

PERLA COMPANIA DE SEGUROS, INC., PETITIONER, VS. HON. JOSE R. RAMOLETE, PRIMITIVA Y. PALMES. HONORATO BORBON. SR., OFFICE OF THE PROVINCIAL SHERIFF, PROVINCE OF CEBU, RESPONDENTS.

G.R. No. 60887. November 13, 1991

Ponente: FELICIANO, J.

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FELICIANO, J.:

The present Petition for Certiorari seeks to annul: (a) the Order dated 6 August 1979[1] which ordered the Provincial Sheriff to garnish the third-party liability insurance policy issued by petitioner Perla Compania de Seguros, Inc. ("Perla") in favor of Nelia Enriquez, judgment debtor in Civil Case No. R-15391; (b) the Order dated 24 October 1979 which denied the motion for reconsideration of the 6 August 1979[2] Order; and (c) the Order dated 8 April 1980[3] which ordered the issuance of an alias writ of garnishment against petitioner.

In the afternoon of 1 June 1976, a Cimarron PUJ owned and registered in the name of Nelia Enriquez, and driven by Gosme Casas, was travelling from Cebu City to Danao City. While passing through Liloan, Cebu, the Cimarron PUJ collided with a private jeep owned by the late Calixto Palmes (husband of private respondent Primitiva Palmes) who was then driving the private jeep. The impact of the collision was such that the private jeep was flung away to a distance of about thirty (30) feet and then fell on its right side pinning down Calixto Palmes. He died as a result of cardio-respiratory arrest due to a crushed chest.[4] The accident also caused physical injuries on the part of Adeudatus Borbon who was then only two (2) years old.

On 25 June 1976, private respondents Primitiva Palmes (widow of Calixto Palmes) and Honorato Borbon, Sr. (father of minor Adeudatus Borbon) filed a complaint[5] against Cosme Casas and Nelia Enriquez (assisted by her husband Leonardo Enriquez) before the then Court of First Instance of Cebu, Branch 3, claiming actual, moral, nominal and exemplary damages as a result of the accident.

The claim of private respondent Honorato Borbon, Sr., being distinct and separate from that of co-plaintiff Primitiva Palmes, and the amount thereof falling properly within the jurisdiction of the inferior court, respondent Judge Jose R. Ramolete ordered the Borbon claim excluded from the complaint, without prejudice to its being filed with the proper inferior court.

On 4 April 1977, the Court of First Instance rendered a Decision[6] in favor of private respondent Primitiva Palmes, ordering common carrier Nelia Enriquez to pay her P10,000.00 as moral damages, P12,000.00 as compensatory damages for the death of Calixto Palmes, P3,000.00 as exemplary damages, P5,000.00 as actual damages, and P1,000.00 as attorney's fees.

The judgment of the trial court, became final and executory and a writ of execution was thereafter issued. The writ of execution was, however, returned unsatisfied. Consequently, the judgment debtor Nelia Enriquez was summoned before the trial court for examination on 23 July 1979. She declared under oath that the Cimarron PUJ

registered in her name was covered by a third-party liability insurance policy issued by petitioner Perla.

Thus, on 31 July 1979, private respondent Palmes filed a motion for garnishment[7] praying that an order of garnishment be issued against the insurance policy issued by petitioner in favor of the judgment debtor. On 6 August 1979, respondent Judge issued an Order[8] directing the Provincial Sheriff or his deputy to garnish the third-party liability insurance policy.

Petitioner then appeared before the trial court and moved for reconsideration of the 6 August 1979 Order and for quashal of the writ of garnishment[9], alleging- that the writ was void on the ground that it (Perla) was not a party to the case and that jurisdiction over its person had never been acquired by the trial court by service of summons or by any other process. The trial court denied petitioner's motion[10]. An Order for issuance of an alias writ of garnishment was subsequently issued on 8 April 1980.[11]

More than two (2) years later, the present Petition for Certiorari and Prohibition was filed with this Court on 25 June 1982 alleging grave abuse of discretion on the part of respondent Judge Ramolete in ordering garnishment of the third-party liability insurance contract issued by petitioner Perla in favor of the judgment debtor, Nelia Enriquez. The Petition should have been dismissed forthwith for having been filed way out of time but, for reasons which do not appear on the record, was nonetheless entertained.

In this Petition, petitioner Perla reiterates its contention that its insurance contract cannot be subjected to garnishment or execution to satisfy the judgment in Civil Case No. R-15391 because petitioner was not a party to the case and the trial court did not acquire jurisdiction over petitioner's person. Perla further argues that the writ of garnishment had been issued solely on the basis of the testimony of the judgment debtor during the examination on 23 July 1979 to the effect that the Cimarron PUJ was covered by a third-party liability insurance issued by Perla, without granting it the opportunity to set up any defenses which it may have under the insurance contract; and that the proceedings, taken against petitioner are contrary to the procedure laid down in *Economic Insurance Company, Inc. v. Torres, et al.*, [12] which held that under Rule 39, Section 45, the Court "may only authorize" the judgment creditor to institute an action against a third person who holds property belonging to the judgment debtor.

We find no grave abuse of discretion or act in excess of or without jurisdiction on the part of respondent Judge Ramolete in ordering the garnishment of the judgment debtor's third-party liability insurance.

Garnishment has been defined as a species of attachment for reaching any property or credits pertaining or payable to a judgment debtor.[13] In legal contemplation, it is a forced novation by the substitution of creditors:[14] the judgment debtor, who is the original creditor of the garnishee is, through service of the writ of garnishment, substituted by the judgment creditor who thereby becomes creditor of the garnishee. Garnishment has also been described as a warning to a person having in his possession property or credits of the judgment debtor, not to pay the money or deliver the property to the latter, but rather to appear and answer the plaintiff's suit.[15]

In order that the trial court, may validly acquire jurisdiction to bind the person of the garnishee, it is not necessary that summons be served upon him. The garnishee need not be imp leaded as a party to the case. All that is necessary for the trial court lawfully to bind the person of the garnishee or any person who has in his possession credits belonging to the judgment debtor is service upon him of the writ of garnishment.

The Rules of Court themselves do not require that the garnishee be served with summons or imp leaded in the case in order to make him liable.

Rule 39, Section 15 provides:

"Sec. 15. Execution of money judgments. — The officer must enforce an execution of a money judgment by levying on all the property, real or personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution x x x.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under a writ of attachment." (Underscoring supplied).

Rule 57, Section 7(e) in turn reads:

"Sec. 7. Attachment of real and personal property; recording thereof. — Properties shall be attached by the officer executing the order in the following manner:

x x x x x x x x

(e) Debts and credits, and other personal property not capable of manual delivery, by leaving with the person owing such debts, or having in his possession or under his control, such credits or other personal property, or with his agent, a copy of the order, and notice that the debts owing by him to the party against whom attachment is issued, and the credits and other personal property in his possession, or under his control, belonging to said party, are attached in pursuance of such order;

x x x x x x x x"

(Underscoring supplied)

Through service of the writ of garnishment, the garnishee becomes a "virtual party" to, or a "forced intervenor" in, the case and the trial court thereby acquires jurisdiction to bind him to compliance with all orders and processes of the trial court with a view to the complete satisfaction of the judgment of the court. In *Bautista v. Barredo*,^[16] the Court, through Mr. Justice Bautista Angelo, held:

"While it is true that defendant Jose M. Barredo was not a party in Civil Case No. 1636 when it was instituted by appellant against the Philippine Ready Mix Concrete Company, Inc., however, jurisdiction was acquired over him by the court and he became a virtual party to the case when, after final judgment was rendered in said case against the company, the sheriff served upon him a writ of garnishment in behalf of appellant. Thus, as held by this Court in the case of *Tayabas Land Company vs. Sharruf*, 41 Phil. 382, the proceeding by garnishment is a species of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. By means of the citation, the stranger becomes a forced intervenor; and the court, having acquired jurisdiction over him by means of the citation, requires him to pay his debt, not to his former creditor, but to the new creditor, who is creditor in the main litigation." (Underscoring supplied).

In *Rizal Commercial Banking Corporation v. De Castro*,^[17] the Court stressed that the asset or credit garnished is thereupon subjected to a specific lien:

"The garnishment of property to satisfy a writ of execution operates as an attachment and fastens upon the property a lien by which the property is brought under the jurisdiction of the court issuing the writ. It is brought into custodia legis, under the sole control of such court."^[18] (Underscoring supplied)

In the present case, there can be no doubt, therefore, that the trial court actually acquired jurisdiction over petitioner Perla when it was served with the writ of garnishment of the third-party liability insurance policy it had issued in favor of judgment debtor Nella Enriquez. Perla cannot successfully evade liability thereon by such a contention.

Every interest which the judgment debtor may have in property may be subjected to execution.^[19] In the instant case, the judgment debtor Nella Enriquez clearly had an interest in the proceeds of the third-party liability

insurance contract. In a third-party liability insurance contract, the insurer assumes the obligation of paying the injured third party to whom the insured is liable.[20] The insurer becomes liable as soon as the liability of the insured to the injured third person attaches. Prior payment by the insured to the injured third person is not necessary in order that the obligation of the insurer may arise. From the moment that the insured became liable to the third person, the insured, acquired an interest in the insurance contract, which interest may be garnished like any other credit.[21]

Petitioner also contends that in order that it may be held liable under the third-party, liability insurance, a separate action should have been commenced by private respondents to establish petitioner's liability. Petitioner invokes *Economic Insurance Company, Inc. v. Torres*,[22] which stated:

"It is clear from Section 45, Rule 39 that if a person alleged to have property of the judgment debtor or to be indebted to him claim's an interest not applicable in the instant case, and we see no need to require a separate action against Perla: a writ of garnishment suffices to hold petitioner answerable to the judgment creditor. If Perla had any substantive defenses against the judgment debtor, it is properly deemed to have waived them by laches.

WHEREFORE, the Petition for Certiorari and Prohibition is hereby **DISMISSED** for having been filed out of time and for lack of merit. The assailed Orders of the trial court are hereby **AFFIRMED**. Costs against petitioner. This Decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino and Medialdea, JJ., concur.

[1] Rollo, p. 40.

[2] Id., p. 44.

[3] Id., p. 46

[4] Id., p. 41.

[5] Id., pp. 14-18.

[6]Id., pp. 19-37.

[7]Id., pp.38-39.

[8] Id., p. 40.

[9] Id., pp. 42-43.

[10] Id., p. 44.

[11]Id., p. 46.

[12] 79 SCRA 519 (1977).

[13] *Tayabas Land Company v. Sharuff*, 41 Phil. 382 (1921); *Bautista v. Barredo*, 13 SCRA 744 (1965).

[14] *Tayabas Land Company v. Sharuff*, *supra*.

[15] *Reliance Procoma, Inc. v. Phil-Asia Tobacco Corporation*, 57 SCRA 370 (1974).

[16] 13 SCRA 744 (1965)

[17] 168 SCRA 49 (1988).

[18] See also *De Leon v. Salvador*, 36 SCRA 567 (1970); *National Power v. de Neyra*, 3 SCRA 646 (1961); *Hacbang v. Leyte*, 8 SCRA 103 (1963).

[19] *Reyes v. Grey*, 21 Phil. 73 (1911); *Levy Hermanos, Inc., v. Casimiro*, 60 Phil. 978 (1934).

[20] Section 373 [f], Insurance Code.

[21] *Landaker v. Anderson*, 261 P. 388 (1927).

[22] 79 SCRA 519 (1977)

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