

SECOND DIVISION

[G.R. No. 132560, January 30, 2002]

**WESTMONT BANK (FORMERLY ASSOCIATED BANKING CORP.),
PETITIONER, VS. EUGENE ONG, RESPONDENT.**

DECISION

QUISUMBING, J.:

This is a petition for review of the decision^[1] dated January 13, 1998, of the Court of Appeals in CA-G.R. CV No. 28304 ordering the petitioner to pay respondent P1,754,787.50 plus twelve percent (12%) interest per annum computed from October 7, 1977, the date of the first extrajudicial demand, plus damages.

The facts of this case are undisputed.

Respondent Eugene Ong maintained a current account with petitioner, formerly the Associated Banking Corporation, but now known as Westmont Bank. Sometime in May 1976, he sold certain shares of stocks through Island Securities Corporation. To pay Ong, Island Securities purchased two (2) Pacific Banking Corporation manager's checks,^[2] both dated May 4, 1976, issued in the name of Eugene Ong as payee. Before Ong could get hold of the checks, his friend Paciano Tanlimco got hold of them, forged Ong's signature and deposited these with petitioner, where Tanlimco was also a depositor. Even though Ong's specimen signature was on file, petitioner accepted and credited both checks to the account of Tanlimco, without verifying the 'signature indorsements' appearing at the back thereof. Tanlimco then immediately withdrew the money and absconded.

Instead of going straight to the bank to stop or question the payment, Ong first sought the help of Tanlimco's family to recover the amount. Later, he reported the incident to the Central Bank, which like the first effort, unfortunately proved futile.

It was only on October 7, 1977, about five (5) months from discovery of the fraud, did Ong cry foul and demanded in his complaint that petitioner pay the value of the two checks from the bank on whose gross negligence he imputed his loss. In his suit, he insisted that he did not "deliver, negotiate, endorse or transfer to any person or entity" the subject checks issued to him and asserted that the signatures on the back were spurious.^[3]

The bank did not present evidence to the contrary, but simply contended that since plaintiff Ong claimed to have never received the originals of the two (2) checks in question from Island Securities, much less to have authorized Tanlimco to receive the same, he never acquired ownership of these checks. Thus, he had no legal personality to sue as he is not a real party in interest. The bank then filed a demurrer to evidence which was denied.

On February 8, 1989, after trial on the merits, the Regional Trial Court of Manila, Branch 38, rendered a decision, thus:

IN VIEW OF THE FOREGOING, the court hereby renders judgment for the plaintiff and against the defendant, and orders the defendant to pay the plaintiff:

1. The sum of P1,754,787.50 representing the total face value of the two checks in question, exhibits "A" and "B", respectively, with interest thereon at the legal rate of twelve percent (12%) per annum computed from October 7, 1977 (the date of the first extrajudicial demand) up to and until the same shall have been paid in full;
2. Moral damages in the amount of P250,000.00;
3. Exemplary or corrective damages in the sum of P100,000.00 by way of example or correction for the public good;
4. Attorney's fees of P50,000.00 and costs of suit.

Defendant's counterclaims are dismissed for lack of merit.

SO ORDERED.^[4]

Petitioner elevated the case to the Court of Appeals without success. In its decision, the appellate court held:

WHEREFORE, in view of the foregoing, the appealed decision is AFFIRMED in toto.^[5]

Petitioner now comes before this Court on a petition for review, alleging that the Court of Appeals erred:

I

... IN AFFIRMING THE TRIAL COURT'S CONCLUSION THAT RESPONDENT HAS A CAUSE OF ACTION AGAINST THE PETITIONER.

II

... IN AFFIRMING THE TRIAL COURT'S DECISION FINDING PETITIONER LIABLE TO RESPONDENT AND DECLARING THAT THE LATTER MAY RECOVER DIRECTLY FROM THE FORMER; AND

III

... IN NOT ADJUDGING RESPONDENT GUILTY OF LACHES AND IN NOT ABSOLVING PETITIONER FROM LIABILITY.

Essentially the issues in this case are: (1) whether or not respondent Ong has a cause of action against petitioner Westmont Bank; and (2) whether or not Ong is barred to recover the money from Westmont Bank due to laches.

Respondent admitted that he was never in actual or physical possession of the two (2) checks of the Island Securities nor did he authorize Tanlimco or any of the latter's representative to demand, accept and receive the same. For this reason, petitioner argues, respondent cannot sue petitioner because under Section 51 of the Negotiable Instruments Law^[6] it is only when a person becomes a holder of a negotiable instrument can he sue in his own name. Conversely, prior to his becoming a holder, he had no right or cause of action under such negotiable instrument. Petitioner further argues that since Section 191^[7] of the Negotiable Instruments Law defines a "holder" as the 'payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof,' in order to be a holder, it is a requirement that he be in possession of the instrument or the bearer thereof. Simply stated, since Ong never had possession of the checks nor did he authorize anybody, he did not become a holder thereof hence he cannot sue in his own name.^[8]

Petitioner also cites Article 1249^[9] of the Civil Code explaining that a check, even if it is a manager's check, is not legal tender. Hence, the creditor cannot be compelled to accept payment thru this means.^[10] It is petitioner's position that for all intents and purposes, Island Securities has not yet tendered payment to respondent Ong, thus, any action by Ong should be directed towards collecting the amount from Island Securities. Petitioner claims that Ong's cause of action against it has not ripened as of yet. It may be that petitioner would be liable to the drawee bank - - but that is a matter between petitioner and drawee-bank, Pacific Banking Corporation.^[11]

For its part, respondent Ong leans on the ruling of the trial court and the Court of Appeals which held that the suit of Ong against the petitioner bank is a desirable shortcut to reach the party who ought in any event to be ultimately liable.^[12] It likewise cites the ruling of the courts *a quo* which held that according to the general rule, a bank who has obtained possession of a check upon an unauthorized or forged indorsement of the payee's signature and who collects the amount of the check from the drawee is liable for the proceeds thereof to the payee. The theory of said rule is that the collecting bank's possession of such check is wrongful.^[13]

Respondent also cites *Associated Bank vs. Court of Appeals*^[14] which held that the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements. The collecting bank is also made liable because it is privy to the depositor who negotiated the check. The bank knows him, his address and history because he is a client. Hence, it is in a better position to detect forgery, fraud or irregularity in the indorsement.^[15]

Anent Article 1249 of the Civil Code, Ong points out that bank checks are specifically governed by the Negotiable Instruments Law which is a special law and only in the absence of specific provisions or deficiency in the special law may the Civil Code be invoked.^[16]

Considering the contentions of the parties and the evidence on record, we find no reversible error in the assailed decisions of the appellate and trial courts, hence there is no justifiable reason to grant the petition.

Petitioner's claim that respondent has no cause of action against the bank is clearly

misplaced. As defined, a cause of action is the act or omission by which a party violates a right of another.^[17] The essential elements of a cause of action are: (a) a legal right or rights of the plaintiff, (b) a correlative obligation of the defendant, and (c) an act or omission of the defendant in violation of said legal right.^[18]

The complaint filed before the trial court expressly alleged respondent's *right* as payee of the manager's checks to receive the amount involved, petitioner's correlative *duty* as collecting bank to ensure that the amount gets to the rightful payee or his order, and a *breach* of that duty because of a blatant act of negligence on the part of petitioner which violated respondent's rights.^[19]

Under Section 23 of the Negotiable Instruments Law:

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.

Since the signature of the payee, in the case at bar, was forged to make it appear that he had made an indorsement in favor of the forger, such signature should be deemed as inoperative and ineffectual. Petitioner, as the collecting bank, grossly erred in making payment by virtue of said forged signature. The payee, herein respondent, should therefore be allowed to recover from the collecting bank.

The collecting bank is liable to the payee and must bear the loss because it is its legal duty to ascertain that the payee's endorsement was genuine before cashing the check.^[20] As a general rule, a bank or corporation who has obtained possession of a check upon an unauthorized or forged indorsement of the payee's signature and who collects the amount of the check from the drawee, is liable for the proceeds thereof to the payee or other owner, notwithstanding that the amount has been paid to the person from whom the check was obtained.^[21]

The theory of the rule is that the possession of the check on the forged or unauthorized indorsement is wrongful, and when the money had been collected on the check, the bank or other person or corporation can be held as for moneys had and received, and the proceeds are held for the rightful owners who may recover them. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected the money without indorsement at all and the act of the bank amounts to conversion of the check.^[22]

Petitioner's claim that since there was no delivery yet and respondent has never acquired possession of the checks, respondent's remedy is with the drawer and not with petitioner bank. Petitioner relies on the view to the effect that where there is no delivery to the payee and no title vests in him, he ought not to be allowed to recover on the ground that he lost nothing because he never became the owner of the check and still retained his claim of debt against the drawer.^[23] However, another view in certain cases holds that even if the absence of delivery is