

ELTON W. CHASE, AS MINORITY STOCKHOLDER AND ON BEHALF OF OTHER STOCKHOLDERS SIMILARLY SITUATED AND FOR THE BENEFIT OF AMERICAN MACHINERY AND PARTS MANUFACTURING, INC., PLAINTIFF-...

G.R. No. L-20395. May 13, 1985

Ponente: CUEVAS, J.

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CUEVAS, J.:

This is a joint appeal interposed by both plaintiffs and defendants from the decision of the then Court of First Instance of Manila in its Civil Case No. 49346, the dispositive portion of which reads —

"IN VIEW WHEREOF, on the complaint, Dr. Buencamino is condemned to pay Amparts the sum of P1,970,200.00 with legal interest from the date of the filing of the complaint; he is also prohibited from collecting any interest on the sum of P300,000 paid by him on the 15th July, 1955 on the initial subscription, and such interest as has already been paid to him is ordered refunded with legal interest from the date of the filing of the complaint; the lease on his Apartment is declared to terminate and be terminated after 1 year from the date this decision shall have become final; on the counterclaims, Elton Chase is condemned to pay Amparts the sum of P500.00 with legal interest from the date of the filing of the counterclaim; the other charges and counter charges are dismissed; no more pronouncement as to costs. SO ORDERED.

Manila, 3 May, 1962."

On August 20, 1960, Elton Chase in his capacity as director and minority stockholder of American Machinery and Parts Manufacturing, Inc. (AMPARTS) and in behalf of the other stockholders of said corporation similarly situated and for the benefit of Amparts filed Civil Case No. 49346, before the then Court of First Instance of Manila, Branch XIV against —

- a) Dr. Victor Buencamino, Sr. in his capacity as Director, President and General Manager of Amparts;
- b) Victor Buencamino, Jr., in his capacity as Director, Treasurer and Liaison Officer;
- c) Julio B. Francia in his capacity as Director and Assistant General Manager;
- d) Dolores A. Buencamino in her capacity as Director; and
- e) Spouses William E. Cranker and Florence Cranker alias Florence Barker who together hold 1/3 of the entire subscribed and outstanding shares of stocks of Amparts.

The complaint seeks —

- a) the removal of Dr. Buencamino, Sr., Victor Buencamino, Jr. and Julio B. Francia from the offices held by them;
- b) to enjoin defendants from participating in the management, operation and control of Amparts;

- c) if necessary, order a dissolution and liquidation of Amparts;
- d) the appointment of a receiver pendente lite in order to prevent the continuance and aggravation of the violations of defendants and to preserve and protect the rights and interests of plaintiff-appellant and other stockholders similarly situated; and
- e) for general relief.[1]

Defendants William B. Cranker and Florence Cranker even at the time the complaint was filed no longer resided in the Philippines and had no assets against which a judgment may be executed because as alleged by the plaintiffs, the said defendants "had already disposed of their interests in favor of defendants Buencaminos." For this reason, plaintiffs' motion to serve summons upon them extraterritorially was denied by the lower court.[2]

The remaining defendants, Dr. Victor Buencamino, Sr., Victor Buencamino, Jr., Mrs. Dolores A. Buencamino and Julio B. Francia filed their "Opposition to Preliminary Receivership"[3] and subsequently, on September 6, 1960, their Answer with Counterclaim.[4]

On June 10, 1961, the lower court issued an Order denying plaintiffs' application for receivership but ordering defendants to file a bond in the amount of P100,000.00 to answer for the damages that plaintiffs might suffer by the non-appointment of a receiver.[5]

After trial on the merits, the lower court (then presided by Judge Magno Gatmaitan) rendered judgment dated May 3, 1962, finding defendant Dr. Buencamino guilty of "breach of a legal obligation."

The dispositive portion of the said decision had earlier been quoted herein,

From the aforesaid decision and from the Orders denying defendants' Motion for Reconsideration, both plaintiffs and defendants appealed to this Court, plaintiffs contending that the lower court erred —

I

In not ordering the ouster of defendants from the management of Amparts notwithstanding its finding that defendant Buencamino was "guilty of breach of a legal obligation" and its sentence that he pay back his frauds;

II

In not awarding at least the dissolution of Amparts and the consequent return of the investment and participation of plaintiff-appellant in said business notwithstanding its finding of fraud against defendants;

III

In condemning defendants Buencamino to pay back Amparts only the proceeds he received from the black-market sales of Amparts dollar; and in not including the amount of excess remittances of dollars Amparts has fraudulently caused to make plus interests on loans and other bank charges Amparts paid to make those excess remittances and in failing to order said defendant to render accounting of his management;

IV

In not ordering the rescission and resolution of the resale of the Pasig land by defendants to themselves;

V

In not requiring defendants to account for the illegal overprice of the Forkner Hanger parts and for the other frauds committed by them; and

VI

In finding plaintiff-appellant Chase guilty of the two counts on the counterclaims and in condemning him to pay P500.00 as damages.

On the other hand, defendants contend that the lower court erred —

I

In not holding that plaintiff was a party to and or consented to the alleged fraudulent acts committed by Cranker and Buencamino;

II

In not holding that defendants and particularly defendant Dr. Buencamino were unaware of the private arrangements between plaintiff and Cranker as to the sale of plaintiff's plant;

III

In not holding that plaintiff is in estoppel;

IV

In ruling that plaintiff had proven the alleged fraudulent acts and in requiring Dr. Buencamino to pay to the corporation the alleged excess price;

V

In not holding that it was plaintiff who defrauded defendant Or. Buencamino;

VI

In voiding the assignment of credit;

VII

In holding that Dr. Buencamino is guilty of breach of trust;

VIII

In absolving plaintiff from responsibility for alleged sale of dollars and rendering judgment against Dr. Buencamino for the alleged proceeds of dollar sales;

IX

In holding Dr. Buencamino liable for the entire amount including the share of Cranker, assuming arguendo, that Cranker and Dr. Buencamino profited in the alleged sale of dollars;

X

In charging Dr. Buencamino and Cranker twice for the same amounts assuming, arguendo, that they profited in the alleged sale of dollars;

XI

In requiring Cranker and Dr. Buencamino to pay for the alleged profits on the Bertoni and Cotti deal;

XII

In holding that the term of lease of the building constructed by Dr. Buencamino to be only for a term of seven years;

XIII

In ruling that Amparts was charged with interest for payment of stock;

XIV

In not rendering judgment against plaintiff and in favor of the defendants on the first cause of action of the counterclaim;

XV

In not rendering judgment against plaintiff in favor of Amparts on the second cause of action of the counterclaim;

XVI

In requiring plaintiff to pay only P500.00 on the third cause of action of the counterclaim;

XVII

In not rendering judgment against plaintiff in favor of defendants on the fourth cause of action of the counterclaim; and

XVIII

In not rendering judgment against plaintiff in favor of the defendants on the fifth cause of action of the counterclaim.

all of which assigned errors boil down to the more important issues of —

a) Were the defendants, more particularly defendant Dr. Buencamino, guilty of "fraud" and/or breach of a legal obligation as would entitle plaintiff not only to a "money judgment" but also to the dissolution of Amparts and/or the removal of defendants Buencaminos from the management of the said corporation; and

b) Was plaintiff Chase himself guilty of fraud as would entitle defendants to recover on their counterclaims.

The evidence on record discloses that defendant Dr. Buencamino, Sr., a Filipino and William Cranker, an American, even prior to the year 1954 were already business associates. They owned two firms namely, the Philippine American Machinery and Equipment Corporation (PAMEC) which was organized in 1947 and the BUCRA which means Buencamino and Cranker.[6]

Plaintiff Elton Chase, on the other hand, was the owner of Production Manufacturing Company, of Portland, Oregon, USA, a corporation primarily dedicated to the operation of a machine shop and heat-treating plant for the production of tractor parts.[7]

Sometime in 1954, Chase was notified by the Highway Commission of the State of Oregon that his factory was going to be in the path of a proposed highway. He was then advised to sell or face expropriation and warned to remove his plant within a year. His distributor Craig Carrol told him of a Dr. Buencamino of Manila who he said was interested in establishing a manufacturing plant in the Philippines. Craig Carrol contacted Buencamino who told him to contact his associate William Cranker in the United States.[8] Thereafter, a series of negotiations took place both here in Manila, and in the United States, between Chase on the one hand, and Cranker and Buencamino, on the other, for the purchase of Chase's factory (Production Manufacturing Company) and the establishment of a new factory in Manila which was to be called the American Machinery Engineering Parts, Inc. (Amparts for short). These negotiations culminated in a final agreement to the effect that - Elton Chase was to be paid One Hundred Thousand Dollars (\$100,000.00) and he would also be given a one-third interest in Amparts, with the other two, Dr. Buencamino and Cranker, as the owner of the other two-thirds (2/3) interest, 1/3 interest each; that in exchange for said \$100,000.00 and the 1/3 interest, Chase was to transfer to Amparts his tractor plant, ship his machineries to Manila, assuming all costs of dismantling, preserving and crating for shipment to Manila, install said machineries at Amparts plant with the aid of five technicians and finally, he has to be the production manager of Amparts.

Amparts was formally organized as a corporation on July 5, 1955 with an authorized capital stock of P4,000,000.00 divided into 4,000 shares with a par value of P1,000.00 each. The original subscription was P1,800,000.00. Dr. Buencamino, Cranker & Chase subscribed P600,000.00 each. But since five were necessary to organize a corporation, Buencamino and Cranker took in their respective wives.

In the meanwhile, Chase had already shipped his machineries and had them installed in the Amparts plant in Pasig, Rizal. Amparts then began operation with Dr. Buencamino as President, William Cranker as Manager and Elton Chase as Production Manager. For sometime the three maintained harmonious relations but later on distrust came in until finally Chase tendered his letter of resignation as Production Manager, dated March 28, 1957" which was accepted by both Dr. Buencamino and Cranker thru a letter dated July 8, 1957.[10]

On April 21, 1958, Chase thru his lawyer addressed a letter of demand to both Dr. Buencamino and Cranker" which reads—

"April 21, 1958

Dr. Victor Buencamino
Mr. William E. Cranker
American Machinery & Parts
Manufacturing Co., Inc.
1501 A. Mabini, Manila

Gentlemen:

Mr. Elton W. Chase has retained our services to enforce his claim against you for breach of contract, unpaid salaries and expenses, and damages amounting to approximately P500,000.00 at the official rate of exchange between pesos and U.S. dollars.

Inasmuch as you are aware of the claims of Mr. Chase, We shall not enter into details in this letter. Our purpose in writing to you is to inform you that, unless Mr. Chase's claims are satisfied within five days from receipt of this letter, we shall have no recourse but to file suit against you.

If you would care to discuss this matter with me, I shall be free on Friday, April 25, 1958, from 3:00 P.M. onwards, and shall be glad to meet with you at any place convenient to you.

Very truly yours,

DIOKNO & SISON

By:

(Sgd) JOSE W. DIOKNO"

This was answered by Dr. Buencamino the next day in the following letter—

"April 22, 1958

Messrs. Diokno & Sison
Regina Bldg., Room 332-334
Escolta, Manila

Attention: Mr. Jose "W. Diokno

Re: Claim of Elton W. Chase Gentlemen:

Your letter of April 21, 1958, wherein you make reference to a claim of Mr. Chase "for breach of contract, unpaid salaries and expenses, and damages amounting to approximately P500,000.00," was, and continues to be a surprise to us not only because we have never heard of his claim but more so because you go so far as to assume that we are aware of said claims. Until we receive a more definite statement from you or from Mr. Chase himself, we cannot enter into any discussion.

We might add that any claim that Mr. Chase may have should be directed to the American Machinery & Parts Manufacturing, Inc. of which he himself is a one-third owner. Your letter under reply, which was addressed to Messrs. V. Buencamino, W.E. Cranker and American Machinery & Parts Manufacturing, Inc. is obviously misdirected.

Very truly yours,

AMERICAN MACHINERY &

PARTS MANUFACTURING, INC.

By: V. BUENCAMINO

President"

On May 23, 1958, Chase filed an action against Cranker with the Superior Court of Los Angeles¹² seeking to recover the sum of \$150,000.00 as alleged balance of the purchase price of his plant. This case however died a natural death because Cranker left and was never reached by process from the California Court. Then, sometime in August 1958, Cranker sold out all his interest in Amparts to Dr. Buencamino.[13]

Finally, on August 20, 1960, Chase filed this case before the Court of First Instance of Manila, alleging various acts of fraud which he claimed had been committed by both Dr. Buencamino and Cranker, namely, —

1. Dr. Buencamino got stock in part without paying for it and in part with proceeds of the sale of Amparts dollars in the blackmarket;
2. Dr. Buencamino purchased for Amparts certain materials from Bertoni and Cotti Of Italy and inflated the invoice price from \$ 122,250.00 to \$387,933.36, sending the excess dollars abroad and selling them at the blackmarket for his private gain;
3. Dr. Buencamino purchased land from the province of Rizal for Amparts and then resold part of it to himself for private gain;
4. Dr. Buencamino and Cranker in August 1955, bought a surplus building in Guam for \$60,000.00 C.I.F. and in the same year sold it to Amparts for \$187,500.00 for their private gain;
5. Dr. Buencamino permitted the use of third parties for his private gain, of the Amparts dock at the Pasig River;
6. Dr. Buencamino collected and collects rentals for apartments by him constructed even though no longer used by Amparts technicians;
7. Dr. Buencamino permitted the sale abroad of Amparts manufactured tractor parts at depressed prices;
8. Dr. Buencamino collected a mark up interest on moneys borrowed by him from the banks and by him advanced unto Amparts;
9. The Board Resolutions of 13 May 1960 which also increased compensation of Bucncamino's relatives and gave him an increased mark up on his evidences and authorized his and his wife's trip abroad and also authorized the conversion of his credit for unpaid interest into Amparts stocks were all void.

On the other hand, defendants in their Answer set up by way of counterclaim that —

1. Chase sold machineries unto Amparts thru Overseas part of which consisting of 24 pieces worth of P264,000.00 were junk;
2. Chase maliciously spread false rumors against Amparts and induced its employees to leave; and is engaged in competition with Amparts;
3. Chase spread false rumors against the integrity of defendants to embarrass and humiliate them and injure their reputation;
4. Chase took into the Philippines thru the shipment of his factory, his own personal effects, machineries and materials the freight expenses for which reach £6,676.60; and
5. Chase by the unfounded action should pay defendants their attorney's fees;

for all of which counterclaims, defendants claim a monetary judgment against Chase.

After a careful and painstaking review of the voluminous evidences on record, We find that the lower court correctly found that Buencamino and Cranker committed the following frauds and profited from the same —

I-A). Through overpricing, Amparts remitted to U.S. \$312,500.00 for Chase's factory. Only \$80,000.00 was paid Chase for his machineries at this time. The excess dollars were blackmarketed and the peso proceeds thereof went to pay the stocks subscription in Amparts of Buencamino and his wife and Cranker and his wife. (Analysis and Synthesis of Evidence, par. 1-A, pp. 1-10).

That these profits from overpricing and remittance of dollars went to Buencamino and Cranker was testified to by no less than Buencamino's long time accountant Maximo Penas, corroborated by the bank accounts which he kept for Buencamino and Cranker, Exhibit UU, the duplicates of the letters of Cranker to the Bank of America containing Buencamino's admitted initials, Exhibits "L", "M" and "N", the Bank of America's remittance receipts and order Exhibit "P", and Amparts own books, namely, journal entries Nos. 16, 21 and 26, Exhibit "FFF", pp. 2-3.

I-B). Through overpricing, Amparts remitted to U.S. \$207,000.00 for forwarding costs, technical services and promotional expenses. But forwarding costs were already paid from the \$312,500.00 remittances for plant purchase price and Chase was never paid his salary for one year nor his promotional expenses. Of the \$207,000.00 remittance, only \$ 15,000.00 was expended to pay Chase the balance due in the purchase of his factory totalling \$100,000.00. The excess remittances of dollars were blackmarketed and the peso proceeds thereof totalling P434,000.00 were deposited in Buencamino's bank account at the Philippine Trust Company. (Analysis and Synthesis of Evidence, par. 1-B, pp. 10-12).

I-C). Through overpricing, Amparts remitted to U.S. \$387,933.66 for the tractor parts and track press imported from Bertoni and Cotti. Only \$212,250.00 was paid to Bertoni and Cotti of the excess remittance, \$ 17,000.00 were blackmarketed realizing P391,200.00 which were deposited in the personal bank account of Buencamino at the Philippine Trust Company and People's Bank. (Analysis and Synthesis of Evidence, par. 1-C, pp. 12-15).

Again, this fraud committed by Buencamino and Cranker was testified to by their own accountant Maximo Penas and he testified from the very book of account he kept for them, Exhibit "UU". They were corroborated by Bertoni and Cotti's letters Exhibits "FF" and "HH", the debit notes of First National Bank of Portland, Exhibits "NN" and "NN-I" and Buencamino's initial appearing in Bertoni and Cotti's letter, Exhibit 'ff plus Buencamino's admission that the address to which the Bertoni and Cotti's letter was sent, i.e., "P.O. Box 2493, Manila Filipinas," as the address of Overseas Ltd., was the postal box of Amparts. (p. 72, tsn, November 18, 1960).

II. The fraudulent issue of P1,200,000.00 fully paid-up Amparts shares, without payment obviously resulted to the profits of only Buencamino and Cranker and their families in whose favor they were issued. (Analysis and Synthesis of Evidence, par. II, pp. 18-35).

Aside from Amparts' borrowing of money for the initial payment on the subscription of Buencamino and Cranker and their wives and the withdrawal thereof, the charging of interest thereon, the application of the proceeds of sales at blackmarket of Amparts' dollars for the payment of their subscription totalling P570,000.00 there were the acknowledgments obtained from Amparts of an indebtedness to Overseas Investment Co., Ltd. of \$287,500.00 for the purchase price of Chase's factory, Amparts acknowledgments of an assumption of such indebtedness by Buencamino and Cranker Company to Overseas Investment Company, Ltd. and to pay Buencamino and Cranker Company its peso equivalent or P575,000.00 through the issue of fully paid-up P330,000.00 worth of shares to Buencamino and Cranker and their wives and crediting Buencamino's account with P245,000.00.

In this jurisdiction, it is a "fundamental and settled rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case." [14]

We have reviewed the evidence on record thoroughly and We are satisfied that the lower court has not overlooked factors of substance and value which if considered, might affect the result of the case. We therefore uphold the following findings and conclusions of the lower court —

"We go first to the Bertoni and Cotti transaction; while the defense that Dr. Buencamino only saw Exh. FF the letter of Bertoni and Cotti and did not anymore pay attention to it might be plausible, the Court considering his long relationship with Cranker, for he and Cranker had their own BUCRA and PAMEC — and the fact that the testimony of Maximo Peñas is corroborated by the padded invoice of the transaction, is impelled to conclude that he was a party to it, probably not at first but surely afterwards, he willingly benefited therefrom; that was a fraud upon Amparts and on the broad principle of agency and trust, 1455, 1891, New Civil Code, he should surrender thereon, his gains of P391,200.00; and on the same reasoning as this, the Court must also hold that with respect to the blackmarketing of the excess dollars on the forwarding and promotion costs in the amount of \$140,000.00, he once more should be made to account for P434,000.00; unless the Court as already stated a few pages back, should sustain his defenses as to all these charges, namely, a)- That they took place when he was not yet the manager; b)- That he is estopped by reason of his letter Exh. 10, his complaint and affidavit Exhs. 11 and 12 and the actuations of his own auditor Hendershott as revealed in the Board Meeting of 27 November 1956 Exh. 4. Now as to these, a)- That he was not the manager but Cranker to the Court is not very important because as the Court sees it, since the inception of the venture and even when it had become a reality, he was one of the guiding hands if not the principal guide; he was President and Director; and he knowingly profited from the transactions which should go to Amparts otherwise; once more the Court applying 1455 and 1891 of the New Civil Code must hold that in these transactions where he had thus profited, he was guilty of breach of a legal obligation; b)- The Court having seen with its own eyes the evidence proving the fraud, can not find it easy to refuse relief unto Chase because of the failure of his auditor to discover the anomalies; or because of the fact that he had filed a suit against Cranker in California and failed to mention Dr. Buencamino there as a guilty party, for this would only weaken his evidence but would not be enough to put him in estoppel for as Chase correctly says, it did not mislead Dr. Buencamino to adopt a course of action to the latter's prejudice; and as well does the Court feel bound not to bar the case of Chase by reason of his letter Exh. 10 wherein he blamed Cranker not Dr. Buencamino for his predicament, for the same reason; the Court of course must grant that there was inconsistency in the position here; for there in California and in the letter Exh. 10, he proceeded on the theory that the transaction on his plant was between him and Cranker for \$250,000.00 while here his theory is that it was a deal between him, Cranker and Dr. Buencamino wherein these two would pay him \$100,000.00 and they three would form Amparts with 1/3 of the shares being given to him fully paid up as part of the purchase price; but the Court while it must admit that this has weakened the case for Chase, must also admit that they have not altogether destroyed that since in the first place, the inconsistency in theory adopted in the California Court from that adopted here as an obstacle to the present action is as the Court takes it, obviated by the very evidence of Dr. Buencamino since because the theory of California was that Chase was entitled to only \$250,000.00, and nothing more and what would if true, not grant unto Chase any personality to file this derivative suit as an Amparts stockholder, but the evidence of defendants proves very clearly that right from the start, Chase was by them recognized as a stockholder and initial incorporator with 600 paid up shares representing a 1/3 interest in Amparts, and that would be enough for Chase to have the correct personality to institute this derivative suit; the second place, it also appears apparently undenied that Chase did not win in California so that he did not recover the \$150,000.00 that he had prayed for there against Overseas, which if he had would really in the mind of the Court have put him in estoppel to intervene in any manner as incorporator or stockholder of Amparts; and in the third place and most important it should not be forgotten that Chase has filed the present case not for his personal benefit, but for the benefit of Amparts, so that to the Court the

argument of estoppel as against him would appear to be out of place; the estoppel to be valid as a defense must be an estoppel against Amparts itself; the long and short of it is that the Court is impelled and constrained to discard all the other defenses set up by Dr. Buencamino on the principal complaint; the result of all these would be to sustain so far, the position of Chase that Dr. Buencamino must account for the P570,000.00 used to pay the second series of payment on the subscription, the P330,000.00 used in paying the 1st series on the subscription, plus another sum of P245,000.00 entered as loan on his favor and against Amparts, for the sum of P434,000.00 earned in the blackmarketing of the excess of \$ 140,000.00 dollars on the forwarding costs and promotional expenses, for the sum of P391,200.00 earned in the blackmarketing of the excess of \$117,000.00 in the transaction with Bertoni and Cotti, and all these would reach a total of P1,970,200.00; and as the appropriation of the profits for himself was a quasi-delict, the liability therefore assuming that it had been done with the cooperation of Cranker would have to be solidary, 2194 New Civil Code, because it was a quasi-delict; but the next question is whether these findings must justify the remedy of change of management and dissolution; before going to this, the Court seeing that this is a question interrelated to the counterclaims, will proceed to examine them."

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"the result of the foregoing will be that the Court must find it proved on the counterclaims, that Chase had helped a competitor contrary to his position of trust as director of Amparts, and that Chase had also spread rumors against Amparts, and its management; for these acts, the Court will impose some damages which in the absence of better proof the Court will fix at five hundred (P500.00) pesos; we go to the most important point of debate, namely, the final remedy that the Court must now concede.

It will above be noted that while the Court found Chase guilty on two counts, on the counterclaims the guilt referred to acts performed during the litigation; they do not show that Chase had come to Court already guilty; as the Court has found, when he came to Court on 20 August, 1960, he was an innocent party, and Amparts was the victim of fraud; on the other hand, while this really is true, the Court can not see how under the present circumstances, the correct equitable relief that the Court should grant should be to change over the management from Buencamino unto Chase; especially considering that the Court has also seen that Chase pendente lite had performed an act that has virtually helped an Amparts competitor; neither can the Court grant a dissolution because the action is a derivative one for the benefit of Amparts and not for the personal benefit of Chase, and Amparts can not be benefited by its extinction; as to the ouster of Dr. Buencamino from management, it should not be forgotten that Dr. Buencamino is not only a manager, but is in fact 2/3 owner of Amparts and to oust him from management would amount to his disenfranchisement as owner of the majority of the enterprise apart from the fact that it is also established in the proofs that Amparts is already picking up and has been a going concern after Cranker left unto him the direction of its affairs; the Court therefore having in mind all these finds that the solution most equitable and just would be to limit its decision to imposing a monetary judgment upon the guilty parties for the benefit of Amparts."

The record further shows that there were other precautionary measures adopted by lower court for the protection of Chase's rights and interest in Amparts.¹⁵ Thus, on May 12, 1962, the following Order was issued —

"After hearing the parties and with a view to protect the interests of both and to prevent a possibility of abuse, the Court resolves that until further orders, the hereinafter while the case is pending:

'(1) Mr. Chase shall have free access to AMPARTS and its record personally and/or through representative duly authorized;

(2) Decisions of Dr. Buencamino and/or management of AMPARTS shall be made known to Chase who shall have the right to object and if so, the matter shall be notified to the Court which shall resolve the difficulties; in the interim, pending the objection, the decision shall not be enforced or made operative;

With this resolution, the Court disposes for the present of the issue of receivership."

Supplementing the above-quoted Order, the lower court, then already presided by the Honorable Jesus de Veyra, issued the following Order of August 27, 1962:

"As for the appointment of a receiver, Judge Gatmaitan decided on the temporary measure of giving plaintiff (petitioner herein) a veto right, appealable to this Court, on all decisions of management. Considering that up to the present, the Buencaminos own 2/3 of the stock corporation, the solution is equitable, and must be allowed to continue subject to the condition that once a decision of management is made known to plaintiff, he must make know his objection thereto to the Court within five (5) days from receipt of said decision, otherwise he shall be deemed to have waived any objection lo the decision."

The removal of a stockholder (in this case a majority stockholder) from the management of the corporation and/or the dissolution of a corporation in a suit filed by a minority stockholder is a drastic measure. It should be resorted to only when the necessity is clear which is not the situation in the case at bar.

WHEREFORE, finding the appealed decision to be in accordance with the law and the evidence, the same is hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED

Makasiar, Abad Santos, and Escolin, JJ., concur.
Concepcion, Jr., J., on leave.

[1] Joint Record on Appeal, Vol. 1, pages 19-1 16.

[2] Joint Record on Appeal. Vol. 1. p. 291.

[3] Joint Record on Appeal. Vol. 1. p. 1 1 7.

[4] Joint Record on Appeal. Vol. 1. pages 139-217.

[5] Joint Record on Appeal, Vol. 1. p. 274.

[6] Pages 6-7. TSN. November 3, 1960.

[7] Pages 10-12, TSN. October 30, 1960.

[8] Pages 13-19. TSN. Ibid.

[9] Exhibit "15

[10] Exhibit "16".

[11] Exhibit "18".

[12] Exhibit "11".

[13] Paragraph 2. Complaint admitted in Paragraph 2. Answer.

[14] People vs. Grefiel, 125 SCRA 102: People vs. Fernandez, 124 SCRA 248: Olango vs. Court of First Instance of Misamis Oriental, 121 SCRA 338.

[15] Chase vs. CFI-Manila, 18 SCRA 602.

CONCURRING OPINION

AQUINO, J.,:

I concur in the opinion of Justice Cuevas. Elton W. Chase, as minority stockholder, filed a derivative suit for the removal of the officers and directors of American Machinery & Parts Manufacturing, Inc. (Amparts) on the ground of breach of trust and for the appointment of a receiver and the dissolution and liquidation of Amparts if necessary.

After trial, Hon. Judge Magno S. Gatmaitan in his decision dated May 3, 1962 ordered Doctor Victor Buencamino, Sr., director, president and general manager, to pay Amparts the sum of P1,970,200 with legal interest from the filing of the complaint, enjoined him from collecting interest on the sum of P300,000 which he had paid as his initial subscription on July 15, 1955 and asked him to refund the interest which he had already collected, with legal interest from the filing of the complaint (See Chase vs. CFI of Manila, 124 Phil. 1128, 1130).

In an order dated May 12, 1962, the trial court directed that Chase, personally or through a duly authorized representative, should have "direct access to Amparts and its records" and that the decisions of Buencamino or the management of Amparts should be made known to Chase who would have the right to object and, if he objects, the matter should be taken up in court which should "resolve the difficulties" and, "in the interim, pending the objection, the decision shall be enforced or made operative" (124 Phil. 1130).

In another order dated August 27, 1962, the trial court clarified Chase's veto power by declaring that "once a decision of management is made known to plaintiff (Chase), he must make known his objection thereto to the Court within five (5) days from receipt of said decision, otherwise he shall be deemed to have waived any objection to (he decision" (124 Phil. 1131).

In view of those precautionary measures, this Court sustained the trial court's orders denying Chase's petition for receivership (124 Phil. , 128).

All the parties appealed from the trial court's 140-page decision. The appeal involves questions of law and fact, having been perfected under Republic Act No. 2613 and before Republic Act No. 5440 was enacted.[*]

Elton W. Chase, now dead, a machinist who finished first year high school, was the owner of a firm manufacturing tractor parts in Portland, Oregon. In 1954, he was advised by the state's highway commission to transfer his factory and heating plant, which were in the path of a proposed freeway, or face expropriation.

To solve that problem, Chase, without the assistance of a lawyer, agreed to convey his plant to a corporation to be organized in the Philippines by Doctor Victor Buencamino, Sr. and his partner, William E. Cranker (Buencamino & Cranker or Bucra), who both controlled the Philippine American Machinery Equipment Co., Inc. (Pamec).

Cranker and his wife, Florence M. Barker (who was also his secretary), owned a firm known as Overseas Investment Co., Ltd. which was domiciled in Tangier, Morocco. That firm undertook the sale of Chase's Oregon machinery and equipment. It was proposed that the price would be \$250,000 with \$ 100,000 payable in cash and \$150,000 to be "repatriated" to Chase as a profit. Chase's equity in Am parts would be P600,000 or P650,000 according to Florence M. Cranker or Barker (Exh. 12-E).

Chase testified that he, Buencamino and Cranker finally agreed that Chase would have a one-third interest in Amparts and receive \$100,000 cash in advance. At his expense, he would dismantle his Oregon plant, crate the machinery and equipment and ship them to Manila, reinstall them here, hire five technicians and assume the

position of production manager at Amparts (25-28 tsn, October 30, 1960).

Even before Amparts was formally incorporated, Buencamino, as acting president, pretending that Amparts was already a corporation, filed an application with the Central Bank for an allocation of \$900,000, specifying that the amount would be used to purchase Chase's factory, as shown below (Exh. A):

(a) Plant purchase (where is)

\$693,000

(b) Forwarding costs to Phil.

47,000

(c) Technical services

90,000

(d) Promotional expenses

70,000

Total

\$900,000

Buencamino represented in that application that the sum of \$693,000 represented the depreciated value of Chase's machinery and equipment as of January 10, 1955 (Exh. A).

G.S. Licaros of the Central Bank in a letter dated October 26, 1955 (after Amparts was incorporated) advised the Philippine Trust Company that Amparts was given the quota allocation of \$519,500, broken down as follows (pp. 62-63, Record on Appeal):

(a) Purchase price of Chase Machinery and equipment

\$ 312,500

(b) Forwarding costs to the Phil.

47,000

(c) Technical services of technicians for one year

90,000

(d) Chase's salary for one year promotional expenses

70,000

Total

\$ 519,500

Chase's counsel contends that Amparts bought the machinery of Chase for \$ 100,000 and P600,000 worth of

shares of stock in Amparts or a one-third interest therein (pp. 15-16, plaintiff-appellee's brief).

On the other hand, Buencamino's counsel failed to state with precision what amount should be paid to Chase for his machinery and equipment which counsel branded as mostly junk with a book value of \$18,000 only but which Buencamino appraised at \$693,000 (p. 173, Vol. III, Rollo, Exh. A).

It is also the theory of Chase that he agreed with Cranker to sell his plant for \$250,000 (Exh. 11) and that Cranker's firm, Overseas Investment Co., Ltd., in turn resold the said plant to Amparts for \$600,000. By means of a letter of credit, Amparts paid to Cranker \$312,500 as the initial installment on the price of \$600,000. That amount of \$312,500 was withdrawn by Cranker from the National Bank of Commerce at Seattle, Washington and the National Bank in Portland, Oregon. Out of that amount, Cranker paid Chase \$100,000 (Exh. 12).

The balance of \$212,500 was allegedly disposed of by Cranker and Buencamino for their personal benefit as shown in the withdrawals made by Cranker from the Bank of America (Exh. L to S). The sum of \$190,000 of that amount was sold in the blackmarket at the rate of three pesos a dollar. The proceeds of the sale in the sum of P570,000 were deposited in Buencamino's bank account (549-0, Record on Appeal).

On July 5, 1955, Amparts was organized with an authorized capital stock of P4,000,000 divided into 4,000 shares with a par value of P1,000 each. The incorporators, the Buencamino spouses, the Cranker spouses and Chase, subscribed to the stock of Amparts in the total sum of P1,800,000, or 600 shares for Chase, 600 shares for the Buencaminos and 600 shares for the Crankers, of which P450,000, or 25% of the subscription was supposedly paid or deposited in the bank.

The sum of P150,000, as Chase quota, was paid by Buencamino with the understanding that the machinery and equipment of Chase would later be conveyed to Amparts as payment of his subscription and then the amount advanced by Buencamino would be returned to him. Corporate funds in the sum of P388,000 were transferred to Buencamino's personal account allegedly because he used his persona credit to raise additional operating capital (Exh. B).

Eventually, Buencamino, Cranker and Chase each owned 600 fully paid shares of Amparts (212-213, Record on Appeal).

Chase received on February 8, 1960 his stock certificate for 600 (598) shares dated May 14, 1958 which he at first refused to receive (140-141, Record on Appeal; 74 tsn October 30, 1960). Thus, he became a "one-third owner" of Amparts (Exh. 18-A).

On August 1, 1956, Chase executed an affidavit of final payment wherein he acknowledged that he had received from Overseas Investment Co., Ltd. the full payment and other considerations for the sale of his plant to Amparts (Exh. 14).

Chase's dismantled factory was shipped to Manila and was installed at Amparts' site in Pasig, Rizal. Buencamino served as president of Amparts, Crankeras board chairman and general manager, and Chase as production manager. They also served as directors. The other two directors were Mrs. Cranker and Mrs. Buencamino.

For a time, Buencamino, Cranker and Chase worked in harmony and the plant was functioning properly. Then distrust and discord set in. Amparts sustained a net loss of P155,881.95 for 1956 (Exh. 25).

On March 28, 1957, or (less than two years after the organization of Amparts, Chase tendered his resignation as production manager because, as he said, "there are so many points of disagreement between us on business procedures, plant developments and operations, and the present course being followed on sales products, that I cannot continue here" (Exh. 15).

He requested that he be replaced at once and that there be a "final settlement of the amounts" due to him and "the issuance of stocks in both Amparts and Overseas as per agreement" (Exh. 15). Without waiting for the acceptance of his resignation, Chase left his job and went home to Los Angeles, California.

Chase's resignation was accepted by Buencamino in his letter dated July 8, 1957, when Chase was in Los Angeles. Buencamino said:

"Bill Cranker and I have decided to accept your letter of resignation effective immediately. Please understand that this does not in anyway affect your interest in the corporation nor your membership in the Board of Directors. We find this as a possible remedy to the present financial standing of the corporation of which you are fully cognizant.

"However, should you be successful in your endeavor to buy out the interest of Bill Cranker and mine in the corporation, you will then of course be in a position to decide who will direct the policies of the corporation"(Exh. 16).

Several months later, or in March, 1958, Alberto Cacnio in a letter to Chase dated March 12, 1958 offered to buy Chase's 600 shares in Amparts at P165 a share (the par value was P600,000), or for P98,000 only (Exh. D). On their part, Buencamino and Cranker in a letter dated March 20, 1958 gave Cacnio up to April 1, 1958 to buy their 1,200 shares at P165 a share (Exh. 28).

Cranker in his letter to Chase dated March 15, 1958 stressed that Cacnio's offer was a close approximation of the actual value of the shares and that Chase should accept the offer "or be completely wiped out, plus the contingency of further personal litigations and judgments" should the bank sue Chase, Buencamino and Cranker on their personal liability (Exh. E).

Cranker in his letter further stressed the precarious position of Amparts whose business continued to deteriorate and said that it was "perilously close to the end." He added this alarming postscript: "Should (heaven forbid) you decide not to sell, then I suggest you consult an attorney as our position is hopeless" (Exh. E).

Chase rejected the offer. He sent to the Philippines for the second time his auditor to examine the books of Amparts. The auditor reported to Chase by telephone and telegrams that there was evidence that Buencamino and Cranker had allegedly "robbed" Amparts of an amount exceeding \$250,000 in connection with its transaction with the firm of Vertoni & Cotti (63 tsn October 30, 1960).

Chase's lawyer in a letter to Buencamino and Cranker dated April 21, 1958 demanded the payment of his unpaid salaries, expenses and damages amounting to approximately P500,000 (Exh. 18). Buencamino replied that he was unaware of Chase's claim and that any claim of Chase should be directed to Amparts of which Chase is a one-third owner (Exh. 18-A).

Chase sued Cranker and Overseas Investment Co., Ltd. on May 23, 1958 in the Superior Court of California at Los Angeles for the recovery of \$150,000 as the alleged unpaid balance of the purchase price for the sale of his tractor and heating plant to Overseas Investment Co., Ltd. (Exh. C and 11, pp. 188-197, Record on Appeal).

Upon Chase's motion, that case was dismissed without prejudice in an order dated September 16, 1960 or after the instant case was filed. Chase said that it was futile to sue Cranker in California since he had no funds in that state and the tax authorities were after him (pp. 36-37, Defendants-appellants' brief; p. 56, Plaintiff-Appellee's Brief; pp. 272-273, Record on Appeal, 69 tsn October 30, 1960).

At this juncture, it should be noted that although Chase in a 1956 affidavit had sworn that he had already been paid by Overseas Investment Co., Ltd. for his factory (Exh. 14), yet in the 1958 suit which he filed against

Cranker and Overseas Investment and in his counter-affidavit of October 10, 1958 (which he filed in the California case) as well as in his handwritten letter to Buencamino dated July 3, 1958 (Exh. 10), Chase claimed that Cranker had not paid the said balance of \$150,000, that Cranker "devised and engineered a plan whereby" Chase was deprived of his machinery and equipment for Cranker's benefit; that Cranker used Amparts as a front to divert funds to enrich Overseas Investment Co., Ltd. and that Cranker had manipulated the affairs of Pamec, Bucra and Amparts for his own benefit and to the prejudice of Chase (Exh. 10).

In August, 1958, Cranker sold his 600 shares of stock in Amparts to Buencamino, severed his connection with that firm and left the Philippines. Thus, Buencamino became the controlling stockholder of Amparts or Amparts became the family corporation of the Buencaminos, with Chase as the only minority stockholder.

In a letter dated October 1, 1959 Chase's lawyer demanded from Amparts the payment of P19,630.93 for the materials which Chase shipped to Amparts (Exh. II; No. 9, Annex A of Exh. 4).

On May 13, 1960, the board of directors of Amparts held a meeting. Present were Buencamino, Sr., Buencamino, Jr., Julio B. Francia, Jr. (son-in-law of Buencamino) and Chase whose lawyer was allowed to sit beside him. In that meeting certain resolutions were passed over the objection of Chase.

The board resolved (1) to increase to 12% per annum the interest on the loans of Buencamino, Sr. to Amparts; (2) to increase to P1,800 the monthly salaries of Buencamino, Jr., Jorge F. Paez (another son-in-law of Buencamino, Sr.) and Francia, Jr. and to supply each of the three with a company car with a driver to be used when they would perform their duties as company officials; (3) to authorize Buencamino, Sr. and his wife to represent Amparts in any manner in the execution of contracts on condition that the contracts entered into by them be confirmed by the board of directors; (4) that the reasonable transportation and lodging expenses of Buencamino, Sr. and his wife be borne by the company; (5) that the sum of P100,000 as the unpaid interest on the loans made by Buencamino, Sr. to Amparts be paid by means of shares of stock; (6) approving the auditor's report for 1958-59; (7) designating Francia, Jr. as acting president and general manager in the absence of Buencamino, Sr. and (8) authorizing Buencamino, Sr. to open a current account with the Commercial Bank and Trust Company (Exh. JJ).

The annual audit reports show the following results for Amparts' business operations:

- 1956 — Net loss of P155,857.05 (Exh. 25)
- 1957 — Net loss of P088,870.61 (Exh. 25-a)
- 1958 — Net profit of P46,647.43 (Exh. 25-b)
- 1959 — Net profit of P489,775.03 (Exh. 25-c)
- 1960 — Net profit of P103,548.30 (Exh. EEE)

As of June 30, 1961, Amparts suffered a net loss amounting to P27,603.32 (Exh. JJJ). It had a net profit of P979.46 for 1962. It suffered losses for 1963 to 1969 (no record for 1966) (p. 166, Vol. III, Rollo).

As of December 31, 1960, Amparts had current assets of P2,937,078.63 and fixed assets of P2,563,487.56. It owed the Philippine National Bank P297,973.49 and its "officer" (presumably Buencamino, Sr.) P1,379,189.57 (Exh. EEE).

Aside from Chase, the stockholders of Amparts in September, 1960 were the Buencamino spouses, 625 shares; Buencamino's two daughters, Mrs. Paez and Mrs. Francia, 380 shares and his two sons-in-law, 20 shares (pp. 140-142, Record on Appeal).

The complaint in this case was filed on August 20, 1960. The Cranker spouses, being abroad, were never served with summons. The trial court denied the motion for the extrajudicial service of summons to them since, as already stated, they had transferred their stocks to Buencamino. So, the antagonists in this case are Chase and

Buencamino.

Chase in his complaint prayed for the removal of Buencamino, Sr. as director, president and general manager of Amparts; Buencamino, Jr. as director, treasurer and liaison officer of Amparts and Julio B. Francia, Jr., Buencamino's son-in-law, as director and assistant general manager of Amparts. Chase alleged that Buencamino, Sr., his son and son-in-law have been guilty of breach of trust.

The trial court in its order of June 10, 1961 denied Chase's petition for receivership but required the defendants to post a bond in the sum of P100,000 to answer for the damages which Chase might suffer because no receiver was appointed (pp. 406-7, Record on Appeal).

Findings of the trial court: blackmarketeering of dollars. — The trial court found that Chase was to receive \$100,000 plus a fully paid one-third interest in Amparts. meaning that Amparts' plant was to be owned by Buencamino, Cranker and Chase, with Chase contributing his machinery and Buencamino and Cranker contributing money for the purchase of Chase plant and the \$100,000 due to Chase (p. 548, Record on Appeal).

Buencamino and Cranker were supposed to pay P1,200,000 for their shares in Amparts. The sum of P600,000 as the par value of Chase's shares was paid by means of the transfer of his plant to Amparts. Buencamino made the following payments on the amounts due from him and Cranker:

Amount paid to Amparts on July 15, 1955

P450,000

Less P150,000" corresponding to Chase

300,000

Net amount corresponding to Buencamino and Cranker

300,000

Add subsequent payments:

Payment on December 15, 1955

35,000

Payment on December 29, -1955

200,000

Payment on January 31, 1956

335,000

Payment by assignment to Buencamino and Cranker of the credit of Overseas Investment against Amparts

330,000

Total

P1,200,000

Amparts was indebted to Buencamino in the sum of P245,000, representing the difference between the assigned credit of P575,000 and the sum of P300,000 paid to Amparts as subscription of Buencamino and Cranker (512-3, Record on Appeal).

The lower court rejected Chase's theory as to Buencamino's withdrawal of P383,000 and P35,000 sometime after he paid to Amparts the sum of P450,000 as initial payment on the subscription of the three major stockholders (514-5, Record on Appeal).

The trial court also found that out of the dollar allocation of \$312,500 given by the Central Bank to Amparts for the purchase of Chase's machinery and equipment (Exh. A). Buencamino and Cranker sold in the blackinmarket \$190,000 at three pesos a dollar. The proceeds of the sale amounting to P570,000 were deposited in Buencamino's account. As to this amount, the trial court held that Buencamino was accountable because in depositing it in his account he committed a breach of trust (528-9, Record on Appeal).

It should be repeated that Overseas Investment Co., Ltd. supposedly purchased from Chase his machinery and equipment for \$250,000 (Bxh. 11), that Overseas in turn contracted to sell the same to Amparts for \$600,000 and that only the sum of \$312,500 was paid by Amparts, thus leaving a balance of \$287,500 or P575,000.

Overseas, through Mrs. Cranker, in a letter dated November 3, 1955 to Amparts said that Overseas had assigned to the firm of Buencamino and Cranker (Bucra) that credit of \$287,000 so that Amparts would not be indebted anymore for that amount to Overseas but Amparts' creditor would be the Bucra firm (Exh. 12-a).

A week later, or on November 10, Buencamino as president of Amparts wrote a letter to Bucra, confirming Mrs. Cranker's letter and advising Bucra that Amparts was indebted to Bucra in the sum of P575,000. a two-&-one valuation of the sum of \$287,500 (Exh. 12-b).

Then, five days later, or on November 15, 1955. Cranker, as managing partner of Bucra. informed Amparts that P330,000 out of the P575,000 owed by Amparts, first to Overseas and later to Bucra, should be considered as a payment of the subscription of the Buencamino and Cranker spouses to Amparts in this manner: P165,000 for the Buencamino spouses and P165,000 also for the Cranker spouses. Cranker added that the balance of P245,000 owed by Amparts to Bucra should be regarded as an "advance" made by Buencamino and should be owed by Amparts to Buencamino rather than to Bucra (Exh. 12-c).

The trial court stressed that the profit from the negotiation of the dollar allocation was deposited in Buencamino's name and, therefore, he has to account to Amparts for the sum of P570,000 which he obtained from the blackmarketing of dollars (549-50, Record on Appeal).

Findings regarding Pasig lot. — On September 8, 1955, Amparts bought from Rizal Province 163 parcels of land with a total area of 76,000 square meters (which used to be the site of the old capitol), with two buildings, located at Barrio Sta. Rosa, Pasig, Rizal for the aggregate price of P395,000 (Exh. VV-1).

More than a month later, Amparts bought from Rizal Province four additional parcels of land with an area of 7,838 square meters, also situated at Barrio Sta. Rosa for £39,190 or at five peso a square meter (Exh. VV). The said parcels were the unregistered portions of the old capitol site. As of November 4, 1960, Amparts owed the province of Rizal P251,622 on the price of the two purchases (Exh. WW).

In a resolution dated December 12, 1955, it was decided that Amparts would retain only 13,498 square meters of the said land as the site of its factory and that the rest would be resold at cost to Buencamino and Cranker (Exh. C).

The trial court explained that there was nothing wrong with the resale. Buencamino did not make any profit in the said resale. Amparts was not prejudiced (555-6, Record on Appeal).

Sale of hangar parts from Pamec. — Surplus hangar parts, which Pamec, a corporation controlled by Cranker and Buencamino, bought for P60,000, were sold to Amparts for P187,500. The trial court found the price to be reasonable (560, Record on Appeal). Buencamino, Cranker and Chase, as directors, approved the sale at the board meeting held on September 25, 1956 (Exh. 2).

Use of Amparts' docks. — Pamec allegedly allowed third parties to use the docks of Amparts at the Pasig River and did not turn over to Amparts the fees collected for the use of the docks. The trial court found that there was no prejudice to Amparts because Pamec did not charge Amparts any fee for certain services and, moreover, Pamec, having used its crane and personnel at the docks, could charge fees therefor (560-1, Record on Appeal).

Rent for Buencamino's apartments. — The trial court ruled that one year after its decision became final, Amparts should not pay anymore rentals to Buencamino for the apartments intended for the technicians which had already been vacated and were no longer occupied (565, Record on Appeal).

Sale of tractor parts at depressed prices. — The trial court found no proof that by means of the sale of Amparts' tractor parts abroad by Overseas Investment Co., Ltd. Buencamino was able to sell dollars in the blackmarket or salt dollars abroad (566, Record on Appeal).

Matters covered by board resolution of May 13, 1960. — The trial court found nothing wrong in Buencamino's charging of 12% interest per annum on his loans to Amparts, in the increase in salaries of the company's officers, in the trip abroad of Buencamino spouses at the expense of Amparts, in the conversion into shares of stock of Amparts of the sum of P100,000 representing unpaid interests to Buencamino.

Transaction with Bertoni and Cotti. — The trial court found that Amparts imported from Bertoni and Cotti tractor parts worth \$122,250 but which Buencamino inflated to \$387,933.66, the amount which Amparts remitted to the United States. So, there was an excess remittance of \$265,683.66. The sum of \$17,000 out of that excess amount was sold in the blackmarket at P3.42 a dollar. The proceeds of P391,200 were deposited in the bank account of Buencamino in the Philippine Trust Company (Exh. UU, p. 24).

The trial court held that Buencamino should account for that amount to Amparts.

Forwarding costs, technical services and promotional expenses. — Amparts remitted to Overseas Investment Co., Ltd., through American banks, the sum of \$297,000 (p. 6, Exh. UU-5). The sum of \$140,000 out of that amount was sold in the blackmarket at the rate of three pesos and ten centavos a dollar (p. 31, Exh. UU-6). The trial court held that Buencamino should also account for the proceeds of the sale amounting to P434,000.

Recapitulation. — Hence, according to the trial court, Buencamino should account for the following amounts:

1. Sale of 5285,000 on the blackmarket

P570,000

2. Amount used in paying for subscription

330,000

3. Amount of alleged loans to Buencamino by Amparts

245,000

4. Sale in the blackmarket of \$140,000

434,000

5- Sale in the blackmarket of \$117,000

391,200

GRAND TOTAL

P1,970,200

Buencamino's counterclaims. — The trial court found that the Buencamino's claim that Chase should refund to Amparts the value of 24 pieces of machinery, which were allegedly useless, is not well-founded. Not well-founded because those pieces of machinery were intended for the manufacture of agricultural implements but Buencamino and Cranker decided not to engage in that kind of business. Hence, it was not the fault of Chase if the said machinery was not used by Amparts.

Amparts is not entitled to recover from Chase the sum of P6,676.60 as the freight charges paid by Amparts for the pieces of machinery and materials which Chase shipped to the Philippines but which were not a part of the plant that he had sold to Amparts.

The trial court found that matter was settled in the memorandum annexed to the minutes of the board meeting held on November 27, 1956 (Exh. 4). In fact, Chase's lawyer in a letter dated October 1, 1959 asked Amparts to pay for the said materials valued at P19,630.93 (Exh. II).

For intriguing against Amparts after this case had been filed, the trial court imposed upon Chase damages amounting to P500.

On the issue of dissolution or receivership. — The trial court held that Amparts cannot be benefited by its dissolution and that as Buencamino and his group own 2/3 of Amparts, it would not be proper to oust him as manager of Amparts. The most equitable solution would be to require him to pay his monetary liability to Amparts.

I concur in Justice Cuevas' conclusion that Judge Galmaitan's decision is supported by the law and the evidence. The appeals should not be sustained.

[**] The delay in the disposition of this case is partly attributable to the voluminous record consisting of a record on appeal with 1,040 pages, six brief (three of which are not brief)- 1,296 pages of testimony and 607 pages of exhibits, many of which are difficult to read and comprehend, especially the illegible photostatic copies and the documents in fine print. Plaintiff-appellant's brief has no statement of facts. Matters irrelevant to the main issue of breach of trust were offered as evidence and needlessly discussed. There is no coherent summation or synthesis of the evidence. Plaintiff's analysis of the evidence was not made a part of his statement of Facts.

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