

5 Phil. 142

[G.R. No. 2091. October 18, 1905]

COMPANIA GENERAL DE TABACOS, PLAINTIFF AND APPELLANT, VS. SEBASTIAN VICTOR MOLINA ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

In the months of November and December, 1895, the defendant, Sebastian Victor Molina, was the owner of a tobacco store in Binondo, in Manila. During these months the plaintiff, a manufacturer, sold to the said defendant cigars and cigarettes, which the said defendant resold in his store. After the month of December the parties, by mutual agreement, determined that the amount due to the plaintiff from the said defendant by reason of the previous sales was 3,319.74 pesos. On January 23, 1896, the said defendant, Sebastian Victor Molina, executed and delivered to the plaintiff a written instrument, of which the following is a copy:

“For \$3,319.74 Three months after date I promise to pay to the order of the Compania General de Tabacos de Filipinas three thousand three hundred and nineteen pesos and seventy-four cents, value received in merchandise to my entire satisfaction. Manila, January 23, '96. S. Molina. There is a rubric. Surety. J. V. Molina. There is a rubric. There is a regulation stamp, cancelled, of the value of two pesos.”

The other defendant signed the instrument as surety for its payment, as indicated thereon. When the note became due it was duly protested. No part of it, or of the debt on account of which it was given, has

been paid, except the sum of 432.80 pesos. On the 17th day of July, 1903, the plaintiff commenced this action against both of the defendants. Judgment in the court below was entered in favor of the defendants on the ground that the note above described was a commercial instrument, and that the cause of action thereon has prescribed by virtue of the limitation of three years mentioned in article 950 of the Code of Commerce. The plaintiff has brought the case here by bill of exceptions.

Two questions are presented by the record: First, is the instrument in question one of the instruments mentioned in said article 950? Second, if it is, can the plaintiff maintain an action against the defendant, Sebastian Victor Molina, based upon the original sale of merchandise to him?

(1) It is claimed by the plaintiff that the document in question is not a commercial note, because it does not comply with the requirements of article 531 of the Code of Commerce. He relies upon the fact that the sixth requisite of that article, which requires the promissory note to state the place where it is to be paid, has been entirely omitted, and that the note in question does not fulfill the requirements of the seventh paragraph, which says that the promissory note must state the source and the kind of value which it represents. We think the contention as to the sixth requisite can not be sustained. This article 531, at the end thereof, provides that bills which are to be paid in a different place from that of the residence of the payor should indicate a domicile for their payment. Blanco, in his Treatise on Commercial Law, makes the following statement;

“Bills or notes must contain the same requisites as drafts already enumerated (3), with the sole difference that in those bills in which the payment is to be effected in a different place from that of the residence of the payor, the place of payment should be stated therein. (2 Derecho Mercantil, p. 274.)”

Estasen, in his work on Commercial Law, makes the following statement :

“Messrs. La Serna and Reus invite attention, that although the supreme court of Spain (1) has determined that promissory notes which do not contain the requisites prescribed in article 563 of the old Code of Commerce are not commercial, it should not be understood that said requisites are essential since the same code provides for cases in which they are wanting.(4 *Derecho Mercantil* p. 95.)”

It will be observed that article 531 refers to drafts as well as to bills and notes, and this sixth requisite was intended to be applied in any event to drafts, but the addition to the article indicates that it was not always to be applied to bills or notes.

Neither do we think that the contention of the plaintiff in regard to the seventh requisite can be sustained. The origin of the debt is sufficiently stated, for as the plaintiff itself says in its brief, the receipt of merchandise in exchange for money necessarily supposes a contract of purchase and sale. We think also the nature of the consideration is sufficiently stated. It was not necessary to insert in the document an inventory of the different articles that had been sold by the plaintiff to the said defendant, Sebastain. As the appellees say in their brief in this court, if this was required, an ordinary commercial note would be more extensive than a government *expediente*. In order to bring the document within the Code of Commerce it must appear that it had its origin in commercial operations. It seems to be the contention of the appellant that this fact must appear in the note itself. This, in our opinion, can not be sustained. If the requirements of article 531 are complied with, and, nevertheless, it does not appear from the note itself that it had its origin in commercial operations, this fact can be proved by other evidence. In other words, if the origin and nature of the consideration is stated, and that statement does not show that the note proceeded from commercial operations, the document, nevertheless, is a commercial document, if it can be proved by other evidence that it did proceed from such operations. (Judgment

of the supreme court of Spain of the 7th of November, 1870.)

We therefore hold that the action upon the note was barred by the statute of limitations in the Code of Commerce. As the only obligation which the defendant, Juan Victor Molina, assumed was the obligation evidenced by this note the action against him is barred.

(2) It remains to be considered whether an action can be maintained against the defendant, Sebastian, based upon the original contract of purchase and sale of the articles in question. This purchase and sale was undoubtedly a commercial transaction. (Art. 2, Code of Commerce.) This code says nothing concerning the way in which obligations shall be extinguished. It is therefore necessary to apply the rules of the common law. (Art. 50, Code of Commerce.) Article 1170 of the Civil Code provides in part as follows:

“The delivery of promissory notes to order or bills of exchange or other commercial paper shall only produce the effects of payment when collected or when, by the fault of the creditor, their value has been prejudiced.

In the meantime the action arising from the original obligation shall be suspended.”

We think that this article is applicable not only to those instruments, executed by third persons, which the debtor delivers to the creditor, but also to a note executed by the debtor himself and delivered to the creditor. The clause relating to prejudice caused to the instrument by the fault of the creditor is applicable only to the first class of documents, and not to the second.

It is apparent also that there was no novation of the contract in accordance with the provisions of article 1204 of the Civil Code.

(Eighth Commentaries on the Civil Code, Manresa, 397, 2 *Derecho Mercantil*, Blanco, 90.)

Our conclusion upon this branch of the case is that the plaintiff's cause of action against the defendant, Sebastian Victor Molina, growing out of the sale of these articles, still exists and can be enforced.

The facts stated in paragraphs 1 to 5 of the amended complaint (omitting the last seven lines of the fifth paragraph) are a sufficient statement of this cause of action. In view of the fact that a demurrer to the original complaint was sustained, on the ground that the complaint was based upon the note alone, and that the note was out-lawed, it is apparent that the plaintiff, when he presented his amended complaint, which contained allegations in regard to the sale of the articles in question, did not intend to rely solely upon the note for a cause of action, but, on the contrary, did intend to rely upon the original contract of sale. Otherwise the allegations relating to this sale would have been entirely useless. The quotation which the appellees make in the third page of their brief in this court is taken from the original complaint, which was entirely superseded by the amended complaint. The defendant, Sebastian, admitted in his answer that on January 23, 1896, he owed the plaintiff 3,319.74 pesos for the said merchandise.

The judgment of the court below is affirmed, in so far as it relates to the defendant Juan Victor Molina. It is reversed in so far as it relates to the defendant Sebastian Victor Molina, and the case is remanded to the court below with instructions to enter a judgment in favor of the plaintiff and against the defendant Sebastian, for the equivalent in Philippine pesos of 3,319.74 pesos, Mexican currency, less 432.80 pesos, Mexican currency with interest from the commencement of the action, and costs. No costs will be allowed to either party in this court, and after the expiration of twenty days judgment shall be entered in accordance herewith. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

