

IN RE LIQUIDATION OF THE MERCANTILE BANK OF CHINA. THE FLETCHER AMERICAN NATIONAL BANK OF INDIANAPOLIS ET AL., CLAIMANTS AND APPELLANTS, VS. ANG CHENG LIAN ET AL., CLAIMANTS AND...

G.R. No. 43426. March 31, 1938

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

In its appealed decision, the court in part said:

"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."

This case refers to various claims of creditors of the Mercantile Bank of China. In all these claims the question raised is whether the claims for current account and the so-called savings and fixed deposits are preferred. We resolved this same question in case G. R. No. 43305 in the following language:

"We said in G. R. No. 43682 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 (articles 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 (article 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 (articles 908 and 909, paragraphs 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 (section 48, paragraph 6, of the Insolvency Law) and not from the properties received on deposit (section 48, paragraph 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."

CLAIM OF PAN PACIFIC OIL CO.

On June 5, 1931, the claimant shipped from Los Angeles, California, consigned to Manila Overseas Co., goods and merchandise of the total value of \$22,400, United States currency, issuing for that purpose, a draft in the said amount and enclosing the bills of lading and other documents relative to said merchandise. This draft was endorsed and delivered by the claimant to the Citizens National Trust and Savings Bank for collection. This bank, on said date, provisionally advanced on account of said draft the amount it represented. The Citizens National Trust and Savings Bank, in turn, endorsed the same draft, with all the bills of lading, to the insolvent Mercantile Bank of China for collection only and with instructions that upon payment thereof, its amount be forwarded by check to Los Angeles. On August 24, 1931, the Mercantile Bank of China collected the amount of this draft which, with interest, rate of exchange and expenses, totalled \$22,838.65, United States currency. The insolvent bank retained in its possession the amount of this draft, and on September 3d of that year remitted by registered mail to the Citizens National Trust and Savings Bank of Los Angeles a check for the amount of \$22,838.65, United States currency, against the Pacific National Bank of San Francisco and to the order of the Citizens National Trust and Savings Bank. On September 24, 1931 the Citizens National Trust and Savings Bank sent the check for payment to the drawee bank, but this payment was not made as the operations of the Mercantile Bank of China were then already suspended. For failure to pay this check, the Pan Pacific Oil Co. had to reimburse the Citizens National Trust and Savings Bank the amount which it had advanced, with interest and other expenses,

that is \$22,838.65, United States currency, receiving in exchange the check which was refused payment and is now in possession of the depository.

The Pan Pacific Oil Co. claims the payment of this amount of \$22,838.65, United States currency, as preferred, and the court, upon recommendation of the referee, ordered its payment as a preferred credit.

The relation between the claimant and the insolvent bank with respect to the amount claimed is, under the facts stated, that of principal and agent, the agency consisting merely in the collection by the Mercantile Bank of China of the amount of the draft and remitting it to the claimant. The ownership of the draft has not been transferred to the insolvent bank and it continued to be the property of the principal, Pan Pacific Oil Co. This relation of principal and agent between the claimant and the insolvent bank had not ceased when the insolvency was declared, hence, the amount of the draft was until then the property of the claimant.

This is in accordance with the provision of section 48, No. 7, of the Insolvency Law, No. 1956, reading:

"Sec. 48. Merchandise, effects, and any other kind of property found among the property of the insolvent, the ownership of which has not been conveyed to him by a legal and irrevocable title, shall be considered to be the property of other persons and shall be placed at the disposal of its lawful owners on order of the court made at the hearing mentioned in section forty-three or at any ordinary hearing, if the assignee or any creditor whose right in the estate of the insolvent has been established shall petition in writing for such hearing and the court in its discretion shall so order, the creditors, however, retaining such rights in said property as belong to the insolvent, and subrogating him whenever they shall have complied with all obligations concerning said property.

"The following shall be included in this section:

* * * * *

"7. Amounts due the insolvent for sales of merchandise on commission, and bills of exchange and promissory notes derived therefrom in his possession, even when the same are not made payable to the owner of the merchandise sold, provided it is proven that the obligation to the insolvent is derived therefrom and that said bills of exchange and promissory notes were in the possession of the insolvent for account of the owner of the merchandise to be cashed and remitted, in due time, to the said owner; all of which shall be a legal presumption when the amount involved in any such sale shall not have been credited on the books of both the owner of the merchandise and of the insolvent."

Resolving this same question in case G. R. No. 43689, we said:

"* * * The appellants being the owners of the amounts of the drafts, inasmuch as the Mercantile Bank of China merely acted as their representative or agent and the title to said drafts did not pass to it, it is obvious that any amount which may be collected on account of said drafts and their interest should be turned over to the appellants in satisfaction of their credits. 'As a general rule, checks and other papers deposited in a bank for collection remain the property of the depositor, and the bank performs the service of collection as his agent, even though it is authorized to apply the proceeds on a debt of the owner.' (7 C. J., sec. 245, pp. 597, 598; Richardson vs. New Orleans Coffee Co., 102 Fed., 785; Philadelphia vs. Eckels, 98 Fed., 485; Commercial Nat. Bank vs. Armstrong, 148 U. S., 50; St. Louis, etc. R. Co. vs. Johnston, 133 U. S., 566; Ward vs. Smith, 19 Law. ed., 207; Carpenter vs. National Shawmut Bank, 187 Fed., 1.) 'In collecting drafts and other instruments deposited with specific instructions to collect and remit the proceeds to the depositor, the bank acts as agent throughout the undertaking; and such instructions bind those to whom they are addressed or who know of them, but no other parties.' (7 C. J., sec. 256, p. 605; Boone County Nat. Bank vs. Latimer, 67 Fed., 27; Crown Point First Nat. Bank vs. Richmond First Nat. Bank, 76 Ind., 561; 40 Am. Rep., 261.)"

Wherefore, we affirm the appealed decision as to the claim.

CLAIM OF FLETCHER AMERICAN NATIONAL BANK

On November 2, 1930 the claimant, the Fletcher American National Bank of Indianapolis, sent to the Mercantile Bank of China a draft drawn by the Continental Optical Co. of Indianapolis against the Casaje Toh & Co., of Manila payable to the order of the remitting bank in the amount of \$216.50, United States currency. The Fletcher American National Bank endorsed this draft to the insolvent bank Mercantile Bank of China for collection only with instructions that upon its payment it be reimbursed for the amount thereof by check payable in New York. The drawees, in due time, paid the insolvent bank the amount of this draft, including the rate of exchange and the commission for collection. The insolvent bank retained this amount of the draft in its possession, and on September 7, 1931 it mailed its check for the amount of the draft to the order of the Fletcher American National Bank of Indianapolis and against the Bank of America, National Association of New York. This check was not paid because before it could be presented for payment to the drawee bank, the insolvent bank suspended its operations.

The court, upon recommendation of the referee, declared this a preferred credit and ordered its payment as such.

For the same reasons set forth in connection with the claim of Pan Pacific Oil Co., we affirm the appealed decision as to this claim.

CLAIM OF CORN PRODUCTS REFINING CO.

The Marine Midland Trust Co. of New York, as agent of the claimant, sent drafts to the insolvent bank for the total amount of \$4,088.25, United States currency, for collection, with instructions to send the amount thereof to the remitting bank. The insolvent bank collected the amount of these drafts and in compliance with the instructions received, it issued checks for the amount of the drafts, forwarding them to the remitter, but as the payments thereof were suspended, the said checks were not paid by the drawee bank. However, the insolvent bank paid on account of these checks the amount of (1,000, United States currency, through the Pacific National Bank of San Francisco, reducing thereby the amount of the drafts to \$3,088.25, United States currency. Upon the recommendation of the referee, the court declared this a preferred credit and ordered the payment thereof as such.

The relation between the insolvent and the claimant with respect to these drafts was, as in the case of the claim of the Pan Pacific Oil Co., that of principal and agent, and for the reasons stated as to the said claim, we affirm the decision of the court.

CLAIM OF S. ALLEN PRESBY AND LANSTON MONOTYPE CO.

S. Allen Presby, personally and as agent and representative of Lanston Monotype Co., claims the amount of two drafts in the total sum of \$194.80, United States currency. These drafts were obtained from the insolvent bank against the bank of America of New York. On presentation for payment, they were not paid because the insolvent bank had already suspended their payment.

Upon recommendation of the referee, the court declared them as ordinary credits.

These credits, being merely the purchase and sale of bills or drafts, do not constitute a trust fund and are merely ordinary credits. And if they are to be placed on a par with those on current account, as the claimants contend, they should be considered as ordinary credits, wherefore, we hold that they do not enjoy any preference. We affirm the decision of the court as to this claim.

CLAIMS OF THE PHILIPPINE NATIONAL BANK OF NEW YORK, GUARANTY TRUST GO. OF NEW YORK, BANK OF AMERICA, NATIONAL TRUST AND SAVINGS ASSOCIATION, NATIONAL BANK OF

THE REPUBLIC OF CHICAGO AND MANUFACTURERS' TRUST CO. OF NEW YORK.

The amount of \$350.57 which the National Bank claims as a preferred credit is the amount of a draft remitted by Its agent in New York to the insolvent bank, accompanied by the bills of lading of goods consigned to the drawee, with authority to deliver said papers to the drawee upon trust-receipt under the responsibility of the insolvent bank. The latter delivered the bills of lading to the drawee upon trust-receipt, and the amount of the draft has not been paid up to date.

The amount of this draft not having been collected, the same has not come into the possession of the insolvent bank and it is not, therefore, an amount belonging to another which, under section 48 of the Insolvency Law, should be placed at the disposal of its rightful owner. It is simply an ordinary credit arising from the responsibility of the insolvent bank by way of damages.

That the credits by virtue of current account and the so-called savings and fixed deposits are not preferred, we have so held at the beginning of this decision.

The appellees call attention to the fact that the appellants, with the exception of the National City Bank of New York, being foreign corporations, have neither alleged nor proved that they have the authority required by the Corporation Law to do business in these Islands or, by themselves or through an attorney-in-fact, to bring any suit to recover any debt, claim or action of any kind, wherefore, they have no standing to appear in this court. But aside from the fact that this allegation is made for the first time in this instance, this court has held in the case of Marshall-Wells Co. vs. Henry W. Elser & Co. (46 Phil., 70), that this is a matter of affirmative defense and should be established by evidence.

For the foregoing considerations, it is held that credits by virtue of current account and the so-called savings and fixed deposits are not preferred, and it is ordered:

- That the appealed decision be affirmed as to the claim of the Pan Pacific Oil Co.
- That the appealed decision be affirmed as to the claim of the Fletcher American National Bank.
- That the appealed decision be also affirmed as to the claim of Corn Products Refining Co.
- That the appealed decision be affirmed as to the claim of S. Allen Presby and Lanston Monotype Co.
- That the appealed decision be affirmed as to the claim of the Philippine National Bank in the amount of \$350.57.

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

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

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