

JOSEFINA RUIZ DE LUZURIAGA BLANCO, ET AL., PLAINTIFFS AND APPELLANTS VS. COMPAÑIA GRAL. DE TABACOS DE FILIPINAS AND CENTRAL AZUCARERA DE TARLAC, DEFENDANTS AND APPELLEES.*G.R. No. L-10810. November 29, 1960*

Ponente: DIZON, J.

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Appellant Josefina Ruiz de Luzuriaga Blanco is the widow, and the other Appellants, except Claudio R. de Luzuriaga-who is the attorney-in-fact of some of them-are the children of Eugenio Mas Fernandez who died in Barcelona, Spain, in May, 1933, leaving, among other properties, some bonds of Central Azucarera de Bais which he had deposited with and entrusted to the care and administration of the Compania Gral. de Tabacos de Filipinas-hereinafter referred to as Tabacalera. After his death Tabacalera remained in charge of his estate in the Philippines- including the bonds aforesaid-the account having been transferred in the corporate books in the name of "Herederos de Eugenio Mas". Subsequently, said bonds were redeemed and the proceed thereof were invested by Tabacalera, as stated hereinafter, in the purchase of bonds issued by Central Azucarera de Tarlac-hereafter referred to as the Central.

It appears that on November 15, 1928 the Central issued for sale to the public, debenture bonds of P1,000 each, payable on or before November 15, 1943, with interest thereon at the rate of 8% per annum, payable semiannually as per interest coupons attached to the bond certificates. Their issuance was in accordance with the trust indenture entitled "Escritura de Hipoteca Fideicomisaria" now marked as Exhibit "1". Among the purchasers thereof were Tabacalera itself which purchased 717 bonds; Tabacalera's affiliate, Tabacalera Insurance Company, which purchased 55 bonds; "Tabacalera Caja de Prevision del Personal de la Tabacalera", another affiliate of Tabacalera, which purchased 58 bonds; Antonio V. Correa, Vice Director of Tabacalera, who purchased 19 bonds; Federico Perez "Jefe Comercial" of Tabacalera, who purchased 37 bonds, and Manuel Perez Rosales, a Director of Tabacalera, who purchased 5 bonds.

On November 21, 1933, appellants purchased 70, and on December 6 of the same year they again purchased 45 of the bonds above-mentioned issued by the Central. Of the 115 bonds thus purchased by appellants, 41 were redeemed prior to January 1, 1942, leaving 74 bonds, with a total par value, exclusive of interest, of P74,000.00, still outstanding or unredeemed. When the second world war broke out in the Pacific area these 74 bonds were still deposited with Tabacalera against deposit receipts (Exhibits F and G) reading as follows:

"Hemos recibido de Srs. Herederos de Don Eugenio Mas-A Disposicion de los Mismos-Para Su Custodia y Cobro de Dividendos O Intereses Setenta Obligaciones de la Central Azucarera de Tarlac-Segun Detalle al Dorso.

'Los expresados valores seran entregados a la presentation de este resguardo al depositante o a la persona o personas que el haya designado en el acto de constituir el deposito, mediante recibo del interesado o de su apoderado, al dorso del mismo.

"Se advierte que la Compañia no responde de los casos de fuerza mayor.

Manila, 21 de Noviembre de 1933.

V. o. B. o.

Cia. Gral. de Tabacos de Filipinas

El Admor. Gral.

Por Delacion:

(Fdo.) C. Davies

(Fdo.) G. Galiana

Cajero

(Fdo.) R. Descals

Contador"

(EXHIBIT F)

"Hemos recibido de los SRES. HEREDEROS DE DON EUGENIO MAS - A Disposicion de los mismos-Para Su Custodia y Cobro de Dividendos O INTERESES CUARENTA Y CINCO OBLIGACIONES DE LA CENTRAL AZUCARERA DE TARLAC-SEGUN DETALLE AL DORSO.

"Los expresados valores seran entregados a la presentacion de este resguardo al depositante o a la persona o personas que el haya designado en el acto de eonstituir el deposito, mediante recibo del interesado o de su apoderado, al dorso del mismo.

"Se advierte que la Compania no responde de los cusos de fuerza mayor.

Manila, 6 de Diciembre de 1933.

V. o. B. o.

Cia. Gral. de Tabacos de Filipinas

El Admor. Gral.

Por Delacion:

(Fdo.) G. Davies

(Fdo.) G. Galiana

Cafero

(Fdo.) R. Descals

Contador"

(EXHIBIT G)

The record further discloses that on October 5, 1939 appellants executed the power of attorney Exhibit 4 in favor of Tabacalera, the pertinent portion of Which reads as follows:

"..... CONFIERE PODE

a la Compania General de Tabacos de Filipinas y por ella a cualquiera de sus Gerentes, apoderados o legitimos representantes para que con respecto a los valores y tittlos que las mandantes todos juntos tienen depositados a nombre de herederos de Eugenio Mas Fernandez en la propia Compania mandataria en Manila, cobre los cupones intereses, dividendos, o amortizaciones de los titulos depositados; levante y retire los valores de dichos depositos, los venda, canjee o sustituya por otros de igual o distinta clase, compre nuevos titulos y efectue nuevos depositos, que tambieff podra retirar cuando lo estime oportuno, iftrmando y suscribiendo los resguardos recibos y cuantos otros documentos sean necesarios, puesto que la entidad mandataria queda

plenamente facultada para disponer sin limitacion ni restriccion alguna de los valores depositados en la propia Compania."

(Exhibit 4)

Under the trust indenture Exhibit 1, in accordance with which the bonds of the Central were issued, the 2,500 bonds still outstanding when the second world war broke out in the Pacific area could be redeemed on or before November 15, 1943. On March 15 of said year the Central gave written notice to Tabacalera—who was the trustee of the bondholders under the aforesaid bond indenture—of its intention to redeem them. Aside from this notice on May 10, 11 and 12 of the same year, the required notice calling in the 2,500 outstanding bonds was published in the corresponding issues of the Manila Tribune and of La Vanguardia.

The evidence likewise shows that on or about April 17, 1943 the Central negotiated a loan with the Bank of Taiwan in the sum of P2,500,000.00 for the purpose—obviously—of having the required amount with which to redeem the outstanding 2,500 bonds. On May 15, 1943 the Central drew a P2,500,000.00 check against the Bank of Taiwan, payable to Tabacalera, in the latter's capacity as trustee of the bondholders, in full payment or discharge of the aforesaid outstanding bonds, said trustee being under obligation to make payments to the different owners thereof. Upon receipt of the check aforesaid Tabacalera deposited the amount it represented with the Bank of Taiwan in a special account entitled "Cuenta Fideicomisaria de la Central Azucarera de Tarlac."

Pursuant to the notices published as mentioned heretofore, a total of 1,987 bonds were redeemed and paid for—with Japanese Military Notes—on May 15, 1943, among them being the 74 bonds of appellants; 717 bonds of Tabacalera; 58 bonds of the "Tabacalera Caja de Prevision del Personal"; 55 bonds of Tabacalera Insurance Company; 19 bonds of Antonio V. Correa and 37 bonds of Federico Perez. On the date of payment, according to the Ballantyne scale of values, the rate of exchange was 1.25 Japanese military note to P1.00, Philippine currency. The proceeds obtained from the redemption of appellants' bonds, amounting to P74,000.00 in Japanese military notes, were placed in the account of Tabacalera in its capacity as depositary and trustee appointed by appellants. In fact, it remained so deposited with Tabacalera during the whole period of the Japanese occupation. In this connection, the lower court found—and we believe its finding is duly supported by sufficient evidence—that during the whole period of the Japanese occupation and until the liberation of the Philippines in 1945, Tabacalera had sufficient funds deposited in Manila banks to cover the aforesaid amount of P74,000.00, and that up to December 29, 1944 Tabacalera's special bondholders' account with the Bank of Taiwan had more than sufficient to cover said amount. The evidence further shows that said special account was closed on December 29, 1944 upon demands of the Bank of Taiwan, and the money was deposited in Tabacalera's vaults.

The present action was instituted by appellants to question the validity of the redemption of their 74 debenture bonds as above-mentioned; the surrender of the bond certificates by Tabacalera to the Central, and to recover from both or either the value of said bonds. After trial upon the issues raised by appellants in their second amended complaint (Rec. on Ap. pp. 1-49) and the answers thereto filed by Tabacalera (id. pp. 78-112) and the Central (id. pp. 168-186), the lower court rendered judgment dismissing the complaint, with costs, from which appellants interposed the present appeal.

Disregarding some questions of secondary importance raised in appellants' brief, their main contentions may be reduced to the following propositions:

- (1) That Tabacalera—their depositary and trustee—in violation of its trust, and the Central, entered into a fraudulent scheme to redeem the outstanding bonds of the latter, to the detriment of the interests of the bondholders;
- (2) That appellants never ratified the acts of Tabacalera and the Central relative to the redemption aforesaid; and

(3) That because of conditions arising subsequent to the execution of the power of attorney by appellants in favor of Tabacalera and the latter's appointment as trustee under the trust indenture Exhibit 1, Tabacalera had lost the right to exercise said power and trust.

In the absence of direct evidence to support their contention regarding the fraudulent scheme and breach of trust attributed to Tabacalera and the Central, appellants invite our attention to the following facts: that the Central was organized in June, 1927 by high executive officials of Tabacalera; that of its 16,000 shares, 13,000 were subscribed by Tabacalera, 2,000 by its executive officers, and only 100 by other persons not known to be connected with Tabacalera; that as of December 31, 1941 the Central had 70,000 shares of stock outstanding, of which 26,302 were in the name of Tabacalera, 729 in the name of "Caja de Prevision del Personal de la Cia. Gral. de Tabacos de Filipinas", 557 in the name of Tabacalera Insurance Company, while 8,821 were in the name of other persons for whom Tabacalera was the attorney-in-fact; that Tabaca-Jera was the general manager of, and used to finance the operations of, the Central since its organization, and that the majority of the members of the Board of Directors of the Central had always been high officials of Tabacalera,;

It is not very hard to perceive that the above facts and circumstances, whether singly or collectively, are not sufficient to establish the serious charge of fraud made against Tabacalera and the Central; neither would they justify our jumping to the conclusion that the said parties had committed fraud, one of them committing furthermore a violation of trust.

It must be remembered that the bonds in question were expressly made redeemable on or before November 15, 1943. To redeem them on or before that date was evidently not only the contractual obligation but the right of the Central. That it exercised said right six months before November 15, 1943 was, therefore, dearly in accordance with the conditions of the bonds. Moreover, the redemption of the bonds before November 15, 1943 could be said to have been favorable to the bondholders themselves, bearing in mind that the Japanese military notes in circulation at the time decreased in value as time passed. Upon the facts of record there could have been no such fraudulent scheme or intent. If the only bonds redeemed on May 15, 1943 had been appellants' 74 bonds, there could have been some reason to suspect the good faith of the Central and Tabacalera, but the truth of the matter regarding this fact is that, together with appellants' 74 bonds, many other were redeemed, among them, 717 belonging to Tabacalera itself, 58 to "Tabacalera Caja de Prevision del Personal", 55 to Tabacalera Insurance Company, 19 to Antonio V. Correa and 37 to Federico Perez, both high-ranking officers of Tabacalera. To this we must add the consideration that the value of the Japanese military notes at the time, of the redemption had not yet greatly depreciated. In *Aurechoechea vs. Kabankalan Sugar, Co., Inc.*, (81 Phil., 476; 46 Off. Gaz., 258), we took judicial notice of the fact that "in October, 1943 they (the Japanese military notes) had as much purchasing power as, if not more than, the Victory notes had" in April, 1945. That subsequently, the military notes first depreciated in value and finally became worthless was something that Tabacalera and the Central could not have foreseen nor prevented.

With particular reference to Tabacalera, we find that, according to the facts, it had really no choice but to accept payment of appellants' bonds when the same was tendered to it by the issuing Central, because the latter had both the duty and the right to call in its bond for redemption on or before November 15, 1943. Upon receipt of payment it was naturally Tabacalera's duty to surrender the bond certificates to the Central. For the validity of this surrender and delivery there was no need for Tabacalera neither to obtain the previous consent of appellants nor to notify them of the redemption after the same had been made because Tabacalera, as appellants' attorney-in-fact, was fully authorized, inter alia, not only to collect the interests, dividends or amortizations paid upon the bonds, but also to receive payment of their value, to sell them and with the proceeds to buy other bonds. In fact, the power of attorney authorized Tabacalera "para disponer sin limitacion ni restriccion alguna de los valores

depositados" (Exh. 4). It must be stated further that the trust indenture under which the Central issued the debenture bonds in question provide only for notice to the bondholders by means of notices to be published in Manila newspapers. On the other hand, the power of attorney executed by appellants in favor of Tabacalera does not provide that the latter should give notice to its principals of the redemption of the bonds. Consequently, Tabacalera's failure to notify appellants regarding of the redemption of their bonds and the payment of their value constitutes no violation of trust nor proof of negligence.

That Tabacalera was the trustee of the bondholders and was at the same time general manager of the Central is of little consequence. The evidence discloses in this action that appellants and their predecessor in interest-who resided in the Philippines for some time and frequently visited the offices of Tabacalera and the Central (Deposition of Eugenio Mas p. 12)-must have been fully aware of this circumstance when they appointed Tabacalera as their depositary and attorney-in-fact, and received interest payments and amortizations from the latter before the war. We, therefore, fail to see how they can now complain about this situation.

Appellants' last important contention is that Tabacalera could no longer act as their agent after a change of conditions had developed creating conflict of interests between them, and that this notwithstanding, it continued to exercise its powers as their depositary and attorney-in-fact, to their prejudice. It is their contention that, with the occupation of the Philippines by the Japanese armed forces, a conflict of interests arose between themselves, on the one hand, and Tabacalera, the Central and other bondholders, on the other; that Tabacalera and the Central, by agreeing on the redemption of the bonds, squeezed the bondholders out of the fair value thereof by paying them with Japanese military notes with a depreciated value; that in calling in the bonds for redemption, Tabacalera enabled the Central to relieve itself of its prewar obligation to the bondholders, while it subrogated itself in the place of said bondholders as creditor of the Central by lending to the latter the big amount of money it received from the Central in payment of the bonds redeemed on May 15, 1943.

We find appellants' contention to be without merits. In the first place, the power of attorney executed by them in favor of Tabacalera does not provide at all that in case of any particular change of conditions subsequent to its execution, the instrument shall be deemed to have become inoperative, and that the attorney-in-fact shall no longer exercise its authority thereunder. In the second place, we fail to see how the Japanese occupation and the circulation of the Japanese military notes in the Philippines could have, ipso facto, amounted to a virtual cancellation or, at least, suspension of Tabacalera's powers as appellants' depositary and attorney-in-fact.

As regards the alleged plan of squeezing the bondholders out of the fair value of their bonds, suffice it to say: first, that the Central was bound by contract, and had the right, to redeem the bonds on or before November 15, 1943; second, that Tabacalera, as appellants' attorney-in-fact, was authorized to accept payment of such bonds as belonged to its principals; and lastly, that at the time of the redemption of the bonds, the Japanese military notes were legal tender in the Philippines and their value had not yet greatly depreciated. Appellants' predicament, therefore, does not differ substantially from that of creditors whose credits were virtually wiped out by payment of said debts during the Japanese occupation, thus making the ruling in the *Haw Pia* case applicable to the present. In said case the Bank of Taiwan, as the authorized agent of the creditor, received money (payment) from the debtor and the money thus paid-which remained deposited with said bank-became of no value. The creditor was found not to be entitled to relief (*Haw Pia vs. China Banking Corp.*, 80 Phil., 604; 45 Off. Gaz., 9 supp., 229).

Appellants' claim that Tabacalera surrogated itself in the place of the bondholders as creditor of the Central, is inaccurate. It was the Bank of Taiwan who, in effect, was subrogated as creditor of the Central when the latter borrowed money from the former with which to redeem the bonds. Appellants' claim that Tabacalera subsequently loaned the money it had received in payment of the bonds to the Central so that the latter may, in turn, repay its debt to the Bank of Taiwan is not borne out by the evidence. As stated heretofore, during the

Japanese occupation and until the liberation of the Philippines in 1945, Tabacalera not only had sufficient funds in Manila banks to cover the P74,000.00 it received in payment of appellants' bonds, but also had, during all that time, more than sufficient funds to cover said amount in its special bondholders' account with the Bank of Taiwan. This can only mean that Tabacalera had not made use of appellants' funds when it loaned money to the Central with which the latter paid its indebtedness to the Bank of Taiwan. What Tabacalera did with the amounts it received in payment of its own 717 bonds and of others belonging to other parties is, of course, not of appellants' concern at all. Upon the other hand, that Tabacalera loaned the necessary amount to the Central for the repayment of the Bank of Taiwan's loan, is no indication that the two entities had entered into a fraudulent scheme between themselves. Such accommodation was not the first nor an isolated case, because appellants themselves claim that it was customary for Tabacalera to finance the operations of the Central since the latter's organization.

Finally, considering that what must have caused the commencement of this action was the fact that the Japanese military notes paid to redeem applicants' bonds became worthless after the war, we deem of particular application to this case what was said in the *Haw Pia* case, as follows:

"But be that as it may, whatever might have been the intrinsic or extrinsic worth of the Japanese war-notes which the Bank of Taiwan has received as full satisfaction of the obligations of the appellee's debtors to it, is of no consequence in the present case. As we have already stated, the Japanese war-notes were issued as legal tender at par with the Philippine peso, and guaranteed by the Japanese Government 'which takes full responsibility for their usage having the correct amount to back them up (Proclamation of Jan. 8 1942). Now that the outcome of the war has turned against Japan, the enemy banks have light to demand from Japan, thru their States or Government, payments or compensation in Philippine peso or U. S. dollars as the case may be, for the loss or damage inflicted on the property by the emergency war measure taken by the enemy. If Japan: had won the war or were the victor, the property or money of said banks sequestered or impounded by her might be retained by Japan and credited to the respective State of which the owners of said banks were nationals, as a payment on account of the sums payable by them as indemnity under the treaties, and the said owners were to look for compensation in Philippine pesos or U. S. dollars to their respective States. (Treaty of Versailles and other peace treaties entered at the close of the first world war; VI Hackworth Digest of International Law, p. 232.) And if they cannot get any or sufficient compensation either from the enemy or from their States, because of their insolvency or impossibility to pay, they have naturally to suffer, as everybody else, the losses incidental to all wars."

In the view we take of this case we deem it unnecessary to consider other secondary points raised by appellants in their brief.

Wherefore, the appealed judgment is affirmed with costs.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed.

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