

IN RE LIQUIDATION OF THE MERCANTILE BANK OF CHINA. PACIFIC COAST BISCUIT CO. ET AL., CLAIMANTS AND APPELLANTS, VS. CHINESE GROCERS ASSOCIATION ET AL., CLAIMANTS AND APPELLEES.

G.R. No. 43305. March 31, 1938

Ponente: AVANCEÑA, C. J.

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AVANCEÑA, C. J.:

In its appealed decision, the court said in part:

"Having instituted these proceedings for the liquidation of the assets of the Mercantile Bank of China and the payment of its obligations, as under its financial condition it could not continue its operations without danger of greater losses, the court declared the said bank in a state of liquidation on December 4, 1931, pursuant to the provisions of section 1639 of the Administrative Code, as amended by Act No. 3519. Some presented their claims against the aforesaid bank with the Bank Commissioner, while others presented theirs before this court. The Bank Commissioner filed his report with the court in April, 1932, and in view of the fact that other claims had been subsequently presented, the court, by its order of July 15, 1932, appointed Mr. Fulgencio Borromeo, ex-president of the Bank of the Philippine Islands, Commissioner, to hear said claims and those presented subsequently by the creditors, with instructions that he submit to the court his report containing his findings of fact and his recommendations. By virtue of the aforesaid order of the court, Mr. Borromeo properly acted not merely as a commissioner but as a referee, with the consent of all the creditors who substantiated their claims before him, and his acts in such capacity were approved by the court in its order of October 31, 1933."

The appellants assign three errors committed by the lower court:

I

"The lower court erred in declaring the claims of the depositors of the insolvent bank, Mercantile Bank of China, to be preferred and not ordinary claims. (Referee's Report, pages 9-41, and decision of the lower court, Record on Appeal, p. 46.)"

We said in *G. R. No. 43682, Tan Tiong Tick vs. American Apothecaries Co.*, 38 Off. Gaz., 889), that the so-called current account, savings, and fixed deposits made with the insolvent bank, are commercial and should be governed by the Code of Commerce, and that the classification and preference of the credits involved in this liquidation should be determined in accordance with the Insolvency Law, No. 1956, as amended, in its sections 48, 49 and 50.

The current account and the so-called savings and fixed deposits are not deposits in the sense that this contract is defined by the Code of Commerce and they do not have the legal effect and classification that is given to this contract in articles 908 and 909, paragraph 3, of the Code of Commerce, and section 48, paragraph 3, of the Insolvency Law.

A deposit takes place when the thing which constitutes its object is delivered to the depositary, with the obligation to preserve it in the manner he receives the article deposited (arts. 305 and 306 of the Code of Commerce). Consequently, it is necessary in a commercial deposit that the thing received be preserved, thus precluding the use thereof by the depositary. This condition is so essential in a deposit that it loses its character and is converted into another contract if, with the consent of the depositor, the depositary disposes of the articles on deposit (art. 309 of the Code of Commerce). In the contract of current account the bank may dispose of the money thus received for its operations, its only obligation being to attend to the payment of the checks issued by the current account depositor. This is deducible from the legal provision requiring the bank to have in its possession at all times an amount equal to 18 per cent of the total amount received by it in current account, a provision which would be purposeless if, at any rate, the bank should be under a duty to keep the same amount received and could not use it in its operations. It is, therefore, plain that the contract of current account bears an aspect which makes it essentially incompatible with a deposit.

Moreover, articles 908 and 909 of the Code of Commerce and section 48 of the Insolvency Law, in enumerating the properties which, being in the possession of the insolvent, should, however, be considered as belonging to another because the ownership thereof has not been transferred, include the properties received on deposit, but exclude those deposited on current account, which means that the latter does not belong to anyone but the insolvent who, therefore, may use the same in its operations. The mere fact that properties on deposit are considered as belonging to another. While those received on current account are not (arts. 908 and 909, pars. 3 and 6 of the Code of Commerce) is tantamount to a declaration that a current account is not a deposit.

The same circumstance that the law, in excluding from properties considered as belonging to another those received on current account, exclude them from properties merely remitted to the insolvent (sec. 48, par. 6, of the Insolvency Law) and not from the properties received on deposit (sec. 48, par. 3, of the same law), is proof that it does not in any wise consider a current account as a deposit.

At any rate, the properties remitted on current account do not constitute, under section 48, paragraph 6, of the Insolvency Law, properties belonging to another which should be placed at the disposal of their rightful owners. On the other hand, neither do they constitute preferred credits in accordance with section 50. They should, therefore, be considered as ordinary credits pursuant to section 49 of the same law.

What has been said so far is applicable with more reason to the so-called savings and fixed deposits.

For the foregoing reasons and those set out in G. R. No. 43682, the appealed decision is reversed in this respect, and we hold that the claims by virtue of a current account and the so-called savings and fixed deposits are not preferred.

II

"The lower court erred in declaring the following claims to be ordinary and not preferred claims:

Claimant

Claim

Referee's
report page

1.

The National City Bank of New York

\$1,637.05

192

2.

Wellington Sears & Co.

7,857.24

194

3.

The National Bank of Commerce of Seattle

5,030.71

202

4.

Neuss, Hesslein & Co., Inc.

5,354.03

207

5.

-----do-----

9,713.05

205

6.

Pacific Coast Biscuit Co.

1,053.64

172

7.

-----do-----

1,313.35

172

8.

The Hood Rubber Products Co., Inc.

423.10

169

9.

First Wisconsin National Bank of Milwaukee

1,599.72

196"

The amounts which are the subject matter of these claims, with the exception of \$9,713.05 of Neuss, Hesslein & Co., Inc., and \$1,313.35 of the Pacific Coast Biscuit Co., represent the drafts sent to the insolvent bank for collection from the drawees, accompanied by the bills of lading of goods consigned to the latter, with instructions not to deliver them except upon payment of the amount of the drafts. The insolvent bank, however, in violation of these instructions, delivered the bills of lading to the drawees upon trust-receipts only, without payment by the latter of the amount of said drafts. The remitters claim the amounts represented by these drafts as preferred credits. They rely on section 48 of the Insolvency Law which provides that properties found among the property of the insolvent, the ownership of which has not been conveyed to him by a legal title, shall be considered as the property of other persons and shall be placed at the disposal of their lawful owners. This provision, however, is not in point because the amounts represented by these drafts not having been collected, they are not properties found in the possession of the insolvent. Nevertheless the insolvent bank, as agent, for violation of the instructions of its principals, the remitters, is liable for the amounts of these drafts by way of damages (art. 1718 of the Civil Code), and as ordinary credits only, thereby affirming the appealed decision in this respect.

The sum of \$9,713.05, claimed as preferred credit by Neuss, Hesslein & Co., Inc., is also the amount of various drafts remitted by the National City Bank of New York to the insolvent bank, to be collected from the drawees, accompanied by bills of lading of goods consigned to the latter, with instructions not to deliver them except upon payment of the drafts. The insolvent bank, however, delivered to the drawees the bills of lading upon trust-receipts before collecting the amount of the drafts. The latter matured after the appointment of the receiver of the insolvent bank, who collected, on account of the draft 339724-E against Ang King Yiap, various amounts, including that of P409.65 representing the balance of the latter's current account with the insolvent bank. The receiver also collected the entire sum of P656.38, the amount of the draft 349877-E issued against the Chinese Trading Co. Both amounts are in the hands of the receiver and belong to Neuss, Hesslein & Co., Inc., because the ownership thereof has never been transferred to the insolvent bank.

From the amount collected on account of the draft 339724-E, should be deducted P409.65, representing the balance of Ang King Yiap's current account, which should be paid pro rata in concurrence with the other creditors. Deducting the amounts paid on account of the two aforesaid drafts, excluding P409.65, the remainder of \$5,619.97 only, constitutes an ordinary credit by way of damages resulting from the violation of the remitters' instructions.

It appears that the Bank Commissioner, having found that the drawees of the remaining drafts had sufficient balances in their current accounts with the insolvent bank, applied them to the payment of these drafts. This payment, however, should be made not at present but after the liquidation and for the amount of the dividends corresponding to these balances.

The amount of \$1,313.35 claimed by the Pacific Coast Biscuit Co. as a preferred credit is represented by three drafts, 505, 544 and 566, remitted to the insolvent bank, accompanied by bills of lading of goods consigned to the drawees, with instructions not to deliver up these papers without prior payment of the drafts. The insolvent bank delivered the bills of lading upon trust-receipt before payment of the amount of the drafts. The remitters claim these amounts as preferred credits, in reliance also upon section 48 of the Insolvency Law which, as in the case of Neuss, Hesslein & Co., Inc., is not applicable because the amounts represented by these drafts not having been collected, they are not found in the possession of the insolvent.

But it appears that after these drafts had been received by the insolvent bank and after the latter had turned over the bills of lading to the consignees, the claimant Pacific Coast Biscuit Co. instructed the Bank Commissioner by telephone to deliver these drafts to the Chartered Bank of India, Australia & China in Manila, relieving the insolvent bank from any liability for having delivered the bills of lading relative to these drafts upon trust-receipt. The referee decided that these drafts be forwarded by the Bank Commissioner to the Chartered Bank of India, Australia & China.

For this reason it is proper that the amount of \$4,093.08 be placed at the disposal of the claimant Neuss, Hesslein & Co., Inc., and the remainder of \$5,619.97 be declared an ordinary credit, to the payment of which shall be applied the dividends which may correspond to the drawees, after the liquidation, as creditors of the insolvent bank. The decision of the court is affirmed as to the claim of the Pacific Coast Biscuit Co., in so far as it orders the delivery of the drafts 505, 544 and 566 to the Chartered Bank of India, Australia & China.

III

"The lower court erred in:

"(1) Not allowing Wellington Sears & Co. the additional sum of \$10.80, for and as protest fees (Referee's Report, p. 92);

"(2) Allowing and ordering payment to the Commercial Pacific Cable Co. of P282.02 only, instead of P682.02 (Referee's Report, p. 273)."

As to the amount of \$10.80 as protest fees, which Wellington Sears & Co. asks to be included in its claim which was declared preferred, its inclusion is proper it being an expense incurred by reason of acts attributable to the insolvent bank.

As to the claim of the Commercial Pacific Cable Co., which has been approved by the referee and affirmed by the court in the sum of P282.02, and which the claimant contends should be P682.02, we find in the evidence presented before the referee that the latter amount is really the one claimed.

Wherefore, it is ordered that the amount of \$10.80 be included in the approved claim of Wellington Sears & Co., and that the claim, also approved, of the Commercial Pacific Cable Co., be understood to be P632.02 instead of

P282.02.

In view of all the foregoing, it is held that the current account and the so-called savings and fixed deposits, are not preferred credits, and it is ordered:

- That the amount of \$4,093.08 be returned to Neuss, Hesslein & Co., Inc.
- That the remaining amount of \$5,619.97 be declared an ordinary credit, to be paid from the dividends which may correspond to the drawees after the liquidation.
- That the decision of the court be affirmed as to the claim of Pacific Coast Biscuit Co., in so far as it orders the delivery of the drafts 505, 544 and 566 to the Chartered Bank of India, Australia & China.
- That the amount of \$10.80 be included in the claim of Wellington Sears & Co.
- That the amount of the claim of Pacific Commercial Cable Co., approved by the referee and affirmed by the court, be understood as P682.02.

No special pronouncement as to costs is made. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, and Horrilleno, JJ., concur.

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