Louisiana Law Review

Volume 21 | Number 2
The Work of the Louisiana Supreme Court for the 1959-1960 Term
February 1961

Commercial Law: Negotiable Instruments

Paul M. Hebert

origin and that it was caused by the plaintiff insured. Evidence that the fire was of incendiary origin was lacking and proof of motive was weak, although the circumstances were very suspicious.

NEGOTIABLE INSTRUMENTS

*Paul M. Hebert**

The problem of "connexity" between a finance company and the dealer as relates to the protection afforded the holder in due course of a negotiable instrument was before the court in *Universal C.I.T. Credit Corp. v. Alker*,[1] in an interesting factual setting. The defendants, Alker and Duvic, affixed their signatures to a note and chattel mortgage using a form furnished by the finance company to the vendor, Orleans Motor Company. The note and chattel mortgage when executed were on one sheet of paper, the note being detachable by means of perforations. On the face of the chattel mortgage there was a space designated under the printed heading "Customer" and this blank had been filled in to show J'Alkard Enterprises, Inc. This corporation was newly formed and insolvent at the time of the suit. The two defendants were officers of the corporation and were sued individually on the note. Consideration for the note was a ranch wagon purchased for the corporation. The chattel mortgage security could not be enforced because the vehicle, after its purchase, had been sent by the corporation to Mexico on business and had not been returned. The signatures of the two defendants appeared on both the note and the chattel mortgage without any designation of capacity other than as individuals. There was nothing in the note to indicate that the defendants were signing in a representative capacity. The defense was (1) that defendants subscribed the note solely for and on behalf of the corporation in their representative capacity as officers without intent to be personally bound thereon; and (2) that the payee motor company was agent or representative of the plaintiff finance company or was so identified with the payee that knowledge of the limited purpose for which defendants were alleged to have signed were imputed to the finance company under the doctrine of *Commercial Credit Co. v. Childs*[2] and *C.I.T. Corp. v. Emmons*.[3]

*Dean and Professor of Law, Louisiana State University Law School.

1. 239 La. 1057, 121 So.2d 78 (1960).
2. 199 Ark. 1073, 137 S.W.2d 260, 128 A.L.R. 726 (1940).
3. 197 So. 662 (La. App. 1940).

On the facts it was established that the note and mortgage were executed by defendants in the presence of the payee's salesman and the note was endorsed and sent by messenger to the plaintiff's office. A crucial fact in dispute was whether the plaintiff actually knew of the alleged infirmity. On this issue the Supreme Court found that plaintiff had in fact informed the payee's salesman that it would not accept the financing of a car for a newly formed corporation unless two individual signatures were given. From this fact, from the individual form of the signatures, and from the general corroborative evidence, the court concluded that the individual signatures were given as demanded by the finance company for the purpose of creating personal liability and that plaintiff had no knowledge of any agreement or understanding that the corporation and not the defendants were to be the obligor. The defendant whose case was on appeal strongly contended that the plaintiff was so closely connected with the entire transaction that knowledge of the alleged equities between the original parties should be imputed to the plaintiff. The Supreme Court flatly rejected this contention and adhered to the rule of actual knowledge laid down in *White System of New Orleans v. Hall.*[4] The court again specifically repudiated the line of cases headed by *Commercial Credit Co. v. Childs,*[5] the leading American authority finding identity between the payee-vendor and the endorsee-finance company to the point of transferring the payee's knowledge in a manner to defeat holder in due course status.

This reaffirmation of the requirement that bad faith must be "actual knowledge" of the infirmity is a salutary result as the situation here involved is quite different from the degree of actual knowledge found to be present in *C.I.T. Corp. v. Emmons.*[6]

4. 219 La. 440, 53 So.2d 227 (1951) (finance company holder purchased note from seller for value in good faith and before maturity without notice that sold equipment was defective; *held*, finance company not subject to defenses that buyer might have against seller. General Motors Acceptance Corp. v. Swain, 176 So. 636 (La. App. 1937); C.I.T. Corp. v. Emmons, 197 So. 662 (La. App. 1940); International Harvester Co. v. Carruth, 23 So.2d 473 (La. App. 1945); and Citizens Loan Corp. v. Robbins, 40 So.2d 503 (La. App. 1949) distinguished).

5. 199 Ark. 1073, 137 S.W.2d 260 (1940); Clark v. Roberts, 206 Mass. 235, 92 N.E. 461 (1910); Commercial Credit Corp. v. Orange County Machine Works, 34 Cal.2d 766, 214 P.2d 819 (1950); Mutual Finance Co. v. Martin, 63 So.2d 649, 44 A.L.R.2d 1 (Fla. 1953). The *Childs* case and its aftermath is discussed in Comment, 18 LOUISIANA LAW REVIEW 322, 327 (1958).

6. 197 So. 662 (La. App. 1940) (facts established finance company had full

The principal case also correctly applies the rule of Section 20 of the Negotiable Instruments Law in holding that avoidance of personal liability can only be achieved by clearly disclosing the principal and signing in a representative capacity.[7] An examination of the note showed that no principal was disclosed on it and no representative capacity was indicated in the note. The decision that the typed blank indicating the corporation as "Customer" did not meet the test of Section 20 seems entirely sound. The case as a whole strengthens considerably the holder in due course protection as applied to the dealer-finance company relationship and is in keeping with the policy of freeing the holder in due course from equities between the original parties. The case may mark a more definite trend away from the questionable result of the *Emmons* case.[8]

In *O'Rourke v. Moore*,[9] a written document was sued on under allegations that plaintiff "is the holder in due course and for value of an acknowledgment of a debt and/or negotiable instrument" signed by the decedent for the sum of $1,000.00. The instrument was addressed to no drawee, contained no words of negotiability, had no promissory language, and was merely in the form of an order "Pay to L. O'Rourke — $1,000.00." From the facts it appeared that the decedent had written the slip of paper and delivered it to plaintiff, stating in the presence of plaintiff's husband and daughter, "I am giving her a thousand dollars, which I think she deserves, because she has been a very good, faithful saleslady." In affirming the court of appeal it was held: (1) the instrument could not be enforced as a gift for failure to meet the requisites of a valid donation mortis causa;[10] (2) the instrument could not be enforced as a negotiable instru-

knowledge of the agreement of the vendor to purchase insurance from which the court found "actual" knowledge of the infirmity in the instrument). But *query*, did the facts in the *Emmons* case sufficiently establish knowledge of breach of the vendor's obligation? The *Emmons* case is subject to criticism on the point. See Comment, 18 LOUISIANA LAW REVIEW 322, 331, n. 39 (1958).

7. LA. R.S. 7:20 (1950).

8. C.I.T. Corp. v. Emmons, 197 So. 662 (La. App. 1940). See Comment, 18 LOUISIANA LAW REVIEW 322, 329-34 (1958), for a discussion of the Louisiana cases where it is correctly concluded that a finance company with "actual knowledge" of an infirmity should not be permitted to use the Negotiable Instruments Law as a shield. The strong policy considerations outlined in Sections 52, 56, and 57 of the NIL, LA. R.S. 7:52, 56, 57 (1950), should not be undermined by judicial interpretation. The principal instant case, by reaffirming White System of New Orleans v. Hall, 219 La. 440, 53 So.2d 227 (1951), is more in keeping with the policy of the statute than the result of the *Emmons* case.

9. 239 La. 6, 117 So.2d 826 (1960).

10. LA. CIVIL CODE art. 1570 (1870). See Succession of Rabasse, 49 La. Ann. 1405, 22 So. 767 (1897).

ment because it did not meet the *formal requisites of negotiability*;[11] and (3) it was not an acknowledgment of a debt so as to be a charge against the succession because it contained no language which would constitute such an acknowledgment.

The question of negotiability, though correctly decided, would appear to be irrelevant to the disposition of this case, but in declining to apply the doctrine of *Barthe v. Succession of Lacroix*,[12] the Supreme Court placed some emphasis upon the statement that the *Barthe* case involved a negotiable instrument given in recognition of a natural obligation. There is, of course, a clear distinction between a manual donation of a negotiable instrument where the payee-holder is the donor — which has been sustained under the Civil Code as a manual donation[13] and the situation in which the maker's own note not founded upon consideration is attempted to be used to subvert the requirements of the law as to forms of donations.[14] Although the court specifically stated it was not overruling the *Barthe* case, it may well be questioned as to whether or not the principal case does not in practical effect do so, for the facts as to the consideration do, contrary to the holding of the court, appear to be quite close to those of the *Barthe* case as plaintiff was a long-time employee of the decedent whom he wished to remunerate under circumstances strikingly similar to the *Barthe* case. The correct final result appears to have been reached because it does not appear that the facts of this case or the *Barthe* case warrant the conclusion that

11. LA. R.S. 7:1 (1950) lists the formal requisites of negotiability which were clearly not complied with. Nor could the instrument be considered a bill of exchange, a promissory note, or a check for lack of the requisites defined in *id.* 7:126, 184, and 185, respectively.

12. 29 La. Ann. 326 (1877) (a promissory note for a certain sum executed by the decedent payable at the maker's death, although said sum was not legally due was held not to be a donation in disguise, if it appeared that the note had for its consideration the natural obligation in favor of the employee, arising out of his long services to the maker — a case not turning on the negotiability or non-negotiability of the note).

13. Succession of Leroy, 157 La. 1077, 103 So. 328 (1925) (endorsement and delivery of a check payable to the order of the donor constitutes a valid donation of the fund represented, though collected after the death of the donor). LA. CIVIL CODE art. 1539 (1870).

14. Morres v. Compton, 12 Rob. 76 (La. 1845) (parol proof that a promissory note, payable to the order of the donor, and by him endorsed in blank, was delivered to plaintiff as a gift, is insufficient to hold it as a gratuitous donation inter vivos — such a donation must be by an act before a notary and two witnesses); Miller v. Andrus, 1 La. Ann. 237 (1846) (a promissory note made by a father to the order of his daughter was null as a donation for want of form). Both of these cases are cited with approval in Succession of Desina, 123 La. 468, 479-80 (1909).

there was a natural obligation.[15] The case may give rise to difficulty if it be wrongly interpreted as impliedly sanctioning a gratuitous donation of the maker-donor's own note when clothed in the form of negotiability.

15. LA. CIVIL CODE art. 1758 (1870). See Note, 7 LOUISIANA LAW REVIEW 445 (1947).