CEBU INTERNATIONAL FINANCE CORPORATION, PETITIONER, VS. COURT OF APPEALS, VICENTE ALEGRE, RESPONDENTS.

G.R. No. 123031. October 12, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails respondent appellate court's Decision,[1] dated December 8, 1995, in CA G.R. CV No. 44085, which affirmed the ruling of the Regional Trial Court of Makati, Branch 132. The dispositive portion of the trial court's decision reads:

> "WHEREFORE, judgment is hereby rendered ordering defendant [herein petitioner] to pay plaintiff [herein private respondent]:
>
> "(1) the principal sum of P514,390.94 with legal interest thereon computed from August 6, 1991 until fully paid; and
>
> "(2) the costs of suit.
>
> SO ORDERED."[2]

Based on the records, the following are the pertinent facts of the case:

> Cebu International Finance Corporation (CIFC), a quasi-banking institution, is engaged in money market operations.
>
> On April 25, 1991, private respondent, Vicente Alegre, invested with CIFC, five hundred thousand (P500,000.00) pesos, in cash. Petitioner issued a promissory note to mature on May 27, 1991. The note for five hundred sixteen thousand, two hundred thirty-eight pesos and sixty-seven centavos (P516,238.67) covered private respondent's placement plus interest at twenty and a half (20.5%) percent for thirty-two (32) days.
>
> On May 27, 1991, CIFC issued BPI Check No. 513397 (hereinafter the CHECK) for five hundred fourteen thousand, three hundred ninety pesos and ninety-four centavos (P514,390.94) in favor of the private respondent as proceeds of his matured investment plus interest. The CHECK was drawn from petitioner's current account number 0011-0803-59, maintained with the Bank of the Philippine Islands (BPI), main branch at Makati City.
>
> On June 17, 1991, private respondent's wife deposited the CHECK with Rizal Commercial Banking Corp. (RCBC), in Puerto Princesa, Palawan. BPI dishonored the CHECK with the annotation, that the "Check (is) Subject of an Investigation." BPI took custody of the CHECK pending an investigation of several counterfeit checks drawn against CIFC's aforestated checking account. BPI used the check to trace the perpetrators of the forgery.
>
> Immediately, private respondent notified CIFC of the dishonored CHECK and demanded, on several occasions, that he be paid in cash. CIFC refused the request, and instead instructed private respondent to wait for its ongoing bank reconciliation with BPI. Thereafter, private respondent, through counsel, made a formal

demand for the payment of his money market placement. In turn, CIFC promised to replace the CHECK but required an impossible condition that the original must first be surrendered.

On February 25, 1992, private respondent Alegre filed a complaint[3] for recovery of a sum of money against the petitioner with the Regional Trial Court of Makati (RTC-Makati), Branch 132.

On July 13, 1992, CIFC sought to recover its lost funds and formally filed against BPI, a separate civil action[4] for collection of a sum of money with the RTC-Makati, Branch 147. The collection suit alleged that BPI unlawfully deducted from CIFC's checking account, counterfeit checks amounting to one million, seven hundred twenty-four thousand, three hundred sixty-four pesos and fifty-eight centavos (P1,724,364.58). The action included the prayer to collect the amount of the CHECK paid to Vicente Alegre but dishonored by BPI.

Meanwhile, in response to Alegre's complaint with RTC-Makati, Branch 132, CIFC filed a motion for leave of court to file a third-party complaint against BPI. BPI was impleaded by CIFC to enforce a right, for contribution and indemnity, with respect to Alegre's claim. CIFC asserted that the CHECK it issued in favor of Alegre was genuine, valid and sufficiently funded.

On July 23, 1992, the trial court granted CIFC's motion. However, BPI moved to dismiss the third-party complaint on the ground of pendency of another action with RTC-Makati, Branch 147. Acting on the motion, the trial court dismissed the third-party complaint on November 4, 1992, after finding that the third party complaint filed by CIFC against BPI is similar to its ancillary claim against the bank, filed with RTC-Makati Branch 147.

Thereafter, during the hearing by RTC-Makati, Branch 132, held on May 27, and June 22, 1993, Vito Arieta, Bank Manager of BPI, testified that the bank, indeed, dishonored the CHECK, retained the original copy and forwarded only a certified true copy to RCBC. When Arieta was recalled on July 20, 1993, he testified that on July 16, 1993, BPI encashed and deducted the said amount from the account of CIFC, but the proceeds, as well as the CHECK remained in BPI's custody. The bank's move was in accordance with the Compromise Agreement[5] it entered with CIFC to end the litigation in RTC-Makati, Branch 147. The compromise agreement, which was submitted for the approval of the said court, provided that:

"1. Defendant [BPI] shall pay to the plaintiff [CIFC] the amount of P1,724,364.58 plus P 20,000 litigation expenses as full and final settlement of all of plaintiff's claims as contained in the Amended Complaint dated September 10, 1992. The aforementioned amount shall be credited to plaintiff's current account No. 0011-0803-59 maintained at defendant's Main Branch upon execution of this Compromise Agreement.

"2. Thereupon, defendant shall debit the sum of P 514,390.94 from the aforesaid current account representing payment/discharge of BPI Check No. 513397 payable to Vicente Alegre.

"3. In case plaintiff is adjudged liable to Vicente Alegre in Civil Case No. 92-515 arising from the alleged dishonor of BPI Check No. 513397, plaintiff cannot go after the defendant: otherwise stated, the defendant shall not be liable to the plaintiff. Plaintiff [CIFC] may however set-up the defense of payment/discharge stipulated in par. 2 above."[6]

On July 27, 1993, BPI filed a separate collection suit[7] against Vicente Alegre with the RTC-Makati, Branch 62. The complaint alleged that Vicente Alegre connived with certain Lina A. Pena and Lita A. Anda and forged several checks of BPI's client, CIFC. The total amount of counterfeit checks was P 1,724,364.58. BPI prevented the encashment of some checks amounting to two hundred ninety five thousand, seven hundred seventy-five pesos and seven centavos (P295,775.07). BPI admitted that the CHECK, payable to Vicente Alegre for P514,390.94, was deducted from BPI's claim, hence, the balance of the loss incurred by BPI was nine hundred fourteen thousand, one hundred ninety-eight pesos and fifty-seven centavos (P914,198.57), plus costs of suit for twenty thousand (P20,000.00) pesos. The records are silent on the outcome of this case.

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On September 27, 1993, RTC-Makati, Branch 132, rendered judgment in favor of Vicente Alegre.

CIFC appealed from the adverse decision of the trial court. The respondent court affirmed the decision of the trial court.

Hence this appeal,[8] in which petitioner interposes the following assignments of errors:

> 1. The Honorable Court of Appeals erred in affirming the finding of the Honorable Trial Court holding that petitioner was not discharged from the liability of paying the value of the subject check to private respondent after BPI has debited the value thereof against petitioner's current account.
>
> 2. The Honorable Court of Appeals erred in applying the provisions of paragraph 2 of Article 1249 of the Civil Code in the instant case. The applicable law being the Negotiable Instruments Law.
>
> 3. The Honorable Court of Appeals erred in affirming the Honorable Trial Court's findings that the petitioner was guilty of negligence and delay in the performance of its obligation to the private respondent.
>
> 4. The Honorable Court of Appeals erred in affirming the Honorable Trial Court's decision ordering petitioner to pay legal interest and the cost of suit.
>
> 5. The Honorable Court of Appeals erred in affirming the Honorable Trial Court's dismissal of petitioner's third-party complaint against BPI.

These issues may be synthesized into three:

> 1. WHETHER OR NOT ARTICLE 1249 OF THE NEW CIVIL CODE APPLIES IN THE PRESENT CASE;
>
> 2. WHETHER OR NOT "BPI CHECK NO. 513397" WAS VALIDLY DISCHARGED; and
>
> 3. WHETHER OR NOT THE DISMISSAL OF THE THIRD PARTY COMPLAINT OF PETITIONER AGAINST BPI BY REASON OF LIS PENDENS WAS PROPER?

On the first issue, petitioner contends that the provisions of the Negotiable Instruments Law (NIL) are the pertinent laws to govern its money market transaction with private respondent, and not paragraph 2 of Article 1249 of the Civil Code. Petitioner stresses that it had already been discharged from the liability of paying the value of the CHECK due to the following circumstances:

> "1) There was "ACCEPTANCE" of the subject check by BPI, the drawee bank, as defined under the Negotiable Instruments Law, and therefore, BPI, the drawee bank, became primarily liable for the payment of the check, and consequently, the drawer, herein petitioner, was discharged from its liability thereon;
>
> 2) Moreover, BPI, the drawee bank, has not validly DISHONORED the subject check; and,
>
> 3) The act of BPI, the drawee bank of debiting/deducting the value of the check from petitioner's account amounted to and/or constituted a discharge of the drawer's (petitioner's) liability under the instrument/subject check."[9]

Petitioner cites Section 137 of the Negotiable Instruments Law, which states:

> "Liability of drawee retaining or destroying bill - Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery or such other period as the holder may allow, to return the bill accepted or non-accepted to the Holder, he will be deemed to have accepted the same."

Petitioner asserts that since BPI accepted the instrument, the bank became primarily liable for the payment of the CHECK. Consequently, when BPI offset the value of CHECK against the losses from the forged checks allegedly

committed by the private respondent, the check was deemed paid.

Article 1249 of the New Civil Code deals with a mode of extinction of an obligation and expressly provides for the medium in the "payment of debts." It provides that:

> "The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency, which is legal tender in the Philippines.
>
> The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.
>
> In the meantime, the action derived from the original obligation shall be held in abeyance."

Considering the nature of a money market transaction, the above-quoted provision should be applied in the present controversy. As held in Perez vs. Court of Appeals,[10] a "money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in open market. In a money market transaction, the investor is a lender who loans his money to a borrower through a middleman or dealer.[11]

In the case at bar, the money market transaction between the petitioner and the private respondent is in the nature of a loan. The private respondent accepted the CHECK, instead of requiring payment in money. Yet, when he presented it to RCBC for encashment, as early as June 17, 1991, the same was dishonored by non-acceptance, with BPI's annotation: "Check (is) subject of an investigation." These facts were testified to by BPI's manager. Under these circumstances, and after the notice of dishonor,[12] the holder has an immediate right of recourse against the drawer,[13] and consequently could immediately file an action for the recovery of the value of the check.

In a loan transaction, the obligation to pay a sum certain in money may be paid in money, which is the legal tender or, by the use of a check. A check is not a legal tender, and therefore cannot constitute valid tender of payment. In the case of Philippine Airlines, Inc. vs. Court of Appeals,[14] this Court held:

> "Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment (citation omitted). A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized (Art. 1249, Civil Code, par. 3.)"[15]

Turning now to the second issue, when the bank deducted the amount of the CHECK from CIFC's current account, this did not ipso facto operate as a discharge or payment of the instrument. Although the value of the CHECK was deducted from the funds of CIFC, it was not delivered to the payee, Vicente Alegre. Instead, BPI offset the amount against the losses it incurred from forgeries of CIFC checks, allegedly committed by Alegre. The confiscation of the value of the check was agreed upon by CIFC and BPI. The parties intended to amicably settle the collection suit filed by CIFC with the RTC-Makati, Branch 147, by entering into a compromise agreement, which reads:

> x x x
>
> "2. Thereupon, defendant shall debit the sum of P 514,390.94 from the aforesaid current account representing payment/discharge of BPI Check No. 513397 payable to Vicente Alegre.

> "3. In case plaintiff is adjudged liable to Vicente Alegre in Civil Case No. 92-515 arising from the alleged dishonor of BPI Check No. 513397, plaintiff cannot go after the defendant; otherwise stated, the defendant shall not be liable to the plaintiff. Plaintiff however (sic) set-up the defense of payment/discharge stipulated in par. 2 above."[16]

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.[17] It is an agreement between two or more persons who, for preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which everyone of them prefers in the hope of gaining, balanced by the danger of losing.[18] The compromise agreement could not bind a party who did not sign the compromise agreement nor avail of its benefits.[19] Thus, the stipulations in the compromise agreement is unenforceable against Vicente Alegre, not a party thereto. His money could not be the subject of an agreement between CIFC and BPI. Although Alegre's money was in custody of the bank, the bank's possession of it was not in the concept of an owner. BPI cannot validly appropriate the money as its own. The codal admonition on this issue is clear:

> "Art. 1317 -
>
> "No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.
>
> "A Contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party."[20]

BPI's confiscation of Alegre's money constitutes garnishment without the parties going through a valid proceeding in court. Garnishment is an attachment by means of which the plaintiff seeks to subject to his claim the property of the defendant in the hands of a third person or money owed to such third person or a garnishee to the defendant.[21] The garnishment procedure must be upon proper order of RTC-Makati, Branch 62, the court who had jurisdiction over the collection suit filed by BPI against Alegre. In effect, CIFC has not yet tendered a valid payment of its obligation to the private respondent. Tender of payment involves a positive and unconditional act by the obligor of offering legal tender currency as payment to the obligee for the former's obligation and demanding that the latter accept the same.[22] Tender of payment cannot be presumed by a mere inference from surrounding circumstances.

With regard to the third issue, for litis pendentia to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties or at least such as to represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (c) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to res judicata in the other.[23]

The trial court's ruling as adopted by the respondent court states, thus:

> "A perusal of the complaint in Civil Case No. 92-1940, entitled Cebu International Finance Corporation vs. Bank of the Philippine Islands now pending before Branch 147 of this Court and the Third Party Complaint in the instant case would readily show that the parties are not only identical but also the cause of action being asserted, which is the recovery of the value of BPI Check No. 513397 is the same. In Civil Case No. 92-1940 and in the Third Party Complaint the rights asserted and relief prayed for, the reliefs being founded on the facts, are identical.
>
> x x x
>
> WHEREFORE, the motion to dismiss is granted and consequently, the Third Party Complaint is hereby

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ordered dismissed on ground of lis pendens."[24]

We agree with the observation of the respondent court that, as between the third party claim filed by the petitioner against BPI in Civil Case No. 92-515 and petitioner's ancillary claim against the bank in Civil Case No. 92-1940, there is identity of parties as well as identity of rights asserted, and that any judgment that may be rendered in one case will amount to res judicata in another.

The compromise agreement between CIFC and BPI, categorically provided that "In case plaintiff is adjudged liable to Vicente Alegre in Civil Case No. 92-515 arising from the alleged dishonor of BPI Check No. 513397, plaintiff (CIFC) cannot go after the defendant (BPI); otherwise stated, the defendant shall not be liable to the plaintiff."[25] Clearly, this stipulation expressed that CIFC had already abandoned any further claim against BPI with respect to the value of BPI Check No. 513397. To ask this Court to allow BPI to be a party in the case at bar, would amount to res judicata and would violate terms of the compromise agreement between CIFC and BPI. The general rule is that a compromise has upon the parties the effect and authority of res judicata, with respect to the matter definitely stated therein, or which by implication from its terms should be deemed to have been included therein.[26] This holds true even if the agreement has not been judicially approved.[27]

WHEREFORE, the instant petition is hereby DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 44085 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Mendoza, and Buena, JJ., concur.

Bellosillo, (Chairman), J., on official leave.

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[1] Rollo, pp. 46-52.

[2] Court of Appeals Rollo, p. 65.

[3] Vicente Alegre vs. Cebu International Finance, Corporation, Civil Case No. 92-515; Record, Regional Trial Court, pp. 1-12.

[4] Cebu International Finance Corporation vs. Bank of the Philippine Islands, Civil Case No. 92-1940; Court of Appeals, Rollo pp. 67-77.

[5] Rollo, pp. 71-72.

[6] Id. at 71.

[7] Id. at 100 -103; Bank of the Philippine Island, vs. Vicente A. Alegre, Civil Case No. 93-2550.

[8] Id. at 7–43.

[9] Id. at 143.

[10] 127 SCRA 636 (1984).

[11] Sesbreño vs. Court of Appeals, 240 SCRA 606, 614 (1995).

[12] Negotiable Instruments Law, Section 89.

[13] Id., Section 151.

[14] 181 SCRA 557 (1990).

[15] Id. at 568.

[16] Supra, note 5.

[17] Del Rosario vs. Madayag, 247 SCRA 767, 770 (1995).

[18] Id., citing David vs. Court of Appeals, 214 SCRA 644, 650 (1992), citing Rovero vs. Amparo, 91 Phil. 228, 235 (1952); Arcenas vs. Cinco, 74 SCRA 118, 123 (1976).

[19] Jag and Haggar Jeans and Sportswear Corp. vs. NLRC, 241 SCRA 635, 642 (1995).

[20] Civil Code of the Philippines, Article 1317.

[21] Manila Remnant Co., Inc. vs. CA, 231 SCRA 281, 289 (1994)

[22] Roman Catholic Bishop of Malolos, Inc. vs. Intermediate Appellate Court, 191 SCRA 411, 419 (1990).

[23] Ramos vs. Peralta, 203 SCRA 412, 416-417 (1991); Yu vs. CA, 232 SCRA 594, at 598 (1994).

[24] Court of Appeals Rollo, p. 61.

[25] Supra, note 5.

[26] Del Rosario vs. Madayag, 247 SCRA 767, 771 (1995); citing Nieves vs. Court of Appeals, 198 SCRA 63, 69 (1991); World Machine Enterprises vs. Intermediate Appellate Court, 192 SCRA 459, 465 (1990).

[27] Id., 771; citing Mayuga vs. Court of Appeals, 154 SCRA 309 (1987) citing Meneses vs. De la Rosa, 77 Phil. 34 (1946); Vda. de Guilas vs David, 23 SCRA 762 (1968); Cochingyan vs. Cloribel, 76 SCRA 361.

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