

[G.R. No. L-8155. October 23, 1956]

VIOLET MCGUIRE SUMACAD, ET AL., PLAINTIFFS AND APPELLEES, VS. THE PROVINCE OF SAMAR, ET AL., DEFENDANTS; THE PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLANT.

D E C I S I O N

PARAS, C.J.:

In May, 1942, while the province of Samar was still occupied by Japanese military forces, a check was issued by said province to Paulino M. Santos (then the postmaster of Borongan) for the sum of P25,000, drawn against the Philippine National Bank Cebu Branch. The payee negotiated the check with James McGuire, an American citizen and resident of the municipality of Borongan. After the liberation in 1946, James McGuire presented the check to the municipal treasurer of Borongan for payment, but the latter (who merely noted it) was not able or did not choose to pay the same. James McGuire wrote letters to the Bureau of Posts dated May 28 and August 5, 1948, and March 30, 1950 seeking payment of the check, which were in turn referred by the 'Director of the Bureau of Posts to the Philippine National Bank on April 21, 1950. On April 25, 1950, the Philippine National Bank requested the Bureau of Posts to furnish it with photostatic copies of the check which were duly received by the bank on May 12, 1950. As of this date the province of Samar still had a deposit of F84,287.47 in the Philippine National Bank. On May 14, 1950, the latter requested James McGuire to present the check to the provincial treasurer and the provincial auditor for certification in accordance with the circular issued by the Secretary of Finance of July 3, 1947. On August 22, 1950, James McGuire again requested the Bureau of Posts to expedite compliance with the requirement of the Philippine National Bank so as to permit the encashment of the check. Before the check could be certified by the authorities concerned as being in order and entitled to priority of payment, the province of Samar, on September 4, 1951, withdraw the amount of P83,504.07, leaving a balance of only P743.43. In the meantime, James McGuire transferred his rights to the check to the herein plaintiffs who, unable to cash it, filed in the Court of First Instance of Samar on July 27, 1953, the

present complaint against the province of Samar and the Philippine National Bank. After trial the court rendered a decision sentencing the defendants to pay jointly and severally to the plaintiffs the sum of P25,000, plus legal interest from May 1950, P1,000 as attorney's fees, and the costs. Only the Philippine National Bank has appealed.

The position of the appellant bank is that it did not issue the check and was merely called upon to pay the same upon being presented for encashment if and when funds for the purpose were available; that it could not have paid said check because it was never presented to it with the required certification under the circular of the Secretary of Finance of July 3, 1947; that the relation between the appellant bank and the province of Samar was that of debtor and creditor, the debtor being without power to inquire into the obligation of his creditor unless it had an interest in the same; that there is nothing in the records to show that the holder of the check ever requested the appellant bank to withhold the amount of the check or ever filed, before the exhaustion of the deposit of the province of Samar, any order from the courts or proper authorities to withhold the amount covered by the check; that in any event, the appellant bank cannot be held solidarity liable, the province of Samar being the drawee of the check and therefore primarily liable to pay the same.

Appellant's contentions are in the main correct. But in view of the fact that as early as May 12, 1950, upon its own request, it was furnished with photostatic copies of the check in question; and on May 14, 1950, it went to the trouble of requiring James McGuire to present the check to the provincial treasurer and provincial auditor for necessary certification, it voluntarily assumed the obligation of holding so much of the deposit of the province of Samar as would be sufficient to cover the amount of the check, or before allowing the withdrawal that exhausted said deposit, of making the necessary inquiry on the matter. In our opinion, an implied acceptance of the check by the appellant bank was thereby created. The request by the appellant bank from the Bureau of Posts for photostatic copies of the check and the subsequent requirement by it for its presentation by James McGuire to the provincial treasurer and the provincial auditor for certification, would be an empty gesture if the appellant did not thereby mean to assume the obligation of paying the check and holding sufficient deposit of the drawer for the purpose. Even so, appellant's resulting obligation is merely subsidiary, the province of Samar being primarily liable to pay the check.

It being understood that the obligation of the appellant is merely subsidiary, the appealed decision is hereby affirmed, without costs in this instance. So ordered.

Bautista Angelo, Labrador, Reyes, J. B. L., Endencia and Felix, JJ., concur.

DISSENTING:

PADILLA, J.,

Under the facts of the case I do not believe the appellant bank is even subsidiarily liable. To hold the bank liable the original check must have been presented to it for payment and the bank should have refused to honor or cash it. The fact that it requested the Bureau of Posts to furnish it with photostatic copies of the check shows that the original check had not been presented to the drawee (the bank) for payment. The request by the bank for photostatic copies of the check did not, at the time of the request, create any obligation on its part to pay the amount of the check. The suggestion by the bank to James McGuire to secure a certification of the check by the provincial treasurer and auditor, in accordance with a circular of the Department of Finance dated 3 July 1947, also did not create an obligation on its part to pay the amount of the check. The subsequent withdrawal by the Province of Samar of its deposit, thereby leaving a small balance insufficient to pay the check referred to if and when duly presented for payment, could not be prevented by the bank and if it had refused to allow the withdrawal the bank might be held responsible for damages for refusing to allow it. The only party liable for the payment of the check is the Province of Samar, the drawer. The Philippine National Bank, the drawee, should be held free from any liability, primarily or subsidiarily. The judgment appealed from should be modified by absolving the appellant from any liability.
