

SECOND DIVISION

[G.R. No. 170912, April 19, 2010]

**ROBERT DINO, PETITIONER, VS. MARIA LUISA JUDAL-LOOT,
JOINED BY HER HUSBAND VICENTE LOOT, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] of the 16 August 2005 Decision^[2] and 30 November 2005 Resolution^[3] of the Court of Appeals in CA-G.R. CV No. 57994. The Court of Appeals affirmed the decision of the Regional Trial Court, 7th Judicial Region, Branch 56, Mandaue City (trial court), with the deletion of the award of interest, moral damages, attorney's fees and litigation expenses. The trial court ruled that respondents Maria Luisa Judal-Loot and Vicente Loot are holders in due course of Metrobank Check No. C-MA 142119406 CA and ordered petitioner Robert Dino as drawer, together with co-defendant Fe Lobitana as indorser, to solidarily pay respondents the face value of the check, among others.

The Facts

Sometime in December 1992, a syndicate, one of whose members posed as an owner of several parcels of land situated in Canjulao, Lapu-lapu City, approached petitioner and induced him to lend the group P3,000,000.00 to be secured by a real estate mortgage on the properties. A member of the group, particularly a woman pretending to be a certain Vivencia Ompok Consing, even offered to execute a Deed of Absolute Sale covering the properties, instead of the usual mortgage contract.^[4] Enticed and convinced by the syndicate's offer, petitioner issued three Metrobank checks totaling P3,000,000.00, one of which is Check No. C-MA-142119406-CA postdated 13 February 1993 in the amount of P1,000,000.00 payable to Vivencia Ompok Consing and/or Fe Lobitana.^[5]

Upon scrutinizing the documents involving the properties, petitioner discovered that the documents covered rights over government properties. Realizing he had been deceived, petitioner advised Metrobank to stop payment of his checks. However, only the payment of Check No. C-MA- 142119406-CA was ordered stopped. The other two checks were already encashed by the payees.

Meanwhile, Lobitana negotiated and indorsed Check No. C-MA- 142119406-CA to respondents in exchange for cash in the sum of P948,000.00, which respondents borrowed from Metrobank and charged against their credit line. Before respondents accepted the check, they first inquired from the drawee bank, Metrobank, Cebu-Mabolo Branch which is also their depository bank, if the subject check was

sufficiently funded, to which Metrobank answered in the positive. However, when respondents deposited the check with Metrobank, Cebu-Mabolo Branch, the same was dishonored by the drawee bank for reason "PAYMENT STOPPED."

Respondents filed a collection suit^[6] against petitioner and Lobitana before the trial court. In their Complaint, respondents alleged, among other things, that they are holders in due course and for value of Metrobank Check No. C-MA-142119406-CA and that they had no prior information concerning the transaction between defendants.

In his Answer, petitioner denied respondents' allegations that "on the face of the subject check, no condition or limitation was imposed" and that respondents are holders in due course and for value of the check. For her part, Lobitana denied the allegations in the complaint and basically claimed that the transaction leading to the issuance of the subject check is a sale of a parcel of land by Vivencia Ompok Consing to petitioner and that she was made a payee of the check only to facilitate its discounting.

The trial court ruled in favor of respondents and declared them due course holders of the subject check, since there was no privity between respondents and defendants. The dispositive portion of the 14 March 1996 Decision of the trial court reads:

In summation, this Court rules for the Plaintiff and against the Defendants and hereby orders:

- 1.) defendants to pay to Plaintiff, and severally, the amount of P1,000,000.00 representing the face value of subject Metrobank check;
- 2.) to pay to Plaintiff herein, jointly and severally, the sum of P101,748.00 for accrued and paid interest;
- 3.) to pay to Plaintiff, jointly and severally, moral damages in the amount of P100,000.00;
- 4.) to pay to Plaintiff, jointly and severally, the sum of P200,000.00 for attorney's fees; and
- 5.) to pay to Plaintiff, jointly and severally, litigation expenses in the sum of P10,000.00 and costs of the suit.

SO ORDERED.^[7]

Only petitioner filed an appeal. Lobitana did not appeal the trial court's judgment.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's finding that respondents are holders in due course of Metrobank Check No. C-MA- 142119406-CA. The Court of Appeals pointed out that petitioner's own admission that respondents were never parties to

the transaction among petitioner, Lobitana, Concordio Toring, Cecilia Villacarlos, and Consing, proved respondents' lack of knowledge of any infirmity in the instrument or defect in the title of the person negotiating it. Moreover, respondents verified from Metrobank whether the check was sufficiently funded before they accepted it. Therefore, respondents must be excluded from the ambit of petitioner's stop payment order.

The Court of Appeals modified the trial court's decision by deleting the award of interest, moral damages, attorney's fees and litigation expenses. The Court of Appeals opined that petitioner "was only exercising (although incorrectly), what he perceived to be his right to stop the payment of the check which he rediscounted." The Court of Appeals ruled that petitioner acted in good faith in ordering the stoppage of payment of the subject check and thus, he must not be made liable for those amounts.

In its 16 August 2005 Decision, the Court of Appeals affirmed the trial court's decision with modifications, thus:

WHEREFORE, premises considered, finding no reversible error in the decision of the lower court, WE hereby DISMISS the appeal and AFFIRM the decision of the court a quo with modifications that the award of interest, moral damages, attorney's fees and litigation expenses be deleted.

No pronouncement as to costs.

SO ORDERED.^[8]

In its 30 November 2005 Resolution, the Court of Appeals denied petitioner's motion for reconsideration.

In denying the petitioner's motion for reconsideration, the Court of Appeals noted that petitioner raised the defense that the check is a crossed check for the first time on appeal (particularly in the motion for reconsideration). The Court of Appeals rejected such defense considering that to entertain the same would be offensive to the basic rules of fair play, justice, and due process.

Hence, this petition.

The Issues

Petitioner raises the following issues:

I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENTS WERE HOLDERS IN DUE COURSE. THE FACT THAT METROBANK CHECK NO. 142119406 IS A CROSSED CHECK CONSTITUTES SUFFICIENT WARNING TO THE RESPONDENTS TO EXERCISE EXTRAORDINARY DILIGENCE TO DETERMINE THE TITLE OF THE INDORSER.

II. THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION UPON THE GROUND THAT THE ARGUMENTS RELIED UPON HAVE ONLY BEEN RAISED FOR THE FIRST TIME. EQUITY DEMANDS THAT THE COURT OF APPEALS SHOULD HAVE MADE AN EXCEPTION TO PREVENT THE COMMISSION OF MANIFEST WRONG AND INJUSTICE UPON THE PETITIONER.^[9]

The Ruling of this Court

The petition is meritorious.

Respondents point out that petitioner raised the defense that Metrobank Check No. C-MA-142119406-CA is a crossed check for the first time in his motion for reconsideration before the Court of Appeals. Respondents insist that issues not raised during the trial cannot be raised for the first time on appeal as it would be offensive to the elementary rules of fair play, justice and due process. Respondents further assert that a change of theory on appeal is improper.

In his Answer, petitioner specifically denied, among others, (1) Paragraph 4 of the Complaint, concerning the allegation that on the face of the subject check, no condition or limitation was imposed, and (2) Paragraph 8 of the Complaint, regarding the allegation that respondents were holders in due course and for value of the subject check. In his "Special Affirmative Defenses," petitioner claimed that "for want or lack of the prestation," he could validly stop the payment of his check, and that by rediscounting petitioner's check, respondents "took the risk of what might happen on the check." Essentially, petitioner maintained that respondents are not holders in due course of the subject check, and as such, respondents could not recover any liability on the check from petitioner.

Indeed, petitioner did not expressly state in his Answer or raise during the trial that Metrobank Check No. C-MA-142119406-CA is a crossed check. It must be stressed, however, that petitioner consistently argues that respondents are not holders in due course of the subject check, which is one of the possible effects of crossing a check. The act of crossing a check serves as a warning to the holder that the check has been issued for a definite purpose so that the holder thereof must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course.^[10] Contrary to respondents' view, petitioner never changed his theory, that respondents are not holders in due course of the subject check, as would violate fundamental rules of justice, fair play, and due process. Besides, the subject check was presented and admitted as evidence during the trial and respondents did not and in fact cannot deny that it is a crossed check.

In any event, the Court is clothed with ample authority to entertain issues or matters not raised in the lower courts in the interest of substantial justice.^[11] In *Casa Filipina Realty v. Office of the President*,^[12] the Court held:

[T]he trend in modern-day procedure is to accord the courts broad discretionary power such that the appellate court may consider matters bearing on the issues submitted for resolution which the parties failed to raise or which the lower court ignored. Since rules of procedure are mere