

**IN THE MATTER OF THE INVOLUNTARY INSOLVENCY OF
BONIFACIO SAN MATEO AND TOMASA NUÑEZ. JOSE MORENO TAN
SENGUAN & CO., INC., AND M. CHUA KAY & CO.,
PETITIONERS AND APPELLEES, VS. B...**

G.R. No. 45521. April 26, 1939

Ponente: MORAN, J.

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MORAN, J.:

A petition for involuntary insolvency was filed against the spouses Bonifacio San Mateo and Tomasa Nuñez by their three creditors, Jose Moreno, Tan Senguan & Co., Inc., and M, Chua Kay & Co. After due hearing thereon, said spouses were adjudged insolvent, and they appealed.

Appellants contend that the lower court acted without jurisdiction in entertaining the petition, because it was not verified by three creditors as required by law. It is argued that, altho the verification was signed by Jose Moreno, Ke Tek, and Tan Kep See, as the last two omitted to state their authority to make the same, the verification was actually made by only one creditor. It appears that, in accordance with the court's order giving the petitioners five days within which to amend the petition in order to supply the alleged deficiency in the verification thereof, an amended petition was filed wherein the supposed defect was corrected. Appellants impugned the allowance of the amendment on the ground that it referred to a jurisdictional matter.

There is no merit in appellants' contention. The original petition was signed not only by the attorneys for the petitioners but by the petitioners themselves in the following manner:

"(Sgd.) Jose Moreno

"(Sgd,) Ke Tek

"Manager, Chua Kay & Co.

"Sgd.) Tan Kep See

"Manager, Tan Senguan & Co., Inc."

Under a liberal construction of pleadings, as provided in section 106 of our Code of Civil Procedure, it may be said that, altho no express allegation is contained in the body of the petition as to the authority of Ke Tek and Tan Kep See to sign the same, the placing under their respective signatures of words describing such authority is, under the circumstances, sufficient to supply the omission, specially where no demurrer is interposed on the ground of ambiguity. If the signers' authority is thus sufficiently stated in the petition, it need not be restated in the verification as the latter is a mere affirmation under oath of the truth of all the facts stated in the petition.

The order of amendment was, therefore, unnecessary.

Appellants also contend that the petition should have been dismissed for lack of the requisite number of creditors. The credits alleged and relied upon by the petitioners are recited in documents Exhibits E, I and J. Exhibit E

appears to be a joint and several note executed by both spouses, Bonifacio San Mateo and Tomasa Nunez, in favor of Jose Moreno. Exhibit I is a receipt signed by Bonifacio San Mateo alone in favor of M. Chua Kay & Co. in the amount of P1,035.66. And Exhibit J is a vale for 22 cavanese of palay signed by Tomasa Nunez alone. Appellants claimed that it is apparent from said documents that there are two creditors only against Bonifacio San Mateo, i. e., Moreno and M. Chua Kay & Co., and two against Tomasa Nunez, i. e., Moreno and Tan Senguan & Co., Inc. Oral evidence, however, was introduced showing the true import of said documents and fully supporting the decision of the lower court which reads as follows:

"That only the note Exhibit E for P49.40 is signed jointly and severally by the respondent spouses in favor of the petitioner Jose Moreno; that the vale Exhibit J for 20 cavanese of palay, representing a credit of P75 in favor of the petitioner Tan Senguan & Co., Inc. is signed only by the respondent Tomasa Nunez; that the receipt Exhibit I for P1,035.66 in favor of the petitioner M. Chua Kay & Co. is signed only by the respondent Bonifacio San Mateo; and that, therefore, there are only two petitioning creditors against each of the respondents, namely: Jose Moreno and M. Chua Kay & Co. against respondent Bonifacio San Mateo, and Jose Moreno and Tan Senguan & Co., Inc., against respondent Tomasa Nunez.

"With respect to the vale Exhibit J, the preponderance of the evidence shows that the sum of P75 was obtained by the respondent spouses from the petitioner Tan Senguan & Co., Inc., on November 4, 1931, at which time the said spouses signed a receipt for said sum and that said receipt was returned to the respondent Tomasa Nunez on August 7, 1934, when she signed the vale Exhibit J for 20 cavanese of palay in substitute of said receipt. The court is not inclined to believe the uncorroborated testimony of the respondent Bonifacio San Mateo to the effect that his wife alone obtained the said sum of P75 and signed the vale Exhibit J without his knowledge because it appears that both spouses were engaged as merchants in the purchase of palay, and the testimony of the witness Jose Atacador to the effect that both spouses received the original sum of P75 from Tan Senguan & Co., Inc., in order to purchase palay with it for the account of the latter, is more in consonance with the ordinary course of the business of said spouses than the testimony of Bonifacio San Mateo that his wife obtained the money from said company on her own account and without his knowledge and intervention.

"With respect to the receipt of Exhibit I, the evidence shows that said document represents a liquidation of previous transactions had between the petitioner M. Chua Kay & Co. on the one hand and the respondent spouses on the other, consisting of advances made by the former to the latter of funds with which said spouses were to purchase palay for the said company. For the same reasons stated with respect to Exhibit J, the court is not inclined to believe the uncorroborated testimony of the respondent Bonifacio San Mateo to the effect that his wife had no intervention in the transactions which culminated in the signing by him of said receipt Exhibit I."

Judgment is affirmed, with costs against appellants.

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

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