

**MANILA TRADING & SUPPLY CO., PLAINTIFF AND APPELLEE,  
VS. MARIANO MEDINA, DEFENDANT AND APPELLANT.***G.R. No. L-16477. May 31, 1961*

Ponente: REYES, J.B.L., J.

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This case was certified to us by the Court of Appeals because the claims involved totalled more than P200,000.00 (Resolution, C.A., 14 Nov. 1959).

The facts appear to be that prior to May 7, 1956, the defendant-appellant Mariano Medina had certain accounts with appellee Manila Trading & Supply Co. These accounts were on said date consolidated into a total balance due of P60,000.00 for which Medina executed a promissory note (Exh. "A") for Sixty Thousand Pesos (60,000.00), with interest at 12% per annum, payable in monthly installments of P4,000.00 plus interest. The note provided that upon failure to pay any of the installments, "the whole sum remaining then unpaid will immediately become due and payable, at the option of the holder of this note," together with 33-1/3% of the amount due for attorney's fees and expenses of collection, in addition to the costs of the suit.

On January 8, 1957, the payee Manila Trading & Supply Co., filed a complaint against appellant Medina in the Court of First Instance of Manila, claiming that the said debtor had failed to meet the installments due on the note for the months of September, 1956 up to and including January 7, 1957, and that due to such default, the balance of the note amounting to P43,596.22, plus 12% interest thereon and 33-1/3% thereof by way of attorney's fees and collection expenses, had become due and demandable; and prayed for judgment in the amounts stated. On January 4, 1957, upon petition of plaintiff, a writ of attachment was issued and levied upon eleven of defendant's buses.

On March 10, 1957, Medina filed an answer (Record on Appeal, p. 11), admitting the allegations of paragraphs 2, 3, and 4 of the complaint (i.e., the execution of the note; the failure to pay the monthly installments for September, 1956 up to January, 1957; the maturity of the balance due of P43,596.22; and the lack of sufficient security). He also admitted the allegations of the complaint concerning the 12% interest on the principal, but contended that the 33-1/3% attorney's fees were exorbitant and unconscionable. Medina further pleaded, by way of defense, that he was induced to pay P4,000.00 additional on January 24, 1957, upon promise that he would not be sued, and that he would be allowed to pay the balance "paulatinamente", and that instead, his trucks were attached. By way of counterclaim, Medina asked for damages due to lost earnings of the trucks attached, at the rate of P900.00 per day. These defenses and counterclaim were traversed by the plaintiff.

Trial was set for September 10, 1957, and because of non-appearance of defendant and his counsel, the court commissioned the Clerk to receive plaintiff's evidence, which showed that from June 6, 1956 to January 21, 1957, defendant had made twenty-one payments totalling P24,311.34 of which P4,413.76 corresponded to interest and the balance (P19,982.15) to the principal.

Upon seasonable motion of defendant Medina, the Court reopened the case to give him opportunity to present his evidence. Thereupon, he testified and asserted that in addition to the twenty-one payments acknowledged by

plaintiff company, he had made ten other payments that, added to the former, showed that he (Medina) had paid more than P4,000.00 a month since the execution of the note up to the filing of the complaint, and was, therefore, not in default. To bolster his claims, Medina exhibited ten additional receipts signed by the plaintiff's cashier, but without numbers or year dates, because they were allegedly eaten by anay; however, defendant wrote thereon the supposed numbers that the receipts originally bore, based on a memorandum book where he purported to have noted his payments to plaintiff. Medina also testified that by reason of the attachment of his buses, he had lost net earnings of P550.00 per day, and his business in building truck bodies had been affected to the extent of P50,000.00; and that he had been forced to engage counsel at stipulated fees of P7,000.00. Considering that the attachment was maintained for over two years, the damages claimed by defendant would amount to over P300,000.00.

In rebuttal, the assistant accountant of the Manila Trading denied that the ten additional receipts exhibited by the defendant corresponded to the period covered by the promissory note Exh. "A"; that the numbers attributed to them by plaintiff were not in the proper sequence, because as of July 28, 1956, the company has adopted a new numbering of its receipts; and that in the absence of the correct numbers and the years of issue, it was impossible to locate the record of the payments claimed.

After considering the evidence, the trial court entertained doubts as to the veracity of the receipts produced by the defendant, and refused to credit him with the amounts shown therein. It, therefore, gave judgment for the plaintiff for the balance due of P40,102.42 on the note, plus 12% interest from January 21, 1957 until payment; but reduced the attorney's fees from 33-1/3% of the sum due to only P1,000.00. Defendant appealed from the decision.

Our examination of the evidence satisfied Us that the ten additional receipts produced by the defendant (Exhs. 3-D, 3-F, 3-H, 3-L, 3-S, 3-U, 3-W, 3-Z, 3-BB, and 3-CC), while issued by plaintiff, were not for payments made on the dates claimed by defendant, nor are they chargeable to the balance of the promissory note Exh. "A". As pointed out by the trial court, it is highly suspicious that these receipts should be mutilated precisely at the places where the serial numbers and the year of issue must appear, while the receipts for intervening payments recognized by the plaintiff remained intact. Moreover, these contested receipts appear identical in shape, size, and color to those issued by plaintiff company prior to July 28, 1956, before the form of its receipts were changed, such as Exhs. 3 to 3-C, and Exhs. 7 to 7-D; but differ radically in color, size, and particulars from those issued after July 28, 1956. In addition, the numbers that Medina attributed to them are not in sequence as can be seen from the list Exh. 4. Thus, defendant claims that Exh. 3-D was issued in June (or July) 29, 1956 and bore No. 2898; yet the acknowledged receipt for July 28, 1956 is numbered 0096; receipt Exh. 3-F, allegedly for August 1, 1956, is numbered, according to defendant, 3438, while the admittedly authentic receipt Exh. 3-G for August 3 has a lower number, 0813.

Moreover, receipt Exh. 3-H that defendant claims to be dated August 18, 1956, is numbered 1584, a number lower than that of Exh. 3-F dated August 1st (No. 3438), when the latter was issued earlier. The same inconsistency between dates and serial numbers is true with the other contested receipts. It is difficult to believe that a trading company should issue receipts numbered at random, since it would make auditing control impossible.

The lower court also correctly noted that the genuine receipts from and after July 23 invariably specify the amount charged to interest as well as that credited to the principal for each payment, while the disputed receipts contain no such specification.

These differences between the defendant's disputed receipts and those admitted by plaintiff, when coupled with

the fact that appellant Medina's answer expressly admitted the balance due as well as his failure to meet the monthly installments from September, 1956 to January, 1957, his lack of corroborating and the further circumstance that the admissions in his answer were never withdrawn nor was the answer containing them ever amended, irresistibly show that the trial court's rejection of the genuineness and validity of the disputed receipts constituted no error. The authenticity of the signatures appended to them does not prove that they were issued in 1956 or 1957, as claimed by the appellant, nor that they should be credited to the note Exh. "A". It is not at all improbable that these mutilated receipts were among those issued to the appellant prior to the consolidation of his accounts and the execution of the promissory note.

Appellant avers that the genuine receipts dated January, 1957 raise the presumption that prior installments were paid. This might be true if such receipts recited that they were issued for the installments corresponding to the month of January, 1957; but nowhere does that fact appear. And even if such recital had been made, the resulting presumption would only be *prima facie*, and the evidence before us is clear that the payments made do not correspond to the installment falling due on the dates of the genuine receipts.

We find no error in the judgment appealed from, and therefore the same is hereby affirmed. Costs in both instances against appellant Mariano Medina.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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