43 Phil. 308

[G. R. No. 16977. April 21, 1922]

FRANK B. INGERSOLL, AS ASSIGNEE OF THE INSOLVENT ESTATE OF DY POCO, PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLANT. THE PHILIPPINE GUARANTY COMPANY, INC., INTERVENOR AND APPELLEE.[1]

D E C I S I O N

STATEMENT

In May, 1919, Dy Poco, a merchant of Manila, owed the defendant Philippine National Bank about P58,000. Prior to June 4, the bank secured his signature to a blank form of pledge of all of his stock of goods, wares, and merchandise, and a promissory note for the amount of its claim. When the promissory note and the blank form of pledge was signed, neither of them was dated, and there was no list or description of the property pledged, and the bank did not then know the exact amount of its claim against Dy Poco. The note was later dated June 4, 1919, and the bank, relying upon its provisions, seized all of Dy Poco's property in his *bodega* at 346 Calle Elcano, of which it made an inventory and made it a part of the pledge, which was given to secure its promissory note.

On June 7, the creditors of Dy Poco filed a petition in the Court of First Instance, asking that he be declared insolvent, and, based upon which, he was declared insolvent, and the plaintiff, Frank B. Ingersoll, was duly appointed and qualified as assignee of his estate.

On behalf of the creditors, he made a demand upon the bank for the possession of the property described in the pledge or its value alleged to be P75,176.90. Upon refusal of the bank to deliver the property or account for its value, the plaintiff brought this action, among other things, alleging that about June 5, 1919, the bank, without the consent of Dy Poco, seized the merchandise described in the pledge and converted it to its own use; that its value was P77,411.32; that a written demand was made; and he prayed judgment for the

amount, with interest and costs.

For answer, the bank pleads the execution of the note as of June 4, 1919, and all of its terms and conditions, to which a description of all the property is attached and made a part of the pledge, and that, by reason of a breach of the terms and conditions of the note, it took possession of the property and sold and converted it into money, from which it realized P37,382.46, and that it had a legal right to do so.

As a special defense to this answer, the plaintiff alleges that the note and pledge was not executed on June 4, 1919, and that the property therein described was never pledged or deposited with the defendant, and that the pledge is not a public instrument, and is void as against the plaintiff.

In its bill of intervention, the Philippine Guaranty Company alleges that, on behalf of Dy Poco and on April 22, 1919, it gave a bond to the Government of the Philippine Islands for P19,800 for the presentation to the Collector of Customs, within four months, of the bill of lading for 1,000 boxes of sardines in can, which arrived on the steamship *Eclipse* at the port of Manila, and on the same date it gave another like bond for P5,700 for the presentation of the certificate of origin of the 1,000 boxes of sardines in the office of the customs house, when required.

That the bonds were given by the intervenor, in order that the Collector of Customs would permit Dy Poco, who is now insolvent, to take from the customs house the 1,000 boxes of sardines which arrived on the steamship Eclipse, without the presentation of the bill of lading or the payment of customs duties; that, by reason of said bonds, the customs authorities permitted Dy Poco to take the sardines from its office; that they were seized by the defendant bank and sold for P4,338.60; and that they were of the real value of P10,296; and that the bank has no right to the possession' of the merchandise or the proceeds of its sale. That neither the bill of lading nor the certificate of origin of the sardines were delivered by Dy Poco or his assignee to the Bureau of Customs. That, by reason of the failure of the intervenor to deliver the documents, the Collector of Customs will compel the intervenor to pay the damages caused by Dy Poco taking the merchandise from the customs house, and that, under the terms of its bonds, the intervenor is bound to pay the Government of the Philippine Islands the amount of P25,500, which Dy Poco should pay. That the intervenor should be subrogated to the rights of the Government, and that, by reason of such subrogation, the sardines or the proceeds thereof should be delivered to the intervenor.

Wherefore, it prayed judgment against the bank for the sum of P4,338.60, with legal interest.

After formal denial of this plea, testimony was taken, and the lower court rendered judgment in favor of the plaintiff and against the defendant bank for P37,382.46, without interest, and directed that P4,338.60 out of such judgment should be paid to the intervenor as a preferred claim, from which all the parties appealed, claiming that the court committed error in accord with their respective contentions.

Johns, J.:

The defendant claims that, under the terms and provisions of its promissory note for P58,000, the property therein described was pledged to it as collateral security, and that it had a legal right to sell the property and apply the proceeds of the sale *pro tanto* to the payment of its note.

At the time the promissory note was signed it was not dated, and when the blank form of pledge was signed, it was not dated, and did not contain any description of the property. The note upon which the bank now relies is dated June 4,1919, and the pledge contains a description of all of the merchandise of the insolvent in the warehouse at 346 Calle Elcano, and it appears from the evidence that this was all of the property which Dy Poco had at the time he was declared insolvent. It also appears from the evidence that upon January 25, 1919, the bank held the promissory note of Dy Eoco for P20,000, payable four months after date, which was secured by quedan No. 1 for 300 *sacos cafe* and 1,800 *cajas sardinas* value P50,400. The bank vigorously contends that, when it took its note for P58,000 and the property was pledged as collateral, it was acting in good faith and did not know that Dy Poco was insolvent.

With all due respect to the bank, its position is not sound or tenable. There is ample evidence in the record from which the bank knew or should have known that Dy Poco was insolvent on June 4, 1919. Instead of his liability being reduced, it was increased from P20,000 on January 25, 1919, to P58,000 on June 4, 1919, and the amount of his old note was included in, and made a part of, his new note, and that a large portion of its claim was for a preexisting debt.

The further fact that Dy Poco was a merchant engaged in the sale and purchase of general merchandise, and that the pledge of June 4th was of all of his stock, is strong evidence that the bank knew or had reason to believe that he was insolvent.

The court is not impressed with the good faith and sincerity of the bank in the transaction of June 4, 1919, The facts show a constructive fraud, if nothing else, by reason of which the bank is not entitled to relief.

The plaintiff claims that the property pledged was of the value of P75,176.90, and that sum is the amount of the bank's liability. Its claim was P58,000, with accrued interest, and it sold the property for P37,382.46. It must be remembered that Dy Poco was insolvent when the property was sold.

The evidence shows that in the sale of the property the bank was acting in good faith. That an honest attempt was made to sell it for all it was worth, and that the assignee was freely consulted before any sale was made, and there is no evidence that any more money could have been realized from the sale of the property. In one case, it was a forced sale by the bank. In the other, it would have been a forced sale by the assignee.

The bank's claim was P58,000, and it is fair to assume that it would not have sold the property for less than it was worth, and for P21,000 less than the amount of its claim.

Upon that question we agree with the trial court, but the plaintiff should be entitled to interest on the amount of its judgment at 6 per cent per annum from the date of the filing of his complaint.

Upon the question of preference of the claim of the Philippine Guaranty Company, Act No. 1956 of the Philippine Legislature, known as the Insolvency Law, is complete within itself. Section 48, Chapter 6, specifically defines the "classification and preference of creditors." There are nine subdivisions in this section, each of which specifies and defines what claims are preferred in insolvency proceedings, and claims of the nature of the Philippine Guaranty Company or kindred thereto are not mentioned or included in either subdivision. Neither can it be construed to come within any of the provisions of section 50 of the Act.

Where the law specifies and defines what claims are to be preferred, it must follow that any claim, which is not in the nature of, or kindred to, those specified, is not a preferred claim, and should not have a preference.

In the absence of insolvency proceedings, there might be some merit in the contention of the intervenor as to its right of subrogation, but where, as in the instant case, Dy Poco, for whose benefit the bonds were given, is insolvent and the insolvency law specifies what claims are preferred, it must be followed.

The judgment of the lower court in favor of the plaintiff and against the Philippine National Bank for P37,382.46 is hereby affirmed and modified, so as to include interest on that amount at the rate of 6 per cent per annum from September 8, 1919, the date of the filing of the complaint, and the judgment in favor of the intervenor, the Philippine Guaranty Company, for P4,338.60, and allowing it as a preferred claim, is reversed. Neither party to recover costs on this appeal. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

Judgment affirmed and modified as to Philippine National Bank; and reversed as to Philippine Guaranty Company.

RESOLUTION ON MOTION FOR REHEARING

December 29,1922.

Johns, J.:

The Philippine Guaranty Company has filed a vigorous petition for a rehearing in which it for the first time raises the question that the insolvent estate never was the owner of the sardines, and that under the terms of purchase the title to them never passed out of the Overseas Trading Company.

In its pleadings filed in the lower court it claimed and alleged that it was a preferred creditor, and that its claim should be allowed as such. The testimony was taken and the case tried there, and the decision of the lower court was rendered upon such issues, and upon appeal the same question was argued and presented in this court.

In justice to the lower court and the rules of practice, the Philippine Guaranty Company is bound by its pleadings and ought not to be permitted to allege one cause of action and then claim the right to recover upon another. From necessity, its claim as a preferred creditor against the insolvent estate is founded upon the fact that the insolvent estate was the lawful owner of the sardines. Hence, it must follow that, if the insolvent estate was not the owner of the sardines, the Philippine Guaranty Company would not have a preferred claim against the insolvent estate. The fact that the Philippine Guaranty Company claimed arid alleged that it had a preferred claim against the insolvent estate legally carries with it that the title to the sardines had passed to, and was vested in, the insolvent estate. Upon the issues which were presented and upon which the case was tried in the lower court and in this

court, we adhere to our former opinion that the Guaranty Company does not have a preferred claim. Upon such issues and to that extent, the motion for a rehearing is denied.

If it be a fact, as the Guaranty Company now claims, that the insolvent estate never became the owner of the sardines, and that the title to them was still vested in the Overseas Trading Company, another and a different question would be presented. If the insolvent estate never became the owner of the sardines, as the Guaranty Company now claims, in the interest of justice, it should have a right to present and litigate that question under proper pleadings. For that purpose and to that extent, the former opinion of this court, in which the claim of preference of the Philippine Guaranty Company was denied is reversed, and the case is remanded to the Court of First Instance, with leave to the Guaranty Company to amend its pleadings, so as to present the question which it now seeks to raise in its petition for a rehearing, of which all parties in interest shall be given legal notice, and after the pleadings have been reframed, the question will then be tried as to the ownership of the sardines at the times alleged, without costs to either the plaintiff or the Philippine Guaranty Company. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

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[1]Case No. 17074, Insolvency of Dy Poco vs. Philippine Guaranty Co. was decided upon the same principles as in the above case.

DISSENTING

STREET, *J.,*

I believe that the Guaranty Company has completely established its right to the proceeds of the sardines in question ; and I am of the opinion that this fact could properly be recognized here simply by affirming the judgment, without putting the parties to further trouble or expense. In sending the cause back for further proceedings it seems to me that the court places under stress upon a mere point of practice. One who asserts a preferential right in insolvent proceedings should be considered as having made out his case upon proof of actual ownership.

Former judgment as to Philippine Guaranty Company, reversed and case remanded with instructions.

Date created: June 05, 2014