

## THIRD DIVISION

[ G.R. No. 181721, September 09, 2015 ]

**WATERCRAFT VENTURE CORPORATION, REPRESENTED BY ITS VICE-PRESIDENT, ROSARIO E. RAÑO A, PETITIONER, VS. ALFRED RAYMOND WOLFE, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Resolution<sup>[1]</sup> dated January 24, 2008 denying the motion for reconsideration of its Decision<sup>[2]</sup> dated September 27, 2007 in CA-G.R. SP No. 97804.

The facts are as follows:

Petitioner Watercraft Venture Corporation (*Watercraft*) is engaged in the business of building, repairing, storing and maintaining yachts, boats and other pleasure crafts at the Subic Bay Freeport Zone, Subic, Zambales. In connection with its operations and maintenance of boat storage facilities, it charges a boat storage fee of Two Hundred Seventy-Two US Dollars (US\$272.00) per month with interest of 4% per month for unpaid charges.

Sometime in June 1997, Watercraft hired respondent Alfred Raymond Wolfe (*Wolfe*), a British national and resident of Subic Bay Freeport Zone, Zambales, as its Shipyard Manager.

During his employment, Wolfe stored the sailboat, *Knotty Gull*, within Watercraft's boat storage facilities, but never paid for the storage fees.

On March 7, 2002, Watercraft terminated the employment of Wolfe.

Sometime in June 2002, Wolfe pulled out his sailboat from Watercraft's storage facilities after signing a Boat Pull-Out Clearance dated June 29, 2002 where he allegedly acknowledged the outstanding obligation of Sixteen Thousand Three Hundred and Twenty-Four and 82/100 US Dollars (US\$16,324.82) representing unpaid boat storage fees for the period of June 1997 to June 2002. Despite repeated demands, he failed to pay the said amount.

Thus, on July 7, 2005, Watercraft filed against Wolfe a Complaint for Collection of Sum of Money with Damages with an Application for the Issuance of a Writ of Preliminary Attachment. The case was docketed as Civil Case No. 4534-MN, and raffled to Branch 170<sup>[3]</sup> of the Regional Trial Court (RTC) of Malabon City.

In his Answer, Wolfe claimed he was hired as Service and Repair Manager, instead of

Shipyard Manager. He denied owing Watercraft the amount of US\$16,324.82 representing storage fees for the sailboat. He explained that the sailboat was purchased in February 1998 as part of an agreement between him and Watercraft's then General Manager, Barry Bailey, and its President, Ricky Sandoval, for it to be repaired and used as training or fill-in project for the staff, and to be sold later on. He added that pursuant to a central Listing Agreement for the sale of the sailboat, he was appointed as agent, placed in possession thereof and entitled to a ten percent (10%) sales commission. He insisted that nowhere in the agreement was there a stipulation that berthing and storage fees will be charged during the entire time that the sailboat was in Watercraft's dockyard. Thus, he claimed to have been surprised when he received five (5) invoices billing him for the said fees two (2) months after his services were terminated. He pointed out that the complaint was an offshoot of an illegal dismissal case he filed against Watercraft which had been decided in his favor by the Labor Arbiter.

Meanwhile, finding Watercraft's *ex-parte* application for writ of preliminary attachment sufficient in form and in substance pursuant to Section 1 of Rule 57 of the Rules of Court, the RTC granted the same in the Order dated July 15, 2005, thus:

WHEREFORE, let a Writ of Preliminary Attachment be issued accordingly in favor of the plaintiff, Watercraft Ventures Corporation conditioned upon the filing of attachment bond in the amount of **Three Million Two Hundred Thirty-One Thousand Five Hundred and Eighty-Nine and 25/100 Pesos (Php3,231,589.25)** and the said writ be served simultaneously with the summons, copies of the complaint, application for attachment, applicant's affidavit and bond, and this Order upon the defendant.

SO ORDERED.<sup>[4]</sup>

Pursuant to the Order dated July 15, 2005, the Writ of Attachment dated August 3, 2005 and the Notice of Attachment dated August 5, 2005 were issued, and Wolfe's two vehicles, a gray Mercedes Benz with plate number XGJ 819 and a maroon Toyota Corolla with plate number TFW 110, were levied upon.

On August 12, 2005, Wolfe's accounts at the Bank of the Philippine Islands were also garnished.

By virtue of the Notice of Attachment and Levy dated September 5, 2005, a white Dodge pick-up truck with plate number XXL 111 was also levied upon. However, a certain Jeremy Simpson filed a Motion for Leave of Court to Intervene, claiming that he is the owner of the truck as shown by a duly-notarized Deed of Sale executed on August 4, 2005, the Certificate of Registration No. 3628665-1 and the Official Receipt No. 271839105.

On November 8, 2005, Wolfe filed a Motion to Discharge the Writ of Attachment, arguing that Watercraft failed to show the existence of fraud and that the mere failure to pay or perform an obligation does not amount to fraud. He also claimed that he is not a flight risk for the following reasons: (1) contrary to the claim that his Special Working Visa expired in April 2005, his Special Subic Working Visa and Alien Certificate of Registration are valid until April 25, 2007 and May 11, 2006,

respectively; (2) he and his family have been residing in the Philippines since 1997; (3) he is an existing stockholder and officer of Wolfe Marine Corporation which is registered with the Securities and Exchange Commission, and a consultant of "Sudeco/Ayala" projects in Subic, a member of the Multipartite Committee for the new port development in Subic, and the Subic Chamber of Commerce; and (4) he intends to finish prosecuting his pending labor case against Watercraft. On even date, Watercraft also filed a Motion for Preliminary Hearing of its affirmative defenses of forum shopping, *litis pendentia*, and laches.

In an Order dated March 20, 2006, the RTC denied Wolfe's Motion to Discharge Writ of Attachment and Motion for Preliminary Hearing for lack of merit.

Wolfe filed a motion for reconsideration, but the RTC also denied it for lack of merit in an Order dated November 10, 2006. Aggrieved, Wolfe filed a petition for *certiorari* before the CA.

The CA granted Wolfe's petition in a Decision dated September 2007, the dispositive portion of which reads:

**WHEREFORE**, the Order dated March 20, 2006 and the Order dated November 10, 2006 of respondent Judge are hereby **ANNULLED** and **SET ASIDE**. Accordingly, the *Writ of Attachment* issued on August 3, 2005, the *Notice of Attachment* dated August 5, 2005 and the *Notice of Attachment and Levy* dated September 5, 2005 are hereby also declared **NULL** and **VOID**, and private respondent is **DIRECTED** to return to their owners the vehicles that were attached pursuant to the Writ.

**SO ORDERED.**<sup>[5]</sup>

The CA ruled that the act of issuing the writ of preliminary attachment *ex-parte* constitutes grave abuse of discretion on the part of the RTC, thus:

x x x In *Cosiquien [v. Court of Appeals]*, the Supreme Court held that:

**"Where a judge issues a fatally defective writ of preliminary attachment based on an affidavit which failed to allege the requisites prescribed for the issuance of the writ of preliminary attachment, renders the writ of preliminary attachment issued against the property of the defendant fatally defective. The judge issuing it is deemed to have acted in excess of jurisdiction.** In fact, the defect cannot even be cured by amendment. Since the attachment is a harsh and rigorous remedy which exposed the debtor to humiliation and annoyance, the rule authorizing its issuance must be strictly construed in favor of defendant. **It is the duty of the court before issuing the Avrit to ensure that all the requisites of the law have been complied with. Otherwise, a judge acquires no jurisdiction to issue the writ.**" (emphasis supplied)

In the instant case, the Affidavit of Merit executed by Rosario E. Rañoa, Watercraft's Vice-President, failed to show fraudulent intent on the part

of Wolfe to defraud the company. It merely enumerated the circumstances tending to show the alleged possibility of Wolfe's flight from the country. And upon Wolfe's filing of the Motion to Discharge the Writ, what the respondent Judge should have done was to determine, through a hearing, whether the allegations of fraud were true. As further held in *Cosiquien*:

**"When a judge issues a writ of preliminary attachment ex-parte, it is incumbent on him, upon proper challenge of his order to determine whether or not the same was improvidently issued. If the party against whom the writ is prayed for squarely controverts the allegation of fraud, it is incumbent on the applicant to prove his allegation. The burden of proving that there indeed was fraud lies with the party making such allegation. This finds support in Section 1, Rule 131 Rules of Court. In this jurisdiction, fraud is never presumed."** (Emphasis supplied)

As correctly noted by Wolfe, although Sec. 1 of Rule 57 allows a party to invoke fraud as a ground for the issuance of a writ of attachment, the Rules require that in all averments of fraud, the circumstances constituting fraud must be stated with particularity, pursuant to Rule 8, Section 5. The *Complaint* merely stated, in paragraph 23 thereof that *"For failing to pay the use [of] facilities and services in the form of boat storage fees, the Defendant is clearly guilty of fraud which entitles the Plaintiff to a Writ of Preliminary Attachment upon the property of the Defendant as security for the satisfaction of any judgment herein."* This allegation does not constitute fraud as contemplated by law, fraud being the *"generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated."* In this instance, Wolfe's mere failure to pay the boat storage fees does not necessarily amount to fraud, absent any showing that such failure was due to [insidious] machinations and intent on his part to defraud Watercraft of the amount due it.

As to the allegation that Wolfe is a flight risk, thereby warranting the issuance of the writ, the same lacks merit. The mere fact that Wolfe is a British national does not automatically mean that he would leave the country at will. As Wolfe avers, he and his family had been staying in the Philippines since 1997, with his daughters studying at a local school. He also claims to be an existing stockholder and officer of Wolfe Marine Corporation, a SEC-registered corporation, as well as a consultant of projects in the Subic Area, a member of the Multipartite Committee for the new port development in Subic, and a member of the Subic Chamber of Commerce. More importantly, Wolfe has a pending labor case against Watercraft - a fact which the company glaringly failed to mention in its complaint - which Wolfe claims to want to prosecute until its very end. The said circumstances, as well as the existence of said labor case where Wolfe stands not only to be vindicated for his alleged illegal dismissal, but

also to receive recompense, should have convinced the trial court that Wolfe would not want to leave the country at will just because a suit for the collection of the alleged unpaid boat storage fees has been filed against him by Watercraft.

Neither should the fact that Wolfe's Special Working Visa expired in April 2005 lead automatically to the conclusion that he would leave the country. It is worth noting that all visas issued by the government to foreigners staying in the Philippines have expiration periods. These visas, however, may be renewed, subject to the requirements of the law. In Wolfe's case, he indeed renewed his visa, as shown by *Special Working Visa No. 05-WV-0124P* issued by the Subic Bay Metropolitan Authority Visa Processing Office on April 25, 2005, and with validity of two (2) years therefrom. Moreover, his *Alien Certificate of Registration* was valid up to May 11, 2006.

Based on the foregoing, it is therefore clear that the writ was improvidently issued. It is well to emphasize that "[T]he rules on the issuance of a writ of attachment must be construed strictly against the applicants. This stringency is required because the remedy of attachment is harsh, extraordinary and summary in nature. If all the requisites for the granting of the writ are not present, then the court which issues it acts in excess of its jurisdiction. Thus, in this case, Watercraft failed to meet all the requisites for the issuance of the writ. Thus, in granting the same, respondent Judge acted with grave abuse of discretion.<sup>[6]</sup>

In a Resolution dated January 24, 2008, the CA denied Watercraft's motion for reconsideration of its Decision, there being no new or significant issues raised in the motion.

Dissatisfied with the CA Decision and Resolution, Watercraft filed this petition for review on *certiorari*, raising these two issues:

I.

WHETHER THE *EX-PARTE* ISSUANCE OF THE PRELIMINARY ATTACHMENT BY THE TRIAL COURT IN FAVOR OF THE PETITIONER IS VALID.

II.

WHETHER THE ALLEGATIONS IN THE AFFIDAVIT OF MERIT CONCERNING FRAUD ARE SUFFICIENT TO WARRANT THE ISSUANCE OF A PRELIMINARY WRIT OF ATTACHMENT BY THE TRIAL COURT IN FAVOR OF THE PETITIONER.<sup>[7]</sup>

Watercraft argues that the CA erred in holding that the RTC committed grave abuse of discretion in issuing the writ of preliminary attachment, and in finding that the affidavit of merit only enumerated circumstances tending to show the possibility of Wolfe's flight from the country, but failed to show fraudulent intent on his part to defraud the company.

Stressing that its application for such writ was anchored on two (2) grounds under