

SECOND DIVISION

[G.R. No. 129015, August 13, 2004]

**SAMSUNG CONSTRUCTION COMPANY PHILIPPINES, INC.,
PETITIONER, VS. FAR EAST BANK AND TRUST COMPANY AND
COURT OF APPEALS, RESPONDENTS.**

DECISION

TINGA, J.:

Called to fore in the present petition is a classic textbook question – if a bank pays out on a forged check, is it liable to reimburse the drawer from whose account the funds were paid out? The Court of Appeals, in reversing a trial court decision adverse to the bank, invoked tenuous reasoning to acquit the bank of liability. We reverse, applying time-honored principles of law.

The salient facts follow.

Plaintiff Samsung Construction Company Philippines, Inc. ("Samsung Construction"), while based in Biñan, Laguna, maintained a current account with defendant Far East Bank and Trust Company^[1] ("FEBTC") at the latter's Bel-Air, Makati branch.^[2] The sole signatory to Samsung Construction's account was Jong Kyu Lee ("Jong"), its Project Manager,^[3] while the checks remained in the custody of the company's accountant, Kyu Yong Lee ("Kyu").^[4]

On 19 March 1992, a certain Roberto Gonzaga presented for payment FEBTC Check No. 432100 to the bank's branch in Bel-Air, Makati. The check, payable to cash and drawn against Samsung Construction's current account, was in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00). The bank teller, Cleofe Justiani, first checked the balance of Samsung Construction's account. After ascertaining there were enough funds to cover the check,^[5] she compared the signature appearing on the check with the specimen signature of Jong as contained in the specimen signature card with the bank. After comparing the two signatures, Justiani was satisfied as to the authenticity of the signature appearing on the check. She then asked Gonzaga to submit proof of his identity, and the latter presented three (3) identification cards.^[6]

At the same time, Justiani forwarded the check to the branch Senior Assistant Cashier Gemma Velez, as it was bank policy that two bank branch officers approve checks exceeding One Hundred Thousand Pesos, for payment or encashment. Velez likewise counterchecked the signature on the check as against that on the signature card. He too concluded that the check was indeed signed by Jong. Velez then forwarded the check and signature card to Shirley Syfu, another bank officer, for approval. Syfu then noticed that Jose Sempio III ("Sempio"), the assistant accountant of Samsung Construction, was also in the bank. Sempio was well-known

to Syfu and the other bank officers, he being the assistant accountant of Samsung Construction. Syfu showed the check to Sempio, who vouched for the genuineness of Jong's signature. Confirming the identity of Gonzaga, Sempio said that the check was for the purchase of equipment for Samsung Construction. Satisfied with the genuineness of the signature of Jong, Syfu authorized the bank's encashment of the check to Gonzaga.

The following day, the accountant of Samsung Construction, Kyu, examined the balance of the bank account and discovered that a check in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00) had been encashed. Aware that he had not prepared such a check for Jong's signature, Kyu perused the checkbook and found that the last blank check was missing.^[7] He reported the matter to Jong, who then proceeded to the bank. Jong learned of the encashment of the check, and realized that his signature had been forged. The Bank Manager reputedly told Jong that he would be reimbursed for the amount of the check.^[8] Jong proceeded to the police station and consulted with his lawyers.^[9] Subsequently, a criminal case for qualified theft was filed against Sempio before the Laguna court.^[10]

In a letter dated 6 May 1992, Samsung Construction, through counsel, demanded that FEBTC credit to it the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00), with interest.^[11] In response, FEBTC said that it was still conducting an investigation on the matter. Unsatisfied, Samsung Construction filed a *Complaint* on 10 June 1992 for violation of Section 23 of the Negotiable Instruments Law, and prayed for the payment of the amount debited as a result of the questioned check plus interest, and attorney's fees.^[12] The case was docketed as Civil Case No. 92-61506 before the Regional Trial Court ("RTC") of Manila, Branch 9.^[13]

During the trial, both sides presented their respective expert witnesses to testify on the claim that Jong's signature was forged. Samsung Corporation, which had referred the check for investigation to the NBI, presented Senior NBI Document Examiner Roda B. Flores. She testified that based on her examination, she concluded that Jong's signature had been forged on the check. On the other hand, FEBTC, which had sought the assistance of the Philippine National Police (PNP),^[14] presented Rosario C. Perez, a document examiner from the PNP Crime Laboratory. She testified that her findings showed that Jong's signature on the check was genuine.^[15]

Confronted with conflicting expert testimony, the RTC chose to believe the findings of the NBI expert. In a *Decision* dated 25 April 1994, the RTC held that Jong's signature on the check was forged and accordingly directed the bank to pay or credit back to Samsung Construction's account the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (P999,500.00), together with interest tolled from the time the complaint was filed, and attorney's fees in the amount of Fifteen Thousand Pesos (P15,000.00).

FEBTC timely appealed to the Court of Appeals. On 28 November 1996, the Special Fourteenth Division of the Court of Appeals rendered a *Decision*,^[16] reversing the RTC *Decision* and absolving FEBTC from any liability. The Court of Appeals held that

the contradictory findings of the NBI and the PNP created doubt as to whether there was forgery.^[17] Moreover, the appellate court also held that assuming there was forgery, it occurred due to the negligence of Samsung Construction, imputing blame on the accountant Kyu for lack of care and prudence in keeping the checks, which if observed would have prevented Sempio from gaining access thereto.^[18] The Court of Appeals invoked the ruling in *PNB v. National City Bank of New York*^[19] that, if a loss, which must be borne by one or two innocent persons, can be traced to the neglect or fault of either, such loss would be borne by the negligent party, even if innocent of intentional fraud.^[20]

Samsung Construction now argues that the Court of Appeals had seriously misapprehended the facts when it overturned the RTC's finding of forgery. It also contends that the appellate court erred in finding that it had been negligent in safekeeping the check, and in applying the equity principle enunciated in *PNB v. National City Bank of New York*.

Since the trial court and the Court of Appeals arrived at contrary findings on questions of fact, the Court is obliged to examine the record to draw out the correct conclusions. Upon examination of the record, and based on the applicable laws and jurisprudence, we reverse the Court of Appeals.

Section 23 of the Negotiable Instruments Law states:

When a signature is forged or made without the authority of the person whose signature it purports to be, **it is wholly inoperative, and no right** to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, **can be acquired through or under such signature**, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. (Emphasis supplied)

The general rule is to the effect that a forged signature is "wholly inoperative," and payment made "through or under such signature" is ineffectual or does not discharge the instrument.^[21] If payment is made, the drawee cannot charge it to the drawer's account. The traditional justification for the result is that the drawee is in a superior position to detect a forgery because he has the maker's signature and is expected to know and compare it.^[22] The rule has a healthy cautionary effect on banks by encouraging care in the comparison of the signatures against those on the signature cards they have on file. Moreover, the very opportunity of the drawee to insure and to distribute the cost among its customers who use checks makes the drawee an ideal party to spread the risk to insurance.^[23]

Brady, in his treatise *The Law of Forged and Altered Checks*, elucidates:

When a person deposits money in a general account in a bank, against which he has the privilege of drawing checks in the ordinary course of business, the relationship between the bank and the depositor is that of debtor and creditor. So far as the legal relationship between the two is concerned, the situation is the same as though the bank had borrowed money from the depositor, agreeing to repay it on demand, or had bought goods from the depositor, agreeing to pay for them on demand.

The bank owes the depositor money in the same sense that any debtor owes money to his creditor. Added to this, in the case of bank and depositor, there is, of course, the bank's obligation to pay checks drawn by the depositor in proper form and presented in due course. When the bank receives the deposit, it impliedly agrees to pay only upon the depositor's order. When the bank pays a check, on which the depositor's signature is a forgery, it has failed to comply with its contract in this respect. Therefore, the bank is held liable.

The fact that the forgery is a clever one is immaterial. The forged signature may so closely resemble the genuine as to defy detection by the depositor himself. And yet, if a bank pays the check, it is paying out its own money and not the depositor's.

The forgery may be committed by a trusted employee or confidential agent. The bank still must bear the loss. Even in a case where the forged check was drawn by the depositor's partner, the loss was placed upon the bank. The case referred to is *Robinson v. Security Bank, Ark.*, 216 S. W. Rep. 717. In this case, the plaintiff brought suit against the defendant bank for money which had been deposited to the plaintiff's credit and which the bank had paid out on checks bearing forgeries of the plaintiff's signature.

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It was held that the bank was liable. It was further held that the fact that the plaintiff waited eight or nine months after discovering the forgery, before notifying the bank, did not, as a matter of law, constitute a ratification of the payment, so as to preclude the plaintiff from holding the bank liable. xxx

This rule of liability can be stated briefly in these words: "A bank is bound to know its depositors' signature." The rule is variously expressed in the many decisions in which the question has been considered. But they all sum up to the proposition that a bank must know the signatures of those whose general deposits it carries.^[24]

By no means is the principle rendered obsolete with the advent of modern commercial transactions. Contemporary texts still affirm this well-entrenched standard. Nickles, in his book *Negotiable Instruments and Other Related Commercial Paper* wrote, thus:

The deposit contract between a payor bank and its customer determines who can draw against the customer's account by specifying whose signature is necessary on checks that are chargeable against the customer's account. Therefore, a check drawn against the account of an individual customer that is signed by someone other than the customer, and without authority from her, is not properly payable and is not chargeable to the customer's account, inasmuch as any "unauthorized signature on an instrument is ineffective" as the signature of the person whose name is signed.^[25]

Under Section 23 of the Negotiable Instruments Law, forgery is a real or absolute defense by the party whose signature is forged.^[26] On the premise that Jong's signature was indeed forged, FEBTC is liable for the loss since it authorized the discharge of the forged check. Such liability attaches even if the bank exerts due diligence and care in preventing such faulty discharge. Forgeries often deceive the eye of the most cautious experts; and when a bank has been so deceived, it is a harsh rule which compels it to suffer although no one has suffered by its being deceived.^[27] The forgery may be so near like the genuine as to defy detection by the depositor himself, and yet the bank is liable to the depositor if it pays the check.^[28]

Thus, the first matter of inquiry is into whether the check was indeed forged. A document formally presented is presumed to be genuine until it is proved to be fraudulent. In a forgery trial, this presumption must be overcome but this can only be done by convincing testimony and effective illustrations.^[29]

In ruling that forgery was not duly proven, the Court of Appeals held:

[There] is ground to doubt the findings of the trial court sustaining the alleged forgery in view of the conflicting conclusions made by handwriting experts from the NBI and the PNP, both agencies of the government.

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These contradictory findings create doubt on whether there was indeed a forgery. In the case of *Tenio-Obsequio v. Court of Appeals*, 230 SCRA 550, the Supreme Court held that forgery cannot be presumed; it must be proved by clear, positive and convincing evidence.

This reasoning is pure sophistry. Any litigator worth his or her salt would never allow an opponent's expert witness to stand uncontradicted, thus the spectacle of competing expert witnesses is not unusual. The trier of fact will have to decide which version to believe, and explain why or why not such version is more credible than the other. Reliance therefore cannot be placed merely on the fact that there are colliding opinions of two experts, both clothed with the presumption of official duty, in order to draw a conclusion, especially one which is extremely crucial. Doing so is tantamount to a jurisprudential cop-out.

Much is expected from the Court of Appeals as it occupies the penultimate tier in the judicial hierarchy. This Court has long deferred to the appellate court as to its findings of fact in the understanding that it has the appropriate skill and competence to plough through the *minutiae* that scatters the factual field. In failing to thoroughly evaluate the evidence before it, and relying instead on presumptions haphazardly drawn, the Court of Appeals was sadly remiss. Of course, courts, like humans, are fallible, and not every error deserves a stern rebuke. Yet, the appellate court's error in this case warrants special attention, as it is absurd and even dangerous as a precedent. If this rationale were adopted as a governing standard by every court in the land, barely any actionable claim would prosper, defeated as it would be by the mere invocation of the existence of a contrary "expert" opinion.

On the other hand, the RTC did adjudge the testimony of the NBI expert as more credible than that of the PNP, and explained its reason behind the conclusion: