

## FIRST DIVISION

[ G.R. No. 126696, January 21, 1999 ]

**SECURITY BANK & TRUST COMPANY, PETITIONER, VS. TRIUMPH LUMBER AND CONSTRUCTION CORPORATION, RESPONDENT.**

### D E C I S I O N

**DAVIDE JR., C.J.:**

In this petition for review on *certiorari* under Rule 45 of the Rules of Court the petitioner asks this Court to reverse the decision<sup>[1]</sup> of 28 December 1995 and the resolution<sup>[2]</sup> of 17 September 1996 of the Court of Appeals in CA-G.R. CV No. 33513. The former set aside the decision<sup>[3]</sup> of 14 November 1990 of the Regional Trial Court (RTC) of Makati in Civil Case No. 16882 and ordered the petitioner to reimburse the private respondent the value of the alleged forged checks drawn against private respondent's account, plus interest and attorney's fees. The latter denied petitioner's motion for reconsideration.

Petitioner and private respondent were the defendant and plaintiff, respectively, in Civil Case No. 16882.

The factual antecedents of this case were summarized by the trial court in its decision in Civil Case No. 16882; thus:

Based on plaintiff's evidence, it appears that plaintiff is a depositor in good standing of defendant bank's branch at Sucat, Parañaque, under current checking account no. 210-0053-60. Plaintiff claims that on March 23 and 24, 1987, three (3) checks all payable to cash and all drawn against plaintiff's aforementioned current account were presented for encashment at defendant's Sucat Parañaque branch, to wit: Security Bank check nos. 466779 and 466777, both dated March 23, 1987 in the amount of P150,000.00 and P130,000.00, respectively; and Security Bank Check no. 466780 dated March 24, 1987 in the amount of P20,000.00. (Exhs. A, A-1 to A-3, B, B-1 to B-3, C, C-1 to C-3) Plaintiff also claims that due to defendant bank's gross negligence and inexcusable negligence in exercising ordinary diligence in verifying from plaintiff the encashment of plaintiff's checks whose amount exceed P10,000.00 and in determining the forgery of drawer's signatures, the aforesaid three (3) checks were encashed by unauthorized persons to the damage and prejudice of the plaintiff corporation. (Exhs. D, D-1, D-2) Plaintiff then requested the defendant to credit back and restore to its account the value of the checks which were wrongfully encashed in the amount of P300,000.00 but despite due demand the defendant failed to pay its liability. (Exhs. F, F-1, F-2) Finally, plaintiff claims that per findings of the PC Crime Laboratory, the signatures of Co Yok Teng and Yu Chun Kit, the authorized [signatories] of plaintiff were forged. (Exhs. E, E-1 to

E-4, G, G-1, G-2, H, I, I-1, I-2)

Upon the other hand, the defendant bank claims that on June 19, 1985 the plaintiff corporation opened savings account no. 3220-0529-79 and current account no. 3210-0053-60 with defendant bank's branch in Sucat, Parañaque, Metro Manila. In order to make the said current and savings account operational, the plaintiff herein provided the defendant with the requisite specimen signature cards which in effect authorized defendant bank to honor withdrawals on the basis of any two of three signatures affixed thereon, specifically those of Mr. Dee Kong, Mr. Co Yok Teng and Mr. Chun Yun Kit, the president, treasurer and general manager, respectively, of plaintiff corporation. (Exhs. 3, 4) Subsequently, plaintiff executed an automatic transfer agreement authorizing defendant bank to transfer cleared funds from plaintiff's savings account to its current account at any time whenever funds in the current account are insufficient to meet withdrawals therefrom or are below the stipulated minimum balance. (Exhs. 5, 6, 6-A) Defendant also claims that the savings account pass book and the check booklets were kept by the plaintiff in its filing cabinet but on March 23, 1987 the plaintiff herein discovered that the door of his office was forced open including that of the filing cabinet where the check booklets and other bank documents were being kept by the plaintiff. (pp. 32-33, TSN of August 15, 1988) Defendant further claims that the incident was not reported to the police authorities by the plaintiff nor was there any advise given to defendant bank and that on the same day of the discovery by plaintiff of the burglary, said plaintiff nevertheless made three separate deposits in a total amount of P374,554.10. (Exhs. 1, 1-A, 1-B, 2-A, 2-B) Defendant also claims that immediately after the said deposit of P374,554.10 has been made by the plaintiff, three checks namely: check no. 466779 dated March 23, 1987 in the amount of P130,000.00; check no. 466779 dated March 23, 1987 of P150,000.00 and check no. 466780 dated March 24, 1987 in the amount of P20,000.00 which [were] all payable to cash were successively presented to defendant bank for encashment which was given due course by the latter after said checks have passed through the standard bank procedure for verification of the check signatures and the regularity of the material particulars of said checks. (pp. 6, 19, 20, 39, TSN of February 1, 1989, p. 21, TSN of August 15, 1988)<sup>[4]</sup>

On the basis of such factual environment, the trial court found no preponderance of evidence to support private respondent's complaint. The private respondent failed to show that the signatures on the subject checks were forged. It did not even present in court the originals of the checks. Neither did it bother to explain its failure to do so. Thus, it could be presumed that the original checks were wilfully suppressed and would be adverse to private respondent's case if produced. Moreover, the signatures on the checks were not compared with the specimen signature appearing on the specimen signature cards provided by the private respondent upon opening its current account with petitioner. Thus, the opinion of the expert witness is not worthy of credit. Besides, the private respondent failed to present Mr. Co Yok Teng, one of the signatories of the checks in question, to deny the genuineness of the signatures.

The trial court was convinced that the petitioner bank had exercised due care and diligence in determining the authenticity of the checks in question before they were

encashed. It was rather the private respondent that had been negligent in the care and custody of the corporate checks. After the incident in question occurred, the private respondent should have reported the matter to the police authorities or to the bank in order that the latter could "undertake stringent measure to counteract any attempt to forge the corporate checks." But private respondent did not. Hence, private respondent should be the one to bear the loss.

In view of such findings, the trial court dismissed the complaint for lack of merit.

On appeal, the Court of Appeals reversed the decision of the trial court and ordered the petitioner to reimburse the private respondent the sum of P300,000, plus interest at the rate of 2 ½ % per month from 24 March 1987 until full payment thereof, as well as attorney's fees equivalent to 25 % of the principal obligation.

The Court of Appeals held that it was not necessary for the private respondent to prove that the signatures on the three checks in question were forged because of the following admissions set forth in petitioner's answer:

14. Plaintiff was guilty of negligence substantially contributing to the unauthorized signatures or forgery of the signatures on the checks mentioned in the complaint.

...

15. The alleged forged signatures on the checks were sufficiently adroit as to escape detection even under the officer's scrutiny.

...

- 20.3 Anna P. Naval and Roberto N. Gabutao verbally admitted that the checks were forged.

...

21. Anna Naval and Roberto Gabutao are now facing charges for estafa thru Falsification of Commercial Documents under Criminal Case No. 30004 pending with the Regional Trial Court, National Capital Judicial Region, sitting at Makati, Metro Manila.

According to the Court of Appeals, the expert witness, contrary to the trial court's finding, was able to examine the signatures on the original checks and compared them with the standard signatures of the signatories. The photographic enlargements of the questioned checks, which she identified in court, were in fact taken from the original checks. With the bank's admission in its answer, as well as the un rebutted testimony of the expert witness and of Chun Yun Kit, there could be no doubt that the signatures on the questioned checks were forged.

The Court of Appeals likewise held that the petitioner must be the one to bear the consequences of its failure to detect the forgery. Besides, petitioner was "less than prudent" in the treatment of private respondent's account. It did not observe its arrangement with the private respondent that it would inform the latter whenever a check of more than P10,000 would be presented for encashment. Neither did it ask the payee to present an identification card or to bring someone who could attest to identity of the payee.

After its motion for reconsideration was denied<sup>[5]</sup> by the Court of Appeals, petitioner filed this petition contending that the Court of Appeals erred in holding that

I

...THE SIGNATURES ON THE CHECKS IN QUESTION WERE FORGED

II

...WHETHER THE SIGNATURES WERE FORGED IS NO LONGER AN ISSUE IN THE CASE CONSIDERING THE AFFIRMATIVE DEFENSES SET FORTH IN PETITIONER'S ANSWER

III

... THE PETITIONER ITSELF WAS NEGLIGENT AND THAT THE RESPONDENT EXERCISED DUE CARE IN THE CUSTODY OF ITS CHECKS AND OTHER RELATED DOCUMENTS

IV

... RESPONDENT IS ENTITLED TO REIMBURSEMENT OF P300,000.00 PLUS INTEREST THEREOF AS WELL AS ATTORNEY'S FEES.

In the first assigned error, the petitioner alleges that the best evidence of the forgery were the original checks bearing the alleged forged signatures of private respondent's officers. In spite of the timely objection made by the petitioner, the private respondent introduced in evidence mere photocopies of the questioned checks. The failure to produce the originals of the checks was a fatal omission inasmuch as there would be no evidentiary basis for the court to declare that the instruments were forgeries. Likewise such failure amounted to a willful suppression of evidence, which created a presumption that its production would be unfavorable to respondent's case.<sup>[6]</sup> It could also be presumed that "the checks in question [were] genuine checks regularly issued by the respondent in the course of its business, bearing the genuine signatures of the officers whom it authorized to sign in its behalf."<sup>[7]</sup> Also, an unfavorable inference could be drawn from the unexplained failure of private respondent to call as its witness Mr. Co Yok Teng, whose signature was among those allegedly forged.

Petitioner, further contends that the opinion of private respondent's expert witness, Crispina V. Tabo, Senior Document Examiner of the PC Crime Laboratory, has no weight and deserves no consideration. Tabo did not use as basis of her analytical study the standard signatures of Chun Yun Kit and Co Yok Teng on the specimen signature cards provided by the respondent upon opening Current Account No. 3210-0523-60 with the petitioner. It was to be against these standard signatures appearing on the specimen cards that petitioner was to honor checks drawn against private respondent's account. What Tabo utilized for comparisons were signatures that were not even authenticated by Chun Yun Kit and Co Yok Teng. Neither was it proved that the supposed standard signatures had been written "closely proximate" to the date of the questioned checks. Moreover, the "requested signatures" on the long bond paper written *post litem motam* could not be accepted as standards of comparison "because of the ease with which they[could] be disguised to

intentionally differentiate them from those being challenged.”<sup>[8]</sup>

As to the second assigned error, petitioner maintains that its Answer contained a specific denial of private respondent’s allegation of forgery. It could set in its answer affirmative and negative defenses alternatively even if they were inconsistent with each other.<sup>[9]</sup>

With respect to its third assigned error, petitioner asserts that it exercised due care and diligence in the payment of private respondent’s checks by first verifying in accordance with standard bank practices and procedures the genuineness of the signatures and endorsements. Upon the other hand, the private respondent, in the management of its business affairs, fell short of the diligence and the ordinary prudence required under the circumstances. It should have advised petitioner of the alleged burglary so that petitioner could have applied stricter rules in the processing of checks drawn against private respondent’s account, but it did not bother to do so. Neither did it reconcile its account, balances with the petitioner in order to forestall the happening of the forgery.

In the last assigned error, the petitioner alleges that in view of the reasons it stated in the first and third assigned errors the petitioner cannot be obliged to pay the amount of P300,000 plus interest. On the contrary, petitioner is entitled to an award of attorney’s fees because private respondent’s complaint was “insincere, baseless, and intended to harass, annoy and defame [it].”<sup>[10]</sup>

Upon the other hand, the respondent claims that petitioner should have filed “a petition for review by *certiorari* and not merely a petition for review.” The determination of negligence by the Court of Appeals is a question of fact that cannot be disturbed on appeal. Even assuming that the instant case is an exception to the rule limiting the appellate jurisdiction of the Supreme Court to reviewing errors of law nonetheless, the issue of forgery was adequately proved by preponderance of evidence.

This appeal is meritorious.

Well settled is the rule that in the exercise of our power of review the findings of facts of the Court of Appeals are conclusive and binding on this Court. However, there are recognized exceptions, among which is when the factual findings of the trial court and the appellate court are conflicting.<sup>[11]</sup> The disagreement between the trial court and the Court of Appeals in the factual conclusion, especially with regard to the alleged forgery of the signatures on the questioned checks and the negligence of the parties, has constrained us to examine the evidence submitted by the parties.

On the issue of forgery, we are unable to agree with the finding of the Court of Appeals that the petitioner admitted in its Answer<sup>[12]</sup> to the complaint the forgery of the signatures. Far from admitting the forgery, petitioner categorically denied that the signatures on the questioned checks were forgeries. However, by way of an alternative affirmative defense, petitioner contended that it had exercised reasonable degree of diligence in detecting whether there was forgery. Even assuming that the signatures on the checks were forged, still petitioner could not be held liable for the value of the checks because all the checks were complete and regular on their face. The alleged forged signatures were “sufficiently adroit as to