

**METRO, INC. AND SPOUSES FREDERICK JUAN AND LIZA JUAN,
PETITIONERS, VS. LARA'S GIFTS AND DECORS, INC., LUIS
VILLAFUERTE, JR. AND LARA MARIA R. VILLAFUERTE,
RESPONDENTS.**

G.R. No. 171741. November 27, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the 29 September 2004 Decision[2] and 2 March 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 79475. In its 29 September 2004 Decision, the Court of Appeals granted the petition for certiorari of respondents Lara's Gifts and Decors, Inc., Luis Villafuerte, Jr., and Lara Maria R. Villafuerte (respondents). In its 2 March 2006 Resolution, the Court of Appeals denied the motion for reconsideration of petitioners Metro, Inc., Frederick Juan and Liza Juan (petitioners).

The Facts

Lara's Gifts and Decors Inc. (LGD) and Metro, Inc. are corporations engaged in the business of manufacturing, producing, selling and exporting handicrafts. Luis Villafuerte, Jr. and Lara Maria R. Villafuerte are the president and vice-president of LGD respectively. Frederick Juan and Liza Juan are the principal officers of Metro, Inc.

Sometime in 2001, petitioners and respondents agreed that respondents would endorse to petitioners purchase orders received by respondents from their buyers in the United States of America in exchange for a 15% commission, to be shared equally by respondents and James R. Paddon (JRP), LGD's agent. The terms of the agreement were later embodied in an e-mail labeled as the "2001 Agreement." [4]

In May 2003, respondents filed with the Regional Trial Court, Branch 197, Las Piñas City (trial court) a complaint against petitioners for sum of money and damages with a prayer for the issuance of a writ of preliminary attachment. Subsequently, respondents filed an amended complaint[5] and alleged that, as of July 2002, petitioners defrauded them in the amount of \$521,841.62. Respondents also prayed for P1,000,000 as moral damages, P1,000,000 as exemplary damages and 10% of the judgment award as attorney's fees. Respondents also prayed for the issuance of a writ of preliminary attachment.

In its 23 June 2003 Order,[6] the trial court granted respondents' prayer and issued the writ of attachment against the properties and assets of petitioners. The 23 June 2003 Order provides:

WHEREFORE, let a Writ of Preliminary Attachment issue against the properties and assets of Defendant METRO, INC. and against the properties and assets of Defendant SPOUSES FREDERICK AND LIZA JUAN not exempt from execution, as may be sufficient to satisfy the applicants' demand of US\$521,841.62 US Dollars or its equivalent in Pesos upon actual attachment, which is about P27 Million, unless such Defendants make a deposit or give a bond in an amount equal to P27 Million to satisfy the applicants' demand exclusive of

costs, upon posting by the Plaintiffs of a Bond for Preliminary Attachment in the amount of twenty five million pesos (P25,000,000.00), subject to the approval of this Court.

SO ORDERED.[7]

On 26 June 2003, petitioners filed a motion to discharge the writ of attachment. Petitioners argued that the writ of attachment should be discharged on the following grounds: (1) that the 2001 agreement was not a valid contract because it did not show that there was a meeting of the minds between the parties; (2) assuming that the 2001 agreement was a valid contract, the same was inadmissible because respondents failed to authenticate it in accordance with the Rules on Electronic Evidence; (3) that respondents failed to substantiate their allegations of fraud with specific acts or deeds showing how petitioners defrauded them; and (4) that respondents failed to establish that the unpaid commissions were already due and demandable.

After considering the arguments of the parties, the trial court granted petitioners' motion and lifted the writ of attachment. The 12 August 2003 Order[8] of the trial court provides:

Premises considered, after having taken a second hard look at the Order dated June 23, 2003 granting plaintiff's application for the issuance of a writ of preliminary attachment, the Court holds that the issuance of a writ of preliminary attachment in this case is not justified.

WHEREFORE, the writ of preliminary attachment issued in the instant case is hereby ordered immediately discharged and/or lifted.

SO ORDERED.[9]

Respondents filed a motion for reconsideration. In its 10 September 2003 Order, the trial court denied the motion.

Respondents filed a petition for certiorari before the Court of Appeals. Respondents alleged that the trial court gravely abused its discretion when it ordered the discharge of the writ of attachment without requiring petitioners to post a counter-bond.

In its 29 September 2004 Decision, the Court of Appeals granted respondents' petition. The 29 September 2004 Decision provides:

WHEREFORE, finding merit in the petition, We GRANT the same. The assailed Orders are hereby ANNULLED and SET ASIDE. However, the issued Writ of Preliminary Attachment may be ordered discharged upon the filing by the private respondents of the proper counter-bond pursuant to Section 12, Rule 57 of the Rules of Civil Procedure.

SO ORDERED.[10]

Petitioners filed a motion for reconsideration. In its 2 March 2006 Resolution, the Court of Appeals denied the motion.

Hence, this petition.

The 12 August 2003 Order of the Trial Court

According to the trial court, respondents failed to sufficiently show that petitioners were guilty of fraud either in incurring the obligation upon which the action was brought, or in the performance thereof. The trial court found no proof that petitioners were motivated by malice in entering into the 2001 agreement. The trial court also declared that petitioners' failure to fully comply with their obligation, absent other facts or circumstances to indicate evil intent, does not automatically amount to fraud. Consequently, the trial court ordered the discharge of

the writ of attachment for lack of evidence of fraud.

The 29 September 2004 Decision of the Court of Appeals

According to the Court Appeals, the trial court gravely abused its discretion when it ordered the discharge of the writ of attachment without requiring petitioners to post a counter-bond. The Court of Appeals said that when the writ of attachment is issued upon a ground which is at the same time also the applicant's cause of action, courts are precluded from hearing the motion for dissolution of the writ when such hearing would necessarily force a trial on the merits of a case on a mere motion.[11] The Court of Appeals pointed out that, in this case, fraud was not only alleged as the ground for the issuance of the writ of attachment, but was actually the core of respondents' complaint. The Court of Appeals declared that the only way that the writ of attachment can be discharged is by posting a counter-bond in accordance with Section 12,[12] Rule 57 of the Rules of Court.

The Issue

Petitioners raise the question of whether the writ of attachment issued by the trial court was improperly issued such that it may be discharged without the filing of a counter-bond.

The Ruling of the Court

The petition has no merit.

Petitioners contend that the writ of attachment was improperly issued because respondents' amended complaint failed to allege specific acts or circumstances constitutive of fraud. Petitioners insist that the improperly issued writ of attachment may be discharged without the necessity of filing a counter-bond. Petitioners also argue that respondents failed to show that the writ of attachment was issued upon a ground which is at the same time also respondents' cause of action. Petitioners maintain that respondents' amended complaint was not an action based on fraud but was a simple case for collection of sum of money plus damages.

On the other hand, respondents argue that the Court of Appeals did not err in ruling that the writ of attachment can only be discharged by filing a counter-bond. According to respondents, petitioners cannot avail of Section 13,[13] Rule 57 of the Rules of Court to have the attachment set aside because the ground for the issuance of the writ of attachment is also the basis of respondents' amended complaint. Respondents assert that the amended complaint is a complaint for damages for the breach of obligation and acts of fraud committed by petitioners.

In this case, the basis of respondents' application for the issuance of a writ of preliminary attachment is Section 1(d), Rule 57 of the Rules of Court which provides:

SEC. 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 maybe recovered in the following cases: x x x

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

In *Liberty Insurance Corporation v. Court of Appeals*,[14] we explained:

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.[15]

The applicant for a writ of preliminary attachment 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.[16]

In their amended complaint, respondents alleged the following in support of their prayer for a writ of preliminary attachment:

5. Sometime in early 2001, defendant Frederick Juan approached plaintiff spouses and asked them to help defendants' export business. Defendants enticed plaintiffs to enter into a business deal. He proposed to plaintiff spouses the following:

a. That plaintiffs transfer and endorse to defendant Metro some of the Purchase Orders (PO's) they will receive from their US buyers;

b. That defendants will sell exclusively and "only thru" plaintiffs for their US buyer;

x x x

6. After several discussions on the matter and further inducement on the part of defendant spouses, plaintiff spouses agreed. Thus, on April 21, 2001, defendant spouses confirmed and finalized the agreement in a letter-document entitled "2001 Agreement" they emailed to plaintiff spouses, a copy of which is hereto attached as Annex "A".

x x x

20. Defendants are guilty of fraud committed both at the inception of the agreement and in the performance of the obligation. Through machinations and schemes, defendants successfully enticed plaintiffs to enter into the 2001 Agreement. In order to secure plaintiffs' full trust in them and lure plaintiffs to endorse more POs and increase the volume of the orders, defendants during the early part, remitted to plaintiffs shares under the Agreement.

21. However, soon thereafter, just when the orders increased and the amount involved likewise increased, defendants suddenly, without any justifiable reasons and in pure bad faith and fraud, abandoned their contractual obligations to remit to plaintiffs their shares. And worse, defendants transacted directly with plaintiffs' foreign buyer to the latter's exclusion and damage. Clearly, defendants planned everything from the beginning, employed ploy and machinations to defraud plaintiffs, and consequently take from them a valuable client.

22. Defendants are likewise guilty of fraud by violating the trust and confidence reposed upon them by plaintiffs. Defendants received the proceeds of plaintiffs' LCs with the clear obligation of remitting 15% thereof to the plaintiffs. Their refusal and failure to remit the said amount despite demand constitutes a breach of trust amounting to malice and fraud.[17] (Emphasis and underscoring in the original) (Boldfacing and italicization supplied)

We rule that respondents' allegation that petitioners undertook to sell exclusively and only through JRP/LGD for Target Stores Corporation but that petitioners transacted directly with respondents' foreign buyer is sufficient allegation of fraud to support their application for a writ of preliminary attachment. Since the writ of preliminary attachment was properly issued, the only way it can be dissolved is by filing a counter-bond in accordance with Section 12, Rule 57 of the Rules of Court.

Moreover, the reliance of the Court of Appeals in the cases of *Chuidian v. Sandiganbayan*,[18] *FCY Construction*

Group, Inc. v. Court of Appeals,[19] and Liberty Insurance Corporation v. Court of Appeals[20] is proper. The rule that "when the writ of attachment is issued upon a ground which is at the same time the applicant's cause of action, the only other way the writ can be lifted or dissolved is by a counter-bond"[21] is applicable in this case. It is clear that in respondents' amended complaint of fraud is not only alleged as a ground for the issuance of the writ of preliminary attachment, but it is also the core of respondents' complaint. The fear of the Court of Appeals that petitioners could force a trial on the merits of the case on the strength of a mere motion to dissolve the attachment has a basis.

WHEREFORE, we DENY the petition. We AFFIRM the 29 September 2004 Decision and 2 March 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 79475.

SO ORDERED.

Leonardo-De Castro[*], Brion, Del Castillo, and Abad, JJ., concur.

[*] Designated additional member per Special Order No. 776.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 36-45. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Rebecca de Guia-Salvador and Aurora Santiago-Lagman, concurring.

[3] Id. at 46-47.

[4] CA rollo, p. 47.

[5] Rollo, pp. 48-60.

[6] Id. at 61-63. Penned by Judge Manuel N. Duque.

[7] Id. at 63.

[8] Id. at 64-67.

[9] Id. at 67.

[10] Id. at 44.

[11] Citing *Chuidian v. Sandiganbayan*, 402 Phil. 795 (2001); *FCY Construction Group, Inc. v. Court of Appeals*, 381 Phil. 282 (2000); and *Liberty Insurance Corporation v. Court of Appeals*, G.R. No. 104405, 13 May 1993, 222 SCRA 37.

[12] Section 12, Rule 57 of the Rules of Court provides:

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 was 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. A notice of the deposit shall forthwith be served on the attaching

party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. 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.

[13] Section 13, Rule 57 of the Rules of Court provides:

SEC. 13. Discharge of attachment on other grounds. - The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after a levy or even after the release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. If the attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.

[14]Supra note 11.

[15] Id. at 45.

[16] Foundation Specialists, Inc. v. Betonval Ready Concrete, Inc., G.R. No. 170674, 24 August 2009; Tanchan v. Allied Banking Corporation, G.R. No. 164510, 25 November 2008, 571 SCRA 512; Ng Wee v. Tankiansee, G.R. No. 171124, 13 February 2008, 545 SCRA 263; and Philippine National Construction Corporation v. Dy, G.R. No. 156887, 3 October 2005, 472 SCRA 1.

[17]Rollo, pp. 49, 52-53.

[18] Chuidian v. Sandiganbayan, supra note 11.

[19]FCY Construction Group, Inc. v. Court of Appeals, supra note 11.

[20]Liberty Insurance Corporation v. Court of Appeals, supra note 11.

[21] Chuidian v. Sandiganbayan, supra note 11, at 817-818.

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