

## SECOND DIVISION

**[ G.R. No. 113236, March 05, 2001 ]**

**FIRESTONE TIRE & RUBBER COMPANY OF THE PHILIPPINES,  
PETITIONER, VS. COURT OF APPEALS AND LUZON  
DEVELOPMENT BANK, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition assails the decision<sup>[1]</sup> dated December 29, 1993 of the Court of Appeals in CA-G.R. CV No. 29546, which affirmed the judgment<sup>[2]</sup> of the Regional Trial Court of Pasay City, Branch 113 in Civil Case No. PQ-7854-P, dismissing Firestone's complaint for damages.

The facts of this case, adopted by the CA and based on findings by the trial court, are as follows:

...[D]efendant is a banking corporation. It operates under a certificate of authority issued by the Central Bank of the Philippines, and among its activities, accepts savings and time deposits. Said defendant had as one of its client-depositors the Fojas-Arca Enterprises Company ("Fojas-Arca" for brevity). Fojas-Arca maintaining a special savings account with the defendant, the latter authorized and allowed withdrawals of funds therefrom through the medium of special withdrawal slips. These are supplied by the defendant to Fojas-Arca.

In January 1978, plaintiff and Fojas-Arca entered into a "Franchised Dealership Agreement" (Exh. B) whereby Fojas-Arca has the privilege to purchase on credit and sell plaintiff's products.

On January 14, 1978 up to May 15, 1978. Pursuant to the aforesaid Agreement, Fojas-Arca purchased on credit Firestone products from plaintiff with a total amount of P4,896,000.00. In payment of these purchases, Fojas-Arca delivered to plaintiff six (6) special withdrawal slips drawn upon the defendant. In turn, these were deposited by the plaintiff with its current account with the Citibank. All of them were honored and paid by the defendant. This singular circumstance made plaintiff believe [sic] and relied [sic] on the fact that the succeeding special withdrawal slips drawn upon the defendant would be equally sufficiently funded. Relying on such confidence and belief and as a direct consequence thereof, plaintiff extended to Fojas-Arca other purchases on credit of its products.

On the following dates Fojas-Arca purchased Firestone products on credit (Exh. M, I, J, K) and delivered to plaintiff the corresponding special

withdrawal slips in payment thereof drawn upon the defendant, to wit:

DATE	WITHDRAWAL <u>SLIP NO.</u>	AMOUNT
June 15, 1978	42127	P1,198,092.80
July 15, 1978	42128	940,190.00
Aug. 15, 1978	42129	880,000.00
Sep. 15, 1978	42130	981,500.00

These were likewise deposited by plaintiff in its current account with Citibank and in turn the Citibank forwarded it [sic] to the defendant for payment and collection, as it had done in respect of the previous special withdrawal slips. Out of these four (4) withdrawal slips only withdrawal slip No. 42130 in the amount of P981,500.00 was honored and paid by the defendant in October 1978. Because of the absence for a long period coupled with the fact that defendant honored and paid withdrawal slips No. 42128 dated July 15, 1978, in the amount of P981,500.00 plaintiff's belief was all the more strengthened that the other withdrawal slips were likewise sufficiently funded, and that it had received full value and payment of Fojas-Arca's credit purchased then outstanding at the time. On this basis, plaintiff was induced to continue extending to Fojas-Arca further purchase on credit of its products as per agreement (Exh. "B").

However, on December 14, 1978, plaintiff was informed by Citibank that special withdrawal slips No. 42127 dated June 15, 1978 for P1,198,092.80 and No. 42129 dated August 15, 1978 for P880,000.00 were dishonored and not paid for the reason 'NO ARRANGEMENT.' As a consequence, the Citibank debited plaintiff's account for the total sum of P2,078,092.80 representing the aggregate amount of the above-two special withdrawal slips. Under such situation, plaintiff averred that the pecuniary losses it suffered is caused by and directly attributable to defendant's gross negligence.

On September 25, 1979, counsel of plaintiff served a written demand upon the defendant for the satisfaction of the damages suffered by it. And due to defendant's refusal to pay plaintiff's claim, plaintiff has been constrained to file this complaint, thereby compelling plaintiff to incur litigation expenses and attorney's fees which amount are recoverable from the defendant.

Controverting the foregoing asseverations of plaintiff, defendant asserted, inter alia that the transactions mentioned by plaintiff are that of plaintiff and Fojas-Arca only, [in] which defendant is not involved; Vehemently, it was denied by defendant that the special withdrawal slips were honored and treated as if it were checks, the truth being that when the special withdrawal slips were received by defendant, it only verified whether or not the signatures therein were authentic, and whether or not the deposit level in the passbook concurred with the savings ledger, and whether or not the deposit is sufficient to cover the withdrawal; if plaintiff treated the special withdrawal slips paid by Fojas-Arca as checks then plaintiff has to blame itself for being grossly negligent in treating the

withdrawal slips as check when it is clearly stated therein that the withdrawal slips are non-negotiable; that defendant is not a privy to any of the transactions between Fojas-Arca and plaintiff for which reason defendant is not duty bound to notify nor give notice of anything to plaintiff. If at first defendant had given notice to plaintiff it is merely an extension of usual bank courtesy to a prospective client; that defendant is only dealing with its depositor Fojas-Arca and not the plaintiff. In summation, defendant categorically stated that plaintiff has no cause of action against it (pp. 1-3, Dec.; pp. 368-370, id).<sup>[3]</sup>

Petitioner's complaint<sup>[4]</sup> for a sum of money and damages with the Regional Trial Court of Pasay City, Branch 113, docketed as Civil Case No. 29546, was dismissed together with the counterclaim of defendant.

Petitioner appealed the decision to the Court of Appeals. It averred that respondent Luzon Development Bank was liable for damages under Article 2176<sup>[5]</sup> in relation to Articles 19<sup>[6]</sup> and 20<sup>[7]</sup> of the Civil Code. As noted by the CA, petitioner alleged the following tortious acts on the part of private respondent: 1) the acceptance and payment of the special withdrawal slips without the presentation of the depositor's passbook thereby giving the impression that the withdrawal slips are instruments payable upon presentment; 2) giving the special withdrawal slips the general appearance of checks; and 3) the failure of respondent bank to seasonably warn petitioner that it would not honor two of the four special withdrawal slips.

On December 29, 1993, the Court of Appeals promulgated its assailed decision. It denied the appeal and affirmed the judgment of the trial court. According to the appellate court, respondent bank notified the depositor to present the passbook whenever it received a collection note from another bank, belying petitioner's claim that respondent bank was negligent in not requiring a passbook under the subject transaction. The appellate court also found that the special withdrawal slips in question were not purposely given the appearance of checks, contrary to petitioner's assertions, and thus should not have been mistaken for checks. Lastly, the appellate court ruled that the respondent bank was under no obligation to inform petitioner of the dishonor of the special withdrawal slips, for to do so would have been a violation of the law on the secrecy of bank deposits.

Hence, the instant petition, alleging the following assignment of error:

**25. The CA grievously erred in holding that the [Luzon Development] Bank was free from any fault or negligence regarding the dishonor, or in failing to give fair and timely advice of the dishonor, of the two intermediate LDB Slips and in failing to award damages to Firestone pursuant to Article 2176 of the New Civil Code.**<sup>[8]</sup>

The issue for our consideration is whether or not respondent bank should be held liable for damages suffered by petitioner, due to its allegedly belated notice of non-payment of the subject withdrawal slips.

The initial transaction in this case was between petitioner and Fojas-Arca, whereby the latter purchased tires from the former with special withdrawal slips drawn upon