

INVOLUNTARY INSOLVENCY OF MARIANO VELASCO & CO., ET AL. COMPANIA AGRFCOLA DE ULTRAMAR, CLAIMANT AND APPELLEE, VS. VICENTE NEPOMUCENO, ASSIGNEE AND APPELLANT.

G.R. No. 32778. November 14, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

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It appears from the record that on March 17, 1927, the registered partnerships, Mariano Velasco & Co., Mariano Velasco, Sons, & Co., and Mariano Velasco & Co., Inc., were, on petition of the creditors, declared insolvent by the Court of First Instance of Manila.

On the 16th day of April, 1927, the Compañia Agricola de Ultramar filed a claim against one of the insolvents, Mariano Velasco & Co., claiming the sum of P10,000, with the agreed interest thereon at the rate of 6 per cent per annum from April 5, 1918, until its full payment. The company maintained that the aforesaid sum was a deposit with said Mariano Velasco & Co. and asked the court to

The assignee of the insolvency answered the claim by interposing a general denial. The claim was thereupon referred by the court to a commissioner to receive the evidence, and on September 23, 1929, the court rendered a decision declaring that the alleged deposit was a preferred claim for the sum mentioned, with interest at 6 per cent per annum from April 5, 1918, until paid. From this decision the assignee appealed.

The evidence presented by the claimant Compañia Agricola de Ultramar consisted of a receipt in writing, and the testimony of Jose Velasco who was the manager of Mariano Velasco & Co. at the time the note was executed. The receipt reads as follows (translation):

"Manila, P. L, April 5, 1918

"Received from the 'Compañia Agricola de Ultramar' the sum of ten thousand Philippine pesos as a deposit at the interest of six per cent annually, for the term of three months from date.

"In witness thereof, I sign the present. "Mariano Velasco & Co. "By (Sgd.) Jose Velasco "Manager
"P10,000.00"

In his testimony, Jose Velasco stated that his signature on the receipt was authentic and that he received the said sum of P10,000 from the appellee and deposited it with the bank in the current account of Mariano Velasco & Co,

In our opinion the court below erred in finding that the claim of the appellee should be considered a deposit and a preferred claim. In the case of Gavieres vs. De Tayera (1 Phil., 71), very similar to the present case, this court held

that the transaction therein involved was a loan and not a deposit. The facts of the case were that in 1859 Ignacia de Gorricho delivered P3,000 to Felix Pardo de Tavera. The agreement between them read as follows (translation):

"Received of Senorita Ignacia de Gorricho the sum of 3,000 pesos, gold (3,000 pesos), as a deposit payable on two months' notice in advance, with interest at 6 per cent per annum with an hypothecation of the goods now owned by me or which may be owned hereafter, as security of the payment.

"In witness whereof I sign in Binondo, January 31, 1859. "Felix Pardo de Tavera"

After the death of both parties, Gavieres, as plaintiff and successor in interest of the deceased Ignacia de Gorricho, brought the action against Trinidad H. Pardo de Tavera, the successor in interest of the deceased Felix Pardo de Tavera, for the collection of the sum of P1,423.75, the remaining portion of the 3,000 pesos. The plaintiff Gavieres alleged that the money was delivered to Felix Pardo de Tavera as a deposit, but the defendant insisted that the agreement above quoted was not a contract of deposit but one of loan. This court said:

"Although in the document in question a deposit is spoken of, nevertheless from an examination of the entire document it clearly appears that the contract was a loan and that such was the intention of the parties. It is unnecessary to recur to the canons of interpretation to arrive at this conclusion. The obligation of the depositary to pay interest at the rate of 6 per cent to the depositor suffices to cause the obligation to be considered as a loan and makes it likewise evident that it was the intention of the parties that the depositary should have the right to make use of the amount deposited, since it was stipulated that the amount could be collected after notice of two months in advance. Such being the case, the contract lost the character of a deposit and acquired that of a loan. (Art. 1768, Civil Code.)"

In the case of *Javellana vs. Lim* (11 Phil., 141), this court, speaking through Justice Torres, said:

"Authority from the court having been previously obtained, the complaint was amended on the 10th of January, 1907; it was then alleged, that on the 26th of May, 1897, the defendants executed and subscribed a document in favor of the plaintiff reading as follows:

" 'We have received from Angel Javellana, as a deposit without interest, the sum of two thousand six hundred and eighty-six pesos and fifty-eight cents of pesos fuertes, which we will return to the said gentleman, jointly and severally, on the 20th of January, 1898.—Jaro, 26th of May, 1897.—Signed: Jose Lim.—Signed: Ceferino Domingo Lim.

"That, when the obligation became due, the defendants begged the plaintiff for an extension of time for the payment thereof, binding themselves to pay interest at the rate of 15 per cent on the amount of their indebtedness, to which the plaintiff acceded; that on the 15th of May, 1902, the debtors paid on account of interest due the sum of 1,000 pesos, with the exception of which they had not paid any other sum on account of either capital or interest, notwithstanding the requests made by the plaintiff, who had thereby been subjected to loss and damages.

* * * * *

"The document of indebtedness inserted in the complaint states that the plaintiff left on deposit with the defendants a given sum of money which they were jointly and severally obliged to return on a certain date fixed in the document; but that, nevertheless, when the document appearing as Exhibit 2, written in the Visayan dialect and followed by a translation into Spanish was executed, it was acknowledged, at the date thereof, the 15th of November, 1902, that the amount deposited had not yet been returned to the creditor, whereby he was subjected to losses and damages amounting to 830 pesos since the 20th of January, 1898, when the return was again stipulated with the further agreement that the amount deposited should bear interest at the rate of 15 per cent per annum from the aforesaid date of January 20, and that the 1,000 pesos paid to the

depositor on the 15th of May, 1900, according to the receipt issued by him to the debtors, would be included, and that the said rate of interest would obtain until the debtors paid the creditor the said amount in full. In this second document the contract between the parties, which is a real loan of money with interest, appears perfectly defined, notwithstanding the fact that in the original document executed by the debtors on the 26th of May, 1897, it is called a deposit; so that when they bound themselves jointly and severally to refund the sum of 2,686.58 pesos to the depositor, Javellana, they did not engage to return the same coins received and of which the amount deposited consisted, and they could have accomplished the return agreed upon by the delivery of a sum equal to the one received by them. For this reason it must be understood that the debtors were lawfully authorized to make use of the amount deposited, which they have done, as subsequently shown when asking for an extension of the time for the return thereof, inasmuch as, acknowledging that they have subjected the lender, their creditor, to losses and damages for not complying with what had been stipulated and being conscious that they had used, for their own profit and gain, the money that they received apparently as a deposit, they engaged to pay interest to the creditor from the date named until the time when the refund should be made. Such conduct on the part of the debtors is unquestionable evidence that the transaction entered into between the interested parties was not a deposit, but a real contract of loan.

"Article 1767 of the Civil Code provides that—

" 'The depositary cannot make use of the thing deposited without the express permission of the depositor.

" 'Otherwise he shall be liable for losses and damages.'

"Article 1768 also provides that—

" 'When the depositary has permission to make use of the thing deposited, the contract loses the character of a deposit and becomes a loan or bailment.

" 'The permission shall not be presumed, and its existence must be proven.'

* * * * *

"Moreover, for the reasons above set forth it may, as a matter of course, be inferred that there was no renewal of the contract of deposit converted into a loan, because, as has already been stated, the defendants received said amount by virtue of a real loan contract under the name of a deposit, since the so-called bailees were forthwith authorized to dispose of the amount deposited. This they have done, as has been clearly shown."

The two cases quoted are sufficient to show that the ten thousand pesos delivered by the appellee to Mariano Velasco & Co. cannot be regarded as a technical deposit. But the appellee argues that it is at least an "irregular deposit." This argument is, we think, sufficiently answered in the case of *Rogers vs. Smith, Bell & Co.* (10 Phil., 319). There, this court said:

* * * Manresa, in his *Commentaries on the Civil Code* (vol. 11, p. 664), states that there are three points of difference between a loan and an irregular deposit. The first difference which he points out consists in the fact that in an irregular deposit the only benefit is that which accrues to the depositor, while in a loan the essential cause for the transaction is the necessity of the borrower. The contract in question does not fulfill this requirement of an irregular deposit. It is very apparent that it was not for the sole benefit of Rogers. It, like any other loan of money, was for the benefit of both parties. The benefit which Smith, Bell & Co. received was the use of the money; the benefit which Rogers received was the interest on his money. In the letter in which Smith, Bell & Co. on the 30th of June, 1888, notified the plaintiff of the reduction of the interest, they said: 'We call your attention to this matter in order that you may if you think best employ your money in some other place.

"Nor does the contract in question fulfill the third requisite indicated by Manresa, which is, that in an irregular deposit, the depositor can demand the return of the article at any time, while a lender is bound by the

provisions of the contract and cannot seek restitution until the time for payment, as provided in the contract, has arisen. It is apparent from the terms of this document that the plaintiff could not demand his money at any time. He was bound to give notice of his desire for its return and then to wait for six months before he could insist upon payment."

In the present case the transaction in question was clearly not for the sole benefit of the Compañia Agricola de Ultramar ; it was evidently for the benefit of both parties. Neither could the alleged depositor demand payment until the expiration of the term of three months.

For the reasons stated, the appealed judgment is reversed, and we hold that the transaction in question must be regarded as a loan, without preference. Without costs. So ordered.

Johnson, Street, Malcolm, Villamor, Johns and Villa- Real, JJ., concur.

DISSENTING

Romualdez, J.:

We are here concerned, I take it, with an irregular deposit; and following Manresa's commentaries on this point (11 Manresa, 694-697, 3d edition), as well as the case he cites from the Supreme Court of Spain, decided on April 8, 1881, I am of the opinion that although the deposit in question earned interest, it was a preferred credit. The judgment appealed from should therefore, as I think, be affirmed.

Avanceña, C. J., concurs in this dissenting opinion.

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