

HARRY LYONS ET AL., PETITIONERS, VS. CONRADO V. SANCHEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, ET AL., RESPONDENTS.

G.R. No. L-3274, L-3292 and L-3295. August 29, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In Branch VII of the Court of First Instance of Manila, presided over by Hon. Conrado V. Sanchez, the following five civil cases are pending hearing and consideration:

Civil Case No. 5859 —Material Distributors (Phil.) Inc., plaintiff, versus Miles Timber & Teansport Corporation, Prentice M. Miles and Harry Lyons, et al., defendants.

Civil Case No. 5700.—Harry Lyons, et al., plaintiffs, versus Allison J. Gibbs, et al., defendants.

Civil Case No. 5505.—Harry Lyons, et al., plaintiffs, versus Allison J., Gibbs, et al., defendants.

Civil Case No. 5062.—Harry Lyons, Construction, Inc., et al., plaintiffs, versus Harry Lyons, defendant.

Civil Case No. 5228.—Harry Lyons, et al., plaintiffs, versus Levant Brown, et al., defendants.

A joint order for the five cases, dated July 26, 1949} was issued by Judge Sanchez ordering the sale of all the properties in litigation between the parties therein involved, located at 179 Inverness, Sta. Ana, Manila, and at Malolos, B lilac an, except those mortgaged to the Far Eastern Surety and Insurance Co., under the terms and conditions set forth in said order.

In five corresponding petitions before this Tribunal wherein the petitioners are either Harry Lyons alone or he and his wife Creal M. Lyons or Harry Lyons and Harry Lyons Jr., the petitioners thru certiorari seek to review and later set aside and annul the said order of sale of Judge Sanchez on the ground that he had acted with grave abuse of discretion in issuing the same against the vigorous objections of the petitioners. It appears.that the petitioners and the respondents herein are either the plaintiffs or defendants in the five civil cases pending in the lower court.

At the beginning, there was an attempt on the part of the petitioners to consolidate these five petitions into one single case but by resolution of this Court dated August 31, 1949, it was ordered that these five cases be docketed under five separate entries and that the petitioners .pay the corresponding docketing fees.

To give a fair idea of the interests or alleged interests of the parties in the properties involved and ordered sold by the lower court, which interests are naturally conflicting, and to understand the situation and condition of said properties,—rather precarious and extremely unfavorable, to be sure, as far as their deterioration and depreciation are concerned, it is convenient to briefly state the following facts as may be gathered from the pleadings and their annexes appearing in our record. We cannot go into the record of the five civil cases pending in the lower court and on which the present petitions are based, for the reason that the records of those five cases are not before us, We, therefore, have no definite idea as to the nature of the said five cases pending in the lower court but on page 6

of the present petition for certiorari there is a brief description of each case which may give us a rough notion and which we are quoting for purposes of information:

"Civil Case No. 5062, filed April 6, 1948, which is an action for injunction against your petitioner Harry Lyons;

"Civil Case No. 5228, filed April 23, 1948, which is an action for injunction against Allison J. Gibbs, et al.;

"Civil Case No. 5505, filed May 23, 1948, which is an action to compel the defendants Allison J. Gibbs and Finley J. Gibbs, to reconvey to your petitioner Harry Lyons his 50% interest or 98 shares of stock in the Material Distributors (Phil.) Inc., etc.;

"Civil Case No. 5700, filed June 19, 1948, which is an action for Quo Warranto and Injunction against Allison J. Gibbs, et al., who have illegally constituted themselves as officers and members of the Board of the Material Distributors (Phil.) Inc.; and

"Civil Case No. 5859, filed July 13, 1948, which is an action for injunction, damages, sums of money, with cross claims against and among the parties thereto."

It would appear from the petition and its annexes that about June 3, 1946, Harry Lyons was appointed agent for an American Company, Material Distributors Inc. of Wichita, Kansas, U.S.A., in the purchase and sale of surplus stocks or property, presumably from the U.S. Armed Forces, in the island of Guam and other locations in the Pacific war area and that as his remuneration he was to receive 10% of the profits realized after proper allowances for expenses and costs, Harry Lyons acted as such agent in the purchase and sale of surplus property and actually made purchases up to December, 1946 in Guam and in the Philippines. Such property consisted mostly of heavy equipment and machinery. For his work and services he claims he was entitled to about P500,000 from the American company. In September, 1946 Harry Lyons still acting as agent for the Wichita company bought for the latter from the Philippine Exchange Co., Inc. and the Filipino Businessmen's Syndicate of Manila heavy construction equipment worth about P500,000. Because Harry Lyons was not paid what he believed was due him by the Wichita company, and in order to protect himself, he did not surrender to the said company the equipment bought by him and kept in the Philippines, the bulk of said equipment being deposited at 179 calle Inverness, Sta. Ana, Manila, and the rest at Malolos, Bulacan. He then proceeded to organize a Philippine corporation known as the "Material Distributors (Phil.) Inc.", one of the respondents herein, capitalized at P400,000 of which P80,000 was subscribed by him in full with the exception of four qualifying shares.

Judging from the Articles of Incorporation of said Material Distributors (Phil.) Inc., it had rather ambitious and extensive objectives—to engage in business of civil engineers, designers, contractors of roads, bridges, docks, piers, mills, refineries, manufacturing plants, and installations of all kinds; to act as consulting and construction engineers in connection with the promotion, development, rehabilitation, administration and operation of every kind of commercial, manufacturing, industrial, mining, or prospecting enterprise; and to purchase, convey or sell, lease, rent, mortgage or otherwise deal in such real and personal property in any part of the Philippines or elsewhere as may be convenient, etc. It was intended to engage in almost all kinds of business, especially, construction, commercial and industrial, and this, on a large scale. This will explain in some way the volume and kind of equipment and surplus property involved in the order of sale complained against.

Harry Lyons paid P19,900 on his subscription, receiving therefore 195 shares of the Material Distributors (Phil.) Inc., while his four co-incorporators had one share each, Harry Lyons was subsequently elected President of the corporation. At a meeting of the stockholders held on June 30, 1947, Harry Lyons and his wife Creal M. Lyons were elected two of the four Directors of the corporation and upon the constitution of the board of directors, Harry Lyons v/as elected President and General Manager and his wife Creal M. Lyons as Vice-president, Levant Brown

as Treasurer, and Francisco Collantes as Secretary.

According to Harry Lyons, after the Material Distributors (Phil.) Inc. was organized, he as agent of the Wichita company, transferred and assigned all the miscellaneous heavy construction equipment acquired from the Philippine Exchange Co., Inc. and the Filipino Businessmen's Syndicate of Manila, all located in the Philippines, to the said Material Distributors (Phil.) Inc. for and in consideration of the nominal sum of P100. Later, Harry Lyons, according to himself, acting as President, entered into a purchase-lease agreement with the corporation Harry Lyons Construction Inc. (whose name was later changed to Malakas Construction Inc.) whereby a great deal of the equipments, particularly that in Malolos, Bulacan, was delivered to the aid company by way of lease.

Harry Lyons further claims that about the first day of July, 1947, in consideration of a loan of P17,000 made to him by Atty. Allison J. Gibbs, without interest, he (Lyons) conveyed 98 of his 195 shares of stock of the Material Distributors (Phil.) Inc. to the said Allison J. Gibbs as a result of which, Harry Lyons retained only 97 shares, Atty. Allison J. Gibbs had 49 shares and his brother Atty. Finley J. Gibbs another 49 shares, while Levant Brown, Francisco Collantes, Grover C. Brooks, Creal M. Lyons, and Raymond W. Lehman had one share each. It is further claimed on behalf of Harry Lyons that about the same time that he conveyed 98 of his 195 shares, as he was about to leave the Philippines for Australia for a short visit, he gave a proxy to Allison J. Gibbs authorizing the latter "to attend and represent him at any and all meetings of the stockholders of the Material Distributors (Phil.) Inc. and to vote upon any and all matters or questions, and he thereby ratifies all that Atty. Gibbs would do in the premises" but that this authority or proxy was good only during his absence from the Philippines. He further claims that Atty. Gibbs, taking advantage of and abusing this authority, called several meetings of the stockholders of the company and had himself elected General Manager and later President of the same company to the exclusion of himself (Lyons) and his wife Greal; that Atty. Gibbs and his associates later passed a resolution calling upon the stockholders and subscribers to pay up the balance of their subscriptions fixing a date for said payment under penalty of having the subscribed shares sold at public auction, and all this, while Harry Lyons was already in the Philippines and when the proxy in favor of Atty. Gibbs had already lapsed and was no longer in force.

The foregoing facts, tho not complete, will in some measure explain the alleged interests of the different parties in the property herein involved, referred to in the order of sale by Judge Sanchez, as well as the reasons behind the five civil cases now pending before said Judge and for which the joint order of sale was issued.

On three occasions—July 12, 1948, July 19, 1948 and September 1, 1948, petitions for the appointment of a receiver pendente lite to take charge of the assets of the Material Distributors (Phil.) Inc. were filed on behalf of Lyons. On September 9, 1948, Judge Sanchez appointed one Prentice M. Miles as receiver of the properties deposited at 179 Inverness, Sta. Ana, Manila, of which Miles had already taken possession. It will be well to state that the lot at 179 Inverness, Sta. Ana where the machineries and equipment are located, belongs to one Stewart E. Tait, leased to Marsman, Inc. and, presumably, subleased to Materials Distributors (Phil.) Inc.

On October 1, 1948, Harry Lyons petitioned the court to enlarge the scope of the receivership given to Miles so as to include the equipments located at Malolos, Bulacan, on the ground that according to his own inspection, some of the said equipments in Malolos had been stripped and others abandoned and left at the mercy of the elements. The record does not show what action, if any was taken by the court on this motion. But on March 1, 1949, Harry Lyons in an urgent petition informed the trial court that receiver Prentice M. Miles had completely abandoned all the properties under his receivership at 173 Inverness, Sta. Ana, Manila, said Miles having allegedly surrendered said properties to the owner or lessor of the lot or premises, Stewart H. Tait who was taking possession of the same thru his counsel Atty. Allison J. Gibbs, and he asked the court to appoint another receiver not only to keep and preserve the said equipment but also to keep it away from Atty. Gibbs.

Then, on April 27, 1949, the Material Distributors (Phil.) Inc. and the Malagas Construction Inc. represented by Attys. Allison J. Gibbs and his brother Finley J. Gibbs and their law partners filed in the trial court an urgent motion to sell, alleging among other things that ever since October, 19⁴⁸, both corporations had sought to sell the machinery and equipments and to deposit the proceeds less expenses with the Clerk of Court but due to the opposition of other parties, the court had refused to act on the petition; that because of the adverse publicity from the various law suits (presumably referring to the five civil cases aforementioned) it was impossible to interest reputable parties to even inspect and submit their offers to purchase the equipments owned by said corporations; that because of the adverse publicity produced by said suits, both corporations have been unable to engage in business and so had to shut down all business operations; that the equipments in the possessions of both corporations were rapidly deteriorating and that unless sold before the coming rainy season, said equipments will become valueless except as junk and scrap iron; and that the Malakas Construction Inc. was incurring an expense of approximately P1,500 a month in guarding the equipments in its possession; that overhead expenses of the Manila offices of both corporations amount to approximately P3,000 monthly. Harry Lyons vigorously opposed this motion to sell, alleging that all the properties in question really to him and was merely held in trust for him by the Material Distributors (Phil.) Inc., and that it would be unfair to sell said property over his objection.

As we understand it, the position maintained by Harry Lyons not only in the present petitions for certiorari but also in the five civil cases pending in the trial court is that he is the real owner of all the equipments and property involved in these proceedings located at Sta. Ana, Manila and at Malolos, Bulacan, and that furthermore, he is not only the organizer but also the majority stockholder and practically the owner of the Material Distributors (Phil.) Inc. which is holding those properties in trust for him; and that the respondents herein, particularly Atty. Allison J. Gibbs, are mere intruders who, by manipulations and unfair tactics had practically eliminated him and his wife from the Material Distributors (Phil.) Inc., have taken control of the Malakas Construction Inc. which holds and possesses the equipments at Malolos, Bulacan, and ... now desire to sell all these equipments at presumably great loss and at a very low price, all to his great prejudice.

From the record we gather the impression that Harry Lyons is not opposed to the eventual sale of the equipments. What he wants is that a competent man be first appointed as receiver to take charge of the machineries and equipments, have them reconditioned and later sold under more advantageous conditions and at a good price. This scheme seems to be fair enough and if it is feasible and can be carried out, we can see no valid objection to it. This, on the assumption that he (Lyons) is the real owner, if not of the whole, at least of a considerable part of the property involved, altho, until the five civil cases pending in the trial court are finally determined, we must also consider the possibility that the different parties therein, particularly the Gibbs brothers may have a material and substantial interest in the property. At least, according to the agreement between Harry Lyons and Atty. Allison J. Gibbs, the latter and his brother Finley were to have 98 shares as against 97 shares of Harry Lyons in the Material Distributors (Phil.) Inc., this, further assuming that the Wichita company in America no longer has a valid claim to the property.

We have carefully gone over the order of sale issued by the respondent Judge. Under the circumstances we have to accept the findings of fact contained in his order and it seems that said findings and considerations find basis and support in the pleadings and their annexes now before us.

In order to determine whether respondent Judge had abused his discretion in deciding to issue the order of sale of the property in question, we should consider the circumstances and the conditions in which said property was then found. There is every reason to believe that the equipment since 1948 has not been well-kept and preserved, perhaps due to its very nature, weight and bulk. That is the reason why Harry Lyons himself was so much concerned, even frantic, in having a receiver appointed to take charge of the property and arrest deterioration and

depreciation due to disuse and to exposure to the elements. According to his petition for receivership of September 7, 1948, particularly the affidavit of Civil Engineer Ramon Veto attached to said petition, as per inspection of said Engineer on September 4, 1948, of the equipments at 179 Inverness, Sta. Ana, Manila, during the flood of September 2, 1948, at the deepest part of the yard where the equipments were stored, the water was 1 1/2 meters high, and that to the best of his technical knowledge, unless said equipments were overhauled and put in condition they will be useless and become mere junk in less than two week's time. Again, in his petition of October 1, 1948, to enlarge the scope of the receivership, Harry Lyons informed the court that some of the equipments at Malolos, Bulacan had been found stripped and others abandoned and at the mercy of the elements. In said petition he speaks of an attached affidavit which gives "reasonable grounds of apprehension as to the conditions of the machineries and equipment, now at Malolos, Bulacan," but said affidavit is not before us. Anyway, it is not hard to imagine that said equipments on July 26, 1949, when the order of sale was issued, stored at places completely at the mercy of the elements and subject even to floods, was fast deteriorating and losing its value as such equipment, and that something had to be done either to store and keep it, and if possible recondition it, or sell it outright. The respondent Judge had to decide between these two alternatives, and without loss of time. But this was not all. It seems that the two companies,—the Material Distributors (Phil.) Inc., which was supposed to own all the property, and the Malakas Construction Co., which was leasing and holding the equipments at Malolos, Bulacan, had no funds to continue paying guards and caretakers, including the fees of a receiver if one was appointed, much less the amount needed to recondition the machineries and equipment in order to attract buyers and command a better price. We quote some portions of Judge Sanchez's order which we deem important and pertinent:

"Since the very start, in view of the multifarious interests involved, the opposing claims, and the fact that even at the pleading stage the records of these cases plainly indicate a long and protracted litigation, the court attempted as best it could to bring the parties into an equitable settlement of their differences without the necessity of trial. The effort of the court did not bear fruit. Thus it was that the trial on the merits started. Several sessions were had and even then the direct examination of only one witness (Allison J. Gibbs), as the court understands, has not covered a respectable fraction of his direct testimony.

"Primarily involved are certain heavy equipment and machinery for purposes of construction work. As adverted to at the beginning, part of the equipment is at No. 179 Inverness Street, Santa Ana, Manila, and the rest at Malolos, Bulacan. The equipment is not in use. That there was and there will be deterioration does not need the adroit mind of an engineer to realize. In the meantime, as days go on, it must be expected that depreciation will continue, and as depreciation continue the value correspondingly declines. As late as June 22, 1949, information was received by the court to the effect that because of the June rains the equipment at Inverness Street was partly under water. Now, the rainy season is at hand.

"In the meantime, expenses must be incurred for the preservation of these properties. The parties can ill afford to leave the properties at the mercy of the elements or the looters. The property at Malolos is under guard. The guardians of the said property, naturally, must be paid.

"The-owner of the land at Calle Inverness (Stewart S. Tait) and the lessee thereof (Marsman, Inc.) have served notice that they would protect their interests in connection with the properties located thereat. Both claim liens on the property for rentals. Marsman, Inc. made it plain that they would not answer for losses, theft or pilferage. They need the space occupied by the equipment which hampers their activities. This situation may mean one or both of two things: The said properties may be thrown out of the premises and/or rentals have to be paid. None of the parties has offered to advance the necessary money for the preservation or payment of rentals. Inaction may well result in a great part of the value of the property being eaten up by expenses or progressively increasing liens thereon.

* * * * *

"The primary question drumming the mind of the court is what to do at this stage, for the benefit of the parties. At first the court was under the impression that Harry Lyons would be willing to put up money for the purpose of reconditioning the equipment so that the components thereof may be in serviceable condition and thereafter leased; and whatever is expended on the property would be a gravamen thereon. It developed later in the course of the arguments on this point that such proposition of Harry Lyons was predicated on the condition sine qua non that the man to be proposed as receiver would first receive his Imprimatur.

* * * * *

"Another situation which faces the court is the fact that the parties amongst themselves could not agree on a receiver. If one party proposes a person as receiver the other objects, and vice versa. Furthermore, the court is faced with the situation that there are no sufficient funds available within the reach of the court with which to recondition the property if a receiver be appointed. The court is not even in a position to say whether or not a receiver appointed by the court would be willing to undertake the job of receivership without any assurance that for his efforts he would be justly compensated.

"Receivership is not a panacea for all business ills. Proof of this is the fact that the partial receivership issued by the court on behalf of Prentice II. Miles was not a happy experiment. It has to be closed."

Particularly significant is the following paragraph of the order:

"All the parties involved in the cases now before this branch of the court including Stewart in. Tait and Mars-man, Inc.—except Harry Lyons—are agreed in that the most feasible solution to the difficulties is to sell the properties and deposit the proceeds thereof in court pending the final determination of these suits and the claims thereon."

And, the lower court finally says:

"Balancing the claims of all of the parties in one equation, the court is of the opinion that.. the best remedy to the situation is the disposal of the properties by sale."

Considering all the facts and circumstances involved in these cases, particularly those that confronted the trial court when it had to make a decision as to the best solution to be arrived at or step be taken,—either the appointment of receiver if a competent man could be found, agreeable to all the parties, who was willing to serve with the payment of his compensation deferred until funds are available, either from the parties or from the eventual sale of the machinery and equipment after reconditioning, or to sell the properties immediately, the proceeds to be deposited in court, we cannot say that respondent Judge committed an error of judgment or appreciation or abused his discretion in deciding upon immediate sale. On the contrary, we are inclined to believe that under the circumstances, his choice and decision was probably the best.

In view of the foregoing, we find no merit in these five petitions for certiorari and the same are hereby dismissed. The petitioners will pay costs for one case only. So ordered.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

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