

**IN THE MATTER OF THE ESTATE OF MINDANAO MOTOR LINE, INC.,
AN INSOLVENT DEBTOR, APPELLEE, JESUS MORAZA, AS PRESIDENT
AND GENERAL MANAGER, PETITIONER, VS. EPIFANIO ALFORQUE,
IGNAC...**

G.R. NO. L-27944. May 28, 1974

Ponente: CASTRO, J.

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CASTRO, J.:

On August 15, 1956 the fifty-three (53) appellants. Alforque, et al., filed a complaint against the Mindanao Motor Line, Inc. with the Court of First Instance of Davao (docketed as civil case 2051) for payment of overtime compensation. The court, after due trial, found for the plaintiffs and rendered judgment on December 23, 1957, ordering the defendant company to pay the plaintiffs the amount of P157,560.79 as unpaid overtime compensation, the sum of P10,600 as attorney's fees, and the costs of the suit. The Court of Appeals affirmed, but decreed that the company may present evidence of overtime compensation already paid to the plaintiffs, and, after its decision became final, accordingly remanded the case to the Court of First Instance of Davao for that purpose.

Upon remand, the Davao court set the case for hearing on June 15 and 16, 1966 for reception of evidence, but the company sought on June 7, 1966 a postponement, and the hearing was reset for July 6, 7 and 8, 1966.

On June 15, 1966, however, the defendant Mindanao Motor Line, Inc. filed a petition for voluntary insolvency in the Court of First Instance of Cebu (docketed as special proceeding 2660-R). The schedule annexed to the petition named only two creditors: E.B. Garcia, for a payable account of P1,200, and Carlos Dominguez, for a payable account of P1,000. Alforque and his fifty-two (52) companions were not named in the schedule.

On June 18, 1966 the Court of First Instance of Cebu declared the Mindanao Motor Line, Inc. insolvent, ordered the sheriff to take possession of all its properties and records and directed the publication of a notice to all creditors and persons interested in the proceeding to appear before the court on July 30, 1966 for the purpose of electing an assignee or receiver of the properties of the company.

On the same day, June 18, 1966, the Mindanao Motor Line, Inc., on its own initiative, sent Alforque, et al. a copy of the order of June 18, 1966; this copy was received by the latter on June 27, 1966.

Meanwhile, on June 24, 1966, the Court of First Instance of Cebu ordered the suspension of the proceedings in civil case 2051 of the Court of First Instance of Davao.

On July 28, 1966 the appellants Alforque, et al., in the proceedings in the insolvency court moved intervene, suspend the election of an assignee, and dismiss the insolvency proceedings. In these motions, Alforque, et al. informed the court that they are the plaintiffs in civil case 2051 of the Court of First Instance of Davao; that the said case was nearing termination as the only matter left for determination is the exact amount of overtime compensation that the Mindanao Motor Line, Inc. has yet to pay; that they were not named as creditors in the schedule annexed to the petition for insolvency; that the said petition was pro forma for failure to comply with the

jurisdictional requirements prescribed by the Insolvency Law; and that the petition was filed to defeat the objectives of the said law and to evade payment of their overtime compensation award.

On August 13, 1966 the insolvency court declared Alfredo Marigomen the elected assignee. Alforque, et al moved for reconsideration. Their motion was denied in an order dated September 12, 1966. In this order, the court stated that it did not act on the previous motions to intervene, to suspend election of an assignee and to dismiss the insolvency proceedings, because these motions were attached to the case records after it had issued its order of August 13, 1966.

On November 18, 1966 the insolvency court granted the motion to intervene, but on December 27, 1966 denied the motion to dismiss as well the motion for reconsideration of the appointment of Marigomen as assignee.

Altorque, et al. moved for reconsideration but their motion was denied on March 21, 1967. Not satisfied they interposed, on April 7, 1967, the present appeal assigning the following errors:

"I. The trial court erred in not dismissing these insolvency proceedings for failure of petitioner-appellee to include intervenors-appellants as creditors in the annexed schedule as required by Sections 14 and 15, Chapter III of the law on insolvency.

"II. The trial court erred in not dismissing these insolvency proceedings for failure of petitioner-appellee to attach a verified inventory to its petition as required by Sections 14, 16 and 17, Chapter III of the law on insolvency.

"III. The trial court erred in ordering the suspension of Civil Case No. 2051 in spite of the fact that petitioner in insolvency is a corporation."

I. The explanation of the company in not including the appellants Alforque, et al. in the schedule annexed to its petition for insolvency is that it considered as merely inchoate their claim in civil case 2051 of the Court of First Instance of Davao for overtime compensation. We reject this explanation. The issue in the pending case is no longer the determination of the appellants' right to overtime compensation, which had already been decided by the Court of First Instance of Davao and affirmed by the Court of Appeals, but the simple arithmetical determination of the exact amount of overtime compensation the company has yet to pay. The comprehensiveness of the coverage of the matters required to be stated explicitly in the schedule, as prescribed by section 15 of the Insolvency Law (Act 1956, as amended), is such that even an outline of the facts giving rise or which might give rise to a cause of action against the insolvent debtor must be included. Thus:

"Sec. 15. Said schedule must contain a full and true statement of all his debts and liabilities, together with a list of all those to whom, to the best of his knowledge and belief, said debts or liabilities are due, the place of residence of his creditors and the sum due each, the nature of the indebtedness or liability and whether founded on written security, obligation, contract or otherwise, the cause and consideration thereof, the time and place when and where such indebtedness or liability accrued, a declaration of any existing pledge, lien, mortgage, judgment, or other security for the payment of the debt or liability, and an outline of the facts giving rise or which might give rise to a cause of action against such insolvent debtor."

Certainly, the appellants not merely had a cause of action at the time the appellee filed its petition for insolvency, for their cause of action had already been adjudged in their favor. Nor was their non-inclusion in the schedule a minor defect, for they were fifty-three (53) in number and represented a finally adjudged award in the substantial sum of P157,560.79.

The importance of rendering a true and complete statement of the matters called for in the schedule cannot be over-emphasized; if the name of a creditor is omitted, he stands to be deprived of personal notice of the proceedings, apart from publication, and of his right to vote in the election of an assignee. As has happened in the

case at bar, only two creditors having credits of P1,200 and P1,000, respectively, elected the assignee, while the fifty-three appellants with credits in the sum of P157,560.79 were totally deprived of all the rights accruing to them.

The circumstances obtaining immediately before and after the filing of the petition for insolvency clearly indicate that the omission of the appellants from the schedule was other than innocent, and the purpose of the filing of the petition was other than the purpose for which the Insolvency Law was enacted, which is to effect an equitable distribution of the bankrupt's properties among his creditors and to benefit the debtor by discharging him from his liabilities and enabling him to start afresh with the property set apart for him as exempt.[1] The day when the company filed its petition for insolvency with the Court of First Instance of Cebu (June 15, 1966) was the same day when it was supposed to offer evidence of payment of overtime compensation in civil case 2051 in the Court of First Instance of Davao. It moved on June 7, 1966 to postpone the hearing in Davao which was set for June 15, 1966, and when it succeeded in obtaining a postponement, it immediately filed insolvency proceedings in Cebu without including the appellants in the schedule that it annexed to its petition. Under these circumstances, we hold that the appellee company acted in gross bad faith in the filing of the petition for insolvency.

When the company notified the appellants of the insolvency proceedings on June 27, 1966, which it now claims was a gesture of good faith, the harm caused by their malicious exclusion from the schedule had already been inflicted, as the court had already, on June 18, 1966, declared the appellee insolvent. The notification did not cure the defect. Upon the contrary, it demonstrates that the company was fully aware that it should have included the appellants in the schedule in the first place. Their non-inclusion completely vitiated the proceedings.[2]

The Court of First Instance of Cebu ordered the suspension of the proceedings in the Davao court on June 24, 1966, but the appellants were notified of the insolvency proceedings only after three (3) days. Since the appellants were intentionally not included in the schedule, and were not priorly notified of the proceedings and had no actual knowledge thereof, the order of the Cebu court suspending the overtime compensation case in the Davao court is ab initio null and void.[3]

II. The appellee company did not attach an inventory to its petition for insolvency, but alleged in the petition that it did not "inasmuch as it has no properties." The appellants would consider the lack of an inventory as fatal to the petition. We do not agree, because it is to be assumed, until proven otherwise, that the appellee company was stating the truth when it alleged under oath that it had no property to inventory.

III. The third assigned error – whether a corporation as such the appellee, may be discharged so as to stay suits instituted against it – need not be passed upon since the order of the insolvency court suspending the case in Davao is null and void, as already indicated.

IV. The appellee company has raised the issue of the tardiness of the present appeal, upon the following premises: the court issued the order declaring the appellee insolvent on June 18, 1966; the appellants received notice thereof on June 27, 1966 but filed their motions to intervene, to suspend election of an assignee and to dismiss the petition only on July 28, 1966; the court did not categorically act on the motions to suspend election of an assignee and to dismiss the petition until December 27, 1966 when it denied these motions; the appellants received the order of December 27, 1966 on January 31, 1967; and the order dated March 21, 1967 denying reconsideration was received by appellants on April 7, 1967. The appellee argues that since the appellants received on June 27, 1966 the order declaring it insolvent, and said order became final in July, 1966, the appeal of the appellants on April 7, 1967 was time barred.

This argument is devoid of merit. The order of June 18, 1966 declaring the appellee insolvent did not affect the appellants for lack of personal notice to them of the insolvency proceedings; and they received no notice because

they were, intentionally and in gross bad faith, omitted from the schedule – for which reasons the said order is a complete and absolute nullity. Actually, the orders appealed from are (a) the order of December 27, 1966 which denied both the motion to dismiss and the motion for reconsideration of the appointment of the assignee, and (b) the order of March 21, 1967 which denied reconsideration of the order of December 27, 1966. (Notice of Appeal, Record on Appeal, pp. 75 76) The appellants received the order of December 27, 1966 on January 31, 1967; they filed a motion for reconsideration thereof on February 28, 1967; they received the order denying reconsideration on April 7, 1967; they filed their notice of appeal on the same day. April 7, 1967, and filed an appeal bond on April 11, 1967 (April 10 was a holiday because April 9 was an official holiday that fell on a Sunday). Clearly, their appeal was perfected on time.

ACCORDINGLY, the orders appealed from are set aside, and judgment is hereby rendered dismissing special proceeding no. 2660-R of the Court of First Instance of Cebu. Costs against the appellee company.

Makalintal, C.J., Teehankee, Makasiar, Esguerra, and Munoz Palma, JJ., concur.

[1] 6 Am. Jar. 547-550; Williams vs. United States Fidelity & G. Co., 236 US 549, 35 Sop. Ct. Rep. 289.

[2] Cf. Small vs. Graves, 7 Barg. N.Y. 576, cited in Agbayani, Comments & Juris. on the Commercial Laws of the Phil.. Vol. 2, p. 979.

[3] Sec 69, Insolvency Law; Hoskyn & Co. vs. Martin (1940) 71 Phil. 154.

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