

THE PROVINCIAL SHERIFF OF PAMPANGA, CIRILO D. CABRAL AND ZACARIAS PEREZ, PETITIONERS, VS. HON. COURT OF APPEALS AND MARCIANO AGUSTIN, RESPONDENTS.

G.R. No. L-25152. February 26, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

An action for recovery of a sum of money was filed on June 4, 1960, by Cirilo D. Cabral and Zacarias Perez against Elpidio Agustin and Manuel Flores in the Court of First Instance of Bulacan.[1]

At said time, Elpidio Agustin was then a furniture dealer under the business name and style "Modern Furniture Store" in Masantol, Pampanga. A big fire, however, broke out on January 9, 1961, and totally burned said furniture store of Elpidio Agustin and its contents of several pieces of furniture. As a result Elpidio Agustin, on January 12, 1961, surrendered to the municipal treasurer his license to operate the store.

Not long thereafter, said defendant's brother, Marciano Agustin, put on the same site a new furniture store, adopting the name and style "Modern Furniture Store". On February 20, 1961, for business purposes, Marciano Agustin secured a new license and privilege tax to operate the store. And on the same date, Elpidio Agustin verbally transferred "Modern Furniture Store" to his brother Marciano Agustin.

Subsequently, on July 13, 1961, the Court of First Instance of Bulacan, in the aforementioned case, rendered judgment against Elpidio Agustin (who had confessed judgment) and Manuel Flores, jointly and severally, for P10,685.15 plus interest and P500.00 attorney's fees.

Subsequently, the Court of Appeals affirmed the decision and it became final and executory. A writ of execution was issued on April 20, 1963. Acting thereon, the Provincial Sheriff of Pampanga, on May 3, 1963, levied on the pieces of furniture found in "Modern Furniture Store". Stating that said properties do not belong to judgment debtor Elpidio Agustin but to him, Marciano Agustin filed a third party claim with the sheriff. An indemnity bond, however, was posted by the judgment creditors in the sheriff's favor, so he issued notice that the properties levied upon will be sold at public auction on May 18, 1963.

A day before that, on May 17, 1963, Marciano Agustin filed in the Court of First Instance of Pampanga the present action, against judgment creditors Cabral and Perez and the sheriff, to be declared owner of the pieces of furniture levied upon, with preliminary injunction and damages. A writ of preliminary injunction was issued enjoining the sheriff from proceeding with the sale.

After the defendants answered and trial, the Court of First Instance rendered a decision that dismissed the complaint. Plaintiff appealed to the Court of Appeals. On July 29, 1965, the Appellate Court rendered a decision reversing the lower court, and declaring Marciano Agustin owner of the pieces of furniture listed in the complaint, ordering defendants to pay him jointly and severally P2,000.00 moral and actual damages and P500.00 attorney's fees, and rendering permanent the injunction issued.

Appeal therefrom was taken to Us by defendants. At issue here is: Does Article 1387 of the Civil Code on pre-sumption of fraud apply?

Appellants invoke said Article, which reads:

"ART. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

"Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated; and need not have been obtained by the party seeking the rescission.

"In addition to these presumptions, the design to defraud creditor may be proved in any other manner recognized by law of evidence."

The provision in question applies only when there has in fact been an alienation or transfer, whether gratuitously or by onerous title. In the present case, the finding of the Court of Appeals, which is factual and therefore not proper for Us to alter in this appeal, is that the store of Marciano Agustin is a new and different one from that of Elpidio Agustin. True, Marciano Agustin testified that "Modern Furniture Store" was transferred, verbally, to him by Elpidio Agustin on February 20, 1961. As the Court of Appeals found, however, this referred to the business name and style, not to the store or its contents, as the store and contents were completely new, coming from the capital of Marciano Agustin, whereas Elpidio's store and its contents of furniture destroyed totally by the fire January 9, 1961.

Since there was in fact no transfer of the store or its furniture, Article 1387 aforementioned finds no application. And appellants do not contend that the transfer merely of the name and style "Modern Furniture Store" would be fraudulent. Such transfer has in the circumstances no effect on Marciano Agustin's ownership of the pieces of furniture in question.

WHEREFORE, the appealed judgment of the Court of Appeals is hereby affirmed, with costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Civil Case No. 2197.

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