

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. OLUTANGA LUMBER COMPANY, DEFENDANT AND APPELLEE.

G. R. No. 30982. January 31, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal is taken by the Philippine National Bank from an order of the Court of First Instance of Manila, the dispositive part of which is as follows:

"The Philippine National Bank having appeared as an ordinary creditor in the involuntary insolvency of the Olutanga Lumber Company, civil case No. 33048 of this court, claiming that the sum attached by the sheriff, it thereby renounced its preferred right acquired through garnishment issued in the present case; and for that reason, the motion issued of the Bank of the Philippine Islands is hereby ordered to return to it the sum deposited by virtue of the garnishment, after deducting therefrom his legal fees to which he has a perfect right notwithstanding the result arrived at."

In support of its appeal, the appellant assigns the following alleged errors committed by the trial court in its judgment, to wit:

"1. The lower court erred in holding, in its order of March 31, 1928, that the appellant Philippine National Bank had waived its lien acquired by garnishment in the present case by joining as an unsecured creditor the petition for the involuntary insolvency of the Olutanga Lumber Company.

"2. The lower court erred in holding, in its said order of March 31, 1928, that the garnishment issued in the present case referred only to P16,656.30, and in ordering the difference between said sum and the amount of P30,092.11 deposited with the sheriff of Manila to be returned to the Bank of the Philippine Islands after deducting the sheriff's fees therefrom.

"3. The lower court erred in denying the motion of the appellant of November 14, 1928."

The following facts are necessary and pertinent to resolve the questions raised in the present appeal:

In civil case entitled the Bank of the Philippine Islands, plaintiff and appellee, vs. Olutanga Lumber Company, defendant and appellant, G. R. No. 27045,¹ said plaintiff and appellee was ordered by this court to pay to the aforesaid defendant and appellant a certain sum amounting to P31,242.11, Philippine currency. Upon the return of the case to the Court of First Instance of Zamboanga, the corresponding writ of execution was issued, which was complied with by the sheriff of said province by presenting it to the manager of the branch of the Bank of the Philippine Islands in the City of Zamboanga, on January 10, 1928, but without levying execution on any property belonging to the execution debtor. On the same date, the aforesaid sheriff addressed to the central office of said bank at Manila the following telegram:

"Execution Bank Philippine Islands versus Olutanga Lumber Company served today manager Zamboanga

branch. Please authorize him pay amount due defendant Olutanga Lumber plus sheriff fees otherwise levy will be made on your Zamboanga office. Luis Panaguiton, Provincial Sheriff."

On the same date, January 10, 1928, before receiving the foregoing telegram, the central office of the Bank of the Philippine Islands in Manila was notified by the sheriff of the City of Manila that all the credits and debts contracted by it with the Olutanga Lumber Company, amounting to P16,656.30, plus the interest at the rate of 12 per cent per annum from April 19, 1922 until fully paid, were levied upon in the name of the Philippine National Bank by virtue of a writ of attachment issued in civil case No. 32936 of the Court of First Instance of Manila.

On the following day, January 11, 1928, the Bank of the Philippine Islands, in reply to said notice, addressed a letter to the sheriff of the City of Manila, notifying the latter that, pursuant to his notice of attachment, it retained at the disposal of said sheriff the aforesaid sum of P16,656.30, plus interest at the rate of 12 per cent per annum from April 19, 1922 until such date as may be designated. On the same date, January 11, 1928, the sheriff of the City of Manila sent a letter to the Bank of the Philippine Islands at Manila, requiring the latter to deliver to him the sum of P32,109.45, theretofore attached, belonging to the Olutanga Lumber Company.

After the delivery to the sheriff of the City of Manila of the amount of the judgment in favor of the Olutanga Lumber Company, rendered in civil case No. 1176 of the Court of First Instance of Zamboanga, G. R. No. 27045 of this court, the Bank of the Philippine Islands notified the provincial sheriff of Zamboanga by telegram, on January 12, 1928, that the amount of the judgment in favor of the Olutanga Lumber Company against said bank had been delivered to the sheriff of the City of Manila, and that any question on that subject should be taken up with him.

On January 14, 1928, the provincial sheriff of Zamboanga sent a communication to the manager of the Bank of the Philippine Islands in said city, notifying him that all the money he had in his possession or control, belonging to the Bank of the Philippine Islands, was levied upon by virtue of an order of execution issued by the Court of First Instance of Zamboanga in civil case No. 1176, entitled Bank of the Philippine Islands vs. Olutanga Lumber Company," G. R. No. 27045 of this court, copy of which order of execution was served upon him on January 10, 1928.

On January 14, 1928, the sheriff of the City of Manila sent a telegram to the sheriff of the Province of Zamboanga, telling him that .the amount of the judgment against the Bank of the Philippine Islands and in favor of the Olutanga Lumber Company, which had been attached by virtue of two writs of attachment issued by the Philippine National Bank and the Standard Oil Company of New York against the Olutanga Lumber Company, had been deposited with him by said Bank of the Philippine Islands.

Notwithstanding the fact that the provincial sheriff of Zamboanga had been duly informed of the levy made by the sheriff of the City of Manila upon the funds of the Olutanga Lumber Company in possession of the herein appellee, the Bank of the Philippine Islands, and of the delivery of said funds to said judicial officer of the City of Manila, he attempted to collect from the branch of said Bank pf the Philippine Islands at Zamboanga the amount of the judgment in favor of the Olutanga Lumber Company, threatening to levy, and in fact did levy, an attachment against said branch.

In view of this act of the provincial sheriff of Zamboanga, the herein appellee, the Bank of the Philippine Islands, had to file a petition for prohibition with this court against the Judge of the Court of First Instance of Zamboanga,

the provincial sheriff of said province and the Olutanga Lumber Company, docketed as G. R. No. 29043 of this court. Upon hearing said petition, this court entered the following resolution on February 9, 1928:

"Upon consideration of the petition filed in case G. R. No. 29043, Banco de las Islas Filipinas vs. J. Horilleno et al., and of the answer interposed by the respondents in connection with the arguments adduced by both parties in their memoranda and during the hearing of said case, and it appearing that the writ of execution complained of was issued and served upon the petitioner before the latter received notice of the garnishment, and two days before he was required by the sheriff of Manila to deliver the amount mentioned in the said garnishment proceedings, wherefore, the respondent judge did not exceed its jurisdiction in issuing the aforesaid writ of execution, it is ordered that the petition for a writ of prohibition be and is hereby denied, with costs against the petitioner. Mr. Justice Street took no part."

On February 10, 1928, the clerk of this court sent the following telegram to the provincial sheriff of Zamboanga:

"Supreme Court denied writ of prohibition requested by Bank Philippine Islands to stop execution judgment in favor Olutanga Lumber Company you may proceed with execution forthwith."

Upon receipt of the foregoing telegram, the provincial sheriff of Zamboanga sent the following letter to the manager of the Bank of the Philippine Islands at Zamboanga:

"Sir : With reference to the levy made by the undersigned on your office on January 14, 1928, in the sum of thirty-two thousand pesos (P32,000), Philippine currency, to cover the amount claimed in the order of execution issued by the Court of First Instance of Zamboanga in civil case No. 1176, 'The Bank of the Philippine Islands vs. Olutanga Lumber Company,' and R. G. No. 27045, which levy has been suspended by order of the Honorable Supreme Court by virtue of the writ of prohibition filed by the Bank of the Philippine Islands against the undersigned and others, I have the honor to inform you that said writ of prohibition has been denied by the Supreme Court as per telegram received by the undersigned, a copy of which is herewith inclosed.

"In view thereof, and in pursuance of the order of execution above referred to, you are hereby ordered to deliver to the undersigned, immediately upon your receipt hereof, the sum of thirty-one thousand five hundred ninety-six pesos and eighty-three centavos (P31,596.83), Philippine currency, which is the amount recovered by the Olutanga Lumber Company in the Supreme Court including interests, costs and sheriff's fees.

"Zamboanga, Zamboanga, February 11, 1928. (Sgd.) "Luis Panaguiton

"Provincial Sheriff"

In view of this urgent and peremptory demand of the provincial sheriff of Zamboanga, the manager of the Bank of the Philippine Islands at Zamboanga had no other remedy than to deliver to the sheriff of Zamboanga the sum of P31,596.83.

The only question necessary to be decided in this appeal is whether the funds placed by the Bank of the Philippine Islands in possession of the sheriff of the City of Manila, which had been attached in the name of the Philippine National Bank and against the Olutanga Lumber Company, had been released from said attachment when the aforesaid Bank of the Philippine Islands, by judicial order, paid the judgment rendered by this court against the said Bank of the Philippine Islands and in favor of the Olutanga Lumber Company.

We have seen, that after the central office of the Bank of the Philippine Islands in the City of Manila had

deposited with the sheriff of the City of Manila the sum of P32,109.45, by virtue of a demand made upon it by the latter in compliance with an order of attachment issued by the Court of First Instance of Manila in civil case No. 82936, wherein the Philippine National Bank was and still is the plaintiff and the Olutanga Lumber Company was and still is the defendant,—which sum of P32,109.45 was the amount of the judgment rendered in civil case No. 1176 of the Court of First Instance of Zamboanga, G. R. No. 27045 of this court, in favor of the Olutanga Lumber Company and against the Bank of the Philippine Islands,—said central office of the Bank of the Philippine Islands notified the provincial sheriff of Zamboanga of said consignment; but the latter, notwithstanding the attachment of said amount by the sheriff of the City of Manila, tried to collect from the branch office in Zamboanga of the Bank of the Philippine Islands the amount of said judgment. Under the circumstances the Zamboanga branch had to resort to this court for a remedy to prevent execution of said judgment. This court denied the remedy prayed for, and upon receipt of notice of said denial the provincial sheriff of Zamboanga insisted in collecting from the Zamboanga branch of the Bank of the Philippine Islands the amount of said judgment, which said bank had to pay. The general rule is that, where attached properties belonging to the principal debtor are taken out of the hands of a person by legal process, after he had been notified of the order of attachment, said person cannot be made to answer for the properties in a proceeding to carry out said attachment (28 Corpus Juris, paragraph 362, page 264). In the present case, the fact that the funds attached in the possession of the Bank of the Philippine Islands, belonging to the Olutanga Lumber Company, had been deposited with the sheriff of the City of Manila by order of said officer, does not change the juridical situation of said funds as attached in the possession of the Bank of the Philippine Islands, and, according to the above-quoted rule, the aforesaid Bank of the Philippine Islands, having been judicially compelled to pay the amount of the judgment represented by said funds to the Olutanga Lumber Company, after having employed all the legal means to avoid it, is released from all responsibility to the Philippine National Bank in whose favor the writ of attachment was issued.

For the foregoing considerations, we are of the opinion, and so hold, that when a person has funds in his possession belonging to a debtor, and said funds are attached by a creditor of the latter, said person is relieved from all responsibility to said creditor if he is judicially compelled to deliver said funds to the aforesaid debtor.

Wherefore, the dispositive part of the order appealed from is affirmed in so far as it grants the motion of the Bank of the Philippine Islands, and the sheriff of the City of Manila is hereby ordered to return to said bank the amount deposited by virtue of the writ of attachment, after deducting his legal fees, with costs against the appellant.

So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns and Romuldez, JJ., concur.

[1] 51 Phil., 184.

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