

## TENTH DIVISION

[ CA-G.R. CV No. 97952, November 28, 2014 ]

**NORSK HYDRO (PHILIPPINES), INC. AND NORTEAM SEATRANSPORT SERVICES, PLAINTIFFS-APPELLEES, VS. PREMIERE DEVELOPMENT BANK, BANK OF THE PHILIPPINE ISLANDS, CITIBANK N.A., SKYRIDER BROKERAGE INTERNATIONAL, INC. AND MARIVIC-JONG BRIONES, DEFENDANTS-APPELLANTS.**

### DECISION

VELOSO, J.:

#### *The Case*

In this appeal, defendants *Premiere Development Bank, Bank of the Philippine Islands, Citibank, N.A., Skyriders Brokerage International, Inc. and Marivic-Jong Briones* ("**Defendants-Appellants**") assail the **Decision**<sup>[1]</sup> dated **April 14, 2010** of the Regional Trial Court of Makati City<sup>[2]</sup> ("**RTC**") in Civil Case No. 03-1203, entitled "*Norsk Hydro (Philippines), Inc. and NorTEAM SEATRANSPORT SERVICES, Plaintiffs versus Premiere Development Bank, Bank of the Philippine Islands, Citibank, N.A., Skyriders Brokerage International, Inc. and Marivic-Jong Briones, Defendants,*" the dispositive portion of which reads:

"**WHEREFORE**, premises considered:

1. Defendants Premiere Development Bank, Skyriders Brokerage International, Inc., Marivic Jong-Briones and Bank of the Philippine Islands are hereby ordered to pay jointly and solidarily plaintiffs Yara Fertilizers Philippines, Inc. and NorTEAM SEATRANSPORT SERVICES, Inc. the amount of Twenty Six Million One Hundred Seventy Six Thousand Six and 6/100 (P26,176,006.06) covered by the eighteen (18) MCs purchased from defendant Bank of the Philippine Islands, plus interest;
2. Defendants Premiere Development Bank, Skyriders Brokerage International, Inc. Marivic Jong-Briones and Citibank N.A. are jointly and solidarily liable to pay plaintiffs Yara Fertilizers Philippines, Inc. and NorTEAM SEATRANSPORT SERVICES, Inc. the amount of One Million Nine Hundred Seven Thousand Seven Hundred Eighty Four Pesos (P1,907,784.00) covered by Citibank Manager's Check No. 338583 dated November 16, 2001, plus interest;
3. Defendants Bank of the Philippine Islands and Citibank N.A. cross claims against defendant Premiere Bank is hereby given due course, and the aforesaid defendants have a right to claim reimbursement from the defendant Premiere Bank of whatever amount it would pay to the plaintiffs. Its counterclaims, however, to the plaintiffs Yara Fertilizers and NorTEAM SEATRANSPORT are hereby **DISMISSED** for lack of merit.
4. Defendant Premiere Bank's counterclaim against herein plaintiffs is hereby **DISMISSED** for lack of merit as the plaintiffs did not maliciously filed [sic] the instant Complaint but merely exhausted possible remedies to protect its right. Defendant Premiere Bank's cross claim against defendants BPI and Citibank cannot be given due course as the same has no merit. The person it can go after only is its Former Branch Manager and a certain Mr. Agoncillo who was not prosecuted because he did not file his Answer to the third party Complaint filed by defendant Premiere Bank and defendant Premiere Bank likewise failed to prosecute the case against him, and to a certain Mr. Arthur Espino whose whereabouts is unknown and to which the Court did not acquire jurisdiction thus, the third party complaint filed against Mr. Agoncillo and Mr. Espino by defendant Premiere Bank is hereby **DISMISSED** without prejudice.
5. The Court cannot also rule on the liability of Mr. Banga as the Court did not acquire jurisdiction over him, thus, the third party complaint filed by defendants Skyriders Brokerage, Inc. and Ms. Marivic Jong-Briones against Mr. Banga is hereby **DISMISSED** provisionally.
6. Defendants Premiere Development, Skyriders Brokerage International, Inc. and Marivic Jong-Briones are hereby ordered to jointly and solidarily pay plaintiffs the amount of P400,000.00 for and as moral damages.
7. Defendants Premiere Development Bank, Skyriders Brokerage International, Inc. are hereby ordered to pay jointly and solidarily the plaintiffs the sum of P400,000.00 by way of exemplary damages.
8. And lastly, defendants Premiere Development Bank, Skyriders Brokerage, Inc. and Marivic Jong-Briones are hereby ordered to pay jointly and solidarily the amount of P700,000.00 for and as attorney's fees plus litigation expenses.

Proportionate costs against defendants Premiere Bank and Skyriders Brokerage International, Inc. and Marivic Jong Briones.

SO ORDERED."<sup>[3]</sup>

#### *The Facts*

This case proceeds from a **Complaint for Sum of Money and Damages**<sup>[4]</sup> filed on October 9, 2003, by Norsk Hydro (Philippines), Inc. ("**Norsk Hydro**"), now Yara Fertilizers ("**Yara Fertilizers**") and Norteam Seatransport Services, Inc. ("**Norteam**") against Premiere Development Bank ("**Premiere**"), Bank of the Philippine Islands ("**BPI**"), Citibank N.A. ("**Citibank**"), Skyrider Brokerage International, Inc. ("**Skyrider**") and Marivic Jong-Briones ("**Briones**").

As culled from the RTC's assailed Decision, the plaintiffs alleged as follows:

"Plaintiff **Yara Fertilizers** (formerly **Norsk Hydro**) is a corporation engaged in the **business of importing fertilizer and other agricultural chemicals and inputs**, as indicated in the primary purpose of its Articles of Incorporation.

Plaintiff Yara Fertilizers commissioned plaintiff **Norteam Seatransport** to act as its **Operations Manager** for its importations of fertilizers. As Operations Manager, plaintiff Norteam Seatransport acted as liaison to secure a licensed customs brokerage who shall be **responsible for the transmittal of the payment of customs duties and taxes to the Bureau of Customs** in order for the latter to release to the plaintiffs the imported fertilizers after payment of the required customs duties and taxes.

During the years 2001 up to 2002, plaintiff Norsk Hydro made several importations of fertilizer and thus, plaintiff Norsk Hydro incurred customs duties and taxes in favor of the Bureau of Customs in connection with the said importations, and because of the importations made, plaintiff Norteam Seatransport hired defendant **Skyrider Brokerage International, Inc. to compute the customs duties and taxes** of plaintiff Norsk Hydro and for the former to transmit the payment of the corresponding customs and duties of the imported fertilizers to the Bureau of Customs for the release of the same.

In order to pay the corresponding customs and duties of the imported fertilizers for the years 2001 and 2002, **plaintiff Norteam Seatransport**, being the operations manager of plaintiff Norsk Hydro, on different dates, **purchased from** defendants **Bank of the Philippine Islands** and **Citibank, N.A., eighteen (18) Manager's Check** and **One Manager's Check**, respectively, or for a total of nineteen (19) Manager's Check, all **payable to the order of Bureau of Customs**. The **grand total** of the nineteen (19) Manager's Check amounted to **P28,083,790.02**. Every time Plaintiffs purchased a Manager's Check from either defendant Bank of the Philippine Islands and [sic] Citibank, N.A., plaintiff Norteam Seatransport would **transmit said check to defendant Skyrider Brokerage International Inc. for the latter to deliver to the Bureau of Customs** as payment for the customs duties and taxes incurred by the plaintiffs relative to the imported fertilizers.

Meanwhile, the imported fertilizers were regularly and religiously released to plaintiff Norsk Hydro, and plaintiff Norteam Seatransport received and were provided by defendant Skyrider Brokerage International, Inc. **Official Receipts purportedly issued by the Bureau of Customs evidencing payment of the customs duties and taxes**.

However, on September 16, 2002, a **letter from the Bureau of Customs** was received by herein plaintiff Yara Fertilizer, (formerly Norsk Hydro) **demanding** from the latter the **customs duties and taxes** of the imported fertilizers for the years 2001 and 2002 **in the liquidated amount of P20,766,667.00** which is to be paid within ten (10) days from receipt thereof, otherwise the Bureau of Customs shall take the necessary legal action against plaintiff Norsk. Further, the Bureau of Customs informed plaintiff Norsk Hydro that an alleged **Certificate of Eligibility** which was allegedly submitted by plaintiff Norsk Hydro to the Bureau of Customs and purportedly issued by the Department of Agriculture's Philippine Carabao Center was found to be **spurious**. Said certificate of eligibility was submitted in evidence. **The said Certificate of Eligibility was used as an exemption for the payment of customs duties and taxes** on the importation of the fertilizers and for the withdrawal of the same from the Bureau of Customs, without paying the aforesaid customs duties and taxes. As a result of such findings of the Bureau of Customs as to the alleged non-payment of customs duties and taxes by plaintiffs by presenting a **fake certificate of eligibility for exemption**, the Bureau of Customs thru the Commissioner of Customs, issued a hold order on all subsequent importations of plaintiff Norsk Hydro.

On September 15, 2002, the Bureau of Customs summoned the Vice Presidents of plaintiff Norsk Hydro to explain their obligations to the Bureau of Customs. Thus, after the Bureau of Customs made their [sic] own investigation of the said fraudulent scheme, it verified that plaintiff Norsk Hydro had nothing to do with the tax payment diversion scam, and plaintiff Norsk, as a show of good faith on its part, made partial payment of the said customs duties and taxes in the amount of P15,000,000.00 to the Bureau of Customs.

Further, Deputy Commissioner Gil A. Valera strongly recommended that the Hold Order issued against all the shipment of plaintiff Norsk in all ports, including that in the port of Bacolod be lifted. The Bureau of Customs, thereafter, computed the alleged deficiency liability of plaintiff Norsk Hydro to P4,830,365.91, which was subsequently paid by plaintiff Norsk Hydro as per Certification of the Bureau of Customs dated November 13, 2002.

Thereafter, plaintiff Norsk Hydro received **another demand letter dated January 15, 2003 from the Bureau of Customs** of the Port of Cagayan de Oro for the alleged non-payment of custom duties in the amount [of] **P4,087,820.00** on four (4) importations made in the year 2001. Likewise, in the **demand letter dated February 21, 2003**, the Bureau of Customs of Legaspi City made a demand to plaintiff Norsk Hydro for the alleged non-payment of customs duties in the amount of **P814,486.00** covering importation of fertilizers.

It was also testified by one of plaintiffs' witness[es], Mr. Quiban that defendant Skyrider Brokerage International, Inc. **did not remit to the Bureau of Customs the nineteen (19) crossed Manager's Check**, which is supposed to be the payment for the customs duties and taxes for the imported fertilizers, and that defendants Skyrider Brokerage International Inc. and Marivic Jong-Briones were using a fictitious and spurious Certificate of Eligibility to make it appear that Plaintiff Norsk Hydro was exempted from the payment of customs duties and taxes of the imported fertilizers and for the release of the same from the Bureau of Customs without the payment of the aforesaid duties and taxes.

It was further elicited from the testimonies of plaintiffs' witness[es] that **the nineteen (19) Manager's Check[s]** purchased from defendants Bank of the Philippine Islands and Citibank N.A. which **were deposited in Account Numbers 01-00-780-1 and 05-02687-8 in Premiere Development Bank, Pedro Gil Branch**, all contained the stamped endorsement '**prior endorsement and/or lack of endorsements guaranteed**' of the defendant Premiere Development

Bank; that defendant **Premiere Development Bank encashed the nineteen (19) crossed Manager's Check[s]** payable to the order of the Bureau of Customs despite the fact that defendant Premiere Bank is **not authorized agent bank** of the Bureau of Customs **nor authorized to receive payment of customs duties and taxes** for the Bureau of Customs. On the other hand, defendants Bank of the Philippine Islands and Citibank N.A. released to defendant Premiere Development Bank the amounts covered by the nineteen (19) crossed Manager's Check[s], which are payable to the order of Bureau of Customs even though the latter was not an authorized agent bank of the former.

Plaintiff Norteam Seatransport send demand letters, the last of which was on June 25, 2003, to defendant Premiere Development Bank for the payment and reimbursement of the nineteen (19) crossed Manager's Check[s] covering the total amount of P28,083,790.02 which it illegally encashed. Likewise, a demand letter dated January 22, 2003 was sent by plaintiff Norteam Seatransport, in behalf of its principal plaintiff Norsk Hydro, to defendant Bank of the Philippine Islands demanding the latter to reimburse the amount of P26,176,006.00 covering the eighteen (18) of the nineteen (19) crossed Manager's Check[s], which plaintiff Norsk Hydro purchased from defendant Bank of the Philippine Islands and which the latter also illegally released to defendant Premiere Development Bank.

Plaintiff Norsk also made a similar demand in a letter dated December 16, 2002 to defendant Citibank N.A. for the latter to reimburse to the former the amount of P1,907,784.00 covered under Citibank Manager's Check No. 338583, which plaintiff purchased from defendant Citibank and which the latter also illegally released the said amounts to defendant Premiere Development Bank.

That to date, neither defendant Premiere Development Bank nor Bank of the Philippine Islands and Citibank N.A. complied with the just demands of plaintiffs Norteam Seatransport and Norsk Hydro. Further, as per investigation conducted by the Bureau of Customs, which is contained in a Memorandum dated June 6, 2003, the Bureau of Customs recommended the filing of criminal charges against defendant Skyriders Brokerage International. Inc. and the suspension of its authority to transact business with the former. The Deputy Commissioner Gil A. Valera of the Bureau of Customs also acknowledged that the tax diversion scam was made through collusion of several employees of the Bureau of Customs and defendants Skyriders Brokerage International, Inc. and Premiere Development Bank. Further, witness testified that defendant Marivic Jong-Briones, general manager of defendant Skyriders Brokerage International, Inc. cannot feign ignorance on the tax scam as she participated in the said scam."<sup>[5]</sup> (emphasis Ours)

On the other hand, the RTC summarized the respective arguments of each of the defendants, viz.:

"xxx[T]he defense and contention of herein **defendant Premiere Development Bank** is that the **fraud** that attended the subject Manager's Check is **limited only to the incident of diversion of its purpose** which is already consummated after the breach of Contract between Norsk Hydro (Yara), Norteam and Skyriders Brokerage and Marivic Jong Briones and that the deposit and encashment of the subject checks are not the fraud being claimed by the plaintiff as defendant/third party plaintiff Premiere Bank is **not privy** to the brokerage transactions of plaintiffs Norsk Hydro, Norteam and defendants Skyriders Brokerage and Marivic Jong Briones and that the claim of herein Plaintiffs Norsk Hydro and Norteam that defendant Premiere Bank is in collusion with defendant Skyriders and Briones has not been proven.

Another defense raised by defendant Premiere Bank is that the act of accepting and encashing the Bureau of Customs (BOC) checks is in the nature of a criminal act of its **former Manager third-party defendant Manuel Agoncillo**, which is definitely an **ultra vires act which could not bind defendant-third party plaintiff Premiere Bank**. According to defendant Premiere bank, it could not be reasonably expected to control the state of mind of its employees or officers in their propensity to commit a crime which is outside of the bounds of their duties and functions. It further contended that **defendant/third party Premiere Bank had exerted due diligence** in issuing memorandum and notices to its officers and branches enjoining them from accepting second endorsed checks and government checks. The subject BOC-checks are both in the nature of second endorsed checks and government checks, thus the acceptance of the subject BOC-checks by former Manuel Agoncillo despite the said memorandum and notices against its acceptance, is absolutely an ultra-vires act of him which could not bind Premiere Bank in any manner whatsoever.

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It was the contention of **defendants Skyriders Brokerage and Jong-Briones** that they are both in good faith. According to the aforesaid defendants, no proof could back up the claim of their co-defendant Premiere Bank as it is clear from existing facts that **Skyriders and Briones engaged in an agreement with a certain Mr. David Banga for the release of the shipments of plaintiffs in good faith**. Mr. David Banga is a known personality in the business circle and his proposal to facilitate the release of the shipment of the plaintiffs with the Bureau of Customs was not haphazardly accepted by herein defendants but rather scrutinized, studied and dissected before they actually engage Mr. Banga. Defendants Skyriders and Briones averred that **they believed in good faith that David Banga was the authorized representative of the plaintiffs as he even represented himself as their Attorney-in-fact**. Defendants contended that they are in good faith on engaging Mr. Banga because of the following reasons: first that Mr. Banga is a personality in the industry with a relatively long experience in dealing with the BOC and there is no reason for defendants to cast doubt as to his intention. Second, he represented himself to be the duly authorized representative of plaintiff Norsk Hydro as he even signed in a letter as their Attorney-in-fact. Third, all the shipments were released without any problem whatsoever. Fourth, plaintiffs knew or should have known that Skyriders is only licensed to transact brokerage activities within the ports of Metro Manila and not outside. All shipments were either processed or released in the ports of San Fernando[,] La Union or Cagayan and Skyriders and [sic] could not simply do this as the license is limited to Metro Manila Ports only and that plaintiffs engaged Skyriders in the computation of duties and taxes only. Thus, clearly the acts of defendants Skyriders and Jong-Briones were done in good faith.

It was further contended as a defense of defendants Skyriders and Briones that the subject crossed Manager's Checks were received by Skyriders, however, the said checks were turned over to Mr. David Banga who actually made payments to the Bureau of Customs. Receipts were in fact issued by Mr. Banga acknowledging receipt of the subject Manager's Checks

which are all crossed checks. Thu[s,] they relied in good faith with the representations of Mr. Banga that he is the lawful representative of plaintiff plus the added fact that all subject shipments were actually released thus, there was no reason for defendants Skyrider and Briones to doubt the legitimacy and faithfulness of David Banga's representation. Just like the plaintiffs, **Skyrider and Briones presumed everything to be ordinary just as plaintiffs presumed regularity of the transaction.**

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It was the contention of herein **defendant BPI** that it did not commit any negligent act and cannot be held liable to plaintiff and to cross-claimant Premiere Development Bank as **it was not a privy at all to plaintiffs and Skyriders dealings** as the latter being the agent of plaintiff is the one negligent in employing a certain David Banga and that plaintiffs could also be held contributorily negligent for allowing Mr. Banga to be engaged by Skyrider as evidence show that plaintiffs knew of the engagement of Mr. Banga.

Defendant Bank of the Philippine Islands further contended that **it cannot be held negligent in the check clearing process to ascertain the supposed authorized agent of banks**, given the standing rule then observed by participating banks. According to defendant Bank of the Philippine Islands[,], **the subject Manager's Checks were all crossed checks or for payee's account only.** The Manager's checks were all payable to the order of the Bureau of Customs. The checks were accepted for deposit by co-defendant Premiere Bank. Defendant Premiere Bank then presented the checks for BPI clearing. Defendant Premiere Bank had stamped thereon on all the Manager's Check its guarantee that all prior endorsements and lack of endorsements guaranteed and under the Negotiable Instruments Law by such deliberate and positive act, defendant Premiere Bank had for all legal intents and purposes treated the said checks as negotiable instruments and accordingly assumed the warranty of an endorser. After the Manager's check had cleared, it is undisputable that Premiere Bank paid the Manager's check so endorsed notwithstanding that title had not passed to the endorser. Thus, in doing so, Premiere Bank as collecting bank[,], did so at its peril and became liable to the payee for the value of the checks and the liability attached whether or not the bank was aware of the unauthorized endorsement.

Moreover, defendant Bank of the Philippine Islands cannot deny collecting money on the endorsement. **It was Premiere Bank's responsibility to inquire as to the authority of its client to deposit crossed checks payable to the Bureau of Customs.** The failure of Premiere Bank to make this inquiry was a breach of duty that renders it liable to Plaintiffs for the amount of the Manager's checks subject matter of the complaint. According to defendant Bank of the Philippine Islands, the argument of Premiere Bank that the former should have known that Premiere was not an authorized agent bank of the Bureau of Customs and therefore should have dishonored the Manager's checks at first instance is both specious and misleading because it conveniently avoids the argument that Premiere Bank officers and check clearing department knew in the first place that their bank was not an authorized agent bank of the Bureau of Customs at that time, hence, the Manager's check should not have been deposited to an account in Premiere Bank, which in the first place, was not even a Bureau of Customs account. Thus, it was Premiere Bank as the collecting bank that should be held liable and not defendant Bank of the Philippine Islands.

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According to **Defendant Citibank** considering that Citibank had **no privity of contract with Premiere's depositor**, Citibank could not verify the depositor's identity. Premiere Bank is the collecting bank and as such, it is the one which holds the account of the depositor and can verify its identity. Upon receipt of the Manager's check, Premiere had the responsibility of determining the rights of the holder and ultimately ensuring that the proceeds of the Manager's Check are subsequently deposited to an account of the Bureau of Customs, thus, **the endorsement of Premiere which was also relied upon by Citibank.**

Furthe[r,] according to Citibank, Premiere's endorsement stamp bearing an initial of Premiere's employee and indicating that 'all prior endorsements and/or lack of endorsement guaranteed is the guarantee of the collecting bank as a general indorser to the drawee bank. **Under existing law, jurisprudence and industry practice, Citibank had the right to rely on the clearing indorsement of Premiere, because as the last indorser, Premiere had the duty to ascertain that genuineness of all prior endorsements or the lack thereof.**

It was Premiere Bank's duty to exercise diligence, ensure that it only accepts checks properly paid to the order of its clients and to determine whether it credited the proceeds of the Manager's check it admittedly received to an account of the Bureau of Customs in its Branch. According to Citibank[,], there is no way by which Citibank could have known that Premiere was at the time the Manager's Check was presented for collection and clearing in 2001, not an authorized agent bank of the Bureau of Customs and neither is Citibank required to know all of the authorized agent banks of the Bureau of Customs. Citibank's obligation as the drawee bank of the Manager's Check was limited, in view of the stamped endorsement of Premiere as the collecting bank, to ensure that the proper procedure for the clearing of the checks is carried out without any irregularities. Thus, in view of the foregoing, defendant Citibank claims that it did not commit any wrongful act against plaintiffs and Premiere.

It was also the contention of Citibank that the **Philippine Clearing House Corporation** only issued **Philippine Clearing House Operation Memo No. 375** dated October 27, 2003 addressed to all clearing banks/institutions regarding the 'Handling/Processing of Cheques payable to the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) and PCHC **Clearing House Operating Memo No. 387** dated February 27, 2004 regarding the Returning/Re-clearing of untagged BOC/BIR cheques that provides rules for a **separate clearing process for checks payable to either the Bureau of Customs** o[r] the Bureau of Internal Revenue. Through these rules, drawee banks like Citibank, could ascertain whether the checks payable to these agencies should be cleared and the corresponding funds released to the collecting bank. Thus, in the instant case, Citibank at the time the Manager's Check was presented for collection by Premiere in November 2001 had absolutely **no means by which it could have known that Premiere was not an authorized agent bank of the Bureau of Customs or that the payee was not the one collecting on the Manager's Check.**"<sup>[6]</sup> (emphasis Ours)

As earlier mentioned, on April 14, 2010, the RTC rendered the herein assailed Decision in favor of the plaintiffs, explaining:

"The issues now presented before the Court for resolution are the following:

- a) Whether or not Plaintiffs has [*sic*] a cause of action and is entitled for damages against defendants Skyrider Brokerage and Jong-Briones, Premiere Bank, and defendants Citibank N.A. and Bank of the Philippine Islands.
- b) Whether defendant Premiere Bank should be held liable for the damages suffered by plaintiffs when defendant Premiere Bank accepted for deposit and subsequently encashed, the subject checks in the name of the Bureau of [C]ustoms notwithstanding the fact that it is not an authorized agent bank of the latter.
- c) Whether defendants Skyrider Brokerage and Jong-Briones should be held liable for the damages suffered by the plaintiffs due to their unauthorized delivery of the subject checks to a certain David Banga resulting in the unauthorized conversion of the amount of the subject checks.
- d) Whether defendants BPI and Citibank, both of which are authorized agent banks of the Bureau of Customs was negligent or should be held liable for damages suffered by the plaintiffs when said defendants authorized the release of the funds covered by the subject checks to defendant Premiere even though the latter was not an authorized agent bank of the Bureau of Customs.

With respect to the first issue, the Court based on the testimonies and evidence presented to the Court by all the parties is convinced that **plaintiffs clearly have a cause of action against herein defendants Skyrider Brokerage, Marivic Jong-Briones and Premiere Bank.**

Going now first on the liability of **Skyrider Brokerage and Marivic Jong Briones** as the responsible officer of the former being its General Manager. It was clearly established and admitted by Skyrider Brokerage and Marivic Jong Briones that it was hired by plaintiff Norteam Seatransport, the latter being the Operations Manager of Plaintiff Yara Fertilizers (Norsk Hydro) to compute the customs duties and taxes of plaintiff Yara [F]ertilizers and transmit the payment thereof to the Bureau of [C]ustoms for the release of the imported fertilizers; that in payment of the said customs duties, plaintiff Norteam purchased nineteen (Manager's Checks) from Bank of the Philippine Islands and Citibank N.A. and entrust the same for delivery to the Bureau of Customs to Skyrider Brokerage as payment for the customs duties and taxes. However, such payments were never remitted to the Bureau of Customs. Plaintiffs were not aware of such because the imported fertilizers were regularly released to them and they received Official Receipts purportedly coming from the Bureau of Customs evidencing payment of the customs duties and taxes.

Plaintiffs only came to know such incident when they received a letter from the Bureau of Customs demanding them of the unpaid customs duties and taxes and issuance of a hold-departure order on all importation of Plaintiff Yara Fertilizers. Plaintiff also found out later that an alleged spurious Certificate of Eligibility was submitted with the Bureau of Customs in the name of Yara Fertilizers purportedly issued by the Department of Agriculture's Philippine Carabao Center making it appear that Plaintiff Yara was exempted from the payment of customs duties and taxes on its importations. Thus, the Certificate of Eligibility was used by third persons to withdraw imported fertilizer from the Bureau of Customs without the payment of the appropriate customs duties and taxes.

The **only defense** given by defendant Skyrider and Briones is that **they relied in good faith with a certain Mr. David Banga who claims that it was an agent of plaintiff Norteam.** According to defendant Skyrider, they entrusted the subject checks with Mr. Banga who represented himself as agent of Plaintiff Norteam and believing in good faith considering that Mr. Banga was well known in the said industry[,] they paid Mr. Banga ten percent (10%) of the brokerage and facilitation fees for the latter to transact directly with the Bureau of Customs for the payment of the customs duties and delivered to them Official Receipts from the Bureau of Customs for the said customs duties.

The above-mentioned defense however of Skyrider deserves no merit. **Skyrider merely relied on a letter dated June 15, 2001 purportedly showing that Mr. Banga was allegedly the attorney-in-fact/agent of the plaintiff Norteam which is merely self-serving.** The letter head of plaintiffs in the said letter was the only basis relied upon by the Skyrider in assuming that Mr. Banga is really an agent of plaintiff Norteam. Such deserves no merit as the letter head can be easily manufactured or copied.

No further evidence was presented by defendant Skyrider to prove that it was really in good faith in believing that Mr. Banga was really an agent of plaintiff Norteam. What is clear is that, **neither plaintiffs Yara Fertilizers nor Norteam Seatransport ever engaged David Banga to be their agent as there was no proof presented to prove the same.** The evidence presented only shows that it was Skyrider that was engaged by the plaintiff to act as its agent in its transactions with the Bureau of Customs not Mr. David Banga.

The fact that no evidence was further presented by plaintiff to prove that David Banga was hired by the plaintiffs other than a written letter was manifested during the cross-examination of Myrene Perena, the lone witness of defendants Skyrider Brokerage which is hereunder quoted as follows:

'Q: Ms. Witness, in your Judicial Affidavit, you mentioned of a letter from certain David Banga, I'm showing to you this letter from Mr. David Banga. Aside from this letter from David Banga, do you have any document which would show that David Banga was authorized by plaintiff, Norsk Hydro?