

LA GRANJA, INC., PETITIONER, VS. FELIX SAMSON, JUDGE OF FIRST INSTANCE OF CAGAYAN, CHUA BIAN, CHUA YU LEE AND CHUA KI, RESPONDENTS.

G.R. No. 40054. September 14, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

In this original petition for mandamus filed by the corporate entity, La Granja, Inc., against Felix Samson, as Judge of the Court of First Instance of Cagayan, Chua Bian, Chua Yu Lee and Chua Ki, the petitioner herein, for the reasons stated in its petition, prays that a writ of mandamus be issued against the respondent judge compelling him to issue a writ of attachment against the properties of the other respondents herein, who are defendants in civil case No. 1888 of the Court of First Instance of Cagayan.

The pertinent facts necessary for the solution of the questions raised in the present case are as follows:

On July 5, 1932, the petitioner herein, La Granja, Inc., filed a complaint in the Court of First Instance of Cagayan, against Chua Bian, Chua Yu Lee and Chua Ki, for the recovery of the sum of P2,418.18 with interest thereon at the rate of 12 per cent per annum, which case was docketed as civil case No. 1888. The plaintiff, at the same time, also prayed for the issuance of an order of attachment against the aforementioned defendants' property and accompanied said complaint with an affidavit of the manager of the aforesaid petitioner, La Granja, Inc., wherein it was alleged, among other essential things, that the said defendants have disposed or are disposing of their properties in favor of the Asiatic Petroleum Co., with intent to defraud their creditors. The respondent judge, wishing to ascertain or convince himself of the truth of the alleged disposal, required the petitioner herein to present evidence to substantiate its allegation, before granting its petition. Inasmuch as the petitioner refused to comply with the court's requirement, alleging as its ground that it was not obliged to do so, the respondent judge dismissed said petition for an order of attachment.

The only question to decide in the present case is whether or not the mere filing of an affidavit executed in due form is sufficient to compel a judge to issue an order of attachment.

Section 426 of the Code of Civil Procedure provides the following:

"Sec. 426. 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 set-offs or counterclaims is as much as the sum for which the order is granted."

It will be seen that the legal provision just cited orders the granting of a writ of attachment when it has been made to appear by affidavit that the facts mentioned by law as sufficient to warrant the issuance thereof, exist. Although

the law requires nothing more than the affidavit as a means of establishing the existence of such facts, nevertheless, such affidavit must be sufficient to convince the court of their existence, the court being justified in rejecting the affidavit if it does not serve this purpose and in denying the petition for an order of attachment. The affidavit filed by the petitioner, La Granja, Inc., must not have satisfied the respondent judge inasmuch as he desired to ascertain or convince himself of the truth of the facts alleged therein by requiring evidence to substantiate them. The sufficiency or insufficiency of an affidavit depends upon the amount of credit given it by the judge, and its acceptance or rejection, upon his sound discretion.

Hence, the respondent judge, in requiring the presentation of evidence to establish the truth of the allegation of the affidavit that the defendants had disposed or were disposing of their property to defraud their creditors, has done nothing more than exercise his sound discretion in determining the sufficiency of the affidavit.

In view of the foregoing considerations, we are of the opinion and so hold that the mere filing of an affidavit executed in due form is not sufficient to compel a judge to issue an order of attachment, but it is necessary that by such affidavit it be made to appear to the court that there exists sufficient cause for the issuance thereof, the determination of such sufficiency being discretionary on the part of the court.

Wherefore, the petition for a writ of mandamus is hereby denied and the same is dismissed, with costs against the petitioner. So ordered.

Malcolm, Abad Santos, Hull, and Imperial, JJ., concur.

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