

SECOND DIVISION

[G.R. No. 163692, February 04, 2008]

ALLIED BANKING CORPORATION, Petitioner, vs. SOUTH PACIFIC SUGAR CORPORATION, MARGARITA CHUA SIA, AGOSTO SIA, LIN FAR CHUA, GERRY CHUA, SIU DY CHUA, and ANTONIO CHUA, Respondents.

DECISION

QUISUMBING, J.:

The instant petition assails the Decision^[1] dated February 3, 2004 and the Resolution^[2] dated May 13, 2004 of the Court of Appeals in CA-G.R. SP No. 68619. The appellate court had found no grave abuse of discretion on the part of the Regional Trial Court (RTC) of Makati City, Branch 148, in discharging the writ of preliminary attachment it previously granted, and dismissed the petition for certiorari. The motion for reconsideration was denied.

The factual antecedents of this case are as follows:

South Pacific Sugar Corporation (South Pacific), on March 23, 1999, issued three promissory notes totaling P96,000,000^[3] to the petitioner, Allied Banking Corporation (hereafter Allied Bank), to secure payment of loans contracted during the same period. Respondents Margarita Chua Sia, Agosto Sia, Lin Far Chua, Gerry Chua, Siu Dy Chua, and Antonio Chua (guarantors) executed continuing guaranty/comprehensive surety agreements binding themselves solidarily with the corporation. On maturity, South Pacific and its guarantors failed to honor their respective covenants.

On January 26, 2001, Allied Bank filed a complaint for collection of a sum of money with a prayer for the issuance of a writ of preliminary attachment against respondents. Allied Bank prayed in its complaint (1) that upon its filing, a writ of preliminary attachment be issued *ex parte* against all leviable properties of the respondents as may be sufficient to satisfy petitioner's claim; and (2) that the respondents be ordered to pay petitioner P90,000,000 plus interest and charges, as well as attorney's fees and costs of suit.

During the *ex parte* hearing for the issuance of a writ of preliminary attachment, Allied Bank's lone witness, Account Officer Marilou T. Go, testified that Allied Bank approved the corporation's application for credit facilities on the latter's representation that (1) it was in good fiscal condition and had positive business projections as stated in a voluminous Information Memorandum, and that (2) it would use the loan to fund the operations of the sugar refinery. Go further testified that Allied Bank discovered soon after that these representations were false; that the loans were allegedly "diverted to illegitimate purposes;" that as of January 2001, the loan amounted to P90 million; that based on a project study by a

consulting company, Seed Capital Ventures, Inc., South Pacific was suffering losses and incurring debts in the millions; that there had been no credit investigation to appraise the corporation's business operations; and that Allied Bank relied on the financial statements of the corporation.^[4]

Thereafter, the trial court granted the attachment and Allied Bank posted the requisite bond.

The respondents filed a motion to discharge the attachment with an urgent motion to defer further the implementation of the writ, grounded upon the arguments that (1) the evidence of fraud was insufficient and self-serving; and (2) there was no evidence that South Pacific used the loan for other purposes. The respondents pointed out that they have been dealing with Allied Bank since 1995, and had paid a total of P210 million out of a maximum exposure of about P300 million, and that the P90 million subject of the pending suit constitutes merely the balance of their loan.^[5]

The trial court granted the respondents' motion to defer the implementation of the writ of attachment. Allied Bank opposed the motion. After hearing, the court granted the motion to discharge^[6] and denied the motion for reconsideration.^[7]

On certiorari, Allied Bank averred that the trial court acted with precipitate haste in deciding the motion to discharge the attachment without its written opposition, and with grave abuse of discretion in dissolving the writ without requiring the guarantors to post a counter-bond. Finally, it asserted that the trial court failed to appreciate evidence of respondents' fraud.

The Court of Appeals, however, affirmed the trial court's order. It ruled that Allied Bank was not denied its day in court since it was allowed to argue its position during the hearing on the motion and was given ample opportunity to file its opposition. However, Allied Bank failed to take advantage of the period given to it. Instead of filing its opposition within the time allowed by the Court, Allied Bank filed a motion for extension of time by registered mail. Then, it filed its opposition also only by registered mail notwithstanding that it was forewarned that the motion to discharge the attachment would be considered submitted for resolution with or without the parties' respective position papers.^[8]

On the issue of discharge of the writ notwithstanding fraud, the Court of Appeals held that the inability of respondents to pay does not amount to a fraudulent intent. The Court of Appeals stated that Allied Bank failed to justify the grant of a writ of attachment. Essentially, it found wanting such evidence as would establish fraud as required before a writ of attachment may be granted under Section 1,^[9] Rule 57 of the 1997 Rules of Civil Procedure. It found that "the core of the prayer for the attachment was the failure of the respondents to pay their obligations on maturity date," not fraudulent intent to evade their commitments; and that the "inability to pay one's creditors is not necessarily synonymous with fraudulent intent not to honor an obligation."^[10] The appellate court added that Allied Bank was aware of the corporation's financial standing and capacity to pay its loans when Allied Bank granted credit facilities to it. The appellate court noted that respondents had disclosed their financial standing through the Information Memorandum they submitted. The trial court, therefore, committed no grave error, said the appellate

court.

Having failed to obtain a reversal by its motion for reconsideration before the appellate court, Allied Bank now interposes this appeal through a petition for review, raising the following issues:

I.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS NO INTENTION ON [THE] PART OF RESPONDENTS TO DEFRAUD THE PETITIONER.

II.

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT A COUNTER-BOND WAS NECESSARY FOR THE DISCHARGE OF THE WRIT OF PRELIMINARY ATTACHMENT.

III.

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THE COURT A *QUO* COMMITTED GRAVE ABUSE OF DISCRETION IN DISCHARGING THE WRIT OF PRELIMINARY ATTACHMENT WITHOUT AFFORDING THE PETITIONER THE REQUISITE DUE PROCESS OF LAW.^[11]

The ultimate issue raised in this petition is whether there was fraud committed by respondents against petitioner bank such that a writ of attachment may be issued against respondents.

Allied Bank contends that respondents were guilty of fraud in contracting for their loan amounting to about P90 million and in performing their obligations under said loan, as sufficiently testified to by its lone witness. Respondents counter that they had no fraudulent intent in such contract for loan nor in the performance of obligations thereunder.

A thorough examination of witness Marilou Go's testimony, however, reveals that her testimony did not detail how respondents induced or deceived Allied Bank into granting the loans. She mentioned an Information Memorandum which allegedly misled Allied Bank to grant the loan. She claimed that promising financial projections in said Memorandum guaranteeing South Pacific's present and future capacity to pay convinced Allied Bank to approve the loan. Yet, the Information Memorandum was never presented in evidence. Neither was its existence proved, nor its authorship authenticated, much less its contents shown to explain how the information could have enticed, misinformed or deceived Allied Bank. The alleged content of the document, which was not identified nor formally offered in evidence, is technically pure hearsay. It cannot be admitted or considered as the proof of petitioner's contention.^[12]

Next, the witness of petitioner, Marilou Go, cited a project study prepared by a certain consulting firm, Seed Capital Ventures, Inc.. According to petitioner, the project study suggested that only about 60% of South Pacific's mill and refinery was being utilized to capacity, leading Allied Bank to suspect that the loan was being

diverted to other purposes. Yet, again, the project study was neither presented nor offered in evidence, hence testimony on it is just hearsay.

The same witness also testified that South Pacific was indebted in millions of pesos to several other banks, but then again, no documentary evidence or other proof was presented to establish such fact. Hence, the witness' testimony remains uncorroborated.

In our considered view, without presenting the documents adverted to by petitioner's lone witness, Allied Bank's allegations of fraud amount to no more than mere conjectures. Yet there is no showing why Allied Bank, being in the business of loans, could not obtain and present the necessary documents in support of its allegations. Thus, we are in agreement that the Court of Appeals was correct in finding that the testimony of Allied Bank's witness failed to show that respondents' indebtedness was incurred fraudulently.

Moreover, even a cursory examination of the bank's complaint will reveal that it cited no factual circumstance to show fraud on the part of respondents. The complaint only had a general statement in the Prayer for the Issuance of a Writ of Preliminary Attachment, reproduced in the attached affidavit of petitioner's witness Go who stated as follows:

x x x x

4. Defendants committed fraud in contracting the obligations upon which the present action is based and in the performance thereof. Among others, defendants induced plaintiff to grant the subject loans to defendant corporation by wilfully and deliberately misrepresenting that, one, the proceeds of the loans would be used as additional working capital and, two, they would be in a financial position to pay, and would most certainly pay, the loan obligations on their maturity dates. In truth, defendants had no intention of honoring their commitments as shown by the fact that upon their receipt of the proceeds of the loans, they diverted the same to illegitimate purposes and then brazenly ignored and resisted plaintiff's lawful demands for them to settle their past due loan obligations;^[13]

x x x x

Such general averment will not suffice to support the issuance of the writ of preliminary attachment. It is necessary to recite in what particular manner an applicant for the writ of attachment was defrauded. In a prayer for a writ of attachment, as already held by this Court:

... It is not enough for the complaint to ritualistically cite, as here, that the defendants are "guilty of fraud in contracting an obligation." **An order of attachment cannot be issued on a general averment**, such as one ceremoniously quoting from a pertinent rule. **The need for a recitation of factual circumstances that support the application becomes more compelling here considering that the ground relied upon is "fraud in contracting an obligation."** The complaint utterly failed to even give a hint about what constituted the fraud and