

THIRD DIVISION

[G.R. No. 181235, July 22, 2009]

**BANCO DE ORO-EPCI, INC. (FORMERLY EQUITABLE PCI BANK),
PETITIONER, VS. JOHN TANSIPEK, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* assailing the Decision^[1] of the Court of Appeals in CA-G.R. CV No. 69130 dated 18 August 2006 and the Resolution of the same court dated 9 January 2008.

The facts of the case are as follows:

J. O. Construction, Inc. (JOCI), a domestic corporation engaged in the construction business in Cebu City, filed a complaint against Philippine Commercial and Industrial Bank (PCIB) in the Regional Trial Court (RTC) of Makati City docketed as Civil Case No. 97-508. The Complaint alleges that JOCI entered into a contract with Duty Free Philippines, Inc. for the construction of a Duty Free Shop in Mandaue City. As actual construction went on, progress billings were made. Payments were received by JOCI directly or through herein respondent John Tansipek, its authorized collector. Payments received by respondent Tansipek were initially remitted to JOCI. However, payment through PNB Check No. 0000302572 in the amount of P4,050,136.51 was not turned over to JOCI. Instead, respondent Tansipek endorsed said check and deposited the same to his account in PCIB, Wilson Branch, Wilson Street, Greenhills, San Juan, Metro Manila. PCIB allowed the said deposit, despite the fact that the check was crossed for the deposit to payee's account only, and despite the alleged lack of authority of respondent Tansipek to endorse said check. PCIB refused to pay JOCI the full amount of the check despite demands made by the latter. JOCI prayed for the payment of the amount of the check (P4,050,136.51), P500,000.00 in attorney's fees, P100,000.00 in expenses, P50,000.00 for costs of suit, and P500,000.00 in exemplary damages.

PCIB filed a Motion to Dismiss the Complaint on the grounds that (1) an indispensable party was not impleaded, and (2) therein plaintiff JOCI had no cause of action against PCIB. The RTC denied PCIB's Motion to Dismiss.

PCIB filed its answer alleging as defenses that (1) JOCI had clothed Tansipek with authority to act as its agent, and was therefore estopped from denying the same; (2) JOCI had no cause of action against PCIB ; (3) failure to implead Tansipek rendered the proceedings taken after the filing of the complaint void; (4) PCIB's act of accepting the deposit was fully justified by established bank practices; (5) JOCI's claim was barred by laches; and (6) the damages alleged by JOCI were hypothetical and speculative. PCIB incorporated in said Answer its counterclaims for exemplary damages in the amount of P400,000.00, and litigation expenses and attorney's fees

in the amount of P400,000.00.

PCIB likewise moved for leave for the court to admit the former's third-party complaint against respondent Tansipek. The third-party complaint alleged that respondent Tansipek was a depositor at its Wilson Branch, San Juan, Metro Manila, where he maintained Account No. 5703-03538-3 in his name and/or that of his wife, Anita. Respondent Tansipek had presented to PCIB a signed copy of the Minutes of the meeting of the Board of Directors of JOCI stating the resolution that -

Checks payable to J.O. Construction, Inc. may be deposited to Account No. 5703-03538-3 under the name of John and/or Anita Tansipek, maintained at PCIB, Wilson Branch.^[2]

Respondent Tansipek had also presented a copy of the Articles of Incorporation of JOCI showing that he and his wife, Anita, were incorporators of JOCI, with Anita as Treasurer. In the third-party complaint, PCIB prayed for subrogation and payment of attorney's fees in the sum of P400,000.00.

PCIB filed a Motion to Admit Amended Third-Party Complaint. The amendment consisted in the correction of the caption, so that PCIB appeared as Third-Party Plaintiff and Tansipek as Third-Party Defendant.

Upon Motion, respondent Tansipek was granted time to file his Answer to the Third-Party Complaint. He was, however, declared in default for failure to do so. The Motion to Reconsider the Default Order was denied.

Respondent Tansipek filed a Petition for *Certiorari* with the Court of Appeals assailing the Default Order and the denial of the Motion for Reconsideration. The Petition was docketed as CA-G.R. SP No. 47727. On 29 May 1998, the Court of Appeals dismissed the Petition for failure to attach the assailed Orders. On 28 September 1998, the Court of Appeals denied respondent Tansipek's Motion for Reconsideration for having been filed out of time.

Pre-trial on the main case ensued, wherein JOCI and PCIB limited the issues as follows:

1. Whether or not the defendant bank erred in allowing the deposit of Check No. 0302572 (Exh. "A") in the amount of P4,050,136.51 drawn in favor of plaintiff JO Construction, Inc. in John Tansipek's account when such check was crossed and clearly marked for payee's account only.
2. Whether the alleged board resolution and the articles of Incorporation are genuine and a valid defense against plaintiff's effort to collect the amount of P4,050,136.51.

On 14 July 2000, the RTC promulgated its Decision in Civil Case No. 97-508, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [JOCI] and against the defendant bank [PCIB] ordering the latter to pay to the plaintiff the sum of P4,050,136.51 with interest at the rate of twelve percent (12%) per annum from the filing of this complaint until fully paid plus costs of suit. The other damages claimed by the plaintiff are denied for being speculative.

On the third party complaint, third-party defendant John Tansipek is ordered to pay the third-party plaintiff Philippine Commercial and Industrial Bank all amounts said defendant/third-party plaintiff shall have to pay to the plaintiff on account of this case.^[3]

Respondent Tansipek appealed the Decision to the Court of Appeals. The case was docketed as CA-G.R. CV No. 69130. Respondent Tansipek assigned the following alleged errors:

a) The trial court's decision upholding the order of default and the consequent ex-parte reception of appellee's evidence was anchored on erroneous and baseless conclusion that:

- 1) The original reglementary period to plead has already expired.
- 2) The ten day extended period to answer has likewise expired.
- 3) There is no need to pass upon a second motion to plead much less, any need for a new motion for extended period to plead.

b) The trial court erred in utterly depriving the appellant of his day in court and in depriving constitutional, substantive and procedural due process premised solely on pure and simple technicality which never existed and are imaginary and illusory.

c) The trial court erred in ordering the third-party defendant-appellant John Tansipek to pay the third party plaintiff-appellee PCIBank all amounts said bank shall have to pay to the plaintiff-appellee by way of subrogation since appellant if allowed to litigate in the trial court, would have obtained a favorable judgment as he has good, valid and meritorious defenses.^[4]

On 18 August 2006, the Court of Appeals issued the assailed Decision finding that it was an error for the trial court to have acted on PCIB's motion to declare respondent Tansipek in default. The Court of Appeals thus remanded the case to the RTC for further proceedings, to wit:

WHEREFORE, premises considered, the appeal is GRANTED. The decision relative to the third party complaint is REVERSED and SET ASIDE. The case is ordered REMANDED to the trial court for further proceedings on the third party complaint.^[5]