

ALEJANDRO NG WEE, Petitioner, vs. MANUEL TANKIANSEE, Respondent.*G.R. No. 171124. February 13, 2008*

Ponente: NACHURA, J.

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Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the September 14, 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 90130 and its January 6, 2006 Resolution[2] denying the motion for reconsideration thereof.

The facts are undisputed. Petitioner Alejandro Ng Wee, a valued client of Westmont Bank (now United Overseas Bank), made several money placements totaling P210,595,991.62 with the bank's affiliate, Westmont Investment Corporation (Wincorp), a domestic entity engaged in the business of an investment house with the authority and license to extend credit.[3]

Sometime in February 2000, petitioner received disturbing news on Wincorp's financial condition prompting him to inquire about and investigate the company's operations and transactions with its borrowers. He then discovered that the company extended a loan equal to his total money placement to a corporation [Power Merge] with a subscribed capital of only P37.5M. This credit facility originated from another loan of about P1.5B extended by Wincorp to another corporation [Hottick Holdings]. When the latter defaulted in its obligation, Wincorp instituted a case against it and its surety. Settlement was, however, reached in which Hottick's president, Luis Juan L. Virata (Virata), assumed the obligation of the surety.[4]

Under the scheme agreed upon by Wincorp and Hottick's president, petitioner's money placements were transferred without his knowledge and consent to the loan account of Power Merge through an agreement that virtually freed the latter of any liability. Allegedly, through the false representations of Wincorp and its officers and directors, petitioner was enticed to roll over his placements so that Wincorp could loan the same to Virata/Power Merge.[5]

Finding that Virata purportedly used Power Merge as a conduit and connived with Wincorp's officers and directors to fraudulently obtain for his benefit without any intention of paying the said placements, petitioner instituted, on October 19, 2000, Civil Case No. 00-99006 for damages with the Regional Trial Court (RTC) of Manila.[6] One of the defendants impleaded in the complaint is herein respondent Manuel Tankiansee, Vice-Chairman and Director of Wincorp.[7]

On October 26, 2000, on the basis of the allegations in the complaint and the October 12, 2000 Affidavit[8] of petitioner, the trial court ordered the issuance of a writ of preliminary attachment against the properties not exempt from execution of all the defendants in the civil case subject, among others, to petitioner's filing of a P50M-bond.[9] The writ was, consequently, issued on November 6, 2000.[10]

Arguing that the writ was improperly issued and that the bond furnished was grossly insufficient, respondent, on December 22, 2000, moved for the discharge of the attachment.[11] The other defendants likewise filed similar motions.[12] On October 23, 2001, the RTC, in an Omnibus Order,[13] denied all the motions for the discharge of

the attachment. The defendants, including respondent herein, filed their respective motions for reconsideration[14] but the trial court denied the same on October 14, 2002.[15]

Incidentally, while respondent opted not to question anymore the said orders, his co-defendants, Virata and UEM-MARA Philippines Corporation (UEM-MARA), assailed the same via certiorari under Rule 65 before the CA [docketed as CA-G.R. SP No. 74610]. The appellate court, however, denied the certiorari petition on August 21, 2003,[16] and the motion for reconsideration thereof on March 16, 2004.[17] In a petition for review on certiorari before this Court, in G.R. No. 162928, we denied the petition and affirmed the CA rulings on May 19, 2004 for Virata's and UEM-MARA's failure to sufficiently show that the appellate court committed any reversible error.[18] We subsequently denied the petition with finality on August 23, 2004.[19]

On September 30, 2004, respondent filed before the trial court another Motion to Discharge Attachment,[20] re-pleading the grounds he raised in his first motion but raising the following additional grounds: (1) that he was not present in Wincorp's board meetings approving the questionable transactions;[21] and (2) that he could not have connived with Wincorp and the other defendants because he and Pearlbank Securities, Inc., in which he is a major stockholder, filed cases against the company as they were also victimized by its fraudulent schemes.[22]

Ruling that the grounds raised were already passed upon by it in the previous orders affirmed by the CA and this Court, and that the additional grounds were respondent's affirmative defenses that properly pertained to the merits of the case, the trial court denied the motion in its January 6, 2005 Order.[23]

With the denial of its motion for reconsideration,[24] respondent filed a certiorari petition before the CA docketed as CA-G.R. SP No. 90130. On September 14, 2005, the appellate court rendered the assailed Decision[25] reversing and setting aside the aforementioned orders of the trial court and lifting the November 6, 2000 Writ of Preliminary Attachment[26] to the extent that it concerned respondent's properties. Petitioner moved for the reconsideration of the said ruling, but the CA denied the same in its January 6, 2006 Resolution.[27]

Thus, petitioner filed the instant petition on the following grounds:

A.

IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF APPEALS SHOULD NOT HAVE GIVEN DUE COURSE TO THE PETITION FOR CERTIORARI FILED BY RESPONDENT, SINCE IT MERELY RAISED ERRORS IN JUDGMENT, WHICH, UNDER PREVAILING JURISPRUDENCE, ARE NOT THE PROPER SUBJECTS OF A WRIT OF CERTIORARI.

B.

MOREOVER, IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF APPEALS COMMITTED SERIOUS LEGAL ERROR IN RESOLVING FAVORABLY THE GROUNDS ALLEGED BY RESPONDENT IN HIS PETITION AND (SIC) LIFTING THE WRIT OF PRELIMINARY ATTACHMENT, SINCE THESE GROUNDS ALREADY RELATE TO THE MERITS OF CIVIL CASE NO. 00-99006 WHICH, UNDER PREVAILING JURISPRUDENCE, CANNOT BE USED AS BASIS (SIC) FOR DISCHARGING A WRIT OF PRELIMINARY ATTACHMENT.

C.

LIKewise, IT IS RESPECTFULLY SUBMITTED THAT THE COURT OF APPEALS ERRED IN SUSTAINING THE ERRORS IN JUDGMENT ALLEGED BY RESPONDENT, NOT ONLY BECAUSE THESE ARE BELIED BY THE VERY DOCUMENTS HE SUBMITTED AS PROOF OF SUCH ERRORS, BUT ALSO BECAUSE THESE HAD EARLIER BEEN RESOLVED WITH FINALITY BY THE LOWER COURT.[28]

For his part, respondent counters, among others, that the general and sweeping allegation of fraud against respondent in petitioner's affidavit—respondent as an officer and director of Wincorp allegedly connived with the other defendants to defraud petitioner—is not sufficient basis for the trial court to order the attachment of respondent's properties. Nowhere in the said affidavit does petitioner mention the name of respondent and any specific act committed by the latter to defraud the former. A writ of attachment can only be granted on concrete and specific grounds and not on general averments quoting perfunctorily the words of the Rules. Connivance cannot also be based on mere association but must be particularly alleged and established as a fact. Respondent further contends that the trial court, in resolving the Motion to Discharge Attachment, need not actually delve into the merits of the case. All that the court has to examine are the allegations in the complaint and the supporting affidavit. Petitioner cannot also rely on the decisions of the appellate court in CA-G.R. SP No. 74610 and this Court in G.R. No. 162928 to support his claim because respondent is not a party to the said cases.[29]

We agree with respondent's contentions and deny the petition.

In the case at bench, the basis of petitioner's application for the issuance of the writ of preliminary attachment against the properties of respondent is Section 1(d) of Rule 57 of the Rules of Court which pertinently reads:

Section 1. Grounds upon which attachment may issue.—At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may 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

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof.

For a writ of attachment to issue under this rule, the applicant must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.[30] The applicant must then be able to demonstrate that the debtor has intended to defraud the creditor.[31] In *Liberty Insurance Corporation v. Court of Appeals*, [32] we explained 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.[33]

In the instant case, petitioner's October 12, 2000 Affidavit[34] is bereft of any factual statement that respondent committed a fraud. The affidavit narrated only the alleged fraudulent transaction between Wincorp and Virata and/or Power Merge, which, by the way, explains why this Court, in G.R. No. 162928, affirmed the writ of attachment issued against the latter. As to the participation of respondent in the said transaction, the affidavit merely states that respondent, an officer and director of Wincorp, connived with the other defendants in the civil case to defraud petitioner of his money placements. No other factual averment or circumstance details how respondent committed a fraud or how he connived with the other defendants to commit a fraud in the transaction sued upon. In other words, petitioner has not shown any specific act or deed to support the allegation that respondent is guilty of fraud.

The affidavit, being the foundation of the writ,[35] must contain such particulars as to how the fraud imputed to respondent was committed for the court to decide whether or not to issue the writ.[36] Absent any statement of other factual circumstances to show that respondent, at the time of contracting the obligation, had a preconceived plan or intention not to pay, or without any showing of how respondent committed the alleged fraud, the general averment in the affidavit that respondent is an officer and director of Wincorp who allegedly connived with the other defendants to commit a fraud, is insufficient to support the issuance of a writ of preliminary attachment.[37] In the application for the writ under the said ground, compelling is the need to give a hint about what constituted the fraud and how it was perpetrated[38] because established is the rule that fraud is never presumed.[39] Verily, the mere fact that respondent is an officer and director of the company does not necessarily give rise to the inference that he committed a fraud or that he connived with the other defendants to commit a fraud. While under certain circumstances, courts may treat a corporation as a mere aggroupment of persons, to whom liability will directly attach, this is only done when the wrongdoing has been clearly and convincingly established.[40]

Let it be stressed that the provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance.[41] The rules governing its issuance are, therefore, strictly construed against the applicant,[42] such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction.[43] Likewise, the writ should not be abused to cause unnecessary prejudice. If it is wrongfully issued on the basis of false or insufficient allegations, it should at once be corrected.[44]

Considering, therefore, that, in this case, petitioner has not fully satisfied the legal obligation to show the specific acts constitutive of the alleged fraud committed by respondent, the trial court acted in excess of its jurisdiction when it issued the writ of preliminary attachment against the properties of respondent.

We are not unmindful of the rule enunciated in *G.B. Inc., etc. v. Sanchez, et al.*,[45] that

[t]he merits of the main action are not triable in a motion to discharge an attachment otherwise an applicant for the dissolution could force a trial of the merits of the case on his motion.[46]

However, the principle finds no application here because petitioner has not yet fulfilled the requirements set by the Rules of Court for the issuance of the writ against the properties of respondent.[47] The evil sought to be prevented by the said ruling will not arise, because the propriety or impropriety of the issuance of the writ in this case can be determined by simply reading the complaint and the affidavit in support of the application.

Furthermore, our ruling in G.R. No. 162928, to the effect that the writ of attachment is properly issued insofar as it concerns the properties of Virata and UEM-MARA, does not affect respondent herein, for, as correctly ruled by the CA, respondent is “never a party thereto.”[48] Also, he is not in the same situation as Virata and UEM-MARA since, as aforesaid, while petitioner’s affidavit detailed the alleged fraudulent scheme perpetrated by Virata and/or Power Merge, only a general allegation of fraud was made against respondent.

We state, in closing, that our ruling herein deals only with the writ of preliminary attachment issued against the properties of respondent—it does not concern the other parties in the civil case, nor affect the trial court’s resolution on the merits of the aforesaid civil case.

WHEREFORE, premises considered, the petition is DENIED. The September 14, 2005 Decision and the January 6, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 90130 are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Corona, and Reyes, JJ., concur.

[*] In lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 484 dated January 11, 2008.

[1] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Roberto A. Barrios (deceased) and Amelita G. Tolentino, concurring; rollo, pp. 44-55.

[2] Rollo, p. 57.

[3] Id. at 61-63, 650.

[4] Id. at 63-67, 650-652.

[5] Id. at 67-71, 652-653.

[6] Id. at 58.

[7] Id. at 60. The other defendants in the civil case are Luis Juan L. Virata, Power Merge Corporation, UEM Development Philippines, Inc., UEM-MARA Philippines Corporation, United Engineers (Malaysia) Berhad, Majlis Amanah Rakyat, Renong Berhad, Westmont Investment Corporation, Antonio T. Ong, Anthony A.T. Reyes, Simeon S. Cua, Mariza Santos-Tan, Vicente T. Cualoping, Henry T. Cualoping, Manuel A. Estrella and John Anthony B. Espiritu.

[8] Id. at 377-383. The material portions of the October 12, 2000 Affidavit read:

4. In order to entice me to place substantial funds in Wincorp, the latter's officers and said Manager of Westmont Bank-Binondo Branch, who actively marketed Wincorp's business, made the following representations to me:

4.1. Money placements with Wincorp would earn more interest than an ordinary savings or time deposit of the same amount with Westmont Bank.

4.2. Money placements with Wincorp are profitable, stable and secure because the funds are loaned to borrowers who are extensively screened and who are required to provide sufficient security in accordance with generally accepted banking standards and practices like those observed by Westmont Bank.

4.3. Wincorp is stable since Wincorp and Westmont Bank were owned or controlled by the same shareholders and thus, has the backing of Westmont Bank.

4.4. Being a depositor of Westmont Bank, I could easily make or withdraw my money placements by merely instructing Westmont Bank and Wincorp to transfer the funds from my accounts and remit the same to the other.

5. Relying on said representations, I placed substantial amounts of money in my own name and in the names of others with Wincorp on several occasions. Some of my outstanding placements with Wincorp, which were loaned by Wincorp, are in the names of Robert Tabada Tan, Elizabeth Ng Wee, Alex Lim Tan and Angela Archangel who hold said placements in trust for me.

6. Each money placement I gave to Wincorp and Wincorp's receipt thereof is evidenced by a confirmation advice issued by Wincorp.

7. I was assured by the officers of Wincorp with whom I transacted that upon maturity of each money placement, the maturity value thereof can be withdrawn from Wincorp or the same can be "rolled over" as principal for

another money placement at the prevailing interest rate at the time of the roll-over. I was also assured by the officers of Wincorp that they would allow me, being a valued client, to pre-terminate my accounts/placements if I needed to withdraw the proceeds thereof before their maturity dates. However, I would usually roll-over most of the placements, upon the advice and enticement of Wincorp.

8. Sometime in February 2000, I received disturbing news about the financial condition and the questionable operations of Wincorp and its borrowers.

9. Considering that I had sizeable placements with Wincorp, I conducted inquiries and investigated the veracity of the news reports.

10. Based on my inquiries and the documents, which came to my possession as a result thereof, I discovered the following:

x x x x

11. It must be noted that my money placements were transferred to the loan account of Power Merge by Wincorp and its officers/directors, without my prior knowledge and consent. Later, however, through false representations by Wincorp and its officers/directors, I was enticed to roll over the placements which were loaned to Virata/Power Merge because I was made to believe that the latter were not in default of their loan obligations; otherwise, Wincorp and its officers/directors would not have renewed the loans or grant additional loans to Virata/Power Merge.

12. The principal amount of my money placements/funds which were loaned by Wincorp to Virata/Power Merge, is at least Two Hundred Ten Million Five Hundred Ninety-Five Thousand Nine Hundred Ninety-One and 62/100 Pesos (P210,595,991.62). [cf. Confirmation Advices (Annexes “S,” “S-1” to “S-35” of the Complaint)]

13. Said money placements have all matured and are now all past due and owing.

14. However, despite demand, Virata/Power Merge have refused and continue to refuse to pay me the said outstanding loan obligations. [cf. Annexes “T,” “T-1,” “T-2” and “T-3” of the Complaint]

15. Based on the foregoing, it is evident that I have a sufficient cause of action for the payment of the outstanding loan obligation to me in the principal amount of Two Hundred Ten Million Five Hundred Ninety-Five Thousand Nine Hundred Ninety-One and 62/100 Pesos (P210,595,991.62), plus all stipulated interests, liquidated damages and attorney’s fees against Power Merge and Virata who beneficially owns all the shares of stock of the latter and who personally used and/or benefited from my placements/funds. I also have a cause of action against Wincorp and its officers and directors considering that the damage and prejudice to me could not have been caused without their participation and connivance with Virata/Power Merge in granting loans to the latter using my funds/placements.

16. From the foregoing facts, it clearly appears that the acts of Wincorp and its officers and directors in granting loans to Virata/Power Merge using my funds/placements with the latter having no intention nor capacity to pay said loan obligation, constitute fraud both in contracting the debt or incurring the obligation, and in the performance thereof under Section 1, Rule 57 of the Rules of Court.

17. There is no other security for my legitimate claims in the principal amount of at least Two Hundred Ten Million Five Hundred Ninety-Five Thousand Nine Hundred Ninety-One and 62/100 Pesos (P210,595,991.62), plus all stipulated interests, liquidated damages and attorney’s fees, which amount is likewise the amount to which I am entitled and for which the order of attachment is sought above all legal counterclaims.

[9] Id. at 384-386.

[10] Id. at 387.

[11] Id. at 390-393. This is respondent's first motion to discharge the attachment.

[12] Id. at 400.

[13] Id. at 400-404.

[14] Id. at 405-410.

[15] Id. at 412-417.

[16] Id. at 419-433. The August 21, 2003 Decision of the appellate court in CA-G.R. SP No. 74610 was penned by Associate Justice Arsenio J. Magpale, with Associate Justices Bienvenido L. Reyes and Rebecca De Guia-Salvador concurring.

[17] Id. at 435.

[18] Id. at 436.

[19] Id. at 437.

[20] Id. at 448-461. This is respondent's second motion to discharge the attachment.

[21] Id. at 451-453.

[22] Id. at 453-455.

[23] Id. at 508-510.

[24] Id. at 511.

[25] Supra note 1.

[26] Supra note 10.

[27] Supra note 2.

[28] Rollo, pp. 17-18.

[29] Id. at 661-685.

[30] See *Philippine National Construction Corporation v. Dy*, G.R. No. 156887, October 3, 2005, 472 SCRA 1, 9-12.

[31] *Spouses Godinez v. Hon. Alano*, 362 Phil. 597, 609 (1999).

[32] G.R. No. 104405, May 13, 1993, 222 SCRA 37.

[33] Id. at 45.

[34] Rollo, pp. 377-383.

[35] *Jardine-Manila Finance, Inc. v. Court of Appeals*, G.R. No. 55272, April 10, 1989, 171 SCRA 636, 645.

[36] See *Philippine Bank of Communications v. Court of Appeals*, 405 Phil. 271, 280 (2001).

[37] See *PCL Industries Manufacturing Corporation v. Court of Appeals*, G.R. No. 147970, March 31, 2006, 486 SCRA 214, 222-226.

[38] *Ting v. Villarin*, G.R. No. 61754, August 17, 1989, 176 SCRA 532, 535.

[39] *Benitez v. Intermediate Appellate Court*, No. L-71535, September 15, 1987, 154 SCRA 41, 46.

[40] *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, G.R. No. 153535, July 28, 2005, 464 SCRA 409, 424-425.

[41] *Benitez v. Intermediate Appellate Court*, *supra* note 39, at 48.

[42] *D.P. Lub Oil Marketing Center, Inc. v. Nicolas*, G.R. No. 76113, November 16, 1990, 191 SCRA 423, 428.

[43] *Philippine Bank of Communications v. Court of Appeals*, *supra* note 36, at 282.

[44] *Benitez v. Intermediate Appellate Court*, *supra* note 39, at 48.

[45] 98 Phil. 886 (1956); see *Chuidian v. Sandiganbayan*, 402 Phil. 795, 816 (2001); see also *FCY Construction Group, Inc. v. Court of Appeals*, 381 Phil. 282 (2000).

[46] *Id.* at 891.

[47] See *Villongco, et al. v. Panlilio etc., et al.*, 94 Phil. 15 (1953).

[48] CA rollo, p. 341.

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