

## **OLIVIA M. NAVOA AND ERNESTO NAVOA, PETITIONERS, VS. COURT OF APPEALS, TERESITA DOMDOMA AND EDUARDO DOMDOMA, RESPONDENTS.**

*G.R. No. 59255. December 29, 1995*

Ponente: BELLOSILLO, J.

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### **BELLOSILLO, J.:**

Petitioners Olivia M. Navoa and Ernesto Navoa seek reversal of the decision of the Court of Appeals[1] which "modified" the order of the trial court dismissing the complaint for lack of cause of action. The appellate court remanded the case to the court a quo for private respondents to file their responsive pleading and for trial on the merits.

On 17 December 1977 private respondents filed with the Regional Trial Court of Manila an action against petitioners for collection of various sums of money based on loans obtained by the latter. On 3 January 1978 petitioners filed a motion to dismiss the complaint on the ground that the complaint stated no cause of action and that plaintiffs had no capacity to sue.

After private respondents submitted their opposition to the motion to dismiss on 9 January 1978 the trial court dismissed the case. A motion to reconsider the dismissal was denied.

On 27 March 1978 private respondents appealed to the Court of Appeals which on 11 December 1980 modified the order of dismissal "by returning the records of this case for trial on the merits, upon filing of an answer subject to the provisions of Articles 1182 and 1197 of the Civil Code for the first cause of action. The other causes of action should be tried on the merits subject to the defenses the defendants may allege in their answer."

The instant petition alleges that respondent court erred: (a) in not dismissing the appeal for lack of appellate jurisdiction over the case which involves merely a question of law; (b) in not affirming the order of dismissal for lack of cause of action; and, (c) in holding that private respondents have a cause of action under the second to the sixth causes of action of the complaint.[2]

We cannot sustain the petition. Petitioners are now estopped from assailing the appellate jurisdiction of the Court of Appeals after receiving an adverse judgment therefrom.[3] Having participated actively in the proceedings before the appellate court, petitioners can no longer question its authority.

Petitioners submit that private respondents failed to specify in their complaint a fixed period within which petitioners should pay their obligations; that instead of stating that petitioners failed to discharge their obligations upon maturity private respondents sought to collect on the checks which were issued to them merely as security for the loans; and, that private respondents failed to make a formal demand on petitioners to satisfy their obligations before filing the action.

For a proper determination of whether the complaint filed by private respondents sufficiently stated a cause of action, we shall examine the relevant allegations in the complaint, to wit:

### Allegations Common To All Causes of Actions

xxx x x x x x x

3. That sometime in x x x February, 1977, when the Reycard Duet was in Manila, plaintiff Teresita got acquainted with defendant Olivia in the jewelry business, the former selling the jewelries of the latter; that to the Reycard Duet alone, plaintiff Teresita sold jewelries worth no less than ONE HUNDRED TWENTY THOUSAND (P120,000.00) PESOS in no less than twenty (20) transactions; that even when the Reycards have already left, their association continued, and up to the month of August, 1977, plaintiff Teresita sold for defendant Olivia jewelries worth no less than TWENTY THOUSAND (P20,000.00) PESOS, in ten (10) transactions more or less;

xxx x x x x x x

5. That sometime in the months of June and July of 1977, defendant Olivia, on two occasions, asked for a loan from plaintiff Teresita, for the purpose of investing the same in the purchase of jewelries, which loan were secured by personal checks of the former; that in connection with these loans, defendant promised plaintiff a participation in an amount equivalent to one half (1/2) of the profit to be realized; that on these loans, plaintiff was given a share in the amount of P1,200.00 in the first transaction, and in the second transaction, the sum of P950.00;

### First Cause of Action

6. That on August 15, 1977, defendant Olivia got from plaintiff Teresita, one diamond ring, one and one half (1-1/2) karats, heart shape, valued in the amount of Fifteen thousand (P15,000.00) Pesos; that as a security for the said ring, Olivia issued a Philippine Commercial and Industrial Bank Check, San Sebastian Branch, dated August 15, 1977, No. 13894, copy of which is hereto attached and made a part hereof as Annex "A";

7. That the condition of the issuance of the check was - if the ring is not returned within fifteen (15) days from August 15, 1977, the ring is considered sold; that after fifteen days, plaintiff Teresita asked defendant Olivia if she could deposit the check, and the answer of defendant Olivia was - hold it for sometime, until I tell you to deposit the same; that the check was held until the month of November, 1977, and when deposited, it was dishonored for lack of sufficient funds; that for the reason that the aforementioned check was not honored when deposited, defendant Olivia should be held liable for interest at the rate of one percent a month, from date of issue, until the same is fully paid;

### Second Cause of Action

8. That on August 25, 1977, plaintiff Teresita extended a loan to the herein defendant Olivia in the amount of TEN THOUSAND (P10,000.00) PESOS, secured by a Philippine Commercial and Industrial Bank Check, PCIBANK Singalong Branch, No. 14307, dated Sept. 25, 1977, photo copy of which is hereto attached and made a part hereof as Annex "B";

9. That this loan was extended upon representation of defendant Olivia that she needed money to pay for jewelries which she can resell for a big profit; that having established her goodwill, by reason of the transaction mentioned in par. "5" hereof, the loan was extended by plaintiff;

10. That this check, Annex "B", when deposited was dishonored; that for the reason that the check was dishonored when deposited, defendant Olivia should be held liable for interest at the rate of one percent (1%) per month, from the date of issue until fully paid;

### Third Cause of Action

11. That on August 27, 1977, plaintiff extended to defendant Olivia a loan in the amount of FIVE THOUSAND PESOS (P5,000.00), secured by a Philippine Commercial & Industrial Bank check, PCIBANK Singalong Branch, No. 14308, dated Sept. 27, 1977, photo copy of which is hereto attached and made a part hereof as Annex "C";

12. That this loan was extended on the same representation made by defendant Olivia, stated in par. "9", under the terms and conditions stated in par. "5" hereof;

13. That the check Annex "C", has not as yet been paid up to now, hence, defendant Olivia should be held liable for interest at the rate of one percent (1%) monthly, from date of issue, until fully paid;

#### Fourth Cause of Action

14. That on August 30, 1977, plaintiff Teresita, extended a loan in favor of defendant Olivia, in the amount of Five Thousand (P5,000.00) Pesos, secured by a Philippine Commercial and Industrial Bank Check, PCIBANK Singalong Branch, No. 14311, dated Sept. 30, 1977, photo copy of which is hereto attached and made a part hereof as Annex "D";

15. That this loan was extended on the same representation made by defendant Olivia, as stated in par. "9" hereof, under the terms and conditions stated in par. "5" hereof;

16. That this check, Annex "D" has not as yet been paid up to now, hence, she should be held liable for interest thereon at the rate of one percent (1%) per month, from date of issue, until fully paid;

#### Fifth Cause of Action

17. That on Sept. 15, 1977, plaintiff Teresita extended a loan in favor of defendant Olivia, in the amount of TEN THOUSAND (P10,000.00) PESOS, secured by a Philippine Commercial & Industrial Bank check, PCIBANK Singalong Branch, No. 14320, dated October 15, 1977, photo copy of which is hereto attached and made a part hereof as Annex "E";

18. That this loan was given on the same representation made by defendant Olivia, stated on par. "9" hereof, and under the terms and conditions stated in par. "5" hereof;

19. That this check Annex "E" when deposited was dishonored; that for the reason that the check was dishonored when deposited, defendant Olivia should be held liable for interest at the rate of one percent (1%) monthly, from date of issue, until fully paid;

#### Sixth Cause of Action

20. That on Sept. 27, 1977, plaintiff Teresita extended a loan to defendant Olivia, in the amount of TEN THOUSAND (P10,000.00) PESOS, secured by a Philippine Commercial & Industrial Bank check, No. 14325, dated October 27, 1977, photo copy of which is hereto attached and made a part hereof as Annex "F";

21. That this loan was given on the same representation made by defendant Olivia, stated in par. "9" hereof, and under the terms and conditions stated in par. "5" hereof;

22. That this check, Annex F, when deposited was dishonored; that for the reason that the check was dishonored when deposited, defendant Olivia should be held liable for interest thereon, at the rate of one percent (1%) monthly, from date of issue, until fully paid;

#### Seventh Cause of Action

23. That plaintiff, by reason of the two transactions in par. "5" hereof, reposed trust and confidence on defendant Olivia, however, by virtue of these trust and confidence, she availed of the same in securing the loans

aforementioned by misrepresentations, and as a direct consequence thereof, the loans have not as yet been settled up to now, for which plaintiff Teresita suffered sleepless nights, mental torture and wounded feelings, for the reason that the money used in said transactions do all belong to her; that this situation is further aggravated by the malicious act of defendant Olivia, by having filed a complaint with the Manila Police, to the effect that she (Teresita) stole the checks involved in this case; that as a consequence thereof, she was investigated and she suffered besmirched reputation, social humiliation, wounded feelings, moral shock and similar injuries, for which defendant Olivia should be held liable, as and by way of moral damages in the amount of EIGHTY THOUSAND (P80,000.00) PESOS;

#### Eight Cause of Action

24. That as and by way of exemplary or corrective damages, to serve as an example or correction for the public good, defendant Olivia should be held liable to pay to the herein plaintiff Teresita, the amount of Ten Thousand Pesos, as exemplary damages;

#### Ninth Cause of Action

25. That plaintiff, in order to protect her rights and interests, engaged the services of the undersigned, and she committed herself to pay the following:

- The amount of P200.00 for every appearance in the trial of this case.
- The amount of P2,000.00 as retainers fees.
- An amount equivalent to ten percent of any recover from defendant.

On the basis of the allegations under the heading Allegations Common to all Causes of Action above stated as well as those found under the First Cause of Action to the Ninth Cause of Action, should the complaint be dismissed for want of cause of action?

A cause of action is the fact or combination of facts which affords a party a right to judicial interference in his behalf. The requisites for a cause of action are: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created, (b) an obligation on the part of the defendant to respect and not to violate such right; and, (c) an act or omission on the part of the defendant constituting a violation of the plaintiff's right or breach of the obligation of the defendant to the plaintiff.[4] Briefly stated, it is the reason why the litigation has come about; it is the act or omission of defendant resulting in the violation of someone's right.[5]

In determining the existence of a cause of action, only the statements in the complaint may properly be considered. Lack of cause of action must appear on the face of the complaint and its existence may be determined only by the allegations of the complaint, consideration of other facts being proscribed and any attempt to prove extraneous circumstances not being allowed.

If a defendant moves to dismiss the complaint on the ground of lack of cause of action, such as what petitioners did in the case at bar, he is regarded as having hypothetically admitted all the averments thereof. The test of sufficiency of the facts found in a complaint as constituting a cause of action is whether or not admitting the facts alleged the court can render a valid judgment upon the same in accordance with the prayer thereof. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in a complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendants.[6]

In their first cause of action private respondents Eduardo and Teresita Domdoma alleged that petitioner Olivia

Navoa obtained from the latter a ring valued at P15,000.00 and issued as security therefor a check for the same amount dated 15 August 1977 with the condition that if the ring was not returned within fifteen (15) days the ring would be considered sold; and, after the lapse of the period, private respondent Teresita Domdoma asked to deposit the check but petitioner Olivia Navoa requested the former not to deposit it in the meantime; that when Teresita Domdoma deposited the check after holding it for sometime the same was dishonored for lack of funds. Private respondent Teresita Domdoma sought to collect the amount of P15,000.00 plus interest from 15 August 1977 until fully paid.

From these facts the ring was considered sold to petitioner Olivia Navoa 15 days from 15 August 1977 and despite the sale the latter failed to pay the price therefor even as the former was given ample time to pay the agreed amount covered by a check. Clearly, respondent Teresita Domdoma's right under the agreement with petitioner Olivia Navoa was violated by the latter.

In the second to the sixth causes of action it was alleged that private respondents granted loans to petitioners in different amounts on different dates. All these loans were secured by separate checks intended for each amount of loan obtained and dated one month after the contracts of loan were executed. That when these checks were deposited on their due dates they were all dishonored by the bank. As a consequence, private respondents prayed that petitioners be ordered to pay the amounts of the loans granted to them plus one percent interest monthly from the dates the checks were dishonored until fully paid.

Culled from the above, the right of private respondents to recover the amounts loaned to petitioners is clear. Moreover, the corresponding duty of petitioners to pay private respondents is undisputed. The question now is whether petitioners committed an act or omission constituting a violation of the right of private respondents.

All the loans granted to petitioners are secured by corresponding checks dated a month after each loan was obtained. In this regard, the term security is defined as a means of ensuring the enforcement of an obligation or of protecting some interest in property. It may be personal, as when an individual becomes a surety or a guarantor; or a property security, as when a mortgage, pledge, charge, lien, or other device is used to have property held, out of which the person to be made secure can be compensated for loss.[7] Security is something to answer for as a promissory note.[8] That is why a secured creditor is one who holds a security from his debtor for payment of a debt.[9] From the allegations in the complaint there is no other fair inference than that the loans were payable one month after they were contracted and the checks issued by petitioners were drawn to answer for their debts to private respondents.

Petitioners failed to make good the checks on their due dates for the payment of their obligations. Hence, private respondents filed the action with the trial court precisely to compel petitioners to pay their due and demandable obligations. Art. 1169 of the Civil Code is explicit - those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. The continuing refusal of petitioners to heed the demand of private respondents stated in their complaint unmistakably shows the existence of a cause of action on the part of the latter against the former.

Quite obviously, the trial court erred in dismissing the case on the ground of lack of cause of action. Respondent Court of Appeals therefore is correct in remanding the case to the trial court for the filing of an answer by petitioners and to try the case on the merits.

WHEREFORE, the petition is DENIED. The judgment of the Court of Appeals dated 11 December 1980 remanding the case to the trial court for the filing of petitioners' answer and thereafter for trial on the merits is AFFIRMED. Costs against petitioners.

**SO ORDERED.**

Padilla, (Chairman), Davide, Jr., Kapunan, and Hermosisima, Jr., JJ., concur.

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[1] Penned by Associate Justice Jorge R. Coquia, concurred in by Associate Justices Samuel F. Reyes and Mariano A. Zosa.

[2] Rollo, pp. 10-13.

[3] Summit Guaranty and Insurance Company, Inc. v. Court of Appeals, G.R. No. 51539, 14 December 1981, 110 SCRA 241.

[4] Rava Development Corporation v. Court of Appeals, G.R. No. 96825, 3 July 1992, 211 SCRA 114.

[5] Paras, Edgar L., Rules of Court Annotated, 1989 Ed., Vol. I, p. 44.

[6] See Note 4.

[7] Sibal, Jose Agaton R., Philippine Legal Encyclopedia, 1986 Ed., p. 928.

[8] Moreno, Federico B., Philippine Law Dictionary, 1988 Ed., p. 868.

[9] See Note 8.

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