

MARIA MARTINEZ, PETITIONER, VS. THE YEK TONG LIN FIRE & MARINE INSURANCE CO., RESPONDENT.*G.R. No. 45980. April 20, 1939*

Ponente: CONCEPCION, J.

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Maria Martinez appeals to this court on certiorari from the decision of the Court of Appeals which modified the judgment of the Court of First Instance of Manila, rendered in a case filed by the herein petitioner, as plaintiff, against the Central Brokerage Co., Inc., and the Yek Tong Lin Fire & Marine Insurance Co., as defendants. The judgment of the Court of First Instance ordered the defendants to pay to the plaintiff, jointly and severally, the sum of P3,258.70, plus the legal interest thereon from August 30, 1934, the date of the filing of the complaint, and the costs. The Court of Appeals affirmed this judgment except in so far as it makes liable the herein respondent, the Yek Tong Lin Fire & Marine Insurance Co., Ltd., dismissing the complaint with respect to said corporation.

From the statement of facts set out in the decision of the Court of Appeals, it appears that:

"On July 13, 1934, the Central Brokerage Co., Inc., was duly registered as a corporation in the Bureau of Commerce. One of its incorporators and directors was Jesus Lontoc (Exhibit A). On July 25, 1934, said corporation, through its president and/or manager, H. A. Wendt, applied for a certificate of authority to engage in brokerage business in the Philippines (Exhibit B). On August 8, 1934, the Central Brokerage Co., Inc. as principal, and the Yek Tong Lin Fire & Marine Insurance Co., Ltd., a corporation duly organized and existing under and by virtue of the laws of the Philippines, as surety, bound themselves for a period of one (1) year to pay, jointly and severally, an amount not to exceed P20,000 to the Government of the Philippine Islands, or to whom it may concern, for the purpose of securing the payment to any person who may sustain any loss or damage by reason of any fraud or negligence connected with or growing out of the nonperformance of the obligations stipulated in the bond (Exhibit C). On August 9, 1934, the certificate of authority applied for by the Central Brokerage Co., Inc. was issued by the Bureau of Commerce. Jesus Lontoc took all the necessary steps for the issuance of said authority, but Lontoc was not a broker. The authority of the Central Brokerage Co., Inc., is still subsisting. On August 21, 1934, the plaintiff, who was a licensed broker, purchased for J. Lontoc of the Central Brokerage Co., Inc., 5,000 shares of the Baguio Gold Mining Co. (Exhibit F-1), the price of which was paid by said corporation by means of checks for P1,020 and P680 drawn by the corporation on August 22 and 24, 1934, respectively, upon the Philippine National Bank in favor of the plaintiff. Said checks were signed by Jesus Lontoc, as manager, and H. A. Wendt, as president, of the Central Brokerage Co., Inc., the name of the corporation appearing typewritten over and above said signatures (Exhibits E and E-1). On August 22, 1934, Jesus Lontoc ordered the plaintiff to purchase 11,000 shares of the Baguio Gold Mining Co. at P0.34 a share. The price thereof amounting to P3,758.70 including the brokerage charges (Exhibits G-1, G-2, F-2, F-3, H and H-1), has not been paid by the defendants Central Brokerage Co., Inc., and the Yek Tong Lin Fire & Marine Insurance Co., Ltd., except P500 paid by Jesus Lontoc on August 24, 1934 (p. 11, t. s. n.; Exhibit 1); despite demands made upon said defendants to do so (Exhibits I and 1-1). On August 23, 1934, in a letter addressed by Jesus Lontoc to the Baguio Gold Mining Co., he instructed said mining company to transfer the 11,000 shares in his name (Exhibit H-2.). The plaintiff never had any personal transaction with Jesus Lontoc (p. 9, t. s. n.). On August 23, 1934, at 9 a. m., the office of Fleming & Williamson, transfer agents of

the Baguio Gold Mining Co., received the originals of Exhibits H and H-l, and pursuant thereto and to a letter received from Jesus Lontoc (Exhibit H-2) said 11,000 shares of the Baguio Gold Mining Co. were transferred in the name of Jesus Lontoc. On August 24, 1934, 5,000 of said shares were transferred to Hess Investment Co. Inc.; and on August 27, 1934, 6,000 of said shares were transferred to A. Elsingre (p. 14, t. s. n.). According to the rules of the exchange the price of shares purchased must be paid in cash within 48 hours (p. 15, t. s. n.)."

In view of the foregoing facts, the Court of Appeals reached the conclusion that a contractual relation arose between the plaintiff, the herein petitioner, and the defendant corporation, and held that said corporation was bound to live up to its part of the contract entered into by its manager, Jesus Lontoc. This part is to pay the price of the shares purchased by it; but as to the liability of the other defendant, the Yek Tong Lin Fire & Marine Insurance Co., Ltd., the Court of Appeals found no reason to make it liable under the terms of its bond. This is the part of the decision that has been appealed.

Before taking the appeal, the plaintiff filed a motion for reconsideration in the Court of Appeals on the ground that the said court has entirely put out of view paragraph (c) of the bond of the said surety company, which paragraph reads:

" (c) That with the exception of the cases where he has underwritten an issue of securities and is reselling them to the public, he shall not purchase and sell for his own account" (Italics ours.)

The petitioner contended that the court, having held that the Central Brokerage Co., Inc., had sold the shares of the plaintiff on its behalf, it should have applied the said paragraph (c) of the bond, for the violation of which by the Central Brokerage Co., Inc., the surety corporation was liable under its bond. The motion for reconsideration was denied.

One of the assignments of error made by the petitioner on appeal consists in the reproduction of her contention just mentioned, namely:

"The Court of Appeals erred and abused its discretion in rendering judgment in disregard of paragraph (c) of the bond."

In denying the motion for reconsideration, the Court of Appeals entered the following resolution:

"This is a motion for reconsideration of the decision rendered in this case on December 29, 1937, in so far as it dismisses the complaint against the Yek Tong Lin Fire & Marine Insurance Co., Ltd., without costs.

"Counsel for the plaintiff contend that clause (c) of the bond regarding obligations of the principal, which provides :

" 'That with the exception of the cases where he has underwritten an issue of securities and is reselling them to the public, he shall not purchase and sell for his own account', renders the Yek Tong Lin Fire & Marine Insurance Co., Ltd., liable upon its bond.

"In the decision rendered in this case we did not hold that the Central Brokerage Co., Inc., had purchased 11,000 shares of the Baguio Gold Mining Co. for its account. This was denied by the Central Brokerage Co., Inc., because, as claimed by it, the order for the purchase thereof was made by Jesus Lontoc when he was no longer its manager, he having resigned his position the day before the order was given, and the resignation was accepted that same day by the board of directors of the brokerage company. In fact, the shares thus purchased were disposed of by Jesus Lontoc for his own benefit and not for that of the brokerage company. What we did hold in our decision is that in view of the circumstance attending said purchase of 11,000 shares of the Baguio Gold Mining Co., Inc., the defendant Central Brokerage Co., Inc., as far as the plaintiff was concerned, was liable to pay for the price thereof, because 'she was entitled to rely upon the fact that he was the manager of the defendant corporation and to act upon it.' The liability of the Central Brokerage Co., Inc., is not made to rest

upon the fact that it had made the purchase of said shares of stock, but upon the ground of estoppel. If the Central Brokerage Co., Inc., did not purchase the said shares, it is evident that the Yek Tong Lin Fire & Marine Insurance Co., Ltd., can not be held liable upon its bond." (Italics ours.)

The portion underlined does not seem to tally with what the Court of Appeals itself said in its decision as to the participation of the Central Brokerage Co., Inc., in the contract of sale of 11,000 shares of the Baguio Gold Mining Co. A portion of the decision, after setting forth various findings as to how the said shares were acquired by Jesus Lontoc, as an incorporator, director and manager of the Central Brokerage Co. Inc., and as to how this corporation paid the value of said 11,000 shares, states the following:

"The facts established in this case warrant the conclusion that a contractual relation arose between the plaintiff and the defendant corporation. Said defendant is bound to perform its part of the contract entered into by its manager or agent. That part is to pay the price of the shares purchased for it."

According to this, the Court of Appeals arrived at the conclusion that the contract of sale of the 11,000 shares of Baguio Gold Mining Co. took place between the plaintiff and the defendant, Central Brokerage Co., Inc.; but in the resolution denying the motion for reconsideration, it takes the view that "the liability of the Central Brokerage Co., Inc., is not made to rest upon the fact that it had made the purchase of said shares of stock, but upon the ground of estoppel."

"Upon the ground of estoppel", that is to say, the Central Brokerage Co., Inc., by its own acts, is estopped from denying that it has purchased the shares.

In view of the foregoing facts, there is no question that Central Brokerage Co., Inc., purchased the aforesaid 11,000 shares of Baguio Gold Mining Co. upon its own account, and thereafter sold them also upon its own account, a part to Hess Investment Co., Inc.; and a part to A. Elsingre, in violation of its obligations as a broker, for as such broker it could neither purchase nor sell shares upon its own account. The compliance with this obligation was guaranteed by the surety under paragraph (c) of the bond above transcribed.

Wherefore, the appealed decision is reversed, and the Yek Tong Lin Fire & Marine Insurance Co., Ltd., is likewise ordered to pay to the petitioner, jointly and severally with the Central Brokerage Co., Inc., the sum of P3,258.70, with legal interest thereon from August 30, 1934, the date of the filing of the complaint, with the costs to the respondents. So ordered.

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

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