

BANKING

Duty of care – Banker and customer relationship – Encashment of cheques – Whether bank was negligent in encashing cheques

RHB Bank Bhd v Mogana Sunthari Subramaniam

[2016] 4 CLJ 541, Court of Appeal

Facts The appellant is a banking institution while the respondent was a partner in a legal firm ("the Firm") which has been dissolved. The Firm had maintained two accounts ("the Accounts") with the appellant, where the respondent was the signatory of cheques for both Accounts. Before the respondent went abroad in 2004, she had informed the appellant of the change and appointment of a new signatory ("the Signatory") and the identity of the authorised person for cheque encashment purposes. The respondent further undertook to inform the appellant of any change of authorised personnel in the future. An internal procedure concerning the issuance and encashment of cheques was made between the respondent and her partner, the Signatory, the custodian of the cheque book and the employees of the Firm. The appellant, however, was not privy to this. The dispute arose when the respondent returned to the country and noticed that unauthorised transactions had taken place involving the Accounts. The respondent sued the appellant for negligence as it failed to detect and prevent the unauthorised transactions. The genuineness of the cheques and authenticity of the signatures were not disputed. The High Court held in favour of the respondent. Hence this appeal.

Issue The main issue was whether the appellant was negligent in failing to discover the encashment of the cheques from the Accounts, albeit a genuine mandate was accorded by the Firm.

Held In allowing the appeal, the court held that considering the internal procedure of issuance and encashment of cheques, the Firm could not blame the appellant for encashment of cheques that were validly issued. The duty of care owed by the appellant, a bank to its customer, such as the Firm, does not extend to detecting internal fraud committed by the employees of the respondent. Therefore, the appellant is not responsible for the losses of the Firm.