

FIRST DIVISION

[G.R. No. 115678, February 23, 2001]

**PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS.
HON. COURT OF APPEALS AND BERNARDINO VILLANUEVA,
RESPONDENTS.**

G.R. NO. 119723

**PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS.
HON. COURT OF APPEALS AND FILIPINAS TEXTILE MILLS, INC.,
RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Before us are consolidated petitions for review both filed by Philippine Bank of Communications; one against the May 24, 1994 Decision of respondent Court of Appeals in CA-G.R. SP No. 32863^[1] and the other against its March 31, 1995 Decision in CA-G.R. SP No. 32762.^[2] Both Decisions set aside and nullified the August 11, 1993 Order^[3] of the Regional Trial Court of Manila, Branch 7, granting the issuance of a writ of preliminary attachment in Civil Case No. 91-56711.

The case commenced with the filing by petitioner, on April 8, 1991, of a Complaint against private respondent Bernardino Villanueva, private respondent Filipinas Textile Mills and one Sochi Villanueva (now deceased) before the Regional Trial Court of Manila. In the said Complaint, petitioner sought the payment of P2,244,926.30 representing the proceeds or value of various textile goods, the purchase of which was covered by irrevocable letters of credit and trust receipts executed by petitioner with private respondent Filipinas Textile Mills as obligor; which, in turn, were covered by surety agreements executed by private respondent Bernardino Villanueva and Sochi Villanueva. In their Answer, private respondents admitted the existence of the surety agreements and trust receipts but countered that they had already made payments on the amount demanded and that the interest and other charges imposed by petitioner were onerous.

On May 31, 1993, petitioner filed a Motion for Attachment,^[4] contending that violation of the trust receipts law constitutes estafa, thus providing ground for the issuance of a writ of preliminary attachment; specifically under paragraphs "b" and "d," Section 1, Rule 57 of the Revised Rules of Court. Petitioner further claimed that attachment was necessary since private respondents were disposing of their properties to its detriment as a creditor. Finally, petitioner offered to post a bond for the issuance of such writ of attachment.

The Motion was duly opposed by private respondents and, after the filing of a Reply thereto by petitioner, the lower court issued its August 11, 1993 Order for the

issuance of a writ of preliminary attachment, conditioned upon the filing of an attachment bond. Following the denial of the Motion for Reconsideration filed by private respondent Filipinas Textile Mills, both private respondents filed separate petitions for *certiorari* before respondent Court assailing the order granting the writ of preliminary attachment.

Both petitions were granted, albeit on different grounds. In CA-G.R. SP No. 32762, respondent Court of Appeals ruled that the lower court was guilty of grave abuse of discretion in not conducting a hearing on the application for a writ of preliminary attachment and not requiring petitioner to substantiate its allegations of fraud, embezzlement or misappropriation. On the other hand, in CA-G.R. SP No. 32863, respondent Court of Appeals found that the grounds cited by petitioner in its Motion do not provide sufficient basis for the issuance of a writ of preliminary attachment, they being mere general averments. Respondent Court of Appeals held that neither embezzlement, misappropriation nor incipient fraud may be presumed; they must be established in order for a writ of preliminary attachment to issue.

Hence, the instant consolidated^[5] petitions charging that respondent Court of Appeals erred in -

- "1. Holding that there was no sufficient basis for the issuance of the writ of preliminary attachment in spite of the allegations of fraud, embezzlement and misappropriation of the proceeds or goods entrusted to the private respondents;
2. Disregarding the fact that that the failure of FTMI and Villanueva to remit the proceeds or return the goods entrusted, in violation of private respondents' fiduciary duty as entrustee, constitute embezzlement or misappropriation which is a valid ground for the issuance of a writ of preliminary attachment."^[6]

We find no merit in the instant petitions.

To begin with, we are in accord with respondent Court of Appeals in CA-G.R. SP No. 32863 that the Motion for Attachment filed by petitioner and its supporting affidavit did not sufficiently establish the grounds relied upon in applying for the writ of preliminary attachment.

The Motion for Attachment of petitioner states that -

1. The instant case is based on the failure of defendants as entrustee to pay or remit the proceeds of the goods entrusted by plaintiff to defendant as evidenced by the trust receipts (Annexes "B", "C" and "D" of the complaint), nor to return the goods entrusted thereto, in violation of their fiduciary duty as agent or entrustee;
2. Under Section 13 of P.D. 115, as amended, violation of the trust receipt law constitute(s) estafa (fraud and/or deceit) punishable under Article 315 par. 1[b] of the Revised Penal Code;

3. On account of the foregoing, there exist(s) valid ground for the issuance of a writ of preliminary attachment under Section 1 of Rule 57 of the Revised Rules of Court particularly under sub-paragraphs "b" and "d", i.e. for embezzlement or fraudulent misapplication or conversion of money (proceeds) or property (goods entrusted) by an agent (entrustee) in violation of his fiduciary duty as such, and against a party who has been guilty of fraud in contracting or incurring the debt or obligation;
4. The issuance of a writ of preliminary attachment is likewise urgently necessary as there exist(s) no sufficient security for the satisfaction of any judgment that may be rendered against the defendants as the latter appears to have disposed of their properties to the detriment of the creditors like the herein plaintiff;
5. Herein plaintiff is willing to post a bond in the amount fixed by this Honorable Court as a condition to the issuance of a writ of preliminary attachment against the properties of the defendants.

Section 1(b) and (d), Rule 57 of the then controlling Revised Rules of Court, provides, to wit -

SECTION 1. *Grounds upon which attachment may issue.* - A plaintiff or any proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

x x x x x x x x

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

x x x x x x x x

(d) In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;

x x x x x x x x

While the Motion refers to the transaction complained of as involving trust receipts, the violation of the terms of which is qualified by law as constituting estafa, it does not follow that a writ of attachment can and should automatically issue. Petitioner cannot merely cite Section 1(b) and (d), Rule 57, of the Revised Rules of Court, as mere reproduction of the rules, without more, cannot serve as good ground for issuing a writ of attachment. An order of attachment cannot be issued on a general averment, such as one ceremoniously quoting from a pertinent rule.^[7]