

SECOND DIVISION

[G.R. No. 168842, August 11, 2010]

VICENTE GO, PETITIONER, VS. METROPOLITAN BANK AND TRUST CO., RESPONDENT.

DECISION

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision^[1] dated May 27, 2005 and the Resolution^[2] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 63469.

The Facts

The facts of the case are as follows:

Petitioner filed two separate cases before the Regional Trial Court (RTC) of Cebu. Civil Case No. CEB-9713 was filed by petitioner against Ma. Teresa Chua (Chua) and Glyndah Tabañag (Tabañag) for a sum of money with preliminary attachment. Civil Case No. CEB-9866 was filed by petitioner for a sum of money with damages against herein respondent Metropolitan Bank and Trust Company (Metrobank) and Chua.^[3]

In both cases, petitioner alleged that he was doing business under the name "Hope Pharmacy" which sells medicine and other pharmaceutical products in the City of Cebu. Petitioner had in his employ Chua as his pharmacist and trustee or caretaker of the business; Tabañag, on the other hand, took care of the receipts and invoices and assisted Chua in making deposits for petitioner's accounts in the business operations of Hope Pharmacy.^[4]

In CEB-9713, petitioner claimed that there were unauthorized deposits and encashments made by Chua and Tabañag in the total amount of One Hundred Nine Thousand Four Hundred Thirty-three Pesos and Thirty Centavos (P109,433.30). He questioned particularly the following:

(1) FEBTC Check No. 251111 dated April 29, 1990 in the amount of P22,635.00 which was issued by plaintiff's [petitioner's] customer Loy Libron in payment of the stocks purchased was deposited under Metrobank Savings Account No. 420-920-6 belonging to the defendant Ma. Teresa Chua;

(2) RCBC Checks Nos. 330958 and 294515, which were in blank but pre-signed by him (plaintiff [petitioner] Vicente Go) for convenience and intended for payment to plaintiff's [petitioner's] suppliers, were filled up

and dated September 22, 1990 and September 7, 1990 in the amount of P30,000.00 and P50,000.00 respectively, and were deposited with defendant Chua's aforestated account with Metrobank;

(3) PBC Check No. 005874, drawn by Elizabeth Enriquez payable to the Hope Pharmacy in the amount of P6,798.30 was encashed by the defendant Glyndah Tabañag;

(4) There were unauthorized deposits and encashments in the total sum of P109,433.30;^[5]

In CEB-9866, petitioner averred that there were thirty-two (32) checks with Hope Pharmacy as payee, for varying sums, amounting to One Million Four Hundred Ninety-Two Thousand Five Hundred Ninety-Five Pesos and Six Centavos (P1,492,595.06), that were not endorsed by him but were deposited under the personal account of Chua with respondent bank,^[6] and these are the following:

<u>CHECK NO.</u>	<u>DATE</u>	<u>AMOUNT</u>
FEBTC 251166	5-23-90	P 65,214.88
FEBTC 239399	5-08-90	24,917.75
FEBTC 251350	7-24-90	212,326.56
PBC 279887	6-27-90	2,000.00
PBC 162387	1-24-90	6,300.00
PBC 162317	12-22-89	3,300.00
PBC 279881	6-23-90	7,650.00
PBC 009005	7-21-89	3,584.00
PBC 279771	5-14-90	3,600.00
PBC 279726	4-25-90	2,000.00
PBC 168004	3-22-90	2,800.00
PBC 167963	3-07-90	1,700.00
FEBTC 267793	8-20-90	80,085.66
FEBTC 267761	7-21-90	45,304.63
FEBTC 251252	6-03-90	64,000.00
FEBTC 267798	8-15-90	40,078.67
PBC 367292	8-06-90	2,100.00
PBC 376445	9-26-90	1,125.00
PBC 009056	8-07-89	2,500.00
PBC 376402	9-12-90	12,105.40
BPI 197074	7-17-90	5,240.00
BPI 197051	7-06-90	1,350.00
BPI 204358	9-19-90	5,402.60
BPI 204252	7-31-90	6,715.60
FEBTC 251171	6-27-90	83,175.54
FEBTC 251165	6-28-90	231,936.10
FEBTC 251251	6-30-90	47,087.25
FEBTC 251163	6-21-90	170,600.85
FEBTC 251170	5-23-90	16,440.00
FEBTC 251112	5-31-90	211,592.69
FEBTC 239400	6-15-90	47,664.03
FEBTC 251162	6-22-90	
		<u>82,697.85</u>

P1,492,595.06^[7]

Petitioner claimed that the said checks were crossed checks payable to Hope Pharmacy only; and that without the participation and connivance of respondent bank, the checks could not have been accepted for deposit to any other account, except petitioner's account.^[8]

Thus, in CEB-9866, petitioner prayed that Chua and respondent bank be ordered, jointly and severally, to pay the principal amount of P1,492,595.06, plus interest at 12% from the dates of the checks, until the obligation shall have been fully paid; moral damages of Five Hundred Thousand Pesos (P500,000.00); exemplary damages of P500,000.00; and attorney's fees and costs in the amount of P500,000.00.^[9]

On February 23, 1995, the RTC rendered a Joint Decision,^[10] the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby renders judgment dismissing plaintiff Vicente Go's complaint against the defendant Ma. Teresa Chua and Glyndah Tabañag in Civil Case No. CEB-9713, as well as plaintiff's complaint against the same defendant Ma. Teresa Chua in Civil Case No. CEB-9866.

Plaintiff Vicente Go is moreover sentenced to pay P50,000.00 in attorney's fees and litigation expenses to the defendants Ma. Teresa Chua and Glyndah Tabañag in Civil Case No. CEB-9713.

Defendant Metrobank in Civil Case No. CEB-9866 is hereby condemned to pay unto plaintiff Vicente Go/Hope Pharmacy the amount of P50,000.00 as moral damages, and attorney's fees and litigation expenses in the aggregate sum of P25,000.00.

The defendant Metrobank's crossclaim against its co-defendant Ma. Teresa Chua in Civil Case No. CEB-9866 is dismissed for lack of merit.

No special pronouncement as to costs in both instances.

SO ORDERED.^[11]

In striking down the complaint of the petitioner against Chua and Tabañag in CEB-9713, the RTC made the following findings:

(1) FEBTC Check No. 251111, dated April 29, 1990, in the amount of P22,635.00 payable to cash, was drawn by Loy Libron in payment of her purchases of medicines and other drugs which Ma. Teresa Chua was selling side by side with the medicines and drugs of the Hope Pharmacy, for which she (Maritess) was granted permission by its owner, Mr. Vicente Chua. These medicines and drugs from Thailand were Maritess' sideline,

and were segregated from the stocks of Hope Pharmacy; x x x.

(2) RCBC Check Nos. 294519 and 330958 were checks belonging to plaintiff Vicente Go payable to cash x x x; these checks were replacements of the sums earlier advanced by Ma. Teresa Chua, but which were deposited in the account of Vicente Go with RCBC, as shown by the deposit slips x x x, and confirmed by the statement of account of Vicente Go with RCBC.

(3) Check No. PCIB 005374 drawn by Elizabeth Enriquez payable to Hope Pharmacy/Cash in the amount of P6,798.30 dated September 6, 1990, was admittedly encashed by the defendant, Glyndah Tabañag. As per instruction by Vicente Go, Glyndah requested the drawer to insert the word "Cash," so that she could encash the same with PCIB, to meet the Hope Pharmacy's overdraft.

The listings x x x, made by Glyndah Tabañag and Flor Ouano will show that the corresponding amounts covered thereby were in fact deposited to the account of Mr. Vicente Go with RCBC; the Bank Statement of Mr. Go x x x, confirms defendants' claim independently of the deposit slip[s] x x x.^[12]

The trial court absolved Chua in CEB-9866 because of the finding that the subject checks in CEB-9866 were payments of petitioner for his loans or borrowings from the parents of Ma. Teresa Chua, through Ma. Teresa, who was given the total discretion by petitioner to transfer money from the offices of Hope Pharmacy to pay the advances and other obligations of the drugstore; she was also given the full discretion where to source the funds to cover the daily overdrafts, even to the extent of borrowing money with interest from other persons.^[13]

While the trial court exonerated Chua in CEB-9866, it however declared respondent bank liable for being negligent in allowing the deposit of crossed checks without the proper indorsement.

Petitioner filed an appeal before the CA. On May 27, 2005, the CA rendered a Decision,^[14] the *fallo* of which reads:

WHEREFORE, except for the award of attorney's fees and litigation expenses in favor of defendants Chua and Tabañag which is hereby deleted, the decision of the lower court is hereby **AFFIRMED**.

SO ORDERED.^[15]

Hence, this petition.

The Issue

Petitioner presented this sole issue for resolution: