

JAI-ALAI CORPORATION OF THE PHILIPPINES, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

G.R. No. L-29432. August 06, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

This is a petition by the Jai-Alai Corporation of the Philippines (hereinafter referred to as the petitioner) for review of the decision of the Court of Appeals in C.A.-G.R. 34042-R dated June 25, 1968 in favor of the Bank of the Philippine Islands (hereinafter referred to as the respondent).

From April 2, 1959 to May 18, 1959, ten checks with a total face value of P8,030.58 were deposited by the petitioner in its current account with the respondent bank. The particulars of these checks are as follows:

1. Drawn by the Delta Engineering Service upon the Pacific Banking Corporation and payable to the Inter-Island Gas Service, Inc. or order:

Date Deposited Check Number

Amount

Exhibit Number

4/2/59 B-352680

P500.00

18

4/20/59 A-156907

372.32

19

4/24/59 A-156924

397.82

20

5/4/59 B-364764

250.00

23

5/6/59 B-364775

250.00

24

2. Drawn by the Enrique Cortiz & Co. upon the Pacific Banking Corporation and payable to the Inter-Island Gas Service, Inc. or bearer:

4/13/59 B-335063

P2108.70

21

4/27/59 B-335072

2210.94

22

3. Drawn by the Luzon Tinsmith & Company upon the China Banking Corporation and payable to the Inter-Island Gas Service, Inc. or bearer:

5/18/59 VN430188

P940.80

25

4. Drawn by the Roxas Manufacturing, Inc. upon the Philippine National Bank and payable to the Inter-Island Gas Service, Inc. or order:

5/14/59 1860160

P500.00

26

5/18/59 1860660

500.00

27

All the foregoing checks, which were acquired by the petitioner from one Antonio J. Ramirez, a sales agent of the Inter-Island Gas and a regular bettor at jai-alai games, were, upon deposit, temporarily credited to the petitioner's account in accordance with the clause printed on the deposit slips issued by the respondent and which reads:

"Any credit allowed the depositor on the books of the Bank for checks or drafts hereby received for deposit, is provisional only, until such time as the proceeds thereof, in current funds or solvent credits, shall have been actually received by the Bank and the latter reserves to itself the right to charge back the item to the account of its depositor, at any time before that event, regardless of whether or not the item itself can be returned."

About the latter part of July 1959, after Ramirez had resigned from the Inter-Island Gas and after the checks had been submitted to inter-bank clearing, the Inter-Island Gas discovered that all the indorsements made on the checks purportedly by its cashiers, Santiago Amplayo and Vicenta Mucor (who were merely authorized to deposit checks issued payable to the said company) as well as the rubber stamp impression thereon reading "Inter-Island Gas Service, Inc.," were forgeries. In due time, the Inter-Island Gas advised the petitioner, the respondent, the drawers and the drawee-banks of the said checks about the forgeries, and filed a criminal complaint against Ramirez with the Office of the City Fiscal of Manila.[1]

The respondent's cashier, Ramon Sarthou, upon receipt of the letter of Inter-Island Gas dated August 31, 1959, called up the petitioner's cashier, Manuel Garcia, and advised the latter that in view of the circumstances he would debit the value of the checks against the petitioner's account as soon as they were returned by the respective drawee-banks.

Meanwhile, the drawers of the checks, having been notified of the forgeries, demanded reimbursement to their respective accounts from the drawee-banks, which in turn demanded from the respondent, as collecting bank, the return of the amounts they had paid on account thereof. When the drawee-banks returned the checks to the respondent, the latter paid their value which the former in turn paid to the Inter-Island Gas. The respondent, for its part, debited the petitioner's current account and forwarded to the latter the checks containing the forged indorsements, which the petitioner, however, refused to accept.

On October 8, 1959 the petitioner drew against its current account with the respondent a check for P135,000 payable to the order of the Marino Olondriz y Cia. in payment of certain shares of stock. The check was, however, dishonored by the respondent as its records showed that as of October 8, 1959 the current account of the petitioner, after netting out the value of the checks (P8,030.58) with the forged indorsements, had a balance of only P128,257.65.

The petitioner then filed a complaint against the respondent with the Court of First Instance of Manila, which was however dismissed by the trial court after due trial, and as well by the Court of Appeals, on appeal.

Hence, the present recourse.

The issues posed by the petitioner in the instant petition may be briefly stated as follows:

- (a) Whether the respondent had the right to debit the petitioner's current account in the amount corresponding to the total value of the checks in question after more than three months had elapsed from the date their value was credited to the petitioner's account;
- (b) Whether the respondent is estopped from claiming that the amount of P8,030.58, representing the total value of the checks with the forged indorsements, had not been properly credited to the petitioner's account, since the same had already been paid by the drawee-banks and received in due course by the respondent; and
- (c) On the assumption that the respondent had improperly debited the petitioner's current account, whether the latter is entitled to damages.

These three issues interlock and will be resolved jointly.

In our opinion, the respondent acted within legal bounds when it debited the petitioner's account. When the petitioner deposited the checks with the respondent, the nature of the relationship created at that stage was one of agency, that is, the bank was to collect from the drawees of the checks the corresponding proceeds. It is true that the respondent had already collected the proceeds of the checks when it debited the petitioner's account, so that following the rule in *Gullas vs. Philippine National Bank*[2] it might be argued that the relationship between the parties had become that of creditor and debtor as to preclude the respondent from using the petitioner's funds to make payments not authorized by the latter. It is our view nonetheless that no creditor-debtor relationship was created between the parties.

Section 23 of the Negotiable Instruments Law (Act 2031) states that[3] —

"When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."

Since under the foregoing provision, a forged signature in a negotiable instrument is wholly inoperative and no right to discharge it or enforce its payment can be acquired through or under the forged signature except against a party who cannot invoke the forgery, it stands to reason, upon the facts of record, that the respondent, as a collecting bank which indorsed the checks to the drawee-banks for clearing, should be liable to the latter for reimbursement, for, as found by the court a quo and by the appellate court, the indorsements on the checks had been forged prior to their delivery to the petitioner. In legal contemplation, therefore, the payments made by the drawee-banks to the respondent on account of the said checks were ineffective; and, such being the case, the relationship of creditor and debtor between the petitioner and the respondent had not been validly effected, the checks not having been properly and legitimately converted into cash.[4]

In *Great Eastern Life Ins. Co. vs. Hongkong & Shanghai Bank*,[5] the Court ruled that it is the obligation of the collecting bank to reimburse the drawee-bank the value of the checks subsequently found to contain the forged indorsement of the payee. The reason is that the bank with which the check was deposited has no right to pay the sum stated therein to the forger "or anyone else upon a forged signature." "It was its duty to know," said the Court, "that [the payee's] endorsement was genuine before cashing the check." The petitioner must in turn shoulder the loss of the amounts which the respondent, as its collecting agent, had to reimburse to the drawee-banks.

We do not consider material for the purposes of the case at bar that more than three months had elapsed since the

proceeds of the checks in question were collected by the respondent. The record shows that the respondent had acted promptly after being informed that the indorsements on the checks were forged. Moreover, having received the checks merely for collection and deposit, the respondent cannot be expected to know or ascertain the genuineness of all prior indorsements on the said checks. Indeed, having itself indorsed them to the respondent in accordance with the rules and practices of commercial banks, of which the Court takes due cognizance, the petitioner is deemed to have given the warranty prescribed in Section 66 of the Negotiable Instruments Law that every single one of those checks "is genuine and in all respects what it purports to be."

The petitioner was, moreover, grossly recreant in accepting the checks in question from Ramirez. It could not have escaped the attention of the petitioner that the payee of all the checks was a corporation — the Inter-Island Gas Service, Inc. Yet, the petitioner cashed these checks to a mere individual who was admittedly a habitue at its jai-alai games without making any inquiry as to his authority to exchange checks belonging to the payee-corporation. In *Insular Drug Co. vs. National*[6] the Court made the pronouncement that

"... The right of an agent to indorse commercial paper is a very responsible power and will not be lightly inferred. A salesman with authority to collect money belonging to his principal does not have the implied authority to indorse checks received in payment. Any person taking checks made payable to a corporation, which can act only by agents, does so at his peril, and must abide by the consequences if the agent who indorses the same is without authority." (italics supplied)

It must be noted further 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 the 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 petitioner's 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 cashiers' indorsements.

At all events, under Section 67 of the Negotiable Instruments Law, "Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liability of an indorser," and under Section 66 of the same statute a general indorser warrants that the instrument "is genuine and in all respects what it purports to be." Considering that the petitioner indorsed the said checks when it deposited them with the respondent, the petitioner as an indorser guaranteed the genuineness of all prior indorsements thereon. The respondent which relied upon the petitioner's warranty should not be held liable for the resulting loss. This conclusion applies similarly to exh. 22 which is an uncrossed bearer instrument, for under Section 65 of the Negotiable Instruments Law, "Every person negotiating an instrument by delivery...warrants (a) That the instrument is genuine and in all respects what it purports to be." Under that same section this warranty "extends in favor of no holder other than the immediate transferee," which, in the case at bar, would be the respondent.

The provision in the deposit slip issued by the respondent which stipulates that it "reserves to itself the right to charge back the item to the account of its depositor," at any time before "current funds or solvent credits shall have been actually received by the Bank," would not materially affect the conclusion we have reached. That stipulation prescribes that there must be an actual receipt by the bank of current funds or solvent credits; but as we have earlier indicated the transfer by the drawee-banks of funds to the respondent on account of the checks in question was ineffectual because made under the mistaken and valid assumption that the indorsements of the payee thereon were genuine. Under article 2154 of the New Civil Code "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." There was,

therefore, in contemplation of law, no valid payment of money made by the drawee-banks to the respondent on account of the questioned checks.

ACCORDINGLY, the judgment of the Court of Appeals is affirmed, at petitioner's cost.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., is on leave.

[1] The City Fiscal dropped the charges on the ground that the Inter-Island Gas which was later reimbursed by the drawee-banks, was no longer qualified to be regarded as an offended party which could properly file a complaint against Ramirez because it had not suffered any damage at all.

[2] 62 Phil. 519 (1935).

[3] A bank check is a negotiable instrument and is governed by the Negotiable Instruments Law (Ang Tiong vs. Ting, 22 SCRA 713).

[4] The collecting bank may certainly set up as defense the so-called "24-hour clearing house rule" of the Central Bank. This rule is not, however, invoked here. See Hongkong & Shanghai Banking Corp. vs. People's Bank & Trust Co., 35 SCRA 141.

[5] 43 Phil. 678 (1922).

[6] 58 Phil. 685 (1933).

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