

PHILIPPINE MOTOR ALCOHOL CORPORATION AND CARLOS PALANCA, PETITIONERS, VS. EMILIO MAPA, JUDGE OF FIRST INSTANCE OF MANILA, C. M. HUDSON AND J. E. BERKENKOTTER, RESPONDENTS.

G. R. No. 45606. September 04, 1937

Ponente: LAUREL, J.

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LAUREL, J.:

This is a petition for a combined writ of Certiorari, prohibition and mandamus filed by the Philippine Motor Alcohol Corporation and Carlos Palanca against the Honorable Emilio Mapa, as Judge of the Court of First Instance of Manila, C. M. Hudson and J. E. Berkenkotter. The petitioners, after incorporating the complaint filed by the respondent C. M. Hudson against the Philippine Motor Alcohol Corporation and Carlos Palanca in civil case No. 51448, Court of First Instance of Manila, allege that on the 14th day of June, 1937/immediately after the presentation and filing of said complaint, the respondent Judge Emilio Mapa, without notice to the defendants, issued ex parte an order appointing the respondent J. E. Berkenkotter receiver of the property of the petitioner Philippine Motor Alcohol Corporation; that the said order appointing J. E. Berkenkotter receiver was served on the petitioners on the afternoon of June 15, 1937 and that on the following day, to wit, the 16th of June, 1937, they filed a motion for the suspension and dissolution of said order; that the said motion to suspend and dissolve the order of June 14, 1937 was denied by the respondent judge, Emilio Mapa, on June 28, 1937. The validity of the order of June 14, 1937 aforesaid is challenged by the petitioners on the following grounds: (1) That the said order was issued without notice to the defendants in civil case No. 51448 of the Court of First Instance of Manila, who are petitioners herein, and without alleging any reason for summary ex parte action; (2) that the complaint upon which the order was issued states no ground for the appointment of a receiver, either with or without notice; (3) that the complaint alleges that the payment of the claim of the plaintiff Hudson against the petitioner, Philippine Motor Alcohol Corporation, is guaranteed by the petitioner Carlos Palanca and thereby shows on its face that the said Hudson has another safe, speedy and adequate remedy for the collection of said claim; (4) that the part of paragraph 1 of section 174 and section 176 of the Code of Civil Procedure upon the basis of which the court appointed the receiver in this case on the complaint of a creditor to recover a debt from an insolvent corporation has been superseded by Act No. 1956 of the Philippine Legislature; (5) that the complaint upon which the order appointing a receiver was issued does not show that the plaintiff therein had' any interest in the property to be placed under receivership; (6) that the petitioner Philippine Motor Alcohol Corporation is engaged in the business of manufacturing motor alcohol under the direction of a staff of experienced persons employed for that purpose; that the petitioner Carlos Palanca, the controlling stockholder, president and general manager of said corporation, has been engaged for many years in the business of manufacturing and selling motor alcohol and by reason of his long experience is speedily qualified to direct and manage the business of said Philippine Motor Alcohol Corporation; that the said petitioner Carlos Palanca is informed and believes, and upon such information and belief alleges, that the respondent Berkenkotter is entirely inexperienced in the business of manufacturing and/or selling motor alcohol; that the effect of the proposed delivery of the motor alcohol distillery and other

assets and management of said corporation to the said respondent Berkenkotter as receiver would be to completely disrupt its business and destroy any opportunity of selling it advantageously as a going concern, thereby causing the said corporation and its stockholders including petitioner Carlos Palanca and its creditors other than the respondent Hudson irreparable loss and injury; (7) that petitioners have no plain, speedy and adequate remedy in the ordinary course of law other than by means of the present petition for certiorari, prohibition and mandamus.

Petitioners pray (1) for the issuance of an order requiring the clerk of the Court of First Instance of Manila to certify to this court a copy of the petition, order appointing the receiver, motion to suspend and dissolve said order and the decree denying said motion in said civil case No. 51448 of the said Court of First Instance; (2) for a preliminary injunction ordering the respondents to refrain from further proceeding in the matter of the receivership here sought to be reviewed until the further order of this court; and (3) that after hearing the parties, judgment be rendered: (a) annulling said order appointing the respondent Berkenkotter receiver of the property of the petitioner Philippine Motor Alcohol Corporation; (b) prohibiting the said Berkenkotter, his employees, agents and/or representatives, from taking possession of the property of said petitioner corporation or taking any other action as a result of his said appointment as receiver; (c) ordering the said Berkenkotter to return to the petitioner corporation all books of account, papers, documents or other effects or assets of said corporation received by him under his appointment as such receiver; (d) for costs of suit and for such other and further relief as this court may deem just and equitable.

The questioned order of the trial court is as follows:

"It appearing to the court, upon the affidavit of the plaintiff in the above entitled action, that has an unpaid claim against the defendants Philippine Motor Alcohol Corporation and Carlos Palanca, amounting to at least P266,003.63, and that defendant corporation is insolvent or is in imminent danger of insolvency and that it is about to dispose of all its properties to defraud its creditors particularly the herein plaintiff, and it appearing further that the plaintiff in the above entitled case is willing and has already furnished a bond in the amount of P1,000 for the benefit of all persons interested in this case, it is hereby ordered that Mr. J. E. Berkenkotter, a resident of the City of Manila, be appointed receiver of the properties of the defendant corporation consisting mainly of the alcohol distilleries situated in the municipalities of Talisay and Binalbagan, Occidental Negros, with the powers conferred upon him as such receiver by law, during the pendency of this action.

"Before, entering upon the discharge of the duties of said office, the receiver shall execute an obligation in the amount of P5,000, for the benefit of all persons interested in the property subject to receivership, with sufficient sureties to be approved by the court, to the effect that he will faithfully discharge his duties and obey the orders of the court in relation thereto."

Petitioners take the ground that the order just quoted is invalid because granted ex parte. Authority, however, for the issuance of said order seems clear from the provisions of section 177 of the Code of Civil Procedure, to wit: "If a receiver be appointed upon an ex parte application, the court, before making the order, may require from the plaintiff or person filing the application for such appointment, an obligation with sufficient sureties, to be approved by the court, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant in the application all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment; require an additional obligation as further security for such damages. The damages, if any, shall be ascertained by the court and, in its final judgment in the action, shall be decreed against the plaintiff and the sureties on the obligation." It is a necessary and legitimate inference from the opening statement of this section that an order of receivership may be issued by the court ex parte upon proper showing in appropriate cases.

We agree with the suggestion of counsel for the petitioners that the appointment of a receiver, because of its drastic nature and of its character as a special remedy under our Code of Civil Procedure, is a power which should be exercised with great caution. But this does not argue against the existence of the power of the court to appoint a receiver where the necessity therefor has arisen. In such a case, the appointment of a receiver is a matter resting largely in the discretion of the trial court. Upon the other hand, it is not disputed that after the appointment *ex parte* of the receiver in the present case arguments both written and oral were presented and that the defendants in civil case No. 51448 who are petitioners herein made a creditable effort to set aside the order issued by the trial court appointing a receiver. These arguments appear to have been carefully weighed by the respondent judge who thereafter, in an order of June 28, 1937, virtually reaffirmed his order of receivership. Under these circumstances, it can not be said that the trial judge acted without or in excess of jurisdiction or that the order of June 13, 1937 issued by him is otherwise illegal for lack of notice to or hearing of the parties.

Petitioners also contend that the complaint upon which the order was issued states no ground for the appointment of a receiver either with or without notice. An examination, however, of the complaint filed on June 11, 1937 in civil case No. 51448 shows that it is therein alleged (par. 14) "That the Philippine Motor Alcohol Corporation is insolvent or is in imminent danger of insolvency, and unless a receiver is appointed, its present assets consisting mainly of its alcohol distilleries situated in the municipalities of Talisay and Binalbagan, Occidental Negros, are in danger of being misapplied to the prejudice of plaintiff." Section 174 (par. 1) of the Code of Civil Procedure clearly provides that a receiver may be appointed "When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights."

Petitioners also contend that the complaint upon which the order appointing a receiver was issued does not show that the plaintiff therein had any interest in the property to be placed under receivership. By Section 176 of the Code of Civil Procedure, "When a corporation has been dissolved, or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights, the Court of First Instance of the province where the corporation has its principal place of business may, on complaint of a creditor of the corporation, or a stockholder or member thereof, appoint as receiver to take charge of its estate and effects, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the money and other properties that shall remain over among the stockholders or members." The complaint filed by C. M. Hudson avers clearly that the Philippine Motor Alcohol Corporation was insolvent or was in imminent danger of insolvency. It is also alleged in the complaint—and this seems an admitted fact—that Hudson is a creditor and stockholder of the Philippine Motor Alcohol Corporation. These allegations are sufficient to warrant the issuance of an order of receivership under section 176 in connection with section 174 of the Code of Civil Procedure.

It is true that the claim of Hudson against the Philippine Motor Alcohol Corporation is guaranteed by Carlos Palanca, one of the petitioners herein, but the existence of a guarantee is not in law a bar to receivership proceedings. It should be observed that Hudson is not only a creditor but also a stockholder of the Philippine Motor Alcohol Corporation. As a creditor, it seems natural for him to address himself to the principal debtor before resorting to the guarantor. As a stockholder, he has sufficient interest in the proper preservation of the property to entitle him to the appointment of a receiver in a suit filed by him for the recovery of a sum of money and for proper accounting on the part of the corporation.

Petitioners contend that the Insolvency Law (Act No. 1956) has entirely superseded section 174, paragraph 1, and section 176 of the Code of Civil Procedure. A comparison of the two laws reveals essential differences. It is sufficient to observe, however, in this connection that under the provisions of the Code of Civil Procedure just cited a receiver may be appointed upon petition of a creditor or stockholder who alleges the insolvency or imminent danger of insolvency of a corporation. Under the Insolvency Law (sec. 20) at least three creditors,

residents of the Philippines, whose credits amount to a total of at least P1,000 are required to start insolvency proceedings. The present case while covered by the Code of Civil Procedure does not fall under the Insolvency Law. Here, then, is no case of repugnancy or essential inconsistency between two statutes so as to warrant the conclusion that one has repealed the other by implication. Repeals by implication are not favored (U. S. vs. Palacio, 38 Phil., 208; Smith, Bell & Co. vs. Estate of Maronilla, 41 Phil., 557; Lichauco & Co. vs. Apostol and Corpus, 44 Phil., 138; 59 C. J., p. 905). In Strong & Trowbridge vs. Van Buskirk-Crook Co. (10 Phil., 190), cited by the petitioners, this court, following the case of Bonaplata vs. Ambler and McMicking (2 Phil., 392), held that the provisions of sections 174 and 176 of the Code of Civil Procedure regarding insolvency could not be availed of until a new Insolvency Law was enacted, as the proceedings thereunder amount to bankruptcy proceedings specifically forbidden by section 524 of the same Code. Stated otherwise, the aforementioned provisions of the Code of Civil Procedure may only be availed of after the enactment of a new Insolvency Law. In Leyte Asphalt & Mineral Oil Co. vs. Block, Johnston & Greenbaum (52 Phil., 429), cited also by the petitioners, this court did not hold that the Insolvency Law superseded the provisions of sections 174 and 176 of the Code of Civil Procedure. It was there held that the court may assume jurisdiction of insolvency proceedings instituted after the institution of receivership proceedings for the reason that "Act No. 190 or the Law of Civil Procedure is general in character, while the Insolvency Law, Act No. 1956, is a special law and the rule is that on a specific matter the special law shall prevail over the general law, which shall be resorted to only to supply deficiencies in the former. (Art 16, Civil Code.)"

The petition is accordingly dismissed and the preliminary injunction issued by this court on July 2, 1937 is hereby dissolved, with costs -against the petitioners. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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