

GREGORIO D. CANEDA, JR., PETITIONER, VS. HON. COURT OF APPEALS, HON. REGIONAL TRIAL COURT OF DAVAO, BRANCH IX, INVESTORS FINANCE CORPORATION, DOING BUSINESS UNDER THE NAME AND S...

G.R. No. 81322. February 05, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari and prohibition with preliminary injunction seeking the cancellation of the entry of judgment in CA-G.R. CV No. 03390 entitled "Investors Finance Corporation, doing business under the name and style "FNCB FINANCE", Plaintiff v. Buenaventura Gueson and John Doe, Defendants and Third Party Plaintiffs-Appellees v. Gregorio Caneda, Jr., Third Party Defendant-Appellant".

It appears on record that sometime on November 8, 1977, Buenaventura Gueson for value received, executed a promissory note for the sum of P18,960.00 in favor of Gregorio Caneda, Jr. promising to pay a monthly installment of P790.00 for 24 months with 14% interest per annum; that to secure the obligation Gueson executed a chattel mortgage and used a Toyota Jiffy jeep as a collateral; that it is expressly stipulated in the promissory note and chattel mortgage that default in the payment of any installment will make the entire obligation due and demandable. This promissory note and chattel mortgage was assigned by Gregorio Caneda in favor of Investors Finance Corporation (FNCB). Defendant Gueson defaulted in his obligation and as of September 24, 1980 had an outstanding balance of P11,230.00 exclusive of interest and other charges. Despite repeated demands defendant Gueson allegedly failed and refused to pay the entire obligation. Hence, FNCB on December, 1980 filed a complaint for replevin and/or sum of money against Buenaventura Gueson and John Doe. As relief, FNCB prayed for the seizure of the Toyota Jiffy jeep and its delivery to it, the payment of 25% of the total amount due as attorney's fees plus 10% thereof as liquidated damages and costs. In the alternative FNCB also prayed for the payment of the sum of P11,230.00 with interest at 15% per annum to be computed from September 25, 1978 until fully paid (Rollo, pp. 124-127).

On January 2, 1981, Buenaventura Gueson filed his answer with third party complaint. In his answer Gueson interposed the defense that he did not receive any value for the promissory note he executed as he merely accommodated the real debtor Gregorio Caneda, Jr.; that as the accommodated party Caneda, Jr. executed a deed of sale in Gueson's favor covering the Jiffy jeep subject matter of the chattel mortgage and he also executed a counter deed of sale in favor of Caneda, Jr.; that with the consent of FNCB, Caneda, Jr. executed an "undertaking" whereby he bound himself to pay and assume the obligation stipulated in the promissory note and chattel mortgage; that FNCB is not a holder in due course of the promissory note nor an assignee in good faith; that as the real debtor Caneda, Jr. is primarily liable to FNCB; that because of Caneda's unjustifiable refusal to honor his obligation Gueson suffered damages. He, therefore, prayed that Caneda, Jr. be ordered to pay directly FNCB and in the event that he be required to pay FNCB that he should be reimbursed by Caneda, Jr. As counterclaim, he also asked for the payment of actual and moral damages, attorney's fees and litigation expenses (Rollo, p. 146).

On March 18, 1981, Gregorio D. Caneda, Jr. filed his answer to the third party complaint. He denied that he is the real debtor or the party accommodated. He alleged that he had not incurred any monetary obligation in favor of FNCB. He pointed out that Gueson agreed to buy his Jiffy jeep, but since he has no cash, they agreed that Gueson will apply for financing with FNCB; that he executed a deed of sale on the condition that if the financing will not be approved the sale shall not materialize and Gueson shall deed back the jeep to him; that since the loan was approved the "counter deed of sale" was rendered moot and academic; that Gueson was not relieved of his obligation to FNCB since the "undertaking" was "with recourse to Buenaventura Gueson in case of default"; that under Section 19 of the Negotiable Instruments Law, Gueson is still liable to FNCB even assuming that he is merely an accommodation party. Accordingly, he prayed for the dismissal of the complaint against him (Rollo, pp. 134-135; 146-147).

On June 18, 1981, the pre-trial conference was terminated as no settlement could be reached by the parties (Rollo, p. 134). Trial ensued thereafter.

On February 19, 1982 hearing, the John Doe named on the complaint was identified as Gregorio Caneda, Jr. Upon FNCB's motion the third party complaint was treated as a cross-claim and the pleading filed by Caneda, Jr. was considered as an answer to the complaint and cross-claim (Rollo, pp. 7-10). In said hearing FNCB presented Bethoven Sur, its Field Collector as its lone witness who identified the promissory note (Exhibit A) and the chattel mortgage (Exhibit B) and testified on the transaction. Buenaventura Gueson also testified in the hearing and identified the undated counter deed of sale (Exhibit 1) and the undertaking (Exhibit 2). In his testimony he accommodated Atty. Gregorio Caneda, Jr. upon the prodding of the Rivera spouses, his townmates. He also pointed out that the typewritten words "with recourse to Buenaventura Gueson in case of default" appearing in Exhibit 2 was not there when Atty. Caneda, Jr. signed the document; that the jeep and its registration papers were always in the possession of Atty. Caneda, Jr. (Rollo, pp. 14-15). Gueson formally offered his exhibits and rested his case on June 2, 1987.

Because of Caneda's failure to attend the hearing, who instead filed an ex-parte motion for postponement despite the previous warning of the court that the October 22, 1982 hearing could not be moved as the previous scheduled hearing for the reception of Caneda, Jr.'s evidence was postponed at his instance, the trial court in its order dated October 22, 1982 declared that Caneda waived his right to present evidence and the case would be decided on the evidence on record. Caneda filed a motion for reconsideration, but it was denied in the order of the trial court dated November 22, 1982.

The above incident was elevated to the Court of Appeals. But for lack of merit the petition for certiorari and prohibition filed by Caneda, Jr. was dismissed on March 15, 1983 by the Appellate Court in AC G.R. Sp. No. 15220. Thereafter, Caneda, Jr. filed a petition for review on certiorari, but this Court in G.R. No. 64567 resolved on August 15, 1983 to deny the petition for lack of merit (Ibid.).

On November 26, 1983, the trial court rendered its decision[*] on the main case, finding that Buenaventura Gueson was merely an accommodation party for the benefit of Caneda, Jr.; that there was novation in the form of substitution of debtors when Gregorio Caneda, Jr. executed the undertaking assuming the liability of B. Gueson in favor of FNCB; that the phrase "With recourse to Buenaventura Gueson in case of default" found in the undertaking was inserted only after Caneda and FNCB had already signed the undertaking and without the knowledge of B. Gueson and that Caneda was in bad faith in trying to evade payment of a justly-secured legal obligation. The dispositive portion of said decision reads:

"WHEREFORE, premises duly considered, judgment is hereby rendered —

I. On the complaint:

- a) Dismissing the same as against Defendant/Cross-claimant Buenaventura-Gueson;
- b) Ordering Defendant/cross-defendant Gregorio D. Caneda, Jr., to pay plaintiff the sum of ELEVEN THOUSAND TWO HUNDRED THIRTY (P11,230.00) PESOS, Philippine Currency, with interest at the rate of 12% per annum computed from September 25, 1978 until fully paid; plus the sum equivalent to 25% of the total amount due and payable as and for attorney's fees, including costs of premium of the Replevin Bond, and filing fees.

II. On the Counterclaim and Cross-claim of Defendant/Cross-Claimant Buenaventura Gueson:

- a) Ordering the defendant/cross-defendant Gregorio D. Caneda, Jr., to pay the defendant/cross-claimant Buenaventura Gueson the amounts of TEN THOUSAND (P10,000.00) PESOS, Philippine Currency, as moral damages he suffered established under his Counterclaim;
- b) Ordering the defendant/cross defendant Gregorio D. Caneda, Jr., to pay defendant/cross-claimant Buenaventura Gueson the sum of FIVE THOUSAND (P5,000.00) PESOS, Philippine Currency, as exemplary damages; and
- c) Ordering the defendant/cross-defendant Gregorio D. Caneda, Jr., to pay defendant/cross-claimant Buenaventura Gueson the sum of THREE THOUSAND (P3,000.00) PESOS, Philippine Currency, as and for attorney's fees plus TWO THOUSAND (P2,000.00) PESOS, Philippine Currency, for expenses of litigation.

Finally, said defendant/cross-defendant Gregorio D. Caneda, Jr., is hereby ordered to pay the costs of the suit.

IT IS SO ORDERED."

From the above decision, Caneda, Jr. interposed an appeal. In its decision[**] in CA-G.R. CV No. 03390 promulgated on November 28, 1986, the Third Division of the Court of Appeals affirmed the decision of the trial court with costs against appellant Caneda, Jr. (Rollo, pp. 144-152).

On June 2, 1987, the Court of Appeals made an entry of judgment of its decision in CA-G.R. CV No. 03390 as it became final and executory on December 28, 1986 (Rollo, p. 11). Original records of the case were remanded to the trial court on June 3, 1987 (Rollo, p. 117).

On June 18, 1987, Caneda Jr. filed with the Court of Appeals a motion to cancel entry of judgment alleging that the appellate court's decision is not yet final and executory as he has not received a copy of the said decision. In its resolution dated July 23, 1987, the Court of Appeals denied said motion.

Hence, this petition.

The main issue in this case is whether or not a copy of the November 28, 1986 decision of the Court of Appeals has been properly served on herein petitioner and therefore has become final and executory.

After all the required pleadings had been filed, the petition was given due course in the resolution of July 25, 1988 (Rollo, p. 103) and the parties were required to submit simultaneously their respective memoranda. Private respondent Gueson filed his memorandum on October 3, 1988 (Rollo, p. 112) while FNCB waived its right to file memorandum (Rollo, p. 174). Petitioner filed his memorandum on October 10, 1988 (Rollo, p. 154).

Petitioner claimed among others that the Court of Appeals arbitrarily denied his motion to cancel entry of judgment, despite the fact that on June 3, 1987, he learned for the first time that a decision dated November 28, 1986 was rendered by the Court of Appeals because he was not furnished a copy of said decision which was delivered instead by letter carrier Anastacio Arbizo of the Post Office of Davao City on December 11, 1986 at about 12:10 noon to a certain Boy Reyes, petitioner's neighbor, living just in front of his office as shown by the

record book of said letter carrier and the certification of Cresenciano C. Tagaza, Postmaster VI (Annex "B"; Rollo, p. 95). To date, Boy Reyes who moved with his family to Cateel, Davao del Norte about six months from the filing of the petition, has not delivered to petitioner subject decision. Petitioner argued that Boy Reyes is not authorized to receive his mails so that the negligence of Reyes is not binding on him. Hence, he claimed that the Court of Appeals' denial of his motion to cancel entry of judgment is tantamount to a denial of his fundamental right to due process of law and prayed for: (a) the cancellation of the entry of judgment; (b) the setting aside of the order dated July 23, 1987 of the Court of Appeals; and (c) the delivery to him of a copy of the decision dated November 28, 1986, so that he can appeal. Pending the determination of the instant petition he also prayed for the issuance of a restraining order or a writ of preliminary injunction to prohibit the enforcement of the decision of the trial court as affirmed by the Court of Appeals.

On the other hand, while respondents pointed out that previous summons and other pleadings were duly served in petitioner's office, they were not able to show that the copy of the decision in question was properly served on the petitioner as required by Section 8, Rule 14 of the Rules of Court. In fact, petitioner's claim that as appearing in the registry book of the Bureau of Post as well as the Certification of the Postmaster that the copy of the Court of Appeals' decision was delivered to Boy Reyes, his neighbor, was not successfully rebutted.

Instead respondents resorted to suppositions and surmises claiming that it is unthinkable that Boy Reyes, petitioner's neighbor, "living just right in front of the office" which office also serve as petitioner's residence would not deliver the mail matter containing the decision to petitioner, considering the fact that no incident has been cited that would show any motive why Boy Reyes did not inform him or deliver to him the mail containing the decision; and that it is impossible to believe that petitioner failed to receive the mail containing the decision when all mails sent to him by the Court of Appeals were received by him at the same address. Finally, private respondent concluded that there is no practical benefit by giving due course to the petition (Rollo, pp. 64-67). Be that as it may, suppositions and surmises are not evidence sufficient to show compliance with the Rules.

Hence, as ruled by this Court under similar circumstances where service was made at an address which was neither the "residence" nor the "dwelling house" of the petitioner nor his office or regular place of business at the time of service and served on a person who is not the proper person to whom the papers should be left, the same is not the service contemplated by the Rules. The statutory requirements of substituted service must be followed strictly, faithfully and fully and any substituted service other than that authorized by statute is considered ineffective (*Filmerco Commercial Co., Inc. v. IAC*, 149 SCRA 194-196 [1987]).

In fine, Canada's motion to cancel the assailed entry of judgment should have been granted by the Court of Appeals but to remand this case to respondent Court for that purpose alone, after which the same will be returned again to this Court on appeal or review, would be an exercise that would only delay the final adjudication of the litigation. There are sufficient facts on record not to mention the findings of the trial court and the Court of Appeals by which the merits of the appeal can be resolved. Well-settled is the rule that remanding of a case for the reception of evidence is not necessary if the Supreme Court could resolve the dispute based on the records before it (*Quisumbing v. Court of Appeals*, 122 SCRA 703 [1983]; *Board of Liquidators v. Zulueta*, 115 SCRA 548 [1982]). More so in this case, where a decision has already been promulgated and in fact ready for appeal. Thus, it was held that where there is enough basis for the Court to end the basic controversy between the parties here and now, procedural steps can be dispensed with, which would not anyway affect substantially the merits of their respective claims (*Velasco v. Court of Appeals*, 95 SCRA 621-622 [1980]).

As to the merits of the main case, it is undisputed that Buenaventura Gueson executed a promissory note in favor of petitioner Canada, secured by a chattel mortgage on a Toyota Jippy jeep as collateral; which promissory note and chattel mortgage were assigned by Canada in favor of FNCB evidently to secure his obligation with said

company, with the knowledge and consent of Gueson. The records also show that when FNCB tried to collect from Gueson, Caneda consented and affixed his signature on an "undertaking" thereby acknowledging indebtedness in favor of FNCB.

The principal question that arises is the effect of the assignment on the obligations of Gueson and Caneda to FNCB.

As between Gueson and Caneda, it is obvious that whatever private agreement or understanding transpired between them is binding on them alone and not on FNCB whose only concern in the whole transaction is the repayment of the loan it has extended.

As regard FNCB, both the trial court and the Court of Appeals are of the view that Caneda is the real debtor of said company and Gueson is only an accommodation party of Caneda. However, the trial court concluded that there was novation in the form of substitution of debtors when Caneda executed the undertaking assuming the liability of Gueson in favor of FNCB.

Novation has been defined as the extinguishment of an obligation by a subsequent one which terminates it, either by changing its object or principal conditions, referred to as objective or real novation or by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor, also called as subjective or personal novation (*Cochingyan, Jr. v. R & B Surety and Insurance Co., Inc.*, 151 SCRA 349 [1987]).

But as explained by this Court, novation is never presumed; it must be explicitly stated or there must be a manifest incompatibility between the old and the new obligations in every aspect. The test of incompatibility between two obligations or contracts, is whether or not they can stand together, each one having an independent existence. If they cannot, they are incompatible, and the later obligation novates the first (*Bisaya Land Transportation Co., Inc. v. Sanchez*, 153 SCRA 534-535 [1987]).

As correctly observed by the Court of Appeals, there is no novation, whether express or implied. There is no express novation since the undertaking executed on October 2, 1980 does not state in clear terms that the promissory note and chattel mortgage executed by Gueson is extinguished and in lieu thereof the undertaking will be substituted. Neither is there an implied novation since the promissory note and chattel mortgage are not incompatible with the undertaking.

Neither is there substitution of debtors. Petitioner Caneda in executing the undertaking assuming the liability with FNCB, merely confirmed that he is the real or principal debtor while Gueson in signing the promissory note and the chattel mortgage accommodated Caneda in his obligation with FNCB. Otherwise stated, he became a surety. Thus, this Court has ruled, that a person 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 is liable on the instrument to a holder for value, notwithstanding the fact that such holder at the time of taking the instrument knew him to be only an accommodation party. Nonetheless, after paying the holder, such accommodation party has the right to obtain reimbursement from the party accommodated, since the relation between them is in effect that of principal and surety, the accommodation party being the surety (*People v. Maniego*, 148 SCRA 31 [1987]).

Likewise, it is no defense to state on the part of either Gueson or Caneda that they did not receive any value for the promissory note executed, both claiming to be only an accommodation party. As held by this Court, a third person advances the face value of the note to the accommodated party at the time of the creation of the note, the consideration for the note as regards its maker is the money advanced to the accommodated party, and it cannot be said that the note is lacking in consideration as to the accommodating party just because he himself received none of the money. It is enough that value was given for the note at the time of its creation (*Acuna v. Veloso* and

Xavier, 50 Phil. 241-242 [1927]).

In resume, FNCB can go against both Caneda, the principal debtor and Gueson as the surety or either of them. But the lower court erred in dismissing the claim against Gueson. FNCB did not however, appeal thereby rendering this case moot as against Gueson. It does not however, follow that FNCB cannot recover the full amount from Caneda being the accommodated party. By not appealing the decision of the lower court, FNCB merely opted to recover its credit from Caneda and waived its right to recover from Gueson.

In like manner, the disputed phrase "with recourse to Buenaventura Gueson in case of default" is immaterial insofar as the liability of Caneda is concerned. If at all, said phrase merely confirms the fact that Gueson is merely an accommodation party and will not absolve Caneda, the principal debtor, from payment of the indebtedness with FNCB.

After a careful study of the records, no plausible reason can be found to disturb the findings and conclusions of the Court of Appeals.

PREMISES CONSIDERED, the appeal of petitioner is hereby ALLOWED, but considering this case on the merits, the assailed decision of the Court of Appeals of November 28, 1986 making Caneda, Jr. liable to FNCB, is hereby AFFIRMED.

SO ORDERED.

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

[*]Written by Judge Bernardo V. Saldares.

[**]Penned by Associate Justice Bienvenido C. Ejercito and concurred in by Associate Justices Rodolfo A. Nocon and Antonio N. Martinez.

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