

ANACLETA RIVERA, ET AL., PETITIONERS, VS. FELICIDAD TALAVERA, ET AL., RESPONDENTS.

G.R. Nos. 16280 and 16805. May 30, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Before us are two connected petitions—one an appeal by certiorari from a resolution of the Court of Appeals (G. R. No. L-16280), and the other, an original action for certiorari with prohibition and mandamus, against certain orders of the Court of First Instance of Tarlac (G. R. No. L-16805). Both arose from the same case (Civil Case No. 33 of the Court of First Instance of Tarlac) and involve the same question of law, the liability of the sureties under certain counterbonds posted to dissolve a receivership.

Civil Case No. 33 is a suit for the recovery of a parcel of land plus damages filed on October 9, 1945 by the late Secundino Alzadon (later substituted by his widow and children, Anacleta Rivera, et al.) and Macaria Capuno, against the late Dominga Peña (also substituted by his widow and children, Felicidad Talavera, et al).

On October 16, 1945, plaintiffs in said case, upon an ex parte motion and the filing of a bond in the sum of P1,000.00, obtained from the trial court an order appointing one Pedro Alzadon receiver of the property under litigation; but the receivership was discharged when defendants filed a counterbond on October 5, 1945 for the same amount. Again on December 3, 1945, plaintiffs filed another bond for P5,000.00 and had the same Pedro Alzadon reappointed receiver of the property, but upon defendants' counterbond dated December 28, 1945 for the same amount of P5,000.00, the receivership was again discharged. Subsequently, plaintiffs for a third time obtained a receivership for the palay harvest of the property in dispute for the agricultural year 1947-48, but as before, defendants, upon a counterbond dated December 18, 1947 for the sum of P3,000.00, procured the discharge of the receivership. For a fourth time, plaintiffs on November 27, 1948 again had a receiver, a certain Jose Timbol, appointed in the case, but defendants nevertheless obtained the discharge of the receivership by posting a counterbond dated December 16, 1948 in the amount of P3,000.00. Finally, on January 24, 1950, plaintiffs again had Pedro Alzadon reappointed receiver, which receivership was likewise dissolved upon a counterbond of defendants dated June 16, 1950 for the sum of P3,000.00.

All in all, the following counterbonds to discharge receivership have been filed by the defendants in the case:

Date Amount Principal Sureties

October 5, P1,000.00 Dominga Lorenzo Talavera

1945 Peña Ricardo Talavera

December 28, 5,000.00 Moningo Lorenzo Talavera

1945 Peña Cirilo Yalung

Ricardo Talavera

December 18, 3,000.00 Felicidad Lorenzo Talavera

1947 Talavera Rafael Morales

December 16, 3,000.00 Felicidad Gerardo R. Castro

1948 Talavera Salvador Ayson

June 16, 3,000.00 Felicidad Gerardo R. Castro

1950 Talavera Salvador Ayson

On May 31, 1955, the trial court rendered judgment for the plaintiffs, ordering the immediate return of the property in question to them and requiring defendants to pay them P16,500.00 damages, with interests. Defendants appealed to the Court of Appeals (C.A.-G. R. No. 14984-R), and in order to remain in the possession of the property in litigation, they posted on May 31, 1955, a counterbond in the amount of P5,000.00 subscribed by the Visayan Surety & Insurance Corporation (Bond No. V-MY-55.520) and obtained the dissolution of the receivership secured by plaintiffs pending appeal.

On August 17, 1959, the Court of Appeals affirmed the decision of the court below except the award of damages to plaintiffs which was reduced from P16,500.00 to P11,000.00. Defendants-appellants, on September 9, 1959, moved to reconsider the judgment, but reconsideration was denied. On September 19, 1959, defendants-appellants filed another motion for reconsideration, asking for the discharge of the counterbonds filed by them in the court below, on the ground that no application for damages and no notice to sureties were served in the trial court before the decision therein became final. On the same date, September 19, 1959, plaintiffs-appellees submitted to the appellate court, with notice to the Visayan Surety and Insurance Co., a petition requesting to be allowed to file an application for damages suffered by them by reason of defendants-appellant's continued possession of the premises pending appeal, that is, from April 27, 1954, the date of the perfection of the appeal from the decision of the trial court, to August 17, 1959, the date of the judgment of the appellate court. Acting on said petition, the Court of Appeals promulgated on October 14, 1959 a resolution affirming that portion of the decision of the court a quo holding the various counterbonds filed by the defendants in said court liable, but relieving the Visayan Surety & Insurance Co. from responsibility under its bond. Plaintiffs-appellees sought reconsideration of this resolution, calling attention to the fact that the obligation underwritten by the Visayan Surety & Insurance Co. was for damages to be suffered by them from the time of the decision of the trial court until the termination of the appeal; and realizing the error it committed in relation to the liability of said surety, the appellate court entered a resolution on October 23, 1958, setting aside its order relieving the Visayan Surety & Insurance Co. from responsibility under its bond, but declaring also the other sureties in the five counterbonds filed by defendants in the court a quo relieved from responsibility on their undertakings on the ground of

"lack of proper notice served them, much less of proper hearing regarding plaintiffs' petition for damages before trial made either in the answer or by way of counterclaim, or after the rendition of final judgment but in which the court a quo still had jurisdiction over the case."

Plaintiffs-appellees on November 3, 1959 moved to reconsider the above order in so far as it relieved the sureties on the five counterbonds, and also requested that the case be referred to the trial court in connection with their application for damages against the bond of the Visayan Surety Sc Insurance Co., but the reconsideration, as well as the request for reference, was denied; whereupon, they appealed by certiorari to this Court, which appeal is docketed here as G. R. No. L-16280, the first petition now before us.

In the meantime and while the above proceedings were taking place after judgment in the Court of Appeals, plaintiffs, on September 21, 1959, filed in the trial court a supplemental complaint, supposedly in accordance with the provisions of section 9, Rule 61, in relation to section 20, Rule 59, Rules of Court, to declare the five counterbonds filed by defendants to discharge receivership liable for the damages suffered by them as a result of such discharge. Duly summoned, the defendants-sureties filed a special appearance impugning the jurisdiction of the trial court over the supplemental complaint on the grounds, first, that after appeal was perfected from the court's decision, said court lost jurisdiction and control over matters in the case, which jurisdiction was transferred to the appellate court; and second, that the supplemental complaint should have been filed during the trial or before judgment in the trial court, or, at the latest, before the approval of the record on appeal. Plaintiffs, on their part, moved to have the sureties declared in default for failure to answer their supplemental complaint within five days as required in the summons. On October 22, 1959, the trial court issued an order sustaining its jurisdiction over the supplemental complaint because at the time, the decision of the Court of Appeals in the case had not yet become final and executory. Even then, the defendants-sureties still did not answer the complaint, and instead filed a manifestation calling the trial court's attention to the resolution of the Court of Appeals dated October 23, 1959 relieving them from responsibility on their respective bonds. Again plaintiffs moved to declare the sureties its default, upon receipt of which motion, the court issued an order requiring the appearance of counsel for both sides to discuss the legality of the Court of Appeals' resolution relieving the defendants-sureties from liability on their bonds. Counsel accordingly argued their respective points, after which the trial court, on December 16, 1959, rendered an order holding itself with jurisdiction to entertain the supplemental complaint, and declaring the defendants-sureties in default as to the same. Plaintiffs were then allowed to present their evidence on their damages, and on the following day, December 17, 1959, the court issued an order holding the defendants-sureties liable on their respective bonds for the amounts underwritten therein. The sureties moved for the reconsideration of said orders which was denied. Said sureties then filed with this Court against such order the other petition now before us, G. R. No. L-16805, for certiorari with prohibition and mandamus.

The questions posed by the two petitions are:

- (1) Whether the Court of First Instance of Tarlac has jurisdiction to entertain the supplemental complaint and to hold the defendants-sureties liable on their bonds;
- (2) Whether the order of the Court of Appeals relieving said sureties from all liability under their bonds is proper and legal; and
- (3) Whether the Court of Appeals erred in refusing to refer to the Court of First Instance the application for damages filed by plaintiffs against the Visayan Surety & Insurance Company.

The law involved is section 9, Rule 61, Rules of Court (on the subject of "Receivers"), in relation to section 20, Rule 29 (on the subject of "Attachment"), to wit:

Rule 61:

"SEC. 9. Judgment to include recovery against sureties.—The amount, if any, to be awarded to either party upon any bond filed by the other in accordance with the provisions of this rule, shall be claimed, ascertained, and granted under the same procedure as prescribed its section 20 of Rule 59."

Rule 59:

"SEC. 20. Claim for damages on plaintiff's bond on account of illegal attachment.—If the judgment on the action be in favor of the defendant, he may recover, upon the bond given by the plaintiff, damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or, in the discretion of the

court, before entry of the final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Damages sustained during the pendency of an appeal may be claimed by the defendant, if the judgment of the appellate court be favorable to him, by filing an application therewith, with notice to the plaintiff and his surety or sureties, and the appellate court may allow the application to be heard and decided by the trial court."

Under the above provisions, the application or claim for damages against a counterbond "must be filed before the trial or, in the discretion of the court, before entry of the final judgment". This offers the claimant two alternatives: first, to claim and prove his damages during the trial, with due notice to the surety or sureties; or second, to claim and prove his damages, again with due notice to the surety or sureties, even after trial and judgment, but "before entry of the final judgment".

The procedure to be followed in case the claimant chooses the second alternative was outlined by this Court in the case of *Visayan Surety and Insurance Corporation vs. Pascual, et al.*, 85 Phil., 779; 47 Off. Gaz., 5075, as follows:

"(3) That if, as in this case, no notice is given to the surety of the application for damages, the judgment that may be entered against the principal cannot be executed against the surety without giving the latter an opportunity to be heard as to the reality or reasonableness of the alleged damages. 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 for damages. If the surety should contest 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. The oral proof of damages already adduced by the claimant may be reproduced without the necessity of retaking the testimony, but the surety should be given an opportunity to cross-examine the witness or witnesses if it so desires."

Consistently with this doctrine, the plaintiffs sought permission from the Court of Appeals, before the latter's decision became executory, to file an application for damages against the sureties in the trial court and in the appeal (see Annex "B", Petition, Case No, L-16280). But the Court of Appeals did not act upon this petition, but instead declared that the sureties had been released—

"for lack of proper notice served them, much less of proper hearing regarding plaintiffs' petition for damages before trial, made either in the answer or by way of counterclaim or after the rendition of the final judgment but in which the court a quo still had jurisdiction over the case" (Resolution of October 23, 1950, Annex "F", G. R. No. L-16280).

Plainly, the Court of Appeals proceeded on the theory that the words "before entry of the final judgment" meant before adjudication on the merits by the trial court, and understood "final judgment" to mean a judgment that is appealable and not merely interlocutory. It thus upheld the theory of the sureties that after appeal was perfected, it was too late for the prevailing party to hold the sureties liable on their bonds.

The ruling of the Court of Appeals was patent error. This Supreme Court has already explained and held that "before entry of the final judgment" in section 20, Rule 59, signified "not later than the date when the judgment becomes final and executory" (*Del Rosario vs. Nava*, 95 Phil., 637; 50 Off. Gaz., [9] 4189; *Alliance Ins. & Surety Co. vs. Hon. Piccio, et al.*, 105 Phil., 1192). The judgment of the Court of First Instance, while final in the sense of appealable, was certainly not final and executory, since it was duly appealed. It follows that an application to hold the sureties liable in damages is not made out of time so long as it is made before the judgment of the appellate court has not become final and susceptible of execution. Of course, where the trial court's judgment has been appealed, the application for damages against the sureties must be made in the appellate court, since that tribunal is the one that has jurisdiction over the case.

Therefore, when the plaintiffs seasonably sought the permission of the Court of Appeals to apply for damages in

the court below against the sureties, the said court should have either granted permission to have the application made in the trial court, as requested, or else directed that the application be filed before it (the Court of Appeals itself). But in no case was it correct to reject the application as made too late, because it was filed in due time so long as the sentence of the Court of Appeals had not become executory.

Upon the other hand, it was improper for the plaintiffs to ask the Court of First Instance to assess damages against the sureties while the appeal was pending, unless the Court of Appeals had granted permission to do so. The reason is plain: It was the Court of Appeals that had jurisdiction over the case. The trial court had lost jurisdiction upon perfection of the appeal, and could no longer act except to adopt conservatory measures. It follows, then, as correctly contended by the defendants and sureties in case No. L-16805, that the Court of First Instance could not validly entertain the supplemental complaint seeking to hold the sureties liable, unless the Court of Appeals referred the matter to it, and "allow(ed) the application to be heard and decided by the trial court" (sec. 20, Rule 59), and that the hearing conducted by it and the award for damages rendered against the sureties were void for lack of requisite authorization.

As for the matter of the liability of the Visayan Surety and Insurance Company on its bond answering for whatever damages plaintiffs may sustain from the discharge of the receivership pending the appeal, and which was denied by resolution of November 13, 1959, we again agree with plaintiffs that the Court of Appeals erred in denying the application, and that it should have either admitted and heard their application to hold said bond liable for the damages suffered by them during the appeal, or allowed the application to be heard and decided by the court. This is in accordance with the last part of section 20, Rule 59, which provides that:

"Damages sustained during the pendency of an appeal may be claimed by the defendant, if the judgment of the appellate court be favorable to him, by filing an application therewith, with notice to the plaintiff and his surety or sureties, and the appellate court may allow the application to be heard and decided by the trial court."

In resumé, we hold and declare:

- (1) That the application for damages against the sureties in injunction and receivership bonds or counterbonds, authorized under section 20 of Rule 59, may be filed in the Court of First Instance before trial, or even after trial, but before judgment becomes executory; and if appeal is taken, then the application must be made in the appellate court but always before the judgment of the latter court becomes final and executory;
- (2) That where such application is seasonably made to the appellate court, the latter must either proceed to hear and decide the application or refer the application to the trial court and allow it to hear and decide the same;
- (3) That application for damages against the sureties may not be made to the Court of First Instance when the case is pending in the appellate court, unless expressly allowed by the latter; and that without express permission from, or reference by, the appellate court, the Court of First Instance can not validly hear or determine such claims against the sureties, and that
- (4) Where the bond is given to answer for such damages as may be sustained pending the appeal, the application must be filed in the appellate court before its judgment becomes final and executory; and the appellate tribunal may either hear and decide itself the application for damages or allow it to be heard and decided by the trial court, pursuant to the last provision of section 20 of Rule 59.

WHEREFORE, all proceedings taken by the Court of First Instance of Tarlac on the supplemental complaint filed by plaintiffs against the sureties in Civil Case No. 33 of that court, without the permission of the Court of Appeals, are vacated and set aside, and said supplemental complaint is ordered elevated to the Court of Appeals for proper action by it, with due notice to the sureties. The Court of Appeals is likewise ordered to take action,

also with due notice to the surety, on the application for damages presented by plaintiffs against the bond of the Visayan Surety and Insurance Company. Whatever judgment favorable to the plaintiffs may be rendered in both instances shall be deemed included in the final judgment of the Court of Appeals in C.A.-G. R. No. 14984-R and entered as part of said judgment.

Costs against respondents Felicidad Talavera, et al., in G.R. No. L-16280, and against petitioners Lorenzo Talavera, et al., in G.R. No. L-16805.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

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