

PHILIPPINE NATIONAL BANK, PETITIONER, VS. SPOUSES CHEAH CHEE CHONG AND OFELIA CAMACHO CHEAH, RESPONDENTS.*G.R. No. 170865. April 25, 2012*

Ponente: DEL CASTILLO, J.

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Law favoreth diligence, and therefore, hateth folly and egligence.—Wingate’s Maxim.

In doing a friend a favor to help the latter’s friend collect the proceeds of a foreign check, a woman deposited the check in her and her husband’s dollar account. The local bank accepted the check for collection and immediately credited the proceeds thereof to said spouses’ account even before the lapse of the clearing period. And just when the money had been withdrawn and distributed among different beneficiaries, it was discovered that all along, to the horror of the woman whose intention to accommodate a friend’s friend backfired, she and her bank had dealt with a rubber check.

These consolidated[1] Petitions for Review on Certiorari filed by the Philippine National Bank (PNB)[2] and by the spouses Cheah Chee Chong and Ofelia Camacho Cheah (spouses Cheah)[3] both assail the August 22, 2005 Decision[4] and December 21, 2005 Resolution[5] of the Court of Appeals (CA) in CA-G.R. CV No. 63948 which declared both parties equally negligent and, hence, should equally suffer the resulting loss. For its part, PNB questions why it was declared blameworthy together with its depositors, spouses Cheah, for the amount wrongfully paid the latter, while the spouses Cheah plead that they be declared entirely faultless.

Factual Antecedents

On November 4, 1992, Ofelia Cheah (Ofelia) and her friend Adelina Guarin (Adelina) were having a conversation in the latter’s office when Adelina’s friend, Filipina Tuazon (Filipina), approached her to ask if she could have Filipina’s check cleared and encashed for a service fee of 2.5%. The check is Bank of America Check No. 190[6] under the account of Alejandria Pineda and Eduardo Rosales and drawn by Atty. Eduardo Rosales against Bank of America Alhambra Branch in California, USA, with a face amount of \$300,000.00, payable to cash. Because Adelina does not have a dollar account in which to deposit the check, she asked Ofelia if she could accommodate Filipina’s request since she has a joint dollar savings account with her Malaysian husband Cheah Chee Chong (Chee Chong) under Account No. 265-705612-2 with PNB Buendia Branch.

Ofelia agreed.

That same day, Ofelia and Adelina went to PNB Buendia Branch. They met with Perfecto Mendiola of the Loans Department who referred them to PNB Division Chief Alberto Garin (Garin). Garin discussed with them the process of clearing the subject check and they were told that it normally takes 15 days.[7] Assured that the deposit and subsequent clearance of the check is a normal transaction, Ofelia deposited Filipina’s check. PNB then sent it for clearing through its correspondent bank, Philadelphia National Bank. Five days later, PNB received a credit advice[8] from Philadelphia National Bank that the proceeds of the subject check had been temporarily credited to PNB’s account as of November 6, 1992. On November 16, 1992, Garin called up Ofelia to inform her that the

check had already been cleared.[9] The following day, PNB Buendia Branch, after deducting the bank charges, credited \$299,248.37 to the account of the spouses Cheah.[10] Acting on Adelina's instruction to withdraw the credited amount, Ofelia that day personally withdrew \$180,000.00.[11] Adelina was able to withdraw the remaining amount the next day after having been authorized by Ofelia.[12] Filipina received all the proceeds.

In the meantime, the Cable Division of PNB Head Office in Escolta, Manila received on November 16, 1992 a SWIFT[13] message from Philadelphia National Bank dated November 13, 1992 with Transaction Reference Number (TRN) 46506218, informing PNB of the return of the subject check for insufficient funds.[14] However, the PNB Head Office could not ascertain to which branch/office it should forward the same for proper action. Eventually, PNB Head Office sent Philadelphia National Bank a SWIFT message informing the latter that SWIFT message with TRN 46506218 has been relayed to PNB's various divisions/departments but was returned to PNB Head Office as it seemed misrouted. PNB Head Office thus requested for Philadelphia National Bank's advice on said SWIFT message's proper disposition.[15] After a few days, PNB Head Office ascertained that the SWIFT message was intended for PNB Buendia Branch.

PNB Buendia Branch learned about the bounced check when it received on November 20, 1992 a debit advice,[16] followed by a letter[17] on November 24, 1992, from Philadelphia National Bank to which the November 13, 1992 SWIFT message was attached. Informed about the bounced check and upon demand by PNB Buendia Branch to return the money withdrawn, Ofelia immediately contacted Filipina to get the money back. But the latter told her that all the money had already been given to several people who asked for the check's encashment. In their effort to recover the money, spouses Cheah then sought the help of the National Bureau of Investigation. Said agency's Anti-Fraud and Action Division was later able to apprehend some of the beneficiaries of the proceeds of the check and recover from them \$20,000.00. Criminal charges were then filed against these suspect beneficiaries.[18]

Meanwhile, the spouses Cheah have been constantly meeting with the bank officials to discuss matters regarding the incident and the recovery of the value of the check while the cases against the alleged perpetrators remain pending. Chee Chong in the end signed a PNB drafted[19] letter[20] which states that the spouses Cheah are offering their condominium units as collaterals for the amount withdrawn. Under this setup, the amount withdrawn would be treated as a loan account with deferred interest while the spouses try to recover the money from those who defrauded them. Apparently, Chee Chong signed the letter after the Vice President and Manager of PNB Buendia Branch, Erwin Asperilla (Asperilla), asked the spouses Cheah to help him and the other bank officers as they were in danger of losing their jobs because of the incident. Asperilla likewise assured the spouses Cheah that the letter was a mere formality and that the mortgage will be disregarded once PNB receives its claim for indemnity from Philadelphia National Bank.

Although some of the officers of PNB were amenable to the proposal,[21] the same did not materialize. Subsequently, PNB sent a demand letter to spouses Cheah for the return of the amount of the check,[22] froze their peso and dollar deposits in the amounts of P275,166.80 and \$893.46,[23] and filed a complaint[24] against them for Sum of Money with Branch 50 of the Regional Trial Court (RTC) of Manila, docketed as Civil Case No. 94-71022. In said complaint, PNB demanded payment of around P8,202,220.44, plus interests[25] and attorney's fees, from the spouses Cheah.

As their main defense, the spouses Cheah claimed that the proximate cause of PNB's injury was its own negligence of paying a US dollar denominated check

without waiting for the 15-day clearing period, in violation of its bank practice as mandated by its own bank circular, i.e., PNB General Circular No. 52-101/88.[26] Because of this, spouses Cheah averred that PNB is

barred from claiming what it had lost. They further averred that it is unjust for them to pay back the amount disbursed as they never really benefited therefrom. As counterclaim, they prayed for the return of their frozen deposits, the recoupment of P400,000.00 representing the amount they had so far spent in recovering the value of the check, and payment of moral and exemplary damages, as well as attorney's fees.

Ruling of the Regional Trial Court

The RTC ruled in PNB's favor. The dispositive portion of its Decision[27] dated May 20, 1999 reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Philippine National Bank [and] against defendants Mr. Cheah Chee Chong and Ms. Ofelia Camacho Cheah, ordering the latter to pay jointly and severally the herein plaintiffs' bank the amount:

1. of US\$298,950.25 or its peso equivalent based on Central Bank Exchange Rate prevailing at the time the proceeds of the BA Check No. 190 were withdrawn or the prevailing Central Bank Rate at the time the amount is to be reimbursed by the defendants to plaintiff or whatever is lower. This is without prejudice however, to the rights of the defendants (accommodating parties) to go against the group of Adelina Guarin, Atty. Eduardo Rosales, Filipina Tuazon, etc., (Beneficiaries- accommodated parties) who are privy to the defendants.

No pronouncement as to costs.

No other award of damages for non[e] has been proven.

SO ORDERED.[28]

The RTC held that spouses Cheah were guilty of contributory negligence.

Because Ofelia trusted a friend's friend whom she did not know and considering the amount of the check made payable to cash, the RTC opined that Ofelia showed lack of vigilance in her dealings. She should have exercised due care by investigating the negotiability of the check and the identity of the drawer. While the court found that the proximate cause of the wrongful payment of the check was PNB's negligence in not observing the 15-day guarantee period rule, it ruled that spouses Cheah still cannot escape liability to reimburse PNB the value of the check as an accommodation party pursuant to Section 29 of the Negotiable Instruments Law.[29] It likewise applied the principle of *solutio indebiti* under the Civil Code. With regard to the award of other forms of damages, the RTC held that each party must suffer the consequences of their own acts and thus left both parties as they are.

Unwilling to accept the judgment, the spouses Cheah appealed to the CA.

Ruling of the Court of Appeals

While the CA recognized the spouses Cheah as victims of a scam who nevertheless have to suffer the consequences of Ofelia's lack of care and prudence in immediately trusting a stranger, the appellate court did not hold PNB scot-free. It ruled in its August 22, 2005 Decision,[30] viz:

As both parties were equally negligent, it is but right and just that both parties should equally suffer and shoulder the loss. The scam would not have been possible without the negligence of both parties. As earlier stated, the complaint of PNB cannot be dismissed because the Cheah spouses were negligent and Ms. Cheah took an active part in the deposit of the check and the withdrawal of the subject amounts. On the other hand, the Cheah spouses cannot entirely bear the loss because PNB allowed her to withdraw without waiting for the clearance of the check. The remedy of the parties is to go after those who perpetrated, and benefited from, the scam.

WHEREFORE, the May 20, 1999 Decision of the Regional Trial Court, Branch 5, Manila, in Civil Case No. 94-71022, is hereby REVERSED and SET ASIDE and another one entered DECLARING both parties equally

negligent and should suffer and shoulder the loss.

Accordingly, PNB is hereby ordered to credit to the peso and dollar accounts of the Cheah spouses the amount due to them.

SO ORDERED.[31]

In so ruling, the CA ratiocinated that PNB Buendia Branch's non-receipt of the SWIFT message from Philadelphia National Bank within the 15-day clearing period is not an acceptable excuse. Applying the last clear chance doctrine, the CA held that PNB had the last clear opportunity to avoid the impending loss of the money and yet, it glaringly exhibited its negligence in allowing the withdrawal of funds without exhausting the 15-day clearing period which has always been a standard banking practice as testified to by PNB's own officers, and as provided in its own General Circular No. 52/101/88. To the CA, PNB cannot claim from spouses Cheah even if the latter are accommodation parties under the law as the bank's own negligence is the proximate cause of the damage it sustained. Nevertheless, it also found Ofelia guilty of contributory negligence. Thus, both parties should be made equally responsible for the resulting loss.

Both parties filed their respective Motions for Reconsideration[32] but same were denied in a Resolution[33] dated December 21, 2005.

Hence, these Petitions for Review on Certiorari.

Our Ruling

The petitions for review lack merit. Hence, we affirm the ruling of the CA.

PNB's act of releasing the proceeds of the check prior to the lapse of the 15-day clearing period was the proximate cause of the loss.

"Proximate cause is 'that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.' x x x To determine the proximate cause of a controversy, the question that needs to be asked is: If the event did not happen, would the injury have resulted? If the answer is no, then the event is the proximate cause." [34]

Here, while PNB highlights Ofelia's fault in accommodating a stranger's check and depositing it to the bank, it remains mum in its release of the proceeds thereof without exhausting the 15-day clearing period, an act which contravened established banking rules and practice.

It is worthy of notice that the 15-day clearing period alluded to is construed as 15 banking days. As declared by Josephine Estella, the Administrative Service Officer who was the bank's Remittance Examiner, what was unusual in the processing of the check was that the "lapse of 15 banking days was not observed." [35] Even PNB's agreement with Philadelphia National Bank [36] regarding the rules on the collection of the proceeds of US dollar checks refers to "business/ banking days." Ofelia deposited the subject check on November 4, 1992. Hence, the 15th banking day from the date of said deposit should fall on November 25, 1992. However, what happened was that PNB Buendia Branch, upon calling up Ofelia that the check had been cleared, allowed the proceeds thereof to be withdrawn on November 17 and 18, 1992, a week before the lapse of the standard 15-day clearing period.

This Court already held that the payment of the amounts of checks without previously clearing them with the drawee bank especially so where the drawee bank is a foreign bank and the amounts involved were large is contrary to normal or ordinary banking practice. [37] Also, in *Associated Bank v. Tan*, [38] wherein the bank allowed the withdrawal of the value of a check prior to its clearing, we said that "[b]efore the check shall have

been cleared for deposit, the collecting bank can only ‘assume’ at its own risk x x x that the check would be cleared and paid out.” The delay in the receipt by PNB Buendia Branch of the November 13, 1992 SWIFT message notifying it of the dishonor of the subject check is of no moment, because had PNB Buendia Branch waited for the expiration of the clearing period and had never released during that time the proceeds of the check, it would have already been duly notified of its dishonor. Clearly, PNB’s disregard of its preventive and protective measure against the possibility of being victimized by bad checks had brought upon itself the injury of losing a significant amount of money.

It bears stressing that “the diligence required of banks is more than that of a Roman pater familias or a good father of a family. The highest degree of diligence is expected.”[39] PNB miserably failed to do its duty of exercising extraordinary diligence and reasonable business prudence. The disregard of its own banking policy amounts to gross negligence, which the law defines as “negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected.”[40] With regard to collection or encashment of checks, suffice it to say that the law imposes on the collecting bank the duty to scrutinize diligently the checks deposited with it for the purpose of determining their genuineness and regularity. “The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct.”[41] A bank is expected to be an expert in banking procedures and it has the necessary means to ascertain whether a check, local or foreign, is sufficiently funded.

Incidentally, PNB obliges the spouses Cheah to return the withdrawn money under the principle of solutio indebiti, which is laid down in Article 2154 of the Civil Code:[42]

Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

“[T]he indispensable requisites of the juridical relation known as solutio indebiti, are, (a) that he who paid was not under obligation to do so; and (b) that the payment was made by reason of an essential mistake of fact.[43]

In the case at bench, PNB cannot recover the proceeds of the check under the principle it invokes. In the first place, the gross negligence of PNB, as earlier discussed, can never be equated with a mere mistake of fact, which must be something excusable and which requires the exercise of prudence. No recovery is due if the mistake done is one of gross negligence.

The spouses Cheah are guilty of contributory negligence and are bound to share the loss with the bank

“Contributory negligence is conduct on the part of the injured party,

contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.”[44]

The CA found Ofelia’s credulousness blameworthy. We agree. Indeed, Ofelia failed to observe caution in giving her full trust in accommodating a complete stranger and this led her and her husband to be swindled. Considering that Filipina was not personally known to her and the amount of the foreign check to be encashed was \$300,000.00, a higher degree of care is expected of Ofelia which she, however, failed to exercise under the circumstances. Another circumstance which should have goaded Ofelia to be more circumspect in her dealings was when a bank officer called her up to inform that the Bank of America check has already been cleared way earlier than the 15-day clearing period. The fact that the check was cleared after only eight banking days from the time it was deposited or contrary to what Garin told her that clearing takes 15 days should have already put Ofelia on guard. She should have first verified the regularity of such hasty clearance considering that if something goes

wrong with the transaction, it is she and her husband who would be put at risk and not the accommodated party. However, Ofelia chose to ignore the same and instead actively participated in immediately withdrawing the proceeds of the check. Thus, we are one with the CA in ruling that Ofelia's prior consultation with PNB officers is not enough to totally absolve her of any liability. In the first place, she should have shunned any participation in that palpably shady transaction.

In any case, the complaint against the spouses Cheah could not be dismissed. As PNB's client, Ofelia was the one who dealt with PNB and negotiated the check such that its value was credited in her and her husband's account. Being the ones in privity with PNB, the spouses Cheah are therefore the persons who should return to PNB the money released to them.

All told, the Court concurs with the findings of the CA that PNB and the spouses Cheah are equally negligent and should therefore equally suffer the loss. The two must both bear the consequences of their mistakes.

WHEREFORE, premises considered, the Petitions for Review on Certiorari in G.R. No. 170865 and in G.R. No. 170892 are both DENIED. The assailed August 22, 2005 Decision and December 21, 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 63948 are hereby AFFIRMED in toto.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] Consolidated pursuant to our Resolution dated April 26, 2006, rollo (G.R. No. 170865), p. 392 and rollo (G.R. No. 170892), p. 95.

[2] Docketed as G.R. No. 170865, rollo, pp. 105-129.

[3] Docketed as G.R. No. 170892, id. at 11-39.

[4] CA rollo, pp. 172-188; penned by Associate Justice Jose Catral Mendoza (now a member of this Court) and concurred in by Presiding Justice Romeo A. Brawner and Associate Justice Mario L. Guariña III.

[5] Id. at 261; penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Mario L. Guariña III and Celia C. Librea-Leagogo.

[6] Records, p. 199.

[7] TSN, July 3, 1998, pp. 14-17.

[8] Records, p. 200.

[9] TSN, July 3, 1998, pp. 18-19; July 24, 1998, pp. 32-33.

[10] Records, pp. 201 and 425.

[11] Id. at 202.

[12] Id. at 206.

[13] Stands for 'Society for Worldwide Interbank Financial Telecommunication.' It is an international transaction processing system owned by and serving the financial community worldwide. It handles financial messages such as: a. customer transfers or payment orders; b. bank transfers; c. foreign exchange confirmation; d. debit confirmation; e. credit confirmation; f. statement of account; g. collections; h. documentary credits; i.

syndications; j. traveler's checks; See Joint Affidavit of Gregorio SC Termulo and Leoncio M. David, Assistant Department Manager II and Division Chief III of the Cable Division, International Department of PNB, id. at 312-315.

[14] Id. at 316.

[15] Id. at 317.

[16] Id. at 384.

[17] Id. at 386-387.

[18] Based on the records of the case at bar, upon the NBI's investigation, the withdrawn money was divided among Transmedian Management (Adelina Guarin's office), Nilo Montalban, Patricio Valleser, and Lucesio Semblante, who all received a part of the proceeds as commissions, while the rest of the amount was divided between Felix Sajot and Eduardo Rosales, id. at 276-277. The NBI, suspecting a conspiracy among the bank officers and the beneficiaries, filed an estafa case against Adelina Guarin and PNB officials Lorenzo Bal, Ponciano Felix, Teresita Gregorio, and Domingo Posadas before the Office of the Ombudsman, but this was dismissed, id. at 402-407. Criminal case for estafa was likewise filed by the Makati Prosecutor against Filipina Tuazon, Nilo Montalban, Patricio Vallaser, Lucesio Semblante, Eduardo Rosales and Felix Sajot before the Regional Trial Court of Makati, id. at 426-427.

[19] TSN, July 3, 1998, pp. 43-48; July 24, 1998, p. 9.

[20] Records, pp. 207-208.

[21] Id. at 388-395.

[22] Id. at 399.

[23] Under Account Nos. 265-560184-0 and 265-705612-2.

[24] Records, pp. 1-9.

[25] Converted to peso at a rate of \$1 = P27.695. The amount recovered was deducted from the \$300,000, then computed at an interest rate of 7.5% per annum.

[26] Said Circular dated August 31, 1988, states:

The existing cash letter services of our foreign correspondents [sic] bank make it possible for PNB to obtain immediate credit, subject to final payment for US dollar denominated checks withdrawn on banks in the U.S.A. negotiated with us by clients. The guarantee period 'and' notice of non-payment by telex features under such clearing item is made known to PNB within 15 days from date of receipts of checks by our collecting agent bank. Records, p. 525 as incorporated in the RTC Decision, p. 20.

[27] Id. at 506-541; penned by Judge Urbano Victorio, Sr.

[28] Id. at 540-541.

[29] Sec. 29. Liability of accommodation party. - An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party.

[30] Supra note 4.

[31] CA rollo, pp. 187-188.

[32] See PNB's Motion for Reconsideration, *id.* at 194-207 and the spouses Cheah's Motion for Reconsideration, *id.* at 208-231.

[33] *Supra* note 5.

[34] Allied Banking Corporation v. Lim Sio Wan, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 518.

[35] TSN, July 5, 1995, p. 26.

[36] Records, pp. 281-285.

[37] Banco Atlantico v. Auditor General, 171 Phil. 298, 304 (1978).

[38] 487 Phil. 512, 525 (2004).

[39] Philippine Savings Bank v. Chowking Food Corporation, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330, citing Bank of the Philippine Islands v. Court of Appeals, 383 Phil. 538, 554 (2000); Philippine Bank of Commerce v. Court of Appeals, 336 Phil. 667, 681 (1997) and Philippine Commercial International Bank v. Court of Appeals, 403 Phil. 361, 388 (2001).

[40] Victoriano v. People, G.R. Nos. 171322-24, November 30, 2006, 509 SCRA 483, 493, citing Fonacier v. Sandiganbayan, G.R. Nos. 50691, 52263, 52766, 52821, 53350, 53397, 53415 and 53520, December 5, 1994, 238 SCRA 655, 687-688.

[41] Metropolitan Bank and Trust Company v. Philippine Bank of Communications, G.R. Nos. 141408 and 141429, October 18, 2007, 536 SCRA 556, 563, citing Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corporation, 241 Phil. 187, 200 (1988).

[42] N.B. *Solutio indebiti* also covers mistake in law under Article 2155 of the Civil Code.

[43] City of Cebu v. Judge Piccio, 110 Phil. 558, 563 (1960).

[44] Valenzuela v. Court of Appeals, 323 Phil. 374, 388 (1996).

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