

## SECOND DIVISION

[ G.R. NO. 156294, November 29, 2006 ]

**MELVA THERESA ALVIAR GONZALES, PETITIONER, VS. RIZAL  
COMMERCIAL BANKING CORPORATION, RESPONDENT.**

### D E C I S I O N

**GARCIA, J.:**

An action for a sum of money originating from the Regional Trial Court (RTC) of Makati City, Branch 61, thereat docketed as Civil Case No. 88-1502, was decided in favor of therein plaintiff, now respondent Rizal Commercial Banking Corporation (RCBC). On appeal to the Court of Appeals (CA) in *CA-G.R. CV No. 48596*, that court, in a decision<sup>[1]</sup> dated August 30, 2002, affirmed the RTC minus the award of attorney's fees. Upon the instance of herein petitioner Melva Theresa Alviar Gonzales, the case is now before this Court *via* this petition for review on *certiorari*, based on the following undisputed facts as unanimously found by the RTC and the CA, which the latter summarized as follows:

Gonzales was an employee of Rizal Commercial Banking Corporation (*or RCBC*) as New Accounts Clerk in the Retail Banking Department at its Head Office.

A foreign check in the amount of \$7,500 was drawn by Dr. Don Zapanta of the Ade Medical Group with address at 569 Western Avenue, Los Angeles, California, against the drawee bank Wilshire Center Bank, N.A., of Los Angeles, California, U.S.A., and payable to Gonzales' mother, defendant Eva Alviar (*or Alviar*). Alviar then endorsed this check. Since RCBC gives special accommodations to its employees to receive the check's value without awaiting the clearing period, Gonzales presented the foreign check to Olivia Gomez, the RCBC's Head of Retail Banking. After examining this, Olivia Gomez requested Gonzales to endorse it which she did. Olivia Gomez then acquiesced to the early encashment of the check and signed the check but indicated thereon her authority of "up to P17,500.00 only". Afterwards, Olivia Gomez directed Gonzales to present the check to RCBC employee Carlos Ramos and procure his signature. After inspecting the check, Carlos Ramos also signed it with an "ok" annotation. After getting the said signatures Gonzales presented the check to Rolando Zornosa, Supervisor of the Remittance section of the Foreign Department of the RCBC Head Office, who after scrutinizing the entries and signatures therein authorized its encashment. Gonzales then received its peso equivalent of P155,270.85.

RCBC then tried to collect the amount of the check with the drawee bank by the latter through its correspondent bank, the First Interstate Bank of California, on two occasions dishonored the check because of "END.

IRREG" or irregular indorsement. Insisting, RCBC again sent the check to the drawee bank, but this time the check was returned due to "account closed". Unable to collect, RCBC demanded from Gonzales the payment of the peso equivalent of the check that she received. Gonzales settled the matter by agreeing that payment be made thru salary deduction. This temporary arrangement for salary deductions was communicated by Gonzales to RCBC through a letter dated November 27, 1987 xxx

xxx xxx xxx

The deductions was implemented starting October 1987. On March 7, 1988 RCBC sent a demand letter to Alviar for the payment of her obligation but this fell on deaf ears as RCBC did not receive any response from Alviar. Taking further action to collect, RCBC then conveyed the matter to its counsel and on June 16, 1988, a letter was sent to Gonzales reminding her of her liability as an indorser of the subject check and that for her to avoid litigation she has to fulfill her commitment to settle her obligation as assured in her said letter. On July 1988 Gonzales resigned from RCBC. What had been deducted from her salary was only P12,822.20 covering ten months.

It was against the foregoing factual backdrop that RCBC filed a complaint for a sum of money against Eva Alviar, Melva Theresa Alviar-Gonzales and the latter's husband Gino Gonzales. The spouses Gonzales filed an Answer with Counterclaim praying for the dismissal of the complaint as well as payment of P10,822.20 as actual damages, P20,000.00 as moral damages, P20,000.00 as exemplary damages, and P20,000.00 as attorney's fees and litigation expenses. Defendant Eva Alviar, on the other hand, was declared in default for having filed her Answer out of time.

After trial, the RTC, in its three-page decision,<sup>[2]</sup> held two of the three defendants liable as follows:

WHEREFORE, premises above considered and plaintiff having established its case against the defendants as above stated, judgment is hereby rendered for plaintiff and as against defendant EVA. P. ALVIAR as principal debtor and defendants MELVA THERESA ALVIAR GONZLAES as guarantor as follows:

1. To pay plaintiff the amount of P142,648.65 (P155,270.85 less the amount of P12,622.20, as salary deduction of [Gonzales]), representing the outstanding obligation of the defendants with interest of 12% per annum starting February 1987 until fully paid;
2. To pay the amount of P40,000.00 as and for attorney's fees; and to
3. Pay the costs of this suit.

SO ORDERED.

On appeal, the CA, except for the award of attorney's fees, affirmed the RTC judgment.

Hence, this recourse by the petitioner on her submission that the CA erred 6

XXX IN FINDING [PETITIONER], AN ACCOMMODATION PARTY TO A CHECK SUBSEQUENTLY ENDORSED PARTIALLY, LIABLE TO RCBC AS GUARANTOR;

XXX IN FINDING THAT THE SIGNATURE OF GOMEZ, AN RCBC EMPLOYEE, DOES NOT CONSTITUTE AS AN ENDORSEMENT BUT ONLY AN INTER-BANK APPROVAL OF SIGNATURE NECESSARY FOR THE ENCASHMENT OF THE CHECK;

XXX IN NOT FINDING RCBC LIABLE ON THE COUNTERCLAIMS OF [THE PETITIONER].

The recourse is impressed with merit.

The dollar-check<sup>[3]</sup> in question in the amount of \$7,500.00 drawn by Don Zapanta of Ade Medical Group (U.S.A.) against a Los Angeles, California bank, Wilshire Center Bank N.A., was dishonored because of "End. Irregular," *i.e.*, an irregular endorsement. While the foreign drawee bank did not specifically state which among the four signatures found on the dorsal portion of the check made the check irregularly endorsed, it is absolutely undeniable that only the signature of Olivia Gomez, an RCBC employee, was a qualified endorsement because of the phrase "up to P17,500.00 only." There can be no other acceptable explanation for the dishonor of the foreign check than this signature of Olivia Gomez with the phrase "up to P17,500.00 only" accompanying it. This Court definitely agrees with the petitioner that the foreign drawee bank would not have dishonored the check had it not been for this signature of Gomez with the same phrase written by her.

The foreign drawee bank, Wilshire Center Bank N.A., refused to pay the bearer of this dollar-check drawn by Don Zapanta because of the defect introduced by RCBC, through its employee, Olivia Gomez. It is, therefore, a useless piece of paper if returned in that state to its original payee, Eva Alviar.

There is no doubt in the mind of the Court that a subsequent party which caused the defect in the instrument cannot have any recourse against any of the prior endorsers in good faith. Eva Alviar's and the petitioner's liability to subsequent holders of the foreign check is governed by the Negotiable Instruments Law as follows:

Sec. 66. *Liability of general indorser.* -Every indorser who indorses without qualification, warrants to all subsequent holders in due course;

(a) The matters and things mentioned in subdivisions (a), (b), and (c) of the next preceding section; and

(b) That the instrument is, at the time of his indorsement, valid and subsisting;

And, in addition, he engages that, on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.