

BANK OF THE PHILIPPINE ISLANDS (SUCCESSOR-IN-INTEREST OF COMMERCIAL BANK AND TRUST CO.), PETITIONER, VS. HON. COURT OF APPEALS, EASTERN PLYWOOD CORP. AND BENIGNO D. LIM, RESPOND...*G.R. No. 104612. May 10, 1994*

Ponente: DAVIDE, JR., J.

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The petitioner urges us to review and set aside the amended Decision[1] of 6 March 1992 of respondent Court of Appeals in CA--G.R. CV No. 25739 which modified the Decision of 15 November 1990 of Branch 19 of the Regional Trial Court (RTC) of Manila in Civil Case No. 87-42967, entitled Bank of the Philippine Islands (successor-in-interest of Commercial Bank and Trust Company) versus Eastern Plywood Corporation and Benigno D. Lim. The Court of Appeals had affirmed the dismissal of the complaint but had granted the defendants' counterclaim for P331,261.44 which represents the outstanding balance of their account with the plaintiff.

As culled from the records and the pleadings of the parties, the following facts were duly established:

Private respondents Eastern Plywood Corporation (Eastern) and Benigno D. Lim (Lim), an officer and stockholder of Eastern, held at least one joint bank account ("and/or" account) with the Commercial Bank and Trust Co. (CBTC), the predecessor-in-interest of petitioner Bank of the Philippine Islands (BPI). Sometime in March 1975, a joint checking account ("and" account) with Lim in the amount of P120,000.00 was opened by Mariano Velasco with funds withdrawn from the account of Eastern and/or Lim. Various amounts were later deposited or withdrawn from the joint account of Velasco and Lim. The money therein was placed in the money market.

Velasco died on 7 April 1977. At the time of his death, the outstanding balance of the account stood at P662,522.87. On 5 May 1977, by virtue of an Indemnity Undertaking executed by Lim for himself and as President and General Manager of Eastern,[2] one-half of this amount was provisionally released and transferred to one of the bank accounts of Eastern with CBTC.[3]

Thereafter, on 18 August 1978, Eastern obtained a loan of P73,000.00 from CBTC as "Additional Working Capital," evidenced by the "Disclosure Statement on Loan/Credit Transaction" (Disclosure Statement) signed by CBTC through its branch manager, Ceferino Jimenez, and Eastern, through Lim, as its President and General Manager.[4] The loan was payable on demand with interest at 14% per annum.

For this loan, Eastern issued on the same day a negotiable promissory note for P73,000.00 payable on demand to the order of CBTC with interest at 14% per annum.[5] The note was signed by Lim both in his own capacity and as President and General Manager of Eastern. No reference to any security for the loan appears on the note. In the Disclosure Statement, the box with the printed word "UNSECURED" was marked with "X" -- meaning

unsecured, while the line with the words "this loan is wholly/partly secured by" is followed by the typewritten words "Hold-Out on a 1:1 on C/A No. 2310-001-42," which refers to the joint account of Velasco and Lim with a balance of P331,261.44.

In addition, Eastern and Lim, and CBTC signed another document entitled "Holdout Agreement," also dated 18 August 1978,[6] wherein it was stated that "as security for the Loan [Lim and Eastern] have offered [CBTC] and the latter accepts a holdout on said [Current Account No. 2310-011-42 in the joint names of Lim and Velasco] to the full extent of their alleged interests therein as these may appear as a result of final and definitive judicial action or a settlement between and among the contesting parties thereto." [7] Paragraph 02 of the Agreement provides as follows:

"Eastply [Eastern] and Mr. Lim hereby confer upon Comtrust [CBTC], when and if their alleged interests in the Account Balance shall have been established with finality, ample and sufficient power as shall be necessary to retain said Account Balance and enable Comtrust to apply the Account Balance for the purpose of liquidating the Loan in respect of principal and/or accrued interest."

And paragraph 05 thereof reads:

"The acceptance of this holdout shall not impair the right of Comtrust to declare the loan payable on demand at any time, nor shall the existence hereof and the non-resolution of the dispute between the contending parties in respect of entitlement to the Account Balance, preclude Comtrust from instituting an action for recovery against Eastply and/or Mr. Lim in the event the Loan is declared due and payable and Eastply and/or Mr. Lim shall default in payment of all obligations and liabilities thereunder."

In the meantime, a case for the settlement of Velasco's estate was filed with Branch 152 of the RTC of Pasig, entitled "In re Intestate Estate of Mariano Velasco," and docketed as Sp. Proc. No. 8959. In the said case, the whole balance of P331,261.44 in the aforesaid joint account of Velasco and Lim was being claimed as part of Velasco's estate. On 9 September 1986, the intestate court granted the urgent motion of the heirs of Velasco to withdraw the deposit under the joint account of Lim and Velasco and authorized the heirs to divide among themselves the amount withdrawn.[8]

Sometime in 1980, CBTC was merged with BPI.[9] On 2 December 1987, BPI filed with the RTC of Manila a complaint against Lim and Eastern demanding payment of the promissory note for P73,000.00. The complaint was docketed as Civil Case No. 87-42967 and was raffled to Branch 19 of the said court, then presided over by Judge Wenceslao M. Polo. Defendants Lim and Eastern, in turn, filed a counterclaim against BPI for the return of the balance in the disputed account subject of the Holdout Agreement and the interests thereon after deducting the amount due on the promissory note.

After due proceedings, the trial court rendered its decision on 15 November 1990 dismissing the complaint because BPI failed to make out its case. Furthermore, it ruled that "the promissory note in question is subject to the 'hold-out' agreement,"[10] and that based on this agreement, "it was the duty of plaintiff Bank [BPI] to debit the account of the defendants under the promissory note to set off the loan even though the same has no fixed maturity.[11] As to the defendants' counterclaim, the trial court, recognizing the fact that the entire amount in question had been withdrawn by Velasco's heirs pursuant to the order of the intestate court in Sp. Proc. No. 8959, denied it because the "said claim cannot be awarded without disturbing the resolution" of the intestate court.[12]

Both parties appealed from the said decision to the Court of Appeals. Their appeal was docketed as CA-G.R. CV No. 25739.

On 23 January 1991, the Court of Appeals rendered a decision affirming the decision of the trial court. It, however, failed to rule on the defendants' (private respondents') partial appeal from the trial court's denial of their

counterclaim. Upon their motion for reconsideration, the Court of Appeals promulgated on 6 March 1992 an Amended Decision[13] wherein it ruled that the settlement of Velasco's estate had nothing to do with the claim of the defendants for the return of the balance of their account with CBTC/BPI as they were not privy to that case, and that the defendants, as depositors of CBTC/BPI, are the latter's creditors; hence, CBTC/BPI should have protected the defendants' interest in Sp. Proc. No. 8959 when the said account was claimed by Velasco's estate. It then ordered BPI "to pay defendants the amount of P331,261.44 representing the outstanding balance in the bank account of defendants." [14]

On 22 April 1992, BPI filed the instant petition alleging therein that the Holdout Agreement in question was subject to a suspensive condition stated therein, viz., that the "P331,261.44 shall become a security for respondent Lim's promissory note only if respondents' Lim and Eastern Plywood Corporation's interests to that amount are established as a result of a final and definitive judicial action or a settlement between and among the contesting parties thereto." [15] Hence, BPI asserts, the Court of Appeals erred in affirming the trial court's decision dismissing the complaint on the ground that it was the duty of CBTC to debit the account of the defendants to set off the amount of P73,000.00 covered by the promissory note.

Private respondents Eastern and Lim dispute the "suspensive condition" argument of the petitioner. They interpret the findings of both the trial and appellate courts that the money deposited in the joint account of Velasco and Lim came from Eastern and Lim's own account as a finding that the money deposited in the joint account of Lim and Velasco "rightfully belong[ed] to Eastern Plywood Corporation and/or Benigno Lim." And because the latter are the rightful owners of the money in question, the suspensive condition does not find any application in this case and the bank had the duty to set off this deposit with the loan. They add that the ruling of the lower court that they own the disputed amount is the final and definitive judicial action required by the Holdout Agreement; hence, the petitioner can only hold the amount of P73,000.00 representing the security required for the note and must return the rest. [16]

The petitioner filed a Reply to the aforesaid Comment. The private respondents filed a Rejoinder thereto.

We gave due course to the petition and required the parties to submit simultaneously their memoranda.

The key issues in this case are whether BPI can demand payment of the loan of P73,000.00 despite the existence of the Holdout Agreement and whether BPI is still liable to the private respondents on the account subject of the Holdout Agreement after its withdrawal by the heirs of Velasco.

The collection suit of BPI is based on the promissory note for P73,000.00. On its face, the note is an unconditional promise to pay the said amount, and as stated by the respondent Court of Appeals, "[t]here is no question that the promissory note is a negotiable instrument." [17] It further correctly ruled that BPI was not a holder in due course because the note was not indorsed to BPI by the payee, CBTC. Only a negotiation by indorsement could have operated as a valid transfer to make BPI a holder in due course. It acquired the note from CBTC by the contract of merger or sale between the two banks. BPI, therefore, took the note subject to the Holdout Agreement.

We disagree, however, with the Court of Appeals in its interpretation of the Holdout Agreement. It is clear from paragraph 02 thereof that CBTC, or BPI as its successor-in-interest, had every right to demand that Eastern and Lim settle their liability under the promissory note. It cannot be compelled to retain and apply the deposit in Lim and Velasco's joint account to the payment of the note. What the agreement conferred on CBTC was a power, not a duty. Generally, a bank is under no duty or obligation to make the application. [18] To apply the deposit to the payment of a loan is a privilege, a right of set-off which the bank has the option to exercise. [19]

Also, paragraph 05 of the Holdout Agreement itself states that notwithstanding the agreement, CBTC was not in

any way precluded from demanding payment from Eastern and from instituting an action to recover payment of the loan. What it provides is an alternative, not an exclusive, method of enforcing its claim on the note. When it demanded payment of the debt directly from Eastern and Lim, BPI had opted not to exercise its right to apply part of the deposit subject of the Holdout Agreement to the payment of the promissory note for P73,000.00. Its suit for the enforcement of the note was then in order and it was error for the trial court to dismiss it on the theory that it was set off by an equivalent portion in C/A No. 2310-001-42 which BPI should have debited. The Court of Appeals also erred in affirming such dismissal.

The "suspensive condition" theory of the petitioner is, therefore, untenable.

The Court of Appeals correctly decided on the counterclaim. The counterclaim of Eastern and Lim for the return of the P331,261.44[20] was equivalent to a demand that they be allowed to withdraw their deposit with the bank. Article 1980 of the Civil Code expressly provides that "[f]ixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan." In *Serrano vs. Central Bank of the Philippines*,[21] we held that bank deposits are in the nature of irregular deposits; they are really loans because they earn interest. The relationship then between a depositor and a bank is one of creditor and debtor. The deposit under the questioned account was an ordinary bank deposit; hence, it was payable on demand of the depositor.[22]

The account was proved and established to belong to Eastern even if it was deposited in the names of Lim and Velasco. As the real creditor of the bank, Eastern has the right to withdraw it or to demand payment thereof. BPI cannot be relieved of its duty to pay Eastern simply because it already allowed the heirs of Velasco to withdraw the whole balance of the account. The petitioner should not have allowed such withdrawal because it had admitted in the Holdout Agreement the questioned ownership of the money deposited in the account. As early as 12 May 1979, CBTC was notified by the Corporate Secretary of Eastern that the deposit in the joint account of Velasco and Lim was being claimed by them and that one-half was being claimed by the heirs of Velasco.[23]

Moreover, the order of the court in Sp. Proc. No. 8959 merely authorized the heirs of Velasco to withdraw the account. BPI was not specifically ordered to release the account to the said heirs; hence, it was under no judicial compulsion to do so. The authorization given to the heirs of Velasco cannot be construed as a final determination or adjudication that the account belonged to Velasco. We have ruled that when the ownership of a particular property is disputed, the determination by a probate court of whether that property is included in the estate of a deceased is merely provisional in character and cannot be the subject of execution.[24]

Because the ownership of the deposit remained undetermined, BPI, as the debtor with respect thereto, had no right to pay to persons other than those in whose favor the obligation was constituted or whose right or authority to receive payment is indisputable. The payment of the money deposited with BPI that will extinguish its obligation to the creditor-depositor is payment to the person of the creditor or to one authorized by him or by the law to receive it.[25] Payment made by the debtor to the wrong party does not extinguish the obligation as to the creditor who is without fault or negligence, even if the debtor acted in utmost good faith and by mistake as to the person of the creditor, or through error induced by fraud of a third person.[26] The payment then by BPI to the heirs of Velasco, even if done in good faith, did not extinguish its obligation to the true depositor, Eastern.

In the light of the above findings, the dismissal of the petitioner's complaint is reversed and set aside. The award on the counterclaim is sustained subject to a modification of the interest.

WHEREFORE, the instant petition is partly GRANTED. The challenged amended decision in CA-G.R. CV No. 25735 is hereby MODIFIED. As modified:

- (1) Private respondents are ordered to pay the petitioner the promissory note for P73,000.00 with interest at:

- (a) 14% per annum on the principal, computed from 18 August 1978 until payment;
- (b) 12% per annum on the interest which had accrued up to the date of the filing of the complaint, computed from that date until payment pursuant to Article 2212 of the Civil Code.

(2) The award of P331,264.44 in favor of the private respondents shall bear interest at the rate of 12% per annum computed from the filing of the counterclaim.

No pronouncement as to costs.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quason, and Kapunan, JJ., concur.

[1] Annex "A" of Petition; Rollo, 18-24. Per Associate Justice Jose C. Campos, Jr., concurred in by Associate Justices Alicia V. Sempio-Diy and Filemon H. Mendoza.

[2] Annex "2" of Answer; Original Records (OR), 23-26.

[3] Exhibits "31" and "32"; Id., 124 and 125, respectively.

[4] Exhibit "A-6"; Id., 5.

[5] Exhibit "A"; OR, 4.

[6] Exhibit "C"; Id., 155-157.

[7] Holdout Agreement, 1-2.

[8] Annex "A" of Answer to Counterclaim; OR, 31-32.

[9] Per testimony of Ceferino Jimenez; TSN, 4 July 1988, 11.

[10] OR, 200.

[11] Id., 201.

[12] Id., 202.

[13] Annex "A" of Petition; Rollo, 19-23.

[14] Rollo, 22-23.

[15] Id., 13-14.

[16] Rollo, 33-35.

[17] Id., 20.

[18] 9 C.J.S. Banks and Banking § 301 (1938). See *Bank of California vs. Starrett*, 188 p. 410 (Wash. 1920); *Bryant vs. Williams*, 16 F.2d 159 (D.C.N.C. 1926).

[19] Id., § 296. See *Lowden vs. Iowa-Des Moines Nat. Bank and Trust Co.*, 10 F. Supp. 430 (D.C. Iowa 1935); *Meredith vs. First National Bank of Central City*, 271 S.W.2d 274 (Ky. Ct. App. 1954).

[20] OR, 17.

[21] 96 SCRA 96 [1980]. See also, *Guingona vs. City Fiscal of Manila*, 128 SCRA 577 [1984]; *People vs. Ong*, 204 SCRA 942 [1991].

[22] 10 Am Jur 2d, Banks, § 356.

[23] Annex "1" of Answer; OR, 20-21.

[24] *Valera vs. Inserto*, 149 SCRA 533 [1987].

[25] See Article 1240, New Civil Code.

[26] IV ARTURO TOLENTINO, CIVIL CODE OF THE PHILIPPINES 285 (1991 ed.).

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