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Without any showing of bad faith, malice nor corruption and considering that this is the first time respondent was ever charged administratively in twenty five years she has served the judiciary, we are of the view that she may have been moved only by her eagerness to perform her duty as instructed.

WHEREFORE, a *FINE* of Two Thousand Pesos (₱2,000.00) is hereby imposed upon respondent with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and *De Leon, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 109491. February 28, 2001]

ATRIUM MANAGEMENT CORPORATION, *petitioner, vs.* **COURT OF APPEALS, E.T. HENRY AND CO., LOURDES VICTORIA M. DE LEON, RAFAEL DE LEON, JR., AND HI-CEMENT CORPORATION,** *respondents.*

[G.R. No. 121794. February 28, 2001]

LOURDES M. DE LEON, *petitioner, vs.* **COURT OF APPEALS, ATRIUM MANAGEMENT CORPORATION, AND HI-CEMENT CORPORATION,** *respondents.*

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SYNOPSIS

Hi-Cement Corp., through its corporate signatories, de Leon and Lourdes M. Antonio de las Alas, issued crossed checks in the amount of ₱2 million in favor of ET Henry and Co. The checks were then discounted and endorsed to Atrium Corp. but dishonored upon presentment for payment. The Court of Appeals ruled that Hi-Cement Corp. is absolved from any liability as the checks were issued without valuable consideration, unauthorized and constituting *ultra vires* acts. Two appeals were interposed, one by Atrium Corp. and the other by de Leon.

The Court ruled that there was basis to rule that the act of issuing the checks was well within the ambit of a valid corporate act, for it was for securing a loan to finance the activities of Hi-Cement, hence, not an *ultra vires* act. However, as the checks were issued to ET Henry strictly for deposit only to payee's account, respondent de Leon became personally liable to the payment of the checks, along with ET Henry, when she confirmed, for the purpose of rediscounting, that the checks were issued to ET Henry in payment of purchased petroleum products. Her negligence resulted in damage to Hi-Cement Corp. Finally, the Court ruled that, although Atrium Corp. is not a holder in due course as it has knowledge of the flaws of the checks, it is not precluded from recovering on the instrument.

SYLLABUS

1. **COMMERCIAL LAW; PRIVATE CORPORATIONS; CORPORATE OFFICERS; *ULTRA VIRES* ACT.** — "An *ultra vires* act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the power conferred upon it by law" The term *"ultra vires"* is "distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated."

2. **ID.; ID.; ID.; WHEN PERSONAL LIABILITY MAY VALIDLY ATTACH.** — "Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when: "1. He assents (a)

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to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons; "2. He consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; "3. He agrees to hold himself personally and solidarily liable with the corporation; or "4. He is made, by a specific provision of law, to personally answer for his corporate action."

3. ID.; ID.; ID.; NEGLIGENCE RESULTING IN DAMAGES TO THE CORPORATION; CASE AT BAR. — In the case at bar, Lourdes M. de Leon and Antonio de las Alas as treasurer and Chairman of Hi-Cement were authorized to issue the checks. However, Ms. de Leon was negligent when she signed the confirmation letter requested by Mr. Yap of Atrium and Mr. Henry of E.T. Henry for the rediscounting of the crossed checks issued in favor of E.T. Henry. She was aware that the checks were strictly endorsed for deposit only to the payee's account and not to be further negotiated. What is more, the confirmation letter contained a clause that was not true, that is, "that the checks issued to E.T. Henry were in payment of Hydro oil bought by Hi-Cement from E.T. Henry." Her negligence resulted in damage to the corporation. Hence, Ms. de Leon may be held personally liable therefor.

4. ID.; NEGOTIABLE INSTRUMENTS LAW; HOLDER IN DUE COURSE. — The Negotiable Instruments Law, Section 52 defines a holder in due course, thus: "A holder in due course is a holder who has taken the instrument under the following conditions: (a) That it is complete and regular upon its face; (b) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact; (c) That he took it in good faith and for value; (d) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

5. ID.; ID.; HOLDER NOT IN DUE COURSE; CAN STILL RECOVER ON THE INSTRUMENT. — In the instant case, the checks were crossed checks and specifically indorsed for deposit to payee's account only. From the beginning, Atrium was aware of the

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fact that the checks were all for deposit only to payee's account, meaning E.T. Henry. Clearly, then, Atrium could not be considered a holder in due course. However, it does not follow as a legal proposition that simply because petitioner Atrium was not a holder in due course for having taken the instruments in question with notice that the same was for deposit only to the account of payee E.T. Henry that it was altogether precluded from recovering on the instrument. The Negotiable Instruments Law does not provide that a holder not in due course can not recover on the instrument. The disadvantage of Atrium in not being a holder in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable. One such defense is absence or failure of consideration.

APPEARANCES OF COUNSEL

Meer Meer & Meer for Lourdes M. De Leon.

Castillo Laman Tan Pantaleon & San Jose for Atrium Mgt. Corp.

Quisumbing Torres for Hi-Cement Corp.

D E C I S I O N

PARDO, *J.*:

What is before the Court are separate appeals from the decision of the Court of Appeals,[1] ruling that Hi-Cement Corporation is not liable for four checks amounting to ₱2 million issued to E.T. Henry and Co. and discounted to Atrium Management Corporation.

On January 3, 1983, Atrium Management Corporation filed with the Regional Trial Court, Manila an action for collection of the proceeds of four postdated checks in the total amount of ₱2 million. Hi-Cement Corporation through its corporate signatories, petitioner Lourdes M. de Leon,[2] treasurer, and the

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[1] In CA-G. R. CV No. 26686, promulgated on March 17, 1973, Francisco, C., J., *ponente*, Ramirez and Gutierrez, *JJ.*, concurring.

[2] In G. R. No. 121794.

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late Antonio de las Alas, Chairman, issued checks in favor of E.T. Henry and Co. Inc., as payee. E.T. Henry and Co., Inc., in turn, endorsed the four checks to petitioner Atrium Management Corporation for valuable consideration. Upon presentment for payment, the drawee bank dishonored all four checks for the common reason "payment stopped." Atrium, thus, instituted this action after its demand for payment of the value of the checks was denied.[3]

After due proceedings, on July 20, 1989, the trial court rendered a decision ordering Lourdes M. de Leon, her husband Rafael de Leon, E.T. Henry and Co., Inc. and Hi-Cement Corporation to pay petitioner Atrium, jointly and severally, the amount of ₱2 million corresponding to the value of the four checks, plus interest and attorney's fees.[4]

On appeal to the Court of Appeals, on March 17, 1993, the Court of Appeals promulgated its decision modifying the decision of the trial court, absolving Hi-Cement Corporation from liability and dismissing the complaint as against it. The appellate court ruled that: (1) Lourdes M. de Leon was not authorized to issue the subject checks in favor of E.T. Henry, Inc.; (2) The issuance of the subject checks by Lourdes M. de Leon and the late Antonio de las Alas constituted *ultra vires* acts; and (3) The subject checks were not issued for valuable consideration.[5]

At the trial, Atrium presented as its witness Carlos C. Syquia who testified that in February 1981, Enrique Tan of E.T. Henry approached Atrium for financial assistance, offering to discount four RCBC checks in the total amount of ₱2 million, issued by Hi-Cement in favor of E.T. Henry. Atrium agreed to discount the checks, provided it be allowed to confirm with Hi-Cement

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[3] Consolidated Memorandum, G. R. No. 121794, *Rollo*, pp. 191-226, at pp. 192-193.

[4] Original Record, Decision, Judge Edilberto G. Sandoval, presiding, pp. 356-362.

[5] Petition, Annex "C", in G. R. No. 109491, *Rollo*, pp. 319-339 and Petition, Annex "A", in G. R. No. 121794, *Rollo*, pp. 30-49.

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the fact that the checks represented payment for petroleum products which E.T. Henry delivered to Hi-Cement. Carlos C. Syquia identified two letters, dated February 6, 1981 and February 9, 1981 issued by Hi-Cement through Lourdes M. de Leon, as treasurer, confirming the issuance of the four checks in favor of E.T. Henry in payment for petroleum products.[6]

Respondent Hi-Cement presented as witness Ms. Erlinda Yap who testified that she was once a secretary to the treasurer of Hi-Cement, Lourdes M. de Leon, and as such she was familiar with the four RCBC checks as the postdated checks issued by Hi-Cement to E.T. Henry upon instructions of Ms. de Leon. She testified that E.T. Henry offered to give Hi-Cement a loan which the subject checks would secure as collateral.[7]

On July 20, 1989, the Regional Trial Court, Manila, Branch 09 rendered a decision, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, and plaintiff having proved its cause of action by preponderance of evidence, judgment is hereby rendered ordering all the defendants except defendant Antonio de las Alas to pay plaintiff jointly and severally the amount of TWO MILLION (₱2,000,000.00) PESOS with the legal rate of interest from the filling (*sic*) of the complaint until fully paid, plus the sum of TWENTY THOUSAND (₱20,000.00) PESOS as and for attorney's fees and the cost of suit."

All other claims are, for lack of merit dismissed.

SO ORDERED."[8]

In due time, both Lourdes M. de Leon and Hi-Cement appealed to the Court of Appeals.[9]

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[6] TSN, September 30, 1985, pp. 6-19.

[7] TSN, January 29, 1988, pp. 15-16.

[8] Original Record, Decision, Judge Edilberto G. Sandoval, presiding, pp. 356-362.

[9] *Ibid.*, Notice of Appeal, Lourdes, p. 366, and Notice of Appeal Hi-Cement, p. 365.

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Lourdes M. de Leon submitted that the trial court erred in ruling that she was solidarilly liable with Hi-Cement for the amount of the check. Also, that the trial court erred in ruling that Atrium was an ordinary holder, not a holder in due course of the rediscounted checks.[10]

Hi-Cement on its part submitted that the trial court erred in ruling that even if Hi-Cement did not authorize the issuance of the checks, it could still be held liable for the checks. And assuming that the checks were issued with its authorization, the same was without any consideration, which is a defense against a holder in due course and that the liability shall be borne alone by E.T. Henry.[11]

On March 17, 1993, the Court of Appeals promulgated its decision modifying the ruling of the trial court, the dispositive portion of which reads:

"Judgment is hereby rendered:

(1) dismissing the plaintiff's complaint as against defendants Hi-Cement Corporation and Antonio De las Alas;

(2) ordering the defendants E.T. Henry and Co., Inc. and Lourdes M. de Leon, jointly and severally to pay the plaintiff the sum of TWO MILLION PESOS (₱2,000,000.00) with interest at the legal rate from the filling (*sic*) of the complaint until fully paid, plus ₱20,000.00 for attorney's fees.

(3) Ordering the plaintiff and defendants E.T. Henry and Co., Inc. and Lourdes M. de Leon, jointly and severally to pay defendant Hi-Cement Corporation, the sum of ₱20,000.00 as and for attorney's fees.

With cost in this instance against the appellee Atrium Management Corporation and appellant Lourdes Victoria M. de Leon.

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[10] CA *Rollo*, Defendant-Appellant Lourdes M. De Leon's Brief, pp. 10-10N.

[11] *Ibid.*, Defendant Appellant's Brief, pp. 23C-23II.

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So ordered."[12]

Hence, the recourse to this Court.[13]

The issues raised are the following:

In G. R. No. 109491 (Atrium, petitioner):

1. Whether the issuance of the questioned checks was an *ultra vires* act;
2. Whether Atrium was not a holder in due course and for value; and
3. Whether the Court of Appeals erred in dismissing the case against Hi-Cement and ordering it to pay ₱20,000.00 as attorney's fees.[14]

In G. R. No. 121794 (de Leon, petitioner):

1. Whether the Court of Appeals erred in holding petitioner personally liable for the Hi-Cement checks issued to E.T. Henry;
2. Whether the Court of Appeals erred in ruling that Atrium is a holder in due course;
3. Whether the Court of Appeals erred in ruling that petitioner Lourdes M. de Leon as signatory of the checks was personally liable for the value of the checks, which were declared to be issued without consideration;
4. Whether the Court of Appeals erred in ordering petitioner to pay Hi-Cement attorney's fees and costs.[15]

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[12] CA *Rollo*, Decision, pp. 78-99, Francisco, *C .J., ponente*, Ramirez and Gutierrez, *JJ.*, concurring.

[13] G. R. No. 109491, Petition filed on April 13, 1993, *Rollo*, pp. 3-18; G. R. No. 121794, Petition filed on October 20, 1995, *Rollo*, pp. 10-28. On January 31, 2000, we gave due course to the petition. G. R. No. 109491, *Rollo*, pp. 244-245; G. R. No. 121794, *Rollo*, pp. 152-153.

[14] Petition, G. R. No. 1109491, *Rollo*, pp. 10-16.

[15] Petition, G. R. No. 121794, *Rollo*, p. 16.

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We affirm the decision of the Court of Appeals.

We first resolve the issue of whether the issuance of the checks was an *ultra vires* act. The record reveals that Hi-Cement Corporation issued the four (4) checks to extend financial assistance to E.T. Henry, not as payment of the balance of the ₱30 million pesos cost of hydro oil delivered by E.T. Henry to Hi-Cement. Why else would petitioner de Leon ask for counterpart checks from E.T. Henry if the checks were in payment for hydro oil delivered by E.T. Henry to Hi-Cement?

Hi-Cement, however, maintains that the checks were not issued for consideration and that Lourdes and E.T. Henry engaged in a "kiting operation" to raise funds for E.T. Henry, who admittedly was in need of financial assistance. The Court finds that there was no sufficient evidence to show that such is the case. Lourdes M. de Leon is the treasurer of the corporation and is authorized to sign checks for the corporation. At the time of the issuance of the checks, there were sufficient funds in the bank to cover payment of the amount of ₱2 million pesos.

It is, however, our view that there is basis to rule that the act of issuing the checks was well within the ambit of a valid corporate act, for it was for securing a loan to finance the activities of the corporation, hence, not an *ultra vires* act.

"An *ultra vires* act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the power conferred upon it by law"[16] The term "*ultra vires*" is "distinguished from an illegal act for the former is merely voidable which may be enforced by performance, ratification, or estoppel, while the latter is void and cannot be validated."[17]

The next question to determine is whether Lourdes M. de Leon and Antonio de las Alas were personally liable for the

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[16] *Republic v. Acoje Mining Co., Inc.*, 117 Phil. 379, 383 [1963]; Corporation Code Sec. 45.

[17] *Republic v. Acoje Mining Co., Inc., supra*, Note 16, at pp. 383-384.

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checks issued as corporate officers and authorized signatories of the check.

"Personal liability of a corporate director, trustee or officer along (although not necessarily) with the corporation may so validly attach, as a rule, only when:

"1. He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

"2. He consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;

"3. He agrees to hold himself personally and solidarily liable with the corporation; or

"4. He is made, by a specific provision of law, to personally answer for his corporate action."[18]

In the case at bar, Lourdes M. de Leon and Antonio de las Alas as treasurer and Chairman of Hi-Cement were authorized to issue the checks. However, Ms. de Leon was negligent when she signed the confirmation letter requested by Mr. Yap of Atrium and Mr. Henry of E.T. Henry for the rediscounting of the crossed checks issued in favor of E.T. Henry. She was aware that the checks were strictly endorsed for deposit only to the payee's account and not to be further negotiated. What is more, the confirmation letter contained a clause that was not true, that is, "that the checks issued to E.T. Henry were in payment of Hydro oil bought by Hi-Cement from E.T. Henry". Her negligence resulted in damage to the corporation. Hence, Ms. de Leon may be held personally liable therefor.

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[18] *FCY Construction Group, Inc. v. Court of Appeals*, G. R. No. 123358, February 1, 2000, citing *Tramat Mercantile, Inc. v. Court of Appeals*, 238 SCRA 14, 18-19 [1994]; *Equitable Banking Corporation v. NLRC*, 339 Phil. 541, 566 (1997).

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The next issue is whether or not petitioner Atrium was a holder of the checks in due course. The Negotiable Instruments Law, Section 52 defines a holder in due course, thus:

"A holder in due course is a holder who has taken the instrument under the following conditions:

(a) That it is complete and regular upon its face;
(b) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
(c) That he took it in good faith and for value;
(d) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

In the instant case, the checks were crossed checks and specifically indorsed for deposit to payee's account only. From the beginning, Atrium was aware of the fact that the checks were all for deposit only to payee's account, meaning E.T. Henry. Clearly, then, Atrium could not be considered a holder in due course.

However, it does not follow as a legal proposition that simply because petitioner Atrium was not a holder in due course for having taken the instruments in question with notice that the same was for deposit only to the account of payee E.T. Henry that it was altogether precluded from recovering on the instrument. The Negotiable Instruments Law does not provide that a holder not in due course can not recover on the instrument.[19]

The disadvantage of Atrium in not being a holder in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable.[20] One such defense is absence or failure of consideration.[21]

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[19] *Chan Wan v. Tan Kim and Chen So,* 109 Phil. 706 (1960).

[20] *State Investment House v. Intermediate Appellate Court,* 175 SCRA 310, 317 (1989).

[21] Negotiable Instruments Law, Sec. 28.

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We need not rule on the other issues raised, as they merely follow as a consequence of the foregoing resolutions.

WHEREFORE, the petitions are hereby *DENIED.* The decision and resolution of the Court of Appeals in CA-G.R. CV No. 26686, are hereby *AFFIRMED in toto.*

No costs.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Kapunan, and *Ynares-Santiago, JJ.,* concur.

SECOND DIVISION

[G.R. No. 122858. February 28, 2001]

BIEN D. SEVALLE, *petitioner, vs.* **COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYNOPSIS

Accused-appellant Bien D. Sevalle was convicted of homicide by the Regional Trial Court of Pasig and was sentenced to suffer the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum. In his appeal, petitioner contends that the prosecution has not established his guilt beyond reasonable doubt.

After reviewing the records of the case, the Supreme Court affirmed the decision of the trial court finding accused-appellant guilty of homicide. According to the Court, the evidence of the prosecution is sufficient to produce conviction in an unprejudiced mind. Witness Rosemarie Balbuena pointed to the area where the crime was committed. She testified that she