

VOLUNTARY DISSOLUTION OF THE COMPAÑIA HISPANO-FILIPINA, INC.; GERARDO GARCIA, CLAIMANT AND APPELLANT, VS. CHINA BANKING CORPORATION, CLAIMANT AND APPELLEE.

G.R. No. 36356. February 14, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Gerardo Garcia appeals to this court from a ruling of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, the claim of the China Banking Corporation, as appears from the judgment rendered in civil case No. 38609 of this court, is hereby declared to be a preferred credit, and the receiver Gerardo Garcia, is ordered to pay to the China Banking Corporation, out of the funds deposited in this bank in the name of the Compañia Hispano-Filipina, Incorporada, the sum of P6,526.44, with interest at 9 per cent per annum from November 26, 1930 until fully paid, plus the additional sum of P300 as lawyer's fees, and the costs of that case, within the period of five (5) days from notice hereof. It is so ordered."

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its judgment, to wit:

"(1) The lower court erred in not considering and deciding that, inasmuch as this is a proceeding for the voluntary dissolution of a corporation, like that in insolvency proceedings, the judgment obtained in case No. 38609 of this court, cannot have as against the other creditors of the corporation the scope, nature, and effect given in paragraph 3 of article 1924 of the Civil Code to final judgments, inasmuch as that judgment was obtained when proceedings for the dissolution were already under way, and besides it was rendered in a case against other persons, jointly and severally.

"(2) The lower court erred in not considering and deciding that Gerardo Garcia's credit partakes of the nature of preferred claim mentioned in paragraph 1 of article 1922 of the Civil Code, or that it is a lien upon the proceeds from the sale of the merchandise of the dissolved corporation.

"(3) The lower court erred in not holding and deciding that the balances found by the public accountant, Exhibits A and B, duly approved by the board of directors of the corporation, the Compañia Hispano-Filipina, legally incorporated in their minutes and resolutions, Exhibits F and G, all of them showing the existence of the alleged preferred credit of the appellant Gerardo Garcia, have the nature and effect of public instruments or documents, for the purposes of subsection A, paragraph 3, article 1924 of the Civil Code, and as such take precedence over the judgment in favor of the China Bank."

The following facts were proved at the trial without dispute:

On March 12, 1931, the Compañia Hispano-Filipina, Inc., through counsel filed a petition in the Court of First Instance of Manila with the following prayer:

"Wherefore, it is respectfully prayed (a) that an order be issued admitting this petition and setting it for hearing after notice thereof has been served on the interested persons mentioned herein; (b) that the present manager and liquidator of the corporation, Gerardo Garcia, be appointed as receiver of the corporate property; and (c) that final judgment be rendered declaring the Compañia Hispano-Filipina, Incorporated, legally dissolved, with direction and order for the distribution and adjudication of its properties, credits and liabilities among the persons therein interested, in the manner and to the extent prescribed by law; and with such further pronouncements and provisions as may be necessary for the final settlement and dissolution sought in this petition."

After the publication required by law, the Hon. Leonard S. Goddard, Judge of the Court of First Instance of Manila, entered an order on June 5, 1931, the dispositive part of which reads as follows:

"Wherefore, the court hereby decrees the dissolution of the corporation Compañia Hispano-Filipina, Inc., and orders that said receiver submit within fifteen days from this date a statement of the assets and liabilities of said corporation, together with a plan for the payment of said liabilities and for the disposal of any balance that may remain after said payment. It is also ordered that a copy of said plan be furnished all the stockholders and creditors of said corporation, and that they be notified of the date set for the approval of the same. So ordered."

On June 17, 1931, Eduardo Gutierrez Repide, one of the sureties of the Compañia Hispano-Filipina, Inc., in favor of the China Banking Corporation, filed a petition with the following prayer:

"Wherefore, it is respectfully prayed that the Receiver and Liquidator be ordered to pay, out of the funds of the corporation in dissolution now on deposit with the China Banking Corporation, the amount of the judgment recovered by the said China Banking Corporation against the said corporation in dissolution, Eduardo Gutierrez Repide and Recaredo Pando; or that the said China Banking Corporation be authorized to deduct the said amount of the judgment rendered in its favor from the funds of the corporation now on deposit with the said banking institution."

On June 25, 1931, the plaintiff Gerardo Garcia also filed a petition claiming preferential payment of the sum of P30,592.80 for merchandise purchased by him by order and for the account of the Compañia Hispano-Filipina, Inc., which merchandise was charged in its books as an advance or loan by the claimant, and sold afterwards for the account and benefit of said company, the proceeds amounting to P21,372.51, being now deposited in the China Banking Corporation, the claimant-appellee herein.

On July 2, 1931, the said China Banking Corporation also filed a claim for the preferential payment of the sum of P6,526.44, with interest at 9 per cent per annum from November 26, 1930, until fully paid, and the sum of P200 as lawyer's fees, by virtue of a judgment rendered in its favor on April 28, 1931, against the said Compañia Hispano-Filipina, Inc., and its sureties, Eduardo Gutierrez Repide and Recaredo Pando, in civil case No. 38609 of the Court. of First Instance of Manila.

The claimant-appellant Gerardo Garcia contends in his first assignment of error that inasmuch as the claimant and appellee, the China Banking Corporation, obtained the judgment in civil case No. 38609 after legal proceedings had been instituted for the dissolution of the Compañia Hispano-Filipina, Inc., that judgment has not the scope, nature and effect contemplated by paragraph 3, subdivision B, article 1924 of the Civil Code, considering that it was rendered against other persons jointly and severally.

The chapter of Act No. 1459, known as the Corporation Law, as amended by section 18 of Act No. 3518, treating of voluntary dissolution of corporations (secs. 62-67), differs from the Insolvency Law in that it contains no provision regarding judgments rendered in cases commenced while proceedings for judicial dissolution of a corporation are pending. Neither does the Insolvency Law contain any provision regarding the dissolution of corporations even when their insolvency be the cause of such dissolution. Since there is no provision of law

rendering ineffective a judgment obtained against a corporation while judicial proceedings for dissolution are pending, such judgment has the scope, nature and effect contemplated in paragraph 3, subdivision B, article 1924 of the Civil Code.

But aside from that judgment, there is a public instrument evidencing the credit of the China Banking Corporation against the Compañia Hispano-Filipina, Inc., and making it a preferred credit according to subdivision A, paragraph 3, of said article 1924 of the Civil Code, in the cases mentioned therein.

But the plaintiff-appellant maintains that his credit also appears in a public instrument, to wit, the book of the Compañia Hispano-Filipina, Inc., wherein it is recorded, and which is kept in accordance with the requisites and formalities prescribed by the Code of Commerce. Article 36 of said Code provides:

"Art. 36. Merchants shall present the books referred to in article 33 bound, ruled, and folioed, to the justice of the peace of the municipality where they have their commercial establishments, in order that he may put on the first page of each one a signed memorandum of the number of pages contained in the book.

"The seal of the justice of the peace which authenticates them shall, moreover, be stamped on all the sheets of each book."

Although the intervention of a justice of the peace imparts to commercial books a certain public character (art. 1216, C. C.), these books are not, however, the public instruments mentioned by article 1924, paragraph 3, subdivision A, of the Civil Code; for though a public instrument is a public document, not every public document is a public instrument: the latter is made by a notary public in the presence of the parties executing it and of two witnesses, signed by the interested parties or, at their request, by one of the witnesses with the notary. (II Escriche, Diccionario de Legislacion y Jurisprudencia, p. 859.)

The fact that the judgment in question was rendered against other persons jointly and severally does not divest it of its preferred character conferred by paragraph 3, subdivision A, article 1924 of the Civil Code, as the claimant-appellant contends; for, the obligation being solidary, each one of those who are solidarily bound must answer for the whole obligation, and the creditor may collect the whole debt from any of them.

As to the claimant-appellant Gerardo Garcia's contention that his claim enjoys a special privilege under subdivision 1, article 1922 of the Civil Code, as a vendor of personal properties to the dissolved corporation which were later sold, with respect to the unpaid price thereof, to the extent of their value, while it appears from the record that the purchases made by said claimant and appellant by order and for the account of the Compañia Hispano-Filipina, Inc., with money advanced by him to said company, which was entered in the latter's books as a loan, date as far back as the year 1925, yet as it does not appear that the goods he purchased were those that were in existence at the time of the dissolution, or that the amount deposited in the China Banking Corporation is the exclusive proceeds from said sale of goods and not of other personal property, so that it is impossible to determine what portion of that amount was derived from the sale of the goods purchased by him, such special privilege cannot be given recognition because, for this purpose, the identity of the goods sold and not paid for, and that they were in possession of the purchaser at the time of the filing of the claim for the unpaid price thereof, must first be established.

In view of the foregoing, we are of opinion that the judgment appealed from must be affirmed, with costs against the appellant. So ordered.

Villamor, Hull, Vickers, and Imperial, JJ., concur.

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