

LUZON SURETY CO., INC., PETITIONER, VS. RAFAEL P. GUERRERO, SR., ET AL., RESPONDENTS.*G. R. No. 20705. June 20, 1966*

Ponente: DIZON, J.

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On January 9, 1962, Rafael P. Guerrero filed an action for ejectment with the Municipal Court of Bacolod City against the spouses Felipe Navarro and Julia L. Navarro because of their alleged failure to pay the agreed rentals (Civil Case No. 3021). As the latter defaulted, the court, after receiving Guerrero's evidence, rendered judgment in his favor. The judgment having become final and executory, the court, upon motion of Guerrero, issued a writ of execution by virtue of which several personal effects belonging to the Navarros were levied upon by the sheriff. Prior to their sale at public auction, and after several unsuccessful attempts to have the Municipal Court set aside the aforesaid writ of execution, Navarro filed a petition for relief with the Court of First Instance of Negros Occidental (civil Case No. 6743) praying that the judgment and the writ of execution mentioned heretofore be set aside. Upon his filing a bond in the amount of P600,00, with the Luzon Surety Co., Inc., as surety, the court issued a writ of preliminary injunction restraining the sheriff from selling the properties levied upon and ordering their release.

After several postponements, the Court, on October 29, 1962, dismissed the petition for relief because of Navarro's failure to prosecute his case, at the same time holding his bond liable for whatever damages Guerrero may have suffered by reason of the injunction. On December 8, 1962, the court also issued, ex-parte, an order for the issuance of a writ of execution against the bond filed by herein petitioner. Thereupon the latter moved to have the aforesaid order and writ set aside on the ground that the same were issued without the notice and hearing required by law. As this motion was denied, petitioner Luzon Surety Co., Inc. filed the present petition for certiorari, with a prayer for a writ of preliminary injunction which We issued on February 16, 1963.

The issue to be resolved now is whether or not the respondent judge committed a grave abuse of discretion or exceeded his court's jurisdiction in issuing the order and writ complained of.

As shown by the facts stated heretofore, the bond filed by petitioner was an injunction bond conditioned that the same shall answer - up to the amount of P600.00 - for such damages as the party enjoined may suffer by reason of the injunction, should the court later declare that the same was issued without sufficient cause. In accordance with the provisions of Section 9, Rule 60, and Section 20, Rule 59 of the Rules of Court, the party enjoined must make a formal claim for such damages and said claim must be set for hearing to give the claimant an opportunity to prove such damages as he claims to have suffered by reason of the injunction issued against him, and also to give the adverse party an opportunity to defend himself (Section 9, Rule 58, in relation to Section 20, Rule 57, Rules of Court). Only after such hearing may the corresponding judgment be rendered resolving the claim for damages (*Visayan Surety etc., vs. Pascual*, 85 Phil., 779; 47 O. G. 5075; *Underwriters Insurance Co. vs. Tan*, Phil., 911).

In the present case, it is not denied that the respondent judge, after dismissing the petition for relief filed by

petitioner, issued ex-parte the order of December 8, 1962 providing for the issuance of the corresponding writ of execution against the bond filed by petitioner. It held no hearing to determine whether the claimant had suffered damages by reason of the preliminary injunction issued against him, and to give an opportunity to the surety to be heard. Obviously, therefore, said order - and necessarily the writ of execution issued thereunder - are void.

WHEREFORE, the writ prayed for is granted, with costs against respondent Guerrero. The preliminary injunction issued Heretofore is hereby made final.

Concepcion, C.J., Reyes, Barrera, Dizon, Regala, Makalintal, Bengzon, Zaldivar, and Sanchez, JJ., concur.

RESOLUTION

October 22, 1966

DIZON, J.:

Before Us is a motion for reconsideration filed by respondent Rafael P. Guerrero Sr. praying "that the decision of this Honorable Court dated June 2, 1966, be reconsidered in the sense that the lower court be ordered to receive the evidence and/or application for damages of the respondent Rafael P. Guerrero against the petitioner Luzon Surety Co. Inc., or in the alternative for the sake of justice and equity to modify the decision of June 20, 1966 exempting the respondent Rafael P. Guerrero from costs".

Our decision in this case granting the writ of certiorari prayed for in the petition filed by Luzon Surety Company Inc. is predicated upon the following considerations: that the bond filed by petitioner was an injunction bond liable— up to the amount of P600.00— for such damages as the party enjoined may suffer by reason of the writ of preliminary injunction issued against him, should that writ be subsequently declared to have been issued without sufficient cause; that to determine the liability of the surety upon such bond, the aggrieved party must make a claim for damages, and that the same should be set for hearing with previous notice to both parties.

In the present case the respondent court, on October 29, 1962, not only dismissed the petition for relief file by the Navarro spouses, who were defendants in the ejectment case filed in the Municipal Court of Bacolod City, but also held the indemnity bond filed by petitioner liable for such damages as respondent Guerrero might have suffered by reason of the injunction. Then on December 8 of the same year, resolving an ex-parte motion filed by Guerrero, said court issued an order for the issuance of a writ of execution against the bond file by petitioner herein. Damages caused through the improvident issuance of a writ of preliminary injunction—as is well known—may not be recovered in a separate action but must be claimed in the same proceeding where the injunction bond was filed. In the case at bar, the allegations and prayer for relief contained in the motion to dismiss filed by Guerrero on August 23, 1962 and in his ex-parte motion for execution dated December 6, 1962 (Annexes "C" and "E" respectively, of the petition) comply substantially with the requirement concerning the filing of a claim, but no hearing in connection therewith was held before the writ of execution complained of was issued.

In consonance with the foregoing, the motion for reconsideration is granted to the extent that the lower court is directed to hold the required hearing in relation to such claim for damages and afterwards proceed to determine the same. Without costs.

Concepcion, C.J., Reyes, J.B.L., Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Castro, JJ., concur.

Motion granted.

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