

TAN LUA, PLAINTIFF AND APPELLANT, VS. S. W. O'BRIEN ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 32501. October 16, 1930*

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-32501/>**STREET, J.:**

This action was instituted in the Fourth Branch of the Court of First Instance of the City of Manila on December 15, 1927, by Tan Lua, widow of Eugenio Velasco Chua Eng Chay, deceased. The plaintiff was formerly a resident of the City of Manila but since 1925 she has been a resident of Amoy, China. The purpose of the action is to obtain the annulment, so far as pertains to herself, of an order of the Sixth Branch of the Court of First Instance of the City of Manila, dated March 17, 1927, declaring the plaintiff a general partner of the insolvent firms of Mariano Velasco & Co. and Mariano Velasco Sons & Co., and as such, herself an insolvent, and for the purpose of securing an order excluding the plaintiff, Tan Lua, from the effects of the aforesaid insolvency.

The cause was heard upon the answers of S. W. O'Brien and others, as petitioning creditors in the insolvency proceeding, and of Vicente Nepomuceno, assignee of the insolvent estate of Mariano Velasco & Co. et al., with the result that the trial court dismissed the action, with costs against the plaintiff. From this decision the plaintiff appealed.

For many years there was, in the City of Manila, a mercantile partnership, known by the firm name of Mariano Velasco & Co., which was engaged in the conduct of a commercial enterprise in said city. The name of this establishment was subsequently changed to Mariano Velasco Sons & J Co., also a general partnership, and later the business was incorporated under the corporate name of Mariano Velasco & Co., Inc. Generally speaking, it may be said that in this business were embarked the fortunes of the descendants of Mariano Velasco, the original founder. The plaintiff, Tan Lua, is the widow of Eugenio Velasco Chua Eng Chay a son of said founder.

On June 12, 1926, S. W. O'Brien and others instituted a proceeding in the Sixth Branch of the Court of First Instance of Manila to have the entities above-mentioned, consisting of two partnerships and the successor corporation, declared insolvent, as well as the general partners in the two first mentioned concerns. Among the persons thus proceeded against as general partners were Tan Lua and her children and grandchildren, including a daughter-in-law, named Valentina Bautista. At the time this proceeding was begun some of her children were known to be living in Amoy, China, and for these publication was made in usual course. Others of the defendants were known to be in Manila, and these were either served or voluntarily appeared.

Among the defendants supposed to be in Manila was Tan Lua, but she was at the time, and had been for a year, in Amoy, China, and when this fact was discovered, the attorneys for the petitioning creditors saw that it would be necessary to effect service against her by publication. The necessity for publication was, however, removed, as was supposed, by the fact that on June 23, 1926, thereafter, Gregorio Perfecto, a practicing attorney in the City of Manila, filed in the insolvency proceeding (case No. 29955 of the Court of First Instance of Manila) his general appearance in behalf of Tan Lua, her children, grandchildren, and daughter-in-law, respondents in said

proceeding. On the same date, and in behalf of the same respondents, said attorney filed a petition in the insolvency proceeding, asking for the discharge of the receiver appointed by the court; and on July 2, 1926, the same attorney, acting in behalf, as was supposed, of the same respondents, answered the original petition of involuntary insolvency. This answer bore the affidavit of Chua Chitco, the oldest son of Tan Lua, in which he asserted that said respondents had not committed any act of insolvency and that they were not insolvent, and he furthermore asserted that the respondents were not members or partners of either of the partnership entities or of the corporation against which the petition of insolvency was directed.

As a result of the interposition of this answer a legal combat ensued extending over a period of several months, with the usual incidents of the filing of various petitions, motions, and writings, including the briefs and memoranda incident to such a contest. Finally, on March 17, 1927, his Honor, Judge Anacleto Diaz, rendered a decision declaring all the respondents, including Tan Lua, insolvent debtors under the Insolvency Law.

Returning for a moment to the incident of the making of publication for the non-resident respondents, we note that, in addition to the necessary publication in daily newspapers of Manila, copies of the petition for declaration of involuntary insolvency and of the order to show cause in said proceeding, were duly sent by registered mail to the respondent children of Tan Lua who were living in Amoy, China. These communications were not returned, a circumstance giving rise to the inference that they reached their destination and that they probably came to the notice of Tan Lua, who was then living with her children in Amoy, but against whom personally publication had not been directed.

We note further that when Judge Diaz declared all of the respondents to be insolvent, notice of the decision was given, on March 24, 1927, to attorney Gregorio Perfecto. About eighteen days thereafter the same attorney excepted to the order adjudging the defendants insolvent, moved for a new trial, and gave notice of an intended appeal; but as the notice of appeal was found to have been given after the time for appeal had expired, Judge Diaz denied the appeal and refused to sign the bill of exceptions. This action resulted in the filing of various fruitless motions for reconsideration, and in the end the attorney applied to the Supreme Court for a writ of certiorari, designed to secure a review of the decision by said court. To this writ was annexed an affidavit of Chua Chitco, oldest son of Tan Lua, wherein he stated that the application for the writ was prepared and presented at the instance of the petitioners therein. Upon being heard in the Supreme Court the application was denied.[1]

Before disaster overtook the Velasco store Eugenio Velasco Chua Eng Chay, the husband of Tan Lua, had been a general partner in the partnership entities; and upon his death his estate consisted chiefly of his interest in the Velasco property. In addition to this he possessed two parcels of real estate, with improvements thereon, in the City of Manila. Upon the death of said husband, his oldest son, Chua Chitco, secured the services of the then existing law firm of Crossfield & O'Brien, to attend to the administration of the estate. In connection with these proceedings Tan Lua, on October 8, 1924, cabled her son Chua Chitco to the effect that he was authorized to arrange matters relating to his father's will. This authority of course cannot be interpreted as authority to employ an attorney to represent Tan Lua in the later insolvency proceedings, but it shows that Chua Chitco, as oldest son, and pursuant to Chinese custom, was at the helm in Manila; and it was the same Chua Chitco who later employed Gregorio Perfecto to represent his mother and her various descendants in the insolvency proceeding. During the course of the administration of the estate of Eugenio Velasco Chua Eng Chay the two parcels of land in Manila, with their improvements, that had pertained to him were set aside for Tan Lua, by the consent of all the heirs, as her own property. In these proceedings Chua Chitco, acting for Tan Lua, employed Eugenio Angeles to appear for her as attorney.

From the time that Tan Lua left the Philippine Islands, in October, 1925, until April 14, 1927, she had an attorney-in-fact in Manila, one Chan Hoan Lai, but upon the date mentioned Tan Lua superseded this power with

another general power of attorney in the name of another of her sons, Chua Yoc Ten; and on June 15, 1927, thereafter, Chua Yoc Ten mortgaged to one Enrique Brias de Coya of Manila one of the two parcels of property belonging to Tan Lua in the City of Manila for the sum of P16,000. It is interesting to note that Tan Lua immediately defaulted in her obligations under this mortgage, thereby giving rise to a foreclosure proceeding instituted by Enrique Brias de Coya, a proceeding now pending final disposition in this court. Again, on June 28, 1927, the same Chua Yoc Ten, as attorney-in-fact of Tan Lua, executed in favor of the Manila Compañia de Seguros another mortgage to secure the sum of P20,000 advanced by the creditor upon said property. This proceeding is also now pending for final disposition in this court, and of its existence we take judicial notice.

Having in view the fact that on March 17, 1927, the Court of First Instance of the City of Manila had adjudged the Velasco entities insolvent and that Tan Lua was included in said declaration as an insolvent partner, it is evident and even transparent that the power of attorney executed by Tan Lua in favor of her son Chua Yoc Ten and his subsequent action thereunder, in mortgaging the aforesaid two parcels of property to innocent purchasers for the large sums of money advanced upon the faith of said mortgages, was motivated by no other purpose than to defraud the creditors of the Velasco entities, by placing the property under the dominion of innocent purchasers, to the much peril, be it said, of the latter. Nor will the diligence shown in the taking of these steps escape attention, as compared with the tardiness of the effort taken by Tan Lua in the matter of obtaining relief from the declaration of insolvency.

We note that Tan Lua, in her deposition taken in Amoy, denies emphatically that she gave authority to anybody to represent her in the insolvency proceedings; but we also note that the deposition of Chua Chitco, the person by whom Gregorio Perfecto was employed, was not taken, though this witness was equally as accessible as his mother. The failure to take the testimony of this witness of course weakens materially the statements of Tan Lua with respect to the lack of authority for the appearance of Gregorio Perfecto, as her attorney, in the insolvency proceedings.

Our conclusion, after reviewing the evidence, is that Tan Lua had full knowledge of the insolvency proceedings and of the danger, in which she, as a partner, was involved, of being sucked down personally into the abyss. The circumstances strongly indicate also that she was aware of the fact that she was a party to the insolvency proceedings, and if she did not authorize the employment of Gregorio Perfecto to represent her, she must have known of the fact of his employment and acquiesced therein. The action before us was not begun until December 15, 1927, long after the complete failure of every step taken by the attorney to set aside the declaration of insolvency and many months after she had executed a power of attorney in favor of Chua Yoc Ten under which he had conveyed away the two parcels of land belonging to her in the City of Manila. If there had been, in fact, an unauthorized appearance for her by the attorney in the insolvency proceedings, she could have caused a special appearance to be entered in her behalf for the purpose of making a motion in the insolvency proceeding, looking to her relief, under section 113 of the Code of Civil Procedure. Instead of this she permitted the battle to go on and only instituted this action in December, after the six months had passed during which she could have extricated herself under section 113 of the Code of Civil Procedure, supposing the authority of the attorney was non-existent. In fine, we are of the opinion that if the attorney chosen by her son, had no authority to represent her in the insolvency proceedings, she should at least have acted with as much diligence as she did in executing the power of attorney under which her individual properties in Manila were mortgaged to innocent purchasers, with the certain result of defrauding" either the mortgagees or the insolvent estate; and by not acting with this diligence, Tan Lua must be taken to have acquiesced in the employment of the attorney, Gregorio Perfecto. By so doing she must also be said to have ratified the act. It must be remembered that authority to employ an attorney does not have to be proved by a public document, nor even by a paper writing. Its existence may be inferred from circumstantial evidence, and in law it is even assumed *prima facie* that every attorney who appears in court does

so with sufficient authority. Of course this is not a conclusive presumption, and in a timely direct attack upon the judgment a person may undoubtedly establish that, in a particular case, the authority did not in fact exist. But the security of judicial proceedings requires that the evasions and tergiversations of unsuccessful litigants should not be received in such a matter with undue favor.

Another fact to which the trial court attributed importance, but which is perhaps undecisive, is the attitude taken by Tan Lua, through her attorney, in the action for foreclosure instituted by Enrique Brias de Coya on the mortgage already referred to. In this connection it may be observed that in the Court of First Instance judgment was given in favor of De Coya for the foreclosure of the mortgage in ordinary course, and Tan Lua, as mortgagor, was formally ordered to pay the mortgage debt. Upon appeal to this court, however, it was insisted for Tan Lua, as appellant, that she had been declared insolvent and that therefore she could not be expected or required to satisfy the mortgage debt. The position thus taken was based upon the assumption that Tan Lua would be held bound by the adjudication of insolvency; and although technically it cannot be said that the taking of this position amounted to a ratification of the adjudication of insolvency, it is evident that the attitude assumed is not exactly consistent with the position taken by the litigant in this case.

In the briefs in the case before us much has been said on the question whether the remedy of the appellant, supposing that she had not been properly made a party in the insolvency case, is by independent action as here, or should have been sought through a motion under section 113 of the Code of Civil Procedure. Into this question it is not necessary here to enter, since we are of the opinion that the evidence shows that Gregorio Perfecto, who appeared for Tan Lua in the insolvency case, was employed by proper authority, and even assuming that formal authority had not been given beforehand, Tan Lua had knowledge of her implication in the insolvency proceeding and knew that her interest was being represented therein by an attorney employed by her son and, finally, that she is bound from her acquiescence in the act.

The judgment appealed from will be affirmed, and it is so ordered, with costs against the appellant.

Avanceña, C. J., Villamor, Ostrand, Johns and Romualdez, JJ., concur.

Villa-Real, J.: dissents.

[1] Resolution of October 28, 1927.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.