

**JOSE TIAOQUI AND ALFREDO HIDALGO RIZAL, AS
ADMINISTRATORS OF THE INTESTATE OF THE DECEASED ALFONSO
M. TIAOQUI, PLAINTIFFS AND APPELLEES, VS. G. A. CU UNJIENG AND
MARIANO CU UNJI...**

G. R. No. L-8418. October 31, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by the assignee of the involuntary insolvency of Guillermo A. Cu Unjieng and Mariano Cu Unjieng, from a decision of the Court of First Instance of Manila.

The complaint in this case is for the recovery of P140,000, representing the aggregate amount of two (2) promissory notes, executed on June 9, 1931. The original parties were Alfonso M. Tiaoqui, as plaintiff, and Guillermo A. Cu Unjieng, Mariano Cu Unjieng and Rafael Fernandez, as defendants. It was alleged in the complaint:

"II. That during the years 1930 and 1931, until on or about the 12 day of July, of the last mentioned year, the above-named defendants, with offices at 320 Dasmariñas, Manila, in connection with a joint venture among themselves involving the purchase and sale of sugar, the buying and selling of exchange, and the financing of sugar shipments abroad in connection therewith, caused various securities, consisting of sugar quedans and certificates of stock of the Pampanga Sugar Development Co., Inc., to be prepared as duplicate imitations of the genuine ones, and the signatures of the authorized officers of said Company to be forged on said securities, and thereafter negotiated the same with various banks and financial institutions, as well as with other private parties in the City of Manila, for the purpose of obtaining loans upon the security of the same.

"III. That in pursuance of said illegal combination between the defendants to obtain money on the security of said forged securities, the said defendants, acting thru the said Rafael Fernandez, on or about the 9th day of June, 1931, fraudulently and illegally obtained from plaintiff the sum of One Hundred Forty Thousand Pesos (P140,000.00), Philippine Currency, by way of a loan, and as security for the payment of the same, delivered to the said plaintiff certain certificates of stock which were represented to plaintiff as being the genuine certificates of stock issued by the Pampanga Sugar Development Co., Inc., and bearing the following particulars.

Certificate Number

Date of Issuance

No. of Shares

1458

.....

July 16, 1930

.....

571

1459

.....

July 18, 1930

.....

1100

1464

.....

July 19, 1930

.....

700

1468

.....

July 22, 1930

.....

450

1469

.....

July 25, 1930

.....

450

1470

.....

July 26, 1930

.....

450

1471

.....

July 11, 1930

.....

"IV. That the certificates of stock listed in paragraph III hereof and delivered to plaintiff herein are all forged, as the above-named defendants well knew, and that the pledging of the same to plaintiff and the fraudulent obtaining of the loan from plaintiff as herein above set forth is only a part of the fraudulent combination and conspiracy among the defendants herein to obtain money from diverse banking institution and private parties on the security of such and other false and fraudulent securities.

"V. That the proceeds of the loan so obtained from plaintiff was directly deposited to the credit of the overdraft account of the defendant Rafael Fernandez in the National City Bank of New York, secured by other false and fraudulent securities, and thru such bank thereafter disbursed for the common use and benefit of the defendants named therein.

"VI. That in connection with this loan transaction, the said Rafael Fernandez executed a document of pledge (copy of which is hereto attached marked Exhibit 'A' and made a part hereof), to secure the payment of said loan as evidence by two promissory notes in words and figures, as follows:

'Pagare en Manila el dia 29 de Junio de 1931, a Don Alfonso M. Tiaoqui o a su orden la suma de SETENTA MIL pesos Filipinos (P70,000.00), valor recibido; si no fuese satisfecha a su vencimiento, pagare intereses a razon de 10% anual de dicha cantidad. Protesto renunciado.

'Y caso de no satisfacerse este pagare a su vencimiento pagare" la suma adicional de SIETE MIL PESOS FILIPINOS (P7,000.00) en su totalidad sin deduccion alguna en concepto de daños y honorarios de abogado para su cobro, hayan sido incurridos o no, ademas de cualquier otros gastos y desembolses fijados por el Codigo de Procedimiento Civil.

Manila, I. F. 9 de Junio de 1931.

(Fdo.) RAFAEL FERNANDEZ'

'Pagare en Manila el dia 29 de Junio de 1931, a Don Alfonso M. Tiaoqui, o a su orden la suma de SETENTA MIL PESOS FILIPINOS (P70,000.00), valor recibido; si no fuese satisfecha a su vencimiento, pagare intereses a razon de 10% anual de dicha, cantidad. Protesto renunciado.

'Y caso de no satisfacerse este pagare a su vencimiento, pagare la suma adicional de SIETE MIL FILIPINO (P7,000.00) en su totalidad sin deduccion alguna en concepto de daños y honorarios de abogado para su cobro, hayan sido incurridos o no, ademas de cualquier otros gastos y desembolsos fijados por el Codigo de Procedimiento Civil.

Manila, I. F. 9 de Junio de 1931.

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"VII. That no part of the amount so fraudulently obtained from the plaintiff has been paid, notwithstanding the fact that the same became due and payable on the 29th of June, 1931, and that therefore there is now due and owing from the defendants, jointly and severally, the sum of One Hundred Forty Thousand Pesos (P 140,000.00), with interest thereon at the rate of 10% per annum from June 29, 1931, until paid, plus the sum of P14,000.00 by way of penalty for damages and for attorney's fees and costs of collection." (Italics ours.)

It appears that, in connection with, or as a consequence of, the illegal combination, counterfeiting, forgery and loans referred in said complaint, several actions were filed, in 1939, against said defendants. Mariano Cu Unjieng, Manuel Carlos and John Doe were accused in Criminal Case No. 42649 of the Court of First Instance of Manila of estafa thru falsification of commercial documents, involving the sum of P1,411,312.80, in which the Hongkong and Shanghai Banking Corporation was allegedly defrauded. Similarly, Rafael Fernandez was charged with estafa

in Criminal Cases Nos. 42244 (in connection with the same transaction involved in Criminal Case No. 42649) and 42388 (referring to an analogous fraudulent transaction of which Vicente Rufino was said to have been the victim) of said Court. In Civil Case No. 40863 thereof, filed early in October, 1931, the Hongkong and Shanghai Banking Corporation prayed for judgment against Guillermo A. Cu Unjieng and Mariano Cu Unjieng for said sum of P1,411,312.80. In Civil Case No. 40653 of the same Court, filed on October 19, 1931, the National City Bank of New York sought to recover from Guillermo A. Cu Unjieng, Mariano Cu Unjieng and Rafael Fernandez, the sum of P665,497.48 plus interests thereon. In Civil Case No. 40662 of said Court, filed on October 20, 1931, the Malabon Sugar Co. sued the same defendants for the sums of P479,589.47 and P26,832.09, both amounts with interests. In Civil Case No. 40716 of the same Court, filed on October 28, 1931, Smith Bell & Co. claimed to have been defrauded by the same defendants in the sum of P242,711.10, plus interests thereon.

In the present civil case, filed on November 10, 1931, attachment was levied upon some properties of the Cu Unjiengs. Inasmuch as the main issues raised therein were, also, involved in the Criminal Case No. 42649 against Mariano Cu Unjieng, and some of the evidence therein were intended to be availed of in the case at bar, the proceedings in the latter were suspended, until the final disposition of the former, and the parties in this case agreed that certain specified evidence, introduced in said criminal case, could be used by plaintiff herein.

In due course, Mariano Cu Unjieng was convicted by the Court of First Instance of Manila in said Criminal Case No. 42649, and, on appeal, the decision of said Court was, on March 26, 1935, affirmed by this Supreme Court (61 Phil., 236, 303). A motion for reconsideration of the decision of this Court was denied by the same on December 17, 1935 (61 Phil., 908, 1008). Moreover, Rafael Fernandez was convicted in said Criminal Cases Nos. 42244 and 42388 of the Court of First Instance of Manila, the decisions of which were, on appeal, affirmed by this Supreme Court in G. R. Nos. 41598 and 41599. Likewise, on December 29, 1936, this Court affirmed the decision of the Court of First Instance of Manila in said Criminal Case No. 40653, 40662 and 40716 thereof, which were jointly heard, in favor of the National City Bank of New York, the Malabon Sugar Co. and Smith Bell & Co., respectively, and against Fernandez and the Cu Unjiengs, as defendants therein.

On August 18, 1937, Rafael Fernandez was, on motion of the original plaintiff, dropped from this case, as one of the defendants therein, he having been declared insolvent.' Guillermo A. Cu Unjieng and Mariano Cu Unjieng were thus left as the only defendants therein. Subsequently, however, these defendants were, also, declared insolvents, for which reason the assignee of their properties substituted them as parties in the case at bar, the continuation of which was, on October 17, 1939, authorized by the court taking cognizance of the corresponding insolvency proceedings (Case No. 54122 of the Court of First Instance of Manila). Meanwhile, Alfonso M. Tiaoqui died, and was substituted, as plaintiff herein, by his judicial administrators, Jose S. Tiaoqui and Alfredo Hidalgo Rizal. On motion of said assignee, on October 30, 1940, the lower court dissolved the attachment levied in the present case, upon the real properties covered by Certificates of Title Nos. 12835, 12836, 12837, 22652 and 35460, in the name of Guillermo A. Cu Unjieng, except the last which was in that of Mariano Cu Unjieng, upon the filing and approval of two (2) bonds in the aggregate amount of P200,000. Thereafter, the lower court proceeded to hear this case and receive evidence thereon. Before the trial had been completed, war broke out in the Pacific and the Philippines was occupied by the enemy forces. Then came the liberation, during which the records of this case were destroyed. Upon the reconstitution of part thereof, and the presentation of additional evidence, oral as well as documentary, the case was deemed submitted for decision. In a decision dated April 1, 1954, the Court of First Instance of Manila found that the allegations made in the complaint had been proven and, accordingly, rendered judgment for the plaintiffs, as prayed for in said pleading. The dispositive part of said decision reads:

"IN VIEW OF ALL THE FOREGOING, the Court hereby sentence the original defendants Guillermo A. Cu Unjieng and Mariano Cu Unjieng, now herein represented by the substituted defendant J. V. Hickey as

assignee of their insolvent estate, to pay jointly and severally to the substituted plaintiffs, firstly, the total sum of P140,000 as value of the two promissory notes for P70,000 each, and the additional sum of P14,000 as attorney's fees, and secondly, the interest on P140,000 at the rate of 10 per cent per annum from June 29, 1931 until paid, and the costs. This judgment shall be enforced against the properties of said defendants on which the original plaintiff herein Alfonso M. Tiaoqui, has a first lien by virtue of the order of attachment issued by this Court in his favor; or against the bonds that were filed in lieu of said properties so attached as were sold at public auction to the National City Bank of New York, subject to said plaintiff's first attachment lien."

A motion for reconsideration thereof having been, subsequently, denied, the defendant-assignee filed notice of his intention to appeal. Soon thereafter, or on June 29, 1954, plaintiffs moved for the immediate execution of said decision, which was granted, despite defendant's opposition thereto.

In his brief, appellant alleges:

"1. The trial court erred in finding that the original defendants, Guillermo A. Cu Unjieng, Mariano Cu Unjieng and Rafael Fernandez, had entered into an illegal combination to obtain money from plaintiff on the security of forged securities, and in holding that the loan of P140,000 secured by Rafael Fernandez from the original plaintiff, Alfonso M. Tiaoqui, was for the benefit of the said three original defendants.

"2. The trial court erred in admitting in evidence Exhibit 'I-2', the judgment of conviction against Mariano Cu Unjieng rendered in Criminal Case No. 42649, as well as the exhibits relative to the said criminal case, particularly Exhibits 'I', 'I-1', 'I-3', 'I-4', 'I-5', 'I-6', 'I-7', 'I-8' and 'I-9'.

"3. The trial court erred in sentencing the original defendants, Guillermo A. Cu Unjieng and Mariano Cu Unjieng, now represented herein by the substituted defendant, Amado M. Balangue, as assignee of their insolvent estates, to pay jointly and severally to the substituted plaintiffs the sum of P140,000 together with interest thereon at the rate of 10 per cent per annum from June 29, 1931 until paid, and the sum of P14,000 as attorney's fees, as well as the costs.

"4. The trial court erred in ordering execution of the judgment and abused its discretion in issuing its order of July 26, 1954, granting plaintiffs' motion for special execution pending appeal."

The first three (3) assignments of error are interrelated. The questions raised therein boil down to whether the Cu Unjiengs are liable for the amount of the above quoted promissory notes, none of them having signed the same.

It should be noted, however, that the transaction, leading to the execution of said notes and the disbursement, by the deceased Alfonso M. Tiaoqui, of the sum of P140,000, constituting the cause or consideration for said notes, was part and parcel of an illegal scheme between the Cu Unjiengs and Rafael Fernandez, whereby the latter, with the knowledge and consent of the former, and in conspiracy with them-in fact, under the direction of Mariano Cu Unjieng, the son and attorney-in-fact of Guillermo A. Cu Unjieng, with whose knowledge and consent Mariano Cu Unjieng acted-obtained money from several banks and financial institutions, as well as from private individuals, including the deceased Alfonso M. Tiaoqui, by giving, as security, counterfeit quedans and stock certificates, as alleged in the complaint filed in the case at bar. The existence of said conspiracy and scheme has been satisfactorily established by the testimonial evidence introduced in the present case, and the decisions rendered in the criminal cases against Mariano Cu Unjieng and Rafael Fernandez, respectively and, particularly, in the aforementioned civil cases instituted, against both and Guillermo A. Cu Unjieng, by the National City Bank of New York, the Malabon Sugar Co. and Smith Bell & Co., which decisions were introduced, and correctly admitted, in evidence in the case at bar. As defendants in those civil cases, the Cu Unjieng had ample opportunity to cross-examine the witnesses for plaintiffs therein, whose cause of action against them was hinged on said conspiracy and scheme. Besides, by agreement between the parties in this case and the parties in the criminal cases against Mariano Cu Unjieng and Rafael Fernandez, based upon the fact that a good portion of the evidence

introduced in said criminal cases would be used in the case at bar, the proceedings therein were suspended by the lower court on November 22, 1933, until after the disposition of the case against Mariano Cu Unjieng. Thus, it was, in effect, agreed that the afdrementioned evidence in this criminal case would be admitted in the present case, for, otherwise, it would have been pointless to defer the hearing thereof.

The last assignment of error is clearly devoid of merit. Plaintiffs' credit of P140,000 earned interest at the rate of 10 per cent a year, from June 29, 1931. When the lower court ordered immediate execution of its decision late in June, 1954, the aggregate interest due amounted, therefore, to over P322,000, which, added to the capital of P140,000, gives a grand total of P462,000 then due to plaintiffs herein, whereas the only property available for the satisfaction thereof was a bond for P200,000. In the light of this fact, and of the other circumstances obtaining in the case, particularly of the several decisions establishing the main facts upon which plaintiffs' cause of action is predicated, it is apparent to us that the alleged errors assigned by appellant herein are untenable.

Wherefore, the decision appealed from is hereby affirmed, with cost against the defendant-appellant. It is so ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

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