

THE PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. UY TENG PIAO, DEFENDANT AND APPELLEE.

G. R. No. 35252. October 21, 1932

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by the plaintiff from a decision of the Court of First Instance of Manila absolving the defendant from the complaint, without a special finding as to costs. The appellant makes the following assignments of error:

"The trial court erred:

"1. In finding that one Mr. Pecson gave a promise to appellee Uy Teng Piao to condone the balance of the judgment rendered against the said Uy Teng Piao and in favor of the Philippine National Bank in civil case No. 26328 of the Court of First Instance of Manila.

"2. In finding that merely in selling the property described in certificate of title No. 11274 situated at Ronquillo Street, Manila, to Mariano Santos for P8,600 (Exhibit 2), the appellant had undoubtedly given the alleged promise of condonation to appellee Uy Teng Piao.

"3. In finding that the consideration of document Exhibit 1 is the condonation of the balance of the judgment rendered in said civil case No. 26328.

"4. In finding that said Mr. Pecson, granting that the latter has' actually given such promise to condone, could bind the appellant corporation.

"5. In holding that the absence of demand for payment upon appellee Uy Teng Piao for the balance of the said judgment from February 11, 1925 up to the year 1930 is 'una senal inequivoca y una prueba evidente' of the condonation of the balance of the said judgment.

"6. In finding that by the sale of the said property to Mariano Santos for the sum of P8,600, the said judgment in civil case No. 26328 has been more than fully paid even discounting the sum of P1,300 which appellant paid as the highest bidder for the said property.

"7. In declaring that the offer of appellee Uy Teng Piao as shown by Exhibits B and D-1, reflects only the desire of the said appellee Uy Teng Piao to avoid having a case with the appellant bank.

"8. In finally absolving appellee Uy Teng Piao and in not sentencing him to pay the amount claimed in the complaint with costs."

On September 9, 1924 the Court of First Instance of Manila rendered a judgment in favor of the Philippine National Bank and against Uy Teng Piao in civil case No. 26328 for the sum of P17,232.42 with interest at 7 per cent per annum from June 1, 1924, plus 10 per cent of the sum amount for attorney's fees and costs. The court ordered the defendant to deposit said amount with the clerk of the court within three months from the date of the judgment, and in case of his failure to do so that the mortgaged properties described in transfer certificates of title Nos. 7264 and 8274 should be sold at public auction in accordance with the law and the proceeds applied to the

payment of the judgment.

Uy Teng Piao failed to comply with the order of the court, and the sheriff of the City of Manila sold the two parcels of land at public auction to the Philippine National Bank on October 14, 1924 for P300 and P1,000 respectively.

On February 11, 1925, the Philippine National Bank secured from Uy Teng Piao a waiver of his right to redeem the property described in Transfer Certificate of Title No. 8274, and on the same date the bank sold said property to Mariano Santos for P8,600.

Evidently the other parcel, Transfer Certificate of Title No. 7264, was subsequently resold by the bank for P2,700, because the account of the defendant was credited with the sum of P11,300. In other words, the bank credited the defendant with the full amount realized by it when it resold the two parcels of land.

The bank brought the present action to revive the judgment for the balance of P11,574.38, with interest at 7 per cent per annum from August 1, 1930.

In his amended answer the defendant alleged as a special defense that he waived his right to redeem the land described in transfer certificate of title No. 8274 in consideration of an understanding between him and the bank that the bank would not collect from him the balance of the judgment; It was on this ground that the trial court absolved the defendant from the complaint.

In our opinion the defendant has failed to prove any valid agreement on the part of the bank not to collect from him the remainder of the judgment. The alleged agreement rests upon the uncorroborated testimony of the defendant" the pertinent part of whose testimony on direct examination was as follows:

"P. En este documento aparece que usted, por consideracion de valor recibido del Banco Nacional demandante en la presente causa, renuncia a su dereeho de recompra de la propiedad vendida por el Sheriff en publica subasta el catorce de octubre de mil novecientos veinticuatro a favor del Banco Nacional; quiere usted explicar al Honorable Juzgado, cual es esta consideracion de valor ?-R. Si, senior. Esto desde mil novecientos veintitres o mil novecientos veinticuatro, no recuerdo bien, me habia dicho el senior Pecson, porque algunas veces yo no podia pagar esos intereses mensuales. Entonces me dijo Pecson, 'como puede usted recibir alquileres y no paga usted intereses?'

"P. iQuien es ese senior Pecson?-R. Era encargado de este asunto.

"P. Que era el del Banco Nacional, usted sabe?-R. Era encargado de estas transacciones. Cuando tenia necesidad siempre Hamaba yo al senior Pecson. Entonces hable al senior Pecson que somos comerciantes, algunas veces Jos alquileres no pueden cobrarse por anticipado.

"Sr. ENDRIGA. No es resporisiva la contestation a la pregunta.

"Sr. GONZALEZ. Si esta explicando y no. ha terminado el testigo su contestacion.

"JUZGADO. Que la termine.

"TESTIGO. Me dijo el senior Pecson que es cosa mala para mi por que usted cobra alquileres y no paga los intereses? Mejor deje usted ya todos sus bienes para cubrir sus deudas.'

"P. El senior Pecson le. dijo a usted 'mejor deje usted ya todos sus bienes,' a que bienes se referia el?-R. Al terreno de Ronquillo y al terreno de Paco.

"P. Cual de esos terrenos, el de Ronquillo o el de Paco, el que se refiere aqui en el Exhibit 1?-R. Paco, primeramente, los dos ambos.

"P. Pero este Exhibit 1, a que se refiere; al de Paco o al de Ronquillo?-R. Parece que Paco.

"P. No recuerda usted muy bien?-R. No recuerdo.

"P. Y cuando le dijo a usted el señor Pecson mejor que dejara todos sus bienes, le dijo a usted a favor de quien iba usted a dejar sus bienes?-R. Al Banco Nacional.

"P. Y que le dijo a usted, si le dijo a usted algo el señor Pecson con respecto al saldo deudor que usted todavía era en deber a favor del Banco Nacional ?-R. No recuerdo mas; pero mas o menos de catorce mil pesos.

"P. Que le dijo el con respecto al saldo, si el cobraria todavía o se le condonaria?

"Sr. ENDRIGA. Es alternativa la pregunta. Me opongo.

"JUZGADO. Cambiese la pregunta.

"P. Que le dijo a usted con respecto al saldo, una vez otorgado este Exhibit 1 ?

"Sr. ENDRIGA. La pregunta no tiene ninguna base. Nos oponemos.

"Sr. GONZALEZ. Si dice el que se habian vendido todos los terrenos. "Juzgado. Puede contestar.

"Sr. ENDRIGA. Excepci6n.

"R. Me dijo que para que usted no cobre alquileres y no pague intereses deje usted esos terrenos de Ronquillo y terreno de Paco para cubrir ya todas mis deudas. Entonces dije ya, si, como yo tengo buena fe con este Banco. Hasta que al fin yo dije que queria yo comprar.

"P. Cuando usted firmo el once de febrero de mil novecientos veinticinco este documento Exhibit 1, recibio usted algun centimo de dinero del Banco?-R. Nada, absolutamente."

When asked on cross-examination if Pecson was not in Iloilo at the time of the execution of defendant's waiver of his right to redeem, the defendant answered that he did not know; asked when Pecson had spoken to him about the matter, the defendant replied that he did not remember.

One of the attorneys for the plaintiff testified that the defendant renounced his right to redeem the parcel of land in Calle Ronquillo, Exhibit 1, because a friend of the defendant was interested in buying it.

The bank ought to have presented Pecson as a witness, or his deposition, if he was not residing in Manila at the time of the trial.

With respect to the testimony of the bank's attorney, we should like to observe that although the law does not forbid an attorney to be a witness and at the same time an attorney in a cause, the courts prefer that counsel should not testify as a witness unless it is necessary, and that they should withdraw from the active management of the case. (Malcolm, Legal Ethics, p. 148.) Canon 19 of the Code of Legal Ethics reads as follows:

"When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in court in behalf of his client."

Defendant's testimony as to the alleged agreement is very uncertain. There is no mention in Exhibit 1 as to such an agreement on the part of the bank. Exhibit 1 relates only to the land in Calle Ronquillo. If Pecson had made any such agreement as the defendant claims, it is reasonable to suppose that he would have required the defendant to waive his right to redeem both parcels of land, and that the defendant, a Chinese business man, would have insisted upon some evidence of the agreement in writing. It appears to us that the defendant waived his right to redeem the land in Calle Ronquillo, because a friend of his wished to purchase it and was willing to pay therefor

P8,600, and the bank agreed to credit the defendant with the full amount of the sale.

Furthermore, if it be conceded that there was such an Understanding between Pecson and the defendant as the latter claims, it is not shown that Pecson was authorized to make any such agreement for the bank. Only the board of directors or the persons empowered by the board of directors could bind the bank by such an agreement. There is no merit in the contention that since the bank accepted the benefit of the waiver it cannot now repudiate the alleged agreement. The fact that the bank after having bought the land for P1,000 resold it at the instance of the defendant for P8,600 and credited the defendant with the full amount of the resale was a sufficient consideration for the execution of defendant's waiver of his right to redeem.

For, the foregoing reasons, the decision appealed from is reversed, and the defendant is condemned to pay the plaintiff the sum of P11,574.38 with interest thereon at the rate of 7 per cent per annum from August 1, 1930, and the costs of both instances.

Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Imperial, and Butte, JJ., concur.

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