

R.D. POLICARPIO & CO., INC., PETITIONER, VS. HON. IRIN ZENAIDA S. BUAN, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF ANGELES CITY, BRANCH 56, YL LAND CORPOR...

Ponente: DE GUIA-SALVADOR, R., J.

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DE GUIA-SALVADOR, R., J.:

Primarily assailed in this petition for certiorari filed pursuant to Rule 65 of the Rules of Civil Procedure is the Order dated May 2, 2013 issued by public respondent, Hon. Irin Zenaida S. Buan, Presiding Judge of the Regional Trial Court, Branch 56, Angeles City (RTC), in Civil Case No. 13550,[1] the decretal portion of which states:

"WHEREFORE, in light of the foregoing discussion, the defendants' motion to discharge is granted. The attachment earlier granted by the Court is ordered discharged and the cancellation of the levy on attachment on the defendants['] properties covered by Transfer Certificates of Title Nos. 198343, 140860, 140861, 140862, 140585 and Condominium Certificate of Title No. 15476 is hereby ordered.

Serve copies of this Order to Attys. Winston M. Gine[z], Jhomel M. Amercin and Augusto Panlilio.

SO ORDERED."[2]

The factual and procedural antecedents are not in dispute.

On April 27, 2007, petitioner R.D. Policarpio & Co., Inc. (RDPCI) filed a complaint for a sum of money and damages, with ex-parte application for a writ of preliminary attachment, against private respondent YL Land Corporation (YLLC) and its officials, individual private respondents Isidro Laforteza and Nita, Philip, Robert, Rene Mari, Gary, Jose Mari and Regina Victoria, all surnamed Yupangco. Docketed as Civil Case No. 13550 before the RTC, the complaint alleged that, in February 1996, individual private respondents offered to sell to RDPCI on a pre-selling basis nine (9) condominium units at the Toyota Tower of YLLC's Yupangco Tri-Tower project, at No. 1, Ayala Avenue, Makati City, for an aggregate consideration of Php25,235,255.40. Noticing no significant construction of or development in the aforesaid project despite its having paid a total downpayment in the sum of Php12,213,863.64, RDPCI claimed to have demanded from YLLC and individual private respondents compliance with their obligations as condominium developers/sellers and, later, a refund of its downpayment as aforesaid, plus interest.[3]

Except for refunds totalling Php1,800,000.00, RDPCI contended that YLLC and individual private respondents failed to heed its demands for payment of the balance in the sum of Php10,413,863.00 plus interest. Claiming to have discovered that a portion of the lot for the condominium project was not even registered in the name of YLLC whose corporate registration was later revoked for non-compliance with the reportorial requirements of the Securities and Exchange Commission (SEC), RDPCI prayed for piercing the veil of corporation fiction and that the former and individual private respondents be held jointly and severally liable to pay its claims for said remaining unrefunded balance, interest at 15% or 12% per annum, attorney's fees, litigation expenses and the

costs. On the ground that YLLC and individual private respondents were guilty of fraud in incurring the obligation sued upon, RDPCI also sought the grant of its prayer for the provisional remedy of preliminary attachment.[4] Pursuant to the public respondent's Order dated November 26, 2007,[5] a writ of attachment was issued on December 4, 2007, conditioned on RDCPI's posting of a bond in a sum not exceeding Php10,413,863.64.[6]

In implementing the aforesaid writ, Sheriff IV Vicente S. Sicat, Jr. caused a December 13, 2013 notice to be served upon the Register of Deeds of Makati for levy on attachment to be made on, among others, the properties titled in the name of YLLC and individual private respondents under Transfer Certificates of Title (TCT) Nos. 198343, 140860, 140861, 140862 and 140585 as well as Condominium Certificate of Title (CCT) No. 15476.[7] On June 25, 2013, YLLC and individual private respondents filed a motion to discharge the writ of attachment and cancel notice of levy on attachment upon the posting of Counter Attachment Bond No. SU-JCL3-HO-12-0000001-00 in the sum of Php10,413,863.64, issued by Charter Ping An Insurance Corporation (CPAIC) to YLLC.[8] The motion was opposed by RDCPI on the ground, among others, that the certificate of accreditation of said bonding company had already lapsed and that the amount of the counter bond was insufficient to cover the claims asserted in its complaint which, if at all, should only apply to the property registered in YLLC's name under TCT No. 198343.[9]

On May 2, 2013, public respondent issued the first assailed Order, granting the motion filed by YLLC and individual private respondents for the discharge writ of attachment and to cancel notice of levy on attachment on the aforesaid properties. Finding it no longer necessary to rule on the validity of the accreditation of the bonding company which had been shown to be accredited until July 31, 2013, public respondent upheld the sufficiency of the counter bond[10] and ruled as follows:

"xxx xxx xxx The effect of posting a counter bond in an amount that corresponds to the attachment bond fixed by the Court is to totally discharge the attachment. 'This rule clarifies that the attachment is totally discharged if a cash deposit or a counter bond is filed in an amount equal to the demand as fixed in the order of attachment.' By virtue of the total discharge of the attachment, the Court cannot sustain plaintiff's argument that the levy of attachment on defendants' properties should remain despite the discharge of the attachment. 'By the dissolution of an attachment levied on defendant's property through the filing of a counter bond, the released property becomes free and no longer liable to the results of the proceedings in which it was attached.' The counter bond posted acts as security for the payment of any judgment that the attaching party may obtain, they are thus mere replacements of the property formerly attached." [11]

RDPCI's motion for reconsideration of the foregoing order was denied for lack of merit in public respondent's second assailed Order dated September 5, 2013,[12] hence, this petition for certiorari which is anchored on the following ground:

WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED HER DISCRETION IN GRANTING THE MOTION TO DISCHARGE WRIT OF ATTACHMENT AND CANCEL NOTICE OF LEVY OF ATTACHMENTS ON ALL THE ATTACHED PROPERTY.

The petition is bereft of merit.

A writ of preliminary attachment is defined as a provisional remedy issued upon order of the court where the action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment that might be secured in the said action by the attaching creditor against the defendant.[13] Although the court may, in its discretion, require prior hearing on the application for preliminary attachment with notice to the defendant, the writ may properly issue ex parte upon showing that the relevant requisites therefor had been fulfilled by the applicant. The levy of the

property pursuant to the writ issued may not be validly effected, however, unless preceded or contemporaneously accompanied by service on the defendant of the summons together with a copy of the complaint, the application itself if not incorporated in the complaint, the order of attachment, and the attachment bond posted by the plaintiff.[14]

Attachment is a mere provisional remedy designed to ensure the safety and preservation of the thing attached until the plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction. Under the Rules of Civil Procedure, the writ of attachment thus issued may be quashed only by either of the two ways therein provided: (a) by filing a counter bond immediately; or (b) by moving to quash on the ground of improper and irregular issuance.[15] YLLC and private respondents availed of the first mode pursuant to Section 12, Rule 57 of the Rules which provides as follows:

"Section. 12. Discharge of attachment upon giving counter-bond. – At any time after writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of court where the application is made, in an amount equal to the that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of deposit shall forthwith be served on the attaching party. Upon the discharge of the attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property released. Should such counter-bond for any reason be found to be, or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment."

In urging the grant of its petition, RDCPI argues that public respondent gravely abused her discretion in granting the motion to discharge the writ of attachment and to cancel notice of levy on attachment filed by YLLC and individual respondents. Calling attention to the fact that its complaint prayed for the refund of the Php10,413,863.00 balance plus interests of 15% or 12% per annum, attorney's fees, litigation expenses and the costs, RDCPI maintains that the counter bond posted equivalent only to said principal sum is grossly inadequate. Even assuming arguendo that the amount of the counter bond issued by CPAIC to YLLC were to be considered adequate, RDCPI maintains that public respondent nevertheless committed grave abuse of discretion when she discharged the writ and notice of levy with respect to individual private respondents' properties as well. Since the counter bond was issued to YLLC, RDCPI argues that only the property registered in YLLC's name under TCT No. 198343 should have been exempted from the enforcement of said provisional remedy.

Having itself posted a bond in the sum of Php10,413,863.00 in support of the writ of attachment it sought a quo, RDCPI is clearly out on a limb in maintaining that the counter bond posted by YLLC in the same amount is grossly inadequate. Unlike the former Section 12 of Rule 57 of the Rules of Court where the value of the property attached was the defining measure in the computation of the discharging counter-attachment bond, appropriate note should be taken of the fact that the present provision hereinbefore quoted simply provides that the court shall order the discharge of attachment if the movant "makes a cash deposit, or files a counter-bond . . . in an amount equal to that fixed by the court in the order of attachment, exclusive of costs." [16] When the law is clear and explicit as in this case, it has been ruled that there is no need for an extended court ratiocination on the law – there is no room for interpretation, vacillation or equivocation, only application.[17]

Because counterbonds posted to obtain the lifting of a writ of attachment are simply securities for the payment of any judgment that the attaching party may obtain, they are thus mere replacements of the property formerly attached and may, therefore, be levied upon after final judgment in the case in order to realize the amount adjudged.[18] Since jurisprudence teaches that a writ of attachment cannot, moreover, be issued for moral and exemplary damages and other unliquidated or contingent claims,[19] it stands to reason that said limitation likewise applies to the counter bond required to discharge the same. To avoid excessive attachments which ought to be avoided at all times, it has, therefore, been ruled that the attached property — and logically the counter-bond necessary to discharge the lien on such property — should as much as possible correspond in value to, or approximately match the attaching creditor's principal claim[20] which in this case, amounts to Php10,413,863.00.

Given that the counter bond posted in the case is equivalent to the attachment bond posted by RDCPI, the Court finds that public respondent cannot, likewise, be faulted for discharging all of the properties attached by virtue of the same writ which, for all intents and purposes, had already been fully discharged. While it is true that the counter bond was issued only to YLLC, the record shows that the motion to discharge writ of attachment and notice of levy on attachment was filed for individual private respondents as well. For whatever it may be worth, RDCPI's insistence on the selective discharge of the properties attached is inconsistent with its prayer for a piercing of the veil of YLLC's corporate fiction and the consequent solidary obligation said corporation is sought to be held liable alongside individual private respondents. Upon the deposit of the sum or posting of the counter bond to secure the payment of any judgment the attaching party may recover in the action, it stands to reason that the properties attached will have to be delivered to the adverse party, with the money deposited or bond posted to be applied towards the satisfaction of any judgment that may be rendered in favor of the prevailing party.[21]

In the context of petitions for certiorari like the one at bench, grave abuse of discretion is, finally, understood to be such capricious and whimsical exercise of jurisdiction as is equivalent to lack of jurisdiction.[22] It is tantamount to an evasion of a positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[23] For failure of RDCPI to demonstrate the grave abuse of discretion it imputes against public respondent, the Court finds no reason to disturb, much less to nullify, the assailed orders.

WHEREFORE, premises considered, the instant petition for certiorari is DENIED for lack of merit.

SO ORDERED.

Rosario, and Dimagiba, JJ., concur.

[1] Rollo, pp. 17-20

[2] Id., p. 20

[3] Id., p. 25

[4] Id., p. 29

[5] Id., p. 31

[6] Id., p. 32

[7] Id., pp. 34-36

[8] Id., pp. 37-40

[9] Id., pp. 42-45

[10] Id., p. 19

[11] Id.

[12] Id., p. 21

[13] Torres vs. Satsatin, G.R. No. 166759, November 25, 2009

[14] Davao Light & Power Co., Inc. vs. Court of Appeals, G.R. No. 93262, November 29, 1991

[15] Chuidian vs. Sandiganbayan, G.R. No. 139941, January 19, 2001

[16] Insular Savings Bank vs. Court of Appeals, G.R. No. 123638, June 15, 2005

[17] Caguioa vs. Lavina, 345 SCRA 49

[18] Security Pacific Assurance Corp. vs. Hon. Amelia Tria-Infante, G.R. No. 144740, August 31, 2005, citing Luzon Steel Corp. vs. Sia, 28 SCRA 58

[19] Supra, at Note 16, citing Herrera, Remedial Law, p. 597, citing Salas vs. Adil, 90 SCRA 121 [1979]; Peregrino vs. Panis, 133 SCRA 72 [1984]; Mialhe vs. de Lencquesaing, 142 SCRA 694[1986].

[20] Supra, at Note 16

[21] Villanueva-Fabella vs. Lee, A.M. No. MTJ-04-1518, January 15, 2004

[22] Nepomuceno vs. Court of Appeals, 303 SCRA 679, 682

[23] J.L. Bernardo Construction vs. Court of Appeals, 324 SCRA 24, 34

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