LEOPOLDO DE BELEN, PLAINTIFF AND APPELLANT, VS. THE INSULAR COLLECTOR OF CUSTOMS AND THE SHERIFF OF MANILA, DEFENDANTS AND APPELLEES.

G.R. No. 22082. September 26, 1924

Ponente: STREET, J.

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STREET, J.:

In the month of April, 1921, Timoteo Tienzo was a duly accredited customs broker in the City of Manila, and in connection with his business as such broker, operated a number of trucks for the purpose of conveying merchandise arriving at the port of Manila to various consignees, his customers, throughout the city. On or about April 7, 1921, Tienzo procured a permit from the Insular Collector for the withdrawal of 12,500 sacks of flour from one of the piers for delivery to one Chua Soco, then a merchant in the City of Manila. The bill of lading for said flour was not produced by Tienzo at the time he procured the delivery permit, and in order to get possession of the flour he obligated himself, upon his bond as a customs broker, to have the bill of lading forthcoming in due time. Said bill of lading, however, was never produced by Tienzo or his principal, Chua Soco, with the result that the collector of customs caused an action of replevin to be begun in the name of the Government on June 10, 1921, to recover the flour which had been delivered as aforesaid, or in case the flour itself could not be secured, to recover judgment for the value thereof in the amount of P47,816.32.

In connection with the institution of this action, an attachment was sued out by the plaintiff against the property of the defendant Tienzo, on the ground that he was about fraudulently to dispose thereof; and on June 13, 1921, the sheriff levied said attachment on seven trucks that had been operated by Tienzo in connection with his business as customs broker and truckman. At the time the sheriff made demand upon Tienzo for the surrender of trucks, the latter announced his willingness to surrender possession, but as the trucks were then out, he stated that they could only be delivered at half past five in the afternoon. At about that time the deputy proceeded to a place designated in the city where the trucks were in fact found and taken into possession by him.

After the sheriff had taken the trucks into custody the plaintiff in this case, Leopoldo de Belen, a brother-in-law of Tienzo, made claim to the trucks, relying on a document of transfer (Exhibit A), dated June 1, 1921, and executed by Tienzo and himself, in which Tienzo purports to convey to Belen all of the trucks involved in this controversy. The consideration stated in this instrument is the sum of P25,000, said to have been advanced upon previous occasions to Tienzo by Belen. The sheriff having ignored the claim of Belen to the ownership of the trucks, the present action of replevin was instituted by Belen against the Collector of Customs and the sheriff for the recovery of the trucks and compensation for the unlawful detention of the same.

Upon hearing the cause the trial judge found that the document referred to (Exhibit A) was evidently a fictitious transfer, conceived and executed for the purpose of placing the trucks in question beyond the reach of the creditors of Tienzo, and he held said instrument to be completely without effect. He therefore absolved the defendants from the complaint, and the plaintiff appealed.

To dispose first of the question of fact involved in the appeal, we will say that we consider the document Exhibit A to be of the character ascribed to it by the trial court. In this connection it is sufficient to refer to the testimony of one Gerardo Garcia, specially deputized by the sheriff to serve the summons and other papers relating to the case No. 20110, instituted by the Government and the Collector of Customs against Chua Soco and Timoteo Tienzo. This witness states that in a conversation between himself and the present plaintiff soon after the service of the complaint, the latter said that Tienzo was owner of the trucks and that he (Belen) was merely an instrument of Tienzo. This admission of the plaintiff, in connection with the relation of the parties and the financial difficulties then impending over Tienzo, establish in our opinion a strong presumption that the transfer referred to was made for the purpose of placing the trucks beyond the reach of legal process directed against Tienzo. Nor is this presumption overcome by the documents C to C-6, purporting to be receipts for money advanced by Belen to Tienzo during the years, 1918, 1919, and 1920. The trial judge we think was right in entertaining the suspicion that these receipts might have been manufactured to meet the situation, without representing bona fide debts of Tienzo to Belen. At any rate it is quite clear that Belen was aware of the financial embarrassment in which Tienzo was involved, and the evidence in our opinion establishes the conclusion drawn by the trial court, namely, that the transfer of the trucks was a simulated transaction.

But it is insisted for the appellant that, conceding that the questioned transfer may suffer from the vice attributed to it by the trial court, nevertheless the transaction is not subject to question while the liability of Tienzo remains unestablished in the action instituted against him and Chua Soco, and that, moreover, the creditors of Tienzo are not in a position to attack the transfer otherwise than by an action of nullity or for the rescission of the transfer under article 1302 or 1291 of the Civil Code. This position is in our opinion untenable. A simulated transfer of property con- stitutes no obstruction whatever to the levy of legal process of any sort directed against a person who has executed such a transfer, and in such case no independent action to rescind or annul is necessary. The explanation of this is apparently found in the circumstance that a simulated or purely fictitious contract lacks the elements prescribed in article 1261 of the Civil Code as necessary to make any contract whatever, and it may therefore be treated as non-existent for all purposes'. This distinction between entire absence of contract (inexistencia) and the situation requiring an action of rescission or nullity is fully expounded by Manresa in his comment on article 1300 of the Civil Code (q. v.).

For the reasons stated the assignments of error must be considered not to be well taken, and the judgment appealed from will be affirmed. It is so ordered, with costs against the appellant.

Johnson, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez JJ., concur.

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