

**IN THE SUPREME COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

YANG JAE OH,)	APPEAL NO. 98-036
)	CIVIL ACTION NO. 97-0087
Plaintiff/Appellee,)	
)	
v.)	
)	OPINION
ANGEL ENT., INC., dba ANGEL HOUSE,)	
)	
Defendant/Appellant.)	
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Submitted on the briefs on September 15, 1999
Cite as: *Yang Jae Oh v. Angel Ent., Inc.*, 2000 MP 6

Counsel for Appellant:	Russell H. Tansey Saipan
Counsel for Appellee:	John M. Chambers Saipan

BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice, LIZAMA, Justice *Pro Tem*
CASTRO, Associate Justice:

[1,2]This is an appeal from a trial court judgment that Plaintiff/Appellee Jae Oh Yang (“Yang”) was entitled to recover the amount of four checks from Defendant/Appellant Angel Enterprises, Inc., dba Angel House (“Angel House”). Angel House appeals, claiming there was no enforceable contract with Yang, Yang did not hold the checks as a holder in due course, and Angel House was not precluded from denying

the checks were forged. We have jurisdiction pursuant to Article IV, Section 3 of the Constitution of the Commonwealth of the Northern Mariana Islands, as amended,¹ and 1 CMC § 3102. We affirm.

ISSUES PRESENTED AND STANDARDS OF REVIEW

[3]The first issue is whether Yang was a holder in due course. This is a factual question, subject to the clearly erroneous standard on appellate review. *Financial Management Servs., Inc. v. Familian Corp.*, 905 P.2d 506, 510-11 (Ariz. Ct. App. 1995); *see Merrick v. Peterson*, 606 P.2d 700, 702 (Wash. Ct. App. 1980).

[4]The second issue² is whether the trial court properly precluded Angel House from claiming the checks were forged. This is a legal conclusion, reviewed *de novo* on appeal. *Agulto v. Northern Marianas Inv. Group Ltd.*, 4 N.M.I. 7, 9 (1993).

FACTUAL AND PROCEDURAL BACKGROUND

In 1993, Yang arranged to invest in a scuba shop on Saipan with Dong Hyun Ji (“Ji”), Angel House’s chairman of the board and husband of Yun Hee Kim (“Kim”), a major stockholder and later president. Although Kim was not present during negotiations for the scuba venture, she knew of the

¹ N.M.I. Const. art. IV, § 3 was amended by the passage of Legislative Initiative 10-3, ratified by the voters on November 1, 1997 and certified by the Board of Elections on December 13, 1997.

² The parties also present the issue of whether there was an enforceable contract between Yang and Angel House. Yang’s amended complaint only sought to recover the amount of the checks, and did not state a cause of action for breach of contract. A contract is not necessary for Yang to be a holder in due course. All that is necessary is that he took the checks for value. See 5 CMC §§ 3302 (defining “holder in due course”), 3308 (declaring holder in due course takes for value if he takes check in payment for antecedent debt), 3408 (requiring no consideration where holder takes check as payment for antecedent debt). Therefore, the question of whether a contract existed presumably relates to whether Yang took the checks for value so as to make him a holder in due course. As stated above, this is a factual question.

Angel House further argues that, at most, Yang should not be permitted to recover in excess of the \$21,875 recited in the contract for repayment, because anything over that constitutes usurious interest. It appears Angel House is raising this issue for the first time on appeal. The trial court’s Judgment does not address the issue of usury, and there is no indication from the record that Angel House presented evidence or argued this issue at trial. This Court may not consider an issue raised for the first time on appeal unless: (1) the issue is one of law not relying on any factual record; (2) a new theory or issue has arisen because of a change in law while the appeal is pending; or (3) plain error occurred and an injustice might otherwise result. *Cushnie v. Bank of Guam*, 4 N.M.I. 198, 199-200 (1994). Here, whether the checks included a usurious amount of interest depends on what facts were presented at trial. There has been no change in the law since Angel House filed its appeal, and we find no plain error in the trial court’s Judgment. Therefore, this Court may not consider this belated argument by Angel House.

venture as well as of arrangements for repayment.³ Yang paid for construction costs at the site of the scuba store, as well as for other items such as phone installation and airplane tickets for a tourist group. Additionally, in early 1994 Yang co-signed a loan on Kim's behalf for approximately ten thousand dollars, secured by a house Yang co-owned. When Kim defaulted on the loan and the bank threatened to foreclose on Yang's house, Yang paid the loan in full. These expenses amounted to about \$21,875.

The scuba shop never opened because Yang and the other investors did not believe it would be a profitable business. However, in exchange for Yang's investment, Ji wrote a contract in Korean on March 14, 1995 ("contract for repayment") that provided for repayment through an offset on room rentals at Angel House Hotel on Saipan.⁴ At the time he signed the contract, Ji was an officer of Angel House.

Yang was unable to use the rooms because they were locked and the hotel was not being operated at that time. Consequently, sometime between February and April 1996, Yang went to Ji's office and picked up four checks written on Angel House's account totaling \$35,000 in repayment of his investment. The checks appeared to have been signed by Kim, and were post-dated by several months. When Yang attempted to cash the checks that July, the bank returned the checks for insufficient funds. Angel House concedes the checks were timely deposited. Yang had no reason to believe the signatures on the checks were not Kim's, since he was not familiar with her handwriting.

Kim and Ji divorced in April 1996, and Kim became president of Angel House on May 10, 1996. As of that date, Ji was no longer part of Angel House. Kim never reported the four checks missing or stolen to the police. When the checks were dishonored, she never reported the signatures she claims were forged.

In January 1997, Yang brought his complaint to recover \$35,030 in indebtedness due to the four dishonored checks. Angel House denied it was indebted to Yang, denied knowledge of the four checks, and asserted the following affirmative defenses: Yang did not hold the checks as a holder in due course,

³ Although Angel House cites to a "Transcript" several times in its brief, it did not provide a Transcript with its Excerpts of Record for this Court to review. However, we note that in addition to the trial court's findings, the record indicates Yang paid the initial expenses directly to Ji and Kim. Transcript of Trial Proceedings, Supplemental Excerpts of Record at 15.

⁴ Angel House only submitted the English translation of this contract with its appellate brief.

Yang received no consideration for the checks, the checks were forged, and Yang was guilty of unclean hands.

The trial court issued its judgment on September 17, 1998 after a bench trial. *Yang, Jae Oh v. Angel Ent., Inc. dba Angel House*, Civ. No. 97-0087 (N.M.I. Super. Ct. Sept. 17, 1998) (Findings of Fact and Conclusions of Law Awarding Judgment to Plaintiff After Trial). The court, applying the Uniform Commercial Code of the Northern Marianas, determined Yang was a holder in due course because he took the checks for value pursuant to the contract for repayment, he acted in good faith, and without notice that Ji was not authorized to issue the checks on behalf of Angel House. The trial court did not find credible Kim's testimony that she never saw the bank statements for a corporation in which she was a major stockholder and later president. The court further held that even if Kim did not sign the checks, she was precluded from denying her signature because she had knowledge of the business arrangement between her husband and Yang but did nothing to rescind it.

Angel House timely appealed.

ANALYSIS

I. Whether Yang Held the Checks as a Holder in Due Course

Angel House contends there was no enforceable contract to serve as consideration for the four checks. However, the relevant inquiry is whether the check holder took the checks for value.

[5,6,7]The Uniform Commercial Code of the Northern Mariana Islands ("UCC"), Division 3, Chapter 1 governs commercial paper transactions. *See* 5 CMC § 3101 *et seq.* A check is a negotiable instrument as defined in Chapter 1, therefore the UCC applies to this case. *See* 5 CMC § 3104(2)(b). Under the UCC, Yang may recover the value of the checks if he is a holder in due course. A holder in due course is one who takes the instrument (a) for value, (b) in good faith, and (c) without notice that it is overdue, has been dishonored, or of any defense against or claim to it on the part of any person. 5 CMC § 3302(1). We address each element in turn.

A. For Value

[8,9]A holder in due course takes for value (a) to the extent that the agreed consideration has been performed, or (b) when he takes the instrument in payment of or as security for an antecedent claim against any person, whether or not the claim is due. 5 CMC § 3303. The proper inquiry in determining whether the holder took for value is not whether the debtor received value, but whether the holder gave value. *Joe Sipala & Son Nursery Corp. v. Lee Servicing Corp.*, 214 B.R. 281, 286 (E.D.N.Y. 1997).

[10,11]A holder takes for value when he takes a check in payment of an antecedent debt. *Kane v. Kroll*, 538 N.W.2d 605, 607 (Wis. Ct. App. 1995); see 5 CMC §§ 3303, 3408; *Silberschmidt v. Moran*, 250 P. 205, 206-07 (Cal. Ct. App. 1926). One may also be a holder in due course to the extent he has performed an executory promise, *Saka v. Mann Theatres*, 575 P.2d 1335, 1336-37 (Nev. 1978), and in some cases in exchange for the promise itself. *Eckley v. Steinbrecher*, 482 P.2d 392, 394 (Colo. Ct. App. 1971).

[12]When a plaintiff introduces the negotiable instrument sued on (legally presumed to have been given for value received) into evidence, he is not required in the first instance to produce any further proof of consideration. The defendant then has the burden of going forward with the evidence and rebutting plaintiff's prima facie case. If the defendant succeeds, that is, casts doubt upon the reality of the consideration, then plaintiff has the ultimate burden of proving consideration by a preponderance of the evidence. *S&S Cash Register & Computer Co. v. Calderera*, 627 So.2d 255, 258 (La. App. 1993).

[13]Here, the facts indicate Yang gave consideration for the checks. He invested money in the scuba shop venture and made a loan to Kim, and handed the money to Ji and Kim personally. Transcript of Trial Proceedings, Supplemental Excerpts of Record ("S.E.R.") at 15-16. Angel House insists that unless there was an enforceable contract for the scuba shop venture, Yang could not have taken the checks for value. However, the scuba shop agreement need not be the value for which Yang took the checks. Regardless of whether there was an enforceable contract to open a scuba shop, the written contract for repayment specifies that Yang paid for air fares, telephone facilities, principal on a loan, interest and expenses for a mortgage release, and construction costs. Contract for Repayment, Excerpts of Record ("E.R.") at 15. Yang also claims he made some further investment after the contract for repayment, which brought his total expenditures to \$35,000. The contract for repayment then states that "As a way of

repaying the above amount of money,” Angel House would provide its rooms to Yang at a discount.⁵ E.R. at 15 (emphasis added).

Thus, not only did Yang give value in the form of a loan and investment in the scuba shop, but Ji acknowledged this value and signed a written contract to repay this money, which the contract recited as \$21,875. When Ji was unable to perform on this contract by providing discounted room rentals, the parties modified the contract and Ji instead gave Yang the four checks.⁶

Yang’s expenses constitute an antecedent debt or, alternatively, performance on the scuba shop agreement. This in turn constitutes the value for which Yang took the four checks. Under these facts, Angel House has not met its burden of casting doubt upon the reality of Yang’s consideration.

B. Good Faith

[14]The Commonwealth Code defines “good faith” as “honesty in fact in the conduct or transaction concerned.” 5 CMC § 1201(19). The test for good faith is subjective, looking to the intent or state of mind of the party concerned. *Farmers & Merchants State Bank v. Western Bank*, 841 F.2d 1433, 1443 (9th Cir. 1987). It is sufficient that the holder honestly believed there was nothing wrong with the transaction. *Financial Management Servs.*, 905 P.2d at 511. Under this subjective standard, lack of knowledge does not by itself constitute lack of good faith. *Money Mart Check Cashing Ctr. v. Epicycle Corp.*, 667 P.2d 1372, 1373 (Colo. 1983) (finding clear error where trial court found no holder in due

⁵ The contract states:

As a way of repaying the above amount of money the charges for rooms of Angels [sic] House shall be offset and it is agreed as follows:

1. From 1 October 1995 room rates shall be fixed at \$300 per month.
2. The room shall be used until the above amount of money is settled.
3. [Ji] shall faithfully observe his obligation concerning the above money and manifest his good faith even sooner.

⁶ The Court notes a discrepancy between the amount recited in the contract for repayment and the amount of the checks. We will defer to the trial court’s factual determination of the amount of Angel House’s indebtedness to Yang. Additionally, we note that Yang testified the total check amount of \$35,000 was the “amount we agreed, calculating based on twenty one thousand eight hundred dollar [sic] they owe us and plus interest and some of the expenses.” S.E.R. at 23. Yang also testified he paid for goggles, a life jacket and a boat, and sent them to Saipan. *Id.* at 40. Finally, the contract for repayment states “accounts to be settled later” with respect to the mortgage and construction costs.

course because holder did not inquire as to whether stop payment order had been issued on check, or whether check was stolen, incomplete or secured by fraud).

[15,16] Good faith is a question for the jury. *Silberschmidt*, 250 P. at 207. An appellate court reviews the lower court's finding for clear error. *Farmers & Merchants State Bank*, 841 F.2d at 1444.

The record does not reveal any facts suggesting the trial court was clearly erroneous in finding Yang acted in good faith. There is no evidence Yang knew the checks would be dishonored. There is no evidence to support Kim's accusation that Yang must have stolen the checks because the signatures were forged. There is also no evidence to contradict Yang's testimony he was unaware that Kim and Ji were divorced, or that Ji was not acting as Angel House's agent when he gave Yang the four checks, or that Angel House did not intend to honor the checks.

C. Without Notice

[17,18,19] Under 5 CMC § 1201, a person has "notice" of a fact when:

- (a) He has actual knowledge of it; or
- (b) He has received a notice or notification of it; or
- (c) From all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than reason to know

5 CMC § 1201(25). Notice entails actual notice of a defense, or of such facts that would alert a person to a possible defense. *Financial Management Services*, 905 P.2d at 512. The test involves an objective inquiry into what a reasonable person in the holder's position would know. *Farmers & Merchants State Bank*, 841 F.2d at 1449. Where an instrument is regular on its face, there is no duty to inquire as to a possible defense, unless the circumstances suggest a deliberate desire to evade knowledge out of fear that investigation would disclose the existence of a defense. *Money Mart*, 667 P.2d at 1374.

Again, there is no evidence to suggest Yang had notice that the checks would be dishonored. There is no evidence Yang knew or should have known the checks were forged, or that Ji and Kim were divorced and Ji was no longer acting as Angel House's agent when he gave Yang the four checks.

II. Whether the Trial Court Properly Precluded Angel House from Claiming the Checks Were Forged

The trial court found that while Kim did not sign the checks, she was precluded from denying her signature because she knew of the business arrangement between Yang and Angel House. Angel House claims Kim only had general knowledge of a scuba shop venture, and did not know the details of the contract for repayment, or of the four checks. Angel House argues there is no legal authority to support the trial court's finding that the debtor's failure to promptly rescind forgeries makes the payee a holder in due course.

Yang responds that there was no evidence to support Angel House's contention the four checks were stolen, since Kim never reported the stolen checks to either the police or the bank. By failing to report the checks, Yang argues Kim ratified them. Yang also emphasizes that Kim was more than just generally aware of the arrangement between Yang and Angel House.

[20]Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it, but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value. 5 CMC § 3404(1).

[21,22,23]An agent's act, although without actual authority, may be with such apparent authority as to bind the principal. *Geyer v. Walling Co.*, 122 N.W.2d 230, 235 (Neb. 1963) (finding holder in due course not required to ascertain whether vice president's signature on behalf of corporation was authorized, where in fact it was not). Ratification requires intent to ratify plus knowledge of all material facts. Ratification may be express or implied, and intent may be inferred from the failure to repudiate an unauthorized act, from inaction, or from conduct on the part of the principal which is inconsistent with any position other than an intent to adopt the act. *Cook v. Great Western Bank & Trust*, 685 P.2d 145, 148 (Ariz. Ct. App. 1984) (citing *United Bank of Ariz. v. Mesa N.O. Nelson Co.*, 590 P.2d 1384, 1386 (Ariz. 1979)). Ratification is a question of fact. *Id.* at 149.

[24]Any person who negligently and substantially contributes to a material alteration of an instrument, or to the making of an unauthorized signature, is precluded from asserting the alteration or lack of authority against a holder in due course. 5 CMC § 3406; *see Koerner & Lambert v. Allstate Ins. Co.*, 374 So.2d 179, 180-81 (4th Cir. 1979) (finding insurance company negligently entrusted drafts to repair

shop without notifying insured or otherwise taking action to verify signatures on drafts, and that such negligence substantially contributed to unauthorized and forged signatures).

[25]Here, the trial court found the signatures were forged. However, because Kim knew of the business arrangement between her husband and Yang, the court further found Kim was precluded from denying her signature on the checks. Ji, Kim's husband and Angel House's chairman of the board, was acting with apparent, if not actual, authority when he dealt with Yang. Kim was aware her husband was doing business with Yang. Kim knew of the scuba shop agreement, and that the shop was to be on Angel House's property. Yang personally handed money, a substantial amount of which consisted of a loan, to Kim and her husband. She knew Ji had entered into the contract for repayment of this money. She did not deny this contract. As Angel House's president and the only person authorized to write checks on its behalf, she did nothing once she became aware that four checks in the amount of \$35,000 had been dishonored. She did not report the checks once she discovered they were allegedly stolen. Under these facts, the trial court correctly applied 5 CMC § 3404(1).

CONCLUSION

For the foregoing reasons, we **AFFIRM** the trial court's judgment in favor of Yang.

Dated this 31 day of March 2000.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN, Chief Justice

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/ Juan T. Lizama
JUAN T. LIZAMA, Justice *Pro Tem*