

**ALPHA TRUCKING AND GENERAL SERVICES REPRESENTED BY
JOHN CABIGON AND JOHN CABIGON IN HIS PERSONAL CAPACITY,
PETITIONERS, VS. HON. SYLVA PADERANGA, IN HER OFFICIAL
CAPACITY AS PRE...**

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing public respondent's issuances in Civil Case No. 32636, to wit: (1) Order dated March 29, 2011[1] granting the application for the issuance of a writ of preliminary attachment of private respondent Fast Cargo Logistics Corp. (Fast Cargo) and directing the issuance of the writ conditioned upon the filing of a bond in the amount of P4,128,400.99; (2) Order dated May 7, 2013[2] denying the motion for reconsideration of petitioners Alpha Trucking and General Services, Inc. (Alpha Trucking) and John Cabigon (Cabigon).

The Antecedents

Fast Cargo sued Alpha Trucking and Cabigon [together referred to as petitioners] for collection of sum of money with application for preliminary attachment. According to the complaint, Cabigon approached Fast Cargo sometime in 2005 and offered to engage the latter's services to handle the hauling and trucking needs of SMC-Shipping and Lighterage Corporation (SMC). Cabigon represented to Fast Cargo that his corporation, Alpha Trucking, was authorized by SMC to enter into subcontracting transactions for SMC's trucking requirements.

Subsequently, Fast Cargo handled the hauling and trucking requirements of SMC in behalf of petitioners, upon the assurances that it would be remunerated for the contracted services and that SMC authorized Alpha Trucking to enter into subcontracting arrangements. However, petitioners did not pay their obligations to Fast Cargo despite having been duly billed.

On June 3, 2005, Fast Cargo and petitioners formalized their arrangement by executing a Trucking Services Sub-contractor Agreement (trucking agreement). Subsequently, Fast Cargo demanded from petitioners a copy of the latter's contract with SMC containing SMC's authorization for Alpha Trucking to engage subcontractors. Petitioners, however, failed to show such contract to Fast Cargo.

Even after formalizing their subcontracting arrangement, petitioners were still late in paying their obligations to Fast Cargo and altogether stopped paying their outstanding obligations after December 2, 2005. On February 8, 2006 and on several occasions thereafter, Fast Cargo made demands for payment on petitioners for the latter's obligation amounting to P4,128,400.00, excluding interests, but these went unheeded.

In its application for a writ of attachment, Fast Cargo averred that petitioners were guilty of fraud because their warranty that SMC authorized Alpha Trucking to engage subcontractors was false. Moreover, Alpha Trucking's General Information Sheet (GIS) filed with the Securities and Exchange Commission showed that its paid up capital was only P31,250.00, thus, it had no substantial asset for its operations. Meanwhile, the amount of Fast

Cargo's services already amounted to P4,128,400.00. Fast Cargo averred that its claim fell under Section 1, paragraph d, Rule 57 of the Rules of Court which justified the issuance of a writ of preliminary attachment.

Petitioners filed their Answer[3] claiming that Cabigon had an existing agreement with SMC to handle the latter's trucking requirements subject to subcontracting if Alpha Trucking could not meet SMC's trucking needs. It was actually Fast Cargo that approached Alpha Trucking and the latter subcontracted the former for SMC's trucking requirements. Petitioners had made payments to Fast Cargo aggregating to P2,333,286.00 per attached receipts and deposit slips. Fast Cargo exclusively prepared the trucking agreement and after its execution, Fast Cargo stopped rendering service. Petitioners later came to know that Fast Cargo tried to directly contract with SMC. Petitioners claimed that Fast Cargo's Statement of Account contained unsupported general charges and the amount it demanded were either double-billed or non-existent.

In opposing the application for a writ of preliminary attachment, petitioners averred that Fast Cargo's ground could not be considered as fraud on petitioners' part. Petitioners claimed that they had a contract with SMC, but it was of the innominate kind. The amount of Alpha Trucking's paid-up capital could not constitute fraud and be a ground for the issuance of a writ of attachment since the documents containing the information was public record and accessible to Fast Cargo even before it entered into a contract with petitioners.

Public respondent conducted hearings on the application for preliminary attachment, during which the parties presented two witnesses for each side. Thereafter, public respondent issued the first questioned order granting Fast Cargo's application for issuance of preliminary attachment and directing the issuance of the writ conditioned upon the filing of a bond in the amount of P4,128,400.99. Petitioners moved for reconsideration but public respondent denied their motion. Aggrieved, petitioners brought this petition on a lone question, thus:

DID PUBLIC RESPONDENT JUDGE COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN SHE ISSUED HER TWO QUESTIONED ORDERS OF MARCH 29, 2011 AND THE SECOND ORDER DATED MAY 7, 2013 IN CIVIL CASE NO. 32636.

This Court's Ruling

The petition is unimpressed with merit.

Petitioners advanced the following contentions: first, that public respondent had no jurisdiction to hear the application due to the absence of the affidavit required by Section 3, Rule 57 of the Rules of Court; second, that public respondent was partial towards Fast Cargo when she issued the writ of preliminary attachment in the amount of P4,128,400.00, or more than half of the amount sought by Fast Cargo, even if it was established during the hearing for the application that petitioners already paid P2,333,000.00; and third, that their undertaking in the trucking agreement to obtain authorization from SMC was not fraud or evidence of fraud, but it amounted only to a promise in the course of negotiations.

We address petitioners' contentions ad seriatim.

In insisting on the affidavit requirement, petitioners cited the case of *Jardine Manila Finance Inc. v. Court of Appeals*[4] which was decided on April 10, 1989 and declared that:

The general rule that the affidavit is the foundation of the writ and if none is filed, or one be filed which wholly fails to set out some facts required by law to be stated therein, there is no jurisdiction and the proceedings are null and void.

However, in *Nasser v. The Court of Appeals*,[5] a later ruling promulgated on December 3, 1990, the Supreme Court held that "it is settled that a verified statement incorporated in the complaint without a separate affidavit is

sufficient and valid to obtain the attachment”. Thus, so long as the facts required to be set out in the affidavit appear in the verified complaint, the absence of the affidavit per se is not a fatal defect to warrant a denial of Fast Cargo's application. Since Fast Cargo's verified complaint incorporated the matters that were supposed to be treated and contained in the affidavit, there was substantial compliance with the rules. It is also noteworthy that the complaint was duly verified. The oath elevates the petition to the same category as a separate affidavit.[6]

As for public respondent's issuance of the writ of preliminary attachment for the amount of P4,128,400.00, this did not amount to grave abuse of discretion and could not be said to have prejudiced petitioners by making them pay their obligation twice. Petitioners have to be reminded that public respondent issued only a writ of preliminary attachment and did not yet render a judgment on the case. The character and purpose of the writ of preliminary attachment was detailed in the case of *Magaling v. Ong*,[7] thus:

A writ of preliminary attachment is a provisional remedy by virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the court as security for the satisfaction of the judgment that may be recovered. The chief purpose of the remedy of attachment is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors. [Emphasis supplied.]

The writ of preliminary attachment against petitioners was to serve the above purpose. With its issuance, liability was not yet adjudged on petitioners; hence, it was premature for them to claim that public respondent disregarded their alleged payment of P2,333,000.00. Petitioners' assertion regarding their alleged payment still has to be litigated during the trial for the collection case; threshing it out in full was inappropriate during the hearing of the application.

Finally, there was also no grave abuse of discretion on the part of public respondent for finding fraud on the part of petitioners in contracting the obligation. Contrary to petitioners' proposition, their undertaking in the trucking agreement could not be considered a mere promise in the course of negotiations. Petitioners did not merely undertake “to obtain” SMC's authorization to engage subcontractors; rather, they represented to Fast Cargo that Alpha Trucking “already had a contract” with SMC. This is evident from the stipulation in their trucking agreement, viz.:

“7. AUTHORITY TO ASSIGN

In addition the CONTRACTOR must present to the SERVICE PROVIDER a copy of its contract with SMC-SHIPPING & LIGHTERAGE CORP. appointing the former as a duly authorized trucker and containing a further authorization to enter into a SUB-CONTRACTORS agreement and appoint service providers;”[8]

Petitioners' false representation regarding their alleged existing contract with, and authority to engage subcontractors from SMC, was Fast Cargo's inducement to conclude the contract with them. Such false representation constituted fraud. Fraud refers to all kinds of deception — whether through insidious machination, manipulation, concealment or misrepresentation — that would lead an ordinarily prudent person into error after taking the circumstances into account.[9] As petitioners were guilty of fraud in contracting their obligation, the assailed orders positively acting on Fast Cargo's application for a writ of preliminary attachment were properly founded. Public respondent could not, therefore, be held guilty of gravely abusing her discretion.

WHEREFORE, the petition is DENIED. Public respondent's Orders in Civil Case No. 32636 dated March 29, 2011 and May 7, 2013 are hereby AFFIRMED.

SO ORDERED.

Hernando, and Azcarraga-Jacob, JJ., concur.

[1] Rollo, pp. 12-15.

[2] Rollo, pp. 16-17.

[3] Rollo, pp. 25-34.

[4] G.R. No. 55272.

[5] G.R. No. 32946.

[6] See *Mago v. Court of Appeals*, G.R. No. 115624. February 25, 1999.

[7] G.R. No. 173333. August 13, 2008.

[8] Quoted from the RTC's Order, rollo, p. 13.

[9] See *Solidbank Corporation v. Mindanao Ferroalloy Corporation*. G.R. No. 153535. July 28, 2005.

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