

**MAX CHAMORRO & CO., PETITIONER, VS. PHILIPPINE
READYMIX CONCRETE CO., INC. AND HON. MANUEL P. BARCELONA,
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA,
RESPONDENTS.**

G.R. No. L-6572. May 14, 1954

Ponente: REYES, J.

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REYES, J.:

The object of this petition for certiorari is to annul an order of the Court of First Instance of Manila dissolving a writ of preliminary attachment.

The record shows that on December 8, 1951 petitioner filed an action in said court against the respondent Philippine Ready-Mix Concrete Co., Inc., for the recovery of P4,355.09 due plaintiff for road building materials furnished the defendant in May and June of that year. Through an ex parte petition filed simultaneously with the complaint and alleging disposal of property on defendant's part with the intent to defraud its creditors, plaintiff had a writ of preliminary attachment issue, and, on the authority thereof, garnished funds of an equivalent amount due defendant from the Bureau of Public Works. Defendant move to have the attachment discharged, alleging that the same had been procured on a false ground, but the motion was denied. However, this ruling was reconsidered by another Judge after the death of the one in charge of the case, and the attachment was ordered dissolved, the court having found that the transactions cited to justify the attachment as constituting dispositions of property in fraud of creditors were effected "to pay legitimate debts or to comply with legitimate obligations" and not to defraud defendant's creditors.

Alleging that this finding is contrary to law and the evidence, the petition for certiorari seeks annulment of the order lifting the attachment on the ground that it constitutes a clear abuse of judicial discretion.

The petition is without merit.

The only transactions cited by plaintiff as constituting dispositions of property with intent to defraud creditors are those specified in the affidavit of its attorney, Maximo Calalang, as follows:

"1. On August 7, 1950, the defendant corporation assigned in favor of the Philippine National Bank P461,372.00 worth of its collectible amounts from the Bureau of Public Works;

"2. On February 20, 1951, the defendant corporation assigned in favor of the RFC 50 per cent of all payments due the defendant corporation until the full amount of P300 and its interest at the rate of 6 per cent per annum is fully paid, and thereafter 30 per cent of all payments due the defendant corporation until its other indebtedness with the RFC is fully paid;

"3. On August 21, 1951, the defendant corporation assigned in favor of Mr. Domingo Bautista (Plaintiff in Domingo Bautista vs. Phil. Ready-Mix, Civil Case No. 1482, Court of First Instance of Rizal) 15 per cent of its free 503—the first 50 per cent having been assigned to the RFC—until the full amount of P58,465 owed by the

defendant corporation in favor of Domingo Bautista is paid, together with the value of other materials which said Domingo Bautista shall deliver to the Defendant;

"4. During the month of September, 1951, the defendant assigned in favor of the Manila Surety & Fidelity 10 per cent of its collection from the government until the amount of P49,010 is fully paid;

"5. In the 10th day of June, 1952 the Phil. Ready-Mix sold by absolute sale 97 parcels of land located in the province of Rizal for more than P136,000 to Andres and Jose, both Soriano, the whereabouts of which proceeds of sale is unknown to the plaintiff."

The above transactions are, however, explained in the rebuttal joint affidavit of the officers of the respondent company, the pertinent portion of which is reproduced in the Order below, as follows:

"(a) The assignment of expected collections up to an amount of P461,372, on April 8, 1950, in favor of the Philippine National Bank was limited to specific contracts, to wit: Philippine Rehabilitation Projects PR-69(11) and PR-5(21); that the deed of assignment states plainly that the assignment was made 'in consideration of certain loans, to the assignors; and that said assignment was an advance arrangement required by the PNB for the payment or liquidation of loans extended to finance road construction projects of the debtor-assignors.

"(b) The alleged assignment on February 20, 1951 in favor of the RFC was likewise limited to expected collections from specific projects until a stipulated amount shall have been paid; that all assignments made in favor of the RFC were for the sole purpose of paying the obligations incurred by the debtor-assignor by way of loans, credits and overdrafts granted by said financing institution; and that said assignment was required by the RFC in the normal course of business to secure said loans to finance operation of the debtor assignor.

"(c) The assignment on August 21, 1951, of a small percentage of collections from specified projects in favor of Mr. Domingo Bautista, a creditor who filed an action in court, was made precisely to pay a legitimate indebtedness to the said person and further to guarantee the payment to said person of future deliveries of materials to the corporation; and that this assignment was necessary to insure a steady supply of road construction materials at the projects.

"(d) The assignment in September 1951, in favor of the Manila Surety & Fidelity Co. of a percentage collections from specified contracts, until an amount of P49,010 shall have been collected, was made in order to indemnify the said surety company against a possible liability under surety bond issued upon the request of the assignor who was compelled to put up a bond in three pending civil cases; that the amounts collected thereunder by the surety are mere deposits, not a true assignment; that the deed of assignment clearly provides that the said amount 'shall be kept in trust by the Manila Surety & Fidelity Co., Inc., to the credit of the Philippine Ready-Mix Concrete Co., Inc., to be refunded upon the cancellation of the bond, and shall not be used for any purpose other than to secure the bond therein mentioned.'

"(e) The sale of 97 parcels of land on June 10, 1952 for P136,000 was dictated by business necessity. These 97 parcels of land were originally mortgaged to the RFC. To pay the indebtedness to the RFC and to meet other urgent obligations, these lands were sold; of the proceeds of the sale, P120,892 was turned over to the RFC in part payment of the outstanding balance; the balance of P15,111.50 was also turned over to the RFC which amount was 'to be released in favor of the mortgagor against invoices of raw materials to be purchased by the mortgagor'; that these terms were imposed by the RFC as mortgagee of the property sold, for the protection of its credit and to insure that the balance will be used only in road construction projects of the corporation." As the lower court says in its order, the above explanations have not been contradicted, much less refuted, by plaintiff and they really clearly show that the transactions were effected to pay legitimate debts or to comply with legitimate obligations and to enable defendant to conduct its business operations. They may as the lower court observes, have the effect of giving preference to certain creditors; but such preference is not a legal ground for attachment.

"The disposal of most of defendant's property for the purpose of paying his debts, and the use of the proceeds thereof for that purpose only, were insufficient to sustain an attachment on the ground that he had disposed of his property with intent to hinder and delay his creditors." (Syll., *Blakemore vs. Eagle*, 73 Ark. 477; S. W. 637.)

"The fact that a debtor in good faith sells all his property to pay certain of his creditors to the exclusion of others is not a ground for attachment." (See *Campell vs. Warner*, 22 Kan. 604.)

"A preferential transfer or payment without actual fraud does not constitute a disposition of property with intent to delay and defraud creditors, so as to authorize an attachment." (Syll., *Crookston State Bank vs. Lee*, Minn. 112; 144 N. W. 433.)

"The transfer by a debtor of all his property does not warrant the issuance of attachment, tho the transfer results in a preference of some creditors and in hindering or delaying others in the collection of their claims where there is no element of intentional fraud." (See *Moeller vs. Van Loo*, 180 111. App. 435.)

It should also be noted that, as observed by the court below, the first and second transactions mentioned above took place long before the accrual of plaintiff's action. And the objection that the respondent is on the verge of insolvency does not necessarily strengthen petitioner's case, since insolvency is not a ground for attachment, especially when defendant has not been shown to have committed any act intended to defraud its creditors.

"To authorize an attachment, at least one of the causes mentioned in the statute must exist. Mere insolvency * * * is not a ground of attachment. A man may be unable to pay his debts in full, and still be doing all in his power to pay them, and, so long as he furnishes no statutory cause of attachment against him, no attachment will be against his property." (Federal Farm Mortg. Corp. vs. Mulder, 280 N. W. 454, 455; *Walker vs. Hagerty*, 20 Neb. 482, 30 N. W., 556.)

Where a merchant, in failing circumstances, caused by poor business management, gave a chattel mortgage to a creditor to whom he was heavily indebted, and turned over to him all his property not exempt from execution, and gave other mortgages thereon to other creditors, in the order they applied for them, such acts do not establish a fraudulent disposition of his property warranting an attachment on that ground. (See *Burnham vs. Patmor*, 3 Kan. App. 257; 45 Pac. 115.)

Petitioner alleges that there are other cases pending against the respondent company with preliminary attachment issued in some of them, so that there is probability that, with all those accumulated claims against it, the company would not be in a position to pay petitioner. These are bare allegations which may or may not be true. What we have to decide in the present case is whether the lower court, on the basis of the proof adduced at the hearing, which consists of the affidavits set forth above, has abused its discretion in lifting the attachment secured on an ex parte motion. Upon examination of said affidavits, we do not find that the court below has been guilty of such abuse of discretion. On the contrary, we find that its conclusion as to law and fact are correct, for the transactions entered into by the respondent company with the RFC and others do not show intent to defraud its creditors and are therefore no ground for the issuance of a writ of preliminary attachment under section 1 of Rule 59. Convinced that the writ had been improperly issued, the lower court only acted as directed in section 13 of the same Rule when it ordered the attachment discharged.

The petition for certiorari is, therefore, denied with costs against petitioner.

Pablo, Bengzon, Montemayor, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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