

43 Phil. 195

[G. R. No. 17230. March 17, 1922]

JOSE VELASCO, PLAINTIFF AND APPELLEE, VS. TAN LIUAN & CO., TAN LIUAN, UY TENGPIAO, AND AW YONG CHIEW SOO, DEFENDANTS.

D E C I S I O N

STATEMENT

The defendant Tan Liuan & Co. executed to the defendant Aw Yong Chiew Soo four certain promissory notes: The first, for P12,000, dated February 18th, the second, for P16,000, dated February 23d, the third, for P38,000, dated March 17th, and the fourth, for P21,000, dated March 27th, all in the year 1919, and each payable six months after its respective date.

March 17, 1919, the defendant Aw Yong Chiew Soo drew a bill of exchange or sight draft, for 33,500 Yen on Jing Kee & Co., 2 Kaisandori 5-Chone, Kobe, in favor of the Philippine National Bank, which at first it refused to cash. The plaintiff was then induced to, and did, endorse it, and the bank cashed the draft, no part of which plaintiff received, and it is claimed that all of the money was paid to Tan Liuan & Co, In the ordinary course of business, the draft was dishonored when presented, and later the plaintiff was requested to, and did, personally execute to the Philippine National Bank his promissory note, for the amount of the draft, interest and expenses.

August 18, 1919, Tan Liuan made the following written statement:

“In consideration for the indorsement by Jose Velasco at my request of a draft drawn by Aw Yong Chiew Soo on Messrs. Jing Kee & Co., 2 Kaisandori 5-Chone, Kobe, Japan, for the payment of which he became liable upon his indorsement for the sum of 33,500 Yen, I promise to pay to Jose Velasco, or order, within ten days after he shall have been obligated to pay the amount of said draft, or any part

thereof, the full amount with all costs, expenses and attorney's fees which he shall pay on account of his indorsement of said draft, with interest on the amount paid by him at 10 per cent per annum thereon from the time of payment."

On the same day, the plaintiff made the following written statement:

"Aw Yong Chiow Soo having this day transferred to me his claim of credit against the firm of Tan Liuan & Co. as collateral security in consideration of my having indorsed his draft made by him on Messrs. Jing Kee & Go. for the sum of 33,500 Yen and presented to the Philippine National Bank by which it was cashed, now if the drawer of said draft or the said Aw Yong Chiow Soo shall pay the said draft so that I am relieved from all responsibility in connection therewith and the expenses incurred on account thereof, then I will reassign the said claim against Tan Liuan & Co. to him, and if I am obliged to pay said draft, any amount which I may receive on account of said claim assigned to me over and above the amount paid by me, including all expenses and attorney's fees, shall be delivered to the said Aw Yong Chiow Soo."

August 22, 1919, the defendant Aw Yong Chiow Soo made the following written statement:

"For value received and to me in hand paid, I hereby assign, transfer and deliver to Jose Velasco the whole amount of my credit against Tan Liuan & Co., amounting to eighty-seven thousand pesos (P87,000), evidenced by four (4) promissory notes, which are described as follows:

"1. Promissory note dated Manila, February 18, 1919, for the sum of P12,000; for six (6) months;

"2. Promissory note dated Manila, February 23, 1919, for the sum of P16,000; for six (6) months;

"3. Promissory note dated Manila, March 17, 1919, for the sum of P38,000; for six (6) months;

"4. Promissory note dated Manila, March 27, 1919, for the sum of P21,000; for six (6) months;

the above-mentioned promissory notes being attached hereto and made a part hereof, and fully authorize the said Jose Velasco to collect and receive the said amount from Tan Liuan & Co., or from the legal representative of, or liquidator of said Tan Liuan & Co.”

Concurrent therewith, the defendant unqualifiedly indorsed the four promissory notes to the plaintiff, who, on February 19, 1920, commenced this action against the defendants.

The complaint alleges the execution of the notes by the defendant Tan Liuan & Co. to the defendant Aw Yong Chiow Soo. That the defendant Aw Yong Chiow Soo indorsed the notes to the plaintiff; that at their maturity they were duly presented to Tan Liuan & Co.; and that payment was refused, of which refusal the defendant Aw. Yong Chiow Soo was duly notified.

For answer, Aw Yong Chiow Soo makes a general denial, and, as a further and separate defense, alleges the drawing of the sight draft, and that it was an accommodation only, and that, conforming to the agreement, it was duly indorsed by the plaintiff, and Aw Yong Chiow Soo delivered the money to the defendant Tan Liuan. The defendant then alleges the making of the written statement by Tan Liuan of August 18, 1919, above quoted. On that date, Aw Yong Chiow Soo was a creditor of the defendant Tan Liuan & Co., evidenced by the promissory notes above described, and that Tan Liuan & Co. was insolvent. That by reason thereof, one of the promissory notes was executed to guarantee Aw Yong Chiow Soo against any liability in case that Tan Liuan or the plaintiff would not pay the sight draft, and because the bank had requested the plaintiff to pay the draft, this defendant and the plaintiff agreed that this defendant should transfer to him all of its interest in the four promissory notes, under an agreement that, in case Jing Kee & Co. should pay the draft, the plaintiff would re-transfer the notes to this defendant, but in the event that the plaintiff was required to pay the draft, that he would endeavor to collect the notes in full, and from the proceeds would first reimburse himself and then pay any remainder to the defendant. It is also alleged that the plaintiff has not paid the draft or made any effort to collect it from Tan Liuan. That this defendant is not liable to the plaintiff on any contract, and does not owe him anything, but that, under the agreement, the plaintiff should return to this defendant any amount which he should collect over the amount of his personal claim. That, by reason of the contract between the plaintiff and the defendant, Tan Liuan, this defendant has been released and discharged of all liability, and that the action is premature.

Upon such issues, the case was tried, and the lower court rendered judgment against the defendants Tan Liuan & Co. and Tan Liuan and Uy Tengpiao, for the full amount of the notes, from which the plaintiff should only receive a sufficient amount to fully compensate

him as an indorser of the draft; to wit, P46,135.70, and that, if collected, the remainder, if any, should be paid to Aw Yong Chiow Soo against whom judgment was rendered for the amount of P46,135.70 should the defendant Tan Liuan & Co. fail to pay the judgment. From this, the defendant Aw Yong Chiow Soo only appealed, claiming that the lower court erred in rendering judgment against it upon the four promissory notes, or that it was liable for the payment of either of them, or that it should pay the plaintiff P46,135.70, or that he should have any judgment against this defendant.

Johns, J.:

It will be noted that two of the promissory notes are dated in February; that the third is dated March 17th, and the last March 27th, all in 1919. That each promissory note is payable six months after date, and is executed by Tan Liuan & Co. in favor of Aw Yong Chiow Soo.

The sight draft is dated March 17, 1919, payable thirty days after date, and is drawn by Aw Yong Chiow Soo upon Jing Kee & Co. in favor of the Philippine National Bank.

The written statement of Tan Liuan is dated August 18, 1919, and that three of the promissory notes were then due and payable.

Although it is claimed that Tan Liuan & Co. received the proceeds from the draft, its name does not appear in or upon the draft, and it is very apparent that the written statement of Tan Liuan & Co., of August 18th, was signed, for the purpose of showing the true relations of that firm to the transaction, and that within ten days after the plaintiff had assumed and paid the amount of the draft, with costs and expenses, Tan Liuan & Co. would pay the plaintiff the full amount which plaintiff had obligated himself to pay.

In other words, Tan Liuan & Co., by that writing, assumes all liability for the amount of the draft and promises to pay the plaintiff and release him from all liability. In legal effect, plaintiff's written statement of August 18th, is an acknowledgment of the receipt from Aw Yong Chiow Soo of the four promissory notes as collateral security for his indorsement of the draft, and that, in the event the plaintiff is released from his liability, he will then reassign the notes to the defendant, Aw Yong Chiow Soo, and that, if he is required to pay the draft, any amount which he may receive on account of the promissory notes over and above the amount which he is required to pay, he will then pay any remainder to the defendant Aw Yong Chiow Soo. The indorsement of Aw Yong Chiow Soo of the notes to the plaintiff was unqualified, and the law fixes the liability of an unqualified indorser, and oral

testimony is not admissible to vary or contradict the terms of a written instrument.

Section 30 of Act No. 2031, of the Philippine Legislature, known as "The Negotiable Instruments Law," says:

"SEC. 30. *What constitutes negotiation.*—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder completed by delivery.

"SEC. 31. *Indorsement; how made.*—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

"SEC. 33. *Kinds of indorsement.*—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

"SEC. 38. *Qualified indorsement.*—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorsers signature the words 'without recourse' or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

"SEC. 45. *Time of indorsement; presumption.*—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was, overdue.

"SEC. 63. *When person deemed indorser.*—A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

"SEC. 66. *Liability of general indorser.*—Every indorser who indorses without qualification, warrants to all subsequent holders in due course—

"(a) The matters and things mentioned in subdivisions

(a), (b), and (c) of the next preceding section; and

“(b) That the instrument is at the time of his indorsement valid and subsisting.

“And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

“SEC. 114. *When notice need not be given to drawer.*— Notice of dishonor is not required to be given to the drawer in either of the following cases: (d) Where the drawer has no right to expect or require that the drawer or acceptor will honor the instrument.”

Aw Yong Chiow Soo, being an unqualified indorser, the law fixes its liability.

If it was not its purpose or intent to assume and agree to pay the notes, it should have indorsed them “without recourse,” or in such a manner as to disclaim any personal liability. When a person makes an unqualified indorsement of a promissory note, the Negotiable Instruments Law specifies and defines his liability, and parol testimony is not admissible to explain or defeat such liability. Here, the bill of exchange was drawn by the defendant, Aw Yong Chiow Soo, and it was the bill of exchange which was indorsed by the plaintiff, and the testimony is conclusive that plaintiff’s indorsement was required by the bank as one of the conditions upon which it would cash the draft. Three of the notes had matured at the time they were indorsed and the written instruments signed. Although the draft was drawn by Aw Yong Chiow Soo, it was dishonored, and the plaintiff was required by the bank to execute his note for its amount. At the time of the execution of the notes, Aw Yong Chiow Soo was a creditor of Tan Liuan & Co. for the amount of the notes.

The action here is not based upon the draft. It is founded upon the promissory notes. The plaintiff did not receive any part of the proceeds of the draft, but has been required by the bank to make his promissory note for the amount of the draft. As collateral and to indemnify and protect plaintiff from any liability, Aw Yong Chiow Soo indorsed the promissory notes, which it held against Tan Liuan & Co. to the plaintiff, and did not in any manner qualify its indorsement, and the Negotiable Instruments Act says that—

“Every indorser who indorses without qualification, warrants to all subsequent holders in due course, etc., engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.”

Section 80 of the Act says:

“Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.”

And subdivision (d), of section 114, says:

“Where the drawer has no right to expect or require that the drawer or acceptor will honor the instrument.”

The draft was drawn on March 18, 1919, payable thirty-days after sight, and it was dishonored. Three of the notes were past due at the time the written agreements were made, and the testimony is conclusive that Tan Liuan & Co. was insolvent, and that Aw Yong Chiow Soo knew it, and that none of the notes would be paid if presented, and the evidence shows that, before they were indorsed, the first two had been duly presented and dishonored. In other words, at the time the unqualified indorsement was made, two of the notes had been protested, and Aw Yong Chiow Soo knew that Tan Liuan & Co. was insolvent, and had no reason to expect that the notes would be paid if presented. There is no claim or pretense that its claim was prejudiced or that it lost any legal right, because the last two notes were not protested, the first of which was past due when it was indorsed.

The purpose and intent of the August written statements was to explain the transactions between the parties, to whom the proceeds from the draft were paid, and that the notes were indorsed by Aw Yong Chiow Soo to plaintiff, as collateral, to protect and hold him harmless in his indorsement of the draft, and to specify that Aw Yong Chiow Soo should have any proceeds from the notes after the draft had been fully paid therefrom and the

plaintiff released from his liability as an indorser. The statements do not make any reference to the legal liability of Aw Yong Chiow Soo as an indorser of the notes, do not and were never contended to fully discharge and release that firm from its liability as an indorser.

With all due respect to the able and ingenious brief for the appellant, there is no merit in the defense, and the judgment of the lower court is affirmed, with costs in favor of the plaintiff. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.
