

**JOSEPH TAY CHUN SUY, PETITIONER, VS. COURT OF APPEALS,
EXECUTIVE JUDGE OF THE SEVENTH JUDICIAL REGION CEBU CITY,
THE PRESIDING JUDGE, REGIONAL TRIAL COURT, SEVENTH
JUDICIAL REGI...**

G.R. Nos. 91004-05. August 20, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

Petitioner Joseph Tay Chun Suy filed a special civil action for certiorari and prohibition with the Court of Appeals against six orders issued by the respondent judges in Civil Case No. CEB-5162 in the Regional Trial Court of Cebu City entitled "Philippine Trigon Shipyard Corporation v. Sta. Clara Housing Industries, Inc., Mayad Shipping Lines, Inc., Tay Chun Suy, and the Provincial Sheriff (Davao City)."

The petition was dismissed by the Court of Appeals on August 28, 1989,[1] and reconsideration was denied on November 7, 1989.[2] The petitioner is now before us and asks us to reverse the respondent court for upholding the said orders.

On March 26, 1984, Judge Mariano C. Tupas of the Regional Trial Court of Davao, Branch 12, rendered judgment in Civil Case No. 15,970 ordering the defendant therein, Sta. Clara Lumber Co., Inc., to pay herein petitioner Tay Chun Suy, as plaintiff, the principal sum of P181,194.90 with 12% as interest from January 23, 1981, up to the date of said decision, plus 25% of the collectible amount as attorney's fees and the sum of P1,000.00 as costs.[3] The decision became final and executory, and a writ of execution was issued, pursuant to which the motor vessel Sta. Clara I, owned by Sta. Clara Lumber Co., Inc. under Coastwise License No. 86-0008, was levied upon. On July 16, 1986, the vessel with its accessories was sold at public auction to the petitioner as the highest bidder for the sum of P317,000.00 and a sheriff's certificate of sale was issued in his favor. On July 18, 1986, the trial court, on the petitioner's motion, ordered the Eighth Coast Guard District of Davao City to register the motor vessel in his name.

On the same date, private respondent Philippine Trigon Shipyard Corporation filed in the Regional Trial Court of Cebu City a complaint for a sum of money and damages with prayer for preliminary attachment, later docketed as Civil Case No. CEB-5162, against Sta. Clara Housing Industries, Inc. (SCHII), Mayad Shipping Lines, herein petitioner Tay Chun Suy, and the Provincial Sheriff (Davao City).

The complaint alleged that Sta. Clara I was originally owned by the Sta. Clara Lumber Co., Inc., which mortgaged the vessel, together with other properties, to the Development Bank of the Philippines. The latter foreclosed the mortgage and was the highest bidder at the auction sale, thus becoming the sole owner of the said vessel. Thereafter, DBP entered into a Lease-Purchase Agreement with Sta. Clara Housing Industries, Inc. and possession of the vessel was forthwith turned over to SCHII and its agent, Mayad Shipping Lines.

On March 10, 1986, Trigon and Mayad, the latter acting as agent of SCHII, entered into a Bareboat Charter

Party[4] under which Trigon was to drydock said vessel for repairs, put her in good running order and seaworthy condition, and thereafter use her as its charterer.

The Charter Party further provided that all repair bills for labor and materials not exceeding P250,000.00 would be for the charterer's account and any amount in excess thereof would be for the owner's account. Trigon said it incurred repair expenses amounting to P1,992,862.55 and so claimed an existing maritime lien on the vessel in the amount of P1,742,862.55.

On July 21, 1986, Judge Valeriano P. Tomol, Jr. of the Regional Trial Court of Cebu, Branch 11, issued a writ of preliminary attachment as prayed for in the complaint upon the filing of a bond by the plaintiff.[5] The respondent sheriff then attached the motor vessel as well as the bank accounts of the petitioner. On July 24, 1986, the petitioner filed an urgent ex parte motion to dissolve the writ of preliminary attachment. On the same date, the trial court issued a second order allowing Trigon to act as depositary of the attached vessel and to temporarily operate it.[6] On July 28, 1986, the petitioner filed a joint motion to dismiss the complaint and to discharge the attachment. On August 1, 1986, the trial court, in a third order, excluded the other properties, real or personal, and monies as well as bank deposits in the name of petitioner, thereby leaving only the vessel under attachment.[7] The joint motion to dismiss the complaint and to discharge the attachment was denied in a fourth order issued on August 13, 1986.[8] A motion for reconsideration of the order dated August 1, 1986, filed by the petitioner on August 11, 1986, was also denied in a fifth order dated August 14, 1986.[9] Nothing daunted, the petitioner filed a motion for reconsideration of the orders dated July 21, August 13 and August 14, 1986, but this too was denied in the sixth order dated October 8, 1986.[10]

We shall also uphold the challenged orders.

The petitioner claims that there was no ground to justify the order of attachment under Section 1, Rule 57, of the Revised Rules of Court, which provides:

Section 1. Grounds upon which attachment may issue. - A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

- (a) In an action for the recovery of money or damages on a cause of action arising from contract, express or implied, against a party who is about to depart from the Philippines with intent to defraud his creditors;
- (b) In 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;
- (c) In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an officer;
- (d) In 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, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;
- (e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors;
- (f) In an action against a party who resides out of the Philippines, or on whom summons may be served by publication.

Contrary to the petitioner's claim, it is paragraph (c) and not paragraph (d) that is applicable to the private

respondent's case.

Trigon alleged in its complaint in Civil Case No. CEB-5162 that Tay Chun Suy and the sheriff of Davao City knew that Sta. Clara Lumber was no longer the owner and possessor of the vessel at the time the decision in Civil Case 15,970 was rendered; that the judgment award in that decision was only P181,194.90 plus 12% interest and 25% of the amount as attorney's fees and P1,000.00 cost of suit; and that the vessel was sold to Tay Chun Suy at a shockingly low bid price of P50,000.00 (although the Sheriff's certificate of sale indicated P317,000.00) despite the fact that the vessel was easily worth P5,000,000.00. Under par. (c), Trigon was entitled to the attachment of the vessel, on its showing that the vessel was being unjustly detained by the petitioner (through Deputy Sheriff Reyes of Davao City), who had acquired it under questionable circumstances from one which was no longer its owner.

The petitioner also claims that since he was not a party to the Bareboat Charter Party, the private respondent did not have a sufficient cause of action against him. This contention is not tenable because he is considered an indispensable party in the Cebu case under Section 7. Rule 3 of the Revised Rules of Court, which reads:

Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants

An indispensable party is one with such an interest in the controversy that a final decree would necessarily affect his rights, such that the courts cannot proceed without his presence.[11] Unquestionably, any judgment covering the disposition of the vessel would unavoidably affect the petitioner as its purchaser at the auction sale.

The petitioner also complains that the writ of preliminary attachment was wrongfully issued because it was based only on the general allegations contained in the private respondent's application. The petitioner cites the case of *Gruenberg v. Court of Appeals*,[12] but this is clearly inapplicable. We find that Trigon's affidavit, as well as its complaint, no less than the order of July 21, 1989, contained specific details as required by the Rule to justify the issuance of the writ.

In contending that the application for attachment contains false and misleading allegations and that Trigon has no maritime lien, the petitioner is raising factual issues that this Court cannot review, absent a clear showing that they were arbitrarily resolved.

The petitioner also cites the case of *Flores v. Santos*,[13] where it was held that if property sought to be attached is in custodia legis, a copy of the order of attachment shall be filed with the proper court and notice of attachment served upon the custodian of such property. His claim is that the private respondent, as well as the respondent judges and sheriff, failed to show that a copy of the writ of preliminary attachment issued by the Cebu court was filed with the Davao court, which had custodia legis of the motor vessel, and that a notice of the attachment had been served upon the actual custodian of the motor vessel.

We quote with approval the observation of the respondent court that there is "a paucity of evidence" to support the petitioner's allegations that the above-stated requirements have not been complied with. On the other hand, there is the presumption that official duty has been regularly performed. Moreover, the record will show that the notice of attachment was served upon the sheriff of the Davao court who was then the actual custodian of the vessel sought to be attached.

The petitioner's contention that there was a hasty ex parte issuance of the writ of preliminary attachment is also without merit.

In attachment cases, the absence of notice or hearing is allowed on the ground that the defendant might abscond with or dispose of his property before a writ of attachment is actually issued.[14] The judge before whom the

application is made has full discretion in considering the supporting evidence proffered by the applicant. The sufficiency or insufficiency of an affidavit depends upon the amount of credit given to it by the judge and its acceptance or rejection is left to his sound discretion.

The petitioner cannot complain that he was denied his day in court when Judge Tomol issued the writ of preliminary attachment without hearing. No grave abuse of discretion can be ascribed to the judge for issuing a writ of attachment ex parte as there is nothing in the Rules of Court that conditions such issuance on prior notice and hearing.

As a matter of fact, a hearing would defeat the purpose of this provisional remedy. The time which such a hearing would take could be enough to enable the defendant to abscond with or dispose of his property before a writ of attachment is issued.[15]

The petitioner likewise claims that the enforcement of the writ of attachment interferes with the jurisdiction of the Regional Trial Court of Davao, Branch 12, which is a court of coordinate jurisdiction. Again we disagree.

While it is true that property in the custody of the law may not be interfered with without the permission of the proper court, this rule is confined to cases where the property belongs to the defendant or where the defendant has proprietary interests. We have held that when the sheriff, acting beyond the bounds of his office, seizes a stranger's property, the rule does not apply and interference with his custody is not considered interference with another court's order of attachment.[16]

In a separate action filed by a third party who claims to be the owner of the property attached, the court may render judgment ordering the sheriff or whoever is in possession of the attached property to deliver it to the plaintiff or desist from seizing it. In such action, the court may issue an interlocutory order, upon the filing of such bond as may be necessary, to release the property pending final adjudication of the title. Jurisdiction over an action includes jurisdiction on interlocutory matters incidental to the cause and deemed necessary to preserve the subject matter of the suit or protect the parties' interest.[17]

The foregoing ruling was reiterated in the later case of *Traders Royal Bank v. IAC* (133 SCRA 141 [1984]) and even more recently in the case of *Escovilla v. C.A.*, G.R. No. 84497, November 6, 1989, where this Court stressed:

"The power of the court in the execution of judgments extends only over properties unquestionably belonging to the judgment debtor. The levy by the sheriff of a property by virtue of a writ of attachment may be considered as made under the authority of the court only when the property levied upon belongs to the defendant. If he attaches properties other than those of the defendant, he acts beyond the limits of his authority. The court issuing a writ of execution is supposed to enforce its authority only over properties of the judgment debtor. Should a third party appear to claim the property levied upon by the sheriff, the procedure laid down by the Rules is that such claim should be the subject of a separate and independent action." [18]

Under Section 17 of Rule 39, a third person who claims property levied upon to implement a judgment may vindicate such claim by action. Obviously, a decision declaring him to be the owner of the property would not constitute interference with the power or processes of the court that rendered the judgment sought to be enforced. If that be so, and it is so because property belonging to a stranger is not subject to levy, then an interlocutory order such as an injunction, based upon a claim and prima facie showing of ownership by the claimant, cannot be considered interference.[19]

The aforementioned principles are applicable to attachment, and even though *Trigon* filed Civil Case No. CEB-5162 against the petitioner only to enforce a maritime lien and not to claim ownership of the vessel.

In support of his claim that the respondent sheriff for Davao City acted in violation of law when he enforced the writ of preliminary attachment issued by the Cebu court, the petitioner invokes the admonition in the case of *Policarpio v. Fajardo*,^[20] to wit:

We cannot conclude this decision without reiterating emphatically Our admonition to all judges that the general practice of the lower courts of appointing special sheriffs is unauthorized by law except when the sheriff is party to any action or proceeding or is otherwise incompetent to serve process therein and when the office of sheriff is vacant.

Significantly, he merely cites the case but does not allege or present any evidence that the designation of the respondent sheriff was irregular. Again, the presumption of regularity must operate against him. Additionally, there is the case of *Nasser v. Court of Appeals*,^[21] where we held:

It is likewise evident that respondent judge did not err in deputizing the Chief of Police of Governor Generoso, as special sheriff under Sec. 2, Rule 57 of the Revised Rules of Court where the former is expressly authorized to require not only the sheriff but also other officers of the province or the sheriffs or other proper officers of different provinces in this case, the Chief of Police of Governor Generoso, to attach all the properties of the party against whom it may be issued within the province not exempt from execution.

Lastly, the petitioner claims that the case filed in Cebu was not the proper remedy to enforce the alleged lien. He avers that an admiralty proceeding in rem wherein the vessel is named as a defendant should have been instituted. The following observations in *BF Homes, Inc. v. Court of Appeals*^[22] are appropriate:

Attachment is in the nature of a proceeding in rem. It is against the particular property. The attaching creditor thereby acquired specific lien upon the attached property 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 property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The law does not provide the length of time an attachment lien shall continue after the rendition of judgment, and it must therefore necessarily continue until the debt is paid, or sale is had under execution issued on the judgment or until judgment is satisfied, or the attachment discharged or vacated in some manner provided by law. It has been held that the lien obtained by attachment stands upon as high equitable grounds as a mortgage lien: x x x

Our conclusion is that none of the six assailed orders is flawed with error so as to call for their reversal. On the contrary, the respondent Court of Appeals was correct in upholding them, each being within the competence and sound discretion of the trial courts.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Grino-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Penned by Justice Arturo B. Buena, with Limcaoco and Francisco C., JJ., concurring.

[2] Rollo, p. 91.

[3] Ibid., p. 93.

[4] Id., p. 202.

[5] id., p. 113.

[6] id., p. 118; through Executive Judge Leonardo Canares.

[7] id., p. 130.

[8] *id.*, p. 135.

[9] *id.*, p. 137.

[10] *id.*, p. 151.

[11] *Co v. CA*, 193 SCRA 198.

[12] 138 SCRA 471.

[13] 23 SCRA 82.

[14] *Consolidated Bank and Trust Corp. v. CA*, 197 SCRA 663.

[15] *Mindanao Savings and Loan Association v. CA*, 172 SCRA 480.

[16] *Manila Herald Publishing Co., Inc. v. Ramos*, 88 Phil. 94; cited in *Uy, Jr. v. CA*, 191 SCRA 275.

[17] *Ibid.*

[18] *Id.*

[19] *Peñalosa v. Villanueva*, 177 SCRA 778.

[20] 78 SCRA 210.

[21] 191 SCRA 785.

[22] 190 SCRA 262; citing *Government of the Philippine Islands v. Mercado*, 67 Phil. 409.

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