

INTESTATE ESTATE OF THE DECEASED SALVADOR UNSON; CONSUELO FRANCA, ADMINISTRATRIX AND APPELLEE VS. FERNANDO HIPOLITO, CLAIMANT AND APPELLANT.

G.R. No. L-5530. October 26, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This case concerns a claim for the sum of P60,000, as a loan, plus an additional sum of P5,000 as attorney's fees, against the estate of the late Salvador Unson, who died on February 9, 1945.

The claim was filed on November 26, 1945, by Fernando Hipolito and is based on a promissory note signed by the deceased on November 22, 1944. On November 28, 1945, the administratrix opposed the claim setting up three defenses, to wit, (1) that the promissory note was executed without consideration; (2) that the promissory note was executed under duress; and (3) that if there was any money received by the deceased it was in Japanese military notes with the understanding that the money would be loaned to the guerrillas in the belief that it would be redeemed by the United States Government after liberation, dividing proportionately between the claimant and the deceased whatever amount may be received in return from that Government; and as no payment has so far been made the claim is unfounded.

The claim was originally heard on January 8, 1946 in the absence of the administratrix who claims not to have been duly notified of the date of hearing. On January 14, upon motion of the administratrix, the proceedings so far had were set aside and the case was set anew for hearing. At the re-hearing, the administratrix, through her counsel, withdrew her first two defenses and gave notice that she was circumscribing her opposition to the claim to her third defense that the money delivered was in Japanese notes and that it was given with the understanding that it was to be invested in connection with the guerrilla activities of the deceased. Thereafter, the parties presented their respective evidence.

On August 9, 1946, the court, having in mind the moratorium orders abstained from deciding the case on the merits, even if such defenses was not set up by the administratrix, but pressed for action by both parties, who evinced a desire to have a decision rendered on the merits, the court was finally prevailed upon to do so and rendered a decision dismissing the complaint without pronouncement as to costs. From this decision claimant has appealed.

The promissory note which, according to claimant, was signed by the deceased on the occasion of the delivery of the money reads as follows:

MANILA, P. I., Nov. 22, 1944

"P60,000.00

"Within one year from the occupation of Manila by the Americans, for value received, I promised to pay Dr. Fernando Hipolito the sum of sixty thousand pesos (P60,000.00) without interest.

"If it becomes necessary that a law suit be instituted to be able to collect the sum stated above, I further agree to pay the expenses of the litigation plus the attorney's fees.

"In case of death, this note shall be charged against my properties or against my heirs. This note shall be given preference above all others.

(Sgd.)

SALVADOR UNSON

Pagsanjan

"Signed in the presence of:

(Sgd.)

CONSOLACION L. RIVAS

(Sgd.)

CARLOS F. TANSECO"

Claimant attempted to prove through the testimony of Consolacion Rivas that sometime in November, 1944, he loaned to Salvador Unson, now deceased, the sum of P60,000 in genuine Philippine currency; that the money was taken by claimant himself to the house of Unson in Paco, Manila, placing the money in a bayong and riding in a carretela; that the money, which was in bundles, was counted by the claimant and after counting each bundle the money was handed over to Unson; that after the money had been delivered, Unson placed it in the drawer of the table where the money was counted; that the money was counted not only in the presence of the claimant and Miss Rivas but in that of other guests of the house who were invited by Unson to a luncheon on that occasion; that after the money had been counted, Unson prepared the promissory note Exhibit A on a typewriter and signed it, which note was also signed by Miss Rivas and one Carlos Tanseco; and that after signing the note they went to eat their lunch, and after eating they left the house. The money given by claimant to the deceased was not in Japanese military notes, but in genuine Philippine currency.

It should be noted that the testimony of Miss Rivas that the money was given all in genuine Philippine currency does not appear corroborated by any other evidence, testimonial or documentary. Her testimony on this matter was not even corroborated by Carlos Tanseco, the other witness presented by claimant, who was allowed to testify as to the circumstances surrounding the execution of the promissory note. This is perhaps due to the objection of opposing counsel predicated on the rule which prohibits the declaration of a party to prove any matter of fact occurring before the death of a person upon the theory that he cannot come to court to disprove it; but this

objection should have been resisted and rebutted for the simple reason that, under the authorities, the prohibition of the rule only refers to a party or assignor or a person in whose behalf a case is prosecuted, but does not extend to a witness or persons not expressly mentioned therein. (Rule 123, section 26[c]; *Kiel vs. Estate of P. S. Savert*, 46 Phil., 193; *Reyes vs. Wells*, 54 Phil., 102.) The failure of Tanseco to testify on this point cannot but detract from the testimony of Miss Rivas.

But such is not the only weakness in the testimony of Miss Rivas. Examining it as a whole, and analyzing it in connection with the testimony of her co-witness, Carlos Tanseco, one cannot but note flaws and inconsistencies in her testimony which create in the mind serious doubts as to its trustworthiness. Thus, while on one hand she stated that she witnessed the arrival of the claimant at the house of the deceased because she heard the conversation between the two when the former arrived, Tanseco, on the other, testified that when he and Miss Rivas arrived, because they arrived together, claimant was already in front of the house of the deceased. Again, while Miss Rivas stated that the order of the ensuring stages relative to the delivery of the money was as follows: first, the money was counted, second, the promissory note was written, and third, the note was signed, Tanseco in turn asserted that when he arrived the note was already prepared, the signing of the note came first, and the counting of the money was done later, or after the note was signed. Again, Miss Rivas stated that the claimant and the deceased had a conversation regarding the transaction before the delivery of the money and the signing of the promissory note, while Tanseco stated that they only talked about other matters and not about the transaction. And finally, while Miss Rivas was most emphatic in asserting that the money delivered consisted of ten, twenty, and fifty-peso bills and was placed in pandan bag of more than half a meter high, Tanseco intimated that the money consisted of all kinds of denominations and was merely placed in a bunch of ordinary size. He did not mention any pandan bag. These material contradictions cannot but adversely reflect against the credibility not only of Tanseco but especially of Consolacion Rivas who has shown an unusual interest in establishing the claim of Fernando Hipolito.

This unusual interest evinced by Miss Rivas can be better comprehended by a careful scrutiny of her behavior before the presentation of the present claim in court and during the time it was being substantiated. It is interesting to note the two letters she had written to the administratrix in connection with certain matters affecting the pecuniary liability of the deceased among which undoubtedly is included the account covered by the promissory note in question. In one letter (Exhibit 2), which she wrote to Mrs. Unson on August 31, 1945, prior to the filing of the claim in court, Miss Rivas broached to her that she had "some important papers of Mr. Unson which I would like to talk over with you", papers which were said to be "more important to you (Mrs. Unson)" than to Miss Rivas. Miss Rivas was then intending to leave for Japan but before doing so she said that "I would like to clear these things with you", and so she hoped that she would come to see her very soon. Apparently, Mrs. Unson did not mind this solicitude of Miss Rivas and so the claim was filed in court. Note that at the first hearing the administratrix failed to appear but Miss Rivas testified explaining the circumstances surrounding the execution of the promissory note. Then the proceedings were set aside and a new hearing was granted. Nevertheless, the interest of Miss Rivas in the case never waned for on March 18, 1946, she again wrote another letter to Mrs. Unson this time faintly insinuating that if Mrs. Unson would not come to make a settlement she would be forced to testify again against her interest. She concluded her letter with the following admonition: "If you care to believe me and you think that I could be of some help then come over and come soon before I can make up my mind to appear in the trial of the case. I want to give you a chance before Dr. Hipolito requests me again to appear as a witness to the said case." (Exhibit 1.) Mrs. Unson again ignored this entreatment and warning and Miss Rivas testified for the second time. A perusal of her testimony will show that Miss Rivas was most vehement, persistent, and sensitive giving the impression that she had embraced the cause of the claimant as her own.

There are other more noteworthy reasons why the claim that the money delivered to the deceased was in genuine

Philippine currency cannot be entertained. Paramount among these is the time at which the transaction had taken place. Note that the alleged transaction took place on November 22, 1944, one month after the successful landing of the United States forces in Leyte and the beginning of the liberation of the Philippines. This historical fact became known to all, as is to be expected, because the Filipinos at that time were only too eager to know and keep abreast of the onward march of the forces of liberation. It can be said then that every Filipino was most eager to get rid of the Japanese military notes he might possess and convert them into genuine currency. This feeling was most legitimate because of the impending defeat of the enemy. On the other hand, it was a matter that can be taken judicial notice of that the Japanese currency has suffered an unparalleled inflation with the concomitant result that the value of genuine currency has reached its peak so that there was a mad rush or desire to get rid of the former and convert it into the latter or any other article of value. Under such a situation it would indeed be the height of folly for one who has in his possession genuine currency to do away with it especially when it is of substantial amount. Yet this is the picture which the evidence for the claimant has portrayed before the court and which the latter has asked the court to believe. Naturally the court cannot be swayed to accept such illogical and nonsensical situation.

The attitude of the claimant in allegedly lending his money to the deceased under the situation already pictured above becomes more illogical and incredible if we bear in mind what Miss Rivas has testified. She said that after delivering the money to Unson the claimant signified to him that he could have it without executing any receipt or note thereof. According to her, "as a matter of fact, Dr. Hipolito was not even willing to have Mr. Unson execute a promissory note for the amount loaned because he believes so much in the honesty and integrity of the late Mr. Unson." And she added, "It was Mr. Unson who insisted that he should sign a promissory note for the amount that was loaned to him by Dr. Hipolito." The promissory note, therefore, was executed upon the insistence of Unson himself, and, as it should be noted, the loan was made without interest and without security. What a generous act on the part of Dr. Hipolito! The evidence of the claimant does not show what particular interest had prompted him to give a loan of such big amount in genuine Philippine currency to Unson who was only a mere casual acquaintance without security of any sort. A sane man would not do such a thing even if he is moved by a generous impulse. This is contrary to logic and reason.

As well stated by the lower court, the promissory note in question was executed "for some purpose which was not revealed during the proceedings." What then could have been the motive or purpose of the delivery of the money which, in our opinion, was in Japanese military notes by the claimant to Salvador Unson? While this purpose cannot be gathered from the evidence of the claimant one cannot but conclude that it was for investment with the expectation of getting some return in the form of genuine currency. This is the tenor of the third special defense of the administratrix and this is what is reflected in the evidence she has submitted to prove said defense.

Two witnesses testified in support of this special defense of the administratrix, Col. Jose V. Hernandez and Major Alredo Ferrer, both of the Blue Eagle unit, a guerilla organization. Both were intimate friends of Unson. Hernandez had known him for thirty years and Ferrer for twenty years. In fact, in 1944, Unson lived in Ferrer's house in Paco, Manila. In substance, these witnesses said that Unson made his first contribution to the guerillas between the 18th and 20th of October, 1944 when he delivered P30,000 in Japanese military notes. Around the end of November of the same year, Unson contributed P90,000 more, and on the 19th of December 1944, he again gave P75,000. The bulk of his contribution was made during the last part of 1944 and the early part of 1945, and in no case did he make contributions to the cause of the guerillas in genuine Philippine currency. They also said that Unson gave loans to some American internees in the University of Santo Tomas concentration camp which were covered by five promissory notes the total value of which was P6,900. These notes were executed with the help of Ferrer and show that the name of the payee in the first three notes was left in blank for security reasons, the fourth appears to be payable to Ferrer as the real party in interest, while the fifth appears to be

payable by Ferrer but was really intended for some interneers. (Exhibits 5 to 5D.) These two witnesses finally said that Unson never had any appreciable amount of genuine currency in his possession because he had no safe in his house and, besides, a Japanese interpreter who was working in Fort Santiago was living nearby in the same neighborhood.

All the foregoing tend to show that the money given by the claimant to Unson must have been in Japanese military notes and was intended to be given to the guerillas in furtherance of the resistance movement in the hope that if after liberation they are redeemed or repaid by the United States Government the money would be divided proportionately between the claimant and Unson. This can be the only sensible purpose which may justify the delivery of that money to Unson. And there is every reason to believe that the money was invested as intended considering the heavy contributions made to that end by Unson during the last part of 1944 and the early part of 1945. This is the only reasonable conclusion that can be drawn considering the surrounding circumstances of this case. While the promissory note Exhibit A shows on its face that the money was to be paid within one year from the occupation of Manila by the Americans there is justification for concluding, as already pointed out above, that this liability can only be asserted if and when the money is collected from the proper authorities. There being no showing that such is the case, we are constrained to hold that claimant has failed to make out a case in these proceedings.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Reyes and Jugo, JJ., concur.

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