

EDGAR S. ASUNCION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, AND PENINSULA NATURAL RESOURCES CORPORATION, RESPONDENTS.*G.R. No. 82173. September 28, 1988*

Ponente: SARMIENTO, J.

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From the decision[1] of the Court of Appeals in CA-G.R. No. 13403-SP, entitled "Peninsula Natural Resources Corporation vs. Hon. Eutropio Migriño, etc., et al.," promulgated on January 22, 1988, and its Resolution dated February 23, 1988, denying the petitioner's (private respondent in the Court of Appeals) Motion For Reconsideration, the petitioner now comes to us by a petition for review on certiorari. The petitioner seeks the annulment and setting aside of the challenged decision and order of the respondent Court of Appeals which annulled and set aside the orders of the respondent Regional Trial Court judge granting the issuance ex parte of a writ of attachment in favor of the herein petitioner, denying the herein private respondents' motion to lift or discharge the attachment, denying the motion for reconsideration thereof, and granting the herein petitioner's motion to pull out the attached properties.

We grant the petition.

The genesis of this petition is traced to the lodging, by the petitioner on September 17, 1987, of a complaint against the private respondent, Peninsula Natural Resources Corporation (Peninsula), with the Regional Trial Court of Pasig. The complaint sought the collection of a loan based on a promissory note executed by the private respondent and signed by its president, one Lorenzo Palao. It was accompanied by an application for the issuance ex parte of a writ of preliminary attachment which was supported by an affidavit executed by former Court of Appeals Justice Elias B. Asuncion. The affiant, who is the father of petitioner Edgar S. Asuncion, was the chairman of the board of directors of private respondent when the said loan was extended to it (Peninsula) by ESAS Development Corporation, a family corporation of ex-Justice Asuncion. The application for the ex parte issuance of the writ of attachment as well as the supporting affidavit allege the fraudulent removal, concealment, or disposition of some of the private respondent corporation's properties or the intent to do so. In an order dated September 24, 1987, the petitioner's application was granted by the trial court and the corresponding writ of attachment was issued after the petitioner had posted a bond of P80,000.00.

On October 14, 1987, the private respondent filed in the court a quo an unverified motion to lift the attachment, claiming that the petitioner's allegations of fraudulent removal, concealment, or disposition of properties, or the intent to do so, "exists only in the mind of the plaintiff (the petitioner)."[2] An affidavit executed by one Leoncio Fonacier, allegedly a member of the board of directors of the private respondent corporation from April 7, 1986 to August 29, 1987, was annexed to the motion.[3] Per Mr. Fonacier's affidavit, the amount of P150,000.00 being claimed by the petitioner constitutes a previous investment made by the private respondent's former chairman of the board of directors, ex-Justice Elias B. Asuncion. Fonacier's affidavit further states that through fraudulent

manipulations carried out in connivance with the private respondent's appointed vice-president for finance/treasurer, the said investment was converted into a loan obligation and was assigned to ESAS Development Corporation. No copy of the private respondent's motion was allegedly furnished the petitioner. In spite of that, the petitioner submitted an opposition to the said motion to lift the attachment. Thereafter, the trial court, after conducting a hearing, denied the private respondent's motion in an order dated November 4, 1987.

From that order of the trial court denying its motion to lift the writ of preliminary attachment, the private respondent moved for a reconsideration and signified its willingness to post a counter-attachment bond.[4] A joint hearing was conducted on the said motion for reconsideration and on the petitioner's motion to pull out the attached properties. In an order issued on November 26, 1987, the trial court denied both motions. It also directed the private respondent to put up a counterbond of P301,935.41, until December 4, 1987, with a warning that should the private respondent fail to post the required counterbond within the given period, the petitioner's motion to pull out the attached properties would be granted, and the subject properties placed in a secure place to be agreed upon by the court, the deputy sheriff, and the petitioner.

Feeling aggrieved by the trial court's order, the private respondent, without complying therewith, proceeded to the respondent Court of Appeals to file a petition for certiorari, prohibition, and mandamus with a prayer for the issuance of a restraining order or a writ of preliminary injunction. The appellate court rendered on January 22, 1988, a decision which, as aforesaid, granted the private respondent's petition and annulled and set aside the challenged orders of the trial court. The petitioner moved for a reconsideration of the decision but the same was denied on February 23, 1988. Hence, this petition for review.

As declared at the outset, we grant the petition. The respondent appellate court seriously erred in annulling and setting aside the challenged orders of the trial court. There was no grave abuse of discretion committed by the trial court in issuing the writ of preliminary attachment prayed for by the petitioner, nor in denying the motion to lift attachment filed by the private respondents. On the contrary, as against the respondent appellate court's finding, the trial court's issuance of a writ of preliminary attachment upon the application of the petitioner is fully in accord with law. Indeed, the petitioner's complaint in the trial court is "an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors." [5]

The case of *Benitez vs. Intermediate Appellate Court, et al.*, [6] cited by the appellate court as basis for its reversal, is inapplicable to the case at bar. Material factual differences between *Benitez* and the instant case exist. More importantly, in the first case, *Helena Benitez* supported her bid to lift the writ of preliminary attachment issued against her with sufficient evidence, a fact which the private respondent here failed to do.

Another point that strongly militates against the private respondent's position is its failure to comply substantially with the procedural requirements imposed by law. As averred by the petitioner, the private respondent did not bother to furnish him nor his counsel with a copy of the motion to lift the writ of attachment. This constitutes a serious omission, denying, in effect, the petitioner the opportunity to contest the motion to lift. Again, when the petition for certiorari, mandamus, and prohibition was filed in the respondent appellate court, the private respondent did not attach thereto certified true copies of the assailed orders of the trial court. This is expressly required and provided for under Section 1, Rule 65 of the Revised Rules of Court.

Section 1. Petitioner for certiorari. --When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.

The petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto.

In a large sense, these cited instances of non-compliance by the private respondent with the Rules of Court, unexplained as they are, should not be countenanced even only to assure fairness to litigants as well as preserve the orderly administration of justice. In another and more restrictive sense, they reflect adversely on the merits of the private respondent's cause and enhance those of the petitioner.

There was thus no grave abuse of discretion committed by the trial court in issuing the writ of preliminary attachment prayed for by the petitioner, nor in denying the motion to lift attachment by the private respondent. On the other hand, it is the respondent court that committed a reversible error in annulling and setting aside the lawful orders of the trial court in this regard.

We however find the counter-attachment bond in the amount of P301,935.41 required of the private respondent by the trial court as rather excessive under the circumstances. Considering that the principal amounts claimed by the petitioner in his two causes of action total to only P185,685.00, and that he had posted a bond of only P80,000.00 for the issuance of the writ of preliminary attachment, we deem it reasonable to lower the amount of the counter-attachment bond to be posted by the private respondent (in case it wishes to have the writ of attachment lifted pending the resolution of the case on the merits) to the sum of P185,685.00.

WHEREFORE, the petition is GRANTED, the Decision of the Court of Appeals dated January 22, 1988 is REVERSED and SET ASIDE, and all the challenged orders of the Regional Trial Court are REINSTATED with the modification that the counter-attachment bond to be posted by the private respondent, should it be disposed to do so, is reduced to P185,685.00. No costs.

SO ORDERED.

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

[1] Chua, S.G., J., ponente; Purisima, F.P., and Lapeña Jr., N.P., JJ. concurring.

[2] Rollo, 51.

[3] Id., 53-54.

[4] Id., 131.

[5] Section 1(e), Rule 57, Revised Rules of Court.

[6] G.R. No. 75135, September 15, 1987.

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