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vs. Rogel, 4 SCRA 807). In the case at bar, the testimony of Dizon that he tried to prevent Saturnino from stabbing Baldasan is self-serving, uncorroborated, and does not merit serious consideration.

WHEREFORE, IN VIEW OF THE FOREGOING, the appealed decision is hereby AFFIRMED but the indemnity to the heirs of the deceased should be increased from P12,000.00 to P30,000.00.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 57552. October 10, 1986]

LUISA F. MCLAUGHLIN, *petitioner, vs.* **THE COURT OF APPEALS AND RAMON FLORES,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS: RESCISSION; NOT PROPER WHEN THERE IS SUBSTANTIAL COMPLIANCE IN THE AGREEMENT.**— We agree with the appellate court that it would be inequitable to cancel the contract of conditional sale and to have the amount of P101,551.00 (P148,126.97 according to private respondent in his brief) already paid by him under said contract, excluding the monthly rentals paid, forfeited in favor of petitioner, particularly after private respondent had tendered the amount of P76,059.71 in full payment of his obligation. In the analogous case of *De Guzman vs. Court of Appeals*, this Court sustained the order of the respondent judge denying the petitioners' motion for execution on the ground that the private respondent had substantially complied with the

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terms and conditions of the compromise agreement, and directing the petitioners to immediately execute the necessary documents transferring to the private respondent the title to the properties (July 23, 1985, 137 SCRA 730). In the case at bar, there was also substantial compliance with the compromise agreement.

2. **ID.; OBLIGATION; EXTINGUISHMENT OF OBLIGATION; TENDER OF PAYMENT; VALID IN CASE AT BAR.**— Private respondent's tender of payment of the amount of P76,059.71 together with his motion for reconsideration on November 17, 1980 was, therefore, well within the thirty-day period granted by law. The tender made by private respondent of a certified bank manager's check payable to petitioner was a valid tender of payment. The certified check covered not only the balance of the purchase price in the amount of P69,059.71, but also the arrears in the rental payments from June to December, 1980 in the amount of P7,000.00, or a total of P76,059.71. On this point the appellate court correctly applied the ruling in the case of *New Pacific Timber & Supply Co., Inc. vs. Seneris* (101 SCRA 686, 692-694) to the case at bar.

3. **ID.; ID.; ID.; ID.; DOES NOT IN ITSELF RELIEVE THE VENDOR FROM HIS LIABILITY TO PAY THE REDEMPTION PRICE.**— Although private respondent had made a valid tender of payment which preserved his rights as a vendee in the contract of conditional sale of real property, he did not follow it with a consignation or deposit of the sum due with the court. As this Court has held: "The rule regarding payment of redemption prices is invoked. True that consignation of the redemption price is not necessary in order that the vendor may compel the vendee to allow the repurchase within the time provided by law or by contract. (*Rosales vs. Reyes and Ordoveza*, 25 Phil. 495.) We have held that in such cases a mere tender of payment is enough, if made on time, as a basis for action against the vendee to compel him to resell. But that tender does not in itself relieve the vendor from his obligation to pay the price when redemption is allowed by the court. In other words, tender of payment is sufficient to compel redemption but is not in itself a payment that relieves the vendor from his liability to pay the redemption price." (*Paez vs. Magno*, 83 Phil. 403, 405).

4. **ID.; ID.; ID.; ID.; RULE WHEN CREDITOR REFUSES TO ACCEPT WITHOUT JUST CAUSE.**— According to Article

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1256 of the Civil Code of the Philippines, if the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due, and that consignation alone shall produce the same effect in the five cases enumerated therein; Article 1257 provides that in order that the consignation of the thing (or sum) due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation; and Article 1258 provides that consignation shall be made by depositing the thing (or sum) due at the disposal of the judicial authority and that the interested parties shall also be notified thereof.

5. **ID.; ID.; ID.; ID.; DISTINGUISHED FROM CONSIGNATION.**— As the Court held in the case of *Soco vs. Militante*, promulgated on June 28, 1983, after examining the above-cited provisions of the law and the jurisprudence on the matter: "Tender of payment must be distinguished from consignation. Tender is the antecedent of consignation, that is, an act preparatory to the consignation, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks to obtain. Tender of payment may be extrajudicial, while consignation is necessarily judicial, and the priority of the first is the attempt to make a private settlement before proceeding to the solemnities of consignation. (8 Manresa 325)." (123 SCRA 160, 173).

APPEARANCES OF COUNSEL

*Fernando Ma. Alberto for peti*tioner.
R.C. Domingo for private respondent.

DECISION

FERIA, *Actg. C.J.*:

This is an appeal by *certiorari* from the decision of the Court of Appeals, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING PREMISES, the petition for *certiorari* and *mandamus* is hereby GRANTED and the Orders of respondent court dated November 21 and 27 both 1980 are hereby

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nullified and set aside and respondent Judge is ordered to order private respondent to accept petitioner's Pacific Banking Corporation certified manager's Check No. MC-A-000311 dated November 17, 1980 in the amount of P76,059.71 in full settlement of petitioner's obligation, or another check of equivalent kind and value, the earlier check having become stale."

On February 28, 1977, petitioner Luisa F. McLaughlin and private respondent Ramon Flores entered into a contract of conditional sale of real property. Paragraph one of the deed of conditional sale fixed the total purchase price of P140,000.00 payable as follows: a) P26,550.00 upon the execution of the deed; and b) the balance of P113,450.00 to be paid not later than May 31, 1977. The parties also agreed that the balance shall bear interest at the rate of 1% per month to commence from December 1, 1976, until the full purchase price was paid.

On June 19, 1979, petitioner filed a complaint in the then Court of First Instance of Rizal (Civil Case No. 33573) for the rescission of the deed of conditional sale due to the failure of private respondent to pay the balance due on May 31, 1977.

On December 27, 1979, the parties submitted a Compromise Agreement on the basis of which the court rendered a decision on January 22, 1980. In said compromise agreement, private respondent acknowledged his indebtedness to petitioner under the deed of conditional sale in the amount of P119,050.71, and the parties agreed that said amount would be payable as follows: a) P50,000.00 upon signing of the agreement; and b) the balance of P69,059.71 in two equal installments on June 30, 1980 and December 31, 1980.

As agreed upon, private respondent paid P50,000.00 upon the signing of the agreement and in addition he also paid an "escalation cost" of P25,000.00.

Under paragraph 3 of the Compromise Agreement, private respondent agreed to pay one thousand (P1,000.00) pesos monthly rental beginning December 5, 1979 until the obligation is duly paid, for the use of the property subject matter of the deed of conditional sale.

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Paragraphs 6 and 7 of the Compromise Agreement further state:

"That the parties are agreed that in the event the defendant (private respondent) fails to comply with his obligations herein provided, the plaintiff (petitioner) will be entitled to the issuance of a writ of execution rescinding the Deed of Conditional Sale of Real Property. In such eventuality, defendant (private respondent) hereby waives his right to appeal to (from) the Order of Rescission and the Writ of Execution which the Court shall render in accordance with the stipulations herein provided for.

"That in the event of execution all payments made by defendant (private respondent) will be forfeited in favor of the plaintiff (petitioner) as liquidated damages."

On October 15, 1980, petitioner wrote to private respondent demanding that the latter pay the balance of P69,059.71 on or before October 31, 1980. This demand included not only the installment due on June 30, 1980 but also the installment due on December 31, 1980.

On October 30, 1980, private respondent sent a letter to petitioner signifying his willingness and intention to pay the full balance of P69,059.71, and at the same time demanding to see the certificate of title of the property and the tax payment receipts.

Private respondent states on page 14 of his brief that on November 3, 1980, the first working day of said month, he tendered payment to petitioner but this was refused acceptance by petitioner. However, this does not appear in the decision of the Court of Appeals.

On November 7, 1980, petitioner filed a Motion for Writ of Execution alleging that private respondent failed to pay the installment due on June 1980 and that since June 1980 he had failed to pay the monthly rental of P1,000.00. Petitioner prayed that a) the deed of conditional sale of real property be declared rescinded with forfeiture of all payments as liquidated damages; and b) the court order the payment of P1,000.00 back rentals since June 1980 and the eviction of private respondent.

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On November 14, 1980, the trial court granted the motion for writ of execution.

On November 17, 1980, private respondent filed a motion for reconsideration tendering at the same time a Pacific Banking Corporation certified manager's check in the amount of P76,059.71, payable to the order of petitioner and covering the entire obligation including the installment due on December 31, 1980. However, the trial court denied the motion for reconsideration in an order dated November 21, 1980 and issued the writ of execution on November 25, 1980.

In an order dated November 27, 1980, the trial court granted petitioner's *ex-parte* motion for clarification of the order of execution rescinding the deed of conditional sale of real property.

On November 28, 1980, private respondent filed with the Court of Appeals a petition for *certiorari* and prohibition assailing the orders dated November 21 and 27, 1980.

As initially stated above, the appellate court nullified and set aside the disputed orders of the lower court. In its decision, the appellate court ruled in part as follows:

"The issue here is whether respondent court committed a grave abuse of discretion in issuing the orders dated November 21, 1980 and November 27, 1980.

"The general rule is that rescission will not be permitted for a slight or casual breach of the contract, but only for such breaches as are substantial and fundamental as to defeat the object of the parties in making the agreement. (*Song Fo & Co. vs. Hawaiian-Philippine Co.*, 47 Phil. 821)

"In aforesaid case, it was held that a delay in payment for a small quantity of molasses, for some twenty days is not such a violation of an essential condition of the contract as warrants rescission for nonperformance.

"In *Universal Food Corp. vs. Court of Appeals,* 33 SCRA 1, the Song Fo ruling was reaffirmed.

"In the case at bar, McLaughlin wrote Flores on October 15, 1980 demanding that Flores pay the balance of P69,059.71 on or before October 31, 1980. Thus it is undeniable that despite Flores' failure

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to make the payment which was due on June 1980, McLaughlin waived whatever right she had under the compromise agreement as incorporated in the decision of respondent court, to demand rescission.

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"It is significant to note that on November 17, 1980, or just seventeen (17) days after October 31, 1980, the deadline set by McLaughlin, Flores tendered the certified manager's check. We hold that the *Song Fo* ruling is applicable herein considering that in the latter case, there was a 20-day delay in the payment of the obligation as compared to a 17-day delay in the instant case.

"Furthermore, as held in the recent case of *New Pacific Timber & Supply Co., Inc. vs. Hon. Alberto Seneris*, L-41764, December 19, 1980, it is the accepted practice in business to consider a cashier's or manager's check as cash and that upon certification of a check, it is equivalent to its acceptance (Section 187, Negotiable Instrument Law) and the funds are thereby transferred to the credit of the creditor (*Araneta v. Tuason*, 49 O.G. p. 59).

"In the *New Pacific Timber & Supply Co., Inc.* case, the Supreme Court further held that the object of certifying a check is to enable the holder thereof to use it as money, citing the ruling in *PNB vs. National City Bank of New York*, 63 Phil. 711.

"In the *New Pacific Timber* case, it was also ruled that the exception in Section 63 of the Central Bank Act that the clearing of a check and the subsequent crediting of the amount thereof to the account of the creditor is equivalent to delivery of cash, is applicable to a payment through a certified check.

"Considering that Flores had already paid P101,550.00 under the contract to sell, excluding the monthly rentals paid, certainly it would be the height of inequity to have this amount forfeited in favor McLaughlin. Under the questioned orders, McLaughlin would get back the property and still keep P101,550.00."

Petitioner contends that the appellate court erred in not observing the provisions of Article No. 1306 of the Civil Code of the Philippines and in having arbitrarily abused its judicial discretion by disregarding the penal clause stipulated by the parties in the compromise agreement which was the basis of the decision of the lower court.

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We agree with the appellate court that it would be inequitable to cancel the contract of conditional sale and to have the amount of P101,550.00 (P148,126.97 according to private respondent in his brief) already paid by him under said contract, excluding the monthly rentals paid, forfeited in favor of petitioner, particularly after private respondent had tendered the amount of P76,059.71 in full payment of his obligation.

In the analogous case of *De Guzman vs. Court of Appeals*, this Court sustained the order of the respondent judge denying the petitioners' motion for execution on the ground that the private respondent had substantially complied with the terms and conditions of the compromise agreement, and directing the petitioners to immediately execute the necessary documents transferring to the private respondent the title to the properties (July 23, 1985, 137 SCRA 730). In the case at bar, there was also substantial compliance with the compromise agreement.

Petitioner invokes the ruling of the Court in its Resolution of November 16, 1978 in the case of *Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc.*, to the effect that Republic Act 6552 (the Maceda Law) "recognizes and reaffirms the vendor's right to cancel the contract to sell upon breach and non-payment of the stipulated installments but requires a grace period after at least two years of regular installment payments x x x." (86 SCRA 305, 329).

On the other hand, private respondent also invokes said law as an expression of public policy to protect buyers of real estate on installments against onerous and oppressive conditions (Section 2 of Republic Act No. 6552).

Section 4 of Republic Act No. 6552 which took effect on September 14, 1972 provides as follows:

"In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of the cancellation or the demand for rescission of the contract by a notarial act."

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Section 7 of said law provides as follows:

"Any stipulation in any contract hereafter entered into contrary to the provisions of Sections 3, 4, 5 and 6, shall be null and void."

The spirit of these provisions further supports the decision of the appellate court. The record does not contain the complete text of the compromise agreement dated December 20, 1979 and the decision approving it. However, assuming that under the terms of said agreement the December 31, 1980 installment was due and payable when on October 15, 1980, petitioner demanded payment of the balance of P69,059.71 on or before October 31, 1980, petitioner could cancel the contract after thirty days from receipt by private respondent of the notice of cancellation. Considering petitioner's motion for execution filed on November 7, 1980 as a notice of cancellation, petitioner could cancel the contract of conditional sale after thirty days from receipt by private respondent of said motion. Private respondent's tender of payment of the amount of P76,059.71 together with his motion for reconsideration on November 17, 1980 was, therefore, well within the thirty-day period granted by law.

The tender made by private respondent of a certified bank manager's check payable to petitioner was a valid tender of payment. The certified check covered not only the balance of the purchase price in the amount of P69,059.71, but also the arrears in the rental payments from June to December, 1980 in the amount of P7,000.00, or a total of P76,059.71. On this point the appellate court correctly applied the ruling in the case of *New Pacific Timber & Supply Co., Inc. vs. Seneris* (101 SCRA 686, 692-694) to the case at bar.

Moreover, Section 49, Rule 130 of the Revised Rules of Court provides that:

"An offer in writing to pay a particular sum of money or to deliver a written instrument or specific property is, if rejected, equivalent to the actual production and tender of the money, instrument, or property."

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However, although private respondent had made a valid tender of payment which preserved his rights as a vendee in the contract of conditional sale of real property, he did not follow it with a consignation or deposit of the sum due with the court. As this Court has held:

"The rule regarding payment of redemption prices is invoked. True that consignation of the redemption price is not necessary in order that the vendor may compel the vendee to allow the repurchase within the time provided by law or by contract. (*Rosales vs. Reyes and Ordoveza*, 25 Phil. 495.) We have held that in such cases a mere tender of payment is enough, if made on time, as a basis for action against the vendee to compel him to resell. But that tender does not in itself relieve the vendor from his obligation to pay the price when redemption is allowed by the court. In other words, tender of payment is sufficient to compel redemption but is not in itself a payment that relieves the vendor from his liability to pay the redemption price." (*Paez vs. Magno*, 83 Phil. 403, 405).

On September 1, 1986, the Court issued the following resolution:

"Considering the allegation in petitioner's reply brief that the Manager's Check tendered by private respondent on November 17, 1980 was subsequently cancelled and converted into cash, the Court RESOLVED to REQUIRE the parties within ten (10) days from notice to inform the Court whether or not the amount thereof was deposited in court and whether or not private respondent continued paying the monthly rental of P1,000.00 stipulated in the Compromise Agreement."

In compliance with this resolution, both parties submitted their respective manifestations which confirm that the Manager's Check in question was subsequently withdrawn and replaced by cash, but the cash was not deposited with the court.

According to Article 1256 of the Civil Code of the Philippines, if the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due, and that consignation alone shall produce the same effect in the five cases enumerated therein; Article 1257 provides that in order that the consignation of the thing (or sum) due may release

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the obligor, it must first be announced to the persons interested in the fulfillment of the obligation; and Article 1258 provides that consignation shall be made by depositing the thing (or sum) due at the disposal of the judicial authority and that the interested parties shall also be notified thereof.

As the Court held in the case of *Soco vs. Militante*, promulgated on June 28, 1983, after examining the above-cited provisions of the law and the jurisprudence on the matter:

"Tender of payment must be distinguished from consignation. Tender is the antecedent of consignation, that is, an act preparatory to the consignation, which is the principal, and from which are derived the immediate consequences which the debtor desires or seeks to obtain. Tender of payment may be extrajudicial, while consignation is necessarily judicial, and the priority of the first is the attempt to make a private settlement before proceeding to the solemnities of consignation. (8 Manresa 325)." (123 SCRA 160, 173).

In the above-cited case of *De Guzman vs. Court of Appeals* (137 SCRA 730), the vendee was released from responsibility because he had deposited with the court the balance of the purchase price. Similarly, in the above-cited case of *New Pacific Timber & Supply Co., Inc. vs. Seneris* (101 SCRA 686), the judgment debtor was released from responsibility by depositing with the court the amount of the judgment obligation.

In the case at bar, although as above stated private respondent had preserved his rights as a vendee in the contract of conditional sale of real property by a timely valid tender of payment of the balance of his obligation which was not accepted by petitioner, he remains liable for the payment of his obligation because of his failure to deposit the amount due with the court.

In his manifestation dated September 19, 1986, private respondent states that on September 16, 1980, he purchased a Metrobank Cashier's Check No. CC 004233 in favor of petitioner Luisa F. McLaughlin in the amount of P76,059.71, a photocopy of which was enclosed and marked as Annex "A-1;" but that he did not continue paying the monthly rental of P1,000.00 because, pursuant to the decision of the appellate court, petitioner herein was ordered to accept the aforesaid amount in full payment

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of herein respondent's obligation under the contract subject matter thereof.

However, inasmuch as petitioner did not accept the aforesaid amount, it was incumbent on private respondent to deposit the same with the court in order to be released from responsibility. Since private respondent did not deposit said amount with the court, his obligation was not paid and he is liable in addition for the payment of the monthly rental of P1,000.00 from January 1, 1981 until said obligation is duly paid, in accordance with paragraph 3 of the Compromise Agreement. Upon full payment of the amount of P76,059.71 and the rentals in arrears, private respondent shall be entitled to a deed of absolute sale in his favor of the real property in question.

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with the following modifications:

(a) Petitioner is ordered to accept from private respondent the Metrobank Cashier's Check No. CC 004233 in her favor in the amount of P76,059.71 or another certified check of a reputable bank drawn in her favor in the same amount;

(b) Private respondent is ordered to pay petitioner, within sixty (60) days from the finality of this decision, the rentals in arrears of P1,000.00 a month from January 1, 1981 until full payment thereof; and

(c) Petitioner is ordered to execute a deed of absolute sale in favor of private respondent over the real property in question upon full payment of the amounts as provided in paragraphs (a) and (b) above. No costs.

SO ORDERED.

Fernan, Alampay, Gutierrez, Jr., and *Paras, JJ.*, concur.