EXCELLENT QUALITY APPAREL, INC., PETITIONER, VS. VISAYAN SURETY & INSURANCE CORPORATION, AND FAR EASTERN SURETY & INSURANCE CO., INC., RESPONDENTS.

G.R. No. 212025. July 01, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

The present case involves the wrongful attachment and release of the petitioner's funds to the adverse party and its plight to recover the same. It seems that when misfortune poured down from the skies, the petitioner received a handful. The scales of justice, however, do not tilt based on chance; rather on the proper application of law, jurisprudence and justice.

This is a petition for review on certiorari seeking to reverse and set aside the October 21, 2013 Decision[1] and the April 1, 2014 Resolution[2] of the Court of Appeals (CA), in CA-G.R. CV No. 95421, which affirmed the January 15, 2010[3] and May 19, 2010[4] Orders of the Regional Trial Court of Manila, Branch 32 (RTC), in Civil Case No. 04-108940.

The Facts

On March 26, 1996, petitioner Excellent Quality Apparel, Inc. (petitioner), then represented by Max L.F. Ying (Ying), Vice-President for Productions, and Alfiero R. Orden, Treasurer, entered into a contract with Multi-Rich Builders (Multi-Rich), a single proprietorship, represented by Wilson G. Chua, its President and General Manager, for the construction of a garment factory within the Cavite Philippine Economic Zone Authority (CPEZA). The duration of the project was for a maximum period of five (5) months or 150 consecutive calendar days. Included in the contract was an Arbitration Clause in case of dispute.

On November 27, 1996, the construction of the factory building was completed.

On February 20, 1997, Win Multi-Rich Builders, Inc. (Win Multi-Rich) was incorporated with the Securities and Exchange Commission (SEC).

On January 26, 2004, Win Multi-Rich filed a complaint for sum of money and damages against petitioner and Ying before the RTC.[5] It also prayed for the issuance of a writ of attachment, claiming that Ying was about to abscond and that petitioner had an impending closure.

Win Multi-Rich then secured the necessary bond in the amount of P8,634,448.20 from respondent Visayan Surety and Insurance Corporation (Visayan Surety)[6] In the Order,[7] dated February 2, 2004, the RTC issued a writ of preliminary attachment in favor of Win Multi-Rich.

To prevent the enforcement of the writ of preliminary attachment on its equipment and machinery, petitioner issued Equitable PCI Bank Check No. 160149,[8] dated February 16, 2004, in the amount of P8,634,448.20 payable to the Clerk of Court of the RTC.

On February 19, 2004, petitioner filed its Omnibus Motion,[9] seeking to discharge the attachment. Petitioner also questioned the jurisdiction of the RTC due to the presence of the Arbitration Clause in the contract. It asserted that the case should have been referred first to the Construction Industry Arbitration Commission (CIAC) pursuant to Executive Order (E.O.) No. 1008.

The motion, however, was denied by the RTC in its Order,[10] dated April 12, 2004, because the issues of the case could be resolved after a full-blown trial.

On April 26, 2004, petitioner filed its Answer with Compulsory Counterclaim[11] before the RTC. It denied the material allegation of the complaint and sought the immediate lifting of the writ of attachment. It also prayed that the bond filed by Win Multi-Rich to support its application for attachment be held to satisfy petitioner's claim for damages due to the improper issuance of such writ.

On April 29, 2004, the RTC issued another order[12] directing the deposit of the garnished funds of petitioner to the cashier of the Clerk of Court of the RTC.

Win Multi-Rich then filed a motion,[13] dated April 29, 2004, to release petitioner's cash deposit to it. Notably, the motion was granted by the RTC in the Order,[14] dated May 3, 2004. Subsequently, on May 7, 2004, Win Multi-Rich posted Surety Bond No. 10198[15] issued by respondent Far Eastern Surety and Insurance Co., Inc. (FESICO) for the amount of P9,000,000.00, to secure the withdrawal of the cash deposited by petitioner. Thus, Win Multi-Rich was able to receive the funds of petitioner even before the trial began.

On June 18, 2004, petitioner filed a petition for certiorari[16] under Rule 65 of the 1997 Rules of Civil Procedure before the CA. The petition sought to. annul and set aside the April 12, 2004 and April 29, 2004 Orders of the RTC. Petitioner then filed its Supplemental Manifestation and Motion,[17] asserting that its cash deposit with the RTC was turned over to Win Multi-Rich.

On March 14, 2006, the CA rendered a decision,[18] annulling the April 12 2004 and April 29, 2004 Orders of the RTC. It ruled, however, that the RTC had jurisdiction over the case inspite of the arbitration clause because it was a suit for collection of sum of money. The dispositive portion of which reads:

> IN LIGHT OF ALL THE FOREGOING, the instant petition is hereby GRANTED. The Orders dated April 12, 2004 and April 29, 2004 of respondent judge are hereby ANNULLED and SET ASIDE. Accordingly, the writ of preliminary injunction is hereby MADE PERMANENT.
>
> SO ORDERED.[19]

Petitioner filed a motion for reconsideration arguing, among others, that the CA decision failed to state an order to return the garnished amount of P8,634,448.[20], which was taken from its bank account and given to Win Multi-Rich. In its Resolution,[20] dated October 11, 2006, the CA denied the motion.

Aggrieved, petitioner elevated the matter to the Court by way of a petition for review on certiorari under Rule 45, docketed as G.R. No. 175048.

On February 10, 2009, in G.R. No. 175048, the Court promulgated a decision[21] in favor of petitioner and held: first, that Win Multi-Rich was not a real party in interest; second, that the RTC should not have taken cognizance of the collection suit because the presence of the arbitration clause vested jurisdiction on the CIAC over all construction disputes between petitioner and Multi-Rich; and lastly, that Win Multi-Rich could not retain the garnished amount, as the RTC did not have jurisdiction to issue the questioned writ of attachment and to order the release of the funds. The dispositive portion reads:

> WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals is hereby MODIFIED. Civil

> Case No. 04-108940 is DISMISSED. Win Multi-Rich Builders, Inc. is ORDERED to return the garnished amount of EIGHT MILLION SIX HUNDRED THIRTY FOUR THOUSAND FOUR HUNDRED FORTY-EIGHT PESOS AND TWENTY CENTAVOS (P8,634,448.20), which was turned over by the Regional Trial Court, to petitioner with legal interest of 12 percent (12%) per annum upon finality of this Decision until payment.
>
> SO ORDERED.[22]

Win Multi-Rich filed a motion for reconsideration but it was denied by the Court in its April 20, 2009 Resolution.[23] Pursuant to an entry of judgment,[24] the Court's decision became final and executory on June 2, 2009.

On June 26, 2009, petitioner moved for execution thereof, praying for the return of its cash deposit and, in the event of refusal of Win Multi-Rich to comply, to hold Visayan Surety and FESICO liable under their respective bonds.[25]

Win Multi-Rich, Visayan Surety and FESICO were served with copies of the motion for execution.[26] During the August 7, 2009 hearing on the motion for execution, counsels for petitioner, Win Multi-Rich and FESICO were present.[27] The hearing, however, was reset to September 16, 2009. On the said date, Win Multi-Rich, Visayan Surety and FESICO were given fifteen (15) days to submit their respective comments or oppositions to the motion for execution.[28]

On October 15, 2009, Win Multi-Rich opposed the motion for execution[29] because the cash deposit awarded to it by the RTC had been paid to suppliers and the said amount was long overdue and demandable.

The RTC granted the motion for execution in an Order,[30] dated October 19, 2009, and issued a writ of execution.[31] Visayan Surety and FESICO separately moved for reconsideration of the RTC order.

The RTC Ruling

On January 15, 2010, the RTC issued the order,[32] granting the surety respondents' motion for reconsideration and lifting its October 19, 2009 Order insofar as it granted the motion for execution against Visayan Surety and FESICO. The RTC absolved the surety respondents because petitioner did not file a motion for judgment on the attachment bond before the finality of judgment, thus, violating the surety respondents' right to due process. It further held that the execution against the surety respondents would go beyond the terms of the judgment sought to be executed considering that the Court decision pertained to Win Multi-Rich only.

Petitioner moved for reconsideration, but its motion was denied by the RTC in its May 19, 2010 Order.[33]

Undaunted, petitioner appealed before the CA, arguing that there was no violation of the right to due process because the liability of the surety respondents were based on the bonds issued by them.

The CA Ruling

In the assailed decision, dated October 21, 2013, the CA found petitioner's appeal without merit. Citing Section 20, Rule 57 of the 1997 Rules of Civil Procedure (Section 20, Rule 57), the CA held that petitioner failed to timely claim damages against the surety before the decision of the Court became final and executory. It further stated that a court judgment could not bind persons who were not parties to the action as the records showed that Visayan Surety and FESICO were neither impleaded nor informed of the proceedings before the Court in G.R. No. 175048. It was the view of the CA that "[h]aving failed to observe very elementary rules of procedure which are mandatory, [petitioner] caused its own predicament."

Petitioner filed a motion for reconsideration, but it was denied by the CA in the assailed April 1, 2014 Resolution.

Hence, this present petition, anchored on the following

> STATEMENT OF ISSUES
>
> I
>
> THE ASSAILED DECISION AND THE ASSAILED RESOLUTION OF THE COURT OF APPEALS SHOULD BE REVERSED AND SET ASIDE FOR BEING CONTRARY TO LAW AND JURISPRUDENCE CONSIDERING THAT THE RIGHT TO DUE PROCESS OF THE TWO SURETY COMPANIES WILL NOT BE VIOLATED IF EXECUTION OF THE JUDGMENT AGAINST THEM IS ALLOWED.
>
> II
>
> THE ASSAILED DECISION AND THE ASSAILED RESOLUTION OF THE COURT OF APPEALS SHOULD BE REVERSED AND SET ASIDE FOR BEING CONTRARY TO LAW AND JURISPRUDENCE CONSIDERING THAT TO ALLOW THE EXECUTION AGAINST THE TWO SURETY COMPANIES WOULD GIVE FULL EFFECT TO THE TERMS OF THE JUDGMENT.[34]

Petitioner contends that Visayan Surety and FESICO could be held liable because the Court, in G.R. No. 175048, ruled that it cannot allow Win Multi-Rich to retain the garnished amount turned over by the RTC, which had no jurisdiction to issue the questioned writ of attachment. Petitioner argues that if Win Multi-Rich fails or refuses to refund or return the cash deposit, then Visayan Surety and FESICO must be held liable under their respective bonds. Also, petitioner claims that the surety bond of FESICO is not covered by Section 20, Rule 57 because it did not pertain to the writ of attachment itself, but on the withdrawal of the cash deposit.

On October 3, 2014, Visayan Surety filed its Comment.[35] It asserted that no application for damages was filed before the Court in G.R. No. 175048. Thus, there was no occasion to direct the RTC to hear and decide the claim for damages, which constituted a violation of its right to due process. Also, Visayan Surety contended that Section 20, Rule 57 provided a mandatory rule that an application for damages must be filed before the judgment becomes final and executory.

On October 8, 2014, FESICO filed its Comment.[36] It averred that petitioner failed to comply with Section 20, Rule 57 of the Rules of Court because the hearing on the motion for execution was conducted after the decision in G.R. No. 175048 had already become final and executory. It also stated that petitioner failed to implead the surety respondents as parties in G.R. No. 175048.

On January 26, 2015, petitioner filed its Consolidated Reply.[37] It stressed that because the highest court of the land had directed the return of the wrongfully garnished amount to petitioner, proceedings on the application under Section 20, Rule 57, became no longer necessary.

The Court's Ruling

The petition is partly meritorious.

There was an application

for damages; but there was

no notice given to Visayan

Surety

By its nature, preliminary attachment, under Rule 57 of the Rules of Court, "is an ancillary remedy applied for not

for its own sake but to enable the attaching party to realize upon relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action. As such, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition and for purposes of the ultimate effects, of a final judgment in the case.[38] In addition, attachment is also availed of in order to acquire jurisdiction over the action by actual or constructive seizure of the property in those instances where personal or substituted service of summons on the defendant cannot be effected."[39]

The party applying for the order of attachment must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ.[40] The purpose of an attachment bond is to answer for all costs and damages which the adverse party may sustain by reason of the attachment if the court finally rules that the applicant is not entitled to the writ.[41]

In this case, the attachment bond was issued by Visayan Surety in order for Win Multi-Rich to secure the issuance of the writ of attachment. Hence, any application for damages arising from the improper, irregular or excessive attachment shall be governed by Section 20, Rule 57, which provides:

> Sec. 20. Claim for damages on account of improper, irregular or excessive attachment.
>
> An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.
>
> If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court, with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.
>
> Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

The history of Section 20, Rule 57 was discussed in Malayan Insurance, Inc. v. Salas[42] In that case, the Court explained that Section 20, Rule 57 was a revised version of Section 20, Rule 59 of the 1940 Rules of Court, which, in turn, was a consolidation of Sections 170, 177, 223, 272, and 439 of the Code of Civil Procedure regarding the damages recoverable in case of wrongful issuance of the writs of preliminary injunction, attachment, mandamus and replevin and the appointment of a receiver.

Thus, the current provision of Section 20, Rule 57 of the 1997 Rules of Civil Procedure covers application for damages against improper attachment, preliminary injunction, receivership, and replevin.[43] Consequently, jurisprudence concerning application for damages against preliminary injunction, receivership and replevin bonds can be equally applied in the present case.

In a catena of cases,[44] the Court has cited the requisites under Section 20, Rule 57 in order to claim damages against the bond, as follows:

- The application for damages must be filed in the same case where the bond was issued;

- Such application for damages must be filed before the entry of judgment; and

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- After hearing with notice to the surety.

The first and second requisites, as stated above, relate to the application for damages against the bond. An application for damages must be filed in the same case where the bond was issued, either (a) before the trial or (b) before the appeal is perfected or (c) before the judgment becomes executory.[45] The usual procedure is to file an application for damages with due notice to the other party and his sureties. The other method would be to incorporate the application in the answer with compulsory counterclaim.[46]

The purpose of requiring the application for damages to be filed in the same proceeding is to avoid the multiplicity of suit and forum shopping. It is also required to file the application against the bond before the finality of the decision to prevent the alteration of the immutable judgment.[47]

In Paramount Insurance Corp. v. CA,[48] the Court allowed an application for damages incorporated in the answer with compulsory counterclaim of the defendant therein. The sureties were properly notified of the hearing and were given their day in court.

Conversely, in the recent case of Advent Capital and Finance Corp. v. Young,[49] the application for damages against the bond was not allowed. The respondent therein filed his omnibus motion claiming damages against surety after the dismissal order issued by the trial court had attained finality.

In the present petition, the Court holds that petitioner sufficiently incorporated an application for damages against the wrongful attachment in its answer with compulsory counterclaim filed before the RTC. Petitioner alleged that the issuance of the improper writ of attachment caused it actual damages in the amount of at least P3,000,000.00. It added that the Equitable PCI Bank Check No. 160149 it issued to the RTC Clerk of Court, to lift the improper writ of attachment, should be returned to it.[50] Evidently, these allegations constitute petitioner's application for damages arising from the wrongful attachment, and the said application was timely filed as it was filed before the finality of judgment.

The next requisite that must be satisfied by petitioner to hold Visayan Surety liable would be that the judgment against the wrongful attachment was promulgated after the hearing with notice to the surety. Certainly, the surety must be given prior notice and an opportunity to be heard with respect to the application for damages before the finality of the judgment. The Court rules that petitioner did not satisfy this crucial element.

Section 20, Rule 57 specifically requires that the application for damages against the wrongful attachment, whether filed before the trial court or appellate court, must be with due notice to the attaching party and his surety or sureties. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

Due notice to the adverse party and its surety setting forth the facts supporting the applicant's right to damages and the amount thereof under the bond is indispensable. The surety should be given an opportunity to be heard as to the reality or reasonableness of the damages resulting from the wrongful issuance of the writ. In the absence of due notice to the surety, therefore, no judgment for damages may be entered and executed against it.[51]

In the old case of Visayan Surety and Insurance Corp. v. Pascual,[52] the application for damages was made before the finality of judgment, but the surety was not given due notice. The Court allowed such application under Section 20, Rule 59 of the 1940 Rules of Court because there was no rule which stated that the failure to give to the surety due notice of the application for damages would release the surety from the obligation of the bond.[53]

The case of Visayan Surety and Insurance Corp. v. Pascual, however, was abandoned in the subsequent rulings of the Court because this was contrary to the explicit provision of Section 20, Rule 57.[54]

In People Surety and Insurance Co. v. CA,[55] the defendant therein filed an application for damages during the trial but the surety was not notified. The Court denied the application and stated that "it is now well settled that a court has no jurisdiction to entertain any proceeding seeking to hold a surety liable upon its bond, where the surety has not been given notice of the proceedings for damages against the principal and the judgment holding the latter liable has already become final."[56]

In Plaridel Surety & Insurance Co. v. De Los Angeles,[57] a motion for execution against the bond of the surety was filed after the finality of judgment. The petitioner therein asserted that the motion for execution was a sufficient notification to the surety of its application for damages. The Court ruled, that "[t]his notification, however, which was made after almost a year after the promulgation of the judgment by the Court of Appeals, did not cure the tardiness of the claim upon the liability of the surety, which, by mandate of the Rules, should have been included in the judgment."[58]

In the present case, petitioner's answer with compulsory counterclaim, which contained the application for damages, was not served on Visayan Surety.[59] Also, a perusal of the records[60] revealed that Visayan Surety was not furnished any copies of the pleadings, motions, processes, and judgments concerned with the application for damages against the surety bond. Visayan Surety was only notified of the application when the motion for execution was filed by petitioner on June 29, 2009, after the judgment in G.R. No. 175048 had become final and executory on June 2, 2009.

Clearly, petitioner failed to comply with the requisites under Section 20, Rule 57 because Visayan Surety was not given due notice on the application for damages before the finality of judgment. The subsequent motion for execution, which sought to implicate Visayan Surety, cannot alter the immutable judgment anymore.

FESICO's bond is not

covered by Section 20,

Rule 57

While Visayan Surety could not be held liable under Section 20, Rule 57, the same cannot be said of FESICO. In the case at bench, to forestall the enforcement of the writ of preliminary attachment, petitioner issued Equitable PCI Bank Check No. 160149, dated February 16, 2004, in the amount of P8,634,448.20 payable to the Clerk of Court of the RTC. Pursuant to the RTC Order, dated April 29, 2004, the garnished funds of petitioner were deposited to the cashier of the Clerk of Court of the RTC. The procedure to discharge the writ of preliminary attachment is stated in Section 12, Rule 57, to wit:

Sec. 12. Discharge of attachment upon giving counterbond.

> After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason

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> to be found to be or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.
>
> [Emphasis Supplied]

Win Multi-Rich, however, took a step further and filed a motion to release petitioner's cash deposit to it. Immediately, the RTC granted the motion and directed Win Multi-Rich to post a bond in favor of petitioner in the amount of P9,000,000.00 to answer for the damages which the latter may sustain should the court decide that Win Multi-Rich was not entitled to the relief sought. Subsequently, Win Multi-Rich filed a surety bond of FESICO before the RTC and was able to obtain the P8,634,448.20 cash deposit of petitioner, even before the trial commenced.

Strictly speaking, the surety bond of FESICO is not covered by any of the provisions in Rule 57 of the Rules of Court because, in the first place, Win Multi-Rich should not have filed its motion to release the cash deposit of petitioner and the RTC should not have granted the same. The release of the cash deposit to the attaching party is anathema to the basic tenets of a preliminary attachment.

The chief purpose of the remedy of attachment is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.[61] The garnished funds or attached properties could only be released to the attaching party after a judgment in his favor is obtained. Under no circumstance, whatsoever, can the garnished funds or attached properties, under the custody of the sheriff or the clerk of court, be released to the attaching party before the promulgation of judgment.

Cash deposits and counterbonds posted by the defendant to lift the writ of attachment is a security for the payment of any judgment that the attaching party may obtain; they are, thus, mere replacements of the property previously attached.[62] Accordingly, the P8,634,448.20 cash deposit of petitioner, as replacement of the properties to be attached, should never have been released to Win Multi-Rich.

Nevertheless, the Court must determine the nature of the surety bond of FESICO. The cash deposit or the counter-bond was supposed to secure the payment of any judgment that the attaching party may recover in the action.[63] In this case, however, Win Multi-Rich was able to withdraw the cash deposit and, in exchange, it posted a surety bond of FESICO in favor of petitioner to answer for the damages that the latter may sustain. Corollarily, the surety bond of FESICO substituted the cash deposit of petitioner as a security for the judgment. Thus, to claim damages from the surety bond of FESICO, Section 17, Rule 57 could be applied. It reads:

> 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 in the same action.

From a reading of the above-quoted 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.[64] Noticeably, unlike Section 20, Rule 57, which requires notice and hearing before the finality of the judgment in an application for damages, Section 17, Rule 57 allows a party to claim damages on the surety bond after the judgment has become executory.[65]

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The question remains, in contrast to Section 20, why does Section 17 sanction the notice and hearing to the surety after the finality of judgment? The answer lies in the kind of damages sought to be enforced against the bond.

Under Section 20, Rule 57, in relation to Section 4 therein,[66] the surety bond shall answer for all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment. In other words, the damages sought to be enforced against the surety bond are unliquidated. Necessarily, a notice and hearing before the finality of judgment must be undertaken to properly determine the amount of damages that was suffered by the defendant due to the improper attachment. These damages to be imposed against the attaching party and his sureties are different from the principal case, and must be included in the judgment.

On the other hand, under Section 17, Rule 57, in relation to Section 12 therein, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. Stated differently, the damages sought to be charged against the surety bond are liquidated. The final judgment had already determined the amount to be awarded to the winning litigant on the main action. Thus, there is nothing left to do but to execute the judgment against the losing party, or in case of insufficiency, against its sureties.

Here, the Court is convinced that a demand against FESICO had been made, and that it was given due notice and an opportunity to be heard on its defense. First, petitioner filed a motion for execution on June 29, 2009, a copy of which was furnished to FESICO;[67] second, petitioner filed a manifestation,[68] dated July 13, 2009, that FESICO was duly served with the said motion and notified of the hearing on August 7, 2009; third, during the August 7, 2009 hearing on the motion for execution, the counsels for petitioner, Win Multi-Rich and FESICO were all present;[69] fourth, in an Order, dated September 16, 2009, FESICO was given fifteen (15) days to submit its comment or opposition to the motion for execution;[70] and lastly, FESICO filed its comment[71] on the motion on October 1, 2009. Based on the foregoing, the requirements under Section 17, Rule 57 have been more than satisfied.

Indeed, FESICO cannot escape liability on its surety bond issued in favor of petitioner. The purpose of FESICO's bond was to secure the withdrawal of the cash deposit and to answer any damages that would be inflicted against petitioner in the course of the proceedings.[72] Also, the undertaking[73] signed by FESICO stated that the duration of the effectivity of the bond shall be from its approval by the court until the action is fully decided, resolved or terminated.

FESICO cannot simply escape liability by invoking that it was not a party in G.R. No. 175048. From the moment that FESICO issued Surety Bond No. 10198 to Win Multi-Rich and the same was posted before the RTC, the court has acquired jurisdiction over the surety, and the provisions of Sections 12 and 17 of Rule 57 became operational. Thus, the Court holds that FESICO is solidarity liable under its surety bond with its principal Win Multi-Rich.

On a final note, the Court reminds the bench and the bar that lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities.[74]

WHEREFORE, the petition is PARTIALLY GRANTED. The October 21, 2013 Decision and the April 1, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 95421 are AFFIRMED WITH MODIFICATION. The Regional Trial Court of Manila, Branch 32 in Civil Case No. 04-108940 is hereby ordered to proceed with the execution against Far Eastern Surety & Insurance Co., Inc., to the extent of the amount of the surety bond.

SO ORDERED.

Carpio, (Chairperson), Bersamin,[*] Del Castillo, and Leonen, JJ., concur.

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[*] Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 2079, dated June 29, 2015.

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justice Florito S. Macalino and Associate Justice Pedro B. Corales, concurring; rollo, pp. 34-41.

[2] Id. at 43-44.

[3] Penned by Presiding Judge Thelma Bunyi-Medina; id. at 566-568.

[4] Id. at 614.

[5] Id. at 138-145.

[6] Id. at 146.

[7] Records (Vol. I), pp. 76-80.

[8] Id. at 214.

[9] Rollo, pp. 173-184.

[10] Id. at 226-227.

[11] Id. at 228-249.

[12] Id. at 271-273.

[13] Id. at 274-276.

[14] Penned by Presiding Judge Juan C. Nabong, Jr.; Records (Vol. I), p. 293.

[15] Rollo, p. 390.

[16] Id. at 295-334.

[17] Records (Vol. II), pp. 120-122.

[18] Id. at 125-141.

[19] Id. at 141.

[20] Id. at 151-151a.

[21] Penned by Associate Justice Dante O. Tinga with Associate Justices Leonardo A. Quisumbing,Conchita Carpio Morales, Presbitero J. Velasco, Jr., and Arturo D. Brion, concurring; rollo, pp. 428-440.

[22] Id. at 438-439.

[23] Id. at 441-442.

[24] Id. at 445.

[25] Id. at 419-427.

[26] Id. at 426.

[27] Records (Vol. III), p. 34.

[28] Id. at 61.

[29] Id. at 449-451.

[30] Id. at 469-472.

[31] Id. at 561-562.

[32] Id. at 566-568.

[32] Id. at 614.

[33] Id. at 570-583.

[34] Id. at 19.

[35] Id. at 843-855.

[36] Id. at 859-864.

[37] Id. at 869-880.

[38] Republic v. Estate of Alfonso him, Sr., 611 Phil. 37, 51 (2009).

[39] Lim v. Spouses Lazaro, G.R. No. 185734, July 3, 2013, 700 SCRA 547, 552.

[40] Section 4, Rule 57, Rules of Court.

[41] Republic v. Garcia, 554 Phil. 371, 376 (2007).

[42] 179 Phil. 201 (1979).

[43] See Section 8 of Rule 58, Section 9 of Rule 59 and Section 10 of Rule 60.

[44] Jao, et al. v. Royal Financing Corp., et al., 114 Phil. 1152 (1962); Paramount Insurance Corp. v. CA, 369 Phil. 641 (1999); and Pioneer Insurance v. De Dios Transport Co., 454 Phil. 409 (2003).

[45] Spouses Flores v. Stronghold Insurance, Co., 533 Phil. 200, 210 (2006).

[46] Malayan Insurance, Inc. v. Salas, supra note 42.

[47] See Malayan Insurance, Inc. v. Salas, supra note 42, at 211.

[48] Supra note 44.

[49] 670 Phil. 538 (2011).

[50] Id. at 233.

[51] Pioneer Insurance v. De Dios Transport Co., 454 Phil. 409, 429 (2003), citing International Container Terminal Services, Inc. v. CA, G.R. No. 90530, October 07, 1992, 214 SCRA 456, 464.

[52] 85 Phil. 779 (1950).

[53] Id. at 784.

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[54] See Malayan Insurance, Inc. v. Solas, supra note 42 at 210.

[55] 126 Phil. 840 (1967).

[56] Id. at 845.

[57] 133 Phil. 543 (1968).

[58] Id. at 547.

[59] Rollo, p. 236.

[60] Records (Vol. III), p. 24.

[61] Magaling v. Ong, 584 Phil. 151, 180 (2008).

[62] Security Pacific Assurance Corp. v. Tria-Infante, 505 Phil. 609 (2005).

[63] Section 12, Rule 57.

[64] United Pulp and Paper Co., v. Acropolis Central Guaranty Corp., G.R. No. 171750, January 25, 2012, 664 SCRA 65, 72.

[65] See Leelin Marketing Corp. v. C&S Agro Development Co., 206 Phil. 629 (1983).

[66] Sec. 4. Condition of applicant's bond. -

The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudged that hte applicant was not entitled there to.

[67] Records (Vol. III), p. 8.

[68] Id. at 31-32.

[69] Id. at 34.

[70] Id. at 61.

[71] Id. at 70-78.

[72] Records (Vol. I), p. 294.

[73] Id. at 303.

[74] Heirs of Amada Zaulda v. Zaulda, G.R. No. 201234, March 17, 2014.

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