

FIRST DIVISION

[G.R. No. 179952, December 04, 2009]

**METROPOLITAN BANK AND TRUST COMPANY (FORMERLY
ASIANBANK CORPORATION), PETITIONER, VS. BA FINANCE
CORPORATION AND MALAYAN INSURANCE CO., INC.,
RESPONDENTS.**

D E C I S I O N

CARPIO MORALES, J.:

Lamberto Bitanga (Bitanga) obtained from respondent BA Finance Corporation (BA Finance) a P329,280^[1] loan to secure which, he mortgaged his car to respondent BA Finance.^[2] The mortgage contained the following stipulation:

The MORTGAGOR covenants and agrees that he/it will cause the property(ies) hereinabove mortgaged to be insured against loss or damage by accident, theft and fire for a period of one year from date hereof with an insurance company or companies acceptable to the MORTGAGEE in an amount not less than the outstanding balance of mortgage obligations and that he/it will make all loss, if any, under such policy or policies, **payable to the MORTGAGEE** or its assigns as its interest may appear x x x.^[3] (emphasis and underscoring supplied)

Bitanga thus had the mortgaged car insured by respondent Malayan Insurance Co., Inc. (Malayan Insurance)^[4] which issued a policy stipulating that, *inter alia*,

Loss, if any shall be **payable to BA FINANCE CORP.** as its interest may appear. It is hereby expressly understood that this policy or any renewal thereof, shall not be cancelled without prior notification and conformity by BA FINANCE CORPORATION.^[5] (emphasis and underscoring supplied)

The car was stolen. On Bitanga's claim, Malayan Insurance issued a check payable to the order of "B.A. Finance Corporation and Lamberto Bitanga" for P224,500, drawn against China Banking Corporation (China Bank). The check was crossed with the notation "For Deposit Payees' Account Only."^[6]

Without the indorsement or authority of his co-payee BA Finance, Bitanga deposited the check to his account with the Asianbank Corporation (Asianbank), now merged with herein petitioner Metropolitan Bank and Trust Company (Metrobank). Bitanga subsequently withdrew the entire proceeds of the check.

In the meantime, Bitanga's loan became past due, but despite demands, he failed to settle it.

BA Finance eventually learned of the loss of the car and of Malayan Insurance's issuance of a crossed check payable to it and Bitanga, and of Bitanga's depositing it in his account at Asianbank and withdrawing the entire proceeds thereof.

BA Finance thereupon demanded the payment of the value of the check from Asianbank^[7] but to no avail, prompting it to file a complaint before the Regional Trial Court (RTC) of Makati for sum of money and damages against Asianbank and Bitanga,^[8] alleging that, *inter alia*, it is entitled to the entire proceeds of the check.

In its Answer with Counterclaim,^[9] Asianbank alleged that BA Finance "instituted [the] complaint in bad faith to coerce [it] into paying the whole amount of the CHECK knowing fully well that its rightful claim, if any, is against Malayan [Insurance]."^[10]

Asianbank thereafter filed a cross-claim against Bitanga,^[11] alleging that he fraudulently induced its personnel to release to him the full amount of the check; and that on being later informed that the entire amount of the check did not belong to Bitanga, it took steps to get in touch with him but he had changed residence without leaving any forwarding address.^[12]

And Asianbank filed a third-party complaint against Malayan Insurance,^[13] alleging that Malayan Insurance was grossly negligent in issuing the check payable to both Bitanga and BA Finance and delivering it to Bitanga without the consent of BA Finance.^[14]

Bitanga was declared in default in Asianbank's cross-claim.^[15]

Branch 137 of the Makati RTC, finding that Malayan Insurance was not privy to the contract between BA Finance and Bitanga, and noting the claim of Malayan Insurance that it is its policy to issue checks to both the insured and the financing company, held that Malayan Insurance cannot be faulted for negligence for issuing the check payable to both BA Finance and Bitanga.

The trial court, holding that Asianbank was negligent in allowing Bitanga to deposit the check to his account and to withdraw the proceeds thereof, without his co-payee BA Finance having either indorsed it or authorized him to indorse it in its behalf,^[16] found Asianbank and Bitanga jointly and severally liable to BA Finance following Section 41 of the *Negotiable Instruments Law* and *Associated Bank v. Court of Appeals*.^[17]

Thus the trial court disposed:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants Asian Bank Corporation and Lamberto Bitanga:

- 1) To pay plaintiff jointly and severally the sum of P224,500.00 with interest thereon at the rate of 12% from September 25, 1992 until fully paid;
- 2) To pay plaintiff the sum of P50,000.00 as exemplary damages; P20,000.00 as actual damages; P30,000.00 as attorney's fee; and
- 3) To pay the costs of suit.

Asianbank's and Bitanga's [*sic*] counterclaims are dismissed.

The third party complaint of defendant/third party plaintiff against third-party defendant Malayan Insurance, Co., Inc. is hereby dismissed. Asianbank is ordered to pay Malayan attorney's fee of P50,000.00 and a per appearance fee of P500.00.

On the cross-claim of defendant Asianbank, co-defendant Lamberto Bitanga is ordered to pay the former the amounts the latter is ordered to pay the plaintiff in Nos. 1, 2 and 3 above-mentioned.

SO ORDERED.^[18] (emphasis and underscoring supplied)

Before the Court of Appeals, Asianbank, in its Appellant's Brief, submitted the following issues for consideration:

3.01.1.1 Whether BA Finance has a cause of action against Asianbank.

3.01.1.2 Assuming that BA Finance has a valid cause of action, may it claim from Asianbank more than one-half of the value of the check considering that it is a mere co-payee or joint payee of the check?

3.01.1.3 Whether BA Finance is liable to Asianbank for actual and exemplary damages for wrongfully bringing the case to court.

3.01.1.4 Whether Malayan is liable to Asianbank for reimbursement of any sum of money which this Honorable Court may award to BA Finance in this case.^[19] (underscoring supplied)

And it proffered the following arguments:

A. BA Finance has no cause of action against Asianbank as it has no legal right and title to the check considering that the check was not delivered to BA Finance. Hence, BA Finance is not a holder thereof under the Negotiable Instruments Law.

B. Asianbank, as collecting bank, is not liable to BA Finance as there was no privity of contract between them.

C. Asianbank, as collecting bank, is not liable to BA Finance, considering that, as the intermediary between the payee and the drawee Chinabank, it merely acted on the instructions of drawee Chinabank to pay the amount of the check to Bitanga, hence, the consequent damage to BA Finance was due to the negligence of Chinabank.

D. Malayan's act of issuing and delivering the check solely to Bitanga in violation of the "loss payee" clause in the Policy, is the proximate cause of the alleged damage to BA Finance.

E. Assuming Asianbank is liable, BA Finance can claim only his proportionate interest on the check as it is a joint payee thereof.

F. Bitanga alone is liable for the amount to BA Finance on the ground of unjust enrichment or *solutio indebiti*.

G. BA Finance is liable to pay Asianbank actual and exemplary damages.
[20] (underscoring supplied)

The appellate court, "summarizing" the errors attributed to the trial court by Asianbank to be "whether...BA Finance has a cause of action against [it] even if the subject check had not been delivered to...BA Finance by the issuer itself," held in the affirmative and accordingly affirmed the trial court's decision but deleted the award of P20,000 as actual damages.[21]

Hence, the present Petition for Review on Certiorari[22] filed by Metrobank (hereafter petitioner) to which Asianbank was, as earlier stated, merged, faulting the appellate court

I. x x x in applying the case of Associated Bank v. Court of Appeals, in the absence of factual similarity and of the legal relationships necessary for the application of the desirable shortcut rule. x x x

II. x x x in not finding that x x x the general rule that the payee has no cause of action against the collecting bank absent delivery to him must be applied.

III. x x x in finding that all the elements of a cause of action by BA Finance Corporation against Asianbank Corporation are present.

IV. x x x in finding that Article 1208 of the Civil Code is not applicable.

V. x x x in awarding of exemplary damages even in the absence of moral, temperate, liquidated or compensatory damages and a finding of fact that Asianbank acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

x x x x

VII. x x x in dismissing Asianbank's counterclaim and Third Party

complaint [against Malayan Insurance].^[23] (italics in the original; underscoring supplied)

Petitioner proffers the following arguments against the application of *Associated Bank v. CA* to the case:

x x x [T]he rule established in the *Associated Bank* case has provided a speedier remedy for the payee to recover from erring collecting banks despite the absence of delivery of the negotiable instrument. However, the application of the rule demands careful consideration of the factual settings and issues raised in the case x x x.

One of the relevant circumstances raised in *Associated Bank* is the existence of forgery or unauthorized indorsement. x x x

x x x x

In the case at bar, Bitanga is authorized to indorse the check as the drawer names him as one of the payees. Moreover, his signature is not a forgery nor has he or anyone forged the signature of the representative of BA Finance Corporation. No unauthorized indorsement appears on the check.

x x x x

Absent the indispensable fact of forgery or unauthorized indorsement, the desirable shortcut rule cannot be applied,^[24] (underscoring supplied)

The petition fails.

Section 41 of the *Negotiable Instruments Law* provides:

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, **all must indorse** unless the one indorsing has authority to indorse for the others. (emphasis and underscoring supplied)

Bitanga alone endorsed the crossed check, and petitioner allowed the deposit and release of the proceeds thereof, despite the absence of authority of Bitanga's co-payee BA Finance to endorse it on its behalf.^[25]

Denying any irregularity in accepting the check, petitioner maintains that it followed normal banking procedure. The testimony of Imelda Cruz, Asianbank's then accounting head, shows otherwise, however, viz:

Q Now, could you be familiar with a particular policy of the bank with respect to checks with joined (sic) payees?