

MERCANTILE BANK OF CHINA, PLAINTIFF AND APPELLEE, VS. JOHN GO HIAP, JUDICIAL ADMINISTRATOR OF THE TESTATE ESTATE OF THE DECEASED RAFAEL MACHUCA Y GOTAUCO, AND KHU YEK CHIONG, DE...

G.R. No. 45552. March 31, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The bank commissioner, in his capacity as liquidator of the Mercantile Bank of China, brought this action in the lower court, by way of appeal, after the committee on claims and appraisal, appointed in the Testate Estate of the deceased Rafael Machuca y Gotaucó (Civil Case No. 40266 of the Court of First Instance of Manila) had disallowed the claim presented to it by said bank against the administrator of the estate in question, for payment of the sum of P37,000 with interest thereon at 12 per cent per annum from February 27, 1929, plus P3,700 as attorney's fees. This was done in order that the claim might be considered and that the testate estate, or the defendant, in his capacity as administrator, and Khu Yek Chiong, might later be ordered to pay said sums to the bank in process of liquidation.

The bank commissioner and liquidator based his complaint upon a promissory note alleged by him to have been executed by Rafael Machuca, in life, and Khu Yek Chiong, as follows:

(Exhibit B)

"37,000.00

Manila, Philippine Islands

February 27/1929

"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 pesos (P37,000) only, Philippine Currency; with interest from Feb. 29, 1929, at the rate of nine (9%) per cent per annum.

"Upon maturity of this note, or any time thereafter, I/we, and each of us, do hereby authorize and empower the Mercantile Bank of China, at its option, to apply to the payment of this note any or all moneys and securities now or hereafter in the hands of Mercantile Bank of China on deposit or otherwise, to the credit of or belonging to the undersigned or any of them.

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

(Sgd.) "Rafael Machuca Gotauco

"Khu Yek Chiong"

The administrator of the testate estate of said deceased, as defendant, and Khu lek Chiong, also as defendant, separately filed an answer with a general and specific denial of all the allegations of the plaintiff, and the following special defenses:

- That the promissory note referred to in the complaint does not express the true intention of the parties who executed it;
- That said parties did not receive the sum of P37,000 mentioned in the promissory note; and
- That said promissory note was executed without consideration.

The lower court decided the case by ordering the defendants to pay jointly and severally to the plaintiff the sum of P37,000 claimed therein, with interest thereon at 12 per cent per annum from February 27, 1929, until fully paid, and also the sum of P2,000 as attorneys' fees and costs of the trial. The defendants appealed from the decision of the lower court and in the brief jointly filed by them, they attribute to said court the following alleged errors:

"1. The lower court erred in not holding that the four promissory notes for P37,000 each, originated from the earlier promissory notes aggregating P113,000 and the loss suffered by the Mercantile Bank of China in 1925.

"2. The lower court erred in finding that the deceased Rafael Machuca Gotauco received the cash value of the promissory note Exhibit B by cashing the Manager's check Exhibit E.

"3. The lower court erred in not finding that the Mercantile Bank of China bound itself at the time of the execution of the four promissory notes for P37,000 each, not to hold the signers thereof responsible, and to pay off the said notes from its surplus earnings.

"4. The lower court erred in rendering judgment, ordering the defendants jointly and severally to pay to the Mercantile Bank of China the amount of P37,000 with interest thereon at the rate of 12 per cent per annum counted from February 27, 1929, until fully paid, plus the sum of P2,000 as attorneys' fees and costs of the trial, and

"5. The lower court erred in denying the defendants' motion for reconsideration and a new trial."

During the trial, the parties presented two stipulations of facts, one dated July 17, 1935, and another so-called additional one dated November 25, 1936, together with the documents referred to therein now appearing in the record as Exhibits A to Z-2 and Exhibits 1 to 12. It appears from said stipulations and evidence that on February 27, 1929, Rafael Machuca Gotauco, in life, and Khu Yek Chiong executed in favor of the Mercantile Bank of China the above-quoted promissory note for the sum of P37,000. They then bound themselves, according to said promissory note, to pay the amount thereof on demand, together with interest thereon at the rate of 9 per cent per annum which would be increased to 12 per cent in case of default, plus P3,700 as attorneys' fees and costs of the trial. On the same day of the execution of said promissory note, they received from the manager of the Mercantile Bank of China the manager's check for the sum of P37,000, which now shows upon its face that it was paid by the bank or cashed a few days after the date of issuance thereof, by reason of the following circumstances: that it was endorsed by Rafael Machuca Gotauco who affixed his signature upon the back thereof; that the word paid is perforated in it and it bears the rubber stamp ordinarily used in the bank to indicate that a check has been duly paid; that in the list of checks paid or cashed on March 4, 1929, four days after the date of the check in question, the same appears as one of the several checks then cashed (Exhibit F); and that such fact appears in the Proof Sheet Paying Teller Department (Exhibit G). It likewise appears that as the bank suffered a loss amounting to

P113,688.98 in its foreign exchange business in 1925, the directors thereof agreed to cover said loss, for which purpose four of them, Khu Yek Chiong, the second appellant, S. C. Choy, Ty Hoan Chay and Quirino Uy Quioco were to make cash advances some giving P28,000, others P28,500. It appears furthermore that S. C. Choy, Ty Hoan Chay and Quirino Uy Quioco, on August 16, 1925, transferred one-half of their respective advances to Yu Ping Kun, Cu Yeg Keng and Go Chioco, respectively, and that the appellant Khu Yek Chiong, as well as the other three directors, on March 29, 1926, waived in favor of the bank any right he had or might have to recover his said advance, notwithstanding said bank's resolution of June 20, 1925. (Exhibits C and M-1), obligating and binding itself to repay them said advances with interest thereon at 10 per cent per annum from the time said advances were made.

The appellants attempted to prove during the trial that the advance made by the appellant Khu Yek Chiong had been returned to him in the same manner those of S. C. Choy and Quirico Uy Quioco had been returned to them, by means of the shrewd procedure of making some of their employees execute some promissory notes for the same amounts as their advances, with themselves as solidary guarantors, and later receiving the proceeds thereof. However, the preponderance of the evidence shows the contrary, and in the case of the appellant Khu Yek Chiong, this court is of the opinion that the advance, which he claims to have made, is absolutely different from the amount delivered to Rafael Machuca Gotauco by virtue of the promissory note executed by both of them in favor of the bank on February 27, 1929.

On the other hand, the promissory note claimed by the appellants to have been executed by one of the employees of Khu Yek Chiong and guaranteed by the latter, does not exist. On the contrary, it appears that said appellant, testifying at the trial, and in his letter addressed to the bank on November 27, 1931 (Exhibit W), clearly stated that he was disposed to pay the obligation demanded of him, provided the action brought against the appellant Rafael Machuca Gotauco for the recovery of said amount was decided first. He stated further that the promissory note in question has absolutely nothing to do with the losses suffered by the bank in 1925, as it was expressly made to appear in the minutes of the bank of September 8, 1930, of which Exhibit T is a copy, and in the letter fully quoted in said Exhibit, which Khu Yek Chiong, in his capacity as president of said bank, had addressed to the bank commissioner on the same date.

Therefore, the question whether or not Khu Yek Chiong, having made a cash advance to the bank in 1925 for the purpose of restoring part of its losses, is entitled now to recover it with interest thereon, may and should be decided in the same manner as that raised by the defendant in case G. R. No. 41695, entitled *Mercantile Bank of China vs. Uy Quioco* (34 Off. Gaz., 1626). A bank official, who, as creditor thereof, condones a loan granted by him thereto for the purpose of restoring it and maintaining its commercial credit impaired by reason of great losses, as the appellant Khu Yek Chiong did in this case in the most formal manner possible, by executing therefor a document of the nature of Exhibit M, converts said loan into a mere donation, and does not entitle him to recover it either fully or partially.

The contention of the appellant John Go Hiap that the promissory note in question is a renewal of or merely represents some former obligations of his coappellant Khu Yek Chiong, for which Ong Pue, Ong Si Teng, Gwo Chay and Yu Guanjo later were responsible, is not supported by the evidence. It is based on mere conjectures. On the contrary, the evidence and stipulations above-stated show that the deceased Rafael Machuca Gotauco received the amount expressed in the promissory note Exhibit B under the circumstances and in the manner and time already mentioned. In addition to the foregoing, it may be stated that there is the evidence Exhibit N, consisting in a resolution of the bank dated January 30, 1929, which literally reads as follows:

"Resolved: That a demand loan of pesos thirty-seven thousand (P37,000) is hereby granted to Mr. Rafael Machuca Gotauco, said loan to be secured by the personal signature of Mr. Khu Yek Chiong, with interest at

the rate of 9 per cent per annum."

It was precisely by virtue of said resolution that it was possible for the deceased to obtain the loan of P37,000. Had the promissory note in question been a mere renewal, or if it had some relation with former accounts of Khu Yek Chiong or of the other persons above-mentioned, or had Rafael Machuca Gotauco signed it merely for accommodation, something to that effect would have been stated or insinuated at least in the resolution, or at all events in said promissory note. For all these reasons, it seems clear to this court that the first four errors attributed to the lower court by the appellants are absolutely unfounded.

With respect to the last error, it being a mere corollary of the first four, it may be stated that the lower court did not commit the same and that said court acted correctly in denying the appellants' motion for a new trial based on the grounds therein stated.

Wherefore, the decision and judgment appealed from being in accordance with law, they are affirmed in toto, with costs to the appellants. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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