Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

TSUNEISHI HEAVY INDUSTRIES (CEBU), INC.,
Petitioner,

-versus-

MIS MARITIME CORPORATION,
Respondent.

G.R. No. 193572

Present:

SERENO, *CJ.*, *Chairperson*,*
LEONARDO-DE CASTRO,**
DEL CASTILLO,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

APR 04 2018

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DECISION

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Tsuneishi Heavy Industries (Cebu), Inc. (Tsuneishi) challenging the Decision[2] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 03956 dated October 7, 2009 and its Resolution[3] dated August 26, 2010. The CA Decision reversed three Orders of Branch 7 of the Regional Trial Court (RTC), Cebu City dated April 15, 2008, July 7, 2008, and December 11, 2008, respectively.[4] The Resolution denied Tsuneishi's motion for reconsideration.

Respondent MIS Maritime Corporation (MIS) contracted Tsuneishi to dry dock and repair its vessel M/T MIS-1 through an Agreement dated March 22, 2006.[5] On March 23, 2006, the vessel dry docked in Tsuneishi's shipyard. Tsuneishi rendered the required services. However, about a month later and while the vessel was still dry docked, Tsuneishi conducted an engine test on M/T MIS-1. The vessel's engine emitted smoke. The parties

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* On leave.

** Designated as Acting Chairperson of the First Division per Special Order No. 2540 dated February 28, 2018.

1 *Rollo*, pp. 11-39.

2 *Id.* at 54-68. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Rodil V. Zalameda and Samuel H. Gaerlan, concurring.

3 *Id.* at 71-72. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez, concurring.

4 *Id.* at 67-68.

5 *Id.* at 55.

eventually discovered that this was caused by a burnt crank journal. The crankpin also showed hairline cracks due to defective lubrication or deterioration. Tsuneishi insists that the damage was not its fault while MIS insists on the contrary. Nevertheless, as an act of good will, Tsuneishi paid for the vessel's new engine crankshaft, crankpin, and main bearings.[6]

Tsuneishi billed MIS the amount of US$318,571.50 for payment of its repair and dry docking services. MIS refused to pay this amount. Instead, it demanded that Tsuneishi pay US$471,462.60 as payment for the income that the vessel lost in the six months that it was not operational and dry docked at Tsuneishi's shipyard. It also asked that its claim be set off against the amount billed by Tsuneishi. MIS further insisted that after the set off, Tsuneishi still had the obligation to pay it the amount of US$152,891.10.[7] Tsuneishi rejected MIS' demands. It delivered the vessel to MIS in September 2006.[8] On November 6, 2006, MIS signed an Agreement for Final Price.[9] However, despite repeated demands, MIS refused to pay Tsuneishi the amount billed under their contract.

Tsuneishi claims that MIS also caused M/T White Cattleya, a vessel owned by Cattleya Shipping Panama S.A. (Cattleya Shipping), to stop its payment for the services Tsuneishi rendered for the repair and dry docking of the vessel.[10]

MIS argued that it lost revenues because of the engine damage in its vessel. This damage occurred while the vessel was dry docked and being serviced at Tsuneishi's yard. MIS insisted that since this arose out of Tsuneishi's negligence, it should pay for MIS' lost income. Tsuneishi offered to pay 50% of the amount demanded but MIS refused any partial payment.[11]

On April 10, 2008, Tsuneishi filed a complaint[12] against MIS before the RTC. This complaint stated that it is invoking the admiralty jurisdiction of the RTC to enforce a maritime lien under Section 21 of the Ship Mortgage Decree of 1978[13] (Ship Mortgage Decree). It also alleged as a cause of action MIS' unjustified refusal to pay the amount it owes Tsuneishi under their contract. The complaint included a prayer for the issuance of arrest order/writ of preliminary attachment. To support this prayer, the complaint alleged that Section 21 of the Ship Mortgage Decree as well as Rule 57 of the Rules of Court on attachment authorize the issuance of an order of arrest of vessel and/or writ of preliminary attachment.[14]

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6 *Id.* at 56.
7 *Id.*
8 *Rollo*, pp. 56-57.
9 *Id.* at 16.
10 *Id.*
11 *Rollo*, pp. 135-136.
12 *Id.* at 83-96.
13 PRESIDENTIAL DECREE No. 1521.
14 *Rollo*, pp. 91-92.

In particular, Tsuneishi argued that Section 21 of the Ship Mortgage Decree provides for a maritime lien in favor of any person who furnishes repair or provides use of a dry dock for a vessel. Section 21 states that this may be enforced through an action *in rem*. Further, Tsuneishi and MIS' contract granted Tsuneishi the right to take possession, control and custody of the vessel in case of default of payment. Paragraph 9 of this contract further states that Tsuneishi may dispose of the vessel and apply the proceeds to the unpaid repair bill.[15]

Finally, Tsuneishi's complaint alleges that there are sufficient grounds for the issuance of a writ of preliminary attachment. In particular, it claims that MIS is guilty of fraud in the performance of its obligation. The complaint states:

> 40. x x x Under the factual milieu, it is wrongful for defendant MIS Maritime to take undue advantage of an unfortunate occurrence by withholding payment of what is justly due to plaintiff under law and contract. Defendant MIS Maritime knew or ought to have known that its claim for lost revenues was unliquidated and could not be set-off or legally compensated against the dry-docking and repair bill which was liquidated and already fixed and acknowledged by the parties.
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> 41. Defendant CATTLEYA SHIPPING's actions and actuations in performing its obligation were clearly fraudulent because, firstly, it had no business getting involved as far as the M/T MIS-1 incident was concerned; secondly, no incident of any sort occurred when its vessel M/T WHITE CATTLEYA was dry docked and repaired. It had no claim against the plaintiff. Yet, it (defendant Cattleya Shipping) allowed itself to be used by defendant MIS Maritime when it willfully and unlawfully stopped paying plaintiff, and conspired to make good defendant MIS Maritime's threat to "withhold payment of any and all billings that you (plaintiff) may have against our fleet of vessels which include those registered under Cattleya Shipping Panama S.A. (MT White Cattleya) x x x.[16]

Tsuneishi also filed the Affidavit[17] of its employee Lionel T. Bitera (Bitera Affidavit), in accordance with the requirement for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court. The Bitera Affidavit stated that Tsuneishi performed dry docking and repair services for M/T MIS-1 and M/T White Cattleya. It also alleged that after Tsuneishi performed all the services required, MIS and Cattleya refused to pay their obligation. According to the Bitera Affidavit, this refusal to pay constitutes fraud because:

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15 *Id.* at 92.
16 *Id.* at 93.
17 *Id.* at 111-113.

> d. The breach of the obligation was willful. In the case of M/T MIS-1 no single installment payment was made despite the fact that the vessel was accepted fully dry docked and with a brand new engine crankshaft installed by the yard free of charge to the Owner. MIS Maritime Corporation was blaming the yard for the damage sustained by the engine crank shaft on 25 April 2006 when the engine was started in preparation for sea trial. When the incident happened the drydocking had already been completed and the vessel was already in anchorage position for sea trial under the management and supervisory control of the Master and engineers of the vessel. Besides, the incident was not due to the fault of the yard. It was eventually traced to dirty lube oil or defective main engine lubricating oil which was the lookout and responsibility of the vessel's engineers.
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> x x x x
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> e. The action taken by MIS Maritime Corporation in setting off its drydocking obligation against their claim for alleged lost revenues was unilaterally done, and without legal and factual basis for while, on one hand, the drydocking bill was for a fixed and agreed amount, the claim of MIS Maritime for lost revenues, on the other hand, was not liquidated as it was for a gross amount. x x x
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> f. Cattleya Shipping for its part had nothing to do with the dry docking of M/T MIS-1. There was no incident whatsoever during the dry docking of its vessel M/T WHITE CATTLEYA. In fact, after this vessel was satisfactorily dry docked and delivered to its Owner (Cattleya Shipping) the latter started paying the monthly installments without any complaint whatsoever. x x x[18]

The RTC issued a writ of preliminary attachment in an Order[19] dated April 15, 2008 (First Order) without hearing. Consequently, MIS' condominium units located in the financial district of Makati, cash deposits with various banks, charter hire receivables from Shell amounting to ₱26.6 Million and MT MIS-1 were attached.[20]

MIS filed a motion to discharge the attachment.[21] The RTC denied this motion in an Order[22] dated July 7, 2008 (Second Order). MIS filed a motion for reconsideration which the RTC also denied in an Order[23] dated December 11, 2008 (Third Order).

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18 *Id.* at 112-113.
19 *Id.* at 44.
20 *Id.* at 566.
21 *Id.* at 244-255.
22 *Id.* at 46-48.
23 *Id.* at 50-51.

MIS then filed a special civil action for *certiorari*[24] before the CA assailing the three Orders. MIS argued that the RTC acted with grave abuse of discretion when it ordered the issuance of a preliminary writ of attachment and denied MIS' motion to discharge and motion for reconsideration.

The CA ruled in favor of MIS. It reversed the three assailed Orders after finding that the RTC acted with grave abuse of discretion in issuing the writ of preliminary attachment.[25]

According to the CA, the Bitera Affidavit lacked the required allegation that MIS has no sufficient security for Tsuneishi's claim. In fact, the CA held that the evidence on record shows that MIS has sufficient properties to cover the claim. It also relied on jurisprudence stating that when an affidavit does not contain the allegations required under the rules for the issuance of a writ of attachment and the court nevertheless issues the writ, the RTC is deemed to have acted with grave abuse of discretion. Consequently, the writ of preliminary attachment is fatally defective.[26] The CA further highlighted that a writ of preliminary attachment is a harsh and rigorous remedy. Thus, the rules must be strictly construed. Courts have the duty to ensure that all the requisites are complied with.[27]

The CA also found that the RTC ordered the issuance of the writ of preliminary attachment despite Tsuneishi's failure to prove the presence of fraud. It held that the bare and unsubstantiated allegation in the Bitera Affidavit that MIS willfully refused to pay its obligation is not sufficient to establish *prima facie* fraud. The CA emphasized that a debtor's mere inability to pay is not fraud. Moreover, Tsuneishi's allegations of fraud were general. Thus, they failed to comply with the requirement in the Rules of Court that in averments of fraud, the circumstances constituting it must be alleged with particularity. The CA added that while notice and hearing are not required for the issuance of a writ of preliminary attachment, it may become necessary in instances where the applicant makes grave accusations based on grounds alleged in general terms. The CA also found that Tsuneishi failed to comply with the requirement that the affidavit must state that MIS has no other sufficient security to cover the amount of its obligation.[28]

The CA disposed of the case, thus:

> **WHEREFORE**, the petition is **GRANTED**. The three (3) Orders dated April 15, 2008, July 7, 2008 and December 11, 2008, respectively, of the Regional Trial Court, Branch 7, Cebu City, in Civil Case No. CEB-34250,

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24 *Id.* at 318-358.
25 *Id.* at 67-68.
26 *Id.* at 65.
27 *Id.* at 63-65.
28 *Id.* at 65-67.

> are **ANNULLED** and **SET ASIDE**.[29] (Emphasis in the original, citations omitted.)

Tsuneishi filed this petition for review on *certiorari* under Rule 45 of the Rules of Court challenging the CA's ruling. Tsuneishi pleads that this case involves a novel question of law. It argues that while Section 21 of the Ship Mortgage Decree grants it a maritime lien, the law itself, unfortunately, does not provide for the procedure for its enforcement. It posits that to give meaning to this maritime lien, this Court must rule that the procedure for its enforcement is Rule 57 of the Rules of Court on the issuance of the writ of preliminary attachment. Thus, it proposes that aside from the identified grounds for the issuance of a writ of preliminary attachment in the Rules of Court, the maritime character of this action should be considered as another basis to issue the writ.[30]

To support its application for the issuance of a writ of preliminary attachment, Tsuneishi also invokes a provision in its contract with MIS which states that:

> In case of default, either in payment or in violation of the warranties stated in Section 11, by the Owner, the Owner hereby appoints the Contractor as its duly authorized attorney in fact with full power and authority to take possession, control, and custody of the said Subject Vessel and / or any of the Subject Vessel's accessories and equipment, or other assets of the Owner, without resorting to court action; and that the Owner hereby empowers the Contractor to take custody of the same until the obligation of the Owner to the Contractor is fully paid and settled to the satisfaction of the Contractor. x x x[31] (Underscoring omitted.)

It insists that the writ of preliminary attachment must be issued so as to give effect to this provision in the contract.

Tsuneishi also disputes the CA's finding that it failed to show fraud in MIS' performance of its obligation. It opines that MIS' failure to comply with its obligation does not arise from a mere inability to pay. If that were the case, then the CA would be correct in saying that MIS committed no fraud. However, MIS' breach of its obligation in this case amounts to a gross unwillingness to pay amounting to fraud.[32]

Tsuneishi adds that the CA erred in holding that the RTC acted with grave abuse of discretion when it failed to conduct a hearing prior to the issuance of the writ of preliminary attachment. It insisted that the Rules of

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[29] *Id.* at 67-68.
[30] *Id.* at 21-28.
[31] *Id.* at 26.
[32] *Id.* at 31-36.

Court, as well as jurisprudence, does not require a hearing prior to issuance.[33]

Finally, Tsuneishi disagrees with the ruling of the CA that it did not comply with the requirements under the rules because the Bitera Affidavit did not state that MIS has no other sufficient security. This was already stated in Tsuneishi's complaint filed before the RTC. Thus, the rules should be applied liberally in favor of rendering justice.[34]

In its comment,[35] MIS challenges Tsuneishi's argument that its petition raises a novel question of law. According to MIS, the issue in this case is simple. A reading of Tsuneishi's complaint shows that it prayed for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court or arrest of vessel to enforce its maritime lien under the Ship Mortgage Decree.[36] Thus, Tsuneishi knew from the start that a remedy exists for the enforcement of its maritime lien—through an arrest of vessel under the Ship Mortgage Decree. However, the RTC itself characterized the complaint as a collection of sum of money with prayer for the issuance of a writ of preliminary attachment. Thus, what it issued was a writ of preliminary attachment. Unfortunately for Tsuneishi, the CA reversed the RTC because it found that the element of fraud was not duly established. Thus, there was no ground for the issuance of a writ of preliminary attachment.[37]

MIS insists that Tsuneishi is raising this alleged novel question of law for the first time before this Court in an attempt to skirt the issue that it failed to sufficiently establish that MIS acted with fraud in the performance of its obligation. MIS contends that fraud cannot be inferred from a debtor's mere inability to pay. There is no distinction between inability and a refusal to pay where the refusal is based on its claim that Tsuneishi damaged its vessel. According to MIS, its vessel arrived at Tsuneishi's shipyard on its own power. Its engine incurred damage while it was under Tsuneishi's custody. Thus, Tsuneishi is presumed negligent.[38]

MIS further highlights that Tsuneishi completed the dry docking in April 2006. It was during this time that the damage in the vessel's engine was discovered. The vessel was turned over to MIS only in September 2006. Thus, it had lost a significant amount of revenue during the period that it was off-hire. Because of this, it demanded payment from Tsuneishi which the latter rejected.[39]

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33 *Id.* at 28-29.
34 *Id.* at 29-30.
35 *Id.* at 563-595.
36 *Id.* at 569.
37 *Id.* at 577-583.
38 *Id.* at 583-586.
39 *Id.* at 584-585.

Hence, MIS argues that this is not a situation where, after Tsuneishi rendered services, MIS simply absconded. MIS has the right to demand for the indemnification of its lost revenue due to Tsuneishi's negligence.[40]

MIS further adds that the CA correctly held that there was no statement in the Bitera Affidavit that MIS had no adequate security to cover the amount being demanded by Tsuneishi. Tsuneishi cannot validly argue that this allegation is found in its complaint and that this should be deemed compliance with the requirement under Rule 57.[41]

Further, in its motion to discharge the preliminary attachment, MIS presented proof that it has the financial capacity to pay any liability arising from Tsuneishi's claims. In fact, there was an excessive levy of MIS' properties. This is proof in itself that MIS has adequate security to cover Tsuneishi's claims. Finally, MIS agrees with the CA that the RTC should have conducted a hearing. While it is true that a hearing is not required by the Rules of Court, jurisprudence provides that a hearing is necessary where the allegations in the complaint and the affidavit are mere general averments. Further, where a motion to discharge directly contests the allegation in the complaint and affidavit, the applicant has the burden of proving its claims of fraud.[42]

There are two central questions presented for the Court to resolve, namely: (1) whether a maritime lien under Section 21 of the Ship Mortgage Decree may be enforced through a writ of preliminary attachment under Rule 57 of the Rules of Court; and (2) whether the CA correctly ruled that Tsuneishi failed to comply with the requirements for the issuance of a writ of preliminary injunction.

We deny the petition.

I

We begin by classifying the legal concepts of lien, maritime lien and the provisional remedy of preliminary attachment.

A lien is a "legal claim or charge on property, either real or personal, as a collateral or security for the payment of some debt or obligation."[43] It attaches to a property by operation of law and once attached, it follows the property until it is discharged. What it does is to give the party in whose favor the lien exists the right to have a debt satisfied out of a particular thing. It is a legal claim or charge on the property which functions as a collateral or security for the payment of the obligation.[44]

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40 *Id.* at 585-586.
41 *Id.* at 586-588.
42 *Id.* at 588-593.
43 *People v. Regional Trial Court of Manila*, G.R. No. 81541, October 4, 1989, 178 SCRA 299, 307.
44 *Id.*

Section 21 of the Ship Mortgage Decree establishes a lien. It states:

> Sec. 21. *Maritime Lien for Necessaries; Persons entitled to such Lien.* – Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem*, and it shall be necessary to allege or prove that credit was given to the vessel.

In practical terms, this means that the holder of the lien has the right to bring an action to seek the sale of the vessel and the application of the proceeds of this sale to the outstanding obligation. Through this lien, a person who furnishes repair, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, in accordance with the requirements under Section 21, is able to obtain security for the payment of the obligation to him.

A party who has a lien in his or her favor has a remedy in law to hold the property liable for the payment of the obligation. A lienholder has the remedy of filing an action in court for the enforcement of the lien. In such action, a lienholder must establish that the obligation and the corresponding lien exist before he or she can demand that the property subject to the lien be sold for the payment of the obligation. Thus, a lien functions as a form of security for an obligation.

Liens, as in the case of a maritime lien, arise in accordance with the provision of particular laws providing for their creation, such as the Ship Mortgage Decree which clearly states that certain persons who provide services or materials can possess a lien over a vessel. The Rules of Court also provide for a provisional remedy which effectively operates as a lien. This is found in Rule 57 which governs the procedure for the issuance of a writ of preliminary attachment.

A writ of preliminary attachment is a provisional remedy issued by a court where an action is pending. In simple terms, a writ of preliminary attachment allows the levy of a property which shall then be held by the sheriff. This property will stand as security for the satisfaction of the judgment that the court may render in favor of the attaching party. In *Republic v. Mega Pacific eSolutions* (*Republic*),[45] we explained that the purpose of a writ of preliminary attachment is twofold:

> *First*, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation, thereby preventing the loss or dissipation of

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[45] G.R. No. 184666, June 27, 2016, 794 SCRA 414.

> the property through fraud or other means. *Second*, it subjects the property of the debtor to the payment of a creditor's claim, in those cases in which personal service upon the debtor cannot be obtained. **This remedy is meant to secure a contingent lien on the defendant's property until the plaintiff can, by appropriate proceedings, obtain a judgment and have the property applied to its satisfaction, or to make some provision for unsecured debts in cases in which the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.**[46] (Citations omitted, emphasis supplied. Italics in the original.)

As we said, a writ of preliminary attachment effectively functions as a lien. This is crucial to resolving Tsuneishi's alleged novel question of law in this case. Tsuneishi is correct that the Ship Mortgage Decree does not provide for the specific procedure through which a maritime lien can be enforced. Its error is in insisting that a maritime lien can only be operationalized by granting a writ of preliminary attachment under Rule 57 of the Rules of Court. Tsuneishi argues that the existence of a maritime lien should be considered as another ground for the issuance of a writ of preliminary attachment under the Rules of Court.

Tsuneishi's argument is rooted on a faulty understanding of a lien and a writ of preliminary attachment. As we said, a maritime lien exists in accordance with the provision of the Ship Mortgage Decree. It is enforced by filing a proceeding in court. When a maritime lien exists, this means that the party in whose favor the lien was established may ask the court **to enforce it** by ordering the sale of the subject property and using the proceeds to settle the obligation.

On the other hand, a writ of preliminary attachment is issued precisely **to create a** lien. When a party moves for its issuance, the party is effectively asking the court to attach a property and hold it liable for any judgment that the court may render in his or her favor. This is similar to what a lien does. It functions as a security for the payment of an obligation. In *Quasha Asperilla Ancheta Valmonte Peña & Marcos v. Juan*,[47] we held:

> An attachment proceeding is for the purpose of creating a lien on the property to serve as security for the payment of the creditors' claim. Hence, where a lien already exists, as in this case a maritime lien, the same is already equivalent to an attachment. x x x[48]

To be clear, we repeat that when a lien already exists, this is already equivalent to an attachment. This is where Tsuneishi's argument fails.

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[46] *Id.* at 441.
[47] G.R. No. L-49140, November 19, 1982, 118 SCRA 505.
[48] *Id.* at 520.

Clearly, because it claims a maritime lien in accordance with the Ship Mortgage Decree, all Tsuneishi had to do is to file a proper action in court for its enforcement. The issuance of a writ of preliminary attachment on the pretext that it is the only means to enforce a maritime lien is superfluous. The reason that the Ship Mortgage Decree does not provide for a detailed procedure for the enforcement of a maritime lien is because it is not necessary. Section 21 already provides for the simple procedure—file an action *in rem* before the court.

To our mind, this alleged novel question of law is a mere device to remedy the error committed by Tsuneishi in the proceedings before the trial court regarding the issuance of a writ of preliminary attachment. We note that the attachment before the trial court extended to other properties other than the lien itself, such as bank accounts and real property. Clearly, what was prayed for in the proceedings below was not an attachment for the enforcement of a maritime lien but an attachment, plain and simple.

II

Tsuneishi's underlying difficulty is whether it succeeded in proving that it complied with the requirements for the issuance of a writ of preliminary attachment. This is the only true question before us. In particular, we must determine whether the Bitera Affidavit stated that MIS lacked sufficient properties to cover the obligation and whether MIS acted with fraud in refusing to pay.

At the onset, we note that these questions dwell on whether there was sufficient evidence to prove that Tsuneishi complied with the requirements for the issuance of a writ of preliminary attachment. Sufficiency of evidence is a question of fact which this Court cannot review in a Rule 45 petition. We are not a trier of fact.

Nevertheless, we have examined the record before us and we agree with the factual findings of the CA.

The record clearly shows that the Bitera Affidavit does not state that MIS has no other sufficient security for the claim sought to be enforced. This is a requirement under Section 3, Rule 57 of the Rules of Court. We cannot agree with Tsuneishi's insistence that this allegation need not be stated in the affidavit since it was already found in the complaint. The rules are clear and unequivocal. There is no basis for Tsuneishi's position. Nor is it entitled to the liberal application of the rules. Not only has Tsuneishi failed to justify its omission to include this allegation, the facts also do not warrant the setting aside of technical rules. Further, rules governing the issuance of a writ of preliminary attachment are strictly construed.

We also agree with the CA's factual finding that MIS did not act with fraud in refusing to pay the obligation. We emphasize that when fraud is

invoked as a ground for the issuance of a writ of preliminary attachment under Rule 57 of the Rules of Court, there must be evidence clearly showing the factual circumstances of the alleged fraud.[49] Fraud cannot be presumed from a party's mere failure to comply with his or her obligation. Moreover, the Rules of Court require that in all averments of fraud, the circumstances constituting it must be stated with particularity.[50]

In *Republic*, we defined fraud as:

> [A]s the voluntary execution of a wrongful act or a wilful omission, while knowing and intending the effects that naturally and necessarily arise from that act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive — including all acts and omission and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed — resulting in damage to or in undue advantage over another. Fraud is also described as embracing all multifarious means that human ingenuity can device, and is resorted to for the purpose of securing an advantage over another by false suggestions or by suppression of truth; and it includes all surprise, trick, cunning, dissembling, and any other unfair way by which another is cheated.[51] (Citations omitted.)

By way of example, in *Metro, Inc. v. Lara's Gifts and Decors, Inc.*,[52] we ruled that the factual circumstances surrounding the parties' transaction clearly showed fraud. In this case, the petitioners entered into an agreement with respondents where the respondents agreed that they will endorse their purchase orders from their foreign buyers to the petitioners in order to help the latter's export business. The petitioners initially promised that they will transact only with the respondents and never directly contact respondents' foreign buyers. To convince respondents that they should trust the petitioners, petitioners even initially remitted shares to the respondents in accordance with their agreement. However, as soon as there was a noticeable increase in the volume of purchase orders from respondents' foreign buyers, petitioners abandoned their contractual obligation to respondents and directly transacted with respondents' foreign buyers. We found in this case that the respondents' allegation (that the petitioners undertook to sell exclusively through respondents but then transacted directly with respondents' foreign buyer) is sufficient allegation of fraud to support the issuance of a writ of preliminary attachment.[53]

In contrast, in *PCL Industries Manufacturing Corporation v. Court of Appeals*,[54] we found no fraud that would warrant the issuance of a writ of preliminary attachment. In that case, petitioner purchased printing ink

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[49] *Republic v. Mega Pacific eSolutions*, *supra* note 45 at 442.
[50] RULES OF COURT, Rule 8, Sec. 5.
[51] *Republic v. Mega Pacific eSolutions*, *supra* note 45 at 443-444.
[52] G.R. No. 171741, November 27, 2009, 606 SCRA 175.
[53] *Id.* at 186.
[54] G.R. No. 147970, March 31, 2006, 486 SCRA 21[illegible]

materials from the private respondent. However, petitioner found that the materials delivered were defective and thus refused to pay its obligation under the sales contract. Private respondent insisted that petitioner's refusal to pay after the materials were delivered to it amounted to fraud. We disagreed. We emphasized our repeated and consistent ruling that the mere fact of failure to pay after the obligation to do so has become due and despite several demands is not enough to warrant the issuance of a writ of preliminary attachment.[55]

An examination of the Bitera Affidavit reveals that it failed to allege the existence of fraud with sufficient specificity. The affidavit merely states that MIS refused to pay its obligation because it demanded a set off between its obligation to Tsuneishi and Tsuneishi's liability for MIS' losses caused by the delay in the turn-over of the vessel. The affidavit insists that this demand for set off was not legally possible. Clearly, there is nothing in the affidavit that even approximates any act of fraud which MIS committed in the performance of its obligation. MIS' position was clear: Tsuneishi caused the damage in the vessel's engine which delayed its trip and should thus be liable for its losses. There is no showing that MIS performed any act to deceive or defraud Tsuneishi.

In *Watercraft Venture Corporation v. Wolfe*,[56] we ruled that an affidavit which does not contain concrete and specific grounds showing fraud is inadequate to sustain the issuance of the writ of preliminary attachment.[57]

Moreover, the record tells a different story.

The record shows that Tsuneishi released the vessel in September 2006. MIS signed the Agreement of the Final Price only in November 2006. Thus, Tsuneishi's claim that MIS' act of signing the document and making it believe that MIS will pay the amount stated is the fraudulent act which induced it to release the vessel cannot stand. Tsuneishi agreed to release the vessel even before MIS signed the document. It was thus not the act which induced Tsuneishi to turn over the vessel.

Further, Tsuneishi is well aware of MIS' claims. It appears from the record, and as admitted by MIS in its pleadings, that the reason for its refusal to pay is its claim that its obligation should be set off against Tsuneishi's liability for the losses that MIS incurred for the unwarranted delay in the turn-over of the vessel. MIS insists that Tsuneishi is liable for the damage on the vessel. This is not an act of fraud. It is not an intentional act or a willful omission calculated to deceive and injure Tsuneishi. MIS is asserting a claim which it believes it has the right to do so under the law. Whether MIS' position is legally tenable is a different matter. It is an issue fit for the court

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55 *Id.* at 225-226.
56 G.R. No. 181724, September 9, 2015, 770 SCRA 179.
57 *Id.* at 197-198.

to decide. Notably, MIS filed this as a counterclaim in the case pending before the RTC.[58] Whether MIS is legally correct should be threshed out there.

Even assuming that MIS is wrong in refusing to pay Tsuneishi, this is nevertheless not the fraud contemplated in Section 1(d), Rule 57 of the Rules of Court. Civil law grants Tsuneishi various remedies in the event that the trial court rules in its favor such as the payment of the obligation, damages and legal interest. The issuance of a writ of preliminary attachment is not one of those remedies.

There is a reason why a writ of preliminary attachment is available only in specific cases enumerated under Section 1 of Rule 57. As it entails interfering with property prior to a determination of actual liability, it is issued with great caution and only when warranted by the circumstances. As we said in *Ng Wee v. Tankiansee*,[59] the rules on the issuance of the writ of preliminary attachment as a provisional remedy are strictly construed against the applicant because it exposes the debtor to humiliation and annoyance.[60]

Moreover, we highlight that this petition for review on *certiorari* arose out of a Decision of the CA in a Rule 65 petition. In cases like this, this Court's duty is only to ascertain whether the CA was correct in ruling that the RTC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Jurisprudence has consistently held that a court that issues a writ of preliminary attachment when the requisites are not present acts in excess of its jurisdiction.[61] In *Philippine Bank of Communications v. Court of Appeals*,[62] we highlighted:

> Time and again, we have held that the rules on the issuance of a writ of attachment must be construed strictly against the applicants. This stringency is required because the remedy of attachment is harsh, extraordinary and summary in nature. If all the requisites for the granting of the writ are not present, then the court which issues it acts in excess of its jurisdiction.[63] (Citation omitted.)

In accordance with consistent jurisprudence, we must thus affirm the ruling of the CA that the RTC, in issuing a writ of preliminary attachment when the requisites under the Rules of Court were clearly not present, acted with grave abuse of discretion.

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58 *Rollo*, p. 141.

59 G.R. No. 171124, February 13, 2008, 545 SCRA 263.

60 *Id.* at 274-275.

61 *Marphil Export Corporation v. Allied Banking Corporation*, G.R. No. 187922, September 21, 2016, 803 SCRA 627, 656; *Ng Wee v. Tankiansee*, *supra* at 274-275; *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 115678, February 23, 2001, 352 SCRA 616, 624-625.

62 *Supra*.

63 *Id.* at 624-625.

WHEREFORE, in view of the foregoing, the petition is **DENIED**. The Decision of the Court of Appeals dated October 7, 2009 and its Resolution dated August 26, 2010 are **AFFIRMED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

(On Leave)
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Acting Chairperson
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

NOEL GIMENEZ TIJAM
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.

TERESITA J. LEONARDO-DE CASTRO
Acting Chairperson, First Division
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ANTONIO T. CARPIO
*Acting Chief Justice****

*** Designated as Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.