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Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

QUINTIN ARTACHO LLORENTE,
Petitioner,

- versus -

STAR CITY PTY LIMITED, represented by the JIMENO AND COPE LAW OFFICES as Attorney-in-Fact,
Respondent.

G.R. No. 212050

x- -x

STAR CITY PTY LIMITED, represented by the JIMENO COPE & DAVID LAW OFFICES as its Attorney-in-Fact,
Petitioner,

- versus -

QUINTIN ARTACHO LLORENTE and EQUITABLE PCI BANK (now BDO Unibank, Inc.),
Respondents.

G.R. No. 212216

Present:

PERALTA, *C.J., Chairperson,*
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:
JAN 15 2020

x- -x

DECISION

CAGUIOA, *J.*:

Before the Court are petitions for review on *certiorari*[1] under Rule 45 of the Rules of Court respectively filed by petitioner Quintin Llorente (Llorente) in G.R. No. 212050 and petitioner Star City Pty Limited (SCPL) in

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[1] *Rollo* (G.R. No. 212050), pp. 10-23, excluding Annexes; *rollo* (G.R. No. 212216), pp. 45-62, excluding Annexes.

G.R. No. 212216 assailing the Decision[2] dated September 30, 2013 (Decision) and the Resolution[3] dated April 10, 2014 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 94736. The CA Decision affirmed with modification the Decision[5] dated April 16, 2009 rendered by the Regional Trial Court, Branch 134, City of Makati (RTC) in Civil Case No. 02-1423. The CA Resolution dated April 10, 2014 denied the motions for reconsideration filed by Llorente and SCPL.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> x x x [SCPL] is an Australian corporation which operates the Star City Casino in Sydney, New South Wales, Australia. Claiming that it is not doing business in the Philippines and is suing for an isolated transaction, it filed on 25 November 2002 through its attorney-in-fact, Jimeno Jalandoni and Cope Law Offices, a complaint for collection of sum of money with prayer for preliminary attachment against x x x Llorente, who was a patron of its Star City casino and Equitable PCI Bank (EPCIB, for brevity). This case was docketed as Civil Case No. 02-1423 and raffled to Branch 134 of the Regional Trial Court (RTC) in the City of Makati.
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> [SCPL] alleged that Llorente is one of the numerous patrons of its casino in Sydney, Australia. As such, he maintained therein Patron Account Number 471741. On 12 July 2000, he negotiated two (2) Equitable PCI bank drafts with check numbers 034967 and 034968 worth US $150,000.00 each or for the total amount of US $300,000.00 ("subject [demand/bank][6] drafts" [or simply "subject drafts"]) in order to play in the Premium Programme of the casino. This Premium Programme offers the patron a 1% commission rebate on his turnover at the gambling table and a .10% rebate for complimentary expenses. Before upgrading x x x Llorente to this programme, [SCPL] contacted first EPCIB to check the status of the subject drafts. The latter confirmed that the same were issued on clear funds without any stop payment orders. Thus, Llorente was allowed to buy in on a Premium Programme and his front money account in the casino was credited with US $300,000.00.
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> On 18 July 2000, [SCPL] deposited the subject drafts with Thomas Cook Ltd. On 1 August 2000, it received the advice of Bank of New York about the "Stop Payment Order" prompting it to make several demands, the final being on 22 August 2002, upon Llorente to make good his obligation. However, the latter refused to pay. It likewise asked EPCIB on 30 August 2002 for a settlement which the latter denied on the ground that it was Llorente who requested the Stop Payment Order and no notice of dishonor was given.

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2 Id. at 24-38; id. at 10-24. Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes concurring.

3 Id. at 55-57; id. at 41-43.

4 Fourteenth Division and Former Fourteenth Division, respectively.

5 *Rollo* (G.R. No. 212050), pp. 39-54. Penned by Presiding Judge Perpetua Atal-Paño.

6 EPCIB in its "Comment on the Petition for Review" dated October 4, 2014 used the terms "demand/bank drafts," "subject bank drafts" and "bank drafts" to refer to the drafts which it drew with Llorente as payee. *Rollo* (G.R. No. 212216), pp. 132-145.

On 28 January 2003, the [RTC] deemed it proper to grant and issue a writ of preliminary attachment because the acts of Llorente, *i.e.*, leaving the hotel premises without informing [SCPL] of his whereabouts, failing to pay for all the services he had availed and/or not making sure that these would be paid by the checks he negotiated and indorsed, requesting for a Stop Payment Order despite knowledge that these checks are to answer for the payment for all services he had availed, failing to communicate for the settlement of his outstanding obligation and for leaving and/or transferring residence without notifying [SCPL] of his forwarding address, are clear indications of his intention to renege on his obligation and defraud [SCPL].

For his part, Llorente alleged that he caused the stoppage of the subject drafts' payment because [SCPL's] personnel and representatives committed fraud and unfair gaming practices during his stay in the casino on 12 July up to 17 July 2000. He also countered that the case should be dismissed on the ground that [SCPL] lacks the legal capacity to sue since the "isolated transaction rule" for which it anchored its right to bring action in our courts presupposes that the transaction subject matter of the complaint must have occurred in the Philippines, which however, is not the situation at bar since it is clear from the narration that the same occurred in Australia.

On the other hand, EPCIB, in its Answer, not only alleged [SCPL's] lack of personality to sue before Philippine courts, but denied also that it unjustifiably and maliciously refused to settle the obligation since it merely complied with the instructions of Llorente, as payee of the subject drafts, to stop payment thereon. It further went on saying that [SCPL] had no cause of action against it because there was no privity of contract between them. EPCIB likewise filed a cross-claim against Llorente since it already reimbursed the face value of the subject drafts, pursuant to the demand of the latter. For such reason, it should be relieved of any and all liabilities under the subject drafts.

Finding that [SCPL] had the legal capacity to sue and seek judicial relief before Philippine courts, the [RTC], on 16 April 2009, rendered a Decision holding both [Llorente and EPCIB] solidarily liable for the value of the subject drafts. It ruled that when Llorente, as payee of the subject drafts, signed at the back thereof, he is said to ha[ve] become an indorser who warrants that on due presentment, the instruments would be accepted or paid or both, as the case may be, according to their tenor, and that if they be dishonored and the necessary proceedings on dishonor be duly taken, they will pay the amount thereof to the holder. The same is also true for EPCIB, being the drawer of the subject drafts. It is of no moment if the bank was not a privy to the transaction for its liability as a drawer is not based on direct transaction but by virtue of the warranties it made within the purview of the Negotiable Instruments Law. The [RTC] even pointed that [Llorente and EPCIB] could not seek refuge on the alleged lack of notice of dishonor to them since they were responsible for the dishonor of the subject drafts aside from the fact that it would be futile to require such notice since it was EPCIB who countermanded the payment.

The trial court did not also consider Llorente's justification for ordering a stopped payment as it found that it was done in order to escape liability of paying his obligations with [SCPL]. The decretal portion of [the RTC] Decision reads as:

> "WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [SCPL] and against both defendants Llorente and [EPCIB], as follows:
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> 1. Ordering defendants Quintin Llorente and Equitable PCI Bank to pay the plaintiff [SCPL], jointly and severally the amount of the subject bank drafts in the sum of US $300,000[.00];
>
> 2. Ordering defendants Quintin Llorente and Equitable PCI Bank to pay the plaintiff [SCPL], jointly and severally, five (5%) percent of the amount claimed, or US $15,000.00, x x x as and by way of attorney's fees; and,
>
> 3. Costs of suit.
>
> For lack of merit, both defendants Llorente and Equitable PCI Bank's counterclaims as well as defendant Equitable PCI Bank's cross-claim against defendant Llorente are DENIED.
>
> SO ORDERED."
>
> Aggrieved with the said ruling, both [Llorente and EPCIB] appealed before [the CA]. x x x[7]

Ruling of the CA

The CA identified the following 3 issues raised in the appeals filed by Llorente and Equitable PCI Bank[8] (EPCIB): (1) SCPL's personality to sue before Philippine courts under the isolated transaction rule; (2) SCPL's being a holder in due course; and (3) solidary liability of EPCIB.[9]

Anent the first issue, the CA held that SCPL has pleaded the required averments in the complaint — it is a foreign corporation not doing business in the Philippines suing upon a singular and isolated transaction — which sufficiently clothed it the necessary legal capacity to sue in this jurisdiction.[10] The CA emphasized that the subject drafts were drawn by EPCIB, which is a Philippine bank, and since the drawer is a bank organized and existing in the Philippines then naturally a suit on the draft or check it issued can be filed in any of the places where the check is drawn, issued, delivered or dishonored, which, in this case, can be either the Philippines where the drafts were drawn and issued, or Australia where the indorsement and dishonor happened.[11]

On the second issue, the CA held that, contrary to EPCIB's assertion that the subject drafts were drawn without any value, the fact that Llorente used them to "buy in" into the Premium Programme of SCPL's casino which

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7 *Rollo* (G.R. No. 212050), pp. 25-29; *rollo* (G.R. No. 212216), pp. 11-15.
8 Now BDO Unibank, Inc.; *rollo* (G.R. No. 212216), p. 132.
9 *Rollo* (G.R. No. 212050), p. 31; *rollo* (G.R. No. 212216), p. 17.
10 Id. at 32-33; id. at 18-19.
11 Id. at 33; id. at 19.

would entitle him to earn 1% cash commission or 0.1%[12] rebate on his gaming turn-over is enough to constitute as the "value" contemplated by the law, making SCPL a holder in due course.[13]

On SCPL's good faith in view of Llorente's averment about the impossibility of having no face cards coming out after seven consecutive deals, the CA found the following explanation in the judicial affidavit of Paul Arbuckle[14] (Arbuckle) sufficient:

> x x x The game of Baccarat as played at Star City uses 8 decks of cards by 52 cards in each deck. There are 416 cards in total with 128 cards being denoted as "face" cards including the "ten value card". A single deal of [B]accarat consists of a minimum of 4 cards to a maximum of 6 cards. If we use 5 cards as an average then over 6 or 7 deals of Baccarat approximately 35 to 42 cards will be expended. Around 8.4% to a maximum of 10% of the total amount of cards available, I would consider it possible, and in fact, very likely that with such a small percentage of the total number of cards exposed that no face cards would appear.[15]

Also, the CA pointed out that Llorente's conduct — "in spite of the alleged irregularities in the [B]accarat table, continued to play in said casino x x x [and] he should have stopped playing and betting because it would entail huge losses on his part"[16] — counteracted whatever truth his claim has.[17]

Regarding the third issue, the CA deemed it proper to discharge EPCIB from any responsibility considering that it already paid Llorente the face amount of the subject drafts amounting to US $300,000.00 as evidenced by the Quitclaim, Indemnity and Confidentiality Agreement[18] (Indemnity Agreement) executed on August 8, 2002.[19] The CA further reasoned that allowing EPCIB's solidary liability would sanction unjust enrichment on Llorente's part who would be allowed to profit or enrich himself inequitably at EPCIB's expense.[20]

Thus, the CA in its Decision dated September 30, 2013 ruled that Llorente's appeal was bereft of any merit while that of EPCIB was partially considered.[21] The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the instant appeal is **PARTIALLY GRANTED**. The assailed Decision dated 16 April 2009 of

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12 Erroneously reflected as 1% in CA Decision, id. at 36; id. at 22.
13 *Rollo* (G.R. No. 212050), pp. 36-37; *rollo* (G.R. No. 212216), pp. 22-23.
14 As Star City Casino's Head of Gaming and given his 30 years work experience in the different casinos located in Australia, Arbuckle had gained knowledge and expertise in the different casino games particularly Baccarat according to the CA. Id. at 35; id. at 21.
15 Id.; id.
16 Id. at 36; id. at 22, citing the RTC Decision dated April 16, 2009, *rollo* (G.R. No. 212050), p. 49.
17 Id.; id.
18 *Rollo* (G.R. No. 212216), pp. 146-149.
19 *Rollo* (G.R. No. 212050), p. 37; id. at 23.
20 Id.; id.
21 Id. at 31; id. at 17.

the Regional Trial Court is **AFFIRMED with the modification** that EPCIB is **ABSOLVED** from any liability under Civil Case No. 02-1423.

SO ORDERED.[22]

Llorente filed a motion for reconsideration while SCPL filed a motion for partial reconsideration. The CA denied both motions in its Resolution[23] dated April 10, 2014.

Hence, the instant Rule 45 petitions for review on *certiorari* in G.R. No. 212050 filed by Llorente and in G.R. No. 212216 filed by SCPL, respectively. Regarding G.R. No. 212050, SCPL filed its Comment[24] dated September 24, 2014 and Llorente filed his Reply[25] dated October 8, 2014. Regarding G.R. No. 212216, EPCIB filed its Comment[26] dated October 4, 2014. Llorente filed an Explanation[27] dated August 14, 2015 wherein he manifested that he deemed it more proper and appropriate to forego the filing of a Comment in G.R. No. 212216 considering the consolidation of the two petitions and the issues and arguments raised therein are substantially the same and inter-related with one another.[28]

The Issues

In G.R. No. 212050, Llorente raises the following issues:

1. whether the CA erred in affirming the RTC Decision despite the latter's lack of jurisdiction over the subject matter of the complaint;

2. whether the CA erred in finding that SCPL has legal capacity to sue under the isolated transaction rule; and

3. whether the designation of the law firm of Jimeno, Jalandoni and Cope (JJC Law) as attorney-in-fact of SCPL constitutes gross violation of Section 69 of the Corporation Code.[29]

In G.R. No. 212216, SCPL raises the following issues:

1. whether the CA erred when it modified the RTC Decision by absolving EPCIB of any liability; and

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22 Id. at 37-38; id at 23-24.
23 Id. at 55-57; id. at 41-43.
24 Id. at 82-97.
25 Id. at 98-104.
26 *Rollo* (G.R. No. 212216), pp. 132-145.
27 Id. at 165-170.
28 Id. at 166.
29 *Rollo* (G.R. No. 212050), p. 14.

2. whether in absolving EPCIB the CA ignored the express provisions of law and anchored its ratio on evidence that was not at all proven in trial.[30]

The Court's Ruling

G.R. No. 212050

Llorente's Petition lacks any merit.

On the issue of jurisdiction, Llorente argues that except for the mere issuance of the 2 bank drafts by EPCIB, all the material acts and transactions between him and SCPL transpired in Australia; and, in fact, his front money account with SCPL was even credited while he was in Australia.[31] Thus, the sole jurisdiction to hear and decide SCPL's complaint pertains to the Australian Court rather than the Philippine Court.[32]

On SCPL's capacity to sue, Llorente argues that the condition *sine qua non* of the application of the isolated transaction rule is that the alleged delict or wrongful act must have occurred in the Philippines and the transaction between him and SCPL was in pursuance of the latter's casino business.[33]

Regarding the designation of JJC Law as SCPL's attorney-in-fact, Llorente argues that it is violative of Section 69 of the Corporation Code because SCPL is not licensed to do business in the Philippines.[34] As such, SCPL's complaint is a mere scrap of paper and any judgment rendered in connection therewith is a nullity which may be struck down even on appeal.[35]

On the capacity of a foreign corporation to sue before Philippine courts, the applicable law is clear.

Under Republic Act No. (RA) 11232[36] or the Revised Corporation Code of the Philippines (Revised Corporation Code), which became effective on February 23, 2019,[37] the pertinent provision is Section 150, which states:

> SEC. 150. *Doing Business Without a License.* – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the

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30 *Rollo* (G.R. No. 212216), pp. 52-53.
31 *Rollo* (G.R. No. 212050), pp. 14-15.
32 Id. at 15.
33 Id. at 15-16.
34 Id. at 16-17.
35 Id. at 17.
36 AN ACT PROVIDING FOR THE REVISED CORPORATION CODE OF THE PHILIPPINES. Approved on February 20, 2019.
37 Upon completion of its publication in Manila Bulletin and the Business Mirror on February 23, 2019, see <http://www.sec.gov.ph/wp-content/uploads/2019/03/2019Legislation_RevisedCorporationCodeEffectivity.pdf>.

> Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws.

Section 150 of the Revised Corporation Code is a verbatim reproduction of Section 133 of *Batas Pambansa Blg.* (BP) 68 or the Corporation Code of the Philippines (Corporation Code), which provided:

> Sec. 133. ***Doing business without a license.*** – No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. (69a)

It must be noted that the Revised Corporation Code repealed the Corporation Code and any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary or inconsistent with any provision of the Revised Corporation Code is modified or repealed accordingly.[38]

While the law (presently the Revised Corporation Code or its predecessor, the Corporation Code) grants to foreign corporations with Philippine license the right to sue in the Philippines, the Court, however, in a long line of cases under the regime of the Corporation Code has held that a foreign corporation not engaged in business in the Philippines may not be denied the right to file an action in the Philippine courts for an isolated transaction.[39] The issue on whether a foreign corporation which does not have license to engage in business in the Philippines can seek redress in Philippine courts depends on whether it is doing business or it merely entered into an isolated transaction.[40] A foreign corporation that is not doing business in the Philippines must disclose such fact if it desires to sue in Philippine courts under the "isolated transaction rule" because without such disclosure, the court may choose to deny it the right to sue.[41]

The right and capacity to sue, being, to a great extent, matters of pleading and procedure, depend upon the sufficiency of the allegations in the complaint. Thus, as to a foreign corporation, the qualifying circumstance that if it is doing business in the Philippines, it is duly licensed or if it is not, it is suing upon a singular and isolated transaction, is an essential part of the element of the plaintiff's capacity to sue and must be affirmatively pleaded.[42]

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38 RA 11232, Sec. 187.

39 *The Commissioner of Customs v. K.M.K. Gani, Indrapal & Co.*, 261 Phil. 717, 723 (1990), citing *Bulakhidas v. Navarro*, 225 Phil. 500, 501 (1986); *Antam Consolidated, Inc. v. CA*, 227 Phil. 267 (1986); *Universal Rubber Products, Inc. v. CA*, 215 Phil. 85 (1984).

40 *The Commissioner of Customs v. K.M.K. Gani, Indrapal & Co.*, id. at 723.

41 Id., citing *Atlantic Mutual Insurance Co. v. Cebu Stevedoring Co.*, 124 Phil. 463 (1966).

42 Id. at 725, citing *Atlantic Mutual Insurance Co. v. Cebu Stevedoring Co.*, id. at 466-467.

These pronouncements equally obtain under the Revised Corporation Code given the reproduction of the exact wording of Section 133, Corporation Code in Section 150 of the Revised Corporation Code.

Based on the parameters discussed above, the CA has correctly ruled that SCPL has personality to sue before Philippine courts under the isolated transaction rule, to wit:

> x x x [A] foreign corporation needs no license to sue before Philippine courts on an isolated transaction.[43] However, to say merely that a foreign corporation not doing business in the Philippines does not need a license in order to sue in our courts does not completely resolve the issue. When the allegations in the complaint have a bearing on the plaintiff's capacity to sue and merely state that the plaintiff is a foreign corporation existing under the laws of a country, such averment conjures two alternative possibilities: either the corporation is engaged in business in the Philippines, or it is not so engaged. In the first, the corporation must have been duly licensed in order to maintain the suit; in the second, and the transaction sued upon is singular and isolated, no such license is required. In either case, compliance with the requirement of license, or the fact that the suing corporation is exempt therefrom, as the case may be, cannot be inferred from the mere fact that the party suing is a foreign corporation. The qualifying circumstance being an essential part of the plaintiff's capacity to sue must be affirmatively pleaded. Hence, the ultimate fact that a foreign corporation is not doing business in the Philippines must first be disclosed for it to be allowed to sue in Philippine courts under the isolated transaction rule. Failing in this requirement, the complaint filed by plaintiff with the trial court, it must be said, fails to show its legal capacity to sue.[44] x x x
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> In the case at bar, [SCPL] alleged in its complaint that "it is a foreign corporation which operates its business at the Star City Casino in Sydney, New South Wales, Australia; that it is not doing business in the Philippines; and that it is suing upon a singular and isolated transaction". It also appointed Jimeno, Jalandoni and Cope Law Offices as its attorney-in-fact. Following the pronouncement mentioned above and having pleaded these averments in the complaint sufficiently clothed [SCPL] the necessary legal capacity to sue before Philippine courts.[45]

The appointment of JJC Law as attorney-in-fact of SCPL is irrelevant on the latter's capacity to sue in the Philippines under an isolated transaction.

Further, the following observation of the RTC is apropos:

> Besides, it is observed that defendant Llorente in [his] answer pleaded [an] affirmative relief for damages from plaintiff [SCPL] by way of a counterclaim. This is contrary to his position that plaintiff has no capacity to sue in the Philippines because such contention likewise entails that plaintiff may be sued in the Philippines as defendant Llorente also prayed for affirmative relief against the plaintiff. He is deemed to have

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43 Citing *Lorenzo Shipping Corp. v. Chubb and Sons, Inc.*, 475 Phil. 169, 183 (2004).
44 Citing *New York Marine Managers, Inc. v. Court of Appeals*, 319 Phil. 538, 543-544 (1995).
45 *Rollo* (G.R. No. 212050), pp. 32-33.

> admitted the capacity of plaintiff to be subject of our judicial process. It would be unfair to rule that plaintiff may be sued in the Philippines without at the same time allowing it to sue on an isolated transaction here.[46]

On the issue of jurisdiction, the argument of Llorente that Australian courts have jurisdiction over the case because all the material acts and transactions between him and SCPL transpired in Australia, except for the mere issuance of the two bank drafts by EPCIB in the Philippines also fails.

It must be remembered that the complaint filed by SCPL against Llorente and EPCIB is for collection of sum of money, which is a civil case. Under BP 129, Section 19, RTCs have exclusive jurisdiction "[i]n all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of property in controversy exceeds Three hundred thousand pesos (P300,000.00) or, in such other cases in Metro Manila, where the demand, exclusive of the abovementioned items exceeds Four hundred thousand pesos (P400,000.00)."[47] Since the amount demanded by SCPL against Llorente and EPCIB in solidary capacity, which is "USD $300,000.00 plus legal interest from date of first demand on December 20, 2000 until full payment,"[48] is above ₱400,000.00, the RTC has jurisdiction over SCPL's complaint.

Also, from the point of view of territorial jurisdiction in criminal cases[49] involving checks, any of the places where the check is drawn, issued, delivered, or dishonored has jurisdiction.[50] As the CA emphasized, "[w]hile it is true that the stopped payment occurred in Australia per advice of Union Bank of California to the Bank of New York, x x x the subject matter of the instant complaint are the subject drafts drawn by EPCIB, which is a Philippine bank."[51]

G.R. No. 212216

SCPL's Petition is meritorious.

The CA absolved EPCIB from any liability in this wise:

> Relative to EPCIB's solidary liability, We deem it proper to discharge it from any responsibility considering that it already paid Llorente the face value of the subject drafts amounting to US $300,000.00 as evidenced by the Quitclaim, Indemnity and Confidentiality Agreement executed on 8 August 2002. It would be very unfair to hold EPCIB solidarily liable with Llorente because it already paid/refunded to the latter the total amount of the subject drafts. Moreover, allowing such solidary

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46 Id. at 44.
47 BP 129, Sec. 19(8), as amended by RA 7691.
48 *Rollo* (G.R. No. 212050), p. 64.
49 Like violation of BP 22.
50 See *Brodeth v. People*, G.R. No. 197849, November 29, 2017, 847 SCRA 92, 111.
51 *Rollo* (G.R. No. 212050), p. 33.

> liability would, indeed, be to sanction unjust enrichment on the part of Llorente, who will be allowed to profit or enrich himself inequitabl[y] at EPCIB's expense,[52] since he was already paid and yet, the latter, who was without any fault, is still bound to share the responsibility without any assurance of being paid. Hence, it is only just and equitable to relieve the bank from any liability to pay considering the execution of the above agreement in favor of Llorente.[53]

In its Petition, SCPL posits that it is an established fact that EPCIB issued the subject demand drafts since it was never denied by EPCIB and was even confirmed by the bank's counsel in a letter dated September 16, 2002 to SCPL's counsel.[54] According to SCPL, in issuing the subject demand drafts, EPCIB is considered by law as the drawer and being the drawer, it represented that on due presentment the checks would be accepted or paid, or both, according to their tenor and if they be dishonored and the necessary proceedings be taken it would be the one who would pay pursuant to Section 61 of the Negotiable Instruments Law (NIL).[55]

Additionally, SCPL argues that under the NIL, while the maker and the acceptor of the negotiable instrument are primarily liable, the drawer and endorser are secondarily liable; and the drawer's secondary liability to pay the amount of the checks arises from its warranties as the drawer.[56] Being a holder in due course, as the CA has recognized, SCPL may enforce payment of the instrument for its full amount against all parties liable thereon.[57] SCPL concludes that there is no room for the application of equity and unjust enrichment because the rights, liabilities and representations of the parties are explicitly provided in the NIL and equity, being invoked only in the absence of law, may supplement the law but it can neither contravene nor supplant it.[58]

As to the Indemnity Agreement allegedly executed on August 8, 2002, SCPL further posits that the CA has no basis to give it weight as it was never presented as evidence on EPCIB's behalf and was never formally offered or identified by a proper witness in court.[59] Even assuming that the Indemnity Agreement can be used as evidence, SCPL takes the position that it is only valid between Llorente and EPCIB and cannot be enforced to defeat SCPL's right as a holder in due course to enforce payment of the instrument for the full amount thereof against all parties liable thereon.[60]

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52 Citing *Grandteq Industrial Steel Products, Inc. v. Margallo*, 611 Phil. 612, 627-628 (2009).
53 *Rollo* (G.R. No. 212050), p. 37; *rollo* (G.R. No. 212216), p. 23.
54 *Rollo* (G.R. No. 212216), p. 53.
55 Id. at 54.
56 Id.
57 Id. at 55-56.
58 Id. at 56.
59 Id. at 57.
60 Id. at 58.

In its Comment,[61] EPCIB counters that the CA correctly absolved EPCIB from any liability by reason of unjust enrichment and cites Article 22 of the Civil Code, which provides that every person who through an act or performance of another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.[62] EPCIB argues that the unjust enrichment principle is applicable considering that Llorente already received the value of the subject bank drafts from EPCIB; and requiring it again to pay the face value of the bank drafts would amount to Llorente's unjust enrichment to its prejudice.[63]

As another ground, EPCIB argues that SCPL and EPCIB have no privity of contract as they never transacted with each other.[64] Invoking the basic principle of relativity of contracts, EPCIB states that it would be highly iniquitous if it is made liable in any way for whatever controversy that arose between SCPL and Llorente.[65]

Given the foregoing, EPCIB has apparently abandoned its arguments before the CA that: (1) SCPL is not a holder in due course because it took the subject bank drafts without any value since the funds corresponding thereto had been withdrawn by Llorente, and (2) SCPL cannot be considered in good faith because of Llorente's averment regarding the impossibility of having no face cards coming out of several deals despite a considerable amount of time.[66]

The CA has rejected the said arguments and admitted that SCPL is a holder in due course, *viz.*:

> Section 52 of the [NIL] gives the conditions in order to consider [a] person as a holder in due course, *to wit*:
>
> "SEC. 52. *What constitutes a holder in due course.* – A holder in due course is a holder who has taken the instrument under the following conditions:
>
> (a) That it is complete and regular upon its face;
>
> (b) That he became the holder of it before it was overdue and without notice that it had been previously dishonored, if such was the fact;
>
> (c) That he took it in good [faith] and for value;
>
> (d) That at the time it was negotiated to him, he had no notice of any infirmity or defect in the title of [the] person negotiating it."

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61 Id. at 132-145.
62 Id. at 139.
63 Id. at 140.
64 Id.
65 Id.
66 Id. at 19; *rollo* (G.R. No. 212050), p. 33.

As a general rule, under the above provision, every holder is presumed *prima facie* to be a holder in due course. One who claims otherwise has the *onus probandi* to prove that one or more of the conditions required to constitute a holder in due course are lacking.[67] At bar, EPCIB failed to prove that the elements of good faith and value are wanting.

Anent the element of good faith, [SCPL] showed that Llorente's averment about the impossibility of having no face cards coming out after seven consecutive deals, is not unusual in view of the small percentage of the total number of cards exposed [as explained in the] judicial affidavit [of] Paul Arbuckle, Head of Gaming of Star City Casino x x x [.]

x x x x

It bears to emphasize that Arbuckle had thirty (30) years work experience in the different casinos located in Australia such that his knowledge and expertise about the different casino games particularly Baccarat, could not easily be disregarded and overturned by a simple allegation of cheating which has not been substantiated in view of the absence of a complaint [by] Llorente to [SCPL's] personnel.

Moreover, Llorente's conduct after he complained about the purported fraud in the casino counteracted whatever truth his claim has. For this purpose, We acknowledge the [RTC's] disquisition, *viz*[.]:

x x x x

> The [c]ourt finds it quite interesting, and contrary to human behavior, that x x x Llorente, in spite of the alleged irregularities in the [B]accarat table, continued to play in said casino. If there were indeed irregularities, as being claimed by x x x Llorente, he should have stopped playing and betting because it would entail huge losses on his part. Considering that the amount of capital involved was very substantial and considering further that x x x Llorente, as his qualifications show, is admittedly an experienced casino player x x x, the court finds it hard to believe that, if indeed there were unlawful activities going on in the casino, specifically in the [B]accarat table, that x x x Llorente would still choose to continue playing, further risking his money.

x x x x

Contrary to EPCIB's assertion that the subject drafts were taken without any value, We would like to point out that value "in general terms, may be some right, interest, profit or benefit to the party who makes the contract or some forbearance, detriment, loan, responsibility, etc. on the other side."[68] Here, it was established that Llorente used the subject drafts to buy-in into the Premium Programme of [SCPL's] casino which would entitle him to earn one x x x percent [(1%)] cash commission or [zero point] one x x x percent [(0.1%)] rebate on his gaming turn-over. This right to play under the Premium Programme is enough to constitute as a "value" contemplated by the law, thus, making [SCPL] a holder in due course.

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67 Citing *Bank of Philippine Islands v. Roxas*, 562 Phil. 161, 165 (2007).
68 Citing *Bank of Philippine Islands v. Roxas*, id. at 166.

> Said status of [SCPL] remained despite the withdrawal of the funds because at the time Llorente negotiated the subject drafts, [SCPL] had no notice that the same had been previously dishonored. In fact, it even verified the status by calling x x x EPCIB, who advised it through the latter's employee x x x Consuelo Conigado that the same were issued on clear funds and there [was] no stop payment orders.[69]

The Court notes that while Llorente testified that he purportedly reported the fraud or "cheating" incident in SCPL's casino to the branch office of the Australian Gaming Commission (AGC) at the ground floor of the casino, he presented no proof, documentary or otherwise, that he in fact did file a complaint; and the RTC found his account of how he allegedly brought the matter to the AGC "not highly persuasive" noting that Llorente never mentioned anything about him having reported the incident to the AGC in his Answer, an information so vital to support his claim of fraud.[70]

American jurisprudence explains the nature of drafts in this wise:

> A draft in the law of bills and notes is a "drawing" and has been defined as an open letter of request from, and an order by, one person on another to pay a sum of money therein mentioned to a third person on demand or at a future time specified therein. A draft is a bill of exchange, and the term "draft" is commonly employed as a synonym for the words "bill of exchange" or "check," although it cannot be the latter if it lacks the requirements of a check as distinguished from other bills of exchange. Banks are perhaps the greatest users of drafts, and they sell them to persons who desire to transmit funds. Thus **a draft has been defined as a check drawn by a bank**, the only distinguishing feature between a draft and an ordinary check being the character of the drawer. The instrument which is usually denominated a "bank draft"[71] is in the customary form of a check and is generally drawn by one bank upon another bank in which it has deposits much the same as the ordinary depositor draws his check upon his bank. The general rule is that such instrument is a check and subject to the rules applicable to checks. Since the term check is limited to a demand instrument and "draft" is not [as it may be payable on demand or at a fixed or determinable future time[72]], there is a distinction between the two in this respect.
>
> In its usual form a draft is a negotiable instrument.[73] (Emphasis and underscoring provided)

When the CA recognized SCPL as a holder in due course[74] and it did not overturn the finding of the RTC that the subject demand/bank drafts are

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69 *Rollo* (G.R. No. 212216), pp. 20-23.

70 *Rollo* (G.R. No. 212050), pp. 51-53.

71 Bank draft is a bill of exchange payable on demand. 11 Am. Jur. 2d, *Drafts*, §14, note 6, p. 43 (1963), citing *Bank of Republic v. Republic State Bank*, 328 Mo 848, 42 SW2d 27.

72 11 Am. Jur. 2d, *Drafts*, §14, note 12, p. 43 (1963), citing *Branch Banking & Trust Co. v. Bank of Washington*, 255 NC 205, 120 SE2d 830.

73 Id. at 43-44, citations omitted.

74 The CA found that the conditions in order to consider a person a holder in due course are present in this case and discussed extensively the elements of good faith, for value and lack of notice of infirmity or defect in the title of the person negotiating the negotiable instrument. See *rollo* (G.R. No. 212216), pp. 20-23.

negotiable instruments,[75] the CA in effect ruled that the two demand/bank drafts drawn by EPCIB with Llorente as the payee are negotiable instruments. The Court totally agrees with the RTC's finding, to wit:

> A draft is a form of a bill of exchange used mainly in transactions between persons physically remote from each other. It is an order made by one person, say the buyer of goods, addressed to a person having in his possession funds of such buyer, ordering the addressee to pay the purchase price to the seller of the goods. Where the order is made by one bank to another bank, as in this case, it is referred to as a bank draft. Needless to say, the bank drafts, subject of this case are negotiable instruments and are therefore governed by the provisions of the Negotiable Instruments Law.[76]

Both the RTC and CA correctly recognized EPCIB as the drawer of the subject demand/bank drafts. The liability of the drawer is spelled out in Section 61 of the NIL, which provides:

> Sec. 61. ***Liability of drawer.*** – The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that, on due presentment, the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

When the bank, as the drawer of a negotiable check, signs the instrument its engagement is then as absolute and express as if it were written on the check;[77] and a dual promise is implied from the issuance of a check: first, that the bank upon which it is drawn will pay the amount thereof; and second, if such bank should fail to make the payment, the drawer will pay the same to the holder.[78]

Generally, by drawing a check, the drawer: admits the existence of the payee and his then capacity to endorse; impliedly represents that he (the payee) has funds or credits available for its payment in the bank in which it is drawn; engages that if the bill is not paid by the drawee and due proceedings on dishonor are taken by the holder, he will upon demand pay the amount of the bill together with the damages and expenses accruing to the holder by reason of the dishonor of the instrument; and, if the drawee refuses to accept a bill drawn upon him, becomes liable to pay the instrument according to his original undertaking.[79]

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75 *Rollo* (G.R. No. 212050), p. 46.
76 Id.
77 11 Am. Jur. 2d, *Drawer, Generally*, § 589, p. 657 (1963). Citations omitted.
78 *Gambord Meat Co. v. Corbari*, 109 Cal App 2d 161, 240 P2d 342 cited in 11 Am. Jur. 2d, id., note 20.
79 11 Am. Jur. 2d, *Drawer, Generally*, § 589, pp. 658-660 (1963). Citations omitted.

However, the liability of the drawer is not primary but **secondary**, particularly after acceptance because it is conditional upon proper presentment and notice of dishonor, and, in case of a foreign bill of exchange, protest, unless such conditions are excused or dispensed with.[80] Thus, under Section 84 of the NIL, when the instrument is dishonored by non-payment, an **immediate right of recourse to all parties secondarily liable** thereon accrues to the holder, subject to the provisions of the NIL.

Regarding the effect of countermand or stopping payment, the drawer of a bill, including a draft or check, as a general rule, may by notice to the drawee prior to acceptance or payment countermand his order and command the drawee not to pay, in which case the drawee is obliged to refuse to accept or pay.[81] There are however cases which hold that a draft drawn by one bank upon another and bought and paid for by a remitter, as the equivalent of money or as an executed sale of credit by the drawer, is not subject to rescission or countermand so as to avoid the drawer's liability thereon.[82] Moreover, the right to stop payment cannot be exercised so as to prejudice the rights of holders in due course without rendering the drawer liable on the instrument to such holders.[83] Stated differently, stopping payment does not discharge the liability of the drawer of a check or other bill to the payee or other holder.[84] However, where payment has been stopped by the drawer the relation between the drawer and payee becomes the same as if the instrument had been dishonored and notice thereof given to the drawer.[85] Thus, the drawer's conditional liability is changed to one free from the condition and his situation is like that of the maker of a promissory note due on demand; and he is liable on the instrument if he has no sufficient defense.[86]

In the instant case, on July 27, 2002 Llorente applied for and executed a Stop Payment Order (SPO) on the subject demand/bank drafts on the pretext that the said drafts which he issued/negotiated to SCPL allegedly exceeded the amount he was obliged to pay SCPL[87] contrary to his position that SCPL committed fraud and unfair gaming practices. The execution of the SPO by Llorente did not discharge the liability of EPCIB, the drawer, to SCPL, the holder of the subject demand/bank drafts. Given that an SPO was issued, the dishonor and non-payment of the subject demand/bank drafts were to be expected, triggering the immediate right of recourse of the holder to all parties secondarily liable, including the drawer, pursuant to the NIL. As the RTC noted: "[Llorente and EPCIB] could not seek refuge on the alleged lack of notice of dishonor to them since they were responsible for the dishonor of the

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80 Id. at 659. Citations omitted.
81 Id., *Countermand or stopping payment*, § 590, p. 660. Citations omitted.
82 Id.
83 Id. at 660-661. Citations omitted.
84 Id. at 661.
85 Id.
86 Id. Citations omitted.
87 *Rollo* (G.R. No. 212216), p. 146.

subject drafts aside from the fact that it would be futile to require such notice since it was EPCIB who countermanded the payment."[88]

The finding of both the RTC and the CA that SCPL is a holder in due course is not even disputed by EPCIB in its Comment[89] dated October 4, 2014 to the SCPL Petition. To recall, EPCIB merely argued that the CA was correct in absolving it from liability by applying the principle of unjust enrichment.[90] EPCIB added that it had no privity of contract between SCPL and Llorente.[91]

Under Section 57 of the NIL, "[a] holder in due course holds the instrument free from any defect in the title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon." In addition, under Section 51 of the NIL, every holder of a negotiable in instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

Having recognized the status of SCPL as a holder in due course and EPCIB as the drawer of the subject demand/bank drafts, was the CA correct in absolving EPCIB from any liability in view of the Indemnity Agreement dated August 8, 2002 between Llorente and EPCIB?

In absolving EPCIB from liability, the CA forwarded the following justification:

> Relative to EPCIB's solidary liability, We deem it proper to discharge it from any responsibility considering that it already paid Llorente the face value of the subject drafts amounting to US $300,00[0].00 as evidenced by the Quitclaim, Indemnity and Confidentiality Agreement executed on 8 August 2002. It would be very unfair to hold EPCIB solidarily liable with Llorente because it already paid/refunded to the latter the total amount of the subject drafts. Moreover, allowing such solidary liability would, indeed, be to sanction unjust enrichment on the part of Llorente, who [would] be allowed to profit or enrich himself inequitabl[y] at EPCIB's expense, since he was already paid and yet, the latter, who was without any fault, is still bound to share the responsibility without any assurance of being paid. Hence, it is only just and equitable to relieve the bank from any liability to pay considering the execution of the above agreement in favor of Llorente.[92]

The Court finds, and so holds, that the CA erred in discharging EPCIB from its liability as the drawer of the subject demand/bank drafts.

A review of the records confirms SCPL's argument that the Indemnity Agreement cannot be considered as evidence because it was not formally

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88 *Rollo* (G.R. No. 212050), p. 28; id. at 14.
89 *Rollo* (G.R. No. 212216), pp. 132-145.
90 Id. at 139-140.
91 Id. at 140-141.
92 Id. at 23.

offered. In addition, even if it were given some evidentiary weight, it will nevertheless not bind SCPL pursuant to the principle of relativity of contracts under Article 1311 of the Civil Code, which provides that "[c]ontracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law."

As to the unjust enrichment principle applied by the CA, the same is not proper. EPCIB's invocation of unjust enrichment to avoid its liability as the drawer of the subject demand/bank draft evinces bad faith in that rather than discharging its obligation as the drawer, EPCIB presents the Indemnity Agreement as an afterthought to shield itself from liability.

Firstly, the liability of EPCIB as the drawer cannot be abrogated by virtue of the Indemnity Agreement because it arises from the subject demand/bank drafts, which are negotiable instruments, that it issued. Its secondary liability under Section 61 of the NIL became primary when the payment of the subject demand/bank drafts had been stopped which had the same effect as if the instruments had been dishonored and notice thereof was given to the drawer pursuant to Section 84 of the NIL. Given the nature of the liability of the drawer of a negotiable instrument, EPCIB's argument that it is not liable to SCPL because they have no privity of contract is utterly without merit.

Secondly, the reimbursement/return by EPCIB to Llorente of the face value of the subject demand/bank drafts in the total amount of US$300,000.00 by virtue of the Indemnity Agreement, assuming this had any probative value, is subject to the following provision:

> 4. Claimant ([Llorente)] also agrees to execute and post an indemnity bond in an amount equivalent to US$300,000.00 in favor of EPCIBank, Star Casino (US$ Drafts Holder/Endorsee), Union Bank of California (UBOC), and to any other person or entity who may have been prejudiced by Claimant for whatever damages that may be suffered by EPCIBank, and other third parties as a consequence of Claimant's SPO [(Stop Payment Order)] and reimbursement of the amount of US$300,000.00.[93]

Thus, if EPCIB is made liable on the subject demand/bank drafts, it has a recourse against the indemnity bond. To be sure, the posting of the indemnity bond required by EPCIB of Llorente is in effect an admission of his liability to SCPL and the provision in the Whereas clause that: "On 27 July 2002, Claimant [(Llorente)] applied for and executed a Stop Payment Order (SPO) on the two drafts, citing as reason that the drafts he issued/negotiated to Star Casino exceeded the amount he was [obliged] to pay"[94] may be taken against

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93 Id. at 147.
94 Id. at 146.

him to weaken his allegation of fraud and unfair gaming practices against SCPL.

Lastly, for the unjust enrichment principle to apply against SCPL, it should be the party who is benefitted from the reimbursement or return of the funds by EPCIB. In this case, the party who received the benefit was Llorente. Any payment to SCPL arising from the subject demand/bank drafts by EPCIB and/or Llorente can never be by mistake. As provided in Article 2154 of the Civil Code, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises; and, under Article 2163, there is payment by mistake if something which has never been due or has already been paid is delivered.

While EPCIB is clearly liable as the drawer of the subject demand/bank drafts, there is no legal basis to make it solidarily liable with Llorente.

According to Article 1207 of the Civil Code, there is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. In this case, there is no contract or agreement wherein the solidary liability of EPCIB is expressly provided. Under the NIL and the nature of the liability of the drawer, solidary obligation is also not provided. Thus, EPCIB's liability is not solidary but primary due to the SPO that Llorente issued against the subject demand/bank drafts.

Consequently, both Llorente and EPCIB are individually and primarily liable as endorser and drawer of the subject demand/bank drafts, respectively. Given the nature of their liability, SCPL may proceed to collect the damages hereinafter awarded simultaneously against both Llorente and EPCIB, or alternatively against either Llorente or EPCIB, provided that in no event can SCPL recover from both more than the damages awarded.

In the event that SCPL is able to collect from EPCIB based on this judgment, any amount that EPCIB pays to SCPL can be collected by EPCIB from Llorente by virtue of its cross-claim against Llorente and pursuant to the indemnity clause of the Indemnity Agreement, which is valid as between Llorente and EPCIB.

The monetary awards imposed by the RTC upon Llorente and EPCIB have to be modified pursuant to *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,[95] wherein the majority of the Court *en banc* revised the guidelines on interest in *Eastern Shipping Lines, Inc. v. Court of Appeals*[96] and *Nacar v. Gallery Frames*[97] and the *ponente* filed a Concurring and Dissenting Opinion. Thus, the payment of the amount of the subject bank drafts in the sum of US$300,000.00 should bear interest at the legal rate of

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95 G.R. No. 225433, August 28, 2019.
96 304 Phil. 236 (1994).
97 716 Phil. 267 (2013).

12% per annum from the date of extrajudicial demand, which is August 30, 2002[98] (as this is the date the extrajudicial demand against EPCIB that was made subsequent to the extrajudicial demand for payment against Llorente), to June 30, 2013 and at 6% per annum from July 1, 2013 until full payment and the payment of the attorney's fees equivalent to 5% of the amount of demand or US$15,000.00 should bear interest at the rate of 6% per annum from finality of this Decision until full payment.

WHEREFORE, the Petition in G.R. No. 212050 is hereby **DENIED** while the Petition in G.R. No. 212216 is **GRANTED**. The Decision dated September 30, 2013 and the Resolution dated April 10, 2014 of the Court of Appeals in CA-G.R. CV No. 94736 are **PARTIALLY REVERSED** and **SET ASIDE** insofar as the Court of Appeals absolved Equitable PCI Bank from any liability is concerned. The Decision dated April 16, 2009 rendered by the Regional Trial Court, Branch 134, Makati City in Civil Case No. 02-1423 is **REINSTATED** with **MODIFICATION**:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Star City Pty Limited and against both defendants Quintin Llorente and Equitable PCI Bank, as follows:
>
> 1. Finding both defendants Quintin Llorente and Equitable PCI Bank individually and primarily liable and:
>
> (a) Ordering defendants Quintin Llorente and Equitable PCI Bank to pay the plaintiff Star City Pty Limited the amount of the subject bank drafts in the sum of US $300,000.00 with interest at 12% *per annum* from August 30, 2002 to June 30, 2013 and at 6% *per annum* from July 1, 2013 until full payment;
>
> (b) Ordering defendants Quintin Llorente and Equitable PCI Bank to pay the plaintiff Star City Pty Limited 5% of the amount claimed, or US $15,000.00, as and by way of attorney's fees with interest at 6% *per annum* from the finality of this Decision until full payment; and,
>
> 2. Costs of suit.
>
> For lack of merit, both defendants Quintin Llorente's and Equitable PCI Bank's counterclaims are **DENIED**. Defendant Equitable PCI Bank's cross-claim against defendant Quintin Llorente is **GRANTED**.
>
> **SO ORDERED.**

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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98 *Rollo* (G.R. No. 212050), p. 26; *rollo* (G.R. No. 212216), p. 12.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice