

SEVENTH DIVISION

[CA-G.R. CV NO. 99934, May 21, 2014]

**PHILIPPINE NATIONAL BANK, PLAINTIFF-APPELLEE, VS.
FELICITO GUIYAB, DEFENDANT-APPELLANT.**

DECISION

BATO, JR., J.:

This is an appeal from the Judgment^[1] dated October 24, 2012 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 1, in Civil Case No. 7052, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff and against the defendant. The defendant is directed to pay the plaintiff the amount of P343,112.30 representing the value of defendant's PNB Check No. 91489 which it paid to BMS Development Corporation plus 6% interest from the time the judgment becomes final until full satisfaction thereof.

Costs of suit against the defendant.

SO ORDERED."

The factual antecedents:

Felicitto Guiyab [herein defendant-appellant] is a fuel and petroleum dealer at Cabagan, Isabela. In 1998, he opened a current account with the Philippine National Bank (PNB), Tuguegarao Branch with Account No. 488-8111471. On January 8, 2005, defendant-appellant issued PNB Check No. 91489^[2] in the amount of P343,112.30 payable to BMS Development Corporation. BMS presented the check for payment on January 10, 2005 with its depository bank – Allied Bank, Retiro Branch. On January 11, 2005, the check was brought to the Philippine Clearing House Corporation (PCHC). At that time, defendant-appellant had insufficient funds to cover the check as he had only P149,782.15 in his account.^[3] The check was returned and the bank imposed NSF (No Sufficient Fund) charges.^[4] Defendant-appellant made several deposits on January 12 and 13, 2005 in the aggregate amount of P350,407.22, thereby increasing the total deposit to P496,389.37. On January 13, 2005, Allied Bank eventually released the amount of P343,112.30 to BMS^[5] and this amount was withdrawn by Allied Bank from PNB's account with the Bangko Sentral ng Pilipinas.^[6] The check was then lodged at the reconciling account items at the clearing division of PNB Head Office. During an audit, it was discovered that the amount of P343,112.30 was not debited from PNB Tuguegarao Branch and that it was erroneously posted to another account. Thus, from the period January 11, 2005 until defendant-appellant's account was closed on January 30, 2006,^[7] PNB failed to deduct the amount of P343,112.30 from his account.

On April 4, 2007, PNB sent a letter^[8] to defendant-appellant informing him that the check was not posted to his account due to insufficiency of funds. However, there was a nationwide offline on January 12, 2005 and it was not possible to verify his balance. Thereupon, the check was treated as a good and funded check by its clearing division but it was erroneously posted to another account. PNB requested for the immediate settlement of the amount of P343,112.30. PNB sent several demand letters to defendant-appellant dated May 21, August 21 and November 13, 2007^[9] but the latter failed to pay.

Consequently, PNB filed a Complaint^[10] for Collection of Sum of Money against defendant-appellant before the Regional Trial Court [Branch 1, Tuguegarao City, Cagayan], docketed as Civil Case No. 7052. The complaint was subsequently amended.^[11] PNB alleged that it paid for defendant-appellant's obligation with BMS but it failed to debit his account for the value of the check due to inadvertence as it was posted to another account. This inadvertence was only discovered by PNB after his account was already closed. Clearly, the defendant-appellant has a natural obligation to return the afore-stated amount. Thus, PNB prayed that defendant-appellant be ordered to pay the amount of P343,112.30, with interest at the legal rate from the date of final demand up to the time of actual payment, P20,000.00 as attorney's fees, and P1,000.00 as appearance fee.

Defendant-appellant filed his amended Answer with Counterclaims^[12] wherein he averred that it is impossible for PNB to treat the check as good and funded without first verifying if it was actually funded. He averred that the former Bank Manager of PNB Tuguegarao Branch, Mr. Juan Lugo, Jr., used to pick up his collections and deposit the same in his account. Thus, he truly believed that Mr. Lugo deposited defendant-appellant's collections to cover the cost of PNB Check No. 91489. From January 11, 2005 onwards, he has not received any notice for the alleged insufficiency of funds. He also alleged that the imposition of NSF charges was inconsistent to the claim that the check was treated as good and funded. He asserted that PNB's claim that the amount was erroneously posted to another account is improbable since the same would have been noticed by its internal auditor in his examination, verification and reconciliation of accounts. In this case, the demand was made more than two years after the alleged transaction and for this reason, the cause of action had already prescribed. By way of Counterclaim, defendant-appellant claimed that PNB should be held liable for the payment of P50,000.00 as attorney's fees and P100,000.00 as moral damages.

Trial ensued. After the formal offer of the parties' evidence,^[13] the court *a quo* rendered the assailed Judgment on October 24, 2012. Hence, this appeal by defendant-appellant raising the following assignment of errors:

"I.

THE TRIAL COURT ERRED IN HOLDING THAT THE VALUE OF THE CHECK ISSUED BY DEFENDANT-APPELLANT TO BMS DEVELOPMENT COMPANY, INC. WAS NOT DEDUCTED OR DEBITED FROM HIS ACCOUNT BY PLAINTIFF-APPELLEE.

II.

THE TRIAL COURT ERRED IN ADMITTING DOCUMENTARY EVIDENCE NOT MARKED AND PRESENTED DURING THE PRE-TRIAL DESPITE TIMELY

OPPOSITION REGISTERED BY THE DEFENDANT-APPELLANT WHEN THE SAME WAS OFFERED.”^[14]

Defendant-appellant argued in his brief that the court *a quo* erred in relying on the check presented by PNB as it does not show on its face that the value thereof was not debited because it did not reflect the precise status and details of his account. The check merely proves that he issued the same, that it was declared as a good check and that it was debited to his account. Hence, he insisted that he did not enrich himself at the expense of PNB because the check was actually debited to his account and because he did not commit any illegal or unlawful act. As to the Statements of Account, defendant-appellant asserted that they are not definite and certain as to whether PNB indeed paid the value of the check. As regards the PCHC Inward Regional Item Transaction, defendant-appellant maintained that the court *a quo* erred in admitting the same because it was not marked and presented during the pre-trial.

On the other hand, PNB argued that it paid P343,112.30 to BMS considering that the defendant-appellant did not categorically deny the same and the check was not dishonored as borne out by the stampmark of indorsement at the dorsal portion thereof. The fact that the aforementioned amount was not debited to defendant-appellant's account can be readily seen in the Statements of Account which were sent to him on a monthly basis. However, in utter bad faith, defendant-appellant failed to call its attention that the amount was not debited. Thus, defendant-appellant unjustly enriched himself by failing to return the money. While PNB admitted the lapse on its part regarding the posting and debiting of P343,112.30 to the account of a different depositor, it posited that such “error is a reality” considering the bulk of transactions entered into by the bank on a daily basis.

We rule in favor of PNB.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence, or evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.^[15] Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the *onus* to prove his assertion in order to obtain a favorable judgment.^[16]

In the present case, PNB alleged that it paid the amount of P343,112.30 to BMS but it failed to deduct this amount to defendant-appellant's account. To support its allegation, PNB presented the following documents, viz.: PNB Check No. 91489, demand letters sent to defendant-appellant, Statements of Account covering the period of January 11, 2005 until January 30, 2006, and PCHC Inward Regional Item Transaction. It likewise presented Emelyn T. Lozada as a witness who testified that PNB paid the value of the check to the collecting bank – Allied Bank. On the contrary, defendant-appellant alleged that the check was good and sufficiently funded and that the amount thereof was debited in his account.

At the outset, it bears stressing that the matter of whether PNB had paid the value of the check to BMS through Allied Bank has already been settled considering the judicial admissions of defendant-appellant during cross-examination:

“Q: You mentioned a while ago that the check issued to BMS Development Co., Incorporated was for payment