ANAMER SALAZAR, PETITIONER, VS. J.Y. BROTHERS MARKETING CORPORATION, RESPONDENT.

G.R. No. 171998. October 20, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a petition for review seeking to annul and set aside the Decision[1] dated September 29, 2005 and the Resolution[2] dated March 2, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 83104.

The facts, as found by the Court of Appeals, are not disputed, thus:

> J.Y. Brothers Marketing (J.Y. Bros., for short) is a corporation engaged in the business of selling sugar, rice and other commodities. On October 15, 1996, Anamer Salazar, a freelance sales agent, was approached by Isagani Calleja and Jess Kallos, if she knew a supplier of rice. Answering in the positive, Salazar accompanied the two to J.Y. Bros. As a consequence, Salazar with Calleja and Kallos procured from J. Y. Bros. 300 cavans of rice worth P214,000.00. As payment, Salazar negotiated and indorsed to J.Y. Bros. Prudential Bank Check No. 067481 dated October 15, 1996 issued by Nena Jaucian Timario in the amount of P214,000.00 with the assurance that the check is good as cash. On that assurance, J.Y. Bros. parted with 300 cavans of rice to Salazar. However, upon presentment, the check was dishonored due to "closed account."
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> Informed of the dishonor of the check, Calleja, Kallos and Salazar delivered to J.Y. Bros. a replacement cross Solid Bank Check No. PA365704 dated October 29, 1996 again issued by Nena Jaucian Timario in the amount of P214,000.00 but which, just the same, bounced due to insufficient funds. When despite the demand letter dated February 27, 1997, Salazar failed to settle the amount due J.Y. Bros., the latter charged Salazar and Timario with the crime of estafa before the Regional Trial Court of Legaspi City, docketed as Criminal Case No. 7474.
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> After the prosecution rested its case and with prior leave of court, Salazar submitted a demurrer to evidence. On November 19, 2001, the court a quo rendered an Order, the dispositive portion of which reads:
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> WHEREFORE, premises considered, the accused Anamer D. Salazar is hereby ACQUITTED of the crime charged but is hereby held liable for the value of the 300 bags of rice. Accused Anamer D. Salazar is therefore ordered to pay J.Y. Brothers Marketing Corporation the sum of P214,000.00. Costs against the accused.
>
> SO ORDERED.

Aggrieved, accused attempted a reconsideration on the civil aspect of the order and to allow her to present evidence thereon. The motion was denied. Accused went up to the Supreme Court on a petition for review on certiorari under Rule 45 of the Rules of Court. Docketed as G.R. 151931, in its Decision dated September 23, 2003, the High Court ruled:

> IN LIGHT OF ALL THE FOREGOING, the Petition is GRANTED. The Orders dated November 19, 2001 and January 14, 2002 are SET ASIDE and NULLIFIED. The Regional Trial Court of Legaspi City, Branch 5, is hereby DIRECTED to set Criminal Case No. 7474 for the continuation of trial for the reception of the

> evidence-in-chief of the petitioner on the civil aspect of the case and for the rebuttal evidence of the private complainant and the sur-rebuttal evidence of the parties if they opt to adduce any.
>
> SO ORDERED.[3]

The Regional Trial Court (RTC) of Legaspi City, Branch 5, then proceeded with the trial on the civil aspect of the criminal case.

On April 1, 2004, the RTC rendered its Decision,[4] the dispositive portion of which reads:

> WHEREFORE, Premises Considered, judgment is rendered DISMISSING as against Anamer D. Salazar the civil aspect of the above-entitled case. No pronouncement as to costs.
>
> Place into the files (archive) the record of the above-entitled case as against the other accused Nena Jaucian Timario. Let an alias (bench) warrant of arrest without expiry dated issue for her apprehension, and fix the amount of the bail bond for her provisional liberty at 59,000.00 pesos.
>
> SO ORDERED.[5]

The RTC found that the Prudential Bank check drawn by Timario for the amount of P214,000.00 was payable to the order of respondent, and such check was a negotiable order instrument; that petitioner was not the payee appearing in the check, but respondent who had not endorsed the check, much less delivered it to petitioner. It then found that petitioner's liability should be limited to the allegation in the amended information that "she endorsed and negotiated said check," and since she had never been the holder of the check, petitioner's signing of her name on the face of the dorsal side of the check did not produce the technical effect of an indorsement arising from negotiation. The RTC ruled that after the Prudential Bank check was dishonored, it was replaced by a Solid Bank check which, however, was also subsequently dishonored; that since the Solid Bank check was a crossed check, which meant that such check was only for deposit in payee's account, a condition that rendered such check non-negotiable, the substitution of a non-negotiable Solid Bank check for a negotiable Prudential Bank check was an essential change which had the effect of discharging from the obligation whoever may be the endorser of the negotiable check. The RTC concluded that the absence of negotiability rendered nugatory the obligation arising from the technical act of indorsing a check and, thus, had the effect of novation; and that the ultimate effect of such substitution was to extinguish the obligation arising from the issuance of the Prudential Bank check.

Respondent filed an appeal with the CA on the sole assignment of error that:

> IN BRIEF, THE LOWER COURT ERRED IN RULING THAT ACCUSED ANAMER SALAZAR BY INDORSING THE CHECK (A) DID NOT BECOME A HOLDER OF THE CHECK, (B) DID NOT PRODUCE THE TECHNICAL EFFECT OF AN INDORSEMENT ARISING FROM NEGOTIATION; AND (C) DID NOT INCUR CIVIL LIABILITY.[6]

After petitioner filed her appellees' brief, the case was submitted for decision. On September 29, 2005, the CA rendered its assailed Decision, the decretal portion of which reads:

> IN VIEW OF ALL THE FOREGOING, the instant appeal is GRANTED, the challenged Decision is REVERSED and SET ASIDE, and a new one entered ordering the appellee to pay the appellant the amount of P214,000.00, plus interest at the legal rate from the written demand until full payment. Costs against the appellee.[7]

In so ruling, the CA found that petitioner indorsed the Prudential Bank check, which was later replaced by a Solid Bank check issued by Timario, also indorsed by petitioner as payment for the 300 cavans of rice bought from respondent. The CA, applying Sections 63,[8] 66[9] and 29[10] of the Negotiable Instruments Law, found that petitioner was considered an indorser of the checks paid to respondent and considered her as an accommodation

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indorser, who was liable on the instrument to a holder for value, notwithstanding that such holder at the time of the taking of the instrument knew her only to be an accommodation party.

Respondent filed a motion for reconsideration, which the CA denied in a Resolution dated March 2, 2006.

Hence this petition, wherein petitioner raises the following assignment of errors:

> - THE COURT OF APPEALS ERRED IN IGNORING THE RAMIFICATIONS OF THE ISSUANCE OF THE SOLIDBANK CHECK IN REPLACEMENT OF THE PRUDENTIAL BANK CHECK WHICH WOULD HAVE RESULTED TO THE NOVATION OF THE OBLIGATION ARISING FROM THE ISSUANCE OF THE LATTER CHECK.
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> - THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT OF LEGASPI CITY, BRANCH 5, DISMISSING AS AGAINST THE PETITIONER THE CIVIL ASPECT OF THE CRIMINAL ACTION ON THE GROUND OF NOVATION OF OBLIGATION ARISING FROM THE ISSUANCE OF THE PRUDENTIAL BANK CHECK.
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> - THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE MOTION FOR RECONSIDERATION OF THE PETITIONER ON THE GROUND THAT THE ISSUE RAISED THEREIN HAD ALREADY BEEN PASSED UPON AND CONSIDERED IN THE DECISION SOUGHT TO BE RECONSIDERED WHEN IN TRUTH AND IN FACT SUCH ISSUE HAD NOT BEEN RESOLVED AS YET.[11]

Petitioner contends that the issuance of the Solid Bank check and the acceptance thereof by the respondent, in replacement of the dishonored Prudential Bank check, amounted to novation that discharged the latter check; that respondent's acceptance of the Solid Bank check, notwithstanding its eventual dishonor by the drawee bank, had the effect of erasing whatever criminal responsibility, under Article 315 of the Revised Penal Code, the drawer or indorser of the Prudential Bank check would have incurred in the issuance thereof in the amount of P214,000.00; and that a check is a contract which is susceptible to a novation just like any other contract.

Respondent filed its Comment, echoing the findings of the CA. Petitioner filed her Reply thereto.

We find no merit in this petition.

Section 119 of the Negotiable Instrument Law provides, thus:

> SECTION 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. (Emphasis ours)

And, under Article 1231 of the Civil Code, obligations are extinguished:

> x x x x
>
> (6) By novation.

Petitioner's claim that respondent's acceptance of the Solid Bank check which replaced the dishonored Prudential bank check resulted to novation which discharged the latter check is unmeritorious.

In Foundation Specialists, Inc. v. Betonval Ready Concrete, Inc. and Stronghold Insurance Co., Inc.,[12] we stated the concept of novation, thus:

> x x x Novation is done by the substitution or change of the obligation by a subsequent one which extinguishes the first, either by changing the object or principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor. Novation may:
>
> [E]ither be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superceded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.
>
> An extinctive novation would thus have the twin effects of, first, extinguishing an existing obligation and, second, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation, (2) an agreement of all parties concerned to a new contract, (3) the extinguishment of the old obligation, and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (e.g., a change in interest rates or an extension of time to pay; in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.)

The obligation to pay a sum of money is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones or the new contract merely supplements the old one.[13]

In Nyco Sales Corporation v. BA Finance Corporation,[14] we found untenable petitioner Nyco's claim that novation took place when the dishonored BPI check it endorsed to BA Finance Corporation was subsequently replaced by a Security Bank check,[15] and said:

> There are only two ways which indicate the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. First, novation must be explicitly stated and declared in unequivocal terms as novation is never presumed. Secondly, the old and the new obligations must be incompatible on every point. The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first. In the instant case, there was no express agreement that BA Finance's acceptance of the SBTC check will discharge Nyco from liability. Neither is there incompatibility because both checks were given precisely to terminate a single obligation arising from Nyco's sale of credit to BA Finance. As novation speaks of two distinct obligations, such is inapplicable to this case.[16]

In this case, respondent's acceptance of the Solid Bank check, which replaced the dishonored Prudential Bank check, did not result to novation as there was no express agreement to establish that petitioner was already discharged from his liability to pay respondent the amount of P214,000.00 as payment for the 300 bags of rice. As we said, novation is never presumed, there must be an express intention to novate. In fact, when the Solid Bank check was delivered to respondent, the same was also indorsed by petitioner which shows petitioner's recognition of the existing obligation to respondent to pay P214,000.00 subject of the replaced Prudential Bank check.

Moreover, respondent's acceptance of the Solid Bank check did not result to any incompatibility, since the two checks – Prudential and Solid Bank checks – were precisely for the purpose of paying the amount of P214,000.00,

i.e., the credit obtained from the purchase of the 300 bags of rice from respondent. Indeed, there was no substantial change in the object or principal condition of the obligation of petitioner as the indorser of the check to pay the amount of P214,000.00. It would appear that respondent accepted the Solid Bank check to give petitioner the chance to pay her obligation.

Petitioner also contends that the acceptance of the Solid Bank check, a non-negotiable check being a crossed check, which replaced the dishonored Prudential Bank check, a negotiable check, is a new obligation in lieu of the old obligation arising from the issuance of the Prudential Bank check, since there was an essential change in the circumstance of each check.

Such argument deserves scant consideration.

Among the different types of checks issued by a drawer is the crossed check.[17] The Negotiable Instruments Law is silent with respect to crossed checks,[18] although the Code of Commercemakes reference to such instruments.[19] We have taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and could not be converted into cash.[20] Thus, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein.[21] The change in the mode of paying the obligation was not a change in any of the objects or principal condition of the contract for novation to take place.[22]

Considering that when the Solid Bank check, which replaced the Prudential Bank check, was presented for payment, the same was again dishonored; thus, the obligation which was secured by the Prudential Bank check was not extinguished and the Prudential Bank check was not discharged. Thus, we found no reversible error committed by the CA in holding petitioner liable as an accommodation indorser for the payment of the dishonored Prudential Bank check.

WHEREFORE, the petition is DENIED. The Decision dated September 29, 2005 and the Resolution dated March 2, 2006, of the Court of Appeals in CA-G.R. CV No. 83104, are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Leonardo-De Castro,[*] and Mendoza, JJ., concur.

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[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 905, dated October 5, 2010.

[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Japar B. Dimaampao, concurring; rollo, pp. 23-28.

[2] Id. at 30-31.

[3] Rollo, pp. 23-25.

[4] Penned by Judge Pedro R. Soriao; id. at 38-40.

[5] Id. at 40.

[6] Rollo, p. 46.

[7] Id. at 28.

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[8] Sec. 63. When a person deemed indorser. - A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

[9] Sec. 66. Liability of general indorser. - Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

(a) The matters and things mentioned in subdivisions (a), (b), and (c) of the next preceding section; and
(b) That the instrument is, at the time of his indorsement, valid and subsisting;

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.

[10] Sec. 29. Liability of accommodation party. - An accommodation party is 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 him to be only an accommodation party.

[11] Rollo, p. 14.

[12] G.R. No. 170674, August 24, 2009, 596 SCRA 697.

[13] Id. at 706-708.

[14] G.R. No. 71694, August 16, 1991, 200 SCRA 637.

[15] Dishonored when presented for payment.

[16] Supra note 14, at 642. (Citations omitted.)

[17] See Bank of America, NT & SA v. Associated Citizens Bank, G.R. Nos. 141001 and 141018, May 21, 2009, 588 SCRA 51, 59.

[18] Id.; Art. 541 of the Code of Commerce states: "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 â€›and company.'"

[19] Id., citing Yang v. Court of Appeals, 456 Phil. 378, 395 (2003); Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals, G.R. No. 93048, March 3, 1994, 230 SCRA 643, 647.

[20] Id., citing State Investment House v. Intermediate Appellate Court, G.R. No. 72764, July 13, 1989, 175 SCRA 310, 315.

[21] Id.

[22] See Diongzon v. Court of Appeals, 378 Phil. 1090, 1097 (1999).

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