Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner, - versus - **ANGEL Y. POBRE and GINO NICHOLAS POBRE,** Respondents.	**G.R. No. 259709** Present: CAGUIOA, *Chairperson,* INTING, GAERLAN, DIMAAMPAO, and SINGH, *JJ.* Promulgated: August 30, 2023 MisPDcBath

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D E C I S I O N

DIMAAMPAO, *J.:*

The instant Petition for Review on *Certiorari*[1] inveighs against the Decision[2] and the Resolution[3] of the Court of Appeals (CA) which lifted and dissolved the Writ of Preliminary Attachment issued by the trial court, and denied the Motion for Reconsideration[4] of Pilipinas Shell Petroleum Corporation (petitioner) thereof, respectively, in CA-G.R. SP No. 165174.

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1 *Rollo,* pp. 12-59.
2 Id. at 60-76. The Decision dated March 23, 2021 was penned by Associate Justice Manuel M. Barrios, with the concurrence of Associate Justices Gabriel T. Robeniol and Carlito B. Calpatura.
3 Id. at 77-79. Dated December 21, 2021.
4 Id. at 80-103.

The case has its precursor in a complaint for specific performance and collection of sum of money with application for a writ of preliminary attachment[5] filed before Branch 62 of the Regional Trial Court (RTC) of Makati City. The petition was instituted by petitioner against respondents Angel Y. Pobre (Angel), in his capacity as a retailer of Shell gas stations, and Gino Nicholas Pobre (Gino), who assumed ownership over the said stations after Angel retired.[6] For brevity, Angel and Gino shall be collectively referred to as respondents.

In the years 2008 and 2009, petitioner entered into three Retailer Supply Agreements (RSAs)[7] with Angel, wherein they agreed that the former would supply Shell brand fuel and lubricants which the latter would then sell through three Shell stations in Buntun, Carigana, and Libag, Tuguegarao City, Cagayan.[8]

On October 26, 2017, Angel informed petitioner through a letter that he was resigning as Shell dealer/operator effective December 16, 2017 owing to his declining health and other conditions which require constant medical attention.[9] On December 15, 2017, he made one last purchase of Shell products in the total amount of ₱4,846,555.84. The next day, he sent another letter to petitioner reiterating his resignation and requesting that the payment for the last purchase be set off with the receivables due him for some promotional programs he conducted on behalf of petitioner.[10]

As it happened, petitioner sent on March 9, 2018 a reconciliation[11] of accounting records to Angel and requested a confirmation that his outstanding balance, net of accounts payable to him, amounted to ₱2,787,529.33. Notably, on that same day, Gino sent his own letter to petitioner requesting that it dismantle and remove all Shell signages at the three Shell stations as he had already assumed ownership of the properties.[12]

On March 13, 2018, petitioner demanded that Angel abide by his obligations under the RSAs and that he pay his outstanding balance of ₱4,846,555.84. Petitioner also demanded that respondents cease and desist from using competitor brand products in the gas stations. It likewise rejected Gino's request as the removal of the Shell signages thereon would be a violation of the subsisting RSAs.[13]

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5 Id. at 366-395.
6 Id. at 367.
7 Id. at 107-124, Retailer Supply Agreement dated July 1, 2008; id. at 168-184, Retailer Supply Agreement dated April 1, 2009; and id. at 228-244, Retailer Supply Agreement dated August 1, 2009.
8 Id. at 61. CA Decision.
9 Id.
10 Id.
11 Id. at 337. E-mail from petitioner to Angel Y. Pobre.
12 Id. at 62. CA Decision.
13 Id.

In response, Angel acknowledged the reconciliation and manifested his willingness to pay the outstanding balance of ₱2,787,529.33 less the amount charged as Globe Telecom EDC terminal installation fees given that the corresponding terminals were never installed in any of the three sites. Angel also reiterated that he had already resigned as dealer/operator due to his deteriorating health, and that he could not be forced to continue operating the Shell sites since the RSAs were effectively terminated by his resignation. He also denied selling competitor brand products.[14]

Petitioner asserted that Angel had neither the right to unilaterally terminate the RSAs nor to assign the stations to Gino, who was a retailer of Phoenix Petroleum Philippines, Inc., one of petitioner's competitors.[15] Gino firmly brushed aside petitioner's demands as it was neither the owner nor the lessor of the properties and merely supplied Shell products to Angel. He avouched that Angel was ready and able to pay the outstanding balance.[16]

Unable to arrive at an amicable resolution, petitioner instituted the abovementioned complaint against respondents. It sought the following claims: (1) payment of ₱4,846,555.84 representing the price of the Shell products purchased by Angel on December 15, 2017; (2) adherence to the RSAs; (3) actual and compensatory damages for lost profit between January to June 2018 in the amount of ₱10,000,000.00; (4) moral and exemplary damages as well as attorney's fees in the amount of ₱3,000,000.00; and (5) compelling Angel to either retain a fourth site as a Shell branded station or pay nominal damages in the amount of ₱75,000,000.00 representing the profits petitioner could have earned from the operation of the said fourth site.[17] The complaint likewise prayed for the issuance of a writ of preliminary attachment to safeguard its claims as Angel was supposedly guilty of fraud in the performance of his obligations under the RSAs.[18]

On May 17, 2019, the RTC issued its Order providing for the issuance of a Writ of Preliminary Attachment in favor of petitioner and directing the sheriff to attach respondents' properties to secure the satisfaction of petitioner's total claim of ₱92,846,555.84.[19]

Respondents moved for reconsideration *ad cautelam* and, in the alternative, prayed for the discharge of the issued writ and/or the reduction of the same to petitioner's principal claim.[20] Respondents argued that petitioner failed to prove the imputed fraud under Section 1(d) of Rule 57 of the Rules of Court.[21] In its Order dated October 7, 2019, the RTC partly granted the

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14 Id. at 62-63.
15 Id. at 63.
16 Id.
17 Id. at 392. Complaint with *Ex Parte* Application for a Writ of Preliminary Attachment.
18 Id. at 391.
19 Note: Not found in the *rollo*, but referenced in the CA Decision dated March 23, 2021 (see *rollo*, p. 64).
20 Note: Not found in the *rollo*, but referenced in the CA Decision dated March 23, 2021 (see *rollo*, p. 65).
21 *Rollo*, p. 64. CA Decision.

same by excluding the claimed moral and exemplary damages from the amount covered by the writ and reducing the total amount to ₱89,846,555.84.[22]

Respondents then filed an Omnibus Motion for Inhibition with Motion for Reconsideration, which resulted in the previous judge's voluntary inhibition from the case.[23] However, after the case was re-raffled to Branch 58 of the RTC, the new presiding judge denied respondents' motion for reconsideration for lack of merit in the Order dated February 14, 2020.[24]

Undeterred, respondents filed their petition for *certiorari* before the CA, claiming that the RTC gravely abused its discretion in issuing its Orders dated October 7, 2019 and February 14, 2020.[25]

In the impugned Decision,[26] the CA set aside the challenged RTC Orders and directed the immediate lifting and dissolution of the Writ of Preliminary Attachment. The appellate court found that petitioner failed to prove that respondents were guilty of fraud and that they did not have sufficient security to cover the monetary claims.[27] It held that petitioner was unable to adduce sufficient evidence of fraud on Angel's supposed questionable order of products on December 15, 2017, given that he was authorized to continue purchasing Shell products during the subsistence of the RSAs. In actual fact, petitioner acceded to the order despite knowing Angel's prior intent to resign. Moreover, Angel manifested several times that he was ready and willing to pay the outstanding balance. Furthermore, fraud cannot be presumed from his mere failure to comply with his contractual obligations.[28] Similarly, Angel's failure to execute an RSA for the fourth site is not indicative of fraud. Section 1(d), Rule 57 presupposes the actual execution of an agreement wherein the imputed fraud must have induced the other party to give consent. Hence, it cannot apply to this situation where no contract was executed between the parties. At best, the evidence proffered by petitioner merely showed that they were in the preparatory stages to execute a contract. Reneging thereon does not indicate fraud.[29] As to Gino, the CA held that a characterization of his relation and degree of privity to the RSAs executed between petitioner and his father, Angel, particularly as to whether he was intended as an assignee of the contracts, would preempt the ruling of the RTC on the merits of the case.[30] Gino's refusal to comply with the RSAs does not constitute fraud *per se*. In any case, even if Gino were an assignee

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22 Id.
23 Id. at 66.
24 Id.
25 Id.
26 Id. at 60-76. The Decision dated March 23, 2021 was penned by Associate Justice Manuel M. Barrios, with the concurrence of Associate Justices Gabriel T. Robeniol and Carlito B. Calpatura.
27 Id. at 67.
28 Id. at 70-71.
29 Id. at 72.
30 Id.

of Angel, petitioner failed to allege specific acts of fraud committed by Gino.[31] As to the other requisite, the CA found that the RTC erred in not determining whether respondents had sufficient security to satisfy petitioner's claim. It limited its examination to the presence or absence of fraud, which is merely one requisite under Section 1(d) of Rule 57.[32]

Petitioner's bid for reconsideration was denied in the oppugned Resolution,[33] hence, it filed the present petition.

The jugular issue posited before this Court is whether or not the CA erred in lifting and dissolving the Writ of Preliminary Attachment issued against respondents.

THE COURT'S RULING

As a preliminary matter, the Court resolves the procedural issue raised by petitioner as to the timeliness of the petition for *certiorari* instituted by respondents before the CA.

Petitioner asserts that the CA should have dismissed the petition outright for being filed out of time. Respondents admitted having received on October 25, 2019 the Order dated October 7, 2019, denying their first motion for reconsideration. Thus, pursuant to Section 4, Rule 65 of the Rules of Court, they had 60 days therefrom, or until December 24, 2019, within which to file their petition for *certiorari.* However, they filed their petition only on March 22, 2020, or 149 days after.[34] Rather than directly elevating the matter to the CA, respondents filed a second motion for reconsideration, which did not toll the running of the 60-day period. Accordingly, the appellate court erred in even taking cognizance of respondents' petition.[35]

For their part, respondents counter by stating that there was no prohibited second motion for reconsideration. They insist that the first motion sought to prevent the issuance of the writ, whereas the second motion sought its discharge. They maintain that a motion to discharge is a primary and distinct remedy allowed under Section 13, Rule 57 of the Rules of Court.[36] In any event, even assuming that there was a "second" motion for reconsideration, it was filed under "extraordinarily persuasive reasons to serve the higher interest of justice."[37]

Both parties are partly correct.

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31 Id. at 73.
32 Id. at 74.
33 Id. at 77-79. The Resolution dated December 21, 2021 was penned by Associate Justice Manuel M. Barrios, with the concurrence of Associate Justices Gabriel T. Robeniol and Carlito B. Calpatura.
34 Id. at 33. Petition for Review on *Certiorari.*
35 Id. at 34-36.
36 Id. at 407-410. Respondent's Comment/Opposition with Motion to Dismiss.
37 Id. at 410.

As extensively discussed in the seminal case of *Davao Light & Power Co., Inc. v. Court of Appeals, et al.*[38] *(Davao Light)*, there are several options available to a party whose properties are sought to be attached under Rule 57 as "[t]he relative ease with which a preliminary attachment may be obtained is matched and paralleled by the relative facility with which the attachment may legitimately be prevented or frustrated."[39] Such options may be summarized as follows:

1. In instances where the trial court conducts a hearing prior to the issuance of the writ,[40] the defendant may oppose the same based on the absence of the grounds required under the rules for the issuance thereof, or defects in the supporting evidence adduced by the complainant in support of their motion.

2. If the order issuing the writ has already been rendered, the defendant may prevent its enforcement by making a deposit or by filing a counterbond with the court.[41]

3. After the property is attached, the defendant may seek the lifting or discharge of the writ either by:

    a. filing a counterbond;[42]
    b. showing that it was irregularly or improperly issued;[43] or

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38 281 Phil. 386 (1991).

39 Id. at 397.

40 See Section 2, Rule 57 of the Rules of Court which reads:
SECTION 2. *Issuance and contents of order.* — An order of attachment may be issued either *ex parte* or **upon motion with notice and hearing by the court in which the action is** pending, or by the Court of Appeals or the Supreme Court, xxx (Emphasis supplied)

41 See Sections 2 and 5, Rule 57 of the Rules of Court which read:
SEC. 2. *Issuance and contents of order.* — An order of attachment may be issued either *ex parte* or upon motion with notice and hearing by the court in which the action is pending, or by the Court of Appeals or the Supreme Court, and must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, **unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order,** which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs. xxx (Emphasis supplied)
SEC. 5. *Manner of attaching property.* — The sheriff enforcing the writ shall without delay and with all reasonable diligence attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, **unless the former makes a deposit with the court from which the writ is issued, or gives a counter-bond executed to the applicant**, in an amount equal to the bond fixed by the court in the order of attachment or to the value of the property to be attached, exclusive of costs. xxx (Emphasis supplied)

42 See Section 12, Rule 57 of the Rules of Court, which reads:
SEC. 12. *Discharge of attachment upon giving counter-bond.* — **After a writ of attachment has been enforced**, the party whose property has been attached, or the person appearing on his behalf, **may move for the discharge of the attachment** wholly or in part on the security given. The court shall, after due notice and hearing, **order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made**, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. xxx (Emphasis supplied)

43 See Section 13, Rule 57 of the Rules of Court, which reads:

c. proving that the bond filed by the movant-party is insufficient.

4. The defendant may also seek a partial discharge of the attachment if it is excessive, but the discharge shall be limited to the excess.[44]

No matter the option availed of, "[t]he attachment debtor cannot be deemed to have waived any defect in the issuance of the attachment writ by simply availing himself of one way of discharging the attachment writ, instead of the other."[45]

Consequently, respondents are correct in stating that a motion to discharge is a distinct remedy afforded by the Rules of Court. However, confusion arose in this instance when it prayed for two unique remedies in the same motion.

As may be gleaned from the pleadings submitted to this Court, respondents filed their first motion which prayed that the RTC reconsider its Order dated May 17, 2019 directing the issuance of the Writ of Preliminary Attachment and, alternatively, to discharge the Writ and/or reduce the same to petitioner's principal claim.[46] In essence, respondents' motion actually seeks to overturn the issuance of the writ, which is an extension of the first option abovecited, while simultaneously seeking its discharge under the third option.

Although respondents were at full liberty to avail of both recourses, the resultant remedies from the trial court's denial thereof varied. With respect to the RTC's denial of respondents' plea to reconsider the issuance of the Writ as an extension of the first option, this should have already been questioned through a Rule 65 petition for *certiorari* before the CA. Respondents' filing of their second motion which continued to question the RTC's Order dated May 17, 2019,[47] already partook the nature of a second motion for reconsideration. On this point, petitioner is correct in saying that respondents were already barred from questioning the same before the CA as the running of the 60-day period was not tolled by the second motion for reconsideration.

SEC. 13. *Discharge of attachment on other grounds*. — The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after levy or even after the release of the attached property, **for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient**. If the attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.

44 See Section 13, Rule 57 of the Rules of Court, which reads:
SEC. 13. *Discharge of attachment on other grounds*. — xxx If the attachment is excessive, the discharge shall be limited to the excess. xxx

45 See *Davao Light & Power Co., Inc. v. Court of Appeals, et al.*, supra note 38 at 399.

46 See *rollo*, p. 34. Petition for Review on *Certiorari*.

47 See id.

Still and all, this does not hold true for the RTC's denial of respondents' alternative prayer seeking to discharge the writ. As heretofore discussed, respondents are free to adopt any and all of the available remedies under Rule 57 in seeking succor against the Writ of Preliminary Attachment and availing of one remedy will not bar the other, even if based on the same ground, *e.g.,* defects in the supporting affidavit or documents submitted by complainant or the absence of the grounds under Section 1, Rule 57, which may result in the improper and/or irregular issuance of the writ. Consequently, the first motion filed by respondents was also the first time it availed of the remedy under the third option as abovelisted. As a result, its Omnibus Motion for Inhibition with Motion for Reconsideration was simultaneously its second motion for reconsideration of the Order dated May 17, 2019 and also its first and only motion for reconsideration of the denial of its motion to discharge. Necessarily, and only with respect to the denial of its motion to discharge, it was only upon its receipt of the RTC's Order dated February 14, 2020 that the 60-day period under Rule 65 began to run.[48]

In sooth, there is no merit in petitioner's contention that the CA should have dismissed respondents' petition outright for being filed out of time. It also bears stressing that the CA characterized the petition for *certiorari* as impugning both the Order dated October 7, 2019 and the Order dated February 14, 2020 only insofar as it denied the discharge of the Writ of Preliminary Attachment, and denied respondents' motion for reconsideration thereof, respectively. Patently absent is any mention of the challenge to the issuance of the Writ itself from the Order dated May 17, 2019. Hence, it is beyond cavil that the petition was filed on time.

In any event, even assuming that there was a delay in the filing of respondents' petition for *certiorari,* the merits of the instant case and substantial justice serve as exceptions to the 60-day period under Rule 65.[49]

As aptly pointed out by the CA, the RTC gravely abused its discretion when it denied respondents' motion to discharge despite the irregularities in the issuance of the Writ of Preliminary Attachment under the Order dated May 17, 2019.

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[48] See *Communication and Information Systems Corp. v. Mark Sensing Australia Pty. Ltd., et. al.*, 804 Phil. 233, 243-245 (2017).

[49] See *Fluor Daniel, Inc.-Philippines v. Fil-Estate Properties, Inc.*, 866 Phil. 626, 636 (2019), wherein the Court reiterated the following enumeration of instances when the period to file a petition for *certiorari* may be extended: "(1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) **the merits of the case**; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake, or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) **in the name of substantial justice and fair play**; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances." (Emphasis supplied)

In the aforesaid case of *Davao Light,* the Court delved into the concept of preliminary attachment and defined it as "the provisional remedy in virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the court as security for the satisfaction of any judgment that may be recovered." All the same, as a remedy which is purely statutory in nature, it necessitates "strict construction of the provisions granting it."[50]

Following this characterization, the Court has repeatedly advised the lower courts to exercise great caution in issuing writs of attachment and to do so only when the circumstances so warrant as it "entails interfering with property prior to a determination of actual liability" and "exposes the debtor to humiliation and annoyance."[51]

To be sure, the onus is on the movant party, such as herein petitioner, to prove entitlement to the writ. In evaluating such a motion, the RTC must ensure strict adherence to the requisites under Rule 57, otherwise, any resulting writ would have been issued in excess of the trial court's jurisdiction,[52] as in this case.

The requisites to apply for a writ of preliminary attachment under Section 1(d), Rule 57 of the Rules of Court are as follows: "(1) that a sufficient cause of action exists; (2) that the case is one of those mentioned in Section 1 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/she is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims."[53]

Here, the RTC failed to determine the existence of the second and third requisites.

On the second requisite, case law has consistently instructed that the fraud alleged must be of sufficient specificity and must rest on concrete grounds.[54] The mere failure to pay a due and demandable debt or to comply with contractual obligations is not the fraud contemplated under Section 1(d), Rule 57.[55] Being a state of mind, fraud **cannot** be inferred from bare allegations of non-payment or non-performance.[56] In its complaint, petitioner submits the following allegations to show that Angel was guilty of fraud in the performance of his obligations under the RSAs:

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50 *Davao Light & Power Co., Inc. v. Court of Appeals, et al.,* supra note 38.
51 *Tsuneishi Heavy Industries (Cebu), Inc. v. MIS Maritime Corp.,* 829 Phil. 90, 110 (2018).
52 See *Lorenzo Shipping Corp. v. Villarin*, 848 Phil. 412, 428 (2019).
53 *Chua v. China Banking Corp.*, G.R. No. 202004, November 4, 2020.
54 See *Tsuneishi Heavy Industries (Cebu), Inc. v. MIS Maritime Corp.*, supra note 52 at 108-109.
55 See id. at 108.
56 See *Dumaran v. Llamedo*, G.R. No. 217583, August 4, 2021. Emphasis supplied.

> 103. The circumstances show that Angel fraudulently incurred the obligation to pay a sum of money amounting to PHP 4,846,555.84 representing the Shell-branded fuel and products he purchased as of 16 December 2017. Admittedly, Angel already made known to Shell his intent to resign on 26 October 2017. Shell took steps to remind Angel that his resignation would be invalid, and that he had other alternatives that were within the contemplation of the RSAs, such as transfer or assignment. Angel responded that he would "think about" or "consider" Shell's suggestions.
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> 104. Angel eventually continued to order Shell-branded fuel and lubricants from Shell as if he was no longer "resigning" as these were in the same quantities and variants as he ordered previously. Clearly, Shell was made to believe that Angel will comply with his obligations under the RSAs.
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> 105. Between the time he made his intent to "resign" known to Shell until the time his account was blocked, Angel was consistent in leading Shell to believe that he is ready and willing to pay his obligations under the RSAs. However, as of June 2018, not a single centavo has been paid to Shell from either Angel or his "transferee" Gino.
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> 106. It has also been sufficiently shown that Angel has made an illegal unilateral assignment of rights despite clear stipulation under the RSAs to the contrary. This was effected through the clever guides of "health concerns", aimed at gaining Shell's sympathy and generosity into accommodating his "resignation". It turned out, however, that the main reason for his "resignation" from the RSAs was not really the so claimed "health concerns" but really for Gino to take over the Sites in violation of Shell's rights under the RSAs.
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> 107. Therefore, Angel and Gino have both been clearly shown to be guilty of fraud in incurring the obligation to build Site 4 and in the performance of obligations arising from the RSAs.[57]

After due consideration, however, the CA unerringly ruled that the foregoing statements lacked the specificity required under prevailing jurisprudence to establish fraud on the part of Angel. Nowhere in the foregoing allegations may it be inferred that Angel employed such multifarious means to defraud petitioner. As the CA correctly pointed out, up until the RSAs were actually terminated, Angel had the right to place purchase orders for Shell products to sell at the stations. Petitioner was apprised beforehand of his intent to resign but still acceded to the purchase request. Indeed, this circumstance *per se,* **without more**, is not indicative of fraud. As to his purported refusal to pay a "single centavo" to petitioner when the dispute arose, the Court holds that non-payment of a debt, by itself, cannot constitute fraud under Section 1(d), Rule 57 of the Rules of Court. With respect to Gino, there is nothing in the averments of any particular fraudulent act on his part. Thus, the second requisite is palpably absent. To clarify, however, the Court is not making a categorical statement on the presence or absence of fraud or bad faith in the dealings between the parties. This is a

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[57] *Rollo,* pp. 389-390. Complaint with *Ex Parte* Application for a Writ of Preliminary Attachment.

matter best left to the trial court in the resolution of the main case. The Court strictly confines its conclusions to the failure of petitioner to meet the particularity required under case law for the issuance of a writ of preliminary attachment in cases of fraud.

On the third requisite, the Court could not agree more with the CA's observation that the evidence presented by petitioner fails to establish that respondents had insufficient security to answer its claim.[58] If truth be told, the argument on this point in petitioner's own application is woefully deficient:

> 108. During the effectivity of the RSAs, and even during the discussions for the construction of Site 4, Angel has never posted any bond or security to secure his obligations thereunder. This was in view of Shell and Angel's harmonious contractual relations prior to the present dispute, which arose due to Angel's several acts of breach of the provisions of the RSAs.
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> 109. Hence, there is no sufficient security for Shell's claim to be enforced by this action.[59]

Indeed, petitioner uses the fact that Angel never posted a security for the RSAs as proof that he **could not** post a security for the amounts claimed in its complaint. However, this reasoning is illogical and simply does not follow. By petitioner's own admission, the reason Angel never posted a security was not because of his inability, but because of their "harmonious contractual relations." Thence, this could not serve as basis to comply with the third requisite.

As a final point, and as an added badge of grave error on the part of the trial court, the Court likewise wholly concurs with the CA that the amount that the RTC ordered to be attached was excessive.[60] As pointed out by the CA, petitioner was primarily seeking to cover at least its principal claim of ₱4,846,555.84,[61] but the RTC erroneously included all the amounts sought by petitioner, even those corresponding to the claimed actual and compensatory damages, moral and exemplary damages, and nominal damages. Realizing its error, the RTC even amended the original May 17, 2019 Order by excluding the moral and exemplary damages from the coverage of the Writ.[62]

The Court takes this occasion to sternly remind the lower courts that a writ of attachment should not be issued for unliquidated or contingent claims and should, as a general rule, be confined to the principal claim.[63] The rationale is to avoid excessive attachments that would unduly prejudice and,

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58 Id. at 73. CA Decision.
59 Id. at 390. Complaint with *Ex Parte* Application for a Writ of Preliminary Attachment.
60 Id. at 74. CA Decision.
61 Id. at 391. Complaint with *Ex Parte* Application for a Writ of Preliminary Attachment.
62 Id. at 65. CA Decision.
63 See *Insular Savings Bank v. Court of Appeals*, 499 Phil. 116, 121 (2005).

in some cases, financially cripple the debtor or defendant even before the main issues of the controversy have been resolved.

The ₱75,000,000.00 in nominal damages sought as expected profits for 10 years relating to the fourth site that never materialized, despite the fact that the said arrangement was not even covered by a contract in writing, is the very definition of an unliquidated claim, *i.e.*, one that cannot be established with reasonable certainty.[64] In including this amount, the RTC issued an excessive and unconscionable writ.

Ineluctably, the RTC gravely erred in denying respondents' motion to discharge the subject Writ of Preliminary Attachment.

THE FOREGOING DISQUISITIONS CONSIDERED, the Petition for Review on *Certiorari* is hereby **DENIED** for lack of merit. The Decision dated March 23, 2021 and the Resolution dated December 21, 2021 of the Court of Appeals in CA-G.R. SP No. 165174 are **AFFIRMED**.

SO ORDERED.

JAPAR B. DIMAAMPAO
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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64 See *UCPB Leasing and Finance Corp. v. Heirs of Leporgo, Sr.*, G.R. No. 210976, January 12, 2021.

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

MARIA FILOMENA D. SINGH
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.

ALFREDO BENJAMIN S. CAGUIOA
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 this Court.

ALEXANDER G. GESMUNDO
Chief Justice