

**GEORGE C. ARNOLD, PLAINTIFF AND APPELLEE, VS.
INTERNATIONAL BANKING CORPORATION, DEFENDANT AND
APPELLANT.**

G.R. No. 27026. July 13, 1927

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STATEMENT

The plaintiff is a resident of the City of Manila. The defendant is a foreign banking corporation duly licensed to do a banking business in the Philippine Islands.

For the first cause of action plaintiff alleges that prior to February 27, 1920, and until July 31, 1921, he was the manager of Willits & Patterson, Ltd., a domestic corporation, with which he had a contract that on all business of that corporation he should receive one-half of the profits which were to be credited directly to him and which were not to be passed through the profit and loss account. That the defendant was fully advised of the nature and contents of the contract and that the plaintiff was the owner of one-half of all the profits. That in the months of July and August, 1920, said corporation limited became heavily indebted to the defendant, by reason of which it entered into various contracts with Willits & Patterson, Ltd., in and by which it took over all the assets of that corporation as security for its debt and assumed control of the operations of the corporation, and advanced to it the necessary funds to carry on its business. That on or about February 27, 1920, Willits & Patterson, Ltd., entered into certain contracts or agreements for the purchase and sale of 500,000 kilos of coconut oil with funds advanced by the defendant, on which there was a profit of P180,000 one-half of which belonged to the plaintiff under the terms and provisions of the contract with Willits & Patterson, Ltd. That because of the inability of the purchasers to pay for the oil, the purchasers Cruz & Tan Chong Say executed to Willits & Patterson, Ltd., nine promissory notes amounting to P180,000, with interest thereon at the rate of 9 per cent per annum, all of which were delivered to and made payable at the office of the defendant, which has collected P105,000 in principal and P4,833.83 as interest thereon and still holds the balance of the notes amounting to P75,000 with accrued interest. That at the time of the collection of the P109,833.83 by the defendant, Willits & Patterson, Ltd., was still heavily indebted to it, and that the defendant, with full knowledge of plaintiff's rights and that he was entitled to one-half of the proceeds of said notes, took and applied all of such proceeds to the indebtedness of Willits & Patterson, Ltd., and in doing so, wrongfully misappropriated P54,916.91, or one-half thereof, which belonged to the plaintiff. That on July 6, 1921, the defendant paid to the plaintiff P30,000 on account of his interest in the proceeds of said notes so collected. That plaintiff has repeatedly made demand upon the defendant to pay the balance of his one-half interest in such proceeds and to recognize him as the owner of the remaining one-half uncollected, and that defendant has refused and still refuses to make such payment or to recognize him as such owner.

For the second cause of action plaintiff alleges certain profits in another transaction arising out of the sale and purchase of 1,012.38 metric tons of copra, upon which there was a profit of P5,230.65 of which plaintiff was entitled to have and receive P2,615.32, which was likewise wrongfully taken by the defendant and applied P to the satisfaction of its claim against Willits & Patterson, Ltd.

For the third cause of action plaintiff alleges that from and out the sale and purchase of 171,730 kilos of coconut oil there was a profit of P2,132.28, one-half of which was also wrongfully taken by the defendant and applied pro tanto to the satisfaction of its claim against Willits & Patterson, Ltd.

For the fourth cause of action plaintiff alleges that there was sold to Spencer Kellogg & Sons, Inc., 1,000 tons, of 2,240 pounds each, of coconut oil, upon which there was a profit of P36,391.89 one-half of which belonged to the plaintiff and which was likewise wrongfully appropriated by the defendant in payment pro tanto to the satisfaction of its claim against Willits & Patterson, Ltd.

As the fifth cause of action plaintiff alleges that there was sold to E. A. Stevenson & Company of New York City 586,906 kilos of coconut oil, resulting in a profit of P20,435.91 one-half of which belonged to the plaintiff and was likewise appropriated to the use of the defendant.

For the sixth cause of action plaintiff alleges that from January 1, 1921 to July 31, 1921, Willits & Patterson, Ltd. earned certain commissions amounting to P12,323.62 onehalf of which, or P6,161.81, belonged to the plaintiff under his contract with Willits & Patterson, Ltd., and as the seventh cause of action plaintiff claims the further sum of P1,373.09, and plaintiff prays for judgment against the defendant for the sum of P24,916.91, with legal interest, on the first cause of action, and that the defendant be made to legally recognize him as the owner of the remaining one-half interest in the uncollected notes; for the sum of P2,615.32, with interest, on the second cause of action; P1,066.14, with interest, on the third cause of action; P18,195.95, with interest, on the fourth cause of action; P10,217.95, with interest, on the fifth cause of action; P6,161.81, with interest, on the sixth cause of action; P1,373.09, with legal interest, on the seventh cause of action; and "for such other and further relief as the court may deem proper and equitable in the premises." Copies of all the contracts and alleged sales are attached to and made a part of the complaint.

To this complaint the defendant filed a demurrer upon the ground that it did not state facts sufficient to constitute a cause of action, which was overruled, and the defendant then filed an answer in which it made a general and specific denial, and it further denied that either of the alleged contracts referred to in the third paragraph of plaintiff's amended complaint, as later amended by stipulation between the parties of January 31, 1925, was signed or executed by or under the authority or knowledge of Willits & Patterson, Ltd., and that either contract, Exhibits J and K, was ever adopted, approved or ratified by Willits & Patterson, Ltd., or the defendant, and as a further and separate defense alleged that prior to the 7th day of September, 1920, Willits & Patterson, Ltd., a domestic corporation, was indebted to the defendant in the sum of P1,209,068.46 for which the defendant did not have any security and at which time Willits & Patterson, Ltd., was insolvent. That on September 7, 1920, and by means of a public instrument in writing, the defendant entered into a contract with Willits & Patterson, Ltd., in and by which it was agreed that the defendant would furnish to Willits & Patterson, Ltd., financial assistance to enable it to manufacture, purchase and sell coconut oil and other coconut products, and to carry out certain of its contracts in and by which it was agreed that all of the proceeds in the sales of coconut oil and other products should be applied to the indebtedness then existing and thereafter to be incurred, and in which Willits & Patterson, Ltd., agreed to assign and transfer to the defendant all of its right, title and interest in all of said contracts with third persons and sales, to be used and applied by the defendant to liquidate all of such advances, interests and costs incurred by it, and the balance, if any, to be applied by the defendant to the liquidation of its debt then existing against Willits & Patterson, Ltd. That pursuant to the terms of such contract and between the 7th of September, 1920, and the 31st of July, 1921, the defendant advanced large sums of money to Willits & Patterson, Ltd., for the purpose of carrying out the contract. That pursuant to the terms thereof Willits & Patterson, Ltd., duly assigned and transferred to the defendant all of its right, title and interest in and to all sales and contracts and executed to the defendant proper instruments of pledge covering all coconut oil and products manufactured by it

and financed by the defendant, and upon the sale thereof delivered all of the proceeds from such sale to the defendant to be applied and which were applied as above stated under the terms and provisions of the contract. That at all of such times the plaintiff represented to the defendant that he was the president and manager of Willits & Patterson, Ltd., and that the contract in question was entered into by the defendant at the special instance and request of the plaintiff, and that all financial assistance rendered by the defendant was furnished at the special instance and request of the plaintiff, and that all of the transactions alleged in the complaint were had and carried out by the plaintiff in his capacity as president and manager of Willits & Patterson, Ltd., and that all instruments in writing, including the contract of September 7, 1920, as well as all assignments of sales contracts and instruments of pledge by Willits & Patterson, Ltd., were executed by the plaintiff himself in his capacity as president and manager of Willits & Patterson, Ltd., and that all of such transactions and the application of the proceeds of such sales were had and made with the knowledge, consent and approval of the plaintiff, and that without the aid and assistance of the plaintiff as such manager, the defendant would not have consented to furnish any further financial assistance to Willits & Patterson, Ltd., and would not have financed the numerous commercial transactions of Willits & Patterson, Ltd., without the pledge of all the securities given to it under the contract of September 7, 1920, or without the authority to apply the proceeds to the satisfaction of its claim against Willits & Patterson. That on July 31, 1921, and after the application of all such funds, Willits & Patterson, Ltd., was indebted to the defendant in the sum of P573,626.70, and that it is now indebted to the defendant in the sum of P1,400,151.87, no part of which has been paid, and that Willits & Patterson, Ltd., is insolvent.

Upon such issues the lower court rendered judgment against the defendant and in favor of the plaintiff for P102,064.87, with interest from April 6, 1923, at 6 per cent per annum, and that plaintiff was the owner of an undivided one-half interest in the .remaining uncollected notes. Defendant's motion for new trial was overruled, and on appeal it assigns forty-eight different errors the substance of which is that the lower court erred in overruling the demurrer to the complaint, and in the admission of certain exhibits in evidence, and in the admission of certain evidence of the plaintiff, and in denying defendant's motion to strike out certain testimony, and in granting plaintiff's motion to reopen the trial to permit plaintiff to offer in evidence certain portions of the deposition of Stanley Williams taken in April, 1923, and in the admission of such portions in evidence, and in making certain findings of fact, and in rendering judgment for the plaintiff, and in not rendering judgment for the defendant, and in denying its motion for new trial.

JOHNS, J.:

In the case of Arnold (who is plaintiff here) vs. Willits & Patterson (44 Phil., 634), this court held that the contract which plaintiff now seeks to enforce was valid and binding as between the plaintiff and Willits & Patterson, Ltd., and that Arnold was entitled to have and receive one-half of the net profits of that corporation accruing from July 31, 1916 to July 31, 1921, the life of the contract. There is no claim or pretense that the defendant here was one of the original parties to that contract, or that it was a party to that decision. Even so, plaintiff contends that both are equally binding upon the defendant and that it should account to him for one-half of the profits as to all of the items alleged in the complaint.

The storm center of this case is the legal force and effect of the contract of September 7, 1920 between Willits & Patterson, Ltd., and this defendant.

That contract was executed on behalf of Willits & Patterson, Ltd., by the plaintiff here as its president and E. E. Selph as secretary, and on behalf of the defendant by S. Williams as its manager, and among other things it recites that:

"Whereas the party of the first part is indebted to the party of the second part in the sum of one million two

hundred and nine thousand and sixty-eight pesos and 46/100 (P1,209,068.46), represented by overdrafts granted and allowed by the party of the second part;

"Whereas the party of the first part is a manufacturer of coconut oil and other coconut by-products and requires the financial assistance of the party of the first part for the purpose of purchasing copra and other materials required in the manufacture of said coconut oil and other by-products;

"Whereas the party of the first part has entered into various contracts for the sale of coconut oil and other products, which contracts are to be supported by Letters of Credit established in favor of the party of the first part, and desires to manufacture said oil and products and with the proceeds of the sale thereof, liquidate its indebtedness to the party of the second part;

"Whereas the party of the second part is desirous of advancing to the party of the first part such sums of money as may be required for the purposes above expressed: Provided, however, That all contracts for the sale of cocoanut oil or other products are supported by Letters of Credit satisfactory to the party of the second part;

"Now, therefore, the parties hereto have agreed and do hereby agree as follows:

"1. The party of the first part shall assign and transfer to the party of the second part all its interests and title in and to all sales contracts entered into between the party of the first part and third persons for the purchase and sale of cocoanut oil and other by-products: Provided, however, That nothing herein contained shall impose upon the party of the second part the obligations assumed by the party of the first part by reason of such contracts, said transfer being merely for the purpose of securing the party of the second part from loss by reason of financial advances made to the party of the first part.

"2. The party of the first part shall execute proper instruments of pledge covering all oil and other by-products manufactured by said party of the first part and financed by the party of the second part for the further purpose of guaranteeing the party of the second part against loss by reason of such indebtedness.

"3. The party of the second part shall advance to the party of the first part such sums of money as may be required to carry out the purposes of this agreement: Provided, however, That such advances shall at no time exceed the sum of three hundred thousand pesos (P300,000) : And provided further, That no advances will be made unless and except all sales contracts are supported by Letters of Credit as hereinabove provided.

"4. It is further agreed that upon the sale and delivery of cocoanut oil and other products, the proceeds vof such sale shall be delivered and held by the party of the second part for the purpose of liquidating all advances, interests and costs defrayed by said party of the second part, and the balance, if any, shall be applied by the party of the first part to the liquidation of its overdraft in favor of said party of the second part amounting to one million two hundred and nine thousand and sixty-eight pesos and 46/100 (P1,209,068.46).

"5. It is further stipulated and agreed that this contract, as well as all instruments of pledge executed thereunder, shall remain in full force and effect until the party of the first part has liquidated and paid to the party of the second part all monies due said party of the second part or which may become due by virtue of this agreement from the party of the first part, whether represented, by advances, interests, costs, overdrafts or any other similar reason."

It is conceded that upon its execution both parties entered upon and in good faith undertook to carry out this contract, and the record shows that, as a result thereof, there was a profit on the particular transactions specified in the complaint of the respective amounts therein alleged. It is also conclusive that at the time of the execution of the contract on September 7, 1920, Willits & Patterson, Ltd., was indebted to the defendant in the sum of P1,209,068.46, and that at its termination on July 31, 1921, that corporation was indebted to the defendant in the sum of about P1,500,000. In other words, during the life of the contract there was an increase in the indebtedness to the bank of P300,000. Notwithstanding that fact, the plaintiff now claims that he should have and receive from

the defendant the one-half of the profits accruing from the transactions alleged in the complaint which he would have received from Willits & Patterson, Ltd., under the terms and provisions of the contract between them of date July 31, 1916. The question involved on this appeal is whether the defendant is legally liable to the plaintiff for such proceeds. That question involves the construction, the legal force and effect of the contract between Willits & Patterson, Ltd., and this defendant, made on September 7, 1920.

In construing this contract it should be borne in mind that it was executed as the result of prior negotiations between the plaintiff himself and the defendant bank, and that he signed the contract as president and for and on behalf of Willits & Patterson, Ltd., and the situation and the relation of the parties to each other at the time it was executed. Willits & Patterson, Ltd., was then insolvent and it did not have any funds with which to carry on its operations or to fulfill its contracts. In other words, that Willits & Patterson, Ltd., then owed the defendant bank P1,200,000 which it could not pay, and was then financially helpless. In this situation, plaintiff as president applied to the defendant bank for assistance resulting in the execution of the contract of September 7, 1920. It is very apparent that the defendant bank entered into this contract upon the theory and with the hope that by rendering assistance to Willits & Patterson, Ltd., it might be able to collect its debt of P1,200,000 against Willits & Patterson, Ltd., which otherwise would be a total loss. Be that as it may, the net result of the whole transaction was a further loss to the bank of P300,000. There is no claim or pretense that the bank failed to advance the required money or to carry out its part of the contract which among other things recites that "the party of the first part shall assign and transfer to the party of the second part all its interests and title in and to all sales contracts;" that "the party of the first part shall execute proper instruments of pledge covering all oil and other by-products manufactured ;" and "it is further agreed that upon the sale and delivery of coconut oil and other products, the proceeds of such sale shall be delivered and held by the party of the second part for the purpose of liquidating all advances, interests and costs defrayed by said party of the second part, and the balance, if any, shall be applied by the party of the first part to the liquidation of its overdraft in favor of said party of the second part amounting to one million two hundred and nine thousand and sixty-eight pesos and 46/100 (P1,209,068.46)." Paragraph 5 recites that the contract, with all instruments of pledge under it, shall remain in full force and effect until Willits & Patterson, Ltd., has liquidated and paid to the bank all moneys due it or which may become due, whether represented by "advances, interests, costs, overdrafts or any other similar reason."

From such provisions it is very apparent that the purpose and intent of the contract was to pledge and deliver to the bank all the contracts and agreements of Willits & Patterson, Ltd., with third persons, and that the whole plant should be operated under the control and supervision of the defendant bank which was to have and receive all proceeds from such sales and operation, until such time as it was reimbursed for the moneys advanced by it under the contract and its original and primary debt against Willits & Patterson, Ltd., was satisfied.

After the execution of such contract and as evidence of such purpose and intent by both parties, the plaintiff himself as president and general manager of Willits & Patterson, Ltd., signed and delivered to the defendant all contracts and sales of Willits & Patterson, Ltd., with third parties, including those alleged and specified in the complaint, together with the operation, control and supervision of the plant, during all of which time the plaintiff was the manager and superintendent.

As a condition precedent all applications for advances were first submitted to and approved by the defendant bank, and the proceeds from all contracts and sales were ' assigned to and collected by the bank.

In addition to all this, the plaintiff himself was the superintendent of operations from September 7, 1920, to July 31, 1921, and not only had personal knowledge of the manner and method by which business was done by and between Willits & Patterson, Ltd., and the defendant bank, but he was personally, directly or indirectly, a party to all of such transactions.

Much importance is attached to the fact that on July 31, 1921, when the plaintiff severed his relations with the operations of the property and the plant under the contract. of September 7, 1920, that the defendant bank paid him P30,000, and it is forcibly contended that this was a payment on account of the amount of his claim for the undivided profits as alleged. The fact that the defendant saw fit to give the plaintiff a liberal compensation for his services rendered under the contract of September 7, 1920, ought not to be construed as evidence of its liability to account to plaintiff for the one-half of the profits, as provided for in his contract with Willits & Patterson, Ltd., of July 31, 1916. That fact is nothing more than evidence of a very liberal compensation which the defendant paid plaintiff for the services which he rendered under the contract made September 7, 1920 between Willits & Patterson, Ltd., and the defendant.

By his own actions and conduct both prior and subsequent to the execution of the contract of September 7, 1920, and his personal and official relations to both Willits & Patterson, Ltd., and the defendant, the plaintiff is now estopped to claim or assert that the defendant should personally account to him for any profits from the operation of the property or the sale of any of its products on and after September 7, 1920.

The contract of September 7, 1920 between Willits & Patterson, Ltd., and the defendant was not only the result of previous negotiations between the plaintiff and the defendant, but it was made with the full knowledge, consent and approval of the plaintiff who, as president of Willits & Patterson, Ltd., executed it for that corporation and who thereafter, both by his own actions and conduct, and his personal and official relations to the parties, in all things and respects ratified and approved the contract with all of its terms and provisions.

For analogous reasons and upon the same legal principle that this court held that plaintiff was entitled to have and receive one-half of the profits under his contract with Willits & Patterson, Ltd., he is now estopped to enforce it or to claim or assert any liability on that contract as against the defendant in this action.

The judgment of the lower court is reversed and the complaint dismissed, with costs for the defendant. So ordered.

Johnson, Street, Malcolm, Villamor, and Villa-Real, JJ., concur.

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