

**CARIDAD MUGURUZA, ADMINISTRATRIX OF THE ESTATE OF
RICARDO REGIDOR, DECEASED, PLAINTIFF AND APPELLANT, VS.
THE INTERNATIONAL BANKING CORPORATION, DEFENDANT AND
APPELLEE.**

G.R. No. 3523. March 12, 1908

Ponente: CARSON, J.

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CARSON, J.:

Ricardo Regidor, the original plaintiff in this action, having died after the complaint had been filed in the trial court, his widow, the administratrix of the estate, was substituted as plaintiff in his stead.

Regidor alleged that on the 30th day of March, 1904, at the request of the International Banking Corporation, he authorized the bank to transfer a deposit, which at that time stood to his credit therein, to the account-current of Martinez, Gallegos & Co., as security for the final satisfaction thereof in accordance with a contract entered into by the latter with the bank on the 15th of February, 1904; that it was "expressly stipulated that unless said contract should be complied with and carried out by the defendant bank, and the business of Martinez, Gallegos & Co. continued, the deposit should be withdrawn;" and that the defendant bank had failed to comply with the provisions of the contract, and by instituting judicial proceedings against Martinez, Gallegos & Co., within forty days after the deposit of funds to its credit, had rendered it impossible for that company to continue in business; wherefore plaintiff prayed for judgment against the International Banking Corporation for the sum of P22,522.53, being the amount of the funds transferred to the account-current of Martinez, Gallegos & Co. by the defendant bank on the 30th of March, 1904.

The trial court appears to have accepted the allegations of the plaintiff as to the conditions under which the funds were transferred to the account-current of Martinez, Gallegos & Co., but found that the defendant bank had complied with its contract, and fulfilled all the conditions of the alleged agreement entered into at the time when the funds were placed to the credit of Martinez, Gallegos & Co. Hearing its decision on these findings, the court dismissed the action, holding that the plaintiff could not require a return of the deposit "until such time as the account-current between the defendant and the said Martinez, Gallegos & Co. is satisfied."

From this judgment of dismissal plaintiff appealed, and made the following assignment of errors:

- (1). The court erred in finding that the defendant bank had complied with all the conditions on its part to be performed in the contract of February 15, 1904.
- (2). The court erred in failing to find that the forcible discontinuance of the business of Martinez, Gallegos & Co. in case No. 2082 was a breach of the condition of the transfer of the deposit, assuring the continuance of said business, entitling the plaintiff to recover.
- (2). The court erred in finding that the plaintiff can not require a return of the deposit until such time as the account-current of Martinez, Gallegos & Co. is satisfied.

- (3). The court erred in considering that the money deposited was perhaps not the property of the plaintiff.
- (4). The court erred in rendering judgment for the defendant because there was no evidence upon which to base said judgment and the same is contrary to law.

We do not deem it necessary to consider any of these errors except the last, because we are of opinion that an examination of the terms and conditions under which the funds were placed to the credit of Martinez, Gallegos & Co. discloses that they were not transferred, as alleged by the plaintiff, "as security for the final satisfaction of the account-current of Martinez, Gallegos & Co.," and that there was no stipulation, as alleged by the plaintiff, that Regidor could withdraw these funds in the event that the bank failed "to comply with and carry out the contract of February 15, 1904," or in the event that the "business of Martinez, Gallegos & Co. was not continued in accordance therewith."

Counsel for the appellant states in his brief that "the letters which determine the character of the deposit" of the funds to the credit of Martinez, Gallegos & Co. are the following:

"MR. REGIDOR: Mr. Lee requests me to secure your authorization to credit to the account-current of Martinez, Gallegos & Co. the deposit held by us in your favor as guarantee of the current account, as we have agreed. Awaiting your answer.

"BROWN."

"MARCH 28, 1904.

"MR. BROWN : I have no objection to accepting or giving my authorization to credit to the current account of the Casa Comision the deposit made in my favor in your bank by Mr. Robles, provided that Mr. Lee and yourself assure me that said company shall continue its business and that the contract of the 15th of February shall be carried out. Otherwise you may consider it withdrawn.

"R." (Answer at the foot of the foregoing letter:)

"MR. REGIDOR: You may send letter with authorization as you desire.

"BROWN."

[Formal letter.]

"March 30, 1904.

"To the AGENT OF THE INTERNATIONAL, BANK.

"Sir: In order to attend especially to the operations which your bank has agreed upon with Messrs. Martinez, Gallegos & Co. sociedad en comandita, in the instrument of the 15th of February last, executed before the notary Mr. Manuel Torres, I have transferred in favor of said company the certificate of deposit No. 231 for P22,522.53, issued by your bank in favor of Mr. Robles Lahesa and transferred to me by that gentleman by letter addressed to that bank on the 25th instant.

"For that reason I authorized you, in conformity with Messrs. Martinez, Gallegos & Co. to credit the P22,522.53 to the current account opened in favor of the latter company by virtue of the above-mentioned instrument, for which purpose the said company expresses its conformity with me at the foot of this letter.

"RICARDO KEGIDOR.

"MARTINEZ, GALLEGOS & CO., S. C,
"VICENTE G. AZAOLA, Assistant Manager."

The foregoing formal letter was accompanied by the following:

"MARCH 30, 1904.

"MR. BROWN: I this day forward to you the letter of authorization you requested of me, in order to credit to the current account of Martinez, Gallegos & Co. the deposit made by Robles in your bank and placed by him at my disposal; inserting therein the condition under which I accepted it the other day; that is to say, that I granted the same for the sole purpose of investing it in the operations agreed upon in the contract of the 15th of February, upon which condition only it was also accepted by Martinez, Gallegos & Co., who signed the letter with me. Kindly tell me if it is all right.

"RICARDO EEGIDOR."

(Answer at the foot of the letter:)

"It is all right.

"BROWN."

The Regidor whose name appears in these letters was the original plaintiff in this action; Brown was the local manager of the defendant bank; Lee was the supervising agent of the Oriental agencies of the bank; and Martinez, Gallegos & Co. was the company to whose credit the funds were transferred.

We think that the conditions upon which the transfer of the funds was made, and all of these conditions, are to be found in the last two of the above-cited letters, dated March 30, 1904, the first being a formal letter to the bank, and the second a private letter to the manager of the bank which accompanied the formal communication. These letters undertake to set out the precise conditions upon which the transfer of the funds was authorized, and do so in terms so definite and explicit as to leave no room for doubt or ambiguity. "I gave it [the authorization to transfer the funds] solely on the understanding that the money should be invested (invertido) in the business which is the subject of the contract of February 15 and it is solely subject to this condition."

The funds having been credited on the account-current of Martinez, Gallegos & Co. on March 30, 1904, they were there and then invested (invertido) in the business which was the subject of the contract of February 15, and the bank having complied with the sole condition of the agreement for the transfer of these funds, the plaintiff can have no just cause of action arising out of that transaction.

Counsel for the appellant, however, insists that the conditions upon which the transfer of the funds was made are to be found in the letter of March 28, 1904, We do not think so. The formal letter to the bank of March 30, 1904, together with the letter to the manager, expressly undertake to set out all the terms and conditions of the contract, and we do not think we would be justified in reading into that contract new and additional terms or conditions other than those set out therein. (Sec. 285, Code of Civil Procedure.)

There is nothing in the record to show that, contrary to the express terms of the contract of March 30, the letter of March 28 formed a part thereof, other than the fact that it was written a few days previously. It contained a tentative proposition as to terms, which appears to have been accepted, but we can not say that this tentative proposition was not modified or altogether put aside by subsequent letters or interviews, and in any event the final contract as entered into by the parties leaves no room for doubt that no terms or conditions were imposed thereby other than those therein expressly set out.

But since the trial judge below appears to have dismissed the complaint on the ground that the institution of the action was premature, and no appeal therefrom was taken by the defendant, so that the plaintiff is not precluded from instituting a new action for the recovery of the deposit at "such time as the account-current between the defendant and said Martinez, Gallegos & Co1, is satisfied" again, it may be well for us to point out that, granting

that the pleadings and the evidence were sufficient to demonstrate the failure of the letters" of March 30 "to express the true intent and agreement Of the parties," and, admitting that the terms and conditions set out in the letter of March 28 should be regarded as constituting a part of the final contract of March 30, nevertheless, that letter does not support the allegations of the plaintiff as to the true meaning and intent of the contract.

Counsel for the appellant construes the last sentence in that, letter as equivalent to a reservation of a right to withdraw the funds at any time that there should be a failure on the part of the bank to carry out the agreement proposed in the body of the letter. This sentence in the original is as follows: De no ser asi tengalo por retirado (otherwise consider it withdrawn). Counsel seems to think that the particle lo (it) refers to the deposit, but neither the language of the letter itself nor the circumstances under which it was written justify this construction.

Giving the sentence its strict grammatical construction, the particle lo (it) must be understood as referring not to the "deposit" but to the phrase whereby in the body of the letter the writer spoke of "authorizing the deposit"—that is, to the phrase, no tengo inconveniente en aceptar o dar mi autoridad I agree to accept or to give my authority) — and the true meaning of the sentence as used by the writer was that, unless he received the assurances asked for, his conditional acceptance of the proposition contained in the previous letter and his conditional undertaking to give his authority for the transfer to the bank should be regarded as withdrawn.

In the light of the surrounding circumstances, it can not be doubted that this is the true meaning of the letter. As appears from the first letter, which appellant introduces in his brief as the letter to which the letter of March 28 was an answer, the funds were already held by the bank as security "for the account-current of Martinez, Gallegos & Co." Evidently Regidor could not have intended to say that, unless he received the assurances asked for, he there and then withdrew the deposit from the bank. He had no authority so to do, nor is it reasonable to suppose that the bank ever agreed to such a proposition. Nor is it reasonable to suppose that with the money on deposit as security "for the account-current of Martinez, Gallegos & Co.," the bank desired or Regidor proposed that this money should be placed in the account-current of Martinez, Gallegos & Co. and thus invested in the business operations of the company, and still continue to be held by the bank as the property of Regidor deposited with the bank as security for the final settlement of the account-current, and subject to Regidor's order in the event that the bank failed to carry out" certain assurances set out in the letter. The mere statement of the proposition exposes its absurdity.

If our interpretation of the letter of the 28th of March be correct, the bank, upon giving the assurances asked for therein, was duly authorized to make the transfer, and the failure of the bank to carry out its assurances, while it might give the plaintiff a right to damages, would not entitle him to a return of the funds, which under the terms of the contract became the property of Martinez, Gallegos & Co. Under the conditions set out in the letter of March 28, as well as under those of March 30, the funds ceased to be held by the bank as security for the current account of Martinez, Gallegos & Co., and could in no wise be regarded as a deposit subject to withdrawal in the event that the bank failed to live up to its assurances.

The evidence of record in this case appears to sustain the findings of the court below not only that there was no failure of the bank to live up to the assurances demanded in the letter of March 28 but that at the time when the transfer was made the funds on deposit had already become the property of Martinez, Gallegos & Co., so that it may well be doubted whether in any event plaintiff could establish an allegation that she had been damaged by the action of the bank in crediting the funds to the account of their true owner. The judgment of the trial court should be affirmed with the cost of this appeal against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ., concur.
Johnson, J., did not sit in this case.

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