

**ERNESTINA CRISOLOGO-JOSE, PETITIONER, VS. COURT OF APPEALS
AND RICARDO S. SANTOS, JR. IN HIS OWN BEHALF AND AS
VICE-PRESIDENT FOR SALES OF MOVER ENTERPRISES INC.,
RESPONDENTS.**

G.R. No. 80599. September 15, 1989

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioner seeks the annulment of the decision[1] respondent Court of Appeals, promulgated on September 8, 1987, which reversed the decision of the trial court[2] dismissing the complaint for consignation filed by therein plaintiff Ricardo S. Santos, Jr.

The parties are substantially agreed on the following facts as found by both lower courts:

"In 1980, plaintiff Ricardo S. Santos, Jr. was the vice-president of Mover Enterprises, Inc. in charge of marketing and sales; and the president of the said corporation was Atty. Oscar Z. Benares. On April 30, 1980, Atty. Benares, in accommodation of his clients, the spouses Jaime and Clarita Ong, issued Check No. 093553 drawn against Traders Royal Bank, dated June 14, 1980, in the amount of P45,000.00 (Exh. '1') payable to defendant Ernestina Crisologo-Jose. Since the check was under the account of Mover Enterprises, Inc., the same was to be signed by its president, Atty. Oscar Z. Benares, and the treasurer of the said corporation. However, since at that time, the treasurer of Mover Enterprises was not available, Atty. Benares prevailed upon the plaintiff, Ricardo S. Santos, Jr., to sign the aforesaid check as an alternate signatory. Plaintiff Ricardo S. Santos, Jr. did sign the check.

"It appears that the check (Exh. '1') was issued to defendant Ernestina Crisologo-Jose in consideration of the waiver or quitclaim by said defendant over a certain property which the Government Service Insurance System (GSIS) agreed to sell to the clients of Atty. Oscar Benares, the spouses Jaime and Clarita Ong, with the understanding that upon approval by the GSIS of the compromise agreement with the spouses Ong, the check will be encashed accordingly. However, since the compromise agreement was not approved within the expected period of time, the aforesaid check for P45,000.00 (Exh. '1') was replaced by Atty. Benares with another Traders Royal Bank check bearing No. 379299 dated August 10, 1980, in the same amount of P45,000.00 (Exhs. 'A' and '2'), also payable to the defendant Jose. This replacement check was also signed by Atty. Oscar Z. Benares and by the plaintiff Ricardo S. Santos, Jr. When defendant deposited this replacement check (Exhs. 'A' and '2') with her account at Family Savings Bank, Mayon Branch, it was dishonored for insufficiency of funds. A subsequent redepositing of the said check was likewise dishonored by the bank for the same reason. Hence, defendant through counsel was constrained to file a criminal complaint for violation of Batas Pambansa Blg. 22 with the Quezon City Fiscal's Office against Atty. Oscar Z. Benares and plaintiff Ricardo S. Santos, Jr. The investigating Assistant City Fiscal, Alfonso Llamas, accordingly filed an amended information with the court charging both Oscar Benares and Ricardo S. Santos, Jr. for violation of Batas Pambansa Blg. 22 docketed as Criminal Case No. Q-14867 of then Court of First Instance of Rizal, Quezon City.

"Meanwhile, during the preliminary investigation of the criminal charge against Benares and the plaintiff herein, before Assistant City Fiscal Alfonso T. Llamas, plaintiff Ricardo S. Santos, Jr. tendered cashier's check No. CC. 160152 for P45,000.00 dated April 10, 1981 to the defendant Ernestina Crisologo-Jose, the complainant in that criminal case. The defendant refused to receive the cashier's check in payment of the dishonored check in the amount of P45,000.00. Hence, plaintiff encashed the aforesaid cashier's check and subsequently deposited said amount of P45,000.00 with the Clerk of Court on August 14, 1981 (Exhs. 'D' and 'E'). Incidentally, the cashier's check adverted to above was purchased by Atty. Oscar Z. Benares and given to the plaintiff herein to be applied in payment of the dishonored check." [3]

After trial, the court a quo, holding that it was "not persuaded to believe that consignation referred to in Article 1256 of the Civil Code is applicable to this case," rendered judgment dismissing plaintiff's complaint and defendant's counterclaim. [4]

As earlier stated, respondent court reversed and set aside said judgment of dismissal and revived the complaint for consignation, directing the trial court to give due course thereto.

Hence, the instant petition, the assignment of errors wherein are prefatorily stated and discussed seriatim.

1. Petitioner contends that respondent Court of Appeals erred in holding that private respondent, one of the signatories of the check issued under the account of Mover Enterprises, Inc., is an accommodation party under the Negotiable Instruments Law and a debtor of petitioner to the extent of the amount of said check.

Petitioner avers that the accommodation party in this case is Mover Enterprises, Inc. and not private respondent if who merely signed the check in question in a representative capacity, that is, as vice-president of said corporation, hence he is not liable thereon under the Negotiable Instruments Law.

The pertinent provision of said law referred to provides:

"Sec. 29. Liability of accommodation party. - An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party."

Consequently, to be considered an accommodation party, a person must (1) be a party to the instrument, signing as maker, drawer, acceptor, or indorser, (2) not receive value therefore, and (3) sign for the purpose of lending his name for the credit of some other person.

Based on the foregoing requisites, it is not a valid defense that the accommodation party did not receive any valuable consideration when he executed the instrument. From the standpoint of contract law, he differs from the ordinary concept of a debtor therein in the sense that he has not received any valuable consideration for the instrument he signs. Nevertheless, he is liable to a holder for value as if the contract was not for accommodation, [5] in whatever capacity such accommodation party signed the instrument, whether primarily or secondarily. Thus, it has been held that in lending his name to the accommodated party, the accommodation party is in effect a surety for the latter. [6]

Assuming arguendo that Mover Enterprises, Inc. is the accommodation party in this case, as petitioner suggests, the inevitable question whether or not it may be held liable on the accommodation instrument, that is, the check issued in favor of herein petitioner.

We hold in the negative.

The aforequoted provision of the Negotiable Instruments Law which holds an accommodation party liable on the

instrument to a holder for value, although such holder at the time of taking the instrument knew him to be only an accommodation party, does not include nor apply to corporations which are accommodation parties.[7] This is because the issue or indorsement of negotiable paper by a corporation without consideration and for the accommodation of another is ultra vires.[8] Hence, one who has taken the instrument with knowledge of the accommodation nature thereof cannot recover against a corporation where it is only an accommodation party. If the form of the instrument, or the nature of the transaction, is such as to charge the indorsee with knowledge that the issue or indorsement of the instrument by the corporation is for the accommodation of another, he cannot recover against the corporation thereon.[9]

By way of exception, an officer or agent of a corporation shall have the power to execute or indorse a negotiable paper in the name of the corporation for the accommodation of a third person only if specifically authorized to do so.[10] Corollarily, corporate officers, such as the president and vice-president, have no power to execute for mere accommodation a negotiable instrument of the corporation for their individual debts or transactions arising from or in relation to matters in which the corporation has no legitimate concern. Since such accommodation paper cannot thus be enforced against the corporation, especially since it is not involved in any aspect of the corporate business or operations, the inescapable conclusion in law and in logic is that the signatories thereof shall be personally liable therefor, as well as the consequences arising from their acts in connection therewith.

The instant case falls squarely within the purview of the aforesaid decisional rules. If we indulge petitioner in her aforesaid postulation, then she is effectively barred from recovering from Mover Enterprises, Inc. the value of the check. Be that as it may, petitioner is not without recourse.

The fact that for lack of capacity the corporation is not bound by an accommodation paper does not thereby absolve, but should render personally liable, the signatories of said instrument where the facts show that the accommodation involved was for their personal account, undertaking or purpose and the creditor was aware thereof.

Petitioner, as hereinbefore explained, was evidently charged with the knowledge that the check was issued at the instance and for the personal account of Atty. Benares who merely prevailed upon respondent Santos to act as co-signatory in accordance with the arrangement of the corporation with its depository bank. That it was a personal undertaking of said corporate officers was apparent to petitioner by reason of her personal involvement in the financial arrangement and the fact that, while it was the corporation's check which was issued to her for the amount involved, she actually had no transaction directly with said corporation.

There should be no legal obstacle, therefore, to petitioner's claims being directed personally against Atty. Oscar Z. Benares and respondent Ricardo S. Santos, Jr., president and vice-president, respectively, of Mover Enterprises, Inc.

2. On her second assignment of error, petitioner argues that the Court of Appeals erred in holding that the consignment of the sum of P45,000.00, made by private respondent after his tender of payment was refused by petitioner, was proper under Article 1256 of the Civil Code.

Petitioner's submission that no creditor-debtor relationship exists between the parties, hence consignment is not proper. Concomitantly, this argument was premised on the assumption that private respondent Santos is not an accommodation party.

As previously discussed, however, respondent Santos is an accommodation party and is, therefore, liable for the value of the check. The fact that he was only a co-signatory does not detract from his personal liability. A co-maker or co-drawer under the circumstances in this case is as much an accommodation party as the other

co-signatory or, for that matter, as a lone signatory in an accommodation instrument. Under the doctrine in *Philippine Bank of Commerce vs. Aruego*, supra, he is in effect a co-surety for the accommodated party with whom he and his co-signatory, as the other co-surety, assume solidary liability *ex lege* for the debt involved. With the dishonor of the check, there was created a debtor-creditor relationship, as between Atty. Benares and respondent Santos, on the one hand, and petitioner, on the other. This circumstance enables respondent Santos to resort to an action of consignment where his tender of payment had been refused by petitioner.

We interpose the caveat, however, that by holding that the remedy of consignment is proper under the given circumstances, we do not thereby rule that all the operative facts for consignment which would produce the effect of payment are present in this case. Those are factual issues that are not clear in the records before us and which are for the Regional Trial Court of Quezon City to ascertain in Civil Case No. Q-33160, for which reason it has advisedly been directed by respondent court to give due course to the complaint for consignment, and which would be subject to such issues or claims as may be raised by defendant and the counterclaim filed therein which is hereby ordered similarly revived.

3. That respondent court virtually prejudged Criminal Case No. Q-14687 of the Regional Trial Court of Quezon City filed against private respondent for violation of Batas Pambansa Blg. 22, by holding that no criminal liability had yet attached to private respondent when he deposited with the court the amount of P45,000.00 is the final plaint of petitioner.

We sustain petitioner on this score.

Indeed, respondent court went beyond the ratiocination called for in the appeal to it in CA-G.R. CV. No. 05464. In its own decision therein, it declared that "(t)he lone issue dwells in the question of whether an accommodation party can validly consign the amount of the debt due with the court after his tender of payment was refused by the creditor." Yet, from the commercial and civil law aspects determinative of said issue, it digressed into the merits of the aforesaid Criminal Case No. Q-14867, thus:

"Section 2 of B.P. 22 establishes the prima facie evidence of knowledge of such insufficiency of funds or credit. Thus, the making, drawing and issuance of a check, payment of which is refused by the drawee because of insufficient funds in or credit with such bank is prima facie evidence of knowledge of insufficiency of funds or credit, when the check is presented within 90 days from the date of the check.

"It will be noted that the last part of Section 2 of B.P. 22 provides that the element of knowledge of insufficiency of funds or credit is not present and, therefore, the crime does not exist, when the drawer pays the holder the amount due or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

"Based on the foregoing consideration, this Court finds that the plaintiff-appellant acted within his legal rights when he consigned the amount of P45,000.00 on August 14, 1981, between August 7, 1981, the date when plaintiff-appellant receive (sic) the notice of non-payment, and August 14, 1981, the date when the debt due was deposited with the Clerk of Court (a Saturday and a Sunday which are not banking days) intervened. The fifth banking day fell on August 14, 1981. Hence, no criminal liability has yet attached to plaintiff-appellant when he deposited the amount of P45,000.00 with the Court a quo on August 14, 1981." [11]

That said observations made in the civil case at bar and the intrusion into the merits of the criminal case pending in another court are improper do not have to be belabored. In the latter case, the criminal trial court has to grapple with such factual issues as, for instance, whether or not the period of five banking days had expired, in the process determining whether notice of dishonor should be reckoned from any prior notice if any has been given or from receipt by private respondents of the subpoena therein with supporting affidavits, if any, or from the first day of

actual preliminary investigation; and whether there was a justification for not making the requisite arrangements for payment in full of such check by the drawee bank within the said period. These are matters alien to the present controversy on tender and consignment of payment, where no such period and its legal effects are involved.

These are aside from the considerations that the disputed period involved in the criminal case is only a presumptive rule, *juris tantum* at that, to determine whether or not there was knowledge of insufficiency of funds in or credit with the drawee bank; that payment of civil liability is not a mode for extinguishment of criminal liability; and that the requisite quantum of evidence in the two types of cases are not the same.

To repeat, the foregoing matters are properly addressed to the trial court in Criminal Case No. Q-14867, the resolution of which should not be interfered with by respondent Court of Appeals at the present posture of said case, much less preempted by the inappropriate and unnecessary holdings in the aforequoted portion of the decision of said respondent court. Consequently, we modify the decision of respondent court in CA-G.R. CV No. 05464 by setting aside and declaring without force and effect its pronouncements and findings insofar as the merits of Criminal Case No. Q-14867 and the liability of the accused therein are concerned.

WHEREFORE, subject to the aforesaid modifications, the judgment of respondent Court of Appeals is AFFIRMED.

SO ORDERED.

Paras, Padilla, and Sarmiento, JJ., concur.

Melencio-Herrera, J., (Chairman), no part. Did not participate in the deliberation.

[1] Penned by Justice Justo P. Torres, Jr. and concurred in by Associate Justices Leonor Ines Luciano and Oscar M. Herrera; Rollo, 18.

[2] Civil Case No. Q-33160, Regional Trial Court of Quezon City, Branch XCVI.

[3] Rollo, 19-20.

[4] Rollo, 18.

[5] *Ang Tiong vs. Ting, et al.*, 22 SCRA 713 (1968).

[6] *Philippine Bank of Commerce vs. Aruego*, 102 SCRA 530 (1981).

[7] 11 C.J.S. 309.

[8] 14A C.J. 732.

[9] *Oppenheim vs. Simon Reigel Cigar Co.*, 90 N.Y.S. 355, cited in 11 C.J.S. 309.

[10] *In re Wrentham Mfg. Co.*, Low. 119; *Hall vs. Auburn Turnp. Co.*, 27 Cal. 255, cited in 14A C.J. 461.

[11] Rollo, 21-22.

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