

**J.L. BERNARDO CONSTRUCTION, REPRESENTED BY
ATTORNEYS-IN-FACT SANTIAGO R. SUGAY, EDWIN A. SUGAY AND
FERNANDO S.A. ERANA, SANTIAGO R. SUGAY, EDWIN A. SUGAY AND
FERNANDO S. A. ERAN...**

G.R. No. 105827. January 31, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This petition for certiorari under Rule 65 seeks to annul and set aside the following:

- Decision dated February 6, 1992 issued by the Eleventh Division of the Court of Appeals in CA-G.R. No. 26336 which nullified the order of the Regional Trial Court of Cabanatuan City in Civil Case No. 1016-AF granting plaintiffs (petitioners herein) a writ of attachment and a contractor's lien upon the San Antonio Public Market; and
- Resolution dated June 10, 1992 issued by the former Eleventh Division of the Court of Appeals in CA-G.R. No. 26336 denying the motions for reconsideration filed by both parties.

The factual antecedents of this case, as culled from the pleadings, are as follows:

Sometime in 1990, the municipal government of San Antonio, Nueva Ecija approved the construction of the San Antonio Public Market. The construction of the market was to be funded by the Economic Support Fund Secretariat (ESFS), a government agency working with the USAID. Under ESFS' "grant-loan-equity" financing program, the funding for the market would be composed of a (a) grant from ESFS, (b) loan extended by ESFS to the Municipality of San Antonio, and (c) equity or counterpart funds from the Municipality.

It is claimed by petitioners Santiago R. Sugay, Edwin A. Sugay, Fernando S.A. Erana and J.L. Bernardo Construction, a single proprietorship owned by Juanito L. Bernardo, that they entered into a business venture for the purpose of participating in the bidding for the public market. It was agreed by petitioners that Santiago Sugay would take the lead role and be responsible for the preparation and submission of the bid documents, financing the entire project, providing and utilizing his own equipment, providing the necessary labor, supplies and materials and making the necessary representations and doing the liaison work with the concerned government agencies.

On April 20, 1990, J.L. Bernardo Construction, thru petitioner Santiago Sugay, submitted its bid together with other qualified bidders. After evaluating the bids, the municipal pre-qualification bids and awards committee, headed by respondent Jose L. Salonga (then incumbent municipal mayor of San Antonio) as Chairman, awarded the contract to petitioners. On June 8, 1990, a Construction Agreement was entered into by the Municipality of San Antonio thru respondent Salonga and petitioner J.L. Bernardo Construction.

It is claimed by petitioners that under this Construction Agreement, the Municipality agreed to assume the

expenses for the demolition, clearing and site filling of the construction site in the amount of P1,150,000 and, in addition, to provide cash equity of P767,305.99 to be remitted directly to petitioners.

Petitioners allege that, although the whole amount of the cash equity became due, the Municipality refused to pay the same, despite repeated demands and notwithstanding that the public market was more than ninety-eight percent (98%) complete as of July 20, 1991. Furthermore, petitioners maintain that Salonga induced them to advance the expenses for the demolition, clearing and site filling work by making representations that the Municipality had the financial capability to reimburse them later on. However, petitioners claim that they have not been reimbursed for their expenses.[1]

On July 31, 1991, J.L. Bernardo Construction, Santiago Sugay, Edwin Sugay and Fernando Erana, with the latter three bringing the case in their own personal capacities and also in representation of J.L. Bernardo Construction, filed a complaint for breach of contract, specific performance, and collection of a sum of money, with prayer for preliminary attachment and enforcement of contractor's lien against the Municipality of San Antonio, Nueva Ecija and Salonga, in his personal and official capacity as municipal mayor. After defendants filed their answer, the Regional Trial Court held hearings on the ancillary remedies prayed for by plaintiffs.[2]

On September 5, 1991, the Regional Trial Court issued the writ of preliminary attachment prayed for by plaintiffs. It also granted J.L. Bernardo Construction the right to maintain possession of the public market and to operate the same. The dispositive portion of the decision provides:

IN VIEW OF THE FOREGOING DISQUISITION, the Court finds the auxiliary reliefs of attachment prayed for by the plaintiffs to be well-taken and the same is hereby GRANTED. Conformably thereto, let a writ of preliminary attachment be issued upon the filing by the plaintiffs of a bond in the amount of P2,653,576.84 to answer for costs and damages which the defendants may suffer should the Court finally adjudged (sic) that the plaintiffs are not entitled to the said attachment, and thereafter, the Deputy Sheriff of this court is hereby ordered to attach the properties of the defendants JOSE LAPUZ SALONGA and the MUNICIPALITY OF SAN ANTONIO, NUEVA ECIJA which are not exempt from execution.

CORROLARILY, the Court grants the plaintiffs J.L. BERNARDO CONSTRUCTION, represented by SANTIAGO R. SUGAY, EDWIN A. SUGAY and FERNANDO S.A. ERANA, the authority to hold on to the possession of the public market in question and to open and operate the same based on fair and reasonable guidelines and other mechanics of operation to be submitted by plaintiffs within fifteen (15) days from their receipt of this Order which shall be subject to Court's approval and to deposit the income they may derive therefrom to the Provincial Treasurer of Nueva Ecija after deducting the necessary expenses for the operation and management of said market, subject to further orders from this Court.

SO ORDERED.

The trial court gave credence to plaintiffs' claims that defendants were guilty of fraud in incurring their contractual obligations as evidenced by the complaint and the affidavits of plaintiffs Santiago Sugay and Erana. The court ruled that defendants' acts of "...obtaining property, credit or services by false representations as to material facts made by the defendant to the plaintiff with intent to deceive constitutes fraud warranting attachment" and that "... a debt is considered fraudulently contracted if at the time of contracting it, the debtor entertained an intention not to pay."

With regards to the contractor's lien, the trial court held that since plaintiffs have not been reimbursed for the cash equity and for the demolition, clearing and site filling expenses, they stand in the position of an unpaid contractor and as such are entitled, pursuant to articles 2242 and 2243 of the Civil Code, to a lien in the amount of P2,653,576.84 (as of August 1, 1991), excluding the other claimed damages, attorney's fees and litigation expenses, upon the public market which they constructed. It was explained that, although the usual way of

enforcing a lien is by a decree for the sale of the property and the application of the proceeds to the payment of the debt secured by it, it is more practical and reasonable to permit plaintiffs to operate the public market and to apply to their claims the income derived therefrom, in the form of rentals and goodwill from the prospective stallholders of the market, as prayed for by plaintiffs.

The trial court made short shrift of defendants' argument that the case was not instituted in the name of the real parties-in-interest. It explained that the plaintiff in the cause of action for money claims for unpaid cash equity and demolition and site filling expenses is J.L. Bernardo Construction, while the plaintiffs in the claim for damages for violation of their rights under the Civil Code provisions on human relations are plaintiffs Santiago Sugay, Edwin Sugay and Erana.[3]

The defendants moved for reconsideration of the trial court's order, to which the plaintiffs filed an opposition. On October 10, 1991 the motion was denied. The following day, the trial court approved the guidelines for the operation of the San Antonio Public Market filed by plaintiffs.

Respondent Salonga filed a motion for the approval of his counterbond which was treated by the trial court in its October 29, 1991 order as a motion to fix counterbond and for which it scheduled a hearing on November 19, 1991.

On October 21, 1991, during the pendency of his motion, respondent Salonga filed with the Court of Appeals a petition for certiorari under Rule 65 with prayer for a writ of preliminary injunction and temporary restraining order which case was docketed as CA-G.R. SP No. 26336.[4] Petitioners opposed the petition, claiming that respondent had in fact a plain, speedy and adequate remedy as evidenced by the filing of a motion to approve counter-bond with the trial court.[5]

On February 6, 1992, the Court of Appeals reversed the trial court's decision and ruled in favor of Salonga. The dispositive portion of its decision states –

FOR ALL THE FOREGOING, the petition is hereby granted as follows:

- The respondent judge's ORDER dated September 5, 1991 for the issuance of a writ of attachment and for the enforcement of a contractor's lien, is hereby NULLIFIED and SET ASIDE; the writ of attachment issued pursuant thereto and the proceedings conducted by the Sheriffs assigned to implement the same are, as a consequence, also hereby NULLIFIED and SET ASIDE;
- The respondent judge's ORDER dated October 11, 1991 further enforcing the contractor's lien and approving the guidelines for the operation of the San Antonio Public Market is also NULLIFIED and SET ASIDE.

Petitioner's prayers for the dismissal of Civil Case No. 1016 (now pending before respondent judge) and for his deletion from said case as defendant in his private capacity are, however, DENIED.

The respondent judge may now proceed to hearing of Civil Case No. 1016 on the merits.

SO ORDERED.

The appellate court reasoned that since the Construction Agreement was only between Juanito Bernardo and the Municipality of San Antonio, and since there is no sworn statement by Juanito Bernardo alleging that he had been deceived or misled by Mayor Salonga or the Municipality of San Antonio, it is apparent that the applicant has not proven that the defendants are guilty of inceptive fraud in contracting the debt or incurring the obligation, pursuant to Rule 57 of the Rules of Court, and therefore, the writ of attachment should be struck down for having been improvidently and irregularly issued.

The filing of a motion for the approval of counter-bond by defendants did not, according to the Court of Appeals, render the petition for certiorari premature. The appellate court held that such motion could not cure the defect in the issuance of the writ of attachment and that, moreover, the defendants' motion was filed by them "without prejudice to the petition for certiorari."

As to the contractor's lien, the appellate court ruled that Articles 2242 of the Civil Code finds application only in the context of insolvency proceedings, as expressly stated in Article 2243. Even if it is conceded that plaintiffs are entitled to retain possession of the market under its contractor's lien, the appellate court held that the same right cannot be expanded to include the right to use the building. Therefore, the trial court's grant of authority to plaintiffs to operate the San Antonio Public Market amounts to a grave abuse of discretion.

With regard to the allegations of defendants that plaintiffs are not the proper parties, the Court of Appeals ruled that such issue should be assigned as an error by defendants later on should the outcome of the case be adverse to the latter.[6]

Petitioners are now before this Court assailing the appellate court's decision. In their petition, they make the following assignment of errors:

- THE DECISION IS CONTRARY TO LAW IN THAT THE COURT OF APPEALS OVERLOOKED AND/OR DISREGARDED THE FUNDAMENTAL REQUIREMENT AND ESTABLISHED SUPREME COURT DECISIONS IN ACTIONS FOR CERTIORARI CONSIDERING THAT THE FILING OF THE PETITION BY RESPONDENT SALONGA WITH THE COURT OF APPEALS IS OBVIOUSLY PREMATURE AND IMPROPER SINCE THERE ADMITTEDLY EXISTS A PLAIN, SPEEDY AND ADEQUATE REMEDY AVAILABLE TO RESPONDENT SALONGA WHICH IS HIS UNRESOLVED "MOTION TO APPROVE COUNTERBOND" PENDING WITH THE TRIAL COURT.

- IN COMPLETE DISREGARD OF ESTABLISHED JURISPRUDENCE, THE COURT OF APPEALS HAS SKIRTED AND/OR FAILED TO CONSIDER/DISREGARDED THE EQUALLY CRUCIAL ISSUE THAT THE QUESTIONED ORDERS ARE CLEARLY AND ADMITTEDLY INTERLOCUTORY IN NATURE AND THEREFORE THEY CANNOT BE THE PROPER SUBJECT OF AN ACTION FOR CERTIORARI; PROOF THAT THE ORDERS ASSAILED BY RESPONDENT SALONGA ARE INTERLOCUTORY IN CHARACTER IS THE DISPOSITIVE PORTION OF THE DECISION WHEN THE COURT OF APPEALS SAID "THE RESPONDENT JUDGE MAY NOW PROCEED TO HEARING OF SAID CIVIL CASE NO. 1016 ON THE MERITS"; PETITION FILED BY RESPONDENT SALONGA WITH THE COURT OF APPEALS SHOULD HAVE BEEN DISMISSED OUTRIGHTLY AS SOUGHT BY HEREIN PETITIONERS IN THEIR VARIOUS UNACTED PLEADINGS.

- THE DECISION IS BASED ON FINDINGS OF FACTS AND CONCLUSIONS WHICH ARE NOT ONLY GROSSLY ERRONEOUS BUT ARE SQUARELY CONTRADICTED BY THE EVIDENCE ON RECORD.

- THE COURT OF APPEALS HAS CLEARLY MISAPPRECIATED, MISREAD AND DISREGARDED HEREIN PETITIONERS' CAUSES OF ACTION AGAINST RESPONDENT SALONGA AND HIS CO-RESPONDENT MUNICIPALITY OF SAN ANTONIO, NUEVA ECIJA.

- THE COURT OF APPEALS HAS MADE ERRONEOUS AND CONTRADICTORY CONCLUSIONS AND FINDINGS ON THE ISSUE OF "REAL PARTY IN INTEREST" IN COMPLETE DISREGARD OF THE POWERS AND AUTHORITY GRANTED BY JUANITO L. BERNARDO CONSTRUCTION TO HEREIN PETITIONERS.

- THE COURT OF APPEALS HAS SKIRTED THE IMPORTANT ISSUE OF "AGENCY COUPLED WITH

AN INTEREST."

- THE COURT OF APPEALS WENT BEYOND THE ISSUES OF THE CERTIORARI CASE AND ITS FINDINGS AND CONCLUSIONS ON ISSUES NOT RELATED TO THE CASE FOR CERTIORARI ARE CONTRARY TO THE PLEADINGS AND DO NOT CONFORM TO THE EVIDENCE ON RECORD.

- THE COURT OF APPEALS HAS LIKEWISE DISREGARDED THE PRECEPT THAT CONCLUSIONS AND FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT ON APPEAL AND SHOULD NOT BE DISTURBED SINCE THERE IS NO STRONG AND COGENT REASON WHATSOEVER TO OVERCOME THE WELL-WRITTEN AND DETAILED AND ESTABLISHED FACTUAL FINDINGS OF THE TRIAL COURT.

- PETITIONERS HAVE STRONG REASONS TO BELIEVE THAT THE DECISION OF THE COURT OF APPEALS WAS ISSUED WITH SERIOUS INJUSTICE AND AGAINST THE TENETS OF FAIR PLAY SINCE THE DECISION HAD BEEN KNOWN TO AS IT WAS OPENLY AND PUBLICLY ANNOUNCED BY RESPONDENT SALONGA LONG BEFORE IT WAS "PROMULGATED" BY THE COURT OF APPEALS.

The various issues raised by petitioners may be restated in a more summary manner as -

- Whether or not the Court of Appeals correctly assumed jurisdiction over the petition for certiorari filed by respondents herein assailing the trial court's interlocutory orders granting the writ of attachment and the contractor's lien?

- Whether or not the Court of Appeals committed reversible errors of law in its decision?

A petition for certiorari may be filed in case a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[7]

The office of a writ of certiorari is restricted to truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.[8] We held in a recent case that certiorari may be issued "only where it is clearly shown that there is a patent and gross abuse of discretion as to amount to an evasion of positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility." [9]

As a general rule, an interlocutory order is not appealable until after the rendition of the judgment on the merits for a contrary rule would delay the administration of justice and unduly burden the courts.[10] However, we have held that certiorari is an appropriate remedy to assail an interlocutory order (1) when the tribunal issued such order without or in excess of jurisdiction or with grave abuse of discretion and (2) when the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief.[11]

We hold that the petition for certiorari filed by Salonga and the Municipality with the Court of Appeals questioning the writ of attachment issued by the trial court should not have been given due course for they still had recourse to a plain, speedy and adequate remedy - the filing of a motion to fix the counter-bond, which they in fact filed with the trial court, the grant of which would effectively prevent the issuance of the writ of attachment. Moreover, they could also have filed a motion to discharge the attachment for having been improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive.[12] With such remedies still available to the Municipality and Salonga, the filing of a petition for certiorari with the Court of

Appeals insofar as it questions the order of attachment was clearly premature.

However, with regards to the contractor's lien, we uphold the appellate court's ruling reversing the trial court's grant of a contractor's lien in favor of petitioners.

Articles 2241 and 2242 of the Civil Code enumerates certain credits which enjoy preference with respect to specific personal or real property of the debtor. Specifically, the contractor's lien claimed by petitioners is granted under the third paragraph of Article 2242 which provides that the claims of contractors engaged in the construction, reconstruction or repair of buildings or other works shall be preferred with respect to the specific building or other immovable property constructed.[13]

However, Article 2242 only finds application when there is a concurrence of credits, i.e. when the same specific property of the debtor is subjected to the claims of several creditors and the value of such property of the debtor is insufficient to pay in full all the creditors. In such a situation, the question of preference will arise, that is, there will be a need to determine which of the creditors will be paid ahead of the others.[14] Fundamental tenets of due process will dictate that this statutory lien should then only be enforced in the context of some kind of a proceeding where the claims of all the preferred creditors may be bindingly adjudicated, such as insolvency proceedings.[15]

This is made explicit by Article 2243 which states that the claims and liens enumerated in articles 2241 and 2242 shall be considered as mortgages or pledges of real or personal property, or liens within the purview of legal provisions governing insolvency.[16]

The action filed by petitioners in the trial court does not partake of the nature of an insolvency proceeding. It is basically for specific performance and damages.[17] Thus, even if it is finally adjudicated that petitioners herein actually stand in the position of unpaid contractors and are entitled to invoke the contractor's lien granted under Article 2242, such lien cannot be enforced in the present action for there is no way of determining whether or not there exist other preferred creditors with claims over the San Antonio Public Market. The records do not contain any allegation that petitioners are the only creditors with respect to such property. The fact that no third party claims have been filed in the trial court will not bar other creditors from subsequently bringing actions and claiming that they also have preferred liens against the property involved.[18]

Our decision herein is consistent with our ruling in *Philippine Savings Bank v. Lantin*,[19] wherein we also disallowed the contractor from enforcing his lien pursuant to Article 2242 of the Civil Code in an action filed by him for the collection of unpaid construction costs.

It not having been alleged in their pleadings that they have any rights as a mortgagee under the contracts, petitioners may only obtain possession and use of the public market by means of a preliminary attachment upon such property, in the event that they obtain a favorable judgment in the trial court. Under our rules of procedure, a writ of attachment over registered real property is enforced by the sheriff by filing with the registry of deeds a copy of the order of attachment, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any.[20] If judgment be recovered by the attaching party and execution issue thereon, the sheriff may cause the judgment to be satisfied by selling so much of the property as may be necessary to satisfy the judgment.[21] Only in the event that petitioners are able to purchase the property will they then acquire possession and use of the same.

Clearly, the trial court's order of September 5, 1991 granting possession and use of the public market to petitioners does not adhere to the procedure for attachment laid out in the Rules of Court. In issuing such an order,

the trial court gravely abused its discretion and the appellate court's nullification of the same should be sustained.

At this stage of the case, there is no need to pass upon the question of whether or not petitioners herein are the real parties-in-interest. In the event that judgment is rendered against Salonga and the Municipality, this issue may be assigned as an error in their appeal from such judgment.

WHEREFORE, we UPHOLD the Court of Appeal's Decision dated February 6, 1992 in CA-G.R. SP No. 26336 insofar as it nullifies the contractor's lien granted by the trial court in favor of petitioners in its September 5, 1991 Order. Consequently, we also UPHOLD the appellate court's nullification of the trial court's October 11, 1991 Order approving the guidelines for the operation of the San Antonio Public Market. However, we REVERSE the appellate court's order nullifying the writ of attachment granted by the trial court.

No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Rollo, 16-19.

[2] Ibid., 63-96.

[3] Ibid., 106-126.

[4] Ibid., 128-146.

[5] Ibid., 55.

[6] Ibid., 52-62.

[7] *Abad v. National Labor Relations Commission*, 286 SCRA 355 (1998); Rules of Court, Rule 65, sec. 1.

[8] *Fortich v. Corona*, 289 SCRA 624 (1998).

[9] *Lalican v. Vergara*, 276 SCRA 518 (1997).

[10] *Id.*

[11] *Pearson v. Intermediate Appellate Court*, 295 SCRA 27 (1998); *Casil v. Court of Appeals*, 285 SCRA 264 (1998).

[12] Rules of Court, Rule 57, sec. 13.

[13] Article 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right;

(1)

Taxes due upon the land or building;

(2)

For the unpaid price of real property sold, upon the immovables sold.

(3)

Claims of laborers, masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;

(4)

Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works;

(5)

Mortgage credits recorded in the Registry of Property, upon the real estate mortgaged;

(6)

Expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovables preserved or improved;

(7)

Credits annotated in the Registry of Property, in virtue of a judicial order, by attachments or execution, upon the property affected, and only as to later credits;

(8)

Claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided;

(9)

Claims of donors of real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated;

(10)

Credits of insurers, upon the property insured, for the insurance premium for two years.

[14] Philippine Savings Bank v. Lantin, 124 SCRA 476 (1983).

[15] Id.

[16] De Barretto v. Villanueva, 6 SCRA 928 (1962), citing the Report of the Code Commission, provides:

"The question as to whether the Civil Code and the Insolvency Law can be harmonized is settled by this Article (2243). The preferences named in Articles 2261 and 2262 (now 2241 and 2242) are to enforced in accordance with the Insolvency Law."

[17] Rollo, 37-38.

[18] Philippine Savings Bank v. Lantin, supra.

[19] Id.

[20] Rules of Court, Rule 57, sec. 7.

[21] Id. sec. 15.

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