

**JOHNNY T. CHAN, PLAINTIFF-APPELLANT, VS. EQUITABLE PCI BANK
AND JOSEPH ROSTUM B. MOYA, DEFENDANTS/THIRD PARTY
PLAINTIFFS-APPELLANTS, JOSIELENE CHAN, CHAN SAU MIN AND
SUSAN LARA,...**

Ponente: CASTILLO, M., J.

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CASTILLO, M., J.:

Before this Court are two separate appeals from the October 8, 2012 Order[1] of the Regional Trial Court of Makati City, Branch 148, ordering the defendants/third party plaintiffs-appellants to pay plaintiff-appellant nominal damages in the amount of P100,000.00 and dismissing the defendants/third party plaintiffs-appellants' third party complaint against the third party defendants-appellees.

The facts, as culled from the voluminous records of the case, are as follows:

On June 30, 2005, plaintiff-appellant Johnny T. Chan filed a Complaint for Damages[2] against defendants/third party plaintiffs-appellants Equitable PCI Bank[3] and Joseph Rostum B. Moya before the Regional Trial Court of Makati City, Branch 148, docketed as Civil Case No. 05-590.

The complaint alleged that on March 28, 1988, plaintiff and his wife, third party defendant-appellee Josielene Chan, entered into a contract of Lease of Safe Deposit Box[4] (SDB No. M-126, hereinafter referred to as SDB No. 126) with the defendant bank's Ortigas Branch located at G/F Strata 100, Emerald Avenue, Pasig City. The lease contract pertinently provided that “[t]he authorization to another person or persons to open the BOX shall be evidenced by a power of attorney signed by all the RENTERS and duly notarized, a copy of which shall be left with the BANK.” Defendant bank then gave the plaintiff two (2) keys for him and his wife to access the rented SDB No. 126. Plaintiff averred that in the course of leasing SDB No. 126, he and his wife had deposited therein for safekeeping their treasured possessions, including jewelry and plaintiff's personal collection of expensive watches, with an aggregate value of P8,463,370.00.

On October 21, 2004, the defendant bank, through its Branch Manager, defendant Joseph Rostum Moya, without the plaintiff's and/or his wife's knowledge, consent or authorization, forcibly opened and/or allowed the forcible opening of SDB No. 126. The contents of the safety deposit box were taken out. It was only sometime in January 2005 that plaintiff found out about the forced opening of the box. The latter then demanded explanation from the defendant Branch Manager through a letter dated February 4, 2005.[5] In a letter dated February 14, 2005,[6] the defendant Branch Manager admitted the forced opening and alleged that the same was requested by Chan Sau Min, plaintiff's mother-in-law. The plaintiff stated that he or his wife never authorized his mother-in-law or anyone to open SDB No. 126, nor did they issue any power of attorney authorizing anyone to forcibly open the said box. In fact, up to the filing of the complaint, plaintiff was in possession of the keys to SDB No. 126.

The plaintiff, in a letter dated March 3, 2005,[7] demanded from the defendants the restoration of SDB No. 126 and the return of the valuables therein. The defendants, however, continuously failed to comply with the said demand prompting the plaintiff to file the instant complaint for actual, moral and exemplary damages plus

attorney's fees.

In their Answer with Counterclaim,[8] the defendants merely generally averred that the opening of the subject safety deposit box was completely authorized and made with full consent. Subsequently, the said defendants filed a Third Party Complaint[9] against Chan Sau Min, Susan Lara and Josielene Chan. The third party plaintiffs alleged that in October 2004, third party defendants Chan Sau Min and Susan Lara (Josielene's sister) went to third party plaintiff Equitable Bank (Ortigas Branch) and requested for the opening of SDB No. 126, representing themselves as having been authorized to open the said box by virtue of a Special Power of Attorney[10] executed by plaintiff's wife, third party defendant Josielene Chan. The third party plaintiffs acceded to the request because, aside from the special power of attorney, Chan Sau Min, plaintiff's mother-in-law, had been previously allowed to open SDB No. 126 with the knowledge and consent of the plaintiff. This is evidenced by the SDB Index Card showing the various dates the box was opened as well as the persons who opened it.[11] At any rate, third party plaintiffs stated that should they be adjudged responsible for the opening of the safety deposit box, the third party defendants should indemnify them because they persuaded, induced and cajoled them into opening SDB No. 126.

In their Ex-Abundanti Answer (to Third Party Complaint),[12] third party defendants averred that although SDB No. 126 was registered in the names of the plaintiff and his wife, third party defendant Josielene Chan, the same was only for convenience as the actual and real owner of the contents thereof was third party defendant Chan Sau Min. Indeed, Chan Sau Min was the one who received the keys to SDB No. 126, as shown by the document obtained from the defendant bank.[13] Moreover, it was Chan Sau Min who had been regularly accessing the subject safety deposit box, as shown by the Access Card to SDB No. 126. The third party defendants averred that plaintiff used to live with Chan Sau Min, during which the latter learned to trust the former. Because of her trust in the plaintiff and considering that the latter was the only man in the house who could protect her valuables, Chan Sau Min entrusted to the plaintiff her portable cash box containing the keys to the subject box as well as to another safety deposit box, SDB No. 120, which Chan Sau Min also rented for herself. The portable cash box also contained substantial amounts of cash including US Dollars.

When Chan Sau Min asked the plaintiff to return her portable cash box, the latter refused and denied having in possession of the same. Thus, Chan Sau Min subsequently executed an Affidavit of Loss[14] as regards the loss of the keys to SDB Nos. 126 and 120. And while she was the real owner of the contents of SDB No. 126, she still secured a Special Power of Attorney from her daughter, third party defendant Josielene Chan, authorizing her to access and close the said box. The third party defendants emphasized that the subject safety deposit box was registered in the names of the plaintiff and his wife in an and/or capacity so that Josielene Chan had the authority to solely execute the special power of authority in favor of her mother. Third party defendants thus claimed that the opening of SDB No. 126 was lawful and regular. Finally, third party defendants denied that they cajoled and induced the third party plaintiffs into opening the subject box. The third party plaintiffs voluntarily allowed the opening of the box by Chan Sau Min because: 1) the latter was the real owner of the contents thereof; 2) she was duly armed with a special power of attorney; 3) she had been previously allowed several times to access the subject box; and 4) the plaintiff knew that she had been accessing the box but the latter never protested.

During the trial, plaintiff Johnny Chan testified to support his claim. His testimony was summarized by the trial court as follows:

The plaintiff testified that he and his wife, third party defendant Josielene Chan, rented SDB No. 126 in 1988 from third party plaintiff Equitable Bank-Ortigas Branch. After paying the fees for the box, the two keys were given to them. Thereafter, he and his wife stored therein expensive watches, jewelry, commemorative notes and other valuables and novelty items which he listed in an inventory prepared by him before he placed the said items in the safety deposit box.[15] Plaintiff averred that he acquired the aforementioned valuable items, specially the

expensive watches, in a span of more or less ten (10) years, when he was managing their family-owned Blue Ribbon Hotel in Pasay City in the 1970's to 1980's. Some of them he purchased from his friends, family business' customers and guests. He estimated, based on his memory and pictures of the items (some of which he obtained from the internet, particularly the expensive watches and cigarette cases and holders, the value of which he likewise obtained from the internet), that the total value of the items stored in the safety deposit box amounted to not less than P8,000,000.00.

The plaintiff narrated that on January 24, 2005, he went to defendant/third party plaintiff Equitable Bank- Ortigas Branch to pay the rental fee for SDB No. 126 but he was informed by defendant/third party plaintiff Joseph Moya that the box was forcibly opened on October 21, 2004 upon the request of third party defendants Chan Sau Min and Susan Lara. The plaintiff then sent a letter to the defendants/third party plaintiffs and demanded for a written explanation about the forced opening of SDB No. 126. In a letter dated February 14, 2005, defendant/third party plaintiff Moya stated his justifications for allowing the opening of SDB No. 126. Plaintiff then sent a demand letter dated March 03, 2005 to the defendants/third party plaintiffs demanding the restoration and/or replacement of the lost items in his safety deposit box but the latter failed to heed his demands, prompting him to file the instant complaint for damages.[16]

On the other hand, defendant/third party plaintiff Joseph Rostum Moya and Mayette Canillas testified for the defendants/third party plaintiffs. Their testimonies were summarized by the trial court as follows:

Joseph Rostum B. Moya testified that he was the Branch Manager of defendant/third party plaintiff bank from 2001 to August 06, 2008. Plaintiff Chan and third party defendant Josielene Chan were the renters of SDB No. 126. The witness averred that he allowed the opening of SDB No. 126 on October 21, 2004 upon the request of third party defendants Chan Sau Min and Susan Lara because the keys to the said safety deposit were allegedly lost as shown by the Affidavit of Loss executed by Chan Sau Min. Besides, he knew that third party defendants Chan Sau Min and Susan Lara were the plaintiff's mother-in-law and sister-in-law, respectively. The witness also considered the facts that a Special Power of Attorney was executed by third party defendant Josielene Chan, one of the renters of SDB No. 126, in favor of Chan Sau Min, and that the latter, based on the bank records, was the recipient of the two keys to the aforesaid safety deposit box.

The witness also noted that the access card for SDB No. 126 indicated that third party defendant Chan Sau Min first accessed the said safety deposit box and then followed by third party defendant Josielene Chan. In those instances, plaintiff Johnny Chan never protested nor filed any case regarding the prior and regular access by third party defendant Chan Sau Min to SDB No. 126. Thus, considering that the access card/index card of SDB No. 126 showed that third party defendant Chan Sau Min had been previously accessing SDB No. 126, he allowed the forcible opening of the said safety deposit box for humanitarian reasons because third party defendant Chau San Min was then very old and had a fragile health.[17]

Mayette Canillas testified that she accompanied third party defendants Chan Sau Min and Susan Lara and the one (sent by the bank's head office) who would forcibly open the safety deposit box into the safety deposit box room, after which she returned to her counter in the New Accounts Section. She further testified that she saw third party defendants Chan Sau Min and Susan Lara as they were leaving the bank and that Ms. Lara was only carrying a small handbag. She likewise testified that the subject safety deposit box in her estimate, had a dimension of 5x5x24 (inches). She stated that in her own personal observation, twenty six watches would not fit in the said box.[18]

For their part, third party defendants presented as witnesses Josielene Chan, Susan Lara, Manuelito Caloloy and Efren V. Flores. Their respective testimonies were summarized by the trial court as follows:

Josielene Chan testified that she and her husband, plaintiff Chan, leased SDB No. 126 in an “and/or” capacity. She averred that the said safety deposit box was leased and registered in her and husband's names only for the convenience and benefit of third party defendant Chan Sau Min, who was then in her late 60's. She paid for the rent of SDB No. 126 and the only keys to SDB No. 126 were issued to and received by third party defendant Chan Sau Min. The witness likewise stated that most of the items stored in SDB No. 126 belonged to third party defendant Chan Sau Min, consisting of the latter's jewelry, precious stones and other items, as well as her own (the witness) jewelry and personal items. She stressed that the safety deposit box never contained the expensive watches, commemorative items, lighters, gold cigarette case and holder claimed by plaintiff Chan.

Josielene Chan also identified the signatures appearing in the index card of SDB No. 126 as those of her mother, Chan Sau Min, and her husband, Johnny Chan, whose signatures she was familiar with. As shown in the said index card, it was third party defendant Chan Sau Min who first accessed SDB No. 126 on February 4, 1993. The witness herself followed her mother, accessing the safety deposit box twice. After the witness, the next access was made by Chan Sau Min again, followed by plaintiff Chan himself, who accessed SDB No. 126 on March 21, 1997. Thereafter, only third party defendant Chan Sau Min accessed the safety deposit box, doing it eleven more times until it was closed in October 2004. The witness also testified that when she and her husband were still living with her mother, plaintiff was able to gain the trust and confidence of Chan Sau Min. Thus, the latter entrusted to plaintiff her portable cash box containing substantial amounts of cash, jewelry and the keys to SDB No. 126. When Chan Sau Min demanded the return of the portable cash box, however, the plaintiff denied having received the same. Because of her mother's fear that plaintiff might open SDB Nos. 126 and 120 without her knowledge and consent and empty their contents, and considering that she was then detained at Camp Karingal based on false charges, the witness executed a Special Power of Attorney in favor of her mother authorizing the latter to open and close SDB No. 126. Chan Sau Min and Susan Lara then submitted the special power of attorney as well as the affidavit of loss of the keys (executed by Chan Sau Min) to the defendants/third party plaintiffs for the forcible opening of SDB No. 126. After the opening of SDB No. 126, all its contents, together with the contents of SDB No. 120, were merely transferred to a larger safety deposit box, SDB No. 77.[19]

Susan Lara corroborated the testimony of her sister, Josielene Chan. She likewise testified that she was the one who accompanied her mother, Chan Sau Min, to the third party plaintiff bank to act as her interpreter in requesting for the forced opening of SDB No. 126 as well as SDB No. 120. She echoed her sister's testimony that Chan Sau Min requested the forced opening of the safety deposit boxes because the plaintiff denied having in his possession the portable cash box of their mother containing the keys to the said safety deposit boxes, and that the latter feared that the plaintiff might open the safety deposit boxes and empty their contents without their mother's consent.[20]

Manuelito Caloloy testified that he was the driver of third party defendant Chan Sau Min from February 1997 until October 2004. During his employment, he drove the latter several times in going to defendant/third party plaintiff Equitable Bank (Ortigas Branch) and that she was regularly accompanied either by plaintiff Chan, third party defendant Josielene Lara or Susan Lara to open her safety deposit boxes. He likewise averred that on one occasion, he was instructed by Chan Sau Min to drive her to plaintiff Chan to get her portable cash box taken by the latter.[21]

Finally, Efren V. Flores, a Document Examiner of the National Bureau of Investigation, essentially testified on the authenticity of the typewritten entry number “M-126” on the right corner of the Index Card for the subject safety deposit box. He stated that after various lighting processes and stereoscopic microscope, he concluded that M-126 was not altered. With respect, however, to the other side of the index card containing another typewritten entry of M-126, the same was partially torn so that it could not be totally deciphered.[22]

Meanwhile, the records show that on October 20, 2006, the trial court, upon motion of the defendants/third party plaintiffs, issued a Joint Order[23] placing another safety deposit box, SDB No. 77, under custodia legis. The said safety deposit box was where the contents of SDB No. 126 were allegedly transferred right after its forcible opening and closure. On June 26, 2008, the trial court issued an Order[24] allowing the opening of SDB No. 77 by the sheriff in the presence of all the parties. SDB No. 77 was eventually opened on December 9, 2008 for which the sheriff issued a Report[25] as regards its contents.

On January 19, 2011, the trial court, through Presiding Judge Oscar B. Pimentel, rendered an Amended Decision,[26] the dispositive portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendants/third party plaintiffs and against the plaintiff Johnny Chan. Thus:

- The Complaint for damages filed by plaintiff Johnny Chan against herein defendants/third party plaintiffs Equitable PCI Bank and Joseph Rostum Moya is hereby DISMISSED.

- In view of the foregoing, the third party Complaint of herein defendants/third party plaintiffs Equitable PCI Bank (Ortigas Branch) and Joseph Rostum Moya against third party defendants Chan Sau Min, Susan Lara and Josielene Chan is likewise hereby DISMISSED. With respect to the Counterclaim of herein third party defendants against herein defendants/third party plaintiffs, the same is likewise DISMISSED for lack of merit,

- Plaintiff Johnny Chan to pay herein defendants/third party plaintiffs and third party defendants attorney's fees in the amount of P100,000.00 each.

- Plaintiff to pay the costs of suit for both defendants/third party plaintiffs and third party defendants.

SO ORDERED.”

In ruling against the plaintiff, the trial court ruled that the opening of SDB No. 126 by the former and third party defendant Josielene Chan was in an “and/or” capacity, which meant that either of them could access the safety deposit box. It also meant that either of them could authorize someone to access the safety deposit box in his/her behalf. The trial court also noted the facts that the keys to the deposit box were received by third party defendant Chan Sau Min and that it was the latter who had been regularly accessing the same. Finally, the trial court also ruled that the plaintiff failed to prove not only his ownership of the alleged expensive jewelry and watches but also their very existence. The trial court thus concluded that the opening of the safety deposit box by the third party plaintiffs and third party defendants was valid and regular.

Aggrieved by the above decision, plaintiff-appellant filed a motion for reconsideration[27] thereof. On January 4, 2012, the trial court, through Acting Presiding Ma. Rita A. Bascos Sarabia,[28] rendered a Second Amended Decision[29] granting the motion for reconsideration. The dispositive portion of the said decision reads:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff JOHNNY CHAN and against defendants EQUITABLE PCI BANK, (NOW BDO), AND JOSEPH ROSTUM MOYA AND THIRD PARTY DEFENDANTS CHAN SAU MIN, SUSAN LARA AND JOSIELENE CHAN. Defendants Equitable PCI Bank, (now BDO), and Joseph Rostum Moya and third party defendants Chan Sau Min, Susan Lara and Josielene Chan are directed to pay plaintiff JOHNNY CHAN in accordance with the following:

1. Defendants Equitable PCI Bank (now BDO), Joseph Rostum Moya, and third party defendants Josielene Chan, Chan Sau Min and Susan Lara are jointly and severally liable to pay temperate damages amounting to PhP 1,000,000.00;

2. Defendants Equitable PCI Bank (Now BDO), and Joseph Rostum Moya and third defendants Chan Sau Min, Susan Lara and Josielene Chan are jointly and severally liable to pay the amount of PhP 200,000.00

representing moral damages;

3. Third party defendants Chan Sau Min, Susan Lara and Josielene Chan are held liable, jointly and severally, for exemplary damages fixed at PhP 200,000.00;

4. Defendants Equitable PCI Bank (now BDO), and Joseph Rostum Moya and third party defendants Chan Sau Min, Susan Lara and Josielene Chan are held jointly and severally liable to pay attorney's fees in the amount of PhP 200,000.00.

5. Cost of suit.

SO ORDERED.”

In granting the motion for reconsideration, the trial court ratiocinated that the third party plaintiffs were guilty of breach of contract when they allowed the forcible opening of SDB No. 126 by persons other than the registered renters thereof. While the lease contract was in an “and/or” capacity and that co-renter Josielene Chan executed a special power of attorney authorizing her mother, Chan Sau Min, to open and close the safety deposit box, the same violated the contract as it was not signed by plaintiff Chan. The trial court took note of the provision in the lease contract stating that “[t]he authorization to another person or persons to open the BOX shall be evidenced by a power of attorney signed by all the RENTERS...” The trial court also adjudged the third party defendants jointly and solidarily liable with the third party plaintiffs as it was through their representation and inducement that the latter allowed the forcible opening of SDB No. 126. The trial court, however, awarded only temperate damages instead of the actual damages prayed for because aside from the fact that the deposited items were conjugal, plaintiff failed to prove the actual value of the alleged lost items.

Plaintiff-appellant's victory, however, was short-lived. Upon separate motions for reconsideration by the third party plaintiffs and third party defendants, the trial court, this time through Presiding Judge Andres Bartolome Soriano, issued the assailed October 8, 2012 Order, the dispositive portion of which reads:

“WHEREFORE, the Motion for Reconsideration of defendants/third party plaintiffs is PARTLY GRANTED.

Defendants/Third Party Plaintiffs Equitable PCI Bank and Rostum Moya should pay Nominal Damages instead of Temperate Damages to the plaintiff in the mitigated amount of Php100,000.00.

The award of Moral, Exemplary, Attorney's Fees and Cost of suit are DELETED.

On the other hand, the Motion for Reconsideration of the third party defendants Chan Sau Min, Susan Lara and Josielene Chan is GRANTED. The third party complaint filed against them by defendants/third party plaintiffs is DISMISSED. Their counterclaim against defendants/third party plaintiffs is likewise dismissed for lack of merit.

However, the award of attorney's fees and cost of suit in their favor in the Amended Decision dated January 19, 2011 is DELETED.

SO ORDERED.”

This time, the trial court held that while third party plaintiffs were guilty of breach of contract for allowing the forced opening of SDB No. 126 despite the fact that the plaintiff did not sign the special power of attorney executed by his wife, the plaintiff was guilty of contributory negligence. Despite his knowledge that Chan Sau Min had previously accessed the subject safety deposit box several times, plaintiff never made any protest. More importantly, the trial court ruled that the plaintiff failed to prove by clear and convincing evidence the actual damages or pecuniary loss he suffered due to the opening of the safety deposit box. Thus, the trial court deemed it reasonable to award nominal damages only in the amount of P100,000.00, to be paid by the third party plaintiffs

by reason of their breach of the contract of lease of SDB No. 126.

Both feeling aggrieved by the above order, plaintiff-appellant and defendants/third party plaintiffs-appellants now come to this Court for relief via their separate appeals.

In their Appellants' Brief,[30] defendants/third party plaintiffs-appellants raise the following assignment of errors:

- THE TRIAL COURT ERRED IN FINDING THAT DEFENDANTS/THIRD PARTY PLAINTIFFS-APPELLANTS BDO AND JOSEPH ROSTUM MOYA ARE LIABLE TO PLAINTIFF JOHNNY CHAN FOR NOMINAL DAMAGES IN THE AMOUNT OF P100,000.00.
- THE TRIAL COURT ERRED IN DISMISSING DEFENDANTS/THIRD PARTY PLAINTIFFS-APPELLANTS' THIRD PARTY COMPLAINT AGAINST THIRD PARTY DEFENDANTS-APPELLEES CHAN SAU MIN, SUSAN LARA AND JOSIELENE CHAN.

Defendants/third party plaintiffs-appellants essentially argue that there was no violation of plaintiff-appellant's right warranting the award of nominal damages because they did not breach the contract relating to the safety deposit box. They contend that under the principle of implied agency or agency by estoppel, plaintiff-appellant is deemed to have authorized third party defendant Chan Sau Min's opening and closing of the safety deposit box as the former, despite his knowledge, never protested the previous repeated access made by the latter to the safety deposit box. Defendants/third party plaintiffs-appellants likewise contend that if their act of allowing the third party defendants-appellees to open and close the safety deposit box amounted to breach of contract, the latter should be made liable for whatever damage, if any, suffered by the plaintiff-appellant because it was through the inducement and representation of the third party defendants-appellees that defendants/third party plaintiffs-appellants allowed the forcible opening of the safety deposit box.

On the other hand, plaintiff-appellant Johnny Chan, in his Appellant's Brief,[31] finds error in the trial court's deletion of the awards of temperate, moral and exemplary damages, as well as attorney's fees. He contends that the defendants/third party plaintiffs-appellants were guilty of breach of contract when they allowed the forcible opening of the subject safety deposit box without his consent. Thus, he is entitled to temperate damages because, while he failed to prove with certainty the actual damages he suffered, it was sufficiently established that he suffered some pecuniary loss. He also suffered physical and mental suffering warranting the award of moral damages. Finally, because of the wanton manner that the defendants/third party plaintiffs-appellants violated his right by reason of which he was constrained to secure the services of an attorney to enforce his rights, he is entitled to exemplary damages and attorney's fees.

We find no merit in both appeals, although We reduce the award of nominal damages imposed against the defendants/third party plaintiffs-appellants.

The threshold issue to be resolved in this case is whether or not the defendants/third party plaintiffs-appellants committed a breach of contract when they allowed the third party defendants-appellees to forcibly open SDB No. 126 despite the fact that the special power of attorney presented by the latter was not signed by all the renters of the subject safety deposit box. We answer in the affirmative.

The pertinent portion of the Lease of Safe Deposit Box for SDB No. 126 reads:

“5. Access to the BOX may be obtained in the following manner:

xxx xxx xxx

(b) For two or more individuals jointly. -- Access to the BOX, including the right to control its contents, surrender the BOX and execute a release in favor of the BANK shall be had by any of the RENTERS and to

such person or persons as they may designate by proper document, or the legal representative of any of the RENTERS in the event of death, insolvency or legal disability of any of them. The authorization to another person or persons to open the BOX shall be evidenced by a power of attorney signed by all the RENTERS and duly notarized, a copy of which shall be left with the BANK.”

Admittedly in this case, the special power of attorney executed by third party defendant-appellee Josielene Chan in favor of her mother, third party defendant-appellee Chan Sau Min, was not signed by her husband and co-renter, plaintiff-appellant Johnny Chan. This is clearly in violation of the above provision of the contract of lease of safety deposit box.

That the safety deposit box was rented in an “and/or” capacity does not dispense with the requirement that when a third person is allowed to access the safety deposit box, it should be with the authorization of all the renters. In other words, while any of the co-renters could personally access the safety deposit box any time, he/she could not just authorize any third person to access the same without the consent of the other co-renter. Indeed, it is not hard to discern the reason for this requirement. A co-renter cannot just allow any third person to access personal – in this case, even intimate -- items or belongings of the co-renters without the consent of the other co-renter, in the same manner that a co-renter of a room cannot just allow any person inside a shared room without the consent of his/her roommate.

Defendants/third party plaintiffs-appellants contend that plaintiff-appellant is deemed to have duly authorized Chan Sau Min to forcibly open the subject safety deposit box because Chan Sau Min had previously accessed the said box several times with the knowledge of plaintiff-appellant but the latter never protested. Chan Sau Min is thus deemed an implied agent of plaintiff-appellant, or that the latter is now estopped from denying that the former was his agent, pursuant to Article 1869 of the Civil Code on implied agency. We are not persuaded.

Article 1869 of the Civil Code provides:

“ART. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.”

Article 1869 of the Civil Code states that implied agency is derived from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority. Implied agency, being an actual agency, is a fact to be proved by deductions or inferences from other facts.[32] “The law makes no presumption of agency and proving its existence, nature and extent is incumbent upon the person alleging it. Whether or not an agency has been created is a question to be determined by the fact that one represents and is acting for another.”[33]

In this case, defendants/third party plaintiffs-appellants failed to prove by convincing evidence the existence of an implied agency. In the first place, one basic flaw in the said appellants' refuge in implied agency is that there is not a single evidence to prove that Chan Sau Min acted in behalf of, or represented herself as an agent of plaintiff-appellant Johnny Chan. The evidence of the defendants/third party plaintiffs-appellants mainly showed that they allowed the forcible opening of the safety deposit box by Chan Sau Min out of compassion for the latter who was then very fragile, and on the strength of the special power of attorney executed solely by Josielene Chan. On the other hand, third party defendants-appellees repeatedly claimed that Chan Sau Min was the real owner of the items deposited in the subject box. Apparently, defendants/third party plaintiffs-appellants were also prompted by this claim into allowing the forcible opening of the box when they stated in their third party complaint that “talks are ripe that the real owner of the contents of the subject SDB is third-party-defendant Chan Sau Min and she merely entrusted the same to plaintiff Johnny Chan and his wife, Josielene Chan.”[34]

More importantly, that Chan Sau Min used to access the safety deposit box with the knowledge of plaintiff-appellant does not necessarily mean that the latter allowed the forcible opening of the said box, or that Chan Sau Min had the authority to forcibly open and close the said box. Indeed, the fact that Chan Sau Min no longer had the key but still wanted to forcibly open and close the safety deposit should have put the defendants/third party plaintiffs-appellants on guard and question Chan Sau Min's alleged implied authority. In other words, assuming that the previous access to the safety deposit box by Chan Sau Min created an implied agency between her and plaintiff-appellant, the fact that the latter no longer had the key but still wanted to forcibly open the safety deposit box should have prompted the defendants/third party plaintiffs-appellants to believe that such agency had been effectively revoked. If at all, the said previous access to the safety deposit box by Chan Sau Min should only serve to mitigate the defendants/third party plaintiffs-appellants' liability for nominal damages. We shall dwell on this further later.

Nevertheless, We reject plaintiff-appellant's claim for temperate damages.

Preliminarily, as conceded by plaintiff-appellant himself, he is not entitled to actual or compensatory damages as he failed to substantiate his claim for such damages. Article 2199 of the Civil Code provides that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."

As regards temperate damages, Article 2224 of the Civil Code provides that "[t]emperate damages, which is 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 certainty."

In this case, not only did plaintiff-appellant fail to prove with certainty the amount of the loss he allegedly suffered, he failed to prove that he suffered some pecuniary loss in the first place. At this juncture, We defer to the following findings of the trial court, both in its January 19, 2011 Amended Decision and its October 8, 2012 Order:

"With respect to the claim of Plaintiff Chan for actual damages due to the alleged missing valuable items allegedly stored by said plaintiff in safety deposit box no. 126, the Court is of the view that the same was also not preponderantly established by plaintiff more particularly the expensive watches and the cigarette holders and cases and lighters he claimed.

Plaintiff, during the cross-examination, admitted that he does not have any evidence or document to show or prove his ownership or the existence and genuineness of said watches other than his own inventory list which he unilaterally prepared. As a matter of fact he cannot even present a single picture of the aforesaid expensive watches. What he presented in Court are pictures of the said watches and cigarette holders and lighters which he downloaded from the internet with their corresponding value or amount. An ordinary man can just download such things in the internet and thus, deserves no merit. The plaintiff was not able to present even a single receipt of document evidencing his possession or ownership of the aforesaid watches considering the value and rarity of those.

The inventory list of the foregoing valuable items presented by the defendant in Court containing the respective value of the said valuables is merely self serving and hearsay considering that it was prepared by the plaintiff himself, was not backed up by an evidence to prove the same nor was there any witness presented by the plaintiff to corroborate his testimony.[35]

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It is clear that defendants/third party plaintiffs breach (sic) their contract and violated a legal right of the plaintiff when they allowed the forced opening of the safety deposit box without the consent or authority of the

former, and likewise allowed previous access of the said box by third party plaintiff Chan Sau Min. But no sufficient evidence was presented to show that there was pecuniary loss or substantial injury suffered by the plaintiff. It must be remembered that plaintiff merely presented an inventory of the list of alleged precious items in the safety deposit box but he was not able to show that he was indeed the owner of such or that the items alleged really existed. The pictures and prices he presented in Court of the said items were mere picture he downloaded in (sic) the internet with their corresponding prices, hence the Court could not give credence to the same. What is established only is that there was a breach of a legal right by the plaintiff which must be vindicated hence the award of nominal damages.”[36]

From the foregoing, not only did plaintiff-appellant clearly fail to prove the existence of the expensive items allegedly deposited in SDB No. 126. He also failed to prove his ownership thereof. Moreover, the third party defendants-appellees had categorically asserted that the real owner of the contents of the subject safety deposit box was Chan Sau Min. Finally, when SDB No. 77 was opened in court in the presence of the parties, there was no showing that the expensive items allegedly owned by plaintiff-appellant were among its contents. It must be pointed out that the third party defendants-appellees testified that after its closure, the contents of SDB No. 126 were transferred to SDB No. 77. On the other hand, Ms. Mayette Canillas, an employee of the defendant/third party plaintiff bank, testified that when third party defendants Chan Sau Min and Susan Lara were leaving the bank after the closure of SDB No. 126, Ms. Lara was only carrying a small handbag (presumably, Chan Sau Min was not carrying anything as she was then very old and frail). Thus, the said third party defendants could not have taken the alleged items deposited by plaintiff-appellant. Certainly, the bank could not have taken the same as it apparently did not know the contents of the rented safety deposit box. Clearly, therefore, plaintiff-appellant failed to prove the existence of the alleged lost expensive items.

However, as correctly pointed out by the trial court in its October 8, 2012 Order, the defendants/third party plaintiffs-appellants are liable to the plaintiff-appellant for their breach of contract. Article 2221 of the Civil Code provides that “[N]ominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.”

Nevertheless, We deem it reasonable to reduce the amount of P100,000.00 awarded by the trial court to P20,000.00. To stress, nominal damages are for the purpose of vindicating a right violated and not for indemnifying the plaintiff. "Nominal damages are 'recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.'"[37] Nominal damages may be awarded "to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered." [38]

In this case, We find the amount of P100,000.00, too high. This is particularly so since as correctly pointed out by the trial court, the defendants/third party plaintiffs-appellants' liability should be mitigated by plaintiff-appellant's contributory act of previously allowing Chan Sau Min to repeatedly access SDB No. 126 without any protest despite his knowledge thereof. Indeed, it was partly due to these previous accesses that the defendants/third party plaintiffs-appellants allowed Chan Sau Min to forcibly open the said safety deposit box. Under the circumstances, therefore, We deem that the amount of P20,000.00 as reasonable nominal damages.

Plaintiff-appellant is not also entitled to moral and exemplary damages. In the first place, plaintiff-appellant failed to prove his claim of mental anguish, sleepless nights, serious anxiety, etc. More importantly, Article 2220 of the Civil Code provides that moral damages may be awarded in breaches of contract where the defendant acted fraudulently or in bad faith. Moreover, case law has it that moral damages may be awarded for breach of contract where the breach thereof by the obligor is wanton, reckless, malicious or in bad faith, oppressive or abusive, or

where the obligor is guilty of gross negligence amounting to bad faith.[39]

In this case, it cannot be said that the defendants/third party plaintiffs-appellants acted maliciously or in bad faith when they allowed the forcible opening of the subject safety deposit box. As pointed out above, they allowed the forcible opening of the said box on the strength of the special power of attorney executed by Josielene Chan, one of the renters, in favor of Chan Sau Min, in addition to the fact that Chan Sau Min had previously repeatedly accessed the safety deposit box with the knowledge of the plaintiff-appellant and without any protest from the latter. Clearly, therefore, while defendants/third party plaintiffs-appellants may have acted erroneously or negligently as discussed above, they did not act maliciously.

Corollary to the foregoing, plaintiff-appellant is not entitled to exemplary damages. Article 2232 of the Civil Code provides that in contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Furthermore, this specie of damages is allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first established his clear right to moral damages.[40]

Finally, plaintiff-appellant is not entitled to attorney's fees. A winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith. Trial courts must be reminded that attorney's fees may not be awarded to a party simply because the judgment is favorable to him, for it may amount to imposing a premium on the right to redress grievances in court.[41] "The right to litigate is of great consequence that a penalty should not be charged on those who may exercise it mistakenly unless, of course, such party acted in bad faith." [42] In this case, We cannot award attorney's fees because as repeatedly stated above, defendants/third party plaintiffs-appellants did not act maliciously or in bad faith.

Anent defendants/third party plaintiffs-appellants' claim for reimbursement from the third party defendants-appellees for any liability that may be adjudged against them, We likewise deny the same.

It must be pointed out that the defendants/third party plaintiffs-appellants' third party complaint was essentially predicated on their possible liability for the alleged loss of plaintiff-appellant's expensive items deposited in the safety deposit box by reason of the forcible opening thereof by the third party defendants-appellees. As held above, however, plaintiff-appellant was not awarded any actual or temperate damages because he failed to prove any pecuniary loss by reason of the forcible opening of the safety deposit box. In this regard, the third party complaint should be dismissed.

In the instant appeal, however, defendants/third party plaintiffs-appellants are claiming reimbursement for the nominal damages imposed against them by the trial court. They argue that their breach of the contract of lease of safety deposit box was due to the representation, persuasion and inducement of the third party defendants-appellees. They thus base their claim for reimbursement on contractual interference under Article 1314 of the Civil Code. We are not persuaded.

Article 1314 of the Civil provides:

"Any third person who induces another to violate his contract shall be liable for damages to the other contracting party."

The elements of tortuous interference with contractual relations are: (a) existence of a valid contract; (b) knowledge on the part of the third person of the existence of the contract and (c) interference of the third person without legal justification or excuse.[43] "To sustain a case for tortuous interference, the defendant must have acted with malice or must have been driven by purely impious reasons to injure the plaintiff. In other words, his

act of interference cannot be justified.”[44]

In the above-cited case of *Lagon v. Court of Appeals*, the Supreme Court held:

“Assuming *ex gratia argumenti* that petitioner knew of the contract, such knowledge alone was not sufficient to make him liable for tortuous interference. Which brings us to the third element. According to our ruling in *So Ping Bun*, petitioner may be held liable only when there was no legal justification or excuse for his action or when his conduct was stirred by a wrongful motive. To sustain a case for tortuous interference, the defendant must have acted with malice or must have been driven by purely impious reasons to injure the plaintiff. In other words, his act of interference cannot be justified.

Furthermore, the records do not support the allegation of private respondent that petitioner induced the heirs of Bai Tonina Sepi to sell the property to him. The word “induce” refers to situations where a person causes another to choose one course of conduct by persuasion or intimidation. The records show that the decision of the heirs of the late Bai Tonina Sepi to sell the property was completely of their own volition and that petitioner did absolutely nothing to influence their judgment. Private respondent himself did not proffer any evidence to support his claim. In short, even assuming that private respondent was able to prove the renewal of his lease contract with Bai Tonina Sepi, the fact was that he was unable to prove malice or bad faith on the part of petitioner in purchasing the property. Therefore, the claim of tortuous interference was never established.

xxx xxx xxx

The foregoing disquisition applies squarely to the case at bar. In our view, petitioner's purchase of the subject property was merely an advancement of his financial or economic interests, absent any proof that he was enthused by improper motives. In the very early case of *Gilchrist v. Cuddy* [29 Phil 542 (1915)] the Court declared that a person is not a malicious interferer if his conduct is impelled by a proper business interest. In other words, a financial or profit motivation will not necessarily make a person an officious interferer liable for damages as long as there is no malice or bad faith involved.[45] (Emphasis Ours.)

The above disquisitions are clearly applicable to the instant case. In the first place, there is no showing that third party defendants-appellees induced or cajoled the defendants/third party plaintiffs-appellants to forcibly open the subject safety deposit box. The act of the latter in allowing the forcible opening of the said box was of their own volition, and the same was based on the presentation of a special power of attorney and the on the fact that Chan Sau Min had previously accessed the safety deposit box. There is simply no evidence to prove that third party defendants-appellees induced or cajoled the defendants/third party plaintiffs-appellants. More importantly, there is no showing that third party defendants-appellees were motivated by bad faith or malice in requesting for the forcible opening of the subject safety deposit box. To stress, they requested the forcible opening and closure of the said box because of their categorical assertion that it was Chan Sau Min who really owned the contents thereof and because of their belief that the special power of attorney executed by Josielene Chan was already sufficient. Clearly, therefore, third party defendants-appellees cannot be said to have committed tortuous contractual interference.

One last thing to be determined is the propriety of awarding costs of suit. It must be pointed out that the trial court, in its assailed October 8, 2012 Order, deleted such award made in both the earlier Amended Decision dated January 19, 2011 (against the plaintiff-appellant) and Second Amended Decision dated January 4, 2012 (against the defendants/third party plaintiffs-appellants and third party defendants-appellees).

We agree with the trial court. We adopt herein the same policy applied by the Supreme Court with respect to the award of attorney's fees. A winning party may be entitled to expenses of litigation only where he, by reason of plaintiff's clearly unjustifiable claims or defendant's unreasonable refusal to his demands, was compelled to incur said expenditures.[46] “An award of attorney's fees and litigation expenses is proper when the court deems it just

and equitable that attorney's fees and litigation expenses should be recovered, and when the civil action or proceeding is clearly unfounded and where defendant acted in gross and evident bad faith.”[47]

In this case, as pointed out above, none of the parties acted unjustifiably, much less in bad faith or malice. Indeed, each party is not blameless and/or has committed contributory act for his/her/its own injury. In the case of plaintiff-appellant, he never protested Chan Sau Min's previous access to the safety deposit box, causing the defendants/third party plaintiffs-appellants to believe (albeit erroneously) that the former impliedly authorized the latter to forcibly open the said box. As regards the defendants/third party plaintiffs-appellants, they are guilty of breach of contract for allowing the forcible opening of the safety deposit box despite the third party defendants-appellees' lack of full and complete authority to do so, although as pointed out above, such breach was mitigated by plaintiff-appellant's contributory act. Finally, with respect to the third party defendants-appellees, although it does not amount to compensable tortuous contractual interference, it was at their instance that the defendants/third party plaintiffs-appellants allowed the forcible opening of the safety deposit box. In view of the foregoing, We deem it wise to hold that each party must bear the injury he/she/it suffered. *Damnum absque injuria*.

WHEREFORE, premises considered, the instant appeals are DENIED. The October 8, 2012 Order of the Regional Trial Court of Makati City, Branch 148, is AFFIRMED with the MODIFICATION that the award of nominal damages in favor of the plaintiff-appellant and against the defendants/third party plaintiffs-appellants is reduced to P20,000.00.

SO ORDERED.

Lazaro-Javier and Galapate-Laguilles, JJ., concur.

[1] Original Records, pp. 2076-2083.

[2] *Id.*, pp. 1-11.

[3] Now BDO Unibank., Inc.

[4] Original Records, pp. 12-13.

[5] *Id.*, pp. 21, 766.

[6] *Id.*, pp. 22, 767.

[7] *Id.*, pp. 23-24, 768-769.

[8] *Id.*, pp. 34-37.

[9] *Id.*, pp. 73-80.

[10] *Id.*, pp. 82, 1128.

[11] *Id.*, pp. 83, 1131, 1607.

[12] *Id.*, pp. 159-173.

[13] *Id.*, pp. 174, 1158.

[14] *Id.*, pp. 176, 1161.

[15] *Id.*, pp. 737-765.

- [16] Pages 3-4 of the RTC Decision dated January 19, 2011.
- [17] *Id.*, pp. 4-5.
- [18] *Id.*, p. 5.
- [19] *Id.*, pp. 6-7.
- [20] *Id.*, p. 7.
- [21] *Ibid.*
- [22] *Id.*, p. 8.
- [23] Original Records, pp. 209-211.
- [24] *Id.*, pp. 831-833.
- [25] *Id.*, pp. 1081-1083.
- [26] The trial court originally issued exactly the same decision but was erroneously dated January 19, 2010 (Original Records, pp. 1832-1845). Thus, the trial court issued the Amended Decision dated January 19, 2011.
- [27] Original Records, pp. 1861-1872.
- [28] Before he could resolve plaintiff-appellant's motion for reconsideration, Presiding Judge Oscar B. Pimentel compulsory retired (Original Records, p. 1874).
- [29] Original Records, pp. 1905-1923.
- [30] Rollo, pp. 113-126.
- [31] *Id.*, pp. 128-142.
- [32] *Yun Kwan Byung v. PAGCOR*, G.R. No. 163553 (December 11, 2009).
- [33] *Ibid.*
- [34] Pages 4-5 of the Third Party Complaint at pp. 76-77 of the Original Records.
- [35] Page 10 of the January 19, 2011 Amended Decision.
- [36] Page 5 of the October 8, 2012 Order.
- [37] *Francisco v. Ferrer, Jr.*, 353 SCRA 261, 267-268 (February 28, 2001).
- [38] *Ibid.*, p. 268.
- [39] *LBC Express, Inc. v. Ado*, 468 SCRA 216, 230 (August 25, 2005).
- [40] *Mahinay v. Velasquez*, 419 SCRA 118, 122 (January 13, 2004).
- [41] *National Power Corporation v. Philipp Brothers Oceanic, Inc.*, 369 SCRA 629, 649 (November 20, 2001).
- [42] *Spouses Provost v. Court of Appeals*, G.R. No. 160406 (June 26, 2006).
- [43] *Lagon v. Court of Appeals*, 453 SCRA 616, 624 (March 18, 2005), citing the case of *So Ping Bun v. Court of Appeals*, 314 SCRA 751 (1999).
- [44] *Id.*, p. 626. Also cited in the case of *Allan C. Go v. Mortimer F. Cordero*, G.R. Nos. 164703 & 164747 (May

4, 2010).

[45] *Id.*, pp. 626-627.

[46] *National Power Corporation v. Philipp Brothers Oceanic, Inc.*, 369 SCRA 629, 649 (November 20, 2001).

[47] *Spouses Provost v. Court of Appeals*, G.R. No. 160406 (June 26, 2006).

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