

DEVELOPMENT BANK OF RIZAL, PLAINTIFF-PETITIONER, VS. SIMA WEI AND/OR LEE KIAN HUAT, MARY CHENG UY, SAMSON TUNG, ASIAN INDUSTRIAL PLASTIC CORPORATION AND PRODUCERS BANK OF THE PH...

G.R. No. 85419. March 09, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

On July 6, 1986, the Development Bank of Rizal (petitioner Bank for brevity) filed a complaint for a sum of money against respondents Sima Wei and/or Lee Kian Huat, Mary Cheng Uy, Samson Tung, Asian Industrial Plastic Corporation (Plastic Corporation for short) and the Producers Bank of the Philippines, on two causes of action:

- (1) To enforce payment of the balance of P1,032,450.02 on a promissory note executed by respondent Sima Wei on June 9, 1983; and
- (2) To enforce payment of two checks executed by Sima Wei, payable to petitioner, and drawn against the China Banking Corporation, to pay the balance due on the promissory note.

Except for Lee Kian Huat, defendants filed their separate Motions to Dismiss alleging a common ground that the complaint states no cause of action. The trial court granted the defendants' Motions to Dismiss. The Court of Appeals affirmed this decision,[*] to which the petitioner Bank, represented by its Legal Liquidator, filed this Petition for Review by Certiorari, assigning the following as the alleged errors of the Court of Appeals:[1]

- (1) THE COURT OF APPEALS ERRED IN HOLDING THAT THE PLAINTIFF-PETITIONER HAS NO CAUSE OF ACTION AGAINST DEFENDANTS-RESPONDENTS HEREIN.
- (2) THE COURT OF APPEALS ERRED IN HOLDING THAT SECTION 13, RULE 3 OF THE REVISED RULES OF COURT ON ALTERNATIVE DEFENDANTS IS NOT APPLICABLE TO HEREIN DEFENDANTS-RESPONDENTS.

The antecedent facts of this case are as follows:

In consideration for a loan extended by petitioner Bank to respondent Sima Wei, the latter executed and delivered to the former a promissory note, engaging to pay the petitioner Bank or order the amount of P1,820,000.00 on or before June 24, 1983 with interest at 32% per annum. Sima Wei made partial payments on the note, leaving a balance of P1,032,450.02. On November 18, 1983, Sima Wei issued two crossed checks payable to petitioner Bank drawn against China Banking Corporation, bearing respectively the serial numbers 384934, for the amount of P550,000.00 and 384935, for the amount of P500,000.00. The said checks were allegedly issued in full settlement of the drawer's account evidenced by the promissory note. These two checks were not delivered to the petitioner-payee or to any of its authorized representatives. For reasons not shown, these checks came into the possession of respondent Lee Kian Huat, who deposited the checks without the petitioner-payee's indorsement

(forged or otherwise) to the account of respondent Plastic Corporation, at the Balintawak branch, Caloocan City, of the Producers Bank. Cheng Uy, Branch Manager of the Balintawak branch of Producers Bank, relying on the assurance of respondent Samson Tung, President of Plastic Corporation, that the transaction was legal and regular, instructed the cashier of Producers Bank to accept the checks for deposit and to credit them to the account of said Plastic Corporation, inspite of the fact that the checks were crossed and payable to petitioner Bank and bore no indorsement of the latter. Hence, petitioner filed the complaint as aforesaid.

The main issue before Us is whether petitioner Bank has a cause of action against any or all of the defendants, in the alternative or otherwise.

A cause of action is defined as an act or omission of one party in violation of the legal right or rights of another. The essential elements are: (1) legal right of the plaintiff; (2) correlative obligation of the defendant; and (3) an actor omission of the defendant in violation of said legal right.[2]

The normal parties to a check are the drawer, the payee and the drawee bank. Courts have long recognized the business custom of using printed checks where blanks are provided for the date of issuance, the name of the payee, the amount payable and the drawer's signature. All the drawer has to do when he wishes to issue a check is to properly fill up the blanks and sign it. However, the mere fact that he has done these does not give rise to any liability on his part, until and unless the check is delivered to the payee or his representative. A negotiable instrument, of which a check is, is not only a written evidence of a contract right but is also a species of property. Just as a deed to a piece of land must be delivered in order to convey title to the grantee, so must a negotiable instrument be delivered to the payee in order to evidence its existence as a binding contract. Section 16 of the Negotiable Instruments Law, which governs checks, provides in part:

"Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. x x x."

Thus, the payee of a negotiable instrument acquires no interest with respect thereto until its delivery to him.[3] Delivery of an instrument means transfer of possession, actual or constructive, from one person to another.[4] Without the initial delivery of the instrument from the drawer to the payee, there can be no liability on the instrument. Moreover, such delivery must be intended to give effect to the instrument.

The allegations of the petitioner in the original complaint show that the two (2) China Bank checks, numbered 384934 and 384935, were not delivered to the payee, the petitioner herein. Without the delivery of said checks to petitioner-payee, the former did not acquire any right or interest therein and cannot therefore assert any cause of action, founded on said checks, whether against the drawer Sima Wei or against the Producers Bank or any of the other respondents.

In the original complaint, petitioner Bank, as plaintiff, sued respondent Sima Wei on the promissory note, and the alternative defendants, including Sima Wei, on the two checks. On appeal from the orders of dismissal of the Regional Trial Court, petitioner Bank alleged that its cause of action was not based on collecting the sum of money evidenced by the negotiable instruments stated but on quasi-delict -- a claim for damages on the ground of fraudulent acts and evident bad faith of the alternative respondents. This was clearly an attempt by the petitioner Bank to change not only the theory of its case but the basis of his cause of action. It is well-settled that a party cannot change his theory on appeal, as this would in effect deprive the other party of his day in court.[5]

Notwithstanding the above, it does not necessarily follow that the drawer Sima Wei is freed from liability to petitioner Bank under the loan evidenced by the promissory note agreed to by her. Her allegation that she has paid the balance of her loan with the two checks payable to petitioner Bank has no merit for, as We have earlier explained, these checks were never delivered to petitioner Bank. And even granting, without admitting, that there

was delivery to petitioner Bank, the delivery of checks in payment of obligation does not constitute payment unless they are cashed or their value is impaired through the fault of the creditor.[6] None of these exceptions were alleged by respondent Sima Wei.

Therefore, unless respondent Sima Wei proves that she has been relieved from liability on the promissory note by some other cause, petitioner Bank has a right of action against her for the balance due thereon.

However, insofar as the other respondents are concerned, petitioner Bank has no privity with them. Since petitioner Bank never received the checks on which it based its action against said respondents, it never owned them (the checks) nor did it acquire any interest therein. Thus, anything which the respondents may have done with respect to said checks could not have prejudiced petitioner Bank. It had no right or interest in the checks which could have been violated by said respondents. Petitioner Bank has therefore no cause of action against said respondents, in the alternative or otherwise. If at all, it is Sima Wei, the drawer, who would have a cause of action against her co-respondents, if the allegations in the complaint are found to be true.

With respect to the second assignment of error raised by petitioner Bank regarding the applicability of Section 13, Rule 3 of the Rules of Court, We find it unnecessary to discuss the same in view of Our finding that the petitioner Bank did not acquire any right or interest in the checks due to lack of delivery. It therefore has no cause of action against the respondents, in the alternative or otherwise.

In the light of the foregoing, the judgment of the Court of Appeals dismissing the petitioner's complaint is AFFIRMED insofar as the second cause of action is concerned. On the first cause of action, the case is REMANDED to the trial court for a trial on the merits, consistent with this decision, in order to determine whether respondent Sima Wei is liable to the Development Bank of Rizal for any amount under the promissory note allegedly signed by her.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[*] CA G.R. CV No. 11980 dated October 12, 1988. Penned by Associate Justice Venancio D. Aldecoa, Jr. with Associate Justices Ricardo P. Tensuan and Luis L. Victor, concurring.

[1] Petition, p. 7; Rollo, p. 20.

[2] *Caseñas vs. Rosales, et al.*, 19 SCRA 462 (1967); *Remitere, et al. vs. Vda. de Yulo, et al.*, 16 SCRA 251 (1966).

[3] *In re Martens' Estate*, 226 Iowa 162, 283 N.W. 885 (1939); *Shriver vs. Danby*, 113 A. 612 (1921).

[4] *Negotiable Instruments Law*, Sec. 191, par. 6.

[5] *Ganzon vs. Court of Appeals*, 161 SCRA 646 (1988). See also 1 M. MORAN, *COMMENTS ON THE RULES OF COURT* 715 (1957 ed.), citing *San Agustin vs. Barrios*, 68 Phil. 475 (1939), *Toribio vs. Decasa*, 55 Phil. 461 (1930), *American Express Co. vs. Natividad*, 46 Phil. 207 (1924), *Agoncillo vs. Javier*, 38 Phil. 424 (1918).

[6] *CIVIL CODE*, Art. 1249, par. 2.

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