

ANA RIVERA, PLAINTIFF AND APPELLANT, VS. PEOPLES BANK AND TRUST CO., DEFENDANT AND APPELLEE. MINNIE STEPHENSON, IN HER CAPACITY AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF EDGA...

G.R. No. 47757. April 17, 1942

Ponente: OZAETA, J.

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OZAETA, J.:

The question raised in this appeal is the validity of the survivorship agreement made by and between Edgar Stephenson, now deceased, and Ana Rivera, appellant herein which reads as follows:

"SURVIVORSHIP AGREEMENT

"Know All Men by These Presents:

"That we hereby agree with each other and with the PEOPLES BANK AND TBUST COMPANY, Manila, Philippine Islands (hereinafter called the Bank), that all moneys now or hereafter deposited by us or either of us with the Bank in our savings account shall be deposited in and received by the Bank with the understanding and upon the conditions that said money be deposited without consideration of its previous ownership, and that said money and all interest thereon, if any there be, shall be the property of both of us as joint tenants, and shall be payable to and collectible by either of us during our joint lives, and after the death of one of us shall belong to and be the sole property of the survivor, and shall be payable to and collectible by such survivor.

"And we further covenant and agree with each other and the Bank, its successors or assigns, that the receipt or check of either of us during our joint lives, or the receipt or check of the survivor, for any payment made from this account, shall be valid and sufficient release and discharge to the Bank for such payment.

"The Bank is hereby authorized to accept and deposit to this account all checks made payable to either or both of us, when endorsed by either or both of us or one for the other.

"This is a joint and several agreement and is binding upon each of us, our heirs, executors, administrators, and assigns.

"In witness whereof we have signed our names hereto this 17th day of October, 1931.

"Witnesses:

"(Sgd.) EDGAR STEPHENSON

"(Sgd.) ANA RIVERA

"Address: 799 Sta. Mesa, Manila

"Witnesses:

"(Sgd.) FRED W. BOHLER

"(Sgd.) Y. E. Cox

"S. A. #4146"

Ana Rivera was employed by Edgar Stephenson as housekeeper from the year 1920 until his death on June 8, 1939. On December 24, 1929, Stephenson opened an account in his name with the defendant Peoples Bank by depositing therein the sum of P1,000. On October 17, 1931, when there was a balance of P2,072 in said account, the survivorship agreement in question was executed and the said account was transferred to the name of "Edgar Stephenson and/or Ana Rivera." At the time of Stephenson's death Ana Rivera held the deposit book, and there was a balance in said account of P701.43, which Ana Rivera claimed but which the bank refused to pay to her upon advice of its attorneys, who gave the opinion that the survivorship agreement was of doubtful validity. Thereupon Ana Rivera instituted the present action against the bank, and Minnie Stephenson, administratrix of the estate of the deceased, intervened and claimed the amount for the estate, alleging that the money deposited in said account was and is the exclusive property of the deceased.

The trial court held that the agreement in question, viewed from its effect during the lives of the parties, was a mere power of attorney authorizing Ana Rivera to withdraw the deposit, which power terminated upon the death of the principal, Edgar Stephenson; but that, viewed from its effect after the death of either of the parties, the agreement was a donation mortis causa with reference to the balance remaining at the death of one of them, which, not having been executed with the formalities of a testamentary disposition as required by article 620 of the Civil Code, was of no legal effect.

The defendant bank did not appear in this Court Counsel for the intervenor-appellee in his brief contends that the survivorship agreement was a donation mortis causa from Stephenson to Ana Rivera of the bank account in question and that, since it was not executed with the formalities of a will, it can have no legal effect.

We find no basis for the conclusion that the survivorship agreement was a mere power of attorney from Stephenson to Ana Rivera, or that it is a gift mortis causa of the bank account in question from him to her. Such conclusion is evidently predicated exclusive owner of the funds deposited in the bank, which assumption was in turn based on the facts (1) that the account was originally opened in the name of Stephenson alone and (2) that Ana Rivera "served only as housemaid of the deceased." But it not infrequently happens that a person deposits money in the bank in the name of another; and in the instant case it also appears that Ana Rivera served her master for about nineteen years without actually receiving her salary from him. The fact that subsequently Stephenson transferred the account to the name of himself and/or Ana Rivera and executed with the latter the survivorship agreement in question although there was no relation of kinship between them but only that of master and servant, nullifies the assumption that Stephenson was the exclusive owner of the bank account. In the absence, then, of clear proof to the contrary, we must give full faith and credit to the certificate of deposit, which recites in effect that the funds in question belonged to Edgar Stephenson and Ana Rivera; that they were joint owners thereof; and that either of them could withdraw any part or the whole of said account during the lifetime of both, and the balance, if any, upon the death of either, belonged to the survivor.

Is the survivorship agreement valid? Prima facie, we think it is valid. It is an aleatory contract supported by a lawful consideration—the mutual agreement of the joint depositors permitting either of them to withdraw the whole deposit during their lifetime, and transferring the balance to the survivor upon the death of one of them. The trial court said that the Civil Code "contains no provisions sanctioning such an agreement." We think it is covered by article 1790 of the Civil Code, which provides as follows:

"ART. 1790. By an aleatory contract one of the parties binds himself, or both reciprocally bind themselves, to give or to do something as an equivalent for that which the other party is to give or do in case of the occurrence of an event which is uncertain or will happen at an indeterminate time."
(See also article 1255)

The case of *Macam vs. Gatmaitan* (decided March 11, 1937), 36 Off. Gaz., 2175, is in point. Two friends, Juana Gatmaitan and Leonarda Macam, who had lived together for some time, agreed in writing that the house of strong materials which they bought with the money belonging to Leonarda Macam and the Buick automobile and certain furniture which belonged to Juana Gatmaitan shall belong to the survivor upon the death of one of them and that "this agreement shall be equivalent to a transfer of the rights of the one who dies first and shall be kept by the survivor." After the death of Leonarda Macam, her executrix assailed that document on the ground that with respect to the house the same constituted a donation *mostis causa* by Leonarda Macam in favor of Juana Gatmaitan. In affirming the judgment of the trial court absolving the defendants from the complaint this Court speaking through Chief Justice Avanceña, said:

"This court is of the opinion that Exhibit C is an aleatory contract whereby, according to article 1790 of the Civil Code, one of the parties or both reciprocally bind themselves to give or do something as an equivalent for that which the other party is to give or do in case of the occurrence of an event which is uncertain or will happen at an indeterminate time. As already stated, Leonarda was the owner of the house and Juana of the Buick automobile and most of the furniture. By virtue of Exhibit C, Juana would become the owner of the house in case Leonarda died first, and Leonarda would become the owner of the automobile and the furniture if Juana were to die first. In this manner Leonarda and Juana reciprocally assigned their respective property to one another conditioned upon who might die first, the time of death determining the event upon which the acquisition of such right by the one or the other depended. This contract, as any other contract, is binding upon the parties thereto. Inasmuch as Leonarda had died before Juana, the latter thereupon acquired the ownership of the house, in the same manner as Leonarda would have acquired the ownership of the automobile and of the furniture if Juana had died first." (36 Off. Gat, 2176.)

Furthermore "it is well established that a bank account may be so created that two persons shall be joint owners thereof during their mutual lives, and the survivor take the whole on the death of the other. The right to make such joint deposits has generally been held not to be done away with by statutes abolishing joint tenancy and survivorship generally as they existed at common law." (7 Am. Jur., 299.)

But although the survivorship agreement is *per se* not contrary to law, its operation or effect may be violative of the law. For instance, if it be shown in a given case that such agreement is a mere cloak to hide an inofficious donation, to transfer property in fraud of creditors, or to defeat the legitime of a forced heir, it may be assailed and annulled upon such grounds. No such vice has been imputed and established against the agreement involved in this case.

The judgment appealed from is reversed and another judgment will be entered in favor of the plaintiff ordering the defendant bank to pay to her the sum of P701.43, with legal interest thereon from the date of the complaint and the costs in both instances.

So ordered

Yulo, C.J., Moran, Paras, and Bocobo, JJ., concur.

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