

SECURITY BANK & TRUST COMPANY, PETITIONER, VS. TRIUMPH LUMBER AND CONSTRUCTION CORPORATION, RESPONDENT.

G.R. No. 126696. January 21, 1999

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court the petitioner asks this Court to reverse the decision[1] of 28 December 1995 and the resolution[2] of 17 September 1996 of the Court of Appeals in CA-G.R. CV No. 33513. The former set aside the decision[3] of 14 November 1990 of the Regional Trial Court (RTC) of Makati in Civil Case No. 16882 and ordered the petitioner to reimburse the private respondent the value of the alleged forged checks drawn against private respondent's account, plus interest and attorney's fees. The latter denied petitioner's motion for reconsideration.

Petitioner and private respondent were the defendant and plaintiff, respectively, in Civil Case No. 16882.

The factual antecedents of this case were summarized by the trial court in its decision in Civil Case No. 16882; thus:

Based on plaintiff's evidence, it appears that plaintiff is a depositor in good standing of defendant bank's branch at Sucat, Parañaque, under current checking account no. 210-0053-60. Plaintiff claims that on March 23 and 24, 1987, three (3) checks all payable to cash and all drawn against plaintiff's aforementioned current account were presented for encashment at defendant's Sucat Parañaque branch, to wit: Security Bank check nos. 466779 and 466777, both dated March 23, 1987 in the amount of P150,000.00 and P130,000.00, respectively; and Security Bank Check no. 466780 dated March 24, 1987 in the amount of P20,000.00. (Exhs. A, A-1 to A-3, B, B-1 to B-3, C, C-1 to C-3) Plaintiff also claims that due to defendant bank's gross negligence and inexcusable negligence in exercising ordinary diligence in verifying from plaintiff the encashment of plaintiff's checks whose amount exceed P10,000.00 and in determining the forgery of drawer's signatures, the aforesaid three (3) checks were encashed by unauthorized persons to the damage and prejudice of the plaintiff corporation. (Exhs. D, D-1, D-2) Plaintiff then requested the defendant to credit back and restore to its account the value of the checks which were wrongfully encashed in the amount of P300,000.00 but despite due demand the defendant failed to pay its liability. (Exhs. F, F-1, F-2) Finally, plaintiff claims that per findings of the PC Crime Laboratory, the signatures of Co Yok Teng and Yu Chun Kit, the authorized [signatories] of plaintiff were forged. (Exhs. E, E-1 to E-4, G, G-1, G-2, H, I, I-1, I-2)

Upon the other hand, the defendant bank claims that on June 19, 1985 the plaintiff corporation opened savings account no. 3220-0529-79 and current account no. 3210-0053-60 with defendant bank's branch in Sucat, Parañaque, Metro Manila. In order to make the said current and savings account operational, the plaintiff herein provided the defendant with the requisite specimen signature cards which in efect authorized defendant bank to honor withdrawals on the basis of any two of three signatures affixed thereon, specifically those of Mr. Dee Kong, Mr. Co Yok Teng and Mr. Chun Yun Kit, the president, treasurer and general manager, respectively, of plaintiff corporation. (Exhs. 3, 4) Subsequently, plaintiff executed an automatic transfer

agreement authorizing defendant bank to transfer cleared funds from plaintiff's savings account to its current account at any time whenever funds in the current account are insufficient to meet withdrawals therefrom or are below the stipulated minimum balance. (Exhs. 5, 6, 6-A) Defendant also claims that the savings account pass book and the check booklets were kept by the plaintiff in its filing cabinet but on March 23, 1987 the plaintiff herein discovered that the door of his office was forced open including that of the filing cabinet where the check booklets and other bank documents were being kept by the plaintiff. (pp. 32-33, TSN of August 15, 1988) Defendant further claims that the incident was not reported to the police authorities by the plaintiff nor was there any advise given to defendant bank and that on the same day of the discovery by plaintiff of the burglary, said plaintiff nevertheless made three separate deposits in a total amount of P374,554.10. (Exhs. 1, 1-A, 1-B, 2-A, 2-B) Defendant also claims that immediately after the said deposit of P374,554.10 has been made by the plaintiff, three checks namely: check no. 466779 dated March 23, 1987 in the amount of P130,000.00; check no. 466779 dated March 23, 1987 of P150,000.00 and check no. 466780 dated March 24, 1987 in the amount of P20,000.00 which [were] all payable to cash were successively presented to defendant bank for encashment which was given due course by the latter after said checks have passed through the standard bank procedure for verification of the check signatures and the regularity of the material particulars of said checks. (pp. 6, 19, 20, 39, TSN of February 1, 1989, p. 21, TSN of August 15, 1988)[4]

On the basis of such factual environment, the trial court found no preponderance of evidence to support private respondent's complaint. The private respondent failed to show that the signatures on the subject checks were forged. It did not even present in court the originals of the checks. Neither did it bother to explain its failure to do so. Thus, it could be presumed that the original checks were wilfully suppressed and would be adverse to private respondent's case if produced. Moreover, the signatures on the checks were not compared with the specimen signature appearing on the specimen signatures cards provided by the private respondent upon opening its current account with petitioner. Thus, the opinion of the expert witness is not worthy of credit. Besides, the private respondent failed to present Mr. Co Yok Teng, one of the signatories of the checks in question, to deny the genuineness of the signatures.

The trial court was convinced that the petitioner bank had exercised due care and diligence in determining the authenticity of the checks in question before they were encashed. It was rather the private respondent that had been negligent in the care and custody of the corporate checks. After the incident in question occurred, the private respondent should have reported the matter to the police authorities or to the bank in order that the latter could "undertake stringent measure to counteract any attempt to forge the corporate checks." But private respondent did not. Hence, private respondent should be the one to bear the loss.

In view of such findings, the trial court dismissed the complaint for lack of merit.

On appeal, the Court of Appeals reversed the decision of the trial court and ordered the petitioner to reimburse the private respondent the sum of P300,000, plus interest at the rate of 2 ½ % per month from 24 March 1987 until full payment thereof, as well as attorney's fees equivalent to 25 % of the principal obligation.

The Court of Appeals held that it was not necessary for the private respondent to prove that the signatures on the three checks in question were forged because of the following admissions set forth in petitioner's answer:

14.

Plaintiff was guilty of negligence substantially contributing to the unauthorized signatures or forgery of the signatures on the checks mentioned in the complaint.

...

15.

The alleged forged signatures on the checks were sufficiently adroit as to escape detection even under the officer's scrutiny.

...

20.3

Anna P. Naval and Roberto N. Gabutao verbally admitted that the checks were forged.

...

21.

Anna Naval and Roberto Gabutao are now facing charges for estafa thru Falsification of Commercial Documents under Criminal Case No. 30004 pending with the Regional Trial Court, National Capital Judicial Region, sitting at Makati, Metro Manila.

According to the Court of Appeals, the expert witness, contrary to the trial court's finding, was able to examine the signatures on the original checks and compared them with the standard signatures of the signatories. The photographic enlargements of the questioned checks, which she identified in court, were in fact taken from the original checks. With the bank's admission in its answer, as well as the un rebutted testimony of the expert witness and of Chun Yun Kit, there could be no doubt that the signatures on the questioned checks were forged.

The Court of Appeals likewise held that the petitioner must be the one to bear the consequences of its failure to detect the forgery. Besides, petitioner was "less than prudent" in the treatment of private respondent's account. It did not observe its arrangement with the private respondent that it would inform the latter whenever a check of more than P10,000 would be presented for encashment. Neither did it ask the payee to present an identification card or to bring someone who could attest to identity of the payee.

After its motion for reconsideration was denied[5] by the Court of Appeals, petitioner filed this petition contending that the Court of Appeals erred in holding that

I

...THE SIGNATURES ON THE CHECKS IN QUESTION WERE FORGED

II

...WHETHER THE SIGNATURES WERE FORGED IS NO LONGER AN ISSUE IN THE CASE CONSIDERING THE AFFIRMATIVE DEFENSES SET FORTH IN PETITIONER'S ANSWER

III

... THE PETITIONER ITSELF WAS NEGLIGENT AND THAT THE RESPONDENT EXERCISED DUE CARE IN THE CUSTODY OF ITS CHECKS AND OTHER RELATED DOCUMENTS

IV

... RESPONDENT IS ENTITLED TO REIMBURSEMENT OF P300,000.00 PLUS INTEREST THEREOF AS WELL AS ATTORNEY'S FEES.

In the first assigned error, the petitioner alleges that the best evidence of the forgery were the original checks bearing the alleged forged signatures of private respondent's officers. In spite of the timely objection made by the petitioner, the private respondent introduced in evidence mere photocopies of the questioned checks. The failure to produce the originals of the checks was a fatal omission inasmuch as there would be no evidentiary basis for the court to declare that the instruments were forgeries. Likewise such failure amounted to a willful suppression of evidence, which created a presumption that its production would be unfavorable to respondent's case.[6] It could also be presumed that "the checks in question [were] genuine checks regularly issued by the respondent in the

course of its business, bearing the genuine signatures of the officers whom it authorized to sign in its behalf.”[7] Also, an unfavorable inference could be drawn from the unexplained failure of private respondent to call as its witness Mr. Co Yok Teng, whose signature was among those allegedly forged.

Petitioner, further contends that the opinion of private respondent’s expert witness, Crispina V. Tabo, Senior Document Examiner of the PC Crime Laboratory, has no weight and deserves no consideration. Tabo did not use as basis of her analytical study the standard signatures of Chun Yun Kit and Co Yok Teng on the specimen signature cards provided by the respondent upon opening Current Account No. 3210-0523-60 with the petitioner. It was to be against these standard signatures appearing on the specimen cards that petitioner was to honor checks drawn against private respondent’s account. What Tabo utilized for comparisons were signatures that were not even authenticated by Chun Yun Kit and Co Yok Teng. Neither was it proved that the supposed standard signatures had been written “closely proximate” to the date of the questioned checks. Moreover, the “requested signatures” on the long bond paper written post litem motam could not be accepted as standards of comparison “because of the ease with which they[could] be disguised to intentionally differentiate them from those being challenged.”[8]

As to the second assigned error, petitioner maintains that its Answer contained a specific denial of private respondent’s allegation of forgery. It could set in its answer affirmative and negative defenses alternatively even if they were inconsistent with each other.[9]

With respect to its third assigned error, petitioner asserts that it exercised due care and diligence in the payment of private respondent’s checks by first verifying in accordance with standard bank practices and procedures the genuineness of the signatures and endorsements. Upon the other hand, the private respondent, in the management of its business affairs, fell short of the diligence and the ordinary prudence required under the circumstances. It should have advised petitioner of the alleged burglary so that petitioner could have applied stricter rules in the processing of checks drawn against private respondent’s account, but it did not bother to do so. Neither did it reconcile its account, balances with the petitioner in order to forestall the happening of the forgery.

In the last assigned error, the petitioner alleges that in view of the reasons it stated in the first and third assigned errors the petitioner cannot be obliged to pay the amount of P300,000 plus interest. On the contrary, petitioner is entitled to an award of attorney’s fees because private respondent’s complaint was “insincere, baseless, and intended to harass, annoy and defame [it].”[10]

Upon the other hand, the respondent claims that petitioner should have filed “a petition for review by certiorari and not merely a petition for review.” The determination of negligence by the Court of Appeals is a question of fact that cannot be disturbed on appeal. Even assuming that the instant case is an exception to the rule limiting the appellate jurisdiction of the Supreme Court to reviewing errors of law nonetheless, the issue of forgery was adequately proved by preponderance of evidence.

This appeal is meritorious.

Well settled is the rule that in the exercise of our power of review the findings of facts of the Court of Appeals are conclusive and binding on this Court. However, there are recognized exceptions, among which is when the factual findings of the trial court and the appellate court are conflicting.[11] The disagreement between the trial court and the Court of Appeals in the factual conclusion, especially with regard to the alleged forgery of the signatures on the questioned checks and the negligence of the parties, has constrained us to examine the evidence submitted by the parties.

On the issue of forgery, we are unable to agree with the finding of the Court of Appeals that the petitioner

admitted in its Answer[12] to the complaint the forgery of the signatures. Far from admitting the forgery, petitioner categorically denied that the signatures on the questioned checks were forgeries. However, by way of an alternative affirmative defense, petitioner contended that it had exercised reasonable degree of diligence in detecting whether there was forgery. Even assuming that the signatures on the checks were forged, still petitioner could not be held liable for the value of the checks because all the checks were complete and regular on their face. The alleged forged signatures were “sufficiently adroit as to escape detection even under the officer’s scrutiny.”

The Court of Appeals also erred in holding that forgery was duly established. First, Section 3, Rule 130 of the Rules of Court was not complied with by private respondent. The Section explicitly provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. This is what is known as the “best evidence” rule. The exceptions are as follows:

1.

When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

2. When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

3. When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the fact sought to be established from them is only the general result of the whole; and

4. When the original is a public record in the custody of a public officer or is recorded in a public office.

In this case, the originals of the alleged forged checks had to be produced, since it was never shown that any of these exceptions was present. What the private respondent offered were mere photocopies of the checks in question marked as Exhibits “A,” “B,” and “C.”[13] It never explained the reason why it could not produce the originals of the checks. Its expert witness Crispina Tabo admitted though that the original checks were taken back by the investigating policeman, Glenn Ticson; thus:

ATTY. NARAG:

...

Q

Do you have a copy, Madam Witness of the checks which were submitted to you under question?

A

It was only a xerox copy, because the original was withdrawn by the investigating policeman, which is in (sic) the name of Glenn Ticson, sir.

Q Do you want to impress the court that the originals of these checks were submitted to you?

A Yes, sir.

Q Do you have a copy of the originals of the checks under (sic) standards?

A Xerox copies only, because it was also withdrawn by the investigating policeman, who is Mr. Glenn Ticson.[14]

Yet, the said policeman was not presented to produce the original checks.

It is true that the photocopies of the questioned checks were all identified by private respondent's witness Yu Chun Kit during his direct testimony[15] without objection on the part of petitioner's counsel. The latter even cross-examined Yu Chun Kit,[16] and, at the formal offer of said exhibits, he objected to their admission solely on the grounds that they were "irrelevant, immaterial and self-serving."[17] The photocopies of the checks may therefore be admitted for failure of petitioner to tender an appropriate objection[18] to their admission. Nevertheless, their probative value is nil.[19]

Then, too, the proper procedure in the investigation of a disputed handwriting was not observed. The initial step in such investigation is the introduction of the genuine handwriting of the party sought to be charged with the disputed writing, which is to serve as a standard of comparison.[20] The standard or the exemplar must therefore be proved to be genuine.[21] For the purpose of proving the genuineness of a handwriting Section 22, Rule 132 of the Rules of Court provides:

SEC. 22. How genuineness of handwriting proved. – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

In *BA Finance v. Court of Appeals*,[22] we had the occasion to rule that the genuineness of a standard writing may be established by any of the following: (1) by the admission of the person sought to be charged with the disputed writing made at or for the purposes of the trial, or by his testimony; (2) by witnesses who saw the standards written or to whom or in whose hearing the person sought to be charged acknowledged the writing thereof; (3) by evidence showing that the reputed writer of the standard has acquiesced in or recognized the same, or that it has been adopted and acted upon by him in his business transactions or other concerns.

We find in the records only photocopies, not the originals, of the "long bond papers" containing the alleged specimen signatures.[23] Nobody was presented to prove that the specimen signatures were in fact signatures affixed by Yu Chun Kit and Co Yok Teng. Although the former took the witness stand, he was never called to identify or authenticate his signatures on the said photocopy. Clearly then, Section 22 of Rule 132 of the Rules of Court and the guidelines set forth in *BA Finance v. Court of Appeals*[24] were not complied with.

Moreover, the so-called specimen signatures on the bond paper were not directly turned over to Tabo by those who purportedly wrote them. They, together with the questioned checks, were first submitted to the Administration Branch of the PC Crime Laboratory, then endorsed to the Questioned Document Branch. The chief of the latter branch thereafter referred them to Tabo. Tabo never saw the parties write the specimen signatures. She just presumed the specimen signatures to be genuine signatures of the parties concerned. These facts were disclosed by Tabo during her cross-examination; thus:

Q

These question [sic] signatures and the specimen signatures or standard were just given to you by the police of Parañaque?

A

It was submitted to the Administrative Branch and the Administrative Branch endorsed that to the Question Document Branch and the Chief of the Document branch assigned that case to me, sir. That is why I received it and examined it.

COURT:

Q How do you know that, that is the genuine signature?

ATTY. REVILLA

Yes, how do you know that, that is the genuine signatures when you were not able to see him personally write his signature?

A

Because I examined the genuine signatures of Co Yok Teng which was submitted to the office by the investigator and it is said to be genuine, and I compared the signatures whether it is genuine or not. And upon comparing, all the specimen signatures were written by one, and also comparing all question [sic] signatures, this one (pointing to the chart) are written by one so, they were written, the question [sic] and specimen were written by two different persons.

Q

You did not ask the person to personally give his signature in order that there will be basis of comparison between standard signature and the question [sic] signature?

A

Your Honor, if the specimen signature is not sufficient enough to arrive at a conclusion, we will tell the investigator to let the person involved to come to our office to write and sign his signature, if it is not sufficient to arrive at a conclusion we let him sign.

Q

So, you do not normally demand his income tax for example, the residence certificate or other documents which contained this undisputed signature?

A

We did not ask anymore additional specimen because the submitted document is sufficient enough to arrive at the conclusion.

ATTY. REVILLA:

Q

So, you just relied on what were given to you by the investigator as they informed you that these were genuine and standard signatures?

A

Yes, sir.

Q

And who was that person who gave you this document?

A

It was the Administrative Branch who [sic] endorsed this document to the Documentation Branch. I do not know the person who brought that.

Q

You do not know the person who brought this document to the Administrative branch?

A

Yes, sir I do not know.

Q

When you started making comparison and analysis of this question [SIC] signatures and standard signatures, you did not anymore require the person, Mr. Co Yok Teng to appear personally to you?

A

I did not, sir.[25]

...

ATTY. REVILLA

Q

Mrs. Tabo, like the question [sic] signature of Mr. Co Yok Teng, you also did not personally see or observe how Mr. Co Yok Teng write this standard signature?

A

Yes, sir.

Q

And this [sic] standard signatures were just submitted to you?

A

Yes, it was submitted to the office, sir.

Q

And when you made the examination and analysis of these documents the standard and the question [sic] signature you did not require any other signature from these two personalities except those which were delivered to you?

A

Yes, sir.

...

COURT

Q

When this standard signature were submitted to you, you were just told that this is the genuine signature of the person involved, you were just told?

A

Yes, your Honor. As stated in the request it is the genuine signature.

Q

So that was your basis in claiming that this is the genuine signature of the persons involved?

A

I examined first the specimen, all the specimen whether it was written by....

Q

What are those specimen submitted to you?

A

The same checks, your Honor, and the written standard.

Q

Did you confront Co Yok Teng?

ATTY. REVILLA

A She said no, your Honor.

COURT

Q

Did you confront Yu Chun Kit whether those were actually his genuine signature?

No, your Honor.

Q

So you just relied on the claim of the person who submitted to you that these are the genuine signatures?

A

Yes, your Honor.

Q

And on the basis of that you compare the characteristic handwriting between the alleged genuine and question [sic] signature?

A

Yes, your Honor.[26] (underscoring ours for emphasis).

Our review of the testimony of private respondent's expert witness, Crispina V. Tabo, fails to convince us that she was a credible document examiner, despite petitioner's admission that she was. She was candid enough to admit to the court that although she had testified more or less three hundred times as an expert, her findings were sustained by the courts in more or less ten cases only. Thus:

Court:

Q

How many times have you testified in Court?

A More or less three hundred (300) times, your Honor.

Q How many were sustained by the Court?

A More or less ten (10), sir.

Q Out of 300?

A Yes, your Honor.[27]

Besides, under the circumstances obtaining in this case, Tabo could by no yardstick be considered to have adequate knowledge of the genuine signatures of the parties whose signatures on the questioned checks were claimed to be forged. That knowledge could be obtained either by (a) seeing the person write some other documents or signatures (*ex visu scriptionis*); (b) seeing documents otherwise known to him to have been written by the person in question (*ex scriptis olim visis*); or (c) examining, in or out of court, for the express purpose of obtaining such knowledge, the documents said to have been written by the person in question (*ex comparatione scriptorum*).[28] Tabo could not be a witness under the first and the second. She tried to be under the third. But under the third, it is essential that (a) certain specimens of handwriting were seen and considered by her and (b) they were genuinely written by the person in question.[29] Now, as stated above, Tabo had no adequate basis for concluding that the alleged specimen signatures in the long bond paper were indeed the signatures of the parties whose signatures in the checks were claimed to have been forged. Moreover, we do not think that the alleged specimens before were sufficient in number.[30]

Given the fact that Mrs. Tabo's testimony cannot inspire a conclusion that she was an expert, it was error to rely on her representation. It is settled that the relative weight of the opinions of experts by and large depends on the value of assistance and guidance they furnish the court in the determination of the issue involved.[31]

On the issue of negligence, the Court of Appeals held:

[T]here is overwhelming evidence to show that appellee (petitioner herein) was less than prudent in the treatment of appellant's (private respondents') account.

According to Chun Yun Kit, they had an agreement with Appellee's Assistant branch manager, Felicidad Dimaano, that appellant should be informed whenever a check for than P10,000.00 is presented for encashment. Dimaano did not controvert Chun Kit's testimony on this point. Such an arrangement was not observed by appellee with respect to the payment of the checks in question. (Emphasis supplied).

We do not agree. During the hearing on 1 February 1989, Felicidad Dimaano denied having such agreement with the private respondent. Rather, the agreement was that "all encashments over the counter of P10,000.00 and above should be accompanied by one of the signatories" of private respondent. But this agreement was made only on 31 March 1987, or a few days after the encashment of the checks in question.[32]

At any rate, since the questioned checks, which were payable to "cash," appeared regular on their face and the bank found nothing unusual in the transaction, as the respondent usually issued checks in big amounts[33] made payable to cash or to a particular person or to a company,[34] the petitioner cannot be faulted in paying the value of the disputed checks.

Contrary to the finding of the Court of Appeals, the private respondent is the one which stands to be blamed for its predicament. Chun Yun Kit testified that in the morning of 23 March 1987, he and some employees found the doors of their office and the filing cabinets containing the company's check booklet to have been forcibly opened. They also found the documents in disarray. Under these circumstances, a prudent and reasonable man would simply have to go over the check booklet to find out whether a check was missing. But, apparently, private

respondent's officers and employees did not bother to do so. If they did examine the booklet they could have readily discovered whether a check was taken. The following testimony of Chun Yun Kit is apropos:

Q

You said also during the last hearing that on the morning of March 23, 1987 you found out in the morning that the doors of the office were forced opened?

A

Yes, sir.

Q

And you also testified during the last hearing that the locked [sic] of the filing cabinet were also forced opened?

A

Yes, sir.

Q

And you found out on that same time and date on March 23, 1987 that the documents in the filing cabinet were not in their proper position?

A

Yes, sir.

Q

What did you do when you found out this [sic] circumstances on March 23, 1987?

A

We did not do anything because nothing was lost.

Q

Did it not occur to you Mr. Witness, that considering that burglary was committed in your office, the doors of your office were forced opened, the locks of the filing cabinet were forced opened, the documents placed in the filing cabinet were not in their proper position, it did not occur to you to check the checks of the company as being placed in the filing cabinet?

A

When we examined the check booklet, we did not discover anything lost.

Q

You did not at all bother Mr. Witness or your treasurer to check something might have lost in the check [sic], considering that the burglary [sic] and the filing cabinet were forced opened?

A

No, sir.

Q

Did you notice anything lost?

A

No, sir.[35]

Neither did any of private respondent's officers or employees report the incident to the police authorities,[36] nor did anyone advise the petitioner of such incident so that the latter could adopt necessary measures to prevent unauthorized encashments of private respondent's checks. Hence, as correctly held by the trial court, it is the private respondent, not the petitioner, which must bear the loss.

WHEREFORE, the instant petition is GRANTED the challenged decision of the Court of Appeals in CA-G.R. CV No. 33513 is hereby REVERSED, and the decision of the Regional Trial Court of Makati in Civil Case No. 16882 is hereby REINSTATED.

SO ORDERED.

Melo, Kapunan, Martinez, and Pardo JJ., concur.

[1] Annex "A" of Petition; Rollo, 54-62. Per Jacinto, G., J., with Montoya, S. and Agcaoili, O., JJ.,concurring.

[2] Annex "B" of Petition; Id., 64-65.

[3] Original Record (OR), Civil Case No. 16882, 219-222. Per Judge Zosimo Z. Angeles.

[4] OR, 220-221.

[5] Rollo, CA-G.R. CV No. 33513, 96-110.

[6] Per Section 3[e], Rule 131, Rules of Court.

[7] Citing Section 5b and 5q, Rule 131, Rules of Court, [Now Section 3 (b and q)].

[8] Rollo, 36.

[9] Citing Section 2, Rule 8, Rules of Court.

[10] Citing *Heirs of Justiva v. Court of Appeals*, 7 SCRA 72 [1963]; *Tanjangco v. Jovellanos*, 108 Phil. 713 [1960]; *Enervida v. De la Torre*, 55 SCRA 339.

[11] *Borillo v. Court of Appeals*, 209 SCRA 130, 140 [1992]; *Salvador v. Court of Appeals*, 243 SCRA 239, 253 [1995].

[12] OR, 25-32.

[13] OR, 140.

[14] TSN, 4 November 1988, 8-9.

[15] TSN, 10 August 1988, 8, 11-12; 14-15.

[16] TSN, 15 August 1988, 24-35; TSN, 9 September 1988, 3-19.

[17] TSN, 1 February 1989, 2-3.

[18] See RICARDO J. FRANCISCO, EVIDENCE 60-61 (1993).

[19] See *Borje v. Sandiganbayan*, 125 SCRA 763, 780 [1983], citing *U.S. v. Gregorio*, 17 Phil. 522 [1910]; *People v. Sto. Tomas*, 138 SCRA 206, 218-219 [1985]; *Claverias v. Quingco*, 207 SCRA 66, 76-77 [1992]; *People v. Dismuke*, 234 SCRA 51, 60 [1994]; *Gobonseng v. Court of Appeals*, 246 SCRA 472, 495 [1995]; *Republic v. Court of Appeals*, 258 SCRA 223, 242 [1996].

[20] 7 VICENTE J, FRANCISCO, EVIDENCE Part I, 604 (1973).

[21] 2 H.C. UNDERHILL, UNDERHILL'S CRIMINAL EVIDENCE Sec. 318, at 806 (5th ed. 1956). See also J. NEWTON BAKER, LAW OF DISPUTED AND FORGED DOCUMENTS Sec. 52, at 77-78 (1955).

[22] 161 SCRA 608, 618 [1998].

[23] Exhibits “J” and “H”; OR, 144 and 146.

[24] *Supra* note 22.

[25] TSN, 7 December 1988, 28-34.

[26] TSN, 8 December 1988, 10-14.

[27] TSN, 6 December 1988, 14.

[28] 3 JOHN HENRY WIGMORE, WIGMORE ON EVIDENCE Sec. 693, at 21 (3rd ed. 1940).

[29] *Ibid.*

[30] 3 JOHN HENRY WIGMORE, WIGMORE ON EVIDENCE Sec. 709, at 41.

[31] *Geromo v. Comelec*, 118 SCRA 165, 175 [1982] ; *People v. Aldana*, 175 SCRA 635, 650 [1989] ; *Espiritu v. Court of Appeals*, 242 SCRA 362, 371 [1995] ; *Eduarte v. Court of Appeals*, 253 SCRA 391, 399 [1996].

[32] TSN, 1 February 1989, 33-34; Exhibit “6,” OR, 160.

[33] TSN, 1 February 1989, 41.

[34]34 TSN, 1 February 1989, 55.

[35] TSN, 9 September 1989, 11-13.

[36] TSN, 15 August 1989, 4.

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