

**MERCEDES GRUENBERG AND ALBERT GRUENBERG, PETITIONERS,
VS. HONORABLE COURT OF APPEALS, HONORABLE LINO L. AÑOVER
AND ELDA R. FLORES, RESPONDENTS.**

G.R. No. L-45948. September 10, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition to review the decision of the Court of Appeals, now Intermediate Appellate Court, which affirmed the order for the issuance of a writ of preliminary attachment, and other related orders of the then Court of First Instance of Rizal in Civil Case No. Q-18444.

The antecedent facts are summarized by the appellate court as follows:

"Petitioners are the defendants and private respondent is the plaintiff in Civil Case No. Q-18444, Court of First Instance of Rizal, Branch XVII-B-Quezon City, for annulment of sale, recovery of ownership and possession of the house and lot situated at No. 24 Scout Limbaga, Diliman, Quezon City, the same, allegedly, having been sold in fraud of creditors.

"Private respondent filed the complaint in Civil Case No. Q-18444, in her capacity as the administratrix of the intestate estate of the late William Gruenberg.

"It is alleged in the complaint in Civil Case No. Q-18444 that the house and lot in question, which were sold to defendant Albert Gruenberg (one of the petitioners), form part of the conjugal partnership of the Gruenberg spouses, which must answer for the obligations that deceased William Gruenberg might have incurred during his lifetime in his capacity as manager and administrator of the conjugal partnership; and that the sale of the house and lot before the death of William Gruenberg, when at that time two creditors had already filed suits against him for collection of unpaid obligations, and the latter had unpaid obligation, to plaintiff Elda R. Flores (private respondent) in the amount of P13,000.00, exclusive of interest and collection charges, patently and clearly can no longer be paid or liquidated.

"On March 1, 1974, petitioners filed their answer to the complaint.

"Under date of February 7, 1976, private respondent filed a 'Motion for Issuance of Writ of Preliminary Attachment' against the properties of petitioners, alleging, among others, that the latter are indebted to her in the principal amount of P13,000.00, which, according to her, she seeks to recover in Civil Case No. Q-18444.

"On March 1, 1976, petitioners filed their opposition to the motion for the issuance of writ of preliminary attachment, alleging among others, that Civil Case No. Q-18444 is an action for annulment of sale and recovery of the house and lot mentioned therein, and not for recovery of sum of money. It is contended that a writ of preliminary attachment is not the proper remedy for the protection of the rights of the estate. In the same opposition, petitioners refuted the allegations of private respondent in her motion that the complaint in Civil Case No. Q-18444 is one for collection of a sum of money allegedly contracted fraudulently by petitioners.

"On March 26, 1976, respondent Judge issued an order, granting the motion of private respondent and issuing a writ of preliminary attachment against the properties of petitioners, respondent Judge stating that no opposition had been filed to the motion.

"In the latter part of July, 1976, respondent Sheriff and/or his deputies served on petitioners and the managers of the Hollywood Theater, Palace Theater and Illusion Theater a writ of preliminary attachment and notice of garnishment against petitioners and personally in favor of respondent Flores.

"It is alleged that the order of respondent Judge was not received by petitioners' new counsel, but, upon being informed by petitioners of the writ of preliminary attachment and notice of garnishment, petitioners' new counsel promptly went to the court of respondent Judge and then and there he discovered that petitioners' opposition to the motion was not attached to the record, because the same was forwarded to Branch XVIII to which Civil Case No. Q-18444 was originally assigned.

"On July 30, 1976, petitioners filed (a) a motion for reconsideration of the order granting the motion for the issuance of a writ of preliminary attachment, and (b) a motion to recall the writ of preliminary attachment and notice of garnishment, on the ground that it is not true that petitioners did not oppose the motion of private respondent, and that there is no valid basis to grant the motion.

"On August 16, 1976, respondent Judge issued an order, denying the motions of petitioners.

"On October 28, 1976, respondent Judge issued an order, requiring petitioners to appear before his court to explain why they should not be punished for contempt for denying or disobeying the lawful processes of the court."

The issuance of the "show cause" order prompted the petitioners to file a petition for certiorari with writ of preliminary injunction in the Court of Appeals. The petition was dismissed. Hence, the instant petition.

The issues raised to us are embodied in the petitioners' assignments of errors as follows:

- THE COURT OF APPEALS ERRED IN OVERLOOKING THE FACT THAT WRIT OF PRELIMINARY ATTACHMENT COULD ONLY BE GRANTED TO SECURE THE SATISFACTION OF A JUDGMENT IN A CASE IN WHICH SAID WRIT IS PRAYED FOR;
- THE COURT ERRED IN SUSTAINING THE ISSUANCE OF THE WRIT OF PRELIMINARY ATTACHMENT FOR THE PERSONAL BENEFIT OF PRIVATE RESPONDENT IN CIVIL CASE NO. Q-18444, NOTWITHSTANDING THE FACT THAT SAID RESPONDENT INSTITUTED SAID ACTION NOT IN HER PERSONAL CAPACITY, BUT AS ADMINISTRATRIX OF THE ESTATE OF THE LATE WILLIAM GRUENBERG, SR.;
- THE COURT OF APPEALS ERRED IN RULING THAT PETITIONERS CAN BE CITED FOR CONTEMPT FOR THE ALLEGED FAILURE TO COMPLY WITH THE NOTICE OF GARNISHMENT ADDRESSED TO THIRD PARTIES.

The issues are interrelated and may be discussed together. They all focus on the propriety of the writ of attachment and garnishment against the petitioners' properties issued by the trial court and affirmed by the appellate court.

In her affidavit supporting the motion for a writ of preliminary attachment, the private respondent stated that her case "x x x is one of the situations covered by Section 1(d), Rule 57 of the Rules of Court whereby a writ of preliminary attachment may issue." Section 1(d), Rule 57 provides:

"Grounds upon which attachment may issue. — A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of them adverse party attached as security for the

satisfaction of any judgment that may be recovered in the following cases:

xxx xxx xxx

"(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought.

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There are various reasons why this petition should prosper.

Private respondent Elda R. Flores, as a claimant for P13,000.00 against the estate of William Gruenberg, Sr., was appointed administratrix of the estate of the deceased. In her capacity as administratrix, she filed Civil Case No. Q-18444 against the petitioners. This main case was for the annulment of a deed of sale executed by the late William Gruenberg, Sr., in favor of Albert Gruenberg and for the recovery of possession and ownership of the house and lot involved in that sale.

The motion for a writ of preliminary attachment filed by Flores, however, states:

1. Defendants are indebted to plaintiff in the amount of P13,000.00 exclusive of accrued interest and collection charges, which plaintiff seeks to recover in the instant action; and
2. Defendants are guilty of fraud in contracting the debt or incurring the obligation due plaintiff in that they conspired and confederated with each other as mother and son to defraud other creditors one of whom is plaintiff, by simulating the sale of house and lot situated at No. 24 Scout Limbaga Street, Quezon City x x x.

While the respondent filed the motion in her capacity as administratrix of the Gruenberg estate, the motion for a writ of attachment and its supporting affidavit show that the attachment was intended to secure only her P13,000.00 claim against the estate. Obviously, this cannot be done.

A writ of attachment is a remedy ancillary to the principal proceeding. The well-entrenched principle is that:

"Attachment is a juridical institution which has for its purpose to secure the outcome of the trial, that is, the satisfaction of the pecuniary obligation really contracted by a person or believed to have been contracted by him, either by virtue of a civil obligation emanating from contract or from law, or by virtue of some crime or misdemeanor that he might have committed, and the writ issued, granting it, is executed by attaching and safely keeping all the movable property of the defendant, or so much thereof as may be sufficient to satisfy the plaintiff's demands x x x." (Guzman v. Catolico, et al., 65 Phil. 257).

The purpose behind the filing of the complaint was to recover a piece of property allegedly belonging to the intestate estate of the deceased. Hence, any writ of attachment necessary to secure the judgment must be related to the protection of the estate. The writ may not issue if only to protect the personal interests of the private respondent as a creditor of that estate.

The records show that the private respondent's interest in the estate is to recover a debt based on a contract with the deceased Gruenberg. For this reason, she instituted the special proceedings for the settlement of the intestate estate resulting to her appointment as administratrix. Under these circumstances, the private respondent's remedy to recover the outstanding debt of the deceased is to follow the procedure in Rule 86 on claims against an estate. As a matter of fact, if an administrator has a claim against an estate, Section 8 of Rule 86 calls for the appointment of a special administrator to defend the estate against such claim.

A court order which violates the Rules constitutes grave abuse of discretion as it wrecks the orderly procedure prescribed for the settlement of claims against deceased persons designed to protect the interests of the creditors

of the decedent. (See *Dy v. Enage*, 70 SCRA 96). Allowing the private respondent in the annulment case to attach the petitioners' properties for the benefit of her P13,000.00 claim against the estate would give her an undue advantage over other creditors against the estate.

Moreover, the P13,000.00 claim of the respondent cannot be settled in the case for annulment of the deed of sale, wherein the writ of attachment is sought. What she seeks to be secured is not the judgment in the main case but a mere claim against the estate which is still to be considered and adjudicated by the court.

The rules on the issuance of a writ of attachment must be construed strictly in favor of the defendant. The remedy of attachment is harsh, extraordinary, and summary in nature. If all the requisites for the issuance of the writ are not present, the court which issues it acts in excess of its jurisdiction.

In *Salas v. Adil* (90 SCRA 121), we stated:

"A preliminary attachment is a rigorous remedy, which exposes the debtor to humiliation and annoyance, such it should not be abused as to cause unnecessary prejudice. It is, therefore, the duty of the court, before issuing the writ, to ensure that all the requisites of the law have been complied with; otherwise the judge acts in excess of his jurisdiction and the writ so issued shall be null and void. (*Guzman v. Catolico*, 65 Phil. 257, 261).

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"Considering the gravity of the allegation that herein petitioners have removed or disposed of their properties or are about to do so with intent to defraud their creditors, and further considering that the affidavit in support of the preliminary attachment merely states such ground in general terms, without specific allegations of circumstances to show the reason why plaintiffs believe that defendants are disposing of their properties in fraud of creditors, it was incumbent upon respondent Judge to give notice to petitioners and to allow them to present their position at a hearing wherein evidence is to be received."

Following the principle of strict compliance with all requisites, this Court has also ruled that "when the facts, or some of them, stated in the plaintiff's affidavit are shown by the defendant to be untrue, the writ may be considered as improperly or irregularly issued." (*National Coconut Corporation v. Pecson, et al.*, 90 Phil. 809).

The February 7, 1976 motion for issuance of a writ of preliminary attachment and the affidavit of preliminary attachment are misleading. First, the private respondent states that the "defendants are indebted to plaintiff in the amount of P13,000.00" exclusive of interests and collection charges. Then, she avers that the "defendants are guilty of fraud in contracting the debt or incurring the obligation due plaintiff".

The facts in the motion and the affidavit are deceptively framed. The obligation which the respondent seeks to secure by an attachment was between her and the late William Gruenberg, Sr. What she seeks to establish as fraudulent was the sale between the late Mr. Gruenberg and his son. These are two entirely distinct transactions.

One of the reasons for granting the motion for the issuance of a writ of preliminary attachment was the court's finding that the petitioners' failed to file an opposition thereto. It turns out, however, that the petitioners filed a timely opposition to the motion but it was filed in another branch of the court where the case had earlier been assigned. Nevertheless, despite this timely opposition, the motion for reconsideration of the order for the issuance of a writ of preliminary attachment, was summarily denied for lack of merit.

We also note that the order which directed the issuance of a writ of preliminary attachment merely recited the grounds alleged in the private respondent's motion without any specific details as to the supposed fraud committed by the petitioners when they contracted the debt and the alleged disposition or concealment by the petitioners of their properties. The order of the trial court disregards the rule that attachment being a harsh remedy, it must be issued on concrete and specific grounds and not on general averments merely quoting the

words of the pertinent rules. (*Dy v. Enage*, supra). The absence of specific grounds highlights the fact that the petitioners are not indebted to respondents Flores. It was the late William Gruenberg who incurred the alleged indebtedness and it is his estate which owes Flores. The validity of the claim of Flores will have to be threshed out in the special proceedings, not in the case for annulment of the deed of sale.

Finally, the transaction sought to be annulled in the main case refers to a questioned sale of a house and lot. It would have been sufficient to annotate a notice of lis pendens in the title to that property. Assuming the trial court could validly attach the house and lot involved in the sale, we see no justification why the attachment should reach out to the petitioners' interests in the Hollywood Theatre, the Palace Theatre, and the Illusion Theatre. The petitioners also point out that there is no showing of any attempt on their part to conceal or to dispose of the house and lot nor of any change in the title or condition of the property. Considering all the foregoing, we find the writ of preliminary attachment to have been improvidently issued.

WHEREFORE, the petition is hereby GRANTED. The decision of the former Court of Appeals is SET ASIDE. The writ of preliminary attachment and the notice of garnishment issued in Civil Case No. Q-18444 are DISSOLVED. The other related orders issued in connection with the writ of attachment are SET ASIDE.

SO ORDERED.

Teehankee, C.J., (Chairman), Melencio-Herrera, Plana, Relova, De La Fuente, and Alampay, JJ., concur.

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