

JUAN S. RUSTIA AND FILOMENA D. DE RUSTIA, PLAINTIFFS AND APPELLEES, VS. AGUINALDO & AGUINALDO, DEFENDANT AND APPELLANT.*G.R. No. L-4005. September 16, 1953*

Ponente: TUASON, J.

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This action was commenced in the Court of First Instance of Manila by a complaint captioned "Demanda con Consignacion de Cantidad de Pesos en Pago" and filed by Juan S. Rustia and Filomena D. de Rustia, man and wife, against Aguinaldo & Aguinaldo. After trial, the following judgment was handed down: "For all the foregoing, the Court hereby holds that the plaintiffs have substantially complied with the requirements of the law when, September 11, 1944, they consigned with the Court of First Instance the sum of P4,395.90 in payment of the judgment against them in the aforesaid Civil Case No. 52786. It is therefore the judgment of this Court that said consignment has completely relieved the plaintiffs from any liability arising out of the judgment afore-quoted. The defendant is also hereby ordered to forthwith deliver unto the plaintiffs their shares of stock, to wit: Antamok, 1,000; Gold Creek Company, 5,000; Northern Mining, 5,000; Itogon, 1,000; Northern Mining and Development, 5,000; Suyoc, 5,000; and Macawiwili, 6,682, and pay unto the plaintiffs the total sum of P657.50 representing dividends that have accrued on the said mining stocks and to pay the costs of this suit. The plaintiffs' claim for damages is hereby denied."

Only question of law are raised. Of the facts, set forth in detail in the trial court's decision, only the following need be mentioned as a preliminary statement; others will be cited in the course of this opinion.

The judgment in Civil Case No. 52786 the amount of which, with interest, was consigned, had been rendered in May, 1941, by Judge Arsenio Locsin, but it became final only in 1944, when, having been appealed, it was affirmed by the Court of Appeals. It sentenced the defendants, Mr. and Mrs. Rustia, to pay unto plaintiff P3,100.40 6 per cent interest per annum, and the plaintiff to surrender unto defendants the shares of stock which they had purchased through Aguinaldo & Aguinaldo.

A new hitch developed after the termination of that case mainly by reason of Aguinaldo & Aguinaldo's inability to surrender to Mr. and Mrs. Rustia their Suyoc and Antamok shares because these were covered by bigger lots which could not be split on account of the mining companies' offices being closed due to the current war. Aguinaldo & Aguinaldo offered to guarantee with proper security the delivery of those shares when conditions became normal, but Mr. and Mrs. Rustia were not agreeable to that; they insisted that the certificates of stock which included shares belonging to other customers be entrusted to them for safekeeping, or that either Aguinaldo & Aguinaldo buy their shares or sell to them others' shares.

Following this impasse Mr. and Mrs. Rustia brought the action at bar, in which, besides consigning P4,395.90 in Japanese war notes, they filed cross-claims for dividends on their shares, for accounting, and damages, among other things. As may be seen from the judgment transcribed above, none of these cross-claims were allowed,

except a small dividend.

The controversy would, in all probability, have ended with that judgment had it not been for the fact that by it Aguinaldo & Aguinaldo was to bear the loss of the money which had been deposited with the court and perished, physically and intrinsically, with the advent of liberation. Basically, that is the sole question for decision now. Aguinaldo & Aguinaldo, the appellant assails the sufficiency and validity of the tender and consignation made by the appellees, assigning several grounds and errors only one of which, however, will be discussed, the rest being subordinate thereto, as we view the case.

Article 1176 of the Civil Code of 1889 still in force at the time the present action was begun, provides:

"ART. 1176. If a creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of liability by the consignation of the thing due.

"* * * * *

The evidence set forth in the appealed decision does not bear out what seems to have been the finding below, that the creditor had refused to receive the amount of the judgment rendered in Civil Case No. 52786. It never had. As early as May 8, 1944, Aguinaldo & Aguinaldo's manager wrote its attorney (Exhibit 5) urging him to have the judgment executed, and all the conversations and correspondence between the parties or their representatives on the matter, as related in the decision, reveal plainly that it (creditor) was only too willing and ready to have the judgment effected.

Actually, it was the judgment debtors who put obstacles in the way of a settlement, as the lower court's recital of the evidence also shows. To cite only one instance, in one of the very letters (Exhibit 4) quoted in part by the trial court, Mr. Rustia said that he and his wife could not pay Aguinaldo & Aguinaldo's collector, who had come in obedience to the debtors' own indication, because the messenger "does not carry any credential or authority to receive legally the payment and issue, on his part, corresponding receipt," and because "it results that entity 'Aguinaldo & Aguinaldo' is not legally ready (en disposicion legal) to comply with its obligation, as broker or agent, to return to us immediately our shares of stock, claims, funds, and their interest or earnings, etc." What the "etcetera" referred to was not disclosed.

Whether Mr. and Mrs. Rustia had good cause for their counter-demands was beside the point. Parenthetically, none of them, as seen, were allowed in the appealed judgment, with which the plaintiffs apparently were satisfied. The point is that, because of the said counter-demands, irrespective of their merit or lack of merit, there was neither tender of payment in the legal concept of the term, on the part of the debtors, nor refused to accept payment on the part of the creditor. And there being no tender, the subsequent consignation must fall, even if the consignation had not suffered from fatal defects of its own, which it did.

Consignation and tender complement each other, tender being but a step preliminary to consignation, and neither must be encumbered by conditions if it is to produce the intended result. The thing tendered or consigned not only must be due and demandable, but put before the creditor in such wise that he could have no valid excuse for refusing; no choice but to accept it or run the risk for his loss. Conditional tender or consignation is a contradiction, self-nullifying, in the juristic sense.

It will be noticed, at this juncture, that the so-called suit of consignation was cluttered with counter-propositions and demands more onerous and more numerous than the conditions of the first offer to pay. It contained three separate causes of action, the first of which embodied the terms of the purported tender in a more detailed fashion. On the second cause of action, plaintiff's demanded immediate payment of P632.50 as dividends up to October 11, 1941, on their shares of stocks; rendition of "cuenta exacta y comprobada de sus renditos y ganancias por las

inversiones a que ha dedicado dichos fondos hasta su completo pago juntamente con dichos reditor y ganancias;" immediate delivery of the said shares of stock including those of Antamok and Suyoc, etc.; and on the third cause of action, damages in the amount of P11,377.05 exclusive of interest.

With these counter-propositions and cross-claims it is utterly contrary to Article 1176 of the Civil Code, not to say unfair, to charge to the defendant the loss of the deposit. Did the plaintiffs by their complaint tell the creditor, "Your money has been deposited with the court; it is your, go get it," as they should have done? Indeed, would the plaintiffs and the court have allowed the defendant to withdraw, if it had wanted, the amount deposited before the case was tried and decided? Was the creditor under obligation to accept the plaintiffs' complicated cross-claims, cross-claims which more than wiped out the consignment, one of which cross-claims was impossible of accomplishment at that time, and all of which the defendant believed baseless and unmeritorious, as the court subsequently found? The answers to all these questions are, of course, no. And in the meantime that the defendant was prevented from taking the money on deposit, it was fast dwindling in value, to become absolutely worthless in a few months; while the same deposit remained at the plaintiffs' free disposal, at their pleasure to withdraw or spend. One cannot eat his cake and have it, too, as the would have the court sanction. Having placed in the hands of the court the amount which was due to the appellant, and retaining sole control and disposition thereof while the action lasted, they would have the creditor suffer all the consequences for the deterioration and final outlawing of the deposit.

Irony of the situation was that the supposed necessity for the present suit, which has produced nothing but delay, harassment and expense, was brought about by circumstances of plaintiffs' own choosing. It should be remembered that Aguinaldo & Aguinaldo's action against Mr. and Mrs. Rustia to recover the debt now in question was commenced as early as May 29, 1938; that the debt was incurred from 1936 to 1937; and that the judgment in the case was promulgated on May 15, 1941, more than six months before the outbreak of the late war. Even at that late date there would have been no difficulty in arranging for the issuance of all the certificates of stock which Aguinaldo & Aguinaldo was to deliver over to the defendant and there would have been no unliquidated dividends to compute and no accounting to render, if only the debtors had not unjustifiably resisted Judge Locsin's judgment. But they appealed to the Court of Appeals only to lose, and after the affirmance of the judgment, attempted to take the case by certiorari to the Supreme Court only to abandon the latter attempt after they were denied a long extension of time which they had asked purportedly to perfect their petition for review.

In conclusion, it is our considered opinion that the so-called tender and consignment by the plaintiffs were not tender and consignment at all within the purview of the applicable provisions of the old Civil Code, and did not discharge their obligation to the defendant; that the plaintiffs should be condemned to pay the defendant the sum of P3,100.40, the amount which they were sentenced to pay in Civil Case No. 52786, with legal interest from the date of the institution of that action; that the defendant should deliver to the plaintiffs the shares of stock listed in the decision on appeal plus dividends on said shares in the sum of P387.50 found by Judge Locsin and such additional dividends as said shares may have earned from May 15, 1941. These additional dividends are just and legal upon the same principle that the plaintiffs are made to pay interest on the debt from that date.

It is accordingly ordered that judgment be entered in accordance with the tenor of the immediately preceding paragraph, and that the plaintiffs and appellees pay the costs of suit of both instances.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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