

EVERETT STEAMSHIP CORPORATION, PLAINTIFF AND APPELLEE, VS. BANK OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

G.R. No. L-1729. July 23, 1949

Ponente: FERIA, J.

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FERIA, J.:

This case was submitted to the Court of First Instance of Manila on an agreed statements of facts the pertinent parts of which read as follows:

"That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal offices at 223 Dasmariñas, City of Manila, Philippines; and that the majority of stockholders of the plaintiff corporation are American and British citizens;

"That defendant is a banking corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal offices at Plaza Cervantes, City of Manila, Philippines;

"That sometime before December, 1941, the plaintiff opened and, since then maintained a deposit in current account with the defendant, which account, at the close of banking hours on December 29, 1941, had a valid balance of P53,175.51, Philippine currency;

"That during the period of Japanese occupation of Manila, the officers of the plaintiff corporation were interned by the Japanese Army in the University of Santo Tomas Internment Camp, Manila;

"That between December 29, 1941, and February 3, 1945, the plaintiff corporation has not availed nor attempted to avail itself of said deposit in current account with the defendant;

"That on October 4, 1943, the Director of the Department of General Affairs of the then Japanese Military Administration in the Philippines, promulgated ZAI No. 257, ordering the local banks to transfer to the Bank of Taiwan, Ltd., as the depository of the Bureau of Enemy Property Custody, all deposit account of hostile people (including those of corporation);

"That on or around October 8, 1943, the defendant bank in compliance with ZAI Order 257, turned-over to the Bank of Taiwan, Ltd., Manila, the aforesaid balance of plaintiff's account with it, including the registry and identification cards, as well as all other papers related to said account, as non-combatant enemy property;

"That plaintiff's account with the defendant was transferred or paid by the defendant to the Bank of Taiwan on October 9, 1943 by defendant's Check No. 3474 drawn by defendant in favor of the Bank of Taiwan in the sum of P53,175.51;

"That on July 18, 1946, plaintiff presented to the defendant bank for honor its check No. 3976 for the sum of P53,175.51 and the defendant bank refused to honor plaintiff's check for the reason that on or about October 8, 1943, the defendant bank was ordered against its will, to turn over to the Bank of Taiwan, Ltd., Manila, as the depository of the Bureau of Enemy Property Custody, the aforesaid balance of plaintiff's account with it,

including the registry and identification cards, as well as other papers related to said account, in accordance with order ZAI No. 257 of the aforesaid Japanese Military Administration."

The lower court rendered a judgment sentencing the defendant to pay the plaintiff the sum of P53,175.51, which was the balance of the plaintiff's deposit in current account with the defendant bank at the close of banking hours on December 29, 1941, with legal interest up from July 6, 1946, until fully paid, and the costs.

The case of *Haw Pia vs. China Banking Corporation* No. 71164 of the Court of First Instance of Manila, decided by the said Court of First Instance on March 13, 1943, in favor of the defendant, was then pending on appeal in this Supreme Court, L-554, (45 Off. Gaz. [Supp. to No. 9], 229), and the attorneys for the plaintiff-appellee in their brief filed with this Court in the instant case submitted the following:

"Contrary to the assertions of defendant-appellant, this case is analogous to *Haw Pia vs. China Banking Corporation*, G. R. No. L-554, now pending before this Honorable Court. The slight difference in the factual situation between this case and the *Haw Pia* case is insignificant for, in the final analysis, the ultimate issue of facts and the general applicable principles in both cases are basically the same. If we understand correctly the argument in the *Haw Pia* case, it is there contended by the China Banking Corporation that the collection by the Bank of Taiwan, Ltd., as liquidator of the China Banking Corporation, of the mortgage credit which it had against *Haw Pia*, amounted to a confiscation of said credit by the Japanese Military authorities. It is further urged by the China Banking Corporation that the payment by *Haw Pia* to the Bank of Taiwan, Ltd. was null and void, and did not discharge *Haw Pia*'s mortgage obligation.

"In the instant case, the issue involved is whether the Japanese Military Administration could validly require defendant-appellant to transfer to the Bank of Taiwan, Ltd., as official depository of the Bureau of Enemy Property Custody, the balance of plaintiff-appellee's current account with defendant-appellant. It is the contention of plaintiff-appellee that the transfer by defendant-appellant to the Bank of Taiwan, Ltd. of the balance of its pre-war account amounted to a confiscation of plaintiff-appellee's credit against defendant-appellant. It may, therefore, be seen that the only difference between the two cases is that in the *Haw Pia* case, the victim of the confiscatory act is a bank, while in the instant case, the victim is a depositor. We, therefore, take the view that both the *Haw Pia* case and the instant case should be governed by the same decisive principles of law." (Plaintiff's brief, pages 4 and 5.)

Attorneys for the appellee are correct in stating that the case at bar is analogous to that of *Haw Pia vs. China Banking Corporation*, and that the "slight difference in the factual situation between this case and the *Haw Pia* case is insignificant for, in the final and the ultimate issue of facts and the general applicable principles in both cases are basically the same," and therefore, "the *Haw Pia* case and the instant case should be governed by the same decisive principles of law."

In the *Haw Pia* case the Japanese Military Administration ordered the liquidation of the local enemy banks, among them the China Banking Corporations, and authorized the Bank of Taiwan, which was the depository or custodian of the enemy property, to liquidate the business of said corporation and to collect and keep the debts due to the Bank from its debtors, because a bank had to be liquidated before its asset or properties could be seized or impounded. In the present case, by order of the Japanese Military Administration, the plaintiff's deposit balance with the defendant Bank was transferred or paid by the defendant to the Bank of Taiwan designated by ZAI Order No. 257 of the Japanese Military Administration as depository of Enemy Property Custody of all deposit accounts of hostile people including those of corporations. The question involved in the *Haw Pia* case was whether or not the collection of *Haw Pia*'s debt to the China Banking Corporation by the Bank of Taiwan by order of the Japanese Military Administration was a confiscation of the defendant bank's credit; and the question involved in the present case is whether or not the transfer or payment by the defendant bank to the Bank of Taiwan of the plaintiff's credit or deposit accounts, by order of the Japanese Military Administration was a confiscation of said

credit.

This Court having ruled in the Haw Pia case that the collection by the Bank of Taiwan of the China Banking Corporation's credit from the latter debtor by order of the Japanese Military Administration was not a confiscation but a mere sequestration of enemy's private personal property, and therefore the payment by the plaintiff to the Bank of Taiwan was valid and released his obligation to the defendant Bank, it follows that the transfer or payment by the defendant bank, to the Bank of Taiwan of plaintiff's deposit, by order of the Japanese Military Administration was valid and released the defendant's obligation to the plaintiff.

In view of the foregoing, the judgment appealed from is reversed and the defendant is absolved from the complaint.

Moran, C.J., Paras, Bengzon, Montemayor, and Reyes, JJ., concur.

PERFECTO, J.:

We concur upon the same grounds in our opinion in the Haw Pia case.

DISSENTING

TUASON, J.:

I dissent on the same general principles and reasons stated in Mr. Justice Hilado's dissenting opinion in Haw Pia vs. China Banking Corporation, G. R. No. L-554, and in my dissenting opinion in Philippine Trust Company vs. Araneta, G. R. No. L-2734.

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