

THIRD DIVISION

[G.R. No. 175727, March 06, 2019]

**LORENZO SHIPPING CORPORATION, PETITIONER, VS.
FLORENCIO O. VILLARIN AND FIRST CARGOMASTERS
CORPORATION, CEBU ARRASTRE & STEVEDORING SERVICES
CORPORATION AND GUERRERO G. DAJAO, RESPONDENTS.**

[G.R. No. 178713]

**LORENZO SHIPPING CORPORATLON, PETITIONER, VS.
FLORENCIO O. VILLARIN, RESPONDENTS.**

DECISION

REYES, A., JR., J.:

These are consolidated petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court assailing the rulings of the Court of Appeals (CA) in CA-G.R. SP No. 86333, which sustained the Orders dated . May 11, 2004^[1] and June 16, 2004^[2] issued by the Regional Trial Court (RTC) of Cebu City, Branch 6, in Civil Case No. CEB-25283; and in CA-G.R. CEB SP No. 01855, which reversed the Orders dated March 9, 2006^[3] and May 30, 2006^[4] issued by the RTC of Cebu City, Branch 20 in the same case. Civil Case No. CEB-25283 is a suit for specific performance, accounting, and damages, with prayer for writs of preliminary mandatory injunction and preliminary attachment, filed before the RTC of Cebu City.

The Facts

Lorenzo Shipping Corporation (LSC) is a domestic corporation which operates interisland shipping vessels in the Philippines. On the other hand, Cebu Arrastre and Stevedoring Services Corporation (CASSCOR) provides arrastre and stevedoring services for LSC's ships calling at the Port of Cebu under a Cargo Handling Contract dated March 8, 1997.^[5]

On February 20, 1997, Guerrero G. Dajao (Dajao), as President and General Manager of CASSCOR, entered into a Memorandum of Agreement (MOA) with Serafin Cabanlit (Cabanlit) and Florencio Villarín (Villarín).^[6]

Under the MOA, Villarín and Cabanlit undertook to operate and manage the arrastre and stevedoring operations of CASSCOR with respect to LSC's vessels. CASSCOR was entitled to 5% of the proceeds of the operation, while Dajao was entitled to a 2% royalty. 10% was allocated for taxes, wages and other necessary expenses; and another 10% was earmarked for the share of the Philippine Ports Authority.^[7] Villarín and Cabanlit alleged that the rest of the proceeds, amounting to 73%, were due to them.^[8]

The Attachment Case

Alleging failure on the part of CASSCOR and Dajao to remit their shares from July 1999 onwards, Villarin, Cabanlit, and FCC (Villarin, *et al.*) filed a Complaint for specific performance and accounting against CASSCOR and Dajao.^[9] The Complaint was subsequently amended on June 20, 2000 to implead LSC as a nominal defendant; to include a prayer for a writ of preliminary attachment against CASSCOR and Dajao; and to include a prayer for mandatory injunction against LSC. The case was docketed as Civil Case No. CEB-25283 and raffled to Branch 5 of the RTC of Cebu City. A writ of preliminary attachment was thereafter issued by the RTC against CASSCOR and Dajao on June 21, 2000.^[10]

CASSCOR and Dajao filed their Answer on June 27, 2000, while LSC filed its Answer on August 27, 2001. However, on September 22, 2003, Villarin, *et al.* filed a Second Amended Complaint. The case was then re-raffled to Branch 6 of the RTC of Cebu City.^[11]

On January 26, 2004, Villarin, *et al.* filed a motion for issuance of a writ of preliminary attachment. On May 11, 2004, Judge Anacleto Caminade (Judge Caminade) of RTC Branch 6 granted the motion and ordered the issuance of a writ of preliminary attachment upon the posting by Villarin, *et al.* of a Php 150,000.00 bond. On May 17, 2004, LSC filed a Motion for Clarification/Reconsideration, arguing that it cannot be subjected to the attachment writ. However, before the court can act on LSC's Motion for Clarification/Reconsideration, a Notice of Garnishment was served on LSC on May 20, 2004, prompting it to file a motion to post a counter-bond. On June 1, 2004, Judge Caminade issued an order granting LSC's motion to post a counter-bond. Hence, LSC and CASSCOR both posted counter-bonds worth Php 150,000.00 each, resulting in the discharge of the writ of attachment.^[12]

On June 16, 2004, Judge Caminade, ruling on LSC's Motion for Clarification/Reconsideration, issued an Order^[13] clarifying that the writ of attachment issued under the Order dated May 11, 2004 is directed at *all* the defendants, including LSC. The pertinent portion of the order states that:

It is the opinion of the Court as already stated that all the defendants including the defendant-movant appear to be guilty of fraud in the performance of the obligation. It is not true that the plaintiffs and defendant-movant have no contract. Plaintiff has contract with the shipping corporation in view of the fact that the defendant shipping corporation is a beneficiary of the services of plaintiffs as alleged in the contract between plaintiffs and other defendants. The rule on privity of contract applies.^[14]

Aggrieved, LSC filed a petition for *certiorari* with the CA claiming that Judge Caminade committed grave abuse of discretion in subjecting LSC to the attachment writ since it had no contract or juridical relation with Villarin and the other plaintiffs. LSC further argued that it cannot be subjected to the attachment writ because it was only impleaded as a nominal party.

Judge Caminade subsequently inhibited himself from the case, which was then re-

raffled to RTC Branch 20.

The Deposit Case

On November 23, 2004, Villarin, et al. filed a *Verified Motion to Require Defendant LSC to Deposit in Court Money Held in Trust*.^[15] To support the motion, Villarin, et al. presented an audit report^[16] and a letter^[17] dated January 5, 2004 from LSC Vice-President for Finance Julita' Valeros (Valeros) which contains a statement from LSC's external auditor stating that the unpaid account of LSC to CASSCOR amounts to Php 10,297,499.59.

On August 12, 2005, Judge Bienvenido R. Saniel, Jr. (Judge Saniel) of RTC Branch 20 issued an Order^[18] (Order to Deposit) granting the November 23, 2004 motion, which reads as follows:

When this case was called today, Atty. Bernardito Florido and Atty. Florencio Villarin agreed and jointly manifested that the money requested to be deposited in the plaintiffs' motion shall be deposited in court under the joint account/name of the plaintiffs and defendant Cebu Arrastre and Stevedoring Services Corporation. No one shall withdraw the money without the knowledge and conformity of the other, and the approval of the court.

Accordingly, the verified motion to require defendant Lorenzo Shipping Corporation to deposit in court the money held in trust is hereby granted. Defendant [LSC] is directed to deposit the amount of Php10,297,499.59 with the Clerk of Court of this Court in the joint account/name of the plaintiffs and Cebu Arrastre and Stevedoring Services Corporation, the same to be withdrawn only with the knowledge and conformity of the said parties and the approval of the court.

SO ORDERED.^[19]

The Order noted that the counsels for Villarin, *et al.* and CASSCOR and Dajao have subsequently agreed and jointly manifested that the money requested to be deposited will be so deposited in court.

On September 6, 2005, Villarin, *et al.* moved for the issuance of a writ of execution to enforce Judge Saniel's Order to Deposit. On the other hand, LSC moved for reconsideration of the Order to Deposit on October 4, 2005.^[20]

On March 9, 2006, Judge Saniel issued an Order^[21] granting LSC's motion for reconsideration and denying Villarin's motion for execution. The pertinent portions of the order are as follows:

The motion to require the deposit was concurred in, with condition, by defendant Cebu Arrastre and Stevedoring Services Corporation (CASSCOR). The apparent purpose of the plaintiffs in securing the deposit of the above-mentioned amount is to have an assurance that the money - which the plaintiff claims to be owing from defendant Lorenzo Shipping and payable to CASSCOR- will be available for payment to the

prevailing party when this case shall be finally terminated or disposed of. The court has noted however that earlier the court had issued a writ of preliminary attachment but the same was discharged when the defendants put up a counterbond of P300,000.00. In approving the counterbond, the court had thereby determined that the counterbond was sufficient to protect the interests of the plaintiff. To still require the deposit of the amount in court would be unnecessary and oppressive. Besides, whether or not there is privity of contract between the plaintiffs and Lorenzo Shipping is an issue that is yet to be determined and resolved in this case.

WHEREFORE, without needing to discuss the other matters and arguments raised in the motion for reconsideration and other pleadings of the parties, the court resolves to reconsider, as it does hereby reconsider and set aside, the order of August 12, 2005.

The plaintiffs motion for issuance of a writ of execution to enforce the 12 August 2005 order is hereby denied.^[22]

Villarin, *et al.* moved for reconsideration but was denied. In denying the motion, the trial court noted that the grant of LSC and CASSCOR's motions to post counterbond was not questioned by the plaintiffs and that the issue of LSC's liability to Villarin, *et al.* is still in dispute. It also held that the Order to Deposit has no basis in the Rules of Court.^[23]

Aggrieved, Villarin, *et al.* filed a petition for *certiorari* with the CA (the Deposit Case), asserting that Judge Saniel committed grave abuse of discretion in granting LSC's motion for reconsideration. They raised the following contentions in their petition: (1) the Order to Deposit is sanctioned by Rule 135, Section 6, which authorizes courts to issue writs and processes to carry their jurisdiction into effect; (2) the Php 300,000.00 counterbond is insufficient to protect their interest; and (3) the letter dated January 5, 2004 amounts to an admission of liability on the part of LSC.^[24]

Rulings of the CA

CA Ruling in the Deposit Case

On September 7, 2006, the CA rendered its Decision^[25] in favor of Villarin, *et al.*, thusly:

WHEREFORE. in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case, **ANNULLING** and **SETTING ASIDE**, as they are hereby annulled and set aside, the Orders elated March 9, 2006 and May 30, 2006 of the respondent judge and **REINSTATING** his Order elated August 12, 2005. Further, the respondent judge is hereby ordered to ENFORCE his Order dated August 12, 2005 which requires the deposit in court the amount of P10, 297, 499.59.

SO ORDERED.^[26]

The CA ruled that Judge Saniel committed grave abuse of discretion in granting LSC's motion on the ground that the counterbond was sufficient to protect the interests of the plaintiffs. Taking the Valeros letter as a judicial admission on the part of CASSCOR and Dajao, the appellate court concluded that the Php 300,000.00 counterbond would not suffice to secure a liability of more than Php 10,000,000.00. The appellate court also upheld Villarin, *et al.*'s contention regarding the grounding of the Order to Deposit in Rule 135, Section 6. Finally, it ruled that the Order to Deposit does not amount to a prejudgment of the case because the deposited amount remains in the control of the court as a measure to ensure that LSC will not unjustly benefit from the funds to the prejudice of whoever may be ultimately declared entitled thereto.

LSC filed a motion for reconsideration which was denied by the appellate court in a Resolution^[27] dated May 30, 2006. Aggrieved, LSC filed a petition for review on *certiorari*^[28] with this Court which was docketed as G.R. No. 175727.

CA Ruling in the Attachment Case

On April 24, 2007, the CA rendered its Decision^[29] in favor of Villarin, *et al.*, disposing thus:

WHEREFORE, the present petition is hereby DISMISSED for want of merit.

SO ORDERED.^[30]

The CA, in upholding the trial court, ruled that the complaint contained averments which allege fraud on the part of *all the defendants*, including LSC. As regards LSC's assertion of the absence of privity of contract, the CA ruled that LSC is a beneficiary of the contract between Villarin and CASSCOR; and that Section 1(d) of Rule 57 does not require the existence of a contractual obligation. Citing *Sta. Ines Melale Forest Products Corporation v. Macaraig*,^[31] the CA noted that Section 1(d) also contemplates other sources of obligation, such as law, crime, or quasi-delict, without stating the precise nature of the obligation involved in the case at bar. The CA further held that the admission cited by LSC in its petition was not an admission of the absence of privity of contract between LSC and Villarin but is instead an admission by Villarin that LSC has payables to FCC.

LSC sought reconsideration of the decision but was denied by the CA in its Resolution^[32] dated July 6, 2007. LSC thus filed a petition for review on *certiorari*^[33] with this Court, docketed as G.R. No. 178713. In a Resolution^[34] dated September 16, 2009, the Com1ordered the consolidation of G.R. No. 178713 with G.R. No. 175727. Thereafter, the parties were directed to file their respective memoranda.

The Issues

G.R. No. 178713

LSC ascribes the following error to the appellate court in G.R. No. 178713: