

BANCO DE ORO SAVINGS AND MORTGAGE BANK, PETITIONER, VS. EQUITABLE BANKING CORPORATION, PHILIPPINE CLEARING HOUSE CORPORATION, AND REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH XCI...

G.R. No. L-74917. January 20, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.

This is a petition for review on certiorari of a decision of the Regional Trial Court of Quezon City promulgated on March 24, 1986 in Civil Case No. Q-46517 entitled Banco de Oro Savings and Mortgage Bank versus Equitable Banking Corporation and the Philippine Clearing House Corporation after a review of the Decision of the Board of Directors of the Philippine Clearing House Corporation (PCHC) in the case of Equitable Banking Corporation (EBC) vs. Banco de Oro Savings and Mortgage (BCO), ARBICOM Case No. 84-033.

The undisputed facts are as follows:

“It appears that sometime in March, April, May and August 1983, plaintiff through its Visa Card Department, drew six crossed Manager's check (Exhibits ‘A’ to ‘F’, and herein referred to as Checks) having an aggregate amount of Forty-Five Thousand Nine Hundred and Eighty-Two & 23/100 (P45,982.23) Pesos and payable to certain member establishments of Visa Card. Subsequently, the checks were deposited with the defendant to the credit of its depositor, a certain Aida Trencio.

Following normal procedures, and after stamping at the back of the Checks the usual endorsements: ‘All prior and/or lack of endorsement guaranteed’ the defendant sent the checks for clearing through the Philippine Clearing House Corporation (PCHC). Accordingly, plaintiff paid the Checks; its clearing account was debited for the value of the Checks and defendant’s clearing account was credited for the same amount.

Thereafter, plaintiff discovered that the endorsements appearing at the back of the Checks and purporting to be that of the payees were forged and/or unauthorized or otherwise belong to persons other than the payees.

Pursuant to the PCHC Clearing Rules and Regulations, plaintiff presented the Checks directly to the defendant for the purpose of claiming reimbursement from the latter. However, defendant refused to accept such direct presentation and to reimburse the plaintiff for the value of the Checks; hence, this case.

In its Complaint, plaintiff prays for judgment to require the defendant to pay the plaintiff the sum of P45,982.23 with interest at the rate of 12% per annum from the date of the complaint plus attorney’s fees in the amount of P10,000.00 as well as the cost of the suit.

In accordance with Section 38 of the Clearing House Rules and Regulations, the dispute was presented for Arbitration; and Atty. Cesar Querubin was designated as the Arbitrator.

After an exhaustive investigation and hearing the Arbiter rendered a decision in favor of the plaintiff and against the defendant ordering the PCHC to debit the clearing account of the defendant, and to credit the

clearing account of the plaintiff of the amount of P45,982.23 with interest at the rate of 12% per annum from date of the complaint and Attorney's fee in the amount of P5,000.00. No pronouncement as to cost was made.”[1]

In a motion for reconsideration filed by the petitioner, the Board of Directors of the PCHC affirmed the decision of the said Arbiter in this wise:

“”In view of all the foregoing, the decision of the Arbiter is confirmed”; and the Philippine Clearing House Corporation is hereby ordered to debit the clearing account of the defendant and credit the clearing account of plaintiff the amount of Forty Five Thousand Nine Hundred Eighty-Two & 23/100 (P45,982.23) Pesos with interest at the rate of 12% per annum from date of the complaint, and the Attorney’s fee in the amount of Five Thousand (P5,000.00) Pesos.””

Thus, a petition for review was filed with the Regional Trial Court of Quezon City, Branch XCH, wherein in due course a decision was rendered affirming in toto the decision of the PCHC.

Hence this petition.

The petition is focused on the following issues;

1. Did the PCHC have any jurisdiction to give due course to and adjudicate Arbicom Case No. 84-033?
2. Were the subject checks non-negotiable and if not, does it fall under the ambit of the power of the PCHC?
3. Is the Negotiable Instrument Law, Act No. 2031 applicable in deciding controversies of this nature by the PCHC?
4. What law should govern in resolving controversies of this nature?
5. Was the petitioner bank negligent and thus responsible for any undue payment?

Petitioner maintains that the PCHC is not clothed with jurisdiction because the Clearing House Rules and Regulations of the PCHC cover and apply only to checks that are genuinely negotiable. Emphasis is laid on the primary purpose of the PCHC in the Articles of Incorporation, which states:

“To provide, maintain and render an effective, convenient, efficient, economical and relevant exchange and facilitate service limited to check processing and sorting by way of assisting member banks, entities in clearing checks and other clearing items as defined in existing and in future Central Bank of the Philippines circulars, memoranda, circular letters, rules and regulations and policies in pursuance to the provisions of Section 107 of R.A. 265. . .”

and Section 107 of R.A. 265 which provides:

“xxx xxx xxx

The deposit reserves maintained by the banks in the Central Bank, in accordance with the provisions of Section 1000 shall serve as a basis for the clearing of checks, and the settlement of interbank balances . . .”

Petitioner argues that by law and common sense, the term check should be interpreted as one that fits the articles of incorporation of the PCHC, the Central Bank and the Clearing House Rules stating that it is a negotiable instrument citing the definition of a “check” as basically a “bill of exchange” under Section 185 of the NIL and that it should be payable to “order” or to “bearer” under Section 126 of same law. Petitioner alleges that with the cancellation of the printed word “or bearer” from the face of the check; it becomes non-negotiable so the PCHC has no jurisdiction over the case.

The Regional Trial Court took exception to this stand and conclusion put forth by the herein petitioner as it held:

“Petitioner’s theory cannot be maintained. As will be noted, the PCHC makes no distinction as to the character or nature of the checks subject of its jurisdiction. The pertinent provisions quoted in petitioners memorandum simply refer to check(s). Where the law does not distinguish, we shall not distinguish.

In the case of Reyes vs. Chuanico (CA-G.R. No. 208.13-R, Feb. 5, 1962) the Appellate Court categorically stated that there are four kinds of checks in this jurisdiction; the regular check; the cashier’s check; the traveler’s check; and the crossed check. The Court, further elucidated, that while the Negotiable Instruments Law does not contain any provision on crossed checks, it is common practice in commercial and banking operations to issue checks of this character, obviously in accordance with Article 541 of the Code of Commerce. Attention is likewise called to Section 185 of the Negotiable Instruments Law:

‘Sec. 185. Check defined. — A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.’

and the provisions of Section 61 (supra) that the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. Consequently, it appears that the use of the-term ‘check’ in the Articles of Incorporation of PCHC is to be perceived as not limited to negotiable checks only, but to checks as is generally known in use in commercial or business transactions.

Anent Petitioner’s liability on said instruments, this court is in full accord with the ruling of the PCHC Board of Directors that:

‘In presenting the Checks for clearing and for payment, the defendant made an express guarantee on the validity of ‘all prior endorsements.’ Thus, stamped, at the back of the checks are the defendant’s clear warranty; ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENTS GUARANTEED. Without such warranty, plaintiff would not have paid on the checks.

No amount of legal jargon can reverse the clear meaning of defendant's warranty. As the warranty has proven to be false and inaccurate, the defendant is liable for any damage arising out of the falsity of its representation.

The principle of estoppel, effectively prevents the defendant from denying liability for any damage sustained by the plaintiff which, relying upon an action or declaration of the defendant, paid on the Checks. The same principle of estoppel effectively prevents the defendant from denying the existence of the Checks.’ (Pp. 10-11 Decision; pp. 43-44, Rollo)”

We agree.

As provided in the aforecited articles of incorporation of PCHC its operation extend to “clearing checks and other clearing items.” No doubt transactions on non-negotiable checks are within the ambit of its jurisdiction.

In a previous case, this Court had occasion to rule: “Ubi lex non distinguit nec nos distinguere debemos.[2] It was enunciated in *Loc Cham v. Ocampo*, 11 Phil. 636 (1946):

“The rule, founded on logic is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance. In other words, there should be no distinction in the application of a statute where none is indicated.”

There should be no distinction in the application of a statute where none is indicated for courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think it ought to be but as they find it and without regard to consequences.[3]

The term, check as used in the said Articles of Incorporation of PCHC can only connote checks in general use in

commercial, and business activities. It cannot be conceived to be limited to negotiable checks only.

Checks are used between banks and bankers and their customers, and are designed to facilitate banking operations. It is of their essence to be payable on demand, because the contract between the banker and the customer is that the money is needed on demand.[4]

The participation of the two banks, petitioner and private respondent, in the clearing operations of PCHC is a manifestation of their submission to its jurisdiction. Sec. 3 and 36.6 of the PCHC-CHRR clearing rules and regulations provide:

“SEC. 3. AGREEMENT TO THESE RULES. — It is the general agreement and understanding, that any participant in the Philippine Clearing House Corporation, MICR clearing operations by the mere fact of their participation, thereby manifests its agreement to these Rules and Regulations and its subsequent amendments.”

Sec. 36.6. (ARBITRATION) — The fact that a bank participates in the clearing operations of the PCHC shall be deemed its written and subscribed consent to the binding effect of this arbitration agreement as if it had done so in accordance with Section 4 of (the) Republic Act No. 876, otherwise known as the Arbitration Law.”

Further Section 2 of the Arbitration Law mandates:

“Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission and which may be the subject of an action, or the parties of any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid and irrevocable, save upon grounds as exist at law for the revocation of any contract.

"Such submission or contract may include question arising out of valuations, appraisals or other controversies which may be collateral, incidental, precedent or subsequent to any issue between the parties x x x"

Sec. 21 of the same rules, says:

“Items which have been the subject of material alteration or items bearing a forged endorsement when such endorsement is necessary for negotiation shall be returned by direct presentation or demand to the Presenting Bank and not through the regular clearing house facilities within the period prescribed by law for the filing of a legal action by the returning bank/branch, institution or entity sending the same.” (Italics supplied)

Viewing these provisions the conclusion is clear that the PCHC Rules and Regulations should not be interpreted to be applicable only to checks which are negotiable instruments but also to non-negotiable instruments, and that the PCHC has jurisdiction over this case even as the checks subject of this litigation are admittedly non-negotiable.

Moreover, petitioner is estopped from raising the defense of non-negotiability of the checks in question. It stamped its guarantee on the back of the checks and subsequently presented these checks for clearing and it was on the basis of these endorsements by the petitioner that the proceeds were credited in its clearing account.

The petitioner by its own acts and representation can not now deny liability because it assumed the liabilities of an endorser by stamping its guarantee at the back of the checks.

The petitioner having stamped its guarantee of “all prior endorsements and/or lack of endorsements” (Exh. A-2 to F- 2) is now estopped from claiming that the checks under consideration are not negotiable instruments. The checks were accepted for deposit by the petitioner stamping thereon its guarantee, in order that it can clear the said checks with the respondent bank. By such deliberate and positive attitude of the petitioner it has for all legal intents and purposes treated the said checks as negotiable instruments and accordingly assumed the warranty of

the endorser when it stamped its guarantee of prior endorsements at the back of the checks. It led the said respondent to believe that it was acting as endorser of the checks and on the strength of this guarantee said respondent cleared the checks in question and credited the account of the petitioner. Petitioner is now barred from taking an opposite posture by claiming that the disputed checks are not negotiable instrument.

This Court enunciated in *Philippine National Bank vs. Court of Appeals*,^[5] a point relevant to the issue when it stated – “the doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon.”

A commercial bank cannot escape the liability of an endorser of a check and which may turn out to be a forged endorsement. Whenever any bank treats the signature at the back of the checks as endorsements and thus logically guarantees the same as such there can be no doubt said bank has considered the checks as negotiable.

Apropos the matter of forgery in endorsements, this Court has succinctly emphasized that 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. This is laid down in the case of *PNB vs. National City Bank*.^[6] In another case, this court held that if the drawee-bank discovers that the signature of the payee was forged after it has paid the amount of the check to the holder thereof, it can recover the amount paid from the collecting bank.^[7]

A truism stated by this Court is that — “The doctrine of estoppel precludes a party from repudiating an obligation voluntarily assumed after having accepted benefits therefrom. To countenance such repudiation would be contrary to equity and put premium on fraud or misrepresentation.”^[8]

We made clear in Our decision in *Philippine National Bank vs. The National City Bank of NY & Motor Service Co.* that:

“Where a check is accepted or certified by the bank on which it is drawn, the bank is estopped to deny the genuineness of the drawer's signature and his capacity to issue the instrument.

If a drawee bank pays a forged check which was previously accepted or certified by the said bank, it can not recover from a holder who did not participate in the forgery and did not have actual notice thereof.

The payment of a check does not include or imply its acceptance in the sense that this word is used in Section 62 of the Negotiable Instruments Act.”^[9]

The point that comes uppermost is whether the drawee bank was negligent in failing to discover the alteration or the forgery.

Very akin to the case at bar is one which involves a suit filed by the drawer of checks against the collecting bank and this came about in *Farmers State Bank*^[10] where it was-held:

“A cause of action against the (collecting bank) in favor of the appellee (the drawer) accrued as a result of the bank breaching its implied warranty of the genuineness of the indorsements of the name of the payee by bringing about the presentation of the checks (to the drawee bank) and collecting the amounts thereof, the right to enforce that cause of action was not destroyed by the circumstance that another cause of action for the recovery of the amounts paid on the checks would have accrued in favor of the appellee against another or to others than the bank if when the checks were paid they have been indorsed by the payee.” (*United States vs. National Exchange Bank*, 214 US, 302, 29 S CT-665, 53 L.Ed 1006, 16 Am. Cas. 1184; *Onondaga County Savings Bank vs. United States* (E.C. A.) 64 F 703).”

Section 66 of the Negotiable Instruments ordains that:

“Every indorser who indorses without qualification, warrants to all subsequent holders in due course” (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has good title to it; (c) that all prior parties have capacity to contract; and (d) that the instrument is at the time of his indorsement valid and subsisting.[11]

It has been enunciated in an American case particularly in *American Exchange National Bank vs. Yorkville Bank*[12] that: “the drawer owes no duty of diligence to the collecting bank (one who had accepted an altered check and had paid over the proceeds to the depositor) except of seasonably discovering the alteration by a comparison of its returned checks and check stubs or other equivalent record, and to inform the drawee thereof.”

In this case it was further held that:

“The real and underlying reasons why negligence of the drawer constitutes no defense to the collecting bank are that there is no privity between the drawer and the collecting bank (*Corn Exchange Bank vs. Nassau Bank*, 204 N.Y.S. 80) and the drawer owes to that bank no duty of vigilance (*New York Produce Exchange Bank vs. Twelfth Ward Bank*, 204 N.Y.S. 54) and no act of the collecting bank is induced by any act or representation or admission of the drawer (*Seaboard National Bank vs. Bank of America* (supra) and it follows that negligence on the part of the drawer cannot create any liability from it to the collecting bank, and the drawer thus is neither a necessary nor a proper party to an action by the drawee bank against such bank. It is quite true that depositors in banks are under the obligation of examining their passbooks and returned vouchers as a protection against the payment by the depository bank against forged checks, and negligence in the performance of that obligation may relieve that bank of liability for the repayment of amounts paid out on forged checks, which but for such negligence it would be bound to repay. A leading case on that subject is *Morgan vs. United States Mortgage and Trust Co.* 208 N.Y. 218, 101 N.E. 871 Amn. Cas. 1914D, 462, L.R.A. 1915D, 74.”

Thus We hold that while the drawer generally owes no duty of diligence to the collecting bank, 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. The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct.

And although the subject checks are non-negotiable the responsibility of petitioner as indorser thereof remains.

To countenance a repudiation by the petitioner of its obligation would be contrary to equity and would deal a negative blow to the whole banking system of this country.

The court reproduces with approval the following disquisition of the PCHC in its decision —

"II.

Payments To Persons Other
Than The Payees Are Not Valid
And Give Rise To An Obligation
To Return Amounts Received.

Nothing is more clear than that neither the defendant's depositor nor the defendant is entitled to receive payment for the Checks. As the checks are not payable to defendant's depositor, payments to persons other than payees named therein, their successor-in- interest or any person authorized to receive payment are not valid. Article 1240, New Civil Code of the Philippines unequivocally provides that:

‘Art. 1240. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor-in-interest, or any person authorized to receive it.’

Considering that neither the defendant's depositor nor the defendant is entitled to receive payments for the Checks, payments to any of them give rise to an obligation to return the amounts received. Section 2154 of the New Civil Code mandates that: —

‘Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

It is contended that plaintiff should be held responsible for issuing the Checks notwithstanding that the underlying transactions were fictitious. This contention has no basis in our jurisprudence.

The nullity of the underlying transactions does not diminish, but in fact strengthens, plaintiffs right to recover from the defendant. Such nullity clearly emphasizes the obligation of the payees to return the proceeds of the Checks. If a failure of consideration is sufficient to warrant a finding that a payee is not entitled to payment or must return payment already made, with more reason the defendant, who is neither the payee nor the person authorized by the payee, should be compelled to surrender the proceeds of the Checks received by it. Defendant does not have any title to the Checks; neither can it claim any derivative title to them.

"III.

Having Violated Its Warranty
On Validity Of All Endorsements,
Collecting Bank Cannot Deny
Liability To Those Who Relied
On Its Warranty.

In presenting the Checks for clearing and for payment, the defendant made an express guarantee on the validity of all prior endorsements.’ Thus, stamped at the bank of the checks are the defendant’s clear warranty: ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENTS GUARANTEED. Without such warranty, plaintiff would not have paid on the checks.

No amount of legal jargon can reverse the clear meaning of defendant's warranty. As the warranty has proven to be false and inaccurate, the defendant is liable for any damage arising out of the falsity of its representation.

The principle of estoppel effectively prevents the defendant from denying liability for any damages sustained by the plaintiff which, relying upon an action or declaration of the defendant, paid on the Checks..The same principle of estoppel effectively prevents the defendant from denying the existence of the Checks.

Whether the Checks have been issued for valuable considerations or not is of no serious moment to this case. These Checks have been made the subject of contracts of endorsement wherein the defendant made expressed warranties to induce payment by the drawer of the Checks; and the defendant cannot now refuse liability for breach of warranty as a consequence of such forged endorsements. The defendant has falsely warranted in favor of plaintiff the validity of all endorsements and the genuineness of the checks in all respects what they purport to be.

The damage that will result if judgment is not rendered for the plaintiff is irreparable. The collecting bank has privity with the depositor who is the principal culprit in this case. The defendant knows the depositor; her address and her history. Depositor is defendant's client. It has taken a risk on its depositor when it allowed her to collect on the crossed-checks.

Having accepted the crossed checks from persons other than the payees, the defendant is guilty of negligence; the risk of wrongful payment has to be assumed by the defendant.

On the matter of the award of the interest and attorney's fees, the Board of Directors finds no reason to reverse the decision of the Arbiter. The defendant's failure to reimburse the plaintiff has constrained the plaintiff to hire the services of counsel in order to protect its interest notwithstanding that plaintiff's claim is plainly valid, just and demandable. In addition, defendant's clear obligation is to reimburse plaintiff upon direct presentation of the checks; and it is undenied that up to this time the defendant has failed to make such reimbursement."

WHEREFORE, the petition is DISMISSED for lack of merit without pronouncement as to costs. The decision of the respondent court of 24 March 1986 and its order of 3 June 1986 are hereby declared to be immediately executory.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

[1] Decision, pp. 2-3. pp. 35-36, Rollo. These are the findings of facts in the said decision of the Philippine Clearing House Corporation (PCHC), board of directors in Arbitration Case No. 84-033, which are final and conclusive upon all parties in said arbitration dispute appealable only on question of law. (Section 13 PCHC-ARR, rules of procedure).

[2] Phil. Veiriah Assurance Co. Inc. vs. The Honorable Intermediate Appellate Court, Sycwin Coating and Wires Inc. and Aminador Cacpal. Chief Deputy Sheriff of Manila G.R. 72005.

[3] Loc Cham vs. Ocampo, supra.

[4] Barker v. Anderson, 21 Wend. (N.Y.), 2 Sto. 502, Fed. Case No. 1,985; Merchants National Bank v. Bank, 10 Wall (U.S.) 647, 19 L. Ed. 1008; Wood River Bank v. Bank, 36 Neb. 744 N.W. 239.

[5] 94 SCRA 357.

[6] 63 Phil. 711.

[7] Republic Bank vs. Ebrada, 65 SCRA 680.

[8] 10 Saura Import & Export Co., 24 SCRA 974.

[9] Supra.

[10] Markel vs. United States, 62 F ed. 178.

[11] Ang Tiong vs. Ting, L-16767, Feb. 28, 1968, 22 SCRA 713.

[12] 204 N.Y.S. 621 101 N.E. 871 Amn. Cas. 1914D, 462, L.R.A. 191D, 74.

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