

**WILLIAM ALAIN MIAILHE AND THE HON. FELIX V. BARBERS, IN HIS
CAPACITY AS PRESIDING JUDGE, RTC OF MANILA, BRANCH XXXIII,
PETITIONERS-APPELLANTS, VS. ELIANE M. DE LENCQUESAING AND
...**

G.R. NO. 67715. July 11, 1986

Ponente: PARAS, J.

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PARAS, J.:

This petition is an appeal by certiorari from the Decision of the Intermediate Appellate Court in AC-G.R. SP. No. 01914 which declared null and void, the Order of the Hon. Judge Felix V. Barbers, issued in Civil Case No. 83-16829, dated April 14, 1983, granting petitioner's application for the issuance of a writ of preliminary attachment and the Order dated September 13, 1983 denying respondent's motion to lift said attachment.

The pertinent facts that gave rise to the instant petition are as follows:

Petitioner William Alain Mialhe, his sisters Monique Mialhe Sichere, Eliane Mialhe de Lencquesaing and their mother, Madame Victoria D. Mialhe are co-owners of several registered real properties located in Metro Manila. By common consent of the said co-owners, petitioner William Alain has been administering said properties since 1960. As Madame Victoria D. Mialhe, her daughter Monique and son William Alain (herein petitioner) failed to secure an out-of-court partition thereof due to the unwillingness or opposition of respondent Elaine, they filed in the Court of First Instance of Manila (now Regional Trial Court) an action for Partition, which was docketed as Civil Case No. 105774 and assigned to Branch XXX thereof,

presided over by Judge Pedro Ramirez. Among the issues-presented in the partition case was the matter of petitioner's account as administrator of the properties sought to be partitioned. But while the said administrator's account was still being examined, respondent Elaine filed a motion praying that the sum of P203,167.36 which allegedly appeared as a cash balance in her favor as of December 31, 1982, be ordered delivered to her by petitioner William Alain. Against the opposition of petitioner and the other co-owners, Judge Pedro Ramirez granted the motion in his Order dated December 19, 1983 which order is now the subject of a certiorari proceeding in the Intermediate Appellate Court under AC-G.R. No. SP-03070.

Meanwhile however, and more specifically on February 28, 1983, respondent Elaine filed a criminal complaint for estafa against petitioner William Alain, with the office of the City Fiscal of Manila, alleging in her supporting affidavit that on the face of the very account submitted by him as Administrator, he had misappropriated considerable amounts, which should have been turned over to her as her share in the net rentals of the common properties. Two days after filing the complaint, respondent flew back to Paris, the City of her residence. Likewise, a few days after the filing of the criminal complaint, an extensive news item about it appeared prominently in the Bulletin Today, March 4, 1983 issue, stating substantially that Alain Mialhe, a consul of the Philippines in the Republic of France, had been charged with Estafa of several million pesos by his own sister with the office of the City Fiscal of Manila.

On April 12, 1983, petitioner Alain filed a verified complaint against respondent Elaine, for Damages in the amount of P2,000,000.00 and attorney's fees of P250,000.00 allegedly sustained by him by reason of the filing by respondent (then defendant) of a criminal complaint for estafa, solely for the purpose of embarrassing petitioner (then plaintiff) and besmirching his honor and reputation as a private person and as an Honorary Consul of the Republic of the Philippines in the City of Bordeaux, France. Petitioner further charged respondent with having caused the publication in the March 4, 1983 issue of the Bulletin Today, of a libelous news item. In his verified complaint, petitioner prayed for the issuance of a writ of preliminary attachment of the properties of respondent consisting of 1/6 undivided interests in certain real properties in the City of Manila on the ground that "respondent-defendant is a non-resident of the Philippines", pursuant to paragraph (f), Section 1, Rule 57, in relation to Section 17, Rule 14 of the Revised Rules of Court.

This case for Damages was docketed as Civil Case No. 83-16829 of the Regional Trial Court of Manila, Branch XXXIII presided over by the Honorable Felix V. Barbers.

On April 14, 1983, Judge Barbers granted petitioner's application for preliminary attachment upon a bond to be filed by petitioner in the amount of P2,000,000.00. Petitioner filed said bond and upon its approval, the Writ of Preliminary Attachment was issued on April 18, 1983 which was served on the Deputy Clerk of Court of Branch XXX before whom the action for Partition was pending.

On May 17, 1983, respondent thru counsel filed a motion to lift or dissolve the writ of attachment on the ground that the complaint did not comply with the provisions of Sec. 3 of Rule 57, Rules of Court and that petitioner's claim was for unliquidated damages. The motion to lift attachment having been denied, respondent filed with the Intermediate Appellate Court a special action for certiorari under AC-G.R. SP No. 01914 alleging that Judge Barbers had acted with grave abuse of discretion in the premises.

On April 4, 1984, the IAC issued its now assailed Decision declaring null and void the aforesaid Writ of preliminary attachment. Petitioner filed a motion for the reconsideration of the Decision but it was denied hence, this present petition which was given due course in the Resolution of this Court dated February 6, 1985.

We find the petition meritless. The most important issue raised by petitioner is — whether or not the Intermediate Appellate Court erred in construing Section 1 par. (f) Rule 57 of the Rules of Court to be applicable only in case the claim of the plaintiff is for liquidated damages (and therefore not where he seeks to recover unliquidated damages arising from a crime or tort).

In its now assailed decision, the IAC stated —

"We find, therefore, and so hold that respondent court had exceeded its jurisdiction in issuing the writ of attachment on a claim based on an action for damages arising from delict and quasi delict, the amount of which is uncertain and had not been reduced to judgment just because the defendant is not a resident of the Philippines. Because of the uncertainty of the amount of plaintiffs claim it cannot be said that said claim is over and above all legal counterclaims that defendant may have against plaintiff, one of the indispensable requirements for the issuance of a writ of attachment which should be stated in the affidavit of applicant as required in Sec. 3 of Rule 57 or alleged in the verified complaint of plaintiff. The attachment issued in the case was therefore null and void.

We agree.

Section 1 of Rule 57 of the Rules of Court provides —

SEC. 1. Grounds upon which attachment may issue.— A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the

satisfaction of any judgment that may be recovered in the following cases:

- (a) In an action for the recovery of money or damages on a cause of action arising from contract, express or implied, against a party who is about to depart from the Philippines with intent to defraud his creditors;
- (b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;
- (c) In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an officer;
- (d) 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;
- (e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors;
- (f) In an action against a party who resides out of the Philippines, or on whom summons may be served by publication, (*italics supplied*)

While it is true that from the aforequoted provision attachment may issue "in an action against a party who resides out of the Philippines" irrespective of the nature of the action or suit, and while it is also true that in the case of *Cu Unjteng, et al. v. Albert*, 58 Phil. 495, it was held that "each of the six grounds treated ante is independent of the others," still it is imperative that the amount sought be liquidated.

In view of the foregoing, the Decision appealed from is hereby **AFFIRMED**.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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