

**BELISLE INVESTMENT &#038; FINANCE CO., INC. AND SMITH, BELL &#038; CO., INC., PETITIONERS, VS. STATE INVESTMENT HOUSE, INC., THE INTERMEDIATE APPELLATE COURT (SECOND SPECIAL CASES DIVISIO...**

*G.R. No. 71917. June 30, 1987*

Ponente: PARAS, J.

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**PARAS, J.:**

THIS IS A PETITION FOR REVIEW ON CERTIORARI SEEKING THE REVERSAL OF: (A) THE DECISION OF THE INTERME-DIATE APPELLATE COURT\* (NOW COURT OF APPEALS) DATED APRIL 30, 1985, DENYING DUE COURSE TO THE PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS WITH PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER, FILED WITH SAID APPELLATE COURT WITHOUT A CERTIFIED COPY OF THE ORDER BEING ASSAILED BUT OBVIOUSLY REFERRING TO AN ORDER ISSUED EX-PARTE BY THE LOWER COURT TO ATTACH PETITIONERS' PROPERTIES AND (B) THE RESOLUTION OF THE SAME APPELLATE COURT DENYING PETITIONERS' MOTION FOR RECONSIDERATION.

IN NOVEMBER 1982 AND MAY 1983 STATE INVESTMENT HOUSE, INC. (HOUSE, FOR SHORT) AND BELISLE INVESTMENT AND FINANCE CO., INC. (FINANCE, FOR SHORT), EXECUTED AGREEMENTS WHEREBY THE FORMER AGREED TO EXTEND FINANCIAL ASSISTANCE TO THE LATTER, WHO IN TURN SHALL EXECUTE IN FAVOR OF HOUSE PROMISSORY NOTES TO EVIDENCE ITS INDEBTED-NESS UNDER EACH AVAILMENT AND, WHENEVER NECESSARY AND APPLICABLE IN SUCH FORM AND TENOR AS PRESCRIBED BY LAW AND OTHER RULES AND REGULATIONS PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION AND THE CENTRAL BANK OF THE PHILIPPINES (COMPLAINT; ROLLO, PP. 44-45).

SMITH, BELL & CO., INC., OWNER OF 93% OF THE OUT-STANDING STOCK OF FINANCE, EXECUTED IN FAVOR OF HOUSE COMPREHENSIVE SURETY AGREEMENTS WHEREBY SMITH, BELL GUARANTEED JOINTLY AND SEVERALLY WITH FINANCE THE FULL AND PUNCTUAL PAYMENT AT MATURITY TO HOUSE OF ANY AND ALL SUCH INSTRUMENTS, LOANS, ADVANCES, CREDITS AND/OR OTHER OBLIGATIONS AND ALSO ANY AND ALL OTHER INDEBTED-NESS OF EVERY KIND WHICH TOGETHER WITH ANY AND ALL EXPENSES, INTERESTS OR PENALTIES WHICH MAY BE INCURRED BY HOUSE IN COLLECTING ALL OR ANY SUCH INSTRUMENTS OR OTHER INDEBTEDNESS OR OBLIGATIONS (IBID., ROLLO, P. 45).

SMITH, BELL ALSO EXECUTED A LETTER OF CONFORMITY, CONFIRMING THAT IT IS IN FACT THE OWNER OF THE ABOVE-MENTIONED SHARES OF STOCK AND THAT IT HAS FULL KNOWLEDGE OF THE OBLIGATIONS BEING UNDERTAKEN BY FINANCE WITH HOUSE (IBID, ROLLO, P. 46).

ON MAY 27 AND AUGUST 27, 1984, FINANCE FAILED TO PAY ITS OBLIGATIONS WITH HOUSE DESPITE DEMANDS. AS OF OCTOBER 10, 1984, THE OBLIGATIONS OF FINANCE REMAINING OUTSTANDING AND UNPAID, AMOUNTED TO P6,838,358.00 (ROLLO, P. 48).

ON DECEMBER 6, 1984, A COMPLAINT WITH PRELIMINARY ATTACHMENT WAS FILED BY HOUSE AGAINST FINANCE AND SMITH, BELL & CO., INC. WITH THE REGIONAL TRIAL COURT OF MANILA, BRANCH 49, DOCKETED THEREIN AS CIVIL CASE NO. 84-28167. ACTING ON THE PRAYER FOR WRIT OF PRELIMINARY ATTACHMENT, RESPONDENT JUDGE ON JANUARY 23, 1985 ISSUED AN ORDER DIRECTING THE BRANCH CLERK OF COURT TO RECEIVE PLAINTIFF'S EVIDENCE ON THE APPLICATION FOR WRIT OF PRELIMINARY ATTACHMENT TO BE ENFORCED AGAINST THE PROPERTIES OF DEFENDANTS (PETITIONERS HEREIN) NOT EXEMPT FROM EXECUTION TO THE EXTENT OF P6,838,358.00 THE AMOUNT CLAIMED IN PLAINTIFF'S COMPLAINT. ON JANUARY 29, 1985, AN ORDER OF ATTACHMENT WAS ISSUED AND ADDRESSED TO PUBLIC RESPONDENTS, DEPUTY SHERIFFS GERRY C. DUNCAN AND GERMILIANO G. TENGCO, WHO WERE DIRECTED TO ATTACH REAL AND PERSONAL PROPERTIES, OF THE DEFENDANTS NOT EXEMPT FROM EXECUTION. ON JANUARY 31, 1985, PERSONAL PROPERTIES OF PETITIONER FINANCE AND THE REAL AND PERSONAL PROPERTIES OF SMITH, BELL & CO., INC. WERE LEVIED UPON (DECISION, AC-G.R. SP. No. 05745, ROLLO, P. 128).

ON JANUARY 31, 1985, PETITIONERS FILED A MOTION TO DISCHARGE ATTACHMENT AND POSTED A COUNTERBOND IN THE AMOUNT OF P6,838,358.00. ON FEBRUARY 4, 1985 THE MOTION TO DISCHARGE ATTACHMENT AND AN URGENT EX PARTE MOTION FOR ISSUANCE OF RESTRAINING ORDER FILED BY DEFENDANTS WERE HEARD AND ARGUED BEFORE THE RESPONDENT COURT. AT THE HEARING, THE PARTIES WERE GIVEN A TOTAL OF NINE (9) DAYS TO FILE THEIR WRITTEN PLEADINGS AFTER WHICH THE MOTION TO DISCHARGE ATTACHMENT SHALL BE DEEMED SUBMITTED FOR RESOLUTION (IBID., P. 129).

ON FEBRUARY 7, 1985, PRIVATE RESPONDENT FILED ITS OPPOSITION TO PETITIONERS' MOTION TO DISCHARGE ATTACHMENT, PETITIONERS IN TURN FILED THEIR REPLY TO OPPOSITION. ON FEBRUARY 11, 1985 PETITIONERS FILED A SUPPLEMENT TO MOTION TO DISCHARGE ATTACHMENT AND ON THE SAME DAY FILED THEIR ANSWER WITH COUNTERCLAIM. ON FEBRUARY 21, 1985, PRIVATE RESPONDENT FILED ITS REPLY AND ANSWER TO COUNTERCLAIM.

FROM THE CHRONOLOGY OF EVENTS, IT WILL BE OBSERVED THAT BEFORE RESPONDENT JUDGE COULD RESOLVE THE MOTION TO DISCHARGE AND THE SUPPLEMENT TO THE MOTION TO DISCHARGE ATTACHMENT, PETITIONERS FILED ON FEBRUARY 8, 1985 A PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS WITH PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER IN THE SUPREME COURT DOCKETED AS SPECIAL CIVIL ACTION G.R. NO. 69819. ON MARCH 7, 1985, PETITIONERS FILED AN URGENT MOTION IN REITERATION OF PETITION PRAYING FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER. IN THE RESOLUTION OF MARCH 13, 1985, THE SUPREME COURT ISSUED A TEMPORARY RESTRAINING ORDER AND REFERRED THE CASE TO THE INTERMEDIATE APPELLATE COURT (NOW COURT OF APPEALS) FOR PROPER DETERMINATION OF THE CASE AND ALL PENDING INCIDENTS (ROLLO, G.R. No. 71917, PP. 20; 128-132, ROLLO, G.R. NO. 69819).

AS AFORESTATED, THE PETITION WAS DENIED DUE COURSE BY THE COURT OF APPEALS AND DISMISSED WITHOUT PRONOUNCEMENT AS TO COSTS. (DECISION, AC-G.R. SP. NO. 05745;

ROLLO, PP. 128-132). IN LIKE MANNER, PETITIONERS' MOTION FOR RECONSIDERATION OF SAID DECISION WAS DENIED FOR LACK OF MERIT, IN THE RESOLUTION OF AUGUST 16, 1985 OF THE SAME APPELLATE COURT.

**HENCE, THIS PETITION.**

**PETITIONERS RAISE THE FOLLOWING QUESTIONS OF LAW:**

(A) WHETHER THE HONORABLE INTERMEDIATE APPELLATE COURT (SECOND DIVISION) HAS DECIDED A QUESTION NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT; OR

(B) WHETHER THE HONORABLE INTERMEDIATE APPELLATE COURT (SECOND DIVISION) HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS OR SO FAR SANCTIONED SUCH DEPARTURE BY THE LOWER COURT BY FAILING TO TIMELY RESTRAIN ENFORCEMENT OF A WRIT OF ATTACHMENT PENDING APPROVAL OF SUFFICIENT COUNTERBOND RESULTING TO EXCESSIVE LEVY.

IN THE RESOLUTION OF OCTOBER 14, 1985, THE FIRST DIVISION OF THIS COURT, WITHOUT GIVING DUE COURSE TO THE PETITION, REQUIRED THE RESPONDENTS TO COMMENT THEREON (ROLLO, P. 174) WHICH WAS COMPLIED WITH ON NOVEMBER 14, 1985 (ROLLO, PP. 178-199).

IN THE RESOLUTION OF DECEMBER 16, 1985, THE COURT RESOLVED TO REQUIRE THE PETITIONERS TO FILE A REPLY THERETO, WHICH WAS FILED N FEBRUARY 12, 1986 (ROLLO, PP. 217-228).

A CAREFUL PERUSAL OF THE RECORDS AS WELL AS THE ARGUMENTS ADDUCED BY BOTH PARTIES, REVEALS THAT THE COURT OF APPEALS CORRECTLY DENIED DUE COURSE TO SUBJECT PETITION.

AS ABLY DEMONSTRATED BY SAID APPELLATE COURT, THE ISSUES RAISED BY THE PETITIONERS HAD LONG BEEN LAID TO REST BY THE SUPREME COURT.

THE MAIN THRUST OF THIS PETITION IS THE ALLEGED FAILURE OF THE INTERMEDIATE APPELLATE COURT TO RULE AMONG OTHERS ON THE INACTION OF THE LOWER COURT TO TIMELY RESOLVE PETITIONERS' MOTION FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER PENDING THE RESOLUTION OF SAID PETITIONERS' MOTION TO DISCHARGE THE WRIT OF PRELIMINARY ATTACHMENT BY POSTING A COUNTERBOND EQUAL TO THE AMOUNT OF PLAINTIFF'S CLAIM. OTHERWISE STATED, PETITIONERS APPEAR TO BE OF THE VIEW THAT UPON THEIR POSTING OF A COUNTERBOND WHICH ACCOMPANIES THEIR MOTION TO DISCHARGE THE WRIT OF PRELIMINARY ATTACHMENT, IT IS MANDATORY FOR THE RESPONDENT JUDGE TO STAY THE ENFORCEMENT OF SAID WRIT.

IT WILL BE RECALLED THAT THE SUPREME COURT HAS ALREADY ISSUED A TEMPORARY RESTRAINING ORDER AS PRAYED FOR BY THE PETITIONERS IN G.R. NO. 69819 "BALISLE INVESTMENT AND FINANCE CO., INC., ET AL. VS. STATE INVESTMENT HOUSE, INC., ET AL." IN THE RESOLUTION OF THE FIRST DIVISION DATED MARCH 13, 1985, BEFORE SUBJECT PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS WITH PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER WAS REFERRED TO THE COURT OF APPEALS FOR PROPER DETERMINATION OF THE CASE AND ALL PENDING INCIDENTS.

IN THE DETERMINATION OF THE CASE AND PENDING INCIDENTS, THE COURT OF APPEALS CANNOT BE FAULTED FOR NOT HAVING RULED ON THE ALLEGED INACTION OF RESPONDENT JUDGE TO ISSUE THE PRELIMINARY INJUNCTION OR RESTRAINING ORDER IN THE LOWER COURT TO STOP THE ENFORCEMENT OF THE WRIT OF PRELIMINARY ATTACHMENT.

IT IS A WELL ESTABLISHED RULE THAT THE GRANT OR DENIAL OF AN INJUNCTION RESTS UPON THE SOUND DISCRETION OF THE COURT, IN THE EXERCISE OF WHICH APPELLATE COURTS WILL NOT INTERFERE EXCEPT ON A CLEAR CASE OF ABUSE (YAPTINCHAY VS. TORRES, 28 SCRA 489 [1969]).

AS CORRECTLY FOUND BY THE COURT OF APPEALS, NO GRAVE ABUSE OF DISCRETION CAN BE ASCRIBED TO RESPONDENT JUDGE EITHER IN THE ISSUANCE OF THE WRIT OF ATTACHMENT WITHOUT NOTICE TO PETITIONERS AS THERE IS NOTHING IN THE RULES OF COURT WHICH MAKES NOTICE AND HEARING INDISPENSABLE AND MANDATORY REQUISITES IN THE ISSUANCE OF A WRIT OF ATTACHMENT (FILINVEST CREDIT CORPORATION VS. RELOVA, 117 SCRA 420) OR IN THE FAILURE OF RESPONDENT JUDGE TO IMMEDIATELY RESTRAIN THE ENFORCEMENT OF THE WRIT OF PRELIMINARY ATTACHMENT UPON PETITIONERS' POSTING OF A COUNTERBOND FOR INDEED, THE RULES AND JURIS-PRUDENCE REQUIRE THAT NO PRELIMINARY INJUNCTION SHALL ISSUE WITHOUT HEARING. IN FACT THE ISSUANCE OF INJUNCTION EX PARTE IS DISCOURAGED AND THE COURT HAS REPEATEDLY HELD THAT PRELIMINARY INJUNCTION IS AN EXTRA-ORDINARY PEREMPTORY REMEDY THAT SHOULD BE DISPENSED WITH CIRCUMSPECTION, AND BOTH SIDES SHOULD FIRST BE HEARD WHENEVER POSSIBLE (RAMOS VS. COURT OF APPEALS, 95 SCRA 360 [1980]; PALAMAN LUMBER & PLYWOOD CO., INC., ET AL. VS. ARRANZ, ET AL., L-27106, 22 SCRA 1194 [1968]).

MOREOVER, THE COURT OF APPEALS CORRECTLY RULED THAT THE MERE POSTING OF A COUNTERBOND DOES NOT AUTOMATICALLY DISCHARGE THE WRIT OF ATTACHMENT. IT IS ONLY AFTER HEARING AND AFTER THE JUDGE HAS ORDERED THE DISCHARGE OF THE ATTACHMENT IF A CASH DEPOSIT IS MADE OR A COUNTERBOND IS EXECUTED TO THE ATTACHING CREDITOR IS FILED, THAT THE WRIT OF ATTACHMENT IS PROPERLY DISCHARGED UNDER SECTION 12, RULE 57 OF THE RULES OF COURT. WHILE IT IS UNDISPUTED THAT RESPONDENT COURT HEARD THE PARTIES ON FEBRUARY 4, 1985, THEY WERE THEREAFTER GIVEN A TOTAL OF NINE (9) DAYS TO FILE THEIR WRITTEN PLEADINGS AFTER WHICH THE MOTION WOULD BE DEEMED SUBMITTED FOR RESOLUTION.

THUS, BOTH THE MOTION TO DISCHARGE ATTACHMENT AND THE MOTION FOR THE ISSUANCE OF PRELIMINARY INJUNCTION TO STAY THE ENFORCEMENT THEREOF, WERE STILL PENDING CONSIDERATION BY THE LOWER COURT WITH BOTH PARTIES STILL FILING PLEADINGS UP TO FEBRUARY 14, 1985, WHEN PETITIONERS FILED SUBJECT PETITION WITH THE SUPREME COURT ON FEBRUARY 8, 1985. TO SAY THE LEAST, THE PETITION IN THE INSTANT CASE WAS PREMATURE.

THIS COURT HAS RULED THAT BEFORE FILING A PETITION FOR CERTIORARI IN A HIGHER COURT, THE ATTENTION OF THE LOWER COURT SHOULD GENERALLY BE FIRST CALLED TO ITS SUPPOSED ERROR AND ITS CORRECTION SHOULD BE SOUGHT. IF THIS IS NOT DONE, THE PETITION FOR CERTIORARI SHOULD BE DENIED. THE REASON FOR THIS RULE IS THAT ISSUES WHICH COURTS OF FIRST INSTANCE ARE BOUND TO DECIDE SHOULD NOT SUMMARILY BE TAKEN FROM THEM AND SUBMITTED TO AN APPELLATE COURT WITHOUT FIRST GIVING SUCH

LOWER COURTS THE OPPORTUNITY TO DISPOSE OF THE SAME WITH DUE DELIBERATION (BUTUAN BAY WOOD EXPORT CORP. VS. COURT OF APPEALS, 97 PHIL. 297-298 [1980]).

UNDER THE CIRCUMSTANCES, THE LOWER COURT SHOULD BE THE PROPER FORUM TO THRESH OUT THE QUESTION OF WHETHER OR NOT PRIVATE RESPONDENTS SHOULD CONTINUE TO BE ENJOINED OR RESTRAINED FROM THE ENFORCEMENT OF THE QUESTIONED ATTACHMENT ORDER (RUBIO VS. MARIANO, 52 SCRA 344 [1973]), AS WELL AS THE MATTER OF WHETHER OR NOT THE WRIT OF ATTACHMENT ISSUED BY THE LOWER COURT SHOULD BE DISCHARGED.

PREMISES CONSIDERED, (A) THE INSTANT PETITION IS HEREBY DENIED AND THE DECISION OF THE COURT OF APPEALS IS HEREBY AFFIRMED, AND (B) THIS CASE IS REMANDED TO THE LOWER COURT FOR TRIAL ON THE MERITS AND FOR THE DETERMINATION OF ALL PENDING INCIDENTS.

**SO ORDERED.**

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

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\* THE COURT OF APPEALS DECISION WAS PENNED BY JUSTICE JOSE F. RACELA, JR., WITH JUSTICES SIMEON M. GOPENGCO, LINO M. PATAJO AND FIDEL P. PURISIMA, CONCURRING.

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