



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BDO UNIBANK, INC.,
Petitioner,

G.R. No. 227005

Present:

- versus -

CARPIO,* J.,
PERALTA,** *Acting Chairperson*,
MENDOZA,
LEONEN, and
MARTIRES, JJ.

ENGR. SELWYN LAO, doing
business under the name and
style "SELWYN F. LAO
CONSTRUCTION" AND
"WING AN CONSTRUCTION
AND DEVELOPMENT
CORPORATION" and
INTERNATIONAL EXCHANGE
BANK (now UNION BANK OF
THE PHILIPPINES),

Promulgated:

19 JUN 2017

Respondents.

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DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the October 14, 2015 Decision¹ and the September 5, 2016 Resolution² of the Court of Appeals (CA) in CA-G.R. CV No. 100351, which affirmed, with modification, the July 9, 2012 Decision³ of the Regional Trial Court, Branch 55, Manila (RTC) in Civil Case No. 99-93068, a case for collection of sum of money.

* On Official Leave.

** Per Special Order No. 2445 dated June 16, 2017.

¹ Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justice Mariflor P. Punzalan Castillo, and Associate Justice Leoncia R. Dimagiba, concurring; *rollo*, pp. 36-48.

² Id. at 50-54.

³ Penned by Presiding Judge Josefina E. Siscar; id. at 61-76.

The Antecedents

On March 9, 1999, respondent Engineer Selwyn S. Lao (*Lao*) filed before the RTC a complaint for collection of sum of money against Equitable Banking Corporation, now petitioner Banco de Oro Unibank (*BDO*), Everlink Pacific Ventures, Inc. (*Everlink*), and Wu Hsieh a.k.a. George Wu (*Wu*).

In his complaint, Lao alleged that he was doing business under the name and style of “Selwyn Lao Construction”; that he was a majority stockholder of Wing An Construction and Development Corporation (*Wing An*); that he entered into a transaction with Everlink, through its authorized representative Wu, under which, Everlink would supply him with “HCG sanitary wares”; and that for the down payment, he issued two (2) Equitable crossed checks payable to Everlink: Check No. 0127-242249⁴ and Check No. 0127-242250,⁵ in the amounts of ₱273,300.00 and ₱336,500.00, respectively.

Lao further averred that when the checks were encashed, he contacted Everlink for the immediate delivery of the sanitary wares, but the latter failed to perform its obligation. Later, Lao learned that the checks were deposited in two different bank accounts at respondent International Exchange Bank, now respondent Union Bank of the Philippines (*Union Bank*). He was later informed that the two bank accounts belonged to Wu and a company named New Wave Plastic (*New Wave*), represented by a certain Willy Antiporda (*Antiporda*). Consequently, Lao was prompted to file a complaint against Everlink and Wu for their failure to comply with their obligation and against BDO for allowing the encashment of the two (2) checks. He later withdrew his complaint against Everlink as the corporation had ceased existing.

In its answer, BDO asserted that it had no obligation to ascertain the owner of the account/s to which the checks were deposited because the instruction to deposit the said checks to the payee’s account only was directed to the payee and the collecting bank, which in this case was Union Bank; that as the drawee bank, its obligations consist in examining the genuineness of the signatures appearing on the checks, and paying the same if there were sufficient funds in the account under which the checks were drawn; and that the subject checks were properly negotiated and paid in accordance with the instruction of Lao in crossing them as they were deposited to the account of the payee Everlink with Union Bank, which then presented them for payment with BDO.

On August 24, 2001, Lao filed an Amended Complaint, wherein he impleaded Union Bank as additional defendant for allowing the deposit of

⁴ Records, p. 104.

⁵ Id.

the crossed checks in two bank accounts other than the payee's, in violation of its obligation to deposit the same only to the payee's account.

In its answer, Union Bank argued that Check No. 0127-242249 was deposited in the account of Everlink; that Check No. 0127-242250 was validly negotiated by Everlink to New Wave; that Check No. 0127-242250 was presented for payment to BDO, and the proceeds thereof were credited to New Wave's account; that it was under no obligation to deposit the checks only in the account of Everlink because there was nothing on the checks which would indicate such restriction; and that a crossed check continues to be negotiable, the only limitation being that it should be presented for payment by a bank.

During trial, BDO presented as its witnesses Elizabeth P. Tinimbang (*Tinimbang*) and Atty. Carlos Buenaventura (*Atty. Buenaventura*).

Tinimbang testified that Everlink was the payee of the two (2) crossed checks issued by their client, Wing An; that the checks were deposited with Union Bank, which presented them to BDO for payment. She further narrated that after the checks were cleared and that the drawer's signatures on the checks were determined to be genuine, that there was sufficient fund to cover the amounts of the checks, and that there was no order to stop payment, the checks were paid by BDO. Tinimbang continued that sometime in July 1998, BDO received a letter from Wing An stating that the amounts of the checks were not credited to Everlink's account. This prompted BDO to write a letter to Union Bank demanding the latter to refund the amounts of the checks. In a letter-reply, Union Bank claimed that the checks were deposited in the account of Everlink.

Atty. Buenaventura claimed that BDO gave credence to Union Bank's representation that the checks were indeed credited to the account of Everlink. He stated that BDO's only obligations under the circumstances were to ascertain the genuineness of the checks, to determine if the account was sufficiently funded and to credit the proceeds to the collecting bank. On cross-examination, Atty. Buenaventura clarified that Union Bank endorsed the crossed checks as could be seen on the dorsal portion of the subject checks. According to him, such endorsement meant that the lack of prior endorsement was guaranteed by Union Bank.

For its part, Union Bank presented as its witness Jojina Lourdes C. Vega (*Vega*), its Branch Business Manager. Vega testified that the transaction history of Everlink's account with Union Bank and the notation at the back of the check indicating Everlink's Account No. (005030000925) revealed that the proceeds of Check No. 0127-242249 were duly credited to Everlink's account on September 22, 1997. As regards Check No. 0127-242250, Vega clarified that the proceeds of the same were credited to New

Wave's account. She explained that New Wave was a valued client of Union Bank. As a form of accommodation extended to valued clients, Union Bank would request the signing of a second endorsement agreement because the payee was not the same as the account holder. In this case, Antiporda executed a Deed of Undertaking (Second Endorsed Checks) wherein he assumed the responsibilities for the correctness, genuineness, and validity of the subject checks.

The RTC Ruling

In its Decision, dated July 9, 2012, the RTC absolved BDO from any liability, but ordered Union Bank to pay Lao the amount of ₱336,500.00, representing the value of Check No. 0127-242250; ₱50,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees.

The RTC observed that there was nothing irregular with the transaction of Check No. 0127-242249 because the same was deposited in Everlink's account with Union Bank. It, however, found that Check No. 0127-242250 was irregularly deposited and encashed because it was not issued for the account of Everlink, the payee, but for the account of New Wave. The trial court noted further that Check No. 0127-242250 was not even endorsed by Everlink to New Wave. Thus, it opined that Union Bank was negligent in allowing the deposit and encashment of the said check without proper endorsement. The RTC wrote that considering that the subject check was a crossed check, Union Bank failed to take reasonable steps in order to determine the validity of the representations made by Antiporda. In the end, it adjudged that BDO could not be held liable because of Union Bank's warranty when it stamped on the check that "all prior endorsement and/or lack of endorsement guaranteed." The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in **FAVOR** of the plaintiff Engr. Selwyn F. Lao and **AGAINST** the defendant International Exchange Bank (now Union Bank) ordering the latter to pay the former the following:

1. The amount of Three Hundred Thirty Six Thousand Five Hundred Pesos (₱336,500.00) representing the Equitable Bank Check No. 0127-242250;
2. The amount of Fifty Thousand Pesos (₱50,000.00) representing moral damages;
3. The amount of One Hundred Thousand Pesos (₱100,000.00) representing exemplary damages; and,
4. The amount of Fifty Thousand Pesos (₱50,000.00) as attorney's fees.

The Complaints against defendants Equitable Banking Corporation (now Banco de Oro) and Wu Shu Chien a.k.a. George Wu are hereby ordered **DISMISSED**.

Costs against the defendant International and Exchange Bank (now Union Bank).

SO ORDERED.⁶

Aggrieved, Union Bank elevated an appeal to the CA.⁷

The CA Ruling

In its assailed Decision, dated October 14, 2015, the CA affirmed, with modification, the ruling of the RTC. It ordered BDO to pay Lao the amount of ₱336,500.00, with legal interest from the time of filing of the complaint until its full satisfaction. The appellate court further directed Union Bank to reimburse BDO the aforementioned amount. It concurred with the RTC that Union Bank was liable because of its negligence and its guarantee on the validity of all prior endorsements or lack of it.

With regard to BDO's liability, the CA explained that it violated its duty to charge to the drawer's account only those authorized by the latter when it paid the value of Check No. 0127-242250. Thus, it held that BDO was liable for the amount charged to the drawer's account. The *fallo* reads:

FOR THESE REASONS, the appeal is **PARTLY GRANTED**. The July 9, 2012 Decision of the Regional Trial Court of Manila, Branch 55 is **AFFIRMED** with **MODIFICATIONS** that Equitable Bank is ordered to pay Selwyn Lao the amount corresponding to Check No. 0127-242250, i.e., ₱336,500.00, with legal interest from the time of filing of the complaint until the amount is fully paid. International Exchange Bank (now Union Bank of the Philippines) is ordered to reimburse Equitable Bank the abovementioned amount. The award of damages and attorney's fees is **DELETED**. The rest of the Decision stands.

SO ORDERED.⁸

On November 5, 2012, BDO filed its Motion for Partial Reconsideration. It argued that neither Lao nor Union Bank appealed the dismissal of the complaint against it, thus, the RTC decision had already attained finality as far as it was concerned. It also prayed that Lao should be allowed to recover directly from Union Bank.

⁶ Id. at 828.

⁷ Id. at 833.

⁸ *Rollo*, p. 47-48.

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In its assailed Resolution, dated September 6, 2016, the CA denied BDO's Motion for Partial Reconsideration. It ratiocinated that in *Bank of America, NT & SA v. Associated Citizens Bank*,⁹ (*Bank of America*) the drawee bank was adjudged liable for the amount charged to the drawer's account, while the collecting bank was ordered to reimburse the drawee bank whatever amount the latter was made to pay.

Hence, this petition anchored on the following:

GROUNDS

I.

ISSUES NOT RAISED BY THE PARTIES ON APPEAL CANNOT BE REVIEWED NOR RULED UPON BY THE APPELLATE COURT.

II.

A COLLECTING BANK ASSUMES RESPONSIBILITY FOR A CROSSED CHECK AS A GENERAL ENDORSER IN ACCORDANCE WITH SECTION 66 OF THE NEGOTIABLE INSTRUMENTS LAW.

III.

THE PARTY WHICH DID NOT EXERCISE THE REQUIRED DILIGENCE IS THE CAUSE OF THE LOSS AND BEARS THE DAMAGES.¹⁰

BDO argued that the CA's order for it to pay Lao was erroneous as the RTC had already adjudged with finality that it was not liable. It posited that the appellate court could not resolve issues not raised on appeal by both parties thereto. BDO pointed out that it was not a party in the appeal before the CA. It further stressed that neither Lao nor Union Bank assailed the RTC decision with respect to the dismissal of the complaint against it during the appeal before the CA, and even on motion for reconsideration before the RTC. Thus, for failure to appeal therefrom, the RTC decision had already attained finality as to BDO.

BDO further averred that Union Bank, as the collecting bank and last endorser, must suffer the loss because it had the duty to ascertain the genuineness of all prior endorsement. It asserted that as the drawee bank, it could not be held liable because it merely relied on Union Bank's express guarantee. It added that the proximate cause of the loss suffered by Lao was

⁹ 606 Phil. 35 (2009).

¹⁰ *Rollo*, p. 18.

the negligence of Union Bank when it allowed the deposit of the crossed check intended for Everlink to New Wave's account.

In his Comment,¹¹ dated January 26, 2017, Lao asserted that the CA did not commit any error when it resolved the issue on the liability of BDO even if it was not raised on appeal. He was of the view that the said issue was inextricably intertwined with the principal issue. Lao stated that the CA correctly adjudged BDO liable, without prejudice to its right to seek reimbursement from Union Bank, as it was the correct sequence in the enforcement of payment in cases where the collecting bank allowed a crossed check to be deposited in the account of a person other than the payee.

Union Bank did not file any comment on BDO's petition.

The Court's Ruling

The petition is meritorious.

Ordinarily, this Court would have concurred with the CA as regards the applicability of *Bank of America*. There is, however, a peculiar circumstance which would prevent the application of *Bank of America* in the present case.

Sequence of Recovery in cases of unauthorized payment of checks

The Court agrees with the appellate court that in cases of unauthorized payment of checks to a person other than the payee named therein, the drawee bank may be held liable to the drawer. The drawee bank, in turn, may seek reimbursement from the collecting bank for the amount of the check. This rule on the sequence of recovery in case of unauthorized check transactions had already been deeply embedded in jurisprudence.¹²

The liability of the drawee bank is based on its contract with the drawer and its duty to charge to the latter's accounts only those payables authorized by him. A drawee bank is under strict liability to pay the check only to the payee or to the payee's order. When the drawee bank pays a person other than the payee named in the check, it does not comply with the terms of the check and violates its duty to charge the drawer's account only for properly payable items.¹³

¹¹ Id. at 228-242.

¹² *Bank of America, NT & SA v. Associated Citizens Bank*, supra, note 9; *Traders Royal Bank v. Radio Philippines Network, Inc.*, 439 Phil. 475 (2002).

¹³ *Philippine National Bank v. Rodriguez*, 588 Phil. 196, 214-215 (2008).

On the other hand, the liability of the collecting bank is anchored on its guarantees as the last endorser of the check. Under Section 66 of the Negotiable Instruments Law, an endorser warrants “that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting.”

It has been repeatedly held that in check transactions, the collecting bank generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. If any of the warranties made by the collecting bank turns out to be false, then the drawee bank may recover from it up to the amount of the check.¹⁴

In the present case, BDO paid the value of Check No. 0127-242250 to Union Bank, which, in turn, credited the amount to New Wave’s account. The payment by BDO was in violation of Lao’s instruction because the same was not issued in favor of Everlink, the payee named in the check. It must be pointed out that the subject check was not even endorsed by Everlink to New Wave. Clearly, BDO violated its duty to charge to Lao’s account only those payables authorized by him.

Nevertheless, even with such clear violation by BDO of its duty, the loss would have ultimately pertained to Union Bank. By stamping at the back of the subject check the phrase “all prior endorsements and/or lack of it guaranteed,” Union Bank had, for all intents and purposes treated the check as a negotiable instrument and, accordingly, assumed the warranty of an endorser. Without such warranty, BDO would not have paid the proceeds of the check. Thus, Union Bank cannot now deny liability after the aforesaid warranty turned out to be false.¹⁵

Union Bank was clearly negligent when it allowed the check to be presented by, and deposited in the account of New Wave, despite knowledge that it was not the payee named therein. Further, it could not have escaped its attention that the subject checks were crossed checks.

A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. A check may be crossed generally or specially. A check is crossed especially when the name of a particular banker or company is written between the parallel lines drawn. It is crossed

¹⁴ *Areza v. Express Savings Bank, Inc.*, G.R. No. 176697, September 10, 2014, 734 SCRA 588, 605.

¹⁵ *Bank of the Philippine Islands v. Court of Appeals*, 290 Phil. 452 (1992).

generally when only the words “and company” are written at all between the parallel lines.¹⁶

Jurisprudence dictates that the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once – to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose.¹⁷ The effects of crossing a check, thus, relate to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein.¹⁸

It is undisputed that Check No. 0127-242250 had been crossed generally as nothing was written between the parallel lines appearing on the face of the instrument. This indicated that Lao, the drawer, had intended the same for deposit only to the account of Everlink, the payee named therein. Despite this clear intention, however, Union Bank negligently allowed the deposit of the proceeds of the said check in the account of New Wave.

Generally, BDO must be ordered to pay Lao the value of the subject check; whereas, Union Bank would be ordered to reimburse BDO the amount of the check. The aforesaid sequence of recovery, however, is not applicable in the present case due to the presence of certain factual peculiarities.

*Simplification of the proceedings
for Recovery*

Although the rule on the sequence of recovery has been deeply engrained in jurisprudence, there may be exceptional circumstances which would justify its simplification. Stated differently, the aggrieved party may be allowed to recover directly from the person which caused the loss when circumstances warrant. In *Associated Bank v. Court of Appeals (Associated Bank)*,¹⁹ the person who suffered the loss as a result of the unauthorized encashment of crossed checks was allowed to recover the loss directly from the negligent bank despite the latter’s contention of lack of privity of contract. The Court said:

There being no evidence that the crossed checks were actually received by the private respondent, she would have a right of action against the drawer companies, which in turn could go against their respective drawee banks, which in turn could sue the herein petitioner as collecting bank. In a similar situation, it was

¹⁶ *Go v. Metropolitan Bank*, 642 Phil. 264, 271-272 (2010).

¹⁷ *State Investment House v. IAC*, 256 Phil. 762, 768 (1989).

¹⁸ *Yang v. Court of Appeals*, 456 Phil. 378, 396 (2003).

¹⁹ 284 Phil. 615 (1992).

held that, to simplify proceedings, the payee of the illegally encashed checks should be allowed to recover directly from the bank responsible for such encashment regardless of whether or not the checks were actually delivered to the payee. We approve such direct action in the case at bar.²⁰

A peculiar circumstance in *Associated Bank* is the fact that the drawer companies, which should have been directly liable to the aggrieved payee, were not impleaded as parties in the suit. In this regard, it is a fundamental principle in this jurisdiction that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party. This principle conforms to the constitutional guarantee of due process of law.²¹ To the mind of the Court, this principle was a foremost underlying consideration for allowing the direct recovery by the payee from the negligent collecting bank.

Finality of the RTC decision with respect to BDO justifies the simplification of the proceedings for recovery.

BDO argues that the appellate court erred in ordering it to pay the amount of the subject check to Lao because it was no longer a party in the case, not being impleaded in the appeal, and that the issue as regards its liability had already been settled with finality by the RTC.

The Court agrees.

It has been held that it is not the caption of the pleading, but the allegations therein that are controlling. The non-inclusion of a party in the title of the pleading is not fatal to the case, provided there is a statement in the body indicating that such non-included person is a party to the case.²²

BDO was not impleaded as a party in Union Bank's appeal before the CA. This is evident from the title of the case before the CA, and the respective briefs of Union Bank and Lao, which mentioned only Lao and Union Bank as parties thereto. Moreover, in their respective briefs before the appellate court, neither Lao²³ nor Union Bank²⁴ made any statement or raised any issue on BDO's liability and its inclusion as a party in the appeal.

Consequently, because of Lao and Union Bank's failure to appeal the July 9, 2012 Decision of the RTC with respect to BDO's lack of liability, said decision became final as to the latter.

²⁰ Id. at 623-624.

²¹ *Dare Adventure Farm Corporation v. Court of Appeals*, 695 Phil. 681, 690 (2012).

²² *Spouses Genato v. Viola*, 625 Phil. 514, 525, (2010).

²³ CA *rollo*, pp. 107-131.

²⁴ Id. at 51-88.

The finality of the July 9, 2012 RTC Decision as to BDO, which absolved it from any liability, necessarily means that it could not be prejudiced or adversely affected by the decision rendered in the appeal. It is elementary in this jurisdiction that a person cannot be bound by a decision wherein it was not a party.²⁵ A contrary finding would violate BDO's constitutional right to due process. Needless to state, the appellate court erred in ordering BDO to pay the amount of the subject check because the latter was not made a party in the appeal, and the issue as to its liability or lack thereof, was not raised on appeal.

From the foregoing, the Court is of the considered view that the pronouncements made in *Associated Bank* as regards the simplification of the recovery proceedings are applicable in the present case. The factual milieu of this case are substantially similar with that of *Associated Bank, i.e.*, a crossed check was presented and deposited, without authority, in the account of a person other than the payee named therein; the collecting bank endorsed the crossed check and warrant the validity of all prior endorsements and/or lack of it; the warranty turned out to be false; and, a party to the check transaction, which would otherwise be held liable to the party aggrieved, was not made a party in the proceedings in court.

To summarize, Lao, the drawer of the subject check, has a right of action against BDO for its failure to comply with its duty as the drawee bank. BDO, in turn, would have a right of action against Union Bank because of the falsity of its warranties as the collecting bank. Considering, however, that BDO was not made a party in the appeal, it could no longer be held liable to Lao. Thus, following *Associated Bank*, the proceedings for recovery must be simplified and Lao should be allowed to recover directly from Union Bank.

WHEREFORE, the petition is **GRANTED**. The October 14, 2015 Decision and the September 5, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 100351 are hereby **REVERSED** and **SET ASIDE** insofar as it ordered petitioner BDO Unibank, Inc. to pay Selwyn Lao the amount of Check No. 0127-242250. The rest of the decision is **AFFIRMED**.

The amount shall earn interest at the rate of twelve percent (12%) *per annum* from August 24, 2001, the date of judicial demand, to June 30, 2013. From July 1, 2013, the rate shall be six percent (6%) *per annum* until full satisfaction.


SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁵ *Buazon v. Court of Appeals*, G.R. No. 97749, March 19, 1993, 220 SCRA 182, 189.

WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Associate Justice

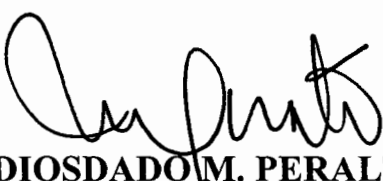

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson


MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice