

BANK OF AMERICA NT & SA, PETITIONER, VS. PHILIPPINE RACING CLUB, RESPONDENT.*G.R. No. 150228. July 30, 2009*

Ponente: LEONARDO-DE CASTRO, J.

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This is a petition for review on certiorari under Rule 45 of the Rules of Court from the Decision[1] promulgated on July 16, 2001 by the former Second Division of the Court of Appeals (CA), in CA-G.R. CV No. 45371 entitled "Philippine Racing Club, Inc. v. Bank of America NT & SA," affirming the Decision[2] dated March 17, 1994 of the Regional Trial Court (RTC) of Makati, Branch 135 in Civil Case No. 89-5650, in favor of the respondent. Likewise, the present petition assails the Resolution[3] promulgated on September 28, 2001, denying the Motion for Reconsideration of the CA Decision.

The facts of this case as narrated in the assailed CA Decision are as follows:

Plaintiff-appellee PRCI is a domestic corporation which maintains several accounts with different banks in the Metro Manila area. Among the accounts maintained was Current Account No. 58891-012 with defendant-appellant BA (Paseo de Roxas Branch). The authorized joint signatories with respect to said Current Account were plaintiff-appellee's President (Antonia Reyes) and Vice President for Finance (Gregorio Reyes).

On or about the 2nd week of December 1988, the President and Vice President of plaintiff-appellee corporation were scheduled to go out of the country in connection with the corporation's business. In order not to disrupt operations in their absence, they pre-signed several checks relating to Current Account No. 58891-012. The intention was to insure continuity of plaintiff-appellee's operations by making available cash/money especially to settle obligations that might become due. These checks were entrusted to the accountant with instruction to make use of the same as the need arose. The internal arrangement was, in the event there was need to make use of the checks, the accountant would prepare the corresponding voucher and thereafter complete the entries on the pre-signed checks.

It turned out that on December 16, 1988, a John Doe presented to defendant-appellant bank for encashment a couple of plaintiff-appellee corporation's checks (Nos. 401116 and 401117) with the indicated value of P110,000.00 each. It is admitted that these 2 checks were among those presigned by plaintiff-appellee corporation's authorized signatories.

The two (2) checks had similar entries with similar infirmities and irregularities. On the space where the name of the payee should be indicated (Pay To The Order Of) the following 2-line entries were instead typewritten: on the upper line was the word "CASH" while the lower line had the following typewritten words, viz: "ONE HUNDRED TEN THOUSAND PESOS ONLY." Despite the highly irregular entries on the face of the checks, defendant-appellant bank, without as much as verifying and/or confirming the legitimacy of the checks considering the substantial amount involved and the obvious infirmity/defect of the checks on their faces, encashed said checks. A verification process, even by way of a telephone call to PRCI office, would have taken less than ten (10) minutes. But this was not done by BA. Investigation conducted by plaintiff-appellee corporation yielded the fact that there was no transaction involving PRCI that call for the payment of

P220,000.00 to anyone. The checks appeared to have come into the hands of an employee of PRCI (one Clarita Mesina who was subsequently criminally charged for qualified theft) who eventually completed without authority the entries on the pre-signed checks. PRCI's demand for defendant-appellant to pay fell on deaf ears. Hence, the complaint.[4]

After due proceedings, the trial court rendered a Decision in favor of respondent, the dispositive portion of which reads:

PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff and against the defendant, and the latter is ordered to pay plaintiff:

- (1) The sum of Two Hundred Twenty Thousand (P220,000.00) Pesos, with legal interest to be computed from date of the filing of the herein complaint;
- (2) The sum of Twenty Thousand (P20,000.00) Pesos by way of attorney's fees;
- (3) The sum of Ten Thousand (P10,000.00) Pesos for litigation expenses, and
- (4) To pay the costs of suit.

SO ORDERED.[5]

Petitioner appealed the aforesaid trial court Decision to the CA which, however, affirmed said decision in toto in its July 16, 2001 Decision. Petitioner's Motion for Reconsideration of the CA Decision was subsequently denied on September 28, 2001.

Petitioner now comes before this Court arguing that:

- The Court of Appeals gravely erred in holding that the proximate cause of respondent's loss was petitioner's encashment of the checks.
- The Court of Appeals gravely erred in holding that petitioner was liable for the amount of the checks despite the fact that petitioner was merely fulfilling its obligation under law and contract.
- The Court of Appeals gravely erred in holding that petitioner had a duty to verify the encashment, despite the absence of any obligation to do so.
- The Court of Appeals gravely erred in not applying Section 14 of the Negotiable Instruments Law, despite its clear applicability to this case;
- The Court of Appeals gravely erred in not holding that the proximate cause of respondent's loss was its own grossly negligent practice of pre-signing checks without payees and amounts and delivering these pre-signed checks to its employees (other than their signatories).
- The Court of Appeals gravely erred in affirming the trial court's award of attorney's fees despite the absence of any applicable ground under Article 2208 of the Civil Code.
- The Court of Appeals gravely erred in not awarding attorney's fees, moral and exemplary damages, and costs of suit in favor of petitioner, who clearly deserves them.[6]

From the discussions of both parties in their pleadings, the key issue to be resolved in the present case is whether the proximate cause of the wrongful encashment of the checks in question was due to (a) petitioner's failure to make a verification regarding the said checks with the respondent in view of the misplacement of entries on the face of the checks or (b) the practice of the respondent of pre-signing blank checks and leaving the same with its employees.

Petitioner insists that it merely fulfilled its obligation under law and contract when it encashed the aforesaid checks. Invoking Sections 126[7] and 185[8] of the Negotiable Instruments Law (NIL), petitioner claims that its duty as a drawee bank to a drawer-client maintaining a checking account with it is to pay orders for checks bearing the drawer-client's genuine signatures. The genuine signatures of the client's duly authorized signatories affixed on the checks signify the order for payment. Thus, pursuant to the said obligation, the drawee bank has the duty to determine whether the signatures appearing on the check are the drawer-client's or its duly authorized signatories. If the signatures are genuine, the bank has the unavoidable legal and contractual duty to pay. If the signatures are forged and falsified, the drawee bank has the corollary, but equally unavoidable legal and contractual, duty not to pay.[9]

Furthermore, petitioner maintains that there exists a duty on the drawee bank to inquire from the drawer before encashing a check only when the check bears a material alteration. A material alteration is defined in Section 125 of the NIL to be one which changes the date, the sum payable, the time or place of payment, the number or relations of the parties, the currency in which payment is to be made or one which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect. With respect to the checks at issue, petitioner points out that they do not contain any material alteration.[10] This is a fact which was affirmed by the trial court itself.[11]

There is no dispute that the signatures appearing on the subject checks were genuine signatures of the respondent's authorized joint signatories; namely, Antonia Reyes and Gregorio Reyes who were respondent's President and Vice-President for Finance, respectively. Both pre-signed the said checks since they were both scheduled to go abroad and it was apparently their practice to leave with the company accountant checks signed in black to answer for company obligations that might fall due during the signatories' absence. It is likewise admitted that neither of the subject checks contains any material alteration or erasure.

However, on the blank space of each check reserved for the payee, the following typewritten words appear: "ONE HUNDRED TEN THOUSAND PESOS ONLY." Above the same is the typewritten word, "CASH." On the blank reserved for the amount, the same amount of One Hundred Ten Thousand Pesos was indicated with the use of a check writer. The presence of these irregularities in each check should have alerted the petitioner to be cautious before proceeding to encash them which it did not do.

It is well-settled that 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.[12]

Petitioner asserts that it was not duty-bound to verify with the respondent since the amount below the typewritten word "CASH," expressed in words, is the very same amount indicated in figures by means of a check writer on the amount portion of the check. The amount stated in words is, therefore, a mere reiteration of the amount stated in figures. Petitioner emphasizes that a reiteration of the amount in words is merely a repetition and that a repetition is not an alteration which if present and material would have enjoined it to commence verification with respondent.[13]

We do not agree with petitioner's myopic view and carefully crafted defense. Although not in the strict sense "material alterations," the misplacement of the typewritten entries for the payee and the amount on the same blank and the repetition of the amount using a check writer were glaringly obvious irregularities on the face of the check. Clearly, someone made a mistake in filling up the checks and the repetition of the entries was possibly an attempt to rectify the mistake. Also, if the check had been filled up by the person who customarily accomplishes

the checks of respondent, it should have occurred to petitioner's employees that it would be unlikely such mistakes would be made. All these circumstances should have alerted the bank to the possibility that the holder or the person who is attempting to encash the checks did not have proper title to the checks or did not have authority to fill up and encash the same. As noted by the CA, petitioner could have made a simple phone call to its client to clarify the irregularities and the loss to respondent due to the encashment of the stolen checks would have been prevented.

In the case at bar, extraordinary diligence demands that petitioner should have ascertained from respondent the authenticity of the subject checks or the accuracy of the entries therein not only because of the presence of highly irregular entries on the face of the checks but also of the decidedly unusual circumstances surrounding their encashment. Respondent's witness testified that for checks in amounts greater than Twenty Thousand Pesos (P20,000.00) it is the company's practice to ensure that the payee is indicated by name in the check.[14] This was not rebutted by petitioner. Indeed, it is highly uncommon for a corporation to make out checks payable to "CASH" for substantial amounts such as in this case. If each irregular circumstance in this case were taken singly or isolated, the bank's employees might have been justified in ignoring them. However, the confluence of the irregularities on the face of the checks and circumstances that depart from the usual banking practice of respondent should have put petitioner's employees on guard that the checks were possibly not issued by the respondent in due course of its business. Petitioner's subtle sophistry cannot exculpate it from behavior that fell extremely short of the highest degree of care and diligence required of it as a banking institution.

Indeed, taking this with the testimony of petitioner's operations manager that in case of an irregularity on the face of the check (such as when blanks were not properly filled out) the bank may or may not call the client depending on how busy the bank is on a particular day,[15] we are even more convinced that petitioner's safeguards to protect clients from check fraud are arbitrary and subjective. Every client should be treated equally by a banking institution regardless of the amount of his deposits and each client has the right to expect that every centavo he entrusts to a bank would be handled with the same degree of care as the accounts of other clients. Perforce, we find that petitioner plainly failed to adhere to the high standard of diligence expected of it as a banking institution.

In defense of its cashier/teller's questionable action, petitioner insists that pursuant to Sections 14[16] and 16[17] of the NIL, it could validly presume, upon presentation of the checks, that the party who filled up the blanks had authority and that a valid and intentional delivery to the party presenting the checks had taken place. Thus, in petitioner's view, the sole blame for this debacle should be shifted to respondent for having its signatories pre-sign and deliver the subject checks.[18] Petitioner argues that there was indeed delivery in this case because, following American jurisprudence, the gross negligence of respondent's accountant in safekeeping the subject checks which resulted in their theft should be treated as a voluntary delivery by the maker who is estopped from claiming non-delivery of the instrument.[19]

Petitioner's contention would have been correct if the subject checks were correctly and properly filled out by the thief and presented to the bank in good order. In that instance, there would be nothing to give notice to the bank of any infirmity in the title of the holder of the checks and it could validly presume that there was proper delivery to the holder. The bank could not be faulted if it encashed the checks under those circumstances. However, the undisputed facts plainly show that there were circumstances that should have alerted the bank to the likelihood that the checks were not properly delivered to the person who encashed the same. In all, we see no reason to depart from the finding in the assailed CA Decision that the subject checks are properly characterized as incomplete and undelivered instruments thus making Section 15[20] of the NIL applicable in this case.

However, we do agree with petitioner that respondent's officers' practice of pre-signing of blank checks should be deemed seriously negligent behavior and a highly risky means of purportedly ensuring the efficient operation of

businesses. It should have occurred to respondent's officers and managers that the pre-signed blank checks could fall into the wrong hands as they did in this case where the said checks were stolen from the company accountant to whom the checks were entrusted.

Nevertheless, even if we assume that both parties were guilty of negligent acts that led to the loss, petitioner will still emerge as the party foremost liable in this case. In instances where both parties are at fault, this Court has consistently applied the doctrine of last clear chance in order to assign liability.

In *Westmont Bank v. Ong*,^[21] we ruled:

...[I]t is petitioner [bank] which had the last clear chance to stop the fraudulent encashment of the subject checks had it exercised due diligence and followed the proper and regular banking procedures in clearing checks. As we had earlier ruled, the one who had a last clear opportunity to avoid the impending harm but failed to do so is chargeable with the consequences thereof.^[22] (emphasis ours)

In the case at bar, petitioner cannot evade responsibility for the loss by attributing negligence on the part of respondent because, even if we concur that the latter was indeed negligent in pre-signing blank checks, the former had the last clear chance to avoid the loss. To reiterate, petitioner's own operations manager admitted that they could have called up the client for verification or confirmation before honoring the dubious checks. Verily, petitioner had the final opportunity to avert the injury that befell the respondent. Failing to make the necessary verification due to the volume of banking transactions on that particular day is a flimsy and unacceptable excuse, considering that the "banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be a high degree of diligence, if not the utmost diligence."^[23] Petitioner's negligence has been undoubtedly established and, thus, pursuant to Art. 1170 of the NCC,^[24] it must suffer the consequence of said negligence.

In the interest of fairness, however, we believe it is proper to consider respondent's own negligence to mitigate petitioner's liability. Article 2179 of the Civil Code provides:

Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Explaining this provision in *Lambert v. Heirs of Ray Castillon*,^[25] the Court held:

The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages actually caused by his negligence. xxx xxx xxx

As we previously stated, respondent's practice of signing checks in blank whenever its authorized bank signatories would travel abroad was a dangerous policy, especially considering the lack of evidence on record that respondent had appropriate safeguards or internal controls to prevent the pre-signed blank checks from falling into the hands of unscrupulous individuals and being used to commit a fraud against the company. We cannot believe that there was no other secure and reasonable way to guarantee the non-disruption of respondent's business. As testified to by petitioner's expert witness, other corporations would ordinarily have another set of authorized bank signatories who would be able to sign checks in the absence of the preferred signatories.^[26] Indeed, if not for the fortunate happenstance that the thief failed to properly fill up the subject checks, respondent would expectedly take the blame for the entire loss since the defense of forgery of a drawer's signature(s) would be unavailable to it. Considering that respondent knowingly took the risk that the pre-signed blank checks might fall into the hands of wrongdoers, it is but just that respondent shares in the responsibility for the loss.

We also cannot ignore the fact that the person who stole the pre-signed checks subject of this case from respondent's accountant turned out to be another employee, purportedly a clerk in respondent's accounting department. As the employer of the "thief," respondent supposedly had control and supervision over its own employee. This gives the Court more reason to allocate part of the loss to respondent.

Following established jurisprudential precedents,[27] we believe the allocation of sixty percent (60%) of the actual damages involved in this case (represented by the amount of the checks with legal interest) to petitioner is proper under the premises. Respondent should, in light of its contributory negligence, bear forty percent (40%) of its own loss.

Finally, we find that the awards of attorney's fees and litigation expenses in favor of respondent are not justified under the circumstances and, thus, must be deleted. The power of the court to award attorney's fees and litigation expenses under Article 2208 of the NCC[28] demands factual, legal, and equitable justification.

An adverse decision does not ipso facto justify an award of attorney's fees to the winning party.[29] Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[30]

WHEREFORE, the Decision of the Court of Appeals dated July 16, 2001 and its Resolution dated September 28, 2001 are AFFIRMED with the following MODIFICATIONS: (a) petitioner Bank of America NT & SA shall pay to respondent Philippine Racing Club sixty percent (60%) of the sum of Two Hundred Twenty Thousand Pesos (P220,000.00) with legal interest as awarded by the trial court and (b) the awards of attorney's fees and litigation expenses in favor of respondent are deleted.

Proportionate costs.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio, Corona, and Bersamin, JJ., concur.

[1] Rollo, pp. 80-87.

[2] Id. at 122-126.

[3] Id. at 89.

[4] Id. at 81-82.

[5] Id. at 126.

[6] Id. at 55-56.

[7] Sec. 126. Bill of exchange defined. - A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

[8] Sec. 185. Check defined. -- A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

[9] Rollo, pp. 296-297.

[10] Id. at 298.

[11] Id. at 125.

[12] *Samsung Construction Company Philippines, Inc. v. Far East Bank and Trust Company, Inc.*, G.R. No. 129015, August 13, 2004, 436 SCRA 402, 421.

[13] Id. at 299.

[14] TSN, testimony of Carlos H. Reyes, October 1, 1991, p. 3.

[15] TSN, testimony of Rose Acuban, August 20, 1991, pp. 8-9.

[16] Sec. 14. Blanks, when may be filled. - Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

[17] Sec. 16, Delivery; when effectual; when presumed. - Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder of a due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

[18] Rollo, p. 304.

[19] Id. at 306.

[20] Sec. 15. Incomplete instrument not delivered. - Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

[21] G.R. No. 132560, January 30, 2002, 375 SCRA 212.

[22] Id. at 223, citing *Philippine Bank of Commerce v. CA*, G.R. No. 97626, 269 SCRA 695, 707-708.

[23] *Gempesaw v. CA*, G.R. No. 92244, February 9, 1993, 218 SCRA 682, 697.

[24] Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[25] G.R. No. 160709, February 23, 2005, 452 SCRA 285, 293.

[26] TSN, testimony of Gerardo Martin, a certified public accountant/auditor from Sycip Gorres & Velayo, February 25, 1992, p. 6.

[27] Philippine Bank of Commerce v. Court of Appeals, G.R. No. 97626, March 14, 1997, 269 SCRA 695; Consolidated Bank and Trust Corporation v. Court of Appeals, G.R. No. 138569, September 11, 2003, 410 SCRA 562.

[28] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[29] "J" Marketing Corp. v. Sia, Jr., G.R. No. 127823, January 29, 1998, 285 SCRA 580, 584.

[30] Felsan Realty & Development Corporation v. Commonwealth of Australia, G.R. No. 169656, October 11, 2007, 535 SCRA 618, 632.

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