

SECOND DIVISION

[G.R. No. 139130, November 27, 2002]

RAMON K. ILUSORIO, PETITIONER, VS. HON. COURT OF APPEALS, AND THE MANILA BANKING CORPORATION, RESPONDENTS.

DECISION

QUISUMBING, J.:

This petition for review seeks to reverse the decision^[1] promulgated on January 28, 1999 by the Court of Appeals in CA-G.R. CV No. 47942, affirming the decision of the then Court of First Instance of Rizal, Branch XV (now the Regional Trial Court of Makati, Branch 138) dismissing Civil Case No. 43907, for damages.

The facts as summarized by the Court of Appeals are as follows:

Petitioner is a prominent businessman who, at the time material to this case, was the Managing Director of Multinational Investment Bancorporation and the Chairman and/or President of several other corporations. He was a depositor in good standing of respondent bank, the Manila Banking Corporation, under current Checking Account No. 06-09037-0. As he was then running about 20 corporations, and was going out of the country a number of times, petitioner entrusted to his secretary, Katherine^[2] E. Eugenio, his credit cards and his checkbook with blank checks. It was also Eugenio who verified and reconciled the statements of said checking account.^[3]

Between the dates September 5, 1980 and January 23, 1981, Eugenio was able to encash and deposit to her personal account about seventeen (17) checks drawn against the account of the petitioner at the respondent bank, with an aggregate amount of P119,634.34. Petitioner did not bother to check his statement of account until a business partner apprised him that he saw Eugenio use his credit cards. Petitioner fired Eugenio immediately, and instituted a criminal action against her for estafa thru falsification before the Office of the Provincial Fiscal of Rizal. Private respondent, through an affidavit executed by its employee, Mr. Dante Razon, also lodged a complaint for estafa thru falsification of commercial documents against Eugenio on the basis of petitioner's statement that his signatures in the checks were forged.^[4] Mr. Razon's affidavit states:

That I have examined and scrutinized the following checks in accordance with prescribed verification procedures with utmost care and diligence by comparing the signatures affixed thereat against the specimen signatures of Mr. Ramon K. Ilusorio which we have on file at our said office on such dates,

x x x

That the aforementioned checks were among those issued by Manilabank in favor of its client MR. RAMON K. ILUSORIO,...

That the same were personally encashed by KATHERINE E. ESTEBAN, an executive secretary of MR. RAMON K. ILUSORIO in said Investment Corporation;

That I have met and known her as KATHERINE E. ESTEBAN the attending verifier when she personally encashed the above-mentioned checks at our said office;

That MR. RAMON K. ILUSORIO executed an affidavit expressly disowning his signature appearing on the checks further alleged to have not authorized the issuance and encashment of the same....^[5]

Petitioner then requested the respondent bank to credit back and restore to its account the value of the checks which were wrongfully encashed but respondent bank refused. Hence, petitioner filed the instant case.^[6]

At the trial, petitioner testified on his own behalf, attesting to the truth of the circumstances as narrated above, and how he discovered the alleged forgeries. Several employees of Manila Bank were also called to the witness stand as hostile witnesses. They testified that it is the bank's standard operating procedure that whenever a check is presented for encashment or clearing, the signature on the check is first verified against the specimen signature cards on file with the bank.

Manila Bank also sought the expertise of the National Bureau of Investigation (NBI) in determining the genuineness of the signatures appearing on the checks. However, in a letter dated March 25, 1987, the NBI informed the trial court that they could not conduct the desired examination for the reason that the standard specimens submitted were not sufficient for purposes of rendering a definitive opinion. The NBI then suggested that petitioner be asked to submit seven (7) or more additional standard signatures executed before or about, and immediately after the dates of the questioned checks. Petitioner, however, failed to comply with this request.

After evaluating the evidence on both sides, the court *a quo* rendered judgment on May 12, 1994 with the following dispositive portion:

WHEREFORE, finding no sufficient basis for plaintiff's cause herein against defendant bank, in the light of the foregoing considerations and established facts, this case would have to be, as it is hereby DISMISSED.

Defendant's counterclaim is likewise DISMISSED for lack of sufficient basis.

SO ORDERED.^[7]

Aggrieved, petitioner elevated the case to the Court of Appeals by way of a petition for review but without success. The appellate court held that petitioner's own negligence was the proximate cause of his loss. The appellate court disposed as follows:

WHEREFORE, the judgment appealed from is AFFIRMED. Costs against the appellant.

SO ORDERED.[8]

Before us, petitioner ascribes the following errors to the Court of Appeals:

- A. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT BANK IS ESTOPPED FROM RAISING THE DEFENSE THAT THERE WAS NO FORGERY OF THE SIGNATURES OF THE PETITIONER IN THE CHECK BECAUSE THE RESPONDENT FILED A CRIMINAL COMPLAINT FOR ESTAFA THRU FALSIFICATION OF COMMERCIAL DOCUMENTS AGAINST KATHERINE EUGENIO USING THE AFFIDAVIT OF PETITIONER STATING THAT HIS SIGNATURES WERE FORGED AS PART OF THE AFFIDAVIT-COMPLAINT.[9]
- B. THE COURT OF APPEALS ERRED IN NOT APPLYING SEC. 23, NEGOTIABLE INSTRUMENTS LAW.[10]
- C. THE COURT OF APPEALS ERRED IN NOT HOLDING THE BURDEN OF PROOF IS WITH THE RESPONDENT BANK TO PROVE THE DUE DILIGENCE TO PREVENT DAMAGE, TO THE PETITIONER, AND THAT IT WAS NOT NEGLIGENT IN THE SELECTION AND SUPERVISION OF ITS EMPLOYEES.[11]
- D. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT BANK SHOULD BEAR THE LOSS, AND SHOULD BE MADE TO PAY PETITIONER, WITH RECOURSE AGAINST KATHERINE EUGENIO ESTEBAN.[12]

Essentially the issues in this case are: (1) whether or not petitioner has a cause of action against private respondent; and (2) whether or not private respondent, in filing an estafa case against petitioner's secretary, is barred from raising the defense that the fact of forgery was not established.

Petitioner contends that Manila Bank is liable for damages for its negligence in failing to detect the discrepant checks. He adds that as a general rule a bank which has obtained possession of a check upon an unauthorized or forged endorsement of the payee's signature and which collects the amount of the check from the drawee is liable for the proceeds thereof to the payee. Petitioner invokes the doctrine of estoppel, saying that having itself instituted a forgery case against Eugenio, Manila Bank is now estopped from asserting that the fact of forgery was never proven.

For its part, Manila Bank contends that respondent appellate court did not depart from the accepted and usual course of judicial proceedings, hence there is no reason for the reversal of its ruling. Manila Bank additionally points out that Section 23[13] of the Negotiable Instruments Law is inapplicable, considering that the fact of forgery was never proven. Lastly, the bank negates petitioner's claim of estoppel.[14]

On the *first issue*, we find that petitioner has no cause of action against Manila Bank. To be entitled to damages, petitioner has the burden of proving negligence on the part of the bank for failure to detect the discrepancy in the signatures on the checks. It is incumbent upon petitioner to establish the fact of forgery, *i.e.*, by submitting his specimen signatures and comparing them with those on the questioned checks. Curiously though, petitioner failed to submit additional specimen

signatures as requested by the National Bureau of Investigation from which to draw a conclusive finding regarding forgery. The Court of Appeals found that petitioner, by his own inaction, was precluded from setting up forgery. Said the appellate court:

We cannot fault the court *a quo* for such declaration, considering that the plaintiff's evidence on the alleged forgery is not convincing enough. The burden to prove forgery was upon the plaintiff, which burden he failed to discharge. Aside from his own testimony, the appellant presented no other evidence to prove the fact of forgery. He did not even submit his own specimen signatures, taken on or about the date of the questioned checks, for examination and comparison with those of the subject checks. On the other hand, the appellee presented specimen signature cards of the appellant, taken at various years, namely, in 1976, 1979 and 1981 (Exhibits "1", "2", "3" and "7"), showing variances in the appellant's unquestioned signatures. The evidence further shows that the appellee, as soon as it was informed by the appellant about his questioned signatures, sought to borrow the questioned checks from the appellant for purposes of analysis and examination (Exhibit "9"), but the same was denied by the appellant. It was also the former which sought the assistance of the NBI for an expert analysis of the signatures on the questioned checks, but the same was unsuccessful for lack of sufficient specimen signatures.^[15]

Moreover, petitioner's contention that Manila Bank was remiss in the exercise of its duty as drawee lacks factual basis. Consistently, the CA and the RTC found that Manila Bank employees exercised due diligence in cashing the checks. The bank's employees in the present case did not have a hint as to Eugenio's *modus operandi* because she was a regular customer of the bank, having been designated by petitioner himself to transact in his behalf. According to the appellate court, the employees of the bank exercised due diligence in the performance of their duties. Thus, it found that:

The evidence on both sides indicates that TMBC's employees exercised due diligence before encashing the checks. Its verifiers first verified the drawer's signatures thereon as against his specimen signature cards, and when in doubt, the verifier went further, such as by referring to a more experienced verifier for further verification. In some instances the verifier made a confirmation by calling the depositor by phone. It is only after taking such precautionary measures that the subject checks were given to the teller for payment.

Of course it is possible that the verifiers of TMBC might have made a mistake in failing to detect any forgery -- if indeed there was. However, a mistake is not equivalent to negligence if they were honest mistakes. In the instant case, we believe and so hold that if there were mistakes, the same were not deliberate, since the bank took all the precautions.^[16]

As borne by the records, it was petitioner, not the bank, who was negligent. Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do.^[17] In the present case, it appears that petitioner accorded his secretary unusual degree of trust and unrestricted access to his credit cards, passbooks, check books, bank