

ROBERTO TING AND DOLORES TING, PETITIONERS, VS. HON. AUGUSTO E. VILLARIN, FELICIANO GERVACIO, FERDINAND J. GUERRERO, AND CONSOLIDATED BANK & TRUST COMPANY, RESPONDENTS.

G.R. No. 61754. August 17, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

On September 17, 1981, private respondent Consolidated Bank and Trust Company (hereinafter "Consolidated Bank") filed a complaint[1] for a sum of money with prayer for a writ of preliminary attachment against Perlon Textile Mills and its directors.

Roberto Ting, a director, was impleaded with his wife Dolores Lim Ting. The complaint recites that the wife was impleaded as a party defendant in order to bind their conjugal partnership of gains which allegedly benefitted from the transactions subject of the complaint. The spouses Ting are the present petitioners.

Consolidated Bank actually sued on two (2) causes of action. The first was targetted at recovering on several promissory notes the amount of P2,972,955.51, allegedly obtained for the defendant corporation by its duly authorized officers Lu Cheng Peng, Teng See, and Roberto Ting. These officers allegedly signed the promissory notes in their personal and official capacities thereby binding themselves jointly and severally to Consolidated Bank for the payment of the promissory notes.

The second cause of action dwells on several violations of trust receipt agreements which the defendant corporation executed in favor of Consolidated Bank. The defendant corporation's faithful compliance with the trust receipt agreements appears to have been secured by the continuing guaranty of defendants Liu Suy Lin, Angelo Leonar, and Lu Cheng Peng.

In support of the application for preliminary attachment, Consolidated Bank averred the ground of "fraud in contracting an obligation" thus -

16. Defendants are guilty of fraud in contracting their obligations more specifically illustrated by their violation of the trust receipt agreement which is a ground defined under Sec. 1, Rule 57 of the Rules of Court for the issuance of a writ of preliminary attachment.[2]

On September 23, 1981, acting on the application for a writ of attachment by Consolidated Bank, the respondent judge issued the orders under question, to wit:

xxx xxx xxx

We, therefore, command you [Deputy Sheriffs Feliciano Gervacio and Ferdinand J. Guerrero] that you attach the estate, real and personal, of the said defendants Perlon Textile Mills, Inc., Lu Cheng Peng and Spouse; Teng See @ Teng Tik Hua and Spouse; Spouses Roberto Ting and Dolores Lim Ting; Angelo Leonor and

Spouse, Liu Suy Lin and Spouse, and Yap Chi and Spouse, within your province to the value of said demands, and costs of suit, and that you keep safely the same according to the Rules of Court, unless the defendant - gives security to pay such judgment as may be recovered in this action in the manner provided for by the Rules of Court; and that you return immediately this order after executing the same with a full statement of your proceedings and a complete inventory of the properties attached.[3]

On March 3, 1982, acting on the petitioners' Motion to Quash Attachment, the respondent judge issued a second order, to wit:

xxx xxx xxx

Acting on defendants Roberto and Dolores Ting's motion to quash attachment and plaintiffs' opposition thereto, it appearing from plaintiffs' allegations that the alleged fraud was effected through the collective action of the defendants, the court finds the motion to be without sufficient merit.[4]

xxx xxx xxx

On July 19, 1982, acting on the petitioners' motion for reconsideration, the respondent judge issued the last disputed order the dispositive portion of which states:

xxx xxx xxx

WHEREFORE, under the circumstances, and finding no sufficient justification for the reconsideration of the order of March 3, 1982, the motion for reconsideration is hereby DENIED.[5]

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The petitioners came to this Court via a petition for certiorari. They are questioning the writ of preliminary attachment principally on the ground that the application therefor hinges on "fraud in contracting" the trust receipt agreements under the second cause of action. On the other hand, the petitioners are impleaded in the complaint merely under the first cause of action.

Moreover, the petitioners challenge the writ of preliminary attachment issued because, in effect, it pierced the veil of corporate fiction. The petitioners explain that the corporation alone should be held liable for the violation of the trust receipt agreements.

Finally, the petitioners ask that the writ of preliminary attachment be struck down by this Court because it authorized an attachment over the petitioners' conjugal partnership property.

We agree with the petitioners.

The complaint did not provide for a sufficient basis for the issuance of a writ of preliminary attachment. It is not enough for the complaint to ritualistically cite, as here, that the defendants are "guilty of fraud in contracting an obligation". An order of attachment cannot be issued on a general averment, such as one ceremoniously quoting from a pertinent rule.[6] The need for a recitation of factual circumstances that support the application becomes more compelling here considering that the ground relied upon is "fraud in contracting an obligation". The complaint utterly failed to even give a hint about what constituted the fraud and how it was perpetrated. Fraud cannot be presumed.[7]

The respondent judge thus failed in his duty to ensure that, before issuing the writ of preliminary attachment, all the requisites of the law have been complied with. He acted in excess of his jurisdiction and the writ he so issued is thus null and void.[8]

What is more, the respondent judge plainly ignored that, as correctly pointed out by the petitioners, the application

for preliminary attachment rests on "fraud in contracting" the trust receipt agreements. The complaint itself, save for the unwarranted sweeping reference to "defendants", alleged that only Consolidated Bank, as principals, and Liu Suy Lin, Angelo Leonar, and Lu Cheng Peng, as guarantors, were privy to the trust receipt agreements under the second cause of action. Petitioner Roberto Ting's involvement is limited only to the promissory notes under the first cause of action. The complaint thus relevantly alleges -

FIRST CAUSE OF ACTION

7. On March 15, 1979, defendant corporation, through its duly authorized officers Lu Cheng Peng, Tang See and Roberto Ting obtained from plaintiff loan accommodations in the amount of P2,972,955.51 and as evidence thereof, the aforementioned defendants in their personal and official capacities executed promissory notes undertaking therein jointly and severally with the corporation to pay plaintiff the above-mentioned amount with interest x x x.

SECOND CAUSE OF ACTION

8. On different occasions in 1978-1979, defendants applied to plaintiff for the opening of numerous letters of credit to finance its purchase of goods from various suppliers.

xxx xxx xxx

ALLEGATIONS COMMON TO ALL

CAUSES OF ACTION

12. In order to secure the credit accommodations obtained and all those that the defendant Perlon Textile Mills, Inc. may thereafter obtain from plaintiff, defendants Liu Suy Lin, Angelo Leonar and Lu Cheng Peng executed a continuing guaranty x x x.[9]

The sweeping nature of the attachment order probably stemmed from the respondent judge's failure to detect that the two (2) causes of action had been improperly joined. Joinder of causes of action is, among others, subject to the rules on joinder of parties.[10] And the rule on joinder of parties is enunciated in Sec. 6, Rule 3, Revised Rules of Court, thus -

Sec. 6. Permissive joinder of parties. - All persons x x x against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these rules x x x be joined as defendants in one complaint, where any question of law or fact common to all such x x x defendants may arise in the action x x x.

Here, the two causes of action arose from different transactions. There was no "series of transactions" to speak of. But above all, the complaint can conceivably affect adversely petitioner Roberto Ting under the first cause of action only but not in the second cause of action.[11]

That the attachment ordered by the respondent judge called for the sheriffs to "attach the estate, real and personal of x x x Spouses Roberto Ting and Dolores Lim Ting" (Order of September 23, 1981) likewise gives cause for this Court to strike it down for being null and void. The attached property of the spouses Ting are conjugal, the same cannot be validly brought under the painful process of attachment because:

(a) First, the wife Dolores was impleaded merely because of the fact that she is the spouse of Roberto;

(b) Second, the conjugal partnership cannot possibly be benefitted (again, here, Consolidated Bank's allegation that the act of the husband redounded to the benefit of the conjugal partnership is mere "book form") when the

husband binds himself, as guarantor, because this act does not conserve or augment conjugal funds but instead threatens to dissipate them^[12] by unnecessary and unwarranted risks to the partnership's financial stability. When the husband assumes the obligation of a guarantor, the presumption that he acts, as administrator, for the benefit of the conjugal partnership, is lost.

WHEREFORE, the petition is hereby GRANTED. The questioned Orders, dated September 23, 1981, March 3, 1982, and July 19, 1982, of the respondent judge, and the levy on attachment made by the deputy sheriffs against the parcel of land covered by TCT No. T-7232 and registered in the names of the petitioners, are declared NULL AND VOID. Costs against the private respondent.

SO ORDERED.

Melencio--Herrera, (Chairman), Paras, and Regalado, JJ., concur.
Padilla, J., No part in the deliberations.

[1] Rollo, 15-22.

[2] Rollo, 20.

[3] Rollo, 23.

[4] Rollo, 33.

[5] Rollo, 45.

[6] Dy v. Enage, No. L-35351, March 17, 1976, 70 SCRA 96.

[7] Filinvest Credit Corp. vs. Relova, No. 50378, September 30, 1982, 117 SCRA 420.

[8] Salas vs. AdiI, No. L-46089, May 14, 1979, 90 SCRA 121.

[9] Rollo, 16, 17, 19.

[10] Sec. 5, Rule 2, Revised Rules of Court.

[11] Gacula v. Martinez, et al., L-3038, January 31, 1951, 88 Phil. 142.

[12] Luzon Surety Co., Inc. v. De Garcia, G.R. No. 25659, October 31, 1969, 30 SCRA 111.

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