

## THIRD DIVISION

[ G.R. No. 235511, June 20, 2018 ]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.  
JUNNEL'S MARKETING CORPORATION, PURIFICACION DELIZO,  
AND BANK OF COMMERCE, RESPONDENTS.**

[G.R. No. 235565]

**BANK OF COMMERCE, PETITIONER, VS. JUNNEL'S MARKETING  
CORPORATION, PURIFICACION DELIZO, AND METROPOLITAN  
BANK AND TRUST COMPANY RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

At bench are two appeals<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated 22 March 2017 and Resolution<sup>[3]</sup> dated 19 October 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 102462. The first appeal was filed by the Metropolitan Bank and Trust Company (Metrobank), while the second by the Bank of Commerce (Bankcom).

The facts are as follows:

Respondent Junnel's Marketing Corporation (JMC) is a domestic corporation engaged in the business of selling wines and liquors. It has a current account with Metrobank<sup>[4]</sup> from which it draws checks to pay its different suppliers. Among JMC's suppliers are Jardine Wines and Spirits (Jardine) and Premiere Wines (Premiere).

In 2000, during an audit of its financial records,<sup>[5]</sup> JMC discovered an anomaly involving eleven (11) checks (subject checks) it had issued to the orders of Jardine and Premiere on various dates between October 1998 to May 1999. As it was, the subject checks had already been charged against JMC's current account but were, for some reason, not covered by any official receipt from Jardine or Premiere. The subject checks, which are all *crossed* checks and amounting to P1,481,292.00 in total, are as follows:

Checks Payable to the Order of Jardine:

1. Check No. 3010048953 - issued on 11 October 1998 in the amount of P181,440.00
2. Check No. 3010048955 - issued on 24 October 1998 in the amount of P195,840.00
3. Check No. 3010069098 - issued on 18 May 1999 in the amount of P58,164.56

4. Check No. 3010069099 - issued on 18 May 1999 in the amount of P44,651.52
5. Check No. 3010049551 - issued on 25 May 1999 in the amount of P103,680.00
6. Check No. 3010049550 - issued on 30 May 1999 in the amount of P103,680.00
7. Check No. 3010048954 - issued on 29 December 1998 in the amount of P195,840.00

Checks Payable to the Order of Premiere:

1. Check No. 3010049149 - issued on 9 December 1998 in the amount of P136,220.00
2. Check No. 3010049148 - issued on 16 December 1998 in the amount of P136,220.00
3. Check No. 3010049410 - issued on 18 April 1999 in the amount of P189,336.00.
4. Check No. 3010049150 - issued on 27 November 1998 in the amount of P136,220.00

Examination of the dorsal portion of the subject checks revealed that all had been deposited with Bankcom, Dau branch, under Account No. 0015-32987-7.<sup>[6]</sup> Upon inquiring with Jardine and Premiere, however, JMC was able to confirm that neither of the said suppliers owns Bankcom Account No. 0015-32987-7.

Meanwhile, on 30 April 2000, respondent Purificacion Delizo (Delizo), a former accountant of JMC, executed a handwritten letter<sup>[7]</sup> addressed to one Nelvia Yusi, President of JMC. In the said letter, Delizo confessed that, during her time as an accountant for JMC, she stole several company checks drawn against JMC's current account. She professed that the said checks were never given to the named payees but were forwarded by her to one Lita Bituin (Bituin). Delizo further admitted that she, Bituin and an unknown bank manager colluded to cause the deposit and encashing of the stolen checks and shared in the proceeds thereof.

JMC surmised that the subject checks are among the checks purportedly stolen by Delizo.

On 28 January 2002, JMC filed before the Regional Trial Court (RTC) of Pasay City a complaint for sum of money<sup>[8]</sup> against Delizo, Bankcom and Metrobank. The complaint was raffled to Branch 115 and was docketed as Civil Case No. 02-0193.

In its complaint, JMC alleged that the wrongful conversion of the subject checks was caused by a combination of the "*tortious and felonious*" scheme of Delizo and the "*negligent and unlawful acts*" of Bankcom and Metrobank, to wit:<sup>[9]</sup>

1. Delizo, by her own admission, stole the company checks of JMC. Among these checks, as confirmed by JMC's audit, are the subject checks.

2. After stealing the subject checks, Delizo and her accomplices, Bituin and an unknown bank manager, caused the subject checks to be deposited in Bankcom, Dau branch, under Account No. 0015-32987-7. Bankcom, on the other hand, negligently accepted the subject checks for deposit under the said account despite the fact that they are crossed checks payable to the orders of Jardine and Premiere and neither of them owns the concerned account.
3. Thereafter, Bankcom presented the subject checks for payment to Metrobank which, also in negligence, decided to honor the said checks even though Bankcom Account No. 0015-32987-7 belongs to neither Jardine nor Premiere.

On the basis of the foregoing averments, JMC prayed that Delizo, Bankcom and Metrobank be held solidarily liable in its favor for the amount of the subject checks.

Delizo, Bankcom and Metrobank filed their individual answers denying liability.<sup>[10]</sup> Incorporated in Metrobank's answer, moreover, is a cross-claim against Bankcom and Delizo wherein Metrobank asks for the right to be reimbursed in the event it is ordered liable in favor of JMC.<sup>[11]</sup>

On 28 May 2013, the RTC rendered a decision<sup>[12]</sup> holding both Bankcom and Metrobank liable to JMC-on a 2/3 to 1/3 ratio, respectively-for the amount of subject checks plus interest as well as attorney's fees, *but* absolving Delizo from any liability.<sup>[13]</sup> The trial court, in the same decision, also dismissed Metrobank's cross-claim against Bankcom. The dispositive portion of the decision reads:<sup>[14]</sup>

WHEREFORE, judgment is rendered against defendants [Bankcom] and [Metrobank] for the total value of the 11 checks. [Bankcom] and Metrobank are adjudged solidarily liable to pay [JMC] at the ratios of 2/3 and 1/3, respectively:

1. The actual loss of P 1,481,292 including 6% legal interest from the filing of the complaint;
2. Plus 12% interest on the principal of P 1,481,292 including 6% interest on the principal, from the date this Decision becomes final and executory;
3. The attorney's fees of 15% of the total of number one and two above;
4. Costs against [Bankcom] and Metrobank.

Metrobank's cross-claim against [Bankcom] is DISMISSED, both being negligent.

SO ORDERED.

The RTC's decision was hinged on the following findings:<sup>[15]</sup>

1. The subject checks were complete and not forged. They were, however, stolen by unknown malefactors and were wrongfully encashed due to the negligence

of Bankcom and Metrobank.

2. Delizo's complicity in the acquisition and negotiation of the subject checks was not proven. No direct evidence linking Delizo to the deeds was presented. Moreover, Delizo's supposed handwritten confession must be discredited for being made under duress, intimidation and threat. It was established during trial that Delizo was only forced by Yusi to confess about the missing checks and to execute the handwritten confession. Hence, Delizo must be absolved from any liability.
3. The involvement of Bankcom and Metrobank on the wrongful encashment of the subject checks, however, were clearly established:
  - a. Bankcom accepted the subject checks for deposit under Account No. 0015-32987-7, endorsed them and sent them for clearance with the Philippine Clearing House Corporation (PCHC). Bankcom did all these despite the fact that the subject checks were II crossed checks and that Account No. 0015-32987-7 neither belongs to Jardine nor Premiere-the payees named in the subject checks. In this regard, Bankcom was clearly negligent.
  - b. Metrobank, on the other hand, is also negligent for its failure to scrutinize the subject checks before clearing and honoring them. Had Metrobank done so, it would have noticed that Bankcom's ID band stamped at the back of the subject checks did not contain any initials and are, therefore, defective. In this regard, Metrobank was remiss in its duty to ensure that the subject checks are paid only to the named payees.

In view of the *comparative negligence* of Bankcom and Metrobank, they should be held liable to JMC, on a 2/3 to 1/3 ratio, respectively, for the amount of subject checks plus interest.

Bankcom and Metrobank filed their respective appeals with the CA.

On 22 March 2017, the CA rendered its decision<sup>[16]</sup> affirming, albeit with modification, the decision of the RTC. The disposition of the decision reads:<sup>[17]</sup>

WHEREFORE, the Decision dated 28 May 2013 of the [RTC] in Civil Case NO. 02-0193 is AFFIRMED with MODIFICATION in that: (a) the award of attorney's fees is DELETED; and (b) [Bankcom] and [Metrobank] are ordered to pay interest at the rate of 12% per annum on the principal of P 1,481,292 including 6% interest on the principal, from the date of the Decision (28 May 2013) until June 2013 and 6% per annum from 1 July 2013 until full satisfaction. The Decision is affirmed in all other respects.

SO ORDERED.

The CA agreed with the RTC that Bankcom and Metrobank should be held liable to JMC, on a 2/3 to 1/3 ratio, respectively, for the amount of subject checks. The appellate court, however, differed with the trial court with respect to the basis of Metrobank's liability. According to the CA, Metrobank's negligence consisted, not in its inability to notice that Bankcom's ID band does not contain any initials, but in its

failure to ascertain that only four (4) out of the 11 subject checks were stamped by Bankcom with the express guarantees "*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*" and "*NON-NEGOTIABLE*" as required by Section 17 of the PCHC Rules and Regulations.<sup>[18]</sup>

The CA also sustained the ruling of the RTC anent the absolution of Delizo and the dismissal of Metrobank's cross-claim.

Finally, the CA modified the rate of interest due on the amount of the subject checks that was fixed by the RTC and also deleted the RTC's award of attorney's fees in favor of JMC.<sup>[19]</sup>

Bankcom and Metrobank filed their motions for reconsideration, but the CA remained steadfast. Hence the present consolidated appeals.

Both Metrobank and Bankcom pray for absolution but they differ in the arguments they raise in support of their prayer:<sup>[20]</sup>

1. Metrobank posits that it should be absolved because it had exercised absolute diligence in verifying the genuineness of the subject checks. Metrobank argues that the RTC erred in holding it negligent on its failure to ascertain that only four (4) out of the 11 subject checks were stamped with Bankcom's express guarantees. Metrobank claims that while Section 17 of the PCHC Rules and Regulations does require all checks cleared through the PCHC to contain the collecting bank's express guarantees, the same provision precludes it, as a drawee bank, to return any checks presented to it for payment just because the same does not contain such express guarantees "*for as long as there is evidence appearing on the cheque itself that the same had been deposited with the [collecting] [b]ank e.g., PCHC machine sprayed tracer/ID band.*" In this regard, Metrobank points out that all the subject checks had been stamped in their dorsal portion with PCHC's tracer ID for Bankcom.

Metrobank submits that, under the circumstances, it should be Bankcom-as the last indorser of the subject checks-that should bear the loss and be held solely liable to JMC.

2. Bankcom, on the other hand, argues that it should be absolved because it was never a party to the wrongful encashment of the subject checks. It claims that Account No. 0015-32987-7 does not exist in its system and, therefore, denies that the subject checks were ever deposited with it.

Bankcom proffers the view that it is JMC that should bear the loss of the subject checks. Bankcom argues that it was JMC's faulty accounting procedures which led to the subject checks being stolen and misappropriated.

### **Our Ruling**

The consolidated appeals must be denied as neither Metrobank nor Bankcom are entitled to absolution.

Be that as it may, there is a need to modify the decision of the CA and the RTC with respect to the *manner* by which Metrobank and Bankcom are held liable under the