

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK (FORMERLY
PHILIPPINE COMMERCIAL & INDUSTRIAL BANK), PETITIONER,
VS. INTERMEDIATE APPELLATE COURT AND SPOUSES JOSE
SALGADO AND JULIETA SA...**

G.R. No. 73610. April 19, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Intermediate Appellate Court dated October 30, 1985 in AC-G.R. CV No. 00119 entitled, "Philippine Commercial and Industrial Bank, v. Spouses Jose Salgado and Julieta Salgado," which reversed the decision of the trial court and its resolution denying the motion for reconsideration.

The facts are as follows:

A complaint (pp. 43-48, Rollo) for recovery of a sum of money with an application for a writ of preliminary attachment was filed on May 8, 1978 by Philippine Commercial and Industrial Corporation (PCIB) against Spouses Salgado with the Court of First Instance of Rizal and docketed as Civil Case No. 29392. The complaint sought to enforce payment of the P1.3 million promissory note executed by the spouses in favor of PCIB. To secure a writ of attachment, PCIB alleged in the complaint that the note has no sufficient security and that the spouses were disposing, concealing or removing their properties with intent to defraud creditors. An affidavit to this effect was executed by Helen Osias, PCIB's Credit Division Manager (p. 52, Rollo).

The application for a writ of preliminary injunction was granted on May 9, 1978 upon the filing by PCIB of a bond of P1,500,905.00 (p. 53, Rollo). The deputy sheriff of the court levied upon fifteen (15) parcels of land registered in the names of the spouses (p. 83, Rollo).

PCIB also filed a petition for extra-judicial foreclosure of four (4) real estate mortgages executed in its favor by spouses Salgado with the provincial sheriff of Negros Occidental on May 11, 1978. The petition alleged that the outstanding debt of the spouses to PCIB under the above mortgages amounted to P3,161,393.44 inclusive of interests, penalty/bank charges as of April 30, 1978. An auction sale was conducted where PCIB was the highest bidder for P2,325,819.60 (CA decision, p. 11, Rollo).

Spouses Salgado filed their answer in the civil case alleging that the note sued upon was secured by several real estate mortgages and that PCIB allowed the reconstruction of the loan by agreeing to service their accounts with future sugar proceeds starting from crop year 1978-79 and onwards.

On September 15, 1978, the spouses Salgado moved to quash the writ of preliminary attachment alleging that PCIB made fraudulent misrepresentation in securing the writ by deleting the words "REM" (Real Estate Mortgage) from the xerox copy of the promissory note attached to the complainant thereby making it appear that the note was unsecured. The motion was granted and the writ lifted on January 31, 1979; PCIB's motion for

reconsideration was denied.

PCIB filed a petition for certiorari questioning the trial court's lifting of the writ of attachment with the appellate court. The petition was dismissed for lack of merit in a resolution dated November 29, 1979. However, on motion for reconsideration, the appellate court reversed its previous order and reinstated the writ of attachment. The spouses Salgado went to this Court in a petition for certiorari which was docketed as G.R. No. 55381.

Meanwhile, in the main case for recovery of a sum of money, a decision was rendered by the trial court on July 15, 1981, through Judge Nelly L. Romero Valdellon. The trial court found that the note sued upon in the main case was sufficiently secured by a real estate mortgage and that the note was not yet due and demandable in view of the agreement of the parties to restructure the obligation (pp. 87-90, Rollo). The dispositive portion of the decision states:

"WHEREFORE, judgment is hereby rendered in favor of defendants and against plaintiff:

a) Dismissing the complaint;

b) Ordering plaintiff to pay defendants:

1. P1,000,000.00 as moral damages
2. P100,000.00 as exemplary damages; and
3. P150,000.00 as and for attorney's fees.

As a consequence hereof, the writ of preliminary attachment previously issued becomes vacated *motu proprio*.

Costs against plaintiff.

"SO ORDERED." (p. 95, Rollo)

On reconsideration by PCIB, the trial court, through Judge Gregorio Pineda, pairing Judge of Judge Valdellon who was then on leave, reversed the decision and ruled that there was indeed a debt which was due and demandable. The dispositive portion of the decision states:

"WHEREFORE, the Decision of this Court of July 15, 1981 is hereby reconsidered. The defendants are hereby ordered to pay to the plaintiff the amount of P1,300,000.00 with the corresponding interests, penalties, bank charges and attorney's fees in accordance with the terms of the Promissory Note, Exhibit 'A'. The counter-claims are dismissed. The writ of preliminary attachment previously issued by this Court is hereby maintained. Costs against the defendants." (p. 103, Rollo)

Upon the denial of their motion for reconsideration, the spouses Salgado appealed to the Intermediate Appellate Court.

Meanwhile, this Court in G.R. No. 55381, declared that the allegations in the affidavit of Helen Osias, which was made the basis for the issuance of the writ of attachment in the trial court, was false: and the issuance of the writ, irregular. The note sued upon in the main case was in fact secured by a real estate mortgage duly registered and annotated in the titles of the affected property. Accordingly, the resolution of the then appellate court reinstating the writ of attachment was set aside. (p. 113, Rollo).

On the basis of the decision of the Supreme Court in G.R. 55381 declaring that the issuance of the writ of attachment was irregular, the Salgado spouses filed on November 28, 1984 a claim for damages on account of the illegal attachment with the Intermediate Appellate Court. The claim was referred to the Regional Trial Court that took the place of Branch XXII of the Court of First Instance of Rizal, for trial and reception of evidence (p. 4, CA Decision, p. 9, Rollo). During the trial, only Julieta Salgado testified. The trial court concluded that Julieta

Salgado had not satisfactorily proved her claims for actual damages but granted moral damages, exemplary damages and attorney's fees.

On June 18, 1985, the Salgado spouses filed a motion for reconsideration of the above decision of the lower court in the claim for damages on account of illegal attachment, praying that the damages awarded be increased even just to the extent of the full amount of the attachment bond of P1,500,000.00. When this motion for reconsideration was filed, the records were already with the Intermediate Appellate Court. On July 8, 1985, the Salgado spouses filed a Notice of Appeal from the trial court's decision of June 11, 1985.

Invoking Section 20 of Rule 57 of the Rules of Court, the Intermediate Appellate Court included the appeal of the Salgado spouses from the decision of the trial court in their claim for damages on account of illegal attachment in the resolution of the main case (p. 4, CA Decision; p. 9, Rollo). In a decision (pp. 6-17, Rollo) rendered on October 30, 1985, the Intermediate Appellate Court reversed the decision of Judge Pineda in the main case and modified the decision of the trial court in the claim of the Salgado's for damages on the account of the illegal attachment by increasing the award of damages, the pertinent portion of which reads:

"In the main case the lower court in its decision dated July 15, 1981 through Judge Valdellon dismissed the complaint and awarded damages in favor of appellants. Since, We are awarding damages due to the illegal attachment, in the exercise of Our discretion, the damages awarded by Judge Valdellon should be reduced. Hence, in addition to the damages as a result of the illegal attachment, an award of P150,000.00 as moral damages; P75,000.00 as exemplary damages; and P50,000.00 as and for attorney's fees, are adequate and reasonable.

"WHEREFORE, the decision appealed from is hereby REVERSED and set aside and a new one entered awarding damages in favor of Appellants (Salgado spouses) in the following aggregate sum of P650,000.00 as actual damages; P450,000.00 as moral damages; P175,000.00 as exemplary damages and P149,000.00 as and for attorney's fees.

"SO ORDERED." (pp. 14-15, Rollo)

Upon the denial of its motion for reconsideration, PCIB filed the instant petition for review on February 26, 1986 raising the following questions of law:

"I. When a bank-creditor extrajudicially forecloses a Real Estate Mortgage (REM) to satisfy a past due obligation of its debtor and realizes certain monetary proceeds in the foreclosure sale thereof, can said debtor legally demand pursuant to the provisions of Article 1252 of the New Civil Code of the Philippines on 'Application of Payments' that said proceeds be applied as payment to his other outstanding obligation with the same bank-creditor which is a subject matter of an ordinary action for collection and not to the indebtedness secured by the mortgage?

"II. When a bank-creditor applied and obtained a writ of attachment which was later on dissolved without any pronouncement or finding of bad faith on the part of said bank-creditor in obtaining said writ of attachment, can said bank-creditor be held liable for damages in consequence thereof? (p. 19, Rollo)

Petitioner PCIB admitted in its petition that the P1.3 Million account subject of Civil Case No. 29392 was also secured by the same mortgage foreclosed on August 14, 1978 but it contended that when it brought the civil action for collection (Civil Case No. 29392), their mortgage was deemed waived (p. 13, Rollo).

No valid waiver of mortgage can be concluded from PCIB's act of filing a collection suit to enforce payment of the 1.3 M account and subsequently filing foreclosure proceedings for the security given for the account. Although it appears that the mortgages foreclosed on August 14, 1978 also secured private respondents' other outstanding obligations for crop years 1976-77 and 1977-78, the fact remains that the foreclosure proceedings also

included the security for the P1.3 M account.

While the law allows a mortgage creditor to either institute a personal action for the debt or a real action to foreclose the mortgage, he cannot pursue both remedies simultaneously or successively as was done by PCIB in this case. This rule was laid down in the case of *Danao v. Court of Appeals*, G.R. No. L-48276, September 30, 1987, 154 SCRA 446, 457; pp. 457-458, citing *Manila Trading and Supply Co. v. Co Kim, et al.*, 71 Phil. 448 [1941]; *Movido v. RFC, et al.*, 105 Phil. 886, where We held:

"Anent real properties in particular, the court has laid down the rule that a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both.

The rule was explained in the above-cited cases, as follows:

"For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of the mortgage. But both demands arise from the same cause, the non-payment of the debt, and, for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently there exists only one cause of action for a single breach of that obligation. Plaintiff, then, by applying the rule above stated cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and the other to foreclose his mortgage, We will, in effect, be authorizing him plural redress for a single breach of contract at much cost to the courts and with so much vexation and oppression to the debtor.

"x x x a rule that would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice (*Soriano v. Enrriquez*, 24 Phil. 584) and obnoxious to law and equity (*Osorio v. San Agustin*, 25 Phil. 404), but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies." (*Bachrach Motor Co., Inc. v. Esteban Icarangal, et al.*, 38 Off. Gaz. – 389 [1939])

"Evidently, the prior recourse of the creditor bank in filing a civil action against the Danao spouses and subsequently resorting to the complaint of foreclosure proceedings, are not only a demonstration of the prohibited splitting up of a cause of action but also of the resulting vexation and oppression to the debtor."

Thus, when the PCIB filed Civil Case No. 29392 to enforce payment of the P1.3 Million promissory note secured by real estate mortgages and subsequently filed a petition for extrajudicial foreclosure, it violated the rule against splitting a cause of action.

It is also the contention of PCIB that the rule on application of payments does not apply in this case. We have held that the application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, (*Gorospe v. Gochangco*, 106 Phil. 426), hence, respondent appellate court correctly held that the proceeds of P2,325,819.60 realized in the public auction sale of August 14, 1978 may be applied first to liquidate private respondent's indebtedness of P1,300,000.00 subject of the main case because, in addition to the fact that the said debt was one of those secured by the real estate mortgages foreclosed by the Provincial Sheriff, it is the most onerous (14% interest per year) and the oldest.

There is no question that the suing out of the writ of attachment by petitioner was wrongful. This question is

settled in G.R. No. 55381 entitled, "Spouses Jose Salgado and Julieta Salgado v. Hon. Court of Appeals," promulgated on March 26, 1984. Petitioner contends that since there was no pronouncement in G.R. No. 55381 that there was bad faith or malice in securing the writ of attachment, PCIB cannot be held liable for damages.

The contention is not meritorious. The silence of the decision in G.R. No. 55381 on whether there was bad faith or malice on the part of petitioner in securing the writ of attachment does not mean the absence thereof. Only the legality of the issuance of the writ of attachment was brought in issue in that case. Hence, this Court ruled on that issue without a pronouncement that procurement of the writ was attended by bad faith. Proof of bad faith or malice in obtaining a writ of attachment need be proved only in the claim for damages on account of the issuance of the writ. We affirm the finding of respondent appellate court that malice and bad faith attended the application by PCIB of a writ of attachment.

"To have a basis for the issuance of a writ of preliminary attachment, in the xerox copy of the promissory note attached to the complaint in the instant case, the existence of the REM was blotched out making it appear that the note was unsecured when in truth and in fact it was fully secured by a series of valid and existing real estate mortgages duly registered and annotated in the titles of the affected real properties in favor of the bank. Certainly blotching out the existence of a fact is an act of bad faith. This act of bad faith was made more apparent when Appellee bank in its complaint did not mention of such REM." (p. 14, Rollo)

However, the award of actual damages is not supported by evidence. While the testimony of Julieta Salgado was not rebutted by the petitioner, the trial court which received the evidence held that the claims for damages were not satisfactorily proved.

"The stopping of her children from going to school is too remote a result of the wrongful attachment.

"It has not been clearly shown that whatever losses she might have suffered from the sale of her 80 carabaos at a lower price and from the pledge of her jewelry were the direct and proximate result of the wrongful suing out of the writ and the seizure and detention of her property thereunder.

'In accordance with the rule that the recovery of actual damages is limited to compensation for injuries which are the direct and proximate result of the wrongful attachment, the items recoverable are limited to those which flow naturally and reasonably therefrom.' (Francisco, *supra*, p. 165)

"The loss from P600,000.00 to P1,000,000.00 as a result of the abandonment of the sugar cane plantation is not certain and is speculative and has not been duly established by competent proofs;

'It is well settled rule that one who has been injured by a wrongful attachment can recover damages for the actual loss resulting therefrom x x x. But for such losses to be recoverable, they must constitute actual damages duly established by competent proofs' (Diaz & Delena vs. Enriquez & Teodoro, (CA) 49 O.G. 29320).

"The cancellation of the loan with Traders Royal bank, as not been sufficiently established by evidence independent of the testimony of Julieta Salgado.

"The P100,000 — loss in the fishing boat business and the P240,000-loss in the fish pond business have not been shown, by clear and convincing evidence, to have been the natural, direct and proximate result of the wrongful attachment. Neither can the failure to pay the laborers, for want of complete evidence, be considered as the immediate result of the suing out of the writ.

"The P50,000.00 allegedly spent by Julieta Salgado for her board and lodging and transportation from Bacolod to Manila and from Manila to Bacolod in connection with the attachment case has not been adequately established. No receipts covering such as expenditure have been produced. Her testimony on this point has not been corroborated.

"The P99,000.00 representing the attorney's fees of previous counsel has not been completely and competently proved. Exhibit M has not been duly authenticated. It has no usefulness as evidence.

'Whatever the character of a private writing its authentication is a condition precedent to its usefulness as evidence' (Salonga, Philippine Law of Evidence, 3rd Edition, p. 710).

"The impairment of Julieta Salgado's credit is a remote consequence of the wrongful attachment.

'The impairment of the plaintiff's credit, his inability to sell the land levied upon, or to contract a loan upon the security of the land, are not the proximate, but remote consequence of the attachment.' (Heath v. Lent, 1 Cal. 410; Elder v. Kutner, 47 Cal. 490, 32 Pac 563, cited in Francisco, supra, p. 168)

"The illness of Julieta Salgado's husband his ulcer and the 3 operations he had undergone maybe ascribable to causes remotely related to the wrongful attachment." (pp. 123-125, Rollo)

We quote with approval the findings of the trial court that spouses Salgado are entitled to moral damages, exemplary damages and attorney's fees.

"Defendants-Appellants however are entitled to recover moral damages, exemplary damages and attorney's fees but in reduced amounts.

"Julieta Salgado declared: 'Basing on our social standing in our community, basing on our business transaction I think 10 million moral damages is not enough to compensate for what the bank has done to us' (TSN, March 27, 1985, p. 30).

"No evidence has been submitted on her social standing or reputation in her community. 'Reputation x x x is the consideration or estimation in which a person is held especially by the community or the public generally' (Hopkins v. Tate, 255 Pa. 56, 90 A-210). It is 'what people think an individual is and what they say about him' (Black's Law Dictionary, De Luxe Fourth Edition, p. 1468). Put otherwise, reputation is not what a person thinks of, and says about himself.

"The reputation must be among people who have had an opportunity of observing the person's conduct; in particular, in the neighborhood of his home, or in a group of persons with whom he follows his occupation or otherwise associates intimately x x x. The common reputation must be among people who have had an adequate opportunity of observing the person's conduct' (Wigmore's Pocket Code of Evidence, Sec. 1074, p. 250). No such persons have been produced to testify on the reputation and the social or credit standing of the Salgado's in the community in which they live.

"It has been established that the writ of attachment based on a false affidavit (Exh. C) was improperly or irregularly issued (Exh. F). 'An action to recover damages from the attachment plaintiff, for the wrongful issuance and levy of attachment is identical with or analogous to the ordinary action for malicious prosecution' (Lazatin vs. Twaño, L-12736, July 31, 1961, 2 SCRA 842). In view thereof, moral damages may be recovered by defendants-appellants (Art. 2219 (8), Civil Code).

""Moral damages are to be fixed in the discretion of the court taking into consideration the educational, social and financial standing of the parties' (Dominding vs. Ng, 103 Phil. 11). No evidence has been introduced showing that defendants-appellants appear to be of much social and financial consequence. As a consequence, it is believed that the amount of P10,000,000.00 moral damages is out of reason and should accordingly be reduced to P10,000.00.

"It has been shown that defendants-appellants are entitled to moral damages. They may, for that reason, recover exemplary damages.

'For one to recover exemplary damages, he must first show that he is entitled to moral, temperate, liquidated or compensatory damages' (Marchan vs. Mendoza, 26 SCRA 731).

"The amount, however, of P5,000,000.00 is excessive. It should be reduced to P5,000.00.

"Reasonable attorney's fees constitute a proper element of damages in an action based upon wrongful attachment.

'x x x the more generally prevailing view is that one against whom an attachment has been wrongfully sued out is entitled to recover reasonable counsel fees incurred or expended in defending against such attachment' (7 C.J.S., 372, cited in Francisco, supra, p. 170).

"And 'in cases mentioned in Article 2208 (Civil Code) attorney's fees constitute a part of actual damages' (Fores vs. Miranda, L-12103, March 4, 1959).

"'Recoverable attorney's fees are limited to those actually paid or contracted to be paid.' It cannot be successfully disputed that defendants-appellants are represented actively by counsel. But the amount of P50,000.00 as attorney's fees is unreasonable, considering the amount and character of the services rendered, the nature of the litigation, and the time spent during the hearing thereof. It should accordingly be reduced to P3,000.00

'The principle that courts should reduce stipulated attorney's fees whenever it is found under the circumstances of the case that the same is unreasonable, is now deeply rooted in this jurisdiction to entertain any serious objection to it.' (Mambulao Lumber Co. vs. Philippine National Bank, 22 SCRA 370).

"x x x.

"For the foregoing considerations, judgment is hereby rendered ordering plaintiff-appellee Philippine Commercial and Industrial Bank to pay the defendants-appellants, the spouses Jose and Julieta Salgado, the following amounts:

1. P10,000.00 as moral damages;
2. P5,000.00 as exemplary damages; and
3. P3,000.00 as attorney's fees.

"SO ORDERED." (pp. 125-129, Rollo)

However, We are increasing the attorney's fees from P3,000.00 to P10,000.00 considering that the issue on the legality of the issuance of the writ of preliminary attachment reached this Court.

In the main case, recovery of damages is in order. However, the award granted by the appellate court is very excessive. An award of P30,000.00 moral damages, P10,000.00 exemplary damages and P10,000.00 attorney's fees is sufficient.

ACCORDINGLY, the decision of the Court of Appeals is AFFIRMED with modification on the amount awarded as damages: the aggregate sum of P40,000.00 as moral damages, P15,000.00 as exemplary damages and P20,000.00 as attorney's fees.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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