

## SECOND DIVISION

[ G.R. No. 227005, June 19, 2017 ]

**BDO UNIBANK, INC., PETITIONER, VS. ENGR. SELWYN LAO,  
DOING BUSINESS UNDER THE NAME AND STYLE "SELWYN F.  
LAO CONSTRUCTION" AND "WING AN CONSTRUCTION AND  
DEVELOPMENT CORPORATION" AND INTERNATIONAL  
EXCHANGE BANK (NOW UNION BANK OF THE  
PHILIPPINES),RESPONDENTS.**

### DECISION

#### MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the October 14, 2015 Decision<sup>[1]</sup> and the September 5, 2016 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 100351, which affirmed, with modification, the July 9, 2012 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 55, Manila (RTC) in Civil Case No. 99-93068, a case for collection of sum of money.

#### *The Antecedents*

On March 9, 1999, respondent Engineer Selwyn S. Lao (*Lao*) filed before the RTC a complaint for collection of sum of money against Equitable Banking Corporation, now petitioner Banco de Oro Unibank (*BDO*), Everlink Pacific Ventures, Inc. (*Everlink*), and Wu Hsieh a.k.a. George Wu (*Wu*).

In his complaint, Lao alleged that he was doing business under the name and style of "Selwyn Lao Construction"; that he was a majority stockholder of Wing An Construction and Development Corporation (*Wing An*); that he entered into a transaction with Everlink, through its authorized representative Wu, under which, Everlink would supply him with "HCG sanitary wares"; and that for the down payment, he issued two (2) Equitable crossed checks payable to Everlink: Check No. 0127-242249<sup>[4]</sup> and Check No. 0127-242250,<sup>[5]</sup> in the amounts of P273,300.00 and P336,500.00, respectively.

Lao further averred that when the checks were encashed, he contacted Everlink for the immediate delivery of the sanitary wares, but the latter failed to perform its obligation. Later, Lao learned that the checks were deposited in two different bank accounts at respondent International Exchange Bank, now respondent Union Bank of the Philippines (*Union Bank*). He was later informed that the two bank accounts belonged to Wu and a company named New Wave Plastic (*New Wave*), represented by a certain Willy Antiporda (*Antiporda*). Consequently, Lao was prompted to file a complaint against Everlink and Wu for their failure to comply with their obligation and against BDO for allowing the encashment of the two (2) checks. He later withdrew his complaint against Everlink as the corporation had ceased existing.

In its answer, BDO asserted that it had no obligation to ascertain the owner of the account/s to which the checks were deposited because the instruction to deposit the said checks to the payee's account only was directed to the payee and the collecting bank, which in this case was Union Bank; that as the drawee bank, its obligations consist in examining the genuineness of the signatures appearing on the checks, and paying the same if there were sufficient funds in the account under which the checks were drawn; and that the subject checks were properly negotiated and paid in accordance with the instruction of Lao in crossing them as they were deposited to the account of the payee Everlink with Union Bank, which then presented them for payment with BDO.

On August 24, 2001, Lao filed an Amended Complaint, wherein he impleaded Union Bank as additional defendant for allowing the deposit of the crossed checks in two bank accounts other than the payee's, in violation of its obligation to deposit the same only to the payee's account.

In its answer, Union Bank argued that Check No. 0127-242249 was deposited in the account of Everlink; that Check No. 0127-242250 was validly negotiated by Everlink to New Wave; that Check No. 0127-242250 was presented for payment to BDO, and the proceeds thereof were credited to New Wave's account; that it was under no obligation to deposit the checks only in the account of Everlink because there was nothing on the checks which would indicate such restriction; and that a crossed check continues to be negotiable, the only limitation being that it should be presented for payment by a bank.

During trial, BDO presented as its witnesses Elizabeth P. Tinimbang (*Tinimbang*) and Atty. Carlos Buenaventura (*Atty. Buenaventura*).

Tinimbang testified that Everlink was the payee of the two (2) crossed checks issued by their client, Wing An; that the checks were deposited with Union Bank, which presented them to BDO for payment. She further narrated that after the checks were cleared and that the drawer's signatures on the checks were determined to be genuine, that there was sufficient fund to cover the amounts of the checks, and that there was no order to stop payment, the checks were paid by BDO. Tinimbang continued that sometime in July 1998, BDO received a letter from Wing An stating that the amounts of the checks were not credited to Everlink's account. This prompted BDO to write a letter to Union Bank demanding the latter to refund the amounts of the checks. In a letter-reply, Union Bank claimed that the checks were deposited in the account of Everlink.

Atty. Buenaventura claimed that BDO gave credence to Union Bank's representation that the checks were indeed credited to the account of Everlink. He stated that BDO's only obligations under the circumstances were to ascertain the genuineness of the checks, to determine if the account was sufficiently funded and to credit the proceeds to the collecting bank. On cross-examination, Atty. Buenaventura clarified that Union Bank endorsed the crossed checks as could be seen on the dorsal portion of the subject checks. According to him, such endorsement meant that the lack of prior endorsement was guaranteed by Union Bank.

For its part, Union Bank presented as its witness Jojina Lourdes C. Vega (*Vega*), its Branch Business Manager. Vega testified that the transaction history of Everlink's account with Union Bank and the notation at the back of the check indicating

Everlink's Account No. (005030000925) revealed that the proceeds of Check No. 0127-242249 were duly credited to Everlink's account on September 22, 1997. As regards Check No. 0127-242250, Vega clarified that the proceeds of the same were credited to New Wave's account. She explained that New Wave was a valued client of Union Bank. As a form of accommodation extended to valued clients, Union Bank would request the signing of a second endorsement agreement because the payee was not the same as the account holder. In this case, Antiporda executed a Deed of Undertaking (Second Endorsed Checks) wherein he assumed the responsibilities for the correctness, genuineness, and validity of the subject checks.

### *The RTC Ruling*

In its Decision, dated July 9, 2012, the RTC absolved BDO from any liability, but ordered Union Bank to pay Lao the amount of P336,500.00, representing the value of Check No. 0127-242250; P50,000.00 as moral damages; P100,000.00 as exemplary damages; and P50,000.00 as attorney's fees.

The RTC observed that there was nothing irregular with the transaction of Check No. 0127-242249 because the same was deposited in Everlink's account with Union Bank. It, however, found that Check No. 0127-242250 was irregularly deposited and encashed because it was not issued for the account of Everlink, the payee, but for the account of New Wave. The trial court noted further that Check No. 0127-242250 was not even endorsed by Everlink to New Wave. Thus, it opined that Union Bank was negligent in allowing the deposit and encashment of the said check without proper endorsement. The RTC wrote that considering that the subject check was a crossed check, Union Bank failed to take reasonable steps in order to determine the validity of the representations made by Antiporda. In the end, it adjudged that BDO could not be held liable because of Union Bank's warranty when it stamped on the check that "all prior endorsement and/or lack of endorsement guaranteed." The dispositive portion of the decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered in **FAVOR** of the plaintiff Engr. Selwyn F. Lao and **AGAINST** the defendant International Exchange Bank (now Union Bank) ordering the latter to pay the former the following:

1. The amount of Three Hundred Thirty Six Thousand Five Hundred Pesos (P336,500.00) representing the Equitable Bank Check No. 0127-242250;
2. The amount of Fifty Thousand Pesos (P50,000.00) representing moral damages;
3. The amount of One Hundred Thousand Pesos (P100,000.00) representing exemplary damages; and,
4. The amount of Fifty Thousand Pesos (P50,000.00) as attorney's fees.

The Complaints against defendants Equitable Banking Corporation (now Banco de Oro) and Wu Shu Chien a.k.a. George Wu are hereby ordered **DISMISSED**.

Costs against the defendant International and Exchange Bank (now Union Bank).

SO ORDERED.<sup>[6]</sup>

Aggrieved, Union Bank elevated an appeal to the CA.<sup>[7]</sup>

### *The CA Ruling*

In its assailed Decision, dated October 14, 2015, the CA affirmed, with modification, the ruling of the RTC. It ordered BDO to pay Lao the amount of P336,500.00, with legal interest from the time of filing of the complaint until its full satisfaction. The appellate court further directed Union Bank to reimburse BDO the aforementioned amount. It concurred with the RTC that Union Bank was liable because of its negligence and its guarantee on the validity of all prior endorsements or lack of it.

With regard to BDO's liability, the CA explained that it violated its duty to charge to the drawer's account only those authorized by the latter when it paid the value of Check No. 0127-242250. Thus, it held that BDO was liable for the amount charged to the drawer's account. The *fallo* reads:

**FOR THESE REASONS**, the appeal is **PARTLY GRANTED**. The July 9, 2012 Decision of the Regional Trial Court of Manila, Branch 55 is **AFFIRMED** with **MODIFICATIONS** that Equitable Bank is ordered to pay Selwyn Lao the amount corresponding to Check No. 0127-242250, i.e., P336,500.00, with legal interest from the time of filing of the complaint until the amount is fully paid. International Exchange Bank (now Union Bank of the Philippines) is ordered to reimburse Equitable Bank the abovementioned amount. The award of damages and attorney's fees is **DELETED**. The rest of the Decision stands.

SO ORDERED.<sup>[8]</sup>

On November 5, 2012, BDO filed its Motion for Partial Reconsideration. It argued that neither Lao nor Union Bank appealed the dismissal of the complaint against it, thus, the RTC decision had already attained finality as far as it was concerned. It also prayed that Lao should be allowed to recover directly from Union Bank.

In its assailed Resolution, dated September 6, 2016, the CA denied BDO's Motion for Partial Reconsideration. It ratiocinated that in *Bank of America, NT & SA v. Associated Citizens Bank*,<sup>[9]</sup> (*Bank of America*) the drawee bank was adjudged liable for the amount charged to the drawer's account, while the collecting bank was ordered to reimburse the drawee bank whatever amount the latter was made to pay.

Hence, this petition anchored on the following:

## **GROUND**

### **I.**

**ISSUES NOT RAISED BY THE PARTIES ON APPEAL CANNOT BE**

**REVIEWED NOR RULED UPON BY THE APPELLATE COURT.**

**II.**

**A COLLECTING BANK ASSUMES RESPONSIBILITY FOR A CROSSED CHECK AS A GENERAL ENDORSER IN ACCORDANCE WITH SECTION 66 OF THE NEGOTIABLE INSTRUMENTS LAW.**

**III.**

**THE PARTY WHICH DID NOT EXERCISE THE REQUIRED DILIGENCE IS THE CAUSE OF THE LOSS AND BEARS THE DAMAGES.<sup>[10]</sup>**

BDO argued that the CA's order for it to pay Lao was erroneous as the RTC had already adjudged with finality that it was not liable. It posited that the appellate court could not resolve issues not raised on appeal by both parties thereto. BDO pointed out that it was not a party in the appeal before the CA. It further stressed that neither Lao nor Union Bank assailed the RTC decision with respect to the dismissal of the complaint against it during the appeal before the CA, and even on motion for reconsideration before the RTC. Thus, for failure to appeal therefrom, the RTC decision had already attained finality as to BDO.

BDO further averred that Union Bank, as the collecting bank and last endorser, must suffer the loss because it had the duty to ascertain the genuineness of all prior endorsement. It asserted that as the drawee bank, it could not be held liable because it merely relied on Union Bank's express guarantee. It added that the proximate cause of the loss suffered by Lao was the negligence of Union Bank when it allowed the deposit of the crossed check intended for Everlink to New Wave's account.

In his Comment,<sup>[11]</sup> dated January 26, 2017, Lao asserted that the CA did not commit any error when it resolved the issue on the liability of BDO even if it was not raised on appeal. He was of the view that the said issue was inextricably intertwined with the principal issue. Lao stated that the CA correctly adjudged BDO liable, without prejudice to its right to seek reimbursement from Union Bank, as it was the correct sequence in the enforcement of payment in cases where the collecting bank allowed a crossed check to be deposited in the account of a person other than the payee.

Union Bank did not file any comment on BDO's petition.

**The Court's Ruling**

The petition is meritorious.

Ordinarily, this Court would have concurred with the CA as regards the applicability of *Bank of America*. There is, however, a peculiar circumstance which would prevent the application of *Bank of America* in the present case.

*Sequence of Recovery in cases of unauthorized payment of checks*