



Republic of the Philippines
SUPREME COURT
 Manila

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WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

THIRD DIVISION

JUL 05 2018

**METROPOLITAN BANK
 AND TRUST COMPANY,**
 Petitioner,

G.R. No. 235511

- versus -

**JUNNEL'S MARKETING
 CORPORATION,
 PURIFICACION DELIZO,
 and BANK OF COMMERCE,**
 Respondents.

Present:

VELASCO, JR., J., Chairperson,
 BERSAMIN,*
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

X-----X

BANK OF COMMERCE,
 Petitioner,

G.R. No. 235565

- versus -

**JUNNEL'S MARKETING
 CORPORATION,
 PURIFICACION DELIZO,
 and METROPOLITAN BANK
 AND TRUST COMPANY**
 Respondents.

Promulgated:

June 20, 2018

X-----X

DECISION

VELASCO, JR., J.:

At bench are two appeals¹ assailing the Decision² dated 22 March 2017 and Resolution³ dated 19 October 2017 of the Court of Appeals (CA)

* On leave.

¹ Both appeals are made *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

² *Rollo* (G.R. No. 235565), pp. 39-52. The decision was penned by Associate Justice Ramon M. Bato, Jr. for the Eleventh Division of the Court of Appeals with Associate Justices Manuel M. Barrios and Renato C. Francisco concurring.

³ *Id.* at 54-55. The resolution was penned by Associate Justice Ramon M. Bato, Jr. for the Former Eleventh Division of the Court of Appeals with Associate Justices Manuel M. Barrios and Renato C. Francisco concurring.

in CA-G.R. CV No. 102462. The first appeal was filed by the Metropolitan Bank and Trust Company (Metrobank), while the second by the Bank of Commerce (Bankcom).

The facts are as follows:

Respondent Junnel's Marketing Corporation (JMC) is a domestic corporation engaged in the business of selling wines and liquors. It has a current account with Metrobank⁴ from which it draws checks to pay its different suppliers. Among JMC's suppliers are Jardine Wines and Spirits (Jardine) and Premiere Wines (Premiere).

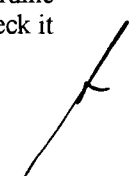
In 2000, during an audit of its financial records,⁵ JMC discovered an anomaly involving eleven (11) checks (subject checks) it had issued to the orders of Jardine and Premiere on various dates between October 1998 to May 1999. As it was, the subject checks had already been charged against JMC's current account but were, for some reason, not covered by any official receipt from Jardine or Premiere. The subject checks, which are all *crossed* checks and amounting to ₱1,481,292.00 in total, are as follows:

Checks Payable to the Order of Jardine:

1. Check No. 3010048953 – issued on 11 October 1998 in the amount of ₱181,440.00
2. Check No. 3010048955 – issued on 24 October 1998 in the amount of ₱195,840.00
3. Check No. 3010069098 – issued on 18 May 1999 in the amount of ₱58,164.56
4. Check No. 3010069099 – issued on 18 May 1999 in the amount of ₱44,651.52
5. Check No. 3010049551 – issued on 25 May 1999 in the amount of ₱103,680.00
6. Check No. 3010049550 – issued on 30 May 1999 in the amount of ₱103,680.00
7. Check No. 3010048954 – issued on 29 December 1998 in the amount of ₱195,840.00

⁴ Specifically, Metrobank F.B. Harrison branch.

⁵ The idea of an audit was conceived by JMC after it received communication from Jardine requesting for the settlement of an invoice that—per JMC's records—was supposedly covered by a check it (JMC) already issued (See *rollo* [G.R. No. 235565], p. 40).



Checks Payable to the Order of Premiere:

1. Check No. 3010049149 – issued on 9 December 1998 in the amount of ₱136,220.00
2. Check No. 3010049148 – issued on 16 December 1998 in the amount of ₱136,220.00
3. Check No. 3010049410 – issued on 18 April 1999 in the amount of ₱189,336.00.
4. Check No. 3010049150 – issued on 27 November 1998 in the amount of ₱136,220.00

Examination of the dorsal portion of the subject checks revealed that all had been deposited with Bankcom, Dau branch, under Account No. 0015-32987-7.⁶ Upon inquiring with Jardine and Premiere, however, JMC was able to confirm that neither of the said suppliers owns Bankcom Account No. 0015-32987-7.

Meanwhile, on 30 April 2000, respondent Purificacion Delizo (Delizo), a former accountant of JMC, executed a handwritten letter⁷ addressed to one Nelvia Yusi, President of JMC. In the said letter, Delizo confessed that, during her time as an accountant for JMC, she stole several company checks drawn against JMC's current account. She professed that the said checks were never given to the named payees but were forwarded by her to one Lita Bituin (Bituin). Delizo further admitted that she, Bituin and an unknown bank manager colluded to cause the deposit and encashing of the stolen checks and shared in the proceeds thereof.

JMC surmised that the subject checks are among the checks purportedly stolen by Delizo.

On 28 January 2002, JMC filed before the Regional Trial Court (RTC) of Pasay City a complaint for sum of money⁸ against Delizo, Bankcom and Metrobank. The complaint was raffled to Branch 115 and was docketed as Civil Case No. 02-0193.

In its complaint, JMC alleged that the wrongful conversion of the subject checks was caused by a combination of the “*tortious and felonious*” scheme of Delizo and the “*negligent and unlawful acts*” of Bankcom and Metrobank, to wit:⁹

⁶ As revealed in the dorsal portion of the checks.

⁷ *Rollo* (G.R. No. 235565), p. 61.

⁸ *Id.* at 56-60.

⁹ *Id.*

1. Delizo, by her own admission, stole the company checks of JMC. Among these checks, as confirmed by JMC's audit, are the subject checks.
2. After stealing the subject checks, Delizo and her accomplices, Bituin and an unknown bank manager, caused the subject checks to be deposited in Bankcom, Dau branch, under Account No. 0015-32987-7. Bankcom, on the other hand, negligently accepted the subject checks for deposit under the said account despite the fact that they are *crossed checks* payable to the orders of Jardine and Premiere and neither of them owns the concerned account.
3. Thereafter, Bankcom presented the subject checks for payment to Metrobank which, also in negligence, decided to honor the said checks even though Bankcom Account No. 0015-32987-7 belongs to neither Jardine nor Premiere.

On the basis of the foregoing averments, JMC prayed that Delizo, Bankcom and Metrobank be held solidarily liable in its favor for the amount of the subject checks.

Delizo, Bankcom and Metrobank filed their individual answers denying liability.¹⁰ Incorporated in Metrobank's answer, moreover, is a cross-claim against Bankcom and Delizo wherein Metrobank asks for the right to be reimbursed in the event it is ordered liable in favor of JMC.¹¹

On 28 May 2013, the RTC rendered a decision¹² holding both Bankcom and Metrobank liable to JMC—on a 2/3 to 1/3 ratio, respectively—for the amount of subject checks plus interest as well as attorney's fees, *but* absolving Delizo from any liability.¹³ The trial court, in the same decision, also dismissed Metrobank's cross-claim against Bankcom. The dispositive portion of the decision reads:¹⁴

WHEREFORE, judgment is rendered against defendants [Bankcom] and [Metrobank] for the total value of the 11 checks. [Bankcom] and Metrobank are adjudged solidarily liable to pay [JMC] at the ratios of 2/3 and 1/3, respectively:

1. The actual loss of P 1,481,292 including 6% legal interest from the filing of the complaint;

¹⁰ *Rollo* (GR. No. 235511), pp. 84-90; 91-95; and 96-100.

¹¹ *Id.* at 93-94.

¹² *Rollo* (G.R. No. 235565), pp. 220-234.

¹³ *Id.*

¹⁴ *Id.* at 233-234.

2. Plus 12% interest on the principal of P 1,481,292 including 6% interest on the principal, from the date this Decision becomes final and executory;
3. The attorney's fees of 15% of the total of number one and two above;
4. Costs against [Bankcom] and Metrobank.

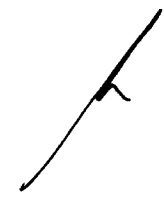
Metrobank's cross-claim against [Bankcom] is DISMISSED, both being negligent.

SO ORDERED.

The RTC's decision was hinged on the following findings:¹⁵

1. The subject checks were complete and not forged. They were, however, stolen by *unknown* malefactors and were wrongfully encashed due to the negligence of Bankcom and Metrobank.
2. Delizo's complicity in the acquisition and negotiation of the subject checks was not proven. No direct evidence linking Delizo to the deeds was presented. Moreover, Delizo's supposed handwritten confession must be discredited for being made under duress, intimidation and threat. It was established during trial that Delizo was only forced by Yusi to confess about the missing checks and to execute the handwritten confession. Hence, Delizo must be absolved from any liability.
3. The involvement of Bankcom and Metrobank on the wrongful encashment of the subject checks, however, were clearly established:
 - a. Bankcom accepted the subject checks for deposit under Account No. 0015-32987-7, endorsed them and sent them for clearance with the Philippine Clearing House Corporation (PCHC). Bankcom did all these despite the fact that the subject checks were all crossed checks and that Account No. 0015-32987-7 neither belongs to Jardine nor Premiere—the payees named in the subject checks. In this regard, Bankcom was clearly negligent.
 - b. Metrobank, on the other hand, is also negligent for its failure to scrutinize the subject checks before clearing and honoring them. Had Metrobank done so, it would have noticed that Bankcom's ID band stamped at the back of the subject checks did not contain any initials and are, therefore,

¹⁵ Id. at 220-234.



defective. In this regard, Metrobank was remiss in its duty to ensure that the subject checks are paid only to the named payees.

In view of the *comparative negligence* of Bankcom and Metrobank, they should be held liable to JMC, on a 2/3 to 1/3 ratio, respectively, for the amount of subject checks plus interest.

Bankcom and Metrobank filed their respective appeals with the CA.

On 22 March 2017, the CA rendered its decision¹⁶ affirming, albeit with modification, the decision of the RTC. The disposition of the decision reads:¹⁷

WHEREFORE, the Decision dated 28 May 2013 of the [RTC] in Civil Case NO. 02-0193 is AFFIRMED with MODIFICATION in that: (a) the award of attorney's fees is DELETED; and (b) [Bankcom] and [Metrobank] are ordered to pay interest at the rate of 12% per annum on the principal of P 1,481,292 including 6% interest on the principal, from the date of the Decision (28 May 2013) until June 2013 and 6% per annum from 1 July 2013 until full satisfaction. The Decision is affirmed in all other respects.

SO ORDERED.

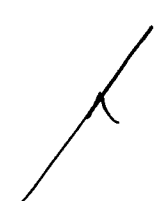
The CA agreed with the RTC that Bankcom and Metrobank should be held liable to JMC, on a 2/3 to 1/3 ratio, respectively, for the amount of subject checks. The appellate court, however, differed with the trial court with respect to the basis of Metrobank's liability. According to the CA, Metrobank's negligence consisted, not in its inability to notice that Bankcom's ID band does not contain any initials, but in its failure to ascertain that only four (4) out of the 11 subject checks were stamped by Bankcom with the express guarantees "*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*" and "*NON-NEGOTIABLE*" as required by Section 17 of the PCHC Rules and Regulations.¹⁸

The CA also sustained the ruling of the RTC anent the absolution of Delizo and the dismissal of Metrobank's cross-claim.

¹⁶ Id. at 39-52.

¹⁷ Id. at 52.

¹⁸ Id. at 39-52.



Finally, the CA modified the rate of interest due on the amount of the subject checks that was fixed by the RTC and also deleted the RTC's award of attorney's fees in favor of JMC.¹⁹

Bankcom and Metrobank filed their motions for reconsideration, but the CA remained steadfast. Hence the present consolidated appeals.

Both Metrobank and Bankcom pray for absolution but they differ in the arguments they raise in support of their prayer.²⁰

1. Metrobank posits that it should be absolved because it had exercised absolute diligence in verifying the genuineness of the subject checks. Metrobank argues that the RTC erred in holding it negligent on its failure to ascertain that only four (4) out of the 11 subject checks were stamped with Bankcom's express guarantees. Metrobank claims that while Section 17 of the PCHC Rules and Regulations does require all checks cleared through the PCHC to contain the collecting bank's express guarantees, the same provision precludes it, as a drawee bank, to return any checks presented to it for payment just because the same does not contain such express guarantees "*for as long as there is evidence appearing on the cheque itself that the same had been deposited with the [collecting] [b]ank e.g., PCHC machine sprayed tracer/ID band.*" In this regard, Metrobank points out that all the subject checks had been stamped in their dorsal portion with PCHC's tracer ID for Bankcom.

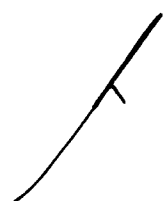
Metrobank submits that, under the circumstances, it should be Bankcom—as the last indorser of the subject checks—that should bear the loss and be held solely liable to JMC.

2. Bankcom, on the other hand, argues that it should be absolved because it was never a party to the wrongful encashment of the subject checks. It claims that Account No. 0015-32987-7 does not exist in its system and, therefore, denies that the subject checks were ever deposited with it.

Bankcom proffers the view that it is JMC that should bear the loss of the subject checks. Bankcom argues that it was JMC's faulty accounting procedures which led to the subject checks being stolen and misappropriated.

¹⁹ Id.

²⁰ See *rollo* (G.R. No. 235511), pp. 10-30; *rollo* (G.R. No. 235565), pp. 10-31.



Our Ruling

The consolidated appeals must be denied as neither Metrobank nor Bankcom are entitled to absolution.

Be that as it may, there is a need to modify the decision of the CA and the RTC with respect to the *manner* by which Metrobank and Bankcom are held liable under the circumstances. Instead of holding both Metrobank and Bankcom liable to JMC in accordance with a fixed ratio, we find that the two banks should have been ordered *sequentially* liable for the entire amount of the subject checks pursuant to the seminal case of *Bank of America v. Associated Citizens Bank*.²¹

Accordingly, we rule: (1) Metrobank liable to return to JMC the entire amount of the subject checks plus interest and (2) Bankcom liable to reimburse Metrobank the same amount plus interest.


The Rule on Sequence of Recovery in Cases of Unauthorized Payment of Checks; The Case of Bank of America

The instant case involves the *unauthorized payment of valid checks, i.e.*, the payment of checks to persons other than the payee named therein or his order. The subject checks herein are considered valid because they are complete and bear genuine signatures.

Bank of America is the leading jurisprudence that illustrates the respective liabilities of a collecting bank and a drawee bank in cases of unauthorized payment of valid checks. Notably, the facts of *Bank America* are parallel to the facts of the present case. Both *Bank of America* and the present case involved **crossed checks payable to the order of a specified payee that were deposited in a collecting bank under an account not belonging to the payee or his indorsee** but which, upon presentment, were subsequently **honored by the drawee bank**, thus:

1. *Bank of America* involved four (4) crossed checks drawn against the Bank of America (the drawee bank) and made payable to the order of a Miller Offset Press, Inc. (the designated payee). These checks were then deposited to the Associated Citizens Bank (the collecting bank) under a joint bank account of one Ching Uy Seng and a certain Uy Chung Guan Seng (an account that does not belong to the payee or its indorsee). The checks were then presented to the Bank of America, which honored it, resulting to loss on the part of BA Finance Corporation (the

²¹ G.R. Nos. 141001 & 141018, 21 May 2009.



drawer.)

2. The instant case involves eleven (11) crossed checks that were drawn against Metrobank (the drawee bank) and made payable to the orders of Jardine and Premiere (the designated payees). These checks were deposited with Bankcom (the collecting bank) under Account No. 0015-32987-7 (an account that does not belong to either payee or their indorsees). The checks were then presented to Metrobank, which honored it, resulting to loss on the part of JMC (the drawer.)

Bank of America held that, in cases involving the unauthorized payment of valid checks, **the drawee bank becomes liable to the drawer for the amount of the checks but the drawee bank, in turn, can seek reimbursement from the collecting bank.** The rationale of this rule on sequence of recovery lies in the very basis and nature of the liability of a drawee bank and a collecting bank in said cases. As the recent case of *BDO Unibank v. Lao*²² explains:

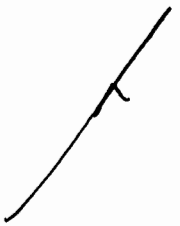
The liability of the drawee bank is based on its contract with the drawer and its duty to charge to the latter's accounts only those payables authorized by him. A drawee bank is under strict liability to pay the check only to the payee or to the payee's order. When the drawee bank pays a person other 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.

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. (Citations omitted).

This rule should have been applied to the case at bench.

²² G.R. No. 227005, 19 June 2017.



Metrobank is Liable to JMC

Metrobank, as drawee bank, is liable to return to JMC the amount of the subject checks.

A drawee bank is contractually obligated to follow the explicit instructions of its drawer-clients when paying checks issued by them.²³ The drawer's instructions—including the designation of the payee or to whom the check should be paid—are reflected on the face and by the terms thereof.²⁴ When a drawee bank pays a person other than the payee named on the check, it essentially commits a breach of its obligation and renders the payment it made unauthorized.²⁵ In such cases and under normal circumstances, the drawee bank may be held liable to the drawer for the amount charged against the latter's account.²⁶

The liability of the drawee bank to the drawer in cases of unauthorized payment of checks has been regarded in jurisprudence to be **strict** by nature.²⁷ This means that once an unauthorized payment on a check has been made, the resulting liability of the drawee bank to the drawer for such payment attaches *even if* the former had acted merely upon the guarantees of a collecting bank.²⁸ Indeed, it is only when the *unauthorized payment of a check had been caused or was attended by the fault or negligence of the drawer himself* can the drawee bank be excused, whether wholly or partially, from being held liable to the drawer for the said payment.²⁹

In the present case, it is apparent that Metrobank had breached JMC's instructions when it paid the value of the subject checks to Bankcom for the benefit of a certain Account No. 0015-32987-7. The payment to Account No. 0015-32987-7 was unauthorized as it was established that the said account does not belong to Jardine or Premiere, the payees of the subject checks, or to their indorsees. In addition, causal or concurring negligence on the part of JMC had not been proven. Under such circumstances, Metrobank is clearly liable to return to JMC the amount of the subject checks.

Metrobank's insistence that it should be absolved for it merely complied with Section 17 of the PCHC Rules and Regulations and thereby only relied upon the concomitant guarantees of Bankcom when it paid the subject checks, cannot stand insofar as JMC is concerned. In *Bank of America*, we rejected a similar argument interposed by a drawee bank (Bank

²³ *Bank of America v. Associated Citizens Bank*, G.R. Nos. 141001 and 141018, 21 May 2009.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See *Bank of America v. Associated Citizens Bank*, G.R. Nos. 141001 and 141018, 21 May 2009. and *Associated Bank v. Court of Appeals*, G.R. Nos. 107382 and 107612, 31 January 1996.

²⁸ See *Bank of America v. Associated Citizens Bank*, G.R. Nos. 141001 and 141018, 21 May 2009.

²⁹ See *Gempesaw v. Court of Appeals*, G.R. No. 92244, 9 February 1993 and *Bank of America v. Philippine Racing Club*, G.R. No. 150228, 30 July 2009.

of America) precisely on the ground of the latter's strict liability to its drawer (BA-Finance) *viz.*³⁰

Bank of America denies liability for paying the amount of the four checks issued by BA-Finance to Miller, alleging that **it (Bank of America) relied on the stamps made by Associated Bank stating that all prior endorsement and/or lack of endorsement guaranteed, through which Associated Bank assumed the liability of a general endorser under Section 66 of the Negotiable Instruments Law. Moreover, Bank of America contends that the proximate cause of BA-Finances injury, if any, is the gross negligence of Associated Bank which allowed Ching Uy Seng (Robert Ching) to deposit the four checks issued to Miller in the personal joint bank account of Ching Uy Seng and Uy Chung Guan Seng.**

We are not convinced.

The bank on which a check is drawn, known as the drawee bank, is under strict liability, based on the contract between the bank and its customer (drawer), to pay the check only to the payee or the payee's order. x x x.

x x x x

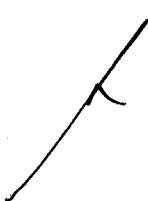
In this case, the four checks were drawn by BA-Finance and made payable to the Order of Miller Offset Press, Inc. The checks were also crossed and issued For Payee's Account Only. Clearly, the drawer intended the check for deposit only by Miller Offset Press, Inc. in the latter's bank account. **Thus, when a person other than Miller, i.e., Ching Uy Seng, a.k.a. Robert Ching, presented and deposited the checks in his own personal account (Ching Uy Sengs joint account with Uy Chung Guan Seng), and the drawee bank, Bank of America, paid the value of the checks and charged BA-Finances account therefor, the drawee Bank of America is deemed to have violated the instructions of the drawer, and therefore, is liable for the amount charged to the drawer's account (Citations omitted. Emphasis supplied).**

Accordingly, we find Metrobank liable to return to JMC the amount of the subject checks.

Bankcom is Liable to Metrobank

While Metrobank's reliance upon the guarantees of Bankcom does not excuse it from being liable to JMC, such reliance does enable Metrobank to seek reimbursement from Bankcom—the collecting bank.

³⁰ G.R. Nos. 141001 and 141018, 21 May 2009.



A collecting or presenting bank—*i.e.*, the bank that receives a check for deposit and that presents the same to the drawee bank for payment—is an indorser of such check.³¹ When a collecting bank presents a check to the drawee bank for payment, the former thereby assumes the same warranties assumed by an indorser of a negotiable instrument pursuant to Section 66 of the Negotiable Instruments Law. These warranties are: (1) that the instrument is genuine and in all respects what it purports to be; (2) that the indorser has good title to it; (3) that all prior parties had capacity to contract; and (4) that the instrument is, at the time of the indorsement, valid and subsisting.³² If any of the foregoing warranties turns out to be false, a collecting bank becomes liable to the drawee bank for payments made under such false warranty.

Here, it is clear that Bankcom had assumed the warranties of an indorser when it forwarded the subject checks to PCHC for presentment to Metrobank. By such presentment, Bankcom effectively guaranteed to Metrobank that the subject checks had been deposited with it *to an account that has good title to the same*. This guaranty, however, is a complete falsity because the subject checks were, in truth, deposited to an account that neither belongs to the payees of the subject checks nor to their indorsees. Hence, as the subject checks were paid under Bankcom's false guaranty, the latter—as collecting bank—stands liable to return the value of such checks to Metrobank.

Bankcom's assertion that it should be absolved as the subject checks were allegedly never deposited with it must fail. Such allegation is readily disproved by the fact that the subject checks all contained, at their dorsal side, a stamp bearing Bankcom's tracer/ID band.³³ Under the PCHC Rules and Regulations, the stamped tracer/ID band of Bankcom signifies that the checks had been deposited with it and that Bankcom indorsed the said checks and sent them to PCHC.³⁴ As observed by the RTC:³⁵

Record shows that the pieces of evidence presented by [JMC], particularly the 11 subject checks were endorsed and were allowed to be encashed by [Bankcom], as indicated in the dorsal portion of the checks where [PCHC] machine's tracer, or the ID band of [Bankcom] was stamped. And this stamped tracer ID band of [Bankcom] signifies that [Bankcom] certified that the checks were deposited to [Bankcom] and [Bankcom] endorsed these checks and sent them to PCHC.

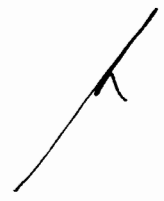
³¹ *Associated Bank v. Court of Appeals*, G.R. Nos. 107382 and 107612, 31 January 1996.

³² Section 66 of the Negotiable Instruments Law.

³³ *Rollo* (G.R. No. 235565), p. 230.

³⁴ See Section 17 of PCHC Rules and Regulations.

³⁵ *Rollo* (G.R. No. 235565), p. 230.



Neither do we find the liability of Bankcom to be affected by the fact that only four (4) out of the eleven (11) subject checks were actually stamped with the guarantees “*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*” and “*NON-NEGOTIABLE*” as required under Section 17 of the PCHC Rules and Regulations. The stamping of such guarantees is not necessary to fix the liability of Bankcom as an indorser for *all* the subject checks.

To begin with, jurisprudence has it that a collecting bank’s mere act of presenting a check for payment to the drawee bank is itself an assertion, on the part of the former, that it had done its duty to ascertain the validity of prior indorsements. Hence, in *Banco De Oro v. Equitable Banking Corporation*,³⁶ we stated:

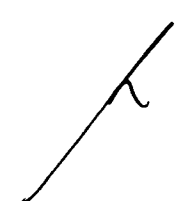
Apropos the matter of forgery in endorsements, this Court has presently succinctly emphasized that the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements **considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements.** This is laid down in the case of *PNB v. National City Bank*. (Citations omitted. Emphasis supplied).

More than such pronouncement, however, Section 17 of the PCHC Rules and Regulations expressly provides that checks “*cleared through the PCHC*” that do not bear the mentioned guarantees shall nonetheless “*be deemed guaranteed by the [collecting bank] as to all prior endorsements and/or lack of endorsement*” such that “*no drawee bank shall return any [check] received by it through clearing by reason only of the absence or lack of such guarantee... as long as there is evidence appearing on the [check] itself that the same had been deposited with the [collecting bank] x x x.*” The full provision reads:

Sec. 17.—Bank Guarantee. All checks cleared through the PCHC shall bear the guarantee affixed thereto by the Presenting Bank/Branch which shall read as follows:

Cleared thru the Philippine Clearing House Corporation all prior endorsements and/or lack of endorsement guaranteed NAME OF BANK/BRANCH BRSTN (Date of Clearing).

³⁶ G.R. No. 74917, 20 January 1998.



Checks to which said guarantee has not been affixed shall, nevertheless, be deemed guaranteed by the Presenting Bank as to all prior endorsement and/or lack of endorsement.

No drawee bank shall return any cheque received by it through clearing by reason only of the absence or lack of such guarantee stamped at the back of said cheque, for as long as there is evidence appearing on the cheque itself that the same had been deposited with the Presenting Bank, e.g. PCHC machine sprayed ‘tracer/ID band.’
(Emphasis supplied)

In the present case, all the subject checks have been transmitted by Bankcom to the PCHC for clearing and presentment to Metrobank. As earlier adverted to, all of the said checks also bear the PCHC machine sprayed tracer/ID band of Bankcom. Such circumstances, pursuant to prevailing banking practices as laid out under the PCHC Rules and Regulations, are enough to fix the liability of Bankcom as an indorser of the subject checks even *sans* the stamp “*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*” and “*NON-NEGOTIABLE.*” As the stamping of such guarantees are not required before the warranties of an indorser could attach against Bankcom, we find the latter liable to reimburse Metrobank the value of all the subject checks.

Recourse of Bankcom

The sequence of recovery in cases of unauthorized payment of checks, however, does not ordinarily stop with the collecting bank. In the event that it is made to reimburse the drawee bank, the collecting bank can seek similar reimbursement from the very persons who caused the checks to be deposited and received the unauthorized payments.³⁷ Such persons are the ones *ultimately liable* for the unauthorized payments and their liability rests on their absolute lack of valid title to the checks that they were able to encash.

Verily, Bankcom ought to have a right of recourse against the persons that caused the anomalous deposit of the subject checks and received payments therefor. Unfortunately—as none of such persons were impleaded in the case before us—no pronouncement as to this matter can be made in favor of Bankcom.

At this juncture, we express our concurrence to the absolution of Delizo. The RTC and the CA were uniform in their finding that the participation of Delizo—as the supposed thief of the subject checks—had not been established in this case. We reviewed the evidence on hand and saw no cogent reason to deviate from this factual finding.

³⁷ See *Bank of America v. Associated Citizens Bank*, G.R. Nos. 141001 and 141018, 21 May 2009.



Doctrine of Comparative Negligence Does Not Apply to the Instant Case

Instead of applying the rule on the sequence of recovery to the case at bench, the RTC and the CA held both Metrobank and Bankcom liable to JMC in accordance with a fixed ratio. In so doing, the RTC and the CA seemingly relied on the doctrine of comparative negligence³⁸ as applied in the cases of *Bank of the Philippine Islands v. Court of Appeals*³⁹ and *Allied Banking Corporation v. Lio Sim Wan*.⁴⁰ In both cases, the Court held the drawee bank and collecting bank liable for the wrongful encashment of checks under a 60% and 40% ratio.

It must be emphasized, however, that the factual contexts of *Bank of the Philippine Islands* and *Allied Banking Corporation* are starkly different from the instant case:

1. *Bank of the Philippine Islands* involved **two (2) cashier's checks** issued by the Bank of the Philippine Islands (BPI) in favor of a certain Eligia Fernando (Eligia). The checks are supposed to represent the proceeds of a pre-terminated money market placement of Eligia with BPI. BPI issued the checks upon the mere phone request of a person who introduced herself as Eligia. The checks were subsequently deposited with the China Banking Corporation (CBC) under an account that was opened by a person who identified herself as Eligia. This person thereafter encashed the checks.


It was later established, however, that Eligia never requested the pre-termination of her money market placement nor opened an account with the CBC. It was an impostor who did so.

2. *Allied Banking Corporation*, on the other hand, involved a **manager's check** issued by the Allied Banking Corporation (ABC) in favor of a certain Lim Sio Wan (Lim). The check is supposed to represent the proceeds of a pre-terminated money market placement of Lim with ABC. ABC issued the checks upon the mere phone request of a person who introduced herself as Lim. The checks, now bearing an indorsement of Lim, were then deposited with the Metrobank under the account of a

³⁸ The doctrine of comparative negligence is a legal principle that limits the extent of reparation that may be recovered by a person who is guilty of contributory negligence. Under this doctrine, a person who is guilty of contributory negligence, though allowed to seek recourse against the principal tortfeasor, must nonetheless bear a portion of the losses proportionate to the amount of his negligence. The application of this doctrine is sanctioned in our jurisdiction by the second sentence of Article 2179 of the Civil Code.

³⁹ G.R. No. 102383, 26 November 1992.

⁴⁰ G.R. No. 133179, 27 March 2008.



certain Filipinas Cement Corporation. The checks were eventually encashed.

It was later established, however, that Lim never requested the pre-termination of his money market placement and that his indorsement in the check was forged.

A glaring peculiarity in the cases of *Bank of the Philippine Islands* and *Allied Banking Corporation* is that the **drawee bank—which is essentially also the drawer in the scenario—is not only guilty of wrongfully paying a check but also of negligence in issuing such check.** Indeed, this is the very reason why the drawee bank in the two cases were adjudged co-liable with the collecting bank under a fixed ratio and the former was not allowed to claim reimbursement from the latter.⁴¹ The drawee bank cannot claim that its participation in the wrongful payment of a check was merely limited to its reliance on the guarantees of the collecting bank. In other words, the drawee bank was held liable in its own right because it was the one that negligently issued the checks in the first place.

That, however, is clearly not the situation in the case at bench. Here, no negligence similar to that committed by the drawee banks in *Bank of the Philippine Islands* and *Allied Banking Corporation*—whether in type or in magnitude—can be attributed to Metrobank. Metrobank, though guilty of the unauthorized check payments, only acted upon the guarantees deemed made by Bankcom under prevailing banking practices. While Metrobank's reliance upon the guarantees of Bankcom did not excuse it from being answerable to JMC, such reliance does enable Metrobank to seek reimbursement from Bankcom on the ground of the breach in the latter's warranties as a collecting bank. Under such circumstances, we cannot deny Metrobank's right to seek reimbursement from Bankcom.

Hence, given the differences in the factual milieu between this case on one hand and the cases of *Bank of the Philippine Islands* and *Allied Banking Corporation* on the other, we find that the doctrine of comparative negligence cannot be applied so as to apportion the respective liabilities of Metrobank and Bankcom. The liabilities of Metrobank and Bankcom, as already discussed in length, must be governed by the rule on sequential recovery pursuant to *Bank of America*.

Interests

As a final matter, we also saw it fit to impose legal interest upon the respective principal liabilities of Metrobank and Bankcom.

⁴¹ Id.



In *Nacar v. Gallery Frames*,⁴² we laid out the following guidelines for the imposition and computation of legal interests:


To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. **When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded.** In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
2. **When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum.** No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. **Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code),** but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.**

⁴² G.R. No. 189871, 13 August 2013



And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein. (Citations omitted. Emphasis supplied).

Applying the foregoing guidelines to the case at bench, we fix the legal interests due against Metrobank and Bankcom thusly:

1. The liability of Metrobank to JMC consists in returning the amount it charged against JMC's current account. Current accounts, like all bank deposits, are considered under the law as loans.⁴³ Normally, current accounts are interest-bearing by express contract. However, the actual interest rate, if any, for the current account opened by JMC with Metrobank was not given in evidence.⁴⁴

Under these circumstances, we find it proper to subject Metrobank's principal liability to JMC to a legal interest of 6% per annum from 28 January 2002 until full satisfaction.⁴⁵ The date 28 January 2002 is the date when JMC filed its complaint with the RTC.

2. The liability of Bankcom to Metrobank, on the other hand, consists in returning the amount it was paid by Metrobank. This stems from a breach by Bankcom of its warranties as a collecting bank.

Accordingly, we find it proper to subject Bankcom's principal liability to Metrobank to a legal interest of 6% per annum from 5 March 2003 until full satisfaction.⁴⁶ The date 5 March 2003 is the date when Metrobank filed its answer with cross-claim against Bankcom.


⁴³ Article 1980 of the Civil Code of the Philippines.

⁴⁴ Confronted with a similar scenario, the case of *Associated Bank v. Court of Appeals*, G.R. Nos. 107382 and 107612 ruled that the drawee bank should just be subjected to a 6% legal interest. The pertinent portion of the ruling reads:

The trial court made PNB and Associated Bank liable with legal interest from March 20, 1981, the date of extrajudicial demand made by the Province of Tarlac on PNB. The payments to be made in this case stem from the deposits of the Province of Tarlac in its current account with the PNB. Bank deposits are considered under the law as loans. Central Bank Circular No. 416 prescribes a twelve percent (12%) interest per annum for loans, forbearance of money, goods or credits in the absence of express stipulation. Normally, current accounts are likewise interest-bearing, by express contract, thus excluding them from the coverage of CB Circular No. 416. **In this case, however, the actual interest rate, if any, for the current account opened by the Province of Tarlac with PNB was not given in evidence. Hence, the Court deems it wise to affirm the trial court's use of the legal interest rate, or six percent (6%) per annum. The interest rate shall be computed from the date of default, or the date of judicial or extrajudicial demand.** (Emphasis supplied)

⁴⁵ See *Associated Bank v. Court of Appeals*, G.R. Nos. 107382 and 107612, 31 January 1996.

⁴⁶ See *Associated Bank v. Court of Appeals*, *id.*




WHEREFORE, the consolidated appeals are **DENIED**. The Decision dated 22 March 2017 and Resolution dated 19 October 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 102462 are herein **MODIFIED** with respect to the individual liabilities of the Metropolitan Bank and Trust Company and the Bank of Commerce, as follows:

1. The Metropolitan Bank and Trust Company is adjudged liable to pay respondent Junnel's Marketing Corporation the following:
 - a. The principal amount of ₱ 1,481,292.00, *and*
 - b. Interest on the said principal at the rate of 6% per annum from 28 January 2002 until full satisfaction.
2. The Bank of Commerce is adjudged liable to pay the Metropolitan Bank and Trust Company the following:
 - a. The principal amount of ₱ 1,481,292.00, *and*
 - b. Interest on the said principal at the rate of 6% per annum from 5 March 2003 until full satisfaction.

Other findings and pronouncements of the Court of Appeals in its Decision dated 22 March 2017 and Resolution dated 19 October 2017 in CA-G.R. CV No. 102462 that are not contrary to this Decision are **AFFIRMED**.

Costs against the Metropolitan Bank and Trust Company and the Bank of Commerce.


SO ORDERED.



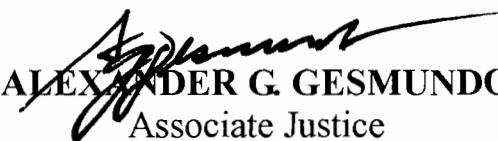
PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

(On Leave)
LUCAS P. BERSAMIN
Associate Justice

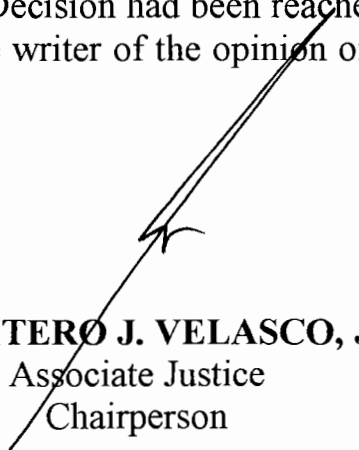

MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

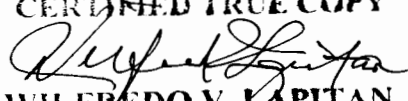
ATTESTATION


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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division


ANTONIO T. CARPIO
Acting Chief Justice

JUL 05 2018