

SECOND DIVISION

[G.R. No. 205839, July 07, 2016]

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. NARCISO L. KHO, RESPONDENT.

[G.R. No. 205840]

MA. LORENA FLORES AND ALEXANDER CRUZ, PETITIONERS, VS. NARCISO L. KHO, RESPONDENT.

DECISION

BRION, J.:

These are consolidated petitions for review on *certiorari* assailing the Court of Appeals' (CA) August 30, 2012 decision and February 14, 2013 Resolution in **CA-G.R. CV No. 93881**.^[1] The CA set aside the Regional Trial Court's (RTC) dismissal of **Civil Case No. Q-06-57154**^[2] and remanded the case for further proceedings.

Antecedents

The respondent Narciso Kho is the sole proprietor of United Oil Petroleum, a business engaged in trading diesel fuel. Sometime in December 2006, he entered into a verbal agreement to purchase lubricants from Red Orange International Trading (*Red Orange*), represented by one Rudy Medel. Red Orange insisted that it would only accept a Land Bank manager's check as payment.

On December 28, 2005, Kho, accompanied by Rudy Medel, opened **Savings Account No. 0681-0681-80** at the Araneta Branch of petitioner Land Bank of the Philippines (*Land Bank*).^[3] His initial **P25,993,537.37** deposit^[4] consisted of the following manager's checks:

| | | |
|---|---|------------------|
| 1 | UCPB Del Monte Branch Check No. 19107 | PHP 15,000,000 |
| 2 | E-PCI Banawe Branch Check No. 26200720 | PHP 2,900,000 |
| 3 | I.E. Bank Retiro Branch Check No. 1466 | PHP 8,093,537.37 |

These checks were scheduled for clearance on January 2, 2006.

Kho also purchased Land Bank **Manager's Check No. 07410** leveraged by his newly opened savings account. Recem Macarandan, the Acting Operations Supervisor of the Araneta branch, and Leida Benitez, the Document Examiner, *prepared and signed* the check.^[5]

The check was postdated to January 2, 2006, and scheduled for actual delivery on the same date after the three checks were expected to have been cleared. It was valued at P25,000,000.00 and made payable to Red Orange.^[6]

Kho requested a photocopy of the manager's check to provide Red Orange with proof that he had available funds for the transaction. The branch manager, petitioner Ma. Lorena Flores, accommodated his request. Kho gave the photocopy of the check to Rudy Medel.^[7]

On January 2, 2006, Kho returned to the bank and picked up check No. 07410. Accordingly, P25,000,000.00 was debited from his savings account.

Unfortunately, his deal with Red Orange did not push through.

On January 3, 2006, an employee of the Bank of the Philippine Islands (*BPI*) called Land Bank, Araneta Branch, to inform them that Red Orange had deposited check No. 07410 for payment. Flores confirmed with BPI that Land Bank had issued the check to Kho.^[8]

On January 4, 2006, the Central Clearing Department (*CCD*) of the Land Bank Head Office faxed a copy of the deposited check to the Araneta branch for payment. The officers of the Araneta branch *examined the fax copy and thought that the details matched* the check purchased by Kho. Thus, Land Bank **confirmed the deposited check**.^[9]

On January 5, 2006, Flores informed Kho by phone that Check No. 07410 was cleared and paid by the BPI, Kamuning branch.^[10]

Shocked, Kho informed Flores that he never negotiated the check because the deal did not materialize. More importantly, *the actual check was still in his possession*.^[11]

Kho immediately went to Land Bank with the **check No. 07410**. They discovered that what was deposited and encashed with BPI was a spurious manager's check.^[12] Kho demanded the cancellation of his manager's check and the release of the remaining money in his account (then P995,207.27).^[13] However, Flores refused his request because she had no authority to do so at the time.

Kho returned to the Land Bank, Araneta branch on January 12, 2006, with the same demands. He was received by petitioner Alexander Cruz who was on his second day as the Officer in Charge (OIC) of the Araneta branch.^[14] Cruz informed him that there was a standing freeze order on his account because of the (then) ongoing investigation on the fraudulent withdrawal of the manager's check.^[15]

On January 16, 2006, Kho sent Land Bank a final demand letter for the return of his P25,000,000.00 and the release of the P995,207.27 from his account but the bank did not comply.

Hence, on January 23, 2006, Kho filed a *Complaint for Specific Performance and Damages* against Land Bank, represented by its Araneta Avenue Branch Manager

Flores and its OIC Cruz. He also impleaded Flores and Cruz in their personal capacities. The complaint was docketed as **Civil Case No. Q-06-57154**.

Kho asserted that the manager's **check No. 07410** was still in his possession and that he had no obligation to inform Land Bank whether or not he had already negotiated the check.^[16]

On the other hand, Land Bank argued that Kho was negligent because he handed Medel a photocopy of the manager's check and that this was the proximate cause of his loss.^[17]

On April 30, 2009, the RTC dismissed the complaint.^[18]

Citing *Associated Bank v. Court of Appeals*, the RTC reasoned that the failure of the purchaser/drawer to exercise ordinary care that substantially contributed to the making of the forged check precludes him from asserting the forgery.^[19] It held that (1) Kho's act of giving Medel a photocopy of the check and (2) his failure to inform the bank that the transaction with Red Orange did not push through were the proximate causes of his loss.^[20]

The RTC also found that Flores and Cruz acted in good faith in performing their duties as officers of Land Bank when they refused to cancel the manager's check and disallowed Kho from withdrawing from his account.^[21]

Kho appealed to the CA where the case was docketed as **CA-G.R. CV No. 93881**.

On August 30, 2012, the CA set aside the RTC's decision and remanded the case for further proceedings.

The CA pointed out that Land Bank was conducting an investigation to determine whether there was a fraudulent negotiation of the manager's check No. 07410. It held that the outcome of the investigation - which was not yet available during the trial - is crucial to the resolution of the case. It noted that the RTC's ruling on Kho's negligence in dealing with Medel preempted the outcome of Land Bank's investigation.^[22] Thus, it remanded the case to the RTC with the directive to consider the outcome of the investigation.

Dissatisfied, Land Bank, Flores, and Cruz, filed separately petitions for review on *certiorari* before this Court.

The Arguments

Land Bank asserts that neither party denied the spurious nature of the manager's check that was deposited with BPI. Therefore, the conclusion of its investigation as to the fraudulent negotiation of **check No. 07410** is immaterial to the resolution of the case.^[23]

Land Bank adopts the RTC's conclusion that Kho is precluded from, asserting the forgery of **check No. 07410** because his negligence substantially contributed to his loss.^[24]

The bank highlights the following instances of Kho's negligence:

- (1) Kho transacted with Rudy Medel, a person he barely knew, without verifying Medel's actual relationship with Red Orange. In fact, Kho even mistook him as "Rudy Rodel" in his complaint;
- (2) Kho accorded Medel an unusual degree of trust. He brought Medel with him to the bank and carelessly gave the latter a photocopy of the manager's check; and
- (3) When he picked up **check No. 07410** on January 2, 2006, Kho did not even bother to inform Land Bank that his transaction with Red Orange did not push through. He could have prevented or detected the duplication of the check if he had simply notified the bank.^[25]

Flores and Cruz maintain that they did not incur any personal liability to Kho because they were only performing their official duties in good faith. They insist that their alleged wrongdoing, if there was any, were corporate acts performed within the scope of their official authority; therefore, only Land Bank should be made liable for the consequences.^[26]

For his part, Kho adopts the CA's arguments and reasoning in **CA-G.R. CV No. 93881**.^[27]

Our Ruling

At the outset, we agree with Land Bank's contention that the result of its investigation is not indispensable to resolving this case. After all, it was not conducted by an independent party but by a party-litigant. We cannot expect the report to yield a completely impartial result. At best, the investigation report will be of doubtful probative value.

More importantly, all the facts necessary to decide the case are already available. Although they have reached different legal conclusions, both the RTC and the CA agree that:

- On December 28, 2005, Kho opened an account with Land Bank in order to leverage a business deal with Red Orange;
- He purchased Land Bank Manager's check No. 07410 worth P25,000,000.00 payable to Red Orange and dated January 2, 2006;
- He also gave Rudy Medel a photocopy of the check that the bank had given him;
- After his visit to the Bank, the deal with Medel and Red Orange did not push through;
- He picked up check No. 07410 from the bank on January 2, 2006, without informing the bank that the deal did not materialize;
- Afterwards, Red Orange presented a spurious copy of check No. 07410 to BPI, Kamuning for payment;