

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK, PETITIONER, VS.
HON. COURT OF APPEALS, HON. JESUS ARLEGUI, PRESIDING JUDGE
OF BRANCH VIII, REGIONAL TRIAL COURT, LEGASPI CITY,
WILFREDO...**

G.R. No. 105138. August 05, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal by certiorari under Rule 45 of the Revised Rules of Court from the decision of the Court of Appeals in CA-G.R. CV No. 11867, entitled "Wilfredo C. Delos Santos and Grace Co Delos Santos, plaintiffs-appellees v. Cecilia O. Fernandez and Banco Filipino Savings & Mortgage Bank, Defendants. Banco Filipino Savings & Mortgage Bank, Defendant-Appellant."

In said case, the Court of Appeals affirmed in toto the decision of the Regional Trial Court, Legaspi City, in Civil Case No. 7103, ordering defendants to pay plaintiffs, jointly and severally, the amount of P64,319.00 as actual damages, P30,000.00 as moral damages, P10,000.00 as exemplary damages and P10,000.00 as attorney's fees and to pay the costs.

Petitioner accepted, with the exception of the underlined portions, and the Court of Appeals adopted, the following findings of fact of the trial court:

"Defendant Cecilia O. Fernandez was the registered owner of Lot 610-A of Subdivision Plan LRC PSD-130634 and Lot 6, Block 6 of the Consolidation Subdivision Plan Pcs-9910. She mortgaged these parcels of land to co-defendant Banco Filipino Savings and Mortgage Bank, Naga Branch, and for failure to comply with the terms of the mortgage, the mortgagee-bank instituted extrajudicial foreclosure proceedings on the properties covered by the mortgage. The auction sale was scheduled for June 6, 1983. Prior to the scheduled auction sale, plaintiff was informed by Miss Angie Janer, Manager of Banco Filipino Legaspi about the foreclosure proceedings and asked the plaintiff whether she was interested in the purchase of the property. The plaintiff having been interested in the proposition visited the place of defendant Cecilia O. Fernandez at Vel-Amor Subdivision together with Miss Janer and met the adult daughter of Fernandez, Vicky. Vicky then informed plaintiff about her mother's desire to sell the property for P350,000.00. In their meeting, it turned out that Fernandez had made representation with defendant Banco Filipino through its manager at the Naga Branch about a possible arrangement to forestall the sale of the property at auction. The terms given by Banco Filipino to Fernandez is for her to remit P100,000.00 in order that the sale would not push through. On the basis of this information, Delos Santos placed a long distance telephone call to Mr. Domingo F. Claro (BF Naga Branch Manager) for the purpose of verifying the truth of Fernandez' information. Claro confirmed to Delos Santos about the arrangement.

In order to meet the requirements of the bank and with understanding that the property would be sold by Fernandez to plaintiff Grace Co Delos Santos, the latter drew a Philippine Commercial & Industrial Bank check, payable to the order of Banco Filipino for the account of Cecilia Fernandez. The check was delivered by

Delos Santos to Miss Janer in her capacity as manager of Banco Filipino Legaspi. Miss Janer issued a receipt to Delos Santos which is quoted as follows: 'Received from Mrs. Grace Delos Santos PCIB Check No. 106978 for One Hundred Thousand Pesos (P100,000.00) representing earnest money for the house and lot of Mrs. Cecilia Fernandez at Vel-Amor Subdivision, Legaspi City' (Exh. "B"). Miss Janer then, together with defendant Cecilia Fernandez on May 31, 1983, went to Naga City and delivered plaintiff's check to Banco Filipino Naga for which the bank issued an official receipt for the P100,000.00 remittance (Exh. "C"). In the afternoon of the same date, Fernandez and Janer went back to the plaintiff and delivered to her the receipt of the bank and xeroxed copies of the Tax Declaration and certificates of title of the properties mortgaged with the bank. Also delivered to the plaintiff was a Statement of Account of Cecilia Fernandez.

Going back to the long distance telephone conversation by the plaintiff with Manager Domingo Claro of BF Naga, it was confirmed by the latter that in order to stop the foreclosure proceedings, there is a need for the debtor (Fernandez) to at least pay the amount of P100,000.00. Plaintiff told the manager that she was interested in the purchase of the property and that she was accepting the bank's terms and would send the amount of P100,000.00 without delay. The bank manager assured her that after the payment of P100,000.00, she could go to BF Naga for the signing of the papers regarding the assumption of mortgage which in effect, the plaintiff would become the owner of the property after assuming the balance due on the mortgage. When Angie Janer and Fernandez went to BF Naga Branch, the defendant bank thru Mr. Claro knew for a fact that the plaintiff's check was being paid because of the agreement between Fernandez and the plaintiff that with this payment, the foreclosure proceedings would be stopped and that the necessary papers would then be executed. In fact on the same date, May 31, 1983, after the delivery of plaintiff's check of P100,000.00, the branch manager of the defendant bank wrote the provincial sheriff informing the latter that the bank is withdrawing the foreclosure proceedings against Fernandez for the reason that Fernandez had already made an amicable settlement with the bank (Exh. "F" and "F-2"). On June 1, 1983, plaintiff went to BF Naga to clarify certain aspects regarding the computation of her loan amortization for the assumption of defendant's obligation with the bank. The bank gave her a statement of account whereby stated therein was the said selling price of the property at P350,000.00 (Exhs. "D" and "D-1") and upon her return from Naga, she called up Miss Janer and inquired from her whether defendant Fernandez had delivered to her the Deed of Sale (which was supposed to be prepared by Atty. Alfredo Kallos) which she had promised to execute in the afternoon of May 31, 1983. Miss Janer informed her that she was not able to contact Fernandez. By June 3, 1983, plaintiff learned that the property was already sold to a certain Rita Samarista, who, on the previous day purchased a manager's check from BF Legaspi for the sum of P100,000.00 payable to BF for the account of Cecilia Fernandez. She also learned that on the same day (June 3, 1983) Fernandez and Samarista had left for Naga City presumably to deliver the manager's check. Acting on the information, the plaintiff immediately placed a long distance call to Naga and was able to talk to the branch manager thereof, and learned from the manager that they (bank) had accepted the manager's check tendered by Fernandez upon advise of the bank's legal counsel and that the bank is intending to return the check of the plaintiff which the bank had earlier accepted.

On June 12, 1983, the plaintiff with her counsel Atty. Cicero Triunfante went to Naga to ascertain the acceptance of the BF Manager's Check tendered by defendant Cecilia Fernandez. Claro confirmed the previous information given her that the acceptance of the second check was due to the advise of the bank's legal counsel and that as of that moment, the two payments of P100,000.00 each were merely considered as floating and one of these were applied to the account of Fernandez and that the payment of the plaintiff of P100,000.00 shall henceforth be treated as an account payable to the plaintiff.

The plaintiff was also able to show that she would not have paid the amount of P100,000.00 to BANCO FILIPINO Naga, had it not been for the latter's assurance that it is the amount necessary in order that the bank would withdraw the foreclosure proceedings. Plaintiff Delos Santos was also assured that the bank has given its consent to Cecilia Fernandez to sell the property to the plaintiff and for the latter to assume the mortgage for the remaining balance of the loan."

As to defendant, Cecilia O. Fernandez, she failed to appear in almost all of the settings of this case and also failed to adduce or to present evidence in her favor which could be interpreted as a waiver to prosecute her defense" (Rollo, pp. 10-13).

According to petitioner, Angie Janer was not authorized to receive the check given by Grace Co Delos Santos. She received the same in her personal capacity, and not as a bank branch manager, for the purpose of delivery to the Naga branch of the bank.

Petitioner also denied that Domingo Claro had assured Grace Co Delos Santos that the bank would entertain her application to assume the obligation of Cecilia Fernandez after the latter had executed the deed of sale over the property to her.

The petition for certiorari is based on the following grounds:

- (1) The Court of Appeals erred in affirming the trial court's ruling finding Banco Filipino's Managers, namely: Angie Janer and Domingo Claro liable for tort to the plaintiff-appellee;
- (2) Assuming arguendo that the acts of Angie Janer and Domingo Claro constitute tort, their liability is personal to them because they were not acting within the scope of their assigned tasks;
- (3) The award for damages is not only without legal basis, but also excessive.

The action against petitioner is based on quasi--delict.

Article 2176 of the Civil Code of the Philippines provides:

"Whoever by act or omission causes damage to another, there being fault or negligence is obliged to pay for the damage done. Such fault or negligence, if there is no pre--existing contractual relation between the parties is called a quasi-delict and is governed by the provisions of this Chapter."

Article 2180 of the same Code, the pertinent parts of which provide:

"The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions but also for those of persons for whom one is responsible.

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The owners and managers of an establishment or enterprises are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions."

Petitioner, being a corporation, must act through its officers, employees or agents. In the case at bench, petitioner was sued because of the acts or omissions of its employees, Angie Janer, the manager of petitioner's branch in Legaspi City and Domingo Claro, the manager of petitioner's branch in Naga City.

What the Court of Appeals found as constituting the actionable act or omission on the part of petitioner's employees, was the sale of the property to Rita Samarista, instead of private respondents. As stressed by the Court of Appeals:

"This is where the wrongful act lies. Appellee was made to believe that she will enjoy preference in the purchase of the property upon her remittance of P100,000.00 as in fact she did, only to learn that the property was sold to another person."

Laying the blame on petitioner's employees, the Court of Appeals further held:

"She [Grace Co Delos Santos] had entrusted her full faith and confidence to the advice given her by Ms. Janer

and Mr. Claro, managers of the appellant bank's Legaspi and Naga branches respectively, on how to facilitate and effectuate the eventual sale of the property in her favor" (Rollo, p. 37).

The Court of Appeals erred in holding that Angie Janer accepted the check given by Grace Co Delos Santos for and on behalf of the bank. The receipt was typewritten on ordinary paper and not on the official stationery of the bank. If she received the check in her official capacity, she should have issued to Grace Co Delos Santos an official receipt of the bank. Janer could not have validly issued a receipt for earnest money for the purchase of the property because the bank was not the owner thereof. Besides, the Legaspi branch, of which Janer was the manager, had nothing to do with the loan of Fernandez, which she secured from the Naga branch.

Likewise, we accept as more credible the denial of assurance to Grace Co Delos Santos that after the payment of the P100,000.00 to the bank, private respondents would become the owners of the property after assuming the balance due on the mortgage. Private respondents were aware that the property they were buying belonged to Fernandez, not to Claro or the petitioner. It would be the height of naivete for them to believe that by just assuming the obligation of Fernandez to the bank, they would become the owners of the property.

Clearly, the Court of Appeals has misplaced the blame for the breach of contract of sale on petitioner's branch managers. The registered owner of the property was not petitioner but Fernandez. Petitioner was merely a mortgagee of the property. The only one who could decide to whom the property would be sold was Fernandez. At least, there was no evidence to show that petitioner's branch managers had induced Fernandez to sell the property to Samarista. Private respondents negotiated for the purchase of the property with open eyes. They knew all along that they had to deal with Fernandez. To protect their interests, private respondents should have demanded from Fernandez a written commitment not to sell the property to a third party before depositing the manager's check "for the account of Fernandez." The acts of petitioner's branch managers conform with their claim that their involvement was only to assist private respondent in buying the property.

The Court of Appeals erred in holding that petitioner's branch managers had betrayed the faith and confidence of a client of the bank. Private respondents were never clients of the bank.

WHEREFORE, the decision of the Court of Appeals is REVERSED and the complaint against petitioner is DISMISSED.

SO ORDERED.

Cruz, C.J., (Chairman), Griño-Aquino, Davide, Jr., and Bellosillo, JJ., concur.

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