

**RUFINA DE LA CRUZ AND HER HUSBAND ALEJO F. CANDIDO,
PLAINTIFFS AND APPELLANTS, VS. SI PENG, REPRESENTATIVE OF SY
CHO TEE, WIDOW OF THE DECEASED LORENZO ELIZAGA YAP
CAONG, JULIA ...**

G.R. No. 10087. March 31, 1915

Ponente: TRENT, J.

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TRENT, J.:

This is an action by a judgment creditor, Rufina de la Cruz, joined by her husband, against the estate of an insolvent decedent seeking to set aside an alleged fraudulent conveyance made by the deceased the day prior to his death in favor of the defendant Yap Tuaco. From a judgment dismissing the complaint on the merits, the plaintiff appealed.

The appellant urges that the trial court erred (1) in not decreeing the rescission of the contract of purchase and sale of the deceased's interest in his parents' estate, the same having been executed in fraud of creditors and while the purchaser was the judicial receiver of the property purchased; (2) in not finding that the signature of the deceased was obtained at a time when he was "at the gates of death;" and (3) in not finding that the interest of the deceased in his parents' estate was worth more than P7,000 at the time of the alleged sale. While, on the other hand, the appellee, Yap Tuaco, insists that the appellant is estopped from now questioning the validity of the sale which forms the basis of this action because (a) she recognized and approved the sale by accepting from Yap Tuaco as executor partial payments on her judgment, and (b) because of the final and unappealed judgment wherein the court declared that the purchase price was P7,000. It has also been suggested that the plaintiff cannot maintain this action under the provisions of section 713 of the Code of Civil Procedure.

The facts are as follows:

Antonio Elizaga Yap Caong and his wife died in 1897, leaving considerable conjugal property in and around the city of Manila, Philippine Islands. There were two legitimate children, Lorenzo and Tomasa. The husband also left two children born out of wedlock, Yap Tuaco and Yap Chiacco, to whom he left in equal parts the one-third of his share of the conjugal property of which he could freely dispose. The wife apparently died intestate and the legitimate children consequently inherited the whole of her share of the conjugal property. So that the shares of the various children in the estate of the spouses were as follows: Lorenzo five-twelfths (5/12) r Tomasa five-twelfths (5/12), Yap Tuaco one-twelfth (1/12), and Yap Ghiaco one-twelfth (1/12).

The interests of these heirs in the estate were duly entered upon the property registry. Yap Chiacco subsequently died, leaving two legitimate sons, Yap Cadu and Yap Gajua. Tomasa Elizaga also died in 1909, leaving as testamentary heirs Clotilde Mariano, Julia de la Cruz, and Bufina de la Cruz, the latter being the plaintiff in the case at bar. Jo Bin Sui subsequently purchased the interests of these heirs in the estate of Tomasa, and a legacy left by her to her husband of P1,000 was also purchased by Yap Tuaco. The participation of Lorenzo and Tomasa in the conjugal property of Antonio Elizaga Yap Caong and his wife had been mortgaged by them to the Banco

Espanol- Filipino for P17,746. Lorenzo, being the eldest child of the spouses, assumed control of the conjugal property of the deceased spouses and administered the same until November 10, 1910, without, as it is alleged, rendering any account whatever of his administration. On this date Yap Tuaco filed a complaint in the Court of First Instance setting forth in substance the above facts and asking for an accounting and a division of the property. At the same time he filed a petition asking that he be appointed receiver of the property. This petition was granted on January 19, 1911, and Yap Tuaco qualified as receiver on January 23, 1911. On August 29, 1912, Lorenzo executed a document in which he sold to Yap Tuaco his participation in his parents' estate for the sum of P7,000. On the same day Lorenzo also executed his last will and testament, in which he disposed of some interests which he stated he owned in the partnership firm of Song Fo & Co., naming as his executor Yap Tuaco. Lorenzo died the next day at about 5 o'clock in the morning.

The will was duly probated and Yap Tuaco named as executor. On January 13, 1913, Yap Tuaco, as executor, filed an inventory of the estate, in which he listed a credit against himself of P7,000, and a certain interest in Song Fo & Co., the value of which he did not give.

Commissioners were appointed by the court to appraise the estate and they reported its only asset to be the P7,000 referred to by Yap Tuaco. The commissioners rendered their report on March 13, 1913, in which the claim of the herein plaintiff was allowed in full. On March 29, 1913, the court declared a twenty per cent payment on the claims duly proved. On April 8, 1913, the herein plaintiff petitioned that she be made a preferred creditor by reason of her judgment against the deceased. This petition was denied by the court on April 12, 1913. On April 18, 1913, she asked that the administrator be required to pay her her 20 per cent payment. This petition was denied by the court on the following day because due notice had not been given to the administrator. On April 21, 1913, the committee appointed by the court to examine the books of Song Fo & Co. reported, showing a balance due the deceased in that firm of only P79.13. The committee supported its reports by receipts signed by the deceased which showed the gradual withdrawal of his capital from the firm. While the report may not amount to a judicial determination of what interest the deceased had in this company, the evidence presented by the committee is very convincing that such interest amounted to practically nothing.

On June 3, 1913, the herein plaintiff petitioned the court that an investigation be made to ascertain if Yap Tuaco had not obligated himself to pay the deceased P13,000 for his share in his father's estate instead of P7,000 as declared by Yap Tuaco. On August 28, 1913, the court rendered judgment on the issue thus raised. The court found:

"The heirs to that estate sold their interest to the administrator of this estate, and it appears that the inheritance above stated as assigned to the above-named deceased, Lorenzo Elizaga Yap Caong, was sold to Yap Tuaco for the sum of P7,000.

"The evidence discloses that prior to the actual delivery of the estate Yap Tuaco had advanced to the above-named deceased, Lorenzo E. Yap Caong, a certain amount of money, and that the account between them was finally liquidated and the transfer was made by public document for the sum of P7,000 as stated."

On October 22, 1913, the herein plaintiff again petitioned the court that the administrator be required to pay her her 20 per cent payment on her claim. Yap Tuaco presented his accounts as administrator of the deceased, showing a net balance in favor of the estate of P3,169.60. On December 5, 1913, the court approved the administrator's accounts, decreeing a balance in favor of the estate of P3,437.22. On December 13, 1913, the court ordered the distribution of the remaining funds, pro rata, among the creditors of the estate. Defendant's Exhibit 10 comprises a number of receipts executed by the herein plaintiff showing partial payments in a total amount of P239.60 upon her judgment against the deceased.

When the case at bar came on for trial the plaintiff introduced Attorney Azarraga, who testified that the deceased had been a client of his for a considerable time. He conducted the deceased's defense in the case instituted against him by the herein plaintiff. In May, 1913, the deceased brought him plaintiff's Exhibit C, which is a copy of Exhibit B, and asked his opinion as to its legality. Witness replied that it was legal and inquired if deceased was conformable to the price mentioned therein, to which the deceased replied that he was not, and, therefore, the deceased did not sign it. At that time it bore the signatures of Yap Tuaco and one other whom witness did not know. Witness kept the document in his possession for the reason that the deceased did not agree to the price stated therein for his interest in the estate. Witness testified that he went to see the deceased on the morning of August 29, to speak with him about the case of the herein plaintiff against him. The deceased was at that time very sick and could not talk. Witness asked a Chinaman, who was present, what the deceased was saying, but the Chinaman answered that he could not understand anything the deceased was saying as he was only murmuring. Witness proceeded to the courthouse and tried the case, after which he returned to the home of the deceased and found the latter in the same condition, unable to talk. This was about ten o'clock in the morning. Witness saw Yap Tuaco there on his second visit.

Paula Leonardo testified that she had known the deceased for about twenty years. She went to his house on August 29, 1912, to visit him because he was sick. She tried to talk with him but he did not answer her. He only looked at her and kept moving all the time.

Clotilde Mariano testified that the deceased was her nephew. He used to live in her house. The deceased sent for her on the 29th of August. She arrived at about ten or eleven o'clock and did not leave until about ten o'clock that night. She saw Yap Tuaco there and he was holding the deceased on his lap. Attorney Caringal was also there and an American. Lorenzo and Yap Tuaco were talking in Chinese and so she could not understand what they were saying. The American asked Lorenzo three times if he agreed to the writing, but Lorenzo did not say a word. Then witness addressed the deceased, calling him by name and asking him if he agreed to the document, although she did not know what it was about. Lorenzo did not answer her. She asked Lorenzo if he knew her, but he only looked at her.

As to the value of the deceased's interest sold to the appellee, the appellee himself states in Exhibit B, which was executed on August 29, 1912, that his interest in the estate of the spouses, Antonio Elizaga Yap Caong and Eusebia Mariano was one-twelfth of the whole estate and he valued his interest in that document at P3,750. According to this valuation, the whole estate was worth P45,000. In Exhibit A, which is the document of purchase and sale in question, it is stated that there is a mortgage on the interest of Lorenzo and Tomasa amounting to P15,000, with interest, and in Exhibit B, it was agreed that this mortgage, together with interests and costs, would amount to P18,000, or P9,000 on the interest of Lorenzo. Taking the appellee's own valuation, Lorenzo's interest was worth at that time P18,750, the appellee paying for the same P16,000, this amount being the P7,000 stated in the document of purchase and sale, and P9,000 of Lorenzo's mortgage.

The plaintiff was a legatee of Tomasa, sister of the deceased. She sold her legacy, as stated above, to one Jo Bin Siu. The record fails to show the amount that plain tiff received for this interest or the exact date upon which the sale was made, but such sale did take place before August 29, 1912. The plaintiff's interest at the time she sold it to Jo Bin Siu was five one hundred and eighths (5/108), less one-third of the legacy of P1,000, of the whole estate of the, spouses, Antonio Elizaga Yap Gaong and Eusebia Mariano. In the complaint filed by the appellee on November 10, 1910, there is described the following property as belonging to the estate of the deceased spouses Yap Caong and Eusebia Mariano:

Seven warehouses of strong materials, together with the land upon which they stand, situated in the barrio of Galangin, Tondo, Manila;

One house of mixed materials, in the same barrio;
Four fishponds, situated in the same barrio;
Personal property, rights, and actions, not listed.

The land, according to the appellee's complaint filed at that time, amounted to 77,760 square meters, and the property produced a rental value of P6,600 per year. The bond of the appellee as receiver was fixed at P12,000.

Plaintiff's husband, and as one of the plaintiffs and appellants in this case, testified that, when he presented his motion asking for an investigation into the price actually paid by the appellee for the deceased's interest in his parents' estate, he was not aware of the facts alleged in the complaint in the case at bar relating to the fraud connected with the sale in question. He did not learn of these facts until in January, 1914, when he discovered them through the two old women, Clotilde and Paula.

From the foregoing finding of facts it clearly appears (a) that there is a deficiency of assets in the hands of the executor for the payment of the debts and expenses of administration; (b) that the appellee did not pay an adequate consideration for the interest of the deceased in the estate of the latter's parents; and (c) that the signature of the deceased to the document of purchase and sale was obtained at a time when he was in no condition to transact business.

It is believed that the trial court could not have found the facts to have been otherwise. As will be noted from a reading of the judgment appealed from, the court declined to consider these facts, holding that the plaintiff was estopped by having accepted partial payments from the proceeds of the sale. The judgment rests solely upon this ground.

Section 712 of the Code of Civil Procedure reads:

"Estate fraudulently conveyed by deceased may be recovered.—When there is a deficiency of assets in the hands of an executor or administrator for the payment of debts and expenses of administration, and the deceased person in his lifetime had conveyed real estate, or a right or interest therein, with an intent to defraud his creditors or to avoid a right, debt, or duty of a person; or had so conveyed such estate that by law the conveyance would be void as against his creditors, and the estate attempted to be conveyed would be liable to attachment or execution by a creditor of the deceased in his lifetime, the executor or administrator may commence and prosecute to final judgment an action for the recovery of such real estate or interest therein for the benefit of the creditors; and he may also, for the benefit of the creditors, sue and recover, for such goods, chattels, right, or credits fraudulently conveyed by the deceased in his lifetime, with the intent in this section stated; but no executor or administrator shall be bound to institute such proceedings in such action unless on application of the creditors of the deceased, nor unless the creditors making the application pay such part of the costs and expenses, or give security therefor to the executor or administrator, as the court judges equitable."

Under this section a conveyance by a debtor of his attachable property, without consideration and without making adequate provisions for the payment of his debts, is fraudulent and void as to his creditors. Such fraud on the part of the debtor may be an actual fraudulent purpose to cheat and defraud his creditors, or it may be constructive fraud, which is fraud that the law imputes to him from the condition of his estate and the necessary consequence of his act in respect to his creditors. It is sometimes necessary to distinguish between fraudulent conveyances upon consideration and conveyances without consideration, and, in cases of voluntary conveyance, between those which rest upon a legal inference of fraud and those where an actual fraudulent intent is shown. In the case at bar there was, as we have said, an inadequate consideration and a lack of assets to pay the then existing creditors. It may be that it cannot be said that there was an actual intent on the part of the vendor, owing to his physical condition at the time, to defraud his creditors, but the constructive fraud, taken together with the actual fraud on the part of the vendee, is amply sufficient to avoid the sale.

Under these circumstances, section 713 of the Code of Civil Procedure authorizes any creditor to commence and prosecute to final judgment an action for the recovery of the property thus conveyed for the benefit of the creditors if the executor or administrator has not commenced such action. The appellee being the executor of the estate of the deceased, Lorenzo Elizaga Yap Caong, the plaintiff could not, by license of the court, prosecute this action in his name as executor. For the prosecution of this suit in her own name, a license from the court was unnecessary. It is only when the suit is in the name of the executor or administrator that such a license is essential.

As to the question of estoppel urged by the appellee: First, the allegation that the adequacy of the consideration paid by Yap Tuaco for the interest of Lorenzo Elizaga Yap Caong in his parents' estate has already been adjudicated in the administration proceedings of Lorenzo's estate. As we read plaintiff's Exhibit D, which is her petition in the administration proceedings referred to, she merely asked for an investigation to determine whether Yap Tuaco had not agreed to pay P13,000 for Lorenzo's interest in the estate instead of P7,000 which he claimed to have paid for it. According to the allegations of her petition, she had not as yet seen either of the documents which Lorenzo signed a few hours before his death, and which are referred to above. All that she knew positively was gathered from the inventory returned by Yap Tuaco as executor of the decedent's estate, in which he listed as a credit to the estate P7,000 due from himself. Certainly these allegations in the petition did not raise any question of fraudulent conveyance. If any allegation of fraud may be inferred from the petition, it is simply that Yap Tuaco was misrepresenting the sum he had agreed to pay for the decedent's interest; not that he had bought that interest for an insufficient consideration. The order of the court denying the prayer of the petition does not enter into the value of the estate. The issue adjudicated in the probate proceedings was that Yap Tuaco had purchased Lorenzo's share in his parents' estate for P7,000, and not P13,000, as alleged by the plaintiff. The issue in the case at bar is whether that conveyance was fraudulent. There is no effort in this case to deny what was determined in the probate proceedings. It is now nought to impeach the contract of sale by extraneous evidence of fraud. It might be urged that the plaintiff ought to have pressed the charge of fraudulent conveyance in the investigation made by the court during the probate proceedings. To this there are two sufficient answers. First, she had no evidence at that time upon which to base such a charge, and, hence, it could not have prospered. Second, had Yap really agreed to pay P13,000 for Lorenzo's share, as she alleged and believed, instead of P7,000, there would have been, apparently, sufficient funds to pay all the creditors in full, and this was the extent of her interest in the matter.

The second point upon which estoppel is urged is that the plaintiff accepted partial payments upon her credit against Lorenzo's estate after becoming aware of the price which Yap had paid therefor. The plaintiff ought to have been fairly conversant with the affairs of the estate and its value, inasmuch as she had at one time had an interest therein, as an heir, which she later sold. But the knowledge that the price which Yap paid for Lorenzo's interest in the estate was inadequate was not alone sufficient to justify her in alleging a fraudulent conveyance. In the absence of evidence showing that the conveyance was tainted with fraud, either actual or constructive, it could only be said that Lorenzo had exercised poor business management in disposing of his property for that amount.

As we understand the contention of the plaintiff, it is not alleged that the consideration paid by the defendant executor was so grossly inadequate as to shock the conscience. In the absence of evidence of fraud, it might be urged that, with so many heirs to the old people's property and its administration so involved, a smaller sum than the property was actually worth would look more attractive to Lorenzo than what he might secure after expensive litigation and a long period of waiting. Hence, the fact that the plaintiff knew the consideration paid by Yap was less than the fair market value of Lorenzo's interest in his parents' estate does not estop her from setting up fraud which subsequently came to her notice. Until such evidence was available, there was nothing she could do but resign herself to the inevitable and accept on her credit against the decedent what was offered her. We therefore conclude that the objections raised by the appellee to the prosecution of this action cannot be sustained.

For the foregoing reasons the judgment appealed from is reversed and the sale in question is hereby set aside. The interest of the deceased in his parents' estate will become assets in the hands of the executor for the payment of the debts and costs of administration after the appellee has been repaid for the actual amount which he has disbursed out of his private funds on account of the purchase and sale which forms the basis of this action. The plaintiffs' costs, incident to the prosecution of this action, will become a charge against the estate. No costs are allowed the appellee. So ordered.

Arellano, C. J., Torres and Araullo, JJ., concur.

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