

## THIRTEENTH DIVISION

[ CA-G.R. SP No. 122931, March 28, 2014 ]

**ALARM SECURITY & INVESTIGATION SERVICES, INC.,  
PETITIONER, VS. HON. RIZALINA T. CAPCO-UMALI AS  
PRESIDING JUDGE OF BRANCH 212, REGIONAL TRIAL COURT OF  
MANDALUYONG CITY, CYNTHIA S. RAMILO AND ELSIE V.  
SAREMO, RESPONDENTS.**

### DECISION

**YBAÑEZ, J.:**

Because public respondent Judge Rizalina Capco-Umali issued an Order<sup>[1]</sup> on 10 June 2011 denying its Motions to Recall the Order dated 06 April 2011 and Reconsideration, petitioner filed this Petition for Certiorari<sup>[2]</sup> to annul and set aside the aforesaid order and forthwith reinstate the writ of preliminary attachment previously issued against private respondent Cynthia Ramilo.

#### The Facts

On 11 March 2010, petitioner filed an Amended Complaint for Restitution/ Sum of Money and Damages with Application for a Writ of Preliminary Attachment<sup>[3]</sup> against its former employee, Cynthia Ramilo, who purportedly amassed a total of Sixteen Million Five Hundred Seventy Five Thousand Three Hundred Eighty Six Pesos & 11/100 (P16,575,386.11) in connivance with her sister, Elsie Saremo. The suit was docketed as Civil Case No. MC09-4166 and raffled to the sala of Judge Carlos Valenzuela of Branch 213, Regional Trial Court of Mandaluyong City.

Judge Valenzuela ordered on 14 January 2010, the issuance of preliminary attachment in favor of the petitioner conditioned upon the posting of a bond amounting to Sixteen Million Five Hundred Seventy Five Thousand Three Hundred Eighty Six Pesos & 11/100 (P16,576,386.11)<sup>[4]</sup> which petitioner complied with on 29 January 2010.<sup>[5]</sup> Thereafter or on 01 March 2010, Sheriff Gerardo Umali caused the annotation of the Notice of Attachment upon the real property covered by TCT V-90561 and registered in the name of spouses Almario and Cynthia Ramilo.<sup>[6]</sup>

In her Answer with Counterclaim,<sup>[7]</sup> private respondent Ramilo denied petitioner's allegation that she defrauded the company a vast amount of money since, as a bookkeeper, she is not the person responsible for preparing the payrolls sheet and ATM transmittal logbook as well as in the encoding of amounts on the documents that were forwarded to the bank. Such duties pertain to the Accounting and Payroll department that was headed by Nelia Servidad. Private respondent Saremo, on the other hand, did not file any answer prompting petitioner to moved to declare her in default.<sup>[8]</sup>

Private respondent Ramilo likewise moved for the quashal and/or lifting of the writ of attachment since the property levied upon is their family home which is one of those properties exempt from execution. Another reason she pointed out to bolster the quashal is the impropriety of the attachment on the one-half (½) undivided share of his husband over the attached property who was not made a party in the instant case.<sup>[9]</sup>

On 14 February 2011, Judge Valenzuela issued an Order<sup>[10]</sup> ("Judge Valenzuela's Order") granting the private respondent Ramilo's Motion to Quash/Lift Writ of Attachment on the ground that the subject attached property is exempt from execution or attachment pursuant to Section 13, Rule 39 of the Revised Rules of Court. In the same Order also, he denied petitioner's motion to declare private respondent Saremo in default.

Aggrieved with the aforesaid Order and alarmed of a suspected partiality and bias in favor of the private respondents, petitioner moved to disqualify or inhibit Judge Valenzuela from the case which the latter granted on 15 March 2011.<sup>[11]</sup> Consequently, the case was re-raffled to Branch 212, sala of public respondent Judge Rizalina Capco-Umali.

On 06 April 2011, public respondent ordered the issuance of a Certificate of Finality of the Order dated 14 February 2011, which quashed the writ of attachment, since petitioner did not file any motion for reconsideration as of said date.<sup>[12]</sup> Said certificate dated 12 April 2011<sup>[13]</sup> was then furnished to the parties' counsels.

On 09 May 2011, petitioner filed a Motion to Recall the Order dated 06 April 2011<sup>[14]</sup> averring that the certificate of finality ordered by the public respondent to be issued is premature and inappropriate because said order is an interlocutory one which cannot attain finality because of the on-going court proceedings. In fact, private respondents even included as one of the proposed issues to be tried, the propriety of the issuance of the writ of attachment. Petitioner likewise prayed that the court admit the attached Motion for Reconsideration of the Order dated 14 February 2011<sup>[15]</sup> where it posited that that it was denied of a legitimate process when Judge Valenzuela denied its motion to reset and eventually ordered the quashal of the writ of attachment. It further argued that said Order has no basis because the case cited by Judge Valenzuela has nothing to do with a family home's exemption from attachment or execution.

On 10 June 2011, public respondent issued the assailed Order<sup>[16]</sup> denying petitioner's Motions to Recall and Reconsideration. Undaunted, petitioner sought to reconsider the assailed Order which turned out to be futile in view of the Order dated 17 October 2011.<sup>[17]</sup>

Hence, petitioner filed the instant petition interposing the following grounds,<sup>[18]</sup> *to wit:*

RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND/OR GRAVELY ABUSED HER DISCRETION IN ISSUING THE ORDER DATED JUNE 10, 2011 AND THE SUBSEQUENT ORDER DATED OCTOBER 17, 2011, THEREBY DENYING PETITIONER'S SIMULTANEOUSLY FILED -

(i) MOTION FOR RECONSIDERATION OF THE ORDER DATED 14 FEBRUARY 2011 AND (ii) MOTION TO RECALL THE ORDER DATED 6 APRIL 2011, UPON WHICH THE CERTIFICATE OF FINALITY OF THE ORDER DATED 14 FEBRUARY 2011 IS BASED, AND AS SUCH REFUSING TO ADMIT THE ATTACHED MOTION FOR RECONSIDERATION OF THE ORDER DATED 14 FEBRUARY 2011, IN THAT -

A

BY ISSUING THE TWO QUESTIONED ORDERS, THE RESPONDENT JUDGE ASSENTS AND HAS EFFECTIVELY RATIFIED THE ORDER DATED 14 FEBRUARY 2011 RENDERED BY A COORDINATE COURT/BRANCH, CAUSING THE LIFTING OF THE WRIT OF ATTACHMENT GRANTED TO PETITIONER BY THE COURT A QUO, DESPITE ALL INDICATIONS THAT THE SAID ORDER HAS NOT BEEN JUSTIFIED BY STATUTE OR CASE LAW AND THEREFORE LACKS LEGAL BASIS.

B

BY ASSENTING TO AND EFFECTIVELY RATIFYING THE ORDER DATED 14 FEBRUARY 2011, RESPONDENT JUDGE DEPRIVED PETITIONER OF ITS DAY IN COURT THEREBY DENYING IT THE OPPORTUNITY TO BE HEARD BECAUSE THE COURT A QUO FAILED TO CONDUCT A HEARING TO DETERMINE WHETHER OR NOT THERE WAS ANY IMPROPRIETY OR IRREGULARITY BEHIND THE ISSUANCE OF THE WRIT OF ATTACHMENT IN THE PETITIONER'S FAVOR.

C

PRIVATE RESPONDENT SAREMO'S OBSTINATE REFUSAL TO COMPLY WITH THE ORDERS OF THE COURT A QUO WARRANT THAT SAID RESPONDENT BE DECLARED IN DEFAULT. AS SUCH, RESPONDENT JUDGE'S REFUSAL TO CONSIDER THESE ACTUATIONS MANIFEST GRAVE ABUSE OF DISCRETION ON HER PART.

D

IN UPHOLDING THE ORDER DATED 14 FEBRUARY 2011, THE ORDER DATED OCTOBER 17, 2011 ISSUED BY RESPONDENT JUDGE TAKES NO HEED OF THE FACT THAT THE PREVIOUS ORDER IS MERELY