

**LORETO D. DE LA VICTORIA, AS CITY FISCAL OF MANDAUE CITY
AND IN HIS PERSONAL CAPACITY AS GARNISHEE, PETITIONER, VS.
HON. JOSE P. BURGOS, PRESIDING JUDGE, RTC, BR. XVII, CEBU CIT...**

G.R. No. 111190. June 27, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

RAUL H. SESBREÑO filed a complaint for damages against Assistant City Fiscals Bienvenido N. Mabanto, Jr., and Dario D. Rama, Jr., before the Regional Trial Court of Cebu City. After trial judgment was rendered ordering the defendants to pay P11,000.00 to the plaintiff, private respondent herein. The decision having become final and executory, on motion of the latter, the trial court ordered its execution. This order was questioned by the defendants before the Court of Appeals. However, on 15 January 1992 a writ of execution was issued.

On 4 February 1992 a notice of garnishment was served on petitioner Loreto D. de la Victoria as City Fiscal of Mandaue City where defendant Mabanto, Jr., was then detailed. The notice directed petitioner not to disburse, transfer, release or convey to any other person except to the deputy sheriff concerned the salary checks or other checks, monies, or cash due or belonging to Mabanto, Jr., under penalty of law.[1] On 10 March 1992 private respondent filed a motion before the trial court for examination of the garnishees.

On 25 May 1992 the petition pending before the Court of Appeals was dismissed. Thus the trial court, finding no more legal obstacle to act on the motion for examination of the garnishees, directed petitioner on 4 November 1992 to submit his report showing the amount of the garnished salaries of Mabanto, Jr., within fifteen (15) days from receipt[2] taking into consideration the provisions of Sec. 12, pars. (f) and (i), Rule 39 of the Rules of Court.

On 24 November 1992 private respondent filed a motion to require petitioner to explain why he should not be cited in contempt of court for failing to comply with the order of 4 November 1992.

On the other hand, on 19 January 1993 petitioner moved to quash the notice of garnishment claiming that he was not in possession of any money, funds, credit, property or anything of value belonging to Mabanto, Jr., except his salary and RATA checks, but that said checks were not yet properties of Mabanto, Jr., until delivered to him. He further claimed that, as such, they were still public funds which could not be subject to garnishment.

On 9 March 1993 the trial court denied both motions and ordered petitioner to immediately comply with its order of 4 November 1992.[3] It opined that the checks of Mabanto, Jr., had already been released through petitioner by the Department of Justice duly signed by the officer concerned. Upon service of the writ of garnishment, petitioner as custodian of the checks was under obligation to hold them for the judgment creditor. Petitioner became a virtual party to, or a forced intervenor in, the case and the trial court thereby acquired jurisdiction to bind him to its orders and processes with a view to the complete satisfaction of the judgment. Additionally, there was no sufficient reason for petitioner to hold the checks because they were no longer government funds and presumably delivered to the payee, conformably with the last sentence of Sec. 16 of the Negotiable Instruments Law.

With regard to the contempt charge, the trial court was not morally convinced of petitioner's guilt. For, while his explanation suffered from procedural infirmities nevertheless he took pains in enlightening the court by sending a written explanation dated 22 July 1992 requesting for the lifting of the notice of garnishment on the ground that the notice should have been sent to the Finance Officer of the Department of Justice. Petitioner insists that he had no authority to segregate a portion of the salary of Mabanto, Jr.. The explanation however was not submitted to the trial court for action since the stenographic reporter failed to attach it to the record.[4]

On 20 April 1993 the motion for reconsideration was denied. The trial court explained that it was not the duty of the garnishee to inquire or judge for himself whether the issuance of the order of execution, writ of execution and notice of garnishment was justified. His only duty was to turn over the garnished checks to the trial court which issued the order of execution.[5]

Petitioner raises the following relevant issues: (1) whether a check still in the hands of the maker or its duly authorized representative is owned by the payee before physical delivery to the latter; and, (2) whether the salary check of a government official or employee funded with public funds can be subject to garnishment.

Petitioner reiterates his position that the salary checks were not owned by Mabanto, Jr., because they were not yet delivered to him, and that petitioner as garnishee has no legal obligation to hold and deliver them to the trial court to be applied to Mabanto, Jr.'s judgment debt. The thesis of petitioner is that the salary checks still formed part of public funds and therefore beyond the reach of garnishment proceedings.

Petitioner has well argued his case.

Garnishment is considered as a species of attachment for reaching credits belonging to the judgment debtor owing to him from a stranger to the litigation.[6] Emphasis is laid on the phrase "belonging to the judgment debtor" since it is the focal point in resolving the issues raised.

As Assistant City Fiscal, the source of the salary of Mabanto, Jr., is public funds. He receives his compensation in the form of checks from the Department of Justice through petitioner as City Fiscal of Mandaue City and head of office. Under Sec. 16 of the Negotiable Instruments Law, every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As ordinarily understood, delivery means the transfer of the possession of the instrument by the maker or drawer with intent to transfer title to the payee and recognize him as the holder thereof.[7]

According to the trial court, the checks of Mabanto, Jr., were already released by the Department of Justice duly signed by the officer concerned through petitioner and upon service of the writ of garnishment by the sheriff petitioner was under obligation to hold them for the judgment creditor. It recognized the role of petitioner as custodian of the checks. At the same time however it considered the checks as no longer government funds and presumed delivered to the payee based on the last sentence of Sec. 16 of the Negotiable Instruments Law which states: "And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed." Yet, the presumption is not conclusive because the last portion of the provision says "until the contrary is proved." However this phrase was deleted by the trial court for no apparent reason. Proof to the contrary is its own finding that the checks were in the custody of petitioner. Inasmuch as said checks had not yet been delivered to Mabanto, Jr., they did not belong to him and still had the character of public funds. In *Tiro v. Hontanosas*[8] we ruled that -

The salary check of a government officer or employee such as a teacher does not belong to him before it is physically delivered to him. Until that time the check belongs to the government. Accordingly, before there is actual delivery of the check, the payee has no power over it; he cannot assign it without the consent of the

Government.

As a necessary consequence of being public fund, the checks may not be garnished to satisfy the judgment.[9] The rationale behind this doctrine is obvious consideration of public policy. The Court succinctly stated in *Commissioner of Public Highways v. San Diego*[10] that -

The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

In denying petitioner's motion for reconsideration, the trial court expressed the additional ratiocination that it was not the duty of the garnishee to inquire or judge for himself whether the issuance of the order of execution, the writ of execution, and the notice of garnishment was justified, citing our ruling in *Philippine Commercial Industrial Bank v. Court of Appeals*. [11] Our precise ruling in that case was that "[I]t is not incumbent upon the garnishee to inquire or to judge for itself whether or not the order for the advance execution of a judgment is valid." But that is invoking only the general rule. We have also established therein the compelling reasons, as exceptions thereto, which were not taken into account by the trial court, e.g., a defect on the face of the writ or actual knowledge by the garnishee of lack of entitlement on the part of the garnisher. It is worth to note that the ruling referred to the validity of advance execution of judgments, but a careful scrutiny of that case and similar cases reveals that it was applicable to a notice of garnishment as well. In the case at bench, it was incumbent upon petitioner to inquire into the validity of the notice of garnishment as he had actual knowledge of the non-entitlement of private respondent to the checks in question. Consequently, we find no difficulty concluding that the trial court exceeded its jurisdiction in issuing the notice of garnishment concerning the salary checks of Mabanto, Jr., in the possession of petitioner.

WHEREFORE, the petition is GRANTED. The orders of 9 March 1993 and 20 April 1993 of the Regional Trial Court of Cebu City, Br. 17, subject of the petition are SET ASIDE. The notice of garnishment served on petitioner dated 3 February 1992 is ordered DISCHARGED.

SO ORDERED.

Quiason and Kapunan, JJ., concur.

Padilla, J., (Chairman), join J. Davide, Jr., in his separate opinion.

[1] Rollo, p. 12.

[2] *Id.*, p. 18.

[3] *Id.*, p. 115.

[4] *Id.*, p. 114.

[5] *Id.*, p. 129.

[6] *Engineering Construction, Inc. v. National Power Corporation*, No. L-34589, 29 June 1988, 163 SCRA 9; *Rizal Commercial Banking Corporation v. de Castro*, No. L-34548, 29 November 1988, 168 SCRA 49; Sec. 8, Rule 57 of the Rules of Court.

[7] *Hector S. de Leon, The Law on Negotiable Instruments*, 1989 Ed., p. 48; *People v. Yabut, Jr.*, No. L-42902, 29 April 1977, 76 SCRA 624.

[8] No. L-32312, 25 November 1983, 125 SCRA 697.

[9] Republic v. Palacio, No. L-20322, 29 May 1968, 23 SCRA 899; Director of the Bureau of Commerce and Industry v. Concepcion, 43 Phil. 384 (1922); Traders Royal Bank v. IAC, G.R. No. 68514, 17 December 1990, 192 SCRA 305.

[10] No. L-30098, 18 February 1970, 31 SCRA 616.

[11] G.R. No. 84526, 28 January 1991, 193 SCRA 452.

SEPARATE OPINION

DAVIDE, JR., J.:

This Court may take judicial notice of the fact that checks for salaries of employees of various Departments all over the country are prepared in Manila not at the end of the payroll period, but days before it to ensure that they reach the employees concerned not later than the end of the payroll period. As to the employees in the provinces or cities, the checks are sent through the heads of the corresponding offices of the Departments. Thus, in the case of Prosecutors and Assistant Prosecutors of the Department of Justice, the checks are sent through the Provincial Prosecutors or City Prosecutors, as the case may be, who shall then deliver the checks to the payees.

Involved in the instant case are the salary and RATA checks of then Assistant City Fiscal Bienvenido Mabanto, Jr., who was detailed in the Office of the City Fiscal (now Prosecutor) of Mandaue City. Conformably with the aforesaid practice, these checks were sent to Mabanto thru the petitioner who was then the City Fiscal of Mandaue City.

The ponencia failed to indicate the payroll period covered by the salary check and the month to which the RATA check corresponds.

I respectfully submit that if these salary and RATA checks corresponded, respectively, to a payroll period and to a month which had already lapsed at the time the notice of garnishment was served, the garnishment would be valid, as the checks would then cease to be property of the Government and would become property of Mabanto. Upon the expiration of such period and month, the sums indicated therein were deemed automatically segregated from the budgetary allocations for the Department of Justice under the General Appropriations Act.

It must be recalled that the public policy against execution, attachment, or garnishment is directed to public funds.

Thus, in the case of Director of the Bureau of Commerce and Industry vs. Concepcion^[1] where the core issue was whether or not the salary due from the Government to a public officer or employee can, by garnishment, be seized before being paid to him and appropriated to the payment of his judgment debts, this Court held:

A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it.

The United States Supreme Court, in the leading case of *Buchanan vs. Alexander* ([1846], 4 How., 19), in speaking of the right of creditors of seamen, by process of attachment, to divert the public money from its legitimate and appropriate object, said:

"To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service. *** So long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects." (See, further, 12 R.C.L., p. 841; *Keene vs. Smith* [1904], 44 Ore., 525; *Wild vs. Ferguson* [1871], 23 La. Ann., 752; *Bank of Tennessee vs. Dibrell* [1855], 3 Sneed [Tenn.], 379). (emphasis supplied)

The authorities cited in the ponencia are inapplicable. Garnished or levied on therein were public funds, to wit: (a) the pump irrigation trust fund deposited with the Philippine National Bank (PNB) in the account of the Irrigation Service Unit in *Republic vs. Palacio*;^[2] (b) the deposits of the National Media Production Center in *Traders Royal Bank vs. Intermediate Appellate Court*;^[3] and (c) the deposits of the Bureau of Public Highways with the PNB under a current account, which may be expended only for their legitimate object as authorized by the corresponding legislative appropriation in *Commissioner of Public Highways vs. Diego*.^[4]

Neither is *Tiro vs. Hontanosas*^[5] squarely in point. The said case involved the validity of Circular No. 21, series of 1969, issued by the Director of Public Schools which directed that "henceforth no cashier or disbursing officer shall pay to attorneys-in-fact or other persons who may be authorized under a power of attorney or other forms of authority to collect the salary of an employee, except when the persons so designated and authorized is an immediate member of the family of the employee concerned, and in all other cases except upon proper authorization of the Assistant Executive Secretary for Legal and Administrative Matters, with the recommendation of the Financial Assistant." Private respondent *Zafra Financing Enterprise*, which had extended loans to public school teachers in Cebu City and obtained from the latter promissory notes and special powers of attorney authorizing it to take and collect their salary checks from the Division Office in Cebu City of the Bureau of Public Schools, sought, inter alia, to nullify the Circular. It is clear that the teachers had in fact assigned to or waived in favor of *Zafra* their future salaries which were still public funds. That assignment or waiver was contrary to public policy.

I would therefore vote to grant the petition only if the salary and RATA checks garnished corresponds to an unexpired payroll period and RATA month, respectively.

[1] 43 Phil. 384 [1922].

[2] 23 SCRA 899 [1968].

[3] 192 SCRA 305 [1990].

[4] 31 SCRA 616 [1970].

[5] 125 SCRA 697 [1983].

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