

ISIDORO DE MORA, PLAINTIFF AND APPELLEE, VS. LA INSULAR CIGAR AND CIGARETTE FACTORY, INC., DEFENDANT AND APPELLANT.

G. R. No. L-5021. July 31, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Rizal ordering defendant to pay the plaintiff the sum of P70,000 with legal interest thereon from the date of the filing of the complaint and the costs of action.

Appellant is a corporation organized under the laws of the Republic of the Philippines, its principal stockholder being Doña Maria de los Angeles Santa Marina de Ozores, hereinafter referred to as Marquesa de Aranda. Besides being principal stockholder, she was as early as 1941 a creditor of the corporation with a credit balance of more than P1,500,000.

Early in 1935, Isidoro de Mora, appellee herein, was sent to the Philippines by attorney Marin Lazaro, President of appellant corporation, to attend to some errand, and later was appointed General Manager of the corporation in the Philippines. Appellee was then a Spaniard, with residence in Madrid, Spain.

In view of the heavy indebtedness of the corporation to the Marquesa de Aranda, an arrangement was made whereby the corporation agreed to send her a monthly remittance of P10,000 through A. Soriano & Co., and this arrangement not having been satisfactorily carried out, on May 25, 1940, the Marquesa de Aranda wrote to appellee urging him to effect payment of at least P20,000 on account of the monthly amortizations agreed upon. This request was not attended to and the corporation became further indebted to other stockholders.

Considering this deplorable financial situation of the corporation, its Board of Directors, sometime in December, 1940, resolved to send appellee to Spain with instructions to contact the Marquesa de Aranda and other important stockholders to see the best way of reorganizing and recapitalizing the corporation by, among others, converting its indebtedness into shares of stock. Appellee arrived in Spain on March 2, 1941, and his first step was to confer with Marin Lazaro and the Marquesa de Aranda to whom he broached the advisability of effecting the proposed reorganization. He also contacted for the same purpose other important stockholders.

The Marquesa de Aranda was not inclined to approve the plan unless she be given an advance payment of P100,000 on account of her outstanding credit against the corporation, and informed of this desire, Marin Lazaro suggested to the appellee that he advance said amount out of his own funds, but when appellee intimated that the only amount he could dispose of at the time was 350,000 pesetas, or P70,000 in Philippine currency, Lazaro, who was then acting as legal adviser of the Marquesa de Aranda, stated that amount would do. This amount was in effect accepted by the Marquesa, and on April 30, 1941, the same was delivered by appellee to her who then and there issued in his favor a receipt in her own handwriting the contents of which will be quoted in the latter part of this decision. After having effected this payment, and made similar arrangement with other stockholders, the Marquesa de Aranda and the other stockholders signed a document containing the plan of recapitalization already

adverted to. On August 2, 1941, appellee left for the Philippines via the United States but while in this place war broke out in the Pacific and appellee was forced to stay in the United States for the duration of the war. The Marquesa de Aranda died in Spain on December 23, 1941.

Upon the termination of the war, appellee was relieved of his position as General Manager of the corporation, and in July, 1946, Alvaro Ozores and Ignacio de la Iluerta, as heirs of the Marquesa de Aranda and representatives of the corporation, went to New York to confer with appellee and settle whatever claims he might have against the corporation. This was done with certain reservations on July 26, 1946. On August 26, 1946, appellee demanded from the corporation the payment of the sum of P70,000 he had advanced to the Marquesa de Aranda in line with the deed of settlement, but the corporation failed to pay said amount. In the meantime, intestate proceedings were initiated in the Court of First Instance of Manila relative to the settlement of the estate of the late Marquesa de Aranda and by way of precaution, appellee filed a creditor's claim for the same amount against the estate with the idea of proving it should the corporation fail to pay said claim, or turn out to be insolvent. At the same time, appellee filed a separate action against the corporation to recover the same amount inasmuch as the document signed by the late Marquesa and which served as basis of his claim represented a partial assignment to him of her credit against the corporation. Upon motion of counsel for the corporation, however, the claim of appellee against the estate was dismissed without prejudice to instituting a separate action. The next step taken by appellee was to file a motion in the civil action to join the administrator of the estate as a necessary party so that the alternative claim of appellee may be pressed against the estate, but this motion was denied in view of the vigorous opposition of counsel for the corporation. A further attempt to make the estate a party defendant in the case also failed in view of the opposition of the same counsel with the result that the case was continued against the corporation as sole defendant.

We have seen that the lower court, after receiving the evidence of both parties, decided the case in favor of the plaintiff and the defendant has appealed to this court. In this instance, appellant now assigns several errors one of them relating to the defense of moratorium which it set up in its answer but which the lower court refused to entertain on the ground that, having pleaded such defense late, appellant must be deemed to have waived it. We will, however, skirt this assignment in our discussion in view of the recent ruling of this court in the case of *Rutter vs. Esteban*, [*] G. R. No. L-3708, wherein the Moratorium Law was declared null and void.

The pivotal issue on which hinges the determination of this case revolves around the correct interpretation of the contents of the document signed by the Marquesa de Aranda on the occasion when, according to appellee, he delivered to her the amount of 350,000 pesetas. This document reads as follows:

"30 de Abril, 1941

"He recibido de don Isidoro de Mora Pesos 70,000 (Setenta mil) de mi cuenta corriente de La Insular. Este recibo no tiene ni tendra otro efecto quo el de servir de comprobante para dar salida de dicha cantidad en la contabilidad de la Fabrica, quedando absolutamente anulado al efectuarse dicha operacion.

Maria de los Angeles Santa Marina,
Marquesa de Aranda."

(Exhibit P-2)

There is no dispute between appellant and appellee as to the fact that the above-quoted document was executed by the Marquesa de Aranda in her own handwriting and was duly delivered by her to the appellee. The dispute lies in the interpretation of its contents. It is the theory of appellant that the document in question is a mere advance receipt (*recibo anticipado*) issued by the Marquesa de Aranda to enable appellee to withdraw in the future upon his arrival in Manila the amount of P70,000 for subsequent remittance to her in Spain, after which the document

shall be retained in the files of the corporation as proof of such payment. The theory of appellee, on the other hand, is that the Marquesa de Aranda received the amount of P70,000 mentioned in the document, either as consideration for an assignment of her credit in said amount, or as payment of said amount by the appellee to her for the account of the appellant corporation, said document to serve as evidence whereby appellee could ask for repayment or reimbursement of said amount from the corporation.

The words in which the document are couched are simple and clear and admit of no doubtful interpretation. They say "He recibido de Don Isidoro de Mora Pesos 70,000 (Setenta Mil) de mi cuenta corriente de La Insular", which mean in simple language that the signer has received the sum of P70,000 from Isidoro de Mora which should be taken or deducted from the current account of the signer with the corporation. The fact that the phrase "de mi cuenta corriente" comes after the words "He recibido" can only indicate that the money received or taken should be charged to that current account. It cannot be otherwise for, if the intention were the contrary, the signer would have stated "autorizo a Don Isidoro de Mora cobrar Pesos 70,000 (Setenta Mil) de mi cuenta corriente de Insular", which would have been the case if the intention were merely to convey the idea that the money has not been actually received, as insistently pretended by counsel for the corporation. The words "He recibido" cannot be given any other interpretation.

The practice of sending advance receipts or "recibos anticipados" wherein the signer signs the receipt even if no money is actually delivered is observed generally among business houses or concerns in connection with collection of accounts for goods sold on credit, and even then the receipt is noted down as merely temporary in nature to be later supplemented by the official receipt. The document in question is not one of them. It was written by the late Marquesa de Aranda in her own handwriting in connection with a particular transaction and there is no pretense that it was executed for articles sold on credit, nor is there any intimation that the late Marquesa de Aranda, and for that matter any other stockholder of the corporation, has ever issued on any previous occasion a receipt of the tenor insisted upon by counsel for sums of money or remittances which she expected to receive at some future time. There was no such practice ever permitted by the corporation, nor any has been proven to bolster up the theory of appellant. This theory is based on mere conjecture. It finds no support in any evidence obtaining in the record. On the contrary, it stands discredited by the testimony of appellee that at no time in the past did the appellant ever require the Marquesa de Aranda to execute, in advance of any remittance to her, any advance receipt evidencing any payment in the future.

The theory that the document in question represents receipt of money actually delivered to the late Marquesa de Aranda is supported not only by the document itself (Exhibit P-2) but by the positive testimony of appellee which stands unrefuted. He said that, because of the deplorable financial situation of the corporation, he was sent to Spain by its Board of Directors to take up with the Marquesa de Aranda and other stockholders the necessity of reorganizing the corporation by converting their credits into shares of stock. And true to his mission he contacted the Marquesa and submitted the proposal but the latter expressed her conformity to it only on condition that she be paid the amount of P100,000. In this connection, Atty. Marin Lazaro, legal adviser of the Marquesa, suggested that appellee advance the amount out of his own funds, but as he was only in a position to advance 390,000 pesetas, or P70,000, in our currency, Atty. Lazaro intimated that that amount would do. This amount in fact was enough and was then and there delivered by appellee to Marquesa de Aranda. These facts stand un rebutted for indeed it cannot be disputed that the corporation at that time was in such a precarious condition that there was great need of taking a radical measure to solve the crisis and allow its business to continue. That the Marquesa de Aranda was likewise in financial strait was also quite evident as shown by the misgivings she expressed in the letters she had written the appellee in his capacity as General Manager of the corporation months before his arrival in Spain wherein she complained of the failure of the corporation to comply with its commitment to send her a monthly remittance of not less than P10,000 (Exhibit B-1 and Exhibit K). These letters corroborate in

substance the testimony of appellee that the Marquesa did actually impose the condition that the amount of P100,000 be advanced to her if she were to agree to the plan of reorganization and recapitalization of the corporation.

But appellant tries to discredit this testimony of appellee not only because, according to appellant, said testimony is not corroborated by any other evidence, but because of certain circumstances which in its opinion make his testimony doubtful and suspicious. We do not subscribe to this opinion.

As to the first ground, the very document Exhibit P-2 constitutes its own refutation because it furnishes the best corroboration of the advance payment made by appellee to the late Marquesa de Aranda. The letters of the deceased wherein she expressed her misgivings because of the failure of the corporation to comply with its commitments constitute another corroborative evidence. They attest to the fact that the Marquesa was at least in a position to demand some cash advance because at that time she was not well financially.

The circumstances which, according to appellant, cast doubt and suspicion on the testimony of appellee are based on pure conjecture. Take for instance the claim that the Marquesa could not have possibly taken money from the appellee for the simple reason that she was practically the owner of the corporation while appellee was merely her employee, and that, being wealthy, with properties and assets worth more than two million pesos, if she ever wanted cash or money she could have gotten it easily from other persons and not from an employee like the appellee. But on what ground does appellant base this conjecture? Merely on the testimony of Gonzalo Ozores, husband of the late Marquesa, who by the way was not present when the money was delivered by the appellee. Nor is this testimony corroborated. Appellee, in his deposition, mentioned the names of witnesses who could have been called to rebut his testimony regarding the delivery of the money and who could have thrown light on the financial predicament of the Marquesa who, though wealthy, may yet find herself in need of cash to meet her peremptory needs, specially those stockholders with whom appellee had conferred in Spain relative to the reorganization and recapitalization of the corporation, but notwithstanding the fact that they were then available and could have been examined relative to the truthfulness of the averments made by appellee, such step was never taken by the corporation and instead it preferred to resort to mere conjecture in an effort to nullify his testimony. Be that as it may, the fact remains that, contrary to appellant's contention, the Marquesa did not actually borrow money from the appellee, as contended, but that the latter volunteered to advance to her a portion of her own credit subject to the understanding that he should be reimbursed for it by the corporation after his return to Manila. And to carry this into effect, she gave him the document under consideration. There is nothing improper, nor humiliating, in this arrangement.

Much capital is made, by appellant of the delay of appellee in demanding reimbursement of the amount either from the corporation or from the estate, delay which in its opinion creates the impression that his present attempt is but a mere afterthought or a desire to take advantage of the death of the Marquesa de Aranda who cannot now dispute his claim because death has sealed her lips. In other words, it is claimed that while the delivery of the money was allegedly made on April 30, 1941 and the Marquesa de Aranda died on December 23, 1941, however, appellee did not take any step to get reimbursement of the money until August 26, 1946, which is indicative of bad faith on his part or lack of merit of his claim.

But this apparent delay can easily be explained if we recount the background which gave rise to the issuance of the document under consideration. It should be recalled that the paramount purpose of the Marquesa de Aranda in asking for the advance payment of P100,000 was her desire to reduce the indebtedness of the corporation to her so that the resulting credit balance could be converted into shares of stock as proposed by the planners of the corporation and, to facilitate this plan, appellee volunteered to advance the sum of P70,000. When the Marquesa de Aranda died on December 23, 1941, the appellee was in New York having been caught there by the Pacific

war. When war terminated in 1945, the appellee continued to be the top executive officer of the corporation and naturally he felt then that his first concern was to see to it that the plan of reorganization and recapitalization of the corporation be carried out. But when months after liberation the corporation decided to dispense with his services and sent representatives to settle and liquidate the accounts he might then have against the corporation, as in fact such settlement or liquidation was effected, he found no other alternative than to make clear his stand in connection with this particular transaction in order to protect his interest. It was then that he gave notice to the corporation of the advance he had made to the Marquesa de Aranda and demanded that it be reimbursed to him in line with their understanding. This attitude is justifiable. For him to have done the contrary, or to demand early reimbursement for the simple expedient that the Marquesa had died would have been unworthy on his part or would have rendered him untrue to his commitment with the Marquesa. We see therefore nothing incongruous or suspicious in this attitude of appellee.

Another claim of appellant refers to the lack of marital consent to the alleged assignment of credit embodied in the document in question. It is contended that said alleged assignment is not valid and has no legal effect because, the credit subject of the assignment being a portion of conjugal property, the assignment could not have been made without marital consent. Its reimbursement cannot therefore be enforced now by appellee.

To answer the point raised, there is need to mention here some facts which are germane to the main issue. It appears that when the Marquesa de Aranda contracted marriage with her husband Gonzalo Ozores, they executed an antenuptial contract wherein they agreed to celebrate their union under the regime of conjugal partnership subject, however, to certain reservation with regard to properties and rents previously acquired by the prospective wife, and there is a faint intimation in the testimony of Gonzalo Ozores, the surviving husband, that the shares of stock acquired by the late Marquesa in the appellant corporation were one of those properties excluded from the conjugal partnership. The credit in question is a derivative of said shares of stock. It can be said therefore that its management and disposition comes under the exclusive power and authority of the wife. And even in the assumption that it forms part of the paraphernal property of the wife, and that under the Civil Code of Spain, where the document was executed, a wife cannot, without the consent of the husband, assign or sell her paraphernal property or its fruits, the fact however remains that any alienation of such property by the wife without the consent of the husband is not void but merely voidable and the action to annul it should be brought within four years from the death of the wife. (*Peoples Bank & Trust Co. vs. Register of Deeds of Manila*, 60 Phil. 167, 171-173; *Papa and Delgado vs. Montenegro*, 54 Phil. 331, 341.) This period has already elapsed and no action to that effect has so far been taken by the husband. This claim therefore cannot now be maintained nor can it affect the validity of the assignment in question. At any rate, it should be here emphasized that what the late Marquesa in effect did in connection with this transaction was merely to collect a portion of her credit against the corporation, and when appellee volunteered to advance its payment he merely subrogated himself to the rights of the Marquesa, an act which may be considered as within the power of administration of a married woman. For this act the consent of the husband is not necessary.

The remaining question to be determined refers to the claim of appellant that the alleged assignment of credit by the Marquesa de Aranda in favor of appellee has already been included in the deed of settlement signed by him and the corporation and, consequently, appellee is now barred from effecting its collection in the present case.

A careful analysis of the items involved in the deed of settlement above referred to would reveal that this claim has no merit. It should be noted that said deed of settlement was executed on July 26, 1946, that is, before appellee has demanded the payment of this credit from the corporation. It should also be noted that the aforesaid settlement was made in full payment of any and all claims which appellee may then have against the corporation but subject to certain exceptions, one of them referring to sums of money which appellee may have paid or

advanced out of his own funds to individual stockholders as to which he reserved his right to collect from said individual stockholders. And among the provisions therein contained, it should further be noted, is that, notwithstanding his failure to enforce such payment, he may still press its reimbursement out of any share, interest or money that may belong to the stockholder in the corporation. These provisions are clear enough to convince us that appellee may still proceed to press his claim either against the estate of the Marquesa or against the corporation. This claim comes within the reservation clause.

The foregoing considerations in our opinion would suffice to show that the errors imputed by appellant to the lower court do not have any legal or factual basis.

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

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

[*] Supra, p. 68.

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