

## NATIVIDAD CASTELLVI RAQUIZA, PETITIONER VS. RAYMUNDA CAREAGA OFILADA, ET AL., RESPONDENTS

*G.R. No. 17182. September 30, 1963*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

This is a petition for a writ of certiorari to review a judgment of the Court of Appeals affirming that rendered by the Court of First Instance of Manila in Civil Case No. 34025. In this Court the petitioner assigns the following errors claimed to have been committed by the Courts of Appeals:

- (1) in not holding that, by their inadequate allegations in the complaint as well as their immaterial evidence adduced during the trial, the respondents failed to establish liability on the part of the petitioner to pay them P1 ,500.00;
- (2) in admitting in evidence check for P1,500 (Exhibit G) which was not alleged in the complaint;
- (3) in leaving unsolved the petitioner's motion for new trial;
- (4) in not holding that the respondent's claim for P1,086.00 was already paid;
- (5) in not holding that plaintiff's claim for P14,500 was neither adequately alleged in the complaint nor proved during the trial;
- (6) in admitting in evidence the power of attorney (Exh. F) with which respondents intend to prove their above claim of P14,500;
- (7) in holding that Exh. F (power of attorney) alone constitutes sufficient evidence that Mrs. Raquiza owed the Ofiladas P14,500; and
- (8) in admitting Exhs. G, G-1, G-2 and G-3 against the objection of the defendant for not being alleged in the complaint.

The findings of the Court of Appeals are the following:

"It appears that sometime in July 1950, plaintiff Raymunda G. Ofilada purchased from a certain Rufina Vinoya a pair of diamond earrings for P1,500. But to accommodate defendant Natividad Castellvi Raquiza, the earring had previously been pledged by Mrs. Vinoya to one Mrs. Maria de Guzman. In order to redeem the jewelry, the buyer thereof issued a check (Exh. "C") in the amount of P1,500.00 in favor of Mrs. Raquiza for the redemption of the articles pledged. The check was cashed at the Philippine National Bank by Mrs. Raquiza who did not utilize the money for the purchase intended. Thus, no earrings were delivered to Mrs. Ofilada.

The paying teller of the Philippine National Bank by the name of Pedro Melendrez positively declared that the check was cashed by Mrs. Raquiza. He testified thus—

Q.

Would you tell the Court the procedure when a check is presented to you?

A.

When a check is presented to me for payment I verify the signature of the drawer; after verifying the signature of the drawer I send the check to the bookkeeper for further verification of the drawer's signature and the balance; then the check is given to me for payment. Before I pay the check, of course I will have to let the payee, the one who is cashing the check, to sign in my presence.

Q.

I am showing to you now a PNB check bearing No. 2094321-K which has been marked as Exhibit C, do you know this check?

A.

Yes.

Q.

Do you know the person who cashed this check?

A.

Of course the signature on the back will show that she was the one who cashed the check.

Q.

Who cashed the check?

A.

Mrs. Natividad Raquiza.

Q.

Do I get you right that before you paid this check to Mrs. Natividad C. Raquiza you required her to sign?

A.

In my presence, yes.

Court:

Q.

Where is she now, do you know?

A.

She is there. \* \* \*." (t.s.n. pp. 38-39, Samson)

It also appears that on September 21, 1950, one transaction about jewelry was entered into by and between Mrs. Ofilada and Mrs. Raquiza, who executed the corresponding promissory note—

"I promise to pay Mrs. R. C. Ofilada the amount of P1,086.50 before December 31, 1950.

(Sgd.) Natividad Raquiza  
Horse Shoe Drive"

(Exhibit "A")

On July 23, 1956, Mrs. Raquiza executed a special power of attorney in favor of Mrs. 'Carmen Vda. de Castellvi authorizing her to pay the total amount of P14,500.00 to Mrs. Raymunda C. Ofilada and Mrs. Andrea Ofilada Veneracion.

Defendant, however, insists that the amount of P1,086.50 which she had promised to pay before December 31, 1950, to plaintiff Raymunda C. Ofilada had already been paid in behalf of the former by a certain Mrs. Castellvi who was said to have paid the sum of P2,000.00 (t.s.n., p. 55, April 10, 1955). But, the promissory note evidencing the indebtedness (Exh. "A") has not been retrieved from the creditor, plaintiff Mrs. Ofilada, and there is nothing on its bare face to show that it was ever paid by the promisor defendant Natividad Raquiza, who admitted having executed the same (t.s.n., p. 18, January 23, 1958). Under this circumstance, we could not believe that plaintiff Ofilada would have the temerity of going to the extent of suing herein defendant if the latter had already satisfied her indebtedness as embodied in Exhibit "A". If the creditor required the debtor to sign the corresponding promissory note (Exh. "A"), like, in the instant case, then the latter should have reasonably asked the former to hand in the note and to indicate thereon that the same has already been paid. That is the normal and ordinary way of dealing on this kind of transaction. And since this has not been done, we are not inclined, much less satisfied, to believe defendant's pretension that she had already paid her obligation under Exhibit "A".

The complaint as well as the evidence satisfactorily establishes the fact that herein defendant is under obligation to plaintiff Ofilada in the sum of P1,500.00 which was advanced to the former by the latter in the form of a check for the purpose of redeeming the pair of diamond earrings from a certain Mrs. Maria de Guzman. Defendant, however, did not redeem the precious articles and so nothing was delivered to Mrs. Ofilada who lost money and earrings. This is what they say in ordinary parlance "por nada". Of course defendant in trying to shake off liability under the check denied having cashed the same, for, according to her, the signature appearing at the back thereof is not her genuine signature. In other words, she wants us to believe that somebody had forged her signature and thereafter the forger or somebody else cashed the check. But, the paying teller, who does not appear to have any ill-motive towards herein defendant, positively declared that she was the very one who signed the check on the back as payee. While there is an apparent dissimilarity between the admittedly genuine signature of the defendant and the signature appearing on the back of the check, yet we cannot rule out or do away with the testimony of the teller who, from all indications, simply testified on what he knew. It may be stated in this connection that the signature appearing at the bottom of Exhibit "A" and those appearing on Exhibits "F" and "G" are not quite similar—an indication that defendant at times sign her name in different ways. For this reason, it would not be reasonable to say that she may have signed her name in a different way she cashed the check (Exh. "C"). For all these considerations, we hold and declare that plaintiff never put up a theory different from what she alleged in the complaint about Exhibit "B".

The check (Exh. "C") is an evidence in support of what has been alleged in the complaint regarding the transaction relating to the pair of earrings that were previously pledged to Mrs. Maria de Guzman and later on sold by Mrs. Vinoya to herein plaintiff. It was established that the pledge was constituted for the benefit of the defendant. It is not true that plaintiffs failed to adequately alleged in the complaint the claim of P14,500.00. It is enough to reproduce in this connection the pertinent paragraph—

"6. That on July 23, 1956, defendant herein executed a power of attorney in favor of Carmen Vda. de Castellvi for the purpose of paying the sum of P14,500.00 to the plaintiffs herein as shown in said special power of attorney a copy of which is hereto attached and marked as Annex "D" which forms a part of this complaint."

It should also be stated that defendant admitted the genuineness of her signature appearing on the special power of

attorney (Exh. "F", authorizing her attorney-in-fact, Mrs. Carmen Vda. de Castellvi, to pay Mrs. R. C. Ofilada and Mrs. Andrea Ofilada Veneracion the total sum of P14,500.00.

The special power of attorney (Exh. "F") is written in English, a language which, we can reasonably say, is understood by the executor thereof, Mrs. Castellvi Raquiza, considering that she testified in said language (Pis. see t.s.n., p. 17, hearing, Jan. 21, 1958). For this reason, we cannot reasonably say that she was duped to sign the same. We are, therefore, satisfied that Exhibit "F" was duly executed for some lawful obligation, and not for any undesirable purpose.

Exhibits "G", "G-1" and "G-3" were correctly admitted, for they may be considered for whatever they are worth in connection with the allegations in the complaint and other evidence duly presented. It may be stated that defendant's counsel interposed his objection as to the admission of Exhibit "G-2" only. All of these Exhibits ("G", "G-1" & "G-2") reflect the sale of defendant's share in the expropriated estate of her late father, Alfonso Catellvi. Plaintiff Raymunda G. Ofilada declared that "everytime she sold to me a portion of her land she executed a document, and these are the documents that she executed (t.s.n., pp. 21-24, Jan. 10, 1958). A cursory reading of Exhibits "G", "G-1", "G-2" and "G-3" readily confirms the sale to Mrs. Ofilada and Mrs. Veneracion of defendant's participation in the estate of her late father."

Ultimate and not evidentiary facts are to be pleaded in a complaint. The test of sufficiency of a complaint is, could a competent court render a valid judgment upon the facts alleged in it if admitted or proved? If it could, then the allegations are sufficient. The indebtedness of the petitioner has been established as found by the Court of Appeals. This Court does not find any error of law claimed by the petitioner to have been committed by the Court of Appeals, except an error of fact upon which this Court is not allowed to pass. The error is to have taken into account Exhibit G executed by the petitioner on 17 February 1958 and Exhibit G-2 executed on 16 May 1957 to support in part the items of P12,000.00 and P900.00 appearing in the special power of attorney (Exhibit F, Annex D to the complaint) executed on 23 July 1956. If, as testified to by respondent Ofilada, the special power of attorney executed by the petitioner on 23 July 1956 in favor of Carmen Vda. de Castellvi, was a consolidation of all the receipts signed by the petitioner for money paid by the former and received by the latter, then Exhibits G and G-2, receipts signed by the petitioner on 17 February 1958 and 16 May 1957, respectively, long after the execution of the special power of attorney (Exhibit F) on 23 July 1956, could not have been included in the amounts appearing in Exhibit F. But the Court of Appeals found that counsel for the petitioner, contrary to his claim, objected to the admission of Exhibit G-2 only. Be that as it may, the fact is that in Exhibit F the petitioner acknowledged to be indebted to the respondents in the sums therein stated and authorized Carmen Vda. de Castellvi to pay the sums to the respondents.

The third error assigned is untenable, because by finally deciding the case without even mention of the new trial prayed for, the Court in effect denied the motion. The judgment under review is affirmed, without pronouncement as to costs in this instance.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur

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