

ROGELIO A. MIRANDA, PETITIONER, VS. THE COURT OF APPEALS AND SPOUSES ORLANDO A. RAYOS AND MERCEDES T. RAYOS, RESPONDENTS.

G.R. No. 80030. October 26, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

Challenged in this case is the decision of the Court of Appeals affirming the order of the trial court lifting a writ of attachment previously issued by it under Rule 57, Section 1(d) of the Rules of Court. This provision authorizes the issuance of such writ:

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.

The writ was issued in connection with a complaint for damages filed by the petitioner against the private respondents on January 2, 1987. This was docketed as Civil Case No. 15639 in the Regional Trial Court of Makati, Branch 143, presided by Judge Socorro Tirona Liwag. The writ was later discharged by her on the finding that the private respondent could not be faulted with fraud under the aforecited provision of the Rules.

In his complaint, the petitioner alleged that the spouses Orlando and Mercedes Rayos sold him a parcel of land on December 26, 1985, for the sum of P250,000.00 under a Deed of Sale with Assumption of Mortgage prepared by Orlando Rayos, who is a lawyer. It is not denied that Miranda directly paid Rayos the sum of P150,000.00 and thereafter also paid the first three quarterly amortizations in the total amount of P87,864.94 to the Philippine Savings Bank as the mortgagee on the loan contracted by Rayos. Miranda claims that the bank at first refused to accept his third quarterly payment but relented when he showed it the contract he had entered into with Rayos. However, when he offered to make the fourth and last payment on December 24, 1986, the bank refused to accept it, informing him that Rayos had already made the payment and had asked it not to deliver the Torrens certificate of the mortgaged land to Miranda. This certificate was subsequently recovered by Rayos, who had since then refused to surrender it to him or to refund him the total amount of P267,088.61 which he said he had paid on their contract.

On the basis of these allegations, the trial judge issued the writ of attachment Miranda had also prayed for. Rayos then filed a motion to discharge the attachment, claiming there was no proof that he had committed fraud in contracting the debt or incurring the obligation on which the complaint was based. After considering the arguments of the parties, Judge Liwag granted the motion in her order dated March 5, 1987,[1] which she subsequently affirmed in her order dated March 18, 1987.[2] Miranda then went on certiorari to the respondent court,[3] which dismissed his petition for lack of merit in its decision dated September 9, 1987.[4]

We affirm.

The petitioner insists that there was a valid ground for the issuance of the writ of attachment because the Deed of

Sale with Assumption of Mortgage prepared by Rayos was attended at the inception with fraud that brought it under the provision of Rule 57, Section 1(d) of the Rules of Court. That fraud consisted of the deception employed by Rayos in inveigling him to enter into the contract of sale without cautioning him that his assumption of mortgage might be disapproved by the Philippine Savings Bank.

The Court cannot accept this contention in the light of the evidence of record. If at all - and on this we do not rule categorically as the matter is yet to be litigated in the court a quo - the fraud might have been committed by Rayos after the conclusion of the contract. However, such fraud is not covered by the aforesaid rule, let alone the fact that it has yet to be established.

What is clear at this time is that Rayos cannot be said to have deluded Miranda into entering into the contract by taking advantage of his position as a lawyer and withholding necessary information from Miranda. Miranda insists he did not know any better as a layman. He complains that Rayos did not warn him that the assumption of mortgage would have to be approved by the Philippine Savings Bank and that their transaction would be nullified without such approval. He stresses that had he been properly warned, he would not have invested an initial payment of P150,000.00 and later made the three amortization payments of P87,864.94, not to mention the last quarterly payment he also remitted to the Bank.

The private respondent's position is that he had in fact informed Miranda that the assumption of mortgage was subject to the approval of the mortgagee bank and that he had sent the petitioner the appropriate forms to accomplish. Miranda, for his part, maintains that such form was merely an application for individual loans and did not constitute the sufficient advise or warning that Rayos should have given him. On this point, the respondent court correctly affirmed the following findings of the trial court:

The plaintiff, in his Comment on Compliance dated March 13, 1987 argued as follows:

The "Application for Loan" form sent by defendant Orlando Rayos to plaintiff has no relevance and materiality to the assumption of defendant Rayos' loan account with defendant Philippine Savings Bank. That application form of PSB accomplished by plaintiff is strictly for individual loan application filed by plaintiff for P100,000.00 for himself. It does not constitute in any manner a "warning" or an "instruction" to plaintiff that it was incumbent upon plaintiff to get an express approval by the bank (PSB) for his assumption of Rayos' mortgage, ... if by sending that application form of PSB to plaintiff, defendant Orlando Rayos wanted to inform plaintiff about the necessity to get or obtain the express approval of the assumption of mortgage from PSB, why did he not say in clear terms to the plaintiff?

The Court finds this argument untenable. The Loan Application Form sent by defendant Rayos was actually filled up and signed by the plaintiff and his wife dated March 4, 1986. In said loan application, the amount of the loan appears as P100,00.00, the same amount as the mortgage to be assumed, the security offered also appears as TCT No. 100156 the same property bought by the plaintiff from the defendants with assumption of the mortgage in favor of the Philippine Savings Bank (See Deed of Sale with Assumption of Mortgage, par. 2(6), Annex "D", Complaint). How can the plaintiff now say that the Application for Loan form sent by the defendant to plaintiff "has no relevance and materiality to the assumption of the defendant Rayos' loan account with defendant Philippine Savings Bank."

It appears from the Loan Application and the General Information Sheet in connection with said Loan Application which the plaintiff and his wife also signed that the plaintiff and his wife are both degree holders and the plaintiff is the Acting Municipal Treasurer of the Municipality of Las Piñas. There is every reason to believe, therefore, that they understood what the Loan Application Form given to them by the defendant was for and there was no necessity for the defendant to state "in clear terms" that there was a need to apply to the bank in order for them to assume the mortgage.

The above findings are entirely logical and belie the petitioner's pretensions that he was completely duped as if he were a babe in arms. Being a layman did not excuse him from knowledge of the basic principles involved in this case of which he feigns total ignorance. Moreover, the evidence shows that he was in fact informed of the need for the approval of the assumption of mortgage and actually sought to secure such approval although unsuccessfully. This shows that no fraud was imposed on him by Rayos when they entered into the Deed of Sale with Assumption of Mortgage, which also means that there was really no ground for the issuance of the writ of attachment.

As the writ of attachment was improperly granted, it was only fitting that it be discharged by the trial court in rectification of its initial error. Hence, there was no need at all for the private respondent to post a counterbond. Finally, we also agree with the respondent court that the order lifting the attachment being merely interlocutory, it should not have been questioned on certiorari. This extraordinary remedy is available only when there is a clear showing of a grave abuse of discretion amounting to lack of jurisdiction, and there is no such showing here.

WHEREFORE, the petition is DENIED with costs against the petitioner. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Annex "L."

[2] Annex "N."

[3] Annex "O."

[4] Chua, J., ponente, with Ejercito and Lapeña, Jr., JJ., concurring.

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