

**K.O. GLASS CONSTRUCTION CO., INC., PETITIONER, VS. THE
HONORABLE MANUEL VALENZUELA, JUDGE OF THE COURT OF
FIRST INSTANCE OF RIZAL, AND ANTONIO D. PINZON,
RESPONDENTS.**

G.R. No. L-48756. September 11, 1982

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari to annul and set aside the writ of preliminary attachment issued by the respondent Judge in Civil Case No. 5902-P of the Court of First Instance of Rizal, entitled: "Antonio D. Pinzon, plaintiff, versus K.O. Glass Construction Co., Inc., and Kenneth O. Glass, defendants," and for the release of the amount of P37,190.00, which had been deposited with the Clerk of Court, to the petitioner.

On October 6, 1977, an action was instituted in the Court of First Instance of Rizal by Antonio D. Pinzon to recover from Kenneth O. Glass the sum of P37,190.00, alleged to be the agreed rentals of his truck, as well as the value of spare parts which have not been returned to him upon termination of the lease. In his verified complaint, the plaintiff asked for an attachment against the property of the defendant consisting of collectibles and payables with the Philippine Geothermal, Inc., on the grounds that the defendant is a foreigner; that he has a sufficient cause of action against the said defendant; and that there is no sufficient security for his claim against the defendant in the event a judgment is rendered in his favor.[1]

Finding the petition to be sufficient in form and substance, the respondent Judge ordered the issuance of a writ of attachment against the properties of the defendant upon the plaintiff's filing of a bond in the amount of P37,190.00.[2]

Thereupon, on November 22, 1977, the defendant Kenneth O. Glass moved to quash the writ of attachment on the grounds that there is no cause of action against him since the transactions or claims of the plaintiff were entered into by and between the plaintiff and the K.O. Glass Construction Co., Inc., a corporation duly organized and existing under Philippine laws; that there is no ground for the issuance of the writ of preliminary attachment as defendant Kenneth O. Glass never intended to leave the Philippines, and even if he does, plaintiff can not be prejudiced thereby because his claims are against a corporation which has sufficient funds and pro-perty to satisfy his claim; and that the money being garnished belongs to the K.O. Glass Corporation Co., Inc. and not to defendant Kenneth O. Glass.[3]

By reason thereof, Pinzon amended his complaint to include K.O. Glass Construction Co., Inc. as co-defendant of Kenneth O. Glass.[4]

On January 26, 1978, the defendants therein filed a supplementary motion to discharge and/or dissolve the writ of preliminary attachment upon the ground that the affidavit filed in support of the motion for preliminary attachment was not sufficient or wanting in law for the reasons that: (1) the affidavit did not state that the amount

of plaintiff's claim was above all legal set-offs or counterclaims, as required by Sec. 3, Rule 57 of the Revised Rules of Court; (2) the affidavit did not state that there is no other sufficient security for the claim sought to be recovered by the action as also required by said Sec. 3; and (3) the affidavit did not specify any of the grounds enumerated in Sec. 1 of Rule 57,[5] but, the respondent Judge denied the motion and ordered the Philippine Geothermal, Inc. to deliver and deposit with the Clerk of Court the amount of P37,190.00 immediately upon receipt of the order which amount shall remain so deposited to await the judgment to be rendered in the case.[6]

On June 19, 1978, the defendants therein filed a bond in the amount of P37,190.00 and asked the court for the release of the same amount deposited with the Clerk of Court,[7] but, the respondent Judge did not order the release of the money deposited.[8]

Hence, the present recourse. As prayed for, the Court issued a temporary restraining order, restraining the respondent Judge from further proceeding with the trial of the case.[9]

We find merit in the petition. The respondent Judge gravely abused his discretion in issuing the writ of preliminary attachment and in not ordering the release of the money which had been deposited with the Clerk of Court for the following reasons:

First, there was no ground for the issuance of the writ of preliminary attachment. Section 1, Rule 57 of the Revised Rules of Court, which enumerates the grounds for the issuance of a writ of preliminary attachment, reads, as follows:

"Sec. 1. Grounds upon which attachment may issue. - A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

"(a) In an action for the recovery of money or damages on a cause of action arising from contract, express or implied, against a party who is about to depart from the Philippines with intent to defraud his creditor;

"(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

"(c) In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an officer;

"(d) In an action against the party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;

"(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors;

"(f) In an action against a party who resides out of the Philippines, or on whom summons may be served by publication."

In ordering the issuance of the controversial writ of preliminary attachment, the respondent Judge said and We quote:

"The plaintiff filed a complaint for a sum of money with prayer for Writ of Preliminary Attachment dated September 14, 1977, alleging that the defendant who is a foreigner may, at any time, depart from the Philippines with intent to defraud his creditors including the plaintiff herein; that there is no sufficient security for the claim sought to be enforced by this action; that the amount due the plaintiff is as much as the sum for

which an order of attachment is sought to be granted; and that defendant has sufficient leviable assets in the Philippines consisting of collectibles and payables due from Philippine Geothermal, Inc., which may be disposed of at any time, by defendant if no Writ of Preliminary Attachment may be issued. Finding said motion and petition to be sufficient in form and substance." [10]

Pinzon, however, did not allege that the defendant Kenneth O. Glass "is a foreigner (who) may, at any time, depart from the Philippines with intent to defraud his creditors including the plaintiff." He merely stated that the defendant Kenneth O. Glass is a foreigner. The pertinent portion of the complaint reads, as follows:

"15. Plaintiff hereby avers under oath that defendant is a foreigner and that said defendant has a valid and just obligation to plaintiff in the total sum of P32,290.00 arising out from his failure to pay (i) service charges for the hauling of construction materials; (ii) rentals for the lease of plaintiff's Isuzu Cargo truck, and (iii) total cost of the missing/destroyed spare parts of said leased unit; hence, a sufficient cause of action exists against said defendant. Plaintiff also avers under oath that there is no sufficient security for his claim against the defendant in the event a judgment be rendered in favor of the plaintiff. However, defendant has sufficient assets in the Philippines in the form of collectibles and payables due from the Philippine Geothermal, Inc. with office address at Citibank Center, Paseo de Roxas, Makati, Metro Manila, but which properties, if not timely attached, may be disposed of by defendant and would render ineffectual the reliefs prayed for by plaintiff in this Complaint." [11]

In his Amended Complaint, Pinzon alleged the following:

"15. Plaintiff hereby avers under oath that defendant GLASS is an American citizen who controls most, if not all, the affairs of defendant CORPORATION. Defendants CORPORATION and GLASS have a valid and just obligation to plaintiff in the total sum of P32,290.00 arising out for their failure to pay (i) service charges for the hauling of construction materials, (ii) rentals for the lease of plaintiff's Isuzu Cargo truck, and (iii) total cost of the missing/destroyed spare parts of said leased unit; hence, a sufficient cause of action exist against said defendants. Plaintiff also avers under oath that there is no sufficient security for his claim against the defendants in the event a judgment be rendered in favor of the plaintiff. However, defendant CORPORATION has sufficient assets in the Philippines in the form of collectibles and payables due from the Philippine Geothermal, Inc. with office address at Citibank Center, Paseo de Roxas, Makati, Metro Manila, but which properties, if not timely attached, may be disposed of by defendants and would render ineffectual the reliefs prayed for by plaintiff in this Complaint." [12]

There being no showing, much less an allegation, that the defendants are about to depart from the Philippines with intent to defraud their creditor, or that they are non-resident aliens, the attachment of their properties is not justified.

Second, the affidavit submitted by Pinzon does not comply with the Rules. Under the Rules, an affidavit for attachment must state that (a) a sufficient cause of action exists, (b) the case is one of those mentioned in Section 1(a) of Rule 57; (c) there is no other sufficient security for the claim sought to be enforced by the action, and (d) the amount due to the applicant for attachment or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. Section 3, Rule 57 of the Revised Rules of Court reads, as follows:

"Section 3. Affidavit and bond required. - An order of attachment shall be granted only when it is made to appear by the affidavit of the applicant, or of some person who personally knows the facts, that a sufficient cause of action exists; that the case is one of those mentioned in Section 1 hereof; that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the clerk or judge of the court before the order issues."

In his affidavit, Pinzon stated the following:

"I, ANTONIO D. PINZON, Filipino, of legal age, married and with residence and postal address at 1422 A. Mabini Street, Ermita, Manila, subscribing under oath, depose and states that"

"1. On October 6, 1977, I filed with the Court of First Instance of Rizal, Pasay City Branch, a case against Kenneth O. Glass entitled 'ANTONIO D. PINZON vs. KENNETH O. GLASS', docketed as Civil Case No. 5902-P;

"2. My Complaint against Kenneth O. Glass is based on several causes of action, namely:

"(i) On February 15, 1977, we mutually agreed that I undertake to haul his construction materials from Manila to his construction project in Bulalo, Bay, Laguna and vice-versa, for a consideration of P50.00 per hour;

"(ii) Also, on June 18, 1977, we entered into a separate agreement whereby my Isuzu cargo truck will be leased to him for a consideration of P4,000.00 a month payable on the 15th day of each month;

"(iii) On September 7, 1977, after making use of my Isuzu truck, he surrendered the same without paying the monthly rentals for the leased Isuzu truck and the peso equivalent of the spare parts that were either destroyed or misappropriated by him;

"3. As of today, October 11, 1977, Mr. Kenneth O. Glass still owes me the total sum of P32,290.00 representing his obligation arising from the hauling of his construction materials, monthly rentals for the lease Isuzu truck and the peso equivalent of the spare parts that were either destroyed or misappropriated by him;

"4. I am executing this Affidavit to attest to the truthfulness of the foregoing and in compliance with the provisions of Rule 57 of the Re-vised Rules of Court."[13]

While Pinzon may have stated in his affidavit that a sufficient cause of action exists against the defendant Kenneth O. Glass, he did not state therein that "the case is one of those mentioned in Section 1 hereof; that there is no other sufficient security for the claim sought to be enforced by the action; and that the amount due to the applicant is as much as the sum for which the order granted above all legal counterclaims." It has been held that the failure to allege in the affidavit the requisites prescribed for the issuance of a writ of preliminary attachment, renders the writ of preliminary attachment issued against the property of the defendant fatally defective, and the judge issuing it is deemed to have acted in excess of his jurisdiction.[14]

Finally, it appears that the petitioner has filed a counter-bond in the amount of P37,190.00 to answer for any judgment that may be rendered against the defendant. Upon receipt of the counter-bond, the respondent Judge should have discharged the attachment pursuant to Section 12, Rule 57 of the Revised Rules of Court which reads, as follows:

"Section 12. Discharge of attachment upon giving counterbond. - At any time after an order of attachment has been granted, the party whose property has been attached, or the person appearing on his behalf, may upon reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the attachment wholly or in part on the security given. The judge shall, after hearing, order the discharge of the attachment if a cash deposit is made, or a counterbond executed to the attaching creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made, in an amount equal to the value of the property attached as determined by the judge, to secure the payment of any judgment that the attaching creditor may recover in the action. Upon the filing of such counter-bond, copy thereof shall forthwith be served on the attaching creditor or his lawyer. Upon the discharge of an 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 the person appearing on his behalf, the deposit or counter-bond aforesaid standing in the place of the

property so 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 creditor may apply for a new order of attachment."

The filing of the counter-bond will serve the purpose of preserving the defendant's property and at the same time give the plaintiff security for any judgment that may be obtained against the defendant.[15]

WHEREFORE, the petition is GRANTED and the writ prayed for is issued. The orders issued by the re-spondent Judge on October 11, 1977, January 26, 1978, and February 3, 1978 in Civil Case No. 5902-P of the Court of First Instance of Rizal, insofar as they relate to the issuance of the writ of preliminary attachment, should be, as they are hereby ANNULLED and SET ASIDE and the respondents are hereby ordered to forthwith release the garnished amount of P137,190.00 to the petitioner. The temporary restraining order, heretofore issued, is hereby lifted and set aside. Costs against the private respondent Antonio D. Pinzon.

SO ORDERED.

Barredo, (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur. Aquino, J., in the result.

[1] Rollo, p. 10.

[2] Id., p. 18.

[3] Id., p. 20.

[4] Id., p. 23.

[5] Id., p. 31.

[6] Id., p. 35.

[7] Id., p. 39.

[8] Par. 13, Petition, Rollo, p. 7.

[9] Rollo, p. 49.

[10] Id., p. 18.

[11] Id., p. 13.

[12] Id., p. 26-27.

[13] Id., p. 17.

[14] Guzman vs. Catolico, 65 Phil. 257.

[15] G.B., Inc. vs. Sanchez, 98 Phil. 886, 891.

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