

ASSOCIATED BANK AND CONRADO CRUZ, PETITIONERS, VS. HON. COURT OF APPEALS, AND MERLE V. REYES, DOING BUSINESS UNDER THE NAME AND STYLE “MELISSA’S RTW,” RESPONDENTS.

G.R. No. 89802. May 07, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The sole issue raised in this case is whether or not the private respondent has a cause of action against the petitioners for their encashment and payment to another person of certain crossed checks issued in her favor.

The private respondent is engaged in the business of ready-to-wear garments under the firm name “Melissa's RTW.” She deals with, among other customers, Robinson's Department Store, Payless Department Store, Rempson Department Store, and the Corona Bazaar.

These companies issued in payment of their respective accounts crossed checks payable to Melissa's RTW in the amounts and on the dates indicated below:

PAYOR

BANK

AMOUNT

DATE

Payless

Solid Bank

P 3,960.00

January 19, 1982

Robinson's

FEBTC

4,140.00

December 18, 1981

Robinson's

FEBTC

1,650.00

December 24, 1981

Robinson's

FEBTC

1,980.00

January 12, 1982

Rempson

TRB

1,575.00

January 9, 1982

Corona

RCBC

2,500.00

December 22, 1981

When she went to these companies to collect on what she thought were still unpaid accounts, she was informed of the issuance of the above-listed crossed checks. Further inquiry revealed that the said checks had been deposited with the Associated Bank (hereinafter, "the Bank.") and subsequently paid by it to one Rafael Sayson, one of its "trusted depositors," in the words of its branch manager and co-petitioner, Conrado Cruz. Sayson had not been authorized by the private respondent to deposit and encash the said checks.

The private respondent sued the petitioners in the Regional Trial Court of Quezon City for recovery of the total value of the checks plus damages. After trial, judgment was rendered requiring them to pay the private respondent the total value of the subject checks in the amount of P15,805.00 plus 12% interest, P50,000.00 actual damages, P25,000.00 exemplary damages, P5,000.00 attorney's fees, and the costs of the suit. [1]

The petitioners appealed to the respondent court, reiterating their argument that the private respondent had no cause of action against them and should have proceeded instead against the companies that issued the checks. In disposing of this contention, the Court of Appeals[2] said:

The cause of action of the appellee in the case at bar arose from the illegal, anomalous and irregular acts of the appellants in violating common banking practices to the damage and prejudice of the appellees, in allowing to be deposited and encashed as well as paying to improper parties without the knowledge, consent, authority or endorsement of the appellee which totalled P15,805.00, the six (6) checks in dispute which were "crossed checks" or "for payee's account only," the appellee being the payee.

The three (3) elements of a cause of action are present in the case at bar, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach thereof. (Republic Planters Bank vs. Intermediate Appellate Court, 131 SCRA 631).

And such cause of action has been proved by evidence of great weight. The contents of the said checks issued by the customers of the appellee had not been questioned. There is no dispute that the same are crossed checks or for payee's account only, which is Melissa's RTW. The appellee had clearly shown that she had never authorized anyone to deposit the said checks nor to encash the same; that the appellants had allowed all said checks to be deposited, cleared and paid to one Rafael Sayson in violation of the instructions in the said

crossed checks that the same were for payee's account only; and that the appellee maintained a savings account with the Prudential Bank, Cubao Branch, Quezon City which never cleared the said checks and the appellee had been damaged by such encashment of the same.

We affirm.

Under accepted banking practice, crossing a check is done by writing two parallel lines diagonally on the left top portion of the checks. The crossing is special where the name of a bank or a business institution is written between the two parallel lines, which means that the drawee should pay only with the intervention of that company.[3] The crossing is general where the words written between the two parallel lines are "and Co." or "for payee's account only," as in the case at bar. This means that the drawee bank should not encash the check but merely accept it for deposit.[4]

In *State Investment House vs. IAC*,^[5] this Court declared that "the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check maybe negotiated only once - to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose."

The effects therefore of crossing a check relate to the mode of its presentment for payment. Under Sec. 72 of the Negotiable Instruments Law, presentment for payment, to be sufficient, must be made by the holder or by some person authorized to receive payment on his behalf. Who the holder or authorized person is depends on the instruction stated on the face of the check.

The six checks in the case at bar had been crossed and issued "for payee's account only." This could only signify that the drawers had intended the same for deposit only by the person indicated, to wit, Melissa's RTW.

The petitioners argue that the cause of action for violation of the common instruction found on the face of the checks exclusively belong to the issuers thereof and not to the payee. Moreover, having acted in good faith as they merely facilitated the encashment of the checks, they cannot be made liable to the private respondent.

The subject checks were accepted for deposit by the Bank for the account of Rafael Sayson although they were crossed checks and the payee was not Sayson but Melisa's RTW. The Bank stamped thereon its guarantee that "all prior endorsements and/or lack of endorsements (were) guaranteed." By such deliberate and positive act, the Bank had for all legal intents and purposes treated the said checks as negotiable instruments and, accordingly, assumed the warranty of the endorser.

The weight of authority is to the effect that "the possession of a check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held 'for moneys had and received.'"^[6] The proceeds are held for the rightful owner of the payment and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check.^[7]

It is not disputed that the proceeds of the subject checks belonged to the private respondent. As she had not at any time authorized Rafael Sayson to endorse or encash them, there was conversion of the funds by the Bank.

When the Bank paid the checks so endorsed notwithstanding that title had not passed to the endorser, it did so at its peril and became liable to the payee for the value of the checks. This liability attached whether or not the Bank was aware of the unauthorized endorsement [8]

The petitioners were negligent when they permitted the encashment of the checks by Sayson. The Bank should

have first verified his right to endorse the crossed checks, of which he was not the payee, and to deposit the proceeds of the checks to his own account. The Bank was by reason of the nature of the checks put upon notice that they were issued for deposit only to the private respondent's account. Its failure to inquire into Sayson's authority was a breach of a duty it owed to the private respondent.

As the Court stressed in *Banco de Oro Savings and Mortgage Bank vs. Equitable Banking Corp.*[9] “the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity. The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct.”

The petitioners insist that the private respondent has no cause of action against them because they have no privity of contract with her. They also argue that it was Eddie Reyes, the private respondent's own husband, who endorsed the checks.

Assuming that Eddie Reyes did endorse the crossed checks, we hold that the Bank would still be liable to the private respondent because he was not authorized to make the endorsements. And even if the endorsements were forged, as alleged, the Bank would still be liable to the private respondent for not verifying the endorser's authority. There is no substantial difference between an actual forging of a name to a check as an endorsement by a person not authorized to make the signature and the affixing of a name to a check as an endorsement by a person not authorized to endorse it.[10]

The Bank does not deny collecting the money on the endorsement. It was its responsibility to inquire as to the authority of Rafael Sayson to deposit crossed checks payable to Melissa's RTW upon a prior endorsement by Eddie Reyes. The failure of the Bank to make this inquiry was a breach of duty that made it liable to the private respondent for the amount of the checks.

There being no evidence that the crossed checks were actually received by the private respondent, she would have a right of action against the drawer companies, which in turn could go against their respective drawee banks, which in turn could sue the herein petitioner as collecting bank. In a similar situation, it was held that, to simplify proceedings, the payee of the illegally encashed checks should be allowed to recover directly from the bank responsible for such encashment regardless of whether or not the checks were actually delivered to the payee.[11] We approve such direct action in the case at bar.

It is worth repeating that before presenting the checks for clearing and for payment, the Bank had stamped on the back thereof the words: “All prior endorsements and/or lack of endorsements guaranteed,” and thus made the assurance that it had ascertained the genuineness of all prior endorsements.

We find that the respondent court committed no reversible error in holding that the private respondent had a valid cause of action against the petitioners and that the latter are indeed liable to her for their unauthorized encashment of the subject checks. We also agree with the reduction of the award of the exemplary damages for lack of sufficient evidence to support them.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Narvasa, C.J., Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

[1] Orig. rec., pp. 149-158.

[2] Paras, G.C., J., ponente with Aldecoa and Ordoñez-Benitez, JJ., concurring.

[3] State Investment House vs. Intermediate Appellate Court, 175 SCRA 310.

[4] Vicente R. de Ocampo & Co. vs. Gatchalian, 3 SCRA 596.

[5] 175 SCRA 310.

[6] Buckley vs. Second Nat. Bank, 35 N.J.L. 400; United States Portland Cement Co. vs. United States Nat. Bank, 61 Colo. 334; People vs. Bank of North America, 75 N.J. 547; Schaap vs. First Nat. Bank, 208 S.W. 309; Merchants' Bank vs. National Capital Press, 31 A.L.R. 1066; Allen vs. M. Mendelsohn & Son, 31 A.L.R. 1063.

[7] Meyer vs. Rosenheim, 73 S.W. 1129; Talbot vs. Bank of Rochester, 1 N.Y. 295; People vs. Bank of North America, 75 N.Y. 547; Johnson vs. First Nat. Bank, 68 N.Y. 616.

[8] Teas vs. Third National Bank & Trust Co., 4 A 2d. 64.

[9] 157 SCRA 188.

[10] Possaic-Bergen Lumber Co. vs. United States Trust Co., 164 A. 580.

[11] Hoffman vs. First Nat. Bank, 20 N.E. (2d.) 121; Possaic-Bergen Lumber Co. vs. United States Trust Co., supra; Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Phil., 1978 Ed., Vol. 1, p. 197.

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