

**PACIFIC MERCHANDISING CORPORATION, PLAINTIFF-APPELLEE,
VS. CONSOLACION INSURANCE & SURETY CO., INC.,
DEFENDANT-APPELLEE, CONSOLACION INSURANCE & SURETY
CO., INC., THIRD-PARTY PL...**

G.R. No. L-30204. October 29, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal, on a question of law, from the judgment of the Court of First Instance of Manila, dated August 8, 1964, affirming the decision of the City Court in Civil Case No. 117811. The issue arose from the following facts:

In Civil Case No. 117811, which was an action instituted by Pacific Merchandising Corporation (plaintiff-appellee) to collect the sum of P2,562.88 from Consolacion Insurance & Surety Co, Inc, (defendant-appellee) who in turn filed a third-party complaint against Gregorio V. Pajarillo (third-party defendant-appellant), the City Court of Manila rendered judgment on April 6, 1964, the dispositive portion of which reads, in part, thus:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the former the sum of P2,562.88 with interest thereon at the rate of 12% per annum from May 30, 1963 until fully paid, P100.00 as for attorney's fees, plus the costs of suit; condemning third-party defendant to pay third-party plaintiff for whatever sums or amounts the latter paid the plaintiff on account of this judgment." [1]

By virtue of the appeal interposed by the third-party defendant, Gregorio V. Pajarillo, the case was elevated, on May 12, 1964, to the Court of First Instance of Manila. On July 21, 1964, the parties, through their respective counsel, submitted the following Stipulation of Facts:

"1. That on the 19th day of October, 1962, a Writ of Execution was issued by the Court of First Instance of Manila under Civil Case No. 49691, entitled Pacific Merchandising Corporation vs. Leo Enterprises, Inc., a copy of the said Writ of Execution is attached as ANNEX 'A' to the com-plaint;

"2. That by virtue of the aforesaid Writ of Execution, the Sheriff of Manila levied and attached the following:

‘1. Second Hand AUTOMATICKET Machine No. MG-31833; and

‘2. Cinema Projectors Complete, trade-mark SIMPLEX PEERLESS MAGNARC NOS. 52625 and 62387'

which items were advertised for sale on March 2, 1963, copy of Notice of Sale attached as ANNEX 'B' to the Complaint;

"3. That Atty. Greg V. Pajarillo was appointed on March 2, 1963 as Receiver of all the assets, properties and equipment of Paris Theatre, operated by Leo Enterprises, Inc. under Civil Case No. 50201 entitled Gregorio V. Pajarillo vs. Leo Enterprises, Inc.;

"4. That the sale at public auction of the above-described properties was postponed and was later cancelled due to the representation of Atty. Greg V. Pajarillo as Receiver of Paris Theatre operated by Leo Enterprises, Inc. in which he undertook the payment of the judgment rendered in favor of the plaintiff against Leo Enterprises, Inc. as per undertaking dated March 11, 1963, copy of which is attached as ANNEX 'C' to the complaint;

"5. That on or about the third of March, 1963, third-party defendant Pajarillo approached the third-party plaintiff and applied for a surety bond in the amount of P5,000.00 to be posted in favor of the above-named plaintiff in order to guarantee to said plaintiff the payment of obligations in its favor by the Leo Enterprises, Inc.;

"6. That the bond applied for was in fact executed in favor of the plaintiff with third-party defendant Pajarillo as principal and third-party plaintiff as surety in the context of the allegations of the preceding paragraph and a copy of the said bond is attached as ANNEX 'A' to the third-party complaint;

"7. That to protect third-party plaintiff against damage and injury, the third-party defendant Pajarillo executed in favor of the former an INDEMNITY AGREEMENT, copy of which is attached as ANNEX 'B' to third-party complaint; the terms of which are incorporated by reference;

"8. That the plaintiff received from the said principal, Greg V. Pajarillo, the sum of P2,000.00 leaving a balance of P2,562.88 still unpaid aside from interest at the rate of 1% per month and attorney's fees equivalent to 25% of the amount due as provided for in said undertaking (ANNEX 'C' to the complaint);

"9. That on July 1, 1963, a decision was rendered by the Court of First Instance of Manila in Civil Case No. 50201, copy of which is attached as ANNEX 'A' to Answer to Third-Party Complaint, by virtue of which Greg V. Pajarillo, as said Receiver, stopped making payments to plaintiff;

"10. That the said decision in Civil Case No. 50201 dated July 1, 1963 was appealed by defendant Leo Enterprises, Inc. to the Court of Appeals and that the records were elevated to the said Appellate Court on August 27, 1963;

"11. That on October 9, 1963, plaintiff's counsel demanded from the said principal, Greg V. Pajarillo, the payment of the installments corresponding to the months of May, June, July, August and September, 1963, which remain unpaid in spite of said demand, copy of said letter being attached as ANNEX 'E' to the complaint;

"12. That the defendant was duly notified of the demand made on the principal, Greg V. Pajarillo and in spite of said notice the defendant has failed and refused to pay the unpaid obligation;

"13. That on December 19, 1963, plaintiff's counsel demanded from the defendant the payment of the unpaid obligation of the principal, Greg V. Pajarillo but refused and failed to pay the same in spite of said demand;

"14. That when reminded by third-party plaintiff regarding his obligations in favor of the plaintiff, the third-party defendant, Greg V. Pajarillo replied that he no longer was bound to pay because he had ceased to be the receiver of Paris Theatre operated by Leo Enterprises, Inc. by virtue of the decision of the Court in Civil Case No. 50201 cited above, and for this reason, third-party plaintiff refused to pay the demand of the plaintiff." [2]

On the basis of the foregoing Stipulation of Facts, the Court of First Instance rendered judgment on August 8, 1964, which judgment was amended on August 25, 1964, affirming the appealed decision of the City Court. [2-a]

The trial court predicated its judgment on the following considerations: (1) Since the unpaid claim represents the cost of certain materials used in the construction of the Paris Theatre, the possession of which reverted to Gregorio V. Pajarillo as owner of said property by virtue of the judgment in Civil Case No. 50201, "it is only simple justice that Pajarillo should pay for the said claim, otherwise he would be enriching himself by having the said building without paying plaintiff for the cost of certain materials that went into its construction"; (2) "under

Section 7 of Rule 61 of the former Rules of Court, one of the powers of a receiver is to pay outstanding debts, and since the said plaintiff's claim has been outstanding since August 27, 1962, if not before, Pajarillo should have paid the same long before the alleged termination of the receivership on July 1, 1963"; (3) the procedure outlined in Section 8 of the Rule, namely, that whenever the court "shall determine that the necessity for a receiver no longer exists, it shall, after due notice to all interested parties and hearing, settle the accounts of the receiver, direct the delivery of the funds and other property in his hands to the persons adjudged entitled to receive them, and order the discharge of the receiver from further duty as such", has not been followed; and (4) when Gregorio V. Pajarillo undertook to pay the amount owed to plaintiff (Annex "C") and executed the surety bond (Annex "D") in favor of plaintiff, he "stepped into the shoes" of the debtor, Leo Enterprises, Inc., "and the properties of the said debtor having all subsequently passed on to Pajarillo, there is no reason, legal or otherwise, for relieving defendants of their said undertaking."

The court a quo likewise declared that (1) "the receivership was not terminated by virtue of the appeal interposed by Leo Enterprises, Inc., one of the defendants in Civil Case No. 50201, because a decision which is appealed cannot be the subject of execution"; (2) "granting arguendo that the decision is final and executory, the said decision cannot bind nor can it be enforced against the plaintiff in the present case because it is not a party in Civil Case No. 50201"; and (3) "when Atty. Pajarillo assumed the obligation of Leo Enterprises, Inc., as a Receiver, there was a subrogation of the party liable and, therefore, the plaintiff cannot enforce the judgment in Civil Case No. 49691 against Leo Enterprises, Inc."

From the foregoing judgment, third-party defendant Gregorio V. Pajarillo interposed an appeal to the Court of Appeals. The aforesaid Appellate Court, in turn certified the same to this Court on the ground that there is no question of fact involved, but only one of law.

The legal question is whether or not third-party defendant-appellant Gregorio V. Pajarillo is, under the facts and circumstances obtaining, liable to plaintiff for the unpaid amount claimed. Upon the resolution of this issue will in turn depend the liability of defendant-third-party plaintiff Consolacion Insurance & Surety Co., Inc. under the Surety Bond, on the basis of which it was ordered by the court a quo to pay the amount involved to plaintiff-appellee.

1. A receiver is not an agent or representative of any party to the action. He is an officer of the court exercising his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all the parties in interest.[3] He performs his duties "subject to the control of the Court", and every question involved in the receivership may be determined by the court taking cognizance of the receivership proceedings.[4] Thus, "a receiver, strictly speaking, has no right or power to make any contract binding the property or fund in his custody or to pay out funds in his hands without the authority or approval of the court * * *".[5] As explained by Justice Moran, speaking for the Court in a 1939 case,[6] " * * * The custody of the receiver is the custody of the court. His acts and possession are the acts and possession of the court, and his contracts and liabilities are, in contemplation of law, the contracts and liabilities of the court. As a necessary consequence, a receiver is subject to the control and supervision of the court at every step in his management of the property or funds placed in his hands. * * *"[7] He cannot operate independently of the court, and cannot enter into any contract without its approval."

" * * * El depositario no puede obrar independientemente del juzgado; contrata bajo el control del mismo; sin su autorizacion o aprobacion expresa, el depositario no puede perfeccionar ningun contrato. * * *"[8]

2. In the case at bar, appellant Pajarillo does not dispute the fact that he never secured the court's approval of either the agreement of March 11, 1963, with Pacific Merchandising Corporation or of his Indemnity Agreement with the Consolacion Insurance Surety Co., Inc. on March 14, 1963, in consideration of the performance bond

submitted by the latter to Pacific Merchandising Corporation to guarantee the payment of the obligation. As the person to whom the possession of the theater and its equipment was awarded by the court in Civil Case No. 50201, it was certainly to his personal profit and advantage that the sale at public auction of the equipment of the theater was prevented by his execution of the aforesaid agreement and submission of the afore-mentioned bond. In order to bind the property or fund in his hands as receiver, he should have applied for and obtained from the court authority to enter into the aforesaid contract.[9] Unauthorized contracts of a receiver do not bind the court in charge of receivership. They are the receiver's own contracts and are not recognized by the courts as contracts of the receivership.[10] Consequently, the aforesaid agreement and undertaking entered into by appellant Pajarillo not having been approved or authorized by the receivership court should, therefore, be considered as his personal undertaking or obligation. Certainly, if such agreements were known by the receivership court, it would not have terminated the receivership without due notice to the judgment creditor as required by Section 8 of Rule 59 of the Rules of Court. This must be assumed because of the legal presumption that official duty has been regularly performed.[11] Indeed, if it were true that he entered into the agreement and undertaking as a receiver, he should have, as such receiver, submitted to the court an account of the status of the properties in his hands including the outstanding obligations of the receivership.[12] Had he done so, it is reasonable to assume that the judgment creditor would have opposed the termination of the receivership, unless its claim was paid. Having failed to perform his duty, to the prejudice of the creditor, appellant should not be permitted to take advantage of his own wrong. The judgment creditor having been induced to enter into the aforesaid agreement by appellant Pajarillo it was the duty of the latter to comply with his end of the bargain. He not only failed to perform his undertaking, but now attempts to evade completely his liability. Under such circumstances, appellant is not entitled to equitable relief. No ground for equitable relief can be found in a case where a party has not only failed to perform the conditions upon which he alone obtained the execution of the contract, but where it is clear that he never, at any time, intended to perform them.[13]

3. Moreover, it will be recalled that the obligation due the Pacific Merchandising Corporation represented the cost of materials used in the construction of the Paris Theatre. There can not be any question that such improvements, in the final analysis, redounded to the advantage and personal profit of appellant Pajarillo because the judgment in Civil Case No. 50201, which was in substance affirmed by the Appellate Court, ordered that the "possession of the lands, building, equipment, furniture, and accessories * * *" of the theater be transferred to said appellant as owner thereof.

As the trial court aptly observed " * * it is only simple justice that Pajarillo should pay for the said claim, otherwise he would be enriching himself without paying plaintiff for the cost of certain materials that went into its construction. * * It is argued, however, that he did so only as a receiver of Leo Enterprises, Inc.. This may be so, but it is equally true that * * all of the properties of Leo Enterprises, Inc, passed on to Pajarillo by virtue of the judgment in Civil Case No. 50201 * * ". This Roman Law principle of "Nemo Cum alterius detrimento locupletari potest" is embodied in Article 22 (Human Relations),[14] and Articles 2142 to 2175 (Quasi-Contracts) of the New Civil Code. Long before the enactment of this Code, however, the principle of unjust enrichment which is basic in every legal system, was already expressly recognized in this jurisdiction.

As early as 1903, in *Perez v. Pomar*,[15] this Court ruled that where one has rendered services to another, and these services are accepted by the latter, in the absence of proof that the service was rendered gratuitously, it is but just that he should pay a reasonable remuneration therefor because "it is a well-known principle of law that no one should be permitted to enrich himself to the damage of another." Similarly in 1914, this Court declared that in this jurisdiction, even in the absence of statute, " * * under the general principle that one person may not enrich himself at the expense of another, a judgment creditor would not be permitted to retain the purchase price of land sold as the property of the judgment debtor after it has been made to appear that the judgment debtor had no title

to the land and that the purchaser had failed to secure title thereto * * *".[16] The foregoing equitable principle which springs from the fountain of good conscience are applicable to the case at bar.

ACCORDINGLY, in view of the foregoing, the judgment under appeal is hereby AFFIRMED. Costs against appellant.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Record on Appeal, p. 71.

[2] *ibid.*, pp. 74-78.

[2-a] Decision was amended by the trial court on August 25, 1964, to the effect that third-party defendant Pajarillo was ordered to pay third-party plaintiff whatever amount the latter pays to the plaintiff under said judgment.

[3] *Teal Motor Co. v. Court of First Instance of Manila*, 51 Phil. 549.

[4] *Oria v. Campbell, et al.*, 34 Phil. 850; *Compañia General de Tabacos v. Gauzon, et al.*, 20 Phil. 261.

[5] 75 C.J.S. 817, citing *Country Corp. of Maryland v. Semmes*, 182 A. 273, 169 Md. 501; *Miller, Franklin & Co. v. Gentry*, 79 S. W. 2d. 470, 239 Mo. App. 892; *Clifford v. West Hartford Creamery Co.*, 153 A. 205, 103 Vt. 229.

[6] *National City Bank of New York v. Yek Tong Lin & Marine Insurance Co.*, 67 Phil. 544.

[7] *Ibid.*, at page 545. Italics supplied.

[8] *Cruz, et al. v. Encarnacion, et al.*, 91 Phil. 868, 874.

[9] 75 C.J.S. 818, citing *Naslund v. Moon Motor Car Co.*, 134 S.W. 2d. 102, 107, 345 Mo. 465.

[10] *Knickerbocker & Co. v. Benson*, 279 N.Y.S. 86, citing *Sager Manufacturing Co. v. Smith*, 60 N.Y.S. 849; *Sayles v. Jourdan*, 24 N.E. 1098.

[11] Section 5(m), Rule 131, Rules of Court.

[12] *Martinez v. Graño*, 49 Phil. 214.

[13] *Huggins v. Daley*, 99 F. 606.

[14] Article 22 of the New Civil Code provides:

"ART. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

[15] 2 Phil. 682.

[16] *Bonzon v. Standard Oil Co. and Osorio*, 27 Phil. 141, 146.

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