

E. S. LYONS, PLAINTIFF AND APPELLANT, VS. C. W. ROSENSTOCK, EXECUTOR OF THE ESTATE OF HENRY W. ELSE, DECEASED, DEFENDANT AND APPELLEE.*G.R. No. 35469, March 17, 1932*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the City of Manila, by E. S. Lyons against C. W. Rosenstock, as executor of the estate of H. W. Elser, deceased, consequent upon the taking of an appeal by the executor from the allowance of the claim sued upon by the committee on claims in said estate. The purpose of the action is to recover four hundred forty-six and two thirds shares of the stock of J. K. Pickering & Co., Ltd., together with the sum of about P125,000, representing the dividends which accrued on said stock prior to October 21, 1926, with lawful interest. Upon hearing the cause the trial court absolved the defendant executor from the complaint, and the plaintiff appealed.

Prior to his death on June 18, 1923, Henry W. Elser had been a resident of the City of Manila where he was engaged during the years with which we are here concerned in buying, selling, and administering real estate. In several ventures which he had made in buying and selling property of this kind the plaintiff, E. S. Lyons, had joined with him, the profits being shared by the two in equal parts. In April, 1919, Lyons, whose regular vocation was that of a missionary, or missionary agent, of the Methodist Episcopal Church, went on leave to the United States and was gone for nearly a year and a half, returning on September 21, 1920. On the "eve of his departure Elser made a written statement showing that Lyons was, at that time, half owner with Elser of three particular pieces of real property. Concurrently with this act Lyons executed in favor of Elser a general power of attorney empowering him to manage and dispose of said properties at will and to represent Lyons fully and amply, to the mutual advantage of both. During the absence of Lyons two of the pieces of-property above referred to were sold by Elser, leaving in his hands a single piece of property located at 616-618 Carriedo Street, in the City of Manila, containing about 282 square meters of land, with the improvements thereon.

In the spring of 1920 the attention of Elser was drawn to a piece of land, containing about 1,500,000 square meters, near the City of Manila, and he discerned therein a fine opportunity for the promotion and development of a suburban improvement. This property, which will be herein referred to as the San Juan Estate, was offered by its owners for P570,000. To afford a little, time for maturing his plans, Elser purchased an option on this property for P5,000, and when this option was about to expire without his having been able to raise the necessary funds, he paid 15,000 more for an extension of the option, with the understanding in both cases that, in case the option should be exercised, the amounts thus paid should be credited as part of the first payment. The amounts paid for this option and its extension were supplied by Elser entirely from his own funds. In the end he was able from his own means, and with the assistance which he obtained from others, to acquire said estate. The amount required for the first payment was P150,000, and as Elser had available only about P120,000, including the P20,000 advanced upon the option, it was necessary to raise the remainder by obtaining a loan for P50,000. This amount

was finally obtained from a Chinese merchant of the city named Uy Siuliong. This loan was secured through Uy Cho Yee, a son of the lender; and in order to get the money it was necessary for Elser not only to give a personal note signed by himself and his two associates in the projected enterprise, but also by the Fidelity & Surety Company. The money thus raised was delivered to Elser by Uy Siuliong on June 24, 1920. With this money and what he already had in bank Elser purchased the San Juan Estate on or about June 28, 1920. For the purpose of the further development of the property a limited partnership had, about this time, been organized by Elser and three associates, under the name of J. K. Pickering & Company; and when the transfer of the property was effected the deed was made directly to this company. As Elser was the principal capitalist in the enterprise he received by far the greater number of the shares issued, his portion amounting in the beginning to 3,290 shares.

While these negotiations were coming to a head, Elser contemplated and hoped that Lyons might be induced to come in with him and supply part of the means necessary to carry the enterprise through. In this connection it appears that on May 20, 19-20, Elser wrote Lyons a letter, informing him that he had made an offer for a big subdivision and that, if it should be acquired and Lyons would come in, the two would be well fixed. (Exhibit M-5.) On June 3, 1920, eight days before the first option expired, Elser cabled Lyons that he had bought the San Juan Estate and thought it advisable for Lyons to resign (Exhibit M-13), meaning that he should resign his position with the mission board in New York. On the same date he wrote Lyons a letter explaining some details of the purchase, and added "Have advised in my cable that you resign and I hope you can do so immediately and will come and join me on the lines we have so often spoken about. * * * There is plenty of business for us all now and I believe we have started something that will keep us going for some time." In one or more communications prior to this, Elser had sought to impress Lyons with the idea that he should raise all the money he could for the purpose of giving the necessary assistance in future deals in real estate.

The enthusiasm of Elser did not communicate itself in any marked degree to Lyons, and found him averse from joining in the purchase of the San Juan Estate. In fact upon this visit of Lyons to the United States a grave doubt had arisen as to whether he would ever return to Manila, and it was only in the summer of 1920 that the board of missions of his church prevailed upon him to return to Manila and resume his position as managing treasurer and one of its trustees. Accordingly, on June 21, 1920, Lyons wrote a letter from New York thanking Elser for his offer to take Lyons into his new project and adding that from the standpoint of making money, he had passed up a good thing.

One source of embarrassment which had operated on Lyons to bring him to the resolution to stay out of this venture, was that the board of missions was averse to his engaging in business activities other than those in which the church was concerned; and some of Lyons' missionary associates had apparently been criticizing his independent commercial activities. This fact was dwelt upon in the letter above-mentioned. Upon receipt of this letter Elser was of course informed that it would be out of the question to expect assistance from Lyons in carrying out the San Juan project. No further efforts to this end were therefore made by Elser.

When Elser was concluding the transaction for the purchase of the San Juan Estate, his books showed that he was indebted to Lyons to the extent of, possibly, P11,669.72, which had accrued to Lyons from profits and earnings derived from other properties; and when the J. K. Pickering & Company was organized and stock issued, Elser indorsed to Lyons 200 of the shares allocated to himself, as he then believed that Lyons would be one of his associates in the deal. It will be noted that the par value of these 200 shares was more than P8,000 in excess of the amount which Elser in fact owed to Lyons; and when the latter returned to the Philippine Islands, he accepted these shares and sold them for his own benefit. It seems to be supposed in the appellant's brief that the transfer of these shares to Lyons by Elser supplies some sort of basis for the present action, or at least strengthens the considerations involved in a feature of the case to be presently explained. This view is manifestly untenable, since

the ratification of the transaction by Lyons and the appropriation by him of the shares which were issued to him leaves no ground whatever for treating the transaction as a source of further equitable rights in Lyons. We should perhaps add that after Lyons' return to the Philippine Islands he acted for a time as one of the members of the board of directors of the J. K. Pickering & Company, his qualification for this office being derived precisely from the ownership of these shares.

We now turn to the incident which supplies the main basis of this action. It will be remembered that, when Elser obtained the loan of P 50,000 to complete the amount needed for the first payment on the San Juan Estate, the lender, Uy Siuliong, insisted that he should procure the signature of the Fidelity & Surety Co. on the note to be given¹ for said loan. But before signing the note with Elser and his associates, the Fidelity & Surety Co. insisted upon having security for the liability thus assumed by it. To meet this requirement Elser mortgaged to the Fidelity & Surety Co. the equity of redemption in the property owned by himself and Lyons on Carriedo Street. This mortgage was executed on June 30, 1920, at which time Elser expected that Lyons would come in on the purchase of the San Juan Estate. But when he learned from the letter from Lyons of July 21, 1920, that the latter had determined not to come into this deal, Elser began to cast around for means to relieve the Carriedo property of the encumbrance which he had placed upon it. For this purpose, on September 9, 1920, he addressed a letter to the Fidelity & Surety Co., asking it to permit him to substitute a property owned by himself at 644 M. H. del Pilar Street, Manila, and 1,000 shares of the J. K. Pickering & Company, in lieu of the Carriedo property, as security. The Fidelity & Surety Co. agreed to the proposition; and on September 15, 1920, Elser executed in favor of the Fidelity & Surety Co. a new mortgage on the M. H. del Pilar property and delivered the same, with 1,000 shares of J. K. Pickering & Company, to said company. The latter thereupon in turn executed a cancellation of the mortgage on the Carriedo property and delivered it to Elser. But -notwithstanding the fact that these documents were executed and delivered, the new mortgage and the release of the old were never registered; and on September 25, 1920, thereafter, Elser returned the cancellation of the mortgage on the Carriedo property and took back from the Fidelity & Surety Co. the new mortgage on the M. H. del Pilar property, together with the 1,000 shares of the J. K. Pickering & Company which he had delivered to it.

The explanation of this change of purpose is undoubtedly to be found in the fact that Lyons had arrived in Manila on September 21, 1920, and shortly thereafter, in the course of a conversation with Elser told him to let the Carriedo mortgage remain on the property ("Let the Carriedo mortgage ride"). Mrs. Elser testified to the conversation in which Lyons used the words above quoted, and as that conversation supplies the most reasonable explanation of Elser's recession from his purpose of relieving the Carriedo property, the trial court was, in our opinion, well justified in accepting as a proven fact the consent of Lyons for the mortgage to remain on the Carriedo property. This concession was not only reasonable under the circumstances, in view of the abundant solvency of Elser, but in view of the further fact that Elser had given to Lyons 200 shares of the stock of the J. K. Pickering & Co., having a value of nearly P8,000 in excess of the indebtedness which Elser had owed to Lyons upon statement of account. The trial court found in effect that the excess value of these shares over Elser's actual indebtedness was conceded by Elser to Lyons in consideration of the assistance that had been derived from the mortgage placed upon Lyons' interest in the Carriedo property. Whether the agreement was reached exactly upon this precise line of thought is of little moment but the relations of the parties had been such that it was to be expected that Elser would be generous; and he could scarcely have failed to take account of the use he had made of the joint property of the two.

As the development of the San Juan Estate was a success from the start, Elser paid the note of P50,000 to Uy Siuliong on January 18, 1921, although it was not due until more than five months later. It will thus be seen that the mortgaging of the Carriedo property never resulted in damage to Lyons to the extent of a single cent; and although the court refused to allow the defendant to prove that Elser was solvent at this time in an amount much

greater than the entire encumbrance placed upon the property, it is evident that the risk imposed upon Lyons was negligible. It is also plain that no money actually deriving from this mortgage was ever applied to the purchase of the San Juan Estate. What really happened was that Elser merely subjected the property to a contingent liability, and no actual liability ever resulted therefrom. The financing of the purchase of the San Juan Estate," apart from the modest financial participation of his three associates in the San Juan deal, was the work of Elser accomplished entirely upon his own account.

The case for the plaintiff supposes that, when Elser placed a mortgage for P50,000 upon the equity of redemption in the Carriedo property, Lyons, as half owner of said property, became, as it were, involuntarily the owner of an undivided interest in the property acquired partly by that money; and it is insisted for him that, in consideration of this fact, he is entitled to the four hundred forty-six and two-thirds shares of J. K. Pickering & Company, with the earnings thereon, as claimed in his complaint.

Lyons tells us that he did not know until after Elser's death that the money obtained from Uy Siuliong in the manner already explained had been used to help finance the purchase of the San Juan Estate. He seems to have supposed that the Carriedo property had been mortgaged to aid in putting through another deal, namely, the purchase of a property referred to in the correspondence as the "Ronquillo property"; and in this connection a letter of Elser of the latter part of May, 1920, can be quoted in which he uses this language:

"As stated in cablegram I have arranged for P50,000 loan on Carriedo property. Will use part of the money for Ronquillo buy (P60,000) if the owner comes through."

Other correspondence shows that Elser had apparently been trying to buy the Ronquillo property, and Lyons leads us to infer that he thought that the money obtained by mortgaging the Carriedo property had been used in the purchase of this property. It doubtless appeared so to him in the retrospect, but certain considerations show that he was inattentive to the contents of the quotation from the letter above given. He had already been informed that, although Elser was angling for the Ronquillo property, its price had gone up, thus introducing a doubt as to whether he would get it; and the quotation above given shows that the intended use of the money obtained by mortgaging the Carriedo property was that only part of the P50,000 thus obtained would be used in this way, if the deal went through. Naturally, upon the arrival of Lyons in September, 1920, one of his first inquiries would have been, if he did not know before, what was the status of the proposed trade for the Ronquillo property.

Elser's widow and one of his clerks testified that about June 15, 1920, Elser cabled Lyons something to this effect: "I have mortgaged the property on Carriedo Street, secured by my personal note. You are amply protected. I wish you to join me in the San Juan Subdivision. Borrow all money you can." Lyons says that no such cablegram was received by him, and we consider this point of fact of little moment, since the proof shows that Lyons knew that the Carriedo mortgage had been executed, and after his arrival in Manila he consented for the mortgage to remain on the property until it was paid off, as shortly occurred. It may well be that Lyons did not at first clearly understand all the ramifications of the situation, but he knew enough, we think, to apprise him of the material factors in the situation, and we concur in the conclusion of the trial court that Elser did not act in bad faith and was guilty of no fraud.

In the purely legal aspect of the case, the position of the appellant is, in our opinion, untenable. If Elser had used any money actually belonging to Lyons in this deal, he would under article 1724 of the Civil Code and article 264 of the Code of Commerce, be obligated to pay interest upon the money so applied to his own use. Under the law prevailing in this jurisdiction a trust does not ordinarily attach with respect to property acquired by a person who uses money belonging to another (*Martinez vs. Martinez*, 1 Phil., 647; *Enriquez vs. Olaguer*, 25 Phil., 641). Of course, if an actual relation of partnership had existed in the money used, the case might be different; and much emphasis is laid in the appellant's brief upon the relation of partnership which, it is claimed, existed. But

there was clearly no general relation of partnership between the parties; and the most that can be said is that Elser and Lyons had been coparticipants in various transactions in real estate. No objection can be made to the use of the word partnership as a term descriptive of the relation in those particular transactions, but it must be remembered that it was in each case a particular partnership, under article 1678 of the Civil Code. It is clear that Elser, in buying the San Juan Estate, was not acting for any partnership composed of himself and Lyons, and the law cannot be distorted into a proposition which would make Lyons a participant in this deal contrary to his express determination.

If seems to be supposed that the doctrines of equity worked out in the jurisprudence of England and the United States with reference to trusts supply a basis for this action. The doctrines referred to operate, however, only where money belonging to one person vis used by another for the acquisition of property which should belong to both; and it takes but little discernment to see that the situation here involved is not one for the application of that doctrine for no money belonging to Lyons or any partnership composed of Elser and Lyons was in fact used by Elser in, the purchase of the San Juan Estate. Of course, if any damage had been caused to Lyons by the placing of the mortgage upon the equity of redemption in the Carriedo property, Elser's estate would be liable for such damage. But it is evident that Lyons was not prejudiced by that act.

The appellee insists that the trial court committed error in admitting the testimony of Lyons upon matters passed between him and Elser while the latter was alive. While the admission of this testimony was of questionable propriety, any error made by the trial court on this point was error without injury, and the determination of the question is not necessary to this decision. We therefore pass the point without further discussion.

The judgment appealed from will be affirmed, and it is so ordered, with .costs against the appellant.

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

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