

SOFIA TORRES, FRUCTOSA TORRES, HEIRS OF MARIO TORRES AND SOLAR RESOURCES, INC., PETITIONERS, VS. NICANOR SATSATIN, EMILINDA AUSTRIA SATSATIN, NIKKI NORMEL SATSATIN AND NIKKI NOR...

G.R. No. 166759. November 25, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari assailing the Decision[1] dated November 23, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 83595, and its Resolution[2] dated January 18, 2005, denying petitioners' motion for reconsideration.

The factual and procedural antecedents are as follows:

The siblings Sofia Torres (Sofia), Fructosa Torres (Fructosa), and Mario Torres (Mario) each own adjacent 20,000 square meters track of land situated at Barrio Lankaan, Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) Nos. 251267,[3] 251266,[4] and 251265,[5] respectively.

Sometime in 1997, Nicanor Satsatin (Nicanor) asked petitioners' mother, Agripina Aledia, if she wanted to sell their lands. After consultation with her daughters, daughter-in-law, and grandchildren, Agripina agreed to sell the properties. Petitioners, thus, authorized Nicanor, through a Special Power of Attorney, to negotiate for the sale of the properties.[6]

Sometime in 1999, Nicanor offered to sell the properties to Solar Resources, Inc. (Solar). Solar allegedly agreed to purchase the three parcels of land, together with the 10,000-square-meter property owned by a certain Rustica Aledia, for P35,000,000.00. Petitioners alleged that Nicanor was supposed to remit to them the total amount of P28,000,000.00 or P9,333,333.00 each to Sofia, Fructosa, and the heirs of Mario.

Petitioners claimed that Solar has already paid the entire purchase price of P35,000,000.00 to Nicanor in Thirty-Two (32) post-dated checks which the latter encashed/deposited on their respective due dates. Petitioners added that they also learned that during the period from January 2000 to April 2002, Nicanor allegedly acquired a house and lot at Vista Grande BF Resort Village, Las Piñas City and a car, which he registered in the names of his unemployed children, Nikki Normel Satsatin and Nikki Norlin Satsatin. However, notwithstanding the receipt of the entire payment for the subject property, Nicanor only remitted the total amount of P9,000,000.00, leaving an unremitted balance of P19,000,000.00. Despite repeated verbal and written demands, Nicanor failed to remit to them the balance of P19,000,000.00.

Consequently, on October 25, 2002, petitioners filed before the regional trial court (RTC) a Complaint[7] for sum of money and damages, against Nicanor, Ermilinda Satsatin, Nikki Normel Satsatin, and Nikki Norlin Satsatin. The case was docketed as Civil Case No. 2694-02, and raffled to RTC, Branch 90, Dasmariñas, Cavite.

On October 30, 2002, petitioners filed an Ex-Parte Motion for the Issuance of a Writ of Attachment,[8] alleging among other things: that respondents are about to depart the Philippines; that they have properties, real and personal in Metro Manila and in the nearby provinces; that the amount due them is P19,000,000.00 above all other claims; that there is no other sufficient security for the claim sought to be enforced; and that they are willing to post a bond fixed by the court to answer for all costs which may be adjudged to the respondents and all damages which respondents may sustain by reason of the attachment prayed for, if it shall be finally adjudged that petitioners are not entitled thereto.

On October 30, 2002, the trial court issued an Order[9] directing the petitioners to post a bond in the amount of P7,000,000.00 before the court issues the writ of attachment, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, and finding the present complaint and motion sufficient in form and substance, this Court hereby directs the herein plaintiffs to post a bond, pursuant to Section 3, Rule 57 of the 1997 Rules of Civil Procedure, in the amount of Seven Million Pesos (P7,000,000.00), before the Writ of Attachment issues.[10]

On November 15, 2002, petitioners filed a Motion for Deputation of Sheriff,[11] informing the court that they have already filed an attachment bond. They also prayed that a sheriff be deputized to serve the writ of attachment that would be issued by the court.

In the Order[12] dated November 15, 2002, the RTC granted the above motion and deputized the sheriff, together with police security assistance, to serve the writ of attachment.

Thereafter, the RTC issued a Writ of Attachment[13] dated November 15, 2002, directing the sheriff to attach the estate, real or personal, of the respondents, the decretal portion of which reads:

WE, THEREFORE, command you to attach the estate, real or personal, not exempt from execution, of the said defendants, in your province, to the value of said demands, and that you safely keep the same according to the said Rule, unless the defendants give security to pay such judgment as may be recovered on the said action, in the manner provided by the said Rule, provided that your legal fees and all necessary expenses are fully paid.

You shall return this writ with your proceedings indorsed hereon within twenty (20) days from the date of receipt hereof.

GIVEN UNDER MY HAND AND SEAL of this Court, this 15[th] day of November, 2002, at Imus for Dasmariñas, Cavite, Philippines.[14]

On November 19, 2002, a copy of the writ of attachment was served upon the respondents. On the same date, the sheriff levied the real and personal properties of the respondent, including household appliances, cars, and a parcel of land located at Las Piñas, Manila.[15]

On November 21, 2002, summons, together with a copy of the complaint, was served upon the respondents.[16]

On November 29, 2002, respondents filed their Answer.[17]

On the same day respondents filed their answer, they also filed a Motion to Discharge Writ of Attachment[18] anchored on the following grounds: the bond was issued before the issuance of the writ of attachment; the writ of attachment was issued before the summons was received by the respondents; the sheriff did not serve copies of the application for attachment, order of attachment, plaintiffs' affidavit, and attachment bond, to the respondents; the sheriff did not submit a sheriff's return in violation of the Rules; and the grounds cited for the issuance of the writ are baseless and devoid of merit. In the alternative, respondents offered to post a counter-bond for the lifting of the writ of attachment.[19]

On March 11, 2003, after the parties filed their respective pleadings, the RTC issued an Order[20] denying the motion, but at the same time, directing the respondents to file a counter-bond, to wit:

WHEREFORE, premises considered, after the pertinent pleadings of the parties have been taken into account, the herein defendants are hereby directed to file a counter-bond executed to the attaching party, in the amount of Seven Million Pesos (P7,000,000.00), to secure the payment of any judgment that the attaching party may recover in the action, with notice on the attaching party, whereas, the Motion to Discharge Writ of Attachment is DENIED.

SO ORDERED.[21]

Thereafter, respondents filed a motion for reconsideration and/or motion for clarification of the above order. On April 3, 2003, the RTC issued another Order[22] which reads:

In view of the Urgent Motion For Reconsideration And/Or Motion For Clarification of the Order of this Court dated March 11, 2003, denying their Motion to Discharge Writ of Attachment filed by the defendants through counsel Atty. Franco L. Loyola, the Motion to Discharge Writ of Attachment is denied until after the defendants have posted the counter-bond in the amount of Seven Million Pesos (P7,000,000.00).

The defendants, once again, is directed to file their counter-bond of Seven Million Pesos (P7,000,000.00), if it so desires, in order to discharge the Writ of Attachment.

SO ORDERED.

On December 15, 2003, respondents filed an Urgent Motion to Lift/Set Aside Order Dated March [11], 2003,[23] which the RTC denied in an Order[24] of even date, the dispositive portion of which reads:

WHEREFORE, premises considered, defendants' Urgent Motion to Lift/Set Aside Order Dated March 23, 2003 (With Manifestation to Dissolve Writ of Attachment) is hereby DENIED for lack of Merit.

SO ORDERED.

Respondents filed an Urgent Motion for Reconsideration,[25] but it was denied in the Order[26] dated March 3, 2004.

Aggrieved, respondents filed before the CA a Petition for Certiorari, Mandamus and Prohibition with Preliminary Injunction and Temporary Restraining Order[27] under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 83595, anchored on the following grounds:

- (1) public respondents committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in failing to notice that the lower court has no jurisdiction over the person and subject matter of the complaint when the subject Writ of Attachment was issued;
- (2) public respondents committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in granting the issuance of the Writ of Attachment despite non-compliance with the formal requisites for the issuance of the bond and the Writ of Attachment.[28]

Respondents argued that the subject writ was improper and irregular having been issued and enforced without the lower court acquiring jurisdiction over the persons of the respondents. They maintained that the writ of attachment was implemented without serving upon them the summons together with the complaint. They also argued that the bond issued in favor of the petitioners was defective, because the bonding company failed to obtain the proper clearance that it can transact business with the RTC of Dasmariñas, Cavite. They added that the various clearances which were issued in favor of the bonding company were applicable only in the courts of the cities of Pasay, Pasig, Manila, and Makati, but not in the RTC, Imus, Cavite.[29]

On November 23, 2003, the CA rendered the assailed Decision in favor of the respondents, finding grave abuse of discretion amounting to lack of or in excess of jurisdiction on the part of the RTC in issuing the Orders dated December 15, 2003 and March 3, 2004. The decretal portion of the Decision reads:

WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the assailed Orders are hereby nullified and set aside. The levy on the properties of the petitioners pursuant to the Writ of Attachment issued by the lower court is hereby LIFTED.

SO ORDERED.[30]

Petitioners filed a Motion for Reconsideration,[31] but it was denied in the Resolution[32] dated January 18, 2005.

Hence, this petition assigning the following errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN ORDERING THE LIFTING OF THE WRIT OF ATTACHMENT PURSUANT TO SECTION 13, RULE 57 OF THE REVISED RULES OF CIVIL PROCEDURE.

II.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN GRANTING THE WRIT OF ATTACHMENT DESPITE THE BOND BEING INSUFFICIENT AND HAVING BEEN IMPROPERLY ISSUED.

III.

THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE PETITION BY REASON OF ESTOPPEL, LACHES AND PRESCRIPTION AND IN HOLDING THAT THE WRIT OF ATTACHMENT WAS IMPROPERLY AND IRREGULARLY ENFORCED IN VIOLATION OF SECTION 5, RULE 57 OF THE REVISED RULES OF COURT.

IV.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PRINCIPLE OF ESTOPPEL WILL NOT LIE AGAINST RESPONDENTS.

Petitioners maintain that in the case at bar, as in the case of *FCY Construction Group, Inc. v. Court of Appeals*,[33] the only way the subject writ of attachment can be dissolved is by a counter-bond. They claim that the respondents are not allowed to file a motion to dissolve the attachment under Section 13, Rule 57 of the Rules of Court. Otherwise, the hearing on the motion for the dissolution of the writ would be tantamount to a trial on the merits, considering that the writ of preliminary attachment was issued upon a ground which is, at the same time, the applicant's cause of action.

Petitioners insist that the determination of the existence of grounds to discharge a writ of attachment rests in the sound discretion of the lower court. They argue that the Certification[34] issued by the Office of the Administrator and the Certifications[35] issued by the clerks of court of the RTCs of Dasmariñas and Imus, Cavite, would show that the bonds offered by Western Guaranty Corporation, the bonding company which issued the bond, may be accepted by the RTCs of Dasmariñas and Imus, Cavite, and that the said bonding company has no pending liability with the government.

Petitioners contend that respondents are barred by estoppel, laches, and prescription from questioning the orders of the RTC issuing the writ of attachment. They also maintain that the issue whether there was impropriety or irregularity in the issuance of the orders is moot and academic, considering that the attachment bond questioned by the respondent had already expired on November 14, 2003 and petitioners have renewed the attachment bond covering the period from November 14, 2003 to November 14, 2004, and further renewed to cover the period of November 14, 2004 to November 14, 2005.

The petition is bereft of merit.

A writ of preliminary attachment is defined as a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment that might be secured in the said action by the attaching creditor against the defendant.[36]

In the case at bar, the CA correctly found that there was grave abuse of discretion amounting to lack of or in excess of jurisdiction on the part of the trial court in approving the bond posted by petitioners despite the fact that not all the requisites for its approval were complied with. In accepting a surety bond, it is necessary that all the requisites for its approval are met; otherwise, the bond should be rejected.[37]

Every bond should be accompanied by a clearance from the Supreme Court showing that the company concerned is qualified to transact business which is valid only for thirty (30) days from the date of its issuance.[38] However, it is apparent that the Certification[39] issued by the Office of the Court Administrator (OCA) at the time the bond was issued would clearly show that the bonds offered by Western Guaranty Corporation may be accepted only in the RTCs of the cities of Makati, Pasay, and Pasig. Therefore, the surety bond issued by the bonding company should not have been accepted by the RTC of Dasmariñas, Branch 90, since the certification secured by the bonding company from the OCA at the time of the issuance of the bond certified that it may only be accepted in the above-mentioned cities. Thus, the trial court acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction when it issued the writ of attachment founded on the said bond.

Moreover, in provisional remedies, particularly that of preliminary attachment, the distinction between the issuance and the implementation of the writ of attachment is of utmost importance to the validity of the writ. The distinction is indispensably necessary to determine when jurisdiction over the person of the defendant should be acquired in order to validly implement the writ of attachment upon his person.

This Court has long put to rest the issue of when jurisdiction over the person of the defendant should be acquired in cases where a party resorts to provisional remedies. A party to a suit may, at any time after filing the complaint, avail of the provisional remedies under the Rules of Court. Specifically, Rule 57 on preliminary attachment speaks of the grant of the remedy "at the commencement of the action or at any time before entry of judgment." [40] This phrase refers to the date of the filing of the complaint, which is the moment that marks "the commencement of the action." The reference plainly is to a time before summons is served on the defendant, or even before summons issues.[41]

In *Davao Light & Power Co., Inc. v. Court of Appeals*, [42] this Court clarified the actual time when jurisdiction should be had:

It goes without saying that whatever be the acts done by the Court prior to the acquisition of jurisdiction over the person of defendant x x x issuance of summons, order of attachment and writ of attachment x x x 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 x x x. (Emphasis supplied.)

In *Cuartero v. Court of Appeals*,^[43] this Court held that the grant of the provisional remedy of attachment 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 be first obtained. However, once the implementation of the writ commences, 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.^[44]

Thus, it is indispensable not only for the acquisition of jurisdiction over the person of the defendant, but also upon consideration of fairness, to apprise the defendant of the complaint against him and the issuance of a writ of preliminary attachment and the grounds therefor that prior or contemporaneously to the serving of the writ of attachment, service of summons, together with a copy of the complaint, the application for attachment, the applicant's affidavit and bond, and the order must be served upon him.

In the instant case, assuming *arguendo* that the trial court validly issued the writ of attachment on November 15, 2002, which was implemented on November 19, 2002, it is to be noted that the summons, together with a copy of the complaint, was served only on November 21, 2002.

At the time the trial court issued the writ of attachment on November 15, 2002, it can validly do so since the motion for its issuance can be filed "at the commencement of the action or at any time before entry of judgment." However, at the time the writ was implemented, the trial court has not acquired jurisdiction over the persons of the respondent since no summons was yet served upon them. The proper officer should have previously or simultaneously with the implementation of the writ of attachment, served a copy of the summons upon the respondents in order for the trial court to have acquired jurisdiction upon them and for the writ to have binding effect. Consequently, even if the writ of attachment was validly issued, it was improperly or irregularly enforced and, therefore, cannot bind and affect the respondents.

Moreover, although there is truth in the petitioners' contention that an attachment may not be dissolved by a showing of its irregular or improper issuance if it is upon a ground which is at the same time the applicant's cause of action in the main case, since an anomalous situation would result if the issues of the main case would be ventilated and resolved in a mere hearing of a motion. However, the same is not applicable in the case bar. It is clear from the respondents' pleadings that the grounds on which they base the lifting of the writ of attachment are the irregularities in its issuance and in the service of the writ; not petitioners' cause of action.

Further, petitioners' contention that respondents are barred by estoppel, laches, and prescription from questioning the orders of the RTC issuing the writ of attachment and that the issue has become moot and academic by the renewal of the attachment bond covering after its expiration, is devoid of merit. As correctly held by the CA:

There are two ways of discharging the attachment. First, to file a counter-bond in accordance with Section 12 of Rule 57. Second[,] [t]o quash the attachment on the ground that it was irregularly or improvidently issued, as provided for in Section 13 of the same rule. Whether the attachment was discharged by either of the two ways indicated in the law, the attachment debtor cannot be deemed to have waived any defect in the issuance of the attachment writ by simply availing himself of one way of discharging the attachment writ, instead of the other. The filing of a counter-bond is merely a speedier way of discharging the attachment writ instead of the other way.^[45]

Moreover, again assuming *arguendo* that the writ of attachment was validly issued, although the trial court later acquired jurisdiction over the respondents by service of the summons upon them, such belated service of summons on respondents cannot be deemed to have cured the fatal defect in the enforcement of the writ. The trial court cannot enforce such a coercive process on respondents without first obtaining jurisdiction over their person. The preliminary writ of attachment must be served after or simultaneous with the service of summons on the defendant whether by personal service, substituted service or by publication as warranted by the circumstances of the case. The subsequent service of summons does not confer a retroactive acquisition of jurisdiction over her person because the law does not allow for retroactivity of a belated service.[46]

WHEREFORE, premises considered, the petition is DENIED. The Decision and Resolution of the Court of Appeals dated November 23, 2004 and January 18, 2005, respectively, in CA-G.R. SP No. 83595 are AFFIRMED.

SO ORDERED.

Corona, (Chairperson), Chico-Nazario, Velasco, Jr., and Nachura, JJ., concur.

[1] Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court), with Associate Justices Romeo A. Brawner (now deceased) and Magdangal M. De Leon, concurring; rollo, pp. 41-59.

[2] Rollo, p. 39.

[3] CA rollo, pp. 54-55.

[4] *Id.* at 56-57.

[5] *Id.* at 58-59.

[6] *Id.* at 60-65.

[7] Records, pp. 1-14.

[8] CA rollo, pp. 79-83.

[9] *Id.* at 110-112.

[10] *Id.* at 112.

[11] *Id.* at 127.

[12] *Id.* at 128.

[13] *Id.* at 129-130.

[14] *Id.* at 130.

[15] *Id.* at 154-156.

[16] *Id.* at 131-132.

[17] *Id.* at 133-145.

[18] *Id.* at 146-153.

[19] *Id.* at 146-149.

- [20] Id. at 169-170.
- [21] Id. at 170.
- [22] Id. at 171.
- [23] Id. at 171-178.
- [24] Id. at 39.
- [25] Id. at 184-189.
- [26] Id. at 36-38.
- [27] Id. at 2-35.
- [28] Rollo, p. 52.
- [29] Id. at 53.
- [30] Id. at 58.
- [31] Id. at 60-69.
- [32] Id. at 38-39.
- [33] G.R. No. 123358, February 1, 2000, 324 SCRA 270.
- [34] CA rollo, p. 354.
- [35] Id. at 356-365.
- [36] Cuartero v. Court of Appeals, G.R. No. 102448, August 5, 1992, 212 SCRA 260.
- [37] Judicial Audit and Physical Inventory of Confiscated Cash, Surety and Property Bonds at RTC, Tarlac City, Brs. 63, 64 & 65, A.M. No. 04-7-358-RTC, July 22, 2005, 464 SCRA 21, 28.
- [38] Id.
- [39] CA rollo, p. 119.
- [40] Rules of Court, Rule 57, Sec. 1.
- [41] Mangila v. Court of Appeals, 435 Phil. 870, 880 (2002).
- [42] G.R. No. 93262, November 29, 1991, 204 SCRA 343, 355-356.
- [43] Supra note 36.
- [44] Id. at 266.
- [45] Rollo, pp. 57-58.
- [46] Supra note 41, at 883.

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