

SECOND DIVISION

[G.R. No. 165339, August 23, 2010]

**EQUITABLE PCI BANK, PETITIONER, VS. ARCELITO B. TAN,
RESPONDENT.**

DECISION

PERALTA, J.:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision^[1] and the Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CV No. 41928.

The antecedents are as follows:

Respondent Arcelito B.Tan maintained a current and savings account with Philippine Commercial International Bank (PCIB), now petitioner Equitable PCI Bank.^[3] On May 13, 1992, respondent issued PCIB Check No. 275100 postdated May 30, 1992^[4] in the amount of P34,588.72 in favor of Sulpicio Lines, Inc. As of May 14, 1992, respondent's balance with petitioner was P35,147.59. On May 14, 1992, Sulpicio Lines, Inc. deposited the aforesaid check to its account with Solid Bank, Carbon Branch, Cebu City. After clearing, the amount of the check was immediately debited by petitioner from respondent's account thereby leaving him with a balance of only P558.87.

Meanwhile, respondent issued three checks from May 9 to May 16, 1992, specifically, PCIB Check No. 275080 dated May 9, 1992, payable to Agusan del Sur Electric Cooperative Inc. (ASELCO) for the amount of P6,427.68; PCIB Check No. 275097 dated May 10, 1992 payable to Agusan del Norte Electric Cooperative Inc., (ANECO) for the amount of P6,472.01; and PCIB Check No. 314104 dated May 16, 1992 payable in cash for the amount of P10,000.00. When presented for payment, PCIB Check Nos. 275080, 275097 and 314014 were dishonored for being drawn against insufficient funds.

As a result of the dishonor of Check Nos. 275080 and 275097 which were payable to ASELCO and ANECO, respectively, the electric power supply for the two mini-sawmills owned and operated by respondent, located in Talacogon, Agusan del Sur; and in Golden Ribbon, Butuan City, was cut off on June 1, 1992 and May 28, 1992, respectively, and it was restored only on July 20 and August 24, 1992, respectively.

Due to the foregoing, respondent filed with the Regional Trial Court (RTC) of Cebu City a complaint against petitioner, praying for payment of losses consisting of unrealized income in the amount of P1,864,500.00. He also prayed for payment of moral damages, exemplary damages, attorney's fees and litigation expenses.

Respondent claimed that Check No. 275100 was a postdated check in payment of

Bills of Lading Nos. 15, 16 and 17, and that his account with petitioner would have had sufficient funds to cover payment of the three other checks were it not for the negligence of petitioner in immediately debiting from his account Check No. 275100, in the amount of P34,588.72, even as the said check was postdated to May 30, 1992. As a consequence of petitioner's error, which brought about the dishonor of the two checks paid to ASELCO and ANECO, the electric supply to his two mini-sawmills was cut off, the business operations thereof were stopped, and purchase orders were not duly served causing tremendous losses to him.

In its defense, petitioner denied that the questioned check was postdated May 30, 1992 and claimed that it was a current check dated May 3, 1992. It alleged further that the disconnection of the electric supply to respondent's sawmills was not due to the dishonor of the checks, but for other reasons not attributable to the bank.

After trial, the RTC, in its Decision^[5] dated June 21, 1993, ruled in favor of petitioner and dismissed the complaint.

Aggrieved by the Decision, respondent filed a Notice of Appeal.^[6] In its Decision dated May 31, 2004, the Court of Appeals reversed the decision of the trial court and directed petitioner to pay respondent the sum of P1,864,500.00 as actual damages, P50,000.00 by way of moral damages, P50,000.00 as exemplary damages and attorney's fees in the amount of P30,000.00. Petitioner filed a motion for reconsideration, which the CA denied in a Resolution dated August 24, 2004.

Hence, the instant petition assigning the following errors:

I

THE FOURTH DIVISION OF THE COURT OF APPEALS DEFIED OFFICE ORDER NO. 82-04-CG BY HOLDING ON TO THIS CASE AND DECIDING IT INSTEAD OF UNLOADING IT AND HAVING IT RE-RAFFLED AMONG THE DIVISIONS IN CEBU CITY.

II

THE COURT OF APPEALS ERRED IN REVERSING THE FINDING OF THE REGIONAL TRIAL COURT THAT CHECK NO. 275100 WAS DATED MAY 3, 1992.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT'S WAY OF WRITING THE DATE ON CHECK NO. 275100 WAS THE PROXIMATE CAUSE OF THE DISHONOR OF HIS THREE OTHER CHECKS.

IV

THE COURT OF APPEALS ERRED IN AWARDING ACTUAL DAMAGES, MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

Anent the first issue, petitioner submits that the CA defied Office Order No. 82-04-CG dated April 5, 2004 issued by then CA Presiding Justice Cancio C. Garcia when it failed to unload CA-G.R. CV No. 41928 so that it may be re-raffled among the Divisions in Cebu City.

Office Order No. 82-04-CG^[7] provides:

x x x x

In view of the reorganization of the different Divisions due to the appointment of eighteen (18) new Justices to the additional divisions in the cities of Cebu and Cagayan de Oro, the raffle of civil, criminal and special cases submitted for decision and falling within the jurisdiction of the additional divisions shall commence on April 6, 2004.

The raffle of newly-filed cases and those for completion likewise falling within the jurisdiction of the additional divisions, shall start on April 12, 2004.

x x x x

Petitioner alleged that since the aforementioned Office Order directed the raffle of civil, criminal and special cases submitted for decision and falling within the jurisdiction of the additional divisions on April 6, 2004, CA-G.R. CV No. 41928 should have been unloaded by the CA's Fourth Division and re-raffled to the CA's Division in Cebu City instead of deciding the case on May 31, 2004.

Respondent argued that the CA's Fourth Division correctly acted in taking cognizance of the case. The CA defended its jurisdiction by ruling that cases already submitted for decision as of the effectivity of Republic Act (R.A.) 8246^[8] on February 1, 1997 were no longer included for re-raffle to the newly-created Visayas and Mindanao Divisions of the CA, conformable to Section 5 of the said statute.

Petitioner's argument is misplaced. Under Section 3 of R.A. 8246, it is provided that:

Section 3. Section 10 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:

Sec. 10. *Place of Holding Sessions.* -- The Court of Appeals shall have its permanent stations as follows: The first seventeen (17) divisions shall be stationed in the City of Manila for cases coming from the First to the Fifth Judicial Regions; the Eighteenth, Nineteenth, and Twentieth Divisions shall be in Cebu City for cases coming from the Sixth, Seventh and Eighth Judicial Regions; the Twenty-first, Twenty-second and Twenty-third Divisions shall be in Cagayan de Oro City for cases coming from the Ninth, Tenth, Eleventh, and Twelfth Judicial Regions. Whenever demanded by public interest, or whenever justified by an increase in case

load, the Supreme Court, upon its own initiative or upon recommendation of the Presiding Justice of the Court of Appeals, may authorize any division of the Court to hold sessions periodically, or for such periods and at such places as the Supreme Court may determine, for the purpose of hearing and deciding cases. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months unless extended by the Chief Justice of the Supreme Court.

Further, Section 5 of the same Act provides:

Upon the effectivity of this Act, all pending cases, ***except those which have been submitted for resolution***, shall be referred to the proper division of the Court of Appeals.^[9]

Although CA-G.R. CV No. 41928 originated from Cebu City and is thus referable to the CA's Divisions in Cebu City, the said case was already submitted for decision as of July 25, 1994.^[10] Hence, CA-G.R. CV No. 41928, which was already submitted for decision as of the effectivity of R.A. 8246, *i.e.*, February 1, 1997, can no longer be referred to the CA's Division in Cebu City. Thus, the CA's Former Fourth Division correctly ruled that CA-G.R. CV No. 41928 pending in its division was not among those cases that had to be re-raffled to the newly-created CA Divisions in the Visayas Region.

Further, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out.^[11] Thus, Office Order No. 82-04-CG cannot defeat the provisions of R.A. 8246.

As to the second issue, petitioner maintains that the CA erred in reversing the finding of the RTC that Check No. 275100 was dated May 3, 1992. Petitioner argued that in arriving at the conclusion that Check No. 275100 was postdated May 30, 1992, the CA just made a visual examination of the check, unlike the RTC which verified the truth of respondent's testimony relative to the issuance of Check No. 275100. Respondent argued that the check was carefully examined by the CA which correctly found that Check No. 275100 was postdated to May 30, 1992 and not May 3, 1992.

The principle is well established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court. However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court.^[12] Due to the divergence of the findings of the CA and the RTC, We shall re-examine the facts and evidence presented before the lower courts.

The RTC ruled that:

x x x x

The issue to be resolved in this case is whether or not the date of PCIB Check No. 275100 is May 3, 1992 as contended by the defendant, or May 30, 1992 as claimed by the plaintiff. The date of the check is written as follows - 5/3/0/92. From the manner by which the date of the check is written, the Court cannot really make a pronouncement as to whether the true date of the check is May 3 or May 30, 1992, without inquiring into the background facts leading to the issuance of said check.

According to the plaintiff, the check was issued to Sulpicio Lines in payment of bill of lading nos. 15, 16 and 17. An examination of bill of lading no. 15, however, shows that the same was issued, not in favor of plaintiff but in favor of Coca Cola Bottlers Philippines, Inc. Bill of Lading No. 16 is issued in favor of Suson Lumber and not to plaintiff. Likewise, Bill of Lading No. 17 shows that it was issued to Jazz Cola and not to plaintiff. Furthermore, the receipt for the payment of the freight for the shipments reflected in these three bills of lading shows that the freight was paid by Coca Cola Bottlers Philippines, Inc. and not by plaintiff.

Moreover, the said receipt shows that it was paid in cash and not by check. From the foregoing, the evidence on record does not support the claim of the plaintiff that Check No. 275100 was issued in payment of bills of lading nos. 15, 16 and 17.

Hence, the conclusion of the Court is that the date of the check was May 3, 1992 and not May 30, 1992.^[13]

x x x x

In fine, the RTC concluded that the check was dated May 3, 1992 and not May 30, 1992, because the same check was not issued to pay for Bills of Lading Nos. 15, 16 and 17, as respondent claims. The trial court's conclusion is preposterous and illogical. The purpose for the issuance of the check has no logical connection with the date of the check. Besides, the trial court need not look into the purpose for which the check was issued. A reading of Check No. 275100^[14] would readily show that it was dated May 30, 1992. As correctly observed by the CA:

On the first issue, we agree with appellant that appellee Bank apparently erred in misappreciating the date of Check No. 275100. We have carefully examined the check in question (Exh. DDDD) and we are convinced that it was indeed postdated to May 30, 1992 and not May 3, 1992 as urged by appellee. The date written on the check clearly appears as "5/30/1992" (Exh. DDDD-4). The first bar (/) which separates the numbers "5" and "30" and the second bar (/) which further separates the number "30" from the year 1992 appear to have been done in heavy, well-defined and bold strokes, clearly indicating the date of the check as "5/30/1992" which obviously means May 30, 1992. On the other hand, the alleged bar (/) which appellee points out as allegedly separating the numbers "3" and "0," thereby leading it to read the date as May 3, 1992,