

FIDELITY SAVINGS AND MORTGAGE BANK, PETITIONER, VS. HON. PEDRO D. CENZON, IN HIS CAPACITY AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA (BRANCH XL) AND SPOUSES TIM...

G.R. NO. L-46208. April 05, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

The instant petition seeks the review, on pure questions of law, of the decision rendered by the Court of First Instance of Manila (now Regional Trial Court), Branch XL, on December 3, 1976 in Civil Case No. 84800,[1] ordering herein petitioner to pay private respondents the following amounts:

"(a) P90,000.00 with accrued interest in accordance with Exhibits A and B until fully paid;

(b) P30,000.00 as exemplary damages; and

(c) P10,000.00 as and for attorney's fees.

"The payment by the defendant Fidelity Savings and Mortgage Bank of the aforementioned sums of money shall be subject to the Bank Liquidation Rules and Regulations embodied in the Order of the Court of First Instance of Manila, Branch XIII, dated October 3, 1972, Civil Case No. 86005, entitled, 'IN RE: Liquidation of the Fidelity Savings Bank versus Central Bank of the Philippines, Liquidator.'

"With costs against the defendant Fidelity Savings and Mortgage Bank.

"SO ORDERED."

Private respondents instituted this present action for a sum of money with damages against Fidelity Savings and Mortgage Bank, Central Bank of the Philippines, Eusebio Lopez, Jr., Arsenio M. Lopez, Sr., Arsenio S. Lopez, Jr., Bibiana E. Lacuna, Jose C. Morales, Leon P. Cusi, Pilar Y. Pobre-Cusi and Ernani A. Pacana. On motion of herein private respondents, as plaintiffs, the amended complaint was dismissed without prejudice against defendants Jose C. Morales, Leon P. Cusi, Pilar Y. Pobre-Cusi and Ernani A. Pacana.[2] In its aforesaid decision of December 3, 1976, the court a quo dismissed the complaint as against defendants Central Bank of the Philippines, Eusebio Lopez, Jr., Arsenio S. Lopez, Jr., Arsenio M. Lopez, Sr. and Bibiana S. Lacuna.

Back on August 10, 1973, the plaintiffs (herein private respondents) and the defendants Fidelity Savings and Mortgage Bank (petitioner herein), Central Bank of the Philippines and Bibiana E. Lacuna had filed in said case in the lower court a partial stipulation of facts, as follows:

"COME NOW herein plaintiffs, SPOUSES TIMOTEO M. SANTIAGO and OLIMPIA R. SANTIAGO, herein defendants FIDELITY SAVINGS AND MORTGAGE BANK and the CENTRAL BANK OF THE PHILIPPINES, and herein defendant BIBIANA E. LACUNA, through their respective undersigned counsel, and before this Honorable Court most respectfully submit the following Partial Stipulation of Facts:

"1. That herein plaintiffs are husband and wife, both of legal age, and presently residing at No. 480 C. de la Paz Street, Sta. Elena, Marikina, Rizal;

"2. That herein defendant Fidelity Savings and Mortgage Bank is a corporation duly organized and existing under and by virtue of the laws of the Philippines; that defendant Central Bank of the Philippines is a corporation duly organized and existing under and by virtue of the laws of the Philippines;

"3. That herein defendant Bibiana E. Lacuna is of legal age and a resident of No. 42 East Lawin Street, Philamlife Homes, Quezon City; said defendant was an Assistant Vice-President of the defendant Fidelity Savings and Mortgage Bank;

"4. That sometime on May 16, 1968, herein plaintiffs deposited with the defendant Fidelity Savings Bank the amount of FIFTY THOUSAND PESOS (P50,000.00) under Savings Account No. 16-0536; that likewise, sometime on July 6, 1968, herein plaintiffs deposited with the defendant Fidelity Savings and Mortgage Bank the amount of FIFTY THOUSAND PESOS (P50,000.00) under Certificate of Time Deposit No. 0210; that the aggregate amount of deposits of the plaintiffs with the defendant Fidelity Savings and Mortgage Bank is ONE HUNDRED THOUSAND PESOS (P100,000.00);

"5. That on February 18, 1969, the Monetary Board, after finding the report of the Superintendent of Banks, that the condition of the defendant Fidelity Savings and Mortgage Bank is one of insolvency, to be true, issued Resolution No. 350 deciding, among others, as follows:

`1) To forbid the Fidelity Savings Bank to do business in the Philippines;

2) To instruct the Acting Superintendent of Banks to take charge, in the name of the Monetary Board, of the Bank's assets;'

"6. That pursuant to the above-cited instructions of the Monetary Board, the Superintendent of Banks took charge in the name of the Monetary Board, of the assets of defendant Fidelity Savings Bank on February 19, 1969; and that since that date up to this date, the Superintendent of Banks (now designated as Director, Department of Commercial and Savings Banks) has been taking charge of the assets of defendant Fidelity Savings and Mortgage Bank;

"7. That sometime on October 10, 1969 the Philippine Deposit Insurance Corporation paid the plaintiffs the amount of TEN THOUSAND PESOS (P10,000.00) on the aggregate deposits of P100,000.00 pursuant to Republic Act No. 5517, thereby leaving a deposit balance of P90,000.00;

"8. That on December 9, 1969, the Monetary Board issued its Resolution No. 2124 directing the liquidation of the affairs of defendant Fidelity Savings Bank;

"9. That on January 25, 1972, the Solicitor General of the Philippines filed a 'Petition for Assistance and Supervision in Liquidation' of the affairs of the defendant Fidelity Savings and Mortgage Bank with the Court of First Instance of Manila, assigned to Branch XIII and docketed as Civil Case No. 86005;

"10. That on October 3, 1972, the Liquidation Court promulgated the Bank Rules and Regulations to govern the liquidation of the affairs of defendant Fidelity Savings and Mortgage Bank, prescribing the rules on the conversion of the Bank's assets into money, processing of claims against it and the manner and time of distributing the proceeds from the assets of the Bank;

"11. That the liquidation proceedings has not been terminated and is still pending up to the present;

"12. That herein plaintiffs, through their counsel, sent demand letters to herein defendants, demanding the immediate payment of the aforementioned savings and time deposits.

"WHEREFORE, it is respectfully prayed that the foregoing Partial Stipulation of Facts be approved by this Honorable Court, without prejudice to the presentation of additional documentary or testimonial evidence by herein parties.

"Manila, Philippines, August 10, 1973."[3]

Assigning error in the judgment of the lower court quoted ab antecedente, petitioner raises two questions of law, to wit:

1. Whether or not an insolvent bank like the Fidelity Savings and Mortgage Bank may be adjudged to pay interest on unpaid deposits even after its closure by the Central Bank by reason of insolvency without violating the provisions of the Civil Code on preference of credits; and
2. Whether or not an insolvent bank like the Fidelity Savings and Mortgage Bank may be adjudged to pay moral and exemplary damages, attorney's fees and costs when the insolvency is caused by the anomalous real estate transactions without violating the provisions of the Civil Code on preference of credits.

There is merit in the petition.

It is settled jurisprudence that a banking institution which has been declared insolvent and subsequently ordered closed by the Central Bank of the Philippines cannot be held liable to pay interest on bank deposits which accrued during the period when the bank is actually closed and non-operational.

In *The Overseas Bank of Manila vs. Court of Appeals and Tony D. Tapia*,[4] we held that:

"It is a matter of common knowledge, which We take judicial notice of, that what enables a bank to pay stipulated interest on money deposited with it is that thru the other aspects of its operation it is able to generate funds to cover the payment of such interest. Unless a bank can lend money, engage in international transactions, acquire foreclosed mortgaged properties or their proceeds and generally engage in other banking and financing activities from which it can derive income, it is inconceivable how it can carry on as a depository obligated to pay stipulated interest. Conventional wisdom dictates this inexorable fair and just conclusion. And it can be said that all who deposit money in banks are aware of such a simple economic proposition. Consequently, it should be deemed read into every contract of deposit with a bank that the obligation to pay interest on the deposit ceases the moment the operation of the bank is completely suspended by the duly constituted authority, the Central Bank."

This was reiterated in the subsequent case of *The Overseas Bank of Manila vs. The Hon. Court of Appeals and Julian R. Cordero*,[5] and in the recent cases of *Integrated Realty Corporation, et al. vs. Philippine National Bank, et al.* and *the Overseas Bank of Manila vs. Court of Appeals, et al.*[6]

From the aforecited authorities, it is manifest that petitioner cannot be held liable for interest on bank deposits which accrued from the time it was prohibited by the Central Bank to continue with its banking operations, that is, when Resolution No. 350 to that effect was issued on February 18, 1969.

The order, therefore, of the Central Bank as receiver/liquidator of petitioner bank allowing the claims of depositors and creditors to earn interest up to the date of its closure on February 18, 1969,[7] is in line with the doctrine laid down in the jurisprudence above cited.

Although petitioner's formulation of the second issue that it poses is slightly inaccurate and defective, we likewise find the awards of moral and exemplary damages and attorney's fees to be erroneous.

The trial court found, and it is not disputed, that there was no fraud or bad faith on the part of petitioner bank and the other defendants in accepting the deposits of private respondents. Petitioner bank could not even be faulted in

not immediately returning the amount claimed by private respondents considering that the demand to pay was made and Civil Case No. 84800 was filed in the trial court several months after the Central Bank had ordered petitioner's closure. By that time, petitioner bank was no longer in a position to comply with its obligations to its creditors, including herein private respondents. Even the trial court had to admit that petitioner bank failed to pay private respondents because it was already insolvent.[8] Further, this case is not one of the specified or analogous cases wherein moral damages may be recovered.[9]

There is no valid basis for the award of exemplary damages which is supposed to serve as a warning to other banks from dissipating their assets in anomalous transactions. It was not proven by private respondents, and neither was there a categorical finding made by the trial court, that petitioner bank actually engaged in anomalous real estate transactions. The same were raised only during the testimony of the bank examiner of the Central Bank,[10] but no documentary evidence was ever presented in support thereof. Hence, it was error for the lower court to impose exemplary damages upon petitioner bank since, in contracts, such sanction requires that the offending party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[11] Neither does this case present the situation where attorney's fees may be awarded.[12]

In the absence of fraud, bad faith, malice or wanton attitude, petitioner bank may, therefore, not be held responsible for damages which may be reasonably attributed to the non-performance of the obligation.[13] Consequently, we reiterate that under the premises and pursuant to the aforementioned provisions of law, it is apparent that private respondents are not justifiably entitled to the payment of moral and exemplary damages and attorney's fees.

While we tend to agree with petitioner bank that private respondents' claims should have been filed in the liquidation proceedings in Civil Case No. 86005, entitled "In Re: Liquidation of the Fidelity Savings and Mortgage Bank," pending before Branch XIII of the then Court of First Instance of Manila, we do not believe that the decision rendered in the instant case would be violative of the legal provisions on preference and concurrence of credits. As the trial court puts it:

"x x x But this order of payment should not be understood as raising these deposits to the category of preferred credits of the defendant Fidelity Savings and Mortgage Bank but shall be paid in accordance with the Bank Liquidation Rules and Regulations embodied in the Order of the Court of First Instance of Manila, Branch XIII dated October 3, 1972 (Exh. 3). x x x"[14]

WHEREFORE, the judgment appealed from is hereby MODIFIED. Petitioner Fidelity Savings and Mortgage Bank is hereby declared liable to pay private respondents Timoteo and Olimpia Santiago the sum of P90,000.00, with accrued interest in accordance with the terms of Savings Account Deposit No. 16-0536 (Exhibit A) and Certificate of Time Deposit No. 0210 (Exhibit B) until February 18, 1969. The awards for moral and exemplary damages, and attorney's fees are hereby DELETED. No costs.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Annex A, Petition; Rollo, 42-67.

[2] Rollo, 46.

[3] Ibid., 52-53.

[4] 105 SCRA 49 (1981).

[5] 113 SCRA 778 (1982).

[6] G.R. Nos. 60705 and 60907, jointly decided on June 28, 1989.

[7] Rollo, 33.

[8] Ibid., 61-64.

[9] Art. 2219, Civil Code.

[10] Ibid., 57.

[11] Art. 2232, Civil Code.

[12] Art. 2208, id.

[13] Art. 2201, id.

[14] Rollo, 65.

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