

INTERNATIONAL TOBACCO CO., INC., PLAINTIFF AND APPELLANT, VS. WANG WAN TAT AND PEK HOCK LENG, DEFENDANTS AND APPELLEES.

G.R. No. 12808. May 30, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

On December 10, 1956, defendant Wang Wan Tat executed a promissory note of the following tenor:—

"Twelve (12) months after date, I promise to pay for value received, the INTERNATIONAL TOBACCO CO., INC. or order the sum of FIVE THOUSAND PESOS (P5,000.00), on four (4) equal installments payable every end of the quarter of P1,250.00 a quarter.

With 6% interest and attorney's fee if this note is not paid upon maturity, The maker and indorsers severally waived presentment for payment, protest, notice of protest and notice of non-payment of this note."

To secure the above note, defendant Wang Wan Tat as principal and his co-defendant Pek Hock Leng as Surety, executed in favor of plaintiff International Tobacco Co., Inc., a Surety Bond, the pertinent portions of which are quoted below:

"WHEREAS, the above bonded Principal, on the 10th day of December, 1956, executed a Promissory Note in favor of the INTERNATIONAL TOBACCO CO., INC., in the amount of FIVE THOUSAND PESOS (P5,000.00) payable on four (4) equal installments for a period of twelve (12) months commencing on December 10, 1956. * * *

The undersigned Surety in this Surety Bond are also subject to the following conditions and obligations:

"(a) That in the event that the Principal fails to pay his obligation, as stipulated in the said Promissory Note, the undersigned shall upon demand immediately pay the INTERNATIONAL TOBACCO CO., INC., the full amount of Promissory Note to the INTERNATIONAL TOBACCO CO., INC., for the failure of the said Principal to comply with his obligation under the said Promissory Note."

On June 28, 1957, due to the failure of defendant Wang Wan Tat to pay any of the stipulated installments, and after repeated demands on both Wang Wan Tat and Pek Hock Leng, were unheeded, a complaint for the collection of the amount including the interest and attorney's fees, was instituted with the Court of First Instance of Manila.

On July 10, 1957, the defendants, instead of Answering the Complaint, presented a Motion to Dismiss, claiming that the promissory note was not yet due and demandable and, therefore, the action was premature. Over the opposition of plaintiff, contending that the complaint states sufficient cause of action upon the Promissory Note and the Surety Bond, the lower court issued an order of the following nature:—

"This is a motion to dismiss plaintiff's action filed by the defendants on the ground that it states no cause of action.

It appears that the complaint seeks the payment of a promissory note executed on December 10, 1956, by the defendant Wang Wan Tat, in favor of the plaintiff, International Tobacco Co., which note is attached to the complaint as Annex 'A'. But the note itself specifically provides that the same shall be paid twelve months after date, which is December 10, 1957, and it is very apparent that said note has not yet matured because the twelve months had not yet expired. It is then very clear that the presentation of the complaint is premature and, consequently, plaintiff's complaint does not state a cause of action.

WHEREFORE, the complaint is hereby dismissed without costs."

After the motion for reconsideration was denied allegedly for lack of merits, the matter was brought before Us for review.

We find the lower court in error, in dismissing the complaint on the supposed ground of lack of cause of action. It is true that the action was brought before the expiration of the twelve months period, and that the terms of the promissory note might convey the notion entertained or interpretation made by the lower court thereof. Considering, however, the fact that the surety bond, Annex B, executed by the defendants which forms part and parcel of the complaint, provides that the sum of P5,000.00 is "payable on four (4) equal installments for a period of twelve (12) months commencing on December 10, 1956," there can no longer be any doubt that failure to pay any of the installments on the respective quarter, within the year, commencing from December 10, 1956, the date of the promissory note, constitutes already a breach and a cause of action arises. And if we consider further the condition of the surety bond, it becomes manifest that since there was failure on the part of the principal, to pay the obligation, as stipulated, the whole amount became immediately demandable, against the defendant surety Pek Hock Leng. Factually, when the complaint was filed, not a single quarterly installment was paid within the year.

Pending decision, the defendants-appellees submitted a motion to dismiss the appeal, enclosing therewith a photostatic copy of the alleged promissory note, dated December 10, 1957, in which Pek Hock Leng (surety) undertook to pay the P5,000 in monthly installments of P100.00, providing that failure on his part to pay one of the installments will render the whole balance immediately demandable and stating that this promissory note supersedes the note signed by Wang Wan Tat, dated December 10, 1956, object of the present case. The new promissory note bore the supposed acceptance of Francisco Cokeng, General Manager of the plaintiff-appellant. It is alleged that the second promissory note has caused a novation of the pre-existing contract sued upon. In view, however, of the conclusions reached by Us in the case and there being no showing that the photostatic copy is derived from an authentic original note, and there being no conformity of the plaintiff-appellant to the dismissal of its appeal, the motion to dismiss the appeal is hereby denied, without prejudice of presenting it at the opportune time and in the proper place.

Finding that the order appealed from is not in conformity with the facts and the law on the matter, the same should be, as it is hereby set aside, and another entered remanding the case to the court of origin for further proceedings.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Dizon, De Leon, and Natividad, JJ., concur.

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