

PHILIPPINE CHARTER INSURANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS, GATES LEARJET CORPORATION AND GATES LEARJET EXPORT CORPORATION, RESPONDENTS.

G.R. No. 88379, November 15, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

In December, 1981, Learjet Phil. Inc. commenced suit in the Regional Trial Court at Pasig against Gates Learjet Corporation and Gates Learjet Export Corporation.[1] On said plaintiff's application, and upon the posting of an attachment bond in its behalf by Philippine Charter Insurance Corporation (then known as Phil-Am Assurance Co., Inc.), the Court issued a writ of preliminary attachment directed against the defendants' properties. On the strength of the writ, the sheriff seized a twin engine airplane, a Learjet 35-A-3799, belonging to the defendants.

After due proceedings, judgment was rendered by the Trial Court in plaintiffs' favor, sentencing the defendants to pay US\$2,250,000.00 as actual damages, P200,000.00 as moral damages, P100,000.00 as exemplary damages, as well as attorney's fees and costs. On appeal to the Court of Appeals by the defendants,[2] however, this judgment was reversed. The decision of the Appellate Tribunal, promulgated on December 10, 1986, disposed as follows:

"WHEREFORE, the decision appealed from is hereby REVERSED and SET ASIDE, and Civil Case No. 43874 of the Regional Trial Court of Pasig is DISMISSED for lack of merit. For the wrongful attachment of Learjet aircraft 35A?44 owned by defendant-appellant Gates Learjet Corporation, plaintiff-appellee Learjet Philippines, Inc. is hereby ordered to pay to the former by way of actual damages the amount of \$73,179.36, P50,000.00 as exemplary damages, and the costs of the suit."

On December 16, 1986, four days after notice of the judgment was served on the defendants, they filed with the Court of Appeals an "Urgent Petition to have Damages Awarded on Account of Illegal Attachment Executed Against Attachment Bond Issued by the Surety Philippine American Assurance Co., Inc., Now Pan-Philippines General Insurance Corporation." The petition adverted to the attachment bond posted by the surety firm in the amount of P2,000,000.00, and asked that the "damages awarded defendants-appellants by reason of the wrongful attachment be enforced, after proper notice to plaintiff and its bondsman and hearing of ** (the) application, jointly and severally against both the plaintiff and the bondsman-surety **." A copy of the petition was furnished the surety. The plaintiff, in its turn, filed a motion for reconsideration of the decision of December 10, 1986.

By Resolution dated March 10, 1987, the Court of Appeals:[3] (1) denied the plaintiff's motion for reconsideration for lack of merit; and (2) NOTED "defendants-appellants' application or claim for damages against the surety" and RESOLVED "to refer the said claim or application to the trial court and allow the latter to hear and decide the same pursuant to Section 20, Rule 57 of the Rules of Court."

The plaintiff tried to have the Appellate Court's decision reviewed and reversed by us, but failed.[4] We denied its petition for review by resolution dated August 10, 1987; and entry of the resolution was made on February 26, 1988.

On remand of the case to the Trial Court, the defendants filed an "Urgent Petition to Have Damages Awarded on Account of Illegal Attachment Executed Against Attachment Bond Issued by the Surety Philippine American Assurance Co., Inc., now Pan-Philippines General Insurance Corporation" dated December 16, 1986. The Court ordered execution of the judgment "against the plaintiff at Suite 10 Prescon Strata 100 Emerald Avenue, Pasig, Metro Manila" in accordance with the Rules. The writ issued on April 8, 1988.

Evidently, the sheriff sought to enforce the writ also against the surety, "Philippine Charter Insurance Corporation ** (formerly Pan-Philippines General Insurance Corporation)." Said surety thereupon filed with the Trial Court an "Urgent Motion to Recall and Nullify Sheriff's Notice of Enforcement of Writ of Execution, and for Issuance of Restraining Order/Writ of Preliminary Injunction." It contended that there was in truth no judgment against it "due to the wrongful attachment of ** (the defendants') Learjet Aircraft 35A-44," that since neither Section 20, Rule 57 of the Rules of Court nor the Resolution of the Court of Appeals of March 10, 1987 had been complied with, there existed no award of damages against it under its attachment bond, and enforcement of execution against said bond would be contrary to due process.

The Trial Court forthwith restrained enforcement of the writ of execution against the surety and set the surety's motion for hearing in the morning of May 27, 1988. After receiving the parties' arguments, the Court promulgated an Order on June 14, 1988 overruling the movant surety's argument that it (the Court) had lost competence to hear and determine the application for damages against the attachment bond because the judgment of the Court of Appeals had become final and executory. The Court observed that:

"What is contemplated under Section 20, Rule 57, is that if no application for damages is made before the entry of the final judgment the surety on the bond is relieved from liability therefor. (*Visayan Surety and Insurance Corporation v. Pascual* [85 Phil. 779], citing *Facundo vs. Tan* and *Facundo vs. Lim*). In the case at bar, an application was made before the entry of final judgment * * *. What was merely deferred was the hearing of said application before the trial court. In fact, said application was duly noted by the Honorable Court of Appeals in its resolution. Hence, an application for damages was filed in time.

"Considering the foregoing, and in order to determine the extent of the liability of both principal and surety on the attachment bond, a hearing is necessary."

The Court also resolved to issue, upon a bond of P1,000,000.00, a writ of preliminary injunction restraining the sheriffs from enforcing the writ of execution or otherwise executing the judgment against the surety "until the application for damages on the attachment bond is heard and decided;" and set the hearing on the matter on August 9, 1988. The surety moved for reconsideration, but its motion was denied by Order handed down on October 13, 1988.

The surety then went to the Court of Appeals again, where it sought annulment of the Trial Court's Orders of June 14, 1988 and October 13, 1988. Its petition for certiorari, prohibition and preliminary injunction, filed on November 3, 1988, was docketed as CA-G.R. No. SP No. 15987. In it the surety argued that it had been denied its day in court when, without its being present at the trial, the defendants had "adduced evidence in support of ** (the) damages" eventually awarded by the Court of Appeals; that said defendants had "fatally failed to file an application for damages on account of the wrongful attachment," and consequently, the Court had "no more jurisdiction to set for hearing ** (the) urgent petition" (to have damages awarded on account of illegal attachment executed against attachment bond, etc.).

The Appellate Court's verdict however again went against the surety. By Decision promulgated on March 8, 1989,[5] the petition was "DENIED DUE COURSE." According to the Court, (1) the "general prayer" in the petition (to hold surety liable on its bond) dated December 16, 1986 "for such further reliefs justified in the premises" was "broad enough to include and embrace an application or claim for whatever damages movants

sustained during the pendency of the appeal, by reason of ** 'the wrongful attachment **,' (2) such a finding was consistent with "Supreme Court rulings' and the earlier "Resolution of March 10, 1987" noting "defendants-appellants' application or claim for damages against the surety" and referring it "to the trial court ** pursuant to Section 20, Rule 57 of the Rules of Court;" and (3) "what must have been contemplated ** (in said application or claim for damages) were not the damages awarded in CA-G.R. CV No. 08585,[6] but the damages which applicants or claimants could have suffered during the pendency of said appeal, as a consequence of the wrongful attachment found by final judgment," for otherwise "there would have been no need for this Court to allow and, in effect, direct the trial court a quo 'to hear and decide' subject post-judgment petition in CA-G.R. CV No. 08585." The surety's motion for reconsideration dated March 28, 1989 was denied by Resolution dated May 17, 1989.

The surety is once again before us,[7] this time praying for reversal of the Appellate Tribunal's aforesaid judgment of March 8, 1989. Once again it will fail, no merit being discerned in its petition for review on certiorari.

By settled rule a writ of preliminary attachment may issue once the Court is satisfied, on consideration ex parte of the application and its supporting affidavits and documents,[8] or after hearing, as the court may in its discretion consider proper, that any of the grounds specified by law exists, and an acceptable bond is given by the applicant - [9]

" . . . executed to the adverse party in an amount ** fixed by the judge, not exceeding the applicant's claim, conditioned that the latter 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."

The filing of the attachment bond by a surety undoubtedly connotes and operates as a voluntary submission by it to the Court's jurisdiction, and of course binds it to faithfully comply with its specific obligations under its bond.

The surety does not, to be sure, become liable on its bond simply because judgment is subsequently rendered against the party who obtained the preliminary attachment. The surety becomes liable only when and if "the court shall finally adjudge that the applicant was not entitled to the attachment." This is so regardless of the nature and character of the judgment on the merits of the principal claims, counterclaims or cross-claims, etc. asserted by the parties against each other. Indeed, since an applicant's cause of action may be entirely different from the ground relied upon by him for a preliminary attachment,[10] it may well be that although the evidence warrants judgment in favor of said applicant, the proofs may nevertheless also establish that said applicant's proffered ground for attachment was inexistent or specious and hence, the writ should not have issued at all; i.e., he was not entitled thereto in the first place. In that event, the final verdict should logically award to the applicant the relief sought in his basic pleading, but at the same time sentence him -- usually on the basis of a counterclaim -- to pay damages caused to his adversary by the wrongful attachment.[11]

When the final judgment declares that the party at whose instance an attachment had issued was not entitled thereto, there is no question about the eminent propriety of condemning that party to the payment of all the damages that the wrongful attachment had caused to the party whose property had been seized under the attachment writ.

But what of the surety's liability? The surety on an attachment bond, as already pointed out, assures 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." [12] In other words the surety, by submitting its attachment bond, binds itself solidarity to make the same

payments which its principal -- the party at whose instance the attachment issues -- may be condemned to make, to compensate for the damages resulting from the wrongful attachment, although unlike its principal, its liability is limited to the amount stated in its bond.

The final adjudication "that the applicant was not entitled" to the attachment, standing alone, does not suffice to make the surety liable. It is necessary, in addition, that the surety be accorded due process, i.e., that it be given an opportunity to be heard on the question of its solidarily liability for damages arising from wrongful attachment. This, by established rule and practice, is accorded to the surety at a summary hearing, scheduled after judgment on presentation of an application to hold it answerable on its bond. Evidently, such a summary hearing is not rendered unnecessary or superfluous by the fact that the matter of damages was among the issues tried during the hearings on the merits, unless of course, the surety had previously been duly impleaded as a party, or otherwise earlier notified and given opportunity to be present and ventilate its side on the matter during the trial. The procedure for the rendition of a binding directive on the surety upon its solidarily liability for damages for wrongful attachment is indicated in Section 20, Rule 57 of the Rules of Court. The section reads as follows:

Sec. 20. Claim for damages on account of illegal attachment. - If the judgment on the action be in favor of the party against whom attachment was issued, he may recover upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.

Certain principles are derived from this provision of the Rules. A party against whom a writ of preliminary attachment issues may impugn the writ by alleging and proving inter alia that the applicant was not entitled thereto, i.e., that the asserted ground for attachment was inexistent, or the amount for which the writ was sought was excessive, etc., this, by appropriate motion. He may also claim damages on account of the wrongful attachment through an appropriate pleading, such as a counterclaim, or other form of application. What is important is that the "application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. "

In the case at bar, since the Trial Court's decision had gone against the defendants, and no irregularity had been adjudged as regards the preliminary attachment, the latter obviously had no occasion to apply for damages from wrongful attachment -- although they could have so applied therefor because, as already pointed out, it is entirely possible under the law that an applicant for preliminary attachment be adjudged entitled to relief on his basic claim and at the same time pronounced as not entitled to the attachment.

As things turned out, the Trial Court's judgment was reversed by the Court of Appeals; the latter dismissed the complaint, declared the plaintiff not entitled to the attachment and sentenced it to pay to the defendants damages on account thereof. And it was only at this time that the defendants could have presented and did actually present their petition to enforce the surety's liability on its bond. This petition, as aforesaid, the Court of Appeals (a) noted and (b) referred to the Trial Court with instructions "to hear and decide ** pursuant to Section 20, Rule 57

of the Rules of Court." Under the circumstances, and in the light of the explicit provisions of said Section 20, Rule 57, there can be no debate about the seasonableness of the defendants' application for damages and the correctness of the referral by the Court of Appeals of the application for damages to the Trial Court for hearing and determination.

Under the circumstances, too, there can be no gainsaying the surety's full awareness of its undertakings under its bond: that, as the law puts it: "the plaintiff will pay all costs which may be adjudged to the defendant(s), and all damages which may be sustained by reason of the attachment, if the same shall finally be adjudged to have been wrongful and without cause," and that those damages plainly comprehended not only those sustained during the trial of the action but also those during the pendency of the appeal. This is the law,[13] and this is how the surety's liability should be understood. The surety's liability may be enforced whether the application for damages for wrongful attachment be submitted in the original proceedings before the Trial Court, or on appeal, so long as the judgment has not become executory. The surety's liability is not and cannot be limited to the damages caused by the improper attachment only during the pendency of the appeal. That would be absurd. The plain and patent intendment of the law is that the surety shall answer for all damages that the party may suffer as a result of the illicit attachment, for all the time that the attachment was in force: from levy to dissolution. The fact that the attachment was initially (and erroneously) deemed correct by the Trial Court, and it was only on appeal that it was pronounced improper, cannot restrict recovery on the bond only to such damages as might have been sustained during the appeal. The declaration by the appellate court that the applicant for attachment "was not entitled thereto," signifies that the attachment should not have issued in the first place, that somehow the Trial Court had been misled into issuing the writ although no proper ground existed therefor. The logical and inevitable conclusion is that the applicant for attachment and the surety on the attachment bond are solidarily liable for all the damages suffered by the party against whom the writ is enforced, except only that the surety's liability is limited to the amount set forth in its bond.

The fact that the second paragraph of the rule speaks only of "damages sustained during the pendency of the appeal" is of no moment; it obviously proceeds from the assumption in the first paragraph that the award for the damages suffered during the pendency of the case in the trial court was in fact "included in the final judgment" (or applied for therein before the appeal was perfected or the judgment became executory); hence, it states that the damages additionally suffered thereafter, i.e., during the pendency of the appeal, should be claimed before the judgment of the appellate tribunal becomes executory. It however bears repeating that where, as in the case at bar, the judgment of the Trial Court has expressly or impliedly sustained the attachment and thus has given rise to no occasion to speak of, much less, file an application for damages for wrongful attachment, and it is only in the decision of the Court of Appeals that the attachment is declared wrongful and that the applicant "was not entitled thereto," the rule is, as it should be, that it is entirely proper at this time for the application for damages for such wrongful attachment to be filed -- i.e., for all the damages sustained thereby, during all the time that it was in force, not only during the pendency of the appeal. And the application must be filed "with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory." In such a situation, the appellate court may resolve the application itself or allow it "to be heard and decided by the trial court."

WHEREFORE, the petition is DISMISSED for lack of merit, with costs against the petitioner.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

- [1] The case was docketed as Civil Case No. 43874 and assigned to Branch 162 of said Court
- [2] Docketed as CA-G.R. No. CV No. 08585
- [3] Per Nocon (then Associate, now Presiding, Justice) and Ejercito and Martinez, JJ, concurring
- [4] The appeal was docketed as G.R. No. 77673
- [5] Written for the Division by Purisima, Chairman, with whom concurred Fule and Ordoñez-Benitez, JJ.
- [6] SEE footnote 4 and related text at page 2, *supra*
- [7] SEE footnote 4 and related text at page 2, *supra*
- [8] Secs. 1 and 3, Rule 57, Rules of Court
- [9] Sec. 4, Rule 57
- [10] E.g., the action is for damages arising from tort, and the ground for attachment is that the defendant has removed or disposed of his property; or is about to do so, with intent to defraud his creditors
- [11] SEE *Baron v. David*, 51 Phil. 1; *Nueva España v. Montelibano*, 58 Phil. 807, 809
- [12] This, in fact, is substantially the language in which the surety's undertaking is couched. *Italics supplied.*
- [13] Secs. 4 and 20, Rule 57, Rules of Court

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