

L. L. HILL, PLAINTIFF AND APPELLANT VS. MAXIMINA CH. VELOSO ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 9421. July 24, 1915

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

On December 30, 1910, Maximina Ch. Veloso, the wife of Manuel M. Tio Cuana, and Domingo Franco, the first named with the consent of her husband, executed and signed a document of the following tenor:

"For value of the goods we have received in La Cooperativa Filipino, we promise to pay jointly and severally to Michael & Co., S. en C, or its order, in the municipality of Cebu, the sum of six thousand three hundred and nineteen pesos and thirty-three centavos (P6,319.33), in the manner hereinafter set forth, with interest on such part of said principal as may remain unpaid at the end of each month at the rate of one and a half per cent per month until the principal shall have been completely paid. The said sum of/six thousand three hundred and nineteen pesos and thirty-three centavos (P6,319.33) shall be paid at the rate of five hundred pesos (P500) monthly on or before the 15th day of each month, and the interest shall also be paid monthly. In case said monthly payments are not made in the manner that we have promised hereinabove, then all the unpaid principal shall become immediately demandable, at the option of the owner of this promissory note. In case suit be brought for the collection of the amount of this promissory note or any part thereof, we bind ourselves jointly and severally to pay an additional and reasonable sum as fees of the plaintiff's attorney in said suit.

(Sgd.) "MAXIMINA CH. VELOSO.

"DOMINGO FRANCO.

"I consent to my wife, Maximina Ch. Veloso, signing the foregoing document.

(Sgd.) "MANUEL M. TIO CUANA.

"CEBU, P. I., December 30, 1910"

This promissory note was indorsed to L. L. Hill on January 12, 1911. The following indorsement appears on the back:

"January 12, 1911. "Pay to the order of L. L. Hill.

"E. MICHAEL, S. en C.

"By E. MICHAEL, Gerente"

Two thousand pesos have been paid on this note—that is, four installments of P500 each on February 10, March 16, April 16, and May 22, 1911, respectively.

On July 5, 1911, L. L. Hill brought the present suit to recover the following sums: P4,319.33, with interest thereon at the rate of 1½ per cent per month from July 1, 1911, until said sum should be entirely paid; P473.18 as interest on the principal of said note from December 30 to June 30, 1911; P1,000 as fees for plaintiff's attorney in this suit and for the costs of the proceedings against the defendants, Maximina Ch. Veloso and Manuel Martinez Tio

Cuana.

Defendants, in answer to the complaint, alleged as a special defense that "about the middle of December, 1910, the deceased Domingo Franco, who was their son-in-law, had stated to them that attorney Martin M. Levering, in his capacity of guardian of the minor children of Potenciano Chiong Veloso, had suggested to the said Franco the necessity of the defendants' executing in Levering's behalf a document in which it should be set forth that the defendants would pay to Levering, in his capacity of guardian of said minors, the sum of P8,000 which defendants had borrowed from Damasa Ricablanca, the former guardian of these minors, in view of the fact that the court had removed this latter from office and appointed said attorney in her stead; that, by reason of this statement by Levering to Franco, and having, as they did have, confidence in said decedent, Domingo Franco, on account of his being a member of their family, defendants were willing to execute in behalf of the said attorney, Levering, a document that should set forth the sum owed by them to the wards represented by Levering; that, consequently, said Domingo Franco had defendants sign, outside his office, a blank paper, stating to them that said paper would be filled out inside his office by recording on the sheet the obligation contracted by them in behalf of said wards; that defendants did in fact sign the said paper for the purpose indicated, and, up to the death of said Domingo Franco, which occurred in May of the present year (1911) confided in his good faith and in the belief that the paper which they had signed had been duly filled out with the obligation contracted by them in behalf of said wards and had been delivered to attorney Martin M. Levering as guardian of said minors, but that after the said Franco died they learned that at no time had he ever delivered to said attorney any document whatever signed by defendants; that they believed that the paper which said deceased had them sign for the alleged purpose aforementioned was filled out with a totally different obligation from that which they had been made to believe would be set forth therein. Defendants therefore alleged that, as they had had no transaction whatever with Michael & Co., S. en C, nor with the plaintiff, and as they had not received any kind of goods whatever from said firm, and it appearing that they, together with the deceased Domingo Franco, seemingly signed the promissory note, plaintiff's Exhibit A, all these reasons induced them to believe, and they so alleged, that the said deceased, without their consent, utilized the aforementioned paper for the execution of said promissory note. Defendants further alleged that at no time did they intend to execute any promissory note in behalf of Michael & Co., S. en C.; that it was false that Michael & Co. delivered goods to them in La Cooperativa Filipino,; and that, of their own free will, they did not execute any document whatever in behalf of the creditor mentioned in said promissory note."

Evidence was adduced by the parties, after which the Court of First Instance of Cebu, who tried the case, rendered judgment absolving defendants from the complaint, with their costs.

Plaintiff appealed, and his appeal having been heard and the evidence reviewed, it appears: That the trial court sustained defendants' special defense in all its parts, making it the principal ground for his judgment, to wit, that defendants' signatures on the promissory note were obtained by means of the fraud alleged in their answer to the complaint and that defendants at the trial explicitly acknowledged their signatures. The defendant Maximina Ch. Veloso testified that her son-in-law, Domingo Franco, had her sign the document in blank; that when she did so it contained no writing; and that if he made her sign it, and if she did sign it, it was because Franco had told her that Levering compelled her to execute a document in his behalf "for the minor children of Damasa Ricablanca," her sister-in-law and widow of Potenciano Ch. Veloso, who had deposited with her P8,000 belonging to her minor children to whom witness acknowledged herself to be indebted in the said sum of P8,000.

Assuming this to be true, by the recognition of the signature of the promissory note, the document became completely effective, unless there be proof of some exception permitted by law. Were there such an exception, the maker was the person obliged to prove it and, in the present case, that person is the defendant; and the latter has

presented absolutely no proof of the mistake by reason of which she says she signed the promissory note, nor of the fraud or deceit she charges to her son-in-law, Domingo Franco, now deceased. Far from it, something else was shown to have "been proven by her own testimony and acts. On her being cross-questioned as to whether it was true that, as she says, she signed the promissory note in blank thinking that she was signing an obligation in behalf of Levering as guardian of the estate belonging to the minor children of her deceased brother, she replied that it was, that she had been told by the said Domingo Franco that it was such an obligation, and so she was willing to sign it, because "it was really a debt."

From this testimony of Maximina Ch. Veloso and from her written answer, it appears that in December, 1910, she signed in blank the promissory note now in question; that she signed it in the belief that the obligation which it would contain would be that of acknowledging her debt of P8,000 in favor of the minor children of Damasa Ricablanca and of paying it to Levering, who at that time was the guardian of the said minors; that for this reason, in her written answer of August 4, 1911, she set up that special defense of error and deceit, when she saw that the obligation contained in the document signed in blank was a promissory note made out to Michael & Co. for P6,319 and some centavos. It appears that Levering, as guardian of the minor children of Damasa Ricablanca, commenced proceedings on November 1, 1911, to recover the P8,000 owed by the defendant Maximina Ch. Veloso, and that the latter, on January 15, 1912, answered the complaint stating that her debt was owing to Damasa Ricablanca herself in her own right, but not in her capacity of guardian of her minor children. (Record, pp. 34 and 36.)

If she said this in 1912, it cannot be maintained that in 1910, on being required to recognize and pay the debt of P8,000, she consented to sign a document in blank recognizing the debt and binding herself to pay it to Levering as the then guardian of the minor children of Damasa Ricablanca. What would have been natural and logical is that then, as in 1912, she would have refused to execute said obligation in writing in favor of Levering, as she did reject it on January 18, 1912, since she did not consider herself to be in debt to the minors, but to their mother.

This being shown by the record, the allegation of that other fact, entirely contradicted at trial by the same person, cannot be considered as proof of the error and deceit alleged in this action.

It is likewise proven in this case that during the trial, after the defendant Veloso had acknowledged the debt owing the minors represented by Levering, she was cross-questioned as to why she had denied it in 1912 when she was sued for its payment; she replied that possibly demand had been made upon her for payment, but that she did not remember, and on being cross-questioned as to whether she remembered that judgment had been rendered against her, she replied that she did and that she had been informed of it by her own attorney.

This is the only thing in the record which may be opposed to the truth and presumption of truth offered by the contents of a document freely and willingly signed.

This is not proof, much less preponderant proof, that can outweigh the contents of the promissory note that is the basis of the complaint; on the contrary, it is conclusive proof of the falsity of the other cause of debt alleged in the special defense.

But even granted that no such proofs existed in the case; even granted that it was proven at trial that Domingo Franco acted in the manner stated in the answer and in the defendant Maximina Ch. Veloso's testimony, yet even so, the deceit and error alleged could not annul the consent of the contracting parties to the promissory note, nor exempt this defendant from the obligation incurred. The deceit, in order that it may annul the consent, must be that which the law defines as a cause. "There is deceit when by words or insidious machinations on the part of one of the contracting parties, the other is induced to execute a contract which without them he would not have made." (Civ. Code, art. 1269.)

Domingo Franco is not one of the contracting parties who may have deceitfully induced the other contracting party, Michael & Co., to execute the contract. The one and the other of the contracting parties, to whom the law refers, are the active and the passive subjects of the obligation, the party of the first part and the party of the second part who execute the contract. The active subject and party of the first part of the promissory note in question is Michael & Co., and the passive subject and party of the second part are Maximina Ch. Veloso and Domingo Franco; two, or be they more, who are one single subject, one single party. Domingo Franco is not one contracting party with regard to Maximina Ch. Veloso as the other contracting party. They both are but one single contracting party in contractual relation with, or as against, Michael & Co. Domingo Franco, like any other person who might have been able to induce Maximina Ch. Veloso to act in the manner she is said to have done, under the influence of deceit, would be, for this purpose, but a third person. There would then not be deceit on the part of one of the contracting parties exercised upon the other contracting party, but deceit practiced by a third person.

"In accordance with the text of the Code, which coincides with that of other foreign codes, deceit by a third person does not in general annul consent, and in support of this opinion it is alleged that, in such a case, the two contracting parties act in good faith (on the hypothesis set forth, Michael & Co., and Maximina Ch. Veloso); that there is no reason for making one of the parties suffer for the consequences of the act of a third person in whom the other contracting party may have reposed an imprudent confidence. Notwithstanding these reasons, the deceit caused by a third person may produce effects and, in some cases, bring about the nullification of the contract. This will happen when the third person causes the deceit in connivance with, or at least with the knowledge, without protest, of the favored contracting party: the most probable suppositions, in which the latter cannot be considered exempt from responsibility. Moreover, and even without the attendance of that circumstance, the deceit caused by a third person might lead the contracting party upon whom it was practiced into error, and as such, though it be not deceit, may vitiate consent. In any case, this deceit may give rise to more or less extensive and serious responsibility on the part of the third person, and a corresponding right of action for the contracting party prejudiced" (in the present hypothesis, Maximina Ch. Veloso against Domingo Franco). (8 Manresa, 659, 2d Ed.)

With respect to the true cause of the debt or cause of the contract, it is not necessary to set forth any consideration whatever, because, as the deceit and error alleged cannot be estimated, it is of no importance whether the La Cooperativa Filipina, whose goods were the cause of the debt, exclusively belonged to one or the other of the debtors, the obligation of debt and payment being joint. But if any consideration with respect to this error alleged on appeal were necessary it would only be that the evidence against the finding contained in the judgment appealed from is very conclusive. Isabelo Alburo, a witness for the defense and manager of La Cooperativa Filipina, testified that the goods furnished by Michael were received in the store La Cooperativa Filipina; that he signed the bills for collection; that the bill-heads bore the printed legend "La Cooperativa Filipina de Maximina Ch. Veloso;" and that all the forms, books and accounts were printed in the same manner. The municipal treasurer exhibited the registry books and testified that the license for that establishment was issued in the name of Maximina Ch. Veloso, and the appellee herself testified that she was aware that it was conducted in her name.

The third assignment of error should be considered like the foregoing two. The statement is in all respects inadmissible that the promissory note in question is absolutely null and void, not merely annulable, and that in such cases the Supreme Court has decided that no rights can be acquired by a person who obtains a promissory note by indorsement, in support of which averment the decisions in the cases of *Palma vs. Canizares* (1 Phil. Rep., 602) and *Lichauco vs. Martinez* (6 Phil. Rep., 594) are cited.

In neither of these decisions is such a doctrine set up. The syllabus in the first case says: "A promissory note which represents a gambling debt and is therefore unenforceable in the hands, of the payee, obtains no greater validity in the hands of an assignee in the absence of showing that the debtor has consented to and approved of the assignment."

And that of the second case: "Money lost at a prohibited game cannot be recovered, though the loser deliver to the winner his note for the amount lost.

"An assignee of such note who took it after it became due has no more rights than his assignor"

Both of these decisions deal with a promissory note for a sum of money lost at a prohibited game; and, in the case at bar, we have not to do with a promissory note of this nature. "The promissory note in question—says the trial court—was indorsed to L. L. Hill on January 12, 1911.

The note had then already become due, although the date specified in the note for the payment of the first amount of P500 of the principal had not yet arrived." (Bill of ex., p. 13.)

If the date for the payment of the first amount of P500 had not yet arrived, it follows that the note had not yet fallen due, because it could have no other due date than that of the first installment, and this fact was finally recognized by the court in another order wherein he says: "It appears that the court erred in that part of his order where he held that the promissory note in question fell due on the date of its conveyance by indorsement to L. L. Hill." 'Bill of ex., p. 16.)

So that, neither by reason of the indorsement, nor by reason of its object, is the promissory note null, ox annulable, and the aforecited decisions are absolutely inapplicable to the case at bar.

The absolution of the defendants from the complaint being unsupported by any grounds of fact or law, it devolves upon this court to set forth the conclusions of fact and law on which this decision rests.

The defendants' signatures on the promissory note herein concerned were identified at the trial.

These signatures were written and the obligation was contracted, without error or deceit.

There is no evidence whatever that Michael & Co. threatened to bring suit against Domingo Franco unless Maximum Ch. Veloso signed with Domingo Franco a promissory note for the said sum.

The facts constituting the consideration for the contract contained in the promissory note are fully proven (though proof was not necessary, as a presumption of law, not destroyed by any evidence whatever to the contrary, lies in its favor), because it has been fully proven that the goods, the consideration for the debt, were received in the La Cooperatives Filipina. It was likewise fully proven that the La Cooperativa Filipina belonged to the defendant, with or without Domingo Franco having a share therein, and that the goods came from Michael & Co.

There is nothing to support the finding that the sale of the goods by Michael & Co. was a sale to Domingo Franco only. There is no proof whatever that Levering, as the guardian of the minor children of Potenciano Veloso, had required Maximina Veloso in December, 1910, to sign a document recognizing her debt to said minors, nor that Domingo Franca acted, for this purpose, as the defendants' attorney and adviser. With regard to the defendants' debt of P8,000 to the minor children of Potenciano Veloso and Damasa Ricablanca, the instrument attesting this debt, executed by the defendants in favor of Damasa Ricablanca who was then the guardian of said minors, had already existed since June 30, 1907, and appears on page 34 of the record.

The facts alleged in the special defense can not in any wise be held to be proven-, as above demonstrated in our examination of the parol evidence adduced in this case, and, besides, because of this other consideration: If, as stated in the special defense, "Domingo Franco, who was a son-in-law of the defendants, had told them that attorney Martin M. Levering, in his capacity as guardian of the minor children of Potenciano Ch. Veloso, had suggested to Franco the necessity of the defendants' executing an instrument setting out that they would pay to the said Attorney Martin M. Levering, in his capacity of guardian of said minors, the sum of P8;000 which defendants had borrowed from Damasa Ricablanca, the former guardian of said minors;" and if, as held by the trial court in

his judgment, Domingo Franco had then acted as defendants' attorney and adviser, there is nothing in the record to show why Domingo Franco had to sign such an instrument attesting a debt to the minors, as the principal obligor, when the creditor required -no one but the defendants to sign such a document; nor was it shown why, on such a supposition, Manuel Martinez did not have to sign the instrument except merely to authorize his wife, by his permission as her husband, to sign it, when in the special defense it is admitted that the document in question contains an acknowledgment of the debt of P8,000 "which the defendants had borrowed from Damasa Ricablanca."

The alleged error cannot be sustained. There is no other signed document than the promissory note presented with the intention, on its being signed, of securing the payment of the eroods sold to the La Cooperativa Filipina.

That is what the document says, and its contents must be accepted, pursuant to section 297 of Act No. 190 (Code of Civil Procedure).

The remainder of the principal owing, P4,319.33, must be paid. Payment must also be made of the covenanted interest at the rate of 1½ per cent per month from July 1, 1911, until the whole of the said sum be completely paid; and, finally the P1,000 stipulated in the contract as fees for the plaintiff's attorney in this case must be paid.

With respect to the P473.18, interest on the principal of said promissory note from December 30, 1910, to June 30, 1911, this amount cannot be recovered, because, in conformity with article 1110 of the Civil Code, a receipt from the creditor for the principal, that contains no stipulation regarding interest, extinguishes the obligation of the debtor with regard thereto; and the receipts issued by the International Bank show that no reservation whatever was made with respect to the interest on the P2,000 paid on account. The judgment appealed from is reversed. Twenty days after notification of this decision, let judgment be entered against the defendant Maximina Ch. Veloso ordering the payment of P4,319, with the stipulated interest thereon at the rate of 1½ per cent per month from July 1, 1911, and of P1,000 as attorney's fees, with costs of first instance, without special finding as to the costs of this second instance, it is so ordered.

Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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