

TAN TIONG TICK, PETITIONER, VS. PHILIP MANUFACTURING CORPORATION (FORMERLY HENG TONG TEXTILE CO), RESPONDENTS.

G.R. No. L-19152. February 29, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal by certiorari against a decision of the Court of Appeals, affirming that of the Court of First Instance of Manila, Hon. Antonio G. Lucero, presiding, sentencing the defendant-appellant Tan Tiong Tick to pay plaintiff-appellee the sum of P20,000.00, with interest thereon at the rate of six per cent per annum from the filing of the complaint.

The basic facts are, as found by the Court of Appeals, as follows:

"The following facts are undisputed: Ernesto Tan-Chi, vice-president of the plaintiff corporation, and the defendant Tan Tiong Tick were friends of long standing whose business relations started before the war and continued after the liberation. Sometime in 1951 the plaintiff corporation, through one Andres Roldan, Lao., now deceased, sales manager of an affiliate firm, saw an opportunity to buy textile goods from a certain Lucilo Macaraig, who had the necessary import license and dollar allocation for that purpose but did not have sufficient funds to finance the importation. The plaintiff was willing to advance the sum, of P20,000.00 but did not know Macaraig well-enough to give him the money outright. So what the plaintiff did was to issue a check for the said amount, payable to the defendant Tan Tiong Tick. This check, marked Exhibit B-1, was drawn on the China Banking Corporation and dated March 21, 1951. It was indorsed by the defendant and cashed, and the proceeds turned over to Lucilo Macaraig. The latter, however, failed to deliver the textiles which he was supposed to order and on April 14, 1958 the plaintiff instituted the present action against the defendant for the collection of the face value of the check, with interest at 6% from March 21, 1951, plus damages, attorney's fees and costs."

The appellee's theory about the nature of the terms of the agreement about the P20,000.00 check payable to appellant, is, as stated by the Court of Appeals, as follows:

"The plaintiff's theory is that the check was made out in the defendant's name pursuant to an agreement between him and Ernesto Tan-Chi to the effect that since Macaraig was well known to the defendant but not to the plaintiff the former would assume responsibility for the amount thus advanced on condition that the profits to be realized from the transaction would be shared equally between them, that is ½ for the plaintiff and ½ for the defendant. The latter's theory, on the other hand, is that there was no such agreement, that the transaction was exclusively between the plaintiff and Lucilo Macaraig, and that the defendant signed on the back of the check merely as a witness to the encashment thereof and to the delivery of the money to Macaraig."

While that of the defendant-appellant is as follows:

"The defendant's theory that the check Exhibit B-1 was made out in his name by the plaintiff and that he signed it on the back simply because the plaintiff wanted a witness to its encashment and to the delivery of the money

to Lucilo Macaraig and because the latter did not wish to accept a check but wanted cash instead is really entitled to less consideration and credence than, has been accorded to it in the decision, sought to be reconsidered. For if that was the only reason, there was no need to bother the defendant Tan Tiong Tick at all. The plaintiff could have made the check payable directly to Macaraig and the latter endorsement thereof would be sufficient proof of his receipt of the amount without the necessity of any witness; or if Macaraig wished that cash be 'given to him Tan-Chi himself could have cashed a check at the bank, delivered the money directly to Macaraig and required the latter to sign the corresponding receipt, with any person from the plaintiff's office signing as a witness. The procedure actually adopted, that is, issuing the check in the name of Tan Tiong Tick and having him indorse it was not only unnecessary but also too devious and round about to be resorted to for the purpose alleged by the defendant. And being the experienced businessman that he was, the defendant would hardly have agreed to sign the check as payee and indorser if his intention was only to act as witness, since he knew that he would be liable or accountable to the drawer by indorsing and having it cashed in the bank."

The Court of Appeals, sustaining the findings of the trial court, found plaintiff-respondent's theory more credible, i.e., that plaintiff's witness Tan Chi delivered the P20,000.00 check payable to Tan Tiong Tick, to the latter, under an agreement that the amount of the check was to be given to Macaraig in payment of textiles and that the profits to be derived from the investment was to be divided equally between plaintiff-respondent and defendant-petitioner. It rejected the latter's theory that petitioner was merely a witness to the encashment of the check. The reasons for the conclusion are: In defendant's answer it is alleged as special defense that Macaraig received the P20,000.00 in cash from defendant-petitioner; the check does not show that any one else received the cash representing the face value thereof but the payee or defendant himself; and the further fact that the books of account of plaintiff-appellee contain an entry of the said sum an indebtedness of the defendant from 1951 to 1958 and plaintiff's accountants have sent yearly to defendant-petitioner confirmation slips of said indebtedness.

The first two issues raised by counsel for defendant-petitioner in their brief, namely, that no written permission or resolution of the respondent corporation was shown authorizing its Vice-President to enter into the transaction in question, and that the transaction was null and void— both questions were never raised in the court below; hence they may not be raised for the first time in this Court.

The second issue is petitioner's claim that the transaction involving the delivery of the check and its encashment was merely an agreement of guaranty entered into by the defendant-petitioner with Tan Chi. Neither was this defense ever raised in the petitioner's answer in the Court of First Instance. This issue seems to be made to depend on the testimony of defendant-petitioner, that he did not himself cash the check but only endorsed it and gave it to another for encashment. But the petitioner's testimony to that effect was found by the Court of Appeals to be untrue because the check appears to have been cashed by the petitioner himself.

It is also argued on behalf of petitioner that the lack of a written agreement on the understanding between petitioner and Tan Chi on such a big amount as P20,000.00 militates against the conclusion that the promise of petitioner to respond for the amount was actually made. But the promise of petitioner was sufficiently proved by the testimony of Tan Chi and the other facts and circumstances.

It is also claimed that the long period of time that lapsed before the suit to collect, creates a presumption against the existence of the agreement. No such presumption could arise because the account was carried in the books of respondent corporation and notice thereof was given every year for confirmation by respondent's accountants.

Finding no merit in the arguments of petitioner's counsel the appeal should be, as it is hereby, dismissed, and the decision appealed from, affirmed. With costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Concepción, Reyes, J. B. L., Barrera, Paredes, Dizon and Regala, JJ.,

concur,

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