

FERMIN ONG, PETITIONER, VS. COURT OF APPEALS AND MARIANO ONG, RESPONDENTS.

G.R. No. 75819. September 08, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The basic issue in this case is the amount of the indebtedness due from the petitioner Fermin Ong to private respondent Mariano Ong, his cousin. Fermin says it is only P120,000.00 and was sustained by the trial court.[1] Mariano says it is P160,000.00 and was upheld by the respondent court.[2] The petition prays that the decision of the respondent court be reversed and that of the trial court reinstated.

According to the petitioner, he borrowed from the private respondent the amount of only P160,000.00 and secured its payment with three post-dated checks totaling the same amount. These were: Check No. 870585 dated September 6, 1978 for P50,000.00; Check No. 908254 dated October 8, 1978 for P10,000.00; and Check No. 887380 dated October 15, 1978 for P100,000.00. All were drawn against Fermin's Account No. 11-1281 with the Consolidated Bank and Trust Corporation.[3]

On January 23, 1979, he issued a fourth check for P40,000.00 in partial settlement of the loan, which was thereby reduced to P120,000.00. This was Check No. 0906, payable to Mariano Ong, and drawn against Fermin's account with the China Banking Corporation.[4]

The petitioner says that he stored in Mariano's warehouse a quantity of zippers valued at P181,000.00, from which he occasionally made withdrawals in the presence of Mariano's son. Fermin denies they were intended to guarantee the payment of his loan and claims they were merely deposited there because he had nowhere else to place them.

When he subsequently tried to get the rest of his zippers. Fermin claims Mariano refused to release them on the ground of non-payment of the loan. Fermin avers that he had requested Mariano not to deposit or encash the post-dated checks on maturity and admits that he had not made good their amount when they were dishonored.[5]

Eventually, Mariano sued Fermin after first sending him a demand for the amount of P160,000.00.

In his answer, Fermin denied liability. He alleged, first, that the debt had been reduced because of the partial payment he had made and, second, that the balance of P120,000.00 had been offset by the sum of P200,000.00 due from Mariano. This amount represented the consideration for the transfer to him of Fermin's rights to four stalls in the Yangco Market.[6]

The private respondent stated in his reply that the check for P40,000.00 was issued by Fermin in payment for another obligation owed to Mariano's wife; but he abandoned this defense in his subsequent pleadings. He was to claim later that the original loan was for P200,000.00 and this was reduced with the payment of the said check, leaving a balance of P160,000.00.[7] This amount was equivalent to the face value of the remaining three checks which he could not encash.

The petitioner was not consistent either, for he abandoned his original allegation that Mariano owed him P200,000.00 for the rights to the market stalls when the latter showed that the consideration was only P25,000.00. Fermin was thereafter to invoke another set-off, to wit, his outstanding loan against the cost of the zippers, which he said Mariano had unjustly retained.

Given these contradictions between the parties, and in their own respective positions, one can understand why the trial court and the respondent court also could not agree. It is up to this Court now to straighten this mess and to discover the truth from the conflicting versions of the parties, on the basis of the record before us and the applicable law.

Under Rule 45 of the Rules of Court, a review is not a matter of right but of sound judicial discretion and will be granted only if there are special and important reasons therefor, such as:

- (a) When the Court of Appeals has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; and
- (b) When the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

We do not see such reasons, or any similar reasons, in the case at bar. Moreover, the basic issue presented is a factual issue, in contravention of the strict limitation in the same Rule that "only questions of law may be raised in the petition."

While this is not to say that the factual findings of the Court of Appeals are conclusive upon this Court in every case, they will be so regarded as a matter of practice and policy in the absence of a showing that they come under the accepted exceptions as developed and established by judicial doctrine.

Among such exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) when the inference made is manifestly mistaken; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (6) when the findings of fact of the Court of Appeals are contrary to those of the trial court; (7) when said findings of fact are conclusions without citation of specific evidence on which they are based; (8) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (9) when the findings of fact of the Court of Appeals are premised on the absence of evidence and is contradicted by the evidence of record.[8]

Although the factual findings of the respondent court conflict with those of the trial court, this Court believes nonetheless that the former must be sustained, being more conformable to the evidence of record. The simple and incontrovertible fact is that the post-dated checks issued by the petitioner and still in the possession of the private respondent are in the total amount of P160,000.00, which is the same amount claimed by Mariano as Fermin's outstanding loan.

If it is true that that sum had really been reduced by P40,000.00, there would have been a corresponding reduction also in the amount of the post-dated checks issued by Fermin to secure his total indebtedness. There was none. And if it be argued that the checks were not sufficiently funded anyway, then Fermin could at least have demanded a receipt from Mariano for the partial payment allegedly made to him. No such receipt was ever introduced in evidence.

Fermin, being an experienced businessman, would have taken either of these acts, but he did not. And it is no argument that there was no need for these precautions because, after all, he and Mariano were cousins who had

grown up together. Fermin knew well enough that this close relationship did not prevent Mariano from treating their transaction in a totally businesslike manner. If Mariano had required his cousin to issue the post-dated checks to secure the payment of his loan, Fermin would have been no less cautious and asked for acknowledgment of his alleged partial payment.

What obviously happened, as found by the respondent court, is that Mariano extended Fermin a loan of P200,000.00 for which the latter issued four post-dated checks to cover the said amount. With the encashment of the fourth check for P40,000.00, loan was reduced by that amount, leaving the remaining first three checks to guarantee the balance of the loan. The important point to stress is that the reduced loan was equivalent to the total face value of the checks.

As for the zippers, it would seem that the petitioner has adopted another ambivalent position, rejecting them first as worthless and then later demanding their return as a condition for the payment of his debt.

In one part of his memorandum, he says that the private respondent acted unfairly when he refused to release the zippers until they eventually became outmoded and so lost their value.[9] Toward the end of the same memorandum, he says that "he will pay his indebtedness of P120,000.00 to private respondent if the zippers be returned to him." [10] He adds, of course, that they should be "still in working, worthy and valuable state or quality," which is a negation of his flat statement (in the same memorandum) that "now they are valueless." [11]

The private respondent denies that he ever prevented the petitioner from getting the zippers although we take this with a grain of salt. The likelihood is that Mariano did detain the zippers to force the petitioner to pay his debt, his post-dated checks having proved worthless. That was a reasonable business precaution, assuming he did take it. At any rate, Mariano had expressly indicated that he had (and has) no objections to the petitioner taking back his zippers and in fact is charging Fermin storage fees for the use of his warehouse. [12]

Now, to the only legal question raised, to wit, the alleged compensation between the reciprocal obligations of the parties.

Fermin claims the balance of his debt is deemed set off by the price of the zippers in the possession of Mariano, who had the obligation to return them to him. The flaw in this argument is the assumption that Mariano had such an obligation, which has not been proved by Fermin. It has already been found that Mariano had not retained them nor did he have any need for them as he was in a different business. He had not bought them or otherwise owed their value to Fermin, who was in fact the obligor. Fermin does not deny that he deposited the zippers in Mariano's warehouse without paying storage fees or any other consideration.

This being so, Fermin obviously cannot take refuge in Article 1279 of the Civil Code, providing as follows:

ART. 1279. In order that compensation may be proper, it is necessary:

- (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
- (3) That the two debts be due;
- (4) That they be liquidated and demandable;
- (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

As the respondent Court correctly observed in holding that the above provision was not applicable:

The instant case does not certainly satisfy the above because (1) appellant is not a debtor of appellee, it is only the latter who is indebted to appellant; (2) the debts, even admitting that the delivery of the zippers to plaintiff is a debt, do not both consist in a sum of money nor are they of the same quality and kind x x x.[13]

The petitioner says, however, that there was a judicial set-off under Article 1283 of the Civil Code, reading as follows:

ART. 1283. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof.

The trouble is that Fermin has not proved the right to any damage as a result of the claimed retention of the zippers by Mariano. There was also no proof of the amount of such damages as he could not even say how many of the zippers had been earlier withdrawn by him.

We find that the respondent court has not committed any reversible error in holding that the original amount of the petitioner's indebtedness to the private respondent was P200,000.00; that this was subsequently reduced to P160,000.00 with the partial payment of P40,000.00 made with the China Banking Corporation check; and that the outstanding loan has not been canceled by offset or compensation under the pertinent provisions of the Civil Code.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Decided by Judge Rosalina Bonifacio Vera.

[2] Penned by Bartolome, J., ponente, with Coquia and Ejercito, JJ., concurring.

[3] Exhibits "A," "B," and "C."

[4] Exhibit "1."

[5] Annex "D."

[6] Ibid.

[7] Rollo, p. 79.

[8] Ibarra v. Ibarra, 156 SCRA 616; Mendoza v. CA, *ibid.*, 597; Tong Brothers Co. v. IAC, *id.*, 726; Amarante heirs v. CA, 155 SCRA 46.

[9] Rollo, p. 101.

[10] *Ibid.*, p. 107.

[11] *Id.*, p. 105.

[12] TSN, February 9, 1981, p. 41.

[13] Decision, Rollo, p. 20.

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