

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. MARGARITA QUINTOS E YPARRAGUIRRE AND ANGEL A. ANSALDO, DEFENDANTS AND APPELLANTS.

G.R. No. 22383. October 06, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The appellants pray for the dismissal of the complaint with costs against the plaintiff, alleging that the judgment appealed from is erroneous: (1) Because it holds that the document Exhibit A does not contain anything that makes the plaintiff agent of the defendants; (2) because it finds without any ground that the defendants were husband and wife when they executed said document; (3) because upon this finding, it considers unnecessary to discuss whether or not the obligation evidenced by said document is solidary between the defendants; (4) because to maintain such opinion amounts to compelling the defendants to comply with said obligation in a manner distinct from that stipulated in the contract; and (5) because it sanctions an arbitrary, unjust and illegal procedure.

The Honorable Pedro Concepcion, judge, who tried this case, rendered decision in the following terms:

"The plaintiff seeks to recover of the defendants the sum of P31,785.96, the amount of an alleged overdraft against them and in favor of the plaintiff bank, with interest thereon at 8 per cent per annum from October 1, 1922.

"It appears from the evidence that in a document dated June 20, 1918, the Philippine National Bank granted the defendants a credit to the amount of P31,284, and to secure the payment thereof, as well as the interest and costs, the defendants mortgaged and pledged to the bank certain certificates of one hundred fifty-eight shares of stock of the Bank of the Philippine Islands of the nominal value of P200 each. Later on, a certificate of fifty shares and another of forty were substituted by others of 10 and 30 shares, respectively. Besides these shares, the defendants delivered to the bank, as additional securities, fifty shares of stock of the 'Compañia Naviera' of the nominal value of P100 each; eighty shares of stock of the 'Compania Mercantir' of P100 each; fifty shares of stock of the Davao Agriculture and Commercial Company of P100 each, and 10 second liberty bonds. These bonds were sold by the plaintiff bank on or before August 19, 1922, having realized the sum of P2,360 from the sale thereof. (Exhibit 3.)

"On August 21, 1920, the herein defendant, Mr. Angel Ansaldo, in his answer to a letter of the bank addressed to him or to his wife, his codefendant Margarita Q. de Ansaldo, stated, as may be seen in Exhibit B, that the balance in his current account in favor of said bank in the sum of P33,558.45 on July 31, 1920, had been examined by him and found correct. This balance with the interest due from the said date up to September 30, 1922, amounted to P41,212.05 and after deducting the credit and deposits from August 1, 1920, to September 30, 1922, which amount to P9,426.09, there remains a balance of P31,785.96, payment of which is claimed in the complaint.

"And the complaint was filed because between April 2, 1921, and July 22, 1922, the date of the letter Exhibit 6, the defendant Mr. Ansaldo was several times required to pay his debt, the securities given having been found to be insufficient. to secure the payment of his obligations, but the defendants failed to give the new additional

securities demanded.

"The defendants discuss in the first place the nature of the obligation sued on, maintaining that the same is not of a solidary nature because, say they, there is nothing in it that expressly determines said character, and therefore it binds only those who have contracted the same to the extent of their share in said obligation; and in connection with this point it was attempted to prove that the defendant Margarita Q. de Ansaldo, making use of the credit granted, has received from the bank only the sum of P10,000, (Exhibit 5). As an answer to the question raised the attorney for the bank calls attention to Exhibit A where it appears that the defendant Angel A. Ansaldo 'and or' Margarita Q. de Ansaldo, both or either of them indiscriminately, could sign checks against the bank in their current account.

"The court is of the opinion that it is not necessary to discuss whether the obligation in question is solidary or joint, because in either case this debt is in the last analysis chargeable to the conjugal partnership of the defendant spouses. According to article 1408 of the Civil Code, all the debts and obligations contracted during the marriage by the husband, as well as those incurred by the wife in those cases in which she may legally bind the partnership, are chargeable to the conjugal partnership. In the instant case, the defendant Margarita Q. de Ansaldo joined her husband in the execution of the document, evidencing the obligation in question, on June 20, 1918, Exhibit A. (See *Joaquin vs. Avellana*, 11 Phil., 249; *Fulgencio vs. Gatchalian*, 21 Phil., 252; *Falcon vs. Manzano*, 15 Phil., 441.)

"Another question raised, although indirectly, by the defendants is that, this being, as it is, a case of a loan for an indefinite period of time they were not asked to pay in accordance with law, articles 313 and 316 of the Code of Commerce. This contention is untenable. Under the provision of section 33 of Act No. 2938, amending the charter of the Philippine National Bank, if, from any cause whatsoever, any of the securities specified for the loans provided for therein, or accepted by said bank as security for loans, should decline or depreciate in market value wholly or in part, said bank may demand additional securities or may forthwith declare such obligation due and payable; and it is a fact admitted by the defendants themselves that the securities given by them have suffered a considerable depreciation and it is a fact proven that they were required to give additional securities but failed to do so.

"If the securities were found to have depreciated in value, say the defendants, 'the plaintiff bank's remedy was the one provided in the document executed by the defendants in its favor and in accordance with its own charter.' According to the contract, it may hold or sell the securities above mentioned although as an agent (articles 1710, 1713, 1714, 1718, 1719, and 1796 of the Civil Code) ; and in accordance with its charter (section 42, Act No. 2612), said sale may be ordered! 15 days after a demand in writing is made upon the debtor to increase the amount thereof, if in the meantime said debtor should have failed to comply with this requirement * * * 'The plaintiff, say they, cannot be considered authorized to be negligent, as soon as it shall have learned that the securities had begun to depreciate, as compared with the value they had when they were delivered; for then it neither would comply with the agency stipulated in the document in its favor, which would render it liable, nor could in justice claim from the debtor what by its own negligence it may have failed to receive.' As an answer to this, it may be said that:

" * * * it must be borne in mind that it is a recognized doctrine in the matter of suretyship that with respect to the surety, the creditor is under no obligation to display any diligence in the enforcement of his rights as a creditor. His mere inaction, indulgence, passiveness, or delay in proceeding against the principal debtor, or the fact that he did not enforce the guaranty or apply to the payment of such funds as were available, constitute no defense at all for the surety, unless the contract expressly requires diligence and promptness on the part of the creditor, which is not the case in the present action (*Clark vs. Sellner*, 42 Phil., 384.)

"Furthermore, there is nothing in the document evidencing the contract which makes the plaintiff, as the defendants believe, their agent with the obligation to sell the securities given as pledge; on the contrary, the plaintiff, according to the document, has a right, not an obligation, to elect to enforce the securities in the manner it now does by bringing this action.

"As to the amount of the obligation, the defendants argue that the acknowledgment of the debit balance on July 31, 1920, in the amount of P33,548.55, (Exhibit B), is not any evidence that may legally bind the defendant Margarita Q. de Ansaldo, who has not accepted it as correct. The truth, however, is that the defendant Mr. Ansaldo who gave his conformity with the aforesaid balance is the husband of the other defendant and the legal manager of the property of the conjugal partnership which is liable for the payment of this debt.

"The interest computed was likewise discussed in this case, the defendants claiming that the same was not fixed with their consent, nor does there exist, say they, any proof that it was ever fixed by the Board of Directors of the bank. It appears, however, from the evidence of the plaintiff that the National Bank had authorized various officers thereof to fix certain rate of interest on certain occasions; as for instance, the rate of interest for the months of August to September, 1920, was raised from 9 to 12 per cent. It remained stationary at the rate of 12 per cent until April, 1922, when it lowered from 12 to 8 per cent. At all events, we believe that the defendants have no right to raise this question because they have paid interest at the rate of 9 per cent per annum, as appears from the document marked Exhibit I.

"For all of the foregoing, judgment is rendered sentencing the defendants to pay the plaintiff bank the sum of thirty-one thousand seven hundred eighty-five pesos and ninety- six centavos (P31,785.96), with interest thereon at the rate of 8 per cent per annum from October 1, 1922, until full payment, with the costs; in case of failure to pay, let the certificates of shares described in Exhibit A be sold, and if the proceeds of the sale of said shares are not sufficient to cover the whole amount of the debt, let an execution issue against any property of the conjugal partnership of the defendants and, in default thereof, against the private property of each of them, sufficient to cover the whole amount of the balance that may be remaining unpaid. "

So ordered.

"Manila, P. I., February 5, 1924.

(Sgd.) "Pedro Concepcion

"Judge?

As the transcript of the testimony of the witnesses was not forwarded to this court, we cannot, according to the constant jurisprudence of this court, review the evidence and so we have to abide by the findings of fact set forth in the judgment of the trial court.

We agree with the appellants that, according to the contract of pledge Exhibit A, attached to the complaint, the defendants authorized the plaintiff to act as their agent with full power and authority to dispose of the effects pledged in the manner stipulated in said contract; but it appears that the plaintiff had also an option, not an obligation precisely, to enforce the securities given.

The question whether or not the appellants executed the aforesaid document Exhibit A as husband and wife was decided by the trial court in the sense that the defendant appellant Mr. Ansaldo is the husband of the other defendant Dona Margarita Q. e Iparraguirre. For the reason above given we cannot alter this finding of the trial court and consequently if the defendants are husband and wife, it is immaterial whether the debt was contracted by one or the other, for in either case as the debt was contracted during the marriage of the defendants it must be paid for the account of the conjugal partnership in accordance with article 1408 of the Civil Code.

After a thorough study of the judgment appealed from, we do not find therein any substantial error that justifies the reversal thereof and therefore the same must be, as is hereby, affirmed with costs against the appellants. So ordered.

Johnson, Street, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

DECISION UPON MOTION FOR RECONSIDERATION

December 10, 1924.

VILLAMOR, J.:

In view of the juridical importance of the question raised in this motion, wherein it is maintained that the obligation of the defendants is chargeable to the conjugal partnership, and not to the private property of the spouses, and much less to the private property of Margarita Quintos de Ansaldo, we deem it well to enlarge upon our decision published October 6, 1924.

It will be remembered that the defendants signed a document of pledge in favor of the plaintiff Philippine National Bank to secure the payment of a loan in current account to the amount of P31,284. In said document it does not clearly appear that the signers were husband and wife, although there is proof in the record tending to show their civil status as husband and wife. Nor does it appear in the said document that the signers have bound themselves solidarity to pay the debt owing to plaintiff.

The judgment appealed from, affirmed by this court in a decision published October 6, 1924, sentences the defendants to pay the plaintiff bank the sum of thirty-one thousand seven hundred eighty-five pesos and ninety-six centavos (P31,785.96) with interest thereon at 8 per cent per annum from October 1, 1922, until full payment, with the costs; providing that, in default of payment, the certificates of shares described in Exhibit A must be sold, and in case the proceeds of the sale were not sufficient to cover the whole amount of the debt, an execution shall issue against the property of the conjugal partnership of the defendants and, if no such property was found, then against any private property of each of them sufficient to cover the whole amount of the balance remaining unpaid.

There can be no doubt that the property pledged being insufficient, the property of the conjugal partnership is liable for this obligation in accordance with article 1408 of the Civil Code, because the same was contracted by the spouses during the marriage; but in default of property of the conjugal partnership (article 1401), what is the liability of the spouses as to the private property (article 1396) of each of them?

In this jurisdiction we do not believe that a similar question was heretofore ever raised and decided, and so far as the research of the writer hereof discloses, it finds no precedent in the Spanish jurisprudence.

By express provision of the Civil Code, the conjugal partnership begins to exist at the celebration of the marriage, and the separation of the properties between the spouses shall take place (article 1432) only when it is expressly stipulated in the marriage settlement, or is judicially decreed, or in the case provided in article 50 of the Code. This conjugal partnership, however, is confined to the properties mentioned in article 1401 of the Civil Code, to wit: (a) Those acquired by onerous title during the marriage at the expense of the common property whether the acquisition is made for the community or for only one of them; (b) those obtained by the industry, salary or labor of the spouses or any of them; (c) the fruits, rents or interest received or accruing during the marriage, from the common or the private property of each of the spouses. The partnership does not produce the merger of the properties of each spouse. Each of them, notwithstanding the existence of the partnership, continues to be the

owner of what he or she had before contracting marriage, as well as of what he or she may have acquired later by lucrative title, by right of redemption, or by exchange with his or her property, or by purchase with his or her money.

The ganancial partnership, to use the expression of Mr. Manresa, is the same conjugal partnership constituted, in its economical aspect, under the system established by the law as suppletory. It is, therefore, formed by the husband and the wife, each with his or her own property and with his or her own debts. The legislator does not intend to effect a mixture or merger of those debts or properties between the spouses. The partnership maintains the separation of the properties brought by each spouse from those that he or she may substitute for them, or privately acquire afterwards by lucrative title.

Under the provisions of the Code it appears evident that the conjugal partnership does not produce the merger of properties, nor does it cause the personality of the wife to disappear; on the contrary, the law establishes absolute separation of capitals—a complete independence of the capital account from the account of benefits pertaining to the conjugal partnership, all of which constitutes an unsurmountable obstacle to the presumption of solidarity between spouses.

The question submitted to our consideration presupposes the insolvency of the conjugal partnership, and as there is no presumption of solidarity of properties between the spouses, the question may be asked, What liability do the partners have with respect to the debts of the partnership? The legal provisions about conjugal partnership, contained in chapter 5, title 3, book 4, of the Civil Code, do not give an adequate answer to this question; so that we have to resort to other sources for a solution thereof. Mr. Manresa already indicates in his commentaries on article 1395 that in view of the provisions of the Code regarding conjugal partnership, "the cases will be rare wherein there would be any need to resort to the suppletory rule of the contract of partnership; but the law, which does not in any manner pretend having provided for all the questions that may present themselves in the practice, points out new sources of law to which resort must be made in order to solve doubtful cases, situations or circumstances not provided in articles 1392 to 1431." The case now before us is one of them, which requires, in order to be solved, a resort to the rule on the contract of partnership, prescribed in article 1698, which provides that the partners are not solidarily liable with respect to the debt of the partnership, and none can bind the others by a personal act, if they have not given him any power therefor.

The aforecited provision negating solidarity in the liability of the partners is a consequence of the conclusive rule of article 1137, of general application to all kinds of obligation, to the effect that in obligations created by the will of the parties, solidarity will exist only when it is expressly determined in the title thereof, giving them such a character. Therefore if solidarity exists only by stipulation, or by law, it is evident that the partner cannot be solidarily liable for the debts of the partnership, because, as Manresa says, there is no legal provision imposing such burden upon him, and because the same is not only not authorized by the contract of partnership, but is contrary to the nature thereof, for gain being the consideration of the obligation, the latter cannot be extended beyond the interest that the partner may have therein which is proportional to his share.

Taking into account that the contract of pledge signed by the defendants does not show that they have contracted a solidary obligation, it is our opinion, and so decide, that the properties given as pledge being insufficient, the properties of the conjugal partnership of the defendants are liable for the debt to the plaintiff, and in default thereof, they are jointly liable for the payment thereof.

It being understood that the judgment appealed from is modified in the sense above stated, the motion of the appellants is denied. So ordered.

Johnson, Street, Malcolm, Avanceña, Ostrand, and Romualdez JJ., concur.

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