

**TIMOTEO UNSON AND CLARA LACSON DE UNSON, PETITIONERS, VS.
HONORABLE QUIRICO ABETO, JUDGE OF FIRST INSTANCE OF
SEVENTEENTH JUDICIAL DISTRICT, CENTRAL CAPIZ, AND WALTER
A. SMITH, ...**

G.R. No. 23108. December 18, 1924

Ponente: STREET, J.

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STREET, J.:

This is an original application for the writ of mandamus in this court whereby Timoteo Unson and his wife, Clara Lacson de Unson, seek to compel the Honorable Quirico Abeto, Judge of the Court of First Instance of Capiz, to proceed with the trial of a cause wherein the plaintiffs are seeking to recover damages for breach of contract from the Central Capiz, a corporation organized under the laws of the Philippine Islands, and having its principal office in the City of Iloilo. The cause is now before us for a determination of the questions presented upon the petition and the answer of the respondents.

It appears that on or about August 10, 1921, the petitioners instituted in the Court of First Instance of Capiz an action to recover damages in a large amount for alleged breach of contract on the part of the Central Capiz, the corporation defendant in said action. To the complaint in said cause the corporation answered, denying the liability set forth in the complaint and exhibiting a cross-complaint by which it sought in turn to recover damages of the plaintiffs in a large amount. In connection with its complaint in said action the plaintiffs procured an attachment to be levied on real property belonging to the defendant corporation, and said attachment has not been dissolved. More than a year after the action above referred to had been instituted, but before said cause had come to trial, the corporation defendant filed a petition in the Court of First Instance of Iloilo, asking that it be declared a voluntary insolvent. In response to this petition the Iloilo court declared said defendant an insolvent, and one Walter A. Smith, a resident of Iloilo, was appointed assignee in insolvency of said corporation. Thereafter the attorney representing the plaintiffs in the litigation pending in Capiz appeared before the respondent judge and asked that the assignee in insolvency be substituted as defendant instead of the corporation, the original defendant. This motion was granted on October 28, 1922, and the name of the assignee was thereupon substituted as defendant.

It will be noted that the proceedings in the insolvency are pending in the Court of First Instance at Iloilo, while the damage suit to which reference has been made is pending in the court of Capiz, in which province the property of the insolvent corporation appears to be located.

It does not appear that the court having jurisdiction of the insolvency has ever made any order to restrain the prosecution of the damage suit against the insolvent, or its assignee, in the Capiz court, and the plaintiffs are desirous of prosecuting said action to judgment. Nevertheless the respondent judge presiding in the Capiz court, on September 26, 1924, made an order suspending the hearing of the case until an order should be obtained from the judge presiding in the court at Iloilo, authorizing the prosecution of the cause to judgment. This order is made

the basis of the present petition, it being claimed by the petitioners that it is the duty of the CapiZ court to permit the litigation to proceed to judgment, in the absence of an order from the Iloilo court inhibiting the proceeding.

The two provisions of the Insolvency Law (Act No. 1956) most directly pertinent to the discussion are these:

"SEC. 18 (in part). Upon the granting of said order," i. e., adjudication of insolvency, "all civil proceedings pending against the said insolvent shall be stayed."

"SEC. 60 (in part). No creditor whose debt is provable under this Act shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor until the question of the debtor's discharge shall have been determined, and any such suit or proceeding shall, upon the application of the debtor or of any creditor, or the assignee, be stayed to await the determination of the court on the question of discharge: Provided, That if the amount due the creditor is in dispute, the suit, by leave of the court in insolvency, may proceed to judgment for the purpose of ascertaining the amount due, which amount, when adjudged, may be allowed in the insolvency proceedings, but execution shall be stayed as aforesaid."

Under these provisions it is impossible to declare the respondent judge in error, for in staying the cause he has obeyed the simple mandate of the law. It may be admitted that the adjudication in insolvency does not operate ipso facto as a stay of proceedings against the insolvent. The author of the treatise on Bankruptcy in Corpus Juris says that the proper practice appears to be that the application for a stay should be made in the court in which the action is pending (7 C. J., 349) ; but it is not questioned that the court before which the insolvency proceeding is pending itself has jurisdiction to stay an action in another court. The words quoted above from section 60 contemplate that the request for the stay may come either from the insolvent himself, his assignee, or from any one or more of the creditors; but no provision is made in the law with reference to the precise form in which the application shall be made. In the case before us it appears from the order which gave rise to this petition that the attorney for the assignee had raised a question as to the competency of the court to proceed with the trial. From this it is evident that the assignee desired that a stay should be granted, and it cannot be said that the action taken was objectionable as being merely gratuitous.

The language of the provisions quoted is explicit and clearly evinces a purpose on the part of the legislature to require all claims against the insolvent to be determined in the insolvency proceeding (*De Krafft vs. Velez*, 34 Phil., 854). The only exception expressly recognized in the statute is contained in the proviso, which permits the action against the assignee to proceed to judgment for the purpose of ascertaining the amount due, but this course can only be pursued where leave of the court in insolvency is obtained.

The principal contention made for the petitioners in this court appears to be based upon the circumstance that the insolvent in this case is a corporation and it is expressly declared in the closing words of section 52 of the Insolvency Law that "Whenever any corporation is declared insolvent, its property and assets shall be distributed to the creditors; but no discharge shall be granted to any corporation." From the circumstance that the corporation cannot be finally discharged from its debts the conclusion is deduced that the action should not be stayed. In support of this contention the attorney for the petitioners cites certain passages from various American treatises on Bankruptcy, in which it is declared that the dischargeability of the debt supplies the criterion for determining whether the action should be stayed or not. (7 C. J., 349; 1 Collier on Bankruptcy, 13th ed., sec. 11, par. B, pp. 400-1.) But it will be noted that these authorities are all based upon the existing American Bankruptcy Law of 1898 which declares in effect that only suits upon dischargeable debts shall be stayed. Under our statute the provability of a claim, not its dischargeability, supplies the criterion for determining whether an action thereon shall be stayed; and of course a claim for damages against a corporation is a provable claim.

It should not be forgotten that under the existing American Bankruptcy Law a corporation may be discharged

from its debts, and actions against corporations must be stayed to the same extent as actions against persons. The adoption of the rule contended for by the attorneys for the petitioners would therefore in effect lead to a departure from American practice upon the very point as to which we are asked to adopt it.

Before dismissing the phase of the case which we have been discussing, we should perhaps add that the question whether the respondent judge should have stayed the action pending in his court is not a question of jurisdiction at all but rather a question as to whether the court should obey the express mandate of the statute on a mere point of practice. The Capiz court undoubtedly had, and has, jurisdiction over the cause; and in case the insolvency court shall give the plaintiffs leave to proceed the litigation will be resumed.

But it is insisted that the action should not have been stayed for the reason that the petitioners have acquired a lien by attachment, and American authority is cited in support of this proposition. (*Tennessee Producer Marble Co. vs. Grant*, 135 Fed., 322.) But the trouble is that the American doctrine on this point is based precisely upon the words of the American Bankruptcy Act which provide for a stay of any action founded upon a claim from which a discharge would be a release; and we are thus Conducted back to the same error which underlies the petitioners' contention upon the point already discussed. In this jurisdiction it is the provability of the claim that determines whether the action should be stayed; and it is quite evident that the plaintiffs' claim for damages is a provable claim notwithstanding the fact that a preliminary attachment has been sued out in connection with the institution of the action.

It is true that under section 59 and related provisions of the Insolvency Law (Act No. 1956) the plaintiffs have an election to prove their claim in insolvency (in which case the attachment lien must be surrendered) or to maintain their rights under the attachment, in which case it is made the duty of the assignee to surrender to them the property which has been attached.

We are not unmindful of the embarrassment which might result to the plaintiffs if the court having charge of the insolvency proceeding should adopt a dilatory and obstructive attitude, but it is not to be assumed that such will be the case. On the contrary that court, when the matter is properly brought before it, will doubtless see the necessity of allowing the plaintiffs' action to proceed to judgment, not only for the purpose of determining whether a lawful claim exists but whether the attachment was lawfully sued out; for even supposing that the plaintiffs have a just cause of action for damages, nevertheless if they should fail to sustain the ground of attachment, the provisional lien would be lost and the attached property would then be available as part of the general funds of the insolvent for distribution among all its creditors alike.

For the reasons stated, the petition must be denied; and it is so ordered, with costs.

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

Johns, J., concurring:

I concur in the result of denying the writ only.

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