

J. MCMICKING VS. PADERN, MORENO, JIMENEZ & CO.

G.R. No. 10193. October 12, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by this appeal is who of the various defendants is entitled to a certain sum of money in the hands of the sheriff of the city of Manila which was received by him as the result of the sale of certain goods, wares and merchandise under executions issued by the Court of First Instance of the city of Manila.

From the record the following important facts appear.

- That on the 3rd day of April, 1913, the defendant J. J. Peterson obtained a judgment against the said Padern, Moreno, Jimenez & Co., S. en C, in the Court of First Instance of the City of Manila, in case No. 10370, for the sum of P5,813.06 and costs; that an execution was issued upon said judgment upon the 26th day of July, 1913, and the goods, wares and merchandise of the defendant Padern, Moreno, Jimenez & Co., S. en C, were levied upon and later sold at public auction; that a part of the money in the hands of the sheriff was the result of said execution sale.

- That the defendant Natalia Pascual Casal obtained a judgment against the defendant Padern, Moreno, Jimenez & Co., S. en C, in the court of the justice of the peace of the city of Manila on the 28th day of June, 1913, for the sum of P821.49 and costs; that on the 8th day of July, 1913, an execution was duly issued upon said judgment, and the goods, wares and merchandise of the defendant Padern, Moreno, Jimenez & Co., S. en C, were sold at public auction; and a part of the money now in the hands of the sheriff is the result of said sale; that the judgment in favor of Natalia Pascual Casal for the sum of P821.49, was for rent due and payable for the use and occupation of the building occupied by Padern, Moreno, Jimenez & Co., S. en C.

- That on the 30th day of July, 1913, the defendant D. L. Minnich obtained a judgment in the Court of First Instance of the city of Manila against the defendant Padern, Moreno, Jimenez & Co. (Inc.) for the sum of P441.20 and costs.

- That on the 5th day of September, 1912, Francisco Moreno filed an application for voluntary insolvency of said Padern, Moreno, Jimenez & Co., S. en C.; that on the 19th day of September, 1912, said firm offered a composition with its creditors, which was accepted by all of them except the defendant J. J. Peterson; that later said voluntary insolvency proceedings were dismissed at the request of Padern, Moreno, Jimenez & Co., S. en C. (see case No. 9892); that in the month of September, 1912, the defendant Padern, Moreno, Jimenez & Co. (Inc.) was organized as a corporation under the laws of the Philippine Islands, and on the 24th day of September, 1912, received from the defendant Padern, Moreno, Jimenez & Co., S. en C, all of its real and personal property; that the corporation Padern, Moreno, Jimenez & Co. (Inc.), was capitalized at P166,000; that there were issued to the

defendant Padern, Moreno, Jimenez & Co., S. en C, shares of stock in said new corporation, amounting to P165,500; that one share of TIOCF each was issued to J. A. Wolfson, Messrs. Luzuriaga, Brown, Calvo and Drexel; that the only property constituting the capital of the new corporation Padern, Moreno, Jimenez & Co. (Inc.) was the property which the defendant Padern, Moreno, Jimenez & Co., S. en C, had turned over to said new corporation; that the other stockholders Wolfson, Luzuriaga, Brown, Calvo and Drexel paid nothing whatever for the five shares of stock which were issued to them.

- That the indebtedness upon which the said J. J. Peterson and Natalia Pascual Casal had obtained judgment existed against the said Padern, Moreno, Jimenez & Co., S. en C, prior to the time when the said new corporation was organized and before its property was turned over to the new corporation; that at the time the new corporation was organized, and at the time the old corporation turned over its property to the new, the old corporation was insolvent.

- That when Padern, Moreno, Jimenez & Co. (Inc.) was organized its only assets was the property which Padern, Moreno, Jimenez & Co., S. en C, had turned over to it at a time the latter was absolutely insolvent.

- That whatever amount may be due D. L. Minnich is due him from Padern, Moreno, Jimenez & Co. (Inc.). He makes no claim against Padern, Moreno, Jimenez & Co., S. en C.

- That whatever amount may be due the Manila Electric Railroad & Light Company is due it from Padern, Moreno, Jimenez & Co. (Inc.) Said company makes no claim against Padern, Moreno, Jimenez & Co., S. en C,

- That no proof whatever was adduced during the trial of the cause in support of the claim presented by the Bank of the Philippine Islands in its answer.

- That the defense presented by Francisco Moreno on behalf of Padern, Moreno, Jimenez & Co., S. en C, was made, according to his own admission, without any authority to represent said corporation.

- That there is nothing in the record which shows by what authority the property of Padern, Moreno, Jimenez & Co., S. en C, was sold and transferred to the new corporation Padern, Moreno, Jimenez & Co. (Inc.). The record does show however, that the new corporation (Padern, Moreno, Jimenez & Co. (Inc.) took over all of the property and effects of the old company and issued to it stock of the new corporation in the sum of P165,500. The record further shows that the new company continued the same business of the old company at the same building in the same place in which the old company had formerly conducted its business. The record further shows that, if the property of the old company was sold at all under the said executions above mentioned, the same was purchased by the new corporation, for the reason that all of the money which the sheriff received by virtue of said sale was received from the representatives of the new corporation. The sum so received was P3,017.89. Evidently that was all of the property which the old corporation had turned over to the new, and which constituted the basis for the issuance to the old company by the new, of stock valued at P165,500. The record contains no explanation how property worth P3,017.89 could constitute a consideration for shares of stock amounting to P165,500. The record clearly shows by an overwhelming preponderance that at the time Padern, Moreno, Jimenez & Co., S. en C, sold

and transferred, if indeed a sale took place, all of its property and effects to Padern, Moreno Jimenez & Co. (Inc.), it was insolvent and unable to pay but a small portion of its indebtedness. The record further shows that said sale was without consideration, was made when the vendor was insolvent and evidently for the purpose of defrauding its creditors. The same is, therefore, null and void, and the property so sold, or the proceeds thereof, can be applied to the payment of the debts of Padern, Moreno, Jimenez & Co., S. en C, in accordance with the rule of preference.

While the judgment of the appellee Peterson antedates the judgment of Natalia Pascuai Casal, and while, under section 1924 of the Civil Code, he would, therefore, have a preference over Natalia Pascuai Casal, yet the record shows, and the fact is not denied, that the judgment in favor of Natalia Pascuai Casal was for rents due and payable for the use and occupation of the building occupied by the insolvent. For that reason, therefore, by virtue of paragraph 7 of article 1922 of the Civil Code, Natalia Pascuai Casal has a preference in the payment of her debt over that of Peterson.

Therefore, it is hereby ordered and decreed that the judgment of the lower court be modified, that Natalia Pasmí be paid the full amount of her claim of P821.49 out of the money which the sheriff holds and that the balance thereof be paid to the appellee Peterson, without any finding as to costs. So ordered.

Arellano, C. J., Carson, Araullo, and Street, JJ., concur.

MALCOLM, J., did not take part.

Judgment modified.

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