

UY PIAOCO, PLAINTIFF AND APPELLEE, VS. SERGIO OSMEÑA, DEFENDANT AND APPELLANT.*G.R. No. 3935. December 04, 1907*

Ponente: TORRES, J.

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On the 7th of September, 1906, Uy Piaoco, a Chinaman, filed a complaint against the sheriff of the Court of First Instance of Cebu, Sergio Osmeña, alleging that on or about the 24th of August of said year the judge of First Instance of said province issued a writ of preliminary attachment upon request of Martina Rodriguez, against the property of the Chinaman Dy-Siongco and Uy Chiam-Liong, by reason of a certain amount, due by the latter; and on the same date the sheriff, the defendant herein, levied an attachment on the property belonging to Uy Piaoco, the plaintiff, which existed in a store situated in Calle del Comercio, close to that of Norte America, in the capital of Cebu; during the whole of the time mentioned in the complaint, the above-named Dy-Siongco and Uy Chiam-Liong had no interest whatever as owners in the said store or its contents. The defendant, without authority from any court and without any just reason therefor, closed the aforesaid store owned by the plaintiff, and placed under custody the goods therein contained, and notwithstanding the fact that on the same date the plaintiff filed a proper claim before the sheriff, the defendant herein, and asked the discharge of the goods that had been attached, the said defendant, without any right whatever, refused to deliver the goods of the plaintiff, keeping them under custody, the store remaining closed up to this date.

The property that was attached consisted of the said store and a large assortment of goods valued at P15,000; it was further stated that prior to the attachment, goods to the value of more than P10,000 were sold every month with a net profit of P1,500; and that in consequence of the attachment the plaintiff, besides the value of the goods, suffered damages to the extent of P1,500 pr month; that on the 13th of August the said defendant, without any right whatever under the attachment order, attached about three hundred bales of tobacco, the property of the plaintiff, stored in the town of Naga in said province, said tobacco being valued at P1,700, and was not returned by the defendant in spite of the fact that a claim was filed with him by the plaintiff, and the said Dy-Siongco and Uy Chiam-Liong never had any interest as owners in the same. In consequence of the said attachments the plaintiff suffered damages and his credit in Cebu and in Manila was ruined, and he lost the value of the attached goods which amounted to P15,000; he therefore asked that judgment be entered in his favor, and that the defendant be sentenced to replace him in the possession of the store, and of the tobacco and goods, as stated above, or otherwise to pay the value thereof amounting to P16,700, to pay the sum of P15,000 together with P1,500 monthly from the 24th of August, 1906, until such time as the store and the goods are returned to him, and to pay the costs of the proceedings, and finally he asked for any other remedy which the court might consider proper.

The defendant in his answer alleged that the contents of paragraphs 1 and 2 of the complaint were true, as also the contents of paragraph 2, which should be the third, regarding the issue of the writ of attachment against the property of Uy Chiam-Liong and Dy-Siongco on the 24th of August; 1906, in the civil case instituted against

them by Martina Rodriguez; but that it was not true that the defendant had attached property belonging to the plaintiff since what had been seized by him in compliance with the order of the court belonged to the said Uy Chiam-Liong and Dy-Siongco, it being also true that the defendant did not receive orders from any competent authority to attach any property of the plaintiff, Uy Piaoco, and that he did not attach any property and goods belonging to the latter; that it was true that he refused to deliver to him the attached property because he did not believe that it belonged to him but to the said Uy Chiam-Liong and Dy-Siongco, and further, because the defendant had not been informed in a conclusive manner of the right upon which the plaintiff intended to base his title of ownership; that the contents of paragraph 5 of the complaint were true as to what the attached property consisted of, but not as to the value thereof, which should only be determined from the inventory made by the defendant, the allegations contained in paragraphs 6 and 8 of the complaint being denied; that it was true that the defendant on the 13th of August, aforesaid, did attach 300 quintals of tobacco, but that it was not true that said article was the property of the plaintiff because it was owned exclusively by Uy Chiam-Liong and Dy-Siongco, and for said reason he refused and still refuses to deliver the 300 quintals of tobacco to the plaintiff, because the latter is not the owner of the same; he therefore asked that the complaint be dismissed with costs against the plaintiff.

The evidence adduced by both parties having been received at the trial and some of the documents exhibited attached to the records, the books remaining in the possession of the clerk of the court because it was impossible to attach them to said records, it appears that on the 17th of January, 1905, the Chinamen Dy-Siongco and Uy Chiam-Liong and Serafin Uy Piaoco appeared before Martin M. Levering, a notary public in Cebu, and produced a document said to be a contract of sale, entered into between the two first named and the third party, of all the goods, merchandise, and furniture owned by Dy-Siongco and Uy Chiam-Liong, who were indebted to Uy Piaoco in the sum of P39,752.25, made out in favor of the creditor Uy Piaoco; the said goods, merchandise, and furniture were deposited at the house of Joaquin Castro y Cia. in Calle del Comercio, Cebu, and were valued at P22,000; that the said debtors sold to their creditor a building lot situated in Calle Magallanes, Cebu, valued at P5,000, and to this purpose the vendors executed the corresponding bill of sale before the said notary, which document, signed on the same date, is considered as a part of the above-named agreement that they also sold four hundred shares of the Yuen Sheng Company of Manila, at the rate of P100 per share, their par value, said shares appearing in the name of Uy Chiam-Liong, who paid P50 on account of each share to said company, but Uy Chiam-Liong obtained from said company a loan of P10,000, mortgaging the said four hundred shares as security for the loan, it having been agreed that the present value of the shares was P9,000; that the total value of all the property conveyed to the creditor was P36,752.25, and that in consideration of said transfer, the creditor, Uy Piaoco, waived the balance of the indebtedness, and the contracting parties signed the document drawn out in duplicate at Cebu, on the date aforementioned. Counsel for the defendant took exception to the filing of said bill of sale.

Counsel for the plaintiff offered in evidence, as Exhibit B, the inventory book, to which the lawyer of the defendant took exception, on the ground that the same had not been proven to be such inventory book because it was not signed by Uy Chiam-Liong and Dy-Siongco.

Pages 38 and 39 of the book, Exhibit D, and page 25 of Exhibit F were also offered as evidence of the accounts between Uy Chiam-Liong, Dy-Siongco, and Uy Piaoco, which were likewise opposed and excepted to by the defendant on the ground that the books referred to were not kept in accordance with the provisions of the Code of Commerce.

A document marked as Exhibit J was also offered in evidence, some of its pages having been signed by the court, and to this the defendant also excepted because it was not a legal book and had not been identified.

In view of the above facts, judgment was rendered on the 23d of November, 1900, in favor of the plaintiff,

holding therein that the property attached belonged to him by virtue of a valid sale made to him by the Chinamen Uy Chiam-Liong and Dy-Siongco, the court ordering that the bond of the plaintiff for the retention of the property held by him be set aside, and that the said plaintiff recover judgment against the defendant for the absolute possession of said property and for the sum of P1,750 as damages, with interest thereon at the rate of 6 per cent per annum from the 24th day of November, 1906, and the costs of the proceedings.

The above judgment was excepted to by the defendant, who gave notice of his intention to appeal to the Supreme Court and also moved for a new trial on the ground that the findings were openly and manifestly contrary to the weight of the evidence; the motion having been overruled, defendant excepted thereto and upon approval of the bill of exceptions the same was submitted to this court.

The sale of the goods, merchandise, and furniture contained in the store established on the ground floor of the house of Joaquin Castro y Cia. situated in Calle del Comercio, Cebu, made on the 17th of January, 1906, by the owners thereof, Uy Chiam-Liong and Dy-Siongco in favor of Uy Piaoco, was ratified before Martin M. Levering, a notary public, and authenticated by him; said deed, which was executed by both parties, was not argued as false nor was any motion for the nullity of this sale made during the proceedings on the ground that it was fraudulent, and that it had been made to the prejudice of the creditors of the vendors.

In said deed the reasons which the vendors had for transferring the goods and furniture to Uy Piaoco, the creditor and purchaser, are stated, inasmuch as it is affirmed therein that the vendors were indebted to the purchaser in the sum of P39,752.25; that the total value of the property conveyed or assigned to said creditor was P36,352.25, and that the creditor waived the balance of his credit; it has not been proven in any manner that the debt was simulated, in order to be able to assume that the sale or assignment made to the creditor was both fictitious and fraudulent. Article 1111 of the Civil Code reads:

"Creditors, after having attached the property of which the debtor may be in possession, in order to collect all that is due them, may exercise all the rights and actions of the latter for the same purpose, excepting those inherent in his person; they may also impugn the acts which the debtor may have performed in fraud of their right."

In connection with fraudulent contracts, article 1297 of said code provides:

"Contracts by virtue of which the debtor alienates property, for a good consideration, are presumed to be executed in fraud of creditors.

"Alienations for valuable considerations, made by persons against Avhom a condemnatory judgment, in any instance, has been previously rendered, or a writ of seizure of property has been issued, shall also be presumed fraudulent."

The supreme court of Spain in its decision of June 15, 1897, when applying the above last-cited article to an appeal in cassation, establishes the following doctrine:

"The presumption that alienations are fraudulent, established by said article (1297) may,, as all others, be destroyed by proof to the contrary in accordance with article 1251, and any judgment which may so establish it is not in violation of article 1248 nor of article 1291 of the Civil Code."

No evidence has been adduced to show in a satisfactory manner that Uy Chiam-Liong and Dy-Siongco were within any of the cases stated in the foregoing articles of the code; that they did not owe Uy Piaoco any amount; that the contents of the document marked as "Exhibit A" were untrue; and that the sale of the goods and furniture of the aforesaid store was fictitious and simulated.

The fact that a new license for the store was obtained on behalf of Uy Piaoco from the municipal treasurer on the

same day when the sale was made, and that a few days later Mr. Janssen, agent of the firm of Behn, Meyer & Co., importers, was informed that Uy Piaoc⁶ was the owner of the store and that he had taken over the goods sold to the former owners thereof, further confirms the truth of the sale made to the plaintiff.

So that when the said goods and furniture were attached on the 24th. of August, 1906, at the request of another creditor, Martina Rodriguez, it was almost eight months since the articles attached had no longer belonged to Uy Chiam-Liong and Dy-Siongco, but to the plaintiff, Uy Piaoco; therefore the latter's attorney in fact performed his duty and exercised a perfect right when protesting against the attachment placed thereon, and in asking the sheriff who carried out the proceeding to release the attached goods.

Was the affidavit filed by the attorney in fact of the plaintiff affirming that the latter was the owner of the property levied upon, and not the debtors, Uy Chiam-Liong and Dy-Siongco, as presumed when the proceeding was executed, sufficient to support the claim and petition for dissolution, or was it necessary to prove the transfer of the dominion by producing the bill of sale marked as "Exhibit A"? This question is decided by section 442 of the Code of Civil Procedure, which is of the following tenor:

"Right of third party against officer.—If the property taken be claimed by any other person than the defendant or his agent and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer while he has possession of the property, the officer shall not be bound to keep the property under the attachment, unless the plaintiff, on demand of him, or his agent, indemnify the officer against such claim by an obligation with two sufficient sureties; and no claim to such property or damage for its seizure by any other person than the defendant or his agent shall be valid against the officer unless so made, but nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action."

Section 451 of the Code of Civil Procedure accords with the above. Neither of the above sections requires that the title of ownership .be produced or exhibited, an affidavit of his title thereto or of his right to the possession thereof being all that is necessary to be presented with his written claim to the sheriff who levied the attachment. Such requirements were undoubtedly complied with by the attorney in fact of the plaintiff as acknowledged by the defendant himself, and since by none of the sections cited above is the production of the title deed required, the plaintiff's attorney in fact was not bound to submit to the sheriff the bill of sale marked as "Exhibit. A," as claimed by the appellant in his brief.

The writ of attachment issued by judicial order was a legal procedure in execution of said order; but from the time when the agent of the owner of the seized goods filed a written claim protesting against the attachment and justified his claim for the removal of the obstacle by means of an affidavit stating his title thereto or his right to the possession thereof and the grounds of his allegation, the defendant sheriff should have considered the claim because in accordance with the said section 442 he was not bound to maintain the attachment nor to keep the property attached, in his possession.

According to the Code of Civil Procedure the powers of the sheriff involve both discretionary power and personal liability if he fails to consider a just claim based on the law, thereby causing injury to a third person whose property is not subject to the responsibility of a debtor nor bound in favor of the creditor who applied for the attachment. It is unnecessary to produce the title to the property claimed, which must be done in action of intervention, and the qualification of the validity and efficiency of the title rests with the judge. It suffices to attach to the written claim filed with the sheriff an affidavit of the title thereto or of the right to the possession thereof with a statement of the grounds on which the claim is based.

A third party who protests against the attachment of his property and presents his claim in accordance with the provisions of sections 442 and 451 of said Code of Civil Procedure is entitled to protection and to be maintained

in and restored to the possession of his said property, it not being permitted to deprive him of the same unless by due process of law.

If, notwithstanding a claim made in accordance with the law, a sheriff maintains the attachment and refuses to dissolve it, he incurs, as a matter of fact, the responsibility which the law determines because he then commits an act of dispossession or depriving of possession or an actual attempt against the right of ownership or possession, and violates the legal precepts in force which in this connection are different from those of the former Ley de Enjuiciamiento Civil; and the person who applied for the attachment must share the responsibility therefor in case he secured by a bond the responsibility contracted by the officer who executed the attachment.

The defendant sheriff in disregarding the claim of the plaintiff's attorney in fact and maintaining the attachment on the property of the said plaintiff, the same not being subject to the liability of the Chinese debtors of Martina Rodriguez, has injured the said plaintiff by depriving him of the possession of his personal property for about seventy-five days, and in consequence thereof is bound to repair the injury caused, in accordance with the provisions of article 1902 of the Civil Code, which treats of obligations arising from fault or negligence.

Considering that after the expiration of seventy-five days the attachment was removed and the seized goods were returned to the plaintiff; taking into account that the value given to the goods was P15,000, the average proceeds of the monthly sales that might have been obtained by said store had the same been kept open, the condition of things in this country including the Island of Cebu even prior to 1906, and the existence of other similar stores in said city, it is reasonably estimated that the total amount of the loss suffered in consequence of the attachment together with the rental for the premises and salary of clerks amounts only to P300, which sum in justice should be paid by the defendant, with interest thereon at the rate of 6 per cent per annum from the 24th of November, 1906.

With regard to the 300 quintals of tobacco seized in the town of Naga in said island, the record does not show the same to be the property of the plaintiff, since beyond the fact that nothing is stated in Exhibit A in reference to said 300 quintals of tobacco, no satisfactory proof exists that they were acquired for account of the plaintiff. On the contrary, it appears to have been conclusively proven that the 300 quintals of tobacco seized were the property of the two Chinese debtors of Martina Rodriguez Uy Chiam-Liong and Dy-Siongco, and that, therefore, the legal representative of Uy Piaoco, the plaintiff, had no legal right to request, the sheriff to remove the attachment on the tobacco in question because it did not belong to the plaintiff.

Section 297 of the Code of Civil Procedure, dealing on the affirmative allegations which each party must prove provides that:

"Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party."

If in accordance with the provision of the foregoing section the plaintiff complied with his duty to prove that the goods and furniture of the store above referred to were his own property, he has not, however, done so with regard to the 300 quintals of tobacco, which are shown to belong to Uy Chiam-Liong and Dy-Siongco.

In view of the considerations above set forth, it is our opinion, and we so hold, that the responsibility-contracted by the defendant, Sergio Osmeña, as sheriff of the Province of Cebu, is limited to the damage caused by the attachment and retention of the goods and furniture of the store acquired by the plaintiff on the 17th of January, 1906; therefore, the said defendant is hereby sentenced to pay the plaintiff, Uy Piaoco, as an indemnity, the sum of P900 "with interest thereon at the rate of 6 per cent per annum from the 24th day of November, 1906, without

any special ruling as to costs, and the judgment appealed from, thus modified, is hereby affirmed. So ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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