

## THIRD DIVISION

[ CA-G.R. SP NO. 132570, November 21, 2014 ]

**R.D. POLICARPIO & CO., INC., PETITIONER, VS. HON. IRIN ZENAIDA S. BUAN, IN HER CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF ANGELES CITY, BRANCH 56, YL LAND CORPORATION, NITA L. YUPANGCO, PHILIP L. YUPANGCO, RENE MARI L. YUPANGCO, GARY L. YUPANGCO, JOSE MARI L. YUPANGCO, REGINA VICTORIA DE OCAMPO, AND ISIDRO F. LAFORTEZA, RESPONDENTS.**

### D E C I S I O N

**DE GUIA-SALVADOR, R., J.:**

Primarily assailed in this petition for certiorari filed pursuant to Rule 65 of the **Rules of Civil Procedure** is the Order dated May 2, 2013 issued by **public respondent**, Hon. Irin Zenaida S. Buan, Presiding Judge of the Regional Trial Court, Branch 56, Angeles City (**RTC**), in Civil Case No. 13550,<sup>[1]</sup> the decretal portion of which states:

"WHEREFORE, in light of the foregoing discussion, the defendants' motion to discharge is granted. The attachment earlier granted by the Court is ordered discharged and the cancellation of the levy on attachment on the defendants['] properties covered by Transfer Certificates of Title Nos. 198343, 140860, 140861, 140862, 140585 and Condominium Certificate of Title No. 15476 is hereby ordered.

Serve copies of this Order to Attys. Winston M. Gine[z], Jhomel M. Amercin and Augusto Panlilio.

SO ORDERED."<sup>[2]</sup>

The factual and procedural antecedents are not in dispute.

On April 27, 2007, petitioner R.D. Policarpio & Co., Inc. (**RDPCI**) filed a complaint for a sum of money and damages, with ex-parte application for a writ of preliminary attachment, against private respondent YL Land Corporation (**YLLC**) and its officials, **individual private respondents** Isidro Laforteza and Nita, Philip, Robert, Rene Mari, Gary, Jose Mari and Regina Victoria, all surnamed Yupangco. Docketed as Civil Case No. 13550 before the RTC, the complaint alleged that, in February 1996, individual private respondents offered to sell to RDPCI on a pre-selling basis nine (9) condominium units at the Toyota Tower of YLLC's Yupangco Tri-Tower project, at No. 1, Ayala Avenue, Makati City, for an aggregate consideration of Php25,235,255.40. Noticing no significant construction of or development in the aforesaid project despite its having paid a total downpayment in the sum of Php12,213,863.64,

RDCPI claimed to have demanded from YLLC and individual private respondents compliance with their obligations as condominium developers/sellers and, later, a refund of its downpayment as aforesaid, plus interest.<sup>[3]</sup>

Except for refunds totalling Php1,800,000.00, RDPCI contended that YLLC and individual private respondents failed to heed its demands for payment of the balance in the sum of Php10,413,863.00 plus interest. Claiming to have discovered that a portion of the lot for the condominium project was not even registered in the name of YLLC whose corporate registration was later revoked for non-compliance with the reportorial requirements of the Securities and Exchange Commission (**SEC**), RDPCI prayed for piercing the veil of corporation fiction and that the former and individual private respondents be held jointly and severally liable to pay its claims for said remaining unrefunded balance, interest at 15% or 12% per annum, attorney's fees, litigation expenses and the costs. On the ground that YLLC and individual private respondents were guilty of fraud in incurring the obligation sued upon, RDPCI also sought the grant of its prayer for the provisional remedy of preliminary attachment.<sup>[4]</sup> Pursuant to the public respondent's Order dated November 26, 2007,<sup>[5]</sup> a writ of attachment was issued on December 4, 2007, conditioned on RDCPI's posting of a bond in a sum not exceeding Php10,413,863.64.<sup>[6]</sup>

In implementing the aforesaid writ, Sheriff IV Vicente S. Sicat, Jr. caused a December 13, 2013 notice to be served upon the Register of Deeds of Makati for levy on attachment to be made on, among others, the properties titled in the name of YLLC and individual private respondents under Transfer Certificates of Title (**TCT**) Nos. 198343, 140860, 140861, 140862 and 140585 as well as Condominium Certificate of Title (**CCT**) No. 15476.<sup>[7]</sup> On June 25, 2013, YLLC and individual private respondents filed a motion to discharge the writ of attachment and cancel notice of levy on attachment upon the posting of Counter Attachment Bond No. SU-JCL3-HO-12-0000001-00 in the sum of Php10,413,863.64, issued by Charter Ping An Insurance Corporation (**CPAIC**) to YLLC.<sup>[8]</sup> The motion was opposed by RDCPI on the ground, among others, that the certificate of accreditation of said bonding company had already lapsed and that the amount of the counter bond was insufficient to cover the claims asserted in its complaint which, if at all, should only apply to the property registered in YLLC's name under TCT No. 198343.<sup>[9]</sup>

On May 2, 2013, public respondent issued the first assailed Order, granting the motion filed by YLLC and individual private respondents for the discharge writ of attachment and to cancel notice of levy on attachment on the aforesaid properties. Finding it no longer necessary to rule on the validity of the accreditation of the bonding company which had been shown to be accredited until July 31, 2013, public respondent upheld the sufficiency of the counter bond<sup>[10]</sup> and ruled as follows:

"xxx xxx xxx The effect of posting a counter bond in an amount that corresponds to the attachment bond fixed by the Court is to totally discharge the attachment. 'This rule clarifies that the attachment is totally discharged if a cash deposit or a counter bond is filed in an amount equal to the demand as fixed in the order of attachment.' By virtue of the total discharge of the attachment, the Court cannot sustain plaintiff's argument that the levy of attachment on defendants' properties should remain despite the discharge of the attachment. 'By the

dissolution of an attachment levied on defendant's property through the filing of a counter bond, the released property becomes free and no longer liable to the results of the proceedings in which it was attached.' The counter bond posted acts as security for the payment of any judgment that the attaching party may obtain, they are thus mere replacements of the property formerly attached."<sup>[11]</sup>

RDPCI's motion for reconsideration of the foregoing order was denied for lack of merit in public respondent's second assailed Order dated September 5, 2013,<sup>[12]</sup> hence, this petition for certiorari which is anchored on the following ground:

**WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED HER DISCRETION IN GRANTING THE MOTION TO DISCHARGE WRIT OF ATTACHMENT AND CANCEL NOTICE OF LEVY OF ATTACHMENTS ON ALL THE ATTACHED PROPERTY.**

The petition is bereft of merit.

A writ of preliminary attachment is defined as a provisional remedy issued upon order of the court where the action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment that might be secured in the said action by the attaching creditor against the defendant.<sup>[13]</sup> Although the court may, in its discretion, require prior hearing on the application for preliminary attachment with notice to the defendant, the writ may properly issue *ex parte* upon showing that the relevant requisites therefor had been fulfilled by the applicant. The levy of the property pursuant to the writ issued may not be validly effected, however, unless preceded or contemporaneously accompanied by service on the defendant of the summons together with a copy of the complaint, the application itself if not incorporated in the complaint, the order of attachment, and the attachment bond posted by the plaintiff.<sup>[14]</sup>

Attachment is a mere provisional remedy designed to ensure the safety and preservation of the thing attached until the plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction. Under the **Rules of Civil Procedure**, the writ of attachment thus issued may be quashed only by either of the two ways therein provided: (a) by filing a counter bond immediately; or (b) by moving to quash on the ground of improper and irregular issuance.<sup>[15]</sup> YLLC and private respondents availed of the first mode pursuant to Section 12, Rule 57 of the **Rules** which provides as follows:

"Section. 12. *Discharge of attachment upon giving counter-bond.* – At any time after writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of court