

JARDINE-MANILA FINANCE, INC., PETITIONER, VS. COURT OF APPEALS, IMPACT CORPORATION, RICARDO DE LEON, AND EDUARDO DE LEON, RESPONDENTS.

G.R. No. 55272. April 10, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is a petition for review on certiorari seeking to reverse and set aside: (a) the August 29, 1980 decision of the Court of Appeals[1] in Special Proceedings CA-G.R. No. SP-09972-R entitled "Impact Corporation, et al. v. Hon. Buenaventura Guerrero, etc., et al." annulling the order and the writ of attachment issued by the Court of First Instance of Rizal in Civil Case No. 34617 entitled "Jardine-Manila Finance, Inc. v. Impact Corporation, et al." [2] and (b) the Resolution dated October 7, 1980 denying herein petitioner's motion for reconsideration.[3]

On September 28, 1979, petitioner Jardine-Manila Finance, Inc. (JARDINE) filed a complaint in the then Court of First Instance (CFI) of Rizal, docketed as Civil Case No. 34617, against private respondents Impact Corporation (IMPACT), Ricardo de Leon and Eduardo de Leon, to collect various sums of money allegedly due from therein defendant IMPACT under a credit accommodation by way of a discounting line agreement.[4] Herein private respondents Ricardo de Leon and Eduardo de Leon were included as defendants by virtue of their undertaking covered by a Surety Agreement under which they bound themselves jointly and severally with defendant IMPACT to pay herein petitioner all of IMPACT's obligations under the aforesaid agreement.[5]

It was alleged that in April and May 1979, IMPACT assigned its receivables to JARDINE on the condition that IMPACT was to collect them on their due dates from their issuers and remit the collected amounts to JARDINE and/or repurchase the assigned receivables;[6] but despite the fact that IMPACT had collected the amounts due on said receivables, it failed or refused to turn over the amounts so collected to JARDINE.

JARDINE thus demanded payment of P1,000,212.64, the total amount due under said various deeds of assignment, plus interest of P16,614.64 as of September 6, 1979 and 25% of the aforesaid amount as attorney's fees, exemplary damages and other expenses of litigation.

Likewise contained in said complaint is petitioner's application for a writ of preliminary attachment against private respondents. The allegations in support of said petition for a writ of preliminary attachment are quoted in full:

"Special Allegations

for

Preliminary Attachment"

"A. The foregoing allegations are hereby repleaded and made integral parts hereof.

"B. The defendant corporation at the time of the execution of the aforesaid deeds of assignment had reservation

not to remit to plaintiff the proceeds of the receivables assigned to plaintiff as confirmed by their refusal to remit the same to plaintiff although the issuers of the receivables assigned to plaintiff had already paid to defendant corporation their obligations on said receivables to the latter.

"C. Defendants Ricardo de Leon and Eduardo de Leon who are likewise officers of defendant corporation in order to elicit plaintiff's approval to enter into said deeds of assignment with defendant corporation, executed the aforesaid surety agreement (Annex L), likewise, with reservation in their minds not to honor their obligations under the same as what they actually did when they refused to pay the obligations of defendant corporation to plaintiff pursuant to the provisions of said surety agreement. (Annex L)

"D. Defendant corporation, Ricardo de Leon and Eduardo de Leon have no visible other sufficient security for the claim sought to be enforced by this action of plaintiff other than their real and personal properties which are located in Metro Manila and in the province of Rizal, Province of Nueva Ecija or elsewhere. (underscoring ours)

"E. Plaintiff's action against defendant corporation is based upon documents and therefrom a sufficient cause of action exists.

"F. Plaintiff is willing to post a bond in an amount to be fixed by the Honorable Court, not exceeding plaintiff's claim which will be conditioned to the effect that plaintiff will pay all the costs which may be adjudged to the adverse party and all damages which they may sustain by reason of attachment, if the Honorable Court should finally adjudge that the applicant plaintiff is not entitled thereto." [7]

On the basis of the foregoing allegations, the lower court granted JARDINE's petition for the issuance of a writ of preliminary attachment on October 16, 1979.[8]

On October 19, 1979, therein defendants filed a motion to set aside the writ of preliminary attachment. They also submitted to the court a quo a memorandum in support of their motion to dissolve the attachment contending that the grounds alleged by the plaintiff in its application for a writ of attachment are not among the grounds specified under Section 1 of Rule 57; that the defendants have other sufficient security; that there was no affidavit of merit to support the application for attachment as required by Section 3 of Rule 57 and that the verification of the complaint was defective as it did not state that the amount due to the plaintiff above all legal setups or counterclaims is as much as the sum for which the order is sought.[9]

JARDINE opposed said motion arguing that the mental reservation of defendants at the time of the execution of the deeds of assignment constituted fraud; that such fraud was further confirmed by the fact that defendants actually failed to remit the proceeds of the collection of receivables assigned by them; that defendants failed to disclose to the plaintiff the fact that they had already collected the receivables assigned by them; that the amounts collected by defendant corporation were received by defendants in trust for plaintiff and defendant corporation appropriated for itself said collection.[10]

On November 7, 1979, the trial court denied defendants' motion to annul the writ of preliminary attachment. Thereupon, defendant Impact Corporation went to the appellate court on a petition for certiorari seeking to annul said writ.[11]

The findings of the Court of Appeals are as follows:

"To our mind there is no question that the allegations of the complaint proper which were repleaded and made integral part of the application for preliminary attachment (paragraph A) made out a case of conversion or misappropriation of property held in trust which is the subject of the complaint for said allegations stated that IMPACT had assigned to JARDINE certain receivables with the understanding that it was to collect the same from the issuers of said receivables and deliver the amounts collected to JARDINE, but in spite of the fact that

IMPACT had actually collected said amounts, it failed to turn over said receivables to JARDINE. There was, therefore, in the allegations of said complaint true conversion of the amounts received by defendant in trust for plaintiff. Defendants in their motion to discharge the attachment and the memorandum filed by them in support of said motion had in effect, admitted the conversion of the amounts collected by defendant IMPACT, but justified the use of said amounts to meet its operational expenses to prevent a complete shutdown of its operations.

"While we find that the grounds alleged by plaintiff, the herein private respondent, to support its application for preliminary attachment are among those enumerated in Section 1 of Rule 57 as grounds upon which an attachment may be issued, we are constrained nonetheless to rule against the regularity or legality of the attachment issued by respondent Court because there was no allegation made by plaintiff in its application for the issuance of a writ of attachment to the effect 'that there is no sufficient security for the claim sought to be enforced, by the action, and the amount due to the applicant or the value of the property on the basis of which is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims,' a requirement for the granting of an order of attachment under Section 3 of Rule 57." [12]

Thus, on August 29, 1980, the Court of Appeals annulled the assailed writ of attachment for having been issued improperly and irregularly, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, the petition to annul the order and the writ of attachment issued by respondent Court is hereby GRANTED and judgment is rendered declaring said order and writ of attachment null and void for having been issued improperly and irregularly. The restraining order issued by this Court on November 9, 1979 restraining respondents from enforcing the writ of attachment issued by respondent Judge on October 16, 1979 is hereby made PERMANENT. With costs against private respondents." [13]

Hence this recourse.

Reduced to bare essentials, the records show that in the exercise of its discretion, the lower court found justification in the issuance of the attachment. On the other hand, the Court of Appeals while in accord with the lower court that a sufficient cause of action exists for petitioner and that the ground for its application for attachment is one of those mentioned in Section 1, Rule 57 of the Rules of Court, found the issuance of the attachment irregular or illegal in the absence of the following allegations in the application for attachment: (1) that "there is no sufficient security for the claim sought to be enforced by the action; and (2) that "the amount due to the applicant or the value of the property on the basis of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims."

Ultimately, the issue therefore, is whether or not non-compliance with the formal requirements invalidate the writ of attachment.

On both counts, petitioner admits not having used the exact words of the Rules in making the requisite allegations, but nonetheless it alleged that it presented ultimate and specific facts, first -- in showing that there is indeed no other sufficient security for the claim sought to be enforced as shown in paragraph D of the Complaint earlier quoted; and second -- while it did not specifically state that the sum due is above all legal counterclaims, such conclusion of fact is no longer necessary in the face of actual proof in the answer which did not carry any counterclaim. In fine, petitioner stresses that mere forms must not be given more weight than substance. [14]

In excusing the deficiencies of its application for a writ of preliminary attachment, petitioner relies heavily on the case of *De Borja v. Platon*, [15] where this Court sustained the writ of attachment issued by the lower court in favor of the defendants based on the counterclaim of the latter despite the lack of allegations in the affidavit attached to the petition for the issuance of the writ of attachment that the amount due the counterclaim was as much as the sum for which the order is granted above all legal counterclaims.

It will be noted however, that the trial court found that the counterclaim of the defendants exceeded the claims of the plaintiff. Thus, this Court held that "as the trial court had before it the evidence adduced by both sides, the petition for a writ of preliminary attachment having been filed four years after the trial court had begun, we presume that the lower court having in mind such evidence, ordered the attachment accordingly." [16]

In sharp contrast, in the case at bar, where the records undeniably reveal that: (1) the complaint was filed on September 28, 1979; [17] (2) the writ of preliminary attachment was issued on October 16, 1979; [18] (3) the motion to annul preliminary attachment dated October 19, 1979 was filed on the same day; [19] (4) the answer of defendant IMPACT dated October 30, 1979 [20] was received by the RTC Pasig only on November 5, 1979, [21] it is evident that the questioned writ was issued *ex parte*; and at a time when the Court *a quo* had yet no basis for concluding that the amount due to petitioner is as much as the sum for which the order is granted above all legal counterclaims.

It is therefore, readily apparent that the conclusions in the *De Borja* case cannot be applied to the case at bar. In fact even petitioner's plea for liberality as it vigorously invokes the doctrine on said case which refused "to sanction that formalism and that technicality which are discountenanced by the modern laws of procedure" is an obvious misreading of the ruling of this Court which states:

"On the first point, we believe a writ of preliminary attachment may be issued in favor of a defendant who sets up a counterclaim. For the purpose of the protection afforded by such attachment, it is immaterial whether the defendants *Borja* and wife simply presented a counterclaim or brought a separate civil action against *Jose de Borja*, plaintiff in the previous case and petitioner herein. To lay down a subtle distinction would be to sanction that formalism and that technicality which are discountenanced by the modern laws of procedure for the sake of speedy and substantial justice. x x x." [22]

as a liberal approach to the required allegations in the application for a writ of preliminary attachment when what this Court actually allowed was the presentation of a counterclaim by the defendant instead of a separate civil action in compliance with one of the basic requirements for the issuance of said writ.

The authority to issue an attachment, like the jurisdiction of the court over such proceedings rests on express statutory provisions and unless there is authority in the statute, there is no power to issue the writ, and such authority as the statute confers must be strictly construed. [23] In fact, "(E)ven where liberal construction is the rule, the statute or the right to attachment thereby granted may not be extended by judicial interpretation beyond the meaning conveyed by the words of the statute." [24] Petitioner's application for a writ of preliminary attachment must therefore be scrutinized and assessed by the requisites and conditions specifically prescribed by law for the issuance of such writ.

Section 3, Rule 57 of the Revised Rules of Court governs the issuance of a writ of attachment, to wit:

"Sec. 3. Affidavit and bond required. - An order of attachment shall be granted only when it is made to appear by the affidavit of the applicant or some other person who personally knows of 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 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 stringent conditions for the issuance of the writ have been echoed in all subsequent cases, even as late as *K.O. Glass Construction Co. Inc. vs. Valenzuela*, [25] wherein the writ of preliminary attachment issued was annulled and set aside on the findings that while the plaintiff "may have stated in his affidavit that a sufficient cause of action exists against the defendant *Kenneth U. Glass*, he did not state therein 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 applicant is as much as the sum for which the order is granted above all legal counterclaims."

More specifically, it has been held that the failure to allege in the affidavit the requisites prescribed for the issuance of the writ of preliminary attachment, renders the writ of preliminary attachment issued against the property of the defendant fatally defective, and the judge issuing it is deemed to have acted in excess of his jurisdiction.[26] In fact, in such cases, the defect cannot even be cured by amendment.[27]

Since the attachment is a harsh and rigorous remedy which exposes the debtor to humiliation and annoyance, the rule authorizing its issuance must be strictly construed in favor of defendant. It is the duty of the court before issuing the writ to ensure that all the requisites of the law have been complied with.[28] Otherwise, a judge acquires no jurisdiction to issue the writ.

The general rule is that the affidavit is the foundation of the writ, and if none be filed or one be filed which wholly fails to set out some facts required by law to be stated therein, there is no jurisdiction and the proceedings are null and void. Thus, while not unmindful of the fact that the property seized under the writ and brought into court is what the court finally exercises jurisdiction over, the court cannot subscribe to the proposition that the steps pointed out by statutes to obtain such writ are inconsequential, and in no sense jurisdictional.[29]

Considering that petitioner's application for the subject writ of preliminary attachment did not fully comply with the requisites prescribed by law, said writ is, as it is hereby declared null and void and of no effect whatsoever.

This conclusion renders a discussion of petitioner's other argument unnecessary.

WHEREFORE, the decision of the Court of Appeals dated August 29, 1980 is hereby **AFFIRMED**. Costs against petitioner.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Penned by Justice Lino M. Patajo, concurred in by Justices Emilio A. Gancayco and Buenaventura S. de la Fuente

[2] C.A. Records, p. 230

[3] C.A. Records, p. 248

[4] Records, p. 36

[5] Rollo, p. 13; C.A. Records, p. 102

[6] Rollo, p. 12

[7] Rollo, pp. 14-15

[8] Rollo, p. 15; C.A. Records, p. 116

[9] Annex G, pp. 138-143, C.A. Records

[10] Annex I, p. 146, C. A. Records

[11] Annex J, p. 160, Records

- [12] Rollo, pp. 17-18
- [13] Rollo, p. 21
- [14] Rollo, p. 7
- [15] 73 Phil. 659
- [16] *ibid.*, p. 660
- [17] Annex "C", C.A. Records, p. 36
- [18] Annex "E", Rollo, p. 15, C. A. Records, p. 116
- [19] Annex "F", C.A. Records, p. 117
- [20] Annex "D", Rollo, p. 115
- [21] Annex "D", Rollo, p. 104
- [22] *Ibid.*, p. 660
- [23] 7 C.J.S. 324; 1980 ed.
- [24] 7 C.J.S. 242; 1980 ed.
- [25] L-18756, September 11, 1982, 116 SCRA 568
- [26] *ibid.*, *Guzman v. Catolico*, 65 Phil. 261-262 (1937)
- [27] *Cu Unjeng and Cu Unjeng v. Goddard*, 58 Phil. 489 (1933)
- [28] *Salgado v. C.A.*, 128 SCRA 395, citing *Giani v. Ramirez*, 54 Pacific Reporter (2d) 91-92
- [29] *Duxerry v. Dahle*, 81 NW 198-199 (1899)

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