

FIRST DIVISION

[G.R. No. 132403 & 132419, September 28, 2007]

HI-CEMENT CORPORATION, PETITIONER, VS. INSULAR BANK OF ASIA AND AMERICA (LATER PHILIPPINE COMMERCIAL INTERNATIONAL BANK AND NOW, EQUITABLE-PCI BANK) RESPONDENT.

[G.R. NO. 132419. SEPTEMBER 28, 2007]

E.T. HENRY & CO. AND SPOUSES ENRIQUE TAN AND LILIA TAN, PETITIONERS, VS. INSULAR BANK OF ASIA AND AMERICA (LATER PHILIPPINE COMMERCIAL INTERNATIONAL BANK AND NOW, EQUITABLE-PCI BANK), RESPONDENT.

D E C I S I O N

CORONA, J.:

At bar are consolidated petitions assailing the decision of the Court of Appeals (CA) dated January 21, 1998 in CA-G.R. CV No. 31600 entitled *Insular Bank of Asia and America [now Philippine Commercial International Bank/(PCIB)] v. E.T. Henry & Co., et al.*^[1]

The antecedent facts follow.

Petitioners Enrique Tan and Lilia Tan (spouses Tan) were the controlling stockholders of E.T. Henry & Co., Inc. (E.T. Henry), a company engaged in the business of processing and distributing bunker fuel.^[2] Among E.T. Henry's customers were petitioner Hi-Cement Corporation (Hi-Cement),^[3] Riverside Mills Corporation (Riverside) and Kanebo Cosmetics Philippines, Inc. (Kanebo). For their purchases, these corporations issued postdated checks to E.T. Henry.

Sometime in 1979, respondent Insular Bank of Asia and America (later PCIB and now Equitable PCI-Bank) granted E.T. Henry a credit facility known as "Purchase of Short Term Receivables." Through this arrangement, E.T. Henry was able to encash, with pre-deducted interest, the postdated checks of its clients. In other words, E.T. Henry and respondent were into "re-discounting" of checks.

For every transaction, respondent required E.T. Henry to execute a promissory note and a deed of assignment bearing the conformity of the client to the re-discounting.^[4]

From 1979 to 1981, E.T. Henry was able to re-discount its clients' checks (with deeds of assignment) with respondent. However, in February 1981, 20 checks^[5] of Hi-Cement (which were crossed and which bore the restriction "deposit to payee's

account only”) were dishonored. So were the checks of Riverside and Kanebo.^[6]

Respondent filed a complaint for sum of money^[7] in the then Court of First Instance of Rizal^[8] against E.T. Henry, the spouses Tan, Hi-Cement (including its general manager^[9] and its treasurer ^[10] as signatories of the postdated crossed checks), Riverside and Kanebo.^[11]

In its complaint, respondent claimed that, due to the dishonor of the checks, it suffered actual damages equivalent to their value, exclusive of accrued and accruing interests, charges and penalties such as attorney’s fees and expenses of litigation, as follows:

1. Riverside Mills Corporation	P
	115,312.50
2. Kanebo Cosmetics	5,811,750.00
Philippines, Inc.	
3. Hi-Cement Corporation	10,000,000.00

Respondent also sought to collect from E.T. Henry and the spouses Tan other loan obligations (amounting to P1,661,266.51 and P4,900,805, respectively) as deficiencies resulting from the foreclosure of the real estate mortgage on E.T. Henry's property in Sucat, Parañaque.^[12]

Hi-Cement filed its answer alleging, among others, that: (1) its general manager and treasurer were not authorized to issue the postdated crossed checks in E.T. Henry's favor; (2) the deed of assignment purportedly executed by Hi-Cement assigning them to respondent only bore the conformity of its treasurer and (3) respondent was not a holder in due course as it should not have discounted them for being “crossed checks.”^[13]

In their answer (with counterclaim against respondent and cross-claims against Hi-Cement, Riverside and Kanebo),^[14] E.T. Henry and the spouses Tan claimed that: (1) the drawers of the postdated checks failed to honor them due to the adverse economic conditions prevailing at the time respondent presented them for payment; (2) the extra-judicial sale of the mortgaged Sucat property was void due to gross inadequacy of the bid price^[15] and (3) their loans were subjected to a usurious interest rate of 21% p.a.

For their part, Riverside and Kanebo sought the dismissal of the case against them, arguing that they were not privy to the re-discounting arrangement between respondent and E.T. Henry.

On June 30, 1989, the trial court rendered a decision which read:

WHEREFORE, in view of the foregoing, and as a consequence of the preponderance of evidence, this Court hereby renders judgment in favor of [respondent] and against [E.T. Henry, spouses Tan, Hi-Cement, Riverside and Kanebo], to wit:

1. Ordering [E.T. Henry, spouses Tan, Hi-Cement, Riverside and Kanebo], jointly and severally, to pay [respondent] damages

represented by the face value of the postdated checks as follows:

(a) Riverside Mills Corporation	P 115,312.50
(b) Kanebo Cosmetics Philippines, Inc.	5,811,750.00
(c) Hi-Cement Corporation	10,000,000.00

plus interests, services, charges and penalties until fully paid;

2. Ordering [E.T. Henry] and/or [spouses Tan] to pay to [respondent] the sum of P4,900,805.00 plus accrued interests, charges, penalties until fully paid;
3. Ordering [E.T. Henry and spouses Tan] to pay [respondent] the sum of P1,661,266.51 plus interests, charges, and penalties until fully paid;
4. Ordering [E.T. Henry, spouses Tan, Hi-Cement, Riverside and Kanebo] to pay [respondent] [a]ttorney's fees and expenses of litigation in the amount of P200,000.00 and pay the cost of this suit.^[16]

SO ORDERED.^[17]

Only petitioners appealed the decision to the CA which affirmed it *in toto*. Hence, these petitions.

In G.R. No. 132403, petitioner Hi-Cement disclaims liability for the postdated crossed checks because (1) it did not authorize their issuance; (2) respondent was not a holder in due course and (3) there was no basis for the lower court's holding that it was solidarily liable for the face value of Riverside's and Kanebo's checks.^[18]

In G.R. No. 132419, on the other hand, E.T. Henry and the spouses Tan essentially contend that the lower courts erred in: (1) applying the doctrine of piercing the veil of the corporate entity to make the spouses Tan solidarily liable with E.T. Henry; (2) not ruling on their cross-claims and counterclaims, and (3) not declaring the foreclosure of E.T. Henry's Sucat property as void.^[19]

(A) G.R. 132403

As a rule, an appeal by certiorari under Rule 45 of the Rules of Court is limited to review of errors of law.^[20] The factual findings of the trial court, specially when affirmed by the appellate court, are generally binding on us unless there was a misapprehension of facts or when the inference drawn from the facts was manifestly mistaken.^[21] This case falls within the exception.

**AUTHORITY OF HI-CEMENT'S
GENERAL MANAGER AND
TREASURER TO ISSUE THE
POSTDATED CROSSED CHECKS**

Both the trial court and the CA concluded that Hi-Cement authorized its general manager and treasurer to issue the subject postdated crossed checks. They both held that Hi-Cement was already estopped from denying such authority since it never objected to the signatories' issuance of all previous checks to E.T. Henry which the latter, in turn, was able to re-discount with respondent.

We agree with the lower courts that both the general manager and treasurer of Hi-Cement were authorized to issue the subjects checks. However, notwithstanding such fact, respondent could not be considered a holder in due course.

RESPONDENT BANK NOT A HOLDER IN DUE COURSE

The Negotiable Instruments Law (NIL), specifically Section 191,^[22] provides:

“Holder” means the payee or indorsee of a bill or a note, or the person who is in possession of it, or the bearer thereof.

On the other hand, Section 52^[23] states:

A holder in due course is a holder who has taken the instrument under the following conditions: (a) it is complete and regular on its face; (b) he became the holder of it before it was overdue, and without notice that it has previously been dishonored, if such was the fact; (c) he took it in good faith and for value and (d) at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Absent any of the elements set forth in Section 52, the holder is not a holder in due course. In the case at bar, the last two requirements were not met.

In *Bataan Cigar and Cigarette Factory, Inc. (BCCF) v. CA*,^[24] we held that the holder of crossed checks was not a holder in due course. There, the drawer (BCCF) issued postdated crossed checks in favor of one of its suppliers (George King) who promised to deliver bales of tobacco leaf but failed. George King, however, sold the checks on discount to State Investment House, Inc. (SIHI) and upon the latter's presentment to the drawee bank, BCCF ordered a “stop payment.” Thereafter, SIHI filed a collection case against it. In ruling that SIHI was not a holder in due course, we explained:

In order to preserve the credit worthiness of checks, jurisprudence has pronounced that crossing of a check should have the following effects: (a) the check may *not* be encashed but only deposited in the bank; (b) the check may be negotiated *only once* – to one who has an account with a bank [and]; (c) the act of crossing the checks serves as *warning* to the holder that the check has been issued for a *definite purpose* so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is *not a holder in due course*.

Likewise, in *Atrium Management Corporation v. CA*,^[25] where E.T. Henry, Hi-Cement and its treasurer^[26] again engaged in a legal scuffle over four postdated crossed checks, we held that Atrium (with which the checks were re-discounted) was not a

holder in due course. In that case, E.T. Henry was the payee of four Hi-Cement postdated checks which it endorsed to Atrium. When the latter presented the crossed checks to the drawee bank, Hi-Cement stopped payment.^[27] We held that Atrium was not a holder in due course:

In the instant case, the checks were crossed and specifically indorsed for deposit to payee's account only. From the beginning, Atrium was aware of the fact that the checks were all for deposit only to payee's account, meaning E.T. Henry. Clearly, then, Atrium could not be considered a holder in due course.

In the case at bar, respondent's claim that it acted in good faith when it accepted and discounted Hi-Cement's postdated crossed checks from E.T. Henry (as payee therein) fails to convince us. Good faith becomes inconsequential amidst proof of respondent's grossly negligent conduct in dealing with the subject checks.

Respondent was all too aware that subject checks were crossed and bore restrictions that they were for deposit to payee's account only; hence, they could not be further negotiated to it. The records likewise reveal that respondent completely disregarded a telling sign of irregularity in the re-discounting of the checks when the general manager did not acquiesce to it as only the treasurer's signature appeared on the deed of assignment. As a banking institution, it behooved respondent to act with extraordinary diligence in every transaction.^[28] Its business is impressed with public interest, thus, it was not expected to be careless and negligent, specially so where the checks it dealt with were crossed. In *Bataan Cigar and Cigarette Factory, Inc.*,^[29] we ruled:

It is then settled that crossing of checks should put the holder on inquiry and upon him devolves the duty to ascertain the indorser's title to the check or the nature of his possession. Failing in this respect, the holder is declared guilty of gross negligence amounting to legal absence of good faith...and as such[,] the consensus of authority is to the effect that the holder of the check is not a holder in due course. (emphasis supplied)

The next query is whether Hi-Cement can still be made liable for the checks. We answer in the negative.

In *State Investment House, Inc. (SIHI) v. Intermediate Appellate Court*,^[30] SIHI re-discounted crossed checks and was declared not a holder in due course. As a result, when it presented the checks for deposit, we deemed that its presentment to the drawee bank was not proper, hence, the liability did not attach to the drawer of the checks. We ruled that:

The three subject checks in the case at bar had been crossed...which could only mean that the drawer had intended the same for deposit only by the rightful person, i.e., the payee named therein. Apparently, it was not the payee who presented the same for payment and therefore, there was no proper presentment, and the liability did not attach to the drawer. Thus, in the absence of due presentment, the drawer did not become liable. ^[31]