

MAXIMO UY AND SYLVIA VASQUEZ-UY, PETITIONERS, VS. THE HON. COURT OF APPEALS, ENRIQUE ANLAP AND ROSALINDA MORENO-ANLAP, RESPONDENTS.

G.R. No. 95550, November 23, 1992

Ponente: NOCON, J.

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NOCON, J.:

Petitioners, spouses Maximo Uy and Sylvia Vasquez, are before Us praying for the review of the decision of respondent Court of Appeals, dated April 24, 1990, and its resolution dated September 26, 1990, denying their motion for reconsideration. The questioned decision dismissed the petition for certiorari and upheld the order of attachment against petitioner's properties, issued by Judge Jesus Tabilon, Branch 40 of the 7th Judicial Region, Dumaguete City.

Records show that private respondents Enrique Anlap and Rosalinda Moreno-Anlap are the owners of a fishing vessel known as "cub-cub" valued at P350,000.00. On September 20, 1985, they rented said vessel and its accessories to petitioners for a period of sixty (60) days commencing September 20, 1985 until November 19, 1985, at the rental rate of P8,000.00 per 30-days or for a total sum of P16,000.00, which petitioners fully paid. The agreement was that should petitioners continue using the vessel after the expiration of the lease, the same shall be considered renewed for another period of one hundred twenty (120) days, provided petitioners pay the amount of P16,000.00 as advance payment for the first sixty (60) days and another P16,000.00 after the expiration of the first sixty (60) days. However, despite the expiration of the original 60-day period petitioners failed to return the fishing vessel and instead continued using the vessel without paying rentals in spite of repeated demands.

Hence, respondents filed a complaint against petitioners for recovery of a sum of money, return of the fishing vessel and damages before the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 40. After trial on the merits, a judgment, dated November 29, 1989, was rendered against petitioners ordering them to:

1. Return the fishing vessel which they leased from respondents, together with its accessories or to pay its value of P350,000.00 if delivery cannot be made;
 2. To pay respondents the following sums:
 - a) P32,000.00 for unpaid rentals plus legal rate of interest from the filing of the civil case until paid;
 - b) P400/day representing the daily income of the fishing vessel or its value paid;
 - c) P3,000.00 as expenses for litigation;
 - d) P5,000.00 as moral damages;
- and 20% of all the aforementioned amount as attorneys fees and to pay cost.

The judgment was predicated on the following findings of the trial court, to wit:

"Defendants however, failed to deliver to plaintiffs at Basay, Negros Oriental, the fishing vessel and its accessories in question up to the present nor pay the rentals thereof, in violation of the contract of lease . . . which is the law between plaintiffs and defendants. Obligations arising from contracts had (sic) the force of law between the contracting parties and should be complied with in good faith (Art. 1159, New Civil Code). Those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages (Art. 1170, New Civil Code). Defendants (sic) allegation that on December 21, 1985, plaintiffs went to their house and informed them that they (plaintiffs) were terminating the lease of the fishing vessel in question and had already informed Edson Celle the boat engineer to bring the fishing vessel in question from Zamboanga to Basay do not absolve defendants from complying with their obligations mandated in the contract of lease, for aside from the fact that those allegations were not supported with clear and convincing evidence and therefore, lacks the ring of truth, they were denied by plaintiffs. That even granting that those allegations were true, the same cannot be considered delivery of the fishing vessel . . . as contemplated in . . . the lease contract . . .

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"Defendants cannot also claimed (sic) exemption from any liability regarding the non-delivery of the fishing boat . . . on the ground that the same got lost due to fortuitous event because in the contract of lease . . . defendants are bound to pay plaintiffs the value of the fishing boat . . . in the event of total loss or destruction by fortuitous events. When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation and he shall be responsible for damages."[1]

On December 15, 1989, petitioners filed a notice of appeal from the aforesaid decision, while respondents filed an ex-parte motion for writ of attachment dated December 18, 1989, which was granted, and the same issued on December 19, 1989. Petitioners' ex-parte motion to discharge said writ failed. Likewise, their attempt at securing a reversal with the Court of Appeals was a failure with the dismissal of their petition for certiorari.

Elevating the matter to this Court, petitioners specifically challenge the propriety of the order of preliminary attachment issued by the trial court, which reads as follows:

"It appearing that the appeal taken by the defendants by filing a Notice of Appeal has not been perfected on account of the fact that the last day for taking an appeal has not yet expired and finding the Ex-parte Motion for Writ of Attachment to be meritorious, the same is hereby granted."[2]

Petitioners contend that the above-quoted Order does not measure up to the rigid standard set by this Court in the issuance of preliminary attachment orders since it does not contain any findings of fact or of law. The lower court in denying the motion of the petitioners to discharge the writ of attachment admitted that "there was no hearing in the granting of the question (sic) writ for this case was decided by this Court and its factual findings supporting the decision supports the issuance of the question (sic) writ pursuant to paragraphs (c) and (d) of Sec. 1, Rule 57 of the Rules of Court. That to conduct a hearing of said motion will just be a repetition in the presentation of evidence already on record."[3]

Petitioners argue that there is nothing in the trial court's decision which would support any kind of fraud or concealment which could serve as basis for attachment. At any rate, petitioners do not agree that a writ of attachment may be issued upon a ground established from the evidence in the main case. Petitioners went further to say that during the entire hearing of the main case, no petition for attachment was filed by the respondents, and it was only after the appeal was perfected that an ex-parte motion for attachment was filed.

Attachment is a provisional remedy by which the property of an adverse party is taken into legal custody as a security for the satisfaction of any judgment that may be recovered by the plaintiff or any proper party.[4] It is an

auxiliary remedy the granting of which lies within the sound discretion of the judge taking cognizance of the principal case upon whose existence it depends. Its purpose is to secure a contingent lien on defendant's property until plaintiff can obtain a judgment and have such property applied to its satisfaction or to make provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction or improperly disposed of or concealed or placed beyond the reach of creditors.[5]

We find nothing in the Rules of Court which makes notice and hearing indispensable and mandatory for the issuance of a writ of attachment. It is simply the duty of the court to ensure that the writ is issued on concrete and specific grounds and not on general averments. Such being the rule, there is no reason why the evidence in the main case cannot be used as basis for issuance of a writ of attachment, more so if it was proved that the defendants unjustly detained, improperly disposed of or concealed or placed the personal property beyond the reach of their creditors.

In the case before Us the writ of attachment sought for was granted only after trial on the merits and a finding on petitioners' liability for the return of the boat leased or its value in case delivery cannot be effected. Nevertheless, We agree with the petitioners that We find nothing in the judgment that would justify the issuance of a writ of attachment.

The statement in respondents' motion for a writ of attachment that they are incorporating "by way of reference the allegations of plaintiffs' complaint and all the evidence already adduced in this case insofar as they are applicable;"[6] and in which complaint, respondents alleged that petitioners refused and/or denied them information as to the whereabouts of their fishing vessel,[7] are not grounds justifying the issuance of a writ of attachment. Moreover, such allegation was not proved in the main case. Petitioners' liability, if any, is predicated on their non-fulfillment of their obligation under the lease contract.

Be that as it may, petitioners' impression that the trial court loses jurisdiction to issue a writ of attachment upon perfection of the appeal is misplaced. The rules specifically state that a motion for a writ of attachment may be filed at the commencement of an action or at anytime thereafter.[8] The trial court may even issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal.[9]

In the case of *Galang v. Endencia*[10] this Court upheld the issuance of a writ of attachment even though appeal had been perfected. Relying on Sec. 9, Rule 41 of the then Rules of Court, the Court said that "[t]he levy in attachment of the properties of the defendant upon the allegation that he is about to dispose of the same to defraud his creditors is one which is intended for the protection and preservation of the rights of the plaintiff and which in no way involves any matter litigated by defendant's appeal."

In the same case, the Court said that errors committed by the trial in the appreciation of the probative value of the facts stated in the petition for the writ do not affect its jurisdiction, but merely the exercise of such jurisdiction. In such cases, appeal together with the main case, not certiorari, is the proper remedy.

PREMISES CONSIDERED, the Petition for Review is hereby GRANTED, the decision of the Court of Appeals dated April 24, 1990 is hereby REVERSED and the trial court's order of preliminary attachment against the properties of the petitioners is hereby LIFTED and CANCELLED. It is further ordered that properties attached be restituted to the petitioners or if this is not possible, to allow petitioners to claim on the bond.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos, Jr., JJ., concur.

- [1] Trial Court's Decision, Annex "C" of the petition, pp. 13-14; Rollo, pp. 37-38.
- [2] Annex "E" of the petition; Rollo, p. 42; CA-G.R. SP No. 19759 with Justice Luis A. Javellana as ponente and Justice Felipe B. Kalalo and Justice Luis E. Victor concurring.
- [3] Annex "I" of the petition, p. 3; Rollo, p. 65
- [4] *Olib v. Pastoral*, G.R. No. 81120, 188 SCRA 692 (1990).
- [5] *Insular Bank of Asia & America, Incorporated v. Court of Appeals*, G.R. No. 61011, 190 SCRA 629 (1990).
- [6] Annex "F" of the Petition, p. 3; Rollo, p. 45.
- [7] Annex "A" of the Petition, p. 4; Rollo, p. 17.
- [8] Section 1, Rule 57, Rules of Court.
- [9] Sec. 9, Rule 41, Rules of Court.
- [10] 73 Phil 399 (1941).

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