

THE INTERNATIONAL BANKING CORPORATION, PLAINTIFF AND APPELLANT, VS. PILAR CORRALES ET AL., DEFENDANTS, CHO HAN LING, INTERVENOR AND APPELLEE.

G.R. No. 4209. March 19, 1908

Ponente: CARSON, J.

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CARSON, J.:

On May 10, 1904, appellant, as plaintiff in the action styled The International Banking Corporation vs. Dña. Pilar Corrales et al., filed its complaint alleging an indebtedness on the part of the defendants in excess of P400,000 and asserting a lien upon the property of one of the defendants, the Casa Comision, including the steamer Oregon, and the launches Madge, Fe, and Caridad. On the same day, on petition of the plaintiff, W. H. Anderson was appointed a receiver to take possession of the property of the Casa Comision, in which plaintiff claimed an interest by virtue of its alleged lien, whereupon Anderson qualified, and took possession of this property, including the above-mentioned vessels.

On September 15, 1904, the appellee, Cho Han Ling, filed a complaint in intervention in accordance with the provisions of section 121 of the Code of Civil Procedure. In this complaint he alleges that he is a creditor of the Casa Comision in the sum of P6,197.67 on account of repairs made to vessels belonging to the Casa Comision as follows: On the Oregon to the value of P3,767.67, of which P4,000 has been paid; on the Madge, 995; on the Fe, P1,685; on the Caridad, P750.

He further alleges that these vessels were in the possession of the Casa Comision at the time the services were performed, and continued in its possession until they were taken into the possession of the receiver appointed in the course of these proceedings, and prayed—

First, that judgment be rendered in his favor and against W. H. Anderson, receiver, (a) for P2,767.67, being the balance due on account of the repairs made on the steamer Oregon at the request of its owner, the Casa Comision, and for materials furnished in the course of these repairs, together with interest and costs, and for an express recognition of his rights as a preferred creditor with relation to the Oregon for the amount due for said repairs and materials furnished, in accordance with the provisions of article 1922 of the Civil Code; (b) for P995, with interest and costs, on account of repairs made to the launch Madge and materials furnished in the course of the said repairs, and for an express recognition of his rights as a preferred creditor for this amount, with relation to the Madge; (c) for P1,685 and a similar decree as to the Fe; (d) for P750 and a similar decree as to the Caridad.

Second, that the vessels be sold separately and the intervenor's claim paid out of their respective proceeds, in preference to those of all other creditors of the Casa Comision.

Appellant by answer denied the intervenor's claim to a preferred right in the said vessels, and asserted the impropriety of the intervention.

The four vessels in question remained in the possession of the receiver from May 10, 1904, until December 27,

1905, when they were sold by order of the court.

The judgment of the trial court was in favor of the intervenor and against W. H. Anderson, receiver, with interest and costs, and provides that the claim of the intervenor be satisfied out of the proceeds of the sale of these vessels as follows: (a) P2,767.67 from the proceeds of the sale of the Oregon; (b) P995 from the proceeds of the sale of the Madge; (c) P1,685 from the proceeds of the sale of the Fe; (d) P750 from the proceeds of the sale of the Caridad.

From this judgment the plaintiff appealed, and made the following assignments of errors :

First. The trial court erred in not dismissing¹ the appellee's complaint in intervention.

Second. The trial court erred in holding that the transfer of possession from the debtor to the receiver did not divest the liens of the intervenor.

Third. The trial court erred in holding that upon the sale by the receiver of the property on which the intervenor claimed a lien, such lien became transferred to the proceeds of such sale.

Fourth. The trial court erred in rendering judgment against W. H. Anderson as receiver in a cause of action against the Casa Comision.

Fifth. The trial court erred in denying appellant's motion for a new hearing.

In support of his first assignment of error, appellant contends that the intervenor's claim is not so related to the subject of the action between plaintiff and defendants in the original action as to warrant intervention, for while it may be said that every creditor has a certain interest in the outcome of a suit brought by another creditor against the same debtor, this does not constitute such an interest in the matter in litigation or in the success of either party as is contemplated by section 121 of the Code of Civil Procedure.

It is to be observed that in this case the plaintiff instituted his action to recover a debt and to foreclose a mortgage on certain specific property, and that the intervenor alleged that he had a lien upon or a statutory right of preference in or to a part of this property under the provisions of article 1922 of the Civil Code.

The interest alleged by the intervenor in the property on which he claims a lien is a very different interest from the interest of an unsecured creditor in the property of his debtor; and the subject-matter in litigation where one asserts a preferred right in specific property is far different from the subject-matter in litigation where one merely asserts a right to a judgment against his debtor for the amount he alleges to be due him. It does not seem to admit of doubt that, if the intervenor did in fact have a lien or statutory right of preference in or to the very property which the plaintiff was endeavoring to subject to the payment of his alleged indebtedness, this lien or statutory right of preference clothed the intervenor with an interest in the subject-matter in litigation which clearly entitled him to be heard to assert his rights.

In *Torres vs. Genato* (7 Phil. Rep., 204), we held that in a proceeding instituted by one of the partners, "praying that the affairs of the partnership be wound up, the partnership property sold, the debts paid, and the proceeds distributed to the interested parties," one who claimed a statutory right of preference in or to certain specific partnership property was entitled to intervene for the purpose of asserting that right. In that case, as in this, the plaintiff sought to have the specific property, in which intervenor asserted a preference, sold and the proceeds distributed, a very different proceeding from that of an unsecured creditor seeking to reduce an alleged indebtedness to judgment, wherein the subject of the action is the alleged indebtedness.

Appellant further contends, that if when a creditor sues, all others may intervene and have their relative priorities established, while the receiver guards the property for the benefit of all, then the prohibition of bankruptcy

proceedings (sec. 524, Code of Civil Procedure) is meaningless, and cites the so-called Tan Tonco cases (Bonaplata vs. Ambler, 2 Phil. Rep., 392; Encarnacion vs. Ambler, 3 Phil. Rep., 623) in support of his contention.

It would seem to be a sufficient answer to this contention also, to point to the fact, that in this action, unlike the original action in the cases just cited, the prayer of the complaint is not merely for a judgment on a debt, but also for the enforcement of a lien on specific property, on which the intervenor sets up a claim of preference.

"The placing by the court of the property of the defendant" (in an action for debt in which no attempt is made to enforce a lien upon any specific property or fund in the hands of the defendant) "in the hands of a receiver for the purpose, after paying costs, fees, and expenses, of distributing that property among creditors" was held in the Tan Tonco cases to amount practically to bankruptcy proceedings, forbidden under section 524 of the Code of Civil Procedure, but this is a very different proceeding from permitting a particular creditor to intervene in an action for debt in which an attempt is made to enforce a lien upon specific property of the debtor, to assert and defend a right of preference in and to the specific property upon which plaintiff is seeking to enforce his lien.

Appellant in support of his second and third assignment of errors argues that since the preferences claimed by the intervenor, on account of repairs on the vessels mentioned in his complaint, are founded on the provisions of paragraph 1 of article 1922 of the Civil Code; and since that article expressly provides that such preferences shall be recognized only while the article repaired continues in the possession of the debtor (*en poder del deudor*); and since the possession of the vessels had passed from the owner into the hands of the receiver, when the complaint in intervention was filed, intervenor had lost whatever right of preference he may have had when he undertook to file his complaint in intervention.

It can not be denied that the vessels in question passed into the possession of the receiver long before the intervenor filed his complaint in intervention, but we do not think that this possession was of such nature as to deprive the intervenor of the right of preference secured to him under article 1922 of the Civil Code.

The precise nature of the possession held by a receiver of the property or estate intrusted to his charge is frequently a question of much importance in determining the relative rights of conflicting claimants to and parties interested in the property.

High, in his treatise on the Law of Receivers (par. 134), says that—

"The general proposition is well established, that, the receiver being the officer or agent of the court from which he derives his appointment, his possession is exclusively the possession of the court, the property being regarded as in the custody of the law, in *gremio legis*, for the benefit of whoever may be Ultimately determined to be entitled thereto. The receiver's possession, therefore, is neither adverse to the plaintiff nor to the defendant in the litigation, being only the possession of the court which holds the property for the greater safety of all parties in interest."

It was said by Mr. Justice Hargreave, in the Landed Estates Court of Ireland, *In re Butler's Estate* (13 Ir. Ch. N. S. 450), that "the general principle is that the possession of the receiver is that of all parties to the suit, according to their titles," and quoting again from High on Receivers (par. 5), "a receiver being appointed for the preservation of the fund or property *pendente lite*, and for its ultimate disposal according to the rights and priorities of the parties entitled, the remedy is regarded as in the nature of a sequestration rather than as an attachment of the property, and it ordinarily gives no advantage or priority to the person at whose instance the appointment is made, over other parties in interest. Nor does it change the title to or create any lien upon the property: its purpose in this respect being rather like that of an injunction *pendente lite*, to preserve the subject-matter until the rights of all parties may be judicially determined," and in the leading case of *Beverly vs. Brooke et al.* (4 Grat., Va., 202) it was said that the receiver of property has in his official character no personal interest therein further than that

which arises out of his responsibility for the correct and faithful discharge of his duties.

Such being the nature of the possession, title, and interest of a receiver appointed pendente lite, it has frequently been decided that the appointment of a receiver for property does not affect preexisting liens upon the property, or vested rights or interests of third persons therein; and this is true whether the lien or right or interest in question has its origin in the contract, or arises by operation of law. In *Kneeland vs. American L. & I. Co.* (136 U. S., 89), it was held that "the appointment of a receiver vests in the court no absolute control of the property, and no general authority to displace vested contract liens," and in *Fidelity Insurance Co. vs. Shenandoah Valley Railway Company* (86 Va., 1), it was held that a vendor of cars and engines to a transportation company, retaining title as security, before a receiver has been appointed, is entitled to be paid by the receiver for their use and to exhaust his lien thereon, but as to balance of his debt he is only a general creditor.

An examination of the authorities, and of the duties, objects, and purposes of receivers appointed pendente lite, convinces us that the possession of the receiver in this case was not the absolute possession and control of the property adverse to the Casa Comision which alone could divest the intervenor of his right to a preference in the disbursement of the proceeds of the sale of the property repaired by him.

We agree with counsel for appellant that judgment was improperly rendered against the receiver for the amount of the indebtedness of one of the defendants to the intervenor. We do not think, however, that it is necessary to reverse the judgment in its entirety and send back the case for new trial. The real object of the intervention was to secure a formal declaration of intervenor's right to a preference in the distribution of the proceeds received from the sale of the vessels mentioned in the complaint, and an order upon the receiver to make payment accordingly. The judgment of the trial court expressly and properly recognized this right, and we are of opinion therefore that the judgment should be modified by striking out so much thereof as undertakes to give judgment in favor of the intervenor and against the receiver for the total amount of the indebtedness of the Casa Comision, and affirming so much thereof as recognizes the intervenor's right to a preference in the distribution of the proceeds of the sale of each vessel for the respective amounts due the intervenor for repairs thereon, as set out in the judgment.

Thus modified, the judgment of the trial court should be, and is hereby, affirmed with costs of this instance against the appellant. So ordered.

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

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