

SECOND DIVISION

[G.R. No. 212025, July 01, 2015]

EXCELLENT QUALITY APPAREL, INC., PETITIONER, VS. VISAYAN SURETY & INSURANCE CORPORATION, AND FAR EASTERN SURETY & INSURANCE CO., INC., RESPONDENTS.

DECISION

MENDOZA, J.:

The present case involves the wrongful attachment and release of the petitioner's funds to the adverse party and its plight to recover the same. It seems that when misfortune poured down from the skies, the petitioner received a handful. The scales of justice, however, do not tilt based on chance; rather on the proper application of law, jurisprudence and justice.

This is a petition for review on *certiorari* seeking to reverse and set aside the October 21, 2013 Decision^[1] and the April 1, 2014 Resolution^[2] of the Court of Appeals (CA), in CA-G.R. CV No. 95421, which affirmed the January 15, 2010^[3] and May 19, 2010^[4] Orders of the Regional Trial Court of Manila, Branch 32 (RTC), in Civil Case No. 04-108940.

The Facts

On March 26, 1996, petitioner Excellent Quality Apparel, Inc. (*petitioner*), then represented by Max L.F. Ying (*Ying*), Vice-President for Productions, and Alfiero R. Orden, Treasurer, entered into a contract with Multi-Rich Builders (*Multi-Rich*), a single proprietorship, represented by Wilson G. Chua, its President and General Manager, for the construction of a garment factory within the Cavite Philippine Economic Zone Authority (*CPEZA*). The duration of the project was for a maximum period of five (5) months or 150 consecutive calendar days. Included in the contract was an Arbitration Clause in case of dispute.

On November 27, 1996, the construction of the factory building was completed.

On February 20, 1997, Win Multi-Rich Builders, Inc. (*Win Multi-Rich*) was incorporated with the Securities and Exchange Commission (*SEC*).

On January 26, 2004, Win Multi-Rich filed a complaint for sum of money and damages against petitioner and Ying before the RTC.^[5] It also prayed for the issuance of a writ of attachment, claiming that Ying was about to abscond and that petitioner had an impending closure.

Win Multi-Rich then secured the necessary bond in the amount of P8,634,448.20 from respondent Visayan Surety and Insurance Corporation (*Visayan Surety*)^[6] In

the Order,^[7] dated February 2, 2004, the RTC issued a writ of preliminary attachment in favor of Win Multi-Rich.

To prevent the enforcement of the writ of preliminary attachment on its equipment and machinery, petitioner issued Equitable PCI Bank Check No. 160149,^[8] dated February 16, 2004, in the amount of P8,634,448.20 payable to the Clerk of Court of the RTC.

On February 19, 2004, petitioner filed its Omnibus Motion,^[9] seeking to discharge the attachment. Petitioner also questioned the jurisdiction of the RTC due to the presence of the Arbitration Clause in the contract. It asserted that the case should have been referred first to the Construction Industry Arbitration Commission (CIAC) pursuant to Executive Order (E.O.) No. 1008.

The motion, however, was denied by the RTC in its Order,^[10] dated April 12, 2004, because the issues of the case could be resolved after a fullblown trial.

On April 26, 2004, petitioner filed its Answer with Compulsory Counterclaim^[11] before the RTC. It denied the material allegation of the complaint and sought the immediate lifting of the writ of attachment. It also prayed that the bond filed by Win Multi-Rich to support its application for attachment be held to satisfy petitioner's claim for damages due to the improper issuance of such writ.

On April 29, 2004, the RTC issued another order^[12] directing the deposit of the garnished funds of petitioner to the cashier of the Clerk of Court of the RTC.

Win Multi-Rich then filed a motion,^[13] dated April 29, 2004, to release petitioner's cash deposit to it. Notably, the motion was granted by the RTC in the Order,^[14] dated May 3, 2004. Subsequently, on May 7, 2004, Win Multi-Rich posted Surety Bond No. 10198^[15] issued by respondent Far Eastern Surety and Insurance Co., Inc. (FESICO) for the amount of P9,000,000.00, to secure the withdrawal of the cash deposited by petitioner. Thus, Win Multi-Rich was able to receive the funds of petitioner even before the trial began.

On June 18, 2004, petitioner filed a petition for *certiorari*^[16] under Rule 65 of the 1997 Rules of Civil Procedure before the CA. The petition sought to annul and set aside the April 12, 2004 and April 29, 2004 Orders of the RTC. Petitioner then filed its Supplemental Manifestation and Motion,^[17] asserting that its cash deposit with the RTC was turned over to Win Multi-Rich.

On March 14, 2006, the CA rendered a decision,^[18] *annulling the April 12 2004 and April 29, 2004 Orders of the RTC*. It ruled, however, that the RTC had jurisdiction over the case inspite of the arbitration clause because it was a suit for collection of sum of money. The dispositive portion of which reads:

IN LIGHT OF ALL THE FOREGOING, the instant petition is hereby GRANTED. The Orders dated April 12, 2004 and April 29, 2004 of respondent judge are hereby ANNULLED and SET ASIDE. Accordingly, the writ of preliminary injunction is hereby MADE PERMANENT.

SO ORDERED.^[19]

Petitioner filed a motion for reconsideration arguing, among others, that the CA decision failed to state an order to return the garnished amount of P8,634,448.^[20], which was taken from its bank account and given to Win Multi-Rich. In its Resolution,^[20] dated October 11, 2006, the CA denied the motion.

Aggrieved, petitioner elevated the matter to the Court by way of a petition for review on *certiorari* under Rule 45, docketed as **G.R. No. 175048**.

On February 10, 2009, in G.R. No. 175048, the Court promulgated a decision^[21] in favor of petitioner and held: *first*, that Win Multi-Rich was not a real party in interest; *second*, that the RTC should not have taken cognizance of the collection suit because the presence of the arbitration clause vested jurisdiction on the CIAC over all construction disputes between petitioner and Multi-Rich; and *lastly*, that Win Multi-Rich could not retain the garnished amount, as the RTC did not have jurisdiction to issue the questioned writ of attachment and to order the release of the funds. The dispositive portion reads:

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals is hereby MODIFIED. Civil Case No. 04-108940 is DISMISSED. Win Multi-Rich Builders, Inc. is ORDERED to return the garnished amount of EIGHT MILLION SIX HUNDRED THIRTY FOUR THOUSAND FOUR HUNDRED FORTY-EIGHT PESOS AND TWENTY CENTAVOS (P8,634,448.20), which was turned over by the Regional Trial Court, to petitioner with legal interest of 12 percent (12%) per annum upon finality of this Decision until payment.

SO ORDERED.^[22]

Win Multi-Rich filed a motion for reconsideration but it was denied by the Court in its April 20, 2009 Resolution.^[23] Pursuant to an entry of judgment,^[24] the Court's decision became final and executory on June 2, 2009.

On June 26, 2009, petitioner moved for execution thereof, praying for the return of its cash deposit and, in the event of refusal of Win Multi-Rich to comply, to hold Visayan Surety and FESICO liable under their respective bonds.^[25]

Win Multi-Rich, Visayan Surety and FESICO were served with copies of the motion for execution.^[26] During the August 7, 2009 hearing on the motion for execution, counsels for petitioner, Win Multi-Rich and FESICO were present.^[27] The hearing, however, was reset to September 16, 2009. On the said date, Win Multi-Rich, Visayan Surety and FESICO were given fifteen (15) days to submit their respective comments or oppositions to the motion for execution.^[28]

On October 15, 2009, Win Multi-Rich opposed the motion for execution^[29] because the cash deposit awarded to it by the RTC had been paid to suppliers and the said amount was long overdue and demandable.

The RTC granted the motion for execution in an Order,^[30] dated October 19, 2009, and issued a writ of execution.^[31] Visayan Surety and FESICO separately moved for reconsideration of the RTC order.

The RTC Ruling

On January 15, 2010, the RTC issued the order,^[32] granting the surety respondents' motion for reconsideration and lifting its October 19, 2009 Order insofar as it granted the motion for execution against Visayan Surety and FESICO. The RTC absolved the surety respondents because petitioner did not file a motion for judgment on the attachment bond before the finality of judgment, thus, violating the surety respondents' right to due process. It further held that the execution against the surety respondents would go beyond the terms of the judgment sought to be executed considering that the Court decision pertained to Win Multi-Rich only.

Petitioner moved for reconsideration, but its motion was denied by the RTC in its May 19, 2010 Order.^[33]

Undaunted, petitioner appealed before the CA, arguing that there was no violation of the right to due process because the liability of the surety respondents were based on the bonds issued by them.

The CA Ruling

In the assailed decision, dated October 21, 2013, the CA found petitioner's appeal without merit. Citing Section 20, Rule 57 of the 1997 Rules of Civil Procedure (*Section 20, Rule 57*), the CA held that petitioner failed to timely claim damages against the surety before the decision of the Court became final and executory. It further stated that a court judgment could not bind persons who were not parties to the action as the records showed that Visayan Surety and FESICO were neither impleaded nor informed of the proceedings before the Court in G.R. No. 175048. It was the view of the CA that "[h]aving failed to observe very elementary rules of procedure which are mandatory, [petitioner] caused its own predicament."

Petitioner filed a motion for reconsideration, but it was denied by the CA in the assailed April 1, 2014 Resolution.

Hence, this present petition, anchored on the following

STATEMENT OF ISSUES

I

THE ASSAILED DECISION AND THE ASSAILED RESOLUTION OF THE COURT OF APPEALS SHOULD BE REVERSED AND SET ASIDE FOR BEING CONTRARY TO LAW AND JURISPRUDENCE CONSIDERING THAT THE RIGHT TO DUE PROCESS OF THE TWO SURETY COMPANIES WILL NOT BE VIOLATED IF EXECUTION OF THE JUDGMENT AGAINST THEM IS ALLOWED.

II

THE ASSAILED DECISION AND THE ASSAILED RESOLUTION OF THE COURT OF APPEALS SHOULD BE REVERSED AND SET ASIDE FOR BEING CONTRARY TO LAW AND JURISPRUDENCE CONSIDERING THAT TO ALLOW THE EXECUTION AGAINST THE TWO SURETY COMPANIES WOULD GIVE FULL EFFECT TO THE TERMS OF THE JUDGMENT.^[34]

Petitioner contends that Visayan Surety and FESICO could be held liable because the Court, in G.R. No. 175048, ruled that it cannot allow Win Multi-Rich to retain the garnished amount turned over by the RTC, which had no jurisdiction to issue the questioned writ of attachment. Petitioner argues that if Win Multi-Rich fails or refuses to refund or return the cash deposit, then Visayan Surety and FESICO must be held liable under their respective bonds. Also, petitioner claims that the surety bond of FESICO is not covered by Section 20, Rule 57 because it did not pertain to the writ of attachment itself, but on the withdrawal of the cash deposit.

On October 3, 2014, Visayan Surety filed its Comment.^[35] It asserted that no application for damages was filed before the Court in G.R. No. 175048. Thus, there was no occasion to direct the RTC to hear and decide the claim for damages, which constituted a violation of its right to due process. Also, Visayan Surety contended that Section 20, Rule 57 provided a mandatory rule that an application for damages must be filed before the judgment becomes final and executory.

On October 8, 2014, FESICO filed its Comment.^[36] It averred that petitioner failed to comply with Section 20, Rule 57 of the Rules of Court because the hearing on the motion for execution was conducted after the decision in G.R. No. 175048 had already become final and executory. It also stated that petitioner failed to implead the surety respondents as parties in G.R. No. 175048.

On January 26, 2015, petitioner filed its Consolidated Reply.^[37] It stressed that because the highest court of the land had directed the return of the wrongfully garnished amount to petitioner, proceedings on the application under Section 20, Rule 57, became no longer necessary.

The Court's Ruling

The petition is partly meritorious.

There was an application for damages; but there was no notice given to Visayan Surety

By its nature, preliminary attachment, under Rule 57 of the Rules of Court, "is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action. As such, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition and for purposes of the ultimate effects, of a final judgment in the case."^[38] In addition, attachment is also availed of in order to acquire jurisdiction over the action by actual or constructive seizure of the property in those instances where personal or