

6 Phil. 219

[G.R. No. 2077. April 30, 1906]

**MARIA CONCEPCION SEBASTIANA LUCIA ET AL., PLAINTIFFS AND APPELLEES,
VS. MATEO PEREZ, DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The defendant in this case was the manager of the Hotel España from the 1st of April to the 15th of November, 1900, which hotel was the property of Jose Soler, the deceased husband and father, respectively, of the plaintiffs herein, and as such manager he received a salary of 100 pesos per month. When the management of the hotel was intrusted to the defendant, the owner did not authorize him to exchange money or discount notes for the account of the hotel. In August, 1900, the defendant discounted, or rather cashed, a check for 2,247 pesos for one Calixto Santos, using for this purpose funds belonging to the hotel. This check was later found to be false, and the money has not been recovered. The defendant claims that he made this transaction for the benefit of the hotel, believing in good faith that this transaction would be to the profit of the business.

As stated by the court below, the question reduces itself to whether the defendant is liable for the 2,247 pesos paid by him on the check. The trial court decided this question in the affirmative and accordingly entered judgment against the defendant and in favor of the plaintiffs for the aforesaid amount.

The defense set up by the defendant is substantially that the plaintiff, Maria Concepcion, approved of the transaction in question by accepting as a proper charge in the accounts of the administration of the hotel rendered by him the amount paid on the check, considering the loss of this amount as a loss to the business.

Referring to this transaction, the defendant, testifying as a witness for the plaintiffs, made the following statement: "When this lady (the plaintiff) returned from Spain she found that

this check was false, and in view of the fact that I was innocent in this matter and in consideration of my good management of the hotel she relieved me of the obligation of making good this check." In another part of his testimony, and referring to the same matter, he testifies as follows: "She (the plaintiff) expressed her regret that such a thing should have happened, but in view of the fact that I had not intended to defraud anybody, that there was no maladministration on my part, and that I had delivered to her a large amount of money as the profit of the business, said that she would let it go." It appears from the testimony of the defendant that the owner of the hotel turned over to him during the month of April the sum of 500 pesos in cash to run the business, this being the only amount received by him for this purpose, and that in the month of November following, when he ceased to be the manager of the business, he paid to the plaintiff as the net profits of the business, after deducting the aforesaid amount lost on the false check, the sum of 5,803.65 pesos. The testimony of the defendant was not contradicted in any way at the trial of the case. On the contrary it was fully corroborated by the testimony of two other witnesses, whose veracity was unquestioned by the plaintiffs.

One of these witnesses, Esteban Garrote, testified as follows: "The night I called on her (the plaintiff), early in the month of December, * * * she told me that she had taken charge of the hotel and that Sr. Perez (the defendant) had liquidated his account with her; that he had paid everything he owed her; *that he was not indebted to her in any way*; that she was very well satisfied with his management; that in seven months, more or less, he had delivered to her about 6,000 pesos, *not including a loss of two thousand-odd pesos, and that she had, naturally, accepted this loss herself*. This is all that she said, although she added that if it had not been for the said loss, he would have turned over to her more than 8,000 pesos." He further testified: "She (the plaintiff) simply said that had it not been for such loss she would have received eight thousand-odd pesos, but that on account of *this loss in the business* she only received 5,000—well, I don't know, about 6,000 pesos." He further Said: "She (the plaintiff) told me that he (the defendant) owed her nothing and that she would have made a profit of eight thousand-odd pesos had it not been for the fact *that there was a loss, she, naturally, having accepted the accounts as rendered*."

The other witness, Juan Sobrino, testified as follows: "I know that he (the defendant) settled with her because he told me so, and the owner told me that she was very well satisfied with the result of the business while Don Mateo (the defendant) had managed the hotel. According to the lady (the witness continued) *Don Mateo had settled with her and owed her nothing*; and she was satisfied with Don Mateo's conduct and management of the business."

From the foregoing testimony we find: First, that the defendant duly rendered to the plaintiff his accounts as manager of the hotel; second, that the amount which is the subject of this action appeared in the accounts thus rendered by him as a loss charged to the business; and, third, that the plaintiff, *with full knowledge of these facts*, approved and accepted this charge when she approved and accepted the accounts of the management of the business as rendered by the defendant. In view of such approval, the plaintiff is estopped from making a claim for the amount in controversy.

We accordingly reverse the judgment appealed from, and acquit, the defendant of the complaint, without special condemnation as to the costs of both instances. After the expiration of twenty days from the date hereof, let judgment be entered in accordance herewith and ten days thereafter the record be remanded to the Court of First Instance for execution. So ordered.

Arellano, C. J., Johnson, and Carson, JJ., concur.

Torres, J., did not sit in this case.

Willard, J., dissents.