

ISIDRO M. ONGSIP, PLAINTIFF-APPELLEE, VS. PRUDENTIAL BANK & TRUST CO., DEFENDANT-APPELLANT.

G.R. No. L-27328. May 30, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the deduction from a depositor's current account of postdated checks and deposits on marginal credit allegedly secured by the depositor.

The Prudential Bank & Trust Co. appealed from the decision of Judge Francisco Arca dated July 23, 1966, ordering the bank to pay Isidro M. Ongsip the sum of P225,484.95 with legal interest from June 2, 1955 until fully paid, the sum of P19,416.37 with legal interest from July 14, 1955 until fully paid and P5,000 as attorney's fees. (Appeal before R.A. No. 5440.)

Ongsip had a current account with the Prudential Bank during the period from 1952 to 1960 (Exh. A to A-304). The bank debited against Ongsip's current account (a) on June 2, 1955 postdated checks amounting to P225,484.95 and (b) on July 14, 1955 the sum of P19,416.37 representing marginal deposits on six letters of credit opened with the bank, not by Ongsip but by third persons. (Exh. A-95 and B; Exh. A-104-A to A-104-F; Exh. C to C-6; Exh. D to H.)

Ongsip made formal demands upon the bank for the restitution of the debited amounts but the bank did not honor the demands (Exh. J-1 to J-4). Ongsip then complained to the Central Bank against the acts of the Prudential Bank but the Central Bank disclaimed jurisdiction. It opined that the matter was contractual between Ongsip and the bank (Exh. J).

On the other hand, Florencio Arcenal, the bank's witness, testified that no specific authority from Ongsip was necessary for the debiting against his current account of the sum of P225,484.95 because that amount was covered by postdated checks deposited by Ongsip. As to the sum of P19,416.37, Ongsip had acted as surety for third persons whose marginal deposits on their letters of credit were required by the bank. Arcenal testified that Ongsip had authorized such debiting.

According to the bank, it was specially arranged with Ongsip that the latter would deposit postdated and immature checks, and the bank would debit them against his current account, and when the checks matured, credit them to his current account: credit, then debit, then credit again!

The trial court did not believe that such a special arrangement existed. It was an irregular banking practice. The trial court could not sanction such an irregularity. It opined that a postdated check is not a check at all. The bank did not produce in evidence the postdated checks except four checks in small amounts (Exh. 6-a to 6-d). Ongsip claims that the four checks were not part of the sum of P225,484.95.

With respect to the sum of P19,416.37, the trial court found that there was no oral authorization to have the sum debited against Ongsip's current account.

The bank contends that the trial court erred in holding that Ongsip was damaged by debiting P225,484.95 against his account because it did not consider the re-crediting entries and other evidence surrounding the transaction.

Although the bank admitted that the crediting of postdated checks to a current account is an irregular practice, it tolerated the irregularity because Ongsip was a valued client. The bank stressed that after the debiting on June 2, 1955 of the sum of P225,484.95, this very same amount was re-credited or redeposited in that same month of June, 1955 to Ongsip's account, as shown in Exhibit 58 and as testified by the bank's assistant auditor, Genaro Yupangco (p. 20, Appellant's Brief).

The re-crediting was brought to the trial court's attention in the bank's motion for reconsideration but it did not change its decision.

On the other hand, Ongsip counters that the evidence on the alleged redeposit or re-crediting, effected also in June, 1955, is self-serving and is not credible in the absence of the supposed postdated checks. Ongsip asserts that the redepositing should have been effected not by means of redeposit slips but by means of credit memoranda.

Moreover, when Ongsip's counsel in his letters dated October 19 and November 4, 1960 complained about the debiting in question, the bank did not inform him that there was a subsequent redeposit or re-crediting of the amount.

The preponderance of the evidence sustains Ongsip's contention that the debiting was improper and that the alleged redeposit was not true.

The bank's second contention is that the trial court erred in holding that Ongsip was not liable for the marginal deposits on six letters of credit which were clandestinely purchased by him.

Ongsip insists that, as admitted by Arcenal, there was no document of purchase and, at any rate, the purchase would have been illegal.

We find the bank's contention to be correct, as shown in Exhibits 51 to 51-E, which prove Ongsip's assumption of the marginal deposits involved in the six letters of credit. He is liable for that amount.

The other contentions of the bank refer to estoppel, falsus in uno, falsus in omnibus, prescription and laches. As to prescription, which is the only affirmative defense invoked in the bank's answer, that defense is not tenable. The applicable provision is that found in article 1144 of the Civil Code which provides that actions upon a written contract must be brought within ten years from the time the right of action accrues.

The instant action, which was preceded by written extrajudicial demands, was filed on January 31, 1961, or after December 27, 1960, when the current account of Ongsip was closed. It had not yet prescribed. (See Art. 1153, Civil Code; *Marella vs. Agoncillo*, 44 Phil 844.)

The question of estoppel and falsus in uno, falsus in omnibus are not of crucial importance as to affect the outcome of the case.

WHEREFORE, the lower court's judgment is affirmed with the modification that Ongsip's claim for P19,416.37 is dismissed. No costs.

SO ORDERED.

Concepcion Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.
Makasiar, (Chairman), J., no part.

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