

BANCO ATLANTICO, PETITIONER, VS. AUDITOR GENERAL, RESPONDENT.

G.R. No. L-33549. January 31, 1978

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal from the decision of the Auditor General contained in a letter dated April 22, 1971 addressed to the counsel of the petitioner, Banco Atlantico, stating that, "x x x for want of legal basis, this Office cannot allow in audit the payment of the said claim of Banco Atlantico against the Philippine Embassy in Madrid, Spain." [1]

The record discloses that the petitioner is a commercial bank doing business in Madrid, Spain; that on October 31, 1968, Virginia Boncan, then the Finance Officer of the Philippine Embassy in Madrid, Spain, negotiated with Banco Atlantico, a Philippine Embassy check signed by Luis M. Gonzales, its ambassador and by said Virginia Boncan as Finance Officer, dated October 31, 1968 in the sum of US\$10,109.10 payable to Azucena Pace and drawn against the Philippine National Bank branch in New York, U.S.A.; that the check was endorsed by Azucena Pace and Virginia Boncan; that the petitioner, without clearing the check with the drawee bank in New York, U.S.A., paid the full amount of US\$10,109.10 to Virginia Boncan; that on November 2, 1968, Virginia Boncan negotiated by endorsement with the petitioner another embassy check signed by Luis M. Gonzales as ambassador and by her as finance officer in the sum of US\$35,000.75 dated November 2, 1968 payable to Virginia Boncan and drawn against the Philippine National Bank branch in New York, U.S.A.; that the petitioner paid the full amount of the check to Virginia Boncan without clearing said check with the drawee bank; that on November 5, 1968, Virginia Boncan negotiated by endorsement with petitioner another embassy check signed by Ambassador Luis M. Gonzales and by Finance Officer Virginia Boncan in the sum of US\$90,000.00 dated November 5, 1968 payable to Virginia Boncan and drawn against the Philippine National Bank in New York, U.S.A.; that the petitioner paid the full amount of the aforementioned check of US\$90,000.00 to Virginia Boncan without clearing said check with the drawee bank; that upon presentment for acceptance and payment of the aforementioned checks by Banco Atlantico through its collecting bank in New York, U.S.A. to the drawee bank, the Philippine National Bank branch in U.S.A., said drawee bank dishonored the checks by non-acceptance allegedly on the ground that the drawer had ordered payments to be stopped; that upon receipt of the notice of the dishonor, the collecting bank of the petitioner in New York, U.S.A. sent individual notices of protest with respect to the checks in question to the Philippine Embassy in Madrid, Spain and to Virginia Boncan as endorser/payee; that Virginia Boncan and the Philippine Embassy in Madrid, Spain refused to pay the petitioner the amounts of the aforementioned checks. [2]

The petitioner, Banco Atlantico, filed the corresponding money claim with the Auditor General.

In denying the claim of the petitioner for the amounts of the three checks in question, the respondent Auditor General concurred in the following views expressed by Ambassador Luis M. Gonzales in his second endorsement dated November 13, 1970:

"1) Counsel for Claimant alleges that the 'Embassy of the Republic of the Philippines maintained a checking account with Claimant who honored and cashed checks drawn by the Embassy against its depository bank, the Philippine National Bank branch in New York, U.S.A.' This claim is erroneous. The Embassy never maintained any checking account with Banco Atlantico at any time in the past. Only the individual staff members of the Embassy, including Miss Virginia Boncan, in their personal and private capacities, maintained accounts with said bank.

2) Counsel for claimant alleges that the three checks for the amount of US\$10,109.10, US\$35,075.00 and US\$90,000.00 were honored and full amount of the aforementioned checks paid to Miss Boncan in the ordinary course of its banking transactions. While the aforementioned checks of the Embassy may have appeared valid, payment to Miss Boncan in her capacity as endorser and payee of the checks without clearing them first with the drawee bank is definitely not in accordance with normal or ordinary banking practice, especially so in this case where the drawee bank was a foreign bank, and the amounts involved were quite large. The normal procedure would have been for the Banco Atlantico to clear the three checks concerned with the drawee bank before paying Miss Boncan.

From our investigations we have gathered enough proof that Miss Boncan had very special relations with the employees and chiefs of the claimant bank's foreign department. This personal relationship that existed between Miss Boncan and said employees and officers was one thing and ordinary banking transactions were something else. Because of this special relationship, the bank took a risk and sacrificed normal banking procedures by cashing the aforementioned checks without prior clearance from the drawee bank.

3) Counsel for claimant says that Banco Atlantico has every right to recover from the Embassy as drawer of the checks because it is a holder in due course. Basis for the claim is Section 61 of the Negotiable Instruments Law, to wit:

'SEC. 61. Liability of drawer - The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse and engages that on the due presentment the instrument will be accepted or paid, or both, according to its tenor and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.'

It is erroneous for claimant bank's Counsel to single out this particular provision because the interpretation thereof would be out of context. All the other related provisions of said law must be interpreted together, and it would then be doubtful if Banco Atlantico could qualify as a holder in due course.

4) As regards the checks for US\$10,109.10 and US\$35,075.00, Miss Boncan had altered them by fraudulently increasing the amounts for which said checks were issued, and claimant bank failed to protect itself by cashing them without first clearing them with the drawee bank. When claimant bank gave Miss Boncan special treatment

as a privileged client in disregard of the elementary principles of prudence that should attend banking transactions, they should stand to suffer the loss that was due to their own negligence.

Further proof of the special relationship between claimant bank and Miss Boncan was the leniency of the bank towards her when it accepted for deposit to Miss Boncan's dollar account an Embassy check for US\$75.00 payable to Mr. Antonio P. Villamor without his indorsement. Such leniency on the part of the bank could even lead to the suspicion that there was collusion between the bank and Miss Boncan. A photocopy of this check is enclosed for ease of reference.

In the particular case of the check for US\$90,000.00 we can demonstrate that claimant bank likewise has no case at all. Section 61 of the Negotiable Instruments Law can only be availed of by holders in due course and Banco Atlantico cannot be considered as one under the definition of Section 52 of the N.I.L., to wit:

'SEC. 52. What constitutes a holder in due course - A holder in due course is a holder who has taken the instrument under the following conditions:

- That it is complete and regular on its face;
- That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact;
- That he took it in good faith and for value;
- That at the time it was negotiated to him he had no notice of infirmity in the instrument or defect in the title of the person negotiating it.'

All four conditions enumerated under this section must concur before a holder can be considered as a holder in due course. The absence or failure to comply with any of the conditions set forth under this section will make one's title to the instrument defective.

The check for US\$90,000.00 was a demand note. When Miss Boncan, the payee of this check, negotiated the same by depositing it in her account, at the same time informing the bank in writing (copy of her letter is enclosed for ease of reference) that it be not presented for collection until a later date, Banco Atlantico through its agent teller or cashier should have been put on guard that there was something wrong with the check. The fact that the amount involved was quite big and it was the payee herself who made the request that the same not be presented for collection until a fixed date in the future was proof of a glaring infirmity or defect in the instrument. It loudly proclaims, 'Take me at your risk.' The interest of the payee was the immediate encashment of the check of which she was the beneficiary and not the deferment of the presentment for collection of the same to the drawee bank. This being the case, Banco Atlantico was not a holder in due course as defined by Section 52 of the N.I.L. because it was obvious that it had knowledge of the infirmity or defect of the check. The fact that the check was

honored by claimant bank was proof not only of their gross negligence but a further manifestation of the special treatment they were according Miss Boncan."[3]

According to the petitioner, the issues at bar are the following:

"1. Was there a forgery committed on the three (3) checks as contemplated by Sec. 23 of the Negotiable Instruments Law (NIL) as to bar petitioner from enforcing collection from the drawer-Philippine Embassy in Madrid, Spain? And, if there was such a forgery, is the drawer precluded from setting up forgery or want of authority of Miss Boncan?, and,

2. Do the payments of the afore-cited checks without clearing them first with the drawee bank constitute an actual notice of a defective title in the endorser thereof and/or an assumption of risk by the petitioner as to defeat collection thereon?"[4]

The record shows that the check dated October 31, 1968 and payable to Azucena Pace was intended to be issued for the sum of US\$109.10 for the payment of said payee's salary as consular clerk in the Philippine Embassy in Madrid for the second half of October, 1968 as shown in the Embassy's General Payroll.[5] It also appears that the check dated November 2, 1968 was to be issued for the amount of US\$75.00 in reimbursement of Virginia Boncan's living quarters allowance from November 1968 as shown in Cash Voucher No. MA-132/69.[6] There is also a showing that on November 8, 1968, Virginia Boncan cashed with the petitioner a check for US\$90,000.00 dated November 5, 1968 drawn on the Philippine National Bank branch at New York City, and although said check was payable on demand, Virginia Boncan asked that the same be not presented for collection until a later date.[7]

The petitioner paid the amounts of the three (3) checks in question to Virginia Boncan without previously clearing the said checks with the drawee bank, Philippine National Bank, New York. This is contrary to normal or ordinary banking practice specially so where the drawee bank is a foreign bank and the amounts involved were large. The drawer of the aforementioned checks was not even a client of the petitioner. There is a showing that Virginia Boncan enjoyed special treatment from the employees and chiefs of the petitioner's foreign department. It was probably because of this special relationship that the petitioner, in disregard of the elementary principles that should attend banking transactions, cashed the three (3) checks in question without prior clearances from the drawee bank.

In view of the foregoing, the Philippine Embassy in Madrid, as drawer of the three (3) checks in question, cannot be held liable. It is apparent that the said three (3) checks were fraudulently altered by Virginia Boncan as to their amounts and, therefore, wholly inoperative.[8] No right of payment thereof against any party thereto could have been acquired by the petitioner.

WHEREFORE, the decision of the Auditor General denying the claim of the petitioner for payment of the three (3) checks, Annex "C", Annex "D", and Annex "E" of the petition, is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, and Guerrero, JJ., concur.

Muñoz Palma, J., in the result.

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- [1] Rollo, p. 9.
 - [2] Brief for Petitioner, pp. 2-3, Rollo, p. 75.
 - [3] Rollo, pp. 10-12.
 - [4] Brief for Petitioner, pp. 6-7, Rollo, p. 75.
 - [5] Annex "1" of Answer, Rollo, p. 43.
 - [6] Annex "2" of Answer, Rollo, p. 44.
 - [7] Annex "3" of Answer, Rollo, p. 45.
 - [8] Section 23, Negotiable Instruments Law.

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