

TEDDY G. PABUGAIS, PETITIONER, VS. DAVE P. SAHIJWANI, RESPONDENT.*G.R. No. 156846. February 23, 2004*

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-156846/>**YNARES-SANTIAGO, J.:**

Assailed in this petition for review on certiorari is the January 16, 2003 Amended Decision[1] of the Court of Appeals[2] in CA-G.R. CV No. 55740 which set aside the November 29, 1996 Decision[3] of the Regional Trial Court of Makati, Branch 64, in Civil Case No. 94-2363.

Pursuant to an “Agreement And Undertaking”[4] dated December 3, 1993, petitioner Teddy G. Pabugais, in consideration of the amount of Fifteen Million Four Hundred Eighty Seven Thousand Five Hundred Pesos (P15,487,500.00), agreed to sell to respondent Dave P. Sahijwani a lot containing 1,239 square meters located at Jacaranda Street, North Forbes Park, Makati, Metro Manila. Respondent paid petitioner the amount of P600,000.00 as option/reservation fee and the balance of P14,887,500.00 to be paid within 60 days from the execution of the contract, simultaneous with delivery of the owner’s duplicate Transfer Certificate of Title in respondent’s name the Deed of Absolute Sale; the Certificate of Non-Tax Delinquency on real estate taxes and Clearance on Payment of Association Dues. The parties further agreed that failure on the part of respondent to pay the balance of the purchase price entitles petitioner to forfeit the P600,000.00 option/reservation fee; while non-delivery by the latter of the necessary documents obliges him to return to respondent the said option/reservation fee with interest at 18% per annum, thus —

5. DEFAULT — In case the FIRST PARTY [herein respondent] fails to pay the balance of the purchase price within the stipulated due date, the sum of P600,000.00 shall be deemed forfeited, on the other hand, should the SECOND PARTY [herein petitioner] fail to deliver within the stipulated period the documents hereby undertaken, the SECOND PARTY shall return the sum of P600,000.00 with interest at 18% per annum.[5]

Petitioner failed to deliver the required documents. In compliance with their agreement, he returned to respondent the latter’s P600,000.00 option/reservation fee by way of Far East Bank & Trust Company Check No. 25AO54252P, which was, however, dishonored.

What transpired thereafter is disputed by both parties. Petitioner claimed that he twice tendered to respondent, through his counsel, the amount of P672,900.00 (representing the P600,000.00 option/reservation fee plus 18% interest per annum computed from December 3, 1993 to August 3, 1994) in the form of Far East Bank & Trust Company Manager’s Check No. 088498, dated August 3, 1994, but said counsel refused to accept the same. His first attempt to tender payment was allegedly made on August 3, 1994 through his messenger;[6] while the second one was on August 8, 1994,[7] when he sent via DHL Worldwide Services, the manager’s check attached to a letter dated August 5, 1994.[8] On August 11, 1994, petitioner wrote a letter to respondent saying that he is consigning the amount tendered with the Regional Trial Court of Makati City.[9] On August 15, 1994, petitioner filed a complaint for consignment.[10]

Respondent's counsel, on the other hand, admitted that his office received petitioner's letter dated August 5, 1994, but claimed that no check was appended thereto.[11] He averred that there was no valid tender of payment because no check was tendered and the computation of the amount to be tendered was insufficient,[12] because petitioner verbally promised to pay 3% monthly interest and 25% attorney's fees as penalty for default, in addition to the interest of 18% per annum on the P600,000.00 option/reservation fee.[13]

On November 29, 1996, the trial court rendered a decision declaring the consignment invalid for failure to prove that petitioner tendered payment to respondent and that the latter refused to receive the same. It further held that even assuming that respondent refused the tender, the same is justified because the manager's check allegedly offered by petitioner was not legal tender, hence, there was no valid tender of payment. The trial court ordered petitioner to pay respondent the amount of P600,000.00 with interest of 18% per annum from December 3, 1993 until fully paid, plus moral damages and attorney's fees.[14]

Petitioner appealed the decision to the Court of Appeals. Meanwhile, his counsel, Atty. Wilhelmina V. Joven, died and she was substituted by Atty. Salvador P. De Guzman, Jr.[15] On December 20, 2001, petitioner executed a "Deed of Assignment"[16] assigning in favor of Atty. De Guzman, Jr., part of the P672,900.00 consigned with the trial court as partial payment of the latter's attorney's fees.[17] Thereafter, on January 7, 2002, petitioner filed an Ex Parte Motion to Withdraw Consigned Money.[18] This was followed by a "Motion to Intervene" filed by Atty. De Guzman, Jr., praying that the amount consigned be released to him by virtue of the Deed of Assignment.[19]

Petitioner's motion to withdraw the amount consigned was denied by the Court of Appeals and the decision of the trial court was affirmed with modification as to the amount of moral damages and attorney's fees.[20]

On a motion for reconsideration, the Court of Appeals declared the consignment as valid in an Amended Decision dated January 16, 2003. It held that the validity of the consignment had the effect of extinguishing petitioner's obligation to return the option/reservation fee to respondent. Hence, petitioner can no longer withdraw the same. The decretal portion of the Amended Decision states:

WHEREFORE, premises considered, our decision dated April 26, 2002 is RECONSIDERED. The trial court's decision is hereby REVERSED and SET ASIDE, and a new one is entered (1) DECLARING as valid the consignment by the plaintiff-appellant in favor of defendant-appellee of the amount of P672,900.00 with the Makati City RTC Clerk of Court and deposited under Official Receipt No. 379061 dated 15 August 1994 and (2) DECLARING as extinguished appellant's obligation in favor of appellee under paragraph 5 of the parties' "AGREEMENT AND UNDERTAKING". Neither party shall recover costs from the other.

SO ORDERED.[21]

Unfazed, petitioner filed the instant petition for review contending, inter alia, that he can withdraw the amount deposited with the trial court as a matter of right because at the time he moved for the withdrawal thereof, the Court of Appeals has yet to rule on the consignment's validity and the respondent had not yet accepted the same.

The resolution of the case at bar hinges on the following issues: (1) Was there a valid consignment? and (2) Can petitioner withdraw the amount consigned as a matter of right?

Consignment is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment.[22] In order that consignment may be effective, the debtor must show that: (1) there was a debt due; (2) the consignment of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because he was absent or incapacitated, or because several persons claimed to be entitled to receive the amount

due or because the title to the obligation has been lost; (3) previous notice of the consignation had been given to the person interested in the performance of the obligation; (4) the amount due was placed at the disposal of the court; and (5) after the consignation had been made the person interested was notified thereof. Failure in any of these requirements is enough ground to render a consignation ineffective.[23]

The issues to be resolved in the instant case concerns one of the important requisites of consignation, i.e, the existence of a valid tender of payment. As testified by the counsel for respondent, the reasons why his client did not accept petitioner's tender of payment were — (1) the check mentioned in the August 5, 1994 letter of petitioner manifesting that he is settling the obligation was not attached to the said letter; and (2) the amount tendered was insufficient to cover the obligation. It is obvious that the reason for respondent's non-acceptance of the tender of payment was the alleged insufficiency thereof — and not because the said check was not tendered to respondent, or because it was in the form of manager's check. While it is true that in general, a manager's check is not legal tender, the creditor has the option of refusing or accepting it.[24] Payment in check by the debtor may be acceptable as valid, if no prompt objection to said payment is made.[25] Consequently, petitioner's tender of payment in the form of manager's check is valid.

Anent the sufficiency of the amount tendered, it appears that only the interest of 18% per annum on the P600,000.00 option/reservation fee stated in the default clause of the "Agreement And Undertaking" was agreed upon by the parties, thus —

5. DEFAULT — In case the FIRST PARTY [herein respondent] fails to pay the balance of the purchase price within the stipulated due date, the sum of P600,000.00 shall be deemed forfeited, on the other hand, should the SECOND PARTY [herein petitioner] fail to deliver within the stipulated period the documents hereby undertaken, the SECOND PARTY shall return the sum of P600,000.00 with interest at 18% per annum.[26]

The manager's check in the amount of P672,900.00 (representing the P600,000.00 option/reservation fee plus 18% interest per annum computed from December 3, 1993 to August 3, 1994) which was tendered but refused by respondent, and thereafter consigned with the court, was enough to satisfy the obligation.

There being a valid tender of payment in an amount sufficient to extinguish the obligation, the consignation is valid.

As regards petitioner's right to withdraw the amount consigned, reliance on Article 1260 of the Civil Code is misplaced. The said Article provides —

Art. 1260. Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation.

Before the creditor has accepted the consignation, or before a judicial confirmation that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force.

The amount consigned with the trial court can no longer be withdrawn by petitioner because respondent's prayer in his answer that the amount consigned be awarded to him is equivalent to an acceptance of the consignation, which has the effect of extinguishing petitioner's obligation.

Moreover, petitioner failed to manifest his intention to comply with the "Agreement And Undertaking" by delivering the necessary documents and the lot subject of the sale to respondent in exchange for the amount deposited. Withdrawal of the money consigned would enrich petitioner and unjustly prejudice respondent.

The withdrawal of the amount deposited in order to pay attorney's fees to petitioner's counsel, Atty. De Guzman, Jr., violates Article 1491 of the Civil Code which forbids lawyers from acquiring by assignment, property and

rights which are the object of any litigation in which they may take part by virtue of their profession.[27] Furthermore, Rule 10 of the Canons of Professional Ethics provides that “the lawyer should not purchase any interest in the subject matter of the litigation which he is conducting.” The assailed transaction falls within the prohibition because the Deed assigning the amount of P672,900.00 to Atty. De Guzman, Jr., as part of his attorney’s fees was executed during the pendency of this case with the Court of Appeals. In his Motion to Intervene, Atty. De Guzman, Jr., not only asserted ownership over said amount, but likewise prayed that the same be released to him. That petitioner knowingly and voluntarily assigned the subject amount to his counsel did not remove their agreement within the ambit of the prohibitory provisions.[28] To grant the withdrawal would be to sanction a void contract.[29]

WHEREFORE, in view of all the foregoing, the instant petition for review is DENIED. The January 16, 2003 Amended Decision of the Court of Appeals in CA-G.R. CV No. 55740, which declared the consignment by the petitioner in favor of respondent of the amount of P672,900.00 with the Clerk of Court of the Regional Trial Court of Makati City valid, and which declared petitioner’s obligation to respondent under paragraph 5 of the “Agreement And Undertaking” as having been extinguished, is AFFIRMED. No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Panganiban, and Azcuna, JJ., concur.

Carpio, J., no part, former counsel of a party.

[1] Rollo, p. 18.

[2] Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Cancio C. Garcia and Marina L. Buzon.

[3] Records, p. 157.

[4] Id., p. 85.

[5] Id., p. 86.

[6] TSN, 24 July 1995, pp. 9-10.

[7] DHL Delivery Receipt, Records, p. 16.

[8] TSN, 24 July 1995, pp. 11-14.

[9] Records, p. 94.

[10] Id., p. 1.

[11] TSN, 14 February 1996, p. 37.

[12] Id., p. 39.

[13] TSN, 27 March 1996, pp. 9-10; 22-23; 29-30.

[14] Records, p. 160.

[15] His “Entry of Appearance” for petitioner which was received by the Court of Appeals on July 4, 2000, was noted in the October 30, 2000 Resolution of said court (CA Rollo, p. 114).

[16] Rollo, p. 116.

[17] Pertinent portion thereof, reads:

WHEREAS, in order that he may pay the estate of the late Atty. Wilhelmina Joven and at the same time give partial payment to herein ASSIGNEE of the latter's attorney's fees, the ASSIGNOR has decided to assign the consigned money to herein ASSIGNEE;

NOW, THEREFORE, for and in consideration of the foregoing premises, and of the terms and conditions hereinafter stated, the ASSIGNOR, by these presents, irrevocably ASSIGNS to the herein ASSIGNEE the P672,900.00 now on deposit with the Clerk of Court of the Regional Trial Court of Makati City under Official Receipt No. 3790631 dated August 15, 1994 in Civil Case No. 94-2363 entitled "Teddy G. Pabugais, petitioner v. Dave Sahijwani, respondent", provided that at least 40% of said amount is paid to the Estate of the late Atty. Wilhelmina Joven.

X X X X X X X X

TEDDY G. PABUGAIS SALVADOR P. DE GUZMAN, JR.
Assignor Assignee

[18] CA Rollo, p. 117.

[19] Id., p. 158.

[20] Id., p. 123.

[21] Rollo, p. 29.

[22] Legaspi v. Court of Appeals, 226 Phil. 24, 29 (1986); citing Limkako v. Teodoro, 74 Phil. 313 (1943).

[23] Soco v. Militante, 208 Phil. 151, 160 (1983); citing Jose Ponce de Leon v. Santiago Syjuco, Inc., 90 Phil. 311 (1951); Civil Code, Articles 1256-1258.

[24] Far East Bank & Trust Company v. Diaz Realty, Inc., G.R. No. 138588, 23 August 2001, 363 SCRA 659, 667; citing Tibajia, Jr. v. Court of Appeals, G.R. No. 100290, 4 June 1993, 223 SCRA 163; Roman Catholic Bishop of Malolos, Inc. v. Intermediate Appellate Court, G.R. No. 72110, 16 November 1990, 191 SCRA 411.

[25] Soco v. Militante, supra.

[26] Records, p. 86.

[27] Article 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

X X X X X X X X

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

[28] Ordinio v. Palongan Eduarte, A.M. No. 3216, 16 March 1992, 207 SCRA 229, 231-232; citing In re: Atty. Melchor E. Ruste, 70 Phil. 243 (1940).

[29] Rubias v. Batiller, 151-A Phil. 584, 600 (1973); Fornilda v. Branch 164, RTC IVth Judicial Region, Pasig,

G.R. No. L-72306, 5 October 1988, 166 SCRA 281, 288-289.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.