

**IN RE LIQUIDATION OF THE MERCANTILE BANK OF CHINA.
GOPOCO GROCERY (GOPOCO) ET AL., CLAIMANTS AND
APPELLANTS, VS. PACIFIC COAST BISCUIT CO. ET AL., OPPOSITORS
AND APPELLEES.**

G.R. Nos. 43697 and 44200. March 31, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

On petition of the Bank Commissioner who alleged to have found, after an investigation, that the Mercantile Bank of China could not continue operating as such without running the risk of suffering losses and prejudicing its depositors and customers; and that with the requisite approval of the corresponding authorities, he had taken charge of all the assets thereof; the Court of First Instance of Manila declared the said bank in liquidation; approved all the acts theretofore executed by the commissioner; prohibited the officers and agents of the bank from interfering with said commissioner in the possession of the assets thereof, its documents, deeds, vouchers, books of account, papers, memorandums, notes, bonds, bonds and accounts, obligations or securities and its real and personal properties; required its creditors and all those who had any claim against it, to present the same in writing before the commissioner within ninety days; and ordered the publication, as was in fact done, of the order containing all these provisions, for two consecutive weeks in two newspapers of general circulation in the City of Manila, at the expense of the aforesaid bank. After these publications, and within the period of ninety days, the following creditors, among others, presented their claims:

Tiong Chui Gion, Gopoco Grocery, Tan Locko, Woo & Lo & Co., Sy Guan Huat, and La Bella Tondeña.

- The claim of Tiong Chui Gion is for the sum of P10,285.27. He alleged that he deposited said sum in the bank under liquidation on current account .

- The claim of Gopoco Grocery (Gopoco) is for the sum of P4,932.48 plus P460. It describes its claim as follows:

Balance due on open account subject to check

P4,927.95

Interest on c/a

4.53

4,932.48

Surety deposit

460.00

- The claim of Tan Locko is for the sum of P7,624.20, and he describes it in turn as follows:

Balance due on open account subject to check L-759

P7,610.44

Savings account No. 166 (foreign) with Mercantile Bank
of China L-1611 Amoy \$15,000.00

Interest on said Savings Account No. 156

3.22

Interest on checking a/c

10.54

7,624.20

- The claim of Woo & Lo & Co. is for the sum of P6,972.88 and is set out in its written claim appearing in the record on appeal as follows:

Balance due on open account subject to check L-845

P6,961.01

Interest on checking a/c

11.87

6,972.88

- The claim of Sy Guan Huat is for the sum of V6,232.88 and he describes it as follows:

Balance due on open account subject to check L-718

P6,224.34

Interest on checking a/c

8.54

6,232.88

- The claim of La Bella Tondeña is for the sum of P1,912.79, also described as follows:

Balance due on open account subject to check L-718

P1,910.59

Interest on account

2.20

1,912.79

To better resolve not only these claims but also the many others which were presented against the bank, the lower court, on July 15, 1932, appointed Fulgencio Borromeo as commissioner and referee to receive the evidence which the interested parties may desire to present; and the commissioner and referee thus named, after qualifying for the office and receiving the evidence presented to him, resolved the aforesaid six claims by recommending that the same be considered as an ordinary credit only, and not as a preferred credit as the interested parties wanted, because they were at the same time debtors of the bank.

The evidence adduced and the very admissions of the said interested parties in fact show that (a) the claimant Tiong Chui Gion, while he was a creditor of the Mercantile Bank of China in the sum of P10,285.27 which he deposited on current account, was also a debtor not only in the sum of P633.76 but also in the sum of P664.77, the amount of a draft which he accepted, plus interest thereon and the protest fees paid therefor; (b) the claimant Gopoco Grocery (Gopoco) had a current account in the bank in the sum of P5,392.48, but it is indebted to it, in turn, in the sum of \$2,334.80, the amount of certain drafts which it had accepted; (c) the claimant Tan Locko had a deposit of P7,624.20, but he owed \$1,378.90, the amount of a draft which he also accepted; (d) the claimant Woo & Lo & Co. had a deposit of P6,972.88, but it was indebted in the sum of \$3,464.84, the amount also of certain drafts accepted by it; (e) the claimants Sy Guan Huat and Siy Kia had a deposit of P6,232.88, but they owed the sum of \$3,107.37, for two drafts accepted by them and already due; and (f) the claimant La Bella Tondeña had, in turn, a deposit of P1,912.79, but it was, in turn, indebted in the sum of \$565.40 including interest and other expenses, the amount of two drafts drawn upon and accepted by it.

The lower court approved all the recommendations of the commissioner and referee as to the claims of the six appellants as follows: (1) To approve the claim of Tiong Chui Gion (P10,285.27) but only as an ordinary credit, minus the amount of the draft for P664.77; (2) to approve the claim of Gopoco Grocery (Gopoco) but also as an ordinary credit only (P5,387.95 according to the referee), minus its obligation amounting to \$2,334.80 or P4,669.60; (3) to approve the claim of Tan Locko but as an ordinary credit only (P7,610.44 according to the referee), deducting therefrom his obligation amounting to \$1,378.90 or P2,757.80; (4) to approve the claim of Woo & Lo & Co. but only as an ordinary credit (P6,961.01 according to the referee), after deducting its obligation to the bank, amounting to \$3,464.84 or P6,929.68; (5) to approve the claim of Sy Guan Huat but only as an ordinary credit (P6,224.34 according to the referee), after deducting his obligation amounting to \$3,107.37 or P6,214.74; and, finally, (6) to approve the claim of La Bella Tondeña but also as an ordinary credit only (P1,917.50 according to the referee), after deducting its obligation amounting to \$565.40 or P1,130.80; but he expressly refused to authorize the payment of interest by reason of impossibility upon the grounds set out in the decision. Not agreeable to the decision of the lower court, each of the interested parties appealed therefrom and thereafter filed their respective briefs.

Tiong Chui Gion argues in his brief filed in case G. R. No. 44200, that the lower court erred:

"1. In holding that his deposit of P10,285.27 in the Mercantile Bank of China, constitutes an ordinary credit only and not a preferred credit.

"2. In holding as preferred credits the drafts and checks issued by the bank under liquidation in payment of the drafts remitted to it for collection from merchants residing in the country, by foreign entities or banks; and in not holding that the deposits on current account in said bank should enjoy preference over said drafts and checks; and

"3. In holding that the amount of P633.76 (which should be understood as P664.77), which the claimant owes to the bank under liquidation, be deducted from his current account deposit therein, amounting to P10,285.27, upon the distribution of the assets of the bank among its various creditors, instead of holding that, after deducting the aforesaid sum of P633.76 (should be P664.77) from his aforesaid deposit, there be turned over to

him the balance together with the dividends or shares then corresponding to him, on the basis of said amount."

The other five claimants, that is, Gopoco Grocery Tan Locko, Woo & Lo & Co., Sy Guan Huat and La Bella Tondeña, in turn, argue in the brief they jointly filed in case G. R. No. 43697, that the lower court erred:

"1. In not first deducting from their respective deposits in the bank under liquidation, whose payment they claim, their respective obligations thereto.

"2. In not holding that their claims constitute a preferred credit.

"3. In holding that the drafts and checks issued by the bank under liquidation in payment of the drafts remitted to it by foreign entities and banks for collection from the certain merchants residing in the country, are preferred credits; and in not holding that the deposits made by each of them enjoy preference over said drafts and checks, and

"4. In denying their motion for a new trial based on the proposition that the appealed decision is not in accordance with law and is contrary to the evidence adduced at the trial."

The questions raised by the appellant in case G. R. No. 44200 and by the appellants in case G. R. No. 43697 being identical in nature, we believe it practical and proper to resolve said questions jointly in one decision. Before proceeding, however, it is convenient to note that the commissioner and referee, classifying the various claims presented against the bank, placed under one group those partaking of the same nature, the classification having resulted in six groups.

In the first group he included all the claims for current account, savings and fixed deposits.

In the second group he included the claims for checks or drafts sold by the bank under liquidation and not paid by the agents or banks in whose favor they had been issued.

In the third group he included the claims for checks or drafts issued by the bank under liquidation in payment or reimbursement of the drafts or goods remitted to it for collection, from resident merchants and entities, by foreign banks and entities.

In the fourth group he included the claims for drafts or securities to be collected from resident merchants and entities which were pending collection on the date payments were suspended.

In the fifth group he included the claims of certain depositors or creditors of the bank who were at the same time debtors thereof; and he considered of this class the claims of the appellants in these two cases, and

In the sixth group he included the other claims different in nature from that of the aforesaid five claims.

- Now, then, should the appellants' deposits on current account in the bank now under liquidation be considered preferred credits, and not otherwise, or should they be considered ordinary credits only? The appellants contend that they are preferred credits because they are deposits in contemplation of law, and as such should be returned with the corresponding interest thereon. In support thereof they cite Manresa (11 Manresa, Civil Code, page 663), and what has been insinuated in the case of Rogers vs. Smith, Bell & Co. (10 Phil., 319), citing the said commentator who maintains that, notwithstanding the provisions of articles 1767 and 1768 and others of the aforesaid Code, from which it is inferred that the so-called irregular deposits no longer exist, the fact is that said deposits still exist. And they contend and argue that what they had in the bank should be considered as of this character. But it happens that they themselves admit that the bank had been paying them interest and that even now the bank owes them interest which should have been paid to them before it was declared in a state of liquidation. This fact undoubtedly destroys the character which they would impress upon their deposits on current account, and nullifies their contention that the same be considered as irregular deposits, because the payment of

interest only takes place in the case of loans. On the other hand, as we stated with respect to the claim of Tan Tiong Tick (In re Liquidation of Mercantile Bank of China, G. R. No. 43682), the provisions of the Code of Commerce, and not those of the Civil Code, are applicable to cases of the nature of those at bar, which have to do with parties who are both merchants. (Articles 303 and 309, Code of Commerce.) We there said, and it is not amiss to repeat now, that the so-called current Recount and savings deposits have lost their character of deposits, properly so-called, and are converted into simple commercial loans because, in cases of such deposits, the bank has made use thereof in the ordinary course of its transactions as an institution engaged in the banking business, not because it so wishes, but precisely because of the authority deemed to have been granted to it by the appellants to enable them to collect the interest which they had been and they are now collecting, and by virtue further of the authority granted to it by section 125 of the Corporation Law (Act No. 1459), as amended by Acts Nos. 2003 and 3610 and section 9 of the Banking Law (Act No. 3154), without considering of course the provisions of article 1768 of the Civil Code. Wherefore, it is held that the deposits on current account of the appellants in the bank under liquidation, with the right on their part to collect interest, have not created and could not create a juridical relation between them except that of creditors and debtor, they being the creditors and the bank the debtor.

What has so far been said resolves adversely the contention of the appellants, the question raised in the first and second assigned errors of Tiong Chui Gion in case G. R. No. 44200, and the appellants' second and third assigned errors in case G. R. No. 43697.

- As to the third and first errors attributed to the lower court by Tiong Chui Gion in his case, and by the other appellants in theirs, respectively, it should be stated that the question of set-off raised by them cannot be resolved except in the same way that we resolved a like question in the said case, G. R. No. 43632, entitled "In re Liquidation of Mercantile Bank of China. Tan Tiong Tick, claimant." It is proper that set-offs be made, inasmuch as the appellants and the bank being reciprocally debtors and creditors, the same is only just and according to law (art. 1195, Civil Code), particularly as none of the appellants falls within the exceptions mentioned in section 58 of the Insolvency Law (Act No. 1956), reading:

"Sec. 58. In all cases of mutual debts and mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed and paid. But no set-off or counterclaim shall be allowed of a claim in its nature not provable against the estate: Provided, That no set-off on counterclaim shall be allowed in favor of any debtor to the insolvent of a claim purchased by or transferred to such debtor within thirty days immediately preceding the filing, or after the filing of the petition by or against the insolvent."

It has been said with much basis by Morse, in his work on Bank & Banking (6th ed., vol. 1, pages 776 and 784) that:

"The rules of law as to the right of set-off between the bank and its depositors are not different from those applicable to other parties." (Page 776.)

"Where the bank itself stops payment and becomes insolvent, the customer may avail himself in set-off against his indebtedness to the bank of any indebtedness of the bank to himself, as, for example, the balance due him on his deposit account." (Page 784.)

But if set-offs are proper in these cases, when and how should they be made, considering that the appellants ask for the payment of interest? Are they by any chance entitled to interest? If they are, when and until what time should they be paid the same?

The question of whether they are entitled to interest should be resolved in the same way that we resolved the case

of the claimant Tan Tiong Tick in the said case, G. R. No. 43682. The circumstances in these two cases are certainly the same as those in the said case with reference to the said question. The Mercantile Bank of China owes to each of the appellants the interest claimed by them, corresponding to the year ending December 4, 1931, the date it was declared in a state of liquidation, but not those which the appellants claim should be earned by their deposits after said date and until the full amounts thereof are paid to them. And with respect to the question of set-off, this should be deemed made, of course, as of the date when the Mercantile Bank of China was declared in a state of liquidation, that is, on December 4, 1931, for then there was already a reciprocal concurrence of debts, with respect to said bank and the appellants. (Arts. 1195 and 1196 of the Civil Code; 8 Manresa, 4th ed., p. 361.)

- With respect to the fourth assigned error of the appellants in case G. R. No. 43697, we hold, in view of the considerations set out in resolving the other assignments of error, that the lower court properly denied the motion for new trial of said appellants.

In view of the foregoing, we modify the appealed judgments by holding that the deposits, claimed by the appellants, and declared by the lower court to be ordinary credits, are for the following amounts: P10,285.27 of Tiong Chui Gion; P5,387.95 of Gopoco Grocery (Gopoco); P7,610.44 of Tan Locko; P6,961.01 of Woo & Lo & Co.; P6,224.34 of Sy Guan Huat; and P1,917.50 of La Bella Tondeña, plus their corresponding interests up to December 4, 1931; that their obligations to the bank under liquidation which should be set off against said deposits, are respectively for the following amounts: P664.77 of Tiong Chui Gion; P4,669.60 of Gopoco Grocery (Gopoco); P2,757.80 of Tan Locko; P6,929.68 of Woo & Lo & Co.; P6,214.74 of Sy Guan Huat; and P1,130.80 of La Bella Tondeña; and we order that the set-offs in question be made in the manner stated in this decision, that is, as of the date already indicated, December 4, 1931. In all other respects, we affirm the aforesaid judgments, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, and Horrilleno, JJ., concur.

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