

**SPOUSES JULIETA SALGADO AND JOSE SALGADO, PETITIONERS, VS.  
HON. COURT OF APPEALS AND PHILIPPINE COMMERCIAL & INDUSTRIAL BANK, RESPONDENTS.**

*G.R. No. 55381. March 26, 1984*

Ponente: ESCOLIN, J.

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**ESCOLIN, J.:**

This is a petition for review filed by the spouses Jose Salgado and Julieta Salgado to set aside the resolution of the then Court of Appeals in CA-G.R. No. SP-09407-R, dated September 18, 1980, which authorized the issuance of a writ of attachment against the property of said petitioners.

The pertinent facts that gave rise to this petition are as follows: On May 8, 1978, the Philippine Commercial and Industrial Bank, hereinafter referred to as the Bank, filed an action against petitioners, docketed as Civil Case No. 29392 of the then Court of First Instance of Rizal, to recover on a promissory note in the amount of P1,510,905.96, inclusive of interest and other bank charges. In its verified complaint, the Bank further prayed for the issuance of a writ of attachment. As grounds therefor it alleged that petitioners had fraudulently misappropriated and/or converted to their own personal use and benefit the sugar proceeds given as security for the payment of the indebtedness; that petitioners are guilty of fraud in contracting their obligation and have concealed, removed or disposed of the properties mortgaged or assigned to the plaintiff, or are concealing, removing or disposing or about to do so, with intent to defraud their creditor; that the obligation sought to be enforced is genuine and, therefore, a sufficient cause of action exists; and that there is no sufficient security for the claim sought to be enforced by the action. Attached to the complaint was the affidavit of Mrs. Helen Osias, Senior Branch Credit Division Manager of the Bank, wherein she stated, among others, "that there is no sufficient security for the claim sought to be enforced by this action."

On May 9, 1978, the trial court issued an order granting the Bank's prayer for preliminary attachment upon a bond in the sum of P1,510,905.96. Upon the filing of said bond, the Deputy Provincial Sheriff levied upon several parcels of land of pe-titioners situated in the province of Negros Occidental.

On September 15, 1978, petitioners Salgado moved to quash the writ of attachment on the ground that respondent Bank made fraudulent misrepresentation in securing the writ by deleting the words "R E M" or "Real Estate Mortgage" from the xerox copy of the promissory note attached to the complaint, thereby "making it appear that the note was unsecured when in truth and in fact it was fully secured by a series of valid and existing real estate mortgages duly registered and annotated in the titles of the affected real properties in favor of the plaintiff Bank." In the same motion, petitioners stressed the lack of factual basis of the Bank's claim as to their alleged fraudulent misappropriation or conversion of the sugar proceeds given as security for their obli-gation.

After due hearing, the trial court issued an order dated January 31, 1979 granting petitioners' motion and lifting the writ of attachment previously issued.

Upon denial of its motion for reconsideration the Bank went to the Court of Appeals on a petition for certiorari to

annul the order of the trial court lifting the writ of attachment.

On November 29, 1979, the respondent Court of Appeals, finding that the order of the trial court was not arbitrarily issued, dismissed the petition for lack of merit.

However, on motion of the Bank, the respondent Court reconsidered its decision of November 29, 1979 and issued the questioned resolution dated September 18, 1980, which authorized the issuance of a writ of attachment.

Hence, the present recourse.

We find the petition impressed with merit. The chief purpose of the remedy of attachment is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.[1]

The grounds upon which attachment may issue are set forth in Section 1, Rule 57 of the Rules of Court. But quite apart from the grounds stated therein, it is further provided in Section 3 of Rule 57 that "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 the facts, that x x x there is no other sufficient security for the claim sought to be enforced by the action."

The reason for the rule prohibiting attachment where indebtedness was already secured is to prevent the secured creditors from attaching additional property and thus tying up more of the debtor's property than was necessary to secure the indebtedness.[2] Thus, to sustain an order of attachment, "it is incumbent upon plaintiff to establish either of these two facts, to wit: (a) that the obligation had not been secured originally, or (b) that, if secured at its beginning, the security later became valueless." [3]

In the instant case, the allegation in the affidavit of the Bank's Credit Division Manager, Mrs. Helen Osias, to the effect that "there is no sufficient security for the claim sought to be enforced by this action" has been shown to be false. It is undisputed that the note sued upon "is fully secured by a series of valid and existing real estate mortgages duly registered and annotated in the titles of the affected real property in favor of the plaintiff Bank."

Section 13, Rule 57 of the Rules of Court authorizes the discharge of an attachment where the same had been improperly or irregularly issued. In *National Coconut Corporation vs. Hon. Potenciano Pecson*, [4] this Court ruled that when the facts or some of them, stated in the plaintiff's affidavit, are shown by the defendant to be untrue, the writ of attachment may be considered as improperly or irregularly issued.

Since 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 the defendant. It should not be abused as to cause unnecessary prejudice. It is the duty of the court before issuing the writ to ensure that all the requisites of the law has been complied with.[5]

Accordingly, the resolution of the respondent Court of Appeals, now the Intermediate Appellate Court, dated September 18, 1980, is hereby set aside. No costs. SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos and De Castro, JJ., concur.

Makasiar, Acting C.J., (Chairman), joins J. Aquino in his dissent.

**[1] 7 C.J.S. 190**

[2] Blankenship vs. Myers, 54 P. 2d 314, 316; 97 Idaho 356 (1975)

[3] Giandeini vs. Ramirez, 54 Pacific Reporter (2d) 91-92

[4] 90 Phil. 809

[5] Guzman vs. Catolico, 65 Phil. 257; Salas vs. Adil, 90 SCRA 125

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**DISSENTING OPINION****AQUINO, J.:**

I dissent with deference to Justice Escolin's opinion. On May 8, 1978, the Philippine Commercial & Industrial Bank filed an ordinary action against the Salgado spouses (residents of Kabankalan, Negros Occidental) in the Court of First Instance of Pasig, Rizal for the collection of the sum of P1,510,905.96 as the debt due from the Salgado spouses on their loan for the crop-year 1975-76, with a prayer for a writ of attachment, considering that there was allegedly no sufficient security for the debt.

The attachment was granted by Judge Nelly L. Romero Valdellon on the following day, May 9, subject to the filing of a bond in the amount of the obligation, P1,510,905.96. The Salgados moved to quash it on the ground that there was misrepresentation on the part of the bank that there was no security for the loan. They charged that the bank tampered with the promissory note by erasing the acronym "REM" (meaning real estate mortgages), thus giving the false impression that there was no security.

The bank countered that it did not resort to foreclosure because the mortgages (Exh. 6 to 10) covered not only the debt of the Salgados for the crop-year 1975-76 but also their obligations for the crop-years 1976-77 and 1977-78 and an additional commercial loan. The Salgados admitted that they did not assign to the bank their sugar for the 1975--76 crop-year. That was why the loan was not paid.

On January 31, 1979, Judge Valdellon dissolved the attachment. About a month later, Julieta Chua Salgado transferred four pieces of real property covered by the attachment to her sisters Jimema Chua Ang and Soledad Chua Montilla, her brother Romeo G. Chua and her daughter, Mary Jane Salgado.

The bank assailed the dissolution order by certiorari in the Court of Appeals. In a decision dated November 29, 1979, Justices Nocon, Samuel F. Reyes and Victoriano upheld the dissolution order because the bank allegedly acted fraudulently in tampering with the note, making it appear that the loan was unsecured when in fact it was secured by mortgages.

The bank filed a motion for reconsideration. In the resolution of September 18, 1980, the same three Justices set aside their decision and sustained the attachment. They held that the dissolution was made on grounds not mentioned in section 13 of Rule 57.

The Salgados appealed to this Court on December 3, 1980. The instant appeal was dismissed for lack of merit in this Court's resolution of June 26, 1981. The Salgados filed a motion for reconsideration wherein they stated that Judge Valdellon in a decision dated July 15, 1981 dismissed the bank's complaint and ordered it to pay the Salgados one million two hundred fifty thousand pesos as moral and exemplary damages and attorney's fees.

The bank opposed the motion. In a manifestation dated June 10, 1982, it apprised this Court that Judge Pineda issued an order dated January 4, 1982 wherein he set aside Judge Valdellon's decision and ordered the Salgados to

pay the bank P1,300,000 plus interest and penalties, bank charges and attorney's fees as stipulated in the promissory note, Exhibit A. Judge Pineda denied the Salgados' motion for reconsideration. (The Salgados appealed to the Intermediate Appellate Court, AC-G. R. No. 00119.)

I am of the opinion that the writ of attachment was properly issued. It is supported by a sufficient bond. The bank posted a bond of P1,510,905.96. The 1981 resolution dismissing the instant appeal should be reaffirmed.

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