

PHILIPPINE TRUST COMPANY, AS ASSIGNEE OF SALVADOR HERMANOS, INSOLVENT, PLAINTIFF AND APPELLANT, VS. PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLEE.

G. R. No. 16483. December 07, 1921

Ponente: JOHNS, J.

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JOHNS, J.:

The plaintiff and defendant are corporations organized under the laws of the Philippine Islands and domiciled in the city of Manila.

Salvador Hermanos was a copartnership and during the month of January, 1919, executed to the defendant eight promissory notes aggregating P156,000, payable on demand, and each secured by a quedan, or warehouse receipt, issued by the firm of Nieva, Ruiz & Company. Each note recites that it is payable on demand after date, for value received, and that the firm has deposited "with the said bank as collateral security for the payment of this note, or any note given in extension or renewal thereof, as well as for the payment of any other liability or liabilities of the undersigned to the said bank, due or to become due, whether now existing or hereafter arising, the following property owned by the undersigned." The note then specifies the number of the quedan and the amount of copra in piculs, and states that the quedan was issued by Nieva, Ruiz & Company. The note for P8,000, dated January 18, 1919, was secured by warehouse receipt No. 30; for P20,000, dated January 22, 1919, was secured by receipt No. 35; for P20,000, dated January 24, 1919, was secured by receipt No. 38; for P20,000, dated January 27, 1919, was secured by receipt No. 41; for P14,000, dated January 28, 1919, was secured by receipt No. 42; for P18,000, dated January 21, 1919, was secured by receipt No. 33; for P18,000, dated January 23, 1919, was secured by receipt No. 36; and for P18,000, dated January 25, 1919, was secured by receipt No. 39, making a total of 16,051.10 piculs of copra, covered by the warehouse receipts of the firm of Nieva, Ruiz & Company issued to the firm of Salvador Hermanos, and by that firm pledged as collateral to the defendant to secure the payment of the eight above-described notes. Each of them further recites that "on the nonperformance of this promise, or upon the non-payment of any of the liabilities above-mentioned, or upon the failure of the undersigned forthwith, with or without notice, to furnish satisfactory additional securities in case of decline, as aforesaid, then and in either such case, this note and all liabilities of the undersigned, or any of them, shall forthwith become due and payable, without demand or notice, and full power and authority are hereby given to said bank to sell, assign, transfer and deliver the whole of the said securities, or any part thereof, or any substitutes therefor or any additions thereto, or any other securities or property given unto or left in the possession of or hereafter given unto or left in the possession of the said bank by the undersigned for safe keeping or otherwise, at any brokers' board or at public or private sale, at the option of said bank or of its president or secretary, without either demand, advertisement or notice of any kind, which are hereby expressly waived. At any such sale, the said bank may itself purchase the whole or any part of the property sold, free from any right of redemption on the part of the undersigned, which is hereby waived and released." Stamped in red ink across the face of each quedan are the words "Negotiable Warrant," and each of them was in the usual form of warehouse receipts.

On February 10, 1919, the firm of Salvador Hermanos withdrew from the defendant bank, by and with its consent, warehouse receipts Nos. 33, 36, and 39 above described, which the bank was holding as collateral security for each of the three 18,000-peso notes amounting to P54,000. The total amount of copra evidenced by the receipts withdrawn was 6,024.55 piculs, the declared value of which, shown on the face of such receipts, was P90,368.25. At the time of the withdrawal, the firm executed the following writing:

"We received from the Philippine National Bank the warehouse receipts issued by Messrs. Nieva, Ruiz & Company, the contents of which are as follows:

No.

Date.

Sacks.

Piculs.

Declared
value.

33

January 21/19.....

2,325

2,040.55

P30,608.25

36

January 23/19.....

2,175

1,992.00

29,880.00

39

January 25/19.....

2,335

1,992.00

29,880.00

Total.....

6,835

6,024.55

90,368.25

"We promise to return to this bank the warehouse receipts above cited on or before the 27th instant. These warehouse receipts are guaranteed by the attached certificate of existence of the effects of the 8th of February, 1919, issued by us.

"Manila, P. I., February 10, 1919.

"SALVADOR HERMANOS.

"Per (Sgd.) G. SALVADOR."

to which was attached this writing:

"MANILA, P. I., February 8, 1919.

"We hereby certify that there exist the following articles in our bodegas as follows:

"Soler Bodega.

100 tons kapok @ 200.00.....

P20,000.00

100 piculs hemp @ 60.00.....

6,000.00

20,000 sacks (empty) @ 0.30.....

6,000.00

1 lot gum copal.....

1,900.00

1 lot gum elemi.....

1,700.00

500,000 rattan @ 12.00.....

6,000.00

Aceites y grasas.....

800.00

9,000 sacks common salt @ 2.00.....

18,000.00

60,400.00

"Wise & Co.—Gagalangin Bodega.

905 cas. Gs. in case @ 12.75.....P11,538.75

77 cas. Gs. in drums

54 gals. 64.80..... 4,989.60

_____ 16,528.35

P76,928.35

=====

and promise that none of the above, articles would be removed without consulting first, with the Philippine National Bank.

"SALVADOR HERMANOS.

"Per (Sgd.) G. SALVADOR."

Neither writing was in any manner authenticated by a notary or by a competent public official. The writing of February 10 is in form a receipt from the firm of Salvador Hermanos to the Philippine National Bank of the quedans, or warehouse receipts, for the copra therein described. The one of February 8 is, in legal effect, the certificate of Salvador Hermanos "that there exist the following articles in our bodegas as follows:" (Here follows the described property.) That is to say, that the firm certifies that the property described is in the warehouse of the firm.

Act No. 1956 of the Philippine Legislature provides for the suspension of payments, the relief of insolvent debtors, the protection of creditors, and the punishment of fraudulent debtors. The Act provides:

"SECTION 1. This Act shall be known and may be cited as The Insolvency Law, and in accordance with its provisions every insolvent debtor may be permitted to suspend payments or be discharged from his debts and liabilities." Section 2 provides that debtor who possesses sufficient property to cover the debts, be it an individual, firm or corporation, and who is unable to meet them at maturity, "may petition that he be declared in the state of suspension of payments by the court, or the judge thereof in vacation."

Section 3 enacts that upon the filing of the petition, the court shall make an order calling a meeting of creditors specifying the time and place; that notice thereof shall be published in a newspaper, and that "said order shall further contain an absolute injunction forbidding the petitioning debtor from disposing in any manner of his property, except in so far as concerns the ordinary operations of commerce or of industry in which the petitioner is engaged, and, furthermore, from making any payments outside of the necessary or legitimate expenses of his business or industry, so long as the proceedings relative to the suspension of payments are pending, and said

proceedings for the purposes of this Act shall be considered to have been instituted from the date of the filing of the petition."

Section 14, chapter 3, provides that any person owing debts exceeding P1,000 may apply to be discharged from his debts and liabilities by petition to the Court of First Instance in which he has resided for six months preceding the filing of the petition.

Section 18 enacts that upon receiving and filing of the petition, schedule, and inventory, the court, or the judge, shall make an order declaring the petitioner insolvent, and "shall further forbid the payment to the debtor of any debts due to him and the delivery to the debtor, or to any person for him, of any property belonging to him, and the transfer of any property by him, and shall further appoint a time and place for a meeting of the creditors to choose an assignee of the estate."

On April 21, 1919, Salvador Hermanos filed a petition of insolvency in the Court of First Instance of the city of Manila. Article 5 of the petition recites:

"That the following property and merchandise are being pledged in favor of the Philippine National Bank, as shown by a written document, on account of its credit which amounts to P175,563.19, which are described as follows:

81,904 kilos kapok @ 0.20 ko.....

P16,380.80

521,600 pieces rattan split 11.00 m.....

5,737.60

93.94 piculs almaciga value.....

2,300.00

80 drums Union gasoline { @ 53 gls. each .}.....

6,415.20

@ 1.485 gal

100 cases gasoline 14.00 cs.....

1,400.00

8 drums gasoline @ 54 gals. ea. 1.485 gl.....

641.52

10,000 piculs copra p. picul 14.50.....

145,000.00

35 bales cardboard value.....

1,451.52

P179,326.64"

The testimony is undisputed and conclusive that about May 3, 1919, Gregorio Salvador, a member of the firm of Salvador Hermanos, delivered certain goods, wares, and merchandise to and in the warehouse of Nieva, Ruiz & Company, and requested that firm to issue its receipt therefor to and in favor of the Philippine National Bank, and that, pursuant to such request, that firm did issue eight quedans to the bank as follows:

- No. 161 for 32 bales of hemp;
- No. 162 for 953 bundles of rattan;
- No. 165 for 72 bundles of empty sacks;
- No. 167 for 136 sacks of gum;
- No. 168 for 1,461 bales of kapok;
- No. 175 for 288 packages of Talcum Powder ;
- No. 176 for 35 packages of cardboard; and
- No. 185 for 134 bundles of empty sacks.

On and between May 6, 1919 and August 7, 1919, acting under the terms and provisions of its respective notes, the defendant bank sold all of the personal property for which it held warehouse receipts, or which had been surrendered to it by the Hermanos firm, save and except the property described in the three warehouse receipts, which were released and surrendered to that firm on February 10, 1919.

Based upon its insolvency petition, and in the ordinary course of business, the firm of Salvador Hermanos was adjudged insolvent, and on July 19, 1919, the Philippine Trust Company was elected assignee of said firm and duly qualified. September 13, 1919, as such assignee, it made a demand upon the bank for the surrender and delivery of the property described in all of the above receipts, and upon the bank's refusal, commenced this action to recover its value alleged to be P242,579.61, claiming that on April 21, 1919, the firm of Salvador Hermanos was the sole and exclusive owner of the property, and that, as to the copra, about June 28, 1919, and after the filing of the insolvency petition, the bank unlawfully seized and converted the copra to its own use, the value of which was P192,260. For a second cause of action, the plaintiff alleges that, as such assignee, it was the owner of the remaining personal property, and that, after the insolvency petition was filed, the defendant unlawfully seized and converted such property to its own use, and that it was of the value of P50,319.61.

For answer, the bank makes a general denial, as to each cause of action, of all of the material allegations of the complaint. This presents the question as to who is the owner and entitled to possession of the property. There is but little, if any, dispute as to the facts.

It is conceded that in January, 1919, the firm of Salvador Hermanos executed to the Philippine National Bank the eight promissory notes above described, and that each note was secured by the quedan, or warehouse receipt, of Nieva, Ruiz & Company, issued to the firm of Salvador Hermanos for so many piculs of copra. That the notes are of the same form, the only difference being the date and the amount of the note, and the number of the quedan, or warehouse receipt, and the amount of copra in piculs. Each warehouse receipt was duly numbered, dated and signed by Nieva, Ruiz & Company, and recites "received from Salvador Hermanos the following packages of copra as specified below, which are stored in warehouse No. 2, situated at....., subject to the terms and conditions stated on the face and back hereof, to be delivered unto Salvador Hermanos, or order," giving the number of the warehouse where located, and the number of sacks., gross weight and the declared value; across the face of each receipt is stamped in red ink the words "Negotiable Warrant." Among the conditions printed on the back of the receipt is paragraph 4, as follows:

- "4. This Company will deliver the packages noted hereon, on surrender to the Company of this warrant endorsed by the party who shall be for the time registered in the books of the Company as the owner of the

packages described hereon; and the production by the Company of this warrant shall at all times be conclusive proof that the packages hereon noted have been properly delivered by the Company and shall exempt the Company from all responsibility in connection with the said packages or goods." Also the following:

"Delivery is hereby authorized unto.....," opposite which some of the receipts were signed by the firm of Salvador Hermanos, and others were not signed by any one.

The fact remains that at the time the eight promissory notes were executed, a given quedan, or warehouse receipt, was described and incorporated in the note as to its number, when and by whom issued, and the property it represented, and each receipt was then delivered by the firm to the defendant bank, all of which was during the month of January, 1919. The bank never had the manual possession or the physical control of any of this property until after the insolvency petition was filed, and it is for such reason that the plaintiff claims that it was the property of the firm, and that the defendant should account to the assignee.

Each quedan, or warehouse receipt, was specifically described in a given note, and was made a part of it, and the note recites that, for any breach of its terms or conditions, the bank has full power and authority "to sell, assign, transfer and deliver the whole of the said security, or any part thereof, etc.," and that "at any such sale, the said bank may itself purchase the whole or any part of the property sold, free from any right of redemption on the part of the undersigned, which is hereby waived and released."

In addition, the quedan itself was delivered to and held by the bank, and the warehouseman recognized the bank as the owner of the property. Legally speaking, the owner of the quedans, or warehouse receipts, was the owner of the property described in them, and the quedans were given as collateral to secure promissory notes, which, for value received, were executed to the bank.

The execution of the notes, the physical possession of the negotiable quedan, or warehouse receipt, and the recognition of ownership by the warehouseman, legally carries with it both the title to, and the possession of, the property. In such a case, title is not founded on a public instrument which should be authenticated by a notary or by a competent public official. Legally speaking, the execution of the promissory notes and the pledging of the quedans, or warehouse receipts, as collateral, and the describing of them in the notes, and the manual delivery of the quedan, or warehouse receipt itself, carries with it not only the title, but the legal possession of the property. In other words, as to the property described in the quedans, or warehouse receipts, which were pledged, as collateral, in January, 1919, to secure the eight respective promissory notes, both the title and the possession of that property were delivered to and vested in the defendant bank in January, 1919. Three of those quedans, or warehouse receipts, were returned to the firm by the bank on February 10, 1919, but the bank still owned and held the notes, which were secured by those warehouse receipts, and no part of the debt itself was paid by or through the surrender of the receipts. For such reason, as to the first cause of action, the plaintiff cannot recover, and, as to it, the judgment of the lower court should be affirmed.

The second cause of action presents another and different question.

February 10, 1919, for some unexplained reason, the bank surrendered and returned to Salvador Hermanos the three quedans, or warehouse receipts, Nos. 33, 36, and 39, which the firm had pledged to it as collateral on January 21, 23, and 25, 1919, to secure the payment of the three notes of P18,000 each, executed on those respective dates. In its receipt for them, the firm promised to return the quedans to the bank "on or before the 27th instant/" meaning January 27, 1919, and it was therein stated that such warehouse receipts "are guaranteed by the attached certificate of existence of the effects of the 8th of February, 1919, issued by us." The legal effect of this receipt is a promise on the part of the firm to return the three quedans on or before January 27, 1919, and a statement that such receipts are guaranteed by the attached certificate of the existence in the warehouse of the

property described in the certificate. The statement of February 8, recites "we hereby certify that there exist the following articles in our bodegas." Then follows a description of the property. This is nothing but a statement or representation to the effect that the firm has the property in its warehouse. Nothing more. After describing the property, the certificate then says: "And promise that none of the above articles would be removed without consulting first with the Philippine National Bank." There is no statement or representation of any kind showing when or from whom the property was received, or how it was held, or who was the owner, or when or to whom it would be delivered. When analyzed, this writing is nothing more than a certificate of the firm that the described property was then in its warehouse, and a promise that none of the "articles Would be removed without consulting first with the Philippine National Bank." Such a writing would not transfer the title of the property to the bank, or give it possession, either actual or constructive. It will be noted that both the receipt of February 10 and the certificate and promise of February 8, are signed by the firm of Salvador Hermanos, and that the certificate says that the property was then in the firm's warehouse, and that neither instrument was in any manner authenticated by a notary or a competent public official, as provided by article 1216 of the Civil Code, and that the property was in the warehouse of the firm.

Article 1863 of the Civil Code provides:

"In addition to the requisites mentioned in article 1857, it shall be necessary, in order to constitute the contract of pledge, that the pledge be placed in the possession of the creditor or of a third person appointed by common consent."

But here, it appears from the certificate that the property was then in the possession of the firm, who made the certificate, and that it was in the possession of that firm when its insolvency petition was filed on April 21, 1919. It further appears that on May 3, 1919, Gregorio Salvador, a member of the firm, appeared at the offices of Nieva, Ruiz & Company, and requested that firm to issue its warehouse receipts to the Philippine National Bank for certain goods, which on that date he placed in the warehouse of that company, and, in accord with his request, Nieva, Ruiz & Company did issue to and in favor of the Philippine National Bank the following quedans, or warehouse receipts:

No. 161 for 32 bales of hemp, in warehouse No. 2, of the declared value of P880;

No. 162 for 953 bundles of rattan, in warehouse No. 2, of the declared value of P3,700.40;

No. 165 for empty sacks, in warehouse No. 2, of the declared value of P450;

No. 167 for 136 sacks of almaciga, in warehouse No. 1, of the declared value of P2,300;

No. 168 for 1,461 bales of kapok, in warehouse No. 1, of the declared value of P14,571.48;

No. 175 for 288 packages of talcum powder, in warehouse No. 5, of the declared value of P15,582.26;

No. 176 for 35 packages of cartulina, in warehouse No. 5, of the declared value of P2,588.48; and

No. 185 for 134 bundles of empty sacks, in warehouse No. 2, of the declared value of P670, making a total declared value of the property evidenced by such receipts of P40,742.62.

In the second cause of action, the complaint alleges that the defendant took and converted 88 drums of gasoline and 100 cases of gasoline; none of which is included in the above receipts. Otherwise the property described in quedans Nos. 161 to 185, inclusive, correspond and are identical with the property described in the second cause of action.

The bank founds its right to claim the property described in the quedans Nos. 161 to 185, inclusive, upon the

firm's certificate of February 8, 1919, above quoted. By comparison, it will be found that the property described in such quedans, or warehouse receipts, does not correspond with the property described in the firm's certificate of February 8. In the certificate of February 8, there are aceites y grasas, or oil and grease, valued at P800, and 9,000 sacks of common salt valued at P18,000 in the bodegas of the firm, and 905 cases of gasoline valued at P11,538.75, and 77 cases of gasoline in drums, 54 gallons, valued at P4,989.60, in the warehouse of Wise & Company, that are not described in the quedans Nos. 161 to 185, inclusive. It also appears that Talcum Powder in receipt No. 175 of the value of P17,140, and cartulina in receipt No. 176 of the value of P2,847 are not included in the property described in the certificate of February 8, making a total value of the property described in those two receipts, and which is not included in the certificate of February 8, of P19,987.

There is not any evidence of the actual market value of the property, but it does appear that at the time quedans Nos. 161 to 185, inclusive, were issued, the bank itself placed a declared value upon that property of P40,742.62. Those quedans do not include the gasoline which the bank admits it sold on May 24, 1919, for P4,989.60, and the gasoline which it sold on May 28, 1919, for the sum of P2,641.80, or P7,631.40 which it received for gasoline. It is true that it appears from the sales report that the bank sold the property described in quedans Nos. 161 to 185, inclusive, for much less money than the valuation which it placed upon the property, but, in legal effect, when the quedans were issued, the conversion of that property took place at the time they were issued to and accepted by the bank, and it should be charged with the value of the property at the time of its conversion, and in the absence of any testimony as to the market value, it should be charged with the amount which it actually received from the sale of the gasoline.

It will be noted that the promissory notes executed by the firm to the bank recite:

"Full power and authority are hereby given to said bank to sell, assign, transfer and deliver the whole of the said securities, or any part thereof, or any substitutes therefor or any additions thereto, or any other securities or property given unto or left in the possession of or hereafter given unto or left in the possession of the said Bank by the undersigned."

Hence, the power and authority of the bank to sell, assign, or transfer is confined to property which was given unto or left in its possession.

As we have pointed out none of the property described in the certificate of February 8 was ever given unto or left in the possession of the bank.

The insolvency petition was filed April 21, 1919, and the plaintiff was duly elected and qualified, as assignee, on July 19, 1919, and, as such, it represents both the creditors and the firm. Although it was not appointed until July, 1919, yet when it did qualify its right and title to all the property of the firm related back and became vested as of April 21, 1919, when the insolvency petition was filed, and from that time it alone had the power and authority to act for and represent the firm. Under the terms and provisions of Act No. 1956 of the Philippine Legislature, after it was filed, the power of the firm or any member of it to deliver possession of the property to secure a preexisting debt was suspended pending final adjudication. That is to say, if the debt was not legally secured before the insolvency petition was filed, no member of the firm had any legal right to secure it after the petition was filed, and any attempt to do so would be null and void.

As to the first cause of action, we hold that in January, 1919, the bank became and remained the owner of the five quedans Nos. 30, 35, 38, 41, and 42; that they were in form negotiable, and that, as such owner, it was legally entitled to the possession and control of the property therein described at the time the insolvency petition was filed and had a right to sell it and apply the proceeds of the sale to its promissory notes, including the three notes of P18,000 each, which were formerly secured by the three quedans Nos. 33, 36, and 39, which the bank surrendered

to the firm. That is to say, the bank had a legal right to apply the proceeds from the property described in the five remaining quedans to the payment of its eight promissory notes.

As to the second cause of action, the judgment of the lower court is reversed, and one will be entered here in favor of the Philippine Trust Company, the plaintiff, and against the Philippine National Bank, the defendant, for P40,742.62, the declared value of the property described in quedans Nos. 161 to 185, inclusive, and for the further sum of P7,631.40, the value of the gasoline sold in May, 1919, or a total of P48,374.02, with interest thereon from September 22, 1919, at the rate of 6 per cent per annum, and for the costs and disbursements in this and the lower court. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avancena, Villamor, and Romualdez, JJ., concur.

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