

THIRD DIVISION

[G.R. No. 202004, November 04, 2020]

**GIL G. CHUA, PETITIONER, VS. CHINA BANKING CORPORATION,
RESPONDENTS.**

DECISION

HERNANDO, J.:

This Petition for Review on *Certiorari*^[1] assails the November 10, 2011 Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 116595, which granted respondent China Banking Corporation's (China Bank) Petition for *Certiorari* and *Mandamus* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction^[3] under Rule 65 of the Rules of Court questioning the lifting of the writ of attachment by the Regional Trial Court (RTC), as well as the May 16, 2012 Resolution^[4] denying petitioner Gil G. Chua's (Chua) Motion for Reconsideration.^[5]

The facts, as culled from the records, are as follows.

On several occasions, Interbrand Logistics & Distribution, Inc.,^[6] (Interbrand) represented by its duly authorized officer, Almer L. Caras (Caras), applied with China Bank for the issuance of Domestic Letters of Credit (L/C) for the purchase of goods from Nestle Philippines. Accordingly, twelve (12) L/Cs with corresponding trust receipts were issued to Interbrand. By the terms of the trust receipts, Interbrand agreed to hold the goods in trust for China Bank. Pursuant to the L/Cs, China Bank advanced the amount of P189,831,288.17 in full payment of the invoice value of said goods. The goods were all delivered to Interbrand's warehouses in Libis, Quezon City, Tarlac City, and Meycauayan, Bulacan. Due to advances made by China Bank, the parties jointly executed two Surety Agreements whereby in the first Agreement, Interbrand and its officers, Chua, Carlos Francisco Mijares (Mijares), and Caras served as sureties; while Edgar San Luis (San Luis) was the individual surety in the second Agreement.^[7]

When the obligation became due, Interbrand failed to pay China Bank despite repeated demands. China Bank likewise demanded payment from the sureties, including Chua, but the latter failed and refused to pay.^[8]

On March 1, 2010, China Bank filed a Complaint for Sum of Money and Damages with Application for Issuance of Writ of Preliminary Attachment^[9] against Chua and the other sureties before the RTC of Makati City, Branch 59. China Bank averred that Interbrand, with knowledge and consent of Chua and other individuals as officers of the company, had committed acts of fraud, deceit and gross bad faith in contracting their indebtedness from China Bank, with manifest intention

not to comply in good faith with their respective obligations both in the trust receipts and in the surety agreements.

Ruling of the Regional Trial Court:

On March 3, 2010, the trial court issued an Order^[10] granting the application for issuance of a Writ of Preliminary Attachment. The dispositive portion reads:

WHEREFORE, as prayed for and upon plaintiff's posting of a bond fixed at PhP189,831,288.17 subject to the approval of this Court, let a Writ of Preliminary Attachment issue directing the Branch Sheriff of this Court to attach all the properties, real or personal, of the defendants Interbrand Logistics and Distribution, Inc. with principal office located at #62 11th Avenue, Cubao, Quezon City; Almer L. Caras located in #2 Barraba Street comer Narra Avenue, Mapayapa Village, Libis, Quezon City; **Gil G. Chua located in #4 Red Arrow Street, White Plains Subdivision, Quezon City**; Carlos Francisco S. Mijares located in #23 Pikadon Street, Midtown Subdivision, San Roque, Marikina City; Edgar S. San Luis located in #3 Troy Street, Acropolis Village, Quezon City or anywhere in the Philippines, not exempt from execution or so much thereof as may be sufficient to satisfy plaintiff's demand for PhP189,831,288.17 plus attorney's fees, unless the defendants make a deposit or give a counterbond in an amount sufficient to satisfy such demands, besides costs, or in an amount equal to the value of the properties which are about to be attached. The condition of the plaintiff's bond is such that it shall answer for all the costs and damages which the defendants Interbrand Logistics and Distribution, Inc. Almer L Caras, **Gil G. Chua**, Carlos Francisco S. Mijares and Edgar S. San Luis may sustain by reason of the attachment, if the court shall finally adjudge that the plaintiff is not entitled thereto. In the event defendants make deposit or give a counterbond as stated above, the same shall be conditioned to secure payment to the plaintiff of any judgment which it may recover in this action.^[11] (Emphasis ours)

Chua and the other sureties filed a Motion to Lift Writ of Attachment,^[12] alleging that they are not debtors, thus should not be guilty of fraud in incurring the obligation. Chua filed a Supplement to the Motion to Lift the Writ of Attachment arguing that he is neither an officer, director nor a stockholder of Interbrand. Consequently, the trial court lifted the Writ of attachment against petitioner in an Order^[13] dated May 21, 2010. China Bank filed a Motion for Reconsideration.^[14] It presented the Minutes of the Special Meeting of the Board of Directors of Interbrand^[15] which shows that petitioner was one of the directors of Interbrand who approved the authority of its President, San Luis, and CFO-Director Caras to obtain loans from and sign trust receipt and loan documents with China Bank. China Bank likewise presented a copy of the Amended Articles of Incorporation^[16] adopted on July 9, 2005 which indicated petitioner as one of the incorporators. Moreover, China Bank argued that Chua admitted in his Answer that he executed the Surety Agreement. The trial court did not give credence to the documents presented by China Bank because none of these documents indicated that during the period material to the case, from September to December 2009, Chua was still a stockholder and director of Interbrand.

Ruling of the Court of Appeals:

China Bank filed a Petition for *Certiorari* and *Mandamus* with Application for Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction^[17] with the CA. On November 10, 2011, the CA rendered a Decision^[18] granting the petition and reinstating the March 3, 2010 Order which directed the branch sheriff to attach the properties of Chua. The appellate court noted that Chua voluntarily signed the Surety Agreement and his liability therein is not limited during his incumbency as an officer and stockholder of Interbrand. The appellate court opted not to tackle the issue on fraud because it would be tantamount to ruling on the merits. Chua moved for reconsideration but it was denied by the CA in its May 16, 2012 Resolution.^[19]

Chua filed the instant Petition for Review on *Certiorari*^[20] challenging the ruling of the CA. He claims that the appellate court violated his right to due process when the latter disregarded his evidence to support the lifting of the writ of attachment and finding that he voluntarily signed the surety agreement. Chua contends that when the appellate court held that the trial court committed grave abuse of discretion when it lifted the writ of preliminary attachment, it was in effect making his liability as surety conditional on his being a director, officer or a stockholder, without taking into consideration whether fraud attended the incurrence of the obligation. Finally, Chua asserts that the remedy from the order lifting the writ of attachment is not through a writ of *certiorari* but may be corrected only by appeal.^[21]

In China Bank's Comment,^[22] it maintains that under the surety agreement, Chua became obligated to perform the obligation and duty of Interbrand in the trust receipts even without possessing a direct or personal interest in the obligations constituted by the latter and despite the fact that Chua is not a signatory in the trust receipts. China Bank adds that the obligation of Chua being direct, primary and absolute, it was as if he personally bound himself to fulfill all and any other obligations of Interbrand in the trust receipt agreements in favor of China Bank. China Bank asserts that fraud was manifested on the part of Chua when he, as a surety, was fully aware of his obligations to remit to China Bank the sale proceeds described in the trust agreement, but he did not have the intention to pay China Bank the proceeds. China Bank adds that mere failure to comply with the trust receipt obligation is a crime.^[23]

Issue

The issue for our resolution concerns only the propriety of the attachment on the properties of Chua.

Our Ruling

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 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.^[24]

Under Sections 12^[25] and 13,^[26] Rule 57 of the Rules of Court, there are two ways to secure the discharge of an attachment, as mentioned by the CA. First, the party whose property has been attached or a person appearing on his/her behalf may post a security. Second, said party may show that the order of attachment was improperly or irregularly issued.^[27] In this case, Chua successfully had the attachment against him initially discharged on the second ground.

China Bank's basis in applying for the writ of preliminary attachment is Section 1(d), Rule 57 of the Rules of Court, *i.e.*, "[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, or in the performance thereof." Section 3^[28] of the same rule requires that an affidavit of merit be issued alleging the following facts: (1) that a sufficient cause of action exists; (2) that the case is one of those mentioned in Section 1 hereof; (3) that there is no other sufficient security for the claim sought to be enforced by the action; and (4) that the amount due to the applicant, or the value of the property the possession of which he/she is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.^[29]

Contrary, however, to the declaration of the CA, there must be a showing of fraud, at least on the allegations in the application for writ of preliminary attachment.

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[/she] 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. x x x

The applicant for a writ of preliminary attachment 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.^[30] (Citations omitted)

In the Joint Affidavit executed by the officers of China Bank, the following pertinent allegations were made to substantiate the application for a writ of preliminary attachment:

5. In the discharge of our duties, we have encountered and/or processed the accounts of defendants INTERBRAND LOGISTICS & DISTRIBUTION, INC., Almer L. Caras, Gil G. Chua, Carlos Francisco S. Mijares, and Edgar San Luis, wherein:

[5].a. On several occasions, defendant INTERBRAND, thru its duly authorized officers, defendant Almer L. Caras, applied in writing with plaintiff for the issuance of domestic Letters of Credit (L/C) for the purchase of goods described therein from Nestle Philippines, Inc. (NESTLE, for short). Plaintiff approved these applications and accordingly issued domestic Letters of Credit; x x x