

**NATIONAL COCONUT CORPORATION, PETITIONER, VS. THE
HONORABLE POTENCIANO PECSON, JUDGE OF THE COURT OF
FIRST INSTANCE OF MANILA AND FRANCISCO SYCIP,
RESPONDENTS.**

G.R. No. L-4296. February 25, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This petition seeks to annul the order of the respondent Judge which denies the motion to discharge the preliminary attachment issued in Civil Case No. 2293 of the Court of First Instance of Manila.

On April 17, 1947, Francisco Sycip filed a complaint for the recovery of a sum of money against the herein petitioner in the Court of First Instance of Manila, which was docketed as civil case No. 2293. On September 4, 1950, Francisco Sycip filed an ex parte petition praying for the issuance of a writ of preliminary attachment and alleging as ground that the herein petitioner "has disposed of and is in the process of disposing its properties with intent to defraud creditors", and setting forth in support thereof the fact that the herein petitioner "has advertised in the Manila Chronicles of June 10, 1950, for public sale on July 5, 1950, one complete oil mill" and that according to newspaper reports, certain government officials were advocating the dissolution of the petitioning corporation. On September 6, 1950, the respondent Judge issued the writ of preliminary attachment prayed for.

Upon being informed of the issuance of said writ, the herein petitioner on September 13, 1950, filed a motion to discharge the attachment attacking thereto an affidavit of its Officer-in-Charge who alleged therein that the ground upon which Francisco Sycip secured the issuance of the writ was false; that the purpose of the advertised sale of petitioner's oil mill was to prevent its being deteriorated; that the sale was never consummated for lack of satisfactory bid; and that in view of the fact that the ground upon which the attachment was issued was based on mere newspaper reports, the same was improperly issued and should be discharged. This motion was denied on September 10, 1950.

On September 29, 1950, the herein petitioner filed a motion for reconsideration pointing out that under paragraph (e), Sec. 1, Rule 59 of the Rules of Court, it is not enough that "the defendant has removed or disposed of his property or is about to do so", but it is an essential requisite "that such removal or disposition or intended removal or disposition be made with intent to defraud his creditors", and that, the alleged intention to defraud on the part of the petitioner having been properly controverted, the petitioning corporation should at least be given an opportunity to prove the absence of such intention in a preliminary hearing. This motion was again denied, hence this petition for certiorari.

Petitioner now contends that the respondent Judge in so declining to discharge the writ of preliminary attachment or at least to allow the herein petitioner to prove at a preliminary hearing its want of intent to defraud, committed a grave abuse of discretion, for in so doing he disregarded the law and precedents on the matter.

There is merit in this contention. Section 13, Rule 59 of the Rules of Court authorizes the discharge of an attachment on the ground that the same was improperly or irregularly issued, and it has been held that "when the facts, or some of them, stated in the plaintiff's affidavit, are shown by the defendant to be untrue" the writ of attachment may be considered as improperly or irregularly issued (*Hijos de I. de La Rama vs. Sajo*, 45 Phil., 703; *Baron vs. David*, 51 Phil. 1, as cited in *II Moran, Comments on the Rules of Court*, p. 38). Here it has been shown that the alleged intent to defraud is not true for it appears that the only property that the petitioner intends to sell or dispose of has been advertised for sale not to defraud its creditors but merely to save it from deterioration. This fact is not disputed. The mere fact that the sale was advertised is proof of the absence of such intention. And aside from this property, none other has been pointed out which petitioner has intended to sell with the same intention.

Assuming that this fact is controverted, or that there is doubt as to which of the affidavits of the parties should be given credence, still the petitioner has the right to introduce evidence in support of its claim. Petitioner evinced its desire to avail itself of this right when it asked the court that it be given an opportunity to prove the absence of its intention to defraud. But the lower court denied it this right and merely relied on the affidavit of respondent Francisco Sycip. We find this to be an abuse of discretion.

"Attachment; Motion to Dissolve.—When a motion is made to dissolve an attachment on the ground that the affidavit upon which the writ was granted is false, the defendant is entitled to introduce evidence of such falsity" (*Miller, Sloss & Scott v. Jones*, 9 Phil. 648).

Wherefore, the order of the respondent Judge dated September 20, 1950, denying petitioner's motion to discharge the preliminary attachment issued herein is hereby set aside.

It is ordered that this case be remanded to the court of origin so that evidence may be presented in support of said petitioner's motion to discharge the attachment, with costs against Francisco Sycip.

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

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