

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE VS. PEDRO C. RELATIVO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-5298. October 29, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

The defendant-appellant Pedro C. Relativo owed the Philippine National Bank the sum of P600 for which he executed a promissory note jointly and severally, with two other persons, now dead. The debt was payable within six months counted from February 12, 1947.

In this suit by the Bank for collection, he asserts the obligation has already been paid because, on June 23, 1949 "he presented himself at the Naga Agency of the plaintiff and tendered payment of the loan out of a check for P5,000 issued by the U. S. Treasury in favor of Bernarda Vda. de Rullas, who then accompanied said defendant, demanding that her check be cashed. This defendant identified her as the payee, but plaintiff's Assistant Agent, Martin Saludo of the Naga Agency, dishonored the check on the ground that the identification and guaranty offered by the defendant were not sound and not free from suspicion. The same check was, however, honored and cashed at a latter date by the Legaspi Branch of the plaintiff through identification of another counsel hired by the payee."

Therefore the issue is whether the tender of payment in the manner above described resulted in the discharge of defendant-appellant's monetary undertaking.

We are clearly of the opinion that it did not, for several reasons, principally the following:

First.—The promissory note executed by appellant undertook to pay in the Philippine currency; and according to the trial judge, as "the tender of payment was made in check, and not his own at that, the plaintiff acted rightly in refusing it. This is true even if the check may be good." (*Belisario vs. Natividad*, 60 Phil., 156, and *Villanueva vs. Santos* Off. Gaz., March 1941, 681.)

Second.—The tender of payment was conditional. Under the Civil Code, a tender of payment, to be valid, must be unconditional.[1] In offering the check, the defendant debtor, practically told the Bank, "Here is P600 but you must pay the remainder of the check, (P4,400) to Bernarda Vda. de Rullas". That condition the Bank's Agency was unwilling to accept.

And without in any manner implying that the creditor's refusal to accept the condition should be justified, we may state that the Bank in this case had some reasons to reject the condition, because of the financial risk it takes in making the payment, in connection with the identity of the payee, or the genuineness of the check or other possible infirmities of the commercial paper which banking institutions are expected to foresee or provide against.

The appellant labors under the impression that it was the duty of the Bank to honor and cash the check when and if the payee Vda. de Rullas presented it. The check is not before us, but we may grant appellant all favorable presumptions. We may assume that the check was in fact genuine, that it was negotiable, that it was drawn upon

the Philippine National Bank, that the person presenting the check was in reality the payee Bernarda Vda. de Rullas, and that the drawer had enough funds in the hands of the plaintiff bank. Still, and in spite of the above circumstances, Bernarda Vda. de Rullas could not compel nor sue the Bank to obtain payment of the check, because it does not appear that it had been accepted. (Sec. 189, Neg. Inst. Law.)

"The payee of a check unaccepted cannot maintain an action on it against the bank on which it is drawn." (General American Life Ins. Co. vs. Stadium, N. C. 1943, 25 S. E. 2d, 202)

"The reason why the holder of the check is not permitted to sue the bank has been stated by the authorities to be, that there is no privity between the holder and the bank until by certification of the check or the acceptance thereof, express or implied, or by any other act or conduct, it has made itself directly liable to the holder." (Standard Trust Co. vs. Commercial Nat. Bank, 1914, 166 N. C., 112.)

"The holder's remedy is against the drawer where payment of a check is refused." (Pease, etc., Co. vs. State Nat. Bank, 1905, 88 S. W., 172, 114 Tenn., 693.)

"The bank is liable only to the drawer for a refusal to pay a check unless the check has been accepted or certified." (Farmers', etc., Nat. Bank vs. Elizabethtown Nat. Bank, 1906, 30 Pa. Super. Ct., 271.)

If the Bank was not the drawee, appellant's case would be less meritorious.

"The payee of an unaccepted check cannot maintain an action against a bank, other than the drawee, which refuses to pay the check on demand." (Independent Oil Men's Assoc. vs. Ft. Dearborn Nat. Bank, 1924, 142 N. E. 458, 311 111., 278, affirming 226 111. App. 570.)

The foregoing exposition of the right—or lack of right—of Bernarda Vda. de Rullas to get payment should be enough answer should appellant insist in his position that the Bank caused him damage—and therefore he has a counterclaim—for depriving him of the opportunity to earn the money he could have earned upon payment of the check through his services or cooperation. As there was no duty of the bank enforceable by Rullas, (nor by this defendant), no wrong was done, for which damage could be claimed.

Third.—Tender of payment even if valid, does not by itself produce legal payment, unless it is completed by consignation.

The effect of a valid tender of payment is merely to exempt the debtor from payment of interest and/or damages.[2]

Tender of payment alone is not a mode of extinguishing obligations. Tender of payment in the Civil Code is treated as subtitle in the section on Payment as a mode of extinguishing obligations. But the subtitle is "Tender of payment and consignation". And article 1176 provides that after a valid tender of payment "the debtor shall be released from responsibility by the consignation of the thing or sum due". As a complement, article 1180 says that "after the consignation has been duly made, the debtor may petition the judge to order the cancellation of the obligation." All of which patently indicate that consignation must follow, supplement or complete the tender of payment if discharge of the obligation is to be obtained.[3]

"B. Ofrecimiento de pago y consignación.—Consiste el primero en una declaración de voluntad dirigida al acreedor, por la que el deudor manifiesta su firme decisión de cumplir inmediatamente la obligación; y la segunda en el depósito que en forma legal hace el deudor de la cosa objeto de la obligación, cuando el acreedor no quiere o no puede recibirla. Solo la consignación es forma de pago. La oferta únicamente nos interesa aquí en cuanto es un acto preparatorio de la consignación." (Castán, Derecho Civil, Vol. 2, p. 521.).

"A. In General.—Under a statute in some jurisdictions an obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in accordance with the statute. In the

absence of such statute, or if there is a failure to comply with the statute) a tender of money does not ordinarily operate as a satisfaction of the debt. * * *" (62 Corpus Juris, p. 683.)

The appellant cites article 1170 of the Civil Code providing that delivery to the creditor of a check "shall produce the effects of payment only when realized or when by the fault of such creditor the privileges inherent in their negotiable character have been lost"; and he argues, that the underlined portion applies to his defense against the Bank. Yet it appears that the refusal of the plaintiff's Naga Branch did not impair the check. So much so that it was subsequently honored and cashed by the Legaspi branch.

Wherefore, the judgment of the court of first instance of (Jamarines Sur requiring this defendant-appellant to pay the debt with interest, attorneys fees and costs is hereby affirmed. He shall also defray the costs of this appeal.

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

[1] Decision of the Supreme Court of Spain cited in footnote, Castan Tobeñas, Derecho Civil, (1943) Vol. 2 p. 522.

[2] See 62 Corpus Juris p. 682.

[3] See Llamas vs. Abaya, 60 Phil., 502 and Asturias Sugar Central vs. Pure Cane, 60 Phil., p. 255.

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