



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

ALFREDO C. LIM, JR.,

Petitioner,

G.R. No. 185734

- versus -

**SPOUSES TITO S. LAZARO and
CARMEN T. LAZARO,**

Respondents.

Present:

CARPIO, J., Chairperson,
BRION,

DEL CASTILLO,

PEREZ, and

PERLAS-BERNABE, JJ.

Promulgated:

JUL 03 2013

Alfredo C. Lim, Jr.

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RESOLUTION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the July 10, 2008 Decision² and December 18, 2008 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 100270, affirming the March 29, 2007 Order⁴ of the Regional Trial Court of Quezon City, Branch 223 (RTC), which lifted the writ of preliminary attachment issued in favor of petitioner Alfredo C. Lim, Jr. (Lim, Jr.).

The Facts

On August 22, 2005, Lim, Jr. filed a complaint⁵ for sum of money with prayer for the issuance of a writ of preliminary attachment before the RTC, seeking to recover from respondents-spouses Tito S. Lazaro and

¹ *Rollo*, pp. 8-20.

² Id. at 23-33. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rebecca De Guia-Salvador and Vicente S. E. Veloso, concurring.

³ Id. at 35-36.

⁴ Id. at 79. Penned by Presiding Judge Ramon A. Cruz.

⁵ Id. at 39-43. Docketed as Civil Case No. Q-05-56123.

Carmen T. Lazaro (Sps. Lazaro) the sum of ₱2,160,000.00, which represented the amounts stated in several dishonored checks issued by the latter to the former, as well as interests, attorney's fees, and costs. The RTC granted the writ of preliminary attachment application⁶ and upon the posting of the required ₱2,160,000.00 bond,⁷ issued the corresponding writ on October 14, 2005.⁸ In this accord, three (3) parcels of land situated in Bulacan, covered by Transfer Certificates of Title (TCT) Nos. T-64940, T-64939, and T-86369 (subject TCTs), registered in the names of Sps. Lazaro, were levied upon.⁹

In their Answer with Counterclaim,¹⁰ Sps. Lazaro averred, among others, that Lim, Jr. had no cause of action against them since: (a) Colim Merchandise (Colim), and not Lim, Jr., was the payee of the fifteen (15) Metrobank checks; and (b) the PNB and Real Bank checks were not drawn by them, but by Virgilio Arcinas and Elizabeth Ramos, respectively. While they admit their indebtedness to Colim, Sps. Lazaro alleged that the same had already been substantially reduced on account of previous payments which were apparently misapplied. In this regard, they sought for an accounting and reconciliation of records to determine the actual amount due. They likewise argued that no fraud should be imputed against them as the aforesaid checks issued to Colim were merely intended as a form of collateral.¹¹ Hinged on the same grounds, Sps. Lazaro equally opposed the issuance of a writ of preliminary attachment.¹²

Nonetheless, on September 22, 2006, the parties entered into a Compromise Agreement¹³ whereby Sps. Lazaro agreed to pay Lim, Jr. the amount of ₱2,351,064.80 on an installment basis, following a schedule of payments covering the period from September 2006 until October 2013, under the following terms, among others: (a) that should the financial condition of Sps. Lazaro improve, the monthly installments shall be increased in order to hasten the full payment of the entire obligation;¹⁴ and (b) that Sps. Lazaro's failure to pay any installment due or the dishonor of any of the postdated checks delivered in payment thereof shall make the whole obligation immediately due and demandable.

The aforesaid compromise agreement was approved by the RTC in its October 31, 2006 Decision¹⁵ and January 5, 2007 Amended Decision.¹⁶

⁶ Id. at 44. See September 15, 2005 RTC Order.

⁷ Id. at 45. See September 29, 2005 RTC Order.

⁸ Id. at 46-47. Issued by Atty. Joseph Ronald T. Abesa, Clerk of Court V.

⁹ Id. at 49-50. See October 27, 2005 Sheriff's return.

¹⁰ Id. at 51-55.

¹¹ Id. at 52.

¹² Id. at 53-54.

¹³ Id. at 59-62.

¹⁴ Id. at 61. As stated in the September 22, 2006 Compromise Agreement, the payment of Sps. Lazaro's mortgage obligation annotated in the memorandum of encumbrances of TCT Nos. T-64940, T-64939, and T-86369 shall be proof of the improvement of their financial condition.

¹⁵ Id. at 63-67.

¹⁶ Id. at 69-73.

Subsequently, Sps. Lazaro filed an Omnibus Motion,¹⁷ seeking to lift the writ of preliminary attachment annotated on the subject TCTs, which the RTC granted on March 29, 2007.¹⁸ It ruled that a writ of preliminary attachment is a mere provisional or ancillary remedy, resorted to by a litigant to protect and preserve certain rights and interests pending final judgment. Considering that the case had already been considered closed and terminated by the rendition of the January 5, 2007 Amended Decision on the basis of the September 22, 2006 compromise agreement, the writ of preliminary attachment should be lifted and quashed. Consequently, it ordered the Registry of Deeds of Bulacan to cancel the writ's annotation on the subject TCTs.

Lim, Jr. filed a motion for reconsideration¹⁹ which was, however, denied on July 26, 2007,²⁰ prompting him to file a petition for *certiorari*²¹ before the CA.

The CA Ruling

On July 10, 2008, the CA rendered the assailed decision,²² finding no grave abuse of discretion on the RTC's part. It observed that a writ of preliminary attachment may only be issued at the commencement of the action or at any time before entry of judgment. Thus, since the principal cause of action had already been declared closed and terminated by the RTC, the provisional or ancillary remedy of preliminary attachment would have no leg to stand on, necessitating its discharge.²³

Aggrieved, Lim, Jr. moved for reconsideration²⁴ which was likewise denied by the CA in its December 18, 2008 Resolution.²⁵

Hence, the instant petition.

The Issue Before the Court

The sole issue in this case is whether or not the writ of preliminary attachment was properly lifted.

¹⁷ Id. at 74-75.

¹⁸ Id. at 79.

¹⁹ Id. at 80-82.

²⁰ Id. at 87. See July 26, 2007 RTC Order.

²¹ Id. at 88-98.

²² Id. at 23-33.

²³ Id. at 32-33.

²⁴ Id. at 100-110.

²⁵ Id. at 35-36.

The Court's Ruling

The petition is meritorious.

By its nature, preliminary attachment, under Rule 57 of the Rules of Court (Rule 57), is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize upon the relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action. As such, it is available during its pendency which may be resorted to by a litigant to preserve and protect certain rights and interests during the interim, awaiting the ultimate effects of a final judgment in the case.²⁶ In addition, attachment is also availed of in order to acquire jurisdiction over the action by actual or constructive seizure of the property in those instances where personal or substituted service of summons on the defendant cannot be effected.²⁷

In this relation, while the provisions of Rule 57 are silent on the length of time within which an attachment lien shall continue to subsist after the rendition of a final judgment, jurisprudence dictates that the said lien *continues until the debt is paid, or the sale is had under execution issued on the judgment or until the judgment is satisfied, or the attachment discharged or vacated in the same manner provided by law.*²⁸

Applying these principles, the Court finds that the discharge of the writ of preliminary attachment against the properties of Sps. Lazaro was improper.

Records indicate that while the parties have entered into a compromise agreement which had already been approved by the RTC in its January 5, 2007 Amended Decision, the obligations thereunder have yet to be fully complied with – particularly, the payment of the total compromise amount of ₱2,351,064.80. Hence, given that the foregoing debt remains unpaid, the attachment of Sps. Lazaro's properties should have continued to subsist.

²⁶ *Republic v. Estate of Alfonso Lim, Sr.*, G.R. No. 164800, July 22, 2009, 593 SCRA 404, 416.

²⁷ "The purposes of preliminary attachment are: (1) to seize the property of the debtor in advance of final judgment and to hold it for purposes of satisfying said judgment, as in the grounds stated in paragraphs (a) to (e) of Section 1, Rule 57 of the Rules of Court; or (2) to acquire jurisdiction over the action by actual or constructive seizure of the property in those instances where personal or substituted service of summons on the defendant cannot be effected, as in paragraph (f) of the same provision." (*Philippine Commercial International Bank v. Alejandro*, G.R. No. 175587, September 21, 2007, 533 SCRA 738, 751-752).

²⁸ *Chemphil Export & Import Corporation v. CA*, G.R. Nos. 112438-39 and 113394, December 12, 1995, 251 SCRA 257, 288, citing *BF Homes, Incorporated v. CA*, G.R. Nos. 76879 and 77143, October 3, 1990, 190 SCRA 262, 271-272. (Emphasis supplied)

In *Chemphil Export & Import Corporation v. CA*,²⁹ the Court pronounced that a writ of attachment is not extinguished by the execution of a compromise agreement between the parties, *viz*:

Did the compromise agreement between Antonio Garcia and the consortium discharge the latter's attachment lien over the disputed shares?

CEIC argues that a writ of attachment is a mere auxiliary remedy which, upon the dismissal of the case, dies a natural death. Thus, when the consortium entered into a compromise agreement, which resulted in the termination of their case, the disputed shares were released from garnishment.

We disagree. To subscribe to CEIC's contentions would be to totally disregard the concept and purpose of a preliminary attachment.

x x x x

The case at bench admits of peculiar character in the sense that it involves a compromise agreement. Nonetheless, x x x. **The parties to the compromise agreement should not be deprived of the protection provided by an attachment lien especially in an instance where one reneges on his obligations under the agreement**, as in the case at bench, where Antonio Garcia failed to hold up his own end of the deal, so to speak.

x x x x

If we were to rule otherwise, we would in effect create a back door by which a debtor can easily escape his creditors. Consequently, we would be faced with an anomalous situation where a debtor, in order to buy time to dispose of his properties, would enter into a compromise agreement he has no intention of honoring in the first place. The purpose of the provisional remedy of attachment would thus be lost. It would become, in analogy, a declawed and toothless tiger. (Emphasis and underscoring supplied; citations omitted)


In fine, the Court holds that the writ of preliminary attachment subject of this case should be restored and its annotation revived in the subject TCTs, re-vesting unto Lim, Jr. his preferential lien over the properties covered by the same as it were before the cancellation of the said writ. Lest it be misunderstood, the lien or security obtained by an attachment even before judgment, is in the nature of a vested interest which affords specific security for the satisfaction of the debt put in suit.³⁰ Verily, the lifting of the attachment lien would be tantamount to an abdication of Lim, Jr.'s rights over Sps. Lazaro's properties which the Court, absent any justifiable ground therefor, cannot allow.

²⁹ Id. at 287-290.


³⁰ "The lien or security obtained by an attachment even before judgment, is a fixed and positive security, a specific lien, and, although whether it will ever be made available to the creditor depends on contingencies, its existence is in no way contingent, conditioned or inchoate. It is a vested interest, an actual and substantial security, affording specific security for satisfaction of the debt put in suit, which constitutes a cloud on the legal title, and is as specific as if created by virtue of a voluntary act of the debtor and stands upon as high equitable grounds as a mortgage." (*BF Homes, Incorporated v. CA*, *supra* note 28, at 272; citations omitted).

WHEREFORE, the petition is **GRANTED**. The July 10, 2008 Decision and the December 18, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 100270 are **REVERSED** and **SET ASIDE**, and the March 29, 2007 Order of the Regional Trial Court of Quezon City, Branch 223 is **NULLIFIED**. Accordingly, the trial court is directed to **RESTORE** the attachment lien over Transfer Certificates of Title Nos. T-64940, T-64939, and T-86369, in favor of petitioner Alfredo C. Lim, Jr.


SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

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


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice