

**ACR FURNITURE MANUFACTURING CORPORATION,
PLAINTIFF-APPELLANT, VS. ZENAIDA JUNTO, DOING BUSINESS
UNDER THE TRADE NAME “MARZEN WOODS AND GREEN CLASSY
FURNITURE HOME DECOR ENTER, D...**

Ponente: ROMILLA-LONTOK, J.

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ROMILLA-LONTOK, J.:

This is an appeal from the decision of Branch 20, RTC, NCJR, Manila in Civil Case No. 97-84470 the dispositive portion of which states, to wit:

“WHEREFORE, premises considered, judgment is hereby rendered ordering Zenaida Junto to pay the sum of P188,435.69 with 14% legal interest, from the date the complaint was filed until fully satisfied. Plaintiff is ordered to return the Hi-Ace Commuter Van with Motor No. 2L-376584, Chassis No. CH 1004005819, Plate No. UV – ADB 691 TO DEFENDANT AND TO PAY THE AMOUNT OF P5,000.00 representing its monthly rental for the use of the Hi-Ace Commuter Van from October 1, 1997 until possession of the same is turned over to defendant. The Writ of Attachment issued by the Court is hereby dissolved.

Let copy of this order be furnished the Register of Deeds of Dagupan City for the cancellation of the annotation in TCT No. 60199 under Entry No. 210157, Page No. 187, Vol. XXCV registered in the name of Zenaida D. Junto upon payment of the required fees.

xxx xxx xxx.”

On August 5, 1997, plaintiff filed an action for collection of the sum of P311,185.69 representing the value of various furnitures which plaintiff allegedly delivered to defendant and which despite demands, the latter failed to pay. An Amended Complaint dated September 4, 1997 reduced the amount to P288,435.69. Said Amended Complaint likewise prays for attorney's fees of P20,000.00, costs of suit, and the issuance of a writ of preliminary attachment.

A writ of preliminary attachment was ordered issued conditioned upon filing and approval of a bond of P288,435.69.

Defendant's Toyota Hi Ace Commuter Van with Plate No. UV – ADB – 691 and a parcel of land in Dagupan City covered by TCT No. 60199 were levied upon pursuant to said writ.

Defendant filed her answer pleading payment and return of goods among her defenses. As counterclaim defendants prayed for moral damages of P300,000.00, attorney's fees of P20,000.00, P3,000.00 as appearance fee for every hearing, costs of suit and expenses of litigation.

Pre-trial was conducted. The parties delimited the issues to whether or not defendant was liable to plaintiff and the extent of her liability.

After trial, the trial court rendered its decision of July 29, 2001.

Plaintiff appealed on the following assigned errors:

- The trial court erred in ruling that defendant had paid P100,000.00 to the plaintiff and the latter failed to deduct from the total obligation of P288,435.69.
- The trial court erred in dissolving the writ of attachment issued by it without first satisfying the claim sought to be enforced in this action.
- The trial court erred in ordering plaintiff to return the Hi Ace Commuter Van with Motor No. 2L – 3765384, Chassis No. CH – 1004005819, Plate No. UV – ADB – 691 to defendant and to pay the amount of P5,000.00 representing the monthly rental for the alleged use of the Toyota Hi Ace Commuter Van from October 1, 1997 until possession of the same is turned over to defendant.

On plaintiff's claim that there was error in declaring defendant to have paid P100,000.00 and plaintiff failed to deduct said payment from the total obligation of P288,435.69.

Mr. Benjamin Duran, plaintiff's Regional Salesman, was called as a witness. He said he knew defendant as a customer of plaintiff. From October, 1996 to May 1997 defendant obtained on credit various products from ACR with a total value of P288,435.69. He identified a number of sales invoices (Exhibits "A" to "J"). He was present during most of the deliveries. The deliveries covered by the invoices were received by defendant's personnel. The deliveries were payable within ninety (90) days. They, however, remained unpaid. A demand letter (Exh. "K") was sent. Said letter was returned with the remark that the addressee was unknown.

On cross-examination, Mr. Duran admitted that filing of complaints is not included among his duties. He was not aware whether their Sales Manager, Paul del Mundo, was authorized by ACR to file cases. He could not recall the deliveries to defendant during which he was present. (TSN, april 25, 2000, pp. 2-8).

Plaintiff rested its case.

Defendant presented her defense.

Mrs. Zenaida Junto testified as to having transacted business with plaintiff. After an interruption in 1986, said business arrangement was resumed in 1992 and continued until 1997.

The goods were payable either in cash or within six (6) months. Defendant denied the deliveries covered by Sales Invoices Nos. 49833 for P25,890.00; 51518 for P44,730.00; 51112 for P20,198.44; 52669 for P27,000.00 and 52887 for P22,115.75. She admitted the rest of the deliveries. She found out that her check payment of P100,000.00 was not credited by plaintiff. The original of the check was misplaced – a xerox copy was presented in court. She had a van worth P400,000.00 possession of which plaintiff secured through a writ of preliminary attachment. Thereafter her house and lot worth P2.5 were also attached. She asked for P500,000.00 by way of expenses. (TSN, October 19, 2000, p. 2-11).

Defendant admitted on cross-examination that the items covered by Exhibits "A" to "J" were sold to Marzen Woods. Marzen Woods is defendant's business name. (TSN, October 19, 2000, p. 14).

Included as one of the special and affirmative defenses in defendants' answer is the following:

"9. xx the defendant has paid the sum of more than P100,000.00 and items were subsequently returned to the plaintiff by the defendant, and the same have not been credited/deducted from the defendant's obligation, hence there is imperative need for the plaintiffs to account for the said payment/returned items;"

Anent payment defendant claimed to have made, her testimony reads:

"ATTY. DESAMITO:

Q. What are other objections do you have in relation to the demand letter which was sent to you by the plaintiff herein, wherein you are being asked to pay plaintiff in the amount of P288,000 plus?

A. As of my knowledge, I found the payment I made for P100,000.00 not credited and I issued check for P100,000.00.

COURT:

Was that encashed?

A. Yes, mam.

Q. Where is that check?

A. Here, mam.

ATTY. DESAMITO:

Incidentally, Your Honor, the original which was in the possession of the defendant, Your Honor was misplaced but we have here xerox copy of the said check.” (TSN, October 19, 2000, p. 8).

The trial court, in its decision, noted that defendant's payment of P100,000.00 was not deducted from the total obligation. The trial court took into consideration the fact that defendant's assertion of payment was not rebutted by plaintiff. (Decision, July 29, 2001, Rollo, p. 29). It was on that basis that the trial court deducted the sum of P100,000.00 from plaintiff's claim. As a rule, the appellate court gives full weight and respect to the determination by the trial court of the credibility of witnesses since the trial judge has the opportunity to observe the demeanor of the witness. (People vs. Roma, GR No. 147996, September 30, 2005, 471 SCRA 413). Defendant was able to establish by preponderant evidence that she paid the sum of P100,000.00. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term “greater weight of the evidence” or “greater weight of the credible evidence”. Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. (Republic vs. Orfinado, Sr., 442 SCRA 342). This Court finds no plausible reason to depart from the finding by the trial court that the sum of P100,000.00 should be deducted from the total obligation.

II. On the claim that the trial court erred in dissolving the attachment without first satisfying the claim sought to be enforced in the action.

III. On whether the trial court erred in ordering return of the Toyota Hi Ace a payment of rentals thereon until possession is turned over to defendant.

Aforesaid two (2) issues will be discussed jointly.

Attachment is a juridical institution intended to secure the outcome of the trial, i.e., 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. It is enforced through a writ which is the process issued at the institution or during the progress of an action commanding the sheriff or other proper officer to attach property, rights, credits, or effects of defendant to satisfy the demand of the plaintiff.

The overriding purpose 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 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. (Sta. Ines Melale Forest Products Corporation vs. Macaraig, Jr., 299 SCRA 491).

A preliminary attachment maybe discharged when it is established that -

- a) the debtor has posted a counterbond or has made the requisite cash deposit (Sec. 12, Rule 57, Revised Rules of Court).
- b) The attachment was improperly or irregularly issued (Sec. 13) as where there is no ground for attachment under Section 1, the affidavit and/or bond filed therefor are defective or insufficient. (Sec. 3);
- c) The attachment is excessive, but the discharge shall be limited to the excess (Sec. 13);
- d) The property attached is exempt from execution, hence, exempt from attachment (Secs. 2 and 5); or
- e) Judgment is rendered against the attaching creditor (Sec. 19).

Not one of aforesaid circumstances to discharge attachment is attendant to instant case. Besides, there was not any move from defendant to discharge the attachment. Section 12, Rule 57 provides for the discharge of an attachment upon giving counterbond; whereas, Section 13 of the same rule provides for discharge of attachment on other grounds. In all instances, the action to discharge an attachment is initiated by a motion predicated upon the reason/ground for which a discharge is sought followed by a due notice and hearing after which the court exercises its discretion whether to grant the motion or not. Attachment is a provisional remedy to ensure the safety and preservation of the property in the possession of the adverse party. (*Sta. Ines Melale Forest Products Corporation vs. Macaraig, Jr.*, supra).

Settled is the rule that an attachment lien continues until the debt is paid, or sale is had under execution issued on the judgment or until judgment is satisfied, or the attachment discharged or vacated in the same manner provided by law. (*Chemphil Export and Import Corporation vs. CA*, 251 SCRA 257).

An ex parte discharge or suspension of the attachment is a disservice to the orderly administration of justice and nullifies the underlying role and purpose of preliminary attachment in preserving the rights of the parties pendente lite as an ancillary remedy. (*Peroxide Philippines Corporation, et al. vs. CA, et al.*, GR No. 92813, July 21, 1991, 199 SCRA 882). The attachment has to remain valid from its issuance since the judgment had not been satisfied nor has the writ been validly discharged. (*Peroxide Philippines Corp. vs. CA*, supra).

An order of attachment is enforced through a writ that may be issued at the commencement of an action, commanding the sheriff to attach property, rights, credits or effects of a defendant to satisfy the plaintiff's demands. Hence, the property of a defendant, when taken, is put in custodia legis. (*Villanueva-Fabella vs. Lee*, 419 SCRA 440, citing *Moran*, Comments on the Rules of Court, Vol. III, [1997], pp. 2-3).

The sheriff in this case attached defendant's Hi Ace Commuter Van with Plate No. UV – ADB – 691 but transferred custody thereof to the plaintiff.

Sec. 5, Rule 57 of the Revised Rules of Court provides:

“Sec. 5. Manner of attaching property. - The sheriff enforcing the writ shall without delay and with all reasonable diligence attach, to await judgment and execution in the action only so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand x x x.”

whereas, Section 7 of the same rule states:

“Sec. 7. Attachment of real and personal property; recording thereof. - Real and personal property shall be attached by the sheriff executing the writ in the following manner:

xxx xxx xxx

b) Personal property capable of manual delivery, by taking and safely keeping it in his custody, after issuing the corresponding receipt therefor;"

In the case of *NBI vs. Tuliao* (270 SCRA 351) the sheriff's act of leaving the attached property in the possession and control of the creditor did not satisfy the requirements of the rules. The claim that the Regional Trial Court did not have any storage facility to house said property is no justification. He could have deposited it in a bonded warehouse. (*Sebastian vs. Valino*, 224 SCRA 256, 259, July 5, 1993). The duty of sheriffs to execute a writ issued by a court is purely ministerial, not discretionary. Clearly, they must keep the levied property safely in their custody, not in that of any of the parties. They exercise no discretion in this regard, for attachment is harsh, extraordinary and summary in nature – a “rigorous remedy which exposes the debtor to humiliation and annoyance. (*Villanueva Fabella vs. Lee* (419 SCRA 440). The prerogatives of the sheriff did not give him the discretion to determine who among the parties was entitled to possession of the attached property. (*NBI vs. Tuliao*, 270 SCRA 351). Leaving the attached property in the possession of the attaching creditor makes a farce of the attachment. He cannot be relieved from liability to the parties interested in said attachment. (*Villanueva-Fabella vs. Lee*, *supra*).

In case of transfer of custody of the attached property, however, the liability to the parties interested in the attachment lies with the sheriff. This Court cannot find any legal basis for plaintiff's liability to pay monthly rental to defendant for the use of the Toyota Hi Ace.

WHEREFORE, premises considered, the appeal is GRANTED in part. This Court AFFIRMS the award to plaintiff of P188,435.90 with interest from the filing of the complaint until the judgment is fully satisfied. The discharge of attachment and the order to pay rentals are RECALLED and SET ASIDE. The writ of attachment is REINSTATED until full satisfaction of judgment.

SO ORDERED.

Barrios, (Chairman) and Guariña, III, JJ., concur.

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