

CHIU CHIONG & COMPANY, INC., PLAINTIFF AND APPELLEE, VS. NATIONAL CITY BANK OF NEW YORK, DEFENDANT AND APPELLANT.*G.R. No. L-7485. August 23, 1956*

Ponente: FELIX, J.

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Plaintiff, a corporation engaged in grocery and cold store business, instituted this action in the Court of First Instance of Manila, for the purpose of recovering from the defendant Bank certain sums of money allegedly paid twice by it: the first, during the Japanese occupation, and the second, after liberation.

There is no dispute as to the facts of the case except on one point which will be later discussed. The record shows that at the time World War II broke out (December 8, 1941), plaintiff was indebted to defendant for credit facilities and advances the latter had theretofore granted to the former (Exhibit F). On December 29, 1941, plaintiff's debt amounted to the total sum of P44,580.59, plus interest at the rate of 8 per cent per annum. During the Japanese occupation plaintiff paid the Japanese Bank of Taiwan, Ltd., its pre-war obligation to defendant. After the surrender of Japan plaintiff, first in 1945, and later in 1947, applied to defendant for additional credit facilities, but plaintiff's request was denied in 1945 because plaintiff refused to make arrangements for the payment of its pre-war obligation (plaintiff's complaint, paragraphs 6 and 7). In the early part of 1947, about the month of April, plaintiff's business was seriously threatened by paralyzation and its previous application for credit facilities was renewed. This time plaintiff was ready to execute, as it did execute a promissory note in favor of defendant for the payment of its pre-war obligation at the rate of P1,000 a month, with interest thereon at the rate of 5 per cent per annum (instead of the original 8 per cent) from April 29, 1947, until fully paid. By reason of plaintiff's change of attitude defendant agreed in turn to grant, and did grant, plaintiff additional credit facilities up to the sum of P60,000.

On May 2, 1947, Yap Tak Wing, Joseph Henry Ng, Chui Lim Wu, Lang Sui and Lee Ng solidarity executed an undertaking of suretyship in favor of defendant, guaranteeing payment of loans resulting from said credit facilities (Exhibit D).

Pursuant to the above mentioned arrangement agreed upon by the parties to this case, and beginning from the month of June, 1947, plaintiff paid defendant the agreed monthly installments of P1,000 on the former's pre-war obligation until the entire amount of plaintiff's promissory note in favor of defendant became fully liquidated in May, 1950 (Exhibits B, B-1 to B-30).

On July 7, 1947, counsel for plaintiff wrote the submanager of defendant Bank a letter (Exhibit I) bringing to his attention the contract of suretyship executed on May 2, 1947, by Chui Chiong & Company, Inc., in favor of the Bank, and to the validity of the payments made by plaintiff during the Japanese occupation to the Bank of Taiwan, Ltd., as liquidator of defendant Bank, and based on these premises said counsel demanded the release of the suretyship and the refund of the sum of P50,143.42, plus collected interests which he alleged had been

wrongly paid to the Bank. To this letter the Manager of defendant Bank replied on July 16, 1952 (Exhibit J), returning the pledge agreement and two undertakings of suretyship furnished by the plaintiff, but declined to refund the sum of P50,143.42. Hence the institution of this action.

In the complaint plaintiff prays the court to sentence defendant to pay the plaintiff the sum of P50,143.42, minus the sum of P1,845.29, the amount not collected from the plaintiff, in addition to the sum of P3,238.78, more or less, for annual interest of 5 per cent, with legal interest on the total amount of the demand from July 7, 1952, plus P6,000 as attorney's fees and costs. This complaint was predicated on decisions of this Court validating payments of pre-war obligations made during the Japanese occupation to the Bank of Taiwan, Ltd., which were considered as made to creditor banks, as the defendant herein (*Haw Pia vs. The China Banking Corporation*, 80 Phil., 604), though it further averred that "the signing (of said promissory note) was premised that when the payment during the occupation by occupation pesos be declared valid by the authorities or by competent courts, then said promissory note be declared void and any amount or amounts paid or deposited pursuant to the promissory note be returned or refunded" (complaint, paragraph 8). At the hearing in the lower court plaintiff contended that the promissory note for P50,143.42 was executed on the understanding had between the plaintiff and the defendant that should payments made during the Japanese occupation be declared valid by the court, any and all payments made on the promissory note would be refunded to the plaintiff. This supposed understanding was vigorously denied by defendant Bank, and without questioning the validity of the payments made to the Bank of Taiwan, Ltd., in turn alleged in its answer that the promissory note in question was executed for valuable consideration and that the additional credit facilities granted to plaintiff after liberation were given by defendant only by reason of the execution by plaintiff of its said promissory note (paragraph IV of the answer). In passing upon this point the trial court expressed itself as follows:

"The defendant's contention that the promissory note is in consideration of the new credit facilities is entirely unfounded.

No businessman would execute a promissory note for P50,143.42 in consideration of new credit facilities up to the amount of P60,000, which is the maximum granted by the defendant to the plaintiff. It should be borne in mind that to secure and guarantee these new credit facilities an instrument entitled 'Undertaking of Suretyship' (Exhibit H) was executed by the plaintiff in favor of the defendant on May 2, 1947. This undertaking of suretyship was released in due course upon payment of all the amounts received by the plaintiff from the defendant in accordance with the new credit facilities. It would be utterly absurd and preposterous for the plaintiff to have executed the promissory note in question and paid its full amount in order to obtain credit facilities in the sum of P60,000, because then the plaintiff will be paying to the defendant the new advances, loans, credits, etc., up to P60,000 besides paying the amount of P50,143.42 of the promissory note.

In consonance with defendant's theory the plaintiff was allowed to obtain loans and advances and bound itself to pay these new loans or advances up to the sum of P60,000, as per its undertaking of suretyship and in addition thereto agreed to pay and paid the additional sum of P50,143.42 represented by the promissory note. No businessman in his sound mind would secure a new indebtedness of P60,000 to guarantee its payment and in addition thereto incur an indebtedness of P50,143.42 represented by the promissory note, payable before the payment of the new obligation. In other words, under defendant's theory, the plaintiff contracted an obligation of P60,000 and, in full satisfaction thereof, paid P110,143.42."

In consonance with these views the trial court rendered decision

"ordering the defendant to return to the plaintiff all the amounts paid on the promissory note aggregating P48,298.13, together with the sum of P3,238.78 representing interests thereon, or a total of P51,536.91, with legal interests thereon from October 29, 1952 and to pay to the plaintiff attorney's fees in the sum of P3,000 and costs."

From this decision the defendant appealed to us setting forth seven assignments of error. At the outset, let it be stated, notwithstanding the views expressed by the trial judge that no businessman in his sound mind would enter into a transaction in which he had to guarantee the payment of a new indebtedness of P60,000 and agree, in addition thereto, to pay before the settlement of the new obligation, an indebtedness of P50,143.42 that he had already paid to the Bank of Taiwan, Ltd., that it is a fact that in the case at bar plaintiff company paid not only the amounts it received from defendant after liberation, but also the additional sum of P50,143.42 that represented its pre-war obligation to the defendant. For this reason we think that the questions at issue in this appeal may be reduced to the following propositions:

- Whether or not the evidence on record shows that the promissory note in question was executed on the understanding that if payments made during the Japanese occupation to the Bank of Taiwan, Ltd., were declared valid, any and all payments made on the said promissory note shall be returned or refunded by the defendant to the plaintiff; and

- In the negative case, whether or not the trial judge erred in not absolving defendant and in not sentencing plaintiff on defendant's counterclaim.

Anent the first proposition, the best evidence to elucidate the point would have been the promissory note in question, because from the terms thereof, taken in conjunction with the undertaking of suretyship dated May 2, 1947 (Exhibit H), the Court could determine whether the parties agreed or not that payments made on said promissory note were to be refunded in case the courts declared valid and in satisfaction of pre-war obligations to the banks in the Philippines payments made to the Bank of Taiwan, Ltd., for such an important clause would not have been omitted in the promissory note if the parties really agreed to such refund. Unfortunately said promissory note was not produced in court and secondary evidence had to be offered by both parties because, according to plaintiff's Manager, it was not returned to his company, while defendant in turn alleged that said promissory note was returned after the obligation was satisfied, together with the pledge agreement and two undertakings of suretyship furnished by the plaintiff (referred to in Exhibit J), as is usual banking practices and as we are inclined to believe. This, of course, might imply a suppression of evidence on the part of the plaintiff.

Coming now to plaintiff's parole evidence on this matter, defendant contends that it is inadmissible for it is an attempt to incorporate in the promissory note a contemporaneous condition that was not therein. In the case of *Yu Tek & Co. vs. Gonzales*, 29 Phil., 384, this Court said:

"Parties are presumed to have reduced to writing all the essential conditions of their contract. While parole evidence is admissible in a variety of ways to explain the meaning of written contracts, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in the writing, unless there has been fraud or mistake. In an early case this Court declined to allow parole evidence showing that a party to a written contract was to become a partner in a firm instead of a creditor of the firm (*Pastor vs. Gaspar*, 2 Phil. 592). Again in *Eveland vs. Eastern Mining Co.* (14 Phil. 6C9), a contract of employment provided that the plaintiff should receive from the defendant a stipulated salary and expenses. The defendant sought to interpose as a defense to recovery that the payment of the salary was contingent upon the plaintiff's employment redounding to the benefit of the defendant company. The contract contained no such condition and the Court declined to receive parole evidence thereof.

In the case at bar, it is sought to show that the sugar was to be obtained exclusively from the crop raised by the defendant. There is no clause in the written contract which even remotely suggests such a condition. The defendant undertook to deliver a specified quantity of sugar within a specified time. The contract placed no restriction upon the defendant on the matter of obtaining the sugar. He was equally at liberty to purchase it in

the market or raise it himself. It may be true that defendant owned a plantation and expected to raise the sugar himself, but he did not limit his obligation to his own crop of sugar. Our conclusion is that the condition which the defendant seeks to add to the contract by parole evidence cannot be considered. The rights of the parties must be determined by the writing itself."

In III Moran's Notes on the Rules of Court (2nd ed.), pp. 178-179, it is stated:

"Prior and contemporaneous collateral agreements; general rule.— When an agreement has been reduced to writing, can any of the parties thereto, by parole evidence, prove oral stipulation prior to, or contemporaneous with, such agreement which may in any way affect the writing? Where the parties have reduced their agreement to writing they are presumed to have intended the writing as the only evidence of their agreement, and, therefore, they are supposed to have embodied therein all the terms of such agreement. Consequently, all prior or contemporaneous collateral stipulations which the parties might have had and do not appear in the writing, are presumed to have been waived or abandoned by them, and, therefore, not provable. The rule is thus stated: 'Where parties merge all prior negotiations and agreements in a writing, intending to make that the repository of their final understanding, evidence of such prior negotiations and agreements will be rejected as immaterial' (Galpin vs Atwater, 29 Conn. 93, 97; Caulfield vs. Hermann, 64 Conn. 325, 327; Brosty vs. Thompson, 79 Conn. 133). 'What was said during the negotiations of the contract or at the time of its execution must be excluded on the ground that the parties have made the writing; the only repository and memorial of the truth, and whatever is not found in the writing must be understood to have been waived and abandoned' (Van Syckel vs. Dalrymple, 32 N.J. Eq. 233)".

Anyway, as counsel for defendant observes, Lee Ng did not go as far as saying that F. C. Bailey bound and committed himself or defendant Bank to make such refund upon the happening of the alleged contemplated events he just stated that it was all a "talk", and in fact he admitted "not to remember if there was a stipulation." In his deposition (Exhibit 37), F. C. Bailey vigorously denied and contradicted the declaration of defendant's submanager and specifically stated:

"I can say positively that there was no talk or discussion between Lee Ngan and me, or between the plaintiff Chiu Chiong & Co., Inc., and the National City Bank, the defendant, as Lee Ngan has testified, that there would be any refund of any of the payments..

There was no agreement that if the Supreme Court of the Philippines should decide that payments against pre-war obligations in occupation currency were declared valid the note would become null and that all the payments would be refunded.

In addition to my memory regarding this incident I can say that there was no talk or agreement to the effect that we, the Manila Branch, would make refund because the policy of the Bank as laid down by our head office and followed by the Manila Branch was that we in the branch were to arrange for a definite and unqualified settlement of the pre-war obligations in every instance."

But even if plaintiff's secondary evidence to establish the aforementioned understanding were admissible, yet the circumstances surrounding and subsequent to the signing and issuance of the promissory note in question militate against the existence of the questioned agreement. In the first place plaintiff itself admitted in paragraphs 6 and 8 of its complaint that in September, 1945:

"The plaintiff through its manager went to the office of the defendant and requested the latter that the firm be granted by the defendant new credit facilities but defendant did not accede to the request of the plaintiff unless said plaintiff (would) submit an up-to-date balance sheet corresponding to its pre-war obligation . . ."

but that late in 1946 or early 1947

"the plaintiff executed and signed a promissory note in favor of the defendant to deposit the total sum of Fifty

thousand one hundred forty-three pesos and forty-two centavos (P50,143.42) covering the sum of P46,074.17 pre-war obligations of the plaintiff as shown in a statement dated April 29, 1947, a copy of which is hereto attached and marked Annex F, plus an additional sum of P4,069.25, as accrued interests covering the period from June 28, 1945, up to April 29, 1947 . . ."

plaintiff giving as cause for executing and signing the promissory note so

"that he be granted new credit facilities by the defendant because without such promissory note said defendant would not grant any credit facilities to the plaintiff and that would paralyze the business of the plaintiff."

The validity of the payments made by plaintiff to the Bank of Taiwan, Ltd., in settlement of its pre-war obligation to the defendant Bank is not denied or questioned by the latter, but as it did not in fact receive any money thus paid by plaintiff to the Bank of Taiwan, it naturally contends that it suffered thereby the corresponding loss. Consequently, when plaintiff wanted to renew commercial transactions with the defendant the latter refused to grant to the former any credit, facilities unless and until plaintiff would indemnify it for said loss. Of course, plaintiff did not like this but had finally to yield to defendant's demand because that was the only way to secure new credit facilities from defendant and avoid the greater damage that would result from the paralyzation of its business. We can infer from the averments of the complaint that plaintiff preferred to lose something in order to obtain further gains in his business rather than lose everything by having said business paralyzed. It is thus seen that the issuance of the promissory note for the payment of the aggregate sum of P48,298.13 plus interests thereon, which amounted to P3,238.78, or a total of P51,536.91, was for a licit and valid consideration.

In the second place, the act of the plaintiff company in continuing the payment of its pre-war obligation to defendant Bank for nearly two years after the former learned of the doctrine laid down by this Court in the aforementioned case of *Haw Pia*, logically leads Us to believe that the story of plaintiff's manager was an eleventh hour attempt to obtain from defendant the refund of the amount they were pressed to pay to the latter in order to avoid paralyzation of their business. Lee Ng testified in court as follows:

"Q.

You mentioned the decision of the court validating the payments made during the Japanese occupation of pre-war obligations. Did you have in your mind the *Haw Pia* case against the China Banking Corporation?

A.

Yes, sir.

Q. That decision was promulgated on April 9, 1948 and it was published in the newspapers?

A. Yes, sir.

* * * * *

Q. Did you read it in the newspapers? It was widely published in the Manila newspapers.

A. It was published, but I think that I did not read it on that date of the decision. The exact date, I did not notice it. I do not remember the date.

Q. But how many days after did you read it in the newspapers?

A. I cannot remember exactly how many days it was.

Q. More or less, how many weeks or months after did you read it in the newspapers?

A. I think after several months, 3 or 4 months after.

Q. You read it 3 or 4 months after, that is, about August, 1948, is that correct?

A. Yes, sir." (Hearing of April 1, 1953, t.s.n. pp. 4, 6-7.)

As appellant's counsel indicates, it is obvious that had plaintiff and defendant company "talked" about the refund of sums that plaintiff might have paid on its promissory note in the event that this Court would declare valid the payments of pre-war obligations made during the Japanese occupation, as claimed by Lee Ng, plaintiff would not have made any further payment to defendant beginning the month of September, 1948, when its manager, Lee Ng, learned of the decision of the Supreme Court in the Haw Pia case, to May, 1950, when the pre-war obligations of plaintiff to defendant Bank was fully satisfied, and would have immediately instituted an action against defendant for the recovery of all the sums of money that it had paid to defendant from May, 1947, to August, 1948 (Exhibits B, B-1 to B-30), without waiting for four long years, or until October 29, 1952, to file the complaint herein.

The fact that plaintiff continued paying defendant the monthly installments that became due on its promissory note from August, 1948, to May, 1950, is the best proof that the present action is totally groundless. Moreover, as held by this Court:

"In the management of property where a principal receives from an agent periodical statements of account and, knowing all the facts in the case, repeatedly agrees to the correctness thereof and approves the same, the result is a species of contract between the parties which can only be set aside upon grounds similar to those upon which any other contract may be annulled or rescinded." (*Ojinaga vs. Estate of Perez*, 9 Phil., 185).

"The plaintiff, with full knowledge of all the data and items appearing in the account rendered by the defendant, her agent, accepted and approved said account. Held, that the plaintiff is estopped from setting out any subsequent claim as to the account thus approved." (*Lucia et al. vs. Perez*, 6 Phil., 290.)

"Against the validity and efficacy of obligations set forth in authentic documents, whether of a public or a private nature, neither any plea not duly justified nor the testimony given by the parties bound under such documents can prevail against the contents of the same, because it is not lawful to permit anyone to contradict his own acts in order to deceive himself or to deceive others in whose favor the obligations were created." (*Hijos de I. de la Rama vs. Robles*, 8 Phil., 712.)

In *Bismorte vs. Aldecoa & Co.*, 17 Phil., 480, this Court adopted in toto the following rule laid down by the U. S. Supreme Court in *Daniels vs. Tearney*, 102 U. S., 415:

"A suit was brought by Tearney and Wilson, executors of Collin C. Porter. The complaint set forth that the defendants on the 1st day of June, 1861, made their joint and several bond whereby they bound themselves to pay to the plaintiff a certain specified sum of money when requested, and that there was a condition affixed to the bond which was 'That, whereas on the 25th day of March, 1861, a writ fieri facias was issued from the clerk's office in the name of Porter against one Daniels for a certain sum of money with interest from the 2nd day of June, 1860 and costs; if, therefore, the said Daniels should pay the debt, interest, and costs when the operation of the ordinance before mentioned should cease, then the obligation to be void, otherwise to be in full force. In April, 1861, a convention of the State of Virginia passed an ordinance of cessation, and on the 30th of that month a law entitled 'An ordinance to provide against the sacrifice of property and to suspend proceedings in certain cases'. It was under this law or ordinance that the bond sued upon was given. When this suit was brought the defendants pleaded, among other things, the unconstitutionality of that statute and ordinance. This law was held by the Supreme Court of the United States to be directly repugnant to the constitutional provisions which forbid the impairment of contracts by State laws. It also, held that the bond sued upon, as a statutory instrument, was likewise void, but held that the defendants were estopped from raising the question of the validity of the statute and bond, the court saying:

"The principle of estoppel thus applied has its foundation in a wise and salutary policy. It is a means of repose. It promotes fair dealing. It cannot be made an instrument of wrong or oppression, and it often gives triumph to right and justice, where nothing else known to our jurisprudence can, by its operation, secure those ends. Like the statute of limitations, it is a conservator, and without it society would not well go on."

In this same case of *Bismorte vs. Aldecoa & Co.*, *supra*, the Court stated the following:

"The Court in quoting from the case of *Ferguson vs. Landram* (5 Bush-Ky.-230) cited in the above case, said:

"Upon what principle of exalted equity shall a man be permitted to receive a valuable consideration through a statute, procured by his own consent or subsequently sanctioned by him, or from which he derived an interest and consideration and then keep the consideration, and repudiate the statute?

It is a principle of law of universal application (and as just as it is general) that admissions, whether of law or of fact, which have been acted upon by others are considered against the party making them, in all cases between him and the person whose conduct he has thus influenced; and the principle is founded upon grounds of public policy that a man shall not be permitted to repudiate his own representations." (*Toppan vs. Cleveland C. & C. R. Co.*, Fed. Cas. No. 14099—*Bismorte vs. Aldecoa & Co.*, 17 Phil., 486-87.).

We could still adduce many other facts and authorities against plaintiff's theory, but we feel that the foregoing considerations are more than sufficient to disprove its pretension.

With regard to the second proposition, we are of the opinion and so hold that defendant's counterclaim in the sum of P6,000 for and as attorney's fees should also be dismissed.

Wherefore, the decision appealed from is hereby reversed and judgment is entered dismissing both plaintiff's complaint and defendant's counterclaim, with costs against plaintiff-appelle. It is so ordered.

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

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