

TRADERS ROYAL BANK, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THE HONORABLE COURT OF FIRST INSTANCE OF RIZAL (PASAY CITY), BRANCH XXIX, THE HONORABLE MANUEL VALENZUELA, PU...

G.R. No. 60222. April 21, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The issue in this case is whether or not the trial court committed grave abuse of discretion in ordering the partial lifting of a writ of preliminary attachment and in granting ex-parte the release of respondents' marginal deposit of P197,722.94.

On 6 March 1980, petitioner filed with the respondent trial court a complaint for a sum of money, with an application for a writ of preliminary attachment against the private respondents. Its principal causes of action involve a promissory note of P2,270,000.00 and domestic letters of credit in the amounts of (a) P540,000.00 covering the purchase of lumber, furniture and kotatsu (sic) from the OESCO Timber Co., (b) P600,000.00 covering the purchase of narra lumber from the OESCO Timber Co. and (c) P300,000.00 covering the purchase of red lauau and tanguile lumber from the R. Syquian Sawmill. In connection with said letters of credit, private respondent G.M. Wood Export Industries, Inc., hereinafter referred to as G.M. Wood, through its President and General Manager, private respondent Gonzales, signed and delivered to the petitioner the corresponding documents of trust.[1] The case was docketed as Civil Case No. 7928-P.

The trial court issued a writ of preliminary attachment. However, on 24 April 1980, petitioner and private respondents filed a Joint Motion containing stipulations regarding a temporary arrangement between them under which G.M. Wood was allowed to continue with its business operations without, however, prejudicing or jeopardizing petitioner's interest in the attached or garnished properties of G.M. Wood; the said motion provides:

"a. That the writ of attachment is not hereby lifted x x x and the attachment/garnishment /levy on the properties of defendant shall subsists (sic)."

The motion also mentions that by virtue of the writ, G.M. Wood's machineries, office equipment and finished and unfinished wood products in its factory were levied upon and garnishment was made upon major banks in Metro Manila on private respondents' money.[2]

On 29 April 1980, the trial court approved the joint motion but lifted partially the attachment levied on private respondents' properties.

On 19 May 1980, petitioner filed an omnibus motion praying, among others, for: (a) the reconsideration of the above order insofar as it mandated the partial lifting of the writ of attachment and (b) the total reinstatement of the attachment on the properties.[3] The hearing for this motion was postponed three (3) times at the instance of private respondents. On the third time; the hearing was again postponed to 15 August 1980, but on this date,

private respondents did not appear; petitioner then verbally moved for the submission of the motion for resolution. The formal motion to this effect was likewise filed. [4] The trial court did not act thereon; instead, on 29 January 1981, it issued an Order[5] granting private respondents' urgent motion for the release to private respondent Gonzales of the marginal deposit of P197,722.94. Petitioner was not furnished with a copy of the motion, which does not even contain the required notice of hearing. Petitioner thus filed a motion for reconsideration[6] which the trial court denied in its Order of 11 February 1981.[7]

The trial court likewise denied on 16 February 1981 petitioner's motion to reconsider the 29 April 1980 Order.[8]

Petitioner then filed with the Court of Appeals a special civil action for certiorari to set aside the Orders of 29 January 1981 and 11 February 1981. This petition was docketed as C.A.-G.R. No. 12078. Upon its receipt of the 16 February 1981 Order, petitioner filed a supplemental petition to set it aside. Petitioner's main thesis is that these orders were issued with grave abuse of discretion and should therefore be declared null and void.

In its decision of 30 September 1981,[9] the Court of Appeals dismissed the petition based on the following grounds: Firstly, the said court failed to note or discern a single document of the various documents which petitioner alleged to have been executed by private respondents authorizing the petitioner to charge or debit any present or future balance of any and/or deposit accounts of the latter with the former. Secondly, it cannot uphold the theory of petitioner that marginal deposits are not really deposits but are considered collateral security, for if this were so, "it becomes a paradox that petitioner would still make mention of certain and various documents which private respondents allegedly executed in favor of petitioner bank authorizing the latter to charge or debit any present or future balance of any and/or deposit accounts of the private respondents with the petitioner bank." Thirdly, as to the grievance that due process was violated by the ex-parte issuance of the 29 January 1981 Order, the same is unfounded because when petitioner filed a motion for reconsideration, he was afforded a full-blown hearing on 11 February 1981; thus, due process was sufficiently observed. In the application of the due process requirement, what is sought to be safeguarded is not lack of notice but the denial of opportunity to be heard.[10]

Petitioner's motion to reconsider the aforesaid decision was denied by the Court of Appeals in its resolution of 5 April 1982 wherein it ruled that the private respondents did not receive the amount of P2,270,000.00 as mentioned in the promissory note dated 30 August 1979; considering that this is the only possible account to which any fund or deposit of private respondents may be applied, the marginal deposit cannot, therefore, be applied to it since private respondents are not even liable on the note.

Hence, this petition wherein petitioner submits the following issues for consideration:

"CAN THE RESPONDENT COURT OF APPEALS OR A COURT OF FIRST INSTANCE ORDER THE DELIVERY OF THE PROPERTY OF A PARTY LITIGANT TO THE ADVERSE PARTY, WHICH PROPERTY IS NOT THE OBJECT OF LITIGATION, AND DO SO -- A) WITHOUT SERVICE OF THE MOTION, BASIS OF THE ORDER; B) WITHOUT HEARING; C) WITHOUT SERVICE OF SAID ORDER TO COUNSEL; AND WITHOUT RECOURSE TO OTHER REMEDY, I.E., REQUIRING IMMEDIATE COMPLIANCE?

CAN THE RESPONDENT COURT OF APPEALS MAKE FINDINGS OF FACTS WITHOUT PRESENTATION OF EVIDENCE?"[11]

After private respondents filed their Comment, this Court gave due course to the petition. Thereafter, the parties filed their respective Briefs.

There is merit in the petition.

We have carefully examined the pleadings and We agree with the petitioner that the marginal deposit of

P197,722.94 is not involved in Civil Case No. 7928-P. It is not denied by private respondents that this marginal deposit is in connection with their importation of machineries for which they obtained letters of credit from petitioner. "The marginal deposit requirement is a Central Bank measure to cut off excess currency liquidity which would create inflationary pressure. It is a collateral security given by the debtor, and is supposed to be returned to him upon his compliance with his secured obligation. Consequently, the bank pays no interest on the marginal deposit, unlike an ordinary bank deposit which earns interest in the bank." [12]

None of the causes of action in the complaint, earlier alluded to, involve any liability on the part of the private respondents arising from the importation of machineries. There is no showing that it is the subject of a counterclaim in the respondents' Answer with the end in view of recovering its deposit. Private respondents assert, however, that the marginal deposit was litigated upon in the case because it was among the properties included in either the attachment order of 7 March 1980 or the modified attachment order of 29 April 1980. The first order is all-embracing as it covers all kinds of properties belonging to the respondents, including the marginal deposit. [13] This assertion is clearly without merit. The mere fact that an attachment order is issued does not mean that the defendant's property is automatically seized. Otherwise stated, an attachment order is not self-executory. There must first be a levy on or garnishment of the property to be made by the sheriff. This levy or garnishment is the operative act that brings the property in custodia legis. Section 5, Rule 57 of the Rules of Court provides for the manner of attachment of property. In the instant case, the sheriff certified that no levy or garnishment was made against private respondents' property in the possession of petitioner. [14] Accordingly, the trial court acquired no jurisdiction over the marginal deposit. Moreover, since by its very nature the marginal deposit is already in the possession of the petitioner as collateral security in a transaction private respondents entered into in connection with the importation of machineries - which cannot be validly released to the latter until the satisfaction of the principal obligation -- its attachment for the benefit of petitioner would be unnecessary unless, in the meantime, the private respondents had settled the principal obligation. Such settlement is a factual issue which is not raised in the pleadings.

The trial court then acted without jurisdiction or with grave abuse of discretion when it ordered the petitioner to release the marginal deposit. What is more reprehensible in the conduct of the trial court is its deliberate failure to act with dispatch on petitioner's motion to reconsider both the Order of 29 April 1980 insofar as it partially lifted the writ of attachment and the approval, ex-parte, of the motion to release the marginal deposit. There was, of course, merit in the first motion as the trial court acted rather capriciously when it partially lifted the writ. None of the parties asked for such lifting. On the contrary, in their joint motion, they explicitly agreed "a. That the writ of attachment is not hereby lifted by virtue of this temporary arrangement and the attachment/garnishment/levy on the properties of defendant shall subsists (sic)." [15] As to the motion for release, We note from the Order dated 29 January 1981 that it is denominated as urgent and was filed only on 28 January 1981. Respondents do not deny the fact that no copy thereof was furnished the petitioner; they also do not dispute the fact that no notice of its hearing was indicated in the motion. The movants then deliberately violated the requirement of notice prescribed in Sections 4 and 5, Rule 15 of the Rules of Court. This requirement is mandatory. A motion that does not contain a notice of hearing is a mere scrap of paper; it presents no question which merits the attention and consideration of the court. It is not even a motion for it does not comply with the rules and the clerk of court has no right to receive it. [16] Being a mere scrap of paper, the trial court had no other alternative but to disregard it. Even if the motion contained a notice, still the trial court could not have validly acted on it for, as of the date it acted thereon, no proof of service of the notice on petitioner was shown. Section 6 of the aforementioned Rule provides that:

"No motion shall be acted upon by the court, without proof of service of the notice thereof, except when the court is satisfied that the rights of the adverse party or parties are not affected."

In this case, the right of the petitioner was definitely affected. That petitioner subsequently filed a motion to reconsider and that it underwent a full-blown hearing did not, contrary to the postulation of the Court of Appeals, cure the fatal error.

The foregoing disquisitions render unnecessary the second issue raised in this petition.

WHEREFORE, the instant petition is hereby GRANTED. The decision of the respondent Court of 30 September 1981 and its resolution of 5 April 1982 in C.A.-G.R. No. 12078 and the Orders of the trial court of 29 January 1981 and 11 February 1981 in Civil Case No. 7928-P are hereby REVERSED and SET ASIDE. The partial lifting of the writ of attachment is likewise SET ASIDE.

Costs against private respondents.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Appendix "A", Brief for Petitioner.

[2] Appendix "B", Id., 44-49.

[3] Appendix "C", Brief for Petitioner.

[4] Appendix "D", Id.

[5] Appendix "E", Id.

[6] Appendix "F", Id.

[7] Appendix "G", Id.

[8] Appendix "H", Brief for Petitioner.

[9] Annex "A" of Petition; Rollo, 25-32.

[10] Bermejo vs. Barrios, 31 SCRA 764 [1970].

[11] Rollo, 8-9.

[12] Abad vs. Court of Appeals, 181 SCRA 191 [1990].

[13] Rollo, 46-47.

[14] Annex. "A" of Annex "C", Respondent's Comment; Id., 71.

[15] Appendix "B", Brief for Petitioners, 45.

[16] Firme vs. Reyes, 92 SCRA 713 [1979], citing Manakil vs. Revilla, 42 Phil. 81 [1921]; The Roman Catholic Bishop of Lipa vs. The Municipality of Unisan, 44 Phil. 866 [1920]; The Director of Lands vs. Sanz, 45 Phil. 117 [1923]. See also Filipinas Fabricators & Sales, Inc. vs. Magsino, 157 SCRA 469 [1988]; Bank of the Philippine Islands vs. Far East Molasses Corp., 198 SCRA 689 [1991].

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