

JUAN TONG AND J. Q. COO TENG HEE, PETITIONERS, VS. F. SANTAMARIA, JUDGE OF FIRST INSTANCE OF ILOILO, AND THE STANDARD OIL COMPANY OF NEW YORK, RESPONDENTS.

G. R. No. 32560. February 01, 1930

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } This proceeding was originally instituted in this court to prevent the honorable respondent judge from carrying into effect his writ of execution of November 5, 1929 rendered in the civil case commenced in the Court of First Instance of Iloilo by the Standard Oil Company of New York against Cho Siong et al., the petitioners alleging that said writ is null and void, and that they have no other plain and speedy remedy in the ordinary course of justice.

The respondents, on the other hand, maintain that said writ is based upon a solid principle of law and justice, and, as the present petition is not the proper remedy, they pray for its dismissal with costs.

It appears from the record: (1) That by virtue of a contract of agency for the sale of petroleum, Cho Siong, as sales agent, bound himself to furnish a cash bond of P1,000 and a personal bond in the sum of P3,000 subscribed on January 27, 1926 by himself, and the sureties Ong Guan, Can and Sun Sy Tong;

(2) That before the sureties signed said bond, said Cho Siong subscribed another document, without the knowledge of his sureties, assuming full responsibility for all the accounts owing from the former sales agent named Tong Kuan, to the plaintiff, as well as for all the goods which said Tong Kuan had in his possession as such agent at the time when the agency was transferred to Cho Siong;

(3) That for non-fulfillment of the obligations of Cho Siong, the Standard Oil Company of New York brought suit against him and his solidary sureties, Ong Guan Can and Sun Sy Tong, for the recovery from them of the amount owed, plus attorney's fees and costs;

(4) That in the course of the proceedings upon that complaint, the court issued a writ of preliminary attachment of the property of Ong Guan Can, which was noted in the transfer certificates of title Nos. 3416 and 3417 of the property of said Ong Guan Can, and was dissolved on November 19 of (the same year, upon petition of Cho Siong, who delivered to the clerk of the court a manager's check issued by the Philippine National Bank in exchange for a personal check made out by the defendant in favor of said bank.

(5) That Cho Siong attempted to. withdraw said cash bond substituting a personal bond therefor, and this petition was granted by the court which required another personal bond of P6,000 subscribed by Juan Tong and J. Q. Coo Teng Hee;

(6) That Ong Guan Can sued the Standard Oil Company of New York for damages in the amount of P15,000 for the unlawful attachment of his property; (7) That in the case of the Standard Oil Company of New York against Cho Siong et al., judgment was rendered in favor of the plaintiff, which was appealed to this court;

(8) That in the case of Ong Guan Can against the Standard Oil Company of New York judgment was likewise rendered absolving the defendant on the ground that the plaintiff had failed to prove that he suffered any actual damages as a consequence of the attachment of his property. This absolutory judgment was also appealed to this court.

(9) That these two appeals (G. R. Nos. 29588 and 29753) Were decided by this court in one judgment, promulgated on December 29, 1928,[1] modifying the judgment in the first case with respect to Cho Siong's liability, secured by Ong Guan Can, which was reduced to P64.40, a sum fully covered by the P1,000 in cash deposited by Cho Siong in possession of the plaintiff, while the debt of the former agent, Tong Kuan, assumed by the defendant Cho Siong without the knowledge of the surety Ong Guan Can was P3,132.96. In the other case, the court affirmed the judgment appealed from; that is, that Ong Guan Can is not entitled to damages for the attachment of his property because he failed to prove that he had sustained any damage whatsoever;

(10) That when the cases were remanded to the court of origin, the respondent judge, upon petition of the plaintiff, the Standard Oil Company of New York, issued the order of November 5, 1929, requiring the sureties Juan Tong and J. Q. Coo Teng Hee to return or deliver to the clerk of court the sum of P3,000, which is the amount of the manager's check No. 19519, or to pay to the plaintiff the sum of P2,197.42, for which the writ of execution had been issued against defendant Cho Siong.

In view of the foregoing facts, and taking into account the allegations of the parties and the arguments adduced in their respective memoranda, the question to be decided is the effect of the bond subscribed by the petitioners in connection with Ong Guan Can's liability in case G. R. No. 29588. The bond subscribed by the petitioners contains the following condition:

"In case judgment is rendered in favor of the plaintiff, the defendants, upon demand, shall again deliver to the officer of the court the property, the attachment of which has been dissolved, in order that the latter may apply it to the payment of the judgment, and should they fail to do so, the defendants and their sureties, shall, upon demand, pay to the plaintiff the full value of so much of the property released as is sufficient to cover the amount adjudged to the plaintiff, plus the costs.

"This obligation shall, then, be null and void; otherwise, it shall continue in full force and effect."

This personal bond was given in substitution for the cash bond of P3,000, for the dissolution of the attachment levied upon the property of the surety Ong Guan Can, in accordance with section 440 of the Code of Civil Procedure as follows:

"Sec. 440. Dissolution of Order of Attachment.—At any time, after the commencement of an action upon which an order of attachment has been made, the defendant may upon reasonable notice to the plaintiff, apply to the judge or justice of the peace who granted the order of attachment, or to the judge of the court in which the action is pending, for an order to discharge the attachment, wholly or in part; and the judge or justice of the peace shall, after hearing, on due notice to both parties, discharge the order of attachment provided the defendant shall execute an obligation to the plaintiff with surety to be approved by the judge, or justice of the peace, to the effect that in case the plaintiff recover judgment in the action, the defendant will, on demand, redeliver the attached property so released to the officer of the court, to be applied to the payment of the judgment, or, in default thereof, that the defendant and surety, will on demand, pay to the plaintiff the full value of the property released. The judge or justice of the peace making such order may fix the sum for which the undertaking must be executed, and for that purpose may take such steps as he finds necessary to determine

the value of the property attached, which obligation shall be filed with the other papers in the cause, and upon its approval by the judge or justice of the peace and the making of the order by him for a discharge of the attachment, all of the property so released, and all of the proceeds of the sales thereof, shall be delivered to the defendant, the obligation aforesaid standing in place of the property so released."

This court held in said case G. R. No. 29588: "Ong Guah Can, as a surety for those debts which Cho Siong might incur upon the contract of agency, does not answer for anything, the principal not having incurred any liability. It is plain under the terms of the bond signed by Ong Guan Can that he did not answer for Cho Siong, save for the latter's acts by virtue of the contract of agency. He cannot be held liable for the debt of agent Tong Kuan which Cho Siong assumed by virtue of another contract of which, said Ong Guan Can was not even aware. A contract of suretyship is to be strictly interpreted and is not to be extended beyond its terms." This being so, we hold that the bond given by the petitioners has, by its own terms, been annulled, and therefore, cannot be carried into effect. Had judgment been rendered against Ong Guan Can, the petitioners' obligation, according to their bond and the aforementioned section 440 of the Code of Civil Procedure, would 'be to deliver to the court official the property, the attachment of which had been dissolved, and in default thereof, to pay its full value sufficient to cover the sum awarded in the judgment; but this court having held that Ong Guan Can has not incurred any civil liability in the action instituted by the Standard Oil Company of New York against Cho Siong et al., his sureties, the petitioners herein, cannot now be required to deliver the released property, nor the value of the cash bond of P3,000, substituted by the personal bond of P6,000.

In regard to the propriety of the remedy taken, it was asserted during the discussion of the case that the petitioners could have appealed from the order in question of November 5, 1929. We seriously doubt that said order could have been appealed, but supposing it to be appealable, we believe an appeal would not be a plain and speedy remedy in the ordinary course of justice. The appeal, had it been taken, would not have stayed the execution of the order under consideration, but would only have promoted a new suit unnecessarily. As was stated in the case of *Dimayuga and Fajardo vs. Fernandez* (43 Phil., 304), the remedy of prohibition is somewhat *sui generis*, and is one of more or less legal discretion, and is intended to prevent the oppressive exercise of legal authority. This being a demand upon a liability already declared null and void by this court, we believe that to compel the petitioners to take the ordinary remedy by appeal, in order to protect their rights, would be to submit them to a new proceeding without legal justification.

Aside from this, the order in question, in so far as it requires the petitioners to deliver the amount of P3,000 which is the value of the manager's check No. 19519, or to pay to the plaintiff the sum of P2,197.42, for which the execution was issued against the defendant Cho Siong, is virtually a revision of the judgment of this court, a thing which the respondent judge could not legally do. As was held in the case of *Shioji vs. Harvey* (43 Phil., 333) :

"Where a cause has been appealed from a Court of First Instance to the Supreme Court of the Philippine Islands, and a judgment rendered by the latter, no interference therewith by the lower court can be tolerated through any proceedings other than such as are directed by the appellate court.

"Inferior courts cannot vary the mandate of the superior court, or examine it, for any other purpose than execution; nor give any other or further relief; nor review it, upon any matter decided on appeal for error apparent; nor intermeddle with it further than to settle so much as has been remanded. (*Sibbald vs. United States* [1838], 12 Pet, 488, followed.)"

By virtue whereof, the said order of November 5, 1929 should be, and is hereby, quashed, and the preliminary injunction is hereby declared permanent, without special pronouncement as to costs. So ordered.

Johnson, Malcolm, Johns, Romualdez and Villa-Real, JJ., concur.

[1] 52 Phil., 612.

CONCURRING

Street, J., :

Upon an examination of the language of the bond for the release of the attached property, it might seem, at first glance, that the petitioners, as sureties on said bond, had made themselves liable to satisfy any judgment that might be entered in the principal action against either of the two co-defendants; and such was the first impression of the undersigned. But upon reflection, I am compelled to accede to the view expressed in the opinion of the court. The language used in the bond for the discharge of an attachment should, in a case where there are more than one defendant, be construed as limiting the liability of the sureties to the liability of the owner of the attached property, the release of which is secured by the giving of the bond, and not as making the sureties liable co-extensively with other defendants.

With respect to the other debatable point in the case, namely, whether the writ of prohibition is a proper remedy, I suggest that the petition may, if necessary, be properly treated as an application for a writ of certiorari to relieve the petitioners from the effect of the order of the Court of First Instance of Iloilo, of November 15, 1929, authorizing the execution of the judgment against the petitioners; and there is no question, to my mind, that certiorari is an appropriate remedy, and I prefer to view the present petition in that aspect.

DISSENTING

Ostrand, J., :

I dissent. Without going into the merits of the case, I wish to call special attention to the misuse of the writ of prohibition. In the past, this court has consistently held that the writ will not lie where there is another plain, speedy, and adequate remedy in the ordinary course of law. In the present case, the order in question was appealable, and there is nothing to show that the remedy of appeal would not have been sufficiently plain, speedy, and adequate; it would be no more inadequate in this case than in any other. I am at a loss to understand the doubts expressed in the majority opinion upon this point; there is no lack of precedents which should dispel such doubts.

The scope of the writ of prohibition is fixed by statute in this jurisdiction, and the law should be followed. Judicial legislation of the kind we are here discussing is usually unsatisfactory and causes confusion.

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