

G. B., INC., ETC., PETITIONER, VS. THE HONORABLE JUDGE CONBADO. V. SANCHEZ, ET AL., RESPONDENTS.*G.R. No. L-7717. April 27, 1956*

Ponente: PARAS, C.J.

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Petitioner herein, G. B. Inc., is the trustee of Juan Luna Subdivision, Inc. Allison Gibbs is the President of the petitioner and Manager of Juan Luna Subdivision, Inc. Before December 31, 1953, herein respondent Juan T. Chuidian and Allison Gibbs were partners of the law firm "Gibbs, Gibbs, Chuidian and Quasha", the retaining counsel of Juan Luna Subdivision, Inc. On June 18, 1948, a loan of ₱40,000 was granted by Juan Luna Subdivision, Inc. to respondent Chuidian, and an "Agreement to Sell" was executed on that date whereby respondent Chuidian acknowledged the receipt of said amount for which he agreed and promised to transfer within 60 days to Juan Luna Subdivision, Inc. the land which he bought from one Florence Shuster with the loan thus obtained. On June 19, 1948; respondent Chuidian addressed a letter to Juan Luna Subdivision, Inc., indicating his intention to secure a loan from the Rehabilitation Finance Corporation with which to pay his debt to Juan Luna Subdivision, Inc. On May 5, 1953, in his letter to Juan Luna Subdivision, Inc., respondent Chuidian acknowledged his indebtedness of ₱53,817.72 representing balance of principal and interest. Instead of conveying the land bought from Florence Shuster to Juan Luna Subdivision, Inc., respondent Chuidian sold the same to Elenita Hernandez for ₱25,000 in order to pay his wife's gambling debt. On December 1, 1953, Allison Gibbs and respondent Chuidian ceased to be law partners. On March 4, 1954, the petitioner filed a complaint against respondent Chuidian in the Court of First Instance of Manila, Civil Case No. 22138, for the collection of his indebtedness based on his "Agreement to Sell". At the commencement of the action, the petitioner asked for the issuance ex parte of a writ of preliminary attachment which was granted by the court upon the filing by the petitioner of a bond of ₱57,000. On March 12, 1954, respondent Chuidian filed a "Motion to Discharge Attachment" based on the ground that said attachment was improperly issued, to which the petitioner filed an opposition, on March 16, 1954. On March 31, 1954, the petitioner filed an urgent motion praying that respondent Chuidian's "Motion to Discharge Attachment" be denied or that it be granted after the filing of a counter bond or that the hearing of said "Motion to Discharge Attachment" be held after respondent Chuidian shall have filed an answer to the complaint. The respondent Judge of the Court of First Instance of Manila denied petitioner's urgent motion and set the hearing, of the "Motion to Discharge Attachment" on April 3, 1954. Such hearing was held on April 3 and 6, 1954. When the hearing in the afternoon of April 6 and was about to end, counsel for petitioner requested that the latter be given a chance to present an absent witness, which the court denied on the ground that it had previously warned the parties that all witnesses should be presented on said date. On April 23, 1954, the respondent Judge issued an order granting respondent Chuidian's "Motion to Discharge Attachment" under section 15 of Rule 59 of the Rules of Court. A motion for reconsideration having been denied, the petitioner filed the present petition for certiorari with preliminary injunction. On May 4, 1954, this Court issued the preliminary injunction prayed for, restraining the respondent Judge and the sheriff of the City of Manila from enforcing the order of April 22, 1954, discharging the writ of attachment.

The grounds advanced by the petitioner for the issuance of the writ of attachment were (a) that respondent Chuidian converted to his own use the land which he bought in a fiduciary capacity for Juan Luna Subdivision, Inc.; (b) that respondent Chuidian is guilty of fraud in contracting his indebtedness and incurring the obligations upon which the action is brought; and (c) that respondent Chuidian has removed or disposed of his property or is about to do so with intent to defraud his creditor. The petitioner also points out that in addition to the grounds set forth in the motion for the issuance of an ex parte writ of preliminary attachment, other grounds contained in the allegations of the complaint were made a part of said ex parte motion by reference. Attached to the "Motion to Discharge Attachment" filed by respondent Chuidian, was an affidavit contradicting the grounds alleged by the petitioner. Respondent Chuidian herein stresses the fact that while the writ of attachment was obtained by petitioner ex parte, its discharge was ordered by the respondent Judge after extended hearings and the submission of memoranda.

Stripped of non-essentials, the petitioner argues that respondent Chuidian converted to his own use the land which he bought in a fiduciary capacity for Juan Luna Subdivision, Inc., or at least is guilty of fraud in contracting his indebtedness and incurring the obligations upon which the action in Civil Case No. 22138 is brought, reliance being placed on the "Agreement to Sell" executed by respondent Chuidian on June 18, 1948, and the letter written by him to Juan Luna Subdivision, Inc., on June 19, 1948, herein above already referred to. Respondent Chuidian in his testimony during the hearing of his "Motion to Discharge Attachment" alleged that said "Agreement to Sell" did not express the true intentions of the parties; that all the papers relied upon by the petitioner were mere formalities to avoid criticisms of the minority stockholders of Juan Luna Subdivision, Inc., conceived by Allison Gibbs; that the real and true intention of the parties was that the money would be advanced by Allison Gibbs to respondent Chuidian and the former would pay the Juan Luna Subdivision, Inc.

Petitioner also alleges that if it had been allowed to present its absent witness, Elenita Hernandez, the following facts would have been proven: (1) that Chuidian's wife's indebtedness to Elenita Hernandez was contracted before the "Agreement to Sell"; (2) that such indebtedness has been outstanding for some time before such date (June 18, 1948); and (3) that the "Agreement to Sell" dated June 18, 1948 and letter on June 19, 1948, were executed with the preconceived intention of not complying with them. It is therefore obvious that, in order to determine whether or not respondent Chuidian converted to his own use the land which he bought in a fiduciary capacity for the Juan Luna Subdivision, Inc., or was guilty of fraud in contracting his debt and incurring the obligations upon which the action is brought, considering that respondent Chuidian has alleged that the "Agreement to Sell" executed by him and other papers relied upon by the petitioner, did not express the real intentions of the parties; and considering that the grounds invoked by the petitioner for the issuance of the writ of attachment form the very basis of its complaint in Civil Case No. 22138, a trial on the merits, after answer shall have been filed by respondent Chuidian, was necessary. In this case the hearings of the "Motion to Discharge" were held before the issues have been joined (respondent Chuidian not having as yet filed his answer, to the complaint), and the order of the respondent Judge discharging the attachment would have the effect of deciding or prejudging the main action. "The merits of the main action are not triable in a motion to discharge an attachment otherwise an applicant for the dissolution could force a trial of the merits of the case on his motion." (4 Am. Jur., Sec. 635, 984.) The petitioner's case is rather strengthened by the fact that it was not given an opportunity to present an absent material witness, in the person of Elenita Hernandez.

In holding that there was no fraud on the part of respondent Chuidian, the respondent Judge held as follows: "It must be borne in mind that defendant did not pocket the money—no money passed hands with that conveyance to Elenita Hernandez. The conveyance was in the form of a 'dacion en pago' Defendant was practically driven to the wall, the family name must be preserved. If defendant received actually that sum of P25,000 consideration for the conveyance, perhaps there may yet be reason for branding defendant as a fraud. But such was not the case." It

is evident, however, that the fact that respondent Chuidian did not pocket the money paid for the conveyance by Blenita Hernandez, is immaterial, inasmuch as the petitioner was deprived of the same amount of P25,000, assuming that under its complaint respondent Chuidian was in fact indebted to the petitioner in the manner stated in said complaint.

We are, therefore, of the opinion that, from what has been said, and in view of the return of the sheriff showing financial instability on the part of respondent Chuidian, the most that the respondent Judge could have done in his favor—to which the petitioner has expressed its agreement—was to discharge the attachment in question upon the filing by respondent Chuidian of a counter bond in the sum of P57,000, under section 12 of Rule 59 of the Rules of Court. This would have accomplished respondent Chuidian's purpose of preserving his property and family name, at the same time giving the petitioner security for any judgment that it may obtain against him. We are constrained to hold that the respondent Judge acted with grave abuse of discretion.

Wherefore, the order of the respondent Judge dated April 22, 1954, is hereby set aside, and the writ of preliminary attachment issued on March 4, 1954 maintained.

So ordered with costs against respondent Juan T. Chuidian.

Bengzon, Reyes, A., Jugo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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