

**MANUEL T. SANTOS AND RAFAEL G. CAMUS, PETITIONERS, VS. HON. BENJAMIN M. AQUINO, JR. JUDGE, REGIONAL TRIAL COURT OF MALABON-NAVOTAS, FINASIA INVESTMENTS &#038; FINANCE CORP., JOSE T. ...**

*G.R. Nos. 86181-82. January 13, 1992*

Ponente: GRINO-AQUINO, J.

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**GRINO-AQUINO, J.:**

Assailed in this petition for certiorari, mandamus and prohibition are the orders dated October 10, 1988 and December 10, 1988 of respondent Judge Benjamin M. Aquino, Jr., allowing the substitution of attached properties in two civil cases for recovery of sums of money. As prayed for in the petition, respondent Judge was temporarily restrained from further proceeding in those cases during the pendency of this special civil action.

On November 3, 1983 and November 13, 1983, petitioners Manuel T. Santos and Rafael G. Camus respectively filed Civil Case No. 365-MN and Civil Case No. 374-MN in the Regional Trial Court of Malabon? Navotas against FINASIA Investments and Finance Corporation (hereafter "FINASIA"), Jose T. Villarosa, Rodolfo Abiog, Benedict Go Alcantara, Willy Trinidad and Ceferino Sanchez (the last five being, respectively, the president and directors of FINASIA) to recover their respective money placements of P752,100 and P769,500, with interests, damages, and costs. They alleged that through the defendants' fraudulent misrepresentations, they were lured to make the money placements with FINASIA.

Upon the petitioners' application, and on the strength of the attachment bonds in the total sum of P1,276,058 posted by them, preliminary attachments were issued by the court on the following properties of FINASIA and Jose Villarosa:

TCT No.

Registered Owner

Description at the

Time of Attachment

13350-A

Spouses Jose T. & Amelita Villarosa

411 sq. m., Pasay, City

13351-A

-ditto-

364 sq. m., Pasay City

120450-A

FINASIA

4,000 sq.m., at Pasong Tamo, Makati, mortgaged to VCPB for P5,947,000

56352

Ann Tunnheim

Pasay City, what was attached was FINASIA's right to repurchase

56355

-ditto-

-ditto?

83398 Rosita de Castro Pasay City, mortgaged to FINASIA

(48695-A) to secure the debt of Felicisimo

Francisco. The mortgage credit was

allegedly assigned by FINASIA to Pioneer

Savings & Loan Bank, Inc.

On January 9, 1984, or less than three (3) months later, the proceedings against FINASIA were suspended because it was placed under receivership by the Securities and Exchange Commission (SEC) for operating without prior SEC registration and for failure to pay maturing money market placements.

FINASIA and Villarosa filed separate motions to lift the attachments on their respective properties by offering counterbonds. The petitioners opposed the motions for insufficiency of the counterbonds and unreliability of the bonding companies - AFISCO and Interworld Assurance Company.

On August 1, 1988 and June 2, 1988, FINASIA and Villarosa filed separate motions to substitute their attached properties with other properties supposedly worth P3.5 million and free from liens and encumbrances. Villarosa alleged that the existing attachment on his two Pasay City lots was excessive.

Petitioners opposed the motions for substitution. The hearing of the motions was set on August 16, 1988 and later reset on September 22, 1988.

On September 21, 1988, petitioners' (plaintiffs') counsel, Atty. Eriberto D. Ignacio, telephoned Santos that the hearing on September 22, 1988 had been cancelled because the judge would be attending a seminar for Regional Trial Court judges. Santos checked with the branch clerk of court who promised to inform him and/or his lawyer of the next setting.

In view of that circumstance, the petitioners-plaintiffs did not appear in court on September 22, 1988. Unfortunately, instead of resetting the hearing of FINASIA's and Villarosa's motions for substitution of their attached properties, respondent Judge issued on that date an Order declaring them "submitted for resolution."

The next day, September 23, 1988, FINASIA filed "Additional Argument in Support of Motion for Substitution of Attached Properties." Three (3) days later, respondent Judge issued an Order resetting for the last time, on October 6, 1988, the hearing of the motions for substitution of properties. Petitioners' counsel, Atty. Ignacio, received a copy of that order, but, for some unexplained reason, he failed to inform his clients about it and he also absented himself from the hearing. The result was that on October 10, 1988, respondent Judge granted the motions on the ground:

"x x x that the properties being offered as substitutes for the attached ones appear to be worth at least P3.415 million, per appraisal report of the Valencia Appraisal Corporation (P3.5 million according to the Rehabilitation Receiver of defendant Finasia) and considering that the attachment bonds in these cases are only for the total amount of P1,276,050 x x x." (p. 30, Rollo.)

Respondent Judge discharged all the attached properties of Villarosa and ordered the attachment of eight (8) small lots in Pasay City of FINASIA which was then already under receivership.

On November 30, 1988, Attorney Ignacio filed a "Motion to Reconsider or Recall" the order of substitution but it was too late to mollify his client, Santos. Santos discharged his lawyer and decided to appear as his own counsel. He filed his own motion for reconsideration of the court's order of substitution. Santos alleged that he and Camus had been denied due process through their lawyer's gross negligence, and that the order of substitution was issued in excess of the court's jurisdiction (p. 169, Rollo).

Before the order lifting the attachment was recorded on Villarosa's titles, the latter had already sold for P232,500 the two (2) Pasay City lots covered by his TCTs Nos. 13350-A and 13351-A, to Metro Realty Corporation, later renamed Jomarias International, Inc. Mrs. Villarosa herself is the president of Jomarias. New TCTs Nos. 93264 and 93265 were issued to Jomarias. The order lifting the attachment was annotated on Jomarias' new TCTs on October 11, 1988. Two months later, Jomarias mortgaged the properties to the Philippine Commercial and International Bank (PCIB) for P1.5 million on December 12, 1988. Similarly, Triplex mortgaged the Pasong Tamo property to Philamlife as security for a P10 million loan.

On December 29, 1988, their motions for reconsideration having been denied, Santos and Camus filed this petition for certiorari, prohibition and mandamus with a prayer for the issuance of a restraining order against Judge Benjamin M. Aquino, Jr., FINASIA Investments and Finance Corporation, Jose T. Villarosa, Triplex Enterprises, Inc., Jomarias International Corporation, Philippine Commercial & International Bank, Philippine American Life Insurance Corporation, Far East Bank and Trust Company, and the Registers of Deeds of Makati and Parañaque, praying the Court to:

"1. Issue a restraining Order and writ of preliminary injunction enjoining respondent Judge from further proceeding with Civil Case Nos. 365-MN and 374-MN, entitled Santos vs. Finasia, et al. and Camus vs. Finasia, et al. respectively;

"2. Declare the Orders issued by respondent Judge dated October 10, 1988 and December 10, 1988 to be null and void for being illegal and for having been issued without jurisdiction and [with] grave abuse of discretion;

"3. Declare the levy on attachment on the properties covered by TCTs Nos. 13550-A, 13551-A, 56352, 56353, S-83398 and 120450 as having subsisted from the date of the original levy and without having been interrupted by the erroneous lifting of said attachment;

"4. Declare null and void all transactions affecting the above properties which occurred after the so-called 'substitution of attached properties;'

"5. Direct the Registers of Deeds of Makati and Parañaque to re-annotate the original attachments obtained by petitioners in the above-entitled cases on TCTs Nos. 13550-A, 13551-A, 120450, 56352, 56353 and S-83898 and on their successor titles and to cancel from said titles all inscriptions of the order of the respondent Judge dated October 10, 1988." (pp. 13-14, Rollo.)

By Resolution dated March 16, 1989, the Court gave due course to the petition and required the parties to submit simultaneous memoranda.

Did respondent Judge gravely abuse his discretion and/or exceed his jurisdiction in allowing the substitution of the attached properties?

After deliberating on the petition, the comments and memoranda of the parties, we conclude that the petition is meritorious.

The trial court's order allowing the substitution of the attached properties was premised on the defendants' allegation that the properties offered by them in substitution for the attached properties, are supposedly worth P3.5 million and are unencumbered. However, respondent Judge received no evidence of the value of the properties offered as substitutes except the self-serving allegations in the motions for substitution and the Appraisal Report of a private appraiser whom the plaintiffs had no chance to cross-examine because, through the gross negligence of their counsel, they were neither heard nor represented at the hearing of defendants' motions.

The rule is that when real property, or an interest therein, of the judgment debtor is attached, the levy creates a lien which nothing can subsequently destroy except by the dissolution of the attachment. Prior registration of the lien creates a preference, since the act of registration is the operative act to convey and affect the land (*Lu vs. IAC*, et al., 169 SCRA 595; *Vda. de Carvajal vs. Coronado*, 18 SCRA 635, 641). Because an attachment is a proceeding in rem against particular property/properties, the attaching creditor acquires a specific lien upon the attached properties which ripens into a judgment against the res when the order of sale is made. Such a proceeding is in effect a finding that the properties attached are indebted things considered as a virtual condemnation to pay the owners' debt. (Art. 2242[7] of the Civil Code: Rules 39 and 57 of the Rules of Court; 7 CJS 433.) The lien obtained by attachment stands upon as high equitable ground as a mortgage lien, a fixed and positive security which must necessarily continue until the debt is paid. (*Roa vs. CA*, 190 SCRA 262, citing *Government vs. Mercado*, 67 Phil. 409). It necessarily follows that the attached properties cannot be interfered with until sold to satisfy the judgment, or discharged in the manner provided by the Rules of Court, requiring the conduct of a proper hearing by the court (*Uy vs. CA*, 191 SCRA 275, citing *Manila Herald Publishing Co., Inc. vs. Ramos*, 88 Phil. 94 and *BF Homes, Inc. vs. CA*, 190 SCRA 263, on Secs. 12 and 13, Rule 57 of the Rules of Court).

The writ of attachment is substantially a writ of execution except that it emanates at the beginning, instead of at the termination, of a suit. It places the attached properties in custodia legis, obtaining pendente lite a lien until the judgment of the proper tribunal on the plaintiff's claim is established, when the lien becomes effective as of the date of the levy (pp. 407-503, 83 CJS, citing *Bank of Missouri vs. Matson*, 26 No. 243, 73 AmD 208; *Forrier vs. Masters*, 83 459, 473, 2 SE 927).

There is no rule allowing substitution of attached property although an attachment may be discharged wholly or in part upon the security of a counterbond offered by the defendant upon application to the court, with notice to, and after hearing, the attaching creditor (Sec. 12, Rule 57, Rules of Court), or upon application of the defendant, with notice to the applicant and after hearing, if it appears that the attachment was improperly or irregularly issued (Sec. 13, Rule 57, Rules of Court).

If an attachment is excessive, the remedy of the defendant is to apply to the court for a reduction or partial discharge of the attachment, not the total discharge and substitution of the attached properties. The reason for this is that the lien acquired by the plaintiff-creditor as of the date of the original levy would be lost. It would in effect constitute a deprivation without due process of law of the attaching creditors' interest in the attached property as security for the satisfaction of the judgment which he may obtain in the action.

The notice of levy in Civil Cases 365-MN and 374-MN was annotated on FINASIA's TCTs Nos. 120450 on November 22 and 23, 1983 and on Villarosa's TCTs Nos. 13350-A and 13351-A on November 7 and 30, 1983. By ordering the substitution on October 11, 1988, the Court obliterated the petitioners' earlier lien under the original attachment and in effect deprived the petitioners of their interest in the attached properties without due process of law.

The substitution of Villarosa's and FINASIA's properties was done in bad faith to defeat the petitioners' chances of collecting their claims against both defendants. The two properties of Villarosa (who is not insolvent and against whom actions have not been suspended) were released from the attachment without substituting other property of Villarosa for them. The court arbitrarily allowed Villarosa's properties to be replaced with properties of FINASIA, an insolvent corporation under receivership, against whom actions have been suspended.

The new owners of the released properties, TRIPLEX and JOMARIAS International, Inc. (Mrs. Villarosa is the president of Jomarias) may not claim to be innocent purchasers for value because the deeds of sale in their favor were executed before the court had ordered the substitution or discharge of the attachment. They are bound by the attachment as if it was not discharged at all.

"A purchaser of the attached property subsequent to the attachment takes the property subject thereto." (Joaquin vs. Arellano, 6 Phil. 551.)

"Section 51 of Act 496 provides that every attachment affecting registered land shall, if registered in the office of the register of deeds, be a notice to all persons from the time of such 'registering, filing or entering,' and Section 50 of the same Act provides that the act of registration constitutes the operative act that affects the land and binds the whole world. This is the essence of registration that constitutes a cardinal feature of the Torrens System." (Guerrero vs. Agustin, 7 SCRA 773.)

"It is settled that if there is an attachment or sequestration of the goods or estate of the defendant in an action which is removed to a bankruptcy court, such an attachment or sequestration will continue in existence and hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer the final judgment or decree rendered by the Court from which the action was removed, unless the attachment or sequestration is invalidated under applicable law (28 USCS No. 1479 [a], 9 AM. Jur. 2d)." (BF Homes, Inc. vs. CA, 190 SCRA 271.)

The grounds for the dissolution of an attachment are fixed in the Rules of Court and the power of the court to dissolve an attachment is limited to the grounds specified therein. Before an attachment lien will be deemed abandoned, there must be an affirmative act or conduct of the creditor inconsistent with the continuance of the lien (6 Am Jur 412). The fact that more property has been attached than an amount sufficient to satisfy the recovery of an action is NOT a ground for dissolution (6 Am Jur 2d 868, citing National Reefer Service vs. Felman, 164 Neb 783, 83 NW 2d 547).

Respondent Judge gravely abused his discretion in ordering the substitution of the attached properties over the vigorous opposition of the petitioners and without hearing them. His orders dated October 10, 1988 and December 10, 1988 are hereby annulled and set aside. The original writ of attachment should be deemed to have subsisted on the attached properties from the date of the original levy in November 1983, without interruption and to have followed said properties into the hands of the new owners thereof, Triplex Enterprises, Inc. and Jomarias

International Corporation.

Corollarily, the real estate mortgage in favor of the Philippine American Life Insurance Corporation over the Pasong Tamo property of Triplex Enterprises, Inc., and the mortgage of the Philippine Commercial and International Bank (PCIB) over the Pasay lots of Jomarias International Corporation are without prejudice to the subsisting attachment liens of the petitioners in this case. For both PCIB and Philamlife are mortgagees in bad faith. PCIB was aware of the attachment on the property which Jomarias mortgaged to it because the order lifting it was annotated on the title of Jomarias. If PCIB had taken the trouble to ascertain from the records of Civil Cases Nos. 365-MN and 374-MN, whether that order was already final, it would have known that the court's order lifting the writ of attachment was not yet final and was in fact being contested by the plaintiffs (herein petitioners).

The same may be said of Philamlife. FINASIA's Pasong Tamo property (covered by TCT No. 120450-Makati) was sold to Triplex for P14,600,000 on May 11, 1988, five (5) months before the attachment was lifted on October 10, 1988. Triplex applied for a P10 million loan from Philamlife with a mortgage on the Pasong Tamo property as collateral, but Philamlife delayed the release of loan until the very day, November 14, 1988, that a new TCT No. 158036 was issued in the name of TRIPLEX - a clear indication that Philamlife waited for the writ of attachment to be lifted before it released the loan to Triplex. But, like PCIB, Philamlife did not wait for the finality of the order lifting the attachment. Therefore, both PCIB and Philamlife may not claim to be mortgagees in good faith, for good faith is "an honest intention to abstain from taking any unconscientious advantage of another" (Duran vs. IAC, 138 SCRA 489). In the following cases we held:

"A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor." (J.M. Tuason & Co., Inc. vs. CA, 94 SCRA 413.)

"A buyer of land who is aware of sufficient facts to induce a reasonably prudent man to inquire into the status of the title to the land can not legally claim the right of a purchaser in good faith." (Mañacop, Jr. vs. Cansino, 1 SCRA 572.)

"A purchaser who has knowledge of facts which should put him upon inquiry and investigation as to possible defects of the title of the vendor and fails to make such inquiry and investigation, cannot claim that he is a purchaser in good faith." (Paylago vs. Jarabe, 22 SCRA 1247.)

These rulings are also applicable to mortgagees.

WHEREFORE, the petition for certiorari and mandamus is granted. The order dated October 10, 1988 of respondent Judge is hereby annulled and set aside. The Registers of Deeds of Makati and Parañaque are hereby ordered: (1) to re-annotate on the titles of the properties in question, namely, TCT No. 158036 in the name of TRIPLEX Enterprises, Inc. and TCTs Nos. 93264 and 93265 in the name of JOMARIAS International Corporation, the original writ of preliminary attachment obtained by petitioners in Civil Cases Nos. 365-MN and 374-MN and (2) to cancel or delete from the new titles the inscriptions of the assailed order dated October 10, 1988 of respondent Judge in the aforesaid cases. The temporary restraining order issued by this Court is hereby lifted and respondent Judge is ordered to proceed immediately with the trial of Civil Cases Nos. 365-MN and 374-MN.

**SO ORDERED.**

Narvasa, C.J., Cruz, and Medialdea, JJ., concur.

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