

IN THE MATTER OF THE INVOLUNTARY INSOLVENCY OF UMBERTO DE POLI. THE AMERICAN FOREIGN BANKING CORPORATION, CLAIMANT AND APPELLEE, VS. J. R. HERRIDGE, ASSIGNEE OF THE INSOLVENT ES...

G.R. No. 21005. December 20, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from the following decision of the Court of First Instance of Manila, the Honorable George R. Harvey presiding:

"On or about April 28, 1920, the debtor, U. de Poli, a licensed public warehouseman in the City of Manila, issued warehouse receipt No. A-48, commonly known as a 'quedan,' for 560 bales of tobacco, which tobacco was particularly described therein as 'Cagayan tabaco en rama with specified marks thereon. Said U. de Poli certified over his signature on the face of said quedan as follows: 'I certify that I am the sole owner of the merchandise herein described,' (Exhibit A of American Foreign Banking Corporation.) This quedan was endorsed in blank by U. de Poli, who delivered it to the American Foreign Banking Corporation as security upon his overdraft, then amounting to about P40,000.

"The claimant bank, by its motion of April 23, 1921, asked that the assignee be ordered to deliver to said bank the 560 bales of leaf tobacco called for in said quedan upon surrender of the original of the warehouse receipt.

"In answer to said motion the assignee denied that the 560 bales of Cagayan tobacco listed in said Exhibit A are now in his possession as assignee of said insolvent estate, and denied that said Exhibit A constitutes a negotiable warehouse receipt under the law, for the reason that it does not comply with the provisions of sections 2, 4, or 5 of the Warehouse Receipt Act; and that, even assuming that said 560 bales of leaf tobacco were now in his possession, he denies that the claimant bank is the owner thereof, or has any lien thereon, or any rights therein, by virtue of said receipt. Exhibit A; and by his amended answer alleges that said Exhibit A was not delivered by the insolvent, U. de Poli, to the claimant for the purpose of transferring the ownership of the property described therein to it, but only as collateral security for a preexisting indebtedness by way of overdraft, for which purpose it is under the law invalid and wholly ineffective as against the general creditors of the said insolvent estate. Substantially the same answer was made by Wise & Co. as general creditors.

"There has been no question raised about the authenticity of the quedan. U. de Poli testified that he issued it to said bank as security for his said overdraft; that the tobacco was in the bodega on Calle Azcarraga when he gave the quedan to the bank; that the tobacco had to be stripped and booked, and for this reason there might have been a slight difference between the quantity given in the quedan and the quantity at present in existence in the warehouse; that he knows that the tobacco was in the warehouse at the time he became insolvent, because he had given an order to fill an order for stripped tobacco, and that the tobacco was taken from the pile which he had given in guaranty to the American Foreign Banking Corporation; that Vicente Molina was in charge of the warehouse, and that he (De Poli) acted upon the data furnished to him by Mr. Molina.

"The evidence shows that there were only 530 bales of this tobacco. The quedan (Exhibit A) calls for 'Cagayan tobacco.' but it was stipulated in this case that the 530 bales of tobacco claimed by the American Foreign Banking Corporation are Isabela tobacco. Mr. De Poli explained this discrepancy in description by saying that he 'had the description of grade only and made the quedan without giving importance if it was Cagayan or Isabela tobacco;' that he asked only for grade, and did not ask whether it was Cagayan or Isabela tobacco, because he had to deliver the security no matter whether it was Isabela or Cagayan tobacco. The objection and motion of the opposition counsel that this explanation be stricken out are hereby overruled. "The quedan in question was issued by J. Magpantay, who was 'encargado*' of all the U. de Poli warehouses, but he did not have control of the warehouses, according to Mr. De Poli. Molina did not see the quedan when it was issued, but said that he knew of the tobacco which Mr. De Poli transferred to the claimant bank, because Mr. De Poli told him about it; that it was tobacco from Isabela for the year 1919, was stored in the warehouse on Calle Azcarraga, and that there was no other tobacco in the warehouse except the 1919 Isabela tobacco.

"The evidence further shows that in December, 1920, Mr. Kaintzler, a subaccountant of the claimant bank, went to the U. de Poli warehouse on Calle Azcarraga to have the tobacco covered by this quedan, Exhibit A, pointed out to him; that the then assignee (Mr. Bayne) and one of his accountants showed him (Kaintzler) the 530 bales of tobacco with the tag A. F. B. C. on them, and these bales were pointed out to him by Mr. Bayne as the tobacco which belonged to the American Foreign Banking Corporation.

"The quedan (Exhibit A) is in the same form as quedan No. A-155, which, in the case of Felisa Roman vs. Asia Banking Corporation, was declared by the Supreme Court of the Philippine Islands to be a negotiable warehouse receipt conveying title to the said bank superior to that of the vendor's lien of Felisa Roman (R. G. No. 17825).[1]

"The evidence shows that said quedan (Exhibit A) was taken by the American Foreign Banking Corporation for value, believing it to be a negotiable warehouse receipt, and without reasonable cause to believe that the debtor U. de Poli (who was operating a public warehouse at the time) was insolvent.

"In view of the decision of the Supreme Court in the Felisa Roman case, above-mentioned, the only question raised by the attorneys for the assignee and for the common creditors which will be considered by the court is that as to the sufficiency of the description of the tobacco in said warehouse receipt. This lot of tobacco was the only tobacco in the warehouse. The debtor said that it was the tobacco which he transferred to the claimant bank. The tobacco was pointed out by the then assignee to the claimant's representative as the tobacco covered by said quedan, Exhibit A. Hence, there does not appear to be any doubt about the identity of the tobacco.

"The only question left for consideration is whether the use of the word 'Cagayan' instead of 'Isabela' in describing the tobacco in the quedan renders the quedan null and void as a negotiable warehouse receipt for the tobacco intended to be covered by it. The insolvent, U. de Poli, testified positively that this quedan referred to the tobacco in the Azcarraga warehouse, and he explained the discrepancy in the description. The then assignee (Mr. Bayne) was evidently convinced that this lot of tobacco belonged to the claimant bank, because he pointed it out to one of the bank's employees, who noted the tags thereon bearing the initials of the claimant bank.

"The court is of the opinion that the intention of the parties to the transaction must prevail against such a technical objection as to the sufficiency of the description of the tobacco. It might be different if there had been Cagayan tobacco in the warehouse at the time of the issuance of the quedan, Exhibit A, or if there were any doubt whatever as to the identity of the tobacco intended to be covered by the quedan. The assignee stands in the shoes of the insolvent, and, while it is his duty to protect the general creditors, he is not in the position of a judgment creditor with an unsatisfied execution.

"In view of the foregoing considerations, the court is of the opinion that the quedan, Exhibit A, is a negotiable warehouse receipt which was duly issued and delivered by the debtor U. de Poli to the American Foreign Banking Corporation, and that it divested U. de Poli of his title to said tobacco and transferred the position and

the title thereof to the American Foreign Banking Corporation.

"It is therefore ordered and adjudged that the assignee deliver the said five hundred and thirty (530) bales of tobacco to the American Foreign Banking Corporation, upon payment by said bank of any Hens or charges thereon, or, in the event of said tobacco having been sold, the proceeds thereof, less the storage and insurance charges paid after the declaration of insolvency; and thereafter due report will be made to this court of such delivery to the claimant bank in order that the proceeds be deducted from the balance due to said claimant bank from the insolvent debtor."

We find no reversible error in the decision quoted and do not think it necessary to add anything to the discussion therein contained.

The judgment appealed from is therefore affirmed, with the costs against the appellants. So ordered.

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

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