

## THIRD DIVISION

[ G.R. No. 193250, April 25, 2012 ]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. AMELIO TRIA  
AND JOHN DOE, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

This is an appeal from the January 18, 2012 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 108571 entitled *Philippine National Bank v. Department of Justice, Amelio C. Tria and John Doe* which affirmed the Resolution dated December 26, 2007 issued by the Department of Justice.

#### The Facts

Respondent Amelio C. Tria (Tria) was a former Branch Manager of petitioner Philippine National Bank (PNB), assigned at PNB's Metropolitan Waterworks and Sewerage System Branch (PNB-MWSS) located within the Metropolitan Waterworks and Sewerage System (MWSS) Compound, Katipunan Road, Balara, Quezon City.

On September 21, 2001, MWSS opened Current Account (C/A) No. 244-850099-6 with PNB-MWSS and made an initial deposit of PhP 6,714,621.13 on October 10, 2001. The account was intended as a depository for a loan from the Asian Development Bank (ADB) to fund Contract No. MS-O1C.

To withdraw from the account, PNB checks must be issued and three signatures secured—one signatory each from MWSS, Maynilad Water Services, Inc. (MWSI), and the contractor, China-Geo Engineering Corporation (China-Geo).<sup>[2]</sup>

On April 16, 2003, C/A 244-850099-6 became dormant with a balance of PhP 5,397,154.07.<sup>[3]</sup>

In the meantime, Tria requested a listing of the dormant accounts of PNB-MWSS and borrowed the folders of MWSS and C/A 244-850099-6.<sup>[4]</sup> On one occasion, Tria also inquired about the irregularities involving manager's checks committed by the bank's former branch accountant.<sup>[5]</sup>

On April 22, 2004, PNB-MWSS received a letter-request from MWSS instructing the deduction of PhP 5,200,000 (plus charges) from C/A 244-850099-6 and the issuance of the corresponding manager's check in the same amount payable to a certain "Atty. Rodrigo A. Reyes." The letter-request was purportedly signed and approved by the duly authorized signatories of MWSS. Hence, C/A 244-850099-6 was re-activated in light of the letter-request.<sup>[6]</sup>

The letter-request, supporting documents, and Manager's Check Application Form were then evaluated by the bank's Sales and Service Officer (SSO), Agnes F. Bagasani, who found the same to be in order.<sup>[7]</sup>

Edsel B. Francisco (Francisco), who was also designated to perform the tasks of a Fund Transfer Processor (FTP), likewise verified the letter-request and the documents from the MWSS Current Account folder of the bank. He then effected the transaction requested by debiting C/A No. 244-850099-6 for the purchase of a Manager's Check payable to "Atty. Rodrigo A. Reyes" and prepared a *Batch Input Sheet* listing the supporting documents for the transaction together with the other transactions for that day.<sup>[8]</sup>

Manager's Check No. 1165848 was, thus, prepared and issued in the name of Atty. Rodrigo A. Reyes (Atty. Reyes) for the amount of PhP 5,200,000 (five million two hundred thousand pesos).<sup>[9]</sup>

On April 26, 2004, PNB-MWSS received cash delivery from PNB's Cash Center in the amount of PhP 8,660,000.<sup>[10]</sup> Nonetheless, at around 11:00 a.m. of the same day, respondent Tria accompanied Atty. Reyes in presenting Manager's Check No. 1165848 to PNB's Quezon City Circle Branch (PNB-Circle) for encashment and told PNB-Circle's SSO, George T. Flandez (Flandez), that PNB-MWSS had no available cash to pay the amount indicated in the Manager's Check. He also informed Flandez that Atty. Reyes was a valued client of his branch and was in a hurry to leave for a scheduled appointment.<sup>[11]</sup>

To confirm the issuance of Manager's Check No. 1165848, Flandez called PNB-MWSS and talked to its Sales and Service Head, Geraldine C. Veniegas (Veniegas).<sup>[12]</sup> Veniegas confirmed that PNB-MWSS issued a manager's check in favor of Atty. Reyes and sent a letter-confirmation through e-mail to PNB-Circle.<sup>[13]</sup>

While waiting for the confirmation, Flandez interviewed Atty. Reyes. Atty. Reyes told Flandez that he was an MWSS contractor and the amount covered by Manager's Check No. 1165848 represented the proceeds of his recent contract with MWSS. Atty. Reyes then showed his driver's license and Integrated Bar of the Philippines identification card to Flandez and wrote the numbers of these cards on the back of the manager's check.<sup>[14]</sup>

Upon receiving confirmation from PNB-MWSS regarding the manager's check, Flandez went to the Cash Center of PNB-Circle to pick up the cash requisition. Tria and Atty. Reyes, however, followed him with Tria telling Flandez: "*Pirmahan ko na lang 'tong check, George. Identify ko na lang siya kasi nagmamadali siya. Dito na lang i-receive. For security... kasi nag-iisa lang siya.*"<sup>[15]</sup> Tria then placed his signature on the check above the handwritten note "PAYEE IDENTIFIED – AMELIO C. TRIA."<sup>[16]</sup>

In August 2004, Veniegas, the Sales and Service Head of PNB-MWSS, observed that Tria showed sudden concern with the Minutes of the Meeting dated August 6, 2004 even if he was no longer involved in the operations of the bank. Tria reminded her to prepare the Minutes of the Meeting. Tria then made revisions therein.<sup>[17]</sup> After the revised Minutes of the Meeting had been signed by all the attendees, Tria sought to

further amend the Minutes, as follows:

9. For your information, BM Tria, per delineation of functions has no approving authority except in the opening of current and savings account. The BM is purely on marketing clients and giving services to existing and new clients. Sometimes, we are requesting his assistance like:

- represent/follow up our operational needs in the Head Office;
- handles client complaints;
- assists in emergency cash requisitions;
- assists in accompanying valued client/clients to QC Circle Branch for encashment of MCs merely to identify the bearer/payee and confirmation of the MC whenever we are short in cash;
- we usually seek some advice and strategies on handling clients complaints and on other operational matters.<sup>[18]</sup>

On November 1, 2004, Tria retired as PNB-MWSS' Manager under PNB's regular retirement plan.<sup>[19]</sup>

On February 2, 2005, Zaida Pulida (Pulida), the MWSS employee in charge of C/A No. 244-850099-6,<sup>[20]</sup> inquired about the account's outstanding balance. While she was trying to reconcile the records of MWSS and PNB, she inquired about a debit entry dated April 22, 2004 to C/A No. 244-850099-6 in the amount of Php 5,200,000.

Veniegas verified that Php 5,200,000 was indeed debited and was encashed using Manager's Check No. 1165848 in favor of Atty. Rodrigo A. Reyes. Veniegas also attempted to retrieve the files for the transaction on April 22, 2004 but discovered that the duplicate copy of Manager's Check No. 1165848, the manager's check application form and the letter of authority were all missing.<sup>[21]</sup>

Pulida notified Veniegas that MWSS did not apply for the issuance of the manager's check payable to Atty. Reyes. Upon verification with the Integrated Bar of the Philippines, it was discovered that there was no Rodrigo A. Reyes included in its membership roster. Further, upon inspection of the PNB-MWSS microfilm copy of Manager's Check No. 1165848, it was shown that the check was negotiated and encashed at the PNB-Circle on April 26, 2004 and was annotated with "*ok for payment per confirmation and approval of PNB MWSS*" by Tria on the dorsal portion of the check.<sup>[22]</sup>

On February 14, 2005, MWSS wrote the new Branch Manager of PNB-MWSS, Ofelia Daway, about the unauthorized withdrawal from their PNB C/A No. 244-850099-6.<sup>[23]</sup> MWSS expressed surprise at the withdrawal of Php 5,200,030 from its account when it had not issued any PNB checks. The MWSS letter also stated that:

Our contractor has already submitted their final billing and we expect to withdraw the full amount deposited to the said account within a month's time. We therefore demand the refund or restoration within five (5) days after receipt of this letter of the amount of P5,200,030.00 to PNB Account No. 244-850099-6 representing the amount withdrawn without MWSS authorization/instructions. Otherwise, we will use all the legal means available to MWSS to recover the amount.

PNB conducted its own investigation and, at its conclusion, sought to hold Tria liable for qualified theft.<sup>[24]</sup>

Employees of PNB-MWSS, Veniegas, Bagasani, and Francisco, and PNB-Circle's SSO, Flandez, executed separate complaint-affidavits to recount the circumstances of the issuance and encashment of Manager's Check No. 1165848, and accused Tria guilty of qualified theft.

Tria, via his Counter-Affidavit, contended that (1) there was no taking of personal property; (2) there was no intent to gain on his part; (3) the personal property does not belong to PNB even if it is the depository bank; (4) there was no grave abuse of confidence on his part; and (5) his alleged identification of the payee is not the operative act that triggered the payment of the manager's check by the PNB-MWSS Branch.<sup>[25]</sup> Instead, Tria argued that it was Flandez who approved and paid the manager's check even beyond his authority. He added that it was the other bank employees who should be held liable for the loss.

In his Reply-Affidavit dated February 20, 2006, Flandez contradicted Tria's claim that Tria left PNB-Circle immediately after signing Manager's Check No. 1165848. According to Flandez, Tria helped Atty. Reyes count the PhP 5,200,000 by the bundle and even asked the bank's security guard for a plastic bag for the cash.<sup>[26]</sup>

Following a preliminary investigation, the Assistant City Prosecutor issued a Resolution<sup>[27]</sup> on August 15, 2006 stating that Tria's identification of the payee did not consummate the payment of the Manager's Check. Rather, it was held, the consummation of the payment occurred during Flandez' approval of the encashment. The Resolution's dispositive portion reads:

WHEREFORE, in view of the foregoing, Undersigned respectfully recommends the approval of the above and the dismissal of the charge for Qualified Theft against respondent Amelio C. Tria due to lack of evidence and probable cause.

PNB moved for reconsideration but was denied in a Resolution<sup>[28]</sup> dated April 13, 2007.

Undaunted, PNB filed a petition for review with the Department of Justice (DOJ) and prayed for the reversal of the August 15, 2006 and April 13, 2007 Resolutions issued by the Office of the City Prosecutor of Quezon City (OCP).

On December 26, 2007, then Justice Secretary Raul M. Gonzales issued a Resolution

dismissing PNB's petition for review. PNB's motion for reconsideration was denied in a Resolution dated February 27, 2009.

PNB sought recourse before the Court of Appeals (CA). It alleged that both the OCP and the DOJ committed grave abuse of discretion in failing to consider that Tria and Atty. Reyes/John Doe conspired in committing the crime of qualified theft; and the DOJ committed grave abuse of discretion in failing to consider the existence of probable cause in the instant case and affirming the OCP's findings that there is no probable cause to hold Tria and Atty. Reyes/John Doe for trial in the crime of qualified theft.

### **The Ruling of the CA**

On January 18, 2010, the CA decided in favor of Tria. In affirming the DOJ Resolution issued by Secretary Gonzales, the CA took notice of how Manager's Check No. 1165848 was issued and paid by PNB after the verification made by PNB's own employees.

The CA ruled that probable cause against Tria and Atty. Reyes was not established since the employees of PNB made the encashment after their own independent verification of C/A No. 244-850099-6. Further, the CA deferred to the DOJ's determination of probable cause for the filing of an information in court as it is an executive function and ruled that the resolutions were not reversible as PNB was unable to show that these resolutions of the DOJ were tainted with grave abuse of discretion. The CA, thus, affirmed the OCP's finding that Tria's identification of the payee did not by itself bring about the payment of the subject manager's check and concluded that the element of taking of personal property belonging to another without the owner's consent is lacking since PNB consented to the taking by Atty. Reyes.

The dispositive portion of the CA Decision reads:

WHEREFORE, the petition is DISMISSED. The assailed Resolutions dated December 26, 2007 and February 29, 2009, issued by Justice Secretary Raul M. Gonzales in I.S. No. 05-10093. are AFFIRMED.

SO ORDERED.

PNB, thus, questions the Decision of the CA by the instant appeal.

### **The Ruling of this Court**

We find petitioner's appeal meritorious.

According to the CA, it was the approval of the request for the issuance and for the encashment of the manager's check by the employees of PNB that resulted in the withdrawal of the amount encashed by Atty. Reyes/John Doe. Hence, according to the appellate court, the OCP was correct in not pursuing the criminal case against Tria.