

VOLUNTARY INSOLVENCY OF GO KIM CHIA. HUNTER, KERR & CO., CLAIMANT AND APPELLANT, VS. SAMUEL MURRAY, CLAIMANT AND APPELLEE. YANG PAO WANG (ALIAS YU PO HONG), RECEIVER AND APPELLEE.*G.R. No. 23979. December 18, 1925*

Ponente: VILLA-REAL, J.

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Between January and December, 1923, Samuel Murray sold merchandise to Go Kim Chia (alias Gaw Chia) to the value of P13,922.96, payable within thirty days after delivery. The period expired, but Go Kim Chia (alias Gaw Chia) did not fulfill his obligation.

On January 25, 1924, Hunter, Kerr & Co. filed a complaint in the Court of First Instance of Manila against Go Kim Chia (alias Gaw Chia) to recover the sum of P13,047.30, the value of the goods sold by said firm to said Go Kim Chia (civil case No. 25665).

On the same date, January 25, 1924, an attachment was issued at the instance of the plaintiff firm against the property of the defendant, the sheriff having levied said attachment upon the merchandise sold by Samuel Murray to Go Kim Chia and not paid for by the latter.

While said attachment was in force, Go Kim Chia instituted a voluntary insolvency proceeding on February 21, 1924; and on the 23d day of the same month and year, the Court of First Instance of Manila entered an order adjudging Go Kim Chia insolvent, and ordering the sheriff of Manila to take charge of all the property of the insolvent until the appointment of an assignee (civil case No. 25811).

On the 25th day of February, 1924, the Court of First Instance of Manila rendered judgment in civil case No. 25665, sentencing Go Kim Chia to pay Hunter, Kerr & Co. the sum of P13,047.30, with legal interest thereon from the filing of the complaint until full payment and costs.

On March 17, 1924, the Court of First Instance of Manila appointed Yang Pao Wang (alias Yu Po Hong) assignee, having been elected at the meeting of the creditors as such, authorizing him to take charge of all the personal and real property of the insolvent upon giving a bond for P5,000 (civil case No. 25811).

On March 19, 1924, Hunter, Kerr & Co. filed a claim, praying that it be declared a preferred creditor of the insolvent by virtue of the attachment issued, in its favor, and that the assignee be ordered to pay it the sum claimed out of the proceeds of the sale of the attached property, which amounted to P13,618.10.

On April 22, 1924, Samuel Murray filed also a claim, alleging a preferential right over certain merchandise sold to the insolvent on credit and not paid for, the value of which amounted to P13,922.96, and prayed that the assignee be ordered to return said merchandise to him.

On the 26th day of April, 1924, the court, upon application of the assignee, entered an order authorizing said

assignee to sell the property of the insolvent, reserving the decision of the respective claims of the claimants Hunter, Kerr & Co. and Samuel Murray until after the introduction of evidence.

Both claimants having introduced evidence, the lower court rendered judgment, holding that the right of Samuel Murray over the P650, the amount obtained from the sale of the merchandise by the assignee, which was identified by said claimant as a part of the goods he had sold to the insolvent in the year 1923, was a preferred one, and rejecting the claim of Hunter, Kerr & Co. for the expenses of the attachment.

Hunter, Kerr & Co., not satisfied with said decision, took this appeal, assigning four supposed errors which will be discussed in this opinion.

The first question to be decided is whether or not the right of said Hunter, Kerr & Co. over the merchandise sold by Samuel Murray to Go Kim Chia on credit and not paid for has preference over the right of said Samuel Murray, by virtue of the attachment levied thereon in favor of Hunter, Kerr & Co.

Section 32 of Act No. 1956, commonly known as Insolvency Law, provides as follows:

"Sec. 32. As soon as an assignee is elected or appointed and qualified, the clerk of the court shall, by an instrument under his hand and seal of the court, assign and convey to the assignee all the real and personal property, estate, and effects of the debtor with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in insolvency, and shall relate back to the acts upon which the adjudication was founded, and by operation of law shall vest the title to all such property, estate, and effects in the assignee, although the same is then attached on mesne process, as the property of the debtor. Such assignment shall operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution. It shall also dissolve any attachment levied within one month next preceding the commencement of the insolvency proceedings and vacate and set aside any judgment entered in any action commenced within thirty days immediately prior to the commencement of insolvency proceedings and shall vacate and set aside any execution issued thereon and shall vacate and set aside any judgment entered by default or consent of the debtor within thirty days immediately prior to the commencement of the insolvency proceedings."

The writ of attachment against the property of Go Kim Chia was issued January 25, 1924, and the petition for adjudication of insolvency was filed February 21, 1924, that is, twenty-seven days after the issuance of the writ of attachment. In other words, the attachment was levied within thirty days prior to the filing of the petition for adjudication of insolvency. On February 23, 1924, the court adjudged Go Kim Chia insolvent, and on March 17, 1924, appointed Yang Pao Wang (alias Yu Po Hong) assignee. On March 27, 1924, the assignee appointed having qualified, the Clerk of the Court of First Instance of Manila assigned and transferred to said assignee all the real and personal estate and documents of the insolvent Go Kim Chia. According to the legal provision above quoted, the effect of said assignment and transfer related back to the date when the insolvency proceeding was commenced, that is, February 21, 1924 (sec. 76, Act No. 1956), and the assignee acquired on said date, by operation of law, title to said estate (Philippine Trust Co. vs. National Bank, 42 Phil., 413). By operation of law, said assignment and transfer also operated to dissolve the attachment levied on said property on January 25, 1924, that is, within thirty days next preceding the date of the filing of the petition for adjudication of insolvency, which took place February 21, 1924, and to annul the judgment rendered February 25, 1924, in the case where said attachment was issued. The annulment of the judgment by operation of law restored the attached property to the state it was in before the levying of the attachment and the entry of said judgment, subject to such privileges and preferences as the creditors of the insolvent may have acquired under the laws in force.

Article 1922, paragraph 1, of the Civil Code provides as follows:

"Art. 1922. With respect to determinate personal property of the debtor, the following are preferred:

"1. Credits for the * * * purchase price of personal property in the possession of the debtor, to the extent of the value of the same."

And article 1926 of the same Code says;

"Art. 1926. Credits which enjoy preference with respect to certain personal property shall exclude all others to the extent of the value of the property to which such preference relates."

The merchandise over which Samuel Murray claimed a preferential right is that which he had sold to Go Kim Chia, judicially adjudged insolvent. The appellant contends that the provision of article 1922, paragraph 1, of the Civil Code is not applicable to the instant case for the reason that the merchandise sold and not paid for was no longer in the possession of the debtor, but of the assignee. This argument loses its strength if it is taken into account that said merchandise passed from the possession of Go Kim Chia to the hands of the assignee, not by his own will, but by the mandate of the law, the assignee having the custody of and holding the title to, the property, subject to the rights of the creditors of the insolvent. The assignee is in effect a special legal agent of the insolvent, and his possession of the insolvent estate is the possession of his legal principal.

We are not unmindful of the provision of paragraph 8 of section 48 of Act No. 1956, commonly known as Insolvency Law, which includes, among the privileged properties, the goods bought on credit by the insolvent and not delivered yet to him, but this court, in disposing of the motion for new trial in the case of Tec Bi & Co. vs. Chartered Bank of India, Australia and China (41 Phil., 819), wherein the question was raised whether or not the above cited legal provision has impliedly repealed the provisions contained in articles 1922 and 1924 of the Civil Code, concerning preference of credits, said the following:

"The right to a preference in the case at bar being founded upon the failure of a debtor to pay the purchase price of goods sold to him by the plaintiff; it may be well to add that the right of the vendor of merchandise, bought on credit by an insolvent, 'so long as the actual delivery thereof has not been made' to have such goods placed at his disposal, in the manner and form prescribed in subsection 8, section 48 of the Insolvency Law, is manifestly an additional and cumulative remedy allowed a vendor of merchandise, the purchase price of which has not been paid, and is in no wise in conflict with the right of such a vendor to assert the preference secured to him in article 1922 of the Code of Civil Procedure [Civil Code], in any case wherein delivery has actually been made."

As to the costs and legal expenses entitled to preference under section 79 of Act No. 1956, section 492 of the Code of Civil Procedure enumerates the lawful costs which may be recovered, and section 79 of Act No. 1956 aforesaid authorizes the payment of lawful expenses, among which the premium paid upon the bond, which the law requires before an attachment may be issued, may very well be included. The only costs and lawful expenses, therefore, to which the appellant is entitled in the Court of First Instance of Manila are: For the filing of the complaint, P30; for sheriff's fees, P4.24; for the premium upon the bond, P211.06; for the custody by the sheriff of the attached property, P72; for the removal of said property, P53.50; for appearance of the attorney, P20; that is, a total of P390.80.

For all of the foregoing, the judgment appealed from is affirmed, in so far as it holds that the right of Samuel Murray to the sum of P650 is preferential; and reversed, in so far as it rejects the claim of Hunter, Kerr & Co. to the costs and legal expenses, and it is adjudged that said firm has a preferential right to said sum of P390.80, without special finding as to costs. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.
Johnson, J., did not take part.

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