

THIRD DIVISION

[G.R. No. 177526, July 04, 2008]

PHILIPPINE SAVINGS BANK, PETITIONER, VS. CHOWKING FOOD CORPORATION, RESPONDENT.

DECISION

REYES, R.T., J.:

IT is the peculiar quality of a fool to perceive the fault of others and to forget his own. ***Ang isang kakatuwang katangian ng isang hangal ay punahin ang kamalian ng iba at kalimutan naman ang sa kanya.***

This is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) reinstating the Decision of the Regional Trial Court (RTC), Manila, Branch 5. The RTC ordered petitioner Philippine Savings Bank (PSBank) and its Bustos Branch Head, Erlinda O. Santos, to reimburse respondent Chowking Food Corporation (Chowking) the amount corresponding to five (5) illegally encashed checks.

The Facts

Between March 15, 1989 and August 10, 1989, Joe Kuan Food Corporation issued in favor of Chowking five (5) PSBank checks with the following numbers, dates and denominations:

| <u>Check No.</u> | <u>Amount</u> | <u>Date</u> |
|------------------|---------------|-------------------------------|
| 017069 | P 44,120.00 | 15 March 1989 |
| 053528 | P135,052.87 | 09 May 1989 |
| 074602 | P160,138.12 | 08 August 1989 |
| 074631 | P159,634.13 | 08 August 1989 |
| 017096 | P 60,036.74 | 10 August 1989 ^[2] |

The total amount of the subject checks reached P556,981.86.

On the respective due dates of each check, Chowking's acting accounting manager, Rino T. Manzano, endorsed and encashed said checks with the Bustos branch of respondent PSBank.^[3]

All the five checks were honored by defendant Santos, even with only the endorsement of Manzano approving them. The signatures of the other authorized officers of respondent corporation were absent in the five (5) checks, contrary to usual banking practice.^[4] Unexpectedly, Manzano absconded with and misappropriated the check proceeds.^[5]

When Chowking found out Manzano's scheme, it demanded reimbursement from

PSBank.^[6] When PSBank refused to pay, Chowking filed a complaint^[7] for a sum of money with damages before the RTC. Likewise impleaded were PSBank's president, Antonio S. Abacan, and Bustos branch head, Santos.^[8]

Both PSBank and Santos filed cross claims and third party complaints against Manzano.^[9] Despite all diligent efforts, summonses were not served upon third party defendant Manzano. Santos did not take any further action and her third party complaint was archived.^[10]

Meanwhile, petitioner caused the service of its summons on the cross-claim and third party complaints through publication. On its subsequent motion, Manzano was declared in default for failure to file a responsive pleading.^[11]

Respondent filed a motion for summary judgment. Petitioner opposed the motion. On February 1, 1995, the trial court denied the motion via an order of even date.^[12]

In its Answer, petitioner did not controvert the foregoing facts, but denied liability to respondent for the encashed checks.^[13] Petitioner bank maintained it exercised due diligence in the supervision of all its employees. It even dismissed defendant Santos after she was found guilty of negligence in the performance of her duties.^[14]

Defendant Santos, on the other hand, denied that she had been negligent in her job. She averred that she merely followed the bank's practice of honoring respondent's checks even if accompanied only by Manzano's endorsement. ^[15]

Defendant Abacan likewise denied any liability to respondent. He alleged that, as president and officer of petitioner bank, he played no role in the transactions complained of. ^[16] Thus, respondent has no cause of action against him.

Petitioner, Santos and Abacan were unanimous in asserting that respondent is estopped from claiming reimbursement and damages since it was negligent in allowing Manzano to take hold, endorse, and encash its checks. Petitioner pointed out that the proximate cause of respondent's loss was its own negligence.^[17]

RTC Disposition

On August 24, 1998, the RTC rendered judgment in favor of respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff and as against defendant Philippine Savings Bank and Erlinda O. Santos ordering the said defendants to pay plaintiff, jointly and severally:

1. The amount of P556,981.86 plus interest at the rate of 12% per annum from August 15, 1989 until said amount shall have been paid;

2. 20% of the total amount due plaintiff as attorney's fees;
3. The sum of P100,000.00 as exemplary damages;
4. The sum of P1,000,000.00 for plaintiff's unrealized profits.

The complaint with respect to defendant Antonio Abacan, Jr. as well as his counterclaim and cross claim are hereby DISMISSED.

With respect to the cross claim of defendant PSBank against Erlinda Santos and its third-party complaint against Rino T. Manzano, both Santos and Manzano are hereby ordered to jointly and severally, reimburse defendant PSBank whatever amount the latter shall be constrained to pay plaintiff in connection with this case.

SO ORDERED.^[18]

Aggrieved, petitioner filed a motion for reconsideration. Through an Order dated January 11, 1999, the RTC reversed its earlier ruling and held that it was respondent's own negligence that was the proximate cause of the loss. The *fallo* of the amended RTC decision now reads:

In light of the foregoing grounds and observations, the Decision of August 24, 1998, by this Court is accordingly modified as follows:

1. Ordering the dismissal of the complaint by the plaintiff Chowking Food Corporation against the defendants, Philippine Savings Bank (PSBank) and Erlinda Santos for lack of basis in fact and law;
2. Ordering the third party defendant, Regino or Rino T. Manzano to pay the plaintiff Chowking Food Corporation, the following:
 - a. To reimburse the plaintiff the amount of P556,981.86 plus interest at the rate of 12% per annum from August 15, 1989, until said amount has been fully satisfied;
 - b. To pay an attorney's fee equivalent to 20% of the total amount due the plaintiff;
 - c. To pay an amount of P100,000.00 the plaintiff for actual and compensatory damages, plus the costs of this suit.

SO ORDERED.^[19]

Dissatisfied with the modified ruling of the RTC, respondent appealed to the CA.

CA Disposition

In its appeal, respondent Chowking contended, *inter alia*, that the RTC erred in ruling that the proximate cause of the loss was its own negligence; and that its claim was barred by estoppel.

On January 31, 2007, the CA granted the appeal, disposing as follows:

WHEREFORE, the instant appeal is GRANTED. The order appealed from is hereby SET ASIDE and the 24 August 1998 decision is consequently REINSTATED with modification that the awards of attorney's fees, exemplary damages, and alleged P1,000,000.00 unrealized profits of the appellant are DELETED.

IT IS SO ORDERED. [20]

The CA held that both petitioner PSBank and Santos should bear the loss. Said the appellate court:

It is admitted that PSB cashed, over the counter, the checks of the appellant indorsed by Manzano alone. Since there is no more dispute on the negligent act of Santos in honoring the appellant's checks, over the counter, despite the proper indorsements, the categorical finding of negligence against her, remaining unrebutted, is deemed established. This in effect warrants a finding that Santos is liable for damages to the appellant. The lower court therefore erred in dismissing the complaint against her.[21]

Further, the CA held that:

Contrary to PSB's contention that it should not be held liable because it neither consented to nor had knowledge of Santos' (*sic*) violations, such liability of Santos is solidary with PSB pursuant to Article 2176 in relation to Article 2180 of the Civil Code which states:

"Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done....

Art. 2180. The obligation imposed by Art. 2176 is demandable not only for one's own acts or omissions but also for those of persons for whom one is responsible.

x x x x

Employers shall be liable for the damage caused by their employees and household helpers acting within the scope of their assigned tasks even though the former are not engaged in any business or activity.

x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage."

x x x However, with banks like PSB, the degree of diligence required is more than that of a good father of a family considering that the business

of banking is imbued with public interest due to the nature of its functions. Highest degree of diligence is needed which PSB, in this case, failed to observe.

x x x Its argument that it should not be held responsible for the negligent acts of Santos because those were independent acts x x x perpetrated without its knowledge and consent is without basis in fact and in law. Assuming that PSB did not err in hiring Santos for her position, its lack of supervision over her made it solidarily liable for the unauthorized encashment of the checks involved. In the supervision of employees, the employer must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for the breach thereof. The appellee, in this case, presented no evidence that it formulated rules/guidelines for the proper performance of functions of its employees *and* that it strictly implemented and monitored compliance therewith. x x x^[22]

The CA also disagreed with petitioner's contention that respondent's own negligence was the proximate cause of its loss. The CA opined that even assuming that respondent was also negligent in allowing Manzano to encash its checks, petitioner had the last clear chance to avert injury and loss to respondent. This could have been done if petitioner, through Santos, faithfully and carefully observed its encashment rules and procedures.

The CA ratiocinated:

x x x Had Santos not been remiss in verifying the indorsements of the checks involved, she would not have cashed the same because Manzano, whose only signature appears therein, is apparently not an authorized signatory of the appellant x x x had every means to determine the validity of those indorsements but for one reason or another she was neglectful of her duty x x x as admitted by PSB, such over the counter encashments are not even sanctioned by its policies but Santos simply ignored the same. It appears clear that Santos let the opportunity slip by when an exercise of ordinary prudence expected of bank employees would have sufficed to prevent the loss.^[23]

Issues

Petitioner has resorted to the present recourse and assigns to the CA the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT RESPONDENT WAS ESTOPPED FROM ASSERTING ITS CLAIM AGAINST PETITIONER.

II

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DID NOT RULE THAT RESPONDENT'S NEGLIGENCE WAS THE PROXIMATE CAUSE OF ITS OWN LOSS (Underscoring supplied)