

D.P. LUB OIL MARKETING CENTER, INC., PETITIONER, VS. RAUL NICOLAS, SOCORRO VALERIE GUTIERREZ, AND THE HONORABLE PONCIANO C. INOPIQUEZ (IN HIS OFFICIAL CAPACITY AS THE PRESI-DING...

G.R. No. 76113. November 16, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Assailed in this petition for certiorari under Rule 65 of the Revised Rules of Court In The Philippines are the respondent trial court's orders, in Civil Case No. 86-35983, the first, dated August 28, 1986, and the second, September 24, 1986, which denied the petitioner-plaintiff's motion for reconsideration. The concluding portion of the August 28, 1986 order reads:

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With the dissolution of the writ of attachment and the withdrawal of the counterbond, the Court deems it no longer necessary to discuss the plaintiff's Motion to Revive the Writ of Attachment.

WHEREFORE, premised upon the findings and observations above, the first motion is GRANTED dissolving the writ of attachment and the counterbond withdrawn. The second motion is denied.

SO ORDERED.[1]

The questioned orders stemmed from a complaint lodged by the petitioner, D.P. Lub Oil Marketing Center, Inc., against private respondents Raul Nicolas and Socorro Valerie Gutierrez for a sum of money and damages, docketed as Civil Case No. 86-35983, on May 23, 1986.[2]

The said complaint contained a prayer for the issuance of a writ of preliminary attachment upon the ground that the claim resulted from the non-payment of the purchase price of fuel oil used for the ten vessels of the private respondents-defendants[3] and that pursuant to the provisions of the Code of Commerce, Article 584 in relation to Article 580 (subpar. 8), the said vessels may be attached. There was the added averment that the private respondents were about to dispose of the said vessels in fraud of their creditors including the petitioner herein.

A writ of preliminary attachment was issued ex parte by a court order,[4] dated May 28, 1986, upon the posting of a bond by the petitioner in the amount of P220,000.00. Armed with the writ, the Sheriff of Manila on June 18, 1986, boarded the private respondents fishing vessel, "Star Vangelina," and placed it under custodia legis.

The following day, on June 19, 1986, an order[5] was issued by the respondent judge lifting the attachment upon the posting of a counterbond in the amount of P220,000.00, upon motion of the private respondents without waiving or abandoning their objections to the alleged grounds for the issuance of the writ of attachment.

Thereafter, the private respondents filed a "Motion to Withdraw Counter-bond and to Dissolve Writ of

Attachment,"[6] dated July 3, 1986. Despite opposition from the petitioner, the respondent judge issued the first of the disputed orders dated August 28, 1986,[7] which dissolved the writ of attachment and allowed the private respondents' withdrawal of their counterbond. The petitioner's subsequent motion for reconsideration[8] was also denied in the second assailed order dated September 24, 1986.[9]

The petitioner submits the following legal issues for resolution by the Court:

- a) Has (sic) the provisions of Articles 580 and 584 of the Code of Commerce being (sic) expressly repealed by the provisions of Presidential Decree 214 so as to render the same abrogated and negated already?
- b) Is the case of *Salas vs. Adil* (90 SCRA 121) applicable in the instant case so as to justify the Honorable Respondent Judge in ordering the withdrawal of the bond?
- c) Has the Honorable Respondent Judge committed grave abuse of discretion tantamount to lack of jurisdiction in issuing the questioned order?[10]

The answer to the first question is affirmative.

The second and third issues may be consolidated thus:

WAS THE PETITIONER ENTITLED TO WRIT OF PRELIMINARY ATTACHMENT IN THE FIRST PLACE?

The answer to this second question is negative.

In resolving the first issue, we affirm the conclusion of the respondent judge that, indeed, Articles 580 and 584 of the Code of Commerce had been expressly repealed by the provisions of Presidential Decree (PD) No. 214 thereby rendering the former abrogated and of no more force and effect. The pertinent provisions are quoted as follows:

Articles 580(8) and 584 of the Code of Commerce:

ARTICLE 580. In all judicial sales of vessels for the payment of creditors, the said creditors shall have preference in the order stated:

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8. The part of the price which has not been paid the last vendor, the credits pending for the payment of materials and work in the construction of the vessel, when it has not navigated, and those arising from the repair and equipment of the vessel and from its provisioning with victuals and fuel during its last voyage.

In order that the credits provided for in this subdivision may enjoy the preference they must appear by contracts recorded in the registry of vessels, or if they were contracted for the vessel while on a voyage and said vessel has not returned to the port of her registry, they must be made under the authority required for such cases and entered in the certificate of registry of the said vessel.

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ARTICLE 584. The vessels subject to the liability for the credits mentioned in Article 580 may be attached and judicially sold in the manner prescribed in Article 579, in the port in which they are at the instance of any of the creditors; but if they should be loaded and ready to sail, the attachment cannot take place except for debts contracted for the preparation and provisioning of the vessels for the same voyage, and even then the attachment shall be dissolved if any person interested in her sailing should give bond for the return of the vessel within the period fixed in the certificate of navigation, and binding himself to pay the debt in so far as it may be legal, should

the vessel be delayed in her return even if it were caused by some fortuitous event.[11]

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Section 2 of PD No. 214, which is the repealing clause is crystal clear.

SEC. 2. The provisions of Commonwealth Act Numbered Six hundred and six, as amended by Republic Act Num-bered Nine hundred and thirteen; the Code of Com-merce, particularly Articles 580 and 584 thereof; and all other Acts, executive orders and regulations inconsistent herewith are hereby repealed or modified accordingly.[12] (Emphasis ours.)

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The petitioner assails the conclusion of the trial court, averring in its petition:

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A mere application on the basic rule of statutory construction would reveal to us that only those inconsistent with the provisions of Presidential Decree 214 are repealed or modified accordingly. We respectfully submit that the intention of Presidential Decree 214 is not to abrogate or negate Articles 580 and 584 of the Code of Commerce. Otherwise it could have clearly and categorically stated so.[13]

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The petitioner submits that the conflicting provisions can co-exist together and that it was not the intention of PD 214 to render nugatory Articles 580 and 584 of the Code of Commerce since they are not inconsistent with the former. It concludes that the respondent judge had committed grave abuse of discretion tantamount to lack of jurisdiction in issuing the questioned orders.[14]

The submission is not meritorious. No interpretation is necessary. It is plain, as plain as ordinary and simple words can ever be, that Articles 580 and 584 of the Code of Commerce were expressly referred to and repealed by Section 2 of PD 214. Ita lex scripta est.

On the second issue, the petitioner advances the argument that the case of *Salas v. Adil* is not applicable to the case at bar.[15]

The issue as to whether or not *Salas* is applicable is not important. The respondent judge acted in accordance with the existing laws and prevailing jurisprudence. The rules on the issuance of a writ of attachment must be construed strictly against the applicants. This stringency is required because the remedy of attachment is harsh, extraordinary, and summary in nature. If all the requisites for the granting of the writ are not present, then the court which issues it acts in excess of its jurisdiction.[16]

The petitioner's prayer for a preliminary attachment hinges on the allegations in paragraph 16 of the complaint[17] and paragraph 4 of the affidavit[18] of Daniel Pe which are couched in general terms devoid of particulars of time, persons, and places to support such a serious assertion that "defendants are disposing of their properties in fraud of the creditors." There is thus the necessity of giving to the private respondents an opportunity to ventilate their side in a hearing, in accordance with due process, in order to determine the truthfulness of the allegations. But no hearing was afforded to the private respondents the writ having been issued ex parte. A writ of attachment can only be granted on concrete and specific grounds and not on general averments merely quoting the words of the rules.[19]

The respondent judge merely corrected himself by issuing the questioned orders, thereby making his actions conform with the applicable laws and his findings of fact. Since the writ of attachment was improperly granted,

the respondent trial court's orders discharging it were compelling and justified to rectify the initial error. Hence, there was no need at all inceptively for the private respondents to post a counterbond.[20]

WHEREFORE, the petition is DISMISSED with costs against the petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Order of the Hon. Ponciano C. Inopiquez, Regional Trial Court of Manila, Branch XIV.

[2] Annex "A", Petition, rollo, 18-23.

[3] Supra, 3-4, id., 20-21.

[4] Annex "B", id., 37.

[5] Annex "C", id., 38.

[6] Annex "D", id., 39.

[7] Annex "I", id., 66.

[8] Annex "J", id., 72-75.

[9] Annex "K", id., 76.

[10] Petition, 4; id., 7.

[11] "The present Code of Commerce is the Spanish Code of Commerce, with some modifications made by the 'Comision de Codificacion de la Provincias de Vetramar,' which was extended to the Philippines by the Royal Decree of August 6, 1888, and took effect as law in this jurisdiction on December 1, 1888." (Macariola vs. Hon. E. Asuncion, Adm. Case 133-J, promulgated on May 31, 1982, 114 SCRA 98.)

[12] Dated June 16, 1973.

[13] Petition, 5, Rollo, 8.

[14] Id., 152.

[15] Id., 169.

[16] Gruenberg v. Court of Appeals, No. L-45948, promulgated on September 10, 1985, 138 SCRA 471.

[17] Annex "A", 4; rollo, 21.

[18] id., 24.

[19] Gruenberg, supra.

[20] Miranda vs. Court of Appeals, et al., G.R. No. 80030, promulgated on October 26, 1989, 6.

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