GREGORIO H. REYES AND CONSUELO PUYAT-REYES, PETITIONERS, VS. THE HON. COURT OF APPEALS AND FAR EAST BANK AND TRUST COMPANY, RESPONDENTS.

G.R. No. 118492. August 15, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review of the Decision[1] dated July 22, 1994 and Resolution[2] dated December 29, 1994 of the Court of Appeals[3] affirming with modification the Decision[4] dated November 12, 1992 of the Regional Trial Court of Makati, Metro Manila, Branch 64, which dismissed the complaint for damages of petitioners spouses Gregorio H. Reyes and Consuelo Puyat-Reyes against respondent Far East Bank and Trust Company.

The undisputed facts of the case are as follows:

In view of the 20th Asian Racing Conference then scheduled to be held in September, 1988 in Sydney, Australia, the Philippine Racing Club, Inc. (PRCI, for brevity) sent four (4) delegates to the said conference. Petitioner Gregorio H. Reyes, as vice-president for finance, racing manager, treasurer, and director of PRCI, sent Godofredo Reyes, the club's chief cashier, to the respondent bank to apply for a foreign exchange demand draft in Australian dollars.

Godofredo went to respondent bank's Buendia Branch in Makati City to apply for a demand draft in the amount One Thousand Six Hundred Ten Australian Dollars (AU$1,610.00) payable to the order of the 20th Asian Racing Conference Secretariat of Sydney, Australia. He was attended to by respondent bank's assistant cashier, Mr. Yasis, who at first denied the application for the reason that respondent bank did not have an Australian dollar account in any bank in Sydney. Godofredo asked if there could be a way for respondent bank to accommodate PRCI's urgent need to remit Australian dollars to Sydney. Yasis of respondent bank then informed Godofredo of a roundabout way of effecting the requested remittance to Sydney thus: the respondent bank would draw a demand draft against Westpac Bank in Sydney, Australia (Westpac-Sydney for brevity) and have the latter reimburse itself from the U.S. dollar account of the respondent in Westpac Bank in New York, U.S.A (Westpac-New York for brevity). This arrangement has been customarily resorted to since the 1960's and the procedure has proven to be problem-free. PRCI and the petitioner Gregorio H. Reyes, acting through Godofredo, agreed to this arrangement or approach in order to effect the urgent transfer of Australian dollars payable to the Secretariat of the 20th Asian Racing Conference.

On July 28, 1988, the respondent bank approved the said application of PRCI and issued Foreign Exchange Demand Draft (FXDD) No. 209968 in the sum applied for, that is, One Thousand Six Hundred Ten Australian Dollars (AU$1,610.00), payable to the order of the 20th Asian Racing Conference Secretariat of Sydney, Australia, and addressed to Westpac-Sydney as the drawee bank.

On August 10, 1988, upon due presentment of the foreign exchange demand draft, denominated as FXDD No.

209968, the same was dishonored, with the notice of dishonor stating the following: "xxx No account held with Westpac." Meanwhile, on August 16, 1988, Westpac-New York sent a cable to respondent bank informing the latter that its dollar account in the sum of One Thousand Six Hundred Ten Australian Dollars (AU$1,610.00) was debited. On August 19, 1988, in response to PRCI's complaint about the dishonor of the said foreign exchange demand draft, respondent bank informed Westpac-Sydney of the issuance of the said demand draft FXDD No. 209968, drawn against the Westpac-Sydney and informing the latter to be reimbursed from the respondent bank's dollar account in Westpac-New York. The respondent bank on the same day likewise informed Westpac-New York requesting the latter to honor the reimbursement claim of Westpac-Sydney. On September 14, 1988, upon its second presentment for payment, FXDD No. 209968 was again dishonored by Westpac-Sydney for the same reason, that is, that the respondent bank has no deposit dollar account with the drawee Westpac-Sydney.

On September 17, 1988 and September 18, 1988, respectively, petitioners spouses Gregorio H. Reyes and Consuelo Puyat-Reyes left for Australia to attend the said racing conference. When petitioner Gregorio H. Reyes arrived in Sydney in the morning of September 18, 1988, he went directly to the lobby of Hotel Regent Sydney to register as a conference delegate. At the registration desk, in the presence of other delegates from various member countries, he was told by a lady member of the conference secretariat that he could not register because the foreign exchange demand draft for his registration fee had been dishonored for the second time. A discussion ensued in the presence and within the hearing of many delegates who were also registering. Feeling terribly embarrassed and humiliated, petitioner Gregorio H. Reyes asked the lady member of the conference secretariat that he be shown the subject foreign exchange demand draft that had been dishonored as well as the covering letter after which he promised that he would pay the registration fees in cash. In the meantime he demanded that he be given his name plate and conference kit. The lady member of the conference secretariat relented and gave him his name plate and conference kit. It was only two (2) days later, or on September 20, 1988, that he was given the dishonored demand draft and a covering letter. It was then that he actually paid in cash the registration fees as he had earlier promised.

Meanwhile, on September 19, 1988, petitioner Consuelo Puyat-Reyes arrived in Sydney. She too was embarrassed and humiliated at the registration desk of the conference secretariat when she was told in the presence and within the hearing of other delegates that she could not be registered due to the dishonor of the subject foreign exchange demand draft. She felt herself trembling and unable to look at the people around her. Fortunately, she saw her husband coming toward her. He saved the situation for her by telling the secretariat member that he had already arranged for the payment of the registration fees in cash once he was shown the dishonored demand draft. Only then was petitioner Puyat-Reyes given her name plate and conference kit.

At the time the incident took place, petitioner Consuelo Puyat-Reyes was a member of the House of Representatives representing the lone Congressional District of Makati, Metro Manila. She has been an officer of the Manila Banking Corporation and was cited by Archbishop Jaime Cardinal Sin as the top lady banker of the year in connection with her conferment of the Pro-Ecclesia et Pontifice Award. She has also been awarded a plaque of appreciation from the Philippine Tuberculosis Society for her extraordinary service as the Society's campaign chairman for the ninth (9th) consecutive year.

On November 23, 1988, the petitioners filed in the Regional Trial Court of Makati, Metro Manila, a complaint for damages, docketed as Civil Case No. 88-2468, against the respondent bank due to the dishonor of the said foreign exchange demand draft issued by the respondent bank. The petitioners claim that as a result of the dishonor of the said demand draft, they were exposed to unnecessary shock, social humiliation, and deep mental anguish in a foreign country, and in the presence of an international audience.

On November 12, 1992, the trial court rendered judgment in favor of the defendant (respondent bank) and against

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the plaintiffs (herein petitioners), the dispositive portion of which states:

> WHEREFORE, judgment is hereby rendered in favor of the defendant, dismissing plaintiffs' complaint, and ordering plaintiffs to pay to defendant, on its counterclaim, the amount of P50,000.00, as reasonable attorney's fees. Costs against the plaintiff.
>
> SO ORDERED.[5]

The petitioners appealed the decision of the trial court to the Court of Appeals. On July 22, 1994, the appellate court affirmed the decision of the trial court but in effect deleted the award of attorney's fees to the defendant (herein respondent bank) and the pronouncement as to the costs. The decretal portion of the decision of the appellate court states:

> WHEREFORE, the judgment appealed from, insofar as it dismisses plaintiffs' complaint, is hereby AFFIRMED, but is hereby REVERSED and SET ASIDE in all other respect. No special pronouncement as to costs.
>
> SO ORDERED.[6]

According to the appellate court, there is no basis to hold the respondent bank liable for damages for the reason that it exerted every effort for the subject foreign exchange demand draft to be honored. The appellate court found and declared that:

> xxx xxx xxx
>
> Thus, the Bank had every reason to believe that the transaction finally went through smoothly, considering that its New York account had been debited and that there was no miscommunication between it and Westpac-New York. SWIFT is a world wide association used by almost all banks and is known to be the most reliable mode of communication in the international banking business. Besides, the above procedure, with the Bank as drawer and Westpac-Sydney as drawee, and with Westpac-New York as the reimbursement Bank had been in place since 1960s and there was no reason for the Bank to suspect that this particular demand draft would not be honored by Westpac-Sydney.
>
> From the evidence, it appears that the root cause of the miscommunications of the Bank's SWIFT message is the erroneous decoding on the part of Westpac-Sydney of the Bank's SWIFT message as an MT799 format. However, a closer look at the Bank's Exhs. "6" and "7" would show that despite what appears to be an asterisk written over the figure before "99", the figure can still be distinctly seen as a number "1" and not number "7", to the effect that Westpac-Sydney was responsible for the dishonor and not the Bank.
>
> Moreover, it is not said asterisk that caused the misleading on the part of the Westpac-Sydney of the numbers "1" to "7", since Exhs. "6" and "7" are just documentary copies of the cable message sent to Westpac-Sydney. Hence, if there was mistake committed by Westpac-Sydney in decoding the cable message which caused the Bank's message to be sent to the wrong department, the mistake was Westpac's, not the Bank's. The Bank had done what an ordinary prudent person is required to do in the particular situation, although appellants expect the Bank to have done more. The Bank having done everything necessary or usual in the ordinary course of banking transaction, it cannot be held liable for any embarrassment and corresponding damage that appellants may have incurred.[7]
>
> xxx xxx xxx

Hence, this petition, anchored on the following assignment of errors:

> I
>
> THE HONORABLE COURT OF APPEALS ERRED IN FINDING PRIVATE RESPONDENT NOT

NEGLIGENT BY ERRONEOUSLY APPLYING THE STANDARD OF DILIGENCE OF AN "ORDINARY PRUDENT PERSON" WHEN IN TRUTH A HIGHER DEGREE OF DILIGENCE IS IMPOSED BY LAW UPON THE BANKS.

II

THE HONORABLE COURT OF APPEALS ERRED IN ABSOLVING PRIVATE RESPONDENT FROM LIABILITY BY OVERLOOKING THE FACT THAT THE DISHONOR OF THE DEMAND DRAFT WAS A BREACH OF PRIVATE RESPONDENT'S WARRANTY AS THE DRAWER THEREOF.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT AS SHOWN OVERWHELMINGLY BY THE EVIDENCE, THE DISHONOR OF THE DEMAND DRAFT WAS DUE TO PRIVATE RESPONDENT'S NEGLIGENCE AND NOT THE DRAWEE BANK.[8]

The petitioners contend that due to the fiduciary nature of the relationship between the respondent bank and its clients, the respondent bank should have exercised a higher degree of diligence than that expected of an ordinary prudent person in the handling of its affairs as in the case at bar. The appellate court, according to petitioners, erred in applying the standard of diligence of an ordinary prudent person only. Petitioners also claim that the respondent bank violated Section 61 of the Negotiable Instruments Law[9] which provides the warranty of a drawer that "xxx on due presentment, the instrument will be accepted or paid, or both, according to its tenor xxx." Thus, the petitioners argue that respondent bank should be held liable for damages for violation of this warranty. The petitioners pray this Court to re-examine the facts to cite certain instances of negligence.

It is our view and we hold that there is no reversible error in the decision of the appellate court.

Section 1 of Rule 45 of the Revised Rules of Court provides that "(T)he petition (for review) shall raise only questions of law which must be distinctly set forth." Thus, we have ruled that factual findings of the Court of Appeals are conclusive on the parties and not reviewable by this Court – and they carry even more weight when the Court of Appeals affirms the factual findings of the trial court.[10]

The courts a quo found that respondent bank did not misrepresent that it was maintaining a deposit account with Westpac-Sydney. Respondent bank's assistant cashier explained to Godofredo Reyes, representating PRCI and petitioner Gregorio H. Reyes, how the transfer of Australian dollars would be effected through Westpac-New York where the respondent bank has a dollar account to Westpac-Sydney where the subject foreign exchange demand draft (FXDD No. 209968) could be encashed by the payee, the 20th Asian Racing Conference Secretatriat. PRCI and its Vice-President for finance, petitioner Gregorio H. Reyes, through their said representative, agreed to that arrangement or procedure. In other words, the petitioners are estopped from denying the said arrangement or procedure. Similar arrangements have been a long standing practice in banking to facilitate international commercial transactions. In fact, the SWIFT cable message sent by respondent bank to the drawee bank, Westpac-Sydney, stated that it may claim reimbursement from its New York branch, Westpac-New York where respondent bank has a deposit dollar account.

The facts as found by the courts a quo show that respondent bank did not cause an erroneous transmittal of its SWIFT cable message to Westpac-Sydney. It was the erroneous decoding of the cable message on the part of Westpac-Sydney that caused the dishonor of the subject foreign exchange demand draft. An employee of Westpac-Sydney in Sydney, Australia mistakenly read the printed figures in the SWIFT cable message of respondent bank as "MT799" instead of as "MT199". As a result, Westpac-Sydney construed the said cable message as a format for a letter of credit, and not for a demand draft. The appellate court correctly found that "the figure before '99' can still be distinctly seen as a number '1' and not number '7'." Indeed, the line of a "7" is in

a slanting position while the line of a “1” is in a horizontal position. Thus, the number “1” in “MT199” cannot be construed as “7”.[11]

The evidence also shows that the respondent bank exercised that degree of diligence expected of an ordinary prudent person under the circumstances obtaining. Prior to the first dishonor of the subject foreign exchange demand draft, the respondent bank advised Westpac-New York to honor the reimbursement claim of Westpac-Sydney and to debit the dollar account[12] of respondent bank with the former. As soon as the demand draft was dishonored, the respondent bank, thinking that the problem was with the reimbursement and without any idea that it was due to miscommunication, re-confirmed the authority of Westpac-New York to debit its dollar account for the purpose of reimbursing Westpac-Sydney.[13] Respondent bank also sent two (2) more cable messages to Westpac-New York inquiring why the demand draft was not honored.[14]

With these established facts, we now determine the degree of diligence that banks are required to exert in their commercial dealings. In Philippine Bank of Commerce v. Court of Appeals[15] upholding a long standing doctrine, we ruled that the degree of diligence required of banks, is more than that of a good father of a family where the fiduciary nature of their relationship with their depositors is concerned. In other words banks are duty bound to treat the deposit accounts of their depositors with the highest degree of care. But the said ruling applies only to cases where banks act under their fiduciary capacity, that is, as depositary of the deposits of their depositors. But the same higher degree of diligence is not expected to be exerted by banks in commercial transactions that do not involve their fiduciary relationship with their depositors.

Considering the foregoing, the respondent bank was not required to exert more than the diligence of a good father of a family in regard to the sale and issuance of the subject foreign exchange demand draft. The case at bar does not involve the handling of petitioners’ deposit, if any, with the respondent bank. Instead, the relationship involved was that of a buyer and seller, that is, between the respondent bank as the seller of the subject foreign exchange demand draft, and PRCI as the buyer of the same, with the 20th Asian Racing Conference Secretariat in Sydney, Australia as the payee thereof. As earlier mentioned, the said foreign exchange demand draft was intended for the payment of the registration fees of the petitioners as delegates of the PRCI to the 20th Asian Racing Conference in Sydney.

The evidence shows that the respondent bank did everything within its power to prevent the dishonor of the subject foreign exchange demand draft. The erroneous reading of its cable message to Westpac-Sydney by an employee of the latter could not have been foreseen by the respondent bank. Being unaware that its employee erroneously read the said cable message, Westpac-Sydney merely stated that the respondent bank has no deposit account with it to cover for the amount of One Thousand Six Hundred Ten Australian Dollar (AU$1610.00) indicated in the foreign exchange demand draft. Thus, the respondent bank had the impression that Westpac-New York had not yet made available the amount for reimbursement to Westpac-Sydney despite the fact that respondent bank has a sufficient deposit dollar account with Westpac-New York. That was the reason why the respondent bank had to re-confirm and repeatedly notify Westpac-New York to debit its (respondent bank’s) deposit dollar account with it and to transfer or credit the corresponding amount to Westpac-Sydney to cover the amount of the said demand draft.

In view of all the foregoing, and considering that the dishonor of the subject foreign exchange demand draft is not attributable to any fault of the respondent bank, whereas the petitioners appeared to be under estoppel as earlier mentioned, it is no longer necessary to discuss the alleged application of Section 61 of the Negotiable Instruments Law to the case at bar. In any event, it was established that the respondent bank acted in good faith and that it did not cause the embarrassment of the petitioners in Sydney, Australia. Hence, the Court of Appeals did not commit any reversable error in its challenged decision.

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WHEREFORE, the petition is hereby DENIED, and the assailed decision of the Court of Appeals is AFFIRMED. Costs against the petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Penned by Associate Justice Jorge S. Imperial and concurred in by Associate Justices Pacita Canizares-Nye and Conrado M. Vasquez, Jr.; Rollo, pp. 24-42.

[2] Rollo, p. 44.

[3] Fourteenth Division.

[4] Court of Appeals Rollo, pp. 60-80.

[5] Court of Appeals Rollo, p. 80.

[6] Rollo, p. 42.

[7] Rollo, p. 40.

[8] Rollo, p. 14a.

[9] Section 61. Liability of drawer.- The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that, on due presentment, the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

[10] Borromeo v. Sun, 317 SCRA 176, 182 (1999).

[11] Exhibit “6”.

[12] Exhibit “4”.

[13] Exhibit “7”.

[14] Exhibits “9” and “10”.

[15] 269 SCRA 695, 708-709 (1997).

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