

RICARDO CUARTERO, PETITIONER, VS. COURT OF APPEALS, ROBERTO EVANGELISTA AND FELICIA EVANGELISTA, RESPONDENTS.

G.R. No. 102448. August 05, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review on certiorari seeking to annul the decision of the Court of Appeals promulgated on June 27, 1991 as well as the subsequent resolution dated October 22, 1991 denying the motion for reconsideration in CA-G.R. SP No. 23199 entitled "Spouses Roberto and Felicia Evangelista v. Honorable Cezar C. Peralejo, Presiding Judge Regional Trial Court of Quezon City, Branch 98, and Ricardo Cuartero," which nullified the orders of the trial court dated August 24, 1990 and October 4, 1990 and cancelled the writ of preliminary attachment issued on September 19, 1990.

Following are the series of events giving rise to the present controversy.

On August 20, 1990, petitioner Ricardo Cuartero filed a complaint before the Regional Trial Court of Quezon City against the private respondents, Evangelista spouses, for a sum of money plus damages with a prayer for the issuance of a writ of preliminary attachment. The complaint was docketed as Civil Case No. Q-90-6471.

On August 24, 1990, the lower court issued an order granting ex-parte the petitioner's prayer for the issuance of a writ of preliminary attachment.

On September 19, 1990, the writ of preliminary attachment was issued pursuant to the trial court's order dated August 24, 1990. On the same day, the summons for the spouses Evangelista was likewise prepared.

The following day, that is, on September 20, 1990, a copy of the writ of preliminary attachment, the order dated August 24, 1990, the summons and the complaint were all simultaneously served upon the private respondents at their residence. Immediately thereafter, Deputy Sheriff Ernesto L. Sula levied, attached and pulled out the properties in compliance with the court's directive to attach all the properties of private respondents not exempt from execution, or so much thereof as may be sufficient to satisfy the petitioner's principal claim in the amount of P2,171,794.91.

Subsequently, the spouses Evangelista filed a motion to set aside the order dated August 24, 1990 and discharge the writ of preliminary attachment for having been irregularly and improperly issued. On October 4, 1990, the lower court denied the motion for lack of merit.

Private respondents, then, filed a special civil action for certiorari with the Court of Appeals questioning the orders of the lower court dated August 24, 1990 and October 4, 1990 with a prayer for a restraining order or writ of preliminary injunction to enjoin the judge from taking further proceedings below.

In a Resolution dated October 31, 1990, the Court of Appeals resolved not to grant the prayer for restraining order

or writ of preliminary injunction, there being no clear showing that the spouses Evangelista were entitled thereto.

On June 27, 1991, the Court of Appeals granted the petition for certiorari and rendered the questioned decision. The motion for reconsideration filed by herein petitioner Cuartero was denied for lack of merit in a resolution dated October 22, 1991. Hence, the present recourse to this Court.

The petitioner raises the following assignment of errors:

I

THE COURT OF APPEALS ERRED AND COMMITTED A GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OF JURISDICTION WHEN IT HELD THAT THE REGIONAL TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER RESPONDENT SPOUSES.

II

THE COURT OF APPEALS ERRED AND ACTED WITH GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE REGIONAL TRIAL COURT COULD NOT VALIDLY ISSUE THE SUBJECT WRIT OF PRELIMINARY ATTACHMENT WHICH IS AN ANCILLARY REMEDY. (Rollo, p. 13)

The Court of Appeals' decision is grounded on its finding that the trial court did not acquire any jurisdiction over the person of the defendants (private respondents herein). It declared that:

"x x x the want of jurisdiction of the trial court to proceed in the main case as well as the ancillary remedy of attachment is quite clear. It is not disputed that neither service of summons with a copy of the complaint nor voluntary appearance of petitioners was had in this case before the trial court issued the assailed order dated August 24, 1990, as well as the writ of preliminary attachment dated September 19, 1990. This is reversible error and must be corrected on certiorari." (Rollo, p. 24)

The appellate tribunal relied on the case of *Sievert v. Court of Appeals*, 168 SCRA 692 (1988) in arriving at the foregoing conclusion. It stated that:

"Valid service of summons and a copy of the complaint vest jurisdiction in the court over the defendant both for the purpose of the main case and for purposes of the ancillary remedy of attachment and a court which has not acquired jurisdiction over the person of defendant, cannot bind the defendant whether in the main case or in any ancillary proceeding such as attachment proceedings (*Sievert v. Court of Appeals*, 168 SCRA 692)." (Rollo, p. 24)

The private respondents, in their comment, adopted and reiterated the aforementioned ruling of the Court of Appeals. They added that aside from the want of jurisdiction, no proper ground also existed for the issuance of the writ of preliminary attachment. They stress that the fraud in contracting the debt or incurring the obligation upon which the action is brought which comprises a ground for attachment must have already been intended at the inception of the contract. According to them, there was no intent to defraud the petitioner when the postdated checks were issued inasmuch as the latter was aware that the same were not yet funded and that they were issued only for purposes of creating an evidence to prove a pre-existing obligation.

Another point which the private respondents raised in their comment is the alleged violation of their constitutionally guaranteed right to due process when the writ was issued without notice and hearing.

In the later case of *Davao Light and Power Co., Inc. v. Court of Appeals*, G. R. No. 93262, November 29, 1991, we had occasion to deal with certain misconceptions which may have arisen from our *Sievert* ruling. The question which was resolved in the *Davao Light* case is whether or not a writ of preliminary attachment may issue ex-parte

against a defendant before the court acquires jurisdiction over the latter's person by service of summons or his voluntary submission to the court's authority. The Court answered in the affirmative. This should have clarified the matter but apparently another ruling is necessary.

A writ of preliminary attachment is defined as a provisional remedy issued upon order of the court where an 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 might be secured in said action by the attaching creditor against the defendant (*Adlawan v. Tomol*, 184 SCRA 31 [1990] citing *Virata v. Aquino*, 53 SCRA 30-31 [1973]).

Under section 3, Rule 57 of the Rules of Court, the only requisites for the issuance of the writ are the affidavit and bond of the applicant. As has been expressly ruled in *BF Homes, Inc. v. Court of Appeals*, 190 SCRA 262 (1990), citing *Mindanao Savings and Loan Association, Inc. v. Court of Appeals*, 172 SCRA 480 (1989), no notice to the adverse party or hearing of the application is required inasmuch as the time which the hearing will take could be enough to enable the defendant to abscond or dispose of his property before a writ of attachment issues. In such a case, a hearing would render nugatory the purpose of this provisional remedy. The ruling remains good law. There is, thus, no merit in the private respondents' claim of violation of their constitutionally guaranteed right to due process.

The writ of preliminary attachment can be applied for and granted at the commencement of the action or at any time thereafter (Section 1, Rule 57, Rules of Court). In *Davao Light and Power, Co. Inc. v. Court of Appeals*, *supra*, the phrase "at the commencement of the action" is interpreted as referring to the date of the filing of the complaint which is a time before summons is served on the defendant or even before summons issues. The Court added that –

"x x x after an action is properly commenced - - by filing of the complaint and the payment of all requisite docket and other fees - - the plaintiff may apply and obtain a writ of preliminary attachment upon the fulfillment of the pertinent requisites laid down by law, and that he may do so at any time, either before or after service of summons on the defendant. And this, indeed, has been the immemorial practice sanctioned by the courts: for the plaintiff or other proper party to incorporate the application for attachment in the complaint or other appropriate pleading (counter-claim, cross-claim, third-party-claim) and for the Trial Court to issue the writ ex-parte at the commencement of the action if it finds the application otherwise sufficient in form and substance."

The Court also pointed out that:

"x x x It is incorrect to theorize that after an action or proceeding has been commenced and jurisdiction over the person of the plaintiff has been vested in the Court, but before acquisition of jurisdiction over the person of the defendant (either by service of summons or his voluntary submission to the Court's authority), nothing can be validly done by the plaintiff or the Court. It is wrong to assume that the validity of acts done during the period should be dependent on, or held in suspension until, the actual obtention of jurisdiction over the defendant's person. The obtention by the court of jurisdiction over the person of the defendant is one thing; quite another is the acquisition of jurisdiction over the person of the plaintiff or over the subject matter or nature of the action, or the res or object thereof."

It is clear from our pronouncements that a writ of preliminary attachment may issue even before summons is served upon the defendant. However, we have likewise ruled that the writ cannot bind and affect the defendant until jurisdiction over his person is eventually obtained. Therefore, it is required that when the proper officer commences implementation of the writ of attachment, service of summons should be simultaneously made.

It must be emphasized that the grant of the provisional remedy of attachment practically involves three stages:

first, the court issues the order granting the application; second, the writ of attachment issues pursuant to the order granting the writ; and third, the writ is implemented. For the initial two stages, it is not necessary that jurisdiction over the person of the defendant should first be obtained. However, once the implementation commences, it is required that the court must have acquired jurisdiction over the defendant for without such jurisdiction, the court has no power and authority to act in any manner against the defendant. Any order issuing from the Court will not bind the defendant.

In *Sievert v. Court of Appeals*, supra, cited by the Court of Appeals in its questioned decision, the writ of attachment issued ex-parte was struck down because when the writ of attachment was being implemented, no jurisdiction over the person of the defendant had as yet been obtained. The court had failed to serve the summons to the defendant.

The circumstances in *Sievert* are different from those in the case at bar. When the writ of attachment was served on the spouses Evangelista, the summons and copy of the complaint were also simultaneously served.

It is appropriate to reiterate this Court's exposition in the *Davao Light and Power* case cited earlier, to wit:

"x x x writs of attachment may properly issue ex-parte provided that the Court is satisfied that the relevant requisites therefore have been fulfilled by the applicant, although it may, in its discretion, require prior hearing on the application with notice to the defendant, but that levy on property pursuant to the writ thus issued may not be validly effected unless preceded, or contemporaneously accompanied by service on the defendant of summons, a copy of the complaint (and of the appointment of guardian ad litem, if any), the application for attachment (if not incorporated in but submitted separately from the complaint), the order of attachment, and the plaintiff's attachment bond."

The question as to whether a proper ground existed for the issuance of the writ is a question of fact the determination of which can only be had in appropriate proceedings conducted for the purpose (*Peroxide Philippines Corporation v. Court of Appeals*, 199 SCRA 882 [1991]). It must be noted that the spouses Evangelista's motion to discharge the writ of preliminary attachment was denied by the lower court for lack of merit. There is no showing that there was an abuse of discretion on the part of the lower court in denying the motion.

Moreover, an attachment may not be dissolved by a showing of its irregular or improper issuance if it is upon a ground which is at the same time the applicant's cause of action in the main case since an anomalous situation would result if the issues of the main case would be ventilated and resolved in a mere hearing of a motion (*Davao Light and Power Co., Inc. v. Court of Appeals*, supra, *The Consolidated Bank and Trust Corp. (Solidbank) v. Court of Appeals*, 197 SCRA 663 [1991]).

In the present case, one of the allegations in petitioner's complaint below is that the defendant spouses induced the plaintiff to grant the loan by issuing postdated checks to cover the installment payments and a separate set of postdated checks for payment of the stipulated interest (Annex "B"). The issue of fraud, then, is clearly within the competence of the lower court in the main action.

WHEREFORE, premises considered, the Court hereby GRANTS the petition. The challenged decision of the Court of Appeals is REVERSED, and the order and writ of attachment issued by Hon. Cezar C. Peralejo, Presiding Judge of Branch 98, Regional Trial Court of Quezon City against spouses Evangelista are hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.

Feliciano, Bidin, and Davide, Jr., JJ., concur.

Romero, J., no part.

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