

PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND LORETO TAN, RESPONDENTS.

G.R. No. 108630. April 02, 1996

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioner Philippine National Bank (PNB) questions the decision^[1] of the Court of Appeals partially affirming the judgment of the Regional Trial Court, Branch 44, Bacolod City. The dispositive portion of the trial court's decision states:

"WHEREFORE, premises considered, the Court hereby renders judgment in favor of the plaintiff and against the defendants as follows:

- 1) Ordering defendants to pay plaintiff jointly and severally the sum of P32,480.00, with legal rate of interest to be computed from May 2, 1979, date of filing of this complaint until fully paid;
- 2) Ordering defendants to pay plaintiff jointly and severally the sum of P5,000.00 as exemplary damages;
- 3) Ordering defendants to pay plaintiff jointly and severally the sum of P5,000.00 as attorney's fees;
- 4) To pay the costs of this suit.

SO ORDERED."^[2]

The facts are the following:

Private respondent Loreto Tan (Tan) is the owner of a parcel of land abutting the national highway in Mandalagan, Bacolod City. Expropriation proceedings were instituted by the government against private respondent Tan and other property owners before the then Court of First Instance of Negros Occidental, Branch IV, docketed as Civil Case No. 12924.

Tan filed a motion dated May 10, 1978 requesting issuance of an order for the release to him of the expropriation price of P3 2,480.00.

On May 22, 1978, petitioner PNB (Bacolod Branch) was required by the trial court to release to Tan the amount of P32,480.00 deposited with it by the government.

On May 24, 1978, petitioner, through its Assistant Branch Manager Juan Tagamolila, issued a manager's check for P3 2,480.00 and delivered the same to one Sonia Gonzaga without Tan's knowledge, consent or authority. Sonia Gonzaga deposited it in her account with Far East Bank and Trust Co. (FEBTC) and later on withdrew the said amount.

Private respondent Tan subsequently demanded payment in the amount of P32,480.00 from petitioner, but the same was refused on the ground that petitioner had already paid and delivered the amount to Sonia Gonzaga on the strength of a Special Power of Attorney (SPA) allegedly executed in her favor by Tan.

On June 8, 1978, Tan executed an affidavit before petitioner's lawyer, Alejandro S. Somo, stating that:

- 1) he had never executed any Special Power of Attorney in favor of Sonia S. Gonzaga;
- 2) he had never authorized Sonia Gonzaga to receive the sum of P32,480.00 from petitioner;
- 3) he signed a motion for the court to issue an Order to release the said sum of money to him and gave the same to Mr. Nilo Gonzaga (husband of Sonia) to be filed in court. However, after the Order was subsequently issued by the court, a certain Engineer Decena of the Highway Engineer's Office issued the authority to release the funds not to him but to Mr. Gonzaga.

When he failed to recover the amount from PNB, private respondent filed a motion with the court to require PNB to pay the same to him.

Petitioner filed an opposition contending that Sonia Gonzaga presented to it a copy of the May 22, 1978 order and a special power of attorney by virtue of which petitioner delivered the check to her.

The matter was set for hearing on July 21, 1978 and petitioner was directed by the court to produce the said special power of attorney thereat. However, petitioner failed to do so.

The court decided that there was need for the matter to be ventilated in a separate civil action and thus private respondent filed a complaint with the Regional Trial Court in Bacolod City (Branch 44) against petitioner and Juan Tagamolila, PNB's Assistant Branch Manager, to recover the said amount.

In its defense, petitioner contended that private respondent had duly authorized Sonia Gonzaga to act as his agent.

On September 28, 1979, petitioner filed a third-party complaint against the spouses Nilo and Sonia Gonzaga praying that they be ordered to pay private respondent the amount of P32,480.00. However, for failure of petitioner to have the summons served on the Gonzagas despite opportunities given to it, the third-party complaint was dismissed.

Tagamolila, in his answer, stated that Sonia Gonzaga presented a Special Power of Attorney to him but borrowed it later with the promise to return it, claiming that she needed it to encash the check.

On June 7, 1989, the trial court rendered judgment ordering petitioner and Tagamolila to pay private respondent jointly and severally the amount of P32,480.00 with legal interest, damages and attorney's fees.

Both petitioner and Tagamolila appealed the case to the Court of Appeals.

In a resolution dated April 8, 1991, the appellate court dismissed Tagamolila's appeal for failure to pay the docket fee within the reglementary period.

On August 31, 1992, the Court of Appeals affirmed the decision of the trial court against petitioner, with the modification that the award of P5,000.00 for exemplary damages and P5,000.00 for attorney's fees by the trial court was deleted.

Hence, this petition.

Petitioner PNB states that the issue in this case is whether or not the SPA ever existed. It argues that the existence of the SPA need not be proved by it under the "best evidence rule" because it already proved the existence of the SPA from the testimonies of its witnesses and by the certification issued by the Far East Bank and Trust Company that it allowed Sonia Gonzaga to encash Tan's check on the basis of the SPA.

We find the petition unmeritorious.

There is no question that no payment had ever been made to private respondent as the check was never delivered to him. When the court ordered petitioner to pay private respondent the amount of P3 2,480.00, it had the obligation to deliver the same to him. Under Art. 1233 of the Civil Code, a debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.

The burden of proof of such payment lies with the debtor.[3] In the instant case, neither the SPA nor the check issued by petitioner was ever presented in court.

The testimonies of petitioner's own witnesses regarding the check were conflicting. Tagamolila testified that the check was issued to the order of "Sonia Gonzaga as attorney-in-fact of Loreto Tan,"[4] while Elvira Tibon, assistant cashier of PNB (Bacolod Branch), stated that the check was issued to the order of "Loreto Tan." [5]

Furthermore, contrary to petitioner's contention that all that is needed to be proved is the existence of the SPA, it is also necessary for evidence to be presented regarding the nature and extent of the alleged powers and authority granted to Sonia Gonzaga; more specifically, to determine whether the document indeed authorized her to receive payment intended for private respondent. However, no such evidence was ever presented.

Section 2, Rule 130 of the Rules of Court states that:

"SEC. 2. Original writing must be produced; exceptions.

- There can be no evidence of a writing the contents of which is the subject of inquiry, other than the original writing itself, except in the following cases:

- (a) When the original has been lost, destroyed, or cannot be produced in court;
- (b) When the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original is a record or other document in the custody of a public officer;
- (d) When the original has been recorded in an existing record a certified copy of which is made evidence by law;
- (e) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole."

Section 4, Rule 130 of the Rules of Court allows the presentation of secondary evidence when the original is lost or destroyed, thus:

"SEC. 4. Secondary evidence when original is lost or destroyed. - When the original writing has been lost or destroyed, or cannot be produced in court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses."

Considering that the contents of the SPA are also in issue here, the best evidence rule applies. Hence, only the original document (which has not been presented at all) is the best evidence of the fact as to whether or not private respondent indeed authorized Sonia Gonzaga to receive the check from petitioner. In the absence of such document, petitioner's arguments regarding due payment must fail.

Regarding the award of attorney's fees, we hold that private respondent Tan is entitled to the same. Art. 2208 of the Civil Code allows attorney's fees to be awarded if the claimant is compelled to litigate with third persons or to

incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought.[6]

In *Rasonable v. NLRC, et al.*, [7] we held that when a party is forced to litigate to protect his rights, he is entitled to an award of attorney's fees.

As for the award of exemplary damages, we agree with the appellate court that the same should be deleted.

Under Art. 2232 of the Civil Code, exemplary damages may be awarded if a party acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. However, they cannot be recovered as a matter of right; the court has yet to decide whether or not they should be adjudicated.[8]

Jurisprudence has set down the requirements for exemplary damages to be awarded:

1. they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established;
2. they cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant;
3. the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner.[9]

In the case at bench, while there is a clear breach of petitioner's obligation to pay private respondents, there is no evidence that it acted in a fraudulent, wanton, reckless or oppressive manner. Furthermore, there is no award to compensatory damages which is a prerequisite before exemplary damages may be awarded. Therefore, the award by the trial court of P5,000.00 as exemplary damages is baseless.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with the modification that the award by the Regional Trial Court of P5,000.00 as attorney's fees is REINSTATED.

SO ORDERED.

Regalado (Chairman), Puno, and Mendoza, JJ., concur.
Torres, Jr., J., on leave.

[1] CA-G.R. CV No. 28486, penned by Cezar D. Francisco, J., ponente and concurred in by Pedro A. Ramirez and Pacita Canizares-Nye, JJ., Rollo, p. 20.

[2] Rollo, p.21.

[3] *Pinon v. Osorio*, 30 Phil. 365.

[4] T.S.N., October 5, 1987, pp. 45-46.

[5] T.S.N., November 9, 1987, p. 7.

[6] *Solid Homes, Inc. v. CA*, 235 SCRA 299 (1994).

[7] G.R.No. 117195, February 20, 1996.

[8] Art. 2233, Civil Code.

[9] *Octol v. Ybanez*, 111 SCRA 79(1982); *De Leon v. CA*, 165 SCRA 166 (1988).

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