

LUIS F. GENERAL, PETITIONER, VS. JOSE R. DE VENECIA, JUDGE OF FIRST INSTANCE OF CAMARINES SUR, AND PETRA VDA. DE RUEDAS, ALSO REPRESENTING ERNESTO RUEDAS, ARMANDO RUEDAS AND GRA...

G.R. No. L-894. July 30, 1947

Ponente: BENGZON, J.

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BENGZON, J.:

Petition for certiorari to annul the order of the Court of First Instance of Camarines Sur denying the motion to dismiss the complaint, and to vacate the attachment issued, in civil case No. 364 therein entitled, "Ruedas vs. Luis F. General."

That complaint was filed on June 4, 1946, to recover the value of a promissory note, worded as follows:

"For value received, I promise to pay Mr. Gregorio Ruedas the amount of four thousand pesos (P4,000), in Philippine currency within six (6) months after peace has been declared and government established in the Philippines.

"Naga, Camarines Sur, September 25, 1944.

(Sgd.) "LUIS F. GENERAL"

It prayed additionally for preliminary attachment of defendant's property, upon the allegation that the latter was about to dispose of his assets to defraud creditors. Two days later, the writ of attachment was issued upon the filing of a suitable bond.

Having been served with summons, the defendant therein, Luis F. General, submitted, on June 11, 1946, a motion praying for dismissal of the complaint and dissolution of the attachment. He claimed it was premature, in view of the provisions of the debt moratorium orders of the President of the Philippines (Executive Orders Nos. 25 and 32 of 1945). Denial of this motion and of the subsequent plea for reconsideration, prompted the institution of this special civil action, which we find to be meritorious, for the reason that the attachment was improvidently permitted, the debt being within the terms of the decree of moratorium (Executive Order No. 32).

It is our view that, upon objection by the debtor, no court may now proceed to hear a complaint that seeks to compel payment of a monetary obligation coming within the purview of the moratorium. And the issuance of a writ of attachment upon such complaint may not, of course, be allowed. Such levy is necessarily one step in the enforcement of the obligation, enforcement which, as stated in the order, is suspended temporarily, pending action by the Government.

But the case for petitioner is stronger when we reflect that his promise is to pay P4,000 "within six months after peace has been declared." It being a matter of contemporary history that the peace treaty between the United States and Japan has not even been drafted, and that no competent official has formally declared the advent of

peace (see *Raquiza vs. Bardford*, 75 Phil., 50), it is obvious that the six-month period has not begun; and Luis F. General has at present and in June, 1946, no demandable duty to make payment to plaintiffs, independently of the moratorium directive.

On the question of validity of the attachment, "the general rule is that, unless the statute expressly so provides, the remedy by attachment is not available in respect to a demand which is not due and payable, and, if an attachment is issued upon such a demand without statutory authority it is void." (7 C.J.S., p. 204.)

It must be observed that under our rules governing the matter the person seeking a preliminary attachment must show that "a sufficient cause of action exists" and that "the amount due him is as much as the sum for which the order of attachment is granted" (sec. 3, Rule 59). Inasmuch as the commitment of Luis F. General has not as yet become demandable, there existed no cause of action against him, and the complaint should have been dismissed and the attachment lifted. (*Orbeta vs. Sotto*, 58 Phil., 505.)

And although it is the general principle that certiorari is not available to correct judicial errors that could be straightened out in an appeal, we have adopted the course that where an attachment has been wrongly levied the writ may be applied for, because the remedy by appeal is either unavailable or inadequate. (*Leung Ben vs. O'Brien*, 38 Phil., 182; *Director of Commerce and Industry vs. Concepcion*, 43 Phil., 384; *Orbeta vs. Sotto*, supra.)

Wherefore, the writ of attachment is quashed and the complaint is dismissed. Costs for petitioner. So ordered.

Moran, C.J., Paras, Feria, Pablo, Hilado, Padilla, and Tuason, JJ., concur.

Perfecto, J., concurs in the result.

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