

INSULAR DRUG CO., INC., PLAINTIFF AND APPELLEE, VS. THE PHILIPPINE NATIONAL BANK ET AL., DEFENDANTS. THE PHILIPPINE NATIONAL BANK, APPELLANT.

G.R. No. 38816. November 03, 1933

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal taken by the Philippine National Bank from a judgment of the Court of First Instance of Manila requiring the bank to pay to the Insular Drug Co., Inc., the sum of P18,285.92 with legal interest and costs.

The record consists of the testimony of Alfred Von Arend, President and Manager of the Insular Drug Co., Inc., and of exhibits obtained from the Philippine National Bank showing transactions of U. E. Foerster with the bank. The Philippine National Bank was content to submit the case without presenting evidence in its behalf. The meagre record and the statement of facts agreed upon by the attorneys for the contending parties disclose the following facts:

The Insular Drug Co., Inc., is a Philippine corporation with offices in the City of Manila. U. E. Foerster was formerly a salesman of the drug company for the Islands of Panay and Negros. Foerster also acted as a collector for the company. He was instructed to take the checks which came to his hands for the drug company to the Iloilo branch of the Chartered Bank of India, Australia and China and deposit the amounts to the credit of the drug company. Instead, Foerster deposited checks, including those of Juan Llorente, Dolores Salcedo, Estanislao Salcedo, and a fourth party, with the Iloilo branch of the Philippine National Bank. The checks were in that bank placed in the personal account of Foerster. Some of the checks were drawn against the Bank of the Philippine Islands and some were drawn against the Philippine National Bank. After the indorsements on the checks was written "Received payment prior indorsement guaranteed by the Philippine National Bank, Iloilo Branch, Angel Padilla, Manager." The indorsements on the checks took various forms, some being "Insular Drug Company, Inc. By: (Sgd.) U. Foerster, Agent. (Sgd.) U. Foerster" others being "Insular Drug Co., Inc. By: (Sgd.) Carmen E. de Foerster, Agent. (Sgd.) Carmen E. de Foerster"; others "Insular Drug Co., Inc. By: (Sgd.) Carmen E. de Foerster, Carmen E. de Foerster"; others "(Sgd.) Carmen E. de Foerster, (Sgd.) Carmen E. de Foerster"; one "(Sgd.) U. Foerster. (Sgd.) U. Foerster"; others "Insular Drug Co., Inc. Carmen E. de Foerster, By: (Sgd.) V. Bacaldo," etc. In this connection it should be explained that Carmen E. de Foerster was the wife of U. E. Foerster, and that V. Bacaldo was his stenographer. As a consequence of the indorsements on the checks the amounts therein stated were subsequently withdrawn by U. E. Foerster and Carmen E. de Foerster.

Eventually the Manila office of the drug company investigated the transactions of Foerster. Upon the discovery of anomalies, Foerster committed suicide. But there is no evidence showing that the bank knew that Foerster was misappropriating the funds of his principal. The Insular Drug Company claims that it never received the face value of the 132 checks here in question covering a total of P18,285.92.

There is no Philippine authority which directly fits the proven facts. The case of *Fulton Iron Works Co. vs. China*

Banking Corporation ([1930], 55 Phil., 208), mentioned by both parties rests on a different state of facts. However, there are elementary principles governing the relationship between a bank and its customers which are controlling.

In the first place, the bank argues that the drug company was never defrauded at all. While the evidence on the extent of the loss suffered by the drug company is not nearly as clear as it should be, it is a sufficient answer to state that no such special defense was relied upon by the bank in the trial court. The drug company saw fit to stand on the proposition that checks drawn in its favor were improperly and illegally cashed by the bank for Foerster and placed in his personal account, thus making it possible for Foerster to defraud the drug company, and the bank did not try to go back of this proposition.

The next point relied upon by the bank, to the effect that Foerster had implied authority to indorse all checks made out in the name of the Insular Drug Co., Inc., has even less force. Not only did the bank permit Foerster to indorse the checks and then place them to his personal account, but it went farther and permitted Foerster's wife and clerk to indorse the checks. The right of an agent to indorse commercial paper is a very responsible power and will not be lightly inferred. A salesman with authority to collect money belonging to his principal does not have the implied authority to indorse checks received in payment. Any person taking checks made payable to a corporation, which can act only by agents does so at his peril, and must abide by the consequences if the agent who indorses the same is without authority. (*Arcade Realty Co. vs. Bank of Commerce* [1919], 180 Cal., 318; *Standard Steam Speciality Co. vs. Corn Exchange Bank* [1917], 220 N. Y., 278; *People vs. Bank of North America* [1879], 75 N. Y., 547; *Graham vs. United States Savings Institution* [1870], 46 Mo., 186.)

Further speaking to the errors specified by the bank, it is sufficient to state that no trust fund was involved; that the fact that the bank acted in good faith does not relieve it from responsibility; that no proof was adduced, admitting that Foerster had the right to indorse the checks, indicative of the right of his wife and clerk to do the same, and that the checks drawn on the Bank of the Philippine Islands can not be differentiated from those drawn on the Philippine National Bank because of the indorsement by the latter.

In brief, this is a case where 132 checks made out in the name of the Insular Drug Co., Inc., were brought to the branch office of the Philippine National Bank in Iloilo by Foerster, a salesman of the drug company, Foerster's wife, and Foerster's clerk. The bank could tell by the checks themselves that the money belonged to the Insular Drug Co., Inc., and not to Foerster or his wife or his clerk. When the bank credited those checks to the personal account of Foerster and permitted Foerster and his wife to make withdrawals "without there being any authority from the drug company to do so, the bank made itself responsible to the drug company for the amounts represented by the checks. The bank could relieve itself from responsibility by pleading and proving that after the money was withdrawn from the bank it passed to the drug company which thus suffered no loss, but the bank has not done so. Much more could be said about this case, but it suffices to state in conclusion that the bank will have to stand the loss occasioned by the negligence of its agents.

Overruling the errors assigned, the judgment of the trial court will be affirmed, the costs of this instance to be paid by the appellant.

Villa-Real, Hull, Imperial, and Butte, JJ., concur.

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