VICENTE GO, PETITIONER, VS. METROPOLITAN BANK AND TRUST CO., RESPONDENT.

G.R. No. 168842. August 11, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 27, 2005 and the Resolution[2] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 63469.

The Facts

The facts of the case are as follows:

Petitioner filed two separate cases before the Regional Trial Court (RTC) of Cebu. Civil Case No. CEB-9713 was filed by petitioner against Ma. Teresa Chua (Chua) and Glyndah Tabañag (Tabañag) for a sum of money with preliminary attachment. Civil Case No. CEB-9866 was filed by petitioner for a sum of money with damages against herein respondent Metropolitan Bank and Trust Company (Metrobank) and Chua.[3]

In both cases, petitioner alleged that he was doing business under the name "Hope Pharmacy" which sells medicine and other pharmaceutical products in the City of Cebu. Petitioner had in his employ Chua as his pharmacist and trustee or caretaker of the business; Tabañag, on the other hand, took care of the receipts and invoices and assisted Chua in making deposits for petitioner's accounts in the business operations of Hope Pharmacy.[4]

In CEB-9713, petitioner claimed that there were unauthorized deposits and encashments made by Chua and Tabañag in the total amount of One Hundred Nine Thousand Four Hundred Thirty-three Pesos and Thirty Centavos (P109,433.30). He questioned particularly the following:

> (1) FEBTC Check No. 251111 dated April 29, 1990 in the amount of P22,635.00 which was issued by plaintiff's [petitioner's] customer Loy Libron in payment of the stocks purchased was deposited under Metrobank Savings Account No. 420-920-6 belonging to the defendant Ma. Teresa Chua;
>
> (2) RCBC Checks Nos. 330958 and 294515, which were in blank but pre-signed by him (plaintiff [petitioner] Vicente Go) for convenience and intended for payment to plaintiff's [petitioner's] suppliers, were filled up and dated September 22, 1990 and September 7, 1990 in the amount of P30,000.00 and P50,000.00 respectively, and were deposited with defendant Chua's aforestated account with Metrobank;
>
> (3) PBC Check No. 005874, drawn by Elizabeth Enriquez payable to the Hope Pharmacy in the amount of P6,798.30 was encashed by the defendant Glyndah Tabañag;
>
> (4) There were unauthorized deposits and encashments in the total sum of P109,433.30;[5]

In CEB-9866, petitioner averred that there were thirty-two (32) checks with Hope Pharmacy as payee, for varying

sums, amounting to One Million Four Hundred Ninety-Two Thousand Five Hundred Ninety-Five Pesos and Six Centavos (P1,492,595.06), that were not endorsed by him but were deposited under the personal account of Chua with respondent bank,[6] and these are the following:

CHECK NO.

DATE

AMOUNT

FEBTC 251166

5-23-90

P 65,214.88

FEBTC 239399

5-08-90

24,917.75

FEBTC 251350

7-24-90

212,326.56

PBC 279887

6-27-90

2,000.00

PBC 162387

1-24-90

6,300.00

PBC 162317

12-22-89

3,300.00

PBC 279881

6-23-90

7,650.00

PBC 009005

7-21-89

3,584.00

PBC 279771

5-14-90

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3,600.00

PBC 279726

4-25-90

2,000.00

PBC 168004

3-22-90

2,800.00

PBC 167963

3-07-90

1,700.00

FEBTC 267793

8-20-90

80,085.66

FEBTC 267761

7-21-90

45,304.63

FEBTC 251252

6-03-90

64,000.00

FEBTC 267798

8-15-90

40,078.67

PBC 367292

8-06-90

2,100.00

PBC 376445

9-26-90

1,125.00

PBC 009056

8-07-89

2,500.00

PBC 376402

9-12-90

12,105.40

BPI 197074

7-17-90

5,240.00

BPI 197051

7-06-90

1,350.00

BPI 204358

9-19-90

5,402.60

BPI 204252

7-31-90

6,715.60

FEBTC 251171

6-27-90

83,175.54

FEBTC 251165

6-28-90

231,936.10

FEBTC 251251

6-30-90

47,087.25

FEBTC 251163

6-21-90

170,600.85

FEBTC 251170

5-23-90

16,440.00

FEBTC 251112

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5-31-90

211,592.69

FEBTC 239400

6-15-90

47,664.03

FEBTC 251162

6-22-90

82,697.85

P1,492,595.06[7]

Petitioner claimed that the said checks were crossed checks payable to Hope Pharmacy only; and that without the participation and connivance of respondent bank, the checks could not have been accepted for deposit to any other account, except petitioner's account.[8]

Thus, in CEB-9866, petitioner prayed that Chua and respondent bank be ordered, jointly and severally, to pay the principal amount of P1,492,595.06, plus interest at 12% from the dates of the checks, until the obligation shall have been fully paid; moral damages of Five Hundred Thousand Pesos (P500,000.00); exemplary damages of P500,000.00; and attorney's fees and costs in the amount of P500,000.00.[9]

On February 23, 1995, the RTC rendered a Joint Decision,[10] the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court hereby renders judgment dismissing plaintiff Vicente Go's complaint against the defendant Ma. Teresa Chua and Glyndah Tabañag in Civil Case No. CEB-9713, as well as plaintiff's complaint against the same defendant Ma. Teresa Chua in Civil Case No. CEB-9866.
>
> Plaintiff Vicente Go is moreover sentenced to pay P50,000.00 in attorney's fees and litigation expenses to the defendants Ma. Teresa Chua and Glyndah Tabañag in Civil Case No. CEB-9713.
>
> Defendant Metrobank in Civil Case No. CEB-9866 is hereby condemned to pay unto plaintiff Vicente Go/Hope Pharmacy the amount of P50,000.00 as moral damages, and attorney's fees and litigation expenses in the aggregate sum of P25,000.00.
>
> The defendant Metrobank's crossclaim against its co-defendant Ma. Teresa Chua in Civil Case No. CEB-9866 is dismissed for lack of merit.
>
> No special pronouncement as to costs in both instances.
>
> SO ORDERED.[11]

In striking down the complaint of the petitioner against Chua and Tabañag in CEB-9713, the RTC made the following findings:

> (1) FEBTC Check No. 251111, dated April 29, 1990, in the amount of P22,635.00 payable to cash, was drawn by Loy Libron in payment of her purchases of medicines and other drugs which Ma. Teresa Chua was selling side by side with the medicines and drugs of the Hope Pharmacy, for which she (Maritess) was granted permission by its owner, Mr. Vicente Chua. These medicines and drugs from Thailand were Maritess' sideline, and were segregated from the stocks of Hope Pharmacy; x x x.
>
> (2) RCBC Check Nos. 294519 and 330958 were checks belonging to plaintiff Vicente Go payable to cash x x

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> x; these checks were replacements of the sums earlier advanced by Ma. Teresa Chua, but which were deposited in the account of Vicente Go with RCBC, as shown by the deposit slips x x x, and confirmed by the statement of account of Vicente Go with RCBC.
>
> (3) Check No. PCIB 005374 drawn by Elizabeth Enriquez payable to Hope Pharmacy/Cash in the amount of P6,798.30 dated September 6, 1990, was admittedly encashed by the defendant, Glyndah Tabañag. As per instruction by Vicente Go, Glyndah requested the drawer to insert the word "Cash," so that she could encash the same with PCIB, to meet the Hope Pharmacy's overdraft.
>
> The listings x x x, made by Glyndah Tabañag and Flor Ouano will show that the corresponding amounts covered thereby were in fact deposited to the account of Mr. Vicente Go with RCBC; the Bank Statement of Mr. Go x x x, confirms defendants' claim independently of the deposit slip[s] x x x.[12]

The trial court absolved Chua in CEB-9866 because of the finding that the subject checks in CEB-9866 were payments of petitioner for his loans or borrowings from the parents of Ma. Teresa Chua, through Ma. Teresa, who was given the total discretion by petitioner to transfer money from the offices of Hope Pharmacy to pay the advances and other obligations of the drugstore; she was also given the full discretion where to source the funds to cover the daily overdrafts, even to the extent of borrowing money with interest from other persons.[13]

While the trial court exonerated Chua in CEB-9866, it however declared respondent bank liable for being negligent in allowing the deposit of crossed checks without the proper indorsement.

Petitioner filed an appeal before the CA. On May 27, 2005, the CA rendered a Decision,[14] the fallo of which reads:

> WHEREFORE, except for the award of attorney's fees and litigation expenses in favor of defendants Chua and Tabañag which is hereby deleted, the decision of the lower court is hereby AFFIRMED.
>
> SO ORDERED.[15]

Hence, this petition.

The Issue

Petitioner presented this sole issue for resolution:

> The Court of Appeals Erred In Not Holding Metrobank Liable For Allowing The Deposit, Of Crossed Checks Which Were Issued In Favor Of And Payable To Petitioner And Without Being Indorsed By The Petitioner, To The Account Of Maria Teresa Chua.[16]

The Ruling of the Court

A check is a bill of exchange drawn on a bank payable on demand.[17] There are different kinds of checks. In this case, crossed checks are the subject of the controversy. A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. It may be crossed generally or specially.[18]

A check is crossed specially when the name of a particular banker or a company is written between the parallel lines drawn. It is crossed generally when only the words "and company" are written or nothing is written at all between the parallel lines, as in this case. It may be issued so that presentment can be made only by a bank.[19]

In order to preserve the credit worthiness of checks, jurisprudence has pronounced that crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once -- to one who has an account with a bank; and (c) the act of crossing the check serves as warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has

received the check pursuant to that purpose, otherwise, he is not a holder in due course.[20]

The Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and not converted into cash. The effect of crossing a check, thus, relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein.[21] The crossing of a check is a warning that the check should be deposited only in the account of the payee. Thus, it is the duty of the collecting bank to ascertain that the check be deposited to the payee's account only.[22]

In the instant case, there is no dispute that the subject 32 checks with the total amount of P1,492,595.06 were crossed checks with petitioner as the named payee. It is the submission of petitioner that respondent bank should be held accountable for the entire amount of the checks because it accepted the checks for deposit under Chua's account despite the fact that the checks were crossed and that the payee named therein was not Chua.

In its defense, respondent bank countered that petitioner is not entitled to reimbursement of the total sum of P1,492,595.06 from either Maria Teresa Chua or respondent bank because petitioner was not damaged thereby.[23]

Respondent bank's contention is meritorious. Respondent bank should not be held liable for the entire amount of the checks considering that, as found by the RTC and affirmed by the CA, the checks were actually given to Chua as payments by petitioner for loans obtained from the parents of Chua. Furthermore, petitioner's non-inclusion of Chua and Tabañag in the petition before this Court is, in effect, an admission by the petitioner that Chua, in representation of her parents, had rightful claim to the proceeds of the checks, as payments by petitioner for money he borrowed from the parents of Chua. Therefore, petitioner suffered no pecuniary loss in the deposit of the checks to the account of Chua.

However, we affirm the finding of the RTC that respondent bank was negligent in permitting the deposit and encashment of the crossed checks without the proper indorsement. An indorsement is necessary for the proper negotiation of checks specially if the payee named therein or holder thereof is not the one depositing or encashing it. Knowing fully well that the subject checks were crossed, that the payee was not the holder and that the checks contained no indorsement, respondent bank should have taken reasonable steps in order to determine the validity of the representations made by Chua. Respondent bank was amiss in its duty as an agent of the payee. Prudence dictates that respondent bank should not have merely relied on the assurances given by Chua.

Respondent presented Jonathan Davis as its witness in the trial before the RTC. He was the officer-in-charge and ranked second to the assistant vice president of the bank at the time material to this case. Davis' testimony was summarized by the RTC as follows:

> Davis also testified that he allowed Ma. Teresa Chua to deposit the checks subject of this litigation which were payable to Hope Pharmacy. According to him, it was a privilege given to valued customers on a highly selective case to case basis, for marketing purposes, based on trust and confidence, because Ma. Teresa [Chua] told him that those checks belonged to her as payment for the advances she extended to Mr. Go/Hope Pharmacy. x x x
>
> Davis stressed that Metrobank granted the privilege to Ma. Teresa Chua that for every check she deposited with Metrobank, the same would be credited outright to her account, meaning that she could immediately make use of the amount credited; this arrangement went on for about three years, without any complaint from Mr. Go/Hope Pharmacy, and Ma. Teresa Chua made warranty that she would reimburse Metrobank if Mr. Go complained. He did not however call or inform Mr. Go about this arrangement, because their bank being a Chinese bank, transactions are based on trust and confidence, and for him to inform Mr. Vicente Go about it,

> was tantamount to questioning the integrity of their client, Ma. Teresa Chua. Besides, this special privilege or arrangement would not bring any monetary gain to the bank. [24]

Negligence was committed by respondent bank in accepting for deposit the crossed checks without indorsement and in not verifying the authenticity of the negotiation of the checks. The law imposes a duty of extraordinary diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity.[25] As a business affected with public interest and because of the nature of its functions, the banks are under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of the relationship.[26] The fact that this arrangement had been practiced for three years without Mr. Go/Hope Pharmacy raising any objection does not detract from the duty of the bank to exercise extraordinary diligence. Thus, the Decision of the RTC, as affirmed by the CA, holding respondent bank liable for moral damages is sufficient to remind it of its responsibility to exercise extraordinary diligence in the course of its business which is imbued with public interest.

WHEREFORE, the Decision dated May 27, 2005 and the Resolution dated August 31, 2005 of the Court of Appeals in CA-G.R. CV No. 63469 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

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[1] Penned by Associate Justice Vicente L. Yap, with Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas, concurring; CA rollo, pp. 184-195.

[2] Id. at 226-228.

[3] Id. at 52.

[4] Id.

[5] Id. at 52-53.

[6] Id. at 53.

[7] Id.

[8] Id.

[9] Id. at 54.

[10] Penned by Judge Renato C. Dacudao; id. at 68.

[11] Id.

[12] Id. at 64-65.

[13] Id. at 66.

[14] Supra note 1, at 195.

[15] Id.

[16] Rollo, p. 10.

[17] Sec. 185, Negotiable Instruments Law.

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[18] Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals, G.R. No. 93048, March 3, 1994, 230 SCRA 643, 647; citing Associated Bank v. Court of Appeals, G.R. No. 89802, May 7, 1992, 208 SCRA 465; State Investment House v. Intermediate Appellate Court, G.R. No. 72764, 175 SCRA 310; and Vicente B. de Ocampo & Co. v. Gatchalian, 113 Phil. 574 (1961).

[19] Id.

[20] Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals, supra note 18, at 648.

[21] Yang v. Court of Appeals, 456 Phil. 378, 381-382 (2003).

[22] Philippine Commercial International Bank v. Court of Appeals, 403 Phil. 361, 364 (2001).

[23] Rollo, p. 46.

[24] CA rollo, p. 64.

[25] Philippine National Bank v. Rodriguez, G.R. No. 170325, September 26, 2008, 566 SCRA 513, 518; Associated Bank v. Court of Appeals, supra note 18.

[26] Philippine Commercial International Bank v. Court of Appeals, supra note 22.

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