

## FIRST DIVISION

[ G.R. No. 119321, March 18, 1997 ]

**CATALINO F. BAÑEZ AND ROMEO P. BUSUEGO, PETITIONERS,  
VS. COURT OF APPEALS AND REPUBLIC PLANTERS BANK,  
REPUBLIC PLANTERS BANK, RESPONDENTS.**

### D E C I S I O N

**BELLOSILLO, J.:**

AYALA CORPORATION issued on 23 December 1987 BPI Check No. 707802 for P33,226,685.69 payable to PAL Employees' Savings and Loan Association, Inc. (PESALA). The check with the words "FOR PAYEE'S ACCOUNT ONLY" written on its face was delivered in trust to Catalino Bañez in his capacity as President of PESALA. However, on the same date, Banez and his co-officers Romeo Busuego and Renato Lim deposited the check in their joint account with respondent Republic Planters Bank, Cubao Branch, which was not an official depository bank of PESALA. Later, Bañez, Busuego and Lim withdrew the amount and failed to account for it to PESALA.

On 21 April 1992, aside from a criminal case for estafa against its officers Bañez, Busuego and Lim, PESALA sued Republic Planters Bank (RPB) for the face value of the check and P500,000.00 as damages for allowing the deposit and encashment of the check despite the fact that it was a crossed check payable only to the account of PESALA, to its great prejudice and in violation of banking laws in the country.<sup>[1]</sup>

On 14 March 1994 RPB moved for leave to file a third-party complaint against Catalino Bañez, Romeo Busuego, Renato Lim and Alberto Barican, the latter as manager of RPB, Cubao Branch, alleging that they were solely and exclusively responsible for the loss of the value of the check through their misrepresentation which led the bank to believe that they were authorized to deposit and withdraw the amount. The motion was granted.

Meanwhile on 6 April 1994 PESALA and RPB (by then known as PNB-RB)<sup>[2]</sup> forged a compromise agreement under which PNB-RB agreed to pay PESALA P20,226,685.00. PESALA, in turn, undertook to assist PNB-RB in prosecuting the third-party defendants for the liability assumed by the bank.

On 13 April 1994 the trial court approved the compromise.

Upon the foregoing amicable settlement, third-party defendant Lim moved to dismiss the third-party complaint on the ground that it could not stand on its own after the termination of the main complaint by compromise since the third-party complaint was but an incident and a continuation of the main case. Third-party defendants Bañez and Busuego, aside from adopting the ground invoked by defendant Lim, likewise moved to dismiss on grounds of *lis pendens*, forum

shopping, lack of jurisdiction and cause of action.

On 14 July 1994 the trial court deferred action on the motion to dismiss anchored on grounds of *lis pendens* and forum shopping, but denied the motion outright anchored on grounds of lack of jurisdiction and termination of the principal complaint.<sup>[3]</sup> The motion of third-party defendants to reconsider the order was denied on 27 October 1994 since the compromise between plaintiff PESALA and third-party plaintiff PNB-RB did not operate to automatically dismiss the third-party complaint as the latter was actually independent of, and separate and distinct from, the plaintiff's complaint.<sup>[4]</sup>

On 1 December 1994 petitioners Bañez and Busuego instituted a special civil action for certiorari with the Court of Appeals imputing grave abuse of discretion on the part of the trial court in issuing the Orders of 14 July and 27 October 1994 attaching duplicate original copies thereof. On 14 December 1994 the Special Fifth Division of the Court of Appeals, without necessarily giving due course to the petition, ordered respondents to comment thereon.<sup>[5]</sup> However, on 31 January 1995, another Resolution<sup>[6]</sup> was issued by the appellate court, this time through its Special Eleventh Division, dismissing the petition for failure of petitioners to attach certified true copies of the questioned orders as required under Sec. 2, par. (a), Rule 6, of the Revised Internal Rules of the Court of Appeals. The motion for reconsideration was denied.<sup>[7]</sup> Hence, this petition.

Two issues are presented before us: whether respondent Court of Appeals erred in dismissing the special civil action for certiorari for failure of petitioners to attach certified true copies, as opposed to duplicate originals, of the questioned orders; and whether the earlier dismissal (by virtue of compromise) of the main complaint warrants the automatic dismissal of the third-party complaint filed in consequence thereof.

On the procedural issue, petitioners do not deny their failure to attach certified true copies of the questioned Orders dated 14 July and 27 October 1994. However they contend that the duplicate originals thereof which they attached to their petition constitute sufficient compliance with the requirements of Sec. 2, par. (a), Rule 6, of the Revised Internal Rules of the Court of Appeals<sup>[8]</sup> since Revised Circular No. 1-88 issued by the Supreme Court itself allows either a clearly legible duplicate original or certified true copy of the assailed decision, judgment, resolution or order to be attached to the petition.<sup>[9]</sup> Thus, petitioners posit that Sec. 2, par. (a), Rule 6, of the Revised Internal Rules of the Court of Appeals should not be read in a "myopic" manner but, rather, liberally consistent and in conjunction with SC Revised Circular No. 1-88.

On the other hand, respondent PNB-RB argues that Revised Circular No. 1-88 cannot be successfully invoked by petitioners since it pertains only to requirements for petitions filed with the Supreme Court, not with the Court of Appeals. In the latter case, its Revised Internal Rules, which mandate that certified true copies of the questioned order must be attached to a petition in special civil actions for certiorari, apply.

We had occasion to rule that the submission of a duplicate copy of the questioned