

(WITH RES. SEPTEMBER 30, 1963)*G.R. Nos. 18223-24. June 29, 1963*

Ponente: LABRADOR, J.

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The above-entitled cases are appeals from judgments rendered by the Court of First Instance of Manila through Judges Gustavo Victoriano and Conrado M. Vasquez, respectively, of said Court.

In G.R. No. L-18223 plaintiff-appellee filed a complaint alleging that the defendants-appellants were granted by it credit accommodations in the form of an overdraft line for an amount not exceeding P80,000, with interest (paragraph 2, Complaint); that defendants or either of them drew regularly upon the above credit line and as of February 10, 1960, the total of their drawings and interest due amounted to P79,943.80 (par 3, id.); that repeated demands were made upon defendants to pay for the drawings but said demands were ignored (par. 4, id.). In their answer to the complaint the defendants admit having drawn upon the credit line extended to them as alleged in the complaint; claim they have not ignored the demands for the payment of the sums demanded and have instituted actions against the former officers of defendant corporation who had defrauded the latter; etc, (par. 4, Answer). By way of special affirmative defenses, they allege that the former officers and directors of the defendant corporation had deliberately defrauded and mismanaged the corporation, as a part of their scheme to wrest control of various corporations owned by Damaso Perez, from the latter, and as a result of said frauds or mismanagements the defendants have instituted actions for damages for breach of trust; and that the amounts drawn on the credit line subject of the complaint were received and used by the former directors and officers of the defendant corporations and constitute part of the funds misapplied by them. Upon motion, Judge Victoriano entered for the plaintiff a judgment on the pleadings, holding that the "special affirmative defenses (of the answer) failed to show any allegation respecting the extent of defendants' drawings, although they have admitted having drawn against the credit line, subject of the action, so that said denial, not being a specific denial in the true sense, does not controvert the allegation at which it is aimed," etc. The Court also further held that the alleged mismanagement and fraud of the former directors and officials of defendant corporation and the action now pending in court regarding the same are merely internal affairs of the corporation which cannot affect or diminish the liability of the defendant corporation to the plaintiff. The defendants appealed from the decision to the Court of Appeals, but this Court certified the case to Us.

In G. R. No. L-18224 the complaint also alleges that the defendants were given credit accommodation in the form of an overdraft line in an amount not exceeding P150,000 and drew regularly upon said credit line amounts which with their interest reach the sum of P133,453.17; that demands were made for the payment of the drawings but defendants have failed to pay the amounts demanded. Defendants in their answer admit the opening of the credit line in their favor and that demands for the indebtedness were made upon them, but allege as special defenses that the directors and officers of the defendant corporation deliberately defrauded and mismanaged the said corporation in breach of trust in order to deprive Damaso Perez of his control and majority interest in the defendant corporation, as a result of which fraud, mismanagement and breach of trust the defendants suffered tremendous losses; that the amounts drawn by defendant corporation upon the credit line were received and used

by the former directors and officers and same constitute part of the funds of the defendant corporation misapplied and mismanaged by said former officers and directors of said corporation. Upon the presentation of the answer the plaintiff presented a motion for judgment on the pleadings which the court sustained, holding:

"The defendants having admitted the indebtedness in question, its liability to pay the plaintiff the amount of the said indebtedness is beyond question. The alleged fact that the money borrowed from the plaintiff was misappropriated or misapplied by some officers of the defendant corporation is no defense against the liability of the defendants to the plaintiff. It is, an internal matter of the defendant corporation in which the plaintiff has no concern or participation whatsoever. This is specially so with respect to the defendant Damaso Perez who appears to have executed the agreement, Annex A, in his own personal capacity and not as an officer of the defendant Republic Credit Corporation. The allegation that the defendants have a right to claim indemnity or contribution from the erring directors and officers of the defendant corporation is a matter which may be the subject of a separate action, and in which the plaintiff is not concerned." (p. 37, Record on Appeal)

Against the above judgment the defendants also have prosecuted this appeal. The Court of Appeals certified the same to Us in accordance with law.

In G. R. No. L-18223, the defendants-appellants argue that the admission made by the defendants in their answer that the amount demanded was due, is qualified "in the sense that whatever amounts were drawn from the overdraft line in question were part of those corporate funds of Philippine Armored Car, Inc., misused and misapplied by Ramon Racelis, et al., former directors and executive officers of said corporation." (p. 13, Appellee's Brief) In answer to this argument we call attention to the fact that in the agreement attached to the complaint Exhibit "A" the obligation of the defendants-appellants to pay for the amount due under the overdraft line is not in any way qualified; there is no statement that the responsibility of the defendants-appellants for the amounts taken on overdraft would cease or be defeated or reduced upon misappropriation or mismanagement of the funds of the corporation by the directors and employees thereof. The special defense is, therefore, a sham defense.

Furthermore, under general rules and principles of law the mismanagement of the business of a party by his agents does not relieve said party from the responsibility that he had contracted to third persons, especially in the case at bar where the written agreement contains no limitation to defendants-appellants' liability.

The so-called special defense contained in the answer is, therefore, no special defense to the liability of the defendants-appellants, nor the action, and the court's action or judgment on the pleadings was properly taken. The argument contained in the brief of the defendants-appellants that the defendants contemplated a third-party complaint is of no weight, because a third-party complaint was not available to the defendants under the facts of the case. A third-party complaint is, under the Rules, available only if the defendant has a right to demand contribution, indemnity, subrogation or any other relief from the supposed third-party defendants in respect to the plaintiff's claim. (Sec. 1, Rule 12, Rules of Court) The supposed parties defendants or alleged officers of the defendants corporation had nothing to do with the overdraft account of defendant corporation with the plaintiff-appellee. Consequently, they cannot be made parties defendants in a third-party complaint. Anyway the filing of a third party complaint is no hindrance to the issuance of the order of the court declaring that the defendants answer presented no issue or defense and that, therefore, plaintiff-appellee was entitled to judgment.

In G. R. No. L-18224, our ruling in the first case is also applicable. In this second case, it is also alleged that at the time of the agreement for credit in current account the defendant corporation was under the management of Roman Racelis and others who defrauded and mismanaged the corporation, in breach of trust, etc., etc. Again we declare that the written agreement for credit in current account, Annex "A", contains no limitation about the liability of the defendants-appellants, nor an express agreement that the responsibility of the

defendants-appellants, should be conditioned upon the lawful management of the business of the defendant corporation. The same rulings in the first case are applicable in this second case.

Wherefore, the judgments appealed from are hereby affirmed, with costs against the defendants-appellants.

Padilla, Bautista Angelo, Conception, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

Sept. 30, 1963

RESOLUTION ON MOTION FOR NEW TRIAL

LABRADOR, J.:

Defendant-appellant Damaso Perez has presented a motion for new trial on the ground of newly discovered evidence. It is claimed that movant was not aware of the nature of the power of attorney that Ramon Racelis used, purportedly signed by him, to secure the loans for the Republic Armored Car Service Corporation and the Republic Credit Corporation. In the motion it is claimed that a photostatic copy of the power of attorney used by Ramon Racelis was presented at the trial. This photostatic copy or a copy thereof has not been submitted to us; for this reason we cannot rule upon his claim and contention that Ramon Racelis had no authority to bind the movant as surety for the loans obtained from the appellee Commercial Bank & Trust Company. Not having before us the supposed photostatic copy of the power of attorney used to secure the loans, there is no reason for us to rule, in accordance with his contention, that Racelis exceeded his authority in securing the loans subject of the present actions.

The motion for reconsideration, however, presents a copy of a power on October 22, 1952. It is not expressly mentioned that this is the precise power of attorney that Ramon Racelis utilized to secure the loans the collection of which is sought in these cases. But assuming, for the sake of argument, that the said power of attorney incorporated in the motion for reconsideration was the one used to obtain the loans, We find that the movant's contention has no merit. In accordance with the document, Racelis was authorized to negotiate for a loan or various loans * * * with other banking institution, financing corporation, insurance companies or investment corporations, in such sum or sums, aforesaid Attorney-in-fact Mr. Ramon Racelis, may deem proper and convenient to my interests, * * * and to execute any and all documents he deems requisite and necessary in order to obtain such loans, always having in mind my best interest; * * *" We hold that this general power of attorney to secure loans from any banking institution was "sufficient authority for Ramon Racelis to obtain the credits subject of the present suits.

It will be noted furthermore that Racelis, as agent of Damaso Perez, executed the documents evidencing the loans signing the same "Damaso Perez by Ramon Racelis," and in the said contracts Damaso Perez agreed jointly and severally to be responsible for the loans. As the documents as signed makes Perez jointly and severally responsible, there is no merit in the contention that Perez was only being held liable as a guarantor.

Furthermore, the promissory notes evidencing the loans are attached to the complaint in G. R. Nos. L-18223 and L-18224. If the movant Perez claims that Racelis had no authority to execute the said promissory notes, the authenticity of said documents should have been specially denied under oath in defendant's answers in the lower

court. This was not done; consequently Perez could not and may not now claim that his agent did not have authority to execute the loan agreements.

Motion for new trial is denied.

Padilla, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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