

FIRST DIVISION

[G.R. No. 157833, October 15, 2007]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS.
GREGORIO C. ROXAS, RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on *Certiorari* assailing the Decision^[1] of the Court of Appeals (Fourth Division) dated February 13, 2003 in CA-G.R. CV No. 67980.

The facts of the case, as found by the trial court and affirmed by the Court of Appeals, are:

Gregorio C. Roxas, respondent, is a trader. Sometime in March 1993, he delivered stocks of vegetable oil to spouses Rodrigo and Marissa Cawili. As payment therefor, spouses Cawili issued a personal check in the amount of ₱348,805.50. However, when respondent tried to encash the check, it was dishonored by the drawee bank.

Spouses Cawili then assured him that they would replace the bounced check with a cashier's check from the Bank of the Philippine Islands (BPI), petitioner.

On March 31, 1993, respondent and Rodrigo Cawili went to petitioner's branch at Shaw Boulevard, Mandaluyong City where Elma Capistrano, the branch manager, personally attended to them. Upon Elma's instructions, Lita Sagun, the bank teller, prepared BPI Cashier's Check No. 14428 in the amount of ₱348,805.50, drawn against the account of Marissa Cawili, payable to respondent. Rodrigo then handed the check to respondent in the presence of Elma.

The following day, April 1, 1993, respondent returned to petitioner's branch at Shaw Boulevard to encash the cashier's check but it was dishonored. Elma informed him that Marissa's account was closed on that date.

Despite respondent's insistence, the bank officers refused to encash the check and tried to retrieve it from respondent. He then called his lawyer who advised him to deposit the check in his (respondent's) account at Citytrust, Ortigas Avenue. However, the check was dishonored on the ground "Account Closed."

On September 23, 1993, respondent filed with the Regional Trial Court, Branch 263, Pasig City a complaint for sum of money against petitioner, docketed as Civil Case No. 63663. Respondent prayed that petitioner be ordered to pay the amount of the check, damages and cost of the suit.

In its answer, petitioner specifically denied the allegations in the complaint, claiming that it issued the check by mistake in good faith; that its dishonor was due to lack of

consideration; and that respondent's remedy was to sue Rodrigo Cawili who purchased the check. As a counterclaim, petitioner prayed that respondent be ordered to pay attorney's fees and expenses of litigation.

Petitioner filed a third-party complaint against spouses Cawili. They were later declared in default for their failure to file their answer.

After trial, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, this Court hereby renders judgment in favor of herein plaintiff and orders the defendant, Bank of the Philippine Islands, to pay Gerardo C. Roxas:

- 1.) The sum of P348,805.50, the face value of the cashier's check, with legal interest thereon computed from April 1, 1993 until the amount is fully paid;
- 2.) The sum of P50,000.00 for moral damages;
- 3.) The sum of P50,000.00 as exemplary damages to serve as an example for the public good;
- 4.) The sum of P25,000.00 for and as attorney's fees; and the
- 5.) Costs of suit.

As to the third-party complaint, third-party defendants Spouses Rodrigo and Marissa Cawili are hereby ordered to indemnify defendant Bank of the Philippine Islands such amount(s) adjudged and actually paid by it to herein plaintiff Gregorio C. Roxas, including the costs of suit.

SO ORDERED.

On appeal, the Court of Appeals, in its Decision, affirmed the trial court's judgment.

Hence, this petition.

Petitioner ascribes to the Court of Appeals the following errors: (1) in finding that respondent is a holder in due course; and (2) in holding that it (petitioner) is liable to respondent for the amount of the cashier's check.

Section 52 of the Negotiable Instruments Law provides:

SEC. 52. *What constitutes a holder in due course.* – A holder in due course is a holder who has taken the instrument under the following conditions:

- (a) That it is complete and regular upon its face;
- (b) That he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact;
- (c) That he took it in good faith and for value;