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A. Attachment

1. Definition

A writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant.²⁸⁶

2. Concept and Purpose.

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, granted 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.²⁸⁷

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.²⁸⁸

3. Nature and Scope: Attachment Purely Statutory

Attachment is not a distinct proceeding in the nature of an action in rem but it is a proceeding to an action of law, designed to secure the payment of any judgment the plaintiff may obtain.

Attachment, as a provisional remedy, is purely a statutory one. It does not exist unless expressly granted by the statute. It is therefore not available except in those cases where the statute expressly permits.²⁸⁹ For this purpose, the party seeking an attachment must show that a sufficient cause of action exists and that the amount due him as much as the sum for which the order of attachment is sought.²⁹⁰

4. Strict Compliance with the Rule

The rule on the issue of a writ of attachment must be construed strictly in favor of the defendant. If all the requisites for the issuance of the writ are not present, the court, which issues it acts in excess of jurisdiction.²⁹¹ It should be issued only on concrete and specific grounds.²⁹²

5. Attachment to Acquire Jurisdiction Over the Res

Attachment is intended to confer jurisdiction by the court over the res. When real property of a non-resident defendant located in Philippines is attached to answer for the claim of the plaintiff, the court acquires jurisdiction over the res and in that event, the jurisdiction over the person of said defendant is not essential.²⁹³

6. Stages in the Issuance of the Writ

The grant of the provisional remedy of attachment practically involves three (3) stages: first, the court issues the order granting the application; second, the writ of attachment issues pursuant to the order granting the writ; and third, the writ is implemented. For the initial two stages, it is not necessary that jurisdiction over the person of the defendant should first be obtained. However, once the implementation commences, it is required that the court must have acquired jurisdiction over the defendant for without such jurisdiction, the court has no power and authority to act in any manner against the defendant. Any order issuing from the court will not bind the defendant.²⁹⁴

A preliminary attachment is a rigorous remedy which exposes the debtor to humiliation and annoyance, such that it should not be abused 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 its jurisdiction and the writ so issued shall be null and void.²⁹⁵

The affidavit must establish that:

- 1) a sufficient cause of action exists;
- 2) the case is one of those mentioned in Rule 57, Section 1;
- 3) there is no sufficient security for the claim sought to be enforced by the action;
- 4) the amount due to the applicant is as much as the sum for which the order is granted above all legal counterclaims.

Failure of the affidavit to show that there is no other sufficient security for the claim sought to be enforced by the action, that the said amount due to the plaintiff above all legal set-offs or counterclaim is as much as the sum for which the order is sought renders that application fatally defective.²⁹⁶

Whether or not the affidavit sufficiently established facts therein stated is a question to be determined by the court in the exercise of sound discretion. The mere filing of an affidavit reciting the facts required by the above provision is not sufficient to compel the judge to grant the writ. It all depends upon the amount of credit given it by the judge who may accept or reject it in the exercise of his discretion.²⁹⁷

7. Orders granting or denying provisional remedies are merely interlocutory and cannot be the subject of an appeal. They may however be challenged before a superior court through a petition for certiorari under Rule 65.

8. Important Jurisprudential Rules

8.1 The purposes of preliminary attachment are:

- 1) to seize the property of the debtor in advance of final judgment and to hold it for purposes of satisfying the said judgment; or
- 2) to enable the court to acquire jurisdiction over the action by the actual or constructive seizure of the property in those instances where personal service of summons on the creditor cannot be effected.²⁹⁸

Thus, a proceeding in attachment is in rem where the defendant does not appear, and in personam where he appears in the action.²⁹⁹ Where a lien already exists, e.g. a maritime lien, the same is equivalent to an attachment,

300just like that under a real estate mortgage.

8.2 Rule on Prior or Contemporaneous Jurisdiction

Although a writ of preliminary attachment may be issued ex-parte or even before service of summons on the defendant, it cannot however be implemented until the court has acquired jurisdiction over the person of the defendant.³⁰¹

8.3 When the ground relied upon in asking for preliminary attachment is impending fraudulent removal, concealment and disposition of defendant's property under paragraphs (d) and (e) of Section 1, Rule 57, the court should either conduct a hearing or require the submission of counter-affidavits from the defendant to gather facts in support of the allegations of fraud.³⁰²

8.4 Preliminary attachment may be granted in an action for a specified amount even when the claim is unliquidated other than for moral and exemplary damages.³⁰³

8.5 If a property has been levied upon by virtue of a writ of preliminary attachment, it becomes one under custodia legis and a subsequent extrajudicial foreclosure of said property by a third-party mortgagee does not affect the lien created by the attachment.³⁰⁴

8.6 A foreign corporation duly licensed to do business in the Philippines is not a non-resident within the meaning of Section 1(f), Rule 57; hence, its property here may not be attached on the mere ground that it is a non-resident.³⁰⁵ Insolvency of the defendant debtor is not a ground for the issuance of a writ of preliminary attachment.³⁰⁶ Section 1(f), concerning summons by publication, refers to those cases in Sections 14 and 16 of Rule 14.

8.7 Property exempt from execution is also exempt from preliminary attachment or garnishment.³⁰⁷ Garnishment does not lie against the funds of the regular departments or offices of the Government, but funds of public corporations are not exempt from garnishment.³⁰⁸

286 Adlawan v. Tomol, G.R. No. 63225, April 3, 1990, 184 SCRA 31; Cuartero v. Court of Appeals, G.R. No. 102448, August 5, 1992 212 SCRA 260 Cited in Chemphil Export and Import Corporation (CEIC) v. Court of Appeals, G.R. No. 112438-39, December 12, 1995, 251 SCRA 257.

287 Guzman v. Catolica, 65 Phil. 257 [1937]; Gruenberg v. Court of Appeals, No. L-45948, September 10, 1985, 138 sCRA 471 Cited in CEIC v. Court of Appeals, supra, note 286.

288 Spouses Salgado v. Court of Appeals, No. L-55381, March 26, 1984, 128 SCRA 395; CEIC v. Court of Appeals, supra, note 286.

289 U.S. v. Namit, 38 Phil. 926 [1918].

290 General v. De Venecia, 78 Phil. 780 [1947]

291 Gruenberg v. Court of Appeals, supra, note 287.

292 Dy vs. Enage, No. L - 35351, March 17, 1976, 70 SCRA 96.

293 Mabanag v. Gallemore, 81 Phil. 254 [1948]

294 Cuartero v. Court of Appeals, G.R. No. 102448, August 5, 1992, 212 SCRA 260.

295 Salas v. Adil, No. L-46009, May 14, 1979, 90 SCRA 121; Spouses Salgado v. Court of Appeals, supra, note

288.

296 Guzman v. Catolica, supra, note 287; K.O. Glass Construction Co., Inc. v. Valenzuela, No. L-48756, September 11, 1982, 116 SCRA 563; Jardine Manila Finance, Inc. v. Court of Appeals, G.R. No. 55272, April 10, 1989, 171 sCRA 636.

297 La Granja Inc. v. Samson, 58 Phil. 378 [1933].

298 Mabanag v. Gallemore, supra, note 293; Quasha v. Juan, No. L-49140, November 19, 1982, 118 SCRA 505.

299 Banco Espanol-Filipino v. Palanca, 37 Phil. 921 [1918].

300 Quasha v. Juan, supra, note 298.

301 Rules of Court, Rule 57, Sec. 5.

302 Adlawan v. Torres, G.R. Nos 65957-58, July 5, 1994, 233 SCRA 645.

303 Rules of Court, Rule 57, Sec. 1(a).

304 Consolidated Bank and Trust Corporation v. Intermediate Appellate Court, No. L-73796, May 29, 1987, 150 SCRA 591.

305 Claude Neon Lights, Fed., Inc. v. Philippine Advertising Corporation, 57 Phil. 607 [1932].

306 Aboitiz and Co., Inc. v. Provincial Sheriff, No. L-35990, June 17, 1981, 105 SCRA 88.

307 Rules of Court, Rule 57, Sec. 5

308 Philippine National Bank v. Pabalan, No. L-33112, June 15, 1978, 83 SCRA 595.

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