

NYCO SALES CORPORATION, PETITIONER, VS. BA FINANCE CORPORATION, JUDDGE ROSALIO A. DE LEON – REGIONAL TRIAL COURT, BR. II, INTERMEDIATE APPELLATE COURT, FIRST CIVIL CASES DIVISIO...*G.R. No. 71694. August 16, 1991*

Ponente: PARAS, J.

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In this petition for review on certiorari, petitioner challenges the April 22, 1985 decision* and the July 16, 1985 resolution* of the then Intermediate Appellate Court in AC-G.R. CV No. 02553 entitled "BA Finance Corporation v. Nyco Sales Corporation, et al." which affirmed with modification the July 20, 1983 decision** of the Regional Trial Court, National Capital Region, Manila, Branch II in the same case docketed as Civil Case No. 125909 ordering petitioner to pay respondent the amount of P60,000.00 as principal obligation plus corresponding interest, the sum of P10,000.00 as and for, attorney's fees and 1/3 of the costs of suit.

It appears on record that petitioner Nyco Sales Corporation (hereinafter referred to as Nyco) whose president and general manager is Rufino Yao, is engaged in the business of selling construction materials with principal office in Davao City. Sometime in 1978, the brothers Santiago and Renato Fernandez (hereinafter referred to as the Fernandezes), both acting in behalf of Sanshell Corporation, approached Rufino Yao for credit accommodation. They requested Nyco, thru Yao, to grant Sanshell discounting privileges which Nyco had with BA Finance Corporation (hereinafter referred to as BA Finance). Yao apparently acquiesced, hence on or about November 15, 1978, the Fernandezes went to Yao for the purpose of discounting Sanshell's post-dated check which was a BPI-Davao Branch Check No. 499648 dated February 17, 1979 for the amount of P60,000.00. The said check was payable to Nyco. Following the discounting process agreed upon, Nyco, thru Yao, endorsed the check in favor of BA Finance. Thereafter, BA Finance issued a check payable to Nyco which endorsed it in favor of Sanshell. Sanshell then made use of and/or negotiated the check. Accompanying the exchange of checks was a Deed of Assignment executed by Nyco in favor of BA Finance with the conformity of Sanshell. Nyco was represented by Rufino Yao, while Sanshell was represented by the Fernandez brothers. Under the said Deed, the subject of the discounting was the aforecited check (Rollo, pp. 26-28). At the back thereof and of every deed of assignment was the Continuing Suretyship Agreement whereby the Fernandezes unconditionally guaranteed to BA Finance the full, faithful and prompt payment and discharge of any and all indebtedness of Nyco (Ibid., pp. 36,46). The BPI check, however, was dishonored by the drawee bank upon presentment for payment. BA Finance immediately reported the matter to the Fernandezes who thereupon issued a substitute check dated February 19, 1979 for the same amount in favor of BA Finance. It was a Security Bank and Trust Company check bearing the number 183157, which was again dishonored when it was presented for payment. Despite repeated demands, Nyco and the Fernandezes, failed to settle the obligation with BA Finance, thus prompting the latter to institute an action in court (Ibid., p. 28). Nyco and the Fernandezes, despite having been served with summons and copies of the complaint, failed to file their answer and were consequently declared in default. On May 16, 1980, the lower court

ruled in favor of BA Finance ordering them to pay the former jointly and severally, the sum of P65,536.67 plus 14% interest per annum from July 1, 1979 and attorney's fees in the amount of P3,000.00 as well as the costs of suit (Rollo, pp. 51-52). Nyco, however, moved to set aside the order of default, to have its answer admitted and to be able to implead Sanshell. The prayer was granted through an order dated June 23, 1980, wherein the decision of the court was set aside only as regards Nyco. Trial ensued once more until the court reached a second decision which states:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Nyco Sales Corporation by ordering the latter to pay the former the following:

- 1) P60,000.00 as principal obligation, plus interest thereon at the rate of 14% per annum from February 1, 1979 until fully paid;
- 2) The amount of P10,000.00 as and for attorney's fees; and
- 3) One-third (1/3) of the costs of this suit.

With respect to defendants Santiago and Renato Fernandez, the decision of May 16, 1980 stands.

The cross-claim of defendant Nyco Sales Corporation against co-defendants Santiago B. Fernandez and Renato B. Fernandez is hereby denied, as there is no showing that Nyco's Answer with cross-claim dated May 29, 1980 was ever received by said Fernandez brothers, even as it is noted that the latter have not been declared in default with respect to said cross-claim, nor were evidence adduced in connection therewith.

As to the would-be litigant Sanshell Construction and Development Corporation, defendant Nyco Sales Corporation did not properly implead said corporation which should have been by way of a third-party complaint instead of a mere cross-claim. The same observations are noted as regard this cross-claim against Sanshell as those made with respect to the Fernandez brothers.

SO ORDERED."

On appeal, the appellate court also upheld BA Finance but modified the lower court's decision by ordering that the interest should run from February 19, 1979 until paid and not from February 1, 1979. Nyco's subsequent motion for reconsideration was denied (*Ibid.*, pp. 33, 62). Hence, the present recourse.

The crux of the controversy is whether or not the assignor is liable to its assignee for its dishonored checks.

For its defense, Nyco anchors its arguments on the following premises: a) that the appellate court erred in affirming its liability for the BPI check despite a similar finding of liability for the SBTC check rendered by the same lower court; b) that it was actually discharged of its liability over the SBTC check when BA Finance failed to give it a notice of dishonor; c) that there was novation when BA Finance accepted the SBTC check in replacement of the BPI check; and d) that it cannot be held liable for its President's unauthorized acts.

The petition is devoid of merit.

An assignment of credit is the process of transferring the right of the assignor to the assignee, who would then be allowed to proceed against the debtor. It may be done either gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale.

According to Article 1628 of the Civil Code, the assignor-vendor warrants both the credit itself (its existence and legality) and the person of the debtor (his solvency), if so stipulated, as in the case at bar. Consequently, if there be any breach of the above warranties, the assignor-vendor should be held answerable therefor. There is no question then that the assignor-vendor is indeed liable for the invalidity of whatever he assigned to the

assignee-vendee.

Considering now the facts of the case at bar, it is beyond dispute that Nyco executed a deed of assignment in favor of BA Finance with Sanshell Corporation as the debtor-obligor. BA Finance is actually enforcing said deed and the check covered thereby is merely an incidental or collateral matter. This particular check merely evidenced the credit which was actually assigned to BA Finance. Thus, the designation is immaterial as it could be any other check. Both the lower and the appellate courts recognized this and so it is utterly misplaced to say that Nyco is being held liable for both the BPI and the SBTC checks. It is only what is represented by the said checks that Nyco is being asked to pay. Indeed, nowhere in the dispositive parts of the decisions of the courts can it be gleaned that BA Finance may recover from the two checks.

Nyco's pretension that it had not been notified of the fact of dishonor is belied not only by the formal demand letter but also by the findings of the trial court that Rufino Yao of Nyco and the Fernandez Brothers of Sanshell had frequent contacts before, during and after the dishonor (Rollo, p. 40). More importantly, it fails to realize that for as long as the credit remains outstanding, it shall continue to be liable to BA Finance as its assignor. The dishonor of an assigned check simply stresses its liability and the failure to give a notice of dishonor will not discharge it from such liability. This is because the cause of action stems from the breach of the warranties embodied in the Deed of Assignment, and not from the dishonoring of the check alone (See Art. 1628, Civil Code).

Novation is the third defense set up by petitioner Nyco. It insists that novation took place when BA Finance accepted the SBTC check in replacement of the BPI check. Such is manifestly untenable.

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 (*Mondragon v. Intermediate Appellate Court*, G.R. No. 71889, April 17, 1990; *Caneda, Jr. v. Court of Appeals*, G.R. No. 81322, February 5, 1990). 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 (*Mondragon v. Intermediate Appellate Court*, supra; *Caneda, Jr. v. Court of Appeals*, supra). 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.

Finally, Nyco disowns its President's acts claiming that it never authorized Rufino Yao (Nyco's President) to even apply to BA Finance for credit accommodation. It supports its argument with the fact that it did not issue a Board resolution giving Yao such authority. However, the very evidence on record readily belies Nyco's contention. Its corporate By-Laws clearly provide for the powers of its President, which include, inter alia, executing contracts and agreements, borrowing money, signing, indorsing and delivering checks, all in behalf of the corporation. Furthermore, the appellate court correctly adopted the lower court's observation that there was already a previous transaction of discounting of checks involving the same personalities wherein any enabling resolution from Nyco was dispensed with and yet BA Finance was able to collect from Nyco and Sanshell was able to discharge its own undertakings. Such effectively places Nyco under estoppel in pais which arises when one, by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts (*Panay Electric Co., Inc. v. Court of Appeals*, G.R. No. 81939, June 29, 1989). Nyco remained silent in the course of the transaction and

spoke out only later to escape liability. This cannot be countenanced. Nyco is estopped from denying Rufino Yao's authority as far as the latter's transactions with BA Finance are concerned.

PREMISES CONSIDERED, the decision appealed from is AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Associate Justice Eduardo P. Caguioa and concurred in by Associate Justices Ma. Rosario Quetulio-Losa and Leonor Ines-Luciano and Presiding Justice Ramon G. Gaviola, Jr.

** Penned by Judge Rosalio A. de Leon

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