

**SAMSUNG CONSTRUCTION COMPANY PHILIPPINES, INC.,
PETITIONER, VS. FAR EAST BANK AND TRUST COMPANY AND COURT
OF APPEALS, RESPONDENTS.***G.R. No. 129015. August 13, 2004*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-129015/>**TINGA, J.:**

Called to fore in the present petition is a classic textbook question – if a bank pays out on a forged check, is it liable to reimburse the drawer from whose account the funds were paid out? The Court of Appeals, in reversing a trial court decision adverse to the bank, invoked tenuous reasoning to acquit the bank of liability. We reverse, applying time-honored principles of law.

The salient facts follow.

Plaintiff Samsung Construction Company Philippines, Inc. (“Samsung Construction”), while based in Biñan, Laguna, maintained a current account with defendant Far East Bank and Trust Company[1] (“FEBTC”) at the latter’s Bel-Air, Makati branch.[2] The sole signatory to Samsung Construction’s account was Jong Kyu Lee (“Jong”), its Project Manager,[3] while the checks remained in the custody of the company’s accountant, Kyu Yong Lee (“Kyu”).[4]

On 19 March 1992, a certain Roberto Gonzaga presented for payment FEBTC Check No. 432100 to the bank’s branch in Bel-Air, Makati. The check, payable to cash and drawn against Samsung Construction’s current account, was in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00). The bank teller, Cleofe Justiani, first checked the balance of Samsung Construction’s account. After ascertaining there were enough funds to cover the check,[5] she compared the signature appearing on the check with the specimen signature of Jong as contained in the specimen signature card with the bank. After comparing the two signatures, Justiani was satisfied as to the authenticity of the signature appearing on the check. She then asked Gonzaga to submit proof of his identity, and the latter presented three (3) identification cards.[6]

At the same time, Justiani forwarded the check to the branch Senior Assistant Cashier Gemma Velez, as it was bank policy that two bank branch officers approve checks exceeding One Hundred Thousand Pesos, for payment or encashment. Velez likewise counterchecked the signature on the check as against that on the signature card. He too concluded that the check was indeed signed by Jong. Velez then forwarded the check and signature card to Shirley Syfu, another bank officer, for approval. Syfu then noticed that Jose Sempio III (“Sempio”), the assistant accountant of Samsung Construction, was also in the bank. Sempio was well-known to Syfu and the other bank officers, he being the assistant accountant of Samsung Construction. Syfu showed the check to Sempio, who vouched for the genuineness of Jong’s signature. Confirming the identity of Gonzaga, Sempio said that the check was for the purchase of equipment for Samsung Construction. Satisfied with the genuineness of the signature of Jong, Syfu authorized the bank’s encashment of the check to Gonzaga.

The following day, the accountant of Samsung Construction, Kyu, examined the balance of the bank account and discovered that a check in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00)

had been encashed. Aware that he had not prepared such a check for Jong's signature, Kyu perused the checkbook and found that the last blank check was missing.[7] He reported the matter to Jong, who then proceeded to the bank. Jong learned of the encashment of the check, and realized that his signature had been forged. The Bank Manager reputedly told Jong that he would be reimbursed for the amount of the check.[8] Jong proceeded to the police station and consulted with his lawyers.[9] Subsequently, a criminal case for qualified theft was filed against Sempio before the Laguna court.[10]

In a letter dated 6 May 1992, Samsung Construction, through counsel, demanded that FEBTC credit to it the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00), with interest.[11] In response, FEBTC said that it was still conducting an investigation on the matter. Unsatisfied, Samsung Construction filed a Complaint on 10 June 1992 for violation of Section 23 of the Negotiable Instruments Law, and prayed for the payment of the amount debited as a result of the questioned check plus interest, and attorney's fees.[12] The case was docketed as Civil Case No. 92-61506 before the Regional Trial Court ("RTC") of Manila, Branch 9.[13]

During the trial, both sides presented their respective expert witnesses to testify on the claim that Jong's signature was forged. Samsung Corporation, which had referred the check for investigation to the NBI, presented Senior NBI Document Examiner Roda B. Flores. She testified that based on her examination, she concluded that Jong's signature had been forged on the check. On the other hand, FEBTC, which had sought the assistance of the Philippine National Police (PNP),[14] presented Rosario C. Perez, a document examiner from the PNP Crime Laboratory. She testified that her findings showed that Jong's signature on the check was genuine.[15]

Confronted with conflicting expert testimony, the RTC chose to believe the findings of the NBI expert. In a Decision dated 25 April 1994, the RTC held that Jong's signature on the check was forged and accordingly directed the bank to pay or credit back to Samsung Construction's account the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00), together with interest tolled from the time the complaint was filed, and attorney's fees in the amount of Fifteen Thousand Pesos (P15,000.00).

FEBTC timely appealed to the Court of Appeals. On 28 November 1996, the Special Fourteenth Division of the Court of Appeals rendered a Decision,[16] reversing the RTC Decision and absolving FEBTC from any liability. The Court of Appeals held that the contradictory findings of the NBI and the PNP created doubt as to whether there was forgery.[17] Moreover, the appellate court also held that assuming there was forgery, it occurred due to the negligence of Samsung Construction, imputing blame on the accountant Kyu for lack of care and prudence in keeping the checks, which if observed would have prevented Sempio from gaining access thereto.[18] The Court of Appeals invoked the ruling in *PNB v. National City Bank of New York*[19] that, if a loss, which must be borne by one or two innocent persons, can be traced to the neglect or fault of either, such loss would be borne by the negligent party, even if innocent of intentional fraud.[20]

Samsung Construction now argues that the Court of Appeals had seriously misapprehended the facts when it overturned the RTC's finding of forgery. It also contends that the appellate court erred in finding that it had been negligent in safekeeping the check, and in applying the equity principle enunciated in *PNB v. National City Bank of New York*.

Since the trial court and the Court of Appeals arrived at contrary findings on questions of fact, the Court is obliged to examine the record to draw out the correct conclusions. Upon examination of the record, and based on the applicable laws and jurisprudence, we reverse the Court of Appeals.

Section 23 of the Negotiable Instruments Law states:

When a signature is forged or made without the authority of the person whose signature it purports to be, it is

wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. (Emphasis supplied)

The general rule is to the effect that a forged signature is “wholly inoperative,” and payment made “through or under such signature” is ineffectual or does not discharge the instrument.[21] If payment is made, the drawee cannot charge it to the drawer’s account. The traditional justification for the result is that the drawee is in a superior position to detect a forgery because he has the maker’s signature and is expected to know and compare it.[22] The rule has a healthy cautionary effect on banks by encouraging care in the comparison of the signatures against those on the signature cards they have on file. Moreover, the very opportunity of the drawee to insure and to distribute the cost among its customers who use checks makes the drawee an ideal party to spread the risk to insurance.[23]

Brady, in his treatise *The Law of Forged and Altered Checks*, elucidates:

When a person deposits money in a general account in a bank, against which he has the privilege of drawing checks in the ordinary course of business, the relationship between the bank and the depositor is that of debtor and creditor. So far as the legal relationship between the two is concerned, the situation is the same as though the bank had borrowed money from the depositor, agreeing to repay it on demand, or had bought goods from the depositor, agreeing to pay for them on demand. The bank owes the depositor money in the same sense that any debtor owes money to his creditor. Added to this, in the case of bank and depositor, there is, of course, the bank’s obligation to pay checks drawn by the depositor in proper form and presented in due course. When the bank receives the deposit, it impliedly agrees to pay only upon the depositor’s order. When the bank pays a check, on which the depositor’s signature is a forgery, it has failed to comply with its contract in this respect. Therefore, the bank is held liable.

The fact that the forgery is a clever one is immaterial. The forged signature may so closely resemble the genuine as to defy detection by the depositor himself. And yet, if a bank pays the check, it is paying out its own money and not the depositor’s.

The forgery may be committed by a trusted employee or confidential agent. The bank still must bear the loss. Even in a case where the forged check was drawn by the depositor’s partner, the loss was placed upon the bank. The case referred to is *Robinson v. Security Bank, Ark.*, 216 S. W. Rep. 717. In this case, the plaintiff brought suit against the defendant bank for money which had been deposited to the plaintiff’s credit and which the bank had paid out on checks bearing forgeries of the plaintiff’s signature.

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It was held that the bank was liable. It was further held that the fact that the plaintiff waited eight or nine months after discovering the forgery, before notifying the bank, did not, as a matter of law, constitute a ratification of the payment, so as to preclude the plaintiff from holding the bank liable. xxx

This rule of liability can be stated briefly in these words: “A bank is bound to know its depositors’ signature.” The rule is variously expressed in the many decisions in which the question has been considered. But they all sum up to the proposition that a bank must know the signatures of those whose general deposits it carries.[24]

By no means is the principle rendered obsolete with the advent of modern commercial transactions. Contemporary texts still affirm this well-entrenched standard. Nickles, in his book *Negotiable Instruments and Other Related Commercial Paper* wrote, thus:

The deposit contract between a payor bank and its customer determines who can draw against the customer’s account by specifying whose signature is necessary on checks that are chargeable against the customer’s

account. Therefore, a check drawn against the account of an individual customer that is signed by someone other than the customer, and without authority from her, is not properly payable and is not chargeable to the customer's account, inasmuch as any "unauthorized signature on an instrument is ineffective" as the signature of the person whose name is signed.[25]

Under Section 23 of the Negotiable Instruments Law, forgery is a real or absolute defense by the party whose signature is forged.[26] On the premise that Jong's signature was indeed forged, FEBTC is liable for the loss since it authorized the discharge of the forged check. Such liability attaches even if the bank exerts due diligence and care in preventing such faulty discharge. Forgeries often deceive the eye of the most cautious experts; and when a bank has been so deceived, it is a harsh rule which compels it to suffer although no one has suffered by its being deceived.[27] The forgery may be so near like the genuine as to defy detection by the depositor himself, and yet the bank is liable to the depositor if it pays the check.[28]

Thus, the first matter of inquiry is into whether the check was indeed forged. A document formally presented is presumed to be genuine until it is proved to be fraudulent. In a forgery trial, this presumption must be overcome but this can only be done by convincing testimony and effective illustrations.[29]

In ruling that forgery was not duly proven, the Court of Appeals held:

[There] is ground to doubt the findings of the trial court sustaining the alleged forgery in view of the conflicting conclusions made by handwriting experts from the NBI and the PNP, both agencies of the government.

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These contradictory findings create doubt on whether there was indeed a forgery. In the case of *Tenio-Obsequio v. Court of Appeals*, 230 SCRA 550, the Supreme Court held that forgery cannot be presumed; it must be proved by clear, positive and convincing evidence.

This reasoning is pure sophistry. Any litigator worth his or her salt would never allow an opponent's expert witness to stand uncontradicted, thus the spectacle of competing expert witnesses is not unusual. The trier of fact will have to decide which version to believe, and explain why or why not such version is more credible than the other. Reliance therefore cannot be placed merely on the fact that there are colliding opinions of two experts, both clothed with the presumption of official duty, in order to draw a conclusion, especially one which is extremely crucial. Doing so is tantamount to a jurisprudential cop-out.

Much is expected from the Court of Appeals as it occupies the penultimate tier in the judicial hierarchy. This Court has long deferred to the appellate court as to its findings of fact in the understanding that it has the appropriate skill and competence to plough through the minutiae that scatters the factual field. In failing to thoroughly evaluate the evidence before it, and relying instead on presumptions haphazardly drawn, the Court of Appeals was sadly remiss. Of course, courts, like humans, are fallible, and not every error deserves a stern rebuke. Yet, the appellate court's error in this case warrants special attention, as it is absurd and even dangerous as a precedent. If this rationale were adopted as a governing standard by every court in the land, barely any actionable claim would prosper, defeated as it would be by the mere invocation of the existence of a contrary "expert" opinion.

On the other hand, the RTC did adjudge the testimony of the NBI expert as more credible than that of the PNP, and explained its reason behind the conclusion:

After subjecting the evidence of both parties to a crucible of analysis, the court arrived at the conclusion that the testimony of the NBI document examiner is more credible because the testimony of the PNP Crime

Laboratory Services document examiner reveals that there are a lot of differences in the questioned signature as compared to the standard specimen signature. Furthermore, as testified to by Ms. Rhoda Flores, NBI expert, the manner of execution of the standard signatures used reveals that it is a free rapid continuous execution or stroke as shown by the tampering terminal stroke of the signatures whereas the questioned signature is a hesitating slow drawn execution stroke. Clearly, the person who executed the questioned signature was hesitant when the signature was made.[30]

During the testimony of PNP expert Rosario Perez, the RTC bluntly noted that “apparently, there [are] differences on that questioned signature and the standard signatures.”[31] This Court, in examining the signatures, makes a similar finding. The PNP expert excused the noted “differences” by asserting that they were mere “variations,” which are normal deviations found in writing.[32] Yet the RTC, which had the opportunity to examine the relevant documents and to personally observe the expert witness, clearly disbelieved the PNP expert. The Court similarly finds the testimony of the PNP expert as unconvincing. During the trial, she was confronted several times with apparent differences between strokes in the questioned signature and the genuine samples. Each time, she would just blandly assert that these differences were just “variations,”[33] as if the mere conjuration of the word would sufficiently disquiet whatever doubts about the deviations. Such conclusion, standing alone, would be of little or no value unless supported by sufficiently cogent reasons which might amount almost to a demonstration.[34]

The most telling difference between the questioned and genuine signatures examined by the PNP is in the final upward stroke in the signature, or “the point to the short stroke of the terminal in the capital letter ‘L,’” as referred to by the PNP examiner who had marked it in her comparison chart as “point no. 6.” To the plain eye, such upward final stroke consists of a vertical line which forms a ninety degree (90°) angle with the previous stroke. Of the twenty one (21) other genuine samples examined by the PNP, at least nine (9) ended with an upward stroke.[35] However, unlike the questioned signature, the upward strokes of eight (8) of these signatures are looped, while the upward stroke of the seventh[36] forms a severe forty-five degree (45°) with the previous stroke. The difference is glaring, and indeed, the PNP examiner was confronted with the inconsistency in point no. 6.

Q:

Now, in this questioned document point no. 6, the “s” stroke is directly upwards.

A:

Yes, sir.

Q:

Now, can you look at all these standard signature (sic) were (sic) point 6 is repeated or the last stroke “s” is pointing directly upwards?

A:

There is none in the standard signature, sir.[37]

Again, the PNP examiner downplayed the uniqueness of the final stroke in the questioned signature as a mere variation,[38] the same excuse she proffered for the other marked differences noted by the Court and the counsel for petitioner.[39]

There is no reason to doubt why the RTC gave credence to the testimony of the NBI examiner, and not the PNP

expert's. The NBI expert, Rhoda Flores, clearly qualifies as an expert witness. A document examiner for fifteen years, she had been promoted to the rank of Senior Document Examiner with the NBI, and had held that rank for twelve years prior to her testimony. She had placed among the top five examinees in the Competitive Seminar in Question Document Examination, conducted by the NBI Academy, which qualified her as a document examiner.[40] She had trained with the Royal Hongkong Police Laboratory and is a member of the International Association for Identification.[41] As of the time she testified, she had examined more than fifty to fifty-five thousand questioned documents, on an average of fifteen to twenty documents a day.[42] In comparison, PNP document examiner Perez admitted to having examined only around five hundred documents as of her testimony.[43]

In analyzing the signatures, NBI Examiner Flores utilized the scientific comparative examination method consisting of analysis, recognition, comparison and evaluation of the writing habits with the use of instruments such as a magnifying lense, a stereoscopic microscope, and varied lighting substances. She also prepared enlarged photographs of the signatures in order to facilitate the necessary comparisons.[44] She compared the questioned signature as against ten (10) other sample signatures of Jong. Five of these signatures were executed on checks previously issued by Jong, while the other five contained in business letters Jong had signed.[45] The NBI found that there were significant differences in the handwriting characteristics existing between the questioned and the sample signatures, as to manner of execution, link/connecting strokes, proportion characteristics, and other identifying details.[46]

The RTC was sufficiently convinced by the NBI examiner's testimony, and explained her reasons in its Decisions. While the Court of Appeals disagreed and upheld the findings of the PNP, it failed to convincingly demonstrate why such findings were more credible than those of the NBI expert. As a throwaway, the assailed Decision noted that the PNP, not the NBI, had the opportunity to examine the specimen signature card signed by Jong, which was relied upon by the employees of FEBTC in authenticating Jong's signature. The distinction is irrelevant in establishing forgery. Forgery can be established comparing the contested signatures as against those of any sample signature duly established as that of the persons whose signature was forged.

FEBTC lays undue emphasis on the fact that the PNP examiner did compare the questioned signature against the bank signature cards. The crucial fact in question is whether or not the check was forged, not whether the bank could have detected the forgery. The latter issue becomes relevant only if there is need to weigh the comparative negligence between the bank and the party whose signature was forged.

At the same time, the Court of Appeals failed to assess the effect of Jong's testimony that the signature on the check was not his.[47] The assertion may seem self-serving at first blush, yet it cannot be ignored that Jong was in the best position to know whether or not the signature on the check was his. While his claim should not be taken at face value, any averments he would have on the matter, if adjudged as truthful, deserve primacy in consideration. Jong's testimony is supported by the findings of the NBI examiner. They are also backed by factual circumstances that support the conclusion that the assailed check was indeed forged. Judicial notice can be taken that is highly unusual in practice for a business establishment to draw a check for close to a million pesos and make it payable to cash or bearer, and not to order. Jong immediately reported the forgery upon its discovery. He filed the appropriate criminal charges against Sempio, the putative forger.[48]

Now for determination is whether Samsung Construction was precluded from setting up the defense of forgery under Section 23 of the Negotiable Instruments Law. The Court of Appeals concluded that Samsung Construction was negligent, and invoked the doctrines that "where a loss must be borne by one of two innocent person, can be traced to the neglect or fault of either, it is reasonable that it would be borne by him, even if innocent of any intentional fraud, through whose means it has succeeded[49] or who put into the power of the third person to

perpetuate the wrong.”[50] Applying these rules, the Court of Appeals determined that it was the negligence of Samsung Construction that allowed the encashment of the forged check.

In the case at bar, the forgery appears to have been made possible through the acts of one Jose Sempio III, an assistant accountant employed by the plaintiff Samsung [Construction] Co. Philippines, Inc. who supposedly stole the blank check and who presumably is responsible for its encashment through a forged signature of Jong Kyu Lee. Sempio was assistant to the Korean accountant who was in possession of the blank checks and who through negligence, enabled Sempio to have access to the same. Had the Korean accountant been more careful and prudent in keeping the blank checks Sempio would not have had the chance to steal a page thereof and to effect the forgery. Besides, Sempio was an employee who appears to have had dealings with the defendant Bank in behalf of the plaintiff corporation and on the date the check was encashed, he was there to certify that it was a genuine check issued to purchase equipment for the company.[51]

We recognize that Section 23 of the Negotiable Instruments Law bars a party from setting up the defense of forgery if it is guilty of negligence.[52] Yet, we are unable to conclude that Samsung Construction was guilty of negligence in this case. The appellate court failed to explain precisely how the Korean accountant was negligent or how more care and prudence on his part would have prevented the forgery. We cannot sustain this “tar and feathering” resorted to without any basis.

The bare fact that the forgery was committed by an employee of the party whose signature was forged cannot necessarily imply that such party’s negligence was the cause for the forgery. Employers do not possess the preternatural gift of cognition as to the evil that may lurk within the hearts and minds of their employees. The Court’s pronouncement in *PCI Bank v. Court of Appeals*[53] applies in this case, to wit:

[T]he 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.[54]

Admittedly, the record does not clearly establish what measures Samsung Construction employed to safeguard its blank checks. Jong did testify that his accountant, Kyu, kept the checks inside a “safety box,”[55] and no contrary version was presented by FEBTC. However, such testimony cannot prove that the checks were indeed kept in a safety box, as Jong’s testimony on that point is hearsay, since Kyu, and not Jong, would have the personal knowledge as to how the checks were kept.

Still, in the absence of evidence to the contrary, we can conclude that there was no negligence on Samsung Construction’s part. The presumption remains that every person takes ordinary care of his concerns,[56] and that the ordinary course of business has been followed.[57] Negligence is not presumed, but must be proven by him who alleges it.[58] While the complaint was lodged at the instance of Samsung Construction, the matter it had to prove was the claim it had alleged - whether the check was forged. It cannot be required as well to prove that it was not negligent, because the legal presumption remains that ordinary care was employed.

Thus, it was incumbent upon FEBTC, in defense, to prove the negative fact that Samsung Construction was negligent. While the payee, as in this case, may not have the personal knowledge as to the standard procedures observed by the drawer, it well has the means of disputing the presumption of regularity. Proving a negative fact may be “a difficult office,”[59] but necessarily so, as it seeks to overcome a presumption in law. FEBTC was unable to dispute the presumption of ordinary care exercised by Samsung Construction, hence we cannot agree with the Court of Appeals’ finding of negligence.

The assailed Decision replicated the extensive efforts which FEBTC devoted to establish that there was no

negligence on the part of the bank in its acceptance and payment of the forged check. However, the degree of diligence exercised by the bank would be irrelevant if the drawer is not precluded from setting up the defense of forgery under Section 23 by his own negligence. The rule of equity enunciated in *PNB v. National City Bank of New York*, [60] as relied upon by the Court of Appeals, deserves careful examination.

The point in issue has sometimes been said to be that of negligence. The drawee who has paid upon the forged signature is held to bear the loss, because he has been negligent in failing to recognize that the handwriting is not that of his customer. But it follows obviously that if the payee, holder, or presenter of the forged paper has himself been in default, if he has himself been guilty of a negligence prior to that of the banker, or if by any act of his own he has at all contributed to induce the banker's negligence, then he may lose his right to cast the loss upon the banker.[61] (Emphasis supplied)

Quite palpably, the general rule remains that the drawee who has paid upon the forged signature bears the loss. The exception to this rule arises only when negligence can be traced on the part of the drawer whose signature was forged, and the need arises to weigh the comparative negligence between the drawer and the drawee to determine who should bear the burden of loss. The Court finds no basis to conclude that Samsung Construction was negligent in the safekeeping of its checks. For one, the settled rule is that the mere fact that the depositor leaves his check book lying around does not constitute such negligence as will free the bank from liability to him, where a clerk of the depositor or other persons, taking advantage of the opportunity, abstract some of the check blanks, forges the depositor's signature and collect on the checks from the bank.[62] And for another, in point of fact Samsung Construction was not negligent at all since it reported the forgery almost immediately upon discovery.[63]

It is also worth noting that the forged signatures in *PNB v. National City Bank of New York* were not of the drawer, but of indorsers. The same circumstance attends *PNB v. Court of Appeals*,[64] which was also cited by the Court of Appeals. It is accepted that a forged signature of the drawer differs in treatment than a forged signature of the indorser.

The justification for the distinction between forgery of the signature of the drawer and forgery of an indorsement is that the drawee is in a position to verify the drawer's signature by comparison with one in his hands, but has ordinarily no opportunity to verify an indorsement.[65]

Thus, a drawee bank is generally liable to its depositor in paying a check which bears either a forgery of the drawer's signature or a forged indorsement. But the bank may, as a general rule, recover back the money which it has paid on a check bearing a forged indorsement, whereas it has not this right to the same extent with reference to a check bearing a forgery of the drawer's signature.[66]

The general rule imputing liability on the drawee who paid out on the forgery holds in this case.

Since FEBTC puts into issue the degree of care it exercised before paying out on the forged check, we might as well comment on the bank's performance of its duty. It might be so that the bank complied with its own internal rules prior to paying out on the questionable check. Yet, there are several troubling circumstances that lead us to believe that the bank itself was remiss in its duty.

The fact that the check was made out in the amount of nearly one million pesos is unusual enough to require a higher degree of caution on the part of the bank. Indeed, FEBTC confirms this through its own internal procedures. Checks below twenty-five thousand pesos require only the approval of the teller; those between twenty-five thousand to one hundred thousand pesos necessitate the approval of one bank officer; and should the amount exceed one hundred thousand pesos, the concurrence of two bank officers is required.[67]

In this case, not only did the amount in the check nearly total one million pesos, it was also payable to cash. That

latter circumstance should have aroused the suspicion of the bank, as it is not ordinary business practice for a check for such large amount to be made payable to cash or to bearer, instead of to the order of a specified person.[68] Moreover, the check was presented for payment by one Roberto Gonzaga, who was not designated as the payee of the check, and who did not carry with him any written proof that he was authorized by Samsung Construction to encash the check. Gonzaga, a stranger to FEBTC, was not even an employee of Samsung Construction.[69] These circumstances are already suspicious if taken independently, much more so if they are evaluated in concurrence. Given the shadiness attending Gonzaga's presentment of the check, it was not sufficient for FEBTC to have merely complied with its internal procedures, but mandatory that all earnest efforts be undertaken to ensure the validity of the check, and of the authority of Gonzaga to collect payment therefor.

According to FEBTC Senior Assistant Cashier Gemma Velez, the bank tried, but failed, to contact Jong over the phone to verify the check.[70] She added that calling the issuer or drawer of the check to verify the same was not part of the standard procedure of the bank, but an "extra effort." [71] Even assuming that such personal verification is tantamount to extraordinary diligence, it cannot be denied that FEBTC still paid out the check despite the absence of any proof of verification from the drawer. Instead, the bank seems to have relied heavily on the say-so of Sempio, who was present at the bank at the time the check was presented.

FEBTC alleges that Sempio was well-known to the bank officers, as he had regularly transacted with the bank in behalf of Samsung Construction. It was even claimed that everytime FEBTC would contact Jong about problems with his account, Jong would hand the phone over to Sempio.[72] However, the only proof of such allegations is the testimony of Gemma Velez, who also testified that she did not know Sempio personally,[73] and had met Sempio for the first time only on the day the check was encashed.[74] In fact, Velez had to inquire with the other officers of the bank as to whether Sempio was actually known to the employees of the bank.[75] Obviously, Velez had no personal knowledge as to the past relationship between FEBTC and Sempio, and any averments of her to that effect should be deemed hearsay evidence. Interestingly, FEBTC did not present as a witness any other employee of their Bel-Air branch, including those who supposedly had transacted with Sempio before.

Even assuming that FEBTC had a standing habit of dealing with Sempio, acting in behalf of Samsung Construction, the irregular circumstances attending the presentment of the forged check should have put the bank on the highest degree of alert. The Court recently emphasized that the highest degree of care and diligence is required of banks.

Banks are engaged in a business impressed with public interest, and it is their duty to protect in return their many clients and depositors who transact business with them. They have the obligation to treat their client's account meticulously and with the highest degree of care, considering the fiduciary nature of their relationship. The diligence required of banks, therefore, is more than that of a good father of a family.[76]

Given the circumstances, extraordinary diligence dictates that FEBTC should have ascertained from Jong personally that the signature in the questionable check was his.

Still, even if the bank performed with utmost diligence, the drawer whose signature was forged may still recover from the bank as long as he or she is not precluded from setting up the defense of forgery. After all, Section 23 of the Negotiable Instruments Law plainly states that no right to enforce the payment of a check can arise out of a forged signature. Since the drawer, Samsung Construction, is not precluded by negligence from setting up the forgery, the general rule should apply. Consequently, if a bank pays a forged check, it must be considered as paying out of its funds and cannot charge the amount so paid to the account of the depositor.[77] A bank is liable, irrespective of its good faith, in paying a forged check.[78]

WHEREFORE, the Petition is GRANTED. The Decision of the Court of Appeals dated 28 November 1996 is

REVERSED, and the Decision of the Regional Trial Court of Manila, Branch 9, dated 25 April 1994 is REINSTATED. Costs against respondent.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Later acquired by or merged with the Bank of the Philippine Islands.

[2] Rollo, p. 35.

[3] Ibid.

[4] Id. at 28.

[5] Ibid.

[6] Ibid.

[7] Rollo, p. 35.

[8] See TSN dated 25 June 1993, p. 10.

[9] Id. at 9.

[10] See TSN dated 15 June 1993, p. 26.

[11] Ibid.

[12] Act No. 2031.

[13] Presided by Judge E.G. Sandoval, now Justice of the Sandiganbayan.

[14] TSN dated 8 October 1993, p. 8.

[15] Rollo, p. 24.

[16] Penned by Justice S. Montoya, concurred in by Justices G. Jacinto and A. Tuquero.

[17] Rollo, p. 38.

[18] Ibid.

[19] 63 Phil 711 (1936).

[20] Rollo, p. 38.

[21] Bank of Philippine Islands v. Court of Appeals, G.R. No. 102383, 26 November 1992, 216 SCRA 51, 65.

[22] FARNSWORTH, E.A., NEGOTIABLE INSTRUMENTS: Cases and Materials, 2nd ed. (1959), at 173.

[23] Id. at 174.

[24] Brady, J.E., The Law of Forged and Altered Checks (1925), at 6-7. Case citations omitted.

[25] Nickles, S.H., Negotiable Instruments and Other Related Commercial Paper, 2nd ed. (1993), at 415.

[26] Gempesaw v. Court of Appeals, G.R. No. 92244, 9 February 1993, 218 SCRA 682, 689.

[27] *Philippine National Bank v. National City Bank of New York*, 63 Phil. 711, 743-744 (1936); citing 17 A. L. R., 891; 5 R. C. L., 559.

[28] Brady, H.J., *Brady on Bank Checks*, 3rd ed. (1962), at 475; citing *Hardy v. Chesapeake Bank* (1879) 51Md. 562, 34 Am. Rep. 325.

[29] OSBORN, A., *QUESTIONED DOCUMENT PROBLEMS*, 2nd ed. (1946), at 181-182.

[30] Rollo, p. 31.

[31] TSN dated 8 October 1993, p. 15.

[32] *Id.* at 15 and 19.

[33] See TSN dated 8 October 1993, pp. 15, 17, 19, 34, 36 and 38.

[34] *Venuto v. Lizzo*, 148 App. Div. 164, 132 N.Y. Supp. 1066 (1911), as cited in A. Osborn, *supra*, note 29.

[35] Defendant's Exhibits Nos. "S-1," "S-7," "S-8," "S-9," "S-10," "S-12," "S-14," "S-15," and "S-16."

[36] Defendant's Exhibit No. "S-9."

[37] TSN dated 8 October 1993, p. 35.

[38] *Id.* at 19 and 36.

[39] *Supra*, note 26.

[40] TSN dated 27 April 1993, p. 5.

[41] *Id.* at 7.

[42] *Id.* at 7-8.

[43] TSN dated 8 October 1993, p. 4.

[44] TSN dated 27 April 1993, pp. 18-19.

[45] *Id.* at 14.

[46] Per NBI Questioned Documents Report No. 244-492, Plaintiff's Exhibit "D."

[47] See TSN dated 25 January 1993, p. 7.

[48] See note 10.

[49] Rollo, p. 38, citing *PNB v. National City Bank of New York*, 63 Phil. 711, 733 (1936), which in turn cites *Gloucester Bank v. Salem Bank*, 17 Mass., 33; *First Nat. Bank of Danvers vs. First National Bank of Salem*, 151 Mass., 280; and *B.B. Ford & Co. v. People's Bank of Orangeburg*, 74 S.C., 180.

[50] *Ibid.*, citing *PNB v. CA*, 134 Phil. 829, 834 (1968), which in turn cites *Blondeau v. Nano*, 61 Phil. 625, 631, 632.

[51] Rollo, p. 38.

[52] *MWSS v. Court of Appeals*, G.R. No. L-62943, 14 July 1986, 143 SCRA 20, 31.

[53] G.R. Nos. 121413, 121479 and 128604, 29 January 2001, 350 SCRA 446.

[54] Ibid at 465.

[55] TSN dated 25 January 1993, pp. 19, 31.

[56] See Section 3(d), Rule 131, Rules of Court.

[57] See Section 3(q), Rule 131, Rules of Court.

[58] Taylor v. Manila Electric Railroad, 16 Phil. 8, 28 (1910), citing Scaevola, Jurisprudencia delCodigo Civil, vol. 6, 551, 552.

[59] US v. Tria, 17 Phil. 303, 307 (1910).

[60] 63 Phil. 711 (1936).

[61] Id. at 740; citing 2 Morse on Banks and Banking, 5[th] ed., secs. 464 and 466, pp. 82-85 and 86, 87.

[62] BRADY, J.E., THE LAW OF FORGED AND ALTERED CHECKS, supra, note 24, at 24-27; citing MacIntosh v. Bank, 123 Mass. 393; East St. Louis Cotton Oil Co. v. Bank of Steele, Mo., 205 S.W. Rep. 96.

[63] “For his failure or negligence either to discover or to report promptly the fact of such forgery to the drawee, the drawer loses his right against the drawee who has debited his account under the forged indorsement.” Gempesaw v. Court of Appeals, G.R. No. 92244, 9 February 1993, 218 SCRA 682, 690; citing American jurisprudence. “A bank may escape liability where the depositor’s negligence consists of failure to properly examine his bank statements and cancelled checks and failure to notify the bank of forgery within a reasonable time.” H. Bailey, supra, note 28, at 477. But see note 24.

[64] G.R. No. L-26001, 29 October 1968, 25 SCRA 693.

[65] Farnsworth, E.A., supra note 22, at 173.

[66] Brady, J.E., supra, note 24, at 5.

[67] See TSN dated 12 July 1993, p. 8.

[68] “When the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.” Sec. 8, Act No. 2031 (Negotiable Instruments Law). Worthy of note is the fact that a check payable to bearer is more likely to be forged than one that is payable to order. The unofficial essence of bearer check is that anyone who possesses or holds it can indorse or receive payment for it which implies that payment is not limited to a particular person. See Nickles, S.H., Matheson, J.H., and Adams, E.S., Modern Commercial Paper: The New Law of Negotiable Instruments and Related Commercial Paper (1994), at 61.

[69] See TSN dated 26 July 1993, p. 18.

[70] See TSN dated 12 July 1993, p. 11.

[71] Ibid.

[72] Id. at 17.

[73] Id. at 18.

[74] TSN dated 26 July 1993, p. 3.

[75] Id. at 6.

[76] Westmont Bank v. Ong, G.R. No. 132560, 30 January 2002, 375 SCRA 212, 220-221.

[77] Traders Royal Bank v. Radio Philippines Network, Inc., G.R. No. 138510, 10 October 2002, 390 SCRA 608, 614.

[78] Bailey, H.J., *supra*, note 28 at 474.

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