



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-2981 March 23, 1950

VISAYAN SURETY & INSURANCE CORPORATION, petitioner,
vs.

VICTORIA PASCUAL and OSCAR CASTELO, Judge of the Court of First of Manila, respondents.

J. Perez Cardenas for petitioner.

Teodoro R. Dominguez for respondents.

OZAETA, J.:

This case calls for the interpretation and application of section 20, Rule 59, in relation to section 10 of Rule 62, of the Rules of Court regarding the enforcement of the bond given by the plaintiff to secure a writ of replevin.

It appears that one Yu Sip brought an action in the Court of First Instance of Manila against Victoria Pascual to recover the possession of a truck and secured a writ of replevin upon filing a bond in the sum of P4,000 executed by the Visayan Surety & Insurance Corporation whereby the principal (Yu Sip) and the surety jointly and severally bound themselves in the sum of P4,000 "for the prosecution of the action, for the return of the property to the defendant, if the return thereof be adjudged, and for the payment to her of such sum as may in the cause be recovered against the plaintiff, and costs of the action."

After due trial the Court of First Instance found in effect that the writ of replevin had been wrongly procured; that the defendant Victoria Pascual was the lawful owner of the truck; and that she suffered damages on account of its wrongful seizure by the sheriff at the instance of the plaintiff Yu Sip. Insofar as pertinent to these proceedings, the judgment of the court ordered the plaintiff Yu Sip to return to the defendant the said truck in good running condition or to pay its value of P2,300 in case of his inability to do so, and, in either case, to pay P30 daily from January 6, 1947, up to the date of its return or until its value is fully paid.¹

During the pendency of the case in the Court of Appeals, to which it was taken by the plaintiff Yu Sip, said court ordered the execution of the judgment of the trial court for failure of the appellant to give an additional bond of P10,000 to secure the payment of the damages, without prejudice to the appeal taking its course. The decision of the trial court was subsequently affirmed by the Court of Appeals.

In the meantime the sheriff, on November 23, 1948, made a return on the writ of execution stating that on November 20, 1948, he seized the truck in question from the plaintiff and delivered it to the defendant Victoria Pascual, and that said plaintiff had no property with which to satisfy the judgment for damages.

After the return of the record to the trial court, the defendant Victoria Pascual filed a "petition for execution against the Visayan Surety & Insurance Corporation to satisfy the judgment out of the surety bond of P4,000 executed by said surety company. Both the plaintiff Yu Sip and the surety company were notified of said petition and of the hearing thereof. The Visayan Surety & Insurance Corporation filed a written opposition to said petition for execution of the surety bond on the ground that up to the time of the rendition of the judgment it had never been notified "by the defendant regarding her presentation of evidence covering the damages she has suffered," contending that under section 10 of Rule 62, in relation to section 20 of Rule 59, it was entitled to such notice. Overruling the opposition, the court granted the petition and ordered the issuance of a writ of execution against the Visayan Surety & Insurance Corporation on its bond of P4,000. A motion for reconsideration of that order was subsequently filed and denied. Thereafter the surety company filed the present petition for certiorari in this court to annul said order and to declare that the bond became canceled and of no further effect upon the return of the truck to the defendant.

Section 2 of the Rule 62 requires the plaintiff who secures a writ of replevin to "give a bond, executed to the defendant in double the value of the property as stated in the affidavit . . . , for 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 section." Section 10 of the same rule reads as follows:

SEC. 10. *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, ascertain, and granted under the same procedure as prescribed in section 20 of Rule 59.

Section 20 of Rule of 59 reads as follows:

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 appellate court may allow the application to be heard and decided by the trial court.

Under this rule, the application for damages resulting from wrongful attachment of wrongful seizure of personal property must be filed in the same action in which the writ of attachment or the writ of replevin was issued; otherwise it is barred. (*Tan-Suyo vs. Javier*, 21 Phil., 807.) It may be made, before trial, in the answer by way of counter-claim. (*Medina vs. Maderera del Norte de Catanduanes*, 51 Phil., 240.) In the discretion of the court, it may also be made at any other time even after the rendition of final judgment if the court has still jurisdiction over the case. (*Santos vs. Moir*, 36 Phil., 350.)

In the present case the defendant Victoria Pascual filed her application for damages for the wrongful seizure of the truck, in the same action, before the trial; and such damages were included in the judgment. However, the surety was not notified of said application for damages.

The only question that arises is whether said judgment for damages is binding and executory against the surety notwithstanding that the latter had not been notified of the application for damages before the trial of the case.

The petitioner contends that once the truck in question was returned by the plaintiff to the defendant, the surety was relieved of any further obligation on its bond and could not be held liable for the value of the truck, which was fixed in the judgment at P2,300. While it is true that the value of the truck cannot be recovered from the surety once the truck is returned to the defendant - and as matter of fact the latter does not claim it, the judgment on this point being in the alternative - it cannot be maintained that the obligation of the surety for damages has been satisfied. The law and the terms of the bond itself are clear that the bond guarantees not only the return of the property to the defendant but also the payment to the defendant of such sum as he may recover from the plaintiff in the action. The judgment in this case orders the plaintiff to return the truck to the defendant or to pay its value and, in either case, to pay to the defendant, by way of damages, P30 a day during the period the truck was retained by the plaintiff in his possession. These damages are clearly covered by the bond, in addition to the return of the property or the payment of its value. Of course the liability of the surety is limited to the amount of the bond although the damages awarded exceed said amount.

The petitioner further contends that the respondent judge exceed his jurisdiction and abused his discretion in issuing a writ of execution against the surety, it appearing that the latter had not been notified of defendant's application for damages, as provided in section 20 of Rule 59. What is the effect of the omission of such notice?

Under section 20 of Rule 59 (attachment), section 9 of Rule 60 (injunction),section 9 of the Rule 61 (receivership), and section 10 of Rule 62 (delivery of personal property), if no application for damages is made before the entry of final judgment the surety on the bond is relieved from liability therefor. *Facundo vs. Tan*, G. R. No. L-2717, *Facundo vs. Santos*, G. R. No. L-2718, and *Facundo vs. Lim*, G. R. No. L-2767, promulgated December 29, 1949.¹⁾

In the present case the application for damages was made before the trial and damages were included in the judgment. The rule does not day that the failure to give to the surety due notice of the application for damages would release the surety from the obligation of the bond. But the surety cannot be deprived of his right to be heard if he so desires. Consequently, no judgment for damages may be entered and executed against the surety without giving the latter an opportunity to be heard as to the reality or reasonableness of the alleged damages. Otherwise, fraud or collusion may be perpetrated against the surety.

In the present case, although the plaintiff Yu Sip filed an answer to defendant's application for damages and prayed that it be dismissed, he did not appear during the trial and as a result the proofs adduced by the defendant as to the amount of the alleged damages remained uncontradicted. Had the herein surety been duly notified of said application for damages, it could have appeared and contested defendant's claim as excessive. The damages awarded against the plaintiff for his retention of the truck in question from January 6, 1947, to

November 20, 1948, aggregate more than P20,500. That seems exorbitant, considering that the truck itself was valued at only P2,300.

In recapitulation, we are of the opinion and so hold:

(1) That damages resulting from preliminary attachment, preliminary injunction, the appointment of a receiver, or the seizure of personal property, the payment of which is secured by judicial bond, must be claimed and ascertained in the same action with due notice to the surety;

(2) That if the surety is given such due notice, he is bound by the judgment that may be entered against the principal, and writ of execution may issue against said surety to enforce the obligation of the bond; and

(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 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. 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.

To avoid the necessity of such additional proceedings, lawyers and litigants are admonished to give due notice to the surety of their claim for damages on the bond at the time such claim is presented.

The writ of execution issued by the respondent judge against the petitioner is set aside, and the parties are directed to proceed in conformity with this opinion. The respondent Victoria Pascual shall pay the costs.

Moran, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor and Reyes, JJ., concur.

Footnotes

¹ *Supra*, 249.