

NGO TIAN TEK & NGO HAY, PETITIONER, VS. PHILIPPINE EDUCATION CO., INC., RESPONDENT.*G.R. No. 48113. April 07, 1947*

Ponente: PARAS, J.

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The plaintiff, Philippine Education Co., Inc., instituted in the Court of First Instance of Manila an action against the defendants, Vicente Tan alias Chan Sy and the partnership of Ngo Tian Tek and Ngo Hay, for the recovery of some P16,070.14, unpaid cost of merchandise purchased by Lee Guan Box Factory from the plaintiff and five other corporate entities which, though not parties to the action, had previously assigned their credits to the plaintiff, together with attorney's fees, interest and costs. By agreement of the parties, the case was heard before a referee, Attorney Francisco Dalupan, who in due time submitted his report holding the defendants jointly and severally liable to the plaintiff for the sum of P16,070.14, plus attorney's fees and interest at the rates specified in the report. On March 6, 1939, the Court of First Instance of Manila rendered judgment in accordance with said report, except as to attorney's fees which were reduced to a total of P1,596.39. This judgment was affirmed by the Court of Appeals in its decision of January 31, 1941, now the subject of our review at the instance of the partnership Ngo Tian Tek and Ngo Hay, petitioner herein.

"It appears that," quoting from the decision of the Court of Appeals whose findings of fact are conclusive, "as far back as the year 1925, the Modern Box Factory was established at 603 Magdalena Street, Manila. It was at first owned by Ngo Hay, who three years later was joined by Ngo Tian Tek as a junior partner. The Modern Box Factory dealt in paper and similar merchandise and purchased goods from the plaintiff and its assignors in the names of the Modern Box Factory, Ngo Hay and Co., Go Hay Box Factory, or merely Go Hay. Then about the year 1930, the Lee Guan Box Factory was established a few meters from the Modern Box Factory, under the management of Vicente Tan. When that concern, through Vicente Tan, sought credit with the plaintiff and its assignors, Ngo Hay, in conversations and interviews with their officers and employees, represented that he was the principal owner of such factory, that the Lee Guan Box Factory and the Modern Box Factory belonged to the same owner, and that the Lee Guan Box Factory was a subsidiary of the Modern Box Factory. There is evidence that many goods purchased in the name of the Lee Guan Box Factory were delivered to the Modern Box Factory by the employees of the plaintiff and its assignors upon the express direction of Vicente Tan. There is also evidence that the collectors of the sellers were requested by Vicente Tan to collect—and did collect—from the Modern Box Factory the bills against the Lee Guan Box Factory. In fact the record shows many checks signed by Ngo Hay or Ngo Tian Tek in payment of accounts of the Lee Guan box Factory. Furthermore,—and this seems to be conclusive—Ngo Hay, testifying for the defense, admitted that 'he' was the owner of the Lee Guan Box Factory in and before the year 1934, but that in January, 1935, 'he' sold it, by the contract of sale Exhibit 7, to Vicente Tan, who had been his manager of the business. Tan declared also that before January, 1935, the Lee Guan Box Factory pertained to Ngo Hay and Ngo Tian Tek. The contract Exhibit 7 was found by the referee to be untrue and simulated, for various convincing reasons that need no repetition here. And the quoted statements serve effectively to confirm the evidence for the plaintiff that it was Ngo Hay's representations of ownership of, and

responsibility for, Lee Guan Box Factory that induced them to open credit for that concern. It must be stated in this connection—to answer appellant's fitting observation—that the plaintiff and the assignors have considered Ngo Hay, the Modern Box Factory and Ngo Hay and Co. as one and the same, through the acts of the partners themselves, and that the proof as to Ngo Hay's statements regarding the ownership of Lee Guan Box Factory must be taken in that view. Ngo Hay was wont to say 'he' owned the Modern Box Factory, meaning that he was the principal owner, his other partner being Ngo Tian Tek. Now, it needs no demonstration—for appellant does not deny it—that the obligations of the Lee Guan Box Factory must rest upon its known owner. And that owner is Ngo Tian Tek and Ngo Hay."

We must overrule petitioner's contention that the Court of Appeals erred in holding that Lee Guan Box Factory was a subsidiary of the Modern Box Factory and in disregarding the fact that the contracts evidencing the debts in question were signed by Vicente Tan alias Chan Sy, without any indication that tended to involve the Modern Box Factory or the petitioner. In the first place, we are concluded by the finding of the Court of Appeals regarding the ownership by the petitioner of Lee Guan Box Factory. Secondly, the circumstance that Vicente Tan alias Chan Sy acted in his own name cannot save the petitioner, in view of said ownership, and because contracts entered into by a factor of a commercial establishment known to belong to a well-known enterprise or association, shall be understood as made for the account of the owner of such enterprise or association, even when the factor has not so stated at the time of executing the same, provided that such contracts involve objects comprised in the line and business of the establishment. (Article 286, Code of Commerce.) The fact that Vicente Tan did not have any recorded power of attorney executed by the petitioner will not operate to prejudice third persons, like the respondent Philippine Education Co., Inc., and its assignors. (3 Echavarri, 133.)

Another defense set up by the petitioner is that prior to the transactions which gave rise to this suit, Vicente Tan had purchased Lee Guan Box Factory from Ngo Hay under the contract, Exhibit 7; and the petitioner assails, under the second assignment of error, the conclusion of the court of Appeals that said contract is simulated. This contention is purely factual and must also be overruled.

The petitioner questions the right of the respondent Philippine Education Co., Inc., to sue for the credits assigned by the five entities with which Lee Guan Box Factory originally contracted, it being argued that the assignment, intended only for purposes of collection, did not make said respondent the real party in interest. The petitioner has cited 5 Corpus Juris, section 144, page 958, which points out that "under statutes authorizing only a bona fide assignee of choses in action to sue thereon in his own name, an assignee for collection merely is not entitled to sue in his own name."

The finding of the Court of Appeals that there is nothing "simulated in the assignment," precludes us from ruling that the respondent company is not a bona fide assignee. Even assuming, however, that said assignment was only for collection, we are not prepared to say that, under section 114 of the Code of Civil Procedure, in force at the time this action was instituted, ours is not one of those jurisdictions following the rule that "when a chose, capable of legal assignment, is assigned absolutely to one, but the assignment is made for purpose of collection, the legal title thereto vests in the assignee, and it is no concern of the debtor that the equitable title is in another, and payment to the assignee discharges the debtor." (5 C. J., section 144, p. 958.) No substantial right of the petitioner could indeed be prejudiced by such assignment, because section 114 of the Code of Civil Procedure reserves to it "any set-off or other defense existing at the time of or before notice of the assignment."

Petitioner's allegations that "fraud in the inception of the debt is personal to the contracting parties and does not follow assignment," and that the contracts assigned to the respondent company "are immoral and against public policy and therefore void," constitute defenses on the merits, but do not affect the efficacy of the assignment. It is obvious that, apart from the fact that the petitioner cannot invoke fraud of its authorship to evade liability, the

appealed decision is founded on an obligation arising, not from fraud, but from the very contracts under which merchandise had been purchased by Lee Guan Box Factory, a subsidiary of petitioner's Modern Box Factory.

The fourth and fifth assignments of error relate to the refusal of the court of Appeals to hold that the writ of attachment issued at the commencement of this action by the Court of First Instance is illegal, and to award in favor of the petitioner damages for such wrongful attachment. For us to sustain petitioner's contention will amount to an unauthorized reversal of the following conclusion of fact of the Court of Appeals: "The stereotyped manner in which defendants obtained goods on credit from the six companies, Vicente Tan's sudden disappearance, the execution of the fake sale Exhibit 7 to throw the whole responsibility upon the absent or otherwise insolvent Tan, defendant's mercurial and unbelievable theories as to the ownership of the Modern Box Factory and" Lee Guan Box Factory—obviously adopted in a vain effort to meet or explain away the evidentiary force of plaintiff's documentary evidence—are much too significant to permit a declaration that the attachment was not justified."

Regarding the suggestion in petitioner's memorandum that this case should be dismissed because of the death of Ngo Hay, it is sufficient to state that the petitioner Ngo Tian Tek and Ngo Hay is sued as a partnership possessing a personality distinct from any of the partners.

The appealed decision is affirmed, with costs against the petitioner. So ordered.

Moran, C.J., Pablo, Perfecto, Hilado, Briones, Hontiveros, and Tuason, JJ., concur.

CONCURRING AND DISSENTING

FERIA, J.:

I concur in the majority opinion except that portion thereof which deals with the question whether an assignee for collection merely is entitled to sue in his own name, which needs not be discussed, in view of the finding of the Court of Appeals that there is nothing "simulated in the assignment" which according to the very opinion of the majority "precludes us from ruling that the respondent company is not a bona fide assignee;" because such being the conclusion of fact of the Court of Appeals, this Supreme Court can not modify or reverse that conclusion and find that respondent Philippine Education was not a bona fide assignee, and the assignment was not absolute, but made merely for collection in order that said respondent may sue in its own name.

But I dissent from the majority opinion when it further says:

"Even assuming, however, that said assignment was only for collection, we are not prepared to say that, under section 114 of the Code of Civil Procedure, in force at the time this action was instituted, ours is not one of those jurisdiction following the rule that 'when a chose, capable of legal assignment, is assigned absolutely to one, but the assignment is made for purpose of collection, the legal title thereto vests in the assignee, and it is no concern of the debtor that the equitable title is in another, and payment to the assignee discharges the debtor.' (5 C. J., section 144, p. 958.) No substantial right of the petitioner could indeed be prejudiced by such assignment, because section 114 of the Code of Civil Procedure reserves to it 'any set-off or other defense existing at the time of or before notice of the assignment.' "

The reason for my dissenting is that, after quoting the finding of the Court of Appeals and stating that said conclusion precludes this Court "from ruling that the respondent company is not a bona fide assignee," the majority should have stopped then and there. But having preferred to adduce an additional ratio decidendi, and assume that the assignment was for collection only and not an absolute and bona fide one, in order to meet the latter's argument, because the Court of Appeals' conclusion is that the assignment was not simulated, that is,

absolute and bona fide, the majority should have quoted and discussed the second and third sentence of paragraph 144, page 958, of the Corpus Juris, quoted and relied on by the petitioner, which refers to an assignment that is not absolutely and bona fide made. However the majority opinion did not do so, and quotes and bases its conclusion to the contrary on the first sentence of said paragraph, not relied on by the petitioner, and which deals with absolute and bona fide assignment, and to the provision of section 114 of the Code of Civil Procedure on set-off and defenses which defendant may set up to an action instituted by a bona fide assignee.

To clearly show the error, we transcribe below section 144, page 958, of Corpus Juris quoted and underlined by the petitioner in his brief:

"144. G. Assignments for Collection.—When a chose, capable of legal assignment, is assigned absolutely to one, but the assignment is made for purpose of collection, the legal title thereto vests in the assignee, and it is no concern of the debtor that the equitable title is in another, and payment to the assignee discharges the debtor, Under the statutes of most jurisdictions, the assignee may prosecute an action thereon in his own name as the real party in interest or as a trustee of an express trust; but, under statutes authorizing only a bona fide assignee of choses in action to sue thereon in his own name, an assignee for collection merely is not entitled to sue in his own name. An assignment merely for collection does not transfer the beneficial ownership to the assignee."

It is not only convenient but necessary to point this error in the present concurring and dissenting opinion, for the conclusion set forth in the above quoted portion of the majority decision is misleading; because it apparently lays down the ruling that an assignee not bona fide to whom a credit was assigned, not absolutely, but for collection merely may sue in his own name (a debatable question which has not yet been passed upon squarely by this Court [Annotation: 64 L. R. A., 585]), but the premise on which the majority's conclusion or ruling is predicated in said portion of the Corpus Juris quoted in the opinion, which is a wrong premise laid down, not by the petitioner, but by the writer himself of the majority opinion.

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