

REPUBLIC BANK, PLAINTIFF-APPELLEE, VS. MAURICIA T. EBRADA, DEFENDANT-APPELLANT.

G.R. No. L-40796. July 31, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

Appeal on a question of law of the decision of the Court of First Instance of Manila, Branch XXIII in Civil Case No. 69288, entitled "Republic Bank vs. Mauricia T. Ebrada."

On or about February 27, 1963 defendant Mauricia T. Ebrada, encashed Back Pay Check No. 508060 dated January 15, 1963 for P1,246.08 at the main office of the plaintiff Republic Bank at Escolta, Manila. The check was issued by the Bureau of Treasury.[1] Plaintiff Bank was later advised by the said bureau that the alleged indorsement on the reverse side of the aforesaid check by the payee, "Martin Lorenzo" was a forgery[2] since the latter had allegedly died as of July 14, 1952.[3] Plaintiff Bank was then requested by the Bureau of Treasury to refund the amount of P1,246.08.[4] To recover what it had refunded to the Bureau of Treasury, plaintiff Bank made verbal and formal demands upon defendant Ebrada to account for the sum of P1,246.08, but said defendant refused to do so. So plaintiff Bank sued defendant Ebrada before the City Court of Manila.

On July 11, 1966, defendant Ebrada filed her answer denying the material allegations of the complaint and as affirmative defenses alleged that she was a holder in due course of the check in question, or at the very least, has acquired her rights from a holder in due course and therefore entitled to the proceeds thereof. She also alleged that the plaintiff Bank has no cause of action against her; that it is in estoppel, or so negligent as not to be entitled to recover anything from her.[5]

About the same day, July 11, 1966 defendant Ebrada filed a Third-Party complaint against Adelaida Dominguez who, in turn, filed on September 14, 1966 a Fourth-Party complaint against Justina Tinio.

On March 21, 1967, the City Court of Manila rendered judgment for the plaintiff Bank against defendant Ebrada; for Third-Party plaintiff against Third-Party defendant, Adelaida Dominguez. and for Fourth-Party plaintiff against Fourth-Party defendant, Justina Tinio.

From the judgment of the City Court, defendant Ebrada took an appeal to the Court of First Instance of Manila where the parties submitted a partial stipulation of facts as follows:

"COME NOW the undersigned counsel for the plaintiff, defendant, Third-Party defendant and Fourth-Party plaintiff and unto this Honorable Court most respectfully submit the following:

PARTIAL STIPULATION OF FACTS

1. That they admit their respective capacities to sue and be sued;
2. That on January 15, 1963 the Treasury of the Philippines issued its Check No. BP-508060, payable to the order of one MARTIN LORENZO, in the sum of P1,246.08, and drawn on the Republic Bank, plaintiff herein,

which check will be marked as Exhibit "A" for the plaintiff;

3. That the back side of aforementioned check bears the following signatures, in this order:

- 1) MARTIN LORENZO;
- 2) RAMON R. LORENZO;
- 3) DELIA DOMINGUEZ; and
- 4) MAURICIA T. EBRADA;

4. That the aforementioned check was delivered to the defendant MAURICIA T. EBRADA by the Third-Party defendant and Fourth-Party plaintiff ADELAIDA DOMINGUEZ, for the purpose of encashment;

5. That the signature of defendant MAURICIA T. EBRADA was affixed on said check on February 27, 1963 when she encashed it with the plaintiff Bank;

6. That immediately after defendant MAURICIA T. EBRADA received the cash proceeds of said check in the sum of P1,246.08 from the plaintiff Bank, she immediately turned over the said amount to the third-party defendant and fourth-party plaintiff ADELAIDA DOMINGUEZ, who in turn handed the said amount to the fourth-party defendant JUSTINA TINIO on the same date, as evidenced by the receipt signed by her which will be marked as Exhibit "1-Dominguez"; and

7. That the parties hereto reserve the right to present evidence on any other fact not covered by the foregoing stipulations.

Manila, Philippines, June 6, 1969."

Based on the foregoing stipulation of facts and the documentary evidence presented, the trial court rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, the Court renders judgment ordering the defendant Mauricia T. Ebrada to pay the plaintiff the amount of ONE THOUSAND TWO FORTY-SIX 08/100 (P1,246.08), with interest as the legal rate from the filing of the complaint on June 16, 1966, until fully paid, plus the costs in both instances against Mauricia T. Ebrada.

The right of Mauricia T. Ebrada to file whatever claim she may have against Adelaida Dominguez in connection with this case is hereby reserved. The right of the estate of Dominguez to file the fourth-party complaint against Justina Tinio is also reserved.

SO ORDERED."

In her appeal, defendant-appellant presses that the lower court erred:

"IN ORDERING THE APPELLANT TO PAY THE APPELLEE THE FACE VALUE OF THE SUBJECT CHECK AFTER FINDING THAT THE DRAWER ISSUED THE SUBJECT CHECK TO A PERSON ALREADY DECEASED FOR 11-1/2 YEARS AND THAT THE APPELLANT DID NOT BENEFIT FROM ENCASHING SAID CHECK."

From the stipulation of facts it is admitted that the check in question was delivered to defendant-appellant by Adelaida Dominguez for the purpose of encashment and that her signature was affixed on said check when she cashed it with the plaintiff Bank. Likewise it is admitted that defendant-appellant was the last indorser of the said check. As such indorser, she was supposed to have warranted that she has good title to said check; for under Section 5 of the Negotiable Instruments Law:[6]

"Every person negotiating an instrument by delivery or by qualified indorsement, warrants:

(a) That the instrument is genuine and in all respects what it purports to be.

(b) That she has good title to it."

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and under Section 65 of the same Act:

"Every indorser who indorses without qualification warrants to all subsequent holders in due course:

(a) The matters and things mentioned in subdivisions (a), (b), and (c) of the next preceding sections;

(b) That the instrument is at the time of his indorsement valid and subsisting."

It turned out, however, that the signature of the original payee of the check, Martin Lorenzo was a forgery because he was already dead⁷ almost 11 years before the check in question was issued by the Bureau of Treasury. Under Section 23 of the Negotiable Instruments Law (Act 2031):

"When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instruments, or to give a discharge thereof against any party thereto, can be acquired through or under such signature unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."

It is clear from the provision that where the signature on a negotiable instrument is forged, the negotiation of the check is without force or effect. But does this mean that the existence of one forged signature therein will render void all the other negotiations of the check with respect to the other parties whose signature are genuine?

In the case of *Beam vs. Farrel*, 135 Iowa 670. 113 N.W. 590, where a check has several indorsements on it, it was held that it is only the negotiation based on the forged or unauthorized signature which is inoperative. Applying this principle to the case before Us, it can be safely concluded that it is only the negotiation predicated on the forged indorsement that should be declared inoperative. This means that the negotiation of the check in question from Martin Lorenzo, the original payee, to Ramon R. Lorenzo, the second indorser, should be declared of no effect, but the negotiation of the aforesaid check from Ramon R. Lorenzo to Adelaida Dominguez, the third indorser, and from Adelaida Dominguez to the defendant-appellant who did not know of the forgery, should be considered valid and enforceable, barring any claim of forgery.

What happens then, if, after the drawee bank has paid the amount of the check to the holder thereof, it was discovered that the signature of the payee was forged? Can the drawee bank recover from the one who encashed the check?

In the case of *State v. Broadway Mut. Bank*, 282 S.W. 196, 197, it was held that the drawee of a check can recover from the holder the money paid to him on a forged instrument. It is not supposed to be its duty to ascertain whether the signatures of the payee or indorsers are genuine or not. This is because the indorser is supposed to warrant to the drawee that the signatures of the payee and previous indorsers are genuine, warranty not extending only to holders in due course. One who purchases a check or draft is bound to satisfy himself that the paper is genuine and that by indorsing it or presenting it for payment or putting it into circulation before presentation he impliedly asserts that he has performed his duty and the drawee who has paid the forged check, without actual negligence on his part, may recover the money paid from such negligent purchasers. In such cases the recovery is permitted because although the drawee was in a way negligent in failing to detect the forgery, yet if the encasher of the check had performed his duty, the forgery would in all probability, have been detected and the fraud defeated. The reason for allowing the drawee bank to recover from the encasher is:

"Every one with even the least experience in business knows that no business man would accept a check in

exchange for money or goods unless he is satisfied that the check is genuine. He accepts it only because he has proof that it is genuine, or because he has sufficient confidence in the honesty and financial responsibility of the person who vouches for it. If he is deceived he has suffered a loss of his cash or goods through his own mistake. His own credulity or recklessness, or misplaced confidence was the sole cause of the loss. Why should he be permitted to shift the loss due to his own fault in assuming the risk, upon the drawee, simply because of the accidental circumstance that the drawee afterwards failed to detect the forgery when the check was presented?"[8]

Similarly, in the case before Us, the defendant-appellant, upon receiving the check in question from Adelaida Dominguez, was duty-bound to ascertain whether the check in question was genuine before presenting it to plaintiff Bank for payment. Her failure to do so makes her liable for the loss and the plaintiff Bank may recover from her the money she received for the check. As reasoned out above, had she performed the duty of ascertaining the genuineness of the check, in all probability the forgery would have been detected and the fraud defeated.

In our jurisdiction We have a case of similar import.[9] The Great Eastern Life Insurance Company drew its check for P2000.00 on the Hongkong and Shanghai Banking Corporation payable to the order of Lazaro Melicor. A certain E. M. Maasin fraudulently obtained the check and forged the signature of Melicor, as an indorser, and then personally indorsed and presented the check to the Philippine National Bank where the amount of the check was placed to his (Maasin's) credit. On the next day, the Philippine National Bank indorsed the check to the Hongkong and Shanghai Banking Corporation which paid it and charged the amount of the check to the insurance company. The Court held that the Hongkong and Shanghai Banking Corporation was liable to the insurance company for the amount of the check and that the Philippine National Bank was in turn liable to the Hongkong and Shanghai Banking Corporation. Said the Court:

"Where a check is drawn payable to the order of one person and is presented to a bank by another and purports upon its face to have been duly indorsed by the payee of the check, it is the duty of the bank to know that the check was duly indorsed by the original payee, and where the Bank pays the amount of the check to a third person, who has forged the signature of the payee, the loss falls upon the bank who cashed the check, and its only remedy is against the person to whom it paid the money."

With the foregoing doctrine We are to concede that the plaintiff Bank should suffer the loss when it paid the amount of the check in question to defendant-appellant, but it has the remedy-to recover from the latter the amount it paid to her. Although the defendant-appellant to whom the plaintiff Bank paid the check was not proven to be the author of the supposed forgery, yet as last indorser of the check, she has warranted that she has good title to it [10] even if in fact she did not have it because the payee of the check was already dead 11 years before the check was issued. The fact that immediately after receiving the cash proceeds of the check in question in the amount of P1,246.08 from the plaintiff Bank, defendant-appellant immediately turned over said amount to Adelaida Dominguez (Third-Party defendant and the Fourth-Party plaintiff) who in turn handed the amount to Justina Tinio on the same date would not exempt her from liability because by doing so, she acted as an accommodation party in the check for which she is also liable under Section 29 of the Negotiable Instrument Law (Act 2031), thus:

"An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party."

IN VIEW OF THE FOREGOING, the judgment appealed from is hereby affirmed in toto with costs against defendant-appellant.

SO ORDERED.

Makalintal, C.J., Ruiz Castro, Makasiar, and Esguerra, JJ., concur.

[1] ROA, p.

[2] ROA, p. 2.

[3] ROA. p. 2.

[4] Exhibit "F-1".

[5] ROA. p. 5.

[6] Act No. 2031.

[7] He died July 14, 1952 as shown by the Certificate of Death issued by the Local Civil Registrar of the Municipality of Lubao, Pampanga (Exhibit B).

[8] Gloucester Bank v. Salem Bank, 17 Mass. 33; Bank of U.S. Bank of Georgia, 10 Wheat 333, 6 L. Ed. 334; National Bank of America v. Bangs, 196 Mass. 441, 8 Am. Rep. 349; First National Bank of Danvers v. First National Bank of Salem, 151 Mass. 280, 24 N.E. 44, 21 Am. St. Rep. 450; First National Bank v. Richer, 71 111. 439, 22 Am. Rep. 104; Rouvant v. Bank, 63 Tex. 610; Bank v. Bank, 30 Ill. 96 Am Dec. 554; People's Bank v. Fmnllyn Bank, 88 Tenn. 299, 12 S.W. 716, 6 L.R.A. 724, 17 Am St. Rep. 884; Ellis & Morton v. Trust Co., 4 Ohio St. 628. 64 Am. Dec. 610; Bank v. Bank, 58 Ohio St. 207, 50 N.E. 723; Bank v. Bank, 22 Neb. 769, 36 N.W. 289. 3 Am. St. Rep. 294; Canadian Bank v: Bingham, 30 Wash. 484, 71 Pac. 43. 60 L.R.A. 955.

[9] Great Eastern Life Insurance Company vs. Hongkong and Shanghai Banking Corporation, 43 Phil. 678.

[10] Sec. 65. par. (b). Negotiable Instruments Law (Act 2031). Every person negotiating an instrument by delivery or by a qualified instrument warrants:

(a) xxx

(b) That he has a good title to it."

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