

SALUD LEDESMA, PETITIONER VS. ALBERTO REALUBIN AND COURTS OF APPEALS, RESPONDENTS.

G.R. No. 18335. July 31, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

From the Baguio Caltex service station owned by the respondent, Alberto Realubin, the petitioner, Salud Ledesma, purchased on credit, on different dates, through her drivers, gasoline and motor oil, from June to September, 1956, for amounts summed up by the month, as follows:

June.....

P908.55

July.....

920.207[1]

August.....

522.00

September.....

439.85

P2,790.60

All the credit purchases were invoiced in the same printed form. The earliest, Exhibit "A", is, in words and figures, as follows:

"Tel. No. 21-38

No. 55968

Baguio CALTEX Service Station
Corner Naguilian, Bower & Bokawkan Road.
Baguio City

Mr. & Mrs. A. REALUBIN—Prop.

Sold to Mrs. S. Ledesma

Address

License No. 1541

Date 6-1-56

Quantity

Articles

Unit

Price

Amount

87

GASOLINE

19.60

2

ENGINE OIL

180

GEAR OIL

HYDRAULIC FLUID

TOTAL

21.40

Purchaser hereby agrees that a charge of 1% per month shall be added to all overdue accounts; (accounts more than 30 days shall be counted overdue) an additional 25% of the amount will also be charged for attorney's fees plus cost of collection; (in cases where such services are required).

It is agreed further that the courts of Baguio will have exclusive jurisdiction over any litigation arising from this transaction.

(SGD.) MANUEL BUENCONSEJO
Purchaser or Agent"

Salesman

The respondent follows this business practice: Each invoice is done in triplicate—the original, in white paper; the two others, in blue and pink paper, respectively. For purchases in cash, the original or white invoice is issued to the customer, but for purchases on credit, the pink copy is issued, the station proprietor retaining the original and blue copies; when payment is made on credit purchases, the white or original copy is then released to the customer.

At the time of the trial, the plaintiff (respondent herein) was in possession of the original or white copies of the invoice for purchases made in the months hereinabove stated (June to September), all of which were signed by the petitioner's truck drivers.

Due to repeated verbal demands upon to pay, the petitioner sent to Alberto Realubin the following handwritten letter:

"Nov. 25, 1967

"Mr. Realubin,

My son told me that you came to see me. To tell you the truth Mr. Realubin, I am just waiting for the money of Miss Casisca from the National Power Corporation, after she can finish the 24 houses she contracted after everything will be paid. I will be the one to go to you, and not you to see me, because that is my obligation to you. I am really very ashamed for all that happened to me that I cannot even pay my obligation.

I hope you understand what I mean. Just be patient Mr. Realubin. Very soon I will settle my account to you.

Sincerely,

(Sgd.) Mrs. Ledesma"

Salud Ledesma was, in the court below, first adjudged in default, but on petition for relief, the default was set aside. In her subsequent answer to the complaint, she denied the purchases, and averred, as a special defense, that her truck drivers did not have the authority to purchase gasoline in her behalf. The drivers' authority to sign, however, was admitted during the trial, but Salud Ledesma testified that the amounts which the plaintiff was collecting from her had been fully paid. She tried to prove payment by her sole testimony and by presenting as exhibits the pink copies of the invoices she had in her possession. Salud Ledesma also contended that the handwritten letter, previously transcribed, is a forgery. On this point, the Court of Appeals made the following observation:

"The handwriting of the letter is that of a convent bred and educated woman; the signature, Mrs. Ledesma, is in the same handwriting, and the contents of the letter express the fine sentiments of a woman apologizing for her failure to pay her obligation. Appellant's two samples of her signature affixed during the trial on Exhibit 12, and her admitted signatures on Exhibits 13 and 14 seem to be the same hand that wrote and signed the letter.

As appellant's testimony denying having written and signed the letter was on material matter, we deem it proper to order the holding of a preliminary investigation to determine whether the crime of perjury or false testimony has probably been committed."

The trial court found for the plaintiff, and the Court of Appeals sustained the decision with certain modifications. The petitioner then took an ultimate appeal to this Court.

The petitioner argues here that it was error for the Court of Appeals to take against her the circumstance that her answer had only one special defense, pointing out that evidence presented on her other defenses was not objected to during the trial. We see no point in this assignment since the Court of Appeals merely stated the truth, that in petitioner's answer she only alleged one special defense: "to wit, lack of authority of her truck drivers to sign the purchase invoices on her behalf. * * * " The appellate court did not question the admissibility of the evidence adduced in support of her other defense of payment, though it was not alleged in her answer, but declined to give it weight, as it had sound discretion to do. To admit evidence and not to believe it are not incompatible with each other, and this Court can not alter the conclusions of the Court of Appeals on the credibility to be accorded to the evidence of the parties.

The second assignment of error refers to the failure of the Court of Appeals to apply the presumption of payment. Invoking Article 1176 of the Civil Code (New), petitioner claims that inasmuch as she admittedly paid her October, 1956 purchase, it is to be presumed that her prior purchases were likewise paid, because her account with the respondent was a running account. We cannot agree. Realubin proved as a fact that the prior purchases were not paid, and that the October purchases were for cash, and the Court of Appeals so found. Therefore, the presumption of payment of prior obligations (assuming its applicability for argument's sake cannot prevail. Between a proven fact and a presumption pro tanto, the former stands, and the latter falls.

The petitioner assails the appellate court's decision to increase the attorney's fees beyond those awarded by the trial court in spite of respondent's interposing no appeal thereon. This objection lacks merit, because the fees determined by the Court of First Instance could not have included the service of counsel on appeal, none having been theretofore interposed and the Court of Appeals could fix counsel fees in accordance with justice and equity.

We agree with appellant, however, that the Appeals Court erred in increasing the interest on the main indebtedness from the 6% awarded in the court of first instance to 12%, because plaintiff's failure to appeal from the decision signified his assent to the rate fixed by the trial judge, despite the party's knowledge that the documents called for 12% interest.

Wherefore, with the sole modification that the main award shall earn interest at the legal rate from July 18, 1959 until fully paid, the decision of the Court of Appeals is affirmed. No costs in this instance.

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

[1] This amount, in the Court of Appeals decision, is stated as P439.85, obviously a clerical error.

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