

STRONGHOLD INSURANCE CO., INC., PETITIONER, VS. COURT OF APPEALS, RESPONDENT.

G.R. No. 89020. May 05, 1992

Ponente: PARAS, J.

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PARAS, J.:

In this petition for review on certiorari, petitioner Stronghold Insurance Co., Inc. assails the decision* of the Court of Appeals in CA-G.R. CV No. 16154 affirming the order of the Regional Trial Court, Branch 167, Pasig, Metro Manila in its Civil Case No. 52177. The dispositive portion of this order of the Trial court reads:

"WHEREFORE, in view of the foregoing consideration, the claim of the defendant against SICI Bond No. 11652 of the Stronghold Insurance Company, Inc. is found to have been established and said surety company is adjudged liable for damages suffered by the defendant as found by this Court in its decision dated June 9, 1986, to the extent of the amount of the replevin bond, which is P42,000.00" (p. 20, Rollo)

The factual antecedents are not disputed.

On March 21, 1985, Leisure Club, Inc. filed Civil Case No. 52177 against Northern Motors Inc. for replevin and damages. It sought the recovery of certain office furnitures and equipments. In an order dated March 22, 1985, the lower court ordered the delivery of subject properties to Leisure Club Inc. subject to the posting of the requisite bond under Section 2, Rule 60 of the Rules of Court. Accordingly, Leisure Club Inc. posted a replevin bond (SICI Bond No. 11652) dated March 25, 1985 in the amount of P42,000.00 issued by Stronghold Insurance Co. Inc. In due course, the lower court issued the writ of replevin, thereby enabling Leisure Club Inc. to take possession of the disputed properties.

Northern Motors Inc. filed a counterbond for the release of the disputed properties. However, efforts to recover these properties proved futile as Leisure Club Inc. was never heard of again.

For failure to appear in the pre-trial of the case, Leisure Club Inc. was declared non-suited. Northern Motors Inc. presented its evidence ex-parte and on June 9, 1986, the lower court rendered its decision in favor of Northern Motors Inc., the dispositive portion of which reads -

"PREMISES CONSIDERED, the instant petition is hereby dismissed and on the counterclaim, plaintiff is ordered to pay defendant the following:

- a) the actual value of the property sold at public auction by defendant, and repossessed by plaintiff, of P20,900.00;
- b) exemplary damages of P10,000.00;
- c) attorney's fees in the amount of P10,000.00; and
- d) costs of suit.

SO ORDERED." (p. 21, Rollo)

In the said decision, the lower court ruled that:

1. Northern Motors Inc. had rightful ownership and right of possession over the subject properties.
2. Leisure Club Inc. is a sister company of Macronics Inc., a debtor of Northern Motors Inc., and former owner of these properties.
3. Under the circumstances, Leisure Club Inc. instituted the action for replevin as part of a scheme to spirit away these properties and pave the way for the evasion of lawful obligations by its sister company. (Decision dated June 4, 1986, p. 4).

On July 3, 1986, Northern Motors Inc. filed a "Motion for Issuance of Writ of Execution Against Bond of Plaintiff's Surety", pursuant to Section 10, Rule 20 of the Rules of Court, which was treated by the lower court as an application for damages against the replevin bond.

At the hearing of the said motion as well as the opposition thereto filed by Stronghold Insurance Co., Inc., Northern Motors Inc. presented one witness in the person of its former manager Clarissa G. Ocampo, whose testimony proved that:

- (a) Northern Motors Inc. and Macronics Marketing entered into a lease agreement wherein the latter leased certain premises from the former.
- (b) Macronics failed to pay its bills to Northern Motors Inc., so the latter was forced to terminate the lease.
- (c) Because of Macronics' unpaid liabilities to Northern Motors Inc., the latter was forced to sell off the former's properties in an auction sale wherein Northern Motors Inc. was the buyer. Macronics was duly notified of the sale.
- (d) These properties sold were the sole means available by which Northern Motors Inc could enforce its claim against Macronics. (TSN dated January 30, 1987; pp. 94-95, Rollo)

Stronghold Insurance Co., Inc. did not cross-examine the said witness. Instead it asked for continuance in order to present its own witness. Stronghold, however, never presented any witness.

On July 21, 1987, the lower court issued its now disputed Order finding Stronghold liable under its surety bond for the damages awarded to Northern Motors Inc. in the June 8, 1986 Decision. In the said Order, the lower court held:

"Submitted for resolution is the 'Motion for Issuance of Writ of Execution Against Bond of Plaintiff's Surety' filed by the defendant and the opposition thereto filed by the Stronghold Insurance Company, Inc.

"In the decision rendered by the Court on June 9, 1977, the defendant Northern Motors, Inc. was the prevailing party and the judgment in its favor ordered the plaintiff to pay the actual value of the property sold at public auction by the defendant and repossessed by plaintiff in the amount of P20,900.00, which is in favor of the plaintiff if the latter is found not entitled to the writ of replevin earlier issued against the defendant.

"The thrust of the opposition of the bonding company is to the effect that the motion for a writ of execution is not the proper remedy but an application against the bond should have been the remedy pursued. The surety company contends that it is not a party to the case and that the decision clearly became final and executory and therefore, is no longer liable on the bond. The surety company likewise raised the issue as to when the decision became final and executory. Moreover, the surety company avers that the defendant failed to prove any damage by reason of the issuance of replevin bond.

"Sec. 20 of Rule 57, in relation to Sec. 10 of Rule 60, provides that the party against whom the bond was issued may recover on the bond for any damage resulting from the issuance of the bond upon application and

hearing. The application must be filed either: before trial; before appeal is perfected; before judgment becomes final and executory.

"Being the prevailing party, it is undeniable that the defendant is entitled to recover against the bond. The application for that purpose was made before the decision became final and before the appeal was perfected. Both the prevailing and losing parties may appeal the decision. In the case of the plaintiff it appears that its counsel did not claim the decision which was sent by registered mail. Moreover, the defendant which is the prevailing party received the decision by registered mail on June 20, 1986 and filed the motion for execution against the bond on July 3, 1986. Hence, with respect to the defendant the motion against the bond was filed before any appeal was instituted and definitely on or before the judgment became final.

"Although the claim against the bond was denominated as a Motion for issuance of a writ of execution, the allegations are to the effect that the defendant is applying for damages against the bond. In fact, the defendant invokes Sec. 10, Rule 60, in relation to Sec. 20, Rule 57, Rules of Court. Evidently, therefore, the defendant is in reality claiming damages against the bond.

"It is undisputed that the replevin bond was obtained by the plaintiff to answer for whatever damages the defendant may suffer for the wrongful issuance of the writ. By virtue of the writ, the plaintiff took possession of the auctioned properties. Despite a redelivery bond issued by the defendant, the plaintiff refused to return the properties and in fact repossessed the same. Clearly, defendant suffered damages by reason of the wrongful replevin, in that it has been deprived of the properties upon which it was entitled to enforce its claim. Moreover, the extent of the damages has been qualified in the decision dated June 9, 1986." (pp. 21-23, Rollo)

This Order was appealed by Stronghold to the Court of Appeals. In a decision dated July 7, 1989, the Court of Appeal affirmed the order of the lower court. This decision is now the subject of the instant petition.

Petitioner raises the following assignments of error:

"1. The lower court erred in awarding damages against herein petitioner despite complete absence of evidence in support of the application.

"2. The lower court erred in just adopting the dispositive portion of the decision dated June 7, 1986 as basis for the award of damages against herein petitioner.

"3. The lower court erred in awarding exemplary damages in favor of Northern Motors, Inc. and against petitioner Stronghold Insurance Co., Inc.

"4. The lower court erred in awarding the attorney's fees of P10,000.00 as damages against the bond." (pp. 10-11, Rollo)

We find no merit in the petition.

In the case of *Visayan Surety & Insurance Corp. vs. Pascual*, 85 Phil. 779, the Court explained the nature of the proceedings to recover damages against a surety, in this wise:

"In such case, upon application of the prevailing party, the court must order the surety to show cause why the bond should not respond for the judgment of damages. If the surety should contest the reality or reasonableness of the damages claimed by the prevailing party, the court must set the application and answer for hearing. The hearing will be summary and will be limited to such new defense, not previously set up by the principal, as the surety may allege and offer to prove." (Id. at 785; underscoring supplied) (p. 96, Rollo)

Stronghold Insurance Co., Inc., never denied that it issued a replevin bond. Under the terms of the said bond, Stronghold Insurance together with Leisure Club Inc. solidarily bound themselves in the sum of P42,000 –

(a) for the prosecution of the action,

(b) for the return of the property to the defendant if the return thereof be adjudged, and

(c) for the payment of such sum as may in the cause be recovered against the plaintiff and the costs of the action.

In the case at bar, all the necessary conditions for proceeding against the bond are present, to wit:

"(i) the plaintiff a quo, in bad faith, failed to prosecute the action, and after retrieving the property, it promptly disappeared;

(ii) the subject property disappeared with the plaintiff, despite a court order for their return; and

(iii) a reasonable sum was adjudged to be due to respondent, by way of actual and exemplary damages, attorney's fees and costs of suit." (p. 63, Rollo)

On the propriety of the award for damages and attorney's fees, suffice it to state, that as correctly observed by the Court of Appeals, the record shows that the same is supported by sufficient evidence. Northern Motors proved the damages it suffered thru evidence presented in the hearing of the case itself and in the hearing of its motion for execution against the replevin bond. No evidence to the contrary was presented by Stronghold Insurance Co. Inc. in its behalf. It did not impugn said award of exemplary damages and attorney's fees despite having every opportunity to do so.

As correctly held by respondent Court of Appeals –

"Stronghold Insurance, Inc. has no ground to assail the awards against it in the disputed Order. Unless it has a new defense, it cannot simplistically dissociate itself from Leisure Club, Inc. and disclaim liability vis-a-vis the findings made in the Decision of the lower court dated June 9, 1986. Under Section 2; Rule 60 the bond it filed is to ensure "the return of the property to the defendant if the return thereof be adjudged, and for the payment to the defendant of such sum as he may recover from the plaintiff in the action." The bond itself ensures, inter alia, "the payment of such sum as may in the cause be recovered against the plaintiff and the cost of the action." (pp. 24-25, Rollo)

Besides, Leisure Club Inc.'s act of filing a replevin suit without the intention of prosecuting the same but for the mere purpose of disappearing with the provisionally recovered property in order to evade lawfully contracted obligations constitutes a wanton, fraudulent, reckless, oppressive and malevolent breach of contract which justifies award of exemplary damages under Art. 2232 of the Civil Code.

The attorney's fees awarded in favor of Northern Motors Inc. are likewise warranted under Art. 2208 of the New Civil Code.

In any event, the trial court has decided with finality that the circumstances justifying the award of exemplary damages and attorney's fees exist. The obligation of Stronghold Insurance Co. Inc., under the bond is specific. It assures "the payment of such sum as may in the cause be recovered against the plaintiff, and the costs of the action." (underscoring supplied)

WHEREFORE, the petition is DENIED for lack of merit. No costs.

SO ORDERED.

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

* Penned by Associate Justice Reynato S. Puno and concurred by Associate Justices Jorge S. Imperial and Cezar

D. Francisco.

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