



Narratives

Negotiable Instruments Law (Commercial)

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2005

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This collection contains forty one (41) cases summarized in this format by Michael Vernon M. Guerrero (as a senior law student) during the Second Semester, school year 2005-2006 in the Commercial Law Review class under Atty. Zarah Villanueva-Castro at the Arellano University School of Law (AUSL).
Compiled as PDF, July 2011.

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1 **Philippine Education Co. Inc. vs. Soriano [GR L-22405, 30 June 1971]**

En Banc, Dizon (J): 8 concur, 2 took no part

Facts: On 18 April 1958 Enrique Montinola sought to purchase from the Manila Post Office 10 money orders of P200.00 each payable to E. P. Montinola with address at Lucena, Quezon. After the postal teller had made out money orders numbered 124685, 124687-124695, Montinola offered to pay for them with a private check. As private checks 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 with his own check and the 10 money orders without the knowledge of the teller. On the same date, 18 April 1958, upon discovery of the disappearance of the unpaid money orders, an urgent message was sent to all postmasters, and the following day notice was likewise served upon all banks. instructing them not to pay anyone of the money orders aforesaid if presented for payment. The Bank of America received a copy of said notice 3 days later. On 23 April 1958 one of the above mentioned money orders numbered 124688 was received by Philippine Education Co. as part of its sales receipts. The following day it deposited the same with the Bank of America, and one day thereafter the latter cleared it with the Bureau of Posts and received from the latter its face value of P200.00. On 27 September 1961, Mauricio A. Soriano, Chief of the Money Order Division of the Manila Post Office, acting for and in behalf of Post-master Enrico Palomar, notified the Bank of America that money order 124688 attached to his letter had been found to have been irregularly issued and that, in view thereof, the amount it represented had been deducted from the bank's clearing account. For its part, on August 2 of the same year, the Bank of America debited Philippine Education Co.'s account with the same amount and gave it advice thereof by means of a debit memo. On 12 October 1961 Philippine Education Co. requested the Postmaster General to reconsider the action taken by his office deducting the sum of P200.00 from the clearing account of the Bank of America, but his request was denied. So was Philippine Education Co.'s subsequent request that the matter be referred to the Secretary of Justice for advice. Thereafter, Philippine Education Co. elevated the matter to the Secretary of Public Works and Communications, but the latter sustained the actions taken by the postal officers. In connection with the events set forth above, Montinola was charged with theft in the Court of First Instance of Manila (Criminal Case 43866) but after trial he was acquitted on the ground of reasonable doubt. On 8 January 1962 Philippine Education Co. filed an action against Soriano, et al. in the Municipal Court of Manila. On 17 November 1962, after the parties had submitted the stipulation of facts, the municipal court rendered judgment, ordering Soriano, et al. to countermand the notice given to the Bank of America on 27 September 1961, deducting from said Bank's clearing account the sum of P200.00 representing the amount of postal money order 124688, or in the alternative, to indemnify Philippine Education Co. in the said sum of P200.00 with interest thereon at the rate of 8-1/2% per annum from 27 September 1961 until fully paid; without any pronouncement as to costs and attorney's fees." The case was appealed to the Court of First Instance of Manila where, after the parties had resubmitted the same stipulation of facts, the appealed decision dismissing the complaints with costs, was rendered. Philippine Education Co. appealed.

Issue: Whether the postal money order is a negotiable instrument.

Held: Philippine postal statutes were patterned after similar statutes in force in the United States. For this reason, Philippine postal statutes 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, 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. 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.

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2 Tibajia vs. Court of Appeals [GR 100290, 4 June 1993]

Second Division, Padilla (J): 3 concur

Facts: Case 54863 was a suit for collection of a sum of money filed by Eden Tan against the Tibajia spouses (Norberto Jr. and Carmen). A writ of attachment was issued by the trial court on 17 August 1987 and on 17 September 1987, the Deputy Sheriff filed a return stating that a deposit made by the Tibajia spouses in the Regional Trial Court (RTC) of Kalookan City in the amount of P442,750.00 in another case, had been garnished by him. On 10 March 1988, the RTC, Branch 151 of Pasig, Metro Manila rendered its decision in Civil Case 54863 in favor of Eden Tan, ordering the Tibajia spouses to pay her an amount in excess of P300,000.00. On appeal, the Court of Appeals modified the decision by reducing the award of moral and exemplary damages. The decision having become final, Eden Tan filed the corresponding motion for execution and thereafter, the garnished funds which by then were on deposit with the cashier of the RTC of Pasig, Metro Manila, were levied upon. On 14 December 1990, the Tibajia spouses delivered to Deputy Sheriff Eduardo Bolima the total money judgment in the following form: (1) Cashier's Check worth P262,750.00, and Cash in the amount of P135,733.70 (Totalling P398,483.70). Eden Tan, refused to accept the payment made by the Tibajia spouses and instead insisted that the garnished funds deposited with the cashier of the RTC of Pasig, Metro Manila be withdrawn to satisfy the judgment obligation. On 15 January 1991, the spouses filed a motion to lift the writ of execution on the ground that the judgment debt had already been paid. On 29 January 1991, the motion was denied by the trial court 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. A motion for reconsideration was denied on 8 February 1991. Thereafter, the spouses Tibajia filed a petition for certiorari, prohibition and injunction in the Court of Appeals. The appellate court dismissed the petition on 24 April 1991 holding that payment by cashier's check is not payment in legal tender as required by Republic Act 529. The motion for reconsideration was denied on 27 May 1991. The spouses filed the petition for review.

Issue: Whether payment by means of check (even by cashier's check) is considered payment in legal tender as required by the Civil Code, Republic Act 529, and the Central Bank Act.

Held: Article 1249 of the Civil Code which 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." Section 1 of Republic Act 529, as amended, on the other hand, provides that "Every provision contained in, or made with respect to, any obligation which purports to give the obligee the right to require payment in gold or in any particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, shall be as it is hereby declared against public policy, null and void, and of no effect, and no such provision shall be contained in, or made with respect to, any obligation thereafter incurred. Every obligation heretofore and hereafter incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts." Also, Section 63 of Republic Act 265, amended (Central Bank Act) which provides that "Checks representing deposit money do not have legal tender power and their acceptance in the payment of debts, both public and private, is at the option of the creditor: Provided, however, that a check which has been cleared and credited to the account of the creditor shall be equivalent to a delivery to the creditor of cash in an amount equal to the amount credited to his account." Further, in the recent cases of Philippine Airlines, Inc. vs. Court of Appeals (GR 49188, 30 January 1990, 181 SCRA 557) and Roman Catholic Bishop of Malolos, Inc. vs. Intermediate Appellate Court (GR 72110, 16 November 1990, 191 SCRA 411), 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." The ruling in these two

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(2) cases merely applies the statutory provisions which lay down the rule that 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. In the more recent case of *Fortunado vs. Court of Appeals* (GR78556, 25 April 1991, 196 SCRA 269), 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."

3 Philippine Airlines vs. Court of Appeals [GR 49188, 30 January 1990]

En Banc, Gutierrez Jr. (J): 7 concur, 3 dissent in separate opinions where 4 joined

Facts: On 8 November 1967, Amelia Tan, under the name and style of Able Printing Press commenced a complaint for damages before the Court of First Instance (CFI) of Manila (Civil Case 71307). After trial, the CFI of Manila, Branch 13, then presided over by the late Judge Jesus P. Morfe rendered judgment on 29 June 1972, in favor of Tan, ordering Philippine Airlines, Inc. (PAL) to pay Tan the amount of P75,000.00 as actual damages, with legal interest thereon from Tan's extra-judicial demand made by the letter of 20 July 1967; P18,200.00, representing the unrealized profit of 10% included in the contract price of P200,000.00 plus legal interest thereon from 20 July 1967; P20,000.00 as and for moral damages, with legal interest thereon from 20 July 1967; P5,000.00 damages as and for attorney's fee; with costs against PAL. On 28 July 1972, PAL filed its appeal with the Court of Appeals (CA-GR 51079-R). On 3 February 1977, the appellate court rendered its decision, affirming but modifying the CFI's decision, ordering PAL to pay the sum of P25,000.00 as damages and P5,000.00 as attorney's fee. Notice of judgment was sent by the Court of Appeals to the trial court and on dates subsequent thereto, a motion for reconsideration was filed by Tan, duly opposed by PAL. On 23 May 1977, the Court of Appeals rendered its resolution denying Tan's motion for reconsideration for lack of merit. No further appeal having been taken by the parties, the judgment became final and executory and on 31 May 1977, judgment was correspondingly entered in the case.

The case was remanded to the trial court for execution and on 2 September 1977, Tan filed a motion praying for the issuance of a writ of execution of the judgment rendered by the Court of Appeals. On 11 October 1977, the trial court, presided over by Judge Ricardo D. Galano, issued its order of execution with the corresponding writ in favor of Tan. The writ was duly referred to Deputy Sheriff Emilio Z. Reyes of Branch 13 of the Court of First Instance of Manila for enforcement. 4 months later, on 11 February 1978, Tan moved for the issuance of an alias writ of execution stating that the judgment rendered by the lower court, and affirmed with modification by the Court of Appeals, remained unsatisfied. On 1 March 1978, PAL filed an opposition to the motion for the issuance of an alias writ of execution stating that it had already fully paid its obligation to Tan through the deputy sheriff of the court, Reyes, as evidenced by cash vouchers properly signed and receipted by said Emilio Z. Reyes. On 3 March 1978, the Court of Appeals denied the issuance of the alias writ for being premature, ordering the executing sheriff Reyes to appear with his return and explain the reason for his failure to surrender the amounts paid to him by PAL. However, the order could not be served upon Deputy Sheriff Reyes who had absconded or disappeared. On 28 March 1978, motion for the issuance of a partial alias writ of execution was filed by Tan. On 19 April 1978, Tan filed a motion to withdraw "Motion for Partial Alias Writ of Execution" with Substitute Motion for Alias Writ of Execution. On 1 May 1978, the Judge issued an order granting the motion, and issuing the alias writ of execution. On 18 May 1978, PAL received a copy of the first alias writ of execution issued on the same day directing Special Sheriff Jaime K. del Rosario to levy on execution in the sum of P25,000.00 with legal interest thereon from 20 July 1967 when Tan made an extrajudicial demand through a letter. Levy was also ordered for the further sum of P5,000.00 awarded as attorney's fees. On 23 May 1978, 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 the judgment debt had already been fully satisfied by PAL as evidenced by the cash vouchers signed and receipted by the server of the writ of execution, Deputy Sheriff Reyes. On 26 May 1978, Special Sheriff del Rosario served a notice of garnishment on the depository bank of PAL, Far East Bank and Trust Company, Rosario Branch, Binondo, Manila, through its manager and garnished PAL's deposit in the said bank in the total amount of P64,408.00 as of 16 May 1978. PAL filed the petition for certiorari.

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Issue: Whether the payment made to the absconding sheriff by check in his name operate to satisfy the judgment debt.

Held: Under the initial judgment, Amelia Tan was found to have been wronged by PAL. She filed her complaint in 1967. After 10 years of protracted litigation in the Court of First Instance and the Court of Appeals, Ms. Tan won her case. Almost 22 years later, Ms. Tan has not seen a centavo of what the courts have solemnly declared as rightfully hers. Through absolutely no fault of her own, Ms. Tan has been deprived of what, technically, she should have been paid from the start, before 1967, without need of her going to court to enforce her rights. And all because PAL did not issue the checks intended for her, in her name. Under the peculiar circumstances of the case, the payment to the absconding sheriff by check in his name did not operate as a satisfaction of the judgment debt. In general, a payment, in order to be effective to discharge an obligation, must be made to the proper person. Article 1240 of the Civil Code provides that "Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it." Further, Article 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. 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." 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 PAL's checks 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.

4 **Sesbreno vs. Court of Appeals [GR 89252, 24 May 1993]**

Third Division, Feliciano (J): 4 concur

See case entry 10

Facts: On 9 February 1981, Raul Sesbreño made a money market placement in the amount of P300,000.00 with the Philippine Underwriters Finance Corporation (Philfinance), Cebu Branch; the placement, with a term of 32 days, would mature on 13 March 1981. Philfinance, also on 9 February 1981, issued the following documents to Sesbreno: (a) the Certificate of Confirmation of Sale, "without recourse," 20496 of 1 Delta Motors Corporation Promissory Note (DMC PN) 2731 for a term of 32 days at 17.0 % per annum; (b) the Certificate of Securities Delivery Receipt 16587 indicating the sale of DMC PN 2731 to Sesbreno, with the notation that the said security was in custodianship of Pilipinas Bank, as per Denominated Custodian Receipt (DCR) 10805 dated 9 February 1981; and (c) post-dated checks payable on 13 March 1981 (i.e., the maturity date of Sesbreno's investment), with Sesbreno as payee, Philfinance as drawer, and Insular Bank of Asia and America as drawee, in the total amount of P304,533.33. On 13 March 1981, Sesbreno sought to encash the post-dated checks issued by Philfinance. However, the checks were dishonored for having been drawn against insufficient funds. On 26 March 1981, Philfinance delivered to Sesbreno the DCR 10805 issued by Pilipinas Bank (Pilipinas). On 2 April 1981, Sesbreno approached Ms. Elizabeth de Villa of Pilipinas, Makati Branch, and handed to her a demand letter informing the bank that his placement with Philfinance in the amount reflected in the DCR 10805 had remained unpaid and outstanding, and that he in effect was asking for the

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physical delivery of the underlying promissory note. Sesbreno then examined the original of the DMC PN 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 Philfinance as "payee" and 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 Sesbreno. Sesbreno later made similar demand letters, dated 3 July 1981 and 3 August 1981, again asking Pilipinas for physical delivery of the original of DMC PN 2731. Pilipinas allegedly referred all of Sesbreno's demand letters to Philfinance for written instructions, as had been supposedly agreed upon in a "Securities Custodianship Agreement" between Pilipinas and Philfinance. Philfinance never did provide the appropriate instructions; Pilipinas never released DMC PN 2731, nor any other instrument in respect thereof, to petitioner. Sesbreno also made a written demand on 14 July 1981 upon Delta for the partial satisfaction of DMC PN 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 Sesbreno on the promissory note, and explained in turn that it had previously agreed with Philfinance to offset its DMC PN 2731 (along with DMC PN 2730) against Philfinance PN 143-A issued in favor of Delta. In the meantime, Philfinance, on 18 June 1981, was placed under the joint management of the Securities and Exchange Commission (SEC) and the Central Bank. Pilipinas delivered to the SEC DMC PN 2731, which to date apparently remains in the custody of the SEC. As Sesbreno had failed to collect his investment and interest thereon, he filed on 28 September 1982 an action for damages with the Regional Trial Court (RTC) of Cebu City, Branch 21, against Delta and Pilipinas. The trial court, in a decision dated 5 August 1987, dismissed the complaint and counterclaims for lack of merit and for lack of cause of action, with costs against Sesbreno. Sesbreno appealed to the Court of Appeals (CA GR CV 15195). In a Decision dated 21 March 1989, the Court of Appeals denied the appeal. Sesbreno moved for reconsideration of the above Decision, without success. Sesbreno filed the Petition for Review on Certiorari.

Issue: Whether the marking "non-negotiable" in DMC PN 2731 prohibited Philfinance from assigning or transferring the same to Sesbreno.

Held: The negotiation of a negotiable instrument must be distinguished from the assignment or transfer of an instrument whether that be negotiable or non-negotiable. Only an instrument qualifying as a negotiable instrument under the relevant statute may be negotiated either by indorsement thereof coupled with delivery, or by delivery alone where the negotiable instrument is in bearer form. A negotiable instrument may, however, instead of being negotiated, also be assigned or transferred. The legal consequences of negotiation as distinguished from assignment of a negotiable instrument are, of course, different. 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." Herein, 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. Further, there is nothing in the letter of agreement dated 10 April 1980 between Delta and Philfinance which can be reasonably construed as a prohibition upon Philfinance assigning or transferring all or part of DMC PN 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 Sesbreno was such an assignee or transferee.

[The issue whether Delta is liable for the value of the promissory to Sesbreno was resolved through Articles 1279 and 1636 of the New Civil Code as to compensation, and Article 1285 of the same as to the assignment of creditor's rights. The Court held that since Sesbreno failed to notify Delta of the assignment of the creditor's (Philfinance) rights at any time before the maturity date of DMC PN 2731, and because the record

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is bare of any indication that Philfinance had itself notified Delta of the assignment to Sesbreno, the Court was compelled to uphold the defense of compensation raised by Delta. The Court, however, held that Philfinance remained liable to Sesbreno under the terms of the assignment made by Philfinance to Sesbreno. As to the issue of Pilipinas' liability to Sesbreno, on the other hand, the Court held that Pilipinas must respond to Sesbreno for damages sustained by him arising out of its breach of duty. By failing to deliver the Note to Sesbreno as depositor-beneficiary of the thing deposited -- when Pilipinas purported to require and await the instructions of Philfinance, in obvious contravention of its undertaking under the DCR to effect physical delivery of the Note upon receipt of "written instructions" from Sesbreño -- Pilipinas effectively and unlawfully deprived Sesbreno of the Note deposited with it. – Civil Law II issues, MVG.]

5 Metropolitan Bank & Trust Company vs. Court of Appeals [GR 88866, 18 February 1991]

First Division, Cruz (J): 4 concur

Facts: The Metropolitan Bank and Trust Co. (MetroBank) is a commercial bank with branches throughout the Philippines and even abroad. Golden Savings and Loan Association was, at the time these events happened, operating in Calapan, Mindoro, with Lucia Castillo, Magno Castillo and Gloria Castillo as its principal officers. In January 1979, a certain Eduardo Gomez opened an account with Golden Savings and deposited over a period of 2 months 38 treasury warrants with a total value of P1,755,228.37. They were all drawn by the Philippine Fish Marketing Authority and purportedly signed by its General Manager and counter-signed by its Auditor. 6 of these were directly payable to Gomez while the others appeared to have been indorsed by their respective payees, followed by Gomez as second indorser. On various dates between June 25 and July 16, 1979, all these warrants were subsequently indorsed by Gloria Castillo as Cashier of Golden Savings and deposited to its Savings Account 2498 in the Metrobank branch in Calapan, Mindoro. They were then sent for clearing by the branch office to the principal office of Metrobank, which forwarded them to the Bureau of Treasury for special clearing. More than 2 weeks after the deposits, Gloria Castillo went to the Calapan branch several times to ask whether the warrants had been cleared. She was told to wait. Accordingly, Gomez was meanwhile 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 says it finally decided to allow Golden Savings to withdraw from the proceeds of the warrants. The first withdrawal was made on 9 July 1979, in the amount of P508,000.00, the second on 13 July 1979, in the amount of P310,000.00, and the third on 16 July 1979, in the amount of P150,000.00. The total withdrawal was P968,000.00. In turn, Golden Savings subsequently allowed Gomez to make withdrawals from his own account, eventually collecting the total amount of P1,167,500.00 from the proceeds of the apparently cleared warrants. The last withdrawal was made on 16 July 1979. On 21 July 1979, Metrobank informed Golden Savings that 32 of the warrants had been dishonored by the Bureau of Treasury on 19 July 1979, 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 in the Regional Trial Court of Mindoro. After trial, judgment was rendered in favor of Golden Savings, which, however, filed a motion for reconsideration even as Metrobank filed its notice of appeal. On 4 November 1986, the lower court modified its decision, by dismissing the complaint with costs against Metrobank; by dissolving and lifting the writ of attachment of the properties of Golden Savings and Spouses Magno Castillo and Lucia Castillo; directing Metrobank to reverse its action of debiting Savings Account 2498 of the sum of P1,754,089.00 and to reinstate and credit to such account such amount existing before the debit was made including the amount of P812,033.37 in favor of Golden Savings and thereafter, to allow Golden Savings to withdraw the amount outstanding thereon before the debit; by ordering Metrobank to pay Golden Savings attorney's fees and expenses of litigation in the amount of P200,000.00; and by ordering Metrobank to pay the Spouses Magno Castillo and Lucia Castillo attorney's fees and expenses of litigation in the amount of P100,000.00. On appeal to the appellate court, the decision was affirmed, prompting Metrobank to file the petition for review.

Issue: Whether the treasury warrants in question are negotiable instruments.

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Held: Clearly stamped on the treasury warrants' 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. Section 1 of the Negotiable Instruments Law, provides that "An instrument to be negotiable must conform to the following requirements: (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." Section 3 (When promise is unconditional) thereof provides that "An unqualified order or promise to pay is unconditional within the meaning of this Act though coupled with — (a) 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 (b) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a 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 unconditional" and the warrants themselves non-negotiable. There should be no question that the exception on Section 3 of the Negotiable Instruments Law is applicable in the present case. 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 Section 66 of the Negotiable Instruments Law. The simple reason is that this law is not applicable to the non-negotiable treasury warrants. The indorsement was made by Gloria Castillo not for the purpose of guaranteeing the genuineness of the warrants but merely to deposit them with Metrobank for clearing. It was in fact Metrobank that made the guarantee when it stamped on the back of the warrants: "All prior indorsement and/or lack of endorsements guaranteed, Metropolitan Bank & Trust Co., Calapan Branch."

6 **Ang Tek Lian vs. Court of Appeals [GR L-2516, 25 September 1950]**

En Banc, Bengzon (J): 6 concur

Facts: Knowing he had no funds therefor, Ang Tek Lian drew on Saturday, 16 November 1946, a check 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 18 November 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. Ang Tek Lian was charged and was convicted of estafa in the Court of First Instance of Manila. The Court of Appeals affirmed the verdict.

Issue: Whether indorsement is necessary for the presentation of a bearer instrument for payment.

Held: Under Section 9(d) of the Negotiable Instruments Law, 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. 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." 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. 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

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charged with negligence in failing to do so. 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." 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. Herein anyway, it is significant, and conclusive, that the form of the check was totally unconnected with its dishonor. It was returned unsatisfied because the drawer had insufficient funds — not because the drawer's indorsement was lacking.

7 **Philippine National Bank vs. Manila Oil Refining & By-Products Company, Inc. [GR L-18103, 8 June 1922]**

First Division, Malcolm (J): 6 concur

Facts: On 8 May 1920, the manager and the treasurer of the Manila Oil Refining & By-Products Company, Inc., executed and delivered to the Philippine National Bank (PNB), a written instrument reading as follows: "RENEWAL. P61,000.00 MANILA, P.I., May 8, 1920. On demand after date we promise to pay to the order of the Philippine National Bank sixty-one thousand only pesos at Philippine National Bank, Manila, P.I. Without defalcation, value received; and do hereby authorize any attorney in the Philippine Islands, in case this note be not paid at maturity, to appear in my name and confess judgment for the above sum with interest, cost of suit and attorney's fees of ten (10) per cent for collection, a release of all errors and waiver of all rights to inquisition and appeal, and to the benefit of all laws exempting property, real or personal, from levy or sale. Value received. No. — Due — MANILA OIL REFINING & BY-PRODUCTS CO., INC., (Sgd.) VICENTE SOTELO, Manager. MANILA OIL REFINING & BY-PRODUCTS CO., INC., (Sgd.) RAFAEL LOPEZ, Treasurer." The Manila Oil Refining & By-Products Company, Inc. failed to pay the promissory note on demand. PNB brought action in the Court of First Instance of Manila, to recover P61,000, the amount of the note, together with interest and costs. Mr. Elias N. Recto, an attorney associated with PNB, entered his appearance in representation of Manila Oil, and filed a motion confessing judgment. Manila Oil, however, in a sworn declaration, objected strongly to the unsolicited representation of attorney Recto. Later, attorney Antonio Gonzalez appeared for Manila Oil and filed a demurrer, and when this was overruled, presented an answer. The trial judge rendered judgment on the motion of attorney Recto in the terms of the complaint. *<The disposition of the trial court and the process as to how the case reached the Supreme Court is not in the facts.>* In the Supreme Court, the question of first impression raised in the case concerns the validity in this jurisdiction of a provision in a promissory note whereby in case the same is not paid at maturity, the maker authorizes any attorney to appear and confess judgment thereon for the principal amount, with interest, costs, and attorney's fees, and waives all errors, rights to inquisition, and appeal, and all property exemptions.

Issue [1]: Whether the Negotiable Instruments Law (Act No. 2031) expressly recognized judgment notes, enforceable under the regular procedure.

Held [1]: The Negotiable Instruments Law, in section 5, provides that "The negotiable character of an instrument otherwise negotiable is not affected by a provision which (b) Authorizes confession of judgment if the instrument be not paid at maturity"; but this provision of law cannot be taken to sanction judgments by confession, because it is a portion of a uniform law which merely provides that, in jurisdictions where judgments notes are recognized, such clauses shall not affect the negotiable character of the instrument. Moreover, the same section of the Negotiable Instruments Law concludes with these words: "But nothing in this section shall validate any provision or stipulation otherwise illegal."

Issue [2]: Whether provisions in notes authorizing attorneys to appear and confess judgments against makers should not be recognized in Philippine jurisdiction by implication.

Held [2]: Judgments by confession as appeared at common law were considered an amicable, easy, and cheap way to settle and secure debts. They are quick remedy serve to save the court's time. Time also save

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time and money of the litigants and the government the expenses that a long litigation entails. In one sense, instruments of this character may be considered as special agreements, with power to enter up judgments on them, binding the parties to the result as they themselves viewed it. On the other hand, are disadvantages to the commercial world which outweigh the considerations just mentioned. Such warrants of attorney are void as against public policy, because they enlarge the field for fraud, because under these instruments the promissor bargains away his right to a day in court, and because the effect of the instrument is to strike down the right of appeal accorded by statute. The recognition of such form of obligation would bring about a complete reorganization of commercial customs and practices, with reference to short-term obligations. It can readily be seen that judgment notes, instead of resulting to the advantage of commercial life the Philippines might be the source of abuse and oppression, and make the courts involuntary parties thereto. If the bank has a meritorious case, the judgment is ultimately certain in the courts. The Court is of the opinion thus that warrants of attorney to confess judgment are not authorized nor contemplated by Philippine law; and that provisions in notes authorizing attorneys to appear and confess judgments against makers should not be recognized in this jurisdiction by implication and should only be considered as valid when given express legislative sanction.

8 Republic Planters Bank vs. Court of Appeals [GR 93073, 21 December 1992]

Second Division, Campos Jr. (J): 4 concur

Facts: Shozo Yamaguchi and Fermin Canlas were President/Chief Operating Officer and Treasurer respectively, of Worldwide Garment Manufacturing, Inc.. By virtue of Board Resolution 1 dated 1 August 1979, Shozo Yamaguchi and Fermin Canlas were authorized to apply for credit facilities with the petitioner Republic Planters Bank (RPB) in the forms of export advances and letters of credit/trust receipts accommodations. Republic Planters Bank issued nine promissory notes, 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 _____XX Current", "Account No. 1372-00257-6", and "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 three promissory notes, the name Worldwide Garment Manufacturing, Inc. was apparently rubber stamped above the signatures of Yamaguchi and Canlas. On 20 December 1982, Worldwide Garment Manufacturing, Inc. (WGMI) noted to change its corporate name to Pinch Manufacturing Corporation (PMC). On 5 February 1982, RPB 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 WGMI inter alia, but it was later amended to drop WGMI as defendant and substitute PMC in its place. PMC and Shozo Yamaguchi did not file an Amended Answer and failed to appear at the scheduled pre-trial conference despite due notice. Only 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 PMC, but instead of WGMI, and that when he issued said promissory notes in behalf of WGMI, the same were in blank, the typewritten entries not appearing therein prior to the time he affixed his signature. On 20 June 1985, The Regional Trial Court rendered a decision in favor of RPB, ordering PMC (formerly WGMI), Yamaguchi and Canlas to pay, jointly and severally, RPB the following sums with interest thereon at 16% per annum under 7 promissory notes, the sum of P300,000.00 with interest from 29 January 1981 until fully paid; P40,000.00 with interest from 27 November 1980; P166,466.00 with interest from 29 January 1981; P86,130.31 with interest from 29 January 1981; P12,703.70 with interest from 27 November 1980; P281,875.91 with interest from 29 January 1981; and P200,000.00 with interest from 29 January 1981. PMC and Yamaguchi were also ordered to pay jointly and severally, RPB the sum of P367,000.00 with interest of 16% per annum from 29 January 1980 under another promissory note. PMC was ordered to pay RPB the sum of P140,000.00 with interest at 16% per annum from

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27 November 1980 until fully paid, under another promissory note; to pay the sum of P231,120.81 with interest at 12% per annum from 1 July 1981, until fully paid and the sum of P331,870.97 with interest from 28 March 1981, until fully paid. The court also ordered PMC, Yamaguchi, and Canlas to pay, jointly and severally, RPB the sum of P100,000.00 as and for reasonable attorney's fee and the further sum equivalent to 3% per annum of the respective principal sums from the dates above stated as penalty charge until fully paid, plus 1% of the principal sums as service charge; with costs against PMC, et al. From the above decision only Canlas appealed to the then Intermediate Court (now the Court Appeals). His contention was that inasmuch as he signed the promissory notes in his capacity as officer of the defunct WGMI, he should not be held personally liable for such authorized corporate acts that he performed. The appellate court affirmed the decision of trial court except that it completely absolved Canlas from liability under the promissory notes and reduced the award for damages and attorney's fees. RPB appealed by a way of a petition for review on certiorari. It is the contention of RPB that having unconditionally signed the 9 promissory notes with Yamaguchi, jointly and severally, Canlas is solidarity liable with Yamaguchi on each of the nine notes.

Issue [1]: Whether Fermin Canlas is solidarily liable on each of the promissory notes bearing his signature.

Held [1]: Fermin Canlas is solidarily liable on each of the promissory notes bearing his signature. The promissory notes are negotiable instruments and must be governed by the Negotiable Instruments Law. 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 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. Herein, the solidary liability of 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 RPB. 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. By making a joint and several promise to pay to the order of RPB, Canlas assumed the solidary liability of a debtor and the payee may choose to enforce the notes against him alone or jointly with Yamaguchi and PMC as solidary debtors. As to whether the interpolation of the phrase "and (in) his personal capacity" below the signatures of the makers in the notes will affect the liability of the makers, it is immaterial and will not affect to the liability of Canlas as a joint and several debtor of the notes. With or without the presence of said phrase, Canlas is primarily liable as a co-maker of each of the notes and his liability is that of a solidary debtor.

Issue [2]: Whether Canlas can avoid liability on the promissory notes by claiming to be a mere agent of the corporation.

Held [2]: As a general rule, officers or directors under the old corporate name bear no personal liability for acts done or contracts entered into by officers of the corporation, if duly authorized. Inasmuch as such officers acted in their capacity as agent of the old corporation and the change of name meant only the continuation of the old juridical entity, the corporation bearing the same name is still bound by the acts of its agents if authorized by the Board. Under the Negotiable Instruments Law, the liability of a person signing as an agent is specifically provided for in Section 20 thereof, which provides that "Liability of a person signing as agent and so forth. 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

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authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. Where the agent signs his name but nowhere in the instrument has he disclosed the fact that he is acting in a representative capacity or the name of the third party for whom he might have acted as agent, the agent is personally liable to take holder of the instrument and cannot be permitted to prove that he was merely acting as agent of another and parol or extrinsic evidence is not admissible to avoid the agent's personal liability."

Issue [3]: Whether the promissory notes were delivered to Canlas in blank for his signature, or were incomplete instruments, to allow the application of Section 14 of the Negotiable Instruments Law.

Held [3]: A careful examination of the notes in question shows that they are the stereotype printed form of promissory notes generally used by commercial banking institutions to be signed by their clients in obtaining loans. Such printed notes are incomplete because there are blank spaces to be filled up on material particulars such as payee's name, amount of the loan, rate of interest, date of issue and the maturity date. The terms and conditions of the loan are printed on the note for the borrower-debtor's perusal. An incomplete instrument which has been delivered to the borrower for his signature is governed by Section 14 of the Negotiable Instruments Law. Proof that the notes were signed in blank was only the self-serving testimony of Canlas. The Court chose to believe the bank's testimony that the notes were filled up before they were given to Canlas and Yamaguchi for their signatures as joint and several promissors. For signing the notes above their typewritten names, they bound themselves as unconditional makers. The court took judicial notice of the customary procedure of commercial banks of requiring their clientele to sign promissory notes prepared by the banks in printed form with blank spaces already filled up as per agreed terms of the loan, leaving the borrowers-debtors to do nothing but read the terms and conditions therein printed and to sign as makers or co-makers. When the notes were given to Canlas for his signature, the notes were complete in the sense that the spaces for the material particular had been filled up by the bank as per agreement. The notes were not incomplete instruments; neither were they given to Canlas in blank as he claims. Thus, Section 14 of the Negotiable Instruments Law is not applicable.

9 Evangelista vs. Mercator Finance Corp. [GR 148864, 21 August 2003]

Third Division, Puno (J): 2 concur, 2 on official leave

Facts: Spouses Eduardo B. Evangelista and Epifania C. Evangelista filed a complaint for annulment of titles against Mercator Finance Corp. Lydia P. Salazar, Lamecs Realty and Development Corporation, and the Register of Deeds of Bulacan. The spouses Evangelista claimed being the registered owners of 5 parcels of land contained in the Real Estate Mortgage executed by them and Embassy Farms, Inc. They alleged that they executed the Real Estate Mortgage in favor of Mercator only as officers of Embassy Farms. They did not receive the proceeds of the loan evidenced by a promissory note, as all of it went to Embassy Farms. Thus, they contended that the mortgage was without any consideration as to them since they did not personally obtain any loan or credit accommodations. There being no principal obligation on which the mortgage rests, the real estate mortgage is void. With the void mortgage, they assailed the validity of the foreclosure proceedings conducted by Mercator, the sale to it as the highest bidder in the public auction, the issuance of the transfer certificates of title to it, the subsequent sale of the same parcels of land to Lydia P. Salazar, and the transfer of the titles to her name, and lastly, the sale and transfer of the properties to respondent Lamecs Realty & Development Corporation. Mercator admitted that the spouses Evangelista were the owners of the subject parcels of land. It, however, contended that on 16 February 1982, the spouses executed a Mortgage in favor of Mercator for and in consideration of certain loans, and/or other forms of credit accommodations obtained from the Mortgagee (Mercator) amounting to P844,625.78 and to secure the payment of the same and those others that the Mortgagee may extend to the mortgagor. It contended that since the spouses and Embassy Farms signed the promissory note as co-makers, aside from the Continuing Suretyship Agreement subsequently executed to guarantee the indebtedness of Embassy Farms, and the succeeding promissory notes[8] restructuring the loan, then the spouses are jointly and severally liable with Embassy Farms. Due to

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their failure to pay the obligation, the foreclosure and subsequent sale of the mortgaged properties are valid. Salazar and Lamecs asserted that they are innocent purchasers for value and in good faith, relying on the validity of the title of Mercator. Lamecs admitted the prior ownership of the spouses of the subject parcels of land, but alleged that they are the present registered owner. Salazar and Lamecs likewise assailed the long silence and inaction by the spouses as it was only after a lapse of almost 10 years from the foreclosure of the property and the subsequent sales that they made their claim. Thus, Salazar and Lamecs averred that petitioners are in estoppel and guilty of laches. After pre-trial, Mercator moved for summary judgment on the ground that except as to the amount of damages, there is no factual issue to be litigated. Mercator argued that petitioners had admitted in their pre-trial brief the existence of the promissory note, the continuing suretyship agreement and the subsequent promissory notes restructuring the loan, hence, there is no genuine issue regarding their liability. The mortgage, foreclosure proceedings and the subsequent sales are valid and the complaint must be dismissed. The spouses opposed the motion for summary judgment claiming that because their personal liability to Mercator is at issue, there is a need for a full-blown trial. The RTC granted the motion for summary judgment and dismissed the complaint. The spouses' motion for reconsideration was denied for lack of merit. Thus, the spouses went up to the Court of Appeals, but again were unsuccessful. A motion for reconsideration by the spouses was likewise denied for lack of merit. The spouses filed the Petition for Review on Certiorari. The spouses allege, inter alia, that there is an ambiguity in the wording of the promissory note and claim that since it was Mercator who provided the form, then the ambiguity should be resolved against it.

Issue: Whether the spouses are solidarily liable with Embassy Farms, in light of the promissory note signed by them.

Held: The promissory note and the Continuing Suretyship Agreement prove that the spouses are solidary obligors with Embassy Farms. The promissory notes subsequently executed by the spouses and Embassy Farms, restructuring their loan, likewise prove that the spouses are solidarily liable with Embassy Farms. The spouses allege that there is an ambiguity in the wording of the promissory note and claim that since it was Mercator who provided the form, then the ambiguity should be resolved against it. Courts can interpret a contract only if there is doubt in its letter. But, an examination of the promissory note shows no such ambiguity. Besides, assuming arguendo that there is an ambiguity, Section 17 of the Negotiable Instruments Law states that "Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply: (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." Further, even if the spouses intended to sign the note merely as officers of Embassy Farms, still this does not erase the fact that they subsequently executed a continuing suretyship agreement. A surety is one who is solidarily liable with the principal. The spouses cannot claim that they did not personally receive any consideration for the contract for well-entrenched is the rule 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. A surety is bound by the same consideration that makes the contract effective between the principal parties thereto. Having executed the suretyship agreement, there can be no dispute on the personal liability of the spouses.

10 *Sesbreno vs. Court of Appeals [GR 89252, 24 May 1993], supra.*
See case entry 4

11 *Consolidated Plywood Industries Inc. vs. IFC Leasing and Acceptance Corp. [GR 72593, 30 April 1987]*
Second Division, Gutierrez Jr. (J): 5 concur

Facts: Consolidated Plywood Industries Inc. (CPII) is a corporation engaged in the logging business. It had for its program of logging activities for the year 1978 the opening of additional roads, and simultaneous logging operations along the route of said roads, in its logging concession area at Baganga, Manay, and

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Caraga, Davao Oriental. For this purpose, it needed 2 additional units of tractors. Cognizant of CPII's need and purpose, Atlantic Gulf & Pacific Company of Manila, through its sister company and marketing arm, Industrial Products Marketing (IPM), a corporation dealing in tractors and other heavy equipment business, offered to sell to CPII 2 "Used" Allis Crawler Tractors, 1 an HD-21-B and the other an HD-16-B. In order to ascertain the extent of work to which the tractors were to be exposed, and to determine the capability of the "Used" tractors being offered, CPII requested the seller-assignor to inspect the jobsite. After conducting said inspection, IPM assured CPII that the "Used" Allis Crawler Tractors which were being offered were fit for the job, and gave the corresponding warranty of 90 days performance of the machines and availability of parts. With said assurance and warranty, and relying on the IPM's skill and judgment, CPII through Henry Wee and Rodolfo T. Vergara, president and vice-president, respectively, agreed to purchase on installment said 2 units of "Used" Allis Crawler Tractors. It also paid the down payment of P210,000.00. On 5 April 1978, IPM issued the sales invoice for the 2 units of tractors. At the same time, the deed of sale with chattel mortgage with promissory note was executed. Simultaneously with the execution of the deed of sale with chattel mortgage with promissory note, IPM, by means of a deed of assignment, assigned its rights and interest in the chattel mortgage in favor of IFC Leasing and Acceptance Corporation. Immediately thereafter, IPM delivered said 2 units of "Used" tractors to CPII's jobsite and as agreed, IPM stationed its own mechanics to supervise the operations of the machines. Barely 14 days had elapsed after their delivery when one of the tractors broke down and after another 9 days, the other tractor likewise broke down. On 25 April 1978, Vergara formally advised IPM of the fact that the tractors broke down and requested for IPM's usual prompt attention under the warranty. In response to the formal advice by Vergara, IPM sent to the jobsite its mechanics to conduct the necessary repairs, but the tractors did not come out to be what they should be after the repairs were undertaken because the units were no longer serviceable. Because of the breaking down of the tractors, the road building and simultaneous logging operations of CPII were delayed and Vergara advised IPM that the payments of the installments as listed in the promissory note would likewise be delayed until IPM completely fulfills its obligation under its warranty. Since the tractors were no longer serviceable, on 7 April 1979, Wee asked IPM to pull out the units and have them reconditioned, and thereafter to offer them for sale. The proceeds were to be given to IFC Leasing and the excess, if any, to be divided between IPM and CPII which offered to bear 1/2 of the reconditioning cost. No response to this letter was received by CPII and despite several follow-up calls, IPM did nothing with regard to the request, until the complaint in the case was filed by IFC Leasing against CPII, Wee, and Vergara. The complaint was filed by IFC Leasing against CPII, et al. for the recovery of the principal sum of P1,093,789.71, accrued interest of P151,618.86 as of 15 August 1979, accruing interest there after at the rate of 12% per annum, attorney's fees of P249,081.71 and costs of suit. CPII, et al. filed their amended answer praying for the dismissal of the complaint and asking the trial court to order IFC leasing to pay them damages in an amount at the sound discretion of the court, P20,000.00 as and for attorney's fees, and P5,000.00 for expenses of litigation, among others. In a decision dated 20 April 1981, the trial court rendered judgment, ordering CPII, et al. to pay jointly and severally in their official and personal capacities the principal sum of P1,093,798.71 with accrued interest of P151,618.86 as of 15 August 1979 and accruing interest thereafter at the rate of 12% per annum; and attorney's fees equivalent to 10% of the principal and to pay the costs of the suit. On 8 June 1981, the trial court issued an order denying the motion for reconsideration filed by CPII, et al. CPII, et al. appealed to the Intermediate Appellate Court. On 17 July 1985, the Intermediate Appellate Court issued the decision affirming in toto the decision of the trial court. CPII et al.'s motion for reconsideration was denied by the Intermediate Appellate Court in its resolution dated 17 October 1985, a copy of which was received by CPII, et al. on 21 October 1985. CPII, et al. filed the petition for certiorari under rule 45 of the Rules of Court.

Issue: Whether the promissory note in question is a negotiable instrument.

Held: The pertinent portion of the note provides that ""FOR VALUE RECEIVED, I/we jointly and severally promise to pay to the INDUSTRIAL PRODUCTS MARKETING, the sum of ONE MILLION NINETY THREE THOUSAND SEVEN HUNDRED EIGHTY NINE PESOS & 71/100 only (P1,093,789.71), Philippine Currency, the said principal sum, to be payable in 24 monthly installments starting July 15, 1978

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and every 15th of the month thereafter until fully paid." Considering that paragraph (d), Section 1 of the Negotiable Instruments Law requires that a promissory note "must be payable to order or bearer," it cannot be denied that the promissory note in question is not a negotiable instrument. 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." These words serve as an expression of consent that the instrument may be transferred. This consent is indispensable since a maker assumes greater risk under a negotiable instrument than under a non-negotiable one. 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. Therefore, considering that the subject promissory note is not a negotiable instrument, it follows that IFC Leasing can never be a holder in due course but remains a mere assignee of the note in question. Thus, CPII may raise against IFC Leasing all defenses available to it as against IPM. This being so, there was no need for CPII to implead IPM when it was sued by IFC Leasing because CPII's defenses apply to both or either of them.

12 De la Victoria vs. Burgos [GR 111190, 27 June 1995]

First Division, Bellosillo (J): 2 concur, 1 concurs in separate opinion to which 1 joined

Facts: Raul H. Sesbreno filed a complaint for damages against Assistant City Fiscal Bienvenido N. Mabanto, Jr., et al. before the Regional Trial Court of Cebu City. After trial Judgment was rendered ordering Mabanto, et al. to pay P11,000.00 to Sesbreno. The decision having become final and executory, on motion of the latter, the trial court ordered its execution. This order was questioned by Mabanto, et al. before the Court of Appeals. However, on 15 January 1992 a writ of execution was issued. On 4 February 1992 a notice of garnishment was served on Loreto D. de la Victoria as City Fiscal of Mandaue City where Mabanto, Jr., was then detailed. The Notice directed De la Victoria not to disburse, transfer, release or convey to any other person except to the deputy sheriff concerned the salary checks, monies, or cash due or belonging to Mabanto, Jr., under penalty of law. On 10 March 1992 Sesbreno filed a motion before the trial court for examination of the garnishees. On 25 May 1992 the petition pending before the Court of Appeals was dismissed. Thus the trial court, finding no more legal obstacle to act on the motion for examination of the garnishees, directed De la Victoria on 4 November 1992 to submit his report showing the amount of the garnished salaries of Mabanto, Jr., within 15 days from receipt taking into consideration the provisions of Sec. 12, pars. (f) and (i), Rule 39 of the Rules of Court. On 24 November 1992 Sesbreno filed a motion to require De la Victoria to explain why he should not be cited in contempt of court for failing to comply with the order of 4 November 1992. On the other hand, on 19 January 1993 De la Victoria 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., until delivered to him. He further claimed that, as such, they were still public funds which could not be subject to garnishment. On 9 March 1993 the trial court denied both motions and ordered De la Victoria to immediately comply with its order of 4 November 1992. It opined that the checks of Mabanto, Jr., had already been released through De la Victoria by the Department of Justice duly signed by the officer concerned; that upon service of the writ of garnishment, De la Victoria as custodian of the checks was under obligation to hold them for the judgment creditor; that De la Victoria became a virtual party to, or a forced intervenor in, the case and the trial court hereby acquired jurisdiction to bind him to its orders and processes with a view to the complete satisfaction of the judgment; and that additionally there was no sufficient reason for De la Victoria to hold the checks because they were no longer government funds and presumably delivered to the payee, conformably with the last sentence of Section 16 of the Negotiable Instruments Law. With regard to the contempt charge, the trial court was not morally convinced of De la Victoria's guilt. On 20 April 1993 the motion for reconsideration was denied. De la Victoria filed the petition.

Issue: Whether 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.

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Held: Garnishment is considered as a species of attachment for reaching credits belonging to the Judgment debtor owing to him from a stranger to the litigation. 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 Department of Justice through De la Victoria as City Fiscal of Mandaue City and head of office. Under Section 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 the 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. As held in *Tiro v. Hontanosas*, "the salary check of a government officer or employee such as a teacher 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." As a necessary consequence of being public fund, the checks may not be garnished to satisfy the judgment. The rationale behind this doctrine is obvious consideration of public policy. The Court succinctly stated in *Commissioner of Public Highways v. San Diego* that "the functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law." The trial court exceeded its jurisdiction in issuing the notice of garnishment concerning the salary checks of Mabanto, Jr., in the possession of De la Victoria.

13 Development Bank of Rizal vs. Sima Wei [GR 85419, 9 March 1993]

Second Division, Campos Jr. (J): 4 concur

Facts: In consideration for a loan extended by the Development Bank of Rizal (DBR) to Sima Wei, the latter executed and delivered to the former a promissory note, engaging to pay DBR or order the amount of P1,820,000.00 on or before 24 June 1983 with interest at 32% per annum. Sima Wei made partial payments on the note, leaving a balance of P1,032,450.02. On 18 November 1983, Sima Wei issued two crossed checks payable to DBR drawn against China Banking Corporation, bearing respectively the serial numbers 384934, for the amount of P550,000.00 and 384935, for the amount of P500,000.00. The said checks were allegedly issued in full settlement of the drawer's account evidenced by the promissory note. These two checks were not delivered to DBR or to any of its authorized representatives. For reasons not shown, these checks came into the possession of Lee Kian Huat, who deposited the checks without DBR's indorsement (forged or otherwise) to the account of the Asian Industrial Plastic Corporation, at the Balintawak branch, Caloocan City, of the Producers Bank. Cheng Uy, Branch Manager of the Balintawak Branch of Producers Bank, relying on the assurance of Samson Tung, President of Plastic Corporation, that the transaction was legal and regular, instructed the cashier of Producers Bank to accept the checks for deposit and to credit them to the account of said Plastic Corporation, in spite of the fact that the checks were crossed and payable to DBR and bore no indorsement of the latter. On 5 July 1986, DBR filed the complaint for a sum of money against Sima Wei and/or Lee Kian Huat, Mary Cheng Uy, Samson Tung, Asian Industrial Plastic Corporation and the Producers Bank of the Philippines, on two causes of action (1) To enforce payment of the balance of P1,032,450.02 on a promissory note executed by Sima Wei on 9 June 1983; and (2) To enforce payment of two checks executed by Sima Wei, payable to DBR, and drawn against the China Banking Corporation, to pay the balance due on the promissory note. Except for Lee Kian Huat, Sima Wei, et al. filed their separate Motions to Dismiss alleging a common ground that the complaint states no cause of action. The trial court granted the Motions to Dismiss. The Court of Appeals affirmed the decision, to which DBR, represented by its Legal Liquidator, filed the Petition for Review by Certiorari.

Issue: Whether DBR, as the intended payee of the instrument, has a cause of action against any or all of the defendants, in the alternative or otherwise.

Held: The normal parties to a check are the drawer, the payee and the drawee bank. Courts have long

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recognized the business custom of using printed checks where blanks are provided for the date of issuance, the name of the payee, the amount payable and the drawer's signature. All the drawer has to do when he wishes to issue a check is to properly fill up the blanks and sign it. However, the mere fact that he has done these does not give rise to any liability on his part, until and unless the check is delivered to the payee or his representative. 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 that "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. Herein, the two (2) China Bank checks, numbered 384934 and 384935, were not delivered to the payee, DBR. Without the delivery of said checks to DBR, 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 DBR 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 DBR. It had no right or interest in the checks which could have been violated by said respondents. DBR 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.

14 Metropol (Bacolod) Financing & Investment Corporation vs. Sambok Motors Co. [GR L-39641, 28 February 1983]

Second Division, De Castro (J): 4 concur, 1 on leave, 1 concurs but articulating his observation that the appeal could have been treated as a petition for review under RA 5440 and dismissed by minute resolution.

Facts: On 15 April 1969 Dr. Javier Villaruel executed a promissory note in favor of Ng Sambok Sons Motors Co., Ltd., in the amount of P15,939.00 payable in 12 equal monthly installments, beginning 18 May 1969, with interest at the rate of 1% per month. It is further provided that in case on non-payment of any of the installments, the total principal sum then remaining unpaid shall become due and payable with an additional interest equal to 25% of the total amount due. On the same date, Sambok Motors Company, a sister company of Ng Sambok Sons Motors Co., Ltd., and under the same management as the former, negotiated and indorsed the note in favor of Metropol Financing & Investment Corporation with the following indorsement: "Pay to the order of Metropol Bacolod Financing & Investment Corporation with recourse. Notice of Demand; Dishonor; Protest; and Presentment are hereby waived. SAMBOK MOTORS CO. (BACOLOD) By: RODOLFO G. NONILLO, Asst. General Manager." The maker, Dr. Villaruel defaulted in the payment of his installments when they became due, so on 30 October 1969, Metropol formally presented the promissory note for payment to the maker. Dr. Villaruel failed to pay the promissory note as demanded, hence Metropol notified Sambok as indorsee of said note of the fact that the same has been dishonored and demanded payment. Sambok failed to pay, so on 26 November 1969 Metropol filed a complaint for collection of a sum of money before the Court of First Instance of Iloilo, Branch I. Sambok did not deny its liability but contended that it could not be obliged to pay until after its co-defendant Dr. Villaruel, has been declared insolvent. During the pendency of the case in the trial court, Dr. Villaruel died, hence, on 24 October 1972 the lower court, on motion, dismissed the case against Dr. Villaruel pursuant to Section 21, Rule 3 of the Rules of Court. On Metropol's motion for summary judgment, the trial court rendered its decision dated 12 September 1973, ordering Sambok to pay to Metropol the sum of P15,939.00 plus the legal rate of interest from 30 October 1969; the sum equivalent to 25% of P15,939.00 plus interest thereon until fully paid; and to pay the cost of suit. Not satisfied with the decision, Sambok appealed. Sambok argue that by adding the words "with

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recourse" in the indorsement of the note, it becomes a qualified indorser; that being a qualified indorser, it does not warrant that if said note is dishonored by the maker on presentment, it will pay the amount to the holder; that it only warrants the following pursuant to Section 65 of the Negotiable Instruments Law: (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 had capacity to contract; (d) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

Issue: Whether Sambok is a qualified indorser of the subject promissory note.

Held: A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement relieves the indorser of the general obligation to pay if the instrument is dishonored but not of the liability arising from warranties on the instrument as provided in Section 65 of the Negotiable Instruments Law. However, Sambok indorsed the note "with recourse" and even waived the notice of demand, dishonor, protest and presentment. "Recourse" means resort to a person who is secondarily liable after the default of the person who is primarily liable. Sambok, by indorsing the note "with recourse" does not make itself a qualified indorser but a general indorser who is secondarily liable, because by such indorsement, it agreed that if Dr. Villaruel fails to pay the note, Metropol can go after Sambok. The effect of such indorsement is that the note was indorsed without qualification. A person who indorses without qualification engages that on due presentment, the note shall be accepted or paid, or both as the case may be, and that if it be dishonored, he will pay the amount thereof to the holder. Sambok's intention of indorsing the note without qualification is made even more apparent by the fact that the notice of demand, dishonor, protest and presentment were all waived. The words added by Sambok do not limit his liability, but rather confirm his obligation as a general indorser. Further, after an instrument is dishonored by non-payment, the person secondarily liable thereon ceases to be such and becomes a principal debtor. His liability becomes the same as that of the original obligor. Consequently, the holder need not even proceed against the maker before suing the indorser.

15 **Gempesaw vs. Court of Appeals [GR 92244. 9 February 1993]**

*Second Division, Campos Jr. (J): 4 concur
see case entry 32*

Facts: Natividad O. Gempesaw owns and operates four grocery stores located at Rizal Avenue Extension and at Second Avenue, both in Caloocan City. Among these groceries are D.G. Shopper's Mart and D.G. Whole Sale Mart. Gempesaw maintains a checking account numbered 13-00038-1 with the Caloocan City Branch of PBCom. To facilitate payment of debts to her suppliers, Gempesaw draws checks against her checking account with PBCom as drawee. Her customary practice of issuing checks in payment of her suppliers was as follows: The checks were prepared and filled up as to all material particulars by her trusted bookkeeper, Alicia Galang, an employee for more than 8 years. After the bookkeeper prepared the checks, the completed checks were submitted to Gempesaw for her signature, together with the corresponding invoice receipts which indicate the correct obligations due and payable to her suppliers. Gempesaw signed each and every check without bothering to verify the accuracy of the checks against the corresponding invoices because she reposed full and implicit trust and confidence on her bookkeeper. The issuance and delivery of the checks to the payees named therein were left to the bookkeeper. Gempesaw admitted that she did not make any verification as to whether the checks were actually delivered to their respective payees. Although PBCom notified her of all checks presented to and paid by the bank, Gempesaw did not verify the correctness of the returned checks, much less check if the payees actually received the checks in payment for the supplies she received. In the course of her business operations covering a period of 2 years, Gempesaw issued, following her usual practice, a total of 82 checks in favor of several suppliers. These checks were all presented by the indorsees as holders thereof to, and honored by PBCom. PBCom correspondingly debited the amounts thereof against Gempesaw's checking account numbered 30-00038-1. Most of the checks were for amounts in excess of her actual obligations to the various payees as shown in their corresponding invoices. Practically, all the checks

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issued and honored by PBCom were crossed checks. Aside from the daily notice given to Gempesaw by PBCom, the latter also furnished her with a monthly statement of her bank transactions, attaching thereto all the cancelled checks she had issued and which were debited against her current account. It was only after the lapse of more than 2 years that Gempesaw found out about the fraudulent manipulations of her bookkeeper. All the 82 checks with forged signatures of the payees were brought to Ernest L. Boon, Chief Accountant of PBCom at the Buendia branch, who, without authority therefor, accepted them all for deposit at the Buendia branch to the credit and/or in the accounts of Alfredo Y. Romero and Benito Lam. Ernest L. Boon was a very close friend of Alfredo Y. Romero. 63 out of the 82 checks were deposited in Savings Account 00844-5 of Alfredo Y. Romero at PBCom's Buendia branch, and 4 checks in his Savings Account 32-81-9 at its Ongpin branch. The rest of the checks were deposited in Account 0443-4, under the name of Benito Lam at the Elcano branch of the respondent drawee Bank. About 30 of the payees whose names were specifically written on the checks did not receive nor even see the subject checks and that the indorsements appearing at the back of the checks were not theirs. The team of auditors from the main office of PBCom which conducted periodical inspection of the branches' operations failed to discover, check or stop the unauthorized acts of Ernest L. Boon. All the deposit slips of the 82 checks in question were initialed and/or approved for deposit by Ernest L. Boon, contrary to the rules of PBCom, where only a Branch Manager, and no other official of PBCom, may accept a second indorsement on a check for deposit. The Branch Managers of the Ongpin and Elcano branches accepted the deposits made in the Buendia branch and credited the accounts of Alfredo Y. Romero and Benito Lam in their respective branches. On 7 November 1984, Gempesaw made a written demand on PBCom to credit her account with the money value of the 82 checks totalling P1,208,606.89 for having been wrongfully charged against her account. PBCom refused to grant Gempesaw's demand. On 23 January 1985, Gempesaw filed a Complaint against the Philippine Bank of Communications (PBCom) for recovery of the money value of 82 checks charged against Gempesaw's account with PBCom on the ground that the payees' indorsements were forgeries. The Regional Trial Court, Branch CXXVIII of Caloocan City, which tried the case, rendered a decision on 17 November 1987 dismissing the complaint as well as PBCom's counterclaim. On appeal, the Court of Appeals in a decision rendered on 22 February 1990, affirmed the decision of the RTC on two grounds, namely (1) that Gempesaw's gross negligence in issuing the checks was the proximate cause of the loss and (2) assuming that the bank was also negligent, the loss must nevertheless be borne by the party whose negligence was the proximate cause of the loss. On 5 March 1990, Gempesaw filed the petition for review under Rule 45 of the Rules of Court.

Issue [1]: Whether the drawer's account may be charged for checks where the indorsements were forged.

Held [1]: As a matter of practical significance, problems arising from forged indorsements of checks may generally be broken into two types of cases: (1) where forgery was accomplished by a person not associated with the drawer — for example a mail robbery; and (2) where the indorsement was forged by an agent of the drawer. This difference in situations would determine the effect of the drawer's negligence with respect to forged indorsements. While there is no duty resting on the depositor to look for forged indorsements on his cancelled checks in contrast to a duty imposed upon him to look for forgeries of his own name, a depositor is under a duty to set up an accounting system and a business procedure as are reasonably calculated to prevent or render difficult the forgery of indorsements, particularly by the depositor's own employees. And if the drawer (depositor) learns that a check drawn by him has been paid under a forged indorsement, the drawer is under duty promptly to report such fact to the drawee bank. For his negligence or failure either to discover or to report promptly the fact of such forgery to the drawee, the drawer loses his right against the drawee who has debited his account under the forged indorsement. As a rule, a drawee bank who has paid a check on which an indorsement has been forged cannot charge the drawer's account for the amount of said check. An exception to this rule is where the drawer is guilty of such negligence which causes the bank to honor such a check or checks. If a check is stolen from the payee, it is quite obvious that the drawer cannot possibly discover the forged indorsement by mere examination of his cancelled check. This accounts for the rule that although a depositor owes a duty to his drawee bank to examine his cancelled checks for forgery of his own signature, he has no similar duty as to forged indorsements. A different situation arises where the indorsement

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was forged by an employee or agent of the drawer, or done with the active participation of the latter. Most of the cases involving forgery by an agent or employee deal with the payee's indorsement. The drawer and the payee oftentimes have business relations of long standing. The continued occurrence of business transactions of the same nature provides the opportunity for the agent/employee to commit the fraud after having developed familiarity with the signatures of the parties. However, sooner or later, some leak will show on the drawer's books. It will then be just a question of time until the fraud is discovered. This is specially true when the agent perpetrates a series of forgeries as herein. The negligence of a depositor which will prevent recovery of an unauthorized payment is based on failure of the depositor to act as a prudent businessman would under the circumstances. Herein, Gempesaw relied implicitly upon the honesty and loyalty of her bookkeeper, and did not even verify the accuracy of the amounts of the checks she signed against the invoices attached thereto. Although she regularly received her bank statements, she apparently did not carefully examine the same nor the check stubs and the returned checks, and did not compare them with the sales invoices. Otherwise, she could have easily discovered the discrepancies between the checks and the documents serving as bases for the checks. With such discovery, the subsequent forgeries would not have been accomplished. It was not until 2 years after the bookkeeper commenced her fraudulent scheme that Gempesaw discovered that 82 checks were wrongfully charged to her account, at which time she notified PBCom. Gempesaw's failure to make such adequate inquiry constituted negligence which resulted in the bank's honoring of the subsequent checks with forged indorsements. Gempesaw's negligence was the proximate cause of her loss. And since it was her negligence which caused PBCom to honor the forged checks or prevented it from recovering the amount it had already paid on the checks, Gempesaw cannot now complain should the bank refuse to recredit her account with the amount of such checks. Under Section 23 of the NIL, she is now precluded from using the forgery to prevent the bank's debiting of her account.

Issue [2]: Whether banking rules prohibiting the drawee bank from having checks with more than one indorsement invalidate the negotiation or transfer of the said check.

Held [2]: The banking rule banning acceptance of checks for deposit or cash payment with more than one indorsement unless cleared by some bank officials does not invalidate the instrument; neither does it invalidate the negotiation or transfer of the said check. In effect, this rule destroys the negotiability of bills/checks by limiting their negotiation by indorsement of only the payee. Under the Negotiable Instruments Law, the only kind of indorsement which stops the further negotiation of an instrument is a restrictive indorsement which prohibits the further negotiation thereof. In this kind of restrictive indorsement, the prohibition to transfer or negotiate must be written in express words at the back of the instrument, so that any subsequent party may be forewarned that it ceases to be negotiable. However, the restrictive indorsee acquires the right to receive payment and bring any action thereon as any indorser, but he can no longer transfer his rights as such indorsee where the form of the indorsement does not authorize him to do so. Although the holder of a check cannot compel a drawee bank to honor it because there is no privity between them, as far as the drawer-depositor is concerned, such bank may not legally refuse to honor a negotiable bill of exchange or a check drawn against it with more than one indorsement if there is nothing irregular with the bill or check and the drawer has sufficient funds. The drawee cannot be compelled to accept or pay the check by the drawer or any holder because as a drawee, he incurs no liability on the check unless he accepts it. But the drawee will make itself liable to a suit for damages at the instance of the drawer for wrongful dishonor of the bill or check.

16 De Ocampo vs. Gatchalian [GR L-15126, 30 November 1961]

En Banc, Labrador (J): 8 concur, 1 concurs in result

Facts: On or about 8 September 1953, in the evening, Anita C. Gatchalian who was then interested in looking for a car for the use of her husband and the family, was shown and offered a car by Manuel Gonzales who was accompanied by Emil Fajardo, the latter being personally known to Gatchalian. Gonzales represented to Gatchalian that he was duly authorized by the owner of the car, Ocampo Clinic, to look for a buyer of said car and to negotiate for and accomplish said sale. Gatchalian, finding the price of the car quoted by Gonzales to

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her satisfaction, requested Gonzales to bring the car the day following together with the certificate of registration of the car, so that her husband would be able to see same. On this request of Gatchalian, Gonzales advised her that the owner of the car will not be willing to give the certificate of registration unless there is a showing that the party interested in the purchase of said car is ready and willing to make such purchase and that for this purpose Gonzales requested Gatchalian to give him a check which will be shown to the owner as evidence of buyer's good faith in the intention to purchase the said car, the said check to be for safekeeping only of Gonzales and to be returned to Gatchalian the following day when Gonzales brings the car and the certificate of registration. Relying on these representations of Gonzales and with this assurance that said check will be only for safekeeping and which will be returned to Gatchalian the following day when the car and its certificate of registration will be brought by Gonzales to Gatchalian, Gatchalian drew and issued a check that Gonzales executed and issued a receipt for said check. On the failure of Gonzales to appear the day following and on his failure to bring the car and its certificate of registration and to return the check on the following day as previously agreed upon, Gatchalian issued a "Stop Payment Order" on the check with the drawee bank. When Gonzales received the check from Gatchalian under the representations and conditions above specified, he delivered the same to the Ocampo Clinic, in payment of the fees and expenses arising from the hospitalization of his wife. Vicente R. De Ocampo & Co. for and in consideration of fees and expenses of hospitalization and the release of the wife of Gonzales from its hospital, accepted said check, applying P441.75 thereof to payment of said fees and expenses and delivering to Gonzales the amount of P158.25 representing the balance on the amount of the said check. The acts of acceptance of the check and application of its proceeds in the manner specified were made without previous inquiry by De Ocampo from Gatchalian. De Ocampo filed with the Office of the City Fiscal of Manila, a complaint for estafa against Gonzales based on and arising from the acts of Gonzales in paying his obligations with De Ocampo and receiving the cash balance of the check and that said complaint was subsequently dropped.

De Ocampo subsequently filed an action for the recovery of the value of a check for P600 payable to De Ocampo and drawn by Gatchalian. The Court of First Instance of Manila, through Hon. Conrado M. Vasquez, presiding, sentenced Gatchalian and Gonzales to pay De Ocampo the sum of P600, with legal interest from 10 September 1953 until paid, and to pay the costs. Gatchalian, et al. appealed.

Issue [1]: Whether De Ocampo is a holder in due course.

Held [1]: NO. Section 52, Negotiable Instruments Law, defines holder in due course as "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." Although De Ocampo was not aware of the circumstances under which the check was delivered to Gonzales, the circumstances -- such as the fact that Gatchalian had no obligation or liability to the Ocampo Clinic, that the amount of the check did not correspond exactly with the obligation of Matilde Gonzales to Dr. V. R. de Ocampo; and that the check had two parallel lines in the upper left hand corner, which practice means that the check could only be deposited but may not be converted into cash — should have put De Ocampo to inquiry as to the why and wherefore of the possession of the check by Gonzales, and why he used it to pay Matilde's account. It was payee's duty to ascertain from the holder Gonzales what the nature of the latter's title to the check was or the nature of his possession. Having failed in this respect, De Ocampo was guilty of gross neglect in not finding out the nature of the title and possession of Gonzales, amounting to legal absence of good faith, and it may not be considered as a holder of the check in good faith.

Issue [2]: Whether the rule that a possessor of the instrument is prima facie a holder in due course applies.

Held [2]: The rule that a possessor of the instrument is prima facie a holder in due course does not apply because there was a defect in the title of the holder (Manuel Gonzales), because the instrument is not payable

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to him or to bearer. On the other hand, the stipulation of facts -- like the fact that the drawer had no account with the payee; that the holder did not show or tell the payee why he had the check in his possession and why he was using it for the payment of his own personal account — show that holder's title was defective or suspicious, to say the least. As holder's title was defective or suspicious, it cannot be stated that the payee acquired the check without 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. And having presented no evidence that it acquired the check in good faith, it (payee) cannot be considered as a holder in due course. In other words, under the circumstances of the case, instead of the presumption that payee was a holder in good faith, the fact is that it acquired possession of the instrument under circumstances that should have put it to inquiry as to the title of the holder who negotiated the check to it. The burden was, therefore, placed upon it to show that notwithstanding the suspicious circumstances, it acquired the check in actual good faith.

17 **Stelco Marketing Corp. vs. Court of Appeals [GR 96160, 17 June 1992]**

Second Division, Narvasa (J): 3 concur, 1 on leave

Facts: Stelco Marketing Corporation is engaged in the distribution and sale to the public of structural steel bars. On 7 different occasions in September and October 1980, it sold to RYL Construction, Inc. quantities of steel bars of various sizes and rolls of G.I. wire. These bars and wire were delivered at different places at the indication of RYL Construction, Inc. The aggregate price for the purchases was P126,859.61. Although the corresponding invoices issued by STELCO stipulated that RYL would pay "COD" (cash on delivery), the latter made no payments for the construction materials thus ordered and delivered despite insistent demands for payment by the former. On April 4, 1981, RYL gave to Armstrong Industries — described by STELCO as its "sister corporation" and "manufacturing arm" — a check drawn against Metrobank in the amount of P126,129.86, numbered 765380 and dated 4 April 1981. That check was a company check of another corporation, Steelweld Corporation of the Philippines, signed by its President, Peter Rafael Limson, and its Vice-President, Artemio Torres. The check was issued by Limson at the behest of his friend, Romeo Y. Lim, President of RYL. Romeo Lim had asked Limson for financial assistance, and the latter had agreed to give Lim a check only by way of accommodation, "only as guaranty but not to pay for anything." Why the check was made out in the amount of P126,129.86 is not explained. The check was actually issued in said amount of P126,129.86, and as already stated, was given by R.Y. Lim to Armstrong, Industries, in payment of an obligation. When the latter deposited the check at its bank, it was dishonored because "drawn against insufficient funds." When so deposited, the check bore two (2) indorsements, that of "RYL Construction," followed by that of "Armstrong Industries." On account of the dishonor of Metrobank Check 765380, and on complaint of Armstrong Industries (through a Mr. Young), Rafael Limson and Artemio Torres were charged in the Regional Trial Court of Manila with a violation of Batas Pambansa Bilang 22. They were acquitted in a decision rendered on 28 June 1984 "on the ground that the check in question was not issued by the drawer 'to apply on account for value,' it being merely for accommodation purposes." That judgment however conditioned the acquittal with the pronouncement that "this is not however to release Steelweld Corporation from its liability under Sec. 29 of the Negotiable Instruments Law for having issued it for the accommodation of Romeo Lim."

Eleven months later — and some 4 years after issuance of the check — in May, 1985, STELCO filed with the Regional Trial Court of Caloocan City a civil complaint against both RYL and STEELWELD for the recovery of the value of the steel bars and wire sold to and delivered to RYL in the amount of P126,129.86, plus 18% interest from 20 August 1980 and 25% of the total amount sought to be recovered as and by way of attorney's fees. A preliminary attachment was issued by the trial court on the basis of the averments of the complaint but was shortly dissolved upon the filing of a counter-bond by STEELWELD. RYL could no longer be located and could not be served with summons. It never appeared. Only STEELWELD filed an answer, under date of 16 July 1985. Judgment was rendered on 26 June 1986. The judgment sentenced Steelweld to pay to Stelco the amount of P126,129.86 with legal rate of interest from 9 May 1985, when the case was instituted until

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fully paid, plus another sum equivalent to 25% of the total amount due as and for attorney's fees. STELCO's motion for reconsideration was denied by the Appellate Tribunal's resolution dated 13 November 1990. STELCO appealed.

Issue[1]: Whether the fourth condition, i.e. as to notice, for a holder in due course is applicable to an accommodation party.

Held [1]: "A holder in due course," says the law, "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 persons negotiating it." As regards an accommodation party (such as STEELWELD), the fourth condition, i.e., lack of notice of any infirmity in the instrument or defect in title of the persons negotiating it, has no application. This is because Section 29 of the law above quoted preserves the right of recourse of a "holder for value" against the accommodation party notwithstanding that "such holder, at the time of taking the instrument, knew him to be only an accommodation party."

Issue [2]: Whether STELCO ever became a holder in due course of Check 765380, a bearer instrument within the contemplation of the Negotiable Instruments Law.

Held [2]: NO. It never did. There is no evidence whatever that STELCO's possession of Check 765380 ever dated back to any time before the instrument's presentment and dishonor. There is no evidence whatsoever that the check was ever given to it, or indorsed to it in any manner or form in payment of an obligation or as security for an obligation, or for any other purpose before it was presented for payment. On the contrary, STELCO never became a holder for value and that "(n)owhere in the check itself does the name of Stelco Marketing appear as payee, indorsee or depositor thereof." 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. 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." Neither is there any evidence whatever that Armstrong Industries, to whom R.Y. Lim negotiated the check, accepted the instrument and attempted to encash it in behalf, and as agent of STELCO. On the contrary, the indications are that Armstrong was really the intended payee of the check and was the party actually injured by its dishonor; it was after all its representative (a Mr. Young) who instituted the criminal prosecution of the drawers, Limson and Torres, albeit unsuccessfully.

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18 Bataan Cigar and Cigarette Factory vs. Court of Appeals [GR 93048, 3 March 1994]

Second Division, Nocon (J): 3 concur

see case entry 44

Facts: Bataan Cigar & Cigarette Factory, Inc. (BCCFI), a corporation involved in the manufacturing of cigarettes, engaged one of its suppliers, King Tim Pua George (George King), to deliver 2,000 bales of tobacco leaf starting October 1978. In consideration thereof, BCCFI, on 13 July 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 5 December 1978, BCCFI agreed to purchase additional 2,500 bales of tobacco leaves, despite the supplier's failure to deliver in accordance with their earlier agreement. Again BCCFI issued postdated 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 State Investment House, Inc. (SIHI) On 19 July 1978, he sold at a discount check TCBT 551826 bearing an amount of P164,000.00, post dated 31 March 1979, drawn by BCCFI, naming George King as payee to SIHI. On December 19 and 26, 1978, he again sold to SIHI checks TCBT 608967 & 608968, both in the amount of P100,000.00, post dated September 15 & 30, 1979 respectively, drawn by BCCFI in favor of George King. In as much as George King failed to deliver the bales of tobacco leaf as agreed despite BCCFI's demand, BCCFI issued on 30 March 1979, a stop payment order on all checks payable to George King, including check TCBT 551826. Subsequently, stop payment was also ordered on checks TCBTs 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 case for collection on three unpaid checks, 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 the case, since he, as payee, is not an indispensable party. The Court of Appeals affirmed the decision of the trial court. BCCFI filed the petition for review.

Issue: Whether SIHI, a second indorser, a holder of crossed checks, is a holder in due course, to be able to collect from the drawer, BCCFI.

Held: The Negotiable Instruments Law states what constitutes a holder in due course, i.e. "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. 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. Herein, BCCFI's defense in stopping payment is as good to SIHI as it is to George King. Because, really, the checks were issued with the intention that George King would supply BCCFI with the bales of tobacco leaf. There being failure of consideration, SIHI is not a holder in due course. Consequently, BCCFI cannot be obliged to pay the checks.

(Note: It does not mean, however, that SIHI 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, SIHI can collect from the immediate indorser, George King.)

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19 State Investment House Inc. (SIHI) vs. Intermediate Appellate Court [GE 72764, 13 July 1989] *Third Division, Fernan (CJ): 3 concur, 1 on leave*

Facts: Shortly before 5 September 1980, New Sikatuna Wood Industries, Inc. (NSWII) requested for a loan from Harris Chua. The latter agreed to grant the same subject to the condition that the former should wait until December 1980 when he would have the money. In view of this agreement, Anita Pena Chua (Harris Chua's wife) issued 3 crossed checks payable to NSWII all postdated 22 December 1980. The total value of the postdated checks amounted to P 299,450.00. Subsequently, NSWII entered into an agreement with State Investment House, Inc. (SIHI) whereby for and in consideration of the sum of P1,047,402.91 under a deed of sale, the former assigned and discounted with SIHI 11 postdated checks including the 3 postdated checks issued by Peña Chua to NSWII. When the three checks issued by Pena Chua were allegedly deposited by SIHI, these checks were dishonored by reason of "insufficient funds", "stop payment" and "account closed", respectively. SIHI claimed that despite demands on Peña Chua to make good said checks, the latter failed to pay the same necessitating the former to file an action for collection against the latter and her husband before the Regional Trial Court of Manila, Branch XXXVII (Civil Case 82-10547). The spouses Chua filed a third party complaint against NSWII for reimbursement and indemnification in the event that they be held liable to SIHI. For failure of NSWII to answer the third party complaint despite due service of summons, the latter was declared in default. On 30 April 1984, the lower court rendered judgment against the spouses, ordering them to pay jointly and severally to SIHI P 229,450.00 with interest at the rate of 12% per annum from 24 February 1981 until fully paid; P 29,945.00 as and for attorney's fees; and the costs of suit. On the third party complaint, NSWII was ordered to pay the spouses all amounts said spouses may pay to SIHI on account of the case. On appeal filed by the spouses (AC-GR CV 04523), the Intermediate Appellate Court (now Court of Appeals) reversed the lower court's judgment in its decision, dismissing the complaint, with costs against SIHI. SIHI filed the petition for review.

Issue [1]: Whether SIHI is a holder in due course as to entitle it to proceed against the spouses Chua for the amount stated in the dishonored cross checks.

Held [1]: NO. Section 52(c) of the Negotiable Instruments Law defines a holder in due course as one who takes the instrument "in good faith and for value". On the other hand, Section 52(d) provides 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 defect in the title of the person negotiating it." However, under Section 59 every holder is deemed prima facie to be a holder in due course. Admittedly, the Negotiable Instruments Law regulating the issuance of negotiable checks as well as the lights and liabilities arising therefrom, does not mention "crossed checks". But the Court has taken 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 may not be converted into cash. Consequently, such circumstance should put the payee on inquiry and upon him devolves the duty to ascertain the holder's title to the check or the nature of his possession. Failing in this respect, the payee is declared guilty of gross negligence amounting to legal absence of good faith and as such the consensus of authority is to the effect that the holder of the check is not a holder in good faith. Relying on the ruling in *Ocampo v. Gatchalian* (GR L-15126, 30 November 1961), 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, the appellate court said that when SIHI rediscounted the check knowing that it was a crossed check he was knowingly violating the avowed intention of crossing the check; that his failure to inquire from the holder, NSWII, 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; that being not a holder in due course, SIHI was subject to personal defenses, such as lack of consideration between the spouses and NSWII (no deposits were made, hence no loan was made, hence the three checks are without

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consideration as per Section 28, NIL); that NSWII negotiated the three checks in breach of faith in violation of Section 55, Negotiable Instruments Law, which is a personal defense available to the drawer of the check; that such instruments are mentioned in Section 541 of the Code of Commerce; and that the payment made to a person other than the banker or institution shall not exempt the person on whom it is drawn, if the payment was not correctly made. The Supreme Court agreed with the appellate court.

Issue [2]: Whether SIHI is a proper party authorized to make presentment of the cross checks in question.

Held [2]: NO. Under usual practice, crossing a check is done by placing two parallel lines diagonally on the left top portion of the check. The crossing may be special wherein between the two parallel lines is written the name of a bank or a business institution, in which case the drawee should pay only with the intervention of that bank or company, or crossing may be general wherein between two parallel diagonal lines are written the words "and Co." or none at all as in the case at bar, in which case the drawee should not encash the same but merely accept the same for deposit. The effect therefore of crossing a check relates to the mode of its presentment for payment. Under Section 72 of the Negotiable Instruments Law, presentment for payment to be sufficient must be made (a) by the holder, or by some person authorized to receive payment on his behalf. As to who the holder or authorized person will be depends on the instructions stated on the face of the check. Herein, the three subject checks had been crossed generally and issued payable to NSWII 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 SIHI against the drawer of the subject checks, Pena Chua, considering that SIHI is not the proper party authorized to make presentment of the checks in question.

Issue [3]: Whether SIHI can still recover even if it is not a holder in due course.

Held [3]: YES. It does not follow that simply because SIHI was not a holder in due course as found by the appellate court for having taken the instruments in question with notice that the same is for deposit only to the account of payee named in the subject checks, SIHI could not recover on the checks. The Negotiable Instruments Law does not provide that a holder who is not a holder in due course may not in any case recover on the instrument. Herein, SIHI may recover from NSWII if the latter has no valid excuse for refusing payment. The only disadvantage of a holder who is not in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable.

20 Yang vs. Court of Appeals [GR 138074, 15 August 2003]

Second Division, Quisumbing (J): 3 concur, 1 on leave

Facts: On or before 22 December 1987, Cely Yang and Prem Chandiramani entered into an agreement whereby the latter was to give Yang a Philippine Commercial International Bank (PCIB) manager's check in the amount of P4.2 million in exchange for 2 of Yang's manager's checks, each in the amount of P2.087 million, both payable to the order of Fernando David. Yang and Chandiramani agreed that the difference of P26,000.00 in the exchange would be their profit to be divided equally between them. Yang and Chandiramani also further agreed that the former would secure from Far East Bank & Trust Company (FEBTC) a dollar draft in the amount of US\$200,000.00, payable to PCIB FCDU Account 4195-01165-2, which Chandiramani would exchange for another dollar draft in the same amount to be issued by Hang Seng Bank Ltd. of Hong Kong. Accordingly, on December 22, 1987, Yang procured (a) Equitable Banking Corporation [ECB] Cashier's Check CCPS 14-009467 in the sum of P2,087,000.00, dated 22 December 1987, payable to the order of Fernando David; (b) FEBTC Cashier's Check 287078, in the amount of P2,087,000.00, dated 22 December 1987, likewise payable to the order of Fernando David; and (c) FEBTC Dollar Draft 4771, drawn on Chemical Bank, New York, in the amount of US\$200,000.00, dated 22 December 1987,

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payable to PCIB FCDU Account 4195-01165-2. At about 1:00 p.m. of the same day, Yang gave the aforementioned cashier's checks and dollar drafts to her business associate, Albert Liong, to be delivered to Chandiramani by Liong's messenger, Danilo Ranigo. Ranigo was to meet Chandiramani at Philippine Trust Bank, Ayala Avenue, Makati City, Metro Manila where he would turn over Yang's cashier's checks and dollar draft to Chandiramani who, in turn, would deliver to Ranigo a PCIB manager's check in the sum of P4.2 million and a Hang Seng Bank dollar draft for US\$200,000.00 in exchange. Chandiramani did not appear at the rendezvous and Ranigo allegedly lost the two cashier's checks and the dollar draft bought by Yang. Ranigo reported the alleged loss of the checks and the dollar draft to Liong at 4:30 p.m. of 22 December 1987. Liong, in turn, informed Yang, and the loss was then reported to the police. It transpired, however, that the checks and the dollar draft were not lost, for Chandiramani was able to get hold of said instruments, without delivering the exchange consideration consisting of the PCIB manager's check and the Hang Seng Bank dollar draft. At 3:00 p.m. or some 2 hours after Chandiramani and Ranigo were to meet in Makati City, Chandiramani delivered to David at China Banking Corporation branch in San Fernando City, Pampanga, the (a) FEBTC Cashier's Check 287078, and the (b) Equitable Cashier's Check CCPS 14-009467. In exchange, Chandiramani got US\$360,000.00 from David, which Chandiramani deposited in the savings account of his wife, Pushpa Chandiramani; and his mother, Rani Reynandas, who held FCDU Account 124 with the United Coconut Planters Bank (UCPB) branch in Greenhills, San Juan, Metro Manila. Chandiramani also deposited FEBTC Dollar Draft 4771, in PCIB FCDU Account 4195-01165-2 on the same date. Meanwhile, Yang requested FEBTC and ECB 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 4771, thus enabling the holder of PCIB FCDU Account 4195-01165-2 to receive the amount of US\$200,000.00.

On 28 December 1987, Yang lodged a Complaint for injunction and damages against ECB, Chandiramani, and David, with prayer for a temporary restraining order, with the Regional Trial Court of Pasay City (Civil Case 5479). The Complaint was subsequently amended to include a prayer for Equitable to return to Yang the amount of P2.087 million, with interest thereon until fully paid. On 12 January 1988, Yang filed a separate case for injunction and damages, with prayer for a writ of preliminary injunction against FEBTC, PCIB, Chandiramani and David, with the RTC of Pasay City, docketed as Civil Case No. 5492. This complaint was later amended to include a prayer that FEBTC et al return to Yang the amount of P2.087 million, the value of FEBTC Dollar Draft 4771, with interest at 18% annually until fully paid. On 9 February 1988, upon the filing of a bond by Yang, the trial court issued a writ of preliminary injunction in Civil Case No. 5479. A writ of preliminary injunction was subsequently issued in Civil Case 5492 also. Meanwhile, David moved for dismissal of the cases against him and for reconsideration of the Orders granting the writ of preliminary injunction, but these motions were denied. David then elevated the matter to the Court of Appeals in a special civil action for certiorari (CA-GR SP 14843), which was dismissed by the appellate court. As Civil Cases 5479 and 5492 arose from the same set of facts, the two cases were consolidated. The trial court then conducted pre-trial and trial of the two cases, but the proceedings had to be suspended after a fire gutted the Pasay City Hall and destroyed the records of the courts. After the records were reconstituted, the proceedings resumed and the parties agreed that the money in dispute be invested in Treasury Bills to be awarded in favor of the prevailing side, and limiting the issues in the case. On 4 July 1995, the trial court handed down its decision in Civil Cases 5479 and 5492, in favor of David declaring him entitled to the proceeds of the 2 cashier's checks, together with the earnings derived therefrom pendente lite; ordering Yang to pay David moral damages in the amount of P100,000.00; attorney's fees in the amount of P100,000.00 and to pay the costs. The trial court dismissed the complaint against FEBTC, PCIB and EBC; without prejudice to whatever action Yang will file against Chandiramani for reimbursement of the amounts received by him from David. Yang then moved for reconsideration of the RTC judgment, but the trial court denied her motion in its Order of 20 September 1995. Yang seasonably filed an appeal with the Court of Appeals (CA-GR CV 52398). On 25 March 1999, the appellate court affirmed the decision of the trial court with modification and ordered Yang to pay PCIB the amount of P25,000.00, as attorney's fees. Yang filed the petition for review on certiorari.

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Issue: Whether David was a holder in due course.

Held: 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." Herein, 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. Yang's challenge to David's status as a holder in due course hinges on two arguments: (1) the lack of proof to show that David tendered any valuable consideration for the disputed checks; and (2) David's failure to inquire from Chandiramani as to how the latter acquired possession of the checks, thus resulting in David's intentional ignorance tantamount to bad faith. In sum, Yang posits that the last two requisites of Section 52 are missing, thereby preventing David from being considered a holder in due course. Unfortunately for Yang, her arguments on this score are less than meritorious and far from persuasive.

Issue [a]: Whether there is lack of proof to show that David tendered any valuable consideration for the disputed checks.

Held [a]: 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, Yang has the onus to prove that David got hold of the checks absent said consideration. In other words, Yang must present convincing evidence to overthrow the presumption. The records, however, shows that Yang failed to discharge her burden of proof. Yang'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. Note that both the trial court and the appellate court found that David did not receive the checks gratis, but instead gave Chandiramani US\$360,000.00 as consideration for the said instruments. Factual findings of the Court of Appeals are conclusive on the parties and not reviewable by the Supreme Court; they carry great weight when the factual findings of the trial court are affirmed by the appellate court.

Issue [b]: Whether David's failure to inquire from Chandiramani as to how the latter acquired possession of the checks, resulted in David's intentional ignorance tantamount to bad faith

Held [b]: Yang fails to point any circumstance which should have put David on inquiry as to the why and wherefore of the possession of the checks by Chandiramani. David was not privy to the transaction between Yang and Chandiramani. Instead, Chandiramani and David had a separate dealing in which it was precisely Chandiramani's duty to deliver the checks to David as payee. The evidence shows that Chandiramani performed said task to the letter. Yang admits that David took the step of asking the manager of his bank to verify from FEBTC and Equitable as to the genuineness of the checks and only accepted the same after being assured that there was nothing wrong with said checks. At that time, David was not aware of any "stop payment" order. Under these circumstances, David thus had no obligation to ascertain from Chandiramani what the nature of the latter's title to the checks was, if any, or the nature of his possession. Thus, he cannot be held guilty of gross neglect amounting to legal absence of good faith, absent any showing that there was something amiss about Chandiramani's acquisition or possession of the checks. David did not close his eyes deliberately to the nature or the particulars of a fraud allegedly committed by Chandiramani upon Yang, absent any knowledge on his part that the action in taking the instruments amounted to bad faith.

Issue [c]: Whether David should at least have inquired as to whether he was acquiring said checks for the

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purpose for which they were issued, pursuant to *Bataan Cigar & Cigarette Factory, Inc. v. Court of Appeals*.

Held [c]: Yang's reliance on the *Bataan Cigar* case, however, is misplaced. The facts in the case are not on all fours with *Bataan Cigar*. In the latter case, the crossed checks were negotiated and sold at a discount by the payee, while herein, the payee did not negotiate further the checks in question but promptly deposited them in his bank account. The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce makes reference to such instruments. Nonetheless, the Court has 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 not converted into cash. The effects of crossing a check, thus, 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. In *Bataan Cigar*, the rediscounting of the check by the payee knowingly violated the avowed intention of crossing the check. Thus, in accepting the cross checks and paying cash for them, despite the warning of the crossing, the subsequent holder could not be considered in good faith and thus, not a holder in due course. The ruling in *Bataan Cigar* reiterates that in *De Ocampo & Co. v. Gatchalian*. The factual circumstances in *De Ocampo* and in *Bataan Cigar* are not present herein. For here, there is no dispute that the crossed checks were delivered and duly deposited by David, the payee named therein, in his bank account. In other words, the purpose behind the crossing of the checks was satisfied by the payee.

21 Philippine National Bank (PNB) vs. Picornell et al. [GR L-18751, 26 September 1922]; also *PNB vs. Picornell* [GR L-18915]
First Division, Romualdez (J): 7 concur

Facts: Bartolome Picornell, following instruction Hyndman, Tavera & Ventura, bought in Cebu 1,735 bales of tobacco. Picornell obtained from the branch of the National Bank in Cebu the sum of P39,529,83, the value of the tobacco, together with his commission of 1 real per quintal, having, in turn, drawn the a bill of exchange. This instrument was delivered to the branch of the Philippine National Bank (PNB) in Cebu, together with the invoice and bill of lading of the tobacco, which was shipped in the boat *Don Ildefonso*, on 27 February 1920, consigned to Hyndman, Tavera & Ventura at Manila. The invoice and bill of lading were delivered to PNB with the understanding that the bank should not deliver them to Hyndman, Tavera & Ventura except upon payment of the bill; which condition was expressed by the well-known formula "D/P" (documents for [against] payment). The central office of PNB in Manila received the bill and the aforesaid documents annexed thereto. On 3 March 1920, PNB presented the bill to Hyndman, Tavera & Ventura, who accepted it, stating on the bill face thereof that "Accepted, 3d March, 1920. Due, 2d April, 1920, Hyndman, Tavera & Ventura, by (Sgd.) J. Pardo de Tavera, member of the firm." The tobacco having arrived at Manila, the firm of Tambunting, owner of the ship *Don Ildefonso*, that brought the shipment, requested Hyndman, Tavera & Ventura to send for the goods, which was done by the company without the knowledge of PNB which retained and always had in its possession the invoice and bill of lading of the tobacco, until it presented them as evidence at the trial. Hyndman, Tavera & Ventura proceeded to the examination of the tobacco, which was deposited in their warehouses, and wrote and cabled to Picornell, notifying him that of the tobacco received, there was a certain portion which was of no use and was damaged. To these communications, Through these communications, therefore, Picornell learned that Hyndman, Tavera & Ventura had in their possession the tobacco. In view of the question raised by the said company as to the quality of the aforesaid tobacco, more correspondence was exchanged between the company and Picornell. Picornell requested PNB to extend the time for payment of the bill for P39,529,83 against Messrs. Hyndman, Tavera & Ventura of Manila for 30 days. PNB granted the request of Picornell; wherefore Hyndman, Tavera & Ventura reaccepted the bill in the terms: "Accepted for thirty days. Due May 2d, 1920. Hyndman, Tavera & Ventura, by (Sgd.) J. Pardo de Tavera, member of the firm." 2 May 1920, arrived and the bill was not paid. On the 4th of the same month, Hyndman, Tavera & Ventura sent a letter to PNB informing the latter that it absolutely refuse to pay draft 2 for P39,529.83, referring to 1,871,235 quintals of Leaf Tobacco Barili, owing to noncompliance of the contract by the drawer. PNB protested the bill, took possession of the tobacco, and had it appraised on the 12th of the same month, its value having been fixed at P28,790.72. The bank brought the action for the recovery of the

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value of the bill of exchange, and about September 1921, sold the tobacco, obtaining from the sale P6,708.82.

In a decision rendered 9 January 1922, and amended by an order of February 18th next, the Court of First Instance of Manila sentenced Bartolome Picornell et al. to pay solidarily to the Philippine National Bank (PNB) the sum of P28, 790.72 with interest at the rate of 9% per annum from 3 May 1921, and costs; and Picornell, specifically, to pay PNB the sum of P10,739.11 with interest at 9% per annum, all as aforesaid, deducting the sum of P6, 708.82 from such amounts to be paid by Picornell et al. This total sum which Picornell et al are required to pay represents the value of a bill of exchange drawn by Picornell in favor of PNB, against the firm of Hyndman, Tavera & Ventura, now dissolved, its only successor being Joaquin Pardo de Tavera. From this judgment Picornell et al. appealed.

Issue [1]: Whether Hyndman, Tavera & Ventura company can escape liability due to want of full consideration.

Held [1]: Whether the tobacco was worth the value of the bill, does not concern PNB. Such partial want of consideration, if it was, does not exist with respect to the bank which paid to Picornell the full value of said bill of exchange. The bank was a holder in due course, and was such for value full and complete. The Hyndman, Tavera & Ventura company cannot escape liability in view of section 28 of the Negotiable Instruments Law. The drawee by acceptance becomes liable to the payee or his indorsee, and also to the drawer himself. But the drawer and acceptor are the immediate parties to the consideration, and if the acceptance be without consideration, the drawer cannot recover of the acceptor. The payee holds a different relation; he is a stranger to the transaction between the drawer and the acceptor, and is, therefore, in a legal sense a remote party. In a suit by him against the acceptor, the question as to the consideration between the drawer and the acceptor cannot be inquired into. The payee or holder gives value to the drawer, and if he is ignorant of the equities between the drawer and the acceptor, he is in the position of a bona fide indorsee. Hence, it is no defense to a suit against the acceptor of a draft which has been discounted, and upon which money has been advanced by the plaintiff, that the draft was accepted for the accommodation of the drawer.

Issue [2]: Whether Bartolome Picornell, even as a commissioned agent of Hyndman, Tavera & Ventuta in the purchase of the tobacco, is liable for the bill.

Held [2]: As to Bartolome Picornell, he warranted, as drawer of the bill, that it would be accepted upon proper presentment and paid in due course, and as it was not paid, he became liable to the payment of its value to the holder thereof, which is the plaintiff bank. (Sec. 61, Negotiable Instruments Law.) The fact that Picornell was a commission agent of Hyndman, Tavera & Ventura, in the purchase of the tobacco, does not necessarily make him an agent of the company in its obligations arising from the drawing of the bill by him. His acts in negotiating the bill constitute a different contract from that made by his having purchased the tobacco on behalf of Hyndman, Tavera & Ventura. Furthermore, he cannot exempt himself from responsibility by the fact of his having been a mere agent of this company, because nothing to this effect was indicated or added to his signature on signing the bill. (Sec. 20, Negotiable Instruments Law.) The fact that the tobacco was or was not of inferior quality does not affect the responsibility of Picornell, because while it may have an effect upon the contract between him and the firm of Hyndman, Tavera, Ventura, yet it cannot have upon the responsibility of both to the bank, upon the bill drawn and accepted as above stated.

(Upon the non-payment of the bill by the drawee-acceptor, the bank had the right of recourse, which it exercised, against the drawer. [Sec. 84, Negotiable Instruments Law] The drawee, the Hyndman, Tavera & Ventura company, or its successors, J. Pardo de Tavera, accepted the bill and is primarily liable for the value of the negotiable instrument, while the drawer, Bartolome Picornell, is secondarily liable.)

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22 People vs. Maniego [GR L-30910, 27 February 1987]

First Division, Narvasa (J): 6 concur

Facts: The information which initiated the criminal proceedings in the Court of First Instance of Rizal indicted 3 persons — Lt. Rizalino M. Ubay, Mrs. Milagros Pamintuan, and Mrs. Julia T. Maniego — for the crime of MALVERSATION, committed as follows: "That on or about the period covering the month of May, 1957 up to and including the month of August, 1957, in Quezon City, Philippines, the above-named accused, conspiring together, confederating with and helping one another, with intent of gain and without authority of law, did, then and there, wilfully, unlawfully and feloniously malverse, misappropriate and misapply public funds in the amount of P66,434.50 belonging to the Republic of the Philippines, in the following manner, to wit: 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 his co-accused, MILAGROS T. PAMINTUAN and JULIA T. MANIEGO, did then and there, unlawfully, willfully and feloniously, with intent of gain and without authority of law, and in pursuance of their conspiracy, 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. After trial judgment was rendered by the Court of First Instance, convicting Ubay of the crime of malversation and sentenced him to suffer the penalty of reclusion temporal of 12 years, 1 day to 14 years, 8 months, and a fine of P57,434.50 which is the amount malversed, and to suffer perpetual special disqualification; while acquitting Maniego but ordering her to pay solidarily with Ubay the amount of P57,434.50 to the government. Maniego sought reconsideration of the judgment, praying that she be absolved from civil liability or, at the very least, that her liability be reduced to P46,934.50. The Court declined to negate her civil liability, but did reduce the amount thereof to P46,934.50. She appealed to the Court of Appeals as Ubay had earlier done. Ubay's appeal was subsequently dismissed by the Appellate Court because of his failure to file brief. On the other hand, Maniego submitted her brief in due course. Because, in the Appellate Court's view, Maniego's brief raised only questions of law, her appeal was later certified to the Supreme Court.

Issue: Whether a mere indorser may be made liable on account of the dishonor of the checks indorsed by her.

Held: 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

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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."

23 **Astro Electronics Corp. vs. Philippine Export and Foreign Loan Guarantee Corporation [GR 136729, 23 September 2003]**

Second Division, Austria-Martinez (J): 3 concur, 1 concurs in result

Facts: Astro Electronics Corporation (Astro) was granted several loans by the Philippine Trust Company (Philtrust) amounting to P3,000,000.00 with interest and secured by three promissory notes: PN PFX-254 dated 14 December 1981 for P600,000.00, PN PFX-258 also dated 14 December 1981 for P400,000.00 and PN 15477 dated 27 August 1981 for P2,000,000.00. In each of these promissory notes, it appears that Peter Roxas signed twice, as President of Astro and in his personal capacity. Roxas also signed a Continuing Suretyship Agreement in favor of Philtrust Bank, as President of Astro and as surety. Thereafter, Philippine Export and Foreign Loan Guarantee Corporation (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. In his Answer, Roxas disclaims any liability on the instruments, alleging, inter alia, that he merely signed the same in blank and the phrases "in his personal capacity" and "in his official capacity" were fraudulently inserted without his knowledge. After trial, the RTC rendered its decision in favor of Philguarantee, ordering Astro and Roxas to solidarily pay Philguarantee the sum of P3,621,187.52 representing the total obligation of Astro and Roxas in favor of Philguarantee as of 31 December 1984 with interest at the stipulated rate of 16% per annum and stipulated penalty charges of 16% per annum computed from 1 January 1985 until the amount is fully paid. On appeal, the Court of Appeals affirmed the RTC decision agreeing with the trial court that Roxas failed to explain satisfactorily why he had to sign twice in the contract and therefore the presumption that private transactions have been fair and regular must be sustained. Astro and Roxas filed the petition for review on certiorari.

Issue: Whether Roxas should be jointly and severally liable (solidary) with Astro for the sum awarded by the RTC.

Held: YES. Astro's loan with Philtrust Bank is secured by three promissory notes. These promissory notes are valid and binding against Astro and Roxas. 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. Further, the three promissory notes uniformly provide: "FOR VALUE RECEIVED, I/We jointly, severally and solidarily, promise to pay to PHILTRUST BANK or order." 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. Also, the phrase "joint and several" binds the makers 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. Having signed under such terms, Roxas assumed the solidary liability of a debtor and Philtrust Bank may choose to enforce the notes against him alone or jointly with Astro. Furthermore, Roxas is the President of Astro and reasonably, a businessman who is presumed to take ordinary care of his concerns. Absent any countervailing evidence, it cannot be gainsaid that he will not sign a

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document without first informing himself of its contents and consequences. Clearly, he knew the nature of the transactions and documents involved as he not only executed these notes on two different dates but he also executed, and again, signed twice, a "Continuing Suretyship Agreement" notarized on 31 July 1981. Such continuing suretyship agreement even re-enforced his solidary liability to Philtrust because as a surety, he bound himself jointly and severally with Astro's obligation. Roxas cannot now avoid liability by hiding under the convenient excuse that he merely signed the notes in blank and the phrases "in his personal capacity" and "in his official capacity" were fraudulently inserted without his knowledge.

24 Garcia vs. Llamas [GR 154127, 8 December 2003]

First Division, Panganiban (J): 4 concur

Facts: The case started out as a complaint for sum of money and damages by Dionisio Llamas against Romeo Garcia and Eduardo de Jesus (Civil Case Q97-32-873), the complaint alleged that on 23 December 1996, Garcia and de Jesus borrowed P400,000.00 from Llamas; that, on the same day, they executed a promissory note wherein they bound themselves jointly and severally to pay the loan on or before 23 January 1997 with a 5% interest per month; that the loan has long been overdue and, despite repeated demands, Garcia and de Jesus have failed and refused to pay it; and that, by reason of their unjustified refusal, Llamas was compelled to engage the services of counsel to whom he agreed to pay 25% of the sum to be recovered from Garcia and de Jesus, plus P2,000.00 for every appearance in court. Annexed to the complaint were the promissory note and a demand letter, dated 2 May 1997, by Llamas addressed to Garcia and de Jesus. Resisting the complaint, Garcia, in his answer, averred that he assumed no liability under the promissory note because he signed it merely as an accommodation party for de Jesus; among others. During the pre-trial conference, de Jesus and his lawyer did not appear, nor did they file any pre-trial brief. Neither did Garcia file a pre-trial brief, and his counsel even manifested that he would no longer present evidence. Given this development, the trial court gave Llamas permission to present his evidence ex parte against de Jesus; and, as regards Garcia, the trial court directed Llamas to file a motion for judgment on the pleadings, and for Garcia to file his comment or opposition thereto. Instead, Llamas filed a Motion to declare Garcia in default and to allow him to present his evidence ex parte. Meanwhile, Garcia filed a Manifestation submitting his defense to a judgment on the pleadings. Subsequently, Llamas filed a Manifestation/Motion to submit the case for judgment on the pleadings, withdrawing in the process his previous motion. Thereunder, he asserted that Garcia's and de Jesus' solidary liability under the promissory note cannot be any clearer, and that the check issued by de Jesus did not discharge the loan since the check bounced. On 7 July 1998, the Regional Trial Court (RTC) of Quezon City (Branch 222) disposed of the case, rendering the decision in favor of Llamas and ordering Garcia and De Jesus] to pay, jointly and severally, Llamas the sums of P400,000.00 representing the principal amount plus 5% interest thereon per month from 23 January 1997 until the same shall have been fully paid, less the amount of P120,000.00 representing interests already paid by de Jesus; P100,000.00 as attorney's fees plus appearance fee of P2,000.00 for each day of court appearance, and; Cost of this suit. On appeal and on 26 November 2001, the Court of Appeals, insofar as it pertains to Garcia, affirmed the decision of the trial court subject to the modification that the award for attorney's fees and cost of suit was deleted. As to portion pertaining to de Jesus, the Court set said portion aside and ordered the case against de Jesus remanded to the court of origin for purposes of receiving ex parte Llamas' evidence against de Jesus. On 26 June 2002, the appellate court denied Garcia's motion for reconsideration. Garcia filed the petition for review.

Issue: Whether a person, who signed the promissory note merely as an accommodation party, was released as obligor when the maker agreed to extend the term of the obligation.

Held: The note in question is not a negotiable instrument. By its terms, the note was made payable to a specific person rather than to bearer or to order — a requisite for negotiability under Act 2031, the Negotiable Instruments Law (NIL). Hence, Garcia cannot avail himself of the NIL's provisions on the liabilities and defenses of an accommodation party. Besides, a non-negotiable note is merely a simple contract in writing and is evidence of such intangible rights as may have been created by the assent of the parties. The

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promissory note is thus covered by the general provisions of the Civil Code, not by the NIL. Even granting arguendo that the NIL was applicable, still, Garcia would be liable for the promissory note. Under Article 29 of Act 2031, an accommodation party is liable for the instrument to a holder for value even if, at the time of its taking, the latter knew the former to be only an accommodation party. The relation between an accommodation party and the party accommodated is, in effect, one of principal and surety — the accommodation party being the surety. It is a settled rule that a surety is bound equally and absolutely with the principal and is deemed an original promisor and debtor from the beginning. The liability is immediate and direct.

25 **Crisologo-Jose vs. Court of Appeals [GR 80599, 15 September 1989]**

Second Division, Regalado (J): 3 concur, 1 took no part

Facts: In 1980, Ricardo S. Santos, Jr. was the vice-president of Mover Enterprises, Inc. in-charge of marketing and sales; and the president of the said corporation was Atty. Oscar Z. Benares. On 30 April 1980, Atty. Benares, in accommodation of his clients, the spouses Jaime and Clarita Ong, issued Check 093553 drawn against Traders Royal Bank, dated 14 June 1980, in the amount of P45,000.00 payable to Ernestina Crisologo-Jose. Since the check was under the account of Mover Enterprises, Inc., the same was to be signed by its president, Atty. Oscar Z. Benares, and the treasurer of the said corporation. However, since at that time, the treasurer of Mover Enterprises was not available, Atty. Benares prevailed upon Santos to sign the aforesaid check as an alternate signatory. Santos did sign the check. The check was issued to Crisologo-Jose in consideration of the waiver or quitclaim by Crisologo-Jose over a certain property which the Government Service Insurance System (GSIS) agreed to sell to the clients of Atty. Benares, the spouses Ong, with the understanding that upon approval by the GSIS of the compromise agreement with the spouses Ong, the check will be encashed accordingly. However, since the compromise agreement was not approved within the expected period of time, the aforesaid check for P45,000.00 was replaced by Atty. Benares with another Traders Royal Bank check bearing 379299 dated 10 August 1980, in the same amount of P45,000.00, also payable to Crisologo-Jose. This replacement check was also signed by Atty. Benares and by Santos. When Crisologo-Jose deposited this replacement check with her account at Family Savings Bank, Mayon Branch, it was dishonored for insufficiency of funds. A subsequent redepositing of the said check was likewise dishonored by the bank for the same reason. Hence, Crisologo-Jose through counsel was constrained to file a criminal complaint for violation of Batas Pambansa 22 (BP22) with the Quezon City Fiscal's Office against Atty. Benares and Santos. The investigating Assistant City Fiscal, Alfonso Llamas, accordingly filed an amended information with the court charging both Benares and Santos for violation of BP 22 (Criminal Case Q-14867) of then Court of First Instance of Rizal, Quezon City.

Meanwhile, during the preliminary investigation of the criminal charge against Benares and Santos, before Assistant City Fiscal Llamas, Santos tendered cashier's check CC 160152 for P45,000.00 dated 10 April 1981 to Crisologo-Jose, the complainant in that criminal case. Crisologo-Jose refused to receive the cashier's check in payment of the dishonored check in the amount of P45,000.00. Hence, Santos encashed the aforesaid cashier's check and subsequently deposited said amount of P45,000.00 with the Clerk of Court on 14 August 1981. Incidentally, the cashier's check adverted to above was purchased by Atty. Benares and given to Santos to be applied in payment of the dishonored check. After trial, the court a quo, holding that it was "not persuaded to believe that consignment referred to in Article 1256 of the Civil Code is applicable to this case," rendered judgment dismissing Santos' complaint for consignment and Crisologo-Jose's counterclaim. On appeal and on 8 September 1987, the appellate court reversed and set aside said judgment of dismissal and revived the complaint for consignment, directing the trial court to give due course thereto. Crisologo-Jose filed the petition.

Issue [1]: Whether Santos, as an accommodation party, is liable thereon under the Negotiable Instruments Law.

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Held [1]: Section 29 (Liability of accommodation party) of the Negotiable Instruments Law provides that "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." Consequently, to be considered an accommodation party, a person must (1) be a party to the instrument, signing as maker, drawer, acceptor, or indorser, (2) not receive value therefor, and (3) sign for the purpose of lending his name for the credit of some other person. Based on the foregoing requisites, it is not a valid defense that the accommodation party did not receive any valuable consideration when he executed the instrument. From the standpoint of contract law, he differs from the ordinary concept of a debtor therein in the sense that he has not received any valuable consideration for the instrument he signs. Nevertheless, he is liable to a holder for value as if the contract was not for accommodation, in whatever capacity such accommodation party signed the instrument, whether primarily or secondarily. Thus, it has been held that in lending his name to the accommodated party, the accommodation party is in effect a surety for the latter.

Issue [2]: Whether Mover Enterprises, Inc. may be held liable on the accommodation instrument, i.e. the check issued in favor of Crisologo-Jose.

Held [2]: The provision of the Negotiable Instruments Law which holds an accommodation party liable on the instrument to a holder for value, although such holder at the time of taking the instrument knew him to be only an accommodation party, does not include nor apply to corporations which are accommodation parties. This is because the issue or indorsement of negotiable paper by a corporation without consideration and for the accommodation of another is ultra vires. Hence, one who has taken the instrument with knowledge of the accommodation nature thereof cannot recover against a corporation where it is only an accommodation party. If the form of the instrument, or the nature of the transaction, is such as to charge the indorsee with knowledge that the issue or indorsement of the instrument by the corporation is for the accommodation of another, he cannot recover against the corporation thereon.

Issue [3]: Whether Santos, who signed the check in question in a representative capacity as vice-president of Mover Enterprises Inc., is liable thereon under the Negotiable Instruments Law.

Held [3]: An officer or agent of a corporation shall have the power to execute or indorse a negotiable paper in the name of the corporation for the accommodation of a third person only if specifically authorized to do so. Corollarily, corporate officers, such as the president and vice-president, have no power to execute for mere accommodation a negotiable instrument of the corporation for their individual debts or transactions arising from or in relation to matters in which the corporation has no legitimate concern. Since such accommodation paper cannot thus be enforced against the corporation, especially since it is not involved in any aspect of the corporate business or operations, the inescapable conclusion in law and in logic is that the signatories thereof shall be personally liable therefor, as well as the consequences arising from their acts in connection therewith.

Issue [4]: Whether the lack of capacity of the corporation absolved the signatories of the instrument.

Held [4]: The fact that for lack of capacity the corporation is not bound by an accommodation paper does not thereby absolve, but should render personally liable, the signatories of said instrument where the facts show that the accommodation involved was for their personal account, undertaking or purpose and the creditor was aware thereof. Crisologo-Jose was evidently charged with the knowledge that the check was issued at the instance and for the personal account of Atty. Benares who merely prevailed upon Santos to act as co-signatory in accordance with the arrangement of the corporation with its depository bank. That it was a personal undertaking of said corporate officers was apparent to Crisologo-Jose by reason of her personal involvement in the financial arrangement and the fact that, while it was the corporation's check which was issued to her for the amount involved, she actually had no transaction directly with said corporation. There

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should be no legal obstacle, therefore, to Crisologo-Jose's claims being directed personally against Atty. Benares and Santos, president and vice-president, respectively, of Mover Enterprises, Inc.

26 Salas vs. Court of Appeals [GR 76788, 22 January 1990]

Third Division, Fernan (CJ): 4 concur

Facts: On 6 February 1980, Juanita Salas bought a motor vehicle from the Violago Motor Sales Corporation (VMS) for P58,138.20 as evidenced by a promissory note. This note was subsequently endorsed to Filinvest Finance & Leasing Corporation (Fininvest) which financed the purchase. Salas defaulted in her installments beginning 21 May 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 Filinvest to initiate Civil Case 5915 for a sum of money against Salas before the Regional Trial Court of San Fernando, Pampanga. In its decision dated 10 September 1982, the trial court rendered judgment ordering Salas to pay Philinvest the sum of P28,414.40 with interest thereon at the rate of 14% from 2 October 1980 until the said sum is fully paid; and the further amount of P1,000.00 as attorney's fees. The court dismissed Salas' counterclaim. Both Salas and Filinvest appealed the aforesaid decision to the Court of Appeals. Imputing fraud, bad faith and misrepresentation against VMS for having delivered a different vehicle to Salas, the latter prayed for a reversal of the trial court's decision so that she may be absolved from the obligation under the contract. On 27 October 1986, the Court of Appeals rendered its decision, modifying the trial court's decision. The appellate court ordered Salas to pay Philinvest the sum of P54,908.30 at 14% per annum from 2 October 1980 until full payment, with costs against Salas. Salas' motion for reconsideration was denied. Salas filed the petition for review on certiorari.

Issue: Whether the promissory note in question is a negotiable instrument which will bar completely all the available defenses of Salas against Philinvest.

Held: Salas' liability on the promissory note, the due execution and genuineness of which she never denied under oath was, under the factual milieu, as inevitable as it was clearly established. The records revealed that what was involved was not a simple case of assignment of credit as Salas would have it appear, where the assignee merely steps into the shoes of, is open to all defenses available against and can enforce payment only to the same extent as, the assignor-vendor. Herein, the basis of Filinvest's claim against Salas is a promissory note which bears all the earmarks of negotiability. The questioned promissory note 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. 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, Filinvest 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, Salas cannot set up against Filinvest the defense of nullity of the contract of sale between her and VMS.

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27 Philippine National Bank vs. Court of Appeals [GR 107508, 25 April 1996]

First Division, Kapunan (J): 4 concur

Facts: A check with serial number 7-3666-223-3, dated 7 August 1981 in the amount of P97,650.00 was issued by the Ministry of Education Culture (now Department of Education, Culture and Sports [DECS]) payable to F. Abante Marketing. This check was drawn against Philippine National Bank (PNB). On 11 August 1981, Abante Marketing, a client of Capitol City Development Bank (Capitol), deposited the questioned check in its savings account with said bank. In turn, Capitol deposited the same in its account with the Philippine Bank of Communications (PBCom) which, in turn, sent the check to PNB for clearing. PNB cleared the check as good and thereafter, PBCom credited Capitol's account for the amount stated in the check. However, on 19 October 1981, PNB returned the check to PBCom and debited PBCom's account for the amount covered by the check, the reason being that there was a "material alteration" of the check number. PBCom, as collecting agent of Capitol, then proceeded to debit the latter's account for the same amount, and subsequently, sent the check back to petitioner. PNB, however, returned the check to PBCom. On the other hand, Capitol could not in turn, debit Abante Marketing's account since the latter had already withdrawn the amount of the check as of 15 October 1981. Capitol sought clarification from PBCom and demanded the re-crediting of the amount. PBCom followed suit by requesting an explanation and re-crediting from PNB. Since the demands of Capitol were not heeded, it filed a civil suit with the Regional trial Court of Manila against PBCom which in turn, filed a third-party complaint against PNB for reimbursement/indemnity with respect to the claims of Capitol. PNB, on its part, filed a fourth-party complaint against Abante Marketing. On 3 October 1989; the Regional Trial Court rendered its decision, ordering PBCom to re-credit or reimburse Capitol the amount of P97,650.00, plus interest of 12% thereto from 19 October 1981 until the amount is fully paid; PNB to reimburse and indemnify PBCom for whatever amount PBCom pays to Capitol; F. Abante Marketing to reimburse and indemnify PNB for whatever amount PNB pays to PBCom. On attorney's fees, the trial court ordered PBCom to pay Capitol attorney's fees in the amount of P10,000.00; but that PBCom is entitled to reimburse/indemnify from PNB; and PNB to be, in turn, reimbursed or indemnified by F. Abante Marketing for the same amount. The court dismissed the counterclaims of PBCom and PNB; without pronouncement as to costs. An appeal was interposed before the Court of Appeals which rendered its decision on 29 April 1992, which modified the appealed judgment by exempting PBCom from liability to Capitol for attorney's fees and ordering PNB to honor the check for P97,650.00, with interest as declared by the trial court, and pay Capitol attorney's fees of P10,000.00. After the check shall have been honored by PNB, the court ordered PBCom to re-credit Capitol's account with it the amount; without pronouncement as to costs. A motion for reconsideration of the decision was denied by the appellate Court in its resolution dated 16 September 1992 for lack of merit. PNB filed the petition for review on certiorari.

Issue: Whether the change in the serial number of the check may be considered a change that alters the effect of the instrument, and thus is a material alteration.

Held: The present case 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. The name of the government agency which issued the subject check was prominently printed therein. The check's issuer was therefore insufficiently identified, rendering the referral to the serial number redundant and inconsequential. If the purpose of the serial number is merely to identify the issuing government office or agency, its alteration had no material effect whatsoever on the integrity of the check. The identity of the issuing government office or agency was not changed thereby and the amount of the check was not charged against the account of the another government office or agency which had no liability under the check. The owner issuer of the check is boldly and clearly printed on its face, second line from the top: "MINISTRY OF EDUCATION AND CULTURE," and below the name of the payee are the rubber-stamped words: "Ministry

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of Educ. & Culture." These words are not alleged to have been falsely or fraudulently intercalated into the check. The ownership of the check is established without the necessity of recourse to the serial number. Neither is there any proof that the amount of the check was erroneously charged against the account of a government office or agency other than the Ministry of Education and Culture. Hence, the alteration in the number of the check did not affect or change the liability of the Ministry of Education and Culture under the check and, therefore, is immaterial. The genuineness of the amount and the signatures therein of then Deputy Minister of Education Hermenegildo C. Dumlao and of the resident Auditor, Penomio C. Alvarez are not challenged. Neither is the authenticity of the different codes appearing therein questioned. PNB, 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.

28 Associated Bank vs. Court of Appeals [GR 107382, 31 January 1996]; also Philippine National Bank vs. Court of Appeals [GR 107612]
Second Division, Romero (J): 3 concur

Facts: The Province of Tarlac maintains a current account with the Philippine National Bank (PNB) Tarlac Branch where the provincial funds are deposited. Checks issued by the Province are signed by the Provincial Treasurer and countersigned by the Provincial Auditor or the Secretary of the Sangguniang Bayan. A portion of the funds of the province is allocated to the Concepcion Emergency Hospital. The allotment checks for said government hospital are drawn to the order of "Concepcion Emergency Hospital, Concepcion, Tarlac" or "The Chief, Concepcion Emergency Hospital, Concepcion, Tarlac." The checks are released by the Office of the Provincial Treasurer and received for the hospital by its administrative officer and cashier. In January 1981, the books of account of the Provincial Treasurer were post-audited by the Provincial Auditor. It was then discovered that the hospital did not receive several allotment checks drawn by the Province. On 19 February 1981, the Provincial Treasurer requested the manager of the PNB to return all of its cleared checks which were issued from 1977 to 1980 in order to verify the regularity of their encashment. After the checks were examined, the Provincial Treasurer learned that 30 checks amounting to P203,300.00 were encashed by one Fausto Pangilinan, with the Associated Bank acting as collecting bank. It turned out that Fausto Pangilinan, who was the administrative officer and cashier of payee hospital until his retirement on 28 February 1978, collected the checks from the office of the Provincial Treasurer. He claimed to be assisting or helping the hospital follow up the release of the checks and had official receipts. Pangilinan sought to encash the first check with Associated Bank. However, the manager of Associated Bank refused and suggested that Pangilinan deposit the check in his personal savings account with the same bank. Pangilinan was able to withdraw the money when the check was cleared and paid by the drawee bank, PNB. After forging the signature of Dr. Adena Canlas who was chief of the payee hospital, Pangilinan followed the same procedure for the second check, in the amount of P5,000.00 and dated 20 April 1978, as well as for 28 other checks of various amounts and on various dates. The last check negotiated by Pangilinan was for P8,000.00 and dated 10 February 1981. All the checks bore the stamp of Associated Bank which reads "All prior endorsements guaranteed Associated Bank." Jesus David, the manager of Associated Bank, alleged that Pangilinan made it appear that the checks were paid to him for certain projects with the hospital. He did not find as irregular the fact that the checks were not payable to Pangilinan but to the Concepcion Emergency Hospital. While he admitted that his wife and Pangilinan's wife are first cousins, the manager denied having given Pangilinan preferential treatment on this account. On 26 February 1981, the Provincial Treasurer wrote the manager of the PNB seeking the restoration of the various amounts debited from the current account of the Province. In turn, the PNB manager demanded reimbursement from the Associated Bank on 15 May 1981. As both banks resisted payment, the Province brought suit against PNB which, in turn, impleaded Associated Bank as third-party defendant. The latter then filed a fourth-party complaint against Adena Canlas and Fausto Pangilinan. After trial on the merits, the lower court rendered its decision on 21 March 1988, on the basic complaint, in favor of the Province and against PNB, ordering the latter to pay to the former, the sum of P203,300.00 with legal interest thereon from 20 March 1981 until fully paid; on the third-party complaint, in favor of PNB and against Associated Bank ordering the latter to reimburse to the former the amount of P203,300.00 with legal

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interests thereon from 20 March 1981 until fully paid; on the fourth-party complaint, the same was ordered dismissed for lack of cause of action as against Adena Canlas and lack of jurisdiction over the person of Fausto Pangilinan as against the latter. The court also dismissed the counterclaims on the complaint, third-party complaint and fourth-party complaint, for lack of merit. PNB and Associated Bank appealed to the Court of Appeals. The appellate court affirmed the trial court's decision in toto on 30 September 1992. Hence the consolidated petitions which seek a reversal of the appellate court's decision.

Issue: Whether PNB was at fault and should solely bear the loss because it cleared and paid the forged checks.

Held: The present case concerns checks payable to the order of Concepcion Emergency Hospital or its Chief. They were properly issued and bear the genuine signatures of the drawer, the Province of Tarlac. The infirmity in the questioned checks lies in the payee's (Concepcion Emergency Hospital) indorsements which are forgeries. At the time of their indorsement, the checks were order instruments. Checks having forged indorsements should be differentiated from forged checks or checks bearing the forged signature of the drawer. Where the instrument is payable to order at the time of the forgery, such as the checks in the case, the signature of its rightful holder (here, the payee hospital) is essential to transfer title to the same instrument. When the holder's indorsement is forged, all parties prior to the forgery may raise the real defense of forgery against all parties subsequent thereto. An indorser of an order instrument warrants "that the instrument is genuine and in all respects what it purports to be; that he has a good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his indorsement valid and subsisting." He cannot interpose the defense that signatures prior to him are forged. A collecting bank where a check is deposited and which indorses the check upon presentment with the drawee bank, is such an indorser. So even if the indorsement on the check deposited by the banks' client is forged, the collecting bank is bound by his warranties as an indorser and cannot set up the defense of forgery as against the drawee bank. The bank on which a check is drawn, known as the drawee bank, is under strict liability to pay the check to the order of the payee. The drawee bank is not similarly situated as the collecting bank because the former makes no warranty as to the genuineness of any indorsement. The drawee bank's duty is but to verify the genuineness of the drawer's signature and not of the indorsement because the drawer is its client. Moreover, the collecting bank is made liable because it is privy to the depositor who negotiated the check. The bank knows him, his address and history because he is a client. It has taken a risk on his deposit. The bank is also in a better position to detect forgery, fraud or irregularity in the indorsement. Hence, the drawee bank can recover the amount paid on the check bearing a forged indorsement from the collecting bank. However, a drawee bank has the duty to promptly inform the presenter of the forgery upon discovery. If the drawee bank delays in informing the presenter of the forgery, thereby depriving said presenter of the right to recover from the forger, the former is deemed negligent and can no longer recover from the presenter. Herein, PNB, the drawee bank, cannot debit the current account of the Province of Tarlac because it paid checks which bore forged indorsements. However, if the Province of Tarlac as drawer was negligent to the point of substantially contributing to the loss, then the drawee bank PNB can charge its account. If both drawee bank-PNB and drawer-Province of Tarlac were negligent, the loss should be properly apportioned between them. The loss incurred by drawee bank-PNB can be passed on to the collecting bank-Associated Bank which presented and indorsed the checks to it. Associated Bank can, in turn, hold the forger, Fausto Pangilinan, liable. If PNB negligently delayed in informing Associated Bank of the forgery, thus depriving the latter of the opportunity to recover from the forger, it forfeits its right to reimbursement and will be made to bear the loss. The Court finds that the Province of Tarlac was equally negligent and should, therefore, share the burden of loss from the checks bearing a forged indorsement. The Province of Tarlac permitted Fausto Pangilinan to collect the checks when the latter, having already retired from government service, was no longer connected with the hospital. With the exception of the first check (dated 17 January 1978), all the checks were issued and released after Pangilinan's retirement on 28 February 1978. After nearly three years, the Treasurer's office was still releasing the checks to the retired cashier. In addition, some of the aid allotment checks were released to Pangilinan and the others to Elizabeth Juco, the new cashier. The fact that there were now two persons collecting the checks

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for the hospital is an unmistakable sign of an irregularity which should have alerted employees in the Treasurer's office of the fraud being committed. There is also evidence indicating that the provincial employees were aware of Pangilinan's retirement and consequent dissociation from the hospital. Hence, due to the negligence of the Province of Tarlac in releasing the checks to an unauthorized person (Fausto Pangilinan), in allowing the retired hospital cashier to receive the checks for the payee hospital for a period close to three years and in not properly ascertaining why the retired hospital cashier was collecting checks for the payee hospital in addition to the hospital's real cashier, the Province contributed to the loss amounting to P203,300.00 and shall be liable to the PNB for 50% thereof. In effect, the Province of Tarlac can only recover 50% of P203,300.00 from PNB. The collecting bank, Associated Bank, shall be liable to PNB for 50% of P203,300.00. It is liable on its warranties as indorser of the checks which were deposited by Fausto Pangilinan, having guaranteed the genuineness of all prior indorsements, including that of the chief of the payee hospital, Dr. Adena Canlas. Associated Bank was also remiss in its duty to ascertain the genuineness of the payee's indorsement.

29 The Great Eastern Life Insurance Co. vs. Hongkong & Shanghai Banking Corp. [GR 18657, 23 August 1922]

En Banc, Johns (J): 8 concur

Facts: The Great Eastern Life Insurance Co. (GELIC) is an insurance corporation, while Hongkong & Shanghai Banking Corp. (HSBC) and Philippine National Bank (PNB) are banking corporations, and each is duly licensed to do its respective business in the Philippine Islands. On 3 May 1920, GELIC drew its check for P2,000 on HSBC with whom it had an account, payable to the order of Lazaro Melicor. E.M. Maasim fraudulently obtained possession of the check, forged Melicor's signature, as an endorser, and then personally endorsed and presented it to PNB where the amount of the check was placed to his credit. After having paid the check, and on the next day, PNB endorsed the check to HSBC, which paid it, and charged the amount of the check to the account of GELIC. In the ordinary course of business, HSBC rendered a bank statement to GELIC showing that the amount of the check was charged to its account, and no objection was then made to the statement. About 4 months after the check was charged to the account of GELIC, it developed that Melicor, to whom the check was made payable, had never received it, and that his signature, as an endorser, was forged by Maasim, who presented and deposited it to his private account in PNB. With this knowledge, GELIC promptly made a demand upon HSBC that it should be given credit for the amount of the forged check, which the bank refused to do, and GELIC commenced the action to recover the P2,000 which was paid on the forged check. On the petition of HSBC, PNB was made defendant. HSBC denies any liability, but prays that, if a judgment should be rendered against it, in turn, it should have like judgment against PNB which denies all liability to either party. Upon the issued being joined, a trial was had and judgment was rendered against GELIC and in favor HSBC and PNB from which GELIC appealed.

Issue: Whether GELIC can recover inasmuch as Melicor's indorsement was forged.

Held: GELIC's check was drawn on HSBC payable to the order of Melicor. In other words, GELIC authorized and directed HSBC to pay Melicor, or his order, P2,000. It did not authorize or direct the bank to pay the check to any other person than Melicor, or his order, and the testimony is undisputed that Melicor never did part with his title or endorse the check, and never received any of its proceeds. Neither is GELIC estopped or bound by the bank statement, which was made to it by HSBC. This is not a case where GELIC's own signature was forged to one of its checks. The forgery was that of Melicor, who was the payee of the check, and the legal presumption is that the bank would not honor the check without the genuine endorsement of Melicor. In other words, when GELIC received its bank statement, it had a right to assume that Melicor had personally endorsed the check, and that, otherwise, the bank would not have paid it. Section 23 of the Negotiable Instruments Law is square in point. The money was on deposit in HSBC, and it had no legal right to pay it out to anyone except GELIC or its order. Here, GELIC ordered HSBC to pay the P2,000 to Melicor, and the money was actually paid to Maasim and was never paid to Melicor, and he never personally endorsed

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the check, or authorized any one to endorse it for him, and the alleged endorsement was a forgery. Hence, upon the undisputed facts, it must follow that HSBC has no defense to the present action. It is admitted that PNB cashed the check upon a forged signature, and placed the money to the credit of Maasim, who was the forger. That PNB then endorsed the check and forwarded it to HSBC by whom it was paid. PNB had no license or authority to pay the money to Maasim or anyone else upon a forged signature. It was its legal duty to know that Melicor's endorsement was genuine before cashing the check. Its remedy is against Maasim to whom it paid the money. The Supreme Court reversed the lower court's judgment, and entered another in favor of GELIC and against HSBC for P2,000, with interest thereon from 8 November 1920, at the rate of 6% per annum, and the costs of the action, and a corresponding judgment will be entered in favor of HSBC against PNB for the same amount, together with the amount of its costs in the action.

30 Republic Bank vs. Ebrada [GR L-40796, 31 July 1975]

First Division, Martin (J): 4 concur

Facts: On or about 27 February 1963, Mauricia T. Ebrada, encashed Back Pay Check 508060 dated 15 January 1963 for P1,246.08 at the main office of the Republic Bank at Escolta, Manila. The check was issued by the Bureau of Treasury. Republic Bank was later advised by the said bureau that the alleged indorsement on the reverse side of the aforesaid check by the payee, "Martin Lorenzo" was a forgery since the latter had allegedly died as of 14 July 1952. Republic Bank was then requested by the Bureau of Treasury to refund the amount of P1,246.08. To recover what it had refunded to the Bureau of Treasury, Republic Bank made verbal and formal demands upon Ebrada to account for the sum of P1,246.08, but Ebrada refused to do so. So Republic Bank sued Ebrada before the City Court of Manila. On 11 July 1966, Ebrada filed her answer denying the material allegations of the complaint and as affirmative defenses alleged that she was a holder in due course of the check in question, or at the very least, has acquired her rights from a holder in due course and therefore entitled to the proceeds thereof. She also alleged that the Republic Bank has no cause of action against her; that it is in estoppel, or so negligent as not to be entitled to recover anything from her. On the same date, Ebrada filed a Third-Party complaint against Adelaida Dominguez who, in turn, filed on 14 September 1966 a Fourth-Party complaint against Justina Tinio. On 21 March 1967, the City Court of Manila rendered judgment for the Republic Bank against Ebrada; for Ebrada against Dominguez, and for Dominguez against Tinio. From the judgment of the City Court, Ebrada took an appeal to the Court of First Instance of Manila, where a partial stipulation of facts was submitted. Based on the stipulation of facts and the documentary evidence presented, the trial court rendered a decision, ordering Ebrada to pay Republic Bank the amount of P1,246.08, with interest as the legal rate from the filing of the complaint on 16 June 1966, until fully paid, plus the costs in both instances against Ebrada; reserving therein the right of Ebrada to file whatever claim she may have against Dominguez in connection with the case, as well as the right of the estate of Dominguez to file the fourth-party complaint against Tinio. Ebrada appealed.

Issue [1]: Whether the existence of one forged signature in a negotiable instrument will render void all the other negotiations of the check with respect to the other parties whose signature are genuine.

Held [1]: In the case of *Beam vs. Farrel*, 135 Iowa 670, 113 N.W. 590, where a check has several indorsements on it, it was held that it is only the negotiation based on the forged or unauthorized signature which is inoperative. Applying this principle to the case, it can be safely concluded that it is only the negotiation predicated on the forged indorsement that should be declared inoperative. This means that the negotiation of the check in question from Martin Lorenzo, the original payee, to Ramon R. Lorenzo, the second indorser, should be declared of no effect, but the negotiation of the aforesaid check from Ramon R. Lorenzo to Adelaida Dominguez, the third indorser, and from Adelaida Dominguez to Ebrada who did not know of the forgery, should be considered valid and enforceable, barring any claim of forgery.

Issue [2]: Whether the drawee bank recover from the one who encashed the check if, after the drawee bank has paid the amount of the check to the holder thereof, it was discovered that the signature of the payee was

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forged.

Held [2]: In the case of *State v. Broadway Mut. Bank*, 282 S.W. 196, 197, it was held that the drawee of a check can recover from the holder the money paid to him on a forged instrument. It is not supposed to be its duty to ascertain whether the signatures of the payee or indorsers are genuine or not. This is because the indorser is supposed to warrant to the drawee that the signatures of the payee and previous indorsers are genuine, warranty not extending only to holders in due course. One who purchases a check or draft is bound to satisfy himself that the paper is genuine and that by indorsing it or presenting it for payment or putting it into circulation before presentation he impliedly asserts that he has performed his duty and the drawee who has paid the forged check, without actual negligence on his part, may recover the money paid from such negligent purchasers. In such cases the recovery is permitted because although the drawee was in a way negligent in failing to detect the forgery, yet if the encasher of the check had performed his duty, the forgery would in all probability, have been detected and the fraud defeated. The reason for allowing the drawee bank to recover from the encasher is that "Every one with even the least experience in business knows that no business man would accept a check in exchange for money or goods unless he is satisfied that the check is genuine. He accepts it only because he has proof that it is genuine, or because he has sufficient confidence in the honesty and financial responsibility of the person who vouches for it. If he is deceived he has suffered a loss of his cash or goods through his own mistake. His own credulity or recklessness, or misplaced confidence was the sole cause of the loss. Why should he be permitted to shift the loss due to his own fault in assuming the risk, upon the drawee, simply because of the accidental circumstance that the drawee afterwards failed to detect the forgery when the check was presented?" Herein, Ebrada, upon receiving the check in question from Adelaida Dominguez, was duty-bound to ascertain whether the check in question was genuine before presenting it to Republic Bank for payment. Her failure to do so makes her liable for the loss and the Republic Bank may recover from her the money she received for the check. Had she performed the duty of ascertaining the genuineness of the check, in all probability the forgery would have been detected and the fraud defeated. As held in the *Great Eastern Life Insurance Company* case, "Where a check is drawn payable to the order of one person and is presented to a bank by another and purports upon its face to have been duly indorsed by the payee of the check, it is the duty of the bank to know that the check was duly indorsed by the original payee, and where the Bank pays the amount of the check to a third person, who has forged the signature of the payee, the loss falls upon the bank who cashed the check, and its only remedy is against the person to whom it paid the money." Hence, the Republic Bank should suffer the loss when it paid the amount of the check in question to Ebrada, but it has the remedy to recover from the latter the amount it paid to her. Although Ebrada to whom the Republic Bank paid the check was not proven to be the author of the supposed forgery, yet as last indorser of the check, she has warranted that she has good title to it even if in fact she did not have it because the payee of the check was already dead 11 years before the check was issued. The fact that immediately after receiving the cash proceeds of the check in question in the amount of P1,246.08 from the Republic Bank, Ebrada immediately turned over said amount to Dominguez who in turn handed the amount to Tinio on the same date would not exempt her from liability because by doing so, she acted as an accommodation party in the check for which she is also liable under Section 29 of the Negotiable Instruments Law.

31 Philippine National Bank vs. Quimpo [GR L-53194, 14 March 1988]

First Division, Gancayco (J): 4 concur

Facts: On 3 July 1973, Francisco S. Gozon II, who was a depositor of the Caloocan City Branch of the Philippine National Bank (PNB), went to the bank in his car accompanied by his friend Ernesto Santos whom he left in the car while he transacted business in the bank. When Santos saw that Gozon left his check book he took a check therefrom, filled it up for the amount of P5,000.00, forged the signature of Gozon, and thereafter he encashed the check in the bank on the same day. The account of Gozon was debited the said amount. Upon receipt of the statement of account from the bank, Gozon asked that the said amount of P5,000.00 should be returned to his account as his signature on the check was forged but the bank refused. Upon Gozon's complaint on 1 February 1974 Ernesto Santos was apprehended by the police authorities and upon

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investigation he admitted that he stole the check of Gozon, forged his signature and encashed the same with the Bank. Gozon filed the complaint for recovery of the amount of P5,000.00, plus interest, damages, attorney's fees and costs against the bank in the CFI Rizal (Branch XIC, Hon. Romulo S. Quimpo presiding). After the issues were joined and the trial on the merits ensued, a decision was rendered on 4 February 1980, by the Court, ordering the bank to return the amount of P5,000 which it had unlawfully withheld, with interest at the legal rate from 22 September 1972 until the amount is fully delivered. The bank was further condemned to pay Gozon the sum of P2,000.00 as attorney's fees and to pay the costs of the suit. The bank filed a petition for review on certiorari.

Issue: Whether the act of Gozon in putting his checkbook containing the forged check into the hands of Santos was the proximate cause of the loss, precluding him from setting up the defense of forgery.

Held: The prime duty of a bank is to ascertain the genuineness of the signature of the drawer or the depositor on the check being encashed. It is expected to use reasonable business prudence in accepting and cashing a check presented to it. 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 change the amount so paid to the account of the depositor whose name was forged. This rule is absolutely necessary to the circulation of drafts and checks, and is based upon the presumed negligence of the drawee in failing to meet its obligation to know the signature of its correspondent. There is nothing inequitable in such a rule. If the paper comes to the drawee in the regular course of business, and he, having the opportunity ascertaining its character, pronounces it to be valid and pays it, it is not only a question of payment under mistake, but payment in neglect of duty which the commercial law places upon him, and the result of his negligence must rest upon him. The act of Gozon in leaving his checkbook in the car while he went out for a short while can not be considered negligence sufficient to excuse PNB from its own negligence. It should be borne in mind that when Gozon left his car, Santos, a long time classmate and friend remained in the same. Gozon could not have been expected to know that the said Santos would remove a check from his checkbook. Gozon had trust in his classmate and friend. He had no reason to suspect that the latter would breach that trust.

32 *Gempesaw vs. CA, February 9, 1993*
see case entry 15

33 **Philippine Commercial International Bank (PICB; formerly Insular Bank of Asia and America) vs. Court of Appeals [GR 121413, 29 January 2001];** also Ford Philippines vs. Court of Appeals [GR 121479], and Ford Philippines v.s Citibank N.A. [GR 128604]
Second Division: Quisumbing (J): 4 concur

Facts: [GRs 121413 and 121479] On 19 October 1977, Ford Philippines drew and issued its Citibank Check SN-04867 -- a crossed check in that, on its face were two parallel lines and written in between said lines was the phrase "Payee's Account Only" -- in the amount of P4,746,114.41, in favor of the Commissioner of Internal Revenue as payment of Ford's percentage or manufacturer's sales taxes for the third quarter of 1977. The aforesaid check was deposited with the Insular Bank of Asia and America (IBAA) and was subsequently cleared at the Central Bank. Upon presentment with Citibank N.A., the proceeds of the check was paid to IBAA as collecting or depository bank. The proceeds of the same Citibank check of Ford was never paid to or received by the payee thereof, the Commissioner of Internal Revenue. The amount of P4,746,114.41 was debited in Ford's account with Citibank and the check was returned to Ford. Upon verification, Ford discovered that its Citibank Check SN-04867 in the amount of P4,746,114.41 was not paid to the Commissioner of Internal Revenue. In separate letters dated 26 October 1979, addressed to Citibank and IBAA, Ford notified the latter that in case it will be re-assessed by the BIR for the payment of the taxes covered by the said checks, then Ford shall hold Citibank and IBAA liable for reimbursement of the face value of the same. IBAA and Citibank denied liability and refused to pay. In a letter dated 28 February 1980 by the Acting Commissioner of Internal Revenue addressed to Ford officially informing the latter, among

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others, that its check in the amount of P4,746,114.41 was not paid to the government or its authorized agent and instead encashed by unauthorized persons, hence, Ford has to pay the said amount within 15 days from receipt of the letter. Upon advice of Ford's lawyers, Ford, on 11 March 1982, paid to the BIR the amount of P4,746,114.41, representing payment of its percentage tax for the third quarter of 1977. Said second payment of Ford in the amount of P4,746,114.41 was duly received by the BIR. As a consequence of Citibank's refusal to reimburse Ford of the payment it had made for the second time to the BIR of its percentage taxes, Ford filed on 20 January 1983 its original complaint before the court. On 24 December 1985, IBAA was merged with the Philippine Commercial International Bank (PCIB) with the latter as the surviving entity. It was learned during an investigation by the National Bureau of Investigation (NBI) that Citibank Check SN-04867 was recalled by Godofredo Rivera, the General Ledger Accountant of Ford. He purportedly needed to hold back the check because there was an error in the computation of the tax due to BIR. With Rivera's instruction, PCIB replaced the check with two of its own Manager's Checks (MCs). Alleged members of a syndicate later deposited the two MCs with the Pacific Banking Corporation (PBC). Ford, with leave of court, filed a third-party complaint before the trial court impleading PBC and Rivera, as third party defendants. But the court dismissed the complaint against PBC for lack of cause of action. The court likewise dismissed the third-party complaint against Rivera because he could not be served with summons as the NBI declared him as a "fugitive from justice". On 15 June 1989, the trial court rendered its decision, ordering Citibank and IBAA/PCIB to solidarily pay Ford the amount of P4,746,114.41 representing the face value of Ford's Citibank Check SN-04867, with interest thereon at the legal rate starting 20 January 1983, the date when the original complaint was filed until the amount is fully paid, plus costs; ordering IBAA/PCIB to reimburse Citibank for whatever amount the latter has paid or may pay to Ford; with costs against Citibank and IBAA. Not satisfied with the said decision, Citibank and PCIB, elevated their respective petitions for review on certiorari to the Court of Appeals. On 27 March 1995, the appellate court issued its judgment affirming the trial court's decision with modifications; dismissing the complaint in Civil Case 49287 insofar as Citibank was concerned; ordering IBAA/PCIB to pay Ford the amount of P4,746,114.41 representing the face value of Ford's Citibank Check SN-04867, with interest thereon at the legal rate starting 20 January 1983, the date when the original complaint was filed until the amount is fully paid; with costs against IBAA/PCIB. PCIB moved to reconsider the decision of the Court of Appeals, while Ford filed a "Motion for Partial Reconsideration." Both motions were denied for lack of merit. Separately, PCIBank and Ford filed before the Supreme Court, petitions for review by certiorari under Rule 45.

[GR 128604] Ford drew Citibank Check SN-10597 on 19 July 1978 in the amount of P5,851,706.37 representing the percentage tax due for the second quarter of 1978 payable to the Commissioner of Internal Revenue. A BIR Revenue Tax Receipt 28645385 was issued for the said purpose. On 20 April 1979, Ford drew another Citibank Check SN-16508 in the amount of P6,311,591.73, representing the payment of percentage tax for the first quarter of 1979 and payable to the Commissioner of Internal Revenue. Again a BIR Revenue Tax Receipt A-1697160 was issued for the said purpose. Both checks were "crossed checks" and contain two diagonal lines on its upper left corner between which were written the words "payable to the payee's account only." The checks never reached the payee, CIR. Thus, in a letter dated 28 February 1980, the BIR, Region 4-B, demanded for the said tax payments the corresponding periods above-mentioned. As far as the BIR is concerned, the said two BIR Revenue Tax Receipts were considered "fake and spurious". This anomaly was confirmed by the NBI upon the initiative of the BIR. The findings forced Ford to pay the BIR anew, while an action was filed against Citibank and PCIBank for the recovery of the amount of Citibank Check Numbers SN-10597 and 16508. On 9 December 1988, Regional Trial Court of Makati, Branch 57, held drawee-bank Citibank liable for the value of the two checks while absolving PCIB from any liability. Both Ford and Citibank appealed to the Court of Appeals which affirmed, in toto, the decision of the trial court. Hence, the petition for review.

[1] GRs 121413 and 121479

Issue [a]: Whether the forgery committed by the drawer-payor's confidential employees precludes Ford from

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recovering the amount of its checks.

Held [a]: NO. Although the employees of Ford initiated the transactions attributable to an organized syndicate, their actions were not the proximate cause of encashing the checks payable to the CIR. The degree of Ford's negligence, if any, could not be characterized as the proximate cause of the injury to the parties. The Board of Directors of Ford did not confirm the request of Godofredo Rivera to recall Citibank Check SN-04867. Rivera's instruction to replace the said check with PCIB's Manager's Check was not in the ordinary course of business which could have prompted PCIB to validate the same. As to the preparation of Citibank Checks SN-10597 and 16508, it was established that these checks were made payable to the CIR. Both were crossed checks. These checks were apparently turned around by Ford's employees, who were acting on their own personal capacity. Given these circumstances, the mere fact that the forgery was committed by a drawer-payor's confidential employee or agent, who by virtue of his position had unusual facilities for perpetrating the fraud and imposing the forged paper upon the bank, does not entitle the bank to shift the loss to the drawer-payor, in the absence of some circumstance raising estoppel against the drawer. This rule likewise applies to the checks fraudulently negotiated or diverted by the confidential employees who hold them in their possession.

Issue [b]: Whether the collecting bank (PCIB) was negligent in preparing two manager's check to replace Citibank Check SN-04867, on orders of persons besides the CIR.

Held [b]: YES. Citibank Check SN-04867 was deposited at PCIB through its Ermita Branch. It was coursed through the ordinary banking transaction, sent to Central Clearing with the indorsement at the back "all prior indorsements and/or lack of indorsements guaranteed," and was presented to Citibank for payment. Thereafter PCIB, instead of remitting the proceeds to the CIR, prepared two of its Manager's checks and enabled the syndicate to encash the same. On record, PCIB failed to verify the authority of Mr. Rivera to negotiate the checks. The neglect of PCIB employees to verify whether his letter requesting for the replacement of the Citibank Check SN-04867 was duly authorized, showed lack of care and prudence required in the circumstances. Furthermore, it was admitted that PCIB is authorized to collect the payment of taxpayers in behalf of the BIR. As an agent of BIR, PCIB is duty bound to consult its principal regarding the unwarranted instructions given by the payor or its agent. As agent of the BIR, IBAA/PCIB should receive instructions only from its principal BIR and not from any other person especially so when that person is not known to IBAA/PCIB. It is very imprudent on the part of IBAA/PCIB to just rely on the alleged telephone call of one (Rivera) and in his signature to the authenticity of such signature considering that the Ford is not a client of IBAA/PCIB.

[2] GR 128604

Issue [a]: Whether PCIB is liable for fraud (embezzlement) committed by PCIB employees while the checks were in transit for clearing.

Held [a]: YES. Even if PCIB had no official act in the ordinary course of business that would attribute to it the case of the embezzlement of Citibank Check Numbers SN-10597 and 16508, because PCIB did not actually receive nor hold the two Ford checks at all; that the switching operation (involving the checks while in transit for "clearing") were the clandestine or hidden actuations performed by the members of the syndicate in their own personal, covert and private capacity and done without the knowledge of PCIB; as a general rule, however, a banking corporation is liable for the wrongful or tortuous acts and declarations of its officers or agents within the course and scope of their employment. A bank will be held liable for the negligence of its officers or agents when acting within the course and scope of their employment. It may be liable for the tortuous acts of its officers even as regards that species of tort of which malice is an essential element. Herein, although a situation exist where the PCIB appears also to be the victim of the scheme hatched by a syndicate in which its own management employees had participated; a bank holding out its officers and agents as

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worthy of confidence will not be permitted to profit by the frauds these officers or agents were enabled to perpetrate in the apparent course of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. For the general rule is that a bank is liable for the fraudulent acts or representations of an officer or agent acting within the course and apparent scope of his employment or authority. And if an officer or employee of a bank, in his official capacity, receives money to satisfy an evidence of indebtedness lodged with his bank for collection, the bank is liable for his misappropriation of such sum. Moreover, Section 5 of Central Bank Circular 580, Series of 1977 provides that any theft affecting items in transit for clearing, shall be for the account of sending bank, which in this case is PCIB.

Issue [b]: Whether Citibank can raise the defenses that it has no knowledge of any infirmity in the issuance of the checks in question and that the endorsement of the Payee or lack thereof was guaranteed by IBAA/PCIB and thus, it has the obligation to honor and pay the same; among others.

Held [b]: NO. Citibank as drawee bank was likewise negligent in the performance of its duties. Citibank failed to establish that its payment of Ford's checks were made in due course and legally in order. As ruled by the Court of Appeals, Citibank must likewise answer for the damages incurred by Ford on Citibank Checks Numbers SN 10597 and 16508, because of the contractual relationship existing between the two. Citibank, as the drawee bank breached its contractual obligation with Ford and such degree of culpability contributed to the damage caused to the latter. Citibank should have scrutinized Citibank Check Numbers SN 10597 and 16508 before paying the amount of the proceeds thereof to the collecting bank of the BIR. The clearing stamps at the back of Citibank Check SN 10597 and 16508 do not bear any initials. Citibank failed to notice and verify the absence of the clearing stamps. Had this been duly examined, the switching of the worthless checks to Citibank Checks 10597 and 16508 would have been discovered in time. For this reason, Citibank had indeed failed to perform what was incumbent upon it, which is to ensure that the amount of the checks should be paid only to its designated payee. The fact that the drawee bank did not discover the irregularity seasonably constitutes negligence in carrying out the bank's duty to its depositors. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

34 Papa vs. Valencia [GR 105188, 23 January 1998]

First Division, Kapunan (J): 3 concur

Facts: Sometime in June 1982, A.U. Valencia and Co., Inc. and Felix Peñarroyo, filed with the Regional Trial Court of Pasig, Branch 151, a complaint for specific performance against Myron C. Papa, in his capacity as administrator of the Testate Estate of one Angela M. Butte. The complaint alleged that on 15 June 1973, Myron C. Papa, acting as attorney-in-fact of Angela M. Butte, sold to Peñarroyo, through Valencia, a parcel of land, consisting of 286.60 square meters, located at corner Retiro and Cadiz Streets, La Loma, Quezon City, and covered by Transfer Certificate of Title 28993 of the Register of Deeds of Quezon City; that prior to the alleged sale, the said property, together with several other parcels of land likewise owned by Butte, had been mortgaged by her to the Associated Banking Corporation (now Associated Citizens Bank); that after the alleged sale, but before the title to the subject property had been released, Butte passed away; that despite representations made by Valencia to the bank to release the title to the property sold to Peñarroyo, the bank refused to release it unless and until all the mortgaged properties of the late Butte were also redeemed; that in order to protect his rights and interests over the property, Peñarroyo caused the annotation on the title of an adverse claim as evidenced by Entry No. PE. — 6118/T-28993, inscribed on 18 January 1977. The complaint further alleged that it was only upon the release of the title to the property, sometime in April 1977, that Valencia and Peñarroyo discovered that the mortgage rights of the bank had been assigned to one Tomas L. Parpana (now deceased), as special administrator of the Estate of Ramon Papa, Jr., on 12 April 1977; that since then, Papa had been collecting monthly rentals in the amount of P800.00 from the tenants of the

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property, knowing that said property had already been sold to Valencia and Peñarroyo on 15 June 1973; that despite repeated demands from said respondents, Papa refused and failed to deliver the title to the property. Valencia and Peñarroyo prayed that Papa be ordered to deliver to Peñarroyo the title to the subject property (TCT 28993); to turn over to the latter the sum of P72,000.00 as accrued rentals as of April 1982, and the monthly rental of P800.00 until the property is delivered to Peñarroyo; to pay Valencia and Peñarroyo the sum of P20,000.00 as attorney's fees; and to pay the costs of the suit. Upon his motion, Delfin Jao was allowed to intervene in the case. Making common cause with Valencia and Peñarroyo, Jao alleged that the subject lot which had been sold to Peñarroyo through Valencia was in turn sold to him on 20 August 1973 for the sum of P71,500.00, upon his paying earnest money in the amount of P5,000.00. For his part, Papa, as administrator of the Testate Estate of Butte, filed a third-party complaint against spouses Arsenio B. Reyes and Amanda Santos, the winning bidders in public auction sale held by the City Treasurer of Quezon City when the estate of Butte was not able to pay the real estate tax of said property. On 29 June 1987, the trial court rendered a decision, allowing Papa to redeem from the Reyes spouses and ordering the spouses to allow the former to redeem the property in question, by paying the sum of P14,000.00 plus legal interest of 12% thereon from 2 January 1980; ordering Papa to execute a Deed of Absolute Sale in favor of Peñarroyo covering the property in question and to deliver peaceful possession and enjoyment of the said property to Peñarroyo, free from any liens and encumbrances, and that should that be impossible, for any reason not attributable to Papa, said Papa was ordered to pay to Peñarroyo the sum of P45,000.00 plus legal interest of 12% from 15 June 1973; ordering Peñarroyo to execute and deliver to intervenor a deed of absolute sale over the same property, upon the latter's payment to the former of the balance of the purchase price of P71,500.00, and that should that be impossible, Peñarroyo was ordered to pay Jao the sum of P5,000.00 plus legal interest of 12% from 23 August 1973; and ordering Papa to pay Valencia and Peñarroyo the amount of P5,000.00 for and as attorney's fees and litigation expenses. Papa 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 Valencia and Peñarroyo in payment of the full purchase price of the subject lot. He maintained that what Valencia and Peñarroyo had actually paid was only the amount of P5,000.00 (in cash) as earnest money. The Reyes spouses, likewise, appealed the above decision. However, their appeal was dismissed because of failure to file their appellants' brief. On 27 January 1992, the Court of Appeals rendered a decision, affirming with modification the trial court's decision, by ordering Papa to deliver to Valencia and Peñarroyo the owner's duplicate of TCT 28993 of Angela M. Butte and the peaceful possession and enjoyment of the lot in question or, if the owner's duplicate certificate cannot be produced, to authorize the Register of Deeds to cancel it and issue a certificate of title in the name of Peñarroyo; with costs against Papa. Papa filed the petition for review on certiorari.

Issue: Whether the alleged sale of the subject property had been consummated, on the presumption that the check in the amount of P40,000 was encashed.

Held: Valencia and Peñarroyo had given Papa the amounts of P5,000.00 in cash on 24 May 1973, and 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 10 years from the payment in part by cash and in part by check, the presumption is that the check had been encashed. He even waived the presentation of oral evidence. Granting that Papa had never encashed the check, his failure to do so for more than 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 Article 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

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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. Considering that Valencia and Peñarroyo had fulfilled their part of the contract of sale by delivering the payment of the purchase price, they, therefore, had the right to compel Papa to deliver to them the owner's duplicate of TCT 28993 of Angela M. Butte and the peaceful possession and enjoyment of the lot in question.

35 **Far East Realty Investment Inc. vs. Court of Appeals [GR L-36549, 5 October 1988]**

Second Division, Paras (J): 4 concur

See case entry 38

Facts: In its complaint dated May 9, 1968, filed with the City Court of Manila, (Civil Case 170859) against Dy Hian Tat, Siy Chee and Gaw Suy An for the collection and payment of P4,500.00 representing the face value of an unpaid and dishonored check, Far East Realty Investment Inc. (FERII) alleged, among others, that on 13 September 1960, Dy et al. approached FERII at its office in Manila and asked the latter to extend to them an accommodation loan in the sum of P4,500.00, which they needed in their business, and which they promised to pay, jointly and severally, in one month time; that they proposed to pay FERII interest thereon at the rate of 14% per annum, as in fact they delivered to FERII the China Banking Corporation (ChinaBank) Check VN-915564, dated 13 September 1960, for P4,500.00, drawn by Dy, and signed by them at the back of said check, with the assurance that after one month from 13 September 1960, the said check would be redeemed by them by paying cash in the sum of P4,500.00, or the said check can be presented for payment on or immediately after one month and said bank would honor the same; that, in order to accommodate Dy et al., FERII agreed and actually extended to Dy et al. an accommodation loan in the sum of P4,500.00 under the aforesaid conditions proposed by Dy et al., which amount was delivered to the later; that on 5 March 1964, the aforesaid check was presented for payment to the ChinaBank, but said check bounced and was not cashed by said bank, for the reason that the current account of the drawer thereof had already been closed; and that subsequently, FERII demanded from Dy et al. the payment of their aforesaid loan obligation, but the latter failed and refused to pay notwithstanding repeated demands therefor. Gaw and Dy filed their answers, while on 31 March 1970, Siy was declared in default. After hearing, the City Court of Manila rendered its decision in favor of FERII, ordering Dy et al. to pay FERII, jointly and severally, the sum of P4,500.00 with interest thereon at the legal rate from 13 September 1960 until the said amount is fully paid; plus the sum of P500.00 by way of attorney's fees, plus the costs of suit. The decision of the city court was appealed by Dy et al. to the Court of First Instance of Manila, where the case was heard de novo for lack of transcript of stenographic notes taken in the city court. After trial, the Court of First Instance of Manila, Branch IX, rendered a decision in Civil Case 80583, dated 15 October 1971, affirming the decision of the city court, ordering Dy et al. to pay, jointly and severally, FERII the sum of P4,500.00, plus interest at the rate of 14% per annum, from 13 September 1960, until fully paid, plus the sum of P1,000.00 in the concept of attorney's fees; and costs of suit. Dy et al. filed a petition for review with the Court of Appeals. On 12 February 1973, the appellate court, finding that the questioned check was not given as collateral to guarantee a loan secured by Dy et al. who allegedly came as a group to FERII on 13 September 1960, but passed through other hands before reaching FERII and the said check was not presented within a reasonable time and after its issuance, reversed the decision of the Court of First Instance. Its motion for reconsideration having been denied, FERII filed the petition for review.

Issue: Whether presentment for payment and notice of dishonor of the questioned check were made within reasonable time.

Held: NO. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after issue, except that in

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the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. Notice may be given as soon as the is dishonored; and unless delay is excused must be given within the time fixed by the law. No hard and fast demarcation line can be drawn between what may be considered as a reasonable or an unreasonable time, because "reasonable time" depends upon the peculiar facts and circumstances in each case. "Reasonable time" has been defined as so much time as is necessary under the circumstances for a reasonable prudent and diligent man to do, conveniently, what the contract or duty requires should be done, having a regard for the rights and possibility of loss, if any, to the other party Herein, it is obvious that presentment and notice of dishonor were not made within a reasonable time. The check in question was issued on 13 September 1960, but was presented to the drawee bank only on 5 March 1964, and dishonored on the same date. After dishonor by the drawee bank, a formal notice of dishonor was made by FERII through a letter dated 27 April 1968. Under these circumstances, FERII undoubtedly failed to exercise prudence and diligence on what he ought to do as required by law. FERII likewise failed to show any justification for the unreasonable delay.

36 Wong vs. Court of Appeals [GR 117857, 2 February 2001]

Second Division, Quisumbing (J): 4 concur

Facts: Luis S. Wong was an agent of Limtong Press Inc. (LPI), a manufacturer of calendars. LPI would print sample calendars, then give them to agents to present to customers. The agents would get the purchase orders of customers and forward them to LPI. After printing the calendars, LPI would ship the calendars directly to the customers. Thereafter, the agents would come around to collect the payments. Wong, however, had a history of unremitted collections, which he duly acknowledged in a confirmation receipt he co-signed with his wife. Hence, Wong's customers were required to issue postdated checks before LPI would accept their purchase orders. In early December 1985, Wong issued 6 postdated checks totaling P18,025.00, all dated 30 December 1985 and drawn payable to the order of LPI. These checks were initially intended to guarantee the calendar orders of customers who failed to issue post-dated checks. However, following company policy, LPI refused to accept the checks as guarantees. Instead, the parties agreed to apply the checks to the payment of Wong's unremitted collections for 1984 amounting to P18,077.07. LPI waived the P52.07 difference. Before the maturity of the checks, Wong prevailed upon LPI not to deposit the checks and promised to replace them within 30 days. However, Wong reneged on his promise. Hence, on 5 June 1986, LPI deposited the checks with Rizal Commercial Banking Corporation (RCBC). The checks were returned for the reason "account closed." The dishonor of the checks was evidenced by the RCBC return slip. On 20 June 1986, LPI through counsel notified Wong of the dishonor. Wong failed to make arrangements for payment within 5 banking days. On 6 November 1987, Wong was charged with 3 counts of violation of BP 22 under three separate Informations for the three checks amounting to P5,500.00, P3,375.00, and P6,410.00 (Criminal Case CBU-12055, 12057, and 12058). Upon arraignment, Wong pleaded not guilty. Trial ensued. On 30 August 1990, the trial court issued its decision, finding Wong guilty beyond reasonable doubt of the offense of Violations of Section 1 of BP 22 in 3 Counts and sentencing Wong to serve an imprisonment of 4 months for each count; to pay Limtong the sums of P5,500.00, P6,410.00 and P3,375.00 corresponding to the amounts indicated in Allied Banking Checks 660143451, 66[0]143464 and 660143463 all issued on 30 December 1985 together with the legal rate of interest from the time of the filing of the criminal charges in Court and pay the costs. Wong appealed his conviction to the Court of Appeals. On 28 October 1994, it affirmed the trial court's decision in toto. Wong filed the petition for review on certiorari.

Issue: Whether the presumption of knowledge of lack of funds under Section 2 of BP 22 should not apply to Wong, as he avers that LPI deposited the checks 157 days after the 30 December 1985 maturity date, and that he should not be expected to keep his bank account active and funded beyond the 90-day period.

Held: Section 2 (Evidence of knowledge of insufficient funds) of BP 22 provides that "The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie

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evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof 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 such check has not been paid by the drawee." An essential element of the offense is "knowledge" on the part of the maker or drawer of the check of the insufficiency of his funds in or credit with the bank to cover the check upon its presentment. Since this involves a state of mind difficult to establish, the statute itself creates a prima facie presumption of such knowledge where payment of the check "is refused by the drawee because of insufficient funds in or credit with such bank when presented within 90 days from the date of the check." To mitigate the harshness of the law in its application, the statute provides that such presumption shall not arise if within 5 banking days from receipt of the notice of dishonor, the maker or drawer makes arrangements for payment of the check by the bank or pays the holder the amount of the check. Contrary to Wong's assertions, nowhere in said provision does the law require a maker to maintain funds in his bank account for only 90 days. Rather, the clear import of the law is to establish a prima facie presumption of knowledge of such insufficiency of funds under the following conditions (1) presentment within 90 days from date of the check, and (2) the dishonor of the check and failure of the maker to make arrangements for payment in full within 5 banking days after notice thereof. That the check must be deposited within 90 days is simply one of the conditions for the prima facie presumption of knowledge of lack of funds to arise. It is not an element of the offense. Neither does it discharge Wong from his duty to maintain sufficient funds in the account within a reasonable time thereof. Under Section 186 of the Negotiable Instruments Law, "a check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay." By current banking practice, a check becomes stale after more than 6 months, or 180 days. LPI deposited the checks 157 days after the date of the check. Hence said checks cannot be considered stale. Only the presumption of knowledge of insufficiency of funds was lost, but such knowledge could still be proven by direct or circumstantial evidence. LPI did not deposit the checks because of the reassurance of Wong that he would issue new checks. Upon his failure to do so, LPI was constrained to deposit the said checks. After the checks were dishonored, Wong was duly notified of such fact but failed to make arrangements for full payment within 5 banking days thereof. There is sufficient evidence that Wong had knowledge of the insufficiency of his funds in or credit with the drawee bank at the time of issuance of the checks.

37 The International Corporate Bank (now Union Bank of the Philippines) vs. Spouses Gueco [GR 141968, 12 February 2001]

First Division, Kapunan (J): 4 concur

Facts: Spouses Francis S. Gueco and Ma. Luz E. Gueco 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 on 7 August 1995 a civil action (Civil Case 658-95) for "Sum of Money with Prayer for a Writ of Replevin" before the Metropolitan Trial Court of Pasay City, Branch 45. On 25 August 1995, 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. However, as a result of the non-payment of the reduced amount on that date, the car was detained inside the bank's compound. On 28 August 1995, Dr. Gueco went to the bank and talked with its Administrative Support Auto Loans/Credit Card Collection Head, Jefferson Rivera. The negotiations resulted in the further reduction of the outstanding loan to P150,000.00. On 29 August 1995, 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. It is the contention of the Gueco spouses and their counsel that Dr. Gueco need not sign the motion for joint dismissal considering that they had not yet filed their Answer. The Bank, however, insisted that the joint motion to

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dismiss is standard operating procedure in their bank to effect a compromise and to preclude future filing of claims, counterclaims or suits for damages. After several demand letters and meetings with bank representatives, the Gueco spouses initiated a civil action for damages before the Metropolitan Trial Court of Quezon City, Branch 33. The Metropolitan Trial Court dismissed the complaint for lack of merit. On appeal to the Regional Trial Court, Branch 227 of Quezon City, the decision of the Metropolitan Trial Court was reversed. In its decision, the RTC held that there was a meeting of the minds between the parties as to the reduction of the amount of indebtedness and the release of the car but said agreement did not include the signing of the joint motion to dismiss as a condition sine qua non for the effectivity of the compromise. The court further ordered the bank to return immediately the subject car to the spouses in good working condition; and to pay the spouses the sum of P50,000.00 as moral damages; P25,000.00 as exemplary damages, and P25,000.00 as attorney's fees, and to pay the cost of suit. In other respect, the court affirmed the decision of the Metropolitan Trial Court Branch 33. The case was elevated to the Court of Appeals, which on 17 February 2000, issued the decision, denying the petition for review on certiorari and affirming the Decision of the RTC of Quezon City, Branch 227, in Civil Case Q-97-31176, in toto; with costs against the bank. The bank filed the petition for review on certiorari with the Supreme Court.

(Short facts: In the meeting of 29 August 1995, 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 the 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 4 September 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 the bank, it appears from the pleadings that said check has not been encashed.)

Issue: Whether the bank was negligent in opting not to deposit or use the manager's check.

Held: 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 (2-1/2) years was considered a stale check. Failure of a payee to encash a check for more than 10 years undoubtedly resulted in the check becoming stale. Thus, even a delay of 1 week or two (2) days, under the specific circumstances of the certain cases constituted unreasonable time as a matter of law. Herein, 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

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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. Herein, 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. The Court saw no bad faith or negligence in this position taken by the Bank.

38 *Far East Realty vs. CA, October 5, 1988*
See case entry 35

39 *State Investment House Inc. vs. Court of Appeals [GR 101163, 11 January 1993]*
First Division, Bellosillo (J): 2 concur, 1 took no part

Facts: Nora B. Moulic issued to Corazon Victoriano, as security for pieces of jewelry to be sold on commission, 2 post-dated Equitable Banking Corporation checks in the amount of P50,000 each, one dated 30 August 1979 and the other, 30 September 1979. Thereafter, the payee negotiated the checks to the State Investment House Inc. (SIHI). Moulic failed to sell the pieces of jewelry, so she returned them to the payee before maturity of the checks. The checks, however, could no longer be retrieved as they had already been negotiated. Consequently, before their maturity dates, Moulic withdrew her funds from the drawee bank. Upon presentment for payment, the checks were dishonored for insufficiency of funds. On 20 December 1979, SIHI allegedly notified Moulic of the dishonor of the checks and requested that it be paid in cash instead, although Moulic avers that no such notice was given her. On 6 October 1983, SIHI sued to recover the value of the checks plus attorney's fees and expenses of litigation. In her Answer, Moulic contends that she incurred no obligation on the checks because the jewelry was never sold and the checks were negotiated without her knowledge and consent. She also instituted a Third-Party Complaint against Corazon Victoriano, who later assumed full responsibility for the checks. On 26 May 1988, the trial court dismissed the Complaint as well as the Third-Party Complaint, and ordered SIHI to pay Moulic P3,000.00 for attorney's fees. SIHI elevated the order of dismissal to the Court of Appeals, but the appellate court affirmed the trial court on the ground that the Notice of Dishonor to Moulic was made beyond the period prescribed by the Negotiable Instruments Law and that even if SIHI did serve such notice on Moulic within the reglementary period it would be of no consequence as the checks should never have been presented for payment. SIHI filed the petition for review.

Issue [1]: Whether the alleged issuance of the post-dated checks as security is a ground for the discharge of the instrument as against a holder in due course.

Held [1]: Section 119 of the Negotiable Instrument Law outlined the grounds in which an instrument is discharged. The provision states that "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." Obviously, MOULIC may only invoke paragraphs (c) and (d) as possible grounds for the discharge of the instrument. But, the intentional cancellation contemplated under paragraph (c) is that cancellation effected by destroying the instrument either by tearing it up, burning it, or writing the word "cancelled" on the instrument. The act of destroying the instrument must also be made by the holder of the instrument intentionally. Since MOULIC failed to get back possession of the post-dated checks, the intentional cancellation of the said checks is altogether impossible. On the other hand, the acts which will

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discharge a simple contract for the payment of money under paragraph (d) are determined by other existing legislations since Section 119 does not specify what these acts are, e.g., Art. 1231 of the Civil Code which enumerates the modes of extinguishing obligations. Again, none of the modes outlined therein is applicable in the instant case as Section 119 contemplates of a situation where the holder of the instrument is the creditor while its drawer is the debtor. Herein, the payee, Corazon Victoriano, was no longer MOULIC's creditor at the time the jewelry was returned. Correspondingly, MOULIC may not unilaterally discharge herself from her liability by the mere expediency of withdrawing her funds from the drawee bank. She is thus liable as she has no legal basis to excuse herself from liability on her checks to a holder in due course.

Issue [2]: Whether the requirement that SIHI should give Notice of Dishonor to MOULIC is indispensable.

Held [2]: The need for notice is not absolute; there are exceptions under Section 114 of the Negotiable Instruments Law. Section 114 (When notice need not be given to drawer) provides that "Notice of dishonor is not required to be given to the drawer in the following cases: (a) Where the drawer and the drawee are the same person; (b) When the drawee is a fictitious person or a person not having capacity to contract; (c) When the drawer is the person to whom the instrument is presented for payment; (d) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (e) Where the drawer had countermanded payment." Indeed, MOULIC'S actuations leave much to be desired. She did not retrieve the checks when she returned the jewelry. She simply withdrew her funds from her drawee bank and transferred them to another to protect herself. After withdrawing her funds, she could not have expected her checks to be honored. In other words, she was responsible for the dishonor of her checks, hence, there was no need to serve her Notice of Dishonor, which is simply bringing to the knowledge of the drawer or indorser of the instrument, either verbally or by writing, the fact that a specified instrument, upon proper proceedings taken, has not been accepted or has not been paid, and that the party notified is expected to pay it. In addition, the Negotiable Instruments Law was enacted for the purpose of facilitating, not hindering or hampering transactions in commercial paper. Thus, the said statute should not be tampered with haphazardly or lightly. Nor should it be brushed aside in order to meet the necessities in a single case. The holder who takes the negotiated paper makes a contract with the parties on the face of the instrument. There is an implied representation that funds or credit are available for the payment of the instrument in the bank upon which it is drawn. Consequently, the withdrawal of the money from the drawee bank to avoid liability on the checks cannot prejudice the rights of holders in due course. Herein, such withdrawal renders the drawer, Moulic, liable to SIHI, a holder in due course of the checks. SIHI could not expect payment as MOULIC left no funds with the drawee bank to meet her obligation on the checks, so that Notice of Dishonor would be futile.

40 Asia Banking Corporation vs. Javier [GR 19051, 4 April 1923]

First Division, Avancena (J): 4 concur, 1 voted for reversal, 1 took no part

Facts: On 10 May 1920, Salvador B. Chaves drew a check on the Philippine National Bank (PNB) for P11,000 in favor of La Insular, a concern doing business in this city. This check was endorsed by the limited partners of La Insular, and then deposited by Salvador B. Chaves in his current account with Asia Banking Corporation. The deposit was made on 14 July 1920. On 25 June 1920, Salvador B. Chaves drew another check for P18,785.30 on PNB, in favor of La Insular. This check was also endorsed by the limited partners of La Insular, and was likewise deposited by Chaves in his current account with Asia Banking, on 6 July 1920. The amount represented by both checks was used by Chaves after they were deposited in Asia Banking, by drawing checks on the latter. Subsequently these checks were presented by Asia Banking to PNB for payment, but the latter refused to pay on the ground that the drawer, Chaves, had no funds therein. Asia Banking brought the action against Juan Javier, as endorser, for the payment of the value of both checks. The lower court sentenced Javier to pay Asia Banking P11,000, upon the check of 10 May 1920, with interest thereon at 9% per annum from 10 July 1920, and P18,778.34 on the check of 25 June 1920, with interest thereon at 9% per annum from 5 August 1920. From this judgment the defendant appealed.

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Issue: Whether Javier's liability as endorser of the checks in question was extinguished.

Held: Section 89 of the Negotiable Instruments Law (Act No. 2031) provides that, when a negotiable instrument is dishonored for non-acceptance or non-payment, notice thereof must be given to the drawer and of each of the endorsers, and those who are not notified that the document was dishonored. Then, under the general principle of the law of procedure, it will be incumbent upon Asia Banking, who seeks to enforce Javiwe's liability upon these checks as endorser, to establish said liability by proving that notice was given to Javier within the time, and in the manner, required by the law that the checks in question had been dishonored. If these facts are not proven, Asia Banking has not sufficiently established Javier's liability. There is no proof in the record tending to show that plaintiff gave any notice whatsoever to the defendant that the checks in question had been dishonored, and therefore it has not established its cause of action. The Supreme Court reversed the judgment appealed from and absolved Javier from the complaint without special pronouncement as to costs.

41 Nyco Sales Corporation vs. BA Finance Corp. [GR 71694, 16 August 1991] *Second Division, Paras (J): 4 concur*

Facts: Nyco Sales Corporation whose president and general manager is Rufino Yao, is engaged in the business of selling construction materials with principal office in Davao City. Sometime in 1978, the brothers Santiago and Renato Fernandez, both acting in behalf of Sanshell Corporation, approached Rufino Yao for credit accommodation. They requested Nyco, thru Yao, to grant Sanshell discounting privileges which Nyco had with BA Finance Corporation. Yao apparently acquiesced, hence on or about 15 November 1978, the Fernandezes went to Yao for the purpose of discounting Sanshell's post-dated check which was a BPI-Davao Branch Check 499648 dated 17 February 1979 for the amount of P60,000.00. The said check was payable to Nyco. Following the discounting process agreed upon, Nyco, thru Yao, endorsed the check in favor of BA Finance. Thereafter, BA Finance issued a check payable to Nyco which endorsed it in favor of Sanshell. Sanshell then made use of and/or negotiated the check. Accompanying the exchange of checks was a Deed of Assignment executed by Nyco in favor of BA Finance with the conformity of Sanshell. Nyco was represented by Rufino Yao, while Sanshell was represented by the Fernandez brothers. Under the said Deed, the subject of the discounting was the aforesaid check. At the back thereof and of every deed of assignment was the Continuing Suretyship Agreement whereby the Fernandezes unconditionally guaranteed to BA Finance the full, faithful and prompt payment and discharge of any and all indebtedness of Nyco. The BPI check, however, was dishonored by the drawee bank upon presentment for payment. BA Finance immediately reported the matter to the Fernandezes who thereupon issued a substitute check dated 19 February 1979 for the same amount in favor of BA Finance. It was a Security Bank and Trust Company check bearing the number 183157, which was again dishonored when it was presented for payment. Despite repeated demands, Nyco and the Fernandezes failed to settle the obligation with BA Finance, thus prompting the latter to institute an action in court. Nyco and the Fernandezes, despite having been served with summons and copies of the complaint, failed to file their answer and were consequently declared in default. On 16 May 1980, the lower court ruled in favor of BA Finance ordering them to pay the former jointly and severally, the sum of P65,536.67 plus 14% interest per annum from 1 July 1979 and attorney's fees in the amount of P3,000.00 as well as the costs of suit. Nyco, however, moved to set aside the order of default, to have its answer admitted and to be able to implead Sanshell. The prayer was granted through an order dated 23 June 1980, wherein the decision of the court was set aside only as regards Nyco. Trial ensued once more until the court reached a second decision, ordering Nyco to pay BA Finance P60,000.00 as principal obligation, plus interest thereon at the rate of 14% per annum from 1 February 1979 until fully paid; the amount of P10,000.00 as and for attorney's fees; and one-third (1/3) of the costs of the suit. With respect to the Fernandezes, the decision of 16 May 1980 stood. On appeal, the appellate court also upheld BA Finance but modified the lower court's decision by ordering that the interest should run from 19 February 1979 until paid and not from 1 February 1979. Nyco's subsequent motion for reconsideration was denied. Nyco filed the petition for review on certiorari.

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Issue: Whether Nyco was actually discharged of its liability over the SBTC check when BA Finance failed to give it a notice of dishonor.

Held: NO. Nyco's pretension that it had not been notified of the fact of dishonor is belied not only by the formal demand letter but also by the findings of the trial court that Rufino Yao of Nyco and the Fernandez Brothers of Sanshell had frequent contacts before, during and after the dishonor. More importantly, it fails to realize that for as long as the credit remains outstanding, it shall continue to be liable to BA Finance as its assignor. The dishonor of an assigned check simply stresses its liability and the failure to give a notice of dishonor will not discharge it from such liability. This is because the cause of action stems from the breach of the warranties embodied in the Deed of Assignment, and not from the dishonoring of the check alone.

42 New Pacific Timber & Supply Company vs. Seneris [GR L-41764, 19 December 1980]
Second Division, Concepcion Jr. (J): 4 concur

Facts: New Pacific Timber & Supply Company, Inc. (NPTSCI) is the defendant in a complaint for collection of a sum of money filed by Ricardo A. Tong. On 19 July 1974, a compromise judgment was rendered by Judge Alberto V. Seneris in accordance with an amicable settlement entered into by the parties the terms and conditions of which are (1) that NPTSCI will pay to Tong the amount of P54,500.00 at 6% interest per annum to be reckoned from 25 August 1972; (2) that NPTSCI will pay to Tong the amount of P6,000.00 as attorney's fees for which P5,000.00 had been acknowledged received by Tong under Consolidated Bank and Trust Corporation Check 16-135022 amounting to P5,000.00 having a balance of P1,000.00; (3) that the entire amount of P54,500.00 plus interest, plus the balance of P1,000.00 for attorney's fees will be paid by NPTSCI to Tong within 5 months from 19 July 1974; and (4) that failure on the part of NPTSCI to comply with any of the conditions, a writ of execution may be issued by the Court for the satisfaction of the obligation. For failure of NPTSCI to comply with his judgment obligation, Judge Seneris, upon motion of Tong, issued an order for the issuance of a writ of execution on 21 December 1974. Accordingly, writ of execution was issued for the amount of P63,130.00 pursuant to which, the Ex-Officio Sheriff (Hakim S. Abdulwahid) levied upon personal properties of NPTSCI, i.e. a unit of American Lathe 24", 1 Unit of American Lathe 18" Cracker Wheeler, and 1 Unit Rockford Shaper 24"; and set the auction sale thereof on 15 January 1975. The auction sale was then postponed on the following day, 16 January 1975 at 10:00 a.m. In the course of the proceedings, Deputy Sheriff Castro sold the levied properties item by item to Tong as the highest bidder in the amount of P50,000.00. As a result thereof, the Ex-Officio Sheriff declared a deficiency of P13,130.00. Thereafter, on 16 January 1975, the Ex-Officio Sheriff issued a "Sheriff's Certificate of Sale" in favor of Tong for the total amount of P50,000.00 only. Subsequently, on 17 January 1975, NPTSCI filed an ex-parte motion for issuance of certificate of satisfaction of judgment. This motion was denied by Judge Seneris in his order dated 28 August 1975. In view thereof, NPTSCI filed the petition for certiorari with preliminary injunction.

Issue: Whether Tong can validly refuse acceptance of the payment of the judgment obligation made by NPTSCI consisting of P50,000.00 in Cashier's Check and P13,130.00 in cash which it deposited with the Ex-Officio Sheriff before the date of the scheduled auction sale.

Held: The check deposited by NPTSCI 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. Where a check is certified by the bank on which it is drawn, the certification is equivalent to acceptance. Said certification "implies that the check is drawn upon sufficient funds in the hands of the drawee, that they have

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been set apart for its satisfaction, and that they shall be so applied whenever the check is presented for payment. It is an understanding that the check is good then, and shall continue good, and this agreement is as binding on the bank as its notes in circulation, a certificate of deposit payable to the order of the depositor, or any other obligation it can assume. The object of certifying a check, as regards 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". Hence, the exception to the rule enunciated under Section 63 of the Central Bank Act to the effect "that a check which has been cleared and credited to the account of the creditor shall be equivalent to a delivery to the creditor in cash in an amount equal to the amount credited to his account" shall apply in the present case. Considering that the whole amount deposited by NPTSCI 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, the Court sees no valid reason for Tong to have refused acceptance of the payment of the obligation in his favor. The auction sale, therefore, was uncalled for. NPTSCI's motion for the issuance of a certificate of satisfaction of judgment is clearly meritorious and Judge Seneris gravely abused his discretion in not granting the same under the circumstances.

43 Philippine National Bank vs. National City Bank of New York [GR 43596, 31 October 1936]

En Banc, Recto (J): 6 concur

Facts: On April 7 and 9, 1933, an unknown person or persons negotiated with Motor Service Company, Inc. (MSCI), two checks in payment for automobile tires purchased from MSCI's stores, purporting to have been issued by the 'Pangasinan Transportation Co., Inc. (Pantranco) by J.L. Klar, Manager and Treasurer', against the Philippine National Bank (PNB) and in favor of the International Auto Repair Shop, for P144.50 and P215.75. Said checks were indorsed by said unknown persons in the manner indicated at the back thereof, the MSCI, believing at the time that the signatures of J.L. Klar, Manager and Treasurer of Pantranco on both checks were genuine. The checks were then indorsed for deposit by MSCI at the National City Bank of New York and the former was accordingly credited with the amounts thereof, or P144.50 and P215.75. On April 8 and 10, 1933, the said checks were cleared at the clearing house and PNB credited the National City Bank for the amounts thereof, believing at the time that the signatures of the drawer were genuine, that the payee is an existing entity and the endorsements at the bank thereof regular and genuine. The PNB then found out that the purported signatures of J.L. Klar, as Manager and Treasurer of Pantranco were forged when so informed by the said Company, and it accordingly demanded from the National City Bank and MSCI and the reimbursement of the amounts for which it credited the National City Bank at the clearing house and for which the latter credited MSCI, but MSCI and National City Bank refused, and continue to refuse, to make such reimbursements. Pantranco objected to have the proceeds of said check deducted from their deposit. PNB filed the case in the municipal court of Manila against National City Bank and MSCI. Upon PNB's motion, the case was dismissed before trial as to the National City Bank. A decision was thereafter rendered giving PNB judgment for the total amount of P360.25, with interest and costs. From this decision MSCI appealed.

Issue [1]: Whether the payment of the checks in question made by the drawee bank constitutes an "acceptance", and, consequently, the case should be governed by the provisions of section 62 of the Negotiable Instruments Law.

Held [1]: A check is a bill of exchange payable on demand and only the rules governing bills of exchange payable on demand are applicable to it, according to section 185 of the Negotiable Instruments Law. In view of the fact that acceptance is a step unnecessary in so far as bills of exchange payable on demand are concerned, it follows that the provisions relative to "acceptance" are without application to checks. Acceptance implies, in effect, subsequent negotiation of the instrument, which is not true in case of the payment of a check because from the moment a check is paid it is withdrawn from circulation. The warranty established by section 62, is in favor of holders of the instrument after its acceptance. When the drawee bank cashes or pays a check, the cycle of negotiation is terminated, and it is illogical thereafter to speak of

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subsequent holders who can invoke the warranty provided in section 62 against the drawee. Moreover, according to section 191, "acceptance" means "an acceptance completed by delivery or notification" and this concept is entirely incompatible with payment, because when payment is made the check is retained by the bank, and there is no such thing as delivery or notification to the party receiving the payment. There can be no such thing as "acceptance" in the ordinary sense of the term. A check being payable immediately and on demand, the bank can fulfill its duty to the depositor only by paying the amount demanded. The holder has no right to demand from the bank anything but payment of the check, and the bank has no right, as against the drawer, to do anything but pay it. A check is not an instrument which in the ordinary course of business calls for acceptance. The holder can never claim acceptance as his legal right. He can present for payment, and only for payment.

Issue [2]: Whether the law or business practice prevents the presentation of checks for acceptance before they are paid.

Held [2]: There is nothing in the law or in business practice against the presentation of checks for acceptance, before they are paid, in which case there is a "certification" equivalent to "acceptance" according to section 187, which provides that "where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance", and it is then that the warranty under section 62 exists. This certification or acceptance consists in the signification by the drawee of his assent to the order of the drawer, which must not express that the drawee will perform his promise by any other means than the payment of money. When the holder of a check procures it to be accepted or certified, the drawer will perform his promise by any other means than the payment of money. When the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon, and then the check operates as an assignment of a part of the funds to the credit of the drawer with the bank. There is nothing in the nature of the check which intrinsically precludes its acceptance, in like manner and with like effect as a bill of exchange or draft may be accepted. The bank may accept if it chooses; and it is frequently induced by convenience, by the exigencies of business, or by the desire to oblige customers, voluntarily to incur the obligation. The act by which the bank places itself under obligation to pay to the holder the sum called for by a check must be the expressed promise or undertaking of the bank signifying its intent to assume the obligation, or some act from which the law will imperatively imply such valid promise or undertaking. The most ordinary form which such an act assumes is the acceptance by the bank of the check, or, as it is perhaps more often called, the certifying of the check.

Issue [3]: Whether MSCI's negligence in purchasing the checks in question is such as to give PNB the right to recover upon said checks, and on the other hand, whether PNB was not itself negligent, except for its constructive fault in now knowing the signature of the drawer and detecting the forgery.

Held [3]: Check number 637023-D was dated 6 April 1933, whereas check number 637020-D and is dated 7 April 1933. Therefore, the later check, which is prior in number to the former check, is however, issued on a later date. This circumstance must have aroused at least the curiosity of MSCI. MSCI further accepted the two checks from unknown persons. Furthermore, check 637023-D was indorsed by a subagent of the agent of the payee, International Auto Repair Shop. MSCI made no inquiry whatsoever as to the extent of the authority of these unknown persons. Check 637020-D, aside from having been indorsed by a supposed agent of the International Auto Repair Shop is crossed generally. The existence of two parallel lines transversally drawn on the face of this check was a warning that the check could only be collected through a banking institution. Yet MSCI accepted the check in payment for merchandise. The facts of case do not make it one between two equally innocent persons, the drawee bank and the holder. Section 23 of the Negotiable Instruments Act provides that "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." It not appearing that PNB did not warrant to MCSI the genuineness of the checks in question, by

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its acceptance thereof, nor did it perform any act which would have induced MSCI to believe in the genuineness of said instruments before MSCI purchased them for value, it can not be said that PNB is precluded from setting up the forgery and, therefore, MSCI is not entitled to retain the amount of the forged check paid to it by PNB.

Issue [4]: Whether the drawee bank should be allowed recovery, as MSCI's position would not become worse than if the drawee had refused the payment of these checks upon their presentation.

Held [4]: A drawee of a check, who is deceived by a forgery of the drawer's signature may recover the payment back, unless his mistake has placed an innocent holder of the paper in a worse position than he would have been in if the discover of the forgery had been made on presentation. Forgeries often deceived 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. Herein, MSCI has lost nothing by anything which the drawee has done. It had in its hands some forged worthless papers. It did not purchase or acquire these papers because of any representation made to it by the drawee. It purchased them from unknown persons and under suspicious circumstances. It had no valid title to them, because the persons from whom it received them did not have such title. MSCI could not have compelled the drawee to pay them, and the drawee could have refused payment had it been able to detect the forgery. By making a refund, MSCI would only be returning what it had received without any title or right. And when MSCI pays back the money it has received it will be entitled to have restored to it the forged papers it parted with. There is no good reason why the accidental payment made by PNB should inure to the benefit of MSCI. If there were injury to MSCI said injury was caused not by the failure of PNB to detect the forgery but by the very negligence of MSCI in purchasing commercial papers from unknown persons without making inquiry as to their genuineness.

(The court held in the case (1) That where a check is accepted or certified by the bank on which it is drawn, the bank is estopped to deny the genuineness of the drawer's signature and his capacity to issue the instrument; (2) That if a drawee bank pays a forged check which was previously accepted or certified by the said bank it cannot recover from a holder who did not participate in the forgery and did not have actual notice thereof; (3) That the payment of a check does not include or imply its acceptance in the sense that this word is used in section 62 of the Negotiable Instruments Law; (4) That in the case of the payment of a forged check, even without former acceptance, the drawee can not recover from a holder in due course not chargeable with any act of negligence or disregard of duty; (5) That to entitle the holder of a forged check to retain the money obtained thereon, there must be a showing that the duty to ascertain the genuineness of the signature rested entirely upon the drawee, and that the constructive negligence of such drawee in failing to detect the forgery was not affected by any disregard of duty on the part of the holder, or by failure of any precaution which, from his implied assertion in presenting the check as a sufficient voucher, the drawee had the right to believe he had taken; (6) That in the absence of actual fault on the part of the drawee, his constructive fault in not knowing the signature of the drawer and detecting the forgery will not preclude his recovery from one who took the check under circumstances of suspicion and without proper precaution, or whose conduct has been such as to mislead the drawee or induce him to pay the check without the usual scrutiny or other precautions against mistake or fraud; (7) That one who purchases a check or draft is bound to satisfy himself that the paper is genuine, and that by indorsing it or presenting it for payment or putting it into circulation before presentation he impliedly asserts that he performed his duty; (8) That while the foregoing rule, chosen from a welter of decisions on the issue as the correct one, will not hinder the circulation of two recognized mediums of exchange by which the great bulk of business is carried on, namely, drafts and checks, on the other hand, it will encourage and demand prudent business methods on the part of those receiving such mediums of exchange; (9) That it being a matter of record in the present case, that PNB is no more chargeable with the knowledge of the drawer's signature than MSCI is, as the drawer was as much the customer of MSCI as of PNB, the presumption that a drawee bank is bound to know more than any indorser the signature nature of its depositor does not hold; (1) that according to the undisputed facts of the case MSCI in purchasing the papers in question from unknown persons without making any inquiry as to the

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identity and authority of the said persons negotiating and indorsing them, acted negligently and contributed to PNB's constructive negligence in failing to detect the forgery; and (11) that under the circumstances of the case, if PNB is allowed to recover, there will be no change of position as to the injury or prejudice of MCSI.)

44 *Bataan Cigar vs. CA, 230 SCRA 648*
See case entry 18

45 *Moran vs. CA [GR 105836, 7 March 1994]*
Second Division, Regalado (J): 4 concur

Facts: George and Librada Moran are the owners of the Wack-Wack Petron gasoline station located at Shaw Boulevard, corner Old Wack-Wack Road, Mandaluyong, Metro Manila. They regularly purchased bulk fuel and other related products from Petrophil Corporation on cash on delivery (COD) basis. Orders for bulk fuel and other related products were made by telephone and payments were effected by personal checks upon delivery. The Morans maintained 3 joint accounts, namely 1 current account (37-00066-7) and 2 savings accounts, (1037002387 and 1037001372) with the Shaw Boulevard branch of Citytrust Banking Corporation. As a special privilege to the Morans, whom it considered as valued clients, the bank allowed them to maintain a zero balance in their current account. Transfers from Savings Account 1037002387 to their current account could be made only with their prior authorization, but they gave written authority to Citytrust to automatically transfer funds from their Savings Account 1037001372 to their Current Account 37-00066-7 at any time whenever the funds in their current account were insufficient to meet withdrawals from said current account. Such arrangement for automatic transfer of funds was called a pre-authorized transfer (PAT) agreement. On 12 December 1983, the Morans, through Librada, drew a check (Citytrust 041960) for P50,576.00 payable to Petrophil Corporation. The next day, 13 December 1983, the Morans, again through Librada, issued another check (Citytrust 041962) in the amount of P56,090.00 in favor of the same corporation. The total sum of the two checks was P106,666.00. On 14 December 1983, Petrophil deposited the two aforementioned checks to its account with the Pandacan branch of the Philippine National Bank (PNB), the collecting bank. In turn, PNB Pandacan branch presented them for clearing with the Philippine Clearing House Corporation in the afternoon of the same day. The records show that on 14 December 1983, Current Account 37-00066-7 had a zero balance, while Savings Account 1037001372 (covered by the PAT) had an available balance of P26,104.30 and Savings Account 1037002387 had an available balance of P43,268.39. At about 10 a.m. of the following day, 15 December 1983, George Moran went to the bank, as was his regular practice, to personally oversee their daily transactions with the bank. He deposited in their Savings Account 1037002387 the amounts of P10,874.58 and P6,754.25, 8 and he likewise deposited in their Savings Account 1037001372 the amounts of P5,900.00, P35,100.00 and 30.00. The amount of P40,000.00 was then transferred by him from Saving Account 1037002387 to their current account by means of a pro forma withdrawal form (a debit memorandum), which was provided by the bank, authorizing the latter to make the necessary transfer. At the same time, the amount of P66,666.00 was transferred from Savings Account 1037001372 to the same current account through the pre-authorized transfer (PAT) agreement. Sometime on December 15 or 16, 1983 George Moran was informed by his wife Librada, that Petrophil refused to deliver their orders on a credit basis because the two checks they had previously issued were dishonored upon presentment for payment. Apparently, the bank dishonored the checks due to "insufficiency of funds." The non-delivery of gasoline forced the Morans to temporarily stop business operations, allegedly causing them to suffer loss of earnings. In addition, Petrophil cancelled their credit accommodation, forcing them to pay for their purchases in cash. George Moran, furious and upset, demanded an explanation from Raul Diaz, the branch manager. Failing to get a sufficient explanation, he talked to a certain Villareal, a bank officer, who allegedly told him that Amy Belen Ragodo, the customer service officer, had committed a "grave error". On December 16 or 17, 1983, Diaz went to the Moran residence to get the signatures of the petitioners on an application for a manager's check so that the dishonored checks could be redeemed. Diaz then went to Petrophil to personally present the checks in payment for the two dishonored checks. In a chance meeting around May or June, 1984, George Moran learned from one Constancio Magno, credit manager of Petrophil, that the latter received from

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Citytrust, through Diaz, a letter dated 16 December 1983, notifying them that the two checks were "inadvertently dishonored . . . due to operational error." Said letter was received by Petrophil on 4 January 1984. On 24 July 1984, or a little over six months after the incident, petitioners, through counsel, wrote Citytrust claiming that the bank's dishonor of the checks caused them besmirched business and personal reputation, shame and anxiety, hence they were contemplating the filing of the necessary legal actions unless the bank issued a certification clearing their name and paid them P1,000,000.00 as moral damages. The bank did not act favorably on their demands, hence the Morans filed a complaint for damages on 8 September 1984, with the RTC Pasig (Branch 159, Civil Case 51549). In turn, Citytrust filed a counterclaim for damages, alleging that the case filed against it was unfounded and unjust. After trial, a decision dated 9 October 1989 was rendered by the trial court dismissing both the complaint and the counterclaim. On appeal, the Court of Appeals rendered judgment in CA-GR CV 25009 on 9 October 1989 affirming the decision of the trial court.

Issue [1]: Whether a bank is not liable for its refusal to pay a check on account of insufficient funds, but wherein a deposit may be made later in the day.

Held [1]: Fixed savings and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan. In other words, the relationship between the bank and the depositor is that of a debtor and creditor. By virtue of the contract of deposit between the banker and its depositor, the banker agrees to pay checks drawn by the depositor provided that said depositor has money in the hands of the bank. Hence, where the bank possesses funds of a depositor, it is bound to honor his checks to the extent of the amount of his deposits. The failure of a bank to pay the check of a merchant or a trader, when the deposit is sufficient, entitles the drawer to substantial damages without any proof of actual damages. Conversely, a bank is not liable for its refusal to pay a check on account of insufficient funds, notwithstanding the fact that a deposit may be made later in the day. Before a bank depositor may maintain a suit to recover a specific amount from his bank, he must first show that he had on deposit sufficient funds to meet his demand.

Issue [2]: Whether the Spouses Moran had sufficient funds in their accounts when the bank dishonored the checks in question.

Held [2]: The available balance on 14 December 1983 was used by the bank in determining whether or not there was sufficient cash deposited to fund the two checks, although what was stamped on the dorsal side of the two checks in question was "DAIF/12-15-83," since 15 December 1983 was the actual date when the checks were processed. When the Morans' checks were dishonored due to insufficiency of funds, the available balance of Savings Account 1037001372, which was the subject of the PAT agreement, was not enough to cover either of the two checks. On 14 December 1983, when PNB, Pandacan branch presented the checks for collection, the available balance for Savings Account 1037001372 was only P26,104.30 while Current Account 37-0006-7 had no available balance. It was only on 15 December 1983 at around 10:00 a.m. that the necessary funds were deposited, which unfortunately was too late to prevent the dishonor of the checks.

Issue [3]: Whether the bank is required to give notice before dishonoring checks drawn upon insufficient funds.

Held [3]: If ever the spouses Moran on previous occasions were given notices every time a check was presented for clearing and payment and there were no adequate funds in their accounts, these were, at most, mere accommodations on the part of CityTrust. It was not a requirement or a general banking practice, hence non-compliance therewith could not lay the bank open to blame or rebuke. Legally, the bank had all the right to dishonor the checks because there were no sufficient funds to speak of in the first place. If the demand is by check, a drawer must have to his credit enough to cover the demand. If his credit with the bank is less than the amount on the face of the check, the bank may lawfully refuse payment.