

## **GERONIMO SANTIAGO, JR., PLAINTIFF AND APPELLEE, VS. FABIAN R. MILLAR, AS MANAGER OF THE PHILIPPINE CHARITY SWEEPSTAKES, DEFENDANT AND APPELLANT.**

*G.R. No. 45993. May 11, 1939*

Ponente: LAUREL, J.

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### **LAUREL, J.:**

This is an appeal from a judgment of the Court of First Instance of Manila ordering the defendant Fabian R. Millar, as manager of the Philippine Charity Sweepstakes to pay to the plaintiff, Geronimo Santiago, Jr., the sum of P470.59 corresponding to two units of ticket No. 0293020 which won a prize of P941.18 in the sweepstake draw held in the City of Manila on May 16, 1937.

It is admitted that the defendant, Fabian B. Millar, was at the time the general manager of the Philippine Charity Sweepstake Office; that on February 15, 1937 the plaintiff, Geronimo Santiago, Jr., as agent No. 896, purchased from the treasurer of the Philippine Charity Sweepstake Office ten booklets of tickets numbered serially from 0292908 to 0293027, both inclusive, for the sweepstake draw and race held on May 16, 1937; that among the winning tickets in the said draw was ticket No. 0293020, included in those bought by the plaintiff, its prize being P941.18; that the payment of the prizes won by certain tickets, including said ticket No. 0293020, was set for May 21, 1937; that the tickets for the said sweepstake draw and race contained a condition that "prizes of tickets sold locally will be paid to holder of ticket upon surrender of same,"

The proof for the plaintiff tends to establish that Carmen B. Garcia, an employee in the National Drug Store where the plaintiff offered for sale his sweepstake tickets, bought two units (or one-half) of ticket No. 0293020 and, on February 20, 1937, presented the plaintiff with them on the occasion of the latter's birthday, and that thereafter, or on May 18, 1937, the said two units were lost.

The fact is further admitted in this case that on May 20, 1937, the defendant received a letter from the attorney of the plaintiff giving notice of the loss.

On the same day, May 20, 1937, the plaintiff filed the present complaint in the Court of First Instance of Manila (civil case No. 51350), praying for the issuance of a writ of preliminary injunction to restrain the defendant and his agents from paying the prize corresponding to the two units of the ticket in question (No. 0293020) to any person until further order of said court, and seeking a judicial declaration that the plaintiff is the owner of said two units and, consequently, solely entitled to collect the corresponding prize of P470.59. Thereupon, a bond in the sum of P100 having been filed by the plaintiff, the Court of First Instance of Manila issued the writ of preliminary injunction prayed for.

The defendant did not introduce any evidence, oral or documentary, and evidently relied on the legal defense set up in his amended answer that the surrender of the sweepstake ticket was a condition precedent to the payment of its prize to the holder of said ticket, and that "no alegandose en la demanda que el demandante ha presentado el ticket para su cobro, el demandante carece de causa de accion."

After trial, the Court of First Instance of Manila rendered, on November 20, 1937, the judgment which is the subject of the present appeal.

The question thus presented is new in this jurisdiction and no enlightenment could be had from foreign sources. We are of the opinion, however, that the present controversy may be disposed of by the application of general principles, having in view the difficulties pointed out in his decision by the trial court. Ticket No. 0293020 bears the notation therein that "prizes of tickets sold locally will be paid to holder of ticket upon surrender of same." This means that to collect the prize the ticket must be presented. The presentation or surrender of the ticket is a condition precedent of payment. The contract is aleatory in nature (art. 1790, Civil Code), and the contracting parties may establish any agreements, terms and conditions they may deem advisable, provided they are not contrary to law, morals, or public order (art. 1255, Civil Code). Obligations arising from contract shall have the force of law between the contracting parties and must be performed in accordance with their stipulations (art. 1091, Civil Code; *Hanlon vs. Haussermann and Beam*, 41 Phil., 276).

The judgment of the lower court is hereby reversed, without pronouncement regarding costs. So ordered.

Avanceña, C. J., Imperial, Diaz, Concepcion, and Moran, JJ., concur.

Villa-Real, J., see dissenting opinion

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### DISSENTING OPINION

#### VILLA-REAL, J.:

The fact that the sweepstake ticket in question bears on its face the notation that "prizes of tickets sold locally will be paid to holder of ticket upon surrender of same" does not increase the obligation of the holder to produce the ticket when demanding payment of the prize won by it, inasmuch as the ticket itself is the best evidence of the obligation of the Philippine Charity Sweepstakes to pay the said prize, and it must be surrendered whether the surrender thereof be stipulated or not. After the drawing of lots, the holder of a winning ticket becomes a creditor and the party who has issued said ticket a debtor for the money won. In good conscience and in law the loss of the evidence of indebtedness does not deprive the creditor of his right to collect the amount due, nor does it relieve the debtor from his obligation to pay. It is on this principle of equity that the law has established the best and secondary evidence rule. The result of the decision of the majority will be that in the case of a debt arising from a lottery venture, the holder of the winning ticket cannot establish by secondary evidence its contents in case it should be lost or destroyed against the will of the holder; which is at variance with the rule obtaining in the collection of ordinary debts evidenced by written instruments, in which creditors may establish the contents of the instruments by means of secondary evidence and collect the amounts due in case the original is lost or destroyed.

"The loss or unintentional destruction of a written instrument in no way affects the liabilities of the parties to it, or the validity or sufficiency of the transaction of which it is the evidence, even though due to the negligence of the owner; nor does it change the nature of the demand, except where the receipt or mailing of the lost instrument constituted payment. The person liable thereon is not relieved from his liabilities by the loss of the instrument \* \* \*" (38 Corpus Juris, sec. 2, page 249.)

I am therefore of the opinion that the contents of a winning sweepstake ticket which has been lost or destroyed before the prize is collected, may be established by secondary evidence and the holder thereof collect the prize.

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