

**TIRSO GARCIA, BANK COMMISSIONER AND RECEIVER OF THE
MERCANTILE BANK OF CHINA, IN LIQUIDATION, PLAINTIFF AND
APPELLEE, VS. KHU YEK CHIONG, ANG GIOC CHIM, AND M.
ESCOLAR, THE LATT...**

G.R. No. 45154. March 31, 1938

Ponente: AVANCEÑA, C. J.

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AVANCEÑA, C. J.:

Khu Yek Chlong obtained a credit from the Mercantile Bank of China amounting, up to October 31, 1935, to P115,294.41. The copartnership of Ang Gioc Chim-M. Escolar & Co., formed by Ang Gioc Chim and M. Escolar, likewise obtained a credit from the same Mercantile Bank of China amounting to P18,805.08 on October 31, 1935. Khu Yek Chiong, jointly and severally with Ang Gioc Chim-M. Escolar & Co., guaranteed the obligations which the latter might contract by virtue of its credit. In addition, on October 22, 1932, Khu Yek Chiong delivered to the Mercantile Bank of China 1,500 shares of Cu Unjieng & Co., Ltd., as security for the payment of his own obligations and those which Ang Gioc Chim-M. Escolar & Co., might contract upon the account of said credit.

The present case was instituted by the plaintiff corporation Mercantile Bank of China to recover from Khu Yek Chiong the amount of P115,294.41 and from the same Khu Yek Chiong and Ang Gioc Chim-M. Escolar & Co., solidarily, the amount of P18,805.08.

The court ordered Khu Yek Chiong to pay the plaintiff P115,294.41 with interest thereon at 10 per cent per annum from October 31, 1935; and ordered the said Khu Yek Chiong and Ang Gioc Chim and M. Escolar to pay the plaintiff, jointly and severally, the sum of P18,806.08 with interest thereon at 10 per cent per annum from October 31, 1935. It was further ordered that the stock certificates placed as security be sold at public auction and the proceeds thereof applied to the payment of this judgment, refunding: the balance, if any, to Khu Yek Chiong.

From this judgment Ang Gioc Chim appealed.

It is alleged that the contract between the Mercantile Bank of China and Ang Gioc Chim-M. Escolar & Co., whereby credit was granted the latter on the solidary guaranty of Khu Yek Chiong, was later novated and Khu Yek Chiong assumed, as sole debtor, all the obligations and Ang Gioc Chim-M. Escolar & Co. In support of this allegation. Exhibits 1, 2, and 3 are relied upon. Exhibit 1, dated January 19, 1932, is a letter of Ang Gioc Chim to the Mercantile Bank of China with the information that the copartnership Ang Gioc Chim-M. Escolar & Co. had been transferred since May 31, 1925 to Khu Yek Chiong, who took charge of all the properties and assumed all the obligations of said copartnership. Exhibit 3, dated the 22d of the same month, is a letter of the Mercantile Bank of China to Khu Yek Chiong inquiring if he had really assumed the obligations of Ang Gioc Chim-M. Escolar & Co. Exhibit 2, bearing the same date as the preceding letter, is the letter of Khu Yek Chiong to the Mercantile Bank of China, confirming that he had assumed the obligations of Ang Gioc Chim-M. Escolar & Co.

This supposed transfer of the properties and obligations of the copartnership Ang Gioc Chim-M. Escolar & Co.,

which does not appear in writing, is contradicted by the fact that subsequently Ang Gioc Chim, as well as M. Escolar, had transactions with the plaintiff and drew checks against it in the name of the copartnership Ang Gioc Chim-M. Escolar & Co.

At any rate, these letters do not prove the alleged novation based on Khu Yek Chiong's having substituted himself as sole debtor of the Mercantile Bank of China in place of Khu Yek Chiong and Ang Gioc Chim-M. Escolar & Co. solidarily. This kind of novation cannot be made without the consent of the creditor (art. 1205 of the Civil Code). The consent of the Mercantile Bank of China to this novation is not shown, nor is it proven by Exhibits 1, 2, and 3. Moreover, these letters merely state that Khu Yek Chiong was willing to assume the obligations of Ang Gioc Chim-M. Escolar & Co., which does not, in the least, alter the extent of the obligation which he, as solidary surety, had already assumed. These letters do not say that Khu Yek Chiong assumed this obligation as sole debtor, relieving therefrom Ang Gioc Chim-M. Escolar & Co. In order that an obligation may be extinguished by another which substitutes it, it is necessary that it be so declared expressly, or that the old and new obligations be incompatible in every respect (art. 1205, Civil Code).

It is also alleged that with the acceptance by the Mercantile Bank of China of the shares of Cu Unjieng, the obligation of Ang Gioc Chim-M. Escolar & Co. was thereby paid. To reject this proposition, we have only to take into account the fact that said shares were not accepted as payment but as additional security for the obligations of Ang Gioc Chim-M. Escolar & Co.

In view of the foregoing, the appealed judgment is affirmed with costs against the appellant. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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