

**ALFREDO M. VELAYO, IN HIS CAPACITY AS ASSIGNEE OF THE
INSOLVENT COMMERCIAL AIR LINES, INC. (CALI), PLAINTIFF AND
APPELLANT, VS. SHELL COMPANY OF THE PHILIPPINE ISLANDS,
LTD., DEF...***G.R. No. L-7817. October 31, 1956*

Ponente: FELIX, J.

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Antecedents—The Commercial Air Lines, Inc., which will be hereinafter referred to as CALI, is a corporation duly organized and existing in accordance with the Philippines laws, with offices in the City of Manila and previously engaged in air transportation business. The Shell Company of the P. L, Ltd., which will be designated as the defendant, is on the other hand, a corporation organized under the laws of England and duly licensed to do business in the Philippines, with principal offices at the Hongkong and Shanghai Bank building in the City of Manila.

Since the start of CALI's operations, its fuel needs were all supplied by the defendant. Mr. Desmond Fitzgerald, its Credit Manager who extended credit to CALI, was in charge of the collection thereof. However, all matters referring to extensions of the term of payment had to be decided first by Mr. Stephen Crawford and later by Mr. Wildred Wooding, who represented in this country Defendant's Board of Directors, the residence of which is in London, England (Exhs. 4-B and 4-A).

As of August, 1948, the books, of the Defendant showed a balance of P170,162.88 in its favor for goods it sold and delivered to CALI. Even before August 6, 1948, Defendant had reasons to believe that the financial condition of the CALI was far from being satisfactory. As a matter of fact, according to Mr. Fitzgerald, CALI's Douglas C-54 plane, then in California, was offered to him by Mr. Alfonso Sycip, CALI's President of the Board of Directors, in partial settlement of their accounts, which offer was, however, declined by Mr. Crawford, probably because upon inquiries made by Mr. Fitzgerald sometime before

August 6, 1948, for the purpose of preparing the report for its London office regarding CALI's indebtedness, Col. Lambert, CALI's Vice President and General Manager, answered that the total outstanding liabilities of his corporation was only P550,000, and the management of Defendant probably assumed that the assets of the CALI could very well meet said liabilities and were not inclined to take charge of the sale of CALI's said Douglas C-54 plane to collect its credit.

On August 6, 1948, the management of CALI informally convened its principal creditors (excepting only the insignificant small claims) who were invited to a luncheon that was held between 12:00 and 2:00 o'clock in the afternoon of that day in the Trade and Commerce Building at 123 Juan Luna St., Manila, and informed them that CALI was in a state of insolvency and had to stop operation. The creditors present, or represented at the meeting, were: Mr. A. L. Bartolini, representing Firestone Tire & Rubber Co.; Mr. Quintin Yu, representing Commercial News; Mr. Mark Pringle, representing Smith, Bell & Co. (Lloyds of London); Messrs. Vicente Liwag, C

Dominguez and Pacifico Agcaoili, representing National Airports Corporation; Messrs. W. J. Bunnell and Manuel Chan, representing Goodrich International Rubber Co.; Mr. G. E. Adair, representing Goodyear Tire & Rubber Co.; Mr. J. T. Chuidian, representing Gibbs, Gibbs, Chuidian & Quasha; Mr. E. Valera, representing Mabasa & Co.; Mr. D. Fitzgerald, representing Shell Co. P.I. Ltd.; and Mr. Alfonso Z. Sycip, representing himself, Yek Hua Trading Corporation and Paul Sycip (Exhs. NN, JJJ, MM, QQQ, II-4, SS, TT, UU, W, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, and HHH).

The persons present, including Mr. Desmond Fitzgerald, signed their names and the names of the companies they represented on a memorandum pad of the law firm Qui-sumbing, Sycip, and Quisumbing (Exhs. W and W-l).

In that meeting at noontime of August 6, 1948, out of the 194 creditors in all (Exh. 00) 15 were listed as principal creditors having big balances' (Exh. NN), to wit:

13th Air Force.....	P12,880.00
Civil Aeronautics Administration.....	98,127.00
Gibbs, Giibs, Chuidian A Quasha.....	5,544.90
Goodrich Inti Rubber Co.....	3,142.47
Goodyear Tire & Rubber Co.....	1,727.50
Mabasa & Co.....	4,867.72
Manila Int'l Airport.....	55,280.04
Manila Inti Air Terminal (PAL).....	36,163.68
Shell Co. of the PhiL, Ltd.....	152,641.68
Smith, Bell & Co., Ltd.	45,534.00
Paul Sycip.....	8,189.33
Mrs. Buenaventura.....	20,000.00
Firestone Tire & Rubber Co.....	4,911.72
Alfonso Sycip.....	575,880.83
Yek Hua Trading Corp.....	487,871.20
Pl,512/762.87	

What occurred in that meeting may be summarized as follows: Mr. Alexander Sycip, Secretary of the Board of Directors of the CALI, informed the creditors present that this corporation was insolvent and had to stop operations. He explained the memorandum agreement executed by the CALI with the Philippine Air Lines), Inc., on August 4, 1948, regarding the proposed sale to the latter of the aviation equipments of the former (Exhe. MM and QQQ, par. 1—memo of meeting; Exhs. III and PPP—P. Agcaoili's memorandum dated August 7, 1948, to the General Manager of the National. Airports Corp.). Mr. Alexander Sycip was assisted in the explanation by CPA Alfredo Velayo of Washington, Sycip & Company, Auditors of the CALI, who discussed the balance sheets and distributed copies thereof to the creditors present (Exhs. NN, NN-1 to 1 Exh. JJ—P. Agcaoili's copy of balance sheet p. 229-230 t.s.n., Nov. 27, 1951, of the testimony of D. Fitzgerald). The said balance sheet made mention of a C-54 plane in the United States, the property now involved in this suit. He was likewise assisted in his

explanation by Mr. Curtis L. Lambert, Vice President and General Manager of the CALI, who described in greater detail the assets of the CALL. There was a general understanding among all the creditors present on the desirability" of consummating the sale in favor of the Philippine Air Lines Inc. (Exhs. MM and QQQ, par. 2-Memo of meeting; Exha. III and PPP par. 5—P. Agcaoili's memorandum dated August 7, 1948, to the General Manager of the National Airports Corp.; and pp. 299-300 t.s.n., January 15, 1952, of the testimony of Desmond Fitzgerald).

Then followed a discussion on the payment of claims of creditors and the preferences claimed for the accounts due to the employees, the Government and the National Airports Corporation. The representatives of the latter Messrs. Vicente H. Liwag, C. Dominguez and Pacifico V. Agcaoili, contended that their accounts were preferred. The other creditors disputed such contention of preference (Exhs. MM and QQQ, par. 3—Memo of meeting; Exhs. III and PPP, par. 3—P. Agcaoili's memorandum dated August 1, 1948, to the General Manager of the National Airports Corp.; and pp. 247-248 t.s.n., January 10, 1952, of the testimony of D. Fitzgerald). No understanding was reached on this point and it was then generally agreed that the matter of preference be further studied by a working committee to be formed (Exhs. MM, par. 3—Memo of meeting). The creditors present agreed to the formation of a working committee to continue the discussion of the payment of claims and preferences alleged by certain creditors, and it was further agreed that said working committee would supervise the preservation of the properties of the corporation while the creditors attempted to come to an understanding as to a fair distribution of the assets among them (Exhs. MM and QQQ, Memo of meeting). From the latter exhibit the following is copied:

"4. Certain specific matters such as the amount owing to the Philippine Air Lines, Inc., and the claims of Smith, Bell & Co., (representing Lloyds of London) that its claim should be offset against the payments which may be due to CALI from insurance claims were not taken up in detail. It was agreed that these matters together with the general question of what are preferred claims should be the subject of further discussions, but shall not interfere with the consummation of the sale in favor of PAL.

"5. The creditors present agreed to the formation of the working committee to supervise the preservation of the properties of the corporation and agreed further that Mr. Fitzgerald shall represent the creditors as a whole in this committee. It was understood, however, that all questions relating to preference of claims can be decided only by the creditors assembled.

"6. It was the sense of the persons present that, if possible, the insolvency court be, avoided but that should the creditors not meet in agreement, then all the profits from the sale will be submitted to an insolvency court for proper division among the creditors."

To this working committee, Mr. Desmond Fitzgerald, Credit Manager, of the Defendant, Atty. Agcaoili of the National Airports Corporation and Atty. Alexander Sycip (Exhs. III and PPP, par. 5—P. Agcaoili's memorandum dated August 7, 1948, to the General Manager of the National Airports (Corp.) were appointed. After the creditors present knew the balance sheet and heard the explanations of the officers of the CALI, it was their unanimous opinion that it would be advantageous not to present suits against this corporation but to strive for a fair pro-rata division of its assets (Exh. MM, par 6, Memo of meeting), although the management of the CALI announced that in case of non-agreement of the creditors on a pro-rata division of the assets, it would file insolvency proceedings (p. 70, t.s.n., October 22, 1951).

Mr. Fitzgerald did not decline the nomination to form part of said working committee and on August 9, 1948, the 3 members thereof discussed methods of achieving the objectives of the committee as decided at the creditors' meeting, which were to preserve the assets of the CALI and to study the way of making a fair division of all the assets among the creditors. Atty. Sycip made an offer to Mr. D. Fitzgerald to name a representative to oversee the preservation of the assets of the CALI, but Mr. Fitzgerald replied that the creditors could rely on Col. Lambert.

Atty. Pacifico Agcaoili promised to refer the arguments adduced at the second meeting to the General Manager of the National Airports Corporations and to obtain the advice of the Corporate Counsel, so the negotiation with respect to the division of assets of the CALI among the creditors was left pending or under advice when on that very day of the meeting of the working committee, August 9, 1948, which Mr. Fitzgerald attended, Defendant effected a telegraphic transfer of its credit against the CALI to the American corporation Shell Oil Company, Inc., assigning its credit, amounting to \$79,440.00, which was subsequently followed by a deed of assignment of credit dated August 10, 1948, the credit amounting this time to the sum of \$85,081.29 (Exh. I).

On August 12, 1948, the American corporation Shell Oil Company, Inc., filed a complaint against the CALI in the Superior Court of the State of California, U.S.A. in and for the County of San Bernardino for the collection of an assigned credit of \$79,440.00—Case No. 62576 of said Court (Exhs. A, E, F, G, H, V, and Z) and a writ of attachment was applied for and issued on the same date against a C-54 plane (Exhs. B, C, D, Y, W, X, and X-1).

On September 17, 1948, an amended complaint was filed to recover an assigned credit of \$85,081.29 (Exhs. I, K, L, M, Q, R, S, T, t£ DD) and a supplemental attachment for a higher sum was applied for and issued against the C-54 plane, plus miscellaneous personal properties held by Pacific Overseas Air Lines for the CALI (Exhs. N, O, P, AA, BB, BB-1 and CC) and on January 5, 1949, a judgment by default was entered by the American court (Exhs. J, EE, FF, GGt and HH).

Unaware of Defendants assignments of credit and attachment suit, the stockholders of CALI resolved in a special meeting of August 12, 1948, to approve the memorandum agreement of sale to the Philippine Air Lines, Inc. and noted "that the Board had been trying to reach an agreement with the creditors of the corporation to prevent insolvency proceedings, but so far no definite agreement had been reached" (Exh. 00—Minutes of August 12, 1948, stockholders' meeting).

By the first week of September, 1948, the National Airports Corporation learned of Defendant's action in the United States and hastened to file its own complaint with attachment against the CALI in the Court of First Instance of Manila (Exhs. KKK, LLL, and MMM). The CALI, also prompted by Defendant's action in getting the alleged undue preference over the other creditors by attaching the C-54 plane in the United States, beyond the jurisdiction of the Philippines, filed on October 7, 1948, a petition for voluntary insolvency. On this date, an order of insolvency was issued by the court (Exh. JJ) which necessarily stayed the National Airports Corporation's action against the CALI and dissolved its attachment (Exh. NNN), thus compelling the National Airports Corporation to file its claims with the insolvency court (Exh. SS).

By order of October 28, 1948, the Court confirmed the appointment of Mr. Alfredo M. Velayo, who was unanimously elected by the creditors as Assignee in the proceedings, and ordered him to qualify as such by taking the oath of office within 5 days from notice and filing a bond in the sum of P30,000.00 to be approved by the Court conditioned upon the faithful performance of his duties, and providing further that all funds that the Assignee may collect or receive from the debtors of the corporation, or from 'any other source or sources, be deposited in a local bank (Exh. KK). On November 3, 1948, the clerk of court executed a deed of conveyance in favor of the Assignee (Alfredo M. Velayo) over all the assets of the CALI (Exh. LL).

The Case.—After properly qualifying as Assignee, Alfredo M. Velayo instituted this case (No. 6966 of the Court of First Instance of Manila) on December 17, 1948, against the Shell Company of P. I., Ltd., for the purpose of securing from the Court a writ of injunction restraining Defendant, its agents, servants, attorneys and solicitors from prosecuting in and for the County of San Bernardino in the Superior Court of the State of California, U.S.A. the aforementioned Civil Case No. 62576 against the insolvent Commercial Air Lines, Inc., begun by it in the name of the American corporation Shell Oil Company, Inc., and as an alternative remedy, in case the purported

assignment of Defendant's alleged credit to the American corporation Shell Oil Company, Inc., and the attachment issued against CALI in the said Superior Court of California shall have the effect of defeating the procurement by plaintiff as Assignee in insolvency of the above-mentioned airplane, which is the property of the insolvent CALI, situated in the Ontario International Airport, within the County of San Bernardino, State of California, U.S.A., that judgment for damages in double the value of the airplane be awarded in favor of plaintiff against Defendant, with costs.

The complaint further prays that upon the filing of a bond executed to the Defendant in an amount to be fixed by the Court, to the effect that plaintiff will pay to Defendant all damages the latter may sustain by reason of the injunction if the Court should finally decide that the plaintiff was not entitled thereto, the Court issued a writ of preliminary injunction enjoining the Defendant, its agent, servants, attorney's and solicitor, from prosecuting the aforementioned case No. 62576, the same writ of preliminary injunction to issue without notice to the Defendant it appearing by verified complaint that the great irreparable injury will result to the plaintiff-appellant before the matter could be on notice. The plaintiff also prays for such other remedies that the Court may deem proper in the premises.

On December 20, 1948, the Defendant filed an opposition to the plaintiff's petition for the issuance of a writ of the preliminary injunction, and on December 22, 1948, the Court denied the same because whether the conveyance of Defendant's credit was fraudulent or not, the Philippine court would not be in position to enforce its orders as against the American corporation Shell Oil Company, Inc., which is outside of the jurisdiction of the Philippines. Plaintiff having failed to restrain the progress of the attachment, suit in the United States by denial of his application for a writ of preliminary injunction and the consequences on execution of the C-54 plane in the County of San Bernardino, State of California, U. S. A., he confines his action to the recovery of damages against the Defendant.

On December 28, 1948, Defendant filed its answer to the complaint, which was amended on February 3, 1949. In its answer, Defendant, besides denying certain averments of the complaint alleged, among other reasons, that the assignment of its credit in favor of the Shell Oil Company, Inc, in the United States was for a valuable consideration and made in accordance with the established commercial practices, there being no law prohibiting a creditor from assigning his credit to another; that it had no interest whatsoever in Civil Case No. 62576 instituted in the Superior Court in the State of California by the Shell Oil Company, Inc., which is a separate and distinct corporation organized and existing in the State of Virginia and doing business in the State of California, U. S. A., the Defendant having as its stockholders the Shell Petroleum Company of London and other persons residing in that City, while the Shell Oil Company Inc., of the United State has its principal stockholders the Shell Union Oil Company of the U.S. and" presumably countless American investors inasmuch as its shares of stock are being traded daily in the New York stock market; that Mr. Fitzgerald, Defendant's Credit Manager, was merely invited to a luncheon-meeting at the Trade and Commerce Building in the City of Manila on August 6, 1948, without knowing the purpose for which it was called; and that Mr. Fitzgerald could not have officially represented the Defendant at that time because such authority resides on Mr. Stephen Crawford. Defendant, therefore, prays that the complaint be dismissed with costs against the plaintiff.

Then Alfonso Sycip, Yek Hua Trading Corporation and Paul Sycip, as well as Mabasa & Co., filed, with permission of the Court, their respective complaints in intervention taking the side of the plaintiff. These complaints in intervention were timely answered by Defendant which prayed that they be dismissed.

After proper proceedings and hearing, the Court rendered decision on February 26, 1954, dismissing the complaint as well as the complaints in intervention, with costs against the plaintiff. In view of this outcome, plaintiff comes to us praying that the judgment of the lower court be reversed and that the Defendant be ordered to

pay him damages in the sum of P660,000 (being double the value of the airplane as established by evidence, i.e., P330,000), with costs, and for such other remedy as the Court may deem just and equitable in the premises.

The Issues.—Either admission of the parties, or by preponderance of evidence, or by sheer weight of the circumstance attending the transactions herein involved, We find that the facts narrated in the preceding statement of the "antecedents" have been sufficiently established, and the questions at issue submitted to our determination in this instance may be boiled down to the following propositions:

(1) Whether or not under the facts of the case, the defendant Shell Company of the P. I., Ltd., taking advantage of its knowledge of the existence of CALI's airplane C-54 at the Ontario International Airport within the Country of San Bernardino, State of California, U. S. A.,

(Which knowledge it acquired: first at the informal luncheon-meeting of the principal creditors of CALI on August 5, 1948, where its Credit Manager, Mr. Desmond Fitzgerald, was selected to form part of the Working Committee to supervise the preservation of CALI's properties and to study the way of making a fair division of all the assets among the creditors and thus avoid the institution of insolvency proceedings in court; and

Subsequently, at the meeting of August 9, 1948, when said Mr. Fitzgerald met the other members of the said Working Committee and heard and discussed the contention of certain creditors of CALI—on the accounts due the employees, the Government and the National Airports Corporation—who alleged that their claims were preferred),

acted in bad faith and betrayed the confidence and trust of the other creditors of CALI present in said meeting by affecting a hasty telegraphic transfer of its credit to the American corporation Shell Oil Company, Inc., for the sum of \$79,440 which was subsequently followed by a deed of assignment of credit dated August 10, 1948, amounting this time to the sum of \$85,081.28 (Exhs. Z), thus defeating the purpose of the informal meetings of CALI's principal creditors and depriving the plaintiff, as its Assignee, of the means of obtaining said C-54 plane, or the value thereof, to the detriment and prejudice of the other CALI's creditors who were consequently deprived of their share in the distribution of said value; and

(2) Whether or not by reason of said betrayal of confidence and trust, Defendant may be made under the law to answer for the damages prayed by the plaintiff; and if so, what should be the amount of such damages.

DISCUSSION OF THE CONTROVERSY

I. The mere enunciation of the first proposition can lead to no other conclusion than that Defendant, upon learning the precarious economic situation of CALI and that with all probability, it could not get much of its outstanding credit because of the preferred claims of certain other creditors, forgot that "Man does not live by bread alone" and entirely disregarded all moral inhibitory tenets. So, on the very day its Credit Manager attended the meeting of the Working Committee on August 9, 1948, it hastily made a telegraphic assignment of its credit against the CALI to its sister American Corporation, the Shell Oil Company, Inc., and by what is stated in the preceding pages hereof, We know that were the damaging effects of said assignment upon the right of other creditors of the CALI to participate in the proceeds of said CALI's plane C-54.

Defendants endeavor to extricate itself from any liability caused by such evident misdeed of its part, alleging that Mr. Fitzgerald had no authority from his principal to commit the latter on any agreement; that the assignment of its credit in favor of its sister corporation, Shell Oil Company, Inc., was for a valuable Consideration and in accordance with the established commercial practices; that there is no law prohibiting a creditor from assigning his credit to another; and that the Shell Oil Company Inc., of the United States is a corporation different and independent from the Defendant. But all these defenses are entirely immaterial and have no bearing on the main

question at issue in this appeal. Moreover, we might say that Defendant could not have accomplished the transfer of its credit to its sister corporation if all the Shell companies throughout the world would not have a sort of union, relation or understanding among themselves to come to the aid of each other. The telegraphic transfer made without knowledge and at the back of the other creditors of CALI may be a shrewd and surprise move that enabled Defendant to collect almost all if not the entire amount of its credit, but the Court of Justice cannot countenance such attitude at all, and much less from a foreign corporation to the detriment of our Government and local business.

To justify its actions, Defendant may also claim that Mr. Fitzgerald, based on his feeling of distrust and apprehension, entertained the conviction that intervenors Alfonso Sycip and Yek Hua Trading Corporation tried to take undue advantage by infiltrating their credits. But even assuming for the sake of argument, that these intervenors really resorted to such strategem or fraudulent device, yet Defendant's act finds not justification for no misdeed on the part of a person is cured by any misdeed of another, and it is to be noted that neither Alfons Z. Sycip, nor Yek Hua Trading Corporation were the only creditors of CALI, nor even preferred ones, and that the infiltration of one's credit is of no sequence if it can not be proven in the insolvency proceedings to the satisfaction of the court. Under the circumstances of the case, Defendant's transfer of its aforementioned credit would have been justified only if Mr. Fitzgerald had declined to take part in the Working Committee and frankly and honestly informed the other creditors present that he had no authority to bind his principal and that the latter was to be left free to collect its credit from CALI by whatever means his principal deemed wise and were available to it. But then such information would have immediately dissolved all attempts to come to an amicable conciliation among the creditors and would have precipitated the filing in court of CALI's voluntary insolvency proceedings and nullified the intended transfer of Defendant's credit to its above-mentioned sister corporation.

II. We may agree with the trial judge, that the assignment of Defendant's credit for a valuable consideration is not violative of the provisions of sections 32 and 70 of the Insolvency Law (Public Act No. 1956), because the assignment was made since August 9, 1948, the original complaint in the United States was filed on August 12, 1948, and the writ of attachment issued on this same date, while CALI filed its petition for insolvency on October 7, 1948. At his Honor correctly states, said Sections 32 and 70 only contemplate acts and transactions occurring within 30 days prior to the commencement of the proceedings in insolvency and, consequently, all other acts outside of the 30-day period cannot possibly be considered as coming within the orbit of the operation. In addition to this, We may add that Article 70 of the Insolvency Law refers to acts of the debtor (in this case the insolvent CALI) and not of the creditor, the Shell Company of the P. I. Ltd. But section 70 does not constitute the only provisions of the law pertinent to the matter. The Insolvency Law also provides the following:

"Sec. 33. The assignee shall have the right to recover all the estate, debt and effects of said insolvent. If at the time of the commencement of the proceedings in insolvency, an action is pending in the name of the debtor, for the recovery of a debt or other thing might or ought to pass to the assignee by the assignment, the assignee shall be allowed to prosecute the action, in like manner and with like effect as if it had been originally commenced by him. If there are any rights of action in favor of the insolvent for damages, on any account, for which an action is not pending the assignee shall have the right to prosecute the same with effect as the insolvent might have done himself if no proceedings in insolvency had been instituted. * * *."

It must not be forgotten that in accordance with the spirit of the Insolvency Law and with the provisions of Chapter V thereof which deal with the powers and duties of a receiver, the assignee represents the insolvent as well as the creditors in voluntary and involuntary proceedings —*Intestate of Mariano G. Veloso, etc. vs. Vda, de Veloso S. C.*—G. R. No. 42454; *Hunter, Kerr & Co, vs. Samuel Murray*, 48 Phil 449; *Chartered Bank vs. Imperial*, 48 Phil. 931; *Asia Banking Corporation vs. Herridge*, 45 Phil. 527—(II Tolentino's Commercial Laws of the Philippines, 633). See also Section 36 of the Insolvency Law.

From the foregoing, We see that plaintiff, as Assignee of the Insolvent CALI, had personality and authority to institute this case for damages, and the only question that remains determination is whether the payment of damages sought to be recovered from Defendant may be ordered under the Law and the evidence of record.

IF ANY PERSON, before the assignment is made, having notice of the commencement of the proceedings in insolvency, or having reason to believe that insolvency proceedings are about to be commenced, embezzles or disposes of any money, goods, chattels, or effects of the insolvent, he is chargeable therewith, and liable to an action by the assignee for double the value of the property sought to be embezzled or disposed of to be recieved for the benefit of the insolvent estate.

The writer of this decision does not entertain any doubt that the Defendant—taking advantage of his knowledge that insolvency proceedings were to be instituted by CALI if the creditors did not come to an understanding as to the manner of distribution of the insolvent asset among them, and believing it most probable that they would not arrive at such understanding as it was really the case —schemed and effected the transfer of its sister corporation in the United States, where CALI's plane C-54 was by that swift and unsuspected operation efficaciously disposed of said insolvent's property depriving the latter and the Assignee that was latter appointed, (of the opportunity to recover said plane. In addition to the aforementioned Section 37, Chapter 2 of the PRELIMINARY TITLE of the Civil Code, dealing on Human Relations, provides the following:

"ART 19. Any person must, in the exercise of his rights and in the performances of his duties, act with justice, give everyone his due and observe honesty and good faith".

It maybe said that this article only contains a mere declarations of principles and while such statement may be is essentially correct, yet We find that such declaration is implemented by Article 21 and sequence of the same Chapter which prescribe the following:

"ART. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage".

The Code Commission commenting on this article, says the following:

"Thus at one stroke, the legislator, if the forgoing rule is approved (as it was approved), would vouchsafe adequate legal remedy for that untold numbers of moral wrongs which is impossible for human foresight to provide for specifically in the statutes.

"But, it may be asked would this proposed article obliterate the boundary line between morality and law? The answer is that, in the last analysis, every good law draws its breath of life from morals, from those principles which are written with words of fire in the conscience of man. If this premises is admitted, then the proposed rule is a prudent earnest of justice in the face of the impossibility of enumerating, one by one, all wrongs which cause damages. When it is reflected that while codes of law and statutes have changed from age to age, the conscience of man has remained fixed to its ancient moorings, one can not but feel that it is safe and salutary to transmute, as far as may be, moral norms into legal rules, thus imparting to every legal system that enduring quality which ought to be one of its superlative attributes.

"Furthermore, there is no belief of more baneful consequence upon the social order than that a person may with impunity cause damage to his fellow-men so long as he does not break any law of the State, though he may be defying the most sacred postulates of morality. What is more, the victim loses faith in the ability of the government to afford him protection or relief.

"A provision similar to the one under consideration is embodied in article 826 of the German Civil Code.

"The same observations may be made concerning injurious acts that are contrary to public policy but are not forbidden by statute. There are countless acts of such character, but have not been foreseen by the lawmakers.

Among these are many business practices that are unfair or oppressive, and certain acts of landholders and employers affecting their tenants and employees which contravene the public policy of social justice.

"Another rule is expressed in Article 24 which compels the return of a thing acquired 'without just or legal grounds'. This provision embodies the doctrine that no person should unjustly enrich himself at the expense of another, which has been one of the mainstays of every legal system for centuries. It is most needful that this ancient principles be clearly and specifically consecrated in the proposed Civil Code to the end that in cases not foreseen by the lawmaker, no one may unjustly benefit himself to the prejudice of another. The German Civil Code has a similar provision (art. 812)." (Report of the Code Commission on the Proposed Civil Code of the Philippines, p. 40-41).

From the Civil Code Annotated by Ambrosio Padilla, Vol. I, p. 51, 1956 edition, We also copy the following:

"A moral wrong or injury, even if it does not constitute a violation of a statute law, should be compensated by damages. Moral damages (Art. 2217) may be recovered (Art. 2219). In Article 20, the liability for damages arises from a willful or negligent act contrary to law. In this article, the act is contrary to morals, good customs or public policy"

Now, if Article 23 of- the Civil Code goes as far as to provide that:

"Even if an act or event causing damage to another's property was not due to the fault or negligence of the defendant, the latter shall be liable for indemnity if through the act or event he was benefited:"

with mere much more reason the Defendant should be liable for indemnity for acts it committed in bad faith and with betrayal of confidence.

It may be argued that the aforequoted provisions of the Civil Code only came into effect on August 30, 1950, and that they cannot be applicable to acts that took place in 1948, prior to its effectivity. But Article 2252 of the Civil Code, though providing that:

"Changes made and new provisions and rules laid down by this Code which may be prejudice or impair vested or acquired rights in accordance with the old legislation, shall have no retroactive effect.***

implies that when the new provisions of the Code does nor prejudice or impair vested or acquired rights in accordance with the old legislation—and it cannot be alleged that in the case at bar Defendant had any vested or acquired right to betray the confidence of the insolvent CALI or of its creditors—said new provisions, like those on Human Relations, can be given retroactive effect. Moreover, Article 2253 of the Civil Code further provides:

"* * *. But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which may give rise thereto may have ben done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin."

and according to Article 2254, "no vested or acquired right can arise from acts or omissions which are against the law or which infringe upon the right of others."

In case of *Juan Castro vs. Aero Taxicab Company*, (82 Phil., 359; 47 Off. Gaz., [5] 2023), one of the question at issue was whether pr not the provisions of the New Civil Code of the Philippines on moral damages should be applied to an act of negligence which occurred before the effectivity of said code, and this Court, through Mr. Justice Briones, sustaining the affirmative proposition and citing decisions of the Supreme Court of Spain of February 14, 1941, and November 14, 1934, as well as the comment of Mr. Castan, Chief Justice of the Supreme Court of Spain, about the revolutionary tendency of Spanish jurisprudence, said the following:

"We conclude, therefore, reaffirming the doctrine laid down in the case of *Lilius* (59 J. F. 800) in the sense that

indemnity lies for moral and patrimonial damages which include physical and pain sufferings. With this (doctrine), We effect in this jurisdiction a real symbiosis^[1] of the Spanish and American Laws and, at the same time, We act in consonance with the spirit and progressive march of time" (translation).

The writer of this decision does not see any reason for not applying the provisions of Section 37 of the Insolvency Law to the case at bar, specially if We take into consideration that the term "any person" used therein cannot be limited to the officers or employee of the insolvent, as no such limitation exist in the wording of the section (See also Sec. 38 of the same Act), and that, as stated before, the Defendant schemed and affected the transfer of its credits (from which it could derive practically nothing) to its sister corporation in the United States where CALI's plane C-54 was then situated, succeeding by such swift and unsuspected operation in disposing of said insolvent's property by removing it from the possession and ownership of the insolvent. However, some members of this Court entertain doubt as to the applicability of said section 37 because in their opinion what Defendant in reality disposed of was its own credit and not the insolvent's property, although this was practically the effect and result of the scheme. Having in mind this objection and that the provisions of Article 37 making the person coming within its purview liable for double the value of the property sought to be disposed of constitute a sort of penal clause which shall be strictly construed, and considering further that the same result may be obtained, by applying only the provisions of the Civil Code, the writer of this decision yields to the objection aforementioned.

Articles 2229, 2232, 2234, 2142, and 2143 of the Civil Code read as follows:

"Art. 2229. Exemplary or corrective damages are imposed, byway of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages."

"Art. 2232. In contracts quasi-contracts, the Court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner."

"Art. 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate, or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages should be upon, although no proof of loss is necessary in order that such liquidated damages be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages."

"Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another."

"Art. 2143. The provisions for quasi-contracts in this Chapter do not exclude other quasi-contracts which may come within the purview of the preceding article."

In accordance with these quoted provisions of the Civil Code, We hold Defendant liable to pay to the plaintiff, for the benefit of the insolvent CALI and its creditors, as compensatory damages a sum equivalent to the value of the plane at the time aforementioned and another equal sum as exemplary damages.

There is no clear proof in the record about the real value of CALF's plane C-54 at the time when Defendant's credit was assigned to its sister corporation in the United States.

Judgment

Wherefore, and on the strength of the foregoing considerations, the decision appealed from is reversed and Defendant-Appellee, Shell Company of the Philippine Islands, Ltd., is hereby sentenced to pay to Plaintiff-Appellant, as Assignee of the insolvent CALI, damages in a sum double the amount of the value of the

insolvent's airplane C-54 at the time Dedenfant's credit against the CALI was assigned to its sister corporation in the United States, which value shall be determined in the corresponding incident in the lower court after this decision becomes final. Costs are taxed against defendant-appellee. It is so ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, concur.

[1] SYMBIOSIS—Biol The living together in more or less intimate association or even close union of two dissimilar organisms. In a broad sense the term includes parasitism or antagonistic or antipathetic symbiosis in which the association is disadvantageous or destructive to one of the organism, but ordinarily it is used of cases where the association is advantageous, or often necessary, to one or both, and not harmful to either. (Webster's New International Dictionary, 2nd Ed., p. 2555).

RESOLUTION

July 30, 1957

FELIX, J.:

Plaintiff-appellant and intervenors on one hand and defendant Shell Company of the Philippine Islands, Ltd., on the other, have filed their respective motions for reconsideration of Our decision rendered in this case. The motion of plaintiff appellant and the intervenors seeks the reconsideration of said decision in so far as it held that:

"There is no clear proof in the record about the real value of CALI's plane C-54, at the time when defendant's credit was assigned to its sister corporation in the United States."

and, upon such holding, it orders that the value of the C-54 plane—

"be determined in the corresponding incident in the lower Court after this decision becomes final."

The movants¹ maintain that there is evidence sufficient to support a finding that CALI's C-54 plane had a fair market value of \$165,000 at or about the time defendant credit was assigned to its sister corporation in the United States and the plane attached. This motion was opposed by defendant-appellee which was replied by plaintiff-appellant with a supplemental motion for reconsideration, and then retorted with a manifestation and motion of defendant-appellant followed by defendant's answer to plaintiff's motion for reconsideration.

After considering the evidence pointed out by said parties in support of their respective contention, we are more convinced that the proofs relative to the real value of CALI plane C-54 at the time defendant's credit was assigned to its sister corporation in the United States, is not clear. Hence, plaintiff-appellant's and intervenors motion for reconsideration is hereby overruled.

The main grounds on which defendant-appellee bases its motion for reconsideration, as relied upon in its counsel's memoranda and oral argument, may be reduced to the following:

(1) That the defendant-appellee is not guilty of bad faith, it having done nothing but to protect legitimately its own interest or credit against the bad faith of its debtor, the insolvent CALI, under the control of the tatter's President Alfonso Sycip;

(2) That appellee's transfer of its credit to its sister corporation in the United States, did not prejudice the Government, because its claims were fully paid, nor caused any loss or injury to other creditors, except the entities and groups controlled by Alfonso Z. Sycip;

(3) That appellee is not liable for exemplary damages because the provisions of the new Civil Code on the matter are not applicable to this case;

(4) That the plaintiff-appellant has no cause of action against defendant-appellant and is not the real party in interest; and

(5) That plaintiff's right of action was based and prosecuted in the lower court under the provisions of the Insolvency Law and consequently that he is stopped from pursuing another theory and is not entitled to damages under the provisions of the New Civil Code.

- The facts on which this Court based its conclusion that defendant corporation acted in bad faith are plainly and explicitly narrated in the decision. They are not and cannot be denied or contradicted by said defendant. On the contrary they are in many respects admitted by the defendant and no amount of reasoning can make us change that conclusion.

- As pointed out by counsel for plaintiff, defendant choses to ignore that besides the claims of intervenors Alfonso Z. Sycip and Yek Hua Trading Corporation, which counsel for the Shell says to constitute 10/11 of the approved ordinary claims, there is still 1/11 of the other creditors whose claims have been also approved by the insolvency Court, in addition to the ordinary creditors whose claims are yet unapproved by the insolvency Court, amounting to P560,296,32, and "no good reason suggests itself why these unapproved but pending claims should be taken into account in considering the prejudice caused all the creditors of the insolvent CALL As long as these claims are pending, .the contingency exist, that these creditors may recover from the insolvent estate and when they do, they will suffer to the diminution of CALI's asset resulting from the ' attachment of the plane by appellee Shell."

Answering Defendant's contention that the transfer of its credit to its sister corporation in the United States did not prejudice the Government or the other creditors of CALI, counsel for plaintiff-appellant has the following to say:

"So far as the claims of the Government are concerned, it is true that they were preferred claims and have all been paid. But this circumstance cannot erase the fact that the appellee's action jeopardized the Government's claims as well as the other claims.

There was doubt as to the preferential character of the Government's claims.. Indeed, the preferential character of one of the Government's claims necessitated a litigation to establish. Had it been held to be an ordinary claim, the Government would have suffered as other creditors. But that is neither here nor there; neither the character of the claim nor the identity of the claimant can possibly affect the application of a principle that no person may profit from his betrayal of a trust."

And the appellant continues thus:

"Appellee had a credit of P170,000 against the insolvent CALI as of August 1948, which is assigned to its sister corporation in the United States for P120,000. Hence, appellee recovered 70% of its credit and immediately upon making the assignment in 1948. More than this, the stated consideration was fixed by and between two sister companies. The fact remains that appellee's sister company was enabled to get hold of a C-54 plane worth about P330,000.

"On the other hand, the ordinary creditors who filed their claims against the insolvent CALI had to wait until November 1956 to get their dividends and only at the rate of 30%, computed as follows:

Assets as of October 30, 1956..... P668,605.15

Less:

Preferred claims still uncollected, assignee
and attorney's fees and other reserves..... P138,719.56

Amount available for distribution P529,885.59

Divident:

Amount available for distribution P529,885.59

_____ = 30%

Total of. all ordinary claims approved and unapproved..... P1,746,222.33

Had appellee not assigned its credit in 1948, the insolvent CALI would have realized from the sale of the plane (which was attached by appellee) P330,000 representing the fair market value of the plane at the time of the attachment. Therefore, if this amount of P330,000 is added to the distributable amount of P529, 885.59, the share of each of the ordinary credits would certainly amount to approximately 1 1/2 times the dividend each of them has received; in other words, each ordinary creditors would received not 30% but approximately 45% of his claim. and appellee would recover approximately only 45% and not 70% of its credit."

And even if the sale of CALI's plane would not have obtained the sum of P330,000.00, the proceeds thereof that might be diminished though affecting, no doubt, the calculated dividend of each of the ordinary creditors, estimated at 45% by reducing it proportionately, such diminution would at the same. time increase the difference between the dividend paid CALI's ordinary creditors in November, 1956, and the dividend of 70% secured by defendant Shell in 1948.

III and IV. That appellee Shell is not liable for exemplary damages in this case and that plaintiff-appellant has no cause of action against defendant-appellee, for he is not the real party in interest, are matters fully discussed in Our decision and We find no sensible reason for disturbing the conclusions We reached therein.

V. As to the fifth question raised by counsel for appellee in the course of his oral argument at the hearing in the City of Baguio of his motion, i.e., "that plaintiff's right of action was based and prosecuted in the lower court under the provisions of the Insolvency Law and he is, therefore, stopped from pursuing on appeal another theory under which he might be entitled to damages in consonance with the provisions of the new Civil Code", We amy invoke the decision in the case of Dimaliwat vs. Asuncion, 59 Phil., 396, 401. In that decision We said the following:

"Vicente Dimaliwat contends that Esperanza Dimaliwat has no right to claim the ownership of the property in question to the exclusion of the children of the third marriage, under the foregoing provisions of the Civil Code, because the ease was not tried on that theory in the lower court. We find no merit in that contention. The decision cited are not in point. Articles 968 and 969 of the Civil Code are rules of substantive law, and if they are applicable to the facts of this case they must be given effect."

The same thing can be said in the case at bar. Articles , 21, 2229, 2232, 2234, 2142 and 2143 of the new Civil Code are rules of substantive law, and if they are applicable to the facts of this case, which We hold they do, they must be made operative and given effect in this litigation.

* * * * *

It maybe seen form the foregoing that the above mentioned grounds on which the motion for reconsideration of

the defendant Shell stand, are not well taken. However, and despite this finding, We insist to delve in the question of whether the exemplary damages imposed in this Court upon Defendant-Appellee, which the latter's counsel contends to be inequitable and unfair, may be modified.

It will be remembered that this case was looked into from the point of view of the provisions of Section 37 of the Insolvency Law, which reads as follows:

SEC. 37. IF ANY PERSON, before the assignment is made having notice of the commencement of the proceedings in insolvency, or having reason to believe that insolvency proceedings are about to be commenced, embezzles or disposes of any of the money goods, chattels, or effects of the insolvent, he is chargeable there-with, and liable to an action by the assignee for double the value of the property sought to be embezzled or disposed of, to be received for the benefit of the insolvent estate.

The writer of the decision was then and still is of the opinion that the provisions of this section were applicable to the case, and accordingly, that defendant Shell was liable in this action instituted by the Assignee for double the value of the property disposed of to be received for the benefit of the Insolvent estate. However, some of the members of this Court, for the reasons already stated in the decision, entertained some doubt as to the applicability of said Section 37, and yielding to their objections the writer of the decision turned his eyes to the provisions of the new Civil Code, inasmuch as the same result could be achieved. In the case at bar, it cannot be denied that:

"Defendant—taking advantage of his knowledge that insolvency proceedings were to be instituted by CALI if the creditors did not come to an understanding as to the manner of distribution of the insolvent assets among them, and believing as most probable that they would not arrive at such understanding, as it was really the case—schemed and effected the transfer of its credit to its sister corporation in the United States where CALI's plane C-54 was and by this swift and unsuspected operation efficaciously disposed of said insolvent's property depriving the latter and the Assignee that was later appointed, of the opportunity to recover said plane."

These acts of defendant Shell come squarely within the sanction prescribed by Congress by similar acts and no reflection can be reasonably cast on Us if in the measure of the exemplary damages that were to be imposed upon Defendant-Appellee, We were influenced by the provisions of Section 37 of the Insolvency Law. In this connection it is to be noted that, according to the Civil Code, exemplary or corrective damages are imposed by way of example or correction for the public good, in addition of the moral, temperate, liquidated or compensatory damages Art. 2229, and that the amount of the exemplary damages need not be proved (Art. 2234), for it is left to the sound discretion of the Court.

Notwithstanding the foregoing, a majority of this Court was of the belief that the value of CALI's plane C-64, at the time when defendant's credit was assigned to its sister corporation in the United States, might result quite high, and that exemplary damages should not be left to speculation but properly determined by a certain and fixed amount. So they voted for the reconsideration of the decision with regard to the amount of exemplary damages which this Court fixed at P25,000.00.

Because of this attitude of the Court, the dispositive part of our decision rendered in this case is hereby amended to read as follows:

Wherefore, and on the strength of the foregoing considerations, the decision appealed from is reversed and Defendant-Appellee, Shell Company of the Philippine Islands Ltd., is hereby sentenced to pay Plaintiff-Appellant,

Assignee of the insolvent CALI, compensatory damages in a sum equal to the value of the insolvent's airplane C-54 at the time Defendant's credit against CALI was assigned to its sister corporation in the United States—which shall be determined in the corresponding incident in the lower Court after this decision becomes final—and

exemplary damages in the sum of P25,000. Coats are taxed against defendant-appellee. It is so ordered.

Paras, C. J., Padilla, Concepcion and Endencia, JJ., concur.

Montemayor, J., concurs in the result.

We concur, but we feel that the ends of justice would be sufficiently served if the exemplary damages were reduced to P10,00

Reyes, Bengzon, Bautista Angelo and Labrador, JJ., concur.

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