

BEWARE OF CROSSED CHECKS

By: Gregorio M. Batiller, Jr.

Joey was in need of money. He approached his friend Lulu who was the treasurer of H. Corp. for a loan. H Corp. thru its treasurer Lulu and its chairman Antonio issued in favor of Joey four (4) postdated checks in the total amount of P2M. Said checks were duly crossed.

Joey, then, turned around and discounted the four (4) checks with AA Finance Corporation. However, before it agreed to discount the checks, AA Finance Corp. sought to first confirm with H Corp. That the post-dated checks issued in favor of Joey represented payment for petroleum products delivered by Joey to H. Corp. H. Corp. thru its treasurer Lulu sent a letter to AA Finance Corp. confirming that the four (4) checks in favor of Joey were in payment of petroleum products. However, upon presentment for payment, the drawee bank dishonored all four checks for the common reason "payment stopped." When its demand for payment was denied by H. Corp., AA Finance Corp. promptly sued H. Corp., Joey, Treasurer Lulu and her husband, and Chairman Antonio.

The RTC rendered a decision finding the defendants except for Chairman Antonio jointly and severally liable to AA Finance in the amount of P2M, plus interest and attorney's fees. (Note: the decision failed to state on what ground Chairman Antonio was excluded from liability.)

On appeal to the Court of Appeals, the Court of Appeals modified the RTC's decision by likewise absolving H. Corp. from liability and dismissing the complaint against it. The Court of Appeals ruled that:

1. Treasurer Lulu was not authorized to issue the subject checks in favor of Joey;
2. The issuance of the checks by Treasurer Lulu and Chairman Antonio was ultra vires and;
3. Subject checks were not issued for valuable consideration.

On further appeal to the Supreme Court, the High Court disposed of the issued thus:

1. The issuance of the checks was NOT an ultra vires act. Treasurer Lulu and Chairman Antonio were authorized to sign checks on behalf of H. Corp. and at the time issuance of the checks, there were sufficient funds in the bank to cover the amount of P2M.

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

Treasurer Lulu was negligent when she signed the confirmation letter requested by AA Finance which certified that the checks were issued in payment for petroleum products when that was not the case. Hence, Treasurer Lulu may be held personally liable for the issuance of said checks.

3. AA Finance was not a holder in due course. In the instant case, the checks were crossed out and specifically indorsed for deposit to payee's account only. However, even if not a holder in due course, it does not necessarily follow that it was precluded from recovering on the instruments. But a disadvantage of not being a holder in due course is that the negotiable instrument is subject to defenses, as if it were non-negotiable among them: the absence of consideration.

(Atrium Management Corp. vs. Court of Appeals, et al., SC G.R. No. 109491, February 28, 2001)