

## SECOND DIVISION

[ G.R. No. 108630, April 02, 1996 ]

### PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND LORETO TAN, RESPONDENTS.

#### DECISION

**ROMERO, J.:**

Petitioner Philippine National Bank (PNB) questions the decision<sup>[1]</sup> of the Court of Appeals partially affirming the judgment of the Regional Trial Court, Branch 44, Bacolod City. The dispositive portion of the trial court's decision states:

"WHEREFORE, premises considered, the Court hereby renders judgment in favor of the plaintiff and against the defendants as follows:

- 1) Ordering defendants to pay plaintiff jointly and severally the sum of P32,480.00, with legal rate of interest to be computed from May 2, 1979, date of filing of this complaint until fully paid;
- 2) Ordering defendants to pay plaintiff jointly and severally the sum of P5,000.00 as exemplary damages;
- 3) Ordering defendants to pay plaintiff jointly and severally the sum of P5,000.00 as attorney's fees;
- 4) To pay the costs of this suit.

SO ORDERED."<sup>[2]</sup>

The facts are the following:

Private respondent Loreto Tan (Tan) is the owner of a parcel of land abutting the national highway in Mandalagan, Bacolod City. Expropriation proceedings were instituted by the government against private respondent Tan and other property owners before the then Court of First Instance of Negros Occidental, Branch IV, docketed as Civil Case No. 12924.

Tan filed a motion dated May 10, 1978 requesting issuance of an order for the release to him of the expropriation price of P3 2,480.00.

On May 22, 1978, petitioner PNB (Bacolod Branch) was required by the trial court to release to Tan the amount of P32,480.00 deposited with it by the government.

On May 24, 1978, petitioner, through its Assistant Branch Manager Juan Tagamolila, issued a manager's check for P3 2,480.00 and delivered the same to one Sonia Gonzaga without Tan's knowledge, consent or authority. Sonia Gonzaga deposited it in her account with Far East Bank and Trust Co. (FEBTC) and later on withdrew the said amount.

Private respondent Tan subsequently demanded payment in the amount of P32,480.00 from petitioner, but the same was refused on the ground that petitioner had already paid and delivered the amount to Sonia Gonzaga on the strength of a Special Power of Attorney (SPA) allegedly executed in her favor by Tan.

On June 8, 1978, Tan executed an affidavit before petitioner's lawyer, Alejandro S. Somo, stating that:

- 1) he had never executed any Special Power of Attorney in favor of Sonia S. Gonzaga;
- 2) he had never authorized Sonia Gonzaga to receive the sum of P32,480.00 from petitioner;
- 3) he signed a motion for the court to issue an Order to release the said sum of money to him and gave the same to Mr. Nilo Gonzaga (husband of Sonia) to be filed in court. However, after the Order was subsequently issued by the court, a certain Engineer Decena of the Highway Engineer's Office issued the authority to release the funds not to him but to Mr. Gonzaga.

When he failed to recover the amount from PNB, private respondent filed a motion with the court to require PNB to pay the same to him.

Petitioner filed an opposition contending that Sonia Gonzaga presented to it a copy of the May 22, 1978 order and a special power of attorney by virtue of which petitioner delivered the check to her.

The matter was set for hearing on July 21, 1978 and petitioner was directed by the court to produce the said special power of attorney thereat. However, petitioner failed to do so.

The court decided that there was need for the matter to be ventilated in a separate civil action and thus private respondent filed a complaint with the Regional Trial Court in Bacolod City (Branch 44) against petitioner and Juan Tagamolila, PNB's Assistant Branch Manager, to recover the said amount.

In its defense, petitioner contended that private respondent had duly authorized Sonia Gonzaga to act as his agent.

On September 28, 1979, petitioner filed a third-party complaint against the spouses Nilo and Sonia Gonzaga praying that they be ordered to pay private respondent the amount of P32,480.00. However, for failure of petitioner to have the summons served on the Gonzagas despite opportunities given to it, the third-party complaint was dismissed.

Tagamolila, in his answer, stated that Sonia Gonzaga presented a Special Power of

Attorney to him but borrowed it later with the promise to return it, claiming that she needed it to encash the check.

On June 7, 1989, the trial court rendered judgment ordering petitioner and Tagamolila to pay private respondent jointly and severally the amount of P32,480.00 with legal interest, damages and attorney's fees.

Both petitioner and Tagamolila appealed the case to the Court of Appeals.

In a resolution dated April 8, 1991, the appellate court dismissed Tagamolila's appeal for failure to pay the docket fee within the reglementary period.

On August 31, 1992, the Court of Appeals affirmed the decision of the trial court against petitioner, with the modification that the award of P5,000.00 for exemplary damages and P5,000.00 for attorney's fees by the trial court was deleted.

Hence, this petition.

Petitioner PNB states that the issue in this case is whether or not the SPA ever existed. It argues that the existence of the SPA need not be proved by it under the "best evidence rule" because it already proved the existence of the SPA from the testimonies of its witnesses and by the certification issued by the Far East Bank and Trust Company that it allowed Sonia Gonzaga to encash Tan's check on the basis of the SPA.

We find the petition unmeritorious.

There is no question that no payment had ever been made to private respondent as the check was never delivered to him. When the court ordered petitioner to pay private respondent the amount of P3 2,480.00, it had the obligation to deliver the same to him. Under Art. 1233 of the Civil Code, a debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be.

The burden of proof of such payment lies with the debtor.<sup>[3]</sup> In the instant case, neither the SPA nor the check issued by petitioner was ever presented in court.

The testimonies of petitioner's own witnesses regarding the check were conflicting. Tagamolila testified that the check was issued to the order of "Sonia Gonzaga as attorney-in-fact of Loreto Tan,"<sup>[4]</sup> while Elvira Tibon, assistant cashier of PNB (Bacolod Branch), stated that the check was issued to the order of "Loreto Tan."<sup>[5]</sup>

Furthermore, contrary to petitioner's contention that all that is needed to be proved is the existence of the SPA, it is also necessary for evidence to be presented regarding the nature and extent of the alleged powers and authority granted to Sonia Gonzaga; more specifically, to determine whether the document indeed authorized her to receive payment intended for private respondent. However, no such evidence was ever presented.