

RICARDO UY HO, PLAINTIFF-APPELLEE, VS. CHARLES TING, DEFENDANT-APPELLANT.

Ponente: PEREZ, J.

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PEREZ, J.:

For consideration is the 21 October 2011 Decision[1] rendered by the Regional Trial Court, Branch 13, 11[th] Judicial Region, Davao City, in Civil Case No. 29,002-2002 filed by plaintiff-appellee Ricardo Uy Ho (appellee) against defendant-appellant Charles Ting (appellant) for Sum of Money, Damages, Attorney's Fees with Prayer for Writ of Preliminary Attachment.

The 21 October 2011 Decision[2] disposed as follows:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of plaintiff and against defendant, ordering defendant to pay the plaintiff the following amounts:

- a) P404,000.00 representing the principal obligation which is the face value of the checks;
- b) P100,000.00 as Attorney's Fees
- c) P15,000.00 as Litigation Expenses;

Defendant likewise, is directed to pay interest on the principal obligation at the rate of 12% per annum from the date of this Decision until fully paid.

SO ORDERED.

The Antecedents

The case at hand centers around four (4) Pay to Cash Metrobank Checks[3] issued by appellant covering different amounts which matured on the following dates, as follows:

- 1) Metrobank Check No. 950117681 dated 5 March 1998 payable to the order of cash in the amount P186,000.00;
- 2) Metrobank Check No. 950117700 dated 12 March 1998 payable to the order of cash in the amount P32,000.00;
- 3) Metrobank Check No. 950117723 dated 15 March 1998 payable to the order of cash in the amount P91,000.00;
- 4) Metrobank Check No. 950117724 dated 15 March 1998 payable to the order of cash in the amount P95,000.00;

On the maturity dates of the foregoing checks, the appellee who was the bearer thereof presented them to the drawee bank for payment but the same were dishonored as payment was apparently ordered stopped by appellant.[4]

As a background prior to the filing of the instant suit, the appellee made personal appeals to appellant to pay his obligation in the amounts reflected in the checks which, however, fell on deaf ears as appellant denied knowing appellee or owing him anything.[5] Eventually, appellee wrote a demand letter urging appellant to pay the amount of P404,000.00 but the same was left unheeded.[6] Prompted by these events, appellee filed the instant suit against appellant on 8 March 2002 praying that appellant settle his obligation and pay damages.[7]

In his Answer,[8] appellant denied any obligation to appellee and averred that the four (4) Metrobank pay to cash checks were issued in favor of a certain Rose Buenaflor, a rice bran dealer, who allegedly failed to deliver goods per their agreement prompting the latter to order the stop payment of the checks.[9]

During the trial, appellee testified that he was engaged in the buy and sell business of empty sacks and that appellant was a rice bran and corn dealer.[10] Appellee narrated that it was a customary business practice that the suppliers who were paid by appellant would indorse their checks in his favor either as payment for sacks they would purchase from him or in exchange for cash at a discounted rate of three (3) percent.[11]

Appellee testified that he came into possession of the checks sometime in February 1998 and when he presented them to the drawee bank for payment, he was surprised that appellant had ordered its stop payment considering their previous transactions of the same nature went through without any hitches.[12] Appellee stated that he made personal appeals, imploring appellant to settle his obligations, but the same proved unsuccessful as the latter insisted that the checks were not issued in his favor, and altogether denied having any transactions with him to warrant any payment on the issued amounts[13]

Appellant for his part, insisted that the order for “stop payment” of the checks was due to the non-delivery of a certain Rose Buenaflor of Rice Bran.[14] Appellant alleged that the checks were really intended for Rose Buenaflor as she even crossed-check the same at the time of issue and likewise denied knowing or having done any business with appellee. Appellant added that at the time the “stop payment” order was implemented, her account had sufficient funds to cover or clear the amounts issued in the check. This allegation was corroborated by the testimony of Metrobank Manager Milagros Gumban.[15]

After due proceedings, the RTC rendered the assailed Decision[16] in favor of the appellee.

The RTC resolved as follows:

During the hearings conducted by the court, defendant did not deny having issued the checks. He only claimed that the checks were not issued to plaintiff himself but to a certain Rose Buenaflor in payment of rice bran which Rose Buenaflor did not deliver. Unfortunately, defendant did not include Rose Buenaflor as a third party-defendant in this case. This, to the mind of the Court is fatal to defendant’s case.

When Charles Ting issued the checks payable to “CASH”, he gave notice to the world that these checks may be encashed by the holder thereof. In this case, the holder of the checks is plaintiff. There is nothing in the checks to show that the same were paid for rice bran which should be delivered at a particular date. The checks in fact directed Metrobank Sta. Ana Branch to pay the holder of thereof (sic) the amounts indicated in the checks.

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The checks that were given to Rose Buenaflor allowed her to negotiate the checks to third persons, or to use the said negotiable instruments as payment for her obligation. Since the defendant was not prudent when he issued the checks payable to “Cash” he cannot disclaim any liability for their issuance.

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Defendant cannot just say that he transacted with Rose Buenaflor, on the glaring evidence that he issued the

checks payable to cash. Rose Buenaflor could have been joined as a third party for a complete determination of the claims of defendant. But this was not done by defendant.

Dissatisfied with result, appellant raises the following assignment of errors for resolution:

I

WHETHER OR NOT THE DECISION OF THE TRIAL COURT IS NULL AND VOID FOR BEING VIOLATIVE OF THE REQUIREMENTS OF SECTION 1 RULE 36 OF THE 1997 RULES OF CIVIL PROCEDURE, THERE BEING NO LAW OR JURISPRUDENCE CITED BY THE TRIAL COURT UPON WHICH THE APPEALED DECISION WAS BASED;

II

WHETHER OR NOT THE JUDGMENT OF THE TRIAL COURT WAS BASED ON A MISAPPREHENSION OF FACTS AND FINDINGS OF FACTS WHICH ARE CONFLICTING AND/OR CONTRARY TO THE ADMISSION MADE BY THE PLAINTIFF-APPELLEE WHEN HE TESTIFIED IN OPEN COURT;

III

WHETHER OR NOT THE TRIAL COURT ERRED IN AWARDING PLAINTIFF-APPELLEE P100,000.00 AS ATTORNEY'S FEES.

The Court's Ruling

On the first assignment of error, appellant asserts that the lower erred when it rendered a decision without allegedly stating the law on which its findings of facts are based.

The contention has no merit.

Contrary to appellant's contention, a closer inspection of the RTC's Decision reveals that the same applied basic principles of the negotiable instruments law when it ruled against appellant. The RTC held that a check payable to the order of cash gave "notice to the whole world, that these checks maybe encashed by the holder thereof." [17] This ruling finds support under Section 9 of the Negotiable Instruments Law as it has long been established that a check payable to cash is payable to the bearer because the name of the payee in the check as "cash" does not purport to be the name of any person. [18]

On the second assignment error, appellant harps on the alleged inconsistency between appellee's allegation in the complaint and his testimony. Appellant insists that the appellee in his complaint alleged that the four (4) checks were negotiated to him by appellant in exchange for cash, while during his testimony, he admitted that the checks were indorsed to him by agents or the suppliers of appellant as payment for sacks that they would buy from him or that he would simply exchange the checks for cash at a discounted rate of three percent.

At the onset, the Court must emphasize the overriding principle, despite the seeming inconsistencies in appellee's testimony, that a check payable to cash entitles the holder thereof to present the same to the drawee bank for encashment upon its maturity. As early as the case of *Ang Tek Lian v. Court of Appeals*, [19] the Supreme Court defined the simplicity and convenience of a check payable to cash which entitles the bearer to present it for payment, without need of an indorsement.

The Supreme Court explained:

Under the Negotiable Instruments Law (sec. 9 [d]), a check drawn payable to the order of "cash" is a check payable to bearer, and the bank may pay it to the person presenting it for payment without the drawer's

indorsement.

Where a check is made payable to the order of "cash", the word cash "does not purport to be the name of any person", and hence the instrument is payable to bearer. The drawee bank need not obtain any indorsement of the check, but may pay it to the person presenting it without any indorsement.

In harmony with this ruling, the Court actually need not dwell on the circumstance or reason behind the issuance of the checks considering that forgery is not an issue in the instant case, and when the appellant as drawer issued the checks payable to cash, he assumed the risk that any holder thereof may present the same for payment. Verily, the liability of appellant in issuing checks payable to cash immediately attached upon maturity and presentment for payment, which is precisely what transpired in the case at bar.

The case of *Jai-Alai Corporation v. BPI* does not relieve appellant of his obligation to pay the amounts reflected in the checks, notwithstanding that the pay to cash checks he issued were cross-checked.

Appellant's reliance on the case of *Jai-Alai Corporation v. BPI*[20] is highly misplaced considering that while the checks issued by appellant were pay to cash checks that were crossed-check, the factual backdrop of this case is far different from the one obtaining in *Jai-Alai*. In the *Jai-Alai* case, the Supreme Court simply explored the liability of respondent BPI for debiting the account of petitioner *Jai-Alai*, when the former, as collecting bank, reimbursed the drawee banks of amounts that it paid to it after finding out that the checks deposited by *Jai-Alai* had a previously forged indorsement.[21] It must be likewise be noted that the crossed pay to bearer checks in the *Jai-Alai* Case were issued by the drawers payable to a corporation or bearer, each check being denominated as Pay to Inter-Island Gas or Bearer.[22]

The Supreme Court ruled that this circumstance should have alerted petitioner (*Jai-Alai*) considering that the checks were indorsed to it by an individual – a certain Antonio J. Ramirez, a mere sales agent of Inter-Island Gas.[23]

So it must be asked, what then, if any, are the implications or ramifications of the *Jai-Alai* ruling to the instant case, particularly with regard to appellant's liability on the crossed pay to cash checks?

In the *Jai-Alai* case, considering that the three of the ten checks subject of that case were issued Payable to Inter-Island Gas or Bearer, two being crossed and one uncrossed, the Supreme Court ruled that this, at the very least, should have aroused petitioner *Jai-Alai*'s suspicion considering that the checks' indorser was a mere sales agent of the payee corporation.

The Supreme Court ruled as follows:

It must be noted that three of the checks in question are crossed checks, namely, exhs. 21, 25 and 27, which may only be deposited, but not encashed; yet, the petitioner negligently accepted them for cash. That two of the crossed checks, namely, exhs. 21 and 25, are bearer instruments would not, in our view, exculpate petitioner from liability with respect to them. The fact that they are bearer checks and at the same time crossed checks should have aroused the petitioners suspicion as to the title of Ramirez over them and his authority to cash them (apparently to purchase *Jai-Alai* tickets from the petitioner), it appearing on their face that a corporate entity- the Inter-Island Gas Service, Inc. was the payee thereof and Ramirez delivered the said

checks to the petitioner ostensibly on the strength of the payee's cashier's indorsements.[24]

In the instant case, there is nothing on the face of the four Metrobank pay to cash checks that should have alerted or elicited suspicion on the part of the appellee considering that the only peculiarity or oddity involved herein is that these checks were issued pay to cash and not to any particular payee, yet were cross-checked. Therefore, did the peculiar nature of these checks serve to preclude or exempt appellant from liability on the amounts stated in the checks, owing simply to the fact that they were cross-checked?

Before We answer this question, a crossed checked with two parallel lines on the upper left hand corner means that:

- a) It could only be deposited and not converted to cash;
- b) That the check may be negotiated only once to one who has an account with a bank; and ;
- c) That the act of crossing the check serves as a warning that the check has been issued for a definite purpose so that he must inquire if he has secured the check pursuant to that purpose.[25]

The crossing of a check 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 crossing may be general wherein between two parallel diagonal lines, nothing else is written in which case the drawee should not encash the same but merely accept the same for deposit.[26]

At this juncture, the Court must highlight that despite appellant's view, no conflict, whether latent or explicit, exists with the manner on how the four checks in the instant case should have been presented for payment considering that they were bearer checks. Appellant's proposition that that right or authority of a person negotiating a bearer check that is cross-checked must still be scrutinized and established is a mere opinion expressed by Antonio Viray[27] in relation to the Jai-Alai case, which as earlier explained, involves an entirely different factual milieu to the instant case.

In fact, Viray, is of the opinion that the crossing of a bearer check is merely done by the drawer to buy time within which he could fund the check.[28] In any event, even if we were to apply the Jai-Alai ruling to the instant case, appellee's identity as the holder of the pay to cash checks had been duly established when he presented the same for collection and by his filing of the instant suit. As mentioned earlier, what sets this case apart from the Jai Alai case is that the appellant did not invoke forgery or fraud, and the only issue involved is his refusal to pay on the bare allegation that appellee was not entitled to the same. At any rate, the Court cannot give cognizance to appellant's version of the events surrounding the order for stop payment of the checks considering that he never impleaded Rose Buenaflor in this action as a third-party defendant. By impleading Rose Buenaflor as a third-party defendant would have at the very least, given some credence to his story behind the stop payment order. Notwithstanding such, the Court is left without recourse but to affirm the RTC considering that even if the checks were really intended for Rose Buenaflor, appellant being a seasoned and astute businessman should have issued a check payable to her order, knowing fully the consequences of issuing a check payable to cash. Appellant cannot be allowed to compromise the stability of commercial transactions by the simple expedient of reneging responsibility in her checking transactions by claiming that the person in possession of a pay to cash check has no right to collect the amount, considering that bearer checks, by nature, are indorsable by mere delivery, and any holder thereof is entitled to collect the same absent any indications of fraud or forgery.

Attorney's fees cannot be awarded in the absence of factual basis.

Anent the award of attorney's fees by the RTC, it must be noted that that the award of attorney's fees remain the exception rather than the general rule and the matter of attorney's fees cannot be touched once and only in the dispositive portion of the decision.[29] The text itself must expressly state the reason why attorney's fees are being awarded.[30] A perusal of the instant Decision reveals that the same is bereft of any findings of fact and law to justify the award of attorney's fees. The text of the decision did not state the reason why attorney's fees are being awarded, and for this reason, the award is hereby deleted.

WHEREFORE, premises considered, the Appeal is hereby DENIED.

Accordingly, 21 October 2011 Decision rendered by the Regional Trial Court, Branch 13, 11th Judicial Region, Davao City is hereby AFFIRMED with MODIFICATION, deleting the award of Attorney's Fees in the amount of P100,000.00.

SO ORDERED.

Camello, J., Ch., and Inting, JJ., concur.

[1] Rollo, pp. 43-45

[2] Id.

[3] See Index of Exhibits, pp. 5-6.

[4] Records, pp. 3.

[5] Records, p. 3

[6] Id. at 3.

[7] Id. at 1-5.

[8] Id. at 27-31.

[9] Id. at 1-2

[10] TSN 14 March 2005, pp. 16-54.

[11] Id. at 42-46.

[12] Id. at 25.

[13] Id. at 30-33.

[14] TSN 22 November 2005, pp. 58-60.

[15] TSN 11 September 2006.

[16] Supra, note 1.

[17] Supra, note 1 at 44.

[18] See Section 9, Negotiable Instruments Law

SEC. 9. When payable to bearer. – The instrument is payable to bearer –

(a) When it is expressed to be so payable; or

- (b) When it is payable to a person named therein or bearer; or
- (c) When it is payable to the order of a fictitious or non-existing person, and such fact is known to the person making it so payable; or
- (d) When the name of the payee does not purport to be the name of any person; or
- (e) Where the only or last indorsement is an indorsement in blank.

See also Checks by Antonio Viray , First Edition , pp. 30-31.

[19] G.R. No. L-2516, September 25, 1950.

[20] 66 SCRA 29

[21] 66 SCRA 34-37.

[22] 66 SCRA 32

[23] 66 SCRA 36-38.

[24] Id.

[25] State Investment House v. Intermediate Appellate Court, G.R. No. 72764, July 13, 1989

[26] Id.

[27] Checks by Antonio Viray, First Edition, p. 136.

[28] Id. at 136-137.

[29] Mirasol v. Dela Cruz, G.R. No. L-32552 July 31, 1978,

[30] Id.

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