

44 Phil. 780

[G.R. No. 19689. April 04, 1923]

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. WELCH, FAIRCHILD & CO., INC., DEFENDANT AND APPELLEE.

D E C I S I O N

STREET, J.:

By this action the plaintiff, the Philippine National Bank, seeks to recover of the defendant, Welch, Fairchild & Co., Inc., the sum of \$125,000, with interest from May 17, 1918, being part of the proceeds of certain insurance effected in the year 1918 upon a ship called the *Benito Juarez* and collected by the defendant after said ship had been lost at sea. Upon hearing the cause the trial judge absolved the defendant from the complaint and the plaintiff appealed.

In the first half of the year 1918, a corporation, known as La Compañia Naviera, Inc., was organized in Manila under the laws of the Philippine Islands, for the purpose of engaging in the business of marine shipping. Among its shareholders was Welch, Fairchild & Co., another corporation organized under the laws of these Islands and having its principal place of business in the City of Manila. Of the shares of La Compañia Naviera, Welch, Fairchild & Co. subscribed for 325 shares of the par value of P100 each.

As La Compañia Naviera was an entirely new enterprise in the shipping world, it was necessary for it to acquire a proper complement of vessels and adequate equipment, and as shipping values in those days were high, the company did not have sufficient ready capital to meet all its requirements. Its officials therefore in May, 1918, applied to the Philippine National Bank for a loan of \$125,000, with which to purchase a boat called *Benito Juarez*, which had been found on the market in the United States. The necessary credit appears to

have been extended by the bank in the form of a loan for \$125,000, to run for one year from May 17, 1918. Nevertheless, owing to delay in the delivery of the vessel, the money was not then delivered and was not actually advanced by the bank until several months later, as will presently appear.

It appears that Welch, Fairchild & Co. was not numbered among the original promoters of La Compañia Naviera, but its interests are to a considerable extent involved in the general shipping conditions in the Islands and it looked with a friendly eye upon the new enterprise. Moreover, the mercantile ramifications of Welch, Fairchild & Co. appear to be extensive; and its friendly offices were freely exerted in behalf of La Compañia Naviera, not only through Welch & Co., the correspondent of the defendant in San Francisco, but also through Mr. Geo. H. Fairchild, the president of Welch, Fairchild & Co., who left Manila for the United States in March of the year 1918 and remained in that country for more than a year. Upon this visit to the United States Mr. Fairchild was kept advised as to certain needs of La Compañia Naviera, and he acted for it in important matters requiring attention in the United States. In particular it was through the efforts of himself and of Judge James Ross, as attorney, that the consent of the proper authorities in Washington, D. C., was obtained for the transfer of the *Benito Juarez* to Philippine registry.

In August, 1918, the *Benito Juarez* was on the California coast, and after the approval of its transfer to Philippine registry had been obtained, steps were taken for the delivery of the vessel to the agents of the purchaser in San Francisco at the price of \$125,000, as agreed; and it was understood that the delivery of the purchase money would be made by the Anglo-London and Paris National Bank, in San Francisco, as agent of the Philippine National Bank, contemporaneously with the delivery to it of the bill of sale and the policy of insurance on the vessel. It developed, however, that the vessel needed repairs before it could be dispatched on its voyage to the Orient; and it became impracticable to deliver the bill of sale and insurance policy to the bank in San Francisco at the time the money was needed to effect the transfer. Being advised of this circumstance, and fearing that a hitch might thus occur in the negotiations, Welch, Fairchild & Co., in Manila, addressed a letter on August 8, 1918, to the Philippine National Bank, requesting it to cable its correspondent in San Francisco to release the money and make payment for the

vessel upon application by Welch & Co., without requiring the delivery of the bill of sale or policy of insurance, "*in which event,*" the letter continued, "*the Compañia Naviera will deliver to you here the bill of sale also the insurance policy covering the voyage to Manila.*" In a letter bearing date of August 10, 1918, also addressed to the Philippine National Bank, La Compañia Naviera, Inc. confirmed this request and authorized the bank to send the cablegram necessary to give it effect.

In response to these communications the Philippine National Bank, on August 14, sent a cablegram to its correspondent in San Francisco authorizing payment of the purchase price of the *Benito Juarez*, without the production of either bill of sale or insurance policy. Under these circumstances the vessel was delivered and money paid over without the production or delivery of the documents mentioned.

After the repair of the *Benito Juarez* had been accomplished it was insured by Welch & Co. to the value of \$150,000 and was dispatched, in November, 1918, on its voyage to the Philippine Islands. On December 3, 1918, the vessel encountered a storm off the Island of Molokai, in the Hawaiian group, and became a total loss.

When the insurance was taken out to cover the voyage to Manila, no policy was issued by any insurer; but the insurance was placed by Welch & Co. of San Francisco, upon the instructions of Welch, Fairchild & Co., as agents of the Compañia Naviera, and it was taken out in the ordinary course of business to protect the interests of all parties concerned.

As would naturally happen in an insurance of this amount, the risk was distributed among several companies, some in remote centers; and it was many months before Welch & Co., of San Francisco, had collected the full amount due from the insurers. However, as the money came to the hands of Welch & Co., of San Francisco, it was remitted by draft or telegraphic transfer to Welch, Fairchild & Co. in Manila; and in this manner practically the full amount for which the *Benito Juarez* had been insured was transmitted to Manila by the last days of June, 1919.

As was perhaps but natural under the circumstances, the Philippine National

Bank appears, to have exhibited no concern about its loan of \$125,000 to La Compañia Naviera, or about the proceeds of the insurance on the *Benito Juarez*, until after the period of credit allowed by the bank on the loan to La Compañia Naviera had expired, that is to say, after May 17, 1919. A short while after this date, an incident occurred upon which the attorneys for the defendant in this case have placed great emphasis, and it is this: In the latter part of the month aforesaid Welch & Co., having collected \$13,000 upon account of the insurance on the *Benito Juarez*, attempted to remit it by telegraphic transfer to Welch, Fairchild & Co. in Manila, but by some mistake or other, the money was remitted to the Philippine National Bank in New York, and it was not until about a month later that authority was received by the Philippine National Bank in Manila to pay to Welch, Fairchild & Co. the sum of \$13,000 upon account of said insurance.

When the authority for the transfer of this credit reached the Philippine National Bank, the attention of the bank officials was drawn to the fact that the transfer related to money forming part of the proceeds of the insurance on the *Benito Juarez*, and they at first determined to intercept the transfer and withhold the credit from Welch, Fairchild & Co., on the ground that the money belonged to the bank. This claim on the part of the bank was of course based on the letter of Welch, Fairchild & Co. dated August 8, 1918, in which the promise had been held out that, if the bank would advance the purchase money of the *Benito Juarez* without requiring the concurrent delivery of the policy of insurance, said policy would be delivered later by La Compañia Naviera in Manila. When the determination of the bank's officials to withhold the money was communicated to Welch, Fairchild & Co., a strong protest was made, and its attorney came at once to the bank to interview its president. As a result of this interview the president of the bank receded from his position about the matter, and an order was made that the money should be passed to the credit of Welch, Fairchild & Co., as was done on July 23, 1919. A day or two later the bank further credited the account of Welch, Fairchild & Co. with the sum of P119.65, as interest on the money during the time it had been withheld.

In the course of the interview above alluded to, not only did the attorney of Welch, Fairchild & Co. call the attention of the president of the bank to the doubtful propriety of its act in intercepting a remittance of money which had been confided to its agent in San Francisco for transmission to Welch,

Fairchild & Co. in Manila, but he also pointed out that Welch, Fairchild & Co. had acted throughout merely in the capacity of agent for La Compañía Naviera, and he therefore insisted that Welch, Fairchild & Co. was not legally bound by the promise made by it in the letter of August 8, 1918, to the effect that the policy of insurance would be delivered to the bank in Manila by La Compañía Naviera; and this contention was urged with such force that the president of the bank—who was not a lawyer—acknowledged himself vanquished, and in the end said that he must have been mistaken in his contention and that the attorney was right.

Shortly after this incident the bank which had permitted La Compañía Naviera to become indebted to it upon inadequate security to the extent of nearly a million pesos began to take steps looking to the betterment of its position in relation with said company. To this end, on August 28, 1919, it went through the barren formality of making demand upon La Compañía Naviera for the delivery of the insurance policies on the *Benito Juarez*, but was informed by La Compañía Naviera that it had never received any policy of insurance upon the *Benito Juarez* as the vessel had been insured in San Francisco by Welch, Fairchild & Co. in behalf of La Compañía Naviera. A little later the bank caused La Compañía Naviera to execute pledges to the bank upon three steamers belonging to said company as security for its indebtedness to the bank. Thereafter matters were permitted to drift until it became apparent that La Compañía Naviera was insolvent; and on December 9, 1919, the bank made formal demand upon Welch, Fairchild & Co. for the delivery of the insurance policy for \$125,000 on the *Benito Juarez*, basing its demand on the letter of Welch, Fairchild & Co. of August 8, 1918, already mentioned.

As the bank officials already knew that the insurance had been collected many months previously by Welch, Fairchild & Co., it is evident that the making of demand for delivery of a policy for \$125,000 was a mere formula by which the bank intended to plant a contention that the proceeds of the insurance, to the extent of \$125,000, belonged to it. To this demand Welch, Fairchild & Co. responded with a negative.

Meanwhile, what had become of the proceeds of the insurance upon the *Benito Juarez*? That money, as we have already seen, came to the hands of Welch, Fairchild & Co. in Manila and has there rested, having been applied

by Welch, Fairchild & Co. in part satisfaction of indebtedness incurred by La Compañía Naviera to it. This disposition of the insurance money was made by Welch, Fairchild & Co. with the tacit approval of La Compañía Naviera, the credits being notified to the latter by the former as the remittances were received in Manila and entered in the accounts of both companies accordingly.

To explain the situation which had thus arisen between the two companies, further reference is here necessary to matters that had taken place during the preceding year. As we have already stated, Welch, Fairchild & Co. had assisted La Compañía Naviera in effecting the purchase and transfer of the *Benito Juarez* to Philippine registry. In addition to this, Welch, Fairchild & Co. advanced in San Francisco several thousands of pesos necessary for the repair and equipment of that vessel prior to its departure for the Philippine Islands; and the incurring of these expenses explain why insurance was taken out to the extent of \$150,000 instead of \$125,000, the latter sum being merely the item of cost price. But the friendly offices of Welch, Fairchild & Co. were not limited to the foregoing matters, and said company rendered practically the same service with respect to other vessels which were purchased for La Compañía Naviera, with the result that the advances made by Welch, Fairchild & Co., beginning in the autumn of 1918, steadily mounted in the course of succeeding months and in the end ran up into the hundreds of thousands of pesos. One particular incident, most disastrous to the latter company, consisted in the operation by it, during several months in 1919, of the *San Pedro*, one of the vessels belonging to La Compañía Naviera, under contract with the latter company.

The result of these expenditures and advances of money by Welch, Fairchild & Co. was that the indebtedness of La Compañía Naviera to Welch, Fairchild & Co. mounted steadily during the year 1919, and said indebtedness was by no means liquidated by the application to it of the insurance money from the *Benito Juarez*. In this connection we note the following debit balances charged on the books of Welch, Fairchild & Co. against the La Compañía Naviera as the same appear by monthly statements from November 30, 1918, to September 30, 1919; and it will be remembered that these are the balances appearing after credit had been given for the collections of the insurance money. Said debit balances for the months stated are as follows: Upon November

30, 1918, P3,675.71; upon December 31, 1918, P30,627; upon January 25, 1919, P93,961.49; upon February 27, 1919, P145,130.78; upon March 30, 1919, P146,370.66; upon April 29, 1919, P148,542.25; upon May 30, 1919, P153,060.13; upon June 30, 1919, P139,531.27; upon July 31, 1919, P168,724; upon August 31, 1919, P169,932.41; upon September 30, 1919, P185,651.73.

The foregoing statement of facts makes comprehensible the contentions upon which the defense to the present action is based; and these contentions may be stated in the following propositions: First, that, inasmuch as Welch, Fairchild & Co. acted exclusively in the character of agent for La Compañia Naviera in the purchase of the *Benito Juarez*, no obligation enforceable against it was created by the letter of August 8, 1918, and as a consequence the bank should look exclusively to La Compañia Naviera, as principal, for indemnification for any loss resulting from the failure of said company to deliver the insurance policy, or policies, on the *Benito Juarez*, or the proceeds thereof, to the bank; secondly, that, even supposing that the letter of August 8, 1918, created any obligation that the defendant was bound to respect, nevertheless the bank waived and abandoned any right that it may have had upon the facts stated; and, thirdly and finally, that, by reason of the delay of the bank and its abandonment of its claim against the defendant, in relation with the prejudice thereby incurred by the defendant, the bank is estopped to assert any right that it may have had in the premises.

We are of the opinion that all of these contentions are untenable and that the plaintiff bank has a clear right of action against the defendant, in nowise affected adversely by any of the considerations suggested. Upon the first point, while it is true that an agent who acts for a revealed principal in the making of a contract does not become personally bound to the other party in the sense that an action can ordinarily be maintained upon such contract directly against the agent (art. 1725, Civ. Code), yet that rule clearly does not control this case; for even conceding that the obligation created by the letter of August 8, 1918, was directly binding only on the principal, and that in law the agent may stand apart therefrom, yet it is manifest upon the simplest principles of jurisprudence that one who has intervened in the making of a contract in the character of agent cannot be permitted to intercept and appropriate the thing which the principal is bound to deliver, and thereby make performance by the principal impossible. The agent in any event must be precluded from doing any

positive act that could prevent performance on the part of his principal. This much, ordinary good faith towards the other contracting party requires. The situation before us in effect is one where, notwithstanding the promise held out jointly by principal and agent in the letters of August 8 and 10, 1918, the two have conspired to make an application of the proceeds of the insurance entirely contrary to the tenor of said letters. This cannot be permitted.

The idea on which we here proceed can perhaps be made more readily apprehensible from another point of view, which is this: By virtue of the promise contained in the letter of August 8, 1918, the bank became the equitable owner of the insurance effected on the *Benito Juarez* to the extent necessary to indemnify the bank for the money advanced by it, in reliance upon that promise, for the purchase of said vessel; and this right of the bank must be respected by all persons having due notice thereof, and most of all by the defendant which took out the insurance itself in the interest of the parties then concerned, including of course the bank. The defendant therefore cannot now be permitted to ignore the right of the bank and appropriate the insurance to the prejudice of the bank, even though the act be done with the consent of its principal.

As to the argument founded upon the delay of the bank in asserting its right to the insurance money, it is enough to say that mere delay unaccompanied by acts sufficient to create an equitable estoppel does not destroy legal rights, but such delay as occurred here is in part explained by the fact that the loan to La Compañia Naviera did not mature till May 17, 1919, and a demand for the surrender of the proceeds of the insurance before that date would have seemed premature. Besides, it is to be borne in mind that most of the insurance was not in fact collected until in June of 1919. It is true that in the month of March previous about P50,000 of this insurance had been remitted to Manila for Welch, Fairchild & Co. through the plaintiff bank, and the bank, we assume, took notice of the source of the remittance. However, its failure then to assert its claim to the money is not a matter of legitimate criticism, since the loan was not then due. After May 17, 1919, the situation was somewhat different; and as we have already seen, the bank was not slow in asserting its right to the remittance that came through the bank in June to Welch, Fairchild & Co., consisting of \$13,000 of the proceeds of this insurance.

This brings us to consider the legal effect of the incident which culminated on July 23, 1919, when the bank abandoned its previous position with regard to this remittance and passed the money to the credit of the defendant, with interest upon the same during the time payment had been withheld. The most, we think, that can fairly be said about that incident is that the bank president admitted himself to be a convert to the proposition advanced by the attorney for the defendant to the effect that as the defendant had merely acted as agent for La Compañía Naviera in the matter, the bank must look exclusively to La Compañía Naviera for the fulfilment of the promise about the insurance money. As a statement of legal doctrine that proposition was, as we have already shown, a mistake; but of course it would have been a matter of indifference if La Compañía Naviera had remained solvent. One consideration that must have operated on the mind of the president of the bank in releasing this money was that it had been remitted in ordinary course of exchange through the bank to the defendant, which was an entirely responsible party; and even though the bank may have had the power to intercept the remittance, the president may have considered that the commercial integrity of the institution in matters of exchange was perhaps worth more than could be gained by an obstinate insistence on its right to this money. There is no evidence whatever that the president of the bank assumed to release the defendant from any obligation which might have been incurred by virtue of the letter of August 8, 1918.

From intimations contained in the testimony of some of the witnesses presented by the defendant it might be inferred that at some time or another an understanding had been reached between the bank and the defendant company by which it was agreed that the defendant should make advances of money to La Compañía Naviera and that it might look to the proceeds of the insurance on the *Benito Juarez* to reimburse itself for those outlays. No such agreement with the bank or any official of the bank is alleged in the defendant's answer; and as one reads the testimony submitted by the defendant this hearsay suggestion continually flits away, until it becomes apparent that no such agreement was made. That there was some such understanding between the defendant and La Compañía Naviera is highly probable, but to that understanding the bank clearly was not a party.

It is insisted, however, that the attitude of the bank has been such that the defendant has been misled to its prejudice, in that not only did it give large

credit to La Compañia Naviera for sums to be recouped from this insurance money but that in reliance upon its right to that money it refrained from taking the steps that it might have taken to save itself from loss; and in this connection it is suggested that but for the incident in July, 1919, when the bank waived its claim to the \$13,000 remitted through it to Welch, Fairchild & Co., the defendant would have sought and would have been able to get additional security in the form of mortgages or pledges of one or more vessels belonging to La Compañia Naviera.

The proof in our opinion shows little or no tangible basis for these contentions; and so far as we can see not one dollar was ever advanced by the defendant to La Compañia Naviera upon the faith of any request, promise, or representation of the bank in that behalf extended; and it should be noted that the large losses incurred by the defendant for advances to that concern after July 23, 1919, were mostly incurred in the desperate effort to retrieve its position by operating the *San Pedro*. The suggestion that, but for the misleading attitude of the bank, the defendant would have been able to obtain additional security loses much of its force when it is considered that upon December 31, 1921, the defendant's books still showed unsecured indebtedness against La Compañia Naviera to the amount of nearly P50,000. The idea that, but for the attitude assumed by the bank, the defendant would have materially bettered its position, is a speculation too remote to affect the issue of this action.

In the light of what has been said, it becomes necessary to reverse, as we hereby do reverse, the judgment appealed from; and judgment will be entered in favor of the plaintiff to recover of the defendant the sum of P250,000, with lawful interest from May 31, 1921, the date of the filing of the complaint. No special pronouncement will be made as to costs. So ordered.

Araullo, C.J., Avanceña, Villamor, Ostrand, and Romualdez, JJ.,
concur.

Mr. Justice Johns voted for reversal but he was absent at the time of the promulgation of the decision, and his signature therefore does not appear signed to the opinion of the court.

(Sgd.) MANUEL ARAULLO

*Chief
Justice*

DISSENTING

MALCOLM, J.:

In my opinion judgment should be affirmed,
for the reason that no contractual relation ever existed between Welch,
Fairchild & Co., Inc., and the Philippine National Bank with respect to the
funds in question.

Date created: June 09, 2014