

CHUA DOC DE, PLAINTIFF AND APPELLANT, VS. ARTADI & COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 7690. October 09, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action to recover damages alleged to have been caused by the malicious attachment and levy by the defendant upon the goods, wares, and merchandise of the plaintiff.

The plaintiff alleged "that since 1903 the said plaintiff was a merchant conducting a general business in the town of Liloan and in other parts of Leyte; that his business was large and his credit good and extensive; that in February and April, 1905, and again for a third time in February, 1906, the defendant had the local sheriff attach the plaintiff's store and all the stock therein, although plaintiff was in no way a party to the action." "All three attachments were released within from one week to four months after each levy. The effect of them, however, was to ruin plaintiff's business and destroy his credit, for which he asked damages in the sum of P20,000."

In the brief it is stated: "This first levy was a preliminary attachment and took place February 18, 1905/ Appellant on March 22, 1905, in the same case but by virtue of a writ of execution against Jose Garrido, was levied on again by the same deputy sheriff, Eustaquio Rafols, Gervacio Mangle, acting president, Carlos D. Lizardi, of Artadi & Co., and Antonio Eiguran, also of Artadi & Co. This levy was on the entire store and business of appellant, the same, as a result thereof, being entirely closed.

"Claim was immediately made to the sheriff in Tacloban by appellant for the store and goods, and, upon Artadi & Co. refusing to file an indemnity bond, the attached goods and premises were restored to appellant in the latter part of March, 1905.

"It should be noted here that this delivery back to appellant was because of his sworn representations and claim of ownership of the property.

"After the return of his goods and the reopening of his store, appellant continued his business, when, on the 22d of February, 1906, the store was once again attached and closed up by virtue of an order of execution in the same case as before. This levy was made by the same deputy sheriff, the municipal president of Liloan, and Antonio Eiguran and Carlos de Lizardi, managers of Artadi & Co. The defendant's agents took active part in directing the attachment.

"As a result of this attachment the store remained closed for two months. Ly Jinco, partner of Chita Doc De, presented his claim to the sheriff for the attached premises, and Artadi & Co. refusing to file a sheriff's indemnity bond, the premises were restored."

From the documentary evidence in the case it appears that some time in the latter part of the year 1904 or the early part of 1905 the defendant company began an action against Jose Garrido and Fernando Garrido for the recovery of about ₱35,000 alleged to be due to the plaintiff from the defendants. In that action the plaintiff company, in February, 1905, obtained an attachment before trial upon the property of the defendants, consisting of a stock of

goods in a tienda, or a part thereof, supposedly the property of the defendants, which is, generally speaking, the subject matter of this action. On the 21st of March, 1905, another attachment was made in the same action and on the same, or substantially the same, property.

The defendants Jose Garrido and Fernando Garrido desiring to recover possession of the property attached, on the 10th of April, 1905, made an application to the court in which the action was pending and which had issued the orders of attachment, to have them dissolved and the property returned to the owners, presenting the proper petition, affidavits, and undertaking to that end. On the 14th of April, 1905, the court ordered a dissolution of the attachments and the return of the property to Jose and Fernando Garrido.

On the 27th of May there was issued by the deputy sheriff, who had in his possession the property attached in February and March, 1905, a paper signed by himself and by the plaintiff in this action, Chua Doc De, entitled "In the Court of First Instance of Leyte, Artady and Company versus Jose Garrido and Fernando Garrido" and denominated "Right of third party to ownership and possession presented by the Chinaman Chua Ducly, alias Dia."

This paper reads as follows:

"In the municipality of Liloan, May 27, 1905.

"Mr. Gervasio D. Mangle, the municipal president of this pueblo, acting in the capacity of sheriff, through deputation, received from Mr. Eustaquio Rafols, deputy sheriff, an affidavit made by the Chinaman, Chua Pucly, before the clerk of the Court of First Instance of this province. By means of the said affidavit, Chua Ducly filed a third party claim to the ownership and possession of various goods and merchandise that were attached in the name of the defendant, Jose Garrido, by order of the Court of First Instance of this province and which were seized on February 18 and March 21 last, by the provincial sheriff in the store which the third party, Chua Ducly, conducts in the pueblo above mentioned. The affidavit recited that the said goods and merchandise belonged to the affiant, Chua Ducly, and that he had been in possession of the same from the time he opened the said store to the date of the seizure. In support of his claim he presented the industrial tax receipts issued to him by the provincial treasury of Leyte on the 16th of March and the 19th of September, 1904, respectively ; wherefore, in view of the said claim, pursuant to the provisions of section 442 of the Code of Civil Procedure now in force, and, furthermore, since the Court of First Instance of this province has ordered the dissolution of the attachment levied on the property of the defendants Jose Garrido and Fernando Garrido, I have deemed it proper to return and deliver to the third party, the Chinaman Chua Ducly, alias Dia, under his own responsibility, the merchandise which was taken from him on the 18th of February and the 21st of March last, as hereinbefore related.

"In witness whereof this certificate is issued, certified under my signature and signed by the third party, Chua Ducly.

(Signed) "GERVASIO D. MANGLE,
"Municipal President.

"CHUA DUCLY."

(Signed in Chinese characters.)

The cause against the Garridos went to trial and plaintiff company, on the 2d of November, 1905, obtained a judgment against the defendants for the sum of P34,736.58. On the 2d of December, 1905, an execution was issued by the court against the property of the defendants. This is the only execution found in the record. Under this execution the sheriff on February 24, 1906, levied upon and seized substantially the same stock of goods and business which had been seized under the attachments of February and March, 1905.

In April, 1906, one Tim Ymco (alias Yma) presented to the sheriff who made the levy under the execution of December 2, 1905, issued against Jose Garrido and Fernando Garrido, a sworn statement alleging that the true and lawful owner of the property seized under that execution was a partnership composed of Chinese persons, namely, himself and one Chua Doc De (alias Dia) doing business under the firm style and name of "Quimzungzing."

From this statement of the case, as it appears from the documentary evidence in the record, it is clear that the first two seizures and not the first one alone were attachments.

That of March 22, 1905, was not a levy "by virtue of a writ of execution" as stated by the plaintiff, but was an attachment levied in the same action and for the same purpose as that of February 18 of the same year. No levy could have been made under an execution at that time because a judgment was not obtained in the action against Jose Garrido and Fernando Garrido until the 2d of November, 1905, and no execution was issued thereon until December 19 of the same year. The first levy under an execution was made on the 6th of February, 1906.

It should be noted also that it is very doubtful if the delivery of the property thus attached to the appellant was "because of his sworn representations and claim of ownership of the property" as claimed by the plaintiff. It should be remembered that both attachments were made in the same action, and upon parts of the same stock of goods and business. According to the documentary evidence in the case, as we have seen, the defendants in that action made an application to the court after the second attachment had been made for a release of the property from said attachments and the return thereof to them, they alleging that said property belonged to them and was in their possession at the time of the attachment. They offered a bond for the safe custody of the property pending the determination of the action. It is to be assumed that the plaintiff was notified of this application, and it would seem that, if Chua Doc De and Tim Ymco were the owners of the property, they themselves would have known of the seizure under the two attachments referred to and would have appeared in the action for the purpose of obtaining release of the two attachments upon the ground that the property belonged to them or to the firm of which they claimed to be partners. No such appearance, however, was made and the court issued an order dissolving the attachments and ordering the return of the property to Jose and Fernando Garrido. It should be noted that the order of the court dissolving the attachments required the giving of two bonds, one of P35,000 and the other of P17,500. The order is a typewritten order and was originally drawn so as to require the giving of one bond only and that for P35,000. After it had been typewritten, however, and at the time of the granting of the order of the 14th of April, 1905, the court, or someone for it, interlined with pen and ink just after the words "a bond in the sum of 35,000 pesos," these words: "and another for the sum of 17,500 pesos." This would indicate that the order was drawn after the first attachment and before the second, and, accordingly, provided for the giving of only one bond and that in the amount necessary for the dissolution of the first attachment; that, after the drawing of the order and before it was granted, the other attachment was made, and the order, when granted, providing for the dissolution of both attachments, must, as a consequence, provide for the corresponding bond for each.

The important thing is that the property seized under both attachments was ordered, after a hearing before the court, delivered back into the possession of Jose and Fernando Garrido as their property.

About the time that this was occurring, we find in the record a paper issued by the deputy sheriff who had made the attachments, setting out, as will be seen from the contents of the document hereinbefore quoted, that one Chua Ducly had laid claim to the ownership of the property thus attached and recites that "since the Court of First Instance of this province has ordered the dissolution of the attachment levied on the property of the defendants Jose Garrido and Fernando Garrido, I have deemed it proper to return and deliver to the third party, the Chinaman Chua Ducly (alias Dia), under his own responsibility, the merchandise which was taken from him on the 18th of February and the 21st of March last, as hereinbefore related."

Why property should be returned by the sheriff to Chua Ducly when the court had dissolved the two attachments thereon upon the ground that the property belonged to Jose and Fernando Garrido it is impossible to say, except upon the theory that Chua Duc was either an agent of the Garridos or was connected with them in business; and the consent of the Garridos to such delivery can be based only on some such assumption.

It is, therefore, important to note that the claim on the part of plaintiff and appellant that the delivery of the property "back to the appellant (Chua Doc De) was because of his sworn representations and claim of ownership of the property" is not altogether borne out by the documentary evidence of the case. The property was delivered as much by reason of the dissolution of the attachments, and perhaps much more, as by the resolution of the claim of ownership by Chua Doc De. In other words, the documentary evidence in the case seems to show that the property in question belonged to the Garridos rather than to the plaintiff in this case. This is still more evident when we observe that, when the levy was made under the execution issued against Jose and Fernando Garrido by Artadi & Co. and the same property already twice attached was seized and levied upon, a claim of ownership was put forward not by Chua Doc De who, it is claimed, had presented a claim of ownership when the property was attached and who is claiming exclusive ownership in this case, but by a partnership having the firm style and name of "Quimzungzing." This claim was put forward by one Tim Ymco, alleging that he and Chua Doc De were partners in the firm just mentioned. This levy, it must be remembered, was upon the same property upon which the attachments had been made previously and it is the property or substantially the property which was released from the attachments by order of the court upon the Garridos giving two bonds conditioned that they would take and safely keep the property delivered to them by virtue thereof, so that, in the event that Artadi & Co. obtained a judgment against them, it would then be subject to levy and sale under execution in favor of said company.

This claim on the part of the partnership mentioned having been made and Artadi & Co. not having given the bond required by section 451 of the Code of Civil Procedure, no sale of the property was made under the execution and the levy appears to have been abandoned. There is nothing in the record that shows when this occurred. We know that it was made in February, 1906, and that the claim was presented by the firm of "Quimzungzing" on the 3d of March following.

While the plaintiff testified that he was the owner of the goods, wares, and merchandise in question and that no other person had any interest therein, we have seen that that fact is disputed by the documentary evidence in the case and so seriously that we are left much in doubt as to the good faith and validity of plaintiff's pretensions in that regard. It is incumbent upon the plaintiff to prove his ownership, if he recover at all, by a fair preponderance of the evidence. Whether the evidence of a plaintiff preponderates or not depends not only upon the testimony itself, but upon the character and credibility of the witnesses presented to prove it. In this litigation three different persons or entities have claimed ownership of the property in question: Jose and Fernando Garrido, Chua Doc De (the plaintiff in this case), and the partnership of "Quimzungzing." The Garridos claimed the property and presented two undertakings conditioned in large amounts for the dissolution of two attachments and the return of said property to them. In that proceeding the judge found that they were entitled to possession of the property and, after the undertakings were filed, ordered it returned to them. About the same time an act of the sheriff, found in the record in the form of a receipt and delivery, seems to indicate that the plaintiff in this case had put in a claim as owner of the property attached and that the sheriff, in delivering the property, delivered it to him. In that receipt, however, are also mentioned the attachments levied against the Garridos and their dissolution by the court and the order to return the property attached to them. Later in the record we found the property being claimed by the firm of "Quimzungzing," represented by Tim Ymco, one of the alleged partners thereof, he asserting that he and the plaintiff in this case constituted the firm. This latter claim of ownership was admitted by the plaintiff in this case and the firm appears to have obtained a release of the property in its favor some time in April or May, 1906.

In this action, however, and as early as June, 1906, when the complaint was filed, we find the plaintiff claiming to be the sole owner of the property, without alleging how it ceased to be the property of Jose and Fernando Garrido or how it ceased to be the property of the firm of "Quimzungzing."

We are of the opinion that upon the whole case the plaintiff has not established his ownership of the property in such a manner as to warrant his recovery in this case. If plaintiff has done anything at all in that regard, it is to demonstrate that Tim Ymco (alias Yma) has an equal interest with him in the property. There can be no question that if the plaintiff has established any ownership of the property outside of the Garridos, it is a joint ownership between him and his partner. He recognized this clearly toward the close of the case and asked that the summons and complaint be amended so as to include Tim Ymco as a party plaintiff in the case. This amendment was opposed by the defendant upon the ground that it brought a new factor into the case which had not been there before and would require, in substance, a relitigation of the whole matter. The court took the matter under advisement, but, so far as the record shows, never ordered the amendment prayed for. As a necessary result there exists a defect of party plaintiff which is fatal to Chua Doc De's recovery in this action.

We do not think the evidence warrants the conclusion which appellant draws therefrom, namely, that defendant by its agents, servants, or employees took sufficient part in the attachments and levy to make the defendant company responsible either in trespass or for malicious interference with plaintiff's property. When a plaintiff places his execution in the hands of an officer for service, he is presumed to intend that no action shall be taken thereunder not authorized by the terms of the writ. The sheriff may seize the property of a stranger or do any other unauthorized act without thereby creating any liability against the plaintiff, because the plaintiff is not presumed to have directed or ratified the illegal proceeding. While this presumption may be rebutted and the injured party may show in such rebuttal that the plaintiff was a cotrespasser with the officer or that he ratified the trespass and thus make him responsible for the abuse of the writ, that has not been done in this case by a fair preponderance of the evidence.

It not having been shown that the defendant company was a cotrespasser with the officer or that it ratified the acts of the sheriff in making the attachments and the levy, the charge that it maliciously caused the attachments and levy to be made upon the property of the plaintiff falls.

The judgment appealed from is affirmed, with costs against the appellant.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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