

**FILINVEST CREDIT CORPORATION, PETITIONER, VS. THE
HONORABLE JUDGE BENJAMIN RELOVA (IN HIS CAPACITY AS
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA,
BRANCH XI) AND ER...**

G.R. No. 50378. September 30, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a special civil action for certiorari, with prayer for restraining order or preliminary injunction, filed by petitioner Filinvest Credit Corporation seeking to annul the Orders issued by respondent Judge dated February 2, 1979 and April 4, 1979 in Civil Case No. 109900.

As shown by the records, the antecedents of the instant Petition are as follows:

On August 2, 1977, Filinvest Credit Corporation (hereinafter referred to as FILINVEST) filed a complaint in the lower court against defendants Rallye Motor Co., Inc. (hereinafter referred to as RALLYE) and Ernesto Salazar for the collection of a sum of money with damages and preliminary writ of attachment. From the allegations of the complaint,[1] it appears that in payment of a motor vehicle described as: "One (1) Unit MAZDA DIESEL SCHOOL BUS, Model: E4100, Serial No. EXC43P-02356, Motor No.: Y-13676," Salazar executed a promissory note dated May 5, 1977 in favor of RALLYE for the amount of P99,828.00. To secure the note, Salazar also executed in favor of RALLYE a deed of chattel mortgage over the above described motor vehicle. On May 7, 1977, RALLYE, for valuable consideration, assigned all its rights, title and interest to the aforementioned note and mortgage to FILINVEST. Thereafter, FILINVEST came to know that RALLYE had not delivered the motor vehicle subject of the chattel mortgage to Salazar, "as the said vehicle (had) been the subject of a sales agreement between the co-defendants." Salazar defaulted in complying with the terms and conditions of the aforesaid promissory note and chattel mortgage. RALLYE, as assignor who guaranteed the validity of the obligation, also failed and refused to pay FILINVEST despite demand. According to FILINVEST, the defendants intentionally, fraudulently and with malice concealed from it the fact that there was no vehicle delivered under the documents negotiated and assigned to it, otherwise, it would not have accepted the negotiation and assignment of the rights and interest covered by the promissory note and chattel mortgage. Praying for a writ of preliminary attachment, FILINVEST submitted with its complaint the affidavit of one Gil Mananghaya, pertinent portions of which read thus:

"That he is the Collection Manager, Automotive Division of Filinvest Credit Corporation;

"That in the performance of his duties, he came to know of the account of Ernesto Salazar, which is covered by a Promissory Note and secured by a Chattel Mortgage, which documents together with all the rights and interest thereto were assigned by Rallye Motor Co., Inc.;

"That for failure to pay a stipulated installment, and the fact that the principal debtor, Ernesto Salazar, and the assignor, Rallye Motor Co., Inc. concealed the fact that there was really no motor vehicle mortgaged under the

terms of the Promissory Note and the Chattel Mortgage, the entire amount of the obligation stated in the Promissory Note becomes due and demandable, which Ernesto Salazar and Rallye Motor Co., Inc. failed and refused to pay, so much so that a sufficient cause of action really exists for Filinvest Credit Corporation to institute the corresponding complaint against said person and entity;

"That the case is one of those mentioned in Section 1, Rule 57 of the Rules of Court, particularly an action against parties who have been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought;

"That there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant Filinvest Credit Corporation is as much as the sum for which the order is granted above all legal counterclaims;

"That this affidavit is executed for the purpose of securing a writ of attachment from the court."[2]

The specific provision adverted to in the above Affidavit is Section 1(d) of Rule 57 which includes "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 concealing or disposing of the property for the taking, detention or conversion of which the action is brought" as one of the cases in which a "plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered."

Judge Jorge R. Coquia (now Justice of the Court of Appeals), then presiding Judge of the lower court, granted the prayer for a writ of attachment in an Order dated August 17, 1977 stating that:

"Finding the complaint sufficient in form and substance, and in view of the sworn statement of Gil Mananghaya, Collection Manager of the plaintiff that defendants have committed fraud in securing the obligation and are now avoiding payment of the same, let a writ of attachment issue upon the plaintiff's filing of a bond in the sum of P97,000.00.

"In the meantime, let summons issue on the defendants."[3]

More than a year later, in an Urgent Motion dated December 11, 1978,[4] defendant Salazar prayed that the writ of preliminary attachment issued ex parte and implemented solely against his property be recalled and/or quashed. He argued that when he signed the promissory note and chattel mortgage on May 5, 1977 in favor of RALLYE, FILINVEST was not yet his creditor or obligee, therefore, he could not be said to have committed fraud when he contracted the obligation on May 5, 1977. Salazar added that as the motor vehicle which was the object of the chattel mortgage and the consideration for the promissory note had admittedly not been delivered to him by RALLYE, his repudiation of the loan and mortgage is more justifiable.

FILINVEST filed an Opposition, but on February 2, 1979, the court a quo, this time presided over by herein respondent Judge, offered the dissolution and setting aside of the writ of preliminary attachment issued on August 17, 1977 and the return to defendant Salazar of all his properties attached by the Sheriff by virtue of the said writ. In this Order, respondent Judge explained that:

"When the incident was called for hearing, the Court announced that, as a matter of procedure, when a motion to quash a writ of preliminary attachment is filed, it is incumbent upon the plaintiff to prove the truth of the allegations which were the basis for the issuance of said writ. In this hearing, counsel for the plaintiff manifested that he was not going to present evidence in support of the allegation of fraud. He maintained that it should be the defendant who should prove the truth of his allegation in the motion to dissolve the said writ. The Court disagrees."[5]

FILINVEST filed a Motion for Reconsideration of the above Order, and was subsequently allowed to adduce

evidence to prove that Salazar committed fraud as alleged in the affidavit of Gil Mananghaya earlier quoted. This notwithstanding, respondent Judge denied the Motion in an Order dated April 4, 1979 reasoning thus:

"The plaintiff's evidence show that the defendant Rallye Motor assigned to the former defendant Salazar's promissory note and chattel mortgage by virtue of which plaintiff discounted the note. Defendant Salazar refused to pay the plaintiff for the reason that Rallye Motor has not delivered to Salazar the motor vehicle which he bought from Rallye. It is the position of plaintiff that defendant Salazar was in conspiracy with Rallye Motor in defrauding plaintiff.

"Ernesto Salazar, on his part complained that he was himself defrauded, because while he signed a promissory note and chattel mortgage over the motor vehicle which he bought from Rallye Motor, Rallye Motor did not deliver to him the personal property he bought; that the address and existence of Rallye Motor can no longer be found.

"While it is true that the plaintiff may have been defrauded in this transaction, it having paid Rallye Motor the amount of the promissory note, there is no evidence that Ernesto Salazar had connived or in any way conspired with Rallye Motor in the assignment of the promissory note to the plaintiff, because of which the plaintiff paid Rallye Motor the amount of the promissory note. Defendant Ernesto Salazar was himself a victim of fraud. Rallye Motor was the only party which committed it."[6]

From the above order denying reconsideration and ordering the sheriff to return to Salazar the personal property attached by virtue of the writ of preliminary attachment issued on August 17, 1977, FILINVEST filed the instant Petition on April 19, 1979. On July 16, 1979, petitioner FILINVEST also filed an Urgent Petition for Restraining Order[7] alleging, among others, that pending this certiorari proceeding in this court, private respondent Salazar filed a Motion for Contempt of Court in the court below directed against FILINVEST and four other persons allegedly for their failure to obey the Order of respondent Judge dated April 4, 1979, which Order is the subject of this Petition. On July 23, 1979, this Court issued a temporary restraining order "enjoining respondent Judge or any person or persons acting in his behalf from hearing private respondent's motion for contempt in Civil Case No. 109900, entitled, 'Filinvest Credit Corporation, Plaintiff, versus The Rallye Motor Co., Inc., et al., Defendants' of the Court of First Instance of Manila, Branch XI."[8]

Petitioner FILINVEST in its MEMORANDUM contends that respondent Judge erred:

- (1) In dissolving the writ of preliminary attachment already enforced by the Sheriff of Manila without Salazar's posting a counter-replevin bond as required by Rule 57, Section 12; and
- (2) In finding that there was no fraud on the part of Salazar, despite evidence in abundance to show the fraud perpetrated by Salazar at the very inception of the contract.

It is urged in petitioner's first assignment of error that the writ of preliminary attachment having been validly and properly issued by the lower court on August 17, 1977, the same may only be dissolved, quashed or recalled by the posting of a counter-replevin bond under Section 12, Rule 57 of the Revised Rules of Court which provides that:

"Section 12. Discharge of Attachment upon giving counter-bond. - At any time after an order of attachment has been granted, the party whose property has been attached, or the person appearing on his behalf, may, upon reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the attachment wholly or in part on the security given. The judge shall, after hearing, order the discharge of the attachment if a cash deposit is made, or a counter-bond executed to the attaching creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made, in an amount equal to the value of the property attached as determined by the judge, to secure the payment of any judgment that the attaching creditor may recover in the

action. xxx."

Citing the above provision, petitioner contends that the court below should not have issued the Orders dated February 2, 1979 and April 4, 1979 for failure of private respondent Salazar to make a cash deposit or to file a counter-bond.

On the other hand, private respondent counters that the subject writ of preliminary attachment was improperly or irregularly issued in the first place, in that it was issued ex parte without notice to him and without hearing.

We do not agree with the contention of private respondent. Nothing in the Rules of Court makes notice and hearing indispensable and mandatory requisites for the issuance of a writ of attachment. The statement in the case of *Blue Green Waters, Inc. vs. Hon. Sundiam and Tan*[9] cited by private respondent, to the effect that the order of attachment issued without notice to therein petitioner *Blue Green Waters, Inc.* and without giving it a chance to prove that it was not fraudulently disposing of its properties is irregular, gives the wrong implication. As clarified in the separate opinion of Mr. Justice Claudio Teehanke in the same cited case,[10] a writ of attachment may be issued ex parte. Sections 3 and 4, Rule 57, merely require that an applicant for an order of attachment file an affidavit and a bond: the affidavit to be executed by the applicant himself or some other person who personally knows the facts and to show that (1) there is a sufficient cause of action, (2) the case is one of those mentioned in Section 1 of Rule 57, (3) there is no other sufficient security for the claim sought to be enforced, and (4) the amount claimed in the action is as much as the sum for which the order is granted above all legal counterclaims; and the bond to be "executed to the adverse party in an amount 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."

We agree, however, with private respondents contention that a writ of attachment may be discharged without the necessity of filing the cash deposit or counter-bond required by Section 12, Rule 57, cited by petitioner. The following provision of the same Rule allows it:

"Sec. 13. Discharge of attachment for improper or irregular issuance. - The party whose property has been attached may also, at any time either before or after the release of the attached property, or before any attachment shall have been actually levied, upon reasonable notice to the attaching creditor, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order to discharge the attachment on the ground that the same was properly or irregularly issued. If the motion be made on affidavits on the part of the party whose property has been attached, but not otherwise, the attaching creditor may oppose the same by counter-affidavits or other evidence in addition to that on which the attachment was made. After hearing, the judge shall order the discharge of the attachment if it appears that it was improperly or irregularly issued and the defect is not cured forthwith." (Underscoring supplied)

The foregoing provision grants an aggrieved party relief from baseless and unjustifiable attachments procured, among others, upon false allegations, without having to file any cash deposit or counter-bond. In the instant case, the order of attachment was granted upon the allegation of petitioner, as plaintiff in the court below, that private respondent RALLYE, the defendants, had committed "fraud in contracting the debt or incurring the obligation upon which the action is brought," covered by Section 1(d), Rule 57, earlier quoted. Subsequent to the issuance of the attachment order on August 17, 1977, private respondent filed in the lower court an "Urgent Motion for the Recall and Quashal of the Writ of Preliminary Attachment on (his property)" dated December 11, 1978[11] precisely upon the assertion that there was "absolutely no fraud on (his) part" in contracting the obligation sued upon by petitioner. Private respondent was in effect claiming that petitioner's allegation of fraud was false, that hence there was no ground for attachment, and that therefore the attachment order was "improperly or irregularly

issued." This Court has held that "(i)f the grounds upon which the attachment was issued were not true x x x, the defendant has his remedy by immediately presenting a motion for the dissolution of the same." [12] We find that private respondent's above-mentioned Urgent Motion was filed under Section 13, Rule 57.

The last sentence of the said provision, however, indicates that a hearing must be conducted by the judge for the purpose of determining whether or not there really was a defect in the issuance of the attachment. The question is: At this hearing, on whom does the burden of proof lie? Under the circumstances of the present case, We sustain the ruling of the court a quo in its questioned Order dated February 2, 1979 that it should be the plaintiff (attaching creditor), who should prove his allegation of fraud. This pronouncement finds support in the first sentence of Section 1, Rule 131, which states that: "Each party must prove his own affirmative allegations." The last part of the same provision also provides that: "The burden of proof lies on the party who would be defeated if no evidence were given on either side." It must be borne in mind that in this jurisdiction, fraud is never presumed. *FRAUS EST IDIOSA ET NON PRAESUMENDA*. [13] Indeed, private transactions are presumed to have been fair and regular. [14] Likewise, written contracts such as the documents executed by the parties in the instant case, are presumed to have been entered into for a sufficient consideration. [15]

In a similar case of *Villongco, et al. vs. Hon. Panlilio, et al.*, [16] a writ of preliminary attachment was issued ex parte in a case for damages on the strength of the affidavit of therein petitioners to the effect that therein respondents had concealed, removed or disposed of their properties, credits or accounts collectible to defraud their creditors. Subsequently, the lower court dissolved the writ of attachment. This was questioned in a certiorari proceeding wherein this Court held, inter alia, that:

"The affidavit supporting the petition for the issuance of the preliminary attachment may have been sufficient to justify the issuance of the preliminary writ, but it cannot be considered as proof of the allegations contained in the affidavit. The reason is obvious. The allegations are mere conclusions of law, not statement of facts. No acts of the defendants are ever mentioned in the affidavit to show or prove the supposed concealment to defraud creditors. Said allegations are affirmative allegations, which plaintiffs had the obligation to prove x x x." [17]

It appears from the records that both herein private parties did in fact adduce evidence to support their respective claims. [18] Attached to the instant Petition as its Annex "H" [19] is a Memorandum filed by herein petitioner FILINVEST in the court below on March 20, 1979. After private respondent filed his Comment to the Petition, [20] petitioner filed a Reply [21] attaching another copy of the aforesaid Memorandum as Annex "A". [22] In this Memorandum, it is stated that "(a)t the hearing of this case on February 28, 1979 and March 1, 1979, the plaintiff (FILINVEST) presented in evidence documentary exhibits" marked Exhibit A, A-1, B, B-1, B-2, B-3, B-4, C, C-1, D, E, F, G and G-1. The Memorandum goes on to state that FILINVEST presented as its witness defendant Salazar himself who testified that he signed Exhibits A, B, C, D, E and G; that he is a holder of a master's degree in Business Administration and is himself a very careful and prudent person; that he does not sign post-dated documents; that he does not sign contracts which do not reflect the truth or which are irregular on their face; that he intended to purchase a school bus from Rallye Motors Co., Inc. from whom he had already acquired one unit; that he had been dealing with Abel Sahagun, manager of RALLYE, whom he had known for a long time; that he intended to purchase the school bus on installment basis so he applied for financing with the FILINVEST; that he knew his application was approved; that with his experience as a business executive, he knew that under a financing arrangement, upon approval of his application, when he signed Exhibits A, B, C, D, E and G, the financing company (FILINVEST) would release the proceeds of the loan to RALLYE and that he would be obligated to pay the installments to FILINVEST; that he signed Exhibits A, B and C simultaneously; that it was his wife who was always transacting business with RALLYE and Abel Sahagun. [23]

Without disputing the above summary of evidence, private respondent Salazar states in his Comment that "the

same evidence proffered by (petitioner's) counsel was adopted by (private respondent) Ernesto Salazar during the proceedings." [24]

According to the court a quo in its assailed order of April 4, 1979, Ernesto Salazar "was himself defrauded because while he signed the promissory note and the chattel mortgage over the vehicle which he bought from Rallye Motors, RALLYE did not deliver to him the personal property he bought." And since no fraud was committed by Salazar, the court accordingly ordered the sheriff to return to Salazar the properties attached by virtue of the writ of preliminary attachment issued on August 17, 1977.

We do not agree. Considering the claim of respondent Salazar that Rallye Motors did not deliver the motor vehicle to him, it follows that the Invoice, Exhibit "C", for the motor vehicle and the Receipt, Exhibit "G", for its delivery and both signed by Salazar, Exhibits "C-1" and "G-1", were fictitious. It also follows that the Promissory Note, Exhibit "A", to pay the price of the undelivered vehicle was without consideration and therefore fake; the Chattel Mortgage, Exhibit "B", over the non-existent vehicle was likewise a fraud; the registration of the vehicle in the name of Salazar was a falsity and the assignment of the promissory note by RALLYE with the conforme of respondent Salazar in favor of petitioner over the undelivered motor vehicle was fraudulent and a falsification.

Respondent Salazar, knowing that no motor vehicle was delivered to him by RALLYE, executed and committed all the above acts as shown in the exhibits enumerated above. He agreed and consented to the assignment by RALLYE of the fictitious promissory note and the fraudulent chattel mortgage, by affixing his signature thereto, in favor of petitioner FILINVEST, who, in the ordinary course of business, relied on the regularity and validity of the transaction. Respondent had previously applied for financing assistance from petitioner FILINVEST as shown in Exhibits "E" and "E-1" and his application was approved, thus he negotiated for the acquisition of the motor vehicle in question from Rallye Motors. Since he claimed that the motor vehicle was not delivered to him, then he was duty-bound to reveal that to FILINVEST, it being material in inducing the latter to accept the assignment of the promissory note and the chattel mortgage. More than that, good faith as well as commercial usages or customs require the disclosure of facts and circumstances which go into the very object and consideration of the contractual obligation. We rule that the failure of respondent Salazar to disclose the material fact of non-delivery of the motor vehicle, there being a duty on his part to reveal them, constitutes fraud. (Article 1339, New Civil Code).

We hold that the court a quo committed grave abuse of discretion in dissolving and setting aside the writ of preliminary attachment issued on August 17, 1977.

WHEREFORE, IN VIEW OF THE FOREGOING, the appealed Orders of the lower court dated February 2, 1979 and April 4, 1979 are hereby REVERSED and SET ASIDE. The temporary restraining order issued by Us on July 23, 1979 is hereby made permanent. No costs.

Petition granted.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Abad Santos, De Castro, and Escolin, JJ., concur.

[1] Annex "C", Petition; Rollo, pp. 17-22.

[2] Annex "D", Complaint; Rollo, p. 26-A; under-scoring supplied.

[3] Annex "B", Petition; Rollo, p. 16.

- [4] Annex "D", Petition, Rollo, pp. 27-30.
- [5] Annex "F" Petition; Rollo, p. 38.
- [6] Annex "A", Petition; Rollo, pp. 14-15.
- [7] Rollo, pp. 107-113.
- [8] Rollo, pp. 125-126.
- [9] L-45901, September 13, 1977, 79 SCRA 66.
- [10] Ibid., p. 71.
- [11] Annex "D", Petition; Rollo, pp. 27-30.
- [12] *Hijos de I. de la Rama vs. Sajo*, 45 Phil. 703, 706.
- [13] See *Pecson vs. Coronel, et al.*, 45 Phil. 216, 230; *Carreon, et al. vs. Agcaoili*, L-11156, February 23, 1961, 1 SCRA 521, 523.
- [14] Rule 131, Section 5(o).
- [15] Rule 131, Section 5(r).
- [16] 94 Phil. 15.
- [17] Ibid., p. 21.
- [18] See the quoted portions of the Order of the Lower Court dated April 4, 1979, *supra*; Petition pp. 4-5; Comment, p. 4; Memorandum of Private Respondent, p. 9.
- [19] Rollo, pp. 46-60.
- [20] Rollo, pp. 68-72.
- [21] Rollo, pp. 78-87.
- [22] Rollo, pp. 88-102.
- [23] Rollo, pp. 53-55.
- [24] Comment, p. 4; Rollo, p. 71.

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