

THIRD DIVISION

[G.R. No. 206563, October 14, 2020]

**UEM MARA PHILIPPINES CORPORATION (NOW KNOWN AS
CAVITEX INFRASTRUCTURE CORPORATION), PETITIONER, VS.
ALEJANDRO NG WEE, RESPONDENT.**

D E C I S I O N

GAERLAN, J.:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court against the August 29, 2012 Decision^[1] and the March 27, 2013 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 120695, which reinstated the writ of preliminary attachment on the share of petitioner UEM Mara Philippines Corporation (UEM MARA) in the income of the Manila-Cavite Tollway Project. The said writ was issued by the Regional Trial Court (RTC) of Manila, Branch 39, in a case for sum of money docketed as Civil Case No. 00-99006.

The antecedent facts are recounted by the CA as follows:

Civil Case No. 00-99006 stems from a Complaint for sum of money, which included an application for the issuance of a writ of preliminary attachment, filed by [Alejandro Ng Wee]^[3] against [UEM MARA] along with several other defendants namely: Luis Juan L. Virata, Power Merge Corporation, UEM Development Phils., Inc., United Engineers (Malaysia) Berhad, Majlis Amanah Rakyat, Renong Berhad, Wesmont Investment Corporation, Antonio T. Ong, Anthony A.T. Reyes, Simeon S. Cua, Manuel N. Tan Kian See, Mariza Santos-Tan, Vicente T. Cualoping, Henry T. Cualoping, Manuel A. Estrella and John Anthony B. Espiritu.

Briefly, [Ng Wee] sought to hold the defendants therein jointly and severally liable for the amount of P210,595,991.62. [Ng Wee] claims that through the enticement of officers of Westmont Bank and Westmont Investment Corporation (Wincorp, for brevity) with the promise of high yield and no risk, [Ng Wee] placed a sizable amount of funds with Wincorp. Most of [Ng Wee]'s money placements with Wincorp were later loaned to Power Merge Corporation ("Power Merge", for brevity), the entire shareholdings of which was beneficially owned by Mr. Luis Juan Virata. However, when [Ng Wee] heard news of the adverse financial condition and questionable operations of Wincorp, he made his own investigation on Wincorp's transactions and discovered that his money placements were loaned to a corporation that Wincorp knew to have neither the capacity nor the obligation to pay back the said money placements. [Ng Wee] discovered that Power Merge was a fairly new corporation with a subscribed capitalization of only P37,000,000.00, had no track record and was not an ongoing business concern. Yet, it was given by Wincorp a credit line facility in the huge amount of over

P2,500,000,000.00. In addition, [Ng Wee] further discovered that, through a side agreement, Wincorp agreed that Power Merge would not be liable to pay the amounts given it under the Power Merge Credit Line Facility. Moreover, [Ng Wee] further discovered that the Power Merge Credit Line Facility was actually part of the fraudulent scheme between, among others, Wincorp and its directors, on the one hand, and Mr. Virata, on the other hand that traces its origin from the Hottick Line Credit Facility.

On November 6, 2000, the trial court granted the application for the issuance of a writ of attachment. Pursuant thereto, the court sheriff served a Notice of Garnishment dated November 7, 2000, on, among others, the then Public Estates Authority, now known as the Philippine Reclamation Authority (PRA) which sought to garnish "the proportionate share of [UEM MARA] in the Project Income of the Tollway Project which are collected by the Public Estates Authority and/or any of its subsidiaries, affiliates, agents and/or entities or persons acting on its behalf."

In a Letter dated November 13, 2000, the PRA advised the court sheriff that, as of November 7, 2000, there is no income which can be allocated for [UEM MARA] which can be garnished since the net revenue between the parties has not yet been distributed. Apart from the foregoing, [Ng Wee] was also able to attach a house and lot of Mr. Virata located in Forbes Park, Makati City, covered under TCT No. 133645.

Subsequently, [UEM MARA] and defendant Virata filed a Motion to Dismiss (with Urgent Motion to Discharge Writ of Attachment) anchored on the following grounds: 1) that the complaint is not prosecuted in the name of the real party in interest; and 2) that the complaint fails to state a cause of action. However, this was denied by the trial court in its Omnibus Order dated October 23, 2001, and Order dated October 14, 2002. Aggrieved, defendant Virata and [UEM MARA] elevated the matter to this Court on *certiorari*.

On August 21, 2003, this Court, through its Special Ninth Division, issued a Decision in CA-G.R. SP No. 74610 denying the petition for *certiorari* of defendant Virata and [UEM MARA] for lack of merit as well as their subsequent motion for reconsideration thereof. Undeterred, defendant Virata and [UEM MARA] filed a petition for review before the High Court docketed as G.R. No. 162928. Unfortunately, the said petition was denied by the Supreme Court in its Resolutions dated May 19, 2004, and August 23, 2004.

Sometime in 2010, defendant Virata and [UEM MARA] filed an Urgent Motion to Discharge Writ of Attachment before the trial court alleging that they were willing to post a counter-bond to discharge the writ of preliminary attachment issued against their properties. As expected, this was opposed by [Ng Wee].

On May 20, 2010, the trial court issued an Order granting defendant Virata's urgent motion to discharge, subject to the posting of a counter-bond, but only insofar as the property covered by TCT No. 133645. x x x

To the aforesaid order, both parties filed motions for reconsideration. Defendant Virata and [UEM MARA] filed a Motion for Partial Reconsideration alleging that the trial court failed to provide any basis in not granting the discharge of the attachment as against UMPC's property. On the other hand, [Ng Wee], in his Motion for Reconsideration, argued that the amount of counter-bond was grossly less than the value of the subject property attached in the instant case. As expected, both parties filed their respective oppositions thereto.

On June 29, 2010, the trial court issued an Order which held in abeyance the resolution of the aforesaid motions for reconsideration as well as setting the case for hearing in order to determine the value of the property covered under TCT No. 133645. x x x

x x x x

Consequently, a Subpoena *Duces Tecum Ad Testificandum* was served to the General Manager of the Public Estates Authority (PEA)/ Philippine Reclamation Authority ordering the same to testify and bring with him/her, during the 22 July 2010 hearing, documents pertaining to the notice of garnishment dated 07 November 2000 which was served on the PRA and its compliance thereto.

In a Letter dated July 20, 2010, the PRA informed the court, among others, of the non-compliance of the notice of garnishment due to the following:

"b. On November 8, 2000, PRA referred the said notices of garnishment to our statutory counsel, the Office of the Government Corporate Counsel (OGCC) for legal advice and assistance regarding the matter. [x x x]

c. In a letter dated November 13, 2000, OGCC informed Branch Sheriff Conrado Lamano of the Regional Trial Court of Manila-Branch 37, that the Notice of Garnishment cannot be affected considering that the contract for the Tollway Project is with [UEM-MARA] and not with UEM Development Philippines, Incorporated, which is ostensibly a separate company. [x x x]

d. Likewise, the PRA, in a letter dated November 13, 2000, wrote the Branch Sheriff informing him that the joint venture of PRA in the Tollway Project is UEM-MARA Philippine Corporation and not UEM Development Phils., Inc. and that there is no income which can be allocated to Mr. Virata which can be garnished. [x x x]"

Taking note of PRA's allegation that no income which can be allocated for UMPC or Mr. Virata can be garnished, defendant Virata and [UEM MARA] filed a Motion to Quash (Subpoena *Duces Tecum and Ad Testificandum* dated July 16, 2010) arguing that the relevancy of the books, documents, things being subpoenaed does not appear. In his Opposition thereto, [Ng Wee] countered the following:

"2.0 It is most respectfully submitted, however, that the PRA's 07 November 2000 letter, on the contrary, gives relevance to the subpoena issued by the Honorable Court.

3.0 The last paragraph of the said 07 November 2000 letter expressly provides as follows:

"The distribution of the respective net revenue share of the parties must first be approved by the Joint Venture Project Committee. To date, there is no distribution of the net revenue between the parties because there is no net revenue approved for distribution by the Joint Venture Project Committee. Thus, there is no income which can be allocated for [UEM MARA] or the Coastal Road Corporation or Mr. Juan Luis L. Virata, which can be garnished."

4.0 It is plain from the foregoing that no net income was garnished at that time because no net revenue was approved for distribution by the Joint Project Committee. Hence, it appears from the foregoing that, had there been such approval by the Joint Venture Project Committee after November 2000 there might have been an income which can be allocated for either defendants Virata or [UEM MARA] and which could be garnished.

5.0 Accordingly, based on the said paragraph of the 07 November 2000 letter, it is most respectfully submitted that the appearance of the General Manager of the PRA is still necessary to determine if: (a) the Joint Venture Project Committee had, in fact, approved the distribution of the respective net revenue share of the parties after November 2000; and (b) if there was an income which was allocated for either defendants Virata or UEM-MARA which could be garnished."

[Ng Wee] then filed a Manifestation and Motion for the Issuance of a Subpoena *Duces Tecum and Ad Testificandum* reiterating its request that the trial court issue another subpoena to the General Manager of the PRA to clarify matters. In its Opposition thereto, defendant Virata and [UEM MARA] argued that the issuance of a new subpoena is unreasonable and oppressive, their stand that, as there is no income of [UEM MARA] which can be garnished, the relevancy of the subject documents being subpoenaed has not been established since there are no properties of [UEM MARA] in possession of the PRA.

In a subsequent Manifestation submitted by the PRA to the trial court, the PRA, among other matters, reiterated that, as of date of PRA's letter to Sheriff Lamano, there is no distribution of the net revenue between PRA and UMPC because there is no net revenue approved for distribution by the Joint Venture Project Committee. Thus, there is no income which can be allocated for UMPC that may be garnished at that time.

In his Reply to the opposition by defendant Virata and [UEM MARA] to the re-issuance of a subpoena to the PRA, [Ng Wee] countered that, contrary to the defendants' claim that there is no income for defendant

[UEM MARA] which can be garnished, the Audited Financial Statements of [UEM MARA] for the years 2000 and 2001 show that its share in the toll fees amounting to P171,535,275.00 and P166,192,476.00, respectively, were listed as revenues by [UEM MARA] for the said years.

In its Order dated February 2, 2011, the trial court granted [Ng Wee]'s motion for the re-issuance of a subpoena to the General Manager of the PRA. x x x

x x x x

Defendant Virata and [UEM MARA] filed a Motion for Reconsideration arguing that the issuance of a subpoena to the PRA is unnecessary on account of the following:

"2.1 The Court already noted PRA's acknowledgment of receipt of the Notice of Garnishment dated November 7, 2000;

2.2 The Court already noted PRA's manifestation that Luis Juan L. Virata is not a party to the Toll Operation Agreement for the Manila Cavite Toll Expressway Project and thus has no income that may be garnished.

2.3 The Notice of Garnishment only intended to garnish income allotted by the PRA as of November 7, 2000 and did not cover the period of November 13, 2000 to July 2010 for which the Court intends to subpoena the PRA."

In its Opposition, [Ng Wee] argued that the garnishment was not limited to the net revenue share of UMPC in the Tollway Project as of the date of service of the notice of garnishment, or on 07 November 2000, but even after, i.e.[,] from 14 November 2000 to the present, since what was garnished was the proportionate share of UMPC in the project income, which was being collected by the then PRA.

On May 26, 2011, the trial court rendered the assailed Order wherein it modified the amount of counter-bond to be posted by defendant Virata, insofar as Virata's Forbes Park property covered under TCT No. 133645 from P60,000,000.00 to P174,100,000.00, but lifted and set aside the writ of attachment on the project income of [UEM MARA] regarding the Manila-Cavite Toll way Project. The *fallo* of the assailed order reads:

"WHEREFORE, the Motion for Partial Reconsideration (Re: Order dated May 20, 2012) filed by defendants Luis Juan L. Virata and UEM-Mara Philippines Corporation through counsel and a Motion for Reconsideration (Re: Order dated 20 May 2010) filed by plaintiff Alejandro Ng Wee through counsel are partially GRANTED. The Court's Order dated May 20, 2010 is modified in the sense that the amount of counter-bond insofar as defendant Luis Juan L. Virata's Forbes Park property covered by TCT No. 133645 is changed from P60,000,000.00 to P174,100,000.00.

Accordingly, the Writ of Attachment on the Project Income of defendant UEM-Mara Philippines Corporation regarding the