

**IN RE: PETITION FOR VOLUNTARY INSOLVENCY OF UY TONG, ALIAS
TEODORO UY. UY TONG, ALIAS TEODORO UY,
PETITIONER-APPELLEE, VS. MARIO R. SILVA, ASSIGNEE, EDUARDO
LOPEZ, ET AT, CLAIMA...**

G.R. No. L-28377. October 01, 1984

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Direct appeal on a pure question of law from the orders of the then Court of First Instance of Manila, Branch XXI, sitting as an insolvency court in Special Proceedings No. 29835, entitled "In Re: Petition for Voluntary Insolvency of Uy Tong alias Teodoro Uy," declaring as duly proved the indebtedness of insolvent Uy Tong in favor of herein appellants, claimants Eduardo Lopez, et al., in the amount of P100,575.00 with legal interest from August 10, 1954; but denying the set-off of such amount against the indebtedness of said claimants to insolvent Uy Tong amounting to P55,000.00 with legal interest from February 24, 1954, until the preferred claims shall have been fully satisfied.

Unquestionably, the principle of compensation or set-off as recognized both in Article 1279 of the Civil Code[1] and Section 58 of the Insolvency Law[2] is applicable to the case at bar. However, the amount which claimants Eduardo Lopez, et al., may set off against their indebtedness in favor of insolvent Uy Tong is limited only to the rentals of the Benavides Building due from the latter for the period from February 28, 1955 up to May 25, 1955, the date when the petition for voluntary insolvency was filed, and not the whole amount representing rentals from February 28, 1955 to June 16, 1961. It is a settled principle that "a debt of the bankrupt arising prior to the bankruptcy cannot be set off against installments of rent falling due after bankruptcy, although the installments are payable under a written lease in effect before the bankruptcy." [3] Upon this premise, the conclusion is easily reached that the debt of claimants which arose prior to bankruptcy cannot be set-off against the installments of rent falling due from the insolvent after bankruptcy. The reason therefor is quite evident with respect to the difference between the debt of claimants Eduardo Lopez, et al., in the amount of P55,000.00 plus interest, and the rentals corresponding to the period from February 28 to May 25, 1955, retention or controversy had been effectively commenced by third persons upon their filing of claims in the insolvency proceedings of which claimants Lopez, et al., had due notice. For compensation to take place, it is necessary, among other legal requisites, "that over neither of them (the two debts) there be any retention or controversy, commenced by third persons and communicated in due time to the debtor." A This essential element of compensation being absent, the same cannot take place.

Besides, to allow compensation to the concurrent amount of the mutual debts and credits would in effect give claimants Lopez, et al., undue preference over other creditors, as such set-off will totally deplete the estate of the insolvent, a situation entirely contrary to the purpose of insolvency proceedings, which is to effect an equitable distribution of the insolvent's estate among his creditors.

WHEREFORE, the orders appealed from are hereby modified in the sense that claimants Eduardo Lopez, et al., are allowed to set off from their indebtedness of P55,000.00 plus interest, whatever amount was due from insolvent Uy Tong as rentals of the Benavides Building from February 28 to May 25, 1955. The difference shall

be paid pro rata with other unpreferred claims, but only after the preferred claims, if any, shall have been satisfied. Let the records of this case be remanded to the court a quo for further proceedings. No costs.

SO ORDERED.

[1] Art. 1279 of the New Civil Code reads:

"Art. 1279. In order that compensation may be proper, it is necessary:

(1)

That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2)

That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3)

That the two debts be due;

(4)

That they be liquidated and demandable;

(5)

That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor."

[2]Section 58 of the Insolvency Law (Act No. 1956) provides:

"In all cases of mutual debts and mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed and paid. But no set off or counterclaim shall be allowed of a claim in its nature not provable against the estate; PROVIDED, that no set off or counterclaim in favor of any debtor to the insolvent of a claim purchased by or transferred to such debtor within thirty days immediately preceding the filing or after the filing of the petition by or against the insolvent.

[3] Standard Oil Co. vs. Elliott (CA4 SC 80 F2d 158, cited in 9 Am Jur 2d 400).

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