

STRONGHOLD INSURANCE COMPANY, INC., PETITIONER, VS. HON. COURT OF APPEALS AND ADRIANO URTESUELA, RESPONDENTS.

G.R. No. 88050. January 30, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner invokes due process to escape liability on a surety bond executed for the protection of a Filipino seaman. It is a familiar argument that will be denied, in light of the following findings.

Acting on behalf of its foreign principal, Qatar National Fishing Co., Pan Asian Logistics and Trading, a domestic recruiting and placement agency, hired Adriano Urtesuela as captain of the vessel M/V Oryx for the stipulated period of twelve months. The required surety bond, in the amount of P50,000.00, was submitted by Pan Asian and Stronghold Insurance Co., Inc., the herein petitioner, to answer for the liabilities of the employer. Urtesuela assumed his duties on April 18, 1982, but three months later his services were terminated and he was repatriated to Manila. He thereupon filed a complaint against Pan Asian and his former employer with the Philippine Overseas Employment Administration for breach of contract and damages.

In due time, the POEA rendered a decision in his favor for the amount of P6,3741.94, representing his salaries for the unexpired portion of his contract and the cash value of his unused vacation leave, plus attorney's fees and costs, which the respondents were required to pay. The judgment eventually became final and executory, not having been appealed on time. Pursuant thereto, a writ of execution was issued against Pan Asian but could be enforced only against its cash bond of P10,000.00, the company having ceased to operate. Urtesuela then filed a complaint with the Insurance Commission against Stronghold on the basis of the aforementioned surety bond and prayed for the value thereof plus attorney's fees and litigation costs.

Under the bond, the petitioner and Pan Asian undertook –

To answer for all liabilities which the Philippine Overseas Employment Administration may adjudge/impose against the Principal in connection with the recruitment of Filipino seamen.

It is understood that notice to the Principal is notice to the surety. (Exh "I-2").

WHEREAS, the liability of the surety under this Bond shall in no case exceed the sum of PESOS: FIFTY THOUSAND ONLY (P50,000.00) Philippine Currency.

After hearing, the Insurance Commission held that the complaint should be reformed because the provisions in the surety bond were not stipulations pour autrui to entitle Urtesuela to bring the suit himself. It held that the proper party was the POEA.[1] This ruling was reversed on appeal by the respondent court in its decision dated April 20, 1989.[2] It was there declared that, as the actual beneficiary of the surety bond, Urtesuela was competent to sue Stronghold, which as surety was solidarily liable with Pan Asian for the judgment rendered against the latter by the POEA.

The petitioner asks for reversal of the Court of Appeals. It submits that the decision of the POEA is not binding

upon it because it was not impleaded in the complaint; it was not notified thereof nor did it participate in the hearing; and it was not specifically directed to pay the damages awarded to the complainant.

In support of its posture, the petitioner cites abundant jurisprudence, particularly *Aguasin v. Velasquez*,^[3] where the Court held:

If the surety is to be bound by his undertaking, it is essential according to Section 10 of Rule 62 in connection with Section 20 of Rule 59 of the Rules of Court that the damages be awarded upon application and after proper hearing and included in the judgment. As a corollary to these requirements, due notice to the plaintiff and his surety setting forth the facts showing his right to damages and the amount thereof under the bond is indispensable. This has to be so if the surety is not to be condemned or made to pay without due process of law. It is to be kept in mind that the surety in this case was not a party to the action and had no notice of or intervention in the trial. It seems elementary that before being condemned to pay, it was the elementary right of the surety to be heard and to be informed that the party seeking indemnity would hold it liable and was going to prove the grounds and extent of its liability. This case is different from those in which the surety, by law and/or by the terms of his contract, has promised to abide by the judgment against the principal and renounced the right to be sued or cited.

The Court has gone over the decision and finds that the petitioner is "hoist by its own petard." For as the quoted excerpt itself says, the case is "different from those in which the surety, by law and/or by the terms of his contract, has promised to abide by the judgment against the principal and renounced the right to be sued or cited."

In the surety bond, the petitioner unequivocally bound itself:

To answer for all liabilities which the Philippine Overseas Employment Administration may adjudge/impose against the Principal in connection with the recruitment of Filipino seamen.

Strictly interpreted, this would mean that the petitioner agreed to answer for whatever decision might be rendered against the principal, whether or not the surety was impleaded in the complaint and had the opportunity to defend itself. There is nothing in the stipulation calling for a direct judgment against the surety as a co-defendant in an action against the principal. On the contrary, the petitioner agreed "to answer for all liabilities" that "might be adjudged or imposed by the POEA against the Principal."

But even if this interpretation were rejected, considering the well-known maxim that "the surety is a favorite of the law," the petitioner would still have to explain its other agreement that "notice to the Principal is notice to the surety." This was in fact another special stipulation typewritten on the printed form of the surety bond prepared by the petitioner. Under this commitment, the petitioner is deemed, by the implied notice, to have been given an opportunity to participate in the litigation and to present its side, if it so chose, to avoid liability. If it did not decide to intervene as a co-defendant (and perhaps also as cross-claimant against Pan Asian), it cannot be heard now to complain that it was denied due process.

The petitioner contends, however, that the said stipulation is unconstitutional and contrary to public policy, because it is "a virtual waiver" of the right to be heard and "opens wide the door for fraud and collusion between the principal and the bond obligee" to the prejudice of the surety. Hence, disregarding the stipulation, the petitioner should be deemed as having received no notice at all of the complaint and therefore deprived of the opportunity to defend itself.

The Court cannot agree. The argument assumes that the right to a hearing is absolute and may not be waived in any case under the due process clause. This is not correct. As a matter of fact, the right to be heard is as often waived as it is invoked, and validly as long as the party is given an opportunity to be heard on his behalf.^[4]

The circumstance that the chance to be heard is not availed of does not disparage that opportunity and deprive the

person of the right to due process. This Court has consistently held in cases too numerous to mention that due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard. It should be obvious that if he opts to be silent where he has a right to speak, he cannot later be heard to complain that he was unduly silenced.

Neither is public policy offended on the wicked ground of fraud and collusion imagined by the petitioner. For one thing, the speculation contravenes without proof the presumption of good faith and unreasonably imputes dishonest motives to the principal and the obligee. For another, it disregards the fiduciary relationship between the principal and the surety, which is the legal and also practical reason why the latter is willing to answer for the liabilities of the former.

In a familiar parallel, notice to the lawyer is considered notice to the client he represents even if the latter is not actually notified. It has not been suspected that this arrangement might result in a confabulation between the counsel and the other party to the client's prejudice.

At any rate, it is too late now for the petitioner to challenge the stipulation. If it believed then that it was onerous and illegal, what it should have done was object when its inclusion as a condition in the surety bond was required by the POEA. Even if the POEA had insisted on the condition, as now claimed, there was still nothing to prevent the petitioner from refusing altogether to issue the surety bond. The petitioner did neither of these. The fact is that, whether or not the petitioner objected, it in the end filed the surety bond with the suggested condition. The consequence of its submission is that it cannot now argue that it is not bound by that condition because it was coerced into accepting it.

This Court has always been receptive to complaints against the denial of the right to be heard, which is the very foundation of a free society. This right is especially necessary in the court of justice, where cases are decided after the parties shall have been given an opportunity to present their respective positions, for evaluation by the impartial judge. Nevertheless, a party is not compelled to speak if it chooses to be silent. If it avails itself of the right to be heard, well and good; but if not, that is also its right. In the latter situation, however, it cannot later complain that, because it was not heard, it was deprived of due process.

Worthy of consideration also is the private respondent's contention that he sought to enforce the petitioner's liability not in NSB Case No. 3810-82 as decided by the POEA, but in another forum. What he did was file an independent action for that purpose with the Insurance Commission on the basis of the surety bond which bound the petitioner to answer for whatever liabilities might be adjudged against Qatar National Fishing Co. by the POEA. In the proceedings before the Commission, the petitioner was given full opportunity (which it took) to present its side, in its answer with counterclaim to the complaint, in its testimony at the hearings, in its motion to dismiss the complaint, and in its 10-page memorandum. There is absolutely no question that in that proceeding, the petitioner was actually and even extensively heard.

The surety bond required of recruitment agencies^[5] is intended for the protection of our citizens who are engaged for overseas employment by foreign companies. The purpose is to insure that if the rights of these overseas workers are violated by their employers, recourse would still be available to them against the local companies that recruited them for the foreign principal. The foreign principal is outside the jurisdiction of our courts and would probably have no properties in this country against which an adverse judgment can be enforced. This difficulty is corrected by the bond, which can be proceeded against to satisfy that judgment.

Given this purpose, and guided by the benign policy of social justice, we reject the technicalities raised by the petitioner against its established legal and even moral liability to the private respondent. These technicalities do not impair the rudiments of due process or the requirements of the law and must be rejected in deference to the

constitutional imperative of justice for the worker.

WHEREFORE, the petition is DENIED and the challenged decision of the Court of Appeals AFFIRMED in toto. The respondent court is directed to ENFORCE payment to the private respondent in full, and with all possible dispatch of the amount awarded to him by the POEA in its decision dated May 13, 1983. It is so ordered.

Narvasa, C.J., Griño-Aquino, and Medialdea, JJ., concur.

[1] Original records, p. 258.

[2] Penned by Pronove, Jr., J. with Melo and Benipayo, JJ., concurring.

[3] 88 Phil. 357.

[4] Bautista vs. Secretary of Labor and Employment, 196 SCRA 470.

[5] Article 31 of the Labor Code; Section 4, Book II, Rule II of the POEA Rules and Regulations.

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