

PHILIPPINE NATIONAL BANK, PETITIONER, VS. THE COURT OF APPEALS AND PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK, RESPONDENTS.

G.R. No. L-26001. October 29, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The Philippine National Bank - hereinafter referred to as the PNB - seeks the review by certiorari of a decision of the Court of Appeals, which affirmed that of the Court of First Instance of Manila, dismissing plaintiff's complaint against the Philippine Commercial and Industrial Bank - hereinafter referred to as the PCIB - for the recovery of P57,415.00.

A partial stipulation of facts entered into by the parties and the decision of the Court of Appeals show that, on or about January 15, 1962, one Augusto Lim deposited in his current account with the PCIB branch at Padre Faura, Manila, GSIS Check No. 645915-B, in the sum of P57,415.00, drawn against the PNB; that, following an established banking practice in the Philippines, the check was, on the same date, forwarded, for clearing, through the Central Bank, to the PNB, which did not return said check the next day, or at any other time, but retained it and paid its amount to the PCIB, as well as debited it against the account of the GSIS in the PNB; that, subsequently, or on January 31, 1962, upon de-mand from the GSIS, said sum of P57,415.00 was re-credited to the latter's account, for the reason that the signatures of its officers on the check were forged; and that, thereupon, or on February 2, 1962, the PNB demanded from the PCIB the refund of said sum, which the PCIB refused to do. Hence, the present action against the PCIB, which was dismissed by the Court of First Instance of Manila, whose decision was, in turn, affirmed by the Court of Appeals.

It is not disputed that the signatures of the General Manager and the Auditor of the GSIS on the check, as drawer thereof, are forged; that the person named in the check as its payee was one Mariano D. Pulido, who purportedly indorsed it to one Manuel Go; that the check purports to have been indorsed by Manuel Go to Augusto Lim, who, in turn, deposited it with the PCIB, on January 15, 1962; that, thereupon, the PCIB stamped the following on the back of the check: "All prior indorsements and/or Lack of Endorsement Guaranteed, Philippine Commercial and Industrial Bank," Padre Faura Branch, Manila; that, on the same date, the PCIB sent the check to the PNB, for clearance, through the Central Bank; and that, over two (2) months before, or on November 13, 1961, the GSIS had notified the PNB, which acknowledged receipt of the notice, that said check had been lost, and, accordingly, requested that its payment be stopped.

In its brief, the PNB maintains that the lower court erred: (1) in not finding the PCIB guilty of negligence; (2) in not finding that the indorsements at the back of the check are forged; (3) in not finding the PCIB liable to the PNB by virtue of the former's warranty on the back of the check; (4) in not holding that "clearing" is not "acceptance", in contemplation of the Negotiable Instruments Law; (5) in not finding that, since the check had not been accepted by the PNB, the latter is entitled to reimbursement therefor; and (6) in denying the PNB's right to recover from the

PCIB.

The first assignment of error will be discussed later, together with the last, with which it is interrelated.

As regards the second assignment of error, the PNB argues that, since the signatures of the drawer are forged, so must the signatures of the supposed indorsers be; but this conclusion does not necessarily follow from said premise. Besides, there is absolutely no evidence, and the PNB has not even tried to prove that the aforementioned indorsements are spurious. Again, the PNB refunded the amount of the check to the GSIS, on account of the forgery in the signatures, not of the indorsers or supposed indorsers, but of the officers of the GSIS as drawer of the instrument. In other words, the question whether or not the indorsements have been falsified is immaterial to the PNB's liability as a drawee, or to its right to recover from the PCIB,[1] for, as against the drawee, the indorsement of an intermediate bank does not guarantee the signature of the drawer,[2] since the forgery of the indorsement is not the cause of the loss.[3]

With respect to the warranty on the back of the check, to which the third assignment of error refers, it should be noted that the PCIB thereby guaranteed "all prior indorsements", not the authenticity of the signatures of the officers of the GSIS who signed on its behalf, because the GSIS is not an indorser of the check, but its drawer[4] Said warranty is irrelevant, therefore, to the PNB's alleged right to recover from the PCIB. It could have been availed of by a subsequent indorsee[5] or a holder in due course[6] subsequent to the PCIB, but, the PNB is neither.[7] Indeed, upon payment by the PNB, as drawee, the check ceased to be a negotiable instrument, and became a mere voucher or proof of payment.[8]

Referring to the fourth and fifth assignments of error, we must bear in mind that, in general, "acceptance", in the sense in which this term is used in the Negotiable Instruments Law[9] is not required for checks, for the same are payable on demand.[10] Indeed, "acceptance" and "payment" are, within the purview of said Law, essentially different things, for the former is "a promise to perform an act," whereas the latter is the "actual performance" thereof.[11] In the words of the Law,[12] "the acceptance of a bill is the signification by the drawee of his assent to the order of the drawer," which, in the case of checks, is the payment, on demand, of a given sum of money. Upon the other hand, actual payment of the amount of a check implies not only an assent to said order of the drawer and a recognition of the drawee's obligation to pay the aforementioned sum, but, also, a compliance with such obligation.

Let us now consider the first and the last assignments of error. The PNB maintains that the lower court erred in not finding that the PCIB had been guilty of negligence in not discovering that the check was forged. Assuming that there had been such negligence on the part of the PCIB, it is undeniable, however, that the PNB has, also, been negligent, with the particularity that the PNB had been guilty of a greater degree of negligence, because it had a previous and formal notice from the GSIS that the check had been lost, with the request that payment thereof be stopped. Just as important, if not more important and decisive, is the fact that the PNB's negligence was the main or proximate cause for the corresponding loss.

In this connection, it will be recalled that the PCIB did not cash the check upon its presentation by Augusto Lim; that the latter had merely deposited it in his current account with the PCIB; that, on the same day, the PCIB sent it, through the Central Bank, to the PNB, for clearing; that the PNB did not return the check to the PCIB the next day or at any other time; that said failure to return the check to the PCIB implied, under the current banking practice, that the PNB considered the check good and would honor it; that, in fact, the PNB honored the check and paid its amount to the PCIB; and that only then did the PCIB allow Augusto Lim to draw said amount from his aforementioned current account.

Thus, by not returning the check to the PCIB, by thereby indicating that the PNB had found nothing wrong with

the check and would honor the same, and by actually paying its amount to the PCIB, the PNB induced the latter, not only to believe that the check was genuine and good in every respect; but, also, to pay its amount to Augusto Lim. In other words, the PNB was the primary or proximate cause of the loss, and, hence, may not recover from the PCIB.[13]

It is a well-settled maxim of law and equity that when one of two (2) innocent persons must suffer by the wrongful act of a third person, the loss must be borne by the one whose negligence was the proximate cause of the loss or who put it into the power of the third person to perpetrate the wrong.[14]

Then, again, it has, likewise, been held that, where the collecting (PCIB) and the drawee (PNB) banks are equally at fault, the court will leave the parties where it finds them.[15]

Lastly, Section 62 of Act No. 2031 provides:

"The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

“(a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

“(b) The existence of the payee and his then capacity to indorse.”

The prevailing view is that the same rule applies in the case of a drawee who pays a bill without having previously accepted it.[16]

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the Philippine National Bank.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., did not take part.

[1] First National Bank of Wichita Falls v. First National Bank of Borger, 37 S.W. (2d) 802.

[2] VI Banks and Banking, Zollmann, 378.

[3] First National Bank of Marshalltown v. Marshalltown State Bank, 77 N.W. 1045.

[4] First National Bank of Wichita Falls v. First National Bank of Borger, supra.

[5] American Hominy Co. v. Millikin National Bank, 273 F. 550, 556.

[6] Wells Fargo Bank & Union Trust Co. v. Bank of Italy, 4 P (2d) 781, 784-785.

[7] The PNB had previous notice of the infirmity of the check when it came into its possession. Art. 52 (d), Act No. 2031.

[8] National Bank of Commerce of Seattle v. Seattle Nat. Bank, 187 P. 342, 346.

[9] Section 132, Act No. 2031.

[10] Sections 143 and 185, Act No. 2031; Phil. Nat. Bank v. Nat. City Bank of New York, 63 Phil. 711; I Morse on Banks and Banking, 6th ed. 898, 899; Wachtel v. Rosen, 249 N.Y. 386, 164 N.E. 326.

[11] First National Bank of Washington v. Whitman, 94 U.S. 343, 347, 24 L. ed. 229.

[12] Section 132 thereof.

[13] Marlin National Bank v. Reed, 164 S.W. (2d) 260; First National Bank of Wichita Falls v. First National Bank of Borger, 37 S.W. (2d) 802. See, also, Commerce-Guardian Bank v. Toledo Trust Co., 21 N.E. (2d) 173, 176; National Bank of Rolla v. First National Bank of Salem, 125 S.W. 513, 516; Philippine National Bank v. National City Bank of NY, supra; VIII Banks and Banking, Zollman, 421.

[14] Blondeau v. Nano, 61 Phil. 625, 631, 632.

[15] VI Banks and Banking by Zollman, 416.

[16] First National Bank of Portland v. United States National Bank of Portland, 197 P. 547; Fidelity & Casualty Co. of New York v. Planenscheck, 227 NW 387; US v. Bank of NY, National Banking Association, 219 F. 648; US Fidelity & Guaranty Co. v. First Nat. Bank of Omaha, 260 NW 798; First National Bank of Cottage Grove v. Bank of Cottage Grove, 117 B. 293.

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