630 Phil. 305

THIRD DIVISION

[G.R. No. 168289, March 22, 2010]

THE MUNICIPALITY OF HAGONOY, BULACAN, REPRESENTED BY THE HON. FELIX V. OPLE, MUNICIPAL MAYOR, AND FELIX V. OPLE, IN HIS PERSONAL CAPACITY, PETITIONERS, VS. HON. SIMEON P. DUMDUM, JR., IN HIS CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 7, CEBU CITY; HON. CLERK OF COURT & EX-OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF CEBU CITY; HON. CLERK OF COURT & EX-OFFICIO SHERIFF OF THE REGIONAL TRIAL COURT OF BULACAN AND HIS DEPUTIES; AND EMILY ROSE GO KO LIM CHAO, DOING BUSINESS UNDER THE NAME AND STYLE KD SURPLUS, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This is a Joint Petition[1] under Rule 45 of the Rules of Court brought by the Municipality of Hagonoy, Bulacan and its former chief executive, Mayor Felix V. Ople in his official and personal capacity, from the January 31, 2005 Decision[2] and the May 23, 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 81888. The assailed decision affirmed the October 20, 2003 Order[4] issued by the Regional Trial Court of Cebu City, Branch 7 in Civil Case No. CEB-28587 denying petitioners' motion to dismiss and motion to discharge/dissolve the writ of preliminary attachment previously issued in the case. The assailed resolution denied reconsideration.

The case stems from a Complaint[5] filed by herein private respondent Emily Rose Go Ko Lim Chao against herein petitioners, the Municipality of Hagonoy, Bulacan and its chief executive, Felix V. Ople (Ople) for collection of a sum of money and damages. It was alleged that sometime in the middle of the year 2000, respondent, doing business as KD Surplus and as such engaged in buying and selling surplus trucks, heavy equipment, machinery, spare parts and related supplies, was contacted by petitioner Ople. Respondent had entered into an agreement with petitioner municipality through Ople for the delivery of motor vehicles, which supposedly were needed to carry out certain developmental undertakings in the municipality. Respondent claimed that because of Ople's earnest representation that funds had already been allocated for the project, she agreed to deliver from her principal place of business in Cebu City twenty-one motor vehicles whose value totaled P5,820,000.00. To prove this, she attached to the complaint copies of the bills of lading showing that the items were consigned, delivered to and received by petitioner municipality on different dates.[6] However, despite having made several deliveries, Ople allegedly did not heed respondent's claim for payment. As of the filing of the complaint, the total obligation of petitioner had already totaled

P10,026,060.13 exclusive of penalties and damages. Thus, respondent prayed for full payment of the said amount, with interest at not less than 2% per month, plus P500,000.00 as damages for business losses, P500,000.00 as exemplary damages, attorney's fees of P100,000.00 and the costs of the suit.

On February 13, 2003, the trial court issued an Order[7] granting respondent's prayer for a writ of preliminary attachment conditioned upon the posting of a bond equivalent to the amount of the claim. On March 20, 2003, the trial court issued the Writ of Preliminary Attachment[8] directing the sheriff "to attach the estate, real and personal properties" of petitioners.

Instead of addressing private respondent's allegations, petitioners filed a Motion to Dismiss[9] on the ground that the claim on which the action had been brought was unenforceable under the statute of frauds, pointing out that there was no written contract or document that would evince the supposed agreement they entered into with respondent. They averred that contracts of this nature, before being undertaken by the municipality, would ordinarily be subject to several preconditions such as a public bidding and prior approval of the municipal council which, in this case, did not obtain. From this, petitioners impress upon us the notion that no contract was ever entered into by the local government with respondent.[10] To address the claim that respondent had made the deliveries under the agreement, they advanced that the bills of lading attached to the complaint were hardly probative, inasmuch as these documents had been accomplished and handled exclusively by respondent herself as well as by her employees and agents.[11]

Petitioners also filed a Motion to Dissolve and/or Discharge the Writ of Preliminary Attachment Already Issued,[12] invoking immunity of the state from suit, unenforceability of the contract, and failure to substantiate the allegation of fraud. [13]

On October 20, 2003, the trial court issued an Order[14] denying the two motions. Petitioners moved for reconsideration, but they were denied in an Order[15] dated December 29, 2003.

Believing that the trial court had committed grave abuse of discretion in issuing the two orders, petitioners elevated the matter to the Court of Appeals via a petition for *certiorari* under Rule 65. In it, they faulted the trial court for not dismissing the complaint despite the fact that the alleged contract was unenforceable under the statute of frauds, as well as for ordering the filing of an answer and in effect allowing private respondent to prove that she did make several deliveries of the subject motor vehicles. Additionally, it was likewise asserted that the trial court committed grave abuse of discretion in not discharging/dissolving the writ of preliminary attachment, as prayed for in the motion, and in effect disregarding the rule that the local government is immune from suit.

On January 31, 2005, following assessment of the parties' arguments, the Court of Appeals, finding no merit in the petition, upheld private respondent's claim and affirmed the trial court's order.[16] Petitioners moved for reconsideration, but the same was likewise denied for lack of merit and for being a mere scrap of paper for having been filed by an unauthorized counsel.[17] Hence, this petition.

In their present recourse, which raises no matter different from those passed upon by the Court of Appeals, petitioners ascribe error to the Court of Appeals for dismissing their challenge against the trial court's October 20 and December 29, 2003 Orders. Again, they reason that the complaint should have been dismissed at the first instance based on unenforceability and that the motion to dissolve/discharge the preliminary attachment should have been granted.[18]

Commenting on the petition, private respondent notes that with respect to the Court of Appeals' denial of the *certiorari* petition, the same was rightly done, as the fact of delivery may be properly and adequately addressed at the trial of the case on the merits; and that the dissolution of the writ of preliminary attachment was not proper under the premises inasmuch as the application for the writ sufficiently alleged fraud on the part of petitioners. In the same breath, respondent laments that the denial of petitioners' motion for reconsideration was rightly done by the Court of Appeals, because it raised no new matter that had not yet been addressed.[19]

After the filing of the parties' respective memoranda, the case was deemed submitted for decision.

We now rule on the petition.

To begin with, the Statute of Frauds found in paragraph (2), Article 1403 of the Civil Code,[20] requires for enforceability certain contracts enumerated therein to be evidenced by some note or memorandum. The term "Statute of Frauds" is descriptive of statutes that require certain classes of contracts to be in writing; and that do not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulate the formalities of the contract necessary to render it enforceable.[21]

In other words, the Statute of Frauds only lays down the method by which the enumerated contracts may be proved. But it does not declare them invalid because they are not reduced to writing inasmuch as, by law, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present.[22] The object is to prevent fraud and perjury in the enforcement of obligations depending, for evidence thereof, on the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.[23] The effect of noncompliance with this requirement is simply that no action can be enforced under the given contracts.[24] If an action is nevertheless filed in court, it shall warrant a dismissal under Section 1(i),[25] Rule 16 of the Rules of Court, unless there has been, among others, total or partial performance of the obligation on the part of either party.[26]

It has been private respondent's consistent stand, since the inception of the instant case that she has entered into a contract with petitioners. As far as she is concerned, she has already performed her part of the obligation under the agreement by undertaking the delivery of the 21 motor vehicles contracted for by Ople in the name of petitioner municipality. This claim is well substantiated -- at least for the initial purpose of setting out a valid cause of action against petitioners -

- by copies of the bills of lading attached to the complaint, naming petitioner municipality as consignee of the shipment. Petitioners have not at any time expressly denied this allegation and, hence, the same is binding on the trial court for the purpose of ruling on the motion to dismiss. In other words, since there exists an indication by way of allegation that there has been performance of the obligation on the part of respondent, the case is excluded from the coverage of the rule on dismissals based on unenforceability under the statute of frauds, and either party may then enforce its claims against the other.

No other principle in remedial law is more settled than that when a motion to dismiss is filed, the material allegations of the complaint are deemed to be hypothetically admitted.[27] This hypothetical admission, according to *Viewmaster Construction Corporation v. Roxas*[28] and *Navoa v. Court of Appeals,*[29] extends not only to the relevant and material facts well pleaded in the complaint, but also to inferences that may be fairly deduced from them. Thus, where it appears that the allegations in the complaint furnish sufficient basis on which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be raised by the defendants.[30] Stated differently, where the motion to dismiss is predicated on grounds that are not indubitable, the better policy is to deny the motion without prejudice to taking such measures as may be proper to assure that the ends of justice may be served.[31]

It is interesting to note at this point that in their bid to have the case dismissed, petitioners theorize that there could not have been a contract by which the municipality agreed to be bound, because it was not shown that there had been compliance with the required bidding or that the municipal council had approved the contract. The argument is flawed. By invoking unenforceability under the Statute of Frauds, petitioners are in effect acknowledging the existence of a contract between them and private respondent -- only, the said contract cannot be enforced by action for being non-compliant with the legal requisite that it be reduced into writing. Suffice it to say that while this assertion might be a viable defense against respondent's claim, it is principally a matter of evidence that may be properly ventilated at the trial of the case on the merits.

Verily, no grave abuse of discretion has been committed by the trial court in denying petitioners' motion to dismiss this case. The Court of Appeals is thus correct in affirming the same.

We now address the question of whether there is a valid reason to deny petitioners' motion to discharge the writ of preliminary attachment.

Petitioners, advocating a negative stance on this issue, posit that as a municipal corporation, the Municipality of Hagonoy is immune from suit, and that its properties are by law exempt from execution and garnishment. Hence, they submit that not only was there an error committed by the trial court in denying their motion to dissolve the writ of preliminary attachment; they also advance that it should not have been issued in the first place. Nevertheless, they believe that respondent has not been able to substantiate her allegations of fraud necessary for the issuance of the writ.[32]

Private respondent, for her part, counters that, contrary to petitioners' claim, she

has amply discussed the basis for the issuance of the writ of preliminary attachment in her affidavit; and that petitioners' claim of immunity from suit is negated by Section 22 of the Local Government Code, which vests municipal corporations with the power to sue and be sued. Further, she contends that the arguments offered by petitioners against the writ of preliminary attachment clearly touch on matters that when ruled upon in the hearing for the motion to discharge, would amount to a trial of the case on the merits.[33]

The general rule spelled out in Section 3, Article XVI of the Constitution is that the state and its political subdivisions may not be sued without their consent. Otherwise put, they are open to suit but only when they consent to it. Consent is implied when the government enters into a business contract, as it then descends to the level of the other contracting party; or it may be embodied in a general or special law[34] such as that found in Book I, Title I, Chapter 2, Section 22 of the Local Government Code of 1991, which vests local government units with certain corporate powers -- one of them is the power to sue and be sued.

Be that as it may, a difference lies between suability and liability. As held in *City of Caloocan v. Allarde,*[35] where the suability of the state is conceded and by which liability is ascertained judicially, the state is at liberty to determine for itself whether to satisfy the judgment or not. Execution may not issue upon such judgment, because statutes waiving non-suability do not authorize the seizure of property to satisfy judgments recovered from the action. These statutes only convey an implication that the legislature will recognize such judgment as final and make provisions for its full satisfaction. Thus, where consent to be sued is given by general or special law, the implication thereof is limited only to the resultant verdict on the action before execution of the judgment.[36]

Traders Royal Bank v. Intermediate Appellate Court,[37] citing *Commissioner of Public Highways v. San Diego,*[38] is instructive on this point. In that case which involved a suit on a contract entered into by an entity supervised by the Office of the President, the Court held that while the said entity opened itself to suit by entering into the subject contract with a private entity; still, the trial court was in error in ordering the garnishment of its funds, which were public in nature and, hence, beyond the reach of garnishment and attachment proceedings. Accordingly, the Court ordered that the writ of preliminary attachment issued in that case be lifted, and that the parties be allowed to prove their respective claims at the trial on the merits. There, the Court highlighted the reason for the rule, to wit:

> The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriations as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects. x x x[39]