

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
FIRST DIVISION**

**BF HOMES, INCORPORATED,  
*Petitioner,***

***-versus-***

**G.R. No. 76879  
October 3, 1990**

**COURT OF APPEALS, ROSALINDA R.  
ROA and VICENTE MENDOZA,  
*Respondents.***

X-----X

**ROSALINDA ROA and VICENTE  
MENDOZA,  
*Petitioners,***

***-versus-***

**G.R. No. 77143  
October 3, 1990**

**COURT OF APPEALS and BF HOMES,  
INCORPORATED,  
*Respondents.***

X-----X

**DECISION**

**CRUZ, J.:**

Involved here are two Petitions for Review assailing the Decision of the Court of Appeals in CA-G.R. No. Sp 05411, entitled BF Homes, Inc. vs. Judge Tutaan, et al., dated June 6, 1986, as amended on October 22, 1986.

BF Homes, Inc. is a domestic corporation previously engaged in the business of developing and selling residential lots and houses and other related realty matters.

On July 19, 1984, BF contracted a loan from Rosalinda R. Roa and Vicente Mendoza in the amount of P250,000.00 with interest at the rate of 33% per annum payable after 32 days. The obligation was embodied in a promissory note and secured by two post-dated checks issued by BF in favor of the lenders.

On September 25, 1984, BF filed a Petition for Rehabilitation and for a Declaration in a State of Suspension of Payments under Sec. 5(d) of P.D. No. 902-A with a prayer that upon the filing of the petition and in the meantime, all claims against it for any and all accounts or indebtedness be suspended, but allowing petitioner to continue with its normal operations. It also asked for the approval of the proposed rehabilitation plan.

On October 17, 1984, Roa and Mendoza filed a complaint against BF with the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-43104, for the recovery of the loan of P250,000.00, with interest and attorney's fees. The complaint also prayed for the issuance of a writ of preliminary attachment against the properties of BF.

On October 22, 1984, the trial court issued the writ against properties of BF sufficient to satisfy the principal claim in the amount of P257,333.33.

In a motion dated October 25, 1984, BF moved for the dismissal of the case for lack of jurisdiction, or at least for its suspension in view of the pendency of SEC Case No. 002693. It also asked for the lifting of the writ of preliminary attachment.

The trial court denied the motion to dismiss on November 20, 1984, and the motion for reconsideration on January 11, 1985. Citing the case of DMRC Enterprises vs. Este del Sol Mountain Reserves, Inc.,<sup>[1]</sup> the trial court held it had jurisdiction because what was involved was not an intra-corporate or partnership dispute but merely a determination of the rights of the parties arising out of the contract of loan.

On February 13, 1985, BF filed with the Intermediate Appellate Court (now Court of Appeals) an original action for certiorari with prayer for a writ of preliminary injunction against the regional trial court, Roa and Mendoza. On February 14, 1985, the Court of Appeals issued an order temporarily restraining proceedings in Civil Case No. Q-43104.

On March 18, 1985, the SEC, finding an urgent need to rehabilitate BF, issued an order creating a management committee and suspending all actions for claims against BF pending before any court, tribunal or board.

On June 6, 1986, the Court of Appeals rendered a decision dismissing the complaint in Civil Case No. Q-43104 and declaring the writ of preliminary attachment null and void. But upon a motion for reconsideration filed by Roa and Mendoza, the decision was set aside and a new one was entered upholding the jurisdiction of the regional trial court over the case. At the same time, however, it suspended the proceedings therein until after the management committee shall have been impleaded as party defendant. The dissolution of the writ of preliminary attachment was maintained.

Both parties filed separate motions for reconsideration. BF took exception to the amended decision insofar as it directed the continuation of proceedings in Civil Case No. Q-43104 until after the management committee shall have been impleaded. Roa and Mendoza faulted the Court of Appeals for ordering BF to be substituted by the management committee and for dissolving the writ of preliminary attachment without the filing of the necessary counter-bond by the defendant.

In a resolution dated December 22, 1986, the Court of Appeals denied both motions for reconsideration, noting that the proceedings in the civil case could not remain suspended forever. The purpose of the suspension, it said, was to enable the management committee to substitute BF as party defendant and prosecute the defense to conclusion. Substitution was necessary to prevent collusion between the previous management and creditors it might seek to favor, to the prejudice of its other creditors.

In sustaining the dissolution of the writ of preliminary attachment, the respondent court said that Roa and Mendoza were secured in the satisfaction of any judgment they might obtain against BF since all the properties of the latter were already in the custody of the management committee.

Their motions for reconsideration having been denied, both parties filed their respective petitions for review before this Court.

In G.R. No. 76879, entitled “BF Homes, Inc. vs. Court of Appeals, Rosalinda R. Roa and Vicente Mendoza,” the petitioner contends that the respondent court committed an error and violated Sec. 5(d) of P.D. No. 902-A when it authorized continuation of proceedings in Civil Case No. Q-43104 after the management committee created by the SEC shall have been impleaded.

In G.R. No. 77143, entitled “Rosalinda R. Roa and Vicente Mendoza vs. Court of Appeals and BF Homes, Inc.,” the petitioners seek a review on the grounds that the management committee was not a proper party and should not have been ordered substituted as party defendant in the regional trial court and that the writ of preliminary attachment should not have been dissolved.

These two petitions were ordered consolidated in the resolution of this Court dated August 17, 1987.

On February 2, 1988, the SEC issued an order approving the proposed revised rehabilitation plan and dissolving the management committee earlier created. Atty. Florencio Orendain was appointed rehabilitation receiver.

Now to the merits.

The parties in both cases are agreed that the proceedings in the civil case for the recovery of a sum of money should be suspended. BF originally maintained that the action should be resumed only until after SEC Case No. 002693 shall have been adjudicated on the merits but now agrees with Roa and Mendoza, in line with the “assessment” of the Solicitor General, that the action should be suspended pending the outcome of the rehabilitation proceedings.

The pertinent provision of law dealing with the suspension of actions for claims against the corporation is Sec. 6(c) of P.D. 902-A, as amended, which reads:

Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

X X X

(c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court, and in such other cases whenever necessary in order to preserve the rights of parties-litigants and/or protect the interest of the investing public and creditors: Provided, however, That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph (d) hereof: Provided, further, That the Commission may appoint a rehabilitation receiver of corporations, partnership or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: Provided, finally, That upon appointment of a management committee, rehabilitation receiver, board or

body, pursuant to this Decree, all actions for claims against corporations, partnership, or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly. (As amended by P.D. Nos. 1653, 1758 and 1799; emphasis supplied.)

As will be noted, the duration of the suspension is not indicated in the law itself. And neither is it specified in the SEC order creating the management committee.

The Court feels that the respondent court erred in ordering the resumption of the civil proceeding after the management committee shall have been impleaded as party defendant. The explanation that the only purpose of suspending the civil action was to enable the management committee to substitute BF as party defendant is not acceptable.

The view of the respondent court is that the continuation of the action is necessary for the purpose of determining the extent of the liability of BF to Roa and Mendoza. The flaw in this theory is that even if such liability is determined, it still cannot be enforced by the trial court as long as BF is under receivership.<sup>[2]</sup> Moreover, it disregards the possibility that such determination would not be necessary at all should the rehabilitation receiver favorably consider and fully acknowledge the claims made by Roa and Mendoza.

Under Sec. 6(d) of P.D. No. 902-A, the management committee or rehabilitation receiver is empowered to take custody and control of all existing assets and properties of such corporations under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations; to determine the best way to salvage and protect the interest of investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the SEC.

In light of these powers, the reason for suspending actions for claims against the corporation should not be difficult to discover. It is not really to enable the management committee or the rehabilitation

receiver to substitute the defendant in any pending action against it before any court, tribunal, board or body. Obviously, the real justification is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the “rescue” of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

In *BF Homes, Inc. vs. Hon. Fernando P. Agdamag, et al.*<sup>[3]</sup> the Court of Appeals held:

It must be emphasized that the suspension is only for a temporary period to prevent the irreversible collapse of the corporation and give the management committee or receiver the absolute tranquility to study the viability of the corporation. During this period, the law creates a wall around the corporation against all claims.

In *Aleamar’s Sibal & Sons, Inc. vs. Hon. Jesus M. Elbinias, et al.*,<sup>[4]</sup> this Court, explaining the legal consequences of a receivership, said:

When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC. (Emphasis supplied)

Consequently, we feel that the trial court cannot at this point determine the extent of BF’s liability, if any, to Roa and Mendoza. This is true whether it is retained as party defendant or substituted by the management committee (or the rehabilitation receiver) as directed by the respondent court. What Roa and Mendoza should do now is file their claims with the rehabilitation receiver and submit to

him such evidence as they would otherwise have to adduce before the trial court to prove such claims.

As the revised rehabilitation plan approved by the SEC is expected to be implemented within ten years, the proceedings in the Regional Trial Court of Quezon City should be suspended during that period, to begin from February 2, 1988, the date of its approval. This is without prejudice to the authority of the SEC to extend the period when warranted and even to order the liquidation of BF if the plan is found to be no longer feasible. On the other hand, on a more positive note, the SEC can also find within that period that BF has been sufficiently revived and able to resume its normal business operations without further need of rehabilitation.

Coming now to the writ of preliminary attachment, we find that it must stand despite the suspension of the proceedings in the Regional Trial Court of Quezon City. The writ was issued prior to the creation of the management committee and so should not be regarded as an undue advantage of Mendoza and Roa over the other creditors of BF.

In its amended decision and the resolution ordering the discharge of the writ of preliminary attachment, the respondent court did not rule on whether the issuance of the writ was improper or irregular. It simply said that the writ was no longer proper or necessary at that time because the properties of BF were in the hands of the receiver. We do not think so.

The appointment of a rehabilitation receiver who took control and custody of BF has not necessarily secured the claims of Roa and Mendoza. In the event that the receivership is terminated with such claims not having been satisfied, the creditors may also find themselves without security therefor in the civil action because of the dissolution of the attachment. This should not be permitted. Having previously obtained the issuance of the writ in good faith, they should not be deprived of its protection if the rehabilitation plan does not succeed and the civil action is resumed.

It is settled that:

If there is an attachment or sequestration of the goods or estate of the defendant in an action which is removed to a bankruptcy court, such an attachment or sequestration will continue in existence and hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer the final judgment or decree rendered by the Court from which the action was removed, unless the attachment or sequestration is invalidated under applicable law. (28 USCS No. 1479 [a].)<sup>[5]</sup>

As we ruled in *Government of the Philippine Islands vs. Mercado*:<sup>[6]</sup>

Attachment is in the nature of a proceeding in rem. It is against the particular property. The attaching creditor thereby acquires specific lien upon the attached property which ripens into a judgment against the res when the order of sale is made. Such a proceeding is in effect a finding that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The law does not provide the length of time an attachment lien shall continue after the rendition of judgment, and it must therefore necessarily continue until the debt is paid, or sale is had under execution issued on the judgment or until judgment is satisfied, or the attachment discharged or vacated in some manner provided by law.

It has been held that the lien obtained by attachment stands upon as high equitable grounds as a mortgage lien:

“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.” (7 *Corpus Juris Secundum*, 433, and authorities therein cited.)

Under the Rules of Court, a writ of attachment may be dissolved only upon the filing of a counter-bond or upon proof of its improper or irregular issuance. Neither ground has been established in the case at bar to warrant the discharge of the writ. No counter-bond has been given. As for the contention that the writ was improperly issued for lack of notice to BF on the application for the writ, it suffices to cite *Mindanao Savings & Loan Association, Inc. vs. Court of Appeals*, where we held:<sup>[7]</sup>

The only requisites for the issuance of a writ of preliminary attachment under Section 3, Rule 57 of the Rules of Court are the affidavit and bond of the applicant.

SEC. 3. Affidavit and bond required. — An order of attachment shall be granted only when it is made to appear 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 clerk or judge of the court before the order issues.”

No notice to the adverse party or hearing of the application is required. As a matter of fact a hearing would defeat the purpose of this provisional remedy. The time which such a hearing would take, could be enough to enable the defendant to abscond or dispose of his property before a writ of attachment issues. Nevertheless, while no hearing is required by the Rules of Court for the issuance of an attachment (*Belisle Investment & Finance Co., Inc. vs. State Investment House, Inc.*, 72927, June 30, 1987; *Filinvest Credit Corp. vs. Relova*, 117 SCRA 420), a motion to quash the writ may not be granted without “reasonable notice to the applicant” and only “after hearing” (Secs. 12 and 13, Rule 57, Rules of Court).

In sum, the Court holds that the substitution of the management committee/rehabilitation receiver in Civil Case No. Q-43104 in the Regional Trial Court of Quezon City is not necessary because the proceedings therein shall be suspended anyway pending implementation of the revised rehabilitation plan, during which the writ of preliminary attachment shall remain in force.

**WHEREFORE**, the decision of the respondent court is **SET ASIDE** and judgment is rendered as follows:

- (1) In G.R. No. 76879, the petition is **GRANTED**. The proceedings in Civil Case No. Q-43104 shall remain suspended for a period of ten (10) years from February 2, 1988, unless extended or shortened by the SEC as circumstances may warrant; and
- (2) In G.R. No. 77143, the petition is **GRANTED** insofar as it seeks restoration of the writ of preliminary attachment, issued on October 22, 1984, which is hereby reinstated.

**SO ORDERED.**

**Narvasa, Gancayco, Griño-Aquino and Medialdea, JJ.,  
concur.**

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[1] 132 SCRA 293.

[2] *Aleamar's Sibal & Sons, Inc. vs. Hon. Jesus M. Elbinias*, G.R. No. 75414, June 4, 1990; *Lipana vs. Development Bank of Rizal*, 154 SCRA 257; *Central Bank vs. Morfe*, 63 SCRA 114.

[3] CA-G.R. Sp. No. 09680, October 16, 1986.

[4] See note 2.

[5] 9 Am. Jur. 2d, Bankruptcy 109.

[6] 67 Phil. 409.

[7] 172 SCRA 480.