

## FIRST DIVISION

[ G.R. No. 112392, February 29, 2000 ]

### **BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COURT OF APPEALS AND BENJAMIN C. NAPIZA, RESPONDENTS.**

#### **D E C I S I O N**

##### **YNARES-SANTIAGO, J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 37392 affirming *in toto* that of the Regional Trial Court of Makati, Branch 139,<sup>[2]</sup> which dismissed the complaint filed by petitioner Bank of the Philippine Islands against private respondent Benjamin C. Napiza for sum of money.

On September 3, 1987, private respondent deposited in Foreign Currency Deposit Unit (FCDU) Savings Account No. 028-187<sup>[3]</sup> which he maintained in petitioner bank's Buendia Avenue Extension Branch, Continental Bank Manager's Check No. 00014757<sup>[4]</sup> dated August 17, 1984, payable to "cash" in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) and duly endorsed by private respondent on its dorsal side.<sup>[5]</sup> It appears that the check belonged to a certain Henry Chan who went to the office of private respondent and requested him to deposit the check in his dollar account by way of accommodation and for the purpose of clearing the same. Private respondent acceded, and agreed to deliver to Chan a signed blank withdrawal slip, with the understanding that as soon as the check is cleared, both of them would go to the bank to withdraw the amount of the check upon private respondent's presentation to the bank of his passbook.

Using the blank withdrawal slip given by private respondent to Chan, on October 23, 1984, one Ruben Gayon, Jr. was able to withdraw the amount of \$2,541.67 from FCDU Savings Account No. 028-187. Notably, the withdrawal slip shows that the amount was payable to Ramon A. de Guzman and Agnes C. de Guzman and was duly initialed by the branch assistant manager, Teresita Lindo.<sup>[6]</sup>

On November 20, 1984, petitioner received communication from the Wells Fargo Bank International of New York that the said check deposited by private respondent was a counterfeit check<sup>[7]</sup> because it was "not of the type or style of checks issued by Continental Bank International."<sup>[8]</sup> Consequently, Mr. Ariel Reyes, the manager of petitioner's Buendia Avenue Extension Branch, instructed one of its employees, Benjamin D. Napiza IV, who is private respondent's son, to inform his father that the check bounced.<sup>[9]</sup> Reyes himself sent a telegram to private respondent regarding the dishonor of the check. In turn, private respondent's son wrote to Reyes stating that the check had been assigned "for encashment" to Ramon A. de Guzman and/or Agnes C. de Guzman after it shall have been cleared upon instruction of Chan. He also said that upon learning of the dishonor of the check, his father immediately

tried to contact Chan but the latter was out of town.<sup>[10]</sup>

Private respondent's son undertook to return the amount of \$2,500.00 to petitioner bank. On December 18, 1984, Reyes reminded private respondent of his son's promise and warned that should he fail to return that amount within seven (7) days, the matter would be referred to the bank's lawyers for appropriate action to protect the bank's interest.<sup>[11]</sup> This was followed by a letter of the bank's lawyer dated April 8, 1985 demanding the return of the \$2,500.00.<sup>[12]</sup>

In reply, private respondent wrote petitioner's counsel on April 20, 1985<sup>[13]</sup> stating that he deposited the check "for clearing purposes" only to accommodate Chan. He added:

"Further, please take notice that said check was deposited on September 3, 1984 and withdrawn on October 23, 1984, or a total period of fifty (50) days had elapsed at the time of withdrawal. Also, it may not be amiss to mention here that I merely signed an authority to withdraw said deposit subject to its clearing, the reason why the transaction is not reflected in the passbook of the account. Besides, I did not receive its proceeds as may be gleaned from the withdrawal slip under the captioned signature of recipient.

If at all, my obligation on the transaction is moral in nature, which (sic) I have been and is (sic) still exerting utmost and maximum efforts to collect from Mr. Henry Chan who is directly liable under the circumstances.

xxx xxx xxx."

On August 12, 1986, petitioner filed a complaint against private respondent, praying for the return of the amount of \$2,500.00 or the prevailing peso equivalent plus legal interest from date of demand to date of full payment, a sum equivalent to 20% of the total amount due as attorney's fees, and litigation and/or costs of suit.

Private respondent filed his answer, admitting that he indeed signed a "blank" withdrawal slip with the understanding that the amount deposited would be withdrawn only after the check in question has been cleared. He likewise alleged that he instructed the party to whom he issued the signed blank withdrawal slip to return it to him after the bank draft's clearance so that he could lend that party his passbook for the purpose of withdrawing the amount of \$2,500.00. However, without his knowledge, said party was able to withdraw the amount of \$2,541.67 from his dollar savings account through collusion with one of petitioner's employees. Private respondent added that he had "given the Plaintiff fifty one (51) days with which to clear the bank draft in question." Petitioner should have disallowed the withdrawal because his passbook was not presented. He claimed that petitioner had no one to blame except itself "for being grossly negligent;" in fact, it had allegedly admitted having paid the amount in the check "by mistake" x x x "if not altogether due to collusion and/or bad faith on the part of (its) employees." Charging petitioner with "apparent ignorance of routine bank procedures," by way of counterclaim, private respondent prayed for moral damages of P100,000.00, exemplary damages of P50,000.00 and attorney's fees of 30% of whatever amount that would be awarded to him plus an honorarium of P500.00 per appearance in court.

Private respondent also filed a motion for admission of a third party complaint against Chan. He alleged that "thru strategem and/or manipulation," Chan was able to withdraw the amount of \$2,500.00 even without private respondent's passbook. Thus, private respondent prayed that third party defendant Chan be made to refund to him the amount withdrawn and to pay attorney's fees of P5,000.00 plus P300.00 honorarium per appearance.

Petitioner filed a comment on the motion for leave of court to admit the third party complaint, wherein it asserted that per paragraph 2 of the Rules and Regulations governing BPI savings accounts, private respondent alone was liable "for the value of the credit given on account of the draft or check deposited." It contended that private respondent was estopped from disclaiming liability because he himself authorized the withdrawal of the amount by signing the withdrawal slip. Petitioner prayed for the denial of the said motion so as not to unduly delay the disposition of the main case asserting that private respondent's claim could be ventilated in another case.

Private respondent replied that for the parties to obtain complete relief and to avoid multiplicity of suits, the motion to admit third party complaint should be granted. Meanwhile, the trial court issued orders on August 25, 1987 and October 28, 1987 directing private respondent to actively participate in locating Chan. After private respondent failed to comply, the trial court, on May 18, 1988, dismissed the third party complaint without prejudice.

On November 4, 1991, a decision was rendered dismissing the complaint. The lower court held that petitioner could not hold private respondent liable based on the check's face value alone. To so hold him liable "would render *inutile* the requirement of 'clearance' from the drawee bank before the value of a particular foreign check or draft can be credited to the account of a depositor making such deposit." The lower court further held that "it was incumbent upon the petitioner to credit the value of the check in question to the account of the private respondent *only upon receipt of the notice of final payment* and should not have authorized the withdrawal from the latter's account of the value or proceeds of the check." Having admitted that it committed a "mistake" in not waiting for the clearance of the check before authorizing the withdrawal of its value or proceeds, petitioner should suffer the resultant loss.

On appeal, the Court of Appeals affirmed the lower court's decision. The appellate court held that petitioner committed "clear gross negligence" in allowing Ruben Gayon, Jr. to withdraw the money without presenting private respondent's passbook and, before the check was cleared and in crediting the amount indicated therein in private respondent's account. It stressed that the mere deposit of a check in private respondent's account did not mean that the check was already private respondent's property. The check still had to be cleared and its proceeds can only be withdrawn upon presentation of a passbook in accordance with the bank's rules and regulations. Furthermore, petitioner's contention that private respondent warranted the check's genuineness by endorsing it is untenable for it would render useless the clearance requirement. Likewise, the requirement of presentation of a passbook to ascertain the propriety of the accounting reflected would be a meaningless exercise. After all, these requirements are designed to protect the bank from deception or fraud.

The Court of Appeals cited the case of *Roman Catholic Bishop of Malolos, Inc. v. IAC*,<sup>[14]</sup> where this Court stated that a personal check is not legal tender or money, and held that the check deposited in this case must be cleared before its value could be properly transferred to private respondent's account.

Without filing a motion for the reconsideration of the Court of Appeals' Decision, petitioner filed this petition for review on *certiorari*, raising the following issues:

1. WHETHER OR NOT RESPONDENT NAPIZA IS LIABLE UNDER HIS WARRANTIES AS A GENERAL INDORSER.
2. WHETHER OR NOT A CONTRACT OF AGENCY WAS CREATED BETWEEN RESPONDENT NAPIZA AND RUBEN GAYON.
3. WHETHER OR NOT PETITIONER WAS GROSSLY NEGLIGENT IN ALLOWING THE WITHDRAWAL.

Petitioner claims that private respondent, having affixed his signature at the dorsal side of the check, should be liable for the amount stated therein in accordance with the following provision of the Negotiable Instruments Law (Act No. 2031):

"SEC. 66. *Liability of general indorser.* – Every indorser who indorses without qualification, warrants to all subsequent holders in due course –

(a) The matters and things mentioned in subdivisions (a), (b), and (c) of the next preceding section; and

(b) That the instrument is at the time of his indorsement, valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it."

Section 65, on the other hand, provides for the following warranties of a person negotiating an instrument by delivery or by qualified indorsement: (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has a good title to it, and (c) that all prior parties had capacity to contract.<sup>[15]</sup> In *People v. Maniego*,<sup>[16]</sup> this Court described the liabilities of an indorser as follows:

"Appellant's contention that as mere indorser, she may not be liable on account of the dishonor of the checks indorsed by her, is likewise untenable. Under the law, the holder or last indorsee of a negotiable instrument has the right 'to enforce payment of the instrument for the full amount thereof against all parties liable thereon.' Among the 'parties liable thereon' is an indorser of the instrument, *i.e.*, 'a person placing his signature upon an instrument otherwise than as a maker, drawer or acceptor \* \* unless he clearly indicated by appropriate words his intention to be bound in some other capacity.' Such an indorser 'who indorses without qualification,' *inter alia* 'engages that on due

presentment, \* \* (the instrument) shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or any subsequent indorser who may be compelled to pay it.' Maniego may also be deemed an 'accommodation party' in the light of the facts, *i.e.*, a person 'who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.' As such, she is under the law 'liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew \* \* (her) to be only an accommodation party,' although she has the right, after paying the holder, to obtain reimbursement from the party accommodated, 'since the relation between them is in effect that of principal and surety, the accommodation party being the surety."

It is thus clear that ordinarily private respondent may be held liable as an indorser of the check or even as an accommodation party.<sup>[17]</sup> However, to hold private respondent liable for the amount of the check he deposited by the strict application of the law and without considering the attending circumstances in the case would result in an injustice and in the erosion of the public trust in the banking system. The interest of justice thus demands looking into the events that led to the encashment of the check.

Petitioner asserts that by signing the withdrawal slip, private respondent "presented the opportunity for the withdrawal of the amount in question." Petitioner relied "on the genuine signature on the withdrawal slip, the personality of private respondent's son and the lapse of more than fifty (50) days from date of deposit of the Continental Bank draft, without the same being returned yet."<sup>[18]</sup> We hold, however, that the propriety of the withdrawal should be gauged by compliance with the rules thereon that both petitioner bank and its depositors are duty-bound to observe.

In the passbook that petitioner issued to private respondent, the following rules on withdrawal of deposits appear:

"4. Withdrawals must be made by the depositor personally but in some exceptional circumstances, the Bank may allow withdrawal by another upon the depositor's written authority duly authenticated; and neither a deposit nor a withdrawal will be permitted except upon the presentation of the depositor's savings passbook, in which the amount deposited withdrawn shall be entered only by the Bank.

5. Withdrawals may be made by draft, mail or telegraphic transfer in currency of the account at the request of the depositor in writing on the withdrawal slip or by authenticated cable. Such request must indicate the name of the payee/s, amount and the place where the funds are to be paid. Any stamp, transmission and other charges related to such withdrawals shall be for the account of the depositor and shall be paid by him/her upon demand. Withdrawals may also be made in the form of travellers checks and in pesos. Withdrawals in the form of notes/bills are allowed subject however, to their (availability).

6. Deposits shall not be subject to withdrawal by check, and may be