

## FIRST DIVISION

[ G.R. NO. 154469, December 06, 2006 ]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.  
RENATO D. CABILZO, RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari*, filed by petitioner Metropolitan Bank and Trust Company (Metrobank) seeking to reverse and set aside the Decision<sup>[1]</sup> of the Court of Appeals dated 8 March 2002 and its Resolution dated 26 July 2002 affirming the Decision of the Regional Trial Court (RTC) of Manila, Branch 13 dated 4 September 1998. The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the assailed decision dated September 4, 1998 is AFFIRMED with modifications (sic) that the awards for exemplary damages and attorney's fees are hereby deleted.

Petitioner Metrobank is a banking institution duly organized and existing as such under Philippine laws.<sup>[2]</sup>

Respondent Renato D. Cabilzo (Cabilzo) was one of Metrobank's clients who maintained a current account with Metrobank Pasong Tamo Branch.<sup>[3]</sup>

On 12 November 1994, Cabilzo issued a Metrobank Check No. 985988, payable to "CASH" and postdated on 24 November 1994 in the amount of **One Thousand Pesos (P1,000.00)**. The check was drawn against Cabilzo's Account with Metrobank Pasong Tamo Branch under Current Account No. 618044873-3 and was paid by Cabilzo to a certain Mr. Marquez, as his sales commission.<sup>[4]</sup>

Subsequently, the check was presented to Westmont Bank for payment. Westmont Bank, in turn, indorsed the check to Metrobank for appropriate clearing. After the entries thereon were examined, including the availability of funds and the authenticity of the signature of the drawer, Metrobank cleared the check for encashment in accordance with the Philippine Clearing House Corporation (PCHC) Rules.

On 16 November 1994, Cabilzo's representative was at Metrobank Pasong Tamo Branch to make some transaction when he was asked by a bank personnel if Cabilzo had issued a check in the amount of **P91,000.00** to which the former replied in the negative. On the afternoon of the same date, Cabilzo himself called Metrobank to reiterate that he did not issue a check in the amount of P91,000.00 and requested that the questioned check be returned to him for verification, to which Metrobank complied.<sup>[5]</sup>

Upon receipt of the check, Cabilzo discovered that Metrobank Check No. 985988 which he issued on 12 November 1994 in the amount of **P1,000.00** was altered to **P91,000.00** and the date **24 November 1994** was changed to **14 November 1994**.<sup>[6]</sup>

Hence, Cabilzo demanded that Metrobank re-credit the amount of P91,000.00 to his account. Metrobank, however, refused reasoning that it has to refer the matter first to its Legal Division for appropriate action. Repeated verbal demands followed but Metrobank still failed to re-credit the amount of P91,000.00 to Cabilzo's account.<sup>[7]</sup>

On 30 June 1995, Cabilzo, thru counsel, finally sent a letter-demand<sup>[8]</sup> to Metrobank for the payment of P90,000.00, after deducting the original value of the check in the amount of P1,000.00. Such written demand notwithstanding, Metrobank still failed or refused to comply with its obligation.

Consequently, Cabilzo instituted a civil action for damages against Metrobank before the RTC of Manila, Branch 13. In his Complaint docketed as Civil Case No. 95-75651, *Renato D. Cabilzo v. Metropolitan Bank and Trust Company*, Cabilzo prayed that in addition to his claim for reimbursement, actual and moral damages plus costs of the suit be awarded in his favor.<sup>[9]</sup>

For its part, Metrobank countered that upon the receipt of the said check through the PCHC on 14 November 1994, it examined the genuineness and the authenticity of the drawer's signature appearing thereon and the technical entries on the check including the amount in figures and in words to determine if there were alterations, erasures, superimpositions or intercalations thereon, but none was noted. After verifying the authenticity and propriety of the aforesaid entries, including the indorsement of the collecting bank located at the dorsal side of the check which stated that, "all prior indorsements and lack of indorsement guaranteed," Metrobank cleared the check.<sup>[10]</sup>

Anent thereto, Metrobank claimed that as a collecting bank and the last indorser, Westmont Bank should be held liable for the value of the check. Westmont Bank indorsed the check as the an unqualified indorser, by virtue of which it assumed the liability of a general indorser, and thus, among others, warranted that the instrument is genuine and in all respect what it purports to be.

In addition, Metrobank, in turn, claimed that Cabilzo was partly responsible in leaving spaces on the check, which, made the fraudulent insertion of the amount and figures thereon, possible. On account of his negligence in the preparation and issuance of the check, which according to Metrobank, was the proximate cause of the loss, Cabilzo cannot thereafter claim indemnity by virtue of the doctrine of equitable estoppel.

Thus, Metrobank demanded from Cabilzo, for payment in the amount of P100,000.00 which represents the cost of litigation and attorney's fees, for allegedly bringing a frivolous and baseless suit. <sup>[11]</sup>

On 19 April 1996, Metrobank filed a Third-Party Complaint<sup>[12]</sup> against Westmont

Bank on account of its unqualified indorsement stamped at the dorsal side of the check which the former relied upon in clearing what turned out to be a materially altered check.

Subsequently, a Motion to Dismiss<sup>[13]</sup> the Third-Party Complaint was then filed by Westmont bank because another case involving the same cause of action was pending before a different court. The said case arose from an action for reimbursement filed by Metrobank before the Arbitration Committee of the PCHC against Westmont Bank, and now the subject of a Petition for Review before the RTC of Manila, Branch 19.

In an Order<sup>[14]</sup> dated 4 February 1997, the trial court granted the Motion to Dismiss the Third-Party Complaint on the ground of *litis pendentia*.

On 4 September 1998, the RTC rendered a Decision<sup>[15]</sup> in favor of Cabilzo and thereby ordered Metrobank to pay the sum of P90,000.00, the amount of the check. In stressing the fiduciary nature of the relationship between the bank and its clients and the negligence of the drawee bank in failing to detect an apparent alteration on the check, the trial court ordered for the payment of exemplary damages, attorney's fees and cost of litigation. The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered ordering defendant Metropolitan Bank and Trust Company to pay plaintiff Renato Cabilzo the sum of P90,000 with legal interest of 6 percent per annum from November 16, 1994 until payment is made plus P20,000 attorney's fees, exemplary damages of P50,000, and costs of the suit.<sup>[16]</sup>

Aggrieved, Metrobank appealed the adverse decision to the Court of Appeals reiterating its previous argument that as the last indorser, Westmont Bank shall bear the loss occasioned by the fraudulent alteration of the check. Elaborating, Metrobank maintained that by reason of its unqualified indorsement, Westmont Bank warranted that the check in question is genuine, valid and subsisting and that upon presentment the check shall be accepted according to its tenor.

Even more, Metrobank argued that in clearing the check, it was not remiss in the performance of its duty as the drawee bank, but rather, it exercised the highest degree of diligence in accordance with the generally accepted banking practice. It further insisted that the entries in the check were regular and authentic and alteration could not be determined even upon close examination.

In a Decision<sup>[17]</sup> dated 8 March 2002, the Court of Appeals affirmed with modification the Decision of the court *a quo*, similarly finding Metrobank liable for the amount of the check, without prejudice, however, to the outcome of the case between Metrobank and Westmont Bank which was pending before another tribunal. The decretal portion of the Decision reads:

WHEREFORE, the assailed decision dated September 4, 1998 is AFFIRMED with the modifications (sic) that the awards for exemplary damages and attorney's fees are hereby deleted.<sup>[18]</sup>

Similarly ill-fated was Metrobank's Motion for Reconsideration which was also denied by the appellate court in its Resolution<sup>[19]</sup> issued on 26 July 2002, for lack of merit.

Metrobank now poses before this Court this sole issue:

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING METROBANK, AS DRAWEE BANK, LIABLE FOR THE ALTERATIONS ON THE SUBJECT CHECK BEARING THE AUTHENTIC SIGNATURE OF THE DRAWER THEREOF.

We resolve to deny the petition.

An alteration is said to be material if it changes the effect of the instrument. It means that an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.<sup>[20]</sup> In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instruments Law.

Section 1 of the Negotiable Instruments Law provides:

Section 1. Form of negotiable instruments. - An instrument to be negotiable must conform to the following requirements:

- (a) It must be in writing and signed by the maker or drawer;
- (b) Must contain an unconditional promise or order to pay a sum certain in money;
- (c) Must be payable on demand or at a fixed determinable future time;
- (d) Must be payable to order or to bearer; and
- (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Also pertinent is the following provision in the Negotiable Instrument Law which states:

Section 125. What constitutes material alteration. - Any alteration which changes:

- (a) The date;
- (b) The sum payable, either for principal or interest;
- (c) The time or place of payment;
- (d) The number or the relation of the parties;
- (e) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration.

In the case at bar, the check was altered so that the amount was increased from **P1,000.00** to **P91,000.00** and the date was changed from **24 November 1994** to **14 November 1994**. Apparently, since the entries altered were among those enumerated under Section 1 and 125, namely, the sum of money payable and the date of the check, the instant controversy therefore squarely falls within the purview of material alteration.

Now, having laid the premise that the present petition is a case of material alteration, it is now necessary for us to determine the effect of a materially altered instrument, as well as the rights and obligations of the parties thereunder. The following provision of the Negotiable Instrument Law will shed us some light in threshing out this issue:

Section 124. Alteration of instrument; effect of. – Where a negotiable instrument is materially altered without the assent of all parties liable thereon, **it is avoided**, except as against a party who has himself **made, authorized, and assented to the alteration** and **subsequent indorsers**.

But when the instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration, he may enforce the payment thereof according to its original tenor. (Emphasis ours.)

Indubitably, Cabilzo was not the one who made nor authorized the alteration. Neither did he assent to the alteration by his express or implied acts. There is no showing that he failed to exercise such reasonable degree of diligence required of a prudent man which could have otherwise prevented the loss. As correctly ruled by the appellate court, Cabilzo was never remiss in the preparation and issuance of the check, and there were no indicia of evidence that would prove otherwise. Indeed, Cabilzo placed asterisks before and after the amount in words and figures in order to forewarn the subsequent holders that nothing follows before and after the amount indicated other than the one specified between the asterisks.

The degree of diligence required of a reasonable man in the exercise of his tasks and the performance of his duties has been faithfully complied with by Cabilzo. In fact, he was wary enough that he filled with asterisks the spaces between and after the amounts, not only those stated in words, but also those in numerical figures, in order to prevent any fraudulent insertion, but unfortunately, the check was still successfully altered, indorsed by the collecting bank, and cleared by the drawee bank, and encashed by the perpetrator of the fraud, to the damage and prejudice of Cabilzo.

Verily, Metrobank cannot lightly impute that Cabilzo was negligent and is therefore prevented from asserting his rights under the doctrine of equitable estoppel when the facts on record are bare of evidence to support such conclusion. The doctrine of equitable estoppel states that when one of the two innocent persons, each guiltless of any intentional or moral wrong, must suffer a loss, it must be borne by the one whose erroneous conduct, either by omission or commission, was the cause of injury.<sup>[21]</sup> Metrobank's reliance on this *dictum*, is misplaced. For one, Metrobank's representation that it is an innocent party is flimsy and evidently, misleading. At the same time, Metrobank cannot asseverate that Cabilzo was negligent and this negligence was the proximate cause<sup>[22]</sup> of the loss in the absence of even a scintilla