Supreme Court E-Library

THIRD DIVISION

[G.R. No. 111008. November 7, 1994]

TRAMAT MERCANTILE, INC. and DAVID ONG, *petitioners, vs.* **HON. COURT OF APPEALS and MELCHOR DE LA CUESTA,** *respondents.*

SYLLABUS

MERCANTILE LAW; CORPORATIONS; CORPORATE OFFICERS; LIABILITIES; INSTANCES WHEN THEIR PERSONAL LIABILITIES ALONG WITH THE CORPORATION 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) to a patently unlawful act of the corporation, or (b) for bad faith, 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 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.

APPEARANCES OF COUNSEL

Emilio G. Abrogena for petitioners.
Constante B. Albano for private respondent.

D E C I S I O N

VITUG, *J.*:

This petition for review on *certiorari* challenges the 04th March 1993 decision of the Court of Appeals and its resolution of 01 July 1993 denying the motion for reconsideration.

On 09 April 1984, Melchor de la Cuesta, doing business under the name and style of "Farmers Machineries," sold to Tramat

Supreme Court E-Library

Mercantile, Inc. (Tramat), one (1) unit HINOMOTO TRACTOR Model MB 1100D powered by a 13 H.P. diesel engine. In payment, David Ong, Tramat's president and manager, issued a check for ₱33,500.00 (apparently replacing an earlier postdated check for ₱33,080.00). Tramat, in turn, sold the tractor, together with an attached lawn mower fabricated by it, to the Metropolitan Waterworks and Sewerage System ("NAWASA") for ₱67,000.00. David Ong caused a "stop payment" of the check when NAWASA refused to pay the tractor and lawn mower after discovering that, aside from some stated defects of the attached lawn mower, the engine (sold by de la Cuesta) was a reconditioned unit.

On 28 May 1985, de la Cuesta filed an action for the recovery of ₱33,500.00, as well as attorney's fees of ₱10,000.00, and the costs of suit. Ong, in his answer, averred, among other things, that de la Cuesta had no cause of action; that the questioned transaction was between plaintiff and Tramat Mercantile, Inc., and not with Ong in his personal capacity; and that the payment of the check was stopped because the subject tractor had been priced as a brand new, not as a reconditioned unit.

On 02 November 1989, after the reception of evidence, the trial court rendered a decision, the dispositive portions of which read:

"WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered:

"1. Ordering the defendants, jointly and severally, to pay the plaintiff the sum of ₱33,500.00 with legal interest thereon at the rate of 12% per annum from July 7, 1984 until fully paid; and

"2. Ordering the defendants, jointly and severally, to pay the plaintiff the sum of ₱10,000.00 as attorney's fees, and the costs of this suit.

SO ORDERED.[1]

An appeal was timely interposed by the defendants. On 04 March 1993, the Court of Appeals affirmed *in toto* the decision

[1] *Rollo*, p. 20.

Supreme Court E-Library

of the trial court. Defendant-appellants' motion for reconsideration was denied.

Hence, the instant petition.

We could find no reason to reverse the factual findings of both the trial court and the appellate court, particularly in holding that the contract between de la Cuesta and TRAMAT was one of absolute, not conditional, sale of the tractor and that de la Cuesta did not violate any warranty on the sale of the tractor to TRAMAT. The appellate court, in its decision, adequately explained:

"If the perfection of the sale was dependent upon acceptance by the MWSS of the subject tractor why did the appellants issue a check in payment of the item to the appellee? And long after MWSS had complained about the defective tractor engine, and after the appellee had failed to remedy the defect, why did the appellants still draw and deliver a replacement check to the appeal for the increased amount of ₱33,500.00?

"These payments argue against the claim now made by the defendants that the sale was conditional.

"According to the appellee, the additional amount covered the cost of replacing the oil gasket of the tractor engine when it was repaired in Soledad Cac's gasoline station in Quezon City. The appellants, on the other hand, claims the amount represented the freight charges for transporting the tractor from Cauayan, Isabela to Metro Manila.

"The appellants should have explained why they failed to include the freight charges in the first check. The tractor was transported from Isabela to Metro Manila as early as April 1984, and the first check was drawn at about the same time. The freight charges cannot be said to have been incurred when the tractor engine was delivered back to the supplier for repairs. The appellants admitted that the engine was not brought back to Isabela. The repairs were done at Soledad Cac's gasoline station in Quezon City.

"Anent the first assigned error, We sustain the trial court's finding that at the time of the purchase, the appellants did not reveal to the appellee the true purpose for which the tractor would be used. Granting that the appellants informed the appellee that they would be reselling

Supreme Court E-Library

the unit to the MWSS, an entity admittedly not engaged in farming, and that they ordered the tractor without the power tiller, an indispensable accessory if the tractor would be used in farming, these in themselves would not constitute the required implied notice to the appellee as seller.

"x x x x x x x x x.

"In regard to the second assigned error, We do not agree that the appellee should have been held liable for the tractor's alleged hidden defects. x x x.

"It has to be noted in this regard that, to satisfy the requirements of the MWSS, the appellants borrowed a lawn mower from the MWSS so they could fabricate one such mower. The appellants' witness stated that the kind of mid-mounted lawn mower was being manufactured by their competitor, Alpha Machinery, which had by then stopped supplying the same (tsn, Nov. 29, 1988, pp. 73-74). There is no showing that the appellants had had any previous experience in the fabrication of this lawn mower. In fact, as aforesaid, they had to borrow one from the MWSS which they could copy. But although they made a copy with the same specifications and design, there was no assurance that the copy would function as well as with the model.

"x x x x x x x x x.

"Although the trial court discussed it in a different light, We view the matter in the same way the trial court did — that the lawn mower as fabricated by the appellants was the root of the parties' problems.

"Having had no previous experience in the manufacture of lawn mowers of the same type as that in litigation, and in a possibly patent-infringing effort to undercut their competition, the appellants gathered enough daring to do the fabrication themselves. But the product might have proved too much for the subject tractor to power, and the tractor's engine was strained beyond its limits, causing it to overheat and damage its gaskets.

"No wonder, then, it was a gasket Soledad Cac had to replace, at a cost chargeable to the appellants. No wonder, furthermore, the appellants' witness declared that even after the replacement of that one gasket, the engine still leaked oil after being torture-tested. The integrity of the other engine gaskets might have been impaired, too. Such was the burden placed on the engine. The engine malfunctioned not necessarily because the engine, as alleged by the

Supreme Court E-Library

appellants, had been a reconditioned, and not a brand new, one. It malfunctioned because it was made to do what it simply could not.[2]

It was, nevertheless, an error to hold David Ong jointly and severally liable with TRAMAT to de la Cuesta under the questioned transaction. Ong had there so acted, not in his personal capacity, but as an officer of a corporation, TRAMAT, with a distinct and separate personality. As such, it should only be the corporation, not the person acting for and on its behalf, that properly could be made liable thereon.[3]

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 (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;[4]

2. He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;[5]

3. He agrees to hold himself personally and solidarily liable with the corporation;[6] or

4. He is made, by a specific provision of law, to personally answer for his corporate action.[7]

In the case at bench, there is no indication that petitioner David Ong could be held personally accountable under any of the abovementioned cases.

---

[2] *Rollo*, pp. 26-30.

[3] *RCPI vs. Court of Appeals*, 143 SCRA 657.

[4] See Section 31, Corporation Code.

[5] See Section 65, Corporation Code.

[6] See *De Asis & Co., Inc. vs. Court of Appeals*, 136 SCRA 599.

[7] Exemplified in Article 144, Corporation Code; see also Sec. 13, Presidential Decree 115 (Trust Receipts Law).

Supreme Court E-Library

WHEREFORE, the petition is given *DUE COURSE* and the decision of the trial court, affirmed by the appellate court, is *MODIFIED* insofar as it holds petitioner David Ong jointly and severally liable with Tramat Mercantile, Inc., which portion of the questioned judgment is *SET ASIDE*. In all other respects, the decision appealed from is *AFFIRMED*. No costs.

SO ORDERED.

Bidin (Acting Chairman), Romero, and *Melo, JJ.*, concur.

Feliciano, J., on leave.

SECOND DIVISION

[G.R. No. 107569. November 8, 1994]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **COURT OF APPEALS, REMEDIOS JAYME-FERNANDEZ and AMADO FERNANDEZ,** *respondents*.

SYLLABUS

CIVIL LAW; OBLIGATIONS AND CONTRACTS; MUTUALITY OF CONTRACTS; CONTRACT CHANGES MUST BE MADE WITH THE CONSENT OF THE CONTRACTING PARTIES. — Contract charges must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, it cannot be gainsaid that the rate of interest is always a vital component, for it can make or break a capital venture. Thus, any change must be *mutually* agreed upon, otherwise, it is bereft of any binding effect.