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[G.R. No. L-5081. February 24, 1954]

MARVEL BUILDING CORPORATION, ET AL., PLAINTIFFS AND APPELLEES, VS. SATURNINO DAVID, IN HIS CAPACITY AS COLLECTOR, BUREAU OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

D E C I S I O N

LABRADOR, J.:

This action was brought by plaintiffs as stockholders of the Marvel Building Corporation to enjoin the defendant Collector of Internal Revenue from selling at public auction various properties described in the complaint, including three parcels of land, with the buildings situated thereon, known as the Aguinaldo Building, the Wise Building, and the Dewey Boulevard-Padre Faura Mansion, all registered in the name of said corporation. Said properties were seized and distrained by defendant to collect war profits taxes assessed against plaintiff Maria B. Castro (Exhibit B). Plaintiffs allege that the said three properties (lands and buildings) belong to the Marvel Building Corporation and not to Maria B. Castro, while the defendant claims that Maria B. Castro is the true and sole owner of all the subscribed stock of the Marvel Building Corporation, including those appearing to have been subscribed and paid for by the other members, and consequently said Maria B. Castro is also the true and exclusive owner of the properties seized. The trial court held that the evidence, which is mostly circumstantial, fails to show to its satisfaction that Maria B. Castro is the true owner of all the stock certificates of the corporation, because the evidence is susceptible of two interpretations and an interpretation may not be made which would deprive one of property without due process of law.

It appears that on September 15, 1950, the Secretary of Finance, upon consideration of the report of a special committee assigned to study the war profits tax case of Mrs. Maria B. Castro, recommended the collection of P3,593,950.78 as war profits taxes for the latter, and on September 22, 1953 the President instructed the Collector that steps be taken to collect the same (Exhibits 114, 114-A to 114-D). Pursuant thereto various properties, including the three above mentioned, were seized by the Collector of Internal Revenue on October 31, 1950. On November 13, 1950, the original complaint in this case was filed. After trial, the Court of First Instance of Manila rendered judgment ordering the release of the properties mentioned, and enjoined the Collector of Internal Revenue from selling the same. The Collector of Internal Revenue has appealed to this Court against the judgment.

The following facts are not disputed, or are satisfactorily proved by the evidence:

The Articles of Incorporation of the Marvel Building Corporation is dated February 12, 1947 and according to it the capital stock is P2,000,000, of which P1,025,000 was (at the time of incorporation) subscribed and paid for by the following incorporators:

Maria B. Castro	250	shares	P250,000.00
Amado A. Yatco	100	"	100,000.00
Santiago Tan	100	"	100,000.00
Jose T. Lopez	90	"	90,000.00
Benita Lamagna	90	"	90,000.00
C. S. Gonzales	80	"	80,000.00
Maria Cristobal	70	"	70,000.00
Segundo Esguerra, Sr.	75	"	75,000.00
Ramon Sangalang	70	"	70,000.00
Maximo Cristobal	55	"	55,000.00
Antonio Cristobal	45	"	45,000.00
			P1,025,000.00

Maria B. Castro was elected President and Maximo Cristobal, Secretary-Treasurer (Exhibit A).

The Wise Building was purchased on September 4, 1946, the purchase being made in the name of Dolores Trinidad, wife of Amado A. Yatco (Exhibit V), and the Aguinaldo Building, on January 17, 1947, in the name of Segundo Esguerra, Sr. (Exhibit M). Both building were purchased for P1,800,000, but as the corporation had only P1,025,000, the balance of the purchase price was obtained as loans from the Insular Life Assurance Co., Ltd. and the Philippine Guaranty Co., Inc. (Exhibit C).

Of the incorporators of the Marvel Buildinjr Corporation, Maximo Cristobal and Antonio Cristobal are half-brothers of Maria B. Castro, Maria Cristobal is a half-sister, and Segundo Esguerra, Sr. a brother-in-law, husband of Maria Cristobal, Maria B. Castro's half-sister. Maximo B. Cristobal did not file any income tax returns before the year 1946, except for the years 1939 and 1940, but in these years he was exempted from the tax. He has not filed any war profits tax return (Exhibit 54). Antonio Cristobal, Segundo Esguerra, Sr. and Jose T. Lopez did not file any income tax returns for the years prior to 1946, and neither did they file any war profits tax returns (Exhibit 52). Maria Cristobal filed income tax returns for the years 1929 to 1942, but they were exempt from the tax (Exhibit 53). Benita A. Lamagna did not file any income tax returns prior to 1945, except for 1942 which was exempt. She did not file any war profits tax (Exhibit 55). Ramon M. Sangalang did not file income tax returns up to 1945 except for the years 1936, 1937, 1938, 1939 and 1940. He has not filed any war profits tax return (Exhibit 56). Santiago Tan did not file any income tax returns prior to 1945, except for the years 1938, 1939, 1940 and 1942, but all of these were exempt. He did not file any war profits tax return (Exhibit 57). Amado A. Yatco did not file income tax returns prior to 1945, except for the years 1937, 1938, 1939, 1941 and 1942, but these were exempt. He did not file any war profits tax return (Exhibit 58).

Antonio Cristobal's income in 1946 is P15,630, and in 1947, P4,550 (Exhibits 59-60) ; Maximo B. Cristobal's income in 1946 is P19,759.10, in 1947, P9,773.47 (Exhibits 61-62) ; Segundo Esguerra's income in 1946 is P5,500, in 1947, P7,754.32 (Exhibits 63-64); Jose T. Lopez's income in 1946 is P20,785, in 1947, P14,302.77 (Exhibits 69-70); Benita A.

Lamagna's income in 1945 is P1,559, in 1946, P6,463.36, in 1947, P6,189.79 and her husband's income in 1947 is P10,825.53 (Exhibits 65-68); Ramon M. Sangalang's income in 1945 is P5,500, in 1946, P18,300.00 (Exhibits 71-72); Santiago Tan's income in 1945 is P456, in 1947 is P9,167.95, and in 1947, P7,620.11 (Exhibits 73-75); and Amado Yatco's income in 1945 is P12,600, in 1946, P23,960, and in 1947, P11,160 (Exhibits 76-78).

In October, 1945 Maria B. Castro, Nicasio Yatco, Maxima Cristobal de Esguerra, Maria Cristobal Lopez and Maximo Cristobal organized the Maria B. Castro, Inc. with a capital stock of P100,000, of which Maria B. Castro subscribed for P99,600 and all the others for P100 each. This was increased in 1950 to P500,000 and Maria B. Castro subscribed P76,000 and the others P1,000 each (Exhibit 126).

It does not appear that the stockholders or the board of directors of the Marvel Building Corporation have ever held a business meeting, for no books thereof or minutes of meeting were ever mentioned by the officers thereof or presented by them at the trial. The by-laws of the corporation, if any had ever been approved, has not been presented. Neither does it appear that any report of the affairs of the corporation has been made, either of its transactions or accounts.

From the book of accounts of the corporation, advances to the Marvel Building Corporation of P125,000 were made by Maria B. Castro in 1947, P102,916.05 in 1948, and P160,910.96 in 1949 (Exhibit 118).

The main issue involved in these proceedings is: Is Maria B. Castro the owner "of all the shares oi stock of the Marvel Building Corporation and the other stockholders mere dummies of hers?

The most important evidence presented by the Collector of Internal Revenue to prove his claim that Maria B. Castro is the sole and exclusive owner of the shares of stock of the Marvel Building Corporation is the supposed endorsement in blank of the shares of stock issued in the name of the other incorporators, and the possession thereof by Maria B. Castro. The existence of said endorsed certificates

was testified to by witnesses Felipe Aquino, internal revenue examiner, Antonio Mariano, examine!. and Crispin Llamado, Under-Secretary of Finance, who declared as follows: Towards the end of the year 1948 and about the beginning of the year 1949, while Aquino and Mariano were examining the books and papers of the Marvel Building Corporation at its place of business, which books and papers were furnished by its Secretary, Maximo Cristobal, they came across an envelope containing eleven stock certificates, bound together by an Acco fastener, which (certificates) corresponded in number and in amount on their face to the subscriptions of the stockholders' that all the certificates, except that in the name of Maria B. Castro, were endorsed in blank by the subscribers; that as the two revenue agents could not agree what to do with the certificates, Aquino brought them to Under-Secretary of Finance Llamado, who thereupon suggested that photostatic copies thereof be taken; that this was done, and the photostatic copies placed by him in his office safe; that Aquino returned the certificates that same day after the photostatic copies had been taken; that the photostatic copies taken are Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13; and in that July, 1950, copy-cat copies of the above photostats were taken, and said copy-cat copies are Exhibits 40-49.

Julio Llamado, bookkeeper of the Marvel Building Corporation from 1947 to May, 1948, also testified that he was the one who had prepared the original certificates, putting therein the number of shares in words in handprint; that the originals were given to him by Maria B. Castro for comparison with the articles of incorporation; that they were not yet signed by the President and by the Secretary-Treasurer when he had the certificates; and that after the checking he returned all of them to Mrs. Castro. He recognized the photostats, Exhibits 4 to 13 as photostats of the said originals. He also declared that he also prepared a set of stock certificates, similar to the certificates which were copied in the photostats, filling the blanks for the name of the stockholder, the number of shares, and the date of issue, and that the certificates he had prepared are Exhibits H, H-1 to H-7 and J (Exhibits 30-38). This set of certificates was made by him first and the set of which photostats were taken, a few days later.

The plaintiffs offered a half-hearted denial of the existence of the endorsed blank certificates, Maximo Cristobal, secretary of the corporation, saying that no investigation was ever made by Aquino and Mariano in which said certificates were discovered by the latter. They, however, vigorously attack the credibility of the witnesses for the defendant, imputing to the Llamados, enmity against Maria B. Castro, and to Aquino and Mariano, a very doubtful conduct in not divulging the existence of the certificates either to Lobrin, Chief Income Tax Examiner, or to the Collector of Internal Revenue, both their immediate chiefs. Reliance is also placed on a certificate, Exhibit W, wherein Aquino and others, declare that the certificates (Exhibits 30 to 38, or H, H-1 to H-7 and J) were regular and were not endorsed when the same were examined In connection with this certificate, Exhibit W, we note that it states that the certificates examined were Exhibits 30 to 38, the existence or character of which are not disputed. But the statement contains nothing to the effect that the above certificates were the only ones in existence, according to their knowledge. Again the certificate was issued for an examination on September 1949, not by Aquino and Mariano at the end of 1948 or the beginning of 1949. The certificate, therefore, neither denies the existence of the endorsed certificates, nor that Aquino and Mariano had made an examination of the papers of the corporation at the end of the year 1948. It can not, therefore, discredit the testimonies of the defendant's witnesses.

As to the supposed enmity of the Llamados towards the plaintiff Maria B. Castro, we note that, supposing that there really was such enmity, it does not appear that it was of such magnitude or force as could have induced the Llamados to lie or fabricate evidence against her. It seems that the Llamados and Maria B. Castro were close friends way back in 1947 and up to 1949; but that at the time of the trial the friendship had been marred by misunderstandings. We believe that in 1948 and 1949 the Llamados were trusted friends of Maria B. Castro, and this explains why they had knowledge of her secret transactions. The younger Llamado even made advances for the hand of Maria B. Castro's daughter, and this at the time when as a bookkeeper he was entrusted with checking up the certificates of stock. When the older Llamado kept

secret the existence of the endorsed certificates, the friendship between the two families was yet intact; hence, the existence of the endorsed certificates must have been kept to himself by the older Llamado. All the above circumstances reinforce our belief that the Llamados had personal knowledge of the facts they testified to, and the existence of this knowledge in turn renders improbable plaintiffs' claim that their testimonies were biased.

Attempt was also made by the plaintiffs to show by expert evidence that the endorsement could have been superimposed, i.e., that the signatures made on other papers and these were pasted and thereafter the documents photographed. Judicial experience is to the effect that expert witnesses can always be obtained for both sides of an issue, most likely because expert witnesses are no longer impermeable to the influence of fees (II Wigmore, *bee.* 563 (2), p. 646). And if parties are capable of paying fees, expert opinion should be received with caution. In the case at bar, the opinion on the supposed superimposition was merely a *possibility*, and we note various circumstances which prove that the signatures were not superimposed and corroborate defendant's claim that they were genuine. In the first place, the printed endorsement contains a very heavy line at the bottom for the signature of the endorsee. This line in almost all of the endorsements is as clear as the printed letters above it, and at the points where the letters of the signature extend down and traverse it (the line), there is no indication that the line is covered by a superimposed paper. Again in these places both the signatures and the lines are clear and distinct, where they cross one another. Had there been superimposition the above features could not have been possible. In the second place, Maria B. Castro admitted having signed 25 stock certificates, but only eleven were issued (t. s. n., p. 662). No explanation is given by her why she had to sign as many as 25 forms when there were only eleven subscribers and eleven forms to be filled. This circumstances corroborate the young Llamado's declaration that two sets of certificates had been prepared. The nineteen issued must be Exhibits H, H-1 to H-7 and J, or Nos. 30 to 38, and the stock certificates endorsed whose photostatic copies are Exhibits 4 to 13. It

is to be remembered also, that it is a common practice among unscrupulous merchants to carry two sets of books, one set for themselves and another to be shown to tax collectors. This practice could not have been unknown to Maria B. Castro, who apparently had been able to evade the payment of her war profits taxes. These circumstances, coupled with the testimony of Julio Llamado that two sets of certificates were given to him for checking, show to an impartial mind the existence of the set of certificates endorsed in blank, thus confirming the testimonies of the defendant's witnesses, Aquino, Mariano and Crispin Llamado, and thus discrediting the obviously partial testimony of the expert presented by plaintiffs. The genuineness of the signatures on the endorsements is not disputed. How could the defendant have secured these genuine signatures? Plaintiffs offer no explanation for this, although they do not question them. It follows that the genuine signatures must have been made on the stock certificates themselves.

Next in importance among the evidence submitted by the defendant collector to prove his contention that Maria B. Castro is the sole owner of the shares of stock of the Marvel Building Corporation, is the fact that the other stockholders did not have incomes in such amounts, during the time of the organization of the corporation in 1947, or immediately thereto, as to enable them to pay in full for their supposed subscriptions. This fact is proved by their income tax returns, or the absence thereof. Let us take Amado A. Yatco as an example. Before 1945 his returns were exempt from the tax, in 1945 he had P12,600 and in 1946, P23,000. He has four children. How could he have paid P100,000 in 1945 and 1946? Santiago Tan who also contributed P100,000 had no appreciable income before 1946, and in this year an income of only P9,167.95. Jose T. Lopez also did not file any income tax returns before 1940 and in 1946 he had an income of only P20,785, whereas he is supposed to have subscribed P90,000 worth of stock early in 1947. Benita Lamagna had no returns either up to 1945, except in 1942, which was exempt, and in 1945 she had an income of P1,550 and in 1946, P6,463.36. in the same situation are all the others, and besides, brothers and sisters and brother-in-law of Maria B. Castro. On the

other hand, Maria B. Castro had been found to have made enormous gains or profits in her business such that the taxes thereon were assessed at around P3,000,000. There was, therefore, in *prima facie* case made out by the defendant collector that Maria B. Castro had furnished all the money that the Marvel Building Corporation had.

In order to meet the above evidence only three of the plaintiffs testified, namely, Maximo Cristobal, the corporation's secretary, who made the general assertion on the witness stand that the other stockholders paid for their shares in full, Maria B. Castro, who stated that payments of the subscriptions were made to her, and C. S. Gonzales, who admitted that Maria B. Castro paid for his subscription. After a careful study of the above testimonies, however, we find them subject to various objections. Maximo Cristobal declared that he issued provincial receipts for the subscriptions supposedly paid to him in 1946; but none of the supposed receipts was presented. If the subscriptions were really received by him, big as the amounts were, he would, have been able to tell specifically, by dates and in fixed amounts, when and how the payments were made. The general assertion of alleged payments, without the concrete days and amounts of payments, are, according to our experience, positive indications of untruthfulness, for when a witness testified to a fact that actually occurs, the act is concretely stated and no generalization is made.

With respect to Maria B. Castro's testimony, we find it to be as untruthful as that of Cristobal. She declared that payments of the subscriptions took place between July and December, 1946, and that said payments were first deposited by her in the National City Bank of New York. A study of her account in said bank (Exhibit 82), however, fails to show the alleged deposit of the subscriptions during the year 1946 (See Exhibits 83-112). This fact completely belies her assertion. As to the testimony of C. S. Gonzales that Maria B. Castro advanced his subscription, there is nothing in the evidence to corroborate it, and the circumstances show otherwise. If he had really been a stockholder and Maria B. Castro advanced his subscription, the agreement between him and Castro should have been put in writing, the amount advanced being quite considerable (P80,000), and it appearing further that

Gonzales is no close relative or confidant of Castro.

Lastly, it is significant that the plaintiffs, the supposed subscribers, who should have come to court to assert that they actually paid for their subscriptions, and are not mere dummies, did not do so. They could not have afforded such a costly indifference, valued at from P70,000 to P100,000 each, if they were not actual dummies. This failure on their part to take the witness stand to deny or refute the charge that they were mere dummies is to us of utmost significance. What could have been easier to disprove the charge that they were dummies, than for them? to come to court and show their receipts and testify on the payments they have made on their subscriptions? This they, however, refused to do. They had it in their power to rebut the charges, but they chose to keep silent. The non-production of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the inference that its tenor is unfavorable to the party's cause (II Wigmore, Sec. 285, p. 162). A party's silence to adverse testimony is equivalent to an admission of its truth (Ibid, Sec. 289, p. 175).

Our consideration of the evidence submitted on both sides leads us to a conclusion exactly opposite that arrived at by the trial court. In general the evidence offered by the plaintiffs is testimonial and direct evidence, easy of fabrication; that offered by defendant, documentary and circumstantial, not only difficult of fabrication but in most cases found in the possession of plaintiffs. There is very little room for choice as between the two. The circumstantial evidence is not only convincing; it is conclusive. The existence of endorsed certificates, discovered by the internal revenue agents between 1948 and 1949 In the possession of the Secretary-Treasurer, the fact that twenty-five certificates were signed by the president of the corporation, for no justifiable reason, the fact that two sets of certificates were issued, the undisputed fact that Maria B. Castro had made enormous profits and, therefore, had a motive to hide them to evade the payment of taxes, the fact that the other subscribers had no incomes of sufficient magnitude to justify their big subscriptions, the fact that the subscriptions were not receipted for and deposited by the

treasurer in the name of the corporation but were kept by Maria B. Castro herself, the fact that the stockholders or the directors never appeared to have ever met to discuss the business of the corporation, the fact that Maria B. Castro advanced big sums of money to the corporation without any previous arrangement or accounting, and the fact that the books of accounts were kept as if they belonged to Maria B. Castro alone—these facts are of patent and potent significance. What are their necessary implications? Maria B. Castro would not have asked them to endorse their stock certificates, or be keeping these in her possession, if they were really the owners. They never would have consented that Maria B. Castro keep the funds without receipts or accounting, nor that she manages the business without their knowledge or concurrence, were they owners of the stocks in their own rights. Each and every one of the facts all set forth above, in the same manner, is inconsistent with the claim that the stockholders, other than Maria B. Castro, owned their shares in their own right. On the other hand, each and every one of them, and all of them, can point to too other conclusion than that Maria B. Castro was the sole and exclusive owner of the shares and that they were only her dummies.

In our opinion, the facts and circumstances duly set forth above, all of which have been proved to our satisfaction, prove conclusively and beyond reasonable doubt (section 89, Rule 123 of the Rules of Court and section 42 of the Provisional law for the application of the Penal Code) that Maria B. Castro is the sole and exclusive owner of all the shares of stock of the Marvel Building Corporation and that the other partners are her dummies.

Wherefore, the judgment appealed from should be, as it hereby is, reversed and the action filed by plaintiffs-appellees, dismissed, with costs against plaintiffs-appellees. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo and Bautista Angelo, JJ., concur.
