

EQUITABLE BANKING CORPORATION, PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT AND THE EDWARD J. NELL CO., RESPONDENTS.

G.R. No. 74451. May 25, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this Petition for Review on Certiorari petitioner, Equitable Banking Corporation, prays that the adverse judgment against it rendered by respondent Appellate Court,[1] dated 4 October 1985, and its majority Resolution, dated 28 April 1986, denying petitioner's Motion for Reconsideration,[2] be annulled and set aside.

The facts pertinent to this Petition, as summarized by the Trial Court and adopted by reference by Respondent Appellate Court, emanated from the case entitled "Edward J. Nell Co. vs. Liberato V. Casals, Casville Enterprises, Inc., and Equitable Banking Corporation" of the Court of First Instance of Rizal (Civil Case No. 25112), and read:

"From the evidence submitted by the parties, the Court finds that sometime in 1975 defendant Liberato Casals went to plaintiff Edward J. Nell Company and told its senior sales engineer, Amado Claustro that he was interested in buying one of the plaintiff's garrett skidders. Plaintiff was a dealer of machineries, equipment and supplies. Defendant Casals represented himself as the majority stockholder, president and general manager of Casville Enterprises, Inc., a firm engaged in the large scale production, procurement and processing of logs and lumber products, which had a plywood plant in Sta. Ana, Metro Manila.

"After defendant Casals talked with plaintiff's sales engineer, he was referred to plaintiff's executive vice-president. Apolonio Javier, for negotiation in connection with the manner of payment. When Javier asked for cash payment for the skidders, defendant Casals informed him that his corporation, defendant Casville Enterprises, Inc., had a credit line with defendant Equitable Banking Corporation. Apparently, impressed with this assertion, Javier agreed to have the skidders paid by way of a domestic letter of credit which defendant Casals promised to open in plaintiff's favor, in lieu of cash payment. Accordingly, on December 22, 1975, defendant Casville, through its president, defendant Casville, ordered from plaintiff two units of garrett skidders. xxx

"The purchase order for the garrett skidders bearing No. 0051 and dated December 22, 1975 (Exhibit 'A') contained the following terms and conditions:

"Two (2) units GARRETT Skidders Model 30A complete or basically described in the bulletin.

PRICE: F.O.B. dock

Manila..... P485,000.00/unit

For two (2) units..... P970,000.00

SHIPMENT: We will inform you the date and name of the vessel as soon as arranged.

TERMS: By irrevocable domestic letter of credit to be issued in favor of THE EDWARD J. NELL CO. or ORDER payable in thirty six (36) months and will be opened within ninety (90) days after date of shipment. First installment will be due one hundred eighty (180) days afterdate of shipment. Interest— 14% per annum' (Exhibit 'A')

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"xxx in a letter dated April 21,1976, defendants Casals and Casville requested from plaintiff the delivery of one (1) unit of the skidders, complete with tools and cables, to Cagayan de Oro, on or before Saturday, April 24, 1976, on board a Lorenzo shipping vessel, with the information that an irrevocable Domestic Letter of Credit would be opened in plaintiff of favor on or before June 30, 1976 under the terms and conditions agreed upon (Exhibit 'B')

"On May 3, 1976, in compliance with defendant Casville's request, plaintiff shipped to Cagayan de Oro City a Garrett skidder. Plaintiff paid the shipping cost in the amount of P10,640.00 because of the verbal assurance of defendant Casville that it would be covered by the letter of credit soon to be opened.

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"On July 15, 1976, defendant Casals handed to plaintiff a check in the amount of P300,000.00 postdated August 4, 1976, which was followed by another check of same date. Plaintiff considered these checks either as partial payment for the skidder that was already delivered to Cagayan de Oro or as reimbursement for the marginal deposit that plaintiff was supposed to pay.

"In a letter dated August 3, 1976 (Exhibit 'C'). defendants Casals and Casville informed the plaintiff that their application for a letter of credit for the payment of the Garrett skidders had been approved by the Equitable Banking Corporation. However, the defendants said that they would need the sum of P300,000.00 to stand as collateral or marginal deposit in favor of Equitable Banking Corporation and an additional amount of P100,000.00, also in favor of Equitable Banking Corporation, to clear the title of the Estrada property belonging to defendant Casals which had been approved as security for the trust receipts to be issued by the bank, covering the above-mentioned equipment.

"Although the marginal deposit was supposed to be produced by defendant Casville Enterprises, plaintiff agreed to advance the necessary amount in order to facilitate the transaction. Accordingly, on August 5, 1976, plaintiff issued a check in the amount of P400,000.00 (Exhibit '2') drawn against the First National City Bank and made payable to the order of Equitable Banking Corporation and with the following notation or memorandum:

'a/c of Casville Enterprises Inc. for Marginal deposit and payment of balance on Estrada Property to be used as security for trust receipt for opening L/C of Garrett Skidders in favor of the Edward J. Nell Co.' Said check together with the cash disbursement voucher (Exhibit '2-A') containing the explanation:

'Payment for marginal deposit and other expenses re opening of L/C for account of Casville Ent.'

A covering letter (Exhibit '3') was also sent and when the three documents were presented to Severino Santos, executive vice president of defendant bank. Santos did not accept them because the terms and conditions required by the bank for the opening of the letter of credit had not yet been agreed on.

"On August 9, 1976, defendant Casville wrote the bank applying for two letters of credit to cover its purchase from plaintiff of two Garrett skidders. under the following terms and conditions:

'a) On sight Letter of Credit for P485,000.00; b) One 36 months Letter of Credit for P606,000.00; c) P300,000.00 CASH marginal deposit; d) Real Estate Collateral to secure the Trust Receipts; e) We shall chattel mortgage the equipments purchased even after payment of the first L/C as additional security for the balance of the second L/C and f) Other conditions you deem necessary to protect the interest of the bank.'

"In a letter dated August 11, 1976 (Exhibit 'D-D. defendant bank replied stating that it was ready to open the letters of credit upon defendant's compliance of the following terms and conditions:

'c) 30% cash margin deposit: d) Acceptable Real Estate Collateral to secure the Trust Receipts: e) Chattel Mortgage on the equipment: and f) Other terms and conditions that our bank may impose.'

"Defendant Casville sent a copy of the foregoing letter to the plaintiff enclosing three postdated checks. In said letter, plaintiff was informed of the requirements imposed by the defendant bank pointing out that the 'cash marginal required under paragraph (c) is 30% of P1,091,000.00 or P327,300.00 plus another P100,000.00 to clean up the Estrada property or a total of P427,300.00' and that the check covering said amount should be made payable 'to the Order of EQUITABLE/BANKING CORPORATION for the account of Casville Enterprises Inc.' Defendant Casville also stated that the three (3) enclosed postdated checks were intended as replacement of the checks that were previously issued to plaintiff to secure the sum of P427,300.00 that plaintiff would advance to defendant bank for the account of defendant Casville. All the new checks were postdated November 19, 1976 and drawn in the sum of P145,500.00 (Exhibit 'F'), P181,800.00 (Exhibit 'G') and P100,000.00 (Exhibit 'H').

"On the same occasion, defendant Casals delivered to plaintiff TCT No. 11891 of the Register of Deeds of Quezon City and TCT No. 50851 of the Register of Deeds of Rizal covering two pieces of real estate properties.

"Subsequently, Cesar Umali, plaintiff's credit and collection manager, accompanied by a representative of defendant Casville, went to see Severino Santos to find out the status of the credit line being sought by defendant Casville. Santos assured Umali that the letters of credit would be opened as soon as the requirements imposed by defendant bank in its letter dated August 11, 1976 had been complied with by defendant Casville.

'On August 16, 1976, plaintiff issued a check for P427,300.00, payable to the 'order of EQUITABLE BANKING CORPORATION A/C CASVILLE ENTERPRISES, INC and drawn against the first National City Bank (Exhibit "E-I"). The check did not contain the notation found in the previous check issued by the plaintiff (Exhibit '2') but the substance of said notation was reproduced in a covering letter dated August 16, 1976 that went with the check (Exhibit "E"). Both the check and the covering letter were sent to defendant bank through defendant Casals. Plaintiff entrusted the delivery of the check and the latter to defendant Casals because it believed that no one, including defendant Casals, could encash the same as it was made payable to the defendant bank alone. Besides, defendant Casals was known to the bank as the one following up the application for the letters of credit.

"Upon receiving the check for P427,300.00 entrusted to him by plaintiff defendant Casals immediately deposited it with the defendant bank and the bank teller accepted the same for deposit in defendant Casville's checking account. After depositing said check, defendant Casville, acting through defendant Casals, then withdrew all the amount deposited.

'Meanwhile, upon their presentation for encashment, plaintiff discovered that the three checks (Exhibits "F", "G" and "H") in the total amount of P427,300.00, that were issued by defendant Casville as collateral were all dishonored for having been drawn against a closed account.

"As defendant Casville failed to pay its obligation to defendant bank, the latter foreclosed the mortgage executed by defendant Casville on the Estrada property which was sold in a public auction sale to a third party.

'Plaintiff allowed some time before following up the application for the letters of credit knowing that it took time to process the same. However, when the three checks issued to it by defendant Casville were dishonored, plaintiff became apprehensive and sent Umali on November 29, 1976, to inquire about the status of the application for the letters of credit. When plaintiff was informed that no letters of credit were opened by the defendant bank in its favor and then discovered that defendant Casville had in the meanwhile withdrawn the

entire amount of P427,300.00. without paying its obligation to the bank plaintiff filed the instant action.

"While the instant case was being tried, defendants Casals and Casville assigned the garrett skidder to plaintiff which credited in favor of defendants the amount of P450,000.00, as partial satisfaction of plaintiff's claim against them.

"Defendants Casals and Casville hardly disputed their liability to plaintiff. Not only did they show lack of interest in disputing plaintiffs claim by not appearing in most of the hearings, but they also assigned to plaintiff the garrett skidder which is an action of clear recognition of their liability.

"What is left for the Court to determine, therefore, is only the liability of defendant bank to plaintiff.

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Resolving that issue, the Trial Court rendered judgment, affirmed by Respondent Court in toto, the pertinent portion of which reads:

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"Defendants Casals and Casville Enterprises and Equitable Banking Corporation are ordered to pay plaintiff, jointly and severally, the sum of P427,300.00. representing the amount of plaintiffs check which defendant bank erroneously credited to the account of defendant Casville and which defendants Casal and Casville misappropriated, with 12% interest thereon from April 5, 1977. until the said sum is fully paid.

"Defendant Equitable Banking Corporation is ordered to pay plaintiff attorney's fees in the sum of P25,000.00.

"Proportionate cost against all the defendants.

"SO ORDERED."

The crucial issue to resolve is whether or not petitioner Equitable Banking Corporation (briefly, the Bank) is liable to private respondent Edward J. Nell Co. (NELL, for short) for the value of the second check issued by NELL, Exhibit "E-1", which was made payable

"to the order of EQUITABLE BANKING CORPORATION A/C OF CASVILLE ENTERPRISES INC."

and which the Bank teller credited to the account of Casville.

The Trial Court found that the amount of the second check had been erroneously credited to the Casville account; held the Bank liable for the mistake of its employees: and ordered the Bank to pay NELL the value of the check in the sum of P427,300.00, with legal interest. Explained the Trial Court:

"The Court finds that the check in question was payable only to the defendant bank and to no one else. Although the words 'A/C OF CASVILLE ENTERPRISES INC appear on the face of the check after or under the name of defendant bank, the payee was still the latter. The addition of said words did not in any way make Casville Enterprises. Inc. the Payee of the instrument for the words merely indicated for whose account or in connection with what account the check was issued by the plaintiff.

"Indeed, the bank teller who received it was fully aware that the check was not negotiable since he stamped thereon the words 'NON-NEGOTIABLE For Payee's Account Only' and -NON-NEGOTIABLE TELLER NO. 4, August 17, 1976 EQUITABLE BANKING CORPORATION.'

"But said teller should have exercised more prudence in the handling of said check because it was not made out in the usual manner. The addition of the words 'A/C OF CASVILLE ENTERPRISES INC should have placed the teller on guard and he should have clarified the matter with his superiors. Instead of doing so. however, the teller decided to rely on his own judgment and at the risk of making a wrong decision, credited the entire

amount in the name of defendant Casville although the latter was not the payee named in the check. Such mistake was crucial and was, without doubt, the proximate cause of plaintiffs defraudation.

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Respondent Appellate Court upheld the above conclusions stating in addition:

"1) The appellee made the subject check payable to appellant's order, for the account of Casville Enterprises, Inc. In the light of the other facts, the directive was for the appellant bank to apply the value of the check as payment for the letter of credit which Casville Enterprises, Inc. had previously applied for in favor of the appellee (Exhibit D-I. p. 5). The issuance of the subject check was precisely to meet the bank's prior requirement of payment before issuing the letter of credit previously applied for by Casville Enterprises in favor of the appellee:

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We disagree.

1) The subject check was equivocal and patently ambiguous. By making the check read:

"Pay to the EQUITABLE BANKING CORPORATION Order of A/C OF CASVILLE ENTERPRISES, INC."

the payee ceased to be indicated with reasonable certainty in contravention of Section 8 of the Negotiable Instruments Law.-[3] As worded, it could be accepted as deposit to the account of the party named after the symbols "A/C." or payable to the Bank as trustee, or as an agent, for Casville Enterprises, Inc.,

with the latter being the ultimate beneficiary. That ambiguity is to be taken contra proferentem that is, construed against NELL who caused the ambiguity and could have also avoided it by the exercise of a little more care. Thus, Article 1377 of the Civil Code, provides:

"Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity."

2) Contrary to the finding of respondent Appellate Court, the subject check was, initially, not non-negotiable. Neither was it a crossed check. The rubber-stamping transversally on the face of the subject check of the words "Non-negotiable for Payee's Account Only" between two (2) parallel lines, and "Non- negotiable, Teller No. 4, August 17, 1986," separately boxed, was made only by the Bank teller in accordance with customary bank practice, and not by NELL as the drawer of the check, and simply meant that thereafter the same check could no longer be negotiated.

3) NELL's own acts and omissions in connection with the drawing, issuance and delivery of the 16 August 1976 check, Exhibit "E-I", and its implicit trust in Casals, were the proximate cause of its own defraudation: (a) The original check of 5 August 1976, Exhibit "2", was payable to the order solely of "Equitable Banking Corporation." NELL changed the payee in the subject check, Exhibit "E-I", however, to "Equitable Banking Corporation, A/C of Casville Enterprises Inc.," upon Casals request. NELL also eliminated both the cash disbursement voucher accompanying the check which read:

"Payment for marginal deposit and other expenses re opening of L/C for account of Casville Ent."

and the memorandum:

"a/c of Casville Enterprises Inc. for Marginal deposit and payment of balance on Estrada Property to be used as security for trust receipt for opening L/C of Garrett Skidders in favor of the Edward J. Nell Co."

Evidencing the real nature of the transaction was merely a separate covering letter, dated 16 August 1976, which Casals, sinisterly enough, suppressed from the Bank officials and teller.

(b) NELL entrusted the subject check and its covering letter, Exhibit "E", to Casals who, obviously, had his own antagonistic interests to promote. Thus it was that Casals did not purposely present the subject check to the Executive Vice-President of the Bank, who was aware of the negotiations regarding the Letter of Credit, and who had rejected the previous check, Exhibit "2", including its three documents because the terms and conditions required by the Bank for the opening of the Letter of Credit had not yet been agreed on.

(c) NELL was extremely accommodating to Casals. Thus, to facilitate the sales transaction, NELL even advanced the marginal deposit for the garrett skidder. It is, indeed, abnormal for the seller of goods, the price of which is to be covered by a letter of credit, to advance the marginal deposit for the same.

(d) NELL had received three (3) postdated checks all dated 16 November, 1976 from Casville to secure the subject check and had accepted the deposit with it of two (2) titles of real properties as collateral for said postdated checks. Thus, NELL was erroneously confident that its interests were sufficiently protected. Never had it suspected that those postdated checks would be dishonored, nor that the subject check would be utilized by Casals for a purpose other than for opening the letter of credit.

In the last analysis, it was NELL's own acts, which put it into the power of Casals and Casville Enterprises to perpetuate the fraud against it and, consequently, it must bear the loss (*Blondeau, et al., vs. Nano, et al.*, 61 Phil. 625 [1935]; *Sta. Maria vs. Hongkong and Shanghai Banking Corporation*, 89 Phil. 780 [1951]; *Republic of the Philippines vs. Equitable Banking Corporation*, L-15895, January 30, 1964, 10 SCRA 8).

"xxx As between two innocent persons, one of whom must suffer the consequence of a breach of trust, the one who made it possible by his act of confidence must bear the loss."

WHEREFORE, the Petition is granted and the Decision of respondent Appellate Court, dated 4 October 1985, and its majority Resolution, dated 28 April 1986, denying petitioner's Motion for Reconsideration, are hereby SET ASIDE. The Decision of the then Court of First Instance of Rizal, Branch XI, is modified in that petitioner Equitable Banking Corporation is absolved from any and all liabilities to the private respondent, Edward J. Nell Company, and the Amended Complaint against petitioner bank is hereby ordered dismissed. No costs.

SO ORDERED.

Yap, C.J., Paras, and Sarmiento, JJ., concur.
Padilla, J., took no part in the deliberations.

[1] Penned by Justice Crisolito Pascual and concurred in by Justices Jose C. Campos. Jr., Serafin E. Camilon. and Desiderio P. Jurado.

[2] With Justice Desiderio P. Jurado. dissenting

[3] Section 8. xxx

Where the instrument is payable to order, the pa_ ee must be named or otherwise indicated therein with reasonable certainty.

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