

NORSK HYDRO (PHILIPPINES), INC. AND NORTEAM SEATRANSPORT SERVICES, PLAINTIFFS-APPELLEES, VS. PREMIERE DEVELOPMENT BANK, BANK OF THE PHILIPPINE ISLANDS, CITIBANK N.A., SKYRIDER ...

Ponente: VELOSO, J.

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VELOSO, J.:

The Case

In this appeal, defendants Premiere Development Bank, Bank of the Philippine Islands, Citibank, N.A., Skyrider Brokerage International, Inc. and Marivic-Jong Briones (“Defendants-Appellants”) assail the Decision[1] dated April 14, 2010 of the Regional Trial Court of Makati City[2] (“RTC”) in Civil Case No. 03-1203, entitled “Norsk Hydro (Philippines), Inc. and Norteam Seatransport Services, Plaintiffs versus Premiere Development Bank, Bank of the Philippine Islands, Citibank, N.A., Skyrider Brokerage International, Inc. and Marivic-Jong Briones, Defendants,” the dispositive portion of which reads:

“WHEREFORE, premises considered:

- Defendants Premiere Development Bank, Skyrider Brokerage International, Inc., Marivic Jong-Briones and Bank of the Philippine Islands are hereby ordered to pay jointly and solidarily plaintiffs Yara Fertilizers Philippines, Inc. and Norteam Seatransport Services, Inc. the amount of Twenty Six Million One Hundred Seventy Six Thousand Six and 6/100 (P26,176,006.06) covered by the eighteen (18) MCs purchased from defendant Bank of the Philippine Islands, plus interest;

- Defendants Premiere Development Bank, Skyrider Brokerage International, Inc. Marivic Jong-Briones and Citibank N.A. are jointly and solidarily liable to pay plaintiffs Yara Fertilizers Philippines, Inc. and Norteam Seatransport Services, Inc. the amount of One Million Nine Hundred Seven Thousand Seven Hundred Eighty Four Pesos (P1,907,784.00) covered by Citibank Manager’s Check No. 338583 dated November 16, 2001, plus interest;

- Defendants Bank of the Philippine Islands and Citibank N.A. cross claims against defendant Premiere Bank is hereby given due course, and the aforesaid defendants have a right to claim reimbursement from the defendant Premiere Bank of whatever amount it would pay to the plaintiffs. Its counterclaims, however, to the plaintiffs Yara Fertilizers and Norteam Seatransport are hereby DISMISSED for lack of merit.

- Defendant Premiere Bank’s counterclaim against herein plaintiffs is hereby DISMISSED for lack of merit as the plaintiffs did not maliciously filed [sic] the instant Complaint but merely exhausted possible remedies to protect its right. Defendant Premiere Bank’s cross claim against defendants BPI and Citibank cannot be given due course as the same has no merit. The person it can go after only is its Former Branch Manager and a certain Mr. Agoncillo who was not prosecuted because he did not file his Answer to the third party Complaint filed by defendant Premiere Bank and defendant Premiere Bank likewise failed to prosecute the case against him, and to a certain Mr. Arthur Espino whose whereabouts is unknown and to which the Court did not acquire jurisdiction thus, the third party complaint filed against Mr. Agoncillo and Mr. Espino by defendant Premiere

Bank is hereby DISMISSED without prejudice.

- The Court cannot also rule on the liability of Mr. Banga as the Court did not acquire jurisdiction over him, thus, the third party complaint filed by defendants Skyrider Brokerage, Inc. and Ms. Marivic Jong-Briones against Mr. Banga is hereby DISMISSED provisionally.

- Defendants Premiere Development, Skyrider Brokerage International, Inc. and Marivic Jong-Briones are hereby ordered to jointly and solidarily pay plaintiffs the amount of P400,000.00 for and as moral damages.

- Defendants Premiere Development Bank, Skyrider Brokerage International, Inc. are hereby ordered to pay jointly and solidarily the plaintiffs the sum of P400,000.00 by way of exemplary damages.

- And lastly, defendants Premiere Development Bank, Skyrider Brokerage, Inc. and Marivic Jong-Briones are hereby ordered to pay jointly and solidarily the amount of P700,000.00 for and as attorney's fees plus litigation expenses.

Proportionate costs against defendants Premiere Bank and Skyrider Brokerage International, Inc. and Marivic Jong Briones.

SO ORDERED.”[3]

The Facts

This case proceeds from a Complaint for Sum of Money and Damages[4] filed on October 9, 2003, by Norsk Hydro (Philippines), Inc. (“Norsk Hydro”), now Yara Fertilizers (“Yara Fertilizers”) and Norteam Seatransport Services, Inc. (“Norteam”) against Premiere Development Bank (“Premiere”), Bank of the Philippine Islands (“BPI”), Citibank N.A. (“Citibank”), Skyrider Brokerage International, Inc. (“Skyrider”) and Marivic Jong-Briones (“Briones”).

As culled from the RTC's assailed Decision, the plaintiffs alleged as follows:

“Plaintiff Yara Fertilizers (formerly Norsk Hydro) is a corporation engaged in the business of importing fertilizer and other agricultural chemicals and inputs, as indicated in the primary purpose of its Articles of Incorporation.

Plaintiff Yara Fertilizers commissioned plaintiff Norteam Seatransport to act as its Operations Manager for its importations of fertilizers. As Operations Manager, plaintiff Norteam Seatransport acted as liaison to secure a licensed customs brokerage who shall be responsible for the transmittal of the payment of customs duties and taxes to the Bureau of Customs in order for the latter to release to the plaintiffs the imported fertilizers after payment of the required customs duties and taxes.

During the years 2001 up to 2002, plaintiff Norsk Hydro made several importations of fertilizer and thus, plaintiff Norsk Hydro incurred customs duties and taxes in favor of the Bureau of Customs in connection with the said importations, and because of the importations made, plaintiff Norteam Seatransport hired defendant Skyrider Brokerage International, Inc. to compute the customs duties and taxes of plaintiff Norsk Hydro and for the former to transmit the payment of the corresponding customs and duties of the imported fertilizers to the Bureau of Customs for the release of the same.

In order to pay the corresponding customs and duties of the imported fertilizers for the years 2001 and 2002, plaintiff Norteam Seatransport, being the operations manager of plaintiff Norsk Hydro, on different dates, purchased from defendants Bank of the Philippine Islands and Citibank, N.A., eighteen (18) Manager's Check and One Manager's Check, respectively, or for a total of nineteen (19) Manager's Check, all payable to the order of Bureau of Customs. The grand total of the nineteen (19) Manager's Check amounted to

P28,083,790.02. Every time Plaintiffs purchased a Manager's Check from either defendant Bank of the Philippine Islands and [sic] Citibank, N.A., plaintiff Norteam Seatransport would transmit said check to defendant Skyriders Brokerage International Inc. for the latter to deliver to the Bureau of Customs as payment for the customs duties and taxes incurred by the plaintiffs relative to the imported fertilizers.

Meanwhile, the imported fertilizers were regularly and religiously released to plaintiff Norsk Hydro, and plaintiff Norteam Seatransport received and were provided by defendant Skyriders Brokerage International, Inc. Official Receipts purportedly issued by the Bureau of Customs evidencing payment of the customs duties and taxes.

However, on September 16, 2002, a letter from the Bureau of Customs was received by herein plaintiff Yara Fertilizer, (formerly Norsk Hydro) demanding from the latter the customs duties and taxes of the imported fertilizers for the years 2001 and 2002 in the liquidated amount of P20,766,667.00 which is to be paid within ten (10) days from receipt thereof, otherwise the Bureau of Customs shall take the necessary legal action against plaintiff Norsk. Further, the Bureau of Customs informed plaintiff Norsk Hydro that an alleged Certificate of Eligibility which was allegedly submitted by plaintiff Norsk Hydro to the Bureau of Customs and purportedly issued by the Department of Agriculture's Philippine Carabao Center was found to be spurious. Said certificate of eligibility was submitted in evidence. The said Certificate of Eligibility was used as an exemption for the payment of customs duties and taxes on the importation of the fertilizers and for the withdrawal of the same from the Bureau of Customs, without paying the aforesaid customs duties and taxes. As a result of such findings of the Bureau of Customs as to the alleged non-payment of customs duties and taxes by plaintiffs by presenting a fake certificate of eligibility for exemption, the Bureau of Customs thru the Commissioner of Customs, issued a hold order on all subsequent importations of plaintiff Norsk Hydro.

On September 15, 2002, the Bureau of Customs summoned the Vice Presidents of plaintiff Norsk Hydro to explain their obligations to the Bureau of Customs. Thus, after the Bureau of Customs made their [sic] own investigation of the said fraudulent scheme, it verified that plaintiff Norsk Hydro had nothing to do with the tax payment diversion scam, and plaintiff Norsk, as a show of good faith on its part, made partial payment of the said customs duties and taxes in the amount of P15,000,000.00 to the Bureau of Customs.

Further, Deputy Commissioner Gil A. Valera strongly recommended that the Hold Order issued against all the shipment of plaintiff Norsk in all ports, including that in the port of Bacolod be lifted. The Bureau of Customs, thereafter, computed the alleged deficiency liability of plaintiff Norsk Hydro to P4,830,365.91, which was subsequently paid by plaintiff Norsk Hydro as per Certification of the Bureau of Customs dated November 13, 2002.

Thereafter, plaintiff Norsk Hydro received another demand letter dated January 15, 2003 from the Bureau of Customs of the Port of Cagayan de Oro for the alleged non-payment of custom duties in the amount [of] P4,087,820.00 on four (4) importations made in the year 2001. Likewise, in the demand letter dated February 21, 2003, the Bureau of Customs of Legaspi City made a demand to plaintiff Norsk Hydro for the alleged non-payment of customs duties in the amount of P814,486.00 covering importation of fertilizers.

It was also testified by one of plaintiffs' witness[es], Mr. Quiban that defendant Skyriders Brokerage International, Inc. did not remit to the Bureau of Customs the nineteen (19) crossed Manager's Check, which is supposed to be the payment for the customs duties and taxes for the imported fertilizers, and that defendants Skyriders Brokerage International Inc. and Marivic Jong-Briones were using a fictitious and spurious Certificate of Eligibility to make it appear that Plaintiff Norsk Hydro was exempted from the payment of customs duties and taxes of the imported fertilizers and for the release of the same from the Bureau of Customs without the payment of the aforesaid duties and taxes.

It was further elicited from the testimonies of plaintiffs' witness[es] that the nineteen (19) Manager's Check[s] purchased from defendants Bank of the Philippine Islands and Citibank N.A. which were deposited in Account Numbers 01-00-780-1 and 05-02687-8 in Premiere Development Bank, Pedro Gil Branch, all contained the

stamped endorsement 'prior endorsement and/or lack of endorsements guaranteed' of the defendant Premiere Development Bank; that defendant Premiere Development Bank encashed the nineteen (19) crossed Manager's Check[s] payable to the order of the Bureau of Customs despite the fact that defendant Premiere Bank is not authorized agent bank of the Bureau of Customs nor authorized to receive payment of customs duties and taxes for the Bureau of Customs. On the other hand, defendants Bank of the Philippine Islands and Citibank N.A. released to defendant Premiere Development Bank the amounts covered by the nineteen (19) crossed Manager's Check[s], which are payable to the order of Bureau of Customs even though the latter was not an authorized agent bank of the former.

Plaintiff Norteam Seatransport send demand letters, the last of which was on June 25, 2003, to defendant Premiere Development Bank for the payment and reimbursement of the nineteen (19) crossed Manager's Check[s] covering the total amount of P28,083,790.02 which it illegally encashed. Likewise, a demand letter dated January 22, 2003 was sent by plaintiff Norteam Seatransport, in behalf of its principal plaintiff Norsk Hydro, to defendant Bank of the Philippine Islands demanding the latter to reimburse the amount of P26,176,006.00 covering the eighteen (18) of the nineteen (19) crossed Manager's Check[s], which plaintiff Norsk Hydro purchased from defendant Bank of the Philippine Islands and which the latter also illegally released to defendant Premiere Development Bank.

Plaintiff Norsk also made a similar demand in a letter dated December 16, 2002 to defendant Citibank N.A. for the latter to reimburse to the former the amount of P1,907,784.00 covered under Citibank Manager's Check No. 338583, which plaintiff purchased from defendant Citibank and which the latter also illegally released the said amounts to defendant Premiere Development Bank.

That to date, neither defendant Premiere Development Bank nor Bank of the Philippine Islands and Citibank N.A. complied with the just demands of plaintiffs Norteam Seatransport and Norsk Hydro. Further, as per investigation conducted by the Bureau of Customs, which is contained in a Memorandum dated June 6, 2003, the Bureau of Customs recommended the filing of criminal charges against defendant Skyriders Brokerage International, Inc. and the suspension of its authority to transact business with the former. The Deputy Commissioner Gil A. Valera of the Bureau of Customs also acknowledged that the tax diversion scam was made through collusion of several employees of the Bureau of Customs and defendants Skyriders Brokerage International, Inc. and Premiere Development Bank. Further, witness testified that defendant Marivic Jong-Briones, general manager of defendant Skyriders Brokerage International, Inc. cannot feign ignorance on the tax scam as she participated in the said scam.”[5] (emphasis Ours)

On the other hand, the RTC summarized the respective arguments of each of the defendants, viz.:

“xxx[T]he defense and contention of herein defendant Premiere Development Bank is that the fraud that attended the subject Manager's Check is limited only to the incident of diversion of its purpose which is already consummated after the breach of Contract between Norsk Hydro (Yara), Norteam and Skyriders Brokerage and Marivic Jong Briones and that the deposit and encashment of the subject checks are not the fraud being claimed by the plaintiff as defendant/third party plaintiff Premiere Bank is not privy to the brokerage transactions of plaintiffs Norsk Hydro, Norteam and defendants Skyriders Brokerage and Marivic Jong Briones and that the claim of herein Plaintiffs Norsk Hydro and Norteam that defendant Premiere Bank is in collusion with defendant Skyriders and Briones has not been proven.

Another defense raised by defendant Premiere Bank is that the act of accepting and encashing the Bureau of Customs (BOC) checks is in the nature of a criminal act of its former Manager third-party defendant Manuel Agoncillo, which is definitely an ultra vires act which could not bind defendant-third party plaintiff Premiere Bank. According to defendant Premiere bank, it could not be reasonably expected to control the state of mind of its employees or officers in their propensity to commit a crime which is outside of the bounds of their duties and functions. It further contended that defendant/third party Premiere Bank had exerted due diligence in issuing memorandum and notices to its officers and branches enjoining them from accepting second endorsed

checks and government checks. The subject BOC-checks are both in the nature of second endorsed checks and government checks, thus the acceptance of the subject BOC-checks by former Manuel Agoncillo despite the said memorandum and notices against its acceptance, is absolutely an ultra-vires act of him which could not bind Premiere Bank in any manner whatsoever.

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It was the contention of defendants Skyrider Brokerage and Jong-Briones that they are both in good faith. According to the aforesaid defendants, no proof could back up the claim of their co-defendant Premiere Bank as it is clear from existing facts that Skyrider and Briones engaged in an agreement with a certain Mr. David Banga for the release of the shipments of plaintiffs in good faith. Mr. David Banga is a known personality in the business circle and his proposal to facilitate the release of the shipment of the plaintiffs with the Bureau of Customs was not haphazardly accepted by herein defendants but rather scrutinized, studied and dissected before they actually engage Mr. Banga. Defendants Skyrider and Briones averred that they believed in good faith that David Banga was the authorized representative of the plaintiffs as he even represented himself as their Attorney-in-fact. Defendants contended that they are in good faith on engaging Mr. Banga because of the following reasons: first that Mr. Banga is a personality in the industry with a relatively long experience in dealing with the BOC and there is no reason for defendants to cast doubt as to his intention. Second, he represented himself to be the duly authorized representative of plaintiff Norsk Hydro as he even signed in a letter as their Attorney-in-fact. Third, all the shipments were released without any problem whatsoever. Fourth, plaintiffs knew or should have known that Skyrider is only licensed to transact brokerage activities within the ports of Metro Manila and not outside. All shipments were either processed or released in the ports of San Fernando[,] La Union or Cagayan and Skyrider and [sic] could not simply do this as the license is limited to Metro Manila Ports only and that plaintiffs engaged Skyrider in the computation of duties and taxes only. Thus, clearly the acts of defendants Skyrider and Jong-Briones were done in good faith.

It was further contended as a defense of defendants Skyrider and Briones that the subject crossed Manager's Checks were received by Skyrider, however, the said checks were turned over to Mr. David Banga who actually made payments to the Bureau of Customs. Receipts were in fact issued by Mr. Banga acknowledging receipt of the subject Manager's Checks which are all crossed checks. Thu[s,] they relied in good faith with the representations of Mr. Banga that he is the lawful representative of plaintiff plus the added fact that all subject shipments were actually released thus, there was no reason for defendants Skyrider and Briones to doubt the legitimacy and faithfulness of David Banga's representation. Just like the plaintiffs, Skyrider and Briones presumed everything to be ordinary just as plaintiffs presumed regularity of the transaction.

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It was the contention of herein defendant BPI that it did not commit any negligent act and cannot be held liable to plaintiff and to cross-claimant Premiere Development Bank as it was not a privy at all to plaintiffs and Skyriders dealings as the latter being the agent of plaintiff is the one negligent in employing a certain David Banga and that plaintiffs could also be held contributorily negligent for allowing Mr. Banga to be engaged by Skyrider as evidence show that plaintiffs knew of the engagement of Mr. Banga.

Defendant Bank of the Philippine Islands further contended that it cannot be held negligent in the check clearing process to ascertain the supposed authorized agent of banks, given the standing rule then observed by participating banks. According to defendant Bank of the Philippine Islands[,] the subject Manager's Checks were all crossed checks or for payee's account only. The Manager's checks were all payable to the order of the Bureau of Customs. The checks were accepted for deposit by co-defendant Premiere Bank. Defendant Premiere Bank then presented the checks for BPI clearing. Defendant Premiere Bank had stamped thereon on all the Manager's Check its guarantee that all prior endorsements and lack of endorsements guaranteed and under the Negotiable Instruments Law by such deliberate and positive act, defendant Premiere Bank had for all legal intents and purposes treated the said checks as negotiable instruments and accordingly assumed the

warranty of an endorser. After the Manager's check had cleared, it is undisputable that Premiere Bank paid the Manager's check so endorsed notwithstanding that title had not passed to the endorser. Thus, in doing so, Premiere Bank as collecting bank[,] did so at its peril and became liable to the payee for the value of the checks and the liability attached whether or not the bank was aware of the unauthorized endorsement.

Moreover, defendant Bank of the Philippine Islands cannot deny collecting money on the endorsement. It was Premiere Bank's responsibility to inquire as to the authority of its client to deposit crossed checks payable to the Bureau of Customs. The failure of Premiere Bank to make this inquiry was a breach of duty that renders it liable to Plaintiffs for the amount of the Manager's checks subject matter of the complaint. According to defendant Bank of the Philippine Islands, the argument of Premiere Bank that the former should have known that Premiere was not an authorized agent bank of the Bureau of Customs and therefore should have dishonored the Manager's checks at first instance is both specious and misleading because it conveniently avoids the argument that Premiere Bank officers and check clearing department knew in the first place that their bank was not an authorized agent bank of the Bureau of Customs at that time, hence, the Manager's check should not have been deposited to an account in Premiere Bank, which in the first place, was not even a Bureau of Customs account. Thus, it was Premiere Bank as the collecting bank that should be held liable and not defendant Bank of the Philippine Islands.

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According to Defendant Citibank considering that Citibank had no privity of contract with Premiere's depositor, Citibank could not verify the depositor's identity. Premiere Bank is the collecting bank and as such, it is the one which holds the account of the depositor and can verify its identity. Upon receipt of the Manager's check, Premiere had the responsibility of determining the rights of the holder and ultimately ensuring that the proceeds of the Manager's Check are subsequently deposited to an account of the Bureau of Customs, thus, the endorsement of Premiere which was also relied upon by Citibank.

Furthe[r,] according to Citibank, Premiere's endorsement stamp bearing an initial of Premiere's employee and indicating that 'all prior endorsements and/or lack of endorsement guaranteed is the guarantee of the collecting bank as a general indorser to the drawee bank. Under existing law, jurisprudence and industry practice, Citibank had the right to rely on the clearing indorsement of Premiere, because as the last indorser, Premiere had the duty to ascertain that genuineness of all prior endorsements or the lack thereof.

It was Premiere Bank's duty to exercise diligence, ensure that it only accepts checks properly paid to the order of its clients and to determine whether it credited the proceeds of the Manager's check it admittedly received to an account of the Bureau of Customs in its Branch. According to Citibank[,] there is no way by which Citibank could have known that Premiere was at the time the Manager's Check was presented for collection and clearing in 2001, not an authorized agent bank of the Bureau of Customs and neither is Citibank required to know all of the authorized agent banks of the Bureau of Customs. Citibank's obligation as the drawee bank of the Manager's Check was limited, in view of the stamped endorsement of Premiere as the collecting bank, to ensure that the proper procedure for the clearing of the checks is carried out without any irregularities. Thus, in view of the foregoing, defendant Citibank claims that it did not commit any wrongful act against plaintiffs and Premiere.

It was also the contention of Citibank that the Philippine Clearing House Corporation only issued Philippine Clearing House Operation Memo No. 375 dated October 27, 2003 addressed to all clearing banks/institutions regarding the 'Handling/Processing of Cheques payable to the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) and PCHC Clearing House Operating Memo No. 387 dated February 27, 2004 regarding the Returning/Re-clearing of untagged BOC/BIR cheques that provides rules for a separate clearing process for checks payable to either the Bureau of Customs o[r] the Bureau of Internal Revenue. Through these rules, drawee banks like Citibank, could ascertain whether the checks payable to these agencies should be cleared and the corresponding funds released to the collecting bank. Thus, in the instant case, Citibank at the

time the Manager's Check was presented for collection by Premiere in November 2001 had absolutely no means by which it could have known that Premiere was not an authorized agent bank of the Bureau of Customs or that the payee was not the one collecting on the Manager's Check." [6] (emphasis Ours)

As earlier mentioned, on April 14, 2010, the RTC rendered the herein assailed Decision in favor of the plaintiffs, explaining:

"The issues now presented before the Court for resolution are the following:

a)

Whether or not Plaintiffs has [sic] a cause of action and is entitled for damages against defendants Skyrider Brokerage and Jong-Briones, Premiere Bank, and defendants Citibank N.A. and Bank of the Philippine Islands.

b)

Whether defendant Premiere Bank should be held liable for the damages suffered by plaintiffs when defendant Premiere Bank accepted for deposit and subsequently encashed, the subject checks in the name of the Bureau of [C]ustoms notwithstanding the fact that it is not an authorized agent bank of the latter.

c)

Whether defendants Skyrider Brokerage and Jong-Briones should be held liable for the damages suffered by the plaintiffs due to their unauthorized delivery of the subject checks to a certain David Banga resulting in the unauthorized conversion of the amount of the subject checks.

d)

Whether defendants BPI and Citibank, both of which are authorized agent banks of the Bureau of Customs was negligent or should be held liable for damages suffered by the plaintiffs when said defendants authorized the release of the funds covered by the subject checks to defendant Premiere even though the latter was not an authorized agent bank of the Bureau of Customs.

With respect to the first issue, the Court based on the testimonies and evidence presented to the Court by all the parties is convinced that plaintiffs clearly have a cause of action against herein defendants Skyrider Brokerage, Marivic Jong-Briones and Premiere Bank.

Going now first on the liability of Skyrider Brokerage and Marivic Jong Briones as the responsible officer of the former being its General Manager. It was clearly established and admitted by Skyrider Brokerage and Marivic Jong Briones that it was hired by plaintiff Norteam Seatransport, the latter being the Operations Manager of Plaintiff Yara Fertilizers (Norsk Hydro) to compute the customs duties and taxes of plaintiff Yara [F]ertilizers and transmit the payment thereof to the Bureau of [C]ustoms for the release of the imported fertilizers; that in payment of the said customs duties, plaintiff Norteam purchased nineteen (Manager's Checks) from Bank of the Philippine Islands and Citibank N.A. and entrust the same for delivery to the Bureau of Customs to Skyrider Brokerage as payment for the customs duties and taxes. However, such payments were never remitted to the Bureau of Customs. Plaintiffs were not aware of such because the imported fertilizers were regularly released to them and they received Official Receipts purportedly coming from the Bureau of Customs evidencing payment of the customs duties and taxes.

Plaintiffs only came to know such incident when they received a letter from the Bureau of Customs demanding them of the unpaid customs duties and taxes and issuance of a hold-departure order on all importation of Plaintiff Yara Fertilizers. Plaintiff also found out later that an alleged spurious Certificate of Eligibility was submitted with

the Bureau of Customs in the name of Yara Fertilizers purportedly issued by the Department of Agriculture's Philippine Carabao Center making it appear that Plaintiff Yara was exempted from the payment of customs duties and taxes on its importations. Thus, the Certificate of Eligibility was used by third persons to withdraw imported fertilizer from the Bureau of Customs without the payment of the appropriate customs duties and taxes.

The only defense given by defendant Skyrider and Briones is that they relied in good faith with a certain Mr. David Banga who claims that it was an agent of plaintiff Norteam. According to defendant Skyrider, they entrusted the subject checks with Mr. Banga who represented himself as agent of Plaintiff Norteam and believing in good faith considering that Mr. Banga was well known in the said industry[,] they paid Mr. Banga ten percent (10%) of the brokerage and facilitation fees for the latter to transact directly with the Bureau of Customs for the payment of the customs duties and delivered to them Official Receipts from the Bureau of Customs for the said customs duties.

The above-mentioned defense however of Skyrider deserves no merit. Skyrider merely relied on a letter dated June 15, 2001 purportedly showing that Mr. Banga was allegedly the attorney-in-fact/agent of the plaintiff Norteam which is merely self-serving. The letter head of plaintiffs in the said letter was the only basis relied upon by the Skyrider in assuming that Mr. Banga is really an agent of plaintiff Norteam. Such deserves no merit as the letter head can be easily manufactured or copied.

No further evidence was presented by defendant Skyrider to prove that it was really in good faith in believing that Mr. Banga was really an agent of plaintiff Norteam. What is clear is that, neither plaintiffs Yara Fertilizers nor Norteam Seatransport ever engaged David Banga to be their agent as there was no proof presented to prove the same. The evidence presented only shows that it was Skyrider that was engaged by the plaintiff to act as its agent in its transactions with the Bureau of Customs not Mr. David Banga.

The fact that no evidence was further presented by plaintiff to prove that David Banga was hired by the plaintiffs other than a written letter was manifested during the cross-examination of Myrene Perena, the lone witness of defendants Skyrider Brokerage which is hereunder quoted as follows:

‘Q: Ms. Witness, in your Judicial Affidavit, you mentioned of a letter from certain David Banga, I’m showing to you this letter from Mr. David Banga. Aside from this letter from David Banga, do you have any document which would show that David Banga was authorized by plaintiff, Norsk Hydro?

A: This is the only one sir.

Q: Thank you, Ms. Witness. So You mean to tell me that Skyrider gave checks to David Banga on the basis of this sole letter that he, himself, executed?

A: As far as I know, sir, he is representative of Norsk Hydro.

Q: So this was your only basis, this letter?

A: Yes, sir.

Q: Aside from Mr. David Banga, who in Norsk Hydro have you dealt with in connection with this case?

A: I could not remember.

Q: So as far as you can remember, only David Banga?

A: Yes, sir.’

(TSN dated February 28, 2007, pages 14-15.)

What was clearly shown was the admission of defendants Skyrider and Briones that they paid David Banga ten

percent of the brokerage and processing/facilitation fees paid by plaintiff Norteam Seatrtransport to defendant Skyrider, thus, it was Skyrider who hired Mr. David Banga and was an agent of defendants Skyrider and Briones and not the plaintiffs.

Assuming further that as claimed by defendants Skyrider and Briones that it was Mr. Banga who perpetrated the fraud that resulted to the unauthorized conversion of the amounts covered by the subject checks, the fact remains that it was Skyrider who entrusted the subject checks to Mr. Banga without the consent and authority of the plaintiffs and outside the agency entered into between defendants Skyrider and Briones and plaintiffs. The claim of defendants Skyrider and Briones that they were unaware of the fraudulent acts of Mr. Banga will not excused [sic] or exonerate them as it was their negligence in entrusting the subject checks to Mr. Banga, who has no authority from plaintiffs Yara Fertilizer and Norteam that directly caused the diversion of the subject checks.

It is the Court[']s findings under the evidence presented that defendant Skyrider Brokerage International[,] Inc. and defendant Marivic Jong Briones are part of the conspiracy in the commission of the fraud against the plaintiff. In the first place, plaintiff engaged defendant Skyrider Brokerage International[,] Inc. wherein the General Manager is defendant Marivic Briones to pay the taxes due to the government because of the importation of fertilizers abroad. Plaintiff has not authorized said defendants to hire a broker or an agent to do the work for them. But then defendants Skyrider and Marivic Briones, allegedly hired a certain David Banga to do the work for them for a fee of 10% of the amount being given by plaintiff to defendants Skyrider and Marivic Jong Briones. David Banga does not appear to be a licensed customs broker, but the one licensed is Marivic Jong Briones, hence David Banga has no personality when to transact business with the Bureau of Customs regarding payment of taxes for others unless he is properly authorized by the principal herein, which is the plaintiff. But then the plaintiff did not authorize David Banga to act for and in their behalf.

Further, evidence is bereft of any proof that defendants Skyrider and Marivic Jong Briones, if it[']s true that they hired David Banga, that said defendants monitored the acts of David Banga. On the contrary, said defendants never lifted a finger about what David Banga did with the checks amounting to P28,083,790.02.

Considering that the checks were encashed, how come that defendants Skyrider and Marivic Jong Briones did not anymore investigate how it was encashed from defendant Premiere Bank, when they were the ones entrusted to have the checks delivered to the Bureau of Customs for payment of taxes due to said Bureau. It is the duty of said defendants to know, verify and confirm with the Bureau of Customs if indeed the taxes have been paid. This is assuming that indeed they hired David Banga.

Likewise, how come that it was made to appear that plaintiff was allegedly given a Certificate of Eligibility purportedly issued by the Philippine Carabao Center of the Department of Agriculture which turn[ed] out to be spurious. Such Certificate of Eligibility allegedly exempts plaintiff from paying taxes, customs duties and other dues to the government. Who was responsible for it? Remember that only Skyrider and defendant Marivic Briones were commissioned by plaintiff to pay such obligations to the Bureau of Customs.

In passing the blame to a certain David Banga, at one point, defendant Skyrider and Marivic Briones even claim that David Banga even represented himself as an agent of Norteam, herein plaintiff. Such act of defendants is so flimsy and preposterous. Said defendants could have simply called or personally verify [sic] from plaintiff such allege[d] claim. Said defendants did not. Thus, the claims of defendants Skyrider and Marivic Jong Briones are not only badges of fraud, but the least that they can be guilty of is being grossly and inexcusably negligent in their obligations to the plaintiff. This is aside from the Affidavit complaint against Marivic Jong Briones before the Chief State Prosecutor, back[ed] up by the Investigation of the Bureau of Customs charging her of criminal offenses under the Customs Code and the Revised Penal Code. Defendant Skyrider and Marivic Jong Briones did

not even exert any effort after being officially informed of the alleged acts of David Banga to locate him and bring him to the bars of justice.

With respect to the issue on the liability of Premiere Bank against herein plaintiffs, it was clearly established by the testimonies and evidence presented that Premiere Bank should be held liable for damages suffered by the plaintiff.

First, defendant Premiere Bank admitted that it allowed a certain Mr. Arthur Espino to deposit the subject checks in Account Numbers 01-00-780-1 and 0-5-02687-8 in its Pedro Gil Branch on the mere presentation of Arthur Espino, using a photocopy of the alleged Certification of Business Name of plaintiff Norteam that he was allegedly the president thereof. Defendant Premiere being a banking institution, it is duty[-]bound to ensure extraordinary diligence in dealing with clients.

Second, defendant Premiere Bank stamped the subject checks with the notation: 'prior endorsement and/or lack of endorsement guaranteed'.

Third, there is a deliberate and/or negligent act on the part of Manuel Agoncillo, manager of the Pedro Gil Branch of defendant Premiere Bank, in transacting the subject checks to the prejudice of plaintiff Yara Fertilizers and Norteam Transport.

Defendant Premiere Bank in stamping the subject checks with the Notation 'prior endorsement and/or lack of endorsement guaranteed' rendered itself primarily liable for the unauthorized encashment of the subject checks, said notation converted itself and assumes the warranties of a general indorser and warrants the genuineness of the payee's endorsement and all other prior endorsement. In the case of Traders Royal Bank vs. Radio Philippines Network, Inc., et. al., G.R. No. 138510, October 10, 2002, the Supreme Court ruled on the liability of a collecting bank that stamped thereon its guarantee on a check despite the fact that the same was not endorsed by the payee thereof:

'A collecting bank where a check is deposited and which indorses the check upon presentment with the drawee bank, is such an indorser. So even if the indorsement on the check deposited by the bank's client is forged, the collecting bank is bound by his warranties as an indorser and cannot set up the defense of forgery as against the drawee bank.'

To hold appellant SBTC liable, it is necessary to determine whether it is a party to the disputed transactions.

Section 3 of the Negotiable Instruments Law reads:

'SECTION 63. When person deemed indorser. — A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be an indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.'

xxx xxx xxx

The stamped endorsement of defendant Premiere Bank on the subject checks operates as a guaranty that it has verified the genuineness of the payee's indorsement and estops defendant Premiere from denying liability for any irregularity in the said endorsement.

Moreover, the subject checks were all crossed checks, this should have put defendant Premiere Bank on guard. In the case of Metropolitan Bank & Trust Company vs. Philippine Bank of Communications, et. al., G.R. No. 141429, October 18, 2007, the Supreme Court held that:

'The crossing of a check with the phrase "Payee's Account Only" is a warning that the check should be deposited in the account of the payee. It is the collecting bank which is bound to scrutinize the check and to

know its depositors before it can make the clearing indorsement, "all prior indorsements and/or lack of indorsement guaranteed."

Here, petitioner banks have the obligation to ensure that the PBCom checks were deposited in accordance with the instructions stated in the checks. The four PBCom checks in question had been crossed and issued "for payee's account only." This could only mean that the drawer, Filipinas Orient, intended the same for deposit only by the payee, Pipe Master. The effect of crossing a check means that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein — Pipe Master.

As what transpired in this case, petitioner banks accommodated Yu Kio, being a valued client and the president of Pipe Master, and accepted the crossed checks. They stamped at the back thereof that "all prior indorsements and/or lack of indorsements are guaranteed." In so doing, they became general endorsers. Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has a good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his indorsement valid and subsisting."

Clearly, petitioner banks, being endorsers, cannot deny liability.

In *Associated Bank v. Court of Appeals*, we held that the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior indorsements and is privy to the depositor who negotiated the check.'

Thus, in the case at bar, defendant Premiere Bank in stamping its indorsement and all prior indorsement guaranteed assumed the liabilities of a general indorser and as a collecting bank it cannot escape its liability for the said endorsement. In the same case of *Metropolitan Bank & Trust Company vs. Philippine Bank of Communications, et. al.*, the Supreme Court held that:

'In fine, it must be emphasized that the law imposes on the collecting bank the duty to diligently scrutinize the checks deposited with it for the purpose of determining their genuineness and regularity. The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct. Since petitioner banks' negligence was the direct cause of the misappropriation of the checks, they should bear and answer for respondent Filipinas Orient's loss, without prejudice to their filing of an appropriate action against Yu Kio.'

The defense of Premiere Bank that it was the Pedro Gil former Branch Manager, Manuel Agoncillo who is allegedly responsible for the fraudulent encashment of the subject checks and such act was purportedly an ultra vires act of defendant Premiere Bank's Manager and it could not be reasonably expected to control the state of mind of its employees or officers in their propensity to commit crime is without merit.

The alleged violation of defendant Premiere Bank's Manager of the alleged policy against the acceptance of 'second endorsement checks' and that the claims of defendant Premiere Bank that the mere issuance of a memorandum and the holding of seminars and workshops against the acceptance of 'second endorsed checks' show that defendant Premiere Bank had exercised due diligence in the supervision of its employees is bereft of merit and cannot exculpate herein defendant Premiere Bank from liability. It cannot just put all the blame to its former Branch Manager considering that the latter executed the fraudulent acts or facilitated the encashment of the subject checks in the course of the performance of his duties as Branch Manager of defendant Premiere Bank.

xxx xxx xxx

The evidence however against defendant Premiere Development Bank did not show that it is part of the conspiracy to commit fraud against the plaintiff. What the evidence indicates is the fact that one of its officers, a Branch Manager, participated or has knowledge of the perpetuation of the fraud committed against plaintiff Yara

Fertilizers (now Norsk Hydro) and Norteam Seatransport. It must be clearly pointed out that banking institutions are imbued with public interest. People repose to banks their highest trust and confidence. They do believe in the integrity and honesty of banks and its officers and employees. People knew of the exacting standards of banks in the selection and supervision of its employees. If a bank did something to lose that trust and confidence perpetrated by its own officers, then it is equally liable. In this case, defendant Premiere Development Bank is not only negligent but grossly and inexcusably at that in the affairs of its branches and the acts of its officers particularly that of Mr. Manuel Agoncillo, its Branch Manager who allowed the opening of an account by Mr. Arthur Espino who claims to be a representative of the Bureau of Customs when in fact he is not, because Premiere Development Bank is not even an authorized depositary bank of the Bureau of Customs.

It bears stressing that Branches of Banks are to be closely monitored and accredited regularly and there is no proof that Premiere Development Bank did this. Hence, its negligence is gross and inexcusable.

With respect to the liability of Defendant Bank of the Philippine Islands and Citibank N.A. as issuer of the subject checks, and as drawee bank, the Court cannot adjudged [sic] them to be negligent in clearing the subject checks as Premiere's endorsement stamp bearing an initial of Premiere's employee and indicating that 'all prior endorsements and/or lack of endorsement guaranteed' is the guarantee of the collecting bank as a general indorser to the drawee bank. Under Section[s] 65 and 66 of the Negotiable Instruments Law, the indorser warrants among other things, that the instrument is genuine and in all respects what it purports to be. Thus, Citibank and BPI had the right to rely on the clearing indorsement of Premiere, because as the last indorser, Premiere had the duty to ascertain the genuineness of all prior endorsements or lack thereof.

However, although defendants BPI and Citibank N.A. was [sic] not proven to have any knowledge or involvement in any anomaly or irregularity on the subject checks as it cleared and paid the amount of the Manager's checks in reliance on the endorsement stamp of the Premiere Bank as the collecting bank, it cannot at all escape responsibility to plaintiff Norsk Hydro and Norteam being the banks who issued the subject Manager's Check. By issuing the subject checks and clearing the same, it has the duty to reimburse the credited amount on the account of Plaintiffs subject however to its right to claim reimbursement to defendant Premiere Bank who indorsed and warranted all prior endorsement upon which defendants BPI and Citibank relied into.

In the case of Philippine Commercial International Bank vs. Court of Appeals & Ford Philippines, Inc., G.R. No. 121413, January 29, 2001, the Supreme Court held that:

'The evidence on record shows that Citibank as drawee bank was likewise negligent in the performance of its duties. Citibank failed to establish that its payment of Ford's checks were made in due course and legally in order. In its defense, Citibank claims the genuineness and due execution of said checks, considering that Citibank (1) has no knowledge of any infirmity in the issuance of the checks in question (2) coupled by the fact that said checks were sufficiently funded and (3) the endorsement of the Payee or lack thereof was guaranteed by PCIBank (formerly IBAA), thus, it has the obligation to honor and pay the same.

For its part, Ford contends that Citibank as the drawee bank owes to Ford an absolute and contractual duty to pay the proceeds of the subject check only to the payee thereof, the CIR. Citing Section 62 of the Negotiable Instruments Law, Ford argues that by accepting the instrument, the acceptor which is Citibank engages that it will pay according to the tenor of its acceptance, and that it will pay only to the payee, (the CIR), considering the fact that here the check was crossed with annotation "Payees Account Only."

As ruled by the Court of Appeals, Citibank must likewise answer for the damages incurred by Ford on Citibank Checks Numbers SN 10597 and 16508, because of the contractual relationship existing between the two. Citibank, as the drawee bank breached its contractual obligation with Ford and such degree of culpability contributed to the damage caused to the latter. On this score, we agree with the respondent court's ruling.

Citibank should have scrutinized Citibank Check Numbers SN 10597 and 16508 before paying the amount of the proceeds thereof to the collecting bank of the BIR. One thing is clear from the record: the clearing stamps at the back of Citibank Check Nos. SN 10597 and 16508 do not bear any initials. Citibank failed to notice and verify the absence of the clearing stamps. Had this been duly examined, the switching of the worthless checks to Citibank Check Nos. 10597 and 16508 would have been discovered in time. For this reason, Citibank had indeed failed to perform what was incumbent upon it, which is to ensure that the amount of the checks should be paid only to its designated payee. The fact that the drawee bank did not discover the irregularity seasonably, in our view, constitutes negligence in carrying out the bank's duty to its depositors. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.'

It should be noted that the purchase of the subject checks from defendants BPI and Citibank created a fiduciary relationship between the issuer (defendants BPI and Citibank) and the purchaser (plaintiffs Yara Fertilizers and Norteam Seatrtransport). Thus, it has an obligation to reimburse the plaintiffs with the loss suffered by the latter as a result of the unauthorized conversion of the amounts covered by the subject checks.

Defendants however have the right to go against defendant Premiere Bank who assumed the liabilities of a general indorser and whose stamped endorsement, defendants BPI and Citibank relied upon.

Moreover[,] the liability of herein defendants was also aggravated by the fact that as authorized agent bank of the Bureau of Customs, it failed to exercise due diligence in not ensuring that before it authorized the release of the funds covered by the subject checks to Premiere Bank[,] it could have simply verified that the latter is not an authorized agent of the Bureau of Customs.

Defendants BPI and Citibank is engaged in the Banking Industry, and as always been the consistent ruling of the Court that it is a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

It appearing that defendant Premiere Development Bank, Skyrider Brokerage International[,] Inc. and Marivic Jong Briones acted in wanton, gross and inexcusable negligence, which is tantamount to be malicious, that resulted to the unauthorized conversion of the subject checks, an award of moral damages should be awarded to the plaintiff in a reasonable amount of P400,000.00. It appearing that the plaintiffs were subjected to social and moral humiliation and their reputation were besmirched[,] tarnished and damaged, because of the gross and inexcusable negligence of the aforesaid defendants, plaintiffs were even investigated by the Committee on Good Government of the House of Representatives for allege[d] Tax Scam when Resolution No. 842 was issued, the acts of defendants Premiere Development Bank and defendants Skyrider Brokerage International[,] Inc. and Marvin [sic] Jong Briones are definitely giving the people some fear and they are alarmed that even those that they have trusted and given their confidence such as banks and those licensed customs brokers can just run away with their hard earned money deserves not only condemnation but they must be taught a lesson. Thus, to set an example and correction for the public good, said defendants should be made to pay plaintiff a reasonable exemplary damage[s] of P400,000.00.

Further, plaintiffs in this case has established by preponderance of evidence that they have to seek the services of a lawyer, not only to protect their interests, but to prepare the instant case for purposes of initiating the instant complaint and indeed this case was filed and prosecuted with the assistance of counsel and thus the plaintiff is entitled to attorney's fees from defendants Premiere Development Bank, Sykyrider Brokerage International Inc. and Marivic Jong Briones in the amount of P700,000.00 plus litigation expenses."[7] (emphasis Ours)

Motions for reconsideration were separately filed by defendant Premiere Development Bank,[8] Skyrider Brokerage International, Inc. and Marivic Jong-Briones,[9] and Citibank, N.A.;[10] while defendant BPI independently filed a Notice of Appeal.[11]

In an Order dated May 14, 2010,[12] defendant BPI's appeal was given due course although the records of the case were not forwarded yet to the appellate court due to the pending motions for reconsideration of the other defendants.

On January 17, 2010,[13] the RTC denied the motions for reconsideration of defendants Premiere Bank, Citibank, Skyrider and Marivic Jong-Briones, for lack of merit.

Hence, this appeal.

Issues:

In their Brief,[14] defendants-appellants Skyrider and Briones raised, for Our resolution, the following errors:

"1.

WHETHER OR NOT THE LOWER COURT ERRED WHEN IT HELD DEFENDANTS-APPELLANTS LIABLE FOR DAMAGES ON THE GROUND THAT THE ONLY DEFENSE GIVEN BY DEFENDANTS-APPELLANTS SKYRIDER AND BRIONES IS THAT THEY RELIED IN GOOD FAITH WITH A CERTAIN DAVID BANGA AS AN AGENT OF PLAINTIFF-APPELLEE NORTEAM

2.

WHETHER OR NOT THE LOWER COURT ERRED WHEN IT HELD DEFENDANTS-APPELLANTS LIABLE FOR DAMAGES ON THE GROUND THAT IT WAS DEFENDANTS-APPELLANTS SKYRIDER AND BRIONES NEGLIGENCE IN ENTRUSTING THE SUBJECT CHECKS TO MR. BANGA THAT DIRECTLY CAUSED THE DIVERSION OF THE SUBJECT CHECKS

3.

WHETHER OR NOT THE LOWER COURT ERRED WHEN IT HELD DEFENDANTS-APPELLANTS LIABLE FOR DAMAGES ON THE GROUND THAT DEFENDANTS-APPELLANTS SKYRIDER AND BRIONES ARE PART OF THE CONSPIRACY IN THE COMMISSION OF FRAUD AGAINST THE PLAINTIFFS-APPELLEES

4.

WHETHER OR NOT THE LOWER COURT ERRED WHEN IT HELD DEFENDANTS-APPELLANTS SKYRIDER AND BRIONES JOINTLY AND SOLIDARILY LIABLE TO PAY THE AMOUNT OF EIGHTEEN (18) MANAGER'S CHECKS PURCHASED FROM DEFENDANT BANK OF THE PHILIPPINE ISLANDS PLUS INTEREST AND THE AMOUNT OF ONE (1) CITIBANK MANAGER'S CHECK PLUS INTEREST

5.

WHETHER OR NOT THE LOWER COURT ERRED WHEN IT HELD DEFENDANTS-APPELLANTS SKYRIDER AND BRIONES LIABLE FOR MORAL AND EXEMPLARY DAMAGE[S]

6.

WHETHER OR NOT THE LOWER COURT ERRED WHEN IT HELD DEFENDANTS-APPELLANTS SKYRIDER AND BRIONES LIABLE FOR ATTORNEY'S FEES PLUS LITIGATION EXPENSES."[15]

Defendant-appellant Premiere Development Bank,[16] on the other hand, argued that:

“I.

THE COURT A QUO ERRED IN ISSUING THE SUBJECT ORDER DATED SEPTEMBER 16, 2004 GRANTING THE WRIT OF ATTACHMENT OF PLAINTIFF[S]-APPELLEES AGAINST DEFENDANT-APPELLANT PREMIERE BANK

II.

THE COURT A QUO ERRED WHEN IT DECLARED THAT DEFENDANT-APPELLANT PREMIERE BANK IS PART OF THE FRAUD AND IN JUSTIFYING THE ISSUANCE OF THE WRIT OF PRELIMINARY ATTACHMENT AGAINST IT

III.

THE COURT A QUO ERRED IN CITING THE FRAUD UPON WHICH THE WRIT OF ATTACHMENT IS BASED INCLUDES THE TIME WHEN THE SUBJECT MANAGER’S (BUREAU OF CUSTOMS) CHECKS WERE DEPOSITED TO THE BRANCH OF DEFENDANT-APPELLANT PREMIERE BANK

IV.

THE COURT A QUO ERRED IN DECLARING THAT THE ACTS OF ITS BRANCH MANAGER MANUEL AGONCILLO IN ACCEPTING THE SUBJECT MANAGER’S (BOC) CHECKS AS PART OF THE FRAUD

V.

THE COURT A QUO ERRED IN NOT AWARDING DAMAGES IN FAVOR OF DEFENDANT-APPELLANT PREMIERE BANK BECAUSE OF THE MALICIOUS MISTAKE OF PLAINTIFF-APPELLEE IN SEEKING PRELIMINARY ATTACHMENT AGAINST IT

VI.

THE COURT A QUO ERRED IN NOT FINDING THE UNAUTHORIZED ACT OF THE BRANCH MANAGER MANUEL AGONCILLO OF DEFENDANT-APPELLANT PREMIERE BANK AS A PURELY PERSONAL CRIMINAL ACT BECAUSE IT WAS AN ULTRA VIRES ACT AND IN VIOLATION OF ITS POLICY

VII.

THE COURT A QUO ERRED IN NOT FINDING PLAINTIFF-APPELLEE NORSK HYDRO (YARA) AND/OR NORTEAM AS GROSSLY NEGLIGENT AND IS THE PROXIMATE CAUSE OF ITS LOSS AND IMPROPER HANDLING OF THE SUBJECT MANAGER’S (BOC) CHECKS

VIII.

THE COURT A QUO ERRED IN NOT FINDING DEFENDANTS-APPELLANTS BANK OF THE PHILIPPINE ISLANDS (BPI) AND CITIBANK TO BE LIABLE TO THE PLAINTIFF-APPELLEE AND NOT DEFENDANT-APPELLANT PREMIERE BANK BECAUSE OF THEIR GROSS NEGLIGENCE IN FAILING TO STOP OR DENY THE CLEARING OF THE SUBJECT MANAGER’S (BOC) CHECKS

IX.

THE COURT A QUO ERRED IN FAILING TO RULE ON THE CROSS CLAIM OF DEFENDANT-APPELLANT PREMIERE BANK AGAINST DEFENDANTS-APPELLANTS SKYRIDER AND MARIVIC JONG BRIONES

X.

THE COURT A QUO ERRED IN FINDING DEFENDANT-APPELLANT PREMIERE BANK AS LIABLE FOR THE DIVERTED SUBJECT MANAGER'S CHECKS, DAMAGES AND ATTORNEY'S FEES"[17]

For its part, defendant-appellant Citibank[18] raised as issues of the case, viz.:

"Whether or not the court a quo committed a grievous error when it held that defendant-appellant Citibank is jointly and solidarily liable together with defendants-appellants Premiere Bank, Skyrider and Jong-Briones to pay plaintiffs-appellees Norsk Hydro and Norteam Seatransport the amount of Php1,907,784.00 covered by the Citibank Manager's Check considering that no less than the court a quo held in the challenged Decision, which was affirmed in the challenged Amended Order, that it cannot adjudge defendant-appellant Citibank as negligent in clearing the Citibank Manager's Check.

Whether or not the court a quo committed a grievous error in ruling in the challenged Decision which it affirmed in the challenged Amended Order that defendant-appellant Citibank is jointly and solidarily liable together with defendants-appellants Premiere Bank, Skyrider and Jong-Briones to pay plaintiffs-appellees Norsk Hydro and Norteam Seatransport the amount of Php1,907,784.00 covered by the Citibank Manager's Check because defendant-appellant Citibank allegedly failed to exercise due diligence by not ensuring that defendant-appellant Premiere Bank is an authorized agent of the Bureau of Customs before it authorized the release of the funds covered by the Citibank Manager's Check.

Whether the court a quo committed a grievous error when it failed to apply Associated Bank vs. Court of Appeals in favor of defendant-appellant Citibank.

Whether the court a quo erred in denying the claims of defendant-appellant Citibank for attorney's fees and costs of litigation from plaintiffs-appellees Norsk Hydro and Norteam Seatransport and defendant-appellant Premiere Bank and exemplary damages from defendant-appellant Premiere Bank."[19] (italics supplied)

On the other hand, BPI, in its Brief,[20] contends that:

"A.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT HELD DEFENDANT-APPELLANT BPI SOLIDARILY LIABLE WITH DEFENDANTS-APPELLANTS PREMIER[E] BANK SKYRIDER AND MARIVIC JONG BRIONES TO PAY PLAINTIFF[S] APPELLEES NORSK HYDRO AND NORTEAM TRANSPORT THE AMOUNT OF [sic] COVERED BY THE 18 MANAGER[']S CHECKS DESPITE A CATEGORICAL FINDING THAT IT CANNOT HOLD BPI NEGLIGENT IN CLEARING THE CHECKS IN ISSUE BASED ON THE CLEARING STAMP INDORSEMENT OF DEFENDANT-APPELLANT PREMIERE BANK.

B.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT HELD DEFENDANT-APPELLANT BPI SOLIDARILY LIABLE WITH DEFENDANT[S]-APPELLANTS PREMIER BANK[,], SKYRIDER AND MARIVIC JONG BRIONES TO PAY PLAINTIFF[S] APPELLEES NORSK HYDRO AND NORTEAM TRANSPORT THE AMOUNT OF [sic] COVERED BY THE 18 MANAGER[']S CHECKS SOLELY ON THE ALLEGATION THAT DURING THE CLEARING PROCESS, BPI COULD HAVE VERIFIED WHETHER OR NOT PREMIERE BANK WAS AN AUTHORIZED AGENT BANK OF THE BUREAU OF CUSTOMS."[21]

In fine, what this Court will resolve is the issue of:

WHETHER OR NOT THE COURT A QUO ERRED IN HOLDING DEFENDANTS-APPELLANTS SKYRIDER AND MARIVIC JONG-BRIONES (AS BROKER), PREMIERE DEVELOPMENT BANK (AS

COLLECTING BANK), CITIBANK, N.A. AND BPI (AS DRAWEE BANKS) JOINTLY AND SEVERALLY LIABLE FOR THE DAMAGES SUFFERED BY THE PLAINTIFFS-APPELLEES AS A RESULT OF THE UNAUTHORIZED ENCASHMENT OF THE SUBJECT CHECKS.

OUR RULING

It is undisputed that plaintiff-appellee Norsk Hydro (now Yara Fertilizers) is a corporation which imports fertilizer, other agricultural chemicals, and inputs; while plaintiff-appellee Norteam Seatransport is its agent, which acted as operations manager in the importation of Norsk Hydro's imported items, particularly fertilizers.[22] Norteam Seatransport, in turn, hired defendant-appellant Skyrider Brokerage to compute the customs duties and taxes of plaintiff-appellee Norsk Hydro and transmit the payment thereof to the Bureau of Customs for the release of the imported fertilizers.[23] For each importation, Norteam Seatransport prepared requests for payment necessitating the purchase of managers' checks to pay for the customs duties and taxes.[24] Acting on said requests, defendants-appellants BPI and Citibank issued a total of nineteen (19) manager's checks in the form of crossed checks payable to the Bureau of Customs ("BOC") in the total amount of P28,083,790.02.[25] However, it appears that said manager's checks were not paid to the agency.[26] Upon verification, it was found out that the checks were actually deposited in defendant-appellant Premiere Development Bank's Pedro Gil Branch, particularly in its Account Nos. 01-00-780-1 and 05-02687-8.[27]

A.

Defendants-Appellants Skyrider Brokerage and Marivic Jong-Briones as Plaintiffs-Appellees' Customs Broker

In their Brief, defendants-appellants Skyrider and Marivic Jong-Briones allege that contrary to the ruling of the court a quo, they were able to show by preponderance of evidence that there are attendant circumstances which led them to believe that Mr. Banga was an authorized representative of the plaintiffs-appellees.[28] They aver that Mr. David Banga ("Banga") was a known personality in the business circle who had a relatively long experience in dealing with the Bureau of Customs. It was for said reason that they accepted Banga's offer to help facilitate the computation of customs duties and taxes of plaintiff-appellee Norsk Hydro;[29] that Banga's representation was further confirmed when he presented a letter manifesting himself as the attorney-in-fact of plaintiff-appellee Norsk Hydro;[30] that they cannot be blamed in relying in good faith that Banga was really plaintiffs-appellees' representative because they had no knowledge that Banga was not an authorized representative.[31]

We are not convinced.

We firstly stress that in civil cases, a party who alleges a fact has the burden of proving it.[32] He who alleges has the burden of proving his allegation by preponderance of evidence or greater weight of credible evidence.[33] It is a basic rule in evidence that each party must prove his affirmative allegations.[34] Since the burden of evidence lies with the party who asserts an affirmative allegation, the plaintiff or complainant has to prove his affirmative allegation in the complaint and the defendant or respondent has to prove the affirmative allegations in his affirmative defenses and counterclaim.[35]

Here, defendants-appellants Skyrider and Briones miserably failed to prove their contention that their engagement with plaintiffs-appellees was "only limited to the computation of customs duties and taxes" and that the entire processing with the BOC for the payment thereof until the release of the shipment was the responsibility of Banga, as plaintiffs-appellees' representative.[36] While they deny in their Answer[37] that they are responsible for the payment or transmittal of the subject checks to the Bureau of Customs,[38] their other allegations thereon prove otherwise. As part of their affirmative allegations and defenses, defendants-appellants Skyrider and Briones explained, viz.:

“29.

Between the period of May 2001 and February 2002 there were at least, eighteen (18) shipments consisting of Urea that arrived to different ports of the Philippines that were all consigned to Norsk Hydro (Philippines) Incorporated (Norsk Hydro for brevity) as importer of all the subject shipment.

30.

As a matter of procedure, whenever a shipment arrives, Norteam thru any of its representative will call defendant Skyrider thru telephone to inform the latter of the shipment arrival. Simultaneously, Norteam shall fax to Skyrider’s office a copy of the Bill of Lading xxx, Invoice xxx and Packing List of the shipment xxx;

31.

Upon receipt of the facsimile message, Skyrider shall then compute the duties and taxes corresponding to the said shipment;

32.

In certain cases where the shipment is VAT (Value Added Tax) exempt, only duties are computed;

33.

After computing the taxes and/or duties for a particular shipment, Skyrider thru any of its staff or representative shall inform Mr. David Banga of the shipment arrival and of the appurtenant taxes and duties which have already been computed. Skyrider shall then furnish Mr. Banga a fax copy of the Bill of Lading, Invoice and Packing List provided by the plaintiff Norteam;

34.

Similarly, Skyrider shall furnish Norteam copy of computation of the duties and/or taxes, xxx. Norteam shall then cause the preparation of the corresponding Manager’s check payable to the Bureau of Customs;

35.

Within a period of two (2) to three (3) days from receipt of the said computation, Norteam would notify Skyrider through telephone of the availability of the Manager’s Check corresponding to the duties/taxes payable to the BOC and that the same is ready for pick up, xxx

36.

Upon notification, Skyrider would send a representative to Norteam to pick up the manager’s check/s together with the original copy of the Bills of Lading, Invoice and packing List;

37.

The manager’s check/s together with the three original documents aforementioned would then be turned over by Skyrider to Mr. David Banga who is tasked to make payment to the BOC, xxx;

38.

Upon receiving the Manager’s Check, Mr. David Banga would process the payment with the BOC and facilitate the release of the shipment using the services of other Brokerage Firms duly licensed to transact business in that particular port as evidenced by the entries filed by the said Brokerage Firm on behalf of Norteam, xxx. After the processing of all payments and facilitating release of the subject shipment, Mr. Banga would come back to the office of Skyrider and provide the latter with the corresponding original Customs receipts and entries and other related documents duly filed by the other brokerage firms as proof that he had

already paid the taxes/duties, xxx;

39.

Thereafter, Skyrider shall surrender the original Customs receipt to Norteam and shall merely retain a photocopy thereof for its file;

40.

For every shipment, Skyrider bills Norsk Hydro thru Norteam a certain amount as Brokerage and Processing/facilitation fee or expenses, xxx;

41.

For processing the payment of all duties/taxes to the BOC and facilitating the release of the shipment, Mr. Banga collected from Skyrider ten percent (10%) of the Brokerage and processing/facilitation fee paid by Norteam; xxx”[39] (emphasis Ours)

Thus, contrary to their own arguments, defendants-appellants Skyrider and Briones categorically admitted that: (1) Skyrider had the responsibility of informing Banga of the arrival of the shipments, upon being advised by Norteam; (2) it is Skyrider who furnishes Banga with the fax copy of the Bill of Lading, Invoice and Packing List; (3) it is Skyrider which sends a representative to Norteam to pick up the manager’s check/s together with the original copy of the Bills of Lading, Invoice and packing List; (4) Banga, after payment and facilitation of the release of the shipment, would give to Skyrider the original customs receipts and other documents corresponding to the shipment; (5) it is Skyrider which surrenders said original customs receipts and other documents to Norteam; (6) it is Skyrider which bills plaintiffs-appellees a certain amount as brokerage and processing/facilitation fee or expenses; and (7) it is Skyrider which gives Banga ten percent (10%) of the brokerage and processing/facilitation fees as payment for processing the payment of all duties/taxes to the BOC and facilitating the release of the shipment in favor of plaintiffs-appellees.

Clearly, the alluded actions of Banga, if true, were done for and in behalf of defendants-appellants Skyrider and Briones, in their capacity as customs broker of plaintiffs-appellees. For, if Banga was indeed acting as a representative of plaintiffs-appellees (and not as agent of defendants-appellants Skyrider and Briones), Banga would have given directly to plaintiffs-appellees the original customs receipts and other documents corresponding to the shipment. That instead, Banga gave said documents to defendants-appellants Skyrider and Briones in order that the latter could surrender them to plaintiffs-appellees, it then is evident that Banga was not an agent of plaintiffs-appellees. He was the facilitator of defendants-appellants Skyrider and Briones. Such is more evident from the admission of Skyrider and Briones that they paid a certain amount as “brokerage and processing/facilitation fee or expense” to Banga, not for the latter’s computing the duties and taxes, but for processing and facilitating the release of the shipment.

Hence, as aptly found by the court a quo, defendants-appellants Skyrider and Briones’ admission that they paid Banga ten percent (10%) of the brokerage and processing/facilitation fees out of what they received from plaintiffs-appellees indisputably shows that it was actually defendants-appellants Skyrider and Briones which hired Banga and the latter was, on such premise, acting as their agent in dealing with the transactions relating to plaintiffs-appellees’ shipments.[40]

Defendants-appellants Skyrider and Briones’ contention that Banga represented himself as attorney-in-fact of plaintiff-appellee Norsk Hydro is likewise not persuasive. For, aside from the self-serving testimony of one Myrene Pereña, executive secretary of defendant-appellant Skyrider, no further evidence was adduced to substantiate their claim. Verily, it is basic in the rule of evidence that bare allegations, unsubstantiated by

evidence, are not equivalent to proof.[41] Mere allegations are not evidence.[42]

Even the purported letter dated June 15, 2001[43] which allegedly shows that Banga was the attorney-in-fact of plaintiff-appellee Norsk Hydro does not convince Us. Its bearing the letterhead of Norsk Hydro does not prove anything, absent a clear and substantial evidence establishing that Banga in fact acted as attorney-in-fact of plaintiffs-appellees in its dealings with defendants-appellants Skyrider and Briones.

Indeed, defendants-appellants Skyrider and Briones cannot elude their responsibility to plaintiffs-appellees through a mere allegation that Banga, not Skyrider, perpetrated fraud in the unauthorized encashment of the subject checks payable to BOC. Evidence on record shows that it was Skyrider who engaged the services of Banga to carry out the processing and facilitation of the release of shipments and it was Skyrider who entrusted the subject checks to him for such purpose. That more importantly, the plaintiffs-appellees entrusted the subject checks to defendants-appellants Skyrider and Briones, it then is evident that they committed gross and inexcusable neglect in failing to protect the interest of their clients when said checks were encashed despite their being crossed and issued "For Payee's Account Only", i.e., to the order of the "Bureau of Customs". They cannot seek exoneration through a plain argument that they were in good faith when they thought that Banga was an agent of plaintiffs-appellees.

B.

Defendant-Appellant Premiere Development Bank as Collecting Bank

A collecting bank where a check is deposited, and which endorses the check upon presentment with the drawee bank, is an endorser.[44] Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting".[45] The High Tribunal has repeatedly held that in check transactions, the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements.[46]

It is beyond dispute here, that defendant-appellant Premiere Bank accepted the subject checks, stamped the back thereof with the phrase "all prior endorsements and/or lack of endorsement guaranteed"[47] and allowed the same to be deposited in Savings Account No. 05-02687-8 and Current Account No. 0119-01-00780-1 of a certain Arthur Espino who represented himself as owner of plaintiff-appellee Norteam Seatransport.[48] In doing so, defendant-appellant Premiere Bank, for all intents and purposes treated the checks as negotiable instruments and, accordingly, assumed the warranty of an endorser. Hence, it cannot now deny liability on the checks.

It must be emphasized that the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity.[49] The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law, as a necessary consequence, holds it to a high standard of conduct.[50] The taking and collection of a check, without the proper indorsement, amount to a conversion of the check by the bank.[51]

By allowing the subject checks to be presented by, and deposited in the bank account of a person who was not the payee as named in the checks, defendant-appellant Premiere Bank was clearly negligent in disregarding established banking rules and regulations. The checks were issued "to the order of Bureau of Customs," were crossed, and issued "For Payee's Account Only." Yet, these safeguards were disregarded by Premiere Bank. The checks were allowed by defendant-appellant Premiere Bank to be deposited to the savings and current accounts of

a certain Arthur Espino, the identity of whom was based on a mere photocopy of an alleged certification of business name of plaintiff-appellee Norteam Seatransport. The Court wonders how it escaped Premiere Bank's attention that the payee of the checks is a government agency while the person who deposited the checks in his own accounts is a natural person.

What is more, the subject checks' being crossed should have put defendant-appellant Premiere Bank on guard. It was its duty to ascertain the indorser's title to the check or the nature of his possession thereof.[52] Defendant-appellant Premiere Bank needed no lecture on the effects of a crossed check, viz.: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once to one who has an account with a bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.[53]

Thus, by encashing in favor of an otherwise unknown person the subject checks which, on their face, were payable to the Bureau of Customs, a government agency that could only act through its agents – the defendant-appellant Premiere Bank did so at its peril. It must therefore suffer the consequences of the unauthorized wrongful endorsement.[54] Defendant-appellant Premiere Bank cannot extricate itself from liability especially through a hollow allegation that plaintiffs-appellees themselves were negligent in handling their own transactions.

We also cannot give credence to defendant-appellant Premiere Bank's contention that it should not be held liable for the deposit and encashment of the subject checks as the same was an ultra vires act and/or criminal activity of its former Bank Manager, Manuel Agoncillo and a supposed client, Arthur Espino. Whether it was defendant-appellant Premiere Bank's negligence and inefficiency or Agoncillo's fraudulent acts that caused the unauthorized encashment of the subject checks, such will not excuse the bank from its liability under the law. The duty to observe "high standards of integrity and performance" imposes on defendant-appellant Premiere Bank that obligation.[55]

And even if We are to assume, arguendo, that Agoncillo was behind the unauthorized encashment of the subject checks, still, defendant-appellant Premiere Bank would be liable to plaintiffs-appellees. For, it is now settled, as it is a basic principle in Our jurisdiction that a bank is liable for the wrongful acts of its officers done in the interest of the bank or in their dealings as bank representatives but not for acts outside the scope of their authority.[56] Prudential Bank v. Court of Appeals[57] already held, viz.:

“xxx A bank holding out its officers and agents as worthy of confidence will not be permitted to profit by the frauds they may thus be enabled to perpetrate in the apparent scope of their employment; nor will it be permitted to shirk its responsibility for such frauds; even though no benefit may accrue to the bank therefrom (10 Am Jur 2d, p. 114). Accordingly, a banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person, for his own ultimate benefit.” (emphasis Ours)

For, if a corporation knowingly permits its officer, or any other agent, to perform acts within the scope of an apparent authority, holding him out to the public as possessing power to do those acts, the corporation will, as against any person who has dealt in good faith with the corporation through such agent, be estopped from denying such authority.[58]

Verily, when defendant-appellant Premiere Bank allowed its purported client, Arthur Espino, to collect on the subject crossed manager's checks issued in the name of the BOC, the bank is guilty of negligence.[59] One who

accepts and encashes a check from an individual knowing that the payee is a corporation, or a government agency as in this case, does so at his peril.[60] Accordingly, defendant Premiere Bank is liable for the amount of the subject manager's checks.

C.

Defendants-Appellants Bank of the Philippine Islands and Citibank N.A. as Drawee Banks

Defendants-appellants BPI and Citibank both posit that as drawee banks, they cannot be adjudged negligent in clearing the manager's checks considering that defendant-appellant Premiere Bank, as collecting bank, endorsed the subject checks;[61] as such, they had the right to rely on the clearing endorsement, it being the duty of defendant-appellant Premiere Bank to ascertain the genuineness of all prior endorsements or lack thereof.[62] The failure of defendant-appellant Premiere Bank to make an inquiry as to the authority of its client to deposit the subject crossed checks was a breach of duty that renders it liable to plaintiffs.[63]

We are not persuaded.

The bank on which a check is drawn, known as the drawee bank, is under strict liability, based on the contract between the bank and its customer (drawer), to pay the check only to the payee or the payee's order.[64] The drawer's instructions are reflected on the face and by the terms of the check.[65] When the drawee bank pays a person other than the payee named on the check, it does not comply with the terms of the check and violates its duty to charge the drawer's account only for properly payable items.[66] Thus, a drawee should charge to the drawer's accounts only the payables authorized by the latter; otherwise, the drawee will be violating the instructions of the drawer and shall be liable for the amount charged to the drawer's account.[67]

In this case, defendants-appellants BPI and Citibank both issued manager's checks upon the instructions of plaintiffs-appellees. While We do not dispute defendant-appellant BPI's argument that "a manager's check, by its nature, is a direct obligation of the issuing bank" and that there is an "unconditional obligation to honor and pay the said MC's when presented for payment,"[68] We note, however, that the subject checks were not merely manager's checks, they were, more importantly, crossed checks. For, undisputedly appearing on the face of the subject checks is the fact that the same were payable "to the order of Bureau of Customs," crossed and issued "For Payee's Account Only."

Crossing a check by placing two parallel lines in the upper left hand corner of the instrument is instructive enough that said check could only be deposited and could not be converted into cash.[69] Undeniably, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein.[70] The crossing may be "special" wherein between the two parallel lines is written the name of a bank or a business institution, in which case the drawee should pay only with the intervention of that bank or company, or "general" wherein between two parallel diagonal lines are written the words "and Co." or none at all, in which case the drawee should not encash the same but has to accept it for deposit only.[71]

Evident from the checks involved is the intention of plaintiffs-appellees Norsk Hydro and Norteam Seatransport, as drawers – to have said checks deposited only by the Bureau of Customs in the latter's account so that as a person other than the Bureau of Customs or its agent, such as one Arthur Espino, presents and deposits the checks in his own personal accounts, it behooved the drawee banks, defendants-appellants BPI and Citibank to dishonor them. That instead, they honored and paid the value of the checks and charged plaintiff-appellee Norsk Hydro's account therefor, the drawee banks BPI and Citibank are deemed to have violated the instructions of the drawer. They thus are liable for the amount charged to the drawer's account.[72]

Defendants-appellants BPI and Citibank's reliance on Associated Bank, et. al. vs. Court of Appeals^[73] is misplaced. It bears stressing that in said case, the Supreme Court held that "to simplify proceedings, the payee of the illegally encashed checks should be allowed to recover directly from the bank responsible for such encashment regardless of whether or not the checks were actually delivered to the payee." The parties involved, therefore, are the "payee" and the "collecting bank," as the issue thereof pertains to the payee's cause of action against the collecting bank for the encashment and payment of crossed checks issued in the payee's favor. Notably, however, the liability of defendants-appellants BPI and Citibank in this case does not arise from the same circumstances.

Plaintiffs-appellees are the drawers of the subject checks, meaning they are clients or depositors of defendants-appellants BPI and Citibank, not just mere payees thereof. Hence, the latter's liability arise from the fiduciary nature of the relationship between the banks and plaintiffs-appellees. This fiduciary relationship means that the bank's obligation to observe "high standards of integrity and performance" is deemed written into every deposit agreement between a bank and its depositor.^[74] Failure to comply with this standard renders said banks liable to their depositor for damages.

It is well to remember that "the banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society."^[75] Whether as mere passive entities for the safe-keeping and saving of money or as active instruments of business and commerce, banks have attained an ubiquitous presence among the people who have come to regard them with respect and even gratitude and, above all, trust and confidence.^[76] It is therefore important that banks should guard against injury attributable to negligence or bad faith on their part. As repeatedly emphasized, since the banking business is impressed with public interest, the trust and confidence of the public in it is of paramount importance. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are required of it."^[77]

The foregoing considered, We find no cogent reason to depart from the findings of the court a quo that defendants-appellants Skyrider and Briones, as well as Premiere Bank, BPI and Citibank all acted in gross, wanton and inexcusable negligence in the unauthorized encashment and conversion of the subject manager's checks, to the prejudice of herein plaintiffs-appellees.

WHEREFORE, the instant appeal is DENIED and consequently DISMISSED for lack of merit.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

[1] Records, Volume 8, pages 2797-2821.

[2] Branch 148.

[3] Records, Volume 8, pages 2820-2821.

[4] Ibid., Volume I, pages 1-30.

[5] Records, Volume 8, pages 2800-2803.

[6] Records, Volume 8, pages 2803-2808.

[7] Records, Volume 8, pages 2809-2820.

[8] Ibid., pages 2822-2854.

- [9] Ibid., pages 2855-2866.
- [10] Ibid., pages 2880-2889.
- [11] Ibid., pages 2870-2871.
- [12] Ibid., page 2872.
- [13] Records, Volume 8, pages 2993-2995; See Nunc Pro Tunc Order dated January 24, 2011, Records, Volume 8, page 2996 and Amended Order dated January 17, 2011, Records, Volume 8, pages 2997-2999.
- [14] Rollo, pages 85-147.
- [15] Rollo, pages 108-109.
- [16] Ibid., pages 212-277.
- [17] Rollo, pages 227-228.
- [18] Ibid., pages 413-469.
- [19] Rollo, pages 443-444.
- [20] Ibid., pages 818-837.
- [21] Ibid., pages 830-831.
- [22] Rollo, pages 535-536.
- [23] Ibid., page 536.
- [24] Ibid.
- [25] Records, Volume I, pages 105-111.
- [26] Ibid., Volume V, pages 1840-1841.
- [27] Rollo, page 541; See also Records, Volume V, page 1916.
- [28] Rollo, page 110.
- [29] Ibid.
- [30] Ibid.
- [31] Ibid.
- [32] Dela Llano vs. Biong, G.R. No. 182356, December 4, 2013.
- [33] Ibid., citing Eulogio v. Spouses Apeles, G.R. No. 167884, January 20, 2009, 576 SCRA 562, 571-572, citing Go v. Court of Appeals, 403 Phil. 883, 890-891 (2001).
- [34] Gonzales vs. Solid Cement Corp., G.R. No. 198423, October 23, 2012, citing Jimenez vs. NLRC, et. al., 326 Phil. 89 (1996).
- [35] Ibid.
- [36] Rollo, page 104.
- [37] Records, Volume II, pages 757-788.

- [38] Ibid., page 760.
- [39] Records, Volume II, pages 768-771.
- [40] Records, Volume 8, page 2811.
- [41] Real vs. Belo, G.R. No. 146224, January 26, 2007, citing Domingo vs. Robles, G.R. No. 153743, March 18, 2005, 453 SCRA 812, 818.
- [42] Ibid., citing Mayor vs. Belen, G.R. No. 151035, June 3, 2004, 430 SCRA 561, 567; Marubeni vs. Lirag, 415 Phil 29, 38 (2001).
- [43] Records, Volume V, page 2041.
- [44] Bank of America, NT & SA vs. Associated Citizens Bank, et. al., G.R. Nos. 141001 and 141018, May 21, 2009, citing Associated Bank v. Court of Appeals, 322 Phil. 677, 697 (1996).
- [45] Ibid.
- [46] Ibid., citing Associated Bank v. Court of Appeals, supra., further citing BPI v. Court of Appeals, G.R. No. 102383, 26 November 1992, 216 SCRA 51, 63; Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation, 241 Phil. 187 (1988); and Great Eastern Life Insurance Co. v. HSBC, 43 Phil. 678 (1922).
- [47] Records, Volume I, pages 105-111.
- [48] Ibid., Vol. II, pages 453-454.
- [49] Bank of the Philippine Islands, vs. Court of Appeals, G.R. No. 136202, January 25, 2007.
- [50] Ibid., citing Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corp., G.R. No. L-74917, January 20, 1988, 157 SCRA 188.
- [51] Ibid., citing Associated Bank v. CA, G.R. No. 89802, May 7, 1992, 208 SCRA 465; City Trust Banking Corp. v. IAC, G.R. No. 84281, May 27, 1994, 232 SCRA 559.
- [52] Traders Royal Bank vs. Radio Philippines Network, Inc. et. al., G.R. No. 138510, October 10, 2002.
- [53] Traders Royal Bank vs. Radio Philippines Network, Inc. et. al., supra., citing Bataan Cigar and Cigarette Factory, Inc. vs. CA, 230 SCRA 643 (1994).
- [54] Ibid., citing Insular Drug Co. vs. National, 58 Phil. 685 (1933).
- [55] Philippine Banking Corporation vs. Court of Appeals, G.R. No. 127469, January 15, 2004.
- [56] Note 54, supra.
- [57] 223 SCRA 350, 357 (1993), cited in Philippine Banking Corporation vs. Court of Appeals, supra.
- [58] BPI Family Savings Bank, Inc. vs. First Metro Investment Corporation, 429 SCRA 30, 37 (2004), citing Francisco vs. GSIS, G.R. No. L-18287, March 30, 1963, 7 SCRA 577, 584; 117 Phil 587, 593.
- [59] Bank of America, NT & SA vs. Associated Citizens Bank, et. al., supra.
- [60] Ibid., citing Jai-Alai Corporation of the Philippines vs. Bank of the Philippine Islands, 160 Phil 741, 747-748 (1975).
- [61] Rollo, pages 445-446.

[62] Ibid.

[63] Ibid., page 833.

[64] Bank of America, NT & SA vs. Associated Citizens Bank, et. al., supra.

[65] Ibid.

[66] Ibid., citing Associated Bank v. Court of Appeals, 322 Phil. 677, 697 (1996).

[67] Ibid., citing Philippine National Bank vs. Rodriguez, G.R. No. 170325, 26 September 2008.

[68] Rollo, page 832.

[69] Bank of America, NT & SA vs. Associated Citizens Bank, et. al., supra, citing State Investment House v. IAC, G.R. No. 72764, 3 July 1989, 175 SCRA 310, 315.

[70] Ibid.

[71] Ibid.

[72] Ibid.

[73] G.R. No. 89802, May 7, 1992.

[74] BPI Family Bank vs. Buenaventura, 471 SCRA 431, 446 (2005).

[75] Equitable Banking Corporation vs. Special Steel Products, Inc., G.R. No. 175350, June 13, 2012.

[76] Ibid.

[77] Note 75, supra., citing Security Bank and Trust Company v. Rizal Commercial Banking Corporation, G.R. Nos. 170984 & 170987, January 30, 2009, 577 SCRA 407, 416-417.

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