

**JOSE MCMICKING, SHERIFF OF THE CITY OF MANILA, PLAINTIFF
AND APPELLEE, VS. DOMINGO TREMOYA, HOLLIDAY, WISE &
CO., BEHN, MEYER & CO., MOLL, KUNZLI & CO., LUTZ
& CO., ELLIS CROMWE...**

G.R. No. 5138. October 09, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that in a certain cause, No. 4262, in the Court of First Instance of the city of Manila, the said Domingo Tremoya obtained a judgment against Lim Buanco. The record does not show what constituted the basis of the action nor the amount of the judgment. An execution was issued on the said judgment and was levied by the sheriff of the city of Manila upon certain goods, wares, and merchandise found in the store located at No. 76 Calle Rosario, district of Binondo, city of Manila, for the purpose of satisfying said judgment. After the goods were attached, the sale of the same was duly announced to take place upon the 13th of April, 1908, and did take place upon said date. At the time of the sale the defendants, Holliday, Wise & Co., Behn, Meyer & Co., Moll, Kunzli & Co., and Lutz & Co. appeared and claimed that a portion of the merchandise found in said store and which had been levied upon by the said sheriff, had been sold by them to the judgment debtor and had not been paid for. The Collector of Internal Revenue appeared and made the claim that the internal-revenue tax had not been paid for the first trimestre of the year 1908. Yu Guioc Lo and Be Yoaju appeared and made the claim to the sheriff that the rent for the building occupied by the judgment debtor had not been paid for the months of January, February, March, and April of the year 1908. The defendants, Ng Boc Pun, Ng Liong and Ng Chee Yan appeared and made the claim to the sheriff that they were employees of the judgment debtor and that their salaries had not been paid. Prior to the time and just before the sale was made, each of the above defendants, who claimed that he had sold merchandise to the judgment debtor, went through the merchandise found in the said store and selected various articles of merchandise which he claimed he had sold to the judgment debtor and which had not yet been paid for. The goods so selected by the said defendants were separated from the general mass of merchandise found in said store, and were sold separately from the other merchandise by the sheriff. The merchandise selected by Holliday, Wise & Co. and sold separately brought the sum of P216.25. The merchandise selected by Behn, Meyer & Co. sold for the sum of P2,984.96. The goods selected by Moll, Kunzli & Co. sold for the sum of P900. The goods selected by Lutz & Co. sold for the sum of P700. The claim of the Collector of Internal Revenue for the first trimestre of the year 1908 amounted to P178.84. The rent of the building occupied by the judgment debtor for the months of January, February, March, and a portion of the month of April, amounted to P721. The salary claimed by Ng Boc Pun, Ng Liong and Ng Chee Yan, respectively, was P502.57, P600, and P720. All of the merchandise found in said store and sold under the said execution brought the sum of P7,012.89, which amount is now in the hands of the sheriff. Each of the above defendants claims a preferred right to have his respective claim paid first out of the said sum of money. The sheriff being unable or unwilling to settle the question of their respective rights filed a petition in the present cause in the Court of First Instance of the city of Manila. Each of the above defendants appeared and answered, setting forth substantially the facts above related.

After hearing the evidence of the respective parties, the lower court found that the goods selected by Holliday, Wise & Co., Behn, Meyer & Co., Moll, Kunzli & Co., and Lutz & Co. had been sold by them, respectively, to the judgment debtor and that the same had not been paid for, and that they were each entitled to a preference of payment out of the funds in the hands of the sheriff in an amount equal to the amount which each received for the said goods.

The lower court further found that the defendant, the Collector of Internal Revenue, was entitled to the amount of taxes due on the business of said store for the first quarter of the year 1908, and that the amount of said taxes was P178.84, and that he was also entitled to be paid that amount out of the funds in the hands of the sheriff.

The lower court further found that the defendants Yu Guioc Lo, and Be Yoaju were the owners of the building in which said merchandise was located, and had a right to be paid, as a preferred credit out of the money in the hands of the sheriff, the rent due for the months of January, February, March, and a portion of April, amounting to the sum of P721.

The lower court held that the other defendants, Ng Boc Pun, Ng Liong, and Ng Chee Yan, were entitled to a proportional amount out of the balance of the funds in the hands of the sheriff, in accordance with their preferred claims.

From this judgment the defendant Domingo Tremoya duly appealed to this court and made the following assignments of error:

"I. The court erred in deciding that the credits of the appellant's codefendants are entitled to preference over appellant's credit.

"II. The court erred in not directing the sheriff to apply the funds in his possession derived from the sale of the property of the Chinaman Lim Buanco, to the payment of the appellant's judgment against said Lim Buanco.

"III. The court erred in denying appellant's motion for a new trial."

With reference to the first assignment of error the appellant makes the point that the validity of the claims of the different defendants must depend upon three essential elements, namely:

- (a) "The money claimed must be due the creditor as the selling price of the property from which it proceeds";
- (b) "It must be capable of identification and identified as the selfsame property whose selling price is unpaid"; and
- (c) "The property upon which the selling price was due must be found in the possession of the debtor."

Evidently the appellant admits that under the provisions of articles 1921 and 1922 of the Civil Code, claims of the nature of those of the defendants, Holliday, Wise & Co., Behn, Meyer & Co., Moll, Kunzli & Co., and Lutz & Co., were entitled to a preference, providing their claims have the above so-called essentials. It would seem, therefore, that whether the said last-mentioned defendants are entitled to a preference in the present case is purely a question of fact. A preference of claims similar to those of the last-mentioned defendants has been allowed by this court, in accordance with the provisions of said articles of the Civil Code, in the following cases: *Torres et al. vs. Genato*, 7 Phil. Rep., 204; *Banco Español-Filipino vs. Peterson et al.*, 7 Phil. Rep., 409, 413; *Fidelity and Deposit Company of Maryland vs. Wilson et al.*, 8 Phil. Rep., 51; *Rubert & Guamis vs. Luengo & Martinez et al.*, 8 Phil. Rep., 554; *Heinszen, & Co. vs. Peterson et al.*, 10 Phil. Rep., 339, 345; *International Banking Corporation vs. Corrales et al.*, 10 Phil. Rep., 435, 436.

With reference to the first above essential and with special reference to the claim of Holliday, Wise & Co., the lower court found "that a portion of the goods delivered by Holliday, Wise & Co. to the judgment debtor had not

bees paid for, and that of the goods not paid for there was levied upon by the sheriff and afterwards sold separately upon the claim of the said company, goods amounting to P216.25." This was the conclusion of the lower court, based upon what he said was a preponderance of the evidence. The appellant claims that the goods which Holliday, Wise & Co. had sold had not been sold to Lim Buanco, the judgment debtor, but to Uy Bo Siong, and calls attention to the bills made out by Holliday, Wise & Co. to support his contention. It is true that the bills of Holliday, Wise & Co., under which the present claim is made, were made out against "El Chino Uy Bo Siong to Holliday, Wise & Co." Upon this question the lower court made an express finding, as follows:

"I find, by a preponderance of the evidence, that the merchandise levied upon was levied upon as that of Lim Buanco, although located in a store which was operated under the name of Uy Bo Siong, but that Lim Buanco owned all of the merchandise in the store."

We are of the opinion that this finding of fact is in accordance with a preponderance of the evidence adduced during the trial. If Lim Buanco and Uy Bo Siong are two different persons or represent two different business establishments, and if the contention of the appellant is tenable, to wit, that the goods in the store No. 176 Calle Rosario belong to Uy Bo Siong as a different person from Lim Buanco, and not to Lim Buanco, then it would appear that the execution in favor of the appellant as against Lim Buanco had been executed upon property not belonging to Lim Buanco but to Uy Bo Siong. We believe that a preponderance of the evidence fully sustains the finding of the lower court, to wit, that while the store and goods found therein actually belonged to Lim Buanco, the store itself was operated under the name of Uy Bo Siong, and that the bills made out by the different vendors of merchandise to Lim Buanco were made out in the name of the house or store instead of in the name of Lim Buanco.

With reference to the claim of Holliday, Wise & Co., the appellant asserts that the record contains no proof whatever that any amount was owing and unpaid to the said firm upon the goods in question. The appellant makes the further point that the goods selected by the representative of Holliday, Wise & Co. were goods sold by the said company to the judgment debtor, Lim Buanco. It appears from the record that one Uy Piaoco was the manager of the store in question. He testified that the goods had been purchased for the store from Holliday, Wise & Co. He makes no statement whatever with reference to the fact whether the particular goods had been paid for or not. The representative of Holliday, Wise & Co. who selected the forty-one pieces at the time of the execution sale, swears positively that the goods had been sold by Holliday, Wise & Co. to the judgment debtor, but there is no statement by any of the witnesses presented by Holliday, Wise & Co. to the effect that the particular goods selected and sold had not been paid for. Paragraph 1 of article 1922 of the Civil Code gives the creditor the right of preference for the price or amount of the sale of personal property which may be in the possession of the debtor. Said provision does not contemplate the right of preference for the payment of a claim which a creditor may have against a debtor. The claim to which preference is given must be a claim for specific personal property found in the possession of the debtor. The mere fact that Lim Buanco owed Holliday, Wise & Co. a sum of money for goods sold and delivered, would not justify the said company in entering the store and claiming any of the goods which were there found which they had sold. They must prove that the particular goods were not only sold to the debtor, but that the price of the particular goods selected had not been paid before they were entitled to the right of preference as provided in said article of the Civil Code. There being no proof, therefore, that the particular goods selected by Holliday, Wise & Co. had not been paid for, they did not have a preferred right over the money received for the sale of the goods selected and sold. Therefore, the judgment of the lower court, granting to Holliday, Wise & Co. the payment of P216.25 out of the funds in the hands of the sheriff as a preferred credit or claim, is hereby revoked.

With reference to the claims of Behn, Meyer & Co., Moll, Kunzli & Co., and Lutz & Co., we are of the opinion, from an examination of the evidence adduced during the trial of the cause, that there is a preponderance of

evidence showing that these companies had sold the goods selected, to the said judgment debtor, and that the particular goods selected had not been paid for. These companies brought themselves within the requirements of the provision of paragraph 1 of said article 1922 of the Civil Code and therefore the judgment of the lower court with reference to each of these particular last-mentioned parties is hereby affirmed.

With reference to the claims of Yu Guioc Lo and Be Yoaju, it appears from the record that these parties are the owners of the building in which the store in question was located and that there was due to them from Lim Buanco and Uy Bo Siong rent amounting to P210 per month for the months of January, February, March, and a portion of the month of April. Claims of this character are expressly recognized as preferred claims against a debtor by paragraph 7 of article 1922 of the Civil Code. The lower court allowed the claim of these defendants as a preferred credit against the money in the hands of the sheriff in a sum amounting to P721. The record brought to this court fully justifies the judgment of the lower court and his judgment with reference to this particular claim is therefore hereby affirmed.

With reference to the claims of Ng Boc Pun, Ng Liong and Ng Chee Yan, who were employees in the store of Lim Buanco and Uy Bo Siong, the appellant undertakes to say that the salaries which these employees claim are exorbitant and fictitious. The lower court found that there was due as salary to Ng Boc Pun the sum of K02.67; to Ng Liong, the sum of P615.67, and to Ng Chee Yan, the sum of P850, and allowed these claims as preferred claims against the sum of money in the hands of the sheriff. The preferred rights of these claimants is recognized by subparagraph (d) of paragraph 2 of article 1924 of the Civil Code. With reference to the justice of these claims there is nothing in the record which would justify this court in modifying the finding of the lower court. The lower court decided that these claims should be paid out of the balance of the money in the hands of the sheriff, in proportion to the respective amounts. In this conclusion, the claims being of equal character, the lower court committed no error. Therefore the judgment of the lower court with reference to the claims of Ng Boc Pun, Ng Liong and Ng Chee Yan, is hereby affirmed.

Therefore, and for the reasons above stated, the judgment of the lower court is hereby affirmed, except that part of the judgment which allows the claim of P16.25 in favor of Holliday, Wise & Co. which is hereby reversed, and without any special finding as to costs, it is so ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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