

ERNEST BERG, PLAINTIFF AND APPELLANT VS. NATIONAL CITY BANK OF NEW YORK, DEFENDANT AND APPELLANT.*G. R. No. L-9312. October 31, 1957*

Ponente: PAREDES, J.

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In 1941, shortly before the outbreak of the war, the Red Star Stores, Inc. was indebted to the National City Bank of New York, Manila Branch, hereinafter called the Bank, in the amount of \$19,956.75 representing certain import bills purchased by said Bank. This obligation was guaranteed by Ernest Berg, hereinafter referred to as plaintiff, and by his brother, Alfred Berg. During the Japanese occupation, the Bank of Taiwan required the Red Star Stores, Inc. to liquidate its obligation and, accordingly, plaintiff paid the same in full.

After liberation, the Bank reopened and established a department to revise all prewar accounts and take such steps as may be necessary to recover them. This department sent a letter to the Red Star Stores, Inc. requesting it to indicate the steps it wanted to take to liquidate its prewar obligation. On November 1, 1945, plaintiff contacted the officials of the Bank telling them that he had already settled the account with the Bank of Taiwan during the Japanese occupation, but said officials intimated that they could not regard such payment as discharging the obligation and requested that it be paid. Plaintiff acknowledged his indebtedness and agreed to pay the same but stated that he desired to consult first his lawyers as to the possible effect of the cases then pending on the validity of wartime payments in Japanese military notes. Subsequently, on February 1, 1946, plaintiff informed the Bank that he was willing to compromise his ease by paying, the indebtedness provided the Bank forego its claim as to interest. This offer was approved and on February 15, 1948, plaintiff signed an acknowledgment of the debt and an agreement relative to its liquidation (Exhibit I). On March 23, 1946, plaintiff informed the Bank that, as the sale of his real property had been delayed, he would not be able to make payment as agreed upon, but that, in the meantime, he would execute a note and a pledge-placing as security the 8,300 shares of Filipinas Compañia de Seguros registered in his name. This Was done and the agreement was subsequently executed.

On March 12, 1946, the Court of First Instance of Manila decided the case of Haw Pia vs. China Banking Corporation holding that payments made in Japanese-military currency to the Bank of Taiwan did not operate to discharge the obligations, but on April 9, 1948, the decision was reversed by the Supreme Court holding said payments to be valid (G. R. No. L-554)[*]. On June 22,, 1946, having been advised that his note was falling due, plaintiff made a partial payment of P4,913.50 and was given an extension of 30 days to pay the balance. On July 21, 1946, a second notice was given plaintiff for the payment of the balance, and on July 31, plaintiff sent a letter authorizing the Bank to sell the shares he had pledged to secure his debt and to deposit the balance, if any, in his personal account. This was done thereby liquidating the account of plaintiff.

On September 27, 1848, plaintiff demanded from the Bank the repayment of the money paid by him relying on the decision of the Supreme Court in the Haw Pia ease. The Bank replied that the case of the plaintiff had been compromised and can no longer be reopened. Whereupon on April 13, 1949, plaintiff commenced the present action to recover the amount paid, plus the sum of P33,000 as, damages.

In his complaint, plaintiff alleged that notwithstanding the fact that he had already paid his debt to the Bank of Taiwan, defendant, by the use of deceit, fraud, threat and intimidation still forced him to compromise his case as a result of which defendant sold his 3,300 shares of the Filipinas Compañía de Seguros and retained the sum of P35,172.62 to pay the debt he had already paid to the Bank of Taiwan. Defendant, in turn, denied the charge and alleged that plaintiff paid the sum of P35,172.62 as a result of a compromise entered into for good and valuable consideration. And on May 29, 1950, the court rendered judgment ordering defendant to pay to plaintiff said amount of P35,172.62, with legal interest from August 6, 1946, plus the costs of action. No action was taken on the claim for damages. In due time, both parties appealed from the decision, plaintiff insofar as the court ignored his claim for damages, and defendant because of the adverse ruling rendered against it.

In holding that the second payment made by plaintiff to defendant of the old indebtedness was improperly made and as a consequence the money paid should be returned in view of the decision of the Supreme Court in the Haw Pia case, the trial court made the following comments:

"There is not much to be discussed in this case. Was the payment made by the plaintiff during the Japanese Administration valid? If it was valid, as the Court believes it to be, then the obligation of the Red Store Co., Inc., was no longer existing' at the time the plaintiff made the second payment. If there was no more obligation to pay, then the demand made by the plaintiff for the payment of the obligation of the 'Red Stores Co., Inc.,' was illegal. Either from the standpoint of the plaintiff? or from the standpoint of the defendant, the second payment was most unjustified. If payment was made because of duress, threats, or intimidation, plaintiff is entitled to the recovery of the amount he paid. If payment was made willingly and voluntarily in the belief that there was still an obligation to be paid, equity and justice demand the return of the second payment for the reason that there was no more obligation to be paid."

Under ordinary circumstances, the above ruling of the court would be correct for indeed under Article 1895 of the old Civil Code, "If a thing is received where there was no right to claim it, and which through an error has been unduly delivered, an obligation to restore the same arises", and apparently here we have a duplication of payment. But in the present case the situation is different, for here we find that plaintiff and defendant had entered into a compromise whereby the formed agreed to pay his indebtedness provided the latter forego the payment of the interest, and this compromise was arrived at when there was still uncertainty as to the validity of the payments made to the Bank of Taiwan of prewar obligations. Thus, on February 15, 1946, as a result of the negotiations had between plaintiff and defendant, the latter sent to the former a letter of the following tenor:

"Mr. Ernest Berg
1340 Oregon St.
Manila

Red Star Stores, Inc.

Dear Mr. Berg':

This will confirm our conversation of this afternoon when you agreed to reimburse us in full for our Advance Bills local amounting to US\$19,956.75 against which we are prepared to waive interest up to date.

It is our understanding that you have disposed of some property and when the deal is consummated, which is expected next week, you will liquidate the subject's pre-war indebtedness to us.

We take this opportunity to convey our thanks for the splendid cooperation you have displayed in discharging this obligation.

Very truly yours.

(Sgd.) Fhed W. Hendbk

Sub-Manager

I hereby acknowledge the above indebtedness and confirm that it will be fully liquidated.

(Sgd.) Eknest Berg

Note that the letter says that it was a confirmation of a conversation had between plaintiff and defendant regarding the settlement of the account previously had by the former the term of which was that plaintiff would pay his account in full and defendant would waive the payment of interest. Note also that at the foot of the letter there appears the following under the signature of plaintiff: "I hereby acknowledge the above indebtedness and confirm that it will be fully liquidated." That this agreement has the nature of a compromise cannot be denied for it was entered into to avoid "the provocation of a suit" which defendant was then contemplating to take against plaintiff and his brother in the belief that the payment made to the Bank of Taiwan was not valid (Article 1809, old Civil Code). Note that at that time the decision of the Supreme Court in the Haw Pia case has not as yet been rendered. It being a compromise, it is binding upon the parties (Article 1809, old Civil Code), and as such it has "the same authority as res judicata" (Article 1816, Idem.).

It is true that plaintiff claims that the agreement Was forced upon him through deceit, fraud, threat or intimidation, but the trial court did not predicate its decision on any of said grounds. Apparently, the trial court was of the belief that a compromise can only be effected if the claim to be settled was enforceable, which is not correct, for, as a rule, a compromise is entered into not because it settles a valid claim but because it settles a controversy between the parties. And here there was a real compromise when defendant waived the payment of interest amounting to over \$4,000.

"The compromise of any matter is valid and binding, not because it is the settlement of a valid claim, but because it is the settlement of a controversy.

'In order to effect a compromise there must be a definite proposition and an acceptance. As a question of law it does not matter from whom the proposition oil settlement comes; if one is made and accepted, it constitutes a contract, and in the absence of fraud it is binding on both parties.' (Page 870.)

'Hence it is a general rule in this country, that compromises are to be favored, without regard to the nature of the controversy compromised, and that they cannot be set aside because the event shows all the gain to have been on one side, and all the sacrifice on the other, if the parties have acted in good faith, and with a belief of the actual existence of the rights which they have respectively waived or abandoned; and if a settlement be made in regard to such subject, free from fraud or mistake, whereby there is a surrender or satisfaction, in whole or in part, of a claim upon one side in exchange for or in consideration of a surrender or satisfaction of a claim in whole or in part, or of something of value, upon the other, however baseless may be the claim upon either side or harsh the terms as to either of the parties, the other cannot successfully impeach the agreement in a court of justice * * *. Where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctable as such in equity, cannot afford a basis for setting a compromise aside or defending against a suit brought thereon * * *. Furthermore, and as following the rule stated, a compromise of conflicting claims asserted in good faith will not be disturbed because by a subsequent judicial decision in an analogous case it appears that one party had no rights to forego.(Pages 883, 884.)" (McCarthy vs. Barber Steamship Lines, 45 Phil., 488, 498-499)

But plaintiff insists that the compromise is null and void as the same has been extorted from him by the officials of the Bank through deceit, fraud and intimidation. In this respect, counsel for defendant says: "Mr. Berg claims that the compromise agreement was secured from him by deceit, fraud and unlawful action by the bank. The bank is referred to as an extortionist, and as a blackmailer, as being guilty of making illegal demands, of coercing Mr.

Berg, of resorting to misrepresentation, illegal distortion, deceit and insidious machinations. Its acts are likened to those of a traffic policeman soliciting a bribe, on one hand, and to a highwayman extracting money from a wayfarer at the point of a gun, on the other. Mr. Berg's counsel states that Mr. Berg was compelled to settle because of fear for his life, of Jife imprisonment or a heavy fine, and fear of financial ruin, the implication being that the bank would cause these dire contingencies should Mr. Berg not pay the sums demanded" (p. 4, Defendant's Memorandum).

But these imputations only find support in the testimony of plaintiff which were denied by the officials of the Bank-In fact, they have not been substantiated. What plaintiff in effect wanted to convey is that the officials of the Bank intimidated to him that unless the account is settled, the Bank would bring an action against him or against Ms brother, Alfred Berg; that it would not extend any further credit facilities to him or his business enterprises; and that it would make use of its influence to prevent him from engaging in business in the Philippines. The question then that arises is: Do these threats constitute duress under the law?

With regard to the first charge, we see nothing improper. It is a practice followed not only by banks hut even by individuals to demand payment of their accounts with the threat that upon failure to do so an action would be instituted in court. Such a threat is proper within the realm of the law as a means to enforce collection. Such a threat cannot constitute duress even if the claim proves to be unfounded so long as the creditor believes that it was his right to do so. This, charge has no legal basis.

"One element of the early law of duress continues to exopt, however its boundaries may be otherwise extended. The present-be-must be wrongful, and not all pressure is wrongful. The law provides certain means for the enforcement of their claims by creditors. It is not duress to threaten to take these means. Therefore, a threat to bringing action or to resort to remedies given by the contract is not such duties as to justify rescission of a transaction induced thereby, even though there is no legal right to enforce the claim, provided the threat is made in good faith; that is, in the belief that a possible cause of action exists. But, if the threat is made with the consciousness that there is no real right of action and the purpose is coercion, a payment or contract induced thereby is voidable. In the former case, it may be said that the threatened action was rightful; in the latter case, it was not." (Section 1606, Williston on Contracts, Vol. V, pp. 4500-4W2.)

Plaintiff also contends that the Bank had intimated that it would not extend to him or his. enterprise further credit facilities unless he settles the former debt of the* Red Star Stores, Inc. Even if this were true, the same' cannot constitute duress that might invalidate the settle. Blent, for there is nothing improper for a bank to decline further credit to any person or entity as a means to enforce the collection of its. accounts if such is necessary to protect its investment. In fact, such is the practice followed by most banking institutions for it goes along way in the determination of the paying capacity of those who deal with. them. Moreover, the banking business in the Philippines is extremely competitive. There are other banks that are opened for business whose facilities plaintiff may avail of in case the threat is carried out and if plaintiff is a good business risk he could certainly find accommodation in any one of them if he so desires. The fact that plaintiff was then under indictment for treason does not change the situation. This is rather a further reason for defendant to adopt a more stringent measure against plaintiff because of the belief, grounded or otherwise, that the collection of the account might be frustrated. Such circumstance should not be considered as a desire on the part of defendant to harrass or aggravate the alleged political or financial difficulties of plaintiff.

Plaintiff likewise contends that the officials of the Bank have threatened him with reprisals in the sense that unless he settles his account they would make use of their influence to prevent him from engaging in business in the Philippines. Not only is this claim inherently untenable but it was flatly denied by the officials of the Bank. Certainly, plaintiff has not been able to indicate in what manner does defendant or its officials expect to carry out

the threat imputed to them.

All things considered, we find the charges of plaintiff unfounded. And considering that, under our law, intimidation can only exist "when one of the contracting parties is inspired with a and well-grounded fear of suffering an imminent and serious injury to his person or property" (Article 1267, old Civil Code), we are persuaded to conclude that the compromise in question has been entered into voluntarily and, as such, is valid and binding.

Having reached this conclusion, we find it unnecessary to discuss the appeal taken by plaintiff-appellant.

Wherefore, the decision appealed from is reversed, without pronouncement as to costs.

Paras, G. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

[*] 80 Phil., 604; 45 Off. Gaz., [Supp. No. 9] 229.

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