

INVOLUNTARY INSOLVENCY OF MARIANO VELASCO & CO. ET AL. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, CLAIMANT AND APPELLANT, VS. CHINA BANKING CORPORATION ET AL.) OPPONENTS AND APPE...

G.R. No. 32701. August 26, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

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The question raised in this appeal is whether the claim of the Postal Savings Bank against Mariano Velasco & Co., for the balance of a mortgage credit is a preferred credit under section 50, paragraph (c) of the Insolvency Law, Act No. 1956.

The Attorney-General contends that such a claim is an indebtedness to the Insular Government, alleging that it is so both by the stipulation in the mortgage contract, and by the final decision of the court below which is the law between the parties. According to the mortgage contract referred to, however, the mortgagee is the Postal Savings Bank (Exhibit 1). It is indeed held in the decision of the lower court (Exhibit A) among the findings of fact, that "the plaintiff Government of the Philippine Islands was and still is the lawful holder of said mortgage credit" and the dispositive part thereof orders "the defendant Mariano Velasco & Co., and the defendant assignee to pay the plaintiff the amount of sixty-six thousand pesos and sixteen centavos (P66,000.16), Philippine currency, being the sum total of the two aforementioned promissory notes, with interest due, and insurance premiums." But this holding is doubtless due to the fact that in the same decision the Postal Savings Bank is declared to be "an institution created and established by the plaintiff herein' (the Government of the Philippine Islands), and it was not the intention of the lower court to decide whether the indebtedness was due to the Government of the Philippine-Islands or to the Postal Savings Bank, which point was not in issue.

That the Postal Savings Bank must not be confounded with the- Insular Government of the Philippines, nor the property and credits of the one with those of the other, goes without saying. The Government of the Philippine Islands made this distinction clear beyond any question of doubt in that case, when, on May 27, 1928, it presented a petition praying that: In view of the sheriff's return relating to the auction of the property involved in that foreclosure proceeding, showing that said property had been adjudicated to the Government of the Philippine Islands, and was so recorded in the final registration, an amendment be made to the sheriffs report and to said final registration, "in the sense that instead of the words 'Government of the Philippine Islands, the following be inserted: The Postal Savings Bank of the Philippine Islands.' " (Exhibit 2.) And the court granted said petition on May 29, 1928, issuing the proper order. (Exhibit 3.)

This action was well taken. For, while it is true that the Postal Savings Bank is a division of the Bureau of Posts (sec. 1986, Administrative Code), which is, in turn, under the Department of Commerce and Communications of the Philippine Government (sec. 86, Adm. Code), and although the board of directors of said bank is made up of Government officials (sec. 1989, Adm. Code) still property acquired by said bank is its own particular property (sec. 2033), and its reserve fund is not revenue fund in the sense of section 614 of said Code, but a trust fund to be used "for no other purpose than to meet deficits in those years after its establishment in which the earnings of the bank are not sufficient to pay the expenses of the bank" (sec. 2035, Adm. Code), which expenses, however, though for the time paid by the Bureau of Posts, are to be repaid to said bureau at the end of each fiscal year (sec. 2037, Adm. Code).

From this it follows that the funds of the Postal Savings Bank cannot be termed Insular Government funds, and debts contracted in favor of said bank in its ordinary operations as provided by law are not to be held debts in favor of the Insular Government. When the Postal Savings Bank grants a loan, it does not do so in the name and on behalf of the Insular Government, but in its own name and behalf and for its own benefit, as may be implied from the law on the matter. In such a loan, therefore, the Insular Government is not the lender or the creditor; and hence, the debt is contracted not in its favor but in favor of the Postal Savings Bank, which has a personality of its own.

The appellant, then, cannot invoke section 50, paragraph (c), of the Insolvency Law.

Furthermore, the debts referred to in the aforesaid paragraph and section are those that pertain to the Insular Government in its function as such Government, and not those relating to or contracted in favor of said Government by virtue of commercial transactions or private contracts. To hold that the legal provision in question includes commercial and private debts would be to set up a baseless and unjust preference detrimental to the other creditors. This could not have been the intention of the law.

With regard to section 59 of the Insolvency Law, also invoked in connection with section 50, paragraph (c), in support of the aforesaid preferential credit, we agree with the following conclusions reached by the trial court:

"If the lawmaker had intended to exclude a government credit secured by a mortgage from the provisions of said section 59, he would have provided otherwise; and in the absence of any such provision, the court is of opinion that said section is equally applicable to all secured credits whether or not the government or one of its dependencies is the creditor." (Page 22, Record on Appeal.)

Finding no error in the judgment appealed from, the same is hereby affirmed, without express pronouncement of costs. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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