

THIRD DIVISION

[G.R. No. 175587, September 21, 2007]

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER,
VS. JOSEPH ANTHONY M. ALEJANDRO, RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review assails the May 31, 2006 Decision^[1] of the Court of Appeals in CA-G.R. CV No. 78200 affirming the August 30, 2000 Decision^[2] of the Regional Trial Court of Makati, which granted respondent Joseph Anthony M. Alejandro's claim for damages arising from petitioner Philippine Commercial International Bank's (PCIB) invalid garnishment of respondent's deposits.

On October 23, 1997, petitioner filed against respondent a complaint^[3] for sum of money with prayer for the issuance of a writ of preliminary attachment. Said complaint alleged that on September 10, 1997, respondent, a resident of Hong Kong, executed in favor of petitioner a promissory note obligating himself to pay P249,828,588.90 plus interest. In view of the fluctuations in the foreign exchange rates which resulted in the insufficiency of the deposits assigned by respondent as security for the loan, petitioner requested the latter to put up additional security for the loan. Respondent, however, sought a reconsideration of said request pointing out petitioner's alleged mishandling of his account due to its failure to carry out his instruction to close his account as early as April 1997, when the prevailing rate of exchange of the US Dollar to Japanese yen was US\$1.00:JPY127.50.^[4] It appears that the amount of P249,828,588.90 was the consolidated amount of a series of yen loans granted by petitioner to respondent during the months of February and April 1997.^[5]

In praying for the issuance of a writ of preliminary attachment under Section 1 paragraphs (e) and (f) of Rule 57 of the Rules of Court, petitioner alleged that (1) respondent fraudulently withdrew his unassigned deposits notwithstanding his verbal promise to PCIB Assistant Vice President Corazon B. Nepomuceno not to withdraw the same prior to their assignment as security for the loan; and (2) that respondent is not a resident of the Philippines. The application for the issuance of a writ was supported with the affidavit of Nepomuceno.^[6]

On October 24, 1997, the trial court granted the application and issued the writ *ex parte*^[7] after petitioner posted a bond in the amount of P18,798,734.69, issued by Prudential Guarantee & Assurance Inc., under Bond No. HO-46764-97. On the same date, the bank deposits of respondent with Rizal Commercial Banking Corporation (RCBC) were garnished. On October 27, 1997, respondent, through counsel, filed a manifestation informing the court that he is voluntarily submitting to its jurisdiction.

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Subsequently, respondent filed a motion to quash^[9] the writ contending that the withdrawal of his unassigned deposits was not fraudulent as it was approved by petitioner. He also alleged that petitioner knew that he maintains a permanent residence at Calle Victoria, Ciudad Regina, Batasan Hills, Quezon City, and an office address in Makati City at the Law Firm Romulo Mabanta Buenaventura Sayoc & De los Angeles, ^[10] where he is a partner. In both addresses, petitioner regularly communicated with him through its representatives. Respondent added that he is the managing partner of the Hong Kong branch of said Law Firm; that his stay in Hong Kong is only temporary; and that he frequently travels back to the Philippines.

On December 24, 1997, the trial court issued an order quashing the writ and holding that the withdrawal of respondent's unassigned deposits was not intended to defraud petitioner. It also found that the representatives of petitioner personally transacted with respondent through his home address in Quezon City and/or his office in Makati City. It thus concluded that petitioner misrepresented and suppressed the facts regarding respondent's residence considering that it has personal and official knowledge that for purposes of service of summons, respondent's residence and office addresses are located in the Philippines. The dispositive portion of the court's decision is as follows:

WHEREFORE, the URGENT MOTION TO QUASH, being meritorious, is hereby GRANTED, and the ORDER of 24 October 1997 is hereby RECONSIDERED and SET ASIDE and the WRIT OF attachment of the same is hereby DISCHARGED.

SO ORDERED.^[11]

With the denial^[12] of petitioner's motion for reconsideration, it elevated the case to the Court of Appeals (CA-G.R. SP No. 50748) via a petition for *certiorari*. On May 10, 1999, the petition was dismissed for failure to prove that the trial court abused its discretion in issuing the aforesaid order.^[13] Petitioner filed a motion for reconsideration but was denied on October 28, 1999.^[14] On petition with this Court, the case was dismissed for late filing in a minute resolution (G.R. No. 140605) dated January 19, 2000.^[15] Petitioner filed a motion for reconsideration but was likewise **denied with finality on March 6, 2000.**^[16]

Meanwhile, on May 20, 1998, respondent filed a claim for damages in the amount of P25 Million^[17] on the attachment bond (posted by Prudential Guarantee & Assurance, Inc., under JCL(4) No. 01081, Bond No. HO-46764-97) on account of the wrongful garnishment of his deposits. He presented evidence showing that his P150,000.00 RCBC check payable to his counsel as attorney's fees, was dishonored by reason of the garnishment of his deposits. He also testified that he is a graduate of the Ateneo de Manila University in 1982 with a double degree of Economics and Management Engineering and of the University of the Philippines in 1987 with the degree of Bachelor of Laws. Respondent likewise presented witnesses to prove that he is a well known lawyer in the business community both in the Philippines and in Hong Kong.^[18] For its part, the lone witness presented by petitioner was Nepomuceno who claimed that she acted in good faith in alleging that respondent is a resident of Hong Kong.^[19]

On August 30, 2000, the trial court awarded damages to respondent in the amount of P25 Million without specifying the basis thereof, thus:

WHEREFORE, premises above considered, and defendant having duly established his claim in the amount of P25,000,000.00, judgment is hereby rendered ordering Prudential Guarantee & [Assurance] Co., which is solidarily liable with plaintiff to pay defendant the full amount of bond under Prudential Guarantee & Assurance, Inc. JCL(4) No. 01081, [Bond No. HO-46764-97], dated 24 October 1997 in the amount of P18,798,734.69. And, considering that the amount of the bond is insufficient to fully satisfy the award for damages, plaintiff is hereby ordered to pay defendant the amount of P6,201,265.31.

SO ORDERED.[20]

The trial court denied petitioner's motion for reconsideration on October 24, 2000.
[21]

Petitioner elevated the case to the Court of Appeals which affirmed the findings of the trial court. It held that in claiming that respondent was not a resident of the Philippines, petitioner cannot be said to have been in good faith considering that its knowledge of respondent's Philippine residence and office address goes into the very issue of the trial court's jurisdiction which would have been defective had respondent not voluntarily appeared before it.

The Court of Appeals, however, reduced the amount of damages awarded to petitioner and specified their basis. The dispositive portion of the decision of the Court of Appeals states:

WHEREFORE, the appeal is PARTIALLY GRANTED and the decision appealed from is hereby MODIFIED. The award of damages in the amount of P25,000,000.00 is deleted. In lieu thereof, Prudential Guarantee & [Assurance, Inc.], which is solidarily liable with appellant [herein petitioner], is ORDERED to pay appellee [herein respondent] P2,000,000.00 as nominal damages; P5,000,000.00 as moral damages; and P1,000,000.00 as attorney's fees, to be satisfied against the attachment bond under Prudential Guarantee & Assurance, Inc. JCL (4) No. 01081.

SO ORDERED.[22]

Both parties moved for reconsideration. On November 21, 2006, the Court of Appeals denied petitioner's motion for reconsideration but granted that of respondent's by ordering petitioner to pay additional P5Million as exemplary damages.[23]

Hence, the instant petition.

At the outset, it must be noted that the ruling of the trial court that petitioner is not entitled to a writ of attachment because respondent is a resident of the Philippines and that his act of withdrawing his deposits with petitioner was without intent to

defraud, can no longer be passed upon by this Court. More importantly, the conclusions of the court that petitioner bank misrepresented that respondent was residing out of the Philippines and suppressed the fact that respondent has a permanent residence in Metro Manila where he may be served with summons, are now beyond the power of this Court to review having been the subject of a final and executory order. Said findings were sustained by the Court of Appeals in CA-G.R. SP No. 50784 and by this Court in G.R. No. 140605. The rule on conclusiveness of judgment, which obtains under the premises, precludes the relitigation of a particular fact or issue in another action between the same parties even if based on a different claim or cause of action. The judgment in the prior action operates as estoppel as to those matters in issue or points controverted, upon the determination of which the finding or judgment was rendered. The previous judgment is conclusive in the second case, as to those matters actually and directly controverted and determined.^[24] Hence, the issues of misrepresentation by petitioner and the residence of respondent for purposes of service of summons can no longer be questioned by petitioner in this case.

The core issue for resolution is whether petitioner bank is liable for damages for the improper issuance of the writ of attachment against respondent.

We rule in the affirmative.

Notwithstanding the final judgment that petitioner is guilty of misrepresentation and suppression of a material fact, the latter contends that it acted in good faith. Petitioner also contends that even if respondent is considered a resident of the Philippines, attachment is still proper under Section 1, paragraph (f), Rule 57 of the Rules of Court since he (respondent) is a resident who is temporarily out of the Philippines upon whom service of summons may be effected by publication.

Petitioner's contentions are without merit.

While the final order of the trial court which quashed the writ did not categorically use the word "bad faith" in characterizing the representations of petitioner, the tenor of said order evidently considers the latter to have acted in bad faith by resorting to a deliberate strategy to mislead the court. Thus –

In the hearings of the motion, and oral arguments of counsels before the Court, it appears that plaintiff BANK through its contracting officers Vice President Corazon B. Nepomuceno and Executive Vice President Jose Ramon F. Revilla, personally transacted with defendant mainly through defendant's permanent residence in METRO-MANILA, either in defendant's home address in Quezon City or his main business address at the Romulo Mabanta Buenaventura Sayoc & Delos Angeles in MAKATI and while at times follow ups were made through defendant's temporary home and business addresses in Hongkong. It is therefore clear that plaintiff could not deny their personal and official knowledge that defendant's permanent and official residence for purposes of service of summons is in the Philippines. In fact, this finding is further confirmed by the letter of Mr. JOHN GOKONGWEI, JR. Chairman, Executive Committee of plaintiff BANK, in his letter dated 6 October 1997 on the subject loan to defendant of the same law firm was addressed to the ROMULO LAW FIRM in MAKATI.

[Anent the] second ground of attachment x x x [t]he Court finds that the amount withdrawn was not part of defendant's peso deposits assigned with the bank to secure the loan and as proof that the withdrawal was not intended to defraud plaintiff as creditor is that plaintiff approved and allowed said withdrawals. It is even noted that when the Court granted the prayer for attachment it was mainly on the first ground under Section 1(f) of Rule 57 of the 1997 Rules of Civil Procedure, that defendant resides out of the Philippines.

On the above findings, it is obvious that plaintiff already knew from the beginning the deficiency of its second ground for attachment [i.e.,] disposing properties with intent to defraud his creditors, and therefore plaintiff had to resort to this misrepresentation that defendant was residing out of the Philippines and suppressed the fact that defendant's permanent residence is in METRO MANILA where he could be served with summons.

On the above findings, and mainly on the misrepresentations made by plaintiff on the grounds for the issuance of the attachment in the verified complaint, the Court concludes that defendant has duly proven its grounds in the MOTION and that plaintiff is not entitled to the attachment.^[25]

Petitioner is therefore barred by the principle of conclusiveness of judgment from again invoking good faith in the application for the issuance of the writ. Similarly, in the case of *Hanil Development Co., Ltd. v. Court of Appeals*,^[26] the Court debunked the claim of good faith by a party who maliciously sought the issuance of a writ of attachment, the bad faith of said party having been previously determined in a final decision which voided the assailed writ. Thus –

Apropos the Application for Judgment on the Attachment Bond, Escobar claims in its petition that the award of attorney's fees and injunction bond premium in favor of Hanil is [contrary] to law and jurisprudence. It contends that no malice or bad faith may be imputed to it in procuring the writ.

Escobar's protestation is now too late in the day. The question of the illegality of the attachment and Escobar's bad faith in obtaining it has long been settled in one of the earlier incidents of this case. The Court of Appeals, in its decision rendered on February 3, 1983 in C.A.-G.R. No. SP-14512, voided the challenged writ, having been issued with grave abuse of discretion. Escobar's bad faith in procuring the writ cannot be doubted. Its Petition for the Issuance of Preliminary Attachment made such damning allegations that: Hanil was already able to secure a complete release of its final collection from the MPWH; it has moved out some of its heavy equipments for unknown destination, and it may leave the country anytime. Worse, its *Ex Parte* Motion to Resolve Petition alleged that "after personal verification by (Escobar) of (Hanil's) equipment in Cagayan de Oro City, it appears that the equipments were no longer existing from their compound." All these allegations of Escobar were found to be totally baseless and untrue.