

ROSARIO GONZALEZ CASTRO VIUDA DE AZAOLA, PLAINTIFF AND APPELLANT, VS. GASTON O'FARRELL, DEFENDANT AND APPELLEE.

G.R. No. 45433. May 12, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

On May 19, 1923, the defendant purchased from the Philippine National Bank eight vessels for P300,000, paying P50,000 on account and the balance in semestral installment of P25,000 each, with interest at 7 per cent per annum from the 11th of the said month. In the deed executed for this purpose, the defendant undertook to give an additional security acceptable to the bank to guarantee the unpaid price. In compliance with this promise, the plaintiff, on July 7, 1923, executed a bond in favor of the Philippine National Bank wherein she guaranteed the payment of P125,000, being a part of the unpaid price of the eight vessels. The document reads as follows:

"DEED OF GUARANTY

"Know all men by these presents:

"That I, Rosario Gonzalez Castro Vda. de Azaola, of age, and residing in the City of Manila, P. I., do hereby execute and state that:

"Whereas, on May 11, 1923, Mr. Gaston O'Farrell, capitalist partner of the general commercial copartnership O'Farrell & Co., entered into a contract with the Philippine National Bank for the purchase of certain vessels set out in said contract;

"Whereas, the Philippine National Bank, aside from the securities which it holds over the said vessels, desires that I, the maker, also guarantee the sum of one hundred twenty-five thousand pesos (P125,000) on account of the balance of the purchase price of the said vessels, until the latter is fully paid;

"Now, therefore, I, the movant, guarantee the payment to the Philippine National Bank of the aforesaid amount of one hundred twenty-five thousand pesos (P125,000), being a part of the purchase price of the vessels purchased by Mr. Gaston O'Farrell from the said Bank as aforesaid, and as a guaranty or security of such payment, I place my property Nos. 24 and 30 on Barraca Street of this City, the Torrens title of which, No. 3568, is hereby deposited with the said Philippine National Bank, there to remain until the termination of the period for which this guaranty is executed, which shall be valid until the full payment of the purchase price of said vessels, or until this guaranty is substituted by another acceptable to the Bank;

"And I, the movant, also engage not to sell, mortgage or encumber the said property without the written consent of the Philippine National Bank, and that the said property should at all times answer for any damage which the Bank may suffer by reason of noncompliance with the contract executed by Mr. Gaston O'Farrell in favor of the said Bank.

"In witness whereof, I sign these presents in the City of Manila, P. I., today, July 7, 1923.

(Sgd.) "ROSARIO GONZALEZ CASTRO

VDA. DE AZAOLA

" UNITED STATES OF AMERICA

PHILIPPINE ISLANDS s.s.

CITY OF MANILA

"Before me, Notary Publica in and for the City of Manila, appeared Mrs. Rosario Gonzalez Castro Vda. de Azaola, whom I. know to be the same person who executed and signed the within document, stating that the same has been executed by her freely and voluntarily. The affiant exhibited no cedula because of her sex.

"In witness whereof, I hereby affix my signature in Manila, today, July 7, 1923.

(Sgd.) "CARLOS A. SOBRAL

"Notary Public

"My commission expires on December 31, 1928

"Notarial Register

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Book III"

On the date of the execution of the deed of sale of the eight vessels, that is, on May 19, 1923, the defendant, Carlos de Oglu and E. G. Abry organized a mercantile partnership styled O'Farrell & Co. and to do business under the firm name Malaysian Navigation Company, with a capital of P300,000 of which the defendant put up 50 per cent and each of the other two partners 25 per cent. In the deed executed for the purpose, it was stated that the defendant conveyed the eight vessels to the mercantile partnership and that the latter, in turn, assumed the whole obligation contracted by the former with the Philippine National Bank. It happened that the defendant did not pay his indebtedness to the Philippine National Bank, whereupon, the latter brought suit in the Court of First Instance of Manila, civil case No. 28269, against the defendant and the plaintiff, the latter as guarantor, claiming in the complaint the payment of the balance of P179,729.55. Judgment was rendered in said case against both the defendant and the plaintiff, sentencing them to pay the amount of P125,000 plus interest thereon at 7 per cent per annum from July 24, 1929. On appeal, this court affirmed the judgment. Sometime later, the plaintiff transferred to the Philippine National Bank her property situated on Barraca Street, City of Manila, in payment of the entire amount of the judgment obtained by the bank, namely, P142,500.

On June 26, 1925, while the civil case instituted by the Philippine National Bank was still pending in the Court of First Instance of Manila, some creditors of O'Farrell & Co. instituted the proceedings for the involuntary insolvency of the latter and its partners: the defendant, Carlos de Oglu and E. G. Abry, the proceedings having been docketed as civil case No. 28284. All were declared insolvent in said case, and after the usual proceedings, the court, upon petition of the defendant and by order of May 27, 1926, discharged the latter from all indebtedness and claims which under the Insolvency Law might be filed against his properties and which existed on June 26, 1925, the date of the filing of the application for insolvency against him, with the sole exception of those debts which had been duly approved or which the Insolvency Law itself excepted from such discharge.

Alleging that she consented to the contract of guaranty which she signed in favor of the Philippine National Bank through the fraud and false representations committed by the defendant, consisting in the assurances given to her that the guaranty which she was to sign was a mere form; that the bank was not going to execute the same; that the Malaysian Navigation Company was to be organized and would assume all defendant's indebtedness to the

bank; that he had sufficient properties to pay the obligation, and that the guaranty which she would put up would be temporary and for a short time, the plaintiff commenced the present action to recover from the defendant the sum of P142,500, paid by her to the Philippine National Bank, with legal interest thereon and the costs. The defendant categorically denied all the allegations of fraud and as a defense stated that the plaintiff executed the guaranty with full knowledge of its scope and effects. Upon submission of the case, the court rendered a decision on October 26, 1936, dismissing the complaint, without costs. The plaintiff appealed after her motion for a new trial was denied.

As errors committed in the appealed judgment, the plaintiff assigns the following: in not holding that her signature in the contract of guaranty, Exhibit B, was obtained by the defendant through fraud and false representations; in holding impliedly that her claim against the defendant is barred because of the latter's discharge decreed in the insolvency proceedings, despite the fact that the defendant has not even filed a statement of his debts; and in dismissing her complaint and denying her motion for a new trial.

The errors assigned can be jointly resolved by simply determining whether the fraud alleged by the plaintiff has been satisfactorily established. After considering the evidence adduced by the parties, the court concluded that the fraud was not satisfactorily established. We believe that in this the court committed no error. The alleged fraud is sought to be established by the testimony of the plaintiff herself, who repeated her allegations in the complaint to the effect that, before she signed the document, the defendant assured her that the guaranty which she would put up was a mere form; that the defendant would immediately organize the Malaysian Navigation Company which would assume his obligation to the bank; that the latter would not execute the guaranty nor would she pay the defendant's indebtedness; that the latter had sufficient properties; and that the guaranty would be merely temporary and for a short time, because as soon as the company is organized, it would attend to the indebtedness of the defendant. This evidence was weakened, if not destroyed, by the testimony of the defendant to the effect that the imputations of the plaintiff were untrue and that she agreed to become a guarantor and to sign the deed of guaranty after she was informed that she would be answerable to the bank in the amount of P125,000 in case of defendant's failure to pay the same. Of no importance is the fact discussed by the parties, of whether it was the defendant who required the execution of the contract of guaranty, or whether it was Carlos de Oglu, the nephew of the plaintiff. Whether it was the former or the latter, or both, the truth is that the plaintiff freely signed the deed of guaranty and thereby bound herself to pay the bank in case the defendant should fail to comply with his obligation. The deed of guaranty before us is decisive and shows conclusively that the plaintiff had knowledge of the nature and effect of her intervention. The plaintiff testified in Spanish and knows the language judging from what appears of record. The deed of guaranty is couched in Spanish and the plaintiff therein stated that she guaranteed the payment by the defendant of the sum of P125,000 and that her liability would last until the entire obligation of the defendant is fully paid; moreover, when she appeared before the notary public and ratified the deed, she stated that the contents thereof represented her free and voluntary act. In these circumstances, it is hardly believable that the defendant had availed himself of the alleged fraud and false representations attributed to him to have the plaintiff execute and sign the deed of guaranty. After a careful examination of the evidence of record, we are convinced that the plaintiff freely executed and signed the deed of guaranty with full knowledge of its scope and effects, and that for this purpose the defendant did not make use of the fraud and false representations attributed to him.

It is contended that from the very beginning the contract which the defendant entered into with the Philippine National Bank was tainted with fraud because the defendant acted as purchaser knowing that he purchased the vessels for the partnership O'Farrell & Co., which he was to organize; and that this was done by the defendant to give an opportunity to De Oglu to act as a broker and to collect from the bank as brokerage fee the amount of P3,000. Under the facts, the company was organized almost simultaneously with the consummation of the sale

and the execution of the consequent deed; this being so, and it not appearing that the bank was kept ignorant of the formation of the partnership or of the conveyance to the latter of the vessels which were the subject matter of the transaction, neither the act executed by the defendant nor the contract of sale which he executed with the Philippine National Bank can be characterized as fraudulent. As to the brokerage fee, De Oglu was entitled thereto if he really acted as broker, and his intervention is not objectionable from the moment the bank approved the same and agreed to pay his commission.

It is further argued that the following acts executed by the defendant establish fraud: (1) when the plaintiff signed the deed of guaranty on July 7, 1923, the eight vessels had already been conveyed by the defendant to O'Farrell & Co., hence, in connection with the bank, the defendant was only the debtor, while in the relations between the defendant and O'Farrell & Co., the latter was the debtor of the said bank; and the defendant did not inform the plaintiff of this state of affairs, but, on the contrary, fraudulently told her that the company was yet to be organized; (2) the defendant assured the plaintiff, to secure the latter's signature in the deed of guaranty, that this was a mere formality, whereas the guaranty was necessary because it was insistently required by the Philippine National Bank; it is contended that this is a concealment of the nature of the deed which is equivalent to fraud; and (3) the defendant made the plaintiff believe that upon the organization of the Malaysian Navigation Company, she would be relieved from her obligation as guarantor, whereas according to the articles of partnership of O'Farrell & Co., Exhibit E, this partnership was already constituted and organized at the time the deed of guaranty was signed on July 7, 1923, it is alleged that this is manifestly a false representation designed to induce the plaintiff to sign the document.

As to the first alleged act of the defendant, the same is based upon a false premise, because it is not true that the plaintiff, at the time the guaranty was signed, did not know that the firm O'Farrell & Co. was already organized. To show that she knew of the existence of the company it is sufficient to mention that at the beginning of the deed she stated the following: "Whereas, on May 11, 1923, Mr. Gaston O'Farrell, capitalist partner of the general commercial partnership O'Farrell & Co., entered into a contract with the Philippine National Bank for the purchase of certain vessels set out in said contract", which convincingly shows that she knew of the existence and organization of the aforesaid company which was not concealed to her by the defendant. As to the alleged second act, it is likewise based upon a false premise, as it has not been proved that the defendant led the plaintiff to believe that the guaranty which she would put up was a mere formality. And as to the third, it is also based upon an unsound premise and the argument is consequently without any persuasive force, for it is not true that the defendant assured the plaintiff that she would be relieved of her obligation as guarantor soon after the organization of the Malaysian Navigation Company, which is the firm name adopted by the partnership O'Farrell & Co.

Passing now to the merits of the plaintiff's action, there is no doubt that the same would lie under articles 1838 and 1839 of the Civil Code, because the plaintiff having paid the defendant's indebtedness to the bank, she, as guarantor, has a right to repeat the action against the defendant and to recover from him what she had advanced; but as the defendant was discharged in the involuntary insolvency proceedings and as the plaintiff's claim against him is not one of those excepted by the Insolvency Law, such discharge operated to release the defendant from the aforesaid claim, and this is barred pursuant to sections 68 and 69 of the Insolvency Law which read as follows:

"SEC. 68. No debt created by the fraud or embezzlement of the debtor, or by his defalcation as a public officer or while acting in a fiduciary capacity, shall be discharged under this Act, but the debt may be proved, and the dividend thereon shall be a payment on account of said debt. No discharge granted under this Act shall release, discharge, or affect any person liable for the same debt, for or with the debtor, either as partner, joint contractor, indorser, surety, or otherwise,

"SEC. 69. A discharge, duly granted under this Act, shall, with the exceptions aforesaid, release the debtor from all claims, debts, liabilities, and demands set forth in his schedule, or which were or might have been proved against his estate in insolvency, and may be pleaded by a simple averment that on the day of its date such discharge was granted to him, setting forth the same in full, and the same shall be a complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be prima facie evidence in favor of such fact and of the regularity of such discharge: Provided, however, That any creditor whose debt was proved or provable against the estate in insolvency who shall see fit to contest the validity of such discharge on the ground that it was fraudulently obtained and who has discovered the facts constituting the fraud subsequent to the discharge, may, at any time within one year after the date thereof, apply to the court which granted it to set it aside and annul the same."

According to the record, the Philippine National Bank commenced civil case No. 28269 against the defendant and the plaintiff on June 23, 1925 and the decision of this court affirming that of the Court of First Instance was promulgated on January 23, 1931. The application for involuntary insolvency was docketed in court on June 26, 1925, the defendant was declared insolvent on July 7th of the same year, and on May 27, 1926, he was discharged from all his obligations existing on the date of the filing of the application for involuntary insolvency. Under these facts the plaintiff, if she wanted to preserve her right to sue the defendant for what she had been sentenced to pay in her capacity as guarantor, should have filed a contingent claim in the insolvency proceedings to the end that the court may conditionally pass upon and approve it. In not taking this step the plaintiff lost her right of action and her claim is barred under sections 68 and 69 of the Insolvency Law.

The plaintiff contends that section 69 of the Insolvency Law should be interpreted in the sense that claims, debts and liabilities discharged thereby are only those included in the list filed by the insolvent which were or might have been proved against his estate; and concludes that her claim against the defendant not having been included in said list, the same is not barred and the defendant is still under a duty to pay the same. We believe that the suggested interpretation is incorrect because section 69 refers both to claims, debts and liabilities which have been included in the statement or list, as well as to those which were or might have been proved against the estate of the insolvent, and the plaintiff's claim falls within these two classifications. We say that the plaintiff's claim was included in the list submitted by the defendant, as insolvent, because there was specified therein his obligation of P152,858.79 to the Philippine National Bank, and this indebtedness virtually represents the claim which the plaintiff now seeks to enforce against the defendant. Furthermore, it is obvious that this claim of the plaintiff could, as we have indicated, have been filed in the insolvency proceedings as a contingent claim, to be paid after the finality of the judgment rendered against her in the case prosecuted by the Philippine National Bank. For the sake of brevity, we need only reiterate that, the fraud alleged by the plaintiff not having been established, her claim against the defendant is for this reason not excepted from the discharge, because it is not an obligation contracted by the defendant through fraud.

In view of the foregoing, the appealed judgment is affirmed, with the costs of this instance to the plaintiff and appellant. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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