

INSULAR BANK OF ASIA & AMERICA, INCORPORATED, PETITIONER, VS. HONORABLE COURT OF APPEALS, AND COMMERCIAL CREDIT CORPORATION, RESPONDENTS.

G.R. No. 61011. October 18, 1990

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-61011/>

PADILLA, J.:

Petitioner Insular Bank of Asia and America (IBAA) made a money market placement with respondent Commercial Credit Corporation (CCC) on 12 December 1980 in the amount of P1,877,053.03. In consideration of such placement, Commercial Credit Corporation executed a Non Negotiable Repurchase Agreement whereby it conveyed to IBAA securities issued by International Corporate Bank (Interbank) with a face value of P2,000,000.00 and with a maturity date of 22 April 1981. The parties (IBAA and CCC) also executed a resale agreement which bound IBAA to re-sell to CCC the Interbank securities for P2,000,000.00 on 22 April 1981. On due date (22 April 1981), CCC caused to be issued to IBAA a Commercial Bank and Trust Co. (CBTC) cashier's check for P2,000,000.00 which was, however, dishonored upon presentment for being drawn against uncollected deposits.

On 18 May 1981, IBAA advised CCC of the dishonor and demanded cash payment. In its reply, CCC admitted difficulty in replacing the dishonored check and proposed payment on a staggered basis, attaching to the proposal a copy of a Central Bank letter approving its (CCC's) request for additional standby credit facility to meet its maturing money market placements.

Due to CCC's failure to meet its obligation despite demands, on 24 August 1981, IBAA filed an action for recovery of sum of money with a prayer for the issuance of a writ of preliminary attachment before the CFI of Rizal, Pasig, Branch X (docketed as Civil Case No. L-42585), claiming that:

"14. This is an action for money or property embezzled or fraudulently misapplied or converted to his own use by defendant in a fiduciary capacity, or for a willful violation of duty; this is an action against defendant 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; this is an action against defendant who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors."[1]

On 20 October 1981, the CFI of Rizal issued an order granting the preliminary attachment against real and personal properties of CCC. On 19 November 1981, CCC filed a petition for certiorari with the Court of Appeals, docketed as CA-G.R. No. SP-13376-SCA, alleging grave abuse of discretion amounting to lack of jurisdiction on the part of the RTC of Rizal in the issuance of the attachment order.

Despite the issuance of a status quo order from the Court of Appeals, deposits of CCC with Bank of the Philippine Islands and Far East Bank and Trust Co. were garnished. Heavy equipment used in the construction of CCC's building in Makati and its office equipment were attached. Two (2) urgent motions and a supplemental pleading

were filed by CCC with the Court of Appeals praying for release of the garnished funds and attached equipment. IBAA reiterated its apprehension over CCC's financial viability and ability to pay;^[2] besides, IBAA claimed, it (CCC) never had any serious intention to pay at the inception of the money market placement transaction such that the intention to defraud the bank (IBAA) was very apparent. The circumstances in the case at bar fall, according to IBAA, under Rule 57, Section 1(d),^[3] of the Rules of Court.

In setting aside the RTC order of attachment, the Court of Appeals, in its decision,* held:

"Petitioner (meaning, CCC) operates as an on-going concern. While it is apparent - that it is in a financial crisis with the Central Bank's grant of an additional standby credit facility of P20 million in favor of the latter, the attachment of its property will unduly hinder any transaction where it can regain its financial solvency to meet its obligations. x x x.

x x x x x x x x

It is true that petitioner failed to pay the private respondent the sum of P2,000,000.00 due to its financial difficulty at the time of the maturity date for the payment of P2,000,000.00 but We find no reason to uphold the order of attachment issued by the respondent judge on October 20, 1981 where there is no showing that the petitioner was performing acts to defraud its creditors or by disposing its assets to the prejudice of its creditors or persons who may have a claim to its assets. On the other hand, the withdrawal of petitioner's bank deposits in the Far East Bank and Trust Company (which were then subject to the garnishment proceedings by the respondent Deputy Sheriff) was intended to finance the operations of the petitioner as an on-going concern, in payment of wages of its employees."

Not satisfied with the Court of Appeals decision, the present petition for review was filed by petitioner bank.

There is insufficient merit in the petition.

Essentially, the only question is whether or not the questioned Court of Appeals decision setting aside the order of the CFI of Rizal, Branch X, Pasig granting a writ of preliminary attachment upon a complaint for collection of a sum of money which the respondent CCC allegedly fraudulently contracted and now has difficulty paying, is in accordance with law or a reversible error.

The purpose of attachment is to secure a contingent lien on defendant's property until plaintiff can obtain a judgment and have such property applied to its satisfaction or to make provision for unsecured debts in such cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction or improperly disposed of (by fraud or otherwise) or concealed or placed beyond the reach of creditors.^[4]

Petitioner claims that at the time the obligation was incurred by respondent CCC, the latter already had the fraudulent intent not to pay the obligation or indebtedness. This contention is not borne out by the records. Upon the other hand, respondent CCC has not denied that it was undergoing financial difficulties and had in fact called a creditor's meeting^[5] to make full disclosure of its business condition and negotiate for payment of its outstanding obligations. Petitioner also claims there was an incipient misrepresentation regarding respondent's capacity to pay. The Court of Appeals found, on the other hand, that there was no dissipation of assets, in fact, respondent's withdrawal of money from Far East Bank and Trust Co. was intended to finance its operations. Inability to pay, we rule, is not necessarily synonymous with fraudulent intent not to honor an admitted obligation.

There is thus no reversible error in the questioned Court of Appeals decision which we find to be in accordance with law.

WHEREFORE, the petition is DENIED. The Court of Appeals decision in CA-G.R. No. SP-13376-SCA is AFFIRMED in toto.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.
Paras, J., no part.

[1] Rollo at 27 and 28

[2] Rollo at 29

[3] Section 1(d), Rule 57:

In an action against a party who has been guilty of a 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.

* Penned by Justice Hugo E. Gutierrez, Jr., concurred in by Justices Edgardo L. Paras and Santiago M. Kapunan.

[4] 7 CJS, 190, 376

[5] Rollo at 62

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.