

NG CHO CIO, ET AL., PLAINTIFFS AND APPELLANTS, VS. NG DIONG, DEFENDANT AND APPELLANT, C. N. HODGES, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-14832. January 28, 1961*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c963de1efb78/>**BAUTISTA ANGELO, J.:**

This action was began in the Court of First Instance of Iloilo by Ng Cho Cio, Ng Pian King and Ng Due King to recover their three-fourths (3/4) pro-indiviso share on seven (7) parcels of land situated in the City of Iloilo which were sold by Ng Diong as manager of the commercial firm Ng Chin Beng Hermanos in favor of C. N. Hodges. The latter had sold four of those parcels of land to Jose C. Tayengco and the other three parcels to Julian Go, and for that reason these two were included as party defendants. As the original plaintiffs sold their rights, title and interest in said partnership to Ng Be Chuat and Ng Feng Tuan, the latter two were allowed to intervene as plaintiffs. Since Jose C. Tayengco had mortgaged three of the lands which he purchased from C. N. Hodges in favor of the Bank of the Philippine Islands, the complaint was amended so as to include the Bank also as party defendant.

On October 16, 1956, after trial had already begun, defendant Ng Diong died, whereupon his heirs were ordered to substitute him as parties defendants. Defendants C. N. Hodges, Ng Diong and Jose C. Tayengco answered the complaint separately setting up certain special defenses and counterclaims. In substance, they refuted the allegations set forth in the complaint and prayed for its dismissal.

The parties submitted a partial stipulation of facts on many points covered by the pleadings thus simplifying the trial of the case while at the same time they introduced additional evidence in amplification of the facts stipulated. Thereupon, the trial court, after a thorough evaluation of the evidence, rendered decision dismissing the complaint with costs. Plaintiffs interposed the present appeal on purely questions of law.

The pertinent facts may be briefly stated as follows: On May 23, 1925, Ng Diong, Ng Be Chuat, Ng Feng Tuan, Ng Be Kian, Ng Cho Cio, Ng Sian King and Ng Due King entered into a contract of general co-partnership under the name Ng Chin Beng Hermanos. The partnership was to exist for a period of 10 years from May 23, 1925 and Ng Diong was named managing partner. On May 10, 1935, the articles of co-partnership were amended by extending its life to 16 years more to be counted from May 23, 1925, or up to May 23, 1941.

On January 5, 1938, the partnership obtained from the National Loan and Investment Board a loan in the amount of P30,000.00, and to guarantee its payment it executed in its favor a mortgage on Lots Nos. 236-B, 317-A, 233 and 540 of the cadastral survey of Iloilo. On the same date, the partnership also obtained from the same entity another loan in the amount of P50,000.00 to secure which it also executed in its favor a mortgage on Lots Nos. 386, 829 and 237 of the same cadastral survey.

Sometime in 1938, the partnership was declared insolvent upon petition of its creditors in Special Proceedings No. 2419 of the Court of First Instance of Iloilo wherein one Crispino Melocoton was elected as assignee. As a

consequence, on June 21, 1939, the titles to the seven parcels of land abovementioned were issued in his name as assignee. In due time, the creditors filed their claims in said proceeding which totalled P192,901.12.

On August 9, 1940, a majority of the creditors with claims amounting to P139,704.81, and the partners of the firm, acting thru counsel, entered into a composition agreement whereby it (was agreed that said creditors would receive 20% of the amount of their claims in full payment thereof. Prior to this agreement, however, defendant Julian Go had already acquired the rights of 24 of the creditors of the insolvent whose total claims amounted to P139,323.10. Said composition agreement was approved by the insolvency court.

On January 30, 1941, the Agricultural and Industrial Bank which had succeeded the National Loan and Investment Board assigned its rights and interests in the loans obtained from it by the partnership in the aggregate amount of P80,000.00 in favor of C. N. Hodges, together with the right and interest in the mortgage executed to secure the loans. Since said loans became due and no payment was forthcoming, Hodges asked permission from the insolvency court to file a complaint against the assignee to foreclose the mortgage executed to secure the same in a separate proceeding, and permission having been granted, Hodges filed a complaint for that purpose on May 13, 1941. In his complaint, Hodges prayed that the assignee be ordered to pay him the sum of P75,622.90, with interest at 8% per annum thereon from March 6, 1941, plus P8,000.00 attorney's fees, exclusive of costs and charges. Meanwhile, war broke out and nothing appears to have been done in the insolvency proceedings. The court records were destroyed. However, they were reconstituted later and given due course.

On August 15, 1945, the partners of the insolvent firm and Julian Go, who acquired most of the claims of the creditors, filed a petition with the insolvency court praying that the insolvency proceedings be closed or terminated because the, composition agreement the creditors had submitted relative to the settlement of the claims had already been approved on October 10, 1940. And on October 6, 1945, the court, acting favorably on the petition, ordered the closure of the proceedings directing the assignee to return and reconvey all the properties of the partnership back to the latter as required by law. In accordance with this order of the court, the assignee executed a deed of reconveyance of the properties to the partnership on April 2, 1946 and by virtue thereof, the register of deeds cancelled the titles issued in the name of the assignee and issued new ones in lieu thereof in the name of the partnership.

As of said date, April 2, 1946, the indebtedness of the partnership to C. N. Hodges which was the subject of the foreclosure proceedings in a separate case was P103,883.34. In order to pay off the same and raise necessary funds to pay the other obligations of the partnership, it was deemed proper and wise by Ng Diong, who continued to be the manager of the partnership, to sell all its properties mortgaged to Hodges in order that the excess may be applied to the payment of said other obligations, and to that effect Ng Diong executed on April 2, 1946 a deed of sale thereof in favor of Hodges for the sum of P124,580.00. Out of this price, the sum of P103,883.34 was applied to the payment of the debt of the partnership to Hodges and the balance was paid to the other creditors of the partnership. On the same date, Hodges executed another contract giving the partnership the right to repurchase Lots Nos. 237, 386 and 829 in installments for the sum of P26,000.00 within three years with interest at the rate of 1% per annum, payable monthly.

On May 23, 1947, the partnership had not yet paid its indebtedness to Julian Go in the amount of P24,864.62 under the composition agreement, nor did it have any money to repurchase Lots Nos. 237, 386 and 829 from Hodges, and so Ng Diong, in behalf of the partnership, transferred the right of the latter to repurchase the same from Hodges to Julian Go in full payment of the partnership's indebtedness to him. And having Julian Go exercised the option, on January 6, 1948, Hodges executed a deed of sale of the properties in his favor, and pursuant thereto the register of deeds issued new titles in his name covering said lots. On May 29, 1948, Hodges executed another deed of sale covering Lots Nos. 317-A, 236-B, 233 and 540 for the sum of P119,067.79 in favor

of Jose C. Tayengco. And on August 31, 1948, Tayengco, mortgaged said lots, together with three other lots of his, to the Bank of the Philippine Islands to secure a loan of P126,000.00 to be used in the construction of a commercial building on said lots.

Appellants make in their brief six assignments of errors, which, reduced to bare essentials, may be boiled down to the following points: (1) the sale made by Ng Diong in behalf of the partnership Ng Chin Beng Hermanos of the seven lots belonging to it in favor of C. N. Hodges on April 2, 1946 is null and void because at that time said parcels were still in the custody of the assignee of the insolvency proceedings, or in custodia legis, and hence, the same is null and void; (2) said sale is also null and void "because of the disparity, irrationality and unreasonableness between the consideration and the real value of the properties when sold"; and (3) the lower court erred in not finding that the two deeds of mortgage executed by the partnership in favor of the National Loan and Investment Board which were later assigned to C. N. Hodges can no longer be enforced because the action to foreclose the same has already prescribed.

Anent the first issue, it would be well to state the following facts by way of clarification: It should be recalled that on August 8, 1940 the majority of the creditors of the partnership, as well as the representative of the latter, submitted to the court taking cognizance of the insolvency proceedings a composition agreement whereby it was agreed that said creditors would receive 20% of the amount of their claims in full payment thereof. This agreement was approved on October 10, 1940 which, in contemplation of law, has the effect of putting an end to the insolvency proceedings. However, no further step was taken thereon because of the outbreak of the war. Later, the record of the case was reconstituted and the parties on August 15, 1945 filed a petition with the court praying for the dismissal and closure of the proceedings in view of the approval of the aforesaid composition agreement, and acting favorably thereon, the court on October 6, 1945, issued an order declaring the proceedings terminated and ordering the assignee to return and reconvey the properties to the partnership. The actual reconveyance was done by the assignee on April 2, 1946.

It would, therefore, appear that for legal and practical purposes the insolvency ended on said date. Since then the partnership became restored to its status quo. It again reacquired its personality as such with Ng Diong as its general manager. From that date on its properties ceased to be in custodia legis. Such being the case, it is obvious that when Ng Diong as manager of the partnership sold the seven parcels of land to C. N. Hodges on April 2, 1946 by virtue of a deed of sale acknowledged before a notary public on April 6, 1946, the properties were already free from the custody of the court as to which the partnership was at liberty to do what it may deem convenient and proper to protect its interest. And acting accordingly, Ng Diong made the sale in the exercise of the power granted to him by the partnership in its articles of co-partnership. We do not, therefore, find anything irregular in this actuation of Ng Diong.

Since at the time of the sale the life of the partnership had already expired, the question may be asked: Who shall wind up its business affairs? May its manager still execute the sale of its properties to C. N. Hodges as was done by Ng Diong? The answer to this question cannot but be in the affirmative because Ng Diong was still the managing partner of the partnership and he had the necessary authority to liquidate its affairs under its articles of co-partnership. And considering that, war had intervened and the affairs of the partnership were placed under receivership, up to October 6, 1945, we are of the opinion that Ng Diong could still exercise his power as liquidator when he executed the sale in question in favor of C. N. Hodges. This is sanctioned by Article 228 of the Code of Commerce which was the law in force at the time.[1]

With regard to the second issue, it is contended that the trial court should have declared the sale of the lots made to C. N. Hodges null and void "because of the disparity, irrationality and unreasonableness between the consideration and real value of the properties when sold." In stressing his point, counsel contends that the lands in

question, which are located in a commercial section of the City of Iloilo, were frittered away only for a "pittance of P124,580.00" when, borrowing his words, "they could have been sold like hotcakes to any resident of the city of regular financial standing upon proper approaches and representations, because at that time those properties were fairly worth one-half of a million pesos."

This claim may be true, but the same is unsupported. Appellants have failed to introduce any evidence to show that they could have secured better offers for the properties if given a chance to do so and what they advance now is a mere speculation or conjecture which has no place in our judicial system. Since every claim must be substantiated by sufficient evidence, and these appellants have failed to do, their pretense cannot be entertained.

Neither can we give any value to the claim that the action for the foreclosure of the mortgage executed by the partnership in favor of C. N. Hodges has already prescribed not only because the same is immaterial but because it is an issue that appellants are raising for the first time in this appeal. Such issue has never been raised in their pleadings, nor in the trial courts. Verily, this claim has no merit.

With regard to the appeal taken by the heirs of defendant Ng Diong whose main claim is that the trial court failed to adjudicate to the partnership the properties which were bought by Julian Go from C. N. Hodges, suffice it to say that the same could not be done, firstly, because no such claim was made by them in their pleadings in the trial court, and, secondly, because the evidence shows that said properties were bought by Julian Go by virtue of the option given to him by the partnership for a valuable consideration in full payment of the credits assigned to him by a good number of creditors of said partnership. There is no evidence that he promised to reconvey the same to the partnership.

Wherefore, the decision appealed from is affirmed, with costs against appellants.

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

[1] Testate Estate of Lazaro Mota vs. Serra, 47 Phil., 464; Lichauco vs. Lichauco, 33 Phil., 350.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.