

QUALITY TOBACCO CORPORATION, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND EUFEMIO PEREZ, RESPONDENTS.

G.R. No. 65005. July 05, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The issue in this case is whether or not the 33 pay-to-cash checks of the private respondent were payment on his account with the petitioner, or were simply encashed for his accommodation by the company's cashier.

The facts are not in dispute. It is the conclusion to be derived from them where the trial court and the Court of Appeals differ from each other. The trial court's findings of fact are quoted hereunder as follows:

“Plaintiff is a distributor of the tobacco products of defendant corporation granted credit facilities that are secured by a mortgage on various pieces of real estate. Starting with a modest amount of P24,480.00 in 1966, the credit arrangement expanded as the volume of transactions grew until in 1970 it reached P700,000.00, duly secured by additional mortgages (Exhs. A, B to B-3, C to C-5, D to D-3, E to E-3, F to F-3 and G to G--3).

"Over the years plaintiff under the above arrangement had been obtaining cigarettes from defendant and distributing them to his outlets, remitting payment to defendant regularly and receiving from the latter periodic statements of account. Plaintiff testified that in May of 1973 he received statements of account for the preceding months of January, February, March and April. He did not receive further statements until January 24, 1974 when company auditors came to his house to audit his accounts and came up with a statement showing a balance of P574,685.42 against him as of January 15, 1974 (Exh. L). Surprised at the size of the amount, he made a check of his own and found that the auditors failed to credit him with payments he made in 33 checks under different dates and amounts (Exhs. K to K-32) with a total of P729,000.00, so that instead of incurring an obligation of P574,685.42 he actually made an overpayment of P154,314.58.

"On February 5, 1974 plaintiff wrote to defendant giving notice that due to failing health he could no longer continue his business relation with it and giving notice of the termination of their contract (Exh. I). On the same date, his lawyers in a separate letter wrote to defendant demanding; (1) refund of the amount of P154,314.58 he had overpaid; (2) release of the mortgage on his properties; and (3) issuance of the corresponding clearance (Exh. H). Defendant in answer to plaintiff's letter Exhibit I asked him to reconsider his stand as the arrangement had been mutually beneficial to them (Exh. J) but this was declined by plaintiff. On March 7, 1974 defendant answered the letter Exhibit H of plaintiff's lawyer reiterating that plaintiff owed it P574,711.06 as of that date, denied the request for the release of the mortgaged collaterals, and demanded payment of the obligation within ten days otherwise action would be taken to enforce collection. (pp. 36, 37, Orig. Record on appeal)

Thereafter, the plaintiff (now private respondent) filed an action alleging the fact of his having paid 33 checks to the petitioner in the amount of P729,000.00, resulting in a balance in his favor of P154,314.58 and praying that defendant be ordered to release the mortgage on his collaterals, refund to him the sum of P154,314.58 with

interest and pay him damages and P50,000.00 as attorney's fees.

In its answer, the defendant denied that the 33 personal checks issued by Perez were payments on his account. It alleged that those checks were merely encashed by Perez through the company's cashier, Dolores Claudio, who delivered the proceeds to him. For that reason, no official receipts were issued to him.

After the trial, the court rendered judgment on July 8, 1975 dismissing the complaint and the defendant's counterclaim for lack of evidence (p. 43, Record on Appeal).

Perez appealed to the Court of Appeals (AC-G.R. CV No. 58351, August 2, 1983) which reversed the trial court. The dispositive part of its decision reads as follows:

"WHEREFORE, the decision appealed from is reversed, and another one entered –

“1) Ordering the defendant to refund to the plaintiff the over-payment of P154,314.58 together with the interest thereon from February 23, 1974 at 12% per annum until full payment;

“2) Ordering the defendant to execute the deeds of release of mortgages;

“3) Ordering the defendant to pay attorney's fees of P15,000.00;

“4) Ordering the defendant to pay the costs.

"Defendant's counterclaims are dismissed.

"The writ of preliminary injunction issued by the Court a quo is made permanent." (p. 23, Rollo.)

Hence, this petition for review.

As a general rule, the findings of fact of the Court of Appeals are conclusive on this Court and may not be reviewed. However, like any rule, this has exceptions. Where the findings or conclusion of the Court of Appeals and the trial court are contrary to each other, the Supreme Court may scrutinize the evidence in the records (Cruz vs. CA, 129 SCRA 222; Petro Port Service, Inc. vs. CA, 131 SCRA 365). This we have done, and the result is that we are unconvinced that the plaintiff, now private respondent, was able to prove by a preponderance of evidence his claim that he overpaid his account with the petitioner.

There is more than meets the eye in the testimonies of Perez and the company's cashier, Claudio. We reproduce hereunder the observations of the trial court which we find to be more logical than the appellate court's.

"It is obvious that the conflicting claims of Eufemio Perez and Dolores Claudio cannot both be true, and it is the task of the Court to determine which of them is right. One of them has attempted to take advantage of the good faith of the other. Either Eufemio Perez has encashed his checks with Dolores Claudio with the intention of claiming later that said checks were paid to the company for his account, relying on said checks to be his receipts of payment or Dolores Claudio has received said checks from Perez as payment, omitted to issue the corresponding receipts, and then cashed them and failed to turn over the proceeds to the company. It is also possible that some of the checks were paid for Perez' account and some were encashed as an accommodation for him which may explain why the total of the checks would result in an excess of P154,314.58 over the amount of Perez' account. The truth is a secret known to only the two of them.

"There are claims made on both sides that strain credibility. Why, for example, should Perez have to importune Claudio to cash his checks for him, and huge amounts at that, when he had his own bank account where he could directly cash his checks? And knowing this, why should Claudio have to leave her office to go to the bank to accommodate him, which was both pointless and unnecessary? Claudio said Perez was afraid of hold-ups. But Perez need not be afraid of hold-ups on the way to the bank, because he does not carry any money while going there. And in coming out of the bank with the money, he is just as exposed to hold-ups

when the checks are cashed for him by Claudio as when he cashes them himself.

"On the other hand, the claim of Perez that he actually made an overpayment of P154,314.58 is even harder to believe. The ledger cards Exhibits 1 to 11 show that over the years the balance against him hovered in the neighborhood of P700,000.00, necessitating his filing of additional real estate mortgages to secure its payment. And yet in about eight months (the period covered by the checks Exhibit[s] K to K-32) he was not only able to settle it but to make an overpayment of P154,314.58. Why should he make an overpayment and in such an amount? As a businessman dealing in transactions of this size he no doubt kept his own books and records and did not have to rely on the company's statement of accounts which, by his own complaint, were not set regularly. Under the legal presumption that a person takes ordinary care of his concerns, Perez knew of the state of his accounts at any given time, and therefore, could not have made the overpayment he now claims.

"It is also difficult to believe that Perez would be so naive and trusting as to remit payments in duly endorsed cash checks without waiting for the covering receipts. The checks are in big amounts, sometimes to the tune of P50,000.00. Anybody who came in possession of these checks could have cashed them. The least Perez could have done was to make them payable in the name of the company. But not having done so, ordinary prudence requires that he demand a receipt for every payment, and again there is a legal presumption that he did so.

"Examining the evidence, it appears that there are dates when Perez made remittances of more than one check. Thus, on May 10, 1973, he made a payment of P30,000.00 for which he was issued a receipt (Exh. 107). The amount was credited to him in his ledger card (Exh. 4, reverse side). Perez' Exhibit K is a check for P56,250.00 also dated May 10, 1973, so that it would appear that on said date he remitted two checks. Now, if he was issued a receipt for the payment of P30,000.00 (which is presumed to be dated truly) why did he not protest that he was not given a receipt for P56,250.00 if the check was really a payment for his account?

"On July 2, 1973, he made payments of P50,000.00, P3,000.00 and P100,000.00 all covered by receipts (Exhs. 81, 82 and 83) and duly entered in his ledger card (Exh. 5). His Exhibit K-3 is a check of the same date for the amount of P16,000.00, not covered by a receipt or entered in his ledger card. Again, why did he not protest that he was not given a receipt if it was really a payment on his account?

"On July 6, 1973 Perez was given a receipt for payment of P35,000.00 (Exh. 78) and he was credited therefor in his ledger card (Exh. 5). His Exhibits K-4 and K-5 are checks of the same date for P40,749.50 and P32,000.00, respectively. If these checks are payments on account, it is indeed strange that he did not protest that he was not given the corresponding receipts.

"The same observation are true with respect to his checks Exhibits K-10, K-15, K-19, K-22, K-24, K-25, K-26, K-27, K-29 and K-30. A further and more important question fairly cries to be asked: If Perez was going to make remittances on the same date, why did he not make them in a single check, instead of writing two or more? It may indeed be supposed that one check was in payment of his account and the other or others were for encashment, and it therefore stands to reason that he would be issued receipts for those checks meant for payment, but not for those that were only encashed.

"There are elements both of probability and improbability in the evidence for either side. It is of course incumbent upon plaintiff to show by preponderance of evidence that his checks Exhibits K to K-32 were payments on his account notwithstanding that defendant failed to issue any receipts for them or to acknowledge them as such payments. Under all the circumstances of the case, the Court is not convinced that the proof warrants a finding in his favor.

"It is noted that of the 33 checks, 15 with a total amount of P217,000.00 (Exhs. K-2, K-3, K-11, K-15, K-17 to K-22, K-25 to -28 and K-32) are all stamped 'For deposit only Quality Tobacco Corporation' and appear to have been so deposited. Eighteen checks with a total amount of P511,730.00 (Exhs. K, K-1, K-4 to -10, K-12 to -14, K--16, K-24, K-29, K-30 and K-31) are not so stamped and appear to have been cashed, presumably to Claudio, the last endorser. Whether any part of the proceeds went back to Perez or went to the company or to

Claudio cannot be ascertained, but the situation was made possible by the manner in which Perez effected his remittances, and he therefore has only himself to blame. x x x." (pp. 40-42, Original Record on Appeal.)

The company's duplicates of the official receipts which it issued to Perez over a period of one (1) year: from January 13, 1973 to January 21, 1974 (Exhs. 12 to 157), with few exceptions, indicated: (1) the Distributor's Report that he submitted with his remittances, and (2) the number of the check whenever his remittance was by check. However, in the case of the 33 checks in question, Perez failed to produce a single Distributor's Report which he should have submitted if those 33 checks were indeed payments on his account with the company. Perez's explanation that he did not submit a Distributor's Report with each of these remittances because such reports are necessary only when he wants to be reimbursed for his expenses, is lame. For why did he suddenly stop asking for reimbursement of his expenses?

Perez's other allegation, that no receipts were issued to him for the 33 checks (Exhs. K to K-32) because the checks had to be cleared first, is refuted by his own Exhibits O to WW, official receipts of the company showing that, as is the usual practice in commercial establishments, official receipts were issued to him by the company for payments by checks, without waiting for prior clearance from the drawee bank. Exhibits O to WW show that receipts issued to him by the company bore the same dates as his checks. That no receipts were issued to him for the 33 checks and that he did not ask for any, confirm Claudio's testimony that those checks were not payments on Perez's account, but were merely encashed for him by Claudio out of her collections to "accommodate" him or to tide him over temporarily for, as the bank's stamp on the checks show, they were not immediately deposited by Claudio in the company's bank account; she waited some 2 to 5 days before doing so (Exhs. K-2, K-3, K-8, K-9, K-10, K-11, K-19, K-20, K-21, K-22, K-25, K-27). In fact, his check (Exh. K-18) dated Sept. 19, 1973 was deposited by Claudio on October 2, 1973 only, or after 13 days.

Claudio's incredible story that she used to encash the checks herself at Perez's bank (The Consolidated Bank & Trust Co. in Tabora), makes us wonder why she went to all that trouble to accommodate him despite the fact that his ledger balance showed that he was never prompt in remitting payments to the company. One wonders what was in it for her. Through the encashment of those pay-to-cash checks, did Claudio receive a commission or "kick back" from Perez? Did she conspire with him to create confusion as to whether those checks were payments on Perez's account or merely for encashment? The Court is confronted with the problem of determining who is trying to defraud who in this case. Did Claudio defraud Perez and the company by pocketing the proceeds of Perez's checks and forgetting to issue receipts for them? Or, was Perez trying to cheat the company by pretending that he did not receive the proceeds of the checks he encashed with Claudio because they were payments on his account? Or did they both conspire to defraud the company, or at least create this confusion and uncertainty and let the courts decide perchance in Perez's favor?

It is, however, significant that over a period of eight (8) months from May 1973 to January 1974 - the period when he issued the 33 checks - Perez did not ask the company either for a statement on the status of his account, or, for a receipt for his "payments." This omission disproves his pretense that he issued the checks as payments on his account with the company.

A person is expected to take ordinary care of his affairs. If Perez intended to settle his account with the company by issuing his personal checks, ordinary prudence would have dictated that he issue the checks in a manner that would leave no doubt as to his purpose. He would have: (1) asked for a receipt for his payment; or (2) indicated on the face of the check that the payee was the company - Quality Tobacco Corporation; or (3) indicated on the back of the check, above his indorsement, that it was "payment on account with Quality Tobacco Corporation". In any of these instances, there would have been no doubt that he discharged his obligation to the company. By failing to take any of these precautions, he showed lack of due care in the conduct of his affairs. If Claudio was

able to misappropriate his checks (without damage to the company which had not issued official receipts therefor), it was because he enabled her to do so by the mode of payment he adopted, hence, he should bear the loss.

IN VIEW OF THE FOREGOING, we resolve to grant the petition for review. The decision dated August 2, 1983 of the Court of Appeals in AC-G.R. CV No. 58351 is hereby set aside and the decision dated July 8, 1975 of the Court of First Instance of Manila, Branch XX, dismissing the complaint in Civil Case No. 93588 is reinstated. Costs against the private respondent.

SO ORDERED.

Narvasa, Acting C.J., Cruz, Gancayco, and Medialdea, JJ., concur.

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