

CHINA BANKING CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, ESPERANZA T. CUA, MANUEL C. DE LEON AND EMERITA DE LEON, RESPONDENTS.

G.R. No. 59887. August 31, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

Petitioner China Banking Corporation filed a complaint for Sum of Money (Civil Case No. 82489) against private respondents Esperanza T. Cua and Spouses Manuel and Emerita de Leon before the Court of First Instance of Manila.

The complaint alleged that private respondents, on June 26, 1969, executed a promissory note whereby they promised to pay, jointly and severally, to the China Banking Corporation, the sum of P50 ,000.00, thirty (30) days after date, with interest at the rate of 13% per annum.

Herein private respondents failed to pay the pro-missory note at the maturity date thereof. On July 30, 1969, however, petitioner received Manager's Check No. 33329 issued by the Philippine Veterans Bank for the sum of P25 ,000.00 in partial payment of the account of Esperanza T. Cua. After applying the remittance to the amount due in the promissory note, there was left an unpaid balance of P25 ,000.00, with interest rate at 13% per annum from July 28, 1969.

After several days, private respondent Esperanza T. Cua went to the office of petitioner and requested for a renewal of the loan previously granted to her. A renewal promissory note was prepared by an employee of petitioner which was given to Esperanza T. Cua, with instruction that it should be signed by all the makers of the original promissory note. After a few days, private respondent Cua returned to the office of the petitioner with the information that the De Leon spouses refused to sign the renewal promissory note. Accordingly, petitioner extended the maturity date of the promissory note to October 19, 1969.

As no other payment on the promissory note was subsequently made by Cua or the De Leon spouses, notwithstanding written demands sent to them, petitioner filed a complaint for recovery of the sum of P25,000.00, plus interest, attorney's fees and costs of suit.

After trial, the Court of First Instance rendered judgment sentencing herein private respondents: Esperanza T. Cua, Manuel C. de Leon and Emerita de Leon "to pay jointly and severally, to the plaintiff China Banking Corporation the sum of P25 ,000.00 with interest rate at 14% per annum from October 20, 1969, compounded monthly until fully paid, plus an additional amount equivalent to 10% of said sum, as and for attorney's fees, and the costs of suit."

In rendering judgment against herein private respondents, the trial court said:

"The mere fact that the plaintiff extended the maturity date of the promissory note without securing the con-sent or approval of the De Leon spouses, did not release them from liability thereunder. This is so because

the pro-missory note expressly provides that-

'I /We hereby consent to any extension which may be requested by anyone of us for the payment of this note.'

"There was no novation of the contract because the De Leon spouses refused to sign the renewal promissory note, and so all the defendants remained liable and continued to do so as makers of a negotiable instrument in accordance with the terms and conditions of the original promissory note.

"The circumstance that the De Leon spouses did not receive any amount of the loan granted by the plaintiff, did not relieve them from liability on the promissory note. As accommodation makers the De Leon spouses are liable in that capacity to the plaintiff, because the latter parted a valuable consideration for the promissory note, and being a holder for value, has a right of recourse against the accommo-dation makers (Sec. 29 in relation to Sec. 26, Neg. Inst. Law).

"It was expressly provided in the promissory note that if it is not paid on the date of maturity, the makers thereof, jointly and severally, agreed to pay interest at the increased rate of 14% on the amount due, compounded monthly, until it is fully paid, and that they jointly and severally agreed to pay an additional sum equivalent to 19% of the total amount due as and for attorney's fees."

From the decision of the trial court, the private respondents appealed to the Court of Appeals which, on December 23, 1981, rendered judgment reversing the decision appealed from and declaring private respondent Esperanza T. Cua solely liable to petitioner in the sum of P25 ,000.00, with interest thereof but without costs.

On February 19, 1982, respondent Court of Appeals denied plaintiff's Motion for Reconsideration, dated February 10, 1982, on the ground that it was filed "twenty eight (28) days late or twenty-eight (28) days beyond the reglementary period."

Hence, this petition for review filed by China Banking Corporation praying that the Decision dated December 23, 1981 and Resolution dated February 19, 1982 of the Special Division of Five of respondent Court of Appeals be set aside and a new one rendered affirming in toto the decision of the Court a quo.

We hold that contrary to the contention of the De Leon spouses, the promissory note, dated June 26, 1969, expressly provides that the three (3) private respondents engaged to pay, jointly and severally, the amount specified therein to herein petitioner. The De Leon spouses did not guarantee the payment of Esperanza T. Cua of the sum of P50 ,000.00, but in fact bound themselves solidarily with her to pay the said amount. Besides, the promissory note expressly provides that:

"I/We hereby consent to any extension which may be requested by anyone of us for the payment of the note."

Thus, it is clear that the refusal of the De Leon spouses to sign the second promissory note did not relieve them of their obligation to petitioner. However, considering that the decision of the Court of Appeals, reversing the decision of the Court of First Instance of Manila, was received by herein petitioner on December 29, 1981, the same became final and executory on January 13, 1982 and, therefore, petitioner's Motion for Reconsideration dated February 10, 1982 was filed out of time.

WHEREFORE, this Petition for Review by way of certiorari is hereby DISMISSED as the decision of the Court of Appeals promulgated on December 23, 1981 has become final and executory.

SO ORDERED.

Teehankee, (Chairman), Plana, and Gutierrez, Jr., JJ., concur.

Makasiar, J., on leave.

Melencio-Herrera and Vasquez, JJ., in the result.

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