

TEKLU KASSA v. MARCOBARZI

FDRE Supreme Court Cassation Division

Cassation Case Reports, Vol. 12, File No: 57932, P. 516-517, 2003 EC

FACTS: The case involved liability a PLC and its manager in relation to a bad cheque issued to a third party by the PLC. Maba PLC (the cheque drawer) issued two cheques representing a total of ETB 219,000 to be paid to Teklu (the cheque payee). The cheque was signed and issued by the manager of Maba PLC, Marcobarzi. Intending to withdraw the cash stated on the cheques, Teklu went to the bank (the cheque drawee) to whom payment on the cheques was ordered. However, the bank refused to effect the payment by stating that the bank account of Maba PLC is already closed. Teklu brought a civil suit at Federal First Instance Court both against Marcobarzi (1st defendant at the court) and Maba PLC (2nd defendant at the court). He claimed that Marcobarzi knew both the fact that the bank account of Maba PLC does not have sufficient fund and, also, the fact that the bank account was closed. Accordingly, Teklu claimed that Marcobarzi and the PLC are jointly and severally liable for the bad cheques issued to him for the payment of ETB 219,000. Marcobarzi and the PLC were duly summoned to submit their defence to the court, but they never did and, therefore, the court heard the case in their absence (*ex parte* proceeding). Having relied on the evidence brought from the bank (the drawee), which states that the bank account of the PLC was closed, the court ruled that only Maba PLC is liable to Teklu for the bad cheques. Teklu appealed to Federal High Court claiming that Marcobarzi should also be liable for the bad cheques. But the court affirmed the lower court decision. Then, Teklu applied to FDRE Supreme Court Cassation Division, and the case was admitted for a hearing by the court. Although duly summoned, Marcobarzi failed to submit his defense in this court too.

ISSUE: Is relieving Marcobarzi from liability, in relation to a cheques he signed and issued as a manager of Maba PLC, consistent with

DECISION: No. Decision of lower courts that relieved Marcobarzi from liability was reversed. “Both Marcobarzi and Maba PLC should be jointly and severally liable for the bad cheques.”

REASONING: The court held that the claims of Teklu and the evidences brought in the *ex parte* proceeding show that *Marcobarzi committed a fault by knowingly issuing a bad cheque on behalf of the company*. Then, the court noted that “*the company (although it has an independent legal personality) carries out its activities through its manager,*” and that “*Marcobarzi is proven to be the manager of the company.*” Having said these, the court concluded that Marcobarzi committed a fault that will make him jointly and severally liable pursuant to Art. 530 of the ComCE, which states that “*managers shall be liable individually or jointly and severally, as the case may be, to the company and third parties for any breach of their duties under this Code or the articles of association.*”

ANALYSIS: This case sets a precedent that “A PLC and its manager are jointly and severally liable to third parties where the manager *knowingly* issues a bad cheque on behalf of the company.” Accordingly, the ruling may not be useful to establish personal liability of PLCs in other types of breaches (breaches not related to issuance of bad cheques). The court should have used this opportunity to set the preconditions that must be fulfilled for holding a PLC manager personally liable. Besides, the court made a major error by making personal liability of a PLC manager to be dependent on “whether the manager knew that he was breaching the ComCE or the articles of association. Art. 530 of the ComCE states that a manager could be personally liable for breach of his duties under this ComCE or the company’s articles of association. Marcobarzi breached his duty under the ComCE (In particular, he breached Art. 830(1) of the ComCE, which provides that no one shall issue a cheque without having a fund at the bank (drawee)). Ignorance of the law is no excuse per Art. 2035(1) of the CCE, and the court might have created a wrong precedent that avails “*a defense of ignorance*” to managers of a PLC who may be sued under Art. 530 of the ComCE.