

## MERCANTILE BANK OF CHINA, PLAINTIFF AND APPELLEE, VS. QUIRINO UY QUIOCO, DEFENDANT AND APPELLANT.

*G.R. No. 41695. November 14, 1935*

Ponente: VILLA-REAL, J.

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### VILLA-REAL, J.:

This is an appeal taken by the defendant Quirino Uy Quioco from the judgment of the Court of First Instance of Manila, the dispositive part of which reads:

"In view of all the foregoing, judgment is rendered in favor of the plaintiff and against the defendant and the latter is hereby ordered to pay the former the value of the promissory note which is the subject matter of this suit, in the sum of thirty-seven thousand pesos (P37,000), with interest thereon at the rate of nine per centum (9%) per annum from March 5, 1929, until fully paid. The defendant is further ordered to pay the plaintiff the sum of three thousand seven hundred pesos (P3,700), as attorney's fees, expenses for collection, and the costs.

"The counterclaim of the defendant is dismissed. So ordered."

In support of his appeal the appellant assigns the following alleged errors committed by the trial court in its decision, namely:

"1. In not allowing the defendant to adduce evidence tending to establish that the sum of thirty-seven thousand pesos (P37,000), the amount of the promissory note claimed in the complaint, is only a renewal of other prior promissory notes dating back to the year 1925 when the defendant, jointly with the other bank directors, Khu Yek Chiong, S. C. Choy and Ty Hoan Chay, turned over to the bank the total sum of P113,688.98, or P28,422.24 each.

"2. In not holding that the sum of P37,000 claimed in the complaint is only an obligation assumed by the defendant to restore or cover a loss of the bank, and it was so understood long before the commencement of this action by the Bank Commissioner who now brings this action as receiver of the plaintiff bank.

"3. In dismissing the counterclaim of the defendant for the sum of P28,422.25.

"4. The trial court erred in ordering the defendant to pay the amount, of the promissory note Exhibit B, the subject matter of the complaint, which, being joint and several in character, should have been filed with and claim from the committee on claims and appraisal of the administration of the estate of the codebtor J. J. Go Chioco, who had died before the filing of the complaint."

The first question to be decided in this appeal, which is raised in the second alleged error assigned, is whether or not the trial court erred in not holding that the sum of P37,000, claimed in the complaint is only an obligation assumed by the defendant to restore or cover a loss of the bank, and that it was so understood long before the filing of the complaint by the Bank Commissioner who now brings this action as receiver of the plaintiff bank.

It is admitted that on March 5, 1929, pursuant to a resolution of the board of directors of the Mercantile Bank of China (Exhibit B), the herein defendant Quirino Uy Quioco and J. J. Go Chioco, now deceased, both directors of

the said bank, obtained a loan from the said bank in the amount of P37,000, executing in favor of said banking institution a promissory note worded as follows (Exhibit A):

"P37,000.00 Manila, P. I., March 5, 1929

"On demand after date, for value received, I/we jointly and severally, promise to pay to the Mercantile Bank of China, or order, at its office in the City of Manila, Philippine Islands, the sum of Thirty-seven thousand only pesos (P37,000), Philippine currency; with interest from March 5, 1929, at the rate of nine per cent (9%) per annum.

"In case of non-payment of this note at maturity, I/we jointly and severally, agree to pay interest at the rate of twelve per cent (12%) per annum on the said amount until paid and a further sum of P3,700 in full, without any deduction, as costs, expenses and attorney's fees for collection whether actually incurred or not.

(Sgd.) "QUIRINO UY QUIOCO

"Address: 401 Elcano, Manila

"pp. J.J. GO CHIOCO

(Sgd.) "F. GO CHIOCO

"I. R. Stamps

"Due: On demand"

The assistant manager of said plaintiff bank issued in favor of the defendant-appellant Quirino Uy Quioco a check for the sum of P7,000 (Exhibit C). The defendant-appellant contends that said promissory note was without consideration, because it was executed for the sole purpose of helping the said plaintiff bank to restore and maintain its commercial credit impaired by the losses which it had suffered in the exchange business.

The lower court, after making a detailed analysis of the evidence, reached the conclusion that the preponderance of the proven facts shows that the promissory note Exhibit A, in the amount of P37,000, issued jointly and severally by the herein defendant-appellant Quirino Uy Quioco and J. J. Go Chioco in favor of the Mercantile Bank of China, was in exchange for a check (Exhibit C) in the sum of P37,000 which said defendant-appellant Quirino Uy Quioco cashed in the same bank on March 7, 1929, receiving the amount thereof from the paying teller, as evidenced by the mark showing payment stamped on the check and by the different memorandums of the employees of the Mercantile Bank of China thru whose hands the said check and the money with which it was paid passed.

We have read the oral testimony and examined the documentary evidence carefully, and have considered their probative weight and value, and we have found no token or reason of sufficient persuasion justifying us in disturbing the conclusions reached by the trial court that the promissory note herein in question was issued for a valuable consideration and not merely for the purpose of helping the Mercantile Bank of China to restore and maintain its commercial credit.

Having arrived at this conclusion, it is not necessary to discuss the first alleged error assigned.

The second question to decide is whether or not the trial court erred in dismissing the defendant's counterclaim for P28,422.25.

The facts bearing on this question are those set out in the stipulation of facts found in the bill of exceptions, from which it clearly appears that the sum of P28,422.25 which said defendant-appellant Quirino Uy Quioco turned over to the Mercantile Bank of China was to contribute to the restoration of the credit of said bank in accordance with a resolution of the directors thereof, one of whom was the defendant Quirino Uy Quioco. In view of the fact that the Insular Treasurer was not satisfied with the conditions under which said sum should be refunded, after

sundry communications, each of the directors who made advances, one of them being the herein defendant Quirino Uy Quioco, individually signed a sworn statement under date of March 29, 1926, renouncing all right, interest and obligation, expressly or impliedly existing in his favor, with respect to the said sum of P28,422.25. The sworn statement signed by the said defendant Quirino Uy Quioco is as follows (Exhibit 11 of the stipulation) :

"I, Quirino Uy Quioco, of legal age and a resident of the City of Manila, P. I., do by these presents declare that the Mercantile Bank of China, a banking corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, with its principal office therein in the City of Manila, is not indebted or in any manner obligated to me for the assessment of P28,422.24, either as to principal or interest under the Resolution adopted at the meeting of their Board of Directors, held at their office on June 24, 1925, to wit:

" 'The letter dated May 4, 1925, from the acting Insular Treasurer which in part called attention to the impairment of the Bank's capital to the extent of approximately One hundred thirteen thousand six hundred eighty-eight and 98/100 pesos (P113,688.98) representing Shrinkage in the Peso equivalent of Foreign Currency Balances with Banks abroad from exchange operations during the year 1924, and recommending that the proper way of an adjustment of this shrinkage would be to assess the shareholders of the Bank, was again read and considered.

" 'It was the unanimous opinion of the Board that this shrinkage should be adjusted and that in the best interest of the Bank and its shareholders, it would, in the Board's opinion, be better to accept the proposition of the following shareholders to advance the Bank funds to cover the approximate amount of the shrinkage rather than assess each and every shareholder of the Bank as suggested by the Acting Treasurer:

Khu Yek Chiong P28,422.25

S. C. Choy 28,422.25

Ty Hoan Chay 28,422.24

Quirino Uy Tioco 28,422.24

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113,688.98

" 'Therefore, on motion of J. J. Go Chioco, seconded by Yu Ping Kun, the proposal of the following shareholders: Khu Yek Chiong, S. S. Choy, Ty Hoan Chay and Quirino Uy Tioco, to advance the Bank the sum of One hundred thirteen thousand six hundred eighty-eight and 98/100 pesos (P113,688.98) for the purpose of the replacement of the shrinkage in the Peso equivalent of Foreign Currency Balance with Banks abroad as to January 31, 1925, was accepted and approved. "

""Further, that the Board, under this resolution obligated the Bank to repay the sum of One hundred thirteen thousand six hundred eighty-eight and 98/100 pesos (P113,688.98) with interest thereon at the rate of ten per cent (10%) per annum from the date of advancement to the date of repayment in full, in such manner and at such time as the Board may, in its discretion, decide upon.

""Further, that the advance so made by the above-mentioned shareholders shall be considered and become a claim upon the assets of the Bank prior to that of any stockholder or stockholders, and in case of liquidation of the Bank, it shall be paid from the assets of the Bank before the liquidation of any stock held by the shareholders.'

"Further, that any rights, interest or obligation that may be expressed or implied in my favor in the said Resolution are hereby waived and no claim of assignment of claim will be made by me as against the Mercantile Bank of China in connection therewith, any understanding or document to the contrary

notwithstanding.

(Sgd.) "QUIRINO UY TIOCO

"Signed in the presence of:

(Sgd.) "H. J. BELDEN (Sgd.) HELEN JONES"

Although the contribution of the aforesaid sum of P28,422.24 made by the herein defendant-appellant Quirino Uy Quioco to restore the credit of the bank was not at the beginning a donation but a loan, inasmuch as it earned interest at the rate of 10 per cent per annum, nevertheless after renouncing all rights, interest, and obligations in his favor mentioned in the resolution reproduced in said sworn statement, said debt was condoned (article 1187, Civil Code), and converted into a special donation, and the said defendant-appellant cannot now claim its payment from said banking institution because the obligation has been totally extinguished (article 1156, Civil Code).

As to the question raised in the fourth assigned error, because the trial court ordered the defendant to pay the amount of the promissory note Exhibit B, it not appearing that the plaintiff-appellee bank has filed its claim with the committee on claims and appraisal of the administration of the properties of the deceased J. J. Go Chioco, joint and several codebtor of Quirino Vy Quioco, in accordance with the provisions of section 698 of the Code of Civil Procedure, it suffices to state that the question not having been raised in the first instance, it cannot now be raised on appeal by the defendant-appellant, hence, said fourth assigned error is riot well taken.

For the foregoing considerations, we are of the opinion and so hold, that a loan made to a bank to restore and maintain its commercial credit impaired by successive losses, over which the creditor renounces all his rights and interest in favor of said bank, is condoned, totally extinguishing thereby the obligations of the debtor, and converting the said loan into a mere donation.

Wherefore, finding no error in the appealed decision, the same is hereby affirmed in all its parts, with costs to the appellant. So ordered.

Malcolm, Imperial, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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