

**EMMANUEL C. OÑATE AND ECON HOLDINGS CORPORATION,
PETITIONERS, VS. HON. ZEUS C. ABROGAR, AS PRESIDING JUDGE OF
BRANCH 150 OF THE REGIONAL TRIAL COURT OF MAKATI, AND SUN
LIFE ASSU...**

G.R. No. 107303. February 23, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

These are motions separately filed by petitioners, seeking reconsideration of the decision of the Second Division holding that although the levy on attachment of petitioners' properties had been made before the trial court acquired jurisdiction over them, the subsequent service of summons on them cured the invalidity of the attachment.

The motions were referred to the Court en banc in view of the fact that in another decision rendered by the Third Division on the same question, it was held that the subsequent acquisition of jurisdiction over the person of a defendant does not render valid the previous attachment of his property. [1] The Court en banc accepted the referral and now issues this resolution.

Petitioners maintain that, in accordance with prior decisions of this Court, the attachment of their properties was void because the trial court had not at that time acquired jurisdiction over them and that the subsequent service of summons on them did not cure the invalidity of the levy. They further contend that the examination of the books and ledgers of the Bank of the Philippine Islands (BPI), the Philippine National Bank (PNB) and the Urban Bank was a "fishing expedition" which the trial court should not have authorized because petitioner Emmanuel C. Oñate, whose accounts were examined, was not a signatory to any of the documents evidencing the transaction between Sun Life Assurance of Canada (Sun Life) and Brunner Development Corporation (Brunner).

On the other hand private respondent Sun Life stresses the fact that the trial court eventually acquired jurisdiction over petitioners and contends that this cured the invalidity of the attachment of petitioners' properties. With respect to the second contention of petitioners, private respondent argues that the examination of petitioner Oñate's bank account was justified because it was he who signed checks transferring huge amounts from Brunner's account in the Urban Bank to the PNB and the BPI.

I.

At the outset, it should be stated that the Court does not in the least doubt the validity of the writ of attachment issued in these cases. The fact that a criminal complaint for estafa which Sun Life had filed against petitioner Oñate and Noel L. Diño, president of Brunner, was dismissed by the Office of the Provincial Prosecutor is immaterial to the resolution of the motions for reconsideration. In the first place, the dismissal, although later affirmed by the Department of Justice, is pending reconsideration. In the second place, since the issue in the case below is precisely whether petitioners were guilty of fraud in contracting their obligation, resolution of the question must await the trial of the main case.

However, we find petitioners' contention respecting the validity of the attachment of their properties to be well taken. We hold that the attachment of petitioners' properties prior to the acquisition of jurisdiction by the respondent court is void and that the subsequent service of summons on petitioners did not cure the invalidity of such attachment. The records show that before the summons and the complaint were served on petitioners Oñate and Econ Holdings Corporation (Econ) on January 9, 1992, Deputy Sheriff Arturo C. Flores had already served on January 3, 1992 notices of garnishment on the PNB Head Office [2] and on all its Metro Manila branches and on A.B. Capital. [3] In addition he made other levies before the service of summons on petitioners, to wit:

— On January 6, 1992, he served notices of garnishment on the Urban Bank Head Office and all its Metro Manila branches, [4] and on the BPI. [5]

— On the same day, he levied on attachment Oñate's condominium unit at the Amorsolo Apartments Condominium Project, covered by Condominium Certificate of Title No. S-1758. [6]

— On January 7, 1992, he served notice of garnishment on the Union Bank of the Philippines. [7]

— On January 8, 1992, he attached Oñate's lot, consisting of 1,256 square meters, at the Ayala-Alabang Subdivision, Alabang, Muntinlupa, covered by TCT No. 112673. [8]

First. The Deputy Sheriff claims that he had tried to serve the summons with a copy of the complaint on petitioners on January 3, 1992 but that there was no one in the offices of petitioners on whom he could make a service. This is denied by petitioners who claim that their office was always open and that Adeliza M. Jaranilla, Econ's Chief Accountant who eventually received summons on behalf of Oñate and Econ, was present that day. Whatever the truth is, the fact is that no other attempt was made by the sheriff to serve the summons except on January 9, 1992, in the case of Oñate and Econ, and on January 16, 1992, in the case of Diño. Meantime, he made several levies, which indicates a predisposition to serve the writ of attachment in anticipation of the eventual acquisition by the court of jurisdiction over petitioners.

Second. Private respondent invokes the ruling in *Davao Light & Power Co. v. Court of Appeals* [9] in support of its contention that the subsequent acquisition of jurisdiction by the court cured the defect in the proceedings for attachment. It cites the following portion of the decision in *Davao Light and Power*, written by Justice, now Chief Justice, Narvasa:

It goes without saying that whatever be the acts done by the Court prior to the acquisition of jurisdiction over the person of the defendant, as above indicated — issuance of summons, order of attachment and writ of attachment (and/or appointment of guardian ad litem, or grant of authority to the plaintiff to prosecute the suit as a pauper litigant, or amendment of the complaint by the plaintiff as a matter of right without leave of court — and however valid and proper they might otherwise be, these do not and cannot bind and affect the defendant until and unless jurisdiction over his person is eventually obtained by the court, either by service on him of summons or other coercive process or his voluntary submission to the court's authority. Hence, when the sheriff or other proper officer commences implementation of the writ of attachment, it is essential that he serve on the defendant not only a copy of the applicant's affidavit and attachment bond, and of the order of attachment, as explicitly required by Section 5 of Rule 57, but also the summons addressed to said defendant as well as a copy of the complaint and order for appointment of guardian ad litem, if any, as also explicitly directed by Section 3, Rule 14 of the Rules of Court. [10]

It is clear from the above excerpt, however, that while the petition for a writ of preliminary attachment may be granted and the writ itself issued before the defendant is summoned, the writ of attachment cannot be implemented until jurisdiction over the person of the defendant is obtained. As this Court explained, "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." [11]

Further clarification on this point was made in *Cuartero v. Court of Appeals*, [12] in which it was held:

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.

Private respondent argues that the case of *Cuartero* itself provides for an exception as shown in the statement that "the court [in issuing the writ of preliminary attachment] cannot bind and affect the defendant until jurisdiction is eventually obtained" and that since petitioners were subsequently served with summons, no question can be raised against the validity of the attachment of petitioners' properties before such service.

The statement in question has been taken out of context. The full statement reads:

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. [13]

Indeed, as this Court through its First Division has ruled on facts similar to those in these cases, the attachment of properties before the service of summons on the defendant is invalid, even though the court later acquires jurisdiction over the defendant. [14] At the very least, then, the writ of attachment must be served simultaneously with the service of summons before the writ may be enforced. As the properties of the petitioners were attached by the sheriff before he had served the summons on them, the levies made must be considered void.

Third. Nor can the attachment of petitioners' properties before the service of summons on them was made be justified on the ground that unless the writ was then enforced, petitioners would be alerted and might dispose of their properties before summons could be served on them.

The Rules of Court do not require that issuance of the writ be kept a secret until it can be enforced. Otherwise in no case may the service of summons on the defendant precede the levy on attachment. To the contrary, Rule 57, § 13 allows the defendant to move to discharge the attachment even before any attachment is actually levied upon, thus negating any inference that before its enforcement, the issuance of the writ must be kept secret. Rule 57, § 13 provides:

SEC. 13. Discharge of attachment for improper or irregular issuance. — The party whose property has been attached may also, at any time either before or after the release of the attached property, or before any attachment shall have been actually levied, upon reasonable notice to the attaching creditor, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order to discharge the attachment on the ground that the same was improperly or irregularly issued. . . . (Emphasis added).

As this Court pointed out in *Davao Light and Power*, [15] the lifting of an attachment "may be resorted to even

before any property has been levied on."

It is indeed true that proceedings for the issuance of a writ of attachment are generally *ex parte*. In *Mindanao Savings and Loans Ass'n v. Court of Appeals* [16] it was held that no hearing is required for the issuance of a writ of attachment because this "would defeat the objective of the remedy [because] the time which such hearing would take could be enough to enable the defendant to abscond or dispose of his property before a writ of attachment issues." It is not, however, notice to defendant that is sought to be avoided but the "time which such hearing would take" because of the possibility that defendant may delay the hearing to be able to dispose of his properties. On the contrary there may in fact be a need for a hearing before the writ is issued as where the issue of fraudulent disposal of property is raised. [17] It is not true that there should be no hearing lest a defendant learns of the application for attachment and he removes his properties before the writ can be enforced.

On the other hand, to authorize the attachment of property even before jurisdiction over the person of the defendant is acquired through the service of summons or his voluntary appearance could lead to abuse. It is entirely possible that the defendant may not know of the filing of a case against him and consequently may not be able to take steps to protect his interests.

Nor may sheriff's failure to abide by the law be excused on the pretext that after all the court later acquired jurisdiction over petitioners. More important than the need for insuring success in the enforcement of the writ is the need for affirming a principle by insisting on that "most fundamental of all requisites — the jurisdiction of the court issuing attachment over the person of the defendant." [18] It may be that the same result would follow from requiring that a new writ be served all over again. The symbolic significance of such an act, however, is that it would affirm our commitment to the rule of law. [19]

II.

We likewise find petitioners' second contention to be meritorious. The records show that, on January 21, 1992, respondent judge ordered the examination of the books of accounts and ledgers of Brunner at the Urban Bank, Legaspi Village branch, and on January 30, 1992 the records of account of petitioner Oñate at the BPI, even as he ordered the PNB to produce the records regarding certain checks deposited in it.

First. Sun Life defends these court orders on the ground that the money paid by it to Brunner was subsequently withdrawn from the Urban Bank after it had been deposited by Brunner and then transferred to petitioner Oñate's account in the BPI and to the unnamed account in the PNB.

The issue before the trial court, however, concerns the nature of the transaction between petitioner Brunner and Sun Life. In its complaint, Sun Life alleges that Oñate, in his personal capacity and as president of Econ, offered to sell to Sun Life P46,990,000.00 worth of treasury bills owned by Econ and Brunner at the discounted price of P39,526,500.82; that on November 27, 1991, Sun Life paid the price by means of a check payable to Brunner; that Brunner, through its president Noel L. Diño, issued to it a receipt with undertaking to deliver the treasury bills to Sun Life; and that on December 4, 1991, Brunner and Diño delivered instead a promissory note, dated November 27, 1991, in which it was made to appear that the transaction was a money placement instead of sale of treasury bills.

Thus the issue is whether the money paid to Brunner was the consideration for the sale of treasury bills, as Sun Life claims, or whether it was money intended for placement, as petitioners allege. Petitioners do not deny receipt of P39,526,500.82 from Sun Life. Hence, whether the transaction is considered a sale or money placement does not make the money the "subject matter of litigation" within the meaning of § 2 of Republic Act No. 1405 which prohibits the disclosure or inquiry into bank deposits except "in cases where the money deposited or invested is

the subject matter of litigation." Nor will it matter whether the money was "swindled" as Sun Life contends.

Second. The examination of bank books and records cannot be justified under Rule 57, § 10. This provision states:

SEC. 10. - Examination of party whose property is attached and persons indebted to him or controlling his property; delivery of property to officer. — Any person owing debts to the party whose property is attached or having in his possession or under his control any credit or other personal property belonging to such party, may be required to attend before the court in which the action is pending, or before a commissioner appointed by the court, and be examined on oath respecting the same. The party whose property is attached may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court may, after such examination, order personal property capable of manual delivery belonging to him, in the possession of the person so required to attend before the court, to be delivered to the clerk of the court, sheriff, or other proper officer on such terms as may be just, having reference to any lien thereon or claims against the same, to await the judgment in the action.

Since, as already stated, the attachment of petitioners' properties was invalid, the examination ordered in connection with such attachment must likewise be considered invalid. Under Rule 57, § 10, as quoted above, such examination is only proper where the property of the person examined has been validly attached.

WHEREFORE, the decision dated February 21, 1994 is RECONSIDERED and SET ASIDE and another one is rendered GRANTING the petitions for certiorari and SETTING ASIDE the orders dated February 26, 1992 and September 9, 1992, insofar as they authorize the attachment of petitioners' properties and the examination of bank books and records pertaining to their accounts, and ORDERING respondent Judge Zeus C. Abrogar —

(1) forthwith to issue an alias writ of attachment upon the same bond furnished by respondent Sun Life Assurance Company of Canada;

(2) direct the sheriff to lift the levy under the original writ of attachment and simultaneously levy on the same properties pursuant to the alias writ so issued; and

(3) take such steps as may be necessary to insure that there will be no intervening period between the lifting of the original attachment and the subsequent levy under the alias writ.

Petitioners may file the necessary counterbond to prevent subsequent levy or to dissolve the attachment after such levy.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Francisco, JJ, concur.

[1] H.B. Zachry Co. v. Court of Appeals, 232 SCRA 329 (1994).

[2] Per Sheriff's Report but see Petition, Annex G, Rollo in G.R. No. 107303, p. 51 and Petition, Annex O, Rollo in G.R. No. 107491, p. 90 which show that the notice of levy of attachment was received by PNB on January 2, 1992.

[3] Petition, Annex H, Rollo in G. R. No. 107303, p. 52 and Petition, Annex P, Rollo in G. R. No. 107491, p. 91.

[4] Petition, Annex I, Rollo in G. R. No. 107303, p. 53 and Petition, Annex U, Rollo in G. R. No. 107491, p. 99.

[5] Petition, Annex J, Rollo, in G. R. No. 107303, p. 54 and Petition, Annex Q, Rollo in G.R. No. 107491, p. 92.

[6] Petition, Annex K, Rollo in G.R. No. 107303, p. 55 and Petition, Annex V, Rollo in G.R. No. 107491, p. 100.

[7] Petition, Annex L, Rollo in G.R. No. 107303, p. 57 and Petition, Annex W, Rollo in G.R. No. 107941, p. 102.

[8] Petition, Annex M, Rollo in G.R. No. 107303, p. 58 and Petition, Annex X, Rollo in G.R. No. 107491, p. 103.

[9] 204 SCRA 343 (1991).

[10] Id. at 355-6 (Emphasis added).

[11] Id. at 357.

[12] 212 SCRA 260, 266 (1992).

[13] Id. (Emphasis added).

[14] H.B. Zachry Co. Inc. v. Court of Appeals, *supra* note 1.

[15] *Supra* note 9 (Emphasis added).

[16] 172 SCRA 480, 484 (1989).

[17] See *Carpio v. Macadaeg*, 9 SCRA 552 (1963).

[18] *Sievert v. Court of Appeals*, 168 SCRA 692, 698 (1989).

[19] Compare *Go v. Court of Appeals*, 206 SCRA 138, 162 (1992): "It may be that to require the State to accord petitioner his rights to a preliminary investigation and to bail at this point, could turn out ultimately to be largely a ceremonial exercise. But the Court is not compelled to speculate. And, in any case, it would not be idle ceremony; rather it would be a celebration by the State of the rights and liberties of its own people and a re-affirmation of its obligation and determination to respect those rights and liberties."

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