

OVERSEAS BANK OF MANILA, PETITIONER, VS. COURT OF APPEALS AND NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, RESPONDENTS.

G.R. No. L-45866. April 19, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

From the Court of Appeals -- which rendered judgment in CA?G.R. No. 42948-R entitled "National Waterworks and Sewerage Authority v. the Overseas Bank of Manila"¹ -- the Overseas Bank has come to this Court on certiorari, seeking reversal of said judgment (as well as that Court's Resolution denying its motion for reconsideration). The Appellate Court's decision had affirmed the judgment by default of the Manila Court of First Instance² which, in an action instituted by the National Waterworks and Sewerage Authority (NAWASA), had rendered a verdict against the defendant Overseas Bank as follows:

"WHEREFORE, the Court hereby renders judgment in favor of the plaintiff and against the defendant, as follows:

(a) On the first cause of action, ordering the defendant to pay the plaintiff the amount of P327,257.20 with 4-1/2% per annum thereon from October 8, 1965, until fully paid, plus legal interest on the said principal and interest from the filing of the complaint until the said sums are fully paid;

(b) On the second cause of action, ordering the defendant to pay the plaintiff the sum of P2,945,314.80 with 6-1/2% interest per annum thereon from December 20, 1965, until fully paid, plus legal interest on the said principal and interest from the filing of the complaint until the said sums are fully paid;

(c) On the third cause of action, ordering the defendant to pay the plaintiff attorney's fees in a sum equivalent to 10% of the said two claims;

(d) Costs of suit.

It is ordered that the sum of P212,338.27 which Nawasa received as interest on the two deposits on December 20, 1966, shall be deducted."

The judgment was predicated on factual findings hereunder briefly narrated.

1. In relation to a contract of sale between NAWASA, as vendor, and a certain Bonifacio Regalado, as vendee, and by authority of the former's board of directors, the amount of P327,257.20 was placed on a time deposit with the Overseas Bank by the NAWASA Treasurer for a period of 6 months, maturing on April 6, 1966. The amount corresponded to a payment earlier made by Regalado to the NAWASA, and the time deposit was made so that a refund could quickly be made to Regalado in the event that his contract with the NAWASA be disapproved by the Office of the President.¹

2. A second payment having been made by Regalado in the same sum of P327,257.20 in connection with his

aforesaid contract, another time deposit was made by the NAWASA Treasurer with the Overseas Bank, this time in the amount of P2,945,314.80, representing the balance of the purchase price due from Regalado. The period of this second deposit was fixed at one (1) year, maturing on December 19, 1966.²

3. On April 21, 1966, NAWASA's Acting General Manager wrote to the Overseas Bank advising that (1) as regards the first time deposit of P327,257.20 which had already matured on April 6, NAWASA wished to withdraw it immediately; and (2) with respect to the second time deposit of P2,945,314.80, it intended to withdraw it sixty (60) days thereafter, as authorized by the parties' agreement set forth in the certificate of time deposit. The Overseas Bank having failed to remit to it the sum of P327,257.20, NAWASA wrote two other letters to it, reiterating that request, one letter being dated May 5, 1966, the other, June 20, 1966. But nothing was heard from the Overseas Bank.³ It did however pay to NAWASA, on December 20, 1966, interest on its time deposits, in the aggregate sum of P212,338,27.4

4. After maturity of the second time deposit, NAWASA again sent a letter to the Overseas Bank, dated January 4, 1967, demanding remittance of both time deposits. Having received no response, NAWASA wrote to the Bank once more, giving it five (5) days to remit the deposited sums, and warning that it would seek the intervention of the Central Bank for the protection of its interests. Still no word was received from the banks⁵

5. NAWASA then wrote to the Central Bank Governor about the matter. The latter replied on July 24, 1967 that it was pursuing a suggestion of the Monetary Board for the Overseas Bank to transfer government deposits in its custody (including those of NAWASA) to the Philippine National Bank and/or the Development Bank of the Philippines. Apparently, even the Central Bank was ignored by Overseas Bank. On September 21, 1967, NAWASA informed the Central Bank that it had received no remittance from the Overseas Bank nor did it appear that the latter had transferred the time deposits to the PNB or the DBP. The Central Bank wrote back on November 17, 1967, pointing out that while the matter really had to be resolved by NAWASA and the Overseas Bank according to their contract, it was nonetheless pursuing all available measures to induce the Overseas Bank to remit the time deposits in question or at least transfer them to either the PNB or DBP; the Central Bank also said that it had informed the President of the Philippines of the status of Government deposits in the Overseas Bank.¹

6. One last letter was written by NAWASA to the Overseas Bank, dated January 11, 1968 reiterating its demand for the return of its money. Again the letter went unheeded.

NAWASA thus brought suit to recover its deposits and damages, with the results already mentioned. The Overseas Bank failed to file its answer despite service of summons; it was declared in default; the Court received NAWASA's evidence ex parte and on the basis thereof, thereafter rendered judgment by default. The Overseas Bank made no effort whatever to have the order of default lifted, or to have the judgment by default reconsidered. After being served with notice of the judgment, it simply brought the case up to the Court of Appeals.

The Court of Appeals, in its own judgment dated January 26, 1977, declared the appeal to be without merit and affirmed the decision against Overseas Bank with the sole modification that the words, "plus legal interest" in the dispositive portion thereof was changed to "plus 4-1/2% interest."²

The petitioner bank now asks this Court to reverse the judgment by default of the Court of First Instance and the affirming judgment of the Court of Appeals. Under the circumstances, it is difficult to see how this Court can possibly be persuaded to do so. The circumstances indeed leave the Court with no alternative except to affirm said judgments. This it now hereby does.

The first argument advanced by the Overseas Bank is that as of July 30, 1968, by reason of "punitive action taken

by the Central Bank," it had been prevented from undertaking banking operations "which would have generated funds to pay not only its depositors and creditors but likewise, the interests due on the deposits."³ The argument is palpably without merit. There is in the first place absolutely no evidence of these facts in the record; and this is simply because the petitioner bank had made no effort whatever to set aside the default order against it so that it could present evidence in its behalf before the Trial Court. Moreover, the suspension of operations which took place in August, 1968, could not possibly excuse non-compliance with the obligations in question which matured in 1966. Again, the claim that the Central Bank, by suspending the Overseas Bank's banking operations, had made it impossible for the Overseas Bank to pay its debts, whatever validity might be accorded thereto, or the further claim that it had fallen into a "distressed financial situation," cannot in any sense excuse it from its obligation to the NAWASA, which had nothing whatever to do with the Central Bank's actuations or the events leading to the bank's distressed state.

Also futile is the petitioner's invocation of this Court's decision in G.R. No. L-29352, "Emerito M. Ramos, et al. v. Central Bank," promulgated October 4, 1971 and subsequent resolutions¹ ordering the "rehabilitation, normalization and stabilization of the Overseas Bank of Manila," and allegedly approving the rehabilitation plan and a proposed procedure for the payment of the bank's obligations. Obviously, the failure of the Court of Appeals to apply such a rehabilitation program to the case cannot be error, as the petitioner posits, since the program was approved after the Appellate Court had rendered judgment. Furthermore, that rehabilitation program or procedure of payment does not in any way negate or diminish the indebtedness of the Overseas Bank to the NAWASA incurred in 1966, for conceding full faith and credit to such a prescribed procedure of payment, it constitutes no obstacle to determining the principal and interests of the debts at issue at this time.

As to petitioner's last argument that it should not be made to pay attorney's fees, it suffices to advert to the factual finding by both the Court of Appeals and the Trial Court that the petitioner bank had acted with evident bad faith by deliberately ignoring the many requests for payment by the NAWASA and disdaining to answer any one of them, thus compelling the latter to litigate and incur expenses to protect its interests.² Under the circumstances, the Court of Appeals has deemed it just and equitable that attorney's fees and expenses of litigation should be recovered.³ That determination, and its holding that 10% of the amount of recovery is reasonable, are not attended by any error, and will be and they are hereby sustained.

WHEREFORE, the petition for review on certiorari is DENIED, and the judgment of the Court of Appeals subject thereof is AFFIRMED in toto, as being in accord with the facts and the applicable law.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

1 The ponente was Mr. Justice Magno S. Gatmaitan, with whom concurred Messrs. Justices Sixto A. Domondon and Samuel F. Reyes.

2 Presided over by then Judge Serafin R. Cuevas

1 Rollo, p. 29

2 Id., pp. 29-30

3 Id., p. 30

4 Id., p. 32

5 Id.

1 Id., pp. 31-32

2 Id., pp. 27, 34-35

3 Id., p. 74; Petitioners' Brief, pp. 10-11

1 60 SCRA 287

2 ART. 2208, par. (2), Civil Code

3 Id.

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