505 Phil. 609

SECOND DIVISION

[G.R. NO. 144740, August 31, 2005]

SECURITY PACIFIC ASSURANCE CORPORATION, PETITIONER, VS. THE HON. AMELIA TRIA-INFANTE, IN HER OFFICIAL CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 9, MANILA; THE PEOPLE OF THE PHILIPPINES, REPRESENTED BY SPOUSES REYNALDO AND ZENAIDA ANZURES; AND REYNALDO R. BUAZON, IN HIS CAPACITY AS SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 9, MANILA, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a petition for review on *certiorari*, assailing the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 58147, dated 16 June 2000 and 22 August 2000, respectively. The said Decision and Resolution declared that there was no grave abuse of discretion on the part of respondent Judge in issuing the assailed order dated 31 March 2000, which was the subject in CA-G.R. SP No. 58147.

THE FACTS

The factual milieu of the instant case can be traced from this Court's decision in G.R. No. 106214 promulgated on 05 September 1997.

On 26 August 1988, Reynaldo Anzures instituted a complaint against Teresita Villaluz (Villaluz) for violation of Batas Pambansa Blg. 22. The criminal information was brought before the Regional Trial Court, City of Manila, and raffled off to Branch 9, then presided over by Judge Edilberto G. Sandoval, docketed as Criminal Case No. 89-69257.

An *Ex-Parte* Motion for Preliminary Attachment[3] dated 06 March 1989 was filed by Reynaldo Anzures praying that pending the hearing on the merits of the case, a Writ of Preliminary Attachment be issued ordering the sheriff to attach the properties of Villaluz in accordance with the Rules.

On 03 July 1989, the trial court issued an Order[4] for the issuance of a writ of preliminary attachment "upon complainant's posting of a bond which is hereby fixed at P2,123,400.00 and the Court's approval of the same under the condition prescribed by Sec. 4 of Rule 57 of the Rules of Court..."

An attachment bond[5] was thereafter posted by Reynaldo Anzures and approved by the court. Thereafter, the sheriff attached certain properties of Villaluz, which were duly annotated on the corresponding certificates of title.

On 25 May 1990, the trial court rendered a Decision[6] on the case acquitting Villaluz of the crime charged, but held her civilly liable. The dispositive portion of the said decision is reproduced hereunder:

> WHEREFORE, premises considered, judgment is hereby rendered ACQUITTING the accused TERESITA E. VILLALUZ with cost de oficio. As to the civil aspect of the case however, accused is ordered to pay complainant Reynaldo Anzures the sum of TWO MILLION ONE HUNDRED TWENTY THREE THOUSAND FOUR HUNDRED (P2,123,400.00) PESOS with legal rate of interest from December 18, 1987 until fully paid, the sum of P50,000.00 as attorney's fees and the cost of suit.[7]

Villaluz interposed an appeal with the Court of Appeals, and on 30 April 1992, the latter rendered its Decision,[8] the dispositive portion of which partly reads:

> WHEREFORE, in CA-G.R. CV No. 28780, the Decision of the Regional Trial Court of Manila, Branch 9, dated May 25, 1990, as to the civil aspect of Criminal Case No. 89-69257, is hereby AFFIRMED, in all respects....

The case was elevated to the Supreme Court (G.R. No. 106214), and during its pendency, Villaluz posted a counter-bond in the amount of P2,500,000.00 issued by petitioner Security Pacific Assurance Corporation.[9] Villaluz, on the same date[10] of the counter-bond, filed an Urgent Motion to Discharge Attachment.[11]

On 05 September 1997, we promulgated our decision in G.R. No. 106214, affirming *in toto* the decision of the Court of Appeals.

In view of the finality of this Court's decision in G.R. No. 106214, the private complainant moved for execution of judgment before the trial court.[12]

On 07 May 1999, the trial court, now presided over by respondent Judge, issued a Writ of Execution.[13]

Sheriff Reynaldo R. Buazon tried to serve the writ of execution upon Villaluz, but the latter no longer resided in her given address. This being the case, the sheriff sent a Notice of Garnishment upon petitioner at its office in Makati City, by virtue of the counter-bond posted by Villaluz with said insurance corporation in the amount of P2,500,000.00. As reported by the sheriff, petitioner refused to assume its obligation on the counter-bond it posted for the discharge of the attachment made by Villaluz.[14]

Reynaldo Anzures, through the private prosecutor, filed a Motion to Proceed with Garnishment,[15] which was opposed by petitioner[16] contending that it should not be held liable on the counter-attachment bond.

The trial court, in its Order dated 31 March 2000,[17] granted the Motion to Proceed with Garnishment. The sheriff issued a Follow-Up of Garnishment[18] addressed to the President/General Manager of petitioner dated 03 April 2000.

On 07 April 2000, petitioner filed a Petition for *Certiorari* with Preliminary Injunction

and/or Temporary Restraining Order[19] with the Court of Appeals, seeking the nullification of the trial court's order dated 31 March 2000 granting the motion to proceed with garnishment. Villaluz was also named as petitioner. The petitioners contended that the respondent Judge, in issuing the order dated 31 March 2000, and the sheriff committed grave abuse of discretion and grave errors of law in proceeding against the petitioner corporation on its counter-attachment bond, despite the fact that said bond was not approved by the Supreme Court, and that the condition by which said bond was issued did not happen.[20]

On 16 June 2000, the Court of Appeals rendered a Decision,[21] the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court finds no grave abuse of discretion on the part of respondent judge in issuing the assailed order. Hence, the petition is dismissed.

A Motion for Reconsideration[22] was filed by petitioner, but was denied for lack of merit by the Court of Appeals in its Resolution[23] dated 22 August 2000.

Undeterred, petitioner filed the instant petition under Rule 45 of the 1997 Rules of Civil Procedure, with Urgent Application for a Writ of Preliminary Injunction and/or Temporary Restraining Order.[24]

On 13 December 2000, this Court issued a Resolution[25] requiring the private respondents to file their Comment to the Petition, which they did. Petitioner was required to file its Reply[26] thereafter.

Meanwhile, on 17 January 2001, petitioner and the spouses Reynaldo and Zenaida Anzures executed a Memorandum of Understanding (MOU).[27] In it, it was stipulated that as of said date, the total amount garnished from petitioner had amounted to P1,541,063.85, and so the remaining amount still sought to be executed was P958,936.15.[28] Petitioner tendered and paid the amount of P300,000.00 upon signing of the MOU, and the balance of P658,936.15 was to be paid in installment at P100,000.00 at the end of each month from February 2001 up to July 2001. At the end of August 2001, the amount of P58,936.00 would have to be paid. This would make the aggregate amount paid to the private respondents P2,500,000.00.[29] There was, however, a proviso in the MOU which states that "this contract shall not be construed as a waiver or abandonment of the appellate review pending before the Supreme Court and that it will be subject to all such interim orders and final outcome of said case."

On 13 August 2001, the instant petition was given due course, and the parties were obliged to submit their respective Memoranda.[30]

ISSUES

The petitioner raises the following issues for the resolution of this Court:

> **Main Issue** - WHETHER OR NOT THE COURT OF Appeals committed reversible error in affirming the 31 march 2000 order of public

respondent judge which allowed execution on the counter-bond issued by the petitioner.

Corollary Issues - (1) WHETHER OR NOT THE COURT OF APPEALS CORRECTLY RULED THAT THE ATTACHMENT ON THE PROPERTY OF VILLALUZ WAS DISCHARGED WITHOUT NEED OF COURT APPROVAL OF THE COUNTER-BOND POSTED; and (2) WHETHER OR NOT THE COURT OF APPEALS CORRECTLY RULED THAT THE ATTACHMENT ON THE PROPERTY OF VILLALUZ WAS DISCHARGED BY THE MERE ACT OF POSTING THE COUNTER-BOND.

THE COURT'S RULING

Petitioner seeks to escape liability by contending, in the main, that the writ of attachment which was earlier issued against the real properties of Villaluz was not discharged. Since the writ was not discharged, then its liability did not accrue. The alleged failure of this Court in G.R. No. 106214 to approve the counter-bond and to cause the discharge of the attachment against Villaluz prevented the happening of a condition upon which the counter-bond's issuance was premised, such that petitioner should not be held liable thereon.[31]

Petitioner further asserts that the agreement between it and Villaluz is not a suretyship agreement in the sense that petitioner has become an additional debtor in relation to private respondents. It is merely waiving its right of excussion[32] that would ordinarily apply to counter-bond guarantors as originally contemplated in Section 12, Rule 57 of the 1997 Rules.

In their Comment,[33] the private respondents assert that the filing of the counter-bond by Villaluz had already *ipso facto* discharged the attachment on the properties and made the petitioner liable on the bond. Upon acceptance of the premium, there was already an express contract for surety between Villaluz and petitioner in the amount of P2,500,000.00 to answer for any adverse judgment/decision against Villaluz.

Petitioner filed a Reply[34] dated 09 May 2001 to private respondents' Comment, admitting the binding effect of the bond as between the parties thereto. What it did not subscribe to was the theory that the attachment was *ipso facto* or automatically discharged by the mere filing of the bond in court. Such theory, according to petitioner, has no foundation. Without an order of discharge of attachment and approval of the bond, petitioner submits that its stipulated liability on said bond, premised on their occurrence, could not possibly arise, for to hold otherwise would be to trample upon the statutorily guaranteed right of the parties to contractual autonomy.

Based on the circumstances present in this case, we find no compelling reason to reverse the ruling of the Court of Appeals.

Over the years, in a number of cases, we have made certain pronouncements about counter-bonds.

In *Tijam v. Sibonghanoy*,[35] as reiterated in Vanguard Assurance Corp. v. Court of Appeals,[36] we held:

> . . . [A]fter the judgment for the plaintiff has become executory and the execution is "returned unsatisfied," as in this case, the liability of the bond automatically attaches and, in failure of the surety to satisfy the judgment against the defendant despite demand therefore, writ of execution may issue against the surety to enforce the obligation of the bond.

In *Luzon Steel Coporation v. Sia, et al.*:[37]

> . . . [C]ounterbonds posted to obtain the lifting of a writ of attachment is due to these bonds being security for the payment of any judgment that the attaching party may obtain; they are thus mere replacements of the property formerly attached, and just as the latter may be levied upon after final judgment in the case in order to realize the amount adjudged, so is the liability of the countersureties ascertainable after the judgment has become final. . . .

In *Imperial Insurance, Inc. v. De Los Angeles*,[38] we ruled:

> . . . Section 17, Rule 57 of the Rules of Court cannot be construed that an "execution against the debtor be first returned unsatisfied even if the bond were a solidary one, for a procedural may not amend the substantive law expressed in the Civil Code, and further would nullify the express stipulation of the parties that the surety's obligation should be solidary with that of the defendant.

In *Philippine British Assurance Co., Inc. v. Intermediate Appellate Court*,[39] we further held that "the counterbond is intended to secure the payment of "*any judgment*" that the attaching creditor may recover in the action."

Petitioner does not deny that the contract between it and Villaluz is one of surety. However, it points out that the kind of surety agreement between them is one that merely waives its right of excussion. This cannot be so. The counter-bond itself states that the parties jointly and severally bind themselves to secure the payment of any judgment that the plaintiff may recover against the defendant in the action. A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.[40]

Suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default or miscarriage of another, known as the principal. The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promise of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal. The surety therefore becomes liable for the debt or duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit