

INVOLUNTARY INSOLVENCY OF UMBERTO DE POLI. G. A. CU UNJIENG, CLAIMANT AND APPELLEE, VS. ASIA BANKING CORPORATION, CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, AND HONGKONG & SHAN...

G.R. No. 20991. March 06, 1924

Ponente: STATEMENT January 17, 1922, the appellee presented his claim against the insolvent estate of Umberto de Poli for an alleged balance of P25,062.35 for rent of the warehouse formerly occupied by the insolvent debtor and taken over by the assignee at the time De Poli was declared insolvent, for and on account of merchandise and effects therein stated, claiming that until December 31, 1921, the insolvent was indebted to him in the sum of P51,700 for rent of the warehouse; that payments had been made by the assignee on account until the claim was reduced to P25,062.35; that the claim for rent constituted a lien on the goods in the warehouse, and prayed for an order of the court that the amount of the unpaid balance should be paid from the proceeds of the sale of merchandise. January 27, 1922, the Chartered Bank of India, Australia & China presented written objections to the allowance of the lien on the merchandise, contending that the funds in question were the proceeds of sales made by the assignee of merchandise covered by warehouse receipts issued by the insolvent in favor of that bank, and of the Hongkong & Shanghai Banking Corporation, the Asia Banking Corporation and the Bank of the Philippine Islands, which had been approved. "That whether said warehouse receipts be treated as having conveyed said merchandise to the undersigned and other bank creditors absolutely or merely as security, neither the merchandise still on hand, nor the proceeds of that which has been sold can be subjected to the payment of the rents due from the assignee to the warehouse owner for the following reasons: (a) The assignee stands in the shoes of the insolvent debtor U. de Poli (36 Phil., 36, 54) and said warehouse receipts provide for the payment of no storage charges, (b) The undersigned and other bank creditors have made claim for and demand upon the said assignee for the delivery of the merchandise covered by said warehouse receipts and said assignee has denied and resisted such claim and has held said merchandise against the protest of the undersigned and other bank creditors, (c) Said merchandise is not now and has not been since the institution of insolvency proceedings the property of the insolvent estate of U. de Poli, but on the contrary the title thereto is now and has been during said entire period in the undersigned and the other bank creditors." No formal action was taken by the court upon either the claim or the objections. Upon December 12, 1922, the claimant presented another motion in which he claimed that until the 30th of April, 1921, the insolvent was indebted- to him in the sum of P59,690; that at times payments had been made amounting to P50,267.78, leaving a balance due of P9,428.22, and he prayed for an order of the court that his claim be paid out of the proceeds of the sale of the merchandise. December 15, 1922, the appellant banks filed the following written objections to the motion of the claimant: "Come now the undersigned by their respective attorneys and object to the granting of the motion of the above-named claimant of December 12, 1922, unless it be first shown to the satisfaction of the court that the assignee of the insolvent estate has on hand a sufficient sum over and above the total amount of the pending preferred claims of the undersigned and other preferred claimants to pay the amount which the said claimant Cu Unjieng seeks to collect." The lower court rendered the following decision on the motion: "This case is before the court on a motion in behalf of G. A. Cu Unjieng, alleged owner of certain warehouses heretofore occupied by the assignee of this insolvent estate for the purposes of this insolvency, asking that the balance due as rents for said warehouses, to wit, P9,428.22 be ordered paid by the assignee in this case. "Mr. A. D. Gibbs, as attorney for the several bank claimants in this case, to which banks the property stored in the warehouses has been adjudicated, subject to the payment of storage, insurance, etc., objected to said motion upon the ground that the rents should be paid by the assignee out of other funds than the proceeds of the goods claimed by said banks. "The court is of the opinion, and has heretofore held in the orders adjudicating the property to several banks, that the property is liable for the storage

charges, and that the amount of the proceeds of said property should be paid to the banks, less the storage charges, insurance, etc. "The court is clearly of the opinion that the bank claimants are not entitled to free storage or free insurance upon the property claimed by them and that such storage and insurance upon the property claimed by the banks should not be paid out of the proceeds of other property which may be available for payment of the claims of ordinary creditors. In fact, in this case appears there to be little, if any, unencumbered property. "Therefore, the motion is granted, and the assignee is hereby ordered to pay said rents as administrative expenses and charge same proportionately among the bank claimants against the proceeds of the property stored in said warehouses during the pendency of these proceedings." From the decision the banks appeal, specifying the following assignments of error: "I. The court erred in allowing the amount claimed in the second motion of appellee for the reason that the same was in conflict with the amount claimed in a previous motion and there was no proof presented as to the correctness thereof. "II. The court erred in holding that the claim of G. A. Cu Unjieng for rent of warehouse is chargeable against the proceeds of merchandise covered by warehouse receipts issued by the insolvent debtor to the appellant banks and wrongfully withheld from the latter by the assignee. "III. The court erred in attempting to confer judicial power upon the assignee by authorizing him in effect to arbitrarily determine the amount of storage to be paid by each appellant bank for the forcible retention and storage of the merchandise during the pendency of the insolvency proceedings." JOHNS, J.

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STATEMENT

January 17, 1922, the appellee presented his claim against the insolvent estate of Umberto de Poli for an alleged balance of P25,062.35 for rent of the warehouse formerly occupied by the insolvent debtor and taken over by the assignee at the time De Poli was declared insolvent, for and on account of merchandise and effects therein stated, claiming that until December 31, 1921, the insolvent was indebted to him in the sum of P51,700 for rent of the warehouse; that payments had been made by the assignee on account until the claim was reduced to P25,062.35; that the claim for rent constituted a lien on the goods in the warehouse, and prayed for an order of the court that the amount of the unpaid balance should be paid from the proceeds of the sale of merchandise.

January 27, 1922, the Chartered Bank of India, Australia & China presented written objections to the allowance of the lien on the merchandise, contending that the funds in question were the proceeds of sales made by the assignee of merchandise covered by warehouse receipts issued by the insolvent in favor of that bank, and of the Hongkong & Shanghai Banking Corporation, the Asia Banking Corporation and the Bank of the Philippine Islands, which had been approved. "That whether said warehouse receipts be treated as having conveyed said merchandise to the undersigned and other bank creditors absolutely or merely as security, neither the merchandise still on hand, nor the proceeds of that which has been sold can be subjected to the payment of the rents due from the assignee to the warehouse owner for the following reasons: (a) The assignee stands in the shoes of the insolvent debtor U. de Poli (36 Phil., 36, 54) and said warehouse receipts provide for the payment of no storage charges, (b) The undersigned and other bank creditors have made claim for and demand upon the said assignee for the delivery of the merchandise covered by said warehouse receipts and said assignee has denied and resisted such claim and has held said merchandise against the protest of the undersigned and other bank creditors, (c) Said merchandise is not now and has not been since the institution of insolvency proceedings the property of the insolvent estate of U. de Poli, but on the contrary the title thereto is now and has been during said entire period in the undersigned and the other bank creditors."

No formal action was taken by the court upon either the claim or the objections.

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1921, the insolvent was indebted- to him in the sum of P59,690; that at times payments had been made amounting to P50,267.78, leaving a balance due of P9,428.22, and he prayed for an order of the court that his claim be paid out of the proceeds of the sale of the merchandise.

December 15, 1922, the appellant banks filed the following written objections to the motion of the claimant:

"Come now the undersigned by their respective attorneys and object to the granting of the motion of the above-named claimant of December 12, 1922, unless it be first shown to the satisfaction of the court that the assignee of the insolvent estate has on hand a sufficient sum over and above the total amount of the pending preferred claims of the undersigned and other preferred claimants to pay the amount which the said claimant Cu Unjieng seeks to collect."

The lower court rendered the following decision on the motion:

"This case is before the court on a motion in behalf of G. A. Cu Unjieng, alleged owner of certain warehouses heretofore occupied by the assignee of this insolvent estate for the purposes of this insolvency, asking that the balance due as rents for said warehouses, to wit, P9,428.22 be ordered paid by the assignee in this case.

"Mr. A. D. Gibbs, as attorney for the several bank claimants in this case, to which banks the property stored in the warehouses has been adjudicated, subject to the payment of storage, insurance, etc., objected to said motion upon the ground that the rents should be paid by the assignee out of other funds than the proceeds of the goods claimed by said banks.

"The court is of the opinion, and has heretofore held in the orders adjudicating the property to several banks, that the property is liable for the storage charges, and that the amount of the proceeds of said property should be paid to the banks, less the storage charges, insurance, etc.

"The court is clearly of the opinion that the bank claimants are not entitled to free storage or free insurance upon the property claimed by them and that such storage and insurance upon the property claimed by the banks should not be paid out of the proceeds of other property which may be available for payment of the claims of ordinary creditors. In fact, in this case appears there to be little, if any, unencumbered property.

"Therefore, the motion is granted, and the assignee is hereby ordered to pay said rents as administrative expenses and charge same proportionately among the bank claimants against the proceeds of the property stored in said warehouses during the pendency of these proceedings."

From the decision the banks appeal, specifying the following assignments of error:

"I. The court erred in allowing the amount claimed in the second motion of appellee for the reason that the same was in conflict with the amount claimed in a previous motion and there was no proof presented as to the correctness thereof.

"II. The court erred in holding that the claim of G. A. Cu Unjieng for rent of warehouse is chargeable against the proceeds of merchandise covered by warehouse receipts issued by the insolvent debtor to the appellant banks and wrongfully withheld from the latter by the assignee.

"III. The court erred in attempting to confer judicial power upon the assignee by authorizing him in effect to arbitrarily determine the amount of storage to be paid by each appellant bank for the forcible retention and storage of the merchandise during the pendency of the insolvency proceedings."

JOHNS, J.:

At a previous time the same court had decided that more than thirty days prior to his insolvency, De Poli had delivered to the banks in question certain quedans or warehouse receipts for the goods, wares, and merchandise in question, and that for such reason the banks were the sole and exclusive owners of the property evidenced by the warehouse receipts. The banks, having made a demand upon the assignee for the possession of the property evidenced by the warehouse receipts, and the assignee, having refused to make delivery, they now contend that they were the owners and entitled to the possession of the property or the proceeds of the sale, free of any charge, lien or encumbrance. In other words, that the property, for which they held the warehouse receipts, ought not to be subjected to the payment of storage charges.

It appears that on September 7, 1921, O. Ranft submitted a written proposition to purchase the property in question for the prices therein specified, in which he says:

"This offer is open until 4 p. m. on the 8th of Sept.

"Please let me have your answer as soon as possible as I must answer by cable to London within 48 hours from date of London cable."

Considering his proposition, the parties in interest through their respective attorneys, on the 8th day of September, 1921, entered into the following stipulation:

"Whereas, it is deemed necessary and to the best interest of all parties concerned that the said maguey and hemp be sold and disposed of, so as to avoid the expense of further insurance and storage of the same pending the final determination of said claims by the court, and the proceeds thereof held by the assignee in lieu of said property and subject to any claims now existing against said property on account of insurance, storage and other property charges for the preservation thereof up to this time;

"And, whereas, after a careful investigation as to the present market value of said hemp, taking into consideration its present condition, the parties hereto are agreed that the said offer received from the said O. Ranft is a reasonable one and should be accepted by the assignee, after first having obtained permission of the court to do so;

"Now, therefore, it is hereby stipulated and agreed by and between the undersigned parties, through their respective counsel, that the offer of the said O. Ranft for the said hemp and maguey mentioned therein, be accepted by the assignee of the above-entitled estate, and that the said hemp and maguey be sold at the price therein stated and the proceeds of said sale held by the assignee subject to the final decision of the courts as to the preferred claims thereto by the various banks of Manila, as hereinbefore stated, and whatever charges may now be due for the storage, insurance, etc., for the preservation of said hemp and maguey by the assignee up to this time, it being understood that this stipulation for the sale of this property shall in no way prejudice the rights of any of the parties in connection with the preferred claims which have been presented to the court by the various banks for the said hemp and maguey, but they shall continue to a final determination, and the proceeds thereof, after deducting the charges hereinbefore stated, shall be paid and delivered to the party or parties whom the court may finally decide is entitled thereto.

"This stipulation is made subject to the approval of the court in the above-entitled action."

March 16, 1923, the banks filed a motion in which they asked permission from the court to amend their record on appeal by including the following objections to the payment of the storage charges, dated February 24, 1922:

"Come now the undersigned secured creditors and with reference to the motion of counsel for the assignee of

February 23, 1922, setting forth the consent of the Bank of the Philippine Islands and of the Asia Banking Corporation to the sale of the tobacco therein described and to the deposit of the proceeds thereof pending the final determination of their claims and without prejudice to the rights of any of the parties, respectfully call the court's attention to the fact that said creditors have in no manner consented and do not now consent to the payment of storage charges during the retention of the said tobacco by the assignee against the will of the undersigned creditors but on the contrary reserve the right at all times to object to the payment of any storage charges or any other charges or expenses incurred by such retention of said tobacco after the presentation of the claims of the undersigned therefor."

February 27, 1922, like objections were made by the attorneys for the Chartered Bank of India, Australia & China.

It will be noted that the stipulation for the sale of the property was made on the 8th of September, 1921, and the property was sold under that stipulation. The formal written objections to the payment of storage charges above quoted were made and dated February 24, 1922. The parties, having stipulated for the sale of the property, and the property, having been sold under the stipulation, they are bound by the terms and provisions of the stipulation. It will be noted that it specifically recites that the property shall be sold, "so as to avoid the expense of further insurance and storage of the same pending the final determination of said claims by the courts, and the proceeds thereof held by the assignee in lieu of said property and subject to any claims now existing against said property on account of insurance, storage and other property charges for the preservation thereof up to this time," and further "that the said hemp and maguey be sold at the price therein stated and the proceeds of said sale held by the assignee subject to the final decision of the courts as to the preferred claims thereto by the various banks of Manila * * *, and whatever charges may now be due for the storage, insurance, etc., for the preservation of said hemp and maguey by the assignee up to this time * * *, and the proceeds thereof, after deducting the charges herein before stated, shall be paid and delivered to the party or parties whom the court may finally decide is entitled thereto."

This clearly implies that the parties agreed to the sale of the property, so as to avoid any further expense for insurance and storage, and that the proceeds of the sale should be held by the assignee, subject to the final decision of the court as to the preferred claims of the various banks and the charges then due for storage and insurance, and that after deducting the charges for such storage and insurance, the remaining proceeds shall be paid and delivered to the party or parties entitled to receive it.

The hemp and maguey were then in claimant's warehouse and could not be sold without some provisions being made for the payment of the storage charges and insurance, and the fact that the stipulation recites that after deducting charges for storage and insurance, the proceeds shall be paid to the parties according to their respective interests, clearly implies that it was then understood and agreed that the storage and insurance charges should be first paid out of the proceeds of the sale before any distribution of the remaining assets.

The stipulation also recites:

"It being understood that this stipulation for the sale of this property shall in no way prejudice the rights of any of the parties in connection with the preferred claims which have been presented to the court by the various banks for the said hemp and maguey."

This part of the stipulation provides that it shall in no way prejudice the rights of any of the parties in connection with the preferred claims of the banks. In other words, neither of the parties waived any rights to object that the claims of the banks were not preferred. Construed as a whole, the stipulation clearly implies that the banks consented to the sale of the property, and agreed that, after deducting charges for storage and insurance, the

remaining proceeds should be paid out and delivered to the parties according to their respective interests. The stipulation, having been made and entered into on the 8th day of September, 1921, and the property, having been sold under the stipulation, its terms could not be changed by any subsequent acts or conduct of the parties.

Although the stipulation was entered into on September 7, 1921, and the plaintiff's first claim was presented January 17, 1922, and his second claim December 12, 1922, and although the banks filed objections to the allowance of the claim as preferred to be paid out of the assets of the sale of the property, which they claimed to own, neither the banks nor any one else ever made any objections as to its amount or that the charges were unfair, unjust or unreasonable, and the court allowed the claim of December 12, 1922, in full.

Appellants point out that the first claim recites that after December 31, 1921, the insolvent was indebted to the claimant in the sum of P51,700 for storage, and that the second claim recites that after April 30, 1921, the insolvent was indebted to the claimant in the sum of P59,690 for storage. Of course, those claims are inconsistent. The appellee contends that there was a mistake or clerical error in the date of the second claim, and that it should read "up to April 30, 1922, instead of April 30, 1921." It is very apparent that this is true. It also appears that the first proof of claim presented on January 17, 1922, was for a balance of P25,062.35, and that a number of payments were made thereon, and that the proof of claim presented on December 12, 1922, the one now in controversy, was for a balance of P9,428.22. That is to say, between the respective dates of the two claims, the assignee paid the claimant the sum of P15,634.13, and that no one has ever objected to the amount of such payments, and that the only question now presented is the fund from and out of which the P9,428.22 should be paid.

The stipulation of September 8, 1921, contemplates that the charges for storage and insurance shall be paid out of the proceeds of sale before any distribution is made, and no objections having been made to the amount of plaintiff's claim or that his charges were unfair, unjust or unreasonable, and the trial court having allowed the claim in full, this court has a legal right to assume that the amount of the claim is just.

Under this view of the case, it is not necessary to pass upon or decide the many other and important legal questions which are discussed in the able briefs of opposing counsel.

From what has been said, it follows that the judgment of the lower court is affirmed, with costs. So ordered.

Street, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

Araullo, C. J., and Johnson, J., did not take part.

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