

ALEJANDRO NG WEE, PETITIONER
VS.
MANUEL TANKIANSEE, RESPONDENT
G.R. 171124 ; FEBRUARY 13, 2008
THIRD DIVISION DECISION ; NACHURA

For a writ of attachment to issue under this rule, the applicant must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. The applicant must then be able to demonstrate that the debtor has intended to defraud the creditor.

The provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance. The rules governing its issuance are, therefore, strictly construed against the applicant, such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction.

FACTS:

Alejandro Ng Wee, a valued client of Westmont Bank (now United Overseas Bank), made several money placements totaling P210,595,991.62 with the bank's affiliate, Westmont Investment Corporation (Wincorp), a domestic entity engaged in the business of an investment house with the authority and license to extend credit.

Sometime in Feb. 2000, Petitioner received disturbing news on Wincorp's financial condition prompting him to inquire about and investigate the company's operations and transactions with its borrowers. He then discovered that the company extended a loan equal to his total money placement to a Corporation [Power Merge] with a subscribed capital of only P37.5M. This credit facility originated from another loan of about P1.5B extended by Wincorp to another Corporation [Hottick Holdings]. When the latter defaulted in its obligation, Wincorp instituted a case against it and its surety. Settlement was, however, reached in which Hottick's president, Virata, assumed the obligation of the surety.

Under the scheme agreed upon by Wincorp and Hottick's president, Petitioner's money placements were transferred without his knowledge and consent to the loan account of Power Merge through an agreement that virtually freed the latter of any liability. Allegedly, through the false representations of Wincorp and its officers and

directors, Petitioner was enticed to roll over his placements so that Wincorp could loan the same to Virata or Power Merge.

Finding that Virata purportedly used Power Merge as a conduit and connived with Wincorp's officers and directors to fraudulently obtain for his benefit without any intention of paying the said placements, Petitioner instituted a case for damages with the RTC of Manila. One of the defendants impleaded in the complaint is herein respondent Tankiansee, Vice-Chairman and Director of WinCorp. The trial court ordered the issuance of a writ of preliminary attachment against the properties not exempt from execution of all the defendants in the subject, among others, to Petitioner's filing of a P50M bond. The writ was consequently issued.

Arguing that the writ was improperly issued and that the bond furnished was grossly insufficient, respondent moved for the discharge of the attachment. The other defendants likewise filed similar motions. The RTC denied all the motions for the discharge of the attachment. The defendants, including respondent herein, filed their respective motions for reconsideration but the trial court denied the same.

Incidentally, while respondent opted not to question anymore the said orders, his co-defendants, Virata and UEM-MARA Philippines Corp. (UEM-MARA), assailed the same via certiorari under Rule 65 before the CA. The CA, however, denied the petition for certiorari, and the MR thereof.

In a Petition for review on certiorari before the SC, in G.R. No. 162928, the court denied the Petition and affirmed the CA rulings for Virata's and UEMMARA's failure to sufficiently show that the appellate court committed any reversible error. The SC subsequently denied the Petition with finality.

On Sept. 30, 2004, respondent filed before the trial court another Motion to Discharge Attachment, re-pleading the grounds he raised in his first motion but raising the following additional grounds: (1) that he was not present in Wincorp's board meetings approving the questionable transactions; and (2) that he could not have connived with Wincorp and the other defendants because he and Pearlbank Securities, Inc., in which he is a major stockholder, filed cases against the company as they were also victimized by its fraudulent schemes.

Ruling that the grounds raised were already passed upon by it in the previous orders affirmed by the CA and the SC, and that the additional grounds were respondent's affirmative defenses that properly pertained to the merits of the case, the trial court denied the motion. With the denial of its MR, respondent filed a petition for certiorari before the CA and the latter rendered the assailed Decision reversing and setting aside the aforementioned orders of the trial court and lifting the Writ of Preliminary

Attachment to the extent that it concerned respondent's properties. Petitioner moved for the reconsideration of the said ruling, but the CA denied the same. Thus, Petitioner filed the instant Petition.

ISSUE/S:

Whether or not the writ of preliminary attachment should be discharged or lifted.

RULING:

In the case at bench, the basis of Petitioner's application for the issuance of the writ of preliminary attachment against the properties of respondent is Section 1 (d) of Rule 57 of the Rules of Court which pertinently reads:

Section 1. 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 xxx

(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.

For a writ of attachment to issue under this rule, the applicant must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. The applicant must then be able to demonstrate that the debtor has intended to defraud the creditor.

In the instant case, Petitioner's Affidavit is bereft of any factual statement that respondent committed a fraud. The affidavit narrated only the alleged fraudulent transaction between Wincorp and Virata and/or Power Merge, which, by the way, explains why the Supreme Court, in G.R. No. 162928, affirmed the writ of attachment issued against the latter.

The affidavit, being the foundation of the writ, must contain such particulars as to how the fraud imputed to respondent was committed for the court to decide whether or not to issue the writ. Absent any statement of other factual circumstances to show that respondent, at the time of contracting the obligation, had a preconceived plan or intention

not to pay, or without any showing of how respondent committed the alleged fraud, the general averment in the affidavit that respondent is an officer and director of Wincorp who allegedly connived w/ the other defendants to commit a fraud, is insufficient to support the issuance of a writ of preliminary attachment.

In the application for the writ under the said ground, compelling is the need to give a hint about what constituted the fraud and how it was perpetrated because established is the rule that fraud is never presumed. Verily, the mere fact that respondent is an officer and director of the company does not necessarily give rise to the inference that he committed a fraud or that he connived with the other defendants to commit a fraud.

While under certain circumstances, courts may treat a Corporation as a mere aggroupment of persons, to whom liability will directly attach, this is only done when the wrongdoing has been clearly & convincingly established.

Let it be stressed that the provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance. The rules governing its issuance are, therefore, strictly construed against the applicant, such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction.

Likewise, the writ should not be abused to cause unnecessary prejudice. If it is wrongfully issued on the basis of false or insufficient allegations, it should at once be corrected.

Considering, therefore, that, in this case, Petitioner has not fully satisfied the legal obligation to show the specific acts constitutive of the alleged fraud committed by respondent, the trial court acted in excess of its jurisdiction when it issued the writ of preliminary attachment against the properties of respondent.