

**FIRESTONE TIRE & RUBBER COMPANY OF THE PHILIPPINES,
PLAINTIFF-APPELLEE, VS. INES CHAVES & CO., LTD., ET AL.,
DEFENDANTS-APPELLANTS.**

G. R. No. 17106. October 19, 1966

Ponente: REGALA, J.

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REGALA, J.:

This appeal originated from a suit filed on January 14, 1960 by appellee Firestone Tire and Rubber Co. of the Philippines against appellant Ines Chaves & Co., Ltd. in the Court of First Instance of Manila, for the collection of P6,241.75, plus interest and attorney's fees. The principal amount represented the price of automobile tires, tubes and other accessories which the appellee had sold and delivered to the appellants on different dates. The claim for interest and attorney's fees was based on the following stipulation appearing on each invoice issued by the appellee.

"All accounts shall be paid upon delivery of the merchandise according to the terms of the invoice, at Manila Office; and the purchaser shall pay one per centum (1%) per month from the date of default, and in case of suit for the collection of account and interest he expressly submits to the jurisdiction of the Courts of Manila, Cebu and Iloilo, and agrees to pay twenty five per centum (25%) thereof as attorney's fees and liquidated damages.

" After trial the court gave judgment for the appellee for the principal amount but denied the claim for interest and attorney's fees as stipulated in the invoices for lack of proof that appellant had agreed to the condition. Instead, the court ordered the payment of interest at the legal rate and an additional amount equal to 25 per cent of the principal as attorney's fees after finding appellants guilty of bad faith in issuing a check which was subsequently dishonored. The check, dated June 9, 1959, was for P1,437.50 and was intended as part payment of appellants' debt. When presented to the Security Bank and Trust Co. by the appellee, the check was returned for insufficiency of funds. Despite repeated demands by the appellee, appellants failed to settle its account.

In the dispositive portion of its decision dated April 12, 1960, the court ordered:

"IN VIEW WHEREOF, judgment is rendered condemning defendants Ines Chaves & Co. principally and Ines Chaves subsidiarily, to pay plaintiff (herein appellee) the sum of P6,241.75 with legal interest from July 3, 1959, which is the end of the period of 30 days from the last receipt until fully paid plus 25% of the principal as attorney's fees, plus costs."

It is from this judgment that appellants brought this appeal to this Court.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.[[1]] Indeed, before the effectivity of the Civil Code, such fees could not be recovered in the absence of a stipulation. It was only with the advent of the new Code that the right to collect attorney's fees in the cases mentioned in article 2208 was recognized.[[2]] Such fees are now included in the concept of actual damages.[3]

One such case is where the defendant is guilty of "gross and evident bad faith in refusing to satisfy plaintiff's

plainly valid, just and demandable claim.[[4] This is a corollary of the general principle expressed in article 19 of the Code that everyone must, in the performance of his duties, observe honesty and good faith and the rule embodied in article 1170 that anyone guilty of fraud (bad faith) in the performance of his obligation shall be liable for damages.

What does the obligation of good faith require? Applied to the present case, did the issuance of check which was subsequently dishonored amount to bad faith on the part of appellants?

Appellants' contention in this appeal is that the lower court erred in finding them guilty of bad faith and, in consequence, ordering them to pay attorney's fees. The claim is made that when the check was issued the appellee knew that there were no funds to back it up and that appellants expected that such funds would be available when the check became due. "This fact had been relayed and made known to the plaintiff (appellee) who had agreed to the same,"[5] it is asserted.

Of course, if appellee agreed to accept the check, knowing that it was not covered by adequate funds in the bank, no finding of bad faith can be made against the appellant. We held in a number of cases that where a person issues a post dated check without funds to cover it and informs the payee of this fact, he cannot be held guilty of estafa because there is no deceit.[[6]]

But here there is nothing in the record to show that appellee knew that there were no funds in the bank when it accepted the check from the appellants, much less that appellee "agreed" to take the check with knowledge of the lack of funds. There is nothing to show that appellants even hinted to the appellee at the lack of funds when the check was issued. On the contrary, by issuing the check, appellants in effect represented to the appellee that there were funds in the bank for its payment.[[7]] We think the lower court correctly found appellants' conduct wanting in good faith. The award of attorney's fees is warranted.

WHEREFORE, the decision appealed from is affirmed, with costs against appellants.

Concepcion, C. J., Reyes, Dizon, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Heirs of Justiva v. Gustilo, G.R. L-16396, Jan. 31, 1963.

[2] See Reyes v. Yatco, 100 Phil. 964 (1957); Tan Ti v. Alvear, 26 Phil. 566 (1914); Castueras v. Bayona, G.R. No. L-13657, Oct. 16, 1959.

[3] Fores v. Miranda, G.R. No. L-12163, March 4, 1959.

[4] Civil Code article 2208(5).

[5] Appellants' brief, p. 9.

[6] People v. Villapando, 56 Phil. 31 (1931); People v. Ulius, 59 Phil. 339 (1933).

[7] See People v. Lilius, *supra* at 340-341.

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