

**MARIA VILLONGCO, CARMEN BERNAL AND RAMON BERNAL,
PETITIONERS VS. HON. ALEJANDRO J. PANLILIO, PRESIDING JUDGE,
BRANCH A, OF THE COURT OF FIRST INSTANCE OF MANILA;
VICTORINA GAERL...**

G.R. No. L-6214. November 20, 1953

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an action of certiorari instituted by petitioners to annul an order of the Court of First Instance of Manila in civil case No. 15963 (of said court), dissolving a writ of preliminary attachment issued by it ex-parte upon the filing of the complaint in said case. The facts giving rise to the action may be briefly stated as follows:

On February 9, 1947 respondents Gaerlan leased to petitioners one door of a building owned by them at No. 611 Arlegui, Quiapo, for a period of one year at P250 a month. As petitioners failed to pay rents for the months of August and September, respondent Gaerlan brought an action in the municipal court of Manila to eject petitioners from the door leased to them. In their answer in the municipal court, the petitioners alleged, as a special defense and by way of counterclaim, that the respondents had misrepresented that they had the right to continue occupying the land on which the building leased in part was constructed, thereby inducing petitioners to spend P8,000 in remodelling and improving the premises leased, when as a matter of fact they (respondents) had no more right to continue on the land. They, therefore, prayed that respondents' action be dismissed and that judgment be rendered against them for the amount of the counterclaim. The municipal court sustained the action and sentenced petitioners to vacate the premises and pay the rentals due, and dismissed the counterclaim on the ground that it was beyond the court's jurisdiction, adding that the petitioners could bring the corresponding action thereon in the proper court. The petitioners appealed to the Court of First Instance but as their lawyers failed to appear on the date of the trial, judgment was rendered against them for all the rents then due. They filed a petition for relief and upon its denial, they came to this Court on a petition for certiorari (G. R. No. L-4039), but their petition was denied. The judgment of this Court was promulgated on January 28, 1952 and promptly thereafter, i.e., on March 5, 1952, they filed civil case No. 15963.

In their complaint in this case, the petitioners allege that the respondents had assured them that they (respondents) had the right to occupy the land on which the building was constructed for a period of at least two years, and on the strength of this assurance, petitioners spent P8,000 for the remodelling and improvement of the premises leased, but that in August, 1947 they discovered to their surprise that the representation was false because the owner of the land was just then suing the respondents for the purpose of ejecting them from the land. To their complaint, they attached an affidavit to the effect that respondents had caused the damages claimed by fraudulent concealment, that respondents have concealed, removed or disposed of their properties, credits or accounts collectible to defraud their creditors, that there is no other security for the claim sought to be enforced, etc. Evidently, on the strength of this affidavit, the Court of First Instance issued a writ of preliminary attachment ex-parte.

On March 22, 1952 respondents herein filed (1) a motion to dismiss on the ground that the action was barred by a prior judgment and (2) an urgent motion to dissolve the writ of preliminary attachment, also on the ground that the action is barred by the prior judgment and, therefore, failed to state a cause of action. Oppositions to both motions were filed by petitioners on April 4, 1952. On May 2, 1952, respondents filed a "Supplement to urgent motion to dissolve ex-parte writ of preliminary attachment." In this supplement, respondents deny that they are guilty of fraud, as petitioners knew that respondents did not have a long term lease; that the allegation that they were concealing, removing or disposing of their properties is a lie, as the petitioners have not given positive showing that such disposition was taking place; that their allegation that there is no other security to respond for the claim (contained in the complaint) is a brazen lie, because petitioners well know that respondents have a restaurant, own a refrigerator and a piano, and own three lots in Mandaluyong; and that the action is for a rescission of a lease, in which case the dissolution of the writ is proper. They, therefore, concluded that the writ was improperly issued. A reply to this supplement was filed by petitioners, stating that the writ was not improperly issued. On May 12, 1952 the court denied the motion to dismiss, and on May 26, 1952 the respondents filed their answer to the complaint. On September 24, 1952 they notified the petitioners that they would submit their motion of March 22, 1952 for the resolution of the court. On September 27, 1952 the court dissolved the writ. Petitioners filed a motion for reconsideration, but this was denied. It is against these orders that the present action of certiorari is directed.

In order to properly understand petitioners' claims and contentions, one must note that two motions were filed for the dissolution of the preliminary attachment, that of March 22 based on the ground that the action is barred by a prior judgment, and that of May 2 entitled "supplement to urgent motion" which alleges that the allegations contained in the affidavit supporting the petition for the attachment are attacked as false and unfounded. The order dissolving the attachment reads:

"En cuanto a la mocion de 22 de marzo de 1952, presentada por la representacion de los demandados, pidiendo la disolucion del embargo preventivo el Juzgado la encuentra bien fundada y meritoria, y accede, por la presente, a la misma. El embargo preventivo en cuestion queda disuelto."

The principal contention of the petitioners is that the respondent judge acted without or in excess of jurisdiction in dissolving the attachment, because the motion to dissolve had been impliedly rejected by the court when it overruled in its order of May 12 the motion to dismiss on the ground of a prior judgment. The contention would be correct if the order attacked were to be considered alone and by itself. The argument is based on the erroneous assumption that what the court considered is the motion of March 22 alone. The motion to dissolve then under the consideration of the court is not the original one dated March 22, but that one and its supplement of May 2. If there was error in the order because it referred to the motion of March 22 alone, then it was merely a clerical, formal one, because the supplementary motion had become integrated into the original motion that it had supplemented. Obviously the court dissolved the attachment because of the supplement to the first motion, i.e., because it was of the belief that the reasons stated in the supplement were sufficient to belie or destroy the allegations contained in the affidavit presented in support of the petition for the issuance of the preliminary attachment. The contention that the court lacked authority to dissolve because it had rejected the plea of *res judicata* in its order overruling the motion to dismiss on this ground, must be dismissed, the premise on which it is based being false or incorrect.

A second contention is that the motion to dissolve the attachment was impliedly waived by the presentation of the answer. The claim is novel: there is no reason or principle on which it may be made to rest. The issues raised in the motion to dissolve are different from those developed in the main action. The former refer to the supposed attempt of defendants to fraudulently conceal, remove, or dispose of their property to defraud the plaintiffs, the absence of any funds or properties of the defendants against which plaintiffs' claims could be asserted, etc. The latter, to the supposed fraud committed by defendants in concealing the fact that their right to the property leased

had terminated. When the defendants filed their answer, no mention is made of the facts contained in their supplement to their motion to dismiss, because their answer could deal with the facts constituting the cause of action and these alone, and not the facts giving rise to the right to a preliminary attachment. The filing of the answer, therefore, may not be claimed as a waiver of the motion to dissolve the injunction.

Let us now consider the merits of the motion to dissolve (the original and the supplement) to determine if there has been an abuse of discretion in granting it. Petitioners seem to rely on the fact that as the allegations of the complaint and of their affidavit are in due form, the defendants had the initiative and the burden of proving the allegations of their affidavit to be false or untrue, obligation which they failed to comply with, because their motion to dismiss is not supported by any affidavit at all.

In their affidavit supporting the petition for the preliminary attachment, petitioners had alleged that defendants had concealed that their right to the land had ceased, that they have removed or concealed, or about to remove or conceal or dispose of their property to defraud their creditors, and that there is no other security for claim of the plaintiffs. These allegations are expressly traversed in the supplementary motion to dismiss, which contains the following statements: that plaintiffs knew that defendants had no long-term lease to the property, that plaintiffs' allegation that the defendants are about to remove, conceal or dispose of their properties is a lie, that it is not true that there is no other property of defendants against which plaintiffs' claims could be enforced, etc. The above allegations of the supplementary motion put in issue the facts alleged in the plaintiffs' affidavit, and it was then incumbent upon plaintiffs to prove the facts in issue either by affidavits or depositions, or by other forms of evidence (Rule 123, Sec. 100.) The affidavit supporting the petition for the issuance of the preliminary attachment may have been sufficient to justify the issuance of the preliminary writ, but it cannot be considered as proof of the allegations contained in the affidavit. The reason is obvious. The allegations are mere conclusions of law, not statement of facts. No acts of the defendants are ever mentioned in the affidavit to show or prove the supposed concealment to defraud creditors. Said allegations are affirmative allegations, which plaintiffs had the obligation to prove (Sec. 70, Rule 123.) As to the alleged absence of any properties of defendants to respond for plaintiffs' claim, the defendants stated in their supplementary motion that they did have properties, a restaurant, a piano, a refrigerator, and real estate in Mandaluyong. This statement of new fact was not denied by plaintiffs.

It is evident, therefore, that the resolution of the motion to dissolve was submitted to the court without plaintiffs having in any way complied with their legal obligation to prove or show the truth of their affirmative allegations. Furthermore, the allegations of facts in the supplementary motion to dissolve are such as are natural, logical and credible, more worthy of belief than the bare generalized assertions of supposed fraud, supposed concealment or alienation, contained in the affidavit of plaintiffs. Under the circumstances, the respondent could not have made any other ruling than that the attachment had been improperly issued and should, therefore, be dissolved.

The petition must be, as it hereby is, denied, and the preliminary injunction issued dissolved, with costs against petitioners.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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