

## FIRST DIVISION

**[ G.R. NO. 156207, September 15, 2006 ]**

**EQUITABLE PCI BANK (THE BANKING ENTITY INTO WHICH PHILIPPINE COMMERCIAL INTERNATIONAL BANK WAS MERGED), PETITIONER, VS. ROWENA ONG, RESPONDENT.**

### D E C I S I O N

#### **CHICO-NAZARIO, J.:**

On 29 November 1991, Warliza Sarande deposited in her account at Philippine Commercial International (PCI) Bank Magsaysay Avenue, Santa Ana District, Davao City Branch, under Account No. 8502-00347-6, a PCI Bank General Santos City Branch, TCBT<sup>[1]</sup> Check No. 0249188 in the amount of P225,000.00. Upon inquiry by Serande at PCI Bank on 5 December 1991 on whether TCBT Check No. 0249188 had been cleared, she received an affirmative answer. Relying on this assurance, she issued two checks drawn against the proceeds of TCBT Check No. 0249188. One of these was PCI Bank Check No. 073661 dated 5 December 1991 for P132,000.00 which Sarande issued to respondent Rowena Ong Owing to a business transaction. On the same day, Ong presented to PCI Bank Magsaysay Avenue Branch said Check No. 073661, and instead of encashing it, requested PCI Bank to convert the proceeds thereof into a manager's check, which the PCI Bank obliged. Whereupon, Ong was issued PCI Bank Manager's Check No. 10983 dated 5 December 1991 for the sum of P132,000.00, the value of Check No. 073661.

The next day, 6 December 1991, Ong deposited PCI Bank Manager's Check No. 10983 in her account with Equitable Banking Corporation Davao City Branch. On 9 December 1991, she received a check return-slip informing her that PCI Bank had stopped the payment of the said check on the ground of irregular issuance. Despite several demands made by her to PCI Bank for the payment of the amount in PCI Bank Manager's Check No. 10983, the same was met with refusal; thus, Ong was constrained to file a Complaint for sum of money, damages and attorney's fees against PCI Bank.<sup>[2]</sup>

From PCI Bank's version, TCBT-General Santos City Check No. 0249188 was returned on 5 December 1991 at 5:00 pm on the ground that the account against which it was drawn was already closed. According to PCI Bank, it immediately gave notice to Sarande and Ong about the return of Check No. 0249188 and requested Ong to return PCI Bank Manager's Check No. 10983 inasmuch as the return of Check No. 0249188 on the ground that the account from which it was drawn had already been closed resulted in a failure or want of consideration for the issuance of PCI Bank Manager's Check No. 10983.<sup>[3]</sup>

After the pre-trial conference, Ong filed a motion for summary judgment.<sup>[4]</sup> Though they were duly furnished with a copy of the motion for summary judgment, PCI

Bank and its counsel failed to appear at the scheduled hearing.<sup>[5]</sup> Neither did they file any written comment or opposition thereto. The trial court thereafter ordered Ong to formally offer her exhibits in writing, furnishing copies of the same to PCI Bank which was directed to file its comment or objection.<sup>[6]</sup>

Ong complied with the Order of the trial court, but PCI Bank failed to file any comment or objection within the period given to it despite receipt of the same order.<sup>[7]</sup> The trial court then granted the motion for summary judgment and in its Order dated 2 March 1995, it held:

IN THE LIGHT OF THE FOREGOING, the motion for summary judgment is GRANTED, ordering defendant Philippine Commercial International Bank to pay the plaintiff the amount of ONE HUNDRED THIRTY-TWO THOUSAND PESOS (P132,000.00) equivalent to the amount of PCIB Manager's Check No. 10983.

Set the reception of the plaintiff's evidence with respect to the damages claimed in the complaint.<sup>[8]</sup>

PCI Bank filed a Motion for Reconsideration which the trial court denied in its Order dated 11 April 1996.<sup>[9]</sup> After the reception of Ong's evidence in support of her claim for damages, the trial court rendered its Decision<sup>[10]</sup> dated 3 May 1999 wherein it ruled:

IN LIGHT OF THE FOREGOIN CONSIDERATION, and as plaintiff has preponderantly established by competent evidence her claims in the Complaint, judgment is hereby rendered for the plaintiff against the defendant-bank ordering the latter:

1. To pay the plaintiff the sum of FIFTY THOUSAND PESOS (P50,000.00) in the concept of moral damages;
2. To pay the plaintiff the sum of TWENTY THOUSAND PESOS (P20,000.00) as exemplary damages;
3. To pay the plaintiff the sum of THREE THOUSAND FIVE HUNDRED PESOS (P3,500.00) representing actual expenses;
4. To pay the plaintiff the sum of TWENTY THOUSAND PESOS (P20,000.00) as and for attorney's fee's; and
5. To pay the costs.<sup>[11]</sup>

From this decision, PCI Bank sought recourse before the Court of Appeals. In a Decision<sup>[12]</sup> dated 29 October 2002, the appellate court denied the appeal of PCI Bank and affirmed the orders and decision of the trial court.

Unperturbed, PCI Bank then filed the present petition for review before this Court and raised the following issues:

1. WHETHER OR NOT THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR WHEN IT SUSTAINED THE LOWER COURT'S ORDER DATED 2 MARCH 1999 GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT NOTWITHSTANDING THE GLARING FACT THAT THERE ARE GENUINE, MATERIAL AND FACTUAL ISSUES WHICH REQUIRE THE PRESENTATION OF EVIDENCE.
2. WHETHER OR NOT THE COURT OF APPEALS WAS IN ERROR WHEN IT SUSTAINED THE LOWER COURT'S DECISION DATED 3 MAY 1999 GRANTING THE RELIEFS PRAYED FOR IN RESPONDENT ONG'S COMPLAINT INSPITE OF THE FACT THAT RESPONDENT ONG WOULD BE "UNJUSTLY ENRICHED" AT THE EXPENSE OF PETITIONER BANK, IF PETITIONER BANK WOULD BE REQUIRED TO PAY AN UNFUNDED CHECK.
3. WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERRORS WHEN IT AFFIRMED THE COURT A QUO'S DECISIION DATED 3 MAY 1999 AWARDING DAMAGES TO RESPONDENT ONG AND HOLDING THAT RESPONDENT ONG HAD PREPONDERANTLY ESTABLISHED BY COMPETENT EVIDENCE HER CLAIMS IN THE COMPLAINT INSPITE OF THE FACT THAT THE EVIDENCE ON RECORD DOES NOT JUSTIFY THE AWARD OF DAMAGES.
4. WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT AFFIRMED THE LOWER COURT'S FACTUAL FINDING IN ITS DECISION DATED 3 MAY 1999 HOLDING RESPONDENT ONG A "HOLDER IN DUE COURSE" INSPITE OF THE FACT THAT THE REQUISITE OF "GOOD FAITH" AND FOR VALUE IS LACKING AND DESPITE THE ABSENCE OF A PROPER TRIAL TO DETERMINE SUCH FACTUAL ISSUE.
5. WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT UPHELD THE LOWER COURT'S DECISION DATED 3 MAY 1999 DENYING PETITIONER EPCI BANK'S COUNTERCLAIM INSPITE OF THE FACT THAT IT WAS SHOWN THAT RESPONDENT ONG'S COMPLAINT LACKS MERIT.<sup>[13]</sup>

We affirm the Decision of the trial court and the Court of Appeals.

The provision on summary judgment is found in Section 1, Rule 35 of the 1997 Rules of Court:

SECTION 1. *Summary judgment for claimant.* - A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Thus, it has been held that a summary judgment is proper where, upon a motion filed after the issues had been joined and on the basis of the pleadings and papers filed, the court finds that there is no genuine issue as to any material fact to except as to the amount of damages. A genuine issue has been defined as an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is sham, fictitious, contrived and patently unsubstantial so as not to constitute a genuine issue for trial.<sup>[14]</sup>

A court may grant summary judgment to settle expeditiously a case if, on motion of either party, there appears from the pleadings, depositions, admissions, and affidavits that no important issues of fact are involved, except the amount of damages.<sup>[15]</sup> Rule 35, Section 3, of the Rules of Court provides two requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.<sup>[16]</sup>

Certainly, when the facts as pleaded appear uncontested or undisputed, then there's no real or genuine issue or question as to the facts, and summary judgment is called for.<sup>[17]</sup>

By admitting it committed an error, clearing the check of Sarande and issuing in favor of Ong not just any check but a manager's check for that matter, PCI Bank's liability is fixed. Under the circumstances, we find that summary judgment was proper and a hearing would serve no purpose. That summary judgment is appropriate was incisively expounded by the trial court when it made the following observation:

[D]efendant-bank had certified plaintiff's PCIB Check No. 073661 and since certification is equivalent to acceptance, defendant-bank as drawee bank is bound on the instrument upon certification and it is immaterial to such liability in favor of the plaintiff who is a holder in due course whether the drawer (Warliza Sarande) had funds or not with the defendant-bank (Security vs. State Bank, 154 N.W. 282) or the drawer was indebted to the bank for more than the amount of the check (Nat. Bank vs. Schmelz, Nat. Bank, 116 S.E. 880) as the certifying bank as all the liabilities under Sec. 62 of the Negotiable Instruments Law which refers to liability of acceptor (Title Guarantee vs. Emadee Realty Corp., 240 N.Y. 36).

It may be true that plaintiff's PCIB Check No. 073661 for P132,000.00 which was paid to her by Warliza Sarande was actually not funded but since plaintiff became a holder in due course, defendant-bank cannot interpose a defense of want or lack of consideration because that defense is equitable or personal and cannot prosper against a holder in due course pursuant to Section 28 of the Negotiable Instruments Law. Therefore, when the aforementioned check was endorsed and presented by the plaintiff and certified to and accepted by defendant-bank in the purchase of PCIB Manager's Check No. 1983 in the amount of P132,000.00, there was a valid consideration.<sup>[18]</sup>

The property of summary judgment was further explained by this Court when it pronounced that:

The theory of summary judgment is that although an answer may on its face appear to tender issues - requiring trial - yet if it is demonstrated by affidavits, depositions, or admissions that those issues are not genuine, but sham or fictitious, the Court is unjustified in dispensing with the trial and rendering summary judgment for plaintiff. The court is expected to act chiefly on the basis of the affidavits, depositions, admissions submitted by the movant, and those of the other party in opposition thereto. The hearing contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence on the issues set up in the pleadings. A hearing is not thus *de riguer*. The matter may be resolved, and usually is, on the basis of affidavits, depositions, admissions. This is not to say that a hearing may be regarded as a superfluity. It is not, and the Court has plenary discretion to determine the necessity therefore.<sup>[19]</sup>

The second and fourth issues are inter-related and so they shall be resolved together. The second issue has reference to PCI Bank's claim of unjust enrichment on the part of Ong if it would be compelled to make good the manager's check it had issued. As asserted by PCI Bank under the fourth issue, Ong is not a holder in due course because the manager's check was drawn against a closed account; therefore, the same was issued without consideration.

On the matter of unjust enrichment, the fundamental doctrine of unjust enrichment is the transfer of value without just cause or consideration. The elements of this doctrine are: enrichment on the part of the defendant; impoverishment on the part of the plaintiff; and lack of cause. The main objective is to prevent one to enrich himself at the expense of another.<sup>[20]</sup> It is based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.<sup>[21]</sup> It is well to stress that the check of Sarande had been cleared by the PCI Bank for which reason the former issued the check to Ong. A check which has been cleared and credited to the account of the creditor shall be equivalent to a delivery to the creditor of cash in an amount equal to the amount credited to his account.<sup>[22]</sup>

Having cleared the check earlier, PCI Bank, therefore, became liable to Ong and it cannot allege want or failure of consideration between it and Sarande. Under settled jurisprudence, Ong is a stranger as regards the transaction between PCI Bank and Sarande.<sup>[23]</sup>

PCI Bank next insists that since there was no consideration for the issuance of the manager's check, ergo, Ong is not a holder in due course. This claim is equally without basis. Pertinent provisions of the Negotiable Instruments Law are hereunder quoted:

SECTION 52. *What constitutes a holder in due course.* - A holder in due course is a holder who has taken the instrument under the following conditions:

(a) That it is complete and regular upon its face;