

LOPE SARREAL, PETITIONER, VS. SOTERO RODAS AND FELIPE NATIVIDAD ET AL., RESPONDENTS.

G.R. No. L-2309. May 28, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

The case.—The principal purpose of this petition for certiorari is to annul the orders of the respondent judges dated April 15 and June 12, 1948, cancelling the attachment of certain properties in Manila.

Facts.—On March 24, 1947, Lope Sarreal filed in the Manila Court of First Instance an action to recover more than one million pesos from two corporations: Material Distributors Inc. of Wichita, Kansas, and Material Distributors (Phil.) Inc. We shall herein refer to the first as Wichita Distributors and to the second as Philippine Distributors.

Upon his request, Judge Felipe Natividad authorized, on the next day, (March 25), the issuance of a preliminary attachment of properties of the defendant corporations after Sarreal had posted a bond of P50,000. Whereupon the sheriff of Manila took possession of certain heavy equipment and other goods situated at 179 Inverness, Santa Ana, Manila, valued at half a million pesos.

On March 26, 1947, Lope Sarreal and the Philippine Distributors signed an agreement whereby the seizure would be lifted provided the latter put up a bond in the amount of P100,000 protecting the plaintiff, who incidentally reserved the right, for good reasons to ask either the reinstatement of the attachment or the increase of the amount of the bond, while the Philippine Distributors reserved the privilege subsequently to seek the lifting of the attachment. In view of the agreement, on March 27, 1947, the court decreed the dissolution of the attachment upon presentation of the bond. The impounded properties were consequently released.

On April 10, 1947, the Philippine Distributors filed its answer to Sarreal's complaint and among other things it denied any and all connections with the Wichita Distributors.

Having allegedly received information that the Wichita Distributors would be dissolved in the United States, and being afraid that any judgment he might obtain against said entity would not be enforceable unless its properties were kept in the Philippines, Sarreal submitted in December 1947, a "motion for amendatory order" praying that the order of March 27, 1947, dissolving the attachment be "amended and clarified" so that the discharge therein authorized shall affect only the properties of the Philippine Distributors—the attachment to remain in force as against the Wichita Distributors. The court on Dec. 27, 1947, denied the motion, saying that its order was clear and unconditional vacating the only attachment issued in the case.

Probably, as Sarreal alleges, Judge Natividad said during the discussion of the preceding motion that his remedy was to secure another attachment of the properties of the Wichita Distributors. So on April 8, 1948, when he could procure the requisite bond, Sarreal prepared and presented to Judge Sotero Rodas a new petition for attachment of the properties of said corporation informing him that Judge Natividad (then on vacation) had previously indicated his willingness to permit such levy. Judge Rodas, on April 9, 1948 issued the writ as prayed for. The sheriff then

took possession of properties, practically all of which had been seized (and later released) under the previous attachment of March 25, 1947. Wherefore the Philippine Distributors, through Attorney A. J. Gibbs immediately filed a motion to dissolve this second attachment stating, among other reasons, that the properties newly attached were the same properties that had been released upon the strength of the one-hundred-thousand-peso bond said corporation had filed, and that, in effect, this new levy sets aside the previous order dissolving a similar attachment. Judge Rodas, after hearing the parties, cancelled his own writ of attachment by an order dated April 15, 1948. A motion for reconsideration was denied by Judge Natividad on June 12, 1948. Thereupon Sarreal instituted this special civil action.

Discussion.—Sarreal charges the respondents with abuse of discretion contending that the attachment was in pursuance of verbal assurance or opinion of Judge Natividad. However, it does not appear that His Honor had advised a new attachment of the same properties released by the order of March 27, 1947. Judge Natividad evidently believed Sarreal could attach such properties of the Wichita Distributors as could legally be attached. Anyway Judge Rodas was not bound by another colleague's advice that had not taken the form of a written final order.

Sarreal also claims the respondents erred in releasing the attached properties of Wichita Distributors at the request of another entity, the Philippine Distributors. But the Philippine Distributors asserts dominion over those goods. Anyway, irrespective of ownership, the Philippine Distributors was practically awarded possession of the properties when it filed the bond of one hundred thousand pesos for their release from attachment, and was entitled to protection. Furthermore having formally agreed for a consideration (the bond) to the return of the properties to the Philippine Distributors, Sarreal had no justification subsequently to forget his word by causing a new attachment without at the same time returning the consideration (i. e. cancelling the bond) and/or securing the consent of the other party to the agreement.

The argument of petitioner that the proper procedure to be followed by the Philippine Distributors was not to petition for the revocation of the order of attachment but to formulate a third party claim under Rule 59 would be correct if there had been no previous judicial directives upon which the said corporation could base its request for revocation. Under the facts the Philippine Distributors did nothing more than to invite the attention of the court to the resultant situation that its new order of attachment unjustly nullified the previous order of dissolution. And there is no doubt in our minds that Judges Rodas and Natividad acted properly in the circumstances described.

Judgment.—Petition denied with costs.

Ozaeta, Paras, Feria, Pablo, Perfecto, Tuason, Montemayor, and Reyes, JJ., concur.

BENGZON, J.:

I hereby certify that the Chief Justice voted to deny the petition.

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