

STATE INVESTMENT HOUSE, INC., PETITIONER, VS. COURT OF APPEALS AND NORA B. MOULIC, RESPONDENTS.

G.R. No. 101163. January 11, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

The liability to a holder in due course of the drawer of checks issued to another merely as security, and the right of a real estate mortgagee after extrajudicial foreclosure to recover the balance of the obligation, are the issues in this Petition for Review of the Decision of respondent Court of Appeals.

Private respondent Nora B. Moulic issued to Corazon Victoriano, as security for pieces of jewelry to be sold on commission, two (2) post-dated Equitable Banking Corporation checks in the amount of Fifty Thousand Pesos (P50,000.00) each, one dated 30 August 1979 and the other, 30 September 1979. Thereafter, the payee negotiated the checks to petitioner State Investment House, Inc. (STATE).

MOULIC failed to sell the pieces of jewelry, so she returned them to the payee before maturity of the checks. The checks, however, could no longer be retrieved as they had already been negotiated. Consequently, before their maturity dates, MOULIC withdrew her funds from the drawee bank.

Upon presentment for payment, the checks were dishonored for insufficiency of funds. On 20 December 1979, STATE allegedly notified MOULIC of the dishonor of the checks and requested that it be paid in cash instead, although MOULIC avers that no such notice was given her.

On 6 October 1983, STATE sued to recover the value of the checks plus attorney's fees and expenses of litigation.

In her Answer, MOULIC contends that she incurred no obligation on the checks because the jewelry was never sold and the checks were negotiated without her knowledge and consent. She also instituted a Third-Party Complaint against Corazon Victoriano, who later assumed full responsibility for the checks.

On 26 May 1988, the trial court dismissed the Complaint as well as the Third-Party Complaint, and ordered STATE to pay MOULIC P3,000.00 for attorney's fees.

STATE elevated the order of dismissal to the Court of Appeals, but the appellate court affirmed the trial court on the ground that the Notice of Dishonor to MOULIC was made beyond the period prescribed by the Negotiable Instruments Law and that even if STATE did serve such notice on MOULIC within the reglementary period it would be of no consequence as the checks should never have been presented for payment. The sale of the jewelry was never effected; the checks, therefore, ceased to serve their purpose as security for the jewelry.

We are not persuaded.

The negotiability of the checks is not in dispute. Indubitably, they were negotiable. After all, at the pre--trial, the parties agreed to limit the issue to whether or not STATE was a holder of the checks in due course.[1]

In this regard, Sec. 52 of the Negotiable Instruments Law provides -

"Sec. 52. What constitutes a holder in due course. - 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 was 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."

Culled from the foregoing, a prima facie presumption exists that the holder of a negotiable instrument is a holder in due course.[2] Consequently, the burden of proving that STATE is not a holder in due course lies in the person who disputes the presumption. In this regard, MOULIC failed.

The evidence clearly shows that: (a) on their faces the post-dated checks were complete and regular; (b) petitioner bought these checks from the payee, Corazon Victoriano, before their due dates;[3] (c) petitioner took these checks in good faith and for value, albeit at a discounted price; and, (d) petitioner was never informed nor made aware that these checks were merely issued to payee as security and not for value.

Consequently, STATE is indeed a holder in due course. As such, it holds the instruments free from any defect of title of prior parties, and from defenses available to prior parties among themselves; STATE may, therefore, enforce full payment of the checks.[4]

MOULIC cannot set up against STATE the defense that there was failure or absence of consideration. MOULIC can only invoke this defense against STATE if it was privy to the purpose for which they were issued and therefore is not a holder in due course.

That the post-dated checks were merely issued as security is not a ground for the discharge of the instrument as against a holder in due course. For, the only grounds are those outlined in Sec. 119 of the Negotiable Instruments Law:

"Sec. 119. Instrument; how discharged. - A negotiable instrument is discharged: (a) By payment in due course by or on behalf of the principal debtor; (b) By payment in due course by the party accommodated, where the instrument is made or accepted for his accommodation; (c) By the intentional cancellation thereof by the holder; (d) By any other act which will discharge a simple contract for the payment of money; (e) When the principal debtor becomes the holder of the instrument at or after maturity in his own right."

Obviously, MOULIC may only invoke paragraphs (c) and (d) as possible grounds for the discharge of the instrument. But, the intentional cancellation contemplated under paragraph (c) is that cancellation effected by destroying the instrument either by tearing it up,[5] burning it,[6] or writing the word "cancelled" on the instrument. The act of destroying the instrument must also be made by the holder of the instrument intentionally. Since MOULIC failed to get back possession of the post-dated checks, the intentional cancellation of the said checks is altogether impossible.

On the other hand, the acts which will discharge a simple contract for the payment of money under paragraph (d) are determined by other existing legislations since Sec. 119 does not specify what these acts are, e.g., Art. 1231 of the Civil Code[7] which enumerates the modes of extinguishing obligations. Again, none of the modes outlined therein is applicable in the instant case as Sec. 119 contemplates of a situation where the holder of the instrument is the creditor while its drawer is the debtor. In the present action, the payee, Corazon Victoriano, was no longer MOULIC's creditor at the time the jewelry was returned.

Correspondingly, MOULIC may not unilaterally discharge herself from her liability by the mere expediency of withdrawing her funds from the drawee bank. She is thus liable as she has no legal basis to excuse herself from

liability on her checks to a holder in due course.

Moreover, the fact that STATE failed to give Notice of Dishonor to MOULIC is of no moment. The need for such notice is not absolute; there are exceptions under Sec. 114 of the Negotiable Instruments Law:

"Sec. 114. When notice need not be given to drawer. - Notice of dishonor is not required to be given to the drawer in the following cases: (a) Where the drawer and the drawee are the same person; (b) When the drawee is a fictitious person or a person not having capacity to contract; (c) When the drawer is the person to whom the instrument is presented for payment; (d) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (e) Where the drawer had countermanded payment."

Indeed, MOULIC'S actuations leave much to be desired. She did not retrieve the checks when she returned the jewelry. She simply withdrew her funds from her drawee bank and transferred them to another to protect herself. After withdrawing her funds, she could not have expected her checks to be honored. In other words, she was responsible for the dishonor of her checks, hence, there was no need to serve her Notice of Dishonor, which is simply bringing to the knowledge of the drawer or indorser of the instrument, either verbally or by writing, the fact that a specified instrument, upon proper proceedings taken, has not been accepted or has not been paid, and that the party notified is expected to pay it.[8]

In addition, the Negotiable Instruments Law was enacted for the purpose of facilitating, not hindering or hampering transactions in commercial paper. Thus, the said statute should not be tampered with haphazardly or lightly. Nor should it be brushed aside in order to meet the necessities in a single case.[9]

The drawing and negotiation of a check have certain effects aside from the transfer of title or the incurring of liability in regard to the instrument by the transferor. The holder who takes the negotiated paper makes a contract with the parties on the face of the instrument. There is an implied representation that funds or credit are available for the payment of the instrument in the bank upon which it is drawn.[10] Consequently, the withdrawal of the money from the drawee bank to avoid liability on the checks cannot prejudice the rights of holders in due course. In the instant case, such withdrawal renders the drawer, Nora B. Moulic, liable to STATE, a holder in due course of the checks.

Under the facts of this case, STATE could not expect payment as MOULIC left no funds with the drawee bank to meet her obligation on the checks,[11] so that Notice of Dishonor would be futile.

The Court of Appeals also held that allowing recovery on the checks would constitute unjust enrichment on the part of STATE Investment House, Inc. This is error.

The record shows that Mr. Romelito Caoili, an Account Assistant, testified that the obligation of Corazon Victoriano and her husband at the time their property mortgaged to STATE was extrajudicially foreclosed amounted to P1.9 million; the bid price at public auction was only P1 million.[12] Thus, the value of the property foreclosed was not even enough to pay the debt in full.

Where the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of mortgage, the mortgagee is entitled to claim the deficiency from the debtor.[13] The step thus taken by the mortgagee-bank in resorting to an extra-judicial foreclosure was merely to find a proceeding for the sale of the property and its action cannot be taken to mean a waiver of its right to demand payment for the whole debt.[14] For, while Act 3135, as amended, does not discuss the mortgagee's right to recover such deficiency, it does not contain any provision either, expressly or impliedly, prohibiting recovery. In this jurisdiction, when the legislature intends to foreclose the right of a creditor to sue for any deficiency resulting from foreclosure of a security given to guarantee an obligation, it so expressly provides. For instance, with respect to pledges, Art. 2115 of the Civil Code[15] does

not allow the creditor to recover the deficiency from the sale of the thing pledged. Likewise, in the case of a chattel mortgage, or a thing sold on installment basis, in the event of foreclosure, the vendor "shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary will be void".[16]

It is clear then that in the absence of a similar provision in Act No. 3135, as amended, it cannot be concluded that the creditor loses his right recognized by the Rules of Court to take action for the recovery of any unpaid balance on the principal obligation simply because he has chosen to extrajudicially foreclose the real estate mortgage pursuant to a Special Power of Attorney given him by the mortgagor in the contract of mortgage.[17]

The filing of the Complaint and the Third-Party Complaint to enforce the checks against MOULIC and the VICTORIANO spouses, respectively, is just another means of recovering the unpaid balance of the debt of the VICTORIANOs.

In fine, MOULIC, as drawer, is liable for the value of the checks she issued to the holder in due course, STATE, without prejudice to any action for recompense she may pursue against the VICTORIANOs as Third-Party Defendants who had already been declared as in default.

WHEREFORE, the petition is GRANTED. The decision appealed from is REVERSED and a new one entered declaring private respondent NORA B. MOULIC liable to petitioner STATE INVESTMENT HOUSE, INC., for the value of EBC Checks Nos. 30089658 and 30089660 in the total amount of P100,000.00, P3,000.00 as attorney's fees, and the costs of suit, without prejudice to any action for recompense she may pursue against the VICTORIANOs as Third-Party Defendants.

Costs against private respondent.

SO ORDERED.

Cruz, (Chairman), and Griño-Aquino, JJ., concur.

Padilla, J., no part.

[1] Rollo, pp. 13-14.

[2] State Investment House, Inc. v. Court of Appeals, G.R. No. 72764, 13 July 1989; 175 SCRA 310.

[3] Per Deeds of Sale of 2 July 1979 and 25 July 1979, respectively; Rollo, p. 13.

[4] Salas v. Court of Appeals, G.R. No. 76788, 22 January 1990; 181 SCRA 296.

[5] Montgomery v. Schwald, 177 No App 75, 166 SW 831; Wilkins v. Shaglund, 127 Neb 589, 256 NW 31.

[6] See Henson v. Henson, 268 SW 378.

[7] Art. 1231. Obligations are extinguished: (1) By payment or performance; (2) By the loss of the thing due; (3) By the condonation or remission of the debt; (4) By the confusion or merger of the rights of creditor and debtor; (5) By compensation; (6) By novation x x x x

[8] Martin v. Browns, 75 Ala 442.

[9] Reinhart v. Lucas, 118 W Va 466, 190 SE 772.

[10] 11 Am Jur 589.

[11] See Agbayani, Commercial Laws of the Philippines, Vol. 1, 1984 Ed., citing Ellenbogen v. State Bank, 197

NY Supp 278.

[12] TSN, 25 April 1985, pp. 16-17.

[13] Philippine Bank of Commerce v. de Vera, No. L-18816, 29 December 1962; 6 SCRA 1029.

[14] Medina v. Philippine National Bank, 56 Phil 651.

[15] Art. 2115. The sale of the thing pledged shall extinguish the principal obligation, whether or not the proceeds of the sale are equal to the amount of the principal obligation, interest and expenses in a proper case x x x x If the price of the sale is less, neither shall the creditor be entitled to recover the deficiency, notwithstanding any stipulation to the contrary.

[16] Art. 1484 [3] of the Civil Code.

[17] See Note 14.

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