43 Phil. 810

[G. R. No. 18405. September 23, 1922]

E. GASKELL & CO., INC., PLAINTIFF AND APPELLANT, VS. TAN SIT, ADMINISTRATRIX OF THE ESTATE OF DY POCO, DECEASED, DEFENDANT AND APPELLEE.

D E C I S I O N

STREET, J.:

On June 23, 1919, a Chinese merchant of the city of Manila, Dy Poco by name, was declared bankrupt in a proceeding instituted by some of his creditors in the Court of First Instance of Manila, and shortly thereafter the same Dy Poco died. Nevertheless, the insolvency proceedings continued their course and in the end an order was made discharging the debtor—or his estate—from all. liability upon provable claims, as contemplated in section 69 of the Insolvency Law (Act No. 1956). Meanwhile, however, Tan Sit, the widow of Dy Poco, had qualified as his administratrix, for the purpose chiefly, no doubt, of realizing upon a policy of insurance for P25,000 in force upon the life of Dy Poco at the time of his death. In this she was successful, as may be seen by referring to an opinion in Sun Life Assurance Co. of Canada vs. Ingersoll and Tan Sit (42 Phil., 331). As a result of the facts above indicated, two distinct parallel proceedings with reference to the estate of Dy Poco were contemporaneously conducted in the Court of First Instance of the city of Manila, that is to say, the proceedings over the estate in insolvency and the proceedings over the estate in administration.

Prior to the institution of the bankruptcy proceeding above alluded to, Gaskell & Co., the plaintiff herein, as customs broker for Dy Poco, joined with the latter in a written application to the Philippine Guaranty Co., requesting said company to become surety on a bond which the Insular Collector of Customs had required Dy Poco to give in order to secure the delivery of certain merchandise arriving from abroad for which Dy Poco was at that time unable to produce the proper bill of lading. Pursuant to said application the Philippine Guaranty Company executed a bond in the sum of P19,800, and merchandise having a value

of P18,338.48 was thereupon delivered to Dy Poco by the Collector of Customs.

At a later date Dy Poco defaulted in his undertaking to produce the bill of lading corresponding to the merchandise which had been delivered to him, and said document was afterwards produced by the Hongkong & Shanghai Banking Corporation, an innocent holder thereof for value; and demand was made by this bank upon the Insular Collector of Customs for the delivery of the same merchandise that had previously been delivered to Dy Poco. When this occurred, the Collector at once made demand upon the Philippine Guaranty Company for payment of the value of the goods (P18,338.48) for the benefit of the aforesaid bank.

In response to this demand, the Guaranty Company paid the amount required, and in turn demanded reimbursement from the present plaintiff, Gaskell & Co., in reliance upon the obligation assumed by the latter in the written application submitted to the Guaranty Company when the latter assumed responsibility as surety for Dy Poco. Up to the time when this action was brought, Gaskell & Co. had not complied with this demand of the Guaranty Company, but no question is made as to Gaskell & Company's ultimate liability.

Upon the preceding statement it is evident that the Philippine Guaranty Company, having paid out a sum of money in the character of surety for Vy Poco, had a right to be exonerated by the latter; and accordingly said company duly proved this claim in the insolvency proceeding that had been instituted against Dy Poco. It will also be noted that Dy Poco was also contingently liable to exonerate Gaskell & Co. in the event that the latter should be compelled to pay out anything to the Philippine Guaranty Company; for it is undisputed that, as between Gaskell & Co. and Dy Poco, the latter was primarily responsible. No steps were taken, however, towards proving this contingent claim on the part of Gaskell & Co. against Dy Poco in the insolvency proceedings. At a later date, however, Gaskell & Co. caused said claim to be presented to the commissioners appointed to pass on claims against the estate of Dy Poco in administration; and the same having been rejected by the commissioners, the matter was brought before the Court of First Instance upon appeal, where the claim was again disallowed. Upon this Gaskell & Co. appealed to the Supreme Court.

The errors assigned all have relation to the right of the appellant to have this claim allowed against the estate of Dy Poco in administration; and the first point upon which the attorneys for the appellant lay stress is that this claim against Dy Poco is a contingent claim, from which it is supposed to follow that it should have been reported by the commissioners to the court having charge of the administration proceedings, as contemplated in section 746 of

the Code of Civil Procedure, whereupon it would have become the duty of the court to order the administratrix to retain funds to satisfy the claim upon its becoming absolute (sec. 747).

There can be no question that the claim of Gaskell & Co. against Dy Poco is properly designated as a contingent claim, which may be defined as a claim in which liability depends on some future event that may or may not happen, and which makes it uncertain whether there will ever be any liability. The expression" is used in contradistinction to the absolute claim, which is subject to no contingency and may be proved and allowed as a debt by the committee on claims. The absolute claim is such a claim as, if contested between living persons, would be proper subject of immediate legal action and would supply a basis of a judgment for a sum certain. It will be noted that the term "contingent" has reference to the uncertainty of the liability and not to the uncertainty in which the realization or collection of the claim may be involved. The word "contingent," as used in the original English, in the Code of Civil Procedure, conveys the idea of ultimate uncertainty as to the happening of the event upon which liability will arise; and it is not the precise equivalent of the Spanish word "*eventual*" by which it is commonly translated. The idea involved in the word "*eventual*" may be satisfied with the idea of that which is uncertain only in respect to the element of time. A thing that is certain to happen at some time or other will eventually come to pass although the exact time may be uncertain; to be contingent its happening must be wholly uncertain until the event which fixes liability occurs.

The most common example of the contingent claim is that which arises when a person is bound as surety or guarantor for a principal who is insolvent or dead. Under the ordinary contract of suretyship the surety has no claim whatever against his principal until he himself pays something by way of satisfaction upon the obligation which is secured. When he does this, there instantly arises in favor of the surety the right to compel the principal to exonerate the surety. But until the surety has contributed something to the payment of the debt, or has performed the secured obligation in whole or in part, he has no right of action against anybody—no claim that could be reduced to judgment. (May vs. Vann, 15 Fla., 553; Gibson vs. Mitchell, 16 Fla., 519; Maxey vs. Carter, 10 Yerg. [Tenn.], 521; Reeves vs. Pulliam, 7 Baxt. [Tenn.], 119; Ernst vs. Nau, 63 Wis., 134.)

But, although it is thus evident that this claim in favor of Gaskell & Co. against Dy Poco is a contingent claim, it by no means follows that said claim can now be allowed against Dy Poco's estate in administration; for a contingent claim is effected by a discharge in bankruptcy the same as an absolute claim, and that this claim has in fact been so barred is easily demonstrable, by reference to section 56 of the Insolvency Law, which reads in part

as follows:

> "Any person liable as bail, surety, or guarantor, or otherwise, for the debtor, who * * * has not paid the whole of said debt, but is still liable for the same, or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same in the name of the creditor." (Act No. 1956, sec. 56.)

From this it will be seen that the claim in question could have been proved by Gaskell & Co. in the bankruptcy proceedings in the name of the creditor (the Philippine Guaranty Company), if the latter had failed to present the credit. But, as already stated, the creditor in fact proved in the insolvency proceeding for the very claim for which the present plaintiff is contingently liable; with the result that the present plaintiff will be exonerated to the extent of any amount which the creditor may recover from the insolvent.

It necessarily follows that, the claim in question having been discharged in bankruptcy, it cannot serve as the basis of recovery against the estate of Dy Poco in administration. When it happens, as here, that both bankruptcy proceedings and administration proceedings are simultaneously conducted over the estate of a deceased bankrupt, no claim can be proved against the administrator which is provable in bankruptcy; and it was partly with a view to making this point clear that we were at pains to say at the conclusion of our opinion in Sun Life Assurance Co. of Canada vs. Ingersoll and Tan Sit, *supra*, that the proceeds of the policy of insurance there awarded to the administratrix were not liable for any of the debts provable against Dy Poco in the bankruptcy proceedings then pending.

From what has been said it follows that there was no error on the part of the trial court in disallowing the claim of Gaskell & Co. against the administratrix of Dy Poco. Said judgment will therefore be affirmed; and it is so ordered, with costs against the appellant.

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

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