



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SECURITY BANK
CORPORATION,

Petitioner,

G.R. No. 219345

Present:

- versus -

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,
LEONEN and
JARDELEZA, JJ.

GREAT WALL COMMERCIAL
PRESS COMPANY, INC.,
ALFREDO BURIEL ATIENZA,
FREDINO CHENG ATIENZA
and SPS. FREDERICK CHENG
ATIENZA and MONICA CU
ATIENZA,

Respondents.

Promulgated:

30 JAN 2017

x ----- x

DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the December 12, 2014 Decision¹ and June 26, 2015 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 131714, which lifted the writ of preliminary attachment issued by the Regional Trial Court, Branch 59, Makati City (RTC), in Civil Case No. 13-570, in favor of petitioner Security Bank Corporation (*Security Bank*).

The Antecedents

On May 15, 2013, Security Bank filed a Complaint for Sum of Money (with Application for Issuance of a Writ of Preliminary Attachment)³ against respondents Great Wall Commercial Press Company, Inc. (*Great Wall*) and

¹ *Rollo*, pp. 32-42.

² *Id.* at 44-45.

³ *Id.* at 81-89.

its sureties, Alfredo Buriel Atienza, Fredino Cheng Atienza, and Spouses Frederick Cheng Atienza and Monica Cu Atienza (*respondents*), before the RTC. The complaint sought to recover from respondents their unpaid obligations under a credit facility covered by several trust receipts and surety agreements, as well as interests, attorney's fees and costs. Security Bank argued that in spite of the lapse of the maturity date of the obligations from December 11, 2012 to May 7, 2013, respondents failed to pay their obligations. The total principal amount sought was ₱10,000,000.00.

On May 31, 2013, after due hearing, the RTC granted the application for a writ of preliminary attachment of Security Bank, which then posted a bond in the amount of ₱10,000,000.00.

On June 3, 2013, respondents filed their Motion to Lift Writ of Preliminary Attachment *Ad Cautelam*,⁴ claiming that the writ was issued with grave abuse of discretion based on the following grounds: (1) Security Bank's allegations in its application did not show a *prima facie* basis therefor; (2) the application and the accompanying affidavits failed to allege at least one circumstance which would show fraudulent intent on their part; and (3) the general imputation of fraud was contradicted by their efforts to secure an approval for a loan restructure.⁵

The RTC Orders

In its Order,⁶ dated July 4, 2013, the RTC denied respondents' motion to lift, explaining that the Credit Agreement⁷ and the Continuing Suretyship Agreement⁸ contained provisions on representations and warranties; that the said representations and warranties were the very reasons why Security Bank decided to extend the loan; that respondents executed various trust receipt agreements but did not pay or return the goods covered by the trust receipts in violation thereof; that they failed to explain why the goods subject of the trust receipts were not returned and the proceeds of sale thereof remitted; and that it was clear that respondents committed fraud in the performance of the obligation.⁹

Respondents filed a motion for reconsideration, but it was denied by the RTC in its Order,¹⁰ dated August 12, 2013.

⁴ Id. at 161-173.

⁵ Id. at 33.

⁶ Id. at 46-49. Issued by Presiding Judge Winlove M. Dumayas.

⁷ Id. at 91-94.

⁸ Id. at 95-98.

⁹ Id. at 47-48.

¹⁰ Id. at 50.

Dissatisfied, respondents filed a petition for *certiorari* before the CA seeking to reverse and set aside the RTC orders denying their motion to lift the writ of preliminary attachment issued.

The CA Ruling

In its assailed decision, dated December 12, 2014, the CA *lifted* the writ of preliminary attachment. The appellate court explained that the allegations of Security Bank were insufficient to warrant the provisional remedy of preliminary attachment. It pointed out that fraudulent intent could not be inferred from a debtor's inability to pay or comply with its obligations. The CA opined that the non-return of the proceeds of the sale and/or the goods subject of the trust receipts did not, by itself, constitute fraud and that, at most, these were only averments for the award of damages once substantiated by competent evidence. It also stressed that respondents' act of offering a repayment proposal negated the allegation of fraud. The CA held that fraud must be present at the time of contracting the obligation, not thereafter, and that the rules on the issuance of a writ of attachment must be construed strictly against the applicant. It disposed the case in this wise:

WHEREFORE, for the foregoing reasons, the instant petition is GRANTED. Accordingly, the attachment over any property of petitioners by the writ of preliminary attachment is ordered LIFTED effective upon the finality of this Decision. No costs.

SO ORDERED.¹¹

Security Bank moved for reconsideration but its motion was denied by the CA in its assailed resolution, dated June 26, 2015.

Hence, this petition raising the lone

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NULLIFYING THE WRIT OF PRELIMINARY ATTACHMENT ISSUED BY THE TRIAL COURT.¹²

Security Bank argues that there are sufficient factual and legal bases to justify the issuance of the writ of preliminary attachment. It claims that it was misled by respondents, who employed fraud in contracting their obligation, as they made the bank believe that they had the capacity to pay; that respondents also committed fraud in the performance of their obligation when they failed to turn over the goods subject of the trust receipt

¹¹ Id. at 41.

¹² Id. at 15.

agreements,¹³ or remit the proceeds thereof despite demands; and that these were not mere allegations in the complaint but facts that were testified to by its witness and supported by written documents.

Security Bank added that respondents' effort to settle their outstanding obligation was just a subterfuge to conceal their real intention of not honoring their commitment and to delay any legal action that the bank would take against them; that respondents submitted a repayment proposal through a letter, dated January 23, 2013, knowing fully well that they were already in default; that they requested a meeting to discuss their proposal but they failed to show up and meet with the bank's representative; and that respondents did not submit any supporting documents to back up their repayment proposal.

In their Comment,¹⁴ respondents countered that there was insufficient basis for the issuance of the writ of preliminary attachment against them; that the mere failure to pay their obligation was not an act of fraud; that the application for the issuance of the writ of preliminary attachment, the affidavit of merit and judicial affidavit merely cited general allegations of fraud and Security Bank failed to sufficiently show the factual circumstances constituting fraud. Moreover, respondents claimed that they did not commit fraud because they were earnestly negotiating with Security Bank for a loan restructuring as shown by their Letter,¹⁵ dated January 23, 2013, and email correspondences.

In its Reply,¹⁶ Security Bank stressed that respondents misled them on their financial capacity and ability to pay their obligations. It emphasized that there were specific allegations in its complaint and its witness testified that respondents committed fraud, specifically their failure to comply with the trust receipt agreements, that they would turn over the goods covered by the trust receipt agreements or the proceeds thereof to Security Bank.

The Court's Ruling

The Court finds merit in the petition.

Preliminary Attachment

A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held

¹³ Id. at 99-143.

¹⁴ Id. at 260-273.

¹⁵ Id. at 174.

¹⁶ Id. at 327-335.

thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.¹⁷

In this case, Security Bank relied on Section 1 (d), Rule 57 of the Rules of Court as basis of its application for a writ of preliminary attachment. It reads:

RULE 57

Preliminary Attachment

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:

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;

xxx

For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud. It is settled that fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.¹⁸

While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question.¹⁹

The allegations of Security Bank in support of its application for a writ of preliminary attachment are as follow:

¹⁷ *Republic v. Mega Pacific eSolutions, Inc.*, G.R. No. 184666, June 27, 2016.

¹⁸ *Metro, Inc. v. Lara's Gift and Decors, Inc.*, 621 Phil. 162, 170 (2009).

¹⁹ *Republic v. Mega Pacific eSolutions, Inc.*, supra note 17.

15. During the negotiation for the approval of the loan application/ renewal of Respondents the latter through Alfredo Buriel Atienza, Fredino Cheng Atienza and Sps. Frederick Cheng Atienza and Monica Cu Atienza, assured SBC that the loan obligation covered by the several Trust Receipts shall be paid in full on or before its maturity date pursuant to the terms and conditions of the aforesaid trust receipts. However, Respondents as well as the sureties failed to pay the aforesaid obligation.

16. In addition, the assurance to pay in full the obligation is further solidified by the warranty of solvency provisions of the Credit Agreement, the pertinent portion of which states that:

“5. Representations at Warranties. – The Borrower further represents and warrants that xxxe) The maintenance of the Credit Facility is premised on the Borrower’s continued ability to service its obligations to its creditors. Accordingly, the Borrower hereby warrants that while any of the Credit Obligations remain unpaid, the Borrower shall at all times have sufficient liquid assets to meet operating requirements and pay all its/his debts as they fall due. Failure of the Borrower to pay any maturing interest, principal or other charges under the Credit Facility shall be conclusive evidence of violation of this warranty.”

17. To allay whatever fear or apprehension of herein plaintiff on the commitment of Respondents to honor its obligations, defendants-sureties likewise executed a “Continuing Suretyship Agreement.

18. Under paragraph 3 of the said Suretyship Agreement, it is provided that:

“3. Liability of the Surety – The liability of the Surety is solidary, direct and immediate and not contingent upon the pursuit by SBC of whatever remedies it may have against the Borrower or the collateral/liens it may possess. If any of the Guaranteed Obligations is not paid or performed on due date (at stated maturity or by acceleration), or upon the occurrence of any of the events of default under Section 5 hereof and/or under the Credit Instruments, the Surety shall without need for any notice, demand or any other act or deed, immediately and automatically become liable therefor and the Surety shall pay and perform the same.”

19. Thus, in the light of the representation made by Respondents Commercial Press Co, Inc., Alfredo Buriel Atienza, Fredino Cheng Atienza and Sps. Frederick Cheng Atienza and Monica Cu Atienza that the loan shall be paid in full on or before maturity, coupled by the warranty of solvency embodied in the Credit Agreement as well as the execution of the Continuing Suretyship Agreement, the loan application was eventually approved.

20. Needless to say that without said representations and warranties, including the Continuing Suretyship Agreement, the plaintiff would not have approved and granted the credit facility to Respondents. It is thus clear that Respondents, Alfredo Buriel Atienza, Fredino Cheng Atienza and Sps. Frederick Cheng Atienza and Monica Cu Atienza, misled SBC and employed fraud in contracting said obligation.

21. Respondents, through its Vice President Fredino Cheng Atienza, likewise executed various Trust Receipt Agreements with the plaintiff whereby it bound itself under the following provision:

“2. In consideration of the delivery to the Entrustee of the possession of the Goods/Documents, the Entrustee hereby agrees and undertakes, in accordance with the provisions of the Presidential Decree No. 115; (i) to hold in trust for the Bank the Goods/Documents; (ii) to sell the Goods for cash only for the account and benefit of the Bank, and without authority to make any other disposition of the Goods/Documents or any part thereof, or to create a lien thereon; (iii) to turn over to the Bank, without need of demand, the proceeds of the sale of the Goods to the extent of the amount of obligation specified above (the “Obligation”), including the interest thereon, and other amounts owing by the Entrustee to the Bank under this Trust Receipt, on or before the maturity date above-mentioned (the “Maturity Date”); or (iv) to return, on or before Maturity Date, without need of demand and at the Entrustee’s expense, the Goods/Documents to the Bank, in the event of non-sale of the Goods.”

Despite the above covenants, defendants failed to pay nor return the goods subject of the Trust Receipt Agreements.

22. Knowing fully well that they are already in default, Respondents and defendants sureties submitted a repayment proposal through their letter dated January 23, 2013. Through their lawyer, they likewise requested the bank for a meeting to discuss their proposal. However, as it turned out, the proposed repayment proposal for their loan was only intended to delay legal action against them. They failed to meet with the Bank’s representative and neither did they submit supporting documents to back up their repayment proposal.²⁰

To support its allegation of fraud, Security Bank attached the Affidavit²¹ of German Vincent Pulgar IV (*Pulgar*), the Manager of the Remedial Management Division of the said bank. He detailed how respondents represented to Security Bank that they would pay the loans upon their maturity date. Pulgar added that respondents signed the Credit

²⁰ *Rollo*, pp. 85-87.

²¹ *Id.* at 154-156.

Agreement which contained the Warranty of Solvency and several Trust Receipt Agreements in favor of Security Bank. The said trust receipts were attached to the complaint which stated that respondents were obligated to turn over to Security Bank the proceeds of the sale of the good or to return the goods. The several demand letters sent by Security Bank to respondents, which were unheeded, were likewise attached to the complaint. These pieces of evidence were presented by Security Bank during the hearing of the application for the issuance of a writ of preliminary attachment in the RTC.

After a judicious study of the records, the Court finds that Security Bank was able to substantiate its factual allegation of fraud, particularly, the violation of the trust receipt agreements, to warrant the issuance of the writ of preliminary attachment.

There were violations of the trust receipts agreements

While the Court agrees that mere violations of the warranties and representations contained in the credit agreement and the continuing suretyship agreement do not constitute fraud under Section 1(d) of Rule 57 of the Rules of Court, the same cannot be said with respect to the violation of the trust receipts agreements.

A trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (*entregarla*) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (*devolvera*) to the owner.²² The obligations under the trust receipts are governed by a special law, Presidential Decree (*P.D.*) No. 115, and non-compliance have particular legal consequences.

Failure of the entrustee to turn over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as *estafa* under Article 315 (1) of the Revised Penal Code, without need of proving intent to defraud.²³ The offense punished under P.D. No. 115 is in the nature of *malum prohibitum*. Mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes a

²² *Ng v. People*, 633 Phil. 304, 316 (2010).

²³ *Colinares v. Court of Appeals*, 394 Phil. 106, 118 (2000).

criminal offense that causes prejudice not only to another, but more to the public interest.²⁴

The present case, however, only deals with the civil fraud in the non-compliance with the trust receipts to warrant the issuance of a writ of preliminary attached. *A fortiori*, in a civil case involving a trust receipt, the entrustee's failure to comply with its obligations under the trust receipt constitute as civil fraud provided that it is alleged, and substantiated with specificity, in the complaint, its attachments and supporting evidence.

Security Bank's complaint stated that Great Wall, through its Vice President Fredino Cheng Atienza, executed various trust receipt agreements in relation to its loan transactions. The trust receipts stated that in consideration of the delivery to the entrustee (Great Wall) of the possession of the goods, it obligates itself to hold in trust for the bank the goods, to sell the goods for the benefit of the bank, to turn over the proceeds of the sale to the bank, and to return the goods to the bank in the event of non-sale. By signing the trust receipt agreements, respondents fully acknowledged the consequences under the law once they failed to abide by their obligations therein. The said trust receipt agreements were attached to the complaint.

Upon the maturity date, however, respondents failed to deliver the proceeds of the sale to Security Bank or to return the goods in case of non-sale. Security Bank sent a final demand letter to respondents, which was also attached to the complaint, but it was unheeded. Curiously, in their letter, dated January 23, 2013, respondents did not explain their reason for non-compliance with their obligations under the trust receipts; rather, they simply stated that Great Wall was having a sudden drop of its income. Such unsubstantiated excuse cannot vindicate respondents from their failure to fulfill their duties under the trust receipts.

In addition, Security Bank attached Pulgar's affidavit, which substantiated its allegation that respondents failed to comply with its obligations under the trust receipts. During the hearing before the RTC, Security Bank presented him and his judicial affidavit. Regarding the trust receipts, he testified:

Q: Do you have any other basis in saying that you have grounds for attachment?

A: Yes, defendants not only failed to pay but they also failed to return the goods covered by the Trust Receipt.

Q: What do you mean by failure to return the goods?

A: They executed several TRs where they obligated to turn over the proceeds of sale of goods or pay the value thereof or return the goods themselves if they are unable to pay.

²⁴ *Metropolitan Bank & Trust Co. v. Gonzales*, 602 Phil. 1000, 1014 (2009).

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Q: What happened in this case?

A: Defendants failed to pay the value of the goods covered by the TRs and they likewise failed to return the goods without any explanation. Hence, obviously they misappropriated the proceeds of the sale of goods.²⁵

The Court is of the view that Security Bank's allegations of violation of the trust receipts in its complaint was specific and sufficient to assert fraud on the part of respondents. These allegations were duly substantiated by the attachments thereto and the testimony of Security Bank's witness.

The case of Philippine Bank of Communications v. Court of Appeals is inapplicable

The CA cited *Philippine Bank of Communications v. Court of Appeals*²⁶ (*PBCom*) to bolster its argument that fraudulent intent cannot be inferred from a debtor's inability to pay or comply with its obligations and that there must be proof of a preconceived plan not to pay.²⁷

At face value, *PBCom* and the present case may show a semblance of similarity. Thus, the CA cannot be faulted for relying on the said case. A closer scrutiny of these two cases, however, shows that their similarity is more apparent than real.

In *PBCom*, the applicant for the writ of preliminary attachment simply stated in its motion that the defendant therein failed to remit the proceeds or return the goods subject of the trust receipt and attached an ambiguous affidavit stating that the case was covered by Sections 1(b) and (d) of Rule 57. Obviously, these allegations and attachments are too general and vague to prove that the defendant committed fraud. Likewise, there was no hearing conducted in the RTC before it granted the issuance of the writ of preliminary attachment. Thus, the Court had no option but to lift the said writ.

In contrast, the complaint in the present case explained in detail the factual circumstances surrounding the execution of the trust receipts, its contents and the subsequent violation thereof. Security Bank attached supporting annexes and presented its witness during the hearing in the RTC to substantiate the specific violation of trust receipts by respondents. Security Bank took great lengths to explain the contents of the trust receipt and show that respondents expressed their conformity to it. When the obligation became due, respondents did not satisfactorily explain the non-

²⁵ *Rollo*, pp. 20-21.

²⁶ 405 Phil. 271 (2001).

²⁷ *Id.* at 268.

compliance of their obligations, and, despite a final demand, they did not fulfill their obligations under the trust receipts. Clearly, *PBCom* is inapplicable in the present case.

Fraud in the performance of the obligation must be considered

The CA stated in the assailed decision that under Section 1(d) of Rule 57, fraud must only be present at the time of contracting the obligation, and not thereafter. Hence, the CA did not consider the allegation of fraud – that respondents offered a repayment proposal but questionably failed to attend the meeting with Security Bank regarding the said proposal – because these acts were done after contracting the obligation.

In this regard, the CA erred.

Previously, Section 1(d), Rule 57 of the 1964 Rules of Court provided that a writ of preliminary attachment may be issued “[i]n 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 xxx” Thus, the fraud that justified the issuance of a writ of preliminary attachment then was only fraud committed in contracting an obligation (*dolo casuante*).²⁸ When the 1997 Rules of Civil Procedure was issued by the Court, Section 1(d) of Rule 57 conspicuously included the phrase “in the performance thereof.” Hence, the fraud committed in the performance of the obligation (*dolo incidente*) was included as a ground for the issuance of a writ of preliminary attachment.²⁹

This significant change in Section 1(d) of Rule 57 was recognized recently in *Republic v. Mega Pacific eSolutions, Inc.*³⁰ The Court stated therein that “[a]n amendment to the Rules of Court added the phrase “in the performance thereof” to include within the scope of the grounds for issuance of a writ of preliminary attachment those instances relating to fraud in the performance of the obligation.”

Accordingly, the alleged fraud committed by respondents in the performance of their obligation should have been considered by the CA. Security Bank detailed in its complaint that respondents, knowing fully well that they were in default, submitted a Repayment Proposal.³¹ Then, they requested for a meeting with the bank to discuss their proposal. For unknown reasons, they did not meet the representatives of the Security Bank.

²⁸ Riano, *Civil Procedure (The Bar Lectures Series)*, Volume II, 2012 ed., p. 26.

²⁹ *Id.*

³⁰ *Supra* note 17.

³¹ *Rollo*, p. 174.

Respondents even attached to its Motion to Lift Writ of Preliminary Attachment *Ad Cautelam*³² the correspondence they had with Security Bank, which revealed that they did not meet the representatives of the latter despite providing a specific date to discuss the proposed repayment scheme. Respondents merely offered lame excuses to justify their absence in the arranged meeting and, ultimately, they failed to clarify the non-compliance with their commitments. Such acts bared that respondents were not sincere in paying their obligation despite their maturity, substantiating the allegations of fraud in the performance thereof.

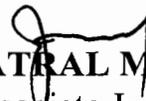
These circumstances of the fraud committed by respondents in the performance of their obligation undoubtedly support the issuance of a writ of preliminary attachment in favor of Security Bank.

Final Note

While the Court finds that Security Bank has substantiated its allegation of fraud against respondents to warrant the issuance of writ or preliminary attachment, this finding should not in any manner affect the merits of the principal case. The writ of preliminary attachment is only a provisional remedy, which is not a cause of action in itself but is merely adjunct to a main suit.³³

WHEREFORE, the December 12, 2014 Decision and the June 26, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 131714 are **REVERSED** and **SET ASIDE**. The issuance of the writ of preliminary attachment by the Regional Trial Court, Branch 59, Makati City, in Civil Case No. 13-570, pursuant to its May 31, 2013 Order, is upheld.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

³² Id. at 161-173.

³³ *Spouses Estares v. Court of Appeals*, 498 Phil. 640, 653. (2005).

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice