

FIRST DIVISION

[G.R. NO. 136202, January 25, 2007]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COURT OF APPEALS, ANNABELLE A. SALAZAR, AND JULIO R. TEMPLONUEVO, RESPONDENTS.

DECISION

AZCUNA, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the Decision^[1] dated April 3, 1998, and the Resolution^[2] dated November 9, 1998, of the Court of Appeals in CA-G.R. CV No. 42241.

The facts^[3] are as follows:

A.A. Salazar Construction and Engineering Services filed an action for a sum of money with damages against herein petitioner Bank of the Philippine Islands (BPI) on December 5, 1991 before Branch 156 of the Regional Trial Court (RTC) of Pasig City. The complaint was later amended by substituting the name of Annabelle A. Salazar as the real party in interest in place of A.A. Salazar Construction and Engineering Services. Private respondent Salazar prayed for the recovery of the amount of Two Hundred Sixty-Seven Thousand, Seven Hundred Seven Pesos and Seventy Centavos (P267,707.70) debited by petitioner BPI from her account. She likewise prayed for damages and attorney's fees.

Petitioner BPI, in its answer, alleged that on August 31, 1991, Julio R. Templonuevo, third-party defendant and herein also a private respondent, demanded from the former payment of the amount of Two Hundred Sixty-Seven Thousand, Six Hundred Ninety-Two Pesos and Fifty Centavos (P267,692.50) representing the aggregate value of three (3) checks, which were allegedly payable to him, but which were deposited with the petitioner bank to private respondent Salazar's account (Account No. 0203-1187-67) without his knowledge and corresponding endorsement.

Accepting that Templonuevo's claim was a valid one, petitioner BPI froze Account No. 0201-0588-48 of A.A. Salazar and Construction and Engineering Services, instead of Account No. 0203-1187-67 where the checks were deposited, since this account was already closed by private respondent Salazar or had an insufficient balance.

Private respondent Salazar was advised to settle the matter with Templonuevo but they did not arrive at any settlement. As it appeared that private respondent Salazar was not entitled to the funds represented by the checks which were deposited and accepted for deposit, petitioner BPI decided to debit the amount of P267,707.70 from her Account No. 0201-0588-48 and the sum of P267,692.50 was paid to Templonuevo by means of a cashier's check. The difference between the value of the

checks (P267,692.50) and the amount actually debited from her account (P267,707.70) represented bank charges in connection with the issuance of a cashier's check to Templonuevo.

In the answer to the third-party complaint, private respondent Templonuevo admitted the payment to him of P267,692.50 and argued that said payment was to correct the malicious deposit made by private respondent Salazar to her private account, and that petitioner bank's negligence and tolerance regarding the matter was violative of the primary and ordinary rules of banking. He likewise contended that the debiting or taking of the reimbursed amount from the account of private respondent Salazar by petitioner BPI was a matter exclusively between said parties and may be pursuant to banking rules and regulations, but did not in any way affect him. The debiting from another account of private respondent Salazar, considering that her other account was effectively closed, was not his concern.

After trial, the RTC rendered a decision, the dispositive portion of which reads thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [private respondent Salazar] and against the defendant [petitioner BPI] and ordering the latter to pay as follows:

1. The amount of P267,707.70 with 12% interest thereon from September 16, 1991 until the said amount is fully paid;
2. The amount of P30,000.00 as and for actual damages;
3. The amount of P50,000.00 as and for moral damages;
4. The amount of P50,000.00 as and for exemplary damages;
5. The amount of P30,000.00 as and for attorney's fees; and
6. Costs of suit.

The counterclaim is hereby ordered DISMISSED for lack of factual basis.

The third-party complaint [filed by petitioner] is hereby likewise ordered DISMISSED for lack of merit.

Third-party defendant's [i.e., private respondent Templonuevo's] counterclaim is hereby likewise DISMISSED for lack of factual basis.

SO ORDERED.^[4]

On appeal, the Court of Appeals (CA) affirmed the decision of the RTC and held that respondent Salazar was entitled to the proceeds of the three (3) checks notwithstanding the lack of endorsement thereon by the payee. The CA concluded that Salazar and Templonuevo had previously agreed that the checks payable to JRT Construction and Trading^[5] actually belonged to Salazar and would be deposited to her account, with petitioner acquiescing to the arrangement.^[6]

Petitioner therefore filed this petition on these grounds:

I.

The Court of Appeals committed reversible error in misinterpreting Section 49 of the Negotiable Instruments Law and Section 3 (r and s) of Rule 131 of the New Rules on Evidence.

II.

The Court of Appeals committed reversible error in NOT applying the provisions of Articles 22, 1278 and 1290 of the Civil Code in favor of BPI.

III.

The Court of Appeals committed a reversible error in holding, based on a misapprehension of facts, that the account from which BPI debited the amount of P267,707.70 belonged to a corporation with a separate and distinct personality.

IV.

The Court of Appeals committed a reversible error in holding, based entirely on speculations, surmises or conjectures, that there was an agreement between SALAZAR and TEMPLONUEVO that checks payable to TEMPLONUEVO may be deposited by SALAZAR to her personal account and that BPI was privy to this agreement.

V.

The Court of Appeals committed reversible error in holding, based entirely on speculation, surmises or conjectures, that SALAZAR suffered great damage and prejudice and that her business standing was eroded.

VI.

The Court of Appeals erred in affirming instead of reversing the decision of the lower court against BPI and dismissing SALAZAR's complaint.

VII.

The Honorable Court erred in affirming the decision of the lower court dismissing the third-party complaint of BPI.^[7]

The issues center on the propriety of the deductions made by petitioner from private respondent Salazar's account. Stated otherwise, does a collecting bank, over the objections of its depositor, have the authority to withdraw unilaterally from such depositor's account the amount it had previously paid upon certain unendorsed order instruments deposited by the depositor to another account that she later closed?

Petitioner argues thus:

1. There is no presumption in law that a check payable to order, when found in the possession of a person who is neither a payee nor the indorsee thereof, has been lawfully transferred for value. Hence, the CA should not have presumed that Salazar was a transferee for value within the contemplation of Section 49 of the Negotiable Instruments Law,^[8] as the latter applies only to a holder defined under Section 191 of the same.^[9]
2. Salazar failed to adduce sufficient evidence to prove that her possession of the three checks was lawful despite her allegations that these checks were deposited pursuant to a prior internal arrangement with Templonuevo and that petitioner was privy to the arrangement.

3. The CA should have applied the Civil Code provisions on legal compensation because in deducting the subject amount from Salazar's account, petitioner was merely rectifying the undue payment it made upon the checks and exercising its prerogative to alter or modify an erroneous credit entry in the regular course of its business.
4. The debit of the amount from the account of A.A. Salazar Construction and Engineering Services was proper even though the value of the checks had been originally credited to the personal account of Salazar because A.A. Salazar Construction and Engineering Services, an unincorporated single proprietorship, had no separate and distinct personality from Salazar.
5. Assuming the deduction from Salazar's account was improper, the CA should not have dismissed petitioner's third-party complaint against Templonuevo because the latter would have the legal duty to return to petitioner the proceeds of the checks which he previously received from it.
6. There was no factual basis for the award of damages to Salazar.

The petition is partly meritorious.

First, the issue raised by petitioner requires an inquiry into the factual findings made by the CA. The CA's conclusion that the deductions from the bank account of A.A. Salazar Construction and Engineering Services were improper stemmed from its finding that there was no ineffective payment to Salazar which would call for the exercise of petitioner's right to set off against the former's bank deposits. This finding, in turn, was drawn from the pleadings of the parties, the evidence adduced during trial and upon the admissions and stipulations of fact made during the pre-trial, most significantly the following:

(a) That Salazar previously had in her possession the following checks:

- (1) Solid Bank Check No. CB766556 dated January 30, 1990 in the amount of P57,712.50;
- (2) Solid Bank Check No. CB898978 dated July 31, 1990 in the amount of P55,180.00; and,
- (3) Equitable Banking Corporation Check No. 32380638 dated August 28, 1990 for the amount of P154,800.00;

(b) That these checks which had an aggregate amount of P267,692.50 were payable to the order of JRT Construction and Trading, the name and style under which Templonuevo does business;

(c) That despite the lack of endorsement of the designated payee upon such checks, Salazar was able to deposit the checks in her personal savings account with petitioner and encash the same;

(d) That petitioner accepted and paid the checks on three (3) separate occasions over a span of eight months in 1990; and

(e) That Templonuevo only protested the purportedly unauthorized

encashment of the checks after the lapse of one year from the date of the last check.^[10]

Petitioner concedes that when it credited the value of the checks to the account of private respondent Salazar, it made a mistake because it failed to notice the lack of endorsement thereon by the designated payee. The CA, however, did not lend credence to this claim and concluded that petitioner's actions were deliberate, in view of its admission that the "mistake" was committed three times on three separate occasions, indicating acquiescence to the internal arrangement between Salazar and Templonuevo. The CA explained thus:

It was quite apparent that the three checks which appellee Salazar deposited were not indorsed. Three times she deposited them to her account and three times the amounts borne by these checks were credited to the same. And in those separate occasions, the bank did not return the checks to her so that she could have them indorsed. Neither did the bank question her as to why she was depositing the checks to her account considering that she was not the payee thereof, thus allowing us to come to the conclusion that defendant-appellant BPI was fully aware that the proceeds of the three checks belong to appellee.

For if the bank was not privy to the agreement between Salazar and Templonuevo, it is most unlikely that appellant BPI (or any bank for that matter) would have accepted the checks for deposit on three separate times nary any question. Banks are most finicky over accepting checks for deposit without the corresponding indorsement by their payee. In fact, they hesitate to accept indorsed checks for deposit if the depositor is not one they know very well.^[11]

The CA likewise sustained Salazar's position that she received the checks from Templonuevo pursuant to an internal arrangement between them, ratiocinating as follows:

If there was indeed no arrangement between Templonuevo and the plaintiff over the three questioned checks, it baffles us why it was only on August 31, 1991 or more than a year after the third and last check was deposited that he demanded for the refund of the total amount of P267,692.50.

A prudent man knowing that payment is due him would have demanded payment by his debtor from the moment the same became due and demandable. More so if the sum involved runs in hundreds of thousand of pesos. By and large, every person, at the very moment he learns that he was deprived of a thing which rightfully belongs to him, would have created a big fuss. He would not have waited for a year within which to do so. It is most inconceivable that Templonuevo did not do this.^[12]

Generally, only questions of law may be raised in an appeal by certiorari under Rule 45 of the Rules of Court.^[13] Factual findings of the CA are entitled to great weight and respect, especially when the CA affirms the factual findings of the trial court.^[14] Such questions on whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on