

**MINDANAO SAVINGS &#038; LOAN ASSOCIATION, INC. (FORMERLY DAVAO SAVINGS &#038; LOAN ASSOCIATION) &#038; FRANCISCO VILLAMOR, PETITIONERS, VS. HON. COURT OF APPEALS, POLY R. MERCADO, &#038; JUAN P. ME...**

*G.R. No. 84481. April 18, 1989*

Ponente: GRIÑO-AQUINO, J.

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**GRIÑO-AQUINO, J.:**

On September 10, 1986, private respondents filed in the Regional Trial Court of Davao City, a complaint against defendants D.S. Homes, Inc., and its directors, Laurentino G. Cuevas, Saturnino R. Petalcorin, Engr. Uldarico D. Dumdum, Aurora P. De Leon, Ramon D. Basa, Francisco D. Villamor, Richard F. Magallanes, Geronimo S. Palermo, Felicisimo V. Ramos and Eugenio M. De los Santos (hereinafter referred to as D.S. Homes, et al.) for "Rescission of Contract and Damages" with a prayer for the issuance of a writ of preliminary attachment, docketed as Civil Case No. 18263.

On September 28, 1986, Judge Dinopol issued an order granting ex parte the application for a writ of preliminary attachment.

On September 22, 1986, the private respondents amended their complaint and on October 10, 1986, filed a second amended complaint impleading as additional defendants herein petitioners Davao Savings & Loan Association, Inc. and its president, Francisco Villamor, but dropping Eugenio M. De los Santos.

On November 5, 1986, Judge Dinopol issued ex parte an amended order of attachment against all the defendants named in the second amended complaint, including the petitioners but excluding Eugenio C. de los Santos.

D.S. Homes, Inc., et al. and the Davao Savings & Loan Association (later renamed Mindanao Savings & Loan Association, Inc. or "MSLA") and Francisco Villamor filed separate motions to quash the writ of attachment. When their motions were denied by the court, D.S. Homes, Inc., et al. offered a counterbond in the amount of P1,752,861.41 per certificate issued by the Land Bank of the Philippines, a banking partner of petitioner MSLA. The lower court accepted the Land Bank Certificate of Time Deposit for P1,752,861.41 as counterbond and lifted the writ of preliminary attachment on June 5, 1987 (Annex V).

On July 29, 1987, MSLA and Villamor filed in the Court of Appeals a petition for certiorari (Annex A) to annul the order of attachment and the denial of their motion to quash the same (CA-G.R. SP No. 12467). The petitioners alleged that the trial court acted in excess of its jurisdiction in issuing the ex parte orders of preliminary attachment and in denying their motion to quash the writ of attachment. D.S. Homes, Inc., et al. did not join them.

On May 5, 1988, the Court of Appeals dismissed the petition for certiorari and remanded the records of Civil Case No. 18263 to the Regional Trial Court of Davao City, Branch 13, for expeditious proceedings. It held:

"Objections against the writ may no longer be invoked once a counterbond is filed for its lifting or dissolution.

"The grounds invoked for the issuance of the writ form the core of the complaint and it is right away obvious that a trial on the merits was necessary. The merits of a main action are not triable in a motion to discharge an attachment otherwise an applicant for dissolution could force a trial on the merits on his motion (4 Am. Jur., Sec. 635, 934, cited in *G.G. Inc. vs. Sanchez, et al.*, 98 Phil. 886, 890, 891)." (Annex B, p. 185, Rollo.)

Dissatisfied, the petitioners appealed to this Court.

A careful consideration of the petition for review fails to yield any novel legal questions for this Court to resolve.

The only requisites for the issuance of a writ of preliminary attachment under Section 3, Rule 57 of the Rules of Court are the affidavit and bond of the applicant.

"SEC. 3. Affidavit and bond required. - An order of attachment shall be granted only when it is made to appear by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section must be duly filed with the clerk or judge of the court before the order issues."

No notice to the adverse party or hearing of the application is required. As a matter of fact a hearing would defeat the purpose of this provisional remedy. The time which such a hearing would take, could be enough to enable the defendant to abscond or dispose of his property before a writ of attachment issues. Nevertheless, while no hearing is required by the Rules of Court for the issuance of an attachment (*Belisle Investment & Finance Co., Inc. vs. State Investment House, Inc.*, 72927, June 30, 1987; *Filinvest Credit Corp. vs. Relova*, 117 SCRA 420), a motion to quash the writ may not be granted without "reasonable notice to the applicant" and only "after hearing" (Secs. 12 and 13, Rule 57, Rules of Court).

The Court of Appeals did not err in holding that objections to the impropriety or irregularity of the writ of attachment "may no longer be invoked once a counterbond is filed," when the ground for the issuance of the writ forms the core of the complaint.

Indeed, after the defendant has obtained the discharge of the writ of attachment by filing a counterbond under Section 12, Rule 57 of the Rules of Court, he may not file another motion under Section 13, Rule 57 to quash the writ for impropriety or irregularity in issuing it.

The reason is simple. The writ had already been quashed by filing a counterbond, hence, another motion to quash it would be pointless. Moreover, as the Court of Appeals correctly observed, when the ground for the issuance of the writ is also the core of the complaint, the question of whether the plaintiff was entitled to the writ can only be determined after, not before, a full-blown trial on the merits of the case. This accords with our ruling in *G.B., Inc. vs. Sanchez*, 98 Phil. 886 that: "The merits of a main action are not triable in a motion to discharge an attachment, otherwise an applicant for the dissolution could force a trial on the merits of the case on this motion."

May the defendant, after procuring the dissolution of the attachment by filing a counterbond, ask for the cancellation of the counterbond on the ground that the order of attachment was improperly issued? That question was answered by this Court when it ruled in *Uy Kimpang vs. Javier*, 65 Phil. 170, that "the obligors in the bond are absolutely liable for the amount of any judgment that the plaintiff may recover in the action without reference to the question of whether the attachment was rightfully or wrongfully issued."

The liability of the surety on the counterbond subsists until the Court shall have finally absolved the defendant from the plaintiff's claims. Only then may the counterbond be released. The same rule applies to the plaintiff's

attachment bond. "The liability of the surety on the bond subsists because the final reckoning is when the Court shall finally adjudge that the attaching creditor was not entitled to the issuance of the attachment writ," (Calderon vs. Intermediate Appellate Court, 155 SCRA 531.)

WHEREFORE, finding no reversible error in the decision of the Court of Appeals in CA-G.R. SP No. 12467, the petition for review is denied for lack of merit with costs against the petitioners.

### **SO ORDERED.**

Cruz, Gancayco, and Medialdea, JJ., concur.

Narvasa, (Chairman), see concurring and dissenting opinion.

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Mindanao Savings & Loan Assn Inc vs CA : 84481 : April 18, 1989 : J. Narvasa : First Division : Concurring and Dissenting Opinion Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /\* Style Definitions \*/ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

### **CONCURRING AND DISSENTING OPINION**

#### **NARVASA, J.:**

I agree that the decision of the Court of Appeals subject of the appeal in this case should be affirmed. I write this separate opinion simply to stress certain principles relative to the discharge of preliminary attachments so that our own decision or that thereby affirmed be not applied to juridical situations beyond their intendment, which may well result from the statement that "after the defendant has obtained the discharge of the writ of attachment by filing a counterbond under Section 12, Rule 57 of the Rules of Court, he may not file another motion under Section 13, Rule 57 to quash the writ for impropriety or irregularity in issuing it."

Rule 57 specifies in clear terms the modes by which a preliminary attachment may be discharged at the instance of the party against whom it has been issued. The first is by the submission of a counterbond or security. The second is by a demonstration of the attachment's improper or irregular issuance.

#### **1.0. The discharge of an attachment on security given is governed by Section 12 of the Rule.**

"SEC. 12. Discharge of attachment upon giving counterbond. -- At any time after an order of attachment has been granted, the party whose property has been attached, or the person appearing in his behalf, may, upon reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the attachment wholly or in part on the security given \* \* in an amount equal to the value of the property attached as determined by the judge to secure the payment of any judgment that the attaching creditor may recover in the action.\*\*."

This mode of dissolution presents no apparent difficulty. It applies when there has already been a seizure of property by the sheriff. All that is entailed is the presentation of a motion to the proper court, seeking approval of a cash or surety bond in an amount equivalent to the value of the property seized and the lifting of the attachment on the basis thereof. The counter-bond stands, according to the cited section, "in place of the property so released."

#### **1.1. But a party need not wait until his property has been seized before seeking its dissolution upon security. In**

fact he may prevent the seizure of his property under attachment by giving security in an amount sufficient to satisfy the claims against him. The relevant provision of the Rule is Section 5.[1]

"SEC. 5. Manner of attaching property. -- The officer executing the order shall without delay attach, to await judgment and execution in the action, all the properties of the party against whom the order is issued in the province, not exempt from execution, or so much thereof as may be sufficient to satisfy the applicant's demand, unless the former makes a deposit with the clerk or judge of the court from which the order issued, or gives a counter-bond executed to the applicant, in an amount sufficient to satisfy such demand besides costs, or in an amount equal to the value of the property which is about to be attached, to secure payment to the applicant of any judgment which he may recover in the action. \* \*."

2.0. The second way of lifting a preliminary attachment is by proving its irregular or improper issuance, under Section 13 of Rule 57. Like the first, this second mode may be availed of even before any property has been actually attached. It may even be resorted to after the property has already been released from the levy on attachment, as the pertinent provision makes clear.[2]

"SEC. 13. Discharge of attachment for improper or irregular issuance. -- The party whose property has been attached may also, at - any time either before or after the release of the attached property, or before any attachment shall have been actually levied, upon reasonable notice to the attaching creditor, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order to discharge the attachment on the ground that the same was improperly or irregularly issued. If the motion be made on affidavits on the part of the party whose property has been attached, but not otherwise, the attaching creditor may oppose the same by counter-affidavits or other evidence in addition to that on which the attachment was made. \* \* ."

As pointed out in *Calderon v. I.A.C.*, 155 SCRA 531 (1987), "The attachment debtor cannot be deemed to have waived any defect in the issuance of the attachment writ by simply availing himself of one way of discharging the attachment writ, instead of the other. Moreover, the filing of a counterbond is a speedier way of discharging the attachment writ maliciously sought out by the attaching creditor instead of the other way, which, in most instances \*\* would require presentation of evidence in a fullblown trial on the merits and cannot easily be settled in a pending incident of the case."

3.0. However, when the preliminary attachment is issued upon a ground which is at the same time the applicant's cause of action; e.g., "an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty,"<sup>1</sup> or "an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought,"<sup>2</sup> the defendant is not allowed to file a motion to dissolve the attachment under Section 13 of Rule 57 by offering to show the falsity of the factual averments in the plaintiffs application and affidavits on which the writ was based -- and consequently that the writ based thereon had been improperly or irregularly issued<sup>3</sup> -- the reason being that the hearing on such a motion for dissolution of the writ would be tantamount to a trial of the merits of the action. In other words, the merits of the action would be ventilated at a mere hearing of a motion, instead of at the regular trial. Therefore, when the writ of attachment is of this nature, the only way it can be dissolved is by a counter-bond.<sup>4</sup>

4.0. The dissolution of the preliminary attachment upon security given, or a showing of its irregular or improper issuance, does not of course operate to discharge the sureties on plaintiff's own attachment bond. The reason is simple. That bond is "executed to the adverse party, \*\* conditioned that the \*\* (applicant) will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto."<sup>5</sup> Hence, until that determination is

made, as to the applicant's entitlement to the attachment, his bond must stand and cannot be withdrawn.

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[1] Emphasis supplied

[2] Emphasis also supplied

1 Sec. 1 (b), Rule 57

2 Sec. 1 (d), Rule 57

3 SEE Benitez v. I.A.C., 154 SCRA 41

4 G.B., Inc. v. Sanchez, 98 Phil. 886

5 Sec. 4, Rule 57

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