INSULAR SAVINGS BANK, PETITIONER, VS. COURT OF APPEALS, JUDGE OMAR U. AMIN, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 135 OF THE REGIONAL TRIAL COURT OF MAKATI, AND FAR EAST ...

G.R. NO. 123638. June 15, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

Thru this appeal via a petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Insular Savings Bank seeks to set aside the decision[1] dated October 9, 1995 of the Court of Appeals in CA-G.R. SP No. 34876 and its resolution dated January 24, 1996,[2] denying petitioner's motion for reconsideration.

The assailed decision of October 9, 1995 cleared the Regional Trial Court (RTC) at Makati, Branch 135, of committing, as petitioner alleged, grave abuse of discretion in denying petitioner's motion to discharge attachment by counter-bond in Civil Case No. 92-145, while the equally assailed resolution of January 24, 1996 denied petitioner's motion for reconsideration.

The undisputed facts are summarized in the appellate court's decision[3] under review, as follows:

> "On December 11, 1991, respondent Bank [Far East Bank and Trust Company] instituted Arbitration Case No. 91-069 against petitioner [Insular Savings Bank] before the Arbitration Committee of the Philippine Clearing House Corporation [PCHC]. The dispute between the parties involved three [unfunded] checks with a total value of P25,200,000.00. The checks were drawn against respondent Bank and were presented by petitioner for clearing. As respondent Bank returned the checks beyond the reglementary period, [but after petitioner's account with PCHC was credited with the amount of P25,200,000.00] petitioner refused to refund the money to respondent Bank. While the dispute was pending arbitration, on January 17, 1992, respondent Bank instituted Civil Case No. 92-145 in the Regional Trial Court of Makati and prayed for the issuance of a writ of preliminary attachment. On January 22, 1992, Branch 133 of the Regional Trial Court of Makati issued an Order granting the application for preliminary attachment upon posting by respondent Bank of an attachment bond in the amount of P6,000,000.00. On January 27, 1992, Branch 133 of the Regional Trial Court of Makati issued a writ of preliminary attachment for the amount of P25,200,000.00. During the hearing on February 11, 1992 before the Arbitration Committee of the Philippine Clearing House Corporation, petitioner and respondent Bank agreed to temporarily divide between them the disputed amount of P25,200,000.00 while the dispute has not yet been resolved. As a result, the sum of P12,600,000.00 is in the possession of respondent Bank. On March 9, 1994, petitioner filed a motion to discharge attachment by counter-bond in the amount of P12,600,000.00. On June 13, 1994, respondent Judge issued the first assailed order denying the motion. On June 27, 1994, petitioner filed a motion for reconsideration which was denied in the second assailed order dated July 20, 1994" (Emphasis and words in bracket added).

From the order denying its motion to discharge attachment by counter-bond, petitioner went to the Court of Appeals on a petition for certiorari thereat docketed as CA-G.R. SP No. 34876, ascribing on the trial court the

commission of grave abuse of discretion amounting to lack of jurisdiction.

While acknowledging that "[R]espondent Judge may have erred in his Order of June 13, 1994 that the counter-bond should be in the amount of P27,237,700.00", in that he erroneously factored in, in arriving at such amount, unliquidated claim items, such as actual and exemplary damages, legal interest, attorney's fees and expenses of litigation, the CA, in the herein assailed decision dated October 9, 1995, nonetheless denied due course to and dismissed the petition. For, according to the appellate court, the RTC's order may be defended by, among others, the provision of Section 12 of Rule 57 of the Rules of Court, infra. The CA added that, assuming that the RTC erred on the matter of computing the amount of the discharging counter-bond, its error does not amount to grave abuse of discretion.

With its motion for reconsideration having been similarly denied, petitioner is now with us, faulting the appellate court, as follows:

> "I. THE COURT OF APPEALS ERRED IN NOT RULING THAT THE PRINCIPAL AMOUNT CLAIMED BY RESPONDENT BANK SHOULD BE THE BASIS FOR COMPUTING THE AMOUNT OF THE COUNTER-BOND, FOR THE PRELIMINARY ATTACHMENT WAS ISSUED FOR THE SAID AMOUNT ONLY.
>
> "II. THE COURT OF APPEALS ERRED IN NOT RULING THAT THE ARGUMENT THAT THE AMOUNT OF THE COUNTER-BOND SHOULD BE BASED ON THE VALUE OF THE PROPERTY ATTACHED CANNOT BE RAISED FOR THE FIRST TIME IN THE COURT OF APPEALS.
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> "III. THE COURT OF APPEALS ERRED IN RULING THAT THE AMOUNT OF THE COUNTER-BOND SHOULD BE BASED ON THE VALUE OF THE PROPERTY ATTACHED EVEN IF IT WILL RESULT IN MAKING THE AMOUNT OF THE COUNTER-BOND EXCEED THE AMOUNT FOR WHICH PRELIMINARY ATTACHMENT WAS ISSUED."

Simply put, the issue is whether or not the CA erred in not ruling that the trial court committed grave abuse of discretion in denying petitioner's motion to discharge attachment by counter-bond in the amount of P12,600,000.00.

Says the trial court in its Order of June 13, 1994:

> "xxx (T)he counter-bond posted by [petitioner] Insular Savings Bank should include the unsecured portion of [respondent's] claim of P12,600,000.00 as agreed by means of arbitration between [respondent] and [petitioner]; Actual damages at 25% percent per annum of unsecured amount of claim from October 21, 1991 in the amount of P7,827,500.00; Legal interest of 12% percent per annum from October 21, 1991 in the amount of P3,805,200.00; Exemplary damages in the amount of P2,000,000.00; and attorney's fees and expenses of litigation in the amount of P1,000,000.00 with a total amount of P27,237,700.00 (Adlawan vs. Tomol, 184 SCRA 31 (1990)".

Petitioner, on the other hand, argues that the starting point in computing the amount of counter-bond is the amount of the respondent's demand or claim only, in this case P25,200,000.00, excluding contingent expenses and unliquidated amount of damages. And since there was a mutual agreement between the parties to temporarily, but equally, divide between themselves the said amount pending and subject to the final outcome of the arbitration, the amount of P12,600,000.00 should, so petitioner argues, be the basis for computing the amount of the counter-bond.

The Court rules for the petitioner.

The then pertinent provision of Rule 57 (Preliminary Attachment) of the Rules of Court under which the appellate

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court issued its assailed decision and resolution, provides as follows:

> "SEC. 12. Discharge of attachment upon giving counter-bond. – At any time after an order of attachment has been granted, the party whose property has been attached, . . . may upon reasonable notice to the applicant, apply to the judge who granted the order or to the judge of the court which the action is pending, for an order discharging the attachment wholly or in part on the security given. The judge shall, after hearing, order the discharge of the attachment if a cash deposit is made, or a counter-bond executed to the attaching creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made in an amount equal to the value of the property attached as determined by the judge, to secure the payment of any judgment that the attaching creditor may recover in the action. x x x . Should such counter-bond for any reason be found to be, or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment"4 (Emphasis supplied).[4]

As may be noted, the amount of the counter-attachment bond is, under the terms of the aforequoted Section 12, to be measured against the value of the attached property, as determined by the judge to secure the payment of any judgment that the attaching creditor may recover in the action. Albeit not explicitly stated in the same section and without necessarily diminishing the sound discretion of the issuing judge on matters of bond approval, there can be no serious objection, in turn, to the proposition that the attached property - and logically the counter-bond necessary to discharge the lien on such property - should as much as possible correspond in value to, or approximately match the attaching creditor's principal claim. Else, excessive attachment, which ought to be avoided at all times, shall ensue. As we held in Asuncion vs. Court of Appeals:[5]

> "We, however, find the counter-attachment bond in the amount of P301,935.41 required of the private respondent by the trial court as rather excessive under the circumstances. Considering that the principal amounts claimed by the petitioner . . . total only P185,685.00, and that he had posted a bond of only P80,000.00 for the issuance of the writ of preliminary attachment, we deem it reasonable to lower the amount of the counter-attachment bond to be posted by the private respondent . . . to the sum of P185,685.00."

The following excerpts from Herrera, REMEDIAL LAW, Vol. VII, 1997 ed., p. 61, citing retired Justice Jose Y. Feria, drive home the same point articulated in Asuncion:

> "The sheriff is required to attach only so much of the property of the party against whom the order is issued as may be sufficient to satisfy the applicant's demand, the amount of which is stated in the order, unless a deposit is made or a counter-bond is given equal to said amount. However, if the value of the property to be attached is less than the amount of the demand, the amount of the applicant's bond may be equal to the value of said property, and the amount of the adverse party's deposit or counter-bond may be equal to the applicant's bond. The writ of preliminary attachment is issued upon approval of the requisite bond". (Emphasis supplied).

Turning to the case at bar, the records show that the principal claim of respondent, as plaintiff a quo, is in the amount of P25,200,000.00,[6] representing the three (3) unfunded checks drawn against, and presented for clearing to, respondent bank. Jurisprudence teaches that a writ of attachment cannot be issued for moral and exemplary damages, and other unliquidated or contingent claim.[7]

The order of attachment dated January 22, 1992 fixed the bond to be posted by respondent, as applicant, at P6,000,000.00. The writ of attachment issued on January 27, 1992, in turn, expressly indicated that petitioner is justly indebted to respondent in the amount of P25,200,000.00.[8] On February 11, 1992, before the Arbitration Committee of the Philippine Clearing House Corporation, petitioner and respondent, however, agreed to equally divide between themselves, albeit on a temporary basis, the disputed amount of P25,200,000.00, subject to the outcome of the arbitration proceedings. Thus, the release by petitioner of the amount of P12,600,000.00 to respondent. On March 7, 1994, petitioner filed a motion to discharge attachment by counter-bond in the amount of P12,600,000.00[9] which, to petitioner, is the extent that respondent may actually be prejudiced in the event its

basic complaint for recovery of money against petitioner prospers.

As things stood, therefore, respondent's principal claim against petitioner immediately prior to the filing of the motion to discharge attachment has effectively been pruned down to P12,600,000.00. The trial court was fully aware of this reality. Accordingly, it should have allowed a total discharge of the attachment on a counter-bond based on the reduced claim of respondent. If a portion of the claim is already secured, we see no justifiable reason why such portion should still be subject of counter-bond. It may be that a counter-bond is intended to secure the payment of any judgment that the attaching party may recover in the main action. Simple common sense, if not consideration of fair play, however, dictates that a part of a possible judgment that has veritably been preemptively satisfied or secured need not be covered by the counter-bond.

With the view we take of this case, the trial court, in requiring petitioner to post a counter-bond in the amount of P27,237,700.00, obviously glossed over one certain fundamental. We refer to the fact that the attachment respondent applied for and the corresponding writ issued was only for the amount of P25.2 Million. Respondent, it bears to stress, did not pray for attachment on its other claims, contingent and unliquidated as they were. Then, too, the attaching writ rightly excluded such claims. While the records do not indicate, let alone provide a clear answer as to the actual value of the property levied upon, it may reasonably be assumed that it is equal to respondent's principal claim. Be that as it may, it was simply unjust for the trial court to base the amount of the counter-bond on a figure beyond the P25,200,000.00 threshold, as later reduced to P12,600,200.00.

The trial court, therefore, committed grave abuse of discretion when it denied petitioner's motion to discharge attachment by counter-bond in the amount of P12,600,000.00, an amount more than double the attachment bond required of, and given by, respondent. As a necessary consequence, the Court of Appeals committed reversible error when it dismissed petitioner's recourse thereto in CA-G.R. SP No. 34876.

It bears to stress, as a final consideration, that the certiorari proceedings before the appellate court and the denial of the motion to discharge attachment subject of such proceedings, transpired under the old rules on preliminary attachment which has since been revised.[10] And unlike the former Section 12 of Rule 57 of the Rules of Court where the value of the property attached shall be the defining measure in the computation of the discharging counter-attachment bond, the present less stringent Section 12 of Rule 57 provides that the court shall order the discharge of attachment if the movant "makes a cash deposit, or files a counter-bond . . . in an amount equal to that fixed by the court in the order of attachment, exclusive of costs." Not being in the nature of a penal statute, the Rules of Court cannot be given retroactive effect.[11]

This disposition should be taken in the light of then Section 12, Rule 57 of the Rules of Court.

WHEREFORE, the instant petition is GRANTED. Accordingly, the assailed decision and resolution of the Courts of Appeals are hereby REVERSED and SET ASIDE, along with the orders dated June 13, 1994 and July 20, 1994 of the Regional Trial Court at Makati, Branch 135, in Civil Case No. 92-145 insofar they denied petitioner's motion to discharge attachment by counter-bond in the amount of P12,600,000.00, and a new one entered GRANTING such motion upon the reposting of the same counter-bond.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

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[1] Penned by Associate Justice (now retired) Eduardo G. Montenegro and concurred in by then (now deceased) Associate Justice Jorge S. Imperial and Associate Justice (now retired) Jose C. De La Rama.

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[2] Rollo, p. 136.

[3] Rollo, pp. 114-119

[4] As amended Section 12, Rule 57 of the Rules of Court now reads as follows

SEC. 12. Discharge of attachment upon giving counter-bond. – After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. xxx. Should such counter-bond for any reason be found to be, or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.

[5] 166 SCRA 55 [1988]

[6] Complaint (Annex “A” of Petition), p. 10; Rollo, p. 43

[7] Herrera, Remedial Law, p. 597, citing Salas vs. Adil, 90 SCRA 121 [1979]; Peregrino vs. Panis, 133 SCRA 72 [1984]; Mialhe vs. de Lenquesaing, 142 SCRA 694[1986].

[8] Complaint, p. 10, Rollo, p. 43

[9] Copy of petitioner’s bond (Annex “D”, Petition), Rollo, pp. 72-73

[10] See Note #4, supra.

[11] Regalado, REMEDIAL LAW Compendium, Vol. One 7th ed., p. 54, citing Bermejo vs. Barrios, L-23614, February 27, 1970

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