

ANG TIONG,. PLAINTIFF AND APPELLEE, VS, LORENZO TING, DOING BUSINESS UNDER THE NAME & STYLE OF PRUNES PRESERVES MFG., & FELIPE ANG, DEFENDANTS, FELIPE ANG, DEFENDANT AND APPELLANT.

G.R. No. L-26767. February 22, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

On August 15, 1960 Lorenzo Ting issued Philippine Bank of Communications check K-81618, for the sum of P4,000, payable to "cash or bearer". With Felipe Ang's signature (indorsement in blank) at the back thereof, the instrument was received by the plaintiff Ang Tiong who thereafter presented it to the drawee bank for payment. The bank dishonored it. The plaintiff then made written demands on both Lorenzo Ting and Felipe Ang that they make good the amount represented by the check. These demands went unheeded; so he filed in the municipal court of Manila an action for collection of the sum of P4,000, plus P500 attorney's fees. On March 6, 1962 the municipal court adjudged for the plaintiff against the two defendants.

Only Felipe Ang appealed to the Court of First Instance of Manila (civil case 50018), which rendered judgment on July 31, 1962, amended by an order dated August 9, 1962, directing him to pay to the plaintiff "the sum of P 4,000, with interest at the legal rate from the date of the filing of the complaint, a further sum of P400 as attorney's fees, and costs."

Felipe Ang then elevated the case to the Court of Appeals, which certified it to this Court because the issues raised are purely of law.

The appellant imputes to the court a quo three errors, namely, (1) that it refused to apply article 2071 of the new Civil Code to the case at bar; (2) that it adjudged him a general indorser under the Negotiable Instruments Law (Act 2031); and (3) that it held that he "cannot obtain his release from the contract of suretyship or obtain security to protect himself against any proceedings on the part of the creditor and against the danger of insolvency of the principal debtor," because he is "jointly and severally liable on the instrument."

This appeal is absolutely without merit.

1. The genuineness and due execution of the instrument are not controverted. That the appellee is a holder thereof for value is admitted.

Having arisen from a bank check which is indisputably a negotiable instrument, the present case is, therefore, in so far as the indorsee is concerned vis-a-vis the indorser, governed solely by the Negotiable Instruments Law (see secs. 1 and 185). Article 2071 of the new Civil Code, invoked by the appellant, the pertinent portion of which states, "The guarantor, even before having paid, may proceed against the principal debtor: (1) when he is sued for the payment; . . . the action of the guarantor is to obtain release from the guaranty, to demand a security that shall protect him from any proceedings by the creditor . . .," is here completely irrelevant and can have no application

whatsoever.

We are in agreement with the trial judge that nothing in the check in question indicates that the appellant is not a general indorser within the purview of section 63 of the Negotiable Instruments Law which makes "a person placing his signature upon an instrument otherwise than as maker, drawer or acceptor" a general indorser, — "unless he clearly indicates by appropriate words his intention to be bound in some other capacity," which he did not do. And section 66 ordains that "every indorser who indorses without qualifications, warrants to all subsequent holders in due course" (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has a good title to it; (c) that all prior parties have capacity to contract; and (d) that the instrument is at the time of his indorsement valid and subsisting. In addition, "he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, and that if it be dishonored, he will pay the amount thereof to the holder." [1]

2. Even on the assumption that the appellant is a mere accommodation party, as he professes to be, he is nevertheless, by the clear mandate of section 29 of the Negotiable Instruments Law, yet "liable on the instrument to a holder for value, notwithstanding that such holder at the time of taking the instrument knew him to be only an accommodation party." To paraphrase, the accommodation party is liable to a holder for value as if the contract was not for accommodation. It is not a valid defense that the accommodation party did not receive any valuable consideration when he executed the instrument. Nor is it correct to say that the holder for value is not a holder in due course merely because at the time he acquired the instrument, he knew that the indorser was only an accommodation party. [2]

3. That the appellant, again assuming him to be an accommodation indorser, may obtain security from the maker to protect himself against the danger of insolvency of the latter, cannot in any manner affect his liability to the appellee, as the said remedy is a matter of concern exclusively between accommodation indorser and accommodated party. So that the fact that the appellant stands only as a surety in relation to the maker, granting this to be true for the sake of argument, is immaterial to the claim of the appellee, and does not in any way diminish nor defeat the rights of the latter who is a holder for value. The liability of the appellant remains primary and unconditional. To sanction the appellant's theory is to give unwarranted legal recognition to the patent absurdity of a situation where an indorser, when sued on an instrument by a holder in due course and for value, can escape liability on his indorsement by the convenient expedient of interposing the defense that he is a mere accommodation indorser.

Accordingly, the judgment a quo is affirmed in toto, at appellant's cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

Judgment affirmed.

[1] See also Beutel's Brannan Negotiable Instruments Law, 7th ed., pp. 927, 956; Alvendia, The Negotiable Instruments Law, pp. 119-120; Stuart del Rosario, Treatise on Negotiable Instruments, 1961 ed., p. 189.

[2] Beutel's, id. pp. 568-569; Stuart del Rosario, id., pp. 165, 242-243; Alvendia id., pp. 55, 57-58; National Bank vs. Maza, et al, 48 Phil, 210.

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