

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. THE HON. COURT OF APPEALS (SEVENTH JUDICIAL), HON. JUDGE REGIONAL TRIAL COURT OF MAKATI, BRANCH 59, CHINA BANKING CORP., AND PHIL...

G.R. No. 102383. November 26, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The present petition asks us to set aside the decision and resolution of the Court of Appeals in CA--G.R. SP No. 24306 which affirmed the earlier decision of the Regional Trial Court of Makati, Branch 59 in Civil Case No. 14911 entitled Bank of the Philippine Islands v. China Banking Corporation and the Philippine Clearing House Corporation, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered dismissing petitioner-appellant's (BPI's) appeal and affirming the appealed order of August 26, 1986 (Annex B of BPI's Petition) with modification as follows:

1. Ordering the petitioner-appellant (BPI) to pay respondent-appellee (CBC):

(a) the amount of One Million Two Hundred Six Thousand, Six Hundred Seven Pesos and Fifty Eight Centavos (P1,206,607.58) with interest at the legal rate of twelve percent (12%) per annum starting August 26, 1986, the date when the order of the PCHC Board of Directors was issued until the full amount is finally paid; and

(b) the amount of P150,000.00 representing attorney's fees;

2. BPI shall also bear 75% or P5,437.50 and CBC, 25% or P1,812.50 of the cost of the arbitration proceedings amounting to P7,250.00;

3. The ownership of respondent-appellee (CBC) of the other sum of One Million Two Hundred Six Thousand Six Hundred Seven Pesos and Fifty Eight Centavos (P1,206,607.58) previously credited to its clearing account on August 12, 1983 per PCHC Stockholders' Resolution No. 6083 dated April 6, 1983, is hereby confirmed.

4. The PCHC is hereby directed to immediately debit the clearing account of BPI the sum of One Million Two Hundred Six Thousand Six Hundred Seven Pesos and Fifty Eight Centavos (P1,206,607.58) together with its interest as decreed in paragraph 1(a) herein above stated and credit the same to the clearing account of CBC;

5. The PCHC's counterclaim and cross-claim are dismissed for lack of merit; and

6. With costs against, the petitioner--appellant." (Rollo, pp. 161-162)

The controversy in this case arose from the following facts as found by the Arbitration Committee of respondent Philippine Clearing House Corporation in Arbicom Case No. 83-029 entitled Bank of the Philippine Islands vs. China Banking Corporation:

"The story underlying this case began in the afternoon of October 9, 1981 with a phone call to BPI's Money Market Department by a woman who identified herself as Eligia G. Fernando who had a money market placement as evidenced by a promissory note with a maturity date of November 11, 1981 and a maturity value of P2,462,243.19. The caller wanted to preterminate the placement, but Reginaldo Eustaquio, Dealer Trainee in BPI's Money Market Department, who received the call and who happened to be alone in the trading room at the time, told her 'trading time' was over for the day, which was a Friday, and suggested that she call again the following week. The promissory note that the caller wanted to preterminate was a roll-over of in earlier 50-day money market placement that had matured on September 24, 1981.

Later that afternoon, Eustaquio conveyed the request for pretermination to the officer who before had handled Eligia G. Fernando's account, Penelope Bulan, but Eustaquio was left to attend to the pretermination process.

The next Monday, October 12, 1981, in the morning, the caller of the previous Friday followed up with Eustaquio, merely by phone again, on the pretermination of the placement. Although not familiar with the voice of the real Eligia G. Fernando, Eustaquio 'made certain' that the caller was the real Eligia G. Fernando by 'verifying' that the details the caller gave about the placement tallied with the details in 'the ledger/folder' of the account. Eustaquio knew the real Eligia G. Fernando to be the Treasurer of Philippine American Life Insurance Company (Philamlife) since he was handling Philamlife's corporate money market account. But neither Eustaquio nor Bulan who originally handled Fernando's account, nor anybody else at BPI, bothered to call up Fernando at her Philamlife office to verify the request for pretermination.

Informed that the placement would yield less than the maturity value because of its pretermination, the caller insisted on the pretermination just the same and asked that two checks be issued for the proceeds, one for P1,800,000.00 and the second for the balance, and that the checks be delivered to her office at Philamlife.

Eustaquio, thus, proceeded to prepare the 'purchase order slip' for the requested pretermination as required by office procedure, and from his desk, the papers, following the processing route, passed through the position analyst, securities clerk, verifier clerk and documentation clerk, before the two cashier's checks, nos. 021759 and 021760 for P1,800,000.00 and P613,215.16, respectively, both payable to Eligia G. Fernando, covering the preterminated placement, were prepared. The two cashier's checks, together with the papers consisting of the purchase order slip indicating that the money market placement was to be preterminated and the promissory note (no. 35623) to be preterminated, were sent to Gerlanda E. de Castro and Celestino Sampiton, Jr., Manager and Administrative Assistant, respectively, in BPI's Treasury Operations Department, both authorized signatories for BPI, who signed the two checks that very morning. Having been signed, the checks now went to the dispatcher for delivery.

'Later in the same morning, however, the same caller changed the delivery instructions; instead of the checks being delivered to her office at Philamlife, she would herself pick up the checks or send her niece, Rosemarie Fernando, to pick them up. Eustaquio then told her that if it were her niece who was going to get the checks, her niece would have to bring a written authorization from her to pick up the checks. This telephone conversation ended with the caller's statement that 'definitely' it would be her niece, Rosemarie Fernando, who would pick up the checks. Thus, Eustaquio had to hurriedly go to the dispatcher, Bernardo Laderas, to tell him of the new delivery instructions for the checks; in fact, he changed the delivery instruction on the purchase order slip, writing thereon 'Rosemarie Fernando release only with authority to pick up.'

It was, in fact, Rosemarie Fernando who got the two checks from the dispatcher, as shown by the delivery receipt. Actually, as it turned out, the same impersonated both Eligia G. Fernando and Rosemarie Fernando. Although the checks represented the termination proceeds of Eligia G. Fernando's placement, not just a roll-over of the placement, the dispatcher failed to get or to require the surrender of the promissory note evidencing the placement. There is also no showing that Eligia G. Fernando's purported signature on the letter requesting the pretermination and the letter authorizing Rosemarie Fernando to pick up the two checks, both of which letters were presumably handed to the dispatcher by Rosemarie Fernando, was compared or verified

with Eligia G. Fernando's signature in BPI's file. Such purported signature has been established to be forged although it has a 'close similarity' to the real signature of Eligia G. Fernando (TSN of January 15, 1985, pp. 24 and 26).

The story's scene now shifted when, in the afternoon of October 13, 1981, a woman who represented herself to be Eligia G. Fernando applied at CBC's Head Office for the opening of a current account.

She was accompanied and introduced to Emily Sylianco Cuaso, Cash Supervisor, by Antonio Concepcion whom Cuaso knew to have opened, earlier that year, an account upon the introduction of Valentin Co, a long-standing 'valued client' of CBC. What Cuaso indicated in the application form, however, was that the new client was introduced by Valentin Co, and with her initials on the form signifying her approval, she referred the application to the New Accounts Section for processing. As finally processed, the application form shows the signature of 'Eligia G. Fernando', 'her' date of birth, sex, civil status, nationality, occupation ('business woman'), tax account number, and initial deposit of P10,000.00. The final approval of the new current account is indicated on the application form by the initials of Regina G. Dy, Cashier, who did not interview the new client but affixed her initials on the application form after reviewing it. The new current account was given the number: 26310-3.

The following day, October 14, 1981, the woman holding herself out as Eligia G. Fernando deposited the two checks in controversy with Current Account No. 126310-3. Her endorsement on the two checks was found to conform with the depositor's specimen signature. CBC's guaranty of prior endorsements and/or lack of endorsement was then stamped on the two checks, which CBC forthwith sent to clearing and which BPI cleared on the same day.

Two days after, withdrawals began on Current Account No. 26310-3: On October 16, 1981, by means of Check No. 240005 dated the same day for P1,000,000.00, payable to 'cash', which the woman holding herself out as Eligia G. Fernando encashed over the counter, and Check No. 240003 dated October 15, 1981 for P48,500.00, payable to 'cash' which was received through clearing from PNB Pasay Branch; on October 19, 1981, by means of Check No. 240006 dated the same day for P1,000,000.00, payable to 'cash,' which the woman identifying, herself as Eligia G. Fernando encashed over the counter; on October 22, 1981, by means of Check No. 240007 dated the same day for P370,000.00, payable to 'cash' which the woman herself also encashed over the counter; and on November 4, 1981, by means of Check No. 240001 dated November 3, 1981 for P4,100.00, payable to 'cash,' which was received through clearing from Far East Bank.

All these withdrawals were allowed on the basis of the verification of the drawer's signature with the specimen signature on file and the sufficiency of the funds in the account. However, the balance shown in the computerized teller terminal when a withdrawal is serviced at the counter, unlike the ledger or usual statement prepared at month-end, does not show the account's historical data such as the account's opening date, the amounts and dates of deposits and withdrawals. The last withdrawal on November 4, 1981 left Current Account No. 26310-3 with a balance of only P571.61.

The day of reckoning came on November 11, 1981, the maturity date of Eligia G. Fernando's money market placement with BPI, when the real Eligia G. Fernando went to BPI for the roll-over of her placement. She disclaimed having preterminated her placement on October 12, 1981. She executed an affidavit stating that while she was the payee of the two checks in controversy, she never received nor endorsed them and that her purported signature on the back of the checks was not hers but forged. With her surrender of the original of the promissory note (no. 35623 with maturity value of P2,462,243.19) evidencing the placement which matured that day, BPI issued her a new promissory note (no. 40314 with maturity date of December 23, 1981 and maturity value of P2,500,266.77) to evidence a roll-over of the placement.

On November 12, 1981, supported by Eligia G. Fernando's affidavit, BPI returned the two checks in controversy to CBC for the reason 'Payee's endorsement forged'. A ping-pong started when CBC, in turn, returned the checks for reason 'Beyond Clearing Time', and the stoppage of this ping-pong, as we mentioned at

the outset, prompted the filing of this case.

Investigation of the fraud by the Presidential Security Command led to the filing of criminal action for 'Estafa Thru Falsification of Commercial Documents' against four employees of BPI, namely Quirino Victorio, Virgilio Gayon, Bernardo Laderas and Jorge Atayan, and the woman who impersonated Eligia G. Fernando, Susan Lopez San Juan. Victorio and Gayon were both bookkeepers in BPI's Money Market Operations Department, Laderas was a dispatcher in the same department. x x x" (Rollo, pp. 74-79)

The Arbitration Committee ruled in favor of petitioner BPI. The dispositive portion of the decision reads:

"WHEREFORE, we adjudge in favor of the Bank of the Philippine Islands and hereby order China Banking Corporation to pay the former the amount of P1,206,607.58 with interest thereon at 12% per annum from August 12, 1983, or the date when PCHC, pursuant to its procedure for compulsory arbitration of the ping-pong checks under Stockholders' Resolution No. 6-83 was implemented, up to the date of actual payment.

Costs of suit in the total amount of P7,250.00 are to be assessed the litigant banks in the following proportion:

a) Plaintiff BPI 25% - P1,812.50

b) Defendant China 75% - P5,437.50

Total Assessment - P7,250.00

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conformably with PCHC Resolution Nos. 46-83 dated October 25, 1983 and 4-85 dated February 25, 1985.

The PCHC is hereby directed to effect the corresponding entries to the litigant banks' clearing accounts in accordance with the foregoing decision." (Rollo, pp. 97-98)

However, upon motion for reconsideration filed by respondent CBC, the Board of Directors of the PCHC reversed the Arbitration Committee's decision in its Order, the dispositive portion of which reads:

"WHEREFORE, the Board hereby reconsiders the Decision of the Arbitration Committee dated March 24, 1986 in Arbicom Case No. 183- 029 and in lieu thereof, one is rendered modifying the decision so that the Complaint of BPI is dismissed, and on the Counterclaim of CBC, BPI is sentenced to pay CBC the sum of P1,206,607.58. In view of the facts, no interest nor attorney's fees are awarded. BPI shall also bear 75% or P5,437.50 and CBC, 25% or P1,812.50 of the cost of the Arbitration proceedings amounting to P7,250.00.

The PCHC is hereby directed to debit the clearing account of the BPI the sum of P1,206,607.58 and credit the same to that of CBC. The cost of Arbitration proceedings are to be debited from the accounts of the parties in the proportion above stated." (Rollo, pp. 112-113)

BPI then filed a petition for review of the abovestated order with the Regional Trial Court of Makati. The trial court dismissed the petition but modified the order as can be gleaned from the dispositive portion of its decision quoted earlier.

Not satisfied with the trial court's decision petitioner BPI filed with us a petition for review on certiorari under Rule 45 of the Rules of Court. The case was docketed as G.R. No. 96376. However, in a Resolution dated February 6, 1991, we referred the case to the Court of Appeals for proper determination and disposition. The appellate court affirmed the trial court's decision.

Hence, this petition.

In a resolution dated May 20, 1992 we gave due course to the petition.

Petitioner BPI now asseverates:

I

THE DECISION AND RESOLUTION OF THE RESPONDENT COURT LEAVES THE UNDESIRABLE RESULT OF RENDERING NUGATORY THE VERY PURPOSE FOR THE UNIFORM BANKING PRACTICE OF REQUIRING THE CLEARING GUARANTEE OF COLLECTING BANKS.

II

CONTRARY TO THE RULING OF THE RESPONDENT COURT, THE PROXIMATE CAUSE FOR THE LOSS OF THE PROCEEDS OF THE TWO CHECKS IN QUESTION WAS THE NEGLIGENCE OF THE EMPLOYEES OF CBC AND NOT BPI; CONSEQUENTLY, EVEN UNDER SECTION 23 OF THE NEGOTIABLE INSTRUMENTS LAW, BPI WAS NOT PRECLUDED FROM RAISING THE DEFENSE OF FORGERY.

III

THE RESPONDENT COURT COMMITTED REVERSIBLE ERROR IN FAILING TO APPRECIATE THE FACT THAT CBC HAD THE "LAST CLEAR CHANCE" OF AVOIDING THE LOSS OCCASIONED BY THE FRAUDULENT ACTS INVOLVED IN THE INSTANT CASE." (Rollo, p. 24)

The main issues raised in the assignment of errors are: When a bank (in this case CBC) presents checks for clearing and payment, what is the extent of the bank's warranty of the validity of all prior endorsements stamped at the back of the checks? In the event that the payee's signature is forged, may the drawer/drawee bank (in this case BPI) claim reimbursement from the collecting bank [CBC] which earlier paid the proceeds of the checks after the same checks were cleared by petitioner BPI through the PCHC?

Anent the first issue, petitioner BPI contends that respondent CBC's clear warranty, that "all prior endorsements and/or lack of endorsements guaranteed" stamped at the back of the checks was an unrestrictive clearing guaranty that all prior endorsements in the checks are genuine. Under this premise petitioner BPI asserts that the presenting or collecting bank, respondent CBC, had an unquestioned liability when it turned out that the payee's signature on the checks were forged. With these circumstances, petitioner BPI maintains that considerations of relative negligence becomes totally irrelevant.

In sum, petitioner BPI theorizes that the Negotiable Instruments Law, specifically Section 23 thereof is not applicable in the light of the absolute liability of the representing or collecting bank as regards forged endorsements in consonance with the clearing guarantee requirement imposed upon the presenting or collecting banks "as it is worded today."

Petitioner BPI first returned to CBC the two (2) checks on the ground that "Payee's endorsement (was) forged" on November 12, 1981. At that time the clearing regulation then in force under PCHC's Clearing House Rules and Regulations as revised on September 19, 1980 provides:

"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 within twenty four (24) hours after discovery of the alteration or the forgery, but in no event beyond the period prescribed by law for the filing of a legal action by the returning bank/branch institution or entity against the bank/branch, institution or entity sending the same." (Section 23)

In the case of *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation* (157 SCRA 188

[1988] the clearing regulation (this is the present clearing regulation) at the time the parties' dispute occurred was as follows:

"Sec. 21. xxx xxx xxx

Items which have been the subject of material alteration or items bearing 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."

It is to be noted that the above-cited clearing regulations are substantially the same in that it allows a return of a check "bearing forged endorsement when such endorsement is necessary for negotiation" even beyond the next regular clearing although not beyond the prescriptive period "for the filing of a legal action by the returning bank."

Bearing in mind this similarity in the clearing regulation in force at the time the forged checks in the present case and the Banco de Oro case were dishonored and returned to the presenting or collecting banks, we can be guided by the principles enunciated in the Banco de Oro case on the relevance of negligence of the drawee vis-a-vis the forged checks.

The facts in the Banco de Oro case are as follows: Sometime in March, April, May and August 1983 Equitable Banking Corporation through its Visa Card Department drew six (6) crossed Manager's check with the total amount of Forty Five Thousand Nine Hundred and Eighty Two Pesos and Twenty Three Centavos (P45,982.23) and payable to certain member establishments of Visa Card. Later, the checks were deposited with Banco de Oro to the credit of its depositor, a certain Aida Trencio. Following normal procedures, and after stamping at the back of the checks the endorsements: "All prior and/or lack of endorsements guaranteed" Banco de Oro sent the checks for clearing through the PCHC. Accordingly, Equitable Banking Corporation paid the checks; its clearing amount was debited for the value of the checks and Banco de Oro's clearing account was credited for the same amount. When Equitable Banking Corporation discovered that the endorsements at the back of the checks and purporting to be that of the payees were forged it presented the checks directly to Banco de Oro for reimbursement. Banco de Oro refused to reimburse Equitable Banking Corporation for the value of the checks. Equitable Banking Corporation then filed a complaint with the Arbitration Committee of the PCHC. The Arbiter, Atty. Ceasar Querubin, ruled in favor of Equitable Banking Corporation. The Board of Directors of the PCHC affirmed the Arbiter's decision. A petition for review of the decision filed by Banco de Oro with the Regional Trial Court of Quezon City was dismissed. The decision of the PCHC was affirmed in toto.

One of the main issues threshed out in this case centered on the effect of Banco de Oro's (representing or collecting bank) guarantee of "all prior endorsements and/or lack of endorsements" at the back of the checks. A corollary issue was the effect of the forged endorsements of the payees which were later discovered by the Equitable Banking Corporation (drawee bank) resulting in the latter's claim for reimbursement of the value of checks after it paid the proceeds of the checks.

We agreed with the following disquisition of the Regional Trial Court, to wit:

"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)" (at pp. 194-195)

We also ruled:

"Apropos the matter of forgery in endorsements, this Court has presently 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 v. National City Bank. (63 Phil. 1711) 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.

xxx xxx xxx

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

xxx xxx xxx

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

xxx xxx xxx

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

xxx xxx xxx

'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." (Underlining supplied, at pp. 198-202)

As can be gleaned from the decision, one of the main considerations in affirming the PCHC's decision was the finding that as between the drawee bank (Equitable Bank) and the representing or collecting bank (Banco de Oro) the latter was negligent and thus responsible for undue payment.

Parenthetically, petitioner BPI's theory that the present clearing guarantee requirement imposed on the representing or collecting bank under the PCHC rules and regulations is independent of the Negotiable Instruments Law is not in order.

Another reason why the petitioner's theory is uncalled for is the fact that the Negotiable Instruments Law (Act No. 2031) applies to negotiable instruments as defined under section one thereof. Undeniably, the present case involves checks as defined by and under the coverage of the Negotiable Instruments Law. To affirm the theory of the petitioner would, therefore, violate the rule that rules and regulations implementing the law should conform to the law, otherwise the rules and regulations are null and void. Thus, we held in *Shell Philippines, Inc. vs. Central*

Bank of the Philippines (162 SCRA 628 [1988]):

"xxx while it is true that under the same law the Central Bank was given the authority to promulgate rules and regulations to implement the statutory provision in question, we reiterate the principle that this authority is limited only to carrying into effect what the law being implemented provides.

"In *People v. Maceren* (79 SCRA 450, 458 and 460), this Court ruled that:

Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended. (*U.S. v. Tupasi Molina*, *supra*). An administrative agency cannot amend an act of Congress (*Santos v. Estenzo*, 109 Phil. 419, 422; *Teoxon v. Members of the Board of Administrators*, L-25619, June 30, 1970, 33 SCRA 585; *Manuel v. General Auditing Office*, L-28952, December 29, 1971, 42 SCRA 660; *Deluao v. Casteel*, L-21906, August 29, 1969, 29 SCRA 350).

The rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. (*University of Santo Tomas v. Board of Tax Appeals*, 93 Phil. 376, 382, citing 12 C.J. 845-46. As to invalid regulations, see *Collector of Internal Revenue Villaflor*, 69 Phil. 319; *Wise & Co. v. Meer*, 78 Phil. 655, 676; *Del Mar v. Phil. Veterans Administration*, L-27299, June 27, 1973, 51 SCRA 340, 349).

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"x x x The rule or regulation should be within the scope of the statutory authority granted by the legislature to the administrative agency. (*Davis, Administrative Law*, p., 194, 197, cited in *Victorias Milling Co., Inc. v. Social Security Commission*, 114 Phil. 555, 558).

In case of discrepancy between the basic law and a rule or regulation issued to implement said law the basic law prevails because said rule or regulation cannot go beyond the terms and provisions of the basic law (*People v. Lim*, 108 Phil. 1091)." (at pp. 633-634)

Section 23 of the Negotiable Instruments Law states:

"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 discharge therefore, or to enforce payment thereof, against any party thereto, can be acquired through or under such forged signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."

There are two (2) parts of the provision. The first part states the general rule while the second part states the exception to the general rule. The general rule is to the effect that a forged signature is "wholly inoperative", and payment made "through or under such signature" is ineffectual or does not discharge the instrument. The exception to this rule is when the party relying on the forgery is "precluded from setting up the forgery or want of authority." In this jurisdiction we recognize negligence of the party invoking forgery as an exception to the general rule. (See *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation* *supra*; *Philippine National Bank v. Quimpo*, 158 SCRA 582 [1988]; *Philippine National Bank v. Court of Appeals*, 25 SCRA 693 [1968]; *Republic v. Equitable Banking Corporation*, 10 SCRA 8 [1964]; *National Bank v. National City Bank of New York*, 63 Phil. 711 [1936]; *San Carlos Milling Co. v. Bank of P.I.*, 59 Phil. 59 [1933]). In these cases we determined the rights and liabilities of the parties under a forged endorsement by looking at the legal effects of the relative negligence of the parties thereto.

In the present petition the payee's names in the two (2) subject checks were forged. Following the general rule, the

checks are "wholly inoperative" and of no effect. However, the underlying circumstances of the case show that the general rule on forgery is not applicable. The issue as to who between the parties should bear the loss in the payment of the forged checks necessitates the determination of the rights and liabilities of the parties involved in the controversy in relation to the forged checks.

The records show that petitioner BPI as drawee bank and respondent CBC as representing or collecting bank were both negligent resulting in the encashment of the forged checks.

The Arbitration Committee in its decision analyzed the negligence of the employees of petitioner BPI involved in the processing of the pre-termination of Eligia G. Fernando's money market placement and in the issuance and delivery of the subject checks in this wise:

"a) The impostor could have been readily unmasked by a mere telephone call, which nobody in BPI bothered to make to Eligia G. Fernando, a vice-president of Philamlife (Annex C, p. 13).

b) It is rather curious, too, that the officer who used to handle Eligia G. Fernando's account did not do anything about the account's pre-termination (Ibid, p. 13).

c) Again no verification appears to have been made by (sic) Eligia G. Fernando's purported signature on the letter requesting the pre-termination and the letter authorizing her niece to pick-up the checks, yet, her signature was in BPI's file (Ibid., p. 13).

d) Another step that could have foiled the fraud, but which BPI neglected to take, was requiring before the two checks in controversy were delivered, the surrender of the promissory note evidencing the money market placement that was supposedly pre-terminated." (Rollo, p. 13)

The Arbitration Committee, however, belittled petitioner BPI's negligence compared to that of respondent CBC which it declared as graver and the proximate cause of the loss of the subject checks to the impostor who impersonated Eligia G. Fernando. Petitioner BPI now insists on the adoption of the Arbitration Committee's evaluation of the negligence of both parties, to wit:

"a) But what about the lapses of BPI's employees who processed the pretermination of Eligia G. Fernando's placement and issued the checks? We do not think it was a serious lapse not to confirm the telephone request for pretermination purportedly made by Eligia G. Fernando, considering that it is common knowledge that business in the money market is done mostly by telephone. Then, too, the initial request of the caller was for the two checks representing the pretermination proceeds to be delivered to 'her' office, meaning Eligia G. Fernando's office at Philamlife, this clever ruse must have put off guard the employee preparing the 'purchase order slip', enough at least for him to do away with having to call Eligia G. Fernando at her office. (Annex C at p. 17)

b) We also do not think it unusual that Penelope Bulan, who used to handle Eligia G. Fernando's account, should do nothing about the request for pretermination and leave it to Eustaquio to process the pretermination. In a bank the size of BPI, it would be quite normal for an officer to take over from another the handling of an account. (Ibid. p. 17)

c) The failure to verify or compare Eligia G. Fernando's purported signature on the letter requesting the pretermination and the letter authorizing the pick-up of the checks in controversy with her signature in BPI's file showed lack of care and prudence required by the circumstances, although it is doubtful that such comparison would have disclosed the deception considering the 'close similarity' between her purported signature and her signature in BPI's file. (Ibid., p.17)

d) A significant lapse was, however, committed when the two checks in controversy were delivered without requiring the surrender of the promissory note evidencing the placement that was supposedly preterminated.

Although, as we already said, it is hard to determine whether the failure to require the surrender of the promissory note was a deliberate act of Laderas, the dispatcher, or simply because the 'purchase order slip' note, (sic) the fact remains that such failure contributed to the consummation of the fraud. (Ibid., pp. 17-18)

The Arbitration Committee Decision's conclusion was expressed thus -

'Except for Laderas, not one of the BPI personnel tasked with the pretermination of Eligia G. Fernando's placement and the issuance of the pretermination checks colluded in the fraud, although there may have been lapses of negligence on their part which we shall discuss later. The secreting out of BPI of Fernando's specimen signature, which, as admitted by the impostor herself (Exhibit E-2, page 5), helped her in forging Fernando's signature was no doubt, an 'inside job' but done by any of the four employees colluding in the fraud, not by the personnel directly charged with the custody of Fernando's records.' (Annex C, p. 15)

With respect to the negligence of the CBC employees in the payment of the two (2) BPI cashier's checks involved in this case, the Arbitration Committee's Decision made incontrovertible findings undisputed in the statement of facts found in the Court of Appeals' decision of 8 August 1991, the Regional Trial Court decision of 28 November 1990 and the PCHC Board of Directors' Order of 26 August 1986 (Annexes A, E, D, respectively). These findings point to negligence of the CBC employees which led to: (a) the opening of the impostor's current account in the name of Eligia G. Fernando; (b) the deposit to said account of the two (2) checks in controversy and (c) the withdrawal of their proceeds from said account.

The Arbitration Committee found that -

1. Since the impostor presented only her tax account number as a means of identification, we feel that Emily Sylianco Cuaso, Cash Supervisor, approved the opening of her current account in the name of Eligia G. Fernando on the strength of the introduction of Antonio Concepcion who had himself opened an account earlier that year. That Mrs. Cuaso was not comfortable with the introduction of Antonio Concepcion who had himself opened an account earlier that year. That Mrs. Cuaso was not comfortable with the introduction of the new depositor by Concepcion is betrayed by the fact that she made it appear in the application form that the new depositor was introduced by Valentin Co a long-standing valued client of CBC, who had introduced Concepcion when he opened his account. We find this misrepresentation significant because when she reviewed the application form she assumed that the new client was introduced by Valentin Co as indicated in the application form (tsn of March 19, 1985, page 13). Thus we find that the impostor was able to open with CBC's current account in the name of Eligia G. Fernando due to the negligence, if not misrepresentation, of its Cash Supervisor, (Annex C, p. 18).
2. Even with negligence attending the impostor's opening of a current account, her encashment of the two checks in controversy could still have been prevented if only the care and diligence demanded by the circumstances were exercised. On October 14, 1981, just a day after she opened her account, the impostor deposited the two checks which had an aggregate value of P2,413,215.16, which was grossly disproportionate to her initial deposit of P10,000. The very date of both checks, October 12, 1981, should have tipped off the real purpose of the opening of the account on October 13, 1981. But what surely can be characterized only as abandonment of caution was allowing the withdrawal of the checks' proceeds which started on October 16, 1981 only two days after the two checks were deposited; by October 22, 1981, the account had been emptied of the checks' proceeds. (Annex C, p. 19).
3. We can not accept CBC's contention that 'big withdrawals' are 'usual business' with it. Huge withdrawals might be a matter of course with an established account but not for a newly opened account, especially 'since the supposed check proceeds being withdrawn were grossly disproportionate to the initial cash deposit.' (Annex C, 19)

As intimated earlier, the foregoing findings of fact were not materially disputed either by the respondent PCHC Board of Directors or by the respondent courts (compare statement of facts of respondent court as reproduced in pp. 9-11 of this petition).

Having seen the negligence of the employees of both Banks, the relevant question is: which negligence was graver. The Arbitration Committee's Decision found and concluded thus -

'Since there were lapses by both BPI and CBC, the question is: whose negligence was the graver and which was the proximate cause of the loss? Even viewing BPI's lapses in the worst light, it can be said that while its negligence may have introduced the two checks in controversy into the commercial stream, CBC's lack of care in approving the opening with it of the impostor's current account, and its allowing the withdrawals of the checks' proceeds, the aggregate value of which was grossly disproportionate to the initial cash deposit, so soon after such checks were deposited, caused the 'payment' of the checks. Being closest to the event of loss, therefore, CBC's negligence must be held to be the proximate cause of the loss.'" (Annex C, pp. 19-20) (Rollo, pp. 38-41)

While it is true that the PCHC Board of Directors, and the lower courts did not dispute the findings of facts of the Arbitration Committee, the PCHC Board of Directors evaluated the negligence of the parties, to wit:

"The Board finds the ruling that the negligence of the employees of CBC is graver than that of the BPI not warranted by the facts because:

1. The acts and omissions of which BPI employees are guilty are not only negligent but criminal as found by the decision.

2. The act of BPI'S dealer-trainee Eustaquio of disclosing information about the money market placement of its client over the telephone is a violation, if not of Republic Act 1405, of Sec. 87 (a) of the General Banking Act which penalizes any officer?employee or agent of any banking institution who discloses to any unauthorized person any information relative to the funds or properties in the custody of the bank belonging to private-individual, corporations, or any other entity; and the bland excuse given by the decision that 'business in the money market is done mostly by the telephone' cannot be accepted nor tolerated for it is an elementary rule of law that no custom or usage of business can override what a law specifically provides. (Ang Tek Lian v. CA, 87 Phil. 383).

3. The failure of BPI employees to verify or compare Eligia G. Fernando's purported signature on the letter requesting for pre-termination and the letter authorizing the pick-up of the checks in controversy with the signatures on file is not even justified but admitted in the decision as showing lack of care and prudence required by the circumstances. The conjectural excuse made in the decision that 'it is doubtful that such Comparison would have disclosed the deception' does not give an excuse for the omission, by BPI employees of the act of verifying the signature, a duty which is the basic requirement of all acts in the bank. From the very first time an employee enters the services of a bank up to the time he becomes the highest officer thereof, the cautionary rule is drilled on him to always be sure that when he acts on the basis of any signature presented before him, the signature is to be verified as genuine and that if the bank acts on the basis of a forgery of such signature, the bank will be held liable. There can be no excuse therefore for such an omission on the part of BPI employees.

4. The decision admits that:

'A significant lapse was however, committed when the two checks in controversy were delivered without requiring the surrender of the promissory note evidencing the placement that was supposedly preterminated.'

This omission of the BPI to require the surrender of the promissory notes evidencing the placement is justified by the decision by saying that Sec. 74 of the Negotiable Instruments Law is not violated by this omission of the BPI employees because said provision is intended for the benefit of the person paying (in this case the BPI) so

that since the omission to surrender having been waived by BPI, so the non-surrender does not invalidate the payment. The fallacy of this argument is that the issue in this case is: whether or not such non-surrender is a necessary ingredient in the cause of the success of the fraud and not whether or not the payment was valid. This excuse may perhaps be acceptable if the omission did not cause damage to any other person. In this case, however, it did cause tremendous damage. Moreover, this statement obviously overlooks the provision in Art. 1240 of the Civil Code requiring the payor (which in this case is the BPI) to be sure he pays to the right person and as Art. 1242 states, he can claim good faith in paying to the right person only if he pays to the person in possession of the credit (which in this case is the promissory note evidencing the money market placement). Clearly therefore, the excuse given in the decision for the non-surrender of this promissory note evidencing the money market placement cannot be accepted.

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"The decision, however, discusses in detail the negligent acts of the CBC in its lapses or certain requirements in the opening of the account and in allowing withdrawals against the deposited checks soon after the deposit thereof. As stated by the decision however, in computerized banks the history of the account is not shown in the computer terminal whenever a withdrawal is made.

The Board therefore believes that these withdrawals, without any further showing that the CBC employees 'had actual knowledge of the infirmity or defect, or knowledge of such facts' (Sec. 56, Negotiable Instruments Law) that their action in accepting their checks for deposit and allowing the withdrawals against the same 'amounted to bad faith' cannot be considered as basis for holding CBC liable." (Rollo, pp. 107-111)

Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. For obvious reasons, the banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.

In the present case, there is no question that the banks were negligent in the selection and supervision of their employees. The Arbitration Committee, the PCHC Board of Directors and the lower courts, however disagree in the evaluation of the degree of negligence of the banks. While the Arbitration Committee declared the negligence of respondent CBC graver, the PCHC Board of Directors and the lower courts declared that petitioner BPI's negligence was graver. To the extent that the degree of negligence is equated to the proximate cause of the loss, we rule that the issue as to whose negligence is graver is relevant. No matter how many justifications both banks present to avoid responsibility, they cannot erase the fact that, they were both guilty in not exercising extraordinary diligence in the selection and supervision of their employees. The next issue hinges on whose negligence was the proximate cause of the payment of the forged checks by an impostor.

Petitioner BPI accuses the Court of Appeals of inconsistency when it affirmed the PCHC's Board of Directors' Order but in the same breath declared that the negligent acts of the CBC employees occurred immediately before the actual loss.

In this regard petitioner BPI insists that the doctrine of last clear chance enunciated in the case of *Picart v. Smith* (37 Phil. 809 [1918]) should have been applied considering the circumstances of the case.

In the *Picart* case, Amado Picart was then riding on his pony over the Carlatan Bridge at San Fernando, La Union when Frank Smith approached from the opposite direction in a car. As Smith neared the bridge he saw Picart and blew his horn to give warning of his approach. When he was already on the bridge Picart gave two more successive blasts as it appeared to him that Picart was not observing the rule of the road. Picart saw the car coming and heard the warning signals. An accident then ensued resulting in the death of the horse and physical injuries suffered by Picart which caused him temporary unconsciousness and required medical attention for

several days. Thereafter, Picart sued Smith for damages.

We ruled:

"The question presented for decision is whether or not the defendant in maneuvering his care in the manner above described was guilty of negligence such as gives rise to a civil obligation to repair the damage done; and we are of the opinion that he is so liable. As the defendant started across the bridge, he had the right to assume that the horse and rider would pass over to the proper side; but as he moved toward the center of the bridge it was demonstrated to his eyes that this would not be done; and he must in a moment have perceived that it was too late for the horse to cross with safety in front of the moving vehicle. In the nature of things this change of situation occurred while the automobile was yet some distance away; and from this moment it was no longer within the power of the plaintiff to escape being run down by going to a place of greater safety. The control of the situation had then passed entirely to the defendant; and it was his duty to either to bring his car to an immediate stop or, seeing that there were no other persons on the bridge, to take the other side and pass sufficiently far away from the horse to avoid the danger of collision. Instead of doing this, the defendant ran straight on until he was almost upon the horse. He was, we think, deceived into doing this by the fact that the horse had not yet exhibited fright. But in view of the known nature of horses, there was an appreciable risk that, if the animal in question was unacquainted with automobiles, he might get excited and jump under the conditions which here confronted him. When the defendant exposed the horse and rider to this danger he was, in our opinion, negligent in the eyes of the law.

The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.

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It goes without saying that the plaintiff himself was not free from fault, for he was guilty of antecedent negligence in planting himself on the wrong side of the road. But as we have already stated, the defendant was also negligent; and in such case the problem always is to discover which agent is immediately and directly responsible. It will be noted that the negligent acts of the two parties were not contemporaneous, since the negligence of the defendant succeeded the negligence of the plaintiff by an appreciable interval. Under these circumstances the law is that the person who has the last fair chance to avoid the impending harm and fails to do so is chargeable with the consequences, without reference to the prior negligence of the other party."

Applying these principles; petitioner BPI's reliance on the doctrine of last clear chance to clear it from liability is not well-taken. CBC had no prior notice of the fraud perpetrated by BPI's employees on the pre-termination of Eligia G. Fernando's money market placement. Moreover, Fernando is not a depositor of CBC. Hence, a comparison of the signature of Eligia G. Fernando with that of the impostor Eligia G. Fernando, which respondent CBC did, could not have resulted in the discovery of the fraud. Hence, unlike in the Picart case wherein the defendant, had he used reasonable care and caution, would have recognized the risk he was taking and would have foreseen harm to the horse and the plaintiff but did not, respondent CBC had no way to discover the fraud at all. In fact the records fail to show that respondent CBC had knowledge, actual or implied, of the fraud perpetrated by the impostor and the employees of BPI.

However, petitioner BPI insists that even if the doctrine of proximate cause is applied, still, respondent CBC should be held responsible for the payment to the impostor of the two (2) checks. It argues that the acts and omissions of respondent CBC are the cause "that set into motion the actual and continuous sequence of events that produced the injury and without which the result would not have occurred." On the other hand, it asserts that its acts and omissions did not end in a loss. Petitioner BPI anchors its argument on its stance that there was "a gap, a hiatus, an interval between the issuance and delivery of said checks by petitioner BPI to the impostor and their

actual payment of CBC to the impostor. Petitioner BPI points out that the gap of one (1) day that elapsed from its issuance and delivery of the checks to the impostor is material on the issue of proximate cause. At this stage, according to petitioner BPI, there was yet no loss and the impostor could have decided to desist from completing the same plan and could have held to the checks without negotiating them.

We are not persuaded.

In the case of *Vda. de Bataclan, et al, v. Medina* (102 Phil. 181 [1957]), we had occasion to discuss the doctrine of proximate cause.

Briefly, the facts of this case are as follows:

At about 2:00 o'clock in the morning of September 13, 1952 a bus carrying about eighteen (18) passengers on its way to Amadeo, Cavite figured in an accident. While the bus was running, one of the front tires burst and the bus began to zigzag until it fell into a canal on the right side of the road and turned turtle. Some passengers managed to get out from the overturned bus except for four (4) passengers, among them, Bataclan. The passengers who got out heard shouts for help from Bataclan and another passenger Lara who said they could not get out from the bus. After half an hour, about ten men came, one of them carrying a lighted torch made of bamboo with a wick on one end fueled with petroleum. These men approached the overturned bus, and almost immediately, a fierce fire started burning and all but consuming the bus including the four (4) passengers trapped inside. It turned out that as the bus overturned, gasoline began to leak and escape from the gasoline tank on the side of the chassis spreading over and permeating the body of the bus and the ground under and around it. The lighted torch brought by one of the men who answered the call for help set it on fire. On the same day, the charred bodies of the trapped passengers were removed and identified. By reason of his death, Juan Bataclan's wife and her children filed a suit for damages against Maximo Medina, the operator and owner of the bus in the then Court of First Instance of Cavite. The trial court ruled in favor of the defendant. However, we reversed and set aside the trial court's decision and said:

"There is no question that under the circumstances, the defendant carrier is liable. The only question is to what degree. The trial court was of the opinion that the proximate cause of the death of Bataclan was not the overturning of the bus, but rather the fire that burned the bus, including himself and his co-passengers who were unable to leave it; that at the time the fire started, Bataclan, though he must have suffered physical injuries, perhaps serious, was still alive and so damages were awarded, not for his death, but for the physical injuries suffered by him. We disagree. A satisfactory definition of proximate cause is found in Volume 38, pages 695-696 of American Jurisprudence, cited by plaintiffs-appellants in their brief. It is as follows:

'x x x that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, 'the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinarily prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.'

It may be that ordinarily, when a passenger bus overturns, and pins down a passenger, merely causing him physical injuries, if through some event, unexpected and extraordinary, the overturned bus is set on fire, say, by lightning, or if some highwaymen after looting the vehicle sets it on fire, and the passenger is burned to death, one might still contend that the proximate cause of his death was the fire and not the overturning of the vehicle. But in the present case and under the circumstances obtaining in the same, we do not hesitate to hold

that the proximate cause of the death of Bataclan was the overturning of the bus, this for the reason that when the vehicle turned not only on its side but completely on its back, the leaking of the gasoline from the tank was not unnatural or unexpected; that the coming of the men with a lighted torch was in response to the call for help, made not only by the passengers, but most probably, by the driver and the conductor themselves, and that because it was very dark (about 2:30 in the morning), the rescuers had to carry a light with them; and coming as they did from a rural area where lanterns and flashlights were not available, they had to use a torch, the most handy and available; and what was more natural than that said rescuers should innocently approach the overturned vehicle to extend the aid and effect the rescue requested from them. In other words, the coming of the men with the torch was to be expected and was natural sequence of the overturning of the bus, the trapping of some of its passengers and the call for outside help." (Underlining supplied, at pp. 185-187)

Again, applying the doctrine of proximate cause, petitioner BPI's contention that CBC alone should bear the loss must fail. The gap of one (1) day between the issuance and delivery of the checks bearing the impostor's name as payee and the impostor's negotiating the said forged checks by opening an account and depositing the same with respondent CBC is not controlling. It is not unnatural or unexpected that after taking the risk of impersonating Eligia G. Fernando with the connivance of BPI's employees, the impostor would complete her deception by encashing the forged checks. There is, therefore, greater reason to rule that the proximate cause of the payment of the forged checks by an impostor was due to the negligence of petitioner BPI. This finding, notwithstanding, we are not inclined to rule that petitioner BPI must solely bear the loss of P2,413,215.16, the total amount of the two (2) forged checks. Due care on the part of CBC could have prevented any loss.

The Court cannot ignore the fact that the CBC employees closed their eyes to the suspicious circumstances of huge over-the-counter withdrawals made immediately after the account was opened. The opening of the account itself was accompanied by inexplicable acts clearly showing negligence. And while we do not apply the last clear chance doctrine as controlling in this case, still the CBC employees had ample opportunity to avoid the harm which befell both CBC and BPI. They let the opportunity slip by when the ordinary prudence expected of bank employees would have sufficed to seize it.

Both banks were negligent in the selection and supervision of their employees resulting in the encashment of the forged checks by an impostor. Both banks were not able to overcome the presumption of negligence in the selection and supervision of their employees. It was the gross negligence of the employees of both banks which resulted in the fraud and the subsequent loss. While it is true that petitioner BPI's negligence may have been the proximate cause of the loss, respondent CBC's negligence contributed equally to the success of the impostor in encashing the proceeds of the forged checks. Under these circumstances, we apply Article 2179 of the Civil Code to the effect that while respondent CBC may recover its losses, such losses are subject to mitigation by the courts. (See *Phoenix Construction, Inc. v. Intermediate Appellate Court*, 148 SCRA 353 [1987]).

Considering the comparative negligence of the two (2) banks, we rule that the demands of substantial justice are satisfied by allocating the loss of P2,413,215.16 and the costs of the arbitration proceedings in the amount of P7,250.00 and the costs of litigation on a 60-40 ratio. Conformably with this ruling, no interests and attorney's fees can be awarded to either of the parties.

WHEREFORE, the questioned DECISION and RESOLUTION of the Court of Appeals are MODIFIED as outlined above. Petitioner Bank of the Philippine Islands shall be responsible for sixty percent (60%) while respondent China Banking Corporation shall share forty percent (40%) of the loss of TWO MILLION FOUR HUNDRED THIRTEEN THOUSAND, TWO HUNDRED FIFTEEN PESOS and SIXTEEN CENTAVOS (P2,413,215.16) and the arbitration costs of SEVEN THOUSAND, TWO HUNDRED FIFTY PESOS (P7,250.00). The Philippine Clearing House Corporation is hereby directed to effect the corresponding entries to the banks' clearing accounts in accordance with this decision. Costs in the same proportion against the Bank of the

Philippine Islands and the China Banking Corporation.

SO ORDERED.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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