

CHAN WAN, PLAINTIFF AND APPELLANT, VS. TAN KIM AND CHEN SO, DEFENDANTS AND APPELLEES.*G.R. No. 15380. September 30, 1960*

Ponente: BENGZON, J.

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This suit to collect eleven checks totalling P4,290.00 is here for decision because it involves no issue of fact.

Such checks payable to "cash or bearer", and drawn.. by defendant Tan Kim (the other defendant is her husband) upon the Equitable Banking Corporation, were all presented for payment by Chan Wan to the drawee bank, but they "were all dishonored and returned to him unpaid due to insufficient funds and/or causes attributable to the drawer."

At the hearing of the case, in the Manila court of first instance, the plaintiff did not take the witness stand. His attorney, however, testified only to identify the checks—which are Exhibits A to K—plus the letters of demand upon defendants.

On the other hand, Tan Kim declared without contradiction that the checks had been issued to two persons named Pinong and Muy for some shoes the former had promised to make and "were intended as mere receipts".

In view of such circumstances, the court declined to order payment for two principal reasons: (a) plaintiff failed to prove he was a holder in due course, and (b) the checks being crossed checks should not have been presented to the drawee for "payment," but should have been deposited instead with the bank mentioned in the crossing.

It may be stated in this connection, that defendants asserted a counterclaim, the court dismissed it for failure of proof, and from such dismissal they did not appeal. The only issue is, therefore, the plaintiff's right to collect on the eleven commercial documents.

The Negotiable Instruments Law regulating the issuance of negotiable checks, the rights and the liabilities arising therefrom, does not mention "crossed checks". Art. 541 of the Code of Commerce refers to such instruments.[1] The bills of Exchange Act of England of 1882, contains several provisions about them, some of which are quoted in the margin.[2] In *Philippine National Bank vs. Zulueta*, 101 Phil., 1071; 55 Off. Gaz., 222, we applied some provisions "of said Bills of Exchange Act because the Negotiable Instruments Law, originating from England and codified in the United States, permits resort thereto in matters not covered by it and local legislation.[3]

Eight of the checks here in question bear across their face two parallel transverse lines between which these words are written: non-negotiable—China Banking Corporation. These checks have, therefore, been crossed specially to the China Banking Corporation, and should have been presented for payment by China Banking, and not by Chan Wan.[4] Inasmuch as Chan Wan did present them for payment himself—the Manila court said—there was no proper presentment, and the liability did not attach to the drawer.

We agree to the legal premises and conclusion. It must be remembered, at this point, that the drawer in drawing

the check engaged that "on due presentment, the check would be paid, and that if it be dishonored * * * he will pay the amount thereof to the holder".[5] Wherefore, in the absence of due presentment, the drawer did not become liable.

Nevertheless we find, on the backs of the checks, endorsements which apparently show they had been deposited with the China Banking Corporation and were, by the latter, presented to the drawee bank for collection. For instance, on the back of the check Exhibit A (same as in Exh. B), this endorsement appears:

"For deposit to the account of White House Shoe Supply with the China Banking Corporation."

and then this:

"Cleared through the clearing office Central Bank of the Philippines. All prior endorsements and/or lack of endorsements guaranteed. China Banking Corporation."

And on the back of Exh. G:

"For deposit to the credit of our account. Viuda e Hijos de Chua Chiang Pio People's Shoe Company",

followed by the endorsement of China Banking Corporation as in Exhibits A and B. All the crossed checks have the "clearance" endorsement of China Banking Corporation.

These circumstances would seem to show deposit of the checks with China Banking Corporation and subsequent presentation by the latter through the clearing office; but as drawee had no funds, they were unpaid and returned, some of them stamped "account closed". How they reached his hands, plaintiff did not indicate. Most probably, as the trial court surmised,—this is not a finding of fact—he got them after they had been thus returned, because he presented them in court with such "account closed" stamps, without bothering to explain. Naturally and rightly, the lower court held him not to be a holder in due course under the circumstances, since he knew, upon taking them up, that the checks had already been dishonored.[6]

Yet it does not follow as a legal proposition, that simply because he was not a holder in due course, Chan Wan could not recover on the checks. The Negotiable Instruments Law does not provide that a holder[7] who is not a holder in due course, may not in any case, recover on the instrument. If B purchases an overdue negotiable promissory note signed by A, he is not a holder in due course; but he may recover from A,[8] if the latter has no valid excuse for refusing payment. The only disadvantage of a holder who is not a holder in due course is that the negotiable instrument is subject to defenses¹ as if it were non-negotiable.[9]

Now what defenses did the defendant Tan Kim prove? The lower court's decision does not mention any; evidently His Honor had in mind the defense pleaded in defendant's answer, but thought it unnecessary to specify, because the "crossing" and presentation incidents sufficed to bar recovery, in his opinion.

Tan Kim admitted on cross-examination either that the checks had been issued as evidence of debts to Pinong and Muy, and/or that they had been issued in payment of shoes which Pinong had promised to make for her.

Seeming to imply that Pinong had failed to make the shoes, she asserted Pinong had "promised to pay the checks for me". Yet she did not complete the idea, perhaps because she was. just answering cross-questions, her main testimony having referred merely to their counter-claim.

Needless to say, if it were true that the checks had been issued in payment for shoes that were never made and delivered, Tan Kim would have a good defense as against a holder who is not a holder in due course.[10]

Considering the deficiency of important details on which a fair adjudication of the parties' rights depends, we think the record should be and is hereby returned, in the interest of justice, to the court below for additional

evidence, and such further proceedings as are not inconsistent with this opinion. With the understanding that, as defendants did not appeal, their counterclaim must be and is hereby definitely dismissed. So ordered.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] SEC. 641.—The maker or any legal holder of a check shall be entitled to indicate therein that it be paid to a certain banker or institution, which he shall do by writing across the face the name of said banker or institution, or only the words "and company."

The payment made to a person other than the banker or institution shall not exempt the person on whom it is drawn, if the payment was not correctly made.

[2] 76. [General and Special Crossings Defined.]—(1) Where a check bears across its face an addition of—

(a) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable;" or

(b) Two parallel transverse lines simply, either with or without the words "not negotiable;" that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

79. * * * (2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid. (Taken from Rrannan's Negotiable Instruments Law, 6th Ed. 1250-1251.)

[3] Sec. 196, Negotiable Instruments Law.

[4] If it is not presented) by said Bank for payment, the drawee runs the risk, in case of payment to persons not entitled thereto. So the practice is for the drawee to refuse when presented by individuals. The check is generally deposited with the bank mentioned in the crossing, so that the latter may take charge of the collection.

[5] Sec. 61, Negotiable Instruments Law.

[6] Sec. 52 (b), Negotiable, Instruments Law.

[7] He was a holder all right, because he had possession of the checks that were payable to bearer.

[8] Sec. 51, Negotiable Instruments Law.

[9] Sec. 58, Negotiable Instruments Law.

[10] Lack of consideration is a defense. (Sec. 28, Negotiable Instruments Law.)

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