

[G.R. No. 3135. February 28, 1907]

**E. M. BACHRACH, PLAINTIFF AND APPELLANT, VS. JAMES J. PETERSON ET AL.,
DEFENDANTS, AND RUBERT & GUAMIS, INTERVENORS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

Prior to the 24th of August, 1904, plaintiff had delivered to Miss A. Hunter, who was then operating a hotel in the city of Manila, various articles of household furniture under contracts of different kinds. On the last-named date the plaintiff and Miss Hunter had a settlement of their affairs relating to this furniture and it was determined between them that the amount then due from her to him was 2,554.50 pesos; that is to say, that the value of all the furniture which she then had in her possession, less the amounts which she had paid thereon, together with other claims against her by the plaintiff, amounted to this sum of 2,554.50 pesos. On that day two contracts were made relating to the furniture then in her possession, and which had been delivered to her by the plaintiff. One of the contracts related to a piano and a piano stool, and the other to bedsteads, wardrobes, mattresses, and chairs. The contracts are of the same nature and they provide that Miss Hunter should pay a certain sum every month and that when the payments amounted to the value of the furniture, which value was stated in the agreement, the ownership and title to the property should pass to Miss Hunter, free from any claim thereto on the part of the plaintiff. Miss Hunter made some payments on the contracts after the 24th of August, and on the 8th day of October a new contract was made, by the terms of which she sold to the plaintiff a large amount of household furniture for the expressed consideration of 2,329.50 pesos. Included in the property sold by this agreement was the property described in the two contracts of August 24, 1904, and there was also included therein a large amount of other household furniture which it was proven was all of the property which Miss Hunter then had in the hotel in question.

The amount of 2,329.50 pesos was the amount then due from Miss Hunter to the plaintiff;

that is, it was the value of the furniture described in the two contracts of August 24, less what she had paid thereon since that date, including all sums owed by her to the plaintiff on other accounts.

The plaintiff never paid to Miss Hunter anything for the execution and delivery of this bill of sale. On the 10th of October of the same year the parties made another contract, by the terms of which the plaintiff leased to Miss Hunter certain property described in the said contract for the term of one year from the 10th day of October, 1904, for the rent of 325 pesos a month. The property described in this lease is the same property which was described in the bill of sale executed two days before. It is evident that these two documents of the 8th and 10th of October are parts of the same transaction.

In December following, the defendant sheriff, by virtue of executions against Miss Hunter, levied upon all the property described in the contracts of the 8th and 10th of October, and sold a part thereof under an execution in favor of the intervenors, Rubert & Guamis, and the remainder under an execution in favor of Lo Shui. This action was brought by the plaintiff against the sheriff to recover the value of the property so sold by him under these executions, and which the plaintiff alleged was upward of 7,000 pesos.

During the trial Rubert & Guamis and Miss Hunter were allowed to take part in the case as intervenors. Judgment was rendered in the court below in favor of the plaintiff and against the defendant sheriff and the intervenors, Rubert & Guamis, for 1,679.50 pesos, and the costs. This sum of 1,679.50 pesos was the amount which Miss Hunter owed the plaintiff on the 6th of December, when the executions were levied by the sheriff. From this judgment the plaintiff and Rubert & Guamis have appealed.

(1) As to the appeal of the plaintiff, it appears that Rubert & Guamis, on the 10th day of September, 1904, obtained a final judgment against Miss Hunter for the sum of 1,550 pesos, which judgment was never reversed and was unpaid on the 8th and 10th of October of the same year. The contracts of those dates, therefore, were by the terms of article 1297 of the Civil Code presumptively fraudulent as to the creditors of Miss Hunter. This presumption was not only not destroyed by the evidence in the case but it was strengthened, and it seems clear from such evidence, and Miss Hunter so testified, that the purpose of the contract of October 8 was to transfer to the plaintiff all the property which she had at that time, with the understanding that when it was sold Bachrach should pay himself the amount of his claim and return the balance to Miss Hunter. This conveyance was made, as she testified, for the purpose of preventing her other creditors from seizing the property and that she

might continue with her business. It was proved in the case that even from the month of August her creditors were pursuing her and attempting to collect their claims.

As to Rubert & Guamis, then, and the sheriff, who represented them and other creditors, this contract of sale of October 8, and the contract of lease of October 10, conferred no additional rights upon the plaintiff. As to these defendants the contracts were null and void.

As the appeal of the plaintiff is based entirely upon the validity of these contracts it must, therefore, fail.

(2) As to the appeal of Rubert & Guamis, the findings of fact made by the court below in regard to the amount of the plaintiff's claim on the 24th of August, 1904, the amount thereof on the 8th of October, 1904, and the payments made by Miss Hunter in October, November, and December of that year, are sustained by the preponderance of the evidence and can not, therefore, be disturbed. It remains, therefore, to consider only the question as to whether the plaintiff is entitled to a judgment for the amount of the indebtedness actually due him from Miss Hunter at the time of the levy of the executions. The contract of sale of October 8, by which Miss Hunter undertook to transfer to the plaintiff not only the property which she had acquired from the plaintiff but also the other property which she then owned in the hotel, having been declared void, the plaintiff can maintain no claim of ownership to any of the property in which he had no interest prior to the 8th day of October. But as to the property described in the contracts of August 24, 1904, which property was included in the contract of October 8, we think that his contention can be maintained. When a contract is set aside, it is the duty of the parties, according to the Civil Code, to reciprocally restore to each other what they have received by reason of the contract thus set aside. In other words, when a contract is set aside on the ground that it is fraudulent as to the creditors, the parties should be placed as far as possible in the same condition in which they were before the contract was made. Applying this doctrine to this case, the contract of October 8 being set aside, the plaintiff would be left with his contracts of August 24. Those contracts, as has been said declared that the plaintiff was the owner of the property described in them; that he transferred the possession thereof to Miss Hunter; and that when she had paid a certain amount she should become the owner thereof. The ownership of the property by the terms of these contracts remained in the plaintiff until the amount named therein was paid. This condition has never been complied with by Miss Hunter, and the plaintiff, accordingly is still the owner of the property. A contract of this kind was, at the time these contracts were made, valid in these Islands and can be enforced.

The defendant sheriff seized and sold all of the property described in the contracts of August 24. This property did not belong to Miss Hunter and the sheriff is, accordingly, responsible to the plaintiff for the value thereof. As to him, the judgment of the court below must be affirmed.

That court ordered judgment not only against the sheriff but against the intervenors, Rubert & Guamis, for the same amount for which judgment was ordered against the sheriff, but it appears from the record in the case that some of the articles included in the contracts of August 24, to wit, twenty-four chairs, were not sold upon the execution of Rubert & Guamis but were sold upon the execution in favor of Lo Shui. Rubert & Guamis are, therefore, not responsible to the plaintiff for the value of these chairs.

The judgment of the court below is affirmed, therefore, as far as it relates to the appeal of the plaintiff. It is also affirmed so far as it relates to the defendant sheriff. But as to the appellants, Rubert & Guamis, it is modified by deducting from the judgment against them the value of the property included in the two contracts of August 24 which was not sold upon the execution in their favor. Upon the return of this case to the Court of First Instance, that court will determine the value of such property, will deduct the same from the amount of the judgment heretofore entered against Rubert & Guamis, and enter judgment against them for the balance. No costs will be allowed to any one of the parties in this court. After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the lower court for proper action. So ordered.

Arellano, C. J., Torres, Mapa, and Johnson, JJ., concur.

DISSENTING

TRACEY, J., with whom concurs **CARSON, J.:**

By the terms of the contract of October 8, which is held to be fraudulent and void as to creditors, but not as to the parties themselves, a prior contract between them of August 24 was canceled and annulled. To declare it restored to life by force of our judgment as to the second contract, is to afford affirmative relief to one of two guilty parties to a fraud. From so much of the judgment as works this result, I dissent.

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