

JAMES L. KING AND DIOSDADO RETUYA, PETITIONERS, VS. COURT OF APPEALS, L.T. & SONS, INC., BUTUAN PREMIER DISTRIBUTION, INC., SUPREME THEATER CORPORATION AND TAN ENTERPRISES, INC....

G.R. NO. 158195. December 16, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioners James L. King and Diosdado Retuya seek, under Rule 65 of the 1997 Rules of Civil Procedure, the nullification of: (1) the December 18, 2002 Resolution[1] of the Court of Appeals in CA-G.R. SP No. 73214 ordering them to cease and desist from implementing and enforcing the Order dated August 13, 2002 of the Regional Trial Court, Branch 55, Mandaue City, in Civil Case No. MAN-4397; and (2) the April 8, 2003 Resolution[2] of the Court of Appeals denying their motion for reconsideration.

The following facts, found by the Court of Appeals, are undisputed:

Petitioners James L. King and Diosdado Retuya filed a complaint[3] for sum of money with damages, with application for a writ of preliminary attachment against the following individuals and corporations: Roderick Lim Go alias "Edu Ting", Nelson Go, Go Tong Go, Grace Tan Go, Lucy Go, Rolando Yap Tan, Elena Chiu Tan, Lamberto Tan, L.T. & Sons, Inc., Butuan Premier Distribution, Inc., Supreme Theater Corporation, and Tan Enterprises, Inc. King alleged that the spouses Roderick Lim Go and Grace Tan Go persuaded him to invest in their business on the promise that he would receive a daily interest of one percent on his investment. Roderick's parents (Go Tong Go and Lucy Go) and his brother (Nelson Go) guaranteed the viability of the transaction. Thus, he invested the amount of P61,280,000 together with the P500,000 invested by Retuya.

Thereafter, the trial court directed the issuance of a writ of preliminary attachment against the private respondents upon the petitioners' filing of a P61,280,000 bond. On the same day that the bond was filed, the writ was issued. The sheriff immediately attached private respondents' properties in Butuan City. Private respondents padlocked and closed the entrances to their offices and business establishments.

In response, private respondents filed an Omnibus Motion:[4] (1) to dismiss the complaint; (2) to quash the writ of preliminary attachment; and (3) to cite petitioners and their counsel for contempt of court. On August 22, 2002, petitioners filed a Motion for Issuance of Break Open Order and for Military Assistance.

Eventually, private respondents filed a petition for certiorari before this Court seeking the quashal of the writ of preliminary attachment. In a Resolution[5] dated September 11, 2002, we dismissed the petition, to wit:

In accordance with Rule 65 in relation to Rule 46, Rule 56 and other pertinent provisions of the 1997 Rules of Civil Procedure, as amended, governing petitions for certiorari, prohibition and mandamus filed with the Supreme Court, only petitions which are accompanied by or comply strictly with the requirements specified therein shall be entertained. On the basis thereof, the Court Resolves to DISMISS the petition for certiorari,

prohibition and mandamus for petitioners' failure to: (a) state the material date of receipt of the assailed order of August 13, 2002 to show that the petition was filed on time pursuant to Section 4, Rule 65 in relation to Section 3(2) and (b) show special and important reasons or exceptional and compelling circumstance to justify their disregard of the hierarchy of courts under Section 4, Rule 65.

Subsequently, private respondents filed a petition for certiorari with the Court of Appeals seeking again the quashal of the writ of preliminary attachment. The appellate court issued a Temporary Restraining Order (TRO),[6] that was converted later to a preliminary injunction,[7] on December 18, 2002.

Thereafter, on June 2, 2003, the instant petition for certiorari was filed before this Court.

Meantime, the appellate court had rendered its Decision[8] on December 15, 2003, giving due course to and granting the private respondents' petition. The appellate court ruled that if there was any fraud committed by the spouses Roderick Lim Go and Grace Tan Go, the petitioners' cause of action was limited to them alone. There was no showing that the corporations were used to perpetrate the fraud nor commit a crime. Hence, the separate corporate identities should be respected and the corporations named as defendants in the cases below could not be jointly held liable for the obligations of their individual owners or stockholders, as the complaint did not allege any cause of action against them. It further held that King's application for the issuance of a writ of preliminary attachment did not show, as required by Section 3,[9] Rule 57 of the 1997 Rules of Civil Procedure, the grounds for issuance of the writ. On December 21, 2004, the appellate court denied reconsideration.[10]

As a result, private respondents manifested before this Court that the case had been rendered moot and academic. Nonetheless, they still submitted their Memorandum if only to demonstrate that the Court of Appeals did not commit any grave abuse of discretion.

Petitioners submitted the following issues in their Memorandum, for our consideration:

In issuing the questioned resolutions, the Court of Appeals acted without jurisdiction, in excess of jurisdiction and/or grave abuse of discretion because:

- PRIVATE RESPONDENTS ARE TWICE GUILTY OF FORUM SHOPPING IN SEEKING THE ANCILLARY REMEDY OF PRELIMINARY INJUNCTION, HENCE THEIR APPLICATION FOR THE REMEDY SHOULD HAVE BEEN DENIED.
- IN EFFECT, THE COURT OF APPEALS PREEMPTED THE LOWER COURT IN ACTING ON THE MOTION OF PRIVATE RESPONDENTS TO QUASH THE WRIT OF PRELIMINARY ATTACHMENT.
- THE COURT OF APPEALS VIOLATED THE RULINGS OF THIS HONORABLE COURT IN OÑATE VS. ABROGAR, 230 SCRA 131, AND CONSOLIDATED BANK AND TRUST CORPORATION VS. COURT OF APPEALS, 197 SCRA 663, THAT "AN ATTACHMENT MAY NOT BE DISSOLVED xxx IF IT IS UPON A GROUND WHICH IS AT THE SAME TIME APPELLANT'S CAUSE OF ACTION IN THE MAIN CASE," FOR BY ENJOINING THE IMPLEMENTATION OF THE PRELIMINARY ATTACHMENT, THE COURT OF APPEALS, IN EFFECT, DISCHARGED THE SAME ON A GROUND WHICH IS AT THE SAME TIME PETITIONERS' CAUSE OF ACTION IN THE MAIN CASE.
- THE COURT OF APPEALS DOES NOT HAVE JURISDICTION OVER THE PETITION BEFORE IT (CA-G.R. SP NO. 73214) SINCE UNDER SECTION 13, RULE 57 OF THE 1997 RULES OF CIVIL PROCEDURE, THE REMEDY FOR THE DISCHARGE OF A WRIT OF PRELIMINARY ATTACHMENT IS TO FILE A MOTION TO THAT EFFECT WITH THE COURT IN WHICH THE ACTION IS PENDING, NOT TO FILE A PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS WITH THE COURT OF APPEALS, AS WAS DONE BY THE PRIVATE RESPONDENTS.
- THE COURT OF APPEALS TOLERATES THE CONTINUOUS REFUSAL OF THE PRIVATE

RESPONDENTS TO OBSERVE THE HIERARCHY OF COURTS.[11]

Indeed, the petition had become moot and academic. An issue is said to have become moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value.[12]

In *Gancho-on v. Secretary of Labor and Employment*, we said,

It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition.[13]

The prayer in the instant petition is for the nullification of the Court of Appeals' Resolutions dated December 18, 2002, and April 8, 2003 which granted the preliminary injunction and denied the petitioners' motion for reconsideration, respectively. With the appellate court's subsequent resolution of the petition for certiorari and its nullification of the writ of preliminary attachment issued by the trial court, thus making permanent the appellate court's preliminary injunction, this petition has become moot and academic. In *Kho v. Court of Appeals*,^[14] we held that the issuance of a final injunction renders any question on the preliminary injunctive order moot and academic although the decision granting a final injunction is pending appeal. Here, the appellate court's decision granting the final injunction was not even appealed.

WHEREFORE, the instant petition is DISMISSED for having become moot and academic.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and Azcuna, JJ., concur.
Carpio, J., on official leave.

[1] Rollo, pp. 32-35. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Cancio C. Garcia (now a member of this Court), and Eloy R. Bello, Jr. concurring.

[2] Id. at 37.

[3] Id. at 196-215.

[4] Id. at 38-54.

[5] Id. at 85-86.

[6] CA Rollo, pp. 113-114.

[7] Id. at 208-211.

[8] Rollo, pp. 270-277.

[9] SEC. 3. Affidavit and bond required.-An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all

legal counterclaims....

[10] Rollo, pp. 510-513.

[11] Id. at 488-489.

[12] See *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, G.R. No. 132795, 10 March 2004, 425 SCRA 129, 134; *Philippine Airlines, Inc. v. Pascua*, G.R. No. 143258, 15 August 2003, 409 SCRA 195, 202.

[13] G.R. No. 108033, 14 April 1997, 271 SCRA 204, 207-208.

[14] G.R. No. 115758, 19 March 2002, 379 SCRA 410, 420 citing *La Vista Association, Inc. v. Court of Appeals*, G.R. No. 95252, 5 September 1997, 278 SCRA 498, 506.

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