

FIRST DIVISION

[G.R. No. 188363, February 27, 2013]

ALLIED BANKING CORPORATION, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

DECISION

VILLARAMA, JR., J.:

A collecting bank is guilty of contributory negligence when it accepted for deposit a post-dated check notwithstanding that said check had been cleared by the drawee bank which failed to return the check within the 24-hour reglementary period.

Petitioner Allied Banking Corporation appeals the Decision^[1] dated March 19, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 97604 which set aside the Decision^[2] dated December 13, 2005 of the Regional Trial Court (RTC) of Makati City, Branch 57 in Civil Case No. 05-418.

The factual antecedents:

On October 10, 2002, a check in the amount of P1,000,000.00 payable to "Mateo Mgt. Group International" (MMGI) was presented for deposit and accepted at petitioner's Kawit Branch. The check, post-dated "**Oct. 9, 2003**", was drawn against the account of Marciano Silva, Jr. (Silva) with respondent Bank of the Philippine Islands (BPI) Bel-Air Branch. Upon receipt, petitioner sent the check for clearing to respondent through the Philippine Clearing House Corporation (PCHC).^[3]

The check was cleared by respondent and petitioner credited the account of MMGI with P1,000,000.00. On October 22, 2002, MMGI's account was closed and all the funds therein were withdrawn. A month later, Silva discovered the debit of P1,000,000.00 from his account. In response to Silva's complaint, respondent credited his account with the aforesaid sum.^[4]

On March 21, 2003, respondent returned a photocopy of the check to petitioner for the reason: "Postdated." Petitioner, however, refused to accept and sent back to respondent a photocopy of the check. Thereafter, the check, or more accurately, the Charge Slip, was tossed several times from petitioner to respondent, and back to petitioner, until on May 6, 2003, respondent requested the PCHC to take custody of the check. Acting on the request, PCHC directed the respondent to deliver the original check and informed it of PCHC's authority under Clearing House Operating Memo (CHOM) No. 279 dated 06 September 1996 to split 50/50 the amount of the check subject of a "*Ping-Pong*" controversy which shall be implemented thru the issuance of Debit Adjustment Tickets against the outward demands of the banks involved. PCHC likewise encouraged respondent to submit the controversy for resolution thru the PCHC Arbitration Mechanism.^[5]

However, it was petitioner who filed a complaint^[6] before the Arbitration Committee, asserting that respondent should solely bear the entire face value of the check due to its negligence in failing to return the check to petitioner within the 24-hour reglementary period as provided in Section 20.1^[7] of the Clearing House Rules and Regulations^[8] (CHRR) 2000. Petitioner prayed that respondent be ordered to reimburse the sum of P500,000.00 with 12% interest per annum, and to pay attorney's fees and other arbitration expenses.

In its Answer with Counterclaims,^[9] respondent charged petitioner with gross negligence for accepting the post-dated check in the first place. It contended that petitioner's admitted negligence was the sole and proximate cause of the loss.

On December 8, 2004, the Arbitration Committee rendered its Decision^[10] in favor of petitioner and against the respondent. First, it ruled that the situation of the parties does not involve a "Ping-Pong" controversy since the subject check was neither returned within the reglementary time or through the PCHC return window, nor coursed through the clearing facilities of the PCHC.

As to respondent's direct presentation of a photocopy of the subject check, it was declared to be without legal basis because Section 21.1^[11] of the CHRR 2000 does not apply to post-dated checks. The Arbitration Committee further noted that respondent not only failed to return the check within the 24-hour reglementary period, it also failed to institute any formal complaint within the contemplation of Section 20.3^[12] and it appears that respondent was already contented with the 50-50 split initially implemented by the PCHC. Finding both parties negligent in the performance of their duties, the Committee applied the doctrine of "Last Clear Chance" and ruled that the loss should be shouldered by respondent alone, thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Allied Banking Corporation and against defendant Bank of the Philippine Islands, ordering the latter to pay the former the following:

- (a) The sum of P500,000.00, plus interest thereon at the rate of 12% per annum counted from the date of filing of the complaint;
- (b) Attorney's fees in the amount of P25,000.00;
- (c) The sum of P2,090.00 as and by way of reimbursement of filing fees, plus the cost of suit.

SO ORDERED.^[13]

Respondent filed a motion for reconsideration^[14] but it was denied by the PCHC Board of Directors under Board Resolution No. 10-2005^[15] dated April 22, 2005. The Board pointed out that what actually transpired was a "ping-pong" "not of a check but of a Charge Slip (CS) enclosed in a carrier envelope that went back and forth through the clearing system in apparent reaction by [petitioner] to the

wrongful return via the PCHC clearing system.” Respondent’s conduct was held as a “gross and unmistakably deliberate violation” of Section 20.2,^[16] in relation to Section 20.1(e) of the CHRR 2000.^[17]

On May 13, 2005, respondent filed a petition for review^[18] in the RTC claiming that PCHC erred in constricting the return of a post-dated check to Section 20.1, overlooking the fact that Section 20.3 is also applicable which provision necessarily contemplates defects that are referred to in Section 20.1 as both sections are subsumed under the general provision (Section 20) on the return of regular items. Respondent also argued that assuming it to be liable, the PCHC erred in holding it solely responsible and should bear entirely the consequent loss considering that while respondent may have the “last” opportunity in proximity, it was petitioner which had the longest, fairest and clearest chance to discover the mistake and avoid the happening of the loss. Lastly, respondent assailed the award of attorney’s fees, arguing that PCHC’s perception of “malice” against it and misuse of the clearing machinery is clearly baseless and unfounded.

In its Decision dated December 13, 2005, the RTC affirmed with modification the Arbitration Committee’s decision by deleting the award of attorney’s fees. The RTC found no merit in respondent’s stance that through inadvertence it failed to discover that the check was post-dated and that confirmation within 24 hours is often “elusive if not outright impossible” because a drawee bank receives hundreds if not thousands of checks in an ordinary clearing day. Thus:

Petitioner admitted par. 4 in its Answer with Counterclaim and in its Memorandum, further adding that upon receipt of the subject check “through inadvertence”, it did not notice that the check was postdated, hence, petitioner did not return the same to respondent.”

These contradict petitioner’s belated contention that it discovered the defect only after the lapse of the reglementary period. What the evidence on record discloses is that petitioner received the check on October 10, 2002, that it was promptly sent for clearing, that through inadvertence, it did not notice that the check was postdated. Petitioner did not even state when it discovered the defect in the subject check.

Likewise, petitioner’s contention that its discovery of the defect was a non-issue in view of the admissions made in its Answer is unavailing. The Court has noted the fact that the PCHC Arbitration Committee conducted a clarificatory hearing during which petitioner admitted that its standard operating procedure as regards confirmation of checks was not followed. No less than petitioner’s witness admitted that BPI tried to call up the drawer of the check, as their procedure dictates when it comes to checks in large amounts. However, having initially failed to contact the drawer, no follow up calls were made nor other actions taken. Despite these, petitioner cleared the check. **Having admitted making said calls, it is simply impossible for petitioner to have missed the fact that the check was postdated.**^[19] (Emphasis supplied)

With the denial of its motion for partial reconsideration, respondent elevated the

case to the CA by filing a petition for review under Rule 42 of the 1997 Rules of Civil Procedure, as amended.

By Decision dated March 19, 2009, the CA set aside the RTC judgment and ruled for a 60-40 sharing of the loss as it found petitioner guilty of contributory negligence in accepting what is clearly a post-dated check. The CA found that petitioner's failure to notice the irregularity on the face of the check was a breach of its duty to the public and a telling sign of its lack of due diligence in handling checks coursed through it. While the CA conceded that the drawee bank has a bigger responsibility in the clearing of checks, it declared that the presenting bank cannot take lightly its obligation to make sure that only valid checks are introduced into the clearing system. According to the CA, considerations of public policy and substantial justice will be served by allocating the damage on a 60-40 ratio, as it thus decreed:

WHEREFORE, the decision of the Regional Trial Court of Makati City (Branch 57) dated December 13, 2005 is ANNULLED and SET ASIDE and judgment is rendered ordering petitioner to pay respondent Allied Banking Corporation the sum of P100,000.00 plus interest thereon at the rate of 6% from July 10, 2003, which shall become 12% per annum from finality hereof, until fully paid, aside from costs.

SO ORDERED.^[20]

Its motion for reconsideration having been denied by the CA, petitioner is now before the Court seeking a partial reversal of the CA's decision and affirmance of the December 13, 2005 Decision of the RTC.

Essentially, the two issues for resolution are: (1) whether the doctrine of last clear chance applies in this case; and (2) whether the 60-40 apportionment of loss ordered by the CA was justified.

As well established by the records, both petitioner and respondent were admittedly negligent in the encashment of a check post-dated one year from its presentment.

Petitioner argues that the CA should have sustained PCHC's finding that despite the antecedent negligence of petitioner in accepting the post-dated check for deposit, respondent, by exercising reasonable care and prudence, might have avoided injurious consequences had it not negligently cleared the check in question. It pointed out that in applying the doctrine of last clear chance, the PCHC cited the case of *Philippine Bank of Commerce v. Court of Appeals*^[21] which ruled that assuming the bank's depositor, private respondent, was negligent in entrusting cash to a dishonest employee, thus providing the latter with the opportunity to defraud the company, it cannot be denied that petitioner bank had the last clear opportunity to avert the injury incurred by its client, simply by faithfully observing their self-imposed validation procedure.

Petitioner underscores respondent's failure to observe clearing house rules and its own standard operating procedure which, the PCHC said constitute further negligence so much so that respondent should be solely liable for the loss. Specifically, respondent failed to return the subject check within the 24-hour

reglementary period under Section 20.1 and to institute any formal complaint within the contemplation of Section 20.3 of the CHRR 2000. The PCHC likewise faulted respondent for not making follow-up calls or taking any other action after it initially attempted, without success, to contact by telephone the drawer of the check, and clearing the check despite such lack of confirmation from its depositor in violation of its own standard procedure for checks involving large amounts.

The doctrine of last clear chance, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence.^[22] The doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption.^[23] Stated differently, the antecedent negligence of the plaintiff does not preclude him from recovering damages caused by the supervening negligence of the defendant, who had the last fair chance to prevent the impending harm by the exercise of due diligence.^[24] Moreover, in situations where the doctrine has been applied, it was defendant's failure to exercise such ordinary care, having the last clear chance to avoid loss or injury, which was the proximate cause of the occurrence of such loss or injury.^[25]

In this case, the evidence clearly shows that the proximate cause of the unwarranted encashment of the subject check was the negligence of respondent who cleared a post-dated check sent to it thru the PCHC clearing facility without observing its own verification procedure. As correctly found by the PCHC and upheld by the RTC, if only respondent exercised ordinary care in the clearing process, it could have easily noticed the glaring defect upon seeing the date written on the face of the check "Oct. 9, 2003". Respondent could have then promptly returned the check and with the check thus dishonored, petitioner would have not credited the amount thereof to the payee's account. Thus, notwithstanding the antecedent negligence of the petitioner in accepting the post-dated check for deposit, it can seek reimbursement from respondent the amount credited to the payee's account covering the check.

What petitioner omitted to mention is that in the cited case of *Philippine Bank of Commerce v. Court of Appeals*,^[26] while the Court found petitioner bank as the culpable party under the doctrine of last clear chance since it had, thru its teller, the last opportunity to avert the injury incurred by its client simply by faithfully observing its own validation procedure, it nevertheless ruled that the plaintiff depositor (private respondent) must share in the loss on account of its *contributory negligence*. Thus:

The foregoing notwithstanding, it cannot be denied that, indeed, private respondent was likewise negligent in not checking its monthly statements of account. Had it done so, the company would have been alerted to the series of frauds being committed against RMC by its secretary. The damage would definitely not have ballooned to such an amount if only RMC, particularly Romeo Lipana, had exercised even a little vigilance in their financial affairs. **This omission by RMC amounts to contributory negligence which shall mitigate the damages that may be**