

IRINEO G. CARLOS, PLAINTIFF AND APPELLANT, VS. MINDORO SUGAR CO., ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 36207. October 26, 1932*

Ponente: IMPERIAL, J.

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The plaintiff brought this action to recover from the defendants the value of four bonds, Nos. 1219, 1220, 1221, and 1222, with due and unpaid interest thereon, issued by the Mindoro Sugar Company and placed in trust with the Philippine Trust Company which, in turn, guaranteed them for value received. Said plaintiff appealed from the judgment rendered by the Court of First Instance of Manila absolving the defendants from the complaint, excepting the Mindoro Sugar Company, which was sentenced to pay the value of the four bonds with interest at 8 per cent per annum, plus costs.

The Mindoro Sugar Company is a corporation constituted in accordance with the laws of the country and registered on July 30, 1917. According to its articles of incorporation, Exhibit 5, one of its principal purposes was to acquire and exercise the franchise granted by Act No. 2720 to George H. Fairchild, to substitute the organized corporation, the Mindoro Company, and to acquire all the rights and obligations of the latter and of Horace Havemeyer and Charles J. Welch in the so-called San Jose Estate in the Province of Mindoro.

The Philippine Trust Company is another domestic corporation, registered on October 21, 1917. In its articles of incorporation, Exhibit A, some of its purposes are expressed thus: "To acquire by purchase, subscription, or otherwise, and to invest in, hold, sell, or otherwise dispose of stocks, bonds, mortgages, and other securities, or any interest in either, or any obligations or evidences of indebtedness, of any other corporation or corporations, domestic or foreign.* * * Without in any particular limiting any of the powers of the corporation, it is hereby expressly declared that the corporation shall have power to make any guaranty respecting the dividends, interest, stock, bonds, mortgages, notes, contracts or other obligations of any corporation, so far as the same may be permitted by, the laws of the Philippine Islands now or hereafter in force." Its principal purpose, then, as its name indicates, is to engage in the trust business.

On November 17, 1917, the board of directors of the Philippine Trust Company, composed of Phil. C. Whitaker, chairman, and James Ross, Otto Vorster, Charles' D. Ay ton, and William J. O'Donovan, members, adopted a resolution authorizing its president, among other things, to purchase at par and in the name and for the use of the trust corporation all or such part as he may deem expedient, of the bonds in the value of P3,000,000 that the Mindoro Sugar Company was about to issue, and to resell them, with or without the guarantee of said trust corporation, at a price not less than par, and to guarantee to the Philippine National Bank the payment of the indebtedness to said bank by the Mindoro Sugar Company or Charles J. Welch and Horace Havemeyer, up to P2,000,000. The relevant part of the resolution, Exhibit 3, reads as follows:

"Resolved that Mr. Phil. C. Whitaker, president of this company, be and he hereby is authorized to purchase at par in the name and for the use of this company all, or such part as he may deem expedient, of the said P3,000,000 of 20-year 8 per cent coupon bonds of the said Mindoro Sugar Company, and to resell or otherwise

dispose of the said bonds, with or without this company's guaranty, at a price not less than par; and it was further

"Resolved that Mr. Phil. C. Whitaker, president of the company be and he hereby is authorized in the name of this company alone or in connection with others, by joint and several obligations, to guarantee to the Philippine National Bank the due and punctual payment of any and all indebtedness owing to the said Bank by either the Mindoro Sugar Company, the Mindoro Company, or Charles J. Welch and Horace Havemeyer, up to P2,000,000; and it was further "Resolved that the said president, Mr. Phil. C. Whitaker, be and he hereby is authorized to execute in the name of this company any and all notes, mortgages, bonds, guaranties, or instruments in writing whatever necessary for the carrying into effect of the authority hereby granted."

In pursuance of this resolution, on December 21, 1917, the Mindoro Sugar Company executed in favor of the Philippine Trust Company the deed of trust, Exhibit 6, transferring all of its property to it in consideration of the bonds it had issued to the value of P3,000,000, the value of each bond being \$1,000, which par value, with interest at 8 per cent per annum, the Philippine Trust Company had guaranteed to the holders, and in consideration, furthermore, of said trust corporation having guaranteed to the Philippine National Bank all the obligations contracted by the Mindoro Sugar Company, Charles J. Welch and Horace Havemeyer up to the aforesaid amount of P2,000,000. The aforementioned deed was approved by His Excellency, the Governor-General, upon recommendation of the Secretary of Agriculture and Natural Resources, and in accordance with the provisions of Act No. 2720 of the Philippine Legislature. Following are the clauses of said Exhibit 6 material to this decision:

"Whereas, for the purposes aforesaid, and in further pursuance of said resolutions of its board of directors and of its stockholders, the Company, in order to secure the payment of said First Mortgage, Twenty Year, Eight Per Cent, Gold Bonds, has determined to execute and deliver to said Philippine Trust Company, as trustee, a deed of trust of its properties hereinafter described, and the board of directors of the Company has approved the form of this indenture and directed that the same be executed and delivered to said trustee; and

"Whereas, all things necessary to make said bonds, when certified by said trustee as in this indenture provided, valid, binding, legal and negotiable obligations of the company and this indenture a valid deed of trust to secure the payment of said bonds, have been done and performed, and the creation and issue of said bonds, and the execution, acknowledgment and delivery of this deed of trust have been duly authorized;

"Now, therefore, in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor, purport and effect, and to secure the performance and observance of all the covenants and conditions herein contained and to declare the terms and conditions upon which said bonds are issued, received and held, and for and in consideration of the premises, and of the purchase or acceptance of such bonds by the holders thereof, and of the sum of one dollar, United States currency, to it duly paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the Mindoro Sugar Company, party of the first part, has sold and conveyed, and by these presents does sell and convey to the Philippine Trust Company, party of the second part, its successors and assigns forever:"

(Description of the property.)

In consequence of this transaction, the bonds, with their coupons were placed on the market and sold by the Philippine Trust Company, all endorsed as follows:

"This is to certify that the within bond is one of the series described in the trust deed therein mentioned.

"PHILIPPINE TRUST COMPANY

"by: (Sgd.)

PHIL. C. WHITAKER

"President"

"For value received, the Philippine Trust Company hereby guarantees the payment of principal and interest of the within bond. "Manila, Jan.-2, 1918

"PHILIPPINE TRUST COMPANY

"by: (Sgd.)

PHIL. C. WHITAKER

"President"

The Philippine Trust Company sold thirteen bonds, Nos. 1219 to 1231, to Ramon Diaz for P27,300, at a net profit of P100 per bond. The four bonds Nos. 1219, 1220, 1221, and 1222, here in litigation, are included in the thirteen sold to Diaz. The Philippine Trust Company paid the appellant, upon presentation of the coupons, the stipulated interest from the date of their maturity until the 1st of July, 1928, when it stopped payments; and thenceforth it alleged that it did not deem itself bound to pay such interest or to redeem the obligation because the guarantee given for the bonds was illegal and void.

The appellant now contends that the judgment appealed from is untenable, assigning the following errors:

"FIRST ERROR

"The lower court erred in sustaining the demurrer against the amended complaint, filed by defendant J. S. Reis (Reese) and consequently in dismissing the same with regard to this defendant.

"SECOND ERROR

"The lower court, without a proof to support it or an averment in defense by the defendant Philippine Trust Company, erred in finding hypothetically that if the guarantee made by this company be held valid, the trust funds and deposits in its hands would probably be endangered.

"THIRD ERROR

"The lower court erred in holding that the Philippine Trust Company has no power to guarantee the obligation of another juridical personality, for value received.

"The lower court erred in not recognizing the validity and effect of the guarantee subscribed by the Philippine Trust Company for the payment of the four bonds claimed in the complaint, endorsed upon them, and in

absolving said institution from the complaint.

"FIFTH ERROR

"The lower court erred in absolving the ex-directors of the Philippine Trust Company, Phil. C. Whitaker, O. Vorster, and Charles D. Ayton, from the complaint."

We shall not follow the order of the appellant's argument, deeming it unnecessary, but shall decide only the third and fourth assignments of error upon which the merits of the case depend. For the clear understanding of this decision and to avoid erroneous interpretations, however, we wish to state that in this decision we shall decide only the rights' of the parties with regard to the four bonds in question and whatever we say in no wise affects or applies to the rest of the bonds.

We shall begin by saying that the majority of the justices of this court who took part in the case are of opinion that the only point of law to be decided is whether the Philippine Trust Company acquired the four bonds in question, and whether as such it bound itself legally and acted within its corporate powers in guaranteeing them. This question was answered in the affirmative.

In adopting this conclusion we have relied principally upon the following facts and circumstances: Firstly, that the Philippine Trust Company, although secondarily engaged in banking, was primarily organized as a trust corporation with full power to acquire personal property such as the bonds in question, according to both section 13 (par. 5) of the Corporation Law and its duly registered by-laws and articles of incorporation; secondly, that being thus authorized to acquire the bonds, it was given implied power to guarantee them in order to place them upon the market under better, more advantageous conditions, and thereby secure the profit derived from their sale:

"It is not, however, ultra vires for a corporation to enter into contracts of guaranty or suretyship where it does so in the legitimate furtherance of its purposes and business. And it is well settled that where a corporation acquires commercial paper or bonds in the legitimate transaction of its business it may sell them, and in furtherance of such a sale it may, in order to make them the more readily marketable, indorse or guarantee their payment." (7 R. C. L., p. 604 and cases cited.)

"Whenever a corporation has the power to take and dispose of the securities of another corporation, of whatsoever kind, it may, for the purpose of giving them a marketable quality, guarantee their payment, even though the amount involved in the guaranty may subject the corporation to liabilities in excess of the limit of indebtedness which it is authorized to incur. A corporation which, has power by its charter to issue its own bonds has power to guarantee the bonds of another corporation, which has been taken in payment of a debt due to it, and which it sells or transfers in payment of its own debt, the guaranty being given to enable it to dispose of the bond to better advantage. And so guaranties of payment of bonds taken by a loan and trust company in the ordinary course of its business, made in connection with their sale, are not ultra vires, and are binding." (14-A C. J., pp. 742-743 and cases cited); thirdly, that although it does not clearly appear in the deed of trust (Exhibit 6) that the Mindoro Sugar Company transferred the bonds therein referred to, to the Philippine Trust Company, nevertheless, in the resolution of the board of directors (Exhibit 3), the president of the Philippine Trust Company was expressly authorized to purchase all or some of the bonds and to guarantee them; whence it may be inferred that subsequent purchasers of the bonds in the market relied upon the belief that they were acquiring securities of the Philippine Trust Company, guaranteed by this corporation; fourthly, that as soon as P3,000,000 worth of bonds was issued, and by the deed of trust the Mindoro Sugar Company transferred all its real property to the Philippine Trust Company, the cause or consideration of the transfer being, (1) the guarantee given by the purchaser to the bonds, and (2) its having likewise guaranteed its obligations and those of Welch and' Havemeyer in favor of the Philippine National Bank up to the amount of P2,000,000; fifthly, that in transferring its real property as aforesaid the Mindoro Sugar Company was reduced to a real state of bankruptcy, as the parties specifically agreed during the hearing of the case, to the point of having become a

nominal corporation without any assets whatsoever; sixthly, that such operation or transaction cannot mean anything other than that the real intention of the parties was that the Philippine Trust Company acquired the bonds issued, and at the same time guaranteed the payment of their par value with interest, because otherwise the transaction would be fraudulent, inasmuch as nobody would be answerable to the bond-holders for their value and interest; seventhly, that the Philippine Trust Company had been paying the appellant the interest accrued upon the four bonds from the date of their issuance until July 1, 1928, such payment of interest being, another proof that said corporation had really become the owner of the aforesaid bonds; and, eighthly, that the Philippine Trust Company has not adduced any evidence to show any other conclusions.

There are other considerations leading to the same result even in the supposition that the Philippine Trust Company did not acquire the bonds in question, but only guaranteed them. In such a case the guarantee of these bonds would, at any rate, be valid and the said corporation would be bound to pay the appellant their value with the accrued interest in view of the fact that they become due on account of the lapse of sixty (60) days, without the accrued interest due having been paid; and the reason is that it is estopped from denying the validity of its guarantee.

"* * * On the other hand, according to the view taken by other courts, which it must be acknowledged are in the majority, a recovery directly upon the contract is permitted, on the ground that the corporation, having received money or property by virtue of a contract not immoral or illegal of itself, is estopped to deny liability; and that the only remedy is one on behalf of the state to punish the corporation for violating the law." (7 R. C. L., pp. 680-681 and cases cited.)

"* * * The doctrine of ultra vires has been declared to be entirely the creation of the courts and is of comparatively modern origin. The defense is by some courts regarded as an ungracious and odious one, to be sustained only where the most persuasive considerations of public policy are involved, and there are numerous decisions and dicta to the effect that the plea should not as a general rule prevail whether interposed for or against the corporation, where it will not advance justice but on the contrary will accomplish a legal wrong." (14-A C. J., pp. 314-315.)

"The doctrine of the Supreme Court of the United States together with the English courts and some of the state courts is that no performance upon either side can validate an ultra vires transaction or authorize an action to be maintained directly upon it. However, the great weight of authority in the state courts is to the effect that a transaction which is merely ultra vires and not malum in se or malum prohibitum although it may be made by the state a basis for the forfeiture of the corporate charter or the dissolution of the corporation, is, if performed by one party, not void as between the parties to all intents and purposes, and that an action may be brought directly upon the transaction and relief had according to its terms." (14-A C. J., pp. 319-320.)

"When a contract is not on its face necessarily beyond the scope of the power of the corporation by which it was made, it will, in the absence of proof to the contrary, be presumed to be valid. Corporations are presumed to contract within their powers. The doctrine of ultra vires, when invoked for or against a corporation, should not be allowed to prevail where it would defeat the ends of justice or work a legal wrong." (Coleman vs. Hotel de France Co., 29 Phil., 323.)

"Guaranties of payment of bonds taken by a loan and trust company in the ordinary course of its business, made in connection with their sale, are not ultra vires, and are binding." (Broadway Nat. Bank vs. Baker, 57 N. E., p. 603.)

It has been intimated that according to section 121 of the Corporation Law, the Philippine Trust Company, as a banking institution, could not guarantee the bonds to the value of P3,000,000 because this amount far exceeds its capital of P1,000,000 of which only one-half has been subscribed and paid. Section 121 reads as follows:

"SEC. 121. No such bank shall at any time be indebted or in any way liable to an amount exceeding the

amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the following nature:

"(1) Moneys deposited with or collected by the bank;

"(2) Bills of exchange or drafts drawn against money actually on deposit to the credit of the bank or due thereto;

"(3) Liabilities to the stockholders of the bank for dividends and reserve profits."

This difficulty is easily obviated by bearing in mind that, as we stated above, the banking operations are not the primary aim of said corporation, which is engaged essentially in the trust business, and that the prohibition of the law is not applicable to the Philippine Trust Company, for the evidence shows that Mindoro Sugar Company transferred all its real property, with the improvements, to it, and the value of both, which surely could not be less than the value of the obligation guaranteed, became a part of its capital and assets; in other words, with the value of the real property transferred to it, the Philippine Trust Company had enough capital and assets to meet the amount of the bonds guaranteed with interest thereon.

Wherefore, the decision appealed from is reversed and the Philippine Trust Company is sentenced to pay to the appellant the sum of four thousand dollars (\$4,000) with interest at eight per cent (8%) per annum from July 1, 1928 until fully paid, and the costs of both instances. So ordered.

Avanceña, C. J., Ostrand, Villa-Real, Abad Santos, and Butte, JJ., concur.

Malcolm and Hull, JJ., concur in the result.

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