

FIRST DIVISION

[G.R. No. 110086, July 19, 1999]

**PARAMOUNT INSURANCE CORPORATION, PETITIONER, VS.
COURT OF APPEALS AND DAGUPAN ELECTRIC CORPORATION,
RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Before this Court is a petition for review on *certiorari* assailing the Decision of the Court of Appeals dated April 30, 1993 in CA-G.R. CV No. 11970 which dismissed petitioner Paramount Insurance Corporation's (PARAMOUNT) appeal, thereby affirming the decision of the court *a quo* finding petitioner liable on its injunction bond.

McAdore Finance and Investment, Inc. (McADORE) was the owner and operator of the McAdore International Palace Hotel in Dagupan City. Private respondent Dagupan Electric Corporation (DECORP), on the other hand, was the grantee of a franchise to operate and maintain electric services in the province of Pangasinan, including Dagupan City.

On February 2, 1978, McADORE and DECORP entered into a contract whereby DECORP shall provide electric power to McADORE's Hotel. During the term of their contract for power service, DECORP noticed discrepancies between the actual monthly billings and the estimated monthly billings of McADORE. Upon inspection, it was discovered that the terminal in the transformers connected to the meter had been interchanged resulting in the slow rotation of the meter. Consequently, DECORP issued a corrected bill but McADORE refused to pay. As a result of McADORE's failure and continued refusal to pay the corrected electric bills, DECORP disconnected power supply to the hotel on November 27, 1978.

Aggrieved, McADORE commenced a suit against DECORP for damages with prayer for a writ of preliminary injunction. McADORE posted injunction bonds from several sureties, one of which was herein petitioner PARAMOUNT, which issued an injunction bond on July 7, 1980 with a face amount of P500,000.00. Accordingly, a writ of preliminary injunction was issued wherein DECORP was ordered to continue supplying electric power to the hotel and restrained from further disconnecting it.

After due hearing, the Regional Trial Court of Quezon City, Branch 106, rendered judgment in favor of DECORP, the dispositive portion of which reads:

"WHEREFORE, there being preponderance of evidence, the court hereby dismisses the amended complaint. Further, the court rescinds the service contract between the parties, and orders McAdore to pay Decorp the following:

1. Actual damages consisting of total arrearages for electric services rendered from February 1978 to January 1983, in the sum of P3,834,489.62, plus interest at the legal rate, computed from the date of demand until full payment;
2. Moral damages in the sum of P600,000.00;
3. Exemplary damages in the sum of P400,000.00;
4. Attorney's fees in the sum of P100,000.00; and
5. Costs of the suit.

"While this case was under litigation, the court issued a number of restraining orders or injunctions. During these incidents, McAdore filed the following bonds: Policy No. 8022709 by Paramount Insurance Corporation for P500,000.00; No. 00007 and No. 00008 by Sentinel Insurance Company, Inc. for P100,000.00 and P50,000.00; and No. 1213 by the Travelers Multi-Indemnity Corporation for P225,000.00.

"Pursuant to the dispositive portion of this decision, the court holds that these bonding companies are jointly and severally liable with McAdore, to the extent of the value of their bonds, to pay the damages adjudged to Decorp.

"Send this decision to: plaintiff's counsel Atty. Pagapong; defendant's counsel Atty. Vera Cruz; and to each of the bondsman.

"It is so ordered."^[1]

McADORE did not appeal the above decision. PARAMOUNT, however, appealed to the Court of Appeals assigning the following errors, to wit:

- I. APPELLANT SURETY WAS NOT GRANTED DUE PROCESS NOR GIVEN ITS DAY IN COURT.
- II. APPELLANT'S SURETY BOND, BEING AN INJUNCTION OR TEMPORARY RESTRAINING ORDER BOND, THE MANDATORY PROCEDURE IN SEC. 20, RULE 57, IN RELATION TO SEC. 9, RULE 58, RULES OF COURT WAS NOT OBSERVED IN THIS CASE;
- III. NO EVIDENCE NOR PROOF HAD BEEN PRESENTED TO SHOW THAT HEREIN APPELLANT SURETY BOND SHOULD BE HELD LIABLE FOR TOTAL DAMAGES AS ADJUDGED IN THE CHALLENGED DECISION."

^[2]

In essence, PARAMOUNT contended that it was not given its day in court because it was not notified by DECORP of its intention to present evidence of damages against its injunction bond, as mandated by Sec. 9 of Rule 58, in relation to Sec. 20 of Rule 57 of the Revised Rules of Court.

The Court of Appeals was not convinced with petitioner's contentions. On April 30, 1993, it affirmed the decision of the trial court.

In the instant petition, PARAMOUNT seeks to reverse and set aside the decision of the Court of Appeals on the following assignment of errors:

"FIRSTLY, THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT NOTICE TO PETITIONER AND ITS PRESENCE THROUGH COUNSEL IN ONE HEARING WHERE NO EVIDENCE IN SUPPORT OF THE DAMAGES GUARANTEED BY PETITIONER'S BOND RENDERS THE NEED FOR ANOTHER HEARING ON THAT MATTER A SUPERFLUITY.

"SECONDLY, THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE COURT A QUO THAT PETITIONER IS JOINTLY AND SEVERALLY LIABLE WITH McADORE TO THE EXTENT OF ITS BOND, WHICH DECISION IS NOT SUPPORTED BY THE EVIDENCE."^[3]

PARAMOUNT asserts that "(t)he bone of contention in the instant case is the matter of evidence (or lack thereof) presented by private respondent during the hearing of the case a quo, notice (or lack thereof) to the surety relative to the proceedings before the court a quo during which said evidence was presented, as well as the actual proceedings themselves."^[4] PARAMOUNT further asseverates that "no evidence relative to damages suffered by private respondent as a result of the injunction was ever presented, or that if any such evidence was presented, the same was done without notice to petitioner and in violation of its right to due process."^[5] Moreover, petitioner maintains that the injunction bond was issued and approved sometime in April 1980 to guarantee "actual and material damages as may be sustained and duly proved by private respondent." Thus, it can only cover the period prospectively from the date of its issuance and does not retroact to the date of the initial controversy.

In its Comment, DECORP claims that PARAMOUNT participated in the proceedings and was given its day in court. This is evidenced by the "Notice of Hearing" dated February 26, 1985 addressed to the three sureties. In fact, at the hearing on March 22, 1985, PARAMOUNT was in attendance represented by Atty. Nonito Q. Cordero. Likewise, PARAMOUNT was notified of the next hearing scheduled for April 26, 1985. DECORP further stressed that the hearing on April 26, 1985 proceeded as scheduled without any comment, objection, opposition or reservation from PARAMOUNT.

The core issue to be resolved here is whether or not petitioner Paramount Insurance Corporation was denied due process when the trial court found the injunction bond it issued in favor of McADORE liable to DECORP. Stated otherwise, was there sufficient evidence to establish the liability of the petitioner on its injunction bond?

The petition is devoid of merit.

Petitioner's submissions necessitates going into the nature of an injunction as well as over the procedure in claiming, ascertaining and awarding damages upon the injunction bond.

Injunction is an extraordinary remedy calculated to preserve the *status quo* of things and to prevent actual or threatened acts violative of the rules of equity and good conscience as would consequently afford an injured party a cause of action resulting from the failure of the law to provide for an adequate or complete relief.^[6]

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.^[7] Its sole purpose is not to correct a wrong of the past, in the sense of redress for injury already sustained, but to prevent further injury.^[8]

A preliminary injunction or temporary restraining order may be granted only when, among others, the applicant, unless exempted by the court, files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.^[9] At the trial, the amount of damages to be awarded to either party, upon the bond of the adverse party, shall be claimed, ascertained, and awarded under the same procedure prescribed in Section 20 of Rule 57.^[10]

Rule 57, Section 20, of the 1997 Rules of Civil Procedure, which is similarly applicable to preliminary injunction, pertinently provides:

"Sec. 20. Claim for damages on account of improper, irregular or excessive attachment. - An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching obligee or his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

"If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.

*"Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching obligee not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award." (**mutatis mutandis**)*

The above rule comes into play when the plaintiff-applicant for injunction fails to sustain his action, and the defendant is thereby granted the right to proceed against the bond posted by the former. In the case at bench, the trial court dismissed McADORE's action for damages with prayer for writ of preliminary injunction and eventually adjudged the payment of actual, moral, and exemplary damages against plaintiff-applicant. Consequently, private respondent DECORP can proceed against the injunction bond posted by plaintiff-applicant to recover the damages occasioned