



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LAND BANK OF THE
PHILIPPINES,

G.R. No. 205839

Petitioner,

- versus -

NARCISO L. KHO,

Respondent.

X-----X

MA. LORENA FLORES and
ALEXANDER CRUZ,

G.R. No. 205840

Petitioners,

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA,* and
LEONEN, JJ.

NARCISO L. KHO,

Respondent.

Promulgated:

07 JUL 2016

X-----X

DECISION

BRION, J.:

These are consolidated petitions for review on *certiorari* assailing the Court of Appeals' (CA) August 30, 2012 decision and February 14, 2013 Resolution in CA-G.R. CV No. 93881.¹ The CA set aside the Regional Trial

* On Official Leave.

¹ Both penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr.

Court's (*RTC*) dismissal of **Civil Case No. Q-06-57154²** and remanded the case for further proceedings.

Antecedents

The respondent Narciso Kho is the sole proprietor of United Oil Petroleum, a business engaged in trading diesel fuel. Sometime in December 2006, he entered into a verbal agreement to purchase lubricants from Red Orange International Trading (*Red Orange*), represented by one Rudy Medel. Red Orange insisted that it would only accept a Land Bank manager's check as payment.

On December 28, 2005, Kho, accompanied by Rudy Medel, opened **Savings Account No. 0681-0681-80** at the Araneta Branch of petitioner Land Bank of the Philippines (*Land Bank*).³ His initial **₱25,993,537.37** deposit⁴ consisted of the following manager's checks:

1	UCPB Del Monte Branch Check No. 19107	PHP 15,000,000
2	E-PCI Banawe Branch Check No. 26200720	PHP 2,900,000
3	I.E. Bank Retiro Branch Check No. 1466	PHP 8,093,537.37

These checks were scheduled for clearance on January 2, 2006.

Kho also purchased Land Bank **Manager's Check No. 07410** leveraged by his newly opened savings account. Recem Macarandan, the Acting Operations Supervisor of the Araneta branch, and Leida Benitez, the Document Examiner, *prepared and signed* the check.⁵

The check was postdated to January 2, 2006, and scheduled for actual delivery on the same date after the three checks were expected to have been cleared. It was valued at ₱25,000,000.00 and made payable to Red Orange.⁶

Kho requested a photocopy of the manager's check to provide Red Orange with proof that he had available funds for the transaction. The branch manager, petitioner Ma. Lorena Flores, accommodated his request. Kho gave the photocopy of the check to Rudy Medel.⁷

On January 2, 2006, Kho returned to the bank and picked up check No. 07410. Accordingly, ₱25,000,000.00 was debited from his savings account.

² RTC, Quezon City, Branch 81 through Presiding Judge Ma. Theresa L. De La Torre-Yadao; G.R. No. 205840, *rollo*, pp. 58-73.

³ Id. at 68.

⁴ Id. at 59, 68.

⁵ Id. at 64-65.

⁶ Id. at 42.

⁷ Id. at 42, 68.

Unfortunately, his deal with Red Orange did not push through.

On January 3, 2006, an employee of the Bank of the Philippine Islands (*BPI*) called Land Bank, Araneta Branch, to inform them that Red Orange had deposited check No. 07410 for payment. Flores confirmed with BPI that Land Bank had issued the check to Kho.⁸

On January 4, 2006, the Central Clearing Department (*CCD*) of the Land Bank Head Office faxed a copy of the deposited check to the Araneta branch for payment. The officers of the Araneta branch *examined the fax copy and thought that the details matched* the check purchased by Kho. Thus, Land Bank **confirmed the deposited check**.⁹

On January 5, 2006, Flores informed Kho by phone that Check No. 07410 was cleared and paid by the BPI, Kamuning branch.¹⁰

Shocked, Kho informed Flores that he never negotiated the check because the deal did not materialize. More importantly, *the actual check was still in his possession*.¹¹

Kho immediately went to Land Bank with the **check No. 07410**. They discovered that what was deposited and encashed with BPI was a spurious manager's check.¹² Kho demanded the cancellation of his manager's check and the release of the remaining money in his account (then ₱995,207.27).¹³ However, Flores refused his request because she had no authority to do so at the time.

Kho returned to the Land Bank, Araneta branch on January 12, 2006, with the same demands. He was received by petitioner Alexander Cruz who was on his second day as the Officer in Charge (*OIC*) of the Araneta branch.¹⁴ Cruz informed him that there was a standing freeze order on his account because of the (then) ongoing investigation on the fraudulent withdrawal of the manager's check.¹⁵

On January 16, 2006, Kho sent Land Bank a final demand letter for the return of his ₱25,000,000.00 and the release of the ₱995,207.27 from his account but the bank did not comply.

Hence, on January 23, 2006, Kho filed a *Complaint for Specific Performance and Damages* against Land Bank, represented by its Araneta Avenue Branch Manager Flores and its OIC Cruz. He also impleaded Flores

⁸ Id. at 62.

⁹ Id. at 62, 63.

¹⁰ Id. at 69.

¹¹ Id. at 49, 69.

¹² Id.

¹³ Id. at 43, 52, and 60.

¹⁴ Id. at 64.

¹⁵ Id.

and Cruz in their personal capacities. The complaint was docketed as **Civil Case No. Q-06-57154**.

Kho asserted that the manager's **check No. 07410** was still in his possession and that he had no obligation to inform Land Bank whether or not he had already negotiated the check.¹⁶

On the other hand, Land Bank argued that Kho was negligent because he handed Medel a photocopy of the manager's check and that this was the proximate cause of his loss.¹⁷

On April 30, 2009, the RTC dismissed the complaint.¹⁸

Citing *Associated Bank v. Court of Appeals*, the RTC reasoned that the failure of the purchaser/drawer to exercise ordinary care that substantially contributed to the making of the forged check precludes him from asserting the forgery.¹⁹ It held that (1) Kho's act of giving Medel a photocopy of the check and (2) his failure to inform the bank that the transaction with Red Orange did not push through were the proximate causes of his loss.²⁰

The RTC also found that Flores and Cruz acted in good faith in performing their duties as officers of Land Bank when they refused to cancel the manager's check and disallowed Kho from withdrawing from his account.²¹

Kho appealed to the CA where the case was docketed as **CA-G.R. CV No. 93881**.

On August 30, 2012, the CA set aside the RTC's decision and remanded the case for further proceedings.

The CA pointed out that Land Bank was conducting an investigation to determine whether there was a fraudulent negotiation of the manager's check No. 07410. It held that the outcome of the investigation – which was not yet available during the trial – is crucial to the resolution of the case. It noted that the RTC's ruling on Kho's negligence in dealing with Medel preempted the outcome of Land Bank's investigation.²² Thus, it remanded the case to the RTC with the directive to consider the outcome of the investigation.

¹⁶ Id. at 69.

¹⁷ Id.

¹⁸ Id. at 58.

¹⁹ Id. at 50, 70.

²⁰ Id. at 51, 71-72.

²¹ Id. at 72.

²² Id. at 56.

Dissatisfied, Land Bank, Flores, and Cruz, filed separately petitions for review on *certiorari* before this Court.

The Arguments

Land Bank asserts that neither party denied the spurious nature of the manager's check that was deposited with BPI. Therefore, the conclusion of its investigation as to the fraudulent negotiation of **check No. 07410** is immaterial to the resolution of the case.²³

Land Bank adopts the RTC's conclusion that Kho is precluded from asserting the forgery of **check No. 07410** because his negligence substantially contributed to his loss.²⁴

The bank highlights the following instances of Kho's negligence:

- (1) Kho transacted with Rudy Medel, a person he barely knew, without verifying Medel's actual relationship with Red Orange. In fact, Kho even mistook him as "Rudy Rodel" in his complaint;
- (2) Kho accorded Medel an unusual degree of trust. He brought Medel with him to the bank and carelessly gave the latter a photocopy of the manager's check; and
- (3) When he picked up **check No. 07410** on January 2, 2006, Kho did not even bother to inform Land Bank that his transaction with Red Orange did not push through. He could have prevented or detected the duplication of the check if he had simply notified the bank.²⁵

Flores and Cruz maintain that they did not incur any personal liability to Kho because they were only performing their official duties in good faith. They insist that their alleged wrongdoing, if there was any, were corporate acts performed within the scope of their official authority; therefore, only Land Bank should be made liable for the consequences.²⁶

For his part, Kho adopts the CA's arguments and reasoning in **CA-G.R. CV No. 93881**.²⁷

²³ *Rollo*, G.R. No. 205839, p. 37.

²⁴ *Id.* at 38.

²⁵ *Id.* at 39.

²⁶ *Rollo*, G.R. No. 205840, p. 32.

²⁷ *Rollo*, G.R. No. 205839, p. 166; *id.* at 110.

Our Ruling

At the outset, we agree with Land Bank's contention that the result of its investigation is not indispensable to resolving this case. After all, it was not conducted by an independent party but by a party-litigant. We cannot expect the report to yield a completely impartial result. At best, the investigation report will be of doubtful probative value.

More importantly, all the facts necessary to decide the case are already available. Although they have reached different legal conclusions, both the RTC and the CA agree that:

- On December 28, 2005, Kho opened an account with Land Bank in order to leverage a business deal with Red Orange;
- He purchased Land Bank Manager's check No. 07410 worth P25,000,000.00 payable to Red Orange and dated January 2, 2006;
- He also gave Rudy Medel a photocopy of the check that the bank had given him;
- After his visit to the Bank, the deal with Medel and Red Orange did not push through;
- He picked up check No. 07410 from the bank on January 2, 2006, without informing the bank that the deal did not materialize;
- Afterwards, Red Orange presented a spurious copy of check No. 07410 to BPI, Kamuning for payment;
- Land Bank cleared the check;
- However, Kho never negotiated the actual check. It was in his possession the whole time.

This case can already be resolved based on these undisputed facts. Therefore, the CA erred when it remanded the case for further proceedings.

That said, we cannot agree that the proximate causes of the loss were Kho's act of giving Medel a photocopy of check No. 07410 and his failure to inform Land Bank that his deal with Red Orange did not push through.

Proximate cause – which is determined by a mixed consideration of logic, common sense, policy, and precedent – is *“that cause which, in natural and continuous sequence, unbroken by any efficient intervening*

cause, produces the injury, and without which the result would not have occurred."²⁸

We cannot understand how both the RTC and the CA overlooked the fact that Land Bank's officers cleared the counterfeit check. We stress that the signatories of the genuine **check No. 07410** were *Land Bank's officers themselves*.

The business of banking is imbued with public interest; it is an industry where the general public's trust and confidence in the system is of paramount importance.²⁹ Consequently, banks are expected to exert the highest degree of, if not the *utmost*, diligence. They are obligated to treat their depositors' accounts with meticulous care, always keeping in mind the fiduciary nature of their relationship.³⁰

Banks hold themselves out to the public as experts in determining the genuineness of checks and corresponding signatures thereon.³¹ Stemming from their primordial duty of diligence, one of a bank's prime duties is to ascertain the genuineness of the drawer's signature on check being encashed.³² This holds especially true for manager's checks.

A manager's check is a bill of exchange drawn by a bank upon itself, and is accepted by its issuance. It is an order of the bank to pay, drawn upon itself, committing in effect its total resources, integrity, and honor behind its issuance. The check is signed by the manager (or some other authorized officer) for the bank. In this case, the signatories were Macarandan and Benitez.

The genuine **check No. 07410** remained in Kho's possession the entire time and Land Bank admits that the check it cleared was a fake. When Land Bank's CCD forwarded the deposited check to its Araneta branch for inspection, its officers had every opportunity to recognize the forgery of their signatures or the falsity of the check. Whether by error or neglect, the bank failed to do so, which led to the withdrawal and eventual loss of the P25,000,000.00.

This is the proximate cause of the loss. Land Bank breached its duty of diligence and assumed the risk of incurring a loss on account of a forged or counterfeit check. Hence, it should suffer the resulting damage.

We cannot agree with the Land Bank and the RTC's positions that Kho is precluded from invoking the forgery. A drawer or a depositor of the

²⁸ *Bank of the Philippine Islands v. Court of Appeals*, 383 Phil. 538, 556 (2000); *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667, 679 (1997).

²⁹ *Bank of the Philippine Islands v. Court of Appeals*, *supra* note 28, at 554; *Gempesaw v. Court of Appeals*, G.R. No. 92244, February 9, 1993, 218 SCRA 682, 697.

³⁰ *Simex International v. Court of Appeals*, 262 Phil. 387, 396 (1990).

³¹ *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Group*, 241 Phil. 187, 200 (1988).

³² *Philippine National Bank v. Quimpo*, 242 Phil. 324, 328 (1988).

bank is precluded from asserting the forgery if the drawee bank can prove his failure to exercise ordinary care and if this negligence substantially contributed to the forgery or the perpetration of the fraud.

In *Gempesaw v. Court of Appeals*,³³ Natividad Gempesaw, a businesswoman, completely placed her trust in her bookkeeper. Gempesaw allowed her bookkeeper to prepare the checks payable to her suppliers. She signed the checks without verifying their amounts and their corresponding invoices. Despite receiving her banks statements, Gempesaw never verified the correctness of the returned checks nor confirmed if the payees actually received payment. This went on for over two years, allowing her bookkeeper to forge the indorsements of over 82 checks.

Gempesaw failed to examine her records with reasonable diligence before signing the checks and after receiving her bank statements. Her gross negligence allowed her bookkeeper to benefit from the subsequent forgeries for over two years.

Gempesaw's negligence precluded her from asserting the forgery. Nevertheless, we adjudged the drawee Bank liable to share evenly in her loss for its failure to exercise utmost diligence, which amounted to a breach of its contractual obligations to the depositor.³⁴

In *Associated Bank v. Court of Appeals*,³⁵ the province of Tarlac (*the depositor*) released 30 checks payable to the order of a government hospital to a *retired* administrative officer/cashier of the hospital. The retired officer forged the hospital's indorsement and deposited the checks into his personal account. This took place for over three years resulting in the accumulated loss of ₱203,300.00. We found the province of Tarlac grossly negligent, to the point of substantially contributing to its loss.³⁶

Nevertheless, we apportioned the loss evenly between the province of Tarlac and the drawee bank because of the bank's failure to pay according to the terms of the check. It violated its duty to charge the customer's account only for properly payable items.³⁷

Kho's negligence does not even come close to approximating those of Gempesaw or of the province of Tarlac. While his act of giving Medel a photocopy of the check may have allowed the latter to create a duplicate, this cannot possibly excuse Land Bank's failure to recognize that the check itself – *not just the signatures* – is a fake instrument. More importantly, Land Bank itself furnished Kho the photocopy without objecting to the latter's intention of giving it to Medel.

³³ *Supra* note 29.

³⁴ *Id.* at 697.

³⁵ G.R. No. 107382, January 31, 1996, 252 SCRA 620.

³⁶ *Id.* at 634.

³⁷ *Id.* at 631.

Kho's failure to inform Land Bank that the deal did not push through as of January 2, 2006, *does not justify Land Bank's confirmation and clearing of a fake check bearing the forged signatures of its own officers.* Whether or not the deal pushed through, *the check remained in Kho's possession.* He was entitled to a reasonable expectation that the bank would not release any funds corresponding to the check.

Lastly, we agree with the RTC's finding that neither Flores nor Cruz is liable to Kho in their private capacities. Their refusal to honor Kho's demands was made in good faith pursuant to the directives of the Land Bank's management.

As a pillar of economic development, the banking industry is impressed with public interest. The general public relies on banks' sworn duty to serve with utmost diligence. Public trust and confidence in banks is critical to a healthy, stable, and well-functioning economy. Let this serve as a reminder for banks to always act with the highest degree of diligence and the most meticulous attention to detail.

WHEREFORE, we PARTLY GRANT the petitions. The Court of Appeals' August 30, 2012 decision and February 14, 2013 resolution in **CA-G.R. CV No. 93881** are **SET ASIDE**. The Regional Trial Court's April 30, 2009 decision in **Civil Case No. Q-06-57154** is **REVERSED**.

Petitioner Land Bank of the Philippines is **ORDERED**:

(1) to **PAY** Narciso Kho the sum of **TWENTY FIVE MILLION PESOS (P25,000,000.00)**, plus interest at the legal rate reckoned from the filing of the complaint; and

(2) to **ALLOW** Narciso Kho to withdraw his remaining funds from **Savings Account No. 0681-0681-80**.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice

(On Official Leave)
JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
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.


ANTONIO T. CARPIO
Acting Chief Justice