

ORTIGA BROTHERS & CO., PLAINTIFFS AND APPELLEES, VS. FRANCISCO ENAGE, SHERIFF OF THE PROVINCE OF LEYTE, AND YAP TICO, DEFENDANTS AND APPELLANTS.*G.R. No. 6228. January 30, 1911*

Ponente: TORRES, J.

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On December 1, 1908, the plaintiffs' counsel filed a written complaint with the Court of First Instance of Leyte alleging as grounds of action: That the plaintiff party was a mercantile partnership company established in these Islands, in accordance with the laws in force, with residence in the city of Manila and several branch offices in different parts of the Archipelago, its principal business being the purchase and sale of hemp, rice, copra and other domestic and foreign products; that it was the owner of a pier for the service of steamers at the port of Tacloban, Leyte, which pier was acquired from the defunct commercial house of Pablo Ortiga, to whose business, real and personal properties, rights and actions the plaintiffs succeeded and of which they took charge by virtue of an agreement between the heirs of the deceased Ortiga who were then the members of the plaintiff company; that the defendant Francisco Enage, the sheriff of the Province of Leyte, on or about the 8th of November, 1908, through his deputy, Cornelio Manalo, and in compliance with an order of execution issued by the Court of 'First Instance of Manila, at the request of the defendant, Yap Tico, against the property of Juana Mercado, Felix Villa and the minors Mercedes, Julian, Felisa and Joaquina Villa, attached the undivided half of the said pier, for the reason that one-half of the same belonged to the judgment debtors aforementioned; and notwithstanding that the proper affidavit was presented to the sheriff by the plaintiff firm in order that he might desist from attaching the said half of the pier of the firm's exclusive ownership, and, though at the beginning the sheriff acceded to its request, yet, a bond having been given by Yap Tico to indemnify the sheriff against any claim which might arise by reason of the attachment, this official, on November 23, 1908, proceeded with the attachment of the said undivided half of the pier and endeavored to sell it, according to the notices given, for the purpose of satisfying the judgment rendered by the Court of First Instance of Manila, in favor of Yap Tico and against the said Juana Mercado, Felix Villa and the minors, Mercedes, Julian, Felisa and Joaquina Villa; that these judgment debtors, none of them, at any time held and owned one-half of the said pier, nor were they then, at the time of the presentation of the complaint, 'the possessors and owners thereof, since the said half of the pier belonged to the plaintiff company, who acquired it from the intestate estate of the deceased Ildefonso Villa Lim Yamco by virtue of a conveyance or sale made on August 17, 1907, through the administratrix of the said estate to the aforementioned firm of Pablo Ortiga, with the authorization of the court, in payment of a part of a certain debt of the estate before referred to; that all the facts alleged by the plaintiff company were known to the defendants, and to each one of them, prior to and at the time of the attachment of the said one-half of the pier, and that, notwithstanding, the defendants, maliciously and with the deliberate intention of prejudicing and injuring the plaintiffs' interests by causing them to incur unnecessary expenses, brought about the attachment of the said property, and on account of such procedure on the part of the defendants and in order that the plaintiffs might protect their interests, the latter had to employ an attorney whose professional fees, amounting to P600, were contracted for and paid, in addition to other

expenses; and that the sheriff, unless prevented by the court, would proceed to sell the half of the said pier to the detriment of the plaintiffs' rights, against which act they had not the remedy of appeal, nor any other expeditious remedy; wherefore they prayed the court to issue a writ of injunction against the sheriff, in order that; during the pendency of this claim, he should refrain from selling the said one-half of the pier and desist from executing any act tending to the same purpose. The plaintiffs further prayed that judgment be rendered whereby it be declared that the pier in question is the exclusive property of the plaintiff company and that the attachment levied on the same is unjust and malicious. The plaintiffs also asked that the defendants be sentenced to pay to them P600 on account of the expenses incurred, and the costs of the trial.

The demurrer to the complaint having been overruled, the defendants in their answer, through their counsel, denied each and all of the allegations contained in each and every paragraph of the said complaint and asked that they be absolved therefrom, with the costs against the plaintiff.

The defendant, F. M. Yap Tico, appearing separately by counsel, alleged in his amended answer of July 13, 1909, that he denied each and every allegation contained in each and every one of the paragraphs of the complaint; that, as special defenses, he set forth: That the plaintiff party lacked the personality requisite for the prosecution of the action instituted; that one-half of the said pier belonged exclusively to the intestate estate of Ildefonso Villa Lim Yamco, the judicially declared heirs of whom were Juana Mercado, Felix Villa, and the minors, Mercedes, Julian, Felisa and Joaquina Villa, residing in Tanauan, Leyte; that the attachment levied upon the one-half of the said pier, was made at the instance of Juana Mercado as the administratrix of the aforementioned estate and with the approval of the heirs thereof, in order to satisfy the claim held by the defendant Yap Tico against the said estate of Lim Yamco; that, in the highly improbable case that Yap Tico should not be considered as a creditor of the intestate Lim Yamco, but simply of the latter's heirs, he would make no claim to acquire over the said half of the disputed pier any other right, interest and share except such as pertain or may pertain to the said Juana Mercado and other of her coheirs; that the sale or transfer, in payment of the said half of the pier, which the plaintiff alleged had been made in the latter's favor by the administratrix of the intestate estate, Juana Mercado, was effected without the knowledge and authorization of a competent court and, therefore, was null and void, for the said sale or transfer prejudiced and was still prejudicing the interests of the estate of the deceased Lim Yamco, the creditors of the estate and also the heirs of the said deceased, as well as the rights of the creditors of such heirs, by preventing them from realizing upon their claims and with the rights, interest and share which pertained or might pertain to each one and all of the said heirs; and that the defendant had carried on with the plaintiffs friendly negotiations in order to convince them of the reality of his right in the one-half of the said pier, but that the plaintiffs did not respond to such act of loyalty and unjustly compelled him to maintain the present suit which, if it had not been for the plaintiffs' procedure, he never would have contemplated; wherefore the defendant asked that the complaint be dismissed with the costs against the plaintiff company.

The case came to trial, oral evidence was introduced by both parties, the documents exhibited being attached to the record, and the court, on April 25, 1910, rendered judgment whereby it found that the one-half of the pier in question belonged to the plaintiff company and not to the judgment debtors, Juana Mercado, Felix, Mercedes, Julian, Joaquina, and Felisa Villa, and that the attachment levied upon the said one-half of the pier was unjust and malicious, sentenced the defendants to pay to the plaintiffs the sum of P600 for the damages caused to the latter by reason of the said attachment, and ordered the sheriff and the other defendant, Yap Tico, to refrain from performing any acts whatsoever tending to the prosecution of the said attachment, with the costs against the defendants. The latter's counsel, having been notified of this judgment, took exception thereto and by a written motion asked for a new trial, on the ground that such judgment was openly and manifestly contrary to the weight of the evidence and to law. This motion was overruled and exception was taken by the defendants' counsel, who duly filed the required bill of exceptions, which was approved, certified to and forwarded to the clerk of this court.

The writ of execution issued by the Court of First Instance of Manila, at the petition of the Chinaman Yap Tico, was intended to obtain the collection of a debt contracted in favor of the latter by Juana Mercado, Felix, Mercedes, Julian, Felisa and Joaquina Villa, the widow and heirs of the deceased Ildefonso Villa Lim Yamco, and for this purpose the undivided one-half of the pier, used for the service of steamers and constructed at the wharf of the port of Tacloban, was attached by the sheriff of the Province of Leyte, as belonging to the said debtors.

The pier aforementioned originally belonged, half to Pablo Ortiga and half to Ildefonso Villa, and when the latter died, on July 16, 1899, the one-half of the said pier was transferred or ceded in payment of a part of what was found to be owing by his intestate estate, to his co-owner, Ortiga, to whose rights the plaintiffs, Ortiga Brothers and Company, in turn succeeded, as shown by the record of proceedings, attached as Exhibit 2, had in the Court of First Instance of Leyte in connection with the settlement of the intestate estate of the aforesaid Ildefonso Villa Lim Yamco. So that the credit for the payment of which an attachment was levied upon the said half of the pier, is not one against the intestate succession of the deceased, Yamco, but against his widow and heirs; and it is not shown in the aforesaid record of proceedings that the judgment creditor, Yap Tico, was a creditor of the said intestate, as no credit whatever in the name of the said Yap Tico appears among those which were recognized and admitted as legitimate by the committee of appraisal appointed by that court.

A person who, having a claim against a deceased person which should be considered by the committee does not, after publication of the required notice, exhibit his claim to the committee as provided by law, shall be barred from recovering such demand or from pleading the same as an offset to any action, under the provisions of section 695 of the Code of Civil Procedure, excepting: the case referred to in section 701 of the same; with still less reason can one who is not a creditor of the said deceased intervene in the proceedings relative to the latter's intestate estate and to the settlement of his succession (article 1034 of the Civil Code), because such creditor has no right or interest that call for the protection of the law and the courts, except in any remainder which may be found due the heir.

It is true that Yap Tico, as the creditor of the widow and heirs of the deceased Ildefonso, is entitled to collect what is due him out of the property left by the latter and which was inherited by such widow and heirs, but it is no less true that only after all the debts of the said estate have been paid can it be known what net remainder will be left for division among the heirs, because the debts of the deceased must be paid before his heirs can inherit. (Arts. 659 et seq., 1026, 1027, and 1032 of the Civil Code, and sees. 734 et seq., Code of Civil Procedure.)

An execution can not legally be levied upon the property of an intestate succession to pay the debts of the widow and heirs of the deceased, until the credits held against the latter at the time of his death shall have been paid, and only after the debts of the estate have been paid can the remaining property that pertains to the said debtor heirs be attached. (Art. 1034, aforesaid, Civil Code.)

From the record of the proceedings beforementioned it is not found that the attached one-half of the pier forms a part of the property remaining after payment of the debts against the said intestate estate, nor that it continues to belong to the assets of the estate left by the deceased Ildefonso Villa Lim Yamco; on the contrary, it appears from the said proceedings that the said one-half of the pier was transferred to Pablo Ortiga, the owner of the other half and the plaintiffs' predecessor in interest, in partial payment of a larger sum which the deceased Ildefonso Villa owed Ortiga, as specified by the debtor's widow, the administratrix of his intestate estate, on August 17, 1907, as may be seen by the writ issued on May 14 by order of the Hon. Judge W. F. Norris, p. 104 of the trial record, which does not show that the said transfer in partial payment was impugned by any of the interested parties or by other creditors of the estate; the debt of 1,885 pesos 43 centavos and 6 octavos due the Ortiga firm, the plaintiffs' predecessor in interest, and secured by the said one-half of the pier, was recognized and admitted, with two other debts, by the committee on claims in its report of March 30, 1907, page 70 of the record, which report was

approved by the said judge in his order of April 30, 1907, page 76 of the record. It is to be noted that the order of August 30, 1906, a copy of which was exhibited under letter D, and which, according to the certification of the annotations of the docket, Exhibit 3, was annulled by another order of November 26 of the same year, relates to the sum of P8,081.77, another debt of the intestate to the Ortiga firm, admitted by the committee of appraisal in its previous report of June 28, 1906, page 36 of the trial record.

The attachment levied upon the one-half of the said pier, at the instance of the defendant, Yap Tico, is, then, evidently and unquestionably improper, not only because the said defendant is not a creditor of the intestate estate of the deceased Ildefonso Villa Lim Yamco, but also because the said one-half of the pier became the property of the plaintiffs, as a partial payment of a certain debt of the deceased. The plaintiffs must be considered as the legitimate owners of the said one-half of the pier, so long as the cession or transfer of the same is not annulled by an express judicial decree, through the prosecution of the proper action brought on the ground of some vice or defect tending to nullify the same.

With respect to the professional fees which the plaintiffs stated they had to pay their attorney for the prosecution of the action in order to protect their rights, which fees amounted to P600, it must be borne in mind that attorneys' fees are not included within the expenses and costs of any trial or proceedings, specified as fees to be paid by the parties to the suit, pursuant to the provisions of sections 785 and following of the Code of Civil Procedure; and therefore the defendants are not compelled to pay the said sum to the plaintiffs.

For the foregoing reasons, it is proper, in our opinion, to affirm the judgment appealed from, as we hereby do, except the finding therein whereby the defendants are sentenced to pay P600 to the plaintiffs, which finding we expressly reverse. The costs of this instance shall be assessed against the appellants. So ordered.

Arellano, C. J., Mapa, Moreland, and Trent, JJ., concur.

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