

FIRST DIVISION

[G.R. No. 156846, February 23, 2004]

**TEDDY G. PABUGAIS, PETITIONER, VS. DAVE P. SAHIJWANI,
RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the January 16, 2003 Amended Decision^[1] of the Court of Appeals^[2] in CA-G.R. CV No. 55740 which set aside the November 29, 1996 Decision^[3] of the Regional Trial Court of Makati, Branch 64, in Civil Case No. 94-2363.

Pursuant to an "Agreement And Undertaking"^[4] dated December 3, 1993, petitioner Teddy G. Pabugais, in consideration of the amount of Fifteen Million Four Hundred Eighty Seven Thousand Five Hundred Pesos (P15,487,500.00), agreed to sell to respondent Dave P. Sahijwani a lot containing 1,239 square meters located at Jacaranda Street, North Forbes Park, Makati, Metro Manila. Respondent paid petitioner the amount of P600,000.00 as option/reservation fee and the balance of P14,887,500.00 to be paid within 60 days from the execution of the contract, simultaneous with delivery of the owner's duplicate Transfer Certificate of Title in respondent's name the Deed of Absolute Sale; the Certificate of Non-Tax Delinquency on real estate taxes and Clearance on Payment of Association Dues. The parties further agreed that failure on the part of respondent to pay the balance of the purchase price entitles petitioner to forfeit the P600,000.00 option/reservation fee; while non-delivery by the latter of the necessary documents obliges him to return to respondent the said option/reservation fee with interest at 18% per annum, thus —

5. DEFAULT — In case the FIRST PARTY [herein respondent] fails to pay the balance of the purchase price within the stipulated due date, the sum of P600,000.00 shall be deemed forfeited, on the other hand, should the SECOND PARTY [herein petitioner] fail to deliver within the stipulated period the documents hereby undertaken, the SECOND PARTY shall return the sum of P600,000.00 with interest at 18% per annum.^[5]

Petitioner failed to deliver the required documents. In compliance with their agreement, he returned to respondent the latter's P600,000.00 option/reservation fee by way of Far East Bank & Trust Company Check No. 25AO54252P, which was, however, dishonored.

What transpired thereafter is disputed by both parties. Petitioner claimed that he twice tendered to respondent, through his counsel, the amount of P672,900.00 (representing the P600,000.00 option/reservation fee plus 18% interest per annum computed from December 3, 1993 to August 3, 1994) in the form of Far East Bank

& Trust Company Manager's Check No. 088498, dated August 3, 1994, but said counsel refused to accept the same. His first attempt to tender payment was allegedly made on August 3, 1994 through his messenger;^[6] while the second one was on August 8, 1994,^[7] when he sent *via* DHL Worldwide Services, the manager's check attached to a letter dated August 5, 1994.^[8] On August 11, 1994, petitioner wrote a letter to respondent saying that he is consigning the amount tendered with the Regional Trial Court of Makati City.^[9] On August 15, 1994, petitioner filed a complaint for consignment.^[10]

Respondent's counsel, on the other hand, admitted that his office received petitioner's letter dated August 5, 1994, but claimed that no check was appended thereto.^[11] He averred that there was no valid tender of payment because no check was tendered and the computation of the amount to be tendered was insufficient,^[12] because petitioner verbally promised to pay 3% monthly interest and 25% attorney's fees as penalty for default, in addition to the interest of 18% per annum on the P600,000.00 option/reservation fee.^[13]

On November 29, 1996, the trial court rendered a decision declaring the consignment invalid for failure to prove that petitioner tendered payment to respondent and that the latter refused to receive the same. It further held that even assuming that respondent refused the tender, the same is justified because the manager's check allegedly offered by petitioner was not legal tender, hence, there was no valid tender of payment. The trial court ordered petitioner to pay respondent the amount of P600,000.00 with interest of 18% per annum from December 3, 1993 until fully paid, plus moral damages and attorney's fees.^[14]

Petitioner appealed the decision to the Court of Appeals. Meanwhile, his counsel, Atty. Wilhelmina V. Joven, died and she was substituted by Atty. Salvador P. De Guzman, Jr.^[15] On December 20, 2001, petitioner executed a "Deed of Assignment"^[16] assigning in favor of Atty. De Guzman, Jr., part of the P672,900.00 consigned with the trial court as partial payment of the latter's attorney's fees.^[17] Thereafter, on January 7, 2002, petitioner filed an Ex Parte Motion to Withdraw Consigned Money.^[18] This was followed by a "Motion to Intervene" filed by Atty. De Guzman, Jr., praying that the amount consigned be released to him by virtue of the Deed of Assignment.^[19]

Petitioner's motion to withdraw the amount consigned was denied by the Court of Appeals and the decision of the trial court was affirmed with modification as to the amount of moral damages and attorney's fees.^[20]

On a motion for reconsideration, the Court of Appeals declared the consignment as valid in an Amended Decision dated January 16, 2003. It held that the validity of the consignment had the effect of extinguishing petitioner's obligation to return the option/reservation fee to respondent. Hence, petitioner can no longer withdraw the same. The decretal portion of the Amended Decision states:

WHEREFORE, premises considered, our decision dated April 26, 2002 is RECONSIDERED. The trial court's decision is hereby REVERSED and SET ASIDE, and a new one is entered (1) DECLARING as valid the

consignation by the plaintiff-appellant in favor of defendant-appellee of the amount of P672,900.00 with the Makati City RTC Clerk of Court and deposited under Official Receipt No. 379061 dated 15 August 1994 and (2) DECLARING as extinguished appellant's obligation in favor of appellee under paragraph 5 of the parties' "AGREEMENT AND UNDERTAKING". Neither party shall recover costs from the other.

SO ORDERED.^[21]

Unfazed, petitioner filed the instant petition for review contending, *inter alia*, that he can withdraw the amount deposited with the trial court as a matter of right because at the time he moved for the withdrawal thereof, the Court of Appeals has yet to rule on the consignation's validity and the respondent had not yet accepted the same.

The resolution of the case at bar hinges on the following issues: (1) Was there a valid consignation? and (2) Can petitioner withdraw the amount consigned as a matter of right?

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment.^[22] In order that consignation may be effective, the debtor must show that: (1) there was a debt due; (2) the consignation of the obligation had been made because the creditor to whom *tender of payment* was made refused to accept it, or because he was absent or incapacitated, or because several persons claimed to be entitled to receive the amount due or because the title to the obligation has been lost; (3) previous notice of the consignation had been given to the person interested in the performance of the obligation; (4) the amount due was placed at the disposal of the court; and (5) after the consignation had been made the person interested was notified thereof. Failure in any of these requirements is enough ground to render a consignation ineffective.

^[23]

The issues to be resolved in the instant case concerns one of the important requisites of consignation, i.e, the existence of a valid tender of payment. As testified by the counsel for respondent, the reasons why his client did not accept petitioner's tender of payment were — (1) the check mentioned in the August 5, 1994 letter of petitioner manifesting that he is settling the obligation was not attached to the said letter; and (2) the amount tendered was insufficient to cover the obligation. It is obvious that the reason for respondent's non-acceptance of the tender of payment was the alleged insufficiency thereof — and not because the said check was not tendered to respondent, or because it was in the form of manager's check. While it is true that in general, a manager's check is not legal tender, the creditor has the option of refusing or accepting it.^[24] Payment in check by the debtor may be acceptable as valid, if no prompt objection to said payment is made.

^[25] Consequently, petitioner's tender of payment in the form of manager's check is valid.

Anent the sufficiency of the amount tendered, it appears that only the interest of 18% per annum on the P600,000.00 option/reservation fee stated in the default clause of the "Agreement And Undertaking" was agreed upon by the parties, thus —