

Q. S. C. M.



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

WATERCRAFT VENTURE
CORPORATION, represented by its
Vice-President, ROSARIO E.
RAÑO, A,

Petitioner,

- versus -

G.R. No. 181721

Present:

VELASCO, JR., J., *Chairperson,*
PERALTA,
VILLARAMA, JR.,
PEREZ,* and
JARDELEZA, JJ.

ALFRED RAYMOND WOLFE,
Respondent.

Promulgated:

September 9, 2015

Welford E. Reyes

X-----X

DECISION

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Resolution¹ dated January 24, 2008 denying the motion for reconsideration of its Decision² dated September 27, 2007 in CA-G.R. SP No. 97804.

The facts are as follows:

Petitioner Watercraft Venture Corporation (*Watercraft*) is engaged in the business of building, repairing, storing and maintaining yachts, boats and other pleasure crafts at the Subic Bay Freeport Zone, Subic, Zambales. In

* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2112 dated July 16, 2015.

¹ Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario, concurring; *rollo*, pp. 35-37.

² *Id.* at 38-50.

connection with its operations and maintenance of boat storage facilities, it charges a boat storage fee of Two Hundred Seventy-Two US Dollars (US\$272.00) per month with interest of 4% per month for unpaid charges.

Sometime in June 1997, Watercraft hired respondent Alfred Raymond Wolfe (*Wolfe*), a British national and resident of Subic Bay Freeport Zone, Zambales, as its Shipyard Manager.

During his employment, Wolfe stored the sailboat, *Knotty Gull*, within Watercraft's boat storage facilities, but never paid for the storage fees.

On March 7, 2002, Watercraft terminated the employment of Wolfe.

Sometime in June 2002, Wolfe pulled out his sailboat from Watercraft's storage facilities after signing a Boat Pull-Out Clearance dated June 29, 2002 where he allegedly acknowledged the outstanding obligation of Sixteen Thousand Three Hundred and Twenty-Four and 82/100 US Dollars (US\$16,324.82) representing unpaid boat storage fees for the period of June 1997 to June 2002. Despite repeated demands, he failed to pay the said amount.

Thus, on July 7, 2005, Watercraft filed against Wolfe a Complaint for Collection of Sum of Money with Damages with an Application for the Issuance of a Writ of Preliminary Attachment. The case was docketed as Civil Case No. 4534-MN, and raffled to Branch 170³ of the Regional Trial Court (*RTC*) of Malabon City.

In his Answer, Wolfe claimed he was hired as Service and Repair Manager, instead of Shipyard Manager. He denied owing Watercraft the amount of US\$16,324.82 representing storage fees for the sailboat. He explained that the sailboat was purchased in February 1998 as part of an agreement between him and Watercraft's then General Manager, Barry Bailey, and its President, Ricky Sandoval, for it to be repaired and used as training or fill-in project for the staff, and to be sold later on. He added that pursuant to a central Listing Agreement for the sale of the sailboat, he was appointed as agent, placed in possession thereof and entitled to a ten percent (10%) sales commission. He insisted that nowhere in the agreement was there a stipulation that berthing and storage fees will be charged during the entire time that the sailboat was in Watercraft's dockyard. Thus, he claimed to have been surprised when he received five (5) invoices billing him for the said fees two (2) months after his services were terminated. He pointed out that the complaint was an offshoot of an illegal dismissal case he filed against Watercraft which had been decided in his favor by the Labor Arbiter.

³ Presided by Hon. Benjamin T. Antonio.

Meanwhile, finding Watercraft's *ex-parte* application for writ of preliminary attachment sufficient in form and in substance pursuant to Section 1 of Rule 57 of the Rules of Court, the RTC granted the same in the Order dated July 15, 2005, thus:

WHEREFORE, let a Writ of Preliminary Attachment be issued accordingly in favor of the plaintiff, Watercraft Ventures Corporation conditioned upon the filing of attachment bond in the amount of **Three Million Two Hundred Thirty-One Thousand Five Hundred and Eighty-Nine and 25/100 Pesos (Php3,231,589.25)** and the said writ be served simultaneously with the summons, copies of the complaint, application for attachment, applicant's affidavit and bond, and this Order upon the defendant.

SO ORDERED.⁴

Pursuant to the Order dated July 15, 2005, the Writ of Attachment dated August 3, 2005 and the Notice of Attachment dated August 5, 2005 were issued, and Wolfe's two vehicles, a gray Mercedes Benz with plate number XGJ 819 and a maroon Toyota Corolla with plate number TFW 110, were levied upon.

On August 12, 2005, Wolfe's accounts at the Bank of the Philippine Islands were also garnished.

By virtue of the Notice of Attachment and Levy dated September 5, 2005, a white Dodge pick-up truck with plate number XXL 111 was also levied upon. However, a certain Jeremy Simpson filed a Motion for Leave of Court to Intervene, claiming that he is the owner of the truck as shown by a duly-notarized Deed of Sale executed on August 4, 2005, the Certificate of Registration No. 3628665-1 and the Official Receipt No. 271839105.

On November 8, 2005, Wolfe filed a Motion to Discharge the Writ of Attachment, arguing that Watercraft failed to show the existence of fraud and that the mere failure to pay or perform an obligation does not amount to fraud. He also claimed that he is not a flight risk for the following reasons: (1) contrary to the claim that his Special Working Visa expired in April 2005, his Special Subic Working Visa and Alien Certificate of Registration are valid until April 25, 2007 and May 11, 2006, respectively; (2) he and his family have been residing in the Philippines since 1997; (3) he is an existing stockholder and officer of Wolfe Marine Corporation which is registered with the Securities and Exchange Commission, and a consultant of "Sudeco/Ayala" projects in Subic, a member of the Multipartite Committee for the new port development in Subic, and the Subic Chamber of Commerce; and (4) he intends to finish prosecuting his pending labor case

⁴ *Rollo*, p. 65. (Emphasis in the original)

against Watercraft. On even date, Watercraft also filed a Motion for Preliminary Hearing of its affirmative defenses of forum shopping, *litis pendentia*, and laches.

In an Order dated March 20, 2006, the RTC denied Wolfe's Motion to Discharge Writ of Attachment and Motion for Preliminary Hearing for lack of merit.

Wolfe filed a motion for reconsideration, but the RTC also denied it for lack of merit in an Order dated November 10, 2006. Aggrieved, Wolfe filed a petition for *certiorari* before the CA.

The CA granted Wolfe's petition in a Decision dated September 27, 2007, the dispositive portion of which reads:

WHEREFORE, the Order dated March 20, 2006 and the Order dated November 10, 2006 of respondent Judge are hereby **ANNULLED** and **SET ASIDE**. Accordingly, the *Writ of Attachment* issued on August 3, 2005, the *Notice of Attachment* dated August 5, 2005 and the *Notice of Attachment and Levy* dated September 5, 2005 are hereby also declared **NULL** and **VOID**, and private respondent is **DIRECTED** to return to their owners the vehicles that were attached pursuant to the Writ.

SO ORDERED.⁵

The CA ruled that the act of issuing the writ of preliminary attachment *ex-parte* constitutes grave abuse of discretion on the part of the RTC, thus:

x x x In *Cosiquien [v. Court of Appeals]*, the Supreme Court held that:

“Where a judge issues a fatally defective writ of preliminary attachment based on an affidavit which failed to allege the requisites prescribed for the issuance of the writ of preliminary attachment, renders the writ of preliminary attachment issued against the property of the defendant fatally defective. The judge issuing it is deemed to have acted in excess of jurisdiction. In fact, the defect cannot even be cured by amendment. Since the attachment is a harsh and rigorous remedy which exposed the debtor to humiliation and annoyance, the rule authorizing its issuance must be strictly construed in favor of defendant. It is the duty of the court before issuing the writ to ensure that all the requisites of the law have been complied with. Otherwise, a judge acquires no jurisdiction to issue the writ.” (emphasis supplied)

⁵ *Id.* at 49. (Emphasis in the original; Citations omitted)

In the instant case, the Affidavit of Merit executed by Rosario E. Rañoa, Watercraft's Vice-President, failed to show fraudulent intent on the part of Wolfe to defraud the company. It merely enumerated the circumstances tending to show the alleged possibility of Wolfe's flight from the country. And upon Wolfe's filing of the Motion to Discharge the Writ, what the respondent Judge should have done was to determine, through a hearing, whether the allegations of fraud were true. As further held in *Cosiquien*:

“When a judge issues a writ of preliminary attachment ex-parte, it is incumbent on him, upon proper challenge of his order to determine whether or not the same was improvidently issued. If the party against whom the writ is prayed for squarely controverts the allegation of fraud, it is incumbent on the applicant to prove his allegation. The burden of proving that there indeed was fraud lies with the party making such allegation. This finds support in Section 1, Rule 131 Rules of Court. In this jurisdiction, fraud is never presumed.” (Emphasis supplied)

As correctly noted by Wolfe, although Sec. 1 of Rule 57 allows a party to invoke fraud as a ground for the issuance of a writ of attachment, the Rules require that in all averments of fraud, the circumstances constituting fraud must be stated with particularity, pursuant to Rule 8, Section 5. The *Complaint* merely stated, in paragraph 23 thereof that “*For failing to pay the use [of] facilities and services – in the form of boat storage fees, the Defendant is clearly guilty of fraud which entitles the Plaintiff to a Writ of Preliminary Attachment upon the property of the Defendant as security for the satisfaction of any judgment herein.*” This allegation does not constitute fraud as contemplated by law, fraud being the “*generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated.*” In this instance, Wolfe's mere failure to pay the boat storage fees does not necessarily amount to fraud, absent any showing that such failure was due to [insidious] machinations and intent on his part to defraud Watercraft of the amount due it.

As to the allegation that Wolfe is a flight risk, thereby warranting the issuance of the writ, the same lacks merit. The mere fact that Wolfe is a British national does not automatically mean that he would leave the country at will. As Wolfe avers, he and his family had been staying in the Philippines since 1997, with his daughters studying at a local school. He also claims to be an existing stockholder and officer of Wolfe Marine Corporation, a SEC-registered corporation, as well as a consultant of projects in the Subic Area, a member of the Multipartite Committee for the new port development in Subic, and a member of the Subic Chamber of Commerce. More importantly, Wolfe has a pending labor case against Watercraft – a fact which the company glaringly failed to mention in its complaint – which Wolfe claims to want to prosecute until its very end. The said circumstances, as well as the existence of said labor case where Wolfe stands not only to be vindicated for his alleged illegal dismissal, but also to receive recompense, should have convinced the trial court that Wolfe would not want to leave the country at will just because a suit for

the collection of the alleged unpaid boat storage fees has been filed against him by Watercraft.

Neither should the fact that Wolfe's Special Working Visa expired in April 2005 lead automatically to the conclusion that he would leave the country. It is worth noting that all visas issued by the government to foreigners staying in the Philippines have expiration periods. These visas, however, may be renewed, subject to the requirements of the law. In Wolfe's case, he indeed renewed his visa, as shown by *Special Working Visa No. 05-WV-0124P* issued by the Subic Bay Metropolitan Authority Visa Processing Office on April 25, 2005, and with validity of two (2) years therefrom. Moreover, his *Alien Certificate of Registration* was valid up to May 11, 2006.

Based on the foregoing, it is therefore clear that the writ was improvidently issued. It is well to emphasize that “[T]he rules on the issuance of a writ of attachment must be construed strictly against the applicants. This stringency is required because the remedy of attachment is harsh, extraordinary and summary in nature. If all the requisites for the granting of the writ are not present, then the court which issues it acts in excess of its jurisdiction. Thus, in this case, Watercraft failed to meet all the requisites for the issuance of the writ. Thus, in granting the same, respondent Judge acted with grave abuse of discretion.⁶

In a Resolution dated January 24, 2008, the CA denied Watercraft's motion for reconsideration of its Decision, there being no new or significant issues raised in the motion.

Dissatisfied with the CA Decision and Resolution, Watercraft filed this petition for review on *certiorari*, raising these two issues:

I.

WHETHER THE *EX-PARTE* ISSUANCE OF THE PRELIMINARY ATTACHMENT BY THE TRIAL COURT IN FAVOR OF THE PETITIONER IS VALID.

II.

WHETHER THE ALLEGATIONS IN THE AFFIDAVIT OF MERIT CONCERNING FRAUD ARE SUFFICIENT TO WARRANT THE ISSUANCE OF A PRELIMINARY WRIT OF ATTACHMENT BY THE TRIAL COURT IN FAVOR OF THE PETITIONER.⁷

Watercraft argues that the CA erred in holding that the RTC committed grave abuse of discretion in issuing the writ of preliminary attachment, and in finding that the affidavit of merit only enumerated circumstances tending to show the possibility of Wolfe's flight from the country, but failed to show fraudulent intent on his part to defraud the company.

⁶ *Rollo*, pp. 44-47. (Citations omitted)

⁷ *Id.* at 21-22.

Stressing that its application for such writ was anchored on two (2) grounds under Section 1,⁸ Rule 57, Watercraft insists that, contrary to the CA ruling, its affidavit of merit sufficiently averred with particularity the circumstances constituting fraud as a common element of said grounds.

Watercraft points out that its affidavit of merit shows that from 1997, soon after Wolfe's employment as Shipyard Manager, up to 2002, when his employment was terminated, or for a period of five (5) years, not once did he pay the cost for the use of the company's boat storage facilities, despite knowledge of obligation and obvious ability to pay by reason of his position.

Watercraft adds that its affidavit clearly stated that Wolfe, in an attempt to avoid settling of his outstanding obligations to the company, signed a Boat Pull-Out Clearance where he merely acknowledged but did not pay Sixteen Thousand Three Hundred and Twenty-Four and 82/100 US Dollars (US\$16,324.82) representing unpaid boat storage fees for the period commencing June 1997 to June 2002. It avers that the execution of such clearance enabled Wolfe to pull out his boat from the company storage facilities without payment of storage fees.

Watercraft also faults the CA in finding no merit in its allegation that Wolfe is a flight risk. It avers that he was supposed to stay and work in the country for a limited period, and will eventually leave; that despite the fact that his wife and children reside in the country, he can still leave with them anytime; and that his work in the country will not prevent him from leaving, thereby defeating the purpose of the action, especially since he had denied responsibility for his outstanding obligations. It submits that the CA overlooked paragraph 28 of its Complaint which alleged that “[i]n support of the foregoing allegations and the prayer for the issuance of a Writ of Preliminary Attachment in the instant case, the Plaintiff has attached hereto the Affidavit of the Vice-President of the Plaintiff, MS. ROSARIO E. RAÑO A X X X.”⁹

Watercraft asserts that it has sufficiently complied with the only requisites for the issuance of the writ of preliminary attachment under Section 3, Rule 57 of the Rules of Court, *i.e.*, affidavit of merit and bond of the applicant. It posits that contrary to the CA ruling, there is no requirement that evidence must first be offered before a court can grant such writ on the basis of Section 1 (d) of Rule 57, and that the rules only require an affidavit

⁸ Section 1. *Grounds upon which attachment may issue.* – x x x. (a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

x x x x

(d) In 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, or in the performance thereof.

⁹ *Rollo*, p. 25.

showing that the case is one of those mentioned in Section 1, Rule 57. It notes that although a party is entitled to oppose an application for the issuance of the writ or to move for the discharge thereof by controverting the allegations of fraud, such rule does not apply when the same allegations constituting fraud are the very facts disputed in the main action, as in this case.

Watercraft also points out the inconsistent stance of Wolfe with regard to the ownership and possession of the sailboat. Contrary to Wolfe's Answer that the purchase of the sailboat was made pursuant to a three (3)-way partnership agreement between him and its General Manager and Executive Vice-President, Barry Bailey, and its President, Ricky Sandoval, Watercraft claims that he made a complete turnaround and exhibited acts of sole-ownership by signing the Boat Pull-Out Clearance in order to retrieve the sailboat. It argues that common sense and logic would dictate that he should have invoked the existence of the partnership to answer the demand for payment of the storage fees.

Watercraft contends that in order to pre-empt whatever action it may decide to take with respect to the sailboat in relation to his liabilities, Wolfe accomplished in no time the clearance that paved the way for its removal from the company's premises without paying his outstanding obligations. It claims that such act reveals a fraudulent intent to use the company storage facilities without payment of storage fees, and constitutes unjust enrichment.

The petition lacks merit.

A writ of preliminary attachment is defined as a provisional remedy issued upon order of the court where an 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.¹⁰ However, it should be resorted to only when necessary and as a last remedy because it exposes the debtor to humiliation and annoyance.¹¹ It must be granted only on concrete and specific grounds and not merely on general averments quoting the words of the rules.¹² Since attachment is harsh, extraordinary, and summary in nature,¹³ the rules on the application of a writ of attachment must be strictly construed in favor of the defendant.

For the issuance of an *ex-parte* issuance of the preliminary attachment to be valid, an affidavit of merit and an applicant's bond must be filed with

¹⁰ *Torres, et al., v. Satsatin, et al.*, 620 Phil. 468, 480 (2009), citing *Cuartero v. Court of Appeals*, G.R. No. 102448, August 5, 1992, 212 SCRA 260.

¹¹ *Philippine Commercial International Bank v. Alejandro*, 560 Phil. 219, 240 (2007).

¹² *D.P. Lub Oil Marketing Center, Inc. v. Nicolas*, 269 Phil. 450, 457 (1990).

¹³ *Philippine Commercial International Bank v. Alejandro*, *supra* note 12.

the court¹⁴ in which the action is pending. Such bond executed to the adverse party in the amount fixed by the court is subject to the conditions that the applicant will pay: (1) all costs which may be adjudged to the adverse party; and (2) all damages which such party may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.¹⁵ As to the requisite affidavit of merit, Section 3,¹⁶ Rule 57 of the Rules of Court states that an order of attachment shall be granted only when it appears in the affidavit of the applicant, or of some other person who personally knows the facts:

1. that a sufficient cause of action exists;
2. that the case is one of those mentioned in Section 1¹⁷ hereof;
3. that there is no other sufficient security for the claim sought to be enforced by the action; and
4. that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.

¹⁴ Under Section 2, Rule 57, it may also be issued by the Court of Appeals and the Supreme Court.

¹⁵ Section 4. *Condition of applicant's bond.* — The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.

¹⁶ Section 3. *Affidavit and bond required.* — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the court before the order issues.

¹⁷ Section 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:

(a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(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;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

The mere filing of an affidavit reciting the facts required by Section 3, Rule 57, however, is not enough to compel the judge to grant the writ of preliminary attachment. Whether or not the affidavit sufficiently established facts therein stated is a question to be determined by the court in the exercise of its discretion.¹⁸ “The sufficiency or insufficiency of an affidavit depends upon the amount of credit given it by the judge, and its acceptance or rejection, upon his sound discretion.”¹⁹ Thus, in reviewing the conflicting findings of the CA and the RTC on the pivotal issue of whether or not Watercraft's affidavit of merit sufficiently established facts which constitute as grounds upon which attachment may be issued under Section 1 (a)²⁰ and (d),²¹ Rule 57, the Court will examine the Affidavit of Preliminary Attachment²² of Rosario E. Rañoa, its Vice-President, which reiterated the following allegations in its complaint to substantiate the application for a writ of preliminary attachment:

x x x x

4. Sometime in June 1997, the Defendant was hired as Watercraft's Shipyard Manager.
5. Soon thereafter, the Defendant placed his sailboat, the *Knotty Gull*, within the boat storage facilities of Watercraft for purposes of storage and safekeeping.
6. Despite having been employed by Watercraft, the Defendant was not exempted from paying Watercraft boat storage fees for the use of the said storage facilities.
7. By virtue of his then position and employment with Watercraft, the Defendant was very much knowledgeable of the foregoing fact.
8. All throughout his employment with Watercraft, the Defendant used the boat storage facilities of Watercraft for his *Knotty Gull*.
9. However, all throughout the said period of his employment, the Defendant never paid the boat storage fees in favor of the Plaintiff.
10. The Defendant's contract of employment with Watercraft was terminated on 07 March 2002.
11. [Sometime] thereafter, that is, in or about June 2002, the Defendant pulled out the *Knotty Gull* from the boat storage facilities of Watercraft.
12. Instead of settling in full his outstanding obligations concerning unpaid storage fees before pulling out the *Knotty Gull*, the Defendant signed a Boat Pull-Out Clearance dated 29 June 2002 wherein he merely acknowledged the then outstanding balance of Sixteen Thousand Three Hundred and Twenty-four and 82/100 US Dollars (US\$16,324.82), representing unpaid boat storage fees for the period commencing June 1997 to June 2002, that he owed Watercraft.
13. By reason of Defendant's mere accomplishment of the said Boat Pull-Out Clearance with acknowledgment of his outstanding obligation to Watercraft in unpaid boat storage fees, Mr. Franz Urbanek, then the Shipyard Manager who replaced the Defendant, contrary to company policy, rules and regulations, permitted the latter to physically pull out his

¹⁸ *La Granja, Inc. v. Samson*, 58 Phil. 378, 380 (1933).

¹⁹ *Id.*

²⁰ *Supra* note 9.

²¹ *Id.*

²² *Rollo*, pp. 61-63.

boat from the storage facilities of the Plaintiff without paying any portion of his outstanding obligation in storage fees.

14. Several demands were then made upon the Defendant for him to settle his outstanding obligations to the Plaintiff in unpaid storage fees but the same went unheeded.

15. As of 02 April 2005, the outstanding obligation of the Defendant to the Plaintiff in unpaid boat storage fees stands at Three Million Two Hundred Thirty-One Thousand Five Hundred and Eighty-Nine and 25/100 Pesos (Php 3,231,589.25) inclusive of interest charges.

16. For failing to pay for the use [of] facilities and services—in the form of boat storage facilities—duly enjoyed by him and for failing and refusing to fulfill his promise to pay for the said boat storage fees, the Defendant is clearly guilty of **fraud** which entitles the Plaintiff to a *Writ of Preliminary Attachment* upon the property of the Defendant as security for the satisfaction of any judgment in its favor in accordance with the provisions of Paragraph (d), Section 1, Rule 57 of the Rules of Court.

17. The instant case clearly falls under the said provision of law.

18. Furthermore, lawful factual and legal grounds exist which show that the **Defendant may have departed or is about to depart the country to defraud his creditors** thus rendering it imperative that a Writ of Preliminary Attachment be issued in favor of the Plaintiff in the instant case.

19. The possibility of flight on the part of the Defendant is heightened by the existence of the following circumstances:

- a. The Special Working Visa issued in favor of the Defendant expired in April 2005;
- b. The Defendant is a British national who may easily leave the country at will;
- c. The Defendant has no real properties and visible, permanent business or employment in the Philippines; and
- e. The house last known to have been occupied by the Defendant is merely being rented by him.

20. All told, the Defendant is a very serious flight risk which fact will certainly render for naught the capacity of the Plaintiff to recover in the instant case.²³

After a careful perusal of the foregoing allegations, the Court agrees with the CA that Watercraft failed to state with particularity the circumstances constituting fraud, as required by Section 5,²⁴ Rule 8 of the Rules of Court, and that Wolfe's mere failure to pay the boat storage fees does not necessarily amount to fraud, absent any showing that such failure was due to insidious machinations and intent on his part to defraud Watercraft of the amount due it.

In *Liberty Insurance Corporation v. Court of Appeals*,²⁵ the Court explained that to constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, it must be shown that the debtor in contracting the

²³ *Id.* (Emphasis added)

²⁴ Section 5. *Fraud, mistake, condition of the mind.* – In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally.

²⁵ G.R. No. 104405, May 13, 1993, 222 SCRA 37. (Citation omitted)

debt or incurring the obligation intended to defraud the creditor. A debt is fraudulently contracted if at the time of contracting it, the debtor has a preconceived plan or intention not to pay. "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."²⁶

Fraudulent intent is not a physical entity, but a condition of the mind beyond the reach of the senses, usually kept secret, very unlikely to be confessed, and therefore, can only be proved by unguarded expressions, conduct and circumstances.²⁷ Thus, the applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.²⁸ The particulars of such circumstances necessarily include the time, persons, places and specific acts of fraud committed.²⁹ An affidavit which does not contain concrete and specific grounds is inadequate to sustain the issuance of such writ. In fact, mere general averments render the writ defective and the court that ordered its issuance acted with grave abuse of discretion amounting to excess of jurisdiction.³⁰

In this case, Watercraft's Affidavit of Preliminary Attachment does not contain specific allegations of other factual circumstances to show that Wolfe, at the time of contracting the obligation, had a preconceived plan or intention not to pay. Neither can it be inferred from such affidavit the particulars of why he was guilty of fraud in the performance of such obligation. To be specific, Watercraft's following allegation is unsupported by any particular averment of circumstances that will show why or how such inference or conclusion was arrived at, to wit: "16. For failing to pay for the use [of] facilities and services - in the form of boat storage facilities - duly enjoyed by him and for failing and refusing to fulfill his promise to pay for the said boat storage fees, the Defendant is clearly guilty of fraud x x x."³¹ It is not an allegation of essential facts constituting Watercraft's causes of action, but a mere conclusion of law.

With respect to Section 1 (a),³² Rule 57, the other ground invoked by Watercraft for the issuance of the writ of preliminary attachment, the Court finds no compelling reason to depart from the CA's exhaustive ruling to the effect that such writ is unnecessary because Wolfe is not a flight risk, thus:

²⁶ *Id.*

²⁷ Francisco, Vicente J., *The Revised Rules of Court in the Philippines (Provisional Remedies)*, Second Edition (1985), p. 23, citing, 4 Am Jur. 833.

²⁸ *Metro Inc., et al v. Lara's Gift and Decors, Inc., et al.*, 621 Phil. 162, 170 (2009).

²⁹ *D.P. Lub Oil Marketing Center, Inc. v. Nicolas*, *supra* note 13, at 456.

³⁰ *Phil. National Construction Corp. v. Hon. Dy*, 509 Phil. 1, 12 (2005).

³¹ *Rollo*, p. 62.

³² *Supra* note 9.

As to the allegation that Wolfe is a flight risk, thereby warranting the issuance of the writ, the same lacks merit. The mere fact that Wolfe is a British national does not automatically mean that he would leave the country at will. As Wolfe avers, he and his family had been staying in the Philippines since 1997, with his daughters studying at a local school. He also claims to be an existing stockholder and officer of Wolfe Marine Corporation, a SEC-registered corporation, as well as a consultant of projects in the Subic Area, a member of the Multipartite Committee for the new port development in Subic, and a member of the Subic Chamber of Commerce. More importantly, Wolfe has a pending labor case against Watercraft – a fact which the company glaringly failed to mention in its complaint – which Wolfe claims to want to prosecute until its very end. The said circumstances, as well as the existence of said labor case where Wolfe stands not only to be vindicated for his alleged illegal dismissal, but also to receive recompense, should have convinced the trial court that Wolfe would not want to leave the country at will just because a suit for the collection of the alleged unpaid boat storage fees has been filed against him by Watercraft.

Neither should the fact that Wolfe's Special Working Visa expired in April 2005 lead automatically to the conclusion that he would leave the country. It is worth noting that all visas issued by the government to foreigner staying in the Philippines have expiration periods. These visas, however, may be renewed, subject to the requirements of the law. In Wolfe's case, he indeed renewed his visa, as shown by *Special Working Visa No. 05-WV-0124P* issued by the Subic Bay Metropolitan Authority Visa Processing Office on April 25, 2005, and with validity of two (2) years therefrom. Moreover, his *Alien Certificate of Registration* was valid up to May 11, 2006.³³

Meanwhile, Watercraft's reliance on *Chuidian v. Sandiganbayan*³⁴ is misplaced. It is well settled that:

x x x when the preliminary attachment is issued upon a ground which is at the same time the applicant's cause of action; e.g., “an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty,” or “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 thereon had been improperly or irregularly issued – the reason being that the hearing on such a motion for dissolution of the writ would be tantamount to a trial of the merits of the action. In other words, the merits of the action would be ventilated at a mere hearing of a motion, instead of at the regular trial.³⁵

³³ *Rollo*, pp. 45-46.

³⁴ 402 Phil. 795 (2001)

³⁵ *Id.* at 816, citing *Mindanao Savings and Loan Association, Inc. v. CA*, 254 Phil. 480 (1989); *Liberty Insurance Corporation v. Court of Appeals*, *supra* note 26. (Emphasis added)

Be that as it may, the foregoing rule is not applicable in this case because when Wolfe filed a motion to dissolve the writ of preliminary attachment, he did not offer to show the falsity of the factual averments in Watercraft's application and affidavit on which the writ was based. Instead, he sought the discharge of the writ on the ground that Watercraft failed to particularly allege any circumstance amounting to fraud. No trial on the merits of the action at a mere hearing of such motion will be had since only the sufficiency of the factual averments in the application and affidavit of merit will be examined in order to find out whether or not Wolfe was guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof.

Furthermore, the other ground upon which the writ of preliminary attachment was issued by the RTC is not at the same time the applicant's cause of action. Assuming *arguendo* that the RTC was correct in issuing such writ on the ground that Watercraft's complaint involves an action for the recovery of a specified amount of money or damages against a party, like Wolfe, who is about to depart from the Philippines with intent to defraud his creditors, the Court stresses that the circumstances³⁶ cited in support thereof are merely allegations in support of its application for such writ.³⁷ Such circumstances, however, are neither the core of Watercraft's complaint for collection of sum of money and damages, nor one of its three (3) causes of action therein.³⁸

³⁶ a. The Special Working Visa issued in favor of the Defendant expired in April 2005;
 b. The Defendant is a British national who may easily leave the country at will;
 c. The Defendant has no real properties and visible, permanent business or employment in the Philippines; and
 d. The house last known to have been occupied by the Defendant is merely being rented by him.
 (*Rollo*, p. 62)

³⁷ *Rollo*, pp. 56-57.

³⁸

FIRST CAUSE OF ACTION

x x x x

18. The failure and adamant refusal of the Defendant to pay the plaintiff the said boat storage fees has prejudiced the latter in the total amount of **Three Million Two Hundred Thirty-One Thousand Five Hundred and Eighty-Nine and 25/100 Pesos (Php 3,231,589.25)** representing unpaid boat storage fees from June 1997 to June 2002, inclusive of interest charges but exclusive of legal interest which should be computed as of the date of demand for the payment of the Defendant's obligation until full payment is made.

SECOND CAUSE OF ACTION

x x x x

20. As an example for the public good and as a deterrent against other individuals similarly disposed as the Defendant who callously ignore and refuse to honor due and demandable obligations which action not only works to the grave prejudice of business entities like that of the Plaintiff but likewise severely undermines the lawful conduct of business especially in a free port zone area, the Defendant should likewise be held liable for **Exemplary Damages** in the amount of not less than **Two Hundred Thousand Pesos (Php 200,000)**

THIRD CAUSE OF ACTION

x x x x

22. By reason of the Defendant's adamant refusal to comply with several demands to pay and his unjustified failure to pay his outstanding obligations in unpaid boat storage fees, the Plaintiff was

All told, the CA correctly ruled that Watercraft failed to meet one of the requisites for the issuance of a writ of preliminary attachment, *i.e.*, that the case is one of those mentioned in Section 1 of Rule 57, and that the RTC gravely abused its discretion in improvidently issuing such writ. Watercraft failed to particularly state in its affidavit of merit the circumstances constituting intent to defraud creditors on the part of Wolfe in contracting or in the performance of his purported obligation to pay boat storage fees, as well as to establish that he is a flight risk. Indeed, if all the requisites for granting such writ are not present, then the court which issues it acts in excess of its jurisdiction.³⁹

WHEREFORE, premises considered, the petition is **DENIED**. The Court of Appeals Decision dated September 27, 2007 and its Resolution dated January 24, 2008 in CA-G.R. SP No. 97804, are **AFFIRMED**.

SO ORDERED.

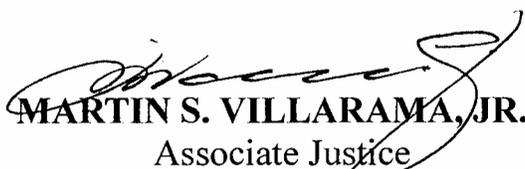


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



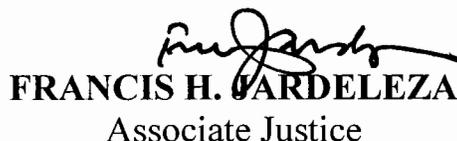
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



FRANCIS H. CARDELEZA
Associate Justice

compelled to engage the services of counsel and to institute the instant suit. Consequently, the Defendant should be held liable to Plaintiff in the total amount of **One Hundred Thousand Pesos (Php 100,000)** as **Attorney's Fees** as well as the **Costs** of this suit. (*Id.* at 55-56; emphasis in the original)

³⁹ *Phil. Bank of Communications v. Court of Appeals*, 405 Phil. 271, 282 (2001).

ATTESTATION

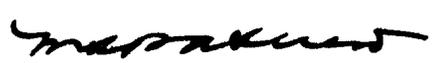
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third 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 Decision 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