

PEOPLE'S BANK AND TRUST COMPANY (NOW BANK OF THE PHILIPPINE ISLANDS), PETITIONER, VS. THE HONORABLE TOMAS R. LEONIDAS, PRESIDING JUDGE OF BRANCH XXXVIII OF THE COURT OF FIRST IN...

G.R. No. L-47815. March 11, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari[1] to annul and set aside the decision dated December 15, 1977 of the Court of First Instance of Manila, Branch XXXVIII in Civil Case No. 112149 for the recovery of a sum of money reversing the decision of the City Court of Manila, Branch XII ordering private respondent Melchor Samonte to pay the petitioner bank the amount of P7,679.83, with 14% interest from March 5, 1973 until fully paid, plus attorney's fees equivalent to 20% of the amount due and to pay the costs as well as the order dated February 2, 1978 denying petitioner's motion for reconsideration in the appealed decision.

The facts as found by the trial court are as follows:

Sometime in January, 1972, a certain woman who identified herself as Aurora S. de Arabis purchased an airconditioner, television and stereo sets from private respondent Melchor Samonte, a franchise dealer of Radiowealth Appliances, with a Philippine American Life Insurance Company (Philamlife) check drawn against the Far East Bank and Trust Company (FEBTC) in the amount of P7,716.80 (pp. 8-9, TSN, January 18, 1977). Said check had a receipt identification stamp bearing the name and signature of Aurora S. de Arabis and was endorsed in favor of private respondent (Exhibit "1"). Private respondent even asked Aurora S. de Arabis to sign her name again at the back of said check (Exhibit "1-b").

On February 2, 1972, private respondent deposited said check in his current account with the petitioner People's Bank and Trust Company (now Bank of the Philippine Islands) which, subsequently, cleared said check.

On February 26, 1973, FEBTC notified the petitioner bank that the payee's signature on the subject check had been forged as evidenced by the sworn affidavit dated January 31, 1973 of Aurora S. de Arabis stating that she was the payee of FEBTC Check No. A-450422-C and that she had not yet received said check which was negotiated on a forged signature considering the fact that she uses only her thumbmark for signature since she does not know how to write (Exhibit "E").

Thereafter, petitioner bank refunded to FEBTC the amount covered by said check and debited to private respondent's account said amount resulting in an overdraft in his account in the sum of P7,679.83 which private respondent refused to pay despite several demands made by the petitioner bank. Hence, this present action.

The only issue raised herein is whether or not the affidavit of Aurora S. de Arabis is admissible as evidence.

The failure of the petitioner's counsel to put Aurora S. de Arabis on the stand is fatal to the case of petitioner and

renders the affidavit of Aurora S. de Arabis inadmissible in evidence under the hearsay rule[2]. Affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiant themselves are placed on the witness stand to testify thereon.[3] In the case at bar, the only evidence of the petitioner to prove forgery was the affidavit of Aurora S. de Arabis who was not presented in court to testify on the alleged forgery of her signature in the check in question. As correctly ruled by the appellate judge in the appealed decision:

"Without, the letter of Aurora S. Arabis (Exhibit "E"), there is no other competent evidence tending to prove the forgery of the signature of the payee of the check. Since said letter is obviously hearsay and incompetent evidence which under the rules of evidence should not have been admitted by the court, it is plain that plaintiff has failed to prove the forgery of the signature of Aurora S. Arabis as payee of the check, and the decision based thereon is assailable. Thus, in the absence of competent proof of forgery, the case of plaintiff must fall."(CFI's Decision, p. 4; Rollo, p. 40)

WHEREFORE, the petition for review is DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Regalado, JJ., concur.
Padilla, J., no part.

[1] Unloaded to the Ponente on December 13, 1991.

[2] Paa vs. Chan, L-25945, 21 SCRA 753 (1967).

[3] People v. Brioso, L-28482, 37 SCRA 336 (1971).

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