

ELEVENTH DIVISION

[CA-G.R. SP. NO. 88471, May 05, 2006]

**SECURITY PACIFIC ASSURANCE CORPORATION, PETITIONER,
VS. FELIXBERTO TALA, THE HON. LABOR ARBITER LEANDRO M.
JOSE AND THE HONORABLE COMM. ERNESTO DINOPOL, IN
THEIR RESPECTIVE OFFICIAL CAPACITIES AS THE LABOR
ARBITER AND THE COMMISSIONER (FIRST DIVISION) OF THE
NATIONAL LABOR RELATIONS COMMISSION, RESPONDENTS.**

DECISION

PERLAS-BERNABE, E., J.:

Before the Court is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure which seeks to annul and set aside the Decision^[1] of the First Division of the National Labor Relations Commission (NLRC) dated June 28, 2004 in NLRC NCR CA No. 030432-02 dismissing the appeal from the Order^[2] of the Labor Arbiter dated October 23, 2003 in NLRC Case No. RAB-III-02-2384-01 which denied the Motion to Quash the Notice of Garnishment and Writ of Execution filed by petitioner Security Pacific Assurance Corporation (SPAC).

The facts are as follows:

On September 14, 2001, the Labor Arbiter issued a Decision in NLRC Case No. RAB-III-02-2384-01 declaring the dismissal of Felixberto Tala (hereinafter Felixberto) as illegal and directing La Cruiser International Services (hereinafter La Cruiser) and Angelito David (hereinafter Angelito) the respondents therein, to pay him the monetary award decreed.^[3] The respondents received a copy of the decision on *October 22, 2001*^[4] and appealed the same, submitting therewith a surety bond^[5] issued by SPAC on *October 30, 2001*.

However, the appeal, filed only on *November 23, 2001*,^[6] was dismissed via the Order^[7] dated November 29, 2002 for having been filed out of time as a consequence of which a judgment was duly entered. Upon Felixberto's motion, a Writ of Execution was issued on March 17, 2003.^[8] As the judgment was merely partially satisfied,^[9] Felixberto filed a Motion for Alias Writ of Execution which was granted by the Labor Arbiter.

On September 18, 2003, a Notice of Garnishment^[10] and an Alias Writ of Execution^[11] were served on SPAC. On September 25, 2003, SPAC filed a "Motion to Quash Notice of Garnishment and Writ of Execution"^[12] (hereinafter Motion) on the following grounds: the Writ of Execution was issued without a prior call on the bond and without due notice to SPAC, hence, it was denied due process of law; non-perfection of the contract of suretyship for having been signed by an unauthorized

signatory; lack of premium payments thereon; and expiration of the surety bond. It, however, set the motion for hearing only on October 24, 2003, beyond the 10-day period allowed by the Rules of Court. Hence, after Felixberto filed his opposition thereon, the Labor Arbiter resolved the motion, denying^[13] the same. SPAC appealed to the NLRC which dismissed the appeal, thus, the instant petition posing the following issues, to wit:

"A. WHETHER OR NOT THE PETITIONER SURETY MAYBE HELD LIABLE IN THE ABSENCE OF A PRIOR CALL THEREON, WITH NOTICE B. WHETHER OR NOT THE PETITIONER IS LIABLE UNDER THE ALLEGED BOND NOTWITHSTANDING THE FACT THAT THE SAME WAS ISSUED BY AN OFFICER IN EXCESS OF HER AUTHORITY

C. WHETHER OR NOT THE PETITIONER IS LIABLE UNDER THE ALLEGED BOND NOTWITHSTANDING THE FACT THAT NO PREMIUM HAD BEEN PAID AND/OR REMITTED TO PETITIONER FOR THE ISSUANCE OF THE SAID BOND

D. WHETHER OR NOT THE PETITIONER IS LIABLE NOTWITHSTANDING THE FACT THAT UNDER THE TERMS APPEARING ON THE SUBJECT BOND'S FACE, THE SAME HAD ALREADY EXPIRED; AND

E. WHETHER OR NOT THE PETITIONER SURETY CAN BE HELD LIABLE NOTWITHSTANDING THE FACT THAT THE APPEAL OF RESPONDENTS WAS FILED BEYOND THE REGLEMENTARY PERIOD."^[14]

On February 14, 2005, the Court issued a Resolution^[15] requiring Felixberto to file his comment to the petition. On March 29, 2005, he filed a Manifestation informing the Court that he had entered into an amicable settlement with SPAC on March 22, 2005 as evidenced by the Minutes/Constancia^[16] before the Labor Arbiter and a notarized Waiver & Quitclaim/Acknowledgment Receipt^[17] acknowledging his receipt of the amount of P20,000.00 from SPAC in consideration of which he released/discharged the latter and assigned his right to it as judgment-creditor in NLRC Case No. RAB-III-02-2384-01. However, SPAC while confirming the amicable settlement^[18] manifested that the Labor Arbiter had not dismissed the case *a quo* and considering the important and legal issues raised in the petition prayed that the petition be submitted for resolution. Thus, the Court is constrained to resolve the herein petition.

The petition is bereft of merit.

Under Section 176 of the Insurance Code, as amended, the liability of a surety in a surety bond is joint and several with the principal obligor. It is basic that liability on a bond is contractual in nature and is ordinarily restricted to the obligation expressly assumed therein or determined only by the clause of the contract of suretyship.^[19] However, while a bond is nonetheless a contract, because it is required by statute, said statutory bonds are construed in the light of the statute creating the obligation secured and the purposes for which the bond is required, as expressed in the statute.^[20] Thus, the conditions of a bond specified and required in the provisions of the statute or regulation providing for the submission of the bond are incorporated or built into all bonds tendered under that statute or regulation, even though not

there set out in printer's ink.^[21]

In the instant case, the surety bond in question was posted in connection with the appeal filed by La Cruiser and Angelito against the Labor Arbiter's monetary award, in accordance with Article 223^[22] of the Labor Code, as amended. The posting of a cash or surety bond by the employer ensures that the award will be eventually paid *should the appeal fail*^[23] and is the exclusive means by which his appeal may be perfected.^[24]

SPAC contends, however, that it should not be held liable on the subject surety bond for lack of a prior call thereon and due notice upon it, thereby denying it of due process when it was served the Notice of Garnishment; that the subject surety bond was intrinsically defective for having been issued by an officer without authority; non-payment of premiums; and that the same had already expired.

The contentions are bereft of merit. We shall hereunder resolve the above issues *in seriatim*.

SPAC contends that "a prior call on the bond with due notice to the bondsman is necessary before a judgment creditor's right of course upon the bond becomes due"^[25] invoking the case of *Luzon Surety vs. Marbella*.^[26] The Court is not unaware of a catena of cases ruling to that effect. However, the same are *inapplicable* to the case at bar. In those cases, the subject matter were counterbonds filed in connection with applications for attachment,^[27] bonds filed to secure the grant of injunction^[28] and receivership,^[29] appointment of an executor/administrator,^[30] and the replevin and redelivery bonds posted in connection with the application for replevin,^[31] where the Rules of Court (Rules) covering them require that notice be made to the applicant and his surety or sureties.^[32] Moreover, in the case of *Visayan Surety & Insurance Corporation vs. Pascual*,^[33] the Supreme Court ruled 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" and that if "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." Damages must still be proved, hence, the necessity of notice and of hearing, albeit summary, and before the judgment has become final and executory.^[34]

On the other hand, the issue in controversy involves the obligation of a surety under a suretyship agreement which provides for a definite amount of obligation. In a plethora of cases, the surety is made privy to the proceedings against its principal, and thus, *bound by a judgment against the latter* even though it was not a party to the proceedings, for 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.^[35] Although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor is direct, primary and absolute; he becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations

nor does he receive any benefit therefrom.^[36] The essence of his obligation as surety is to pay *immediately without qualification whatsoever* if his principal does not pay.^[37] To have another interpretation of the surety's liability would violate the integrity of the surety agreement as well as the clear and unmistakable intent of the law in requiring the posting of a surety bond.

Under the surety bond issued by SPAC on *October 30, 2001*, the latter bound itself jointly and severally with the principal, La Cruiser, to pay NLRC, San Fernando, Pampanga the amount of P157,320.00 adjudged in favor of Felixberto and against La Cruiser in the Decision of the Labor Arbiter dated September 14, 2001 in NLRC Case No. RAB-III-02-2384-01. The posting of said bond stayed the execution of the above-mentioned Labor Arbiter Decision and guaranteed the satisfaction of the decision appealed from in the event that the same be affirmed in whole or part by the appellate body. It was further provided therein that "if the PRINCIPAL shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements stipulated in said contract (*i.e.*, under the said Labor Arbiter decision), then this obligation shall be *null and void*; otherwise, it shall remain *in full force and effect*."^[38] (emphasis supplied).

On the basis of the foregoing disquisition, it cannot be said that SPAC was not afforded due process. On the contrary, it was given the opportunity to be heard when it moved for the quashal of the notice of garnishment and writ of execution. Pertinent on this point is the Supreme Court ruling that "(w)here under the rule and the bond the undertaking is to pay the judgment, the *liability of the surety or sureties attaches upon the rendition of the judgment*, and the issue of an execution and its return *nulla bona* is not, and should not be, a condition to the right to resort to the bond."^[39] It had likewise been held that "(t)hrough service of the writ of garnishment, the garnishee becomes a 'virtual party' to, or a 'forced intervenor' in, the case and the trial court (in this case, labor arbiter) thereby acquires jurisdiction to bind him to compliance with all orders and processes of the trial court (labor arbiter) with a view to the complete satisfaction of the judgment."^[40] Thus, when SPAC was served the Notice of Garnishment and the Alias Writ of Execution on the surety bond it issued in favor of the judgment debtor La Cruiser, the labor arbiter actually acquired jurisdiction over it.

SPAC further claims that the subject surety bond was intrinsically defective for having been issued by an officer in excess of her authority and for non-payment of premiums. It contends that the contract of suretyship was not perfected because the authority of its President Aurora C. Galvez (hereinafter Aurora) to sign the bonds was merely "secondary and alternative"^[41] to Gregorio U. Derige (hereinafter Mr. Derige) and only in his absence but the latter was "never absent."^[42] It capitalizes on the Memorandum^[43] dated *October 29, 1996* issued by Reynaldo G. Almario (hereinafter Mr. Almario), then President of SPAC, designating Mr. Derige, bond consultant, as the company's authorized *primary signatory* who shall be *on call* for the signing and issuance of SPAC bonds, and on the Board Resolution dated April 3, 2000^[44] which resolved to authorize Mr. Almario, this time treasurer of SPAC, and Aurora, then Executive Vice President of SPAC, to sign bonds in the absence of Mr. Derige. The Board Resolution likewise provided that it "is in full force and effect and supersedes the Board Resolution dated April 29, 1998." The latter Board Resolution, however, was not presented before the Court. SPAC further contends that there