

PHILIPPINE TRUST CO., PLAINTIFF AND APPELLANT, VS. ANTIGUA BOTICA RAMIREZ, DANIEL BOQUER, AND J. J. DUNBAR, DEFENDANTS AND APPELLEES.

G.R. No. 34686-88. February 24, 1932

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from the judgment of the Court of First Instance of Manila in the above-entitled three cases which have been tried together and decided by the court below as one case.

In case G. R. No. 34686, plaintiff-appellant seeks to collect from defendants-appellees, Antigua Botica Ramirez, Daniel Boquer, and J. J. Dunbar, the amount of P7,531.28 which represents the balance of an overdraft account of the Antigua Botica Ramirez with the plaintiff as of December 17, 1928. J. J. Dunbar and Daniel Boquer were guarantors for the overdraft.

In case G. R. No. 34687, plaintiff-appellant seeks to collect from defendants, Daniel Boquer, Antigua Botica Ramirez, J. J. Dunbar, and Eduardo Gutierrez Repide, the amount of P5,837.07, balance as of March 24, 1930, of a promissory note for P6,000 executed by the defendants on June 7, 1927, in favor of the plaintiff, whereby the defendants promised, jointly "and severally, to pay the plaintiff 90 days after its execution.

In case G. R. No. 34688, plaintiff-appellant seeks to collect from defendants J. J. Dunbar, Daniel Boquer, Eduardo Gutierrez Repide, and Manuela Reyes y Almeida, the sum of P17,702.52, balance as of December 10, 1927, of a promissory note for P30,000 executed by Dunbar, Boquer, and Gutierrez Repide, P10,000 of which was guaranteed by Manuela Reyes y Almeida with a mortgage of a parcel of land situated in the City of Manila in favor of the plaintiff.

For some time before the complaints were filed the Antigua Botica Ramirez was under the control and management of the plaintiff, and a few months after plaintiff's complaints were filed, and upon plaintiff's petition, a receiver of the properties of the defendant Antigua Botica Ramirez was appointed.

After trial, the court below rendered judgment, dismissing the three complaints, ordering the cancellation of the mortgage of Manuela Reyes' land, discharging the receiver and ordering him to turn over the properties of the defendant Antigua Botica Ramirez to plaintiff.. From this judgment the plaintiff appealed to this court and made the following assignments of error:

"1. The trial court erred in permitting the defendant. Eduardo Gutierrez Repide testify, over the objection and exception of counsel for the plaintiff, that he signed the promissory notes marked Exhibits J' and M in cases Nos. 34687-88, as a mere surety, and for no consideration.

"2. The trial court erred in not striking from the record defendant Eduardo Gutierrez Repide's testimony that his codefendant Daniel Boquer told him that the plaintiff gave him several extensions for the payment of the promissory notes marked Exhibits J and M in cases Nos. 34687-88, and in finding that such extensions were in

fact given by plaintiff.

"3. The trial court erred in permitting the defendants Eduardo Gutierrez Repide, Daniel Boquer and J. J. Dunbar and the witness Rosario Boquer testify, over the objection and exception of counsel for the plaintiff, that the shares which they owned of the stock of the defendant corporation Antigua Botica Ramirez were assigned by them to plaintiff in payment of their obligations and in finding that such assignment, as claimed by the defendants, was in fact made.

"4. The trial court erred in holding that the plaintiff administered the business of the defendant corporation Antigua Botica Ramirez, without any intervention on the latter's part, and in not permitting plaintiff's witness J. M. Araullo testify as to the condition of the corporation in the month of April, 1929.

"5. The trial court erred in finding that plaintiff sold certain furniture and other properties of the defendant Antigua Botica Ramirez at very reduced prices.

"6. The trial court erred in admitting in evidence the documents marked defendant's Exhibits 3, 4, 7, 30, 45, 46 and 47.

"7. The trial court erred in not admitting in evidence the documents marked plaintiff's Exhibits CC, DD and EE, and in not permitting plaintiff's witnesses E. B. Ford and E. B. Velasquez testify on them.

"8. The trial court erred in finding that the preponderance of evidence was in favor of the defendants and against the plaintiff.

"9. The trial court erred in rendering judgment in favor of the defendants, and not in favor of the plaintiff, as prayed for in its complaints.

"10. The trial court erred in denying plaintiff's motions for a new trial."

Under the first assignment of error, counsel for the plaintiff contend that the defendant Eduardo Gutierrez Repide should not have been permitted by the lower court to testify that he signed the promissory notes marked plaintiff's Exhibits J and M as a mere surety, and for no consideration.

We think that this point is well taken. It is admitted by the defendant Eduardo Gutierrez Repide that he signed the promissory notes as a surety, and it was immaterial, so far as the plaintiff was concerned, whether or not the said Gutierrez Repide received anything in payment for the use of his signature. (Clark vs. Sellner, 42 Phil., 384.)

The second assignment of error has reference to the action of the lower court in not striking from the record the testimony of the defendant Eduardo Gutierrez Repide that he was told by the defendant Daniel Boquer that the plaintiff bank gave him (Boquer) several extensions for the payment of the promissory notes Exhibits J and M, and in finding that plaintiff gave such extensions.

We have not found anything in the record to justify defendants' contention. The only witness for the defendants who testified on the alleged extensions given by plaintiff was the defendant Gutierrez Repide himself, and his testimony consisted only of hearsay evidence and general statements against the direct and positive evidence introduced by plaintiff that no extension was ever given for the payment of the promissory notes. But what convinces the court that plaintiff did not extend the time for the payment of the promissory notes in question, is the fact that the testimony of the defendant Eduardo Gutierrez Repide was not corroborated by either the defendant Daniel Boquer, who imparted the information to Gutierrez Repide, or by the defendant J. J. Dunbar. The latter, in fact, admitted that no extension was given him for the payment of the promissory notes. Dunbar testified as follows:

"Q. Mr. Dunbar, have you ever obtained an extension for the payment of the indebtedness or obligations of the

Antigua Botica Ramirez to the Philippine Trust Company and Fidelity & Surety Company covered by some of the documents here presented in evidence?—A. No, sir."

Plaintiff might not have been prompt in proceeding against the principal debtor, but mere delay is no defense at all for the surety.

We rule that the lower court erred in not striking from the record the testimony of the defendant Eduardo Gutierrez Repide on the alleged extensions given by plaintiff to the defendant Daniel Boquer for the payment of the promissory notes marked plaintiff's Exhibits J and M, and in finding that such extensions were given by plaintiff.

The third assignment of error is directed towards the action of the lower court in permitting the defendants Eduardo Gutierrez Repide, Daniel Boquer, and J. J. Dunbar, and the witness Rosario Boquer to testify that the shares which they owned of the stock of the corporation Antigua Botica Ramirez were assigned by them to plaintiff in payment of the defendants' obligations, and in finding that such assignment was, in fact, made.

The defendants claim that they assigned to plaintiff the shares which they owned of the stock of the corporation Antigua Botica Ramirez in payment of their obligations. Plaintiff denies that such assignment was ever made, and claims that the shares in question were assigned for the purpose of enabling plaintiff to reorganize the corporation Antigua Botica Ramirez and sell its business at a fair and reasonable price.

We have carefully examined the evidence, and are of the opinion that plaintiff's contention should be sustained. The defendants Eduardo Gutierrez Repide and Daniel Boquer testified, in direct examination, that a deed of assignment to plaintiff of the shares in question in payment of the obligations of the defendants was to be executed, and the record shows that no such document was ever executed.

It is claimed by the defendants that the assignment of their shares of the stock of the corporation Antigua Botica Ramirez to the plaintiff bank was made in payment of their obligations. Examining, however, the notice for the special stockholders' meeting on April 26, 1929, which notice was prepared by the defendant Eduardo Gutierrez Repide himself, no mention is made therein of any assignment of the shares in question in payment of the obligations of the defendants to plaintiff. The notice simply says that the meeting was being called "for the purpose of electing the new members of the Board of Directors and determining the manner of liquidating with the Philippine Trust Company and Fidelity & Surety Company of the Philippine Islands the obligations of the corporation (Antigua Botica Ramirez) pending payment, and at the same time resolve the indorsement of all the shares of the corporation to the creditor corporations in order that the latter might reorganize the Antigua Botica Ramirez (antes Zobel), Inc. in the manner most convenient to their interest." Had such an assignment as claimed by the defendants been made, it is but natural to expect that the defendant Gutierrez Repide would have made some mention thereof in the notice for the meeting prepared by him.

The fourth and fifth assignments of error relate to the action of the lower court in holding that plaintiff administered the business of the defendant corporation Antigua Botica Ramirez without any intervention on the latter's part; in not permitting the witness J. M. Araullo to testify as to the condition of the corporation in the month of April, 1929; and in finding that plaintiff sold certain properties of the defendant Antigua Botica Ramirez at very reduced prices.

We think these points are well taken.

The defendants contend that plaintiff should not have sold for P5,000 a credit of P18,539.25 which the defendant corporation Antigua Botica Ramirez had against the Palma Rosa Manufacturing Company. The "record, however, shows that the debtor, the said Palma Rosa Manufacturing Company, was insolvent and that before the new board

of directors of the corporation Antigua Botica Ramirez made the sale, the defendants Daniel Boquer and J. J. Dunbar and the stockholders Rosario Boquer and Jose V. Ramirez were asked by plaintiff to make their comments and recommendations and that no attention was paid to plaintiff's request. The defendants should not be heard now to complain.

The defendant Daniel Boquer testified, in direct examination, that he delivered to plaintiff's witness J. M. Araullo all the assets of the defendant corporation Antigua Botica Ramirez. On rebuttal, Araullo was not permitted to controvert Boquer's testimony.

The defendant Daniel Boquer was the manager of the business of the Antigua Botica Ramirez before the plaintiff took possession thereof, and the defendants claimed that the business was properly managed by Boquer. On rebuttal, Araullo was not permitted to testify as to the condition of the business at the time plaintiff took it over for the purpose of reorganization.

The rulings of the lower court were erroneous. The witness Araullo' should have been permitted to testify, on rebuttal, on the points covered by the defendant Boquer in direct examination.

With reference to the sale of a motorcycle and certain shelves of the corporation Antigua Botica Ramirez, we have examined the record and found nothing therein to show that they were not sold for a reasonable price. It appears that the party who once offered P500 for the motorcycle and later on P150, had no money and claimed that the motorcycle was in bad condition, and there is total lack of evidence as to the condition in which the shelves were at the time of the sale.

The sixth and seventh assignments of error are concerned with certain evidence offered by the defendants and admitted by the lower court over the objection of counsel for the plaintiff, and with certain evidence offered by the plaintiff and rejected by the lower court.

In view of the decision to be rendered by the court, we shall only discuss the assignment of error in connection with the document marked Exhibit EE offered by plaintiff in evidence and rejected by the lower court.

Plaintiff's Exhibit EE is a copy of the minutes of a special meeting of the stockholders of the corporation Antigua Botica Ramirez held on April 26, 1929, wherein a transcript of the stenographic notes taken at the stockholders' meeting of the same corporation 'held on April 19, 1929, was incorporated. At the said meeting of April 19, 1929, the defendants Eduardo Gutierrez Repide, J. J. Dunbar and Daniel Boquer admitted their obligations to the plaintiff bank and such admissions were inserted, without any objection on the part of the said defendants, in the minutes of the special stockholders' meeting of April 26, 1929.

Counsel for the defendants objected to the introduction of said Exhibit EE on the ground that it contained certain statements made by the said defendants Eduardo Gutierrez Repide, J. J. Dunbar, and Daniel Boquer; that the latter were not given an opportunity to explain their statements before plaintiff offered the document in evidence; and that the said document was therefore inadmissible as evidence. This contention is without merit. Had plaintiff intended to impeach statements made by the defendants Eduardo Gutierrez Repide, J. J. Dunbar, and Daniel Boquer on another occasion, plaintiff, as claimed by counsel for the defendants, should have laid a foundation for the introduction in evidence of said Exhibit EE by calling the attention of the said defendants Eduardo Gutierrez Repide, J. J. Dunbar, and Daniel Boquer to their former statements, but apparently plaintiff had no such purpose. Plaintiff's purpose in introducing the said Exhibit EE was probably to show certain admissions against interest made by the defendants, and said Exhibit EE might then be admissible without the necessity of plaintiff's first making the defendants Eduardo Gutierrez Repide, J. J. Dunbar, and Daniel Boquer explain their statements.

"* * * In offering in evidence the testimony given by Mr. Hemady and the Hashims in the earlier case, the

defendant-appellant did not claim that said testimony contained admissions against interest by the parties to the action of their agents; if such had been the case, the testimony would have been admissible without the laying of a foundation and without the witnesses having testified in the case at bar. * * *" (Juan Ysmael & Co. vs. Hashim and Gorayeb, 50 Phil., 132, 138.)

For all the foregoing considerations, the judgment of the lower court is hereby reversed, and judgment is hereby rendered—

In case No. 34686, in favor of the plaintiff Philippine Trust Company and against the defendants Antigua Botica Ramirez, Daniel Boquer, and J. J. Dunbar, jointly, for the sum of seven thousand five hundred thirty-one pesos and twenty-eight centavos (P7,531.28), with interest at the rate of nine per cent (9%) per annum from December 17, 1928, until paid.

In case No. 34687, in favor of the plaintiff Philippine Trust Company and against the defendants Antigua Botica Ramirez, Daniel Boquer, J. J. Dunbar, and Eduardo Gutierrez Repide jointly and severally, for the sum of five thousand eight hundred thirty-seven pesos and seven centavos (1N5,837.07), with interest at the rate of ten per cent (10%) per annum, from March 24, 1930, until paid; and additional sum of five 'hundred eighty-three pesos and seventy centavos (P583.70) for and as attorneys' fees and costs of collection.

In case No. 34688 in favor of the plaintiff Philippine Trust Company and against the defendants J. J. Dunbar, Daniel Boquer, Eduardo Gutierrez Repide and Manuela Reyes y Almeida, jointly and severally, for the sum of seventeen thousand seven hundred and tWo pesos and fifty-two centavos (P17,702.52), with interest at the rate of ten per cent (10%) per annum from December 10, 1927, until paid, the liability of the defendant Manuela Reyes y Almeida being limited, however, to the sum of ten thousand pesos (P10,000), which is the amount of the obligations secured by 'her mortgage of February 13, 1926.

The defendants J. J. Dunbar, Daniel Boquer, and Eduardo Gutierrez Repide are further sentenced to pay plaintiff, jointly and severally, the additional sum of one thousand seven hundred and two pesos and twenty-five centavos (P1,702.25) for and as attorneys' fees and costs of collection.

The defendant Manuela Reyes y Almeida is further sentenced to pay plaintiff the additional sum of one thousand pesos (P1,000) for and as attorneys' fees and costs of collection.

The costs will be limited to the attorneys' fees and costs of collection as hereinbefore stated. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villa-Real, and Imperial, JJ., concur.

ROMUALDEZ, J.:

I vote to affirm.

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