

J. ANTONIO ARANETA, PLAINTIFF AND APPELLANT, VS. HONGKONG & SHANGHAI BANKING CORPORATION, DEFENDANT AND APPELLEE.*G. R. No. L-3225. April 27, 1951*

Ponente: PARAS, C.J.

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The plaintiff-appellant has adopted the following statement of facts contained in the appealed decision: "On, May 25, 1937, the plaintiff executed in favor of the defendant bank a letter of hypothecation by which the former obtained from the latter a credit by way of overdraft account in an amount not exceeding ₱8,000. As security for the repayment of whatever indebtedness might be incurred by the plaintiff, and in accordance with said letter of hypothecation, he delivered to the defendant bank by way of pledge the certificates of stock listed in the amended complaint. As of January 1, 1942, before the occupation of Manila by the Japanese forces, the amount of plaintiff's indebtedness under the letter of hypothecation was ₱2,709.64. Upon the occupation of Manila by the Japanese, the Bank of Taiwan, as liquidator of the defendant bank by authority of the Japanese Military Government, demanded from the plaintiff the payment of his indebtedness to said bank, and the plaintiff had to pay regular monthly installments of ₱50 on account of said indebtedness, so that by the end of the Japanese occupation, the balance thereof had been reduced to ₱687.36. In view of the refusal of the defendant bank to accept as full payment of his indebtedness the amount of ₱687.36 and to return the pledged certificates of stock, the plaintiff formally tendered on March 13, 1947 a check in the amount of ₱687.36 covering the outstanding balance of his account after deducting the payments made by him during the Japanese occupation. On March 15, 1947, the defendant bank, by its letter, refused to accept said tender and informed the plaintiff that it could not recognize any alleged payments to the Bank of Taiwan, insisting at the same time that the balance of plaintiff's indebtedness was ₱2,709.64 as of December 31, 1941, plus the interest due thereon. Hence, plaintiff brought this action. On February 23, 1948, the parties in this case filed with this Court a partial stipulation, whereby the defendant agreed to deliver to the plaintiff the securities pledged upon the latter putting up a cash deposit of ₱2,709.64 as substitute security for the balance of his indebtedness to the defendant bank in lieu of the certificates pledged. The plaintiff, however, reserved his right to amend his complaint so as to allege damages in the form of interest at the rate of 8 percent per annum on the sum given as cash deposit if he should find it necessary to do so. A supplemental complaint was subsequently filed by the plaintiff alleging such damages."

It is alleged by the appellant that in order to be able to deposit the sum of ₱2,709.64, as substitute security for the balance of his indebtedness to the defendant bank in lieu of the certificates of stock pledged, he had to borrow that amount from the Bank of the Philippine Islands on which he paid interest at the rate of 8 per cent per annum from February 21, 1948. It is thus prayed by the appellant in his supplemental complaint that the defendant bank be ordered to return to the appellant the sum of ₱2,709.64, together with interest at the rate of 8 per cent per annum from February 23, 1948. Appellant's theory is that the defendant bank had no right to reject the payment by the appellant of the sum of ₱687.36 which was the unpaid balance of his account after deducting the payments made

by him during the Japanese occupation. We are unable to agree. At the time the tender of payment was made by the appellant, the legal effect of payments made to the Japanese liquidator, the Bank of Taiwan, was as yet unsettled, and the defendant bank therefore had the right not to recognize the payments made by the appellant to the Bank of Taiwan during the Japanese occupation upon account of his indebtedness with the defendant bank. Indeed, the defendant bank can be said to have acted with utmost good faith in the matter, because the decisions of the lower courts in the cases relating to payments made to enemy banks liquidated by the Bank of Taiwan were that said payments were void. The good faith of the defendant bank is again revealed by the fact that, after the Haw Pia case was decided by the Supreme Court on April 9, 1948, upholding the validity of the payments made to the Bank of Taiwan, the defendant readily manifested to the trial court its acceptance of the payments made by the appellant to the Bank of Taiwan during the Japanese occupation, and admitted that the unpaid balance of appellant's indebtedness was only P687.36.

From the conclusion that the defendant bank was entitled, at the time the appellant offered to pay the sum of P687.36, not to recognize the payments made by the appellant to the Bank of Taiwan, it must follow that it had the consequent right to hold in pledge the securities in question. If during the pendency of this case, the appellant elected, with the acquiescence of the defendant bank, to deposit the sum of P2,709.64, in place of the pledged certificates of stock, he did so for his benefit. It is noteworthy that appellant's action is for the purpose of compelling the defendant bank to accept the sum of P687.36 and to release the securities pledged by the appellant to guarantee the payment of his overdraft account. The substitution by the appellant of a cash deposit for the pledged certificates of stock was in pursuance of a concession granted by the defendant bank, the enjoyment of which by the appellant was unnecessary to appellant's cause of action.

The appellant has cited an American authority (*L. M. Gordon et al. vs. Kentucky Midland Coal Co. et al.* 278 S. W. 68) allowing the recovery of the premium paid for a bond to release property wrongfully attached. Assuming that this is good law and applicable in our jurisdiction to cases of replevin, the defendant bank cannot be considered as a wrongful possessor, since it came to hold the pledged certificates in virtue of appellant's letter of hypothecation and agreed to release the same as soon as the decision in the Haw Pia case was promulgated.

Wherefore, the appealed decision is affirmed with costs against the appellant. So ordered.

Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

DISSENTING

PADILLA, J.,

I concur in the result, in view of the appellee's willingness to accept the unpaid balance of the loan. The appellant is not entitled to the amount of interest demanded by him. Were it not for such willingness of the appellee, I would insist on my views expressed in *Del Rosario vs. Sandico*, G. R. No. L-867, and *La Orden de Padres Benedictinos de' Filipinos vs. The Philippine Trust Company*, G. R. No. Lr-2020, both promulgated on 29 December 1949.

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