44 Phil. 916

[G. R. No. 18703. August 28, 1922]

INVOLUNTARY INSOLVENCY OF CAMPOS RUEDA & CO., S. EN C., APPELLEE, VS. PACIFIC COMMERCIAL CO., ASIATIC PETROLEUM CO., AND INTERNATIONAL BANKING CORPORATION, PETITIONER AND APPELLANTS.

D E C I S I O N

ROMUALDEZ, J.:

The record of this proceeding having been transmitted to this court by virtue of an appeal taken herein, a motion was presented by the appellants praying this court that this case be considered purely a moot question now, for the reason that subsequent to the decision appealed from, the partnership Campos Rueda & Co., voluntarily filed an application for a judicial decree adjudging itself insolvent, which is just what the herein petitioners and appellants tried to obtain from the lower court in this proceeding.

The motion now before us must be, and is hereby, denied even under the facts stated by the appellants in their motion aforesaid. The question raised in this case is not a purely moot one; the fact that a man was insolvent on a certain day does not justify an inference that he was some time prior thereto.

> "Proof that a man was insolvent on a certain day does not justify an inference that he was on a day some time prior thereto. Many contingencies, such as unwise investments, losing contracts, misfortune, or accident, might happen to reduce a person from a state of solvency within a short space of time. " (Kimball vs. Dressert, 98 Me., 519; 57 Atl. Rep., 767.)

A decree of insolvency begins to operate on the date it is issued. It is one thing to adjudge Campos Rueda & Co. insolvent in December, 1921, as prayed for in this case, and another to declare it insolvent in July, 1922, as stated in the motion.

Turning to the merits of this appeal, we find that this limited partnership was, and is, indebted to the appellants in various sums amounting to not less than P1,000, payable in the Philippines, which were not paid more than thirty days prior to the date of the filing by the petitioners of the application for involuntary insolvency now before us. These facts were sufficiently established by the evidence.

The trial court denied the petition on the ground that it was not proven, nor alleged, that the members of the aforesaid firm were insolvent at the time the application was filed; and that as said partners are personally and solidarily liable for the consequences of the transactins of the partnership, it cannot be adjudged insolvent so long as the partners are not alleged and proven to be insolvent. From this judgment the petitioners appeal to this court, on the ground that this finding of the lower court is erroneous.

The fundamental question that presents itself for decision is whether or not limited partnership, such as the appellee, which has failed to pay its obligations with three creditors for more than thirty days, may be held to have committed an act of insolvency, and thereby be adjudged insolvent against its will.

Unlike the common law, the Philippine statutes consider a limited partnership as a juridical entity for all intents and purposes, which personality is recognized in all its acts and contracts (art. 116, Code of Commerce). This being so and the juridical personality of a limited partnership being different from that of its members, it must, on general principle, answer for, and suffer, the consequence of its acts as such an entity capable of being the subject of rights and obligations. If, as in the instant case, the limited partnership of Campos Rueda & Co. failed to pay its obligations with three creditors for a period of more than thirty days, which failure constitutes, under our Insolvency Law, one of the acts of bankruptcy upon which an adjudication of involuntary insolvency can be predicated, this partnership must suffer the consequences of such failure, and must be adjudged insolvent. We are not unmindful of the fact that some courts of the United States have held that a partnership may not be adjudged insolvent in an involuntary insolvency proceeding unless all of its members are insolvent, while others have maintained a contrary view. But it must be borne in mind that under the American common law, partnerships have no juridical personality independent from that of its members; and if now they have such personality for the purposes of the insolvency law, it is only by virtue of a general law enacted by the Congress of the United States on July 1, 1898, section 5, paragraph (h), of which reads thus:

> "In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt."

The general consideration that these partnerships had no juridical personality and the limitations prescribed in subsection (h) above set forth gave rise to the conflict noted in American decisions, as stated in the case of In re Samuels (215 Fed., 845), which mentions the two apparently conflicting doctrines, citing one from In re Bertenshaw (157 Fed., 363), and the other from Francis vs. McNeal (186 Fed., 481).

But there being in our insolvency law no such provision as that contained in section 5 of said Act of Congress of July 1, 1898, nor any rule similar thereto, and the juridical personality of limited partnerships being recognized by out statues their formation in all their acts and contracts the decisions of American courts on this point can have no application in this jurisdication, nor do we see any reason why these partnerships cannot be adjudged bankrupt irrespective the partnership has, as such, committed some of the acts of insolvency provided in our law. Under this view it is unnecessary to discuss the other points raised by the parties, although in the particular case under consideration it can be added that the liability of the limited partners for the obligations and losses of the partnership is limited to the amounts paid or promised to be paid into the common fund except when a limited partner should have included his name or consented to its inclusion in the firm name (arts. 147 and 148, Code of Commerce).

Therefore, it having been proven that the partnership Campos Rueda & Co. failed for more than thirty days to pay its obligations to the petitioners, the Pacific Commercial Co., the Asiatic Petroleum Co., and the International Banking Corporation, the case comes under paragraph 11 have the right to a judical decree declaring the involuntary insolvency of said partnership.

Wherefore, the judgment appealed from is reversed, and it is adjudged that the limited partnership Campos Rueda & Co. is, and was on December 28, 1921, insolvent and liable for having failed for more than thirty days to meet its obligations with the three petitioners herein, and it is ordered that this proceeding be remanded to the Court of First Instance of

Manila with instruction to said court to issue the proper decrees under section 24 of Act No. 1956, and proceed therewith until its final disposition.

It is so ordered without special finding as to costs.

Araullo, C. J., Johnson, Street, Malcolm, Avaceña, Villamor, Ostrand, and *Johns, JJ.,* concur.

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