Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

IGNACIO S. DUMARAN, *Petitioner,*	**G.R. No. 217583**
	Present:
- *versus* -	GESMUNDO, *CJ.,*[*] PERLAS-BERNABE, *SAJ.,* *Chairperson,* HERNANDO, GAERLAN, and ROSARIO,[**] *JJ.*
TERESA LLAMEDO, SHARON MAGALLANES and GINALYN CUBETA, *Respondents.*	Promulgated: AUG 04 2021

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] with Application for Writs of Preliminary Injunction and/or Temporary Restraining Order seeks the reversal of the August 13, 2014 Decision[2] and February 11, 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 04133-MIN entitled *Teresa Llamedo, Sharon Magallanes and Ginalyn Cubeta v. Hon. Panambulan M. Mimbisa, Presiding Judge, Regional Trial Court, Branch 37, General Santos City, and Ignacio S. Dumaran.* The CA Decision set aside the Orders[4] of the Regional Trial Court (RTC), Branch 37 of General Santos City in Civil Case

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[*] Designated as additional Member per December 17, 2019 Raffle vice *J.* Inting who recused for having penned the assailed Decision.

[**] Designated as additional Member per S.O. No. 2835 dated July 15, 2021.

[1] *Rollo,* pp. 12-29.

[2] Id. at 32-39, penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Pablito A. Perez concurring.

[3] Id. at 52-53.

[4] Id. at 149-151, penned by Judge Panambulan M. Mimbisa.

No. 7938, an action for Sum of Money, Damages and Attorney's Fees with Ex-Parte Prayer for Issuance of a Writ of Preliminary Attachment/Garnishment.

The Antecedents:

Ignacio S. Dumaran (Dumaran) is an authorized dealer of Pilipinas Shell Philippines operating two gasoline stations within General Santos City, namely Linmax Shell Station and Lagao Traveller Shell Station.[5]

In September 2009, Sharon Magallanes (Magallanes), a former employee of Linmax Shell Station, introduced Teresa Llamedo (Llamedo) and Ginalyn Cubeta (Cubeta) to Dumaran. They proposed for Dumaran to supply them diesel and gasoline fuel. They all agreed that Llamedo, Magallanes and Cubeta will pay in cash. Although they initially paid in cash, they subsequently paid for the purchase of the fuel using Llamedo's personal checks.[6]

On November 23, 2009, Dumaran filed a Complaint[7] for Sum of Money, Damages and Attorney's Fees with a Prayer for the Ex-Parte Issuance of a Writ of Preliminary Attachment against Llamedo, Magallanes and Cubeta alleging, among others: that Llamedo, Magallanes and Cubeta opened a joint account in Peninsula Rural Bank and with post-dated checks from that account, purchased on credit diesel and gasoline fuel from him; that they incurred an outstanding obligation of ₱7,416,918.55 in October and November 2009 alone; that the post-dated checks Llamedo, Magallanes and Cubeta issued to pay the obligation were dishonored for insufficient funds/account closed; and despite demands, they failed to pay the total outstanding obligation.[8]

Dumaran further alleged his Affidavit in Support of Prayer for Writ of Attachment[9] that Llamedo, Magallanes and Cubeta could not be located or contacted and were about to dispose of their properties, with intent to defraud Dumaran, because of their monetary obligation to other creditors.[10]

On December 7, 2009, the RTC issued a Writ of Attachment and Notice of Levy on Attachment.[11]

Subsequently, Llamedo, Magallanes and Cubeta filed their Very Urgent Motion to Quash Writ of Attachment and Notice of Levy on Attachment,[12] alleging that the said Writ of Attachment and Notice of Levy on Attachment is illegal, improper and unjustly issued in violation of their right to due process; has no basis in fact and in law, therefore, null and void; and violates Rule 39, Section 3 of the Rules of Court.

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5 Id. at 62.
6 Id.
7 Id. at 62-66.
8 Id. at 63-64.
9 Id. at 126.
10 Id. at 64-65.
11 CA *rollo*, p. 96.
12 *Rollo*, pp. 127-135.

Order of the Regional Trial Court:

In an Order dated February 23, 2010, the RTC denied Llamedo, Magallanes and Cubeta's Motion to Quash Writ of Attachment. The dispositive portion of the Order reads thus:

> WHEREFORE, premises considered, Motion to Quash Writ of Attachment is hereby DENIED.
>
> Set this case for referral to the Philippine Mediation Center for conciliation proceedings on March 19, 2010 at 2:00 o' clock in the afternoon. Parties are hereby directed to personally attend.
>
> SO ORDERED.[13]

In a subsequent Order[14] dated January 20, 2011, the RTC denied Llamedo, Magallanes and Cubeta's Motion for Reconsideration,[15] there being no new and substantial grounds to modify, reverse or reconsider the February 23, 2010 Order. Preliminary conference was therefore set.

Aggrieved, Llamedo, Magallanes and Cubeta filed a Petition for *Certiorari*[16] against Hon. Panambulan M. Mimbisa, the Presiding Judge of RTC, Branch 37, General Santos City, and Dumaran, before the appellate court.

Ruling of the Court of Appeals:

On August 3, 2011, the CA issued a Resolution[17] dismissing the Petition for *Certiorari*[18] due to technical grounds.

On March 6, 2012, the CA issued another Resolution[19] granting the Motion for Reconsideration with Prayer for Leave to Admit Amended Petition[20] of Llamedo, Magallanes and Cubeta, and reinstated their petition.

In its Decision[21] promulgated on August 13, 2014, the CA set aside the Order of the RTC and held that the applicant for a writ of preliminary attachment, in this case Dumaran, did not sufficiently show factual circumstances of the alleged fraud. The pertinent portions of the Decision read:

> The allegations of Dumaran do not meet the requirements of the law regarding fraud. The allegations do not show: (1) that he was defrauded in accepting the offer of the petitioners; and (2) that from the beginning the

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13 Id. at 150.
14 Id. at 151.
15 Id.
16 CA *rollo*, pp. 2-23.
17 *Rollo*, pp. 153-155.
18 CA *rollo*, pp. 2-23.
19 *Rollo*, pp. 157-160.
20 CA *rollo*, pp. 158-162.
21 *Rollo*, pp. 32-39.

petitioners intended that they will not pay their obligation considering that by his own admission, petitioners initially paid in cash and personal checks. "[A] writ of preliminary attachment is too harsh a provisional remedy to be issued based on mere abstractions of fraud. x x x"

x x x

WHEREFORE, the instant petition is GRANTED. The assailed Orders of the Regional Trial Court are SET ASIDE.

SO ORDERED.[22]

On February 11, 2015, the CA denied in a Resolution[23] Dumaran's Motion for Reconsideration[24] reiterating its previous ruling, thus:

The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon." x x x

WHEREFORE, the instant motion is DENIED.

SO ORDERED.[25]

Issues

1. Whether or not the [CA] gravely erred under the law when it held that allegations of fraud in the complaint and the affidavit do not meet the requirements of the law to sustain the issuance of a writ of attachment.

2. Whether or not the [CA] gravely erred under the law in not finding that a counter-bond was necessary for the discharge of the writ of preliminary attachment.[26]

Our Ruling

The Petition is without merit and must be denied.

Non-payment of a debt does not automatically equate to a fraudulent act.

Dumaran has consistently invoked Section 1 (d), Rule 57 of the Rules of Court as a ground upon which attachment may issue against Llamedo, Magallanes and Cubeta's properties. The provision reads:

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[22] Id. at 37-38.
[23] Id. at 52-53.
[24] CA *rollo*, pp. 444-450.
[25] *Rollo*, pp. 53.
[26] Id. at 20.

> Sec. 1. *Grounds upon which attachment may issue.* – At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:
>
> x x x
>
> (d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or **in the performance thereof**;
>
> x x x x (Emphasis supplied)

Dumaran further emphasized that there was sufficient evidence to support that Llamedo, Magallanes and Cubeta **committed fraud in the performance of their obligation, not particularly in contracting the debt or obligation,** when they "undertook to withdraw fuels in other stations without the knowledge of [Dumaran] in violation of their agreement and issued worthless checks in payment therefor."[27]

The Court, though not a trier of facts, perused through the records of the case and agrees with the findings of the CA that the allegations of Dumaran do not meet the requirements of the law regarding fraud. The case of *Republic v. Mega Pacific eSolutions, Inc.*[28] explained the term "fraud" as related to the above-mentioned legal provision in this wise:

> Fraud may be characterized as the voluntary execution of a wrongful act or a willful omission, **while knowing and intending the effects that naturally and necessarily arise from that act or omission.** In its general sense, fraud is deemed to comprise **anything calculated to deceive** – including all acts and omission and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed – resulting in damage to or in undue advantage over another. Fraud is also described as embracing all multifarious means that human ingenuity can device, and is resorted to for the purpose of securing an advantage over another by false suggestions or by suppression of truth; and it includes **all surprise, trick, cunning, dissembling, and any other unfair way by which another is cheated.**
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> While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question.[29] (Emphasis supplied)

The CA rightfully held that Dumaran's allegations in both his Complaint and Affidavit failed to show that Dumaran was defrauded into accepting the offer of Llamedo, Magallanes and Cubeta; and that Llamedo, Magallanes and

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[27] Id. at 23.
[28] 788 Phil. 160 (2016).
[29] Id. at 187-188.

Cubeta intended from the beginning to not pay their obligations. The Complaint and Affidavit did not specifically show wrongful acts or willful omissions that Llamedo, Magallanes and Cubeta knowingly committed to deceive Dumaran to enter into the contract or to perform the obligation. The pleadings filed lacked the particulars of time, persons and places to support the serious assertions that Llamedo, Magallanes and Cubeta were disposing of their properties to defraud Dumaran.

To differentiate when the factual circumstances of a case lead to fraud under Section 1 (d) of Rule 57 of the Rules of Court, the recent case of *Tsuneishi Heavy Industries (Cebu), Inc. v. MIS Maritime Corporation*[30] compared and contrasted two different cases:

> [I]n *Metro, Inc. v. Lara's Gifts and Decors, Inc.*, we ruled that the factual circumstances surrounding the parties' transaction clearly showed fraud. In this case, the petitioners entered into an agreement with respondents where the respondents agreed that they will endorse their purchase orders from their foreign buyers to the petitioners in order to help the latter's export business. To convince respondents that they should trust the petitioners, petitioners even initially remitted shares to the respondents in accordance with their agreement. However, as soon as there was a noticeable increase in the volume of purchase orders from respondents' foreign buyers, petitioners abandoned their contractual obligation to respondents and directly transacted with respondents' foreign buyers. We found in this case that the respondents' allegation (that the petitioners undertook to sell exclusively through respondents but then transacted directly with respondents' foreign buyer) is sufficient allegation of fraud to support the issuance of a writ of preliminary attachment.
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> In contrast, in *PCL Industries Manufacturing Corporation v. Court of Appeals,* we found no fraud that would warrant the issuance of a writ of preliminary attachment. In that case, petitioner purchased printing ink materials from the private respondent. However, petitioner found that the materials delivered were defective and thus refused to pay its obligation under the sales contract. **Private respondent insisted that petitioner's refusal to pay after the materials were delivered to it amounted to fraud. We disagreed. We emphasized our repeated and consistent ruling that the mere fact of failure to pay after the obligation to do so has become due and despite several demands is not enough to warrant the issuance of a writ of preliminary attachment.**[31]

The case at bar is akin to the latter case. Non-payment of a debt or non-performance of an obligation does not automatically equate to a fraudulent act. Being a state of mind, fraud cannot be merely inferred from a bare allegation of non-payment of debt or non-performance of obligation.[32] Dumaran failed to prove with sufficient specificity the alleged fraudulent acts of Llamedo, Magallanes and Cubeta.

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[30] 829 Phil. 90 (2018).
[31] Id. at 107-108.
[32] *Sps. Tanchan v. Allied Banking Corp.*, 592 Phil. 252, 271 (2008).

A counter-bond is not necessary for the discharge of a writ of preliminary attachment that was found to be irregularly issued.

Citing the case of *FCY Construction v. Court of Appeals*[33] *(FCY Construction),* Dumaran alleged that the CA was incorrect in discharging the writ of preliminary attachment without the fulfillment of the requirement of a counter-bond, thus:

> [W]hen the preliminary attachment is issued upon a ground which is at the same time the applicant's cause of action: e.g., x x x an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, the defendant is not allowed to file a motion to dissolve the attachment under Section 13 of Rule 57 by offering to show the falsity of the factual averments in the plaintiff's application and affidavits on which the writ was based and consequently that the writ based therein had been improperly or irregularly issued – the reason being that the hearing on such motion would be tantamount to a trial on the merits. In other words, the merits of the action would be ventilated at a mere hearing of a motion; instead of the regular trial. Therefore, when the writ of attachment is of this nature, the only way it can be dissolved is by a counterbond.[34]

On the other hand, Llamedo, Magallanes and Cubeta averred that the cited *FCY Construction* case is not applicable to their case because the parties in *FCY Construction* had **not yet proven the falsity of the factual averments** in the applicant's application for a writ of preliminary attachment and supporting affidavits. Thus, a regular full-blown trial to prove the falsity of the factual averments and subsequently, the irregularity of the writ of preliminary attachment in accordance with Rule 57, Section 13 was still necessary to allow the discharge of the writ of preliminary attachment. Otherwise, absent a regular full-blown trial, the only way a writ of preliminary attachment can be dissolved is by filing a counter-bond or cash deposit under Rule 57, Section 12.

However, in the case at bar, Llamedo, Magallanes and Cubeta alleged that the **CA had already found and ruled that the writ of preliminary attachment was improperly issued**. The CA had already ruled that Dumaran failed to prove that fraud existed, thus, the writ of preliminary attachment issued by the RTC was a "too harsh" provisional remedy that must be denied.

The Court agrees with the contention of Llamedo, Magallanes and Cubeta. Under Rule 57 of the Rules of Court, there are two remedies a party can avail of to discharge their attached property:

> (1) Under Section 12,[35] make a cash deposit equal to the claim or give a counter-bond which will take the place of the attached property; or

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[33] 381 Phil. 282 (2000).
[34] 381 Phil. 282, 289 (2000).
[35] RULES OF COURT, Rule 57, section 12 reads:

(2) Under Section 13,[36] file a motion to discharge the attachment on the following grounds:
(a) that it was improperly or irregularly issued; or
(b) that it was improperly or irregularly enforced; or
(c) that the bond of the plaintiff is insufficient.

For the second remedy to apply, a writ of attachment may be discharged without filing a cash bond or counter-bond only if the writ of preliminary attachment itself has already been proven to be improperly or irregularly issued or enforced, or the bond is insufficient. The limitation enunciated in *FCY Construction* will not apply when a regular trial on the merits of the main action, not only of the motion to discharge the writ, was conducted.

Here, the CA found that, after reading and hearing the allegations of both parties, Dumaran's allegations did not meet the requirements of the law regarding fraud. The CA found that the writ of preliminary attachment had been irregularly issued, thus, a motion to discharge the writ under Rule 57, Section 13 was the proper remedy. A counter-bond under Section 12 is not necessary.

WHEREFORE, the instant Petition is **DENIED**. The August 13, 2014 Decision and February 11, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 04133-MIN holding that Dumaran failed to meet the requirements of the law regarding fraud to sustain the issuance of a writ of preliminary attachment are hereby **AFFIRMED**.

SECTION 12. *Discharge of Attachment Upon Giving Counter-Bond.* — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharged 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 the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. 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.

[36] RULES OF COURT, Rule 57, section 13 reads:

SECTION 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 is 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. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice