

MARSH THOMSON, PETITIONER, VS. COURT OF APPEALS AND THE AMERICAN CHAMBER OF COMMERCE OF THE PHILIPPINES, INC., RESPONDENTS.

G.R. No. 116631. October 28, 1998

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari seeking the reversal of the Decision[1] of the Court of Appeals on May 19, 1994, disposing as follows:

"WHEREFORE, THE DECISION APPEALED FROM IS HEREBY SET ASIDE. ANOTHER JUDGMENT IS ENTERED ORDERING DEFENDANT-APPELLEE MARSH THOMSON TO TRANSFER THE SAID MPC [Manila Polo Club] SHARE TO THE NOMINEE OF THE APPELLANT."

The facts of the case are:

Petitioner Marsh Thomson (Thomson) was the Executive Vice-President and, later on, the Management Consultant of private respondent, the American Chamber of Commerce of the Philippines, Inc. (AmCham) for over ten years, 1979-1989.

While petitioner was still working with private respondent, his superior, A. Lewis Burridge, retired as AmCham's President. Before Burridge decided to return to his home country, he wanted to transfer his proprietary share in the Manila Polo Club (MPC) to petitioner. However, through the intercession of Burridge, private respondent paid for the share but had it listed in petitioner's name. This was made clear in an employment advice dated January 13, 1986, wherein petitioner was informed by private respondent as follows:

X X X X X X X X

"11. If you so desire, the Chamber is willing to acquire for your use a membership in the Manila Polo Club. The timing of such acquisition shall be subject to the discretion of the Board based on the Chamber's financial position. All dues and other charges relating to such membership shall be for your personal account. If the membership is acquired in your name, you would execute such documents as necessary to acknowledge beneficial ownership thereof by the Chamber."[2]

X X X X X X X X

On April 25, 1986, Burridge transferred said proprietary share to petitioner, as confirmed in a letter[3] of notification to the Manila Polo Club.

Upon his admission as a new member of the MPC, petitioner paid the transfer fee of P40,000.00 from his own funds; but private respondent subsequently reimbursed this amount. On November 19, 1986, MPC issued Proprietary Membership Certificate Number 3398 in favor of petitioner. But petitioner, however, failed to execute a document recognizing private respondent's beneficial ownership over said share.

Following AmCham's policy and practice, there was a yearly renewal of employment contract between the petitioner and private respondent. Separate letters of employment advice dated October 1, 1986,[4] as well March 4, 1988[5] and January 7, 1989,[6] mentioned the MPC share. But petitioner never acknowledged that private respondent is the beneficial owner of the share as requested in follow-up requests, particularly one dated March 4, 1988 as follows:

"Dear Marsh:

x x x x x x x x

All other provisions of your compensation/benefit package will remain the same and are summarized as follows:

x x x x x x x x

9) The Manila Polo Club membership provided by the Chamber for you and your family will continue on the same basis, to wit: all dues and other charges relating to such membership shall be for your personal account and, if you have not already done so, you will execute such documents as are necessary to acknowledge that the Chamber is the beneficial owner of your membership in the Club."[7]

When petitioner's contract of employment was up for renewal in 1989, he notified private respondent that he would no longer be available as Executive Vice President after September 30, 1989. Still, the private respondent asked the petitioner to stay on for another six (6) months. Petitioner indicated his acceptance of the consultancy arrangement with a counter-proposal in his letter dated October 8, 1989, among others as follows:

"11.) Retention of the Polo Club share, subject to my reimbursing the purchase price to the Chamber, or one hundred ten thousand pesos (P110,000.00)."[8]

Private respondent rejected petitioner's counter-proposal.

Pending the negotiation for the consultancy arrangement, private respondent executed on September 29, 1989 a Release and Quitclaim,[9] stating that "AMCHAM, its directors, officers and assigns, employees and/or representatives do hereby release, waive, abandon and discharge J. MARSH THOMSON from any and all existing claims that the AMCHAM, its directors, officers and assigns, employees and/or representatives may have against J. MARSH THOMSON."[10] The quitclaim, expressed in general terms, did not mention specifically the MPC share.

On April 5, 1990, private respondent, through counsel sent a letter to the petitioner demanding the return and delivery of the MPC share which "it (AmCham) owns and placed in your (Thomson's) name."[11]

Failing to get a favorable response, private respondent filed on May 15, 1990, a complaint against petitioner praying, inter alia, that the Makati Regional Trial Court render judgment ordering Thomson "to return the Manila Polo Club share to the plaintiff and transfer said share to the nominee of plaintiff."[12]

On February 28, 1992, the trial court promulgated its decision,[13] thus:

"The foregoing considered judgment is rendered as follows:

- 1.) The ownership of the contested Manila Polo Club share is adjudicated in favor of defendant Marsh Thomson; and;
- 2.) Defendant shall pay plaintiff the sum of P300,000.00

Because both parties thru their respective faults have somehow contributed to the birth of this case, each shall

bear the incidental expenses incurred." [14]

In said decision, the trial court awarded the MPC share to defendant (petitioner now) on the ground that the Articles of Incorporation and By-laws of Manila Polo Club prohibit artificial persons, such as corporations, to be club members, ratiocinating in this manner:

"An assessment of the evidence adduced by both parties at the trial will show clearly that it was the intention of the parties that a membership to Manila Polo Club was to be secured by plaintiff [herein private respondent] for defendant's [herein petitioner] use. The latter was to execute the necessary documents to acknowledge ownership of the Polo membership in favor of plaintiff. (Exh. C par 9) However, when the parties parted ways in disagreement and with some degree of bitterness, the defendant had second thoughts and decided to keep the membership for himself. This is evident from the exhibits (E & G) where defendant asked that he retained the Polo Club membership upon reimbursement of its purchase price; and where he showed his 'profound disappointment, both at the previous Board's unfair action, and at what I consider to be harsh terms, after my long years of dedication to the Chamber's interest.'

x x x x x x x x

"Notwithstanding all these evidence in favor of plaintiff, however, defendant may not be declared the owner of the contested membership nor be compelled to execute documents transferring the Polo Membership to plaintiff or the latter's nominee for the reason that this is prohibited by Polo Club's Articles & By-Laws. x x x

"It is for the foregoing reasons that the Court rules that the ownership of the questioned Polo Club membership be retained by defendant. [15] x x x."

Not satisfied with the trial court's decision, private respondent appealed to the Court of Appeals.

On May 19, 1994, the Court of Appeals (Former Special Sixth Division) promulgated its decision [16] in said CA-G.R. CV No. 38417, reversing the trial court's judgment and ordered herein petitioner to transfer the MPC share to the nominee of private respondent, reasoning thus:

x x x x x x x x

"The significant fact in the instant case is that the appellant [herein private respondent] purchased the MPC share for the use of the appellee [herein petitioner] and the latter expressly conformed thereto as shown in Exhibits A-1, B, B-1, C, C-1, D, D-1. By such express conformity of the appellee, the former was bound to recognize the appellant as the owner of the said share for a contract has the force of law between the parties. (Alim vs. CA, 200 SCRA 450; Sasuhura Company, Inc., Ltd. vs. IAC, 205 SCRA 632) Aside from the foregoing, the appellee conceded the true ownership of the said share to the appellant when (1) he offered to buy the MPC share from the appellant (Exhs. E and E-1) upon the termination of his employment; (2) he obliged himself to return the MPC share after his six month consultancy contract had elapsed, unless its return was earlier requested in writing (Exh. I); and (3) on cross-examination, he admitted that the proprietary share listed as one of the assets of the appellant corporation in its 1988 Corporate Income Tax Return, which he signed as the latter's Executive Vice President (prior to its filing), refers to the Manila Polo Club share (tsn., pp. 19-20, August 30, 1991). x x x" [17]

On 16 June 1994, petitioner filed a motion for reconsideration [18] of said decision. By resolution [19] promulgated on August 4, 1994, the Court of Appeals denied the motion for reconsideration.

In this petition for review, petitioner alleges the following errors of public respondent as grounds for our review:

I. The respondent Court of Appeals erred in setting aside the Decision dated 28 February 1992 of the Regional Trial Court, NCJR, Branch 65, Makati, Metro Manila, in its Civil Case No. 90-1286, and in not confirming petitioner's ownership over the MPC membership share.

II. The respondent Court of Appeals erred in ruling that “the Quitclaim executed by AmCham in favor of petitioner on September 29, 1989 was superseded by the contractual agreement entered into by the parties on October 13, 1989 wherein again the appellee acknowledged that the appellant owned the MPC share, there being absolutely no evidence to support such a conclusion and/or such inference is manifestly mistaken.

III. The respondent Court of Appeals erred in rendering judgment ordering petitioner to transfer the contested MPC share to a nominee of respondent AmCham notwithstanding that: (a) AmCham has no standing in the Manila Polo Club (MPC), and being an artificial person, it is precluded under MPC’s Articles of Incorporation and governing rules and regulations from owning a proprietary share or from becoming a member thereof; and (b) even under AmCham’s Articles of Incorporation, and the purposes for which it is dedicated, becoming a stockholder or shareholder in other corporations is not one of the express or implied powers fixed in AmCham’s said corporate franchise.[20]

As posited above, these assigned errors show the disputed matters herein are mainly factual. As such they are best left to the trial and appellate courts’ disposition. And this Court could have dismissed the petition outright, were it not for the opposite results reached by the courts below. Moreover, for the enhanced appreciation of the jural relationship between the parties involving trust, this Court has given due course to the petition, which we now decide.

After carefully considering the pleadings on record, we find there are two main issues to be resolved: (1) Did respondent court err in holding that private respondent is the beneficial owner of the disputed share? (2) Did the respondent court err in ordering petitioner to transfer said share to private respondent’s nominee?

Petitioner claims ownership of the MPC share, asserting that he merely incurred a debt to respondent when the latter advanced the funds for the purchase of the share. On the other hand, private respondent asserts beneficial ownership whereby petitioner only holds the share in his name, but the beneficial title belongs to private respondent. To resolve the first issue, we must clearly distinguish a debt from a trust.

The beneficiary of a trust has beneficial interest in the trust property, while a creditor has merely a personal claim against the debtor. In trust, there is a fiduciary relation between a trustee and a beneficiary, but there is no such relation between a debtor and creditor. While a debt implies merely an obligation to pay a certain sum of money, a trust refers to a duty to deal with a specific property for the benefit of another. If a creditor-debtor relationship exists, but not a fiduciary relationship between the parties, there is no express trust. However, it is understood that when the purported trustee of funds is entitled to use them as his or her own (and commingle them with his or her own money), a debtor-creditor relationship exists, not a trust.[21]

In the present case, as the Executive Vice-President of AmCham, petitioner occupied a fiduciary position in the business of AmCham. AmCham released the funds to acquire a share in the Club for the use of petitioner but obliged him to “execute such document as necessary to acknowledge beneficial ownership thereof by the Chamber”.[22] A trust relationship is, therefore, manifestly indicated.

Moreover, petitioner failed to present evidence to support his allegation of being merely a debtor when the private respondent paid the purchase price of the MPC share. Applicable here is the rule that a trust arises in favor of one who pays the purchase money of property in the name of another, because of the presumption that he who pays for a thing intends a beneficial interest therein for himself.[23]

Although petitioner initiated the acquisition of the share, evidence on record shows that private respondent acquired said share with its funds. Petitioner did not pay for said share, although he later wanted to, but according to his own terms, particularly the price thereof.

Private respondent’s evident purpose in acquiring the share was to provide additional incentive and perks to its

chosen executive, the petitioner himself. Such intention was repeated in the yearly employment advice prepared by AmCham for petitioner's concurrence. In the cited employment advice, dated March 4, 1988, private respondent once again, asked the petitioner to execute proof to recognize the trust agreement in writing:

"The Manila Polo membership provided by the Chamber for you and your family will continue on the same basis, to wit: all dues and other charges relating to such membership shall be for your personal account and, if you have not already done so, you will execute such documents as are necessary to acknowledge that the Chamber is the beneficial owner of your membership in the Club." [24]

Petitioner voluntarily affixed his signature to conform with the employment advice, including his obligation stated therein -- for him to execute the necessary document to recognize his employer as the beneficial owner of the MPC share. Now, we cannot hear him claiming otherwise, in derogation of said undertaking, without legal and equitable justification.

For private respondent's intention to hold on to its beneficial ownership is not only presumed; it was expressed in writing at the very outset. Although the share was placed in the name of petitioner, his title is limited to the usufruct, that is, to enjoy the facilities and privileges of such membership in the club appertaining to the share. Such arrangement reflects a trust relationship governed by law and equity.

While private respondent paid the purchase price for the share, petitioner was given legal title thereto. Thus, a resulting trust is presumed as a matter of law. The burden then shifted to the transferee to show otherwise, that it was just a loan. Such resulting trust could have been rebutted by proof of a contrary intention by a showing that, in fact, no trust was intended. Petitioner could have negated the trust agreement by contrary, consistent and convincing evidence on rebuttal. However, on the witness stand, petitioner failed to do so persuasively.

On cross-examination, the petitioner testified as follows:

"ATTY. AQUINO

(continuing)

Q.

Okay, let me go to the cash advance that you mentioned Mr. Witness, is there any document proving that you claimed cash advance signed by an officer of the Chamber?

A.

I believe the best evidence is the check.

Q.

Is there any document?

C O U R T

Other than the Check?

MR. THOMSON

Nothing more.

ATTY. AQUINO

Is there any application filed in the Chamber to avail of this cash advance?

A.

Verbal only.

Q.

Nothing written, and can you tell to this Honorable Court what are the stipulations or conditions, or terms of this transaction of securing this cash advance or loan?

x x x x x x x x

COURT

How are you going to repay the cash advance?

MR THOMSON

The cash advance, we never stipulate when I have to repay it, but I presume that I would, when able to repay the money." [25]

In deciding whether the property was wrongfully appropriated or retained and what the intent of the parties was at the time of the conveyance, the court must rely upon its impression of the credibility of the witnesses. [26] Intent is a question of fact, the determination of which is not reviewable unless the conclusion drawn by the trier is one which could not reasonably be drawn. [27] Petitioner's denial is not adequate to rebut the trust. Time and again, we have ruled that denials, if unsubstantiated by clear and convincing evidence, are deemed negative and self-serving evidence, unworthy of credence. [28]

The trust between the parties having been established, petitioner advanced an alternative defense that the private respondent waived the beneficial ownership of MPC share by issuing the Release and Quitclaim in his favor.

This argument is less than persuasive. The quitclaim executed by private respondent does not clearly show the intent to include therein the ownership over the MPC share. Private respondent even asserts that at the time the Release and Quitclaim was executed on September 29, 1989, the ownership of the MPC share was not controversial nor contested. Settled is the rule that a waiver to be valid and effective must, in the first place, be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to him. [29] A waiver may not be attributed to a person when the terms thereof do not explicitly and clearly evidence an intent to abandon a right vested in such person. [30] If we apply the standard rule that waiver must be cast in clear and unequivocal terms, then clearly the general terms of the cited release and quitclaim indicates merely a clearance from general accountability, not specifically a waiver of AmCham's beneficial ownership of the disputed shares.

Additionally, the intention to waive a right or advantage must be shown clearly and convincingly, and when the only proof of intention rests in what a party does, his act should be so manifestly consistent with, and indicative of, an intent to voluntarily relinquish the particular right or advantage that no other reasonable explanation of his conduct is possible. [31] Considering the terms of the quitclaim executed by the President of private respondent, the tenor of the document does not lead to the purported conclusion that he intended to renounce private respondent's beneficial title over its share in the Manila Polo Club. We, therefore, find no reversible error in the respondent Court's holding that private respondent, AmCham, is the beneficial owner of the share in dispute.

Turning now to the second issue, the petitioner contends that the Articles of Incorporation and By-laws of Manila Polo Club prohibit corporate membership. However, private respondent does not insist nor intend to transfer the club membership in its name but rather to its designated nominee. For as properly ruled by the Court of Appeals:

"The matter prayed for does not involve the transfer of said share to the appellant, an artificial person. The transfer sought is to the appellant's nominee. Even if the MPC By-Laws and Articles prohibit corporate membership, there would be no violation of said prohibition for the appellant's nominee to whom the said share is sought to be transferred would certainly be a natural person. x x x

As to whether or not the transfer of said share to the appellant's nominee would be disapproved by the MPC, is a matter that should be raised at the proper time, which is only if such transfer is disapproved by the MPC." [32]

The Manila Polo Club does not necessarily prohibit the transfer of proprietary shares by its members. The Club only restricts membership to deserving applicants in accordance with its rules, when the amended Articles of Incorporation states that: "No transfer shall be valid except between the parties, and shall be registered in the Membership Book unless made in accordance with these Articles and the By-Laws". [33] Thus, as between parties herein, there is no question that a transfer is feasible. Moreover, authority granted to a corporation to regulate the transfer of its stock does not empower it to restrict the right of a stockholder to transfer his shares, but merely authorizes the adoption of regulations as to the formalities and procedure to be followed in effecting transfer. [34]

In this case, the petitioner was the nominee of the private respondent to hold the share and enjoy the privileges of the club. But upon the expiration of petitioner's employment as officer and consultant of AmCham, the incentives that go with the position, including use of the MPC share, also ceased to exist. It now behooves petitioner to surrender said share to private respondent's next nominee, another natural person. Obviously this arrangement of trust and confidence cannot be defeated by the petitioner's citation of the MPC rules to shield his untenable position, without doing violence to basic tenets of justice and fair dealing.

However, we still have to ascertain whether the rights of herein parties to the trust still subsist. It has been held that so long as there has been no denial or repudiation of the trust, the possession of the trustee of an express and continuing trust is presumed to be that of the beneficiary, and the statute of limitations does not run between them. [35] With regard to a constructive or a resulting trust, the statute of limitations does not begin to run until the trustee clearly repudiates or disavows the trust and such disavowal is brought home to the other party, "cestui que trust". [36] The statute of limitations runs generally from the time when the act was done by which the party became chargeable as a trustee by operation of law or when the beneficiary knew that he had a cause of action, [37] in the absence of fraud or concealment.

Noteworthy in the instant case, there was no declared or explicit repudiation of the trust existing between the parties. Such repudiation could only be inferred as evident when the petitioner showed his intent to appropriate the MPC share for himself. Specifically, this happened when he requested to retain the MPC share upon his reimbursing the purchase price of P110,000, a request denied promptly by private respondent. Eventually, petitioner refused to surrender the share despite the written demand of private respondent. This act could then be construed as repudiation of the trust. The statute of limitation could start to set in at this point in time. But private respondent took immediate positive action. Thus, on May 15, 1990, private respondent filed an action to recover the MPC share. Between the time of implicit repudiation of the trust on October 9, 1989, as evidenced by petitioner's letter of said date, and private respondent's institution of the action to recover the MPC share on May 15, 1990, only about seven months had lapsed. Our laws on the matter provide that actions to recover movables shall prescribe eight years from the time the possession thereof is lost, [38] unless the possessor has acquired the ownership by prescription for a less period of four years if in good faith. [39] Since the private respondent filed the necessary action on time and the defense of good faith is not available to the petitioner, there is no basis for any purported claim of prescription, after repudiation of the trust, which will entitle petitioner to ownership of the disputed share. As correctly held by the respondent court, petitioner has the obligation to transfer now said share

to the nominee of private respondent.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The Decision of the Court of Appeals of May 19, 1994, is AFFIRMED.

COSTS against petitioner.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, and Panganiban, JJ., concur.
Bellosillo, J., on official leave.

[1] Penned by Associate Justice Gloria C. Paras and concurred in by Associate Justice Ramon Mabutas, Jr. and Associate Justice Hector L. Hofilena; Rollo, pp. 46-52.

[2] RTC records, p. 39.

[3] Annex "L", Petition; Rollo, p. 106.

[4] RTC records, pp. 41-42.

[5] RTC records, pp. 43-45.

[6] RTC records, pp. 46-48.

[7] Supra, note 5.(Underscoring supplied)

[8] RTC records, p. 50.

[9] RTC records, p. 61.

[10] Ibid.

[11] RTC records, p. 18.

[12] RTC records, p. 3.

[13] Rollo, pp. 127-128.

[14] Ibid..

[15] Ibid..

[16] Supra, note 1.

[17] Rollo, p. 50.

[18] Rollo, pp. 55-70.

[19] Rollo, p. 54.

[20] All caps in the original; Rollo, p. 21.

[21] 76 Am Jur 2d, Trusts, Sec. 16.

[22] Supra, note 2.

[23] Tolentino, Civil Code of the Philippines, Vol. IV, 1985 ed., p. 679; citing Larisey vs. Larisey, 93 S.C. 450,

77 S.E. 129.

[24] Supra, note 4. (Emphasis supplied)

[25] TSN, August 30, 1991, pp. 612 - 613.

[26] 76 Am Jur, Trusts, Sec. 185.

[27] Ibid..

[28] People vs. Villas, 277 SCRA 391, 403.

[29] Gatchalian vs. Delim, 203 SCRA 126, 132; citing Fernandez vs. Sebido, 70 Phil. 151 (1940); Lang vs. Provincial Sheriff of Surigao, et al., 93 Phil. 661 (1953); Andres vs. Crown Life Insurance Co., 102 Phil. 919 (1958); Yepes and Susaya vs. Samar Express Transit, 17 SCRA 91 (1966).

[30] Ibid..

[31] Clemente Fernandez vs. Engracia Sebido et al., 70 Phil. 151, 159; citing 67 C. J., 311.

[32] Rollo, p. 51.

[33] Annex "J", Petition; Rollo, p. 98. (Underscoring supplied)

[34] 18 Am Jur 2d, Corporation, Sec. 383; citing Victor G. Bloede Co. vs. Bloede, 84 MD 129, 34 A 1127.

[35] Supra, note 21; Sec. 712.

[36] Ibid., Sec. 718.

[37] Ibid.

[38] Civil Code, art. 1140.

[39] Civil Code, art. 1132.

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