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FIRST DIVISION

[G.R. No. 150228, July 30, 2009]

BANK OF AMERICA NT & SA, PETITIONER, VS. PHILIPPINE RACING CLUB, RESPONDENT.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court from the Decision[1] promulgated on July 16, 2001 by the former Second Division of the Court of Appeals (CA), in *CA-G.R. CV No. 45371* entitled "*Philippine Racing Club, Inc. v. Bank of America NT & SA*," affirming the Decision[2] dated March 17, 1994 of the Regional Trial Court (RTC) of Makati, Branch 135 in *Civil Case No. 89-5650*, in favor of the respondent. Likewise, the present petition assails the Resolution[3] promulgated on September 28, 2001, denying the Motion for Reconsideration of the CA Decision.

The facts of this case as narrated in the assailed CA Decision are as follows:

> Plaintiff-appellee PRCI is a domestic corporation which maintains several accounts with different banks in the Metro Manila area. Among the accounts maintained was Current Account No. 58891-012 with defendant-appellant BA (Paseo de Roxas Branch). The authorized joint signatories with respect to said Current Account were plaintiff-appellee's President (Antonia Reyes) and Vice President for Finance (Gregorio Reyes).
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> On or about the 2nd week of December 1988, the President and Vice President of plaintiff-appellee corporation were scheduled to go out of the country in connection with the corporation's business. In order not to disrupt operations in their absence, they pre-signed several checks relating to Current Account No. 58891-012. The intention was to insure continuity of plaintiff-appellee's operations by making available cash/money especially to settle obligations that might become due. These checks were entrusted to the accountant with instruction to make use of the same as the need arose. The internal arrangement was, in the event there was need to make use of the checks, the accountant would prepare the corresponding voucher and thereafter complete the entries on the pre-signed checks.
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> It turned out that on December 16, 1988, a John Doe presented to defendant-appellant bank for encashment a couple of plaintiff-appellee corporation's checks (Nos. 401116 and 401117) with the indicated value of P110,000.00 each. It is admitted that these 2 checks were among

> those presigned by plaintiff-appellee corporation's authorized signatories.
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> The two (2) checks had similar entries with similar infirmities and irregularities. On the space where the name of the payee should be indicated (Pay To The Order Of) the following 2-line entries were instead typewritten: on the upper line was the word "CASH" while the lower line had the following typewritten words, viz: "ONE HUNDRED TEN THOUSAND PESOS ONLY." Despite the highly irregular entries on the face of the checks, defendant-appellant bank, without as much as verifying and/or confirming the legitimacy of the checks considering the substantial amount involved and the obvious infirmity/defect of the checks on their faces, encashed said checks. A verification process, even by was of a telephone call to PRCI office, would have taken less than ten (10) minutes. But this was not done by BA. Investigation conducted by plaintiff-appellee corporation yielded the fact that there was no transaction involving PRCI that call for the payment of P220,000.00 to anyone. The checks appeared to have come into the hands of an employee of PRCI (one Clarita Mesina who was subsequently criminally charged for qualified theft) who eventually completed without authority the entries on the pre-signed checks. PRCI's demand for defendant-appellant to pay fell on deaf ears. Hence, the complaint.[4]

After due proceedings, the trial court rendered a Decision in favor of respondent, the dispositive portion of which reads:

> PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff and against the defendant, and the latter is ordered to pay plaintiff:
>
> (1) The sum of Two Hundred Twenty Thousand (P220,000.00) Pesos, with legal interest to be computed from date of the filing of the herein complaint;
>
> (2) The sum of Twenty Thousand (P20,000.00) Pesos by way of attorney's fees;
>
> (3) The sum of Ten Thousand (P10,000.00) Pesos for litigation expenses, and
>
> (4) To pay the costs of suit.
>
> SO ORDERED.[5]

Petitioner appealed the aforesaid trial court Decision to the CA which, however, affirmed said decision *in toto* in its July 16, 2001 Decision. Petitioner's Motion for Reconsideration of the CA Decision was subsequently denied on September 28, 2001.

Petitioner now comes before this Court arguing that:

I. The Court of Appeals gravely erred in holding that the proximate cause of respondent's loss was petitioner's encashment of the checks.

   A. The Court of Appeals gravely erred in holding that petitioner was liable for the amount of the checks despite the fact that petitioner was merely fulfilling its obligation under law and contract.

   B. The Court of Appeals gravely erred in holding that petitioner had a duty to verify the encashment, despite the absence of any obligation to do so.

   C. The Court of Appeals gravely erred in not applying Section 14 of the Negotiable Instruments Law, despite its clear applicability to this case;

II. The Court of Appeals gravely erred in not holding that the proximate cause of respondent's loss was its own grossly negligent practice of pre-signing checks without payees and amounts and delivering these pre-signed checks to its employees (other than their signatories).

III. The Court of Appeals gravely erred in affirming the trial court's award of attorney's fees despite the absence of any applicable ground under Article 2208 of the Civil Code.

IV. The Court of Appeals gravely erred in not awarding attorney's fees, moral and exemplary damages, and costs of suit in favor of petitioner, who clearly deserves them.[6]

From the discussions of both parties in their pleadings, the key issue to be resolved in the present case is whether the proximate cause of the wrongful encashment of the checks in question was due to (a) petitioner's failure to make a verification regarding the said checks with the respondent in view of the misplacement of entries on the face of the checks or (b) the practice of the respondent of pre-signing blank checks and leaving the same with its employees.

Petitioner insists that it merely fulfilled its obligation under law and contract when it encashed the aforesaid checks. Invoking Sections 126[7] and 185[8] of the Negotiable Instruments Law (NIL), petitioner claims that its duty as a drawee bank to a drawer-client maintaining a checking account with it is to pay orders for checks bearing the drawer-client's genuine signatures. The genuine signatures of the client's duly authorized signatories affixed on the checks signify the order for payment. Thus, pursuant to the said obligation, the drawee bank has the duty to determine whether the signatures appearing on the check are the drawer-client's or its duly authorized signatories. If the signatures are genuine, the bank has the unavoidable legal and contractual duty to pay. If the signatures are forged and falsified, the drawee bank has the corollary, but equally unavoidable legal and

contractual, duty not to pay.[9]

Furthermore, petitioner maintains that there exists a duty on the drawee bank to inquire from the drawer before encashing a check only when the check bears a material alteration. A material alteration is defined in Section 125 of the NIL to be one which changes the date, the sum payable, the time or place of payment, the number or relations of the parties, the currency in which payment is to be made or one which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect. With respect to the checks at issue, petitioner points out that they do not contain any material alteration.[10] This is a fact which was affirmed by the trial court itself.[11]

There is no dispute that the signatures appearing on the subject checks were genuine signatures of the respondent's authorized joint signatories; namely, Antonia Reyes and Gregorio Reyes who were respondent's President and Vice-President for Finance, respectively. Both pre-signed the said checks since they were both scheduled to go abroad and it was apparently their practice to leave with the company accountant checks signed in black to answer for company obligations that might fall due during the signatories' absence. It is likewise admitted that neither of the subject checks contains any material alteration or erasure.

However, on the blank space of each check reserved for the payee, the following typewritten words appear: "ONE HUNDRED TEN THOUSAND PESOS ONLY." Above the same is the typewritten word, "CASH." On the blank reserved for the amount, the same amount of One Hundred Ten Thousand Pesos was indicated with the use of a check writer. The presence of these irregularities in each check should have alerted the petitioner to be cautious before proceeding to encash them which it did not do.

It is well-settled that banks are engaged in a business impressed with public interest, and it is their duty to protect in return their many clients and depositors who transact business with them. They have the obligation to treat their client's account meticulously and with the highest degree of care, considering the fiduciary nature of their relationship. The diligence required of banks, therefore, is more than that of a good father of a family.[12]

Petitioner asserts that it was not duty-bound to verify with the respondent since the amount below the typewritten word "CASH," expressed in words, is the very same amount indicated in figures by means of a check writer on the amount portion of the check. The amount stated in words is, therefore, a mere reiteration of the amount stated in figures. Petitioner emphasizes that a reiteration of the amount in words is merely a repetition and that a repetition is not an alteration which if present and material would have enjoined it to commence verification with respondent.[13]

We do not agree with petitioner's myopic view and carefully crafted defense. Although not in the strict sense "material alterations," the misplacement of the typewritten entries for the payee and the amount on the same blank and the repetition of the amount using a check writer were glaringly obvious irregularities on the face of the check. Clearly, someone made a mistake in filling up the checks and the repetition of the entries was possibly an attempt to rectify the mistake. Also, if

the check had been filled up by the person who customarily accomplishes the checks of respondent, it should have occurred to petitioner's employees that it would be unlikely such mistakes would be made. All these circumstances should have alerted the bank to the possibility that the holder or the person who is attempting to encash the checks did not have proper title to the checks or did not have authority to fill up and encash the same. As noted by the CA, petitioner could have made a simple phone call to its client to clarify the irregularities and the loss to respondent due to the encashment of the stolen checks would have been prevented.

In the case at bar, extraordinary diligence demands that petitioner should have ascertained from respondent the authenticity of the subject checks or the accuracy of the entries therein not only because of the presence of highly irregular entries on the face of the checks but also of the decidedly unusual circumstances surrounding their encashment. Respondent's witness testified that for checks in amounts greater than Twenty Thousand Pesos (P20,000.00) it is the company's practice to ensure that the payee is indicated by name in the check.[14] This was not rebutted by petitioner. Indeed, it is highly uncommon for a corporation to make out checks payable to "CASH" for substantial amounts such as in this case. If each irregular circumstance in this case were taken singly or isolated, the bank's employees might have been justified in ignoring them. However, the confluence of the irregularities on the face of the checks and circumstances that depart from the usual banking practice of respondent should have put petitioner's employees on guard that the checks were possibly not issued by the respondent in due course of its business. Petitioner's subtle sophistry cannot exculpate it from behavior that fell extremely short of the highest degree of care and diligence required of it as a banking institution.

Indeed, taking this with the testimony of petitioner's operations manager that in case of an irregularity on the face of the check (such as when blanks were not properly filled out) the bank may or may not call the client depending on how busy the bank is on a particular day,[15] we are even more convinced that petitioner's safeguards to protect clients from check fraud are arbitrary and subjective. Every client should be treated equally by a banking institution regardless of the amount of his deposits and each client has the right to expect that every centavo he entrusts to a bank would be handled with the same degree of care as the accounts of other clients. Perforce, we find that petitioner plainly failed to adhere to the high standard of diligence expected of it as a banking institution.

In defense of its cashier/teller's questionable action, petitioner insists that pursuant to Sections 14[16] and 16[17] of the NIL, it could validly presume, upon presentation of the checks, that the party who filled up the blanks had authority and that a valid and intentional delivery to the party presenting the checks had taken place. Thus, in petitioner's view, the sole blame for this debacle should be shifted to respondent for having its signatories pre-sign and deliver the subject checks.[18] Petitioner argues that there was indeed delivery in this case because, following American jurisprudence, the gross negligence of respondent's accountant in safekeeping the subject checks which resulted in their theft should be treated as a voluntary delivery by the maker who is estopped from claiming non-delivery of the instrument.[19]

Petitioner's contention would have been correct if the subject checks were correctly and properly filled out by the thief and presented to the bank in good order. In that