

## SECOND DIVISION

**[ G.R. No. 124642, February 23, 2004 ]**

**ALFREDO CHING AND ENCARNACION CHING, PETITIONERS, VS.  
THE HON. COURT OF APPEALS AND ALLIED BANKING  
CORPORATION, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This petition for review, under Rule 45 of the Revised Rules of Court, assails the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated November 27, 1995 in CA-G.R. SP No. 33585, as well as the Resolution<sup>[2]</sup> on April 2, 1996 denying the petitioners' motion for reconsideration. The impugned decision granted the private respondent's petition for certiorari and set aside the Orders of the trial court dated December 15, 1993<sup>[3]</sup> and February 17, 1994<sup>[4]</sup> nullifying the attachment of 100,000 shares of stocks of the Citycorp Investment Philippines under the name of petitioner Alfredo Ching.

The following facts are undisputed:

On September 26, 1978, the Philippine Blooming Mills Company, Inc. (PBMCI) obtained a loan of P9,000,000.00 from the Allied Banking Corporation (ABC). By virtue of this loan, the PBMCI, through its Executive Vice-President Alfredo Ching, executed a promissory note for the said amount promising to pay on December 22, 1978 at an interest rate of 14% *per annum*.<sup>[5]</sup> As added security for the said loan, on September 28, 1978, Alfredo Ching, together with Emilio Tañedo and Chung Kiat Hua, executed a continuing guaranty with the ABC binding themselves to jointly and severally guarantee the payment of all the PBMCI obligations owing the ABC to the extent of P38,000,000.00.<sup>[6]</sup> The loan was subsequently renewed on various dates, the last renewal having been made on December 4, 1980.<sup>[7]</sup>

Earlier, on December 28, 1979, the ABC extended another loan to the PBMCI in the amount of P13,000,000.00 payable in eighteen months at 16% interest *per annum*. As in the previous loan, the PBMCI, through Alfredo Ching, executed a promissory note to evidence the loan maturing on June 29, 1981.<sup>[8]</sup> This was renewed once for a period of one month.<sup>[9]</sup>

The PBMCI defaulted in the payment of all its loans. Hence, on August 21, 1981, the ABC filed a complaint for sum of money with prayer for a writ of preliminary attachment against the PBMCI to collect the P12,612,972.88 exclusive of interests, penalties and other bank charges. Impleaded as co-defendants in the complaint were Alfredo Ching, Emilio Tañedo and Chung Kiat Hua in their capacity as sureties of the PBMCI.

The case was docketed as Civil Case No. 142729 in the Regional Trial Court of Manila, Branch XVIII.<sup>[10]</sup> In its application for a writ of preliminary attachment, the ABC averred that the “defendants are guilty of fraud in incurring the obligations upon which the present action is brought<sup>[11]</sup> in that they falsely represented themselves to be in a financial position to pay their obligation upon maturity thereof.”<sup>[12]</sup> Its supporting affidavit stated, *inter alia*, that the “[d]efendants have removed or disposed of their properties, or [are] ABOUT to do so, with intent to defraud their creditors.”<sup>[13]</sup>

On August 26, 1981, after an *ex-parte* hearing, the trial court issued an Order denying the ABC’s application for a writ of preliminary attachment. The trial court decreed that the grounds alleged in the application and that of its supporting affidavit “are all conclusions of fact and of law” which do not warrant the issuance of the writ prayed for.<sup>[14]</sup> On motion for reconsideration, however, the trial court, in an Order dated September 14, 1981, reconsidered its previous order and granted the ABC’s application for a writ of preliminary attachment on a bond of P12,700,000. The order, in relevant part, stated:

With respect to the second ground relied upon for the grant of the writ of preliminary attachment *ex-parte*, which is the alleged disposal of properties by the defendants with intent to defraud creditors as provided in Sec. 1(e) of Rule 57 of the Rules of Court, the affidavits can only barely justify the issuance of said writ as against the defendant Alfredo Ching who has allegedly bound himself jointly and severally to pay plaintiff the defendant corporation’s obligation to the plaintiff as a surety thereof.

WHEREFORE, let a writ of preliminary attachment issue as against the defendant Alfredo Ching requiring the sheriff of this Court to attach all the properties of said Alfredo Ching not exceeding P12,612,972.82 in value, which are within the jurisdiction of this Court and not exempt from execution upon, the filing by plaintiff of a bond duly approved by this Court in the sum of Twelve Million Seven Hundred Thousand Pesos (P12,700,000.00) executed in favor of the defendant Alfredo Ching to secure the payment by plaintiff to him of all the costs which may be adjudged in his favor and all damages he may sustain by reason of the attachment if the court shall finally adjudge that the plaintiff was not entitled thereto.

SO ORDERED.<sup>[15]</sup>

Upon the ABC’s posting of the requisite bond, the trial court issued a writ of preliminary attachment. Subsequently, summonses were served on the defendants,<sup>[16]</sup> save Chung Kiat Hua who could not be found.

Meanwhile, on April 1, 1982, the PBMCI and Alfredo Ching jointly filed a petition for suspension of payments with the Securities and Exchange Commission (SEC), docketed as SEC Case No. 2250, at the same time seeking the PBMCI’s rehabilitation.<sup>[17]</sup>

On July 9, 1982, the SEC issued an Order placing the PBMCI’s business, including its

assets and liabilities, under rehabilitation receivership, and ordered that “all actions for claims listed in Schedule “A” of the petition pending before any court or tribunal are hereby suspended in whatever stage the same may be until further orders from the Commission.”<sup>[18]</sup> The ABC was among the PBMCI’s creditors named in the said schedule.

Subsequently, on January 31, 1983, the PBMCI and Alfredo Ching jointly filed a Motion to Dismiss and/or motion to suspend the proceedings in Civil Case No. 142729 invoking the PBMCI’s pending application for suspension of payments (which Ching co-signed) and over which the SEC had already assumed jurisdiction.<sup>[19]</sup> On February 4, 1983, the ABC filed its Opposition thereto.<sup>[20]</sup>

In the meantime, on July 26, 1983, the deputy sheriff of the trial court levied on attachment the 100,000 common shares of Citycorp stocks in the name of Alfredo Ching.<sup>[21]</sup>

Thereafter, in an Order dated September 16, 1983, the trial court partially granted the aforementioned motion by suspending the proceedings only with respect to the PBMCI. It denied Ching’s motion to dismiss the complaint/or suspend the proceedings and pointed out that P.D. No. 1758 only concerns the activities of corporations, partnerships and associations and was never intended to regulate and/or control activities of individuals. Thus, it directed the individual defendants to file their answers.<sup>[22]</sup>

Instead of filing an answer, Ching filed on January 14, 1984 a Motion to Suspend Proceedings on the same ground of the pendency of SEC Case No. 2250. This motion met the opposition from the ABC.<sup>[23]</sup>

On January 20, 1984, Tañedo filed his Answer with counterclaim and cross-claim.<sup>[24]</sup> Ching eventually filed his Answer on July 12, 1984.<sup>[25]</sup>

On October 25, 1984, long after submitting their answers, Ching filed an Omnibus Motion,<sup>[26]</sup> again praying for the dismissal of the complaint or suspension of the proceedings on the ground of the July 9, 1982 Injunctive Order issued in SEC Case No. 2250. He averred that as a surety of the PBMCI, he must also necessarily benefit from the defenses of his principal. The ABC opposed Ching’s omnibus motion.

Emilio Y. Tañedo, thereafter, filed his own Omnibus Motion<sup>[27]</sup> praying for the dismissal of the complaint, arguing that the ABC had “abandoned and waived” its right to proceed against the continuing guaranty by its act of resorting to preliminary attachment.

On December 17, 1986, the ABC filed a Motion to Reduce the amount of his preliminary attachment bond from P12,700,000 to P6,350,000.<sup>[28]</sup> Alfredo Ching opposed the motion,<sup>[29]</sup> but on April 2, 1987, the court issued an Order setting the incident for further hearing on May 28, 1987 at 8:30 a.m. for the parties to adduce evidence on the actual value of the properties of Alfredo Ching levied on by the sheriff.<sup>[30]</sup>

On March 2, 1988, the trial court issued an Order granting the motion of the ABC and rendered the attachment bond of P6,350,000.<sup>[31]</sup>

On November 16, 1993, Encarnacion T. Ching, assisted by her husband Alfredo Ching, filed a Motion to Set Aside the levy on attachment. She alleged *inter alia* that the 100,000 shares of stocks levied on by the sheriff were acquired by her and her husband during their marriage out of conjugal funds after the Citycorp Investment Philippines was established in 1974. Furthermore, the indebtedness covered by the continuing guaranty/comprehensive suretyship contract executed by petitioner Alfredo Ching for the account of PBMCI did not redound to the benefit of the conjugal partnership. She, likewise, alleged that being the wife of Alfredo Ching, she was a third-party claimant entitled to file a motion for the release of the properties.<sup>[32]</sup> She attached therewith a copy of her marriage contract with Alfredo Ching.<sup>[33]</sup>

The ABC filed a comment on the motion to quash preliminary attachment and/or motion to expunge records, contending that:

2.1 The supposed movant, Encarnacion T. Ching, is not a party to this present case; thus, she has no personality to file any motion before this Honorable Court;

2.2 Said supposed movant did not file any Motion for Intervention pursuant to Section 2, Rule 12 of the Rules of Court;

2.3 Said Motion cannot even be construed to be in the nature of a Third-Party Claim conformably with Sec. 14, Rule 57 of the Rules of Court.

3. Furthermore, assuming in *gracia argumenti* that the supposed movant has the required personality, her Motion cannot be acted upon by this Honorable Court as the above-entitled case is still in the archives and the proceedings thereon still remains suspended. And there is no previous Motion to revive the same.<sup>[34]</sup>

The ABC also alleged that the motion was barred by prescription or by laches because the shares of stocks were in *custodia legis*.

During the hearing of the motion, Encarnacion T. Ching adduced in evidence her marriage contract to Alfredo Ching to prove that they were married on January 8, 1960;<sup>[35]</sup> the articles of incorporation of Citycorp Investment Philippines dated May 14, 1979;<sup>[36]</sup> and, the General Information Sheet of the corporation showing that petitioner Alfredo Ching was a member of the Board of Directors of the said corporation and was one of its top twenty stockholders.

On December 10, 1993, the Spouses Ching filed their Reply/Opposition to the motion to expunge records.

Acting on the aforementioned motion, the trial court issued on December 15, 1993 an Order<sup>[37]</sup> lifting the writ of preliminary attachment on the shares of stocks and

ordering the sheriff to return the said stocks to the petitioners. The dispositive portion reads:

WHEREFORE, the instant Motion to Quash Preliminary Attachment, dated November 9, 1993, is hereby granted. Let the writ of preliminary attachment subject matter of said motion, be quashed and lifted with respect to the attached 100,000 common shares of stock of Citycorp Investment Philippines in the name of the defendant Alfredo Ching, the said shares of stock to be returned to him and his movant-spouse by Deputy Sheriff Apolonio A. Golfo who effected the levy thereon on July 26, 1983, or by whoever may be presently in possession thereof.

SO ORDERED.<sup>[38]</sup>

The plaintiff Allied Banking Corporation filed a motion for the reconsideration of the order but denied the same on February 17, 1994. The petitioner bank forthwith filed a petition for certiorari with the CA, docketed as CA-G.R. SP No. 33585, for the nullification of the said order of the court, contending that:

1. The respondent Judge exceeded his authority thereby acted without jurisdiction in taking cognizance of, and granting a "Motion" filed by a complete stranger to the case.
2. The respondent Judge committed a grave abuse of discretion in lifting the writ of preliminary attachment without any basis in fact and in law, and contrary to established jurisprudence on the matter.

<sup>[39]</sup>

On November 27, 1995, the CA rendered judgment granting the petition and setting aside the assailed orders of the trial court, thus:

WHEREFORE, premises considered, the petition is GRANTED, hereby setting aside the questioned orders (dated December 15, 1993 and February 17, 1994) for being null and void.

SO ORDERED.<sup>[40]</sup>

The CA sustained the contention of the private respondent and set aside the assailed orders. According to the CA, the RTC deprived the private respondent of its right to file a bond under Section 14, Rule 57 of the Rules of Court. The petitioner Encarnacion T. Ching was not a party in the trial court; hence, she had no right of action to have the levy annulled with a motion for that purpose. Her remedy in such case was to file a separate action against the private respondent to nullify the levy on the 100,000 Citycorp shares of stocks. The court stated that even assuming that Encarnacion T. Ching had the right to file the said motion, the same was barred by laches.

Citing *Wong v. Intermediate Appellate Court*,<sup>[41]</sup> the CA ruled that the presumption in Article 160 of the New Civil Code shall not apply where, as in this case, the petitioner-spouses failed to prove the source of the money used to acquire the shares of stock. It held that the levied shares of stocks belonged to Alfredo Ching, as evidenced by the fact that the said shares were registered in the corporate books of Citycorp solely under his name. Thus, according to the appellate court, the RTC