

**MARCELO A. MESINA, PETITIONER, VS. THE HONORABLE
INTERMEDIATE APPELLATE COURT, HON. ARSENIO M. GONONG, IN
HIS CAPACITY AS JUDGE OF REGIONAL TRIAL COURT-MANILA
(BRANCH VIII), JOS...**

G.R. No. 70145. November 13, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal by certiorari from the decision of the then Intermediate Appellate Court (IAC for short), now the Court of Appeals (CA) in AC-G.R. S.P. 04710, dated Jan. 22, 1985, which dismissed the petition for certiorari and prohibition filed by Marcelo A. Mesina against the trial court in Civil Case No. 84-22515. Said case (an Interpleader) was filed by Associated Bank against Jose Go and Marcelo A. Mesina regarding their conflicting claims over Associated Bank Cashier's Check No. 011302 for P800,000.00, dated December 29, 1983.

Briefly, the facts and statement of the case are as follows:

Respondent Jose Go, on December 29, 1983, purchased from Associated Bank Cashier's Check No. 011302 for P800,000.00. Unfortunately, Jose Go left said check on the top of the desk of the bank manager when he left the bank. The bank manager entrusted the check for safekeeping to a bank official, a certain Albert Uy, who had then a visitor in the person of Alexander Lim. Uy had to answer a phone call on a nearby telephone after which he proceeded to the men's room. When he returned to his desk, his visitor Lim was already gone. When Jose Go inquired for his cashier's check from Albert Uy, the check was not in his folder and nowhere to be found. The latter advised Jose Go to go to the bank to accomplish a "STOP PAYMENT" order, which suggestion Jose Go immediately followed. He also executed an affidavit of loss. Albert Uy went to the police to report the loss of the check, pointing to the person of Alexander Lim as the one who could shed light on it.

The records of the police show that Associated Bank received the lost check for clearing on December 31, 1983, coming from Prudential Bank, Escolta Branch. The check was immediately dishonored by Associated Bank by sending it back to Prudential Bank, with the words "Payment Stopped" stamped on it. However, the same was again returned to Associated Bank on January 4, 1984 and for the second time it was dishonored. Several days later, respondent Associated Bank received a letter, dated January 9, 1984, from a certain Atty. Lorenzo Navarro demanding payment on the cashier's check in question, which was being held by his client. He however refused to reveal the name of his client and threat-ened to sue, if payment is not made. Respondent bank, in its letter, dated January 20, 1984, replied saying the check belonged to Jose Go who lost it in the bank and is laying claim to it.

On February 1, 1984, police sent a letter to the Manager of the Prudential Bank, Escolta Branch, requesting assistance in identifying the person who tried to encash the check but said bank refused saying that it had to protect its client's interest and the identity could only be revealed with the client's conformity. Unsure of what to do on the matter, respondent Associated Bank on February 2, 1984 filed an action for Interpleader naming as respondent, Jose Go and one John Doe, Atty. Navarro's then unnamed client. On even date, respondent bank

received summons and copy of the complaint for damages of a certain Marcelo A. Mesina from the Regional Trial Court (RTC) of Caloocan City filed on January 23, 1984 bearing the number C-11139. Respondent bank moved to amend its complaint, having been notified for the first time of the name of Atty. Navarro's client and substituted Marcelo A. Mesina for John Doe. Simultaneously, respondent bank, thru representative Albert Uy, informed Cpl. Gimao of the Western Police District that the lost check of Jose Go is in the possession of Marcelo Mesina, herein petitioner. When Cpl. Gimao went to Marcelo Mesina to ask how he came to possess the check, he said it was paid to him by Alexander Lim in a "certain transaction" but refused to elucidate further. An information for theft (Annex J) was instituted against Alexander Lim and the corresponding warrant for his arrest was issued (Annex 6-A) which up to the date of the filing of this instant petition remains unserved because of Alexander Lim's successful evasion thereof.

Meanwhile, Jose Go filed his answer on February 24, 1984 in the Interpleader Case and moved to participate as intervenor in the complaint for damages. Albert Uy filed a motion for intervention and answer in the complaint for Interpleader. On the scheduled date of pretrial conference in the interpleader case, it was disclosed that the "John Doe" impleaded as one of the defendants is actually petitioner Marcelo A. Mesina. Petitioner instead of filing his answer to the complaint in the interpleader filed on May 17, 1984 an Omnibus Motion to Dismiss Ex Abudante Cautela alleging lack of jurisdiction in view of the absence of an order to litigate, failure to state a cause of action and lack of personality to sue. Respondent bank in the other civil case (CC-11139) for damages moved to dismiss suit in view of the existence already of the Interpleader case.

The trial court in the interpleader case issued an order dated July 13, 1984, denying the motion to dismiss of petitioner Mesina and ruling that respondent bank's complaint sufficiently pleaded a cause of action for interpleader. Petitioner filed his motion for reconsideration which was denied by the trial court on September 26, 1984. Upon motion of respondent Jose Go dated October 31, 1984, respondent judge issued an order on November 6, 1984 declaring petitioner in default since his period to answer has already expired and set the ex-parte presentation of respondent bank's evidence on November 7, 1984.

Petitioner Mesina filed a petition for certiorari with preliminary injunction with IAC to set aside 1) order of respondent court denying his omnibus Motion to Dismiss 2) order of respondent court denying his Motion for Reconsideration and 3) the order of default against him.

On January 22, 1985, IAC rendered its decision dismissing the petition for certiorari. Petitioner Mesina filed his Motion for Reconsideration which was also denied by the same court in its resolution dated February 18, 1985.

Meanwhile, on same date (February 18, 1985), the trial court in Civil Case #84-22515 (Interpleader) rendered a decision, the dispositive portion reading as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering plaintiff Associate Bank to replace Cashier's Check No. 011302 in favor of Jose Go or its cash equivalent with legal rate of interest from date of complaint, and with costs of suit against the latter.

SO ORDERED."

On March 29, 1985, the trial court in Civil Case No. C-11139, for damages, issued an order, the pertinent portion of which states:

"The records of this case show that on August 20, 1984 proceedings in this case was (were) ordered suspended because the main issue in Civil Case No. 84-22515 and in this instant case are the same which is: who between Marcelo Mesina and Jose Go is entitled to payment of Associated Bank's Cashier's Check No. CC-011302? Said issue having been resolved already in Civil Case No. 84-22515, really this instant case has become moot and academic.

WHEREFORE, in view of the foregoing, the motion should be as it is hereby granted and this case is ordered dismissed.

In view of the foregoing ruling no more action should be taken on the "Motion For Reconsideration (of the Order admitting the Intervention)" dated June 21, 1984 as well as the Motion For Reconsideration dated September 10, 1984.

SO ORDERED."

Petitioner now comes to Us, alleging that:

- IAC erred in ruling that a cashier's check can be countermanded even in the hands of a holder in due course.
- IAC erred in countenancing the filing and maintenance of an interpleader suit by a party who had earlier been sued on the same claim.
- IAC erred in upholding the trial court's order declaring petitioner as in default when there was no proper order for him to plead in the interpleader complaint.
- IAC went beyond the scope of its certiorari jurisdiction by making findings of facts in advance of trial.

Petitioner now interposes the following prayer:

- Reverse the decision of the IAC, dated January 22, 1985 and set aside the February 18, 1985 resolution denying the Motion for Reconsideration.
- Annul the orders of respondent Judge of RTC Manila giving due course to the interpleader suit and declaring petitioner in default.

Petitioner's allegations hold no water. Theories and examples advanced by petitioner on causes and effects of a cashier's check such as 1) it cannot be countermanded in the hands of a holder in due course and 2) a cashier's check is a bill of exchange drawn by the bank against itself - are general principles which cannot be aptly applied to the case at bar, without considering other things. Petitioner failed to substantiate his claim that he is a holder in due course and for consideration or value as shown by the established facts of the case. Admittedly, petitioner became the holder of the cashier's check as endorsed by Alexander Lim who stole the check. He refused to say how and why it was passed to him. He had therefore notice of the defect of his title over the check from the start. The holder of a cashier's check who is not a holder in due course cannot enforce such check against the issuing bank which dishonors the same. If a payee of a cashier's check obtained it from the issuing bank by fraud, or if there is some other reason why the payee is not entitled to collect the check, the respondent bank would, of course, have the right to refuse payment of the check when presented by the payee, since respondent bank was aware of the facts surrounding the loss of the check in question. Moreover, there is no similarity in the cases cited by petitioner since respondent bank did not issue the cashier's check in payment of its obligation. Jose Go bought it from respondent bank for purposes of transferring his funds from respondent bank to another bank near his establishment realizing that carrying money in this form is safer than if it were in cash. The check was Jose Go's property when it was misplaced or stolen, hence he stopped its payment. At the outset, respondent bank knew it was Jose Go's check and no one else since Go had not paid or indorsed it to anyone. The bank was therefore liable to nobody on the check but Jose Go. The bank had no intention to issue it to petitioner but only to buyer Jose Go. When payment on it was therefore stopped, respondent bank was not the one who did it but Jose Go, the owner of the check. Respondent bank could not be drawer and drawee for clearly, Jose Go owns the money it represents and he is therefore the drawer and the drawee in the same manner as if he has a current account and he issued a check against it; and from the moment said cashier's check was lost and/or stolen no one outside of Jose Go can

be termed a holder in due course because Jose Go had not indorsed it in due course. The check in question suffers from the infirmity of not having been properly negotiated and for value by respondent Jose Go who as already been said is the real owner of said instrument.

In his second assignment of error, petitioner stubbornly insists that there is no showing of conflicting claims and interpleader is out of the question. There is enough evidence to establish the contrary. Considering the aforementioned facts and circumstances, respondent bank merely took the necessary precaution not to make a mistake as to whom to pay and therefore interpleader was its proper remedy. It has been shown that the interpleader suit was filed by respondent bank because petitioner and Jose Go were both laying their claims on the check, petitioner asking payment thereon and Jose Go as the purchaser or owner. The allegation of petitioner that respondent bank had effectively relieved itself of its primary liability under the check by simply filing a complaint for interpleader is belied by the willingness of respondent bank to issue a certificate of time deposit in the amount of P800,000 representing the cashier's check in question in the name of the Clerk of Court of Manila to be awarded to whoever will be found by the court as validly entitled to it. Said validity will depend on the strength of the parties' respective rights and titles thereto. Bank filed the interpleader suit not because petitioner sued it but because petitioner is laying claim to the same check that Go is claiming. On the very day that the bank instituted the case in interpleader, it was not aware of any suit for damages filed by petitioner against it as supported by the fact that the interpleader case was first entitled Associated Bank vs. Jose Go and John Doe, but later on changed to Marce-lo A. Mesina for John Doe when his name became known to respondent bank.

In his third assignment of error, petitioner assails the then respondent IAC in upholding the trial court's order declaring petitioner in default when there was no proper order for him to plead in the interpleader case. Again, such contention is untenable. The trial court issued an order, compelling petitioner and respondent Jose Go to file their Answers setting forth their respective claims. Subsequently, a Pre-Trial Conference was set with notice to parties to submit position papers. Petitioner argues in his memorandum that this order requiring petitioner to file his answer was issued without jurisdiction alleging that since he is presumably a holder in due course and for value, how can he be compelled to litigate against Jose Go who is not even a party to the check? Such argument is trite and ridiculous if we have to consider that neither his name or Jose Go's name appears on the check. Following such line of argument, petitioner is not a party to the check either and therefore has no valid claim to the Check. Furthermore, the Order of the trial court requiring the parties to file their answers is to all intents and purposes an order to interplead, substantially and essentially and therefore in compliance with the provisions of Rule 63 of the Rules of Court. What else is the purpose of a law suit but to litigate?

The records of the case show that respondent bank had to resort to details in support of its action for Interpleader. Before it resorted to Interpleader, respondent bank took all precautionary and necessary measures to bring out the truth. On the other hand, petitioner concealed the circumstances known to him and now that private respondent bank brought these circumstances out in court (which eventually rendered its decision in the light of these facts), petitioner charges it with "gratuitous excursions into these non-issues." Respondent IAC cannot rule on whether respondent RTC committed an abuse of discretion or not, without being apprised of the facts and reasons why respondent Associated Bank instituted the Interpleader case. Both parties were given an opportunity to present their sides. Petitioner chose to withhold substantial facts. Respondents were not forbidden to present their side - this is the purpose of the Comment of respondent to the petition. IAC decided the question by considering both the facts submitted by petitioner and those given by respondents. IAC did not act therefore beyond the scope of the remedy sought in the petition.

WHEREFORE, finding that the instant petition is merely dilatory, the same is hereby denied and the assailed orders of the respondent court are hereby **AFFIRMED** in toto.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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