

THE MUNICIPAL COUNCIL OF ILOILO, PLAINTIFF AND APPELLEE, VS. JOSE EVANGELISTA ET AL., DEFENDANTS AND APPELLEES. TAN ONG SZE VDA. DE TAN TOCO, APPELLANT.

G.R. No. 32977. November 17, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

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This is an appeal taken by the defendant Tan Ong Sze Vda. de Tan Toco from the judgment of the Court of First Instance of Iloilo, providing as follows:

"Wherefore, judgment is hereby rendered, declaring valid and binding the deed of assignment of the credit executed by Tan Toco's widow, through her attorney-in-fact Tan Buntiong, in favor of the late Antero Soriano; likewise the assignment executed by the latter during his lifetime in favor of the defendant Mauricio Cruz & Co., Inc., and the plaintiff is hereby ordered to pay the said Mauricio Cruz & Co., Inc., the balance of P30,966.40; the plaintiff is also ordered to deposit said sum in a local bank within the period of ninety days from the time this judgment shall become final, at the disposal of the aforesaid Mauricio Cruz & Co., Inc., and in case that the plaintiff shall not make such deposit in the manner indicated, said amount shall bear the legal interest of six per cent per annum from the date when the plaintiff shall fail to make the deposit within the period herein set forth, until fully paid.

"Without special pronouncement of costs."

In support of its appeal, the appellant assigns the following alleged errors as committed by the trial court in its decision, to wit:

- "1. The lower court erred in rejecting as evidence Exhibit 4-A, Tan Toco, and Exhibit 4-B, Tan Toco.
- "2. The lower court erred in sustaining the validity of the deed of assignment of the credit, Exhibit 2-Cruz, instead of finding that said assignment made by Tan Buntiong to Attorney Antero Soriano was null and void.
- "3. The lower court erred in upholding the assignment of that credit by Antero Soriano to Mauricio Cruz & Co., Inc., instead of. declaring it null and void.
- "4. The court below erred in holding that the balance of the credit against the municipality of Iloilo should be adjudicated to the appellant herein, Tan Toco's widow.
- "5. The lower court erred in denying the motion for a new trial filed by the defendant-appellant."

The facts of the case are as follows:

On March 20, 1924, the Court of First Instance of Iloilo rendered judgment in civil case No. 3514 thereof, wherein the appellant herein, Tan Ong Sze Vda. de Tan Toco was the plaintiff, and the municipality of Iloilo the defendant, and the former sought to recover of the latter the value of a strip of land belonging to said plaintiff taken by the defendant to widen a public street; the judgment entitled the plaintiff to recover P42,966.40, representing the value of said strip of land, from the defendant (Exhibit A). On appeal to this court (G. R. No. 22617)[1]the judgment was affirmed on November 28, 1924 (Exhibit B).

After the case was remanded to the court of origin, and the judgment rendered therein had become final and executory, Attorney Jose Evangelista, in his own behalf and as counsel for the administratrix of Jose Ma. Arroyo's intestate estate, filed a claim in the same case for professional services rendered by him, which the court, acting with the consent of the appellant widow, fixed at 15 per cent of the amount of the judgment (Exhibit 22—Soriano).

At the hearing on said claim, the claimants appeared, as did also the Philippine National Bank, which prayed that the amount of the judgment be turned over to it because the land taken over had been mortgaged to it. Antero Soriano also appeared claiming the amount of the judgment as it had been assigned to him, and by him, in turn, assigned to Mauricio Cruz & Co., Inc.

After hearing all the adverse claims on the amount of the judgment, the court ordered that the attorney's lien in the amount of 15 per cent of the judgment, be recorded in favor of Attorney Jose Evangelista, in his own behalf and as counsel for the administratrix of the deceased Jose Ma. Arroyo, and directed the municipality of Iloilo to file an action of interpleading against the adverse claimants, the Philippine National Bank, Antero Soriano, Mauricio Cruz & Co., Jose Evangelista, and Jose Arroyo, as was done, the case being filed in the Court of First Instance of Iloilo as civil case No. 7702.

After due hearing, the court rendered the decision quoted from at the beginning.

On March 29, 1928, the municipal treasurer of Iloilo, with the approval of the auditor, of the provincial treasurer of Iloilo, and of the Executive Bureau, paid the late Antero Soriano the amount of P6,000 in part payment of the judgment mentioned above, assigned to him by Tan Boon Tiong, acting as attorney-in-fact of the appellant herein, Tan Ong Sze Vda. de Tan Toco:

On December 18, 1928, the municipal treasurer of Iloilo deposited with the clerk of the Court of First Instance of Iloilo the amount of P6,000 on account of the judgment rendered in said civil case No. 3514. In pursuance of the resolution of the court below-ordering that the attorney's lien in the amount of 15 per cent of the judgment be recorded in favor of Attorney Jose Evangelista, in his own behalf and as counsel for the late Jose Ma. Arroyo, the said clerk of court delivered on the same date to said Attorney Jose Evangelista the said amount of P6,000. At the hearing of the instant case, the codefendants of Attorney Jose Evangelista agreed not to discuss the payment made to the latter by the clerk of the Court of First Instance of Iloilo of the amount of P6,000 mentioned above in consideration of said lawyer's waiver of the remainder of the 15 per cent of said judgment amounting to P444.69.

With these two payments of P6,000 each making a total of P12,000, the judgment for P42,966.44 against the municipality of Iloilo was reduced to P30,966.40, which was adjudicated by said court to Mauricio Cruz & Co.

This appeal, then, is confined to the claim of Mauricio Cruz & Co. as alleged assignee of the rights of the late Attorney Antero Soriano by virtue of the said judgment in payment of professional services rendered by him to the said widow and her coheirs.

The only question to be decided in this appeal is the legality of the assignment made by Tan Boon Tiong, as attorney-in-fact of the appellant Tan Ong Sze Viuda de Tan Toco, to Attorney Antero Soriano, of all the credits, rights and interests belonging to said appellant Tan Ong Sze "Viuda de Tan Toco by virtue of the judgment

rendered in civil case No. 3514 of the Court of First Instance of Iloilo, entitled *Viuda de Tan Toco vs. The Municipal Council of Iloilo*, adjudicating to said widow the amount of P42,966.40, plus the costs of court, against said municipal council of Iloilo, in consideration of professional services rendered by said attorney to said widow of Tan Toco and her coheirs, by virtue of the deed Exhibit 2.

The appellant contends, in the first place, that said assignment was not made in consideration of professional services by Attorney Antero Soriano, for they had already been satisfied before the execution of said deed of assignment, but in order to facilitate the collection of the amount of said judgment in favor of the appellant, for the reason that, being Chinese, she had encountered many difficulties in trying to collect.

In support of her contention on this point, the appellant alleges that the payments admitted by the court in its judgment, as made by Tan Toco's widow to Attorney Antero Soriano for professional services rendered to her and to her coheirs, amounting to P2,900, must be added to the P700 evidenced by Exhibits 4-A, Tan Toco, and 4-B, Tan Toco, respectively, which exhibits the court below rejected as evidence, on the ground that they were considered as payments made for professional services rendered, not by Antero Soriano personally, but by the firm of Soriano & Arroyo.

A glance at these receipts shows that those amounts were received by Attorney Antero Soriano for the firm of Soriano & Arroyo, which is borne out by the stamp on said receipts reading, "Bufete Soriano & Arroyo," and the manner in which said attorney receipted for them, "Soriano & Arroyo, by A. Soriano."

Therefore, the appellant's contention that the amounts of P200 and P500 evidenced by said receipts should be considered as payments made to Attorney Antero Soriano for professional services rendered by him personally to the interests of the widow of Tan Toco, is untenable.

Besides, if at the time of the assignment to the late Antero Soriano, his professional services to the appellant widow of Tan Toco had already been paid for, no reason can be given why it was necessary to wire him money in payment of professional services on March 14, 1928 (Exhibit 5-G Tan Toco) and December 15, of the same year (Exhibit 5-H Tan Toco) after the deed of assignment, (Exhibit 2-Cruz) dated September 27, 1927, had been executed. In view of the fact that the amounts involved in the cases prosecuted by Attorney Antero Soriano as counsel for Tan Toco's widow, some of which cases have been appealed to this court, run into the hundreds of thousands of pesos, and considering that said attorney had won several of those cases for his clients, the sum of P10,000 to date paid to him for professional services is wholly inadequate, and shows, even if indirectly, that the assignment of the appellant's rights and interests made to the late Antero Soriano and determined in the judgment aforementioned! was made in consideration of the professional service! rendered by the latter to the aforesaid widow and her coheirs.

The defendant-appellant also contends that the deed of assignment Exhibit 2-Cruz was drawn up in contravention of the prohibition contained in article 1459, case 5, of the Civil Code, which reads as follows:

"Art. 1459. The following persons cannot take by purchase, even at a public or judicial auction, either in person or through the mediation of another:

* * * * *

"5. Justices, judges, members of the department of public prosecution, clerks of superior and inferior courts, and other officers of such courts, the property and rights in litigation before the court within whose jurisdiction or territory they perform their respective duties. This prohibition shall include the acquisition of such property by assignment.

"Actions between co-heirs concerning the hereditary property, assignments in payment of debts, or to secure

the property of such persons, shall be excluded from this rule.

"The prohibition contained in this paragraph shall include lawyers and solicitors with respect to any property or rights involved in any litigation in which they may take part by virtue of their profession and office."

It does not appear that Attorney Antero Soriano was counsel for the herein appellant in civil case No. 3514 of the Court of First Instance of Iloilo, which she instituted against the municipality of Iloilo, Iloilo, for the recovery of the value of a strip of land expropriated by said municipality for the widening of a certain public street. The only lawyers who appear to have represented her in that case were Arroyo and Evangelista, who filed a claim for their professional fees. When the appellant's credit, right, and interests in that case were assigned by her attorney-in-fact Tan Boon Tiong, to Attorney Antero Soriano in payment of professional services rendered by the latter to the appellant and her coheirs in connection with other cases, that particular case had been decided, and the only thing left to do was to collect the judgment. There was no relation of attorney and client, then, between Antero Soriano and the appellant, in the case where that judgment was rendered; and therefore the assignment of her credit, right and interests to said lawyer did not violate the prohibition cited above.

As to whether Tan Boon Tiong, as attorney-in-fact of the appellant, was empowered by his principal to make an assignment of credits, rights, and interests, in payment of debts for professional services rendered by lawyers, in paragraph VI of the power of attorney, Exhibit 5-Cruz, Tan Boon Tiong is authorized to employ and contract for the services of lawyers upon such conditions as he may deem convenient, to take charge of any actions necessary or expedient for the interests of his principal, and to defend suits brought against her. This power necessarily implies the authority to pay for the professional services thus engaged. In the present case, the assignment made by Tan Boon Tiong, as attorney-in-fact for the appellant, in favor of Attorney Antero Soriano for professional services rendered in other cases in the interests of the appellant and her coheirs, was that credit which she had against the municipality of Iloilo, and such assignment was equivalent to the payment of the amount of said credit to Antero Soriano for professional services.

With regard to the failure of the other attorney-in-fact of the appellant, Tan Montano, authorized by Exhibit 1—Tan Toco, to consent to the deed of assignment, the latter being also authorized to pay, in the name and behalf of the principal, all her debts and the liens and encumbrances on her property, the very fact that different letters of attorney were given to each of these two representatives shows that it was not the principal's intention that they should act jointly in order to make their acts valid. Furthermore, the appellant was aware of that assignment and she not only did not repudiate it, but she continued employing Attorney Antero Soriano to represent her in court.

For the foregoing considerations, the court is of opinion and so holds: (1) That an agent or attorney-in-fact empowered to pay the debts of the principal, and to employ lawyers to defend the latter's interests, is impliedly empowered to pay the lawyer's fees for services rendered in the interests of said principal, and may satisfy them by an assignment of a judgment rendered in favor of said principal; (2) that when a person appoints two attorneys-in-fact independently, the consent of the one will not be required to validate the acts of the other unless that appears positively to have been the principal's intention; and (3) that the assignment of the amount of a judgment made by a person to his attorney, who has not taken any part in the case wherein said judgment was rendered, made in payment of professional services in other cases, does not contravene the prohibition of article 1459, case 5, of the Civil Code.

By virtue whereof, and finding no error in the judgment appealed from, the same is affirmed in its entirety, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns and Romualdez, JJ., concur.

[1] Viuda de Tan Toco vs. Municipal Council of Iloilo, not reported.

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