

PHILIPPINE NATIONAL BANK, PETITIONER VS. BENITO SEETO RESPONDENT.

G.R. No. L-4388. August 13, 1952

Ponente: LABRADOR, J.

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LABRADOR, J.:

On March 13, 1948, respondent Benito Seeto called at the branch of the Philippine National Bank, petitioner herein, at Surigao, Surigao, and presented a check, No. A-21096, in the amount of P5,000 dated at Cebu on March 10, 1948, payable to cash or bearer, and drawn by one Gan Yek Kiao against the Cebu branch of the Philippine Bank of Communications. After consultation with the employees of the branch, Seeto made a general and unqualified indorsement of the check, and petitioner's agency accepted it and paid respondent the amount of P5,000 therefor. The check was mailed to petitioner's Cebu branch on March 20, 1948, and was presented to the drawee bank for payment on April 9, 1948, but the check was dishonored for "insufficient funds." So the check was returned to petitioner's Surigao agency, and upon receipt thereof by it on April 14, 1948, said branch immediately sent a letter to the respondent herein demanding immediate refund of the value of the check. A second communication of the same tenor was sent on April 26, 1948, to which respondent answered asking that plaintiff's, contemplated suit be deferred while he was making inquiries about the reasons for the dishonor of the check. Thereafter, respondent refused to make the refund demanded, claiming that at the time of the negotiation of the check the drawer had sufficient funds in the drawee bank, and that had the petitioner's Surigao agency not delayed to forward the check until the drawer's funds were exhausted, the same would have been paid.

Thereupon petitioner presented a complaint in the Court of First Instance of Surigao, alleging that respondent Benito Seeto gave assurances to petitioner's agency in Surigao that the drawer of the check had sufficient funds with the drawee bank, and that upon these assurances petitioner's agency delivered the P5,000 to the respondent after the latter had made a general and unqualified indorsement thereon. Respondent denied having made the alleged assurances. Upon this issue petitioner submitted two witnesses at the time of the trial, who testified that it was not the practice of petitioner's agency to cash out of town checks, and that the check was cashed because of the assurances given by the respondent that the drawer, had sufficient funds, and that he (respondent) would refund the amount paid by petitioner's agency in case the check is dishonored. Respondent denied having given the assurances. The trial court found, notwithstanding respondent's denial to the contrary, that the respondent made an undertaking to refund the amount of the check in the event of dishonor. In support of this finding it found that as the drawee bank is not in Cebu, it was impossible for petitioner's agency to make an immediate verification of the drawer's solvency, and must have taken precautions to protect itself against loss by requiring the respondent to give assurances that he would return the amount of the check in case of nonpayment. It also found that there was no unreasonable delay in the presentation of the check, and, therefore, rendered judgment sentencing respondent to refund the amount he had received for the check.

On appeal to the Court of Appeals, this court held that petitioner was guilty of unreasonably retaining and with holding the check, and that the delay in the presentment for payment was inexcusable, so that respondent was

thereby discharged from liability. It also held that parole evidence is incompetent to show that one signing a check as indorser is merely a surety or guarantor, rejecting the evidence adduced at the trial court about the respondent's assurances and promise to refund. It, therefore, reversed the judgment of the trial court and dismissed the complaint, with costs. Against this judgment an appeal by certiorari has been brought to this Court, petitioner if Philippine National Bank contending that the Court of Appeals erred in applying sections 143 and 144 of the Negotiable Instruments Law and declaring respondent Benito Seeto discharged of his liability as indorser of the check, and in not admitting parole evidence to show that respondent made oral assurances to refund the value of the check in case of dishonor.

In support of petitioner's first assignment of error, it is argued that inasmuch as a check need not be presented for acceptance, unlike a bill of exchange as required by Section 143, Section 144 of the law is not applicable to the case at bar but Section 84, which provides:

SEC. 84. Liability of person secondarily liable, when instrument dishonored.—Subject to the provisions of this Act, when the instrument is dishonored by nonpayment, an immediate right of recourse to all Parties secondarily liable thereon accrues to the holder.

It is true that Section 143 and 144 of the law are not applicable, because these are provisions having to do with the presentation of a bill of exchange for acceptance, and not applicable to a check, as to which presentment for acceptance is not required.

It is also true that Section 84 is applicable, but its application is subject to the condition imposed by Section 186 to the effect that the check must be presented for within a reasonable time after its issue.

SEC. 186.—Within what time a check must be presented. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Counsel for petitioner, however, argues that inasmuch as the above section expressly provides for the discharge of the drawer from liability to the extent of the loss caused by the delay, and, on the other hand, it is silent as to the liability of the indorser, the latter may not be considered discharged from liability by reason of the delay in the presentment for payment under the general principle *inclusio unius est exclusio alterius*. We find no reason nor merit in the argument. The silence of Section 186 as to the indorser is due to the fact that his discharge is already expressly covered by the provision of Section 84, the indorser being a person secondarily liable on the instrument. The reason for the difference between the liability of the indorser and that of the drawer in case of dishonor is that the drawer is not probably or necessarily prejudiced thereby, while an indorser is, actually or by legal, presumption.

Innumerable decisions have already been rendered in the state courts of the United States to the effect that although the drawer of a check is discharged only to the extent of loss caused by unreasonable delay in presentment, an indorser is wholly discharged thereby irrespective of any question of loss or injury. (*Swift & Co. vs. Miller*, 62 Ind. App. 312, 113 N. E. 447, cited in *Brannan's Negotiable Instruments Law*, p. 1134, *Nuzum vs. Sheppard*, 87 W. Va. 243, 104 S. E. 587, 11 A. L. R. 1024, *Ibid.*)

"The proposition maintained in the reported case *Sheppard*, ante. 1024) that the indorser of a check, unlike the drawer, is relieved of liability thereon by an unreasonable delay in presenting the same for payment, whether or not he is injured by the delay, is supported by the great weight of authority. (Cases cited.)

"The Court, in *Gough v. Staats* (N. Y.) supra, says: "Upon the question of due diligence to charge an indorser, whether he has been prejudiced or not by the delay is perfectly immaterial. It is not inquired into. The law presumes he has been prejudiced." According to the court in *Carroll v. Sweet* (1891) 128 N. Y. 19, 1-3 L- R.

A. 43, 27 N. E. 763, "presentment in due time as fixed by the law merchant was a condition upon performance of which the liability of the defendant, as indorser, depended, and this delay was not excused, although the drawer of the check had no funds, or was insolvent, or because presentment would have been unavailing as a means of procuring payment." Only when there is affirmative proof that the indorser knew when he cashed the check that there would be no funds in the bank to meet it can the rule be avoided. Otherwise, the failure to present the check in due course for payment will discharge the indorser, even though such presentment would have been unavailing. *Start v. Tupper (Vt.) supra.*" (11 A. L. R. Annotation, pp. 1028-1029.)

We have been unable to find any authority sustaining the proposition that an indorser of a check is not discharged from liability for an unreasonable delay in presentation for payment. This is contrary to the essential nature and character of negotiable instruments—their negotiability. They are supposed to be passed on with promptness in the ordinary course of business transactions; not to be retained or kept for such time as the holder may want, otherwise the smooth flow of commercial transactions would be hindered.

There seems to be an intimation in the decision appealed from that inasmuch as the check was drawn payable elsewhere than at the place of business of the drawer, it must be presented for acceptance or negotiation within a reasonable time, and upon failure to do so the drawer and all Endorsers thereof are discharged pursuant to Section 144 of the law. Against this insinuation the petitioner argues that the application of sections 143 and 144 is not proper, that it may not be presumed that the check in question not drawn and executed in Cebu, the residence or Place of business of the drawer. There is no evidence at all as to the place where the check was drawn. However, we have already pointed out above that neither Section 143 nor Section 144 is applicable. But our ruling that respondent was discharged upon the dishonor of check is based on Sections 84 and 186, the latter expressly requiring that a check must be presented for payment within a reasonable time after issue.

It is not claimed by the petitioner on this appeal that the conclusion of the Court of Appeals that there was unreasonable delay in the presentation of the check for payment at the drawee bank is erroneous. The petitioner concedes the correctness of this conclusion, although for purposes of argument merely. We find that the conclusion is correct. The fact, admitted by the witnesses for the petitioner, that checks of the drawer issued subsequent to March 13, 1948, drawn against the same bank and cashed at the same Surigao agency, were not dishonored positively shows that the drawer had enough funds when he issued the check in question, and that had it not been for the unreasonable delay in its presentation for payment, the petitioner herein would have been able to receive payment therefore. The check is dated March 10 and was cashed by the petitioner's agency on March 13, 1948. It was not mailed until seven days thereafter, i.e., on March 20, 1948, or ten days after issue. No excuse was given for this delay. Assuming that it took, one week, or say ten days, or until March 30, for the check to reach Cebu, neither can there be any excuse for not presenting it for payment at the drawee bank until April 9, 1948, or 10 days after it reached Cebu. We, therefore, find no reason for disturbing the conclusion of the Court of Appeals that there was unreasonable delay in the presentation of the check for payment at the drawee bank, and that as consequence thereof, the indorser, respondent herein, was thereby discharged.

With respect to the second assignment of error, petitioner argues that the verbal assurances given by the respondent to the employees of the bank that he was ready to refund the amount if the check should be dishonor by the drawee bank is a collateral agreement, separate and distinct from the endorsement, by virtue of which petitioner herein was induced to cash the check, and, therefore, admissible as an exception to the parol evidence rule. Petitioner's contention in this respect is not entirely unfounded. In the case of *Tan Machan vs. De La Trinidad, et al.*, 3 Phil., 684, this court held that parol evidence is admissible to show that parties signing as principals merely did so as sureties. In the case of *Robles vs. Lizarraga Hermanos*, 50 Phil., 387, it was also held by this court that parol evidence is admissible to prove "an independent or collateral agreement which constituted an inducement to the making of the sale or part of the consideration therefore." (*Ibid.*, p. 395.) In *Philips vs.*

Preston, 5 How. (U. S.) 278, 12 L. ed. 152, the Supreme Court of the United States held that any prior or contemporaneous conversation in connection with a note or its indorsement, may be proved by parol evidence. And Wigmore states that "an extrinsic agreement between indorser and indorsee which can not be embodied in the instrument without impairing its credit is provable by parol." (9 Wigmore 148, section 2445 [3].) If, therefore, the supposed assurances that the drawer had funds and that the respondent herein would refund the amount of the check if the drawer had no funds, were the considerations or reasons that induced the branch agency of the petitioner to go out of its ordinary practice of not cashing out of town checks and accept the check and to Pay its face value, the same should be provable by parol, Provided, of course, that the assurances or inducements offered would not vary, alter, or destroy the obligations attached by law to the indorsement.

We find, however, that the supposed assurances of refund in case of dishonor of the check are precisely the ordinary obligations of an indorser, and these obligations are, under the law, considered discharged by an unreason delay in the presentation of the check for payment.

SEC. 66. Liability of general indorser.—* * *.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it 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. (Italics ours.)

There was no express obligation assumed by the respondent herein that the drawer would always have funds, or that he (the indorser) would refund the amount of the check even if there was delay in its presentation, so that while the Court of Appeals may have committed an error in disregarding the evidence submitted by petitioner at the trial of the assurances made by respondent herein at the time of the negotiation of the check, such error was without prejudice, because the supposed assurances given were part of his obligations as an indorser, which were discharged by the unreasonable delay in the presentation of the check for payment.

The judgment appealed from is, therefore, affirmed, with costs against the petitioner.

Paras, C. J., Feria, Bengzon, Padilla, Tuason, Montemayor, and Bautista Angelo, JJ., concur.

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