Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MILAGROS P. ENRIQUEZ,
Petitioner,

-versus-

THE MERCANTILE INSURANCE CO., INC.,
Respondent.

G.R. No. 210950

Present:

LEONARDO-DE CASTRO, *Chairperson,*
BERSAMIN,
LEONEN,
REYES, JR., and
GESMUNDO, *JJ.*

Promulgated:
August 15, 2018

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DECISION

LEONEN, *J.*:

A surety bond remains effective until the action or proceeding is finally decided, resolved, or terminated, regardless of whether the applicant fails to renew the bond. The applicant will be liable to the surety for any payment the surety makes on the bond, but only up to the amount of this bond.

This is a Petition for Review on Certiorari[1] assailing the August 13, 2013 Decision[2] and January 14, 2014 Resolution[3] of the Court of Appeals in

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1 *Rollo*, pp. 11–29.

2 Id. at 31–39. The Decision was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

CA-G.R. CV No. 95955, which affirmed the Regional Trial Court's finding that Milagros P. Enriquez (Enriquez) was liable for the full amount of the replevin bond issued by The Mercantile Insurance Company, Inc. (Mercantile Insurance).

Sometime in 2003, Enriquez filed a Complaint for Replevin[4] against Wilfred Asuten (Asuten) before the Regional Trial Court of Angeles City, Pampanga. This Complaint, docketed as Civil Case No. 10846,[5] was for the recovery of her Toyota Hi-Ace van valued at ₱300,000.00.[6] Asuten allegedly refused to return her van, claiming that it was given by Enriquez's son as a consequence of a gambling deal.[7]

Enriquez applied for a replevin bond from Mercantile Insurance. On February 24, 2003, Mercantile Insurance issued Bond No. 138 for ₱600,000.00,[8] which had a period of one (1) year or until February 24, 2004. Enriquez also executed an indemnity agreement with Mercantile Insurance, where she agreed to indemnify the latter "for all damages, payments, advances, losses, costs, taxes, penalties, charges, attorney's fees and expenses of whatever kind and nature"[9] that it would incur as surety of the replevin bond.[10]

On May 24, 2004, the Regional Trial Court issued an Order[11] dismissing the Complaint without prejudice due to Enriquez's continued failure to present evidence.

The Regional Trial Court found that Enriquez surrendered the van to the Bank of the Philippine Islands, San Fernando Branch but did not comply when ordered to return it to the sheriff within 24 hours from receipt of the Regional Trial Court March 15, 2004 Order.[12] She also did not comply with prior court orders to prove payment of her premiums on the replevin bond or to post a new bond. Thus, the Regional Trial Court declared Bond No. 138 forfeited. Mercantile Insurance was given 10 days to produce the van or to show cause why judgment should not be rendered against it for the amount of the bond.[13]

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3 Id. at 41–42. The Resolution was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Former Fourth Division, Court of Appeals, Manila.

4 Id. at 99–101.

5 Id. at 51.

6 Id. at 31.

7 Id. at 32.

8 Id. at 47. The CA Decision stated, however, that the replevin bond was issued on February 23, 2003. *See rollo*, p. 32.

9 Id. at 50.

10 Id. at 32.

11 Id. at 51–52. The Order, docketed as Civil Case No. 10846, was penned by Presiding Judge Ma. Angelica T. Paras-Quiambao of Branch 59, Regional Trial Court, Angeles City.

12 The Regional Trial Court March 15, 2004 Order is not attached in the *rollo*.

13 *Rollo*, pp. 51–52.

On July 12, 2004, the Regional Trial Court held a hearing on the final forfeiture of the bond where it was found that Mercantile Insurance failed to produce the van, and that Bond No. 138 had already expired.[14] In an Order[15] issued on the same day, the Regional Trial Court directed Mercantile Insurance to pay Asuten the amount of ₱600,000.00.

Mercantile Insurance wrote to Enriquez requesting the remittance of ₱600,000.00 to be paid on the replevin bond.[16] Due to Enriquez's failure to remit the amount, Mercantile Insurance paid Asuten ₱600,000.00 on September 3, 2004, in compliance with the Regional Trial Court July 12, 2004 Order.[17] It was also constrained to file a collection suit against Enriquez with the Regional Trial Court of Manila.[18]

In her defense, Enriquez claimed that her daughter-in-law, Asela, filed the Complaint for Replevin in her name and that Asela forged her signature in the indemnity agreement. She also argued that she could not be held liable since the replevin bond had already expired.[19]

In its July 23, 2010 Decision,[20] the Regional Trial Court ruled in favor of Mercantile Insurance. It found that non-payment of the premiums did not cause the replevin bond to expire. Thus, Enriquez was still liable for the reimbursement made by the surety on the bond. The Regional Trial Court likewise pointed out that Enriquez made "conflicting claims" of having applied for the bond and then later claiming that her daughter-in-law was the one who applied for it.[21] The dispositive portion of the Regional Trial Court July 23, 2010 Decision read:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff The Mercantile Insurance Co., Inc. and against defendant Milagros P. Enriquez, as follows:
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> (i) Ordering defendant Milagros P. Enriquez to pay plaintiff the claim of P600,000.00 enforced under the Indemnity Agreement plus legal interest at the rate of 12% per annum from date of judicial demand on October 22, 2004, until fully paid;
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> (ii) Ordering defendant Milagros P. Enriquez to pay attorney's fees fixed in the reasonable amount of P50,000.00;

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14 Id. at 53.
15 Id. at 53–54. The Order was penned by Presiding Judge Ma. Angelica T. Paras-Quiambao.
16 Id. at 56.
17 Id. at 57.
18 Id. at 43–46 and 133.
19 Id. at 137–138.
20 Id. at 133–142. The Decision, docketed as Civil Case No. 04-111228, was penned by Acting Presiding Judge Ma. Theresa Dolores C. Gomez-Estoesta of Branch 17, Regional Trial Court, Manila.
21 Id. at 139–141.

(iii) Ordering defendant Milagros P. Enriquez to pay the costs of suit.

SO ORDERED.[22]

Enriquez appealed[23] with the Court of Appeals, arguing that the replevin bond had already expired; therefore, she could not have been liable under the indemnity agreement. She also averred that even assuming that she was still liable under the indemnity agreement, she should not pay the full amount considering that the value of the van was only ₱300,000.00.[24]

On August 13, 2013, the Court of Appeals rendered a Decision[25] affirming the Regional Trial Court's July 23, 2010 Decision.

The Court of Appeals held that under the Guidelines on Corporate Surety Bonds,[26] the lifetime of any bond issued in any court proceeding shall be from court approval until the case is finally terminated. Thus, it found that the replevin bond and indemnity agreement were still in force and effect when Mercantile Insurance paid ₱600,000.00 to Asuten.[27]

The Court of Appeals likewise found that Enriquez was "bound by the incontestability of payments clause" in the indemnity agreement, which stated that she would be held liable for any payment made by the surety under the bond, regardless of the actual cost of the van.[28] It held that the issue of whether Enriquez was liable for the full amount of the replevin bond should have been raised before the Regional Trial Court in the Complaint for Replevin, and not in her appeal.[29]

Enriquez moved for reconsideration[30] but was denied by the Court of Appeals in its January 14, 2014 Resolution.[31] Hence, this Petition[32] was filed before this Court.

Petitioner argues that when respondent paid Asuten on September 3, 2004, the indemnity agreement was no longer in force and effect since the bond expired on February 24, 2004.[33] She claims that the indemnity

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22 Id. at 142.
23 Id. at 119–132.
24 Id. at 34.
25 Id. at 31–39.
26 A.M. No. 04-7-02-SC (2004).
27 *Rollo*, pp. 34–35.
28 Id. at 35.
29 Id. at 36.
30 Id. at 143–147.
31 Id. at 41–42.
32 Id. at 11–29. Respondent's Comment (*Rollo*, pp. 162–172) to the Petition was filed on August 6, 2014 while Petitioner's Reply (*Rollo*, pp. 180–186) was filed on November 24, 2014.
33 Id. at 17–18.

agreement was a contract of adhesion, and that respondent "intended the agreement to be so comprehensive and all-encompassing to the point of being ambiguous."[34]

Petitioner contends that even assuming that the indemnity agreement could be enforced, she should not have been held liable for the full amount of the bond. Citing Rule 60, Section 2 of the Rules of Court, she argues that a judgment on replevin is only "either for the delivery of the property or for its value in case delivery cannot be made and for such damages as either party may prove, with costs."[35]

Respondent, on the other hand, contends that the present action has already prescribed, considering that Rule 60, Section 10, in relation to Rule 57, Section 20 of the Rules of Court, mandates that any objection on the award should be raised in the trial court where the complaint for replevin is filed. It argues that since petitioner only raised the objection before the Court of Appeals, her action should have been barred.[36]

Respondent likewise points out that the forfeiture of the bond was due to petitioner's own negligence. It asserts that in the proceedings before the Regional Trial Court, Enriquez failed to present her evidence, and it was only when she filed an appeal that she raised her objections.[37] It argues that the Guidelines on Corporate Surety Bonds specify that the expiry of the bond shall be after the court proceeding is finally decided; hence, the bond was still in effect when respondent paid Asuten.[38]

The sole issue for this Court's resolution is whether or not petitioner Milagros P. Enriquez should be made liable for the full amount of the bond paid by respondent The Mercantile Insurance Co., Inc. as surety, in relation to a previous case for replevin filed by petitioner.

I

Replevin is an action for the recovery of personal property.[39] It is both a principal remedy and a provisional relief. When utilized as a principal remedy, the objective is to recover possession of personal property that may have been wrongfully detained by another. When sought as a provisional relief, it allows a plaintiff to retain the contested property during the pendency of the action. In *Tillson v. Court of Appeals*:[40]

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34 Id. at 20–21.
35 Id. at 21–22.
36 Id. at 163–164.
37 Id. at 165.
38 Id. at 166.
39 *See* RULES OF COURT, Rule 60, sec. 1.
40 274 Phil. 880 (1991) [Per J. Narvasa, First Division].

> The term replevin is popularly understood as "the return to or recovery by a person of goods or chattels claimed to be wrongfully taken or detained upon the person's giving security to try the matter in court and return the goods if defeated in the action;" "the writ by or the common-law action in which goods and chattels are replevied," i.e., taken or gotten back by a writ for replevin;" and to replevy, means to recover possession by an action of replevin; to take possession of goods or chattels under a replevin order. Bouvier's Law Dictionary defines replevin as "a form of action which lies to regain the possession of personal chattels which have been taken from the plaintiff unlawfully . . ., (or as) the writ by virtue of which the sheriff proceeds at once to take possession of the property therein described and transfer it to the plaintiff upon his giving pledges which are satisfactory to the sheriff to prove his title, or return the chattels taken if he fail so to do;" the same authority states that the term, "to replevy" means "to re-deliver goods which have been distrained to the original possessor of them, on his giving pledges in an action of replevin." The term therefore may refer either to the action itself, for the recovery of personality, or the provisional remedy traditionally associated with it, by which possession of the property may be obtained by the plaintiff and retained during the pendency of the action. In this jurisdiction, the provisional remedy is identified in Rule 60 of the Rules of Court as an order for delivery of personal property.[41]

Similarly, in *BA Finance Corporation v. Court of Appeals*:[42]

> Replevin, broadly understood, is both a form of principal remedy and of a provisional relief. It may refer either to the action itself, i.e., to regain the possession of personal chattels being wrongfully detained from the plaintiff by another, or to the provisional remedy that would allow the plaintiff to retain the thing during the pendency of the action and hold it *pendente lite*. The action is primarily possessory in nature and generally determines nothing more than the right of possession. Replevin is so usually described as a mixed action, being partly *in rem* and partly *in personam-in rem* insofar as the recovery of specific property is concerned, and *in personam* as regards to damages involved. As an "action in rem," the gist of the replevin action is the right of the plaintiff to obtain possession of specific personal property by reason of his being the owner or of his having a special interest therein. Consequently, the person in possession of the property sought to be replevied is ordinarily the proper and only necessary party defendant, and the plaintiff is not required to so join as defendants other persons claiming a right on the property but not in possession thereof. Rule 60 of the Rules of Court allows an application for the immediate possession of the property but the plaintiff must show that he has a good legal basis, i.e., a clear title thereto, for seeking such interim possession.[43]

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41 Id. at 892–893 *citing* Webster's Third New International Dictionary, copyright 1986 and Third (Rawle's) Revision, Vol. 2.

42 327 Phil. 716 (1996) [Per J. Vitug, First Division].

43 Id. at 724–725 *citing Tillson v. Court of Appeals*, 327 Phil. 716 (1996) [Per J. Vitug, First Division]; Bouvier's Dictionary, Third (Rawle's) Revision, Vol. 2; Black's Law Dictionary, Sixth Edition, p. 1299; and 37 WORDS AND PHRASES 17, further citing the *Young Chevrolet Co.* case, 127 P.2d 813, 191 Okl. 161 (1942).

As a provisional remedy, a party may apply for an order for the delivery of the property before the commencement of the action or at any time before an answer is filed.[44] Rule 60 of the Rules of Court outlines the procedure for the application of a writ of replevin. Rule 60, Section 2 requires that the party seeking the issuance of the writ must first file the required affidavit and a bond in an amount that is double the value of the property:

> Section 2. Affidavit and bond. — The applicant must show by his own affidavit or that of some other person who personally knows the facts:
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> (a) That the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;
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> (b) That the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his knowledge, information, and belief;
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> (c) That the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under *custodia legis*, or if so seized, that it is exempt from such seizure or custody; and
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> (d) The actual market value of the property.
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> The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he may recover from the applicant in the action.[45]

Once the affidavit is filed and the bond is approved by the court, the court issues an order and a writ of seizure requiring the sheriff to take the property into his or her custody.[46] If there is no further objection to the bond filed within five (5) days from the taking of the property, the sheriff shall deliver it to the applicant.[47] The contested property remains in the applicant's custody until the court determines, after a trial on the issues, which among the parties has the right of possession.[48]

In Civil Case No. 10846, petitioner Enriquez filed a replevin case against Asuten for the recovery of the Toyota Hi-Ace van valued at ₱300,000.00.[49] She applied for a bond in the amount of ₱600,000.00 with respondent in Asuten's favor. The Regional Trial Court approved the bond

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44 *See* RULES OF COURT, Rule 60, sec. 1.
45 RULES OF COURT, Rule 60, sec. 2.
46 *See* RULES OF COURT, Rule 60, sec. 3.
47 *See* RULES OF COURT, Rule 60, sec. 6.
48 *See* RULES OF COURT, Rule 60, sec. 9.
49 *Rollo*, p. 31.

and ordered the sheriff to recover the van from Asuten and to deliver it to petitioner. While the van was in petitioner's custody, the Regional Trial Court dismissed the case without prejudice for failure to prosecute. Thus, it ordered the sheriff to restore the van to Asuten. When petitioner failed to produce the van, the Regional Trial Court directed respondent to pay Asuten the amount of the bond.

There was no trial on the merits. The Regional Trial Court's dismissal for failure to prosecute was a dismissal without prejudice to re-filing. In this particular instance, any writ of seizure, being merely ancillary to the main action, becomes *functus oficio*. The parties returned to the status quo as if no case for replevin had been filed. Thus, upon the dismissal of the case, it was imperative for petitioner to return the van to Asuten. In *Advent Capital and Finance Corporation v. Young*:[50]

> We agree with the Court of Appeals in directing the trial court to return the seized car to Young since this is the necessary consequence of the dismissal of the replevin case for failure to prosecute without prejudice. Upon the dismissal of the replevin case for failure to prosecute, the writ of seizure, which is merely ancillary in nature, became *functus officio* and should have been lifted. There was no adjudication on the merits, which means that there was no determination of the issue who has the better right to possess the subject car. Advent cannot therefore retain possession of the subject car considering that it was not adjudged as the prevailing party entitled to the remedy of replevin.
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> Contrary to Advent's view, *Olympia International Inc. v. Court of Appeals* applies to this case. The dismissal of the replevin case for failure to prosecute results in the restoration of the parties' status prior to litigation, as if no complaint was filed at all. To let the writ of seizure stand after the dismissal of the complaint would be adjudging Advent as the prevailing party, when precisely no decision on the merits had been rendered. Accordingly, the parties must be reverted to their *status quo ante*. Since Young possessed the subject car before the filing of the replevin case, the same must be returned to him, as if no complaint was filed at all.[51]

Petitioner argues that she should not have been made liable for the bond despite her failure to return the van, considering that it was effective only until February 24, 2004, and that she did not renew or post another bond.

De Guia v. Alto Surety & Insurance, Co.[52] requires that any application on the bond be made after hearing but before the entry of judgment. Otherwise, the surety can no longer be made liable under the bond:

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50 670 Phil 538 (2011) [Per J. Carpio, Second Division].

51 Id. at 547, *citing Olympia International v. Court of Appeals*, 259 Phil. 841 (1989).

52 117 Phil. 434 (1963) [Per J. Barrera, En Banc].

> Construing and applying these provisions of the Rules, we have held in a long line of cases that said provisions are mandatory and require the application upon the bond against the surety or bondsmen and the award thereof to be made after hearing and before the entry of final judgment in the case; that if the judgment under execution contains no directive for the surety to pay, and the proper party fails to make any claim for such directive before such judgment had become final and executory, the surety or bondsman cannot be later made liable under the bond. The purpose of the aforementioned rules is to avoid multiplicity of suits.[53]

For this reason, a surety bond remains effective until the action or proceeding is finally decided, resolved, or terminated. This condition is deemed incorporated in the contract between the applicant and the surety, regardless of whether they failed to expressly state it. Under the Guidelines on Corporate Surety Bonds:[54]

> VII. LIFETIME OF BONDS IN CRIMINAL AND CIVIL ACTIONS/SPECIAL PROCEEDINGS
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> Unless and until the Supreme Court directs otherwise,[55] the lifetime or duration of the effectivity of any bond issued in criminal and civil actions/special proceedings, or in any proceeding or incident therein shall be from its approval by the court, until the action or proceeding is finally decided, resolved or terminated. *This condition must be incorporated in the terms and condition of the bonding contract and shall bind the parties notwithstanding their failure to expressly state the same in the said contract or agreement.* (Emphasis supplied)

Civil Case No. 10846 is a rare instance where the writ of seizure is dissolved due to the dismissal without prejudice, but the bond stands because the case has yet to be finally terminated by the Regional Trial Court.

The peculiar circumstances in this case arose when petitioner *failed* to return the van to Asuten, despite the dismissal of her action. This is an instance not covered by the Rules of Court or jurisprudence. In its

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53 Id. at 440, *citing Visayan Surety & Insurance Corp. v. Pascual*, 85 Phil. 779 (1950) [Per J. Ozaeta, En Banc]; *Liberty Construction Supply Co. v. Pecson*, 89 Phil. 50 (1951) [Per J. Feria, First Division]; *Aguasin v. Velasquez*, 88 Phil. 357 (1951) [Per J. Tuason, En Banc]; *Abelow v. De la Riva*, 105 Phil. 159 (1959) [Per J. Bengzon, En Banc]; *Riel v. Lacson*, G.R. No. L-9863, September 29, 1958; *Port Motors, Inc. v. Raposas*, 100 Phil. 732 (1957) [Per J. Felix, En Banc]; *Luneta Motor Co. v. Lopez*, 105 Phil. 327 (1959) [Per J.B.L Reyes, En Banc]; *Visayan Surety & Insurance Co. v. Aquino*, 96 Phil. 900 (1955) [Per J. Labrador, En Banc]; *Curilan v. Court of Appeals*, 105 Phil. 1150 (1959) [Per J. Bautista Angelo, En Banc]; *Alliance Insurance & Surety Co. v. Piccio*, 105 Phil. 1192 (1959); and *Del Rosario v. Nava*, 95 Phil. 637 (1954) [Per J.B.L. Reyes, En Banc].

54 A.M. No. 04-7-02-SC (2004). These Guidelines are given retroactive effect considering that the Regional Trial Court Order was issued on May 24, 2004. Petitioner would not be adversely affected by its retroactive application since the procedural rule prevailing at the time, *Fixing the Lifetime of Bonds in Civil Actions or Proceedings* [Administrative Matter No. 03-03-18-SC (2003)], stated the same rule verbatim.

55 This has since been amended by A.M. No. 04-7-02-SC (2015) to read: "Unless and until the court concerned directs otherwise."

discretion, the Regional Trial Court proceeded to rule on the forfeiture of the bond. As a result, respondent paid Asuten twice the value of the van withheld by petitioner. Respondent, thus, seeks to recover *this* amount from petitioner, despite the van only being worth half the amount of the bond.

Of all the provisional remedies provided in the Rules of Court, only Rule 60, Section 2[56] requires that the amount of the bond be *double* the value of the property. The other provisional remedies provide that the amount be fixed by court or be merely equal to the value of the property:

> Provisional Remedies
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> Rule 57
> Preliminary Attachment
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> . . . .
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> Section 4. Condition of applicant's bond. — The party applying for the order must thereafter give a bond executed to the adverse party *in the amount fixed by the court in its order granting the issuance of the writ*, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.
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> . . . .
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> Section 12. Discharge of attachment upon giving counter-bond. — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, *in an amount equal to that fixed by the court in the order of attachment, exclusive of costs*. But if the attachment is sought to be discharged with respect to a particular property, *the counter-bond shall be equal to the value of that property as determined by the court*. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.

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[56] RULES OF COURT, Rule 60, sec. 2. provides:
Section 2. Affidavit and bond. — . . . .
The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he may recover from the applicant in the action.

. . . .

Section 14. Proceedings where property claimed by third person. — If the property attached is claimed by any person other than the party against whom attachment had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant *in a sum not less than the value of the property levied upon.* In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

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Rule 58
Preliminary Injunction

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Section 4. Verified application and bond for preliminary injunction or temporary restraining order. — A preliminary injunction or temporary restraining order may be granted only when:

. . . .

(b) Unless exempted by the court, the applicant 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 to 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.

. . . .

Section 6. Grounds for objection to, or for motion of dissolution of, injunction or restraining order. — The application for injunction or restraining order may be denied, upon a showing of its insufficiency. The injunction or restraining order may also be denied, or, if granted, may be dissolved, on other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the court conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

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Rule 59
Receivership

. . . .

Section 2. Bond on appointment of receiver. — Before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to the party against whom the application is presented, *in an amount to be fixed by the court*, to the effect that the applicant will pay such party all damages he may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.

Section 3. Denial of application or discharge of receiver. — The application may be denied, or the receiver discharged, when the adverse party files a bond executed to the applicant, *in an amount to be fixed by the court*, to the effect that such party will pay the applicant all damages he may suffer by reason of the acts, omissions, or other matters specified in the application as ground for such appointment. The receiver may also be discharged if it is shown that his appointment was obtained without sufficient cause.

. . . .

Rule 60
Replevin

. . . .

Section 7. Proceedings where property claimed by third person. — If the property taken is claimed by any person other than the party against whom the writ of replevin had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds therefor, and serves such affidavit upon the sheriff while the latter has possession of the property and a copy thereof upon the applicant, the sheriff shall not be bound to keep the property under replevin or deliver it to the applicant unless the applicant or his agent, on demand of said sheriff, shall file a bond approved by the court to indemnify the third-party claimant *in a sum not less than the value of the property under replevin* as provided in section 2 hereof. In case of disagreement as to such value, the court shall determine the same. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.[57] (Emphasis supplied)

However, there is a rationale to the requirement that the bond for a writ of seizure in a replevin be double the value of the property. The bond functions not only to indemnify the defendant in case the property is lost, but also to answer for any damages that may be awarded by the court if the

[57] RULES OF COURT, Rules 57–60.

judgment is rendered in defendant's favor. In *Citibank, N.A. v. Court of Appeals*:[58]

> It should be noted that a replevin bond is intended to indemnify the defendant against any loss that he may suffer by reason of its being compelled to surrender the possession of the disputed property pending trial of the action. The same may also be answerable for damages if any when judgment is rendered in favor of the defendant or the party against whom a writ of replevin was issued and such judgment includes the return of the property to him. Thus, the requirement that the bond be double the actual value of the properties litigated upon. Such is the case because the bond will answer for the actual loss to the plaintiff, which corresponds to the value of the properties sought to be recovered and for damages, if any.[59]

Any application of the bond in a replevin case, therefore, is premised on the judgment rendered in favor of the defendant. Thus, the Rules of Court imply that there must be a prior judgment on the merits before there can be any application on the bond:

> Rule 60
> Replevin
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> . . . .
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> Section 9. Judgment. — After trial of the issues, the court shall determine who has the right of possession to and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for its value in case delivery cannot be made, and also for such damages as either party may prove, with costs.
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> Section 10. Judgment to include recovery against sureties. — The amount, if any, to be awarded to any party upon any bond filed in accordance with the provisions of this Rule, shall be claimed, ascertained, and granted under the same procedure as prescribed in section 20 of Rule 57.

The Rules of Court likewise require that for the defendant to be granted the *full* amount of the bond, he or she must first apply to the court for damages. These damages will be awarded only after a proper hearing:

> Rule 57
> Preliminary Attachment
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> . . . .

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58 364 Phil. 328 (1999) [Per J. Purisima, Third Division].

59 Id. at 347, citing *Alim v. Court of Appeals*, 277 Phil. 156 (1991) [Per J. Paras, Second Division]; *Sapugay, et al. v. Court of Appeals, et al.*, 262 Phil. 506 (1990) [Per J. Regalado, First Division]; and *Stronghold Insurance Co., v. Court of Appeals*, 258-A Phil. 690 (1989) [Per J. Regalado, Second Division].

> Section 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 party and 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 on 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 party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

Forfeiture of the replevin bond, therefore, requires *first*, a judgment on the merits in the defendant's favor, and *second*, an application by the defendant for damages. Neither circumstance appears in this case. When petitioner failed to produce the van, equity demanded that Asuten be awarded only an amount equal to the value of the van. The Regional Trial Court would have erred in ordering the forfeiture of the *entire* bond in Asuten's favor, considering that there was no trial on the merits or an application by Asuten for damages. This judgment could have been reversed *had petitioner appealed the Regional Trial Court's May 24, 2004 Order in Civil Case No. 10846*. Unfortunately, she did not. Respondent was, thus, constrained to follow the Regional Trial Court's directive to pay Asuten the full amount of the bond.

II

This is a simple case for collection of a sum of money. Petitioner cannot substitute this case for her lost appeal in Civil Case No. 10846.

In applying for the replevin bond, petitioner voluntarily undertook with respondent an Indemnity Agreement, which provided:

> INDEMNIFICATION – to indemnify the SURETY for all damages, payments, advances, losses, costs, taxes, penalties, charges, attorney's fees and expenses of whatever kind and nature that the SURETY may at any time sustain or incur as a consequence of having become a surety upon the above-mentioned bond, and to pay, reimburse and make good to the

> SURETY, its successors and assigns, all sums or all money which it shall pay or become liable to pay by virtue of said bond even if said payment/s or liability exceeds the amount of the bond. . . .
>
> INCONTESTABILITY OF PAYMENTS MADE BY THE SURETY – any payment or disbursement made by the surety on account of the above-mentioned bond, either in the belief that the SURETY was obligated to make such payment or in the belief that said payment was necessary in order to avoid a greater loss or obligation for which the SURETY might be liable by virtue of the . . . above-mentioned bond, shall be final, and will not be contested by the undersigned, who jointly and severally bind themselves to indemnify the SURETY for any of such payment or disbursement.[60]

Basic is the principle that "a contract is law between the parties"[61] for as long as it is "not contrary to law, morals, good customs, public order, or public policy."[62] Under their Indemnity Agreement, petitioner held herself liable for any payment made by respondent by virtue of the replevin bond.

Petitioner contends that the Indemnity Agreement was a contract of adhesion since respondent made the extent of liability "so comprehensive and all-encompassing to the point of being ambiguous."[63]

A contract of insurance is, by default, a contract of adhesion. It is prepared by the insurance company and might contain terms and conditions too vague for a layperson to understand; hence, they are construed liberally in favor of the insured. In *Verendia v. Court of Appeals*:[64]

> Basically a contract of indemnity, an insurance contract is the law between the parties. Its terms and conditions constitute the measure of the insurer's liability and compliance therewith is a condition precedent to the insured's right to recovery from the insurer. As it is also a contract of adhesion, an insurance contract should be liberally construed in favor of the insured and strictly against the insurer company which usually prepares it.[65]

Respondent, however, does not seek to recover an amount which exceeds the amount of the bond or any "damages, payments, advances, losses, costs, taxes, penalties, charges, attorney's fees and expenses of

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60 *Rollo*, p. 50.

61 *Alcantara v. Alinea*, 8 Phil. 111 (1907) [Per J. Torres, First Division].

62 CIVIL CODE, art. 1306.

63 *Rollo*, p. 21.

64 291 Phil. 439 (1993) [Per J. Melo, Third Division].

65 Id. at 446–447 *citing Pacific Banking Corporation v. Court of Appeals*, 250 Phil. 1 (1988) [Per J. Paras, Second Division]; *Oriental Assurance Corporation v. Court of Appeals*, 277 Phil. 525 (1991) [Per J. Melencio-Herrera, Second Division]; *Perla Compania de Seguros, Inc. v. Court of Appeals*, 264 Phil. 354 (1990) [Per C.J. Fernan, Third Division]; and *Western Guaranty Corporation v. Court of Appeals*, 265 Phil. 687 (1980) [Per J. Feliciano, Third Division].

whatever kind and nature,"[66] all of which it could have sought under the Indemnity Agreement. It only seeks to recover from petitioner the amount of the bond, or ₱600,000.00.

Respondent paid ₱600,000.00 to Asuten pursuant to a lawful order of the Regional Trial Court in Civil Case No. 10846. If there were any errors in the judgment of the Regional Trial Court, as discussed above, petitioner could have appealed this. Petitioner, however, chose to let Civil Case No. 10846 lapse into finality. This case cannot now be used as a substitute for her lost appeal.

It is clear from the antecedents that any losses which petitioner has suffered were due to the consequences of her actions, or more accurately, her inactions. Civil Case No. 10846, which she filed, was dismissed due to her failure to prosecute. The Regional Trial Court forfeited the replevin bond which she had filed because she refused to return the property. She is now made liable for the replevin bond because she failed to appeal its forfeiture.

WHEREFORE, the Petition is **DENIED**. The August 13, 2013 Decision and January 14, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 95955 are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Chairperson

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66 *Rollo*, p. 20.

LUCAS P. BERSAMIN
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPUAN
Division Clerk of Court
Third Division
OCT 10 2018