

## FIRST DIVISION

[ G.R. No. 193572, April 04, 2018 ]

**TSUNEISHI HEAVY INDUSTRIES (CEBU), INC., PETITIONER, VS.  
MIS MARITIME CORPORATION, RESPONDENT.**

### D E C I S I O N

**JARDELEZA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by petitioner Tsuneishi Heavy Industries (Cebu), Inc. (Tsuneishi) challenging the Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 03956 dated October 7, 2009 and its Resolution<sup>[3]</sup> dated August 26, 2010. The CA Decision reversed three Orders of Branch 7 of the Regional Trial Court (RTC), Cebu City dated April 15, 2008, July 7, 2008, and December 11, 2008, respectively.<sup>[4]</sup> The Resolution denied Tsuneishi's motion for reconsideration.

Respondent MIS Maritime Corporation (MIS) contracted Tsuneishi to dry dock and repair its vessel M/T MIS-1 through an Agreement dated March 22, 2006.<sup>[5]</sup> On March 23, 2006, the vessel dry docked in Tsuneishi's shipyard. Tsuneishi rendered the required services. However, about a month later and while the vessel was still dry docked, Tsuneishi conducted an engine test on M/T MIS-1. The vessel's engine emitted smoke. The parties eventually discovered that this was caused by a burnt crank journal. The crankpin also showed hairline cracks due to defective lubrication or deterioration. Tsuneishi insists that the damage was not its fault while MIS insists on the contrary. Nevertheless, as an act of good will, Tsuneishi paid for the vessel's new engine crankshaft, crankpin, and main bearings.<sup>[6]</sup>

Tsuneishi billed MIS the amount of US\$318,571.50 for payment of its repair and dry docking services. MIS refused to pay this amount. Instead, it demanded that Tsuneishi pay US\$471,462.60 as payment for the income that the vessel lost in the six months that it was not operational and dry docked at Tsuneishi's shipyard. It also asked that its claim be set off against the amount billed by Tsuneishi. MIS further insisted that after the set off, Tsuneishi still had the obligation to pay it the amount of US\$152,891.10.<sup>[7]</sup> Tsuneishi rejected MIS' demands. It delivered the vessel to MIS in September 2006.<sup>[8]</sup> On November 6, 2006, MIS signed an Agreement for Final Price.<sup>[9]</sup> However, despite repeated demands, MIS refused to pay Tsuneishi the amount billed under their contract.

Tsuneishi claims that MIS also caused M/T White Cattleya, a vessel owned by Cattleya Shipping Panama S.A. (Cattleya Shipping), to stop its payment for the services Tsuneishi rendered for the repair and dry docking of the vessel.<sup>[10]</sup>

MIS argued that it lost revenues because of the engine damage in its vessel. This

damage occurred while the vessel was dry docked and being serviced at Tsuneishi's yard. MIS insisted that since this arose out of Tsuneishi's negligence, it should pay for MIS' lost income. Tsuneishi offered to pay 50% of the amount demanded but MIS refused any partial payment.<sup>[11]</sup>

On April 10, 2008, Tsuneishi filed a complaint<sup>[12]</sup> against MIS before the RTC. This complaint stated that it is invoking the admiralty jurisdiction of the RTC to enforce a maritime lien under Section 21 of the Ship Mortgage Decree of 1978<sup>[13]</sup> (Ship Mortgage Decree). It also alleged as a cause of action MIS' unjustified refusal to pay the amount it owes Tsuneishi under their contract. The complaint included a prayer for the issuance of arrest order/writ of preliminary attachment. To support this prayer, the complaint alleged that Section 21 of the Ship Mortgage Decree as well as Rule 57 of the Rules of Court on attachment authorize the issuance of an order of arrest of vessel and/or writ of preliminary attachment.<sup>[14]</sup>

In particular, Tsuneishi argued that Section 21 of the Ship Mortgage Decree provides for a maritime lien in favor of any person who furnishes repair or provides use of a dry dock for a vessel. Section 21 states that this may be enforced through an action *in rem*. Further, Tsuneishi and MIS' contract granted Tsuneishi the right to take possession, control and custody of the vessel in case of default of payment. Paragraph 9 of this contract further states that Tsuneishi may dispose of the vessel and apply the proceeds to the unpaid repair bill.<sup>[15]</sup>

Finally, Tsuneishi's complaint alleges that there are sufficient grounds for the issuance of a writ of preliminary attachment. In particular, it claims that MIS is guilty of fraud in the performance of its obligation. The complaint states:

40. x x x Under the factual milieu, it is wrongful for defendant MIS Maritime to take undue advantage of an unfortunate occurrence by withholding payment of what is justly due to plaintiff under law and contract. Defendant MIS Maritime knew or ought to have known that its claim for lost revenues was unliquidated and could not be set-off or legally compensated against the dry-docking and repair bill which was liquidated and already fixed and acknowledged by the parties.

41. Defendant CATTLEYA SHIPPING'S actions and actuations in performing its obligation were clearly fraudulent because, firstly, it had no business getting involved as far as the M/T MIS-1 incident was concerned; secondly, no incident of any sort occurred when its vessel M/T WHITE CATTLEYA was dry docked and repaired. It had no claim against the plaintiff. Yet, it (defendant Cattleya Shipping) allowed itself to be used by defendant MIS Maritime when it willfully and unlawfully stopped paying plaintiff, and conspired to make good defendant MIS Maritime's threat to "withhold payment of any and all billings that you (plaintiff) may have against our fleet of vessels which include those registered under Cattleya Shipping Panama S.A. (MT White Cattleya) x x x."<sup>[16]</sup>

Tsuneishi also filed the Affidavit<sup>[17]</sup> of its employee Lionel T. Bitera (Bitera Affidavit), in accordance with the requirement for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court. The Bitera Affidavit stated that Tsuneishi performed dry docking and repair services for M/T MIS-1 and M/T White Cattleya. It also alleged that after Tsuneishi performed all the services required, MIS and Cattleya refused to pay their obligation. According to the Bitera Affidavit, this refusal to pay constitutes fraud because:

d. The breach of the obligation was willful. In the case of M/T MIS-1 no single installment payment was made despite the fact that the vessel was accepted fully dry docked and with a brand new engine crankshaft installed by the yard free of charge to the Owner. MIS Maritime Corporation was blaming the yard for the damage sustained by the engine crank shaft on 25 April 2006 when the engine was started in preparation for sea trial. When the incident happened the drydocking had already been completed and the vessel was already in anchorage position for sea trial under the management and supervisory control of the Master and engineers of the vessel. Besides, the incident was not due to the fault of the yard. It was eventually traced to dirty lube oil or defective main engine lubricating oil which was the lookout and responsibility of the vessel's engineers.

x x x x

e. The action taken by MIS Maritime Corporation in setting off its drydocking obligation against their claim for alleged lost revenues was unilaterally done, and without legal and factual basis for while, on one hand, the drydocking bill was for a fixed and agreed amount, the claim of MIS Maritime for lost revenues, on the other hand, was not liquidated as it was for a gross amount, x x x

f. Cattleya Shipping for its part had nothing to do with the dry docking of M/T MIS-1. There was no incident whatsoever during the dry docking of its vessel M/T WHITE CATTLEYA. In fact, after this vessel was satisfactorily dry docked and delivered to its Owner (Cattleya Shipping) the latter started paying the monthly installments without any complaint whatsoever, x x x<sup>[18]</sup>

The RTC issued a writ of preliminary attachment in an Order<sup>[19]</sup> dated April 15, 2008 (First Order) without hearing. Consequently, MIS' condominium units located in the financial district of Makati, cash deposits with various banks, charter hire receivables from Shell amounting to P26.6 Million and MT MIS-1 were attached.<sup>[20]</sup>

MIS filed a motion to discharge the attachment.<sup>[21]</sup> The RTC denied this motion in an Order<sup>[22]</sup> dated July 7, 2008 (Second Order). MIS filed a motion for reconsideration which the RTC also denied in an Order<sup>[23]</sup> dated December 11, 2008 (Third Order).

MIS then filed a special civil action for *certiorari*<sup>[24]</sup> before the CA assailing the three Orders. MIS argued that the RTC acted with grave abuse of discretion when it ordered the issuance of a preliminary writ of attachment and denied MIS' motion to discharge and motion for reconsideration.

The CA ruled in favor of MIS. It reversed the three assailed Orders after finding that the RTC acted with grave abuse of discretion in issuing the writ of preliminary attachment.<sup>[25]</sup>

According to the CA, the Bitera Affidavit lacked the required allegation that MIS has no sufficient security for Tsuneishi's claim. In fact, the CA held that the evidence on record shows that MIS has sufficient properties to cover the claim. It also relied on jurisprudence stating that when an affidavit does not contain the allegations required under the rules for the issuance of a writ of attachment and the court nevertheless issues the writ, the RTC is deemed to have acted with grave abuse of discretion. Consequently, the writ of preliminary attachment is fatally defective.<sup>[26]</sup> The CA further highlighted that a writ of preliminary attachment is a harsh and rigorous remedy. Thus, the rules must be strictly construed. Courts have the duty to ensure that all the requisites are complied with.<sup>[27]</sup>

The CA also found that the RTC ordered the issuance of the writ of preliminary attachment despite Tsuneishi's failure to prove the presence of fraud. It held that the bare and unsubstantiated allegation in the Bitera Affidavit that MIS willfully refused to pay its obligation is not sufficient to establish *prima facie* fraud. The CA emphasized that a debtor's mere inability to pay is not fraud. Moreover, Tsuneishi's allegations of fraud were general. Thus, they failed to comply with the requirement in the Rules of Court that in averments of fraud, the circumstances constituting it must be alleged with particularity. The CA added that while notice and hearing are not required for the issuance of a writ of preliminary attachment, it may become necessary in instances where the applicant makes grave accusations based on grounds alleged in general terms. The CA also found that Tsuneishi failed to comply with the requirement that the affidavit must state that MIS has no other sufficient security to cover the amount of its obligation.<sup>[28]</sup>

The CA disposed of the case, thus:

**WHEREFORE**, the petition is **GRANTED**. The three (3) Orders dated April 15, 2008, July 7, 2008 and December 11, 2008, respectively, of the Regional Trial Court, Branch 7, Cebu City, in Civil Case No. CEB-34250, are **ANNULLED** and **SET ASIDE**.<sup>[29]</sup> (Emphasis in the original, citations omitted.)

Tsuneishi filed this petition for review on *certiorari* under Rule 45 of the Rules of

Court challenging the CA's ruling. Tsuneishi pleads that this case involves a novel question of law. It argues that while Section 21 of the Ship Mortgage Decree grants it a maritime lien, the law itself, unfortunately, does not provide for the procedure for its enforcement. It posits that to give meaning to this maritime lien, this Court must rule that the procedure for its enforcement is Rule 57 of the Rules of Court on the issuance of the writ of preliminary attachment. Thus, it proposes that aside from the identified grounds for the issuance of a writ of preliminary attachment in the Rules of Court, the maritime character of this action should be considered as another basis to issue the writ.<sup>[30]</sup>

To support its application for the issuance of a writ of preliminary attachment, Tsuneishi also invokes a provision in its contract with MIS which states that:

In case of default, either in payment or in violation of the warranties stated in Section 11, by the Owner, the Owner hereby appoints the Contractor as its duly authorized attorney in fact with full power and authority to take possession, control, and custody of the said Subject Vessel and / or any of the Subject Vessel's accessories and equipment, or other assets of the Owner, without resorting to court action; and that the Owner hereby empowers the Contractor to take custody of the same until the obligation of the Owner to the Contractor is fully paid and settled to the satisfaction of the Contractor. x x x<sup>[31]</sup> (Underscoring omitted.)

It insists that the writ of preliminary attachment must be issued so as to give effect to this provision in the contract.

Tsuneishi also disputes the CA's finding that it Failed to show fraud in MIS' performance of its obligation. It opines that MIS' failure to comply with its obligation does not arise from a mere inability to pay. If that were the case, then the CA would be correct in saying that MIS committed no fraud. However, MIS' breach of its obligation in this case amounts to a gross unwillingness to pay amounting to fraud.<sup>[32]</sup>

Tsuneishi adds that the CA erred in holding that the RTC acted with grave abuse of discretion when it failed to conduct a hearing prior to the issuance of the writ of preliminary attachment. It insisted that the Rules of Court, as well as jurisprudence, does not require a hearing prior to issuance.<sup>[33]</sup>

Finally, Tsuneishi disagrees with the ruling of the CA that it did not comply with the requirements under the rules because the Bitera Affidavit did not state that MIS has no other sufficient security. This was already stated in Tsuneishi's complaint filed before the RTC. Thus, the rules should be applied liberally in favor of rendering justice.<sup>[34]</sup>

In its comment,<sup>[35]</sup> MIS challenges Tsuneishi's argument that its petition raises a novel question of law. According to MIS, the issue in this case is simple. A reading of