REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. MAJ. GEN. CARLOS FLORES GARCIA, CLARITA DEPAKAKIBO GARCIA, IAN CARL DEPAKAKIBO GARCIA, JUAN PAULO DEPAKAKIBO GARCIA, TIMOTHY DEPAKAK...

G.R. NO. 167741. July 12, 2007

Ponente: CORONA, J.

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CORONA, J.:

This petition for certiorari[1] assails the January 14, 2005 and March 2, 2005 resolutions[2] of the Fourth Division of the Sandiganbayan in Civil Case No. 0193 entitled Republic of the Philippines v. Maj. Gen. Carlos Flores Garcia, Clarita Depakakibo Garcia, Ian Carl Depakakibo Garcia, Juan Paulo Depakakibo Garcia and Timothy Mark Depakakibo Garcia.

Civil Case No. 0193 was a petition for forfeiture of unlawfully acquired properties, with a verified urgent ex-parte application for the issuance of a writ of preliminary attachment, filed by the Republic of the Philippines against Maj. Gen. Carlos F. Garcia, his wife[3] and children[4] in the Sandiganbayan on October 27, 2004. In praying for the issuance of a writ of preliminary attachment, the Republic maintained that, as a sovereign political entity, it was exempt from filing the required attachment bond.

On October 29, 2004, the Sandiganbayan issued a resolution ordering the issuance of a writ of preliminary attachment against the properties of the Garcias upon the filing by the Republic of a P1 million attachment bond.[5] On November 2, 2004, the Republic posted the required attachment bond to avoid any delay in the issuance of the writ as well as to promptly protect and secure its claim.

On December 7, 2004, the Republic filed a motion for partial reconsideration of the October 29, 2004 resolution claiming that it was exempt from filing an attachment bond and praying for the release thereof.

In a resolution dated January 14, 2005, the Sandiganbayan ruled that there was nothing in the Rules of Court that exempted the Republic from filing an attachment bond. It reexamined Tolentino v. Carlos[6] which was invoked by the Republic to justify its claimed exemption. That case was decided under the old Code of Civil Procedure enacted more than a century ago.

The Sandiganbayan denied the Republic's motion. Reconsideration was also denied in a resolution dated March 2, 2005.

As already stated, these two resolutions (January 14, 2005 and March 2, 2005) are the subject of the present petition.

Did the Sandiganbayan commit grave abuse of discretion when it rejected the Republic's claim of exemption from the filing of an attachment bond? Yes.

Sections 3 and 4, Rule 57 of the Rules of Court provide:

> 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 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. The affidavit, and the bond required by the next succeeding section, must be duly filed with the court before the order issues.
>
> Sec. 4. Condition of applicant's bond. - The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto. (emphasis supplied)

Under these provisions, before a writ of attachment may issue, a bond must first be filed to answer for all costs which may be adjudged to the adverse party and for the damages he may sustain by reason of the attachment. However, this rule does not cover the State. In Tolentino,[7] this Court declared that the State as represented by the government is exempt from filing an attachment bond on the theory that it is always solvent.

> - Section 427 of the Code of Civil Procedure provides that before the issuance of a writ of attachment, the applicant therefor or any person in his name, should file a bond in favor of the defendant for an amount not less than P400 nor more than the amount of the claim, answerable for damages in case it is shown that the attachment was obtained illegally or without sufficient cause; but in the case at bar the one who applied for and obtained the attachment is the Commonwealth of the Philippines, as plaintiff, and under the theory that the State is always solvent it was not bound to post the required bond and the respondent judge did not exceed his jurisdiction in exempting it from such requirement. x x x[8] (emphasis supplied)

In other words, the issuance of a writ of preliminary attachment is conditioned on the filing of a bond unless the applicant is the State. Where the State is the applicant, the filing of the attachment bond is excused.[9]

The attachment bond is contingent on and answerable for all costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment should the court finally rule that the applicant is not entitled to the writ of attachment. Thus, it is a security for the payment of the costs and damages to which the adverse party may be entitled in case there is a subsequent finding that the applicant is not entitled to the writ. The Republic of the Philippines need not give this security as it is presumed to be always solvent and able to meet its obligations.

The Sandiganbayan thus erred when it disregarded the foregoing presumption and instead ruled that the Republic should file an attachment bond. The error was not simply an error of judgment but grave abuse of discretion.

There is grave abuse of discretion when an act is done contrary to the Constitution, the law or jurisprudence.[10] Here, the Sandiganbayan's January 14, 2005 resolution was clearly contrary to Tolentino.

Worse, the Sandiganbayan transgressed the Constitution and arrogated upon itself a power that it did not by law possess. All courts must take their bearings from the decisions and rulings of this Court. Tolentino has not been superseded or reversed. Thus, it is existing jurisprudence and continues to form an important part of our legal system.[11] Surprisingly, the Sandiganbayan declared that Tolentino "need(ed) to be carefully reexamined in the light of the changes that the rule on attachment ha(d) undergone through the years."[12] According to the court a quo:

> [Tolentino] was decided by the Supreme Court employing the old Code of Civil Procedure (Act No. 190) which was enacted by the Philippine Commission on August 7, 1901 or more than a century ago.

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> That was then, this is now. The provisions of the old Code of Civil Procedure governing attachment have been substantially modified in the subsequent Rules of Court. In fact, Rule 57 of the present 1997 Rules of Civil Procedure is an expanded modification of the provisions of the old Code of Civil Procedure governing attachment. Unlike the old Code of Civil Procedure, the present 1997 Rules of Civil Procedure is noticeably explicit in its requirement that the party applying for an order of attachment should file a bond.

On this, Article VIII, Section 4(3) of the Constitution provides:

> (3) Cases or matters heard by a division shall be decided or resolved with the concurrence of majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc; Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc. (emphasis supplied)

The Constitution mandates that only this Court sitting en banc may modify or reverse a doctrine or principle of law laid down by the Court in a decision rendered en banc or in division. Any court, the Sandiganbayan included, which renders a decision in violation of this constitutional precept exceeds its jurisdiction.

Therefore, the Sandiganbayan could not have validly "reexamined," much less reversed, Tolentino. By doing something it could not validly do, the Sandiganbayan acted ultra vires and committed grave abuse of discretion.

The fact was, the revisions of the Rules of Court on attachment, particularly those pertaining to the filing of an attachment bond, did not quash Tolentino.

Tolentino applied Sec. 247 of Act No. 190 which provided:

> Sec. 247. Obligation for damages in case of attachment. - Before the order is made, the party applying for it, or some person on his behalf, must execute to the defendant an obligation in an amount to be fixed by the judge, or justice of the peace, and with sufficient surety to be approved by him, which obligation shall be for a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, that the plaintiff will pay all the costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the attachment, if the same shall finally be adjudged to have been wrongful or without sufficient cause. (emphasis supplied)

Contrary to the pronouncement of the Sandiganbayan, Section 247 of Act No. 190 explicitly required the execution of an attachment bond before a writ of preliminary attachment could be issued.

The relevant provisions of Act No. 190 on attachment were later substantially adopted as Sections 3[13] and 4, Rule 59 of the 1940 Rules of Court.

> Sec. 3. Order issued only when affidavit and bond filed. - An order of attachment shall be granted only when it is made to appear by the affidavit of the plaintiff, or of some other person who personally knows the facts, 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 plaintiff, or the value of the property which he is entitled to recover possession of, is as much as the sum for which the order is granted above all legal counterclaims; which affidavit, and the bond required by the next succeeding section, must be duly filed with the clerk or judge of the court before the order issues. (emphasis supplied)

> Sec. 4. Bond required from plaintiff. - The party applying for the order must give a bond executed to the defendant in an amount to be fixed by the judge, not exceeding the plaintiff's claim, that the plaintiff will pay all the costs which may be adjudged to the defendant and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the plaintiff was not entitled thereto.

And with the promulgation of the 1964 Rules of Court, the rules on attachment were renumbered as Rule 57, remaining substantially the same:

> 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 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. The affidavit, and the bond required by the next succeeding section, must be duly filed with the clerk or judge of the court before the order issues. (emphasis supplied)
>
> Sec. 4. Condition of applicant's bond. - The party applying for the order must thereafter give a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the applicant's claim, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.

Clearly, the filing of an attachment bond before the issuance of a writ of preliminary attachment was expressly required under the relevant provisions of both the 1940 and 1964 Rules of Court.

Commentaries on Sections 3 and 4 of the 1964 Rules of Court uniformly cited Tolentino. They stated that the government is exempt from filing an attachment bond[14] and that the State need not file an attachment bond.[15]

> Where the Republic of the Philippines as a party to an action asks for a writ of attachment against the properties of a defendant, it need not furnish a bond. This is so because the State is presumed to be solvent.[16]
>
> When plaintiff is the Republic of the Philippines, it need not file a bond when it applies for a preliminary attachment. This is on the premise that the State is solvent.[17]

And then again, we note the significant fact that Sections 3 and 4, Rule 57 of the 1964 Rules of Court were substantially incorporated as Sections 3 and 4, Rule 57 of the present (1997) Rules of Court.[18] There is thus no reason why the Republic should be made to file an attachment bond.

In fact, in Spouses Badillo v. Hon. Tayag,[19] a fairly recent case, this Court declared that, when the State litigates, it is not required to put up a bond for damages or even an appeal bond because it is presumed to be solvent. In other words, the State is not required to file a bond because it is capable of paying its obligations.[20]

The pronouncement in Spouses Badillo applies in this case even if Spouses Badillo involved the filing of a supersedeas bond. The pronouncement that the State "is not required to put up a bond for damages or even an appeal bond "is general enough to encompass attachment bonds. Moreover, the purpose of an attachment bond (to answer for all costs and damages which the adverse party may sustain by reason of the attachment if the court finally rules that the applicant is not entitled to the writ) and a supersedeas bond (to answer for damages to the winning party in case the appeal is found frivolous) is essentially the same.

In filing forfeiture cases against erring public officials and employees, the Office of the Ombudsman performs the State's sovereign functions of enforcing laws, guarding and protecting the integrity of the public service and addressing the problem of corruption in the bureaucracy.

The filing of an application for the issuance of a writ of preliminary attachment is a necessary incident in forfeiture cases. It is needed to protect the interest of the government and to prevent the removal, concealment and disposition of properties in the hands of unscrupulous public officers. Otherwise, even if the government subsequently wins the case, it will be left holding an empty bag.

Accordingly, the petition is hereby GRANTED. The January 14, 2005 and March 2, 2005 resolutions of the

Sandiganbayan are REVERSED and SET ASIDE. The Republic of the Philippines is declared exempt from the payment or filing of an attachment bond for the issuance of a writ of preliminary attachment issued in Civil Case No. 0193. The Sandiganbayan is hereby ordered to release the P1,000,000 bond posted by the Republic of the Philippines to the Office of the Ombudsman.

SO ORDERED.

Puno, C.J., (Chairperson), Azcuna, and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on leave.

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[1] Under Rule 65 of the Rules of Court.

[2] Both resolutions were penned by Associate Justice Jose R. Hernandez with Associate Justices Gregory S. Ong and Rodolfo A. Ponferrada concurring. Rollo, pp. 25-38, 39-50.

[3] Respondent Clarita D. Garcia.

[4] Respondents Ian Carl D. Garcia, Juan Paulo D. Garcia and Timothy Mark D. Garcia.

[5] Rollo, pp. 100-104.

[6] 66 Phil. 140 (1938).

[7] Id.

[8] Id.

[9] Martin, Ruperto, RULES OF COURT IN THE PHILIPPINES, volume 3, 1969 Second Edition, Philippine Graphic Arts Publications Company, p. 17; Moran, Manuel, COMMENTS ON THE RULES OF COURT, volume III, 1997 Edition, Rex Bookstore, p. 27.

[10] Information Technology Foundation of the Philippines v. Commission on Elections, G.R. No. 159139, 13 January 2004, 419 SCRA 141.

[11] See Article 8, Civil Code.

[12] Emphasis supplied.

[13] The provision requiring the affidavit was formerly Section 246 of Act No. 190.

Sec. 246. Granting order of attachment. – A judge or justice of the peace shall grant an order of attachment when it is made to appear to the judge or justice of the peace by the affidavit of the plaintiff, or of some other person who knows the facts that a sufficient cause of action exists, and that the case is one of those mentioned in section four hundred and twenty-four, and that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the plaintiff above all legal setoffs or counterclaims is as much as the sum for which the order is granted.

[14] Laureta, Wenceslao, COMMENTARIES AND JURISPRUDENCE ON ATTACHMENT AND EXECUTION, 1972 First Edition, National Bookstore, p. 64.

[15] Martin, Ruperto, supra.

[16] Id.

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[17] Moran, Manuel, supra.

[18] There was no change in Section 3 except style by deleting the words "the clerk or judge of" from the last sentence. The only change in Section 4 was, instead of the amount of the bond to be fixed by the judge, not exceeding the applicant's claim, the present rule leaves the amount to be fixed by the court in its order without any limitation. (Herrera, Oscar, Remedial Law [Volume VII]: COMMENTS ON THE 1997 RULES OF CIVIL PROCEDURE AS AMENDED, 1997 EDITION, Rex Bookstore, pp. 602-603.)

[19] 448 Phil. 606 (2003).

[20] Id.

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