

DAVAO LIGHT & POWER CO., INC., PETITIONER, VS. THE COURT OF APPEALS, QUEENSLAND HOTEL OR MOTEL OR QUEENSLAND TOURIST INN, AND TEODORICO ADARNA, RESPONDENTS.

G.R. No. 93262. November 29, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Subject of the appellate proceedings at bar is the decision of the Court of Appeals in CA-G.R. Sp. No. 1967 entitled "Queensland Hotel, Inc., etc. and Adarna v. Davao Light & Power Co., Inc.," promulgated on May 4, 1990.[1] That decision nullified and set aside the writ of preliminary attachment issued by the Regional Trial Court of Davao City[2] in Civil Case No. 19513-89 on application of the plaintiff (Davao Light & Power Co.), before the service of summons on the defendants (herein respondents Queensland Co., Inc. and Adarna).

Following is the chronology of the undisputed material facts culled from the Appellate Tribunal's judgment of May 4, 1990.

1. On May 2, 1989 Davao Light & Power Co., Inc. (hereafter, simply Davao Light) filed a verified complaint for recovery of a sum of money and damages against Queensland Hotel, etc. and Teodorico Adarna (docketed as Civil Case No. No. 19513-89). The complaint contained an ex parte application for a writ of preliminary attachment.
2. On May 3, 1989 Judge Nartatez, to whose branch the case was assigned by raffle, issued an Order granting the ex parte application and fixing the attachment bond at P4,600,513.37.
3. On May 11, 1989 the attachment bond having been submitted by Davao Light, the writ of attachment issued.
4. On May 12, 1989, the summons and a copy of the complaint, as well as the writ of attachment and a copy of the attachment bond, were served on defendants Queensland and Adarna; and pursuant to the writ, the sheriff seized properties belonging to the latter.
5. On September 6, 1989, defendants Queensland and Adarna filed a motion to discharge the attachment for lack of jurisdiction to issue the same because at the time the order of attachment was promulgated (May 3, 1989) and the attachment writ issued (May 11, 1989), the Trial Court had not yet acquired jurisdiction over the cause and over the persons of the defendants.
6. On September 14, 1989, Davao Light filed an opposition to the motion to discharge attachment.
7. On September 19, 1989, the Trial Court issued an Order denying the motion to discharge.

This Order of September 19, 1989 was successfully challenged by Queensland and Adarna in a special civil action of certiorari instituted by them in the Court of Appeals. The Order was, as aforesaid, annulled by the Court of Appeals in its Decision of May 4, 1990. The Appellate Court's decision closed with the following disposition:

“ * * the Orders dated May 3, 1989 granting the issuance of a writ of preliminary attachment, dated September 19, 1989 denying the motion to discharge attachment; dated November 7, 1989 denying petitioner's motion for reconsideration; as well as all other orders emanating therefrom, specially the Writ of Attachment dated May 11, 1989 and Notice of Levy on Preliminary Attachment dated May 11, 1989, are hereby declared null and void and the attachment hereby ordered DISCHARGED.”

The Appellate Tribunal declared that -

" * * While it is true that a prayer for the issuance of a writ of preliminary attachment may be included in the complaint, as is usually done, it is likewise true that the Court does not acquire jurisdiction over the person of the defendant until he is duly summoned or voluntarily appears, and adding the phrase that it be issued 'ex parte' does not confer said jurisdiction before actual summons had been made, nor retroact jurisdiction upon summons being made. * * ."

It went on to say, citing *Sievert v. Court of Appeals*,^[3] that "in a proceeding in attachment," the "critical time which must be identified is * * when the trial court acquires authority under law to act coercively against the defendant or his property * *; " and that "that critical time is the time of the vesting of jurisdiction in the court over the person of the defendant in the main case."

Reversal of this Decision of the Court of Appeals of May 4, 1990 is what Davao Light seeks in the present appellate proceedings.

The question is whether or not a writ of preliminary attachment may issue ex parte against a defendant before acquisition of jurisdiction of the latter's person by service of summons or his voluntary submission to the Court's authority.

The Court rules that the question must be answered in the affirmative and that consequently, the petition for review will have to be granted.

It is incorrect to theorize that after an action or proceeding has been commenced and jurisdiction over the person of the plaintiff has been vested in the court, but before acquisition of jurisdiction over the person of the defendant (either by service of summons or his voluntary submission to the court's authority), nothing can be validly done by the plaintiff or the court. It is wrong to assume that the validity of acts done during this period should be dependent on, or held in suspension until, the actual obtention of jurisdiction over the defendant's person. The obtention by the court of jurisdiction over the person of the defendant is one thing; quite another is the acquisition of jurisdiction over the person of the plaintiff or over the subject-matter or nature of the action, or the res or object thereof.

An action or proceeding is commenced by the filing of the complaint or other initiatory pleading.^[4] By that act, the jurisdiction of the court over the subject matter or nature of the action or proceeding is invoked or called into activity;^[5] and it is thus that the court acquires jurisdiction over said subject matter or nature of the action.^[6] And it is by that self-same act of the plaintiff (or petitioner) of filing the complaint (or other appropriate pleading) --- by which he signifies his submission to the court's power and authority -- that jurisdiction is acquired by the court over his person.^[7] On the other hand, jurisdiction over the person of the defendant is obtained, as above stated, by the service of summons or other coercive process upon him or by his voluntary submission to the authority of the court.^[8]

The events that follow the filing of the complaint as a matter of routine are well known. After the complaint is filed, summons issues to the defendant, the summons is then transmitted to the sheriff, and finally, service of the summons is effected on the defendant in any of the ways authorized by the Rules of Court. There is thus ordinarily some appreciable interval of time between the day of the filing of the complaint and the day of service

of summons on the defendant. During this period, different acts may be done by the plaintiff or by the Court which are of unquestionable validity and propriety. Among these, for example, are the appointment of a guardian ad litem,[9] the grant of authority to the plaintiff to prosecute the suit as a pauper litigant,[10] the amendment of the complaint by the plaintiff as a matter of right without leave of court,[11] authorization by the Court of service of summons by publication,[12] the dismissal of the action by the plaintiff on mere notice.[13]

This, too, is true with regard to the provisional remedies of preliminary attachment, preliminary injunction, receivership or replevin.[14] They may be validly and properly applied for and granted even before the defendant is summoned or is heard from.

A preliminary attachment may be defined, paraphrasing the Rules of Court, as the provisional remedy in virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the court as security for the satisfaction of any judgment that may be recovered.[15] It is a remedy which is purely statutory in respect of which the law requires a strict construction of the provisions granting it.[16] Withal no principle, statutory or jurisprudential, prohibits its issuance by any court before acquisition of jurisdiction over the person of the defendant.

Rule 57 in fact speaks of the grant of the remedy "at the commencement of the action or at any time thereafter." [17] The phrase, "at the commencement of the action," obviously refers to the date of the filing of the complaint -- which, as above pointed out, is the date that marks "the commencement of the action;" [18] and the reference plainly is to a time before summons is served on the defendant, or even before summons issues. What the rule is saying quite clearly is that after an action is properly commenced -- by the filing of the complaint and the payment of all requisite docket and other fees -- the plaintiff may apply for and obtain a writ of preliminary attachment upon fulfillment of the pertinent requisites laid down by law, and that he may do so at any time, either before or after service of summons on the defendant. And this indeed, has been the immemorial practice sanctioned by the courts: for the plaintiff or other proper party to incorporate the application for attachment in the complaint or other appropriate pleading (counterclaim, cross-claim, third-party claim) and for the Trial Court to issue the writ ex parte at the commencement of the action if it finds the application otherwise sufficient in form and substance.

In *Toledo v. Burgos*, [19] this Court ruled that a hearing on a motion or application for preliminary attachment is not generally necessary unless otherwise directed by the Trial Court in its discretion. [20] And in *Filinvest Credit Corporation v. Relova*, [21] the Court declared that "(n)othing in the Rules of Court makes notice and hearing indispensable and mandatory requisites for the issuance of a writ of attachment." The only pre-requisite is that the Court be satisfied, upon consideration of "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 ** (Rule 57), 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 (of attachment) is granted above all legal counterclaims." [22] If the court be so satisfied, the "order of attachment shall be granted," [23] and the writ shall issue upon the applicant's posting of "a bond executed to the adverse party in an amount to be fixed by the judge, not exceeding the plaintiff'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." [24]

In *Mindanao Savings & Loan Association, Inc. v. Court of Appeals*, decided on April 18, 1989, [25] this Court had occasion to emphasize the postulate that no hearing is required on an application for preliminary attachment, with notice to the defendant, for the reason that this "would defeat the objective of the remedy ** (since 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." As observed by a former member of this Court,[26] such a procedure would warn absconding debtors-defendants of the commencement of the suit against them and the probable seizure of their properties, and thus give them the advantage of time to hide their assets, leaving the creditor-plaintiff holding the proverbial empty bag; it would place the creditor-applicant in danger of losing any security for a favorable judgment and thus give him only an illusory victory.

Withal, ample modes of recourse against a preliminary attachment are secured by law to the defendant. The relative ease with which a preliminary attachment may be obtained is matched and paralleled by the relative facility with which the attachment may legitimately be prevented or frustrated. These modes of recourse against preliminary attachments granted by Rule 57 were discussed at some length by the separate opinion in *Mindanao Savings & Loans Asso. Inc. v. C.A.*, supra.

That separate opinion stressed that there are two (2) ways of discharging an attachment: first, by the posting of a counterbond; and second, by a showing of its improper or irregular issuance.

1.0. The submission of a counterbond is an efficacious mode of lifting an attachment already enforced against property, or even of preventing its enforcement altogether.

1.1. When property has already been seized under attachment, the attachment may be discharged upon counterbond in accordance with Section 12 of Rule 57.

'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.* *'

1.2. But even before actual levy on property, seizure under attachment may be prevented also upon counterbond. The defendant need not wait until his property is seized before seeking the discharge of the attachment by a counterbond. This is made possible by Section 5 of Rule 57.

'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. ** .' (Emphasis supplied)

2.0. Aside from the filing of a counterbond, a preliminary attachment may also be lifted or discharged on the ground that it has been irregularly or improperly issued, in accordance with Section 13 of Rule 57. Like the first, this second mode of lifting an attachment may be resorted to even before any property has been levied on. Indeed, it may be availed of after property has been released from a levy on attachment, as is made clear by said Section 13, viz.:

'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. ** .' (Emphasis supplied)

This is so because, "(a)s 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.'"[27]

It may not be amiss to here reiterate other related principles dealt with in *Mindanao Savings & Loans Asso. Inc. v. C.A.*, *supra*,[28] to wit:

(a) When an attachment may not be dissolved by a showing of its irregular or improper issuance:

" ** (W)hen 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,' (Sec. 1 [b], Rule 57), 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' (Sec. 1 [d], Rule 57), 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 plaintiff's application and affidavits on which the writ was based -- and consequently that the writ based thereon had been improperly or irregularly issued (SEE *Benitez v. I.A.C.*, 154 SCRA 41) -- 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 counterbond (*G.B. Inc. v. Sanchez*, 98 Phil. 886)."

(b) Effect of the dissolution of a preliminary attachment on the plaintiff's attachment bond:

" * * . 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' (SEC. 4, Rule 57). Hence, until that determination is made, as to the applicant's entitlement to the attachment, his bond must stand and cannot be withdrawn."

With respect to the other provisional remedies, i.e., preliminary injunction (Rule 58), receivership (Rule 59), replevin or delivery of personal property (Rule 60), the rule is the same: they may also issue ex parte.[29]

It goes without saying that whatever be the acts done by the Court prior to the acquisition of jurisdiction over the person of the defendant, as above indicated -- issuance of summons, order of attachment and writ of attachment (and/or appointment of guardian ad litem, or grant of authority to the plaintiff to prosecute the suit as a pauper litigant, or amendment of the complaint by the plaintiff as it matter of right without leave of court[30] -- and however valid and proper they might otherwise be, these do not and cannot bind and affect the defendant until and unless jurisdiction over his person is eventually obtained by the court, either by service on him of summons or other coercive process or his voluntary submission to the court's authority. Hence, when the sheriff or other proper

officer commences implementation of the writ of attachment, it is essential that he serve on the defendant not only a copy of the applicant's affidavit and attachment bond, and of the order of attachment, as explicitly required by Section 5 of Rule 57, but also the summons addressed to said defendant as well as a copy of the complaint and order for appointment of guardian ad litem, if any, as also explicitly directed by Section 3, Rule 14 of the Rules of Court. Service of all such documents is indispensable not only for the acquisition of jurisdiction over the person of the defendant, but also upon considerations of fairness, to apprise the defendant of the complaint against him, of the issuance of a writ of preliminary attachment and the grounds therefor and thus accord him the opportunity to prevent attachment of his property by the posting of a counterbond in an amount equal to the plaintiffs claim in the complaint pursuant to Section 5 (or Section 12), Rule 57, or dissolving it by causing dismissal of the complaint itself on any of the grounds set forth in Rule 16, or demonstrating the insufficiency of the applicant's affidavit or bond in accordance with Section 13, Rule 57.

It was on account of the failure to comply with this fundamental requirement of service of summons and the other documents above indicated that writs of attachment issued by the Trial Court ex parte were struck down by this Court's Third Division in two (2) cases, namely: *Sievert v. Court of Appeals*,^[31] and *BAC Manufacturing and Sales Corporation v. Court of Appeals, et al.*,^[32] In contrast to the case at bar -- where the summons and a copy of the complaint, as well as the order and writ of attachment and the attachment bond were served on the defendant -- in *Sievert*, levy on attachment was attempted notwithstanding that only the petition for issuance of the writ of preliminary attachment was served on the defendant, without any prior or accompanying summons and copy of the complaint; and in *BAC Manufacturing and Sales Corporation*, neither the summons nor the order granting the preliminary attachment or the writ of attachment itself was served on the defendant "before or at the time the levy was made."

For the guidance of all concerned, the Court reiterates and reaffirms the proposition that writs of attachment may properly issue ex parte provided that the Court is satisfied that the relevant requisites therefor have been fulfilled by the applicant, although it may, in its discretion, require prior hearing on the application with notice to the defendant; but that levy on property pursuant to the writ thus issued may not be validly effected unless preceded, or contemporaneously accompanied, by service on the defendant of summons, a copy of the complaint (and of the appointment of guardian ad litem, if any), the application for attachment (if not incorporated in but submitted separately from the complaint), the order of attachment, and the plaintiffs attachment bond.

WHEREFORE, the petition is GRANTED; the challenged decision of the Court of Appeals is hereby REVERSED, and the order and writ of attachment issued by Hon. Milagros C. Nartatez, Presiding Judge of Branch 8, Regional Trial court of Davao City in Civil Case No. 19513-89 against Queensland Hotel or Motel or Queensland Tourist Inn and Teodorico Adarna are hereby REINSTATED. Costs against private respondents.

SO ORDERED.

Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, and Romero, JJ., concur.

Fernan, C.J., on leave.

Davide, Jr., J., no part.

[1] Jorge S. Imperial, J., ponente; Reynato J. Puno and Artemon Luna, JJ., concurring

[2] Branch 8, presided over by Hon. Milagros C. Nartatez

[3] G.R. No. 84034, Dec. 22, 1988, 168 SCRA 692 (1988)

[4] Sec. 6, Rule 2, Rules of Court.

N. B. The action is not deemed commenced, however, and will not be deemed to interrupt the running of the period of prescription, unless and until the docket and other court fees are fully paid. SEE *Manchester Development Corporation v. Court of Appeals*, 149 SCRA 562 (1987); *Sun Insurance Office, Ltd., et al. v. Asuncion, et al.*, G.R. No. 79937-38, Feb. 13, 1989; *Tacay v. Regional Trial Court of Tagum*, G.R. No. 88075-77, Dec. 20, 1989; *Ayala Corporation, et al. v. Madayag*, G.R. No. 88421, Jan. 30, 1990; *Hodges v. Court of Appeals*, G.R. No. 87617, April 6, 1990; SEE also *Lacson v. Luis Reyes, etc.*, G.R. No. 86250, Feb. 26, 1990; *Sapugay v. Court of Appeals*, G.R. No. 86791, March 21, 1990

[5] Moran, *Comments on the Rules*, 1979 ed., Vol. 1, p. 54, citing *Caluag v. Pecson*, 82 Phil. 8; Francisco, *The Revised Rules of Court*, 1973 ed., Vol. 1, p. 120; Feria, *Civil Procedure*, 1969 ed., pp. 17-18

[6] Defined as the power to hear and determine cases of the general class to which the proceedings in question belong * *, conferred by the sovereign authority which organizes the court and defines its powers. Francisco, *The Revised Rules of Court*, 1973 ed., Vol. 1, p. 117, citing *Reyes v. Diaz*, 73 Phil. 484, 486

[7] Feria, *op. cit.*, p. 19, citing *Manila Railroad Co. v. Attorney-General*, 20 Phil. 523, *King Mau Wu v. Sycip*, 94 Phil. 784, and 21 C.J.S., 122; Moran, *op. cit.*, p. 55, citing *M.R.R. Cop. v. Attorney-General*, 20 Phil. 523 (in turn citing *Ayers v. Watson*, 113 U.S. 594), and *Toledano v. Severino*, 78 Phil. 783; Francisco, *op. cit.*, p. 125 citing, additionally, 21 C.J.S., 122

[8] Feria, *op. cit.*, p. 20, citing 21 C.J.S., 123; *Pennoyer v. Neff*, 95 U.S. 714, *Banco Español-Filipino v. Palanca*, 37 Phil. 921, and *Perkins v. Dizon*, 69 Phil. 186; Moran, *op. cit.*, citing *Banco Español-Filipino v. Palanca*, 37 Phil. 921, *Infante v. Toledo*, 44 Phil. 834, and *Nilo v. Romero*, L-15195, March 29, 1961; Francisco, *op. cit.*, p. 126, citing *Sharruf v. Bubla, et al.*, No. L-17029, Sept. 30, 1964

[9] Sec. 5, Rule 3

[10] Sec. 22, Rule 3

[11] Sec. 2, Rule 10

[12] Sec. 16 or 17, Rule 14

[13] Sec. 1, Rule 17

[14] Rules, 57, 58, 59 and 60, respectively; SEE footnote 29, *infra*

[15] SEC. 1, Rule 57, Rules of Court. Another definition, given in *4 Words and Phrases* 727 (1940), citing cases, is that it is "a provisional remedy, auxiliary or incidental to the main action, whereby the debtor's property capable of being taken under levy and execution is placed under custody of the law pending the determination of the cause, to secure the payment of any judgment that may be recovered therein."

[16] SEE *Salas v. Adil*, 90 SCRA 125, cited in *Sievert v. C.A.*, 168 SCRA 698

[17] Sec. 1

[18] SEE footnote 6, *supra*

[19] 168 SCRA 513 (Dec. 19, 1988). In this case, this Court ultimately ruled that the application for preliminary attachment *ex parte* should have been denied because the fundamental requisites under Rule 57, Section 1 did not exist, and not because *ex parte* applications are *per se* illegal.

[20] *La Granja, Inc. v. Samson*, 58 Phil. 378, 380

[21] 117 SCRA 420, 428-429, cited in *Francisco*, op. cit., 1985 ed., "Provisional Remedies," pp. 31-32

[22] SEC. 3, Rule 57

[23] *Id.*, SEE *Central Capiz v. Salas*, 43 Phil. 930, 931

[24] SEC. 4, Rule 57

[25] 172 SCRA 480, 484 (April 18, 1989), per Griño-Aquino, J., citing *Belisle Investment & Finance Co., Inc. v. State Investment House, Inc.*, 72927, June 30, 1987; *Filinvest Credit Corp. v. Relova*, 117 SCRA 420)

[26] Hon. Abraham F. Sarmiento, who retired on October 9, 1991

[27] 172 SCRA 480, 488

[28] At pp. 488-489

[29] (1) Sec. 5, Rule 58 declares that while, generally, "No preliminary injunction shall be granted without notice to the defendant," nevertheless, "If it shall appear from the facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice, the judge to whom the application for preliminary injunction was made, may issue a restraining order to be effective only for a period of twenty days from date of its issuance. * *."

(2) Sec. 3, Rule 59 provides that, "If a receiver be appointed upon an ex parte application, the court, before making the order, may require the person applying for such appointment to file a bond executed to the party against whom the application is presented in an amount to be fixed by the court, to the effect that the applicant will pay such party all damages he may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause * *."

(3) And Rule 60 provides that "Whenever the complaint in an action prays for the recovery of possession of personal property, the plaintiff may, at the commencement of action or at any time before answer, apply for an order for the delivery of such property to him * * " (Sec. 1); and upon compliance by the plaintiff with the prescribed requisites (affidavit and bond [Sec. 21), the judge ** shall issue an order describing the property alleged to be wrongfully detained, and requiring the sheriff or other proper officer ** forthwith to take such property into his custody" (Sec. 3).

[30] SEE footnotes 9 to 13, *supra*

[31] 168 SCRA 692 (1988)

[32] G.R. No. 96784, Aug. 2, 1991

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