

MANUEL ORIA Y GONZALEZ, PLAINTIFF AND APPELLANT, VS. JOSE MCMICKING, AS SHERIFF OF THE CITY OF MANILA, GUTIERREZ HERMANOS, MIGUEL GUTIERREZ DE CELIS, DANIEL PEREZ, AND LEOPOLDO ...

G.R. No. 7003. January 18, 1912

Ponente: MORELAND, J.

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MORELAND, J.:

These are the facts:

In the month of August, 1909, Gutierrez Hermanos brought an action against Oria Hermanos & Co. for the recovery of P147,204.28; that action is known as No. 7289 in the Court of First Instance of Manila. In March, 1910, the same plaintiff began another action against the same defendant for the recovery of P12,318.57; this case was known as No. 7719 in said court. Subsequent to the beginning of the above actions, and on or about the 30th day of April, 1910, the members of the company of Oria Hermanos & Co., on account of the expiration of the time stated in their agreement of copartnership, dissolved their relations and entered into liquidation. On the 1st day of June, 1910, Tomas Oria y Balbas, as managing partner in liquidation, acting for himself and on behalf of his other coowners Casimiro Oria y Balbas and Adolfo Fuster Robles, entered into a contract with the plaintiff in this case, Manuel Oria Gonzalez, which said contract was for the purpose of selling and transferring to the plaintiff in this action all of the property of which the said Oria Hermanos & Co. was owner. Said instrument contained the following clauses:

"5. I, Tomas Oria y Balbas, do further state and declare that I have agreed with the other party hereto, Don Manuel Oria y Gonzalez, to sell all the property I have mentioned, which is specified more in detail in the general inventory of Oria Hermanos & Co., for the price and under the conditions hereinafter expressed; and in order to carry into effect such agreement made by me with the said Don Manuel Oria y Gonzalez, in my own right and also in representation of my partners, Don Casimiro Oria and Don Adolfo Fuster, I do hereby stipulate and agree:

"6. As managing partner and liquidator of Oria Hermanos & Co., and further in my own right and in the name and representation of Don Casimiro Oria y Balbas and Don Adolfo Fuster y Robles, personally and as partners in Oria Hermanos & Co., in consideration of the sum of two hundred seventy-four thousand pesos (P274,000), which the said Don Manuel Oria y Gonzalez undertakes and engages to pay to the firm of Oria Hermanos & Co., in liquidation, or to us the parties hereto, myself and the persons I represent, as partners in Oria Hermanos & Co., which sum shall be paid in installments, in the manner and under the conditions hereinafter set forth. I hereby sell, cede and transfer absolutely and forever to the said Don Manuel Oria y Gonzalez, his heirs and assigns, all and every part of the property mentioned in the fourth section hereof and more specifically described in the general inventory of Oria Hermanos & Co.; under the following mutual conditions:

"(a) Don Manuel Oria y Gonzalez engages and undertakes to pay and to settle the sum agreed upon for this sale, cession and transfer within a period of twelve (12) years, further engaging and undertaking to pay each

year a sum of not less than ten thousand (10,000) pesos and at the end of said period to settle the balance of said price.

"(b) After the first six (6) years of the period for the payment of the stipulated price, that is, during the last six years of said period, Don Manuel Oria y Gonzalez engages and undertakes to pay interest at 3 per cent a year on the price stipulated or the part thereof unpaid at such time; provided, that this is a mutual obligation and the interest payable annually.

"(c) Don Manuel Oria y Gonzalez further engages and undertakes to pay to Don Tomas Oria, Don Casimiro Oria and Don Adolfo Fuster during the time that they remain in the Philippines and do not reside abroad, the sum of one hundred and fifty (150) pesos monthly; which obligation shall be understood to be contracted individually with each of the said parties; and the amounts so paid to each and all of them shall be charged to the account of Ofia Hermanos & Co., in liquidation, in discharge of the stipulated consideration and the installments thereof and interest thereon when due.

"(d) Don Manuel Oria y Gonzalez engages and undertakes not to sell, alienate, transfer or mortgage, either wholly or in part, the property hereby sold to him, without the written authorization of Don Tomas Oria as liquidator of the firm of Oria Hermanos & Co., so long as the consideration of this sale is not fully satisfied, to guarantee which this restriction is imposed: provided, that this restriction applies only to the vessels, real estate and branch stores in the towns mentioned in the fourth section of this instrument, not to the rest of the property.

"(e) Don Manuel Oria y Gonzalez engages and undertakes to cede gratuitously in the dwelling-house in the town of Laoang, hereby sold, the use of the same or the portion thereof that may be necessary for Don Tomas Oria to establish therein the liquidation office of Oria Hermanos & Co.; provided, that this cession is made for a period of only two (2) years.

"(f) Don Tomas Oria y Balbas and Don Adolfo Fuster engage and undertake to place their personal services at the disposal of Don Manuel Oria y Gonzalez in everything relating to his instruction in the management and conduct of the property and business hereby sold; provided, that this obligation and promise shall be binding upon Don Adolfo Fuster only for the time he may reside in the Philippines and upon both parties only for a maximum period of 12 months.

"7. I, Manuel Oria y Gonzalez, being informed of the foregoing action and contract executed by Don Tomas Oria y Balbas, do on my part stipulate and agree: that I accept the sale, cession and transfer hereby made by him in my favor and engage and undertake to pay to Oria Hermanos & Co., either in liquidation, or if necessary to the partners of Oria Hermanos & Co., the price of said sale, cession and transfer, that is, the sum of P274,000, within a period of 12 years, in the manner and under the conditions set forth by him in the preceding section, and especially engage not to sell, alienate, transfer or mortgage the property involved in this sale which is specified in paragraph (d) of the preceding section, without the previous written authorization of the vendor, Oria Hermanos & Co., such property being so exempted as a guaranty for the payment of the purchase price of this sale."

Among the goods transferred by this instrument was the steamship Serantes, which is the subject of this litigation.

On the 17th day of September, 1910, case No. 7719, above referred to, was resolved by the Court of First Instance in favor of Gutierrez Hermanos and against Oria Hermanos & Co. for the sum demanded in the complaint. The cause was appealed to the Supreme Court and, the judgment therein having been affirmed,[1] execution was issued thereon and placed in the hands of the sheriff of Manila. The sheriff immediately demanded that Tomas Oria y Balbas, as liquidator of the firm of Oria Hermanos & Co. make payment of the said judgment, to which he replied that there were no funds with which to pay the same. Thereupon the sheriff levied upon the said steamer Serantes, took possession of the same, and announced it for sale at public auction on the 21st day of October, 1910. On the 18th day of October, 1910, three days before the sale, the plaintiff in this action presented to the

sheriff a written statement claiming to be the owner of the said steamship, and to have the right of possession of the same by reason of the sale to him by Oria Hermanos & Co. of all of the property belonging to said company, including the said steamer Serantes, as shown by the instrument above referred to and quoted. The sheriff thereupon required Gutierrez Hermanos to present a bond for his protection, which having been done, the sheriff proceeded to the sale of the said steamship. At the sale Gutierrez Hermanos became the purchaser, said company being the highest bidder, and the sum which it paid being the highest sum bidden for the same.

On the 19th day of October, 1911, the plaintiff began the present action, which has for its object, as shown by the prayer of the complaint: First, the issuance of a preliminary injunction to prevent the sale of said steamship; and, second, the declaration that the plaintiff is the owner of said steamship and is entitled to the possession of the same, and that the defendant be required to restore the same to the plaintiff and to pay P10,000 damages for its detention.

Upon the trial judgment was found in favor of the defendant and against the plaintiff, and the complaint was dismissed upon the merits with costs. From that judgment this appeal is taken.

The substantial question presented for our consideration is the validity of the sale from Oria Hermanos & Co. to Manuel Oria y Gonzalez as against the creditors of said company. It is the contention of Gutierrez Hermanos that said sale is fraudulent as against the creditors of Oria Hermanos & Co., and that the transfer thereby consummated of the steamship in question was void as to said creditors and as to Gutierrez Hermanos in particular.

There is some contention on the part of the plaintiffs that aside from the property included in the sale referred to, Oria Hermanos & Co. had sufficient other property to pay the judgment of Gutierrez Hermanos. The trial court found, however, against the plaintiff in this regard. A careful examination of the record fails to disclose any sufficient reason for the reversal of this finding. While the evidence is somewhat conflicting, we are of the opinion that there is sufficient to sustain the findings made.

In determining whether or not the sale in question was fraudulent as against creditors, these facts must be kept in mind:

1. At the time of said sale the value of the assets of Oria Hermanos & Co., as stated by the partners themselves, was P274,000.
2. That at the time of said sale actions were pending against said company by one single creditor for sums aggregating in amount nearly P160,000.
3. The vendee of said sale was a son of Tomas Oria y Balbas and a nephew of the other two persons heretofore mentioned which said three brothers together constituted all of the members of said company.
4. Nothing of value seems to have been delivered by the plaintiff in consideration of said sale and no security whatever was given for the payments therein provided for.
5. The plaintiff is a young man twenty-five years of age. There is no pretense whatever that he owned any property or had any business at the time of the sale. On the contrary it appears without contradiction that, when the sale took place, he was merely a student without assets and without gainful occupation.
6. Plaintiff, at the time of the sale, was fully aware of the two suits that had already been begun against the company whose assets he was purchasing and well knew that if said suits should terminate in favor of the plaintiffs therein the judgments in which they terminated would have to be paid out of the property which he was then taking over or they would not be paid at all.
7. Under all the circumstances the sale in question was, so far as the creditors were concerned, without

consideration. To turn over a business worth P274,000 to an "impecunious and vocationless youth" who knew absolutely nothing about the business he received, and whose adaptability to the management of that business was entirely unknown, without a penny being paid down, without any security whatever, is a proceeding so unusual, so devoid of care and caution, and so wholly outside of the well defined lines of ordinary business transactions, as to startle any person interested in the concern.

8. It is certain that the members of the company of Oria Hermanos & Co. would never have made a similar contract or executed a similar instrument with a stranger.

9. The prohibition in the contract against the sale of certain portions of the property by the plaintiff offers no protection whatever to the creditors. Such prohibition is not security. The parties who made the original transfer can waive and release it at pleasure. Such restriction is of no value to the creditors of the company. They can not utilize it for the reduction of their claims or in any other beneficial way.

In determining whether or not a certain conveyance is fraudulent the question in every case is whether the conveyance was a bona fide transaction or a trick and contrivance to defeat creditors, or whether it conserves to the debtor a special right. It is not sufficient that it is founded on good consideration or is made with bona fide intent: it must have both elements. If defective in either of these particulars, although good between the parties, it is voidable as to creditors. The rule is universal both at law and in equity that whatever fraud creates justice will destroy. The test as to whether or not a conveyance is fraudulent is, does it prejudice the rights of creditors?

In the consideration of whether or not certain transfers were fraudulent, courts have laid down certain rules by which the fraudulent character of the transaction may be determined. The following are some of the circumstances attending sales which have been denominated by the courts badges of fraud:

1. The fact that the consideration of the conveyance is fictitious or is inadequate.
2. A transfer made by a debtor after suit has been begun while it is pending against him.
3. A sale upon credit by an insolvent debtor.
4. Evidence of large indebtedness or complete insolvency.
5. The transfer of all or nearly all of his property by a debtor, especially when he is insolvent or greatly embarrassed financially.
6. The fact that the transfer is made between father and son, when there are present other of the above circumstances.
7. The failure of the vendee to take exclusive possession of all the property.

The case at bar presents every one of the badges of fraud above enumerated. Tested by the inquiry, does the sale prejudice the rights of creditors, the result is clear. The sale in the form in which it was made leaves the creditors substantially without recourse. The property of the company is gone, its income is gone, the business itself is likely to fail, the property is being dissipated, and is depreciating in value. As a result, even if the claims of the creditors should live twelve years and the creditors themselves wait that long, it is more than likely that nothing would be found to satisfy their claims at the end of the long wait. (Regalado vs. Luchsinger & Co., 5 Phil. Rep., 625; art. 1297, Civil Code, par. 1; Manresa's Commentaries, vol. 8, pp. 713-719.)

Since the record shows that there was no property with which the judgment in question could be paid, the defendants were obliged to resort to and levy upon the steamer in suit. The court below was correct in finding the sale fraudulent and void as to Gutierrez Hermanos in so far as was necessary to permit the collection of its

judgment. As a corollary, the court below found that the evidence failed to show that the plaintiff was the owner or entitled to the possession of the steamer in question at the time of the levy and sale complained of, or that he was damaged thereby. Defendant had the right to make the levy and test the validity of the sale in that way, without first resorting to a direct action to annul the sale. The creditor may attack the sale by ignoring it and seizing under his execution the property, or any necessary portion thereof, which is the subject of the sale.

For these reasons the judgment is affirmed, without special finding as to costs. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Trent, JJ., concur.

[1] 19 Phil. Rep., 104.

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