

STATE INVESTMENT HOUSE, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, ANITA PEÑA CHUA AND HARRIS CHUA, RESPONDENTS.*G.R. No. 72764. July 13, 1989*

Ponente: FERNAN, C.J.

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Petitioner State Investment House seeks a review of the decision of respondent Intermediate Appellate Court (now Court of Appeals) in AC-G.R. CV No. 04523 reversing the decision of the Regional Trial Court of Manila, Branch XXXVII dated April 30, 1984 and dismissing the complaint for collection filed by petitioner against private respondents Spouses Anita Peña Chua and Harris Chua.

It appears that shortly before September 5, 1980, New Sikatuna Wood Industries, Inc. requested for a loan from private respondent Harris Chua. The latter agreed to grant the same subject to the condition that the former should wait until December 1980 when he would have the money. In view of this agreement, private respondent-wife, Anita Peña Chua issued three (3) crossed checks payable to New Sikatuna Wood Industries, Inc. all postdated December 22, 1980 as follows:

DRAWEE BANK CHECK NO. DATE AMOUNT

1. China Banking Corporation 589053 Dec. 22, 1980 P 98,750.00
2. International Corporate Bank 04045549 Dec. 22, 1980 102,313.00
3. Metropolitan Bank & Trust Co. 036512 Dec. 22, 1980 98,387.00

The total value of the three (3) postdated checks amounted to P299,450.00.

Subsequently, New Sikatuna Wood Industries, Inc. entered into an agreement with herein petitioner State Investment House, Inc. whereby for and in consideration of the sum of P1,047,402.91 under a deed of sale, the former assigned and discounted with petitioner eleven (11) postdated checks including the aforementioned three (3) postdated checks issued by herein private respondent-wife Anita Peña Chua to New Sikatuna Wood Industries, Inc.

When the three checks issued by private respondent Anita Peña Chua were allegedly deposited by petitioner, these checks were dishonored by reason of "insufficient funds", "stop payment" and "account closed", respectively. Petitioner claims that despite demands on private respondent Anita Peña to make good said checks, the latter failed to pay the same necessitating the former to file an action for collection against the latter and her husband Harris Chua before the Regional Trial Court of Manila, Branch XXXVII docketed as Civil Case No. 82-10547.

Private respondents-defendants filed a third party complaint against New Sikatuna Wood Industries, Inc. for reimbursement and indemnification in the event that they be held liable to petitioner-plaintiff. For failure of third

party defendant to answer the third party complaint despite due service of summons, the latter was declared in default.

On April 30, 1984, the lower court[1] rendered judgment against herein private respondents-spouses, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff or against the defendants ordering the defendants to pay jointly and severally to the plaintiff the following amounts:

"1. P229,450.00 with interest at the rate of 12% per annum from February 24, 1981 until fully paid;

"2. P29,945.00 as and for attorney's fees; and

"3. the costs of suit.

"On the third party complaint, third party defendant New Sikatuna Wood Industries, Inc. is ordered to pay third party plaintiffs Anita Peña Chua and Harris Chua all amounts said defendants-third party plaintiffs may pay to the plaintiff on account of this case."[2]

On appeal filed by private respondents in AC-G.R. CV No. 04523, the Intermediate Appellate Court[3] (now Court of Appeals) reversed the lower court's judgment in the now assailed decision, the dispositive portion of which reads:

"WHEREFORE, finding this appeal meritorious, We Reverse and Set Aside the appealed judgment, dated April 30, 1984 and a new judgment is hereby rendered dismissing the complaint, with costs against plaintiff-appellee."[4]

Hence, this petition.

The pivotal issue in this case is whether or not petitioner is a holder in due course as to entitle it to proceed against private respondents for the amount stated in the dishonored checks.

Section 52(c) of the Negotiable Instruments Law defines a holder in due course as one who takes the instrument "in good faith and for value". On the other hand, Section 52(d) provides that in order that one may be a holder in due course, it is necessary that "at the time the instrument was negotiated to him he had no notice of any x x x defect in the title of the person negotiating it." However, under Section 59 every holder is deemed prima facie to be a holder in due course.

Admittedly, the Negotiable Instruments Law regulating the issuance of negotiable checks as well as the rights and liabilities arising therefrom, does not mention "crossed checks". But this Court has taken 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 may not be converted into cash. Consequently, such circumstance should put the payee on inquiry and upon him devolves the duty to ascertain the holder's title to the check or the nature of his possession. Failing in this respect, the payee is declared guilty of gross negligence amounting to legal absence of good faith and as such the consensus of authority is to the effect that the holder of the check is not a holder in good faith.[5]

Petitioner submits that at the time of the negotiation and endorsement of the checks in question by New Sikatuna Wood Industries, it had no knowledge of the transaction and/or arrangement made between the latter and private respondents.

We agree with respondent appellate court.

Relying on the ruling in *Ocampo v. Gatchalian* (supra), the Intermediate Appellate Court (new Court of Appeals), correctly elucidated that the effects of crossing a check are: the check may not be encashed but only deposited in

the bank; the check may be negotiated only once -- to one who has an account with a bank; and the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise he is not a holder in due course.

Further, the appellate court said:

"It results therefore that when appellee rediscounted the check knowing that it was a crossed check he was knowingly violating the avowed intention of crossing the check. Furthermore, his failure to inquire from the holder, party defendant New Sikatuna Wood Industries, Inc., the purpose for which the three checks were crossed, despite the warning of the crossing, prevents him from being considered in good faith and thus he is not a holder in due course. Being not a holder in due course, plaintiff is subject to personal defenses, such as lack of consideration between appellants and New Sikatuna Wood Industries. Note that under the facts the checks were postdated and issued only as a loan to New Sikatuna Wood Industries, Inc. if and when deposits were made to back up the checks. Such deposits were not made, hence no loan was made, hence the three checks are without consideration (Sec. 28, Negotiable Instruments Law).

"Likewise New Sikatuna Wood Industries negotiated the three checks in breach of faith in violation of Article (sic) 55, Negotiable Instruments Law, which is a personal defense available to the drawer of the check." [6]

In addition, such instruments are mentioned in Section 541 of the Negotiable Instruments Law as follows:

"Sec. 541. 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 "and company".

"The payment made to a person other than the banker or institution shall not exempt the person on whom it is drawn, if the payment was not correctly made."

Under usual practice, crossing a check is done by placing two parallel lines diagonally on the left top portion of the check. The crossing may be special wherein between the two parallel lines is written the name of a bank or a business institution, in which case the drawee should pay only with the intervention of that bank or company, or crossing may be general wherein between two parallel diagonal lines are written the words "and Co." or none at all as in the case at bar, in which case the drawee should not encash the same but merely accept the same for deposit.

The effect therefore of crossing a check relates to the mode of its presentment for payment. Under Section 72 of the Negotiable Instruments Law, presentment for payment to be sufficient must be made (a) by the holder, or by some person authorized to receive payment on his behalf x x x. As to who the holder or authorized person will be depends on the instructions stated on the face of the check.

The three subject checks in the case at bar had been crossed generally and issued payable to New Sikatuna Wood Industries, Inc. which could only mean that the drawer had intended the same for deposit only by the rightful person, i.e., the payee named therein. Apparently, it was not the payee who presented the same for payment and therefore, there was no proper presentment, and the liability did not attach to the drawer. Thus, in the absence of due presentment, the drawer did not become liable.[7] Consequently, no right of recourse is available to petitioner against the drawer of the subject checks, private respondent wife, considering that petitioner is not the proper party authorized to make presentment of the checks in question.

Yet it does not follow as a legal proposition that simply because petitioner was not a holder in due course as found by the appellate court for having taken the instruments in question with notice that the same is for deposit only to the account of payee named in the subject checks, petitioner could not recover on the checks. The Negotiable Instruments Law does not provide that a holder who is not a holder in due course may not in any case recover on

the instrument for in the case at bar, petitioner may recover from the New Sikatuna Wood Industries, Inc. if the latter has no valid excuse for refusing payment. The only disadvantage of a holder who is not in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable.[8]

That the subject checks had been issued subject to the condition that private respondents on due date would make the back up deposit for said checks but which condition apparently was not made, thus resulting in the non-consummation of the loan intended to be granted by private respondents to New Sikatuna Wood Industries, Inc., constitutes a good defense against petitioner who is not a holder in due course.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** with costs against petitioner.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

Feliciano, J., on leave.

[1] Presided over by then Judge (now Court of Appeals Justice) Bienvenido C. Ejercito.

[2] Petition, Annex "A", RTC Decision, Rollo, pp. 42-43.

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

[4] Rollo, p. 51.

[5] Ocampo & Co. v. Gatchalian, 3 SCRA 603 (1961).

[6] Petition, Annex "B", IAC Decision, Rollo, pp. 50-51.

[7] Chan Wan v. Tan Kim and Chen So, L-15380, September 30, 1960, 109 Phil. 706 (1960).

[8] Chan Wan v. Tan Kim and Chen So, *supra*.

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