

THIRD DIVISION

[G.R. No. 155868, February 06, 2007]

SPOUSES GREGORIO AND JOSEFA YU, PETITIONERS, VS. NGO YET TE, DOING BUSINESS UNDER THE NAME AND STYLE, ESSENTIAL MANUFACTURING, RESPONDENT.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the March 21, 2001 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 52246^[2] and its October 14, 2002 Resolution.^[3]

The antecedent facts are not disputed.

Spouses Gregorio and Josefa Yu (Spouses Yu) purchased from Ngo Yet Te (Te) bars of detergent soap worth P594,240.00, and issued to the latter three postdated checks ^[4] as payment of the purchase price. When Te presented the checks at maturity for encashment, said checks were returned dishonored and stamped "ACCOUNT CLOSED".^[5] Te demanded^[6] payment from Spouses Yu but the latter did not heed her demands. Acting through her son and attorney-in-fact, Charry Sy (Sy), Te filed with the Regional Trial Court (RTC), Branch 75, Valenzuela, Metro Manila, a Complaint,^[7] docketed as Civil Case No. 4061-V-93, for Collection of Sum of Money and Damages with Prayer for Preliminary Attachment.

In support of her prayer for preliminary attachment, Te attached to her Complaint an Affidavit executed by Sy that Spouses Yu were guilty of fraud in entering into the purchase agreement for they never intended to pay the contract price, and that, based on reliable information, they were about to move or dispose of their properties to defraud their creditors.^[8]

Upon Te's posting of an attachment bond,^[9] the RTC issued an Order of Attachment/Levy^[10] dated March 29, 1993 on the basis of which Sheriff Constancio Alimurung (Sheriff Alimurung) of RTC, Branch 19, Cebu City levied and attached Spouses Yu's properties in Cebu City consisting of one parcel of land (known as Lot No. 11)^[11] and four units of motor vehicle, specifically, a Toyota Ford Fierra, a jeep, a Canter delivery van, and a passenger bus.^[12]

On April 21, 1993, Spouses Yu filed an Answer^[13] with counterclaim for damages arising from the wrongful attachment of their properties, specifically, actual damages amounting to P1,500.00 per day; moral damages, P1,000,000.00; and exemplary damages, P50,000.00. They also sought payment of P120,000.00 as attorney's fees and P80,000.00 as litigation expenses.^[14] On the same date,

Spouses Yu filed an Urgent Motion to Dissolve Writ of Preliminary Attachment.^[15] They also filed a Claim Against Surety Bond^[16] in which they demanded payment from Visayan Surety and Insurance Corporation (Visayan Surety), the surety which issued the attachment bond, of the sum of P594,240.00, representing the damages they allegedly sustained as a consequence of the wrongful attachment of their properties.

While the RTC did not resolve the Claim Against Surety Bond, it issued an Order^[17] dated May 3, 1993, discharging from attachment the Toyota Ford Fierra, jeep, and Canter delivery van on humanitarian grounds, but maintaining custody of Lot No. 11 and the passenger bus. Spouses Yu filed a Motion for Reconsideration^[18] which the RTC denied.^[19]

Dissatisfied, they filed with the CA a Petition for *Certiorari*,^[20] docketed as CA-G.R. SP No. 31230, in which a Decision^[21] was rendered on September 14, 1993, lifting the RTC Order of Attachment on their remaining properties. It reads in part:

In the case before Us, the complaint and the accompanying affidavit in support of the application for the writ only contains general averments. Neither pleading states in particular how the fraud was committed or the badges of fraud purportedly committed by the petitioners to establish that the latter never had an intention to pay the obligation; neither is there a statement of the particular acts committed to show that the petitioners are in fact disposing of their properties to defraud creditors. x x x.

x x x x

Moreover, at the hearing on the motion to discharge the order of attachment x x x petitioners presented evidence showing that private respondent has been extending multi-million peso credit facilities to the petitioners for the past seven years and that the latter have consistently settled their obligations. This was not denied by private respondent. Neither does the private respondent contest the petitioners' allegations that they have been recently robbed of properties of substantial value, hence their inability to pay on time. By the respondent court's own pronouncements, it appears that the order of attachment was upheld because of the admitted financial reverses the petitioner is undergoing.

This is reversible error. Insolvency is not a ground for attachment especially when defendant has not been shown to have committed any act intended to defraud its creditors x x x.

For lack of factual basis to justify its issuance, the writ of preliminary attachment issued by the respondent court was improvidently issued and should be discharged.^[22]

From said CA Decision, Te filed a Motion for Reconsideration but to no avail.^[23]

Te filed with us a Petition for Review on *Certiorari*^[24] but we denied the same in a

Resolution dated June 8, 1994 for having been filed late and for failure to show that a reversible error was committed by the CA.^[25] Entry of Judgment of our June 8, 1994 Resolution was made on July 22, 1994.^[26] Thus, the finding of the CA in its September 14, 1993 Decision in CA-G.R. SP No. 31230 on the wrongfulness of the attachment/levy of the properties of Spouses Yu became conclusive and binding.

However, on July 20, 1994, the RTC, apparently not informed of the SC Decision, rendered a Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds that the plaintiff has established a valid civil cause of action against the defendants, and therefore, renders this judgment in favor of the plaintiff and against the defendants, and hereby orders the following:

- 1) Defendants are hereby ordered or directed to pay the plaintiff the sum of P549,404.00, with interest from the date of the filing of this case (March 3, 1993);
- 2) The Court, for reasons aforestated, hereby denies the grant of damages to the plaintiff;
- 3) The Court hereby adjudicates a reasonable attorney's fees and litigation expenses of P10,000.00 in favor of the plaintiff;
- 4) ***On the counterclaim, this Court declines to rule on this, considering that the question of the attachment which allegedly gave rise to the damages incurred by the defendants is being determined by the Supreme Court.***

SO ORDERED.^[27] (Emphasis ours)

Spouses Yu filed with the RTC a Motion for Reconsideration^[28] questioning the disposition of their counterclaim. They also filed a Manifestation^[29] informing the RTC of our June 8, 1994 Resolution in G.R. No. 114700.

The RTC issued an Order dated August 9, 1994, which read:

x x x x

(2) With regard the counter claim filed by the defendants against the plaintiff for the alleged improvident issuance of this Court thru its former Presiding Judge (Honorable Emilio Leachon, Jr.), the same has been ruled with definiteness by the Supreme Court that, indeed, the issuance by the Court of the writ of preliminary attachment appears to have been improvidently done, **but nowhere in the decision of the Supreme Court and for that matter, the Court of Appeal's decision which was in effect sustained by the High Court, contains any ruling or directive or imposition, of any damages to be paid by the plaintiff to the defendants**, in other words, both the High Court and the CA, merely declared the previous issuance of the writ of attachment by this Court thru its former presiding judge to be improvidently issued, but it did not award any damages of any kind to the defendants, hence, unless

the High Court or the CA rules on this, this Court could not grant any damages by virtue of the improvident attachment made by this Court thru its former presiding judge, which was claimed by the defendants in their counter claim.

(3) This Court hereby reiterates in toto its Decision in this case dated July 20, 1994. [30] (Emphasis ours)

The RTC also issued an Order dated December 2, 1994, [31] denying the Motion for Reconsideration of Spouses Yu. [32]

In the same December 2, 1994 Order, the RTC granted two motions filed by Te, a Motion to Correct and to Include Specific Amount for Interest and a Motion for Execution Pending Appeal. [33] The RTC also denied Spouses Yu's Notice of Appeal [34] from the July 20, 1994 Decision and August 9, 1994 Order of the RTC.

From said December 2, 1994 RTC Order, Spouses Yu filed another Notice of Appeal [35] which the RTC also denied in an Order [36] dated January 5, 1995.

Spouses Yu filed with the CA a Petition [37] for *Certiorari*, Prohibition and *Mandamus*, docketed as CA-G.R. SP No. 36205, questioning the denial of their Notices of Appeal; and seeking the modification of the July 20, 1994 Decision and the issuance of a Writ of Execution. The CA granted the Petition in a Decision [38] dated June 22, 1995.

Hence, Spouses Yu filed with the CA an appeal [39] docketed as CA-G.R. CV No. 52246, questioning only that portion of the July 20, 1994 Decision where the RTC declined to rule on their counterclaim for damages. [40] However, Spouses Yu did not dispute the specific monetary awards granted to respondent Te; and therefore, the same have become final and executory.

Although in the herein assailed Decision [41] dated March 21, 2001, the CA affirmed *in toto* the RTC Decision, it nonetheless made a ruling on the counterclaim of Spouses Yu by declaring that the latter had failed to adduce sufficient evidence of their entitlement to damages.

Spouses Yu filed a Motion for Reconsideration [42] but the CA denied it in the herein assailed Resolution [43] dated October 14, 2002.

Spouses Yu filed the present Petition raising the following issues:

- I. Whether or not the appellate court erred in not holding that the writ of attachment was procured in bad faith, after it was established by final judgment that there was no true ground therefor.
- II. Whether or not the appellate court erred in refusing to award actual, moral and exemplary damages after it was established by final judgment that the writ of attachment was procured with no true ground for its issuance. [44]

There is one preliminary matter to set straight before we resolve the foregoing issues.

According to respondent Te,^[45] regardless of the evidence presented by Spouses Yu, their counterclaim was correctly dismissed for failure to comply with the procedure laid down in Section 20 of Rule 57. Te contends that as Visayan Surety was not notified of the counterclaim, no judgment thereon could be validly rendered.

Such argument is not only flawed, it is also specious.

As stated earlier, Spouses Yu filed a Claim Against Surety Bond on the same day they filed their Answer and Urgent Motion to Dissolve Writ of Preliminary Attachment.^[46] Further, the records reveal that on June 18, 1993, Spouses Yu filed with the RTC a Motion to Give Notice to Surety.^[47] The RTC granted the Motion in an Order^[48] dated June 23, 1993. Accordingly, Visayan Surety was notified of the pre-trial conference to apprise it of a pending claim against its attachment bond. Visayan Surety received the notice on July 12, 1993 as shown by a registry return receipt attached to the records.^[49]

Moreover, even if it were true that Visayan Surety was left in the proceedings *a quo*, such omission is not fatal to the cause of Spouses Yu. In *Malayan Insurance Company, Inc. v. Salas*,^[50] we held that "x x x if the surety was not given notice when the claim for damages against the principal in the replevin bond was heard, then as a matter of procedural due process the surety is entitled to be heard when the judgment for damages against the principal is sought to be **enforced** against the surety's replevin bond."^[51] This remedy is applicable for the procedures governing claims for damages on an attachment bond and on a replevin bond are the same.^[52]

We now proceed to resolve the issues jointly.

Spouses Yu contend that they are entitled to their counterclaim for damages as a matter of right in view of the finality of our June 8, 1994 Resolution in G.R. No. 114700 which affirmed the finding of the CA in its September 14, 1993 Decision in CA-G.R. SP No. 31230 that respondent Te had wrongfully caused the attachment of their properties. Citing *Javellana v. D.O. Plaza Enterprises, Inc.*,^[53] they argue that they should be awarded damages based solely on the CA finding that the attachment was illegal for it already suggests that Te acted with malice when she applied for attachment. And even if we were to assume that Te did not act with malice, still she should be held liable for the aggravation she inflicted when she applied for attachment even when she was clearly not entitled to it.^[54]

That is a rather limited understanding of *Javellana*. The counterclaim disputed therein was not for moral damages and therefore, there was no need to prove malice. As early as in *Lazatin v. Twaño*,^[55] we laid down the rule that where there is wrongful attachment, the attachment defendant may recover actual damages even without proof that the attachment plaintiff acted in bad faith in obtaining the attachment. However, if it is alleged and established that the attachment was not merely wrongful but also malicious, the attachment defendant may recover moral