



Mercantile Law – Negotiable Instruments Law

Case Digest



**UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW**

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I. NEGOTIABLE INSTRUMENTS LAW

A. Forms and Interpretation

1. Requisites of Negotiability

- Equitable Banking Corporation vs. the Honorable Intermediate Appellate Court and The Edward J. Nell Co., G.R. No. 74451, May 25, 1988

EQUITABLE BANKING CORPORATION, *Petitioner*, -versus- THE HONORABLE INTERMEDIATE APPELLATE COURT and THE EDWARD J. NELL CO, *Respondent*
G.R. No. 74451, May 25, 1988, SECOND DIVISION, MELENCIO-HERRERA, J.

Reading on the wordings of the check, the payee thereon ceased to be indicated with reasonable certainty in contravention of Section 8 of the Negotiable Instruments Law. As worded, it could be accepted as deposit to the account of the party named after the symbols "A/C," or payable to the Bank as trustee, or as an agent, for Casville Enterprises, Inc., with the latter being the ultimate beneficiary.

FACTS

In 1975, Liberato Casals, majority stockholder of Casville Enterprises, went to buy two garrett skidders (bulldozers) from Edward J. Nell Company amounting to P970,000.00. To pay the bulldozers, Casals agreed to open a letter of credit with the Equitable Banking Corporation. Pursuant to this, Nell Company shipped one of the bulldozers to Casville. Meanwile, Casville advised Nell Company that in order for the letter of credit to be opened, Casville needs to deposit P427,300.00 with Equitable Bank, and that since Casville is a little short, it requested **Nell Company** to pay the deposit in the meantime.

Nell Company agreed and so it eventually sent a check in the amount of P427,300.00. The check read: Pay to the EQUITABLE BANKING CORPORATION Order of A/C OF CASVILLE ENTERPRISES, INC.

Nell Company sent the check to Casville so that it would be the latter who could send it to Equitable Bank to cover the deposit in lieu of the letter of credit. Casals received the check, he went to Equitable Bank, and the teller received the check. The teller, instead of applying the amount as deposit in lieu of the letter of credit, credited the check to Casville's account with Equitable Bank. Casals later withdrew all the P427,300.00 and appropriated it to himself.

ISSUE

Whether or not Equitable Bank is liable to cover for the loss.

RULING

NO. The subject check was equivocal and patently ambiguous. Reading on the wordings of the check, the payee thereon ceased to be indicated with reasonable certainty in contravention of Section 8 of the Negotiable Instruments Law. As worded, it could be accepted as deposit to the account of the party named after the symbols "A/C," or payable to the Bank as trustee, or as an agent, for Casville Enterprises, Inc., with the latter being the ultimate beneficiary. That ambiguity is to be taken contra

proferentem that is, construed against Nell Company who caused the ambiguity and could have also avoided it by the exercise of a little more care. Thus, Article 1377 of the Civil Code, provides: Art. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

- Juanita Salas vs. Hon. Court of Appeals and First Finance & Leasing Corporation, G.R. No. 76788 January 22, 1990

JUANITA SALAS, *Petitioner*, -versus- HON. COURT OF APPEALS and FIRST FINANCE & LEASING CORPORATION, *Respondents*.

G.R. No. 76788, January 22, 1990, THIRD DIVISION, FERNAN, C.J.

A careful study of the questioned promissory note shows that it is a negotiable instrument, having complied with the requisites under the law as follows: [a] it is in writing and signed by the maker Juanita Salas; [b] it contains an unconditional promise to pay the amount of P58,138.20; [c] it is payable at a fixed or determinable future time which is "P1,614.95 monthly for 36 months due and payable on the 21 st day of each month starting March 21, 1980 thru and inclusive of Feb. 21, 1983;" [d] it is payable to Violago Motor Sales Corporation, or order and as such, [e] the drawee is named or indicated with certainty.

FACTS

Petitioner Salas bought a motor vehicle from the Violago Motor Sales Corporation (VMSC) evidenced by a promissory note. VMSC subsequently endorsed to Private Respondent Filinvest Finance & Leasing Corporation which financed the purchase.

Petitioner defaulted in her installments allegedly due to a discrepancy in the engine and chassis numbers of the vehicle delivered to her and those indicated in the sales invoice, certificate of registration and deed of chattel mortgage, which fact she discovered when the vehicle figured in an accident.

This failure to pay prompted **private respondent to initiate a case for the collection of a sum of money against petitioner** before the Regional Trial Court of Pampanga.

The trial court decided against Salas. Both petitioner and private respondent appealed the aforesaid decision to the Court of Appeals.

Imputing fraud, bad faith and misrepresentation against VMS for having delivered a different vehicle to petitioner, the Salas prayed for a reversal of the trial court's decision so that she may be absolved from the obligation under the contract.

The Court of Appeals rendered its assailed decision.

Petitioner's motion for reconsideration was denied; hence, the present recourse.

ISSUES

Whether or not the promissory note in question is a negotiable instrument which will bar completely all the available defenses of the petitioner against private respondent.

RULING

YES. A careful study of the questioned promissory note shows that it is a negotiable instrument, having complied with the requisites under the law as follows: [a] it is in writing and signed by the maker Juanita Salas; [b] it contains an unconditional promise to pay the amount of P58,138.20; [c] it is payable at a fixed or determinable future time which is "P1,614.95 monthly for 36 months due and payable on the 21 st day of each month starting March 21, 1980 thru and inclusive of Feb. 21, 1983;" [d] it is payable to Violago Motor Sales Corporation, or order and as such, [e] the drawee is named or indicated with certainty.

In the case at bar, however, the situation is different. Indubitably, the basis of private respondent's claim against petitioner is a promissory note which bears all the earmarks of negotiability.

It was negotiated by indorsement in writing on the instrument itself payable to the Order of Filinvest Finance and Leasing Corporation and it is an indorsement of the entire instrument.

Under the circumstances, there appears to be no question that Filinvest is a holder in due course, having taken the instrument under the following conditions: [a] it is complete and regular upon its face; [b] it became the holder thereof before it was overdue, and without notice that it had previously been dishonored; [c] it took the same in good faith and for value; and [d] when it was negotiated to Filinvest, the latter had no notice of any infirmity in the instrument or defect in the title of VMS Corporation.

Accordingly, Respondent Corporation holds the instrument free from any defect of 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. **This being so, petitioner cannot set up against respondent the defense of nullity of the contract of sale between her and VMS.**

- Metropolitan Bank & Trust Company vs. Court Of Appeals, Golden Savings & Loan Association, Inc., Lucia Castillo, Magno Castillo and Gloria Castillo, G.R. No. 88866, February 18, 1991

**METROPOLITAN BANK & TRUST COMPANY, *Petitioner*, -versus-
COURT OF APPEALS, GOLDEN SAVINGS & LOAN ASSOCIATION, INC., LUCIA CASTILLO, MAGNO
CASTILLO and GLORIA CASTILLO, *Respondents*.**
G.R. No. 88866, February 18, 1991, FIRST DIVISION, CRUZ, J.

But an order to promise to pay out of particular fund is not unconditional. The indication of Fund 501 as the source of the payment to be made on the treasury warrants makes the order or promise to pay "not conditional" and the warrants themselves non-negotiable.

FACTS

Eduardo Gomez opened an account with **Golden Savings** and deposited 38 **treasury warrants**. All warrants were subsequently indorsed by Gloria Castillo as Cashier of Golden Savings and deposited to its Savings account in **Metrobank branch in Calapan**, Mindoro. They were sent for clearance. Meanwhile, Gomez is not allowed to withdraw from his account. Later, however, “exasperated” over Gloria’s repeated inquiries and also as an accommodation for a “valued” client, Metrobank decided to allow Golden Savings to withdraw from proceeds of the warrants. In turn, Golden Savings subsequently allowed Gomez to make withdrawals from his own account. **Metrobank informed Golden Savings that 32 of the warrants had been dishonored by the Bureau of Treasury and demanded the refund by Golden Savings of the amount it had previously withdrawn, to make up the deficit in its account.** The demand was rejected. Metrobank then sued Golden Savings.

ISSUE

1. Whether or not Metrobank can demand refund against Golden Savings.
2. Whether or not treasury warrants are negotiable instruments

RULING

1. **NO.** Metrobank is negligent in giving Golden Savings the impression that the treasury warrants had been cleared and that, consequently, it was safe to allow Gomez to withdraw. Without such assurance, Golden Savings would not have allowed the withdrawals. Indeed, Golden Savings might even have incurred liability for its refusal to return the money that all appearances belonged to the depositor, who could therefore withdraw it anytime and for any reason he saw fit.

It was, in fact, to secure the clearance of the treasury warrants that Golden Savings deposited them to its account with Metrobank. Golden Savings had no clearing facilities of its own. It relied on Metrobank to determine the validity of the warrants through its own services. The proceeds of the warrants were withheld from Gomez until Metrobank allowed Golden Savings itself to withdraw them from its own deposit.

Metrobank cannot contend that by indorsing the warrants in general, Golden Savings assumed that they were genuine and in all respects what they purport to be,” in accordance with Sec. 66 of NIL. The simple reason that NIL is not applicable to non negotiable instruments, treasury warrants.

2. **NO. The treasury warrants are not negotiable instruments. Clearly stamped on their face is the word: non negotiable.”** Moreover, and this is of equal significance, it is indicated that they are payable from a particular fund, to wit, Fund 501. An instrument to be negotiable instrument must contain an unconditional promise or orders to pay a sum certain in money. As provided by Sec 3 of NIL an unqualified order or promise to pay is unconditional though coupled with: 1st, an indication of a particular fund out of which reimbursement is to be made or a particular account to be debited with the amount; or 2nd, a statement of the transaction which give rise to the instrument. **But an order to promise to pay out of particular fund is not unconditional. The indication of Fund 501 as the source of the payment to be made on the treasury warrants makes the order or promise to pay “not conditional” and the warrants themselves non-**

negotiable. There should be no question that the exception on Section 3 of NIL is applicable in the case at bar.

- Caltex (Philippines), Inc. vs. Court of Appeals and Security Bank and Trust Company, G.R. No. 97753, August 10, 1992

CALTEX (PHILIPPINES), INC., *Petitioner* –versus- COURT OF APPEALS and SECURITY BANK AND TRUST COMPANY, *Respondents*.

G.R. No. 97753, August 10, 1992, SECOND DIVISION, REGALADO, J.

The documents provide that the amounts deposited shall be repayable to the depositor. And according to the document, the depositor is the "bearer." The documents do not say that the depositor is Angel de la Cruz and that the amounts deposited are repayable specifically to him. Rather, the amounts are to be repayable to the bearer of the documents or, for that matter, whosoever may be the bearer at the time of presentment.

On this score, the accepted rule is that the negotiability or non-negotiability of an instrument is determined from the writing, that is, from the face of the instrument itself.

FACTS

The defendant, Security Bank and Trust Company, a **commercial banking institution issued 280 Certificate of time deposit (CTDs) in favor of Angel Dela Cruz** who deposited with the Security Bank the total amount of P1.2 Million. **Angel delivered the CTDs to Caltex, in connection with his purchased of fuel products from the latter.**

Subsequently, Angel informed the bank that he lost all the CTDs, and thus executed an affidavit of loss to facilitate the issuance of the replacement CTDs. Angel negotiated and obtained a loan from Security Bank in the amount of P875, 000 and executed a notarized Deed of Assignment of Time Deposit.

When Caltex presented said CTDs for verification with the bank and formally informed the bank of its decision to pre-terminate the same, the bank rejected Caltex' claim and demand as Caltex failed to furnish copies of certain requested documents. In 1983, dela Cruz' loan matured and the bank set-off and applied the time deposits as payment for the loan. Caltex filed a complaint which was dismissed on the ground that the subject certificates of deposit are non-negotiable.

ISSUE

Whether or not the subject CTDs are negotiable.

RULING

YES. The CTDs in question are negotiable instruments as they meet the requirements of the law for negotiability as provided for in Section 1 of the Negotiable Instruments Law. The documents provide that the amounts deposited shall be repayable to the depositor. And according to the document, the depositor is the "bearer." The documents do not say that the depositor is Angel de la Cruz and that the amounts deposited are repayable specifically to him. Rather, the amounts are to be repayable to the bearer of the documents or, for that matter, whosoever may be the bearer at the time of

presentment. However, petitioner cannot recover on the CTDs. Although the CTDs are bearer instruments, a valid negotiation thereof for the true purpose and agreement between it and dela Cruz, as ultimately ascertained, requires both delivery and indorsement. In this case, there was no indorsement as the CTDs were delivered not as payment but only as a security for dela Cruz' fuel purchases.

Under the Negotiable Instruments Law, an instrument is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder thereof, and a holder may be the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof. In the present case, however, there was no negotiation in the sense of a transfer of the legal title to the CTDs in favor of petitioner in which situation, for obvious reasons, mere delivery of the bearer CTDs would have sufficed. Here, the delivery thereof only as security for the purchases of Angel de la Cruz (and we even disregard the fact that the amount involved was not disclosed) could at the most constitute petitioner only as a holder for value by reason of his lien. Accordingly, a negotiation for such purpose cannot be effected by mere delivery of the instrument since, necessarily, the terms thereof and the subsequent disposition of such security, in the event of non-payment of the principal obligation, must be contractually provided for.

Section 1 Act No. 2031, otherwise known as the Negotiable Instruments Law, enumerates the requisites for an instrument to become negotiable, viz:

- (a) It must be in writing and signed by the maker or drawer;
- (b) Must contain an unconditional promise or order to pay a sum certain in money;
- (c) Must be payable on demand, or at a fixed or determinable future time;
- (d) Must be payable to order or to bearer; and
- (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

On this score, the accepted rule is that the negotiability or non-negotiability of an instrument is determined from the writing, that is, from the face of the instrument itself. In the construction of a bill or note, the intention of the parties is to control, if it can be legally ascertained. While the writing may be read in the light of surrounding circumstances in order to more perfectly understand the intent and meaning of the parties, yet as they have constituted the writing to be the only outward and visible expression of their meaning, no other words are to be added to it or substituted in its stead. The duty of the court in such case is to ascertain, not what the parties may have secretly intended as contradistinguished from what their words express, but what is the meaning of the words they have used. What the parties meant must be determined by what they said

- Traders Royal Bank vs. Court of Appeals, Filriters Guaranty Assurance Corporation and Central Bank of the Philippines, G.R. No. 93397, March 3, 1997

TRADERS ROYAL BANK, *Petitioner* –versus- COURT OF APPEALS, FILRITERS GUARANTY ASSURANCE CORPORATION and CENTRAL BANK of the PHILIPPINES, *Respondents*.

G.R. No. 93397, March 3, 1997, SECOND DIVISION, TORRES, JR., J

CBCI is not a negotiable instrument in the absence of words of negotiability within the meaning of the negotiable instruments law. A reading of the subject CBCI indicates that the same is payable to FILRITERS GUARANTY ASSURANCE CORPORATION, and to no one else, thus, discounting the petitioner's submission that the same is a negotiable instrument, and that it is a holder in due course of the certificate.

The language of negotiability which characterize a negotiable paper as a credit instrument is its freedom to circulate as a substitute for money. Hence, freedom of negotiability is the touchstone relating to the protection of holders in due course, and the freedom of negotiability is the foundation for the protection which the law throws around a holder in due course (11 Am. Jur. 2d, 32). This freedom in negotiability is totally absent in a certificate indebtedness as it merely to pay a sum of money to a specified person or entity for a period of time.

FACTS

On November 27, 1979, Filriters Guaranty Assurance Corporation (Filriters) executed a "Detached Assignment" whereby **Filriters, as registered owner, sold, transferred, assigned and delivered unto Philippine Underwriters Finance Corporation (Philfinance) all its rights and title to Central Bank Certificates of Indebtedness (CBCI) of P500k** and having an aggregate value of P3.5M. The Detached Assignment contains an express authorization executed by the transferor intended to complete the assignment through the registration of the transfer in the name of PhilFinance.

On February 4, 1981, Traders Royal Bank (Traders) entered into a Repurchase Agreement w/ PhilFinance whereby in consideration of the sum of P500,000.00, **PhilFinance sold, transferred and delivered a CBCI** w/ a face value of P500K which CBCI was among those previously acquired by PhilFinance from Filriters.

PhilFinance failed to repurchase on the agreed date of maturity, April 27, 1981, when the checks it issued in favor of petitioner were dishonored for insufficient funds. **Philfinance thus transferred and assigned all its rights and title in the CBCI to Traders.**

Respondent failed and refused to register the transfer as requested, and continues to do so notwithstanding petitioner's valid and just title over the same and despite repeated demands in writing. Traders prayed for the registration by the Central Bank of the subject CBCI in its name.

ISSUE

Whether or not the CBCI is a negotiable instrument

RULING

NO. CBCI is not a negotiable instrument in the absence of words of negotiability within the meaning of the negotiable instruments law. A reading of the subject CBCI indicates that the

same is payable to FILRITERS GUARANTY ASSURANCE CORPORATION, and to no one else, thus, discounting the petitioner's submission that the same is a negotiable instrument, and that it is a holder in due course of the certificate.

The language of negotiability which characterize a negotiable paper as a credit instrument is its freedom to circulate as a substitute for money. Hence, freedom of negotiability is the touchstone relating to the protection of holders in due course, and the freedom of negotiability is the foundation for the protection which the law throws around a holder in due course (11 Am. Jur. 2d, 32). This freedom in negotiability is totally absent in a certificate indebtedness as it merely to pay a sum of money to a specified person or entity for a period of time.

A certificate of indebtedness is a certificate for the creation and maintenance of a permanent improvement revolving fund, similar to a "bond" which is properly understood as acknowledgment of an obligation to pay a fixed sum of money. It is usually used for the purpose of long term loans.

Philfinance merely borrowed the CBCI from Filriters, a sister corporation and it lacks any consideration. Thus, its assignment is a complete nullity.

The transfer from Filriters to Philfinance did not conform to the "Rules and Regulations Governing Central Bank Certificates of Indebtedness" (Central Bank Circular No. 769, series of 1980) under which the note was issued. Section 3 thereof provides that any assignment of registered certificates shall not be valid unless made . . . by the registered owner thereof in person or by his representative duly authorized in writing. Alfredo O. Banaria, who signed the deed of assignment purportedly for and on behalf of Filriters, did not have the necessary written authorization from the BOD.

Traders, being a commercial bank, cannot feign ignorance of Central Bank Circular 769, and its requirements. The fact that Filfinance owns majority shares in Filriters is not by itself a ground to disregard the independent corporate status of Filriters. Traders knew that Philfinance is not registered owner of the CBCI and the fact that a non-owner was disposing of the registered CBCI owned by another entity was a good reason for petitioner to verify or inquire as to the title of Philfinance to dispose to the CBCI.

- Philippine National Bank vs. Erlando T. Rodriguez and Norma Rodriguez, G.R. No. 170325, September 26, 2008

PHILIPPINE NATIONAL BANK, *Petitioner*, -versus- ERLANDO T. RODRIGUEZ and NORMA RODRIGUEZ, *Respondents*.

G.R. No. 170325, September 26, 2008, THIRD DIVISION, REYES, R.T., J.

In the case under review, the Rodriguez checks were payable to specified payees. It is unrefuted that the 69 checks were payable to specific persons. Likewise, it is uncontroverted that the payees were actual, existing, and living persons who were members of PEMSLA that had a rediscounting arrangement with spouses Rodriguez.

FACTS

Respondents Spouses Rodriguez maintained savings and demand/checking accounts as well as demand deposits (Checkings/Current Account) with petitioner PNB. They are also engaged in the

informal lending business of discounting arrangement with Philnabank Employees Savings and Loan Association (**PEMSLA**), **an association of PNB**. PEMS LA regularly granted loans to its member and Spouses would rediscount the apostate checks issued to members whenever the association was short of funds. At the same time, the spouses would replace the postdated checks with their own checks issued in the same name.

PEMSLA's policy would not approve applications with outstanding debts and in order to subvert this they created a scheme to obtain additional loans in the names of unknowing members without their knowledge and consent. **PEMSLA checks were then given to spouses for rediscounting and were carried out by forging the endorsement of the named payees in the checks.**

Rodriguez checks were deposited directly to PEMS LA without any endorsement from the named payees. Petitioner found out about the fraudulent acts, and took measures by closing the current account of PEMS LA. **Since PEMS LA checks were dishonored and returned, the respondents incurred losses from the rediscounting transactions. Spouses filed a civil complaint against PEMS LA and PNB, the court rendering judgment in favor of respondent.**

ISSUE

Whether or not the disputed checks were payable to bearer.

RULING

NO. As a rule, when the payee is fictitious or not intended to be the true recipient of the proceeds, the check is considered as a bearer instrument. A check is "a bill of exchange drawn on a bank payable on demand." It is either an order or a bearer instrument.

The distinction between bearer and order instruments lies in their manner of negotiation. Under Section 30 of the NIL, an order instrument requires an indorsement from the payee or holder before it may be validly negotiated. A bearer instrument, on the other hand, does not require an indorsement to be validly negotiated. It is negotiable by mere delivery.

A check that is payable to a specified payee is an order instrument. However, under Section 9(c) of the NIL, a check payable to a specified payee may nevertheless be considered as a bearer instrument if it is payable to the order of a fictitious or non-existing person, and such fact is known to the person making it so payable. Thus, checks issued to "Prinsipe Abante" or "Si Malakas at si Maganda," who are well-known characters in Philippine mythology, are bearer instruments because the named payees are fictitious and non-existent.

A review of US jurisprudence yields that an actual, existing, and living payee may also be "fictitious" if the maker of the check did not intend for the payee to in fact receive the proceeds of the check. This usually occurs when the maker places a name of an existing payee on the check for convenience or to cover up an illegal activity. Thus, a check made expressly payable to a non-fictitious and existing person is not necessarily an order instrument. If the payee is not the intended recipient of the proceeds of the check, the payee is considered a "fictitious" payee and the check is a bearer instrument.

In a fictitious-payee situation, the drawee bank is absolved from liability and the drawer bears the loss. When faced with a check payable to a fictitious payee, it is treated as a bearer instrument that can be negotiated by delivery. The underlying theory is that one cannot expect a fictitious payee to negotiate the check by placing his indorsement thereon. And since the maker knew this limitation, he must have intended for the instrument to be negotiated by mere delivery. Thus, in case of controversy, the drawer of the check will bear the loss. This rule is justified for otherwise, it will be most convenient for the maker who desires to escape payment of the check to always deny the validity of the indorsement. This despite the fact that the fictitious payee was purposely named without any intention that the payee should receive the proceeds of the check.

In the case under review, the Rodriguez checks were payable to specified payees. It is unrefuted that the 69 checks were payable to specific persons. Likewise, it is uncontroverted that the payees were actual, existing, and living persons who were members of PEMSLA that had a rediscounting arrangement with spouses Rodriguez.

What remains to be determined is if the payees, though existing persons, were "fictitious" in its broader context.

For the fictitious-payee rule to be available as a defense, PNB must show that the makers did not intend for the named payees to be part of the transaction involving the checks. At most, the bank's thesis shows that the payees did not have knowledge of the existence of the checks. This lack of knowledge on the part of the payees, however, was not tantamount to a lack of intention on the part of respondents-spouses that the payees would not receive the checks' proceeds. Considering that respondents-spouses were transacting with PEMSLA and not the individual payees, it is understandable that they relied on the information given by the officers of PEMSLA that the payees would be receiving the checks.

Verily, the subject checks are presumed order instruments. This is because, as found by both lower courts, PNB failed to present sufficient evidence to defeat the claim of respondents-spouses that the named payees were the intended recipients of the checks' proceeds. The bank failed to satisfy a requisite condition of a fictitious-payee situation – that the maker of the check intended for the payee to have no interest in the transaction.

Because of a failure to show that the payees were "fictitious" in its broader sense, the fictitious-payee rule does not apply. Thus, the checks are to be deemed payable to order. Consequently, the drawee bank bears the loss.

- People of the Philippines vs. Gilbert Reyes Wagas, G.R. No. 157943, September 4, 2013

**PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, -versus-
GILBERT REYES WAGAS, Accused-Appellant.**
G.R. No. 157943, September 4, 2013, FIRST DIVISION, BERSAMIN, J.

The check delivered to Ligaray was made payable to cash. Under the Negotiable Instruments Law, this type of check was payable to the bearer and could be negotiated by mere delivery without the need of an indorsement. This rendered it highly probable that Wagas had issued the check not to Ligaray, but to somebody else like Cañada, his brother-in-law, who then negotiated it to Ligaray.

FACTS

Gilbert Wagas ordered from Alberto Ligaray 200 bags of rice over the telephone. As payment, **Wagas issued a check in favor of Ligaray**. When the check was deposited, it was dishonored due to insufficiency of funds. Ligaray notified Wagas and demanded payment from the latter but Wagas refused and failed to pay the amount, Ligaray filed a complaint for *estafa* before the RTC. RTC convicted Wagas of *estafa* because the RTC believed that the prosecution had proved **that it was Wagas who issued the dishonored check, despite the fact that Ligaray had never met Wagas in person. Hence, this direct appeal.**

ISSUE

Whether or not Wagas is guilty beyond reasonable doubt

RULING

NO. The Supreme Court acquitted Wagas. The check delivered to Ligaray was made payable to cash. **Under the Negotiable Instruments Law, this type of check was payable to the bearer and could be negotiated by mere delivery without the need of an indorsement. This rendered it highly probable that Wagas had issued the check not to Ligaray, but to somebody else like Cañada, his brother-in-law, who then negotiated it to Ligaray.** Relevantly, Ligaray confirmed that he did not himself see or meet Wagas at the time of the transaction and thereafter, and expressly stated that the person who signed for and received the stocks of rice was Cañada.

It bears stressing that the accused, to be guilty of *estafa* as charged, must have used the check in order to defraud the complainant. What the law punishes is the fraud or deceit, not the mere issuance of the worthless check. Wagas could not be held guilty of *estafa* simply because he had issued the check used to defraud Ligaray. The proof of guilt must still clearly show that it had been Wagas as the drawer who had defrauded Ligaray by means of the check.

2. Kinds of Negotiable Instruments

- Philippine Education Co., inc. vs. Mauricio A. Soriano, et al., G.R. No. L-22405, June 30, 1971

PHILIPPINE EDUCATION CO., INC., Plaintiff-appellant –versus- MAURICIO A. SORIANO, ET AL., Defendant-appellees.

G.R. No. L-22405, June 30, 1971, EN BANC, DIZON, J.

The weight of authority in the United States is that postal money orders are not negotiable instruments, the reason behind this rule being that, in establishing and operating a postal money order system, the government is not engaging in commercial transactions but merely exercises a governmental power for the public benefit.

It is to be noted in this connection that some of the restrictions imposed upon money orders by postal laws and regulations are inconsistent with the character of negotiable instruments.

FACTS

Enrique Montinola sought to purchase from Manila Post Office ten money orders of 200php each payable to E. P. Montinola. Montinola offered to pay with the money orders with a private check. Private check were not generally accepted in payment of money orders, the teller advised him to see the Chief of the Money Order Division, but instead of doing so, Montinola managed to leave the building without the knowledge of the teller.

Upon the disappearance of the unpaid money order, a message was sent to instruct all banks that it must not pay for the money order stolen upon presentment. The Bank of America received a copy of said notice. However, The Bank of America received the money order and deposited it to the appellant's account upon clearance. Mauricio Soriano, Chief of the Money Order Division notified the Bank of America that the money order deposited had been found to have been irregularly issued and that, the amount it represented had been deducted from the bank's clearing account. The Bank of America debited appellant's account with the same account and give notice by mean of debit memo.

ISSUE

Whether or not the postal money order in question is a negotiable instrument.

RULING

NO. It is not disputed that our postal statutes were patterned after statutes in force in the United States. For this reason, ours are generally construed in accordance with the construction given in the United States to their own postal statutes, in the absence of any special reason justifying a departure from this policy or practice. The weight of authority in the United States is that postal money orders are not negotiable instruments (*Bolognesi vs. U.S.* 189 Fed. 395; *U.S. vs. Stock Drawers National Bank*, 30 Fed. 912), the reason behind this rule being that, in establishing and operating a postal money order system, the government is not engaging in commercial transactions but merely exercises a governmental power for the public benefit.

It is to be noted in this connection that some of the restrictions imposed upon money orders by postal laws and regulations are inconsistent with the character of negotiable instruments. For instance, such laws and regulations usually provide for not more than one endorsement; payment of money orders may be withheld under a variety of circumstances (49 C.J. 1153).

Of particular application to the postal money order in question are the conditions laid down in the letter of the Director of Posts of October 26, 1948 (Exhibit 3) to the Bank of America for the redemption of postal money orders received by it from its depositors. Among others, the condition is imposed that "in cases of adverse claim, the money order or money orders involved will be returned to you (the bank) and the, corresponding amount will have to be refunded to the Postmaster, Manila, who reserves the right to deduct the value thereof from any amount due you if such step is deemed necessary." The conditions thus imposed in order to enable the bank to continue enjoying the facilities theretofore enjoyed by its depositors, were accepted by the Bank of America. The latter is therefore bound by them. That it is so is clearly referred from the fact that, upon receiving advice that the amount represented by the money order in question had been deducted from its clearing account with the Manila Post Office, it did not file any protest against such action.

- Firestone Tire & Rubber Company of the Philippines vs. Court of Appeals and Luzon Development Bank, G.R. No. 113236, March 5, 2001

FIRESTONE TIRE & RUBBER COMPANY OF THE PHILIPPINES, *Petitioner* –versus COURT OF APPEALS and LUZON DEVELOPMENT BANK, Respondents.
G.R. No. 113236, March 5, 2001, SECOND DIVISION, QUISUMBING, J.

The essence of negotiability which characterizes a negotiable paper as a credit instrument lies in its freedom to circulate freely as a substitute for money. The withdrawal slips in question lacked this character.

FACTS

In January 1978, **Firestone Tire & Rubber Company of the Philippines** (“Firestone” for brevity) entered into a “Franchised Dealership Agreement” with Fojas-Arca Enterprises Company (“Fojas-Arca”), **whereby the latter has the privilege to purchase on credit and sell Firestone’s products.** From January 14, 1978 to May 15, 1978, Fojas-Arca purchased on credit Firestone products with a total amount of P4,896,000. In payment for the said purchases., **Fojas-Arca delivered six special withdrawal slips drawn upon Luzon Development Bank. Consequently, these were deposited by Firestone in its current account with Citibank.** Since, all of them were honored and paid, Firestone believed and relied on the fact that succeeding withdrawal slips drawn upon the said bank would be equally funded. Relying on such confidence and belief, Firestone extended to Fojas-Arca other purchases on credit of its products.

However, on December 14, 1978, **Firestone was informed by Citibank that special withdrawal slips No. 42127 dated June 15, 1978 for P1,198,092.80 and No. 42129 dated August 15, 1978 for P880,000 were dishonored and not paid for the reason ‘NO ARRANGEMENT’.** As a consequence, Citibank debited Firestone’s account for the total sum of P2,078,092.80. As a result, Firestone averred that it suffered pecuniary losses directly attributable to the gross negligence of Luzon Development Bank.

Firestone filed a complaint against the said bank when it refused to pay damages. However, the trial court dismissed the said complaint while the Court of Appeals denied plaintiff’s appeal and affirmed the trial court’s judgment. Hence, this petition for review on certiorari.

ISSUES

1. WON withdrawal slips are negotiable.
2. WON Luzon Development Bank should be held liable for damages suffered by Firestone due to its allegedly belated notice of non-payment of the subject withdrawal slips.

RULING

1. No. **The essence of negotiability which characterizes a negotiable paper as a credit instrument lies in its freedom to circulate freely as a substitute for money. The withdrawal slips in question lacked this character.**

2. No. Since the withdrawal slips in question were non-negotiable, the rules governing the giving of immediate notice of dishonor of instruments do not apply. **Thus, respondent bank was under no obligation to give immediate notice that it would not make payment on the subject withdrawal slips. Citibank should have known that withdrawal slips were not negotiable instruments. It could not expect these slips to be treated as checks by other entities. Payment or notice of dishonor from respondent bank could not be expected immediately, in contrast to the situation involving checks.**

In the case at bar, it appears that Citibank, with the knowledge that respondent Luzon Development Bank, had honored and paid the previous withdrawal slips, automatically credited petitioner's current account with the amount of the subject withdrawal slips, then merely waited for the same to be honored and paid by respondent bank. It presumed that the withdrawal slips were "good."

It bears stressing that Citibank could not have missed the non-negotiable nature of the withdrawal slips. The essence of negotiability which characterizes a negotiable paper as a credit instrument lies in its freedom to circulate freely as a substitute for money.¹² The withdrawal slips in question lacked this character.

A bank is under obligation to treat the accounts of its depositors with meticulous care, whether such account consists only of a few hundred pesos or of millions of pesos.¹³ The fact that the other withdrawal slips were honored and paid by respondent bank was no license for Citibank to presume that subsequent slips would be honored and paid immediately. By doing so, it failed in its fiduciary duty to treat the accounts of its clients with the highest degree of care.

- Prudential Bank v. Commissioner of Internal Revenue (CIR), G.R. No. 180390, July 27, 2011

PRUDENTIAL BANK, *Petitioner*, -versus- COMMISSIONER OF INTERNAL REVENUE, *Respondent*
G.R. No. 180390, July 27, 2011, FIRST DIVISION, DEL CASTILLO, J

A document to be considered a certificate of deposit need not be in a specific form. Thus, a passbook issued by a bank qualifies as a certificate of deposit drawing interest because it is considered a written acknowledgement by a bank that it has accepted a deposit of a sum of money from a depositor.

FACTS:

Petitioner Prudential Bank received from the respondent Commissioner of Internal Revenue (CIR) a Final Assessment Notice No. ST-DST-95-0042-99 and a Demand Letter for deficiency Documentary Stamp Tax (DST) for the taxable year 1995 on its Repurchase Agreement with the *Bangko Sentral ng Pilipinas* [BSP], Purchase of Treasury Bills from the BSP, and on its Savings Account Plus [SAP] product.

Petitioner protested the assessment on the ground that the documents subject matter of the assessment are not subject to DST. However, respondent denied the protest. Thus, petitioner filed a Petition for Review before the CTA. It held that insofar as the Savings Account is concerned, the assessment on petitioner's deficiency documentary stamp taxes is AFFIRMED. The deficiency

assessment on petitioner's repurchases agreements and treasury bills are hereby CANCELLED and SET ASIDE.

The Court of Tax Appeals En Banc affirmed the ruling of its First Division that petitioner's SAP is a certificate of deposit bearing interest subject to DST under Section 180 of the old National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 7660.

Petitioner contends that its SAP is not subject to DST because it is not included in the list of documents under Section 180 of the old NIRC, as amended. Petitioner insists that unlike a time deposit, its SAP is evidenced by a passbook and not by a deposit certificate. In addition, its SAP is payable on demand and not on a fixed determinable future. To support its position, petitioner relies on the legislative intent of the law prior to Republic Act (RA) No. 9243 and the historical background of the taxability of certificates of deposit. *Assuming arguendo* that SAP is subject to DST, the CTA *En Banc* nonetheless erred in denying petitioner's withdrawal of its petition considering that it has paid under the IVAP the amount of P5,084,272.50, which it claims is 100% of the basic tax of the original assessment of the Bureau of Internal Revenue (BIR). Petitioner insists that the payment it made should be deemed substantial compliance considering the refusal of the respondent to issue the letter of termination and authority to cancel assessment.

Respondent maintains that petitioner's SAP is subject to DST conformably with the ruling in *International Exchange Bank v. Commissioner of Internal Revenue*. It also contends that the CTA *En Banc* correctly denied the motion to withdraw since petitioner failed to comply with the requirements of the IVAP. Mere payment of the deficiency DST cannot be deemed substantial compliance as tax amnesty, like tax exemption, must be construed strictly against the taxpayer.

ISSUES

Whether or not petitioner's SAP is subject to DST

RULING

YES. Petitioner's Saving Account Plus is subject to Documentary Stamp Tax.

In *China Banking Corporation v. Commissioner of Internal Revenue*, it was held that the Savings Plus Deposit Account, which has the following features: (1) *Amount deposited is withdrawable anytime;* (2) *The same is evidenced by a passbook;* (3) *The rate of interest offered is the prevailing market rate, provided the depositor would maintain his minimum balance in thirty (30) days at the minimum, and should he withdraw before the period, his deposit would earn the regular savings deposit rate;* is subject to DST as it is essentially the same as the Special/Super Savings Deposit Account in *Philippine Banking Corporation v. Commissioner of Internal Revenue*, and the Savings Account-Fixed Savings Deposit in *International Exchange Bank v. Commissioner of Internal Revenue*, which are considered certificates of deposit drawing interests.

Similarly, in this case, although the money deposited in a SAP is payable anytime, the withdrawal of the money before the expiration of 30 days results in the reduction of the interest rate. In the same way, a time deposit withdrawn before its maturity results to a lower interest rate and payment of bank charges or penalties.

The fact that the SAP is evidenced by a passbook likewise cannot remove its coverage from Section 180 of the old NIRC, as amended. **A document to be considered a certificate of deposit need not be in a specific form. Thus, a passbook issued by a bank qualifies as a certificate of deposit drawing interest because it is considered a written acknowledgement by a bank that it has accepted a deposit of a sum of money from a depositor.**

B. Completion and Delivery

- Ting Ting Pua vs. Spouses Benito Lo Bun Tiong and Caroline Siok Ching Teng, G.R. No. 198660, October 23, 2013

TING TING PUA, *Petitioner*, -versus- SPOUSES BENITO LO BUN TIONG and CAROLINE SIOK CHING TENG, *Respondents*.

G.R. No. 198660, October 23, 2013, THIRD DIVISION, VELASCO, JR., *J.*

A check "constitutes an evidence of indebtedness" and is a veritable "proof of an obligation."

When an instrument is no longer in the possession of the person who signed it and it is complete in its terms "a valid and intentional delivery by him is presumed until the contrary is proved."

FACTS

The controversy arose from a Complaint for a Sum of Money filed by petitioner **Pua against respondent-spouses Benito Lo Bun Tiong Benito) and Caroline Siok Ching Teng Caroline).** During trial, petitioner Pua clarified that the **PhP 8,500,000 check was given by respondents to pay the loans they obtained from her under a compounded interest agreement on various dates in 1988. In all, respondents issued 17 checks for a total amount of PhP 1,975,000. These checks were dishonored upon presentment to the drawee bank.**

As a result of the dishonor, petitioner demanded payment. Respondents, however, pleaded for more time because of their financial difficulties. Petitioner Pua obliged and simply reminded the respondents of their indebtedness from time to time. Sometime in September 1996, when their financial situation turned better, respondents called and asked petitioner Pua for the computation of their loan obligations. Hence, petitioner handed them a computation dated which showed that, at the agreed 2% compounded interest rate per month, the amount of the loan payable to petitioner rose to PhP 13,218,544.20. On receiving the computation, the respondents asked petitioner to reduce their indebtedness to PhP 8,500,000.¹³ Wanting to get paid the soonest possible time, petitioner Pua agreed to the lowered amount.

Respondents then delivered to petitioner Asiitrust Check bearing the reduced amount of PhP 8,500,000. In turn, respondents demanded the return of the previously dishonored checks. Petitioner, however, refused to return the bad checks and advised respondents that she will do so only after the encashment.

Like the 17 checks, however, it was also dishonored when it was presented by petitioner to the drawee bank. Hence, as claimed by petitioner, she decided to file a complaint to collect the money owed her by respondents.

Respondents categorically denied obtaining a loan from petitioner. Respondent Caroline, in particular, narrated that, in August 1995, she and petitioner's sister, Lilian, forged a partnership that operated a mahjong business. In March 1996, however, respondent Caroline and Lilian had a serious disagreement that resulted in the dissolution of their partnership and the cessation of their business. **In the haste of the dissolution and as a result of their bitter separation, respondent Caroline alleged that she forgot about the five (5) pre-signed checks she left with Lilian.**

After trial, the RTC issued its Decision dated January 31, 2006 in favor of petitioner. In holding thus, the RTC stated that the possession by petitioner of the checks signed by Caroline, under the Negotiable Instruments Law, raises the presumption that they were issued and delivered for a valuable consideration. On the other hand, the court a quo discounted the testimony for the defense completely denying respondents' loan obligation to Pua.

ISSUE

Whether or not Respondents should be held liable.

RULING

YES. In overruling the trial court, the CA opined that petitioner "failed to establish [the] alleged indebtedness in writing. Consequently, so the CA held, respondents were under no obligation to prove their defense. Clearly, the CA had discounted the value of the only hard pieces of evidence extant in the present case—the checks issued by respondent Caroline in 1988 and 1996 that were in the possession of, and presented in court by, petitioner.

In *Pacheco v. Court of Appeals*, this Court has expressly recognized that **a check "constitutes an evidence of indebtedness" and is a veritable "proof of an obligation."** Hence, it can be used "in lieu of and for the same purpose as a promissory note." In fact, in the seminal case of *Lozano v. Martinez*, We pointed out that a check functions more than a promissory note since it not only contains an undertaking to pay an amount of money but is an "order addressed to a bank and partakes of a representation that the drawer has funds on deposit against which the check is drawn, sufficient to ensure payment upon its presentation to the bank." This Court reiterated this rule in the relatively recent *Lim v. Mindanao Wines and Liquour Galleria* stating that "a check, the entries of which are in writing, could prove a loan transaction." This very same principle underpins Section 24 of the Negotiable Instruments Law (NIL):

Section 24. Presumption of consideration. – Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party for value.

Consequently, the 17 original checks, completed and delivered to petitioner, are sufficient by themselves to prove the existence of the loan obligation of the respondents to petitioner. Note that respondent Caroline had not denied the genuineness of these checks. Instead, respondents argue that they were given to various other persons and petitioner had simply collected all these 17 checks from them in order to damage respondents' reputation. This account is not only incredible; it runs counter to human experience, as enshrined in **Sec. 16 of the NIL which provides that when**

an instrument is no longer in the possession of the person who signed it and it is complete in its terms "a valid and intentional delivery by him is presumed until the contrary is proved."

- BENJAMIN EVANGELISTA v. SCREENEX, INC., represented by ALEXANDER G. YU, G.R. No. 211564, November 20, 2017, First Division, SERENO, C.J.:

BENJAMIN EVANGELISTA, *Petitioner*, -versus- SCREENEX INC., REPRESENTED BY ALEXANDER G, YU, *Respondent*.

G.R. No. 211564, November 20, 2017, FIRST DIVISION, SERENO, C.J.

Barring any extrajudicial or judicial demand that may toll the 10-year prescription period and any evidence which may indicate any other time when the obligation to pay is due, the cause of action based on a check is reckoned from the date indicated on the check.

If the check is undated, however, as in the present petition, the cause of action is reckoned from the date of the issuance of the check. This is so because regardless of the omission of the date indicated on the check, Section 17 of the Negotiable Instruments Law instructs that an undated check is presumed dated as of the time of its issuance.

While the space for the date on a check may also be filled, it must, however, be filled up strictly in accordance with the authority given and within a reasonable time. Assuming that Yu had authority to insert the dates in the checks, the fact that he did so after a lapse of more than 10 years from their issuance certainly cannot qualify as changes made within a reasonable time.

FACTS

Sometime in 1991, Evangelista obtained a loan from respondent Screenex, Inc. which issued two (2) checks to Evangelista. The first check was UCPB Check No. 275345 for ₱1,000,000 and the other one is China Banking Corporation Check No. BDO 8159110 for ₱500,000. There were also vouchers of Screenex that were signed by the accused evidencing that he received the 2 checks in acceptance of the loan granted to him.

As security for the payment of the loan, Evangelista gave two (2) open-dated checks: UCPB Check Nos. 616656 and 616657, both pay to the order of Screenex, Inc. represented by ALEXANDER G. YU.

Before the checks were deposited, there was a personal demand from the family for Evangelista to settle the loan and likewise a demand letter sent by the family lawyer and on 25 August 2005, petitioner was charged with violation of Batas Pambansa (BP) Blg. 22 in Criminal Case Nos. 343615-16 filed with the Metropolitan Trial Court (MeTC) of Makati for willfully, unlawfully and feloniously making out, drawing and issuing to SCREENEX INC. the checks described. He was nonetheless acquitted from the criminal charges.

ISSUE

With petitioner's acquittal of the criminal charges for violation of BP 22, the only issue to be resolved in this petition is whether or not petitioner is still liable for the total amount of ₱1.5 million indicated in the two checks.

RULING

NO. By definition, a check is a bill of exchange drawn on a bank 'payable on demand. It is a negotiable instrument - written and signed by a drawer containing an unconditional order to pay on demand a sum certain in money. It is an undertaking that the drawer will pay the amount indicated thereon. Section 119 of the NIL, however, states that a negotiable instrument like a check may be discharged by any other act which will discharge a simple contract for the payment of money, to wit:

Sec. 119. Instrument; how discharged. - A negotiable instrument is discharged:

(a) By payment in due course by or on behalf of the principal debtor;

(b) By payment in due course by the party accommodated, where the instrument is made or accepted for his accommodation;

(c) By the intentional cancellation thereof by the holder;

(d) By any other act which will discharge a simple contract for the payment of money;

(e) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

A check therefore is subject to prescription of actions upon a written contract. Article 1144 of the Civil Code provides:

Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

1) Upon a written contract;

2) Upon an obligation created by law;

3) Upon a judgment.

Barring any extrajudicial or judicial demand that may toll the 10-year prescription period and any evidence which may indicate any other time when the obligation to pay is due, the cause of action based on a check is reckoned from the date indicated on the check.

If the check is undated, however, as in the present petition, the cause of action is reckoned from the date of the issuance of the check. This is so because regardless of the omission of the date indicated on the check, Section 17 of the Negotiable Instruments Law instructs that an undated check is presumed dated as of the time of its issuance.

While the space for the date on a check may also be filled, it must, however, be filled up strictly in accordance with the authority given and within a reasonable time. Assuming that Yu had authority to insert the dates in the checks, the fact that he did so after a lapse of more than 10 years from their issuance certainly cannot qualify as changes made within a reasonable time.

Given the foregoing, the cause of action on the checks has become stale, hence, time-barred. No written extrajudicial or judicial demand was shown to have been made within 10 years which could have tolled the period. Prescription has indeed set in.

1. Insertion of Date

2. Completion of Blanks

- Quirino Gonzales Logging Concessionaire, Quirino Gonzales and Eufemia Gonzales vs. Court of Appeals and Republic Planters Bank, G. R. No. 126568, April 30, 2003

QUIRINO GONZALES LOGGING CONCESSIONAIRE, SPOUSES QUIRINO GONZALES AND EUFEMA GONZALES, *Petitioners*, -versus- THE COURT OF APPEALS AND REPUBLIC PLANTERS BANK, *Respondents*.

G.R.NO. 126568, April 30, 2003, THIRD DIVISION, CARPIO MORALES, J.

The promissory notes, however, appear to be negotiable as they meet the requirements of Section 1 of the Negotiable Instruments Law. Such being the case, the notes are prima facie deemed to have been issued for consideration. It bears noting that no sufficient evidence was adduced by petitioners to show otherwise.

In any case, it is no defense that the promissory notes were signed in blank as Section 14 of the Negotiable Instruments Law concedes the prima facie authority of the person in possession of negotiable instruments, such as the notes herein, to fill in the blanks.

FACTS

In the expansion of its logging business, petitioner QGLC through its general manager Quirino Gonzales, **applied for credit accommodations with respondent Republic Bank**, later as Republic Planters Bank. The Bank approved QGLC's application on December 1962, granting credit line of P900,000.00 broken into overdraft line of P500,000.00 which was later reduced to P 450,000.00 and a letter of Credit (LC) line of P 400,000.00.

Pursuant to the grant, spouses Gonzales executed 10 documents:

- 2 denominated "Agreement for Credit in Current Account
- 4 denominated "Application and Agreement for Commercial Letter of Credit", and
- 4 denominated "Trust Receipt"

Petitioners' obligations under the credit line were secured by a real estate mortgage on 4 parcels of land: 2 in Manila, 1 in Quezon City, and 1 in Manila.

In separate transactions, petitioners, to secure certain advances from the Bank in connection with QGLC's exportation of logs, executed a promissory note in 1964 in favor of the Bank. They were to execute 3 more promissory notes in 1967.

In 1965, petitioners having long defaulted in the payment of their obligations under the credit line, **the Bank foreclosed the mortgage and bought the properties covered thereby, it being the highest bidder in the auction sale held in the same year. Ownership over the properties was later consolidated in the Bank on account of which new titles thereto were issued to it.**

In 1977, alleging non payment of the balance of QGLC's obligation after the proceeds of the foreclosure sale were applied thereto and non payment of the promissory notes despite repeated demand, the Bank filed a complaint for "sum of money" against petitioners before the RTC of Manila.

Among the causes of action raised are anchored on the **promissory notes issued by petitioners allegedly to secure certain advances from the Bank in connection with the exportation of logs as reflected above**. The notes were payable 30 days after date and provided for the solidary liability of petitioners as well as attorney's fees at ten percent of the total amount due in the event of their non-payment at maturity.

Petitioners seek to evade liability under the Banks by claiming that petitioners Quirino and Eufemia Gonzales signed the promissory notes in blank; that they had not received the value of said notes, and that the credit line thereon was unnecessary in view of their money deposits.

The genuineness and due execution of the notes had, however, been deemed admitted by petitioners, they having failed to deny the same under oath. Their claim that they signed the notes in blank does not thus lie.

ISSUE

Whether or not the promissory notes are valid for want of consideration?

RULING

YES. Petitioners admission of the genuineness and due execution of the promissory notes notwithstanding, they raise want of consideration thereof. **The promissory notes, however, appear to be negotiable as they meet the requirements of Section 1 of the Negotiable Instruments Law. Such being the case, the notes are prima facie deemed to have been issued for consideration. It bears noting that no sufficient evidence was adduced by petitioners to show otherwise.**

In any case, it is no defense that the promissory notes were signed in blank as Section 14 of the Negotiable Instruments Law concedes the prima facie authority of the person in possession of negotiable instruments, such as the notes herein, to fill in the blanks.

- *Patrimonio vs. Gutierrez*, 724 SCRA 636

ALVIN PATRIMONIO, *Petitioner*, -versus- NAPOLEON GUTIERREZ and OCTAVIO MARASIGAN III, *Respondents*.

G.R. No. 187769, June 4, 2014, SECOND DIVISION, BRION, J.

In order however that one who is not a holder in due course can enforce the instrument against a party prior to the instrument's completion, two requisites must exist: (1) that the blank must be filled strictly in accordance with the authority given; and (2) it must be filled up within a reasonable time. If it was proven that the instrument had not been filled up strictly in accordance with the authority given and within a reasonable time, the maker can set this up as a personal defense and avoid liability. However, if the holder is a holder in due course, there is a conclusive presumption that authority to fill it up had been given and that the same was not in excess of authority.

FACTS

Petitioner, then a professional basketball player and respondent, a well-known sports columnist, entered into a business venture under the name of Slam Dunk Corporation, a **production related to basketball**.

In the course of their business, the petitioner pre-signed several checks to answer for the expenses of Slam Dunk. Although signed, these checks had no payee's name, date or amount. The blank checks were entrusted to Gutierrez with the specific instruction not to fill them out without previous notification to and approval by the petitioner. Without the petitioner's knowledge and consent, Gutierrez secured a loan from Marasigan on the excuse that the petitioner needed the money for the construction of his house.

Gutierrez delivered to Marasigan one of the blank checks which petitioner pre-signed.

Marasigan deposited the check but it was dishonored for the reason "ACCOUNT CLOSED." Marasigan sought recovery from Gutierrez and petitioner to no avail. Consequently, he filed a criminal case for violation of B.P. 22 against the petitioner.

The petitioner filed before the RTC a Complaint for Declaration of Nullity of Loan and Recovery of Damages against Gutierrez and co-respondent Marasigan. He completely denied authorizing the loan or the check's negotiation, and asserted that he was not privy to the parties' loan agreement.

The RTC ruled in favor of Marasigan, and ordered the petitioner to pay Marasigan the face value of the check with a right to claim reimbursement from Gutierrez.

The CA affirmed the RTC ruling.

After the CA denied the subsequent motion for reconsideration, the petitioner filed the present petition.

ISSUES

1. Whether the petitioner can be made liable under the check he signed.
2. Whether Marasigan is a holder in due course.

RULING:

1. NO.

The answer is supplied by the applicable statutory provision found in Section 14 of the Negotiable Instruments Law (NIL).

This provision applies to an incomplete but delivered instrument. Under this rule, if the maker or drawer delivers a pre-signed blank paper to another person for the purpose of converting it into a negotiable instrument, that person is deemed to have prima facie authority to fill it up. It merely requires that the instrument be in the possession of a person

other than the drawer or maker and from such possession, together with the fact that the instrument is wanting in a material particular, the law presumes agency to fill up the blanks.

In order however that one who is not a holder in due course can enforce the instrument against a party prior to the instrument's completion, two requisites must exist: (1) that the blank must be filled strictly in accordance with the authority given; and (2) it must be filled up within a reasonable time. If it was proven that the instrument had not been filled up strictly in accordance with the authority given and within a reasonable time, the maker can set this up as a personal defense and avoid liability. However, if the holder is a holder in due course, there is a conclusive presumption that authority to fill it up had been given and that the same was not in excess of authority.

In the present case, the petitioner contends that there is no legal basis to hold him liable both under the contract and loan and under the check because: first, the subject check was not completely filled out strictly under the authority he has given and second, Marasigan was not a holder in due course.

2. Marasigan is Not a Holder in Due Course

The NIL defines a holder in due course, thus:

Sec. 52 — 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 in the instrument or defect in the title of the person negotiating it.*

In the present case, Marasigan's knowledge that the petitioner is not a party or a privy to the contract of loan, and correspondingly had no obligation or liability to him, renders him dishonest, hence, in bad faith.

As correctly noted by the CA, his inaction and failure to verify, despite knowledge of that the petitioner was not a party to the loan, may be construed as gross negligence amounting to bad faith

4. Incomplete and Undelivered Instruments

- Ching vs. Nicdao, G.R. No. 141181, April 27, 2007

SAMSON CHING, *Petitioner*, -versus-. CLARITA NICDAO and HON. COURT. CLARITA NICDAO and HON. COURT OF APPEALS OF APPEALS, *Respondents*.
G.R. No. 141181, April 27, 2007, THIRD DIVISION, CALLEJO, SR.,

As previously shown, at the time check no. 002524 was stolen, the said check was blank in its material aspect (as to the name of payee, the amount of the check, and the date of the check), but was already pre-signed by petitioner. In fact, complainant Ching himself admitted that check no. 002524 in his possession was a blank check.

*Moreover, since it has been established that check no. 002524 had been missing since 1995, it is abundantly clear that said check was never delivered to complainant Ching. **Check no. 002524 was an incomplete and undelivered instrument when it was stolen and ended up in the hands of complainant Ching.***

Inasmuch as check no. 002524 was incomplete and undelivered in the hands of complainant Ching, he did not acquire any right or interest therein and cannot, therefore, assert any cause of action founded on said stolen check.

FACTS

On October 21, 1997, petitioner Ching, a Chinese national, instituted criminal complaints for eleven (11) counts of violation of BP 22 against respondent Nicdao. After due trial, the **MCTC rendered judgment convicting respondent Nicdao of the eleven (11) counts of violation of BP 22 which was affirmed in toto by the RTC. However, on appeal, Nicdao was acquitted of the crimes charged, hence, this petition.**

Respondent Nicdao contends that the CA did not commit serious misapprehension of facts when it found that the P20,000,000.00 check was a stolen check and that she never made any transaction with petitioner Ching. These findings are allegedly supported by the evidence on record which consisted of the respective testimonies of the defense witnesses to the effect that: respondent Nicdao had the practice of leaving pre-signed checks placed inside an unsecured cash box in the Vignette Superstore. It is pointed out by respondent Nicdao that her testimony (that the P20,000,000.00 check was the same one that she lost sometime in 1995) was corroborated by the respective testimonies of her employees. Another indication that it was stolen was the fact that among all the checks which ended up in the hands of petitioner Ching and Nuguid, only the P20,000,000.00 check was fully typewritten; the rest were invariably handwritten as to the amounts, payee and date.

Considering that it was stolen, respondent Nicdao argues, the P20,000,000.00 check was an incomplete and undelivered instrument in the hands of petitioner Ching and he did not acquire any right or interest therein. Further, he cannot assert any cause of action founded on the said stolen check. Accordingly, petitioner Ching's attempt to collect payment on the said check through the instant petition must fail.

ISSUE

Whether or not, notwithstanding respondent Nicdao's acquittal of the eleven (11) counts of violation of BP 22, she should be held liable to pay petitioner Ching the amounts of the dishonored checks in the aggregate sum of P20,950,000.00.

RULING

NO. The acquittal of respondent Nicdao likewise effectively extinguished her civil liability.

First, the CA's acquittal of respondent Nicdao is not merely based on reasonable doubt. **Rather, it is based on the finding that she did not commit the act penalized under BP 22. In particular, the CA found that the P20,000,000.00 check was a stolen check which was never issued nor delivered by respondent Nicdao to petitioner Ching. As such, according to the CA, petitioner Ching "did not acquire any right or interest over Check No. 002524 and cannot assert any cause of action founded on said check," and that respondent Nicdao "has no obligation to make good the stolen check and cannot, therefore, be held liable for violation of B.P. Blg. 22."**

Second, while petitioner Ching attempts to show that respondent Nicdao's liability did not arise from or was not based upon the criminal act of which she was acquitted (ex delicto) but from her loan obligations to him (ex contractu), however, petitioner Ching miserably failed to prove by preponderant evidence the existence of these unpaid loan obligations. Significantly, it can be inferred from the following findings of the CA in its decision acquitting respondent Nicdao that the act or omission from which her civil liability may arise did not exist. On the P20,000,000.00 check, the CA found as follows:

True, indeed, the missing pre-signed and undated check no. 002524 surfaced in the possession of complainant Ching who, in cahoots with his paramour Emma Nuguid, filled up the blank check with his name as payee and in the fantastic amount of P20,000,000.00, dated it October 6, 1997, and presented it to the bank on October 7, 1997, along with the other checks, for payment. Therefore, the inference that the check was stolen is anchored on competent circumstantial evidence. The fact already established is that Emma Nuguid, previous owner of the store, had access to said store. Moreover, the possession of a thing that was stolen, absent a credible reason, as in this case, gives rise to the presumption that the person in possession of the stolen article is presumed to be guilty of taking the stolen article (People v. Zafra, 237 SCRA 664).

As previously shown, at the time check no. 002524 was stolen, the said check was blank in its material aspect (as to the name of payee, the amount of the check, and the date of the check), but was already pre-signed by petitioner. In fact, complainant Ching himself admitted that check no. 002524 in his possession was a blank check.

Moreover, since it has been established that check no. 002524 had been missing since 1995, it is abundantly clear that said check was never delivered to complainant Ching. **Check no. 002524 was an incomplete and undelivered instrument when it was stolen and ended up in the hands of complainant Ching.**

Inasmuch as check no. 002524 was incomplete and undelivered in the hands of complainant Ching, he did not acquire any right or interest therein and cannot, therefore, assert any cause of action founded on said stolen check.

It goes without saying that since complainant Ching did not acquire any right or interest over check no. 002524 and cannot assert any cause of action founded on said check, petitioner has no obligation to make good the stolen check and cannot, therefore, be held liable for violation of B.P. Blg. 22.

5. Complete but Undelivered Instruments

- Loreto D. de la Victoria, as City Fiscal of Mandaue City and in his personal capacity as garnishee vs. Hon. Jose P. Burgos, Presiding Judge, RTC, Br. XVII, Cebu City, and Raul H. Sesbreño, G.R. No. 111190, June 27, 1995

LORETO D. DE LA VICTORIA, as City Fiscal of Mandaue City and in his personal capacity as garnishee, *Petitioners*, -versus- HON. JOSE P. BURGOS, Presiding Judge, RTC, Br. XVII, Cebu City, and RAUL H. SESBREÑO, *Respondents*.

G.R. No. 111190 June 27, 1995, FIRST DIVISION, BELLOSILLO, J.

Under Sec. 16 of the Negotiable Instruments Law, every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As ordinarily understood, delivery means the transfer of the possession of the instrument by the maker or drawer with intent to transfer title to the payee and recognize him as the holder thereof.

Inasmuch as said checks had not yet been delivered to Mabanto, Jr., they did not belong to him and still had the character of public funds.

FACTS

Assistant City Fiscal Bienvenido N. Mabanto was ordered to pay herein private respondent **Raul Sesbreño P11,000.00 as damages**. A notice of garnishment was served on herein petitioner Loreto D. de la Victoria as City Fiscal of Mandaue City where Mabanto was detailed. **Petitioner was directed not to disburse, transfer, release or convey to any other person except to the deputy sheriff concerned the salary checks or other checks, monies, or cash due or belonging to Mabanto, Jr., under penalty of law.** Later, he was directed to submit his report showing the amount of the garnished salaries. **He moved to quash the notice of garnishment claiming that he was not in possession of any money, funds, credit, property or anything of value belonging to Mabanto, Jr., except his salary and RATA checks, but that said checks were not yet properties of Mabanto, Jr., until delivered to him. He further claimed that, as such, they were still public funds which could not be subject to garnishment.**

ISSUE

Whether or not a check still in the hands of the maker or its duly authorized representative is owned by the payee before physical delivery to the latter.

RULING

NO. As Assistant City Fiscal, the source of the salary of Mabanto, Jr., is public funds. He receives his compensation in the form of checks from the DOJ through petitioner as City Fiscal of Mandaue City and head of office. **Under Sec. 16 of the Negotiable Instruments Law, every contract on a negotiable instrument is incomplete and revocable until *delivery* of the instrument for the purpose of giving effect thereto. As ordinarily understood, delivery means the transfer of the possession of the instrument by the maker or drawer *with intent to transfer title to the payee and recognize him as the holder thereof.***

Inasmuch as said checks had not yet been delivered to Mabanto, Jr., they *did not belong to him* and still had the character of public funds. The salary check of a government officer or

employee does not belong to him before it is physically delivered to him. Until that time the check belongs to the government. Accordingly, before there is actual delivery of the check, the payee has no power over it; he cannot assign it without the consent of the Government. Being public fund, the checks may not be garnished to satisfy the judgment in consideration of public policy.

- San Miguel Corporation vs. Puzon, Jr., G.R. No. 167567, 22 September 2010

SAN MIGUEL CORPORATION, *Petitioner*, -versus- BARTOLOME PUZON, JR., *Respondent*.
G.R. No. 167567, September 22, 2010, FIRST DIVISION, DEL CASTILLO, J.

Sec 12 of the Negotiable Instruments Law provides: Sec. 12. Antedated and postdated – The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery

Note however that delivery as the term is used in the aforementioned provision means that the party delivering did so for the purpose of giving effect thereto. Otherwise, it cannot be said that there has been delivery of the negotiable instrument. Once there is delivery, the person to whom the instrument is delivered gets the title to the instrument completely and irrevocably.

The evidence of SMC failed to establish that the check was given in payment of the obligation of Puzon.

FACTS

Bartolome V. Puzon, Jr., was a dealer of beer products of petitioner San Miguel Corporation (SMC). **Puzon purchased SMC products on credit. To ensure payment and as a business practice, SMC required him to issue postdated checks** equivalent to the value of the products purchased on credit before the same were released to him. **Said checks were returned to Puzon when the transactions covered by these checks were paid or settled in full.**

On December 2000, Puzon purchased products on credit and issued two BPI checks. to cover the said transaction. Check Nos. 27904 (for P309,500.00) and 27903 (for P11,510,827.00)

On January 23, 2001, Puzon, together with his accountant, visited the SMC Sales Office to reconcile his account with SMC. During that visit Puzon allegedly requested to see BPI Check No. 17657. However, when he got hold of BPI Check No. 27903 which was attached to a bond paper together with BPI Check No. 17657 he allegedly immediately left the office with his accountant, bringing the checks with them.

SMC sent a letter to Puzon demanding the return of the said checks. Puzon ignored the demand hence SMC filed a complaint against him for theft with the City Prosecutor's Office of Parañaque City.

Issue

Whether or not the delivery of the checks to SMC vested the latter ownership over the checks (so as to make Puzon liable for theft, an element of which consists the taking of personal property *belonging to another*)

RULING

NO, the delivery of the checks did not make SMC the owner thereof. The check was not given as payment, there being no intent to give effect to the instrument, then ownership of the check was not transferred to SMC.

Sec 12 of the Negotiable Instruments Law provides: Sec. 12. Antedated and postdated – The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. **The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery**

Note however that delivery as the term is used in the aforementioned provision means that the party delivering did so for the purpose of giving effect thereto. Otherwise, it cannot be said that there has been delivery of the negotiable instrument. Once there is delivery, the person to whom the instrument is delivered gets the title to the instrument completely and irrevocably.

The evidence of SMC failed to establish that the check was given in payment of the obligation of Puzon. There was no provisional receipt or official receipt issued for the amount of the check. What was issued was a receipt for the *document*, a "POSTDATED CHECK SLIP." The petitioner's demand letter sent to respondent states "As per company policies on receivables, all issuances are to be covered by post-dated checks. However, you have deviated from this policy by forcibly taking away the check you have issued to us to cover the December issuance." **Notably, the term "payment" was not used instead the terms "covered" and "cover" were used.** The affidavit of petitioner's witness further reveals that the term "cover" was not meant to be used interchangeably with "payment." In said affidavit paragraph 8 clearly shows that partial payment is expected to be made by the return of beer empties, and not by the deposit or encashment of the check.

When taken in conjunction with the counter-affidavit of Puzon – where he states that "As the [liquid beer] contents are paid for, SMC return[s] to me the corresponding PDCs or request[s] me to replace them with whatever was the unpaid balance." – **it becomes clear that both parties did not intend for the check to *pay* for the beer products. The evidence proves that the check was accepted, not as payment, but in accordance with the long-standing policy of SMC to require its dealers to issue postdated checks to cover its receivables. The check was only meant to *cover* the transaction and in the meantime Puzon was to pay for the transaction by some other means other than the check. This being so, title to the check did not transfer to SMC; it remained with Puzon.** The second element of the felony of theft was therefore not established. Petitioner was not able to show that Puzon took a check that *belonged to another*.

- Equitable Banking Corporation vs. Special Steel Products, June 13, 2012

EQUITABLE BANKING CORPORATION, INC. *Petitioner*, -versus- SPECIAL STEEL PRODUCTS, and AUGUSTO L. PARDO, *Respondents*.

G.R. No. 175350, June 13, 2012, FIRST DIVISION, Del Castillo, J.

The checks that Interco issued in favor of SSPI were all crossed, made payable to SSPI's order, and contained the notation "account payee only." This creates a reasonable expectation that the payee alone would receive the proceeds of the checks and that diversion of the checks would be averted. This

expectation arises from the accepted banking practice that crossed checks are intended for deposit in the named payee's account only and no other.

At the very least, the nature of crossed checks should place a bank on notice that it should exercise more caution or expend more than a cursory inquiry, to ascertain whether the payee on the check has authorized the holder to deposit the same in a different account.

Facts

SSPI, a private domestic corporation selling steel products, sold welding electrodes to Interco, as evidenced by sales invoices. It is due on March 16 1991 (for the first sales invoice and May 11 1991 for others). It also provided that Interco would pay interest at the rate of 36% per annum in case of delay. **As payment for the products, Interco issued 3 checks payable to the order of SSPI. Each check was crossed with the notation "account payee only" and was drawn against Equitable.** The records do not identify the signatory for the checks, or explain how Uy came in possession of these checks. He claimed that he had good title thereto. **He demanded the deposits in his personal accounts in Equitable. The bank did so relying on Uy's status as a valued client and as son-in-law of Interco's majority stockholder.**

SSPI reminded Interco of the unpaid welding electrodes, explaining that its immediate need for payment as it was experiencing some financial crisis of its own. **It replied that it has already issued 3 checks payable to SSPI and drawn against Equitable, which was denied by SSPI. Later on it was discovered that it was Uy, not SSPI, who received the proceeds of 3 checks. Interco finally paid the value of 3 checks to SSPI plus portion of accrued interests. Interco refused to pay entire accrued interest on the ground that it was not responsible for the delay. Hence, Pardo filed a complaint for damages against Uy and Equitable Bank' alleging that the 3 crossed checks, all payable to order of SSPI could be deposited and encashed by SSPI only.**

ISSUES

Whether or not SSPI has a cause of action against Equitable.

RULING

YES. The checks that Interco issued in favor of SSPI were all crossed, made payable to SSPI's order, and contained the notation "account payee only." This creates a reasonable expectation that the payee alone would receive the proceeds of the checks and that diversion of the checks would be averted. This expectation arises from the accepted banking practice that crossed checks are intended for deposit in the named payee's account only and no other.

At the very least, the nature of crossed checks should place a bank on notice that it should exercise more caution or expend more than a cursory inquiry, to ascertain whether the payee on the check has authorized the holder to deposit the same in a different account. It is well to remember that "[t]he banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society. Whether as mere passive entities for the safe-keeping and saving of money or as active instruments of business and commerce, banks have attained an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, above all, trust and confidence. In this connection, it is important that banks should

guard against injury attributable to negligence or bad faith on its part. As repeatedly emphasized, since the banking business is impressed with public interest, the trust and confidence of the public in it is of paramount importance. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are required of it."

Equitable did not observe the required degree of diligence expected of a banking institution under the existing factual circumstances.

The fact that a person, other than the named payee of the crossed check, was presenting it for deposit should have put the bank on guard. It should have verified if the payee (SSPI) authorized the holder (Uy) to present the same in its behalf, or indorsed it to him. Considering however, that the named payee does not have an account with Equitable (hence, the latter has no specimen signature of SSPI by which to judge the genuineness of its indorsement to Uy), the bank knowingly assumed the risk of relying solely on Uy's word that he had a good title to the three checks. Such misplaced reliance on empty words is tantamount to gross negligence, which is the "absence of or failure to exercise even slight care or diligence, or the entire absence of care, evincing a thoughtless disregard of consequences without exerting any effort to avoid them."

Equitable contends that its knowledge that Uy is the son-in-law of the majority stockholder of the drawer, Interco, made it safe to assume that the drawer authorized Uy to countermand the order appearing on the check. In other words, Equitable theorizes that Interco reconsidered its original order and decided to give the proceeds of the checks to Uy. That the bank arrived at this conclusion without anything on the face of the checks to support it is demonstrative of its lack of caution. It is troubling that Equitable proceeded with the transaction based only on its knowledge that Uy had close relations with Interco. The bank did not even make inquiries with the drawer, Interco (whom the bank considered a "valued client"), to verify Uy's representation. The banking system is placed in peril when bankers act out of blind faith and empty promises, without requiring proof of the assertions and without making the appropriate inquiries. Had it only exercised due diligence, Equitable could have saved both Interco and the named payee, SSPI, from the trouble that the bank's mislaid trust wrought for them.

- Development Bank of Rizal vs. Sim Wei, 245 SCRA 374

DEVELOPMENT BANK OF RIZAL, *Plaintiff-petitioner*, -versus- SIMA WEI and/or LEE KIAN HUAT, MARY CHENG UY, SAMSON TUNG, ASIAN INDUSTRIAL PLASTIC CORPORATION and PRODUCERS BANK OF THE PHILIPPINES, *Defendants-respondents*.

G.R. No. 85419, March 9, 1993, SECOND DIVISION, CAMPOS, JR., J.

The allegations of the petitioner in the original complaint show that the two (2) China Bank checks, numbered 384934 and 384935, were not delivered to the payee, the petitioner herein. Without the delivery of said checks to petitioner-payee, the former did not acquire any right or interest therein and cannot therefore assert any cause of action, founded on said checks, whether against the drawer Sima Wei or against the Producers Bank or any of the other respondents.

FACTS

Sima Wei executed a promissory note in consideration of a loan secured from DBR in the amount of P1,820,000. Sima Wei was able to pay partially for the loan but failed to pay the balance. Subsequently, **Sima Wei issued two crossed checks payable to DBR. These two checks however were not delivered to the DBR but instead came into the possession of respondent Lee Kian Huat, who deposited the checks without DBR's indorsement to the account of respondent Plastic Corporation with Producers Bank.** In spite of the fact that the checks were crossed and payable to DBR and bore no indorsement of the latter, **the Branch Manager of Producers Bank authorized the acceptance of the checks for deposit and credited them to the account of said Plastic Corporation.**

DBR instituted actions against Sima Wei and the other defendants. The trial court dismissed the case stating that DBR had no cause of action against the defendants-respondents.

CA affirmed this decision.

ISSUE

Whether petitioner Bank has a cause of action against any or all of the defendants-respondents.

RULING

NO. A negotiable instrument, of which a check is, is not only a written evidence of a contract right but is also a species of property. Just as a deed to a piece of land must be delivered in order to convey title to the grantee, so must a negotiable instrument be delivered to the payee in order to evidence its existence as a binding contract. Section 16 of the Negotiable Instruments Law, which governs checks, provides in part:

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto.

Thus, the payee of a negotiable instrument acquires no interest with respect thereto until its delivery to him. Delivery of an instrument means transfer of possession, actual or constructive, from one person to another. Without the initial delivery of the instrument from the drawer to the payee, there can be no liability on the instrument. Moreover, such delivery must be intended to give effect to the instrument.

The allegations of the petitioner in the original complaint show that the two (2) China Bank checks, numbered 384934 and 384935, were not delivered to the payee, the petitioner herein. Without the delivery of said checks to petitioner-payee, the former did not acquire any right or interest therein and cannot therefore assert any cause of action, founded on said checks, whether against the drawer Sima Wei or against the Producers Bank or any of the other respondents.

Since petitioner Bank never received the checks on which it based its action against said respondents, it never owned them (the checks) nor did it acquire any interest therein. Thus, anything which the respondents may have done with respect to said checks could not have prejudiced petitioner Bank.

It had no right or interest in the checks which could have been violated by said respondents. Petitioner Bank has therefore no cause of action against said respondents, in the alternative or otherwise. If at all, it is Sima Wei, the drawer, who would have a cause of action against her co-respondents, if the allegations in the complaint are found to be true.

- ASIA BREWERY, INC. AND CHARLIE S. GO v. EQUITABLE PCI BANK (NOW BANCO DE ORO – EPCI, INC.), G. R. No. 190432, April 25, 2017, First Division, SERENO, C.J.

ASIA BREWERY, INC. and CHARLIE S. GO, Petitioners, -versus- EQUITABLE PCI BANK (now BANCO DE ORO-EPCI, INC.), Respondents

G.R. No. 190432, April 25, 2017, FIRST DIVISION, SERENO, CJ,

It was erroneous for the RTC to have concluded that there was no delivery, just because the checks did not reach the payee. It failed to consider Section 16 of the Negotiable Instruments Law, which envisions instances when instruments may have been delivered to a person other than the payee.

FACTS

Within the period of September 1996 to July 1998, 10 checks and 16 demand drafts (collectively, "instruments") were issued in the name of Charlie Go. It was alleged that none of the above checks and demand drafts reached payee, Charlie S. Go. Instead, all of the above checks and demand drafts fell into the hands of a certain Raymond U. Keh, then a Sales Accounting Manager of plaintiff Asia Brewery, Inc., who falsely, willfully, and maliciously pretending to be the payee, Charlie S. Go, succeeded in opening accounts with defendant Equitable PCI Bank in the name of Charlie Go and thereafter deposited the said checks and demand drafts in said accounts and withdrew the proceeds thereof to the damage and prejudice of plaintiff Asia Brewery, Inc.

In demanding payment from respondent, petitioners relied on *Associated Bank v. CA, 13* in which this Court held "the possession of check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held for moneys had and received."

Respondent on the other hand argued that *Development Bank of Rizal v. Sima Wei* was squarely applicable to the case and cited these portions of the Decision therein:

Thus, the payee of a negotiable instrument acquires no interest with respect thereto until its delivery to him. Delivery of an instrument means transfer of possession, actual or constructive, from one person to another. Without the initial delivery of the instrument from the drawer to the payee, there can be no liability on the instrument. Moreover, such delivery must be intended to give effect to the instrument.

The allegations of the petitioner in the original complaint show that the two (2) China Bank checks, numbered 384934 and 384935, were not delivered to the payee, the petitioner herein. Without the delivery of said checks to petitioner-payee, the former did not acquire any right or interest therein and cannot therefore assert any cause of action founded on said checks, whether against the drawer Sima Wei or against the Producers Bank or any of the other respondents.

ISSUE

Whether or not the petitioner has a cause of action against the respondent bank.

RULING

YES. A reading of the Order reveals that the RTC dismissed the Complaint for lack of cause of action prior to trial. At that time, this Court, in the 2003 case *Bank of America NT&SA v. CA*, 32 had already emphasized that lack or absence of cause of action is not a ground for the dismissal of a complaint; and that the issue may only be raised after questions of fact have been resolved on the basis of stipulations, admissions, or evidence presented.

The arguments raised by both of the parties to this case require an examination of evidence. Even a determination of whether there was "delivery" in the legal sense necessitates a presentation of evidence. It was erroneous for the **RTC to have concluded that there was no delivery, just because the checks did not reach the payee. It failed to consider Section 16 of the Negotiable Instruments Law, which envisions instances when instruments may have been delivered to a person other than the payee. The provision states:**

Sec. 16. Delivery; when effectual; when presumed. - Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Hence, in order to resolve whether the Complaint lacked a cause of action, respondent must have presented evidence to dispute the presumption that the signatories validly and intentionally delivered the instrument.

The test to determine whether a complaint states a cause of action against the defendants is this: admitting hypothetically the truth of the allegations of fact made in the complaint, may a judge validly grant the relief demanded in the complaint? We believe that petitioner met this test.

A cause of action has three elements: 1) the legal right of the plaintiff; 2) the correlative obligation of the defendant not to violate the right; and 3) the act or omission of the defendant in violation of that legal right. In the case at bar, petitioners alleged in their Complaint as follows:

1) They have a legal right to be paid for the value of the instruments.

18. In the said case of *Associated Bank vs. Court of Appeals*, it was held that the "weight of authority is to the effect that 'the possession of a check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held for moneys had and received.' The proceeds are held for the rightful owner of the payment

and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check. "

2) Respondent has a correlative obligation to pay, having guaranteed all prior endorsements.

15. All of the commercial checks and demand drafts mentioned in the First, Second, Third, Fourth, Fifth and Sixth Causes of Action were endorsed by PCI-Bank-Ayala Branch "All Prior Endorsement And / Or Lack of Endorsement Guaranteed.

3) Respondent refused to pay despite demand.

C. Signature

1. Signing in Trade Name

2. Signature of Agent

- Philippine Bank of Commerce vs. Jose M. Aruego, G.R. Nos. L-25836-37, January 31, 1981

THE PHILIPPINE BANK OF COMMERCE, *Plaintiff-appellee*, -versus- JOSE M. ARUEGO, *Defendant-appellant*.

G.R. Nos. L-25836-37, January 31, 1981, FERNANDEZ, J.

An accommodation party is one who has signed the instrument as maker, drawer, indorser, without receiving value therefor and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of the taking of the instrument knew him to be only an accommodation party. In lending his name to the accommodated party, the accommodation party is in effect a surety for the latter. He lends his name to enable the accommodated party to obtain credit or to raise money. He receives no part of the consideration for the instrument but assumes liability to the other parties thereto because he wants to accommodate another. In the instant case, the defendant signed as a drawee/acceptor. Under the Negotiable Instrument Law, a drawee is primarily liable. Thus, if the defendant who is a lawyer, he should not have signed as an acceptor/drawee. In doing so, he became primarily and personally liable for the drafts.

FACTS

Jose Aruego obtained a **credit accommodation** from the Philippine Bank of Commerce to facilitate the payment of printing of "World Current Events", the periodical he is publishing. **Thus, for every printing of the periodical, the printer, Encal Press and Photo Engraving, collected the cost of printing by drawing a draft against the plaintiff, said draft being sent later to the defendant for acceptance.** As an added security for the payment of the amounts advanced to Encal Press and Photo-Engraving, the plaintiff bank also required defendant Aruego to execute a trust receipt in favor of said bank wherein said defendant undertook to hold in trust for plaintiff the periodicals and to sell the same with the promise to turn over to the plaintiff the proceeds of the sale of said publication to answer for the payment of all obligations arising from the draft. **The Philippine Bank of Commerce instituted an action against Aruego to recover the cost of printing of the latter's**

periodical. Aruego however argues that he signed the supposed bills of exchange only as an agent of the Philippine Education Foundation Company where he is president.

ISSUE

Whether Aruego can be held liable by the petitioner although he signed the supposed bills of exchange only as an agent of Philippine Education Foundation Company.

RULING

YES. The first defense of the defendant is that he signed the supposed bills of exchange as an agent of the Philippine Education Foundation Company where he is president. Section 20 of the Negotiable Instruments Law provides that "*Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent or as filing a representative character, without disclosing his principal, does not exempt him from personal liability.*"

An inspection of the drafts accepted by the defendant shows that nowhere has he disclosed that he was signing as a representative of the Philippine Education Foundation Company. He merely signed as follows: "JOSE ARUEGO (Acceptor) (SGD) JOSE ARGUEGO. For failure to disclose his principal, Aruego is personally liable for the drafts he accepted.

The defendant also contends that he signed the drafts only as an accommodation party and as such, should be made liable only after a showing that the drawer is incapable of paying. This contention is also without merit.

An accommodation party is one who has signed the instrument as maker, drawer, indorser, without receiving value therefor and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of the taking of the instrument knew him to be only an accommodation party. In lending his name to the accommodated party, the accommodation party is in effect a surety for the latter. He lends his name to enable the accommodated party to obtain credit or to raise money. He receives no part of the consideration for the instrument but assumes liability to the other parties thereto because he wants to accommodate another. In the instant case, the defendant signed as a drawee/acceptor. Under the Negotiable Instrument Law, a drawee is primarily liable. Thus, if the defendant who is a lawyer, he should not have signed as an acceptor/drawee. In doing so, he became primarily and personally liable for the drafts.

The defendant also contends that the drafts signed by him were not really bills of exchange but mere pieces of evidence of indebtedness because payments were made before acceptance. This is also without merit. Under the Negotiable Instruments Law, a bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. As long as a commercial paper conforms with the definition of a bill of exchange, that paper is considered a bill of exchange. The nature of acceptance is important only in the determination of the kind of liabilities of the parties involved, but not in the determination of whether a commercial paper is a bill of exchange or not.

3. **Indorsement by Minor or Corporation**

4. **Forgery**

- Westmont Bank (formerly Associated Banking Corp.) vs. Eugene Ong, G.R. No. 132560, January 30, 2002

WESTMONT BANK (formerly ASSOCIATED BANKING CORP.), Petitioner, -versus-EUGENE ONG, Respondent.

G.R. No. 132560, January 30, 2002, SECOND DIVISION, QUISUMBING, J.

The theory of the rule is that the possession of the check on the forged or unauthorized indorsement is wrongful, and when the money had been collected on the check, the bank or other person or corporation can be held as for moneys had and received, and the proceeds are held for the rightful owners who may recover them. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected the money without indorsement at all and the act of the bank amounts to conversion of the check.

Respondent maintained a current account with petitioner. He sold certain shares of stocks to Island Securities Corporations. To pay Ong, Island Securities purchased 2 Pacific Banking Corporation mangers checks, issued in the name of respondent.

Ong's friend Paciano Tanlimco got hold of the checks. Tanlimco forged Ong's signature and deposited said checks with petitioner bank. Even though Ong's specimen signature was on file, petitioner bank accepted and credited both checks to the account of Tanlimco, without verifying the signature indorsements appearing at the back thereof. Tanlimco, immediately withdrew the money and absconded.

Ong first sought the help of Tanlimcos family to recover the amount and reported the incident to the Central Bank, which were both proved futile. It was only about five months from discovery of fraud, did Ong demanded in his complaint that petitioner pay the value of the checks from the bank on whose gross negligence he imputed his loss. In his suit he insisted that he did not deliver, negotiate, endorse or transfer to any person or entity the subject checks.

The petitioner bank contended that Ong never acquired ownership over the checks because he never received them, hence, he had no legal personality to sue.

The trial court rendered a decision, ordering the defendant to pay the plaintiff. Petitioner elevated the case to the Court of Appeals without success.

ISSUE

W/N RESPONDENT HAS A CAUSE OF ACTION?

W/N RESPONDENT IS BARRED TO RECOVER THE MONEY DUE TO LACHES?

HELD

Petitioner argues that since Ong never had the possession of the checks nor did he authorize anybody, he did not become a holder thereof hence he cannot sue in his own.

Respondent maintained a current account with petitioner. He sold certain shares of stocks to Island Securities Corporations. To pay Ong, Island Securities purchased 2 Pacific Banking Corporation mangers checks, issued in the name of respondent.

Ong's friend Paciano Tanlimco got hold of the checks. Tanlimco forged Ong's signature and deposited said checks with petitioner bank. Even though Ong's specimen signature was on file, petitioner bank accepted and credited both checks to the account of Tanlimco, without verifying the signature indorsements appearing at the back thereof. Tanlimco, immediately withdrew the money and absconded.

Ong first sought the help of Tanlimcos family to recover the amount and reported the incident to the Central Bank, which were both proved futile. It was only about five months from discovery of fraud, did Ong demanded in his complaint that petitioner pay the value of the checks from the bank on whose gross negligence he imputed his loss. In his suit he insisted that he did not deliver, negotiate, endorse or transfer to any person or entity the subject checks.

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Ong first sought the help of Tanlimcos family to recover the amount and reported the incident to the Central Bank, which were both proved futile.

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The petitioner bank contended that Ong never acquired ownership over the checks because he never received them, hence, he had no legal personality to sue.

The trial court rendered a decision, ordering the defendant to pay the plaintiff.

Petitioner elevated the case to the Court of Appeals without success.

FACTS

Respondent maintained a current account with petitioner. **He sold certain shares of stocks to Island Securities Corporations. To pay Ong, Island Securities purchased 2 Pacific Banking Corporation managers checks, issued in the name of respondent.** Ong's friend Paciano Tanlimco got hold of the checks. Tanlimco forged Ong's signature and deposited said checks with petitioner bank.

Even though Ong's specimen signature was on file, petitioner bank accepted and credited both checks to the account of Tanlimco, without verifying the signature indorsements appearing at the back thereof. Tanlimco, immediately withdrew the money and absconded.

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The petitioner bank contended that Ong never acquired ownership over the checks because he never received them, hence, he had no legal personality to sue. The trial court rendered a decision, ordering the defendant to pay the plaintiff. Petitioner elevated the case to the Court of Appeals without success.

ISSUE

Whether or not respondent Ong has a cause of action against the petitioner bank.

RULING

YES, respondent has a cause of action.

The complaint filed before the trial court expressly alleged respondents right as payee of the managers checks to receive the amount involved, petitioners correlative duty as collecting bank to ensure that the amount gets to the rightful payee or his order, and a breach of that duty because of a blatant act of negligence on the part of petitioner which violated respondents rights.

Under Section 23 of the Negotiable Instruments Law:

Sec. 23. Forged signature; effect of. - When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

Since the signature of the payee was forged to make it appear that he had made an indorsement in favor of the forger, such signature should be deemed as inoperative and ineffectual. Petitioner grossly erred in making payment by virtue of said forged signature. The payee should therefore be allowed to recover from collecting from bank.

The collecting bank is liable to the payee and must bear the loss because it is its legal duty to ascertain that the payee's endorsement was genuine before cashing the check. As a general rule, a bank or corporation who has obtained possession of a check upon an unauthorized or forged indorsement of the payee's signature and who collects the amount of the check from the drawee, is liable for the proceeds thereof to the payee or other owner, notwithstanding that the amount has been paid to the person from whom the check was obtained.

The theory of the rule is that the possession of the check on the forged or unauthorized indorsement is wrongful, and when the money had been collected on the check, the bank or other person or corporation can be held as for moneys had and received, and the proceeds are held for the rightful owners who may recover them. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected the money without indorsement at all and the act of the bank amounts to conversion of the check.

Petitioner's claim that since there was no delivery yet and respondent has never acquired possession of the checks, respondent's remedy is with the drawer and not with petitioner bank. Petitioner relies on the view to the effect that where there is no delivery to the payee and no title vests in him, he ought not to be allowed to recover on the ground that he lost nothing because he never became the owner of the check and still retained his claim of debt against the drawer. However, another view in certain cases holds that even if the absence of delivery is considered, such consideration is not material. The rationale for this view is that in said cases the plaintiff uses one action to reach, by a desirable short cut, the person who ought in any event to be ultimately liable as among the innocent persons involved in the transaction. In other words, the payee ought to be allowed to recover directly from the collecting bank, regardless of whether the check was delivered to the payee or not.²⁴

- **Associated Bank and Conrado Cruz, vs. Hon. Court of Appeals, and Merle V. Reyes, doing business under the name and style "Melissa's RTW", G.R. No. 89802, May 7, 1992**

ASSOCIATED BANK and CONRADO CRUZ, *Petitioners*, -versus- HON. COURT OF APPEALS, and MERLE V. REYES, doing business under the name and style "Melissa's RTW," *Respondents*.

G.R. No. 89802, May 7, 1992, FIRST DIVISION, CRUZ, J.

The weight of authority is to the effect that "the possession of check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held 'for moneys had and received.'" The proceeds are held for the rightful owner of the payment and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check.

FACTS

The private respondent is engaged in the business of ready-to-wear garments under the firm name "Melissa's RTW." She deals with, among other customers, Robinson's Department Store, Payless Department Store, Rempson Department Store, and the Corona Bazaar. These companies issued in payment of their respective accounts crossed checks payable to Melissa's RTW.

When she went to these companies to collect on what she thought were still unpaid accounts, she was informed of the issuance of the above-listed crossed checks. Further inquiry revealed that the said checks had been deposited with the Associated Bank and subsequently paid by it to one Rafael Sayson, one of its "trusted depositors," in the words of its branch manager and co-petitioner, Conrado Cruz, Sayson had not been authorized by the private respondent to deposit and encash the said checks.

ISSUE

Whether or not private respondent Melissa Reyes can recover from petitioner Associated Bank for the forged indorsement of checks

RULING

YES. Under accepted banking practice, crossing a check is done by writing two parallel lines diagonally on the left top portion of the checks. The crossing is special where the name of a bank or a business institution is written between the two parallel lines, which means that the drawee should pay only with the intervention of that company. The crossing is general where the words written between the two parallel lines are "and Co." or "for payee's account only," as in the case at bar. This means that the drawee bank should not encash the check but merely accept it for deposit.

In *State Investment House vs. IAC*, 5 this Court declared that "the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once -- to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpos."

The effects therefore of crossing a check relate to the mode of its presentment for payment. Under Sec. 72 of the Negotiable Instruments Law, *presentment for payment, to be sufficient, must be made by*

the holder or by some person authorized to receive payment on his behalf. Who the holder or authorized person is depends on the instruction stated on the face of the check.

The six checks in the case at bar had been crossed and issued "for payee's account only." This could only signify that the drawers had intended the same for deposit only by the person indicated, to wit, Melissa's RTW. **The subject checks were accepted for deposit by the Bank for the account of Rafael Sayson although they were crossed checks and the payee was not Sayson but Melissa's RTW. The Bank stamped thereon its guarantee that "all prior endorsements and/or lack of endorsements (were) guaranteed." By such deliberate and positive act, the Bank had for all legal intents and purposes treated the said checks as negotiable instruments and, accordingly, assumed the warranty of the endorser.**

The weight of authority is to the effect that "the possession of check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held 'for moneys had and received." The proceeds are held for the rightful owner of the payment and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check.

It is not disputed that the proceeds of the subject checks belonged to the private respondent. As she had not at any time authorized Rafael Sayson to endorse or encash them, there was conversion of the funds by the Bank.

The petitioners were negligent when they permitted the encashment of the checks by Sayson. The Bank should have first verified his right to endorse the crossed checks, of which he was not the payee, and to deposit the proceeds of the checks to his own account. The Bank was by reason of the nature of the checks put upon notice that they were issued for deposit only to the private respondent's account. Its failure to inquire into Sayson's authority was a breach of a duty it owed to the private respondent.

- **Ramon K. Ilusorio vs. Court of Appeals, G.R. No. 139130, November 27, 2002**

RAMON K. ILUSORIO, *Petitioner*, -versus- HON. COURT OF APPEALS, and THE MANILA BANKING CORPORATION, *Respondents*.

G.R. No. 139130, November 27, 2002, SECOND DIVISION, QUISUMBING, J.

When a signature is forged or made without the authority of the person whose signature it purports to be, the check is wholly inoperative. No right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party, can be acquired through or under such signature. However, the rule does provide for an exception, namely: "unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority." In the instant case, it is the exception that applies. In our view, petitioner is precluded from setting up the forgery, assuming there is forgery, due to his own negligence in entrusting to his secretary his credit cards and checkbook including the verification of his statements of account.

FACTS

Ramon K. Ilusorio, a prominent businessman, entrusted to his secretary, Katherine E. Eugenio, his credit cards and his checkbook with blank checks, as well as the verification and reconciliation of said checking account. **Due to this, Eugenio was able to encash and deposit to her personal account about seventeen (17) checks drawn against the account of Ilusorio at the respondent bank, Manila Banking Corporation**, with an aggregate amount of ₱119,634.34. Such fact was not known to Ilusorio, until a business partner asked him whether he had entrusted his credit card to his secretary because the said partner had seen her used the same. Prompted by this, he was minded to verify the records of his account. Thereafter, Ilusorio fired Eugenio and filed a case of estafa thru falsification. Consequently, the bank also filed a case of estafa thru falsification of commercial documents against her.

Petitioner then requested the bank to credit back and restore to its account the value of the checks which were wrongfully encashed but the latter refused; hence, the instant case.

RTC and CA dismissed the case for there is no sufficient basis on the plaintiff's cause.

ISSUE

Whether or not Ilusorio has a cause of action against Manila Banking Corporation

RULING

NO, petitioner has no cause of action against Manila Bank. To be entitled to damages, petitioner has the burden of proving negligence on the part of the bank for failure to detect the discrepancy in the signatures on the checks. **It is incumbent upon petitioner to establish the fact of forgery**, i.e., by submitting his specimen signatures and comparing them with those on the questioned checks. Curiously though, petitioner failed to submit additional specimen signatures as requested by the National Bureau of Investigation from which to draw a conclusive finding regarding forgery. **The Court of Appeals found that petitioner, by his own inaction, was precluded from setting up forgery.**

Moreover, petitioner's contention that Manila Bank was remiss in the exercise of its duty as drawee lacks factual basis. Consistently, the CA and the RTC found that Manila Bank employees exercised due diligence in cashing the checks. The bank's employees in the present case did not have a hint as to Eugenio's modus operandi because she was a regular customer of the bank, having been designated by petitioner himself to transact in his behalf.

As borne by the records, it was petitioner, not the bank, who was negligent. In the present case, it appears that petitioner accorded his secretary unusual degree of trust and unrestricted access to his credit cards, passbooks, check books, bank statements, including custody and possession of cancelled checks and reconciliation of accounts. Said the Court of Appeals on this matter:

Moreover, the appellant had introduced his secretary to the bank for purposes of reconciliation of his account, through a letter dated July 14, 1980. Thus, the said secretary became a familiar figure in the

bank. What is worse, whenever the bank verifiers call the office of the appellant, it is the same secretary who answers and confirms the checks.

The trouble is, the appellant had put so much trust and confidence in the said secretary, by entrusting not only his credit cards with her but also his checkbook with blank checks. He also entrusted to her the verification and reconciliation of his account. Further adding to his injury was the fact that while the bank was sending him the monthly Statements of Accounts, he was not personally checking the same. His testimony did not indicate that he was out of the country during the period covered by the checks. Thus, he had all the opportunities to verify his account as well as the cancelled checks issued thereunder -- month after month. But he did not, until his partner asked him whether he had entrusted his credit card to his secretary because the said partner had seen her use the same. It was only then that he was minded to verify the records of his account. Petitioner's failure to examine his bank statements appears as the proximate cause of his own damage.

Petitioner further contends that under Section 23 of the Negotiable Instruments Law a forged check is inoperative, and that Manila Bank had no authority to pay the forged checks. True, it is a rule that when a signature is forged or made without the authority of the person whose signature it purports to be, the check is wholly inoperative. No right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party, can be acquired through or under such signature. However, the rule does provide for an exception, namely: "unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority." In the instant case, it is the exception that applies. In our view, petitioner is precluded from setting up the forgery, assuming there is forgery, due to his own negligence in entrusting to his secretary his credit cards and checkbook including the verification of his statements of account.

- Bank of the Philippine Islands vs. Casa Montessori Internationale and Leonardo T. Yabut, G.R. No. 149454, May 28, 2004

**BANK OF THE PHILIPPINE ISLANDS, *Petitioner*, -versus- CASA MONTESSORI
INTERNATIONALE LEONARDO T. YABUT, *Respondents*.**
G.R. No. 149454, May 28, 2004, FIRST DIVISION, PANGANIBAN, J.

BPI failed to detect the eight instances of forgery. Its negligence consisted in the omission of that degree of diligence required of a bank. It cannot now feign ignorance, for very early on we have already ruled that a bank is "bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged."

FACTS

CASA Montessori International opened a current account with BPI with CASAs President Ms. Ma. Carina C. Lebron as one of its authorized signatories. In 1991, after conducting an investigation, CASA discovered that nine (9) of its checks had been encashed by a certain Sonny D. Santos since 1990 in the total amount of P782,000.00. It turned out that Sonny D. Santos with account at BPI's Greenbelt Branch [was] a fictitious name used by third party defendant Leonardo T. Yabut who worked as external auditor of CASA. Third party defendant voluntarily admitted that he forged the signature of Ms. Lebron and encashed the checks.

The PNP Crime Laboratory conducted an examination of the nine (9) checks and concluded that the handwritings thereon compared to the standard signature of Ms. Lebron were not written by the latter.

On March 4, 1991, CASA filed the herein Complaint for Collection with Damages against defendant bank.

ISSUE

1. Whether or not there was forgery under the Negotiable Instruments Law (NIL)?
2. Whether or not BPI is liable as the drawee bank for allowing payment on the checks to a wrongful and fictitious payee?

RULING

1. YES. First, both the CA and the RTC found that Respondent Yabut himself had voluntarily admitted, through an Affidavit, that he had forged the drawer's signature and encashed the checks. He never refuted these findings. That he had been coerced into admission was not corroborated by any evidence on record.

Second, the appellate and the trial courts also ruled that the PNP Crime Laboratory, after its examination of the said checks, had concluded that the handwritings thereon -- compared to the standard signature of the drawer -- were not hers. This conclusion was the same as that in the Report that the PNP Crime Laboratory had earlier issued to BPI -- the drawee bank -- upon the latter's request.

2. YES. Having established the forgery of the drawer's signature, BPI - the drawee erred in making payments by virtue thereof. The forged signatures are wholly inoperative, and CASA -the drawer whose authorized signatures do not appear on the negotiable instruments cannot be held liable thereon. Neither is the latter precluded from setting up forgery as a real defense.

We have repeatedly emphasized that, since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it. By the nature of its functions, a bank is "under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship."

BPI contends that it has a signature verification procedure, in which checks are honored only when the signatures therein are verified to be the same with or similar to the specimen signatures on the signature cards. **Nonetheless, it still failed to detect the eight instances of forgery. Its negligence consisted in the omission of that degree of diligence required of a bank. It cannot now feign ignorance, for very early on we have already ruled that a bank is "bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was**

forged." In fact, BPI was the same bank involved when we issued this ruling seventy years ago.

- **Samsung Construction Company Philippines, Inc. vs. Far East Bank and Trust Company and Court of Appeals, G.R. NO. 129015, August 13, 2004**

SAMSUNG CONSTRUCTION COMPANY PHILIPPINES, INC., *Petitioner*, vs. FAR EAST BANK AND TRUST COMPANY AND COURT OF APPEALS, Respondents.
G.R. No. 129015, August 13, 2004, SECOND DIVISION, TINGA, J.

The general rule remains that the drawee who has paid upon the forged signature bears the loss. The exception to this rule arises only when negligence can be traced on the part of the drawer whose signature was forged, and the need arises to weigh the comparative negligence between the drawer and the drawee to determine who should bear the burden of loss.

*Still, even if the bank performed with utmost diligence, the drawer whose signature was forged may still recover from the bank as long as he or she is not precluded from setting up the defense of forgery. After all, Section 23 of the Negotiable Instruments Law plainly states that no right to enforce the payment of a check can arise out of a forged signature. Since the drawer, **Samsung Construction, is not precluded by negligence from setting up the forgery, the general rule should apply. Consequently, if a bank pays a forged check, it must be considered as paying out of its funds and cannot charge the amount so paid to the account of the depositor. A bank is liable, irrespective of its good faith, in paying a forged check.***

FACTS

A certain Roberto Gonzaga presented for payment FEBTC Check No. 432100 to the bank's branch in Bel-Air, Makati. **The check, payable to cash** and drawn against Samsung Construction's current account, was in the amount of P999,500.00. The bank teller, Cleofe Justiani, checked the balance of the account. After ascertaining there were enough funds, and after comparing the signature in the check and that of the specimen on record, Justiani was satisfied as to the authenticity of the signature on the check. Gonzaga presented 3 identification cards to the bank officers.

Justiani forwarded the check to the branch Senior Assistant Cashier Gemma Velez for approval. Velez too concluded that the check was indeed signed by the company's Project Manager Jong Kyu Lee. The check was also forwarded to Shirley Syfu, another bank officer for approval. **Syfu then noticed that Jose Sempio III (Sempio), the assistant accountant of Samsung Construction, was also in the bank. Syfu showed the check to Sempio, who vouched for the genuineness of Jong's signature.** Satisfied with the genuineness of the signature of Jong, Syfu authorized the bank's encashment of the check to Gonzaga. The following day, the company's accountant, Kyu Yong Lee discovered that a check had been encashed. Aware that he had not prepared such a check for Jong's signature, Kyu found that the last blank check was missing.

Jong learned of the encashment of the check, and realized that his signature had been forged. Samsung Construction filed a *Complaint* for violation of Section 23 of the NIL, and prayed for the payment of the amount debited as a result of the questioned check plus interest, and attorneys fees. The RTC held that Jong's signature on the check was forged and accordingly directed the bank to pay or credit back to Samsung Construction's account the said amount. On appeal, the CA reversed the RTC Decision and absolved FEBTC from any liability.

ISSUE

Whether or not FEBTC is liable to Samsung Construction in paying the forged check.

RULING

YES. Section 23 of the Negotiable Instruments Law states:

When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefore, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

The general rule is to the effect that a forged signature is wholly inoperative, and payment made through or under such signature is ineffectual or does not discharge the instrument. If payment is made, the drawee cannot charge it to the drawers account. The traditional justification for the result is that the drawee is in a superior position to detect a forgery because he has the makers signature and is expected to know and compare it. The rule has a healthy cautionary effect on banks by encouraging care in the comparison of the signatures against those on the signature cards they have on file.

Quite palpably, **the general rule remains that the drawee who has paid upon the forged signature bears the loss. The exception to this rule arises only when negligence can be traced on the part of the drawer whose signature was forged, and the need arises to weigh the comparative negligence between the drawer and the drawee to determine who should bear the burden of loss.**

We recognize that Section 23 of the Negotiable Instruments Law bars a party from setting up the defense of forgery if it is guilty of negligence. Yet, we are unable to conclude that Samsung Construction was guilty of negligence in this case. Given the circumstances, extraordinary diligence dictates that FEBTC should have ascertained from Jong personally that the signature in the questionable check was his.

Still, even if the bank performed with utmost diligence, the drawer whose signature was forged may still recover from the bank as long as he or she is not precluded from setting up the defense of forgery. After all, Section 23 of the Negotiable Instruments Law plainly states that no right to enforce the payment of a check can arise out of a forged signature. Since the drawer, Samsung Construction, is not precluded by negligence from setting up the forgery, the general rule should apply. Consequently, if a bank pays a forged check, it must be considered as paying out of its funds and cannot charge the amount so paid to the account of the depositor. A bank is liable, irrespective of its good faith, in paying a forged check.

- Philippine National Bank vs. FF Cruz and Company, G.R. No. 173259, July 25, 2011

PHILIPPINE NATIONAL BANK, *Petitioner*, -versus- F.F. CRUZ and CO., INC. *Respondent*.
G.R. No. 173259, July 25, 2011, FIRST DIVISION, DEL CASTILLO, J.

Where the bank's negligence is the proximate cause of the loss and the depositor is guilty of contributory negligence, we allocated the damages between the bank and the depositor on a 60-40 ratio. We apply the same ruling in this case considering that, as shown above, PNB's negligence is the proximate cause of the loss while the issue as to FFCCI's contributory negligence has been settled with finality in G.R. No. 173278. Thus, the appellate court properly adjudged PNB to bear the greater part of the loss consistent with these rulings.

FACTS

This petition for review arose from a case for damages filed by FF Cruz against PNB. Plaintiff FF Cruz has open an account at PNB-Timog Ave. Branch, wherein its president and its secretary-treasurer were the named signatories. Plaintiff FF Cruz, avers that PNB has been negligent to deduct the cashier's and manager's checks amounting to Php9,950,000.00 and Php3,260,000.00, respectively, as the same were unauthorized and fraudulently made by the **company accountant Aurea Caparas as both the president and the secretary were out of the country at that time.**

The plaintiff seeks to credit back and restore to its account the value of the checks, to which the defendant bank refused as the defendant bank alleged that it exercised due diligence in handling the account of FF Cruz, as the application of said checks have passed a through standard bank procedures and it was only after finding that it has no infirmity that the checks were given due course.

The trial court rendered a Decision against defendant bank for not calling or personally verifying from the authorized signatories the legitimacy of the subject withdrawals considering that they were huge amounts. **For this reason, defendant PNB had the last clear chance to prevent the unauthorized debits from the FF Cruz account. And thus, PNB should bear the whole loss.**

On appeal, the Court of Appeal, affirmed the Decision of the trial court with modification on the award for damages that PNB should only pay 60% of the actual damage and the Plaintiff FF Cruz should bear the remaining 40% for its contributory negligence by giving authority to its company accountant to transact with defendant bank PNB. Petitioner PNB appealed the Court of Appeals' Decision.

ISSUES

Whether or not PNB is guilty of negligence.

RULING

YES. PNB's own witness, San Diego, testified that in the verification process, the principal duty to determine the genuineness of the signature devolved upon the account analyst. However, PNB did not present the account analyst to explain his or her failure to sign the box for signature and balance verification of the subject applications for manager's check, thus, casting doubt as to whether he or she did indeed verify the signatures thereon.

Gallego admitted that PNB's employees received training on detecting forgeries from the National Bureau of Investigation. However, Emmanuel Guzman, then NBI senior document examiner, testified,

as an expert witness, that the forged signatures in the subject applications for manager's check contained noticeable and significant differences from the genuine signatures of FFCCI's authorized signatories and that the forgeries should have been detected or observed by a trained signature verifier of any bank.

Given the foregoing, we find no reversible error in the findings of the appellate court that PNB was negligent in the handling of FFCCI's combo account, specifically, with respect to PNB's failure to detect the forgeries in the subject applications for manager's check which could have prevented the loss. As we have often ruled, the banking business is impressed with public trust. A higher degree of diligence is imposed on banks relative to the handling of their affairs than that of an ordinary business enterprise. Thus, the degree of responsibility, care and trustworthiness expected of their officials and employees is far greater than those of ordinary officers and employees in other enterprises.

In the case at bar, PNB failed to meet the high standard of diligence required by the circumstances to prevent the fraud. In *Philippine Bank of Commerce v. Court of Appeals* and *The Consolidated Bank & Trust Corporation v. Court of Appeals*, **where the bank's negligence is the proximate cause of the loss and the depositor is guilty of contributory negligence, we allocated the damages between the bank and the depositor on a 60-40 ratio. We apply the same ruling in this case considering that, as shown above, PNB's negligence is the proximate cause of the loss while the issue as to FFCCI's contributory negligence has been settled with finality in G.R. No. 173278. Thus, the appellate court properly adjudged PNB to bear the greater part of the loss consistent with these rulings.**

- Philippine Commercial International Bank vs. Balmaceda, G.R. No. 158143, September 21, 2011

PHILIPPINE COMMERCIAL INTERNATIONAL BANK, *Petitioner*, -versus- ANTONIO B. BALMACEDA and ROLANDO N. RAMOS, *Respondents*.

G.R. No. 158143, September 21, 2011, SECOND DIVISION, BRION, J.

When a check is crossed, it is the duty of the collecting bank to ascertain that the check is only deposited to the payee's account. In complete disregard of this duty, PCIB's systems allowed Balmaceda to encash Manager's checks which were all crossed checks, or checks payable to the "payee's account only."

FACTS

PCIB filed an action for recovery of sum of money with damages before the RTC against Antonio Balmaceda, the Branch Manager of its Sta. Cruz, Manila branch. In its complaint, PCIB alleged that between 1991 and 1993, Balmaceda, by taking advantage of his position as branch manager, fraudulently obtained and encashed 31 Manager's checks in the total amount of Ten Million Seven Hundred Eighty Two Thousand One Hundred Fifty Pesos.

PCIB moved to be allowed to file an amended complaint to implead Rolando Ramos as one of the recipients of a portion of the proceeds from Balmaceda's alleged fraud. PCIB also increased the number of fraudulently obtained and encashed Manager's checks to 34, in the total amount of Eleven Million Nine Hundred Thirty Seven Thousand One Hundred Fifty Pesos (₱11,937,150.00). The RTC granted this motion.

Ultimately, Balmaceda was convicted, while the complaint against Ramos was dismissed, holding that no sufficient evidence existed to prove that he colluded with Balmaceda in the latter's fraudulent manipulations

ISSUE

Whether Ramos, who received a portion of the money that Balmaceda took from PCIB, should also be held liable for the return of this money to the Bank.

RULING

NO. On its face, all that PCIB's evidence proves is that Balmaceda used Ramos' name as a payee when he filled up the application forms for the Manager's checks. But, as the CA correctly observed, the mere fact that Balmaceda made Ramos the payee on some of the Manager's checks is not enough basis to conclude that Ramos was complicit in Balmaceda's fraud; a number of other people were made payees on the other Manager's checks yet PCIB never alleged them to be liable, nor did the Bank adduce any other evidence pointing to Ramos' participation that would justify his separate treatment from the others. Also, while Ramos is Balmaceda's brother-in-law, their relationship is not sufficient, by itself, to render Ramos liable, absent concrete proof of his actual participation in the fraudulent scheme. Moreover, the evidence on record clearly shows that Balmaceda acted on his own when he applied for the Manager's checks against the bank account of one of PCIB's clients, as well as when he encashed the fraudulently acquired Manager's checks.

In considering this case, one point that cannot be disregarded is the significant role that PCIB played which contributed to the perpetration of the fraud. We cannot ignore that Balmaceda managed to carry out his fraudulent scheme primarily because other PCIB employees failed to carry out their assigned tasks – flaws imputable to PCIB itself as the employer.

Ms. Analiza Vega, an accounting clerk, teller and domestic remittance clerk working at the PCIB, Sta. Cruz, Manila branch at the time of the incident, testified that Balmaceda broke the Bank's protocol when he ordered the Bank's employees to fill up the application forms for the Manager's checks, to be debited from the bank account of one of the bank's clients, without providing the necessary Authority to Debit from the client. PCIB also admitted that these Manager's checks were subsequently released to Balmaceda, and not to the client's representative, based solely on Balmaceda's word that the client had tasked him to deliver these checks.

Despite Balmaceda's gross violations of bank procedures – mainly in the processing of the applications for Manager's checks and in the releasing of the Manager's checks – Balmaceda's co-employees not only turned a blind eye to his actions, but actually complied with his instructions. In this way, PCIB's own employees were unwitting accomplices in Balmaceda's fraud.

Another telling indicator of PCIB's negligence is the fact that it allowed Balmaceda to encash the Manager's checks that were plainly crossed checks. A crossed check is one where two parallel lines are drawn across its face or across its corner. Based on jurisprudence, the crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once — to the one who has an account with the bank; and (c) the act of crossing the check serves as a warning to the holder

that the check has been issued for a definite purpose and he must inquire if he received the check pursuant to this purpose; otherwise, he is not a holder in due course. In other words, the crossing of a check is a warning that the check should be deposited only in the account of the payee. When a check is crossed, it is the duty of the collecting bank to ascertain that the check is only deposited to the payee's account. In complete disregard of this duty, PCIB's systems allowed Balmaceda to encash Manager's checks which were all crossed checks, or checks payable to the "payee's account only."

The General Banking Law of 200031 requires of banks the highest standards of integrity and performance. The banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman pater familias or a good father of a family.³² The highest degree of diligence is expected.

While we appreciate that Balmaceda took advantage of his authority and position as the branch manager to commit these acts, this circumstance cannot be used to excuse the manner the Bank – through its employees – handled its clients' bank accounts and thereby ignored established bank procedures at the branch manager's mere order. This lapse is made all the more glaring by Balmaceda's repetition of his modus operandi 33 more times in a period of over one year by the Bank's own estimation. With this kind of record, blame must be imputed on the Bank itself and its systems, not solely on the weakness or lapses of individual employees.

- Metropolitan Waterworks & Sewerage System vs. Court of Appeals, 143 SCRA 20.

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *Petitioner*, -versus- COURT OF APPEALS and THE PHILIPPINE NATIONAL BANK, *Respondents*.

G.R. No. L-62943 July 14, 1986 SECOND DIVISION, GUTIERREZ, JR., J.

Even if the twenty-three (23) checks in question are considered forgeries, considering the petitioner's gross negligence, it is barred from setting up the defense of forgery under Section 23 of the Negotiable Instruments Law.

FACTS

Metropolitan Waterworks and Sewerage System is a government owned and controlled corporation created under Republic Act No. 6234 as the successor-in-interest of the defunct NWSA. The Philippine National Bank (PNB for short), on the other hand, is the depository bank of MWSS and its predecessor-in-interest NWSA. **By special arrangement with the PNB, the MWSS used personalized checks in drawing from this account. These checks were printed for MWSS by its printer, F. Mesina Enterprises.**

From March to May 1969, MWSS issued 23 checks to various payees in the aggregate amount of P320,636.26. During the same months, another set of 23 checks containing the same check numbers earlier issued were forged. The aggregate amount of the forged checks amounted to P3,457,903.00. This amount was distributed to the bank accounts of three persons: Arturo Sison, Antonio Mendoza, and Raul Dizon.

The foregoing checks were deposited by the payees Raul Dizon, Arturo Sison and Antonio Mendoza in their respective current accounts with the Philippine Commercial and Industrial Bank (PCIB) and Philippine Bank of Commerce (PBC) in the months of March, April and May 1969. Thru the Central Bank Clearing, these checks were presented for payment by PBC and PCIB to the defendant PNB, and paid, also in the months of March, April and May 1969. At the time of their presentation to PNB these checks bear the standard indorsement which reads 'all prior indorsement and/or lack of endorsement guaranteed.'

Subsequent investigation however, conducted by the NBI showed that Raul Dizon, Arturo Sison and Antonio Mendoza were all fictitious persons. NWSA addressed a letter to PNB requesting the immediate restoration to its Account the total sum of P3,457,903.00 corresponding to the total amount of these twenty-three (23) checks claimed by NWSA to be forged and/or spurious checks. "In view of the refusal of PNB to credit back the said total sum of P3,457,903.00 MWSS filed the instant complaint on November 10, 1972 before the Court of First Instance of Manila and docketed thereat as Civil Case No. 88950.

ISSUE

Whether or not PNB should restore the said amount.

RULING

NO. MWSS is precluded from setting up the defense of forgery.

Considering the absence of sufficient security in the printing of the checks coupled with the very close similarities between the genuine signatures and the alleged forgeries, the twenty-three (23) checks in question could have been presented to the petitioner's signatories without their knowing that they were bogus checks. Indeed, the cashier of the petitioner whose signatures were allegedly forged was unable to ten the difference between the allegedly forged signature and his own genuine signature. On the other hand, the MWSS officials admitted that these checks could easily be passed on as genuine.

Petitioner was guilty of negligence not only before the questioned checks were negotiated but even after the same had already been negotiated. The records show that at the time the twenty-three (23) checks were prepared, negotiated, and encashed, the petitioner was using its own personalized checks, instead of the official PNB Commercial blank checks. In the exercise of this special privilege, however, the petitioner failed to provide the needed security measures. Another factor which facilitated the fraudulent encashment of the twenty-three (23) checks in question was the failure of the petitioner to reconcile the bank statements with its own records.

Even if the twenty-three (23) checks in question are considered forgeries, considering the petitioner's gross negligence, it is barred from setting up the defense of forgery under Section 23 of the Negotiable Instruments Law.

Nonetheless, the petitioner claims that it was the negligence of the respondent Philippine National Bank that was the proximate cause of the loss. The argument has no merit. The records show that the respondent drawee bank, had taken the necessary measures in the detection of forged checks and the prevention of their fraudulent encashment. In fact, long before the encashment of the twenty-three (23) checks in question, the respondent Bank had issued constant reminders to all Current

Account Bookkeepers informing them of the activities of forgery syndicates.

We cannot fault the respondent drawee Bank for not having detected the fraudulent encashment of the checks because the printing of the petitioner's personalized checks was not done under the supervision and control of the Bank. There is no evidence on record indicating that because of this private printing the petitioner furnished the respondent Bank with samples of checks, pens, and inks or took other precautionary measures with the PNB to safeguard its interests. Under the circumstances, therefore, the petitioner was in a better position to detect and prevent the fraudulent encashment of its checks.

D. Consideration

- Travel-On, Inc. vs. Court of Appeals and Arturo S. Miranda, G.R. No. L-56169, June 26, 1992

TRAVEL-ON, INC., *Petitioner*, -versus- COURT OF APPEALS and ARTURO S. MIRANDA, *Respondents*.

G.R. No. L-56169, June 26, 1992, THIRD DIVISION, FELICIANO, J.

A negotiable instrument is presumed to have been given or indorsed for a sufficient consideration unless otherwise contradicted and overcome by other competent evidence. It was up to private respondent to show that he had indeed issued the checks without sufficient consideration.

The Court considers that Private respondent was unable to rebut satisfactorily this legal presumption. It must also be noted that those checks were issued immediately after a letter demanding payment had been sent to private respondent by petitioner Travel-On.

FACTS

Petitioner Travel-On, Inc. ("Travel-On") is a travel agency selling airline tickets on commission basis for and in behalf of different airline companies. Private respondent Arturo S. Miranda had a revolving credit line with petitioner. He procured tickets from petitioner on behalf of airline passengers and derived commissions therefrom. On 14 June 1972, Travel-On filed suit before the Court of First Instance ("CFI") of Manila to collect on six (6) checks issued by private respondent with a total face amount of P115,000.00. The complaint averred that from 5 August 1969 to 16 January 1970, **petitioner sold and delivered various airline tickets to respondent at a total price of P278,201.57; that to settle said account, private respondent paid various amounts in cash and in kind, and thereafter issued six (6) postdated checks amounting to P115,000.00 which were all dishonored by the drawee banks.** Travel-On further alleged that in March 1972, private respondent made another payment of P10,000.00 reducing his indebtedness to P105,000.00.

In his answer, private respondent admitted having had transactions with Travel-On during the period stipulated in the complaint. Private respondent, however, claimed that he had already fully paid and even overpaid his obligations and that refunds were in fact due to him. He argued that he had issued the postdated checks for purposes of accommodation, as he had in the past accorded similar favors to petitioner. During the proceedings, private respondent contested several tickets alleged to have been erroneously debited to his account. He claimed reimbursement of his alleged

over payments, plus litigation expenses, and exemplary and moral damages by reason of the allegedly improper attachment of his properties.

In the instant Petition for Review, it is urged that the postdated checks are per se evidence of liability on the part of private respondent. Petitioner further argues that even assuming that the checks were for accommodation, private respondent is still liable thereunder considering that petitioner is a holder for value.

ISSUE

Whether or not private respondent is liable on the checks issued.

RULING

YES. It is important to stress that a check which is regular on its face is deemed prima facie to have been issued for a valuable consideration and every person whose signature appears thereon is deemed to have become a party thereto for value. **Thus, the mere introduction of the instrument sued on in evidence prima facie entitles the plaintiff to recovery. Further, the rule is quite settled that a negotiable instrument is presumed to have been given or indorsed for a sufficient consideration unless otherwise contradicted and overcome by other competent evidence.**

In the case at bar, the Court of Appeals, contrary to these established rules, placed the burden of proving the existence of valuable consideration upon petitioner. **This cannot be countenanced; it was up to private respondent to show that he had indeed issued the checks without sufficient consideration. The Court considers that Private respondent was unable to rebut satisfactorily this legal presumption. It must also be noted that those checks were issued immediately after a letter demanding payment had been sent to private respondent by petitioner Travel-On.** The fact that all the checks issued by private respondent to petitioner were presented for payment by the latter would lead to no other conclusion than that these checks were intended for encashment. We are unable to accept the Court of Appeals' conclusion that the checks here involved were issued for "accommodation" and that accordingly, private respondent, maker of those checks was not liable thereon to petitioner payee of those checks.

In the first place, while the Negotiable Instruments Law does refer to accommodation transactions, no such transaction was here shown. Section 29 of the Negotiable Instruments Law provides as follows:

Sec. 29. Liability of accommodation party. — An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party.

In accommodation transactions recognized by the Negotiable Instruments Law, an accommodating party lends his credit to the accommodated party, by issuing or indorsing a check which is held by a payee or indorsee as a holder in due course, who gave full value therefor to the accommodated party. The latter, in other words, receives or realizes full value which the accommodated party then must

repay to the accommodating party, unless of course the accommodating party intended to make a donation to the accommodated party. But the accommodating party is bound on the check to the holder in due course who is necessarily a third party and is not the accommodated party. Having issued or indorsed the check, the accommodating party has warranted to the holder in due course that he will pay the same according to its tenor.

In the case at bar, Travel-On was payee of all six (6) checks, it presented these checks for payment at the drawee bank but the checks bounced. Travel-On obviously was not an accommodated party; it realized no value on the checks which bounced.

- Remigio S. Ong vs. People of the Philippines and Court of Appeals, G.R. No. 139006, November 27, 2000

REMIGIO S. ONG, *Petitioner*, -versus- PEOPLE OF THE PHILIPPINES and COURT OF APPEALS (EIGHTH DIVISION), *Respondents*.

G.R. No. 139006, November 27, 2000, FIRST DIVISION, KAPUNAN, J

Petitioner's argument that the subject check was issued without consideration is inconsequential. The law invariably declares the mere act of issuing a worthless check as malum prohibitum.

In actions based upon a negotiable instrument, it is unnecessary to aver or prove consideration, for consideration is imported and presumed from the fact that it is a negotiable instrument.

FACTS

Remigio Ong approached Marcial de Jesus and requested to be accommodated a loan of P130,000.00 which he needed to pay the 13th month pay of his employees at the Master Metal Craft. Complainant De Jesus obliged by issuing Ong Producers Bank check No. 489427 to Ong's Master Metal Craft. In order to insure the repayment, complainant required Mr. Ong to issue a post-dated check for the same amount to become due on January 16, 1993. Mr. Ong therefore issued FEBTC Check No. 381937, dated January 16, 1993. Remigio Ong negotiated the Producers Bank Check issued to him by De Jesus on the same day, December 17, 1992, although this is at variance the FEBTC statement of account of Remigio Ong which shows that the check was deposited in Ong's account only on May 26, 1993 and debited for the said amount of P130,000.00. At any rate, whatever the date the loan check was encashed by Remigio Ong, what is certain was that the check was encashed for value and debited to Ong's account.

In the meanwhile, Ong's FEBTC check was deposited by Marcial De Jesus in his account at Producers Bank on May 26, 1993 which was promptly returned the following day by FEBTC for reason that it was drawn against insufficient funds (DAIF), meaning, the check was dishonored by FEBTC for lack of sufficient funds. That thereafter, De Jesus verbally notified Remigio Ong of his bounced check several times but unacted until made a written formal demand on September 10, 1993. For failure of Ong to make arrangement for the payment or replacement of the bounced check, De Jesus filed this case. Subsequently, Ong was convicted.

On appeal, petitioner alleged that the subject check was not issued "on account or for value;"

ISSUE

Whether or not Ong may be convicted

RULING

YES. Petitioner's argument that the subject check was issued without consideration is inconsequential. The law invariably declares the mere act of issuing a worthless check as malum prohibitum.

In actions based upon a negotiable instrument, it is unnecessary to aver or prove consideration, for consideration is imported and presumed from the fact that it is a negotiable instrument. The presumption exists whether the words "value received" appear on the instrument or not. Furthermore, such contention is also inconsequential in Batas Pambansa Blg. 22.

- Charles Lee, Chua Siok Suy, Mariano Sio, Alfonso Yap, Richard Velasco and Alfonso Co vs. Court of Appeals and Philippine Bank of Communications, G.R. NO. 117913, February 1, 2002

CHARLES LEE, CHUA SIOK SUY, MARIANO SIO, ALFONSO YAP, RICHARD VELASCO and ALFONSO CO., Petitioners, -versus- COURT OF APPEALS and PHILIPPINE BANK OF COMMUNICATIONS, Respondents.
G.R. No. 117913, February 1, 2002, SECOND DIVISION, DE LEON, JR., J

The Negotiable Instruments Law clearly provides that every negotiable instrument is deemed prima facie to have been issued for valuable consideration and every person whose signature appears thereon are also presumed to have become a party for value. Negotiable instruments include promissory notes, bills of exchange and checks. Letters of credit and trust receipts are however, not negotiable instruments, but drafts issued in connection with letters of credit are negotiable instruments.

*Therefore, the contention of the petitioner that the contracts on loans and letters of credits were not binding on the premise that there were no consideration for value and if there was, the Bank failed to present evidence as to the crediting of the proceeds to its account is **untenable**.*

FACTS

MICO Metals Corporation, through its President, Charles Lee requested from Philippine Bank of Communication a discounting loan/credit line in the amount of P3,000,000.000 for the purpose of carrying out MICO's line of business as well as to maintain its volume of business, and another discounting loan/credit line for the purpose of opening letters of credit and trust receipts.

Both requests were supported by a resolution that the President, Charles Lee, and the Vice President and General Manager, Mr. Mariano Sio, are authorized and empowered to apply for, negotiate and secure the approval of commercial loans x x x x but not limited to discount loans, letters of credit, trust receipts, lines for marginal deposits on foreign and domestic letters of credit x x x x for a total amount of not to exceed P10,000,000.00.

The request was approved by the Bank – PBCom, and first availment in the amount of P1,000,000.00 was made on March 26, 1979. Total availment has reached P3,000,000.00, which upon maturity, were rolled-over or renewed.

As security to the loan, a Real Estate Mortgage over MICO's properties was executed by its VP Mariano Sio. Further, Charles Lee, Chua Siok Suy, Mariano Sio, Alfonso Yap and Richard Velasco, executed in their personal capacity a Surety Agreement in favor of PBCom in the amount of P3,000,000.00.

Another P4,000,000.00 was requested by the President Charles Lee from PBCom for the purpose of expansion and modernization of the companies machineries. The request was consequently approved and availed in full. Another surety agreement was executed by the same set of officers-persons in favor of PBCom and their liability shall not at any one time exceed the sum of P7,500,000.00/

Later, MICO furnished PBCom a copy of its notarized certification issued by its corporate secretary stating therein that Chio Siok Suy was the duly authorized person, unanimously approved by the Board of Directors, to negotiate with PBCom on behalf of MICO for loans and other credit availments.

After the receipt of this secretary's certificate, foreign letters of credits, domestic letter of credits and loans were further requested, approved and availed. **Upon maturity of all the credit availments, PBCom demanded for payment but MICO failed to settle despite repeated demands, reason for the Bank to foreclose extrajudicially the properties, and later sold them in public auction. The price however, was not sufficient to fully pay the total outstanding. PBCom demanded from the petitioners-sureties the deficiency, which the latter refused to acknowledge.** Thus, the filing with the court of the complaint and for attachment on the properties of the petitioners-sureties contending that MICO is no longer in operation and it has no other properties to settle for the deficiency. The trial court denied the complaint for failure on the part of the Bank to prove that the proceeds of the loans were ever delivered to MICO, which the Court of Appeals reversed, hence this petition.

ISSUES

Whether or not the petitioners may be held liable.

RULING

YES. In civil cases, the party having the burden of proof must establish his case by preponderance of evidence, which can be established by the operation of presumption or by the probative value, which the law attaches to a specific state of facts, thereby creating a prima facie case. If there is no proof to the contrary, the prima facie case or evidence will prevail.

The Negotiable Instruments Law clearly provides that every negotiable instrument is deemed prima facie to have been issued for valuable consideration and every person whose signature appears thereon are also presumed to have become a party for value. Negotiable instruments include promissory notes, bills of exchange and checks. Letters of credit and trust receipts are however, not negotiable instruments, but drafts issued in connection with letters of credit are negotiable instruments.

All documents presented by PBCom have not merely created a prima facie case but have actually proved the solidary obligation of MICO and the petitioners-sureties. **While the presumption found**

under the Negotiable Instruments Law may not necessarily be applicable to trust receipts and letters of credit, the presumption that the drafts drawn in connection with the letters of credit have sufficient consideration. The fact that the letters of credit show that the pertinent materials/merchandise have been received by MICO and with drafts signed by the beneficiary/suppliers proved that there was a consideration for value.

Therefore, the contention of the petitioner that the contracts on loans and letters of credits were not binding on the premise that there were no consideration for value and if there was, the Bank failed to present evidence as to the crediting of the proceeds to its account is untenable. It was the petitioner who has been preventing the Bank in presenting the evidence. But from the fact itself that MICO has requested for an additional loan of P4M, impliedly, is a prima facie case which showed that the proceeds of the earlier loans were delivered to MICO. The court also found no merits on the latter's contention that the contracts were executed fraudulently by the unauthorized person Chua Siok Suy. The fact that it was MICO which furnished PBCom the Secretary's Certificate, notarized by its own corporate secretary suffices for the PBCom to believe that it was valid and binding, hence the granting of the request for further availments.

Anent petitioners-sureties contention that they obtained no consideration whatsoever on the surety agreements, the Court pointed out that the consideration for the surety is the very consideration for the principal obligor, MICO, in the contracts of loan. In the case of Willex Plastic Industries Corporation vs. CA, it ruled that the consideration necessary to support a surety obligation need not pass directly to the surety, a consideration moving to the principal alone being sufficient. For a guarantor or surety is bound by the same consideration that makes the contract effective between the parties thereto. It is not necessary that a guarantor or surety should receive any part or benefit, if such there be, accruing to his principal.

QUIRINO GONZALES LOGGING CONCESSIONAIRE, QUIRINO GONZALES AND EUFEMIA GONZALES, *Petitioner*, -versus- COURT OF APPEALS AND REPUBLIC PLANTERS BANK, *Respondent*.

G.R. No. 126568, THIRD DIVISION, April 30, 2003, CARPIO-MORALES, J.

In any case, it is no defense that the promissory notes were signed in blank as Section 14 of the Negotiable Instruments Law concedes the prima facie authority of the person in possession of negotiable instruments, such as the notes herein, to fill in the blanks.

FACTS

Petitioner Quirino Gonzales Logging Concessionaire (QGLC), through its proprietor, general manager co-petitioner Quirino Gonzales, applied on October 15, 1962 for credit accommodations with respondent Republic Bank (the Bank), later known as Republic Planters Bank. The Bank approved QGLCs application granting it a credit line of P900K broken into an overdraft line of P450K and a Letter of Credit (LC) line of P400K.

Pursuant to the grant, the Bank and petitioners QGLC and the spouses Quirino and Eufemia Gonzales executed ten documents: two denominated Agreement for Credit in Current Account, four denominated Application and Agreement for Commercial Letter of Credit, and four denominated Trust Receipt. These were secured by a real estate mortgage on four parcels of land (Pandacan, Manila, Makati, Quezon City).

In separate transactions, petitioners, to secure certain advances from the Bank in connection with QGLCs exportation of logs, executed a promissory note in 1964 in favor of the Bank. They were to execute three more promissory notes in 1967.

In 1965, petitioners having long defaulted in the payment of their obligations under the credit line, the Bank foreclosed the mortgage and bought the properties covered thereby, it being the highest bidder in the auction sale held in the same year. Ownership over the properties was later consolidated in the Bank on account of which new titles thereto were issued to it.

On January 27, 1977, alleging non-payment of the balance of QGLCs obligation after the proceeds of the foreclosure sale were applied thereto, and non-payment of the promissory notes despite repeated demands, the Bank filed a complaint for sum of money against petitioners before the RTC Manila.

The sixth to ninth causes of action are anchored on the promissory notes issued by petitioners allegedly to secure certain advances from the Bank in connection with the exportation of logs as reflected above. The notes were payable 30 days after date and provided for the solidary liability of petitioners as well as attorney's fees at ten percent of the total amount due in the event of their non-payment at maturity.

As affirmative defenses, petitioners assert that the complaint states no cause of action, and assuming that it does, the same is/are barred by prescription or null and void for want of consideration.

RTC favored the petitioners. CA reversed.

Petitioners seek to evade liability under the Banks seventh to ninth causes of action by claiming that petitioners Quirino and Eufemia Gonzales signed the promissory notes in blank; that they had not received the value of said notes, and that the credit line thereon was unnecessary in view of their money deposits.

The genuineness and due execution of the notes had, however, been deemed admitted by petitioners, they having failed to deny the same under oath. Their claim that they signed the notes in blank does not thus lie.

ISSUE

Whether or not the promissory notes are invalid for want of consideration? (NO)

RULING

Petitioners' admission of the genuineness and due execution of the promissory notes notwithstanding, they raise want of consideration⁴⁵ thereof. The promissory notes, however, appear to be negotiable as they meet the requirements of Section 1 of the Negotiable Instruments Law. Such being the case, the notes are *prima facie* deemed to have been issued for consideration. It bears noting that no sufficient evidence was adduced by petitioners to show otherwise.

Exhibits "2" to "2-B" to which petitioners advert in support of their claim that the credit line on the notes was unnecessary because they had deposits in, and remittances due from, the Bank deserve

scant consideration. Said exhibits are merely claims by petitioners under their then proposals for a possible settlement of the case dated February 3, 1978. Parenthetically, the proposals were not even signed by petitioners but by certain Attorneys Osmundo R. Victoriano and Rogelio P. Madriaga.

In any case, it is no defense that the promissory notes were signed in blank as Section 14 of the Negotiable Instruments Law concedes the *prima facie* authority of the person in possession of negotiable instruments, such as the notes herein, to fill in the blanks.

As for petitioners' reliance on Exhibits "B", "P" and "T," they have failed to show the relevance thereof to the seventh up to the ninth causes of action of the Bank.

ENGR. JOSE E. CAYANAN, Petitioner, -versus- NORTH STAR INTERNATIONAL TRAVEL INC., Respondent.

G.R. No. 172954, FIRST DIVISION, October 5, 2011, VILLARAMA, JR, J.

Upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for valuable consideration which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side.

FACTS

North Star International Travel Incorporated (North Star) is a corporation engaged in the travel agency business while petitioner is the owner/general manager of JEAC International Management and Contractor Services, a recruitment agency.

On March 17, 1994, Virginia Balagtas, the General Manager of North Star, in accommodation and upon the instruction of its client, petitioner herein, sent the amount of US\$60,000 to View Sea Ventures Ltd., in Nigeria from her personal account in Citibank Makati. On March 29, 1994, Virginia again sent US\$40,000 to View Sea Ventures by telegraphic transfer, with US\$15,000 coming from petitioner. Likewise, on various dates, North Star extended credit to petitioner for the airplane tickets of his clients, with the total amount of such indebtedness under the credit extensions eventually reaching ₱510,035.47.

To cover payment of the foregoing obligations, petitioner issued five checks to North Star. When presented for payment, the checks in the amount of ₱1,500,000 and ₱35,000 were dishonored for insufficiency of funds while the other three checks were dishonored because of a stop payment order from petitioner. North Star, through its counsel, wrote petitioner on September 14, 1994 informing him that the checks he issued had been dishonored. North Star demanded payment, but petitioner failed to settle his obligations. Hence, North Star instituted Criminal Case Nos. 166549-53 charging petitioner with violation of *Batas Pambansa Blg. 22*, or the Bouncing Checks Law, before the Metropolitan Trial Court (MeTC) of Makati City.

RTC acquitted petitioner of the criminal charges. CA reversed the decision of the RTC insofar as the civil aspect is concerned and held petitioner civilly liable for the value of the subject checks.

ISSUE

Whether or not the checks issued by Cayanan were for valuable consideration? (YES)

RULING

We have held that upon issuance of a check, in the absence of evidence to the contrary, it is presumed that the same was issued for valuable consideration which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side. Under the Negotiable Instruments Law, it is presumed that every party to an instrument acquires the same for a consideration or for value. As petitioner alleged that there was no consideration for the issuance of the subject checks, it devolved upon him to present convincing evidence to overthrow the presumption and prove that the checks were in fact issued without valuable consideration. Sadly, however, petitioner has not presented any credible evidence to rebut the presumption, as well as North Star's assertion, that the checks were issued as payment for the US\$85,000 petitioner owed.

Petitioner claims that North Star did not give any valuable consideration for the checks since the US\$85,000 was taken from the personal dollar account of Virginia and not the corporate funds of North Star. The contention, however, deserves scant consideration. The subject checks, bearing petitioner's signature, speak for themselves. The fact that petitioner himself specifically named North Star as the payee of the checks is an admission of his liability to North Star and not to Virginia Balagtas, who as manager merely facilitated the transfer of funds. Indeed, it is highly inconceivable that an experienced businessman like petitioner would issue various checks in sizeable amounts to a payee if these are without consideration. Moreover, we note that Virginia Balagtas averred in her Affidavit that North Star caused the payment of the US\$60,000 and US\$25,000 to View Sea Ventures to accommodate petitioner, which statement petitioner failed to refute.

In addition, petitioner did not question the Statement of Account No. 8639 dated August 31, 1994 issued by North Star which contained itemized amounts including the US\$60,000 and US\$25,000 sent through telegraphic transfer to View Sea Ventures per his instruction. Thus, the inevitable conclusion is that when petitioner issued the subject checks to North Star as payee, he did so to settle his obligation with North Star for the US\$85,000.

E. Accommodation Party

ANG TIONG, Petitioner, -versus- LORENZO TING, DOING BUSINESS UNDER THE NAME & STYLE OF PRUNES PRESERVES MFG., & FELIPE ANG, Respondent.
G.R. No. L-26767, EN BANC, February 22, 1968, CASTRO, J.

Section 29 of the Negotiable Instruments Law by clear mandate makes the accommodation party "liable on the instrument to a holder for value, notwithstanding that such holder at the time of taking the instrument knew him to be only an accommodation party". It is not a valid defense that the accommodation party did not receive any valuable consideration when he executed the instrument. It is not correct to say that the holder for value is not a holder in due course merely because at the time he acquired the instrument, he knew that the indorser was only an accommodation party.

FACTS

On August 15, 1960 Lorenzo Ting issued Philippine Bank of Communications check K-81618, for the sum of P4,000, payable to "cash or bearer." With Felipe Ang's signature (indorsement in blank) at the back thereof, the instrument was received by the plaintiff Ang Tiong who thereafter presented it to the drawee bank for payment. The bank dishonored it. The plaintiff then made written demands on both Lorenzo Ting and Felipe Ang that they make good the amount represented by the check. These demands went unheeded; so he filed in the municipal court of Manila an action for collection of the sum of P4,000, plus P500 attorney's fees. On March 6, 1962 the municipal court adjudged for the plaintiff against the two defendants

Only Felipe Ang appealed to the Court of First Instance of Manila (civil case 50018), which rendered judgment on July 31, 1962, amended by an order dated August 9, 1962, directing him to pay to the plaintiff "the sum of P4,000, with interest at the legal rate from the date of the filing of the complaint, a further sum of P400 as attorney's fees, and costs."

Felipe Ang then elevated the case to the Court of Appeals, which certified it to this Court because the issues raised are purely of law.

The appellant imputes to the court a quo three errors, namely, (1) that it refused to apply article 2071 of the new Civil Code to the case at bar; (2) that it adjudged him a general indorser under the Negotiable Instruments Law (Act 2031); and (3) that it held that he "cannot obtain his release from the contract of suretyship or obtain security to protect himself against any proceedings on the part of the creditor and against the danger of insolvency of the principal debtor," because he is "jointly and severally liable on the instrument."

ISSUE

Whether or not Felipe Ang is an accommodation party? (YES)

RULING

A bank check is indisputably a negotiable instrument and should be governed solely by the Negotiable Instruments Law (see secs. 1 and 185). Section 63 of the Negotiable Instruments Law makes "a person placing his signature upon an instrument otherwise than as maker, drawer or acceptor" a general indorser,— "unless he clearly indicates by appropriate words his intention to be bound in some other capacity." Section 66 of the same law ordains that "every indorser who indorses without qualification, warrants to all subsequent holders in due course" (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has a good title to it; (c) that all prior parties have capacity to contract; and (d) that the instrument is at the time of his indorsement valid and subsisting. In addition "he engages that on due presentment, it shall be accepted or paid or both, as the case may be, and if it be dishonored, he will pay the amount thereof to the holder."

Section 29 of the Negotiable Instruments Law by clear mandate makes the accommodation party "liable on the instrument to a holder for value, notwithstanding that such holder at the time of taking the instrument knew him to be only an accommodation party". It is not a valid defense that the accommodation party did not receive any valuable consideration when he executed the instrument.

It is not correct to say that the holder for value is not a holder in due course merely because at the time he acquired the instrument, he knew that the indorser was only an accommodation party.

GOVERNMENT SERVICE INSURANCE SYSTEM, *Petitioner*, -versus- COURT OF APPEALS and MR. & MRS. ISABELO R. RACHO, *Respondent*.

G.R. No. L-40824, SECOND DIVISION, February 23, 1989, REGALADO, J.

This approach of both parties appears to be misdirected and their reliance misplaced. The promissory note hereinbefore quoted, as well as the mortgage deeds subject of this case, are clearly not negotiable instruments. These documents do not comply with the fourth requisite to be considered as such under Section 1 of Act No. 2031 because they are neither payable to order nor to bearer. The note is payable to a specified party, the GSIS. Absent the aforesaid requisite, the provisions of Act No. 2031 would not apply; governance shall be afforded, instead, by the provisions of the Civil Code and special laws on mortgages

FACTS

Private respondents, Mr. and Mrs. Isabelo R. Racho, together with the spouses Mr. and Mrs Flaviano Lagasca, executed a deed of mortgage, dated November 13, 1957, in favor of petitioner Government Service Insurance System (hereinafter referred to as GSIS) and subsequently, another deed of mortgage, dated April 14, 1958, in connection with two loans granted by the latter in the sums of P 11,500.00 and P 3,000.00, respectively. A parcel of land covered by Transfer Certificate of Title No. 38989 of the Register of Deed of Quezon City, co-owned by said mortgagor spouses, was given as security under the aforesaid two deeds. They also executed a 'promissory note' which states in part:

... for value received, we the undersigned ... JOINTLY, SEVERALLY and SOLIDARILY, promise to pay the GOVERNMENT SERVICE INSURANCE SYSTEM the sum of . . . (P 11,500.00) Philippine Currency, with interest at the rate of six (6%) per centum compounded monthly payable in . . . (120)equal monthly installments of . . . (P 127.65) each.

On July 11, 1961, the Lagasca spouses executed an instrument denominated "Assumption of Mortgage" under which they obligated themselves to assume the aforesaid obligation to the GSIS and to secure the release of the mortgage covering that portion of the land belonging to herein private respondents and which was mortgaged to the GSIS. This undertaking was not fulfilled.

Upon failure of the mortgagors to comply with the conditions of the mortgage, particularly the payment of the amortizations due, GSIS extrajudicially foreclosed the mortgage and caused the mortgaged property to be sold at public auction on December 3, 1962.

More than two years thereafter, or on August 23, 1965, herein private respondents filed a complaint against the petitioner and the Lagasca spouses in the former Court of First Instance of Quezon City, praying that the extrajudicial foreclosure "made on, their property and all other documents executed in relation thereto in favor of the Government Service Insurance System" be declared null and void. It was further prayed that they be allowed to recover said property, and/or the GSIS be ordered to pay them the value thereof, and/or they be allowed to repurchase the land. Additionally, they asked for actual and moral damages and attorney's fees.

In their aforesaid complaint, private respondents alleged that they signed the mortgage contracts not as sureties or guarantors for the Lagasca spouses but they merely gave their common property to the said co-owners who were solely benefited by the loans from the GSIS.

ISSUE

Whether the transaction of the parties was covered by the Negotiable Instruments Law? (NO)

RULING

In submitting their case to this Court, both parties relied on the provisions of Section 29 of Act No. 2031, otherwise known as the Negotiable Instruments Law, which provide that an accommodation party is one who has signed an instrument as maker, drawer, acceptor or indorser without receiving value therefor, but is held liable on the instrument to a holder for value although the latter knew him to be only an accommodation party.

This approach of both parties appears to be misdirected and their reliance misplaced. The promissory note hereinbefore quoted, as well as the mortgage deeds subject of this case, are clearly not negotiable instruments. These documents do not comply with the fourth requisite to be considered as such under Section 1 of Act No. 2031 because they are neither payable to order nor to bearer. The note is payable to a specified party, the GSIS. Absent the aforesaid requisite, the provisions of Act No. 2031 would not apply; governance shall be afforded, instead, by the provisions of the Civil Code and special laws on mortgages.

As earlier indicated, the factual findings of respondent court are that private respondents signed the documents "only to give their consent to the mortgage as required by GSIS", with the latter having full knowledge that the loans secured thereby were solely for the benefit of the Lagasca spouses. This appears to be duly supported by sufficient evidence on record. Indeed, it would be unusual for the GSIS to arrange for and deduct the monthly amortizations on the loans from the salary as an army officer of Flaviano Lagasca without likewise affecting deductions from the salary of Isabelo Racho who was also an army sergeant. Then there is also the undisputed fact, as already stated, that the Lagasca spouses executed a so-called "Assumption of Mortgage" promising to exclude private respondents and their share of the mortgaged property from liability to the mortgagee. There is no intimation that the former executed such instrument for a consideration, thus confirming that they did so pursuant to their original agreement.

PEOPLE OF THE PHILIPPINES, Petitioner, -versus- JULIA MANIEGO, Respondent.
G.R. No. L-30910, FIRST DIVISION, February 27, 1987, NARVASA, J.

An "accommodation party" in the light of the facts, i.e., a person "who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person." As such, she is under the law "liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew (her) to be only an accommodation party," although she has the right, after paying the holder, to obtain reimbursement from the party accommodated, "since the relation between them is in effect that of principal and surety, the accommodation party being the surety."

FACTS

Application of the established rule in this jurisdiction, that the acquittal of an accused on reasonable doubt is not generally an impediment to the imposition, in the same criminal action, of civil liability for damages on said accused, is what is essentially called into question by the appellant in this case. The information which initiated the instant criminal proceedings in the Court of First Instance of Rizal indicted three (3) persons — Lt. Rizalino M. Ubay, Mrs. Milagros Pamintuan, and Mrs. Julia T. Maniego — for the crime of malversation conspiring together, confederating with and helping one another, with intent of gain and without authority of law feloniously malverse, misappropriate and misapply public funds in the amount of P 66,434.50 belonging to the Republic of the Philippines.

The accused, Lt. Rizalino M. Ubay, a duly appointed officer in the Armed Forces of the Philippines in active duty, who, during the period specified above, was designated as Disbursing Officer in the Office of the Chief of Finance, GHQ, Camp Murphy, Quezon City, and as such was entrusted with and had under his custody and control public funds, conspiring and confederating with co-accused, Milagros T. Pamintuan and Julia T. Maniego, did then and there, take, receive, and accept from his said co-accused several personal checks drawn against the Philippine National Bank and the Bank of the Philippine Islands, of which the accused, Milagros T. Pamintuan is the drawer and the accused, Julia T. Maniego, is the indorser, in the total amount of P66,434.50, cashing said checks and using for this purpose the public funds entrusted to and placed under the custody and control of the said Lt. Rizalino M. Ubay, all the said accused knowing fully well that the said checks are worthless and are not covered by funds in the aforementioned banks, for which reason the same were dishonored and rejected by the said banks when presented for encashment, to the damage and prejudice of the Republic of the Philippines, in the amount of P66,434.50, Philippine currency.

Only Lt. Ubay and Mrs. Maniego were arraigned, Mrs. Pamintuan having apparently fled to the United States in August, 1962. Both Ubay and Maniego entered a plea of not guilty

ISSUE

Whether the Petitioner is civilly liable for being a mere indorser on account of the dishonor of the checks indorsed by her? (YES)

RULING

Hence, contrary to her submission, Maniego's acquittal on reasonable doubt of the crime of Malversation imputed to her and her two (2) co-accused did not operate to absolve her from civil liability for reimbursement of the amount rightfully due to the Government as owner thereof. Her liability therefor could properly be adjudged, as it was so adjudged, by the Trial Court on the basis of the evidence before it, which adequately establishes that she was an indorser of several checks drawn by her sister, which were dishonored after they had been exchanged with cash belonging to the Government, then in the official custody of Lt. Ubay.

Appellant's contention that as mere indorser, she may not be made liable on account of the dishonor of the checks indorsed by her, is likewise untenable. Under the law, the holder or last indorsee of a negotiable instrument has the right to "enforce payment of the instrument for the full amount thereof against all parties liable thereon." Among the "parties liable thereon" is an indorser of the instrument i.e., "a person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor

** unless he clearly indicates by appropriate words his intention to be bound in some other capacity. " Such an indorser "who indorses without qualification," *inter alia* "engages that on due presentment, ** (the instrument) shall be accepted or paid, or both, as the case may be, 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."

Maniego may also be deemed an "accommodation party" in the light of the facts, i.e., a person "who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person." As such, she is under the law "liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew ** (her) to be only an accommodation party," although she has the right, after paying the holder, to obtain reimbursement from the party accommodated, "since the relation between them is in effect that of principal and surety, the accommodation party being the surety."

TOWN SAVING AND LOAN BANK, INC., *Petitioner*, -versus- **COURT OF APPEALS,** *Respondent*.
G.R. No. 106011, FIRST DIVISION, February 27, 1987, GRIÑO-AQUINO, J.

"An accommodation party is one who has signed the instrument as maker, drawer, indorser, without receiving value therefor and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of the taking of the instrument knew him to be only an accommodation party. In lending his name to the accommodated party, the accommodation party is in effect a surety for the latter. He lends his name to enable the accommodated party to obtain credit or to raise money. He receives no part of the consideration for the instrument but assumes liability to the other parties thereto because he wants to accommodate another."

FACTS

On or about May 4, 1983, the Hipolitos applied for, and were granted, a loan in the amount of P700,000.00 with interest of 24% per annum for which they executed and delivered to Town Savings and Loan Bank (or TSLB) a promissory note with a maturity period of three (3) years and an acceleration clause upon default in the payment of any amortization, plus a penalty of 36% and 10% attorney's fees, if the note were referred to an attorney for collection. For failure to keep current their monthly payments on the account, the obligors were deemed to have defaulted on May 24, 1984. Notices of past due account and demands for payment were sent but ignored. At the time of the institution of the action on March 12, 1986, the unpaid obligation amounted to P1,114,983.40.

The Hipolitos denied being personally liable on the P700,000.00 promissory note which they executed. The loan was allegedly for the account of Pilarita H. Reyes, the sister of Miguel Hipolito. She was the real party-in-interest. The Hipolitos, not having received any part of the loan, were mere guarantors for Pilarita. They allegedly signed the promissory note because they were persuaded to do so by Joey Santos, President of TSLB. When they received the demand letters, they confronted him but they were told that the Bank had to observe the formality of sending notices and demand letters. The real purpose was only to pressure Pilarita to comply with her undertaking.

Insisting that they were mere guarantors, the Hipolitos vehemently protested against being dragged into the litigation as principal parties. As a result of the unfounded suit, they allegedly incurred actual damages estimated at P200,000.00 and attorney's fees of P30,000.00.

ISSUE

Whether the Hipolitos are liable on the promissory note which they executed in favor of the petitioner? (YES)

RULING

An accommodation party is one who has signed the instrument as marker, drawer, indorser, without receiving value therefor and for the purpose of lending his name to some other person. Such person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of the taking of the instrument knew him to be only an accommodation party. In lending his name to the accommodated party, the accommodation party is in effect a surety for the latter. He lends his name to enable the accommodated party to obtain credit or to raise money. *He receives no part of the consideration for the instrument but assumes liability to the other parties thereto because he wants to accommodate another.*

In this case, there is no question that the private respondents signed the promissory note in order to enable Pilarita H. Reyes, who is Miguel Hipolito's sister, to borrow the total sum of P1.4 million from TSLB. As observed by both the trial court and the appellate court, the actual beneficiary of the loan was Pilarita H. Reyes and no other. The Hipolitos accommodated her by signing a promissory note for half of the loan that she applied for because TSLB may not lend any single borrower more than the authorized limit of its loan portfolio. Under Section 29 of the Negotiable Instruments Law, the Hipolitos are liable to the bank on the promissory note that they signed to accommodate Pilarita.

Respondent appellate court erred in giving credence to Hipolito's allegation that it was the bank's president who induced him to sign the promissory note so that the bank would not violate the Central Bank's regulation limiting the amount that TSLB could lend out. Besides being self-serving, Hipolito's testimony was uncorroborated by any other evidence on record, therefore, it should have been received with extreme caution. The Court is convinced that the intention of respondents Hipolitos in signing the promissory note was not so much to enable the Bank to grant a loan to Pilarita but for the latter to be able to obtain the full amount of the loan that she needed at the time.

It is not credible that a Bank would want so much to lend money to a borrower that it would go out of its way to convince another person (respondent Miguel Hipolito) to accommodate the borrower (Pilarita H. Reyes). In the ordinary course of things, the borrower, Pilarita, not the Bank, would have requested her brother Miguel to accommodate her so she could have the P1.4 million that she wanted to borrow from the Bank.

The case of *Maulini vs. Serrano* relied upon by the appellate court in reversing the decision of the trial court, is not applicable to this case. In that case, the evidence showed that the indorser (the loan broker Serrano) in making the indorsement to the lender, Maulini, was acting as agent for the latter or, as a mere vehicle for the transference of the naked title from the borrower or maker of the note (Moreno). Furthermore, his indorsement was wholly without consideration. We ruled that Serrano was not an accommodation indorser; he was not liable on the note.

... Where, however, an indorsement is made as a favor to the indorsee, who requests it, not the better to secure payment, but to relieve himself from a distasteful situation, and where the only consideration for such indorsement passes from the indorser to the indorsee, the situation does not present one creating an accommodation

indorsement, nor one where there is a consideration sufficient to sustain an action on the indorsement.

Unlike the Maulini case, there was no agreement here, written or verbal, that in signing the promissory note, Miguel and Alicia Hipolito were acting as agents for the money lender the Bank. The consideration of the note signed by the Hipolitos was received by them through Pilarita. They acted as agents of Pilarita, not of the bank. They signed the promissory note as favor to Pilarita, to help her raise the funds that she needed. It was Pilarita whom they accommodated, not the bank, contrary to the erroneous finding of the appellate court.

EUSEBIO GONZALES, *Petitioner*, -versus- PHILIPPINE COMMERCIAL AND INTERNATIONAL BANK, EDNA OCAMPO, and ROBERTO NOCEDA, *Respondent*.

G.R. No. 180257, FIRST DIVISION, February 23, 2011, VELASCO, JR., J.

In Ang v. Associated Bank, 532 SCRA 244 (2007), quoting the definition of an accommodation party under Section 29 of the Negotiable Instruments Law, the Court cited that an accommodation party is a person “who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.”

FACTS

Petitioner Eusebio Gonzales was a client of Philippine Commercial and International Bank (PCIB) for 15 years. PCIB, through a Credit-On-Hand Loan Agreement (COHLA), granted the credit line of Gonzales. Gonzales drew from said credit line through the issuance of check. At the institution of the instant case, Gonzales had a Foreign Currency Deposit (FCD) of USD8,715.72 with PCIB. Gonzales and his wife obtained a loan for PhP 500,000.00. Consequently, Spouses Panlilio and Spouses Gonzales obtained a loan with PCIB in the amount of PhP 1,000,000.00 and PhP 300,000.00, respectively. The three loans were covered by three promissory notes, and as a security, the spouses Panlilio and spouses Gonzales executed a Real Estate Mortgage in favor of PCIB. The promissory notes specified the solidary liability of both parties. However, it was spouses Panlilio who received the loan of PhP 1,800,000.00.

The monthly interests were paid by the spouses Panlilio, but after some time, the spouses Panlilio already failed to pay their loan. In the meantime, Gonzales issued a check in favor of Rene Unson for PhP 250,000.00 drawn against the COHLA, but the check was dishonored due to the termination of the COHLA, and the PCIB also froze the account of Gonzales. Gonzales, through counsel, wrote PCIB insisting that the check he issued had been fully funded, and demanded the return of the proceeds of his FCD as well as damages for the unjust dishonor of the check.

PCIB stood its ground in freezing the account of Gonzales. Gonzales reminded PCIB that it was the spouses Panlilio who benefited from the loans, but PCIB ignored Gonzales' contention. The refusal of PCIB prompted Gonzales to file a case against PCIB with the Regional Trial Court (RTC). The RTC ruled in favor of PCIB and held that the spouses Panlilio and spouses Gonzales were solidarily liable on the three promissory notes.

Hence, the termination of the COHLA was just because of the outstanding loan. Also, the dishonor of check is also proper given that the COHLA was already terminated. The Court of Appeals affirmed in toto. CA held that the spouses Panlilio and spouses Gonzales were indeed solidary debtors, and PCIB

correctly dishonored the checks because it was only exercising its rights under the contractual stipulations in the COHLA

ISSUE

Whether or not Gonzales is liable for the three promissory he executed with spouses Panlilio? (YES)

RULING

As an accommodation party, Gonzales is solidarily liable with the spouses Panlilio for the loans. In *Ang v. Associated Bank*, 532 SCRA 244 (2007), quoting the definition of an accommodation party under Section 29 of the Negotiable Instruments Law, the Court cited that an accommodation party is a person “who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.”

There was no proper notice to Gonzales of the default and delinquency of the PhP 1,800,000 loan. It must be borne in mind that while solidarily liable with the spouses Panlilio on the PhP 1,800,000 loan covered by the three promissory notes, Gonzales is only an accommodation party and as such only lent his name and credit to the spouses Panlilio. While not exonerating his solidary liability, Gonzales has a right to be properly apprised of the default or delinquency of the loan precisely because he is a co-signatory of the promissory notes and of his solidary liability.

In business, more so for banks, the amounts demanded from the debtor or borrower have to be definite, clear, and without ambiguity. It is not sufficient simply to be informed that one must pay over a hundred thousand aggregate outstanding interest dues without clear and certain figures. Thus, We find PCIB negligent in not properly informing Gonzales, who is an accommodation party, about the default and the exact outstanding periodic interest dues. Without being properly apprised, Gonzales was not given the opportunity to properly act on them.

F. Negotiation

1. Distinguished from Assignment

RAUL SESBREÑO, Petitioner, -versus- HON. COURT OF APPEALS, DELTA MOTORS CORPORATION AND PILIPINAS BANK, Respondent.

G.R. No. 89252, THIRD DIVISION, May 24, 1993, FELICIANO, J.

A non-negotiable instrument may, obviously, not be negotiated; but it may be assigned or transferred, absent an express prohibition against assignment or transfer written in the face of the instrument: “The words ‘not negotiable,’ stamped on the face of the bill of lading, did not destroy its assignability, but the sole effect was to exempt the bill from the statutory provisions relative thereto, and a bill, though not negotiable, may be transferred by assignment; the assignee taking subject to the equities between the original parties.”

FACTS

Raul Sesbreno made a money market placement in the amount of P300,000 with PhilFinance, with a term of 32 days. PhilFinance issued to Sesbreno the Certificate of Confirmation of Sale of a Delta

Motor Corporation Promissory Note (DMC PN No. 2731), the Certificate of Securities Delivery Receipt indicating the sale of the Note with notation that said security was in the custody of Pilipinas Bank, and postdated checks drawn against the Insular Bank of Asia and America for P304,533.33 payable on 13 March 1981. The checks were dishonored for having been drawn against insufficient funds. Philfinance delivered to petitioner Denominated Custodian Receipt (DCR).

Petitioner approached Ms. Elizabeth de Villa of private respondent Pilipinas, and handed her a demand letter informing the bank that his placement with Philfinance in the amount reflected in the DCR had remained unpaid and outstanding, and that he in effect was asking for the physical delivery of the underlying promissory note. Petitioner then examined the original of the DMC PN No. 2731 and found: that the security had been issued on 10 April 1980; that it would mature on 6 April 1981; that it had a face value of P2,300,833.33, with the Philfinance as “payee” and private respondent Delta Motors Corporation (“Delta”) as “maker;” and that on face of the promissory note was stamped “NON NEGOTIABLE.” Pilipinas did not deliver the Note, nor any certificate of participation in respect thereof, to petitioner.

Petitioner later made similar demand letters again asking private respondent Pilipinas for physical delivery of the original of DMC PN No. 2731.

Petitioner also made a written demand upon private respondent Delta for the partial satisfaction of DMC PN No. 2731, explaining that Philfinance, as payee thereof, had assigned to him said Note to the extent of P307,933.33. Delta, however, denied any liability to petitioner on the promissory note.

As petitioner had failed to collect his investment and interest thereon, he filed an action for damages against private respondents Delta and Pilipinas

ISSUE

Whether or not DMC PN No. 2731 marked as non-negotiable may be assigned? (YES)

RULING

A non-negotiable instrument may, obviously, not be negotiated; but it may be assigned or transferred, absent an express prohibition against assignment or transfer written in the face of the instrument: “The words ‘not negotiable,’ stamped on the face of the bill of lading, *did not destroy its assignability*, but the sole effect was to exempt the bill from the statutory provisions relative thereto, and a bill, though *not negotiable, may be transferred by assignment*; the assignee taking subject to the equities between the original parties.” DMC PN No. 2731, while marked “non-negotiable,” was *not* at the same time stamped “non-transferrable” or “non-assignable.” It contained no stipulation which prohibited Philfinance from assigning or transferring, in whole or in part, that Note.

Apropos Delta’s complaint that the partial assignment by Philfinance of DMC PN No. 2731 had been effected without the consent of Delta, we note that such consent was not necessary for the validity and enforceability of the assignment in favor of petitioner. Delta’s argument that Philfinance’s sale or assignment of part of its rights to DMC PN No. 2731 constituted conventional subrogation, which required its (Delta’s) consent, is quite mistaken.

We find nothing in his “Letter of Agreement” which can be reasonably construed as a prohibition upon Philfinance assigning or transferring all or part of DMC PN No. 2731, before the maturity thereof. It is scarcely necessary to add that, even had this “Letter of Agreement” set forth an explicit

prohibition of transfer upon Philfinance, such a prohibition cannot be invoked against an assignee or transferee of the Note who parted with valuable consideration in good faith and without notice of such prohibition. It is not disputed that petitioner was such an assignee or transferee.

2. Modes of Negotiation

**ANG TEK LIAN, *Petitioner*, -versus- THE COURT OF APPEALS, *Respondent*.
G.R. No. L-2516, EN BANC, September 25, 1950, BENGZON, J.**

A check payable to the order of "cash" is a check payable to bearer, and the bank may pay it to the person presenting it for payment without the drawer's indorsement.

FACTS

For having issued a rubber check, Ang Tek Lian was convicted of estafa in the Court of First Instance of Manila. The Court of Appeals affirmed the verdict.

It appears that, knowing he had no funds therefor, Ang Tek Lian drew on Saturday, November 16, 1946, the check Exhibit A upon the China Banking Corporation for the sum of P4,000, payable to the order of "cash." He delivered it to Lee Hua Hong in exchange for money which the latter handed in the act. On November 18, 1946, the next business day, the check was presented by Lee Hua Hong to the drawee bank for payment, but it was dishonored for insufficiency of funds, the balance of the deposit of Ang Tek Lian on both dates being P335 only.

The Court of Appeals believed the version of Lee Huan Hong who testified that "on November 16, 1946, appellant went to his (complainant's) office, at 1217 Herran, Paco, Manila, and asked him to exchange Exhibit A — which he (appellant) then brought with him — with cash alleging that he needed badly the sum of P4,000 represented by the check, but could not withdraw it from the bank, it being then already closed; that in view of this request and relying upon appellant's assurance that he had sufficient funds in the bank to meet Exhibit A, and because they used to borrow money from each other, even before the war, and appellant owns a hotel and restaurant known as the North Bay Hotel, said complainant delivered to him, on the same date, the sum of P4,000 in cash; that despite repeated efforts to notify him that the check had been dishonored by the bank, appellant could not be located any-where, until he was summoned in the City Fiscal's Office in view of the complaint for estafa filed in connection therewith; and that appellant has not paid as yet the amount of the check, or any part thereof."

ISSUE

Whether or not indorsement is necessary to negotiate a check payable to the order of "cash"? (NO)

RULING

Under the Negotiable Instruments Law (sec. 9 [d]), a check drawn payable to the order of "cash" is a check payable to bearer, and the bank may pay it to the person presenting it for payment without the drawer's indorsement.

"A check payable to the order of cash is a bearer instrument. *Bacal v. National City Bank of New York* (1933), 146 Misc., 732; 262 N. Y. S., 839; *Cleary v. Da Beck Plate Glass Co.* (1907), 54 Misc., 537; 104 N. Y. S., 831; *Massachusetts Bonding & Insurance Co. v. Pittsburgh Pipe & Supply Co.* (Tex. Civ. App., 1939), 135 S. W. (2d), 818. See also *H. Cook & Son v. Moody* (1916), 17 Ga. App., 465; 87 S. E., 713."

"Where a check is made payable to the order of 'cash', the word cash 'does not purport to be the name of any person', and hence the instrument is payable to bearer. The drawee bank need not obtain any indorsement of the check, but may pay it to the person presenting it without any indorsement. . . ." (*Zollmann, Banks and Banking, Permanent Edition, Vol. 6, p. 494.*)

Of course, if the bank is not sure of the bearer's identity or financial solvency, it has the right to demand identification and/or assurance against possible complications, — for instance, (a) forgery of drawer's signature, (b) loss of the check by the rightful owner, (c) raising of the amount payable, etc. The bank may therefore require, for its protection, that the indorsement of the drawer — or of some other person known to it — be obtained. But where the Bank is satisfied of the identity and/or the economic standing of the bearer who tenders the check for collection, it will pay the instrument without further question; and it would incur no liability to the drawer in thus acting.

"A check payable to bearer is authority for payment to the holder. Where a check is in the ordinary form, and is payable to bearer, so that no indorsement is required, a bank, to which it is presented for payment, need not have the holder identified, and is not negligent in failing to do so. . . ." (*Michie on Banks and Banking, Permanent Edition, Vol. 5, p. 343.*)

". . . Consequently, a drawee bank to which a bearer check is presented for payment need not necessarily have the holder identified and ordinarily may not be charged with negligence in failing to do so. See Opinions 6C:2 and 6C:3. If the bank has no reasonable cause for suspecting any irregularity, it will be protected in paying a bearer check, 'no matter what facts unknown to it may have occurred prior to the presentment.' 1 *Morse, Banks and Banking, sec. 393.*

"Although a bank is entitled to pay the amount of a bearer check without further inquiry, it is entirely reasonable for the bank to insist that the holder give satisfactory proof of his identity" (*Paton's Digest, Vol. I, p. 1089.*)

Anyway, it is significant, and conclusive, that the form of the check Exhibit A was totally unconnected with its dishonor. The Court of Appeals declared that it was returned unsatisfied because the drawer had insufficient funds — not because the drawer's indorsement was lacking.

CALTEX (PHILIPPINES), INC., *Petitioner*, -versus- COURT OF APPEALS and SECURITY BANK AND TRUST COMPANY, *Respondent*.

G.R. No. 97753, SECOND DIVISION, August 10, 1992, REGALADO, J.

The accepted rule is that the negotiability or non-negotiability of an instrument is determined from the writing, that is, from the face of the instrument itself. In the construction of a bill or note, the intention of the parties is to control, if it can be legally ascertained. While the writing may be read in the light of surrounding circumstances in order to more perfectly understand the intent and meaning of the parties, yet as they have constituted the writing to be the only outward and visible expression of their meaning, no other words are to be added to it or substituted in its stead. The duty of the court in such case is to ascertain, not what the parties may have secretly intended as contradistinguished from what their

words express, but what is the meaning of the words they have used. What the parties meant must be determined by what they said.

FACTS

Defendant bank issued 280 certificates of time deposits (CTDs) in favor of Angel dela Cruz whom herein defendant acknowledges as a depositor of the aggregate amount of P1,120,000.00. A sample text if the CTDs is reproduced below.

SECURITY BANK
AND TRUST COMPANY
6778 Ayala Ave., Makati No. 90101
Metro Manila, Philippines
SUCAT OFFICE P 4,000.00
CERTIFICATE OF DEPOSIT
Rate 16%

Date of Maturity FEB. 23, 1984 FEB 22, 1982, 19__

This is to Certify that B E A R E R has deposited in this Bank the sum of PESOS: FOUR THOUSAND ONLY, SECURITY BANK SUCAT OFFICE P4,000 & 00 CTS Pesos, Philippine Currency, repayable to said depositor 731 days after date, upon presentation and surrender of this certificate, with interest at the rate of 16% per cent *per annum*.
(Sgd. Illegible) (Sgd. Illegible)

AUTHORIZED SIGNATURES

Plaintiff alleged that said CTDs were delivered to them by Angel dela Cruz as security for purchases of fuel products made with Caltex.

Plaintiff formally informed the defendant bank of its possession of the CTDs and claim payment of its value.

Defendant bank rejected the plaintiff's demand and claim for payment of the value of the CTDs after the latter failed to furnish the former a copy of the document evidencing the guarantee agreement with Angel dela Cruz, as well as details of obligation of Angel dela Cruz as requested.

The respondent court dismissed the complaint of plaintiff for payment of the value of the CTDs on the ground that the CTDs are non-negotiable instruments and that petitioner did not become a holder in due course of the said certificates of deposit.

ISSUE

Whether the CTDs are negotiable instruments? (YES)

RULING

Section 1 of Act No. 2031, otherwise known as the Negotiable Instruments Law, enumerates the requisites for an instrument to become negotiable, *viz*: "(a) It must be in writing and signed by the maker or drawer; (b) Must contain an unconditional promise or order to pay a sum certain in money; (c) Must be payable on demand, or at a fixed or determinable future time; (d) Must be payable to order or to bearer; and (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty."

On this score, the accepted rule is that the negotiability or non-negotiability of an instrument is determined from the writing, that is, from the face of the instrument itself. In the construction of a bill or note, the intention of the parties is to control, if it can be legally ascertained. While the writing may be read in the light of surrounding circumstances in order to more perfectly understand the intent and meaning of the parties, yet as they have constituted the writing to be the only outward and visible expression of their meaning, no other words are to be added to it or substituted in its stead. The duty of the court in such case is to ascertain, not what the parties may have secretly intended as contradistinguished from what their words express, but what is the meaning of the words they have used. What the parties meant must be determined by what they said.

Under the Negotiable Instruments Law, an instrument is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder thereof, and a holder may be the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof. In the present case, however, there was no negotiation in the sense of a transfer of the legal title to the CTDs in favor of petitioner in which situation, for obvious reasons, mere delivery of the bearer CTDs would have sufficed. Here, the delivery thereof only as security for the purchases of Angel de la Cruz (and we even disregard the fact that the amount involved was not disclosed) could at the most constitute petitioner only as a holder for value by reason of his lien. Accordingly, a negotiation for such purpose cannot be effected by mere delivery of the instrument since, necessarily, the terms thereof and the subsequent disposition of such security, in the event of non-payment of the principal obligation, must be contractually provided for.

The pertinent law on this point is that where the holder has a lien on the instrument arising from contract, he is deemed a holder for value to the extent of his lien. As such holder of collateral security, he would be a pledgee but the requirements there-for and the effects thereof, not being provided for by the Negotiable Instruments Law, shall be governed by the Civil Code provisions on pledge of incorporeal rights.

3. Kinds of Indorsements

L. Rights of the Holder

6. Holder in Due Course

VICENTE R. DE OCAMPO & CO., *Petitioner*, -versus- **ANITA GATCHALIAN, ET AL.,** *Respondent*.
G.R. No. L-15126, EN BANC, November 30, 1961, LABRADOR, J.

Where a holder's title is defective or suspicious, it cannot be stated that the payee acquired the check without the knowledge, of said defect in holder's title, and for this reason the presumption that it is a holder in due course or that it acquired the instrument in good faith does not exist.

Where the payee required the check under circumstances which should have put it to inquiry, why the holder had the check and used it, to pay his own personal account, the duty developed upon it to prove that it actually acquired said check in good faith.

FACTS

Anita Gatchalian was interested in buying a car. Manuel Gonzales offered to her a car owned by plaintiff. Gonzales claimed that he was authorized by the plaintiff to sell the car. Gonzales order defendant to issue a cross-check to comply on showing interest in buying the car. Gonzales promised to return the check the next day.

When Gonzales never appeared after, defendant issue a stop payment order on the check. She found out that Gonzales used the check as payment to plaintiff's clinic for his wife's fees. Plaintiff now demands defendant for payment of the check, in which defendant refused citing that plaintiff is a not a holder in due course.

The lower court held that defendant should pay plaintiff.

ISSUE

Whether or not De Ocampo is a holder in due course? (NO)

RULING

Section 52(c) provides that a holder in due course is one who takes the instrument “in good faith and for value”; Section 59, “that every holder is deemed *prima facie* to be a holder in due course”; and Section 52(d), that in order that one may be a holder in due course it is necessary that “at the time the instrument was negotiated to him he had no notice of any x x x defect in the title of the person negotiating it”; and lastly Section 59, that every holder is deemed *prima facie* to be a holder in due course.

Where a holder's title is defective or suspicious, it cannot be stated that the payee acquired the check without the knowledge, of said defect in holder's title, and for this reason the presumption that it is a holder in due course or that it acquired the instrument in good faith does not exist.

Where the payee required the check under circumstances which should have put it to inquiry, why the holder had the check and used it, to pay his own personal account, the duty developed upon it to prove that it actually acquired said check in good faith.

JUANITA SALAS, Petitioner, -versus- HON. COURT OF APPEALS AND FIRST FINANCE & LEASING CORPORATION, Respondent.

G.R. No. 76788, THIRD DIVISION, January 22, 1990, FERNAN, C.J.

Under the circumstances, there appears to be no question that Filinvest is a holder in due course, having taken the instrument under the following conditions: [a] it is complete and regular upon its face; [b] it became the holder thereof before it was overdue, and without notice that it had previously been dishonored; [c] it took the same in good faith and for value; and [d] when it is was negotiated to Filinvest, the latter had no notice of any infirmity in the instrument or defect in the title of VMS Corporation.

FACTS

Records disclose that on February 6, 1980, Juanita Salas (hereinafter referred to as petitioner) bought a motor vehicle from the Violago Motor Sales Corporation (VMS for brevity) for P58,138.20 as evidenced by a promissory note. This note was subsequently endorsed to Filinvest Finance & Leasing Corporation (hereinafter referred to as private respondent) which financed the purchase.

Petitioner defaulted in her installments beginning May 21, 1980 allegedly due to a discrepancy in the engine and chassis numbers of the vehicle delivered to her and those indicated in the sales invoice, certificate of registration and deed of chattel mortgage, which fact she discovered when the vehicle figured in an accident on 9 May 1980.

This failure to pay prompted private respondent to initiate Civil Case No. 5915 for a sum of money against petitioner before the Regional Trial Court of San Fernando, Pampanga which ordered the defendant to pay the plaintiff the sum of P28,414.40 with interest thereon at the rate of 14% from October 2, 1980 until the said sum is fully paid; and the further amount of P1,000.00 as attorney's fees.

Imputing fraud, bad faith and misrepresentation against VMS for having delivered a different vehicle to petitioner, the latter prayed for a reversal of the trial court's decision so that she may be absolved from the obligation under the contract.

The appealed decision was modified by the Court of Appeals ordering the defendant to pay the plaintiff the sum of P54,908.30 at 14% per annum from October 2, 1980 until full payment. The decision is AFFIRMED in all other respects. With costs to defendant.

ISSUE

Whether or not private respondent is a holder in due course? (YES)

RULING

Among others, the instrument in order to be considered negotiable must contain the so-called "words of negotiability—i.e., must be payable to 'order' or 'bearer'." Under Section 8 of the Negotiable Instruments Law, there are only two ways by which an instrument may be made payable to order. There must always be a specified person named in the instrument and the bill or note is to be paid to the person designated in the instrument or to any person to whom he has indorsed and delivered the same. Without the words "or order" or "to the order of", the instrument is payable only to the person designated therein and is therefore non-negotiable. Any subsequent purchaser thereof will not enjoy the advantages of being a holder of a negotiable instrument, but will merely "step into the shoes" of the person designated in the instrument and will thus be open to all defenses available against the latter.

A careful study of the questioned promissory note shows that it is a negotiable instrument, having complied with the requisites under the law as follows: [a] it is in writing and signed by the maker Juanita Salas; [b] it contains an unconditional promise to pay the amount of P58,138.20; [c] it is payable at a fixed or determinable future time which is "P1,614.95 monthly for 36 months due and payable on the 21st day of each month starting March 21, 1980 thru and inclusive of Feb. 21, 1983;"

[d] it is payable to Violago Motor Sales Corporation, *or order* and as such, [e] the drawee is named or indicated with certainty.

Under the circumstances, there appears to be no question that Filinvest is a holder in due course, having taken the instrument under the following conditions: [a] it is complete and regular upon its face; [b] it became the holder thereof before it was overdue, and without notice that it had previously been dishonored; [c] it took the same in good faith and for value; and [d] when it was negotiated to Filinvest, the latter had no notice of any infirmity in the instrument or defect in the title of VMS Corporation.

Accordingly, respondent corporation holds the instrument free from any defect of 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. This being so, petitioner cannot set up against respondent the defense of nullity of the contract of sale between her and VMS.

STELCO MARKETING CORPORATION, *Petitioner*, -versus- HON. COURT OF APPEALS and STEELWELD CORPORATION OF THE PHILIPPINES, INC., *Respondent*.

G.R. No. 96160, **SECOND DIVISION**, June 17, 1992, NARVASA, *C.J.*

It is clear from the relevant circumstances that STELCO cannot be deemed a holder of the check for value. It does not meet two of the essential requisites prescribed by the statute. It did not become "the holder of it before it was overdue, and without notice that it had been previously dishonored," and it did not take the check "in good faith and for value."

FACTS

Stelco Marketing Corporation sold structural steel bars to RYL Construction Inc. RYL gave Stelco's "sister corporation," Armstrong Industries, a MetroBank check from Steelweld Corporation. The check was issued by Steelweld's President to Romeo Lim, President of RYL, by way of accommodation, as a guaranty and not in payment of an obligation. When Armstrong deposited the check at its bank, it was dishonored because it was drawn against insufficient funds. When so deposited, the check bore two indorsements, i.e. RYL and Armstrong. Subsequently, Stelco filed a civil case against RYL and Steelweld to recover the value of the steel products.

ISSUE

Whether or not STELCO may be considered a holder of the check for value? (NO)

RULING

What the record shows is that: (1) the STEELWELD company check in question was given by its president to R.Y. Lim; (2) it was given only by way of accommodation, to be "used as collateral for another obligation;" (3) in breach of the agreement, however, R.Y. Lim indorsed the check to Armstrong in payment of an obligation; (4) Armstrong deposited the check to its account, after indorsing it; (5) the check was dishonored. The record does not show any intervention or participation by STELCO in any manner or form whatsoever in these transactions, or any communication of any sort between STEELWELD and STELCO, or between either of them and Armstrong Industries, at any time before the dishonor of the check.

The record does show that *after* the check had been deposited and dishonored, STELCO came into possession of it in some way, and was able, several years after the dishonor of the check, to give it in evidence at the trial of the civil case it had instituted against the drawers of the check (Limson and Torres) and RYL. But, as already pointed out, possession of a negotiable instrument after presentment and dishonor, or payment, is utterly inconsequential; it does not make the possessor a holder for value within the meaning of the law; it gives rise to no liability on the part of the maker or drawer and indorsers.

It is clear from the relevant circumstances that STELCO cannot be deemed a holder of the check for value. It does not meet two of the essential requisites prescribed by the statute. It did not become “the holder of it before it was overdue, and without notice that it had been previously dishonored,” and it did not take the check “in good faith and for value.”

BATAAN CIGAR AND CIGARETTE FACTORY, INC., *Petitioner*, -versus- COURT OF APPEALS AND STATE INVESTMENT HOUSE, INC., *Respondent*.

G.R. No. 93048, SECOND DIVISION, March 3, 1994, **NOCON, J.**

Section 59 of the NIL further states that every holder is deemed prima facie a holder in due course. However, when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims, acquired the title as holder in due course.

The foregoing does not mean, however, that respondent could not recover from the checks. The only disadvantage of a holder who is not a holder in due course is that the instrument is subject to defenses as if it were non-negotiable. Hence, respondent can collect from the immediate indorser, in this case, George King.

FACTS

Petitioner, Bataan Cigar & Cigarette Factory, Inc. (BCCFI), a corporation involved in the manufacturing of cigarettes, engaged one of its suppliers, King Tim Pua George (herein after referred to as George King), to deliver 2,000 bales of tobacco leaf starting October 1978. In consideration thereof, BCCFI, on July 13, 1978 issued crossed checks post dated sometime in March 1979 in the total amount of P820,000.00.

Relying on the supplier's representation that he would complete delivery within three months from December 5, 1978, petitioner agreed to purchase additional 2,500 bales of tobacco leaves, despite the supplier's failure to deliver in accordance with their earlier agreement. Again petitioner issued post dated crossed checks in the total amount of P1,100,000.00, payable sometime in September 1979.

During these times, George King was simultaneously dealing with private respondent SIHI. On July 19, 1978, he sold at a discount check TCBT 551826⁵ bearing an amount of P164,000.00, post dated March 31, 1979, drawn by petitioner, naming George King as payee to SIHI. On December 19 and 26, 1978, he again sold to respondent checks TCBT Nos. 608967 & 608968,⁶ both in the amount of P100,000.00, post dated September 15 & 30, 1979 respectively, drawn by petitioner in favor of George King.

In as much as George King failed to deliver the bales of tobacco leaf as agreed despite petitioner's demand, BCCFI issued on March 30, 1979, a stop payment order on all checks payable to George King, including check TCBT 551826. Subsequently, stop payment was also ordered on checks TCBT Nos. 608967 & 608968 on September 14 & 28, 1979, respectively, due to George King's failure to deliver the tobacco leaves.

Efforts of SIHI to collect from BCCFI having failed, it instituted the present case, naming only BCCFI as party defendant. The trial court pronounced SIHI as having a valid claim being a holder in due course. It further said that the non-inclusion of King Tim Pua George as party defendant is immaterial in this case, since he, as payee, is not an indispensable party.

ISSUE

Whether or not SIHI, a second indorser, a holder of crossed checks, is a holder in due course, to be able to collect from the drawer, BCCFI? (NO)

RULING

The Negotiable Instruments Law states what constitutes a holder in due course, thus: "Sec. 52—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 in the instrument or defect in the title of the person negotiating it."

Section 59 of the NIL further states that every holder is deemed prima facie a holder in due course. However, when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims, acquired the title as holder in due course.

The foregoing does not mean, however, that respondent could not recover from the checks. The only disadvantage of a holder who is not a holder in due course is that the instrument is subject to defenses as if it were non-negotiable. Hence, respondent can collect from the immediate indorser, in this case, George King.

As a preliminary, a check is defined by law as a bill of exchange drawn on a bank payable on demand. There are a variety of checks, the more popular of which are the memorandum check, cashier's check, traveler's check and crossed check. Crossed check is one where two parallel lines are drawn across its face or across a corner thereof. It may be crossed generally or specially.

A check is crossed specially when the name of a particular banker or a company is written between the parallel lines drawn. It is crossed generally when only the words "and company" are written or nothing is written at all between the parallel lines. It may be issued so that presentment can be made only by a bank.

In order to preserve the credit worthiness of checks, jurisprudence has pronounced that crossing of a check should have the following effects: (a) the check may not be encashed but only deposited in

the bank; (b) the check may be negotiated only once—to one who has an account with a bank; (c) and the act of crossing the check serves as warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.

It is then settled that crossing of checks should put the holder on inquiry and upon him devolves the duty to ascertain the indorser's title to the check or the nature of his possession. Failing in this respect, the holder is declared guilty of gross negligence amounting to legal absence of good faith, contrary to Sec. 52(c) of the Negotiable Instruments Law, and as such the consensus of authority is to the effect that the holder of the check is not a holder in due course.

ATRIUM MANAGEMENT CORPORATION, *Petitioner*, -versus- COURT OF APPEALS, E.T. HENRY AND CO., LOURDES VICTORIA M. DE LEON, RAFAEL DE LEON, JR., AND HI-CEMENT CORPORATION, *Respondent*.

G.R. No. 109491, FIRST DIVISION, February 28, 2001, PARDO, J.

In the instant case, the checks were crossed checks and specifically indorsed for deposit to payee's account only. From the beginning, Atrium was aware of the fact that the checks were all for deposit only to payee's account, meaning E.T. Henry. Clearly, then, Atrium could not be considered a holder in due course.

FACTS

Hi-Cement Corporation through its corporate signatories, petitioner Lourdes M. de Leon, treasurer, and the late Antonio de las Alas, Chairman, issued “crossed” checks in favor of E.T. Henry and Co. Inc., as payee. E.T. Henry and Co., Inc., in turn, endorsed the four checks to petitioner Atrium Management Corporation for valuable consideration. Upon presentment for payment, the drawee bank dishonored all four checks for the common reason “payment stopped”. Atrium, thus, instituted this action after its demand for payment of the value of the checks was denied.

During trial, the Court found that Hi-Cement testified that E.T. Henry offered to give Hi-Cement a loan which the subject checks would secure as collateral. Enrique Tan of E.T. Henry approached Atrium for financial assistance, offering to discount four RCBC checks in the total amount of P2 million, issued by Hi-Cement in favor of E.T. Henry. Atrium agreed to discount the checks, provided it be allowed to confirm with Hi-Cement the fact that the checks represented payment for petroleum products which E.T. Henry delivered to Hi-Cement.

ISSUE

Whether or not petitioner Atrium was a holder of the checks in due course? (NO)

RULING

The Negotiable Instruments Law, Section 52 defines a holder in due course, thus: “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 in the instrument or defect in the title of the person negotiating it.”

In the instant case, the checks were crossed checks and specifically indorsed for deposit to payee’s account only. From the beginning, Atrium was aware of the fact that the checks were all for deposit only to payee’s account, meaning E.T. Henry. Clearly, then, Atrium could not be considered a holder in due course.

It does not follow as a legal proposition that simply because petitioner Atrium was not a holder in due course for having taken the instruments in question with notice that the same was for deposit only to the account of payee E.T. Henry that it was altogether precluded from recovering on the instrument. The Negotiable Instruments Law does not provide that a holder not in due course cannot recover on the instrument.

The disadvantage of Atrium in not being a holder in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable. One such defense is absence or failure of consideration.

CELY YANG, *Petitioner*, -versus- COURT OF APPEALS, PHILIPPINE COMMERCIAL INTERNATIONAL BANK, FAR EAST BANK & TRUST CO., EQUITABLE BANKING CORPORATION, PREM CHANDIRAMANI AND FERNANDO DAVID, *Respondent*.
G.R. No. 138074, SECOND DIVISION, August 15, 2003, QUISUMBING, J.

Every holder of a negotiable instrument is deemed prima facie a holder in due course. However, this presumption arises only in favor of a person who is a holder as defined in Section 191 of the Negotiable Instruments Law, meaning a “payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.” In the present case, it is not disputed that David was the payee of the checks in question. The weight of authority sustains the view that a payee may be a holder in due course.

FACTS

Petitioner Cely Yang agreed with private respondent Prem Chandiramani to procure from Equitable Banking Corp. and Far east Bank and Trust Company (FEBTC) two cashier’s checks in the amount of P2.087 million each, payable to Fernando david and FEBTC dollar draft in the amount of US\$200,000.00 payable to PCIB FCDU account No. 4195-01165-2. Yang gave the checks and the draft to Danilo Ranigo to be delivered to Chandiramani. Ranigo was to meet Chandiramani to turn over the checks and the dollar draft, and the latter would in turn deliver to the former Phil. Commercial International Bank (PCIB) manager’s check in the sum of P4.2 million and the dollar draft in the same amount to be issued by Hang Seng Bank Ltd. of HongKong. But Chandiramani did not appear at the rendezvous and Ranigo allegedly lost the two cashier’s checks and the dollar draft.

The loss was then reported to the police. It transpired, however that the checks and the dollar draft were never lost, for Chandiramani was able to get hold of them without delivering the exchange consideration consisting of PCIB Manager’s checks. Two hours after Chandiramani was able to meet Ranigo, the former delivered to David the two cashier’s checks of Yang and, in exchange, got US \$360,000 from David, who in turn deposited them. Chandiramani also deposited the dollar draft in PCIG FCDU No. 4194-0165-2.

Meanwhile, Yang requested FEBTC and Equitable to stop payment on the instruments she believed to be lost. Both Banks complied with her request, but upon the representation of PCIB, FEBTC subsequently lifted the stop payment order on FEBTC Dollar Draft No. 4771, thus, enabling the holder PCIB FCDU Account No. 4194-0165-2 to received the amount of US \$ 200, 000.

ISSUE

Whether or not David may be considered a holder in due course? (YES)

RULING

Every holder of a negotiable instrument is deemed *prima facie* a holder in due course. However, this presumption arises only in favor of a person who is a holder as defined in Section 191 of the Negotiable Instruments Law, meaning a “payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.” In the present case, it is not disputed that David was the payee of the checks in question. The weight of authority sustains the view that a payee may be a holder in due course. Hence, the presumption that he is *a prima facie* holder in due course applies in his favor. However, said presumption may be rebutted. Hence, what is vital to the resolution of this issue is whether David took possession of the checks under the conditions provided for in Section 52 of the Negotiable Instruments Law. All the requisites provided for in Section 52 must concur in David’s case; otherwise he cannot be deemed a holder in due course.

With respect to consideration, Section 24 of the Negotiable Instruments Law creates a presumption that every party to an instrument acquired the same for a consideration or for value. Thus, the law itself creates a presumption in David’s favor that he gave valuable consideration for the checks in question. In alleging otherwise, the petitioner has the onus to prove that David got hold of the checks absent said consideration. In other words, the petitioner must present convincing evidence to overthrow the presumption. Our scrutiny of the records, however, shows that the petitioner failed to discharge her burden of proof. The petitioner’s averment that David did not give valuable consideration when he took possession of the checks is unsupported, devoid of any concrete proof to sustain it.

7. Defenses Against the Holder

RCBC SAVINGS BANK, *Petitioner*, -versus- NOEL M. ODRADA, *Respondent*.

G.R. No. 219037, SECOND DIVISION, October 19, 2016, CARPIO, J.

However, while this Court has consistently held that a manager’s check is automatically accepted, a holder other than a holder in due course is still subject to defenses.

FACTS

In April 2002, respondent Noel M. Odrada (Odrada) sold a secondhand Mitsubishi Montero (Montero) to Teodoro L. Lim (Lim) for One Million Five Hundred Ten Thousand Pesos (P1,510,000). Of the total consideration, Six Hundred Ten Thousand Pesos (P610,000) was initially paid by Lim and the balance of Nine Hundred Thousand Pesos (P900,000) was financed by petitioner RCBC Savings Bank (RCBC) through a car loan obtained by Lim. As a requisite for the approval of the loan, RCBC required Lim to submit the original copies of the Certificate of Registration (CR) and Official Receipt

(OR) in his name. Unable to produce the Montero's OR and CR, Lim requested RCBC to execute a letter addressed to Odrada informing the latter that his application for a car loan had been approved.

On 5 April 2002, RCBC issued a letter that the balance of the loan would be delivered to Odrada upon submission of the OR and CR. Following the letter and initial down payment, Odrada executed a Deed of Absolute Sale on 9 April 2002 in favor of Lim and the latter took possession of the Montero.

When RCBC received the documents, RCBC issued two manager's checks dated 12 April 2002 payable to Odrada for Nine Hundred Thousand Pesos (P900,000) and Thirteen Thousand Five Hundred Pesos (P13,500). After the issuance of the manager's checks and their turnover to Odrada but prior to the checks' presentation, Lim notified Odrada in a letter dated 15 April 2002 that there was an issue regarding the roadworthiness of the Montero. The letter states:

April 15, 2002

Mr. Noel M. Odrada
C/o Kotse Pilipinas
Fronting Ultra, Pasig City

Thru: Shan Mendez;

Dear Mr. Odrada,

Please be inform[ed] that I am going to cancel or exchange the (1) one unit Montero that you sold to me thru Mr. Shan Mendez because it did not match your representations the way Mr. Shan Mendez explained to me like:

1. You told me that the said vehicle has not experience [d] collision. However, it is hidden, when you open its engine cover there is a trace of a head-on collision. The condenser is smashed,; the fender support is not align[ed], both bumper supports] connecting [the] chassis were crippled and welded, the hood support was repaired, etc.

2. The 4-wheel drive shift is not functioning. When Mr. Mendez was asked about it, he said it would not function until you can reach the speed of 30 miles.

3. During Mr. Mendez['s] representation, he said the odometer has still an original mileage data but found tampered.

4. You represented the vehicle as model 1998 however; it is indicated in the front left A-pillar inscribed at the identification plate [as] model 1997.

Therefore, please show your sincerity by personally inspecting the said vehicle at RCBC, Pacific Bldg. Pearl Drive, Ortigas Center, Pasig City. Let us meet at the said bank at 10:00 A.M., April 17, 2002.

Meanwhile, kindly hold or do not encash the manager's check[s] issued to you by RCBC until you have clarified and satisfied my complaints.

Sincerely yours,

Teodoro L. Lim

Cc: Dario E. Santiago, RCBC loan
Legal

Odrada did not go to the slated meeting and instead deposited the manager's checks with International Exchange Bank (Ibank) on 16 April 2002 and redeposited them on 19 April 2002 but the checks were dishonored both times apparently upon Lim's instruction to RCBC. Consequently, Odrada filed a collection suit against Lim and RCBC in the Regional Trial Court of Makati.

In his Answer, Lim alleged that the cancellation of the loan was at his instance, upon discovery of the misrepresentations by Odrada about the Montero's roadworthiness. Lim claimed that the cancellation was not done *ex parte* but through a letter dated 15 April 2002. He further alleged that the letter was delivered to Odrada prior to the presentation of the manager's checks to RCBC

On the other hand, RCBC contended that the manager's checks were dishonored because Lim had cancelled the loan. RCBC claimed that the cancellation of the loan was prior to the presentation of the manager's checks. Moreover, RCBC alleged that despite notice of the defective condition of the Montero, which constituted a failure of consideration, Odrada still proceeded with presenting the manager's checks.

It was later disclosed during trial that RCBC also sent a formal notice of cancellation of the loan on 18 April 2002 to both Odrada and Lim.

ISSUE

Whether or not Odrada is a holder in due course of the manager's checks in question despite being informed of the cancellation of the auto loan by the borrower, Lim? (NO)

RULING

Jurisprudence defines a manager's check as a check drawn by the bank's manager upon the bank itself and accepted in advance by the bank by the act of its issuance. It is really the bank's own check and may be treated as a promissory note with the bank as its maker. Consequently, upon its purchase, the check becomes the primary obligation of the bank and constitutes its written promise to pay the holder upon demand. It is similar to a cashier's check both as to effect and use in that the bank represents that the check is drawn against sufficient funds.

As a general rule, the drawee bank is not liable until it accepts. Prior to a bill's acceptance, no contractual relation exists between the holder and the drawee. Acceptance, therefore, creates a privity of contract between the holder and the drawee so much so that the latter, once it accepts, becomes the party primarily liable on the instrument. Accordingly, acceptance is the act which triggers the operation of the liabilities of the drawee (acceptor) under Section 62 of the Negotiable Instruments Law. Thus, once he accepts, the drawee admits the following: (a) existence of the drawer; (b) genuineness of the drawer's signature; (c) capacity and authority of the drawer to draw the instrument; and (d) existence of the payee and his then capacity to endorse.

As can be gleaned in a long line of cases decided by this Court, a manager's check is accepted by the bank upon its issuance. As compared to an ordinary bill of exchange where acceptance occurs after

the bill is presented to the drawee, the distinct feature of a manager's check is that it is accepted in advance. Notably, the mere issuance of a manager's check creates a privity of contract between the holder and the drawee bank, the latter primarily binding itself to pay according to the tenor of its acceptance. The drawee bank, as a result, has the unconditional obligation to pay a manager's check to a holder in due course irrespective of any available personal defenses. However, while this Court has consistently held that a manager's check is automatically accepted, a holder **other than a holder in due course** is still subject to defenses. In *International Corporate Bank v. Spouses Gueco*, 351 SCRA 516 (2001), which involves a delivered manager's check, the Court still considered whether the check had become stale: It has been held that, if the check had become stale, it becomes imperative that the circumstances that caused its non-presentment be determined. In the case at bar, there is no doubt that the petitioner bank held on the check and refused to encash the same because of the controversy surrounding the signing of the joint motion to dismiss. We see no bad faith or negligence in this position taken by the bank.

The drawee bank of a manager's check may interpose personal defenses of the purchaser of the manager's check if the holder is not a holder in due course. In short, the purchaser of a manager's check may validly countermand payment to a holder who is not a holder in due course. Accordingly, the drawee bank may refuse to pay the manager's check by interposing a personal defense of the purchaser. Hence, the resolution of the present case requires a determination of the status of Odrada as holder of the manager's checks. In this case, the Court of Appeals gravely erred when it considered Odrada as a holder in due course. Section 52 of the Negotiable Instruments Law defines a holder in due course as one 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 has 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 in the instrument or defect in the title of the person negotiating it.

To be a holder in due course, the law requires that a party must have acquired the instrument *in good faith* and *for value*. Good faith means that the person taking the instrument has acted with due honesty with regard to the rights of the parties liable on the instrument and that at the time he took the instrument, the holder has no knowledge of any defect or infirmity of the instrument. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument would amount to bad faith. Value, on the other hand, is defined as any consideration sufficient to support a simple contract.

M. Liabilities of Parties

1. Maker

REPUBLIC PLANTERS BANK, *Petitioner*, -versus- COURT OF APPEALS and FERMIN CANLAS, *Respondent*.

G.R. No. 93073, SECOND DIVISION, December 21, 1992, CAMPOS, JR., J.

Under the Negotiable Instruments Law, persons who write their names on the face of promissory notes are makers and are liable as such. By signing the notes, the maker promises to pay to the order of the payee or any holder according to the tenor thereof. Based on the above provisions of law, there is no

denying that private respondent Fermin Canlas is one of the co-makers of the promissory notes. As such, he cannot escape liability arising therefrom.

FACTS

Defendant Shozo Yamaguchi and private respondent Fermin Canlas were President/Chief Operating Officer and Treasurer respectively, of Worldwide Garment Manufacturing, Inc.. By virtue of Board Resolution No.1 dated August 1, 1979, defendant Shozo Yamaguchi and private respondent Fermin Canlas were authorized to apply for credit facilities with the petitioner Republic Planters Bank in the forms of export advances and letters of credit/trust receipts accommodations. Petitioner bank issued nine promissory notes, marked as Exhibits A to I inclusive, each of which were uniformly worded in the following manner:

_____, after date, for value received, I/we, jointly and severally promise to pay to the ORDER of the REPUBLIC PLANTERS BANK, at its office in Manila, Philippines, the sum of _____ PESOS(...) Philippine Currency...

On the right bottom margin of the promissory notes appeared the signatures of Shozo Yamaguchi and Fermin Canlas above their printed names with the phrase "and (in) his personal capacity" typewritten below. At the bottom of the promissory notes appeared: "Please credit proceeds of this note to:

_____ Savings Account Current Account
No. 1372-00257-6
of WORLDWIDE GARMENT MFG. CORP.

These entries were separated from the text of the notes with a bold line which ran horizontally across the pages.

In the promissory notes marked as Exhibits C, D and F, the name Worldwide Garment Manufacturing, Inc. was apparently rubber stamped above the signatures of defendant and private respondent. On December 20, 1982, Worldwide Garment Manufacturing, Inc. noted to change its corporate name to Pinch Manufacturing Corporation.

On February 5, 1982, petitioner bank filed a complaint for the recovery of sums of money covered among others, by the nine promissory notes with interest thereon, plus attorney's fees and penalty charges. The complainant was originally brought against Worldwide Garment Manufacturing, Inc. *inter alia*, but it was later amended to drop Worldwide Manufacturing, Inc. as defendant and substitute Pinch Manufacturing Corporation in its place. Defendants Pinch Manufacturing Corporation and Shozo Yamaguchi did not file an Amended Answer and failed to appear at the scheduled pre-trial conference despite due notice. Only private respondent Fermin Canlas filed an Amended Answer wherein he, denied having issued the promissory notes in question since according to him, he was not an officer of Pinch Manufacturing Corporation, but instead of Worldwide Garment Manufacturing, Inc., and that when he issued said promissory notes in behalf of Worldwide Garment Manufacturing, Inc., the same were in blank, the typewritten entries not appearing therein prior to the time he affixed his signature.

ISSUE

Whether private respondent Fermin Canlas is solidarily liable with the other defendants, namely Pinch Manufacturing Corporation and Shozo Yamaguchi, on the nine promissory notes? (YES)

RULING

Under the Negotiable Instruments Law, persons who write their names on the face of promissory notes are makers and are liable as such. By signing the notes, the maker promises to pay to the order of the payee or any holder according to the tenor thereof. Based on the above provisions of law, there is no denying that private respondent Fermin Canlas is one of the co-makers of the promissory notes. As such, he cannot escape liability arising therefrom.

Where an instrument containing the words “I promise to pay” is signed by two or more persons, they are deemed to be jointly and severally liable thereon. An instrument which begins with “I”, “We”, or “Either of us” promise to pay, when signed by two or more persons, makes them solidarily liable. The fact that the singular pronoun is used indicates that the promise is individual as to each other; meaning that each of the co-signers is deemed to have made an independent singular promise to pay the notes in full.

In the case at bar, the solidary liability of private respondent Fermin Canlas is made clearer and certain, without reason for ambiguity, by the presence of the phrase “joint and several” as describing the unconditional promise to pay to the order of Republic Planters Bank. A joint and several note is one in which the makers bind themselves both jointly and individually to the payee so that all may be sued together for its enforcement, or the creditor may select one or more as the object of the suit. A joint and several obligation in common law corresponds to a civil law solidary obligation; that is, one of several debtors bound in such wise that each is liable for the entire amount, and not merely for his proportionate share.

2. Drawer

MYRON C. PAPA, ADMINISTRATOR OF THE TESTATE ESTATE OF ANGELA M. BUTTE,
Petitioner, -versus- A.U. VALENCIA and CO., INC., FELIX PEÑARROYO, SPS. ARSENIO B. REYES &
AMANDA SANTOS, and DELFIN JAO, Respondent.

G.R. No. 105188, FIRST DIVISION, January 23, 1998, KAPUNAN, J.

Granting that petitioner had never encashed the check, his failure to do so for more than ten (10) years undoubtedly resulted in the impairment of the check through his unreasonable and unexplained delay.

FACTS

Petitioner Myron C. Papa, acting as attorney-in-fact of Angela M. Butte, sold to respondent Peñarroyo, through respondent Valencia, a parcel of land. Prior to the alleged sale, the said property, together with several other parcels of land likewise owned by Angela M. Butte, had been mortgaged by her to the Associated Banking Corporation (now Associated Citizens Bank).

Despite representations made by herein respondents to the bank to release the title to the property sold to respondent Peñarroyo, the bank refused to release it unless and until all the mortgaged properties of the late Angela M. Butte were also redeemed.

A.U. Valencia and Co., Inc. (Valencia) and Felix Peñarroyo (Peñarroyo) filed with the Regional Trial Court a complaint for specific performance against herein petitioner Myron C. Papa, in his capacity as administrator of the Testate Estate of one Angela M. Butte.

The trial court rendered a decision ordering Papa (defendant) to execute a Deed of Absolute Sale in favor of (plaintiff) Felix Peñarroyo covering the property in question and to deliver peaceful possession and enjoyment of the said property to the said plaintiff, free from any liens and encumbrances.

Petitioner appealed the aforesaid decision of the trial court to the Court of Appeals alleging among others that the sale was never "consummated" as he did not encash the check (in the amount of P40,000.00) given by respondents Valencia and Peñarroyo in payment of the full purchase price of the subject lot. He maintained that what said respondents had actually paid was only the amount of P5,000.00 (in cash) as earnest money.

The Court of Appeals affirmed the decision of the trial court. Hence, this petition for review on certiorari.

ISSUE

Whether or not the check was encashed and can be considered effective as payment? (YES)

RULING

It is an undisputed fact that respondents Valencia and Peñarroyo had given petitioner Myron C. Papa the amounts of Five Thousand Pesos (P5,000.00) in cash on 24 May 1973, and Forty Thousand Pesos (P40,000.00) in check on 15 June 1973, in payment of the purchase price of the subject lot. Petitioner himself admits having received said amounts, and having issued receipts therefor. Petitioner's assertion that he never encashed the aforesaid check is not substantiated and is at odds with his statement in his answer that "he can no longer recall the transaction which is supposed to have happened 10 years ago." After more than ten (10) years from the payment in part by cash and in part by check, the presumption is that the check had been encashed. As already stated, he even waived the presentation of oral evidence.

Granting that petitioner had never encashed the check, his failure to do so for more than ten (10) years undoubtedly resulted in the impairment of the check through his unreasonable and unexplained delay.

While it is true that the delivery of a check produces the effect of payment only when it is cashed, pursuant to Art. 1249 of the Civil Code, the rule is otherwise if the debtor is prejudiced by the creditor's unreasonable delay in presentment. The acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given. It has, likewise, been held that if no presentment is made at all, the drawer cannot be held

liable irrespective of loss or injury unless presentment is otherwise excused. This is in harmony with Article 1249 of the Civil Code under which payment by way of check or other negotiable instrument is conditioned on its being cashed, except when through the fault of the creditor, the instrument is impaired. The payee of a check would be a creditor under this provision and if its non-payment is caused by his negligence, payment will be deemed effected and the obligation for which the check was given as conditional payment will be discharged.

BANK OF THE PHILIPPINE ISLANDS, Petitioner, -versus- REYNALD R. SUAREZ, Respondent.
G.R. No. 167750, SECOND DIVISION, March 15, 2010, CARPIO, J.

Considering that there was no binding representation on BPI's part as regards the same-day crediting of the RCBC check, no negligence can be ascribed to BPI's dishonor of the checks because BPI was justified in dishonoring the checks for lack of available funds in Suarez's account.

FACTS

Suarez represents a client who wants to buy parcels of land without having to directly deal with the land owners. They made arrangements that Suarez will make the transactions on his behalf to make it appear he is the one buying the lots. The client issued a check from Rizal Commercial Banking Co. to be credited to the checking account of Suarez with BPI in the amount of P19,129,100.00 as consideration to the lots.

Knowing that the bank observes a 3-day clearing check policy, he asked his secretary to call BPI if the RCBC check was already credited to his account on the same day the check was issued by his client. Upon the confirmation of his secretary from BPI that the amount was already credited to his account, he subsequently issued 5 checks to the land owners and left to the US for a vacation the next day. He was thereafter informed by his secretary that the 5 checks were dishonored on June 16, 1997, the same day the 5 checks were issued and he incurred charges because of it. On June 19, 1997, the payees again presented the 5 checks and this time they were honored rendering the account of Suarez to be sufficiently funded.

Suarez demanded an apology from BPI and for the reversal of the charges incurred from his account. His checks were apparently returned due to "drawn against insufficient funds" (DAIF) instead of "drawn against uncollected deposit (DAUD). Upon examination of the checks, Suarez insisted that the checks were tampered where the DAIF mark on the check was changed to DAUD. He sued the bank for damages and rejected the bank's offer to reverse the charges from his account.

The RTC ruled in favor of Suarez awarding him actual, moral and exemplary damages and attorney's fees.

On appeal, the Court of Appeals reaffirmed the RTC decision after establishing that there were indeed intercalations made on the DAIF marking to make it appear as DAUD. The court finds it proper to award moral and exemplary damages because Suarez could be criminally held liable in violation of BP 22 if the reason of dishonoring the check is due to DAIF. Although he may not have been liable for a criminal prosecution, he also suffered humiliation from his client because the land owners aborted their transaction thinking he is not capable of fulfilling his obligation. The act of reversion of the bank on the charges imposed on Suarez's account is tantamount to their admission of having committed

blunder in handling the account of their client. The bank however insisted that Suarez is liable for paying the charges mandated by Philippine Clearing House Rules and Regulations (PCHRR).

ISSUE

Whether or not BPI was negligent in handling the account of their client? (NO)

RULING

Negligence is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do."

The question concerning BPI's negligence, however, depends on whether BPI indeed confirmed the same-day crediting of the RCBC check's face value to Suarez's BPI account.

Based on the records, there is no sufficient evidence to show that BPI conclusively confirmed the same-day crediting of the RCBC check which Suarez's client deposited late on 16 June 1997. Garaygay failed to (1) identify and name the alleged BPI employee, and (2) establish that this particular male employee was authorized by BPI either to disclose any information regarding a depositor's bank account to a person other than the depositor over the telephone, or to assure Garaygay that Suarez could issue checks totaling the face value of the RCBC check. Moreover, a same-day clearing of a ₱19,129,100 check requires approval of designated bank official or officials, and not any bank official can grant such approval. Thus, BPI was not estopped from dishonoring the checks for inadequacy of available funds in Suarez's account since the RCBC check remained uncleared at that time.

While BPI had the discretion to undertake the same-day crediting of the RCBC check, and disregard the banking industry's 3-day check clearing policy, Suarez failed to convincingly show his entitlement to such privilege as he had no credit or bill purchase line with BPI which would qualify him to the exceptions to the 3-day check clearing policy

Considering that there was no binding representation on BPI's part as regards the same-day crediting of the RCBC check, no negligence can be ascribed to BPI's dishonor of the checks because BPI was justified in dishonoring the checks for lack of available funds in Suarez's account.

8. Acceptor

ASSOCIATED BANK AND CONRADO CRUZ, Petitioner, -versus- COURT OF APPEALS, AND MERLE V. REYES, DOING BUSINESS UNDER THE NAME AND STYLE "MELISSA'S RTW", Respondent.

G.R. No. 89802, FIRST DIVISION, May 7, 1992, CRUZ, J.

In State Investment House vs. IAC, this Court declared that "the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once—to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose."

FACTS

The private respondent is engaged in the business of ready-to-wear garments under the firm name "Melissa's RTW." She deals with, among other customers, Robinson's Department Store, Payless Department Store, Rempson Department Store, and the Corona Bazaar

These companies issued in payment of their respective accounts crossed checks payable to Melissa's RTW in the amounts and on the dates indicated below

PAYOR	BANK	AMOUNT	DATE
Payless	Solid Bank	P3,960.00	January 19, 1982
Robinson's	FEBTC	4,140.00	December 18, 1981
Robinson's	FEBTC	1,650.00	December 24, 1981
Robinson's	FEBTC	1,980.00	January 12, 1982
Rempson	TRB	1,575.00	January 9, 1982
Corona	RCBC	2,500.00	December 22, 1981

When she went to these companies to collect on what she thought were still unpaid accounts, she was informed of the issuance of the above-listed crossed checks. Further inquiry revealed that the said checks had been deposited with the Associated Bank (hereinafter, "the Bank") and subsequently paid by it to one Rafael Sayson, one of its "trusted depositors," in the words of its branch manager and co-petitioner, Conrado Cruz. Sayson had not been authorized by the private respondent to deposit and encash the said checks.

The private respondent sued the petitioners in the Regional Trial Court of Quezon City for recovery of the total value of the checks plus damages. After trial, judgment was rendered requiring them to pay the private respondent the total value of the subject checks in the amount of P15,805.00 plus 12% interest, P50,000.00 actual damages, P25,000.00 exemplary damages, P5,000.00 attorney's fees, and the costs of the suit.

The petitioners appealed to the respondent court, reiterating their argument that the private respondent had no cause of action against them and should have proceeded instead against the companies that issued the checks. In disposing of this contention, the Court of Appeals 2 said:

The cause of action of the appellee in the case at bar arose from the illegal, anomalous and irregular acts of the appellants in violating common banking practices to the damage and prejudice of the appellees, in allowing to be deposited and encashed as well as paying to improper parties without the knowledge, consent, authority or endorsement of the appellee which totalled P15,805.00, the six (6) checks in dispute which were "crossed checks" or "for payee's account only," the appellee being the payee.

The three (3) elements of a cause of action are present in the case at bar, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach thereof. (Republic Planters Bank v. Intermediate Appellate Court, 131 SCRA 631).

And such cause of action has been proved by evidence of great weight. The contents of the said checks issued by the customers of the appellee had not been questioned. There is no dispute that the same are crossed checks or for payee's account only, which is Melissa's RTW. The appellee had clearly shown that she had never authorized anyone to deposit the said checks nor to encash the same; that the appellants had allowed all said checks to be deposited, cleared and paid to one Rafael Sayson in violation of the instructions in the said crossed checks that the same were for payee's account only; and that the appellee maintained a savings account with the Prudential Bank, Cubao Branch, Quezon City which never cleared the said checks and the appellee had been damaged by such encashment of the same.

ISSUE

Whether or not the private respondent has a cause of action against the petitioners for their encashment and payment to another person of certain crossed checks issued in her favor? (YES)

RULING

Under accepted banking practice, crossing a check is done by writing two parallel lines diagonally on the left top portion of the checks. The crossing is special where the name of a bank or a business institution is written between the two parallel lines, which means that the drawee should pay only with the intervention of that company. The crossing is general where the words written between the two parallel lines are "and Co." or "for payee's account only," as in the case at bar. This means that the drawee bank should not encash the check but merely accept it for deposit.

In *State Investment House vs. IAC*, this Court declared that "the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once—to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose."

The effects therefore of crossing a check relate to the mode of its presentment for payment. Under Sec. 72 of the Negotiable Instruments Law, presentment for payment, to be sufficient, must be made by the holder or by some person authorized to receive payment on his behalf. Who the holder or authorized person is depends on the instruction stated on the face of the check.

The weight of authority is to the effect that "the possession of a check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held 'for moneys had and received.'" The proceeds are held for the rightful owner of the payment and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check.

When the Bank paid the checks so endorsed notwithstanding that title had not passed to the endorser, it did so at its peril and became liable to the payee for the value of the checks. This liability attached whether or not the Bank was aware of the unauthorized endorsement.

As the Court stressed in *Banco de Oro Savings and Mortgage Bank vs. Equitable Banking Corp.*, "the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it, for the

purpose of determining their genuineness and regularity. The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct.”

WESTMONT BANK (FORMERLY ASSOCIATED BANKING CORP.), *Petitioner,* -versus- **EUGENE ONG,** *Respondent.*

G.R. No. 132560, SECOND DIVISION, January 30, 2002, QUISUMBING, J.

When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority

FACTS

Eugene Ong maintained a current account with the petitioner and sometime in May 1976, he sold certain shares of stocks through Island Securities Corporation. Latter purchased 2 Pacific Banking Corp. Manager's checks with the total face value of P1,754,787.50, dated May 4, 1976 and issued in the name of Ong.

Before Ong could get hold of the said checks, his friend Faciano Tanlimco got hold of them, forged Ong's signature and deposited such with the petitioner, where Tanlimco was also a depositor.

Even though Ong's signature was on file, petitioner accepted and credited both checks to the account of Tanlimco, without verifying the 'signature indorsements' appearing at the back thereof. Hence, Tanlimco immediately withdrew the money and absconded.

Ong first sought the help Tanlimco's family then reported the incident to the Central Bank but he was still unable to recover the amount.

It was only 5 months from the discovery of the fraud did Ong demanded in his complaint that the petitioner pay the value of the 2 checks from the bank on whose gross negligence he imputed his loss. He claimed that he did not deliver, negotiate, endorse or transfer to any person/entity the said checks and that the signatures on the back were spurious.

Petitioner on the other hand claimed that since Ong admitted to have never received the 2 checks from Island Securities, he never acquired ownership of these checks. Hence, he had no legal personality to sue as he is not a real party-in-interest.

RTC Manila and the CA ruled in favour of Ong, hence this petition.

ISSUE

Whether or not Ong has a cause of action against the petitioner Westmont Bank? (YES)

RULING

There is a cause of action in here since it is respondent's *right* as payee of the manager's checks to receive the amount involved, petitioner's correlative *duty* as collecting bank to ensure that the amount gets to the rightful payee or his order, and a *breach* of that duty because of a blatant act of negligence on the part of petitioner which violated respondent's rights

Under Section 23 of the Negotiable Instruments Law:

When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

Since the signature of the payee, in the case at bar, was forged to make it appear that he had made an endorsement in favor of the forger, such signature should be deemed as inoperative and ineffectual. Petitioner, as the collecting bank grossly erred in making payment by virtue of said forged signature. The payee, herein respondent, should therefore be allowed to recover from the collecting bank.

The collecting bank is liable to the payee and must bear the loss because it is its legal duty to ascertain that the payee's endorsement was genuine before cashing the check. As a general rule, a bank or a corporation who has obtained possession of a check upon an unauthorized or forged indorsement of the payee's signature and who collects the amount of the check from the drawee, is liable for the proceeds thereof to the payee or other owner, notwithstanding that the amount has been paid to the person from whom the check was obtained.

The theory for this rule is that the possession of the check on the forged or unauthorized indorsement is wrongful, and when the money had been collected on the check, the bank or other person or corporation can be held as for moneys had and received, and the proceeds are held for the rightful owners who may recover them. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected the money without indorsement at all and the act of the bank amounts to conversion of the check.

Petitioner relies on the view to the effect that where there is no delivery to the payee and no title vests in him, he ought not to be allowed to recover on the ground that he lost nothing because he never became the owner of the check and still retained his claim of debt against the drawer. However, another view in certain cases holds that even if the absence of delivery is considered, such consideration is not material. The rationale for this view is that in said cases the plaintiff uses one action to reach, by a desirable short cut, the person who ought in any event to be ultimately liable as among the innocent persons involved in the transaction. In other words, the payee ought to be allowed to recover directly from the collecting bank regardless of whether the check was delivered to the payee or not.

Hence, petitioner could not escape liability for its negligent acts. Banks are engaged in a business impressed with public interest, and it is their duty to protect in return their many clients and depositors who transact business with them. They have the obligation to treat their client's account meticulously and with the highest degree of care, considering the fiduciary nature of their

relationship. The diligence required of banks, therefore, is more than that of a good father of a family. The bank was held to be grossly negligent in performing its duties since it apparently failed to make such a verification or, what is worse did so but, chose to disregard the obvious dissimilarity of the signatures. The first omission makes it guilty of gross negligence; the second of bad faith. In either case, defendant is liable to plaintiff for the proceeds of the checks in question.

As for the second issue, it cannot be said that Ong sat on his rights. This can be fairly seen on the remedies he took and exhausted before bringing the matter to the Central Bank and then the courts. These acts cannot be construed as undue delay in or abandonment of the assertion of his rights. Moreover, it is petitioner which had the last clear chance to stop the fraudulent encashment of the subject checks had it exercised due diligence and followed the proper and regular banking procedures in clearing checks. As we had earlier ruled, the one who had the last clear opportunity to avoid the impending harm but failed to do so is chargeable with the consequences thereof.

SAMSUNG CONSTRUCTION COMPANY PHILIPPINES, INC., *Petitioner,* -versus- **FAR EAST BANK AND TRUST COMPANY AND COURT OF APPEALS,** *Respondent.*
G.R. NO. 129015, SECOND DIVISION, August 13, 2004, TINGA, J.

Under Section 23 of the Negotiable Instruments Law, forgery is a real or absolute defense by the party whose signature is forged. On the premise that Jong's signature was indeed forged, FEBTC is liable for the loss since it authorized the discharge of the forged check. Such liability attaches even if the bank exerts due diligence and care in preventing such faulty discharge. Forgeries often deceive the eye of the most cautious experts; and when a bank has been so deceived, it is a harsh rule which compels it to suffer although no one has suffered by its being deceived. The forgery may be so near like the genuine as to defy detection by the depositor himself, and yet the bank is liable to the depositor if it pays the check.

FACTS

Plaintiff Samsung Construction Company Philippines, Inc. ("Samsung Construction"), while based in Biñan, Laguna, maintained a current account with defendant Far East Bank and Trust Company ("FEBTC") at the latter's Bel-Air, Makati branch. The sole signatory to Samsung Construction's account was Jong Kyu Lee ("Jong"), its Project Manager, while the checks remained in the custody of the company's accountant, Kyu Yong Lee ("Kyu").

On 19 March 1992, a certain Roberto Gonzaga presented for payment FEBTC Check No. 432100 to the bank's branch in Bel-Air, Makati. The check, payable to cash and drawn against Samsung Construction's current account, was in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (₱999,500.00). The bank teller, Cleofe Justiani, first checked the balance of Samsung Construction's account. After ascertaining there were enough funds to cover the check,⁵ she compared the signature appearing on the check with the specimen signature of Jong as contained in the specimen signature card with the bank. After comparing the two signatures, Justiani was satisfied as to the authenticity of the signature appearing on the check. She then asked Gonzaga to submit proof of his identity, and the latter presented three (3) identification cards.

At the same time, Justiani forwarded the check to the branch Senior Assistant Cashier Gemma Velez, as it was bank policy that two bank branch officers approve checks exceeding One Hundred Thousand Pesos, for payment or encashment. Velez likewise counterchecked the signature on the check as against that on the signature card. He too concluded that the check was indeed signed by Jong. Velez

then forwarded the check and signature card to Shirley Syfu, another bank officer, for approval. Syfu then noticed that Jose Sempio III ("Sempio"), the assistant accountant of Samsung Construction, was also in the bank. Sempio was well-known to Syfu and the other bank officers, he being the assistant accountant of Samsung Construction. Syfu showed the check to Sempio, who vouched for the genuineness of Jong's signature. Confirming the identity of Gonzaga, Sempio said that the check was for the purchase of equipment for Samsung Construction. Satisfied with the genuineness of the signature of Jong, Syfu authorized the bank's encashment of the check to Gonzaga.

The following day, the accountant of Samsung Construction, Kyu, examined the balance of the bank account and discovered that a check in the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (₱999,500.00) had been encashed. Aware that he had not prepared such a check for Jong's signature, Kyu perused the checkbook and found that the last blank check was missing. He reported the matter to Jong, who then proceeded to the bank. Jong learned of the encashment of the check, and realized that his signature had been forged. The Bank Manager reputedly told Jong that he would be reimbursed for the amount of the check. Jong proceeded to the police station and consulted with his lawyers. Subsequently, a criminal case for qualified theft was filed against Sempio before the Laguna court.

In a letter dated 6 May 1992, Samsung Construction, through counsel, demanded that FEBTC credit to it the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (₱999,500.00), with interest. In response, FEBTC said that it was still conducting an investigation on the matter. Unsatisfied, Samsung Construction filed a *Complaint* on 10 June 1992 for violation of Section 23 of the Negotiable Instruments Law, and prayed for the payment of the amount debited as a result of the questioned check plus interest, and attorney's fees. The case was docketed as Civil Case No. 92-61506 before the Regional Trial Court ("RTC") of Manila, Branch 9.

During the trial, both sides presented their respective expert witnesses to testify on the claim that Jong's signature was forged. Samsung Corporation, which had referred the check for investigation to the NBI, presented Senior NBI Document Examiner Roda B. Flores. She testified that based on her examination, she concluded that Jong's signature had been forged on the check. On the other hand, FEBTC, which had sought the assistance of the Philippine National Police (PNP), presented Rosario C. Perez, a document examiner from the PNP Crime Laboratory. She testified that her findings showed that Jong's signature on the check was genuine.

Confronted with conflicting expert testimony, the RTC chose to believe the findings of the NBI expert. In a *Decision* dated 25 April 1994, the RTC held that Jong's signature on the check was forged and accordingly directed the bank to pay or credit back to Samsung Construction's account the amount of Nine Hundred Ninety Nine Thousand Five Hundred Pesos (₱999,500.00), together with interest tolled from the time the complaint was filed, and attorney's fees in the amount of Fifteen Thousand Pesos (₱15,000.00).

FEBTC timely appealed to the Court of Appeals. On 28 November 1996, the Special Fourteenth Division of the Court of Appeals rendered a *Decision*, reversing the RTC *Decision* and absolving FEBTC from any liability. The Court of Appeals held that the contradictory findings of the NBI and the PNP created doubt as to whether there was forgery. Moreover, the appellate court also held that assuming there was forgery, it occurred due to the negligence of Samsung Construction, imputing blame on the accountant Kyu for lack of care and prudence in keeping the checks, which if observed would have prevented Sempio from gaining access thereto. The Court of Appeals invoked the ruling in *PNB v.*

National City Bank of New York that, if a loss, which must be borne by one or two innocent persons, can be traced to the neglect or fault of either, such loss would be borne by the negligent party, even if innocent of intentional fraud.

Samsung Construction now argues that the Court of Appeals had seriously misapprehended the facts when it overturned the RTC's finding of forgery. It also contends that the appellate court erred in finding that it had been negligent in safekeeping the check, and in applying the equity principle enunciated in *PNB v. National City Bank of New York*.

ISSUE

Whether or not petitioner may recover from the drawee bank? (YES)

RULING

The general rule is to the effect that a forged signature is “wholly inoperative,” and payment made “through or under such signature” is ineffectual or does not discharge the instrument. If payment is made, the drawee cannot charge it to the drawer's account. The traditional justification for the result is that the drawee is in a superior position to detect a forgery because he has the maker's signature and is expected to know and compare it. The rule has a healthy cautionary effect on banks by encouraging care in the comparison of the signatures against those on the signature cards they have on file. Moreover, the very opportunity of the drawee to insure and to distribute the cost among its customers who use checks makes the drawee an ideal party to spread the risk to insurance.

Under Section 23 of the Negotiable Instruments Law, forgery is a real or absolute defense by the party whose signature is forged. On the premise that Jong's signature was indeed forged, FEBTC is liable for the loss since it authorized the discharge of the forged check. Such liability attaches even if the bank exerts due diligence and care in preventing such faulty discharge. Forgeries often deceive the eye of the most cautious experts; and when a bank has been so deceived, it is a harsh rule which compels it to suffer although no one has suffered by its being deceived. The forgery may be so near like the genuine as to defy detection by the depositor himself, and yet the bank is liable to the depositor if it pays the check.

Thus, the first matter of inquiry is into whether the check was indeed forged. A document formally presented is presumed to be genuine until it is proved to be fraudulent. In a forgery trial, this presumption must be overcome but this can only be done by convincing testimony and effective illustrations.

The bare fact that the forgery was committed by an employee of the party whose signature was forged cannot necessarily imply that such party's negligence was the cause for the forgery. Employers do not possess the preternatural gift of cognition as to the evil that may lurk within the hearts and minds of their employees.

Still, even if the bank performed with utmost diligence, the drawer whose signature was forged may still recover from the bank as long as he or she is not precluded from setting up the defense of forgery. After all, Section 23 of the Negotiable Instruments Law plainly states that no right to enforce the payment of a check can arise out of a forged signature. Since the drawer, Samsung Construction, is not precluded by negligence from setting up the forgery, the general rule should apply. Consequently,

if a bank pays a forged check, it must be considered as paying out of its funds and cannot charge the amount so paid to the account of the depositor. A bank is liable, irrespective of its good faith, in paying a forged check.

Still, in the absence of evidence to the contrary, we can conclude that there was no negligence on Samsung Construction's part. The presumption remains that every person takes ordinary care of his concerns, and that the ordinary course of business has been followed. Negligence is not presumed, but must be proven by him who alleges it. While the complaint was lodged at the instance of Samsung Construction, the matter it had to prove was the claim it had alleged—whether the check was forged. It cannot be required as well to prove that it was not negligent, because the legal presumption remains that ordinary care was employed.

FAR EASTERN BANK & TRUST COMPANY, Petitioner, -versus- GOLD PALACE JEWELRY COMPANY, Respondent.

G.R. NO. 168274, THIRD DIVISION, August 20, 2008, NACHURA, J.

The Negotiable Instruments Law (NIL), explicitly provides that the acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance. His actual payment of the amount in the check implies not only his assent to the order of the drawer and a recognition of his corresponding obligation to pay the aforementioned sum, but also, his clear compliance with that obligation. In this case, the drawee bank cleared and paid the subject foreign draft and forwarded the amount thereof to the collecting bank.

FACTS

In June 1998, a foreigner, identified as Samuel Tagoe, purchased from the respondent Gold Palace Jewellery Co. several pieces of jewelry valued at P258,000.00. In payment of the same, he offered Foreign Draft No. M-069670 issued by the United Overseas Bank (Malaysia) addressed to the Land Bank of the Philippines, Manila (LBP), and payable to the respondent company for P380,000.00.

Yang issued Cash Invoice, to the foreigner, informing him that the pieces of jewelry would be released when the draft had already been cleared. Respondent Julie Yang-Go, the manager of Gold Palace deposited the draft in the company's Far East account. LBP cleared the draft, and GoldPalace's account with Far East was credited. The foreigner was then able to get the goods, and because the amount in the draft was more than the value of the goods purchased, she issued, as his change, Far East Check No. 173088 for P122,000.00. This check was later presented for encashment and was, in fact, paid by the said bank.

On June 1998, or after around three weeks, LBP informed Far East that the amount in said Foreign Draft had been materially altered from P300.00 to P380,000.00 and that it was returning the same. Intending to debit the amount from respondent's account, Far East subsequently refunded the P380,000.00 earlier paid by LBP. Meanwhile, Far East was able to debit only P168,053.36 from the GoldPalace's account as the respondent has already utilized their funds. This was debited without their permission. The bank informed the GoldPalace later thru a phone call.

On August 1998, petitioner demanded from respondents the payment of P211,946. Because Gold Palace did not heed the demand, Far East consequently instituted civil case for sum of money and damages before the RTC in Makati.

RTC ruled in favor of Far East, ordering Gold Palace to pay the former P211,946.64 as actual damages and P50,000.00 as attorney's fees. The trial court ruled that, on the basis of its warranties as a general indorser, Gold Palace was liable to Far East.

On appeal, the CA, reversed the ruling of the trial court and awarded respondents' counterclaim. It ruled in the main that Far East failed to undergo the proceedings on the protest of the foreign draft or to notify Gold Palace of the draft's dishonor; thus, Far East could not charge Gold Palace on its secondary liability as an indorser.

ISSUE

Whether or not GoldPalace can be held liable? (NO)

RULING

The Negotiable Instruments Law (NIL), explicitly provides that the acceptor, by accepting the instrument, engages that he will pay it *according to the tenor of his acceptance*. His actual payment of the amount in the check implies not only his assent to the order of the drawer and a recognition of his corresponding obligation to pay the aforementioned sum, but also, his clear compliance with that obligation. In this case, the drawee bank cleared and paid the subject foreign draft and forwarded the amount thereof to the collecting bank. The latter, Far East, then credited to Gold Palace's account the payment it received. Following the plain language of the law, the drawee, by the said payment, recognized and complied with its obligation to pay in accordance with the *tenor of his acceptance*. **Stated simply, LBP was liable on its payment of the check according to the tenor of the check at the time of payment, which was the raised amount.**

We note that Respondent Gold Palace was not a participant in the alteration of the draft, was not negligent, and was a holder in due course—it received the draft complete and regular on its face. Gold Palace relied on the drawee bank's clearance and payment of the draft. Respondent is also protected by the said Section 62. Commercial policy favors the protection of any one who, in due course, changes his position on the faith of the drawee bank's clearance and payment of a check or draft.

The fault is in LBP; having the most convenient means to correspond with UOB, did not first verify the amount of the draft before it cleared and paid the same. Gold Palace, on the other hand, had no facility to ascertain with the drawer, UOB Malaysia, the true amount in the draft. Thus, the collecting agent, Far East, should not have debited the money paid by the drawee bank from respondent company's account.

When Gold Palace deposited the check with Far East, the latter, under the terms of the deposit and the provisions of the NIL, became an agent of the former for the collection of the amount in the draft. Far East then was able to collect from LBP. As the transaction in this case had been closed and the principal-agent relationship between the payee (GoldPalace) and the collecting bank (Far East) had already ceased, the latter in returning the amount to the drawee bank (LBP) was already acting on its own and should now be responsible for its own actions. The drawee bank had no right to recover what it paid.

Likewise, Far East cannot invoke the warranty of the payee/depositor who indorsed the instrument for collection to shift the burden it brought upon itself. This is precisely because the said indorsement is only for purposes of collection which, under Section 36 of the NIL, is a restrictive indorsement.^[47] It did not in any way transfer the title of the instrument to the collecting bank. Far East did not own the draft, it merely presented it for payment. Considering that the warranties of a general indorser as provided in Section 66 of the NIL are based upon a transfer of title and are available only to holders in due course. Without any legal right to do so, the collecting bank, therefore, could not debit respondent's account for the amount it refunded to the drawee bank.

Far East must return what it had erroneously taken. The remedy under the law is not against Gold Palace but against the drawee-bank or the person responsible for the alteration.

CESAR V. AREZA and LOLITA B. AREZA, Petitioner, -versus- EXPRESS SAVINGS BANK, INC. and MICHAEL POTENCIANO, Respondent.

G.R. No. 176697, FIRST DIVISION, August 20, 2008, PEREZ, J.

A depository/collecting bank where a check is deposited, and which endorses the check upon presentment with the drawee bank, is an endorser. 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 is well-settled that the relationship of the depositors and the Bank or similar institution is that of creditor-debtor. Article 1980 of the New Civil Code provides that fixed, savings and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loans. The bank is the debtor and the depositor is the creditor. The depositor lends the bank money and the bank agrees to pay the depositor on demand. The savings deposit agreement between the bank and the depositor is the contract that determines the rights and obligations of the parties.

FACTS

Petitioners received an order for the purchase of a motor vehicle from Gerry Mambuay where the latter paid petitioners with nine (9) Philippine Veterans Affairs Office (PVAO) checks payable to different payees and drawn against the Philippine Veterans Bank (drawee), each valued at Two Hundred Thousand Pesos (₱200,000.00). Petitioners deposited the said checks in their savings account with the Express Savings Bank which, in turn, deposited the checks with its depository bank, Equitable-PCI Bank and the latter presented the checks to the drawee, the Philippine Veterans Bank, which honored the checks. However, the subject checks were returned by PVAO to the drawee on the ground that the amount on the face of the checks was altered from the original amount of ₱4,000.00 to ₱200,000.00. After informing Express Savings Bank that the drawee dishonored the checks, Equitable-PCI Bank debited the deposit account of ESB in the amount of P1.8M. Express Savings Bank then withdrew the amount of P1.8M representing the returned checks from petitioners saving account.

ISSUE

Whether or not Express Savings Bank had the right to debit ₱1,800,000.00 from petitioners' accounts? (NO)

RULING

Section 63 of Act No. 2031 or the Negotiable Instruments Law provides that the acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance. The acceptor is a drawee who accepts the bill. In *Philippine National Bank v. Court of Appeals*, 28 SCRA 984 (1968), the payment of the amount of a check implies not only acceptance but also compliance with the drawee's obligation.

The second view is that the acceptor/drawee despite the tenor of his acceptance is liable only to the extent of the bill prior to alteration. This view appears to be in consonance with Section 124 of the Negotiable Instruments Law which states that a material alteration avoids an instrument except as against an assenting party and subsequent indorsers, but a holder in due course may enforce payment according to its original tenor. Thus, when the drawee bank pays a materially altered check, it violates the terms of the check, as well as its duty to charge its client's account only for *bona fide* disbursements he had made. If the drawee did not pay according to the original tenor of the instrument, as directed by the drawer, then it has no right to claim reimbursement from the drawer, much less, the right to deduct the erroneous payment it made from the drawer's account which it was expected to treat with utmost fidelity. The drawee, however, still has recourse to recover its loss. It may pass the liability back to the collecting bank which is what the drawee bank exactly did in this case. It debited the account of Equitable-PCI Bank for the altered amount of the checks.

A depositary bank is the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter. It is also the bank to which a check is transferred for deposit in an account at such bank, even if the check is physically received and indorsed first by another bank. A collecting bank is defined as any bank handling an item for collection except the bank on which the check is drawn.

A depositary/collecting bank where a check is deposited, and which endorses the check upon presentment with the drawee bank, is an endorser. 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 depositary/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. If any of the warranties made by the depositary/collecting bank turns out to be false, then the drawee bank may recover from it up to the amount of the check.

The law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it for the purpose of determining their genuineness and regularity. The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct. As collecting banks, the Bank and Equitable-PCI Bank are both liable for the amount of

the materially altered checks. Since Equitable-PCI Bank is not a party to this case and the Bank allowed its account with Equitable-PCI Bank to be debited, it has the option to seek recourse against the latter in another forum.

The Bank cannot debit the savings account of petitioners. A depositary/collecting bank may resist or defend against a claim for breach of warranty if the drawer, the payee, or either the drawee bank or depositary bank was negligent and such negligence substantially contributed to the loss from alteration. In the instant case, no negligence can be attributed to petitioners. We lend credence to their claim that at the time of the sales transaction, the Bank's branch manager was present and even offered the Bank's services for the processing and eventual crediting of the checks. True to the branch manager's words, the checks were cleared three days later when deposited by petitioners and the entire amount of the checks was credited to their savings account.

9. Indorser

ANG TIONG, Petitioner, -versus- LORENZO TING, DOING BUSINESS UNDER THE NAME & STYLE OF PRUNES PRESERVES MFG., & FELIPE ANG, Respondent.
G.R. NO. L-26767, EN BANC, February 22, 1968, CASTRO, J.

Section 66 of the same law ordains that "every indorser who indorses without qualification, warrants to all subsequent holders in due course" (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has a good title to it; (c) that all prior parties have capacity to contract; and (d) that the instrument is at the time of his indorsement valid and subsisting. In addition "he engages that on due presentment, it shall be accepted or paid or both, as the case may be, and if it be dishonored, he will pay the amount thereof to the holder."

FACTS

On August 15, 1960 Lorenzo Ting issued Philippine Bank of Communications check K-81618, for the sum of P4,000, payable to "cash or bearer." With Felipe Ang's signature (indorsement in blank) at the back thereof, the instrument was received by the plaintiff Ang Tiong who thereafter presented it to the drawee bank for payment. The bank dishonored it. The plaintiff then made written demands on both Lorenzo Ting and Felipe Ang that they make good the amount represented by the check. These demands went unheeded; so he filed in the municipal court of Manila an action for collection of the sum of P4,000, plus P500 attorney's fees. On March 6, 1962 the municipal court adjudged for the plaintiff against the two defendants.

Only Felipe Ang appealed to the Court of First Instance of Manila (civil case 50018), which rendered judgment on July 31, 1962, amended by an order dated August 9, 1962, directing him to pay to the plaintiff "the sum of P4,000, with interest at the legal rate from the date of the filing of the complaint, a further sum of P400 as attorney's fees, and costs."

Felipe Ang then elevated the case to the Court of Appeals, which certified it to this Court because the issues raised are purely of law.

ISSUE

Whether or not Felipe Ang is an accommodation party? (NO)

RULING

A bank check is indisputably a negotiable instrument and should be governed solely by the Negotiable Instruments Law (see secs. 1 and 15). Section 63 of the Negotiable Instruments Law makes "a person placing his signature upon an instrument otherwise than as maker, drawer or acceptor" a general indorser "unless he clearly indicates by appropriate words his intention to be bound in some other capacity." Section 66 of the same law ordains that "every indorser who indorses without qualification, warrants to all subsequent holders in due course" (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has a good title to it; (c) that all prior parties have capacity to contract; and (d) that the instrument is at the time of his indorsement valid and subsisting. In addition "he engages that on due presentment, it shall be accepted or paid or both, as the case may be, and if it be dishonored, he will pay the amount thereof to the holder."

Section 29 of the Negotiable Instruments Law by clear mandate makes the accommodation party "liable on the instrument to a holder for value, notwithstanding that such holder at the time of taking the instrument knew him to be only an accommodation party." It is not a valid defense that the accommodation party did not receive any valuable consideration when he executed the instrument. It is not correct to say that the holder for value is not a holder in due course merely because at the time he acquired the instrument, he knew that the indorser was only an accommodation party.

MARIA TUAZON, *Petitioner*, -versus- **HEIRS OF BARTOLOME RAMOS**, *Respondent*.
G.R. No. 156262, THIRD DIVISION, July 14, 2005, PANGANIBAN, J.

As indorser, Petitioner Maria Tuazon warranted that upon due presentment, the checks were to be accepted or paid, or both, according to their tenor; and that in case they were dishonored, she would pay the corresponding amount. After an instrument is dishonored by nonpayment, indorsers cease to be merely secondarily liable; they become principal debtors whose liability becomes identical to that of the original obligor. The holder of a negotiable instrument need not even proceed against the maker before suing the indorser. Clearly, Evangeline Santos - - as the drawer of the checks - - is not an indispensable party in an action against Maria Tuazon, the indorser of the checks.

FACTS

Respondents alleged that between the period of May 2, 1988 and June 5, 1988, spouses Leonilo and Maria Tuazon purchased a total of 8,326 cavans of rice from the deceased Bartolome Ramos predecessor-in-interest of respondents. That of this quantity only 4,437 cavans have been paid for so far], leaving unpaid 3,889 cavans valued at ₱1,211,919.00. In payment therefor, the spouses Tuazon issued several Traders Royal Bank checks.

But when these checks were encashed, all of the checks bounced due to insufficiency of funds. Respondents advanced that before issuing said checks, spouses Tuazon already knew that they had no available fund to support the checks, and they failed to provide for the payment of these despite repeated demands made on them.

Respondents averred that because spouses Tuazon anticipated that they would be sued, they conspired with the other defendants to defraud them as creditors by executing fictitious sales of their properties. They executed simulated sales of three lots in favor of the spouses Buenaventura, as well

as their residential lot and the house thereon, all located at Nueva Ecija, and another simulated deed of sale dated July 12, 1988 of a Stake Toyota registered with the Land Transportation Office of Cabanatuan City on September 7, 1988. Co-petitioner Melecio Tuazon, a son of spouses Tuazon, registered a fictitious Deed of Sale on July 19, 1988 over a residential lot located at Nueva Ecija. Another simulated sale of a Toyota Willys was executed on January 25, 1988 in favor of their other son, [co-petitioner] Alejandro Tuazon. As a result of the said sales, the titles of these properties issued in the names of spouses Tuazon were cancelled and new ones were issued in favor of the co-defendants spouses Buenaventura, Alejandro Tuazon and Melecio Tuazon. Resultantly, by the said ante-dated and simulated sales and the corresponding transfers there was no more property left registered in the names of spouses Tuazon answerable to creditors, to the damage and prejudice of respondents.

For their part, defendants denied having purchased rice from Bartolome Ramos. They alleged that it was Magdalena Ramos, wife of said deceased, who owned and traded the merchandise and Maria Tuazon was merely her agent. They argued that it was Evangeline Santos who was the buyer of the rice and issued the checks to Maria Tuazon as payments therefor. In good faith, the checks were received by petitioner from Evangeline Santos and turned over to Ramos without knowing that these were not funded. And it is for this reason that petitioners have been insisting on the inclusion of Evangeline Santos as an indispensable party, and her non-inclusion was a fatal error. Refuting that the sale of several properties were fictitious or simulated, spouses Tuazon contended that these were sold because they were then meeting financial difficulties but the disposals were made for value and in good faith and done before the filing of the instant suit. To dispute the contention of plaintiffs that they were the buyers of the rice, they argued that there was no sales invoice, official receipts or like evidence to prove this. They assert that they were merely agents and should not be held answerable.

The corresponding civil and criminal cases were filed by respondents against Spouses Tuazon. Those cases were later consolidated and amended to include Spouses Anastacio and Mary Buenaventura, with Alejandro Tuazon and Melecio Tuazon as additional defendants. Having passed away before the pretrial, Bartolome Ramos was substituted by his heirs, herein respondents.

Contending that Evangeline Santos was an indispensable party in the case, petitioners moved to file a third-party complaint against her. Allegedly, she was primarily liable to respondents, because she was the one who had purchased the merchandise from their predecessor, as evidenced by the fact that the checks had been drawn in her name. The RTC, however, denied petitioners' Motion. Since the trial court acquitted petitioners in all three of the consolidated criminal cases, they appealed only its decision finding them civilly liable to respondents.

Sustaining the RTC, the CA held that petitioners had failed to prove the existence of an agency between respondents and Spouses Tuazon. The appellate court disbelieved petitioners' contention that Evangeline Santos should have been impleaded as an indispensable party. Inasmuch as all the checks had been indorsed by Maria Tuazon, who thereby became liable to subsequent holders for the amounts stated in those checks, there was no need to implead Santos.

ISSUE

Whether or not the Honorable Court of Appeals erred in rendering judgment against the petitioners despite the failure of the respondents to include in their action Evangeline Santos, an indispensable party to the suit? (YES)

RULING

Petitioners argue that the lower courts erred in not allowing Evangeline Santos to be impleaded as an indispensable party. They insist that respondents' Complaint against them is based on the bouncing checks she issued; hence, they point to her as the person primarily liable for the obligation. We hold that respondents' cause of action is clearly founded on petitioners' failure to pay the purchase price of the rice. The trial court held that Petitioner Maria Tuazon had indorsed the questioned checks in favor of respondents, in accordance with Sections 31 and 63 of the Negotiable Instruments Law. That Santos was the drawer of the checks is thus immaterial to the respondents' cause of action.

As indorser, Petitioner Maria Tuazon warranted that upon due presentment, the checks were to be accepted or paid, or both, according to their tenor; *and* that in case they were dishonored, she would pay the corresponding amount. After an instrument is dishonored by nonpayment, indorsers cease to be merely secondarily liable; they become principal debtors whose liability becomes identical to that of the original obligor. The holder of a negotiable instrument need not even proceed against the maker before suing the indorser. Clearly, Evangeline Santos - - as the drawer of the checks - - is not an indispensable party in an action against Maria Tuazon, the indorser of the checks.

Indispensable parties are defined as "parties in interest without whom no final determination can be had." The instant case was originally one for the collection of the purchase price of the rice bought by Maria Tuazon from respondents' predecessor. In this case, it is clear that there is no privity of contract between respondents and Santos. Hence, a final determination of the rights and interest of the parties may be made without any need to implead her.

ALLIED BANKING CORPORATION, Petitioner, -versus- BANK OF THE PHILIPPINE ISLANDS,
Respondent.

G.R. No. 188363, FIRST DIVISION, February 27, 2013, VILLARAMA, JR., J.

A collecting bank is guilty of contributory negligence when it accepted for deposit a post-dated check notwithstanding that said check had been cleared by the drawee bank which failed to return the check within the 24-hour reglementary period.

FACTS

On October 10, 2002, a check in the amount of P1,000,000.00 payable to "Mateo Mgt. Group International" (MMGI) was presented for deposit and accepted at petitioner's (Allied Bank) Kawit Branch. The check, post-dated "**Oct. 9, 2003**", was drawn against the account of Marciano Silva, Jr. (Silva) with respondent BPI Bel-Air Branch. Upon receipt, petitioner sent the check for clearing to respondent through the Philippine Clearing House Corporation (PCHC). The check was cleared by respondent and petitioner credited the account of MMGI with P1,000,000.00. On October 22, 2002, MMGI's account was closed and all the funds therein were withdrawn.

A month later, Silva discovered the debit of P1,000,000.00 from his account. In response to Silva's complaint, respondent credited his account with the aforesaid sum. Petitioner filed a complaint before the Arbitration Committee, asserting that respondent should solely bear the entire face value of the check due to its negligence in failing to return the check to petitioner within the 24-hour

reglementary period as provided in Section 20.1 of the Clearing House Rules and Regulations (CHRR) 2000. In its Answer with Counterclaims, respondent charged petitioner with gross negligence for accepting the post-dated check in the first place. It contended that petitioner's admitted negligence was the sole and proximate cause of the loss.

ISSUE

- 1) Whether or not whether the doctrine of last clear chance applies in this case? (YES)
- 2) Whether or not the 60-40 apportionment of loss ordered by the CA was justified? (YES)

RULING

As well established by the records, both petitioner and respondent were admittedly negligent in the encashment of a check post-dated one year from its presentment.

The doctrine of last clear chance, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence. The doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption. Stated differently, the antecedent negligence of the plaintiff does not preclude him from recovering damages caused by the supervening negligence of the defendant, who had the last fair chance to prevent the impending harm by the exercise of due diligence. Moreover, in situations where the doctrine has been applied, it was defendant's failure to exercise such ordinary care, having the last clear chance to avoid loss or injury, which was the proximate cause of the occurrence of such loss or injury.

In this case, the evidence clearly shows that the proximate cause of the unwarranted encashment of the subject check was the negligence of respondent who cleared a post-dated check sent to it thru the PCHC clearing facility without observing its own verification procedure. As correctly found by the PCHC and upheld by the RTC, if only respondent exercised ordinary care in the clearing process, it could have easily noticed the glaring defect upon seeing the date written on the face of the check "Oct. 9, 2003". Respondent could have then promptly returned the check and with the check thus dishonored, petitioner would have not credited the amount thereof to the payee's account. Thus, notwithstanding the antecedent negligence of the petitioner in accepting the post-dated check for deposit, it can seek reimbursement from respondent the amount credited to the payee's account covering the check.

What petitioner omitted to mention is that in the cited case of *Philippine Bank of Commerce v. Court of Appeals*, while the Court found petitioner bank as the culpable party under the doctrine of last clear chance since it had, thru its teller, the last opportunity to avert the injury incurred by its client simply by faithfully observing its own validation procedure, it nevertheless ruled that the plaintiff depositor (private respondent) must share in the loss on account of its *contributory negligence*. Thus:

The foregoing notwithstanding, it cannot be denied that, indeed, private respondent was likewise negligent in not checking its monthly statements of account. Had it done so, the company would have been alerted to the series of frauds being committed against RMC by its secretary. The damage would definitely not have ballooned to such an amount if only RMC, particularly Romeo Lipana, had

exercised even a little vigilance in their financial affairs. **This omission by RMC amounts to contributory negligence which shall mitigate the damages that may be awarded to the private respondent under Article 2179 of the New Civil Code**, to wit:

“When the plaintiff’s own negligence was the immediate and proximate cause of his injury, he cannot recover damages. *But if his negligence was only contributory*, the immediate and proximate cause of the injury being the defendant’s lack of due care, *the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.*”

In view of this, we believe that the demands of substantial justice are satisfied by **allocating the damage on a 60-40 ratio**. Thus, 40% of the damage awarded by the respondent appellate court, except the award of P25,000.00 attorney’s fees, shall be borne by private respondent RMC; only the balance of 60% needs to be paid by the petitioners. The award of attorney’s fees shall be borne exclusively by the petitioners.

In another earlier case, the Court refused to hold petitioner bank solely liable for the loss notwithstanding the finding that the proximate cause of the loss was due to its negligence. Since the employees of private respondent bank were likewise found negligent, its claim for damages is subject to mitigation by the courts. Thus:

Both banks were negligent in the selection and supervision of their employees resulting in the encashment of the forged checks by an impostor. Both banks were not able to overcome the presumption of negligence in the selection and supervision of their employees. It was the gross negligence of the employees of both banks which resulted in the fraud and the subsequent loss. **While it is true that petitioner BPI’s negligence may have been the proximate cause of the loss, respondent CBC’s negligence contributed equally to the success of the impostor in encashing the proceeds of the forged checks.** Under these circumstances, we apply Article 2179 of the Civil Code to the effect that while respondent CBC may recover its losses, such losses are subject to mitigation by the courts.

Considering the comparative negligence of the two (2) banks, we rule that the demands of substantial justice are satisfied by allocating the loss of P2,413,215.16 and the costs of the arbitration proceedings in the amount of P7,250.00 and the costs of litigation on a 60-40 ratio. Conformably with this ruling, no interests and attorney’s fees can be awarded to either of the parties.

Apportionment of damages between parties who are both negligent was followed in subsequent cases involving banking transactions notwithstanding the court’s finding that one of them had the last clear opportunity to avoid the occurrence of the loss.

In *Bank of America NT & SA v. Philippine Racing Club*, the Court ruled: In the case at bar, petitioner cannot evade responsibility for the loss by attributing negligence on the part of respondent because, even if we concur that the latter was indeed negligent in pre-signing blank checks, the former had the last clear chance to avoid the loss. To reiterate, petitioner’s own operations manager admitted that they could have called up the client for verification or confirmation before honoring the dubious checks. Verily, petitioner had the final opportunity to avert the injury that befell the respondent. Petitioner’s negligence has been undoubtedly established and, thus, pursuant to Art. 1170 of the NCC, it must suffer the consequence of said negligence

In the interest of fairness, however, we believe it is proper to consider respondent's own negligence to mitigate petitioner's liability. Article 2179 of the Civil Code provides:

Explaining this provision in *Lambert v. Heirs of Ray Castillon*, the Court held:

“The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must thus be held liable only for the damages actually caused by his negligence.”

Following established jurisprudential precedents, we believe the allocation of sixty percent (60%) of the actual damages involved in this case (represented by the amount of the checks with legal interest) to petitioner is proper under the premises. **Respondent should, in light of its contributory negligence, bear forty percent (40%) of its own loss**

It bears stressing that “the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected,” considering the nature of the banking business that is imbued with public interest. While it is true that respondent's liability for its negligent clearing of the check is greater, petitioner cannot take lightly its own violation of the long-standing rule against encashment of post-dated checks and the injurious consequences of allowing such checks into the clearing system.

MELVA THERESA ALVIAR GONZALES, *Petitioner*, -versus- **RIZAL COMMERCIAL BANKING CORPORATION**, *Respondent*.

G.R. No. 156294, SECOND DIVISION, November 29, 2006, GARCIA, J.

Section 66 of the Negotiable Instruments Law which further states that the general endorser additionally engages that, on due presentment, the instrument shall be accepted or paid, or both, as the case may be, 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 endorser who may be compelled to pay it, must be read in the light of the rule in equity requiring that those who come to court should come with clean hands.

FACTS

Gonzales was an employee of Rizal Commercial Banking Corporation (or RCBC) as New Accounts Clerk in the Retail Banking Department at its Head Office.

A foreign check in the amount of \$7,500 was drawn by Dr. Don Zapanta of the Ade Medical Group with address at 569 Western Avenue, Los Angeles, California, against the drawee bank Wilshire Center Bank, N.A., of Los Angeles, California, U.S.A., and payable to Gonzales' mother, defendant Eva Alviar (or Alviar). Alviar then endorsed this check. Since RCBC gives special accommodations to its employees to receive the check's value without awaiting the clearing period, Gonzales presented the foreign check to Olivia Gomez, the RCBC's Head of Retail Banking. After examining this, Olivia Gomez requested Gonzales to endorse it which she did. Olivia Gomez then acquiesced to the early encashment of the check and signed the check but indicated thereon her authority of "up to ₱17,500.00 only". Afterwards, Olivia Gomez directed Gonzales to present the check to RCBC employee Carlos Ramos and procure his signature. After inspecting the check, Carlos Ramos also signed it with an "ok" annotation. After getting the said signatures Gonzales presented the check to

Rolando Zornosa, Supervisor of the Remittance section of the Foreign Department of the RCBC Head Office, who after scrutinizing the entries and signatures therein authorized its encashment. Gonzales then received its peso equivalent of ₱155,270.85.

RCBC then tried to collect the amount of the check with the drawee bank by the latter through its correspondent bank, the First Interstate Bank of California, on two occasions dishonored the check because of "END. IRREG" or irregular indorsement. Insisting, RCBC again sent the check to the drawee bank, but this time the check was returned due to "account closed". Unable to collect, RCBC demanded from Gonzales the payment of the peso equivalent of the check that she received. Gonzales settled the matter by agreeing that payment be made thru salary deduction. This temporary arrangement for salary deductions was communicated by Gonzales to RCBC through a letter dated November 27, 1987

The deductions was implemented starting October 1987. On March 7, 1988 RCBC sent a demand letter to Alviar for the payment of her obligation but this fell on deaf ears as RCBC did not receive any response from Alviar. Taking further action to collect, RCBC then conveyed the matter to its counsel and on June 16, 1988, a letter was sent to Gonzales reminding her of her liability as an indorser of the subject check and that for her to avoid litigation she has to fulfill her commitment to settle her obligation as assured in her said letter. On July 1988 Gonzales resigned from RCBC. What had been deducted from her salary was only ₱12,822.20 covering ten months.

It was against the foregoing factual backdrop that RCBC filed a complaint for a sum of money against Eva Alviar, Melva Theresa Alviar-Gonzales and the latter's husband Gino Gonzales. The spouses Gonzales filed an Answer with Counterclaim praying for the dismissal of the complaint as well as payment of ₱10,822.20 as actual damages, ₱20,000.00 as moral damages, ₱20,000.00 as exemplary damages, and ₱20,000.00 as attorney's fees and litigation expenses. Defendant Eva Alviar, on the other hand, was declared in default for having filed her Answer out of time.

RTC held two of three defendants liable. CA affirmed the RTC's decision.

ISSUE

Whether or not Eva Alviar and Melva Theresa Alvia-Gonzales is liable as general endorsers? (NO)

RULING

The dollar-check in question in the amount of \$7,500.00 drawn by Don Zapanta of Ade Medical Group (U.S.A.) against a Los Angeles, California bank, Wilshire Center Bank N.A., was dishonored because of "End. Irregular," *i.e.*, an irregular endorsement. While the foreign drawee bank did not specifically state which among the four signatures found on the dorsal portion of the check made the check irregularly endorsed, it is absolutely undeniable that only the signature of Olivia Gomez, an RCBC employee, was a qualified endorsement because of the phrase "up to P17,500.00 only." There can be no other acceptable explanation for the dishonor of the foreign check than this signature of Olivia Gomez with the phrase "up to P17,500.00 only" accompanying it. This Court definitely agrees with the petitioner that the foreign drawee bank would not have dishonored the check had it not been for this signature of Gomez with the same phrase written by her. The foreign drawee bank, Wilshire Center Bank N.A., refused to pay the bearer of this dollar-check drawn by Don Zapanta because of the defect introduced by RCBC, through its employee, Olivia Gomez. It is, therefore, a useless piece of

paper if returned in that state to its original payee, Eva Alviar. There is no doubt in the mind of the Court that a subsequent party which caused the defect in the instrument cannot have any recourse against any of the prior endorsers in good faith. Eva Alviar's and the petitioner's liability to subsequent holders of the foreign check is governed by the Negotiable Instruments Law.

Section 66 of the Negotiable Instruments Law which further states that the general endorser additionally engages that, on due presentment, the instrument shall be accepted or paid, or both, as the case may be, 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 endorser who may be compelled to pay it, must be read in the light of the rule in equity requiring that **those who come to court should come with clean hands**. The holder or subsequent endorser who tries to claim under the instrument which had been dishonored for "irregular endorsement" must not be the irregular endorser himself who gave cause for the dishonor. Otherwise, a clear injustice results when any subsequent party to the instrument may simply make the instrument defective and later claim from prior endorsers who have no knowledge or participation in causing or introducing said defect to the instrument, which thereby caused its dishonor. Courts in this jurisdiction are not only courts of law but also of equity, and therefore cannot unqualifiedly apply a provision of law so as to cause clear injustice which the framers of the law could not have intended to so deliberately cause. In *Carceller v. Court of Appeals*, 302 SCRA 718 (1999), this Court had occasion to stress: "Courts of law, being also courts of equity, may not countenance such grossly unfair results without doing violence to its solemn obligation to administer fair and equal justice for all."

BANK OF THE PHILIPPINE ISLANDS, *Petitioner*, -versus- COURT OF APPEALS AND BENJAMIN C. NAPIZA, *Respondent*.

G.R. No. 112392, FIRST DIVISION, February 29, 2000, YNARES-SANTIAGO, J.

Under the above rule, by depositing the check with petitioner, private respondent was, in a way, merely designating petitioner as the collecting bank. This is in consonance with the rule that a negotiable instrument, such as a check, whether a manager's check or ordinary check, is not legal tender. As such, after receiving the deposit, under its own rules, petitioner shall credit the amount in private respondent's account or infuse value thereon only after the drawee bank shall have paid the amount of the check or the check has been cleared for deposit. Again, this is in accordance with ordinary banking practices and with this Court's pronouncement 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."

FACTS

Private Respondent Napiza deposited in Foreign Currency Deposit Unit (FCDU) Savings Account which he maintained in petitioner's bank Continental Bank Manager's Check payable to cash in the amount of Two Thousand Five Hundred Dollars and duly endorsed by Napiza on its dorsal side. It appears that the check belonged to Henry Chan who went to the office of Napiza and requested him to deposit the check in his dollar account. Napiza agreed to deliver to Chan a signed blank withdrawal slip with the understanding that as soon as the check is cleared, both of them would withdraw upon Napiza's presentation of his passbook. Using the blank withdrawal slip, one Ruben Gayon Jr was able to withdraw the amount. It was later found out that the check was counterfeit. Petitioner filed a complaint against Napiza praying for the return of the amount of \$2,500.00 plus interest.

ISSUE

- 1) Whether or not Napiza is liable under his warranties as a general indorser? (NO)
- 2) Whether or not petitioner is grossly negligent in allowing the withdrawal? (YES)

RULING

Section 65, on the other hand, provides for the following warranties of a person negotiating an instrument by delivery or by qualified indorsement: (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has a good title to it; and (c) that all prior parties had capacity to contract.

The withdrawal slip contains a boxed warning that states: “This receipt must be signed and presented with the corresponding foreign currency savings passbook by the depositor in person. For withdrawals thru a representative, depositor should accomplish the authority at the back.” The requirement of presentation of the passbook when withdrawing an amount cannot be given mere lip service even though the person making the withdrawal is authorized by the depositor to do so. This is clear from Rule No. 6 set out by petitioner so that, for the protection of the bank’s interest and as a reminder to the depositor, the withdrawal shall be entered in the depositor’s passbook. The fact that private respondent’s passbook was not presented during the withdrawal is evidenced by the entries therein showing that the last transaction that he made with the bank was on September 3, 1984, the date he deposited the controversial check in the amount of \$2,500.00.

As correctly held by the Court of Appeals, in depositing the check in his name, private respondent did not become the outright owner of the amount stated therein. Under the above rule, by depositing the check with petitioner, private respondent was, in a way, merely designating petitioner as the collecting bank. This is in consonance with the rule that a negotiable instrument, such as a check, whether a manager’s check or ordinary check, is not legal tender. As such, after receiving the deposit, under its own rules, petitioner shall credit the amount in private respondent’s account or infuse value thereon only after the drawee bank shall have paid the amount of the check or the check has been cleared for deposit. Again, this is in accordance with ordinary banking practices and with this Court’s pronouncement 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.” The rule finds more meaning in this case where the check involved is drawn on a foreign bank and therefore collection is more difficult than when the drawee bank is a local one even though the check in question is a manager’s check.

A manager’s check is like a cashier’s check which, in the commercial world, is regarded substantially to be as good as the money it represents

Said ruling brings to light the fact that the banking business is affected with public interest. By the nature of its functions, a bank is under obligation to treat the accounts of its depositors “with meticulous care, always having in mind the fiduciary nature of their relationship.” As such, in dealing with its depositors, a bank should exercise its functions not only with the diligence of a good father of a family but it should do so with the highest degree of care.

In the case at bar, petitioner, in allowing the withdrawal of private respondent's deposit, failed to exercise the diligence of a good father of a family. In total disregard of its own rules, petitioner's personnel negligently handled private respondent's account to petitioner's detriment. As this Court once said on this matter: "Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do. The seventy-eight (78)-year-old, yet still relevant, case of *Picart v. Smith*, provides the test by which to determine the existence of negligence in a particular case which may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *pater familias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that."

From these facts on record, it is at once apparent that petitioner's personnel allowed the withdrawal of an amount bigger than the original deposit of \$750.00 and the value of the check deposited in the amount of \$2,500.00 although they had not yet received notice from the clearing bank in the United States on whether or not the check was funded. Reyes' contention that after the lapse of the 35-day period the amount of a deposited check could be withdrawn even in the absence of a clearance thereon, otherwise it could take a long time before a depositor could make a withdrawal, is untenable. Said practice amounts to a disregard of the clearance requirement of the banking system.

While it is true that private respondent's having signed a blank withdrawal slip set in motion the events that resulted in the withdrawal and encashment of the counterfeit check, the negligence of petitioner's personnel was the proximate cause of the loss that petitioner sustained. 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." The proximate cause of the withdrawal and eventual loss of the amount of \$2,500.00 on petitioner's part was its personnel's negligence in allowing such withdrawal in disregard of its own rules and the clearing requirement in the banking system. In so doing, petitioner assumed the risk of incurring a loss on account of a forged or counterfeit foreign check and hence, it should suffer the resulting damage.

BDO UNIBANK, INC., *Petitioner*, -versus- ENGR. SELWYN LAO, DOING BUSINESS UNDER THE NAME AND STYLE "SELWYN F. LAO CONSTRUCTION" AND "WING AN CONSTRUCTION AND DEVELOPMENT CORPORATION" AND INTERNATIONAL EXCHANGE BANK (NOW UNION BANK OF THE PHILIPPINES), *Respondent*.

G.R. NO. 227005, SECOND DIVISION, JUNE 19, 2017, MENDOZA, J.

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

FACTS

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

In his complaint, Lao alleged that he was doing business under the name and style of "Selwyn Lao Construction"; that he was a majority stockholder of Wing An Construction and Development Corporation (*WingAn*); that he entered into a transaction with Ever link, through its authorized representative Wu, under which, Everlink would supply him with "HCG sanitary wares"; and that for the down payment, he issued two (2) Equitable crossed checks payable to Everlink: Check No. 0127-242249 and Check No. 0127-242250, in the amounts of ₱273,300.00 and ₱336,500.00, respectively.

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

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

On August 24, 2001, Lao filed an Amended Complaint, wherein he impleaded Union Bank as additional defendant for allowing the deposit of the crossed checks in two bank accounts other than the payee's, in violation of its obligation to deposit the same only to the payee's account.

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

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

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

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

For its part, Union Bank presented as its witness Jojina Lourdes C. Vega (*Vega*), its Branch Business Manager. Vega testified that the transaction history of Everlink's account with Union Bank and the notation at the back of the check indicating Everlink's Account No. (005030000925) revealed that the proceeds of Check No. 0127-242249 were duly credited to Everlink's account on September 22, 1997. As regards Check No. 0127-242250, Vega clarified that the proceeds of the same were credited to New Wave's account. She explained that New Wave was a valued client of Union Bank. As a form of accommodation extended to valued clients, Union Bank would request the signing of a second endorsement agreement because the payee was not the same as the account holder. In this case, Antiporda executed a Deed of Undertaking (Second Endorsed Checks) wherein he assumed the responsibilities for the correctness, genuineness, and validity of the subject checks.

ISSUE

Whether or not a collecting bank assumes responsibility for a crossed check as a general endorser in accordance with section 66 of the negotiable instruments law? (YES)

RULING

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

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.

A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. A check may be crossed generally or specially. A check is crossed especially when the name of a particular banker or company is written between the parallel lines drawn. It is crossed generally when only the words “and company” are written at all between the parallel lines. Jurisprudence dictates that the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once — to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose. The effects of crossing a check, thus, relate to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein.

Although the rule on the sequence of recovery has been deeply engrained in jurisprudence, there may be exceptional circumstances which would justify its simplification. Stated differently, the aggrieved party may be allowed to recover directly from the person which caused the loss when circumstances warrant. In *Associated Bank v. Court of Appeals (Associated Bank)*, 208 SCRA 465 (1992), the person who suffered the loss as a result of the unauthorized encashment of crossed checks was allowed to recover the loss directly from the negligent bank despite the latter’s contention of lack of privity of contract. The Court said: There being no evidence that the crossed checks were actually received by the private respondent, she would have a right of action against the drawer companies, which in turn could go against their respective drawee banks, which in turn could sue the herein petitioner as collecting bank. In a similar situation, it was held that, to simplify proceedings, the payee of the illegally encashed checks should be allowed to recover directly from the bank responsible for such encashment regardless of whether or not the checks were actually delivered to the payee. We approve such direct action in the case at bar.

A peculiar circumstance in *Associated Bank v. Court of Appeals (Associated Bank)*, 208 SCRA 465 (1992), is the fact that the drawer companies, which should have been directly liable to the aggrieved payee, were not impleaded as parties in the suit. In this regard, it is a fundamental principle in this jurisdiction that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party. This principle conforms to the constitutional guarantee of due process of law. To the mind of the Court, this principle was a foremost underlying consideration for allowing the direct recovery by the payee from the negligent collecting bank.

**METROPOLITAN BANK AND TRUST CO., *Petitioner*, -versus- JUNNEL'S MARKETING CORP.,
Respondent.**

G.R. NOS. 235511 & 235565, THIRD DIVISION, June 20, 2018, VELASCO, JR., J.

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.

FACTS

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 Metrobank 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, 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, are all *crossed* checks and amounting to P1,481,292.00 in total

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. 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 letter 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 money 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:

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.¹ 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.

On 28 May 2013, the RTC rendered a decision 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. CA rendered its decision affirming, albeit with modification, the decision of the RTC

ISSUE

- 1) Whether or not Metrobank is liable to return to JMC the entire amount of the subject checks plus interest? (YES)
- 2) Whether or not Bankcom is liable to reimburse Metrobank the same amount plus interest? (YES)

RULING

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* 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.

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

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. 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. 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. 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.

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. 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. 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.

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.

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. 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. 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.

10. Warranties

ASSOCIATED BANK AND CONRADO CRUZ, Petitioner, -versus- COURT OF APPEALS, AND MERLE V. REYES, DOING BUSINESS UNDER THE NAME AND STYLE "MELISSA'S RTW", Respondent.
G.R. No. 89802, FIRST DIVISION, May 7, 1992, CRUZ, J.

In State Investment House vs. IAC, this Court declared that "the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once—to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose."

FACTS

The private respondent is engaged in the business of ready-to-wear garments under the firm name "Melissa's RTW." She deals with, among other customers, Robinson's Department Store, Payless Department Store, Rempson Department Store, and the Corona Bazaar

These companies issued in payment of their respective accounts crossed checks payable to Melissa's RTW in the amounts and on the dates indicated below

PAYOR BANK AMOUNT DATE

Payless Solid Bank	P3,960.00	January 19, 1982
Robinson's FEBTC	4,140.00	December 18, 1981
Robinson's FEBTC	1,650.00	December 24, 1981
Robinson's FEBTC	1,980.00	January 12, 1982
Rempson TRB	1,575.00	January 9, 1982
Corona RCBC	2,500.00	December 22, 1981

When she went to these companies to collect on what she thought were still unpaid accounts, she was informed of the issuance of the above-listed crossed checks. Further inquiry revealed that the said checks had been deposited with the Associated Bank (hereinafter, "the Bank") and subsequently paid by it to one Rafael Sayson, one of its "trusted depositors," in the words of its branch manager and co-petitioner, Conrado Cruz. Sayson had not been authorized by the private respondent to deposit and encash the said checks.

The private respondent sued the petitioners in the Regional Trial Court of Quezon City for recovery of the total value of the checks plus damages. After trial, judgment was rendered requiring them to pay the private respondent the total value of the subject checks in the amount of P15,805.00 plus 12% interest, P50,000.00 actual damages, P25,000.00 exemplary damages, P5,000.00 attorney's fees, and the costs of the suit.

The petitioners appealed to the respondent court, reiterating their argument that the private respondent had no cause of action against them and should have proceeded instead against the companies that issued the checks. In disposing of this contention, the Court of Appeals 2 said:

The cause of action of the appellee in the case at bar arose from the illegal, anomalous and irregular acts of the appellants in violating common banking practices to the damage and prejudice of the

appellees, in allowing to be deposited and encashed as well as paying to improper parties without the knowledge, consent, authority or endorsement of the appellee which totalled P15,805.00, the six (6) checks in dispute which were "crossed checks" or "for payee's account only," the appellee being the payee.

The three (3) elements of a cause of action are present in the case at bar, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach thereof. (Republic Planters Bank v. Intermediate Appellate Court, 131 SCRA 631).

And such cause of action has been proved by evidence of great weight. The contents of the said checks issued by the customers of the appellee had not been questioned. There is no dispute that the same are crossed checks or for payee's account only, which is Melissa's RTW. The appellee had clearly shown that she had never authorized anyone to deposit the said checks nor to encash the same; that the appellants had allowed all said checks to be deposited, cleared and paid to one Rafael Sayson in violation of the instructions in the said crossed checks that the same were for payee's account only; and that the appellee maintained a savings account with the Prudential Bank, Cubao Branch, Quezon City which never cleared the said checks and the appellee had been damaged by such encashment of the same.

ISSUE

Whether or not the private respondent has a cause of action against the petitioners for their encashment and payment to another person of certain crossed checks issued in her favor? (YES)

RULING

Under accepted banking practice, crossing a check is done by writing two parallel lines diagonally on the left top portion of the checks. The crossing is special where the name of a bank or a business institution is written between the two parallel lines, which means that the drawee should pay only with the intervention of that company. The crossing is general where the words written between the two parallel lines are "and Co." or "for payee's account only," as in the case at bar. This means that the drawee bank should not encash the check but merely accept it for deposit.

In *State Investment House vs. IAC*, this Court declared that "the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once—to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose."

The effects therefore of crossing a check relate to the mode of its presentment for payment. Under Sec. 72 of the Negotiable Instruments Law, presentment for payment, to be sufficient, must be made by the holder or by some person authorized to receive payment on his behalf. Who the holder or authorized person is depends on the instruction stated on the face of the check.

The weight of authority is to the effect that "the possession of a check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held 'for

moneys had and received.' ” The proceeds are held for the rightful owner of the payment and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check.

When the Bank paid the checks so endorsed notwithstanding that title had not passed to the endorser, it did so at its peril and became liable to the payee for the value of the checks. This liability attached whether or not the Bank was aware of the unauthorized endorsement.

As the Court stressed in *Banco de Oro Savings and Mortgage Bank vs. Equitable Banking Corp.*, “the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity. The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct.”

N. Presentment for Payment

ASSOCIATED BANK AND CONRADO CRUZ, *Petitioner*, -versus- COURT OF APPEALS, AND MERLE V. REYES, DOING BUSINESS UNDER THE NAME AND STYLE "MELISSA'S RTW", *Respondent*.
G.R. No. 89802, FIRST DIVISION, May 7, 1992, CRUZ, J.

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and co-petitioner, Conrado Cruz. Sayson had not been authorized by the private respondent to deposit and encash the said checks.

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The weight of authority is to the effect that “the possession of a check on a forged or unauthorized indorsement is wrongful, and when the money is collected on the check, the bank can be held ‘for moneys had and received.’” The proceeds are held for the rightful owner of the payment and may be recovered by him. The position of the bank taking the check on the forged or unauthorized indorsement is the same as if it had taken the check and collected without indorsement at all. The act of the bank amounts to conversion of the check.

When the Bank paid the checks so endorsed notwithstanding that title had not passed to the endorser, it did so at its peril and became liable to the payee for the value of the checks. This liability attached whether or not the Bank was aware of the unauthorized endorsement.

As the Court stressed in *Banco de Oro Savings and Mortgage Bank vs. Equitable Banking Corp.*, “the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity. The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct.”

1. Necessity of Presentment for Payment

THE INTERNATIONAL CORPORATE BANK (now UNION BANK OF THE PHILIPPINES),

Petitioner, -versus- SPS. FRANCIS S. GUECO and MA. LUZ E. GUECO, Respondent.

G.R. No. 141968, FIRST DIVISION, February 12, 2001, KAPUNAN, J.

A check must be presented for payment within a reasonable time after its issue, and in determining what is a “reasonable time,” regard is to be had to the nature of the instrument, the usage of trade or business with respect to such instruments, and the facts of the particular case. The test is whether the payee employed such diligence as a prudent man exercises in his own affairs. This is because the nature and theory behind the use of a check points to its immediate use and payability. In a case, a check payable on demand which was long overdue by about two and a half (2-1/2) years was considered a stale check. Failure of a payee to encash a check for more than ten (10) years undoubtedly resulted in the check becoming stale. Thus, even a delay of one (1) week or two (2) days, under the specific circumstances of the cited cases constituted unreasonable time as a matter of law.

FACTS

Spouses Gueco obtained a loan from petitioner International Corporate Bank (now Union Bank of Philippines) to purchase a car. Respondent spouses executed a promissory note in consideration, which were payable in monthly installment and chattel mortgage over the car.

The spouses however, defaulted payment. The car was detained by the bank. When Dr. Gueco delivered the manger's check of P150,000, the car was not released because of his refusal to sign the Joint Motion to Dismiss (JMD).

The bank insisted that the JMD is a standard operating procedure to effect a compromise and to preclude future filing of claims or suits for damages. Gueco spouses filed an action against the bank for fraud, failing to inform them regarding JMD during the meeting & for not releasing the car if they do not sign the said motion.

ISSUE

Whether or not International Corporate Bank was guilty of fraud? (YES)

RULING

A stale check is one which has not been presented for payment within a reasonable time after its issue. It is valueless and, therefore, should not be paid. Under the negotiable instruments law, an instrument not payable on demand must be presented for payment on the day it falls due. When the instrument is payable on demand, presentment must be made within a reasonable time after its issue. In the case of a bill of exchange, presentment is sufficient if made within a reasonable time after the last negotiation thereof.

A check must be presented for payment within a reasonable time after its issue, and in determining what is a "reasonable time," regard is to be had to the nature of the instrument, the usage of trade or business with respect to such instruments, and the facts of the particular case. The test is whether the payee employed such diligence as a prudent man exercises in his own affairs. This is because the nature and theory behind the use of a check points to its immediate use and payability. In a case, a check payable on demand which was long overdue by about two and a half (2-1/2) years was considered a stale check. Failure of a payee to encash a check for more than ten (10) years undoubtedly resulted in the check becoming stale. Thus, even a delay of one (1) week or two (2) days, under the specific circumstances of the cited cases constituted unreasonable time as a matter of law.

In the case at bar, however, the check involved is not an ordinary bill of exchange but a manager's check. A manager's check is one drawn by the bank's manager upon the bank itself. It is similar to a cashier's check both as to effect and use. A cashier's check is a check of the bank's cashier on his own or another check. In effect, it is a bill of exchange drawn by the cashier of a bank upon the bank itself, and *accepted* in advance by the act of its issuance. It is really the bank's own check and may be treated as a promissory note with the bank as a maker. The check becomes the primary obligation of the bank which issues it and constitutes its written promise to pay upon demand. The mere issuance of it is considered an acceptance thereof. If treated as promissory note, the drawer would be the maker and in which case the holder need not prove presentment for payment or present the bill to the drawee for acceptance.

Even assuming that presentment is needed, failure to present for payment within a reasonable time will result to the discharge of the drawer only to the extent of the loss caused by the delay. Failure to present on time, thus, does not totally wipe out all liability. In fact, the legal situation amounts to an acknowledgment of liability in the sum stated in the check. In this case, the Gueco spouses have not alleged, much less shown that they or the bank which issued the manager's check has suffered damage or loss caused by the delay or non-presentment. Definitely, the original obligation to pay certainly has not been erased.

2. Parties to Whom Presentment for Payment Should Be Made

3. Dispensation with Presentment for Payment

4. Dishonor by Non-Payment

O. Notice of Dishonor

JAIME DICO, *Petitioner*, -versus- HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,
Respondent

G.R. NO. 141669, SECOND DIVISION, February 28, 2005, CHICO-NAZARIO, *J.*

The essential elements of the offense penalized under Section 1, B.P. Blg. 22 are as follows: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. The prosecution has the burden to prove all the elements of the crime beyond reasonable doubt. Failure to do so will necessarily result in exoneration.

FACTS

Jaime Dico, now petitioner, was charged on 28 March 1994 with three (3) counts of violation of Batas Pambansa Bilang 22 before the MTC

That on or about the 12th day of May, 1993 and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check she/he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue, make or draw Far East Bank and Trust Co. Check No. 364903 dated May 12, 1993 in the amount of P100,000.00 payable to Equitable Banking Corp. which check was issued in payment of an obligation of said accused, but when said check was presented with said bank, the same was dishonored for reason Account Closed and despite notice and demands made to redeem or make good said check, said accused failed and refused, and up to the present time still fails and refuses to do so, to the damage and prejudice of said Equitable Card Network Inc. in the amount of P100,000.00 Philippine Currency.

When arraigned on 11 January 1995, accused pleaded not guilty to each of the charges. Upon agreement of the parties, pre-trial of the cases was waived. The cases were consolidated and were jointly heard.

He included the above-mentioned four (4) post dated checks as a sign of good faith; and as a way of commitment to pay his outstanding balance to the complainant which is to [be] amortized as follows: May 12, 1993 P100,000.00; June 12, 1993 - P200,000.00; July 12, 1993 P300,000.00; and on August 12, 1993 P300,000.00; but his proposal was rejected by the complainants top management in Manila; that based on Exh. 8 which is the Summary furnished by Debbie Dy, incumbent Branch Manager of the complainant network in Cebu City, his outstanding balance to the complainant is P752,389.19, but with the payment of P100,000.00 he made on April 7, 1993, his balance to the complainant is P652,389.19.

That he does not understand why his total obligation to the complainant has already reached P1,035,589.28 when his credit line is only P499,000.00; hence, he approached the complainants manager to reconcile his accounts and find out where the complainant was mistaken; that even if his accounts were reconciled, he cannot admit that his obligation to the complainant has already reached millions; and that the problem with the complainant is that it did not return to him the checks which he sent to the complainant together with his proposal to reconcile his accounts.

That on May 31, 1993, he filed a Petition For Insolvency with the Regional Trial Court

The accused further testified on cross-examination that although he could not agree on his outstanding obligation to the complainant, he nevertheless placed his total liability to the complainant in his Petition,

In a decision dated 19 June 1996, Amado B. Bajarias, Sr., Presiding Judge of the MTCC, Branch 7, Cebu City, convicted petitioner of the crimes charged

On 25 July 1996, petitioner filed a Motion for Reconsideration which the prosecution opposed. In an order dated 26 August 1996, the motion was denied.

On 30 August 1996, petitioner appealed to the Regional Trial Court (RTC) by filing a notice of appeal.

In a Judgment dated 20 February 1997, Ferdinand J. Marcos, Presiding Judge of the RTC of Cebu City, Branch 20, affirmed en toto the decision of the MTCC. Petitioner moved for its reconsideration which was opposed by the prosecution. On 23 June 1997, the motion for reconsideration was denied.

By way of Petition for Review, accused Dico went up to the Court of Appeals seeking the reversal of the Judgment of the RTC which affirmed the decision of the MTCC.

In its Comment to the Petition for Review, the Office of the Solicitor General asked for the dismissal of the petition on the ground that the same had no merit.

In the Court of Appeals, the challenged decision via petition for review is MODIFIED to read as follows:

(1) Petitioner Jaime Dico is ACQUITTED in Criminal Case No. 38256-R but is, nevertheless, ordered to indemnify private complainant the sum of P296,736.27 representing his unpaid obligation covered by FEBTC Check No. 369380 dated January 15, 1993. Timing

(2) The judgment convicting Petitioner Jaime Dico in Criminal Cases Nos. 38254-R and 38255-R and penalizing him to suffer imprisonment of six (6) months in each of the said cases and ordering him to indemnify private complainant in the amount of P100,000.00 and P200,000.00 representing his unpaid obligation covered by FEBTC Check Nos. 369403 (dated May 12, 1993) and 369404 (dated June 12, 1993) is AFFIRMED in toto.

ISSUE

Whether or not the prosecution was able to prove all the elements of B.P. Blg. 22? (YES)

RULING

The essential elements of the offense penalized under Section 1, B.P. Blg. 22 are as follows: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. The prosecution has the burden to prove all the elements of the crime beyond reasonable doubt. Failure to do so will necessarily result in exoneration.

Re: Criminal Case No. 38255-R

As regards FEBTC Check No. 369404 dated 12 June 1993 which was deposited on 14 June 1993, petitioner maintains that the notice of dishonor given for said check was not the one required by law since said notice was given before the check became due and before it was deposited.

The record of the case shows the only letter received by petitioner involving the three checks subject of these cases was the one dated 08 June 1993. This letter sent by the counsel of private complainant asked petitioner to make good the checks within five (5) days from receipt thereof, otherwise, criminal charges for violation of B.P. Blg. 22 will be filed against him.

SEC. 2. Evidence of knowledge of insufficient funds

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.

The presumption or prima facie evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.

A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank.[36] The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.

The requirement of notice, its sending to, and its actual receipt by, the drawer or maker of the check gives the latter the option to prevent criminal prosecution if he pays the holder of the check the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that the check has not been paid.

As already stated above, the only notice received by petitioner for the three checks involved in these cases was that dated 08 June 1993. There is no dispute that there was indeed a demand letter from the counsel of Equitable Card Network, Inc., but the same was received by petitioner before the checks maturity or due date on 12 June 1993. As testified to by prosecution witness Lily Canlas, the demand letter was sent to petitioner on 08 June 1993 and the check was deposited on 14 June 1993. The demand letter was sent four days before the date of the check and six days before said check was deposited

This Court rules that as regards FEBTC Check No. 369404, petitioner did not receive the notice of dishonor contemplated by the law. There was no valid notice of dishonor to speak of. The term notice of dishonor denotes that a check has been presented for payment and was subsequently dishonored by the drawee bank. This means that the check must necessarily be due and demandable because only a check that has become due can be presented for payment and subsequently be dishonored. A postdated check cannot be dishonored if presented for payment before its due date.

The failure of Equitable Card Network, Inc., to send another letter demanding that FEBTC Check No. 369404 be paid within five days after it has been dishonored prevents the disputable presumption - that petitioner had knowledge of the insufficiency of his funds at the time he issued the check - from arising. Absent such presumption, the burden of evidence shifts to the prosecution to prove such knowledge.

There being no evidence presented by the prosecution to show that petitioner had knowledge of the insufficiency of his funds at the time he issued the check, the second element of the offense was not satisfied. Accordingly, having failed to prove all the elements of B.P. Blg. 22, petitioner must, perforce, be acquitted in Criminal Case No. 38255-R.

8. Parties to Be Notified

**LINA LIM LAO, Petitioner, -versus- COURT OF APPEALS
and PEOPLE OF THE PHILIPPINES, Respondent**

G.R. No. 119178, THIRD DIVISION, June 20, 1997, PANGANIBAN, J.

Because no notice of dishonor was actually sent to and received by the petitioner, the prima facie presumption that she knew about the insufficiency of funds cannot apply. Section 2 of B.P. Blg. 22 clearly provides that this presumption arises not from the mere fact of drawing, making and issuing a bum check; there must also be a showing that, within five banking days from receipt of the notice of dishonor, such maker or drawer failed to pay the holder of the check the amount due thereon or to make arrangement for its payment in full by the drawee of such check.

FACTS

Private complainant Fr. Pelijo, as the provincial secretary of the Society of the Divine Word, invested 514k with Premiere Investment House, wherein Lim Lao worked as a junior officer of the Binondo branch. Fr. Pelijo was issued three postdated Traders Royal Bank checks signed by Lim Lao and Asprec, Premiere's head of operations.

When Fr. Pelijo presented the checks for encashment, they were dishonored for insufficiency of funds. He first went to the Binondo branch but was referred to the Cubao Main Branch to speak with Premiere's president, Mr. Carino. Fr. Pelijo was given 5k, but no other payments followed. Fr. Pelijo then sent a letter of demand to the Cubao branch. Subsequently, Premiere was later on placed under receivership. Fr. Pelijo then filed BP 22 charges against Lim Lao, and Asprec, alleging that Lim Lao issued checks knowing that at the time of issue he did not have sufficient funds. Asprec remained at large while Lim Lao was convicted. Lim Lao's conviction was affirmed by the CA.

Lim Lao's defense is that she signs the checks in blank since she's mostly in the field. It was Asprec who is responsible for subsequently completing, ultimately issuing and delivering the checks to whoever. She had no knowledge of the actual funds available in the corporate account since this devolved on the Treasury Dept, headed by Ms. Ocampo in the Cubao branch. She never dealt with Fr. Pelijo since he dealt exclusively with one Ms. Lachenal, a trader of the corporation. The notice of dishonor was never sent to Lim Lao in the Binondo branch, but in the Cubao Main Branch, which never forwarded the information to Lim Lao. Ms. Ocampo of the Treasury Dept testified that such act was futile since the main office was already in deep financial distress due to panic withdrawals and massive pretermination in the wake of Ninoy's assassination. The receiver prepared a check but it was never claimed by Fr. Pelijo.

ISSUE

Whether or not the notice of dishonor to the Cubao Main Branch constituted a valid notice to Lim Lao? (NO)

RULING

This Court listed the elements of the offense penalized under B.P. Blg. 22, as follows: "(1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the

check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.”

Knowledge of insufficiency of funds or credit in the drawee bank for the payment of a check upon its presentment is an essential element of the offense. There is a *prima facie* presumption of the existence of this element from the fact of drawing, issuing or making a check, the payment of which was subsequently refused for insufficiency of funds. It is important to stress, however, that this is not a conclusive presumption that forecloses or precludes the presentation of evidence to the contrary.

In the present case, the fact alone that petitioner was a signatory to the checks that were subsequently dishonored merely engenders the *prima facie* presumption that she knew of the insufficiency of funds, but it does not render her automatically guilty under B.P. Blg. 22. The prosecution has a duty to prove all the elements of the crime, including the acts that give rise to the *prima facie* presumption; petitioner, on the other hand, has a right to rebut the *prima facie* presumption. Therefore, if such knowledge of insufficiency of funds is proven to be *actually* absent or non-existent, the accused should not be held liable for the offense defined under the first paragraph of Section 1 of B.P. Blg. 22. Although the offense charged is a *malum prohibitum*, the prosecution is not thereby excused from its responsibility of proving beyond reasonable doubt all the elements of the offense, one of which is knowledge of the insufficiency of funds.

Since petitioner Lina Lim Lao signed the checks without knowledge of the insufficiency of funds, knowledge she was not expected or obliged to possess under the organizational structure of the corporation, she may not be held liable under B.P. Blg. 22. For in the final analysis, penal statutes such as B.P. Blg. 22 “must be construed with such strictness as to carefully safeguard the rights of the defendant x x x.” The element of knowledge of insufficiency of funds having been proven to be absent, petitioner is therefore entitled to an acquittal.

Because no notice of dishonor was actually sent to and received by the petitioner, the *prima facie* presumption that she knew about the insufficiency of funds cannot apply. Section 2 of B.P. Blg. 22 clearly provides that this presumption arises not from the mere fact of drawing, making and issuing a bum check; there must also be a showing that, within five banking days *from receipt of the notice of dishonor*, such maker or drawer failed to pay the holder of the check the amount due thereon or to make arrangement for its payment in full by the drawee of such check.

In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a “complete defense.” The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand—and the basic postulates of fairness require—that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under B.P. Blg. 22.

In this light, the postulate of Respondent Court of Appeals that “(d)emand on the Corporation constitutes demand on appellant (herein petitioner),” is erroneous. Premiere has no obligation to forward the notice addressed to it to the employee concerned, especially because the corporation itself incurs no criminal liability under B.P. Blg. 22 for the issuance of a bouncing check. Responsibility under B.P. Blg. 22 is personal to the accused; hence, personal knowledge of the notice of dishonor is necessary. Consequently, constructive notice to the corporation is not enough to satisfy due process. Moreover, it is petitioner, as an officer of the corporation, who is the latter’s agent for purposes of

receiving notices and other documents, and not the other way around. It is but axiomatic that notice to the corporation, which has a personality distinct and separate from the petitioner, does not constitute notice to the latter.

OFELIA MARIGOMEN, Petitioner, -versus- PEOPLE OF THE PHILIPPINES, Respondent
G.R. NO. 153451, SECOND DIVISION, May 26, 2005, CALLEJO, SR, J.

The notice of dishonor must be in writing; a verbal notice is not enough. The rationale for this was explained by the Court in Domagsang v. Court of Appeals, to wit: Petitioner counters that the lack of a written notice of dishonor is fatal. The Court agrees. While, indeed, Section 2 of B.P. Blg. 22 does not state that the notice of dishonor be in writing, taken in conjunction, however, with Section 3 of the law, i.e., “that where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal,” a mere oral notice or demand to pay would appear to be insufficient for conviction under the law. The Court is convinced that both the spirit and letter of the Bouncing Checks Law would require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but that likewise the accused has actually been notified in writing of the fact of dishonor. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.

FACTS

Caltex sold their gas and oil to INSURECO through postdated checks. Petitioner was the finance officer who was authorized to sign checks against INSURECO. Three checks were dishonored due to insufficient funds. After Caltex made demands to INSURECO, which was unheeded, they filed a complaint against petitioner for violation of BP 22.

Petitioner contends that while she had drawn and signed the checks she was not an employee anymore at the purchase of the products. She did not receive any telegrams or notice of the dishonored checks. The lower ruled in favor of Caltex.

ISSUE

Whether or not petitioner was guilty of violating BP 22? (NO)

RULING

For violation of *B.P. Blg. 22* to be committed, the prosecution must prove the following essential elements: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue there are no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

Contrary, to the respondent's contention, the ruling of the Court in *Lao v. Court of Appeals* is applicable in this case. In acquitting the petitioner therein, the Court explained: It has been observed that the State, under this statute, actually offers the violator “a compromise by allowing him to perform some act which operates to preempt the criminal action, and if he opts to perform it the

action is abated.” This was also compared to certain laws allowing illegal possessors of firearms a certain period of time to surrender the illegally possessed firearms to the Government, without incurring any criminal liability. In this light, the full payment of the amount appearing in the check within five banking days from notice of dishonor is a “complete defense.” The absence of a notice of dishonor necessarily deprives an accused an opportunity to preclude a criminal prosecution. Accordingly, procedural due process clearly enjoins that a notice of dishonor be actually served on petitioner. Petitioner has a right to demand—and the basic postulates of fairness require—that the notice of dishonor be actually sent to and received by her to afford her the opportunity to avert prosecution under *B.P. Blg. 22*.

The notice of dishonor must be *in writing*; a verbal notice is not enough. The rationale for this was explained by the Court in *Domagsang v. Court of Appeals*, to wit: Petitioner counters that the lack of a *written notice* of dishonor is fatal. The Court agrees. While, indeed, Section 2 of *B.P. Blg. 22* does not state that the notice of dishonor be in writing, taken in conjunction, however, with Section 3 of the law, *i.e.*, “that where there are no sufficient funds in or credit with such drawee bank, such fact *shall always be explicitly stated in the notice of dishonor or refusal*,” a mere oral notice or demand to pay would appear to be insufficient for conviction under the law. The Court is convinced that both the spirit and letter of the Bouncing Checks Law would require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but that likewise the accused has actually been notified in writing of the fact of dishonor. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.

If the drawer or maker is an officer of a corporation, the notice of dishonor to the said corporation is not notice to the employee or officer who drew or issued the check for and in its behalf. The Court explained in *Lao v. Court of Appeals*, to wit: In this light, the postulate of Respondent Court of Appeals that “(d)emand on the Corporation constitutes demand on appellant (herein petitioner),” is erroneous. Premiere has no obligation to forward the notice addressed to it to the employee concerned, especially because the corporation itself incurs no criminal liability under *B.P. Blg. 22* for the issuance of a bouncing check. Responsibility under *B.P. Blg. 22* is personal to the accused; hence, personal knowledge of the notice of dishonor is necessary. Consequently, constructive notice to the corporation is not enough to satisfy due process. Moreover, it is petitioner, as an officer of the corporation, who is the latter’s agent for purposes of receiving notices and other documents, and not the other way around. It is but axiomatic that notice to the corporation, which has a personality distinct and separate from the petitioner, does not constitute notice to the latter.

GREAT ASIAN SALES CENTER CORPORATION AND TAN CHONG LIN, Petitioner, -versus- THE COURT OF APPEALS AND BANCASIA FINANCE AND INVESTMENT CORPORATION, Respondent
G.R. NO. 105774, THIRD DIVISION, APRIL 25, 2002, CARPIO, J.

Under the Negotiable Instruments Law, notice of dishonor is not required if the drawer has no right to expect or require the bank to honor the check, or if the drawer has countermanded payment. In the instant case, all the checks were dishonored for any of the following reasons: “account closed,” “account under garnishment,” “insufficiency of funds,” or “payment stopped.” In the first three instances, the drawers had no right to expect or require the bank to honor the checks, and in the last instance, the drawers had countermanded payment.

FACTS

Great Asian is engaged in the business of buying and selling general merchandise, in particular household appliances. On March 17, 1981, the board of directors of Great Asian approved a resolution authorizing its Treasurer and General Manager, Arsenio Lim Piat, Jr. (“Arsenio” for brevity) to secure a loan from Bancasia in an amount not to exceed P1.0 million. The board resolution also authorized Arsenio to sign all papers, documents or promissory notes necessary to secure the loan. On February 10, 1982, the board of directors of Great Asian approved a second resolution authorizing Great Asian to secure a discounting line with Bancasia in an amount not exceeding P2.0 million. The second board resolution also designated Arsenio as the authorized signatory to sign all instruments, documents and checks necessary to secure the discounting line.

On March 4, 1981, Tan Chong Lin signed a Surety Agreement in favor of Bancasia to guarantee, solidarily, the debts of Great Asian to Bancasia. On January 29, 1982, Tan Chong Lin signed a Comprehensive and Continuing Surety Agreement in favor of Bancasia to guarantee, solidarily, the debts of Great Asian to Bancasia. Thus, Tan Chong Lin signed two surety agreements (“Surety Agreements” for brevity) in favor of Bancasia.

Great Asian, through its Treasurer and General Manager Arsenio, signed four (4) Deeds of Assignment of Receivables (“Deeds of Assignment” for brevity), assigning to Bancasia fifteen (15) postdated checks. Nine of the checks were payable to Great Asian, three were payable to “New Asian Emp.”, and the last three were payable to cash. Various customers of Great Asian issued these postdated checks in payment for appliances and other merchandise.

Great Asian and Bancasia signed the first two Deed of Assignments on January 12, 1982 covering four postdated checks each with a total face value of P244,225.82 and P312,819.00, with maturity dates not later than April 1, 1982. All these four checks were dishonored. Great Asian and Bancasia signed the third Deed of Assignment on February 11, and the 4th on March 5, 1982 respectively covering postdated checks and similarly, none of the checks were honored.

Arsenio endorsed all the fifteen dishonored checks by signing his name at the back of the checks. Eight of the dishonored checks bore the endorsement of Arsenio below the stamped name of “Great Asian Sales Center”, while the rest of the dishonored checks just bore the signature of Arsenio. The drawee banks dishonored the fifteen checks on maturity when deposited for collection by Bancasia, with any of the following as reason for the dishonor: “account closed”, “payment stopped”, “account under garnishment”, and “insufficiency of funds”. Bancasia referred the matter to its lawyer, Atty. Eladia Reyes, who sent by registered mail to Tan Chong Lin a letters dated March 18, 1982 and June 16, 1982, notifying him of the dishonored checks and demanding payment from him. Neither Great Asian nor Tan Chong Lin paid Bancasia the dishonored checks.

On May 21, 1982, Great Asian filed with the then Court of First Instance of Manila a petition for insolvency, verified under oath by its Corporate Secretary, Mario Tan. Attached to the verified petition was a “Schedule and Inventory of Liabilities and Creditors of Great Asian Sales Center Corporation,” listing Bancasia as one of the creditors of Great Asian in the amount of P1,243,632.00. On June 23, 1982, Bancasia filed a complaint for collection of a sum of money against Great Asian and Tan Chong Lin. Bancasia impleaded Tan Chong Lin because of the Surety Agreements he signed in favor of Bancasia. In its answer, Great Asian denied the material allegations of the complaint claiming it was unfounded, malicious, baseless, and unlawfully instituted since there was already a pending insolvency proceedings, although Great Asian subsequently withdrew its petition for voluntary

insolvency. Great Asian further raised the alleged lack of authority of Arsenio to sign the Deeds of Assignment as well as the absence of consideration and consent of all the parties to the Surety Agreements signed by Tan Chong Lin.

The trial court rendered its decision on January 26, 1988 rendered in favor of the plaintiff and against the two (2) defendants

On appeal, the Court of Appeals sustained the decision of the lower court, deleting only the award of attorney's fees. As against appellants' bare denial of it, the Court is more inclined to accept the appellee's version, to the effect that the subject deeds of assignment are but individual transactions which — being collectively evidentiary of the loan accommodation and/or credit line it granted the appellant corporation — should not be taken singly and distinct therefrom. In addition to its plausibility, the proposition is, more importantly, adequately backed by the documentary evidence on record. Aside from the aforesaid Deeds of Assignment and the Board Resolutions of the appellant corporation's Board of Directors, the appellee — consistent with its theory — interposed the Surety Agreements the appellant Tan Chong Lin executed, as well as the demand letters it served upon the latter as surety. It bears emphasis that the second Resolution of the appellant corporation's Board of Directors even closely coincides with the execution of the February 11, 1982 and March 5, 1982 Deeds of Assignment. Were the appellants' posturings true, it seems rather strange that the appellant Tan Chong Lin did not even protest or, at least, make known to the appellee what he — together with the appellant corporation — represented to be a corporate larceny to which all of them supposedly fell prey. In the petition for voluntary insolvency it filed, the appellant corporation, instead, indirectly acknowledged its indebtedness in terms of financing accommodations to the appellee, in an amount which, while not exactly matching the sum herein sought to be collected, approximates the same.

The appellants contend that the foregoing warranties enlarged or increased the surety's risk, such that appellant Tan Chong Lin should be released from his liabilities. Without saying more, the appellants' position is, however, soundly debunked by the undertaking expressed in the Comprehensive and Continuing Surety Agreements to the effect that the "surety/ies, jointly and severally among themselves and likewise with the principal, hereby agree/s and bind/s himself to pay at maturity all the notes, drafts, bills of exchange, overdrafts and other obligations which the principal may now or may hereafter owe the creditor." With the possible exception of the fixed ceiling for the amount of loan obtainable, the surety undertaking in the case at bar is so comprehensive as to contemplate each and every condition, term or warranty which the principal parties may have or may be minded to agree on. The Court sees little or no reason to go into the appellants' remaining assignments of error, save the matter of attorney's fees. For want of a statement of the rationale therefore in the body of the challenged decision, the trial court's award of attorney's fees should be deleted and disallowed

The decision appealed from is MODIFIED, to delete the trial court's award of attorney's fees. The rest is AFFIRMED *in toto*.

ISSUE

Whether or not Tan Chong Lin is liable to Great Asian under the Surety Agreements? (YES)

RULING

In the financing industry, the term “discounting line” means a credit facility with a financing company or bank, which allows a business entity to sell, on a continuing basis, its accounts receivable at a discount. The term “discount” means the sale of a receivable at less than its face value. The purpose of a discounting line is to enable a business entity to generate instant cash out of its receivables which are still to mature at future dates. The financing company or bank which buys the receivables makes its profit out of the difference between the face value of the receivable and the discounted price.

Under the Negotiable Instruments Law, notice of dishonor is not required if the drawer has no right to expect or require the bank to honor the check, or if the drawer has countermanded payment. In the instant case, all the checks were dishonored for any of the following reasons: “account closed,” “account under garnishment,” “insufficiency of funds,” or “payment stopped.” In the first three instances, the drawers had no right to expect or require the bank to honor the checks, and in the last instance, the drawers had countermanded payment.

Under common law, delay in notice of dishonor, where such notice is required, discharges the drawer only to the extent of the loss caused by the delay. This rule finds application in this jurisdiction pursuant to Section 196 of the Negotiable Instruments Law which states, “Any case not provided for in this Act shall be governed by the provisions of existing legislation, or in default thereof, by the rules of the Law Merchant.” Under Section 186 of the Negotiable Instruments Law, delay in the presentment of checks discharges the drawer. However, Section 186 refers only to delay in presentment of checks but is silent on delay in giving notice of dishonor. Consequently, the common law or Law Merchant can supply this gap in accordance with Section 196 of the Negotiable Instruments Law.

At any rate, there is indeed a fine distinction between a discounting line and a loan accommodation. If the accounts receivable, like postdated checks, are sold for a consideration less than their face value, the transaction is one of discounting, and is subject to the provisions of the Financing Company Act. The assignee is immediately subrogated as creditor of the accounts receivable. However, if the accounts receivable are merely used as collateral for the loan, the transaction is only a simple loan, and the lender is not subrogated as creditor until there is a default and the collateral is foreclosed.

9. Parties Who May Give Notice and Dishonor

ELIZA T. TAN, *Petitioner*, -versus- **PEOPLE OF THE PHILIPPINES**, *Respondent*
G.R. NO. 141466, FIRST DIVISION, January 19, 2001, PARDO, J.

The elements of the offense defined and penalized in Section 1 of Batas Pambansa Blg. 22 are: “1. That a person makes or draws and issues any check; “2. That the check is made or drawn and issued to apply on account or for value; “3. That the person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and “4. That the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.”

FACTS

Accused-appellant Eliza is the Vice-President of Hometown Development, Inc. (HDI), owner/developer of the South Garden Homes, located at Salitran, Dasmariñas, Cavite. Fidel [M. Francisco, Jr.] is the president of the construction firm F. M. Francisco & Associates (FMF).

On January 28, 1992, Eliza, representing HDI, and Fidel, for FMF, entered into a Construction Agreement whereby the FMF was hired by Eliza to undertake land development (construction of roads, railings, curbs, and gutters) at the South Garden Homes. Among others, the Construction Agreement set forth that the manner of payment would be on a monthly progress billing based on accomplishment reports to be submitted by the FMF.

Based on the testimony of Fidel, it would appear for the prosecution that when Eliza failed to pay, both parties terminated the contract. For its accomplishment for the month of November 1992, FMF was paid P23,739.09 by Eliza with Philtrust Bank Check No. A000913 dated February 28, 1993.

Upon presentment for payment, however, subject check was dishonored. After receipt of the notice of dishonor, Fidel verbally notified Eliza and the latter promised to pay. Later on, when Eliza still did not pay, Fidel sent her a demand letter by registered mail. Failing to heed his demand letter, Eliza was charged in court.

Meanwhile, Eliza presented a different version of the case altogether. According to accused-appellant, she initially issued four (4) checks with P50,000.00 each to FMF as advance partial payment as per voucher No. 1575 dated July 25, 1992, to wit:

Check #	Amount	Date
861776	P50,000.00	August 15, 1992
861777	50,000.00	August 30, 1992
861778	50,000.00	Sept. 15, 1992
861779	50,000.00	Sept. 30, 1992"

When FMF failed to accomplish land development in Cavite, the Construction Agreement was terminated and Eliza asked for the return of the four (4) above-mentioned checks. With the excuse, however, that Check No. 861776 dated August 15, 1992 got lost, Fidel gave back only three (3) of the four (4) checks.

As their accounting records reflected that HDI still had an account of P46,000.00 with FMF, and at the behest of Fidel, Eliza issued to the latter, two (2) checks: Philtrust Bank Check Nos. A000904 and A000913 dated January 30, 1993 and February 28, 1993, respectively, each for P23,739.09, as replacement checks for the one that got lost.

She replaced later on these two (2) checks with cash as evidenced by the acknowledgment signature of Fidel on Voucher No. 2028 dated March 30, 1993.

Subsequently, it was realized by HDI's accounting department that Philtrust Bank Check Nos. A000904 and A000913 had already been replaced with cash and so a request to stop payment of these two (2) checks were made by Eliza to the bank.

Accused-appellant maintains that Philtrust Bank Check No. A000913 was dishonored not because it was drawn against insufficient funds but precisely because of her order to stop payment therefor. She stressed that although that bank had stamped "DAUD" in subject check upon its presentment on March 2, 1993, she had sufficient funds to cover the check because at that time, she had a credit limit of P25 million with Philtrust Bank. This allegation was supported by Aileen Sy, representative of the Philippine Trust Bank who confirmed in Court that had there been no stop payment request received by their bank as early as January 27, 1993, the amount of P23,739.09 covered by subject Philtrust Bank Check No. A000913 could have been withdrawn on March 2, 1993 because of the available credit limit of P5 million. This was the reason why, at the dorsal portion of subject check is written under the column Reason for Return, at No. 1 thereof: "Payment Stopped Funded."

In rebuttal, the wife of Fidel, Erlinda S. Francisco, disputes the allegation of Eliza who used to be her friend especially on her husband having allegedly received payment in cash in exchange for Philtrust Bank Check Nos. A000904 and A0009013 and suspects the genuineness of Voucher No. 2028 dated March 30, 1992. For one, Mrs. Francisco asserts that whenever she pays them (FMF) Eliza paid in checks and never in cash and vouchers were already prepared typewritten unlike Voucher No. 2028 where the data are handwritten. Secondly, after Eliza issued the two (2) checks in December 1992, Mrs. Francisco and her husband no longer saw accused-appellant, not even after the demand letter had been sent on March 18, 1993.

ISSUE

Whether or not petitioner is guilty of violation of B. P. 22 because when she issued Philtrust Bank Check No. A000913 to FMF on February 28, 1993, she knew that there were insufficient funds on deposit with the bank to honor the check upon presentment? (NO)

RULING

The elements of the offense defined and penalized in Section 1 of Batas Pambansa Blg. 22 are: "1. That a person makes or draws and issues any check; "2. That the check is made or drawn and issued to apply on account or for value; "3. That the person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and "4. That the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment."

Actually, the check in question was not issued without sufficient funds and was not dishonored due to insufficiency of funds. What was stamped on the check in question was "Payment Stopped-Funded" at the same time "DAUD" meaning drawn against uncollected deposits. Even with uncollected deposits, the bank may honor the check at its discretion in favor of favored clients, in which case there would be no violation of B.P. 22.

10. Effect of Notice

BANK OF THE PHILIPPINE ISLANDS, Petitioner, -versus- REYNALD R. SUAREZ, Respondent.

G.R. No. 167750, SECOND DIVISION, March 15, 2010, CARPIO, J.

Considering that there was no binding representation on BPI's part as regards the same-day crediting of the RCBC check, no negligence can be ascribed to BPI's dishonor of the checks because BPI was justified in dishonoring the checks for lack of available funds in Suarez's account.

FACTS

Suarez represents a client who wants to buy parcels of land without having to directly deal with the land owners. They made arrangements that Suarez will make the transactions on his behalf to make it appear he is the one buying the lots. The client issued a check from Rizal Commercial Banking Co. to be credited to the checking account of Suarez with BPI in the amount of P19,129,100.00 as consideration to the lots.

Knowing that the bank observes a 3-day clearing check policy, he asked his secretary to call BPI if the RCBC check was already credited to his account on the same day the check was issued by his client. Upon the confirmation of his secretary from BPI that the amount was already credited to his account, he subsequently issued 5 checks to the land owners and left to the US for a vacation the next day. He was thereafter informed by his secretary that the 5 checks were dishonored on June 16, 1997, the same day the 5 checks were issued and he incurred charges because of it. On June 19, 1997, the payees again presented the 5 checks and this time they were honored rendering the account of Suarez to be sufficiently funded.

Suarez demanded an apology from BPI and for the reversal of the charges incurred from his account. His checks were apparently returned due to "drawn against insufficient funds" (DAIF) instead of "drawn against uncollected deposit (DAUD). Upon examination of the checks, Suarez insisted that the checks were tampered where the DAIF mark on the check was changed to DAUD. He sued the bank for damages and rejected the bank's offer to reverse the charges from his account.

The RTC ruled in favor of Suarez awarding him actual, moral and exemplary damages and attorney's fees.

On appeal, the Court of Appeals reaffirmed the RTC decision after establishing that there were indeed intercalations made on the DAIF marking to make it appear as DAUD. The court finds it proper to award moral and exemplary damages because Suarez could be criminally held liable in violation of BP 22 if the reason of dishonoring the check is due to DAIF. Although he may not have been liable for a criminal prosecution, he also suffered humiliation from his client because the land owners aborted their transaction thinking he is not capable of fulfilling his obligation. The act of reversion of the bank on the charges imposed on Suarez's account is tantamount to their admission of having committed blunder in handling the account of their client. The bank however insisted that Suarez is liable for paying the charges mandated by Philippine Clearing House Rules and Regulations (PCHRR).

ISSUE

Whether or not BPI was negligent in handling the account of their client? (NO)

RULING

Negligence is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do."

The question concerning BPI's negligence, however, depends on whether BPI indeed confirmed the same-day crediting of the RCBC check's face value to Suarez's BPI account.

Based on the records, there is no sufficient evidence to show that BPI conclusively confirmed the same-day crediting of the RCBC check which Suarez's client deposited late on 16 June 1997. Garaygay failed to (1) identify and name the alleged BPI employee, and (2) establish that this particular male employee was authorized by BPI either to disclose any information regarding a depositor's bank account to a person other than the depositor over the telephone, or to assure Garaygay that Suarez could issue checks totaling the face value of the RCBC check. Moreover, a same-day clearing of a P19,129,100 check requires approval of designated bank official or officials, and not any bank official can grant such approval. Thus, BPI was not estopped from dishonoring the checks for inadequacy of available funds in Suarez's account since the RCBC check remained uncleared at that time.

While BPI had the discretion to undertake the same-day crediting of the RCBC check, and disregard the banking industry's 3-day check clearing policy, Suarez failed to convincingly show his entitlement to such privilege as he had no credit or bill purchase line with BPI which would qualify him to the exceptions to the 3-day check clearing policy

Considering that there was no binding representation on BPI's part as regards the same-day crediting of the RCBC check, no negligence can be ascribed to BPI's dishonor of the checks because BPI was justified in dishonoring the checks for lack of available funds in Suarez's account.

JAMES SVENDSEN, Petitioner, -versus- PEOPLE OF THE PHILIPPINES, Respondent
G.R. NO. 175381, SECOND DIVISION, February 26, 2008, CARPIO MORALES, J.

For petitioner to be validly convicted of the crime under B.P. Blg. 22, the following requisites must thus concur: (1) the making, drawing and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

FACTS

Cristina Reyes (Cristina) extended a loan to petitioner in the amount of P200,000, to bear interest at 10% a month. After petitioner had partially paid his obligation, he failed to settle the balance thereof which had reached P380,000 inclusive of interest.

Cristina thus filed a collection suit against petitioner, which was eventually settled when petitioner paid her P200,000 and issued in her favor an International Exchange Bank check postdated February

2, 1999 (the check) in the amount of P160,000 representing interest. The check was co-signed by one Wilhelm Bolton.

When the check was presented for payment on February 9, 1999, it was dishonored for having been Drawn Against Insufficient Funds (DAIF).

Cristina, through counsel, thus sent a letter to petitioner by registered mail informing him that the check was dishonored by the drawee bank, and demanding that he make it good within five (5) days from receipt thereof.

No settlement having been made by petitioner, an Information for violation of BP 22 was filed against the two.

ISSUE

Whether or not the petitioner guilty of a violation of BP 22? (NO)

RULING

For petitioner to be validly convicted of the crime under B.P. Blg. 22, the following requisites must thus concur: (1) the making, drawing and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

The evidence for the prosecution failed to prove the second element. While the registry receipt, which is said to cover the letter-notice of dishonor and of demand sent to petitioner, was presented, there is no proof that he or a duly authorized agent received the same. Receipts for registered letters including return receipts do not themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters. Thus in *Ting v. Court of Appeals*, 344 SCRA 551 (2000), this Court observed: x x x All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt.

The decision of the MeTC, which was affirmed on appeal by the RTC and the appellate court, ordering petitioner “to pay private complainant Cristina C. Reyes civil indemnity in the total amount of ONE HUNDRED SIXTY THOUSAND PESOS (P160,000) representing his civil obligation covered by subject check,” deserves circumspect examination, however, given that the obligation of petitioner to pay 10% interest per month on the loan is unconscionable and against public policy. The P160,000 check petitioner issued to Cristina admittedly represented unpaid interest. By Cristina’s information, the interest was computed at a fixed rate of 10% per month. While the Usury Law ceiling on interest rates was lifted by Central Bank Circular No. 905, nothing therein grants lenders *carte blanche* to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their

assets. Stipulations authorizing such interest are *contra bonos mores*, if not against the law. They are, under Article 1409 of the New Civil Code, inexistent and void from the beginning.

Respecting petitioner's claim that since the promissory note incorporating the stipulated 10% interest per month was not presented, there is no written proof thereof, hence, his obligation to pay the same must be void, the same fails. As reflected above, Cristina admitted such stipulation. In any event, the presentation of the promissory note may be dispensed with in a prosecution for violation of B.P. Blg. 22 as the purpose for the issuance of such check is irrelevant in the determination of the accused's criminal liability. It is for the purpose of determining his civil liability that the document bears significance. Notably, however, Section 24 of the Negotiable Instruments Law provides that "Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value." It was incumbent then on petitioner to prove that the check was not for a valuable consideration. This he failed to discharge.

11. Form of Notice

JAIME DICO, Petitioner, -versus- HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES,
Respondent

G.R. NO. 141669, SECOND DIVISION, February 28, 2005, CHICO-NAZARIO, J.

The essential elements of the offense penalized under Section 1, B.P. Blg. 22 are as follows: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. The prosecution has the burden to prove all the elements of the crime beyond reasonable doubt. Failure to do so will necessarily result in exoneration.

FACTS

Jaime Dico, now petitioner, was charged on 28 March 1994 with three (3) counts of violation of Batas Pambansa Bilang 22 before the MTC

That on or about the 12th day of May, 1993 and for sometime subsequent thereto, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, knowing at the time of issue of the check she/he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, with deliberate intent, with intent of gain and of causing damage, did then and there issue, make or draw Far East Bank and Trust Co. Check No. 364903 dated May 12, 1993 in the amount of P100,000.00 payable to Equitable Banking Corp. which check was issued in payment of an obligation of said accused, but when said check was presented with said bank, the same was dishonored for reason Account Closed and despite notice and demands made to redeem or make good said check, said accused failed and refused, and up to the present time still fails and refuses to do so, to the damage and prejudice of said Equitable Card Network Inc. in the amount of P100,000.00 Philippine Currency.

When arraigned on 11 January 1995, accused pleaded not guilty to each of the charges. Upon agreement of the parties, pre-trial of the cases was waived. The cases were consolidated and were jointly heard.

He included the above-mentioned four (4) post dated checks as a sign of good faith; and as a way of commitment to pay his outstanding balance to the complainant which is to [be] amortized as follows: May 12, 1993 P100,000.00; June 12, 1993 - P200,000.00; July 12, 1993 P300,000.00; and on August 12, 1993 P300,000.00; but his proposal was rejected by the complainants top management in Manila; that based on Exh. 8 which is the Summary furnished by Debbie Dy, incumbent Branch Manager of the complainant network in Cebu City, his outstanding balance to the complainant is P752,389.19, but with the payment of P100,000.00 he made on April 7, 1993, his balance to the complainant is P652,389.19.

That he does not understand why his total obligation to the complainant has already reached P1,035,589.28 when his credit line is only P499,000.00; hence, he approached the complainants manager to reconcile his accounts and find out where the complainant was mistaken; that even if his accounts were reconciled, he cannot admit that his obligation to the complainant has already reached millions; and that the problem with the complainant is that it did not return to him the checks which he sent to the complainant together with his proposal to reconcile his accounts.

That on May 31, 1993, he filed a Petition For Insolvency with the Regional Trial Court

The accused further testified on cross-examination that although he could not agree on his outstanding obligation to the complainant, he nevertheless placed his total liability to the complainant in his Petition,

In a decision dated 19 June 1996, Amado B. Bajarias, Sr., Presiding Judge of the MTCC, Branch 7, Cebu City, convicted petitioner of the crimes charged

On 25 July 1996, petitioner filed a Motion for Reconsideration which the prosecution opposed. In an order dated 26 August 1996, the motion was denied.

On 30 August 1996, petitioner appealed to the Regional Trial Court (RTC) by filing a notice of appeal.

In a Judgment dated 20 February 1997, Ferdinand J. Marcos, Presiding Judge of the RTC of Cebu City, Branch 20, affirmed en toto the decision of the MTCC. Petitioner moved for its reconsideration which was opposed by the prosecution. On 23 June 1997, the motion for reconsideration was denied.

By way of Petition for Review, accused Dico went up to the Court of Appeals seeking the reversal of the Judgment of the RTC which affirmed the decision of the MTCC.

In its Comment to the Petition for Review, the Office of the Solicitor General asked for the dismissal of the petition on the ground that the same had no merit.

In the Court of Appeals, the challenged decision via petition for review is MODIFIED to read as follows:

(1) Petitioner Jaime Dico is ACQUITTED in Criminal Case No. 38256-R but is, nevertheless, ordered to indemnify private complainant the sum of P296,736.27 representing his unpaid obligation covered by FEBTC Check No. 369380 dated January 15, 1993. Timing

(2) The judgment convicting Petitioner Jaime Dico in Criminal Cases Nos. 38254-R and 38255-R and penalizing him to suffer imprisonment of six (6) months in each of the said cases and ordering him to indemnify private complainant in the amount of P100,000.00 and P200,000.00 representing his unpaid obligation covered by FEBTC Check Nos. 369403 (dated May 12, 1993) and 369404 (dated June 12, 1993) is AFFIRMED in toto.

ISSUE

Whether or not the prosecution was able to prove all the elements of B.P. Blg. 22? (YES)

RULING

The essential elements of the offense penalized under Section 1, B.P. Blg. 22 are as follows: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. The prosecution has the burden to prove all the elements of the crime beyond reasonable doubt. Failure to do so will necessarily result in exoneration.

Re: Criminal Case No. 38255-R

As regards FEBTC Check No. 369404 dated 12 June 1993 which was deposited on 14 June 1993, petitioner maintains that the notice of dishonor given for said check was not the one required by law since said notice was given before the check became due and before it was deposited.

The record of the case shows the only letter received by petitioner involving the three checks subject of these cases was the one dated 08 June 1993. This letter sent by the counsel of private complainant asked petitioner to make good the checks within five (5) days from receipt thereof, otherwise, criminal charges for violation of B.P. Blg. 22 will be filed against him.

SEC. 2. Evidence of knowledge of insufficient funds

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment.

The presumption or prima facie evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.

A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank.[36] The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.

The requirement of notice, its sending to, and its actual receipt by, the drawer or maker of the check gives the latter the option to prevent criminal prosecution if he pays the holder of the check the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that the check has not been paid.

As already stated above, the only notice received by petitioner for the three checks involved in these cases was that dated 08 June 1993. There is no dispute that there was indeed a demand letter from the counsel of Equitable Card Network, Inc., but the same was received by petitioner before the checks maturity or due date on 12 June 1993. As testified to by prosecution witness Lily Canlas, the demand letter was sent to petitioner on 08 June 1993 and the check was deposited on 14 June 1993. The demand letter was sent four days before the date of the check and six days before said check was deposited

This Court rules that as regards FEBTC Check No. 369404, petitioner did not receive the notice of dishonor contemplated by the law. There was no valid notice of dishonor to speak of. The term notice of dishonor denotes that a check has been presented for payment and was subsequently dishonored by the drawee bank. This means that the check must necessarily be due and demandable because only a check that has become due can be presented for payment and subsequently be dishonored. A postdated check cannot be dishonored if presented for payment before its due date.

The failure of Equitable Card Network, Inc., to send another letter demanding that FEBTC Check No. 369404 be paid within five days after it has been dishonored prevents the disputable presumption - that petitioner had knowledge of the insufficiency of his funds at the time he issued the check - from arising. Absent such presumption, the burden of evidence shifts to the prosecution to prove such knowledge.

There being no evidence presented by the prosecution to show that petitioner had knowledge of the insufficiency of his funds at the time he issued the check, the second element of the offense was not satisfied. Accordingly, having failed to prove all the elements of B.P. Blg. 22, petitioner must, perforce, be acquitted in Criminal Case No. 38255-R.

**BANK OF THE PHILIPPINE ISLANDS, *Petitioner*, -versus- AMADO M. MENDOZA and MARIA
MARCOS Vda. de MENDOZA, *Respondent***
G.R. No. 198799, FIRST DIVISION, March 20, 2017, PERLAS-BERNABE, J.

First, the existence or due execution of the subject check was admitted by both parties. Second, the reason for the non-presentation of the original copy of the subject check was justifiable as it was confiscated by the US government for being an altered check. The subject check, being a US Treasury

Warrant, is not an ordinary check, and practically speaking, the same could not be easily obtained. Lastly, absent any proof to the contrary and for the reasons already stated, no bad faith can be attributed to BPI for its failure to present the original of the subject check. Thus, applying the exception to the Best Evidence Rule, the presentation of the photocopy of the subject check as secondary evidence was permissible.

FACTS

On April 8, 1997, respondents: (a) opened a foreign currency savings (US savings account) at BPI-Gapan Branch and deposited therein the total amount of US\$ 16,264.00, in US Treasury Check payable to "Ma. Marcos Vda. de Mendoza" (subject check); and (b) placed the amount of US\$2,000.00 in a time deposit account. After the lapse of the thirty (30) day clearing period on May 9 and 13, 1997, respondents withdrew the amount of US\$16,244.00 from the US savings account, leaving only US\$20.00 for bank charges.

On June 26, 1997, BPI received a notice from its correspondent bank, Bankers Trust Company New York (Bankers Trust), that the subject check was dishonored due to "amount altered", as evidenced by (1) an electronic mail (e-mail) advice from Bankers Trust, and (2) a photocopy of the subject check with a notation "endorsement cancelled" by Bankers Trust as the original copy of the subject check was allegedly confiscated by the government of the United States of America (US government).

This prompted BPI to inform respondents of such dishonor and to demand reimbursement. BPI then claimed that: (a) on July 18, 1997, respondents allowed BPI to apply the proceeds of their time deposit account in the amount of US\$2,015.00 to their outstanding obligation; (b) upon the exhaustion of the said time deposit account, Amado gave BPI a promissory note dated September 8, 1997 containing his promise to pay BPI-Gapan Branch the amount of P1,000.00 monthly; and (c) when respondents failed to fulfill their obligation despite repeated demands, BPI was constrained to give a final demand letter to respondents on November 27, 1997.

In a Decision dated May 9, 2007, the RTC ruled in BPI's favor. Aggrieved, respondents appealed to the CA. In a Decision dated February 4, 2011, the CA reversed and set aside the RTC's ruling, and consequently, dismissed BPI's complaint for lack of merit. It held that BPI failed to prove the dishonor of the subject check, since: (a) the presentation of a mere photocopy of the subject check is in violation of the Best Evidence Rule; and (b) the e-mail advice from Bankers Trust was not properly authenticated in accordance with the Rules on Electronic Evidence as the person who sent the e-mail advice was neither identified nor presented in court.

ISSUE

Whether or not the BPI had proven its cause of action by preponderance of evidence? (YES)

RULING

The Supreme Court finds the petition meritorious. Section 3, Rule 130 of the Rules of Court reads: Section 3. Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; In order to fall under the aforesaid exception, it

is crucial that the offeror proves: (a) the existence or due execution of the original; (b) the loss and destruction of the original, or the reason for its non-production in court; and (c) the absence of bad faith on the part of the offeror to which the unavailability of the original can be attributed. In this case, BPI sufficiently complied with the foregoing requisites.

First, the existence or due execution of the subject check was admitted by both parties. Second, the reason for the non-presentation of the original copy of the subject check was justifiable as it was confiscated by the US government for being an altered check. The subject check, being a US Treasury Warrant, is not an ordinary check, and practically speaking, the same could not be easily obtained. Lastly, absent any proof to the contrary and for the reasons already stated, no bad faith can be attributed to BPI for its failure to present the original of the subject check. Thus, applying the exception to the Best Evidence Rule, the presentation of the photocopy of the subject check as secondary evidence was permissible.

12. Waiver

13. Dispensation with Notice

14. Effect of Failure to Give Notice

P. Discharge of Negotiable Instrument

1. Discharge of Negotiable Instrument

- Bank of the Philippine Islands vs. Court of Appeals (326 SCRA 641 [2000])

CEBU INTERNATIONAL FINANCE CORPORATION, Petitioner, -versus- COURT OF APPEALS, VICENTE ALEGRE, Respondent
G.R. No. 123031, SECOND DIVISION, October 12, 1999, QUISUMBING, J.

A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized

FACTS

Jacinto Dy executed a Special Power of Attorney in favor of private respondent Ang Tay, authorizing the latter to sell the cargo vessel owned by Dy and christened LCT "Asiatic." Through a Deed of Absolute Sale, Ang Tay sold the subject vessel to Robert Ong (Ong). Ong paid the purchase price by issuing three (3) checks. However, since the payment was not made in cash, it was specifically stipulated in the deed of sale that the "LCT Asiatic shall not be registered or transferred to Robert Ong until complete payment." Thereafter, Ong obtained possession of the subject vessel so he could begin deriving economic benefits therefrom. He, likewise, obtained copies of the unnotarized deed of sale allegedly to be shown to the banks to enable him to acquire a loan to replenish his (Ong's) capital. The aforementioned condition, however, which was handwritten on the original deed of sale does not appear on Ong's copies. Contrary to the aforementioned agreements and without the knowledge of Ang Tay, Ong had his copies of the deed of sale (on which the aforementioned prohibition does not

appear) notarized Ong presented the notarized deed to the Philippine Coast Guard which subsequently issued him a Certificate of Ownership and a Certificate of Philippine Register over the subject vessel. Ong also succeeded in having the name of the vessel changed to LCT “Orient Hope.”

Using the acquired vessel, Ong acquired a loan from Cebu International Finance Corporation to be paid in installments as evidenced by a promissory note of even date. As security for the loan, Ong executed a chattel mortgage over the subject vessel, which mortgage was registered with the Philippine Coast Guard and annotated on the Certificate of Ownership. Ong defaulted in the payment of the monthly installments. Consequently, Cebu International Finance Corporation sent him a letter demanding delivery of the mortgaged vessel for foreclosure or in the alternative to pay the balance pursuant to paragraph 11 of the deed of chattel mortgage. Meanwhile, the two checks paid by Ong to Ang Tay for the Purchase of the subject vessel bounced. Ang Tay’s search for the elusive Ong and all attempts to confer with him proved to be futile. A subsequent investigation and inquiry with the Office of the Coast Guard revealed that the subject vessel was already in the name of Ong, in violation of the express undertaking contained in the original deed of sale. As a result thereof, Ang Tay and Jacinto Dy filed a civil case for rescission and replevin with damages against Ong and his wife.

ISSUE

Whether or not a check is of legal tender thereby extinguishing the obligation of CIFIC to pay Alegre?
(NO)

RULING

Considering the nature of a money market transaction, the above-quoted provision should be applied in the present controversy. As held in *Perez vs. Court of Appeals*, a “money market is a market dealing in standardized *short-term credit* instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in open market. In a money market transaction, the investor is a lender who loans his money to a borrower through a middleman or dealer.

In a loan transaction, the obligation to pay a sum certain in money may be paid in money, which is the legal tender or, by the use of a check. A check is not a legal tender, and therefore cannot constitute valid tender of payment. In the case of *Philippine Airlines, Inc. vs. Court of Appeals*, this Court held: “Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment (citation omitted). A check, whether a manager’s check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized (Art. 1249, Civil Code, par. 3.)”

ANAMER SALAZAR, Petitioner, -versus- JY BROTHERS MARKETING CORPORATION, Respondent
G.R. NO. 171998, SECOND DIVISION, October 20, 2010, PERALTA, J.

Among the different types of checks issued by a drawer is the crossed check. The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce makes reference to such instruments. We have taken judicial cognizance of the practice that a check with two parallel lines in

the upper left hand corner means that it could only be deposited and could not be converted into cash. Thus, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein. The change in the mode of paying the obligation was not a change in any of the objects or principal condition of the contract for novation to take place.

FACTS

J.Y. Brothers Marketing (J.Y. Bros., for short) is a corporation engaged in the business of selling sugar, rice and other commodities. On October 15, 1996, Anamer Salazar, a freelance sales agent, was approached by Isagani Calleja and Jess Kallos, if she knew a supplier of rice. Answering in the positive, Salazar accompanied the two to J.Y. Bros. As a consequence, Salazar with Calleja and Kallos procured from J. Y. Bros. 300 cavans of rice worth P214,000.00. As payment, Salazar negotiated and indorsed to J.Y. Bros. Prudential Bank Check No. 067481 dated October 15, 1996 issued by Nena Jaucian Timario in the amount of P214,000.00 with the assurance that the check is good as cash. On that assurance, J.Y. Bros. parted with 300 cavans of rice to Salazar. However, upon presentment, the check was dishonored due to closed account. Informed of the dishonor of the check, Calleja, Kallos and Salazar delivered to J.Y. Bros. a replacement cross Solid Bank Check No. PA365704 dated October 29, 1996 again issued by Nena Jaucian Timario in the amount of P214,000.00 but which, just the same, bounced due to insufficient funds. When despite the demand letter dated February 27, 1997, Salazar failed to settle the amount due J.Y. Bros., the latter charged Salazar and Timario with the crime of estafa before the Regional Trial Court of Legaspi City, docketed as Criminal Case No. 7474.

ISSUE

Whether or not the issuance of the Solidbank crossed check discharged petitioner from liability? (NO)

RULING

In this case, respondent's acceptance of the Solid Bank check, which replaced the dishonored Prudential Bank check, did not result to novation as there was no express agreement to establish that petitioner was already discharged from his liability to pay respondent the amount of P214,000.00 as payment for the 300 bags of rice. As we said, novation is never presumed, there must be an express intention to novate. In fact, when the Solid Bank check was delivered to respondent, the same was also indorsed by petitioner which shows petitioner's recognition of the existing obligation to respondent to pay P214,000.00 subject of the replaced Prudential Bank check.

Among the different types of checks issued by a drawer is the crossed check. The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce makes reference to such instruments. We have taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and could not be converted into cash. Thus, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein. The change in the mode of paying the obligation was not a change in any of the objects or principal condition of the contract for novation to take place.

2. **Discharge of Parties Secondarily Liable**
3. **Right of Party Who Discharged Instrument**
4. **Renunciation by Holder**

Q. Material Alteration

4. **Concept**

PHILIPPINE NATIONAL BANK, *Petitioner*, -versus- COURT OF APPEALS, CAPITOL CITY DEVELOPMENT BANK, PHILIPPINE BANK OF COMMUNICATIONS, and F. ABANTE MARKETING, *Respondent*

G.R. NO. 107508, FIRST DIVISION, April 25, 1996, KAPUNAN, J.

An alteration is said to be material if it alters the effect of the instrument. It means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instruments Law.

FACTS

DECS issued a check in favor of Abante Marketing containing a specific serial number, drawn against PNB. The check was deposited by Abante in its account with Capitol and the latter consequently deposited the same with its account with PBCOM which later deposited it with petitioner for clearing. The check was thereafter cleared. However, on a relevant date, petitioner PNB returned the check on account that there had been a material alteration on it.

Subsequent debits were made but Capitol cannot debit the account of Abante any longer for the latter had withdrawn all the money already from the account. This prompted Capitol to seek reclarification from PBCOM and demanded the recrediting of its account. PBCOM followed suit by doing the same against PNB. Demands unheeded, it filed an action against PBCOM and the latter filed a third-party complaint against petitioner.

ISSUE

Whether or not there is material alteration on the check? (NO)

RULING

We shall first deal with the effect of the alteration of the serial number on the negotiability of the check in question. Petitioner anchors its position on Section 125 of the Negotiable Instruments Law (ACT No. 2031). Petitioner alleges that there is no hard and fast rule in the interpretation of the aforementioned provision of the Negotiable Instruments Law. It maintains that under Section 125(f), any change that alters the effect of the instrument is a material alteration. We do not agree. An alteration

is said to be material if it alters the effect of the instrument. It means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instruments Law.

The case at bench is unique in the sense that what was altered is the serial number of the check in question, an item which, it can readily be observed, is not an essential requisite for negotiability under Section 1 of the Negotiable Instruments Law. The aforementioned alteration did not change the relations between the parties. The name of the drawer and the drawee were not altered. The intended payee was the same. The sum of money due to the payee remained the same. The check's serial number is not the sole indication of its origin. As succinctly found by the Court of Appeals, the name of the government agency which issued the subject check was prominently printed therein. The check's issuer was therefore sufficiently identified, rendering the referral to the serial number redundant and inconsequential. Petitioner, thus cannot refuse to accept the check in question on the ground that the serial number was altered, the same being an immaterial or innocent one.

THE INTERNATIONAL CORPORATE BANK, INC, *Petitioner*, -versus- COURT OF APPEALS AND PHILIPPINE NATIONAL BANK, *Respondent*

G.R. NO. 129910, THIRD DIVISION, SEPTEMBER 5, 2006, CARPIO, J.

An alteration is said to be material if it alters the effect of the instrument. It means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instrument[s] Law.

FACTS

The Ministry of Education and Culture issued 15 checks drawn against Philippine National Bank (PNB). Petitioner International Corporate Bank, Inc. (ICB) accepted the checks for deposit on various dates.

After 24 hours from submission of the checks to PNB for clearing, ICB paid the value of the checks and allowed the withdrawals of the deposits. However, on 14 October 1981, PNB returned all the checks to petitioner without clearing them because the serial number of the checks were materially altered. Thus, ICB instituted an action for collection of sums of money against PNB to recover the value of the checks.

RTC ruled that ICB is not entitled to recover the value of the checks from PNB because the ICB failed to inquire on the status of the checks before paying their value. PNB cannot be faulted for the delay in clearing the checks considering the ingenuity in which the alterations were effected.

The Court of Appeals reversed the trial court's decision. Applying Section 4(c) of Central Bank Circular No. 580, series of 1977, it held that checks that have been materially altered shall be returned within 24 hours after discovery of the alteration. However, it ruled that even if the drawee bank returns a check with material alterations after discovery of the alteration, the return would not

relieve the drawee bank from any liability for its failure to return the checks within the 24-hour clearing period.

Respondent filed a Motion for Reconsideration on 6 November 1991 but the Registry Return Receipt shows that counsel for respondent or his agent received a copy of the 10 October 1991 Decision on 16 October 1991. The motion was filed late.

Despite its late filing, the Court of Appeals resolved to admit the motion for reconsideration “in the interest of substantial justice.” In its *9 August 1994 Amended Decision*, the Court of Appeals reversed itself and affirmed the Decision of the trial court dismissing the complaint. The CA held that its 10 October 1991 Decision failed to appreciate that the rule on the return of altered checks within 24 hours from the discovery of the alteration had been duly passed by the Central Bank and accepted by the members of the banking system. Until the rule is repealed or amended, the rule has to be applied. In its 16 July 1997 Resolution, the Court of Appeals denied the Motion for Reconsideration of ICB for lack of merit so the latter filed the petition before the Supreme Court under both Rules 45 and 65.

ISSUE

Whether or not PNB should be liable for not returning the check with material alteration w/in the 24-hour period? (NO)

RULING

The question on whether an alteration of the serial number of a check is a material alteration under the Negotiable Instruments Law is already a settled matter. In *Philippine National Bank v. Court of Appeals*, 256 SCRA 491 (1996), this Court ruled that the alteration on the serial number of a check is not a material alteration. Thus:

An alteration is said to be material if it alters the effect of the instrument. It means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instrument[s] Law.

The Court will not rule on the proper application of Central Bank Circular No. 580 in this case. Since there were no material alterations on the checks, respondent as drawee bank has no right to dishonor them and return them to petitioner, the collecting bank. Thus, respondent is liable to petitioner for the value of the checks, with legal interest from the time of filing of the complaint on 16 March 1982 until full payment. Further, considering that respondent’s motion for reconsideration was filed late, the 10 October 1991 Decision, which held respondent liable for the value of the checks amounting to P1,447,920, had become final and executory.

5. Effect of Material Alteration

METROPOLITAN BANK AND TRUST COMPANY -versus-. RENATO D. CABILZO G.R. No. 154469, FIRST DIVISION, December 6, 2006, CHICO-NAZARIO, J.

*The bank on which the check is drawn, known as the drawee bank, is under strict liability to pay to the order of the payee in accordance with the drawer's instructions as reflected on the face and by the terms of the check. **Payment made under materially altered instrument is not payment done in accordance with the instruction of the drawer.** When the drawee bank pays a materially altered check, it violates the terms of the check, as well as its duty to charge its client's account only for bona fide disbursements he had made. Since the drawee bank, in the instant case, did not pay according to the original tenor of the instrument, as directed by the drawer, then it has no right to claim reimbursement from the drawer, much less, the right to deduct the erroneous payment it made from the drawer's account which it was expected to treat with utmost fidelity.*

FACTS

Petitioner Metrobank is a banking institution duly organized and existing as such under Philippine laws. Respondent Renato D. Cabilzo (Cabilzo) was one of Metrobank's clients who maintained a current account with Metrobank Pasong Tamo Branch.

On 12 November 1994, Cabilzo issued a Metrobank Check No. 985988, payable to "CASH" and postdated on 24 November 1994 in the amount of One Thousand Pesos (P 1,000.00). The check was drawn against Cabilzo's Account with Metrobank Pasong Tamo Branch under Current Account No. 618044873-3 and was paid by Cabilzo to a certain Mr. Marquez, as his sales commission.

Subsequently, the check was presented to Westmont Bank for payment. Westmont Bank, in turn, indorsed the check to Metrobank for appropriate clearing. After the entries thereon were examined, including the availability of funds and the authenticity of the signature of the drawer, Metrobank cleared the check for encashment in accordance with the Philippine Clearing House Corporation (PCHC) Rules.

On 16 November 1994, Cabilzo's representative was at Metrobank Pasong Tamo Branch to make some transaction when he was asked by a bank personnel if Cabilzo had issued a check in the amount of P 91,000.00 to which the former replied in the negative. On the afternoon of the same date, Cabilzo himself called Metrobank to reiterate that he did not issue a check in the amount of P 91,000.00 and requested that the questioned check be returned to him for verification, to which Metrobank complied. Upon receipt of the check, Cabilzo discovered that Metrobank Check No. 985988 which he issued on 12 November 1994 in the amount of P 91,000.00 and the date 24 November 1994 was changed to 14 November 1994.

ISSUE

Whether or not the alteration made in the subject check is a material alteration.

RULING

Yes. An alteration is said to be material if it changes the effect of the instrument. It means that an unauthorized change in an instrument that purports to modify in any respect the obligation of a party or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party. In other words, a material alteration is one which changes the items which are required to be stated under Section 1 of the Negotiable Instruments Law.

Section 125. What constitutes material alteration. – Any alteration which changes: (a) The date; (b) The sum payable, either for principal or interest; (c) The time or place of payment; (d) The number or the relation of the parties; (e) The medium or currency in which payment is to be made; Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect is a material alteration.

In the case at bar, the check was altered so that the amount was increased from P 1,000.00 to P91,000.00 and the date was changed from 24 November 1994 to 14 November 1994. Apparently, since the entries altered were among those enumerated under Section 1 and 125, namely, the sum of money payable and the date of the check, the instant controversy therefore squarely falls within the purview of material alteration.

Now, having laid the premise that the present petition is a case of material alteration, it is now necessary for us to determine the effect of a materially altered instrument, as well as the rights and obligations of the parties thereunder. The following provision of the Negotiable Instrument Law will shed us some light in threshing out this issue:

Section 124. Alteration of instrument; effect of. – Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, assented to the alteration and subsequent indorsers. . and But when the instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration, he may enforce the payment thereof according to its original tenor.

Indubitably, Cabilzo was not the one who made nor authorized the alteration. Neither did he assent to the alteration by his express or implied acts. There is no showing that he failed to exercise such reasonable degree of diligence required of a prudent man which could have otherwise prevented the loss. As correctly ruled by the appellate court, Cabilzo was never remiss in the preparation and issuance of the check, and there were no indicia of evidence that would prove otherwise. Indeed, Cabilzo placed asterisks before and after the amount in words and figures in order to forewarn the subsequent holders that nothing follows before and after the amount indicated other than the one specified between the asterisks.

The degree of diligence required of a reasonable man in the exercise of his tasks and the performance of his duties has been faithfully complied with by Cabilzo. In fact, he was wary enough that he filled with asterisks the spaces between and after the amounts, not only those stated in words, but also those in numerical figures, in order to prevent any fraudulent insertion, but unfortunately, the check was still successfully altered, indorsed by the collecting bank, and cleared by the drawee bank, and encashed by the perpetrator of the fraud, to the damage and prejudice of Cabilzo.

Verily, Metrobank cannot lightly impute that Cabilzo was negligent and is therefore prevented from asserting his rights under the doctrine of equitable estoppel when the facts on record are bare of evidence to support such conclusion. The doctrine of equitable estoppel states that when one of the two innocent persons, each guiltless of any intentional or moral wrong, must suffer a loss, it must be borne by the one whose erroneous conduct, either by omission or commission, was the cause of injury. Metrobank's reliance on this dictum, is misplaced. For one, Metrobank's representation that it is an innocent party is flimsy and evidently, misleading. At the same time, Metrobank cannot asseverate that Cabilzo was negligent and this negligence was the proximate cause of the loss in the absence of even a scintilla proof to buttress such claim. Negligence is not presumed but must be proven by the one who alleges it.

When the drawee bank pays a materially altered check, it violates the terms of the check, as well as its duty to charge its client's account only for bona fide disbursements he had made. Since the drawee bank, in the instant case, did not pay according to the original tenor of the instrument, as directed by the drawer, then it has no right to claim reimbursement from the drawer, much less, the right to deduct the erroneous payment it made from the drawer's account which it was expected to treat with utmost fidelity.

R. Acceptance

1. Definition

**PRUDENTIAL BANK, *Petitioner*, -versus INTERMEDIATE APPELLATE COURT, PHILIPPINE
RAYON MILLS INC. AND ANACLETO R. CHI
G.R. No. 74886, THIRD DIVISION, December 8, 1992, DAVIDE, JR., J**

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer; this may be done in writing by the drawee in the bill itself, or in a separate instrument.

FACTS

PRMI entered into a contract with Nissho Co., for the importation of textile machineries under a 5-year deferred payment plan. To pay Nissho, PRMI applied for a commercial letter of credit with the Prudential Bank in favor of Nissho. Prudential Bank opened a letter of credit. Against this letter of credit, drafts were drawn and issued by Nissho, which were all paid by Prudential Bank through its correspondent in Japan, the Bank of Tokyo. Two of the original drafts were accepted by PRMI through its president, Anacleto R. Chi, while the others were not.

Upon the arrival of the machineries, Prudential Bank indorsed the shipping documents to PRMI which accepted delivery of the same. To enable PRMI to take delivery of the machineries, it executed, by prior arrangement with the Prudential Bank, a trust receipt which was signed by Anacleto R. Chi in his capacity as President of PRMI company. At the back of the trust receipt was printed a form to be accomplished by 2 sureties who, by the very terms and conditions thereof, were to be jointly and severally liable to the Prudential Bank should the PRMI fail to pay the total amount or any portion of the drafts issued by Nissho and paid for by Prudential Bank. . PRMI was able to take delivery of the textile machineries and installed the same at its factory site. Chi argued that presentment for

acceptance was necessary to make PRMI liable. The trial court ruled that that presentment for acceptance was an indispensable requisite for Philippine Rayon's liability on the drafts to attach.

ISSUE

Whether presentment for acceptance of the drafts was indispensable to make Philippine Rayon liable thereon.

RULING

NO. No it is not necessary to make Philippine Rayon liable. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer; this may be done in writing by the drawee in the bill itself, or in a separate instrument.

Presentment for acceptance is defined as the production of a bill of exchange to a drawee for acceptance. Acceptance, however, was not even necessary in the first place because the drafts which were eventually issued were sight drafts. Even if these were not sight drafts, thereby necessitating acceptance, it would be the Bank (Bank of America) — and not Philippine Rayon — which had to accept the same for the latter was not the drawee.

The trial court and the public respondent, therefore, erred in ruling that presentment for acceptance was an indispensable requisite for Philippine Rayon's liability on the drafts to attach. Contrary to both courts' pronouncements, Philippine Rayon immediately became liable upon Bank of America's payment on the letter of credit. Such is the essence of the letter of credit issued by the petitioner. A different conclusion would violate the principle upon which commercial letters of credit are founded because in such a case, both the beneficiary and the issuer, Nissho Company Ltd. and the petitioner, respectively, would be placed at the mercy of Philippine Rayon even if the latter had already received the imported machinery and the petitioner had fully paid for it.

In fact, there was no need for acceptance as the issued drafts are sight drafts. Presentment for acceptance is necessary only in the cases expressly provided for in Section 143 of the Negotiable Instruments Law (NIL).

In the instant case then, the drawee was necessarily the herein the Bank of America. It was to the latter that the drafts were presented for payment.

PHILIPPINE NATIONAL BANK VS. THE COURT OF APPEALS AND PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK

G.R. No. L-26001, EN BANC, October 29, 1968, CONCEPCION, C.J.

Acceptance, in the sense in which this term is used in the Negotiable Instruments Law is not required for checks, for the same are payable on demand.

FACTS

Augusto Lim deposited in his current account with PCIB a GSIS checkdrawn against PNB. It appears that the signatures of the General Manager and Auditor of GSIS were forged. PCIB stamped at the back of the check "All prior indorsements or lack of indorsements guaranteed, PCIB then sent the check to

PNB through the Central Bank. PNB did not return the check to PCIB, thus PCIB credited Lim's account. As GSIS has informed PNB that the check was lost two months before said transaction, its account was recredited by PNB upon its demand (due to the forged check). PNB requested for refund with PCIB. The latter refused.

ISSUE

Whether clearing is acceptance, in contemplation of the Negotiable Instruments law Ruling:

RULING

NO. No it is not acceptance.

In general, "acceptance", in the sense in which this term is used in the Negotiable Instruments Law is not required for checks, for the same are payable on demand. Indeed, "acceptance" and "payment" are, within the purview of said Law, essentially different things, for the former is "a promise to perform an act," whereas the latter is the "actual performance" thereof. In the words of the Law, "the acceptance of a bill is the signification by the drawee of his assent to the order of the drawer," which, in the case of checks, is the payment, on demand, of a given sum of money. Upon the other hand, actual payment of the amount of a check implies not only an assent to said order of the drawer and a recognition of the drawer's obligation to pay the aforementioned sum, but, also, a compliance with such obligation.

2. **Manner**

3.

**NEW PACIFIC TIMBER & SUPPLY COMPANY, INC. v. HON. ALBERTO V. SENERIS, RICARDO A. TONG and EX-OFFICIO SHERIFF HAKIM S. ABDULWAHID
G.R. No. 41764, SECOND DIVISION, December 19, 1980, CONCEPCION JR., J.**

A cashier's check is deemed as cash. Moreover, since the said check had been certified by the drawee bank, by the certification, the funds represented by the check are transferred from the credit of the maker to that of the payee or holder, and for all intents and purposes, the latter becomes the depositor of the drawee bank, with rights and duties of one in such situation.

FACT

In a case for collection of sum of money filed by Ricardo Tong against New Pacific Timber, a compromise judgment was rendered against the latter. For its failure to comply with judgment obligation, a writ of execution was issued for the amount of P63,130.00 pursuant to which, the Ex-Officio Sheriff levied on the personal properties of the petitioner.

Before the date of the auction sale, petitioner deposited with the Clerk of Court in his capacity as the Ex-Officio Sheriff P50,000.00 in Cashier's Check of the Equitable Banking Corporation and P13,130.00 in cash. Private respondent refused to accept the check and the cash and requested for the auction sale to proceed. The properties were sold for P50,000.00 to the highest bidder with a deficiency of P13,130.00.

New Pacific subsequently filed an ex-parte motion for issuance of certificate of satisfaction of judgment which was denied by the respondent Judge. Hence this present this petition, alleging that the respondent Judge abused his discretion in not granting the requested motion for the reason that the judgment obligation was fully satisfied before the auction sale with the deposit made by the petitioner to the Ex-Officio Sheriff.

ISSUE

Whether the respondent can validly refuse acceptance of the payment of the judgment obligation in Cashier's check which it deposited with the Ex-Officio Sheriff before the date of the scheduled auction sale

RULING

NO. It is to be emphasized in this connection that the check deposited by the petitioner in the amount of P50, 000.00 is not an ordinary check but a Cashier's Check of the Equitable Banking Corporation, a bank of good standing and reputation. As testified to by the Ex-Officio Sheriff with whom it has been deposited, it is a certified crossed check. It is a well-known and accepted practice in the business sector that a Cashier's Check is deemed as cash. Moreover, since the said check had been certified by the drawee bank, by the certification, the funds represented by the check are transferred from the credit of the maker to that of the payee or holder, and for all intents and purposes, the latter becomes the depositor of the drawee bank, with rights and duties of one in such situation.

**PRUDENTIAL BANK v. INTERMEDIATE APPELLATE COURT et al.
G.R. No. 74886, THIRD DIVISION, December 8, 1992, DAVIDE, JR. J.**

Sight drafts do not require presentment for acceptance. Presentment for acceptance is necessary only in the cases expressly provided for in Section 143 of the Negotiable Instruments Law.

FACTS

Philippine Rayon Mills, Inc. (PRMI) entered into a contract with Nissho Co., Ltd. of Japan for the importation of textile machineries under a 5-year deferred payment plan. To effect the payment, PRMI applied for a commercial letter of credit with the Prudential Bank and Trust Company in favor of Nissho. Prudential Bank opened Letter of Credit for \$128, 548.78. Against this letter of credit, drafts were drawn and issued by Nissho, which were all paid by the Prudential Bank through its correspondent in Japan, the Bank of Tokyo, Ltd. Two of the original drafts were accepted by PRMI through its president, Anacleto R. Chi, while the others were not. Upon the arrival of the machineries, the Prudential Bank indorsed the shipping documents to the PRMI which accepted delivery of the same. To enable PRMI to take delivery of the machineries, it executed, by prior arrangement with the Prudential Bank, a trust receipt which was signed by Anacleto R. Chi in his capacity as President of PRMI company.

At the back of the trust receipt was printed a form to be accomplished by 2 sureties who, by the very terms and conditions thereof, were to be jointly and severally liable to the Prudential Bank should the PRMI fail to pay the total amount or any portion of the drafts issued by Nissho and paid for by Prudential Bank. PRMI was able to take delivery of the textile machineries and installed the same at its factory site. Chi argued that presentment for acceptance was necessary to make PRMI liable. The

trial court ruled that that presentment for acceptance was an indispensable requisite for Philippine Rayon's liability on the drafts to attach. IAC sustained the trial court's decision. Its motion for reconsideration having been denied by the IAC, petitioner filed the instant petition.

ISSUE

Whether presentment for acceptance is required for Philippine Rayon's to become liable

RULING

NO. Through a letter of credit, the bank merely substitutes its own promise to pay for one of its customers who in return promises to pay the bank the amount of funds mentioned in the letter of credit plus credit or commitment fees mutually agreed upon. In the instant case then, the drawee was necessarily the herein petitioner. It was to the latter that the drafts were presented for payment. In fact, there was no need for acceptance as the issued drafts are sight drafts. Presentment for acceptance is necessary only in the cases expressly provided for in Section 143 of the Negotiable Instruments Law (NIL).

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. Sight drafts do not require presentment for acceptance. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer; this may be done in writing by the drawee in the bill itself, or in a separate instrument. The parties herein agree, and the trial court explicitly ruled, that the subject, drafts are sight drafts.

6. Time for Acceptance

7. Rules Governing Acceptance

S. Presentment for Acceptance

1. Time/Place/Manner of Presentment

**PRUDENTIAL BANK v. INTERMEDIATE APPELLATE COURT et al.
G.R. No. 74886, THIRD DIVISION, December 8, 1992, DAVIDE, JR. J.**

Sec. 143. When presentment for acceptance must be made. — Presentment for acceptance must be made:

- (a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or*
- (b) Where the bill expressly stipulates that it shall be presented for acceptance; or*
- (c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.*

FACTS

Philippine Rayon Mills, Inc. (PRMI) entered into a contract with Nissho Co., Ltd. of Japan for the importation of textile machineries under a 5-year deferred payment plan. To effect the payment, PRMI applied for a commercial letter of credit with the Prudential Bank and Trust Company in favor

of Nissho. Prudential Bank opened Letter of Credit for \$128,548.78 Against this letter of credit, drafts were drawn and issued by Nissho, which were all paid by the Prudential Bank through its correspondent in Japan, the Bank of Tokyo, Ltd. Two of the original drafts were accepted by PRMI through its president, Anacleto R. Chi, while the others were not. Upon the arrival of the machineries, the Prudential Bank indorsed the shipping documents to the PRMI which accepted delivery of the same. To enable PRMI to take delivery of the machineries, it executed, by prior arrangement with the Prudential Bank, a trust receipt which was signed by Anacleto R. Chi in his capacity as President of PRMI company.

At the back of the trust receipt was printed a form to be accomplished by 2 sureties who, by the very terms and conditions thereof, were to be jointly and severally liable to the Prudential Bank should the PRMI fail to pay the total amount or any portion of the drafts issued by Nissho and paid for by Prudential Bank. PRMI was able to take delivery of the textile machineries and installed the same at its factory site. Chi argued that presentment for acceptance was necessary to make PRMI liable. The trial court ruled that that presentment for acceptance was an indispensable requisite for Philippine Rayon's liability on the drafts to attach. IAC sustained the trial court's decision. It's motion for reconsideration having been denied by the IAC, petitioner filed the instant petition.

ISSUE

Whether presentment for acceptance is required for Philippine Rayon's to become liable

RULING

NO. Presentment for acceptance is necessary only in the cases expressly provided for in Section 143 of the Negotiable Instruments Law (NIL): Sec. 143. When presentment for acceptance must be made. — Presentment for acceptance must be made:

- (a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (b) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

2. Effect of Failure to Make Presentment

MYRON C. PAPA, Administrator of the Testate Estate of Angela M. Butte vs. A. U. VALENCIA and CO. INC., FELIX PEARROYO, SPS. ARSENIO B. REYES & AMANDA SANTOS, and DELFIN JAO
G.R. No. 105188, FIRST DIVISION, January 23, 1998, KAPUNAN, J.

The Court held that if no presentment is made at all, the drawer cannot be held liable irrespective of loss or injury unless presentment is otherwise excused.

FACTS

Myron Papa, acting as attorney-in-fact of Angela M. Butte, sold to Pearroyo, through Valencia and Co. Inc., a parcel of land. The payment for the sales transaction was a check made in the amount of P40, 000.00 and in cash, P5, 000.00. Both were accepted by Papa as evidenced by various receipts. It appeared that the said property has already been mortgaged to the bank previously together with other properties of Butte. When Butte passed away, Penarroyo demanded that the title to the property be conveyed to him, however the bank refused. Hence, the filing of a suit for specific performance by private respondents against the Papa. The lower court ruled in favor of the private respondents and ordered Papa the conveyance of the property or if not, its payment. Thereafter, Papa appealed the lower court's decision alleging that the sale was not consummated as he never encashed the check given as part of the purchase price. The CA affirmed with modifications the lower court's decision. It held that there was a consummated sale of the subject property.

ISSUE

Whether the failure to make presentment would make the drawer liable.

RULING

YES. Granting that petitioner had never encashed the check, his failure to do so for more than ten (10) years undoubtedly resulted in the impairment of the check through his unreasonable and unexplained delay.

While it is true that the delivery of a check produces the effect of payment only when it is cashed, pursuant to Art. 1249 of the Civil Code, the rule is otherwise if the debtor is prejudiced by the creditors unreasonable delay in presentment. The acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given. It has, likewise, been held that if no presentment is made at all, the drawer cannot be held liable irrespective of loss or injury unless presentment is otherwise excused. This is in harmony with Article 1249 of the Civil Code under which payment by way of check or other negotiable instrument is conditioned on its being cashed, except when through the fault of the creditor, the instrument is impaired. The payee of a check would be a creditor under this provision and if its non-payment is caused by his negligence, payment will be deemed effected and the obligation for which the check was given as conditional payment will be discharged.

3. Dishonor by Non-Acceptance

MANUEL UBAS SR. v. WILSON CHAN
G.R. No. 215910, February 6, 2017, FIRST DIVISION, PERLAS-BERNABE, J.

Complete and Delivered Instruments; Section 16 of the Negotiable Instruments Law (NIL) provides that when an instrument is no longer in the possession of the person who signed it and it is complete in its terms, "a valid and intentional delivery by him is presumed until the contrary is proved.

FACTS

Petitioner alleged that respondent, “doing business under the name and style of UNIMASTER,” was indebted to him in the amount of ₱1,500,000.00, representing the price of boulders, sand, gravel, and other construction materials allegedly purchased by respondent from him for the construction of the Macagtas Dam in Macagtas, Catarman, Northern Samar. Further, he averred that respondent had issued three (3) bank checks, payable to “CASH” in the amount of ₱500,000.00 but when petitioner presented the subject checks for encashment, the same were dishonored due to a stop payment order.

Respondent filed an Answer with Motion to Dismiss, seeking the dismissal of the case on the following ground, among others: the complaint states no cause of action, considering that the checks do not belong to him but to Unimasters Conglomeration, Inc. (Unimasters).

The Regional Trial Court (RTC) ruled that petitioner had a cause of action against respondent. At the outset, it observed that petitioner’s demand letter – which clearly stated the serial numbers of the checks, including the dates and amounts thereof – was not disputed by respondent.

The CA reversed and set aside the RTC’s ruling, dismissing petitioner’s complaint on the ground of lack of cause of action. It held that respondent was not the proper party defendant in the case, considering that the drawer of the subject checks was Unimasters, which, as a corporate entity, has a separate and distinct personality from respondent.

ISSUE

Whether or not the Court of Appeals erred in dismissing petitioner’s complaint for lack of cause of action.

RULING

Yes, the CA erred in dismissing petitioner’s complaint for lack of cause of action.

Respondent’s defense that the subject checks were lost and, thus, were not actually issued to petitioner is a factual matter already passed upon by the RTC. As aptly pointed out by the trial court, it would have been contrary to human nature and experience for petitioner to send respondent a demand letter detailing the particulars of the said checks if he indeed unlawfully obtained the same. In fact, it is glaring that respondent did not present Engr. Merelos, the project engineer who had purportedly lost the checks, to personally testify on the circumstances surrounding the checks’ loss. Further, Unimasters’ comptroller, Murillo, testified during trial that “she came to know that the lost checks were deposited in the account of [petitioner as] she was informed by the [o]ffice[r]-in-charge of the drawee bank, the Far East Bank of Tacloban, City Branch.”

However, there was no showing that Unimasters and/or respondent commenced any action against petitioner to assert its interest over a significant sum of P1,500,000.00 relative to the checks that were supposedly lost/stolen. Clearly, this paucity of action under said circumstances is again, inconsistent with ordinary human nature and experience. Thus, absent any cogent reason to the contrary, the Court defers to the RTC’s findings of fact on this matter.

In *Madrigal v. CA*, 456 SCRA 247 (2005), it was explained that: The Supreme Court's jurisdiction is limited to reviewing errors of law that may have been committed by the lower court. The Supreme Court is not a trier of facts.

It leaves these matters to the lower court, which [has] more opportunity and facilities to examine these matters. This same Court has declared that it is the policy of the Court to defer to the factual findings of the trial judge, who has the advantage of directly observing the witnesses on the stand and to determine their demeanor whether they are telling or distorting the truth. Besides, Section 16 of the NIL provides that when an instrument is no longer in the possession of the person who signed it and it is complete in its terms, "a valid and intentional delivery by him is presumed until the contrary is proved," as in this case.

Although the checks were under the account name of Unimasters, it should be emphasized that the manner or mode of payment does not alter the nature of the obligation. The source of obligation, as claimed by petitioner in this case, stems from his contract with respondent. When they agreed upon the purchase of the construction materials on credit for the amount of ₱1,500,000.00, the contract between them was perfected. Therefore, even if corporate checks were issued for the payment of the obligation, the fact remains that the juridical tie between the two (2) parties was already established during the contract's perfection stage and, thus, does not preclude the creditor from proceeding against the debtor during the contract's consummation stage.

That a privity of contract exists between petitioner and respondent is a conclusion amply supported by the averments and evidence on record in this case. First, the Court observes that petitioner was consistent in his account that he directly dealt with respondent in his personal and not merely his representative capacity. Moreover, the demand letter, which was admitted by respondent, was personally addressed to respondent and not to Unimasters as represented by the latter. Also, petitioner explained that he delivered the construction materials to respondent absent any written agreement due to his trust on the latter.

T. Promissory Notes

PHILIPPINE NATIONAL BANK v. CONCEPCION MINING COMPANY, INC., ET AL. G.R. No. L-16968, EN BANC, July 31, 1962, LABRADOR, J.

Pursuant to Sec. 17 (g) of the Negotiable Instruments Law, the payee of the promissory note had the right to hold any one or any two of the signers of the promissory note responsible for the payment of the amount of the note.

FACTS

The present action was instituted by PNB to recover from the defendants the face of a promissory note. Upon the filing of the complaint the defendants presented their answer in which they allege that the co-maker the promissory note Don Vicente L. Legarda died on February 24, 1946 and his estate is in the process of judicial determination in a Special Proceedings case. On the basis of this allegation it is prayed, as a special defense, that the estate of said deceased Vicente L. Legarda be included as party-defendant. The court in its decision ruled that the inclusion of said defendant is unnecessary and immaterial, in accordance with the provisions of Article 1216 of the Deny Civil Code and section 17 (g) of the Negotiable Instruments Law.

ISSUE

Whether the estate of Legarda should be included in the suit since Legarda is a co-maker of the promissory note

RULING

SEC. 17. Construction where instrument is ambiguous. — Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:
xxx xxx xxx

(g) Where an instrument containing the word “I promise to pay” is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

In view of the above quoted provisions, and as the promissory note was executed jointly and severally by the same parties, namely, Concepcion Mining Company, Inc. and Vicente L. Legarda and Jose S. Sarte, the payee of the promissory note had the right to hold any one or any two of the signers of the promissory note responsible for the payment of the amount of the note.

**PERLA COMPANIA DE SEGUROS, INC. VS. THE COURT OF APPEALS, HERMINIO LIM AND
EVELYN LIM**

G.R. No. 96452, SECOND DIVISION, May 7, 1992, NOCON, J

Private respondents are not relieved of their obligation to pay.—This Court agrees with petitioner FCP that private respondents are not relieved of their obligation to pay the former the installments due on the promissory note on account of the loss of the automobile. The chattel mortgage constituted over the automobile is merely an accessory contract to the promissory note. Being the principal contract, the promissory note is unaffected by whatever befalls the subject matter of the accessory contract. Therefore, the unpaid balance on the promissory note should be paid, and not just the installments due and payable before the automobile was carnapped, as erroneously held by the Court of Appeals.

FACTS

On December 24, 1981, private respondents spouses Herminio and Evelyn Lim executed a promissory note infavor of Supercars, Inc. in the sum of P77,940.00, payable in monthly installments according to the schedule of payment indicated in said note,[3] and secured by a chattel mortgage over a brand new red Ford Laser 1300 5DR Hatchback 1981 model with motor and serial No. SUPJYK-03780, which is registered under the name of private respondent Herminio Lim[4] and insured with the petitioner Perla Compania de Seguros, Inc. (Perla for brevity) for comprehensive coverage under Policy No. PC/41PP-QCB-43383.

Supercars, Inc., with notice to private respondents spouses, assigned to petitioner FCP Credit Corporation (FCP for brevity) its rights, title and interest on said promissory note and chattel mortgage as shown by the Deed of Assignment.

At around 2:30 P.M. of November 9, 1982, said vehicle was carnapped while parked at the back of Broadway Centrum along N. Domingo Street, Quezon City.

On November 10, 1982, private respondent Evelyn Lim reported said incident to the Land Transportation Commission in Quezon City, as shown by the letter of her counsel to said office,[8] in compliance with the insurance requirement. She also filed a complaint with the Headquarters, Constabulary Highway Patrol Group.

Private respondent filed a claim for loss with the petitioner Perla but said claim was denied on November 18, 1982[10] on the ground that Evelyn Lim, who was using the vehicle before it was carnapped, was... in possession of an expired driver's license at the time of the loss of said vehicle which is in violation of the authorized driver clause of the insurance policy... private respondents requested from petitioner FCP for a suspension of payment

Perla, however, denied private respondents' claim.

Consequently, petitioner FCP demanded that private respondents pay the whole balance of the promissory note or to return the vehicle[12] but the latter refused.

Private respondents appealed the same to the Court of Appeals, which reversed said decision.

ISSUE

Whether or not the loss of the collateral exempted the debtor from his admitted obligations under the promissory note particularly the payment of interest, litigation expenses and attorney's fees.

RULING

We find no merit in Perla's petition.

This Court agrees with petitioner FCP that private respondents are not relieved of their obligation to pay the former the installments due on the promissory note on account of the loss of the automobile. The chattel mortgage constituted over the automobile is merely an accessory contract to the promissory note. Being the principal contract, the promissory note is unaffected by whatever befalls the subject matter of the accessory contract. Therefore, the unpaid balance on the promissory note should be paid, and not just the installments due and payable before the automobile was carnapped, as erroneously held by the Court of Appeals.

Moreover, it is the "THEFT" clause, and not the "AUTHORIZED DRIVER" clause, that should apply. There is no causal connection between the possession of a valid driver's license and the loss of a vehicle.

To rule otherwise would render car insurance practically a sham since an insurance company can easily escape liability by citing restrictions which are not applicable or germane to the claim, thereby reducing indemnity to a shadow.

private respondents are not relieved of their obligation to pay the former the installments due on the promissory note on account of the loss of the automobile.

The insurance policy was therefore meant to be an additional security to the principal contract, that is, to insure that the promissory note will still be paid in case the automobile is lost through accident or theft.

It is clear from the abovementioned provision that upon the loss of the insured vehicle, the insurance company Perla undertakes to pay directly to the mortgagor or to their assignee, FCP, the outstanding balance of the mortgage at the time of said loss under the mortgage contract.

**JOSE L. PONCE DE LEON v. REHABILITATION FINANCE CORPORATION et al.
G.R. No. L-24571, EN BANC, December 18, 1970, Concepcion, J.**

When a promissory note expresses "no time for payment," it is deemed "payable on demand."

FACTS

Jose Ponce De Leon and Francisco Soriano requested for a loan from the Rehabilitation Finance Corporation (RFC) for P495, 000.00. The loan was secured by a parcel of land owned by Soriano. A deed of mortgage was then executed as security for the loan. Soriano and Ponce de Leon also executed a promissory note in the amount of P495, 000.00 payable in monthly installments. Part of the P495, 000.00 was used to pay off the previous encumbrances amounting to P135, 000.00 on the property of Soriano. The rest were released to Ponce de Leon in various amounts from December 1951 to July 1952, still pursuant to the deed of mortgage. De Leon and Soriano failed to pay their loan obligation. Consequently, RFC initiated a foreclosure proceeding on the mortgaged property. According to RFC, the monthly payments were supposed to be due in October 1952.

In his defense, Ponce de Leon insists that the amortizations never became due because allegedly, RFC did not complete the disbursement of the loan to him, alleging that P19, 000.00 was withheld. He also argued that on the face of the promissory note it was written that the installments have "no fixed or determined dates of payment". Hence, the monthly payments were never due therefore the foreclosure is void. He insists that the court should first determine the date of maturity of the loan.

ISSUE

Whether Ponce de Leon's loan is due and demandable despite the absence of an express time for payment

RULING

YES. Although the date of maturity of the first installment was left blank, the promissory note states that the "date of maturity (was) to be fixed as of the date of the last release," completing the delivery to the plaintiff of the sum of P495,000.00 lent to him by the RFC.

In short, part of the sum of P495,000 had been delivered by the RFC to the creditors of the plaintiff and Francisco Soriano, as agreed upon by them, in payment of their outstanding obligations, and the balance of said sum of P495,000 was turned over to the plaintiff, with the written authorization and conformity of Francisco Soriano. This is borne out by the fact that, prior to the institution of this case, plaintiff had not complained of failure of the RFC to fully release the aforementioned sum of P495,000.00. Plaintiff claims the right to a suspension of payment or an extension of the period to

pay the RFC owing to the typhoons that had lashed his sawmill in October and November 1952, thus indicating clearly that the amount of the loan extended to him and Francisco Soriano had then been fully released by the RFC three (3) months before October 1952 and that the first installment under the promissory note was due that month, as claimed by the RFC.

PEOPLE OF THE PHILIPPINES v. MARTIN L. ROMERO and ERNESTO C. RODRIGUEZ
G. R. No. 112985, FIRST DIVISION, April 21, 1999, PARDO, J.

The rule in the Negotiable Instruments Law is that when there is ambiguity in the amount in words and the amount in figures, it would be the amount in words that would prevail. However, this rule of interpretation finds no application in the case.

FACTS

Ernesto A. Ruiz (Ruiz) was a radio commentator of Radio DXRB, Butuan City. In August, 1989, he came to know the business of Surigao San Andres Industrial Development Corporation (SAIDECOR), when he interviewed accused Romero and Rodriguez regarding the corporation's investment operations in Butuan City and Agusan del Norte. Romero was the president and general manager of SAIDECOR, while Rodriguez was the operations manager. Ruiz went to SAIDECOR office to make an investment because he was promised that there is a return of 800% profit within 21 days. After handing over the amount of P150, 000.00 to Rodriguez, Ruiz received a postdated Butuan City Rural Bank check instead of the usual redeemable coupon. The check indicated P1, 000, 200.00 as the amount in words, but the amount in figures was for P1, 200, 000.00, as the return on the investment. Complainant did not notice the discrepancy. When the check was presented to the bank for payment on October 5, 1989, it was dishonored for insufficiency of funds, as evidenced by the check return slip issued by the bank. The trial court convicted the accused for the crime of estafa. On appeal, Romero testified that when he issued a check in the amount of P1, 200, 000.00 corresponding to the total of the P150, 000.00 investment and the 800% return thereon, the corporation had a deposit of P14, 000, 000.00 at the time of the issuance of the check and four million pesos P4, 000, 000.00 at the time SAIDECOR stopped operations.

ISSUE

Whether the check was dishonored due to the discrepancy of the amount in words and in figures.

RULING

NO. Romero relies on the fact that there was a discrepancy between the amount in words and the amount in figures in the check that was dishonored. The amount in words was P1,000,200.00, while the amount in figures was P1,200,000.00. It is admitted that the corporation had in the bank P1,144,760.00 on September 28,1989, and P1,124,307.14 on April 2, 1990. The check was presented for payment on October 5, 1989. The rule in the Negotiable Instruments Law is that when there is ambiguity in the amount in words and the amount in figures, it would be the amount in words that would prevail. However, this rule of interpretation finds no application in the case. The agreement was perfectly clear that at the end of twenty one (21) days, the investment of P150 , 000.00 would become P1,200,000.00. Even if the trial court admitted the stipulation of facts, it would not be favorable to accused-appellant.

**ASTRO ELECTRONICS CORP. and PETER ROXAS v. PHILIPPINE EXPORT AND FOREIGN LOAN
GUARANTEE CORPORATION**
G.R. No. 136729, SECOND DIVISION, September 23, 2003, Austria-Martinez, J.

Under the Negotiable Instruments Law, persons who write their names on the face of promissory notes are makers, promising that they will pay to the order of the payee or any holder according to its tenor.

FACTS

Astro Electronics Corp. (Astro) obtained several loans from the Philippine Trust Company (Philtrust). The said loans amounted to P3, 000, 000.00 with interest and secured by three promissory notes. The promissory notes bear the signature of Roxas; it shows that Roxas signed twice, as President of Astro and in his personal capacity. Roxas also signed a Continuing Surety ship Agreement in favor of Philtrust Bank, as President of Astro and as surety. Thereafter, Philguarantee, with the consent of Astro, guaranteed in favor of Philtrust the payment of 70% of Astro's loan, subject to the condition that upon payment by Philguarantee of said amount, it shall be proportionally subrogated to the rights of Philtrust against Astro. As a result of Astro's failure to pay its loan obligations, despite demands, Philguarantee paid 70% of the guaranteed loan to Philtrust. Subsequently, Philguarantee filed against Astro and Roxas a complaint for sum of money with the RTC of Makati. The trial court ruled in favor of Philguarantee. On appeal, the Court of Appeals affirmed the RTC decision.

ISSUE

Whether Roxas should be solidarily liable with Astro by signing on the promissory note

RULING

YES. As it appears on the notes, Roxas signed twice: first, as president of Astro and second, in his personal capacity. In signing his name aside from being the President of Astro, Roxas became a co-maker of the promissory notes and cannot escape any liability arising from it. Under the Negotiable Instruments Law, persons who write their names on the face of promissory notes are makers, promising that they will pay to the order of the payee or any holder according to its tenor. Thus, even without the phrase personal capacity, Roxas will still be primarily liable as a joint and several debtor under the notes considering that his intention to be liable as such is manifested by the fact that he affixed his signature on each of the promissory notes twice which necessarily would imply that he is undertaking the obligation in two different capacities, official and personal.

U. Checks

1. Definition

BPI EXPRESS CARD CORPORATION v. COURT OF APPEALS and RICARDO J. MARASIGAN
G.R. No. 120639, THIRD DIVISION, September 25, 1998, KAPUNAN, J.

Settled is the doctrine that a check is only a substitute for money and not money, the delivery of such an instrument does not, by itself operate as payment. This is especially true in the case of a postdated check.

FACTS

Ricardo Marasigan private respondent is complimentary member of BPI Express Card Corp (BECC). It was stated in their contract that non-payment of due bill automatically suspends his credit card. Due to professional and personal reasons he defaulted in payment. Instead of automatically suspending the credit card BPI Express and Marasigan made arrangement that Private respondent Marasigan should pay immediately in “cash” his obligations. However, instead of paying in cash Marasigan paid in postdated check.

With the belief that he already settled his obligations, using the credit card he treated his colleagues at Café Adriatico using his credit card which was denied by the café. Felt embarrassed he filed in court for damages. BPI claimed on the other hand that Marasigan violated their arrangement when he did not pay in cash.

ISSUE

Whether the payment through a postdated check extinguishes Marasigan’s obligation payable in cash as provided in their arrangement with BPI

RULING

NO. Clearly, the purpose of the arrangement between the parties was for the immediate payment of the private respondent's outstanding account, in order that his credit card would not be suspended. As agreed upon by the parties, on the following day, private respondent did issue a check for P15, 000. However, the check was postdated 15 December 1989. Settled is the doctrine that a check is only a substitute for money and not money, the delivery of such an instrument does not, by itself operate as payment. This is especially true in the case of a postdated check.

Thus, the issuance by the private respondent of the postdated check was not effective payment. It did not comply with his obligation under the arrangement with Miss Lorenzo. Petitioner Corporation was therefore justified in suspending his credit card.

2. Kinds

**ASSOCIATED BANK and CONRADO CRUZ v. HON. COURT OF APPEALS, and MERLE V. REYES,
doing business under the name and style "Melissa's RTW
G.R. No. 89802, FIRST DIVISION, May 7, 1992, CRUZ, J.**

Under accepted banking practice, crossing a check is done by writing two parallel lines diagonally on the left top portion of the checks. The effects of crossing a check relate to the mode of its presentment for payment.

FACTS

The private respondent is engaged in the business of ready-to-wear garments under the firm name "Melissa's RTW." She deals with, among other customers, Robinson's Department Store, Payless Department Store, Remson Department Store, and the Corona Bazaar. These companies issued in payment of their respective accounts crossed checks payable to Melissa's RTW. When she went to

these companies to collect on what she thought were still unpaid accounts, she was informed of the issuance of the above-listed crossed checks. However, further inquiry revealed that the said checks had been deposited with the Associated Bank (hereinafter, "the Bank") and subsequently paid by it to one Rafael Sayson which is clearly not the payee in the said crossed- check.

ISSUE

Whether the private respondent Merle Reyes has a cause of action against the petitioners Bank and Cruz for their encashment and payment to another person of certain crossed checks issued in her favor

RULING

YES. Under accepted banking practice, crossing a check is done by writing two parallel lines diagonally on the left top portion of the checks. The crossing is special where the name of a bank or a business institution is written between the two parallel lines, which mean that the drawee should pay only with the intervention of that company. The crossing is general where the words written between the two parallel lines are "and Co." or "for payee's account only," as in the case at bar. This means that the drawee bank should not encash the check but merely accept it for deposit. In *State Investment House vs. IAC*, this Court declared that "the effects of crossing a check are: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once -- to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose."

The effects therefore of crossing a check relate to the mode of its presentment for payment. Under Sec. 72 of the Negotiable Instruments Law, presentment for payment, to be sufficient, must be made by the holder or by some person authorized to receive payment on his behalf. Who the holder or authorized person is depends on the instruction stated on the face of the check. The six checks in the case at bar had been crossed and issued "for payee's account only", this could only signify that the drawers had intended the same for deposit only by the person indicated, to wit, Melissa's RTW and not to anyone else such as Rafael Sayson, hence the bank is liable.

STATE INVESTMENT HOUSE v. INTERMEDIATE APPELLATE COURT, ANITA PEÑA CHUA and HARRIS CHUA

G.R. No. 72764 THIRD DIVISION, July 13, 1989, FERNAN, C.J.

The act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise he is not a holder in due course.

FACTS

Spouses Chua (private respondents) gave 3 cross checks to New Sikatuna Wood Industries due to the conditional loan requested by the latter. However, before the happening of this condition to perfect the contract of loan, New Sikatuna entered to a check rediscounting agreement with herein petitioner State Investment House which includes the 3 subject cross checks.

These cross checks when presented was dishonored for insufficiency of funds. Petitioner filed before the court for its payment. Spouses Chua then filed a third party complaint against New Sikatuna.

ISSUE

Whether State Investment House is a holder in due course of the 3 cross checks it acquired in a rediscounting agreement issued in the name of New Sikatuna Wood Industry as payee

RULING

NO. Relying on the ruling in *Ocampo v. Gatchalian*, the Intermediate Appellate Court (now Court of Appeals), correctly elucidated that the effects of crossing a check are: the check may not be encashed but only deposited in the bank; the check may be negotiated only once to one who has an account with a bank; and the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise he is not a holder in due course. Further, as the CA said:

“It results therefore that when appellee rediscounted the check knowing that it was a crossed check he was knowingly violating the avowed intention of crossing the check. Furthermore, his failure to inquire from the holder, party defendant New Sikatuna Wood Industries, Inc., the purpose for which the three checks were cross despite the warning of the crossing, prevents him from being considered in good faith and thus he is not a holder in due course. Being not a holder in due course, plaintiff is subject to personal defenses, such as lack of consideration between appellants and New Sikatuna Wood Industries. Note that under the facts the checks were postdated and issued only as a loan to New Sikatuna Wood Industries, Inc. if and when deposits were made to back up the checks. Such deposits were not made, hence no loan was made, and hence the three checks are without consideration (Sec. 28, Negotiable Instruments Law).”

The three subject checks in the case at bar had been crossed generally and issued payable to New Sikatuna Wood Industries, Inc. which could only mean that the drawer had intended the same for deposit only by the rightful person, i.e., the payee named therein. Apparently, it was not the payee who presented the same for payment and therefore, there was no proper presentment, and the liability did not attach to the drawer. Thus, in the absence of due presentment, the drawer did not become liable. Consequently, no right of recourse is available to petitioner against the drawer of the subject checks, private respondent wife, considering that petitioner is not the proper party authorized to make presentment of the checks in question.

**PEOPLE OF THE PHILIPPINES v. HON. DAVID G. NITAFAN, Presiding Judge, Regional Trial Court, Branch 52, Manila, and K.T. LIM alias MARIANO LIM
G.R. No. 75954, EN BANC, October 22, 1992, BELLOSILLO, J.**

A memorandum check is in the form of an ordinary check, with the word "memorandum", "memo" or "mem" written across its face, signifying that the maker or drawer engages to pay the bona fide holder absolutely, without any condition concerning its presentment.

FACTS

Private respondent K.T. Lim was charge for violating BP22. He however claimed that the check he issued was a memorandum check which was in the nature of a promissory note, perforce, civil in nature.

ISSUE

Whether a memorandum check issued postdated in partial payment of a pre-existing obligation is within the coverage of B.P. 22

RULING

YES. A memorandum check is in the form of an ordinary check, with the word "memorandum", "memo" or "mem" written across its face, signifying that the maker or drawer engages to pay the bona fide holder absolutely, without any condition concerning its presentment. Such a check is an evidence of debt against the drawer, and although may not be intended to be presented, has the same effect as an ordinary check, and if passed to the third person, will be valid in his hands like any other check.

From the above definition, it is clear that a memorandum check, which is in the form of an ordinary check, is still drawn on a bank and should therefore be distinguished from a promissory note, which is but a mere promise to pay. If private respondent seeks to equate memorandum check with promissory note, as he does to skirt the provisions of B.P. 22, he could very well have issued a promissory note, and this would be have exempted him form the coverage of the law. In the business community a promissory note, certainly, has less impact and persuadability than a check.

Verily, a memorandum check comes within the meaning of Sec. 185 of the Negotiable Instruments Law which defines a check as "a bill of exchange drawn on a bank payable on demand." A check is also defined as "[a] written order or request to a bank or persons carrying on the business of banking, by a party having money in their hands, desiring them to pay, on presentment, to a person therein named or bearer, or to such person or order, a named sum of money. Another definition of check is that is "a draft drawn upon a bank and payable on demand, signed by the maker or drawer, containing an unconditional promise to pay a sum certain in money to the order of the payee."

A memorandum check must therefore fall within the ambit of B.P. 22 which does not distinguish but merely provides that "any person who makes or draws and issues any check knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank which check is subsequently dishonored shall be punished by imprisonment ." Ubi lex no distinguit nec nos distinguere debemus.

RAMON TAN v. THE HONORABLE COURT OF APPEALS and RIZAL COMMERCIAL BANKING CORPORATION

G.R. No. 108555, FIRST DIVISION, December 20, 1994, KAPUNAN, J.

A cashier's check by its peculiar character and general use in the commercial world is regarded substantially to be as good as the money which it represents. In this case, therefore, PCIB by issuing the check created an unconditional credit in favor of any collecting bank.

FACTS

Ramon Tan to avoid the risk of carrying cash enroute to Manila secured a cashier's check from Philippine Commercial Industrial Bank (PCIB) Puerto Prinsesa Branch in the amount of P30,000 payable to his order. When in Manila he deposited the check in his account with RCBC Binondo. Relying on the common knowledge that a cashier's check was as good as cash, that the usual banking practice that local checks are cleared within three (3) working days and regional checks within seven (7) working days, and the fact that the cashier's check was accepted, petitioner issued two (2) personal checks to specific persons but was later dishonored.

Tan then filed for damages. RCBC claimed that the failure to pay was due to the wrong deposit slip used by Tan when it presented the cashier's check. Further, RCBC insists that immediate payment without awaiting clearance of a cashier's check is discretionary with the bank to whom the check is presented and such being the case, its refusal to immediately pay the cashier's check in this case is not to be equated with negligence on its part.

ISSUE

Whether RCBC may be held liable for its failure to credit the deposited cashier's check.

RULING

YES. An ordinary check is not a mere undertaking to pay an amount of money. There is an element of certainty or assurance that it will be paid upon presentation that is why it is perceived as a convenient substitute for currency in commercial and financial transactions. The basis of the perception being confidence. Any practice that destroys that confidence will impair the usefulness of the check as a currency substitute and create havoc in trade circles and the banking community.

Now, what was presented for deposit in the instant cases was not just an ordinary check but a cashier's check payable to the account of the depositor himself. A cashier's check is a primary obligation of the issuing bank and accepted in advance by its mere issuance. By its very nature, a cashier's check is the bank's order to pay drawn upon itself, committing in effect its total resources, integrity and honor behind the check. A cashier's check by its peculiar character and general use in the commercial world is regarded substantially to be as good as the money which it represents. In this case, therefore, PCIB by issuing the check created an unconditional credit in favor of any collecting bank.

All these considered petitioner's reliance on the layman's perception that a cashier's check is as good as cash is not entirely misplaced, as it is rooted in practice, tradition, and principle. We see no reason thus why this so-called discretion was not exercised in favor of petitioner, especially since PCIB and RCBC are members of the same clearing house group relying on each other's solvency. RCBC could surely rely on the solvency of PCIB when the latter issued its cashier's check.

TEDDY G. PABUGAIS v. DAVE P. SAHIJWANI
G.R. No. 15684, February 23, 2004, YNARES-SANTIAGO, J.

While it is true that in general, a manager's check is not legal tender, the creditor has the option of refusing or accepting it. Payment in check by the debtor may be acceptable as valid, if no prompt

objection to said payment is made. Consequently, petitioner's tender of payment in the form of manager's check is valid.

FACTS

Petitioner Pabugais and respondent Sahijwani entered a conditional contract of sale. There is a stipulation that the failure of petitioner to deliver the required documents to respondent would mean the return of the P600,000 plus 18% per annum option/reservation fee initially paid by respondent to petitioner. Subsequently, indeed petitioner failed to deliver the documents triggering the return of the P600,000 reservation fee paid by respondent plus 18% interest.

Petitioner then delivered checks corresponding to this amount to respondent. However, respondent did not accept this on the claim that the amount tendered was insufficient to cover the obligation. Petitioner then consigned the amount to court. Respondent then questions the validity of the consignment.

ISSUE

Whether consignment is proper after the creditor respondent failed to accept payment through check on account of its alleged insufficiency

RULING

YES. The issues to be resolved in the instant case concerns one of the important requisites of consignment, i.e, the existence of a valid tender of payment. As testified by the counsel for respondent, the reasons why his client did not accept petitioners tender of payment were (1) the check mentioned in the August 5, 1994 letter of petitioner manifesting that he is settling the obligation was not attached to the said letter; and (2) the amount tendered was insufficient to cover the obligation.

It is obvious that the reason for respondents non-acceptance of the tender of payment was the alleged insufficiency thereof and not because the said check was not tendered to respondent, or because it was in the form of managers check. While it is true that in general, a manager's check is not legal tender, the creditor has the option of refusing or accepting it. Payment in check by the debtor may be acceptable as valid, if no prompt objection to said payment is made. Consequently, petitioners tender of payment in the form of managers check is valid.

BANK OF THE PHILIPPINE ISLANDS v. GREGORIO C. ROXAS 536 SCRA 168, FIRST DIVISION, October 15, 2007, Sandoval-Gutierrez, J.

In International Corporate Bank v. Spouses Gueco, this Court held that a cashier's check is really the bank's own check and may be treated as a promissory note with the bank as the maker. In New Pacific Timber & Supply Co. Inc. v. Señeris, this Court took judicial notice of the "well-known and accepted practice in the business sector that a cashier's check is deemed as cash." This is because the mere issuance of a cashier's check is considered acceptance thereof.

FACTS

Gregorio Roxas, as trader, delivered stocks of vegetable oil to Spouses Rodrigo and Marissa Cawili. As payment, they issued a personal check amounting to P348, 805.50 which was dishonored by the drawee bank when respondent tried to encash. The Spouses Cawili replaced the check with a cashier's check from Bank of the Philippine Island (BPI). The cashier's check was drawn against the account of Marissa Cawili. The cashier check was delivered to respondent by Rodrigo Cawili. When Roxas tried to encash the cashier check, it was dishonored on the ground that the account of Marissa was closed on the same date that respondent tried to encash. Roxas thereafter filed a complaint with the Regional Trial Court for a sum of money praying that BPI pay him the amount of the check, damages and cost of the suit.

The RTC in its decision held that BPI is liable to pay the face value of the cashier's check amounting to PHP 384, 805.50. On appeal, the CA affirmed the decision of the RTC. Hence, the filing of the Petition for Certiorari by the BPI.

ISSUE

Whether or not BPI is liable to Roxas for the amount of the cashier's check.

RULING

YES. It bears emphasis that the disputed check is a cashier's check. In *International Corporate Bank v. Spouses Gueco*, this Court held that a cashier's check is really the bank's own check and may be treated as a promissory note with the bank as the maker. The check becomes the primary obligation of the bank which issues it and constitutes a written promise to pay upon demand.

In view of the above pronouncements, BPI became liable to Roxas from the moment it issued the cashier's check. Having been accepted by Roxas, subject to no condition whatsoever, BPI should have paid the same upon presentment by the former.

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK v.
ANTONIO B. BALMACEDA and ROLANDO N. RAMOS**
G.R. No. 158143, SECOND DIVISION, September 21, 2011, Brion, J.

A crossed check is one where two parallel lines are drawn across its face or across its corner. Based on jurisprudence, the crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once to the one who has an account with the bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose and he must inquire if he received the check pursuant to this purpose; otherwise, he is not a holder in due course.

FACTS

PCIB filed an action for recovery of sum of money with damages before the RTC against Antonio Balmaceda, the Branch Manager of its Sta. Cruz, Manila branch. In its complaint, PCIB alleged that between 1991 and 1993, Balmaceda, by taking advantage of his position as branch manager,

fraudulently obtained and encashed 31 Managers checks in the total amount of Ten Million Seven Hundred Eighty Two Thousand One Hundred Fifty Pesos (P10,782,150.00).

It was subsequently found by the court that indeed Balmaceda is liable through his fraudulent acts. However, in light of the fact that the check is a “crosscheck” does this make the petitioner bank concurrently negligent?

ISSUE

Whether there is concurrent negligence on the part of the Bank PCIB and its employees in encashing the cross checks.

RULING

YES. Another telling indicator of PCIBs negligence is the fact that it allowed Balmaceda to encash the Manager’s checks that were plainly crossed checks. A crossed check is one where two parallel lines are drawn across its face or across its corner. Based on jurisprudence, the crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once to the one who has an account with the bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose and he must inquire if he received the check pursuant to this purpose; otherwise, he is not a holder in due course. In other words, the crossing of a check is a warning that the check should be deposited only in the account of the payee. When a check is crossed, it is the duty of the collecting bank to ascertain that the check is only deposited to the payees account. In complete disregard of this duty, PCIBs systems allowed Balmaceda to encash 26 Managers checks which were all crossed checks, or checks payable to the payees account only.

The General Banking Law of 2000 requires of banks the highest standards of integrity and performance. The banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman pater familias or a good father of a family. The highest degree of diligence is expected.

3. Presentment for Payment

**NEW PACIFIC TIMBER & SUPPLY COMPANY, INC. vs. HON. ALBERTO V. SENERIS, RICARDO A. TONG and
EX-OFFICIO SHERIFF HAKIM S. ABDULWAHID
G.R. No. L-41764, SECOND DIVISION, December 19, 1980, Concepcion Jr., J.**

Where a check is certified by the bank on which it is drawn, the certification is equivalent to acceptance.

FACTS

In a complaint for a collection of sum of money, New Pacific Timber failed to comply with his judgment obligation in an amicable settlement with the private respondent. Thus a writ of execution was issued pursuant to which, New Pacific Timber’s properties were levied and was held for auction. Prior to the auction, New Pacific Timber deposited with the Clerk of Court, CFI, in his capacity as Ex-

Officio Sheriff, the sum for the payment of the judgment obligation. Private respondent refused to accept the check as well as the cash deposit and requested the scheduled auction sale. Hon. Seneris sustained the contention of the private respondent. New Pacific Timber questioned the order of the judge for denying his motion for issuance of certificate of satisfaction of judgment.

ISSUE

Whether or not there was a valid refusal to accept the payment of the judgment obligation made by New Pacific.

RULING

NO. No there is no valid refusal.

A cashier's check of the Equitable Bank Corporation is not an ordinary check. It is a well-known and accepted practice in the business sector that a Cashier's Check is deemed as cash.

Where a check is certified by the bank on which it is drawn, the certification is equivalent to acceptance. By the certification of drawee bank, the funds represented by the check are transferred from the credit of the maker to that of the payee or holder, and for all intents and purposes, the latter becomes the depositor of the drawee bank. Said certification implies that the check is drawn upon sufficient funds in the hands of the drawee that they have been set apart for its satisfaction, that they shall be so applied whenever the check is presented for payment. The object of certifying a check, as regards to both parties, is to enable the holder to use it as money. When the holder procures the check to be certified, the check operates as an assignment of a part of the funds to the creditors. Certification of a check is an exception to the rule enunciated under Sec 63 of the CB Act.

Considering that the whole amount deposited by the petitioner consisting of Cashier's Check of P50,000.00 and P13,130.00 in cash covers the judgment obligation of P63,000.00 as mentioned in the writ of execution, then, we see no valid reason for the private respondent to have refused acceptance of the payment of the obligation in his favor.

PHILIPPINE AIRLINES, INC. v. HON. COURT OF APPEALS, HON. JUDGE RICARDO D. GALANO, JAIME K. DEL ROSARIO, Deputy Sheriff, Court of First Instance, Manila, and AMELIA TAN, G.R. No. L-49188, EN BANC, January 30, 1990, Gutierrez, Jr., J.

A check, whether manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender or payment and may be refused receipt by the obligee or creditor.

FACTS

Amelia Tan commenced a complaint for damages before the CFI against Philippine Airlines, Inc. (PAL). CFI rendered a judgment in favor of Tan. PAL filed its appeal with the CA, and the appellate court affirmed the judgment of the lower court with the modification that PAL is condemned to pay the latter the sum of P25,000.00 as damages.

Judgment became final and executor. The trial court upon the motion of Amelia Tan issued an order of execution with the corresponding writ in favor of Tan. Said writ was duly referred to Deputy Sheriff Reyes for enforcement.

Four months later, Amelia Tan moved for the issuance of an alias writ of execution, stating that the judgment remained unsatisfied. PAL opposed the motion, stating that it had already fully paid its obligation through the issuance of checks payable to the deputy sheriff who later did not appear with his return and instead absconded.

PAL filed an urgent motion to quash the alias writ of execution stating that no return of the writ had as yet been made by Deputy Sheriff Reyes and that judgment debt had already been fully satisfied by the former as evidenced by the cash vouchers signed and received by the executing sheriff.

ISSUE

Whether payment made in checks to the sheriff and under his name is a valid payment to extinguish judgment of debt of PAL.

RULING

NO. Article 1249 of the Civil Code provides: “The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines”.

Unless authorized to do so by law or by consent of the obligee, a public officer has no authority to accept anything other than money in payment of an obligation under a judgment being executed. Strictly speaking, the acceptance by the sheriff of the petitioner’s checks does not, per se, operate as a discharge of the judgment of debt.

A check, whether manager’s check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender or payment and may be refused receipt by the obligee or creditor. Hence, the obligation is not extinguished.

ROMAN CATHOLIC BISHOP OF MALOLOS, INC. v. INTERMEDIATE APPELLATE COURT, and ROBES- FRANCISCO REALTY AND DEVELOPMENT CORPORATION

G.R. No. 72110. November 16, 1990, Sarmiento, J.

Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. A check, whether a manager’s check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor.

FACTS

A contract over the land was executed between the Roman Catholic Bishop of Malolos as vendor and RFRD Corp. through its president Mr. Carlos Robes, as vendee, stipulating for a downpayment and the balance be paid within 4 years from execution of the contract. The contract likewise provides for

cancellation, forfeiture of previous payments, and reconveyance of the land in case of failure to pay within the period.

When the stipulated period expired, the new president of the vendee Atty. Francisco requested that her company be allowed to pay in three instalments wrote the. Bishop through counsel denied but granted a grace period of 5 days to pay the balance. Atty. Francisco, requested again for a 30-day extension but was again denied.

Atty. Francisco claims that the vendor refused to accept their tender of payment, however, the trial court considered as fatal the failure of Atty. Francisco to present in court the certified personal check allegedly tendered as payment or, at least, its xerox copy, or even bank records thereof.

ISSUE

Whether an offer of a check as a tender of payment under a contract which stipulates that the consideration of the sale is in Philippine Currency is valid.

RULING

NO. Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor.

Hence, where the tender of payment by respondent was not valid for failure to comply with the requisite payment in legal tender or currency stipulated within the grace period and as such, was validly refused receipt by the petitioner, the subsequent consignment did not operate to discharge the former from its obligation to the latter. Thus, petitioner in the legitimate exercise of its rights pursuant to the subject contract, validly order the cancellation of the said contract, the forfeiture of the previous payment, and the reconveyance ipso facto of the land in question.

**ALFARO FORTUNADO, EDITH FORTUNADO, NESTOR FORTUNADO and RAMON A. GONZALES, v. COURT OF APPEALS, BASILISA CAMPANO, as City Sheriff of Iligan City, REGISTER OF DEEDS, Iligan City, ANGEL L. BAUTISTA and NATIONAL STEEL CORPORATION
G.R. No. 78556, FIRST DIVISION, April 25, 1991, Cruz, J.**

A check may be used for the exercise of the right of redemption, the same being a right and not an obligation. The tender of a check is sufficient to compel redemption but is not in itself a payment that relieves the redemptioner from his liability to pay the redemption price. In other words, while private respondents properly exercised their right of redemption, they remain liable, of course, for the payment of the redemption price.

FACTS

RTC of Quezon City 2 rendered judgment ordering Angel Bautista to pay damages to the Alfaro Fortunado. Pursuant thereto, Basilisa Campano, City Sheriff of Iligan City, levied upon two parcels of land in the name of Bautista. The second lot had already been purchased by National Steel Corporation, but had not yet been registered in its name. The lots were sold at public auction to the

petitioners as the only bidder. NSC gave notice to the sheriff of its intention to redeem the lots. NSC issued to the sheriff a PNB in the amount of as the redemption price. Bautista sent the sheriff a letter bearing NSC's conformity in which he availed himself of NSC's check, which was sufficient to cover the full redemption price for both lots. The sheriff acknowledged receipt of the check as redemption money for the two parcels of land issued a certificate of redemption in favor of NSC and Bautista.

Counsel of the petitioners told the sheriff that he was rejecting the check because it was not legal tender and was not intended for payment but merely for deposit. They requested the sheriff to issue a final deed of sale over the two lots and deliver the same to them on the ground that no valid redemption. When the request was not granted, the petitioners filed with the respondent court a petition for mandamus. They contended that the check issued by NSC, not being legal tender, could not be considered payment of the redemption price.

ISSUE

Whether the redemption was valid through the issuance of a check

RULING

YES. Redemption is not rendered invalid by the fact that the said officer accepted a check for the amount necessary to make the redemption instead of requiring payment in money. If he had seen fit to do so, the officer could have required payment to be made in lawful money, and he undoubtedly, in accepting a check, placed himself in a position where he could be liable to the purchaser at the public auction if any damage had been suffered by the latter as a result of the medium in which payment was made. But this cannot affect the validity of the payment.

This does not mean the sanctioning the use of a check for the payment of obligations over the objection of the creditor. A check may be used for the exercise of the right of redemption, the same being a right and not an obligation. The tender of a check is sufficient to compel redemption but is not in itself a payment that relieves the redemptioner from his liability to pay the redemption price. In other words, while private respondents properly exercised their right of redemption, they remain liable, of course, for the payment of the redemption price.

NORBERTO TIBAJIA, JR. and CARMEN TIBAJIA v. THE HONORABLE COURT OF APPEALS and EDEN TAN G.R. No. 100290, SECOND DIVISION, June 4, 1993, Padilla, J.

A check is not legal tender and that a creditor may validly refuse payment by check, whether it be a manager's, cashier's or personal check.

FACTS

Eden Tan won in a collection suit against Tibajia spouses thus she filed the corresponding motion for execution and thereafter, the garnished funds which by then were on deposit with the cashier of RTC were levied upon. The Tibajia spouses delivered to Deputy Sheriff Eduardo Bolima the money judgment of P262,750.00 in Cashier's Check and 135,733.70 in cash.

Eden Tan, refused to accept the payment made by the Tibajia spouses. The motion to lift the writ of execution was denied by the trial court on the ground that payment in cashier's check is not payment in legal tender.

ISSUE

Whether payment by means of a cashier's check is considered payment in legal tender.

RULING

NO. A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. A check is not legal tender and that a creditor may validly refuse payment by check, whether it be a manager's, cashier's or personal check. The Supreme Court stressed that, "We are not, by this decision, sanctioning the use of a check for the payment of obligations over the objection of the creditor."

**FAR EAST BANK & TRUST COMPANY v. DIAZ REALTY INC.
G.R. No. 138588, August 23, 2000, Panganiban J.**

According to jurisprudence, although a check is not a legal tender and a creditor may validly refuse it, this does not prevent a creditor from accepting a check as payment, in which case, payment is valid.

FACTS

Diaz and Co. obtained a loan from Pacific Banking Corp. The said loan was secured with a real estate mortgage over two parcels of land owned by Diaz Realty. Subsequently, the loan account was purchased by the FEBTC. Two years after, the Diaz Realty through its President inquired about its obligation and upon learning of the outstanding obligation, it tendered payment in the form of an Interbank check in order to avoid the further imposition of interests. The payment was with a notation for the full settlement of the obligation.

The FEBTC accepted the check but it alleged in its defense that it was merely a deposit. When the FEBTC refused to release the mortgage, the Diaz Realty filed a suit. The lower court ruled that there was a valid tender of payment and ordered cancellation of the mortgage. Upon appeal, the appellate court affirmed the decision.

ISSUE

Whether there was a valid tender of payment to extinguish the obligation Diaz Realty.

RULING

YES. Although jurisprudence tells us that a check is not a legal tender and a creditor may validly refuse it, this dictum does not prevent a creditor from accepting a check as payment. Herein, the petitioner accepted the check and the same were cleared.

A tender of payment is the definitive act of offering the creditor what is due him or her, together with the demand that he accepts it. More important is that there must be a concurrence of intent, ability and capability to make good such offer, and must be absolute and must cover the amount due. The acts of the Diaz Realty manifest its intent, ability and capability. Hence, there was a valid tender of payment.

THE INTERNATIONAL CORPORATE BANK (now UNION BANK OF THE PHILIPPINES) v. SPS. FRANCIS S. GUECO and MA. LUZ E. GUECO, G.R. No. 141968, February 12, 2001, Kapunan, J.

A manager's check is one drawn by the banks manager upon the bank itself. The mere issuance of it is considered an acceptance thereof. If treated as promissory note, the drawer would be the maker and in which case the holder need not prove presentment for payment or present the bill to the drawee for acceptance.

FACTS

Spouses Gueco obtained a loan from International Corporate Bank (now Union Bank of the Philippines) to purchase a Nissan car. Spouses executed promissory notes which were payable in monthly installments and chattel mortgage over the car to serve as security. Spouses defaulted in payment of instalments, thus the car was ordered to be returned to the bank. However, after some negotiations and computation, spouses and the bank just agreed that the amount be lowered.

Dr. Gueco delivered a manager's check in the amount of P150, 000.00 but the car was not released because of his refusal to sign the Joint Motion to Dismiss. Spouses Gueco prays the court order FEBTC to return the car to them or its value and that the latter, because of its own negligence, should suffer the loss occasioned by the fact that the check had become stale. It is their position that delivery of the manager's check produced the effect of payment and, thus, FEBTC was negligent in opting not to deposit or use said check.

ISSUE

Whether the bank should be faulted for failure to present for payment the manager's check.

RULING

NO. A check must be presented for payment within a reasonable time after its issue. In the case at bar, however, the check involved is not an ordinary bill of exchange but a manager's check. A manager's check is one drawn by the banks manager upon the bank itself. It is a bill of exchange drawn by the cashier of a bank upon the bank itself, and accepted in advance by the act of its issuance. It is really the banks own check and may be treated as a promissory note with the bank as a maker. The check becomes the primary obligation of the bank which issues it and constitutes its written promise to pay upon demand. The mere issuance of it is considered an acceptance thereof. If treated as promissory note, the drawer would be the maker and in which case the holder need not prove presentment for payment or present the bill to the drawee for acceptance.

In the case at bar, there is no doubt that the bank held on the check and refused to encash the same because of the controversy surrounding the signing of the joint motion to dismiss. There is no bad faith or negligence on its part.

SECURITY BANK AND TRUST COMPANY v. RIZAL COMMERCIAL BANKING CORPORATION
G.R. No. 170984, January 30, 2009, Quisumbing, Acting C.J.

A manager's check is one drawn by a bank's manager upon the bank itself. As the bank's own check, a manager's check becomes the primary obligation of the bank and is accepted in advance by the act of its issuance.

FACTS

Security Bank and Trust Company (SBTC) issued a managers check for P8 million, payable to CASH, as proceeds of the loan granted to Guidon Construction and Development Corporation (GCDC). On the same day, the P8-million check, along with other checks, was deposited by Continental Manufacturing Corporation (CMC) in its Current Account with RCBC. Immediately, RCBC honored the P8-million check and allowed CMC to withdraw the same.

On the next banking day, GCDC issued a Stop Payment Order to SBTC, claiming that the check was released to a third party by mistake. Consequently, SBTC dishonored and returned the managers check to RCBC. Thereafter, the check was returned back and forth between the two banks, resulting in automatic debits and credits in each banks clearing balance.

RCBC filed a complaint for damages against SBTC. RCBC avers that the manager's check issued by SBTC is substantially as good as the money it represents because by its peculiar character, its issuance has the effect of an advance acceptance. RCBC claims that it is a holder in due course when it credited the P8-million manager's check to CMCs account. On the other hand, SBTC contends that RCBC violated Monetary Board Resolution No. 2202 of the Central Bank mandating all banks to verify the genuineness and validity of all checks before allowing drawings of the same. SBTC insists that RCBC should bear the consequences of allowing CMC to withdraw the amount of the check before it was cleared.

ISSUE

Whether SBTC is liable on its manager's check.

RULING

YES. The questioned check issued by SBTC is not just an ordinary check but a manager's check. A manager's check is one drawn by a banks manager upon the bank itself. It stands on the same footing as a certified check, which is deemed to have been accepted by the bank that certified it. As the bank's own check, a manager's check becomes the primary obligation of the bank and is accepted in advance by the act of its issuance.

In this case, RCBC, in immediately crediting the amount of P8 million to CMCs account, relied on the integrity and honor of the check as it is regarded in commercial transactions. Where the questioned check, which was payable to Cash, appeared regular on its face, and the bank found nothing unusual

in the transaction, as the drawer usually issued checks in big amounts made payable to cash, RCBC cannot be faulted in paying the value of the questioned check. SBTC cannot escape liability by invoking Monetary Board Resolution No. 2202.

c. Time

**THE INTERNATIONAL CORPORATE BANK (now UNION BANK OF THE PHILIPPINES) v. SPS. FRANCIS S. GUECO and MA. LUZ E. GUECO
G.R. No. 141968, February 12, 2001, Kapunan, J.**

A check must be presented for payment within a reasonable time after its issue, and in determining what is a "reasonable time," regard is to be had to the nature of the instrument, the usage of trade or business with respect to such instruments, and the facts of the particular case. The test is whether the payee employed such diligence as a prudent man exercises in his own affairs.

FACTS

The respondents Gueco Spouses obtained a loan from petitioner International Corporate Bank (now Union Bank of the Philippines) to purchase a car - a Nissan Sentra 1600 4DR, 1989 Model. In consideration thereof, the Spouses executed promissory notes which were payable in monthly installments and chattel mortgage over the car to serve as security for the notes. The Spouses defaulted in payment of installments. Consequently, the Bank filed a civil action docketed as Civil Case No. 658-95 for "Sum of Money with Prayer for a Writ of Replevin" before the MeTC of Pasay, City. Dr. Francis Gueco was served summons and was fetched by the sheriff and representative of the bank for a meeting in the bank premises. Desi Tomas, the Bank's Assistant Vice President demanded payment of the amount of P184,000.00 which represents the unpaid balance for the car loan. After some negotiations and computation, the amount was lowered to P154,000.00 which amount was further reduced after a renegotiation to P 150,000.00. In the meeting of August 29, 1995, respondent Dr. Gueco delivered a manager's check representing the reduced amount of P150,000.00. Said check was given to Mr. Rivera, a representative of respondent bank. However, since Dr. Gueco refused to sign the joint motion to dismiss, he was made to execute a statement to the effect that he was withholding the payment of the check. Subsequently, in a letter addressed to Ms. Desi Tomas, vice president of the bank, dated September 4, 1995, Dr. Gueco instructed the bank to disregard the 'hold order' letter and demanded the immediate release of his car, to which the former replied that the condition of signing the joint motion to dismiss must be satisfied and that they had kept the check which could be claimed by Dr. Gueco anytime. While there is controversy as to whether the document evidencing the order to hold payment of the check was formally offered as evidence by petitioners, it appears from the pleadings that said check has not been encashed. It is the position of the respondents that that petitioner should return the car or its value and that the latter, because of its own negligence, should suffer the loss occasioned by the fact that the check had become stale. It is their position that delivery of the manager's check produced the effect of payment and, thus, petitioner was negligent in opting not to deposit or use said check. Rudimentary sense of justice and fair play would not countenance respondents' position.

ISSUE

Whether the bank should bear the loss because the check had become stale due to the failure of presentment

RULING

NO. A stale check is one which has not been presented for payment within a reasonable time after its issue. It is valueless and, therefore, should not be paid. Under the negotiable instruments law, an instrument not payable on demand must be presented for payment on the day it falls due. When the instrument is payable on demand, presentment must be made within a reasonable time after its issue. In the case of a bill of exchange, presentment is sufficient if made within a reasonable time after the last negotiation thereof. A check must be presented for payment within a reasonable time after its issue, and in determining what is a "reasonable time," regard is to be had to the nature of the instrument, the usage of trade or business with respect to such instruments, and the facts of the particular case. The test is whether the payee employed such diligence as a prudent man exercises in his own affairs. This is because the nature and theory behind the use of a check points to its immediate use and payability. In a case, a check payable on demand which was long overdue by about two and a half years was considered a stale check. Failure of a payee to encash a check for more than ten (10) years undoubtedly resulted in the check becoming stale. Thus, even a delay of one week or two days, under the specific circumstances of the cited cases constituted unreasonable time as a matter of law.

In the case at bar, however, the check involved is not an ordinary bill of exchange but a manager's check. A manager's check is one drawn by the bank's manager upon the bank itself. It is similar to a cashier's check both as to effect and use. A cashier's check is a check of the bank's cashier on his own or another check. In effect, it is a bill of exchange drawn by the cashier of a bank upon the bank itself, and accepted in advance by the act of its issuance. It is really the bank's own check and may be treated as a promissory note with the bank as a maker. The check becomes the primary obligation of the bank which issues it and constitutes its written promise to pay upon demand. The mere issuance of it is considered an acceptance thereof. If treated as promissory note, the drawer would be the maker and in which case the holder need not prove presentment for payment or present the bill to the drawee for acceptance.

d. Effect of Delay

**THE INTERNATIONAL CORPORATE BANK (now UNION BANK OF THE PHILIPPINES) v. SPS. FRANCIS S. GUECO and MA. LUZ E. GUECO
G.R. No. 141968, February 12, 2001, Kapunan, J.**

A check must be presented for payment within a reasonable time after its issue, and in determining what is a "reasonable time," regard is to be had to the nature of the instrument, the usage of trade or business with respect to such instruments, and the facts of the particular case. The test is whether the payee employed such diligence as a prudent man exercises in his own affairs.

FACTS

The respondents Gueco Spouses obtained a loan from petitioner International Corporate Bank (now Union Bank of the Philippines) to purchase a car - a Nissan Sentra. In consideration thereof, the Spouses executed promissory notes which were payable in monthly installments and chattel mortgage over the car to serve as security for the notes. The Spouses defaulted in payment of installments.

Consequently, the bank filed a civil action for "Sum of Money with Prayer for a Writ of Replevin" before the MeTC of Pasay, City. Dr. Francis Gueco was served summons and was fetched by the sheriff and representative of the bank for a meeting in the bank premises. Desi Tomas, the Bank's Assistant Vice President demanded payment of the amount of P184,000.00 which represents the unpaid balance for the car loan. After some negotiations and computation, the amount was lowered to P154,000.00 which amount was further reduced after a renegotiation to P 150, 000.00.

In the meeting of August 29, 1995, respondent Dr. Gueco delivered a manager's check representing the reduced amount of P150, 000.00. Said check was given to Mr. Rivera, a representative of respondent bank. However, since Dr. Gueco refused to sign the joint motion to dismiss, he was made to execute a statement to the effect that he was withholding the payment of the check. Subsequently, in a letter addressed to Ms. Desi Tomas, vice president of the bank, dated September 4, 1995, Dr. Gueco instructed the bank to disregard the "hold order" letter and demanded the immediate release of his car, to which the former replied that the condition of signing the joint motion to dismiss must be satisfied and that they had kept the check which could be claimed by Dr. Gueco anytime.

It is the position of Spouses Gueco that the bank should return the car or its value and that the latter, because of its own negligence, should suffer the loss occasioned by the fact that the check had become stale. It is their position that delivery of the manager's check produced the effect of payment and, thus, the bank was negligent in opting not to deposit or use said check.

ISSUE

Whether the check in question has become stale due to the delay in presentment.

RULING

NO. In the case at bar, even assuming that presentment is needed, failure to present for payment within a reasonable time will result to the discharge of the drawer only to the extent of the loss caused by the delay. Failure to present on time, thus, does not totally wipe out all liability. In fact, the legal situation amounts to an acknowledgment of liability in the sum stated in the check. In this case, the Gueco spouses have not alleged, much less shown that they or the bank which issued the manager's check has suffered damage or loss caused by the delay or non-presentment. Definitely, the original obligation to pay certainly has not been erased.

It has been held that, if the check had become stale, it becomes imperative that the circumstances that caused its non-presentment be determined. In the case at bar, there is no doubt that the petitioner bank held on the check and refused to encash the same because of the controversy surrounding the signing of the joint motion to dismiss. We see no bad faith or negligence in this position taken by the Bank.

PHILIPPINE NATIONAL BANK v. BENITO SEETO

G.R. No. L-4388, August 13, 1952, Labrador, J.

The silence of Section 186 as to the indorser is due to the fact that his discharge is already expressly covered by the provision of Section 84, the indorser being a person secondarily liable on the instrument. The reason for the difference between the liability of the indorser and that of the drawer in case of

dishonor is that the drawer is not probably or necessarily prejudiced thereby, while an indorser is, actually or by legal presumption.

FACTS

Respondent Benito Seeto called at the branch of the Philippine National Bank, petitioner herein, at Surigao, Surigao, and presented a check, No. A-21096, in the amount of P5,000.00 dated at Cebu on March 10, 1948, payable to cash or bearer, and drawn by one Gan Yek Kiao against the Cebu branch of the Philippine Bank of Communications. After consultation with the employees of the branch, Seeto made a general and unqualified indorsement of the check, and petitioner's agency accepted it and paid respondent the amount of P5,000 therefor. The check was mailed to petitioner's Cebu branch on March 20, 1948, and was presented to the drawee bank for payment on April 9, 1948, but the check was dishonored for "insufficient funds." So the check was returned to petitioner's Surigao agency and upon receipt thereof by it on April 14, 1948, said branch immediately sent a letter to the respondent herein demanding immediate refund of the value of the check. A second communication of the same tenor was sent on April 26, 1948; to which respondent answered asking that plaintiff's contemplated suit be deferred while he was making inquiries about the reasons for the dishonor of the check. Thereafter, respondent refused to make the refund demanded, claiming that at the time of the negotiation of the check the drawer had sufficient funds in the drawee bank, and that had the petitioner's Surigao agency not delayed to forward the check until the drawer's funds were exhausted, the same would have been paid.

ISSUE

Whether the respondent is discharged of his obligation by reason of the delay in the presentment of the check to the drawee bank

RULING

YES. The respondent is discharged of his obligation due to the bank's delay in the presentment of the check. Although the drawer of a check is discharged only to the extent of loss caused by unreasonable delay in presentment, an indorser is wholly discharged thereby irrespective of any question of loss or injury. That respondent was discharged upon the dishonor of the check is based on Sections 84 and 186, the latter expressly requiring that a check must be presented for payment within a reasonable time after issue. The silence of Section 186 as to the indorser is due to the fact that his discharge is already expressly covered by the provision of Section 84, the indorser being a person secondarily liable on the instrument. The reason for the difference between the liability of the indorser and that of the drawer in case of dishonor is that the drawer is not probably or necessarily prejudiced thereby, while an indorser is, actually or by legal presumption.

The fact, admitted by the witnesses for the petitioner, that checks of the drawer issued subsequent to March 13, 1948, drawn against the same bank and cashed at the same Surigao agency, were not dishonored positively shows that the drawer had enough funds when he issued the check in question, and that had it not been for the unreasonable delay in its presentation for payment, the petitioner herein would have been able to receive payment therefor. The check is dated March 10 and was cashed by the petitioner's agency on March 13, 1948. It was not mailed until seven days thereafter, i.e., on March 20, 1948, or ten days after issue. No excuse was given for this delay. Assuming that it took one week, or say ten days, or until March 30, for the check to reach Cebu, neither can there be

any excuse for not presenting it for payment at the drawee bank until April 9, 1948, or 10 days after it reached Cebu. Therefore, there was unreasonable delay in the presentation of the check for payment at the drawee bank, and that as a consequence thereof, the indorser, respondent herein, was thereby discharged.

V. Miscellaneous Topics

4. Negotiable instrument as mode of payment

NEW PACIFIC TIMBER & SUPPLY COMPANY, INC. v. HON. ALBERTO V. SENERIS, RICARDO A. TONG and EX-OFFICIO SHERIFF HAKIM S. ABDULWAHID G.R. No. 41764, December 19, 1980, Concepcion Jr., J.

A cashier's check is deemed as cash. Moreover, since the said check had been certified by the drawee bank, by the certification, the funds represented by the check are transferred from the credit of the maker to that of the payee or holder, and for all intents and purposes, the latter becomes the depositor of the drawee bank, with rights and duties of one in such situation.

FACTS

In a case for collection of sum of money filed by Ricardo Tong against New Pacific Timber, a compromise judgment was rendered against the latter. For its failure to comply with judgment obligation, a writ of execution was issued for the amount of P63,130.00 pursuant to which, the Ex-Officio Sheriff levied on the personal properties of the petitioner.

Before the date of the auction sale, petitioner deposited with the Clerk of Court in his capacity as the Ex-Officio Sheriff P50,000.00 in Cashier's Check of the Equitable Banking Corporation and P13,130.00 in cash. Private respondent refused to accept the check and the cash and requested for the auction sale to proceed. The properties were sold for P50,000.00 to the highest bidder with a deficiency of P13,130.00.

New Pacific subsequently filed an ex-parte motion for issuance of certificate of satisfaction of judgment which was denied by the respondent Judge. Hence this present this petition, alleging that the respondent Judge abused his discretion in not granting the requested motion for the reason that the judgment obligation was fully satisfied before the auction sale with the deposit made by the petitioner to the Ex-Officio Sheriff.

ISSUE

Whether the respondent can validly refuse acceptance of the payment of the judgment obligation in Cashier's check which it deposited with the Ex-Officio Sheriff before the date of the scheduled auction sale

RULING

NO. It is to be emphasized in this connection that the check deposited by the petitioner in the amount of P50, 000.00 is not an ordinary check but a Cashier's Check of the Equitable Banking Corporation, a bank of good standing and reputation. As testified to by the Ex-Officio Sheriff with whom it has been

deposited, it is a certified crossed check. It is a well-known and accepted practice in the business sector that a Cashier's Check is deemed as cash. Moreover, since the said check had been certified by the drawee bank, by the certification, the funds represented by the check are transferred from the credit of the maker to that of the payee or holder, and for all intents and purposes, the latter becomes the depositor of the drawee bank, with rights and duties of one in such situation.

**PHILIPPINE AIRLINES, INC. v. HON. COURT OF APPEALS, HON. JUDGE RICARDO D. GALANO, Court of First Instance of Manila, Branch XIII, JAIME K. DEL ROSARIO, Deputy Sheriff, Court of First Instance, Manila, and AMELIA TAN
G.R. No. L-49188, January 30, 1990, Gutierrez, Jr., J.**

Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized (Art. 1249, Civil Code, par. 3).

FACTS

Amelia Tan (Tan), under the name and style of Able Printing Press commenced a complaint for damages before the Court of First Instance of Manila versus Philippine Airlines (PAL). Judgment was then rendered in favor of Tan. PAL then filed a subsequent appeal to the Court of Appeals (CA) where the decision of the lower court was modified in terms of the damages and attorney's fees to be paid, with all else affirmed. Notice of judgment was sent to the trial court to which Tan filed a motion for reconsideration, opposed to by PAL. The motion was denied for lack of merit and no further action was made by either party. Upon execution of the order, Tan moved for the issuance of an alias writ of execution since the judgment rendered by the courts remained unsatisfied. PAL opposed to the said writ reasoning that it had already settled its obligations through the deputy sheriff of the lower court, Emilio Reyes (Reyes), who had signed and receipted the cash vouchers. The CA denied the writ for being premature and ordered Reyes to appear before the court, but the latter has absconded.

A motion for the issuance of a partial writ of execution was filed by Tan, later on withdrawn and instead a Substitute Motion for Alias Writ of Execution was filed which the court granted. An urgent motion to quash was filed by PAL stating that it had already paid its debt, but a notice of garnishment against its accounts with Far Eastern Bank and Trust Company was issued eitherway. PAL thus filed a petition for certiorari with the Supreme Court.

ISSUE

Whether the payments by means of a check made extinguished the judgment debts

RULING

NO. In the absence of an agreement, either express or implied, payment means the discharge of a debt or obligation in money and unless the parties so agree, a debtor has no rights, except at his own peril, to substitute something in lieu of cash as medium of payment of his debt. Consequently, unless authorized to do so by law or by consent of the obligee a public officer has no authority to accept anything other than money in payment of an obligation under a judgment being executed. Strictly speaking, the acceptance by the sheriff of the petitioner's checks, in the case at bar, does not, per se, operate as a discharge of the judgment debt.

Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized (Art. 1249, Civil Code, par. 3).

If bouncing checks had been issued in the name of Amelia Tan and not the Sheriff's, there would have been no payment. After dishonor of the checks, Ms. Tan could have run after other properties of PAL. The theory is that she has received no value for what had been awarded her. Because the checks were drawn in the name of Emilio Z. Reyes, neither has she received anything. The same rule should apply.

**ROMAN CATHOLIC BISHOP OF MALOLOS, INC. v. INTERMEDIATE APPELLATE COURT, and
ROBES- FRANCISCO REALTY AND DEVELOPMENT CORPORATION**

G.R. No. 72110, November 16, 1990, Sarmiento, J.

“Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment.”

FACTS

The Roman Catholic Bishop of Malolos, Inc. (Bishop of Malolos) and the president of Robes-Francisco Realty and Development Corporation (Robes-Francisco Realty) entered into a contract of sale over a parcel of land, with a provision for cancellation, forfeiture of previous payments, and reconveyance in case of failure to complete the payment within the prescribed period. The said parcel of land was with a principal balance of P100,000.00, a downpayment of P23,930.00, plus a 12% interest per annum, payable within 4 years from execution of the contract. Robes-Francisco Realty failed to pay within the stipulated period and asked that it be allowed to pay the principal amount in 3 equal installments of 6 months each with the first installment and the accrued interest to be paid immediately upon approval of the request. However, the request was denied by the Bishop of Malolos and granted them instead a 5-day grace period from receipt of the denial and to pay the total balance, or the cancellation clause will be implemented. Robes-Francisco Realty then asked for an extension of the grace period to 30 days but the same was denied. In another letter by Robes-Francisco Realty, it protested against the Bishop of Malolos its alleged refusal to accept the tender of payment made by the former on the last day of the grace period. Robes-Francisco Realty then demanded that the execution of an absolute deed of sale, and after which it would pay the full amount of the balance.

The trial court did not give credence to the evidence of Robes-Francisco Realty, and noted the inconsistencies of the testimonies of its president. The trial court also considered as fatal the failure to present in court the certified personal checks allegedly tendered as payment to the Bishop of Malolos. Upon appeal to the CA, the decision of the lower court was reversed, concluding that Robes-Francisco Realty had sufficient available funds, which ipso facto made the tender of payment valid.

ISSUE

Whether an offer of a check as a tender of payment under a contract which stipulates that the consideration of the sale is in Philippine Currency is valid

RULING

NO. A certified personal check which is not legal tender nor the currency stipulated, cannot constitute valid tender of payment. The first paragraph of Art. 1249 of the Civil Code provides that "the payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

Hence, where the tender of payment by the Robes-Francisco Realty was not valid for failure to comply with the requisite payment in legal tender or currency stipulated within the grace period and as such, was validly refused receipt by the Bishop of Malolos, the subsequent consignation did not operate to discharge the former from its obligation to the latter.

ALFARO FORTUNADO et al. v. COURT OF APPEALS, BASILISA CAMPANO, as City Sheriff of Iligan City, REGISTER OF DEEDS, Iligan City, ANGEL L. BAUTISTA and NATIONAL STEEL CORPORATION

G.R. No. 78556, April 25, 1991, Cruz, J.

A check may be used for the exercise of the right of redemption, the same being a right and not an obligation. The tender of a check is sufficient to compel redemption but is not in itself a payment that relieves the redemptioner from his liability to pay the redemption price.

FACTS

The RTC of Quezon City ordered Angel Bautista to pay Alfaro Fortunado the amount of damages. Pursuant to the judgment, Sheriff Balisa Campano levied upon 2 parcels of land registered in the name of Bautista. At this juncture, National Steel Corporation (NSC) had already purchased said parcels of land but was not yet registered under its name. The lots were sold at public auction with Fortunado as the only bidder, and a certificate of sale was consequently issued. NSC filed an urgent motion to redeem both lots which were opposed to by Fortunado arguing that it did not have any personality to intervene. Since the redemption period was about to expire while the motion remained unresolved, NSC issued to the sheriff a check in the amount of P296,384.43 as redemption price. The check was acknowledged by the said sheriff.

Bautista then sent a letter to the sheriff along with NSC's conformity in which he availed himself of NSC's check to redeem one of the lots. A certificate of redemption was issued in favor of Bautista and NSC. However, Bautista, in another letter, wrote that he would no longer effect the redemption since there was nothing to redeem, with the auction being null and void. He then prayed that the amount covered by the check be delivered and kept by the Clerk of Court until all incidents relative to the validity of the auction sale were resolved.

Fortunado's counsel was notified of the deposit of the check but the same was rejected because it was not legal tender and was not intended for payment but merely for deposit. Instead, Fortunado requested that a final deed of sale be issued. The request was denied. Consequently, a petition for mandamus was filed by Fortunado with the CA which the court denied but granted the injunction to restrain the registration of the certificate of redemption.

ISSUE

Whether redemption has been validly effected by tender of payment through cross check

RULING

NO. A payment by check or draft or bank bills or currency which is not legal tender is effective if the officer accepts such payment. If in good faith the redemptioner pays, and the officer receives before the expiration of the time of redemption, an ordinary banker's check, the payment is regarded as sufficient. The Supreme Court has held in one occasion that, "...It goes without saying that if he had seen fit to do so, the officer could have required payment to be made in lawful money, and he undoubtedly, in accepting a check, placed himself in a position where he could be liable to the purchaser at the public auction if any damage had been suffered by the latter as a result of the medium in which payment was made. But this cannot affect the validity of the payment. The check as a medium of payment in commercial transactions is too firmly established by usage to permit of any doubt upon this point at the present day..."

NORBERTO TIBAJIA, JR. and CARMEN TIBAJIA v. THE HONORABLE COURT OF APPEALS and EDEN TAN G.R. No. 100290, June 4, 1993, Padilla, J.

A check is not legal tender and a creditor may validly refuse payment by check, whether it be a manager's, cashier's or personal check.

FACTS

Eden Tan filed against Norberto, Jr., and Carmen Tibajia (Tibajia spouses) a suit for collection of a sum of money. A writ of attachment was issued by the trial court with a return by the sheriff stating that a deposit made by the spouses in the amount of P442, 750.00 had been garnished by him in another case. The trial court rendered a decision in favor of Tan. Upon finality of the decision with the Court of Appeals (CA), Tan filed the motion for execution and thereafter garnished the funds on deposit with the trial court.

The spouses deposited a total of P398, 483.70 both in cash and in cashier's check. Tan however refused to accept the payment and insisted that the garnished funds deposited be withdrawn to satisfy judgment of obligation. The spouses filed a motion to lift the writ of execution since the debt had already been paid. Said motion was however denied on the ground that payment in cashier's check is not payment in legal tender and that payment was made by a third party other than the defendant. The spouses' subsequent motion for reconsideration was denied, prompting a petition for certiorari, prohibition, and injunction with the CA. The appellate court however denied the petition.

ISSUE

Whether payment by check is payment in legal tender as required in the Civil Code and the Central Bank Act

RULING

NO. In the recent cases of *Philippine Airlines, Inc. v. Court of Appeals and Roman Catholic Bishop of Malolos, Inc. v. Intermediate Appellate Court*, the Court held that:

"A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor."

Spouses Tibajia erroneously rely on one of the dissenting opinions in the *Philippine Airlines* case to support their cause. The dissenting opinion however does not in any way support the contention that a check is legal tender but, on the contrary, states that "If the PAL checks in question had not been encashed by Sheriff Reyes, there would be no payment by PAL and, consequently, no discharge or satisfaction of its judgment obligation." Moreover, the circumstances in the *Philippine Airlines* case are quite different from those in the case at bar for in that case the checks issued by the judgment debtor were made payable to the sheriff, Emilio Z. Reyes, who encashed the checks but failed to deliver the proceeds of said encashment to the judgment creditor.

In the more recent case of *Fortunado v. Court of Appeals*, the Court stressed that, "We are not, by this decision, sanctioning the use of a check for the payment of obligations over the objection of the creditor."

RAMON TAN v. THE HONORABLE COURT OF APPEALS and RIZAL COMMERCIAL BANKING CORPORATION
G.R. No. 108555, December 20, 1994, Kapunan, J.

An ordinary check is not a mere undertaking to pay an amount of money.

FACTS

Ramon Tan (Tan) secured a Cashier's Check from the Philippine commercial Industrial Bank (PCIB) payable to his order. He deposited said check in his RCBC account but RCBC erroneously sent the same for clearing with the Central Bank, which was returned after having been "missent" or "misrouted". RCBC then debited the amount covered by the check from Tan's account, without informing Tan. Knowing that a cashier's check was as good as cash, Tan issued 2 personal checks in the name of Go Lac presented more than 30 days from Tan's deposit of the cashier's check. However, the issued personal checks were returned twice for insufficiency of funds.

Alleging that Tan suffered humiliation due to the bouncing checks, filed a complaint against RCBC in the trial court of Palawan and Puerto Princesa. The trial court rendered a decision in favor of Tan. Upon RCBC's appeal to the Court of Appeals (CA), the decision of the lower court was reversed.

ISSUE

Whether the reliance on the perception that a cashier's check is as good as cash is misplaced.

RULING

NO. Tan's reliance on the layman's perception that a cashier's check is as good as cash is not entirely misplaced, as it is rooted in practice, tradition, and principle. The Court sees no reason thus why this so-called discretion was not exercised in favor of Tan, especially since PCIB and RCBC are members of the same clearing house group relying on each other's solvency. RCBC could surely rely on the solvency of PCIB when the latter issued its cashier's check. This is because an ordinary check is not a mere undertaking to pay an amount of money. There is an element of certainty or assurance that it will be paid upon presentation that is why it is perceived as a convenient substitute for currency in commercial and financial transactions. The basis of the perception being confidence. Any practice that destroys that confidence will impair the usefulness of the check as a currency substitute and create havoc in trade circles and the banking community.

What was presented for deposit in the instant cases was not just an ordinary check but a cashier's check payable to the account of the depositor himself. A cashier's check is a primary obligation of the issuing bank and accepted in advance by its mere issuance. By its very nature, a cashier's check is the bank's order to pay drawn upon itself, committing in effect its total resources, integrity and honor behind the check. A cashier's check by its peculiar character and general use in the commercial world is regarded substantially to be as good as the money which it represents. In this case, therefore, PCIB by issuing the check created an unconditional credit in favor of any collecting bank.

MYRON C. PAPA, Administrator of the Testate Estate of Angela M. Butte v. A.U. VALENCIA and CO. INC., FELIX PEÑARROYO, SPS. ARSENIO B. REYES & AMANDA SANTOS, and DELFIN JAO
G.R. No. 105188, January 23, 1998, Kapunan, J.

The acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given.

FACTS

A.U. Valencia and Felix Penarroyo filed a complaint for specific performance against Myron Papa in his capacity as administrator of the Testate Estate of Angela Butte. Papa sold to Penarroyo a parcel of land; prior to the sale of the said land, the lot was mortgaged to the Associated Banking Corporation which refused to release it until all the other mortgaged properties of Butte were also redeemed. Penarroyo then caused the annotation on the title of the lot his rights and interests over the property. The trial court rendered a decision in favor of Penarroyo and Valencia.

Upon Appeal to the CA, Papa alleged that the sale was never “consummated” as he did not encash the check paid by Penarroyo. Hed maintained that the payment made was only in the amount of P5,000.00 in cash as earnest money. This appeal was however dismissed.

ISSUE

Whether the sale was consummated.

RULING

YES. It is an undisputed fact that respondents Valencia and Peñarroyo had given petitioner Myron C. Papa the amounts of Five Thousand Pesos (P5,000.00) in cash on 24 May 1973, and Forty Thousand Pesos (P40,000.00) in check on 15 June 1973, in payment of the purchase price of the subject lot. Papa himself admits having received said amounts, and having issued receipts therefor. Papa's assertion that he never encashed the aforesaid check is not substantiated and is at odds with his statement in his answer that "he can no longer recall the transaction which is supposed to have happened 10 years ago." After more than ten (10) years from the payment in part by cash and in part by check, the presumption is that the check had been encashed. As already stated, he even waived the presentation of oral evidence.

Granting that petitioner had never encashed the check, his failure to do so for more than ten (10) years undoubtedly resulted in the impairment of the check through his unreasonable and unexplained delay.

While it is true that the delivery of a check produces the effect of payment only when it is cashed, pursuant to Art. 1249 of the Civil Code, the rule is otherwise if the debtor is prejudiced by the creditor's unreasonable delay in presentment. The acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given. It has, likewise, been held that if no presentment is made at all, the drawer cannot be held liable irrespective of loss or injury unless presentment is otherwise excused. This is in harmony with Article 1249 of the Civil Code under which payment by way of check or other negotiable instrument is conditioned on its being cashed, except when through the fault of the creditor, the instrument is impaired. The payee of a check would be a creditor under this provision and if its no-payment is caused by his negligence, payment will be deemed effected and the obligation for which the check was given as conditional payment will be discharged.

Considering that respondents Valencia and Peñarroyo had fulfilled their part of the contract of sale by delivering the payment of the purchase price, said respondents, therefore, had the right to compel petitioner to deliver to them the owner's duplicate of TCT No. 28993 of Angela M. Butte and the peaceful possession and enjoyment of the lot in question.

BPI EXPRESS CARD CORPORATION v. COURT OF APPEALS and RICARDO J. MARASIGAN

G.R. No. 120639, September 25, 1998, Kapunan, J.

A check is only a substitute for money and not money, the delivery of such an instrument does not, by itself operate as payment.

FACTS

BPI Express Card Corporation (BECC) issued in favor of Attorney Ricardo J. Marasigan a credit card with a credit limit of P5, 000.00 subject to the terms and conditions under a contract. Subsequently, his statement of account for the month of October in the amount of P8, 987.00 was not paid in due time. Hence, BECC demanded its immediate payment of his outstanding account, and required him to issue a check for P15, 000.00 which would include his future bills, otherwise his credit card will be suspended.

Consequently, Marasigan issued a post-dated check in the amount of P15, 000.00 which was received by BECC. Thereafter, BECC sent a letter by ordinary mail to Marasigan informing him of the temporary suspension of the privileges of his credit card until his outstanding account is settled within five (5) days upon receipt of the letter. There was no showing whether Marasigan received the said letter.

Meanwhile, Marasigan treat his friends over Café Adriatico. When he presented his credit card for payment of the bill, it was dishonored. Feeling embarrassed, Marasigan obtained a stop-payment order from Far East Bank check by virtue of which, he sent a letter to BEC requesting for the withholding of deposit of the postdated check on the ground that BEC violated their agreement of not suspending the privileges of the credit card if he will issue the required check. Consequently, Marasigan filed a complaint for damages against BEC with the RTC which ruled in its favor on the ground that there was an assurance given by BEC that the credit card will be honored as long as Marasigan pays the obligation. On appeal, the CA affirmed the RTC decision with modification. Hence, this petition was filed.

ISSUE

Whether the receipt of the postdated check constitutes valid payment.

RULING

NO. The court agrees with the findings of the respondent court, that there was an arrangement between the parties, wherein BECC required Marasigan to issue a check worth P15, 000.00 as payment for the latter's billings. However, the Court finds that the Marasigan was not able to comply with his obligation.

Clearly, the purpose of the arrangement between the parties on November 22, 1989, was for the immediate payment of the Marasigan's outstanding account, in order that his credit card would not be suspended.

As agreed upon by the parties, on the following day, Marasigan did issue a check for P15, 000.00. However, the check was postdated 15 December 1989. Settled is the doctrine that a check is only a substitute for money and not money, the delivery of such an instrument does not, by itself operate as payment. This is especially true in the case of a postdated check. Thus, the issuance by Marasigan of the postdated check was not effective payment. It did not comply with his obligation under the arrangement with BECC. The latter was therefore justified in suspending his credit card.

CEBU INTERNATIONAL FINANCE CORPORATION v. COURT OF APPEALS, VICENTE ALEGRE

G.R. No. 123031, October 12, 1999, Quisumbing, J.

A check, whether a managers check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized.

FACTS

Vicente Alegre invested P500, 000.00 in cash in favor of Cebu International Finance Corporation (CIFIC), a company engaged in money market operation. Consequently, CIFIC issued a Bank of the Philippine Islands (BPI) check in the amount of P514, 390.00 representing the proceeds of Alegre's matured investment plus interest. Thereafter, the check was drawn from CIFIC's account with BPI.

When Alegre's wife deposited the BPI check with RCBC, it was dishonored on the ground that it was a counterfeit check hence a subject of an investigation. Alegre notified CIFIC of the dishonored check and demanded its payment in cash but to no avail. Hence, he filed a complaint for recovery of a sum of money against the latter before the RTC. CIFIC contended that BPI should be held liable since it accepted the check and the latter's act of deducting its amount against CIFIC's account constituted a discharge of CIFIC's liability. Subsequently, CIFIC filed a separate collection suit against BPI before the RTC on the ground that the latter unlawfully deducted from CIFIC's checking account, counterfeit checks amounting to P1, 724, 364.58. The action included the prayer to collect the amount of the check paid to Vicente Alegre but dishonored by BPI. The RTC ruled in favor of Alegre which was affirmed by the CA. Hence, this petition was filed.

ISSUE

Whether CIFIC had already been discharged from the liability of paying the value of the check by virtue of BPI's acceptance of the instrument

RULING

NO. Article 1249 of the New Civil Code deals with a mode of extinction of an obligation and expressly provides for the medium in the payment of debts. It provides that, "the payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency, which is legal tender in the Philippines. The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired. In the meantime, the action derived from the original obligation shall be held in abeyance."

Considering the nature of a money market transaction, the above-quoted provision should be applied in the present controversy. As held in *Perez vs. Court of Appeals*, a money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in open market. In a money market transaction, the investor is a lender who loans his money to a borrower through a middleman or dealer.

In the case at bar, the money market transaction between the petitioner and the private respondent is in the nature of a loan. The private respondent accepted the check, instead of requiring payment in money. Yet, when he presented it to RCBC for encashment, the same was dishonored by non-acceptance, with BPI's annotation: Check (is) subject of an investigation. These facts were testified to by BPI's manager. Under these circumstances, and after the notice of dishonor, the holder has an immediate right of recourse against the drawer, and consequently could immediately file an action for the recovery of the value of the check.

BANK OF THE PHILIPPINE ISLANDS v. COURT OF APPEALS and BENJAMIN C. NAPIZA
G.R. No. 112392, February 29, 2000, Ynares-Santiago, J.

In depositing the check in his name, private respondent Napiza did not become the outright owner of the amount stated therein. By depositing the check with BPI, Napiza was, in a way, merely designating BPI as the collecting bank.

FACTS

By way of accommodation loan, Henry Chan went to the office of Benjamin C. Napiza requesting that a Continental Manager's check in the amount of \$2, 000.00 be deposited in the latter's dollar account with BPI for clearance purposes. After which, Chan and Napiza agreed that as soon as the check was cleared, the latter shall deliver a signed blank withdrawal slip payable to Ramon De Guzman and Agnes De Guzman.

Consequently, one named Ruben Gayon, Jr. was able to withdraw an amount of \$2, 541.61 from the Napiza's dollar account using the signed blank withdrawal slip. Thereafter, BPI was informed by Wells Fargo Bank International that the Continental Manager's check deposited by Napiza was a counterfeit check, thus BPI dishonored the check and demanded the latter to return the withdrawn amount of \$2, 541.61. Napiza refused to pay the said amount on the ground that BPI failed to abide by its own rules when it allowed a withdrawal without the presentation of his savings passbook. On the other hand, BPI contended that when Napiza affixed his signature at the dorsal side of the check, he warranted that that the instrument is genuine and in all respects what it purports to be. Thus, Napiza should be liable with the amount therein.

The RTC ruled in favor of Napiza on the ground that it was incumbent upon BPI to credit the value of the check in question to the account of Napiza only upon receipt of the notice of final payment and should not have authorized the withdrawal from the latter's account of the value or proceeds of the check. Having admitted that it committed a "mistake" in not waiting for the clearance of the check before authorizing the withdrawal of its value or proceeds, BPI should suffer the resultant loss. The CA affirmed the RTC's decision.

ISSUE

Whether in depositing the check by way of accommodation, Napiza became the outright owner of the amount stated therein.

RULING

NO. As correctly held by the Court of Appeals, in depositing the check Napiza's name, private respondent did not become the outright owner of the amount stated therein. Under the above rule, by depositing the check with BPI, Napiza was, in a way, merely designating BPI as the collecting bank. This is in consonance with the rule that a negotiable instrument, such as a check, whether a managers check or ordinary check, is not legal tender. As such, after receiving the deposit, under its own rules, BPI shall credit the amount in Napiza's account or infuse value thereon only after the drawee bank shall have paid the amount of the check or the check has been cleared for deposit. Again, this is in accordance with ordinary banking practices and with this Courts pronouncement 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." The rule finds more meaning in this case where the check involved is drawn on a foreign bank and therefore collection is more difficult than when the drawee bank is a local one even though the check in question is a manager's check.

**THE INTERNATIONAL CORPORATE BANK (now UNION BANK OF THE PHILIPPINES) v. SPS. FRANCIS S. GUECO and MA. LUZ E. GUECO
G.R. No. 141968, February 12, 2001, Kapunan, J.**

A stale check is one which has not been presented for payment within a reasonable time after its issue. It is valueless and, therefore, should not be paid. Under the negotiable instruments law, an instrument not payable on demand must be presented for payment on the day it falls due. When the instrument is payable on demand, presentment must be made within a reasonable time after its issue. In the case of a bill of exchange, presentment is sufficient if made within a reasonable time after the last negotiation thereof.

FACTS

Spouses Francis S. Gueco and Ma. Luz E. Gueco obtained a car loan payable in monthly installments and secured by a chattel mortgage over the car in favor of International Corporate Bank (now Union Bank of the Philippines). Consequently, Spouses Gueco defaulted in payment of installments in the amount of P184,000. Thus, the bank filed a civil action for Sum Of Money With Prayer For A Writ Of Replevin before the Metropolitan Trial Court (MTC).

Meanwhile, Spouses Gueco and the bank had several negotiations which led to the reduction of the unpaid balance to P150, 000.00. Thereafter, spouses Gueco delivered a manager's check in the said amount but the car was not released because the former refused to sign the Joint Motion to Dismiss.

After several demand letters and meetings with bank representatives, spouses initiated a civil action for damages before the MTC which dismissed the complaint for lack of merit. On appeal before the Regional Trial Court (RTC) which reversed the MTC decision. The court upheld the spouses contention that the bank should return the car or its value and that the latter, because of its own negligence in not opting to deposit or use the check, should suffer the loss occasioned by the fact that the check had become stale. The Court of Appeals (CA) affirmed the RTC decision in toto. Hence, this petition for review on certiorari under rule 45 of the Rules of Court was filed.

ISSUE

Whether the delivery of the manager's check produced the effect of payment.

RULING

NO. In the case at bar, the check involved is not an ordinary bill of exchange but a manager's check. A manager's check is one drawn by the banks manager upon the bank itself. It is similar to a cashier's check both as to effect and use. A cashier's check is a check of the banks cashier on his own or another check. In effect, it is a bill of exchange drawn by the cashier of a bank upon the bank itself, and accepted in advance by the act of its issuance. It is really the banks own check and may be treated as

a promissory note with the bank as a maker. The check becomes the primary obligation of the bank which issues it and constitutes its written promise to pay upon demand. The mere issuance of it is considered an acceptance thereof. If treated as promissory note, the drawer would be the maker and in which case the holder need not prove presentment for payment or present the bill to the drawee for acceptance.

Even assuming that presentment is needed, failure to present for payment within a reasonable time will result to the discharge of the drawer only to the extent of the loss caused by the delay. Failure to present on time, thus, does not totally wipe out all liability. In fact, the legal situation amounts to an acknowledgment of liability in the sum stated in the check. In this case, the Gueco spouses have not alleged, much less shown that they or the bank which issued the managers check has suffered damage or loss caused by the delay or non-presentment. Definitely, the original obligation to pay certainly has not been erased.

**FAR EAST BANK & TRUST COMPANY v. DIAZ REALTY INC.
G.R. No. 138588, August 23, 2001, Panganiban, J.**

For a valid tender of payment, it is necessary that there be a fusion of intent, ability and capability to make good such offer, which must be absolute and must cover the amount due. Though a check is not legal tender, and a creditor may validly refuse to accept it if tendered as payment, one who in fact accepted a fully funded check after the debtors manifestation that it had been given to settle an obligation is estopped from later on denouncing the efficacy of such tender of payment.

FACTS

Diaz Realty Inc. obtained a loan in the amount of P720, 000.00 with an interest of 20% per annum secured by a real estate mortgage in favor of the Pacific Banking Corporation (PaBC). The real estate mortgage constitutes two parcels of land which were being rented by Allied Bank of the Philippines (Allied). Diaz Realty, PaBC and Allied agreed that the rental payments shall be paid by the latter in favor of PaBC.

Consequently, PaBC was placed under receivership. Thereafter, Far East Bank & Trust Company purchased the credits of Diaz Realty. After being informed of its purchase, the latter went to PaBC office to inquire the amount of its loan which amounted to P1, 447, 142.03. Later on, Diaz Realty tendered to FEBTC an Interbank check in the amount of P1, 450, 000.00 for the full payment of its loan obligation but was asked to deposit the check with its Davao City Branch. Subsequently, FEBTC told Diaz Realty to change the P1, 450, 000.00 deposit into a money market placement which it did. When there was still no news whether or not FEBTC accepted its tender of payment, Diaz Realty filed a complaint before RTC.

The RTC ruled in favor of Diaz Realty which the CA sustained on the ground that it has made a valid tender of payment in the sum of P1, 450, 000.00 in favor of FEBTC because the latter failed to effectively rebut Diaz Realty's evidence that it so tendered the check to liquidate its indebtedness, and that FEBTC had unilaterally treated the same as a deposit instead. Hence, this petition was filed.

ISSUE

Whether there was a valid tender of payment made by Diaz Realty in favor of FEBTC.

RULING

YES. In the present case, FEBTC did not refuse Diaz Realty's check. On the contrary, it accepted the check which, it insisted, was a deposit. As earlier stated, the check proved to be fully funded and was in fact honored by the drawee bank. Moreover, petitioner was in possession of the money for several months.

Tender of payment is the definitive act of offering the creditor what is due him or her, together with the demand that the creditor accept the same. More important, there must be a fusion of intent, ability and capability to make good such offer, which must be absolute and must cover the amount due.

That Diaz Realty intended to settle its obligation with petitioner is evident from the records of the case. After learning that its loan balance was P1, 447, 142.03, it presented to FEBTC a check in the amount of P1, 450, 000.00, with the specific notation that it was for full payment of its Pacific Bank account that had been purchased by FEBTC. The latter accepted the check; even if it now insists that it considered the same as a mere deposit. The check was sufficiently funded, as in fact it was honored by the drawee bank. When FEBTC refused to release the mortgage, Diaz Realty instituted the present case to compel the bank to acknowledge the tender of payment, accept payment and cancel the mortgage. These acts demonstrate Diaz Realty's intent, ability and capability to fully settle and extinguish its obligation to FEBTC.

TEDDY G. PABUGAIS, petitioner, v. DAVE P. SAHIJWANI, respondent
G.R. No. 156846, February 23, 2004, Ynares-Santiago, J.

Petitioner failed to deliver the necessary documents regarding the sale of lot so he returned to the option/reservation fee but the respondent refused. So petitioner filed a complaint for consignation. Respondents dispute the validity of the tender of payment. The Supreme Court held that the tender of payment through a manager's check is valid with exceptions.

FACTS

Teddy Pabugais (Teddy) sold to Dave Sahijwani (Dave) a lot in the amount of 15,487,500 pesos. Dave paid Teddy the amount of 600,000 pesos as option/reservation fee and the balance to be paid within 60 days from the execution of the contract, simultaneous with the delivery of the owner's duplicate Transfer Certificate of Title in Dave's name and the deed of absolute sale. The parties further agreed that failure on the part of respondent to pay the balance entitles petitioner to forfeit the 600,000 pesos option/reservation fee; while non-delivery by the petitioner of the necessary documents obliges him to return to respondent said option/reservation fee. Petitioner failed to deliver the required documents. He returned to respondent the 600,000 pesos by way of a manager's check. Respondent refused thus prompting petitioner to file a complaint for consignation. The Regional Trial Court rendered a decision declaring the consignation invalid for failure to prove that petitioner tendered payment. The Court of Appeals (CA) reversed the RTC ruling declaring the tender of payment valid.

ISSUE

Whether the tender of payment through manager's check is valid.

RULING

YES. The tender of payment through a manager's check is valid. While it is true that in general, a manager's check is not legal tender, the creditor has the option of refusing or accepting it. Payment in check by the debtor may be acceptable as valid if no prompt objection to said payment is made. Consequently, petitioner's tender of payment in the form of manager's check is valid.

SECURITY BANK AND TRUST COMPANY, *petitioner*, v. RIZAL COMMERCIAL BANKING CORPORATION, *respondent*

G.R. No. 170984, January 30, 2009, Quisumbing, J.

Where the questioned check, which was payable to Cash, appeared regular on its face, and the bank found nothing unusual in the transaction, as the drawer usually issued checks in big amounts made payable to cash, RCBC cannot be faulted in paying the value of the questioned check.

FACTS

Security Bank and Trust Company (SBTC) issued a manager's check for 8 million pesos, payable to cash, as proceeds of the loan granted to Guidon Construction Development Corporation (GCDC). On the same day, the same check was deposited by Continental Manufacturing Corporation (CMC) in its current account with Rizal Commercial Banking Corporation (RCBC). RCBC immediately honoured the 8 million pesos check and allowed CMC to withdraw the same. The next day, GCDC issued a stop payment order to SBTC claiming that the check was released to a third party by mistake. Consequently, SBTC dishonoured and returned the manager's check to RCBC. Thereafter, the check was returned back and forth between the two banks resulting in automatic debits and credits in each banks' clearing balance. RCBC then filed a complaint for damages against SBTC. RCBC claims it is a holder in due course. SBTC contended that all banks are mandated to verify the genuineness and validity of all checks before allowing drawings of the same. Thus RCBC should bear the consequences.

ISSUE

Whether SBTC is liable on the manager's check it issued.

RULING

YES. It must be noted that the questioned check issued by SBTC is not just an ordinary check but a manager's check. A manager's check is one drawn by a bank's manager upon the bank itself. It stands on the same footing as a certified check, which is deemed to have been accepted by the bank that certified it. As the bank's own check, a manager's check becomes the primary obligation of the bank and is accepted in advance by the act of its issuance.

SBTC cannot escape liability by invoking Monetary Board Resolution No. 2202 dated December 21, 1979, prohibiting drawings against uncollected deposits. SBTC's liability as drawer remains the same – by drawing the instrument, it 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.

5. Liabilities of Parties under B.P. 22

EVANGELINE DANA O, petitioner, vs. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, respondents
G.R. No. 122353, June 6, 2001, THIRD DIVISION, SANDOVAL-GUTIERREZ, J.

In King vs. People, this Court, through Justice Artemio V. Panganiban, held: "To hold a person liable under B.P. Blg. 22, it is not enough to establish that a check issued was subsequently dishonored. It must be shown further that the person who issued the check knew 'at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment.' Because this element involves a state of mind which is difficult to establish, Section 2 of the law creates a prima facie presumption of such knowledge.

FACTS

Private complainant Luviminda Macasieb is in the business of rediscounting checks. Arturo Estrada, the branch manager of the Monte de Piedad bank at Pasay City was one of her agents, authorized to transact rediscounting business with any person for and in behalf of the private complainant.

"Sometime in December 1991, appellant (Evangeline Danao) went to see Arturo Estrada at his office to seek an additional loan, being a depositor and borrower of the bank. Estrada had to refuse appellant's request, considering that her existing loan had not yet been fully liquidated.

"Appellant then asked Estrada if he knew a private lender. Estrada informed appellant that he knew one who lends money with postdated checks as security. Appellant agreed to the arrangement, Estrada phoned private complainant Luviminda Macasieb and told her of appellant's desire to get a loan with postdated checks as security. Macasieb talked with appellant over the phone and explained that the checks would be subject to a 10% interest every month. After the telephone conversation with appellant, Macasieb instructed Estrada to release the amount of P29,750.00 from the petty cash fund entrusted by her to Estrada. After appellant received the said amount from Estrada, she issued two postdated checks in the total amount of P29,750.00. The checks were Monte de Piedad Check No. 128796 dated 25 January 1992 in the amount of P14,750.00; and the other check No. 130851 dated 24 January 1992 in the amount of P15,000.00.

"On the maturity dates of the two checks, private complainant deposited the same at the PCIB Branch at Heroes Hill, Quezon City. However, the checks were dishonored for the reason that the account of appellant had already been closed. Macasieb later received check slips together with the returned checks. The returned checks bear the stamped words "ACCOUNT CLOSED". Estrada informed appellant of the dishonor of the checks and asked her to redeem the same but to no avail. A letter was sent by Atty. Jose S. Padolina, counsel for private complainant, demanding that appellant settle her obligation. Appellant, however, failed to heed the demand letter.

"The appellant does not deny that she issued the two postdated checks. She claims, however, that she has fully paid private complainant."

The Trial Court did not give credence to Evangeline's defense, hence, convicted her. On appeal, the Court of Appeals, affirmed the Trial Court's decision.

ISSUE

Whether or not the fact that the check issued was subsequently dishonored is enough to hold the person liable for BP 22.

RULING

No. In *King vs. People*, this Court, through Justice Artemio V. Panganiban, held: “To hold a person liable under B.P. Blg. 22, it is not enough to establish that a check issued was subsequently dishonored. It must be shown further that the person who issued the check knew ‘at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment.’ Because this element involves a state of mind which is difficult to establish, Section 2 of the law creates a prima facie presumption of such knowledge.

This Court further ruled in *King*, “in order to create the prima facie presumption that the issuer knew of the insufficiency of funds, it must be shown that he or she received a notice of dishonor and, within five banking days thereafter, failed to satisfy the amount of the check or make arrangement for its payment.”

If such notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or if there is no proof as to when such notice was received by the drawer, then the presumption or prima facie evidence as provided in Section 2 of B.P. Blg. 22 cannot arise, since there would simply be no way of reckoning the crucial 5-day period.

We clarified in *Lao vs. Court of Appeals* that “(a)lthough the offense charged is a malum prohibitum, the prosecution is not thereby excused from its responsibility of proving beyond reasonable doubt all the elements of the offense, one of which is knowledge of the insufficiency of funds.”

RUTH D. BAUTISTA, petitioner, vs. **COURT OF APPEALS, OFFICE OF THE REGIONAL STATE PROSECUTOR, REGION IV, and SUSAN ALOÑA**, respondents
G.R. No. 143375, July 6, 2001, SECOND DIVISION, BELLOSILLO, J.

Section 2 of BP 22 is clear that a dishonored check presented within the ninety (90)-day period creates a prima facie presumption of knowledge of insufficiency of funds, which is an essential element of the offense. Since knowledge involves a state of mind difficult to establish, the statute itself creates a prima facie presumption of the existence of this element from the fact of drawing, issuing or making a check, the payment of which was subsequently refused for insufficiency of funds. The term prima facie evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction

FACTS

Sometime in April 1998 petitioner Ruth D. Bautista issued to private respondent Susan Aloña a check dated 8 May 1998 for P1,500,000.00 drawn on Metrobank Cavite City Branch.

On 20 October 1998 private respondent presented the check for payment. The drawee bank dishonored the check because it was drawn against insufficient funds.

On 16 March 1999 private respondent filed a complaint-affidavit with the City Prosecutor of Cavite City.

Petitioner then submitted her own counter-affidavit asserting in her defense that presentment of the check within ninety (90) days from due date thereof was an essential element of the offense of violation of BP 22. Since the check was presented for payment 166 days after its due date, it was no longer punishable under BP 22.

On 22 April 1999, the investigating prosecutor issued a resolution recommending the filing of an *Information* against petitioner for violation of BP 22, which was approved by the City Prosecutor. Bautista filed a motion to review the resolution with Office of the Regional State Prosecutor (ORSP) for Region IV, but it was denied.

On 1 October 1999 petitioner filed with the Court of Appeals a petition for review of the resolution of the ORSP. The appellate court issued the assailed Resolution issued by ORSP. CA further stated it is an error to file a petition for review under Rule 43 of Rules of Civil Procedure in their case because ORSP resolution does not fall under a quasi-judicial body.

The petitioner escalated the complaint to SC using the defense that a prosecutor conducting a preliminary investigation performs a quasi-judicial function.

ISSUE

Whether or not the 90-day period an essential element of BP 22, to warrant the defense of the petitioner.

RULING

The elements of the offense under BP 22 are (a) the making, drawing and issuance of any check to apply to account or for value; (b) the maker, drawer or issuer knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and, (c) the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

The ninety (90)-day period is not among these elements. Section 2 of BP 22 is clear that a dishonored check presented within the ninety (90)-day period creates a *prima facie* presumption of knowledge of insufficiency of funds, which is an essential element of the offense. Since knowledge involves a state of mind difficult to establish, the statute itself creates a *prima facie* presumption of the existence of this element from the fact of drawing, issuing or making a check, the payment of which was subsequently refused for insufficiency of funds. The term *prima facie* evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction.

The presumption in Sec. 2 is not a conclusive presumption that forecloses or precludes the presentation of evidence to the contrary. Neither does the term *prima facie* evidence preclude the presentation of other evidence that may sufficiently prove the existence or knowledge of

insufficiency of funds or lack of credit. Surely, the law is not so circumscribed as to limit proof of knowledge exclusively to the dishonor of the subject check when presented within the prescribed ninety (90) day period.

It is evident from the foregoing deliberations that the presumption in Sec. 2 was intended to facilitate proof of knowledge and not to foreclose admissibility of other evidence that may also prove such knowledge. Thus, the only consequence of the failure to present the check for payment within ninety (90) days from the date stated is that there arises no *prima facie* presumption of knowledge of insufficiency of funds. But the prosecution may still prove such knowledge through other evidence. Whether such evidence is sufficient to sustain probable cause to file the information is addressed to the sound discretion of the City Prosecutor and is a matter not controllable by certiorari.

STEVE TAN and MARCIANO TAN, petitioners, vs. FABIAN MENDEZ, JR., respondent.
G.R. No. 138669, June 6, 2002, SECOND DIVISION, QUISUMBING, J.:

We also note that no compensation can take place between petitioners and respondent as respondent is not a debtor of petitioners insofar as the two checks representing collections from the Baa0 ticket sales are concerned. Article 1278 of the Civil Code requires, as a prerequisite for compensation, that the parties be mutually and principally bound as creditors and debtors. If they were not mutually creditors and debtors of each other, the law on compensation would not apply. In this case, the memorandum shows that some unencashed checks returned to respondent to allegedly offset the dishonored check were from the Baa0 ticket sales which are separate from the ticket sales of respondent. Respondent only acted as an intermediary in remitting the Baa0 ticket sales and, thus, is not a debtor of petitioners.

FACTS

Petitioners Steve Tan and Marciano Tan are the owners of Master Tours and Travel Corporation and operators of Philippine Lawin Bus Co., Inc., while respondent Fabian Mendez, Jr. is the owner of three gasoline stations in Iriga City, Ligao, Albay and Sipocot Camarines Sur. Petitioners opened a credit line for their buses lubricants and fuel consumption with respondent. At the same time, the latter was also designated by petitioners as the booking and ticketing agent of Philippine Lawin Bus Co. in Iriga City. Under such arrangement, petitioners' drivers purchased on credit fuel and various oil products for its buses through withdrawal slips issued by petitioners, with periodic payments to respondent through the issuance of checks.

On the other hand, respondent remitted the proceeds of ticket sales to petitioners also through the issuance of checks. Accordingly, petitioners issued several checks to respondent as payment for oil and fuel products. One of these is FEBTC check no. 704227 dated June 4, 1991 in the amount of P58,237.75, as payment for gasoline and oil products procured during the period May 2 to 15, 1991. Said check was dishonored by the bank upon presentment for payment for being drawn against insufficient funds.

Respondent sent a demand letter dated June 21, 1991 to petitioners demanding that they make good the check or pay the amount thereof, to no avail. Hence, an information for violation of B.P. 22 was filed against petitioners, upon the complaint of respondent, before the RTC of Iriga City, Branch 37. Petitioners pleaded not guilty during arraignment and trial ensued. After respondent initiated this case, petitioners attempted to settle the same along with other cases pending in other courts in Iriga City. They asked for more time to settle their obligations because

they were still waiting for a tax credit certificate in the amount of P517,998 to be issued by the Ministry of Finance, that they would use to settle the cases.⁵

On the other hand, the defense presented petitioner Marciano and averred that he cannot be held liable for violation of B.P. 22 because the amount subject of the check had already been extinguished by offset or compensation against the collection from ticket sales from the booking offices. He presented a memorandum⁶ dated June 10, 1991 showing the return to respondent of various unencashed checks in the total amount of P66,839.25 representing remittance of ticket sales in the Iriga and Baa0 offices that were earlier sent by respondent. After the alleged offset, there remains a balance of P226,785.83.⁷

On cross-examination, Marciano admitted to have drawn the subject check to pay private respondent's gasoline station and that it was not covered by sufficient funds at the time of its issuance due to uncollected receivables.⁹ Upon query by the court, he claimed that he did not talk to private complainant and could not tell if the latter agreed to offset the checks with the remittances.¹⁰

On rebuttal, respondent disputed petitioners' claim of payment through offset or compensation. He claimed that the amount of the four unencashed checks totaling P66,839.25 could not have offset the amount of the dishonored checks since petitioners' total obligations at that time had already reached P906,000.¹² Moreover, even if compensation took place, it should have been applied to an alleged earlier obligation of P235,387.33. Respondent also claimed that compensation did not take place as there was no application of payment made by the petitioners in their memorandum dated June 10, 1991.¹³

After trial, the trial court convicted petitioners for violation of B.P. 22. On appeal, the Court of Appeals affirmed the conviction of petitioners.

ISSUE

Whether or not payment through compensation or offset can preclude prosecution for violation of B.P. 22.

RULING

The law enumerates the elements of B.P. Blg. 22 to be (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

The law has made the mere act of issuing a bum check a *malum prohibitum*, an act proscribed by legislature for being deemed pernicious and inimical to public welfare. The gravamen of the offense under this law is the act of issuing a worthless check or a check that is dishonored upon its presentment for payment. Thus, even if there had been payment, through compensation or some other means, there could still be prosecution for violation of B.P. 22. We find that no reversible error was committed by the courts *a quo* in finding petitioners guilty of violation of B.P. 22.

It bears stressing that the issue of whether or not the obligations covered by the subject check had been paid by compensation or offset is a factual issue that requires evaluation and assessment of certain facts. This is not proper in a petition for review on certiorari to the Supreme Court. We have repeatedly held that this Court is not a trier of facts. The jurisdiction of this Court over cases elevated from the Court of Appeals is confined to the review of errors of law ascribed to the Court of Appeals, whose findings of fact are conclusive absent any showing that such findings are entirely devoid of any substantiation on record.

We also note that no compensation can take place between petitioners and respondent as respondent is not a debtor of petitioners insofar as the two checks representing collections from the Baa0 ticket sales are concerned. Article 1278 of the Civil Code requires, as a prerequisite for compensation, that the parties be mutually and principally bound as creditors and debtors. If they were not mutually creditors and debtors of each other, the law on compensation would not apply. In this case, the memorandum shows that some unencashed checks returned to respondent to allegedly offset the dishonored check were from the Baa0 ticket sales which are separate from the ticket sales of respondent. Respondent only acted as an intermediary in remitting the Baa0 ticket sales and, thus, is not a debtor of petitioners.

While we sustain the conviction of petitioners, we deem it appropriate to modify the penalties imposed. We delete the penalty of imprisonment and in lieu thereof, we impose upon petitioners a fine amounting to double the value of the subject check, with subsidiary imprisonment in case of insolvency or non-payment. Supreme Court Administrative Circular No. 12-2000, as clarified by Administrative Circular No. 13-2001, established a rule of preference in imposing penalties in B.P. 22 cases. Section 1 of B.P. 22 imposes the following alternative penalties for its violation, to wit: (a) imprisonment of not less than 30 days but not more than one year; or (b) a fine of not less than but not more than double the amount of the check which fine shall in no case exceed P200,000; or (c) both such fine and imprisonment at the discretion of the court.

The rationale of Adm. Circular No. 12-2000 is found in our rulings in *Eduardo Vaca vs. Court of Appeals* and *Rosa Lim vs. People of the Philippines*. We held in those cases that it would best serve the ends of criminal justice if, in fixing the penalty to be imposed for violation of B.P. 22, the same philosophy underlying the Indeterminate Sentence Law is observed, i.e. that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order.

To be sure, it is not the intention of this Court to decriminalize violation of B.P. 22. Neither is it our intention to delete the alternative penalty of imprisonment. The propriety and wisdom of decriminalizing violation of B.P. 22 is best left to the legislature and not this Court. As clarified by Administrative Circular 13-2001, the clear tenor and intention of Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. 22. Where the circumstances of the case, for instance, clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone may be considered as the more appropriate penalty. This rule of preference does not foreclose the possibility of imprisonment for violators of B.P. 22. Neither does it defeat the legislative intent behind the law. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the judge. Should the judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not to be deemed a hindrance.

**JOY LEE RECUERDO -versus- PEOPLE OF THE PHILIPPINES and COURT OF APPEALS
G.R. No. 133036, January 22, 2003, CARPIO-MORALES, J**

These matters subject of petitioner's contention have long been settled in the landmark case of Lozano v. Martinez where this Court upheld the constitutionality of B.P. 22: The gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by law. The law punishes the act not as an offense against property, but an offense against public order.

FACTS

Yolanda Floro sold a loose diamond stone valued at P420,000.00 to Joy Lee Recuerdo. As payment for the diamond, Recuerdo gave P40,000 as downpayment and issued 9 postdated checks. When Floro tried to deposit eight checks, only three were cleared and the other five were dishonored due to the closure of Recuerdo's account. Recuerdo promised to convert the checks into cash but she welshed on it A demand letter was sent to Recuerdo but she still failed to comply with her obligation. This prompted Floro to file at the Metropolitan Trial Court (MeTC) five informations against Recuerdo for violation of B.P. 22. Recuerdo was found guilty beyond reasonable doubt of violation of B.P. 22 and was sentenced to suffer imprisonment of 30 days for each count and to restitute the amount of P200,000 to Floro. The decision was affirmed by the Regional Trial Court (RTC) and later on, by the Court of Appeals (CA).

ISSUE

Whether or not Recuerdo is guilty beyond reasonable doubt for violation of B.P. 22

RULING

Recuerdo contends that since banks are not damaged by the presentment of dishonored checks as they impose a penalty for each, only creditors/payees are unduly favored by the law; that the law —is in essence a resurrected form of 19th century imprisonment for debt' since the drawer is coerced to pay his debt on threat of imprisonment even if his failure to pay does not arise from malice or fraud or from any criminal intent to cause damage; and that the law is a bill of attainder as it does not leave much room for judicial determination, the guilt of the accused having already been decided by the legislature.

These matters subject of Recuerdo's contention have long been settled in the landmark case of Lozano v. Martinez where the Court upheld the constitutionality of B. P. 22: the gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by law. The law punishes the act not as an offense against property, but an offense against public order.

The contention that B. P. 22 is a bill of attainder, one which inflicts punishment without trial and the essence of which is the substitution of a legislative for a judicial determination of guilt, fails. For under B. P. 22, every element of the crime is still to be proven before the trial court to warrant a conviction for violation thereof.

Recuerdo argues that as no bank representative testified as to –whether the questioned checks were dishonored due to insufficiency of funds (sic), such element was not clearly and convincingly proven, hence, the trial court failed to uphold her right to presumption of innocence when she was convicted based on the sole testimony of Yolanda. Yolanda's testimony that when she deposited the checks to her depository bank they were dishonored due to –Account Closed sufficed.

In fact, even Recuerdo's counsel during trial admitted the dishonor, and on that ground. In fine, the affirmance of Recuerdo's conviction is in order. In the case at bar, the Court notes that no proof, nay allegation, was proffered that Recuerdo was not a first time offender. Considering this and the correctness of the case, it would best serve the interests of justice if Recuerdo is just fined to enable her to continue her dental practice so as not to deprive her of her income, thus insuring the early settlement of the civil aspect of the case, not to mention the FINE.

**ELVIRA YU OH, - versus – COURT OF APPEALS and PEOPLE OF THE PHILIPPINES
G.R. No. 125297, June 6, 2003, SECOND DIVISION, AUSTRIA-MARTINEZ, J.**

It is necessary that a "notice of dishonor" be received by the issuer and the prosecution has the burden of proving the fact of service. It thus stated in section 2 of BP 22. It is essential for the drawer to be notified of the dishonor of her checks so she could make arrangements for its payment within the period prescribed by law (5 days).

FACTS

Petitioner purchased pieces of jewelry from Solid Gold International Traders, Inc. Due to her failure to pay the purchase price, the company filed civil cases against her for specific performance before the RTC of Pasig. On September 17, 1990, petitioner and Solid Gold through its general manager, Joaquin Novales III entered into a compromise agreement to settle said civil cases. It was approved by the trial court provided that petitioner shall issue a total of ninety-nine post-dated checks in the amount of PHP 50,000.00 each, dated every 15th and 30th of the month starting October 1, 1990 and the balance of over PHP 1million to be paid in lump sum on November 16, 1994 (the due date of the 99th post dated check). Petitioner then issued ten checks at Php 50,000.00 each for a total of Php 500,000.00 drawn against her account at the Equitable Banking Corporation (EBC). Novales then deposited each of the ten checks on their respective due dates to the company bank account. However, said checks were dishonored by the EBC for the reason "Account Closed". Dishonor slips were issued for each check that was returned to Novales. On October 5, 1992, Novales filed 10 separate informations before the RTC of Quezon City charging the petitioner with violation of Batas Pambansa Blg. 22. Upon arraignment, petitioner pleaded not guilty.

Nonetheless, RTC convicted her of ten counts of violation of BP 22. CA affirmed the decision.

ISSUES

Whether or not “notice of dishonor” is indispensable in this case.

RULING

Yes. It is necessary that a “notice of dishonor” be received by the issuer and the prosecution has the burden of proving the fact of service. It thus stated in section 2 of BP 22. It is essential for the drawer to be notified of the dishonor of her checks so she could make arrangements for its payment within the period prescribed by law (5 days).

Hence, SC reversed the decision of the CA and acquits the petitioner.

6. Clearing Rules

BANCO DE ORO SAVINGS -versus- EQUITABLE BANKING CORPORATION G.R. No. L-74917, January 20, 1988

The petitioner having stamped its guarantee of “all prior endorsements and/or lack of endorsements” is now estopped from claiming that the checks under consideration are not negotiable instruments.

FACTS

Equitable Banking Corp. drew 6 crossed Manager’s Check payable to certain member of its establishment. Subsequently, the Checks were deposited with Banco de Oro to the credit of its depositor, a certain Aida Trencio.

Following the normal procedures, and after stamping at the back of the of the Checks the usual endorsements: “All prior and/or lack of endorsement guaranteed,” Banco de Oro sent the checks for clearing through PCHC. Accordingly, Equitable Banking Corp. paid the Checks. Its clearing account was debited for the value of the Checks and Banco de Oro’s clearing account was credited for the same amount.

Thereafter, Equitable Banking Corp. discovered that the endorsements at the back of the Checks were forged or otherwise belong to the persons other than the payees. Pursuant to the PCHC Clearing Rules and Regulations, Equitable Bank presented the checks directly to the Banco de Oro to claim reimbursement. However, the latter refused.

ISSUE

Whether Banco de Oro is negligent and thus responsible for any undue payment.

RULING

The petitioner by its own acts and representation cannot now deny liability because it assumed the liabilities of an endorser by stamping its guarantee at the back of the checks. The petitioner having stamped its guarantee of “all prior endorsements and/or lack of endorsements” is now estopped from claiming that the checks under consideration are not negotiable instruments. The checks were

accepted for deposit by the petitioner stamping thereon its guarantee, in order that it can clear the said checks with the respondent bank. By such deliberate and positive attitude of the petitioner it has for all legal intents and purposes treated the said checks as negotiable instruments and accordingly assumed the warranty of the endorser when it stamped its guarantee of prior endorsements at the back of the checks. It led the said respondent to believe that it was acting as endorser of the checks and on the strength of this guarantee said respondent cleared the checks in question and credited the account of the petitioner. Petitioner is now barred from taking an opposite posture by claiming that the disputed checks are not negotiable instrument.

This Court enunciated in *Philippine National Bank vs. Court of Appeals*, a point relevant to the issue when it stated—“the doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice and its purpose is to forbid one to speak against his own act, representations or commitments to the injury of one to whom they were directed and who reasonably relied thereon.”

Apropos the matter of forgery in endorsements, this Court has 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 vs. National City Bank*. In another case, this Court held that if the drawee-bank discovers that the signature of the payee was forged after it has paid the amount of the check to the holder thereof, it can recover the amount paid from the collecting bank.

A truism stated by this Court is that — The doctrine of estoppel precludes a party from repudiating an obligation voluntarily assumed after having accepted benefits therefrom. To countenance such repudiation would be contrary to equity and put premium on fraud or misrepresentation.”

Section 66 of the Negotiable Instruments ordains that: “Every indorser who indorses without qualification, warrants to all subsequent holders in due course” (a) that the instrument is genuine and in all respects what it purports to be; (b) that he has good title to it; (c) that all prior parties have capacity to contract; and (d) that the instrument is at the time of his indorsement valid and subsisting. *Same; Same; Same; Drawer owes no duty of diligence to the collecting bank but collecting bank bound to scrutinize checks deposited with it to determine genuineness and regularity.*—

Thus we hold that while the drawer generally owes no duty of diligence to the collecting bank, the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it for the purpose of determining their genuineness and regularity. The collecting bank being primarily engaged in banking holds itself out to the public as the expert and the law holds it to a high standard of conduct.

And although the subject checks are non-negotiable the responsibility of petitioner as indorser thereof remains. To countenance a repudiation by the petitioner of its obligations would be contrary to equity and would deal a negative blow to the whole banking system of this country.

HOME BANKERS SAVINGS AND TRUST COMPANY, -versus- COURT OF APPEALS and FAR EAST BANK & TRUST CO., INC.**G.R. No. 115412, November 19, 1999, SECOND DIVISION, BUENA, J.**

Simply put, participants in the regional clearing operations of the Philippine Clearing House Corporation cannot bypass the arbitration process laid out by the body and seek relief directly from the courts. In the case at bar, undeniably, private respondent has initiated arbitration proceedings as required by the PCHC rules and regulations, and pending arbitration has sought relief from the trial court for measures to safeguard and/or conserve the subject of the dispute under arbitration, as sanctioned by section 14 of the Arbitration Law, and otherwise not shown to be contrary to the PCHC rules and regulations.

FACTS

Victor Tancuan issued Petitioner Home Bankers Savings and Trust Company a check while Eugene Arriescado issued Private Respondent Far East Bank and Trust Company three checks; both checks totaling the amount of P25,250,000.00. Tancuan and Arriescado exchanged each other's checks and deposited them with their respective banks for collection. When FEBTC presented Tancuan's HBSTC check for clearing, it was dishonored for being DAIF. Meanwhile, HBSTC sent Arriescado's 3 FEBTC checks through the Philippine Clearing House Corporation (PCHC) to FEBTC but was returned for being DAIF. HBSTC receive the notice of dishonor but refused to accept the checks and returned them to FEBTC through the PCHC for the reason "Beyond Reglementary Period," implying that HBSTC already treated the 3 checks as cleared and allowed the proceeds thereof to be withdrawn. FEBTC demanded reimbursement for the returned checks and inquired from HBSTC whether it had permitted any withdrawal of funds against the unfunded checks. HBSTC, however refused to make any reimbursement and to provide FEBTC with the needed information. Thus, FEBTC submitted the dispute for arbitration before the PCHC Arbitration Committee, under its Supplementary Rules on Regional Clearing to which FEBTC and HBSTC are bound as participants in the regional clearing operations administered by the PCHC. While the arbitration proceeding was still pending, FEBTC filed an action for sum of money and damages with preliminary attachment against HBSTC. HBSTC moved to dismiss on the ground that there is no cause of action and because it seeks to enforce an arbitral award which as yet does not exist. The trial court denied the motion to dismiss and the motion for reconsideration. Petitioner then filed a petition for certiorari with respondent CA to which it had dismissed.

ISSUE

Whether or not private respondent which commenced an arbitration proceeding under the auspices of the PCHC may subsequently file a separate case in court over the same subject matter despite the pendency of that arbitration, simply to obtain the provisional remedy of attachment against the adverse party in the arbitration proceeding.

RULING

We find no merit in the petition. Section 14 of Republic Act 876, otherwise known as the Arbitration Law, allows any party to the arbitration proceeding to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.

Petitioner's exposition of the foregoing provision deserves scant consideration. Section 14 simply grants an arbitrator the power to issue subpoena and subpoena *duces tecum* at any time before rendering the award. The exercise of such power is without prejudice to the right of a party to file a petition in court to safeguard any matter which is the subject of the dispute in arbitration. In the case at bar, private respondent filed an action for a sum of money with prayer for a writ of preliminary attachment. Undoubtedly, such action involved the same subject matter as that in arbitration, *i.e.*, the sum of P25,200,000.00 which was allegedly deprived from private respondent in what is known in banking as a "kiting scheme." However, the civil action was not a simple case of a money claim since private respondent has included a prayer for a writ of preliminary attachment, which is sanctioned by section 14 of the Arbitration Law.

Simply put, participants in the regional clearing operations of the Philippine Clearing House Corporation *cannot bypass the arbitration process laid out by the body and seek relief directly from the courts*. In the case at bar, undeniably, private respondent has initiated arbitration proceedings as required by the PCHC rules and regulations, and pending arbitration has sought relief from the trial court for measures to safeguard and/or conserve the subject of the dispute under arbitration, as sanctioned by section 14 of the Arbitration Law, and otherwise not shown to be contrary to the PCHC rules and regulations.

At this point, we emphasize that arbitration, as an alternative method of dispute resolution, is encouraged by this Court. Aside from unclogging judicial dockets, it also hastens solutions especially of commercial disputes. The Court looks with favor upon such amicable arrangement and will only interfere with great reluctance to anticipate or nullify the action of the arbitrator. Wherefore, premises considered, the petition is hereby dismissed and the decision of the court *a quo* is affirmed.

**UNION BANK OF THE PHILIPPINES -versus- COURT OF APPEALS and ALLIED BANK
CORPORATION
G.R. No. 134699, December 23, 1999, FIRST DIVISION, KAPUNAN, J.**

By the terms of R.A. No. 1405, the "money deposited" itself should be the subject matter of the litigation. That petitioner feels a need for such information in order to establish its case against private respondent does not, by itself, warrant the examination of the bank deposits. The necessity of the inquiry, or the lack thereof, is immaterial since the case does not come under any of the exceptions allowed by the Bank Deposits Secrecy Act.

FACTS

A check in the amount of P1M was drawn against an account with private respondent Allied Bank payable to the order of one Jose Ch. Alvarez. The payee deposited the check with petitioner Union Bank who credited the P1M to the account of Mr. Alvarez. Petitioner sent the check for clearing and when the check was presented for payment, a clearing discrepancy was committed by Union Bank's clearing staff when the amount P1M was erroneously "under-encoded" to P1,000 only. Petitioner only discovered the under-encoding almost a year later. Thus, Union Bank notified Allied Bank of the discrepancy by way of a charge slip for P999,000.00 for automatic debiting against Allied Bank. The latter, however, refused to accept the charge slip "since [the] transaction was completed per your [Union Bank's] original instruction and client's account is now insufficiently funded." Union Bank filed a complaint against Allied Bank before the PCHC Arbitration Committee (Arbicom).

Thereafter, Union Bank filed before the RTC a petition for the examination of the account with respondent bank. Judgment on the arbitration case was held in abeyance pending the resolution of said petition. The RTC dismissed Union Bank's petition. CA affirmed the dismissal ruling that the case was not one where the money deposited is the subject matter of the litigation.

ISSUE

Whether the discrepancy amount is the subject matter of litigation.

RULING

The petition before this Court reveals that the true purpose for the examination is to aid petitioner in proving the extent of Allied Bank's liability.

In other words, only a disclosure of the pertinent details and information relating to the transactions involving subject account will enable petitioner to prove its allegations in the pending Arbicom case.

Petitioner is fishing for information so it can determine the culpability of private respondent and the amount of damages it can recover from the latter. It does not seek recovery of the very money contained in the deposit. The subject matter of the dispute may be the amount of P999,000.00 that petitioner seeks from private respondent as a result of the latter's alleged failure to inform the former of the discrepancy; but it is not the P999,000.00 deposited in the drawer's account.

By the terms of R.A. No. 1405, the "money deposited" itself should be the subject matter of the litigation. That petitioner feels a need for such information in order to establish its case against private respondent does not, by itself, warrant the examination of the bank deposits. The necessity of the inquiry, or the lack thereof, is immaterial since the case does not come under any of the exceptions allowed by the Bank Deposits Secrecy Act.

**METROPOLITAN BANK AND TRUST COMPANY (formerly ASIANBANK CORPORATION) V. BA FINANCE CORPORATION and MALAYAN INSURANCE CO. INC.
G.R. No. 179952, Dec. 4, 2009 (607 SCRA 620), FIRST DIVISION, CARPIO-MORALES, J.**

FACTS

Lamberto Bitanga (Bitanga) obtained from respondent BA Finance Corporation (BA Finance) a loan to secure which, he mortgaged his car to respondent BA Finance. Bitanga thus had the mortgaged car insured by respondent Malayan Insurance Co., Inc. (Malayan Insurance). The car was stolen. On Bitanga's claim, Malayan Insurance issued a check payable to the order of B.A. Finance Corporation and Lamberto Bitanga for P224,500, drawn against China Banking Corporation (China Bank). The check was crossed with the notation For Deposit Payees Account Only.

Without the indorsement or authority of his co-payee BA Finance, Bitanga deposited the check to his account with the Asianbank Corporation (Asianbank), now merged with petitioner Metropolitan Bank and Trust Company (Metrobank). Bitanga subsequently withdrew the entire proceeds of the check.

In the meantime, Bitangas loan became past due, but despite demands, he failed to settle it. BA Finance thereupon demanded the payment of the value of the check from Asianbank but to no avail, prompting it to file a complaint for sum of money and damages against Asianbank and Bitanga alleging that, *inter alia*, it is entitled to the entire proceeds of the check.

On the issue of whether or not BA Finance has a cause of action, Metrobank contends that Bitanga is authorized to indorse the check as the drawer names him as one of the payees. Moreover, his signature is not a forgery nor has he or anyone forged the signature of the representative of BA Finance Corporation. No unauthorized indorsement appears on the check. Absent the indispensable fact of forgery or unauthorized indorsement, the payee may not recover from the collecting bank.

ISSUES

Whether BA Finance has a cause of action against Metrobank even if the subject check had not been delivered to BA Finance by the issuer itself.

Whether Metrobank is liable to BA Finance for the full value of the check, under the Negotiable Instruments Law.

RULING

YES. Section 41 of the *Negotiable Instruments Law* provides:

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, **all must indorse** unless the one indorsing has authority to indorse for the others.

Bitanga alone endorsed the crossed check, and petitioner allowed the deposit and release of the proceeds thereof, despite the absence of authority of Bitangas co-payee BA Finance to endorse it on its behalf. Petitioner's argument that since there was neither forgery, nor unauthorized indorsement because Bitanga was a co-payee in the subject check, the dictum in *Associated Bank v. CA* does not apply in the present case fails. The payment of an instrument over a missing indorsement is the equivalent of payment on a forged indorsement or an unauthorized indorsement in itself in the case of joint payees.

Accordingly, one who credits the proceeds of a check to the account of the indorsing payee is liable in conversion to the non-indorsing payee for the *entire* amount of the check.

Moreover, Section 68 of the *Negotiable Instruments Law* instructs that joint payees who indorse are deemed to *indorse jointly and severally*. When the maker dishonors the instrument, the holder thereof can turn to those secondarily liable the indorser for recovery.

A collecting bank, Asianbank in this case, where a check is deposited and which indorses the check upon presentment with the drawee bank, is an indorser. This is because in indorsing a check to the drawee bank, a collecting bank stamps the back of the check with the phrase all prior endorsements and/or lack of endorsement guaranteed and, for all intents and purposes, treats the check as a negotiable instrument, hence, assumes the warranty of an indorser.

Petitioner, as the collecting bank or last indorser, generally suffers the loss because it has the duty to ascertain the genuineness of all prior indorsements 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 prior indorsements.

