

METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS. COURT OF APPEALS, GOLDEN SAVINGS & LOAN ASSOCIATION, INC., LUCIA CASTILLO, MAGNO CASTILLO AND GLORIA CASTILLO, RESPONDENTS.

G.R. No. 88866. February 18, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

This case, for all its seeming complexity, turns on a simple question of negligence. The facts, pruned of all non-essentials, are easily told.

The Metropolitan Bank and Trust Co. is a commercial bank with branches throughout the Philippines and even abroad. Golden Savings and Loan Association was, at the time these events happened, operating, in Calapan, Mindoro, with the other private respondents as its principal officers.

In January 1979, a certain Eduardo Gomez opened an account with Golden Savings and deposited over a period of two months 38 treasury warrants with a total value of P1,755,228.37. They were all drawn by the Philippine Fish Marketing Authority and purportedly signed by its General Manager and countersigned by its Auditor. Six of these were directly payable to Gomez while the others appeared to have been indorsed by their respective payees, followed by Gomez as second indorser.[1]

On various dates between June 25 and July 16, 1979, all these warrants were subsequently indorsed by Gloria Castillo as Cashier of Golden Savings and deposited to its Savings Account No. 2498 in the Metrobank branch in Calapan, Mindoro. They were then sent for clearing by the branch office to the principal office of Metrobank, which forwarded them to the Bureau of Treasury for special clearing.[2]

More than two weeks after the deposits, Gloria Castillo went to the Calapan branch several times to ask whether the warrants had been cleared. She was told to wait. Accordingly, Gomez was meanwhile not allowed to withdraw from his account. Later, however, "exasperated" over Gloria's repeated inquiries and also as an accommodation for a "valued client," the petitioner says it finally decided to allow Golden Savings to withdraw from the proceeds of the warrants.[3] The first withdrawal was made on July 9, 1979, in the amount of P508,000.00, the second on July 13, 1979, in the amount of P310,000.00, and the third on July 16, 1979, in the amount of P150,000.00. The total withdrawal was P968,000.00.[4]

In turn, Golden Savings subsequently allowed Gomez to make withdrawals from his own account, eventually collecting the total amount of P1,167,500.00 from the proceeds of the apparently cleared warrants. The last withdrawal was made on July 16, 1979.

On July 21, 1979, Metrobank informed Golden Savings that 32 of the warrants had been dishonored by the Bureau of Treasury on July 19, 1979, and demanded the refund by Golden Savings of the amount it had previously withdrawn, to make up the deficit in its account.

The demand was rejected. Metrobank then sued Golden Savings in the Regional Trial Court of Mindoro.[5] After trial, judgment was rendered in favor of Golden Savings, which, however, filed a motion for reconsideration even as Metrobank filed its notice of appeal. On November 4, 1986, the lower court modified its decision thus:

ACCORDINGLY, judgment is hereby rendered:

1. Dismissing the complaint with costs against the plaintiff;
2. Dissolving and lifting the writ of attachment of the properties of defendant Golden Savings and Loan Association, Inc. and defendant Spouses Magno Castillo and Lucia Castillo;
3. Directing the plaintiff to reverse its action of debiting Savings Account No. 2498 of the sum of P1,754,089.00 and to reinstate and credit to such account such amount existing before the debit was made including the amount of P812,033.37 in favor of defendant Golden Savings and Loan Association, Inc. and thereafter, to allow defendant Golden Savings and Loan Association, Inc. to withdraw the amount outstanding thereon before the debit;
4. Ordering the plaintiff to pay the defendant Golden Savings and Loan Association, Inc. attorney's fees and expenses of litigation in the amount of P200,000.00
5. Ordering the plaintiff to pay the defendant Spouses Magno Castillo and Lucia Castillo attorney's fees and expenses of litigation in the amount of P100,000.00.

SO ORDERED.

On appeal to the respondent court,[6] the decision was affirmed, prompting Metrobank to file this petition for review on the following grounds:

1. Respondent Court of Appeals erred in disregarding and failing to apply the clear contractual terms and conditions on the deposit slips allowing Metrobank to charge back any amount erroneously credited.
 - (a) Metrobank's right to charge back is not limited to instances where the checks or treasury warrants are forged or unauthorized.
 - (b) Until such time as Metrobank is actually paid, its obligation is that of a mere collecting agent which cannot be held liable for its failure to collect on the warrants.
2. Under the lower court's decision, affirmed by respondent Court of Appeals, Metrobank is made to pay for warrants already dishonored, thereby perpetuating the fraud committed by Eduardo Gomez.
3. Respondent Court of Appeals erred in not finding that as between Metrobank and Golden Savings, the latter should bear the loss.
4. Respondent Court of Appeals erred in holding that the treasury warrants involved in this case are not negotiable instruments.

The petition has no merit.

From the above undisputed facts, it would appear to the Court that Metrobank was indeed negligent in giving Golden Savings the impression that the treasury warrants had been cleared and that, consequently, it was safe to allow Gomez to withdraw the proceeds thereof from his account with it. Without such assurance, Golden Savings would not have allowed the withdrawals; with such assurance, there was no reason not to allow the withdrawal. Indeed, Golden Savings might even have incurred liability for its refusal to return the money that to all appearances belonged to the depositor, who could therefore withdraw it any time and for any reason he saw fit.

It was, in fact, to secure the clearance of the treasury warrants that Golden Savings deposited them to its account

with Metrobank. Golden Savings had no clearing facilities of its own. It relied on Metrobank to determine the validity of the warrants through its own services. The proceeds of the warrants were withheld from Gomez until Metrobank allowed Golden Savings itself to withdraw them from its own deposit.[7] It was only when Metrobank gave the go-signal that Gomez was finally allowed by Golden Savings to withdraw them from his own account.

The argument of Metrobank that Golden Savings should have exercised more care in checking the personal circumstances of Gomez before accepting his deposit does not hold water. It was Gomez who was entrusting the warrants, not Golden Savings that was extending him a loan; and moreover, the treasury warrants were subject to clearing, pending which the depositor could not withdraw its proceeds. There was no question of Gomez's identity or of the genuineness of his signature as checked by Golden Savings. In fact, the treasury warrants were dishonored allegedly because of the forgery of the signatures of the drawers, not of Gomez as payee or indorser. Under the circumstances, it is clear that Golden Savings acted with due care and diligence and cannot be faulted for the withdrawals it allowed Gomez to make.

By contrast, Metrobank exhibited extraordinary carelessness. The amount involved was not trifling - more than one and a half million pesos (and this was 1979). There was no reason why it should not have waited until the treasury warrants had been cleared; it would not have lost a single centavo by waiting. Yet, despite the lack of such clearance - and notwithstanding that it had not received a single centavo from the proceeds of the treasury warrants, as it now repeatedly stresses - it allowed Golden Savings to withdraw - not once, not twice, but thrice - from the uncleared treasury warrants in the total amount of P968,000.00.

Its reason? It was "exasperated" over the persistent inquiries of Gloria Castillo about the clearance and it also wanted to "accommodate" a valued client. It "presumed" that the warrants had been cleared simply because of "the lapse of one week." [8] For a bank with its long experience, this explanation is unbelievably naive.

And now, to gloss over its carelessness, Metrobank would invoke the conditions printed on the dorsal side of the deposit slips through which the treasury warrants were deposited by Golden Savings with its Calapan branch. The conditions read as follows:

Kindly note that in receiving items on deposit, the bank obligates itself only as the depositor's collecting agent, assuming no responsibility beyond care in selecting correspondents, and until such time as actual payment shall have come into possession of this bank, the right is reserved to charge back to the depositor's account any amount previously credited, whether or not such item is returned. This also applies to checks drawn on local banks and bankers and their branches as well as on this bank, which are unpaid due to insufficiency of funds, forgery, unauthorized overdraft or any other reason. (Underscoring supplied.)

According to Metrobank, the said conditions clearly show that it was acting only as a collecting agent for Golden Savings and give it the right to "charge back to the depositor's account any amount previously credited, whether or not such item is returned. This also applies to checks "... which are unpaid due to insufficiency of funds, forgery, unauthorized overdraft or any other reason." It is claimed that the said conditions are in the nature of contractual stipulations and became binding on Golden Savings when Gloria Castillo, as its Cashier, signed the deposit slips.

Doubt may be expressed about the binding force of the conditions, considering that they have apparently been imposed by the bank unilaterally, without the consent of the depositor. Indeed, it could be argued that the depositor, in signing the deposit slip, does so only to identify himself and not to agree to the conditions set forth in the given permit at the back of the deposit slip. We do not have to rule on this matter at this time. At any rate, the Court feels that even if the deposit slip were considered a contract, the petitioner could still not validly disclaim responsibility thereunder in the light of the circumstances of this case.

In stressing that it was acting only as a collecting agent for Golden Savings, Metrobank seems to be suggesting

that as a mere agent it cannot be liable to the principal. This is not exactly true. On the contrary, Article 1909 of the Civil Code clearly provides that -

Art. 1909. --The agent is responsible not only for fraud, but also for negligence, which shall be judged with more or less rigor by the courts, according to whether the agency was or was not for a compensation.

The negligence of Metrobank has been sufficiently established. To repeat for emphasis, it was the clearance given by it that assured Golden Savings it was already safe to allow Gomez to withdraw the proceeds of the treasury warrants he had deposited. Metrobank misled Golden Savings. There may have been no express clearance, as Metrobank insists (although this is refuted by Golden Savings) but in any case that clearance could be implied from its allowing Golden Savings to withdraw from its account not only once or even twice but three times. The total withdrawal was in excess of its original balance before the treasury warrants were deposited, which only added to its belief that the treasury warrants had indeed been cleared.

Metrobank's argument that it may recover the disputed amount if the warrants are not paid for any reason is not acceptable. Any reason does not mean no reason at all. Otherwise, there would have been no need at all for Golden Savings to deposit the treasury warrants with it for clearance. There would have been no need for it to wait until the warrants had been cleared before paying the proceeds thereof to Gomez. Such a condition, if interpreted in the way the petitioner suggests, is not binding for being arbitrary and unconscionable. And it, becomes more so in the case at bar when it is considered that the supposed dishonor of the warrants was not communicated to Golden Savings before it made its own payment to Gomez.

The belated notification aggravated the petitioner's earlier negligence in giving express or at least implied clearance to the treasury warrants and allowing payments therefrom to Golden Savings. But that is not all. On top of this, the supposed reason for the dishonor, to wit, the forgery of the signatures of the general manager and the auditor of the drawer corporation, has not been established.[9] This was the finding of the lower courts which we see no reason to disturb. And as we said in *MWSS v. Court of Appeals*: [10]

Forgery cannot be presumed (*Siasat, et. al. v. IAC, et al.*, 139 SCRA 238). It must be established by clear, positive and convincing evidence. This was not done in the present case.

A no less important consideration is the circumstance that the treasury warrants in question are not negotiable instruments. Clearly stamped on their face is the word "non-negotiable." Moreover, and this is of equal significance, it is indicated that they are payable from a particular fund, to wit, Fund 501.

The following sections of the Negotiable Instruments Law, especially the underscored parts, are pertinent:

SECTION 1. - Form of negotiable instruments. - An instrument to be negotiable must conform to the following requirements:

- (a) It must be in writing and signed by the maker or drawer;
- (b) Must contain an unconditional promise or order to pay a sum certain in money;
- (c) Must be payable on demand, or at a fixed or determinable future time;
- (d) Must be payable to order or to bearer; and
- (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

x x x

SEC. 3. When promise is unconditional. - An unqualified order or promise to pay is unconditional within the

meaning of this Act though coupled with -

(a) An indication of a particular fund out of which reimbursement is to be made or a particular account to be debited with the amount; or

(b) A statement of the transaction which, gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

The indication of Fund 501 as the source of the payment to be made on the treasury warrants makes the order or promise to pay "not unconditional" and the warrants themselves non-negotiable. There should be no question that the exception on Section 3 of the Negotiable Instruments Law is applicable in the case at bar. This conclusion conforms to *Abubakar vs. Auditor General*[11] where the Court held:

The petitioner argues that he is a holder in good faith and for value of a negotiable instrument and is entitled to the rights and privileges of a holder in due course, free from defenses. But this treasury warrant is not within the scope of the negotiable instrument law. For one thing, the document bearing on its face the words "payable from the appropriation for food administration, is actually an Order for payment out of "a particular fund," and is not unconditional and does not fulfill one of the essential requirements of a negotiable instrument (Sec. 3 last sentence and section [1(b)] of the Negotiable Instruments Law).

Metrobank cannot contend that by indorsing the warrants in general, Golden Savings assumed that they were "genuine and in all respects what they purport to be," in accordance with Section 66 of the Negotiable Instruments Law. The simple reason is that this law is not applicable to the non-negotiable treasury warrants. The indorsement was made by Gloria Castillo not for the purpose of guaranteeing the genuineness of the warrants but merely to deposit them with Metrobank for clearing. It was in fact Metrobank that made the guarantee when it stamped on the back of the warrants: "All prior indorsement and/or lack of endorsements guaranteed, Metropolitan Bank & Trust Co., Calapan Branch."

The petitioner lays heavy stress on *Jai Alai Corporation v. Bank of the Philippine Islands*,[12] but we feel this case is inapplicable to the present controversy. That case involved checks whereas this case involves treasury warrants. Golden Savings never represented that the warrants were negotiable but signed them only for the purpose of depositing them for clearance. Also, the fact of forgery was proved in that case but not in the case before us. Finally, the Court found the Jai Alai Corporation negligent in accepting the checks without question from one Antonio Ramirez notwithstanding that the payee was the Inter-Island Gas Services, Inc. and it did not appear that he was authorized to indorse it. No similar negligence can be imputed to Golden Savings.

We find the challenged decision to be basically correct. However, we will have to amend it insofar as it directs the petitioner to credit Golden Savings with the full amount of the treasury checks deposited to its account.

The total value of the 32 treasury warrants dishonored was P1,754,089.00, from which Gomez was allowed to withdraw P1,167,500.00 before Golden Savings was notified of the dishonor. The amount he has withdrawn must be charged not to Golden Savings but to Metrobank, which must bear the consequences of its own negligence. But the balance of P586,589.00 should be debited to Golden Savings, as obviously Gomez can no longer be permitted to withdraw this amount from his deposit because of the dishonor of the warrants. Gomez has in fact disappeared. To also credit the balance to Golden Savings would unduly enrich it at the expense of Metrobank, let alone the fact that it has already been informed of the dishonor of the treasury warrants.

WHEREFORE, the challenged decision is **AFFIRMED**, with the modification that Paragraph 3 of the dispositive portion of the judgment of the lower court shall be reworded as follows:

3. Debiting Savings Account No. 2498 in the sum of P586,589.00 only and thereafter allowing defendant

Golden Savings & Loan Association, Inc. to withdraw the amount outstanding thereon, if any, after the debit.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 12-13.

[2] Ibid., p. 52.

[3] Id., p. 14.

[4] id.

[5] Through Judge Marciano T. Virola.

[6] Penned by Ejercito, J., with Pe and Victor, JJ., concurring.

[7] Rollo, p. 84.

[8] TSN, July 29, 1983, p. 20.

[9] Rollo, p. 61.

[10] 143 SCRA 20.

[11] 81 Phil. 359.

[12] 66 SCRA 29.

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