

THIRD DIVISION

[G.R. NO. 129910, September 05, 2006]

**THE INTERNATIONAL CORPORATE BANK, INC., PETITIONER, VS.
COURT OF APPEALS AND PHILIPPINE NATIONAL BANK,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is a petition for review^[1] assailing the 9 August 1994 Amended Decision^[2] and the 16 July 1997 Resolution^[3] of the Court of Appeals in CA-G.R. CV No. 25209.

The Antecedent Facts

The case originated from an action for collection of sum of money filed on 16 March 1982 by the International Corporate Bank, Inc.^[4] ("petitioner") against the Philippine National Bank ("respondent"). The case was raffled to the then Court of First Instance (CFI) of Manila, Branch 6. The complaint was amended on 19 March 1982. The case was eventually re-raffled to the Regional Trial Court of Manila, Branch 52 ("trial court").

The Ministry of Education and Culture issued 15 checks^[5] drawn against respondent which petitioner accepted for deposit on various dates. The checks are as follows:

Check Number	Date	Payee	Amount
7-3694621-4	7-20-81	Trade Factors, Inc. p	97,500.00
7-3694609-6	7-27-81	Romero D. Palmares	98,500.50
7-3666224-4	8-03-81	Trade Factors, Inc.	99,800.00
7-3528348-4	8-07-81	Trade Factors, Inc.	98,600.00
7-3666225-5	8-10-81	Antonio Lisan	98,900.00
7-3688945-6	8-10-81	Antonio Lisan	97,700.00
7-4535674-1	8-21-81	Golden City Trading	95,300.00
7-4535675-2	8-21-81	Red Arrow Trading	96,400.00
7-4535699-5	8-24-81	Antonio Lisan	94,200.00
7-4535700-6	8-24-81	Antonio Lisan	95,100.00
7-4697902-2	9-18-81	Ace Enterprises, Inc.	96,000.00

7-4697925-6	9-18-81	Golden City Trading	93,030.00
7-4697011-6	10-02-81	Wintrade Marketing	90,960.00
7-4697909-4	10-02-81	ABC Trading, Inc.	99,300.00
7-4697922-3	10-05-81	Golden Enterprises	96,630.00

The checks were deposited on the following dates for the following accounts:

Check Number	Date Deposited	Account Deposited
7-3694621-4	7-23-81	CA 0060 02360 3
7-3694609-6	7-28-81	CA 0060 02360 3
7-3666224-4	8-4-81	CA 0060 02360 3
7-3528348-4	8-11-81	CA 0060 02360 3
7-3666225-5	8-11-81	SA 0061 32331 7
7-3688945-6	8-17-81	CA 0060 30982 5
7-4535674-1	8-26-81	CA 0060 02360 3
7-4535675-2	8-27-81	CA 0060 02360 3
7-4535699-5	8-31-81	CA 0060 30982 5
7-4535700-6	8-24-81	SA 0061 32331 7
7-4697902-2	9-23-81	CA 0060 02360 3
7-4697925-6	9-23-81	CA 0060 30982 5
7-4697011-6	10-7-81	CA 0060 02360 3
7-4697909-4	10-7-81	CA 0060 30982 5 ^[6]

After 24 hours from submission of the checks to respondent for clearing, petitioner paid the value of the checks and allowed the withdrawals of the deposits. However, on 14 October 1981, respondent returned all the checks to petitioner without clearing them on the ground that they were materially altered. Thus, petitioner instituted an action for collection of sums of money against respondent to recover the value of the checks.

The Ruling of the Trial Court

The trial court ruled that respondent is expected to use reasonable business practices in accepting and paying the checks presented to it. Thus, respondent cannot be faulted for the delay in clearing the checks considering the ingenuity in which the alterations were effected. The trial court observed that there was no attempt from petitioner to verify the status of the checks before petitioner paid the value of the checks or allowed withdrawal of the deposits. According to the trial court, petitioner, as collecting bank, could have inquired by telephone from respondent, as drawee bank, about the status of the checks before paying their value. Since the immediate cause of petitioner's loss was the lack of caution of its personnel, the trial court held that petitioner is not entitled to recover the value of the checks from respondent.

The dispositive portion of the trial court's Decision reads:

WHEREFORE, judgment is hereby rendered dismissing both the complaint and the counterclaim. Costs shall, however be assessed against the plaintiff.

SO ORDERED.^[7]

Petitioner appealed the trial court's Decision before the Court of Appeals.

The Ruling of the Court of Appeals

In its 10 October 1991 Decision,^[8] the Court of Appeals reversed the trial court's Decision. Applying Section 4(c) of Central Bank Circular No. 580, series of 1977,^[9] the Court of Appeals held that checks that have been materially altered shall be returned within 24 hours after discovery of the alteration. However, the Court of Appeals ruled that even if the drawee bank returns a check with material alterations after discovery of the alteration, the return would not relieve the drawee bank from any liability for its failure to return the checks within the 24-hour clearing period. The Court of Appeals explained:

Does this mean that, as long as the drawee bank returns a check with material alteration within 24 hour[s] after discovery of such alteration, such return would have the effect of relieving the bank of any liability whatsoever despite its failure to return the check within the 24- hour clearing house rule?

We do not think so.

Obviously, such bank cannot be held liable for its failure to return the check in question not later than the next regular clearing. However, this Court is of the opinion and so holds that it could still be held liable if it fails to exercise due diligence in verifying the alterations made. In other words, such bank would still be expected, nay required, to make the proper verification before the 24-hour regular clearing period lapses, or in cases where such lapses may be deemed inevitable, that the required verification should be made within a reasonable time.

The implication of the rule that a check shall be returned within the 24-hour clearing period is that if the collecting bank paid the check before the end of the aforesaid 24- hour clearing period, it would be responsible therefor such that if the said check is dishonored and returned within the 24-hour clearing period, the drawee bank cannot be held liable. Would such an implication apply in the case of materially altered checks returned within 24 hours after discovery? This Court finds nothing in the letter of the above-cited C.B. Circular that would justify a negative answer. Nonetheless, the drawee bank could still be held liable in certain instances. Even if the return of the check/s in question is done within 24 hours after discovery, if it can be shown that the drawee bank had been patently negligent in the performance of its verification function, this Court finds no reason why the said bank should be relieved of liability.

Although banking practice has it that the presumption of clearance is conclusive when it comes to the application of the 24-hour clearing

period, the same principle may not be applied to the 24-hour period vis-a-vis material alterations in the sense that the drawee bank which returns materially altered checks within 24 hours after discovery would be conclusively relieved of any liability thereon. This is because there could well be various intervening events or factors that could affect the rights and obligations of the parties in cases such as the instant one including patent negligence on the part of the drawee bank resulting in an unreasonable delay in detecting the alterations. While it is true that the pertinent proviso in C.B. Circular No. 580 allows the drawee bank to return the altered check within the period "provided by law for filing a legal action", this does not mean that this would entitle or allow the drawee bank to be grossly negligent and, in spite thereof, avail itself of the maximum period allowed by the above-cited Circular. The discovery must be made within a reasonable time taking into consideration the facts and circumstances of the case. In other words, the aforementioned C.B. Circular does not provide the drawee bank the license to be grossly negligent on the one hand nor does it preclude the collecting bank from raising available defenses even if the check is properly returned within the 24-hour period after discovery of the material alteration.^[10]

The Court of Appeals rejected the trial court's opinion that petitioner could have verified the status of the checks by telephone call since such imposition is not required under Central Bank rules. The dispositive portion of the 10 October 1991 Decision reads:

PREMISES CONSIDERED, the decision appealed from is hereby REVERSED and the defendant- appellee Philippine National Bank is declared liable for the value of the fifteen checks specified and enumerated in the decision of the trial court (page 3) in the amount of P1,447,920.00

SO ORDERED.^[11]

Respondent filed a motion for reconsideration of the 10 October 1991 Decision. In its 9 August 1994 Amended Decision, the Court of Appeals reversed itself and affirmed the Decision of the trial court dismissing the complaint.

In reversing itself, the Court of Appeals held that its 10 October 1991 Decision failed to appreciate that the rule on the return of altered checks within 24 hours from the discovery of the alteration had been duly passed by the Central Bank and accepted by the members of the banking system. Until the rule is repealed or amended, the rule has to be applied.

Petitioner moved for the reconsideration of the Amended Decision. In its 16 July 1997 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the recourse to this Court.

The Issues

Petitioner raises the following issues in its Memorandum:

1. Whether the checks were materially altered;
2. Whether respondent was negligent in failing to recognize within a reasonable period the altered checks and in not returning the checks within the period; and
3. Whether the motion for reconsideration filed by respondent was out of time thus making the 10 October 1991 Decision final and executory.^[12]

The Ruling of This Court

Filing of the Petition under both Rules 45 and 65

Respondent asserts that the petition should be dismissed outright since petitioner availed of a wrong mode of appeal. Respondent cites *Ybañez v. Court of Appeals*^[13] where the Court ruled that "a petition cannot be subsumed simultaneously under Rule 45 and Rule 65 of the Rules of Court, and neither may petitioners delegate upon the court the task of determining under which rule the petition should fall."

The remedies of appeal and certiorari are mutually exclusive and not alternative or successive. ^[14] However, this Court may set aside technicality for justifiable reasons. The petition before the Court is clearly meritorious. Further, the petition was filed on time both under Rules 45 and 65.^[15] Hence, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice,^[16] we will treat the petition as having been filed under Rule 45.

Alteration of Serial Number Not Material

The alterations in the checks were made on their serial numbers.

Sections 124 and 125 of Act No. 2031, otherwise known as the Negotiable Instruments Law, provide:

SEC. 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, or assented to the alteration and subsequent indorsers.

But when an 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 payment thereof according to its original tenor.

SEC. 125. *What constitutes a 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 relations of the parties;
- (e) The medium or currency in which payment is to be made;