

SPOUSES GEORGE MORAN AND LIBRADA P. MORAN, PETITIONERS, VS. THE HON. COURT OF APPEALS AND CITYTRUST BANKING CORPORATION, RESPONDENTS.

G.R. No. 105836. March 07, 1994

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioner spouses George and Librada Moran are the owners of the Wack-Wack Petron gasoline station located at Shaw Boulevard, corner Old Wack-Wack Road, Mandaluyong, Metro Manila. They regularly purchased bulk fuel and other related products from Petrophil Corporation on cash on delivery (COD) basis. Orders for bulk fuel and other related products were made by telephone and payments were effected by personal checks upon delivery.[1]

Petitioners maintained three joint accounts, namely one current account (No. 37-00066-7) and two savings accounts, (Nos. 1037002387 and 1037001372) with the Shaw Boulevard branch of Citytrust Banking Corporation. As a special privilege to the Morans, whom it considered as valued clients, the bank allowed them to maintain a zero balance in their current account. Transfers from Savings Account No. 1037002387 to their current account could be made only with their prior authorization, but they gave written authority to Citytrust to automatically transfer funds from their Savings Account No. 1037001372 to their Current Account No. 37-00066-7 at any time whenever the funds in their current account were insufficient to meet withdrawals from said current account. Such arrangement for automatic transfer of funds was called a pre-authorized transfer (PAT) agreement.[2]

The PAT letter-agreement entered into by the parties on March 19, 1982 contained the following provisions:

x x x

1. The transfer may be effected on the day following the overdrawing of the current account, but the check/s would be honored if the savings account has sufficient balance to cover the overdraft.
2. The regular charges on overdraft, and activity fees will be imposed by the Bank.
3. This is merely an accommodation on our part and we have, the right, at all times and for any reason whatsoever, to refuse to effect transfer of funds at our sole and absolute option and discretion, reserving our right to terminate this arrangement at any time without written notice to you.
4. You hold CITYTRUST free and harmless for any and all omissions or oversight in executing this automatic transfer of funds; x x x[3]

x x x

On December 12, 1983, petitioners, through Librada Moran, drew a check (Citytrust No. 041960) for P50,576.00 payable to Petrophil Corporation.[4] The next day, December 13, 1983, petitioners, again through Librada Moran, issued another check (Citytrust No. 041962) in the amount of P56,090.00 in favor of the same corporation.[5] The

total sum of the two checks was P106,666.00.

On December 14, 1983, Petrophil Corporation deposited the two aforementioned checks to its account with the Pandacan branch of the Philippine National Bank (PNB), the collecting bank. In turn, PNB, Pandacan branch presented them for clearing with the Philippine Clearing House Corporation in the afternoon of the same day. The records show that on December 14, 1983, Current Account No. 37-00066-7 had a zero balance, while Savings Account No. 1037001372 (covered by the PAT) had an available balance of P26,104.30[6] and Savings Account No. 1037002387 had an available balance of P43,268.39.[7]

At about ten o'clock in the morning of the following day, December 15, 1983, petitioner George Moran went to the bank, as was his regular practice, to personally oversee their daily transactions with the bank. He deposited in their Savings Account No. 1037002387 the amounts of P10,874.58 and P6,754.25,[8] and he likewise deposited in their Savings Account No. 1037001372 the amounts of P5,900.00, P35,100.00 and P30.00.[9] The amount of P40,000.00 was then transferred by him from Savings Account No. 1037002387 to their current account by means of a pro forma withdrawal form (a debit memorandum), which was provided by the bank, authorizing the latter to make the necessary transfer. At the same time, the amount of P66,666.00 was transferred from Savings Account No. 1037001372 to the same current account through the pre-authorized transfer (PAT) agreement.[10]

Sometime on December 15 or 16, 1983, George Moran was informed by his wife, Librada, that Petrophil refused to deliver their orders on a credit basis because the two checks they had previously issued were dishonored upon presentment for payment. Apparently, the bank dishonored the checks due to "insufficiency of funds." [11] The non-delivery of gasoline forced petitioners to temporarily stop business operations, allegedly causing them to suffer loss of earnings. In addition, Petrophil cancelled their credit accommodation, forcing them to pay for their purchases in cash.[12] George Moran, furious and upset, demanded an explanation from Raul Diaz, the branch manager. Failing to get a sufficient explanation, he talked to a certain Villareal, a bank officer, who allegedly told him that Amy Belen Ragodo, the customer service officer, had committed a "grave error." [13]

On December 16 or 17, 1983, Diaz went to the Moran residence to get the signatures of petitioners on an application for a manager's check so that the dishonored checks could be redeemed. Diaz then went to Petrophil to personally present the checks in payment for the two dishonored checks.[14]

In a chance meeting around May or June, 1984, George Moran learned from one Constancio Magno, credit manager of Petrophil, that the latter received from Citytrust, through Diaz, a letter dated December 16, 1983, notifying them that the two aforementioned checks were "inadvertently, dishonored x x x due to operational error." Said letter was received by Petrophil on January 4, 1984.[15]

On July 24, 1984, or a little over six months after the incident, petitioners, through counsel, wrote Citytrust claiming that the bank's dishonor of the checks caused them besmirched business and personal reputation, shame and anxiety, hence they were contemplating the filing of the necessary legal actions unless the bank issued a certification clearing their name and paid them P1,000,000.00 as moral damages.[16]

The bank did not act favorably on their demands, hence petitioners filed a complaint for damages on September 8, 1984, with the Regional Trial Court, Branch 159 at Pasig, Metro Manila, which was docketed therein as Civil Case No. 51549. In turn, Citytrust filed a counterclaim for damages, alleging that the case filed against it was unfounded and unjust.

After trial, a decision dated October 9, 1989 was rendered by the trial court dismissing both the complaint and the counterclaim.[17] On appeal, the Court of Appeals rendered judgment in CA-G.R. CV No. 25009 on October 9, 1989 affirming the decision of the trial court.[18]

We start with some basic and accepted rules, statutory and doctrinal. A check is a bill of exchange drawn on a bank payable on demand.[19] Thus, a check is a written order addressed to a bank or persons carrying on the business of banking, by a party having money in their hands, requesting them to pay on presentment, to a person named therein or to bearer or order, a named sum of money.[20]

Fixed savings and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.[21] In other words, the relationship between the bank and the depositor is that of a debtor and creditor.[22] By virtue of the contract of deposit between the banker and its depositor, the banker agrees to pay checks drawn by the depositor provided that said depositor has money in the hands of the bank.[23]

Hence, where the bank possesses funds of a depositor, it is bound to honor his checks to the extent of the amount of his deposits. The failure of a bank to pay the check of a merchant or a trader, when the deposit is sufficient, entitles the drawer to substantial damages without any proof of actual damages.[24]

Conversely, a bank is not liable for its refusal to pay a check on account of insufficient funds, notwithstanding the fact that a deposit may be made later in the day.[25] Before a bank depositor may maintain a suit to recover a specific amount from his bank, he must first show that he had on deposit sufficient funds to meet his demand.[26]

The present action for damages accordingly hinges on the resolution of the inquiry as to whether or not petitioners had sufficient funds in their accounts when the bank dishonored the checks in question. In view of the factual findings of the two lower courts the correctness of which are challenged by what appear to be plausible arguments, we feel that the same should properly be resolved by us. This would necessarily require us to inquire into both the savings and current accounts of petitioners in relation to the PAT arrangement.

On December 14, 1983, when PNB, Pandacan branch, presented the checks for collection, the available balance for Savings Account No. 1037001372 was P26,104.30 while Current Account No. 37-00066-7 expectedly had a zero balance. On December 15, 1983, at approximately ten o'clock in the morning, petitioners, through George Moran, learned that P66,666.00 from Savings Account No. 1037001372 was transferred to their current account. Another P40,000.00 was transferred from Savings Account No. 1037002387 to the current account. Considering that the transfers were by then sufficient to cover the two checks, it is asserted by petitioners that such fact should have prevented the dishonor of the checks. It appears, however, that it was not so.

As explained by respondent court in its decision, Gerard E. Rionisto, head of the centralized clearing unit of Citytrust, detailed on the witness stand the standard clearing procedure adopted by respondent bank and the Philippine Clearing House Corporation, to wit:

Q: Let me again re-phrase the question. Most of (sic) these two checks issued by Mrs. Librada Moran under the accounts of the plaintiffs with Citytrust Banking Corporation were drawn dated December 12, 1983 and December 13, 1983 (and) these two (2) checks were made payable to Petrophil Corporation. On record, Petrophil Corporation presented these two (2) checks for clearing with PNB Pandacan Branch on December 14, 1983. Now in accordance with the bank, what would happen with these checks drawn with (sic) PNB on December 14, 1983?

A: So these checks will now be presented by PNB with the Philippine Clearing House on December 14, and then the Philippine Clearing House will process it until midnight of December 14. Citytrust will send a clearing representative to the Philippine Clearing House at around 2:00 o'clock in the morning of December 15 and then get the checks. The checks will now be processed at the Citytrust Computer at around 3:00 o'clock in the morning of December 14 (sic) but it will be processed for balance of Citytrust as of December 14 because for one, we have not opened on December 15 at 3:00 o'clock. Under the clearing house rules, we are supposed to process it on the date it was presented for clearing. (tsn, September 9, 1988, pp. 9-10).[27]

Considering the clearing process adopted, as explained in the aforequoted testimony, it is clear that the available balance on December 14, 1983 was used by the bank in determining whether or not there was sufficient cash deposited to fund the two checks, although what was stamped on the dorsal side of the two checks in question was “DAIF/12-15-83,” since December 15, 1983 was the actual date when the checks were processed. As earlier stated, when petitioners’ checks were dishonored due to insufficiency of funds, the available balance of Savings Account No. 1037001372, which was the subject of the PAT agreement, was not enough to cover either of the two checks. On December 14, 1983, when PNB, Pandacan branch presented the checks for collection, the available balance for Savings Account No. 1037001372, to repeat, was only P26,104.30 while Current Account No. 37-0006-7 had no available balance. It was only on December 15, 1983 at around ten o’clock in the morning that the necessary funds were deposited, which unfortunately was too late to prevent the dishonor of the checks.

Petitioners argue that public respondent, by relying heavily on Rionisto’s testimony, failed to consider the fact that the witness himself admitted that he had no personal knowledge surrounding the dishonor of the two checks in question. Thus, although he knew the standard clearing procedure, it does not necessarily mean that the same procedure was adopted with regard to the two checks.

We do not agree. Section 3(q), Rule 131 of the Rules of Court provides a disputable presumption in law that the ordinary course of business has been followed. In the absence of a contrary showing, it is presumed that the acts in question were in conformity with the usual conduct of business. In the case at bar, petitioners failed to present countervailing evidence to rebut the presumption that the checks involved underwent the same regular process for clearing of checks followed by the bank since 1983.

Petitioners had no reason to complain, for they alone were at fault. A drawer must remember his responsibilities every time he issues a check. He must personally keep track of his available balance in the bank and not rely on the bank to notify him of the necessity to fund certain checks he previously issued. A check, as distinguished from an ordinary bill of exchange, is supposed to be drawn against a previous deposit of funds for it is ordinarily intended for immediate payment.[28]

Moreover, between the time of the issuance of said checks on December 12 and 13 and the time of their presentment on December 14, petitioners had, at the very least, twenty-four hours to replenish their balances in the bank.

As previously noted, it was only during business hours in the morning of December 15, 1983, that P66,666.00 was automatically transferred from Savings Account No. 1037001372 to Current Account No. 37-00066-7, and another P40,000.00 was transferred from Savings Account No. 1037002387 to the same current account by a debit memorandum. Petitioners argue that if indeed the checks were dishonored in the early morning of December 15, 1983, the bank would not have automatically transferred P66,666.00 to said current account. They theorize that the checks having already been dishonored, there was no necessity to put into effect the pre-authorized transfer agreement.

That theory is incorrect. When the transfers from both savings accounts to the current account were made, they were done in the hope that the checks may be retrieved, thus preventing their dishonor. Unfortunately, respondent bank did not succeed in effectuating its good intentions. The transfers were made to preserve its relations with petitioners whom knew were valued clients, hence it wanted to prevent the dishonor of their checks, if the same was at all possible. Although not admitting fault, it tried its best to make sure that the checks would not bounce.

Under similar circumstances, it was held in *Whitman vs. First National Bank*[29] that a bank performs its full duty where, upon the receipt of a check drawn against an account in which there are insufficient funds to pay it in full, it endeavors to induce the drawer to make good his account so that the check can be paid, and failing in this, it

protests the check on the following morning and notifies its correspondent bank by telegraph of the protest. It cannot, therefore, be held liable to the payee and holder of the check for not protesting it upon the day when it was received. In fact, the court added that the bank did more than it was required to do by making an effort to induce the drawer to deposit sufficient money to make the check good, and by notifying its correspondent of the dishonor of the check by telegram.

Petitioners maintain that at the time the checks were dishonored, they had already deposited sufficient funds to cover said checks. To prove their point, petitioners quoted in their petition the following testimony of said witness Rionisto, to wit:

Q: Now according to you, you would receive the checks from (being deposited to) the collecting bank which in this particular example, was the Pandacan Branch of PNB which in turn will deliver it to the Philippine Clearing House and the Philippine Clearing House will deliver it to your office around 12:00 o'clock in the evening of December...?

A: Around 2:00 o'clock of December 15. We sent a clearing representative.

Q: And the checks will be processed in accordance with the balance available as of December 14?

A: Yes, sir.

Q: And naturally you will place there "drawn against insufficient funds, December 14, 1983"?

A: Yes, sir.

Q: Are you sure about that?

A: Yes, sir. x x x (tsn, September 9, 1988, P. 14).[30]

Obviously, witness Rionisto was merely confused as to the dates (December 14 and 15) because it did not jibe with his previous testimony, wherein he categorically stated that "the checks will now be processed at the Citytrust Computer at around 3:00 in the morning of December 14 (sic) but it will be processed for balance of Citytrust as of December 14 because for one, we have not opened on December 15 at 3:00 o'clock. Under the clearing house rules, we are supposed to process it on the date it was presented for clearing." [31] Analyzing the procedure he had previously explained, and analyzing his testimony in its entirety and not in truncated portions, it would logically and ineluctably appear that he actually meant December 15, and not December 14.

In the early morning of every business day, prior to banking hours, the various branches of Citytrust would receive a computer printout called the "rejected transactions" report from the head office. The report contains, among others, a listing of "checks to be funded." When Citytrust, Shaw Boulevard branch, received said report in the early morning of December 15, 1983, the two checks involved were included in the "checks to be funded." That report was used by the bank as its basis in dishonoring the two checks in question. Petitioner contends that the bank erred when it did so because on previous occasions, the report was merely used by the bank as a basis for determining whether or not it was necessary to notify them of the need to deposit certain amounts in their accounts.

Amy Belen Rogado, a bank employee, testified that she would normally copy the details stated in the report and transfer it on a "pink slip." These pink slips were then given to George Moran. In turn, George Moran testified that he would deposit the necessary funds stated in the pink slips. As a matter of fact, so petitioner asseverated, not a single check written on the notices was ever dishonored after he had funded said checks with the bank. Thus, petitioner argues, the checks were not yet dishonored after the bank received the report in the early morning of December 15, 1983.

Said argument does not persuade. If ever petitioners on previous occasions were given notices every time a check was presented for clearing and payment and there were no adequate funds in their accounts, these were, at most, mere accommodations on the part of respondent bank. It was not a requirement or a general banking practice, hence non-compliance therewith could not lay the bank open to blame or rebuke. Legally, the bank had all the right to dishonor the checks because there were no sufficient funds to speak of in the first place. If the demand is by check, a drawer must have to his credit enough to cover the demand. If his credit with the bank is less than the amount on the face of the check, the bank may lawfully refuse payment.[32]

Pursuing this matter further, the bank could also not be faulted for not accepting either of the two checks. The first check issued was in the amount of P50,576.00, while the second one was for P56,090.00. Savings Account No. 1037001372 then had a balance of only P26,104.30. This being the case, Citytrust could not be expected to accept for payment either one of the two checks nor partially honor one check.

A bank is under no obligation to make part payment on a check, up to only the amount of the drawer's funds, where the check is drawn for an amount larger than what the drawer has on deposit. Such a practice of paying checks in part has never existed. Upon partial payment, the check holder could not be called upon to surrender the check, and the bank would be without a voucher affording a certain means of showing the payment. The rule is based on commercial convenience, and any rule that would work such manifest inconvenience should not be recognized. A check is intended not only to transfer a right to the amount named in it, but to serve the further purpose of affording evidence for the bank of the payment of such amount when the check is taken up.[33]

On the other hand, assuming *arguendo* that Savings Account No. 1037002387, which is not covered by a pre-arranged automatic transfer agreement, had enough amount deposited to cover both checks (which is not so in this case), the bank still had no obligation to honor said checks as there was then no authority given to it to make the transfer of funds. Where a depositor has two accounts with a bank, an open account and a savings account, and draws a check upon the open account for more money than the account contains, the bank may rightfully refuse to pay the check, and is under no duty to make up the deficiency from the savings account.[34]

We agree with respondent Court of Appeals in its assessment and interpretation of the nature of the letter of Citytrust to Petrophil, dated December 16, 1983. As aptly and correctly stated by said court, "x x x the letter is not an admission of liability as it was written merely to maintain the goodwill and continued patronage of plaintiff-appellants. (This) cannot be characterized as baseless, considering the totality of the circumstances surrounding its writing".[35]

In the present case, the actions taken by the bank after the incident clearly show that there was neither malice nor bad faith, but rather a clear intent to mollify an obviously agitated client. Raul Diaz, the branch manager, even went for this purpose to the Moran residence to facilitate their application for a manager's check. Later, he went to the Petrophil Corporation to personally redeem the checks. Still later, the letter was sent by respondent bank to Petrophil explaining that the dishonor of the checks was due to "operational error." However, we reiterate, it would be a mistake to construe that letter as an admission of guilt on the part of the bank. It knew that it was confronted with a client who obviously was not willing to admit any fault on his part, although the facts show otherwise. Thus, respondent bank ran the risk of losing the business of an important and influential member of the financial community if it did not do anything to assuage the feelings of petitioners.

It will be recalled that the credit standing of the Morans with Petrophil Corporation was involved, which fact, more than anything, displeased them, to say the least. On demand of petitioners that their names be cleared, the bank considered it more prudent to send the letter. It never realized that it would thereafter be used by petitioners as one of the bases of their legal action. It will be noted that there was no reason for the bank to send the letter to

Petrophil Corporation since the latter was not a client nor was it demanding any explanation. Clearly, therefore, the letter was merely intended to accommodate the request of the Morans and was part of the series of damage-control measures taken by the bank to placate petitioners.

Respondent Court of Appeals perceptively observed that “all these somehow pacified plaintiffs-appellants (herein petitioners) for they did not thereafter take immediate punitive action against the defendant-appellee (herein private respondent). As pointed out by the court a quo, it took plaintiffs-appellants about six (6) months after the dishonor of the checks to demand that defendant--appellee pay them P1,000,00.00 as damages. At that time, plaintiffs-appellants had discovered the letter of Mr. Diaz attributing the dishonor of their checks to ‘operational error’. The attempt to unduly ride on the letter of Mr. Diaz speaks for itself.”[36]

On the above premises which irresistibly commend themselves to our acceptance, we find no cogent and sufficient reason to award actual, moral, or exemplary damages to petitioners. Although we take judicial notice of the fact that there is a fiduciary relationship between a bank and its depositors, as well as the extent of diligence expected of it in handling the accounts entrusted to its care,[37] the bank may not be held responsible for such damages in the absence of fraud, bad faith, malice, or wanton attitude.[38]

WHEREFORE, finding no reversible error in the judgment appealed from, the same is hereby **AFFIRMED**, with costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Nocon, JJ., concur.

Puno, J., no part.

[1] TSN, May 3, 1985, 6-8.

[2] Ibid., id., 18-24.

[3] Exhibit P, Original Record, 260.

[4] Exhibit D, *ibid.*, 223..

[5] Exhibit E, *ibid.*, 224

[6] *Supra.*, Fn. 5.

[7] Exhibit N, *ibid.*, 254.

[8] Exhibit B-1, *ibid.*, 220.

[9] Exhibit C-1, *ibid.*, 222.

[10] *Supra.*, Fn. 5; TSN, June 7, 1985, 13-18.

[11] TSN, June 7, 1985, 22-23.

[12] Ibid., id., 38-40.

[13] Ibid., id., 32-35.

[14] Ibid., id., 36-37.

[15] Ibid., id., 49-51.

- [16] Rollo, 70.
- [17] Original Record, 423-429; per Judge Maria Alicia M. Austria.
- [18] Rollo, 60; Justice Reynato S. Puno, ponente; Justices Emeterio C. Cui and Salome A. Montoya, concurring.
- [19] Section 185, Negotiable Instruments Law.
- [20] Martin, Philippine Commercial Laws, Vol. I, 1985 Ed., 375.
- [21] Article 1980, Civil Code.
- [22] Republic vs. Court of Appeals, et al., L-25012, July 22, 1975, 65 SCRA 186, reiterated in Siao Tiao Hong vs. Commissioner of Internal Revenue, et al., G.R. No. 32075, September 1, 1992, 213 SCRA 164.
- [23] Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. I, 1987 Ed., 464.
- [24] Browning vs. Bank of Vernal, 60 Utah 197, 207 Pac. 462.
- [25] Goldstein vs. Jefferson Title and Trust Co., 95 Pa. Super Ct., 167.
- [26] O.E. Eads vs. Commercial National Bank of Phoenix, 62 Am. Law Reports, 183.
- [27] Annex A, Petition; Rollo, 55.
- [28] De Leon, The Law on Negotiable Instruments, 1989 Ed., 230-231.
- [29] 35 Pa. Super Ct., 125 (1907).
- [30] Rollo, 17.
- [31] Supra., Fn. 23.
- [32] O.E. Eads vs. Commercial National Bank of Phoenix, 62 A.L.R. 183.
- [33] Id., loc. cit.
- [34] Nauful vs. National Loan and Exchange Bank of Columbia, 97 S.E. Reporter, 843.
- [35] Annex A, Petition; Rollo, 59.
- [36] Ibid.; id., 60.
- [37] Bank of the Philippine Islands vs. Intermediate Appellate Court, et al., G.R. No. 69162, February 21, 1992, 206 SCRA 408.
- [38] Fidelity Savings and Mortgage Bank vs. Cenzon, G.R. No. L-46208, April 5, 1990, 184 SCRA 141.

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