

THE NATIONAL CITY BANK OF NEW YORK, PLAINTIFF AND APPELLANT, VS. THE YEK TONG LIN & MARINE INSURANCE COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 45403. April 26, 1939

Ponente: MORAN, J.

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MORAN, J.:

This is an action on a bond filed by the defendant company in behalf of Rafael Fernandez as receiver appointed in a case then pending in the Court of First Instance of Pampanga. The bond is to secure the faithful performance by the, receiver of his duties and to respond for damages that he may cause for non-compliance therewith. A demurrer was interposed to the complaint on the ground that the court had no Jurisdiction over the subject matter of the action, no leave therefor having been given by the court which appointed the receiver. The demurrer was sustained, and on plaintiff's failure to amend, the case was dismissed. Plaintiff appealed.

The theory underlying the demurrer and the order sustaining it is apparently based upon the following portion of the decision of this court in *De la Riva vs. Molina Salvador* (82 Phil., 277, 285, 286):

"Finally, we are of the opinion that an action against the receiver and his sureties cannot be maintained under the circumstances shown to have existed in this case. When this action was brought there was pending before the court in the action in which the receiver was appointed a proceeding wherein the receiver was accounting for the property which he had in his possession. There had been certain objections presented to such account by the plaintiff herein but based on grounds entirely apart from the negligence or misconduct of the receiver. That proceeding is still pending, so far as we know. We do not believe it to be the policy of the law to permit actions to be brought against a receiver based on his management of the receivership property without leave of the court which appointed him. As we have already intimated, a receiver is to be regarded as the arm, officer, or representative of the court appointing him. The custody of the receiver is the custody of the court. His acts and possession are the acts and possession of the court, and his contracts and liabilities are, in contemplation of law, the contracts and liabilities of the court. As a necessary consequence, a receiver is subject to the control and supervision of the court at every step in his management of the property or funds placed in his hands. On the other hand, it is the duty of the court to protect the possession of its receiver and to prevent all interference with him in the performance of his official functions and duties. So thoroughly is this recognized, that it is well settled that any unauthorized interference with a receiver's possession of the property committed to his charge, or with the receiver in the discharge of his official duties, is a contempt of the court by which he was appointed. It is the relationship which exists between the court and the receiver which has led to the general rule, followed in jurisdictions where statutes have not been passed to the contrary, that no action can be brought against a receiver without leave of the court appointing him. And this rule applies as well where suit is brought to recover a money judgment merely as where it is to take from the receiver specific property whereof he is in possession by order of the court. (See generally *Cys., Receivers and authorities.*) If actions against him are permitted indiscriminately, the interests of those concerned in the property held by the receiver will suffer and the court will be hampered and limited in its control over him. One who feels himself sufficiently

aggrieved by acts of & receiver to warrant active intervention should take the matter into the court which appointed the receiver and ask either for an accounting or take some other proceeding, and ask for the consequent judgment of the court on the acts complained of, or for leave to bring action directly. If, under the facts presented, it is the judgment of the court that the interests of all concerned will be best observed by such a suit or by any other proceeding, permission will be given to bring it."

A perusal of the above quoted portion of the decision discloses that the rule, which requires leave of the appointing court before an action may be maintained against a receiver, is true only when the receivership is still pending. In the instant case, there is no showing that the receivership of Rafael Fernandez still exists. On the contrary, the complaint discloses that the present action was instituted five years after Fernandez had been declared insolvent, a fact which points most strongly to the probability that his receivership was already at an end.

Without deciding whether receiver's bondsmen are within the protection of the rule requiring leave of the receivership court before an action may be maintained against them, we hold that the demurrer had been erroneously sustained.

Order is reversed and let the case be remanded to the court of origin for further proceedings, without costs.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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