

**BPI INVESTMENT CORPORATION, PETITIONER, VS. D. G. CARREON
COMMERCIAL CORPORATION, DANIEL G. CARREON, AURORA J.
CARREON, AND JOSEFA M. JECIEL, RESPONDENTS.**

G.R. No. 126524. November 29, 2001

Ponente: PARDO, J.

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PARDO, J.:

Before the Court is a petition for review on certiorari of the decision[1] of the Court of Appeals reversing the ruling of the Regional Trial Court, Makati, dismissing petitioner's complaint for recovery of a sum of money alleged as overpayment of money market placements.

The Facts

Petitioner BPI Investment Corporation (BPI Investments), formerly known as "Ayala Investment and Development Corporation," was engaged in money market operations. Respondent D. G. Commercial Corporation was a client of petitioner and started its money market placements in September, 1978. The individual respondents, spouses Daniel and Aurora Carreon and Josefa M. Jeceil also placed with BPI Investments their personal money in money market placements.

On November 15, 1979, D. G. Carreon Commercial Corporation (D. G. Carreon, for brevity) placed with BPI Investments P318,981.59 in money market placement with a maturity term of thirty two days, or up to December 17, 1979, at a maturity value of P323,518.22. BPI Investments issued the corresponding sales order slip for straight sale and confirmation slip.

On December 12, 1979, there appeared in BPI Investments ledger due D. G. Carreon an amount of P323,518.22, which is the exact amount to mature on December 17, 1979. D. G. Carreon did not make any money placement maturing on December 12, 1979. As a result of this, Mr. Celso Abrantes, an officer of BPI Investments called up Aurora Carreon about the money market placement supposedly maturing on December 12, 1979. Aurora Carreon instructed Abrantes to roll over the amount of P323,518.22, for another thirty days at 19% interest to mature on January 11, 1980. A sales order slip and a confirmation slip were executed dated December 12, 1979.

On December 17, 1979, BPI Investments credited D. G. Carreon with another P323,518.22 via roll over of P300,000.00, for a term of one hundred twenty days at 19% interest maturing on April 15, 1980, and P23,518.22, paid out in cash. A sales order slip for straight sale and a confirmation slip were executed. BPI Investments paid the money placement on April 16, 1980. The money placement in the amount of P319,000.00 that matured on April 16, 1980 was again rolled over for a term of sixty one days at 19% interest maturing on June 16, 1980, with a maturity value of P329,443.81. The amount was again rolled over for a term of thirty days at 18% interest maturing on July 16, 1980, and again rolled over for another thirty days at 18% interest.

BPI Investments paid D. G. Carreon twice in interest of the amount of P323,518.22, representing a single money market placement, the first on December 12, 1979, and the second on December 17, 1979. According to

petitioner, their bookkeeper made an error in posting "12-17" on the sales order slip for "12-12." BPI Investments claimed that the same placement was also booked as maturing on December 12, 1979. Aurora Carreon instructed BPI Investments to roll over the whole amount of P323,518.22 for another thirty days, or up to January 11, 1980, at 19% interest. BPI Investments claimed that roll overs were subsequently made from maturing payments on which BPI Investments had made over payments at a total amount of P410,937.09, as follows:

April 14, 1980

-

P 14,371.74

June 18, 1980

-

P 9, 648.38

August 12, 1980

-

P100,000.00

March 19, 1981

-

P 66, 259.88

October 19, 1981

-

P220,657.64

TOTAL

P410,937.09

All the above payments were evidenced by checks issued by BPI Investments to respondents.

On April 21, 1982, BPI Investments wrote respondents Daniel Carreon and Aurora Carreon, demanding the return of the overpayment of P410,937.09.[2] They discussed the matter with BPI Investments. The respondents asserted that there was no overpayment and asked for time to look for the papers. Upon the request of BPI Investments, the spouses Daniel and Aurora Carreon sent to BPI Investments a proposed memorandum of agreement, dated May 7, 1982, stating that:

"NOW, THEREFORE, and for (sic) in consideration of the foregoing, the parties herein agree as follows:

"1. Because of the age and retrieval difficulty of the transactions on this placement, the Company has a five-year option to determine if the said placement referred to as funded, and if so, to submit to AIDC (Now BPI Investments) documents to this effect. And if such documents support the funding of side placement, AIDC (BPI Investments) shall pay the company the stated amount being temporarily reimbursed by the

Company with a 12% p.a. interest. In the spirit of goodwill the company hereby agrees to temporarily reimburse AIDC the amount of FOUR HUNDRED TEN THOUSAND NINE HUNDRED THIRTY SEVEN and 9/100 PESOS (P410,937.09) representing the full amount of the claim of AIDC as mentioned above."[3]

On May 10, 1982, BPI Investments, without responding to the memorandum and proposal of D. G. Carreon filed with the Court of First Instance of Rizal, Branch 36, Makati, a complaint[4] for recovery of a sum of money against D. G. Carreon with preliminary attachment. On May 14, 1982, the trial court issued an order[5] for preliminary attachment after submission of affidavit of merit to support the petition, and the posting of a bond in the amount of P200,000.00. However, on October 8, 1982, the trial court lifted the writ of attachment.[6] On October 28, 1982, BPI Investments moved for reconsideration, but the trial court denied the motion after finding the absence of double payment to the defendants.

On July 30, 1982, respondents D. G. Carreon filed with the trial court an answer[7] to the complaint, with counterclaim. D.G. Carreon asked for compensatory damages in an amount to be proven during the trial; spouses Daniel and Aurora Carreon asked for moral damages of P1,000,000.00 because of the humiliation, great mental anguish, sleepless nights and deterioration of health due to the filing of the complaint and indiscriminate and wrongful attachment of their property, especially their residential house and payment of their money market placement of P109,283.75. Josefa Jecel asked for moral damages of P500,000.00, because of sleepless nights and mental anguish, and payment of her money market placement of P73,857.57; all defendants claimed for exemplary damages and attorney's fees of P100,000.00.

On May 25, 1993, the trial court rendered a decision, the pertinent portions of which read as follows:

"Plaintiff's case is unmeritorious."

"The court agrees with defendants' counsel's observation that plaintiff did not prove by clear and convincing evidence that defendants indeed received money in excess of what is due them as it utterly failed to show and present any proof what was actually due defendants. As pointed out by the same counsel, the summary of the money market placement submitted as evidence by plaintiff (Exh. A) is at best self-serving as it was admittedly prepared by plaintiff's own accounting department without any participation of defendants. (TSN of October 15, 1985, p. 4)

"Moreover, the alleged payments in the complaint were admitted by plaintiff itself to be withdrawals from validly issued commercial papers (TSN of August 12, 1986, pp. 3-5) for value received (Exhs. 1-B, 2-B up to 11-B) duly verified and signed by at least two (2) authorized high ranking officers of plaintiff's corporation. Again, as correctly stated by defendants, Art. 1431 of the New Civil Code provides that through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disapproved as against the person relying thereon. Accordingly, plaintiff having thus clearly stated in several documents duly signed by its responsible officers cannot now vary their contents and claim that they were received without value having been received for the same.

"Lastly, it is incumbent upon plaintiff corporation to provide for competent employees possessed with adequate skills in implementing effective safeguards and measures that ensure the non-occurrence of errors of this nature, it would be gross negligence on the part of plaintiff if it fails to provide for the same considering that it is primarily engaged in the solicitation of money market placements.

"In view of the foregoing, the case is hereby DISMISSED with cost against plaintiff. The attachment previously issued is likewise lifted.

"It appearing that plaintiff was not motivated by malice in filing this case, the counterclaim is likewise DISMISSED.

"SO ORDERED." [8]

Both parties appealed the above decision to the Court of Appeals. [9]

After due proceedings, on July 19, 1996, the Court of Appeals promulgated a decision, the dispositive portion of which reads as follows:

"WHEREFORE, the appealed judgment of the trial court dismissing the plaintiff's complaint is hereby AFFIRMED while its dismissal of the counterclaim of defendants is REVERSED and SET ASIDE and judgment is hereby rendered as follows:

"1. Ordering plaintiff BPI to pay the following amounts of damages:

"Moral Damages -

"a) P1,000,000.00 to the late Daniel G. Carreon or his estate represented by Aurora J. Carreon;

"b) P1,000,000.00 to Aurora J. Carreon; P500,000.00 to the late Josefa M. Jeceil or her estate represented by Aurora J. Carreon;

"Compensatory Damages -

"P1,500,000.00 to D. G. Carreon Commercial Corporation;

"Exemplary Damages -

P1,000,000.00 to all defendants;

"Attorney's Fees -

P500,000.00 to all defendants

"2. Ordering plaintiff BPI to pay to the estate of Daniel G. Carreon, represented by Aurora J. Carreon, the money market placement of P109,238.75 with 12% interest per annum from June 3, 1982 until fully paid;

"3. Ordering plaintiff BPI to pay to the estate of Josefa M. Jeceil, represented by Aurora J. Carreon, the money market placement in the amount of P73,857.57 at 12% interest per annum from maturity on July 12, 1982 until fully paid;

"4. Ordering plaintiff BPI to pay for the costs of the suit.

"SO ORDERED" [10]

Hence, this appeal. [11]

Petitioner BPI Investments raises the following issues:

- Whether there was an over payment of respondents' money market placements.
- Whether petitioner abused its right in implementing the writ of preliminary attachment;
- Whether the Court of Appeals awarded excessive moral and exemplary damages as well as attorney's fees to respondents; and
- Whether petitioner was obliged to pay the estate of Josefa Jeceil the amount of her money market placement. [12]

Petitioner's Submissions

First, BPI Investments submits that the summary of the money market placements and the checks issued to D. G. Carreon are sufficient to show that one renewal or "roll over" of the money market placement dated November 15, 1979, for a period of thirty-two days gave rise to two placements maturing on two dates, that is, December 12, 1979 and December 17, 1979.[13]

After several roll overs and withdrawals by D.G. Carreon, BPI Investments discovered that respondent corporation has overpaid P410,937.09 since the December 12, 1979 placement was not funded. BPI Investments stressed that in a money market transaction an official receipt must support maturing placements. The December 12, 1979 placement was unsupported by any fund.[14]

Second, a mistake caused the overpayment in the posting of the maturity date of "12-12" instead of "12-17." The mistake in the posting of the maturity date benefited D. G. Carreon. And as soon as petitioner discovered the wrong posting, it immediately wrote D. G. Carreon to inform the latter of the error in the posting of the maturity dates on its money market placements.[15]

Third, the manner of execution of the writ of attachment is not the fault of BPI Investments. The sheriff of the trial court implemented the writ. The only participation BPI Investments had in the process was the application for a writ of preliminary attachment. BPI Investments did not have a hand in its implementation.[16]

Fourth, the Court of Appeals blamed BPI Investments for the deterioration of the health of two respondents who died pendente lite. The award of moral and exemplary damages and attorney's fees in favor of respondents is bereft of factual and legal bases.[17]

Petitioner filed the case below to recover the overpayment arising from an unfunded placement. The respondents failed to show proof that the December 12, 1979 placement was different from the December 17, 1979 placement.

The Court of Appeals ruling that the filing of the case aggravated and caused the death of respondents Daniel Carreon and Josefa Jeceil is completely unfounded and farfetched. Daniel Carreon, prior to the filing of the case, was suffering from nasopharyngeal cancer from which he died in 1984. Whereas Josefa Jeceil died from various heart ailments in 1987, almost five years since the case was filed. No causal relation whatsoever was established between the health of the respondents and the filing of the case.[18]

The award of damages in favor of the respondent corporation was also without basis. There was no proof adduced that the credit standing of the respondent corporation was affected by the filing of the case. There was no proof of bad faith or malice on the part of BPI Investments. What happened was an honest mistake.[19]

Fifth, the order of the Court of Appeals for BPI Investments to pay the money market placement of Josefa Jeceil was also without basis. The amount of P73,857.57 was placed and deposited by BPI Investments with the sheriff of the Court of First Instance of Rizal in compliance with the order of the court. Respondent Jeceil knew of this fact but she failed to withdraw the amount in the custody of the trial court.[20]

Respondents' Position

Respondents submit that the issues raised are factual, hence, not reviewable in this case.

Only questions of law, distinctly set forth, may be raised in a petition for review on certiorari, subject to clearly settled exceptions in case law. The case at bar does not fall within any of the exceptions.[21]

BPI Investments was guilty of bad faith, malice and gross negligence in the management of respondents' money market placements. According to respondents, this is not a mere case of "misreading" "12-17" as "12-12." The sloppy accounting and recording of the ledger was a clear case of gross negligence in the exercise of petitioner's primary business of accepting money market placements. BPI Investments was remiss in its duty to treat

respondents' money market placements with the highest degree of care, considering the fiduciary nature of their relationship.[22]

The Court of Appeals correctly ruled that petitioner abused its right in executing the writ of attachment against respondents.

Notwithstanding the fact that petitioner's claim amounted only up to P410,937.09, petitioner caused the levy on property of respondents valued at more than P40,000,000.00, in a harsh, unjust, inhuman and oppressive manner. This constitutes an abuse that justifies the award of damages to the respondents. Articles 19, 20 and 21 of the Civil Code constitute the legal basis for the award of damages to respondents.[23]

As to the alleged excessive award of moral and exemplary damages as well as attorney's fees, respondents submit that the same is supported by proofs. As to the moral damages awarded to Daniel G. Carreon and Aurora J. Carreon, both in the amount of P1,000,000.00, and to Josefa M. Jeceil in the amount of P500,000.00, the awards are reasonable and supported by evidence.

All the respondents are persons of high reputation in the community. Each of them suffered mental anguish, embarrassment and humiliation due to the case filed by petitioner and two of them deteriorated in their health and died during the pendency of the case. As to the compensatory damages awarded to the corporation, the same is proper. It was proved that D. G. Carreon is a reputable corporation with good credit standing in the business community and this reputation was damaged due to the malicious charges filed by petitioner.[24]

As to the award of exemplary damages, the same is not excessive. It must be stressed that the amount of P1,000,000.00 was awarded to four respondents. The attorney's fees in the amount of P500,000.00 is not excessive considering that the case dragged on from 1981 up to the present, over fifteen years.[25]

As to the order to pay the long overdue money market placement of the late Josefa Jeceil, petitioner's contention that respondent failed to withdraw the amount deposited with the sheriff is not correct. First, the deposit does not amount to payment; indeed, consignment was not proper. Josefa Jeceil had no right to withdraw such deposit because of the pending litigation. As a consequence, the Court of Appeals directed the petitioner to pay the matured money market placement of the late Josefa Jeceil.[26]

The Court's Ruling

After a careful consideration of the facts and the evidence presented by both parties, we consider the petition partly meritorious.

"There are instances when the findings of fact of the trial court and/or Court of Appeals may be reviewed by the Supreme Court, such as (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record." [27]

In the case at bar, the Court of Appeals committed errors in the apprehension of the facts of the case, hence, we review its findings of facts.

We find petitioner not guilty of gross negligence in the handling of the money market placement of respondents. "Gross negligence implies a want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them." [28]

However, while petitioner BPI Investments may not be guilty of gross negligence, it failed to prove by clear and convincing evidence that D. G. Carreon indeed received money in excess of what was due them. "The alleged payments in the complaint were admitted by plaintiff itself to be withdrawals from validly issued commercial papers, duly verified and signed by at least two authorized high-ranking officers of BPI Investments." [29]

The law on exemplary damages is found in Section 5, Chapter 3, Title XVIII, Book IV of the Civil Code. These are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages. They are recoverable in criminal cases as part of the civil liability when the crime was committed with one or more aggravating circumstances; in quasi-delicts, if the defendant acted with gross negligence; and in contracts and quasi-contracts, if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. [30]

BPI Investments did not act in a wanton, fraudulent, reckless, oppressive, or malevolent manner, when it asked for preliminary attachment. It was just exercising a legal option. The sheriff of the issuing court did the execution and the attachment. Hence, BPI Investments is not to be blamed for the excessive and wrongful attachment.

As to the finding of the appellate court that the filing of the case aggravated and eventually caused the death of two of the respondents, we agree with the petitioner that such correlation is bereft of basis and is far fetched.

The award of moral damages and attorney's fees is also not in keeping with existing jurisprudence. Moral damages may be awarded in a breach of contract when the defendant acted in bad faith, or was guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligation. Finally, with the elimination of award of moral damages, so must the award of attorney's fees be deleted." [31]

There is no doubt, however, that the damages sustained by respondents were due to petitioner's fault or negligence, short of gross negligence. Temperate or moderate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. [32] The Court deems it prudent to award reasonable temperate damages to respondents under the circumstances. [33]

As to the claim for payment of the money market placement of Josefa Jeceil, the trial court may release the deposited amount of P73,857.57 to petitioner as the consignment was not proper or warranted.

The Fallo

IN VIEW WHEREOF, the decision of the Court of Appeals is hereby AFFIRMED with MODIFICATION. The award of moral, compensatory and exemplary damages and attorney's fees are deleted. BPI Investments is ordered to pay to the estate of Daniel G. Carreon and Aurora J. Carreon the money market placement of P109,238.75, with legal interest of twelve (12%) percent per annum from June 3, 1982, until fully paid; to pay the estate of Josefa M. Jeceil, the money market placement in the amount of P73,857.57, with legal interest at twelve (12%) percent per annum from maturity on July 12, 1982, until fully paid. The petitioner may withdraw its deposit from the lower court at its peril. BPI Investments is likewise ordered to pay temperate damages to the estate of the late Daniel G. Carreon in the amount of P300,000.00, and to the estate of Aurora J. Carreon in the amount of P300,000.00, and to the estate of Josefa M. Jeceil in the amount of P150,000.00.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In CA- G. R. CV No. 44838, promulgated on July 19, 1996. Asuncion, J., ponente, Montoya and Jacinto, JJ., concurring. Petition, Annex "A", Rollo, pp. 33-44.

[2] Annex "N", Original Record, pp. 39-40.

[3] Folder of Exhibits, Memorandum of Agreement, pp. 806-808, at pp. 806-807.

[4] Original Record, Complaint, pp. 1-8.

[5] Original Record, Order, p. 22.

[6] Ibid., Order, pp. 337-338.

[7] Original Record, Answer with Counterclaim, pp. 292-302.

[8] Decision, Rollo, pp. 30-31, Judge Salvador S. Abad Santos, presiding.

[9] Docketed as CA-G. R. CV No. 44838.

[10] Petition, Rollo, pp. 33-44, at pp. 43-44.

[11] Petition filed on November 18, 1996, Rollo, pp. 10-29. On November 9, 1998, we gave due course to the petition (Rollo, p. 109).

[12] Petition, Rollo, pp. 22-27.

[13] Ibid., p. 22.

[14] Ibid., p. 23.

[15] Ibid., pp. 23-25.

[16] Ibid., p. 25.

[17] Ibid., p. 26.

[18] Ibid.

[19] Ibid.

[20] Ibid., p. 27.

[21] Comment, Rollo, pp. 61-83, at p. 69.

[22] Ibid., p. 73.

[23] Ibid., p. 76.

[24] Ibid., pp. 77-80.

[25] Ibid., p. 80.

[26] Ibid., p. 81.

[27] Cebu Shipyard and Engineering Works, Inc. v. William Lines, Inc., 366 Phil. 439 (1999), citing Misa vs. Court of Appeals 212 SCRA 217 (1992).

[28] Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission, 331 SCRA 237 (2000).

[29] TSN, August 12, 1986, pp. 3-5.

[30] ABS-CBN Broadcasting Corp. v. Court of Appeals, 361 Phil. 499, 530-531 (1999).

[31] Integrated Packaging Corp. v. Court of Appeals, 331 SCRA 170 (2000).

[32] Article 2224, Civil Code; Heirs of Ramon Durano, Sr. v. Angeles, G. R. No. 136456, October 24, 2000.

[33] Article 2225 of the Civil Code provides:

"Art. 2225. Temperate damages must be reasonable under the circumstances."

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