

LEONCIA VIUDA DE CHAN DIACO (ALIAS LAO LIONG NAW), APPELLEE, VS. JOSE S. Y. PENG, ASSIGNEE, APPELLANT.

G.R. No. 29182. October 24, 1928

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a decision of the Court of First Instance of Manila dismissing an insolvency proceeding.

It appears from the record that on June 13, 1925, the San Miguel Brewery, Porta Pueo & Co., and Ruiz & Rementeria S. en C. instituted insolvency proceedings against Leoncia Vda. de Chan Diaco (alias Lao Liong Naw), alleged to be the owner of a grocery store on Calle Nueva, Binondo, known as the store of "La Viuda de G. G. Chan Diaco."

In their petition for the declaration of the insolvency, the above-mentioned firms alleged, among other things, that Leoncia was indebted to them in the sum of P26,234.47, which debt was incurred within thirty days prior to the filing of said petition. It further appears that other creditors have filed claims against the estate to the amount of P50,000.

The petition for the declaration of insolvency was set down for hearing on June 25, 1925. Leoncia did not appear at the hearing, notwithstanding the fact that she was duly notified, and the court declared her insolvent and ordered the sheriff to take possession of her property, the visible part of which at that time consisting of some merchandise, afterwards sold at public auction for P3,300. Judge Simplicio del Rosario, in an order dated September 12, 1925, appointed Ricardo Summers, the clerk of the Court of First Instance of Manila, referee, authorizing him to take further evidence in regard to the questions of fact raised by the motions of August 5th and 19th.

After various hearings and the taking of considerable testimony, the referee, on February 18, 1926, rendered a report to the court in which he made the following recommendations:

"That the insolvent deliver to the assignee:

"(a) The sum of P56,000 more or less that the 'encargado' of the insolvent's business, Chan Chiao Wa, had delivered to her on the 18th of April, 1925, which amount was in fact, on the 19th day of April, 1925, about P56,102.65.

"(b) The accounts receivable as of June 19, 1925, or that is to say, two months after the insolvent took charge of her store, amounting to P40,000.

"(c) The amount taken for her own use and out of the business on June 8, 1925, to wit, P2,000,

"(d) Another P2,000 that on June 5, 1925, and being already insolvent, the widow of Chan Diaco had taken from the China Banking Corporation for her personal use.

"(e) The following account books:

"Libros de Acreedores Extranjeros.
"Libros de Acreedores Chinos.
"Libros de Deudores de Manila.
"Libros de Deudores de Provincias.
"Libros de entrada y salida de efectos y mercancías para Manila y Provincias.
"Libro Diario de Caja.
"Libro de Sueldos de Empleados.
"Libros de Balances e Inventarios.
"Libro Mayor de 1924 y 1925."

The report was approved by Judge Del Rosario on April 14, 1926, and the merchants Cua Ico, Chan Keep, and Simon A. Chan Bona were ordered to show cause why they should not return to the assignee merchandise to the value of P20,000, alleged to have been delivered to them by Leoncia, together with P5,000 in cash alleged to have been received from her by the merchant Cua Ico between the 8th and 11th days of June, 1925.

On April 22, 1926, the attorney for the insolvent filed her exception to the report of the referee, which had already been approved on April 14, and on July 23, 1926, the court rendered a decision, reaffirming its former order of April 14, and ordered the insolvent to deliver to the assignee the sum of P56,000, more or less, alleged to have been in her possession on April 19, 1925. The court farther ordered her to surrender the books of accounts mentioned in the referee's report together with the accounts receivable amounting to P40,000 and the sums withdrawn by her from her current account with the China Banking Corporation a few days prior to the declaration of insolvency; and directed the assignee to file actions against the merchants Cua Ico, Chan Keep, and Simon A. Chan Bona for the return by them of the sum of P5,000 in cash, plus the merchandise valued at P20,000 delivered to them by the insolvent in fraud of her creditors.

On August 4, 1926, attorney for the insolvent filed a motion asking the court to dismiss the proceedings against her on the ground that they should have been brought against the partnership "Lao Liong Naw & Co.," of which she was only a member. The alleged partnership was evidenced by an agreement dated July 22, 1922, and from which it appeared that on that date Lao Liong Naw (Leoncia), Chan Chiaco Wa, Cua Yuk, Chan Bun Suy, Chan Bun Le, and Juan Maquitan Chan had formed a partnership with a capital of P21,000, of which only P4,000 was contributed by Leoncia.

In view of the aforesaid motion Judge Del Rosario on August 7, 1926, suspended for the time being the effects of the decision of July 23, 1926, and set the motion down for hearing on the 14th of August, 1926. His Honor again appointed Summers as referee.

After several hearings in which various witnesses were examined and documents presented on behalf of both sides, the referee, on February 28, 1927, rendered a second report, in which he found as facts that the alleged partnership between the insolvent and some of her relatives and employees was only a fictitious organization created for the purpose of deceiving the Bureau of Customs and enable some of the aforesaid relatives, who were mere coolies, to come to the Philippines under the status of merchants. He, therefore, recommended that the motion of the insolvent to dismiss the proceedings against her be denied.

The report was assigned for hearing on May 21, 1927. Judge Del Rosario was then absent on leave and the matter was, therefore, submitted to Judge Francisco Zanduetta, who had been temporarily assigned to take the place of Judge Del Rosario, and on June 6, 1927, a decision was rendered disapproving the report of the referee. The court, therefore, affirmed the suspension of the decision of Judge Del Rosario of July 23, 1926, dismissed the insolvency proceedings, and ordered the assignee to return to the sheriff all the property of the insolvent which he, the sheriff, might have in his possession. The decision further provided for leave to the petitioners to file a new petition in

insolvency against the partnership Lao Liong Naw & Co. if they so desired. A motion for reconsideration was presented by the assignee but was denied by the court in an order of July 1, 1927. The assignee, thereupon, appealed to this court and presents the following assignments of error:

"1. The lower court erred in disapproving the report of the referee dated February 28, 1927.

"2. The lower court erred in dismissing the petition for the involuntary insolvency of the merchant Leoncia Vda. de Chan Diaco (alias Lao Liong Naw or Niew).

"3. The lower court erred in ordering the filing of a new petition of insolvency against the fictitious partnership Lao Liong Niew & Co. and the delivery to the sheriff of all the property of the insolvency."

In our opinion, all of the assignments of error are well taken. The evidence appearing in the record fully supports the findings of the referee and his report should have been approved by the court below.

As to the second and third assignments of error it is to be observed that conceding for the sake of the argument that the debts in question were incurred by the alleged partnership, it clearly appears from the record that said partnership, as such, has no visible assets and that, therefore, the partners individually must, jointly and severally, respond for its debts (Code of Commerce, art. 127). As the appellee is one of the partners and admits that she is insolvent, we can see no reason for the dismissal of the proceedings against her. It is further to be noted that both the partnership and the separate partners thereof may be joined in the same action, though the private property of the latter cannot be taken in payment of the partnership debts until the common property of the concern is exhausted (*Compania Maritima vs. Muñoz*, 9 Phil., 326) and, under this rule, it seems clear that the alleged partnership here in question may, if necessary, be included in the case by amendments to the insolvency petition.

We also call attention to the fact that the evidence clearly shows that the business, alleged to have been that of the partnership, was carried on under the name "Leoncia Vda. de Chan Diaco" or "La Vda. de G. G. Chan Diaco," both of which are names of the appellee, and we think it can be safely held that a partnership may be adjudged bankrupt in the name of an ostensible partner, when such name is the name under which the partnership did business.

The decision appealed from is hereby reversed, the reports and recommendations of the referee are approved, the order for the dismissal of the case is set aside, and the decision of Judge Simplicio del Rosario dated July 23, 1926, will remain in full force and effect. No costs will be allowed. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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