

**C. N. HODGES, PLAINTIFF-APPELLANT, VS. ELIEZER A. ESPAYOS, ROQUE SENINING AND LOLITA SIGATON ASSISTED BY HER HUSBAND ELISEO SIGATON, DEFENDANTS, ROQUE SENINING, DEFENDANT-APPELLEE.**

*G.R. No. L-36505. August 31, 1973*

Ponente: TEEHANKEE, J.

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**TEEHANKEE, J.:**

In this appeal from an adverse judgment of the court of first instance of Iloilo, on plaintiff's complaint for recovery of a sum of money, certi-fied to this Court by the Court of Appeals as involv-ing purely questions of law, the Court finds that defendant-guarantor has failed to discharge the burden of showing the alleged nullity or failure of consideration of the promissory note subject matter of the action duly executed by defendant as an accom-modation guarantor and therefore finds him liable to pay one-half of the amounts due thereunder as one of two guarantors. The judgment of the lower court absolving defendant from liability is reversed.

Under the complaint filed under date of October 6, 1959 by plaintiff against defendants Eliezer Espayos as principal and Roque Senining and Lolita Sigaton as guarantors, for recovery of the balance due on a promissory note in the sum of P1,800.00 with stipulated interest at one percent (1%) per month, ten percent (10%) stipulated attorney's fees and costs, the municipal court of Iloilo City rendered its judgment of June 26, 1961, ordering defend-ants jointly and severally to pay plaintiff the said amounts as prayed for in the complaint, after previously having declared defendants Espayos and Sigaton in default for failure to appear at the hearing and to answer the complaint.

Defendant Senining (hereinafter referred to simply as defend-ant, since only he appealed from the adverse judgment of the muni-cipal court) appealed to the court of first instance of Iloilo and the pleadings filed in the municipal court were reproduced in the court of first instance.

The parties submitted a stipulation of facts on November 29, 1962, whereby defendant admitted the complaint's allegation that the balance of P1,800.00 with interest at 1% per month from Oct-ober 20, 1958 due on the promissory note executed by him and his co-defendants in favor of plaintiff was unpaid, whereas plaintiff admitted defendant's documentary exhibits[1] (which are discussed in the judgment of the court of first instance, subject of the present appeal, *infra*). Defendant therein further prayed in case of an adverse judgment against him that "his cross-claim against defend-ants Eliezer Espayos and Lolita Sigaton... be given due course by ordering said defendants to reimburse answering defendant Roque Senining of whatever liabilities he has suffered in the above-entitled case."

The court of first instance thereafter rendered its judgment of January 2, 1963 absolving defendant from the complaint, under the following findings and conclusions:

"From the exhibits and pleading submitted in connection with the stipulation of facts, the following facts have

been established: That the plaintiff sold a jeepney bearing Motor No. MVO-21857 to defendant Eliezer Espayos, the purchase price of which was to be paid by installment as shown in Exh. 'A'. In order to secure the payment of the balance of the purchase price, a chattel mortgage was executed by Eliezer Espayos and also signed by defendant Roque Senining as shown in Exhibit '1'. For the unpaid balance of the purchase price, the plaintiff required the execution of a promissory note which is Exh. 'A' duly signed by Eliezer Espayos as principal and the defendant Roque Senining as one of the guarantors of the promissory note Exh. 'A'.

"The records will show further that the jeep subject to the sale made by the plaintiff bearing Motor No. MVO-21857 and with Plate No. TPU-6091 for the year 1958 was registered in the Motor Vehicles Office in Bacolod City in the name of Manuel V. Ko as shown in Exhibit '7' and as such the plaintiff therefore, is not the registered owner of that vehicle in the year 1958 when he sold it to Eliezer Espayos. It is further shown that in 1959 the said jeep was registered in the name of Loreto Denila and that the same jeep was the subject of a document of chattel mortgage executed by Loreto Denila to Delfin Guillergan as shown in Exhibit '2'. When this chattel mortgage was foreclosed, the plaintiff filed a third-party claim, Exh. '5'. Notwithstanding this third-party claim and because the plaintiff did not pursue his claim in a proper judicial proceeding, the jeepney bearing Motor No. MVO-21857 was sold by the Provincial sheriff of Negros Occidental to Delfin Guillergan, Exhibit '6'.

From the aforementioned facts, it is clear and conclusive that when the plaintiff sold this jeepney to Eliezer Espayos as shown in Exh. 'A', the plaintiff was not the owner of said jeep. The subject matter of the sale did not belong to the plaintiff and, consequently, the sale, Exh. '1', was null and void. The plaintiff should not receive something in consideration of that sale because he was not the owner of the jeep. As a matter of fact, as provided for by the penal code, anyone who knowingly sells properties belonging to another can be the subject of criminal prosecution for estafa. The plaintiff has no right not only to sell the property, the jeepney, but also to receive the consideration thereof. As part of the consideration of this sale was the promissory note which represents the unpaid balance of the value of the jeep, consequently, the promissory note is likewise null and void. In order that a contract is valid in accordance with the civil code, it must have three elements. First, the consent of the contracting parties. Second, the subject matter, and third, the consideration thereof. It is clear from the aforementioned facts that the chattel mortgage is null and void because the subject matter was not owned by the plaintiff Hodges at the time of the sale thereof. Likewise, the consideration of the promissory note is the value of the purchase price of the jeepney which the plaintiff should not collect because he was not the owner of the jeepney. Consequently, the promissory note is likewise null and void. You cannot separate the chattel mortgage from the promissory note because the consideration of the promissory note is the purchase price of the jeepney which was the subject matter of the chattel mortgage." [2]

Plaintiff appealed the lower court's judgment to the Court of Appeals, which under its resolution of December 12, 1972 certified the appeal to this Court as involving purely questions of law since the case was decided on the parties' stipulation of facts.

The crux of the case lies in whether from the mere certification of the Bacolod City motor vehicles registrar that the Ford jeepney sold with chattel mortgage by plaintiff to Espayos on May 21, 1958 (Exhibit 1) was registered "under the name of Mr. Manuel V. Ko for the years 1957 and 1958" (Exhibit 7) can justify the lower court's conclusion that "the plaintiff was not the owner of said jeep. x x x The plaintiff has no right not only to sell the property, the jeepney, but also to receive the consideration thereof," and that "the consideration of the promissory note [sued upon] is the value of the purchase price of the jeepney which the plaintiff should not collect because he was not the owner of the jeepney. Consequently, the promissory note is likewise null and void."

It is clear that the burden of showing the nullity of the promissory note duly executed by defendant with his co-defendants subject-matter of the action lies upon defendant. The principal, Espayos, and the other guarantor,

Sigaton, defaulted and have not complained or asserted the nullity of the promissory note for alleged nullity or failure of consideration. Defendant duly admitted in his answer having executed the promissory note in favor of plaintiff "as an accommodation guarantor." [3] He further submitted in evidence, Exhibit 5 which was the third party claim dated July 16, 1959 filed by plaintiff with the Bacolod city sheriff in foreclosure or attachment proceedings of the jeepney conducted by said sheriff at the instance of one Delfin Guillergan, wherein plaintiff expressly claimed to be the owner of the jeepney, sold by him in installments to Espayos and for which Espayos had executed a chattel mortgage thereof in his favor, as follows:

"That the said Jeepney, being owned by the undersigned, was sold in installment payments to Eliezer A. Espayos and covered by Chattel Mortgage dated May 21, 1958, and registered in the Registry of Property, a copy of which is hereto attached and made integral part of this claim as Annex 'A';

"That said Eliezer A. Espayos does not become owner of the said Jeepney until and after all the installment payments have been paid in full to the undersigned;

"That the cost of the said Jeepney is in the sum of P1,800.00. Please free the Jeepney from the attachment and deliver same to the undersigned."

The chattel mortgage executed on May 21, 1958 by Espayos in favor of plaintiff (presented by defendant as Exhibit 1) recited that he "hereby conveys and mortgages to the said mortgagee" the Ford jeepney in question and that "this mortgage is given as security for the payment according to its terms" of the promissory note subject of plaintiff's complaint.

Under these facts, defendant has failed to discharge the burden of showing the nullity or failure of consideration of the promissory note duly executed by him "as an accommodation guarantor" with his other co-guarantor Lolita Sigaton, and the lower court's unsupported conclusion that the promissory note sued upon is "null and void" cannot stand and must be set aside.

Neither has defendant justified his contention that his guaranty liability should be deemed extinguished when plaintiff, after the sheriff proceeded with the sale at public auction of the jeepney upon the creditor's putting up an indemnity bond, opted not to file an action against the bond but instead to sue defendant and his co-defendants under their promissory note; i.e. to enforce payment of the obligation rather than to cancel the sale to Espayos or foreclose the chattel mortgage, since Article 1484, Civil Code, expressly gives him the choice of remedy.

The Court has noted *motu proprio* that defendant's liability under his guaranty is merely joint and not solidary, by virtue of the provisions of Article 1208, Civil Code that "there is a solidary liability only when the obligation expressly so states" and of Article 2065, Civil Code that

"Should there be several guarantors of only one debtor and for the same debt, the obligation to answer for the same is divided among all. The creditor cannot claim from the guarantors except the shares which they are respectively bound to pay, unless solidarity has been expressly stipulated. x x x"

ACCORDINGLY, the appealed judgment is set aside and reversed, and in lieu thereof, another is hereby rendered sentencing defendant to pay one-half of the sum of P1,800.00 representing the unpaid balance of the promissory note, with the stipulated interest at the rate of one percent (1%) per month thereon from October 20, 1958, until fully paid, and the stipulated sum of P90.00 (10% of defendant's share of the liability) as attorney's fees. Defendant is further ordered to pay the costs of suit in all instances. SO ORDERED.

Zaldivar, Fernando, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, Acting C.J., took no part.

Ruiz Castro, J., concurs in the result.

Barredo, J., dissents in a separate opinion.

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[1] Exhibits numbered 1, 1-A, 2, 2-A to 7 and 7-a, inclusive.

[2] Rec. on Appeal, decision, pp. 25-27.

[3] Answer, pars. 2 and 5, Rec. on Appeal, pp. 8-9.

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#### DISSENTING

BARREDO, J.:

I dissent.

To start with, it seems to be the thrust of the majority opinion that the fact that Espayos and Sigaton allowed themselves to be declared in default amounts to an admission of their liability to plaintiff-appellee. Such a view is contrary to the most elementary rule that a party in default admits nothing and that on the contrary, he is considered by the law as denying in the most effective manner each and all of the bases of plaintiff's alleged cause or causes of action, hence, the requirement that plaintiff should nevertheless actually prove by competent evidence his cause of action. This has been particularly true since the 1964 Rules went into effect because the new rules give him not only the right to appeal but the right to notice of all substantially amended or supplemented pleadings and of the judgment, even if no motion to lift the order of default is filed. Moreover, whatever significance we may give to or gather from such default of Espayos and Sigaton is definitely *res inter alios acta* insofar as Senining is concerned.

In the second place, I cannot agree that just because Senining admitted in the stipulation of facts that the promissory note he co-signed with Espayos and Sigaton had not yet been paid, he is thereby necessarily estopped from claiming lack or failure of consideration. Precisely, the majority's own recital of facts in this respect says that together with such admission, Senining offered and plaintiff had no objection to certain documents being made part of the stipulation, presumably to speak for themselves, namely, the documents showing that (1) in the year 1958 when plaintiff allegedly sold the jeepney in question to Espayos, the registered owner of the jeepney was not the plaintiff but one Manuel V. Ko (Exh. 7) who does not appear to be in any manner a privy in the transaction between Espayos and plaintiff; (2) in the year 1959, the said jeepney was registered in the name of one Loreto Denila who had mortgaged the same to Delfin Guillergan (Exhibit 2); (3) this last-mentioned chattel mortgage was foreclosed, and plaintiff filed a third party claim alleging that he was the owner of the jeepney and not Espayos and that the cash thereof was P1,800.00 (when, on the other hand, the deed of sale (Exhibit 1) stipulated that it was P2,400.00 P600 of which was allegedly paid in cash); (4) this third party claim was abandoned after Guillergan filed the corresponding bond; and (5) the jeepney was actually sold to Guillergan by the sheriff in the foreclosure sale.

Under these facts, I find it difficult to hold that Senining has not proven lack of consideration. Indeed, I cannot find in the record any competent evidence at all of consideration. Appellant is relying on nothing more than the bare recitals in the documents, the deed of sale from appellant to appellee and the appellee's deed of chattel mortgage in favor of appellant, which are precisely the very ones being impugned as not truthful. My position is that the moment it was shown by indubitable documentary evidence that the title and possession of the jeepney in question were in the possession of persons other than appellant during the corresponding material dates, the burden of proof shifted to appellant to at least present some *prima facie* evidence that in spite of the recital in the documents offered by Senining, he was the owner of the vehicle in question and that he did actually deliver the

same to Espayos. These facts cannot be presumed, since there are undisputed documents which speak for themselves indicating the contrary.

During the deliberations, the ponente argued that the Court should presume regularity in favor of appellant's position. But my common sense tells me that under the circumstances of this case, it was his duty to explain why the official records showed that title and possession happened to be successively with Ko, Denila and Guillergan instead of being with him or with Espayos. This he did not do. For his part, Justice Castro made the observation that since the evidence shows that Senining owes money to Hodges and he admits not having paid the debt, that is enough ground to render judgment against Senining. But this is not a case of a simple unconditional promissory note the consideration for which is presumed. Here, the parties all agreed that the promissory note was co-signed by Senining as security for the payment of the balance of the purchase price of the jeepney herein involved. The issue is whether or not there was really such a vehicle sold by appellant to Espayos. On this point, my conclusion from the facts stipulated by the parties is that there is nothing therein to show that Hodges was ever the owner of the said jeepney nor possessor thereof. He never offered any evidence to prove these facts outside of the deed of sale to Espayos and the latter's deed of chattel mortgage in his favor, which as I have already explained are the very documents in issue.

But that is not all. Senining had a cross-claim against Espayos and Sigaton. Why is there no judgment in regard to said claim?

In view of all the foregoing, I vote to affirm the judgment of the trial court, with costs against appellant.

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