

PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS. HON. COURT OF APPEALS AND BERNARDINO VILLANUEVA, RESPONDENTS.

G.R. No. 115678. February 23, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us are consolidated petitions for review both filed by Philippine Bank of Communications; one against the May 24, 1994 Decision of respondent Court of Appeals in CA-G.R. SP No. 32863[1] and the other against its March 31, 1995 Decision in CA-G.R. SP No. 32762.[2] Both Decisions set aside and nullified the August 11, 1993 Order[3] of the Regional Trial Court of Manila, Branch 7, granting the issuance of a writ of preliminary attachment in Civil Case No. 91-56711.

The case commenced with the filing by petitioner, on April 8, 1991, of a Complaint against private respondent Bernardino Villanueva, private respondent Filipinas Textile Mills and one Sochi Villanueva (now deceased) before the Regional Trial Court of Manila. In the said Complaint, petitioner sought the payment of P2,244,926.30 representing the proceeds or value of various textile goods, the purchase of which was covered by irrevocable letters of credit and trust receipts executed by petitioner with private respondent Filipinas Textile Mills as obligor; which, in turn, were covered by surety agreements executed by private respondent Bernardino Villanueva and Sochi Villanueva. In their Answer, private respondents admitted the existence of the surety agreements and trust receipts but countered that they had already made payments on the amount demanded and that the interest and other charges imposed by petitioner were onerous.

On May 31, 1993, petitioner filed a Motion for Attachment,[4] contending that violation of the trust receipts law constitutes estafa, thus providing ground for the issuance of a writ of preliminary attachment; specifically under paragraphs "b" and "d," Section 1, Rule 57 of the Revised Rules of Court. Petitioner further claimed that attachment was necessary since private respondents were disposing of their properties to its detriment as a creditor. Finally, petitioner offered to post a bond for the issuance of such writ of attachment.

The Motion was duly opposed by private respondents and, after the filing of a Reply thereto by petitioner, the lower court issued its August 11, 1993 Order for the issuance of a writ of preliminary attachment, conditioned upon the filing of an attachment bond. Following the denial of the Motion for Reconsideration filed by private respondent Filipinas Textile Mills, both private respondents filed separate petitions for certiorari before respondent Court assailing the order granting the writ of preliminary attachment.

Both petitions were granted, albeit on different grounds. In CA-G.R. SP No. 32762, respondent Court of Appeals ruled that the lower court was guilty of grave abuse of discretion in not conducting a hearing on the application for a writ of preliminary attachment and not requiring petitioner to substantiate its allegations of fraud, embezzlement or misappropriation. On the other hand, in CA-G.R. SP No. 32863, respondent Court of Appeals found that the grounds cited by petitioner in its Motion do not provide sufficient basis for the issuance of a writ of

preliminary attachment, they being mere general averments. Respondent Court of Appeals held that neither embezzlement, misappropriation nor incipient fraud may be presumed; they must be established in order for a writ of preliminary attachment to issue.

Hence, the instant consolidated[5] petitions charging that respondent Court of Appeals erred in -

"1.

Holding that there was no sufficient basis for the issuance of the writ of preliminary attachment in spite of the allegations of fraud, embezzlement and misappropriation of the proceeds or goods entrusted to the private respondents;

2.

Disregarding the fact that that the failure of FTMI and Villanueva to remit the proceeds or return the goods entrusted, in violation of private respondents' fiduciary duty as entrustee, constitute embezzlement or misappropriation which is a valid ground for the issuance of a writ of preliminary attachment."[6]

We find no merit in the instant petitions.

To begin with, we are in accord with respondent Court of Appeals in CA-G.R. SP No. 32863 that the Motion for Attachment filed by petitioner and its supporting affidavit did not sufficiently establish the grounds relied upon in applying for the writ of preliminary attachment.

The Motion for Attachment of petitioner states that -

- The instant case is based on the failure of defendants as entrustee to pay or remit the proceeds of the goods entrusted by plaintiff to defendant as evidenced by the trust receipts (Annexes "B", "C" and "D" of the complaint), nor to return the goods entrusted thereto, in violation of their fiduciary duty as agent or entrustee;
- Under Section 13 of P.D. 115, as amended, violation of the trust receipt law constitute(s) estafa (fraud and/or deceit) punishable under Article 315 par. 1[b] of the Revised Penal Code;
- On account of the foregoing, there exist(s) valid ground for the issuance of a writ of preliminary attachment under Section 1 of Rule 57 of the Revised Rules of Court particularly under sub-paragraphs "b" and "d", i.e. for embezzlement or fraudulent misapplication or conversion of money (proceeds) or property (goods entrusted) by an agent (entrustee) in violation of his fiduciary duty as such, and against a party who has been guilty of fraud in contracting or incurring the debt or obligation;
- The issuance of a writ of preliminary attachment is likewise urgently necessary as there exist(s) no sufficient security for the satisfaction of any judgment that may be rendered against the defendants as the latter appears to have disposed of their properties to the detriment of the creditors like the herein plaintiff;
- Herein plaintiff is willing to post a bond in the amount fixed by this Honorable Court as a condition to the issuance of a writ of preliminary attachment against the properties of the defendants.

Section 1(b) and (d), Rule 57 of the then controlling Revised Rules of Court, provides, to wit -

SECTION 1. Grounds upon which attachment may issue. - A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

x x x x x x x x

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

x x x x x x x x

(d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;

x x x x x x x x

While the Motion refers to the transaction complained of as involving trust receipts, the violation of the terms of which is qualified by law as constituting estafa, it does not follow that a writ of attachment can and should automatically issue. Petitioner cannot merely cite Section 1(b) and (d), Rule 57, of the Revised Rules of Court, as mere reproduction of the rules, without more, cannot serve as good ground for issuing a writ of attachment. An order of attachment cannot be issued on a general averment, such as one ceremoniously quoting from a pertinent rule.[7]

The supporting Affidavit is even less instructive. It merely states, as follows --

I, DOMINGO S. AURE, of legal age, married, with address at No. 214-216 Juan Luna Street, Binondo, Manila, after having been sworn in accordance with law, do hereby depose and say, THAT:

- I am the Assistant Manager for Central Collection Units Acquired Assets Section of the plaintiff, Philippine Bank of Communications, and as such I have caused the preparation of the above motion for issuance of a writ of preliminary attachment;
- I have read and understood its contents which are true and correct of my own knowledge;
- There exist(s) sufficient cause of action against the defendants in the instant case;
- The instant case is one of those mentioned in Section 1 of Rule 57 of the Revised Rules of Court wherein a writ of preliminary attachment may be issued against the defendants, particularly sub-paragraphs "b" and "d" of said section;
- There is no other sufficient security for the claim sought to be enforced by the instant case and the amount due to herein plaintiff or the value of the property sought to be recovered is as much as the sum for which the order for attachment is granted, above all legal counterclaims.

Again, it lacks particulars upon which the court can discern whether or not a writ of attachment should issue.

Petitioner cannot insist that its allegation that private respondents failed to remit the proceeds of the sale of the entrusted goods nor to return the same is sufficient for attachment to issue. We note that petitioner anchors its application upon Section 1(d), Rule 57. This particular provision was adequately explained in *Liberty Insurance Corporation v. Court of Appeals*,[8] as follows -

To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case (*Republic v. Gonzales*, 13 SCRA 633). (Emphasis ours)

We find an absence of factual allegations as to how the fraud alleged by petitioner was committed. As correctly held by respondent Court of Appeals, such fraudulent intent not to honor the admitted obligation cannot be inferred from the debtor's inability to pay or to comply with the obligations.[9] On the other hand, as stressed,

above, fraud may be gleaned from a preconceived plan or intention not to pay. This does not appear to be so in the case at bar. In fact, it is alleged by private respondents that out of the total P419,613.96 covered by the subject trust receipts, the amount of P400,000.00 had already been paid, leaving only P19,613.96 as balance. Hence, regardless of the arguments regarding penalty and interest, it can hardly be said that private respondents harbored a preconceived plan or intention not to pay petitioner.

The Court of Appeals was correct, therefore, in its finding in CA-G.R. SP No. 32863 that neither petitioner's Motion or its supporting Affidavit provides sufficient basis for the issuance of the writ of attachment prayed for.

We also agree with respondent Court of Appeals in CA-G.R. SP No. 32762 that the lower court should have conducted a hearing and required private petitioner to substantiate its allegations of fraud, embezzlement and misappropriation.

To reiterate, petitioner's Motion for Attachment fails to meet the standard set forth in *D.P. Lub Oil Marketing Center, Inc. v. Nicolas*,^[10] in applications for attachment. In the said case, this Court cautioned --

The petitioner's prayer for a writ of preliminary attachment hinges on the allegations in paragraph 16 of the complaint and paragraph 4 of the affidavit of Daniel Pe which are couched in general terms devoid of particulars of time, persons and places to support such a serious assertion that "defendants are disposing of their properties in fraud of creditors." There is thus the necessity of giving to the private respondents an opportunity to ventilate their side in a hearing, in accordance with due process, in order to determine the truthfulness of the allegations. But no hearing was afforded to the private respondents the writ having been issued ex parte. A writ of attachment can only be granted on concrete and specific grounds and not on general averments merely quoting the words of the rules.

As was frowned upon in *D.P. Lub Oil Marketing Center, Inc.*,^[11] not only was petitioner's application defective for having merely given general averments; what is worse, there was no hearing to afford private respondents an opportunity to ventilate their side, in accordance with due process, in order to determine the truthfulness of the allegations of petitioner. As already mentioned, private respondents claimed that substantial payments were made on the proceeds of the trust receipts sued upon. They also refuted the allegations of fraud, embezzlement and misappropriation by averring that private respondent Filipinas Textile Mills could not have done these as it had ceased its operations starting in June of 1984 due to workers' strike. These are matters which should have been addressed in a preliminary hearing to guide the lower court to a judicious exercise of its discretion regarding the attachment prayed for. On this score, respondent Court of Appeals was correct in setting aside the issued writ of preliminary attachment.

Time and again, we have held that the rules on the issuance of a writ of attachment must be construed strictly against the applicants. This stringency is required because the remedy of attachment is harsh, extraordinary and summary in nature. If all the requisites for the granting of the writ are not present, then the court which issues it acts in excess of its jurisdiction.^[12]

WHEREFORE, for the foregoing reasons, the instant petitions are DENIED. The decision of the Court of Appeals in CA-G.R. SP No. 32863 and CA-G.R. SP No. 32762 are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Pardo, JJ., concur.

[1] Penned by Associate Justice Antonio M. Martinez and concurred in by Associate Justices Quirino D. Abad Santos, Jr. and Godardo A. Jacinto; Petition, Annex "A", Rollo, G.R. No. 115678, pp. 26-31.

- [2] Penned by Associate Justice Jaime M. Lantin and concurred in by Associate Justices Ma. Alicia Austria-Martinez and Bernardo LL. Salas; Petition, Annex "A", Rollo, G.R. No. 119723, pp. 28-42.
- [3] Petition, Annex "F"; Rollo, G.R. No. 119723, pp. 65-66.
- [4] Petition, Annex "C"; Rollo, G.R. No. 119723, pp. 54-56.
- [5] Per the June 19, 1995 Resolution of this Court's First Division; Rollo, G.R. No. 119723, p. 75.
- [6] Petition, G.R. No. 119723, p. 10, Rollo, p. 19; G.R. No. 115678, p. 9, Rollo, p. 16.
- [7] *Ting v. Villarin*, G.R. No. 61754, 176 SCRA 532 [1989].
- [8] G.R. No. 104405, 222 SCRA 37, 45 [1993].
- [9] See *Insular Bank of Asia and America v. Court of Appeals*, G.R. No. 61011, 190 SCRA 629 [1990].
- [10] G.R. No. 76113, 191 SCRA 423, 428 [1990].
- [11] *Supra*.
- [12] See *Inter-Asia Services Corporation (International) v. Court of Appeals*, G.R. No. 106427, 263 SCRA 408 [1996].

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