

THOMAS YANG, PETITIONER, VS. THE HONORABLE MARCELINO R. VALDEZ, PRESIDING JUDGE, REGIONAL TRIAL COURT, 11TH JUDICIAL REGION, BRANCH XXII, GENERAL SANTOS CITY, SPS. RICARDO MORAN...

G.R. No. 73317. August 31, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

The present Petition for Certiorari[1] seeks to annul and set aside the orders dated 7 January 1985, 18 January 1985 and 28 February 1985, of Judge Marcelino R. Valdez of the Regional Trial Court of General Santos City, Branch 22. The assailed orders, respectively, had approved a replevin bond posted by respondents, denied the counter-replevin bond filed by Manuel Yaphockun, and rejected petitioner Thomas Yang's counter-replevin bond.

On 4 January 1985, respondent spouses Ricardo and Milagros Morante brought an action in the Regional Trial Court of General Santos City against petitioner Thomas Yang and Manuel Yaphockun, to recover possession of two (2) Isuzu cargo trucks. In their complaint, the Morante spouses alleged that they had actual use and possession of the two (2) cargo trucks, having acquired them during the period from 1982 to 1984. The trucks were, however, registered in the name of petitioner Thomas Yang who was the Treasurer in the Morante spouses' business of buying and selling corn. The Morante spouses further alleged that they were deprived of possession of the vehicles in the morning of 3 January 1985, when petitioner Yang had the vehicles taken from where they were parked in front of the Coca-Cola Plant in General Santos City, to the warehouse of Manuel Yaphockun and there they were thereafter held. Despite repeated demands, the complaint alleged, petitioner Yang refused to release the trucks to respondent spouses.

To obtain immediate possession of the Isuzu trucks, respondent spouses applied for a writ of replevin and put up a replevin bond of P560,000.00 executed by respondent Milagros Morante and Atty. Bayani Calonzo (counsel for respondent spouses).

On 7 January 1985, the respondent judge issued an order of seizure directing the Provincial Sheriff of South Cotabato to take immediate possession and custody of the vehicles involved. The Sheriff carried out the order.

On 10 January 1985, defendant Manuel Yaphockun filed a motion seeking repossession of the cargo trucks, and posted a replevin counter-bond of P560,000.00 executed by himself and one Narciso Mirabueno. The respondent judge promptly required the respondent spouses to comment on the counter-bond proffered.

The respondent spouses reacted by amending their complaint on 13 January 1985 by excluding Manuel Yaphockun as party-defendant. The following day, i.e., 14 January 1985, the respondents submitted an opposition to Yaphockun's counter-bond, contending that since Manuel Yaphockun was merely a nominal defendant, he had no standing to demand the return of the cargo trucks. By an order dated 18 January 1985, the respondent judge disapproved the counter-bond filed by Manuel Yaphockun, since the latter had been dropped as party-defendant

and accordingly no longer had any personality to litigate in the replevin suit. The trial court also ordered the immediate release and delivery of the cargo trucks to respondent spouses.

For his part, petitioner Yang moved, on 21 January 1985, for an extension of fifteen (15) days within which to file an answer to the complaint for replevin. Four days later, on 25 January 1985, petitioner put up a counter-bond in the amount of P560,000.00 which counter-bond was, however, rejected by the respondent judge for having been filed out of time.

Petitioner Yang now argues before us that, firstly, respondent judge had committed a grave abuse of discretion amounting to lack or excess of jurisdiction in approving the replevin bond of respondent spouses. It is contended by petitioner that that replevin bond was merely an undertaking of the bondsmen Milagros Morante and Atty. Calonzo to pay the sum of P560,000.00, that no tangible security, such as "cash, property or surety", was placed thereby at the disposal and custody of the court. It is argued, secondly, that the replevin bond was defective considering that it had been filed by only one of the two (2) private respondents and that the bondsmen thereon had failed by its terms to undertake to return the cargo trucks to petitioner should he (the petitioner) be adjudged lawful owner thereof.

We are not persuaded by petitioner's arguments.

A bond that is required to be given by law is commonly understood to refer to an obligation or undertaking in writing that is sufficiently secured.[2] It is not indispensably necessary, however, that the obligation of the bond be secured or supported by cash or personal property or real property or the obligation of a surety other than the person giving the bond. Most generally understood, a "bond" is an obligation reduced to writing binding the obligor to pay a sum of money to the obligee under specified conditions.[3] At common law, a bond was merely a written obligation under seal.[4] A bond is often, as a commercial matter, secured by a mortgage on real property; the mortgagee may be the obligee, although the mortgagee may also be a third party surety whose personal credit is added to that of the principal obligor under the bond.

The sufficiency of a bond is a matter that is addressed to the sound discretion of the court which must approve the bond. In the case at bar, the replevin bond given by the respondent Morante spouses was properly secured by the sureties themselves who declared their solvency and capacity to answer for the undertaking assumed, through an Affidavit of Justification which read as follows:

"We, MILAGROS MORANTE and BAYANI L. CALONZO, both of legal age, Filipinos, married and residents of Maltana, Tampakan, South Cotabato, and General Santos City, respectively, after having been duly sworn to in accordance with law do hereby depose and say:

1. That each of them is a resident house-holder or free-holder within the Philippines;
2. That each of them is worth the amount specified in the undertaking assumed by them in the above bond over and above all debts, obligations and property exempt from execution.

IN WITNESS WHEREOF, we have hereunto set our hands, this 4th day of January, 1985, at General Santos City, Philippines."

The above sworn declaration of solvency which was submitted to the judge together with the bond, in effect secured the replevin bond. We note also that the sureties or bondsmen under the bond included not only Milagros Morante who was party-plaintiff below, but also a third person, Atty. Bayani L. Calonzo who was not a party-litigant. Petitioner Yang never put in issue the financial capability of these two (2) sureties. It follows that the approval of the replevin bond by respondent judge, before whom it was presented and who was in a better position than this Court to appreciate the financial standing of the sureties, can scarcely be questioned as a grave

abuse of discretion.

The other objections to the replevin bond are equally lacking in merit. The fact that the other respondent, Ricardo Morante, did not act as surety on the same bond as his wife did, does not affect the validity or the sufficiency of that bond. It would appear to the benefit of petitioner that Atty. Bayani L. Calonzo signed up as the other or second surety or bondsman on that bond, since petitioner thereby acquired a right of recourse not only against the respondent spouses but also against a third person, not a party to the replevin suit. Further, the failure of the replevin bond to state expressly that it was "conditioned for the return of the property to the defendant, if the return thereof be adjudged,"[5] is not fatal to the validity of the replevin bond. The replevin bond put up by Milagros Morante and Bayani L. Calonzo stated that it was given "under the condition that [they] will pay all the costs, which may be adjudged to the said defendants and all damages which said defendants may sustain by reason of the order of replevin, if the court shall finally adjudge that the plaintiffs were not entitled thereto."[6] We believe that the condition of the bond given in this case substantially complied with the requirement of Section 2, Rule 60. Moreover, the provisions of Rule 60, Section 2 of the Revised Rules of Court under which the replevin bond was given may be regarded as having become part of the bond and as having been imported thereunto. All the particular conditions prescribed in Section 2, Rule 60, although not written in the bond in printer's ink, will be read into the bond in determining the scope and content of the liability of the sureties or bondsmen under that bond.[7]

Petitioner also contends that since the respondent spouses are not the registered owners of the cargo trucks involved, the writ of replevin should not have been issued. We do not think so. The provisional remedy of replevin is in the nature of a possessory action and the applicant who seeks immediate possession of the property involved need not be holder of the legal title to the property. It suffices, if at the time he applies for a writ of replevin, he is, in the words of Section 2, Rule 60, "entitled to the possession thereof."

Petitioner further urges that the dropping of Manuel Yaphockun as party-defendant in the amended complaint was fraudulently intended to deprive him (Yaphockun) of the right to demand the return of the vehicles in dispute. The difficulty with this argument is that it is merely question-begging. A person in actual or constructive possession of the goods sought to be replevied, should of course be made a party-defendant. At the same time, however, the respondent spouses, as complainants in the suit for replevin, were entitled, for their own convenience and at their own peril, to exclude or strike out the name of a party previously impleaded from the complaint. In excluding Manuel Yaphockun as party-defendant from the complaint, the respondent spouses were well within their rights; no leave of court was needed, no responsive pleading having been previously filed.[8]

Petitioner would finally challenge the order of respondent judge dated 28 February 1985 rejecting his counter-replevin bond for having been filed out of time. Petitioner received summons on the amended complaint on 25 January 1985 and on the same day, filed his counterbond. It is his contention that his redelivery bond was not filed out of time since he was served with summons only on 25 January 1985.

A defendant in a replevin suit may demand return of possession of the property replevied by filing a redelivery bond within the periods specified in Sections 5 and 6 of Rule 60, which provide:

"Sec. 5. Return of property. - If the defendant objects to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon, he cannot require the return of the property as in this section provided; but if he does not so object, he may, at any time before the delivery of the property to the plaintiff, require the return thereof, by filing with the clerk or judge of the court a bond executed to the plaintiff, in double the value of the property stated in the plaintiff's affidavit, for the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant, and by serving a copy of such bond on the plaintiff or his attorney;

Sec. 6. Disposition of property by officer. - If within five (5) days after the taking of the property by the officer, the defendant does not object to the sufficiency of the bond, or of the surety or sureties thereon, or require the return of the property as provided in the last preceding section; or if the defendant so objects and the plaintiff's first or new bond is approved; or if the defendant so requires, and his bond is objected to and found insufficient and does not forthwith file an approved bond, the property shall be delivered to the plaintiff. If for any reason the property is not delivered to the plaintiff, the officer must return it to the defendant." (Underscoring supplied)

Under Section 5, petitioner may "at any time before the delivery of the property to the plaintiff" require the return of the property; in Section 6, he may do so, "within five (5) days after the taking of the property by the officer". Both these periods are mandatory in character.[9] Thus, a lower court which approves a counter-bond filed beyond the statutory periods, acts in excess of its jurisdiction. In the instant case, the cargo trucks were taken into custody by the Sheriff on 7 January 1985. Petitioner Yang's counter-replevin bond was filed on 25 January 1985. The matter was treated at length in the trial court's order of 28 February 1985:

"x x x It is also borne by the record that defendant, thru counsel, was served with copy of the amended complaint dropping defendant Manuel Yap from the complaint on January 14, 1985 and hence, said receipt of the amended complaint was tantamount to a summons issued to the defendant Thomas Yang. It is a truism that the primary purpose of summons is to acquire jurisdiction over the person of the parties, and jurisdiction can be acquired by the voluntary submission of the defendant to the jurisdiction of the Court. Hence, after defendant had been duly represented by counsel even at the inception of the service of summons and a copy of the order of replevin on January 7, 1985, defendant Thomas Yang had already been duly served, especially so, when counsel manifested in their comment to the opposition filed by plaintiffs that Manuel Yap has been duly authorized to represent Thomas Yang. From then on defendant should have been on guard as to the provision of Section 6, Rule 60 of the Rules of Court - re- the five (5) days period within which to file the counter-replevin for the approval of the court, counted from the actual taking of the property by the officer or the sheriff on January 7, 1985. It is honestly believed that the five day period spoken of by the Rule begins from the taking of the property by the sheriff and not from the service of summons to the defendant, for even if summons was already duly served to the defendant but the property has not yet been taken by the sheriff, the provision above cited does not apply. Hence, it is clear that the prescriptive period for filing a counter-replevin bond must be counted from the actual taking of the property by the sheriff, subject of the replevin bond and in this particular case on January 7, 1985. True indeed, that defendant Manuel Yap filed the counter-replevin bond on January 10, 1985, which was denied by this court, that was three (3) days after the property was taken on January 7, 1985 but when the said defendant was dropped from the complaint on January 14, 1985, defendant Thomas Yang should have immediately filed the proper counter-replevin bond after Manuel Yap has been dropped from the complaint on January 14, 1985 considering that the counter-replevin bond filed on January 10, 1985 by Manuel Yap has become obsolete on this date, January 14, 1985. The service of summons to Thomas Yang on January 25, 1985, has become an academic formality because on January 21, 1985, counsel has already filed a motion for extension of time of fifteen (15) days within which to file their responsive pleading counted from January 31, 1985, for the original period of fifteen (15) days for filing the corresponding answer lapsed on January 31, 1985, which this court readily granted. Hence, irrespective of the order of this court dated January 18, 1985, denying the counter-replevin bond filed, defendant Thomas Yang should and must have filed his counter-replevin bond within two (2) days from service of the amended complaint, the same must have been filed on January 18, 1985, to conform with liberal interpretation of the rules and not on January 25, 1985, for then the counter-replevin bond had been filed beyond the period provided by the Rules. The decisional principle on the filing of counter-replevin bond to entitle the defendant to the redelivery or retaining possession of the property, is compliance with all the conditions precedent pursuant to the rules, and failure to comply therewith entitles plaintiff to possession, and the initial steps in obtaining redelivery must be taken within the time limit provided thereto. x x x"[10] (Underscoring supplied)

We agree with the conclusion of respondent judge that petitioner's right to file a counterbond had already prescribed.

We consider, accordingly, that respondent judge did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the orders here assailed.

WHEREFORE, the Resolution of the Court dated 8 February 1988 granting due course to the Petition is hereby WITHDRAWN and the "Petition for Review on Appeal by Certiorari" is DENIED for lack of merit and the orders of respondent Judge Marcelino R. Valdez dated 7 January 1985, 18 January 1985 and 28 February 1985 are hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] The petition was erroneously captioned "petition for review on certiorari" and was initially denied due course in a resolution dated 14 April 1986, for having been filed out of time. The petition was, on reconsideration, given due course, the Court treating the petition as a petition for certiorari under Rule 65 of the Revised Rules of Court, as only interlocutory orders are involved.

[2] Commissioner of Customs v. Alikpala, 36 SCRA 208 (1970).

[3] Lockton v. Lockton, 157 Fed. Supp. 181 (1957); Gural v. Engle, 25 A. 2nd 257, 260 (1942).

[4] Covington Virginia v. Woods, 29 S.E. 2nd 406, 408 (1944).

[5] Section 2, last paragraph, Rule 60, Revised Rules of Court.

[6] Rollo, p. 21.

[7] Bartley v. Bartley, et al. 171 Kan. 465, 233 P. 2d. 735 (1951); Paulsell v. Peters, et al., 115 P. 2d 708 (1941); State v. Anderson, et al., 87 S.E. 2d 249 (1955).

[8] Section 2, Rule 10, Revised Rules of Court.

[9] Bacharach Motor Co., Inc. v. Albert, 60 Phil. 308 (1934).

[10] Rollo, pp. 120-122.

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