

RAMON TAN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND RIZAL COMMERCIAL BANKING CORPORATION, RESPONDENTS.

G.R. No. 108555. December 20, 1994

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition seeks to set aside the decision of the Court of Appeals dated January 12, 1993 in CA-G.R. CV No. 31083, entitled Ramon Tan, plaintiff-appellee, vs. Rizal Commercial Banking Corporation, defendant-appellant, reversing the decision of the Regional Trial Court dated December 28, 1990 ordering respondent bank Rizal Commercial Banking Corporation (RCBC), Binondo Branch, to pay petitioner damages and attorney's fees in the amount of ONE MILLION THIRTY FIVE THOUSAND (P1,035,000.00) PESOS.

The following are the uncontroverted facts:

Petitioner Ramon Tan, a trader-businessman and community leader in Puerto Princesa, had maintained since 1976 Current Account No. 109058068 with respondent bank's Binondo branch. On March 11, 1988, to avoid carrying cash while enroute to Manila, he secured a Cashier's Check No. L 406000126 from the Philippine Commercial Industrial Bank (PCIB), Puerto Princesa branch, in the amount of Thirty Thousand (P30,000.00) Pesos, payable to his order. He deposited the check in his account with RCBC Binondo on March 15. On the same day, RCBC erroneously sent the same cashier's check for clearing to the Central Bank which was returned for having been "missent" or "misrouted."^[1] The next day, March 16, RCBC debited the amount covered by the same cashier's check from the account of the petitioner. Respondent bank at this time had not informed the petitioner of its action which the latter claims he learned of only 42 days after, specifically on March 16, when he received the bank's debit memo.^[2] Relying on the common knowledge that a cashier's check was as good as cash, that the usual banking practice that local checks are cleared within three (3) working days and regional checks within seven (7) working days, and the fact that the cashier's check was accepted, petitioner issued two (2) personal checks both dated March 18. Check No. 040719 in the name of Go Lac for Five Thousand Five Hundred (P5,500.00) Pesos was presented on April 25,^[3] more than 30 days from petitioner's deposit date of the cashier's check. Check No. 040718 in the name of MS Development Trading Corporation for Six Thousand Fifty-Three Pesos and Seventy Centavos (P6,053.70) was returned twice on March 24, nine (9) days from his deposit date and again on April 26, twenty-two days after the day the cashier's check was deposited for insufficiency of funds.^[4]

Petitioner, alleging to have suffered humiliation and loss of face in the business sector due to the bounced checks, filed a complaint against RCBC for damages in the Regional Trial Court of Palawan and Puerto Princesa, Branch 47, docketed as Civil Case No. 2101.^[5]

During the trial, petitioner sought to prove:

First, that it was RCBC's responsibility to call his attention there and then that he had erroneously filled the wrong deposit slip at the time he deposited the cashier's check with they respondent bank's teller and it was

negligence on RCBC's part not to have done so;[6]

Second, that RCBC had been remiss in the performance of its obligation to the petitioner when it "misent" the cashier's check to the Central Bank knowing, as it should, that the source of the check, PCIB, Puerto Princesa Branch, is not included in the areas required to be cleared by the Central Bank, a fact known to the banking world and surely to the respondent bank;[7]

Third, that RCBC upon knowing of its error in "misending" the cashier's check to the Central Bank did not attempt to rectify its "misclearing" error by clearing it seasonably with PCIB, Puerto Princesa, thru its own RCBC Puerto Princesa Branch with whom it had direct radio contact;[8]

Fourth, that as an old client, with twelve (12) years of good standing then, RCBC should have given him more consideration by exerting greater diligence in clearing the check with PCIB, Puerto Princesa, to protect its client's interest;[9]

Fifth, that RCBC failed to inform petitioner promptly that the check had not been cleared, despite its debiting without delay the amount covered by the check from the account of the petitioner and hastily charging the latter service fees immediately after the return of the "misent checks";[10] and

Finally, that the bounced checks resulting from RCBC's "misclearing" had put in doubt his credibility among his business peers and sullied his reputation as a community leader which he had painstakingly cultivated for years. His community standing as a business-socio-civic leader was a source of pride for him in his old age of 70. He cited being Chairman of Palawan Boy Scout Council, 2-term President of the Rotary Club of Puerto Princesa, member of Palawan Chamber of Commerce and Industry, member of the Monitoring Team of the Palawan Integrated Area Development Project, member of Lion's Club, Philippine Rifle Pistol Association and the Saturday Health Club to justify his claim for moral damages.[11]

In its defense, RCBC disowning any negligence, put the blame for the "misrouting" on the petitioner for using the wrong check deposit slip. It insisted that the misuse of a local check deposit slip, instead of a regional check deposit slip, triggered the "misrouting" by RCBC of the cashier's check to the Central Bank and it was petitioner's negligent "misuse" of a local deposit slip which was the proximate cause of the "misrouting", thus he should bear the consequence.[12]

RCBC alleged that it complied strictly with accepted banking practice when it debited the amount of P30,000.00 against petitioner's account since under Resolution No. 2202 dated December 21, 1979 of the Monetary Board, it is a matter of policy to prohibit the drawing against uncollected deposits (DAUDS) except when the drawings are made against uncollected deposits representing bank manager's/cashier's/treasurer's checks, treasury warrants, postal money orders and duly funded "on us" checks which may be permitted at the discretion of each bank.[13] Without crediting the P30,000.00 deposit, petitioner's balance before and after was Two Thousand Seven Hundred Ninety-Two Pesos and the (P2,792.88) Eighty-Eight Centavos.[14] Thus, it dishonored the two (2) checks amounting to P11,553.70 since they were drawn against insufficient funds. RCBC added that petitioner had no bills purchase (BP) line which allows a depositor to receive or draw from proceeds of a check without waiting it to be cleared. Besides, RCBC maintained, had it forwarded the Cashier's Check to PCIB Puerto Princesa, Palawan, it would take at least twenty (20) working days for the cashier's check to be cleared and it would take the same length of time to clear the two (2) personal checks of Tan.[15]

RCBC further asseverated it was merely acting as petitioner's collecting agent and it assumed no responsibility beyond care in selecting correspondents under the theory that where a check is deposited with a collecting bank the relationship created is that of agency and not creditor-debtor, thus it cannot be liable.[16]

Finally, respondent claimed that serious attempts were made to contact petitioner through the telephone numbers in the signature specimen card of petitioner but to no avail.[17] The Assistant Branch Accountant of RCBC Binondo Branch testified that the first telephone number in the card had been deleted from the phone company's list and that when RCBC tried to contact petitioner's daughter Evelyn Tan-Banzon thru a certain telephone number and when they asked for Evelyn Tan, they were told there was no such person.[18]

The trial court rendered a decision on December 28, 1990 in petitioner's favor, the dispositive portion[19] of which reads:

WHEREFORE, premises considered, plaintiff having proven the allegations of his verified complaint by preponderance of evidence, the court hereby renders judgment ordering defendant bank, Binondo Branch, Manila, to pay him damages and attorney's fees in the total amount of P1,035,000.00 Philippine Currency, broken down as follows: P700,000.00 as moral damages, P200,000.00 as exemplary damages; P135,000.00 which is 15% of the sum herein awarded to plaintiff, as attorney's fees and to pay costs of suit.

For having failed to prove by any receipt or writing to underpin it, plaintiff's claim for actual damage is denied for lack of merit.

IT IS SO ORDERED.

RCBC appealed to the Court of Appeals contending that the trial court erred in holding RCBC liable to petitioner on account of its alleged negligence and in awarding petitioner moral and exemplary damages and attorney's fees.

The Court of Appeals on January 12, 1993 rendered a decision[20] with the following decretal portion:

WHEREFORE, and upon all the foregoing, the decision of the court below is REVERSED and this complaint is DISMISSED without pronouncement as to cost.

The court of Appeals' decision is based on the following findings:[21]

What appeared to have caused the unfortunate incident was that the plaintiff filled up the wrong deposit slip which led to the sending of the check to the Central Bank when the clearing should have been made elsewhere.

But the claim of the plaintiff that he was not advised that the Cashier's check was misssent does not seem to be correct. The evidence indicated that the defendant bank thru its personnel had called him up thru telephone in the number (No. 60-45-23) which he gave in his specimen signature card. But it came out, that said telephone number was no longer active or was already deleted from the list of telephone numbers.

There was an instruction on the part of the plaintiff for the bank to contact his daughter, Mrs. Evelyn Tan Banzon and according to the plaintiff, she too, was not contacted as per his instruction. The evidence, however, indicated that Ms. Evelyn Tan also could not be contacted at the number supposed to pertain to her as appeared in the specimen signature card. In other words while there was compliance with the instructions given by the plaintiff but said instructions were faulty. The plaintiff as a customer of the bank is under obligation to inform the defendant of any changes in the telephone numbers to be contacted in the event of any exigency.

All in all, the facts indicate that the refusal of RCBC to credit the amount of P30,000.00 to the plaintiff's current account is consistent with the accepted banking practice. As the defendant bank had claimed, under Resolution No. 2202 dated December 21, 1979 of the Monetary Board, it had been emphatically declared as a matter of policy that no drawings should be made against uncollected deposits except when the drawings are made against uncollected deposits representing bank manager's/cashier's/treasurer's checks, treasury warrants, postal money orders, and duly funded 'on-us' checks as may be permitted at the discretion of each bank.

It is clear that immediate payment without awaiting clearance of a cashier's check is discretionary with the bank to whom the check is presented and such being the case, the refusal to allow it as in this case is not to be equated with negligence in the basic perception that discretion is not demandable as a right. In the instant case, prior to the deposit of P30,000.00, the plaintiff's account appeared to be only in the amount of P2,792.98. So the two (2) checks issued by the plaintiff amounting to P11,553.70 had to be dishonored since they were drawn against insufficient funds.

What the plaintiff should have done, before issuing the two (2) checks, was to await the clearance of the Cashier's check and his failure to do so is a fault not ascribable to the defendant who appeared under the circumstance merely to have followed the usual banking practice.

Petitioner now seeks to reverse the decision of the Court of Appeals and affirm that of the lower court. He raises the following errors:

1. THE HONORABLE COURT OF APPEALS COMMITTED GROSS AND MANIFEST ERROR IN CONCLUDING THAT THE NEGLIGENCE WAS ASCRIBABLE TO HEREIN PETITIONER.
2. THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN FINDING THAT THE RESPONDENT BANK HAD NOT BEEN REMISS IN THE PERFORMANCE OF ITS OBLIGATIONS TO HEREIN PETITIONER.
3. THE HONORABLE COURT OF APPEALS COMMITTED GROSS AND MANIFEST ERROR AND GRAVE ABUSE OF DISCRETION IN REVERSING THE AWARD OF MORAL AND EXEMPLARY DAMAGES TO THE PETITIONER.
4. THE HONORABLE COURT OF APPEALS COMMITTED GROSS AND MANIFEST ERROR AND GRAVE ABUSE OF DISCRETION IN NOT AWARDING ATTORNEY'S FEES TO PETITIONER.

In a most recent case decided by this Court, *City Trust Corporation v. The Intermediate Appellate Court*,^[22] involving damages against City Trust Banking Corporation, the depositor, instead of stating her correct account number 29000823 inaccurately wrote 2900823. Because of this error, six postdated checks amounting to P20,209.00 she issued were dishonored for insufficiency of funds. The Regional Trial Court dismissed the complaint for lack of merit. The Court of Appeals, however, found the appeal meritorious and ordered the bank to pay nominal damages of P2,000.00, temperate and moderate damages of P5,000.00 and attorney's fees of P4,000.00. Upon review, this Court quoted with favor the disquisition of the appellate court:

We cannot uphold the position of defendant. For, even if it be true that there was error on the part of the plaintiff in omitting a zero in her account number, yet, it is a fact that her name, Emma E. Herrero, is clearly written on said deposit slip (Exh. B). This is controlling in determining in whose account the deposit is made or should be posted. This is so because it is not likely to commit an error in one's name than merely relying on numbers which are difficult to remember, especially a number with eight (8) digits as the account numbers of defendant's depositors. We view the use of numbers as simply for the convenience of the bank but was never intended to disregard the real name of its depositors. The bank is engaged in business impressed with public interest, and it is its duty to protect in return its many clients and depositors who transact business with it. It should not be a matter of the bank alone receiving deposits, lending out money and collecting interests. It is also its obligation to see to it that all funds invested with it are properly accounted for and duly posted in its ledgers.

In the case before Us, we are not persuaded that defendant bank was not free from blame for the fiasco. In the first place, the teller should not have accepted plaintiff's deposit without correcting the account number on the deposit slip which, obviously, was erroneous because, as pointed out by defendant, it contained only seven (7) digits instead of eight (8). Second, the complete name of plaintiff depositor appears in bold letters on the deposit slip (Exh. B). There could be no mistaking in her name, and that the deposit was made in her name,

Emma E. Herrero. In fact, defendant's teller should not have fed her deposit slip to the computer knowing that her account number written thereon was wrong as it contained only seven (7) digits. As it happened, according to defendant, plaintiff's deposit had to be consigned to the suspense accounts pending verification. This, indeed, could have been avoided at the first instance had the teller of defendant bank performed her duties efficiently and well. For then she could have readily detected that the account number in the name of Emma E. Herrero was erroneous and would be rejected by the computer. That is, or should be, part of the training and standard operating procedure of the bank's employees. On the other hand, the depositors are not concerned with banking procedure. That is the responsibility of the bank and its employees. Depositors are only concerned with the facility of depositing their money, earning interest thereon, if any, and withdrawing therefrom, particularly businessmen, like plaintiff, who are supposed to be always on-the-go. Plaintiff's account is a current account which should immediately be posted. After all, it does not earn interest. At least, the forbearance should be commensurated with prompt, efficient and satisfactory service.

Bank clients are supposed to rely on the services extended by the bank, including the assurance that their deposits will be duly credited them as soon as they are made. For, any delay in crediting their account can be embarrassing to them as in the case of plaintiff.

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. (Underlining supplied).

In the light of the above-cited case, the respondent bank cannot exculpate itself from liability by claiming that its depositor "impliedly instructed" the bank to clear his check with the Central Bank by filling a local check deposit slip. Such posture is disingenuous, to say the least. First, why would RCBC follow a patently erroneous act born of ignorance or inattention or both. Second, bank transactions pass through a succession of bank personnel whose duty is to check and countercheck transactions for possible errors. In the instant case, the teller should not have accepted the local deposit slip with the cashier's check that on its face was clearly a regional check without calling the depositor's attention to the mistake at the very moment this was presented to her. Neither should everyone else down the line who processed the same check for clearing have allowed the check to be sent to Central Bank. Depositors do not pretend to be past master of banking technicalities, much more of clearing procedures. As soon as their deposits are accepted by the bank teller, they wholly repose trust in the bank personnel's mastery of banking, their and the bank's sworn profession of diligence and meticulousness in giving irreproachable service.

We do not subscribe to RCBC's assertion that petitioner's use of the wrong deposit slip was the proximate cause of the clearing fiasco and so, petitioner must bear the consequence. In *Pilipinas Bank v. CA*,^[23] this Court said:

The bank is not expected to be infallible but, as correctly observed by respondent Appellate Court, in this instance, it must bear the blame for not discovering the mistake of its teller despite the established procedure requiring the papers and bank books to pass through a battery of bank personnel whose duty it is to check and countercheck them for possible errors. Apparently, the officials and employees tasked to do that did not perform their duties with due care, ...

So it is in the instant case, where the conclusion is inevitable that respondent RCBC had been remiss in the performance of its duty and obligation to its client, as well as to itself. We draw attention to the fact that the two dishonored checks issued by petitioner, Check No. 040719 and Check No. 040718 were presented for payment^[24] more than 45 days from the day the cashier's check was deposited. This gave RCBC more than ample time to have cleared the cashier's check had it corrected its "missending" the same upon return from Central Bank using the correct slip this time so it can be cleared properly. Instead, RCBC promptly debited the amount of P30,000.00 against petitioner's account and left it at that.

We observe, likewise, that RCBC inquired about an Evelyn Tan but no Evelyn Tan-Banzon as specifically instructed in the same signature card. (Underlining supplied)[25]

RCBC insists that immediate payment without awaiting clearance of a cashier's check is discretionary with the bank to whom the check is presented and such being the case, its refusal to immediately pay the cashier's check in this case is not to be equated with negligence on its part. We find this disturbing and unfortunate.

An ordinary check is not a mere undertaking to pay an amount of money. There is an element of certainty or assurance that it will be paid upon presentation that is why it is perceived as a convenient substitute for currency in commercial and financial transactions. The basis of the perception being confidence. Any practice that destroys that confidence will impair the usefulness of the check as a currency substitute and create havoc in trade circles and the banking community.[26]

Now, what was presented for deposit in the instant case was not just an ordinary check but a cashier's check payable to the account of the depositor himself. A cashier's check is a primary obligation of the issuing bank and accepted in advance by its mere issuance.[27] By its very nature, a cashier's check is the bank's order to pay drawn upon itself, committing in effect its total resources, integrity and honor behind the check. A cashier's check by its peculiar character and general use in the commercial world is regarded substantially to be as good as the money which it represents.[28] In this case, therefore, PCIB by issuing the check created an unconditional credit in favor of any collecting bank.

All these considered, petitioner's reliance on the layman's perception that a cashier's check is as good as cash is not entirely misplaced, as it is rooted in practice, tradition, and principle. We see no reason thus why this so-called discretion was not exercised in favor of petitioner, specially since PCIB and RCBC are members of the same clearing house group relying on each other's solvency. RCBC could surely rely on the solvency of PCIB when the latter issued its cashier's check.

On the third and fourth issue, RCBC contends that moral damages cannot be recovered in an action for breach of contract since under Article 2219 of the New Civil Code, the instant case is not among those enumerated. For an award of moral damages in a breach of contract, it is imperative that the party acted in bad faith or fraudulently as provided for in Art. 2220 of the Civil Code, to wit:

ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

In the absence of moral damages, RCBC argues, exemplary damages cannot be awarded under Art. 2225 of the same Code which states:

Exemplary damages or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

We hold that petitioner has the right to recover moral damages even if the bank's negligence may not have been attended with malice and bad faith. In *American Express International, Inc. v. IAC*, [29] we held:

While petitioner was not in bad faith, its negligence caused the private respondent to suffer mental anguish, serious anxiety, embarrassment and humiliation, for which he is entitled to recover, reasonable moral damages (Art. 2217, Civil Code).

In *Zenith Insurance Corporation v. CA*, [30] we also said that moral damages are not meant to enrich a complainant at the expense of defendant. It is only intended to alleviate the moral suffering he has undergone. In the instant case, we find the award of P700,000.00 as moral damages excessive and, accordingly, reduce it to one

hundred thousand (P100,000.00) pesos. We find the award of exemplary damages of P200,000.00 unjustified in the absence of malice, bad faith or gross negligence.[31] The award of reasonable attorney's fees is proper for the petitioner was compelled to litigate to protect his interest.[32]

IN VIEW WHEREOF, we REVERSE the decision of respondent Court of Appeals and hereby order private respondent RCBC, Binondo Branch, to pay petitioner the amount of one hundred thousand (P100,000.00) pesos as moral damages and the sum of fifty thousand (P50,000.00) pesos as attorney's fees, plus costs.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Quiason, JJ., concur.

[1] Rollo, p. 30.

[2] Id., at 78.

[3] Id., at 77.

[4] Id., at 76.

[5] Original Records, pp. 2-6

[6] Id. at 164; TSN, March 26, 1990, pp. 22-26.

[7] Original Records, p. 3.

[8] Id., at 4; TSN, March 26, 1990, pp. 32-33.

[9] Original Records, 153-154.

[10] Id., at 4, 167.

[11] Id., at 4-5.

[12] Id., at 47-48, 62.

[13] Id., at 47; TSN, December 18, 1989, p. 155.

[14] Rollo, p. 52.

[15] Id., at 48-49.

[16] Id., at 89.

[17] TSN, February 2, 1990, pp. 59-66; Original Records, p. 49.

[18] Ibid.

[19] Rollo, p. 68.

[20] Id., at 29-38.

[21] Id., at 36-37.

[22] G.R. No. 84281 promulgated May 27, 1994.

[23] G.R. 105410, promulgated July 25, 1994, citing *Bank of Philippine Island v. IAC*, 206 SCRA 408, (February

21, 1992) 413.

[24] See Notes 1-2, *supra*.

[25] Rollo, pp. 91-93.

[26] Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. I, 474 (1992).

[27] *State v. Bengtson*, 367 P 2d 365.

[28] *Ibid*.

[29] 167 SCRA 209.

[30] 185 SCRA 402.

[31] *Globe Mackay Cable and Radio Corporation v. CA*, 176 SCRA 778.

[32] Civil Code, Art. 2208.

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