

FERNANDO MAULINI ET AL., PLAINTIFFS AND APPELLEES, VS. ANTONIO G. SERRANO, DEFENDANT AND APPELLANT.

G.R. No. L-8844. December 16, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila in favor of the plaintiff for the sum of P3,000, with interest thereon at the rate of 1 1/2 per cent per month from September 5, 1912, together with the costs.

The action was brought by the plaintiff upon the contract of indorsement alleged to have been made in his favor by the defendant upon the following promissory note:

"P3,000. Due 5th of September, 1912.

"We jointly and severally agree to pay to the order of Don Antonio G. Serrano on or before the 5th day of September, 1912, the sum of three thousand pesos (P3,000) for value received for commercial operations. Notice and protest renounced. If the sum herein mentioned is not completely paid on the 5th day of September, 1912, this instrument will draw interest at the rate of 1 1/2 per cent per month from the date when due until the date of its complete payment. The makers hereof agree to pay the additional sum of P500 as attorney's fees in case of failure to pay the note.

"Manila, June 5, 1912.

(Sgd.) "For Padern, Moreno & Co., by F. Moreno, member of the firm. For Jose" Padern, by F. Moreno. Angel Gimenez."

The note was indorsed on the back as follows :

"Pay to the order of Don Fernando Maulini, value received. Manila, June 5, 1912. (Sgd.) A. G. Serrano."

The first question for resolution on this appeal is whether or not, under the Negotiable Instruments Law, an indorser of a negotiable promissory note may, in an action brought by his indorsee, show, by parol evidence, that the indorsement was wholly without consideration and that, in making it, the indorser acted as agent for the indorsee, as a mere vehicle of transfer of the naked title from the maker to the indorsee, for which he received no consideration whatever.

The learned trial court, although it received parol evidence on the subject provisionally, held, on the final decision of the case, that such evidence was not admissible to alter, vary, modify or contradict the terms of the contract of indorsement, and, therefore, refused to consider the evidence thus provisionally received, which tended to show that, by verbal agreement between the indorser and the indorsee, the indorser, in making the indorsement, was acting as agent for the indorsee, as a mere vehicle for the transference of naked title, and that his indorsement was wholly without consideration. The court also held that it was immaterial whether there was a consideration for the

transfer or not, as the indorser, under the evidence offered, was an accommodation indorser.

We are of the opinion that the trial court erred in both findings.

In the first place, the consideration of a negotiable promissory note, or of any of the contracts connected therewith, like that of any other written instrument, is, between the immediate parties to the contract, open to attack, under proper circumstances, for the purpose of showing an absolute lack or failure of consideration.

It seems, according to the parol evidence provisionally admitted on the trial, that the defendant was a broker doing business in the city of Manila and that part of his business consisted in looking up and ascertaining persons who had money to loan as well as those who desired to borrow money and, acting as a mediary, negotiate a loan between the two. He had done much business with the plaintiff and the borrower, as well as with many other people in the city of Manila, prior to the matter which is the basis of this action, and was well known to the parties interested. According to his custom in transactions of this kind, and the arrangement made in this particular case, the broker obtained compensation for his services of the borrower, the lender paying nothing¹ therefor. Sometimes this was a certain per cent of the sum loaned; at other times it was a part of the interest which the borrower was to pay, the latter paying 1 1/2 per cent per month for the use of the money, the lender taking 1 per cent and the broker 1/2 per cent. According to the method usually followed in these transactions, and the procedure in this particular case, the broker delivered the money personally to the borrower, took the note in his own name and immediately transferred it by indorsement to the lender. In the case at bar this was done at the special request of the indorsee and simply as a favor to him, the latter stating to the broker that he did not wish his name to appear on the books of the borrowing company as a lender of money and that he desired that the broker take the note in his own name, immediately transferring to him title thereto by indorsement. This was done, the note being at once transferred to the lender.

According to the evidence referred to, there never was a moment when Serrano was the real owner of the note. It was always the note of the indorsee, Maulini, he having furnished the money which was the consideration for the note directly to the maker and being the only person who had the slightest interest therein, Serrano, the broker, acting solely as an agent, a vehicle by which the naked title to the note passed from the borrower to the lender. The only payment that the broker received was for his services in negotiating the loan. He was paid absolutely nothing for becoming responsible as an indorser on the paper, nor did the indorsee lose, pay or forego anything, or alter his position thereby.

Nor was the defendant an accommodation indorser. The learned trial court quoted that provision of the Negotiable Instruments Law which defines an accommodation party as "one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew the same to be only an accommodation party." (Act No. 2031, sec. 29.)

We are of the opinion that the trial court misunderstood this definition. The accommodation to which reference is made in the section quoted is not one to the person who takes the note—that is, the payee or indorsee, but one to the maker or indorser of the note. It is true that in the case at bar it was an accommodation to the plaintiff, in a popular sense, to have the defendant indorse the note; but it was not the accommodation described in the law, but, rather, a mere favor to him and one which in no way bound Serrano. In cases of accommodation indorsement the indorser makes the indorsement for the accommodation of the maker. Such an indorsement is generally for the purpose of better securing the payment of the note—that is, he lends his name to the maker, not to the holder. Cutting it in another way: An accommodation note is one to which the accommodation party has put his name,

without consideration, for the purpose of accommodating some other party who is to use it and is expected to pay it. The credit given to the accommodation party is sufficient consideration to bind the accommodation maker. Where, however, an indorsement is made as a favor to the indorsee, who requests it, not the better to secure payment, but to relieve himself from a distasteful situation, and where the only consideration for such indorsement passes from the indorser to the indorsee, the situation does not present one creating an accommodation indorsement, nor one where there is a consideration sufficient to sustain an action on the indorsement.

The prohibition in section 285 of the Code of Civil Procedure does not apply to a case like the one before us. The purpose of that prohibition is to prevent alteration, change, modification or contradiction of the terms of a written instrument, admittedly existing, by the use of parol evidence, except in the cases specifically named in the section. The case at bar is not one where the evidence offered varies, alters, modifies or contradicts the terms of the contract of indorsement admittedly existing. The evidence was not offered for that purpose. The purpose was to show that no contract of indorsement ever existed; that the minds of the parties never met on the terms of such a contract; that they never mutually agreed to enter into such a contract; and that there never existed a consideration upon which such an agreement could be founded. The evidence was not offered to vary, alter, modify, or contradict the terms of an agreement which it is admitted existed between the parties, but to deny that there ever existed any agreement whatever; to wipe out all apparent relations between the parties, and not to vary, alter or contradict the terms of a relation admittedly existing; in other words, the purpose of the parol evidence was to demonstrate, not that the indorser did not intend to make the particular indorsement which he did make; not that he did not intend to make the indorsement in the terms made; but, rather, to deny the reality of any indorsement; that a relation of any kind whatever was created or existed between him and the indorsee by reason of the writing on the back of the instrument; that no consideration ever passed to sustain an indorsement of any kind whatsoever.

The contention has some of the appearances of a case in which an indorser seeks to prove forgery. Where an indorser claims that his name was forged, it is clear that parol evidence is admissible to prove that fact, and, if he proves it, it is a complete defense, the fact being that the indorser never made any such contract, that no such relation ever existed between him and the indorsee, and that there was no consideration whatever to sustain such a contract. In the case before us we have a condition somewhat similar. While the indorser does not claim that his name was forged, he does claim that it was obtained from him in a manner which, between the parties themselves, renders the contract as completely inoperative as if it had been forged.

Parol evidence was admissible for the purposes named. There is no contradiction of the evidence offered by the defense and received provisionally by the court. Accepting it as true the judgment must be reversed.

The judgment appealed from is reversed and the complaint dismissed on the merits; no special finding as to costs.

Arellano, C. J., Johnson and Trent, JJ., concur.

TORRES, J., with whom concurs ARAULLO, J.

Act No. 2031, known as the Negotiable Instruments Law, which governs the present case, establishes various kinds of indorsements by means of which the liability of the indorser is in some manner limited, distinguishing it from that of the regular or general indorser, and among those kinds is that of the qualified indorsement which, pursuant to section 38 of the same Act, constitutes the indorser a mere assignor of the title to the instrument, and may be made by adding to the indorser's signature the words "without recourse" or any words of similar import.

If the defendant, Antonio G. Serrano, intervened, as he alleged and tried to prove that he did at the trial, only as a broker or agent between the lender and plaintiff, Maulini, and the makers of the promissory note, Padern, Moreno & Co. and Angel Gimenez, in order to afford an opportunity to the former to invest the amount of the note in such

manner that it might bring him interest, the defendant could have qualified the indorsement in question by adding to his signature the words "without recourse" or any others' such as would have made known in what capacity he intervened in that transaction. As the defendant did not do so and as he signed the indorsement in favor of the plaintiff Maulini for value received from the latter, his liability, according to section 66 of the Act aforesaid, is that of a regular or general indorser, who, this same section provides, engages that if the instrument be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. And the evidence which the defendant presented, tending to show what were the conditions to which he obligated himself and in what capacity he intervened in making that indorsement and that this latter was absolutely without consideration, should not have been admitted so that he might elude the aforesaid obligation, or, if admitted, should not be taken into account, because as a regular indorser he warranted, pursuant to the said section 66, that the instrument was genuine and in all respects what it purported to be, that he had a good title to it, and that it was at the time of his indorsement valid and subsisting. He cannot, therefore, by means of any evidence, and much less of such as consists of his own testimony, and as such interested party, alter, modify, contradict or annul, as he virtually claimed and claims to be entitled to do, what in writing and with a full and perfect knowledge of the meaning and import of the words contained in the indorsement, he set forth therein over his signature.

Section 63 of the Act above cited says that a person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. This provision of the law clearly indicates that in every negotiable instrument it is absolutely necessary to specify the capacity in which the person intervenes who is mentioned therein or takes part in its negotiation, because only by so doing can it be determined what liabilities arise from that intervention and from whom, how and when they must be exacted. And if, in the event of a failure to express the capacity in which the person who signed the negotiable instrument intended to be bound, he should be deemed to be an indorser, when the very words of the instrument expressly and conclusively show that such he is, as occurs in the present case, and when the indorsement contains no restriction, modification, condition or qualification whatever, there cannot be attributed to him, without violating the provisions of the said Act, any other intention than that of being bound in the capacity in which he appears in the instrument itself, nor can evidence be admitted or, if already admitted, taken into consideration, for the purpose of proving such other intention, for the simple reason that if the law has already fixed and determined the capacity in which it must be considered that the person who signed the negotiable instrument intervened and the intention of his being bound in a definite capacity, for no other purpose, undoubtedly, than that there shall be no evidence given in the matter, when that capacity appears in the instrument itself and the intention is determined by the very same capacity, as occurs in this case, the admission of evidence in reference thereto is entirely unnecessary, useless, and contrary to the purposes of the law, which is clear and precise in its provisions and admits of no subterfuges or evasions for escaping obligations contracted upon the basis of credit, with evident and sure detriment to those who intervened or took part in the negotiation of the instrument.

However, it is held in the majority opinion, for the purpose of sustaining the premise that the proofs presented by the defendant could have been admitted without violating the provisions of section 285 of the Code of Civil Procedure, that the evidence was not offered to vary, alter, modify, or contradict the terms of an agreement which it is admitted existed between the parties, but to deny that there ever existed any agreement whatever; to wipe out all apparent relations between the parties, and not to vary, alter or contradict the terms of a relation admittedly existing; in other words, the purpose of the parol evidence was to demonstrate, not that the indorser did not intend to make the particular indorsement which he did, not that he did not intend to make the indorsement in the terms made, but rather to deny the reality of any indorsement; to deny that a relation of any kind whatsoever was created

or existed between him and the indorsee by reason of the writing on the back of the instrument; to deny that any consideration ever passed to sustain an indorsement of any kind whatsoever. It is stated in the same decision that the contention has some of the appearances of a case in which an indorser seeks to prove forgery.

First of all, we do not see that there exists any appearance or similarity whatever between the case at bar and one where forgery is sought to be proved. The defendant did not, either civilly or criminally, impugn the indorsement as being false. He admitted its existence, as stated in the majority opinion itself, and did not disown his signature written in the indorsement. His denial to the effect that the indorsement was wholly without consideration, aside from the fact that it is in contradiction to the statements that he over his signature made in the instrument, does not allow the supposition that the instrument was forged.

The meaning which the majority opinion apparently wishes to convey, in calling attention to the difference between what, as it says, was the purpose of the evidence presented by the defendant and what was sought to be proved thereby, is that the defendant does not endeavor to contradict or alter the terms of the agreement, which is contained in the instrument and is admitted to exist between the parties; but to deny the existence of such an agreement between them, that is, the existence of any indorsement at all, and that any consideration ever passed to sustain the said indorsement, or, in other words, that the defendant acknowledged the indorsement as regards the form in which it appears to have been drawn up, but not with respect to its essence, that is, to the truth of the particular facts set forth in the indorsement. It cannot be denied that the practical result of such evidence is other than to contradict, modify, alter or even to annul the terms of the agreement contained in the indorsement: so that, in reality, the distinction does not exist that is mentioned as a ground of the decision of the majority of the court in support of the opinion that the evidence in question might have been admitted, without violating the provisions of the aforementioned section 285 of the Code of Civil Procedure. This section is based upon the same principle which is taken into account in the Negotiable Instruments Law to write into it such positive and definite provisions which purport, without possibility of discussion or doubt, the uselessness of taking evidence when the capacity of the person who intervened in a negotiable instrument or his intention of being bound in a particular way appears in the instrument itself or has been fixed by statute, if it is not shown that he did so in some other capacity than that of maker, drawer or acceptor.

But, aside from what the Code of Civil Procedure prescribes with respect to this matter, as the present case is governed by the Negotiable Instruments Law, we must abide by its provisions.

Section 24 of this Act, No. 2031, says that every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon, to have become a party thereto for value. If the Act establishes this presumption for the case where there might be doubt with respect to the existence of a valuable consideration, in order to avoid the taking of evidence in the matter, when the consideration appears from the instrument itself by the expression of the value, the introduction of evidence is entirely unnecessary and improper.

According to section 25 of the same Act, value is any consideration sufficient to support a simple contract, and so broad is the scope the law gives to the meaning of "value" in this kind of instruments that it considers as such a prior or preexistent debt, whether the instrument be payable on demand or at some future date.

Section 26 provides that where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. It is unquestionable that the defendant gave the P3,000 for the instrument, and, for the purpose of the plaintiff's being considered a holder for value, both in respect to the maker and to the defendant indorser, it is immaterial whether he did so directly to the person who appears in the promissory note as the maker or whether he delivered the sum to the defendant in order that this

latter might in turn, deliver it to the maker.

The defendant being" the holder of the instrument, he is also unquestionably the holder in due course. In the first place, in order to avoid doubts with respect to this matter, which might require the introduction of evidence, the Act before mentioned has provided, in section 59, that every holder is deemed prima facie to be a holder in due course, and such is the weight it gives to this presumption and to the consequences derived therefrom, that it imposes upon the holder the burden to prove that he or some person under whom he claims acquired the title in due course, only when it is shown that the title of any person who has negotiated the instrument was defective. This rule, however, pursuant to the said section, does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title, in which case the defendant Serrano is not included, because, in the first place, he was not bound on the instrument prior to the acquisition of the title by the plaintiff, but it was the maker of the promissory note who was bound on the instrument executed in favor of the defendant or indorser prior to the acquisition of the title by the plaintiff; and, in the second place, it does not appear, nor was it proved, as will be seen hereinafter, that the title in question was defective.

According to section 52 of the same Act, the plaintiff is the holder in due course of the instrument in question, that is, of the promissory note containing the obligation compliance with which is demanded of him by the defendant, because he took the instrument under the conditions: (a) That it was complete and regular upon its face; (b) that he became the holder of it before it was overdue, and without notice that it had been previously dishonored; (c) that he took it in good faith and for value; and (d) that at the time it was negotiated to him he had no notice of any deficiency in the instrument or defect in the title of the person negotiating it.

Pursuant to section 56 of the said Act, to constitute notice of a deficiency in the instrument or defect in the title of the person negotiating, the same, the person to whom it is transferred must have had actual knowledge of the deficiency or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

In the present case it cannot be said, for it is not proven, that the plaintiff, upon accepting the instrument from the defendant, had actual knowledge of any deficiency or defect in the same, for the simple reason that it contains no deficiency or defect. Its terms are very clear and positive. There is nothing ambiguous, concealed, or which might give rise to any doubt whatever with respect to its terms or to the agreement made by the parties. Furthermore, as stated in the majority opinion, the defendant did not intend to make the particular indorsement which he did make in the terms, form and manner in which it was made, nor did he intend to change or alter the terms of the agreement which is admitted to have existed between the parties. All of which indicates that, neither as regards the plaintiff nor as regards the defendant, was there any deficiency or defect in the title or in the instrument, and that the plaintiff, upon taking or receiving the instrument from the defendant, had no knowledge of any fact from which bad faith on his part might be implied. Besides, no evidence was produced of the existence of any such bad faith, nor of the knowledge of any deficiency or defect.

Moreover, section 55 of Act No. 2031 provides that the title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. As no evidence was taken on these points, the only ones that may be proven as regards negotiable instruments, the defendant must be deemed to be the holder of the instrument in due course, pursuant to the provisions of the aforecited section 59, and he cannot be required to prove that he or his predecessor in interest acquired the title as such holder in due course.

Now then, according to section 28 of the same Act, as against the holder of the instrument in due course absence or failure of consideration is not a matter of defense; and, pursuant to section 57, a holder in due course holds the

instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. And the next section, No. 58 prescribes that in the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable.

So it could not be clearer than that, pursuant to the provisions of the Negotiable Instruments Law, which governs the case at bar, as the plaintiff is the holder in due course of the instrument in question, no proof whatever from the defendant could be admitted, nor if admitted should be taken into account, bearing on the lack of consideration in the indorsement, as alleged by him, and for the purpose of denying the existence of any indorsement and that any relation whatever was created or existed between him and the indorsee; likewise, that no defenses of any kind could have been admitted from the defendant in respect to the said instrument, and, finally, that the defendant is obligated to pay the sum mentioned in the said indorsement, it being immaterial whether or not he be deemed to be an accommodation party in the instrument, in order that compliance with the said obligation may be required of him in his capacity of indorser.

Basing our conclusions on the foregoing grounds, and regretting to dissent from the opinion of the majority of our colleagues, we believe that the judgment appealed from should be affirmed, with the costs against the appellant.

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