

**NORBERTO TIBAJIA, JR. AND CARMEN TIBAJIA, PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS AND EDEN TAN,
RESPONDENTS.***G.R. No. 100290. June 04, 1993*

Ponente: PADILLA, J.

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Petitioners, spouses Norberto Tibajia, Jr. and Carmen Tibajia, are before this Court assailing the decision* of respondent appellate court dated 24 April 1991 in CA-G.R. SP No. 24164 denying their petition for certiorari, prohibition, and injunction which sought to annul the order of Judge Eutropio Migrino of the Regional Trial Court, Branch 151, Pasig, Metro Manila in Civil Case No. 54863 entitled "Eden Tan vs. Sps. Norberto and Carmen Tibajia."

Stated briefly, the relevant facts are as follows:

Case No. 54863 was a suit for collection of a sum of money filed by Eden Tan against the Tibajia spouses. A writ of attachment was issued by the trial court on 17 August 1987 and on 17 September 1987, the Deputy Sheriff filed a return stating that a deposit made by the Tibajia spouses in the Regional Trial Court of Kalookan City in the amount of Four Hundred Forty Two Thousand Seven Hundred and Fifty Pesos (P442,750.00) in another case, had been garnished by him. On 10 March 1988, the Regional Trial Court, Branch 151 of Pasig, Metro Manila rendered its decision in Civil Case No. 54863 in favor of the plaintiff Eden Tan, ordering the Tibajia spouses to pay her an amount in excess of Three Hundred Thousand Pesos (P300,000.00). On appeal, the Court of Appeals modified the decision by reducing the award of moral and exemplary damages. The decision having become final, Eden Tan filed the corresponding motion for execution and thereafter, the garnished funds which by then were on deposit with the cashier of the Regional Trial Court of Pasig, Metro Manila, were levied upon.

On 14 December 1990, the Tibajia spouses delivered to Deputy Sheriff Eduardo Bolima the total money judgment in the following form:

Cashier's Check P262,750.00

Cash 135,733.70

Total P398,483.70

Private respondent, Eden Tan, refused to accept the payment made by the Tibajia spouses and instead insisted that the garnished funds deposited with the cashier of the Regional Trial Court of Pasig, Metro Manila be withdrawn to satisfy the judgment obligation. On 15 January 1991, defendant spouses (petitioners) filed a motion to lift the writ of execution on the ground that the judgment debt had already been paid. On 29 January 1991, the motion was denied by the trial court on the ground that payment in cashier's check is not payment in legal tender and that payment was made by a third party other than the defendant. A motion for reconsideration was denied on 8 February 1991. Thereafter, the spouses Tibajia filed a petition for certiorari, prohibition and injunction in the

Court of Appeals. The appellate court dismissed the petition on 24 April 1991 holding that payment by cashier's check is not payment in legal tender as required by Republic Act No. 529. The motion for reconsideration was denied on 27 May 1991.

In this petition for review, the Tibajia spouses raise the following issues:

"I WHETHER OR NOT THE BPI CASHIER'S CHECK NO. 014021 IN THE AMOUNT OF P262,750.00 TENDERED BY PETITIONERS FOR PAYMENT OF THE JUDGMENT DEBT, IS 'LEGAL TENDER'.

II WHETHER OR NOT THE PRIVATE RESPONDENT MAY VALIDLY REFUSE THE TENDER OF PAYMENT PARTLY IN CHECK AND PARTLY IN CASH MADE BY PETITIONERS, THRU AURORA VITO AND COUNSEL, FOR THE SATISFACTION OF THE MONETARY OBLIGATION OF PETITIONERS-SPOUSES."[1]

The only issue to be resolved in this case is whether or not payment by means of check (even by cashier's check) is considered payment in legal tender as required by the Civil Code, Republic Act No. 529, and the Central Bank Act.

It is contended by the petitioners that the check, which was a cashier's check of the Bank of the Philippine Islands, undoubtedly a bank of good standing and reputation, and which was a crossed check marked "For Payee's Account Only" and payable to private respondent Eden Tan, is considered legal tender, payment with which operates to discharge their monetary obligation.[2] Petitioners, to support their contention, cite the case of *New Pacific Timber and Supply Co., Inc. v. Seneris*[3] where this Court held through Mr. Justice Hermogenes Concepcion, Jr. that "It is a well-known and accepted practice in the business sector that a cashier's check is deemed as cash".

The provisions of law applicable to the case at bar are the following:

a. Article 1249 of the Civil Code which provides:

"Article 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.";

b. Section 1 of Republic Act No. 529, as amended, which provides:

"Section 1. Every provision contained in, or made with respect to, any obligation which purports to give the obligee the right to require payment in gold or in any particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, shall be as it is hereby declared against public policy, null and void, and of no effect, and no such provision shall be contained in, or made with respect to, any obligation thereafter incurred. Every obligation heretofore and hereafter incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts."

c. Section 63 of Republic Act No. 265, as amended (Central Bank Act) which provides:

"Section 63. Legal character - Checks representing deposit money do not have legal tender power and their acceptance in the 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 of cash in an amount equal to the amount credited to his account."

From the aforequoted provisions of law, it is clear that this petition must fail.

In the recent cases of *Philippine Airlines, Inc. vs. Court of Appeals*[4] and *Roman Catholic Bishop of Malolos, Inc. vs. Intermediate Appellate Court*,[5] this Court held that --

"A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor."

The ruling in these two (2) cases merely applies the statutory provisions which lay down the rule that a check is not legal tender and that a creditor may validly refuse payment by check, whether it be a manager's, cashier's or personal check.

Petitioners erroneously rely on one of the dissenting opinions in the *Philippine Airlines* case[6] to support their cause. The dissenting opinion however does not in any way support the contention that a check is legal tender but, on the contrary, states that "If the PAL checks in question had not been encashed by Sheriff Reyes, there would be no payment by PAL and, consequently, no discharge or satisfaction of its judgment obligation." [7] Moreover, the circumstances in the *Philippine Airlines* case are quite different from those in the case at bar for in that case the checks issued by the judgment debtor were made payable to the sheriff, Emilio Z. Reyes, who encashed the checks but failed to deliver the proceeds of said encashment to the judgment creditor.

In the more recent case of *Fortunado vs. Court of Appeals*,[8] this Court stressed that, "We are not, by this decision, sanctioning the use of a check for the payment of obligations over the objection of the creditor."

WHEREFORE, the petition is DENIED. The appealed decision is hereby AFFIRMED, with costs against the petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Nocon, JJ., concur.

* Penned by Justice Consuelo Ynares Santiago with the concurrence of Justices Nicolas P. Lapena, Jr. and Cancio C. Garcia

[1] Rollo, p. 11

[2] Rollo, p. 54

[3] G.R. No. L-41764, 19 December 1980, 101 SCRA 686

[4] G.R. No. 49188, 30 January 1990, 181 SCRA 557

[5] G.R. No. 72110, 16 November 1990, 191 SCRA 411

[6] *Supra*, Dissenting Opinion of Padilla, J., pp. 580-582

[7] *Supra*, pp. 581-582

[8] G.R. No. 78556, 25 April 1991, 196 SCRA 269

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