

PEROXIDE PHILIPPINES CORPORATION, EASTMAN CHEMICAL INDUSTRIES, INC., EDMUND O. MAPUA AND ROSE U. MAPUA, PETITIONERS, VS. HON. COURT OF APPEALS AND BANK OF THE PHILIPPINE ISLANDS...

G.R. No. 92813. July 31, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

Assailed in this petition for review on certiorari are the decision[1] of respondent Court of Appeals, promulgated on September 4, 1989 in CA-G.R. SP No. 15672, granting the petition for certiorari filed by private respondent, and its resolution[2] of March 29, 1990 denying petitioners' motion for reconsideration.

On December 6, 1982, herein private respondent Bank of the Philippine Islands (BPI) sued herein petitioners Peroxide Philippines Corporation (Peroxide), Eastman Chemical Industries, Inc. (Eastman), and the spouses Edmund O. Mapua and Rose U. Mapua (Mapuas) in Civil Case No. 48849 of the then Court of First Instance of Pasig, Metro Manila for the collection of an indebtedness of Peroxide wherein Eastman and the Mapuas bound themselves to be solidarily liable.

Upon the filing of said action, the trial court, then presided over by Judge Gregorio G. Pineda, ordered the issuance of a writ of preliminary attachment which was actually done on January 7, 1983 after BPI filed an attachment bond in the amount of P32,700,000.00. Petitioners' properties were accordingly attached by the sheriff.

On January 11, 1983, Eastman and the Mapuas moved to lift the attachment, which motion was set for hearing on January 14, 1983. On said date and on motion of BPI, it was granted up to January 17, 1983 to file a written opposition to the motion to lift the writ of attachment. BPI also filed a motion to set for hearing the said motion to lift attachment and its opposition thereto.

However, on January 17, 1983, Judge Pineda issued two (2) orders, the first, denying BPI's motion for a hearing, and, the second, lifting the writ of attachment as prayed for by Eastman and the Mapuas. BPI filed a motion for reconsideration but, consequent to the then judiciary reorganization, the case was re-raffled and assigned to the sala of Judge Pastor Reyes.

On November 28, 1983, Judge Reyes issued an order with an explicit finding that the attachment against the properties of Eastman and the Mapuas was proper on the ground that they had disposed of their properties in fraud of BPI. It also directed the sheriff to implement the writ of attachment upon the finality of said order.

After a motion for partial reconsideration by BPI and some exchanges between the parties, on December 17, 1984 the trial court, this time with Judge Eficio B. Acosta presiding, issued an order granting BPI's motion for partial reconsideration by finding, inter alia, that "(c)onsidering the lapse of more than a year since the Order of November 28, 1983 and the nature and purpose of attachment, the writ of attachment revived in the Order of November 28, 1983 and hereby re-affirmed may be executed and implemented immediately," and directing the

sheriff to execute said writ which "is hereby declared immediately executory." [3]

Contending that said order of December 17, 1984 was rendered with grave abuse of discretion amounting to lack of jurisdiction, petitioners sought the annulment thereof in a petition for certiorari and prohibition in AC-G.R. SP No. 05043 of the Intermediate Appellate Court, wherein a temporary restraining order was issued. This restraining order was lifted when said court rendered its decision in said case on March 14, 1986, [4] dismissing the petition and holding, among others, that:

"We find nothing wrong with the attachment of the properties of PEROXIDE. Even were We to assume that the original petition for attachment was defective for failure to specify the particular transactions involved in the alleged 'alienation' of PEROXIDE's properties, the fact is that the defect, if any, was cured by the other pleadings (like the opposition or virtual amendment) filed by BANK. With such amendment, the specific properties concerned were distinctly enumerated." [5]

Petitioners then sought the review of said decision by this Court in G.R. No. 74558, but no temporary restraining order was granted therein. In the meantime, on May 29, 1986, Judge Acosta issued an order [6] suspending the writ of preliminary attachment in the aforesaid Civil Case No. 48849 pursuant to an ex parte motion filed by herein petitioners.

Thereafter, in its resolution dated October 27, 1986, this Court denied the aforesaid petition for review on certiorari "considering that the writ of preliminary attachment issued was in accordance with law and applicable jurisprudence." [7] Petitioners' motion for reconsideration was denied with finality in our resolution of October 6, 1987. [8]

Dissatisfied, petitioners again filed an urgent motion for clarification submitting that the Court failed to pass upon two issues, namely: (1) whether Eastman and the Mapuas were sureties or mere guarantors of Peroxide, and (2) whether Rose U. Mapua was bound by the "Continuing Guarantee" executed by her husband, Edmund O. Mapua. Acting upon said motion, on November 10, 1987 the Court resolved to deny the same for the reason, among others, that the clarification sought regarding the propriety of the attachment of the properties of Eastman and the Mapuas involves questions of fact. [9]

On July 30, 1987, BPI filed a motion to order Bataan Pulp and Paper Mills, Inc. (Bataan), jointly and severally with petitioners, to deliver to the sheriff the cash dividends declared on the garnished shares of stock of said petitioners with said paper company, and to cite for contempt the officers of Bataan for releasing and/or paying the dividends to petitioners in disregard of the notice of garnishment.

In an exhaustive order dated December 16, 1987, [10] the trial court, now presided over by Judge Fernando L. Gerona, Jr. and wherein Civil Case No. 48849 was then pending, addressing all the issues raised by the parties, granted BPI's motion for delivery of the dividends. Judge Gerona sustained the position of BPI that dividends are but incidents or mere fruits of the shares of stock and as such the attachment of the stock necessarily included the dividends declared thereon if they were declared subsequent to the notice of garnishment.

He further held that the preliminary attachment, being a provisional remedy, must necessarily become effective immediately upon the issuance thereof and must continue to be effective even during the pendency of an appeal from a judgment of the court which issued the said provisional remedy and will only cease to have effect when the judgment is satisfied or the attachment is discharged or vacated in some manner provided by law. The motion to cite the officers of Bataan was, however, denied.

Petitioners moved for reconsideration but the same was denied for the reason that the order of May 29, 1986 of Judge Acosta was based on an ex parte motion without reasonable notice, hence a patent nullity for lack of due

process. Accordingly, the aforesaid order of December 16, 1987 held that the writ of attachment continued to be effective.[11]

Petitioners thereafter filed a second motion for reconsideration which, however, remained pending and unresolved when Judge Gerona inhibited himself from further sitting in the case. Said case was then re-raffled to the sala of Judge Jainal D. Rasul who required the parties to re-summarize their respective positions upon the issue of the attachment.

Then, resolving the pending incidents before it, the court a quo issued the disputed order of August 23, 1988, which states, inter alia, that:

"THIS Court thru Judge Gerona had arrived at the correct conclusion that the contempt charge against the Officers of the Garnishee Corporation cannot be sustained, for the reason that they relied on the Order of the Court thru Judge Acosta under date of May 29, 1986 suspending the Writ of Attachment and since said order was not then set aside, there was no order or writ violated by said officers. It follows a fortiori that the release of the cash dividends was valid, legal and not contemptuous. Consequently, there is no reason to justify or deserve the return of cash dividends prayed for by the plaintiff.

"Besides, the propriety of the attachment of the properties of the defendant Eastman Chemical Industries, Inc., and defendant Mapua Spouses should still be determined by this Court as a question of fact, pursuant to the Supreme Court resolution dated November 23, 1987. Meanwhile, it is only fair that the properties of the Eastman Chemical Industries, Inc. and the defendants Mapua Spouses should not, pending such proper determination, be attached as to give life and meaning to the Supreme Court resolution of November 23, 1987.

"SO ORDERED."[12]

BPI moved for the reconsideration of said order. Thereafter, it learned that Bataan had again declared a cash dividend on its shares payable on or before September 30, 1988. Furthermore, Bataan informed BPI that it would be releasing to Eastman and Edmund O. Mapua the cash dividends on their shares on September 23, 1988 on the strength of the order of the trial court of August 23, 1988.

Consequently, BPI filed an urgent ex parte motion on September 19, 1988 for the suspension of the effects of the trial court's order of August 23, 1988 in view of the pending motion for reconsideration it had filed against said order. In an order likewise dated September 19, 1988, the trial court denied BPI's motion for suspension of the order of August 23, 1988.[13]

BPI then filed a petition for certiorari in respondent court, docketed therein as CA-G.R. SP No. 15672, invoking the following grounds:

1. The trial court acted with grave abuse of discretion in denying BPI's urgent ex parte motion to suspend the order of August 23, 1988;
2. The order of September 19, 1988 renders moot and academic BPI's pending motion for reconsideration;
3. The lower court erroneously held that the writ of attachment secured by BPI had ceased to be valid and effective or had been suspended by virtue of its orders of January 17, 1983 and May 29, 1986;
4. The trial court committed grave abuse of discretion when it nullified the writ of attachment as against Eastman and the Mapuas;
5. There is no inconsistency between the resolution of the Supreme Court dated October 27, 1986 and its subsequent resolution of November 10, 1987;
6. The attachment can validly issue against the conjugal properties of the Mapuas; and

7. The trial court disregarded the clear and unequivocal records of this case when it issued its order of August 23, 1988.[14]

Ruling on these issues, respondent Court of Appeals declared:

"WHEREFORE, the petition for certiorari is hereby GRANTED. Judgment is hereby rendered as follows:

(a) Declaring the writ of preliminary attachment against the defendants Eastman Chemical Industries, Inc. and the spouses, Edmund and Rose Mapua valid and enforceable from the beginning, without prejudice to determining the solidary liability of said defendants with defendant Peroxide Philippines Corporation;

(b) Setting aside the Order of August 23, 1988 insofar as it decreed that the cash dividends declared on the garnished shares of stocks (sic) of the defendants with Bataan Pulp and Paper Mills, Inc. are not subject to attachment;

(c) Ordering the defendants and the Bataan Pulp and Paper Mills, Inc., jointly and severally, to deliver to the sheriff the cash dividends as may hereafter be declared and paid on the garnished shares of stock;

(d) Setting aside the Order of September 19, 1988.

With costs against private respondents.

SO ORDERED"[15]

Their motion for reconsideration having been denied, petitioners are once again before us on this spin-off facet of the same case, contending that respondent court has departed from the accepted and usual course of judicial proceedings.

1. As correctly formulated by respondent court, the threshold issue is the validity of the attachment of the properties of Eastman and the Mapuas, from which arises the correlative question of whether or not the disputed cash dividends on the garnished shares of stock are likewise subject thereto. Necessarily involved is the matter of the continuing validity of the writ or whether or not the same was validly lifted and suspended by the lower court's orders dated January 17, 1983 and May 29, 1986, respectively.

BPI asserts that the discharge is illegal and void because the order lifting the same is violative of Section 13, Rule 57 of the Rules of Court which requires, among others, a prior hearing before the judge may order the discharge of the attachment upon proof adduced therein of the impropriety or irregularity in the issuance of the writ and the defect is not cured forthwith. We may mention in this regard that if the petition for the discharge of the writ violates the requirements of the law, the trial judge does not acquire jurisdiction to act thereon.[16]

It is true that petitioner's motion to discharge was set for hearing with notice to BPI but it is likewise true that counsel for the latter asked for an opportunity to file a written opposition and for a hearing to which he asked that petitioner Edmund O. Mapua be subpoenaed. Said counsel was allowed to file a written opposition which he Seasonably did, but Judge Pineda denied both the requested subpoena and hearing and, instead, granted the discharge of the attachment. These are the bases for BPI's complaint that it was denied due process.[17]

Now, it is undeniable that when the attachment is challenged for having been illegally or improperly issued, there must be a hearing with the burden of proof to sustain the writ being on the attaching creditor.[18] That hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing parties and meet them. The right to submit arguments implies that opportunity, otherwise the right would be a barren one. It means a fair and open hearing.[19] And, as provided by the aforementioned Section 13 of Rule 57, the attaching creditor should be allowed to oppose the application for the discharge of the attachment by counter-affidavit or other evidence, in addition to that on which the attachment was made.

Respondent court was, therefore, correct in holding that, on the above-stated premises, the attachment of the properties of Eastman and the Mapuas remained valid from its issuance since the judgment had not been satisfied, nor has the writ been validly discharged either by the filing of a counterbond or for improper or irregular issuance.

We likewise affirm the findings and conclusion of respondent court that the order of Judge Acosta, dated May 29, 1986, suspending the writ of attachment was in essence a lifting of said writ which order, having likewise been issued ex parte and without notice and hearing in disregard of Section 13 of Rule 57, could not have resulted in the discharge of the attachment. Said attachment continued unaffected by the so-called order of suspension and could not have been deemed inefficacious until and only by reason of its supposed restoration in the order of December 16, 1987 of Judge Gerona. Under the facts of this case, the ex parte discharge or suspension of the attachment is a disservice to the orderly administration of justice and nullifies the underlying role and purpose of preliminary attachment in preserving the rights of the parties pendente lite as an ancillary remedy.

We, therefore, sustain the position of BPI that the Court of Appeals, in its judgment presently under challenge, did not err in upholding the continuing and uninterrupted validity and enforceability of the writ of preliminary attachment issued in Civil Case No. 48849 since the order of discharge and, later, the order of suspension of the trial court were void and could not have created the operational lacuna in its effectivity as claimed by petitioners. Further, the cancellation of the annotations regarding the levy on attachment of petitioners' properties, procured by the sheriff pursuant to the aforesaid invalid orders, is likewise a nullity and another levy thereon is not required. We observe, however, that the records do not disclose the lifting of the levy on the Bataan shares of Eastman and the Mapuas and on their real properties in Caloocan City.

2. Petitioners next call attention to the fact that when the order of Judge Acosta of December 17, 1984, which directed the immediate execution and implementation of the writ of attachment, was brought on a petition for certiorari and prohibition to the Intermediate Appellate Court in AC-G.R. SP No. 05043, said court issued a temporary restraining order.

They allege that although the restraining order was lifted by said appellate court in its decision in the case on March 14, 1986, the same was reinstated by the court "until further orders" in its order of April 24, 1986 in connection with petitioners' motion for reconsideration therein. On May 14, 1986, respondent court denied the motion for reconsideration but, so petitioners insist, "without, however, stating that it was lifting its restraining order." When the case went on review to this Court in G.R. No. 74558, no mention was made regarding said restraining order. Hence, petitioners assert, the said restraining order had not been lifted; in effect arguing that the writ of attachment cannot be implemented as a consequence.

This misleading argument is confuted by the records in AC-G.R. SP No. 05043. In its aforesaid resolution of April 24, 1986, the appellate court stated that "(a)s of this date, April 23, 1986, the motion for reconsideration could not be considered in view of the absence of the comment of the private respondents." Hence, the court directed that "(i)n order to maintain the status quo of the parties, x x x the restraining order issued by us on December 28, 1984 is hereby revived and made effective until further orders." [20]

Thereafter, finding no merit in the motion for reconsideration, the court denied the same, declaring that "(w)ith this resolution, we find no need in resolving the Urgent Motion to Reconsider and set aside Resolution of April 24, 1985 (sic, 1986) filed by the private respondent BPI and the other incidents still pending resolution." [21]

All incidents in AC-G.R. SP No. 05043 having been disposed of, it follows that the temporary restraining order which had been expressly lifted in the decision therein, and which was merely temporarily reinstated for purposes of the motion for reconsideration that was ultimately denied, was also necessarily lifted. Parenthetically, said temporary restraining order, not having been supplanted by a writ of preliminary injunction, could not have had

an effectivity of more than twenty (20) days,[22] and this limitation applies to temporary restraining orders issued by the Court of Appeals.[23]

3. We reject petitioners' theory that the preliminary attachment is not applicable to Eastman and the Mapuas. The writ was issued in Civil Case No. 48849 against the properties of all the petitioners herein. Eastman and the Mapuas moved for the discharge of the attachment on the ground that they were not disposing of their properties in fraud of creditors, but they did not raise the issue of their liabilities as being allegedly those of mere guarantors. They did so only when this Court resolved on October 27, 1986 that the writ of preliminary attachment was issued in accordance with law and applicable jurisprudence.[24]

Also, what was considered in AC-G.R. SP No. 05043 and thereafter in G.R. No. 74558 was the matter of the validity of the attachment against Eastman and the Mapuas, considering that, even before the proceedings had reached the Intermediate Appellate Court in AC-G.R. SP No. 05043, BPI no longer had any attachment against Peroxide whose only remaining asset in Bulacan had been levied upon and acquired by its other creditors when Judge Pineda lifted the attachment obtained by BPI.

Petitioners seek to capitalize on a passage in the decision in AC-G.R. SP No. 05043, hereinbefore quoted, where the appellate court stated that "(w)e find nothing wrong with the attachment of the properties of PEROXIDE," without mentioning Eastman and the Mapuas. This was clearly in the nature of peccata minuta, a plain case of harmless oversight, since the properties referred to in the decision as having been alienated in fraud of BPI were properties of Eastman and the Mapuas, not of Peroxide.

In fact, as pointed out by private respondent, petitioners' own motion for reconsideration of March 24, 1986 filed in said case specifically adverted to that prefatory statement as being equivocal, with the following observation: "Actually no properties of Peroxide had been attached. What were attached were properties of Eastman and Rose Mapua." [25] Private respondent further invites attention to the petition for certiorari in G.R. No. 74558, against the decision in AC-G.R. SP No. 05043, wherein, assailing the aforequoted statement therein, petitioners aver:

"As can be seen the paragraph begins with the holding that there is nothing wrong with the attachment of properties of Peroxide. This holding on its face is limited only to the upholding of attachment against the properties of petitioner Peroxide. And yet the alienations mentioned in the subsequent sentences do not refer to dispositions of properties of Peroxide and by Peroxide. A cursory glance of records will show that they refer to dispositions alleged to have been fraudulently made by Eastman Chemical Industries, Inc. and Edmund Mapua. Relating this point to the dispositive portion which in effect sustains the attachment issued by the trial court not only against Peroxide, but also against Eastman and Mapua spouses." [26]

4. As earlier narrated, this Court denied the petition for review on certiorari in G.R. No. 74558, and when petitioners persisted in seeking a clarification as to the nature of the liability of Eastman and the Mapuas, the Court denied the same on the ground that the clarification sought involves questions of fact. As observed by respondent Court of Appeals, the aforesaid ruling was erroneously construed by the lower court when it declared that the properties of Eastman and the Mapuas should not, pending proper determination, be attached. In doing so, the court below virtually lifted or discharged the attachment even before its propriety had been determined.

We sustain respondent court's ratiocination in its decision under review that when petitioners sought clarification from us regarding the propriety of the attachment on the properties of Eastman and the Mapuas, and we said that this involves a question of fact, what this means is that the court a quo should determine the propriety or regularity thereof, and such determination can only be had in appropriate proceedings conducted for that purpose. However, until such attachment has been found to be improper and irregular, the attachment is valid and subsisting.

Thus, as correctly posited by BPI, before the determination of the liability of Eastman and the Mapuas after trial on the merits, the writ of preliminary attachment may properly issue. Even assuming that when Eastman and the Mapuas asked for the lifting of the attachment they presented evidence that they were guarantors and not sureties of Peroxide, the trial court could not have admitted such evidence or ruled upon that issue since the same could be entertained only after a full-blown trial and not before then.[27] Otherwise, we would have the procedural absurdity wherein the trial court would be forced to decide in advance and preempt in an auxiliary proceeding an issue which can and should be determined only in a trial on the merits.

The proceeding in the issuance of a writ of preliminary attachment, as a mere provisional remedy, is ancillary to an action commenced at or before the time when the attachment is sued out. Accordingly, the attachment does not affect the decision of the case on the merits, the right to recover judgment on the alleged indebtedness and the right to attach the property of the debtor being entirely separate and distinct. As a rule, the judgment in the main action neither changes the nature nor determines the validity of the attachment.[28] At any rate, whether said petitioners are guarantors or sureties, there exists a valid cause of action against them and their properties were properly attached on the basis of that indubitable circumstance.

5. Petitioners bewail the fact that respondent court allegedly handled the certiorari case, CA-G.R. SP No. 15672 now on appeal before us, as if it were a petition for review on certiorari by passing upon what they submit should be considered as errors of judgment and not errors of jurisdiction. From the foregoing disquisition, however, it is readily apparent that the petition in said case faults the orders of the trial court as tainted with grave abuse of discretion equivalent to a jurisdictional flaw. The errors assigned necessarily involved a discussion of erroneous conclusions and/or lack of factual bases much beyond the pale of mere errors of judgment or misperception of evidence, and dwelt on the improvident issuance of orders clearly arbitrary and oppressive for being in defiance of the rules and devoid of justifying factual moorings. We cannot, therefore, share the sentiments and stance of petitioners on this score.

Neither do we subscribe to petitioners' charge that respondent court injudiciously gave due course to the aforesaid petition for certiorari without requiring the prior filing and resolution of a motion for the reconsideration of the questioned orders of the trial court. There are, admittedly, settled exceptions to that requisite and which obtain in the present case. A motion for reconsideration was correctly dispensed with by respondent court since the questions raised in the certiorari proceeding had been duly raised and passed upon by the lower court.[29] Also, under the circumstances therein, a motion for reconsideration would serve no practical purpose since the trial judge had already had the opportunity to consider and pass upon the questions elevated on certiorari to respondent court.[30]

FOR ALL THE FOREGOING CONSIDERATIONS, the petition at bar is DENIED and the judgment of respondent Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), and Sarmiento, JJ., concur.

*Paras, J., no part, penned CA decision in related case.

*Padilla, J., no part, former BPI counsel.

[1] Penned by Associate Justice Luis L. Victor, with the concurrence of Justices Pedro A. Ramirez and Felipe B. Kalalo.

[2] Rollo, 48.

[3] Rollo, 333.

[4] Penned by Justice Edgardo L. Paras, with the concurrence of Justices Vicente V. Mendoza, Fidel P. Purisima and Ricardo P. Tensuan.

[5] Rollo, CA-G.R. SP No. 15672, 73-74.

[6] Ibid., id., 64.

[7] Ibid., id., 118.

[8] Ibid., id., 119.

[9] Ibid., id., 120.

[10] Ibid., id., 129.

[11] Ibid., id., 133.

[12] Ibid., id., 149.

[13] Ibid., id., 150.

[14] Ibid., id., 29.

[15] Rollo, 45.

[16] Mindanao Savings and Loan Association, Inc., et al. vs. Court of Appeals, et al., 172 SCRA 480 (1989).

[17] Rollo, 25-26.

[18] Benitez vs. Intermediate Appellate Court, et al., 154 SCRA 41 (1987).

[19] Monson vs. Secretary of Agriculture, No. 81, F.S.C., April 28, 1938, cited in Martin, Constitutional Law, 1988 Ed., 233.

[20] Rollo, 51-52.

[21] Ibid., 54. This resolution and the preceding one were penned by Justice Mariano A. Zosa, with the concurrence of Justices Vicente V. Mendoza, Fidel P. Purisima and Ricardo P. Tensuan.

[22] Sec. 5, Rule 58, as amended by B.P. No. 224, effective April 16, 1982; Par. 8, Interim Rules and Guidelines.

[23] Delbros Hotel Corporation vs. Intermediate Appellate Court, etc., et al., 159 SCRA 533 (1988).

[24] Rollo, CA-G.R. SP No. 15672, 118.

[25] Rollo, 292.

[26] Ibid., 293.

[27] Mindanao Savings and Loan Association, Inc. vs. Court of Appeals, et al., ante; G.B. Inc., etc. vs. Sanchez, 98 Phil. 886 (1956).

[28] C.J.S., 187-188, cited in Francisco, Revised Rules of Court, Vol. IV-A, 1971 Ed., 7.

[29] Legaspi Oil Co., Inc. vs. Geronimo, etc., et al., 76 SCRA 174 (1977); Fortich-Celdran, et al. vs. Celdran, et al., 19 SCRA 502 (1967).

[30] See *Central Bank vs. Cloribel, et al.*, 44 SCRA 307 (1972).

* No part. Acting on the “Respectful Submission” of petitioner dated July 5, 1991, the Court in its session en banc of July 16, 1991 resolved that this case be returned to the Second Division and that its Chairperson, Mme. Justice Melencio-Herrera, may validly participate therein since her prior participation in G.R. No. 74558 as a member of the then First Division does not constitute a legal disqualification nor will the same affect her intellectual honesty, objectivity and integrity.

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