

VICENTE R. DE OCAMPO & CO., PLAINTIFF AND APPELLEE, VS. ANITA GATCHALIAN, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-15126. November 30, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Manila, Hon. Conrado M. Vasquez, presiding, sentencing the defendants to pay the plaintiff the sum of P600, with legal interest from September 10, 1953 until paid, and to pay the costs.

The action is for the recovery of the value of a check for P600 payable to the plaintiff and drawn by defendant Anita C. Gatchalian. The complaint sets forth the check and alleges that plaintiff received it in payment of the indebtedness of one Matilde Gonzales; that upon receipt of said check, plaintiff gave Matilde Gonzales PI 58.25, the difference between the face value of the check and Matilde Gonzales' indebtedness. The defendants admit the execution of the check but they allege in their answer, as affirmative defense, that it was issued subject to a condition, which was not fulfilled, and that plaintiff was guilty of gross negligence in not taking steps to protect itself.

At the time of the trial, the parties submitted a stipulation of facts, which reads as follows:

"Plaintiff and defendants through their respective undersigned attorney's respectfully submit the following Agreed Stipulation of Facts:

First.—That on or about 8 September 1953, in the evening, defendant Anita C. Gatchalian who was then interested in looking for a car for the use of her husband and the family, was shown and offered a car by Manuel Gonzales who was accompanied by Emil Fajardo, the latter being personally known to defendant Anita C. Gatchalian;

Second.—That Manuel Gonzales represented to defendant Anita C. Gatchalian that he was duly authorized by the owner of the car, Ocampo Clinic, to look for a buyer of said car and to negotiate for and accomplish said sale, but which facts were not known to plaintiff;

Third.—That defendant Anita C. Gatchalian, finding the price of the car quoted by Manuel Gonzales to her satisfaction, requested Manuel Gonzales to bring the car the day following together with the certificate of registration of the car, so that her husband would be able to see same; that on this request of defendant Anita C. Gatchalian, Manuel Gonzales advised her that the owner of the car will not be willing to give the certificate of registration unless there is a showing that the party interested in the purchase of said car is ready and willing to make such purchase and that for this purpose Manuel Gonzales requested defendant Anita C. Gatchalian to give him, (Manuel Gonzales) a check which will be shown to the owner as evidence of buyer's good faith in the intention to purchase the said car, the said check to be for safekeeping only of Manuel Gonzales and to be returned to defendant Anita C. Gatchalian the following day when Manuel Gonzales brings the car and the certificate of registration, but which facts were not known to plaintiff;

Fourth.—That relying on these representations of Manuel Gonzales and with this assurance that said check will be only for safekeeping and which will be returned to said defendant the following day when the car and its certificate of registration will be brought by Manuel Gonzales to defendants, but which facts were not known to plaintiff, defendant Anita C. Gatchalian drew and issued a check, Exh. 'B'; that Manuel Gonzales executed and issued a receipt for said check, Exh. '1';

Fifth.—That on the failure of Manuel Gonzales to appear the day following and on his failure to bring the car and its certificate of registration and to return the check, Exh. 'B' on the following day as previously agreed upon, defendant Anita C. Gatchalian issued a 'Stop Payment Order' on the check, Exh. '3', with the drawee bank. Said 'Stop Payment Order' was issued without previous notice on plaintiff, not being known to defendant, Anita C. Gatchalian and who furthermore had no reason to know check was given to plaintiff;

Sixth.—That defendants, both or either of them, did not know personally Manuel Gonzales or any member of his family at any time prior to September 1953; but that defendant Hipolito Gatchalian is personally acquainted with V. R. de Ocampo;

Seventh.—That defendants, both or either of them, had no arrangements or agreement with the Ocampo Clinic at any time prior to, on or after 9 September 1953 for the hospitalization of the wife of Manuel Gonzales and neither or both of said defendants had assumed, expressly or impliedly, with the Ocampo Clinic, the obligation of Manuel Gonzales or his wife for the hospitalization of the latter;

Eight.—That defendants, both or either of them, had no obligation or liability, directly or indirectly with the Ocampo Clinic before, or on 9 September 1953;

Ninth.—That Manuel Gonzales having received the check Exh. 'B' from defendant Anita C. Gatchalian under the representations and conditions herein above specified, delivered the same to the Ocampo Clinic, in payment of the fees and expenses arising from the hospitalization of his wife;

Tenth.—That plaintiff for and in consideration of fees and expenses of hospitalization and the release of the wife of Manuel Gonzales from its hospital, accepted said check, applying P441.75 (Exhibit 'A') thereof to payment of said fees and expenses and delivering to Manuel Gonzales the amount of P158.25 (as per receipt, Exhibit 'D') representing the balance on the amount of the said check, Exh. 'B';

Eleventh.—That the acts of acceptance of the check and application of its proceeds in the manner specified above were made without previous inquiry by plaintiff from defendants;

Twelfth.—That plaintiff filed or caused to be filed with the Office of the City Fiscal of Manila, a complaint for estafa against Manuel Gonzales based on and arising from the acts of said Manuel Gonzales in paying his obligations with plaintiff and receiving the cash balance of the check, Exh. 'B' and that said complaint was subsequently dropped;

Thirteenth.—That the exhibits mentioned in this stipulation and the other exhibits submitted previously, be considered as parts of this stipulation, without necessity of formally offering them in evidence ;

WHEREFORE, it is most respectfully prayed that this agreed stipulation of facts be admitted and that the parties hereto be given fifteen days from today within which to submit simultaneously their memorandum to discuss the issues of law arising from the facts, reserving to either party the right to submit reply memorandum, if necessary, within ten days from receipt of their main memoranda." (pp. 21-25, Defendant's Record on Appeal.)

No other evidence was submitted and upon said stipulation the court rendered the judgment already alluded to above.

In their appeal defendants-appellants contend that the check is not a negotiable instrument, under the facts and

circumstances stated in the stipulation of facts, and that plaintiff is not a holder in due course. In support of the first contention, it is argued that defendant Gatchalian had no intention to transfer her property in the instrument as it was for safekeeping merely and, therefore, there was no delivery required by law (Section 16, Negotiable Instruments Law); that assuming for the sake of argument that delivery was not for safekeeping merely, the delivery was conditional and the condition was not fulfilled.

In support of the contention that plaintiff-appellee is not a holder in due course, the appellant argues that plaintiff-appellee cannot be a holder in due course because there was no negotiation prior to plaintiff-appellee's acquiring the possession of the check; that a holder in due course presupposes a prior party from whose hands negotiation proceeded, and in the case at bar, plaintiff-appellee is the payee, the maker and the payee being original parties. It is also claimed that the plaintiff-appellee is not a holder in due course because it acquired the check with notice of defect in the title of the holder, Manuel Gonzales, and because under the circumstances stated in the stipulation of facts there were circumstances that brought suspicion about Gonzales' possession and negotiation, which circumstances should have placed the plaintiff-appellee under the duty to inquire into the title of the holder. The circumstances are as follows:

"The check is not a personal check of Manuel Gonzales. (Paragraph Ninth, Stipulation of Facts). Plaintiff could have inquired why a person would use the check of another to pay his own debt. Furthermore, plaintiff had the 'means of knowledge' inasmuch as defendant Hipolito Gatchalian is personally acquainted with V. R. de Ocampo (Paragraph Sixth, Stipulation of Facts.)

"The maker Anita C. Gatchalian is a complete stranger to Manuel Gonzales and Dr. V. R. de Ocampo (Paragraph Sixth, Stipulation of Facts).

"The maker is not in any manner obligated to Ocampo Clinic nor to Manuel Gonzales. (Par. 7, Stipulation of Facts.)

"The check could not have been intended to pay the hospital fees which amounted only to P441.75. The check is in the amount of P600.00, which is in excess of the amount due plaintiff. (Par. 10, Stipulation of Facts).

"It was necessary for plaintiff to give Manuel Gonzales change in the sum of P158.25 (Par. 10, Stipulation of Facts). Since Manuel Gonzales is the party obliged to pay, plaintiff should have been more cautious and wary in accepting a piece of paper and disbursing cold cash.

"The check is payable to bearer. Hence, any person who holds it should have been subjected to inquiries. Even in a Bank, Checks ARE NOT CASHED) WITHOUT INQUIRY FROM THE BEARER. The Same inquiries should have been made by plaintiff." (Defendants-appellant's brief, pp: 52-53).

Answering the first contention of appellant, counsel for plaintiff-appellee argues that in accordance with the best authority on the Negotiable Instruments Law, plaintiff-appellee may be considered as a holder in due course, citing Brannan's Negotiable Instruments Law, 6th edition, page 252. On this issue Brannan holds that a payee may be a holder in due course and says that to this effect is the greater weight of authority, thus:

"Whether the payee may be a holder in due course under the N. I. L., as he was at common law, is a question upon which the courts are in serious conflict. There can be no doubt that a proper interpretation of the act read as a whole leads to the conclusion that a payee may be a holder in due course under any circumstance in which he meets the requirements of Sec. 52.

"The argument of Professor Brannan in an earlier edition of this work has never been successfully answered and is here repeated: "Section 191 defines 'holder' as the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof. Sec. 52 defines a holder in due course as 'a holder who has taken the instrument under the following conditions: 1. That it is complete and regular on its face. 2. That he became the

holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact. 3. That he took it in good faith and for value. 4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.'

"Since 'holder*', as defined in sec. 191, includes a payee who is in possession the word holder in the first clause of sec. 52 and in the second subsection may be replaced by the definition in sec. 191 so as to read 'a holder in due course is a payee or indorsee who is in possession,' etc." (Brannan's on Negotiable Instruments Low, 6th ed., p. 543).

The first argument of the defendants-appellants, therefore, depends upon whether or not the plaintiff-appellee is a holder in due course. If it is such a holder in due course, it is immaterial that it was the payee and an immediate party to the instrument.

The other contention of the plaintiff is that there has been no negotiation of the instrument, because the drawer did not deliver the instrument to Manuel Gonzales with the intention of negotiating the same, or for the purpose of giving effect thereto, for as the stipulation of facts declares the check was to remain in the possession of Manuel Gonzales, and was not to be negotiated, but was to serve merely as evidence of good faith of defendants in their desire to purchase the car being sold to them. Admitting that such was the intention of the drawer of the check when she delivered it to Manuel Gonzales, it was no fault of the plaintiff-appellee drawee if Manuel Gonzales delivered the check or negotiated it. As the check was payable to the plaintiff-appellee, and was entrusted to Manuel Gonzales by Gatchalian, the delivery to Manuel Gonzales was a delivery by the drawer to his own agent; in other words, Manuel Gonzales was the agent of the drawer Anita Gatchalian insofar as the possession of the check is concerned. So, when the agent of drawer Manuel Gonzales negotiated the check with the intention of getting its value from plaintiff-appellee, negotiation took place through no fault of the plaintiff-appellee, unless it can be shown that the plaintiff-appellee should be considered as having notice of the defect in the possession of the holder Manuel Gonzales. Our resolution of this issue leads us to a consideration of the last question presented by the appellants, i. e., whether the plaintiff-appellee may be considered as a holder in due course.

Section 52, Negotiable Instruments Law, defines holder in due course, thus:

"A holder in due course is a holder who has taken the instrument under the following conditions:

- (a) That it is 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, if such was the fact;
- (c) That he took it in good faith and for value;
- (d) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

The stipulation of facts expressly states that plaintiff-appellee was not aware of the circumstances under which the check was delivered to Manuel Gonzales, but we agree with the defendants-appellants that the circumstances indicated by them in their briefs, such as the fact that appellants had no obligation or liability to the Ocampo Clinic; that the amount of the check did not correspond exactly with the obligation of Matilde Gonzales to Dr. V. R. de Ocampo; and that the check had two parallel lines in the upper left hand corner, which practice means that the check could only be deposited but may not be converted into cash—all these circumstances should have put the plaintiff-appellee to inquiry as to the why and wherefore of the possession of the check by Manuel Gonzales, and why he used it to pay Matilde's account. It was payee's duty to ascertain from the holder Manuel Gonzales what the nature of the latter's title to the check was or the nature of his possession. Having failed in this respect, we must declare that plaintiff-appellee was guilty of gross neglect in not finding out the nature of the title and possession of Manuel Gonzales, amounting to legal absence of good faith, and it may not be considered as a

holder of the check in good faith, to such effect is the consensus of authority.

"In order to show that the defendant had knowledge of such facts that his action in taking the instrument amounted to bad faith,' it is not necessary to prove that the defendant knew the exact fraud that was practiced upon the plaintiff by the defendant's assignor, it being sufficient to show that the defendant had notice that there was something wrong about his assignor's acquisition of title, although he did not have notice of the particular wrong that was committed. *Paika vs. Perry*, 225 Mass. 563, 114 N. E. 830.

"It is sufficient that the buyer of a note had notice or knowledge that the note v.t? in some way tainted with fraud. It is not necessary that he should know the particulars or even the nature of the fraud, since all that is required is knowledge of such facts that his action in taking the note amounted to bad faith. *Ozark Motor Co. vs. Horton* (Mo. App.), 196 S. W. 395. Accord. *Davis vs. First Nat. Bank*, 26 Ariz. 621, 229 Pac. 391.

"Liberty bonds stolen from the plaintiff were brought by the thief, a boy fifteen years old, less than five feet tall, immature in appearance and bearing on his face the stamp of a degenerate, to the defendants' clerk for sale. The boy stated that they belonged to his mother. The defendants paid the boy for the bonds without any further inquiry. Held, the plaintiff could recover the value of the bonds. The term 'bad faith' does not necessarily involve furtive motives, but means bad faith in a commercial sense. The manner in which the defendants conducted their Liberty Loan department provided an easy way for thieves to dispose of their plunder. It was a case of 'no questions asked.' Although gross negligence does not of itself constitute bad faith, it is evidence from which bad faith may be inferred. The circumstances thrust the duty upon the defendants to make further inquiries and they had no right to shut their eyes deliberately to obvious facts. *Morris vs. Muir*, 111 Misc. Rep. 739, 181 N. Y. Supp. 913, *affd. in memo.*, 191 App. Div. 947, 181 N. Y. Supp. 945," (pp: 640-642, Brannan's Negotiable Instruments Law, 6th ed.,).

The above considerations would seem sufficient to justify our ruling that plaintiff-appellee should not be allowed to recover the value of the check. Let us now examine the express provisions of the Negotiable Instruments Law pertinent to the matter to find if our ruling conforms thereto. Section 52 (c) provides that a holder in due course is one who takes the instrument "in good faith and for value;" Section 59, "that every holder is deemed prima facie to be a holder in due course;" and Section 52 (d), that in order that one may be a holder in due course it is necessary that "at the time the instrument was negotiated to him "he had no notice of any * * * defect in the title of the person negotiating it;" and lastly Section 59, that every holder is deemed prima facie to be a holder in due course.

In the case at bar the rule that a possessor of the instrument is prima facie a holder in due course does not apply because there was a defect in the title of the holder (*Manuel Gonzales*), because the instrument is not payable to him or to bearer. On the other hand, the stipulation of facts indicated by the appellants in their brief, like the fact that the drawer had no account' with the payee; that the holder did not show or tell the payee why he had the check in his possession and why he was using it for the payment of his own personal account—show that holder's title was defective or suspicious, to say the least. As holder's title was defective or suspicious, it cannot be stated that the payee acquired the check without knowledge of said defect in holder's title, and for this reason the presumption that it is a holder in due course or that it acquired the instrument in good faith does not exist. And having presented no evidence tfiat it acquired the check in good faith, it (payee) cannot be considered as a holder in due course. In other words, under the circumstances of the case, instead of the presumption that payee was a holder in good faith, the fact is that it acquired possession of the instrument under circumstances that should have put it to inquiry as to the title of the holder who negotiated the check to it. The burden was, therefore, placed upon it to show that notwithstanding the suspicious circumstances, it acquired the check in actual good faith.

The rule applicable to the case at bar is that describe in the case of *Howard National Bank vs. Wilson, et al.*, 96 Vt. 438, 120 At. 889, 894, where the Supreme Court of Vermont made the following disquisition:

"Prior to the Negotiable Instruments Act, two distinct lines of cases had developed in this country. The first had its origin in *Gill vs. Cubitt*, 3 B. & C. 466, 10 E. L. 215, where the rule was distinctly laid down by the court of King's Bench that the purchaser of negotiable paper must exercise reasonable prudence and caution, and that, if the circumstances were such as ought to have excited the suspicion of a prudent and careful man, and he made no inquiry, he did not stand in the legal position of a bona fide holder. The rule was adopted by the courts of this country generally and seem to have become a fixed rule in the law of negotiable paper. Later in *Goodman vs. Harvey*, 4 A. & E. 870, 31 E. C. L. 381, the English court abandoned its former position and adopted the rule that nothing short of actual bad faith or fraud in the purchaser would deprive him of the character of a bona fide purchaser and let in defenses existing between prior parties, that no circumstances of suspicion merely, or want of proper caution in the purchaser, would have this effect, and that even gross negligence would have no effect, except as evidence tending to establish bad faith or fraud. Some of the American courts adhered to the earlier rule, while others followed the change inaugurated in *Goodman vs. Harvey*. The question was before this court in *Roth vs. Colvin*, 32 Vt. 125, and, on full consideration of the question, a rule was adopted in harmony with that announced in *Gill vs. Cubitt*, which has been adhered to in subsequent cases, including those cited above. Stated briefly, one line of cases including our own had adopted the test of the reasonably prudent man and the other that of actual good faith. It would seem that it was the intent of the Negotiable Instruments Act to harmonize this disagreement by adopting the latter test. That such is the view generally accepted by the courts appears from a recent review of the cases concerning what constitutes notice of defect. *Brannan on Neg. Ins. Law*, 187-201. To effectuate the general purpose of the act to make uniform the Negotiable Instruments Law of those states which should enact it, we are constrained to hold (contrary to the rule adopted in our former decisions) that negligence on the part of the plaintiff, or suspicious circumstances sufficient to put a prudent man on inquiry, will not of themselves prevent a recovery, but are to be considered merely as evidence bearing on the question of bad faith. See G. L. 3113, 3172, where such a course is required in construing other uniform acts.

"It comes to this then: When the case has taken such shape that the plaintiff is called upon to prove himself a holder in due course to be entitled to recover, he is required to establish the conditions entitling him to standing as such, including good faith in taking the instrument. It devolves upon him to disclose the facts and circumstances attending the transfer, from which good or bad faith in the transaction may be inferred."

In the case at bar as the payee acquired the check under circumstances which should have put it to inquiry, why the holder had the check and used it to pay his own personal account, the duty devolved upon it, plaintiff-appellee, to prove that it actually acquired said check in good faith. The stipulation of facts contains no statement of such good faith, hence we are forced to the conclusion that plaintiff payee has not proved that it acquired the check in good faith and may not be deemed a holder in due course thereof.

For the foregoing considerations, the decision appealed from should be, as it is hereby, reversed, and the defendants are absolved from the complaint. With costs against plaintiff-appellee.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and De Leon, JJ., concur.

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