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THIRD DIVISION

[G.R. NO. 123638, June 15, 2005]

INSULAR SAVINGS BANK, PETITIONER, VS. COURT OF APPEALS, JUDGE OMAR U. AMIN, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 135 OF THE REGIONAL TRIAL COURT OF MAKATI, AND FAR EAST BANK AND TRUST COMPANY, RESPONDENTS.

D E C I S I O N

GARCIA, J.:

Thru this appeal *via* a petition for review on certiorari under Rule 45 of the Rules of Court, petitioner **Insular Savings Bank** seeks to set aside the **decision**[1] **dated October 9, 1995** of the Court of Appeals in **CA-G.R. SP No. 34876** and its **resolution dated January 24, 1996**,[2] denying petitioner's motion for reconsideration.

The assailed decision of October 9, 1995 cleared the Regional Trial Court (RTC) at Makati, Branch 135, of committing, as petitioner alleged, grave abuse of discretion in denying petitioner's motion to discharge attachment by counter-bond in Civil Case No. 92-145, while the equally assailed resolution of January 24, 1996 denied petitioner's motion for reconsideration.

The undisputed facts are summarized in the appellate court's decision[3] under review, as follows:

> "On December 11, 1991, respondent Bank [Far East Bank and Trust Company] instituted Arbitration Case No. 91-069 against petitioner [Insular Savings Bank] before the Arbitration Committee of the Philippine Clearing House Corporation [PCHC]. The dispute between the parties involved three [unfunded] checks with a total value of P25,200,000.00. The checks were drawn against respondent Bank and were presented by petitioner for clearing. As respondent Bank returned the checks beyond the reglementary period, [but after petitioner's account with PCHC was credited with the amount of P25,200,000.00] petitioner refused to refund the money to respondent Bank. While the dispute was pending arbitration, on January 17, 1992, respondent Bank instituted **Civil Case No. 92-145** in the Regional Trial Court of Makati and prayed for the issuance of a writ of preliminary attachment. On January 22, 1992, Branch 133 of the Regional Trial Court of Makati issued an Order granting the application for preliminary attachment upon posting by respondent Bank of an attachment bond in the amount of P6,000,000.00. On January 27, 1992, Branch 133 of the Regional Trial Court of Makati issued a writ of preliminary attachment for the amount of P25,200,000.00. During the hearing on February 11, 1992 before the Arbitration Committee of the Philippine Clearing House Corporation, petitioner and respondent Bank

> agreed to temporarily divide between them the disputed amount of P25,200,000.00 while the dispute has not yet been resolved. As a result, the sum of P12,600,000.00 is in the possession of respondent Bank. On March 9, 1994, petitioner filed a motion to discharge attachment by counter-bond in the amount of P12,600,000.00. **On June 13, 1994, respondent Judge issued the first assailed order denying the motion. On June 27, 1994, petitioner filed a motion for reconsideration which was denied in the second assailed order dated July 20, 1994"** (Emphasis and words in bracket added).

From the order denying its motion to discharge attachment by counter-bond, petitioner went to the Court of Appeals on a petition for certiorari thereat docketed as CA-G.R. SP No. 34876, ascribing on the trial court the commission of grave abuse of discretion amounting to lack of jurisdiction.

While acknowledging that "[*R]espondent Judge may have erred in his Order of June 13, 1994 that the counter-bond should be in the amount of P27,237,700.00"*, in that he erroneously factored in, in arriving at such amount, unliquidated claim items, such as actual and exemplary damages, legal interest, attorney's fees and expenses of litigation, the CA, in the herein assailed **decision dated October 9, 1995**, nonetheless denied due course to and dismissed the petition. For, according to the appellate court, the RTC's order may be defended by, among others, the provision of Section 12 of Rule 57 of the Rules of Court, *infra*. The CA added that, assuming that the RTC erred on the matter of computing the amount of the discharging counter-bond, its error does not amount to grave abuse of discretion.

With its motion for reconsideration having been similarly denied, petitioner is now with us, faulting the appellate court, as follows:

> "I. THE COURT OF APPEALS ERRED IN NOT RULING THAT THE PRINCIPAL AMOUNT CLAIMED BY RESPONDENT BANK SHOULD BE THE BASIS FOR COMPUTING THE AMOUNT OF THE COUNTER-BOND, FOR THE PRELIMINARY ATTACHMENT WAS ISSUED FOR THE SAID AMOUNT ONLY.
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> "II. THE COURT OF APPEALS ERRED IN NOT RULING THAT THE ARGUMENT THAT THE AMOUNT OF THE COUNTER-BOND SHOULD BE BASED ON THE VALUE OF THE PROPERTY ATTACHED CANNOT BE RAISED FOR THE FIRST TIME IN THE COURT OF APPEALS.
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> "III. THE COURT OF APPEALS ERRED IN RULING THAT THE AMOUNT OF THE COUNTER-BOND SHOULD BE BASED ON THE VALUE OF THE PROPERTY ATTACHED EVEN IF IT WILL RESULT IN MAKING THE AMOUNT OF THE COUNTER-BOND EXCEED THE AMOUNT FOR WHICH PRELIMINARY ATTACHMENT WAS ISSUED."

Simply put, the issue is whether or not the CA erred in not ruling that the trial court committed grave abuse of discretion in denying petitioner's motion to discharge attachment by counter-bond in the amount of P12,600,000.00.

Says the trial court in its Order of June 13, 1994:

> "xxx (T)he counter-bond posted by [petitioner] Insular Savings Bank should include the unsecured portion of [respondent's] claim of

> P12,600,000.00 as agreed by means of arbitration between [respondent] and [petitioner]; Actual damages at 25% percent per annum of unsecured amount of claim from October 21, 1991 in the amount of P7,827,500.00; Legal interest of 12% percent per annum from October 21, 1991 in the amount of P3,805,200.00; Exemplary damages in the amount of P2,000,000.00; and attorney's fees and expenses of litigation in the amount of P1,000,000.00 with a total amount of P27,237,700.00 (Adlawan vs. Tomol, 184 SCRA 31 (1990)".

Petitioner, on the other hand, argues that the starting point in computing the amount of counter-bond is the amount of the respondent's demand or claim only, in this case P25,200,000.00, excluding contingent expenses and unliquidated amount of damages. And since there was a mutual agreement between the parties to temporarily, but equally, divide between themselves the said amount pending and subject to the final outcome of the arbitration, the amount of P12,600,000.00 should, so petitioner argues, be the basis for computing the amount of the counter-bond.

The Court rules for the petitioner.

The then pertinent provision of Rule 57 (Preliminary Attachment) of the Rules of Court under which the appellate court issued its assailed decision and resolution, provides as follows:

> "SEC. 12. *Discharge of attachment upon giving counter-bond.* – At any time after an order of attachment has been granted, the party whose property has been attached, . . . may upon reasonable notice to the applicant, apply to the judge who granted the order or to the judge of the court which the action is pending, for an order discharging the attachment wholly or in part on the security given. The judge shall, after hearing, order the discharge of the attachment if a cash deposit is made, or a counter-bond executed to the attaching creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made **in an amount equal to the value of the property attached as determined by the judge, to secure the payment of any judgment that the attaching creditor may recover in the action**. x x x . Should such counter-bond for any reason be found to be, or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment"4 (Emphasis supplied).[4]

As may be noted, the amount of the counter-attachment bond is, under the terms of the aforequoted Section 12, to be measured against the value of the attached property, as determined by the judge to secure the payment of any judgment that the attaching creditor may recover in the action. Albeit not explicitly stated in the same section and without necessarily diminishing the sound discretion of the issuing judge on matters of bond approval, there can be no serious objection, in turn, to the proposition that the attached property - and logically the counter-bond necessary to discharge the lien on such property - should as much as possible correspond in value to, or approximately match the attaching creditor's principal claim. Else, excessive attachment, which ought to be avoided at all times, shall ensue. As we held in *Asuncion vs. Court of Appeals:*[5]