

INTERNATIONAL BANKING CORPORATION, PLAINTIFF AND APPELLANT, VS. PILAR CORRALES ET AL., DEFENDANTS.-CIPRIANA GARGANTA, INTERVENER AND APPELLEE.

G.R. No. 5227. October 25, 1909

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from an order of the Court of First Instance of Manila, directing" a receiver of the property of one of the defendants to pay over to the intervener and appellee the sum of P470 from the funds in his hands as receiver.

The evidence introduced in the court below not having been included in the record brought to this court, we are limited to an examination of the admissions in the pleadings and the findings of fact in the opinion of the trial court in ascertaining the facts upon which our judgment must be based.

The original complaint filed in this action sets up a claim of indebtedness amounting to nearly P450,000. On the 10th of May, 1904, on petition of the plaintiff corporation, W. H. Anderson was appointed a receiver to take possession of all the property of one of the defendants (the Casa Comision, a mercantile association organized under the provisions of the Code of Commerce) upon which plaintiff claimed to hold a mortgage for the security of its debt. On the same day Anderson qualified and entered upon the discharge of his duties.

On the 18th of April, 1907, while the original action was still pending in the court below, Cipriana Garganta filed a so-called complaint in intervention, under the provisions of section 121 of the Code of Civil Procedure, wherein she alleged that the above-mentioned receiver had used and occupied a certain house and lot, the property of the intervener, from the date of his appointment, May 10, 1904, until the 30th of September, 1904, of which the rental value during that period was not less than P470, and prayed that the receiver be ordered to show cause why he should not be directed to pay that amount to the intervener out of any funds in his hands as receiver.

To the intervener's complaint, the plaintiff corporation filed a general denial, and the receiver after denying all the allegations of intervener's complaint, except the fact that he had been appointed receiver, as alleged therein, expressly denied that he had used or occupied the house and lot of the intervener, and further denied all knowledge of any business relations which may have existed between the intervener and the Casa Comision of whose property he was receiver.

The trial court found that on the 10th of January, 1904, the Casa Comision, entered into a rental contract with the intervener, whereby it obligated itself to pay to the intervener, for a period of two years from the date of the contract, the sum of P100 monthly for the use and occupation of her house and lot; "that the house and lot in question were occupied by the Casa Comision from the 10th day of May, 1904, until the 30th day of September of the same year;" and that during that period the agreed monthly rental for the house and lot had not been paid. Upon these findings the court entered an order directing the receiver to pay to the intervener the sum of P466.66 from any funds of the Casa Comision in his hands, by virtue of his appointment as receiver.

We are of opinion that this order can not be sustained upon the facts admitted in the pleadings and found by the trial court, and that it should, therefore, be revoked and intervener's complaint dismissed.

It will be well at the outset to distinguish this case from the case of the International Banking Corporation vs. Corrales et al., Cho Han Ling, intervener (10 Phil. Rep., 435). In that case, we sustained a right of intervention in the original action, brought here again on this appeal, in favor of a creditor who alleged and established one of the statutory rights of preference provided in article 1922 of the Civil Code with respect to certain specific property of the Casa Comision; and held that the intervener was entitled to a formal declaration of his statutory right, and to an order upon the receiver to recognize this right in the distribution of the proceeds of the sale of the specific property affected thereby. (Cf. Torres vs. Genato, 7 Phil. Rep., 204.) In the case at bar, however, while it is true that the trial court finds that the Casa Comision is indebted to the intervener on account of rent, and that article 1922 of the Civil Code secures to a landlord a preferential right, in certain cases, similar in character to that of the intervener in the former case, nevertheless this preference only exists as to property of the tenant found on the rented property; and nowhere in the allegations of the complaint in intervention, nor in the findings of the trial court, is it intimated that any of the property of the Casa Comision in the hands of the receiver was found in or on the property of the intervener, or that the intervener has any statutory right of preference, under the provisions of the above-mentioned article, with respect to any of the property of the Casa Comision in the hands of the receiver. Hence, so far as the intervener's claim has its origin in the rental contract made with the Casa Comision, she is merely a general unsecured creditor, and her right to intervene can not be maintained on the ground on which intervention was sanctioned in the former case, wherein the intervener alleged and established a preferential right in the distribution of the proceeds arising from the sale of some of the property in the hands of the receiver.

The ground upon which counsel for the intervener appears to have rested the prayer of her complaint in intervention was that the receiver in the performance of his duties as receiver, made use of the house and lot of the intervener in storing, guarding and preserving the property entrusted to his hands, and that she was, therefore, entitled to payment from any funds in the hands of the receiver of a reasonable sum for the use and occupation of the house and lot, such sum being properly chargeable to expenses incurred by the receiver in the performance of the duties of his office; and there can be no doubt that had she established the use and occupancy by the receiver for this purpose, she would be entitled to recover from him a reasonable compensation therefor. But the trial court found that the house and lot were occupied by the Casa Comision itself during the period for which compensation is demanded of the receiver; and this finding having been made upon the issue raised by the denials of intervened allegations that the house and lot were used and occupied by the receiver, it is clear that the order directing payment by the receiver can not be sustained on the theory of counsel for the intervener, that the expense incident to the alleged use and occupation by the receiver was an expense incurred by him in the performance of his duty to guard and preserve property entrusted to him, which was stored therein.

In the discussion of the case by the members of the court after it had been submitted, it was suggested that the theory upon which counsel for appellee rested her claim against the receiver was unnecessarily restricted, in that counsel apparently relied on the sole ground that the alleged use and occupation of intervened house and lot was for the purpose of storing and preserving property entrusted to his care; whereas he might have rested intervener's claim upon the broader doctrine laid down in *High on Receivers* (Third Edition, sees. 632 and 638 (a) and cases cited in foot notes), that "the primary duty of a receiver of leasehold premises is to pay the head-rent or principal rent due the landlord of the premises, and this he is bound to do without any special order of the court to that effect, and without compelling the landlord to resort to any proceedings for the purpose of enforcing payment, and when the title to leasehold premises becomes vested in a receiver, who continues in possession of and sublets the same, the lessor may recover the rent in an action against the receiver;" and that "when receivers enter into

possession of and receive the rents of real estate belonging to third persons not parties to the cause, but which have been held by defendants under lease, they may be required by petition in the cause in which they were appointed to pay to the owners the rent due thereon."

But notwithstanding the fact that the receiver in this case was appointed for all the property of the receiver, it must not be forgotten that as such receiver he had the right, subject to the order of the court, to elect whether he would perform the executory contracts entered into by the company or corporation whose estate he represents, prior to the receivership (*Russ Lumber, etc., Co. vs. Muscupiabe Land, etc., Co.*, 120 Cal., 521; 65 Am. St. Rep., 186; *Spencer vs. World's Columbian Exposition*, 163 111., 117; *Comra. vs. Franklin Ins. Co.*, 115 Mass., 278; *Scott vs. Rainier Power, etc., Co.*, 13 Wash., 108) ; since no preexisting contracts are binding on a receiver unless adopted by him (*Central Trust Co. vs. East Tennessee Land Co.*, 79 Fed. Rep., 19; *General Electric Co. vs. Whitney (C. C. A.)*, 74 Fed. Rep., 664; *United Electric Securities Co. vs. Louisiana Electric Light Co.*, 71 Fed. Rep., 615; *Central Trust Co. vs. Marietta, etc., R. Co.*, 51 Fed. Rep., 15, following *Southern Express Co. vs. Western North Carolina R. Co.*, 99 U. S., 191; *Russ Lumber, etc., Co. vs. Muscupiabe Land etc., Co.*, 120 Cal., 521; 65 Am. St. Rep., 186; *Comm. vs. Franklin Ins. Co.*, 115 Mass., 278; *Scott vs. Rainier Power, etc., Co.*, 13 Wash., 108); and that while a receiver may as a rule adopt the provisions of an executory contract for the benefit of the receivership, it is his duty to refuse to adopt a contract which would prove so burdensome as to imperil the fund. (*General Electric Co. vs. Whitney (C. C. A.)*, 74 Fed. Rep., 664; *Central Trust Co. vs. East Tennessee Land Co.*, 79 Fed. Rep., 19; *United Electric Securities Co. vs. Louisiana Electric Light Co.*, 71 Fed. Rep., 615; *Girard L. Ins., etc., Co. vs. Cooper (C. C. A.)*, 51 Fed. Rep., 332; *Spencer vs. World's Columbian Exposition*, 163 111., 117; *Worthington vs. Oak, etc., Park Imp. Co.*, 100 Iowa, 39. And see *Girard L. Ins., etc., Co. vs. Cooper (C. C. A.)*, 51 Fed. Rep., 332.) Manifestly, therefore, a receiver of an individual or corporation does not by reason merely of his appointment become liable on existing contracts. (*Empire. Distilling Co. vs. McNulta (C. C. A.)*, 77 Fed. Rep., 700; *Minneapolis Baseball Co. vs. City Bank*, 74 Minn., 98; *Nelson vs. Kalkhoff*, 60 Minn., 305); the doctrine as stated by High being as follows:

"As a rule, receivers are not liable upon the covenants of the persons over whose effects they are appointed, but become liable solely by reason of their own acts. And receivers who have been appointed over a corporation, and who have accepted the trust and taken possession of the assets, do not thereby become liable for rent of the premises held by the company under a lease; nor can they be held liable until they elect to take possession of the premises or until the doing of some affirmative act which in law would be equivalent to such an election." (*High on Receivers*, Third Edition, sec. 273; *Commonwealth vs. Franklin Ins. Co.*, 115 Mass., 278; *Gaither vs. Stockbridge*, 67 Md., 222.)

It is very clear, therefore, that the finding by the trial court that the property in question was occupied by the Casa Comision and not by the receiver defeats the intervener's right to recover on this theory of the receiver's liability as effectively as on the theory advanced by her counsel on appeal.

The trial court, however, while it did not sustain the allegations of the intervener as to the use and occupation by the receiver, appears to have been of opinion that since proof of occupation of intervener's property by the Casa Comision, under the rental contract, established intervener's right to recover from the Casa Comision, and since all the property of the Casa Comision was in the hands of the receiver, the intervener should have an order upon the receiver for the payment of the proven indebtedness of the Casa Comision out of any funds in his hands as receiver. In this the trial court erred. We do not question the right of the intervener in a proper action to reduce to judgment her claim of indebtedness against the Casa Comision, and to enforce that judgment against its property in a proper proceeding, but she had no right, and indeed she does not appear to have attempted to intervene in this action for the purpose of securing an adjudication of her claim against her debtor, the Casa Comision, and thereafter to have an order directing the payment of the claim thus adjudicated, out of the funds in the hands of the

receiver, without regard to the priorities of other claimants upon the same funds; the effect of the order is to give a general unsecured creditor a preference in the payment of his claim over other creditors with a specific lien on the property out of which the unsecured creditor is to be paid. The reasoning in the *Cho Han Ling* intervention (*supra*) and in the so-called *Tan Tonco* cases (*Bonaplata vs. Ambler*, 2 Phil. Rep., 392; *Encarnacion vs. Ambler*, 3 Phil. Rep., 623) clearly denies to general unsecured creditors the right of intervention in an action wherein the property of the common debtor has been committed to the hands of a receiver, both because whatever interest a general unsecured creditor may be said to have in the outcome of a suit brought by another creditor against the same debtor, it is clear that it does not constitute such an interest in the matter in litigation or in the success of either party as is contemplated by section 121 of the Code of Civil Procedure; and because, to permit unsecured creditors to intervene under such circumstances, while the receiver guards the property for the benefit of all, would render the prohibition of bankruptcy proceedings' meaningless. (Sec. 524, Code of Civil Procedure.)

It may not be improper to point out that since the intervention in this action was originally permitted for the purpose of asserting an alleged liability of the receiver, this decision does not in any wise limit or deny the right of the intervener to institute a separate action against the Casa Comision, and in the event of a judgment in her favor, to take such steps as she may see fit for the purpose of recovering her judgment out of the property of her debtor. And while it is not necessary for the purposes of this decision to indicate the methods by which the latter end may be obtained, our decisions in the cases of *Torres vs. Genato* (*supra*) and of the intervention of *Cho Han Ling* (*supra*) and the doctrine laid down in the case of *Peterson vs. Newberry* (6 Phil Rep., 260) clearly indicate that a way may be found whereby she can assert whatever right of preference in the distribution of the proceeds of the sale of the property of her debtor she, as a judgment creditor, may be entitled to, under the provisions of article 1924 of the Civil Code.

The order of the lower court should be and is hereby revoked and judgment will be entered against the intervener upon the complaint in intervention in the court below. No costs will be allowed either party on this appeal. So ordered.

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

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