

**GUILLERMO F. GARCIA AND PILAR D GARCIA, PETITIONERS, VS.
THE HON. JUDGE ANDRES REYES, MOBIL OIL (PHIL.)
INCORPORATED, PROVINCIAL SHERIFF OF RIZAL AND SHERIFF OF
THE CITY OF MANI...**

G.R. No. L-27419. October 31, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

The affliction visited on petitioner-spouses, Guillermo F. Garcia and Pilar D. Garcia, by the asserted arbitrariness of the then respondent Judge, now Justice of the Court of Appeals, the Honorable Andres Reyes of the Court of First Instance of Rizal, Branch VI, consisting of the unwarranted issuance of a preliminary writ of attachment, the failure to discharge such writ upon motion of petitioners, the denial of opportunity on their part to present evidence on the impropriety of the issuance thereof and his order granting a motion to sell on the part of private respondent Mobil Oil (Phil.) Incorporated, at whose instance the writ of preliminary attachment was issued, allegations of improvident exercise of authority sufficient to. Raise a due process question, sufficed to evoke an affirmative response from this Tribunal. Consequently, the petition for certiorari and mandamus with preliminary injunction filed on April 7, 1967 was given due course by us in a resolution of April 12, 1967 requiring respondents to answer the petition, a temporary restraining order likewise being issued.[1]

More specifically, in the petition, it was alleged that respondent Mobil Oil (Phil.) Incorporated, hereinafter referred to as Mobil, filed a complaint, with petitioners as defendants, on September 21, 1966 for the collection of an amount of P189,335.21 plus 12% interest and 25% of their indebtedness by way of attorney's fees, "representing [their] supposed unpaid account under their dealership agreement." In such complaint, respondent Mobil, as plaintiff, likewise sought the issuance of a preliminary writ of attachment on the ground that petitioner Guillermo F. Garcia was guilty of fraud in contracting the debt or incurring the obligation, that petitioners had removed or disposed of some of their properties, or were about to do so, with the intent to defraud their creditors, and that there was no other sufficient security for the claim sought to be enforced.[2] It was then stated in the petition that on September 22, 1966 respondent Judge did issue an order for a preliminary writ of attachment, copies of which were served on two of the other respondents, the Provincial Sheriff of Rizal and the City Sheriff of Manila, the former attaching household furnitures and home appliances of petitioner-spouses in their residence at Quezon City, and the latter attaching a motor boat, "Triple Ten", owned by petitioners and moored along the Pasig River, Manila.[3]

After which, petitioners, according to the petition, filed on September 30, 1966 a motion for a discharge of the attachment coupled with a motion to dismiss, premised on the grounds that petitioner Guillermo F. Garcia was not guilty of fraud in contracting the obligation, the contracts he was made to sign when appointed dealer by Mobil being prepared by its legal panel, that neither he nor his wife had disposed or was about to dispose of their properties and that the allegations contained in the complaint of Mobil as to the lack of sufficient security for the claim sought to be enforced was false as the alleged indebtedness of P189,335.21 was sufficiently secured with

chattel mortgages on three vessels with an aggregate value of P375,000.00, plus a guaranty payment bond of P25,000.00, totaling in all P400,000.00. The aforesaid motion to discharge like-wise contained a dare on the part of petitioner Garcia to present specific proof of fraud attributed to him. It stressed what it considered the failure to show that the amount which Mobil was suing for was above all legal counterclaims and hence lacked one of the funda-mental requisites for the issuance of a preliminary writ of attachment. Such an allegation, according to petitioners, could not be made as eight days before the complaint of respondent Mobil, petitioners, as plaintiffs, filed in the Court of First Instance of Manila an action for specific performance with claims in the sum of P363,000.00.[4] It is petitioners' contention that respondent Judge ought to have sustained the motion to discharge the writ of attachment, especially so in the absence of any counter-affidavits on the part of Mobil. It was then recited that petitioners sought to present evidence on the im-propriety of the issuance of the writ of preliminary attachment, a motion to that effect being filed on December 3, 1966. It was denied by respondent Judge in an order of March 13, 1967, which likewise granted a motion on the part of Mobil to sell the properties attached on the ground of their being perishable.[5]

Petitioners would conclude that respondent Judge acted with grave abuse of discretion amounting to lack of jurisdiction in issuing the preliminary writ of attachment, in denying the petitioners' motion to lift the same as well as their motion for the presentation of evidence and in granting the motion of respondent Mobil to sell the chattels that were thus attached.

The answer of respondent Mobil filed on May 4, 1967 attempted to throw a different light on the matter, as could have been expected. It cannot be said that it fully succeeded in its appointed task. There were still doubts left unresolved.

On the question of fraud, which was one of the grounds relied upon for the issuance of the writ of attachment, reliance was had on respondent Mobil's subsequently discovering that petitioner Garcia's ownership of the motor boat, "Triple Ten", dated only on August 22, 1966, by virtue of a bill of sale executed in his favor by one Isabelo Magat, when the contract was entered into on May 22, 1964, at which time he represented that he was already the owner of the same. Moreover, there was a failure to surrender such mortgaged vessel pursuant to the above contract on demand of respondent Mobil. In such pleading reference was likewise made to the above vessel and to another vessel named "Emmanuel I", likewise the subject of the chattel mortgage intended as security for the initial credit line of P75,000.00, allegedly having been fraudulently concealed, removed or disposed. Considering, moreover, that the aggregate value of the alleged securities would not exceed P150,000.00 and the claims of respondent Mobil outside of the principal in the amount of P189,335.21 would likewise include accrued interest at 12% per annum and an amount equivalent to 25% by way of attorney's fees as well as other damages, the answer alleged that there was no sufficient security over and above all legal counterclaims for the amounts sought to be collected in the complaint before respondent judge. Thus respondent Judge acted correctly in denying the motion to discharge such writ of preliminary attachment, there being, moreover, contrary to the allegation of petitioners, counter-affidavits on the part of respondent Mobil.[6]

The answer also attempted to present in the strongest possible light respondent Mobil's side as to the alleged failure to grant petitioners an opportunity to present evidence to justify the lifting of the writ of attachment. The point raised by them centered not on the lack of any merit in the evidence that could be offered but on petitioners having waived such right at the hearing scheduled for October 22, 1966. Respondent Mobil appeared on that date through counsel with its witnesses. Petitioners, however, were absent, contenting themselves with a manifestation in a letter of their counsel, who alleged that he "was not feeling very well and * * * that [he would] submit a memorandum [within] five days in lieu of oral argument after which the motion be considered submitted." Under the circumstances, respondent Mobil would contend that there was no need to present further testimonial

witnesses, the case being submitted instead on the basis of counter-affidavits and other documents. In the light of the above, the reiteration in another urgent motion to present evidence filed on December 3, 1966, when such a question had already been submitted for decision, was considered by respondent Mobil as being pro forma and dilatory.[7]

On the question of the justification under the order of sale, reliance was based by respondent Mobil on a Rules of Court provision to the effect that where the property attached is perishable or that the interests of all the parties to the action will be subserved by the sale thereof, the judge may, on motion, order such property to be sold at public auction, in such manner as he may direct, the proceeds to be deposited in court to abide the judgment in the action.[8] It was then noted that respondent Judge was justified on both grounds to issue such order to sell.[9]

The prayer of the answer was for the dismissal of the petition as well as the denial of the writ of preliminary injunction prayed for.

The case was submitted for decision after both parties, petitioners and respondent Mobil, submitted their respective memo-randa in lieu of oral argument. With the controversy thus receiving further clarification and a careful study of the matter, we have decided to sustain petitioners and issue the writs of certiorari and mandamus prayed for. This we do, not on the ground of the improper issuance of the preliminary writ of attachment nor on the failure to discharge such writ upon motion of petitioners, but on the denial of the opportunity on their part to be heard so that they could present evidence that could justify the lifting thereof, a denial which, to our mind and in the light of the peculiar circumstances of this case, did raise a serious due process question.

1. We start with a reiteration of a principle constantly adhered to by this Court that the validity of the issuance of a writ of attachment is dependent on the due and careful observance of the procedural requirements as set forth in the Rules of Court. Such a view was given expression in the appropriate language of former Chief Justice Moran thus: "The remedy by attachment is purely a statutory remedy, and the provisions thereof must be strictly construed. Courts have consistently held that no court has authority to issue a writ of attachment without express statutory permission. Consequently, where a Court of First Instance issues an attachment for which there is no statutory authority, it is acting irregularly and in excess of jurisdiction in the sense necessary to justify the Supreme Court in entertaining an application for a writ of certiorari and the quashal of the statement. In this connection, there is a clear distinction to be noted between the jurisdiction of the Court of First Instance with respect to the principal cause of action and its jurisdiction to grant an auxiliary remedy, like attachment. A court, although it may have unquestioned jurisdiction over the principal cause of action, may, nevertheless, act irregularly or in excess of its jurisdiction in granting the auxiliary remedy. In such case, the party aggrieved may prosecute a proceeding by writ of certiorari in the Supreme Court." [10]

It is to be admitted of course, that the discretion of the lower court in granting a writ of attachment prayed for is not to be arbitrarily interfered with. There is no justification for viewing with suspicion each and every exercise thereof. The presumption may even be indulged in that the judge had in mind considerations of weight and influence, sufficiently persuasive, thus resulting in the action taken. Nonetheless, in view of the perturbation in property rights and the ever-present possibility that the creditor, as is to be expected by what it considers a legitimate defense of its interest, would betray no hesitancy or reluctance in availing itself of this remedy, it becomes unavoidable in the exercise of our supervisory authority to subject to critical and rigorous scrutiny such an exercise of power whenever appropriately challenged as in this case. So our decisions have indicated with unflinching uniformity.[11]

2. The above controlling principle did not appear to have been ignored or disregarded when on the pleadings then before respondent Judge, he issued the writ of attachment and, thereafter, did not grant petitioners' motion to

discharge such writ of course, it does not offend reason if on the same pleadings, another judge could have been more exacting in his appraisal of the grounds relied upon by respondent Mobil and more sympathetic to the plea of petitioners when they sought to discharge such a writ of attachment. Since, as pointed out, the discretion primarily belongs to the lower court, a difference of view as to how it is to be appropriately exercised certainly does not suffice for a finding that there was a grave abuse thereof.

3. It is an entirely different matter, however, for respondent Judge, considering all the circumstances, to refuse to accord a hearing to petitioners to enable them to present evidence that would, in their opinion, suffice for the discharge of the writ of attachment. This is so particularly because the principal grounds relied upon is the imputation of the alleged fraud on the part of petitioner Guillermo F. Garcia in contracting the debt or incurring the obligation as well as the alleged removal, or disposition by petitioners of some of their properties again with intent to defraud their creditor, respondent Mobil. It must be remembered that the complaint limited itself to a bare assertion that such was the case. Another court might have required more particularity and a certain degree of precision, considering the seriousness of the imputation. Moreover, in the motion to discharge the writ of attachment by petitioners, reference was made to the long existing business relationship between petitioner Guillermo F. Garcia and respondent Mobil that dated back to June 10, 1963, additional contracts being executed on April 1, 1964 and May 22, 1964, respondent Mobil during all the while being conspicuously silent as to any alleged fraud being perpetrated upon it or any misrepresentation made.

It would not appear entirely reasonable to assume without more just because of a statement in the complaint filed on September 20, 1966, after the lapse of three years, that petitioner entered into such business arrangement with deceit and duplicity in mind. Nor did the filing of an opposition to such a motion to discharge attachment by respondent Mobil, wherein reference was made to an investigation thereafter conducted by one in its employ who was unaware of the original circumstances, his services having been availed of much later and who found what for him was an evident case of fraud committed upon by his employer, suffice to erase all doubts about the inherent weakness of the claim it is to be expected that its personnel, even if they did not so consciously intend, would, in the ordinary course of events and out of loyalty, not be disappointed if perchance the right kind of evidence would make its appearance. Thereby, the collection of its credit would be further assured, unfortunately at the cost of the debtor's reputation being seriously impaired.

Since the allegation of fraud would refer to the state of mind of the parties, not as of the date of the litigation but of a period dating back to the past, here three years back, it would not be too much for the debtor to insist that he be fully heard so that the truth could be ascertained. Otherwise, it may happen that for business reverses suffered, the badge of infamy would be attached. The same observation applies to the other ground relied upon which is the alleged disposal or attempt to dispose of the personal properties on the part of petitioner-spouses, again with intent to defraud, although perhaps to a lesser degree. It could be that respondent Mobil did attempt to spin too tight a web on gossamer filigrees. It is not to be lost sight of either that the lower court was thereafter informed that there was, prior to the filing of the complaint by respondent Mobil before it, a case filed by petitioner-spouses, as plaintiffs, against re-spondent Mobil, wherein they sought damages much greater in amount than that sought to be collected in the action before re-spondent Judge. All in all due process would seem to require that both parties further ventilate their respective contentions in a hearing that could indeed reveal the truth. Fairness would be served thereby, the demands of reason satisfied.

We are not to be understood as intimating that we lend credence and belief to what petitioners assert. We do not more hold that because of the facts alleged that they should be heard. Nor do we intimate that in each and every case such a right to a hearing must be granted. That is not so. Here, however, to repeat, enough has been shown to our mind to call for such an opportunity being granted petitioners as persistently sought by them to enable them to

justify their plea for the lifting of the writ of attachment.

4. It is alleged, however, that there was a waiver on their part of the right to a hearing. The lower court, as noted in the answer did set a date for such purpose, but counsel for petitioners did not come as he was ill, as noted in his manifestation, which likewise stated that he would submit a memorandum within five days in lieu of oral argument on the motion for the lifting of such attachment. A waiver could indeed have been predicated, if that were all that is to be considered. The memorandum of petitioners, however, made clear that he did submit such a pleading on October 27, 1966, "but in the last paragraph of the said memorandum, he called the attention of the Hon. Judge Andres Reyes to the need of receiving evidence on the truth or falsity of the grounds relied on by respondent [Mobil Oil] in its application for a writ of attachment."^[12] It is to be noted that in the reply-memorandum of respondent Mobil filed with us, there is no such denial of the above allegation. It would seem, therefore, that under the circumstances no waiver of this right to a hearing was in fact made by petitioners.

5. It is our considered view, therefore, again only because of the unique situation that this litigation presents, that the challenged order of March 13, 1967 by respondent Judge which denied the urgent motion of petitioners to allow the presentation of evidence in support of their plea to discharge the writ of attachment and which granted the motion to sell the attached properties on the part of respondent Mobil, was issued with grave abuse of discretion. To repeat, such a conclusion would not ordinarily be called for as the discretion of the lower court, while not unconfined, is sufficiently broad. Nonetheless, the specific facts presented by this litigation as appraised in the light of the fundamental doctrine that the exercise of this power to issue a writ of attachment is subject to its strict conformity with all procedural requirements upon pain of its being annulled in an appropriate certiorari proceeding compel the conclusion that due process would not be satisfied unless petitioners be granted the opportunity to be heard.

WHEREFORE, the writ of certiorari is granted, setting aside and annulling the challenged order of March 13, 1967, and a writ of mandamus is likewise granted addressed to whoever is acting in the place and stead of the Hon. Andres Reyes, the respondent Judge, now a Justice of the Court of Appeals, to hear evidence on the motion of petitioners to discharge the writ of attachment. With costs against respondent Mobil.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, and Teehankee, JJ., concur.

Dizon and Sanchez, JJ., did not take part.

Barredo, J., concurs in the result. The writ of preliminary attachment should have been lifted even without the need of any formal presentation of evidence.

[1] The Acting Clerk of Court and Provincial Sheriff ex officio of Rizal, Eliseo S. Zari as well as the Clerk of Court and Sheriff ex officio of Manila, Jose San Agustin, were included as respondents.

[2] Petition, pars. 2 & 3. There was likewise an allegation in the complaint that the amount allegedly due Mobil, exclusive of interest, was above all counterclaims.

[3] Ibid, pars. 4 & 5.

[4] Ibid, pars. 6 & 7.

[5] Ibid, pars. 8 to 11.

[6] Answer, pp. 6-12.

[7] Ibid, pp. 13 to 18.

[8] Sec. 11, Rule 57, Rules of Court.

[9] Answer, pp. 18 to 20.

[10] 3 Moran, Rules of Court, pp. 14-15.

[11] Cf. *La Compania General de Tabacos v. Trinchera*, 7 Phil. 708 (1907); *Leung Ben v. O'Brien*, 38 Phil. 182 (1918); *Olsen & Co. v. Olsen*, 48 Phil. 238 (1925); *La Granja, Inc. v. Samson*, 58 Phil. 378 (1933); *General v. De Venecia*, 78 Phil. 780 (1947); *Carpio v. Macadaeg*, 9 SCRA 552 (1963).

[12] Memorandum for the Petitioners, p. 5.

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