

PHILIPPINE NATIONAL BANK AND JOSE P. PANLILIO (IN HIS PERSONAL CAPACITY AND AS (FORMER) MANAGER OF THE PNB BRANCH, SAN FERNANDO, PAMPANGA), PETITIONERS, VS. THE HONORABLE COURT ...

G.R. Nos. L-55243-44. March 15, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the split (4-1) decision of the Court of Appeals in CA-G.R. Nos. 47554-R and 47555-R, Victoriano Siongco vs. Jose P. Panlilio affirming the resolution of the trial court which reversed upon motion for reconsideration of herein respondent Victoriano Siongco its joint decision in two cases: (1) a special civil action of mandamus filed by Siongco to compel the petitioner Philippine National Bank "to pay him his deposit of P8,100.14" (Civil Case No. 2808, Court of First Instance of Pampanga) and (2) an ordinary civil action, Civil Case No. 2811 of the same court, filed, on the other hand, by the herein petitioner Philippine National Bank praying for judgment to be rendered sentencing defendant Siongco to pay P15,349.86, plus interests, etc.; the original of said joint decision dismissed the mandamus case and granted the prayer of PNB in the ordinary civil action, but in the reconsideration, both judgments were reversed. Incidentally, it should be mentioned that Siongco filed a third-party complaint against Antonio Buendia, cashier of the PNB, Pampanga Branch.

According to the Court of Appeals, the aforesaid cases arose from the following facts:

"The interrelated facts of these cases which are not disputed show that Victoriano Siongco is a businessman based in San Nicolas, San Fernando, Pampanga. He maintained current accounts with the Philippine National Bank in San Fernando, Pampanga, and with Philippine Banking Corporation (the rightful name of the other Bank is Philippine Bank of Commerce) in Ylaya, Manila, from May of 1963 to December of 1964. Victoriano Siongco had sales representatives in different parts of the country who send him telegraphic transfers through the Philippine National Bank, (t.s.n., March 7, 1967, pp. 27-28, 30-35; Exhibits N, N-1 to N-31, Folder of Exhibits, pp. 144-175). From May to December, 1963, Victoriano Siongco drew thirteen checks with a total value of P23,450.00 against his current account with the Philippine Banking Corporation (again this should read Philippine Bank of Commerce) in Ylaya, Manila. These checks were encashed at the Philippine National Bank in San Fernando, Pampanga with the prior approval of appellant Antonio Buendia, the Cashier of the Philippine National Bank in San Fernando. Upon encashment of the checks, the same were stamped 'paid and non-negotiable' (t.s.n., June 24, 1969, pp. 4, 6). However, the value of the thirteen checks were not debited against appellee's current account with the Philippine Banking Corporation (this should be Philippine Bank of Commerce) in Ylaya, Manila. This matter came to light only in 1965 in the course of the audit of the open accounts of the Philippine National Bank (t.s.n., June 19, 1968, pp. 12, 23). Consequently, in a letter of June 15, 1965 (Exhibit I, also Exhibit Q, Folder of Exhibits, p. 234) Jose P. Panlilio, manager of the Philippine National Bank in San Fernando, Pampanga, demanded the payment of the equivalent amount of the thirteen checks. The following day Siongco denied the claim of the Philippine National Bank and refused to comply with its demand

(Exhibit 'Q-1', also Exhibit '2', Ibid., p. 235). For this reason, Siongco's current account with the Philippine National Bank in San Fernando was debited in the amount of P8,100.14 as partial settlement of the amount of the 13 checks (Exhibit 'Q-4', also Exhibit '3', Exhibit 'Q-5', also Exhibit '4', Ibid, pp. 237-238)". (Pp. 52-53, Record.)

More details will be stated anon in connection with the communications exchanged between the PNB and Siongco. In the meanwhile, it may already be added at this point that apart from debiting Siongco's account in the amount of P8,100.14, the PNB demanded from Siongco the payment of the balance of P15,349.86 of the total amounts it had paid Siongco in encashing his 13 checks whose whereabouts no one could account for.

To state the nature of the controversy before Us more briefly, pursuant to what appears to have been a practice carried out for quite a time, Siongco, a merchant or businessman with rather substantial transactions, used to be allowed to encash with the San Fernando Branch of the Philippine National Bank checks of other banks to be later on collected by the PNB from the correspond-ing respective banks. Obviously, the same was some kind of special accommodation arrangement accorded by PNB to some of its clients. In the instant case, what are involved are 13 checks of the Philippine Bank of Commerce, Ilaya Branch, Manila, where Siongco had a current account, encashed in the manner just stated at various dates between May, 1963 and January, 1964. Sometime in May, 1965, it was discovered that none of said thirteen checks were debited by the Philippine Bank of Commerce, against the account of Siongco, much less credited in favor of the PNB for the simple reason that the same were not received by said bank. Soon enough, PNB, acting through its Pampanga manager Jose Panlilio, demanded payment of said checks from Siongco. In fact, the PNB immediately debited the account of Siongco with it in the amount of P8,100.14 and then filed the complaint, after continued refusal of Siongco to pay, for the recovery of the balance of P15,349.86. Siongco, on his part, had jumped the gun ahead and filed the mandamus case to compel PNB to pay him the debited P8,100.14. There is absolutely no question, and it is admitted by Siongco, that he actually received from PNB, Pampanga Branch thru the afore-mentioned manner of encashment of his 13 Philippine Bank of Commerce checks the full amount of P23,450.00. Similarly undisputed is the fact that not a centavo of said P23,450.00 has ever been paid or credited to PNB by the Philippine Bank of Commerce since the corresponding checks never reached the latter.

Thus, the crux question of the instant controversy We have to resolve is, did the Court of Appeals err in absolving Siongco from any liability therefor to the PNB?

The majority of four Justices found for Siongco that inasmuch as it is undisputed that the checks were delivered by Siongco to the teller of PNB who encashed them with the approval of the cashier, Antonio Buendia, and hence, were all in PNB's possession, their consequent loss or subsequently unknown whereabouts within the period from May, 1963 to January, 1964, should be accounted for by PNB, and failing in this, it should not make Siongco responsible therefor and is not entitled to collect the total amount thereof from him. Justice Carolina C. Griño-Aquino, however, opined otherwise and held that the several varying and inconsistent theories Siongco pursued before and after the controversy reached the court leave no room for doubt that no matter whatever happened to said checks, the fact that Siongco does not deny PNB has not been paid the amounts corresponding thereto made him indebted to PNB.

While in a sense the decision of the Court of Appeals, even if it is a split one, is based on a conclusion of fact, which as a rule this Court has no authority to review, much less dis-regard, We are of the considered opinion that the considerations in the original decision of the trial court and the dissenting opinion of Justice Griño-Aquino reveal manifest and obvious failure of the majority of circumstances that makes of the case at bar one within the known exceptions wherein we can inquire into the milieu of the appellate court's factual conclusions.

The majority in the appellate court preferred to believe Siongco's theory that sometime after he had encashed the

checks in question with the PNB teller, he redeemed the same from the cashier Antonio Buendia who advised him to tear them immediately in order that they may not be further negotiated by anybody else. As Justice Griño-Aquino pointedly observes, this theory of Siongco surfaced only later and is evidently an afterthought. Indeed, it was denied by Buendia. Earlier, in answer to Panlilio's first letter of demand, Siongco pretended he knew nothing about how the checks were lost. That is strike one against him, for its being unbelievable, for if he had really redeemed them, he would certainly not have made reference to their possible loss. Strikes two and three, with no hit, thus putting him out, are commendably analyzed in the well reasoned dissent of Justice Griño--Aquino thus:

"I believe that the first decision of the trial court dismissing Siongco's mandamus action (Civil Case No. 2808) and allowing the claim of the PNB in the collection suit against him (Civil Case No. 2811) is the correct decision, not the second decision on Siongco's motion for reconsideration. Consequently, I vote to set aside the second decision and reinstate the first.

"I disagree with the finding that Siongco redeemed his 13 checks from the PNB cashier, Antonio Buendia, and that the checks were returned to him upon such redemption.

"The record discloses that the 'redemption-and-return-of-the-checks' theory was formulated by Siongco only on June 23, 1965 after the Bank had debited his account, but that theory, as the pleadings show, did not gel completely until the trial of the case. Before the trial, Siongco wavered between pretending that he knew nothing about the loss of the checks and his later allegation that the checks were redeemed, returned, and destroyed by him.

"Thus, in his counsel's letter to the Bank dated June 16, 1965 in answer to the Bank's demand letter of June 15, 1965, (pp. 50, 53, Rec. on Appeal), Siongco said nothing about having redeemed the checks or repaid the Bank. He only protested that he knew nothing about the loss of the checks. He alleged that:

'Concerning the checks x x x which were never received by your Manila office x x x his (Siongco) only participation is in the issuance of the aforesaid checks and their presentation to your bank for payment. How the checks were lost, he has no idea whatsoever.' (p. 50, Rec. on Appeal.)

"This allegation was reiterated in Siongco's petition for mandamus (Civil Case No. 2808) against the PNB branch manager, Jose P. Panlilio, as follows:

'c. The checks cashed by him with the PNB, San Fernando, Pampanga branch thru its cashier, Mr. Antonio Buendia, were immediately paid in cash upon receipt of said telegraphic transfers and that the checks were returned to him. (p. 7, Rec. on Appeal.)'

"However, in his Answer dated August 26, 1965, to the Bank's complaint (for collection) in Civil Case No. 2811, We find the contradictory allegations that the checks 'were returned' to him by the Cashier and that he 'had no idea' how they were allegedly lost.

'10. That out of the foregoing checks, only the thirteen (13) are allegedly lost, but in truth and in fact they were returned by the cashier of the plaintiff bank, Mr. Antonio Buendia, to the defendant and the proceeds thereof were demanded to be paid in cash by said cashier from the defendant x x x (p. 72, Rec. on Appeal.)'

'4. x x x the defendant declined and refused (to give a statement) because he had no idea how the irregularity leading to the alleged loss of said checks . . ." (p. 70, Rec. on Appeal.)'

"If the checks were returned to him by Buendia, then why did he claim that "he had no idea" as to how they were lost?

Then, almost ten months later, in his third-party complaint against Antonio Buendia, dated June 26, 1966, he executed a somersault. He alleged that the checks 'were never returned' to him and that he 'had nothing to do' with

their loss.

"(d) That after the payment of the same cash received by the third-party plaintiff from said third-party defendant, the former was required to pay back the same amount but that the checks involved were never returned by the latter to the former with the advice that said checks be destroyed as they had no longer any value. (p. 99, Rec. on Appeal)

"9. That in the loss of said checks, the third-party plaintiff had nothing to do and that the third-party defendant alone is responsible. (p. 99, Rec. on Appeal)

"Prior to the trial of Civil Case No. 2811, he reverted to his previous plea 'that he paid back the cash amounts involved to the third-party defendant and the latter returned the checks to the former' x x x. (p. 111, Rec. on Appeal.)

"At the trial, he testified that he redeemed, each of the checks 'in cash' a few days after encashing them, and that he tore up each check upon advice of Buendia 'because if it would be lost, it could be cashed by the person who may find it'. (47-48 tsn Mar. 7, 1967).

"In the light of the above inconsistent and contradictory allegations of Siongco, it was error for the trial court to find (upon motion for reconsideration) that he repaid the Bank. For, as the trial court had pointed out in its first decision, Siongco's purely parol evidence on his alleged redemption of the checks was unconvincing. Not a single one of the 13 checks was produced by him. Not a single receipt from the Bank, or Buendia to prove his alleged payment. (pp. 157-158, Rec., on Appeal.)

Siongco's allegation that he redeemed the checks from Buendia, that they were returned to him by Buendia who advised him to tear them up, was vehemently denied by the latter. Buendia testified that the checks were sent to the PNB's Manila office for collection from Siongco's bank, the PBC. Siongco's allegation, that the checks were returned to him, was refuted by the check remittance slips (Exhs. 3 to 13, Third-Party Defendant) all of which were prepared on the same day or the next day after the checks were issued by Siongco and encashed at the PNB. The check remittance slips prove that the 13 checks were indeed remitted to the PNB Manila Office for collection or presentment to the PBC.

Whether the checks were purloined in the Bank's branch office, or in transit to Manila, or in the Manila office, we can only speculate upon. It is certain, however, that only Siongco benefited from their loss or disappearance because they were not debited from his PBC account. It is significant that he himself admitted that the checks found their way back to him without having been collected from the drawee bank, PBC.

The supposed 'redemption' of the checks by Siongco from Buendia was a highly irregular procedure, hence, not credible. It was contrary to normal banking practice which requires that the checks should be presented to the drawee bank (PBC) for collection. It was rebutted by Buendia's testimony and by the check remittance slips (Exhs. 3 to 13) showing that the checks were sent to the PNB-Manila for collection. The presumption is that the regular banking procedure and the ordinary course of business had been followed (Sec. 5, subpars. (p) and (q), Rule 13, Rules of Court). That presumption was not overturned by Siongco's unreliable, uncorroborated and self-serving parol testimony.

The encashment of Siongco's out-of-town (PBC) checks with the PNB, San Fernando branch, was irregular and suspicious. Since he had a current account in the PNB-San Fernando branch, he could simply have drawn checks on that account, instead of issuing checks against his PBC account in Manila and encashing them at the PNB branch in San Fernando. The 13 checks were not for big amounts. They ranged from P1,000 to P3,000. They were issued and presented to the PNB-San Fernando branch at intervals of one to two weeks. If Siongco had funds in his PNB account, he should have drawn on that account instead of issuing checks against his PBC account.

"Siongco himself explained that he opened two checking accounts, one in Manila and one in San Fernando, Pampanga, so that he could issue checks to his creditors or suppliers in either place without having to pay service charges for the collection of his checks. It was therefore irregular and, as the Bank euphemistically observed, suspicious, that he did exactly what he wanted to avoid: he issued out-of-town (PBC) checks for encashment in the PNB at San Fernando, Pampanga.

"Why the bank cashier, Buendia, approved the encashment of Siongco's out-of-town PBC checks instead of requiring him to deposit them in his PNB account and/or issue a PNB check, is certainly mysterious. For, if Siongco did not have enough funds in his PNB account, prudence would dictate that that Bank should not encash his PBC checks, without first clearing them. On the other hand, if his funds in the PNB were sufficient, then he should have drawn on them instead of from his PBC account in Manila.

"While it appears that Siongco was accorded 'special treatment' by the PNB cashier Buendia, the fact is that it was Siongco, not Buendia, who received from the PNB that P23,450.00 face value of the 13 checks which the PNB failed to collect from the PBC, hence, Siongco should repay that amount to the PNB.

"The partial compensation or set-off of Siongco's current account balance of P8,100.14 at the PNB, against his obligation of P23,450 to said bank, was lawful, for, bank deposits in fixed and current accounts are not true deposits but simple loans creating the relation-ship of debtor and creditor between the bank and its depositor, hence, when they are creditors and debtors of each other, the debts may be set off one against the other (Arts. 1980 and 1278, Civil Code; *Tian Tiong Tick v. American Apothecaries*, 65 Phil. 414; *Hilado v. De la Costa*, 83 Phil. 471).

"The resolution-decision of the trial court dated May 4, 1970 should be set aside. Siongco's action for mandamus (Civil Case No. 2808) should be dismissed. In Civil Case No. 2811, judgment should be rendered in favor of the PNB ordering Siongco to pay it the sum of P15,349.86 (which is the unpaid balance of Siongco's obligation of P23,450.00 to the Bank after a partial setoff against his current account deposit of P8,100.14 in said Bank), with legal rate of interest from June 22, 1965 until fully paid, plus P1,500.00 as attorney's fees, and costs. The counterclaims, as well as the third-party complaint of Siongco against Buendia, should be dismissed. Costs against the appellee." (Pp. 56-62, Record)

And also in the reasoning of the trial court in its original decision (more plausible than in its reversal resolution) as follows:

"But of course, there is not much here to discuss or need be discussed for a factual predicate to this judicial approach or determination as to which side the pivotal issue as above defined should be resolved, it being that -

'1) Mr. Victoriano Siongco does not deny that the disputed amount of P23,450.00 truly represents the total equivalent value of the thirteen (13) PBC checks he had drawn and encashed with the PNB-Pampanga Branch;

'2) He does not neither deny that the afore-said amount of P23,450.00 had actually been paid by, and received by him from the said PNB-Pampanga Branch;

'3) He likewise does not dispute that the thirteen (13) PBC checks he so encashed never reached the Manila Head Office of the payor PNB-Pampanga Branch and therefore, were never presented for payment to the PBC-drawee bank; and

'4) Neither does he dispute that the oft-repeated P23,450.00 had never been debited against his deposit accounts with the said drawee (PBC) bank.

"However, with the apparent and in view of defeating the claim for recovery against him by the PNB for and in behalf of its Pampanga Branch and at the same time, of obtaining the relief of Mandamus he is seeking against the Branch Manager of the said PNB-Pampanga Branch, Mr. Victoriano Siongco theorizes and tries to show to the Court by his evidence that he redeemed those thirteen (13) PBC checks - that only a few days after

encashing each of said checks he used to redeem the same in cash out of the telegraphic transfers he every now and then, during that period, received his different peddlers; that he paid the redemption money value of each of said checks to the PNB-Pampanga Branch Cashier, third-party defendant Mr. Antonio Buendia; that Mr. Buendia in turn, returned to him each and all the checks as redeemed and which he thereafter tore upon the former's (Mr. Buendia's) advice (gist of testimony on this point of Mr. Siongco as noted by the Court). And to induce belief in his foregoing assertions, the said Mr. Siongco even offered in evidence bunches of documents marked as exhibits A to U, inclusive, and concomitants thereof. Thus categorically, Mr. Victoriano Siongco has chosen to pass the bell to Mr. Antonio Buendia whom he brought in the case (Civil Case No. 2811) as a third-party defendant, instead of to stand firm in his struggle for it against the PNB he is principally fighting with.

"Mr. Antonio Buendia on the other hand, in meeting the issues as raised against him by Mr. Victoriano Siongco in the latter's third-party complaint, testified in essence — That all the checks Mr. Siongco had encashed thru him at the bank (PNB-Pampanga Branch) were forwarded to the Manila Head Office by means of remittance slips; that none of said checks were dishonored and consequently returned by the Manila Office so that there can be no reason why Mr. Siongco would pay back or redeemed any of said checks; that whenever a teller pays a check presented for encashment, such teller would immediately stamp the word 'Paid and Non-negotiable' on that check, hence he (Mr. Buendia) would not much less have advised Mr. Siongco to tear any check the latter had allegedly redeemed and received back, simply because (as the reasoning of Mr. Buendia tends) a previously encashed check, even without being torn to pieces, cannot possibly be encashed again although it may fall into other people's hands (t.s.n., p. 5, June 24, 1969).

"Without going any farther into the presentation in detail of the evidence respectively presented by the parties-litigants in these cases, it can now readily be seen that the final determination of the already simplified issue as defined earlier can be made to rest further on the resolution of a far simpler question of whether or not Mr. Victoriano Siongco's allegation of redemption deserves favorable consideration in point of law.

"On this score, therefore, this Court poses this last, but decisive question: Did Mr. Siongco actually redeem, just as he claims he did, the thirteen (13) PBC checks in question from the PNB--Pampanga Branch with which the same had been encashed? To this query, it may be said in answer that this parol evidence says so. And he might have testified truly so also. However, sadly to state, such is not what his numerous documents conclusively show, or at least, even tend to show. The Court does not expect to find in said Mr. Siongco's evidence even one of the 13 checks which he allegedly received back after having supposedly paid the equivalent amount or face value thereof, because right in his pleading he made it clear that he tore said checks upon return of the same to him by the Cashier of the PNB-Pampanga Branch and upon said Cashier's advice. But of course it expects to come across sort of a receipt for the equivalent amount of even just one, if not for some or all of those checks in question, issued by the Bank Cashier with whom Mr. Siongco allegedly made the redemption, or by any other personnel of the Bank duly authorized to receive and receipt for such redemption. But above all, the Court expects to find sufficient showing that the supposed redemption amounts went right into the funds of the Bank — funds with which the checks thus redeemed had previously been converted into cash — for otherwise, say, if such amounts were pocketed by one for purely private reason, no matter how honest the intention is on the part of the redemptionist, the payment cannot be considered a redemption at all. However, no such receipt, nor such showing could be found from among the numerous documents submitted by said Mr. Siongco in support of his theory or contention. For this reason, his cause must fall. And since, per his own admissions, he received the P23,450.00 equivalent amount of the 13 PBC checks he encashed with the PNB-Pampanga Branch, but that said amount was never debited against his deposit account with his depository-drawee (PBC) bank, it is here but right and just to state that said Mr. Siongco is under legal obligation to refund the same to the PNB-Pampanga Branch. And upon this premise, it appearing also that he is a depositor of said PNB-Pampanga Branch, his relationship with the latter as of the date the right of refund had arisen had ceased to be that of a mere depositor-depository or trustor and trustee, but converted into one of creditor-debtor to each and of one another. This considering then, the application of

the law on compensation for a set off of obligation is proper." (Pp. 154-159, CA Record on Appeal)

Above all, as We see it, the long and short of this controversy boils down to the fundamental legal and equitable proposition that no one should enrich himself at the expense of another. Siongco admits he received P23,450.00 from PNB. His uncorroborated explanation of how he returned to or paid back PNB has been shown to be shaky, inconsistent, contrary to ordinary banking practices and, therefore, patently unbelievable.

It would somehow appear, indeed, that because the encashment of the checks in question was made with the approval of Buendia, as a sort of accommodation to Siongco, the burden of responsibility should fall either on Buendia or Siongco, depending on what can only be speculated to be special arrangements between them. Thus Siongco's third-party complaint against Buendia. But again, as against Siongco's uncorroborated varying versions, Buendia's categorical denial of the theory of redemption, corroborated by the transmittal slips, the genuineness and accuracy of which have not been put in issue, We are more inclined to believe the majority in the Court of Appeals departed from the usual course of fact finding in this respect when it upheld Siongco. It is Our considered opinion that inasmuch as the findings in the majority opinion and judgment of the Court of Appeals are not in accord with what reasonable men would readily agree are the correct inferences from the evidence extant in the record, (*Luna v. Linatoc*, 74 Phil. 15) the same may be, as they should be, reversed.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered reversing the decision of the Court of Appeals, and the first judgment of the trial court reading thus:

"WHEREFORE, in view of all the foregoing considerations, finding the petition for Mandamus (Civil Case No. 2808) to be without a concrete legal base, its denial is hereby ordered. However, the counterclaim for damages therein laid by the respondent cannot be entertained because the grounds relied upon therefor do not fit exactly into the circumstances which surrounded the institution of the case. No special pronouncement as to its costs therefor, is hereby made.

"On the other hand, finding the preponderance of evidence in the action for recovery (Civil Case No. 2811) to be in favor of the plaintiff and against the defendant, judgment is hereby rendered ordering the latter to pay unto the former the amount of P15,349.86, representing the remaining unpaid balance on his (defendant's) obligation of P23,450.00 (his current deposit of P8,100.14 having already been applied thereto by way of set off), with legal rate of interest thereon per annum, until the same is fully paid; the sum of P1,500.00 as and for attorney's fees; and the costs of this suit in the amount as may, by virtue hereof, be assessed.

"Meanwhile, the third-party complaint filed in this same case (Civil Case No. 2811) is hereby ordered dismissed for not having been fully substantiated, but the counterclaim thereto interposed cannot likewise be favorably considered for lack of showing in the evidence that the inclusion of the counterclaimant in the case was occasioned by complainant's malicious intent.

"SO ORDERED." (Annex "A", pp. 161-162, Record on Appeal.)

is hereby adopted and made the judgment of this Court, with costs against Siongco in all instances. Concepcion, Jr., De Castro, Ericeta, and Escolin, JJ., concur. Aquino and Abad Santos, JJ., no part.

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