

## SECOND DIVISION

[ G.R. No. 123031, October 12, 1999 ]

**CEBU INTERNATIONAL FINANCE CORPORATION, PETITIONER,  
VS. COURT OF APPEALS, VICENTE ALEGRE, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition for review on *certiorari* assails respondent appellate court's Decision,<sup>[1]</sup> dated December 8, 1995, in CA G.R. CV No. 44085, which affirmed the ruling of the Regional Trial Court of Makati, Branch 132. The dispositive portion of the trial court's decision reads:

"WHEREFORE, judgment is hereby rendered ordering defendant [herein petitioner] to pay plaintiff [herein private respondent]:

"(1) the principal sum of P514,390.94 with legal interest thereon computed from August 6, 1991 until fully paid; and

"(2) the costs of suit.

SO ORDERED."<sup>[2]</sup>

Based on the records, the following are the pertinent facts of the case:

Cebu International Finance Corporation (CIFIC), a quasi-banking institution, is engaged in money market operations.

On April 25, 1991, private respondent, Vicente Alegre, invested with CIFIC, five hundred thousand (P500,000.00) pesos, in cash. Petitioner issued a promissory note to mature on May 27, 1991. The note for five hundred sixteen thousand, two hundred thirty-eight pesos and sixty-seven centavos (P516,238.67) covered private respondent's placement plus interest at twenty and a half (20.5%) percent for thirty-two (32) days.

On May 27, 1991, CIFIC issued BPI Check No. 513397 (hereinafter the CHECK) for five hundred fourteen thousand, three hundred ninety pesos and ninety-four centavos (P514,390.94) in favor of the private respondent as proceeds of his matured investment plus interest. The CHECK was drawn from petitioner's current account number 0011-0803-59, maintained with the Bank of the Philippine Islands (BPI), main branch at Makati City.

On June 17, 1991, private respondent's wife deposited the CHECK with Rizal Commercial Banking Corp. (RCBC), in Puerto Princesa, Palawan. BPI dishonored the CHECK with the annotation, that the "Check (is) Subject

of an Investigation.” BPI took custody of the CHECK pending an investigation of several counterfeit checks drawn against CIFIC’s aforesaid checking account. BPI used the check to trace the perpetrators of the forgery.

Immediately, private respondent notified CIFIC of the dishonored CHECK and demanded, on several occasions, that he be paid in cash. CIFIC refused the request, and instead instructed private respondent to wait for its ongoing bank reconciliation with BPI. Thereafter, private respondent, through counsel, made a formal demand for the payment of his money market placement. In turn, CIFIC promised to replace the CHECK but required an impossible condition that the original must first be surrendered.

On February 25, 1992, private respondent Alegre filed a complaint<sup>[3]</sup> for recovery of a sum of money against the petitioner with the Regional Trial Court of Makati (RTC-Makati), Branch 132.

On July 13, 1992, CIFIC sought to recover its lost funds and formally filed against BPI, a separate civil action<sup>[4]</sup> for collection of a sum of money with the RTC-Makati, Branch 147. The collection suit alleged that BPI unlawfully deducted from CIFIC’s checking account, counterfeit checks amounting to one million, seven hundred twenty-four thousand, three hundred sixty-four pesos and fifty-eight centavos (P1,724,364.58). The action included the prayer to collect the amount of the CHECK paid to Vicente Alegre but dishonored by BPI.

Meanwhile, in response to Alegre’s complaint with RTC-Makati, Branch 132, CIFIC filed a motion for leave of court to file a third-party complaint against BPI. BPI was impleaded by CIFIC to enforce a right, for contribution and indemnity, with respect to Alegre’s claim. CIFIC asserted that the CHECK it issued in favor of Alegre was genuine, valid and sufficiently funded.

On July 23, 1992, the trial court granted CIFIC’s motion. However, BPI moved to dismiss the third-party complaint on the ground of pendency of another action with RTC-Makati, Branch 147. Acting on the motion, the trial court dismissed the third-party complaint on November 4, 1992, after finding that the third party complaint filed by CIFIC against BPI is similar to its ancillary claim against the bank, filed with RTC-Makati Branch 147.

Thereafter, during the hearing by RTC-Makati, Branch 132, held on May 27, and June 22, 1993, Vito Arieta, Bank Manager of BPI, testified that the bank, indeed, dishonored the CHECK, retained the original copy and forwarded only a certified true copy to RCBC. When Arieta was recalled on July 20, 1993, he testified that on July 16, 1993, BPI encashed and deducted the said amount from the account of CIFIC, but the proceeds, as well as the CHECK remained in BPI’s custody. The bank’s move was in accordance with the Compromise Agreement<sup>[5]</sup> it entered with CIFIC to end the litigation in RTC-Makati, Branch 147. The compromise agreement, which was submitted for the approval of the said court, provided that:

"1. Defendant [BPI] shall pay to the plaintiff [CIFC] the amount of P1,724,364.58 plus P 20,000 litigation expenses as full and final settlement of all of plaintiff's claims as contained in the Amended Complaint dated September 10, 1992. The aforementioned amount shall be credited to plaintiff's current account No. 0011-0803-59 maintained at defendant's Main Branch upon execution of this Compromise Agreement.

"2. Thereupon, defendant shall debit the sum of P 514,390.94 from the aforesaid current account representing payment/discharge of BPI Check No. 513397 payable to Vicente Alegre.

"3. In case plaintiff is adjudged liable to Vicente Alegre in Civil Case No. 92-515 arising from the alleged dishonor of BPI Check No. 513397, plaintiff cannot go after the defendant: otherwise stated, the defendant shall not be liable to the plaintiff. Plaintiff [CIFC] may however set-up the defense of payment/discharge stipulated in par. 2 above."<sup>[6]</sup>

On July 27, 1993, BPI filed a separate collection suit<sup>[7]</sup> against Vicente Alegre with the RTC-Makati, Branch 62. The complaint alleged that Vicente Alegre connived with certain Lina A. Pena and Lita A. Anda and forged several checks of BPI's client, CIFC. The total amount of counterfeit checks was P 1,724,364.58. BPI prevented the encashment of some checks amounting to two hundred ninety five thousand, seven hundred seventy-five pesos and seven centavos (P295,775.07). BPI admitted that the CHECK, payable to Vicente Alegre for P514,390.94, was deducted from BPI's claim, hence, the balance of the loss incurred by BPI was nine hundred fourteen thousand, one hundred ninety-eight pesos and fifty-seven centavos (P914,198.57), plus costs of suit for twenty thousand (P20,000.00) pesos. The records are silent on the outcome of this case.

On September 27, 1993, RTC-Makati, Branch 132, rendered judgment in favor of Vicente Alegre.

CIFC appealed from the adverse decision of the trial court. The respondent court affirmed the decision of the trial court.

Hence this appeal,<sup>[8]</sup> in which petitioner interposes the following assignments of errors:

1. The Honorable Court of Appeals erred in affirming the finding of the Honorable Trial Court holding that petitioner was not discharged from the liability of paying the value of the subject check to private respondent after BPI has debited the value thereof against petitioner's current account.

2. The Honorable Court of Appeals erred in applying the provisions of paragraph 2 of Article 1249 of the Civil Code in the instant case. The applicable law being the Negotiable Instruments Law.

3. The Honorable Court of Appeals erred in affirming the Honorable Trial Court's findings that the petitioner was guilty of negligence and delay in the performance of its obligation to the private respondent.

4. The Honorable Court of Appeals erred in affirming the Honorable Trial Court's decision ordering petitioner to pay legal interest and the cost of

suit.

5. The Honorable Court of Appeals erred in affirming the Honorable Trial Court's dismissal of petitioner's third-party complaint against BPI.

These issues may be synthesized into three:

1. WHETHER OR NOT ARTICLE 1249 OF THE NEW CIVIL CODE APPLIES IN THE PRESENT CASE;
2. WHETHER OR NOT "*BPI CHECK NO. 513397*" WAS VALIDLY DISCHARGED; and
3. WHETHER OR NOT THE DISMISSAL OF THE THIRD PARTY COMPLAINT OF PETITIONER AGAINST BPI BY REASON OF LIS PENDENS WAS PROPER?

On the *first issue*, petitioner contends that the provisions of the Negotiable Instruments Law (NIL) are the pertinent laws to govern its money market transaction with private respondent, and not paragraph 2 of Article 1249 of the Civil Code. Petitioner stresses that it had already been discharged from the liability of paying the value of the CHECK due to the following circumstances:

- "1) There was "ACCEPTANCE" of the subject check by BPI, the drawee bank, as defined under the Negotiable Instruments Law, and therefore, BPI, the drawee bank, became primarily liable for the payment of the check, and consequently, the drawer, herein petitioner, was discharged from its liability thereon;
- 2) Moreover, BPI, the drawee bank, has not validly DISHONORED the subject check; and,
- 3) The act of BPI, the drawee bank of debiting/deducting the value of the check from petitioner's account amounted to and/or constituted a discharge of the drawer's (petitioner's) liability under the instrument/subject check."<sup>[9]</sup>

Petitioner cites Section 137 of the Negotiable Instruments Law, which states:

"Liability of drawee retaining or destroying bill - Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery or such other period as the holder may allow, to return the bill accepted or non-accepted to the Holder, he will be deemed to have accepted the same."

Petitioner asserts that since BPI accepted the instrument, the bank became primarily liable for the payment of the CHECK. Consequently, when BPI offset the value of CHECK against the losses from the forged checks allegedly committed by the private respondent, the check was deemed paid.

Article 1249 of the New Civil Code deals with a mode of extinction of an obligation and expressly provides for the medium in the "payment of debts." It provides that:

"The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency, which is legal tender in the Philippines.