

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. THE BANK OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.

G. R. No. 34962. September 22, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The question submitted for our decision is whether the facts alleged in the complaint by the Government are sufficient to constitute a cause of action against the defendant bank.

The Court of First Instance of Manila sustained the demurrer, but the Government contends that the ruling was erroneous and prays, for the reasons given in its brief, that it be reversed and the record remanded to the court below for further proceedings.

The allegations of the complaint relevant to the point in question are the following:

"2. That on October 10, 1919, a certain Mr. Federico Luchsinger, then a resident of the Philippine Islands, sold his Hacienda Progreso in La Carlota, Occidental Negros, to Messrs. Urquijo, Zuloaga and Escubi also of La Carlota, Occidental Negros, for the sum of 1*275,000, payable in five annual installments of P55,000 each.

"3. That, thereafter, or on October 14, 1919, the said Federico Luchsinger appointed the defendant herein his true and lawful attorney-in-fact with full power among other things to collect all credits standing in his favor in these Islands and to pay to the Government of the Philippine Islands such taxes as might from time to time be due from him.

"4. That, thereafter, the said Federico Luchsinger left the Philippine Islands to reside in Paris, France, where he has since remained and that he no longer has any real estate property in these Islands.

"5. That, thereafter, or on June 20, 1920, June 20, 1921, June 20, 1922, June 20, 1923, and June 20, 1924, the defendant collected from Messrs. Urquijo, Zuloaga, and Escubi the sum of P55,000 on each of the aforementioned dates, or a total of P275,000, the same representing the total selling price of the Hacienda Progreso which the aforementioned Federico Luchsinger had sold to Messrs. Urquijo, Zuloaga, and Escubi.

"6. That in the sale of the said hacienda for the sum of P275,000, a net profit of P139,000 was realized by the vendor, which, distributed among the five years in which the payments were made, represented net profits of P27,800 for each of the years from 1920 to 1925, inclusive.

"7. That on February 28, 1921, March 10, 1922, March 23, 1923, February 27, 1924, and February 26, 1925, the defendant, acting as attorney-in-fact of the said Federico Luchsinger, filed income-tax returns on behalf of the latter in which returns the defendant omitted to mention the net income represented by the collection of the payments for the sale of the Hacienda Progreso.

"8. That the amount of income tax due from the said Federico Luchsinger on the profit realized from" the sale of the property in question is P5,077.87.

"9. That due demand for the payment of the taxes mentioned above from the Bank of the Philippine Islands has been made by the Collector of Internal Revenue but, notwithstanding said demand, the defendant has failed and refused and still fails and refuses to pay the same.

"10. That the said amount of P5,077.87 is subject to a surcharge of 5 per cent or P253.89 and bears interest at the rate of 12 per cent per annum from January 20, 1928, to date of payment.

"Wherefore, the plaintiff prays this court to render judgment ordering the defendant to pay the plaintiff the sum of P5,077.87 plus P253.89, with interest on the P5,077.87 from January 20, 1928, together with the costs of this action.

"Plaintiff also prays for such other relief as this court may deem just and equitable." (Pages 2 and 3, Bill of Exceptions.)

Section 9, paragraphs (b) and (c) of our Income Tax Law, Act No. 2833, imposes the duty upon agents of making a complete return of the income and profits of their principal, paying the proper tax thereon.

The complaint does not allege that the defendant bank was or was not aware that the sale of estate had netted a profit to their principal; that is to say, that said principal had received an income subject to the tax. Should the complaint have alleged this in order to establish the defendant's liability, or may it be presumed from what has been alleged that the defendant bank was positively aware of it? We believe the complaint need not allege that the defendant bank knew of such income, because being an agent of said Luchsinger especially authorized with full power to pay all the taxes due the Government from the latter, the presumption is, in the absence of evidence to the contrary, that the defendant bank as agent knew or would know in due time all the taxable income of its principal.

It should likewise be remembered that the defendant's obligation which the complaint alleges to have been breached, did not arise from a contract, but from the law, and it is therefore sufficient if the complaint alleges the breach of such obligation.

"Where the cause of action arises out of the breach of a duty owed by defendant to plaintiff, the declaration, complaint, or petition should show the right of plaintiff and the duty of defendant, and state the nature of the duty and the facts from which it arose. It has been considered, however, that if the duty is one imposed by law, and involves no element of contract it need not be expressly alleged. There must also be an allegation of a breach of the duty, and while this may be averred by way of a conclusion it is necessary to state the facts which are relied on as constituting such breach." (49 C. J., 143, 144.)

The complaint states that the defendant bank failed to include in the proper tax returns the income here in question. Assuming that it was the defendant's legal duty to do so, such a failure constitutes a prima facie breach of duty. And if it has any excuse or reason for such an omission which does not appear in the complaint, the defendant was bound to allege it in its answer.

We therefore hold that the complaint as it is, gives rise to the presumption that the defendant bank knew of the income in question, and taken in connection with this presumption which has not been overcome or destroyed, the facts alleged in the complaint constitute a sufficient cause of action against the defendant bank.

If the latter, through excusable ignorance, did not know of the income in question of its principal Luchsinger, or for any other legally sufficient reason believes it has any defense to set up against the complaint, and to relieve itself of responsibility, it may in its answer allege such defense, and later establish it at the trial for the decision of the competent court.

But the complaint, as it stands, alleges facts sufficient to constitute a cause of action.

For all these considerations, the order appealed from is reversed and the defendant's demurrer overruled, and it is ordered that the record be remanded to the court a quo for further proceedings. Without pronouncement as to costs.

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

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