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[G.R. Nos. 112438-39. December 12, 1995]

CHEMPHIL EXPORT & IMPORT CORPORATION (CEIC), *petitioner, vs.* THE HONORABLE COURT OF APPEALS, JAIME Y. GONZALES, as Assignee of the Bank of the Philippine Islands (BPI), RIZAL COMMERCIAL BANKING CORPORATION (RCBC), LAND BANK OF THE PHILIPPINES (LBP), PHILIPPINE COMMERCIAL & INTERNATIONAL BANK (PCIB) and THE PHILIPPINE INVESTMENT SYSTEM ORGANIZATION (PISO), *respondents.*

[G.R. No. 113394. December 12, 1995]

PHILIPPINE COMMERCIAL INDUSTRIAL BANK (AND ITS ASSIGNEE JAIME Y. GONZALES), *petitioner, vs.* HONORABLE COURT OF APPEALS and CHEMPHIL EXPORT AND IMPORT CORPORATION (CEIC), *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; SUBROGATION; DEFINED AND ELABORATED.— By definition, subrogation is "the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights. It may either be legal or conventional. Legal subrogation is that which takes place without agreement but by operation of law because of certain acts; this is the subrogation referred to in Article 1302. Conventional subrogation is that which takes place by agreement of the parties..." CEIC's theory is premised on Art. 1302(2) of the Civil Code which however, presents an erroneous interpretation of the concept of subrogation. An analysis of the situations involved would reveal the clear inapplicability of Art. 1302(2).

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2. **COMMERCIAL LAW; CORPORATIONS; SHARES OF STOCK; ATTACHMENT THEREOF NEED NOT BE REGISTERED IN TRANSFER BOOK TO BE EFFECTIVE AS AGAINST THIRD PARTIES.**— The attachment lien acquired by the consortium is valid and effective. Both the Revised Rules of Court and the Corporation Code do not require annotation in the corporation's stock and transfer books for the attachment of shares of stock to be valid and binding on the corporation and third-party. Section 74 of the Corporation Code enumerates the instances where registration in the stock and transfer books of a corporation is proper. Are attachments of shares of stock included in the term "transfer" as provided in Sec. 63 of the Corporation Code? We rule in the negative. As succinctly declared in the case of *Monserrat v. Ceron*, "chattel mortgage over shares of stock need not be registered in the corporation's stock and transfer book inasmuch as chattel mortgage over shares of stock does not involve a "transfer of shares," and that only absolute transfers of shares of stock are required to be recorded in the corporation's stock and transfer book in order to have "force and effect as against third persons." Although this *Monserrat* case refers to a chattel mortgage over shares of stock, the same may be applied to the attachment of the disputed shares of stock in the present controversy since an attachment does not constitute an absolute conveyance of property but is primarily used as a means "to seize the debtor's property in order to secure the debt or claim of the creditor in the event that a judgment is rendered." Petitioner CEIC's claim is the Deed of Sale under which it purchased the disputed shares. It is, however, a settled rule that a purchaser of attached property acquires it subject to an attachment legally and validly levied thereon.

3. **ID.; ID.; CORPORATE OFFICERS; SECRETARY; FUNCTIONS; CAN RECEIVE NOTICE OF GARNISHMENT IN BEHALF OF THE CORPORATION, IN COMPLIANCE OF REQUIREMENT IN ATTACHMENT.**— A secretary's major function is to assist his or her superior. He/she in effect an extension of the latter. Obviously, as such, one of her duties is to receive letters

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and notices for and in behalf of her superior, as in the case at bench. The notice of garnishment was addressed to and was actually received by Chemphil's president through his secretary who formally received it for him. Thus, in one case, we ruled that the secretary of the president may be considered an "agent" of the corporation and held that service of summons on him is binding on the corporation. Moreover, the service and receipt of the notice of garnishment was duly acknowledged and confirmed by the corporate secretary of Chemphil, and his successor through their respective certifications. We rule, therefore, that there was substantial compliance with Sec. 7(d), Rule 57 of the Rules of Court.

4. **REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; PURPOSE AND DURATION.**— The concept and purpose of a preliminary attachment is x x x *"as security for the satisfaction of whatever judgment might be secured in an action by the attaching creditor against the defendant."* We reiterate the rule laid down in *BF Homes, Inc. v. CA* that an attachment lien continues 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 the same manner provided by law. The parties to the compromise agreement should not be deprived of the protection provided by an attachment lien especially in an instance where one reneges on his obligations under the agreement. Moreover a violation of the terms and conditions of a compromise agreement entitles the aggrieved party to a writ of execution.

5. **ID.; RULE AGAINST FORUM-SHOPPING.**— The rule against forum-shopping has long been established. Supreme Court Circular 28-91 merely formalized the prohibition and provided the appropriate penalties against transgressors. We cannot over-emphasize its ill-effects, one of which is aptly demonstrated in the case at bench where we are confronted with two divisions of the Court of Appeals issuing contradictory decisions. Forum-shopping or the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of

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certiorari), or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition, has been characterized as an act of malpractice that is prohibited and condemned as trifling with the Courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavily burdened dockets of the courts.

APPEARANCES OF COUNSEL

Quasha, Asperilla, Ancheta, Pena & Nolasco for Chemphil Export & Import Corporation.

Ponce, Enrile, Cayetano, Reyes & Manalastas for RCBC.

Fortun & Narvasa for Jaime Y. Gonzales.

Rilloraza, Africa, de Ocampo & Africa for PCIB.

Nestor Mejia for Dynetics & A.M. Garcia

Puruganan, Chato, Tan & Geronimo for PISO.

Sabino B. Padilla IV for BPI and Land Bank.

DECISION

KAPUNAN, *J.*:

Before us is a legal tug-of-war between the Chemphil Export and Import Corporation (hereinafter referred to as CEIC), on one side, and the PISO and Jaime Gonzales as assignee of the Bank of the Philippine Islands (BPI), Rizal Commercial Banking Corporation (RCBC), Land Bank of the Philippines (LBP) and Philippine Commercial International Bank (PCIB), on the other (hereinafter referred to as the consortium), over 1,717,678 shares of stock (hereinafter referred to as the "disputed shares") in the Chemical Industries of the Philippines (Chemphil/CIP).

Our task is to determine who is the rightful owner of the disputed shares.

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Pursuant to our resolution dated 30 May 1994, the instant case is a consolidation of two petitions for review filed before us as follows:

In G.R. Nos. 112438-39, CEIC seeks the reversal of the decision of the Court of Appeals (former Twelfth Division) promulgated on 30 June 1993 and its resolution of 29 October 1993, denying petitioner's motion for reconsideration in the consolidated cases entitled "Dynetics, Inc., et al. *v.* PISO, et al." (CA-G.R. No. 20467) and "Dynetics, Inc., et al. *v.* PISO, et al.; CEIC, Intervenor-Appellee" (CA-G.R. CV No. 26511).

The dispositive portion of the assailed decision reads, thus:

WHEREFORE, this Court resolves in these consolidated cases as follows:

1. The Orders of the Regional Trial Court, dated March 25, 1988, and May 20, 1988, subject of CA-G.R. CV No. 10467, are SET ASIDE and judgment is hereby rendered in favor of the consortium and against appellee Dynetics, Inc., the amount of the judgment, to be determined by Regional Trial Court, taking into account the value of assets that the consortium may have already recovered and shall have recovered in accordance with the other portions of this decision.

2. The Orders of the Regional Trial Court dated December 19, 1989 and March 5, 1990 are hereby REVERSED and SET ASIDE and judgment is hereby rendered confirming the ownership of the consortium over the Chemphil shares of stock, subject of CA-G.R. CV No. 26511, and the Order dated September 4, 1989, is reinstated.

No pronouncement as to costs.

SO ORDERED.[1]

In G.R. No. 113394, PCIB and its assignee, Jaime Gonzales, ask for the annulment of the Court of Appeals' decision (former Special Ninth Division) promulgated on 26 March 1993 in "PCIB *v.* Hon. Job B. Madayag & CEIC" (CA-G.R. SP NO. 20474)

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[1] *Rollo* of G.R. Nos. 112438-39, pp. 93-94.

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dismissing the petition for certiorari, prohibition and mandamus filed by PCIB and of said court's resolution dated 11 January 1994 denying their motion for reconsideration of its decision.[2]

The antecedent facts leading to the aforementioned controversies are as follows:

On September 25, 1984, Dynetics, Inc. and Antonio M. Garcia filed a complaint for declaratory relief and/or injunction against the PISO, BPI, LBP, PCIB and RCBC or the consortium with the Regional Trial Court of Makati, Branch 45 (Civil Case No. 8527), seeking judicial declaration, construction and interpretation of the validity of the surety agreement that Dynetics and Garcia had entered into with the consortium and to perpetually enjoin the latter from claiming, collecting and enforcing any purported obligations which Dynetics and Garcia might have undertaken in said agreement.[3]

The consortium filed their respective answers with counterclaims alleging that the surety agreement in question was valid and binding and that Dynetics and Garcia were liable under the terms of the said agreement. It likewise applied for the issuance of a writ of preliminary attachment against Dynetics and Garcia.[4]

Seven months later, or on 23 April 1985, Dynetics, Antonio Garcia and Matrix Management & Trading Corporation filed a

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[2] *Rollo* of G.R. No. 113394, p. 66.

[3] *Rollo* of G.R. Nos. 112438-39, pp. 75, 377, 37. Chemark, Inc. secured from foreign banks a loan in the amount of US $4.5 Million to finance its projects. To guarantee payment, Chemark entered into an Indemnity Agreement with the consortium. In turn, the consortium entered into a Surety Agreement with Dynetics, Garcia and Marco Electric Manufacturing Corporation whereby the latter bound themselves to reimburse the consortium for any payment it may be bound to make pursuant to the aforestated Indemnity Agreement. Dynetics, et al. alleged that they are not liable to the consortium under the Surety Agreement because there was no valid consideration, their obligations have been extinguished through novation, etc. (Record of CA-G.R. CV No. 26511, pp. 8-16.)

[4] *Id.*, at 75 and 377.

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complaint for declaratory relief and/or injunction against the Security Bank & Trust Co. (SBTC case) before the Regional Trial Court of Makati, Branch 135 docketed as Civil Case No. 10398.[5]

On 2 July 1985, the trial court granted SBTC's prayer for the issuance of a writ of preliminary attachment and on 9 July 1985, a notice of garnishment covering Garcia's shares in CIP/Chemphil (including the disputed shares) was served on Chemphil through its then President. The notice of garnishment was duly annotated in the stock and transfer books of Chemphil on the same date.[6]

On 6 September 1985, the writ of attachment in favor of SBTC was lifted. However, the same was reinstated on 30 October 1985.[7]

In the meantime, on 12 July 1985, the Regional Trial Court in Civil Case No. 8527 (the consortium case) denied the application of Dynetics and Garcia for preliminary injunction and instead granted the consortium's prayer for a consolidated writ of preliminary attachment. Hence, on 19 July 1985, after the consortium had filed the required bond, a writ of attachment was issued and various real and personal properties of Dynetics and Garcia were garnished, including the disputed shares.[8] This garnishment, however, was not annotated in Chemphil's stock and transfer book.

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[5] *Id.*, at 377. The plaintiffs sought a judicial declaration that they were not liable to SBTC under the Indemnity Agreements they had executed in favor of Chemark Electric Motors, Inc. which had been extended a credit accommodation of about P20,000,000 by SBTC, alleging as grounds therefor, among others, that the Indemnity Agreements were executed without valid consideration; that assuming that there was a valid consideration for the instruments, they were null and void for being ultra vires, etc. SBTC filed its Answer with Counterclaim stating that defendants defaulted in their obligation and praying for the payment thereof.

[6] *Id.*, at 27.

[7] *Id.*, at 377-378.

[8] *Rollo* of G.R. No. 113394, p. 61; *Rollo* of G.R. Nos. 112438-39, p. 76; Record of CA-G.R. CV No. 26511, pp. 458-459, 473, 562.

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On 8 September 1987, PCIB filed a motion to dismiss the complaint of Dynetics and Garcia for lack of interest to prosecute and to submit its counterclaims for decision, adopting the evidence it had adduced at the hearing of its application for preliminary attachment.[9]

On 25 March 1988, the Regional Trial Court dismissed the complaint of Dynetics and Garcia in Civil Case No. 8527, as well as the counterclaims of the consortium, thus:

Resolving defendant's, Philippine Commercial International Bank, "MOTION TO DISMISS WITH MOTION TO SUBMIT DEFENDANT PCIBANK's COUNTERCLAIM FOR DECISION, dated September 7, 1987:

(1) The motion to dismiss is granted; and the instant case is hereby ordered dismissed pursuant to Sec. 3, Rule 17 of the Revised Rules of Court, plaintiff having failed to comply with the order dated July 16, 1987, and having not taken further steps to prosecute the case; and

(2) The motion to submit said defendant's counterclaim for decision is denied; there is no need; said counterclaim is likewise dismissed under the authority of Dalman *vs.* City Court of Dipolog City, L-63194, January 21, 1985, wherein the Supreme Court stated that if the civil case is dismissed, so also is the counterclaim filed therein. "A person cannot eat his cake and have it at the same time" (p. 645, record, Vol. I).[10]

The motions for reconsideration filed by the consortium were, likewise, denied by the trial court in its order dated 20 May 1988:

The Court could have stood pat on its order dated 25 March 1988, in regard to which the defendants-banks concerned filed motions for reconsideration. However, inasmuch as plaintiffs commented on said motions that: "3). In any event, so as not to unduly foreclose on the rights of the respective parties to refile and prosecute their respective

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[9] *Rollo* of G.R. No. 112438-39, p. 76; Record of CA-G.R. CV No. 26511, pp. 641-642.

[10] *Ibid.*

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causes of action, plaintiffs manifest their conformity to the modification of this Honorable Court's order to indicate that the dismissal of the complaint and the counterclaims is without prejudice." (p. 2, plaintiffs' COMMENT etc. dated May 20, 1988). The Court is inclined to so modify the said order.

WHEREFORE, the order issued on March 25, 1988, is hereby modified in the sense that the dismissal of the complaint as well as of the counterclaims of defendants RCBC, LBP, PCIB and BPI shall be considered without prejudice (p. 675, record, Vol. I).[11]

Unsatisfied with the aforementioned order, the consortium appealed to the Court of Appeals, docketed as CA-G.R. CV No. 20467.

On 17 January 1989 during the pendency of consortium's appeal in CA-G.R. CV No. 20467, Antonio Garcia and the consortium entered into a Compromise Agreement which the Court of Appeals approved on 22 May 1989 and became the basis of its judgment by compromise. Antonio Garcia was dropped as a party to the appeal leaving the consortium to proceed solely against Dynetics, Inc.[12] On 27 June 1989, entry of judgment was made by the Clerk of Court.[13]

Hereunder quoted are the salient portions of said compromise agreement:

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3. Defendants, in consideration of avoiding an extended litigation, having agreed to limit their claim against plaintiff Antonio M. Garcia to a principal sum of P145 Million immediately demandable and to waive all other claims to interest, penalties, attorney's fees and other charges. The aforesaid compromise amount of indebtedness of P145 Million shall earn interest of eighteen percent (18%) from the date of this Compromise.

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[11] *Ibid.*

[12] *Rollo* of G.R. No. 113394, p. 61.

[13] *Rollo* of G.R. Nos. 112438-39, p. 79.

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4. Plaintiff Antonio M. Garcia and herein defendants have no further claims against each other.

5. This Compromise shall be without prejudice to such claims as the parties herein may have against plaintiff Dynetics, Inc.

6. Plaintiff Antonio M. Garcia shall have two (2) months from date of this Compromise within which to work for the entry and participation of his other creditor, Security Bank and Trust Co., into this Compromise. Upon the expiration of this period, without Security Bank and Trust Co. having joined, this Compromise shall be submitted to the Court for its information and approval (pp. 27, 28-31, *rollo*, CA-G.R. CV No. 10467).[14]

It appears that on 15 July 1988, Antonio Garcia under a Deed of Sale transferred to Ferro Chemicals, Inc. (FCI) the disputed shares and other properties for P79,207,331.28. It was agreed upon that part of the purchase price shall be paid by FCI directly to SBTC for whatever judgment credits that may be adjudged in the latter's favor and against Antonio Garcia in the aforementioned SBTC case.[15]

On 6 March 1989, FCI, through its President Antonio M. Garcia, issued a Bank of America Check No. 860114 in favor of SBTC in the amount of P35,462,869.62.[16] SBTC refused to accept the check claiming that the amount was not sufficient to discharge the debt. The check was thus consigned by Antonio Garcia and Dynetics with the Regional Trial Court as payment of their judgment debt in the SBTC case.[17]

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[14] *Id.*, at 78-79.

[15] *Id.*, at 321-322.

[16] *Id.*, at 28.

[17] *Id.*, at 379 and 421. On 24 November 1988, the Supreme Court promulgated its decision affirming the decisions of the Court of Appeals and the Regional Trial Court in the SBTC case ordering Garcia, et al. to pay their obligations to SBTC except the penalty charges which were stricken from the judgment. See 167 SCRA 815 (1988).

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On 26 June 1989, FCI assigned its 4,119,614 shares in Chemphil, which included the disputed shares, to petitioner CEIC. The shares were registered and recorded in the corporate books of Chemphil in CEIC's name and the corresponding stock certificates were issued to it.[18]

Meanwhile, Antonio Garcia, in the consortium case, failed to comply with the terms of the compromise agreement he entered into with the consortium on 17 January 1989. As a result, on 18 July 1989, the consortium filed a motion for execution which was granted by the trial court on 11 August 1989. Among Garcia's properties that were levied upon on execution were his 1,717,678 shares in Chemphil (the disputed shares) previously garnished on 19 July 1985.[19]

On 22 August 1989, the consortium acquired the disputed shares of stock at the public auction sale conducted by the sheriff for P85,000,000.00.[20] On the same day, a Certificate of Sale covering the disputed shares was issued to it.

On 30 August 1989,[21] the consortium filed a motion (dated 29 August 1989) to order the corporate secretary of Chemphil to enter in its stock and transfer books the sheriff's certificate of sale dated 22 August 1989, and to issue new certificates of stock in the name of the banks concerned. The trial court granted said motion in its order dated 4 September 1989, thus:

For being legally proper, defendant's MOTION TO ORDER THE CORPORATE SECRETARY OF CHEMICAL INDUSTRIES OF THE PHILS., INC. (CHEMPHIL) TO ENTER IN THE STOCK AND TRANSFER BOOKS OF CHEMPHIL THE SHERIFF'S CERTIFICATE OF SALE DATED AUGUST 22, 1989 AND TO ISSUE NEW CERTIFICATES OF STOCK IN

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[18] *Id.*, at 28-29.

[19] *Id.*, at 79; Record of CA-G.R. CV No. 26511, pp. 325-326.

[20] *Ibid.*; *Id.*, at 66-67.

[21] Record of CA-G.R. CV No. 26511, pp. 62-65.

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THE NAME OF THE DEFENDANT BANKS, dated August 29, 1989, is hereby granted.

WHEREFORE, the corporate secretary of the aforesaid corporation, or whoever is acting for and in his behalf, is hereby ordered to (1) record and/or register the Certificate of Sale dated August 22, 1989 issued by Deputy Sheriff Cristobal S. Jabson of this Court; (2) to cancel the certificates of stock of plaintiff Antonio M. Garcia and all those which may have subsequently been issued in replacement and/or in substitution thereof; and (3) to issue in lieu of the said shares new shares of stock in the name of the defendant Banks, namely, PCIB, BPI, RCBC, LBP and PISO bank in such proportion as their respective claims would appear in this suit (p. 82, record, Vol. II).[22]

On 26 September 1989, CEIC filed a motion to intervene (dated 25 September 1989) in the consortium case seeking the recall of the above-mentioned order on grounds that it is the rightful owner of the disputed shares.[23] It further alleged that the disputed shares were previously owned by Antonio M. Garcia but subsequently sold by him on 15 July 1988 to Ferro Chemicals, Inc. (FCI) which in turn assigned the same to CEIC in an agreement dated 26 June 1989.

On 27 September 1989, the trial court granted CEIC's motion allowing it to intervene, but limited only to the incidents covered by the order dated 4 September 1989. In the same order, the trial court directed Chemphil's corporate secretary to temporarily refrain from implementing the 4 September 1989 order.[24]

On 2 October 1989, the consortium filed their opposition to CEIC's motion for intervention alleging that their attachment lien over the disputed shares of stocks must prevail over the private sale in favor of the CEIC considering that said shares of stock were garnished in the consortium's favor as early as 19 July 1985.[25]

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[22] *Rollo* of G.R. Nos. 112438-39, pp. 79-80; *Id.*, at 82.

[23] *Id.*, at 80; *Id.*, at 83-87.

[24] *Id.*, at 80; *Rollo* of G.R. No. 113394, p. 62.

[25] Record of CA-G.R. CV No. 26511, pp. 102-106.

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On 4 October 1989, the consortium filed their opposition to CEIC's motion to set aside the 4 September 1989 order and moved to lift the 27 September 1989 order.[26]

On 12 October 1989, the consortium filed a manifestation and motion to lift the 27 September 1989 order, to reinstate the 4 September 1989 order and to direct CEIC to surrender the disputed stock certificates of Chemphil in its possession within twenty-four (24) hours, failing in which the President, Corporate Secretary and stock and transfer agent of Chemphil be directed to register the names of the banks making up the consortium as owners of said shares, sign the new certificates of stocks evidencing their ownership over said shares and to immediately deliver the stock certificates to them.[27]

Resolving the foregoing motions, the trial court rendered an order dated 19 December 1989, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Urgent Motion dated September 25, 1989 filed by CEIC is hereby GRANTED. Accordingly, the Order of September 4, 1989, is hereby SET ASIDE, and any and all acts of the Corporate Secretary of CHEMPHIL and/or whoever is acting for and in his behalf, as may have already been done, carried out or implemented pursuant to the Order of September 4, 1989, are hereby nullified.

PERFORCE, the CONSORTIUM'S Motions dated October 3, 1989 and October 11, 1989, are both hereby denied for lack of merit.

The Cease and Desist Order dated September 27, 1989, is hereby AFFIRMED and made PERMANENT.

SO ORDERED.[28]

In so ruling, the trial court ratiocinated in this wise:

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[26] *Rollo* of G.R. Nos. 112438-39, p. 80; *Id.*, at 123.

[27] *Id.*, at 80-81; *Id.*, at 131-135.

[28] *Rollo* of G.R. No. 113394, p. 62.

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After careful and assiduous consideration of the facts and applicable law and jurisprudence, the Court holds that CEIC's Urgent Motion to Set Aside the Order of September 4, 1989 is impressed with merit. The CONSORTIUM has admitted that the writ of attachment/ garnishment issued on July 19, 1985 on the shares of stock belonging to plaintiff Antonio M. Garcia was not annotated and registered in the stock and transfer books of CHEMPHIL. On the other hand, the prior attachment issued in favor of SBTC on July 2, 1985 by Branch 135 of this Court in Civil Case No. 10398, against the same CHEMPHIL shares of Antonio M. Garcia, was duly registered and annotated in the stock and transfer books of CHEMPHIL. The matter of non-recording of the Consortium's attachment in Chemphil's stock and transfer book on the shares of Antonio M. Garcia assumes significance considering CEIC's position that FCI and later CEIC acquired the CHEMPHIL shares of Antonio M. Garcia without knowledge of the attachment of the CONSORTIUM. This is also important as CEIC claims that it has been subrogated to the rights of SBTC since CEIC's predecessor-in-interest, the FCI, had paid SBTC the amount of P35,462,869.12 pursuant to the Deed of Sale and Purchase of Shares of Stock executed by Antonio M. Garcia on July 15, 1988. By reason of such payment, sale with the knowledge and consent of Antonio M. Garcia, FCI and CEIC, as party-in-interest to FCI, are subrogated by operation of law to the rights of SBTC. The Court is not unaware of the citation in CEIC's reply that "as between two (2) attaching creditors, the one whose claims was first registered on the books of the corporation enjoy priority." (Samahang Magsasaka, Inc. *vs.* Chua Gan, 96 Phil. 974.)

The Court holds that a levy on the shares of corporate stock to be valid and binding on third persons, the notice of attachment or garnishment must be registered and annotated in the stock and transfer books of the corporation, more so when the shares of the corporation are listed and traded in the stock exchange, as in this case. As a matter of fact, in the CONSORTIUM's motion of August 30, 1989, they specifically move to "order the Corporate Secretary of CHEMPHIL to *enter in the stock and transfer books of CHEMPHIL* the Sheriff's Certificate of Sale dated August 22, 1989." This goes to show that, contrary to the arguments of the

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CONSORTIUM, in order that attachment, garnishment and/or encumbrances affecting rights and ownership on shares of a corporation to be valid and binding, the same has to be recorded in the stock and transfer books.

Since neither CEIC nor FCI had notice of the CONSORTIUM's attachment of July 19, 1985, CEIC's shares of stock in CHEMPHIL, legally acquired from Antonio M. Garcia, cannot be levied upon in execution to satisfy his judgment debts. At the time of the Sheriff's levy on execution, Antonio M. Garcia has no more shares in CHEMPHIL which could be levied upon.[29]

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On 23 January 1990, the consortium and PCIB filed separate motions for reconsideration of the aforestated order which were opposed by petitioner CEIC.[30]

On 5 March 1990, the trial court denied the motions for reconsideration.[31]

On 16 March 1990, the consortium appealed to the Court of Appeals (CA-G.R. No. 26511). In its Resolution dated 9 August 1990, the Court of Appeals consolidated CA-G.R. No. 26511 with CA-G.R. No. 20467.[32]

The issues raised in the two cases, as formulated by the Court of Appeals, are as follows:

I

WHETHER OR NOT, UNDER THE PECULIAR CIRCUMSTANCES OF THE CASE, THE TRIAL COURT ERRED IN DISMISSING THE COUNTERCLAIMS OF THE CONSORTIUM IN CIVIL CASE NO. 8527;

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[29] Order of the Regional Trial Court of Makati, Metro Manila, Branch 45, dated 19 December 1989, pp. 4-5.

[30] *Rollo* of G.R. Nos. 112438-39, p. 86.

[31] *Rollo* of G.R. No. 113394, p. 62.

[32] *Ibid.*

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II

WHETHER OR NOT THE DISMISSAL OF CIVIL CASE NO. 8527 RESULTED IN THE DISCHARGE OF THE WRIT OF ATTACHMENT ISSUED THEREIN EVEN AS THE CONSORTIUM APPEALED THE ORDER DISMISSING CIVIL CASE NO. 8527;

III

WHETHER OR NOT THE JUDGMENT BASED ON COMPROMISE RENDERED BY THIS COURT ON MAY 22, 1989 HAD THE EFFECT OF DISCHARGING THE ATTACHMENTS ISSUED IN CIVIL CASE NO. 8527;

IV

WHETHER OR NOT THE ATTACHMENT OF SHARES OF STOCK, IN ORDER TO BIND THIRD PERSONS, MUST BE RECORDED IN THE STOCK AND TRANSFER BOOK OF THE CORPORATION; AND

V

WHETHER OR NOT FERRO CHEMICALS, INC. (FCI), AND ITS SUCCESSOR-IN-INTEREST, CEIC, WERE SUBROGATED TO THE RIGHTS OF SECURITY BANK & TRUST COMPANY (SBTC) IN A SEPARATE CIVIL ACTION. (This issue appears to be material as SBTC is alleged to have obtained an earlier attachment over the same Chemphil shares that the consortium seeks to recover in the case at bar).[33]

On 6 April 1990, the PCIB separately filed with the Court of Appeals a petition for certiorari, prohibition and mandamus with a prayer for the issuance of a writ of preliminary injunction (CA-G.R. No. SP-20474), likewise, assailing the very same orders dated 19 December 1989 and 5 March 1990, subject of CA-G.R. No. 26511.[34]

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[33] *Rollo* of G.R. Nos. 112438-39, p. 87.

[34] *Rollo* of G.R. No. 113394, p. 62.

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On 30 June 1993, the Court of Appeals (Twelfth Division) in CA-G.R. No. 26511 and CA-G.R. No. 20467 rendered a decision reversing the orders of the trial court and confirming the ownership of the consortium over the disputed shares. CEIC's motion for reconsideration was denied on 29 October 1993.[35]

In ruling for the consortium, the Court of Appeals made the following ratiocination:[36]

On the first issue, it ruled that the evidence offered by the consortium in support of its counterclaims, coupled with the failure of Dynetics and Garcia to prosecute their case, was sufficient basis for the RTC to pass upon and determine the consortium's counterclaims.

The Court of Appeals found no application for the ruling in Dalman *v.* City Court of Dipolog, 134 SCRA 243 (1985) that "a person cannot eat his cake and have it at the same time. If the civil case is dismissed, so also is the counterclaim filed therein" because the factual background of the present action is different. In the instant case, both Dynetics and Garcia and the consortium presented testimonial and documentary evidence which clearly should have supported a judgment on the merits in favor of the consortium. As the consortium correctly argued, the net atrocious effect of the Regional Trial Court's ruling is that it allows a situation where a party litigant is forced to plead and prove compulsory counterclaims only to be denied those counterclaims on account of the adverse party's failure to prosecute his case. Verily, the consortium had no alternative but to present its counterclaims in Civil Case No. 8527 since its counterclaims are compulsory in nature.

On the second issue, the Court of Appeals opined that unless a writ of attachment is lifted by a special order specifically providing for the discharge thereof, or unless a case has been finally dismissed against the party in whose favor the attachment has been issued, the

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[35] *Rollo* of G.R. Nos. 112438-39, p. 381.

[36] *Id.*, at 87-93.

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attachment lien subsists. When the consortium, therefore, took an appeal from the Regional Trial Court's orders of March 25, 1988 and May 20, 1988, such appeal had the effect of preserving the consortium's attachment liens secured at the inception of Civil Case No. 8527, invoking the rule in *Olib v. Pastoral*, 188 SCRA 692 (1988) that where the main action is appealed, the attachment issued in the said main case is also considered appealed.

Anent the third issue, the compromise agreement between the consortium and Garcia dated 17 January 1989 did not result in the abandonment of its attachment lien over his properties. Said agreement was approved by the Court of Appeals in a Resolution dated 22 May 1989. The judgment based on the compromise agreement had the effect of preserving the said attachment lien as security for the satisfaction of said judgment (citing *BF Homes, Inc. v. CA*, 190 SCRA 262, [1990]).

As to the fourth issue, the Court of Appeals agreed with the consortium's position that the attachment of shares of stock in a corporation need not be recorded in the corporation's stock and transfer book in order to bind third persons.

Section 7(d), Rule 57 of the Rules of Court was complied with by the consortium (through the Sheriff of the trial court) when the notice of garnishment over the Chemphil shares of Garcia was served on the president of Chemphil on July 19, 1985. Indeed, to bind third persons, no law requires that an attachment of shares of stock be recorded in the stock and transfer book of a corporation. The statement attributed by the Regional Trial Court to the Supreme Court in Samahang Magsasaka, Inc. *vs.* Gonzalo Chua Guan, G.R. No. L-7252, February 25, 1955 (unreported), to the effect that "as between two attaching creditors, the one whose claim was registered first on the books of the corporation enjoys priority," is an *obiter dictum* that does not modify the procedure laid down in Section 7(d), Rule 57 of the Rules of Court.

Therefore, ruled the Court of Appeals, the attachment made over the Chemphil shares in the name of Garcia on July 19, 1985 was

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made in accordance with law and the lien created thereby remained valid and subsisting at the time Garcia sold those shares to FCI (predecessor-in-interest of appellee CEIC) in 1988.

Anent the last issue, the Court of Appeals rejected CEIC's subrogation theory based on Art. 1302 (2) of the New Civil Code stating that the obligation to SBTC was paid by Garcia himself and not by a third party (FCI).

The Court of Appeals further opined that while the check used to pay SBTC was a FCI corporate check, it was funds of Garcia in FCI that was used to pay off SBTC. That the funds used to pay off SBTC were funds of Garcia has not been refuted by FCI or CEIC. It is clear, therefore, that there was an attempt on the part of Garcia to use FCI and CEIC as convenient vehicles to deny the consortium its right to make itself whole through an execution sale of the Chemphil shares attached by the consortium at the inception of Civil Case No. 8527. The consortium, therefore, is entitled to the issuance of the Chemphil shares of stock in its favor. The Regional Trial Court's order of September 4, 1989, should, therefore, be reinstated *in toto*.

Accordingly, the question of whether or not the attachment lien in favor of SBTC in the SBTC case is superior to the attachment lien in favor of the consortium in Civil Case No. 8527 becomes immaterial with respect to the right of intervenor-appellee CEIC. The said issue would have been relevant had CEIC established its subrogation to the rights of SBTC.

On 26 March 1993, the Court of Appeals (Special Ninth Division) in CA-G.R. No. SP 20474 rendered a decision denying due course to and dismissing PCIB's petition for certiorari on grounds that PCIB violated the rule against forum-shopping and that no grave abuse of discretion was committed by respondent Regional Trial Court in issuing its assailed orders dated 19 December 1989

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and 5 March 1990. PCIB's motion for reconsideration was denied on 11 January 1994.[37]

On 7 July 1993, the consortium, with the exception of PISO, assigned without recourse all its rights and interests in the disputed shares to Jaime Gonzales.[38]

On 3 January 1994, CEIC filed the instant petition for review docketed as G.R. Nos. 112438-39 and assigned the following errors:

I.

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN SETTING ASIDE AND REVERSING THE ORDERS OF THE REGIONAL TRIAL COURT DATED DECEMBER 5, 1989 AND MARCH 5, 1990 AND IN NOT CONFIRMING PETITIONER'S OWNERSHIP OVER THE DISPUTED CHEMPHIL SHARES AGAINST THE FRIVOLOUS AND UNFOUNDED CLAIMS OF THE CONSORTIUM.

II.

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED:

> (1) In not holding that the Consortium's attachment over the disputed Chemphil shares did not vest any priority right in its favor and cannot bind third parties since admittedly its attachment on 19 July 1985 was not recorded in the stock and transfer books of Chemphil, and subordinate to the attachment of SBTC which SBTC registered and annotated in the stock and transfer books of Chemphil on 2 July 1985, and that the Consortium's attachment failed to comply with Sec. 7(d), Rule 57 of the Rules as evidenced by the notice of garnishment of the deputy sheriff of the trial court dated 19 July 1985 (Annex "D") which the sheriff served on a

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[37] *Rollo* of G.R. No. 113394, p. 63-65.

[38] *Rollo* of G.R. Nos. 112438-39, pp. 118-123.

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certain Thelly Ruiz who was neither President nor managing agent of Chemphil;

(2) In not applying the case law enunciated by this Honorable Supreme Court in Samahang Magsasaka, Inc. *vs.* Gonzalo Chua Guan, 96 Phil. 974 that as between two attaching creditors, the one whose claim was registered first in the books of the corporation enjoys priority, and which respondent Court erroneously characterized as mere *obiter dictum*;

(3) In not holding that the dismissal of the appeal of the Consortium from the order of the trial court dismissing its counterclaim against Antonio M. Garcia and the finality of the compromise agreement which ended the litigation between the Consortium and Antonio M. Garcia in the *Dynetics case* had *ipso jure* discharged the Consortium's purported attachment over the disputed shares.

III.

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT CEIC HAD BEEN SUBROGATED TO THE RIGHTS OF SBTC SINCE CEIC'S PREDECESSOR-IN-INTEREST HAD PAID SBTC PURSUANT TO THE DEED OF SALE AND PURCHASE OF STOCK EXECUTED BY ANTONIO M. GARCIA ON JULY 15, 1988, AND THAT BY REASON OF SUCH PAYMENT, WITH THE CONSENT AND KNOWLEDGE OF ANTONIO M. GARCIA, FCI AND CEIC, AS PARTY-IN-INTEREST TO FCI, WERE SUBROGATED BY OPERATION OF LAW TO THE RIGHTS OF SBTC.

IV.

THE RESPONDENT COURT OF APPEALS GRAVELY ERRED AND MADE UNWARRANTED INFERENCES AND CONCLUSIONS, WITHOUT ANY SUPPORTING EVIDENCE, THAT THERE WAS AN ATTEMPT ON THE PART OF ANTONIO M. GARCIA TO USE FCI AND CEIC AS CONVENIENT VEHICLES TO DENY THE CONSORTIUM ITS RIGHTS TO MAKE ITSELF WHOLE THROUGH AN

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EXECUTION OF THE CHEMPHIL SHARES PURPORTEDLY ATTACHED BY THE CONSORTIUM ON 19 JULY 1985.[39]

On 2 March 1994, PCIB filed its own petition for review docketed as G.R. No. 113394 wherein it raised the following issues:

I. RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR IN RENDERING THE DECISION AND RESOLUTION IN QUESTION (ANNEXES A AND B) IN DEFIANCE OF LAW AND JURISPRUDENCE BY FINDING RESPONDENT CEIC AS HAVING BEEN SUBROGATED TO THE RIGHTS OF SBTC BY THE PAYMENT BY FCI OF GARCIA'S DEBTS TO THE LATTER DESPITE THE FACT THAT—

A. FCI PAID THE SBTC DEBT BY VIRTUE OF A CONTRACT BETWEEN FCI AND GARCIA, THUS, LEGAL SUBROGATION DOES NOT ARISE;

B. THE SBTC DEBT WAS PAID BY GARCIA HIMSELF AND NOT BY FCI, HENCE, SUBROGATION BY PAYMENT COULD NOT HAVE OCCURRED;

C. FCI DID NOT ACQUIRE ANY RIGHT OVER THE DISPUTED SHARES AS SBTC HAD NOT YET LEVIED UPON NOR BOUGHT THOSE SHARES ON EXECUTION. ACCORDINGLY, WHAT FCI ACQUIRED FROM SBTC WAS SIMPLY A JUDGMENT CREDIT AND AN ATTACHMENT LIEN TO SECURE ITS SATISFACTION.

II. RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR IN SUSTAINING THE ORDERS OF THE TRIAL COURT DATED DECEMBER 19, 1989 AND MARCH 5, 1990 WHICH DENIED PETITIONER'S OWNERSHIP OVER THE DISPUTED SHARES NOTWITHSTANDING PROVISIONS OF LAW AND EXTANT JURISPRUDENCE ON THE MATTER THAT PETITIONER AND THE CONSORTIUM HAVE PREFERRED SENIOR RIGHTS THEREOVER.

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[39] *Id.*, at 44-46.

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III. RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR IN CONCLUDING THAT THE DISMISSAL OF THE COMPLAINT AND THE COUNTERCLAIM IN CIVIL CASE NO. 8527 ALSO RESULTED IN THE DISCHARGE OF THE WRIT OF ATTACHMENT DESPITE THE RULINGS OF THIS HONORABLE COURT IN *BF HOMES VS. COURT OF APPEALS*, G.R. NOS. 76879 AND 77143, OCTOBER 3, 1990, 190 SCRA 262, AND IN *OLIB VS. PASTORAL*, G.R. NO. 81120, AUGUST 20, 1990, 188 SCRA 692 TO THE CONTRARY.

IV. RESPONDENT COURT OF APPEALS EXCEEDED ITS JURISDICTION IN RULING ON THE MERITS OF THE MAIN CASE NOTWITHSTANDING THAT THOSE MATTERS WERE NOT ON APPEAL BEFORE IT.

V. RESPONDENT COURT OF APPEALS COMMITTED SERIOUS ERROR IN HOLDING THAT PETITIONER IS GUILTY OF FORUM SHOPPING DESPITE THE FACT THAT SC CIRCULAR NO. 28-91 WAS NOT YET IN FORCE AND EFFECT AT THE TIME THE PETITION WAS FILED BEFORE RESPONDENT APPELLATE COURT, AND THAT ITS COUNSEL AT THAT TIME HAD ADEQUATE BASIS TO BELIEVE THAT CERTIORARI AND NOT AN APPEAL OF THE TRIAL COURT'S ORDERS WAS THE APPROPRIATE RELIEF.[40]

As previously stated, the issue boils down to who is legally entitled to the disputed shares of Chemphil. We shall resolve this controversy by examining the validity of the claims of each party and, thus, determine whose claim has priority.

CEIC's claim

CEIC traces its claim over the disputed shares to the attachment lien obtained by SBTC on 2 July 1985 against Antonio Garcia in Civil Case No. 10398. It avers the when FCI, CEIC's predecessor-in-interest, paid SBTC the due obligations of Garcia to the said bank pursuant to the Deed of Absolute Sale and Purchase of

[40] *Rollo* of G.R. No. 113394, p. 28-29.

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Shares of Stock,[41] FCI, and later CEIC, was subrogated to the rights of SBTC, particularly to the latter's aforementioned attachment lien over the disputed shares.

CEIC argues that SBTC's attachment lien is superior as it was obtained on 2 July 1985, ahead of the consortium's purported attachment on 19 July 1985. More importantly, said CEIC lien was duly recorded in the stock and transfer books of Chemphil.

CEIC's subrogation theory is unavailing.

By definition, subrogation is "the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights. It may either be legal or conventional. Legal subrogation is that which takes place without agreement but by operation of law because of certain acts; this is the subrogation referred to in Article 1302. Conventional subrogation is that which takes place by agreement of the parties. . ."[42]

CEIC's theory is premised on Art. 1302(2) of the Civil Code which states:

Art. 1302. It is presumed that there is legal subrogation:

(1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;

(2) *When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor*;

(3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share. (Italics supplied.)

Despite, however, its multitudinous arguments, CEIC presents an erroneous interpretation of the concept of subrogation. An analysis

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[41] Entered into by and between Antonio Garcia and Ferro Chemicals, Inc. on 15 July 1988, *Rollo* of G.R. Nos. 112438-39, pp. 320-323.

[42] Tolentino, Arturo M., Commentaries & Jurisprudence on the Civil Code of the Philippines, Volume IV, pp. 401-402.

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of the situations involved would reveal the clear inapplicability of Art. 1302(2).

Antonio Garcia sold the disputed shares to FCI for a consideration of P79,207,331.28. FCI, however, did not pay the entire amount to Garcia as it was obligated to deliver part of the purchase price directly to SBTC pursuant to the following stipulation in the Deed of Sale:

Manner of Payment

Payment of the Purchase Price shall be made in accordance with the following order of preference provided that in no instance shall the total amount paid by the Buyer exceed the Purchase Price:

> a. *Buyer shall pay directly to the Security Bank and Trust Co. the amount determined by the Supreme Court as due and owing in favor of the said bank by the Seller.*
>
> The foregoing amount shall be paid within fifteen (15) days from the date the decision of the Supreme Court in the case entitled "Antonio M. Garcia, et al. *vs.* Court of Appeals, et al." G.R. Nos. 82282-83 becomes final and executory.[43] (Italics supplied.)

Hence, when FCI issued the BA check to SBTC in the amount of P35,462,869.62 to pay Garcia's indebtedness to the said bank, it was in effect paying with Garcia's money, no longer with its own, because said amount was part of the purchase price which FCI *owed* Garcia in payment for the sale of the disputed shares by the latter to the former. The money "paid" by FCI to SBTC, thus properly belonged to Garcia. It is as if Garcia himself paid his own debt to SBTC but through a third party — FCI.

It is, therefore, of no consequence that what was used to pay SBTC was a corporate check of FCI. As we have earlier stated, said check no longer represented FCI funds but Garcia's money, being as it was part of FCI's payment for the acquisition of the

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[43] *Rollo* of G.R. Nos. 112438-39, pp. 409-410. See note 17.

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disputed shares. The FCI check should not be taken at face value, the attendant circumstances must also be considered.

The aforequoted contractual stipulation in the Deed of Sale dated 15 July 1988 between Antonio Garcia and FCI is nothing more but an arrangement for the sake of convenience. Payment was to be effected in the aforesaid manner so as to prevent money from changing hands needlessly. Besides, the very purpose of Garcia in selling the disputed shares and his other properties was to "settle certain civil suits filed against him."[44]

Since the money used to discharge Garcia's debt rightfully belonged to him, FCI considered a third party payor under Art. 1302 (2). It was but a conduit, or as aptly categorized by respondents, merely an agent as defined in Art. 1868 of the Civil Code:

Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

FCI was merely fulfilling its obligation under the aforementioned Deed of Sale.

Additionally, FCI is not a disinterested party as required by Art. 1302(2) since the benefits of the extinguishment of the obligation would redound to none other but itself.[45] Payment of the judgment debt to SBTC resulted in the discharge of the attachment lien on the disputed shares purchased by FCI. The latter would then have a free and "clean" title to said shares.

In sum, CEIC, for its failure to fulfill the requirements of Art. 1302 (2), was not subrogated to the rights of SBTC against Antonio Garcia and did not acquire SBTC's attachment lien over the disputed shares which, in turn, had already been lifted or discharged upon satisfaction by Garcia, through FCI, of his debt to the said bank.[46]

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[44] *Id.* at 409.

[45] Tolentino, *supra*, pp. 403-404.

[46] BF Homes, Inc. *v.* CA (190 SCRA 262 [1990]); Francisco, Vicente, The Revised Rules of Court in the Philippines. Provisional Remedies, 2nd ed. 1985, p. 136.

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The rule laid down in the case of *Samahang Magsasaka, Inc. v. Chua Guan*,[47] that as between two attaching creditors the one whose claim was registered ahead on the books of the corporation enjoys priority, clearly has no application in the case at bench. As we have amply discussed, since CEIC was not subrogated to SBTC's right as attaching creditor, which right in turn, had already terminated after Garcia paid his debt to SBTC, it cannot, therefore, be categorized as an attaching creditor in the present controversy. CEIC cannot resurrect and claim a right which no longer exists. The issue in the instant case, then, is priority between an attaching creditor (the consortium) and a purchaser (FCI/CEIC) of the disputed shares of stock and *not* between two attaching creditors — the subject matter of the aforestated Samahang Magsasaka case.

CEIC, likewise, argues that the consortium's attachment lien over the disputed Chemphil shares is null and void and not binding on third parties due to the latter's failure to register said lien in the stock and transfer books of Chemphil as mandated by the rule laid down by the Samahang Magsasaka *v.* Chua Guan.[48]

The attachment lien acquired by the consortium is valid and effective. Both the Revised Rules of Court and the Corporation Code do not require annotation in the corporation's stock and transfer books for the attachment of shares of stock to be valid and binding on the corporation and third party.

Section 74 of the Corporation Code which enumerates the instances where registration in the stock and transfer books of a corporation provides:

Sec. 74. Books to be kept; stock transfer agent. —

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Stock corporations must also keep a book to be known as the stock and transfer book, in which must be kept a record of all

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[47] 96 Phil. 974.

[48] *Rollo* of G.R. Nos. 112438-39, pp. 49-50.

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stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and the date of payment of any settlement; *a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom made*; and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open for inspection by any director or stockholder of the corporation at reasonable hours on business days. (Italics supplied.)

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Section 63 of the same Code states:

SEC. 63. *Certificate of stock and transfer of shares.* — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. *Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.*

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. (Italics supplied.)

Are attachments of shares of stock included in the term "transfer" as provided in Sec. 63 of the Corporation Code? We rule in the negative. As succinctly declared in the case of *Monserrat v. Ceron*,[49] "chattel mortgage over shares of stock need not be

[49] 58 Phil. 469 (1933).

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registered in the corporation's stock and transfer book inasmuch as chattel mortgage over shares of stock does not involve a "transfer of shares," and that only absolute transfers of shares of stock are required to be recorded in the corporation's stock and transfer book in order to have "force and effect as against third persons."

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The word "transferencia" (transfer) is defined by the "Diccionario de la Academia de la Lengua Castellana" as "accion y efecto de transfeir" (the act and effect of transferring); and the verb "transferir," as "ceder or renunciar en otro el derecho o dominio que se tiene sobre una cosa, haciendole dueno de ella" (to assign or waive the right in, or absolute ownership of, a thing in favor of another, making him the owner thereof).

In the Law Dictionary of "Words and Phrases," third series, volume 7, p. 5867, the word "transfer" is defined as follows:

> "Transfer" means any act by which property of one person is vested in another, and "transfer of shares," as used in Uniform Stock Transfer Act (Comp. St. Supp. 690), implies any means whereby one may be divested of and another acquire ownership of stock. (Wallach *vs.* Stein [N.J.], 136 A., 209, 210.)"

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In the case of Noble *vs.* Ft. Smith Wholesale Grocery Co. (127 Pac., 14, 17; 34 Okl., 662; 46 L.R.A. [N.S.], 455), cited in Words and Phrases, second series, vol. 4, p. 978, the following appears:

> "A 'transfer' is the act by which the owner of a thing delivers it to another with the intent of passing the rights which he has in it to the latter, and a chattel mortgage is not within the meaning of such term."

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Although the *Monserrat* case refers to a chattel mortgage over shares of stock, the same may be applied to the attachment of the

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[50] *Ibid.*

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disputed shares of stock in the present controversy since an attachment does not constitute an absolute conveyance of property but is primarily used as a means "to seize the debtor's property in order to secure the debt or claim of the creditor in the event that a judgment is rendered."[51]

Known commentators on the Corporation Code expound, thus:

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Shares of stock being personal property, may be the subject matter of pledge and chattel mortgage. Such *collateral transfers* are however not covered by the registration requirement of Section 63, since our Supreme Court has held that such provision applies only to absolute transfers thus, the registration in the corporate books of pledges and chattel mortgages of shares cannot have any legal effect.[52] (Italics supplied.)

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The requirement that the transfer shall be recorded in the books of the corporation to be valid as against third persons has reference only to absolute transfers or absolute conveyance of the ownership or title to a share.

Consequently, the entry or notation on the books of the corporation of pledges and chattel mortgages on shares is not necessary to their validity (although it is advisable to do so) since they do not involve absolute alienation of ownership of stock (Monserrat *vs.* Ceron, 58 Phil. 469 [1933]; Chua Guan *vs.* Samahang Magsasaka, Inc., 62 Phil. 472 [1935].) To affect third persons, it is enough that the date and description of the shares pledged appear in a public instrument. (Art. 2096, Civil Code.) With respect to a chattel mortgage constituted on shares of stock, what is necessary is its registration in the Chattel Mortgage Registry. (Act No. 1508 and Art. 2140, Civil Code.)[53]

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[51] Black's Law Dictionary, Fifth edition.

[52] Campos, Jr., Jose C. and Campos, Maria Clara, The Corporation Code, Comments, Notes and Selected Cases, Vol. 2, 1990 ed., p. 360.

[53] De Leon, Hector S., The Corporation Code of the Philippines, Annotated, 1993, p. 490.

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CEIC's reliance on the Samahang Magsasaka case is misplaced. Nowhere in the said decision was it categorically stated that annotation of the attachment in the corporate books is mandatory for its validity and for the purpose of giving notice to third persons.

The only basis, then, for petitioner CEIC's claim is the Deed of Sale under which it purchased the disputed shares. It is, however, a settled rule that a purchaser of attached property acquires it subject to an attachment legally and validly levied thereon.[54]

Our corollary inquiry is whether or not the consortium has indeed a prior valid and existing attachment lien over the disputed shares.

Jaime Gonzales'/Consortium's Claim

Is the consortium's attachment lien over the disputed shares valid?

CEIC vigorously argues that the consortium's writ of attachment over the disputed shares of Chemphil is null and void, insisting as it does, that the notice of garnishment was not validly served on the designated officers on 19 July 1985.

To support its contention, CEIC presented the sheriff's notice of garnishment[55] dated 19 July 1985 which showed on its face that said notice was received by one Thelly Ruiz who was neither the president nor managing agent of Chemphil. It makes no difference, CEIC further avers, that Thelly Ruiz was the secretary of the president of Chemphil, for under the above-quoted provision she is not among the officers so authorized or designated to be served with the notice of garnishment.

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[54] Francisco, Vicente, The Revised Rules of Court in the Philippines, *supra*, pp. 77, 85; *Santos v. Aquino* (205 SCRA 127 [1992]); *Joaquin v. Arellano*, 6 Phil. 551; *Yambao v. Po Juat Suy*, 52 Phil. 237; *Gov't. v. Absalle*, 60 Phil. 986; *Vargas v. Francisco*, 67 Phil. 308; *Chunaco v. Alano*, L-4046, Jan. 23, 1952.

[55] *Rollo* of G.R. Nos. 112438-39, p. 124.

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We cannot subscribe to such a narrow view of the rule on proper service of writs of attachment.

A secretary's major function is to assist his or her superior. He/she is in effect an extension of the latter. Obviously, as such, one of her duties is to receive letters and notices for and in behalf of her superior, as in the case at bench. The notice of garnishment was addressed to and was actually received by Chemphil's president through his secretary who formally received it for him. Thus, in one case,[56] we ruled that the secretary of the president may be considered an "agent" of the corporation and held that service of summons on him is binding on the corporation.

Moreover, the service and receipt of the notice of garnishment on 19 July 1985 was duly acknowledged and confirmed by the corporate secretary of Chemphil, Rolando Navarro and his successor Avelino Cruz through their respective certifications dated 15 August 1989[57] and 21 August 1989.[58]

We rule, therefore, that there was substantial compliance with Sec. 7(d), Rule 57 of the Rules of Court.

Did the compromise agreement between Antonio Garcia and the consortium discharge the latter's attachment lien over the disputed shares?

CEIC argues that a writ of attachment is a mere auxiliary remedy which, upon the dismissal of the case, dies a natural death. Thus, when the consortium entered into a compromise agreement,[59] which

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[56] *Summit Trading & Dev. Corp. v. Avendano* (135 SCRA 397 [1985]).

[57] Annex 8, *Rollo* of G.R. Nos. 112438-39, pp. 447-449.

[58] Annex 9, *Id.*, at 450.

[59] Art. 2028 of the Civil Code defines a compromise agreement as follows:

Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

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resulted in the termination of their case, the disputed shares were released from garnishment.

We disagree. To subscribe to CEIC's contentions would be to totally disregard the concept and purpose of a preliminary attachment.

A writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the Sheriff *as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant.*[60] (Italics supplied.)

Attachment is a juridical institution *which has for its purpose to secure the outcome of the trial, that is, the satisfaction of the pecuniary obligation* really contracted by a person or believed to have been contracted by him, either by virtue of a civil obligation emanating from contract or from law, or by virtue of some crime or misdemeanor that he might have committed, and the writ issued, granted it, is executed by attaching and safely keeping all the movable property of the defendant, or so much thereof as may be sufficient to satisfy the plaintiff's demands x x x.[61] (Italics supplied.)

The chief purpose of the remedy of attachment *is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction*, or to make some provision for unsecured debts in cases where 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.[62] (Italics supplied.)

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[60] Herrera, Oscar, Remedial Law, Vol. 3, p. 1, citing *Adlawan v. Tomol*, G.R. No. 63225, 3 April 1990.

[61] *Id.* citing *Guzman v. Catolico* (65 Phil. 257); *Grauenberg v. CA* (138 SCRA 471).

[62] *Id.* citing *Salgado v. CA* (128 SCRA 395).

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We reiterate the rule laid down in *BF Homes, Inc. v. CA*[63] that an attachment lien continues 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 the same manner provided by law. We expounded in said case that:

> 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.
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As we ruled in Government of the Philippine Islands *v.* Mercado:

> 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

[63] 190 SCRA 262 (1990).

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> 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. (*Corpus Juris Secundum*, 433, and authorities therein cited.)
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The case at bench admits of a peculiar character in the sense that it involves a compromise agreement. Nonetheless, the rule established in the aforequoted cases still applies, even more so since the terms of the agreement have to be complied with in full by the parties thereto. The parties to the compromise agreement should not be deprived of the protection provided by an attachment lien especially in an instance where one reneges on his obligations under the agreement, as in the case at bench, where Antonio Garcia failed to hold up his own end of the deal, so to speak.

Moreover, a violation of the terms and conditions of a compromise agreement entitles the aggrieved party to a writ of execution.

In *Abenojar & Tana v. CA, et al.*,[64] we held:

The non-fulfillment of the terms and conditions of a compromise agreement approved by the Court justifies execution thereof and the issuance of the writ for said purpose is the Court's ministerial duty enforceable by mandamus.

Likewise we ruled in *Canonizado v. Benitez*:[65]

A judicial compromise may be enforced by a writ of execution. If a party fails or refuses to abide by the compromise, the other party may enforce the compromise or regard it as rescinded and insist upon his original demand.

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[64] G.R. No. 104133, 18 April 1995.

[65] 127 SCRA 610 (1984).

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If we were to rule otherwise, we would in effect create a back door by which a debtor can easily escape his creditors. Consequently, we would be faced with an anomalous situation where a debtor, in order to buy time to dispose of his properties, would enter into a compromise agreement he has no intention of honoring in the first place. The purpose of the provisional remedy of attachment would thus be lost. It would become, in analogy, a declawed and toothless tiger.

From the foregoing, it is clear that the consortium and/or its assignee Jaime Gonzales have the better right over the disputed shares. When CEIC purchased the disputed shares from Antonio Garcia on 15 July 1988, it took the shares subject to the prior valid and existing attachment lien in favor of and obtained by the consortium.

Forum Shopping in G.R. No. 113394

We uphold the decision of the Court of Appeals finding PCIB guilty of forum-shopping.[66]

The Court of Appeals opined:

True it is, that petitioner PCIB was not a party to the appeal made by the four other banks belonging to the consortium, but equally true is the rule that where the rights and liabilities of the parties appealing are so interwoven and dependent on each other as to be inseparable, a reversal of the appealed decision as to those who appealed, operates as a reversal to all and will inure to the benefit of those who did not join the appeal (Tropical Homes *vs*. Fortun, 169 SCRA 80, p. 90, citing Alling *vs*. Wenzel, 133 111. 264-278; 4 C.J. 1206). Such principal, premised upon communality of interest of the parties, is recognized in this jurisdiction (Director of Lands *vs*. Reyes, 69 SCRA 415). The four other banks which were part of the consortium, filed their notice of appeal under date of March 16, 1990, furnishing a copy thereof upon the lawyers of petitioner. The petition for certiorari in the present case was filed on April 10, 1990, long after

[66] Penned by Justice Ricardo P. Galvez, *Rollo* of G.R. No. 113394, p. 63.

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the other members of the consortium had appealed from the assailed order of December 19, 1989.

We view with skepticism PCIB's contention that it did not join the consortium because it "honestly believed that certiorari was the more efficacious and speedy relief available under the circumstances."[67] Rule 65 of the Revised Rules of Court is not difficult to understand. Certiorari is available only if there is no appeal or other plain, speedy and adequate remedy in the ordinary course of law. Hence, in instituting a separate petition for certiorari, PCIB has deliberately resorted to forum-shopping.

PCIB cannot hide behind the subterfuge that Supreme Court Circular 28-91 was not yet in force when it filed the certiorari proceedings in the Court of Appeals. The rule against forum-shopping has long been established.[68] Supreme Court Circular 28-91 merely formalized the prohibition and provided the appropriate penalties against transgressors.

It alarms us to realize that we have to constantly repeat our warning against forum-shopping. We cannot over-emphasize its ill-effects, one of which is aptly demonstrated in the case at bench where we are confronted with two divisions of the Court of Appeals issuing contradictory decisions[69] one in favor of CEIC and the other in favor of the consortium/Jaime Gonzales.

Forum-shopping or the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum (other than by appeal or the special civil action of certiorari), or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable

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[67] *Rollo* of G.R. No. 113394, p. 53.

[68] Rule 16, Sec. 1(e) and Rule 2, Sec. 4 of the Rules of Court; Villanueva *v.* Adre [172 SCRA 876 (1991)]; Buan *v.* Lopez, Jr. [145 SCRA 34 (1986)].

[69] Tan *v.* CA [199 SCRA 212 (1991)].

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disposition,[70] has been characterized as an act of malpractice that is prohibited and condemned as trifling with the Courts and abusing their processes. It constitutes improper conduct which tends to degrade the administration of justice. It has also been aptly described as deplorable because it adds to the congestion of the already heavily burdened dockets of the courts.[71]

WHEREFORE, premises considered the appealed decision in G.R. Nos. 112438-39 is hereby AFFIRMED and the appealed decision in G.R. No. 113394, insofar as it adjudged the CEIC the rightful owner of the disputed shares, is hereby REVERSED. Moreover, for wantonly resorting to forum-shopping, PCIB is hereby REPRIMANDED and WARNED that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Regalado, Davide, Jr., Romero, Bellosillo, Melo, Mendoza, Francisco, and *Hermosisima, Jr., JJ.*, concur.

Narvasa, C.J., Padilla, Puno, Vitug, and *Panganiban, JJ.*, took no part.

Feliciano, J., on official leave.

EN BANC

[G.R. No. 117487. December 12, 1995]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* ARNEL ALICANDO y BRIONES, *accused-appellant.*

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[70] Ortigas & Co. Limited partnership *v.* Veloso [123 SCRA 455 (1994)].

[71] Gabionza *v.* CA, 234 SCRA 192 (1994).