

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 04133-MIN, August 13, 2014]

TERESA LLAMEDO, SHARON MAGALLANES AND GINALYN CUBETA, PETITIONERS, VS. HON. PANAMBULAN M. MIMBISA, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 37, GENERAL SANTOS CITY AND IGNACIO S. DUMARAN, RESPONDENTS.

D E C I S I O N

INTING, J.:

Before Us is a Petition for Certiorari^[1] filed by petitioners assailing the Orders^[2] of Branch 37, Regional Trial Court (RTC), General Santos City, to wit: (1) granting the prayer for the issuance of a Writ of Preliminary Attachment in favor of private respondent Dumarán; (2) denying their Motion to Quash Writ of Preliminary Attachment; and (3) denying their Motion for Reconsideration to the Order denying the motion to quash.

The facts of the case are as follows:

Dumarán filed a Complaint for Sum of Money, Damages and Attorney's Fees with a Prayer for the Ex-Parte Issuance of a Writ of Preliminary Attachment (WPA) against petitioners, alleging, among others, that^[3]: (1) petitioners purchased on credit diesel and gasoline fuel from him; (2) petitioners has an outstanding obligation of over 7 Million Pesos to him; (3) the checks issued by petitioners to pay the obligation were dishonored; and (4) despite demands, petitioners failed to pay the total obligation.

In relation to the prayer for the issuance of the WPA, Dumarán alleged that petitioners "are about to dispose of their properties and Llamado, Magallanes and Cubeta could not be located or contacted, with intent to defraud the plaintiff herein, because of their monetary obligation to other creditors rendering ineffective whatever money judgment this Honorable Court may render."^[4] In his affidavit to support the prayer for WPA, Dumarán invoked Section 1(d) of Rule 57 of the Rules of Court.^[5]

The RTC granted the prayer for the issuance of a WPA after finding that "the allegations of the verified complaint shows that the instant case falls within coverage of par. (d), Section 1 of Rule 57, 1997 Rules of Civil Procedure, as amended."^[6]

Petitioners then filed a Very Urgent Motion to Quash Writ of Attachment and Notice of Levy on Attachment^[7] contending that the WPA and Notice of Levy on Attachment were: (1) issued in violation of their right to due process; (2) without basis in fact and in law; and (3) issued in violation of Rule 39, Section 13 of the

Rules of Court. They also filed their Answer^[8] to the complaint of Dumaran.

Dumaran filed his Opposition^[9] to the Motion to Quash alleging, among others, that: (1) preliminary attachment is a remedy of a creditor if the debtors are about to dispose their properties with intent to defraud the creditor; (2) the check issued by the petitioners were dishonored and despite demand to pay, the petitioners did not pay; and (3) Llamedo sold diesel fuel at a discount to the damage of Dumaran. Petitioners then filed their Reply^[10] to the Opposition.

The RTC denied^[11] the Motion to Quash arguing that: (1) a WPA may be issued ex-parte and (2) none of the grounds for the quashal of the WPA is present in the case.

Petitioners then filed their Motion for Reconsideration^[12] to the Order of denial of the RTC. They contend, among others, that: (1) the complaint did not state with particularity the circumstances constituting fraud so as to merit the issuance of a WPA; (2) there was no hearing conducted on the allegations of fraud; and (3) the requisite that before a WPA is issued, a notice of raffle to be served prior to or contemporaneously with the summons was not complied. Dumaran filed his Opposition^[13] reiterating that fraud was committed by the petitioners in contracting their debt and that notice of raffle is not an essential requirement in the Rules of Court. Petitioners then filed their Reply^[14] to the Opposition.

The RTC denied the Motion for Reconsideration stating that "there being no new and substantial ground to modify, reverse or reconsider the Order dated 23 February 2010, the Motion for Reconsideration is denied, it appearing further that the arguments raised therein were already considered and passed upon in the aforesaid order.^[15]"

Aggrieved, petitioners filed the instant petition and raised the following issues:

I.

WHETHER OR NOT THE WRIT OF PRELIMINARY ATTACHMENT WAS
IRREGULARLY OR WRONGFULLY ISSUED;

II.

WHETHER OR NOT RESPONDENT COURT ACTED WITH GRAVE ABUSE OF
DISCRETION AMOUNTING TO LACK OF JURISDICTION IN THE EXERCISE
OF ITS JUDGMENT WHEN IT DENIED THE MOTION TO QUASH THE WRIT
OF PRELIMINARY ATTACHMENT AND THE SUBSEQUENT MOTION FOR THE
RECONSIDERATION THEREOF.

Our Ruling

The petition is with merit.

Section 1 of Rule 57 of the Rules of Court states in part:

Grounds upon which attachment may issue. — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may 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

(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

x x x

The Supreme Court explained:

"To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, xxx.^[16]"

In the instant case, Dumaran invoked the above-mentioned provision of the Rules of Court in his affidavit and reiterated his allegations in his complaint. His complaint stated, among others:

"Sometime in September 2009, defendant Magallanes, taking advantage of the trust reposed in her by plaintiff's family, being a former employee in the Linmax Shell Station xxx, introduced her other partners, defendant Teresa Llamedo, (a tuna buyer) and defendant Ginalyn Cubeta to plaintiff. The defendants then who proposed to plaintiff to supply diesel and gasoline fuel to defendants. The defendants initially paid the fuel in cash and sometimes used personal checks of defendant Llamedo for the purchase of fuel."

"However, after gaining the trust of plaintiff, in conspiracy with one another, defendants Llamedo and Magallanes opened a joint account with the Peninsula Rural Bank and started paying in post dated checks, for the diesel and gasoline fuel withdrawn by the representatives of defendants. When the total value of the diesel and gasoline fuel purchased on credit by the defendants were already higher than the value of the checks