

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. ROMULO S. QUIMPO, PRESIDING JUDGE, COURT OF FIRST INSTANCE OF RIZAL, BRANCH XIV, AND FRANCISCO S. GOZON, II, RESPONDENTS.

G.R. No. 53194. March 14, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

On July 3, 1973, Francisco S. Gozon II, who was a depositor of the Caloocan City Branch of the Philippine National Bank, went to the bank in his car accompanied by his friend Ernesto Santos whom he left in the car while he transacted business in the bank. When Santos saw that Gozon left his check book he took a check therefrom, filled it up for the amount of P5,000.00, forged the signature of Gozon, and thereafter he encashed the check in the bank on the same day. The account of Gozon was debited the said amount. Upon receipt of the statement of account from the bank, Gozon asked that the said amount of P5,000.00 should be returned to his account as his signature on the check was forged but the bank refused.

Upon complaint of private respondent on February 1, 1974 Ernesto Santos was apprehended by the police authorities and upon investigation he admitted that he stole the check of Gozon, forged his signature and encashed the same with the bank.

Hence Gozon filed the complaint for recovery of the amount of P5,000.00, plus interest, damages, attorney's fees and costs against the bank in the Court of First Instance of Rizal. After the issues were joined and the trial on the merits ensued, a decision was rendered on February 4, 1980, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff. The defendant is hereby condemned to return to plaintiff the amount of P5,000.00 which it had unlawfully withheld from the latter, with interest at the legal rate from September 22, 1972 until the amount is fully delivered. The defendant is further condemned to pay plaintiff the sum of P2,000.00 as attorney's fees and to pay the costs of this suit."

Not satisfied therewith, the bank now filed this petition for review on certiorari in this Court raising the sole legal issue that -

"THE ACT OF RESPONDENT FRANCISCO GOZON, II IN PUTTING HIS CHECKBOOK CONTAINING THE CHECK IN QUESTION INTO THE HANDS OF ERNESTO SANTOS WAS INDEED THE PROXIMATE CAUSE OF THE LOSS, THEREBY PRECLUDING HIM FROM SETTING UP THE DEFENSE OF FORGERY OR WANT OF AUTHORITY UNDER SECTION 23 OF THE NEGOTIABLE INSTRUMENTS LAW, ACT NO. 3201."

The petition is devoid of merit.

This Court reproduces with approval the disquisition of the court a quo as follows:

"A bank is bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily change the amount so paid to the account of

the depositor whose name was forged' (San Carlos Milling Co. vs. Bank of the P.I., 59 Phil. 59).

This rule is absolutely necessary to the circulation of drafts and checks, and is based upon the presumed negligence of the drawee in failing to meet its obligation to know the signature of its correspondent. x x x There is nothing inequitable in such a rule. If the paper comes to the drawee in the regular course of business, and he, having the opportunity of ascertaining its character, pronounces it to be valid and pays it, it is not only a question of payment under mistake, but payment in neglect of duty which the commercial law places upon him, and the result of his negligence must rest upon him' (12 ALR, 1901, citing many cases found in I Agbayani, supra).

Defendant, however, interposed the defense that it exercised diligence in accordance with the accepted norms of banking practice when it accepted and paid Exhibit 'A'. It presented evidence that the check had to pass scrutiny by a signature verifier as well as an officer of the bank.

A comparison of the signature (Exhibit 'A-1') on the forged check (Exhibit 'A') with plaintiff's exemplar signatures (Exhibits '5-A' and '5-B') found in PNB Form 35-A would immediately show the negligence of the employees of the defendant bank. Even a not too careful comparison would immediately arrest one's attention and direct it to the graceful lines of plaintiff's exemplar signatures found in Exhibits '5-A' and '5-B'. The formation of the first letter 'F' in the exemplars, which could be regarded as artistic, is completely different from the way the same letter is formed in Exhibit 'A-1'. That alone should have alerted a more careful and prudent signature verifier."

The prime duty of a bank is to ascertain the genuineness of the signature of the drawer or the depositor on the check being encashed.[1] It is expected to use reasonable business prudence in accepting and cashing a check presented to it.

In this case the findings of facts of the court a quo are conclusive. The trial court found that a comparison of the signature on the forged check and the sample signatures of private respondent show marked differences as the graceful lines in the sample signature which is completely different from those of the signature on the forged check. Indeed the NBI handwriting expert Estelita Santiago Agnes whom the trial court considered to be an "unbiased scientific expert" indicated the marked differences between the signature of private respondent on the sample signatures and the questioned signature. Notwithstanding the testimony of Col. Fernandez, witness for petitioner, advancing the opinion that the questioned signature appears to be genuine, the trial court by merely examining the pictorial report presented by said witness, found a marked difference in the second "c" in Francisco as written on the questioned signature as compared to the sample signatures, and the separation between the "s" and the "c" in the questioned signature while they are connected in the sample signatures.[2]

Obviously, petitioner was negligent in encashing said forged check without carefully examining the signature which shows marked variation from the genuine signature of private respondent.

In reference to the allegation of the petitioner that it is the negligence of private respondent that is the cause of the loss which he suffered, the trial court held:

"The act of plaintiff in leaving his checkbook in the car while he went out for a short while can not be considered negligence sufficient to excuse the defendant bank from its own negligence. It should be borne in mind that when defendant left his car, Ernesto Santos, a long time classmate and friend remained in the same. Defendant could not have been expected to know that the said Ernesto Santos would remove a check from his checkbook. Defendant had trust in his classmate and friend. He had no reason to suspect that the latter would breach that trust."

We agree.

Private respondent trusted Ernesto Santos as a classmate and a friend. He brought him along in his car to the bank and he left his personal belongings in the car. Santos however removed and stole a check from his check book without the knowledge and consent of private respondent. No doubt private respondent cannot be considered negligent under the circumstances of the case.

WHEREFORE, the petition is DISMISSED for lack of merit with costs against petitioner.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Grino-Aquino, JJ., concur.

[1] PNB vs. National City Bank, 63 Phil. 711, 742; Banco de Oro Savings & Mortgage Bank vs. Equitable Bank Corp., G.R. No. 74917, Jan. 20, 1988.

[2] See decision; p. 59, Rollo.

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