

**HELENA Z. T. BENITEZ, PETITIONER-APPELLEE, VS. THE
INTERMEDIATE APPELLATE COURT, ROSARIO R. VELOSO, IN HER
CAPACITY AS JUDGE OF THE REGIONAL TRIAL COURT, NATIONAL
CAPITAL JUDICI...**

G.R. No. 71535. September 15, 1987

Ponente: YAP, J.

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YAP, J.:

This is a petition for review on certiorari of the decision of respondent Intermediate Appellate Court dated July 25, 1985, affirming the questioned orders of the Regional Trial Court of Makati, to wit: (a) the order dated December 11, 1984, granting the private respondents' petition for a writ of attachment ex-parte; (b) the order dated January 31, 1985, denying petitioner's urgent motion to discharge attachment; and (c) the order dated April 24, 1985, denying petitioner's motion for reconsideration.

The records show that on December 6, 1984, private respondent Casa Filipina Development Corporation (Casa Filipina for brevity) filed a complaint against herein petitioner Helena T. Benitez for rescission of contract, plus damages, with a prayer for preliminary attachment. The complaint alleged that sometime on April 16, 1983, the plaintiff Casa Filipina, a real estate corporation, represented by Renato P. Dragon, and defendant Benitez (the petitioner herein), entered into a verbal contract whereby Benitez allegedly agreed to undertake to purchase/convey land for Casa Filipina in the total value of One Million Pesos (P1,000,000.00) within the period of four (4) months from receipt of the total amount. On the same date, Casa Filipina tendered a check payment in the amount of Five Hundred Thousand Pesos (P500,000.00) in the name of Benitez. On August 26, 1983, to complete the amount of One Million Pesos as allegedly agreed upon, Casa Filipina issued again another check in the amount of Five Hundred Thousand Pesos (P500,000.00). Both checks were deposited and credited in petitioner's bank account. The four-month period allegedly elapsed without Benitez having purchased nor conveyed any real estate in the total value of One Million Pesos (P1,000,000.00) in favor of Casa Filipina, but instead Benitez converted the entrusted money for her own personal use in violation of her fiduciary relationship with plaintiff and that despite repeated demands for the refund or return of the aforementioned amount, Benitez chose to ignore the same. Praying for a writ of preliminary attachment, Casa Filipina submitted with its complaint, the affidavit of one Nestor P. Borromeo, the corporate secretary and acting treasurer of the corporation.

The writ of attachment was granted by respondent court ex-parte in an order dated December 11, 1985.

On December 27, 1984, the Clerk of Court issued a writ of preliminary attachment, by virtue of which the respondent Sheriff served notices of garnishment to the Philippine Women's University, Taft Avenue, Manila, the Unlad Development Resources Corporation and Bank of the Philippine Islands, Unlad Condominium, Taft Avenue, Manila, thereby garnishing the deposits, shares of stocks, salaries and other personal property of the petitioner. Likewise, on January 30, 1984, petitioner was advised by the Acting Register of Deeds of Quezon City that a notice of levy was filed with the Registrar's Office affecting two parcels of prime land at Mariposa Street,

with an aggregate area of 4,304 square meters which are owned by and registered in the name of the petitioner.

Earlier on January 21, 1985, Benitez filed an answer with counterclaim and opposition to the petition for issuance of a writ of preliminary attachment. On the same date, Benitez also filed an Urgent Motion to Discharge Writ of Preliminary Attachment under Section 13, Rule 57 of the Rules of Court, on the ground that the same was improperly or irregularly issued. Benitez alleged that sometime in March 1983, Mr. Renato Dragon, acting for himself and Casa Filipina agreed to buy ten (10) hectares of petitioner's land in Dasmarinas, Cavite for a price of P15.00 per square meter or for a total consideration of One Million Five Hundred Thousand Pesos (P1,500,000.00); that it was agreed upon by the parties that it is only upon full payment of the amount of P1,500,000.00 that delivery of the ten-hectare property of the petitioner will be made; that Casa Filipina was not able to comply with the obligation to pay the balance of P500,000.00 despite repeated demands and instead filed the present action for rescission.

In support of its urgent motion to discharge the writ of preliminary attachment, petitioner attached thereto the affidavit of her technical assistant and attorney-in-fact by the name of Virginia Real, who alleged, among other things, that she knows for a fact that the transaction between Benitez and Dragon or Casa Filipina, was one of purchase and sale; that a copy of TCT No. 9833 covering the land to be purchased was furnished the office of Mr. Dragon on February 28, 1984; that petitioner is willing and able to execute a deed of absolute sale in favor of Casa Filipina upon full payment of the balance of P500,000.00.

The said motion was set for hearing on January 25, 1985 but the private respondent and its counsel failed to appear despite notice. Consequently, the motion was deemed submitted for resolution.

On January 31, 1985, respondent Court denied petitioner's motion to discharge writ of preliminary attachment. The said order reads:

"Considering defendant's motion to quash and/or lift the writ of preliminary attachment issued by this Court upon properties of defendant on the ground that the same was predicated upon false and untrue allegations, the Court believes and so rules that the issue cannot be determined without adducing evidence at the same time going into the merits of the case which in the opinion of the Court could not be done at this stage of the proceedings.

Considering that the writ of preliminary attachment was issued after having satisfied the requirements of the rules, the same may not be lifted or discharged without the defendant filing a counterbond.

WHEREFORE, the motion to lift and/or discharge the writ of preliminary attachment is hereby denied.

SO ORDERED."

On February 5, 1985, despite the lower court's denial of petitioner's motion to discharge preliminary attachment, the private respondent filed a belated opposition to the said motion, to which the petitioner filed a reply on February 18, 1985.

On March 14, 1985, petitioner discovered that her motion to discharge preliminary attachment was denied. Hence, on March 20, 1985, petitioner filed a motion for reconsideration which was likewise denied by respondent judge on April 24, 1985. Whereupon, a petition for certiorari, mandamus and prohibition was filed by the petitioner before respondent Intermediate Appellate Court, which, as stated earlier, was dismissed for lack of merit. Hence, this petition.

On January 8, 1986, the Court gave due course to the petition and required the parties to submit their memoranda.

Petitioner poses the following questions for resolution, to wit:

1. Whether a counter-attachment bond is necessary and indispensable under the circumstances before the subject writ of preliminary attachment may be recalled, quashed and/or discharged?
2. Whether or not the issue on the propriety of the issuance of the subject writ may be resolved without going into the merits of the principal action?

We find the petition meritorious.

The attachment was granted by the lower court ex-parte under Section 1(b), Rule 57, Rules of Court, upon the allegation of respondent Casa Filipina, that petitioner Helena Benitez, the defendant, had violated their alleged fiduciary relationship and had unlawfully converted the amount of P1,000,000.00 for her own use. Petitioner promptly filed an urgent motion to discharge writ of preliminary attachment for improper or irregular issuance, supported by the affidavit of Virginia Real, who alleged that there was no fiduciary relationship between the plaintiff and defendant inasmuch as the transaction between them was one of sale of real property. Thus, in effect, the petitioner claims that the private respondent's allegation of fraud was false, that hence there was no ground for the attachment, and that consequently, the attachment order was improperly or irregularly issued.

In *Villongco, et al, vs. Hon. Panlilio, et al.*,^[1] we held that the affidavit supporting the petition for the issuance of the preliminary attachment may have been sufficient to justify the issuance of the preliminary writ, but it cannot be considered as proof of the allegations contained in the affidavit, which are mere conclusions of law, not statement of facts. Petitioner in the instant case having squarely controverted the private respondent's allegation of fraud, it was incumbent on the latter to prove its allegation. The burden of proving that there indeed was fraud lies with the party making such allegation. This finds support in Section 1, Rule 131 of the Rules of Court which provides: "Each party must prove his own affirmation allegations. x x x The burden of proof lies on the party who would be defeated if no evidence were given on either side." In this jurisdiction, fraud is never presumed.^[2]

The petitioner's Urgent Motion to Discharge Writ of Preliminary Attachment was filed under Section 13, Rule 57. The last sentence of said provision indicates that a hearing must be conducted by the judge for the purpose of determining whether or not there really was a defect in the issuance of the attachment.

It appears from the records that no hearing was conducted by the lower court. Indeed, when the case was called for hearing, the plaintiff (private respondent herein) failed to appear and the petitioner's motion was considered submitted for resolution.

Private respondent has alleged in its memorandum that petitioner did not file an affidavit in support of her Urgent Motion to Discharge Attachment, as required under Section 13 of Rule 57, hence, it was not necessary or imperative that a hearing be held. The Court finds private respondent's allegation to be irresponsible, for attached to petitioner's motion was the supporting affidavit of Virginia L. Real, the technical assistant of petitioner Benitez. In her affidavit, she stated that she had personal knowledge of the transaction between respondent Casa Filipina and petitioner Benitez; that Mr. Renato Dragon, for himself and/or Casa Filipina, agreed to buy a portion consisting of 10 hectares of a parcel of land belonging to Benitez in Dasmarinas, Cavite, for the total price of P1,500,000.00 of which private respondent made a downpayment of P500,000.00 on April 16, 1983, and a second payment of P500,000.00 on August 27, 1983; that private respondent having failed to pay the balance of P500,000.00, the deed of sale could not be executed in favor of private respondent. The record amply supports petitioner's version, as against the private respondent's allegation that Benitez had acted as agent in receiving the money and converted the same for her own use in violation of the fiduciary relationship existing between her and private respondent. Private respondent acknowledged the receipt of a xerox copy of TCT No. 9833 covering petitioner's land in Dasmarinas, Cavite^[3], and the check voucher issued by private respondent on April 16, 1983 showed that the check for P500,000.00 was for "Payment for downpayment of lot to be purchased"^[4] and the

check voucher dated August 27, 1983 for P500,000.00 was for "Second payment for lot to be purchased." [5]

It was grave abuse of discretion on the part of respondent Judge Rosario Veloso to deny petitioner's Urgent Motion to Discharge Writ of Preliminary Attachment, without conducting a hearing and requiring the plaintiff to substantiate its allegation of fraud. Neither can respondent Judge avoid deciding the issue raised in petitioner's urgent motion by ruling that "the issue cannot be determined without adducing evidence at the same time going into the merits of the case." Having issued the writ of preliminary attachment ex parte, it was incumbent on the respondent court, upon proper challenge of its order, to determine whether or not the same was improvidently issued. A preliminary attachment is a rigorous remedy which exposes the debtor to humiliation and annoyance, such that it should not be abused to cause unnecessary prejudice and, if wrongfully issued on the basis of false allegation, should at once be corrected.

We agree with petitioner that a writ of attachment may be discharged pursuant to Section 13, Rule 57, without the necessity of filing a cash deposit or counterbond. The provisions of the aforesaid section grants an aggrieved party relief from baseless and unjustifiable attachments procured, among others, upon false allegations, without having to file any cash deposit or counterbond.

WHEREFORE, in view of the foregoing, the appealed decision is hereby reversed and the ex parte writ of preliminary attachment issued by the respondent Regional Trial Court on December 11, 1984 is ANNULLED and SET ASIDE. Costs against private respondent.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

[1] 94 Phil. 15, 21.

[2] Filinvest Credit Corporation vs. Relova, 117 SCRA 420.

[3] Rollo, p. 82.

[4] Rollo, p. 101.

[5] Rollo, p. 97.

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