

**NATIONAL NAVIGATION CO., INC., PLAINTIFF AND APPELLEE, VS.
JOSE T. TINSAY, DEFENDANT AND APPELLEE, VICENTE BRIONES ET
AL., INTERVENORS AND APPELLANTS.**

G.R. No. 46589, October 06, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the intervenors Vicente Briones and others from the order issued by the Court of First Instance of Manila on April 26, 1936, denying their motion for new trial based on the ground that said order is contrary to law, to the facts proved and to the evidence presented during the trial.

On January 11, 1935, the National Navigation Co., Inc. filed in the Court of First Instance of Manila a complaint against Jose T. Tinsay praying, for the facts alleged therein: "(a) that an appointment of receiver be issued in favor of Captain Manuel Mascuñina so that he may take charge of the 'POLILLO', a vessel of Philippine registry, and administer it under the orders and supervision of the court to await the outcome of this suit; (b) that in due time judgment be rendered ordering the defendant to pay to the plaintiff the sum of P13,500 with interest thereon at the rate of 10 per cent per annum and granting the plaintiff any other just and equitable relief, and (c) that the defendant be ordered to pay the costs."

The defendant Jose T. Tinsay filed an answer to said complaint, denying generally and specifically the facts alleged therein, set up a special defense and presented a cross complaint, praying that the complaint be dismissed and the plaintiff ordered to pay to the defendant the sum of P10,000 as indemnity for damages.

Upon authority of the court, Vicente and his other thirteen companions, on January 30, 1935, filed a petition in intervention, alleging preferred rights and praying that judgment be rendered in their favor, ordering whomsoever may be declared owner of the S. S. "POLILLO" to pay them the amount of P978.63 with the interest thereon and the costs'.

The defendant Jose T. Tinsay, in answer to the complaint in intervention, made a general and specific denial, set up special defenses and asked for the dismissal of the complaint in intervention.

In view of the fact that both the plaintiff company and the defendant admitted in open court at the continuation of the trial held on June 21, 1935, that the intervenors are entitled to collect the sum of P978.63 owed them; in view also of the fact that a receiver had been appointed to take possession of the steamship "POLILLO"—the vessel in which the intervenors rendered their services—and keep it in his custody; and in view furthermore of the fact that their claim for salaries is by nature a preferred one, they asked the court, on July 29, 1935, to order the receiver in question to pay to said intervenors the sum of P978.63 from any amount he might have in his possession.

Considering the motion of the intervenors well founded, the Court of First Instance of Manila, on August 3, 1935, issued the following order:

"It is prayed by the intervenors in their motion that the receiver appointed in this case be ordered to pay them

the sum of P978.63 representing their claim. At the hearing of this motion, there appeared the attorney for the intervenors and Attorney A. L. Noel for the plaintiff and for the receiver. Attorney Noel informed the court that he has no objection to the motion of the intervenors but that the receiver is unable to make any payment for the reason that he actually has no funds in his possession.

"The court, considering the motion of the intervenors well founded, hereby orders the receiver Manuel P. Rosales to pay to said intervenors the sum of P978.63 out of the funds which may hereafter come to his possession.

"It is so ordered."

On January 30, 1936, a stipulation of facts signed by Demetrio E. Garces, purchaser of the rights of the plaintiff, Jose Ma. Cavanna, attorney for the plaintiff National Navigation Co., Inc., the attorneys for Jose T. Tinsay, and the receiver Manuel P. Rosales, was submitted to the court, which stipulation reads as follows:

"Come now the undersigned attorneys for and in behalf of the parties to the above-entitled case, and Demetrio E. Garces in his own behalf, and to the honorable court respectfully allege:

"That the National Navigation Co., Inc. has assigned to Demetrio E. Garces, one of the signers hereof, all its rights, actions and obligations arising or that may hereafter arise from the above-entitled case as well as those arising or that may hereafter arise from the above-entitled case as well as those arising or that may hereafter arise from civil case No. 10074 of the Court of First Instance of Iloilo, entitled Jose T. Tinsay vs. National Navigation Co., Inc.

"That the signer Demetrio E. Garces, being subrogated in the rights of the plaintiff in the above-entitled case, agrees to have this case dismissed provided the other above-mentioned case No. 10074 of the Court of First Instance of Iloilo, entitled Jose T. Tinsay vs. National Navigation Co., Inc., is dismissed.

"That in view of this agreement entered into between the purchaser of the plaintiff's rights and the defendant, the attorney for the herein defendant Jose T. Tinsay withdraws his opposition to the sale of the steamship 'POLILLO' made by the receiver on December 10, 1935, and gives his consent to the approval of the sale in question.

"That the attorney for the defendant Jose T. Tinsay in the above-entitled case likewise considers his cross complaint filed herein withdrawn and waives every right he may have by virtue of the questions raised in the above-entitled case, and will also waive all rights in civil case No. 10074 of the Court of First Instance of Iloilo.

"That the signer Demetrio E. Garces, as purchaser of the plaintiff's rights in the above-entitled case also, in turn, waives all the rights he has or may have in connection with the above-entitled case, which might have belonged to the National Navigation Co., Inc.

"Wherefore, the undersigned attorneys respectfully pray this honorable court:

"(a) For the approval of the sale of the vessel 'POLILLO' made by the receiver Mr. Manuel P. Rosales in the above-entitled case in favor of Demetrio E. Garces, and the delivery of the proceeds thereof to the Philippine National Bank to be applied to the mortgage debt secured by the steamship 'POLILLO'.

"(b) That as soon as the rights of the Philippine National Bank in connection with the steamship 'POLILLO' are cancelled or transferred to the signer Demetrio E. Garces and said steamship is registered in the name of the latter, the appointment of the receiver in the above-entitled case be set aside, relieving him of the trust and of all further responsibility by the cancellation of the bond filed by said receiver, and

"(c) For the dismissal of the above-entitled case without special pronouncement as to the costs."

The intervenors Vicente Briones et al., through their attorney, Mr. Bernabe Butalid, in a petition of January 30, 1936, agreed to said stipulation as follows:

"Comes now the undersigned Attorney of Labor and intervenors' counsel in the above-entitled case to state:

"I. That the undersigned has been served with a copy of the stipulation of the parties in the above-entitled case dated January 30, 1936, for the sale of the S. S. 'POLILLO' to a third party, which copy is hereby attached and marked Exhibit 'A' and made an integral part of this petition;

"II. That the undersigned as such attorney for the intervenors accepts the stipulation for such sale on condition that the preferential rights of the intervenors as to their claim of P978.63 as wages due and unpaid and approved by this court be reserved and protected and shall suffer no prejudice by reason of any acts of the parties in this case."

On January 31, 1936, the Court of First Instance of Manila approved the above-quoted stipulation and dismissed the case, issuing the following order:

"The petition is granted. The sale of the S. S. 'POLILLO' made by the receiver on December 10, 1935, in favor of Demetrio E. Garces, is approved in its entirety, and the receiver is authorized to turn over the sum of P7,500 representing the proceeds of the sale to the Philippine National Bank, after delivery of which sum to the Philippine National Bank, he will be relieved of the trust and of all further responsibility.

"The 'National Navigation Co., Inc.' is deemed substituted by Demetrio E. Garces as plaintiff, for all legal purposes.

"This case is dismissed with respect to the questions and claims raised by both parties thereby disposing of all the questions raised in the complaint and in the counterclaim filed by the defendant, without special pronouncement as to the costs.

"The rights of the intervenors in connection with the claim presented are hereby reserved to them."

In view of said approval and of the reservation made by the court in their favor, the intervenors, through their attorney, presented an urgent motion on February 1, 1936, praying that the receiver Manuel P. Rosales be authorized and ordered to pay to said intervenors the sum of P978.63 out of the amount of P7,500, pursuant to the order of said court dated August 3, 1935.

Acceding to said urgent motion, the court, by order of February 4, 1936, directed the receiver Manuel P. Rosales to pay to the intervenors the sum of P978.63 out of the amount of P7,500 obtained by him from the sale of the steamship "POLILLO".

On the same date, February 4, 1936, the receiver Manuel P. Rosales filed in court a petition praying that he be relieved of the trust and of all further responsibility and that the bond filed by him be declared cancelled, alleging that the proceeds of the sale of the steamship "POLILLO" had already been turned over to the Philippine National Bank, as evidenced by the receipt No. 173228 issued by said Bank on January 31, 1936, in payment of the mortgage debt secured by said vessel which belonged to the National Navigation Co., Inc.

On February 20, 1936, the receiver filed in court a petition entitled "Constancia", asking the court to reconsider its order of February 4, 1936, by setting it aside, or, at least, to relieve him of compliance therewith, alleging that he received a copy of the urgent motion of the attorney for the intervenors only on February 4, 1936; that by virtue of the order of January 31, 1936, whereby he was directed to turn over and pay the proceeds of the sale amounting to P7,500 to the Philippine National Bank, it was so done by him on said date and, therefore, he could no longer comply with the order of February 4, 1936; and that the purchaser, Demetrio E. Garces, on January 31, 1936, directly turned over said amount of P7,500 to the Philippine National Bank.

On February 26, 1936, the intervenors, through their attorney, filed a motion in court praying that the receiver Manuel P. Rosales be required to appear and show cause, if any, why he should not be held guilty of contempt for not having complied with the order of February 4, 1936.

The court, finding the explanation given by the receiver for his failure to comply with the order of February 4, 1936, satisfactory, denied the above-stated motion of the intervenors.

In view of the above-stated facts which are inferred from the pleadings of the parties and from the different orders issued by the court to resolve the questions raised before it, the question arises whether or not the receiver Manuel P. Rosales was negligent in the performance of his duties as such, in not paying the claim of the intervenors.

In the order of January 31, 1936, approving the stipulation submitted by the parties and authorising the receiver to turn over to the Philippine National Bank the sum of P7,500, which represents the proceeds of the sale of the steamship "POLILLO" to Demetrio E. Garees, and relieving said receiver of the trust and of all further responsibility after making said delivery, the right of said intervenors in connection with the claim presented by them was reserved for them. On the date in question, the receiver already had knowledge of the rights which the court had reserved to the intervenors, because when attorney A. L. Noel, on August 3, 1935, appeared before the court in behalf of the receiver, he stated that he had no objection to the motion of the intervenors praying for the payment to them of their claim of P978.63, but his client could not do so because at that time he had no funds in his possession. Finding the motion of the intervenors well founded, the court, by order of said date, August 3, 1935, directed said receiver, Manuel P. Rosales, to pay to the above-named intervenors the sum of P978.63 out of the funds that might thereafter come to his possession. At the time of the sale, the receiver Manuel P. Rosales, therefore, had two orders before him, to wit: that of January 31, 1936, authorizing him to turn over to the Philippine National Bank the proceeds of the sale in the sum of P7,500, reserving to the intervenors their preferential right in connection with their claim; and that of August 3, 1935, ordering him to pay to said intervenors the sum of P978.63 out of the funds which thereafter might come to his possession. To relieve himself from all responsibility, he can not set up as a defense the fact that the purchaser Demetrio E. Garces paid the sum of P7,500 directly to the Philippine National Bank, alleging that he did not have the sum in question in his hands and that, consequently, it was not possible for him to comply with said order of August 3, 1935, directing him to deduct the claim of the intervenors from any sum that might come to his possession, because, in the first place, he, as receiver, was empowered by law (section 175, Act No. 190) to take and keep possession of the property in controversy, and, therefore, was under obligation to do so, and he should not have allowed the purchaser Demetrio E. Garces to pay directly to the Philippine National Bank the proceeds of the sale made by him; and, in the second place, when said banking institution delivered to him the receipt for the aforesaid amount, he should not have accepted it and should have demanded delivery to him of the amount in question, inasmuch as he had an order directing him to pay the preferential claim of the intervenors out of any amount he might receive. For failure to do so, the receiver neglected his duties as such and incurred liability, to answer for which he had filed the bond required by section 178 of Act No. 190.

In view of the foregoing considerations, we are of the opinion and so hold that where a receiver is ordered to pay certain preferred claims out of the funds that may come to his possession as such receiver, he is chargeable with negligence when he allows the purchaser of certain property deposited in his possession to pay the proceeds thereof directly to another creditor with an inferior lien, even though he may be authorized in a subsequent order to pay such proceeds to said other creditor, because he was under a duty to correlate said two orders and he is liable with his bond to the preferred creditor for the damages the latter might have suffered by reason of such negligence.

Wherefore, the appealed order is reversed and the receiver Manuel P. Rosales is sentenced to pay to the

intervenors the sum of P978.63, with the legal interest thereon from January 31, 1936, the date on which he failed to pay said amount, until fully paid, with the costs to said receiver.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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