

CLEMENTE GOCHUICO, PLAINTIFF AND APPELLEE, VS. MANUEL OCAMPO, CHOA TEC HEE, AND HEINSZEN & CO., DEFENDANTS AND APPELLANTS.

G.R. No. 3393. November 23, 1906

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action commenced on the 31st day of July, 1905, in the Court of First Instance of the city of Manila, by the plaintiff against the defendants, to recover the possession of a certain "establecimiento con todos los efectos, enseres, estanienas, muebles y mostradores contenidos en el mismo." The plaintiff bases his right to recover upon the following document:

"Obligacion de P4,800 con hipoteca de una tienda de quincalleria.

"Yo, Manuel Ocampo Lao Sieng Guan, natural del distrito de Jockien, imperio de China, mayor de edad, casado comerciante y vecino de la calle de Rosario del distrito de Binondo, Manila, Islas Filipinas, declaro solemnemente y hago constar por la presente escritura haber recibido antes sin interes ni luero alguno la suma de cuatro mil ochocientos pesos filipinos del Sr. Clemente Gochuico natural de las Islas Filipinas, mayor de edad, viudo, comerciante y vecino del distrito de Sta. Cruz, Manila, Islas Filipinas, mediante cuya percepcion de la expresada suma otorgo la carta de pago mas eficaz a favor del Sr. Clemente Gochuico, sus herederos y causahabientes, que a su derecho y seguridad conduzca.

"Debo hacer constar asimismo que me obligo a pagar la citada suma de cuatro mil ochocientos pesos filipinos dentro del termino de un año a contar desde la fecha del otorgamiento de esta escritura, precisamente en el domicilio del señor acreedor en esta ciudad de Manila, Islas Filipinas, donde se pacta el cumplimiento de este contrato, renunciado el fuero de su domicilio y a cuya jurisdiccion me someto desde ahora, siendo de mi cuenta todos los gastos y costas que se originen en el caso, que tuviera que procederse al cobro judicialmente.

"Que en garantia de esta obligacion y en consideracion a la suma recibida constituyo y traspaso en calidad de hipoteca un establecimiento de mi propiedad que consiste en una tienda de quincalleria con todos los efectos y enseres, estanterias, muebles, mostradores y el sitio denominado vulgarmente mejora, libres de toda carga y gravamen situado en los bajos de la casa No. 83 de la calle de Rosario del distrito de Binondo, Manila, Islas Filipinas.

"Queda convenido y pactado que mientras exista la presente obligacion no tendre derecho de enajenar el reseñado establecimiento, y en caso de que lo hiciere lo hare con anuencia de mi acreedor.

"Debo hacer constar, que si yo, dador hipotecario, pagare o hiciere pagar toda la cantidad adeudada, se considerara esta obligacion como pagada y se tendra por cancelada, nula y sin ningun valor la presente escritura.

"Yo, Clemente Gochuico, enterado de la presente escritura formalizada a mi favor, la acepto en los terminos arriba consignados.

"En testimonio de lo cual firmamos la presente en Manila, Islas Filipinas, A nueve de Mayo de mil novecientos
ciico, A. D.

(Firmado) "LAO SIENG GUAN.

(Firmado) "CLEMENTE GOCHUICO.

"Firmado en presencia de:

(Firmado) "A. QUINPUA.

(Firmado) "P. GONZAGA.

"RATIFICACION.

"[Estados Unidos de America. Islas Filipinas, ciudad de Manila.]

"Hoy 9 de Mayo de 1905, A. 13., comparecieron personalmente los Sres. Manuel Ocampo, Lao Sieng Guan y Clemente Gochuicoco a quienes conozco de que doy fe por ser las personas que otorgaron el documento preinserto y ratificaron ser este un acto de su libre voluntad y otorgamiento habiendome exhibido sus certificados de cedula el del Sr. Manuel Ocampo No. A8677, librado en 16 de Enero de 1905, y el del Sr. Clemente Gochuico No. A3020, librado en 8 de Enero de 1905 por el Colector de Kentas Internas de esta Ciudad. Ante mi:

(Firmado) "EMILIO PINEDA,

"Notario Publico.

"El nombramiento termina el dia 31 de Diciembre de 1906."

(Hay un sello en relieve de la notaria del Sr. Pineda y un sello de 20 centimos.)

While the record does not disclose, yet it is supposed that the action by the plaintiff in connection with the foregoing document is based upon section 202 of the Code of Procedure in Civil Actions.

Upon the 1st day of August the Court of First Instance issued an order directing the sheriff to take possession of the property described in the above obligation, for the benefit of the plaintiff. This order was duly executed by the sheriff.

On the 11th day of August the defendants Choa Tec Hee and Heinszen & Co. filed their petitions respectively in the Court of First Instance, asking permission to be made parties to the said action in order that they might defend against the action of the plaintiff and prayed that the order of the court granted in favor of the plaintiff, decreeing the sequestration of the property of the defendant, Manuel Ocampo, be annulled. The defendants, Choa Tec Hee and Heinszen & Co., based their right to intervene in said cause upon the fact that they had each, on the 1st day of August, obtained judgment in the court of the justice of the peace of the city of Manila against Manuel Ocampo for the sums of 274.96 pesos and 325.60 pesos, respectively.

Upon the 8th day of August the said defendants, Choa Tec Hee and Heinszen & Co., each took out a writ of attachment from the said court of the justice of the peace and placed them in the hands of the sheriff of the city of Manila. These attachments were served upon the property sequestered by virtue of the order of the court of August 1, by the said sheriff.

Later, by agreement between the parties interested, the property so sequestered and attached was ordered to be sold by the Court of First Instance and the proceeds of the sale to be held by the sheriff subject to the final determination of the cause. The defendant, Manuel Ocampo, did not appear in said cause.

After hearing the evidence adduced in said cause, the court, after making a statement of facts, rendered the

following judgment:

"Let judgment be entered in favor of the plaintiff, Clemente Gochuico, against the defendant, Manuel Ocampo Lao Sieng Guan, for the sum of 4,800 pesos, Philippine currency, together with interest thereon at the rate of 0 per cent per annum since the 1st of August, 11)05, and for costs in this action; and that the plaintiff is a special owner of all the property, merchandise, and other things, in the tienda de quincalleria, located at No. 83 Calle Rosario in the district of Binondo, city of Manila, and the same having been sold, the proceeds thereof may be applied in satisfaction of this judgment as far as the same will reach."

From this judgment of the lower court, the defendants (intervenors) appealed and present several assignments of error in this court.

The question presented by all the assignments of error is, Did the plaintiff, by virtue of the said above document, obtain a preference over the assets of the defendant, Manuel Ocampo, as against the other creditors?

Paragraph 3 of article 1024 of the Civil Code provides that credits evidenced by a public document and by a final judgment shall be preferred in accordance with their date.

The above document, which was issued by the defendant, Manuel Ocampo, to the plaintiff, was authenticated by a notary public and is therefore a public document. (Art. 1210 of the Civil Code.) The plaintiff, therefore, by virtue of this document and by virtue of the provisions of article 1924 had a preference over the credit of the defendants by virtue of the said document. (Martinez vs. Holliday, Wise & Co., 1 Phil. Rep., 194, 1 Off. Gaz., 520; Olivares & Tello vs. Hoskyn & Co., 2 Phil. Rep., 089, 1 Off. Gaz., 915.)

The judgment of the lower court is hereby affirmed with interest at 0 per cent per annum from the 1st day of August, 1905, and the costs of this action. After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter the case be returned to the lower court for execution. So ordered.

Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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