

EULALIO BELISARIO, PLAINTIFF AND APPELLANT, VS. PAZ NATIVIDAD VIUDA DE ZULUETA, DEFENDANT AND APPELLEE.

G. R. No. 39815. April 28, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Nueva Ecija in an action for the recovery of two tracts of land situated in the barrio of San Francisco, municipality of Lupao, in said province, and described in certificates of transfer Nos. 3357 and 3358 issued by the register of deeds of the Province of Pangasinan (in which the lands were formerly situated) in favor of the defendant.

It appears from Exhibit A that the plaintiff sold the said lands absolutely and without reservation to the defendant for the consideration of P37,000, which was duly paid, and the agreement on the part of the grantee to assume an indebtedness secured by a lien for P4,500, which was likewise duly paid. The deed recites that the sale is absolute and in perpetuity and the grantor warrants to defend the title. The deed bears the date of April 29, 1927.

On the same date the defendant executed and delivered in favor of the plaintiff Exhibit B which, after reciting that the defendant is the absolute owner of the lands referred to, granted the plaintiff an option to repurchase the lands on or before the end of May, 1931, for the sum of P37,000.

These two instruments are very clear in their terms, were duly signed by both parties in the presence of two witnesses and acknowledged before a notary public and recorded. We see no reason whatever for varying the terms thereof.

On the 28th of May, 1931, the plaintiff appeared at the house of the defendant and offered to exercise his option of repurchase under said Exhibit B by tendering to the defendant a check in the sum of P37,000, drawn by Rosendo Santiago against his account in the Peoples Bank and Trust Company. The books of the bank disclosed that at the time said check was tendered to the defendant the drawer thereof had on deposit in the said bank subject to check the sum of P5.85. Even if the check had been good, the defendant was not legally bound to accept it because such a check does not satisfy the requirements of a legal tender.

Finding no merit in this appeal, the judgment of the court below is affirmed with costs against the appellant.

Abad Santos, Imperial, Goddard, and Diaz, JJ., concur.

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