

## **INTESTATE ESTATE AND HEIRS OF INOCENTES DE LA RAMA, DECEASED, PLAINTIFFS AND APPELLANTS, VS. TALISAY-SILAY MILLING CO. AND PHILIPPINE NATIONAL BANK, DEFENDANTS AND APPELLEES.**

*G. R. No. 31832. March 14, 1930*

Ponente: ROMUALDEZ, J.

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### **ROMUALDEZ, J.:**

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } In the month of May, 1922, the sugar central known as the Talisay-Silay Milling Co., owed the National Bank some five and a half million pesos, secured by a mortgage of the property of its planter-shareholders.

For the purpose of avoiding the impending foreclosure of that mortgage, the central, the creditor the Philippine National Bank, and the aforementioned planter-shareholders entered into the following readjustment contract at that time, that is, in May, 1922:

"This agreement made and entered into this.....day of May, 1922, by and between the persons signing this document as the planters; the Philippine National Bank, of Manila, herein referred to as bank; and the Talisay-Silay Milling Co., Inc., herein referred to as the central, bears witness that:

"Whereas, on December 21, 1920, the planters, by their attorney-in-fact and for the purpose of securing the payment of the sum of P4,500,000 and other indebtedness due or which might become due from the central to the bank, executed in favor of the bank, its successors and assigns, a mortgage on the parcels of land, with all the buildings, improvements and machinery thereon, situated in the Philippine Islands, and more particularly described in Schedule A attached to the said mortgage; and

"Whereas, the actual indebtedness of the central to the bank, secured by the said mortgage, amounts approximately to five million four hundred nineteen thousand seven hundred fifty-five pesos (P5,419,755), and the parties hereto have agreed upon a plan whereby the said amount is to be gradually liquidated by the central with the aid of the planters;

"Now, therefore, in consideration of the bank's or its assigns' giving yearly financial assistance to the planters on their sugar-cane crops, with interest on the money advanced at the current rate, on the basis of P3 per picul, as estimated by the bank, advances to begin in the month of May and continue through the season at monthly intervals or oftener at the discretion of the bank, the planters bind themselves to the following:

"1. To purchase from the central, annually, at par, a number of shares of the central equal to 25 per cent of the net proceeds of the sale of the sugar belonging to the planters in accordance with the terms of their respective milling contract with the central, after deducting therefrom the cost of production, that is to say, the amount

advanced by the bank on the crop at the rate of P3 per picul and the interest thereon.

"2. The bank shall not retain from any planter more than 15 per cent in addition to the 25 per cent mentioned in paragraph 1 to apply to the payment of any other obligations that the planter might have pending unless by express consent of the planter.

"3. The obligation imposed upon the planters by paragraph 1 shall be binding on each and every planter signing this document regardless of the fact that he or they have not asked for financial assistance from the bank for raising and harvesting their crops.

"4. In order to determine the percentage mentioned in paragraph 1, in case a planter does not apply to the bank for financial assistance to raise and harvest his crops, the cost of production of his sugar shall be understood to be P3 a picul.

"5. The obligation contracted by each and every planter in paragraph 1 hereof shall continue as long as the bank or its assigns are ready and willing to lend financial assistance to the planters for raising and harvesting their crops, or until the total obligation of the central is liquidated.

"6. The total amount of the central's shares which each of the planters binds himself to purchase shall be equal to the total indebtedness of the central to the bank divided into as many portions as there are hectares of land mortgaged in the indenture of December 21, 1920, and multiplied by the number of hectares as in the said indenture appear as the property of the individual planter. 'In addition to the manner provided for in paragraph 1 for the payment of these shares the planter may purchase them for cash or under such terms as shall be acceptable both to the central and the bank.

"7. The planter also may at any time, if he so desires, purchase from the central, for cash, the amount of the central's shares specified in the preceding paragraph, and in such event, as well as in the event of his having purchased the whole of the said amount, he shall have the right to require from the bank the release of the mortgage on his property.

"8. The bank by these presents binds itself and its assigns to renew from year to year the obligations of the central until they are totally liquidated as long as the planters who subscribe this document comply with the conditions herein contained, and to reduce the interest charged on the central's obligations to the bank to 6 per cent per annum, effective January 1, 1922.

"In witness wherefore, the parties hereto have signed this document at Bacolod on the.....day of May, 1922." (Pages 3, 4, 5, 6 and 7, Bill of Exceptions.)

Relying mainly upon the foregoing contract, the plaintiffs, which are, the estate and the heirs of the decedent Inocentes de la Rama, one of the signers of said contract, bring this action against said central and bank, to compel them to accept the sum of P68,107.7976 for 6,810 shares in the name of the plaintiffs, with the dividends thereon from the date of the complaint. It is alleged in support of the complaint:

"4. That the area of the property mortgaged by said instrument dated December 21, 1920, is 9,099 hectares, 53 ares, and .03 centares; that the debt of the Talisay-Silay Milling Co. to its codefendant when the foregoing 'Modification of Mortgage and Readjustment of the Central's Plan of Financing was signed, amounted to P5,419,755; that on the 30th of June this year, said debt was reduced to P1,387,353. Dividing the debt of P5,419,755 by the number of hectares mortgaged, namely, 9,099.5303, we have a quotient of P595.6082. Multiplying the latter amount by the number of hectares of the property mortgaged by the deceased Inocentes de la Rama by the aforesaid instrument of December 21, 1920, or 114 hectares and 35 ares, yields a sum of P68,107.7976. But upon the basis of P1,387,353.60 which was the Talisay-Silay Milling Co.'s debt to the Philippine National Bank on June 30, 1928, although the debt has a tendency to increase, and, in fact, is increasing every month, the amount should be only P17,433.80. The par value of the shares of the Talisay-Silay Milling Co. is P10.

"5. That the Talisay-Silay Milling Co. refuses to issue the shares to the plaintiffs by virtue of the foregoing so-called Modification of Mortgage and Readjustment of Central's Plan of Financing.

"6. That the plaintiffs do hereby tender to the defendants the sum of P68,107.7976 in payment of 6,810 shares of the Talisay-Silay Milling Co., at the rate of P10 per share."

The Philippine National Bank answers with a denial of the facts alleged in the complaint and contends that they do not constitute a cause of action against itself.

The Talisay-Silay Milling Co., sets up several special defences, to wit:

First. That the true purpose of paragraphs VI and VII of the contract referred to, and which are ambiguous, was to provide the planters with a means of obtaining the cancellation of their mortgages, and, in fact, that executed upon the property of Inocentes de la Rama, the plaintiffs' predecessor-in-interest, had been cancelled long before this action was commenced.

Second. That paragraphs 7 and 8 of said contract of readjustment are null and void for lack of reciprocity.

Third. That at the time said contract was executed, the market value of the stock of said defendant central was about half of its par value, in view of the large debts of the corporation, and for several years after the execution of said contract, said deceased Inocentes de la Rama never revealed any intention to purchase stock in said central; and it was only after his death, when the stock of said central was quoted at about twenty pesos a share, and the debt to the Philippine National Bank could doubtless be paid, that the plaintiff administrator decided to compel the central to sell him 6,810 shares at a par value of P10 a share.

Fourth. That said readjustment contract was not entered into by the. central with Inocentes de la Rama individually, but with all the planters therein named, conjointly, many of whom refused to purchase stock, and the greater majority were, at their own request, relieved from doing so.

Fifth. That to grant the plaintiffs' contention would place the central under the necessity of conceding a similar right to the other planters who signed said contract, and would thus be under obligation to violate the law by issuing stock in excess of the authorized capital, which is two million pesos, divided into shares with a par value of ten pesos each.

Sixth. That the deceased Inocentes de la Rama held 550 shares of the stock of the defendant central, and when in December, 1923, the capital stock of said central was increased, he, among other shareholders, was granted a month's time within which to subscribe for his proportional number of shares of the increased capital stock, with notice that if he failed to do so within the period mentioned, he would be deemed to have waived his right thereto, and said Inocentes de la Rama neither purchased nor subscribed to any share of said increased capital stock.

Seventh. That the" number of shares which the plaintiffs now seek to purchase is less than the total number of shares purchased by any of the other planters whose property was also mortgaged, but greater than that of Inocentes de la Rama, whose successors-in-interest, the plaintiffs herein, now ask that 6,810 shares be sold to them at par, which would prejudice the central and its stockholders, for, up to the date of the answer, no dividends had been distributed.

Eighth. That the facts alleged in the complaint do not constitute a cause of action.

The plaintiffs then added to their complaint a tender of P16,500 to the defendants for 1,650 shares at par value, as a result of the defendant central's contention set forth in the sixth special defence.

The Court of First Instance of Occidental Negros heard the case and found: That the most logical interpretation of

the readjustment contract was given by the witness Seva; that said contract was impliedly revoked or abandoned by the parties thereto when they executed contract Exhibit A-2 attached to the auditor's report, Exhibit I; that with the cancellation (Exhibit 5) of the mortgage upon Inocentes de la Rama's property on January 31, 1928, the central's obligation to sell stock ceased; and that as Inocentes de la Rama did not subscribe for any stock, he acquired no right to pay for any by installments, under article 9 of the by-laws of the central. In view of all these findings, the complaint was dismissed, with costs against the plaintiffs.

The latter appeal, and assign the following alleged errors as committed by the trial court:

"1. In finding that the readjustment contract had been modified with respect to the plaintiffs, and in not holding that it cannot be repudiated and is still valid and binding as between the parties to this suit.

"2. In holding that the defendant central is estopped from repudiating the plaintiffs' action.

"3. In not holding that the readjustment contract still subsists between the parties to this case, and in failing to order the defendant central to accept from the plaintiffs the tender of P84,600 as contained in the plaintiffs' pleadings, and in not ordering it to issue stock at the par value of P10 a share and to pay to the plaintiffs the dividends earned by said stock.

"4. In admitting parol evidence tending to explain and alter the terms of the readjustment contract.

"5. In not rendering judgment ordering the defendant to accept the sum of P16,500 from the plaintiffs, and to issue stock at a par value of P10 a share therefor, and to pay the corresponding dividends.

"6. In not having ordered that the testimony of President Lizares, quoted below, be stricken from the record.

"7. In admitting Exhibits 1 to 6, inclusive.

"8. In not granting a new trial and the reopening of the case on the ground that it is contrary to the law and the evidence."

The first point to be considered is the nature of the readjustment contract referred to above: Counsel for plaintiffs contends that it is a contract of subscription or purchase of stock; while counsel for the defendant central contend that it is not, in the usual sense that such contracts of subscription or purchase of stock are understood in connection with corporations.

According to the second paragraph of their exposition, said contract is "a plan for the gradual liquidation of the central's indebtedness to the bank with the aid of the planters" and it may be gathered from the terms of said instrument that the purpose and motive of this plan for gradual amortization of the debt was to rescue the central from the critical situation that, according to the evidence, at that time threatened it, since its original indebtedness to the bank of four and a half million pesos (P4,500,000) contracted on December 21, 1920 was not only unpaid, but that it had, at the time of the readjustment (May, 1922), increased to P5,419,755 as stated in the preliminary paragraphs of said contract.

The purpose, then, was not merely to increase the capital stock for an expansion of the enterprise, but rather to stave off the danger that threatened the central and the planters. This must have been the purpose that moved those who signed the contract referred to when the same was executed in May, 1922.

The aim, then, was the amortization of the central's debt, and one of the means employed to that end was the subscription of stock.

And a consideration of the terms of the contract will show that it cannot be a mere contract of subscription of stock, whether absolute or conditional, because there was no authorized capital stock for that purpose at that time,

the limit of the value of the stock which the planters bound themselves to purchase being then in excess of the authorized capital stock, which had already been fully subscribed. The increase in the capital stock was only agreed upon in December, 1923, over a year after said contract Exhibit H was executed. This element of a pre-existing authorized capital stock is essential to the validity of the corporation's acceptance of an agreement for the subscription of stock.

"Subscription for shares of stock which the corporation has no power to issue at all, as in the case of a contract calling for an issue of stock in excess of the authorized capital stock, or for an unauthorized or illegal increase of capital stock, are void on the ground both of illegality and of want of consideration. Even though the president and directors may have power to authorize an additional issue, yet, until they exercise this power, any issue after the original limit has been filled will be void, and a subscription therefor unenforceable." (14 C. J., 530.)

And as a mere agreement for the purchase of stock, not governed by the special rules applicable to the subscription of stock, the contract in question cannot serve as the basis of the plaintiffs' action, if any notice is to be taken of the real intent of the parties signing the same.

This intent is very clearly stated by Attorney Seva who not only witnessed and took part in the discussion which led to the execution of the contract, but actually drew it up himself. And such parol evidence is admissible under article 1282 of the Civil Code and section 285 of the Code of Civil Procedure, inasmuch as the point dealt with in said testimony was one of the questions raised in the pleadings.

And, according to the intent of the parties in executing the contract in question, it was agreed in paragraphs 6 and 7 of Exhibit H that, upon the cancellation of the obligation secured by the mortgage upon the property of the planters, the latter's aid through the purchase of stock in the central was no longer necessary, and therefore, the obligation to purchase stock ceased.

It must be noted that so critical was the financial situation of the central at the time the contract was entered into, that the stock was valued way below par, and the purchase of stock by the planters could not then be looked upon as a desirable right, but rather as an obligation assumed only to help out the central. Hence the language of the contract which reads: "The planters bind themselves as follows, to wit: (1) To purchase from the central annually, at par, a number of shares \* \* \*" (preliminary statement and paragraph 1); "The obligation imposed upon the planters by paragraph 1 \* \* \*" (paragraph 3); "The obligation contracted by each and every planter in paragraph 1 hereof, \* \* \*" (paragraph 5); "The total amount of the central's shares which each of the planters binds himself to purchase \* \* \*." (Paragraph 6.) (Italics ours.)

And that obligation could not have been binding on the planters unconditionally, and perpetually; justice and equity demanded that restrictions and limitations be placed commensurate with the cause or consideration which gave rise to the obligation. Thus it was agreed in paragraph 5 that said obligation to purchase the stock should subsist "as long as the bank or its assignee is ready and willing to lend financial assistance to the planters for raising or harvesting their crops, or until the total debt of the central is liquidated." These restrictions placed upon the obligation imposed on the planters to purchase stock are not affected by paragraph 7 of the contract, which, according to witness Seva, was intended to give such of the planters as had the means, an opportunity to relieve their property from the mortgage without having to wait till it was gradually paid off by the 25 per cent annual surplus provided for. The phrase "at any time" used in said paragraph 7, cannot be understood to mean that said obligation to purchase stock (which the plaintiffs now allege as a right) was permanent, for, neither the nature of the obligation, nor the purpose of the contract, nor paragraph 5 thereof, admit of such an interpretation. The phrase "at any time" must be interpreted to mean at any time while the obligation to purchase stock subsists, in accordance with paragraph 5 of the contract.

Now, when, according to the evidence, the financial status of the central has considerably improved, it is not permissible, without the prior consent of all the contracting parties, and merely at the will of one of them, to hold as a "right" what, according to said contract, was plainly an "obligation." If the reasons which gave rise to the contract have ceased to exist, the result is that the obligation, too, has ceased to exist, but not that a new right has arisen without a new contract.

The parties to this contract of readjustment must have so understood it, when in view of the financial improvement of the central, they executed the following contract Exhibit A-2 in 1925:

"This agreement made and entered into this.....day of....., 1925, by and between the Philippine National Bank, of Manila, herein referred to as the bank and the Talisay-Silay Milling Co., Inc., herein referred to as the central and the persons signing this document herein referred to as planters bears witness that:

"Whereas, in.....the above named parties entered into an agreement known as 'Modification of Mortgage and rearrangement of Central's Plan of Financing' and more commonly known as 'Readjustment Contract' by which a plan was adopted for the gradual liquidation of the central's indebtedness to the bank with the aid of the planters ;

"Whereas, by said agreement the planters obligated themselves individually 'to purchase from the central annually, at par, a number of shares of the central equal to 25 per cent, of the net proceeds of the sale of the sugar belonging to the planters in accordance with the terms of their respective milling contract with the central;'

"Whereas, some of the planters signing said agreement are individually indebted to the bank or to the central or both; "Whereas, it is for the advantage of the bank, the central and those individual planters who are owing either the bank, the central or both that the purchase of shares of the central by said planters, be suspended and the 25 per cent of the net proceeds of the sale of the sugar belonging to said planters be applied to liquidate the said planters' indebtedness to the bank, to the central or to both;

"Now, therefore, the bank, the central and the planters herein signing hereby agree to the following:

"1. That the bank and the central are hereby authorized, when to their judgment it is necessary or convenient to do so and in the case of any individual planter, to suspend the effect of the stipulation contained in the agreement commonly known as the 'Readjustment contract,' requiring the planters to buy central's shares equal to 25 per cent of the net proceeds of the sale of the sugar belonging to them, and apply the said 25 per cent of the net proceeds of the sale of the sugar belonging to any individual planter to the liquidation of the said planters' indebtedness first to the bank, and second to the central.

"2. That for the above-mentioned purpose the bank and the central are hereby authorized to suspend the buying of central's shares by any individual planter for the number of years which to their judgment is necessary and convenient.

"3. Nothing herein contained shall be construed as in any way changing or altering the stipulation and conditions contained in the 'readjustment contract' of....., except as to the stipulation above referred to.

"In witness whereof, the parties hereto have signed this document at.....:.....of this..... day of ....., 1925." (Pages 36-39, Bill of Exceptions.)

It is contended by the appellant that neither the deceased Inocentes de la Rama, nor his heirs consented to the modification of the contract of readjustment, for which reason none of them signed the subsequent contract Exhibit A-2, quoted above. In point of fact, however, said document Exhibit A-2, at the bottom of which appears

the name of the deceased Inocentes de la Rama as one of the parties, is evidence adduced by said party appellant itself, as a document attached to the report of its witness Auditor Borromep, which witness was examined and testified upon said document Exhibit A-2, considering it as a copy of the original, and as a good and valid contract, put into effect and respected by the parties who signed it. Furthermore, under, these circumstances, the appellant cannot attack the genuineness of Exhibit A-2 as a true copy of the original.

Now, then, the power which this latter contract Exhibit A-2 granted to the bank and to the central, to suspend the effect of the stipulation contained in the contract of readjustment, by virtue whereof the planters were bound to purchase stock in the central in an amount equivalent to 25 per cent of the respective yearly surplus, was, according to said Auditor Borromeo, actually exercised. From which it follows that if Inocentes de la Rama, among others who signed said Exhibit A-2, granted that power to the bank and to the central, and if, according to the testimony of said auditor, the bank, making use of said power, "at first took from the surplus of those who had signed the contract of readjustment, that is, Annex A-2 of report Exhibit I, and applied it to the debt owed to the bank and to the central, and thereafter, if anything remained, returned it to them (those who signed the readjustment contract) no longer applying it to any further payment," then that must be understood to mean that when Inocentes de la Rama signed said amendatory contract Exhibit A-2 and respected its effect, he waived the right (if right it were, and not an obligation) to purchase stock in said central, and his successors-in-interest cannot now be heard to claim that which their predecessor renounced during his life time and which he therefore no longer had at his death.

This waiver by Inocentes de la Rama was evident in his conduct with respect to the readjustment contract so often referred to herein. He failed to till his lands, and therefore was not obliged to purchase stock; for, not having cultivated his land he could not have had any surplus product of the crop, pursuant to paragraph 1 of said readjustment contract, for it was impossible, under the terms of said contract, to determine the number of shares which he should have to purchase, on the supposition that, although he failed to sow his fields, he was still under the obligation to purchase. And, the increase in the capital stock of the central, having been decided upon, Inocentes de la Rama failed to purchase stock, although invited to do so in January, 1924 (Exhibit 9).

At any rate, the mortgage on Inocentes de la Rama's property having been cancelled in January, 1928 (Exhibit 5), neither he nor his successors after his death, even supposing that for other reasons they were entitled to purchase stock in the defendant central under said readjustment contract, could have done so, since, without mortgaged land, one of the grounds provided in paragraph 7 of said contract for the computation of the number of shares to be purchased, is already lacking.

The record inclines us to the belief that Inocentes de la Rama never meant nor intended to purchase stock under the readjustment contract here invoked by his successors- in-interest.

We find no merit in the assignments of error, and affirm the judgment appealed from, with the costs of both instances against the appellants. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns and Villa- Real, JJ., concur.

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