

MARIANO ACUÑA, PLAINTIFF AND APPELLEE, VS. MARIANO G. VELOSO AND NARCISO XAVIER, DEFENDANTS; MARIANO G. VELOSO, APPELLANT. FRANCISCO J. GONZALEZ, INTERVENOR AND APPELLEE.

G.R. No. 26486. April 01, 1927

Ponente: STREET, J.

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STREET, J.:

This action was instituted in the Court of First Instance of the City of Manila by Mariano Acuña, as transferee of a joint and several note for P25,000, executed by the two defendants, N. Xavier and M. G. Veloso, for the purpose of recovering the amount named therein, with interest at 10 per cent. Xavier answered with a general denial and special defense based on the fact that he had given a second mortgage on certain property to isecure the note and that he had subsequently sold the mortgaged property to another who had assumed the indebtedness. M. G. Veloso answered with a general denial, a plea of non est factum, and a special defense to the effect that plaintiff is not a holder for value and in good faith. In the course of the trial, Francisco J. Gonzalez, as the original payee and transferer of the note, was permitted by the court to intervene in like right with the plaintiff Acuña, and from that time forth the case was prosecuted by Acuña and Gonzalez together. Upon hearing the cause the trial court gave judgment jointly and severally against the defendants for the plaintiff Acuna to recover the full amount of P25,000, with interest at 10 per cent from December 20, 1921, and costs. At the same time, having found that Veloso was a mere accommodation maker as regards Xavier, he gave judgment over in favor Of Veloso against Xavier for whatever the former should pay upon the judgment, and lastly ordered that Veloso be subrogated to the rights of the plaintiff Acuna in a mortgage given by Xavier to secure the debt, as will hereafter be more fully explained. From the judgment finally entered, and later modified, Veloso appealed.

Nearly all of the determinative facts in this case are proved by documents of indubitable authenticity, but the transactions that have been brought within the range of inquiry are numerous and somewhat complicated. This circumstance, coupled with a faulty memory of witnesses as to the relations of these numerous transactions to each other, to say nothing of deliberate misstatements and tergiversations on the part of the witnesses both for plaintiff and defendant, has made the case so perplexing as almost to baffle the understanding. In order to simplify the presentation of the case, we propose to present the facts in separate segments.

To begin with, the plaintiff Acuña is suing in the character of transferee of a negotiable promissory note, but he acquired title to this note more than two years after it fell due. It results that, although he is a purchaser for value, he is not a purchaser in due course before maturity; and he is therefore in the position merely of an assignee of the rights pertaining to F. J. Gonzalez, the original payee and transferer of the note. But Gonzalez, as stated in the opening paragraph of this opinion, has been permitted to intervene in the character of plaintiff for his own protection. We shall therefore first consider the rights of the parties as they would have been if Gonzalez had brought the action in the character of payee, making casus omissus of the transfer of the note to Acuña.

With respect to the note which is the subject of this action, the following facts are in our opinion proved beyond a reasonable doubt: At the time of the execution of said note, in December, 1921, the defendant N. Xavier was acting in Manila as the agent of his codefendant M. G. Veloso, of Cebu, with respect to certain real property owned by the latter in the City of Manila. At the same time Xavier, though lacking in capital, was given to the practice of trading in real estate, so far as his credit permitted, upon his own account; and sometime before this note was executed Xavier's attention had been attracted to the piece of property on Legarda Street, in Manila, which was then on the market. It occurred to him that the acquisition of this property would be a profitable speculation, but he needed P25,000 to put the deal through. Xavier appears to have been on good terms with his principal, Veloso, notwithstanding the fact that Xavier had become already largely indebted to Veloso in connection with the agency which Xavier was exercising with respect to Veloso's Manila property. Xavier accordingly communicated to Veloso his desire to acquire the Legarda property, and at the same time requested Veloso to assist him in the matter. Veloso at first replied evasively, pleading lack of funds to the request for assistance, but at the same time admitted that the property on Legarda Street was apparently a good purchase. In December, thereafter, Veloso came to Manila and the matter was taken up again by Xavier with him, when Veloso decided to lend a helping hand. Meanwhile, F. J. Gonzalez, a man of means and resident of Manila, had been approached with a view to getting him to advance to Xavier the necessary funds to enable the latter to make the purchase contemplated. Gonzalez agreed to advance the money, or to find some one else to do so, upon two conditions, namely, first, that Xavier and Veloso should make their joint and several note for the amount to be advanced and, secondly, that Xavier should agree to purchase from Gonzalez a one-half interest which the latter possessed in a mortgage credit on a piece of property in Pangasinan, which will hereinafter be referred as Hacienda Leet. These conditions were acceptable to Xavier, and Veloso agreed to join in the note. As the contemplated deal involved more than one transaction, the matter could not be completely fixed up while Veloso was in Manila, but on December 14, just prior to Veloso's departure for Cebu, a conference was held with Veloso in the hotel where the latter was stopping. At this meeting Gonzalez and his broker were present with Xavier and Veloso; and the result was that an undated promissory note, with the name of the payee in blank, was signed by Xavier and Veloso in the following words:

"MANILA,.....

"On or before six months after date we will jointly and severally pay in Manila to the order of..... the sum of twenty-five thousand pesos (P25,000), Philippine currency, for value received of the same in cash, for commercial operations, and with interest at 10 per cent per annum, payable monthly.

"Protest waived.

(Sgd.) "N. XAVIER

"M. G. VELOSO

"Witness:

(Sgd.) "MODESTO ALBERTO"

The space for the date of this note was left in blank with the understanding that it should be filled in with the true date whenever the money should be actually advanced and the trade consummated, in order to mark correctly the precise date from which interest should be calculated. The space for the name of the payee was also left unfilled for the reason that, although Gonzalez had agreed to find the money, he was not certain at the time whether the money would be advanced by him personally or by his client A. J. Rosario, whom he had in mind as the individual who would probably supply the money. At any rate we entertain no doubt that Veloso signed the note

intelligently, with a view to assisting Xavier with his credit to the extent of the P25,000. which would be advanced by Gonzalez or by some person whom Gonzalez would procure to make the loan. It is true that Veloso has pleaded non est factum to the note and, when testifying as a witness, he at first denied the authenticity of the note, but he later admitted his signature, and there can be no doubt that the document is genuine.

About a week passed before the intention of the parties could be carried into effect, but on December 20, 1921, the purchase of the Legarda property by Xavier was effected. On that day, at a conference attended by all principal parties concerned, or their representatives, Gonzalez handed to Xavier a check drawn payable to Xavier in the amount of P25,000. This check was immediately passed by Xavier to Ramon Sotelo, agent of the vendor of the Legarda property, in part payment thereof, and the proceeds of the check came in due time to the seller. It will be noted, however, that the check just mentioned was not a check drawn by Gonzalez but by Rosario, Gonzalez and Rosario having merely exchanged checks. It will thus be seen that, although Gonzalez did not directly advance the P25,000 to Xavier in cash, he nevertheless delivered full value in the form of a check of another person, which was accepted as cash and which served the purpose as well as metallic coins or bank bills would have done. At the same time the note which we have copied above was delivered by Xavier to Gonzalez, who, then or subsequently, filled up the blanks by writing the date "December 20, 1921" and his own name as payee in the blank spaces left for that purpose.

It appears that the Legarda property thus acquired by Xavier was already encumbered with a mortgage to the Shanghai Life Insurance Company, but the value of the property was much greater than the mortgage thus secured; and in order to secure himself further for the P25,000 advanced in the manner above stated, as well as an additional P22,052 for which Xavier was indebted to Gonzalez upon account of the purchase price of Gonzalez's interest in the mortgage on Hacienda Leet, Gonzalez required Xavier to execute a second mortgage to him upon the Legarda property, thereby encumbering said property to the total extent of P47,052. This second mortgage is now in course of foreclosure, and if at the foreclosure sale the property should happen to bring enough to pay off the note for P25,000, with interest, together with the additional amount of P22,052 due to Gonzalez upon the other transaction, it is obvious that Gonzalez would then be reimbursed for the money advanced upon the note, and that would be , the end of the matter. Still, the note now sued on is the joint and several obligation of Xavier and Veloso, and as it is now past due, payment should not be postponed to await the result of the foreclosure proceeding. Furthermore, the right of Gonzalez as payee of the note to recover thereon as against both the makers is undeniable, he having paid full value for the note on the day it bears date.

But it is equally obvious that Veloso, who has lent his credit to Xavier, is entitled, in the event he pays the note, or part thereof, to be subrogated to the rights of Gonzalez in the second mortgage on the Legarda property. It was this right of subrogation which the trial judge intended to .recognize and protect in the last paragraph of his amendatory order of June 17, 1926; but we find that this order is to some extent lacking in clarity and is objectionable in so far as it appears possibly to postpone Veloso's right of subrogation, with respect to P25,000, to the P22,052, also secured by the second mortgage. The appellant's fifth assignment of error is directed to this point, and it is quite clear that appellant's criticism of the order entered below is well founded. The amount of the note, with interest, is secured in the second mortgage equally with the P22,052 above referred to, and neither is given preference over the other. It results that Veloso's right of subrogation extends to the whole proceeds of the mortgaged property in the proportion of the two debts secured by the mortgage, in the event that the property brings less at the foreclosure sale than would be necessary to pay off both credits.

The solution of the case thus indicated is in our opinion the correct one beyond a doubt, but we have thus far designedly ignored certain contemporaneous transactions which have introduced into the case considerations of great perplexity. We now proceed to refer to these matters. It will be remembered that Gonzalez had made it a

condition precedent to the lending of his assistance to Xavier in this matter that Xavier should take off his hands an interest which Gonzalez possessed in a mortgage on the Hacienda Leet. In addition to this, Gonzalez wanted to get Rosario to assume the role of the lender of the money on the note which is the subject of the present suit. The sale of Gonzalez's interest in the mortgage on Hacienda Leet was in fact effected, but Rosario finally balked at taking over the note; and Gonzalez had to keep it himself. But the way in which Gonzalez maneuvered to get Rosario committed to the loan led to complex results, as will be discovered from an enumeration of the following transactions which took place among the three interested parties, Gonzalez, Xavier, and Rosario: Gonzalez first wrote a check for P25,010, payable to Rosario. Rosario then wrote his own check in favor of Xavier for P25,000, this being the check which Xavier passed to Sotelo in part payment for the purchase of the Legarda property. At the same time Gonzalez made an assignment of his interest in the mortgage on Hacienda Leet, amounting in value to P47,052. Furthermore, it was supposed to be necessary to make it appear, on paper at least, that Rosario had security for the check of P25,000 which he made out in the name of Xavier. Xavier therefore immediately made a pledge to Rosario of the interest which Xavier had acquired from Gonzalez in the mortgage on Hacienda Leet. But as Rosario had actually gotten the P25,000 in the form of a check from Gonzalez, Rosario in turn pledged the same credit to Gonzalez. We see therefore both the obligation and the security coming back to the hands of Gonzalez who was at once the source from which the real money had been obtained and the seller of the mortgage credit to Xavier. The foregoing transactions all occurred on December 20, 1921. On February 7, 1922, thereafter, the owners of the Hacienda Leet made a new mortgage direct to Xavier and the other coowner of the mortgage credit thereon, to secure the repayment of the sum of P90,000. As a consequence of this transaction the pledges made by Xavier to Rosario and Rosario to Gonzalez were cancelled. On March 7, 1922, Xavier mortgaged his share in this mortgage credit to Rosario, and Rosario assigned his rights to Gonzalez, in nominal satisfaction of the latter's claim on Rosario for the P25,000, advanced nominally by Rosario. As a consequence of these transactions Gonzalez became the direct creditor of Xavier, and Rosario was eliminated.

As we have already stated, the price for which Gonzalez sold his interest in the mortgage on Hacienda Leet was P47,052. Of this amount P22,052 was included, as we have already seen, in the second mortgage given by Xavier to Gonzalez on the Legarda property, while the other P25,000 was temporarily left uncovered in Gonzalez's hands except as he possibly supposed himself to be secured by the note which is the subject of this action. Before long, however, Xavier secured Gonzalez for this P25,000 by placing a mortgage on the Zorrilla Theater in favor of Gonzalez to secure said amount of P25,000 and an additional indebtedness of about P18,500. This mortgage on the Zorrilla Theater has now been foreclosed, with the result that Gonzalez bought the theater in at the foreclosure sale for the full amount of the mortgage thereon. In this way P25,000 of the indebtedness which Xavier had incurred to Gonzalez by reason of the purchase of Gonzalez's interest in the mortgage on the Hacienda Leet was completely satisfied.

The history of the transaction by which Xavier became the purchaser of the mortgage credit on the Hacienda Leet complicates the question as to what might really have been intended as the real consideration for the note which is the subject of the present action. The taking of proof in the course of the trial of this case in the court below appears to have covered several weeks, including a lengthy interval between the hearings. In the course of these sessions Gonzalez took the stand as a witness more than once. When he was first testifying he gave an account of the transaction which, though in some respects incorrect, was nevertheless consistent with the idea that the consideration for the note was the check which went in part payment of the purchase of the Legarda street property. After thinking his position over fully and refreshing his mind from every available source of information, Gonzalez, at the final session of the court, committed himself to the proposition that the real consideration for the note was P25,000 of the purchase price of the mortgage credit of the Hacienda Leet. By this he undoubtedly meant to indicate that he held the note as collateral security for P25,000 of said purchase price.

This theory of the consideration for the note has the peculiarity that, if true, it would be completely fatal to his right of recovery; for if he took the note as collateral security for part of the price of the mortgage credit on Hacienda Leet, that indebtedness has been paid and the collateral note is now *functus officio*. Furthermore, it is obvious that the application of the note to that purpose would have been a breach of faith with Veloso and an unauthorized diversion of the note from the purpose for which it was created.

The only comment we have to make is that the court is, in our opinion, in a better position to appreciate as a matter of law what was the true consideration for that note than was Gonzalez himself; and his mistake or prevarication in the matter cannot defeat the legal rights which he acquired by the transaction first above detailed with respect to the Legarda street property and the advancement by him of the money for payment of part of the purchase price thereof. Besides, even supposing that he may once have really believed that he could hold the note as collateral security for part of the purchase price of the mortgage credit, that point has become merely academic, by the satisfaction of that indebtedness, and his mistake as to his rights in that respect does not vitiate his better title arising out of the other transaction.

Now a few words with respect to the position of Acuña, to whom Gonzalez transferred both the note and his interest in the second mortgage on the Legarda street property more than two years after the note was due. As already intimated, Acuña gave full value for the note. He therefore acquired by transfer all the rights of Gonzalez to the note. But as we have now demonstrated, Gonzalez paid full value for this note at the time of its creation, in conformity with the intention of the makers. Acuña is therefore entitled to enforce the note as Gonzalez could have done if he were himself the present holder and sole plaintiff.

In the oral argument in behalf of the appellant his attorneys invited the court's attention to a number of American cases holding that, where accommodation paper is negotiated after maturity, the accommodation party cannot be held liable thereon (*Rylee vs. Wilkinson* [Miss.], 99 Southern, 901). The cases referred to as authority for that proposition contemplate the case where the accommodation maker draws a note payable "to the accommodated payee and the payee first negotiates the note after the date of maturity. The case before us is not of that sort. Here the accommodating party and the accommodated party unite in making a joint and several note to a person who advances the face value of the note to one of its makers at the very time of its creation. The consideration for the note, as regards both makers, was the money which the payee advanced to Xavier; and it cannot be said that the note was lacking in consideration as to Veloso because he himself received none of this money. Value was given for the note, and this was enough. In equity as between Veloso and Xavier, the former is entitled to all the rights of a surety, and Xavier is the real debtor; but as to the creditor who gave value for the note at the time of its creation, both Veloso and Xavier are mere joint and several makers.

The discussion of the case in the briefs covers a few points of minor importance not discussed in this opinion, but what has been said disposes of the major features of the controversy and indicates the inevitable conclusion to which a court must arrive, namely, that the trial court committed no error in giving judgment in favor of the plaintiff, but that the appellant's fifth assignment of error is well taken; and Veloso's right of subrogation, in case enough is not realized to pay off the whole, must be understood to extend to such proportion of the proceeds of the contemplated foreclosure sale of the mortgaged property on Legarda Street as the amount of the note, and interest, bears to the entire secured indebtedness.

It being understood that the dispositive part of the court's decision as expressed in the closing paragraph of the decision of June 17, 1926, and amended in the order of July 1, 1926, is modified to the extent above stated, the judgment is in other respects affirmed. So ordered, without express pronouncement as to costs of either instance.

Johnson, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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