

SECOND DIVISION

[G.R. No. 176897, December 11, 2013]

ADVANCE PAPER CORPORATION AND GEORGE HAW, IN HIS CAPACITY AS PRESIDENT OF ADVANCE PAPER CORPORATION, PETITIONERS, VS. ARMA TRADERS CORPORATION, MANUEL TING, CHENG GUI AND BENJAMIN NG, RESPONDENTS.

ANTONIO TAN AND UY SENG KEE WILLY, RESPONDENTS.

DECISION

BRION, J.:

Before us is a Petition for Review^[1] seeking to set aside the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 71499 dated March 31, 2006 and the Resolution dated March 7, 2007.^[2] The Decision reversed and set aside the ruling of the Regional Trial Court (RTC) of Manila, Branch 18 in Civil Case No. 94-72526 which ordered Arma Traders Corporation (*Arma Traders*) to pay Advance Paper Corporation (*Advance Paper*) the sum of P15,321,798.25 with interest, and P1,500,000.00 for attorney's fees, plus the cost of the suit.^[3]

Factual Antecedents

Petitioner Advance Paper is a domestic corporation engaged in the business of producing, printing, manufacturing, distributing and selling of various paper products.^[4] Petitioner George Haw (*Haw*) is the President while his wife, Connie Haw, is the General Manager.^[5]

Respondent Arma Traders is also a domestic corporation engaged in the wholesale and distribution of school and office supplies, and novelty products.^[6] Respondent Antonio Tan (*Tan*) was formerly the President while respondent Uy Seng Kee Willy (*Uy*) is the Treasurer of Arma Traders.^[7] They represented Arma Traders when dealing with its supplier, Advance Paper, for about 14 years.^[8]

On the other hand, respondents Manuel Ting, Cheng Gui and Benjamin Ng worked for Arma Traders as Vice-President, General Manager and Corporate Secretary, respectively.^[9]

On various dates from September to December 1994, Arma Traders purchased on credit notebooks and other paper products amounting to P7,533,001.49 from Advance Paper. ^[10]

Upon the representation of Tan and Uy, Arma Traders also obtained three loans from Advance Paper in November 1994 in the amounts of P3,380,171.82, P1,000,000.00,

and P3,408,623.94 or a total of P7,788,796.76.^[11] Arma Traders needed the loan to settle its obligations to other suppliers because its own collectibles did not arrive on time.^[12] Because of its good business relations with Arma Traders, Advance Paper extended the loans.^[13]

As payment for the purchases on credit and the loan transactions, Arma Traders issued 82 postdated checks^[14] payable to cash or to Advance Paper. Tan and Uy were Arma Traders' authorized bank signatories who signed and issued these checks which had the aggregate amount of P15,130,636.87.^[15]

Advance Paper presented the checks to the drawee bank but these were dishonored either for "insufficiency of funds" or "account closed." Despite repeated demands, however, Arma Traders failed to settle its account with Advance Paper.^[16]

On December 29, 1994, the petitioners filed a complaint^[17] for collection of sum of money with application for preliminary attachment against Arma Traders, Tan, Uy, Ting, Gui, and Ng.

Claims of the petitioners

The petitioners claimed that the respondents fraudulently issued the postdated checks as payment for the purchases and loan transactions knowing that they did not have sufficient funds with the drawee banks.^[18]

To prove the **purchases on credit**, the petitioners presented the summary of the transactions and their corresponding sales invoices as their documentary evidence.^[19]

During the trial, Haw also testified that within one or two weeks upon delivery of the paper products, Arma Traders paid the purchases in the form of postdated checks. Thus, he personally collected these checks on Saturdays and upon receiving the checks, he surrendered to Arma Traders the original of the sales invoices while he retained the duplicate of the invoices.^[20]

To prove the **loan transactions**, the petitioners presented the copies of the checks^[21] which Advance Paper issued in favor of Arma Traders. The petitioners also filed a manifestation^[22] dated June 14, 1995, submitting a bank statement from Metrobank EDSA Kalookan Branch. This was to show that Advance Paper's credit line with Metrobank has been transferred to the account of Arma Traders as payee from October 1994 to December 1994.

Moreover, Haw testified to prove the loan transactions. When asked why he considered extending the loans without any collateral and loan agreement or promissory note, and only on the basis of the issuance of the postdated checks, he answered that it was because he trusted Arma Traders since it had been their customer for a long time and that none of the previous checks ever bounced.^[23]

Claims of the respondents

The respondents argued that the **purchases on credit** were spurious, simulated and fraudulent since there was no delivery of the P7,000,000.00 worth of notebooks and other paper products.^[24]

During the trial, Ng testified that Arma Traders did not purchase notebooks and other paper products from September to December 1994. He claimed that during this period, Arma Traders concentrated on Christmas items, not school and office supplies. He also narrated that upon learning about the complaint filed by the petitioners, he immediately looked for Arma Traders' records and found no receipts involving the purchases of notebooks and other paper products from Advance Paper.^[25]

As to the **loan transactions**, the respondents countered that these were the personal obligations of Tan and Uy to Advance Paper. These loans were never intended to benefit the respondents.

The respondents also claimed that the loan transactions were *ultra vires* because the board of directors of Arma Traders did not issue a board resolution authorizing Tan and Uy to obtain the loans from Advance Paper. They claimed that the borrowing of money must be done only with the prior approval of the board of directors because without the approval, the corporate officers are acting in excess of their authority or *ultra vires*. When the acts of the corporate officers are *ultra vires*, the corporation is not liable for whatever acts that these officers committed in excess of their authority. Further, the respondents claimed that Advance Paper failed to verify Tan and Uy's authority to transact business with them. Hence, Advance Paper should suffer the consequences.^[26]

The respondents accused Tan and Uy for conspiring with the petitioners to defraud Arma Traders through a series of transactions known as rediscounting of postdated checks. In rediscounting, the respondents explained that Tan and Uy would issue Arma Traders' postdated checks to the petitioners in exchange for cash, discounted by as much as 7% to 10% depending on how long were the terms of repayment. The rediscounted percentage represented the interest or profit earned by the petitioners in these transactions.^[27]

Tan did not file his Answer and was eventually declared in default.

On the other hand, Uy filed his Answer^[28] dated January 20, 1995 but was subsequently declared in default upon his failure to appear during the pre-trial. In his Answer, he admitted that Arma Traders together with its corporate officers have been transacting business with Advance Paper.^[29] He claimed that he and Tan have been authorized by the board of directors for the past 13 years to issue checks in behalf of Arma Traders to pay its obligations with Advance Paper.^[30] **Furthermore, he admitted that Arma Traders' checks were issued to pay its contractual obligations with Advance Paper.**^[31] However, according to him, Advance Paper was informed beforehand that Arma Traders' checks were funded out of the P20,000,000.00 worth of collectibles coming from the provinces. Unfortunately, the expected collectibles did not materialize for unknown reasons.^[32]

Ng filed his Answer^[33] and claimed that the management of Arma Traders was left

entirely to Tan and Uy. Thus, he never participated in the company's daily transactions.^[34]

Atty. Ernest S. Ang, Jr. (*Atty. Ang*), Arma Traders' Vice-President for Legal Affairs and Credit and Collection, testified that he investigated the transactions involving Tan and Uy and discovered that they were financing their own business using Arma Traders' resources. He also accused Haw for conniving with Tan and Uy in fraudulently making Arma Traders liable for their personal debts. He based this conclusion from the following: *First*, basic human experience and common sense tell us that a lender will not agree to extend additional loan to another person who already owes a substantial sum from the lender – in this case, petitioner Advance Paper. *Second*, there was no other document proving the existence of the loan other than the postdated checks. *Third*, the total of the purchase and loan transactions vis-à-vis the total amount of the postdated checks did not tally. *Fourth*, he found out that the certified true copy of Advance Paper's report with the Securities and Exchange Commission (*SEC report*) did not reflect the P15,000,000.00 collectibles it had with Arma Traders.^[35]

Atty. Ang also testified that he already filed several cases of estafa and qualified theft^[36] against Tan and Uy and that several warrants of arrest had been issued against them.

In their pre-trial brief,^[37] the respondents named Sharow Ong, the secretary of Tan and Uy, to testify on how Tan and Uy conspired with the petitioners to defraud Arma Traders. However, the respondents did not present her on the witness stand.

The RTC Ruling

On June 18, 2001, the RTC ruled that the purchases on credit and loans were sufficiently proven by the petitioners. Hence, the RTC ordered Arma Traders to pay Advance Paper the sum of P15,321,798.25 with interest, and P1,500,000.00 for attorney's fees, plus the cost of the suit.

The RTC held that the respondents failed to present hard, admissible and credible evidence to prove that the sale invoices were forged or fictitious, and that the loan transactions were personal obligations of Tan and Uy. Nonetheless, the RTC dismissed the complaint against Tan, Uy, Ting, Gui and Ng due to the lack of evidence showing that they bound themselves, either jointly or solidarily, with Arma Traders for the payment of its account.^[38]

Arma Traders appealed the RTC decision to the CA.

The CA Ruling

The CA held that the petitioners failed to prove by preponderance of evidence the existence of the purchases on credit and loans based on the following grounds:

First, Arma Traders was not liable for the loan in the absence of a board resolution authorizing Tan and Uy to obtain the loan from Advance Paper.^[39] The CA acknowledged that Tan and Uy were Arma Traders' authorized bank signatories. However, the CA explained that this is not sufficient because the authority to sign

the checks is different from the required authority to contract a loan.^[40]

Second, the CA also held that the petitioners presented incompetent and inadmissible evidence to prove the purchases on credit since the sales invoices were hearsay.^[41] The CA pointed out that Haw's testimony as to the identification of the sales invoices was not an exception to the hearsay rule because there was no showing that the secretaries who prepared the sales invoices are already dead or unable to testify as required by the Rules of Court.^[42] Further, the CA noted that the secretaries were not identified or presented in court.^[43]

Third, the CA ruling heavily relied on Ng's Appellant's Brief^[44] which made the detailed description of the "badges of fraud." The CA averred that the petitioners failed to satisfactorily rebut the badges of fraud^[45] which include the inconsistencies in:

- (1) "Exhibit E-26," a postdated check, which was allegedly issued in favor of Advance Paper but turned out to be a check payable to Top Line, Advance Paper's sister company;^[46]
- (2) "Sale Invoice No. 8946," an evidence to prove the existence of the purchases on credit, whose photocopy failed to reflect the amount stated in the duplicate copy,^[47] and;
- (3) The SEC report of Advance Paper for the year ended 1994 reflected its account receivables amounting to P219,705.19 only – an amount far from the claimed P15,321,798.25 receivables from Arma Traders.^[48]

Hence, the CA **set aside** the RTC's order for Arma Traders to pay Advance Paper the sum of P15,321,798.25, P1,500,000.00 for attorney's fees, plus cost of suit.^[49] It **affirmed** the RTC decision dismissing the complaint against respondents Tan, Uy, Ting, Gui and Ng.^[50] The CA also directed the petitioners to solidarily pay each of the respondents their counterclaims of P250,000.00 as moral damages, P250,000.00 as exemplary damages, and P250,000.00 as attorney's fees.^[51]

The Petition

The petitioners raise the following arguments.

First, Arma Traders led the petitioners to believe that Tan and Uy had the authority to obtain loans since the respondents left the active and sole management of the company to Tan and Uy since 1984. In fact, Ng testified that Arma Traders' stockholders and board of directors never conducted a meeting from 1984 to 1995. Therefore, if the respondents' position will be sustained, they will have the absurd power to question all the business transactions of Arma Traders.^[52] Citing *Lipat v. Pacific Banking Corporation*,^[53] the petitioners said that if a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.

Second, the petitioners argue that Haw's testimony is not hearsay. They emphasize that Haw has personal knowledge of the assailed purchases and loan transactions