

FLORANTE F. MANACOP, PETITIONER, VS. COURT OF APPEALS & F.F. CRUZ & CO., INC., RESPONDENTS.

G.R. No. 104875. November 13, 1992

Ponente: MELO, J.

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MELO, J.:

Following the dismissal of his petition for certiorari in CA-G.R. SP No. 23651 by the Thirteenth Division of respondent Court (Justice Buena (P), Gonzaga-Reyes and Abad Santos, Jr., JJ.; Page 60, Rollo), petitioner airs his concern over the propriety thereof by claiming in the petition at hand that the disposition, in practical effect, allows a writ of preliminary attachment issued by the court of origin against his corporation to be implemented on his family home which is ordinarily exempt from the mesne process.

Owing to the failure to pay the sub-contract cost pursuant to a deed of assignment signed between petitioner's corporation and private respondent herein, the latter filed on July 3, 1989, a complaint for a sum of money, with prayer for preliminary attachment, against the former. As a consequence of the order on July 28, 1989, the corresponding writ for the provisional remedy was issued on August 11, 1989 which triggered the attachment of a parcel of land in Quezon City owned by Manacop Construction President Florante F. Manacop, herein petitioner.

In lieu of the original complaint, private respondent submitted an amended complaint on August 18, 1989 intended to substitute Manacop Construction with Florante F. Manacop as defendant who is "doing business under the name and style of F.F. Manacop Construction Co., Inc.". After the motion for issuance of summons to the substituted defendant below was granted, petitioner filed his answer to the amended complaint on November 20, 1989.

Petitioner's Omnibus Motion filed on September 5, 1990 grounded on (1) irregularity that attended the issuance of the disputed writ inspite the absence of an affidavit therefor; (2) the feasibility of utilizing the writ prior to his substitution as party-defendant, and (3) exemption from attachment of his family home (page 3, Petition; page 8, Rollo), did not merit the serious consideration of the court of origin. This nonchalant response constrained petitioner to elevate the matter to respondent court which, as aforesaid, agreed with the trial court on the strength of the ensuing observations:

"Anent the petitioner's claim that the writ of attachment was issued without jurisdiction because of the lack of supporting affidavit, We subscribe to the recent ruling of the Highest Tribunal that a verified statement incorporated in the complaint without a separate affidavit is sufficient and valid to obtain the attachment (Nasser vs. Court of Appeals, 191 SCRA 783). In the case at bar, the original as well as the amended complaint filed by herein private respondent were verified, in substantial compliance with the requirements of the law.

"Finally, the petitioner insists that the attached property is a family home, having been occupied by him and his family since 1972, and is therefore exempt from attachment.

"The contention is not well-taken.

"While Article 153 of the Family Code provides that the family home is deemed constituted on a house and lot from the time it is occupied as a family residence, it does not mean that said article has a retroactive effect such that all existing family residences, petitioner's included, are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and henceforth, are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code on August 3, 1988 (Modequillo vs. Breva, 185 SCRA 766). Neither does Article 162 of said Code state that the provisions of Chapter 2, Title V thereof have retroactive effect. It simply means that all existing family residences at the time of the effectivity of the Family Code are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code (Modequillo vs. Breva, supra). Since petitioner's debt was incurred as early as November 25, 1987, it preceded the effectivity of the Family Code. His property is therefore not exempt from attachment (Annex "O", Plaintiff's Position Paper and Memorandum of Authorities, p. 78)." (pp. 5-6, Decision; pp. 64-65, Rollo)

The attempt to reconsider respondent court's stance was to no avail (page 75, Rollo) hence, the petition at bar.

Did respondent court err in dismissing the challenge posed by petitioner against the denial of his omnibus motion?

We are not ready to accept the negative aspersions put forward by petitioner against respondent court in the petition before Us.

Petitioner harps on the supposition that the appellate court should not have pierced the veil of corporate fiction because he is distinct from the personality of his corporation and, therefore, the writ of attachment issued against the corporation cannot be used to place his own family home in custodia legis. This puerile argument must suffer rejection since the doctrine in commercial law adverted to and employed in exculpation by petitioner, during the pendency of his petition for certiorari in the appellate court and even at this stage, may not be permitted to simply sprout from nowhere for such subtle experiment is proscribed by the omnibus motion rule under Section 8, Rule 15 of the Revised Rules of Court, thus:

"A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived."

The spirit that surrounds the foregoing statutory norm is to require the movant to raise all available exceptions for relief during a single opportunity so that multiple and piece-meal objections may be avoided (Rafanan, et al. vs. Rafanan, 98 Phil. 162 [1955]; 1 Martin, Rules of Court with Notes and Comments, 1989 Rev. Edition, p. 492; Savit vs. Rodas, 73 Phil. 310 [1941]).

Another mistaken notion entertained by petitioner concerns the impropriety of issuing the writ of attachment on August 11, 1989 when he "was not yet a defendant in this case." This erroneous perception seems to suggest that jurisdiction over the person of petitioner, as defendant below, must initially attach before the provisional remedy involved herein can be requested by a plaintiff. A contrario, Chief Justice Narvasa obliterated this unfounded assertion in Davao Light and Power Co., Inc. vs. Court of Appeals (204 SCRA 343 [1991]) whose dissertation on the subject as related and applied to the present inquiry is quite enlightening:

"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 the 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 this 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.

"An action or proceeding is commenced by the filing of the complaint or other initiatory pleading. By that act, the jurisdiction of the court over the subject matter or nature of the action or proceeding is invoked or called into activity, and it is thus that the court acquires jurisdiction over said subject matter or nature of the action. And it is, by that self-same act of the plaintiff (or petitioner) of filing the complaint (or other appropriate pleading) ? by which he signifies his submission to the court's power and authority -that jurisdiction is acquired by the court over his person. On the other hand, jurisdiction over the person of the defendant is obtained, as above stated, by the service of summons or other coercive process upon him or by his voluntary submission to the authority of the court.

"The events that follow the filing of the complaint as a matter of routine are well known. After the complaint is filed, summons issues to the defendant, the summons is then transmitted to the sheriff, and finally, service of the summons is effected on the defendant in any of the ways authorized by the Rules of Court. There is thus ordinarily some appreciable interval of time between the day of the filing of the complaint and the day of service of summons of the defendant. During this period, different acts may be done by the plaintiff or by the Court, which are of unquestionable validity and propriety. Among these, for example, are the appointment of a guardian ad litem, the grant of authority to the plaintiff to prosecute the suit as a pauper litigant, the amendment of the complaint by the plaintiff as a matter of right without leave of court, authorization by the Court of service of summons by publication, the dismissal of the action by the plaintiff on mere notice.

"This, too, is true with regard to the provisional remedies of preliminary attachment, preliminary injunction, receivership or replevin. They may be validly and properly applied for and granted even before the defendant is summoned or is heard from.

"A preliminary attachment may be defined, paraphrasing the Rules of Court, as the provisional remedy in virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the court as security for the satisfaction of any judgment that may be recovered. It is a remedy which is purely statutory in respect of which the law requires a strict construction of the provisions granting it. Withal no principle, statutory or jurisprudential, prohibits its issuance by any court before acquisition of jurisdiction over the person of the defendant.

"Rule 57 in fact speaks of the grant of the remedy "at the commencement of the action or at any time thereafter." The phrase, "at the commencement of the action," obviously refers to the date of the filing of the complaint - which, as above pointed out, is the date that marks "the commencement of the action; and the reference plainly is to a time before summons is served on the defendant, or even before summons issues. What the rule is saying quite clearly is that after an action is properly commenced - by the filing of the complaint and the payment of all requisite docket and other fees - the plaintiff may apply for and obtain a writ of preliminary attachment upon 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 (counterclaim, 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." (at pp. 347-350.)

Petitioner seeks to capitalize on the legal repercussion that ipso facto took place when the complaint against him was amended. He proffers the idea that the extinction of a complaint via a superseding one carries with it the cessation of the ancillary writ of preliminary attachment. We could have agreed with petitioner along this line had he expounded the adverse aftermath of an amended complaint in his omnibus motion. But the four corners of his motion in this respect filed on September 5, 1990 are circumscribed by other salient points set forth by Us relative to the propriety of the assailed writ itself. This being so, petitioner's eleventh hour effort in pressing a crucial factor for exculpation must be rendered ineffective and barred by the omnibus motion rule.

Lastly, petitioner is of the belief that his abode at Quezon City since 1972 is a family home within the purview of the Family Code and therefore should not have been subjected to the vexatious writ. Yet, petitioner must concede that respondent court properly applied the discussion conveyed by Justice Gancayco in this regard when he spoke for the First Division of this Court in *Modequillo vs. Brevia* (185 SCRA 766 [1990]) that:

"Article 155 of the Family Code also provides as follows:

'Art. 155. The family home shall be exempt from execution, forced sale or attachment except:

- (1) For nonpayment of taxes;
- (2) For debts incurred prior to the constitution of the family home;
- (3) For debts secured by mortgages on the premises before or after such constitution; and
- (4) For debts due to laborers, mechanics, architects, builders, material-men and others who have rendered service or furnished material for the construction of the building.'

"The exemption provided as aforesaid is effective from the time of the constitution of the family home as such, and lasts so long as any of its beneficiaries actually resides therein.

"In the present case, the residential house and lot of petitioner was not constituted as a family home whether judicially or extrajudicially under the Civil Code. It became a family home by operation of law only under Article 153 of the Family Code. It is deemed constituted as a family home upon the effectivity of the Family Code on August 3, 1988 not August 4, one year after its publication in the Manila Chronicle on August 4, 1987 (1988 being a leap year).

"The contention of petitioner that it should be considered a family home from the time it was occupied by petitioner and his family in 1969 is not well-taken. Under Article 162 of the Family Code, it is provided that "the provisions of this Chapter shall also govern existing family residences insofar as said provisions are applicable." It does not mean that Articles 152 and 153 of said Code have a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code. Article 162 simply means that all existing family residences at the time of the effectivity of the Family Code, are considered family homes and are prospectively entitled to the benefits accorded to a family home under the Family Code. Article 162 does not state that the provisions of Chapter 2, Title V have a retroactive effect.

"Is the family home of petitioner exempt from execution of the money judgment aforesaid? No. The debt or liability which was the basis of the judgment arose or was incurred at the time of the vehicular accident on March 16, 1976 and the money judgment arising therefrom was rendered by the appellate court on January 29, 1988. Both preceded the effectivity of the Family Code on August 3, 1988. This case does not fall under the exemptions from execution provided in the Family Code." (at pp. 771--772.)

Verily, according to petitioner, his debt was incurred in 1987 or prior to the effectivity on August 3, 1988 of the Family Code (page 17, petition; page 22, Rollo). This fact alone will militate heavily against the so-called exemption by sheer force of exclusion embodied under paragraph 2, Article 155 of the Family Code cited in *Modequillo*.

WHEREFORE, the petition is hereby DISMISSED, with costs against petitioner.

SO ORDERED.

Gutierrez, Jr., Acting C.J., (Chairman), J., I concur on the understanding that the writ of attachment may issue as abovementioned but the defendant is bound only upon service of summons.

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

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