

UNITED PULP AND PAPER CO., INC., PETITIONER, VS. ACROPOLIS CENTRAL GUARANTY CORPORATION, RESPONDENT.*G.R. No. 171750. January 25, 2012*

Ponente: MENDOZA, J.

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This is a petition for review under Rule 45 praying for the annulment of the November 17, 2005 Decision[1] and the March 2, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 89135 entitled Acropolis Central Guaranty Corporation (formerly known as the Philippine Pryce Assurance Corp.) v. Hon. Oscar B. Pimentel, as Presiding Judge, RTC of Makati City, Branch 148 (RTC), and United Pulp and Paper Co., Inc.

The Facts

On May 14, 2002, United Pulp and Paper Co., Inc. (UPPC) filed a civil case for collection of the amount of P42,844,353.14 against Unibox Packaging Corporation (Unibox) and Vicente Ortega (Ortega) before the Regional Trial Court of Makati, Branch 148 (RTC).[3] UPPC also prayed for a Writ of Preliminary Attachment against the properties of Unibox and Ortega for the reason that the latter were on the verge of insolvency and were transferring assets in fraud of creditors.[4] On August 29, 2002, the RTC issued the Writ of Attachment[5] after UPPC posted a bond in the same amount of its claim. By virtue of the said writ, several properties and assets of Unibox and Ortega were attached.[6]

On October 10, 2002, Unibox and Ortega filed their Motion for the Discharge of Attachment,[7] praying that they be allowed to file a counter-bond in the amount of P42,844,353.14 and that the writ of preliminary attachment be discharged after the filing of such bond. Although this was opposed by UPPC, the RTC, in its Order dated October 25, 2002, granted the said motion for the discharge of the writ of attachment subject to the condition that Unibox and Ortega file a counter-bond.[8] Thus, on November 21, 2002, respondent Acropolis Central Guaranty Corporation (Acropolis) issued the Defendant's Bond for Dissolution of Attachment[9] in the amount of P42,844,353.14 in favor of Unibox.

Not satisfied with the counter-bond issued by Acropolis, UPPC filed its Manifestation and Motion to Discharge the Counter-Bond[10] dated November 27, 2002, claiming that Acropolis was among those insurance companies whose licenses were set to be cancelled due to their failure to put up the minimum amount of capitalization required by law. For that reason, UPPC prayed for the discharge of the counter-bond and the reinstatement of the attachment. In its December 10, 2002 Order,[11] the RTC denied UPPC's Motion to Discharge Counter-Bond and, instead, approved and admitted the counter-bond posted by Acropolis. Accordingly, it ordered the sheriff to cause the lifting of the attachment on the properties of Unibox and Ortega.

On September 29, 2003, Unibox, Ortega and UPPC executed a compromise agreement,[12] wherein Unibox and Ortega acknowledged their obligation to UPPC in the amount of P35,089,544.00 as of August 31, 2003, inclusive of the principal and the accrued interest, and bound themselves to pay the said amount in accordance with a schedule of payments agreed upon by the parties. Consequently, the RTC promulgated its Judgment[13] dated

October 2, 2003 approving the compromise agreement.

For failure of Unibox and Ortega to pay the required amounts for the months of May and June 2004 despite demand by UPPC, the latter filed its Motion for Execution[14] to satisfy the remaining unpaid balance. In the July 30, 2004 Order,[15] the RTC acted favorably on the said motion and, on August 4, 2004, it issued the requested Writ of Execution.[16]

The sheriff then proceeded to enforce the Writ of Execution. It was discovered, however, that Unibox had already ceased its business operation and all of its assets had been foreclosed by its creditor bank. Moreover, the responses of the selected banks which were served with notices of garnishment indicated that Unibox and Ortega no longer had funds available for garnishment. The sheriff also proceeded to the residence of Ortega to serve the writ but he was denied entry to the premises. Despite his efforts, the sheriff reported in his November 4, 2008 Partial Return[17] that there was no satisfaction of the remaining unpaid balance by Unibox and Ortega.

On the basis of the said return, UPPC filed its Motion to Order Surety to Pay Amount of Counter-Bond[18] directed at Acropolis. On November 30, 2004, the RTC issued its Order[19] granting the motion and ordering Acropolis to comply with the terms of its counter-bond and pay UPPC the unpaid balance of the judgment in the amount of P27,048,568.78 with interest of 12% per annum from default.

Thereafter, on December 13, 2004, Acropolis filed its Manifestation and Very Urgent Motion for Reconsideration,[20] arguing that it could not be made to pay the amount of the counter-bond because it did not receive a demand for payment from UPPC. Furthermore, it reasoned that its obligation had been discharged by virtue of the novation of its obligation pursuant to the compromise agreement executed by UPPC, Unibox and Ortega. The motion, which was set for hearing on December 17, 2004, was received by the RTC and UPPC only on December 20, 2004.[21] In the Order dated February 22, 2005, the RTC denied the motion for reconsideration for lack of merit and for having been filed three days after the date set for the hearing on the said motion.[22]

Aggrieved, Acropolis filed a petition for certiorari before the CA with a prayer for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction.[23] On November 17, 2005, the CA rendered its Decision[24] granting the petition, reversing the February 22, 2005 Order of the RTC, and absolving and relieving Acropolis of its liability to honor and pay the amount of its counter-attachment bond. In arriving at said disposition, the CA stated that, firstly, Acropolis was able to comply with the three-day notice rule because the motion it filed was sent by registered mail on December 13, 2004, four days prior to the hearing set for December 17, 2004;[25] secondly, UPPC failed to comply with the following requirements for recovery of a judgment creditor from the surety on the counter-bond in accordance with Section 17, Rule 57 of the Rules of Court, to wit: (1) demand made by creditor on the surety, (2) notice to surety and (3) summary hearing as to his liability for the judgment under the counter-bond;[26] and, thirdly, the failure of UPPC to include Acropolis in the compromise agreement was fatal to its case.[27]

UPPC then filed a motion for reconsideration but it was denied by the CA in its Resolution dated March 1, 2006.[28]

Hence, this petition.

The Issues

For the allowance of its petition, UPPC raises the following

GROUND S

I.

The Court of Appeals erred in not holding respondent liable on its counter-attachment bond which it posted before the trial court inasmuch as:

A. The requisites for recovering upon the respondent-surety were clearly complied with by petitioner and the trial court, inasmuch as prior demand and notice in writing was made upon respondent, by personal service, of petitioner's motion to order respondent surety to pay the amount of its counter-attachment bond, and a hearing thereon was held for the purpose of determining the liability of the respondent-surety.

B. The terms of respondent's counter-attachment bond are clear, and unequivocally provide that respondent as surety shall jointly and solidarily bind itself with defendants to secure and pay any judgment that petitioner may recover in the action. Hence, such being the terms of the bond, in accordance with fair insurance practices, respondent cannot, and should not be allowed to, evade its liability to pay on its counter-attachment bond posted by it before the trial court.

II.

The Court of Appeals erred in holding that the trial court gravely abused its discretion in denying respondent's manifestation and motion for reconsideration considering that the said motion failed to comply with the three (3)-day notice rule under Section 4, Rule 15 of the Rules of Court, and that it had lacked substantial merit to warrant a reversal of the trial court's previous order.[29]

Simply put, the issues to be dealt with in this case are as follows:

- (1) Whether UPPC failed to make the required demand and notice upon Acropolis; and
- (2) Whether the execution of the compromise agreement between UPPC and Unibox and Ortega was tantamount to a novation which had the effect of releasing Acropolis from its obligation under the counter-attachment bond.

The Court's Ruling

UPPC complied with the twin requirements of notice and demand

On the recovery upon the counter-bond, the Court finds merit in the arguments of the petitioner.

UPPC argues that it complied with the requirement of demanding payment from Acropolis by notifying it, in writing and by personal service, of the hearing held on UPPC's Motion to Order Respondent-Surety to Pay the Bond.[30] Moreover, it points out that the terms of the counter-attachment bond are clear in that Acropolis, as surety, shall jointly and solidarily bind itself with Unibox and Ortega to secure the payment of any judgment that UPPC may recover in the action.[31]

Section 17, Rule 57 of the Rules of Court sets forth the procedure for the recovery from a surety on a counter-bond:

Sec. 17. Recovery upon the counter-bond. – When the judgment has become executory, the surety or sureties on any counter-bond given pursuant to the provisions of this Rule to secure the payment of the judgment shall become charged on such counter-bond and bound to pay the judgment obligee upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing on the same action.

From a reading of the abovequoted provision, it is evident that a surety on a counter-bond given to secure the payment of a judgment becomes liable for the payment of the amount due upon: (1) demand made upon the surety; and (2) notice and summary hearing on the same action. After a careful scrutiny of the records of the case, the Court is of the view that UPPC indeed complied with these twin requirements.

This Court has consistently held that the filing of a complaint constitutes a judicial demand.[32] Accordingly, the filing by UPPC of the Motion to Order Surety to Pay Amount of Counter-Bond was already a demand upon Acropolis, as surety, for the payment of the amount due, pursuant to the terms of the bond. In said bond, Acropolis bound itself in the sum of ₱42,844,353.14 to secure the payment of any judgment that UPPC might recover against Unibox and Ortega.[33]

Furthermore, an examination of the records reveals that the motion was filed by UPPC on November 11, 2004 and was set for hearing on November 19, 2004.[34] Acropolis was duly notified of the hearing and it was personally served a copy of the motion on November 11, 2004,[35] contrary to its claim that it did not receive a copy of the motion.

On November 19, 2004, the case was reset for hearing on November 30, 2004. The minutes of the hearing on both dates show that only the counsel for UPPC was present. Thus, Acropolis was given the opportunity to defend itself. That it chose to ignore its day in court is no longer the fault of the RTC and of UPPC. It cannot now invoke the alleged lack of notice and hearing when, undeniably, both requirements were met by UPPC.

No novation despite compromise agreement; Acropolis still liable under the terms of the counter-bond

UPPC argues that the undertaking of Acropolis is to secure any judgment rendered by the RTC in its favor. It points out that because of the posting of the counter-bond by Acropolis and the dissolution of the writ of preliminary attachment against Unibox and Ortega, UPPC lost its security against the latter two who had gone bankrupt.[36] It cites the cases of *Guerrero v. Court of Appeals*[37] and *Martinez v. Cavives*[38] to support its position that the execution of a compromise agreement between the parties and the subsequent rendition of a judgment based on the said compromise agreement does not release the surety from its obligation nor does it novate the obligation.[39]

Acropolis, on the other hand, contends that it was not a party to the compromise agreement. Neither was it aware of the execution of such an agreement which contains an acknowledgment of liability on the part of Unibox and Ortega that was prejudicial to it as the surety. Accordingly, it cannot be bound by the judgment issued based on the said agreement.[40] Acropolis also questions the applicability of *Guerrero* and draws attention to the fact that in said case, the compromise agreement specifically stipulated that the surety shall continue to be liable, unlike in the case at bench where the compromise agreement made no mention of its obligation to UPPC.[41]

On this issue, the Court finds for UPPC also.

The terms of the Bond for Dissolution of Attachment issued by Unibox and Acropolis in favor of UPPC are clear and leave no room for ambiguity:

WHEREAS, the Honorable Court in the above-entitled case issued on _____ an Order dissolving / lifting partially the writ of attachment levied upon the defendant/s personal property, upon the filing of a counterbond by the defendants in the sum of PESOS FORTY TWO MILLION EIGHT HUNDRED FORTY FOUR THOUSAND THREE HUNDRED FIFTY THREE AND 14/100 ONLY (P 42,844,353.14) Philippine Currency.

NOW, THEREFORE, we UNIBOX PACKAGING CORP. as Principal and PHILIPPINE PRYCE ASSURANCE CORP., a corporation duly organized and existing under and by virtue of the laws of the Philippines, as Surety, in consideration of the dissolution of said attachment, hereby jointly and severally bind ourselves in the sum of FORTY TWO MILLION EIGHT HUNDRED FORTY FOUR THOUSAND THREE HUNDRED FIFTY THREE AND 14/100 ONLY (P 42,844,353.14) Philippine Currency, in favor of the

plaintiff to secure the payment of any judgment that the plaintiff may recover against the defendants in this action.[42] [Emphasis and underscoring supplied]

Based on the foregoing, Acropolis voluntarily bound itself with Unibox to be solidarily liable to answer for ANY judgment which UPPC may recover from Unibox in its civil case for collection. Its counter-bond was issued in consideration of the dissolution of the writ of attachment on the properties of Unibox and Ortega. The counter-bond then replaced the properties to ensure recovery by UPPC from Unibox and Ortega. It would be the height of injustice to allow Acropolis to evade its obligation to UPPC, especially after the latter has already secured a favorable judgment.

This issue is not novel. In the case of *Luzon Steel Corporation v. Sia*,[43] Luzon Steel Corporation sued Metal Manufacturing of the Philippines and Jose Sia for breach of contract and damages. A writ of preliminary attachment was issued against the properties of the defendants therein but the attachment was lifted upon the filing of a counter-bond issued by Sia, as principal, and Times Surety & Insurance Co., as surety. Later, the plaintiff and the defendants entered into a compromise agreement whereby Sia agreed to settle the plaintiff's claim. The lower court rendered a judgment in accordance with the terms of the compromise. Because the defendants failed to comply with the same, the plaintiff obtained a writ of execution against Sia and the surety on the counter-bond. The surety moved to quash the writ of execution on the ground that it was not a party to the compromise and that the writ was issued without giving the surety notice and hearing. Thus, the court set aside the writ of execution and cancelled the counter-bond. On appeal, this Court, speaking through the learned Justice J.B.L. Reyes, discussed the nature of the liability of a surety on a counter-bond:

Main issues posed are (1) whether the judgment upon the compromise discharged the surety from its obligation under its attachment counterbond and (2) whether the writ of execution could be issued against the surety without previous exhaustion of the debtor's properties.

Both questions can be solved by bearing in mind that we are dealing with a counterbond filed to discharge a levy on attachment. Rule 57, section 12, specifies that an attachment may be discharged upon the making of a cash deposit or filing a counterbond "in an amount equal to the value of the property attached as determined by the judge"; that upon the filing of the counterbond "the property attached ... shall be delivered to the party making the deposit or giving the counterbond, or the person appearing on his behalf, the deposit or counterbond aforesaid standing in place of the property so released."

The italicized expressions constitute the key to the entire problem. Whether the judgment be rendered after trial on the merits or upon compromise, such judgment undoubtedly may be made effective upon the property released; and since the counterbond merely stands in the place of such property, there is no reason why the judgment should not be made effective against the counterbond regardless of the manner how the judgment was obtained.

x x x

As declared by us in *Mercado v. Macapayag*, 69 Phil. 403, 405-406, in passing upon the liability of counter sureties in replevin who bound themselves to answer solidarily for the obligations of the defendants to the plaintiffs in a fixed amount of P912.04, to secure payment of the amount that said plaintiff be adjudged to recover from the defendants,

the liability of the sureties was fixed and conditioned on the finality of the judgment rendered regardless of whether the decision was based on the consent of the parties or on the merits. A judgment entered on a stipulation is nonetheless a judgment of the court because consented to by the parties.[44]

[Emphases and underscoring supplied]

The argument of Acropolis that its obligation under the counter-bond was novated by the compromise agreement is, thus, untenable. In order for novation to extinguish its obligation, Acropolis must be able to show that there is an incompatibility between the compromise agreement and the terms of the counter-bond, as required by Article 1292 of the Civil Code, which provides that:

Art. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. (1204)

Nothing in the compromise agreement indicates, or even hints at, releasing Acropolis from its obligation to pay UPPC after the latter has obtained a favorable judgment. Clearly, there is no incompatibility between the compromise agreement and the counter-bond. Neither can novation be presumed in this case. As explained in *Duño v. Lopena*:^[45]

Novation by presumption has never been favored. To be sustained, it need be established that the old and new contracts are incompatible in all points, or that the will to novate appears by express agreement of the parties or in acts of similar import.^[46]

All things considered, Acropolis, as surety under the terms of the counter-bond it issued, should be held liable for the payment of the unpaid balance due to UPPC.

Three-day notice rule,
not a hard and fast rule

Although this issue has been obviated by our disposition of the two main issues, the Court would like to point out that the three-day notice requirement is not a hard and fast rule and substantial compliance is allowed.

Pertinently, Section 4, Rule 15 of the Rules of Court reads:

Sec. 4. Hearing of motion. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to insure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. [Emphasis supplied]

The law is clear that it intends for the other party to receive a copy of the written motion at least three days before the date set for its hearing. The purpose of the three (3)-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.^[47] In *Preysler, Jr. v. Manila Southcoast Development Corporation*,^[48] the Court restated the ruling that “the date of the hearing should be at least three days after receipt of the notice of hearing by the other parties.”

It is not, however, a hard and fast rule. Where a party has been given the opportunity to be heard, the time to study the motion and oppose it, there is compliance with the rule. This was the ruling in the case of *Jehan Shipping Corporation v. National Food Authority*,^[49] where it was written:

Purpose Behind the
Notice Requirement

This Court has indeed held time and time again that, under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered pro forma and does not affect the

reglementary period for the appeal or the filing of the requisite pleading.

As an integral component of procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution by the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.

The test is the presence of the opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. Considering the circumstances of the present case, we believe that the requirements of procedural due process were substantially complied with, and that the compliance justified a departure from a literal application of the rule on notice of hearing.[50] [Emphasis supplied]

In the case at bench, the RTC gave UPPC sufficient time to file its comment on the motion. On January 14, 2005, UPPC filed its Opposition to the motion, discussing the issues raised by Acropolis in its motion. Thus, UPPC's right to due process was not violated because it was afforded the chance to argue its position.

WHEREFORE, the petition is GRANTED. The November 17, 2005 Decision and the March 1, 2006 Resolution of the Court of Appeals, in CA-G.R. SP No. 89135, are hereby REVERSED and SET ASIDE. The November 30, 2004 Order of the Regional Trial Court, Branch 148, Makati City, ordering Acropolis to comply with the terms of its counter-bond and pay UPPC the unpaid balance of the judgment in the amount of P27,048,568.78 with interest of 12% per annum from default is REINSTATED.

Corona,[*] CJ, Velasco, Jr., (Chairperson), Abad, and Perlas-Bernabe, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated July 20, 2009.

[1] Rollo, pp. 234-241; Penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Fernanda Lampas-Peralta.

[2] Id. at 257.

[3] Id. at 47 and 235.

[4] Id. at 46-47.

[5] Id. at 51-52.

[6] Id. at 53 and 235.

[7] Id. at 56-59.

[8] Id. at 235-236.

[9] Id. at 54.

[10] Id. at 64-66.

[11] Id. at 90-93.

[12] Id. at 106-113.

[13] Id. at 114-115.

[14] Id. at 118-119.

[15] Id. at 131-132.

[16] Id. at 132.

[17] Id. at 133-134.

[18] Id. at 135-138.

[19] Id. at 139.

[20] Id. at 140-148.

[21] Id. at 18.

[22] Id. at 159-160.

[23] Id. at 166-189.

[24] Id. at 234-241.

[25] Id. at 239.

[26] Id. at 239-240.

[27] Id. at 240.

[28] Id. at 257.

[29] Id. at 23-24.

[30] Id. at 25.

[31] Id. at 28.

[32] Guerrero v. Court of Appeals, G.R. No. L-22366, October 30, 1969, 29 SCRA 791, 796; Monzon v. Intermediate Appellate Court, 251 Phil. 695, 704 (1989).

[33] Records, p. 885.

[34] Id. at 1067-1070.

[35] Id. at 1070.

[36] Rollo, p. 28.

[37] Supra note 32.

[38] 25 Phil. 581 (1913).

[39] Rollo, pp. 29-30.

[40] Id. at 306-307.

[41] Id. at 308.

[42] Records, p. 885.

[43] 138 Phil. 62 (1969).

[44] Luzon Steel Corporation v. Sia, 138 Phil. 62, 65-67 (1969).

[45] 116 Phil. 1305 (1962).

[46] Id. at 1313-1314, citing Martinez v. Cavives, 25 Phil. 581 (1913); Tiu Siuco v. Habana, 45 Phil. 707 (1924); Asia Banking Corp. v. Lacson Co., 48 Phil. 482 (1925); Pascual v. Lacsamana, 53 O.G. 2467, April 1957.

[47] Sembrano v. Ramirez, 248 Phil. 260, 266 (1988), citing E & L Mercantile, Inc. v. Intermediate Appellate Court, 226 Phil. 299, 305 (1986).

[48] G.R. No. 171872, June 28, 2010, 621 SCRA 636, 645.

[49] 514 Phil. 166 (2005).

[50] Id. at 173-174.

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