

**NEW PACIFIC TIMBER & SUPPLY COMPANY, INC., PETITIONER,
VS. HON. ALBERTO V. SENERIS, RICARDO A. TONG AND EX-OFFICIO
SHERIFF HAKIM S. ABDULWAHID, RESPONDENTS.**

G.R. No. L-41764. December 19, 1980

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

A petition for certiorari with preliminary injunction to annul and/or modify the order of the Court of First Instance of Zamboanga City (Branch II) dated August 28, 1975 denying petitioner's Ex-Parte Motion for Issuance Of Certificate Of Satisfaction Of Judgment.

Herein petitioner is the defendant in a complaint for collection of a sum of money filed by the private respondent.[1] On July 19, 1974, a compromise judgment was rendered by the respondent Judge in accordance with an amicable settlement entered into by the parties the terms and conditions of which, are as follows:

"(1)

That defendant will pay to the plaintiff the amount of Fifty Four Thousand Five Hundred Pesos (P54,500.00) at 6% interest per annum to be reckoned from August 25, 1972;

"(2)

That defendant will pay to the plaintiff the amount of Six Thousand Pesos (P6,000.00) as attorney's fees for which P5,000.00 had been acknowledged received by the plaintiff under Consolidated Bank and Trust Corporation Check No. 16-135022 amounting to P5,000.00 leaving a balance of One Thousand Pesos (P1,000.00);

"(3)

That the entire amount of P54,500.00 plus interest, plus the balance of P1,000.00 for attorney's fees will be paid by defendant to the plaintiff within five months from today, July 19, 1974; and

"(4)

Failure on the part of the defendant to comply with any of the above-conditions, a writ of execution may be issued by this Court for the satisfaction of the obligation."[2]

For failure of the petitioner to comply with his judgment obligation, the respondent Judge, upon motion of the private respondent, issued an order for the issuance of a writ of execution on December 21, 1974. Accordingly, a writ of execution was issued for the amount of P63,130.00 pursuant to which, the Ex-Officio Sheriff levied upon the following personal properties of the petitioner, to wit:

(1) Unit American Lathe 24"

(1) Unit American Lathe 18" Cracker Wheeler

(1) Unit Rockford Shaper 24"

and set the auction sale thereof on January 15, 1975. However, prior to January 15, 1975, petitioner deposited with the Clerk of Court, Court of First Instance, Zamboanga City, in his capacity as Ex-Officio Sheriff of Zamboanga City, the sum of P63,130.00 for the payment of the judgment obligation, consisting of the following:

- P50,000.00 in Cashier's Check No. S-314361 dated January 3, 1975 of the Equitable Banking Corporation; and

- P13,130.00 in cash.[3]

In a letter dated January 14, 1975, to the Ex-Officio Sheriff,[4] private respondent through counsel, refused to accept the check as well as the cash deposit. In the same letter, private respondent requested the scheduled auction sale on January 15, 1975 to proceed if the petitioner cannot produce the cash. However, the scheduled auction sale at 10:00 a.m. on January 15, 1975 was postponed to 3:00 o'clock p.m. of the same day due to further attempts to settle the case. Again, the scheduled auction sale that afternoon did not push through because of a last ditch attempt to convince the private respondent to accept the check. The auction sale was then postponed on the following day, January 16, 1975 at 10:00 o'clock a.m.[5] At about 9:15 a.m., on January 16, 1975, a certain Mr. Tañedo representing the petitioner appeared in the office of the Ex-Officio Sheriff and the latter reminded Mr. Tañedo that the auction sale would proceed at 10:00 o'clock. At 10:00 a.m., Mr. Tañedo and Mr. Librado, both representing the petitioner requested the Ex-Officio Sheriff to give them fifteen minutes within which to contact their lawyer which request was granted. After Mr. Tañedo and Mr. Librado failed to return, counsel for private respondent insisted that the sale must proceed and the Ex-Officio Sheriff proceeded with the auction sale.[6] In the course of the proceedings, Deputy Sheriff Castro sold the levied properties item by item to the private respondent as the highest bidder in the amount of P50,000.00. As a result thereof, the Ex-Officio Sheriff declared a deficiency of P13,130.00.[7] Thereafter, on January 16, 1975, the Ex-Officio Sheriff issued a "Sheriff's Certificate of Sale" in favor of the private respondent, Ricardo Tong, married to Pascuala Tong for the total amount of P50,000.00 only.[8] Subsequently, on January 17, 1975, petitioner filed an ex-parte motion for issuance of certificate of satisfaction of judgment. This motion was denied by the respondent Judge in his order dated August 28, 1975. In view thereof, petitioner now questions said order by way of the present petition alleging in the main that said respondent Judge capriciously and whimsically abused his discretion in not granting the motion for issuance of certificate of satisfaction of judgment for the following reasons: (1) that there was already a full satisfaction of the judgment before the auction sale was conducted with the deposit made to the Ex-Officio Sheriff in the amount of P63,000.00 consisting of P50,000.00 in Cashier's Check and P13,130.00 in cash; and (2) that the auction sale was invalid for lack of proper notice to the petitioner and its counsel when the Ex-Officio Sheriff postponed the sale from June 15, 1975 to January 16, 1976 contrary to Section 24, Rule 39 of the Rules of Court. On November 10, 1975, the Court issued a temporary restraining order enjoining the respondent Ex-Officio Sheriff from delivering the personal properties subject of the petition to Ricardo A. Tong in view of the issuance of the "Sheriff Certificate of Sale."

We find the petition to be impressed with merit.

The main issue to be resolved in this instance is as to whether or not the private respondent can validly refuse acceptance of the payment of the judgment obligation made by the petitioner consisting of P50,000.00 in Cashier's Check and P13,130.00 in cash which it deposited with the Ex-Officio Sheriff before the date of the scheduled auction sale. In upholding private respondent's claim that he has the right to refuse payment by means of a check, the respondent Judge cited the following:

Section 63 of the Central Bank Act:

"Sec. 63. Legal Character. - Checks representing deposit money do not have legal tender power and their acceptance in payment of debts, both public and private, is at the option of the creditor, Provided, however, that a check which has been cleared and credited to the account of the creditor shall be equivalent to a delivery to the creditor in cash in an amount equal to the amount credited to his account."

Article 1249 of the New Civil Code:

"Art. 1249. - The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

"The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

"In the meantime, the action derived from the original obligation shall be held in abeyance."

Likewise, the respondent Judge sustained the contention of the private respondent that he has the right to refuse payment of the amount of P13,130.00 in cash because the said amount is less than the judgment obligation, citing the following Article of the New Civil Code:

"Art. 1248. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the presentations in which the obligation consists. Neither may the debtor be required to make partial payment.

"However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter."

It is to be emphasized in this connection that the check deposited by the petitioner in the amount of P50,000.00 is not an ordinary check but a Cashier's Check of the Equitable Banking Corporation, a bank of good standing and reputation. As testified to by the Ex-Officio Sheriff with whom it has been deposited, it is a certified crossed check.[9] It is a well-known and accepted practice in the business sector that a Cashier's Check is deemed as cash. Moreover, since the said check had been certified by the drawee bank, by the certification, the funds represented by the check are transferred from the credit of the maker to that of the payee or holder, and for all intents and purposes, the latter becomes the depositor of the drawee bank, with rights and duties of one in such situation.[10] Where a check is certified by the bank on which it is drawn, the certification is equivalent to acceptance.[11] Said certification "implies that the check is drawn upon sufficient funds in the hands of the drawee, that they have been set apart for its satisfaction, and that they shall be so applied whenever the check is presented for payment. It is an understanding that the check is good then, and shall continue good, and this agreement is as binding on the bank as its notes in circulation, a certificate of deposit payable to the order of the depositor, or any other obligation it can assume. The object of certifying a check, as regards both parties, is to enable the holder to use it as money." [12] When the holder procures the check to be certified, "the check operates as an assignment of a part of the funds to the creditors". [13] Hence, the exception to the rule enunciated under Section 63 of the Central Bank Act to the effect "that a check which has been cleared and credited to the account of the creditor shall be equivalent to a delivery to the creditor in cash in an amount equal to the amount credited to his account" shall apply in this case. Considering that the whole amount deposited by the petitioner consisting of Cashier's Check of P50,000.00 and P13,130.00 in cash covers the judgment obligation of P63,000.00 as mentioned in the writ of execution, then, We see no valid reason for the private respondent to have refused acceptance of the payment of the obligation in his favor. The auction sale, therefore, was uncalled for. Furthermore, it appears that on January 17, 1975, the Cashier's Check was even withdrawn by the petitioner and replaced with cash in the corresponding amount of P50,000.00 on January 27, 1975 pursuant to an agreement entered into by the parties at the instance of

the respondent Judge. However, the private respondent still refused to receive the same. Obviously, the private respondent is more interested in the levied properties than in the mere satisfaction of the judgment obligation. Thus, petitioner's motion for the issuance of a certificate of satisfaction of judgment is clearly meritorious and the respondent Judge gravely abused his discretion in not granting the same under the circumstances.

In view of the conclusion reached in this instance, We find no more need to discuss the other ground relied upon in the petition.

It is also contended by the private respondent that appeal and not a special civil action for certiorari is the proper remedy in this case, and that since the period to appeal from the decision of the respondent Judge has already expired, then, the present petition has been filed out of time. The contention is untenable. The decision of the respondent Judge in Civil Case No. 250 (166) has long become final and executory and so, the same is not being questioned herein. The subject of the petition at bar as having been issued in grave abuse of discretion is the order dated August 28, 1975 of the respondent Judge which was merely issued in execution of the said decision. Thus, even granting that appeal is open to the petitioner, the same is not an adequate and speedy remedy for the respondent Judge had already issued a writ of execution.[14]

WHEREFORE, in view of all the foregoing, judgment is hereby rendered:

- Declaring as null and void the order of the respondent Judge dated August 28, 1975;
- Declaring as null and void the auction sale conducted on January 16, 1975 and the certificate of sale issued pursuant thereto;
- Ordering the private respondent to accept the sum of P63,130.00 under deposit as payment of the judgment obligation in his favor;
- Ordering the respondent Judge and respondent Ex-Officio Sheriff to release the levied properties to the herein petitioner.

The temporary restraining order issued is hereby made permanent.

Costs against the private respondent.

SO ORDERED.

Barredo, (Chairman), Aquino, Abad Santos, and De Castro, JJ., concur.

[1] Civil Case No. 250 (1669), Court of First Instance, Zamboanga City, entitled "Ricardo A. Tong, Plaintiff, versus New Pacific Timber and Supply, Co., Inc., Defendant."

[2] pp. 14-15, rollo.

[3] p. 16, rollo.

[4] Exhibit "D".

[5] p. 4, rollo.

[6] pp. 5-6, rollo.

[7] p. 6, rollo.

[8] Exhibit "C", see Decision, p. 19, rollo.

[9] p. 35, t.s.n., May 24, 1975.

[10] Gregorio Araneta, Inc. vs. Paz Tuazon de Paterno and Jose Vidal, L-2886, August 22, 1952, 49 O.G. No. 1, p. 59.

[11] Section 187. Certification of check; effect of. - Where a check is certified by the bank on which it is drawn, the certification is equivalent to acceptance. (Negotiable Instruments Law)

[12] PNB vs. Nat. City Bank of New York, 63 Phil. 711, 718-719.

[13] PNB vs. Nat. City Bank of New York, *supra*, 711-717; Sec. 189. When check operates as an assignment. - A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies it. (Negotiable Instruments Law) [Italics supplied]

[14] *Matute vs. Court of Appeals*, 26 SCRA 799, citing *Vda. de Saludes vs. Pajarillo*, 78 Phil. 754, *Woodcraft Works, Ltd. vs. Moscoso*, 92 Phil. 1021 and *Liwanag vs. Castillo*, 106 Phil. 375.

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