

**W. S. PRICE AND THE SULU DEVELOPMENT COMPANY, PLAINTIFFS  
AND APPELLANTS, VS. H. MARTIN, DEFENDANT AND APPELLANT.  
THE AGUSAN COCONUT COMPANY, DEFENDANT AND APPELLEE.**

*G.R. No. 37281. November 10, 1933*

Ponente: HULL, J.

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**HULL, J.:**

Plaintiffs brought suit in the Court of First Instance of Manila praying that a mortgage executed by the Sulu Development Company on its properties in favor of the Agusan Coconut Company be dissolved and declared null and void, the principal contentions being that at the stockholders' meeting in which the officers of the Sulu Development Company were elected and at which the proposed mortgage was approved of, 97 shares of stock of the Sulu Development Company were voted by the proxy of Mrs. Worcester, in whose name the stock at that time stood upon the books of the company, whereas defendant Martin claimed that he was the true owner and that he should have voted the stock.

From the records of the Sulu Development Company it appears that at the meeting of November 12, 1925, Martin presented evidence to the effect that he, and not Mrs. Worcester, was the owner of the 97 shares of stock. Copies of the documents relied upon by Martin were made a part of the record, but apparently no action was taken by the stockholders or by the directors, and at the meetings of November 12, 17, and 19, Mrs. Worcester's proxy apparently voted the stock without protest on the part of Martin or any other stockholder.

As far as the record shows, every formal action taken at those three meetings was unanimous, and Martin at the last two meetings was accompanied by two members of the Bar of the Philippine Islands as his counsel.

The Sulu Development Company from its inception up to the time of executing the contract was virtually owned and controlled by Martin. Price purchased one share of stock about a month before the called meeting but was not present at the meetings in question.

Another ground relied upon by plaintiffs is a claim that the mortgage was without consideration. The evidence shows that for years the Agusan Coconut Company, through its general manager, had been advancing sums through Martin in order that the Sulu Development Company might secure good and sufficient title to a large tract of land situated near Siasi and thereon develop a coconut plantation. The amount of money so advanced was in dispute, but between the meeting on November 12 and the final action on November 19, the attorneys of the Sulu Development Company, one of whom was also an accountant, and the attorneys of the Agusan Coconut Company went over the mutual accounts with care and arrived at the sum set forth in the mortgage. Had there been no agreement, suit would have been instituted by the Agusan Company against the Sulu Development Company.

There is also a claim that there was a parol agreement between Martin and Worcester, representing the two companies, that after the death of Mr. Worcester on May 2, 1924, the Agusan Coconut Company failed to comply with the terms and conditions of the so-called cultivation agreement, and Martin prayed in his special cross-complaint and counter-claim that the defendant Agusan Coconut Company be required to make such further

cash advances to "carry out the full scale development of the tract of land in the cultivation agreement and as contemplated therein."

The trial court, on timely objection, refused to receive the parol evidence as to the cultivation agreement, and after trial and a lengthy opinion, held that the mortgage in question was valid and refused to order its cancellation.

From that decision plaintiffs appeal and make the following assignments of error:

"The trial court erred:

"1. In refusing appellants the right to introduce evidence as to the 'cultivation agreement' extensively referred to by the parties herein.

"2. In refusing to reopen the case on motion filed in due form and manner by the plaintiffs and appellants herein, on the ground of newly discovered evidence, such motion having been filed before the rendition of the judgment herein.

"3. In finding that the plaintiff, W. S. Price, did not appear here as a plaintiff to defend his own right but for the purpose of giving aid to the defendant, Harry Martin.

"4. In ruling that altho the 97 shares voted by Mrs. Nanon L. Worcester at the meetings in question thru her proxy belonged to Harry Martin and were only held in trust by her late husband, Dean C. Worcester, yet such trusteeship was for the benefit of the Agusan Coconut Company, and that such company is the actual cestui que trust thereunder, in violation of the express terms of the trust agreement.

"5. In holding that Mrs. Nanon L. Worcester could legally vote the said 97 shares which she actually voted at the meetings in question, notwithstanding the facts as found by said court, that said shares belonged to H. Martin and were merely held in trust by her deceased husband.

"6. In finding that the 97 shares of stock in question had been adjudicated to Mrs. Nanon L. Worcester by the commissioners on claims against the estate of her deceased husband; that such adjudication had been approved by the Court of First Instance of the City of Manila, and that the said Nanon L. Worcester had inherited said shares by virtue of the will of her deceased husband.

"7. In holding in effect that there was a quorum in the pretended meetings of the stockholders of the Sulu Development Company alleged to have taken place on November 12, 17 and 19, 1925, particularly that one asserted to have been held on November 19, 1925, when in law and in fact there was no such quorum.

"8. In finding in effect that the meetings pretended to be held by the Sulu Development Company on the dates aforementioned were validly and legally held and that the action taken and proceedings had thereat were valid and effective.

"9. In finding that if the defendant H. Martin had had the 97 shares in question in his own name at the alleged meetings of the Sulu Development Company, he would have voted them in the same way and to the same effect as the said Nanon L. Worcester voted them.

"10. In not finding that there was attendant fraud, misrepresentation and deceit in the execution and issuance of the mortgage contract, Exhibit U.

"11. In not holding that said mortgage is null and void for want of legal consideration.

"12. In finding that the plaintiffs and appellants herein are legally bound by the said mortgage contract Exhibit U.

"13. In holding that the plaintiffs and appellants herein are legally estopped to contest the efficacy and validity of the mortgage contract, Exhibit U.

"14. In dismissing plaintiffs' complaint herein.

"15. In denying plaintiffs' motion for a new trial."

While defendant Martin appeals and assigns the following errors:

"1. The trial court erred in refusing to find that the one hundred shares of the capital stock of the appellant, the Sulu Development Company, delivered on November 23, 1922, by the appellant, H. Martin, to the late Dean C. Worcester, were so delivered in trust to be held and used for the benefit of the said H. Martin.

"2. The trial court erred in finding that the voting by Mrs. Nanon L. Worcester, in the meetings held by the stockholders of the appellant, the Sulu Development Company, on November 12, 17, and 19, 1925, was legal.

"3. The trial court erred in refusing to find that the mortgage involved in this litigation, purported to have been executed by the appellant, the Sulu Development Company, in favor of the appellee, the Agusan Coconut Company, is null and void.

"4. The trial court erred in excluding, as being within the statute of frauds, testimony regarding a certain verbal agreement entered into by and between the appellee, the Agusan Coconut Company, and the appellant, H. Martin, which agreement had been fully performed by the latter.

"5. The trial court erred in excluding as 'Hearsay Evidence', testimony regarding statements made by certain officials of the appellee, the Agusan Coconut Company.

"6. The trial court erred in excluding the testimony of the appellant, H. Martin, regarding matters of fact which occurred between him and certain officials of the appellee, the Agusan Coconut Company, who had died prior to the trial of this action."

An examination of the assignments of error will show that although this case in its main aspects is a simple one and confined to the questions, first, as to whether the mortgage was duly executed by the Sulu Development Company and, second, whether it was given for a valuable consideration, many side issues of no moment were urged upon the trial court, which probably accounts for the voluminous record with which we are confronted and numerous assignments of error which we do not deem it necessary to discuss in detail.

Plaintiffs contend that the transference on the books of the company of 97 shares of stock in the name of Mrs. Worcester was fraudulent and illegal. The evidence of record, however, under all the circumstances of the case, fails to demonstrate the allegation of fraud, and this court believes that she acted in good faith and in the honest belief that she had not only a legal right but a duty to participate in the stockholders' meeting.

As to whether the stock was rightfully the property of Martin, that is a question for the courts and not for a stockholder's meeting. Until challenged in a proper proceeding, a stockholder according to the books of the company has a right to participate in that meeting, and in the absence of fraud the action of the stockholders' meeting cannot be collaterally attacked on account of such participation. "A person who has purchased stock, and who desires to be recognized as a stockholder, for the purpose of voting, must secure such a standing by having the transfer recorded upon the books. If the transfer is not duly made upon request, he has, as his remedy, to compel it to be made." (Morrill vs. Little Falls Mfg. Co., 53 Minn., 371; 21 L. R. A., 175-178, citing Cook, Stock & Stockholders, par. 611; People vs. Robinson, 64 Cal., 373; Downing vs. Potts, 23 N. J. L., 66; State vs. Ferris, 42 Conn., 560; New York & N. H. R. Co. vs. Schuyler, 34 N. Y., 80; Bank of Commerce's App., 73 Pa., 59; Hoppin vs. Buffum, 9 R. I., 513; 11 Am. Rep., 291; Re St. Lawrence S. B. Co., 44 N. J. L., 529.)

As to the question of lack of consideration for the mortgage, throughout the brief for appellants it appears by the constant reiteration of the phrase that all the advances were made "by the Agusan Coconut Company and/or its then General Manager, the late Dean C. Worcester, to H. Martin and/or the Sulu Development Company."

It must be remembered that there is no dispute between the Worcester interests and the Agusan Coconut Company as to who advanced the money, namely, the Agusan Coconut Company, nor is there any difficulty in determining to whom the money was advanced. Although Martin was virtually the owner of all the capital stock of the Sulu Development Company, business was carried on in the name of the company, and the land and properties were secured in the name of the company, and up to the time of the execution of the mortgage and some time thereafter there was no claim from anybody that the money had been advanced to Martin instead of to the company. Even a repeated use of the questionable phrase "and/or" as to the grantor "and/or" as to the grantee, will not fabricate a life-raft on which a recalcitrant debtor can reach a safe harbor of repudiation.

We are therefore convinced that the contention that the mortgage was made without consideration was an afterthought without foundation in fact and in a vain attempt to avoid a legal and binding obligation.

We find no merit in the contention that the trial court should have concerned itself with an alleged parol contract between Martin and Dean C. Worcester, deceased. The alleged contract not being in writing or to be executed within a year, it is within the statute of frauds. The value of the rule is shown in this case as it was some time after Mr. Worcester's death before anything was heard of such an alleged agreement. Even if such an agreement had been made and it had been proper to receive proof thereof, it would not benefit plaintiffs as the mortgage was executed pursuant to a compromise agreement to settle the affairs between the two companies, and all the transactions between the two companies were merged and settled by that compromise.

The contention that a new trial should have been granted in order that plaintiffs could present in evidence a letter from Mr. Worcester to the late Governor-General Wood, is likewise without merit. The letter, even if admitted, would not have changed the result of these proceedings, as a fair reading of the letter is not repugnant to a single contention of defendant-appellee.

The judgment appealed from is therefore affirmed. Costs against appellants. So ordered.

Malcolm, Villa-Real, Abad Santos, and Imperial, JJ., concur.

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