

## LEOPOLDO ARANETA, PETITIONER, VS. BANK OF AMERICA, RESPONDENT.

*G.R. No. L-25414. July 30, 1971*

Ponente: MAKALINTAL, J.

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### MAKALINTAL, J.:

Petition for review by certiorari of the decision of the Court of Appeals in CA-G.R. No. L-34508-R modifying that of the Court of First Instance of Manila in the Civil Case No. 52442.

Leopoldo Araneta, the petitioner herein, was a local merchant engaged in the import and export business. On June 30, 1961 he issued a check for \$500 payable to cash and drawn against the San Francisco main office of the Bank of America, where he had been maintaining a dollar current account since 1948. At that time he had a credit balance of \$523.81 in his account, confirmed by the bank's assistant cashier in a letter to Araneta dated September 7, 1961. However, when the check was received by the bank on September 8, 1961, a day after the date of the letter, it was dishonored and stamped with the notation "Account Closed."

Upon inquiry by Araneta as to why his check had been dishonored, the Bank of America acknowledged that it was an error, explaining that for some reason the check had been encoded with wrong account number, and promising that "we shall make every effort to see that this does not reoccur." The bank sent a letter of apology to the payee of the check, a Mr. Harry Gregory of Hongkong, stating that "the check was returned through an error on our part and should not reflect adversely upon Mr. Araneta." In all probability the matter would have been considered closed, but another incident of a similar nature occurred later.

On May 25 and 31, 1962 Araneta issued Check No. 110 for \$500 and Check No. 111 for \$150, respectively, both payable to cash and drawn against the Bank of America. These two checks were received by the bank on June 3, 1962. The first check appeared to have come into the hands of Rufina Saldaña, who deposited it to her account with the First National City Bank of New York, which in turn cleared it through the Federal Reserve Bank. The second check appeared to have been cleared through the Wells Fargo Bank. Despite the sufficiency of Araneta's deposit balance to cover both checks, they were again stamped with the notation "Account Closed" and returned to the respective clearing banks.

In the particular case of Check No. 110, it was actually paid by the Bank of America to the First National City Bank. Subsequently, however, the Bank of America, claiming that the payment had been inadvertently made, returned the check to the First National City Bank with the request that the amount thereof be credited back to the Bank of America. In turn, the First National City Bank wrote to the depositor of the check, Rufina Saldaña, informing her about its return with the notation "Account Closed" and asking her consent to the deduction of its amount from her deposit. However, before Mrs. Saldaña's reply could be received, the Bank of America recalled the check from the First National City Bank and honored it.

In view of the foregoing incidents, Araneta, through counsel, sent a letter to the Bank of America demanding damages in the sum of \$20,000. While admitting responsibility for the inconvenience caused to Araneta, the

bank claimed that the amount demanded was excessive, and offered to pay the sum of P2,000.00. The offer was rejected.

On December 11, 1962 Araneta filed the complaint in this case against the Bank of America for the recovery of the following:

1. Actual or compensatory damages

P30,000.00

2. Moral damages

20,000.00

3. Temperate damages

50,000.00

4. Exemplary damages

10,000.00

5. Attorney's fees

10,000.00

T O T A L

P120,000.00

The judgment of the trial court awarded all the items prayed for, but on appeal by the defendant the Court of Appeals eliminated the award of compensatory and temperate damages and reduced the moral damages to P8,000.00, the exemplary damages to P1,000.00 and the attorney's fees to P1,000.00.

Not satisfied with the decision of the appellate court, the plaintiff filed the instant petition for review, alleging two reasons why it should be allowed, as follows:

"(1) The Court of Appeals erred in holding that temperate damages cannot be awarded without proof of actual pecuniary loss. There is absolutely no legal basis for this ruling; worse yet, it runs counter to the very provisions of ART. 2216 of the New Civil Code and to the established jurisprudence on the matter;

"(2) The Court of Appeals erred in not holding that moral damages may be recovered as an item separate and distinct from the damages recoverable for injury to business standing and commercial credit. This involves the application of paragraph (2) of Art. 2205 of the New Civil Code which up to now has not yet received an authoritative interpretation from the Supreme Court. x x x."

In his brief, however, the petitioner assigned five (5) errors committed by the appellate court, namely: (1) in concluding that the petitioner, on the basis of the evidence, had not sufficiently proven his claim for actual damages, where such evidence, both testimonial and documentary, stands uncontradicted on the record; (2) in holding that temperate damages cannot be awarded to the petitioner without proof of actual pecuniary loss; (3) in not granting moral damages for mental anguish, besmirched reputation, wounded feelings, social humiliation, etc., separate and distinct from the damages recoverable for injury to business reputation; (4) in reducing, without any ostensible reason, the award of exemplary damages granted by the lower court; and (5) in reducing, without special reason, the award of attorney's fees by the lower court.

We consider the second and third errors, as they present the issues raised in the petition for review and on the

basis of which it was given due course.

In disallowing the award of temperate damages, the Court of Appeals ruled:

"In view of all the foregoing considerations we hold that the plaintiff has not proven his claim that the two checks for \$500 each were in partial payment of two orders for jewels worth P50,000 each. He has likewise not proven the actual damage which he claims he has suffered. And in view of the fact that he has not proven the existence of the supposed contract for him to buy jewels at a profit there is not even an occasion for an award of temperate damages on this score."

This ruling is now assailed as erroneous and without legal basis. The petitioner maintains that in an action by a depositor against a bank for damages resulting from the wrongful dishonor of the depositor's checks, temperate damages for injury to business standing or commercial credit may be recovered even in the absence of definite proof of direct pecuniary loss to the plain-tiff, a finding - as it was found by the Court of Appeals - that the wrongful acts of the respondent had adversely affected his credit being sufficient for the purpose. The following provisions of the Civil Code are invoked:

"ART. 2205. Damages may be recovered:

(1) For loss or impairment of earning capacity in cases of temporary or permanent personal injury;

(2) For injury to the plain-tiff's business standing or com-mercial credit."

"ART. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, tem-perate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, ex-cept liquidated ones, is left to the discretion of the court, ac-cording to the circumstances of each case."

Also invoked by the petitioner is the case of *Atlanta National Bank vs. Davis*, 96 Ga 334, 23 SE 190,[1] and the following citations in American Jurisprudence:

"In some states what are called 'temperate damages' are al-lowed in certain classes of cases, without proof of actual or special damages, where the wrong done must in fact have caused actual damage to the plaintiff, though from the nature of the case, he cannot furnish independent, distinct proof thereof. Temperate damages are more than nominal damages, and, rather, are such as would be a reasonable compensation for the injury sustained. x x x." (15 Am. Jur. 400)

"x x x. It has been general-ly, although not universally, held, in an action based upon the wrongful act of a bank in dishonoring checks of a merchant or trader having suf-ficient funds on deposit with the bank, that substantial damages will be presumed to follow such act as a necessary and natural consequence, and accordingly, that special damages need not be shown. One of the reasons given for this rule is that the dishonor of a merchant's or trader's check is tantamount or analogous, to a slander of his trade or business, imputing to him insolvency or bad faith. x x x." (10 Am. Jur. 2d. 545)

On the other hand the respondent argues that since the petitioner invokes Article 2205 of the Civil Code, which speaks of actual or compensatory damages for injury to business standing or commercial credit, he may not claim them as temperate damages and thereby dispense with proof of pecuniary loss under Article 2216. The respondent cites Article 2224, which provides that "temperate or moderate damages, which are more than nominal but less than compensatory damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with cer-tainty," and contends that the petitioner failed to show any such loss in this case.

The question, therefore, is whether or not on the basis of the findings of the Court of Appeals, there is reason to conclude that the petitioner did sustain some pecuniary loss although no sufficient proof of the amount thereof has

been adduced. In rejecting the claim for temperate damages the said Court referred specifically to the petitioner's failure to prove "the existence of a supposed contract for him to buy jewels at a profit," in connection with which he issued the two checks which were dishonored by the respondent. This may be true as far as it goes, that is, with particular reference to the alleged loss in that particular transaction. But it does not detract from the finding of the same Court that actual damage had been suffered, thus:

"... Obviously, the check passed the hands of other banks since it was cleared in the United States. The adverse reflection against the credit of Araneta with said banks was not cured nor explained by the letter of apology to Mr. Gregory."

x x x

"... This incident obviously affected the credit of Araneta with Miss Saldaña.

x x x

"However, in so far as the credit of Araneta with the First National City Bank, with Miss Rufina Saldaña and with any other persons who may have come to know about the refusal of the defendant to honor said checks, the harm was done..."

The financial credit of a businessman is a prized and valuable asset, it being a significant part of the foundation of his business. Any adverse reflection thereon constitutes some material loss to him. As stated in the case *Atlanta National Bank vs. Davis*, supra, citing 2 *Morse Banks*, Sec. 458, "it can hardly be possible that a customer's check can be wrongfully refused payment without some im-peachment of his credit, which must in fact be an actual injury, though he cannot, from the nature of the case, furnish independent, distinct proof thereof."

The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the fol-lowing comment:

"In some States of the American Union, temperate damages are allowed. There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act."

The petitioner, as found by the Court of Appeals, is a merchant of long standing and good reputation in the Philippines. Some of his record is cited in the decision appealed from. We are of the opinion that his claim for temperate damages is legally justified. Considering all the circumstances, including the rather small size of the petitioner's account with the respondent, the amounts of the checks which were wrongfully dishonored, and the fact that the respondent tried to rectify the error soon after it was discovered, although the rec-tification came after the damage had been caused, we believe that an award of P5,000 by way of temperate damages is sufficient.

Under the third error assigned by the petitioner in his brief, which is the second of the two reasons relied upon in his petition for review, he contends that moral damages should have been granted for the injury to his business standing or commercial credit, separately from his wounded feelings and mental anguish. It is true that under Article 2217 of the Civil Code, "besmirched reputation" is a ground upon which moral damages may be claimed, but the Court of Appeals did take this element into considera-tion in adjudging the sum of P8,000 in his favor. We quote from the decision:

"... the damages to his reputation as an established and well known in-ternational trader entitled him to recover moral damages."

x x x

"... It was likewise established that when plaintiff learned that his checks were not honored by the drawee Bank, his wounded feelings and the mental anguish suffered by him caused his blood pressure to rise beyond normal limits, thereby necessitating medical attendance for an extended period."

The trial court awarded attorney's fees in the amount of P10,000. This was reduced by the Court of Appeals to only P1,000. Considering the nature and extent of the services rendered by the petitioner's counsel both in the trial and appellate courts, the amount should be increased to P4,000. This may be done *motu proprio* by this Court under Article 2208 of the Civil Code, which provides that attorney's fees may be recovered in the instances therein enumerated and "in any other case where the Court deems it first and equitable that attorney's fees... should be re-covered," provided the amount thereof be reasonable in all cases.

We do not entertain the first and fourth errors assigned by the petitioner. Neither of them was raised and ruled upon as reasons for the allowance of his petition for review, as required by Section 2 of Rule 45. Besides, the first error involves a question of fact and calls for a review of the evidence and a reappraisal of its probative value - a task not within the appellate jurisdiction of this Court in this case. And with respect to the fourth error, while there was gross negligence on the part of the respondent, the record shows, as hereinbefore observed, that it tried to rectify its error soon after the same was discovered, although not in time to prevent the damage to the petitioner.

Wherefore, the judgment of the Court of Appeals is modified by awarding temperate damages to the petitioner in the sum of P5,000 and increasing the attorney's fees to P4,000; and is affirmed in all other respects. Costs against respondent.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., on leave.

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[1] In this case the plaintiff, whose check was wrongfully dishonored by the bank, was not required to prove special damages in order to recover substantial damages since, the court observed, such damages would naturally follow the dishonor of a check by a bank, although they were probably not susceptible of independent distinct proof. The plaintiff was awarded \$200 as temperate damages.

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