510 Phil. 668

THIRD DIVISION

[G.R. NO. 146400, October 25, 2005]

BERNARDITO A. FLORIDO, PETITIONER, VS. SHEMBERG MARKETING CORPORATION, RESPONDENT.

D E C I S I O N

CORONA, J.:

This is a petition for review on certiorari[1] of a decision of the Court of Appeals (CA) in CA-G.R. SP No. 58381[2] and its resolution denying reconsideration.[3] The CA affirmed the orders of the Regional Trial Court of Mandaue City, Branch 55.[4]

The events leading up to this petition began on November 12, 1998 when respondent Shemberg Marketing Corporation filed a complaint for collection of a sum of money with a plea for the issuance of a writ of preliminary attachment against Solomon Nacua, Jr.[5] On December 17, 1998, the trial court granted Shemberg's plea and ordered the issuance of the writ.[6]

On January 7, 1999, the sheriff prepared a notice of levy on attachment over five marine vessels owned by Nacua, namely, M/L Almeida I through M/L Almeida V.[7] The sheriff then proceeded to Nacua's house to serve the writ but learned that he had fled the country and had appointed an attorney-in-fact, Mariano Florido, Jr., brother of petitioner. The sheriff then went to Florido's house and served the summons on him, in the presence of petitioner. Seeing four vessels owned by Nacua moored at the Cabahug Wharf in Looc, Mandaue City without any officers or crew, the sheriff levied on and took possession of them and made an inventory.[8]

On January 8, 1999, petitioner filed a "Third Party Claim" with the trial court, claiming that Nacua was indebted to him in the amount of seven million pesos (P7,000,000) and that, to secure payment, Nacua had, through his attorney-in-fact (petitioner's brother Florido Jr.), executed in petitioner's favor a contract of pledge over his vessels M/L Almeida I through M/L Almeida V.[9]

He also filed, on the same day, a "Motion to Declare Levy on Attachment Null and Void and for Preliminary Injunction," alleging that there had been no valid service of summons on him and that, prior to the purported service of the complaint and summons, the sheriff had already seized and taken possession of the four vessels.[10] The petitioner likewise filed a "Motion to Cancel Bond" on the ground that the Office of the Clerk of Court had no copy of a "Certificate of Authority" issued in favor of the bonding company. Respondent opposed petitioner's motion, alleging that petitioner had no legal standing to assail the levy and that there had been a valid service of summons and complaint upon Nacua.

On December 1, 1999, the trial court denied the motions of petitioner, ruling that

there had been a proper service of summons and that the petitioner had no personality to challenge the attachment bond, given that only the defendant Nacua could do so. Petitioner then filed a "Complaint of Third-Party Claimant" for "Vindication of Third-Party Claim,"[11] which to date is still pending.

On April 13, 2000, petitioner filed a special civil action for certiorari under Rule 65 of the Rules of Court with the Court of Appeals, seeking the nullification of the orders of the trial court denying his "Motion to Declare Levy on Attachment Null and Void" and his "Motion to Cancel Bond." On July 26, 2000, the Court of Appeals rendered the assailed decision and, on November 14, 2000, denied reconsideration.

Petitioner assigns the following errors:

> I. THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE TRIAL COURT'S WHIMSICAL DENIAL OF PETITIONER'S MOTION TO ANNUL LEVY ON ATTACHMENT.
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> II. THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE TRIAL COURT'S ARBITRARY AND CAPRICIOUS DENIAL OF PETITIONER'S *UNOPPOSED* MOTION TO CANCEL BOND FOR FAILURE OF THE SURETY COMPANY TO SHOW PROOF OF ITS QUALIFICATION.
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> III. THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT PETITIONER MAY NO LONGER FILE DAMAGES AFTER HE HAS FILED A MOTION QUESTIONING THE VALIDITY OF THE ATTACHMENT BOND.[12]

For its part, respondent claims:

> 1) that the petition does not deal with questions of law but solely with questions of fact which have yet to be threshed out in the "Third-Party Claim" and the "Complaint of Third Party Claimant" which he himself filed with the trial court;
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> 2) that the Court of Appeals correctly held that the sheriff could not be faulted for not releasing to petitioner the properties levied on attachment;
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> 3) that the Court of Appeals correctly held that petitioner has a speedy, plain and adequate remedy, and
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> 4) that the Court of Appeals correctly rejected the petitioner's attack against the validity of the attachment bond.

At bottom, the resolution of this petition boils down to whether or not petitioner had the personality to challenge the attachment writ and bond. He did not.

Section 14, Rule 57 of the 1997 Rules of Civil Procedure categorically provides specific remedies to one claiming a right to property attached in a suit in which the claimant is not a party:

> If the property attached is claimed by any person other than the party against whom attachment had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof,

> stating the grounds of such right or title, and serves such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment, unless the attaching party or his agent, on demand of the sheriff, shall file a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the court issuing the writ of attachment. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.
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> The sheriff shall not be liable for damages for the taking or keeping of such property, to any such third-party claimant, if such bond shall be filed. **Nothing herein contained shall prevent such claimant to any third person from vindicating his claim to the property**, or prevent the attaching party from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, **in the same or a separate action**. (Emphasis ours)

Instead of submitting an affidavit of his title stating his right to the vessels, petitioner elected to pursue his claim in the respondent's action against Nacua. The veracity of his claim should therefore be threshed out there.

Petitioner all but trivializes the fact that his motion and subsequent special civil action for certiorari were filed in disregard of the 1997 Revised Rules of Civil Procedure. He attempts to justify this with the conjectural and self-serving statement that "the filing of an Affidavit of Claim, or a separate action cannot promptly relieve the petitioner of the harsh consequences of the unlawful levy on attachment. In actuality, thus, no other plain, speedy and adequate remedy in the course of law available to petitioner other than the above-named special action (*sic*)."[13]

The emergence of third-party claims to protest the attachment of property is hardly new. In *Roque v. Court of Appeals*,[14] petitioner Eligio Roque, also a stranger to a suit for collection of a sum of money, likewise sought to recover a barge that had been attached by the plaintiff. He acquired the vessel at an auction sale held by the company which had done repairs on the barge and which was selling the same to satisfy its mechanic's lien. The lien had accrued long before the writ of attachment was issued. In denying Roque's petition, we ruled:

> It should be reiterated that this is a special civil action for Certiorari, the main requisites for the issuance of which Writ are: 1) that the Writ be directed against a tribunal, board or officer exercising judicial functions; 2) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and 3) that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. While the first requisite has been met, the second and the third have not.
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> We agree with the findings of the Court of Appeals that **petitioners were not without any plain, speedy and adequate remedy in the**