Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 05 2019

THIRD DIVISION

LORENZO SHIPPING CORPORATION,
Petitioner,

- **versus** -

FLORENCIO O. VILLARIN and FIRST CARGOMASTERS CORPORATION, CEBU ARRASTRE & STEVEDORING SERVICES CORPORATION and GUERRERO G. DAJAO,
Respondents.
x----------x

G.R. No. 175727

LORENZO SHIPPING CORPORATION,
Petitioner,

- **versus** -

FLORENCIO O. VILLARIN,
Respondents.
x----------x

G.R. No. 178713

Present:

PERALTA, *J.*,
Chairperson,
LEONEN,
A. REYES, JR.,
HERNANDO, and
CARANDANG,* *JJ.*

Promulgated:

March 6, 2019

DECISION

REYES, A., JR., *J.*:

* Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

These are consolidated petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court assailing the rulings of the Court of Appeals (CA) in CA-G.R. SP No. 86333, which sustained the Orders dated May 11, 2004[1] and June 16, 2004[2] issued by the Regional Trial Court (RTC) of Cebu City, Branch 6, in Civil Case No. CEB-25283; and in CA-G.R. CEB SP No. 01855, which reversed the Orders dated March 9, 2006[3] and May 30, 2006[4] issued by the RTC of Cebu City, Branch 20 in the same case. Civil Case No. CEB-25283 is a suit for specific performance, accounting, and damages, with prayer for writs of preliminary mandatory injunction and preliminary attachment, filed before the RTC of Cebu City.

The Facts

Lorenzo Shipping Corporation (LSC) is a domestic corporation which operates interisland shipping vessels in the Philippines. On the other hand, Cebu Arrastre and Stevedoring Services Corporation (CASSCOR) provides arrastre and stevedoring services for LSC's ships calling at the Port of Cebu under a Cargo Handling Contract dated March 8, 1997.[5]

On February 20, 1997, Guerrero G. Dajao (Dajao), as President and General Manager of CASSCOR, entered into a Memorandum of Agreement (MOA) with Serafin Cabanlit (Cabanlit) and Florencio Villarin (Villarin).[6]

Under the MOA, Villarin and Cabanlit undertook to operate and manage the arrastre and stevedoring operations of CASSCOR with respect to LSC's vessels. CASSCOR was entitled to 5% of the proceeds of the operation, while Dajao was entitled to a 2% royalty. 10% was allocated for taxes, wages and other necessary expenses; and another 10% was earmarked for the share of the Philippine Ports Authority.[7] Villarin and Cabanlit alleged that the rest of the proceeds, amounting to 73%, were due to them.[8]

The Attachment Case

Alleging failure on the part of CASSCOR and Dajao to remit their shares from July 1999 onwards, Villarin, Cabanlit, and FCC (Villarin, *et al.*) filed a Complaint for specific performance and accounting against CASSCOR and Dajao.[9] The Complaint was subsequently amended on June 20, 2000 to implead LSC as a nominal defendant; to include a prayer for a

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1 Rendered by Judge Anacleto Caminade; *rollo* (G.R. No. 178713), pp. 107.
2 Id. at 118-119.
3 *Rollo* (G.R. No. 175727), pp. 149.
4 Id. at 166.
5 *Rollo* (G.R. No. 175727), pp. 343-344.
6 Id. at 343.
7 Id. at 57-58.
8 Id. at 91.
9 The original complaint does not appear in the *Rollo*.

writ of preliminary attachment against CASSCOR and Dajao; and to include a prayer for mandatory injunction against LSC. The case was docketed as Civil Case No. CEB-25283 and raffled to Branch 5 of the RTC of Cebu City. A writ of preliminary attachment was thereafter issued by the RTC against CASSCOR and Dajao on June 21, 2000.[10]

CASSCOR and Dajao filed their Answer on June 27, 2000, while LSC filed its Answer on August 27, 2001. However, on September 22, 2003, Villarin, *et al.* filed a Second Amended Complaint. The case was then re-raffled to Branch 6 of the RTC of Cebu City.[11]

On January 26, 2004, Villarin, *et al.* filed a motion for issuance of a writ of preliminary attachment. On May 11, 2004, Judge Anacleto Caminade (Judge Caminade) of RTC Branch 6 granted the motion and ordered the issuance of a writ of preliminary attachment upon the posting by Villarin, *et al.* of a Php 150,000.00 bond. On May 17, 2004, LSC filed a Motion for Clarification/Reconsideration, arguing that it cannot be subjected to the attachment writ. However, before the court can act on LSC's Motion for Clarification/Reconsideration, a Notice of Garnishment was served on LSC on May 20, 2004, prompting it to file a motion to post a counter-bond. On June 1, 2004, Judge Caminade issued an order granting LSC's motion to post a counter-bond. Hence, LSC and CASSCOR both posted counter-bonds worth Php 150,000.00 each, resulting in the discharge of the writ of attachment.[12]

On June 16, 2004, Judge Caminade, ruling on LSC's Motion for Clarification/Reconsideration, issued an Order[13] clarifying that the writ of attachment issued under the Order dated May 11, 2004 is directed at *all* the defendants, including LSC. The pertinent portion of the order states that:

> It is the opinion of the Court as already stated that all the defendants including the defendant-movant appear to be guilty of fraud in the performance of the obligation. It is not true that the plaintiffs and defendant-movant have no contract. Plaintiff has contract with the shipping corporation in view of the fact that the defendant shipping corporation is a beneficiary of the services of plaintiffs as alleged in the contract between plaintiffs and other defendants. The rule on privity of contract applies.[14]

Aggrieved, LSC filed a petition for *certiorari* with the CA claiming that Judge Caminade committed grave abuse of discretion in subjecting LSC to the attachment writ since it had no contract or juridical relation with Villarin and the other plaintiffs. LSC further argued that it cannot be

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10 *Rollo* (G.R. No. 178713), pp. 70-71.
11 Id. at 84-99.
12 Id. at 117.
13 Id. at 118-119.
14 Id. at 119.

subjected to the attachment writ because it was only impleaded as a nominal party.

Judge Caminade subsequently inhibited himself from the case, which was then re-raffled to RTC Branch 20.

The Deposit Case

On November 23, 2004, Villarin, *et al.* filed a *Verified Motion to Require Defendant LSC to Deposit in Court Money Held in Trust.*[15] To support the motion, Villarin, *et al.* presented an audit report[16] and a letter[17] dated January 5, 2004 from LSC Vice-President for Finance Julita Valeros (Valeros) which contains a statement from LSC's external auditor stating that the unpaid account of LSC to CASSCOR amounts to Php 10,297,499.59.

On August 12, 2005, Judge Bienvenido R. Saniel, Jr. (Judge Saniel) of RTC Branch 20 issued an Order[18] (Order to Deposit) granting the November 23, 2004 motion, which reads as follows:

> When this case was called today, Atty. Bernardito Florido and Atty. Florencio Villarin agreed and jointly manifested that the money requested to be deposited in the plaintiffs' motion shall be deposited in court under the joint account/name of the plaintiffs and defendant Cebu Arrastre and Stevedoring Services Corporation. No one shall withdraw the money without the knowledge and conformity of the other, and the approval of the court.
>
> Accordingly, the verified motion to require defendant Lorenzo Shipping Corporation to deposit in court the money held in trust is hereby granted. Defendant [LSC] is directed to deposit the amount of Php10,297,499.59 with the Clerk of Court of this Court in the joint account/name of the plaintiffs and Cebu Arrastre and Stevedoring Services Corporation, the same to be withdrawn only with the knowledge and conformity of the said parties and the approval of the court.
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> SO ORDERED.[19]

The Order noted that the counsels for Villarin, *et al.* and CASSCOR and Dajao have subsequently agreed and jointly manifested that the money requested to be deposited will be so deposited in court.

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15 *Rollo* (G.R. No. 175727), pp. 113-119.
16 CA *rollo*, pp. 87-146.
17 Id. at 147. Hereinafter referred to as the Valeros letter.
18 *Rollo* (G.R. No. 175727), p. 134.
19 Id.

On September 6, 2005, Villarin, *et al.* moved for the issuance of a writ of execution to enforce Judge Saniel's Order to Deposit. On the other hand, LSC moved for reconsideration of the Order to Deposit on October 4, 2005.[20]

On March 9, 2006, Judge Saniel issued an Order[21] granting LSC's motion for reconsideration and denying Villarin's motion for execution. The pertinent portions of the order are as follows:

> The motion to require the deposit was concurred in, with condition, by defendant Cebu Arrastre and Stevedoring Services Corporation (CASSCOR). The apparent purpose of the plaintiffs in securing the deposit of the above-mentioned amount is to have an assurance that the money – which the plaintiff claims to be owing from defendant Lorenzo Shipping and payable to CASSCOR – will be available for payment to the prevailing party when this case shall be finally terminated or disposed of. The court has noted however that earlier the court had issued a writ of preliminary attachment but the same was discharged when the defendants put up a counterbond of P300,000.00. In approving the counterbond, the court had thereby determined that the counterbond was sufficient to protect the interests of the plaintiff. To still require the deposit of the amount in court would be unnecessary and oppressive. Besides, whether or not there is privity of contract between the plaintiffs and Lorenzo Shipping is an issue that is yet to be determined and resolved in this case.
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> WHEREFORE, without needing to discuss the other matters and arguments raised in the motion for reconsideration and other pleadings of the parties, the court resolves to reconsider, as it does hereby reconsider and set aside, the order of August 12, 2005.
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> The plaintiff's motion for issuance of a writ of execution to enforce the 12 August 2005 order is hereby denied.[22]

Villarin, *et al.* moved for reconsideration but was denied. In denying the motion, the trial court noted that the grant of LSC and CASSCOR's motions to post counterbond was not questioned by the plaintiffs and that the issue of LSC's liability to Villarin, *et al.* is still in dispute. It also held that the Order to Deposit has no basis in the Rules of Court.[23]

Aggrieved, Villarin, *et al.* filed a petition for *certiorari* with the CA (the Deposit Case), asserting that Judge Saniel committed grave abuse of discretion in granting LSC's motion for reconsideration. They raised the following contentions in their petition: (1) the Order to Deposit is sanctioned by Rule 135, Section 6, which authorizes courts to issue writs and processes to carry their jurisdiction into effect; (2) the Php 300,000.00 counterbond is

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20 Id. at 138-148.
21 Id. at 149.
22 Id. at 149.
23 Id. at 166.

insufficient to protect their interest; and (3) the letter dated January 5, 2004 amounts to an admission of liability on the part of LSC.[24]

Rulings of the CA

CA Ruling in the Deposit Case

On September 7, 2006, the CA rendered its Decision[25] in favor of Villarin, *et al.*, thusly:

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case, **ANNULLING** and **SETTING ASIDE**, as they are hereby annulled and set aside, the Orders dated March 9, 2006 and May 30, 2006 of the respondent judge and **REINSTATING** his Order dated August 12, 2005. Further, the respondent judge is hereby ordered to ENFORCE his Order dated August 12, 2005 which requires the deposit in court the amount of P10, 297, 499.59.
>
> **SO ORDERED**.[26]

The CA ruled that Judge Saniel committed grave abuse of discretion in granting LSC's motion on the ground that the counterbond was sufficient to protect the interests of the plaintiffs. Taking the Valeros letter as a judicial admission on the part of CASSCOR and Dajao, the appellate court concluded that the Php 300,000.00 counterbond would not suffice to secure a liability of more than Php 10,000,000.00. The appellate court also upheld Villarin, *et al.*'s contention regarding the grounding of the Order to Deposit in Rule 135, Section 6. Finally, it ruled that the Order to Deposit does not amount to a prejudgment of the case because the deposited amount remains in the control of the court as a measure to ensure that LSC will not unjustly benefit from the funds to the prejudice of whoever may be ultimately declared entitled thereto.

LSC filed a motion for reconsideration which was denied by the appellate court in a Resolution[27] dated May 30, 2006. Aggrieved, LSC filed a petition for review on *certiorari*[28] with this Court which was docketed as G.R. No. 175727.

CA Ruling in the Attachment Case

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24 Id. at 175-179.

25 Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla concurring; *rollo* (G.R. No. 175727), pp. 45-52.

26 Id. at 51.

27 Id. at 166.

28 Id. at 9-42.

On April 24, 2007, the CA rendered its Decision[29] in favor of Villarin, *et al.*, disposing thus:

> **WHEREFORE**, the present petition is hereby DISMISSED for want of merit.
>
> **SO ORDERED**.[30]

The CA, in upholding the trial court, ruled that the complaint contained averments which allege fraud on the part of *all the defendants*, including LSC. As regards LSC's assertion of the absence of privity of contract, the CA ruled that LSC is a beneficiary of the contract between Villarin and CASSCOR; and that Section 1(d) of Rule 57 does not require the existence of a contractual obligation. Citing *Sta. Ines Melale Forest Products Corporation v. Macaraig,*[31] the CA noted that Section 1(d) also contemplates other sources of obligation, such as law, crime, or quasi-delict, without stating the precise nature of the obligation involved in the case at bar. The CA further held that the admission cited by LSC in its petition was not an admission of the absence of privity of contract between LSC and Villarin but is instead an admission by Villarin that LSC has payables to FCC.

LSC sought reconsideration of the decision but was denied by the CA in its Resolution[32] dated July 6, 2007. LSC thus filed a petition for review on *certiorari*[33] with this Court, docketed as G.R. No. 178713. In a Resolution[34] dated September 16, 2009, the Court ordered the consolidation of G.R. No. 178713 with G.R. No. 175727. Thereafter, the parties were directed to file their respective memoranda.

The Issues

G.R. No. 178713

LSC ascribes the following error to the appellate court in G.R. No. 178713:

> THE CA SERIOUSLY ERRED IN AFFIRMING THE ORDER OF THE COURT *A QUO* IN EXTENDING THE WRIT OF PRELIMINARY ATTACHMENT AS TO INCLUDE LSC, WHICH WAS MERELY DESCRIBED AS A

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29 Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz concurring; *rollo* (G.R. No. 178713), pp. 29-44.

30 Id. at 43.

31 359 Phil. 831 (1998).

32 *Rollo* (G.R. No. 178713), pp. 46-47.

33 Id. at 7-25.

34 *Rollo* (G.R. No. 175727), p. 278.

> NOMINAL DEFENDANT, BY CHARGING IT AS GUILTY OF FRAUD IN CONTRACTING THE OBLIGATION, WHEN THE APPLICATION FOR THE WRIT OF PRELIMINARY ATTACHMENT WAS ONLY DIRECTED TO CO-DEFENDANTS CASSCOR AND DAJAO.[35]

According to LSC, the Order dated May 11, 2004 subjecting it to the attachment writ contravenes jurisprudence which requires the writ to contain concrete and specific grounds to justify the attachment. LSC also points out that the CA did not uphold the trial court's finding with regard to privity of contract; instead it held that an existing contractual relation is not a requirement for the issuance of an attachment writ, without specifying the nature of the obligation of LSC to Villarin. LSC further asserts that the allegations in Villarin, *et al.*'s complaint cited by the CA are not badges of fraud but legal justifications for LSC's refusal to pay Villarin directly. LSC faults the CA for subjecting it to the attachment writ on the basis of the general prayer for relief despite its impleader in the case as a mere nominal party. Lastly, LSC points out that the trial court had already issued a writ of attachment on June 21, 2000, making the writ of attachment issued under the Order dated May 11, 2004 a superfluity.

G.R. No. 175727

LSC ascribes the following errors to the appellate court in G.R. No. 175727:

> THE CA SERIOUSLY ERRED IN REVERSING THE ORDERS OF THE COURT *A QUO* AND ORDERING THE IMPLEMENTATION OF THE ORDER DATED AUGUST 12, 2005 REQUIRING LSC, A NOMINAL DEFENDANT AT THAT, TO DEPOSIT TO COURT THE AMOUNT OF PHP 10,297,499.59 UNDER THE JOINT ACCOUNT OF CASSCOR AND VILLARIN, *ET AL.* FOR THE FOLLOWING REASONS, NAMELY:
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> 1. THE ORDER DATED AUGUST 12, 2005, IF ENFORCED, IS TANTAMOUNT TO A PREJUDGMENT OF THE MAIN CASE AS AGAINST LSC.
> 2. AFTER TWO (2) WRITS OF ATTACHMENT ISSUED AND COUNTERBONDS POSTED, REQUIRING LSC TO DEPOSIT ITS MONEY IN COURT IS AN OVERKILL AS IT IS TANTAMOUNT TO A THIRD WRIT OF ATTACHMENT.
> 3. THE ORDER TO DEPOSIT IS NOT SANCTIONED BY THE RULES ON THE PROVISIONAL REMEDIES.

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35 *Rollo* (G.R. No. 178713), p. 18.

4. THE THEORY OF VILLARIN, *ET AL.* THAT THE MONEY IS HELD IN TRUST IS A LEGAL CONCLUSION WHICH NEEDS TO BE THRESHED OUT IN THE DECISION OF THE MAIN CASE AND CANNOT BE PASSED UPON AS A MERE INCIDENCE OF THE CASE. THERE IS NO TRUST, EXPRESS OR IMPLIED, CREATED UNDER THE FACTS OF THE CASE.
5. THE ORDER TO DEPOSIT IS OVER AND ABOVE THE RELIEFS IN THE COMPLAINT AND IS OUTSIDE THE JURISDICTION OF THE COURT *A QUO* DUE TO NON-PAYMENT OF DOCKET FEES THEREFOR.
6. LSC, BEING A NOMINAL DEFENDANT AS DESCRIBED BY VILLARIN, *ET AL.*, CANNOT BE BURDENED MORE THAN THE PRINCIPAL DEFENDANTS WHICH IS THE DAJAO GROUP.
7. THE ORDER SOUGHT TO BE ENFORCED AGAINST LSC IS IN THE NATURE OF A MANDATORY INJUNCTION AND THE VILLARIN AND DAJAO GROUPS MISERABLY FAILED TO PROVE THEIR ENTITLEMENT THERETO.
8. IN LEGAL CONTEMPLATION, NO ADMISSION WAS MADE BY LSC THAT IT OWES DAJAO OR CASSCOR THE AMOUNT OF PHP 10,297,499.59. DEFINITELY, LSC DID NOT ADMIT ANY LIABILITY TO VILLARIN, *ET AL.*[36]

LSC insists that the Order to Deposit amounts to a prejudgment of the case, a third attachment writ, and a mandatory injunction, since it would be compelled to turn over control of the amount deposited. It also claims that the fixing of the amount of the deposit at Php 10,297,499.59 is misleading because it fails to take possible counterclaims and cross-claims into account. LSC likewise assails the CA's application of Rule 135, Section 6 to the case, asserting that there is neither basis nor need for the Order to Deposit because the rules on preliminary attachment adequately govern the case at bar. In the same vein, it submits that the listing of provisional remedies in Rules 57 to 61 of the Revised Rules of Court is exclusive. It also contends that the trial court had no jurisdiction to issue the Order to Deposit in the amount of more than Php 10,000,000.00 considering that Villarin, *et al.* only paid Php 300,000.00 in docket fees. It also maintains that it could not be subjected to the Order to Deposit since it was originally impleaded as a mere nominal party. Finally, LSC challenges the appellate court's acceptance of the Valeros letter as a judicial admission of its liability to CASSCOR.

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36 *Rollo* (G.R. No. 175727), pp. 24-26.

Ruling of the Court

Both petitions are meritorious.

G.R. No. 178713

The CA, in upholding the trial court's order in favor of Villarin, *et al.*, ruled that *all* the defendants, including LSC, are guilty of fraud in the performance of their obligation. The courts *a quo* anchored the issuance the writ of preliminary attachment prayed for on Sections 1(b) and 1(d) of Rule 57 of the Rules of Court, which state:

> **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
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> (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**;
>
> 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;

The Court does not agree.

A writ of preliminary attachment is 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 might be secured in said action by the attaching creditor against the defendant.[37] It is governed by Rule 57 of the Revised Rules of Court.

The provisional remedy of attachment is available in order that the defendant may not dispose of his property attached, and thus secure the satisfaction of any judgment that may be secured by plaintiff from defendant. The purpose and function of an attachment or garnishment is two-fold. First, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation thus preventing the loss

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37 *Adlawan v. Judge Tomol*, 262 Phil. 893, 904 (1990).

or dissipation of the property by fraud or otherwise. Second, it subjects to the payment of a creditor's claim property of the debtor in those cases where personal service cannot be obtained upon the debtor.[38]

In *Ng Wee v. Tankiansee*,[39] the Court, interpreting Section 1(d), ruled that:

> To sustain an attachment [under this section], it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. 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. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case.[40] (Underscoring Ours)

The Court, speaking through Associate Justice Antonio Eduardo B. Nachura, reiterated the long-standing doctrine that "[t]he provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance. The rules governing its issuance are, therefore, strictly construed against the applicant, such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction."[41] This standard of construction of the rules on preliminary attachment is reiterated in the 2015 case of *Watercraft Venture Corporation v. Wolfe*.[42]

Tested against these jurisprudential standards, the CA's decision upholding Judge Caminade's Order dated June 16, 2004 against LSC must be reversed.

It must be borne in mind that Villarin's action is for specific performance. The main thrust of his complaint is to compel Dajao and CASSCOR to observe the provisions of the MOA. All the other remedies sought by the complaint are merely ancillary to this primary relief. The MOA, therefore, is the obligation upon which Villarin's action is brought; hence the obligation sought to be upheld in this case is *ex contractu.*

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38 Id.
39 568 Phil. 819 (2008).
40 Id. at 828-829, citing *Liberty Insurance Corporation v. CA*, 294 Phil. 41, 49-50 (1993).
41 *Ng Wee v. Tankiansee*, id. at 830-831.
42 769 Phil. 394 (2015).

Pertinently, Article 1311 of the New Civil Code provides that "[c]ontracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." In the case at bar, the MOA was entered into by Dajao (as CASSCOR President) on one hand, and Villarin, *et al.* on the other. LSC cannot be guilty of fraud within the contemplation of Section 1(d), Rule 57 of the Rules of Court because it did not enter into any agreement or contract with Villarin. In the absence of any assignment of rights to LSC, the MOA can only bind the parties thereto. Not being a party to the MOA, LSC cannot be subjected to an attachment writ on the basis of Section 1(d).

Villarin admits that he has no express or written contract with LSC. He nevertheless asserts in his Memorandum the existence of an implied trust relation among himself, LSC, and CASSCOR. He alleges in the Second Amended Complaint that LSC was aware of the arrangement under the MOA for CASSCOR to subcontract its LSC arrastre operations to Villarin.[43] He asserts that the relation between them was "*a business relation that requires them to repose trust and confidence in each other and exercise a corresponding degree of fairness and good faith pursuant to an existing quasi-contract or implied contract created by law.*"[44] He then denominates this relation as an implied constructive trust, where LSC holds 73% of the amount payable to CASSCOR in trust for payment to him.

At this point, the Court emphasizes that it cannot make an authoritative characterization of the juridical relation between LSC and Villarin, so as to not preempt any ruling of the RTC Branch 20 in Cebu City in the main controversy. Be that as it may, the Court shall make an initial determination herein if only to resolve the issue on the propriety of the issuance of provisional remedies by the trial court.

In this regard, the Court cannot sustain the finding *a quo* that constructive trust relation obtains in this case.

A constructive trust is "a trust not created by any words, either expressly or impliedly, evincing a direct intention to create a trust but by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. It does not arise by agreement or intention but by operation of law against one who, by fraud, duress, or abuse of confidence obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold."[45]

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43 *Rollo* (G.R. No. 178713), p. 60.

44 *Rollo* (G.R. No. 175727), p. 322.

45 De Leon & De Leon, Comments and Cases on Partnership, Agency and Trusts, 2010 ed., p. 639.

In the case at bar, it appears that LSC has a legal justification for refusing to yield to Villarin's demands, based on the law on privity of contract. Thus, it cannot be said that LSC is withholding payment for fraudulent reasons. Nevertheless, assuming without conceding that a constructive trust relation does exist in this case, it has already been held in *Philippine National Bank v. CA*[46] that, "in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary."[47] This takes the case out of the purview of Section 1(b), since there would be no fiduciary relation between LSC and Villarin.

The appellate court's reliance on the ruling in *Sta. Ines*[48] is misplaced. In that case, the Court found that a juridical relation between the attachment plaintiff and the attachment defendant was created by virtue of the attachment defendant's cutting of logs within the attachment plaintiff's timber license area, which amounted to a wrongful act committed by the former causing damage to the latter. The Court then held that the term "creditors" as used in Rule 57 should be construed broadly to contemplate all classes of creditors regardless of the source of obligation. In other words, a juridical tie is still required, which is not present in the case at bar between Villarin and LSC. LSC's refusal to directly remit its payables to Villarin cannot be considered wrongful, because LSC contracted only with CASSCOR and not with Villarin; and such refusal is justified by the legal principle of privity of contract.

G.R. No. 175727

The pivotal issue in this petition is the propriety of the issuance of the Order to Deposit.

Deposit as a provisional remedy

While deposit may not be included in the provisional remedies stated in Rules 57 to 61 of the Rules of Court, this does not mean, however, that its concept as a provisional remedy is nonexistent. As correctly pointed out by the appellate court, Rule 135 gives courts wide latitude in employing means to carry their jurisdiction into effect. Thus, this Court has upheld deposit orders issued by trial courts in cases involving actions for partition,[49] recovery of possession,[50] and even annulment of contract. In *The Province of Bataan v. Hon. Villafuerte, Jr.*,[51] the Court sustained an escrow order over the lease rentals of the subject properties therein pending the resolution of

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46 291 Phil. 356 (1993).
47 Id. at 364.
48 Supra note 31.
49 *Go v. Go*, 616 Phil. 740 (2009).
50 *Bustamante v. Court of Appeals*, 430 Phil. 797 (2002).
51 419 Phil. 907 (2001).

Reyes

the main action for annulment of sale and reconveyance; while in *Reyes v. Lim*,[52] the Court upheld an order to deposit the down payment for the purchase price of a parcel of land after the buyer sought the rescission of the contract to sell.

Based on jurisprudence, a deposit order is an extraordinary provisional remedy whereby money or other property is placed in *custodia legis* to ensure restitution to whichever party is declared entitled thereto after court proceedings. It is extraordinary because its basis is not found in Rules 57 to 61 of the Rules of Court on Provisional Remedies but rather, under Sections 5(g) and 6 of Rule 135 of the same Rules[53] pertaining to the inherent power of every court "[t]o amend and control its process and orders so as to make them conformable to law and justice;" as well as to issue "all auxiliary writs, processes and other means necessary" to carry its jurisdiction into effect.

To elucidate further, provisional deposit orders can be seen as falling under two general categories. In the first category, the demandability of the money or other property to be deposited is not, or cannot - because of the nature of the relief sought - be contested by the party-depositor. In the second category, the party-depositor regularly receives money or other property from a non-party during the pendency of the case, and the court deems it proper to place such money or other property in *custodia legis* pending final determination of the party truly entitled to the same.

The cases of *Eternal Gardens Memorial Parks Corp. v. First Special Cases Division, Intermediate Appellate Court*[54] and *Reyes v. Lim*[55] fall under the first category. *Eternal Gardens* involved an interpleader case where the plaintiff-buyer (Eternal), who was seeking to compel the litigation of the two conflicting claims to the property in question, refused to comply with an order to deposit in *custodia legis* the installment payments for the disputed property. In upholding the provisional deposit order, the Court ruled that Eternal's disavowal of interest in the disputed property, and the deposit of such disputed money or property with the court, are essential elements of an interpleader suit.[56] Thus, Eternal was ordered to deposit the installment payments with the trial court. In *Reyes*, the Court upheld a provisional

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52 456 Phil. 1 (2003).

53 Rule 135, Sections 5(g) and 6 of the Rules of Court provide:

SEC. 5. *Inherent powers of courts.* — Every court shall have power:

x x x

(g) To amend and control its process and orders so as to make them conformable to law and justice;

x x x

SEC. 6. *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

54 247-A Phil. 518 (1988).

55 Supra note 52.

56 Supra note 54, at 529.

deposit order covering the down payment for a parcel of land pending the resolution of the case for annulment of contract, *viz.*:

> [S]ince Reyes is demanding to rescind the Contract to Sell, he cannot refuse to deposit the P10 million down payment in court. Such deposit will ensure restitution of the P10 million to its rightful owner. Lim, on the other hand, has nothing to refund, as he has not received anything under the Contract to Sell.[57]

In both *Eternal Gardens* and *Reyes*, the nature of the relief sought precluded the depositor-party from contesting the demandability of the amounts sought to be deposited. Stated differently, the depositor-parties effectively resigned their respective interests over the amounts deposited. The most equitable solution to prevent unjust enrichment in such cases, therefore, is a provisional deposit order, so that the amount deposited may easily be turned over to whoever would be adjudged properly entitled thereto.

The second category of cases involve provisional deposit orders covering sums regularly received from non-parties to the case by the depositor-party during the pendency of the proceedings. These are turned over to the custody of the court since the entitlement of the depositor-party thereto remains disputed, and to ensure the timely transfer of such sums to whoever would be adjudged properly entitled thereto. In *Go v. Go*,[58] *Bustamante v. CA*,[59] and *Province of Bataan,*[60] the Court upheld the trial court's order directing the depositor-parties therein, who regularly received rental payments from the lessees of the disputed properties, to deposit such rental payments with the court pending the resolution of the issue of ownership of the disputed properties.

A common thread running through these cases is the existence of an agreement or a juridical tie, which either binds the depositor-party and the party to be benefited by the deposit; or forms the basis for the regular receipt of payments by the depositor-party. In *Eternal Gardens*, Eternal had a contract of sale with one of the interpleading parties; while in *Reyes*, Reyes had a contact to sell with Lim; and in *Go*, *Bustamante,* and *Province of Bataan*, the regular payments received by the depositor-parties are based on lease agreements.

Jurisprudence on provisional deposit orders as applied to the case at bar

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57 Supra note 52, at 12.
58 616 Phil. 740 (2009).
59 430 Phil. 797 (2002).
60 Supra note 51.

Shorn of the minor details, the case at bar involves a situation where the creditor seeks to attach properties of his debtor's debtor, without establishing a juridical link between the two debts. The question arises: can the provisional remedy of deposit, as established under the Rules of Court and jurisprudence, be availed of in such a situation? To answer this query, the Court now determines if the case at bar falls under any of the two categories established by the jurisprudence on provisional deposit orders.

The principal relief sought in respondent's complaint is for specific performance to compel CASSCOR and Dajao to observe the provisions of the MOA. The deposit order was applied for by Villarin, *et al.* and directed at LSC as the depositor-party, with Villarin, *et al.* as the beneficiary of the deposit order. Essentially, the situation involves two contracts: the cargo handling contract between LSC and CASSCOR, and the MOA between Dajao (as CASSCOR President) and Villarin, *et al.* – which is the contract sought to be enforced by Villarin, *et al.* It must be pointed out however, that LSC *is not* a party to the MOA entered into by Dajao and Villarin, *et al.* As such, the deposit order cannot be directed at LSC since it is not privy to the contract sought to be enforced. To do so would violate the civil law principle that a contract can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[61]

Furthermore, the nature of the relief sought in the case at bar does not preclude the depositor-party, *i.e.*, LSC, from contesting the demandability of the amount deposited. In a specific performance case, the defendant can put in issue the existence of any liability on her part to the plaintiff. In contrast, in provisional deposit orders of the first category, the depositor-party *does not*, or *is precluded,* from contesting the demandability of the money or property sought to be deposited – a situation which presumes some resignation of interest in the money or property deposited on the part of the depositor-party. Here, LSC does not resign any interest in favor of Villarin, *et al.*; but instead asserts that it has no liability whatsoever, there being no juridical tie between them. Moreover, even assuming *arguendo* that LSC did concede the *existence* of any liability on its part in favor of CASSCOR or Villarin, *et al.*, the demandability of the amount covered by the deposit order against LSC is still in dispute since LSC has its own claims against CASSCOR.[62] Such claims can possibly compensate for whatever amounts CASSCOR may be entitled to receive from LSC under their contract, which in turn, may be sought from CASSCOR by Villarin, *et al.* Clearly, the case at bar cannot be subsumed under the first category of provisional deposit orders.

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61 *Integrated Packaging Corp. v. CA*, 388 Phil. 835, 845 (2000); *Manila Port Service, et al. v. CA, et al.*, 127 Phil. 692, 694 (1967).

62 , *See* CA *rollo*, p. 353; *rollo* (G.R. No. 175727), p. 366.

The second category of provisional deposit cases is likewise inapplicable. The amount covered by the deposit order against LSC comes from its own account and is not regularly received from non-parties to the case. There is no regular flow of incoming amounts from non-parties which must be properly received and kept in *custodia legis* in favor of the party who will ultimately be adjudged entitled thereto. Furthermore, it has already been established that the actual liability of LSC to CASSCOR is still in dispute.

At this juncture, it would not be amiss to reiterate that LSC has no juridical tie or agreement with Villarin, *et al.* which would suffice as basis for the issuance of a deposit order against the former in favor of the latter.

It is therefore clear from the foregoing disquisition that a provisional deposit order, while available under our procedural law, cannot be granted in this case; the factual and legal circumstances herein being inconsistent with the parameters established by jurisprudence.

The Court concludes by enjoining courts from indiscriminately resorting to deposit orders when the remedy of preliminary attachment is not available. The Court reiterates our pronouncement in *Province of Bataan*,[63] that the provisional remedy of deposit is a "fair response to the exigencies and equities of the situation", when the factual circumstances of the case call for its application. Thus, when there is no juridical tie between the obligee-plaintiff and the beneficiary of the services he has rendered; and the obligor-defendant failed to set up a cross-claim to connect the two parties with whom it had separate contracts, a deposit order would only amount to a circumvention of the rules on preliminary attachment and an unjust imposition on the alleged beneficiary who is not a party to the contract sought to be enforced.

WHEREFORE, premises considered, the Court hereby rules as follows:

1. In **G.R. No. 175727**:
   a. The petition is **GRANTED.**
   b. The Decision dated September 7, 2006 and the Resolution dated November 28, 2006 of the Court of Appeals in CA-G.R. CEB-SP No. 01855 are hereby **REVERSED and SET ASIDE**.
   c. The Orders dated March 9, 2006 and May 30, 2006 issued by Judge Bienvenido R. Saniel, Jr. in Civil Case No. CEB-25283 are hereby **REINSTATED.**
   d. The Regional Trial Court of Cebu City is ordered to return any and all amounts deposited to it by petitioner Lorenzo

63 Supra note 51, at 918.

Shipping Corporation pursuant to the aforesaid Decision and Resolution in CA-G.R. CEB-SP No. 01855.

2. In **G.R. No. 178713**:
   a. The petition is **GRANTED.**
   b. The Decision dated April 24, 2007 and the Resolution dated July 6, 2007 of the Court of Appeals in CA-G.R. SP No. 86333 are hereby **REVERSED and SET ASIDE.**
   c. The Order dated June 16, 2004 issued by Judge Anacleto Caminade in Civil Case No. CEB-25283; and the writ of attachment issued thereunder, are hereby **ANNULLED** and **SET ASIDE** insofar as it pertains to petitioner Lorenzo Shipping Corporation.
   d. The counter-bond posted by Lorenzo Shipping Corporation in connection with the aforesaid writ of attachment is ordered returned.

3. The Regional Trial Court of Cebu City is hereby ordered to try the merits of Civil Case No. CEB-25283 with utmost dispatch.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Chairperson

MARVIC M.V.F. LEONEN
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
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.

DIOSDADO M. PERALTA
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.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 05 2019