

## SECOND DIVISION

[ G.R. No. 121413, January 29, 2001 ]

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK (FORMERLY  
INSULAR BANK OF ASIA AND AMERICA), PETITIONER, VS.  
COURT OF APPEALS AND FORD PHILIPPINES, INC. AND  
CITIBANK, N.A., RESPONDENTS.**

**G.R. NO. 121479**

**FORD PHILIPPINES, INC., PETITIONER-PLAINTIFF, VS. COURT  
OF APPEALS AND CITIBANK, N.A. AND PHILIPPINE  
COMMERCIAL INTERNATIONAL BANK, RESPONDENTS.**

**G.R. NO. 128604**

**FORD PHILIPPINES, INC., PETITIONER, VS. CITIBANK, N.A.,  
PHILIPPINE COMMERCIAL INTERNATIONAL BANK AND THE  
COURT OF APPEALS, RESPONDENTS.**

### D E C I S I O N

#### **QUISUMBING, J.:**

These consolidated petitions involve several fraudulently negotiated checks.

The original actions *a quo* were instituted by Ford Philippines to recover from the drawee bank, CITIBANK, N.A. (Citibank) and collecting bank, Philippine Commercial International Bank (PCIBank) [formerly Insular Bank of Asia and America], the value of several checks payable to the Commissioner of Internal Revenue, which were embezzled allegedly by an organized syndicate.

G.R. Nos. 121413 and 121479 are twin petitions for review of the March 27, 1995 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 25017, entitled "Ford Philippines, Inc. vs. Citibank, N.A. and Insular Bank of Asia and America (now Philippine Commercial International Bank), and the August 8, 1995 Resolution,<sup>[2]</sup> ordering the collecting bank, Philippine Commercial International Bank, to pay the amount of Citibank Check No. SN-04867.

In G.R. No. 128604, petitioner Ford Philippines assails the October 15, 1996 Decision<sup>[3]</sup> of the Court of Appeals and its March 5, 1997 Resolution<sup>[4]</sup> in CA-G.R. No. 28430 entitled "Ford Philippines, Inc. vs. Citibank, N.A. and Philippine Commercial International Bank," affirming *in toto* the judgment of the trial court holding the defendant drawee bank, Citibank, N.A., solely liable to pay the amount of P12,163,298.10 as damages for the misapplied proceeds of the plaintiff's Citibank Check Numbers SN-10597 and 16508.

**I. G.R. Nos. 121413 and 121479**

The stipulated facts submitted by the parties as accepted by the Court of Appeals are as follows:

"On October 19, 1977, the plaintiff Ford drew and issued its Citibank Check No. SN-04867 in the amount of P4,746,114.41, in favor of the Commissioner of Internal Revenue as payment of plaintiff's percentage or manufacturer's sales taxes for the third quarter of 1977.

The aforesaid check was deposited with the defendant IBAA (now PCIBank) and was subsequently cleared at the Central Bank. Upon presentment with the defendant Citibank, the proceeds of the check was paid to IBAA as collecting or depository bank.

The proceeds of the same Citibank check of the plaintiff was never paid to or received by the payee thereof, the Commissioner of Internal Revenue.

As a consequence, upon demand of the Bureau and/or Commissioner of Internal Revenue, the plaintiff was compelled to make a second payment to the Bureau of Internal Revenue of its percentage/manufacturers' sales taxes for the third quarter of 1977 and that said second payment of plaintiff in the amount of P4,746,114.41 was duly received by the Bureau of Internal Revenue.

It is further admitted by defendant Citibank that during the time of the transactions in question, plaintiff had been maintaining a checking account with defendant Citibank; that Citibank Check No. SN-04867 which was drawn and issued by the plaintiff in favor of the Commissioner of Internal Revenue was a crossed check in that, on its face were two parallel lines and written in between said lines was the phrase "Payee's Account Only"; and that defendant Citibank paid the full face value of the check in the amount of P4,746,114.41 to the defendant IBAA.

It has been duly established that for the payment of plaintiff's percentage tax for the last quarter of 1977, the Bureau of Internal Revenue issued Revenue Tax Receipt No. 18747002, dated October 20, 1977, designating therein in Muntinlupa, Metro Manila, as the authorized agent bank of Metrobank, Alabang Branch to receive the tax payment of the plaintiff.

On December 19, 1977, plaintiff's Citibank Check No. SN-04867, together with the Revenue Tax Receipt No. 18747002, was deposited with defendant IBAA, through its Ermita Branch. The latter accepted the check and sent it to the Central Clearing House for clearing on the same day, with the indorsement at the back "all prior indorsements and/or lack of indorsements guaranteed." Thereafter, defendant IBAA presented the check for payment to defendant Citibank on same date, December 19, 1977, and the latter paid the face value of the check in the amount of P4,746,114.41. Consequently, the amount of P4,746,114.41 was debited in plaintiff's account with the defendant Citibank and the check was returned to the plaintiff.

Upon verification, plaintiff discovered that its Citibank Check No. SN-04867 in the amount of P4,746,114.41 was not paid to the Commissioner of Internal Revenue. Hence, in separate letters dated October 26, 1979, addressed to the defendants, the plaintiff notified the latter that in case it will be re-assessed by the BIR for the payment of the taxes covered by the said checks, then plaintiff shall hold the defendants liable for reimbursement of the face value of the same. Both defendants denied liability and refused to pay.

In a letter dated February 28, 1980 by the Acting Commissioner of Internal Revenue addressed to the plaintiff - supposed to be Exhibit "D", the latter was officially informed, among others, that its check in the amount of P4,746,114.41 was not paid to the government or its authorized agent and instead encashed by unauthorized persons, hence, plaintiff has to pay the said amount within fifteen days from receipt of the letter. Upon advice of the plaintiff's lawyers, plaintiff on March 11, 1982, paid to the Bureau of Internal Revenue, the amount of P4,746,114.41, representing payment of plaintiff's percentage tax for the third quarter of 1977.

As a consequence of defendant's refusal to reimburse plaintiff of the payment it had made for the second time to the BIR of its percentage taxes, plaintiff filed on January 20, 1983 its original complaint before this Court.

On December 24, 1985, defendant IBAA was merged with the Philippine Commercial International Bank (PCI Bank) with the latter as the surviving entity.

Defendant Citibank maintains that; the payment it made of plaintiff's Citibank Check No. SN-04867 in the amount of P4,746,114.41 "was in due course"; it merely relied on the clearing stamp of the depository/collecting bank, the defendant IBAA that "all prior indorsements and/or lack of indorsements guaranteed"; and the proximate cause of plaintiff's injury is the gross negligence of defendant IBAA in indorsing the plaintiff's Citibank check in question.

It is admitted that on December 19, 1977 when the proceeds of plaintiff's Citibank Check No. SN-04867 was paid to defendant IBAA as collecting bank, plaintiff was maintaining a checking account with defendant Citibank."<sup>[5]</sup>

Although it was not among the stipulated facts, an investigation by the National Bureau of Investigation (NBI) revealed that Citibank Check No. SN-04867 was recalled by Godofredo Rivera, the General Ledger Accountant of Ford. He purportedly needed to hold back the check because there was an error in the computation of the tax due to the Bureau of Internal Revenue (BIR). With Rivera's instruction, PCIBank replaced the check with two of its own Manager's Checks (MCs). Alleged members of a syndicate later deposited the two MCs with the Pacific Banking Corporation.

Ford, with leave of court, filed a third-party complaint before the trial court impleading Pacific Banking Corporation (PBC) and Godofredo Rivera, as third party defendants. But the court dismissed the complaint against PBC for lack of cause of action. The court likewise dismissed the third-party complaint against Godofredo Rivera because he could not be served with summons as the NBI declared him as a "fugitive from justice".

On June 15, 1989, the trial court rendered its decision, as follows:

"Premises considered, judgment is hereby rendered as follows:

1. Ordering the defendants Citibank and IBAA (now PCI Bank), jointly and severally, to pay the plaintiff the amount of P4,746,114.41 representing the face value of plaintiff's Citibank Check No. SN-04867, with interest thereon at the legal rate starting January 20, 1983, the date when the original complaint was filed until the amount is fully paid, plus costs;
2. On defendant Citibank's cross-claim: ordering the cross-defendant IBAA (now PCI BANK) to reimburse defendant Citibank for whatever amount the latter has paid or may pay to the plaintiff in accordance with the next preceding paragraph;
3. The counterclaims asserted by the defendants against the plaintiff, as well as that asserted by the cross-defendant against the cross-claimant are dismissed, for lack of merits; and
4. With costs against the defendants.

SO ORDERED."<sup>[6]</sup>

Not satisfied with the said decision, both defendants, Citibank and PCIBank, elevated their respective petitions for review on certiorari to the Court of Appeals. On March 27, 1995, the appellate court issued its judgment as follows:

"WHEREFORE, in view of the foregoing, the court AFFIRMS the appealed decision with modifications.

The court hereby renders judgment:

1. **Dismissing** the complaint in Civil Case No. 49287 insofar as defendant Citibank N.A. is concerned;
2. **Ordering** the defendant IBAA now PCI Bank to pay the plaintiff the amount of P4,746,114.41 representing the face value of plaintiff's Citibank Check No. SN-04867, with interest thereon at the legal rate starting January 20, 1983. the date when the original complaint was filed until the amount is fully paid;
3. Dismissing the counterclaims asserted by the defendants against the plaintiff as well as that asserted by the cross-defendant against the cross-claimant, for lack of merits.

Costs against the defendant IBAA (now PCI Bank).

IT IS SO ORDERED."<sup>[7]</sup>

PCIBank moved to reconsider the above-quoted decision of the Court of Appeals, while Ford filed a "Motion for Partial Reconsideration." Both motions were denied for lack of merit.

Separately, PCIBank and Ford filed before this Court, petitions for review by certiorari under Rule 45.

In G.R. No. 121413, PCIBank seeks the reversal of the decision and resolution of the Twelfth Division of the Court of Appeals contending that it merely acted on the instruction of Ford and such cause of action had already prescribed.

PCIBank sets forth the following issues for consideration:

- I. Did the respondent court err when, after finding that the petitioner acted on the check drawn by respondent Ford on the said respondent's instructions, it nevertheless found the petitioner liable to the said respondent for the full amount of the said check.
- II. Did the respondent court err when it did not find prescription in favor of the petitioner.<sup>[8]</sup>

In a counter move, Ford filed its petition docketed as G.R. No. 121479, questioning the same decision and resolution of the Court of Appeals, and praying for the reinstatement *in toto* of the decision of the trial court which found both PCIBank and Citibank jointly and severally liable for the loss.

In G.R. No. 121479, appellant Ford presents the following propositions for consideration:

- I. Respondent Citibank is liable to petitioner Ford considering that:
  1. As drawee bank, respondent Citibank owes to petitioner Ford, as the drawer of the subject check and a depositor of respondent Citibank, an absolute and contractual duty to pay the proceeds of the subject check only to the payee thereof, the Commissioner of Internal Revenue.
  2. Respondent Citibank failed to observe its duty as banker with respect to the subject check, which was crossed and payable to "Payee's Account Only."
  3. Respondent Citibank raises an issue for the first time on appeal; thus the same should not be considered by the Honorable Court.
  4. As correctly held by the trial court, there is no evidence of gross negligence on the part of petitioner Ford.<sup>[9]</sup>