

THIRD DIVISION

[G.R. No. 138588, August 23, 2001]

**FAR EAST BANK & TRUST COMPANY, PETITIONER, VS. DIAZ
REALTY INC., RESPONDENT.**

DECISION

PANGANIBAN, J.:

For a valid tender of payment, it is necessary that there be a fusion of *intent*, *ability* and *capability* to make good such offer, which must be absolute and must cover the amount due. Though a check is not legal tender, and a creditor may validly refuse to accept it if tendered as payment, one who in fact accepted a fully funded check after the debtor's manifestation that it had been given to settle an obligation is estopped from later on denouncing the efficacy of such tender of payment.

The Case

The foregoing principle is used by this Court in resolving the Petition for Review^[1] on *Certiorari* before us, challenging the January 26, 1999 Decision^[2] of the Court of Appeals^[3] (CA) in CA-GR CV No. 45349. The dispositive portion of the assailed Decision reads as follows:

"*WHEREFORE*, the judgment appealed from is hereby *MODIFIED*, to read as follows:

` *WHEREFORE*, JUDGMENT IS HEREBY RENDERED, ORDERING:

` 1. The plaintiffs to pay Far East Bank & Trust Company the principal sum of P1,067,000.00 plus interests thereon computed at 12% per annum from July 9, 1988 until fully paid;

` 2. The parties to negotiate for a new lease over the subject premises; and

` 3. The defendant to pay the plaintiff the sum of fifteen thousand (P15,000.00) pesos as and for attorney's fees plus the costs of litigation.

"All other claims of the parties against each other are *DENIED*."^[4]

Likewise assailed is the May 4, 1999 CA Resolution,^[5] which denied petitioner's Motion for Reconsideration.

The Facts

The court *a quo* summarized the antecedents of the case as follows:

"Sometime in August 1973, Diaz and Company got a loan from the former PaBC [Pacific Banking Corporation] in the amount of P720,000.00, with interest at 12% per annum, later increased to 14%, 16%, 18% and 20%. The loan was secured by a real estate mortgage over two parcels of land owned by the plaintiff Diaz Realty, both located in Davao City. In 1981, Allied Banking Corporation rented an office space in the building constructed on the properties covered by the mortgage contract, with the conformity of mortgagee PaBC, whereby the parties agreed that the monthly rentals shall be paid directly to the mortgagee for the lessor's account, either to partly or fully pay off the aforesaid mortgage indebtedness. Pursuant to such contract, Allied Bank paid the monthly rentals to PaBC instead of to the plaintiffs. On July 5, 1985, the Central Bank closed PaBC, placed it under receivership, and appointed Renan Santos as its liquidator. Sometime in December 1986, appellant FEBTC purchased the credit of Diaz & Company in favor of PaBC, but it was not until March 23, 1988 that Diaz was informed about it.

"According to the plaintiff as alleged in the complaint and testified to by Antonio Diaz (President of Diaz & Company and Vice-President of Diaz Realty), on March 23, 1988, he went to office of PaBC which by then housed FEBTC and was told that the latter had acquired PaBC; that Cashier Ramon Lim told him that as of such date, his loan was P1,447,142.03; that he (Diaz) asked the defendant to make an accounting of the monthly rental payments made by Allied Bank; that on December 14, 1988,^[6] Diaz tendered to FEBTC the amount of P1,450,000.00 through an Interbank check, in order to prevent the imposition of additional interests, penalties and surcharges on its loan; that FEBTC did not accept it as payment; that instead, Diaz was asked to deposit the amount with the defendant's Davao City Branch Office, allegedly pending the approval of Central Bank Liquidator Renan Santos; that in the meantime, Diaz wrote the defendant, asking that the interest rate be reduced from 20% to 12% per annum, but no reply was ever made; that subsequently, the defendant told him to change the P1,450,000.00 deposit into a money market placement, which he did; that the money market placement expired on April 14, 1989; that when there was still no news from the defendant whether or not it [would] accept his tender of payment, he filed this case at the Regional Trial Court of Davao City.

"In its responsive pleading, the defendant set up the following special/affirmative defenses: that sometime in December 1986, FEBTC purchased from the PaBC the account of the plaintiffs for a total consideration of P1,828,875.00; that despite such purchase, PaBC Davao Branch continued to collect interests and penalty charges on the loan from January 6, 1987 to July 8, 1988; that it was therefore not FEBTC which collected the interest rates mentioned in the complaint, but PaBC; that it is not true that FEBTC was trying to impose [exorbitant] rates of interest; that as a matter of fact, after the transfer of plaintiff's account,

it sought to negotiate with the plaintiffs, and in fact, negotiations were made for a settlement and possible reduction of charges; that FEBTC has no knowledge of the rates of interest imposed and collected by PaBC prior to the purchase of the account from the latter, hence it could not be held responsible for those transactions which transpired prior to the purchase; and that the defendant acted at the opportune time for the settlement of the account, albeit exercising prudence in the handling of such account. The rest of the 'affirmative defenses' are bare denials.

"After trial, the court *a quo* rendered judgment on August 6, 1993, the dispositive portion of which reads as follows:

` WHEREFORE, judgment is hereby rendered as follows:

` 1. The plaintiff and defendant shall jointly compute the interest due on the P1,057,000.00 loan from April 18, 1985 until November 14, 1988 at 12% per annum (IBAA Salazar Case Supra).

` 2. That the parties shall then add the result of the joint computation mentioned in paragraph one of the dispositive portion to the P1,057,000.00 principal.

` 3. The result of the addition of the P1,057,000.00 principal and the interests arrived at shall then be compared with the P1,450,000.00 deposit and if P1,450,000.00 is not enough, then the plaintiff shall pay the difference/deficiency between the P1,450,000.00 deposit and what the parties jointly computed[;] conversely, if the P1,450,000.00 is more than what the parties have arrived [at] after the computation, the defendant shall return the difference or the excess to the plaintiffs.

` 4. The defendant shall cancel the mortgage.

` 5. Paragraph eight of the Lease Contract between Allied Bank and the plaintiffs in which the defendant's predecessor, Pacific Banking gave its conformity (Exh. ` H') is hereby cancelled, so that the rental should now be paid to the plaintiffs.

` 6. The defendant shall pay the plaintiffs the sums:

` 6-A. Fifteen thousand pesos as attorney's fees.

` 6-B. Three [h]undred [t]housand [p]esos (P300,000.00) as exemplary damages.

` 6-C. The cost of suit.

` SO ORDERED."

"Upon a motion for reconsideration filed by defendant FEBTC and after due notice and hearing, the court a quo issued an order on October 12, 1993, modifying the aforequoted decision, such that its dispositive portion as amended would now read as follows:

` IN VIEW WHEREOF, the decision rendered last August 6, is modified, accordingly, to wit:

` 1. The plaintiff and defendant shall jointly compute the interest due on the P1,167,000.00 loan from April 18, 1985 until November 14, 1988 at 12% per annum.

` 2. That the parties shall then add the result of the joint computation mentioned in paragraph one above to the P1,067,000.00 principal.

` 3. The result of the addition of the P1,067,000.00 principal and the interests arrived at shall then be compared with the P1,450,000.00 money market placement put up by the plaintiff with the defendant bank if the same is still existing or has not yet matured.

` 4. The defendant shall cancel the mortgage.

` 5. Paragraph eight of the lease contract between Allied Bank and the plaintiff in which the defendant[\'s predecessor], Pacific Banking gave its conformity (Exh. `H') is hereby cancelled and deleted, so that the rental should now be paid to the plaintiff.

` 6. The defendant shall pay the plaintiff the sums:

` 6.A Fifteen [t]housand [p]esos as attorney's fees;

` 6.B Cost of suit.'"^[7]

The CA Ruling

The CA sustained the trial court's finding that there was a valid tender of payment in the sum of P1,450,000, made by Diaz Realty Inc. in favor of Far East Bank and Trust Company. The appellate court reasoned that petitioner failed to effectively rebut respondent's evidence that it so tendered the check to liquidate its indebtedness, and that petitioner had unilaterally treated the same as a deposit instead.

The CA further ruled that in the computation of interest charges, the legal rate of 12 percent per annum should apply, reckoned from July 9, 1988, until full and final payment of the whole indebtedness. It explained that while petitioner's purchase of respondent's account from Pacific Banking Corporation (PaBC) was valid, the 20 percent interest stipulated in the Promissory Note should not apply, because the

account transfer was without the knowledge and the consent of respondent-obligor.

The appellate court, however, sustained petitioner's assertion that the trial court should not have cancelled the real estate mortgage contract, inasmuch as the principal obligation upon which it was anchored was yet to be extinguished. As to the lease contract, the CA held that the same was subject to renegotiation by the parties.

Lastly, the court *a quo* upheld the trial court's award of attorney's fees, pointing to petitioner's negligence in not immediately informing respondent of the purchase and transfer of its credit, and in failing to negotiate in order to avoid litigation.

Issues

Petitioner submits for our resolution the following issues:

"A.

"Whether or not the Court of Appeals correctly ruled that the validity of the tender of payment was not properly raised in the trial court and could not thus be raised in the appeal.

"B.

"Whether or not the Court of Appeals erred in failing to apply settled jurisprudential principles militating against the private respondent's contention that a valid tender of payment had been made by it.

"C.

"Whether or not the Court of Appeals correctly found that the transaction between petitioner and PaBC was an 'ineffective novation' and that the consent of private respondent was necessary therefor.

"D.

"Whether or not the Court of Appeals erred in refusing to apply the rate of interest freely stipulated upon by the parties to the respondent's obligation.

"E.

"Whether or not the Court of Appeals committed an irreconcilable error in ordering the parties to re-negotiate the terms of the contract while finding at the same time that the mortgage contract containing the lease was valid.

"F.

"Whether or not the petition, as argued by private respondent, raises questions of fact not reviewable by certiorari."^[8]