

FAR EAST BANK & TRUST COMPANY, PETITIONER, VS. GOLD PALACE JEWELLERY CO., AS REPRESENTED BY JUDY L. YANG, JULIE YANG-GO AND KHO SOON HUAT, RESPONDENT.*G.R. No. 168274. August 20, 2008*

Ponente: NACHURA, J.

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For the review of the Court through a Rule 45 petition are the following issuances of the Court of Appeals (CA) in CA-G.R. CV No. 71858: (1) the March 15, 2005 Decision[1] which reversed the trial court's ruling, and (2) the May 26, 2005 Resolution[2] which denied the motion for reconsideration of the said CA decision.

The instant controversy traces its roots to a transaction consummated sometime in June 1998, when a foreigner, identified as Samuel Tagoe, purchased from the respondent Gold Palace Jewellery Co.'s (Gold Palace's) store at SM-North EDSA several pieces of jewelry valued at P258,000.00.[3] In payment of the same, he offered Foreign Draft No. M-069670 issued by the United Overseas Bank (Malaysia) BHD Medan Pasar, Kuala Lumpur Branch (UOB), addressed to the Land Bank of the Philippines, Manila (LBP), and payable to the respondent company for P380,000.00.[4]

Before receiving the draft, respondent Judy Yang, the assistant general manager of Gold Palace, inquired from petitioner Far East Bank & Trust Company's (Far East's) SM North EDSA Branch, its neighbor mall tenant, the nature of the draft. The teller informed her that the same was similar to a manager's check, but advised her not to release the pieces of jewelry until the draft had been cleared.[5] Following the bank's advice, Yang issued Cash Invoice No. 1609[6] to the foreigner, asked him to come back, and informed him that the pieces of jewelry would be released when the draft had already been cleared.[7] Respondent Julie Yang-Go, the manager of Gold Palace, consequently deposited the draft in the company's account with the aforementioned Far East branch on June 2, 1998.[8]

When Far East, the collecting bank, presented the draft for clearing to LBP, the drawee bank, the latter cleared the same[9]--UOB's account with LBP was debited,[10] and Gold Palace's account with Far East was credited with the amount stated in the draft.[11]

The foreigner eventually returned to respondent's store on June 6, 1998 to claim the purchased goods. After ascertaining that the draft had been cleared, respondent Yang released the pieces of jewelry to Samuel Tagoe; and because the amount in the draft was more than the value of the goods purchased, she issued, as his change, Far East Check No. 1730881[12] for P122,000.00.[13] This check was later presented for encashment and was, in fact, paid by the said bank.[14]

On June 26, 1998, or after around three weeks, LBP informed Far East that the amount in Foreign Draft No. M-069670 had been materially altered from P300.00 to P380,000.00 and that it was returning the same. Attached to its official correspondence were Special Clearing Receipt No. 002593 and the duly notarized and consul-authenticated affidavit of a corporate officer of the drawer, UOB.[15] It is noted at this point that the

material alteration was discovered by UOB after LBP had informed it that its funds were being depleted following the encashment of the subject draft.[16] Intending to debit the amount from respondent's account, Far East subsequently refunded the P380,000.00 earlier paid by LBP.

Gold Palace, in the meantime, had already utilized portions of the amount. Thus, on July 20, 1998, as the outstanding balance of its account was already inadequate, Far East was able to debit only P168,053.36,[17] but this was done without a prior written notice to the account holder.[18] Far East only notified by phone the representatives of the respondent company.[19]

On August 12, 1998, petitioner demanded from respondents the payment of P211,946.64 or the difference between the amount in the materially altered draft and the amount debited from the respondent company's account.[20] Because Gold Palace did not heed the demand, Far East consequently instituted Civil Case No. 99-296 for sum of money and damages before the Regional Trial Court (RTC), Branch 64 of Makati City.[21]

In their Answer, respondents specifically denied the material allegations in the complaint and interposed as a defense that the complaint states no cause of action--the subject foreign draft having been cleared and the respondent not being the party who made the material alteration. Respondents further counterclaimed for actual damages, moral and exemplary damages, and attorney's fees considering, among others, that the petitioner had confiscated without basis Gold Palace's balance in its account resulting in operational loss, and had maliciously imputed to the latter the act of alteration.[22]

After trial on the merits, the RTC rendered its July 30, 2001 Decision[23] in favor of Far East, ordering Gold Palace to pay the former P211,946.64 as actual damages and P50,000.00 as attorney's fees.[24] The trial court ruled that, on the basis of its warranties as a general indorser, Gold Palace was liable to Far East.[25]

On appeal, the CA, in the assailed March 15, 2005 Decision,[26] reversed the ruling of the trial court and awarded respondents' counterclaim. It ruled in the main that Far East failed to undergo the proceedings on the protest of the foreign draft or to notify Gold Palace of the draft's dishonor; thus, Far East could not charge Gold Palace on its secondary liability as an indorser.[27] The appellate court further ruled that the drawee bank had cleared the check, and its remedy should be against the party responsible for the alteration. Considering that, in this case, Gold Palace neither altered the draft nor knew of the alteration, it could not be held liable.[28] The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the appeal is GRANTED; the assailed Decision dated 30 July 2001 of the Regional Trial Court of Makati City, Branch 64 is hereby REVERSED and SET ASIDE; the Complaint dated January 1999 is DISMISSED; and appellee Far East Bank and Trust Company is hereby ordered to pay appellant Gold Palace Jewellery Company the amount of Php168,053.36 for actual damages plus legal interest of 12% per annum from 20 July 1998, Php50,000.00 for exemplary damages, and Php50,000.00 for attorney's fees. Costs against appellee Far East Bank and Trust Company.[29]

The appellate court, in the further challenged May 26, 2005 Resolution,[30] denied petitioner's Motion for Reconsideration,[31] which prompted the petitioner to institute before the Court the instant Petition for Review on Certiorari.[32]

We deny the petition.

Act No. 2031, or the Negotiable Instruments Law (NIL), explicitly provides that the acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance.[33] This provision applies with equal force in case the drawee pays a bill without having previously accepted it. His actual payment of the amount in the check implies not only his assent to the order of the drawer and a recognition of his corresponding

obligation to pay the aforementioned sum, but also, his clear compliance with that obligation.[34] Actual payment by the drawee is greater than his acceptance, which is merely a promise in writing to pay. The payment of a check includes its acceptance.[35]

Unmistakable herein is the fact that the drawee bank cleared and paid the subject foreign draft and forwarded the amount thereof to the collecting bank. The latter then credited to Gold Palace's account the payment it received. Following the plain language of the law, the drawee, by the said payment, recognized and complied with its obligation to pay in accordance with the tenor of his acceptance. The tenor of the acceptance is determined by the terms of the bill as it is when the drawee accepts.[36] Stated simply, LBP was liable on its payment of the check according to the tenor of the check at the time of payment, which was the raised amount.

Because of that engagement, LBP could no longer repudiate the payment it erroneously made to a due course holder. We note at this point that Gold Palace was not a participant in the alteration of the draft, was not negligent, and was a holder in due course--it received the draft complete and regular on its face, before it became overdue and without notice of any dishonor, in good faith and for value, and absent any knowledge of any infirmity in the instrument or defect in the title of the person negotiating it.[37] Having relied on the drawee bank's clearance and payment of the draft and not being negligent (it delivered the purchased jewelry only when the draft was cleared and paid), respondent is amply protected by the said Section 62. Commercial policy favors the protection of any one who, in due course, changes his position on the faith of the drawee bank's clearance and payment of a check or draft.[38]

This construction and application of the law gives effect to the plain language of the NIL[39] and is in line with the sound principle that where one of two innocent parties must suffer a loss, the law will leave the loss where it finds it.[40] It further reasserts the usefulness, stability and currency of negotiable paper without seriously endangering accepted banking practices. Indeed, banking institutions can readily protect themselves against liability on altered instruments either by qualifying their acceptance or certification, or by relying on forgery insurance and special paper which will make alterations obvious.[41] This is not to mention, but we state nevertheless for emphasis, that the drawee bank, in most cases, is in a better position, compared to the holder, to verify with the drawer the matters stated in the instrument. As we have observed in this case, were it not for LBP's communication with the drawer that its account in the Philippines was being depleted after the subject foreign draft had been encashed, then, the alteration would not have been discovered. What we cannot understand is why LBP, having the most convenient means to correspond with UOB, did not first verify the amount of the draft before it cleared and paid the same. Gold Palace, on the other hand, had no facility to ascertain with the drawer, UOB Malaysia, the true amount in the draft. It was left with no option but to rely on the representations of LBP that the draft was good.

In arriving at this conclusion, the Court is not closing its eyes to the other view espoused in common law jurisdictions that a drawee bank, having paid to an innocent holder the amount of an uncertified, altered check in good faith and without negligence which contributed to the loss, could recover from the person to whom payment was made as for money paid by mistake.[42] However, given the foregoing discussion, we find no compelling reason to apply the principle to the instant case.

The Court is also aware that under the Uniform Commercial Code in the United States of America, if an unaccepted draft is presented to a drawee for payment or acceptance and the drawee pays or accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that the draft has not been altered.[43] Nonetheless, absent any similar provision in our law, we cannot extend the same preferential treatment to the paying bank.

Thus, considering that, in this case, Gold Palace is protected by Section 62 of the NIL, its collecting agent, Far East, should not have debited the money paid by the drawee bank from respondent company's account. When Gold Palace deposited the check with Far East, the latter, under the terms of the deposit and the provisions of the NIL, became an agent of the former for the collection of the amount in the draft.[44] The subsequent payment by the drawee bank and the collection of the amount by the collecting bank closed the transaction insofar as the drawee and the holder of the check or his agent are concerned, converted the check into a mere voucher,[45] and, as already discussed, foreclosed the recovery by the drawee of the amount paid. This closure of the transaction is a matter of course; otherwise, uncertainty in commercial transactions, delay and annoyance will arise if a bank at some future time will call on the payee for the return of the money paid to him on the check.[46]

As the transaction in this case had been closed and the principal-agent relationship between the payee and the collecting bank had already ceased, the latter in returning the amount to the drawee bank was already acting on its own and should now be responsible for its own actions. Neither can petitioner be considered to have acted as the representative of the drawee bank when it debited respondent's account, because, as already explained, the drawee bank had no right to recover what it paid. Likewise, Far East cannot invoke the warranty of the payee/depositor who indorsed the instrument for collection to shift the burden it brought upon itself. This is precisely because the said indorsement is only for purposes of collection which, under Section 36 of the NIL, is a restrictive indorsement.[47] It did not in any way transfer the title of the instrument to the collecting bank. Far East did not own the draft, it merely presented it for payment. Considering that the warranties of a general indorser as provided in Section 66 of the NIL are based upon a transfer of title and are available only to holders in due course,[48] these warranties did not attach to the indorsement for deposit and collection made by Gold Palace to Far East. Without any legal right to do so, the collecting bank, therefore, could not debit respondent's account for the amount it refunded to the drawee bank.

The foregoing considered, we affirm the ruling of the appellate court to the extent that Far East could not debit the account of Gold Palace, and for doing so, it must return what it had erroneously taken. Far East's remedy under the law is not against Gold Palace but against the drawee-bank or the person responsible for the alteration. That, however, is another issue which we do not find necessary to discuss in this case.

However, we delete the exemplary damages awarded by the appellate court. Respondents have not shown that they are entitled to moral, temperate or compensatory damages.[49] Neither was petitioner impelled by malice or bad faith in debiting the account of the respondent company and in pursuing its cause.[50] On the contrary, petitioner was honestly convinced of the propriety of the debit. We also delete the award of attorney's fees for, in a plethora of cases, we have ruled that it is not a sound public policy to place a premium on the right to litigate. No damages can be charged to those who exercise such precious right in good faith, even if done erroneously.[51]

WHEREFORE, premises considered, the March 15, 2005 Decision and the May 26, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 71858 are **AFFIRMED WITH THE MODIFICATION** that the award of exemplary damages and attorney's fees is **DELETED**.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Andres B. Reyes, Jr. and Lucas P. Bersamin, concurring; CA rollo, pp. 78-126.

[2] Id. at 203-205.

- [3] TSN, December 6, 2000, pp. 8-10.
- [4] Records, p. 121.
- [5] TSN, December 6, 2000, pp. 9-10.
- [6] Records, p. 161.
- [7] TSN, December 6, 2000, p. 10.
- [8] Records, pp. 121, 162.
- [9] TSN, October 6, 1999, pp. 21-22, 36.
- [10] TSN, February 23, 2000, p. 8.
- [11] TSN, October 6, 1999, p. 22.
- [12] Records, p. 159.
- [13] TSN, December 6, 2000, pp. 13-14.
- [14] Id.
- [15] Records, pp. 124-127.
- [16] TSN, February 23, 2000, pp. 8-10.
- [17] Id. at 13; TSN, October 6, 1999, pp. 28-30.
- [18] TSN, May, 10, 2000, pp. 17-19.
- [19] Id. at 9-10.
- [20] Records, p. 14.
- [21] Id. at 1-6.
- [22] Id. at 33-34.
- [23] Id. at 191-198.
- [24] Id. at 198. The dispositive portion of the RTC decision reads:

WHEREFORE, in view of the foregoing, judgment is rendered against defendant Gold Palace Jewellery Co., to pay plaintiff Far East Bank and Trust Co., the following:

- The sum of P211,946.64, representing actual damages plus legal interest thereon from 26 June 1998, until the same is fully paid;
- P50,000.00 as attorney's fees; and
- Costs of suit.

SO ORDERED.

- [25] Id. at 194-196.
- [26] Supra note 1.
- [27] CA rollo, pp. 106-112.

[28] Id. at 112-116.

[29] Id. at 123.

[30] Supra note 2.

[31] CA rollo, pp. 127-142.

[32] Rollo, pp. 3-26.

[33] Section 62 of the NIL, which, in full, reads:

SECTION 62. Liability of acceptor.--The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance and admits:

- (a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
- (b) The existence of the payee and his then capacity to indorse.

[34] Philippine National Bank v. Court of Appeals, 134 Phil. 829, 833-835 (1968).

[35] Kansas Bankers Surety Company v. Ford County State Bank, 184 Kan. 529, 534; 338 P.2d 309, 313 (1959).

[36] Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., 214 Cal. 156, 163; 4 P.2d 781, 784 (1931); citing Prof. Brannan in his work on Negotiable Instruments Law (4th Ed.) at page 567; Kansas Bankers Surety Company v. Ford County State Bank, supra.

[37] Section 52 of the NIL reads:

SECTION 52. What constitutes a holder in due course.--A holder in due course is a holder who has taken the instrument under the following conditions:

- (a) That it is complete and regular upon its face;
- (b) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
- (c) That he took it in good faith and for value;
- (d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

See Vicente R. de Ocampo & Co. v. Gatchalian, No. L-15126, November 30, 1961, 3 SCRA 596, in which the Court acknowledged the fact of negotiation of an instrument by an agent of the drawer to the payee.

[38] Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra note 36, at 165-166; see Aetna Casualty & Surety Co. v. Corpus Christi National Bank, 186 S.W.2d 840, 841-842 (1944); The National Park Bank of New York v. The Seaboard Bank, 69 Sickels 28, 114 N.Y. 28, 20 N.E. 632 (1889); Seaboard Surety Company v. First National City Bank of New York, 15 Misc.2d 816, 180 N.Y.S.2d 156 (1958).

[39] Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra note 36, at 165.

[40] National City Bank of Chicago v. National Bank of the Republic of Chicago, 300 Ill. 103, 108; 132 N.E. 832, 833 (1921).

[41] Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra note 36.

[42] Central National Bank v. F.W. Drosten Jewelry Co., 203 Mo.App. 646, 220 S.W. 511 (1920); Interstate Trust

Co., et al. v. United States National Bank, 67 Colo. 6, 185 P. 260, 10 A.L.R. 705 (1919); National Park Bank of New York v. Eldred Bank, 90 Hun 285, 70 N.Y.St.Rep. 497, 35 N.Y.S. 752 (1895); Third National Bank of St. Louis v. Thomas Allen, 59 Mo. 310, 1875 WL 7732 (Mo.) (1875); The Marine National Bank v. The National City Bank, 10 Alb. L.J. 360, 59 N.Y. 67, 17 Am. Rep. 305 (1874); Espy v. Bank of Cincinnati, 85 U.S. 604, 18 Wall 604, 21 L. Ed. 947 (1874); Redington, et al. v. Woods, et al., 45 Cal. 406, 13 Am. Rep. 190 (1873).

[43] UCC § 3-417 (a) on presentment warranties.

[44] Jai-Alai Corporation v. Bank of the Philippine Islands, No. L-29432, August 6, 1975, 66 SCRA 29, 34.

[45] Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra note 36, at 164; Kansas Bankers Surety Company v. Ford County State Bank, supra note 35, at 536.

[46] Citizens National Bank v. First National Bank, 347 So.2d 964, 968 (1977).

[47] Section 36 of the NIL reads:

SECTION 36. When indorsement restrictive.--An indorsement is restrictive which either:

- (a) Prohibits the further negotiation of the instrument; or
- (b) Constitutes the indorsee the agent of the indorser; or
- (c) Vests the title in the indorsee in trust for or to the use of some other persons.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (*Italics supplied.*)

[48] Wells Fargo Bank & Union Trust Co. v. Bank of Italy, et al., supra note 36; Kansas Bankers Surety Company v. Ford County State Bank, supra note 35, at 535.

[49] Civil Code, Art. 2234.

[50] ABS-CBN Broadcasting Corporation v. Court of Appeals, 361 Phil. 499, 531 (1999).

[51] Republic v. Lorenzo Shipping Corp., G.R. No. 153563, February 7, 2005, 450 SCRA 550, 558; Pajuyo v. Court of Appeals, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 524; Alonso v. Cebu Country Club, Inc., 426 Phil. 61, 88 (2002); Orosa v. Court of Appeals, 386 Phil. 94, 105 (2000); "J" Marketing Corporation v. Sia, Jr., 349 Phil. 513, 517 (1998).

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