

JOSE D. CALDERON, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT, GEORGE SCHULZE, GEORGE SCHULZE, JR., ANTONIO C. AMOR, MANUEL A. MOZO, AND VICTOR M. NALUZ, RESPONDENTS.

G.R. No. 74696. November 11, 1987

Ponente: PARAS, J.

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PARAS, J.:

For review on certiorari is respondent appellate Court's decision[1] in AC-G.R. No. 01420, which affirmed the Regional Trial Court's decision[2] appealed from holding the plaintiff Jose D. Calderon (petitioner herein) and his bondsman the Integrated Bonding and Insurance Com-pany, Inc., jointly and severally liable to pay defendants (private respondents herein), damages caused by the filing by Calderon of the allegedly unwarranted suit and the wrongful and malicious attachment of private respondents' properties.

The facts of the case are briefly as follows:

On November 2, 1976, petitioner Calderon purchased from the private respondents the following: the Luzon Brokerage Corporation (LBC, for brevity) and its five (5) affiliate companies, namely - Luzon Air Freight, Inc., Luzon Port Terminals Services, Inc., Luzon (GS) Warehousing Corporation, GS Industrial Management Corporation, and GS Luzon Trucking Corporation. Twenty one (21) days there-after or on November 23, 1976, the Bureau of Customs suspended the operations of LBC for failure to pay the amount of P1,475,840.00 representing customs taxes and duties incurred prior to the execution of the sale. In order to lift the suspension, Calderon paid the sum of P606,430.00 to the Bureau of Customs.

On October 27, 1977, Calderon filed a complaint against private respondents to recover said amount of P1,475,840.00, with damages by reason of breach of warranty. In the same complaint, the petitioner prayed for a preliminary attachment, alleging: that private respondents had deliberately and willfully concealed from his knowledge such staggering liability of the LBC for the purpose of misleading him into buying the six aforesaid companies; and that private respondent Schulze is about to depart from the Philippines in order to defraud his creditors.

To support the petition for preliminary attachment, the petitioner posted a surety bond of P1,475,840.00. On October 28, 1977, the trial court issued a writ of preliminary attachment, whereupon properties of the private respondents were attached and their bank deposits were garnished.

On November 10, 1977, petitioner Calderon filed an amended complaint, alleging that while the liabilities of LBC are reflected in its books, the aforesaid amount was fraudulently withdrawn and misappropriated by private respondent Schulze. (pp. 7-18, Rollo).

On the other hand, private respondents claimed: that the amount of P1,475,840.00 due to the Bureau of Customs represents the duties and taxes payable out of the advanced payments made by LBC's client, Philippine Refining

Company (PRC, for brevity) in August, September and October, 1976, and in the first and second weeks of November 1976, after Calderon himself had taken control of the management of LBC (Exhibit A); that these deposit payments were properly recorded in the books of the corporation and existing as part of the corporate funds; that from the first week of June, 1976 up to October 30, 1976, private respondent Schulze fully disclosed and explained to Calderon that these customer's advanced deposit payments (including those of the PRC) are to be paid to the Bureau of Customs when their corresponding customs taxes and duties become due; that during this phase of the negotiation, Calderon and his representatives inspected and studied the corporate books and records at will and learned the daily operations and management of LBC; that the petitioner did not pay out of his own pocket but out of the LBC funds the said amount of P606,430.30 demanded by the Bureau of Customs, as evidenced by a manager's check No. FEBTC 25092 (Exhibits 9, 10, 11 & 38) and another facility negotiated with the Insular Bank of Asia and America (Exhibit K-2); and that private respondents are setting up a counterclaim for actual, moral and exemplary damages as well as attorney's fees, as a consequence of the filing of the baseless suit and the wrongful and malicious attachment of their properties. (pp. 217-221, Rollo).

On November 17, 1977, private respondents filed a counterbond, whereupon the trial court issued an order directing the sheriff to return all real and personal properties already levied upon and to lift the notices of garnishment issued in connection with the said attachment (Annex B, p. 42, Rollo).

After trial, the trial court dismissed the complaint, holding Calderon and his surety First Integrated Bonding and Insurance Co., Inc., jointly and severally liable to pay the damages prayed for by the private respondents.

Said decision was affirmed on appeal, although slightly modified in the sense that the award of moral and exemplary damages in favor of private respondents Schulze and Amor was reduced. The dispositive portion of the judgment of affirmance and modification reads:

"WHEREFORE, the judgment of the lower court is modified as follows:

To defendant-appellee George Schulze:

P650,00.00 as moral damages and

P200,000.00 as exemplary damages.

To defendant-appellee Antonio C. Amor:

P150,000.00 as moral damages and

P 30,000.00 as exemplary damages.

"All other dispositions in the judgment appealed from, including the dismissal of the amended complaint, are hereby affirmed in toto.

"SO ORDERED."

In his petition, petitioner Calderon asserts, among other things, that the court below erred:

I

IN HOLDING THAT THE PETITIONER FAILED TO ESTABLISH HIS CLAIMS.

II

IN HOLDING THAT THE PRELIMINARY ATTACHMENT HAD BEEN WRONGFULLY AND MALICIOUSLY SUED OUT.

III

IN HOLDING THAT THE PETITIONER IS LIABLE NOT ONLY FOR ACTUAL DAMAGES BUT MORAL AND EXEM-PLARY DAMAGES AS WELL.

On the other hand, petitioner Insurance Company raises the following issues:

I

WHETHER OR NOT THE PETITIONER SURETY IS LIABLE FOR DAMAGES ON ITS CONTRACTED SURETYSHIP NOTWITHSTANDING THE DISSOLUTION OF THE WRIT OF PRELIMINARY ATTACHMENT, AS A CONSEQUENCE OF THE FILING OF THE DEFENDANT'S COUNTER-BOND, WHEREBY LEVIED PROPERTIES WERE ORDERED BY THE COURT RETURNED TO PRIVATE RESPONDENTS AND THE NOTICES OF GARNISHMENT ISSUED IN CONNECTION THEREWITH ORDERED LIFTED.

II

WHETHER OR NOT THE SUBSEQUENT FILING BY PRIVATE RESPONDENTS OF A COUNTER-BOND TO DISCHARGE THE WRIT OF PRELIMINARY ATTACHMENT CONSTITUTE A WAIVER ON ANY DEFECT IN THE ISSUANCE OF THE ATTACHMENT WRIT.

III

WHETHER OR NOT A SURETY IS A GUARANTOR OF THE EXISTENCE OF A GOOD CAUSE OF ACTION IN THE COMPLAINT.

The petition is devoid of merit.

Whether or not the amount of P1,475,840.00 was duly disclosed as an outstanding liability of LBC or was mis-appropriated by private respondent Schulze is purely a factual issue. That Calderon was clearly in bad faith when he asked for the attachment is indicated by the fact that he failed to appear in court to support his charge of misappropriation by Schulze, and in effect, preventing his being cross-examined, no document on the charges was presented by him.

What the Appellate Court found in this regard need not be further elaborated upon. The Appellate Court ruled:

"xxx The record shows that appellant Calderon failed to produce any evidence in support of his sworn charge that appellee Schulze had deliberately and willfully concealed the liabilities of Luzon Brokerage Corporation. Neither did appellant Calderon prove his sworn charges that appellee Schulze had maliciously and fraudulently withdrawn and misappropriated the amount of P1,475,840.00 and that all the defendants had maliciously and fraudulently concealed and withheld from him this alleged liability of Luzon Brokerage Corporation in breach of the contract-warranty that said corporation had no obligations or liabilities except those appearing in the books and records of the said corporation. Indeed, appellant Calderon never appeared in the trial court to substantiate the charges in his verified complaints and in his affidavit to support his petition for the issuance of a writ of attachment. He distanced himself from the appellees and avoided cross-examination regarding his sworn allegations. xxx

"xxx But even though appellant Calderon failed to prove his serious charges of fraud, malice and bad faith, the appellees took it upon themselves to show that they did not conceal or withhold from appellant's knowledge the depo-sits made by Philippine Refining Co., Inc. with Luzon Brokerage Corporation and that they did not withdraw and misappropriate the deposits made by Philippine Refining Co., Inc. with Luzon Brokerage Corporation.

"The books and records of Luzon Brokerage Corporation on which the Financial Statement of Luzon Brokerage Corporation, as of October 31, 1976 was prepared by the auditing firm re-tained by appellant Calderon himself (Exhibit 1), disclose that the liabilities of Luzon Broker-age Corporation in the total amount of P4,574,498.32 appear under the heading 'Customers Depo-sit' (Exhibit 1-A) this amount includes the depo-sit of Philippine Refining Co., Inc. in the sum of P1,475,840.00.

"But appellant Calderon contends that this financial statement was dated February 4, 1977 (see Exhibit 1-C). There is nothing commendable in this argument because the bases of the finan-cial statement were the books, records and docu-ments of Luzon Brokerage Corporation for the period ending October 31, 1976, which were all turned over to and examined by appellant Calderon and his executive, legal and financial staffs. There is also no merit in the contention of appel-lant Calderon that the appellees have tampered the books of Luzon Brokerage Corporation because there is no proof to back this charge, let alone the fact that appellant Calderon did not even present the said books to support his charge.

"As stated above, the amount of customers' deposits in the sum of P4,574,498.32 includes the deposits of Philippine Refining Co., Inc. (Exhibits 46-A, 46-B, 46-C, 46-D, 46-E, 46-F, 46-G, 46-H, 46-I, 46-J, t.s.n. July 23, 1980, pp. 12-13, 14-15). The amounts deposited by Philippine Refining Co., Inc. on various dated with Luzon Brokerage Corporation made before the execution of the sale were all entered in three other corporate books of Luzon Brokerage Corporation namely, the Cash Receipts Register (Exhibits 39-A-1 to 39-K-1 and 39-A-1-B to 39- K-1-B), the Journal Vouchers (Exhibits 42 to 46 and 42-A to 45-A), and the Customer's Deposit Ledger (Exhibits 46-A to 46-J) xxx.

Thus, the claim of appellant Calderon that the deposits made by Philippine Refining Co., Inc. with Luzon Brokerage Corporation of P406,430.00 on August 24, 1976 (Exhibit N), P53,640.00 on October 13, 1976 (Exhibit O), P406,430.00 on September 8, 1976 (Exhibit P), P199,508.00 on September 24, 1976 (Exhibit Q), P52,738.00 on October 22, 1976 (Exhibit R), and P264,436.00 on October 7, 1976 (Exhibit S) were not entered in the books of Luzon Brokerage Corporation, is completely without merit. xxx" (pp. 85-87, Rollo)

It is evident from the foregoing that the attachment was maliciously sued out and that as already pointed out Schulze was not in bad faith.

While as a general rule, the liability on the attachment bond is limited to actual damages, moral and exemplary damages may be recovered where the attachment was alleged to be maliciously sued out and established to be so. (Laza-tin vs. Twano et al, L-12736 July 31, 1961)

In the instant case, the issues of wrongful and malicious suing out of the writ of preliminary attachment were joined not only in private respondents' motion to discharge the attachment but also in their answer to the amended complaint (p. 38, Rollo). The trial court observed that the books and records of Luzon Brokerage Corporation dis-close that the liabilities of the said corporation in the total amount of P4,574,498.32 appear under the heading "Customs Deposit" (Exhibit 1-A) and this amount includes the deposit of Philippine Refining Co., Inc. in the sum of P1,475,840.00 (p. 26, Rollo). On the other hand, plain-tiff never appeared in court, and failed to produce any evidence to substantiate his charges (p. 26, Rollo).

Well settled is the rule that the factual findings of the trial court are entitled to great weight and respect on appeal, especially when established by unrebutted testi-monial and documentary evidence, as in this case.

Anent the petition of the surety, We say the following:

Specifically, petitioner surety contends that the dissolution of the attachment extinguishes its obligation under the bond, for the basis of its liability, which is wrongful attachment, no longer exists, the attachment bond having been rendered void and ineffective, by virtue of Section 12, Rule 57 of the Rules of Court. (p. 5, Petition)

While Section 12, Rule 57 of the Rules of Court provides that upon the filing of a counterbond, the attachment is discharged or dissolved, nowhere is it provided that the attachment bond is rendered void and ineffective upon the filing of counterbond.

The liability of the attachment bond is defined in Section 4, Rule 57 of the Rules of Court, as follows:

“Sec. 4. Condition of applicant's bond. - The party applying for the order must give a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the applicant's claim, 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 adjudge that the applicant was not entitled thereto.”

It is clear from the above provision that the responsibility of the surety arises "if the court shall finally adjudge that the plaintiff was not entitled thereto." In *Rocco vs. Meads*, 96 Phil Reports 884, we held that the liability attaches if the plaintiff is not entitled to the attachment because the requirements entitling him to the writ are wanting, or if the plaintiff has no right to the attachment because the facts stated in his affidavit, or some of them, are untrue. It is, therefore, evident that upon the dismissal of an attachment wrongfully issued, the surety is liable for damages as a direct result of said attachment.

Equally untenable is the Surety's contention that by filing a counterbond, private respondents waived any defect or flaw in the issuance of the attachment writ, for they could have sought, without need of filing any counterbond, the discharge of the attachment if the same was improperly or irregularly issued, as provided in Section 13, Rule 57 of the Rules of Court.

Whether the attachment was discharged by either of the two (2) ways indicated in the law, i.e., by filing a counterbond or by showing that the order of attachment was improperly or irregularly issued, the liability of the surety on the attachment bond subsists because the final reckoning is when "the Court shall finally adjudge that the attaching creditor was not entitled" to the issuance of the attachment writ in the first place. The attachment debtor cannot be deemed to have waived any defect in the issuance of the attachment writ by simply availing himself of one way of discharging the attachment writ, instead of the other. Moreover, the filing of a counterbond is a speedier way of discharging the attachment writ maliciously sought out by the attaching creditor instead of the other way, which, in most instances like in the present case, would require presentation of evidence in a fullblown trial on the merits and cannot easily be settled in a pending incident of the case.

We believe, however, that in the light of the factual situation in this case, the damages awarded by the Intermediate Appellate Court are rather excessive. They must be reduced.

WHEREFORE, the judgment of said Appellate Court is hereby modified as follows: Both petitioner Calderon and petitioner First Integrated Bonding and Insurance Company, Inc. are hereby ordered to give jointly and severally:

1. Respondent George Schulze, P250,000.00 as moral damages and P50,000.00 as exemplary damages; and
2. Respondent Antonio C. Amor, P50,000.00 as moral damages and P10,000.00 as exemplary damages.

The rest of the judgment of the Intermediate Appellate Court is hereby AFFIRMED.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, and Padilla, JJ., concur.

Sarmiento, J., no part; was the former counsel of petitioner in G.R. No. 74696.

[1] Penned by Justice Crisolito Pascual and concurred in by Justices Jose C. Campos, Jr., Serafin E. Camilon and Desiderio P. Jurado.

[2] Penned by Judge Jose Castro

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