

AUGUSTO G. GAMBOA, PETITIONER, VS. THE HON. JUDGE BIENVENIDO A. TAN, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND AGUSTIN A. CANCIO, RESPONDENTS.

G.R. No. L-17076. January 29, 1962

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This involves the effects of consignment.

In April 1960, Augusto G. Gamboa deposited with the Manila court of first instance, the sum P16, 450.00 even as he requested that Agustin A. Cancio be required to take it as full settlement of the latter's a share or interest in the enterprise known as Gamboa's Manila Inc.

Answering the petition (on May 13, 1960). Cancio said he had previously refused to receive the money as full settlement, because his share was worth P51, 256.434, at least, and that Gamboa had agreed to pay the said amount for such share. Nevertheless, Cancio expressed willingness to receive, as partial payment the amount of P16,450.00 thus deposited.

Before Cancio had filed his answer, Gambao changed his mind and on May 6, 1960, he moved for permission to withdraw the sum he had deposited; and the court granted such permission on May 9, 1960.

After filing his answer and knowing the withdrawal, Cancio moved for reconsideration of the order granting such withdrawal, alleging principally that he had not been notified of the motion, and had a right to be heard before it was so granted. The court reversed itself, and ordered Gambao to redeposit the amount.

Hence this petition asserting abuse of discretion and plain legal error in view of the specific provision of Art. 1260 of the Civil Code which reads as follows:

"ART. 1260 x x x. Before the creditor had accepted the consignment, or before a judicial declaration that the consignment has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force."

We think the above articles gives the depositor the right to withdraw the amount deposited at any time before the creditor accepts it (not to speak of the court's order declaring it to be proper). Such right is clear in this case, because the statement of the creditor came late, and , what is more, the acceptance was partial. This last consideration renders it unnecessary to discuss the effect of failure to give the creditor any notice of the withdrawal since Cancio's statement was practically a rejection of the offer of payment.

Wherefore, the order requiring the re-deposit of the money is revoked. Costs against respondent Cancio.

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

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