

**TERESA LLAMEDO, SHARON MAGALLANES AND GINALYN CUBETA,  
PETITIONERS, VS. HON. PANAMBULAN M. MIMBISA, PRESIDING  
JUDGE, REGIONAL TRIAL COURT, BRANCH 37, GENERAL SANTOS  
CITY AND IGNA...**

Ponente: INTING, J.

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**INTING, J.:**

Before Us is a Petition for Certiorari[1] filed by petitioners assailing the Orders[2] of Branch 37, Regional Trial Court (RTC), General Santos City, to wit: (1) granting the prayer for the issuance of a Writ of Preliminary Attachment in favor of private respondent Dumaran; (2) denying their Motion to Quash Writ of Preliminary Attachment; and (3) denying their Motion for Reconsideration to the Order denying the motion to quash.

The facts of the case are as follows:

Dumaran filed a Complaint for Sum of Money, Damages and Attorney's Fees with a Prayer for the Ex-Parte Issuance of a Writ of Preliminary Attachment (WPA) against petitioners, alleging, among others, that[3]: (1) petitioners purchased on credit diesel and gasoline fuel from him; (2) petitioners has an outstanding obligation of over 7 Million Pesos to him; (3) the checks issued by petitioners to pay the obligation were dishonored; and (4) despite demands, petitioners failed to pay the total obligation.

In relation to the prayer for the issuance of the WPA, Dumaran alleged that petitioners "are about to dispose of their properties and Llamedo, Magallanes and Cubeta could not be located or contacted, with intent to defraud the plaintiff herein, because of their monetary obligation to other creditors rendering ineffective whatever money judgment this Honorable Court may render.[4]" In his affidavit to support the prayer for WPA, Dumaran invoked Section 1(d) of Rule 57 of the Rules of Court.[5]

The RTC granted the prayer for the issuance of a WPA after finding that "the allegations of the verified complaint shows that the instant case falls within coverage of par. (d), Section 1 of Rule 57, 1997 Rules of Civil Procedure, as amended."[6]

Petitioners then filed a Very Urgent Motion to Quash Writ of Attachment and Notice of Levy on Attachment[7] contending that the WPA and Notice of Levy on Attachment were: (1) issued in violation of their right to due process; (2) without basis in fact and in law; and (3) issued in violation of Rule 39, Section 13 of the Rules of Court. They also filed their Answer[8] to the complaint of Dumaran.

Dumaran filed his Opposition[9] to the Motion to Quash alleging, among others, that: (1) preliminary attachment is a remedy of a creditor if the debtors are about to dispose their properties with intent to defraud the creditor; (2) the check issued by the petitioners were dishonored and despite demand to pay, the petitioners did not pay; and (3) Llamedo sold diesel fuel at a discount to the damage of Dumaran. Petitioners then filed their Reply[10] to the Opposition.

The RTC denied[11] the Motion to Quash arguing that: (1) a WPA may be issued ex-parte and (2) none of the

grounds for the quashal of the WPA is present in the case.

Petitioners then filed their Motion for Reconsideration[12] to the Order of denial of the RTC. They contend, among others, that: (1) the complaint did not state with particularity the circumstances constituting fraud so as to merit the issuance of a WPA; (2) there was no hearing conducted on the allegations of fraud; and (3) the requisite that before a WPA is issued, a notice of raffle to be served prior to or contemporaneously with the summons was not complied. Dumaran filed his Opposition[13] reiterating that fraud was committed by the petitioners in contracting their debt and that notice of raffle is not an essential requirement in the Rules of Court. Petitioners then filed their Reply[14] to the Opposition.

The RTC denied the Motion for Reconsideration stating that "there being no new and substantial ground to modify, reverse or reconsider the Order dated 23 February 2010, the Motion for Reconsideration is denied, it appearing further that the arguments raised therein were already considered and passed upon in the aforesaid order.[15]"

Aggrieved, petitioners filed the instant petition and raised the following issues:

I.

WHETHER OR NOT THE WRIT OF PRELIMINARY ATTACHMENT WAS IRREGULARLY OR WRONGFULLY ISSUED;

II.

WHETHER OR NOT RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN THE EXERCISE OF ITS JUDGMENT WHEN IT DENIED THE MOTION TO QUASH THE WRIT OF PRELIMINARY ATTACHMENT AND THE SUBSEQUENT MOTION FOR THE RECONSIDERATION THEREOF.

### Our Ruling

The petition is with merit.

Section 1 of Rule 57 of the Rules of Court states in part:

Grounds upon which attachment may issue. — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

x x x

(d)

In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

x x x

The Supreme Court explained:

"To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, xxx.[16]"

In the instant case, Dumaran invoked the above-mentioned provision of the Rules of Court in his affidavit and reiterated his allegations in his complaint. His complaint stated, among others:

"Sometime in September 2009, defendant Magallanes, taking advantage of the trust reposed in her by plaintiff's family, being a former employee in the Linmax Shell Station xxx, introduced her other partners, defendant Teresa Llamedo, (a tuna buyer) and defendant Ginalyn Cubeta to plaintiff. The defendants then who proposed to plaintiff to supply diesel and gasoline fuel to defendants. The defendants initially paid the fuel in cash and sometimes used personal checks of defendant Llamedo for the purchase of fuel."

"However, after gaining the trust of plaintiff, in conspiracy with one another, defendants Llamedo and Magallanes opened a joint account with the Peninsula Rural Bank and started paying in post dated checks, for the diesel and gasoline fuel withdrawn by the representatives of defendants. When the total value of the diesel and gasoline fuel purchased on credit by the defendants were already higher than the value of the checks issued, the plaintiff informed the defendants of their unpaid purchases of diesel and gasoline fuel; for them to update their payments. Unknown to the plaintiff, while the defendants issued postdated checks for the unpaid diesel and gasoline fuel, they also withdrew diesel and gasoline fuel from the plaintiff's other gasoline stations, and paid them with postdated checks. These checks were later dishonored due to insufficient funds, which current account was declared closed later by the drawee bank."

Defendants have an unpaid obligation of over 7 Million Pesos and despite demand, defendants failed to settle their obligation.

"xxx defendants are about to dispose of their properties and Llamedo, Magallanes and Cubeta could not be located or contacted, with intent to defraud the plaintiff herein, because of their monetary obligation to other creditors rendering ineffective whatever money judgment this Honorable Court may render xxx."

Based on Dumaran's allegations, it appears that: (1) petitioners proposed to buy diesel and gasoline fuel from him; (2) he accepted; (3) petitioners initially paid in cash and personal checks; (4) petitioners opened a joint account in Peninsula Rural Bank; (5) petitioners paid in post-dated checks from that new bank account; (6) the post-dated checks were dishonored for insufficient funds/account closed; and (7) private respondents has an outstanding balance of over 7 million Pesos and despite demand to pay, petitioners have not paid.

"The applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.[17]" The allegations of Dumaran do not meet the requirements of the law regarding fraud. The allegations do not show: (1) that he was defrauded in accepting the offer of the petitioners; and (2) that from the beginning the petitioners intended that they will not pay their obligation considering that by his own admission, petitioners initially paid in cash and personal checks. "[A] writ of preliminary attachment is too harsh a provisional remedy to be issued based on mere abstractions of fraud. Rather, the rules require that for the writ to issue, there must be a recitation of clear and concrete factual circumstances manifesting that the debtor practiced fraud upon the creditor at the time of the execution of their agreement in that said debtor had a pre-conceived plan or intention not to pay the creditor. Being a state of mind, fraud cannot be merely inferred from a bare allegation of non-payment of debt or non-performance of obligation.[18]"

"[A]n application for a writ of attachment, being a harsh remedy, is to be construed strictly in favor of the defendant.[19]"

"Grave abuse of discretion arises when a lower court or tribunal violates the Constitution, the law or existing jurisprudence.[20]" Thus, the petition is granted.

WHEREFORE, the instant petition is GRANTED. The assailed Orders of the Regional Trial Court are SET

ASIDE.

**SO ORDERED.**

Camello, (Chairperson), and Perez, JJ., concur.

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[1] Rollo, pp. 2-21

[2] Rollo, p. 96, 130-131, and 151

[3] Rollo, pp. 24-27

[4] Rollo, pp. 26-27

[5] Rollo, p. 95

[6] Rollo, p. 96

[7] Rollo, pp. 98-105

[8] Rollo, pp. 107-112

[9] Rollo, pp. 118-121

[10] Rollo, pp. 126-128

[11] Rollo, pp. 130-131

[12] Rollo, pp. 132-139

[13] Rollo, pp. 142-144

[14] Rollo, pp. 146-150

[15] Rollo, p. 151

[16] Metro Inc. et al. v. Lara's Gifts & Decors Inc. et al., G.R. No. 171741, November 27, 2009 citing Liberty Insurance Corp. v. Court of Appeals

[17] Metro Inc. et al. v. Lara's Gifts & Decors Inc. et al., G.R. No. 171741, November 27, 2009

[18] Spouses Santiago v. Allied Banking Corp., G.R. No. 164510, November 25, 2005

[19] Allied Banking Corp. v. South Pacific Sugar Corp. et al., G.R. No. 163692, February 4, 2008

[20] Fernandez v. COMELEC, G.R. No. 171821, October 9, 2006

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