

**FAR EAST REALTY INVESTMENT INC., PETITIONER-APPELLANT, VS.
THE HONORABLE COURT OF APPEALS, DY HIAN TAT, SIY CHEE AND
GAW SUY AN, RESPONDENTS-APPELLEES.**

G.R. No. L-36549. October 05, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review of the February 12, 1973 decision of the Court of Appeals[*] in CA-G.R. No. 01031-SP, "Dy Hian Tat, et al. v. Hon. Alberto Francisco, et als.", reversing the judgment of the Court of First Instance of Manila, which ordered private respondents to pay, jointly and severally, the petitioner the sum of P4,500.00 plus interest at the rate of 14% per annum, from September 13, 1960, until fully paid, plus the sum of P1,000.00 as attorney's fees.

The dispositive portion of respondent appellate court's decision reads:

"IN VIEW WHEREOF, this Court is constrained to grant as it now grants, the remedy prayed for; the judgment sought to be reviewed is hereby reversed; complaint is dismissed; but for lack of sufficient merit, the claim of defendants for attorney's fees and damages is overruled; costs are however adjudged against plain-tiff in all instances.

"IT IS SO ORDERED." (Rollo, p. 126)

The antecedent facts of this case are as follows:

In its complaint dated May 9, 1968, filed with the City Court of Manila, (Civil Case No. 170859) against the private respondents for the collection and payment of p4,500.00 representing the face value of an unpaid and dishonored check, the petitioner alleged, among others, that on September 13, 1960, the private respondents approached the petitioner at its office in Manila and asked the latter to extend to them an accommodation loan in the sum of P4,500.00, Philippine Currency, which they needed in their business, and which they promised to pay, jointly and severally, in one month time; that they proposed to pay the petitioner interest thereon at the rate of 14% per annum, as in fact they delivered to the petitioner the China Banking Corporation Check No. VN-915564, dated September 13, 1960; for P4,500.00, drawn by Dy Hian Tat, and signed by them at the back of said check, with the assurance that after one month from September 13, 1960, the said check would be redeemed by them by paying cash in the sum of P4,500.00, or the said check can be presented for payment on or immediately after one month and said bank would honor the same; that, in order to accommodate the private respondents, the petitioner agreed and actually extended to the private respondents an accommodation loan in the sum of P4,500.00 under the aforesaid conditions proposed by the private respondents, which amount was delivered to the latter; that on March 5, 1964, the aforesaid check was presented for payment to the China Banking Corporation, but said check bounced and was not cashed by said bank, for the reason that the current account of the drawer thereof had already been closed; and that subsequently, the petitioner demanded from the private respondents the payment of their aforesaid loan obligation, but the latter failed and refused to pay notwithstanding repeated demands therefor

(Rollo, pp. 35-37).

Private respondent Gaw Suy An filed an answer with compulsory counterclaim dated July 8, 1968 denying the material allegations contained in the complaint and by way of special and affirmative defenses alleged that the petitioner has no cause of action against him because as it appears on the endorsement at the back of CBC Check No. VN-915564, he signed said endorsement for his principal, the Victory Hardware and not for his own individual account, hence, could not be made personally liable therefor and granting that he acted in his own capacity as the endorser, he has been wholly discharged by delay in presentment of the check for payment. (Rollo, pp. 39-40).

Private respondent Dy Hian Tat likewise filed his answer with compulsory counterclaim, dated February 27, 1970, denying the material allegations contained in the complaint and by way of special and affirmative defenses alleged that he never had any transaction or negotiation of any check with the petitioner at anytime, so it could not be true that he and the other defendants approached the petitioner on September 13, 1960, for an accommodation loan of P4,500.00 for which they delivered to the petitioner CBC Check No. VN-915564 dated September 13, 1960 because as far as he could remember, said check was delivered by him to Sin Chin Juat Grocery and not to the petitioner; that the manner the said check was negotiated is clearly evident by the endorsement at its back which clearly belies the claim of the petitioner that he (Dy Hian Tat) was one of those who approached the petitioner at its office on September 13, 1960 to deliver the check in exchange for an accommodation loan of P4,500.00; that according to the immediate endorser, Gaw Suy An, who endorsed the check for his principal, Victory Hardware, this check was delivered to the Asian Surety & Insurance Co., Inc., to be applied to the indebtedness of the Victory Hardware with said Insurance Company; and that petitioner not being a holder of the check for value, has no recourse against the immediate endorser, and neither with the drawer thereof, and considering that this check in question was dated September 13, 1960 and deposited only for payment on March 5, 1964, this unreasonable delay in presentment wholly discharged not only the endorser but also the drawer (Rollo, pp. 43-44).

On March 31, 1970, private respondent Siy Chee was declared in default (Rollo, p. 45).

After hearing, the City Court of Manila^[**] rendered its decision in favor of the petitioner, the dispositive portion of which reads:

"After considering the evidence presented by the parties, judgment is hereby rendered, ordering the three defendants to pay the plaintiff, jointly and severally, the sum of P4,500.00 with interest thereon at the legal rate from September 13, 1960 until the said amount is fully paid; plus the sum of P500.00 by way of attorney's fees, plus the costs of suit.

"The counterclaim filed by the defendants Gaw Suy An and Dy Hian Tat are hereby dismissed for lack of basis.

"SO ORDERED." (Rollo, p. 45).

The decision of the city court was appealed by the private respondents to the Court of First Instance of Manila, where the case was heard de novo for lack of transcript of stenographic notes taken in the city court.

After trial, the Court of First Instance of Manila, Branch IX,^[***] rendered a decision in Civil Case No. 80583, dated October 15, 1971, affirming the decision of the city court, the dispositive portion of which reads as follows:

"WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered in favor of the plaintiff and against defendants Dy Hian Tat, Gaw Suy An and Siy Chee ordering the latter to pay, jointly and severally, the plaintiff the sum of P4,500.00, plus interest at the rate of 14% per annum, from September 13, 1960, until fully paid, plus the sum of p1,000.00 in the concept of attorney's fees; and costs of suit.

"SO ORDERED." (Rollo, p. 9).

The private respondents filed a petition for review of the foregoing decision with the Court of Appeals.

On February 12, 1973, the appellate court, finding that the questioned check was not given as collateral to guarantee a loan secured by the three private respondents who allegedly came as a group to the Far East Realty Investment, Inc., on September 13, 1960, but passed through other hands before reaching the petitioner and the said check was not presented within a reasonable time after its issuance, reversed the decision of the Court of First Instance (Rollo, p. 126).

Its motion for reconsideration having been denied, petitioner filed the instant petition.

The main issue in this case is whether or not presentment for payment and notice of dishonor of the questioned check were made within reasonable time.

The petitioner argues that presentment for payment may be dispensed with if it will be useless. Hence, the drawer is liable upon a check although it has not been presented to the bank for payment and although payment has not been refused, where such a presentment would be useless because of the conduct or action of the drawer in the matter or where the check is drawn on insufficient funds or no funds. Likewise, presentment for payment is not required in order to charge the drawer, and that notice of dishonor is not required to be given to the drawer where he has no right to expect or require that the drawee or acceptor will pay or honor the instrument. Therefore, where presentment for payment and notice of dishonor are not necessary as when funds are insufficient to meet a check, the drawer is liable, whether such presentment and notice be totally omitted or merely delayed. However, in a situation where the presentment and/or notice is required to be made without unreasonable delay, the drawer is discharged "pro tanto" or only up to the degree of the loss suffered, by reason of delay. Since discharge is the exception to the general rule, the loss must be proven by the drawer. The drawer in the instant case has not presented in evidence any loss which he may have suffered by reason of the delay.

On the other hand, the private respondents maintain that the questioned check was in fact drawn by Dy Bun Kim, son of Dy Hiat Tat, and delivered to the Sin Chin Juat Grocery in payment of grocery goods for the Goodyear Lumber and not to the Far East with which private respondents have no transaction of any kind. Such being the case, said check was not delivered directly to the Far East in exchange for the alleged P4,500.00 as claimed by William Li Yao. Therefore, the alleged cash of P4,500.00 claimed to have been delivered by Li Yao on September 13, 1960 could not in fact be considered as the consideration for Far East as holder of the check because said delivery of the check in exchange for the alleged P4,500.00 is contrary to the findings of fact by the Court of Appeals. Petitioner, therefore, cannot be considered a holder of the check for value and in due course. Whether there was due presentment or not of the check, or whether there was notice of dishonor or not to the drawer and indorsers, the petitioner cannot recover the amount of P4,500.00 which was in fact not delivered to the private respondents nor the amount of the check for lack of consideration.

It is further argued by the private respondents that in order to charge the persons secondarily liable, such as drawer and indorsers, the instrument must be presented for payment on the date and period therein mentioned in the instrument, if it is payable on a fixed date, or within a reasonable time after issue, otherwise, the drawer and indorsers are discharged from liability. The questioned check was dated September 13, 1960. Granting that it was agreed that it will only be deposited after one month from its date, it should have been deposited for payment after one month and not only on March 5, 1964. This delay in the presentment for payment of the check cannot be construed as a reasonable time.

The petition is devoid of merit.

Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. (Section 71, Negotiable Instruments Law).

Notice may be given as soon as the instrument is dishonored; and unless delay is excused must be given within the time fixed by the law (Section 102, Negotiable Instruments Law).

No hard and fast demarcation line can be drawn between what may be considered as a reasonable or an unreasonable time, because “reasonable time” depends upon the peculiar facts and circumstances in each case (Tolentino, Commentaries and Jurisprudence on Commercial Laws of the Philippines, Vol. I, Eighth Edition, p. 327).

It is obvious in this case that presentment and notice of dishonor were not made within a reasonable time.

“Reasonable time” has been defined as so much time as is necessary under the circumstances for a reasonable prudent and diligent man to do, conveniently, what the contract or duty requires should be done, having a regard for the rights and possibility of loss, if any, to the other party (Citizens' Bank Bldg. v. L. & E. Wertheimer, 189 S.W. 361, 362, 126 Ark. 38, Ann. Cas. 1917 E, 520).

In the instant case, the check in question was issued on September 13, 1960, but was presented to the drawee bank only on March 5, 1964, and dishonored on the same date. After dishonor by the drawee bank, a formal notice of dishonor was made by the petitioner through a letter dated April 27, 1968. Under these circumstances, the petitioner undoubtedly failed to exercise prudence and diligence on what he ought to do as required by law. The petitioner likewise failed to show any justification for the unreasonable delay.

PREMISES CONSIDERED, the petition is DENIED and the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] CA, Fourth Division, penned by Justice Magno S. Gatmaitan, with the concurrence of Justices Jose N. Leuterio and Ramon G. Gaviola.

[**] Judge Roman Cancino, Jr., rendered the decision.

[***] Judge Alberto J. Francisco, penned the decision.

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