

GONZALO P. NAVA, ET AL., PETITIONERS, VS. HON. RAMON R. SAN JOSE, ET AL., RESPONDENTS.*G.R. No. L-3905. October 31, 1951*

Ponente: PARAS, C.J.

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On April 27, 1940, an action was filed in the Court of First Instance of Manila by the Standard Investment of the Philippines against Toribio Teodoro for the recovery of the sum of P10,000, docketed as Civil Case No. 56897. In his answer of October 30, 1940, Toribio Teodoro filed a third party complaint against Gonzalo P. Nava for the recovery of P10,000. In its decision of October 30, 1941, the Court of First Instance of Manila dismissed the claim of Toribio Teodoro against Gonzalo P. Nava. Upon appeal to the Court of Appeals taken by Toribio Teodoro from the decision of the Court of First Instance, the Court of Appeals on December 24, 1943, reversed said decision and sentenced Gonzalo P. Nava to pay to Toribio Teodoro the sum of P10,000. In due time, the Standard Investment of the Philippines and Gonzalo P. Nava filed with the Supreme Court a petition for review on certiorari of the decision of the Court of Appeals, docketed as G. R. No. L-1270. On March 9, 1949, the Supreme Court dismissed the petition for certiorari. A petition for reconsideration was filed on March 29, 1949, which was denied by the Supreme Court on April 18, 1949.

On January 31, 1950, Toribio Teodoro filed a motion in the Court of First Instance of Manila for the execution of his judgment against Gonzalo P. Nava which was granted by said court on the same date. A writ of garnishment was forthwith served by the Sheriff of Manila on the Philippine Bank of Commerce. A return was made by the Philippine Bank of Commerce to the effect that Gonzalo P. Nava had mortgaged to said bank a residential lot covered by transfer certificate of title No. 142 of the Register of Deeds of Rizal City, as security for a credit accommodation in the form of an overdraft line not to exceed P26,000 granted to Nava by the bank. Upon proper examination under oath, it was disclosed that out of the overdraft line of P26,000, Nava had used P19,680.47 as of January 31, 1950, leaving an unused balance of P6,319.53. Toribio Teodoro accordingly filed a motion in the Court of First Instance of Manila praying that the Philippine Bank of Commerce "be ordered to deliver and pay either to the judgment creditor Toribio Teodoro, through his undersigned counsel, or to the Sheriff of Manila, the sum of P6,319.53, representing the unused balance of Gonzalo P. Nava's overdraft account with said bank as of January 31, 1950." An opposition was filed by the Philippine Bank of Commerce, alleging that the unused balance of P6,319.53 was not a credit in favor of Nava subject to garnishment. An opposition was also filed by Gonzalo P. Nava, contending that Nava's obligation to pay P10,000 to Teodoro was a pre-war obligation subject to moratorium under the provisions of Republic Act No. 342 and that the unused balance of P6,319.53 was not a credit in favor of Nava subject to garnishment.

On June 12, 1950, the Court of First Instance of Manila, thru his Honor, Judge Ramon R. San Jose, ordered the Philippine Bank of Commerce to deliver to the Sheriff of Manila the amount of P6,319.53, representing the unused balance of Nava's overdraft account. On June 14, 1950, another order was issued, holding that the obligation of Nava to pay P10,000 to Teodoro was not covered by the Moratorium Law. Failing to obtain a

reconsideration of said orders, Gonzalo P. Nava and the Philippine Bank of Commerce filed with the Supreme Court the present original petition for certiorari against Hon. Ramon R. San Jose, as Judge of the Court of First Instance of Manila, Toribio Teodoro and the Sheriff of Manila, seeking to annul the order of January 31, 1950, ordering the execution, and the order of June 12, 1950, directing the Philippine Bank of Commerce to deliver to the Sheriff of Manila the amount of P6,319.53, representing the unused balance of Nava's overdraft account with the said bank as of January 31, 1950.

1. We agree with the contention of the petitioners that Nava's obligation to pay P10,000 to respondent Teodoro is a pre-war obligation covered by the Moratorium Law, Republic Act No. 342. It is true that, as contended by the respondents, the decision of the Court of Appeals sentencing Nava to pay to Teodoro the sum of P10,000 became unassailable only on March 9, 1949, when the Supreme Court dismissed the petition for certiorari filed by Nava; but the latter's liability for said amount undoubtedly arose or was incurred long before, or at the latest on October 30, 1940, when Teodoro filed his third party complaint against Nava in Civil Case No. 56897 seeking to recover the aforesaid amount. Otherwise, there would absolutely be no basis for said third party complaint or for any judgment thereon. This is too obvious to require further argument. The decision of the Court of Appeals merely gave judicial recognition or authority to an already pre-existing liability arising from fraud on the part of Nava or from the rescission by the latter of his contract with Teodoro executed on April 3, 1947, which gave origin to Civil Case No. 56897. While Nava's obligation is covered by the Moratorium Law, we are, however, of the opinion that he had waived his right to invoke the benefit of moratorium because of his failure to set up said defense before March 9, 1949, when this Court dismissed Nava's petition for certiorari in G.R. No. L-1270, or in his petition for reconsideration filed on March 29, 1949, or even at any time before the resolution of dismissal promulgated by this Court had become final. It must be remembered that Republic Act No. 342 was enacted on July 26, 1948, or long before G.R. No. L-1270 was finally terminated.

2. We also agree with the contention of the petitioners that the unused balance of P6,319.53 of Nava's overdraft account is not a credit subject to garnishment within the purview of sections 7 and 8 of Rule 59 of the Rules of Court. Within the statutory intention, credit is the correlative of debt, so that the existence of a debt on the one part constitutes a credit on the other. (*Isabelle vs. Le Blanc*, 39 A. 436, 437, 68 N. H. 409.) Credits are something belonging to the defendant, but in the possession and under the control of the garnishee, like promissory notes or other evidences of indebtedness of third parties, which may be delivered up or transferred to the sheriff. (*Gow vs. Marshall*, 27 P. 422, 423, 90 Ca. 565.) It is quite plain that the overdraft account in question is not a credit in favor of petitioner Nava, because the latter, supposing he will ever avail himself thereof, will become a debtor instead of a creditor. Indeed "every overdraft, whether by previous arrangement or not, and whether secured or not, and whether drawing interests or not, is a loan." (*United States vs. Allis*, 73 F. 165, 178.) To rule that the unused balance in Nava's overdraft account with the Philippine Bank of Commerce is subject to garnishment, would be tantamount to compelling a person, by judicial process, to borrow funds with which to pay his judgment creditor.

Wherefore, the order of the respondent judge of January 31, 1950, for the execution of the judgment in Civil Case No. 56897, is sustained, but the order of June 12, 1950, requiring the Philippine Bank of Commerce to deliver to respondent Sheriff of Manila the amount of P6,319.53, representing the unused balance of Gonzalo P. Nava's overdraft account with said bank as of January 31, 1950, is set aside. So ordered, without costs.

Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

Tuason, J., concurs in the result.

DISIDENTE

Pablo, M.:

No estoy conforme con la primera parte dispositiva de la decision.

En mi opinion, la moratoria podia aun suscitarse al tiempo de la presentacion por Toribio Teodoro de una mocion pidiendo la ejecucion de la sentencia dictada contra Gonzalo P. Nava. Era la primera oportunidad para alegar la defensa.

Durante la pendencia en este Tribunal del asunto No. L-1270, certiorari contra la decision del Tribunal de Apela-cion, no existia un periodo de alegaciones. La actuacion se reducía a determinar si el Tribunal de Apelacion erro o no.

En Uy Hoo & Company contra Yuseco, (89 Phil., 644) el demandado presento una mocion pidiendo el sobreseimien-to de la demanda, por la razon de que habia otra causa pendiente entre las mismas partes, sin suscitar la defensa de la moratoria. Despues presento su contestacion alegan-do varias defensas sin suscitar tampoco la de moratoria y, cuando ya estaba vista en parte la causa, fue cuando presento por primera vez la contestacion enmendada sus-citando la defensa de moratoria. A pesar de haber el demandado dejado pasar dos oportunidades para suscitar tal defensa durante el periodo de alegaciones, este Tribunal considero bien presentada dicha defensa en la contestacion enmendada.

No veo la razon por que en la presente causa Gonzalo P. Nava no puede suscitar la misma defensa cuando se pidio la ejecucion de la sentencia dictada contra el; era la primera vez que se le presentaba la oportunidad.

Las palabras "enforcement of payment of all debts * * * is temporarily suspended" pueden referirse a la presentacion de la accion, o la ejecucion de una sentencia.

Estoy conforme en todo lo demas.

Feria, M., conforme.

Order of January 31, 1950 sustained, and order of June 12, 1950 set aside.

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