

## SECOND DIVISION

[ G.R. No. 225610, February 19, 2020 ]

**BURGUNDY REALTY CORPORATION, ROGELIO T. SERAFICA AND  
LUIS G. NAKPIL, [\*] PETITIONERS, VS. MAA GENERAL  
ASSURANCE PHILS., INC., RESPONDENT.**

### DECISION

**INTING, J.:**

This is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court of the Decision<sup>[2]</sup> dated April 28, 2016 and Resolution<sup>[3]</sup> dated July 7, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 126282. The CA affirmed the Order dated July 10, 2012 of Branch 59, Regional Trial Court (RTC), Makati City in Civil Case No. 12-282 that denied the Urgent Motion to Quash Writ of Attachment with Damages<sup>[4]</sup> of Burgundy Realty Corporation (Burgundy), Rogelio T. Serafica (Serafica) and Luis G. Nakpil (Nakpil) (collectively, petitioners).

#### *Antecedents*

MAA General Assurance Phils., Inc. (MAA) filed a Complaint (with Very Urgent Prayer for Issuance of Writ Preliminary Attachment)<sup>[5]</sup> dated March 30, 2012 against Burgundy, Serafica and Nakpil for recovery of P25,000,000.00 plus interest, attorney's fees, and liquidated damages.<sup>[6]</sup>

In its complaint, MAA alleged that on April 5, 2007, Burgundy entered into a Short Term Loan Agreement whereby Chinatrust Commercial Banking Corporation (Chinatrust) granted Burgundy a loan of P50,000,000.00 payable within two years.<sup>[7]</sup>

Thus, MAA alleged that sometime in the early part of 2008, Burgundy applied for a surety bond with MAA to serve as partial guarantee for the Short Term Loan Agreement. Burgundy then issued Surety Bond MAAGAP No. 755 in the amount of P25,000,000.00. For and in consideration of the surety agreement, petitioners executed an Indemnity Agreement whereby petitioners obligated themselves to, among other obligations, indemnify MAA and keep it indemnified for, and hold and save it harmless from all damages, payments, advances, losses, costs, stamps, taxes, penalties, charges, attorney's fees, and expenses for having become surety under Surety Bond MAAGAP No. 755. MAA alleged that Serafica and Nakpil signed the Indemnity Agreement both in their official and personal capacities.<sup>[8]</sup>

Considering petitioners' representations, MAA was led to believe that there was no more need for petitioners to post a collateral or security to ensure faithful performance of their obligations under the Indemnity Agreement. However, petitioners' representations turned out to be empty assurances and mere deceptions.<sup>[9]</sup>

Subsequently, Chinatrust wrote MAA a series of demand letters for the payment of P25,000,000.00. MAA then sent advice letters to petitioners, but the latter ignored the letters. Thus, Chinatrust eventually filed a complaint for sum of money against MAA before Branch 143, RTC, Makati City which ordered MAA to pay Chinatrust P25,000,000.00 plus interest. MAA paid Chinatrust P25,000,000.00. In exchange, Chinatrust executed a Deed of Assignment to MAA assigning to the latter the Promissory Note, which was previously executed by Burgundy in favor of Chinatrust.  
[10]

Thus, MAA sent demand letters to petitioners for the payment of P25,000,000.00 and other claims under the Indemnity Agreement. Subsequently, MAA and Serafica agreed on January 21, 2012 that Serafica would settle the P25,000,000.00 plus reasonable expenses within six months. In turn, MAA will put on hold the filing of a court action within the agreed period. The parties also agreed that Burgundy shall submit and turnover the original titles of the condominium units registered under its name.  
[11]

However, what petitioners offered as guaranty in its letter were properties which were neither condominium units nor registered in petitioner Burgundy's name contrary to what was discussed in the January 21, 2012 meeting. Thus, MAA wrote petitioners a letter requesting the latter to complete the following within 10 days from receipt of the letter: (1) submission of acceptable original transfer certificates of title of the condominium units annotated in favor of MAA; (2) memorandum of agreement for the full settlement of the obligation within the agreed period; and (3) forwarding of postdated checks covering the six-month settlement upon signing of the memorandum of agreement. In reply, petitioners proposed to assign to MAA two years' worth of rental income derived from a unit in Burgundy Corporate Tower in the amount of P6,000,000.00, while the balance of P19,000,000.00 will be paid before the year 2014. But for MAA, this would lengthen the payment of the obligation to 24 months without any guaranty, contrary to the six-month period that they originally agreed upon.  
[12]

Thus, MAA filed a complaint with an application for an *ex parte* issuance of a writ of attachment over the leviable properties of petitioners. MAA asserted that petitioners committed fraud in incurring the obligation subject of the complaint which warranted the grant of preliminary attachment pursuant to Section 1(d), Rule 57 of the Rules of Court. MAA further averred that there was no sufficient security for its claim.  
[13]

In its Order dated April 17, 2012, the RTC granted MAA's application, and issued a Writ of Preliminary Attachment<sup>[14]</sup> on April 26, 2012 upon the posting of MAA's bond. The sheriff then served and implemented the writ against the real properties of petitioners.  
[15]

Petitioners then filed their Urgent Motion to Quash Writ of Attachment with Damages. They argued that without notice of hearing, the RTC illegally, irregularly, and improvidently issued the writ of attachment since MAA was allowed to present *ex parte* evidence on its allegations in the Urgent Motion for Issuance of Preliminary Attachment with Damages. Further, MAA failed to establish the existence of any grounds for attachment under Section 1, Rule 57 of the Rules of Court.  
[16]

MAA then filed its Vehement Comment/Opposition to petitioners' Urgent Motion to Quash Writ of Attachment with Damages.  
[17]

### *RTC Ruling*

In its Order dated July 10, 2012, the RTC denied petitioners' Urgent Motion to Quash Writ of Attachment with Damages for lack of merit.<sup>[18]</sup>

Thus, petitioners filed a petition for *certiorari* with the CA which was docketed as CA-G.R. SP No. 126282.

### *CA Ruling*

Pending the proceedings before the CA and prior to the filing of the parties' respective Memoranda, MAA manifested on August 17, 2015 that the RTC already rendered its Decision dated July 9, 2015 in the main action for sum of money and damages.<sup>[19]</sup>

In the Decision<sup>[20]</sup> dated April 28, 2016, the CA denied the petition for *certiorari*. It refused to rule on the issue of whether the petition has been rendered moot by the RTC Decision dated July 9, 2015 in the main action for sum of money and damages. It recognized the rule that when the main action is appealed, the attachment which may have been issued as an incident of the action is also considered appealed and removed from the jurisdiction of the court *a quo*. However, it ruled that while MAA alleged in its Memorandum that it already appealed the RTC Decision dated April 28, 2016 before the CA, it failed to adduce any evidence attesting to its allegation. Further, it explained that a writ of preliminary attachment may be availed of at the commencement of the action or at any time before entry of judgment; that, however, MAA failed to present any proof as to whether there was already an entry of judgment of the RTC Decision.<sup>[21]</sup>

Still, the CA found no grave abuse of discretion on the part of the RTC when it denied the Urgent Motion to Quash Writ of Attachment.<sup>[22]</sup> It explained that the RTC's pronouncements are supported by law. It further noted that petitioners' pleadings before the CA clearly sought a review of the parties' allegations and proof regarding the purported fraud, and ascribed errors on the RTC in its grasp of evidence both in support of and against the issuance of the writ of preliminary attachment. However, the CA ruled that *certiorari* will not lie to cure the errors of the RTC in its appreciation of the evidence of the parties, or its conclusions anchored on its findings and conclusions of law.<sup>[23]</sup>

Petitioners filed a Motion for Reconsideration,<sup>[24]</sup> but the CA denied it in its Resolution<sup>[25]</sup> dated July 7, 2016.

Hence, the petition.

### *The Court's Ruling*

The petition should be denied for being moot.

In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*,<sup>[26]</sup> the Court explained when a case or issue is considered as moot; thus:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no

practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.<sup>[27]</sup>

In determining the need to resolve the petition, the Court takes judicial notice of its ruling in G.R. No. 243036, which stemmed from and ultimately resolved with finality the main action for sum of money and damages filed by MAA against petitioners.

The Court deems it worthy to recall in brief the antecedents of G.R. No. 243036.

Specifically, the RTC rendered its Decision dated July 9, 2015 in the main action for sum of money and damages in favor of MAA.<sup>[28]</sup> It ordered herein petitioners to jointly and severally pay MAA the following: (1) the amount of P25,000,000.00 representing the amount MAA paid to Chinatrust; (2) interest rate of 12% of the amount claimed from the date of demand on December 19, 2011 until fully paid; (3) attorney's fee of P1,000,000.00; and (4) costs of suit.<sup>[29]</sup> The RTC also denied petitioners' counterclaim for lack of merit.<sup>[30]</sup> The RTC ruled that the issue of whether there was a ground under Section 1(d), Rule 57 of the Rules of Court for the issuance of a writ of preliminary attachment was already resolved in the Order dated April 17, 2012 which granted the application for preliminary attachment.<sup>[31]</sup>

On August 7, 2015, petitioners elevated the main case through an appeal of the Decision dated July 9, 2015 to the CA.<sup>[32]</sup> This was docketed as CA-G.R. CV No. 105560.<sup>[33]</sup>

Notably, one of petitioners' arguments in CA-G.R. CV No. 105560 was that the writ of preliminary attachment was improperly issued because there existed no ground for issuing it.<sup>[34]</sup>

In the Decision<sup>[35]</sup> dated May 23, 2018, the CA in CA-G.R. CV No. 105560 denied the appeal and affirmed the RTC Decision dated July 9, 2015. As to the propriety of the issuance of the writ of preliminary attachment, the CA in its Decision dated May 23, 2018 ruled that MAA was able to substantiate its factual allegation of fraud to warrant the issuance of the writ of preliminary attachment under Section 1 (d),<sup>[36]</sup> Rule 57 of the Rules of Court. The CA discussed:

In both the Indemnity Agreement and the Surety Bond, appellants undertook to indemnify MAA Insurance in case appellants fail to comply with their obligations to Chinatrust under the Term Loan Agreement executed on 05 April 2006, which is payable within two years, or will mature on 04 April 2008. Upon the other hand, the letter-advise, dated 14 April 2009, appeared unheeded by appellants.

The Term Loan Agreement had already matured on 04 April 2008, per Chinatrust's Statement of Account attached to the demand letter of 03 April 2009, when the Indemnity Agreement and the Surety Bond were executed both on 13 May 2008 without any evidence that MAA Insurance knew that appellants had already defaulted with their obligations under