

## SECOND DIVISION

[ G.R. No. 141278, March 23, 2004 ]

**MICHAEL A. OSMEÑA, PETITIONER, VS. CITIBANK, N.A.,  
ASSOCIATED BANK AND FRANK TAN, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 49529 which affirmed *in toto* the Decision<sup>[2]</sup> of the Regional Trial Court of Makati City, Branch 38, in Civil Case No. 91-538.

As culled from the records, the appeal at bench stemmed from the following factual backdrop:

On February 22, 1991, the petitioner filed with the Regional Trial Court of Makati an action for damages against the respondents Citibank, N.A. and Associated Bank.<sup>[3]</sup> The case was docketed as Civil Case No. 91-538. The complaint materially alleged that, on or about August 25, 1989, the petitioner purchased from the Citibank Manager's Check No. 20-015301 (the check for brevity) in the amount of P1,545,000 payable to respondent Frank Tan; the petitioner later received information that the aforesaid manager's check was deposited with the respondent Associated Bank, Rosario Branch, to the account of a certain Julius Dizon under Savings Account No. 19877; the clearing and/or payment by the respondents of the check to an improper party and the absence of any indorsement by the payee thereof, respondent Frank Tan, is a clear violation of the respondents' obligations under the Negotiable Instruments Law and standard banking practice; considering that the petitioner's intended payee for the check, the respondent Frank Tan, did not receive the value thereof, the petitioner demanded from the respondents Citibank and the Associated Bank the payment or reimbursement of the value of the check; the respondents, however, obstinately refused to heed his repeated demands for payment and/or reimbursement of the amount of the check; hence, the petitioner was compelled to file this complaint praying for the restitution of the amount of the check, and for moral damages and attorney's fees.

On June 17, 1991, the petitioner, with leave of court, filed an Amended Complaint<sup>[4]</sup> impleading Frank Tan as an additional defendant. The petitioner averred therein that the check was purchased by him as a demand loan to respondent Frank Tan. Since apparently respondent Frank Tan did not receive the proceeds of the check, the petitioner might have no right to collect from respondent Frank Tan and is consequently left with no recourse but to seek payment or reimbursement from either or both respondents Citibank and/or Associated Bank.

In its answer to the amended complaint, [5] the respondent Associated Bank alleged that the petitioner was not the real party-in-interest but respondent Frank Tan who was the payee of the check. The respondent also maintained that the check was deposited to the account of respondent Frank Tan, a.k.a. Julius Dizon, through its Ayala Head Office and was credited to the savings account of Julius Dizon; the Ayala office confirmed with the Rosario Branch that the account of Julius Dizon is also in reality that of respondent Frank Tan; it never committed any violation of its duties and responsibilities as the proceeds of the check went and was credited to respondent Frank Tan, a.k.a. Julius Dizon; the petitioner's affirmative allegation of non-payment to the payee is self-serving; as such, the petitioner's claim for damages is baseless, unfounded and without legal basis.

On the other hand, the respondent Citibank, in answer to the amended complaint, [6] alleged that the payment of the check was made by it in due course and in the exercise of its regular banking function. Since a manager's check is normally purchased in favor of a third party, the identity of whom in most cases is unknown to the issuing bank, its only responsibility when paying the check was to examine the genuineness of the check. It had no way of ascertaining the genuineness of the signature of the payee respondent Frank Tan who was a total stranger to it. If at all, the petitioner had a cause of action only against the respondent Associated Bank which, as depository or collecting bank, was obliged to make sure that the check in question was properly endorsed by the payee. It is not expected of the respondent Citibank to ascertain the genuineness of the indorsement of the payee or even the lack of indorsement by him, most especially when the check was presented for payment with the respondent Associated Bank's guaranteeing all prior indorsements or lack thereof.

On March 16, 1992, the trial court declared Frank Tan in default for failure to file his answer. [7] On June 10, 1992, the pre-trial conference was concluded without the parties reaching an amicable settlement. [8] Hence, trial on the merits ensued.

After evaluating the evidence adduced by the parties, the trial court resolved that the preponderance of evidence supports the claim of the petitioner as against respondent Frank Tan only but not against respondents Banks. Hence, on February 21, 1995, the trial court rendered judgment in favor of the petitioner and against respondent Frank Tan. The complaints against the respondents Banks were dismissed. The dispositive portion of the decision reads:

WHEREFORE, judgment is hereby rendered as follows :

1. Ordering defendant Frank Tan to pay plaintiff Michael Osmeña the amount of One Million Five Hundred Forty-Five Thousand (P1,545,000.00) Pesos, Philippine Currency, with interest thereon at 12% per annum from January 1990, date of extra-judicial demand until the full amount is paid;
2. Dismissing the complaint against defendants Citibank and Associated Bank;
3. Dismissing the counter-claims and the cross-claim of Citibank against Associated Bank for lack of merit.

With costs against defendant Frank Tan. [9]

The petitioner appealed the decision,<sup>[10]</sup> while respondent Frank Tan did not. On November 26, 1999, the appellate court rendered judgment affirming *in toto* the decision of the trial court. Aggrieved, the petitioner assailed the decision in his petition at bar.

The petitioner contends that:

I. RESPONDENT COURT ERRED IN NOT HOLDING CITIBANK AND ASSOCIATED BANK LIABLE TO PETITIONER FOR THE ENCASHMENT OF CITIBANK MANAGER'S CHECK NO. 20015301 BY JULIUS DIZON.

II. RESPONDENT COURT ERRED IN HOLDING THAT FRANK TAN AND JULIUS DIZON ARE ONE AND THE SAME PERSON.

III. THE IDENTITY OF FRANK TAN AS JULIUS DIZON WAS KNOWN ONLY TO ASSOCIATED BANK AND WAS NOT BINDING ON PETITIONER.<sup>[11]</sup>

The petition is denied.

The petitioner asserts that the check was payable to the order of respondent Tan. However, the respondent Associated Bank ordered the check to be deposited to the account of one Julius Dizon, although the check was not endorsed by respondent Tan. As Julius Dizon was not a holder of the check in due course, he could not validly negotiate the check. The latter was not even a transferee in due course because respondent Tan, the payee, did not endorse the said check. The position of the respondent Bank is akin to that of a bank accepting a check for deposit wherein the signature of the payee or endorsee has been forged.

The contention of the petitioner does not hold water.

The fact of the matter is that the check was endorsed by "Julius Dizon" and was deposited and credited to Savings Account No. 19877 with the respondent Associated Bank. But the evidence on record shows that the said account was in the name of Frank Tan Guan Leng, which is the Chinese name of the respondent Frank Tan, who also uses the alias "Julius Dizon." As correctly ruled by the Court of Appeals:

On the other hand, Associated satisfactorily proved that Tan is using and is also known by his alias of Julius Dizon. He signed the *Agreement On Bills Purchased* (Exh. "1") and *Continuing Suretyship Agreement* (Exh. "2") both acknowledged on January 16, 1989, where his full name is stated to be "FRANK Tan Guan Leng (*aka* JULIUS DIZON)." Exh. "1" also refers to his "Account No. SA#19877," the very same account to which the P1,545,000.00 from the manager's check was deposited. Osmeña countered that such use of an alias is illegal. That is but an irrelevant casuistry that does not detract from the fact that the payee Tan as Julius Dizon has encashed and deposited the P1,545,000.00.<sup>[12]</sup>

The respondent Associated Bank presented preponderant evidence to support its assertion that respondent Tan, the payee of the check, did receive the proceeds of the check. It adduced evidence that "Julius Dizon" and "Frank Tan" are one and the same person. Respondent Tan was a regular and trusted client or depositor of the respondent Associated Bank in its branch at Rosario, Binondo, Manila. As such, respondent Tan was allowed to maintain two (2) savings accounts therein.<sup>[13]</sup> The