

**ANGELES TAPIA VIUDA DE JONES, PLAINTIFF AND APPELLANT, VS.
P. D. CARMAN AND E. E. ELSE, DEFENDANTS AND APPELLEES.***G. R. No. 40890. November 27, 1934*

Ponente: BUTTE, J.

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The plaintiff-appellant is the widow of Walter E. Jones who perished in the fire which destroyed his residence in Pasay, Rizal, in November 24, 1929. His life was insured for \$50,000 with the Manufacturers Life Insurance Company of Toronto and for P10,000 with the Employers Liability Assurance Corporation Limited for both of which the appellee, E. E. Elser, is the Manila representative. The appellant was the beneficiary named in both policies.

It appears from Exhibit 20 dated January 9, 1930, that the Manufacturers Life Insurance Company had some doubt as to the cause of the insured's death and insisted on a thorough investigation. By a cable dated February 13, 1930, the company again asked for full report on any suspicious circumstances indicating suicide. On February 15, 1930, Elser made a full report (Exhibit 21) as to the circumstances of Jones's death and on March 18, 1930, the company approved the claim and authorized payment.

The Employers Liability Assurance Corporation, after their doubts as to the cause of Jones's death were cleared up by a thorough investigation, finally authorized payment of their accident policy on April 3, 1930. As Elser had assured the Manufacturers Life Insurance Company that the Employers Liability Corporation, the accident company, would approve the claim, payment of the policies of the former company was withheld until the latter company acted finally. Immediately after the receipt of the cable of April 3, 1930 (Exhibit 26), authorizing payment of the accident policy, the appellee Elser on April 4, 1930, paid the appellant in full in the manner hereinafter indicated and the appellant signed receipts, Exhibits 31 and 32, in full satisfaction of her claims as the policies of both companies.

The P100,000 due under the policy of the Manufacturers Life Insurance Company was paid in two checks: one for P20,000 which the appellant endorsed and delivered to Francisco A. Delgado and one for P80,000 retained by her. The gist of the present action is that the appellant accepted, endorsed and delivered to Francisco A. Delgado the said check for P20,000 under duress and intimidation. Seven thousand seventeen pesos and two centavos of the said P20,000 was delivered to the China Banking Corporation in payment of a past due promissory note executed by Walter E. Jones upon which the appellee P. D. Carman was an accommodation endorser.

The ultimate facts may be sifted out from the evidence as follows: In the interval between the date of the death of Jones (November 24, 1929) and April 4, 1930, when the said payments were made, the appellee Carman and his attorney had several interviews with the appellant there being present her uncle, Alberto Barretto, and her attorney, Alfredo Chicote, both of them able and experienced lawyers. In these conferences Carman and his attorney insisted that Jones had received the entire proceeds of the said promissory note to the China Banking Corporation, on which Carman was an accommodation endorser, and that Jones had assured the endorser that his

insurance would respond for said debt if not paid in his lifetime. They further insisted that a moral obligation rested on the widow to pay this debt. Mrs. Jones, by advice of her counsel, agreed to put P50,000 of the insurance money in escrow until the final determination of her liability, if any, on this debt. This was not satisfactory to Carman whose attorney thereupon, under date of March 24, 1930 (Exhibit D) wrote to Barretto:

"* * * that unless Mrs. Angeles Tapia Jones, the widow, agrees to save Messrs. Carman and Few harmless in this matter, I shall be obliged to bring an injunction suit tomorrow to prevent E. E. Elser from paying any insurance moneys whatsoever to her.

* * * * *

"Unless I have a satisfactory reply from you by tomorrow, Tuesday, at 8.30 a. m., I regret to state that I shall proceed to file suit as above stated. I sincerely trust this will be unnecessary because of the reflection against the good name of the late Walter E. Jones and of the possibility that, as a result of evidence which may be brought out in court, grave doubt may arise as to the manner in which he met his death."

Under date of March 25, 1930 (Exhibit C), Carman's attorney wrote to the insurance companies in care of Elser that Carman claimed an interest in the proceeds of the said policies on the life of Walter E. Jones and demanded that no payment should be made until Carman was fully protected against liability on account of said promissory note. Under date of April 2, 1930, Carman's attorney wrote a letter to Mrs. Jones, the appellant, which concludes as follows:

"In view of the foregoing, therefore, and of the apparently deliberate delay which has taken place in this matter I regret to advise that unless the liability of my clients, Messrs. Carman and Few has been taken care of absolutely by Friday noon, April 4, 1930, I have been instructed to bring action to protect my clients' interest in respect of insurance on the life of your deceased husband. I shall regret exceedingly to take such action but my clients feel that since you have taken the position that they should suffer thru the deceit practiced by your deceased husband in respect of his insurance money, you yourself will likewise have to suffer as, in the event suit is brought »by my clients in this matter, we shall be obliged to allege not only fraud but that your deceased husband met his death thru other than accidental means.

"I am sending a copy of this letter to Mr. E. E. Elser, the representative of the insurance companies interested in this insurance, for his information and guidance."

On the morning of April 4, 1930, as above stated, Elser, in his office, at the request of the appellant and in the presence of her counsel Barretto and Chicote, prepared, signed and delivered to the appellant the check for P80,000 and to Delgado, the check for P20,000. Thereupon she signed receipts for the same. He testified that although he had voluntarily and without security loaned money to the appellant, he never demanded or required that he should be reimbursed out of the proceeds of said policies and he never took part in any of the conferences above mentioned relating to the claim of Carman. He further testified that he notified McFie that he would pay the money due on the policies immediately upon receiving authority from the companies regardless of the demands of Carman's attorneys unless he was restrained by an order of the court. As above stated, he received that authority on April 3, 1930, and the money was paid on April 4, 1930.

Did Mrs. Jones pay her husband's debt with the China Banking Corporation upon which Carman was endorser because she was coerced or intimidated by the statement in the letter of Carman's attorney of April 2, 1930, as follows: "in the event suit is brought by my clients in this matter, we shall be obliged to allege not only fraud but that your deceased husband met his death thru other than accidental means"?

Circumstances may be conceived in which such a veiled threat might constitute intimidation which would annul a juristic act under the provisions of article 1267 of the Civil Code. The pertinent part of said article is as follows:

"Intimidation exists when one of the contracting parties is inspired with a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property, or to the person or property of his spouse, descendants or ascendants.

"In order to determine the extent of the intimidation, the age, sex, and status of the person must be considered." Disregarding the opinion and hearsay evidence, we are convinced that the appellant paid said debt under the advice of her counsel, Barretto and Chicote, voluntarily and because she was in dire need of the P80,000 which she received at the same time she endorsed the check for P20,000 to Delgado. She testified as follows:

"P.

CUANDO se expidieron los cheques, usted estaba representada por los Sres. Chicote y Barretto, iquienes estaban presentes?

—

R.

Yo fui con ellos.

"P.

¿Estaba tambien presente el Sr. Delgado cuando se expidieron los cheques?

—

R.

Si, senior, estaba el Sr. Delgado.

"P.

¿Se acuerda usted si el Sr. Delgado hablo con usted en aquella ocasion en que se expidieron los cheques?

—

R.

Me dio un cheque para que yo lo firmara de veinte mil pesos.

"P.

¿Pero usted no hablo con el, no tuvieron ustedes conversation en aquella manana cuando se expidieron los cheques?

—

R.

No recuerdo.

. "P.

¿Sabe usted si los Sres. Barretto y Chicote conversaron con el Sr. Delgado cuando se expidieron los cheques?

—

R.

Puede ser, pero no recuerdo bien.

"P.

Usted dice haber endosado un cheque, senora. ¿Cual era la razon por que usted hizo aquel endoso?

—

R.

Porque

* * *.

"Sr. ESCUDERO(interrumpe)

—

Es vaga. ¿Que" es ese cheque?

'Sr. DIAZ:

De veinte mil pesos. ¿Por que endoso usted ese cheque?

—

R.

Porque me obligaron.

"El Juzgado. ¿Quien le obligo?

—

R.

Las circunstancias, porque si no accedia a eso, me quedaria en miseria absoluta, porque no me querian pagar el producto del seguro.

"P.

Yo quisiera saber si fue el Sr. Delgado, como usted dice, quien lo mando firmar ese cheque de veinte mil pesos por las circunstancias que usted dice.

—

R.

Si, señor, el Sr. Delgado me puso delante este cheque para que yo lo firmara, pero obligada naturalmente.

"P.

¿Obligada por el Sr. Delgado?

—

R.

Obligada por ellos que querian esa cantidad y me amenazaron que no me pagaban si no firmaba.

"P.

¿A quienes se refiere usted al decir ellos?

—

R.

Al Sr. McFie como abogado de los Sres. Carman y Few.

"P.

¿Estaba presente el Sr. McFie en ese momento en que usted recibio ese cheque?

—

R.

No, señor.

"P.

¿Estaban presentes los Sres. Carman y Few?

—

R.

No, señor."

No mention in the foregoing testimony is made of any fear that the threatened litigation might prove that the appellant's husband had committed suicide and shame might be brought upon the appellant and her family. It is plain that the motivating cause and the circumstance that obliged her to make this settlement was "si no accedia a eso, me quedaria en miseria absoluta, porque no me querian pagar el producto del seguro." Her counsel, Barretto, who is also her uncle, testified that he went to see the appellant and said to her:

"Mira, realmente, si tu no te avienes a pagar esta cantidad te vas a ver imposibilitada, es decir, no vas a poder vivir, no vas a tener con quo vivir. Si no consigues dinero, te vas a morir de hambre."

We agree with the appellant's counsel "que la demandante estaba persuadida de que estas afirmaciones del demandado Carman y de su abogado eran completamente falsas puesto que de la investigacion que se habia hecho

por las companias aseguradoras se habia demostrado que la muerte de Walter E. Jones se habia debido a un accidente y no al suicidio." (Brief, page 50.) Her attorneys, to whom she exhibited said letter, would see instantly the futility of the threatened litigation; and in any event would never have permitted their client, the appellant, to sacrifice any rights under the coercion and intimidation of another.

The evidence leaves us without any doubt that the appellant paid the debt of her husband in order to obtain the release of the balance of the insurance money of which she was in dire need; and not because she feared the litigation threatened by Carman. Whether she did not also act from a sense of moral obligation to pay her husband's debt, we cannot say. But this is certain; in every step she took she had the advice of two able lawyers whose advice she accepted and followed. There is therefore no basis in the evidence for a finding that she paid her husband's debt because of a reasonable and well grounded fear of suffering an imminent and serious injury at the hands of the appellee Carman. (Cf. *Martinez vs. Hongkong & Shanghai Banking Corporation*, 15 Phil., 252, and *Vales vs. Villa*, 35 Phil., 769.)

We have considered all of the assignments of error of the appellant and find no ground for reversing the decision appealed from, which is hereby affirmed with costs against the appellant.

Street, Malcolm, Abad Santos, Hull, Vickers, Goddard, and Diaz, JJ., concur.

VILLA-REAL, J., with whom concurs IMPERIAL, J., dissenting:

The court below in dismissing the complaint of the plaintiff said the following:

"* * * Lo mas que resulta de las pruebas practicadas por la demandante es que ella se nego en la primera entrevista que tuvo con los demandados a pagar las reclamaciones de estos, y persistio en su negativa por bastante tiempo hasta que fue amenazada con un litigio que la impediria disfrutar enseguida del importe de las polizas de su finado marido. El hecho de que la demandante haya pagado las reclamaciones de los demandados para evitar las consecuencias que el citado litigio podria traer para ella y su familia, no constituye en si la intimidation que anula el consentimiento. Para ello es preciso algo mas. Era preciso que se hubiera privado de su libre voluntad y election. Seria preciso que hubiera obrado inducida por el miedo, mas bien que por su propio juicio. Al contrario, la demandante tuvo tiempo y oportunidad para que su juicio y discernimiento sustituyan el miedo, y resultando que ella estuvo en todas las ocasiones en que se puso en contacto personal con los demandados representada y asesorada por su tio carnal D. Alberto Barretto, Juez que fue de Primera Instancia de estas islas, y por un abogado notable y respetable como lo es D. Alfredo Chicote, es dificil creer que dicha demandante haya pagado las reclamaciones de los demandados mediante dolo e intimidacion."

The majority opinion in affirming the decision of the lower court says the following:

"The evidence leaves us without any doubt that the appellant paid the debt of her husband in order to obtain the release of the balance of the insurance money of which she was in dire need; and not because she feared the litigation threatened by Carman. Whether she did not also act from a sense of moral obligation to pay her husband's debt, we cannot say. But this is certain; in every step she took she had the advice of two able lawyers whose advice she accepted and followed. There is therefore no basis in the evidence for a finding that she paid her husband's debt because of a reasonable and well grounded fear of suffering an imminent and serious injury at the hands of the appellee Carman. (Cf. *Martinez vs. Hongkong & Shanghai Banking Corporation*, 15 Phil., 252, and *Vales vs. Villa*, 35 Phil., 769.)"

It will, therefore, be seen that while the court below found that the plaintiff paid the claims of the defendants in order to avoid the consequences that the litigation with which she was threatened might bring upon her and her family, but held that such threat did not constitute duress and did not annul her consent, the majority opinion finds that "the appellant paid the debt of her husband in order to obtain the release of the balance of the insurance

money of which she was in dire need; and not because she feared the litigation threatened by Carman." No exception and appeal has been taken from the said finding of the court below. While it is true that an appellate court may base its affirmance of a decision on a different theory or on different grounds provided the question involved was properly before the lower court (4 Corpus Juris, p. 662), the said finding of the lower court not being involved in this appeal, this court cannot reverse such finding.

If the court below found that the plaintiff paid the claims of the defendants in order to avoid the consequences of the litigation with which she was threatened by Carman and the majority of this court finds that if she did not do so she would not be able to collect the balance of the insurance money of which she was in dire need, the question arises as to whether such threats and peremptory need of money if she did not endorse the check of ₱20,000 were sufficient to constitute duress.

Article 1267 of the Civil Code provides that "intimidation exists when one of the contracting parties is inspired with a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property, or to the person or property of his spouse, descendants or ascendants, that in order to determine the extent of the intimidation, the age, sex, and status of the person must be considered, and that fear of displeasing persons to whom obedience and respect are due shall not annul a contract."

Three are, therefore, the necessary conditions in order that duress may vitiate consent and render a contract invalid, to wit: First, that the intimidation be the determining cause of the contract; second, that it be unjust; and third, that it be grave.

Was the threat of litigation, the consequences of which would blacken the memory of the deceased Walter E. Jones and injure the good name and reputation of his family, the determining cause of the endorsement of the check of P20,000?

As we have seen, the lower court so found, although the majority opinion found that the determining cause was her peremptory need of money and the fear that she could not collect the insurance money.

The next question is, was such cause unjust?

There is no doubt that Mrs. Jones was morally bound to pay the personal debts of her husband out of the insurance money of which she was his only beneficiary; but she has not the legal duty to do so. To threaten her with the bringing of an action, for the success of which it would be necessary to prove that the late Walter E. Jones committed suicide and fraud, in order to compel her to pay her husband's personal debts, is certainly not authorized by any law, and consequently, unjust.

The last question is whether such a threat is grave.

Judging from the earnestness with which the threats were made by Carman himself and through his attorney orally and by letters not only to Mrs. Jones directly but also through Barretto to bring an action to stop the payment of the insurance money, with the assurance that they have evidence to substantiate their contention, and judging from the letter written by McFie to E. E. Elser holding him responsible for double the amount claimed if he paid the insurance policy, there can be no doubt that McFie and Carman meant what they said. The fact that E. E. Elser reported to the insurance companies that the death of Jones was purely accidental and that the report was approved by the insurance companies concerned, did not prevent the latter from stopping the payment of the insurance policies if evidence were found subsequently indicating that Walter E. Jones committed suicide. The threats were, therefore, grave.

If at the time Mrs. Jones endorsed the check for P20,000 she had in mind the said unjust and grave threats, and the

fact that she would be reduced to misery if she could not collect the insurance money of her husband of which she was the sole beneficiary, she had no other choice than that of yielding to the demands of the defendants under such threats.

Both the lower court and the majority of this court consider the assistance of Barretto, uncle of Mrs. Jones, and of Alfredo Chicote as an element counteracting the effect of the threats as they must have advised her of the futility of such litigation and that she willingly endorsed the check. The advice given to his niece by Alberto Barretto is quoted both in the decision appealed from and in the majority opinion. From the terms of such advice it cannot be inferred that he indicated to her that she should pay the debt of her deceased husband as it was her moral obligation to do so; but on the contrary, Barretto placed before her the dilemma of either acceding to the demand of the defendants under said circumstances or living in misery. Of course, she was free to choose between the devil and the deep sea, but whichever side she chose, her choice could not be legally considered as done with her free will and volition.

I am, therefore, of the opinion that the decision appealed from should be reversed.

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