

SECOND DIVISION

[G.R. No. 143706, April 05, 2002]

LAW FIRM OF ABRENICA, TUNGOL & TIBAYAN, DANILO M. TUNGOL AND ABELARDO M. TIBAYAN, PETITIONERS, VS. THE COURT OF APPEALS AND ERLANDO A. ABRENICA, RESPONDENTS.

DECISION

DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals^[2] dated February 15, 2000 in CA-G.R. SP No. 55319 affirming the Order^[3] dated September 17, 1999 of the Securities and Exchange Commission (SEC) *en banc* in EB Case No. 666 which discharged the attachment made on personal properties of respondent Erlando A. Abrenica while setting aside the SEC Order^[4] dated September 28, 1999 relative to the execution of the Order dated September 17, 1999.

Petitioners Danilo N. Tungol and Abelardo M. Tibayan and respondent Erlando A. Abrenica are the registered partners in the Law Firm of Abrenica, Tungol and Tibayan, a professional law partnership duly organized under Philippine laws. On May 6, 1998, petitioners Tungol and Tibayan filed before the Securities and Exchange Commission (SEC) a complaint for accounting, return and transfer of partnership funds with damages and application for issuance of preliminary attachment against their partner, respondent Abrenica.^[5] Petitioners, plaintiffs therein, claim that a real estate transaction entered into by the herein respondent Abrenica, defendant therein, was a law partnership transaction.

Following several hearings SEC Hearing Officer Roberto O. Sencio, Jr. issued an Order dated February 12, 1999 which granted the preliminary attachment of respondent Abrenica's assets.^[6] After filing of a bond, a writ of preliminary attachment was issued on February 12, 1999. The writ directed that sufficient assets of respondent Abrenica be attached to cover for Four Million Five Hundred Twenty-Four Thousand Pesos (P4,524,000.00) alleged to be partnership profits unaccounted and unremitted by respondent Abrenica.

In accordance with the writ of preliminary attachment, SEC Sheriff Edgardo R. Grueso levied upon the following properties of respondent Abrenica:^[7]

1. A parcel of land (Lot 3, Block 3, of the subd. plan (LRC) Psd-483, being a portion of Lot 49-C-3-E-3-B-2 (LRC) Psd-199, LRC) (GLRO) Rec. No. 7672), situated in the Bo. of Calumpang, Mun. of Marikina, Prov. of Rizal containing an area of THREE HUNDRED AND SEVENTY FIVE (375) SQUARE METERS, more or less, covered by TCT No.

216818;

2. One (1) Toyota Exsior 4-door sedan with plate no. UUB 956;
3. One (1) Toyota Corolla 4-door sedan model 1992 with plate no. TCP 318;
4. One (1) Kia Pregio with plate no. USC 553; and
5. Philippine Savings Bank deposits in the amount of Twelve Thousand Eight Hundred Seventy-Three Pesos and Forty-Two Centavos (P12,873.42).

Respondent Abrenica filed an Omnibus Motion for the inhibition of Hearing Officer Sencio and the reconsideration of the Order dated February 12, 1999 which granted the application for a writ of preliminary attachment.^[8] On March 25, 1999, Hearing Officer Sencio voluntarily inhibited himself from the case.^[9] Thereafter, a Hearing Panel composed of SEC Hearing Officers Alberto P. Atas, Myla Gloria A. Amboy and Nathaniel Lobigas issued an Omnibus Order dated June 14, 1999 which denied the motion for reconsideration.^[10]

On June 25, 1999 respondent Abrenica filed a petition for certiorari with the SEC *en banc* contending that Hearing Officer Sencio and the Hearing Panel acted with grave abuse of discretion amounting to lack of or in excess of jurisdiction in granting the petitioners' application for issuance of a writ of preliminary attachment as set forth in the Order dated February 12, 1999 and thereafter denying respondent Abrenica's Motion for Reconsideration therefrom contained in the Omnibus Order dated June 14, 1999.^[11]

On September 17, 1999, the SEC issued an Order^[12] which discharged the attachment made on the personal properties of respondent Abrenica, ratiocinating thus:

As pointed out by [respondent Abrenica] in his reply, the current market value of the house and lot levied by [petitioners] is P6,750,000.00 which is more than sufficient to cover the P4,520,000.00 claim. Even if we take a conservative stand in the estimate of the property, the Commission is still convinced that the same is adequate to cover the claim.

The Rules of Court which applies in suppletory manner states that:

Sec. 13 Discharge of attachment on other grounds. - The party whose property has been ordered attached may file a motion with the court in which the action of (sic) pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. If the attachment is excessive, the discharge shall be limited to the excess xxx (Rule 57 Section 13 Rules of Court).

Thereafter, the SEC issued an Order^[13] dated September 28, 1999, which reads:

Pursuant to the Order of the Commission dated September 17, 1999 discharging the attachment made on the personal property of Erlando Abrenica specifically the three vehicles to wit:

1. One (1) Toyota Exior 4-door sedan plate no. UUB 956.
2. One (1) Toyota Corolla 4-door sedan model 1992 plate no. TCP 318.
3. One (1) Kia Pregio plate no. USC 553.

The Sheriff of the Commission is hereby directed to release the same from the custody of the Commission.

Dissatisfied with the Orders of the SEC, the petitioners filed on October 12, 1999 a petition for certiorari with the Court of Appeals.^[14] Petitioners alleged therein that the SEC acted with grave abuse of discretion amounting to lack of or in excess of its jurisdiction when it rendered the Order dated September 17, 1999, since (a) the issue of excessive attachment was not within its jurisdiction to hear and resolve, (b) the SEC violated the petitioners right to due process of law, (c) the SEC disregarded and violated Rule 57, Section 13 of the Revised Rules of Court, and (d) the respondent Abrenica expressly pronounced that he is not praying for such relief. The petitioners further alleged that the SEC committed grave abuse of discretion in issuing the Order dated September 28, 1999, since (a) the said order has not yet become final and executory, thereby denying petitioners right to due process, and (b) the matter of execution is within the jurisdiction of the SEC SICD Hearing Panel not the SEC *en banc*.

In a Decision dated February 15, 2000, the Court of Appeals brushed aside the arguments of the petitioners relative to the Order dated September 17, 1999 and upheld the said Order. However, the appellate court found merit in the petitioners' proposition concerning the Order dated September 28, 1999. It held that there was a premature execution since the Order dated September 28, 1999 was issued just eleven (11) days after the issuance of the Order dated September 17, 1999 and, obviously, the period of appeal has not yet expired. Accordingly, the Order dated September 28, 1999 was set aside.

On June 7, 2000, the petitioners' motion for reconsideration of the decision was denied by the Court of Appeals in a resolution.^[15] Hence, the petitioners brought the instant petition for review.

It is the petitioners' contention that the Court of Appeals erred in holding that the SEC *en banc*, exercising purely appellate jurisdiction, has jurisdiction and can take cognizance of the issue of excessive attachment which was raised for the "first time" on certiorari and not raised before or brought to the attention of, and acted or ruled upon by, the SEC Hearing Officer/Panel. Petitioners aver that such conclusion is contrary to the well-settled rule that questions or issues not adequately brought to the attention of the trial court could not be raised for the first time on appeal and could not be acted or ruled upon by the reviewing court.

Ordinarily, an appellate court may only pass upon errors assigned.^[16] Nonetheless, the Supreme Court has ruled that an appellate court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, in the following instances: ^[17]