Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

YON MITORI INTERNATIONAL INDUSTRIES,* Petitioner,	**G.R. No. 225538**
	Present:
- versus -	PERALTA, *C.J., Chairperson,* CAGUIOA, LAZARO-JAVIER, LOPEZ, and ROSARIO,** *JJ.*
UNION BANK OF THE PHILIPPINES, Respondent.	Promulgated: OCT 14 2020

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DECISION

CAGUIOA, *J.:*

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court assailing the February 3, 2016 Decision[2] (assailed Decision) and July 5, 2016 Resolution[3] (assailed Resolution) rendered by the Court of Appeals (CA), Eleventh Division in CA-G.R. CV No. 102802.

The assailed Decision and Resolution affirmed, with modification, the February 24, 2014 Decision[4] and May 19, 2014 Order[5] issued by the Regional Trial Court (RTC) of Pasig City, Branch 166, in Civil Case No. 71670.

The RTC granted the Complaint for Sum of Money filed by Union Bank of the Philippines (Union Bank) against Rodriguez Ong Tan (Tan), the

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* A single proprietorship owned and operated by Rodriguez Ong Tan; see *rollo*, pp. 9, 82 and 102.

** Designated additional Member per Special Order No. 2794 dated October 9, 2020.

1 *Rollo*, pp. 8-30, excluding Annexes.

2 Id. at 31-38. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda (now a Member of the Court) and Pedro B. Corales concurring.

3 Id. at 39-40.

4 Id. at 41-47. Penned by Presiding Judge Rowena De Juan-Quinagoran.

5 CA *rollo*, pp. 51-52.

registered owner and operator of Yon Mitori International Industries (Yon Mitori).[6]

The Facts

The CA summarized the facts as follows:

> [Tan], doing business under the name and style of [Yon Mitori], is a depositor, maintaining Current Account No. 027-03-000181-8, [with] the Commonwealth, Quezon City branch of [Union Bank].
>
> On November 12, 2007, Tan deposited in said Union Bank account, the amount of ₱420,000.00 through Bank of the Philippine Islands (BPI) Check No. 0180724 [(BPI Check)]. x x x
>
> [The BPI Check was drawn against the account of Angli Lumber & Hardware, Inc.[7] (Angli Lumber), one of Tan's alleged clients.][8]
>
> [The BPI Check was entered in Tan's bank record thereby increasing his balance to ₱513,700.60 from his previous deposit of ₱93,700.60.[9] In the morning of November 14, 2007, Tan withdrew from the said account the amount of ₱480,000.00. Later that day, the BPI Check was returned to Union Bank as the account against which it was drawn had been closed. It was then that Union Bank discovered that Tan's account had been mistakenly credited. Thus, the branch manager of Union Bank's Commonwealth, Quezon City branch immediately called Tan to recover the funds mistakenly released. However, Tan refused to return the funds, claiming that the BPI Check proceeded from a valid transaction between Angli Lumber and Yon Mitori.[10]
>
> During the course of its investigation, Union Bank discovered that Tan previously deposited five BPI checks drawn by Angli Lumber against the same BPI account, and that these five checks were all previously dishonored.[11]]
>
> Thereafter, on November 20, 2007, Union Bank [through the bank manager of its Commonwealth branch,[12]] sent Tan a letter demanding reimbursement of the amount of ₱420,000.00, by reason of the fact that [the] "(f)unds against said deposit was inadvertently allowed due to technical error on the system prior to actual return of your check deposit which was not yet clear on withdrawal date," it appearing that [the BPI Check] was dishonored by BPI for being drawn against a closed account. Tan refused to return the said amount. Union Bank then debited the available balance reflected in [Tan's] account amounting to ₱34,700.60[13] and thereafter instituted [a Complaint for Sum of Money (Complaint)]

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6 See *rollo*, pp. 46-47.
7 Also appears as "Angli Hardware Incorporated" in some parts of the *rollo*.
8 See Comment, *rollo*, p. 83.
9 *Rollo*, p. 32.
10 See RTC Decision, *rollo*, p. 42.
11 See *rollo*, pp. 90-91.
12 Id. at 42.
13 The Court notes that an additional amount of ₱1,000.00 was credited to Tan's account following the erroneous deposit of the ₱420,000.00 check, thereby bringing Tan's balance to ₱514,700.60. Accordingly, Tan's remaining balance after the withdrawal of ₱480,000.00 amounted to ₱34,700.60.

> before the RTC, for the recovery of [the remaining balance amounting to] ₱385,299.40 plus consequential damages.[14]

RTC Proceedings

In its Complaint, Union Bank alleged that the value of the BPI Check had been inadvertently credited to Tan's account due to a technical error in its system.[15]

For his part, Tan alleged that the BPI Check had been given to him for value in the course of business. Tan claimed that he should not be faulted for withdrawing the value of said check from his account since Union Bank made the corresponding funds available by updating his account to reflect his new balance. After ascertaining that the value of the BPI Check had been credited, Tan withdrew ₱480,000.00 from his account to pay one of his suppliers.[16]

Tan further argued that Union Bank wrongfully and unlawfully deducted the amount of ₱34,700.60 from his account.[17]

On February 24, 2014, the RTC ruled in favor of Union Bank. The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of [Union Bank] and against [Yon Mitori and Tan] by ordering the latter:
>
> 1. To pay [Union Bank] the amount of ₱385,299.40 representing the withdrawal mistakenly given to x x x Tan;
>
> 2. To pay [Union Bank] 12% per annum legal interest computed from the time judicial demand was made on June 13, 2008 until the same is fully paid;
>
> 3. To pay [Union Bank] the amount of ₱100,000.00 as attorney's fees; and
>
> 4. To pay the duly receipted cost of suit in the amount of ₱14,954.20.
>
> **SO ORDERED.**[18]

The RTC found all the requisites for the application of *solutio indebiti* under Article 2154 of the Civil Code present. It held that since Union Bank mistakenly released the amount of ₱480,000.00 in favor of Tan without

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14 *Rollo*, pp. 31-32.
15 Id. at 43.
16 Id. at 43, 44.
17 Id. at 43-44.
18 *Rollo*, pp. 46-47.

being obligated to do so, Tan must be ordered to return said amount to preclude unjust enrichment at Union Bank's expense.[19]

Further, the RTC ruled that under Article 1980 of the Civil Code, "fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning [simple] loan." By reason of the erroneous payment made in Tan's favor, Tan and Union Bank became mutual debtors and creditors of each other. This gave rise to Union Bank's right to set-off the erroneous payment made against Tan's remaining deposit, consistent with the principle of legal compensation under the Civil Code.[20]

Finally, the RTC held that Union Bank should be awarded attorney's fees and cost of suit since it was compelled to litigate due to Tan's unjustified refusal to return the funds mistakenly released to him.[21]

Aggrieved, Tan filed a motion for reconsideration which the RTC denied in its Order dated May 19, 2014.[22] The RTC held that "[a]lthough [Union Bank may have been] negligent when it paid to [Tan] the face value of the check as alleged by [Tan],"[23] Tan is still liable to return the funds mistakenly released to him since Union Bank was under no obligation to release these funds in his favor.[24]

CA Proceedings

Tan filed an appeal *via* Rule 41 and named Yon Mitori as co-appellant.[25] Therein, Tan maintained that the proximate cause of Union Bank's loss is its own gross negligence.[26]

Following an exchange of pleadings, the CA issued the assailed Decision, the dispositive portion of which reads:

> **WHEREFORE**, in light of all the foregoing, the [D]ecision dated February 24, 2014 of Branch 166 of the [RTC] of Pasig City in Civil Case No. 71670 is hereby **AFFIRMED with MODIFICATION** in that the award of attorney's fees and cost of suit in favor of [Union Bank] are hereby deleted, and the rate of legal interest imposed on the awarded sum, reduced to six percent (6%) *per annum*.
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> **SO ORDERED.**[27]

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19 Id. at 44-45.
20 Id. at 45-46.
21 Id. at 46.
22 Id. at 11.
23 As quoted in the Petition, *rollo*, p. 20. Emphasis and underscoring omitted.
24 See id.
25 Id. at 31.
26 Id. at 33.
27 Id. at 37.

Foremost, the CA stressed that the fact of dishonor of the BPI Check for the reason "Account Closed" is undisputed. On this basis, the CA affirmed the RTC's findings and held that Tan would be unjustly enriched at Union Bank's expense if he were permitted to derive benefit from the funds erroneously credited to his account.[28] As well, the CA upheld the application of legal compensation in the case.[29]

Nevertheless, the CA found the award of attorney's fees and cost of suit in favor of Union Bank improper. Since the banking industry is impressed with public interest, all bank personnel are burdened with a high level of responsibility insofar as care and diligence in the custody and management of funds are concerned.[30] Here, the evidence shows that the proximate cause of the unwarranted crediting of the value of the BPI Check was Union Bank's technical error. Thus, while Union Bank was compelled to litigate to protect its rights, such fact alone does not justify an award of attorney's fees and cost of suit there being no showing that Tan acted in bad faith in refusing to reimburse the amount so credited.[31]

Finally, the CA modified the legal interest rate applied on the awarded sum from 12% to 6% per annum, in accordance with the Court's ruling in *Nacar v. Gallery Frames*.[32]

Subsequently, Tan filed a Motion for Reconsideration,[33] still with Yon Mitori as co-appellant. Tan argued that the uniform findings of the RTC and CA with respect to Union Bank's negligence serves as sufficient basis to hold the latter solely liable for its loss.[34] Tan also averred that the principle of *solutio indebiti* applies only in cases where the claimant unduly delivers something because of mistake, and *not* when such delivery results from the claimant's negligence, as in this case.[35]

On July 5, 2016, the CA issued the assailed Resolution denying said Motion for Reconsideration for lack of merit.[36] Tan received a copy of the assailed Resolution on July 11, 2016.[37]

Subsequently, Tan's counsel filed a "Motion for Additional Time to File Appeal"[38] (Motion for Time) before the Court, praying for an additional period of thirty (30) days from July 26, 2016, or until August 25, 2016 to file a petition for review.[39]

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28 See id. at 33-34.
29 Id. at 36.
30 Id.
31 Id. at 37.
32 716 Phil. 267 (2013) [En Banc, per J. Peralta]; *rollo*, p. 37.
33 *Rollo*, pp. 48-58.
34 See id. at 49.
35 Id. at 53.
36 Id. at 39.
37 Id. at 10.
38 Id. at 3-6.
39 Id. at 4.

On August 25, 2016, Tan's counsel filed this Petition. Notably, the Petition names Yon Mitori as sole petitioner even as it describes Yon Mitori as "a single proprietorship duly registered under Philippine law, owned and operated by [Tan]."[40]

On November 9, 2016, the Court issued a Resolution[41] granting the Motion for Time and directing Union Bank to file its comment on the Petition within ten (10) days from notice.

In compliance with the Court's Resolution, Union Bank filed its Comment[42] on April 17, 2017, to which a Reply[43] had been filed.

The Petition maintains that the proximate cause of Union Bank's loss is its own gross negligence. Thus, it is barred from recovering damages under Article 2179 of the Civil Code.[44]

In addition, the Petition reiterates that Union Bank's gross negligence also precludes the application of *solutio indebiti* in this case[45] as there can be no reimbursement under this principle if payment is made as a result of one's negligence.[46] The Petition relies on the Court's ruling in *Philippine National Bank v. Cheah Chee Chong*[47] (*PNB v. Cheah*) where the Court held that under the principle of *solutio indebiti,* no recovery is due "if the mistake done is one of gross negligence."[48]

Finally, the Petition contends that as collecting agent, Union Bank is responsible for losses arising from its own negligence pursuant to Article 1909 of the Civil Code. Thus, the Petition argues that Article 1909 should be applied to hold Union Bank solely liable for its own loss, based on the Court's ruling in *Metropolitan Bank and Trust Company v. Court of Appeals*[49] (*Metrobank v. CA*).[50]

Issue

The sole issue for the Court's resolution is whether the CA erred when it affirmed the RTC Decision directing Tan to return the value of the BPI Check with legal interest.

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40 Id. at 9.
41 Id. at 59.
42 Id. at 82-101.
43 Id. at 163-169.
44 Id. at 12-13.
45 See id. at 15.
46 See id. at 15-18.
47 G.R. Nos. 170865 and 170892, April 25, 2012, 671 SCRA 49 [First Division, per J. Del Castillo].
48 Id. at 64, quoted in the Petition, *rollo*, p. 18.
49 G.R. No. 88866, February 18, 1991, 194 SCRA 169 [First Division, per J. Cruz].
50 *Rollo,* pp. 14-15.

The Court's Ruling

The Petition is denied for lack of merit.

Yon Mitori has no separate juridical personality.

Before delving into the substantive issues, the Court must emphasize that as a general rule, every civil action must be prosecuted or defended in the name of the real party in interest, that is, the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[51]

In turn, Section 1, Rule 3 of the 1997 Rules of Court provides that only natural and juridical persons or entities authorized by law may be parties in a civil action. A single proprietorship is *not* considered a separate juridical person under the Civil Code.[52]

The Petition was filed solely in the name of Yon Mitori. As a single proprietorship, Yon Mitori has no juridical personality separate and distinct from its owner and operator Tan. Accordingly, the Petition should have been filed in Tan's name, the latter being the real party in interest who possesses the legal standing to file this Petition.

Nevertheless, the Court permits the substitution of Tan as petitioner herein in the interest of justice, pursuant to Section 4, Rule 10 of the 1997 Rules of Court:

> SEC. 4. *Formal Amendments.* — A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily **corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party**. (Emphasis supplied)

In *Juasing Hardware v. Mendoza*[53] (*Juasing*), the Court held that the filing of a civil action in the name of a single proprietorship is merely a formal, and not a substantial defect. Substitution of the party in such cases would not constitute a change in the identity of the parties, and would not cause any prejudice on the adverse party, thus:

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51 See 1997 RULES OF COURT, Rule 3, Sec. 2.

52 Article 44 of the Civil Code states:

> ART. 44. The following are juridical persons:
>
> (1) The State and its political subdivisions;
>
> (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
>
> (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

53 No. L-55687, July 30, 1982, 115 SCRA 783 [Second Division, per J. Guerrero].

> Contrary to the ruling of respondent Judge, the defect of the complaint in the instant case is merely formal, not substantial. Substitution of the party plaintiff would not constitute a change in the identity of the parties. No unfairness or surprise to private respondent Dolla, defendant in the *court a quo*, would result by allowing the amendment, the purpose of which is merely to conform to procedural rules or to correct a technical error.[54]

In *Juasing*, the Court ruled that the lower court erred in not allowing the amendment of the complaint filed therein to correct the designation of the party plaintiff, for while the complaint named the sole proprietorship "Juasing Hardware" as plaintiff, the allegations therein show that said complaint was actually brought by its owner.[55]

This Petition warrants the same course of action. As in *Juasing,* no prejudice will result from Yon Mitori's substitution in this case. Tan has been consistently named as owner and operator of Yon Mitori throughout the proceedings below. Moreover, the fact that this Petition was filed in furtherance of Tan's interests is apparent from the allegations in the pleadings filed before the Court and accordingly furnished to Union Bank.

Having settled the foregoing procedural matter, the Court now proceeds to resolve the substantive issues.

Tan is bound to return the proceeds of the dishonored BPI Check based on the principle of unjust enrichment.

Jurisprudence defines a collecting bank as "any bank handling an item for collection except the bank on which the check is drawn."[56] Upon receipt of a check for deposit, the collecting bank binds itself to "credit the amount in [the depositor's] account or infuse value thereon only after the drawee bank shall have paid the amount of the check or [after] the check [is] cleared for deposit."[57]

In this case, Tan deposited the BPI Check in his account with Union Bank for collection. Clearly, Union Bank stands as the collecting bank in this case. By receiving the BPI Check from Tan, Union Bank obliged itself, as collecting bank, to credit Tan's account *only* after BPI, as drawee, shall have paid the amount of the said check *or* after the check is cleared for deposit.[58]

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54 Id. at 787.
55 See id. at 786-787.
56 *Areza v. Express Savings Bank, Inc.*, 742 Phil. 623, 639 (2014) [First Division, per J. Perez].
57 Id. at 639.
58 See id.

As correctly observed by the CA, the dishonor of the BPI Check is not disputed. Evidently, Union Bank was under no obligation to effect payment in favor of Tan *precisely* because the BPI Check which Tan deposited for collection had been dishonored. **Allowing Tan to retain the proceeds of the dishonored BPI Check despite not being entitled thereto would therefore permit unjust enrichment at Union Bank's expense.**

The principle of unjust enrichment is codified under Article 22 of the Civil Code. It states:

> ART. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity, and good conscience.[59]

For the principle to apply, the following requisites must concur: (i) a person is unjustly benefited; and (ii) such benefit is derived at the expense of or with damages to another.[60] Expounding on these requisites, the Court, in *University of the Philippines v. Philab Industries, Inc.*,[61] held:

> Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.
>
> **Moreover, to substantiate a claim for unjust enrichment, the claimant must unequivocally prove that <u>another party knowingly received something of value to which he was not entitled</u> and that the state of affairs are such that it would be unjust for the person to keep the benefit.** Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconvey. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.[62] (Emphasis and underscoring supplied; italics omitted)

The requisites for the application of the principle of unjust enrichment are clearly present in this case. Here, it was unequivocally established that Tan withdrew and utilized the proceeds of the BPI Check fully knowing that he was not entitled thereto.

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59 *Gaisano v. Development Insurance and Surety Corp.*, 806 Phil. 450, 464 (2017) [Third Division, per J. Jardeleza].

60 *Osmeña-Jalandoni v. Encomienda,* 806 Phil. 566, 577 (2017) [Second Division, per J. Peralta].

61 G.R. No. 152411, September 29, 2004, 439 SCRA 467 [Second Division, per J. Callejo, Sr.].

62 Id. at 484-485.

To note, Tan's transaction records show that prior to the deposit of the BPI Check subject of the present case, Tan had deposited five other checks drawn against the same account.[63] During Tan's cross-examination before the RTC, Tan admitted that Union Bank notified him that all five checks he had previously deposited had all been dishonored for the reason "Account Closed" — which notification was made *before* he deposited the BPI Check subject of the present case, thus:

> "Q: Mr. Witness, it appears that you had previously deposited BPI Checks also issued or also made by [Angli Lumber]. I think these x x x BPI Checks were also deposited in your bank, Union Bank, is that correct Mr. Witness?
> A: That is correct, sir.
>
> Q: In fact on five (5) occasions you had deposited BPI Checks [i]ssued by [Angli Lumber] drawn against its BPI [a]ccount and you deposited the same to your bank, x x x Union Bank in this case, is that correct, Mr. Witness?
> A: Yes, sir.
>
> Q: **In those five (5) occasions, Mr. witness, do you confirm that all of these checks were returned to you because the account of [Angli Lumber] was closed, is that correct?**
> A: **Yes, sir.** x x x
>
> Q: Mr. Witness, I have here a return Check Advise dated November 5, 2007. This is before the subject transaction. Can you please tell this [court] if you recognize this written Check Advise?
> A: Yes, sir.
>
> Q: You also pointed to a signature. Are you confirming that, that is your signature, Mr. Witness?
> A: Yes, sir.
>
> Q: Also, this refers to Check No. 0206925, BPI San Fernando Highway, drawee bank. It was deposited on October 30, 2007?
> A: Yes, sir.
>
> Q: Mr. Witness, I also have here a return check advise dated November 7, 2007, can you please tell the court if you recognize this document?
> A: Yes, sir.
>
> x x x x
>
> Q: Whose signature is that, Mr. Witness?
> A: My signature, sir.
>
> Q: This return check advise refers to Check No. 0206927 and also Check No. 0206926 and Check No. 0180723. The drawee bank of these checks are all BPI San Fernando Highway and the date[s] of the deposits are as follows: November 5, 2007 for Check No. 0206926 and November 3, 2007 for Check No. 0180723 all of

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63 *Rollo*, pp. 90-91.

these return check advise, Mr. Witness [state] that the reason for the return is account closed, do you confirm that, Mr. Witness?

A: Yes, sir.

x x x x

[Q]: **So as early as October, Mr. Witness, you have been given [c]hecks by this [Angli Lumber] and you have been depositing the same in your bank account and all of these checks were returned to you because you were informed that the account had been closed, is that correct?**

x x x x

Q: **So these checks were all returned to you for being Account closed?**

A: **Yes, sir.**" x x x[64] (Emphasis and underscoring supplied)

Tan's testimony confirms that he was fully aware that Angli Lumber's account with BPI had been closed. So he could not have expected that the BPI Check in question would be honored. Stated differently, he was cognizant of the BPI Check's impending dishonor at the time he withdrew its proceeds from his Union Bank account. That Tan withdrew the proceeds of the BPI Check soon after discovering that the corresponding funds had been credited to his account despite his knowledge that the account from which the BPI Check was issued had been closed for some time smacks of bad faith if not fraud. Tan's refusal to return the funds despite Union Bank's repeated demands is reprehensible.

On this score, reference to the Court's ruling in *Equitable Banking Corporation v. Special Steel Products, Inc.*[65] (*Equitable Banking*) is proper. In said case, a certain Jose Isidoro Uy (Uy), purchasing officer of International Copra Export Corporation (Interco), presented three crossed checks to Equitable Banking Corporation (Equitable) for collection. These crossed checks were made payable to the order of Special Steel Products, Inc. (SSPI), Interco's supplier.

The crossed checks bore the notation "account payee only". Despite this notation, Equitable deposited the proceeds of the three checks to Uy's personal account upon the latter's instructions. Equitable claimed that it did so believing that Uy was acting upon Interco's instructions. Due to the incident, SSPI and its President Augusto Pardo (Pardo) filed an action for damages against Equitable and Uy.

The Court adjudged Equitable and Uy jointly and severally liable to pay SSPI and Pardo actual, moral, and exemplary damages, as well as costs of suit. Nevertheless, to preclude unjust enrichment, the Court directed Uy to

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64 Id. at 91-94.

65 G.R. No. 175350, June 13, 2012, 672 SCRA 212 [First Division, per J. Del Castillo].

reimburse Equitable whatever amount it may be required to pay SSPI and Pardo, thus:

> Equitable then insists on the allowance of [its] cross-claim against Uy. The bank argues that it was Uy who was enriched by the entire scheme and should reimburse Equitable for whatever amounts the Court might order it to pay in damages to SSPI.
>
> Equitable is correct. There is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. In the instant case, the fraudulent scheme concocted by Uy allowed him to improperly receive the proceeds of the three crossed checks and enjoy the profits from these proceeds during the entire time that it was withheld from SSPI. Equitable, through its gross negligence and mislaid trust on Uy, became an unwitting instrument in Uy's scheme. Equitable's fault renders it solidarily liable with Uy, insofar as respondents are concerned. **Nevertheless, as between Equitable and Uy, Equitable should be allowed to recover from Uy whatever amounts Equitable may be made to pay under the judgment. It is clear that Equitable did not profit in Uy's scheme. Disallowing Equitable's cross-claim against Uy is tantamount to allowing Uy to unjustly enrich himself at the expense of Equitable.** For this reason, the Court allows Equitable's cross-claim against Uy.[66] (Emphasis supplied)

The circumstances which impelled the Court to apply the principle of unjust enrichment in *Equitable Banking* are present in this case.

As stated, Union Bank's obligation to credit Tan's account is contingent upon actual receipt of the value of the BPI Check *or* notice of its clearance. Due to the dishonor of the BPI Check, Union Bank's obligation to credit Tan's account with its proceeds did not attach. Conversely, Tan's right to receive the proceeds of said check did not arise. Nevertheless, Tan withdrew the proceeds of the BPI Check with full and established knowledge that the account against which it was drawn had been closed. As in *Equitable Banking*, Tan, the depositor herein, was unjustly benefited by reason of the erroneous credit made in his favor. Such benefit, in turn, was derived at the expense of Union Bank as the collecting bank.

Thus, based on the principle of unjust enrichment, Tan is bound to return the proceeds of the BPI Check which he had no right to receive.

PNB v. Cheah is inapplicable.

Tan argues that Union Bank should not be allowed to recover the amount erroneously deposited in his account, since said payment was made not because of any mistake of fact or law, but because of Union Bank's own gross negligence. According to Tan, such negligence on the part of Union Bank precludes recovery, pursuant to the Court's ruling in *PNB v. Cheah.*

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[66] Id. at 228-229.

The Court disagrees.

In *PNB v. Cheah,* petitioner Ofelia Cheah (Ofelia) agreed to accommodate Filipina Tuazon's (Filipina) request to have the latter's Bank of America (BOA) Check cleared and encashed for a service fee of 2.5%. Filipina was a mere acquaintance introduced to Ofelia by her friend Adelina Guarin (Adelina). Filipina enlisted Ofelia's assistance since she did not have a dollar account necessary to encash the BOA Check which was drawn for the amount of $300,000.00.

On November 4, 1992, Ofelia deposited the BOA Check to her joint PNB dollar savings account (DSA) with her Malaysian husband Cheah Chee Chong. Five days later, PNB received a credit advice from Philadelphia National Bank in the United States, stating that the proceeds of the BOA Check had been temporarily credited to PNB's account as of November 6, 1992.

On November 16, 1992, PNB Division Chief Alberto Garin called Ofelia to inform her that the BOA Check had been cleared and that her joint DSA with Cheah Chee Chong had been credited the amount of $299,248.37 (representing the face value of the BOA Check sans bank charges). Hence, the proceeds of the BOA Check were withdrawn and delivered to Filipina.

On November 20, 1992, PNB received notice that the BOA Check bounced for being drawn against insufficient funds. PNB demanded that Ofelia and Cheah Chee Chong return the funds withdrawn. In turn, Ofelia attempted to retrieve the funds from Filipina, but Filipina claimed that the funds had already been distributed to several other individuals. Thus, Ofelia and Cheah Chee Chong (Spouses Cheah) requested the assistance of the National Bureau of Investigation (NBI) to apprehend the beneficiaries of the BOA Check. Meanwhile, Spouses Cheah and PNB negotiated the terms of reimbursement pending NBI's investigation.

After negotiations between Spouses Cheah and PNB fell through, PNB filed a complaint for sum of money before the RTC. As their main defense, Spouses Cheah claimed that the proximate cause of PNB's injury was its own negligence in paying the BOA Check without waiting for the expiration of its own 15-day clearing period.

The RTC ruled in favor of PNB. However, the CA reversed on appeal, finding that PNB exhibited negligence in allowing the premature withdrawal of the proceeds of the BOA Check. However, the CA also found Ofelia guilty of contributory negligence. Thus, the CA ruled that Spouses Cheah and PNB should be made equally responsible for the resulting loss.

Unsatisfied, the parties filed their respective petitions for review before the Court. Affirming the CA's Decision, the Court ruled:

Here, while PNB highlights Ofelia's fault in accommodating a stranger's check and depositing it to the bank, it remains mum in its release of the proceeds thereof without exhausting the 15-day clearing period, an act which contravened established banking rules and practice.

It is worthy of notice that the 15-day clearing period alluded to is construed as 15 banking days. As declared by Josephine Estella, the Administrative Service Officer who was the bank's Remittance Examiner, what was unusual in the processing of the check was that the "lapse of 15 banking days was not observed." Even PNB's agreement with Philadelphia National Bank regarding the rules on the collection of the proceeds of US dollar checks refers to "business/banking days." Ofelia deposited the subject check on November 4, 1992. Hence, the 15th banking day from the date of said deposit should fall on November 25, 1992. **However, what happened was that PNB Buendia Branch, upon calling up Ofelia that the check had been cleared, allowed the proceeds thereof to be withdrawn on November 17 and 18, 1992, a week before the lapse of the standard 15-day clearing period**.

This Court already held that the payment of the amounts of checks without previously clearing them with the drawee bank especially so where the drawee bank is a foreign bank and the amounts involved were large is contrary to normal or ordinary banking practice. **Also, in *Associated Bank v. Tan*, wherein the bank allowed the withdrawal of the value of a check prior to its clearing, we said that "[b]efore the check shall have been cleared for deposit, the collecting bank can only 'assume' at its own risk x x x that the check would be cleared and paid out."** The delay in the receipt by PNB Buendia Branch of the November 13, 1992 SWIFT message notifying it of the dishonor of the subject check is of no moment, because had PNB Buendia Branch waited for the expiration of the clearing period and had never released during that time the proceeds of the check, it would have already been duly notified of its dishonor. **Clearly, PNB's disregard of its preventive and protective measure against the possibility of being victimized by bad checks had brought upon itself the injury of losing a significant amount of money**.

It bears stressing that "the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected." PNB miserably failed to do its duty of exercising extraordinary diligence and reasonable business prudence. **The disregard of its own banking policy amounts to gross negligence, which the law defines as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected."** x x x

Incidentally, PNB obliges the [S]pouses Cheah to return the withdrawn money under the principle of *solutio indebiti*, which is laid down in Article 2154 of the Civil Code[.]

x x x x

"[T]he indispensable requisites of the juridical relation known as *solutio indebiti*, are, (a) that he who paid was not under obligation to do so; and (b) that the payment was made by reason of an essential mistake of fact.

> **In the case at bench, PNB cannot recover the proceeds of the check under the principle it invokes. In the first place, the gross negligence of PNB, as earlier discussed, can never be equated with a mere mistake of fact, which must be something excusable and which requires the exercise of prudence. No recovery is due if the mistake done is one of gross negligence.**
>
> *The [S]pouses Cheah are guilty of contributory negligence and are bound to share the loss with the bank*
>
> "Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection."
>
> The CA found Ofelia's credulousness blameworthy. We agree. Indeed, Ofelia failed to observe caution in giving her full trust in accommodating a complete stranger and this led her and her husband to be swindled. Considering that Filipina was not personally known to her and the amount of the foreign check to be encashed was $300,000.00, a higher degree of care is expected of Ofelia which she, however, failed to exercise under the circumstances. Another circumstance which should have goaded Ofelia to be more circumspect in her dealings was when a bank officer called her up to inform that the [BOA C]heck has already been cleared way earlier than the 15-day clearing period. The fact that the check was cleared after only eight banking days from the time it was deposited or contrary to what [PNB Division Chief Alfredo Garin] told her that clearing takes 15 days should have already put Ofelia on guard. She should have first verified the regularity of such hasty clearance considering that if something goes wrong with the transaction, it is she and her husband who would be put at risk and not the accommodated party. **However, Ofelia chose to ignore the same and instead actively participated in immediately withdrawing the proceeds of the check. Thus, we are one with the CA in ruling that Ofelia's prior consultation with PNB officers is not enough to totally absolve her of any liability. In the first place, she should have shunned any participation in that palpably shady transaction.**[67] (Emphasis supplied; citations omitted)

In *PNB v. Cheah,* the Court ruled that PNB was guilty of gross negligence as its own bank officer permitted Ofelia to prematurely withdraw the proceeds of the BOA Check by advising her of the funds' availability before the expiration of the 15-day clearing period mandated by its own internal rules (*i.e.,* PNB General Circular No. 52-101/88). Despite PNB's gross negligence, the Court nevertheless tempered PNB's liability due to Ofelia's contributory negligence. Thus, in *PNB v. Cheah,* the parties were made to suffer the resulting loss equally.

A juxtaposition of the circumstances attendant in *PNB v. Cheah* and the present case shows that Tan's reliance on *PNB v. Cheah* does not support his cause. In fact, reliance on *PNB v. Cheah* actually weakens Tan's claim.

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67 *Philippine National Bank v. Cheah*, supra note 47, at 61-65.

It is well established that whoever alleges a fact has the burden of proving it because mere allegation is not evidence.[68] The records show that while Tan harped on Union Bank's alleged gross negligence, he failed to cite the specific provision of law, banking regulation, or internal rule which had been violated by Union Bank. What is clear from the evidence on record is that due to a technical error in Union Bank's system, the funds corresponding to the value of the BPI Check were credited to Tan's account *before* actual return and clearance. Because of this error, said funds were *inadvertently* made available for Tan's withdrawal upon Union Bank's mistaken belief that the check had already been cleared. Upon notice of the BPI Check's dishonor, Union Bank's officer immediately notified Tan of such fact.[69] However, despite repeated demands, Tan refused to return the amount he had withdrawn insisting that the BPI Check was given to him for value and in the course of business.[70]

Clearly, Tan failed to substantiate his imputation of gross negligence. While Union Bank concedes that a technical error in its own system allowed Tan to withdraw the proceeds of the BPI Check before clearance, this error cannot be likened to the blatant violation of internal procedure committed by PNB's Division Chief in *PNB v. Cheah*.

More importantly, in *PNB v. Cheah,* respondent Ofelia did *not* benefit from the proceeds of the dishonored BOA Check. While Ofelia deposited said check to facilitate encashment, she subsequently delivered the proceeds to Filipina. In this case, it is established that the funds in dispute had been withdrawn by Tan himself. In fact, Tan acknowledged that he used said funds to pay one of his suppliers.[71] **Allowing Tan to benefit from the erroneous payment would undoubtedly permit unjust enrichment at Union Bank's expense particularly in light of circumstances which indicate that Tan withdrew in bad faith the mistakenly released funds.**

Article 1909 does not preclude recovery on the part of Union Bank.

In an attempt to evade liability, Tan also argues that, as his collecting agent, Union Bank should be held solely responsible for losses arising from its own negligence, pursuant to Article 1909 of the Civil Code. Tan invokes the Court's ruling in *Metrobank v. CA* as basis.

Tan's reliance on *Metrobank v. CA* is misplaced.

In said case, a certain Eduardo Gomez (Eduardo) deposited 38 treasury warrants with a total amount of ₱1,755,228.37 to his account with

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68 *Dela Cruz v. Octaviano,* 814 Phil. 891, 905 (2017) [Second Division, per J. Peralta].
69 *Rollo,* p. 42.
70 Id. at 44.
71 Id. at 43.

Golden Savings and Loan Association (Golden Savings). Since Golden Savings did not have its own clearing facilities, its cashier Gloria Castillo endorsed said warrants and deposited them in Golden Savings' account with petitioner Metropolitan Bank and Trust Company (Metrobank).

Gloria went to Metrobank several times to confirm whether the warrants had been cleared. While Gloria was initially told to wait, Metrobank eventually allowed her to withdraw the proceeds of the warrants on behalf of Golden Savings due to "exasperation" over her repeated inquiries, and as a form of accommodation to Golden Savings as a valued client. Thereafter, Eduardo was allowed to withdraw from his deposit account with Golden Savings.

Five days after Eduardo's last withdrawal, Metrobank informed Golden Savings that 32 out of the 38 treasury warrants were dishonored by the Bureau of Treasury. Thus, Metrobank demanded that Golden Savings refund the proceeds previously withdrawn to make up for the deficit in its account. Golden Savings rejected the demand, causing Metrobank to file a complaint for collection of sum of money with the RTC.

The RTC ruled in favor of Golden Savings. The CA affirmed on appeal. Aggrieved, Metrobank filed a petition for review before the Court, alleging, among others, that "[it] cannot be held liable for its failure to collect on the warrants" since it merely acted as a collecting agent.[72]

In its Decision, the Court applied Article 1909 to hold Metrobank liable for the losses suffered by Golden Savings as a result of Metrobank's negligence. The Court held:

> From the above undisputed facts, it would appear to the Court that Metrobank was indeed negligent in giving Golden Savings the impression that the treasury warrants had been cleared and that, consequently, it was safe to allow [Eduardo] to withdraw the proceeds thereof from his account with it. Without such assurance, Golden Savings would not have allowed the withdrawals; with such assurance, there was no reason not to allow the withdrawal. Indeed, Golden Savings might even have incurred liability for its refusal to return the money that to all appearances belonged to the depositor, who could therefore withdraw it any time and for any reason he saw fit.
>
> It was, in fact, to secure the clearance of the treasury warrants that Golden Savings deposited them to its account with Metrobank. Golden Savings had no clearing facilities of its own. It relied on Metrobank to determine the validity of the warrants through its own services. **The proceeds of the warrants were withheld from [Eduardo] until Metrobank allowed Golden Savings itself to withdraw them from its own deposit. It was only when Metrobank gave the go-signal that**

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72 *Metropolitan Bank and Trust Company v. Court of Appeals*, supra note 49, at 173.

> **[Eduardo] was finally allowed by Golden Savings to withdraw them from his own account.**[73] (Emphasis supplied)

By invoking Article 1909 as applied in *Metrobank v. CA*, Tan appears to assert that he, as principal-depositor, suffered losses because of the technical error in Union Bank's system. This assertion is clearly false.

As stated, Tan had no right to receive the proceeds of the BPI Check. **Evidently, Tan did not suffer any loss as a result of Union Bank's technical error. On the contrary, Tan unduly *gained* from the technical error, as it allowed him to withdraw and utilize funds which he had *no right* to receive.**

The fact that Tan received the BPI Check for value in the ordinary course of business does not negate his obligation to return the funds erroneously credited in his favor. Tan's remedy, if any, lies *not* against Union Bank, but against the drawer of the BPI Check Angli Lumber. All told, Tan's obligation to return the erroneously credited funds to Union Bank stands.

Amount due

The records show that Tan had a balance amounting to ₱93,700.60 *before* the value of the BPI Check was erroneously credited to his Union Bank account.[74] Due to Union Bank's system error, Tan's account was credited with the amount of ₱420,000.00, thereby increasing his balance to ₱513,700.60. Subsequently, Tan's account was credited an additional amount of ₱1,000.00 as a result of a separate encashment.

Later still, Tan withdrew the amount of ₱480,000.00. This left Tan's account with the balance of **₱34,700.60**. To illustrate:

Account balance prior to deposit	₱ 93,700.60
Amount credited due to system error	420,000.00
Separate encashment	1,000.00
Account balance prior to withdrawal	514,700.60
Amount withdrawn	(480,000.00)
Account balance after withdrawal	₱ **34,700.60**

Since Tan refused to return the mistakenly credited amount of ₱420,000.00, Union Bank applied Tan's remaining balance of ₱34,700.60 to set off his debt before it filed its Complaint before the RTC.

Thus, the sum due to Union Bank is **₱385,299.40**, as stated in the RTC Decision. This awarded sum, not being a loan or forbearance of money, is subject to 6% interest per annum. In turn, such interest should be

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73 Id.

74 Id. at 121.

computed from the time when the amount due had been established with reasonable certainty, which, in this case, was the date of Union Bank's *extrajudicial* demand on November 20, 2007.

The deletion of damages, attorney's fees and costs of suit was not assailed.

Finally, the Court shall not delve into the issue of damages, attorney's fees, and cost of suit in this Decision considering that Union Bank no longer assailed the deletion of these awards before this Court.

WHEREFORE, the Petition is **DENIED**. The Decision dated February 3, 2016 and Resolution dated July 5, 2016 rendered by the Court of Appeals, Eleventh Division in CA-G.R. CV No. 102802 are **AFFIRMED**.

Petitioner Rodriguez Ong Tan, doing business under the name and style Yon Mitori International Industries, is **ORDERED** to pay respondent Union Bank of the Philippines the amount of **₱385,299.40** with legal interest at the rate of 6% per annum, computed from the time of extrajudicial demand on November 20, 2007 until full payment.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice