

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK (FORMERLY
INSULAR BANK OF ASIA AND AMERICA), PETITIONER, VS. COURT OF
APPEALS AND FORD PHILIPPINES, INC. AND CITIBANK, N.A.,
RESPONDENTS.**

G.R. No. 121413. January 29, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

These consolidated petitions involve several fraudulently negotiated checks.

The original actions a quo were instituted by Ford Philippines to recover from the drawee bank, CITIBANK, N.A. (Citibank) and collecting bank, Philippine Commercial International Bank (PCIBank) [formerly Insular Bank of Asia and America], the value of several checks payable to the Commissioner of Internal Revenue, which were embezzled allegedly by an organized syndicate.

G.R. Nos. 121413 and 121479 are twin petitions for review of the March 27, 1995 Decision[1] of the Court of Appeals in CA-G.R. CV No. 25017, entitled "Ford Philippines, Inc. vs. Citibank, N.A. and Insular Bank of Asia and America (now Philippine Commercial International Bank), and the August 8, 1995 Resolution,[2] ordering the collecting bank, Philippine Commercial International Bank, to pay the amount of Citibank Check No. SN-04867.

In G.R. No. 128604, petitioner Ford Philippines assails the October 15, 1996 Decision[3] of the Court of Appeals and its March 5, 1997 Resolution[4] in CA-G.R. No. 28430 entitled "Ford Philippines, Inc. vs. Citibank, N.A. and Philippine Commercial International Bank," affirming in toto the judgment of the trial court holding the defendant drawee bank, Citibank, N.A., solely liable to pay the amount of P12,163,298.10 as damages for the misapplied proceeds of the plaintiff's Citibank Check Numbers SN-10597 and 16508.

I. G.R. Nos. 121413 and 121479

The stipulated facts submitted by the parties as accepted by the Court of Appeals are as follows:

"On October 19, 1977, the plaintiff Ford drew and issued its Citibank Check No. SN-04867 in the amount of P4,746,114.41, in favor of the Commissioner of Internal Revenue as payment of plaintiff's percentage or manufacturer's sales taxes for the third quarter of 1977.

The aforesaid check was deposited with the defendant IBAA (now PCIBank) and was subsequently cleared at the Central Bank. Upon presentment with the defendant Citibank, the proceeds of the check was paid to IBAA as collecting or depository bank.

The proceeds of the same Citibank check of the plaintiff was never paid to or received by the payee thereof, the Commissioner of Internal Revenue.

As a consequence, upon demand of the Bureau and/or Commissioner of Internal Revenue, the plaintiff was

compelled to make a second payment to the Bureau of Internal Revenue of its percentage/manufacturers' sales taxes for the third quarter of 1977 and that said second payment of plaintiff in the amount of P4,746,114.41 was duly received by the Bureau of Internal Revenue.

It is further admitted by defendant Citibank that during the time of the transactions in question, plaintiff had been maintaining a checking account with defendant Citibank; that Citibank Check No. SN-04867 which was drawn and issued by the plaintiff in favor of the Commissioner of Internal Revenue was a crossed check in that, on its face were two parallel lines and written in between said lines was the phrase "Payee's Account Only"; and that defendant Citibank paid the full face value of the check in the amount of P4,746,114.41 to the defendant IBAA.

It has been duly established that for the payment of plaintiff's percentage tax for the last quarter of 1977, the Bureau of Internal Revenue issued Revenue Tax Receipt No. 18747002, dated October 20, 1977, designating therein in Muntinlupa, Metro Manila, as the authorized agent bank of Metrobank, Alabang Branch to receive the tax payment of the plaintiff.

On December 19, 1977, plaintiff's Citibank Check No. SN-04867, together with the Revenue Tax Receipt No. 18747002, was deposited with defendant IBAA, through its Ermita Branch. The latter accepted the check and sent it to the Central Clearing House for clearing on the same day, with the indorsement at the back "all prior indorsements and/or lack of indorsements guaranteed." Thereafter, defendant IBAA presented the check for payment to defendant Citibank on same date, December 19, 1977, and the latter paid the face value of the check in the amount of P4,746,114.41. Consequently, the amount of P4,746,114.41 was debited in plaintiff's account with the defendant Citibank and the check was returned to the plaintiff.

Upon verification, plaintiff discovered that its Citibank Check No. SN-04867 in the amount of P4,746,114.41 was not paid to the Commissioner of Internal Revenue. Hence, in separate letters dated October 26, 1979, addressed to the defendants, the plaintiff notified the latter that in case it will be re-assessed by the BIR for the payment of the taxes covered by the said checks, then plaintiff shall hold the defendants liable for reimbursement of the face value of the same. Both defendants denied liability and refused to pay.

In a letter dated February 28, 1980 by the Acting Commissioner of Internal Revenue addressed to the plaintiff - supposed to be Exhibit "D", the latter was officially informed, among others, that its check in the amount of P4,746,114.41 was not paid to the government or its authorized agent and instead encashed by unauthorized persons, hence, plaintiff has to pay the said amount within fifteen days from receipt of the letter. Upon advice of the plaintiff's lawyers, plaintiff on March 11, 1982, paid to the Bureau of Internal Revenue, the amount of P4,746,114.41, representing payment of plaintiff's percentage tax for the third quarter of 1977.

As a consequence of defendant's refusal to reimburse plaintiff of the payment it had made for the second time to the BIR of its percentage taxes, plaintiff filed on January 20, 1983 its original complaint before this Court.

On December 24, 1985, defendant IBAA was merged with the Philippine Commercial International Bank (PCI Bank) with the latter as the surviving entity.

Defendant Citibank maintains that; the payment it made of plaintiff's Citibank Check No. SN-04867 in the amount of P4,746,114.41 "was in due course"; it merely relied on the clearing stamp of the depository/collecting bank, the defendant IBAA that "all prior indorsements and/or lack of indorsements guaranteed"; and the proximate cause of plaintiff's injury is the gross negligence of defendant IBAA in indorsing the plaintiff's Citibank check in question.

It is admitted that on December 19, 1977 when the proceeds of plaintiff's Citibank Check No. SN-04867 was paid to defendant IBAA as collecting bank, plaintiff was maintaining a checking account with defendant Citibank."^[5]

Although it was not among the stipulated facts, an investigation by the National Bureau of Investigation (NBI)

revealed that Citibank Check No. SN-04867 was recalled by Godofredo Rivera, the General Ledger Accountant of Ford. He purportedly needed to hold back the check because there was an error in the computation of the tax due to the Bureau of Internal Revenue (BIR). With Rivera's instruction, PCIBank replaced the check with two of its own Manager's Checks (MCs). Alleged members of a syndicate later deposited the two MCs with the Pacific Banking Corporation.

Ford, with leave of court, filed a third-party complaint before the trial court impleading Pacific Banking Corporation (PBC) and Godofredo Rivera, as third party defendants. But the court dismissed the complaint against PBC for lack of cause of action. The court likewise dismissed the third-party complaint against Godofredo Rivera because he could not be served with summons as the NBI declared him as a "fugitive from justice".

On June 15, 1989, the trial court rendered its decision, as follows:

"Premises considered, judgment is hereby rendered as follows:

- Ordering the defendants Citibank and IBAA (now PCI Bank), jointly and severally, to pay the plaintiff the amount of P4,746,114.41 representing the face value of plaintiff's Citibank Check No. SN-04867, with interest thereon at the legal rate starting January 20, 1983, the date when the original complaint was filed until the amount is fully paid, plus costs;
- On defendant Citibank's cross-claim: ordering the cross-defendant IBAA (now PCI BANK) to reimburse defendant Citibank for whatever amount the latter has paid or may pay to the plaintiff in accordance with the next preceding paragraph;
- The counterclaims asserted by the defendants against the plaintiff, as well as that asserted by the cross-defendant against the cross-claimant are dismissed, for lack of merits; and
- With costs against the defendants.

SO ORDERED."[6]

Not satisfied with the said decision, both defendants, Citibank and PCIBank, elevated their respective petitions for review on certiorari to the Court of Appeals. On March 27, 1995, the appellate court issued its judgment as follows:

"WHEREFORE, in view of the foregoing, the court AFFIRMS the appealed decision with modifications.

The court hereby renders judgment:

- Dismissing the complaint in Civil Case No. 49287 insofar as defendant Citibank N.A. is concerned;
- Ordering the defendant IBAA now PCI Bank to pay the plaintiff the amount of P4,746,114.41 representing the face value of plaintiff's Citibank Check No. SN-04867, with interest thereon at the legal rate starting January 20, 1983. the date when the original complaint was filed until the amount is fully paid;
- Dismissing the counterclaims asserted by the defendants against the plaintiff as well as that asserted by the cross-defendant against the cross-claimant, for lack of merits.

Costs against the defendant IBAA (now PCI Bank).

IT IS SO ORDERED."[7]

PCIBank moved to reconsider the above-quoted decision of the Court of Appeals, while Ford filed a "Motion for Partial Reconsideration." Both motions were denied for lack of merit.

Separately, PCIBank and Ford filed before this Court, petitions for review by certiorari under Rule 45.

In G.R. No. 121413, PCIBank seeks the reversal of the decision and resolution of the Twelfth Division of the Court of Appeals contending that it merely acted on the instruction of Ford and such cause of action had already prescribed.

PCIBank sets forth the following issues for consideration:

- Did the respondent court err when, after finding that the petitioner acted on the check drawn by respondent Ford on the said respondent's instructions, it nevertheless found the petitioner liable to the said respondent for the full amount of the said check.
- Did the respondent court err when it did not find prescription in favor of the petitioner.[8]

In a counter move, Ford filed its petition docketed as G.R. No. 121479, questioning the same decision and resolution of the Court of Appeals, and praying for the reinstatement in toto of the decision of the trial court which found both PCIBank and Citibank jointly and severally liable for the loss.

In G.R. No. 121479, appellant Ford presents the following propositions for consideration:

- Respondent Citibank is liable to petitioner Ford considering that:
 - As drawee bank, respondent Citibank owes to petitioner Ford, as the drawer of the subject check and a depositor of respondent Citibank, an absolute and contractual duty to pay the proceeds of the subject check only to the payee thereof, the Commissioner of Internal Revenue.
 - Respondent Citibank failed to observe its duty as banker with respect to the subject check, which was crossed and payable to "Payee's Account Only."
 - Respondent Citibank raises an issue for the first time on appeal; thus the same should not be considered by the Honorable Court.
 - As correctly held by the trial court, there is no evidence of gross negligence on the part of petitioner Ford.[9]
- PCIBank is liable to petitioner Ford considering that:
 - There were no instructions from petitioner Ford to deliver the proceeds of the subject check to a person other than the payee named therein, the Commissioner of the Bureau of Internal Revenue; thus, PCIBank's only obligation is to deliver the proceeds to the Commissioner of the Bureau of Internal Revenue.[10]
 - PCIBank which affixed its indorsement on the subject check ("All prior indorsement and/or lack of indorsement guaranteed"), is liable as collecting bank.[11]
 - PCIBank is barred from raising issues of fact in the instant proceedings.[12]
 - Petitioner Ford's cause of action had not prescribed.[13]

II. G.R. No. 128604

The same syndicate apparently embezzled the proceeds of checks intended, this time, to settle Ford's percentage taxes appertaining to the second quarter of 1978 and the first quarter of 1979.

The facts as narrated by the Court of Appeals are as follows:

Ford drew Citibank Check No. SN-10597 on July 19, 1978 in the amount of P5,851,706.37 representing the percentage tax due for the second quarter of 1978 payable to the Commissioner of Internal Revenue. A BIR Revenue Tax Receipt No. 28645385 was issued for the said purpose.

On April 20, 1979, Ford drew another Citibank Check No. SN-16508 in the amount of P6,311,591.73,

representing the payment of percentage tax for the first quarter of 1979 and payable to the Commissioner of Internal Revenue. Again a BIR Revenue Tax Receipt No. A-1697160 was issued for the said purpose.

Both checks were "crossed checks" and contain two diagonal lines on its upper left corner between which were written the words "payable to the payee's account only."

The checks never reached the payee, CIR. Thus, in a letter dated February 28, 1980, the BIR, Region 4-B, demanded for the said tax payments the corresponding periods above-mentioned.

As far as the BIR is concerned, the said two BIR Revenue Tax Receipts were considered "fake and spurious". This anomaly was confirmed by the NBI upon the initiative of the BIR. The findings forced Ford to pay the BIR anew, while an action was filed against Citibank and PCIBank for the recovery of the amount of Citibank Check Numbers SN-10597 and 16508.

The Regional Trial Court of Makati, Branch 57, which tried the case, made its findings on the modus operandi of the syndicate, as follows:

"A certain Mr. Godofredo Rivera was employed by the plaintiff FORD as its General Ledger Accountant. As such, he prepared the plaintiff's check marked Ex. 'A' [Citibank Check No. SN-10597] for payment to the BIR. Instead, however, of delivering the same to the payee, he passed on the check to a co-conspirator named Remberto Castro who was a pro-manager of the San Andres Branch of PCIB.* In connivance with one Winston Dulay, Castro himself subsequently opened a Checking Account in the name of a fictitious person denominated as 'Reynaldo Reyes' in the Meralco Branch of PCIBank where Dulay works as Assistant Manager.

After an initial deposit of P100.00 to validate the account, Castro deposited a worthless Bank of America Check in exactly the same amount as the first FORD check (Exh. "A", P5,851,706.37) while this worthless check was coursed through PCIB's main office enroute to the Central Bank for clearing, replaced this worthless check with FORD's Exhibit 'A' and accordingly tampered the accompanying documents to cover the replacement. As a result, Exhibit 'A' was cleared by defendant CITIBANK, and the fictitious deposit account of 'Reynaldo Reyes' was credited at the PCIB Meralco Branch with the total amount of the FORD check Exhibit 'A'. The same method was again utilized by the syndicate in profiting from Exh. 'B' [Citibank Check No. SN-16508] which was subsequently pilfered by Alexis Marindo, Rivera's Assistant at FORD.

From this 'Reynaldo Reyes' account, Castro drew various checks distributing the shares of the other participating conspirators namely (1) CRISANTO BERNABE, the mastermind who formulated the method for the embezzlement; (2) RODOLFO R. DE LEON a customs broker who negotiated the initial contact between Bernabe, FORD's Godofredo Rivera and PCIB's Remberto Castro; (3) JUAN CASTILLO who assisted de Leon in the initial arrangements; (4) GODOFREDO RIVERA, FORD's accountant who passed on the first check (Exhibit "A") to Castro; (5) REMBERTO CASTRO, PCIB's pro-manager at San Andres who performed the switching of checks in the clearing process and opened the fictitious Reynaldo Reyes account at the PCIB Meralco Branch; (6) WINSTON DULAY, PCIB's Assistant Manager at its Meralco Branch, who assisted Castro in switching the checks in the clearing process and facilitated the opening of the fictitious Reynaldo Reyes' bank account; (7) ALEXIS MARINDO, Rivera's Assistant at FORD, who gave the second check (Exh. "B") to Castro; (8) ELEUTERIO JIMENEZ, BIR Collection Agent who provided the fake and spurious revenue tax receipts to make it appear that the BIR had received FORD's tax payments.

Several other persons and entities were utilized by the syndicate as conduits in the disbursements of the proceeds of the two checks, but like the aforementioned participants in the conspiracy, have not been impleaded in the present case. The manner by which the said funds were distributed among them are traceable from the record of checks drawn against the original "Reynaldo Reyes" account and indubitably identify the parties who illegally benefited therefrom and readily indicate in what amounts they did so." [14]

On December 9, 1988, Regional Trial Court of Makati, Branch 57, held drawee-bank, Citibank, liable for the value of the two checks while absolving PCIBank from any liability, disposing as follows:

"WHEREFORE, judgment is hereby rendered sentencing defendant CITIBANK to reimburse plaintiff FORD the total amount of P12,163,298.10 prayed for in its complaint, with 6% interest thereon from date of first written demand until full payment, plus P300,000.00 attorney's fees and expenses of litigation, and to pay the defendant, PCIB (on its counterclaim to crossclaim) the sum of P300,000.00 as attorney's fees and costs of litigation, and pay the costs.

SO ORDERED."[15]

Both Ford and Citibank appealed to the Court of Appeals which affirmed, in toto, the decision of the trial court. Hence, this petition.

Petitioner Ford prays that judgment be rendered setting aside the portion of the Court of Appeals decision and its resolution dated March 5, 1997, with respect to the dismissal of the complaint against PCIBank and holding Citibank solely responsible for the proceeds of Citibank Check Numbers SN-10597 and 16508 for P5,851,706.73 and P6,311,591.73 respectively.

Ford avers that the Court of Appeals erred in dismissing the complaint against defendant PCIBank considering that:

- Defendant PCIBank was clearly negligent when it failed to exercise the diligence required to be exercised by it as a banking institution.
- Defendant PCIBank clearly failed to observe the diligence required in the selection and supervision of its officers and employees.
- Defendant PCIBank was, due to its negligence, clearly liable for the loss or damage resulting to the plaintiff Ford as a consequence of the substitution of the check consistent with Section 5 of Central Bank Circular No. 580 series of 1977.
- Assuming arguendo that defendant PCIBank did not accept, endorse or negotiate in due course the subject checks, it is liable, under Article 2154 of the Civil Code, to return the money which it admits having received, and which was credited to it in its Central Bank account.[16]

The main issue presented for our consideration by these petitions could be simplified as follows: Has petitioner Ford the right to recover from the collecting bank (PCIBank) and the drawee bank (Citibank) the value of the checks intended as payment to the Commissioner of Internal Revenue? Or has Ford's cause of action already prescribed?

Note that in these cases, the checks were drawn against the drawee bank, but the title of the person negotiating the same was allegedly defective because the instrument was obtained by fraud and unlawful means, and the proceeds of the checks were not remitted to the payee. It was established that instead of paying the checks to the CIR, for the settlement of the appropriate quarterly percentage taxes of Ford, the checks were diverted and encashed for the eventual distribution among the members of the syndicate. As to the unlawful negotiation of the check the applicable law is Section 55 of the Negotiable Instruments Law (NIL), which provides:

"When title defective -- The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud."

Pursuant to this provision, it is vital to show that the negotiation is made by the perpetrator in breach of faith amounting to fraud. The person negotiating the checks must have gone beyond the authority given by his principal. If the principal could prove that there was no negligence in the performance of his duties, he may set up the personal defense to escape liability and recover from other parties who, through their own negligence, allowed the commission of the crime.

In this case, we note that the direct perpetrators of the offense, namely the embezzlers belonging to a syndicate, are now fugitives from justice. They have, even if temporarily, escaped liability for the embezzlement of millions of pesos. We are thus left only with the task of determining who of the present parties before us must bear the burden of loss of these millions. It all boils down to the question of liability based on the degree of negligence among the parties concerned.

Foremost, we must resolve whether the injured party, Ford, is guilty of the "imputed contributory negligence" that would defeat its claim for reimbursement, bearing in mind that its employees, Godofredo Rivera and Alexis Marindo, were among the members of the syndicate.

Citibank points out that Ford allowed its very own employee, Godofredo Rivera, to negotiate the checks to his co-conspirators, instead of delivering them to the designated authorized collecting bank (Metrobank-Alabang) of the payee, CIR. Citibank bewails the fact that Ford was remiss in the supervision and control of its own employees, inasmuch as it only discovered the syndicate's activities through the information given by the payee of the checks after an unreasonable period of time.

PCIBank also blames Ford of negligence when it allegedly authorized Godofredo Rivera to divert the proceeds of Citibank Check No. SN-04867, instead of using it to pay the BIR. As to the subsequent run-around of funds of Citibank Check Nos. SN-10597 and 16508, PCIBank claims that the proximate cause of the damage to Ford lies in its own officers and employees who carried out the fraudulent schemes and the transactions. These circumstances were not checked by other officers of the company, including its comptroller or internal auditor. PCIBank contends that the inaction of Ford despite the enormity of the amount involved was a sheer negligence and stated that, as between two innocent persons, one of whom must suffer the consequences of a breach of trust, the one who made it possible, by his act of negligence, must bear the loss.

For its part, Ford denies any negligence in the performance of its duties. It avers that there was no evidence presented before the trial court showing lack of diligence on the part of Ford. And, citing the case of *Gempesaw vs. Court of Appeals*,^[17] Ford argues that even if there was a finding therein that the drawer was negligent, the drawee bank was still ordered to pay damages.

Furthermore, Ford contends that Godofredo Rivera was not authorized to make any representation in its behalf, specifically, to divert the proceeds of the checks. It adds that Citibank raised the issue of imputed negligence against Ford for the first time on appeal. Thus, it should not be considered by this Court.

On this point, jurisprudence regarding the imputed negligence of employer in a master-servant relationship is instructive. Since a master may be held for his servant's wrongful act, the law imputes to the master the act of the servant, and if that act is negligent or wrongful and proximately results in injury to a third person, the negligence or wrongful conduct is the negligence or wrongful conduct of the master, for which he is liable.^[18] The general rule is that if the master is injured by the negligence of a third person and by the concurring contributory negligence of his own servant or agent, the latter's negligence is imputed to his superior and will defeat the superior's action against the third person, assuming, of course that the contributory negligence was the proximate cause of the injury of which complaint is made.^[19]

Accordingly, we need to determine whether or not the action of Godofredo Rivera, Ford's General Ledger Accountant, and/or Alexis Marindo, his assistant, was the proximate cause of the loss or damage. As defined, proximate cause is that which, in the natural and continuous sequence, unbroken by any efficient, intervening cause produces the injury, and without which the result would not have occurred.[20]

It appears that although the employees of Ford initiated the transactions attributable to an organized syndicate, in our view, their actions were not the proximate cause of encashing the checks payable to the CIR. The degree of Ford's negligence, if any, could not be characterized as the proximate cause of the injury to the parties.

The Board of Directors of Ford, we note, did not confirm the request of Godofredo Rivera to recall Citibank Check No. SN-04867. Rivera's instruction to replace the said check with PCIBank's Manager's Check was not in the ordinary course of business which could have prompted PCIBank to validate the same.

As to the preparation of Citibank Checks Nos. SN-10597 and 16508, it was established that these checks were made payable to the CIR. Both were crossed checks. These checks were apparently turned around by Ford's employees, who were acting on their own personal capacity.

Given these circumstances, the mere fact that the forgery was committed by a drawer-payor's confidential employee or agent, who by virtue of his position had unusual facilities for perpetrating the fraud and imposing the forged paper upon the bank, does not entitle the bank to shift the loss to the drawer-payor, in the absence of some circumstance raising estoppel against the drawer.[21] This rule likewise applies to the checks fraudulently negotiated or diverted by the confidential employees who hold them in their possession.

With respect to the negligence of PCIBank in the payment of the three checks involved, separately, the trial courts found variations between the negotiation of Citibank Check No. SN-04867 and the misapplication of total proceeds of Checks SN-10597 and 16508. Therefore, we have to scrutinize, separately, PCIBank's share of negligence when the syndicate achieved its ultimate agenda of stealing the proceeds of these checks.

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Citibank Check No. SN-04867 was deposited at PCIBank through its Ermita Branch. It was coursed through the ordinary banking transaction, sent to Central Clearing with the indorsement at the back "all prior indorsements and/or lack of indorsements guaranteed," and was presented to Citibank for payment. Thereafter PCIBank, instead of remitting the proceeds to the CIR, prepared two of its Manager's checks and enabled the syndicate to encash the same.

On record, PCIBank failed to verify the authority of Mr. Rivera to negotiate the checks. The neglect of PCIBank employees to verify whether his letter requesting for the replacement of the Citibank Check No. SN-04867 was duly authorized, showed lack of care and prudence required in the circumstances.

Furthermore, it was admitted that PCIBank is authorized to collect the payment of taxpayers in behalf of the BIR. As an agent of BIR, PCIBank is duty bound to consult its principal regarding the unwarranted instructions given by the payor or its agent. As aptly stated by the trial court, to wit:

"x x x. Since the questioned crossed check was deposited with IBAA [now PCIBank], which claimed to be a depository/collecting bank of the BIR, it has the responsibility to make sure that the check in question is deposited in Payee's account only.

x x x x x x x x

As agent of the BIR (the payee of the check), defendant IBAA should receive instructions only from its principal BIR and not from any other person especially so when that person is not known to the defendant. It is very imprudent on the part of the defendant IBAA to just rely on the alleged telephone call of one Godofredo

Rivera and in his signature to the authenticity of such signature considering that the plaintiff is not a client of the defendant IBAA."

It is a well-settled rule that the relationship between the payee or holder of commercial paper and the bank to which it is sent for collection is, in the absence of an agreement to the contrary, that of principal and agent.[22] A bank which receives such paper for collection is the agent of the payee or holder.[23]

Even considering arguendo, that the diversion of the amount of a check payable to the collecting bank in behalf of the designated payee may be allowed, still such diversion must be properly authorized by the payor. Otherwise stated, the diversion can be justified only by proof of authority from the drawer, or that the drawer has clothed his agent with apparent authority to receive the proceeds of such check.

Citibank further argues that PCI Bank's clearing stamp appearing at the back of the questioned checks stating that ALL PRIOR INDORSEMENTS AND/OR LACK OF INDORSEMENTS GUARANTEED should render PCIBank liable because it made it pass through the clearing house and therefore Citibank had no other option but to pay it. Thus, Citibank asserts that the proximate cause of Ford's injury is the gross negligence of PCIBank. Since the questioned crossed check was deposited with PCIBank, which claimed to be a depository/collecting bank of the BIR, it had the responsibility to make sure that the check in question is deposited in Payee's account only.

Indeed, the crossing of the check with the phrase "Payee's Account Only," is a warning that the check should be deposited only in the account of the CIR. Thus, it is the duty of the collecting bank PCIBank to ascertain that the check be deposited in payee's account only. Therefore, it is the collecting bank (PCIBank) which is bound to scrutinize the check and to know its depositors before it could make the clearing indorsement "all prior indorsements and/or lack of indorsement guaranteed".

In *Banco de Oro Savings and Mortgage Bank vs. Equitable Banking Corporation*,[24] we ruled:

"Anent petitioner's liability on said instruments, this court is in full accord with the ruling of the PCHC's 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."[25]

Lastly, banking business requires that the one who first cashes and negotiates the check must take some precautions to learn whether or not it is genuine. And if the one cashing the check through indifference or other circumstance assists the forger in committing the fraud, he should not be permitted to retain the proceeds of the check from the drawee whose sole fault was that it did not discover the forgery or the defect in the title of the person negotiating the instrument before paying the check. For this reason, a bank which cashes a check drawn upon another bank, without requiring proof as to the identity of persons presenting it, or making inquiries with regard to them, cannot hold the proceeds against the drawee when the proceeds of the checks were afterwards diverted to the hands of a third party. In such cases the drawee bank has a right to believe that the cashing bank (or the collecting bank) had, by the usual proper investigation, satisfied itself of the authenticity of the negotiation of the checks. Thus, one who encashed a check which had been forged or diverted and in turn received payment thereon from the drawee, is guilty of negligence which proximately contributed to the success of the fraud

practiced on the drawee bank. The latter may recover from the holder the money paid on the check.[26]

Having established that the collecting bank's negligence is the proximate cause of the loss, we conclude that PCIBank is liable in the amount corresponding to the proceeds of Citibank Check No. SN-04867.

G.R. No. 128604

The trial court and the Court of Appeals found that PCIBank had no official act in the ordinary course of business that would attribute to it the case of the embezzlement of Citibank Check Numbers SN-10597 and 16508, because PCIBank did not actually receive nor hold the two Ford checks at all. The trial court held, thus:

"Neither is there any proof that defendant PCIBank contributed any official or conscious participation in the process of the embezzlement. This Court is convinced that the switching operation (involving the checks while in transit for "clearing") were the clandestine or hidden actuations performed by the members of the syndicate in their own personal, covert and private capacity and done without the knowledge of the defendant PCIBank...."[27]

In this case, there was no evidence presented confirming the conscious participation of PCIBank in the embezzlement. As a general rule, however, a banking corporation is liable for the wrongful or tortuous acts and declarations of its officers or agents within the course and scope of their employment.[28] A bank will be held liable for the negligence of its officers or agents when acting within the course and scope of their employment. It may be liable for the tortuous acts of its officers even as regards that species of tort of which malice is an essential element. In this case, we find a situation where the PCIBank appears also to be the victim of the scheme hatched by a syndicate in which its own management employees had participated.

The pro-manager of San Andres Branch of PCIBank, Remberto Castro, received Citibank Check Numbers SN 10597 and 16508. He passed the checks to a co-conspirator, an Assistant Manager of PCIBank's Meralco Branch, who helped Castro open a Checking account of a fictitious person named "Reynaldo Reyes." Castro deposited a worthless Bank of America Check in exactly the same amount of Ford checks. The syndicate tampered with the checks and succeeded in replacing the worthless checks and the eventual encashment of Citibank Check Nos. SN 10597 and 16508. The PCIBank Pro-manager, Castro, and his co-conspirator Assistant Manager apparently performed their activities using facilities in their official capacity or authority but for their personal and private gain or benefit.

A bank holding out its officers and agents as worthy of confidence will not be permitted to profit by the frauds these officers or agents were enabled to perpetrate in the apparent course of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. For the general rule is that a bank is liable for the fraudulent acts or representations of an officer or agent acting within the course and apparent scope of his employment or authority.[29] And if an officer or employee of a bank, in his official capacity, receives money to satisfy an evidence of indebtedness lodged with his bank for collection, the bank is liable for his misappropriation of such sum.[30]

Moreover, as correctly pointed out by Ford, Section 5[31] of Central Bank Circular No. 580, Series of 1977 provides that any theft affecting items in transit for clearing, shall be for the account of sending bank, which in this case is PCIBank.

But in this case, responsibility for negligence does not lie on PCIBank's shoulders alone.

The evidence on record shows that Citibank as drawee bank was likewise negligent in the performance of its duties. Citibank failed to establish that its payment of Ford's checks were made in due course and legally in order. In its defense, Citibank claims the genuineness and due execution of said checks, considering that Citibank (1) has

no knowledge of any infirmity in the issuance of the checks in question (2) coupled by the fact that said checks were sufficiently funded and (3) the endorsement of the Payee or lack thereof was guaranteed by PCI Bank (formerly IBAA), thus, it has the obligation to honor and pay the same.

For its part, Ford contends that Citibank as the drawee bank owes to Ford an absolute and contractual duty to pay the proceeds of the subject check only to the payee thereof, the CIR. Citing Section 62[32] of the Negotiable Instruments Law, Ford argues that by accepting the instrument, the acceptor which is Citibank engages that it will pay according to the tenor of its acceptance, and that it will pay only to the payee, (the CIR), considering the fact that here the check was crossed with annotation "Payees Account Only."

As ruled by the Court of Appeals, Citibank must likewise answer for the damages incurred by Ford on Citibank Checks Numbers SN 10597 and 16508, because of the contractual relationship existing between the two. Citibank, as the drawee bank breached its contractual obligation with Ford and such degree of culpability contributed to the damage caused to the latter. On this score, we agree with the respondent court's ruling.

Citibank should have scrutinized Citibank Check Numbers SN 10597 and 16508 before paying the amount of the proceeds thereof to the collecting bank of the BIR. One thing is clear from the record: the clearing stamps at the back of Citibank Check Nos. SN 10597 and 16508 do not bear any initials. Citibank failed to notice and verify the absence of the clearing stamps. Had this been duly examined, the switching of the worthless checks to Citibank Check Nos. 10597 and 16508 would have been discovered in time. For this reason, Citibank had indeed failed to perform what was incumbent upon it, which is to ensure that the amount of the checks should be paid only to its designated payee. The fact that the drawee bank did not discover the irregularity seasonably, in our view, constitutes negligence in carrying out the bank's duty to its depositors. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.[33]

Thus, invoking the doctrine of comparative negligence, we are of the view that both PCIBank and Citibank failed in their respective obligations and both were negligent in the selection and supervision of their employees resulting in the encashment of Citibank Check Nos. SN 10597 and 16508. Thus, we are constrained to hold them equally liable for the loss of the proceeds of said checks issued by Ford in favor of the CIR.

Time and again, we have stressed that banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be very high, if not the highest, degree of diligence.[34] A bank's liability as obligor is not merely vicarious but primary, wherein the defense of exercise of due diligence in the selection and supervision of its employees is of no moment.[35]

Banks handle daily transactions involving millions of pesos.[36] 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.[37] Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.[38]

On the issue of prescription, PCIBank claims that the action of Ford had prescribed because of its inability to seek judicial relief seasonably, considering that the alleged negligent act took place prior to December 19, 1977 but the relief was sought only in 1983, or seven years thereafter.

The statute of limitations begins to run when the bank gives the depositor notice of the payment, which is ordinarily when the check is returned to the alleged drawer as a voucher with a statement of his account,[39] and an action upon a check is ordinarily governed by the statutory period applicable to instruments in writing.[40]

Our laws on the matter provide that the action upon a written contract must be brought within ten years from the time the right of action accrues.[41] Hence, the reckoning time for the prescriptive period begins when the instrument was issued and the corresponding check was returned by the bank to its depositor (normally a month thereafter). Applying the same rule, the cause of action for the recovery of the proceeds of Citibank Check No. SN 04867 would normally be a month after December 19, 1977, when Citibank paid the face value of the check in the amount of P4,746,114.41. Since the original complaint for the cause of action was filed on January 20, 1983, barely six years had lapsed. Thus, we conclude that Ford's cause of action to recover the amount of Citibank Check No. SN 04867 was seasonably filed within the period provided by law.

Finally, we also find that Ford is not completely blameless in its failure to detect the fraud. Failure on the part of the depositor to examine its passbook, statements of account, and cancelled checks and to give notice within a reasonable time (or as required by statute) of any discrepancy which it may in the exercise of due care and diligence find therein, serves to mitigate the banks' liability by reducing the award of interest from twelve percent (12%) to six percent (6%) per annum. As provided in Article 1172 of the Civil Code of the Philippines, responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances. In quasi-delicts, the contributory negligence of the plaintiff shall reduce the damages that he may recover.[42]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 25017, are **AFFIRMED**. PCIBank, known formerly as Insular Bank of Asia and America, is declared solely responsible for the loss of the proceeds of Citibank Check No. SN 04867 in the amount P4,746,114.41, which shall be paid together with six percent (6%) interest thereon to Ford Philippines Inc. from the date when the original complaint was filed until said amount is fully paid.

However, the Decision and Resolution of the Court of Appeals in CA-G.R. No. 28430 are **MODIFIED** as follows: PCIBank and Citibank are adjudged liable for and must share the loss, (concerning the proceeds of Citibank Check Numbers SN 10597 and 16508 totalling P12,163,298.10) on a fifty-fifty ratio, and each bank is **ORDERED** to pay Ford Philippines Inc. P6,081,649.05, with six percent (6%) interest thereon, from the date the complaint was filed until full payment of said amount.

Costs against Philippine Commercial International Bank and Citibank, N.A.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Penned by Justice B. A. Adefuin-de la Cruz and concurred in by Justices Jesus M. Elbinias and Lourdes K. Tayao-Jaguros, rollo, G. R. No. 121413, pp. 27-42.

[2] Rollo, G.R. No. 121413, pp. 44-45.

[3] Penned by Justice Jose C. de la Rama and concurred in by Justices Emeterio C. Cui and Eduardo G. Montenegro, rollo, G.R. No. 128604, pp. 45-60.

[4] Rollo, G.R. No. 128604, pp. 42-43.

[5] *Supra*, see note 1, pp. 32-34 (All citations omitted).

[6] Rollo, G.R. No. 121413, pp. 131-132.

[7] *Id.* at 41-42.

[8] Id. at 18.

[9] Rollo, G.R. No. 121479, pp. 162-163.

[10] Id. at 181.

[11] Id. at 186.

[12] Id. at 188.

[13] Id. at 192.

[14] Supra, see note 3, pp. 47-49.

[15] Id. at 46.

[16] Id. at 24-25.

[17] 218 SCRA 682 (1993).

[18] Am Jur 2d, Volume 58, Negligence, Section 458.

[19] Am Jur 2d, Volume 58, Negligence, Section 464.

[20] Vda. de Bataclan, et al. vs. Medina, 102 Phil. 181, 186 (1957).

[21] Am Jur 2d, Volume 10, Banks, Section 604 (1963 Edition).

[22] Id. at Section 697.

[23] Ibid.

[24] 157 SCRA 188 (1988).

[25] Id. at 194.

[26] Supra note 20 at Section 611.

[27] Rollo, G.R. No. 128604, pp. 56-57.

[28] Supra note 20 at Section 110.

[29] Id. at Sec. 111.

[30] Id. at Sec. 113.

[31] Sec. 5. Loss of Clearing Items - Any loss or damage arising from theft, pilferage, or other causes affecting items in transit shall be for the account of the sending bank/branch, institution or entity concerned.

[32] Sec. 62, Negotiable Instruments Law.

[33] Simex International (Manila), Inc. vs. Court of Appeals, 183 SCRA 360, 367 (1990).

[34] Supra, see note 17, at p. 697.

[35] Ibid.

[36] BPI vs. Court of Appeals, 216 SCRA 51, 71 (1992).

[37] Ibid.

[38] Ibid.

[39] Supra note 20 at Section 605.

[40] Ibid.

[41] CIVIL CODE, Art. 1144.

[42] CIVIL CODE, Art. 2214.

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