corporation secures a license to conduct such business activities under the provisions of Public Law 4-22, 1968, of the Congress of Micronesia.

3. The defendant Jose DL. G. Diaz is permanently enjoined from representing or, aiding the Traid Corporation in the sale of cameras, camera accessories or photographic supplies in the Trust Territory unless said Traid Corporation secures a license to conduct such business activities under the provisions of Public Law 4-22, 1968, of the Congress of Micronesia, and he is further permanently enjoined from aiding Toshimori Fukushima in the sale of cameras, camera accessories or photographic equipment in the Trust Territory unless said Toshimori Fukushima secures a license as a noncitizen to conduct such business activities under the provisions of Public Law 4-22, 1968, of the Congress of Micronesia.

THOMAS C. MENDIOLA, Plaintiff

v.

DAVID R. QUITUGUA, Defendant

Civil Action No. 249

Trial Division of the High Court

Mariana Islands District

March 26,1969

See, also, 4 T.T.R. 383

Action for money due and owing. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that where defendant was untruthful on the witness stand and had fabricated evidence the court was fully justified in accepting plaintiff's version of the transactions involved.

1. Courts-Judicial Notice

The court can take judicial notice of the contents of its own records.

2. Marianas Custom-"Manadalag"

Plaintiff's actions, while considered a community aid, *manadalag,* such as one might do for anyone with no expectation of repayment, furnished

some element of gratitude which among other things resulted in gifts by the defendant.

3. Civil Procedure-Burden of Proof

Where defendant was untruthful on the witness stand and guilty of wrongfully fabricating evidence to present in court, the court is fully justified in accepting plaintiff's version of the events; the maxim *falsus in uno, falsus in omnibus* applies.

CLIFTON, *Temporary Judge*

FINDINGS OF FACT

1. That defendant, at the request of plaintiff, sold a motorcycle belonging to the plaintiff for the sum of $500.00, and that at the request of plaintiff he sold a Chevrolet Impala automobile belonging to the plaintiff for the sum of $1500.00. That defendant received a total sum of $2000.00 for the use and benefit of plaintiff and promised to apply said sums received by him on a debt due by the plaintiff to the Bank of Hawaii. That the defendant failed to pay said sum of $2000.00 to the Bank of Hawaii but instead only paid the sum of $717.00 leaving a balance of $1283.00 in the defendant's hands due and owing to the plaintiff.

2. That there is no sum due or owing to the defendant on the counterclaims alleged in the defendant's answer and counterclaim. Specifically, the plaintiff owes the defendant nothing on account of a washer, a drier and a Telefunken radio-phonograph, he owes nothing on account of charges for chartering an airplane flight from Guam to Rota in November, 1966, he owes nothing on account of alleged commission for the sale of said Chevrolet Impala automobile for the plaintiff or for repairs or tires for said automobile, and he owes plaintiff nothing on account of the transportation of 125 bags of cement for plaintiff or for the sum of $100.00 given to the plaintiff in Saipan or on account of $704.21 allegedly given by defendant to the plaintiff on or about May 23, 1966. That the said washer,

drier and Telefunken radio-phonograph, a chartered airplane flight taken on or about October 19, 1965, the payment of said $100.00 to the plaintiff, the sale of said Chevrolet Impala automobile by the defendant for the plaintiff without charge, and the said transportation of cement, all constituted gifts to the plaintiff by the defendant, or services without charge to the plaintiff.

OPINION

In this action the plaintiff in his complaint, as amended, claims that the defendant owes him $2247.63, proceeds from sales by the defendant of a motorcycle for $600.00 and an automobile for $1647.63 which had been owned by the plaintiff and which the defendant had promised to apply to an installment loan owed to a bank by the plaintiff. The defendant filed an answer containing a counterclaim, in which defendant alleges that the plaintiff is indebted to him for goods sold and delivered by defendant to the plaintiff, and cash in the total sum of $1874.93.

It is regrettable that the plaintiff and defendant are engaged in this somewhat bitter law suit because the defendant during some of his childhood lived in the home of the plaintiff and they have maintained a close relationship ever since and have had several informal business transactions in recent years. However, the plaintiff was sued by a bank for an indebtedness on which the defendant had agreed to pay installments from money owed by him to the plaintiff, and plaintiff sued the defendant in this action and attached defendant's boat. The attachment is probably the reason that the defendant presented the items of his counterclaim at the trial, based on alleged evidence fabricated by him, although this is no justification for his presenting such evidence and falsely testifying in support of it.

The plaintiff purchased from the defendant a Farmmobile automobile in 1965. This sale was written on an installment contract which was discounted by the defend-

ant to the Bank of Hawaii. The balance on the contract including insurance was $2536.89 and the Bank of Hawaii set up an account (Plaintiff's Exhibit #1) showing the balance owing. Plaintiff paid the first three installments, totalling $195.00, to the bank on the contract and then it was agreed that the defendant, having resold a Chevrolet Impala for the plaintiff and previously having sold a motorcycle for him, would pay the amounts due plaintiff from these sales, that is, apply them to the balance due to the Bank of Hawaii. It was stipulated that the defendant had paid only $731.00 on these installments (including charges of $14.00 for delinquent payments) and so the defendant had to pay the Bank of Hawaii the balance due on the account. The payment of $731.00, less $14.00, therefore, represented a legitimate offset to the amounts due plaintiff from the proceeds of the sale of the motorcycle and the Chevrolet. It was stipulated that the sale price of the motorcycle which should be credited to the defendant was $500.00. It was stipulated that the sale price of the Chevrolet automobile was $1500.00 and that this sale was evidenced by Defendant's Exhibit #C, a sales contract to a Mr. and Mrs. Sablan. However, it was not stipulated as to the amount which would be credited to the plaintiff on account of such sale. The plaintiff's son testified that it was agreed that the car would be sold for $1800.00. Defendant claimed that no sale price was mentioned and that he had authority, therefore, to sell the car for $1500.00 and could deduct from this a commission of 20% and amounts which he had to pay for repairs to put the car in salable condition. The court has resolved this question by finding that there was no price fixed for the sale, although the question was a close one. However, as the original sale to the plaintiff was for only $2114.38 including insurance and surcharge on the insurance because of the age of plaintiff's son, a price of $1800.00 after its use

by plaintiff's son might be excessive and because of a doubt that defendant would have disregarded a set price. However, as to the alleged commission, the court has found that no commission was due, because of the near father and son relationship of the parties and their mutual services and gifts.

However, there is no "close question" about the alleged items of the counterclaim. We shall examine them herein in detail. The checks introduced into evidence and allegedly covering these items are as follows:

"Dave's Micro Motors — No. 74 — 101-501
P.O. Box 3217 — 1214
Agana, Guam — May 23, 1966

/s/ Teresita S. Muna
/s/ D. R. Quitugua

Loan to Payee--To be paid when
1962 Chev. Impala Cony. is sold."

"No. 355

July 9,

Pay to
The Order of GUAM TIRE & SUPPLY CO. $ 30.66
THIRTY AND 66/100 Dollars

Guam Branch
BANK OF HAWAII
Agana, Guam

/s/ Dave's Micro Motors
/s/ Teresita S. Muna
/s/ D. R. Quitugua

Pur. of Two Tires for
1962 Chev., Impala, Cony.
2-Door (Tomas Mendiola)"

"Dave's Micro Motors
P.O. Box 3217
Agana, Guam

No. 458

July 25,

/s/ Teresita S. Muna
/s/ D. R. Quitugua

Auto Repair: Tomas Mendiola's
1962 Chev. Impala Conv."

"Dave's Micro Motors
P.O. Box 3217
Agana, Guam

No. 581

101-501
1214

November 7, 1966

Pay to
The Order of GUAM AIR LINES
THREE HUNDRED AND NO/100

Guam Branch
BANK OF HAWAII
Agana, Guam

/s/ Teresita S. Muna
/s/ D. R. Quitugua

Payment of Charter Flight to
Rota for Tomas Mendiola"

As to Exhibit A, the defendant testified that this was a loan. However, the notation made on the check says "Loan to Payee-To be paid when 1962 Chev. Impala Conv. is sold." Obviously this was written by or at the direction of the defendant after this law suit was filed. Plaintiff did not purchase the Chevrolet Impala until June 30 as shown by a receipt, Plaintiff's Exhibit #3.

Although it is not necessary to reach the conclusion that the notation was written after the law suit was commenced, the notation was written with a different typewriter than the body of the check and defendant's explanation that different typists wrote different parts of the check at the time it was made is unbelievable. The plaintiff's explanation of the check was believable. He testified that he had turned back to defendant a Dodge pickup truck, but that afterwards payments on the truck were still deducted by the bank. He showed the bank charge slips, two in number, to defendant and defendant wrote the check in the exact amount of this total of the two checks so as to reimburse the plaintiff for these payments.

Exhibit E, according to the defendant was written in the sum of $30.66 to cover two tires for the Chevrolet so that he could sell it for the plaintiff. However, it is dated July 9, 1966, only 9 days after Mr. Mendiola bought the car whereas, according to the defendant's own testimony, the car was used by plaintiff's son for several months before the car was turned over to defendant by plaintiff's son for sale. The same observation can be made as to Exhibit D, a bill for $470.58, allegedly incurred by defendant to make the car salable. Here the check shows it was dated July 25-only 3 weeks and a half after the car was purchased by Mr. Mendiola, the plaintiff, and long prior to the time it was given to defendant to sell. At this time the car was still in the possession of plaintiff's son. When asked for bills to substantiate the amount of this check, the defendant could only come up with one bill, dated July 2, 1966, *two days after it was purchased by Mr. Mendiola.* Obviously it was for repairs not connected with the sale of the car for Mr. Mendiola. In addition, the notation was not in the same typewriting as the body of the check, but like the similar notations made on the other

checks, was apparently made by or at the direction of the defendant in a clumsy attempt to convert these checks into items of his counterclaim.

[1] As to Exhibit #B, here again the defendant's testimony is contradicted by the dates. Defendant testified that this check for $300.00 was paid by him for plaintiff to cover the cost of a charter flight to Rota from Guam, so that the plaintiff could be present at a trial in a land action brought against him by Calvo. The court can take judicial notice of the contents of its own records and perusal of the record of Action #118, *Calvo v. Mendiola, and Others*, shows the following in the year 1965:-

"10/19-Trial held before C/J E. P. Furber on Rota.
"10/22-Trial concluded and the case taken under advisement."

There are no entries made as to the year 1966, and from the above it can be seen that the date of the check was November 7, 1966, more than one year after the date of the trial. The typed memorandum on the check may have been made by the same typewriter as the body of the check. However, this check appears never to have been cashed as it lacks the perforations made on the other checks showing "Paid", the date of the payment, and the number of the bank. In addition, as showing that the notation was made after the making of the check, the letters "FI" appear to have been typed over the red stamped date Nov. 10, 1966. This, however, is of small, if any, importance. These factors, together with plaintiff's testimony that the usual charge for a flight was $165.00 and that the defendant had told him when asked about the amount, "It's OK Pops, I already took care of it." and had never afterwards asked him for the payment of any sum for the "plane ride" has led the court to the conclusion that it was not connected with the check for $300.00 but was for $165.00 a far lesser sum so that the defendant, under the circum-

stances, made a gift of the cost of the plane ride to the plaintiff to whom he bore a very close relationship.

[2] The transfer by the defendant to the plaintiff of a used washer and drier and a used stereo-phonograph and the transportation of some 125 bags of cement in plaintiff's boat from Guam to Rota and which also appear to be gifts for which no payment was to be made by plaintiff, defendant has attempted to include as items of his counterclaim. The plaintiff had given a cow to the defendant as a baptismal gift and sent him a butchered cow on another occasion, and had worked two weeks and had led others to work on the salvaging of the defendant's boat with several autos on it from the reef. This, while considered a community aid, *"manadalag"* such as one might do for anyone with no expectation of repayment might furnish some element of gratitude which among other things resulted in the gifts by the defendant. Defendant sometimes addressed the plaintiff as "Pops" possibly indicating an affection stemming from defendant's residence when young with the plaintiff. Other circumstances are to be taken into consideration when attempting to decide whether a gift was intended. The defendant, although he labelled himself "an ordinary working man" obviously is not and does not consider himself in that category. He was the proprietor of an automobile sales company, he owned a fairly large motor vessel and used it to transport goods in the Mariana Islands, paying a crew to operate it, and he owned some 100 to 150 cattle. A person of such means might well make what might under other circumstances be considered generous gifts. Furthermore, in relation to the sale of the Chevrolet to the Sablans and the sale of the motorcycle, the defendant was to some extent benefitted, as he had the use of the money, interest free, until each installment on the bank loan was paid.

[3] Finally, it must be said regretfully of one who has shown himself at times to have been generous and possessed of gratitude that in respect to the four exhibits mentioned, the defendant has been untruthful on the witness stand and guilty of wrongfully fabricating evidence to present in court and the court is fully justified in accepting the plaintiff's version about the gifts rather than the defendant's version. The maxim *"Falsus in uno, falsus in omnibus",* that is, "False in one thing, false in everything", applies to this situation.

From all of the above the court has concluded, as reflected in the findings of fact, that the defendant was indebted to the plaintiff in the total sum of $500.00 for the motorcycle and $1500.00 for the Chevrolet Impala sales by the defendant for the plaintiff, that is, a total of $2000.00. Defendant has paid the plaintiff, through payments to the Bank of Hawaii, not including late payment charges, a total sum of $717.00. Defendant, therefore, owes plaintiff the difference, that is, a total sum of $1283.00. The defendant is entitled to nothing by way of counterclaim.

JUDGMENT

It is ordered, adjudged, and decreed as follows:-

1. That the plaintiff have judgment against the defendant in the total sum of $1283.00.

2. That the defendant take nothing on account of his counterclaim in this action.

3. That the plaintiff have judgment against the defendant for costs lawfully incurred by plaintiff in this action.