

JOSE G. CUAYCONG ET AL., PLAINTIFFS-APPELLEES, VS. RAMON S. RIUS, DEFENDANT-APPELLANT.

G.R. No. L-333. April 21, 1950

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an action to compel acceptance of payment of a mortgage debt. The material facts are as follows;

On February 18, 1937, Ramon S. Rius, defendant-appellant, sold his hacienda "Tibidabo" located at the municipality of Manapla, Occidental Negros, to Jose G. Cuaycong and Vicente F. Gustilo, plaintiffs-appellees, for the sum of P350,000, of which p30,000 was paid upon the execution of the deed of sale and P70,000 on March 15, 1937, without interest. The balance in the amount of P250,000 was to be paid with interest of 7 per cent per annum as follows:

P50,000 plus interest for one year on P250,000, a total of P67,000, on February 16, 1938;

P25,000 plus interest for one year on P200,000, a total of P39,000 on February 18, 1939;

P25,000 plus interest for one year on P175,000, a total of P37,250 on February 18, 1940;

P10,500 representing interest for one year on P150,000 on February 18, 1942;

And the balance of P150,000 plus one year interest, a total of P160,500 on February 18, 1943.

As security for this unpaid balance the purchasers mortgaged the same property to the vendor with the stipulation that their failure to comply with any of the conditions regarding payment or any other matter contained in the contract would give the vendor the right to rescind the contract and in that case all payments already made would be lost to the vendor by the purchasers without any right to reimbursement.

Up to December, 1941, the purchasers, or plaintiffs-appellees herein, have been up to date in their payments of the purchase price, but on February 18, 1942, they failed to pay the amount of P10,500 representing interests, and on February 18, 1943, they again failed to pay the balance of P160,500. However, the vendor, or the defendant-appellant herein, chose not to rescind the contract, waiving thus his right to appropriate for himself all the payments already made by plaintiffs-appellees, his reason being that it was not fair to take advantage of the financial difficulties which war might have brought upon the purchasers.

Upon the other hand, the purchasers, on January 24, 1944, made an offer to the vendor to pay in Japanese military notes the whole balance of the mortgage debt, offer which was reiterated on February 17, 1944, with the warning that if after three days the offer was not accepted, plaintiffs-appellees would bring action and deposit the amount in court. The value of Japanese military notes was then already very low and had the installments been paid when they were due the creditor could have invested the money profitably in buying real property. Thus, defendant-appellant refused to accept payment under the circumstances till the war was over, and on February 22, 1944, an action was filed to compel him to accept payment and to issue a deed of cancellation of the mortgage

debt. A manager's check in the amount of P181,000 issued by the Philippine Bank of Commerce in favor of the Clerk of Court was delivered to the latter.

Defendant filed his answer alleging among several defenses that the consignation in Court was not made in accordance with law; that after February 18, 1944, plaintiffs-appellees made a proposition to defendant-appellant to the effect that they would sell the property to Mrs. Caridad Jison subject to the condition that the balance of the purchase price still owing defendant-appellant be paid after termination of the war if defendant-appellant would agree to receive immediately payment of the interests; that this proposition was made on a Saturday and defendant-appellant promised to give his answer on the succeeding Monday; that when on that day defendant-appellant was decided to accept the proposition, plaintiffs-appellees told him that Caridad Jison had withdrawn the offer. It turned out, however, that such withdrawal was not true, for on February 17, 1944, a promise of sale was made in favor of Caridad Jison with the stipulation that P150,000 of the purchase price would be paid by her after the war.

On March 25, 1944, plaintiffs-appellees filed a motion for summary Judgment supported by an affidavit showing the deposit of P181,000 in Court by means of a manager's check. Defendant-appellant opposed the motion, which remained in Court pending for about five months. On August 16, 1944, plaintiffs-appellees withdrew their motion for summary judgment. But on August 28, 1944, Caridad Jison and her husband filed a motion for leave to intervene, alleging the promise of sale made to them, which motion was granted despite the opposition of both the plaintiffs and the defendant. And on November 16, 1944, intervenors filed a motion for summary judgment based on the same grounds on which plaintiffs' original motion for summary judgment was based. In sala motion, it was asked that a judgment be rendered ordering defendant-appellant to accept payment with the amount deposited in Court by plaintiffs, to release the mortgage in his favor over the hacienda "Tibidabo" and to pay the expenses of consignation and costs. Notwithstanding defendant's opposition, the motion was granted and judgment was rendered in accordance with the prayer contained in that motion. Hence, this appeal.

It is not necessary, in our opinion, to examine all the questions raised by appellant in his brief, in view of our conclusion on the question of the validity of the consignation made in Court.

Under Article 1127 of the Civil Code, "Consignation should not be efficacious unless made strictly in accordance with the provision governing payment." And Article 1170 provides that, "payment of debts of money shall be made in the specie stipulated and, should it not be possible to deliver such specie, in silver or gold coin which is legal-tender in the Philippines." Under this provision, a consignation by check is not binding upon the creditor (*Meliciano vs. Natividad* 60 Phil. 156), unless accepted by him (*Gutierrez vs. Carpio* 53 Phil. 334, 336), and in the instant case, there has been no such acceptance. In some case it was held by this Court that where a person entitled to make a repurchase of some property, deposits with the Court, by way of consignation, a check for the re-purchase price, the vendee is not under a duty to accept the check and may refuse the consignation which cannot produce the effect of payment. (*Villanueva vs. Santos*, Off. Gaz., March 8, 1941 p. 681)

True that the consignation in the instant case was made by means of a manager's check. But a manager's check is, like an ordinary check, not legal-tender in the Philippines. Even treasury certificates are not legal-tender except for the payment of taxes and public debts, under Sec. 1626 of Act no. 2711 as amended by Act no. 3058. In the United States, "the general rule is that an offer of a bank check for the amount due is not a good tender and this is true even though the check is certified" (62 C. J. p. 668), except "where no objection is made on this ground" (62 C. J. p. 668). Again it is said that "on the same principle a check is not good legal-tender as against an objection duly made, whether the check is certified or not * * *" (40 Am. Jur. p. 764).

And furthermore, according to the second paragraph of Article 1170 of the Civil Code, "the delivery of

promissory notes payable to order, or bills of exchange or other commercial papers, shall produce the effects of payment only when collected, or when by the fault of the creditor they have lost their value." (*Italics ours*) "Commercial papers" include not only ordinary checks but also manager's checks. And here there is no proof that the manager's check deposited in Court has ever been collected or has lost its value by the fault of the creditor.

It is here maintained that since it was the duty of the clerk of court to deposit the manager's check with the National Treasurer (sec. 130, Rev. Adm. Code), it is presumed that he complied with such duty (Rule 123, sec. 69, Rules of Court), and since it is the duty of a holder of a check to present it for payment within a reasonable time after its issue (Sec. 186 Negotiable Instruments Law) it is also presumed that the National Treasurer has presented the manager's check for collection and has collected it. This argument is defective in that a presumption cannot be made to rest upon another presumption but on facts proven in the case.

"Presumptions are not admissible, except when the fact from which they are to be deduced is fully proven." (Art. 1249 Civil Code)

"The decisions are generally agreed that a presumption, must rest upon facts proved by direct evidence and cannot be based upon, or inferred from, another presumption." (20 Am. Jur. p. 166)

"There seems to be no sufficient reason for questioning the rule that a presumption cannot be based upon a presumption, provided the term 'presumption' is used in the sense of a deduction which the law directs to be made from particular facts." (20 Am. Jur. p. 169)

"A presumption of fact must not be drawn from premises which are uncertain, but must be founded on facts established by direct evidence. Presumptions may not be founded on presumptions." (31 Corpus Juris Secundum p. 727)

To the same effect is Rule 704 of the Model Code of Evidence, drafted by the American Law Institute.

Upon the other hand, since the deposit of the manager's check is invalid because of the objection made thereto, and in truth, under the law, collection of the check deposited is the only fact constituting valid payment, such fact must be made to appear on the face of the record and not merely presumed.

There being no valid consignment in the instant case, the previous tenders of payment made by plaintiffs do not exempt them from paying their obligation.

For all the foregoing, the judgment appealed from is reversed and plaintiffs-appellees are given thirty (30) days, from the date judgment is entered in this Court, within which to pay to defendant-appellant the sum of P181,000 plus interest at the rate of 7 per cent per annum from February 18, 1945, and defendant-appellant is given fifteen (15) days, from date of payment, within which to execute a deed of cancellation of the mortgage debt. Plaintiff's failure to make payment within the period above given, will give defendant right to rescind their contract of sale, and in that case the payments already made by them will be lost to vendor without any right to reimbursement. Plaintiffs will pay the costs of both instances.

Ozaeta, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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