FAR EAST BANK & TRUST COMPANY, PETITIONER, VS. DIAZ REALTY INC., RESPONDENT.

G.R. No. 138588. August 23, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

For a valid tender of payment, it is necessary that there be a fusion of intent, ability and capability to make good such offer, which must be absolute and must cover the amount due. Though a check is not legal tender, and a creditor may validly refuse to accept it if tendered as payment, one who in fact accepted a fully funded check after the debtor's manifestation that it had been given to settle an obligation is estopped from later on denouncing the efficacy of such tender of payment.

The Case

The foregoing principle is used by this Court in resolving the Petition for Review[1] on Certiorari before us, challenging the January 26, 1999 Decision[2] of the Court of Appeals[3] (CA) in CA-GR CV No. 45349. The dispositive portion of the assailed Decision reads as follows:

> "WHEREFORE, the judgment appealed from is hereby MODIFIED, to read as follows:
>
> `WHEREFORE, JUDGMENT IS HEREBY RENDERED, ORDERING:
>
> `1. The plaintiffs to pay Far East Bank & Trust Company the principal sum of P1,067,000.00 plus interests thereon computed at 12% per annum from July 9, 1988 until fully paid;
>
> `2. The parties to negotiate for a new lease over the subject premises; and
>
> `3. The defendant to pay the plaintiff the sum of fifteen thousand (P15,000.00) pesos as and for attorney's fees plus the costs of litigation.
>
> "All other claims of the parties against each other are DENIED."[4]

Likewise assailed is the May 4, 1999 CA Resolution,[5] which denied petitioner's Motion for Reconsideration.

The Facts

The court a quo summarized the antecedents of the case as follows:

> "Sometime in August 1973, Diaz and Company got a loan from the former PaBC [Pacific Banking Corporation] in the amount of P720,000.00, with interest at 12% per annum, later increased to 14%, 16%, 18% and 20%. The loan was secured by a real estate mortgage over two parcels of land owned by the plaintiff Diaz Realty, both located in Davao City. In 1981, Allied Banking Corporation rented an office space in the building constructed on the properties covered by the mortgage contract, with the conformity of mortgagee PaBC, whereby the parties agreed that the monthly rentals shall be paid directly to the mortgagee for the lessor's account, either to partly or fully pay off the aforesaid mortgage indebtedness. Pursuant to such contract, Allied

Bank paid the monthly rentals to PaBC instead of to the plaintiffs. On July 5, 1985, the Central Bank closed PaBC, placed it under receivership, and appointed Renan Santos as its liquidator. Sometime in December 1986, appellant FEBTC purchased the credit of Diaz & Company in favor of PaBC, but it was not until March 23, 1988 that Diaz was informed about it.

"According to the plaintiff as alleged in the complaint and testified to by Antonio Diaz (President of Diaz & Company and Vice-President of Diaz Realty), on March 23, 1988, he went to office of PaBC which by then housed FEBTC and was told that the latter had acquired PaBC; that Cashier Ramon Lim told him that as of such date, his loan was P1,447,142.03; that he (Diaz) asked the defendant to make an accounting of the monthly rental payments made by Allied Bank; that on December 14, 1988,[6] Diaz tendered to FEBTC the amount of P1,450,000.00 through an Interbank check, in order to prevent the imposition of additional interests, penalties and surcharges on its loan; that FEBTC did not accept it as payment; that instead, Diaz was asked to deposit the amount with the defendant's Davao City Branch Office, allegedly pending the approval of Central Bank Liquidator Renan Santos; that in the meantime, Diaz wrote the defendant, asking that the interest rate be reduced from 20% to 12% per annum, but no reply was ever made; that subsequently, the defendant told him to change the P1,450,000.00 deposit into a money market placement, which he did; that the money market placement expired on April 14, 1989; that when there was still no news from the defendant whether or not it [would] accept his tender of payment, he filed this case at the Regional Trial Court of Davao City.

"In its responsive pleading, the defendant set up the following special/affirmative defenses: that sometime in December 1986, FEBTC purchased from the PaBC the account of the plaintiffs for a total consideration of P1,828,875.00; that despite such purchase, PaBC Davao Branch continued to collect interests and penalty charges on the loan from January 6, 1987 to July 8, 1988; that it was therefore not FEBTC which collected the interest rates mentioned in the complaint, but PaBC; that it is not true that FEBTC was trying to impose [exorbitant] rates of interest; that as a matter of fact, after the transfer of plaintiff's account, it sought to negotiate with the plaintiffs, and in fact, negotiations were made for a settlement and possible reduction of charges; that FEBTC has no knowledge of the rates of interest imposed and collected by PaBC prior to the purchase of the account from the latter, hence it could not be held responsible for those transactions which transpired prior to the purchase; and that the defendant acted at the opportune time for the settlement of the account, albeit exercising prudence in the handling of such account. The rest of the `affirmative defenses' are bare denials.

"After trial, the court a quo rendered judgment on August 6, 1993, the dispositive portion of which reads as follows:

`WHEREFORE, judgment is hereby rendered as follows:

`1. The plaintiff and defendant shall jointly compute the interest due on the P1,057,000.00 loan from April 18, 1985 until November 14, 1988 at 12% per annum (IBAA Salazar Case Supra).

`2. That the parties shall then add the result of the joint computation mentioned in paragraph one of the dispositive portion to the P1,057,000.00 principal.

`3. The result of the addition of the P1,057,000.00 principal and the interests arrived at shall then be compared with the P1,450,000.00 deposit and if P1,450,000.00 is not enough, then the plaintiff shall pay the difference/deficiency between the P1,450,000.00 deposit and what the parties jointly computed[;] conversely, if the P1,450,000.00 is more than what the parties have arrived [at] after the computation, the defendant shall return the difference or the excess to the plaintiffs.

`4. The defendant shall cancel the mortgage.

`5. Paragraph eight of the Lease Contract between Allied Bank and the plaintiffs in which the defendant's predecessor, Pacific Banking gave its conformity (Exh. `H') is hereby cancelled, so that the rental should now

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be paid to the plaintiffs.

`6. The defendant shall pay the plaintiffs the sums:

`6-A. Fifteen thousand pesos as attorney's fees.

`6-B. Three [h]undred [t]housand [p]esos (P300,000.00) as exemplary damages.

`6-C. The cost of suit.

`SO ORDERED."

"Upon a motion for reconsideration filed by defendant FEBTC and after due notice and hearing, the court a quo issued an order on October 12, 1993, modifying the aforequoted decision, such that its dispositive portion as amended would now read as follows:

`IN VIEW WHEREOF, the decision rendered last August 6, is modified, accordingly, to wit:

`1. The plaintiff and defendant shall jointly compute the interest due on the P1,167,000.00 loan from April 18, 1985 until November 14, 1988 at 12% per annum.

`2. That the parties shall then add the result of the joint computation mentioned in paragraph one above to the P1,067,000.00 principal.

`3. The result of the addition of the P1,067,000.00 principal and the interests arrived at shall then be compared with the P1,450,000.00 money market placement put up by the plaintiff with the defendant bank if the same is still existing or has not yet matured.

`4. The defendant shall cancel the mortgage.

`5. Paragraph eight of the lease contract between Allied Bank and the plaintiff in which the defendant[`s predecessor], Pacific Banking gave its conformity (Exh. `H') is hereby cancelled and deleted, so that the rental should now be paid to the plaintiff.

`6. The defendant shall pay the plaintiff the sums:

`6.A Fifteen [t]housand [p]esos as attorney's fees;

`6.B Cost of suit.'"[7]

The CA Ruling

The CA sustained the trial court's finding that there was a valid tender of payment in the sum of P1,450,000, made by Diaz Realty Inc. in favor of Far East Bank and Trust Company. The appellate court reasoned that petitioner failed to effectively rebut respondent's evidence that it so tendered the check to liquidate its indebtedness, and that petitioner had unilaterally treated the same as a deposit instead.

The CA further ruled that in the computation of interest charges, the legal rate of 12 percent per annum should apply, reckoned from July 9, 1988, until full and final payment of the whole indebtedness. It explained that while petitioner's purchase of respondent's account from Pacific Banking Corporation (PaBC) was valid, the 20 percent interest stipulated in the Promissory Note should not apply, because the account transfer was without the knowledge and the consent of respondent-obligor.

The appellate court, however, sustained petitioner's assertion that the trial court should not have cancelled the real estate mortgage contract, inasmuch as the principal obligation upon which it was anchored was yet to be extinguished. As to the lease contract, the CA held that the same was subject to renegotiation by the parties.

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Lastly, the court a quo upheld the trial court's award of attorney's fees, pointing to petitioner's negligence in not immediately informing respondent of the purchase and transfer of its credit, and in failing to negotiate in order to avoid litigation.

Issues

Petitioner submits for our resolution the following issues:

> "A.
>
> "Whether or not the Court of Appeals correctly ruled that the validity of the tender of payment was not properly raised in the trial court and could not thus be raised in the appeal.
>
> "B.
>
> "Whether or not the Court of Appeals erred in failing to apply settled jurisprudential principles militating against the private respondent's contention that a valid tender of payment had been made by it.
>
> "C.
>
> "Whether or not the Court of Appeals correctly found that the transaction between petitioner and PaBC was an `ineffective novation' and that the consent of private respondent was necessary therefor.
>
> "D.
>
> "Whether or not the Court of Appeals erred in refusing to apply the rate of interest freely stipulated upon by the parties to the respondent's obligation.
>
> "E.
>
> "Whether or not the Court of Appeals committed an irreconcilable error in ordering the parties to re-negotiate the terms of the contract while finding at the same time that the mortgage contract containing the lease was valid.
>
> "F.
>
> "Whether or not the petition, as argued by private respondent, raises questions of fact not reviewable by certiorari."[8]

In the main, the Court will determine (1) the efficacy of the alleged tender of payment made by respondent, (2) the effect of the transfer to petitioner of respondent's account with PaBC, (3) the interest rate applicable, and (4) the status of the Real Estate Mortgage.

The Court's Ruling

The Petition[9] is not meritorious.

First Issue:
Tender of Payment

Petitioner resolutely argues that the CA erred in upholding the validity of the tender of payment made by respondent. What the latter had tendered to settle its outstanding obligation, it points out, was a check which could not be considered legal tender.

We disagree. The records show that petitioner bank purchased respondent's account from PaBC in December 1986, and that the latter was notified of the transaction only on March 23, 1988. Thereafter, Antonio Diaz, president of respondent corporation, inquired from petitioner on the status and the amount of its obligation. He

was informed that the obligation summed up to P1,447,142.03. On November 14, 1988, petitioner received from respondent Interbank Check No. 81399841 dated November 13, 1988, bearing the amount of P1,450,000, with the notation "Re: Full Payment of Pacific Bank Account now turn[ed] over to Far East Bank."[10] The check was subsequently cleared and honored by Interbank, as shown by the Certification it issued on January 20, 1992.[11]

True, jurisprudence holds that, in general, a check does not constitute legal tender, and that a creditor may validly refuse it.[12] It must be emphasized, however, that this dictum does not prevent a creditor from accepting a check as payment. In other words, the creditor has the option and the discretion of refusing or accepting it.

In the present case, petitioner bank did not refuse respondent's check. On the contrary, it accepted the check which, it insisted, was a deposit. As earlier stated, the check proved to be fully funded and was in fact honored by the drawee bank. Moreover, petitioner was in possession of the money for several months.

In further contending that there was no valid tender of payment, petitioner emphasizes our pronouncement in Roman Catholic Bishop of Malolos, Inc. v. Intermediate Appellate Court,[13] as follows:

> "Tender of payment involves a positive and unconditional act by the obligor of offering legal tender currency as payment to the obligee for the former's obligation and demanding that the latter accept the same.
>
> x x x x x x x x x
>
> "Thus, tender of payment cannot be presumed by a mere inference from surrounding circumstances. At most, sufficiency of available funds is only affirmative of the capacity or ability of the obligor to fulfill his part of the bargain. But whether or not the obligor avails himself of such funds to settle his outstanding account remains to be proven by independent and credible evidence. Tender of payment presupposes not only that the obligor is able, ready, and willing, but more so, in the act of performing his obligation. Ab posse ad actu non vale illatio. `A proof that an act could have been done is no proof that it was actually done.'"

In other words, tender of payment is the definitive act of offering the creditor what is due him or her, together with the demand that the creditor accept the same. More important, there must be a fusion of intent, ability and capability to make good such offer, which must be absolute and must cover the amount due.[14]

That respondent intended to settle its obligation with petitioner is evident from the records of the case. After learning that its loan balance was P1,447,142.03, it presented to petitioner a check in the amount of P1,450,000, with the specific notation that it was for full payment of its Pacific Bank account that had been purchased by petitioner. The latter accepted the check, even if it now insists that it considered the same as a mere deposit. The check was sufficiently funded, as in fact it was honored by the drawee bank. When petitioner refused to release the mortgage, respondent instituted the present case to compel the bank to acknowledge the tender of payment, accept payment and cancel the mortgage. These acts demonstrate respondent's intent, ability and capability to fully settle and extinguish its obligation to petitioner.

That respondent subsequently withdrew the money from petitioner-bank is of no moment, because such withdrawal would not affect the efficacy or the legal ramifications of the tender of payment made on November 14, 1988. As already discussed, the tender of payment to settle respondent's obligation as computed by petitioner was accepted, the check given in payment thereof converted into money, and the money kept in petitioner's possession for several months.

Finally, petitioner points out that, in any case, tender of payment extinguishes the obligation only after proper consignation, which respondent did not do.

The argument does not persuade. For a consignation to be necessary, the creditor must have refused, without just cause, to accept the debtor's payment.[15] However, as pointed out earlier, petitioner accepted respondent's check.

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To iterate, the tender was made by respondent for the purpose of settling its obligation. It was incumbent upon petitioner to refuse, or accept it as payment. The latter did not have the right or the option to accept and treat it as a deposit. Thus, by accepting the tendered check and converting it into money, petitioner is presumed to have accepted it as payment. To hold otherwise would be inequitable and unfair to the obligor.

Second Issue:
Nature of the Transfer of Respondent's Account

Petitioner bewails the CA's characterization of the transfer of respondent's account from Pacific Banking Corporation to petitioner as an "ineffective novation." Petitioner contends that the transfer was an assignment of credit.

Indeed, the transfer of respondent's credit from PaBC to petitioner was an assignment of credit. Petitioner's acquisition of respondent's credit did not involve any changes in the original agreement between PaBC and respondent; neither did it vary the rights and the obligations of the parties. Thus, no novation by conventional subrogation could have taken place.

An assignment of credit is an agreement by virtue of which the owner of a credit (known as the assignor), by a legal cause -- such as sale, dation in payment, exchange or donation -- and without the need of the debtor's consent, transfers that credit and its accessory rights to another (known as the assignee), who acquires the power to enforce it, to the same extent as the assignor could have enforced it against the debtor.[16]

In the present case, it is undisputed that petitioner purchased respondent's loan from PaBC. In doing so, the former acquired all of the latter's rights against respondent. Thus, petitioner had the right to collect the full value of the credit from respondent, subject to the terms as originally agreed upon in the Promissory Note.

Third Issue:
Applicable Interest Rate

Petitioner bank, as assignee of respondent's credit, is entitled to the interest rate of 20 percent in the computation of the debt of private respondent, as stipulated in the August 26, 1983 Promissory Note executed by the latter in favor of PaBC.[17]

However, because there was a valid tender of payment made on November 14, 1988, the accrual of interest based on the stipulated rate should stop on that date. Thus, respondent should pay petitioner-bank its principal obligation in the amount of P1,067,000 plus accrued interest thereon at 20 percent per annum until November 14, 1988, less interest payments given to PaBC from December 1986 to July 8, 1988.[18] Thereafter, the interest shall be computed at 12 percent per annum until full payment.

Fourth Issue:
Status of Mortgage Contract

The Real Estate Mortgage executed between respondent and PaBC to secure the former's principal obligation, as well as the provision in the Contract of Lease between respondent and Allied Bank with regard to the application of rent payment to the former's indebtedness, should subsist until full and final settlement of such obligation pursuant to the guidelines set forth in this Decision. Thereafter, the parties are free to negotiate a renewal of either or both contracts, or to end any and all of their contractual relations.

WHEREFORE, the Petition is hereby DENIED. The assailed Decision of the Court of Appeals is AFFIRMED with the following modifications: Respondent Diaz Realty Inc. is ORDERED to pay Far East Bank and Trust Co. its principal loan obligation in the amount of P1,067,000, with interest thereon computed at 20 percent per annum

until November 14, 1988, less any interest payments made to PaBC, petitioner's assignor. Thereafter, interest shall be computed at 12 percent per annum until fully paid.
SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, pp. 26-68.

[2] Ibid., pp. 10-20.

[3] Third Division. Penned by Justice Delilah Vidallon-Magtolis, with the concurrence of Justices Artemon D. Luna (Division chairman) and Rodrigo V. Cosico (member).

[4] CA Decision, p. 10; rollo, p. 19.

[5] Rollo, p. 85.

[6] The subject Interbank check, dated November 13, 1988, was received by petitioner bank on November 14, 1988. See RTC Records, p. 219.

[7] Assailed Decision, pp. 2-4; rollo, pp. 11-13.

[8] Petitioner's Memorandum, pp. 21-22; rollo, pp. 188-189.

[9] This case was deemed submitted for resolution on February 10, 2000, upon receipt by the Court of the Memorandum for respondent. Said Memorandum was signed by Atty. Roberto T. Sencio. Petitioner's Memorandum, submitted by Ponce Enrile Reyes & Manalastas, was received earlier on January 17, 2000.

[10] RTC Records, p. 219.

[11] Ibid., p. 268.

[12] Tibajia, Jr. v. Court of Appeals, 223 SCRA 163, June 4, 1993; Roman Catholic Bishop of Malolos, Inc. v. Intermediate Appellate Court, 191 SCRA 411, November 16, 1990.

[13] 191 SCRA 411, November 16, 1990, per Sarmiento, J.

[14] Ibid.

[15] Article 1256, Civil Code of the Philippines. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due. Consignation alone shall produce the same effect in the following cases:

> (1) When the creditor is absent or unknown, or does not appear at the place of payment;
>
> (2) When he is incapacitated to receive the payment at the time it is due;
>
> (3) When, without just cause, he refuses to give a receipt;
>
> (4) When two or more persons claim the same right to collect;
>
> (5) When the title of the obligation has been lost.

[16] Tolentino, Civil Code of the Philippines, Book V, p. 188. See Casabuena v. Court of Appeals, 286 SCRA 594, February 27, 1998; Rodriguez v. Court of Appeals, 207 SCRA 553, March 25, 1992; Nyco Sales Corporation v. BA Finance Corporation, 200 SCRA 637, August 16, 1991.

[17] RTC Records, p. 24.

[18] The records reflect that even though respondent corporation's account was purchased in December 1986, the defunct PaBC continued collecting interest and penalty charges on such account until July 8, 1988. Thus, in the computation of the sum owed to petitioner, this matter should be taken into consideration.

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