

INVOLUNTARY INSOLVENCY OF MARIANO VELASCO & CO. ET AL. A. ‘ S. CROSSFIELD, CLAIMANT AND APPELLEE, VS. CHINA BANKING CORPORATION, OPPOSITOR AND APPELLANT. VICENTE NEPOMUCENO, ASS...

G.R. No. 32702. September 22, 1930

Ponente: JOHNS, J.

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JOHNS, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

The judgment of the lower court is as follows:

"The preferred claim of A. S. Crossfield, who is one of the original petitioning creditors in. this case, against the above-named insolvents for a deposit of P25,000, with interest thereon at 10 per cent per annum from May 4, 1925, made with the insolvent Mariano Velasco & Co., has again been presented to the court for formal allowance and payment. Since the presentation of this claim the claimant, A. S. Crossfield has died and his interests are now represented by the administrator of his estate, Mr. A. P. Drakeford. The assignee and the general creditors, the China Banking Corporation and the Hok Yek Steamship Company, have interposed objections to the allowance of the preference claimed by the claimant by generally denying the allegations of the claim and setting up as a special defense that the money in question has been delivered to the insolvent Mariano Velasco & Co. as a loan and not as a deposit, and, consequently, that he is not entitled to a preference under the law.

"By agreement of the parties, the record was referred to the clerk of the court, Mr. Jose Casimiro as a Commissioner, for the taking of the evidence, which has now been. accomplished, and the matter, has now been submitted to the court for its decision.

"The contention of the claimant appears to be that the transaction between him and the said Mariano Velasco & Co. was intended to be and actually was a deposit of the money in question, and that the court, after due deliberation, so found and held in its final order of adjudication of insolvency in this case of March 17, 1927, which he maintains is a final adjudication of the nature of his claim and conclusive as against the assignee and the general creditors, and that, therefore, his claim is entitled to preference under the provisions of section 48, of the Insolvency Law. The assignee and the general creditors above-named, on the other hand, contended that the said transaction was merely a loan of money and not a deposit, that the finding and conclusion of the court in its decision of March 17, 1927, in relation thereto, was merely obiter dictum, and in no way binding upon them, and that, therefore, the claimant is not entitled to a preference in the payment of his claim. They also argue that the claimant has taken part in the election of an assignee in this case, and, therefore he has waived any preference which he might have had in this case.

"After a careful examination of the evidence and the record of these insolvency proceedings, and the law applicable thereto, the court is of the opinion that the contention of the claimant is correct and should be sustained. The evidence in this case conclusively shows and the court so finds that this money was delivered by the claimant to the said Mariano Velasco & Co. in the character of a deposit, without any understanding between them then of subsequent thereto as to the use of it, to be returned to him upon demand, with the obligation on the part of the said Mariano Velasco & Co. to pay interest thereon at 10 per cent per annum while it so remained with it, and that it was always intended and so understood by them to be held only in that capacity, while it is true that the document, Exhibit B, was signed and delivered to him by the said Mariano Velasco & Co. on May 4, 1925, and after said deposits had been made, it clearly appears from the other evidence that that document does not express the true intention and agreement of the parties in relation to said money. The uncontradicted oral testimony on this point is clear, and it is corroborated by the other evidence in this case, which leaves no doubt as to the true nature of this transaction. In fact, both the manager of the said Mariano Velasco & Co. and the president of the new corporation, Mariano Velasco & Co., Inc., which was organized to take over the property and business of the said Mariano Velasco & Co., subject to the payment of its liabilities, have sworn in their verified schedule and inventory filed in this case by order of the court that this money is held as a deposit, without security. There is, therefore no dispute between the parties as to the character in which this money is now held by the said Mariano Velasco & Co., Inc. This being true the assignee and the general creditors are not under the law in a position to say that this transaction was merely a loan and not a deposit. They are clearly precluded from doing so.

"The court is also of the opinion and so holds that its decision in this case of March 17, 1927, constitutes as against the assignee and the general creditors of this estate a final adjudication of this claim. It appears from the record that the claimant was one of the petitioning creditors in the original petition for insolvency in this case and that he was one of the three petitioners who verified the petition, that the basis of the petition, in so far as he was concerned, was that the respondents were indebted to him, in the sum of P25,000, with interest thereon at 10 per cent per annum for a cash deposit with the insolvent debtor Mariano Velasco & Co., which they have failed to return to him for a period of more than thirty days after demand. In their answer the respondents expressly denied that the credit of the said A. S. Crossfield was a deposit, as alleged in the petition, and alleged that it was a mere loan with interest at 10 per cent per annum, and further alleged that they had not failed to return or pay any deposits made with them for a period of more than thirty days after demand. Upon the issues thus raised by the pleadings, evidence was offered by the parties, and after a full hearing the court in its decision of March 17, 1927, found and held as follows:

" 'Es un hecho probado de la manera mas concluyente por los recurrentes que Mariano Velasco y Compania recibio de uno de ellos o sea L. R. Sweet en calidad de deposito el dia 5 de agosto de 1922, la suma de P30,000 bajo la obligaci6n de devolverle la misma juntamente con sus intereses estipulados, que eran al tipo de 12 por ciento al afo, a los treinta dias de recibir un requerimiento por escrito, al efecto; y que bajo el mismo concepto recibio de los recurrentes S; "Y O'Brien y A. S. Crossfield las cantidades de P20,000 y P25,000 respectivamente, en los dias 11 de noviembre de 1920 y 4 de mayo de 1925, bajo la promesa y obligacion de devolverles tambien dichas cantidades cuando se las pidiesen y1 de pagarles ademas mensualmente un interes computado al 10 por ciento al afo. No les pago dichos intereses ni les devolvi6 tampoco las cantidades que de los tres habia recibiddo a pesar de los varios requerimientos que le habian hecho para que asi lo hiciere.'

"It is clear that the nature and validity of this claim, was directly in issue and finally determined by the court in this decision, and that its determination was necessary to uphold the adjudication. In such cases, the law appears to be settled that matters which have been once litigated and determined by the judgment of the court

cannot again be made the subject of legal condition between the parties of such judgment and their privies. The assignee and general creditors in this case must, in contemplation of law, be considered in privity with the respondent debtors, and the adjudication of the nature and validity of this claim in the decision of the court of March 17, 1927, is conclusive upon them.

"It does not appear from the evidence in this case that the preference enjoyed by the claimant by reason of this deposit has been in any way surrendered or waived by him. The record shows that the claimant personally took no part in the election of an assignee as he expressly stated that his claim was a preferred one, and thereupon objection was then made to the voting of such claim unless he waived and surrendered his preference, which he refused to do, and by reason of that fact, the clerk could not and did not consider his vote in the determination of the matter. The mere fact that he, with, other creditors, made recommendation to the court of a certain person to be appointed as assignee cannot be construed as a surrender or waiver of his preference when it affirmatively appears that he has always insisted on such preference.

"The claim of the said A. S. Crossfield being for a deposit made with the insolvent, Mariano Velasco & Co., for the return of which under the conditions already stated all the insolvent debtors in this case are jointly and severally liable, it should be and it is hereby allowed as a preferred claim under and in accordance with the provisions of paragraph 3, of section 48, of the Insolvency Law, in the sum of P25,000, with interest thereon at 10 per cent per annum from May 4, 1925, and the assignee is ordered to pay the same accordingly out of the funds of the insolvent estate now in his hands. It is so ordered."

It will thus be noted that from the evidence taken the lower court found as a fact that the claim of Judge Crossfield was in the nature of a deposit, and as matter of law the court had adjudicated it as a deposit, and that the adjudication was final, from which an appeal would not lie.

We have had the benefit of the good briefs of opposing counsel, and the questions presented on appeal are close and not free from doubt. It stands as an admitted fact that at the time and in the same order in which the court adjudged the entities insolvents, it also found as a fact conclusively proven by the petitioner, that the amount of Judge Crossfield's claim was received and held by Mariano Velasco & Co. as a deposit. It is also admitted that no appeal was ever taken by any one from that judgment, and that the creditors of the insolvents, including the China Banking Corporation, appeared and presented their respective claims against the insolvents; hence, we must assume that they knew or legally should have known of the decision of the court holding and declaring that it was conclusively proven that Judge Crossfield's claim was received and held by the insolvents in the nature of a deposit. That decision was rendered on March 17, 1927, and was never questioned by any one until the respective answers above stated were filed. It is contended that all of that portion of the opinion of March, 1927, holding that Judge Crossfield's claim was a deposit, and as such preferred, was in the nature of obiter dictum. That contention overlooks the underlying, fundamental fact that in paragraph III of the insolvency petition, it is alleged that the claims of Crossfield, O'Brien, and Sweet are based and founded upon "a cash deposit with the debtor, Mariano Velasco & Co." and that in the order adjudicating the insolvency of the entities, it was found as a fact conclusively proven "that Mariano Velasco & Co. received from Crossfield, O'Brien, and Sweet the amount of their respective claims as a deposit," and in addition the lower court found as a fact from the evidence in this case, that it was in truth and in fact a deposit.

There is no merit in any of the other assignments of error. All things considered, the judgment of the lower court is affirmed, with costs. So ordered.

Malcolm, Villamor, Ostrand and Romualdez, JJ., concur.
Villa-Real, J.; reserves his vote.

CONCURRING

Street, J.:

Although the money which was placed by the creditor and appellee in this case with Mariano Velasco & Co. was clearly not a deposit in the legal sense of the word (*Javellana vs. Lim*, 11 Phil., 141; *Schnuraacher vs. Palanca*, G. R. No. 27705),^[1]the Court of First Instance of Manila nevertheless, 01 March 17,1927, held in the insolvency proceeding against Mariano Velasco & Co. that said money in fact constituted a deposit. No appeal was taken from that declaration, and although the China Banking Corporation, creditor and appellant in this case, was not a formal party to that proceeding, the pronouncement was, under many American decisions, conclusive against other creditors as well as against the bankrupt. (*Ayres vs. Cone*, 138 Fed., 778; *In re Fallon*, Fed. Cas. No. 4628; *In re Ulfelder Clothing Co.*, 98 Fed., 409; *Candee vs. Lord*, 2 N. Y., 269; 51 Am. Dec, 294.)

This conclusion rests upon the idea that, for the purpose of combating the application, the insolvent virtually represents not only himself but his creditors, other than the petitioners, and the idea is applied only in the case where the point of-the existence of the credit is litigated in good faith. Under No. 12 of section 20 of the Insolvency Law, the character of this claim, namely, as to whether it was a deposit or a simple loan, was as vital to the maintenance of the insolvency proceedings as the fact that the petitioner actually was a creditor. All the authorities hold that the adjudication in insolvency is binding as to the amount of the claim both upon the insolvent and his other creditors; and where the jurisdiction of the court to entertain the insolvency proceeding is rested upon the case supposed in No. 12 of section 20 of the Insolvency Law, the character of the credit is as much in issue as the fact that any debt at all existed. I therefore concur in the decision.

[1] Promulgated September 6, 1927, not reported.

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