

PHILIPPINE BANKING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND LEONILO MARCOS, RESPONDENTS.

G.R. No. 127469. January 15, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 34382 dated 10 December 1996 modifying the Decision[2] of the Regional Trial Court, Fourth Judicial Region, Assisting Court, Biñan, Laguna in Civil Case No. B-3148 entitled “Leonilo Marcos v. Philippine Banking Corporation.”

The Antecedent Facts

On 30 August 1989, Leonilo Marcos (“Marcos”) filed with the trial court a Complaint for Sum of Money with Damages[3] against petitioner Philippine Banking Corporation (“BANK”).[4]

Marcos alleged that sometime in 1982, the BANK through Florencio B. Pagsaligan (“Pagsaligan”), one of the officials of the BANK and a close friend of Marcos, persuaded him to deposit money with the BANK. Marcos yielded to Pagsaligan’s persuasion and claimed he made a time deposit with the BANK on two occasions. The first was on 11 March 1982 for P664,897.67. The BANK issued Receipt No. 635734 for this time deposit. On 12 March 1982, Marcos claimed he again made a time deposit with the BANK for P764,897.67. The BANK did not issue an official receipt for this time deposit but it acknowledged a deposit of this amount through a letter-certification Pagsaligan issued. The time deposits earned interest at 17% per annum and had a maturity period of 90 days.

Marcos alleged that Pagsaligan kept the various time deposit certificates on the assurance that the BANK would take care of the certificates, interests and renewals. Marcos claimed that from the time of the deposit, he had not received the principal amount or its interest.

Sometime in March 1983, Marcos wanted to withdraw from the BANK his time deposits and the accumulated interests to buy materials for his construction business. However, the BANK through Pagsaligan convinced Marcos to keep his time deposits intact and instead to open several domestic letters of credit. The BANK required Marcos to give a marginal deposit of 30% of the total amount of the letters of credit. The time deposits of Marcos would secure 70% of the letters of credit. Since Marcos trusted the BANK and Pagsaligan, he signed blank printed forms of the application for the domestic letters of credit, trust receipt agreements and promissory notes.

Marcos executed three Trust Receipt Agreements totalling P851,250, broken down as follows: (1) Trust Receipt No. CD 83.7 dated 8 March 1983 for P300,000; (2) Trust Receipt No. CD 83.9 dated 15 March 1983 for P300,000; and (3) Trust Receipt No. CD 83.10 dated 15 March 1983 for P251,250. Marcos deposited the required 30% marginal deposit for the trust receipt agreements. Marcos claimed that his obligation to the BANK was therefore only P595,875 representing 70% of the letters of credit.

Marcos believed that he and the BANK became creditors and debtors of each other. Marcos expected the BANK to offset automatically a portion of his time deposits and the accumulated interest with the amount covered by the three trust receipts totalling P851,250 less the 30% marginal deposit that he had paid. Marcos argued that if only the BANK applied his time deposits and the accumulated interest to his remaining obligation, which is 70% of the total amount of the letters of credit, he would have paid completely his debt. Marcos further pointed out that since he did not apply for a renewal of the trust receipt agreements, the BANK had no right to renew the same.

Marcos accused the BANK of unjustly demanding payment for the total amount of the trust receipt agreements without deducting the 30% marginal deposit that he had already made. He decried the BANK's unlawful charging of accumulated interest because he claimed there was no agreement as to the payment of interest. The interest arose from numerous alleged extensions and penalties. Marcos reiterated that there was no agreement to this effect because his time deposits served as the collateral for his remaining obligation.

Marcos also denied that he obtained another loan from the BANK for P500,000 with interest at 25% per annum supposedly covered by Promissory Note No. 20-979-83 dated 24 October 1983. Marcos bewailed the BANK's belated claim that his time deposits were applied to this void promissory note on 12 March 1985.

In sum, Marcos claimed that:

(1) his time deposit with the BANK "in the total sum of P1,428,795.34^[5] has earned accumulated interest since March 1982 up to the present in the total amount of P1,727,305.45 at the rate of 17% per annum so his total money with defendant (the BANK) is P3,156,100.79 less the amount of P595,875 representing the 70% balance of the marginal deposit and/or balance of the trust agreements;" and

(2) his indebtedness was only P851,250 less the 30% paid as marginal deposit or a balance of P595,875, which the BANK should have automatically deducted from his time deposits and accumulated interest, leaving the BANK's indebtedness to him at P2,560,025.79.

Marcos prayed the trial court to declare Promissory Note No. 20-979-83 void and to order the BANK to pay the amount of his time deposits with interest. He also sought the award of moral and exemplary damages as well as attorney's fees for P200,000 plus 25% of the amount due.

On 18 September 1989, summons and a copy of the complaint were served on the BANK.^[6]

On 9 October 1989, the BANK filed its Answer with Counterclaim. The BANK denied the allegations in the complaint. The BANK believed that the suit was Marcos' desperate attempt to avoid liability under several trust receipt agreements that were the subject of a criminal complaint.

The BANK alleged that as of 12 March 1982, the total amount of the various time deposits of Marcos was only P764,897.67 and not P1,428,795.35^[7] as alleged in the complaint. The P764,897.67 included the P664,897.67 that Marcos deposited on 11 March 1982.

The BANK pointed out that Marcos delivered to the BANK the time deposit certificates by virtue of the Deed of Assignment dated 2 June 1989. Marcos executed the Deed of Assignment to secure his various loan obligations. The BANK claimed that these loans are covered by Promissory Note No. 20-756-82 dated 2 June 1982 for P420,000 and Promissory Note No. 20-979-83 dated 24 October 1983 for P500,000. The BANK stressed that these obligations are separate and distinct from the trust receipt agreements.

When Marcos defaulted in the payment of Promissory Note No. 20-979-83, the BANK debited his time deposits and applied the same to the obligation that is now considered fully paid.^[8] The BANK insisted that the Deed of Assignment authorized it to apply the time deposits in payment of Promissory Note No. 20-979-83.

In March 1982, the wife of Marcos, Consolacion Marcos, sought the advice of Pagsaligan. Consolacion informed Pagsaligan that she and her husband needed to finance the purchase of construction materials for their business, L.A. Marcos Construction Company. Pagsaligan suggested the opening of the letters of credit and the execution of trust receipts, whereby the BANK would agree to purchase the goods needed by the client through the letters of credit. The BANK would then entrust the goods to the client, as trustee, who would undertake to deliver the proceeds of the sale or the goods themselves to the entrustor within a specified time.

The BANK claimed that Marcos freely entered into the trust receipt agreements. When Marcos failed to account for the goods delivered or for the proceeds of the sale, the BANK filed a complaint for violation of Presidential Decree No. 115 or the Trust Receipts Law. Instead of initiating negotiations for the settlement of the account, Marcos filed this suit.

The BANK denied falsifying Promissory Note No. 20-979-83. The BANK claimed that the promissory note is supported by documentary evidence such as Marcos' application for this loan and the microfilm of the cashier's check issued for the loan. The BANK insisted that Marcos could not deny the agreement for the payment of interest and penalties under the trust receipt agreements. The BANK prayed for the dismissal of the complaint, payment of damages, attorney's fees and cost of suit.

On 15 December 1989, the trial court on motion of Marcos' counsel issued an order declaring the BANK in default for filing its answer five days after the 15-day period to file the answer had lapsed.[9] The trial court also held that the answer is a mere scrap of paper because a copy was not furnished to Marcos. In the same order, the trial court allowed Marcos to present his evidence ex parte on 18 December 1989. On that date, Marcos testified and presented documentary evidence. The case was then submitted for decision.

On 19 December 1989, Marcos received a copy of the BANK's Answer with Compulsory Counterclaim.

On 29 December 1989, the BANK filed an opposition to Marcos' motion to declare the BANK in default. On 9 January 1990, the BANK filed a motion to lift the order of default claiming that it had only then learned of the order of default. The BANK explained that its delayed filing of the Answer with Counterclaim and failure to serve a copy of the answer on Marcos was due to excusable negligence. The BANK asked the trial court to set aside the order of default because it had a valid and meritorious defense.

On 7 February 1990, the trial court issued an order setting aside the default order and admitting the BANK's Answer with Compulsory Counterclaim. The trial court ordered the BANK to present its evidence on 12 March 1990.

On 5 March 1990, the BANK filed a motion praying to cross-examine Marcos who had testified during the ex-parte hearing of 18 December 1989. On 12 March 1990, the trial court denied the BANK's motion and directed the BANK to present its evidence. Trial then ensued.

The BANK presented two witnesses, Rodolfo Sales, the Branch Manager of the BANK's Cubao Branch since 1987, and Pagsaligan, the Branch Manager of the same branch from 1982 to 1986.

On 24 April 1990, the counsel of Marcos cross-examined Pagsaligan. Due to lack of material time, the trial court reset the continuation of the cross-examination and presentation of other evidence. The succeeding hearings were postponed, specifically on 24, 27 and 28 of August 1990, because of the BANK's failure to produce its witness, Pagsaligan. The BANK on these scheduled hearings also failed to present other evidence.

On 7 September 1990, the BANK moved to postpone the hearing on the ground that Pagsaligan could not attend the hearing because of illness. The trial court denied the motion to postpone and on motion of Marcos' counsel

ruled that the BANK had waived its right to present further evidence. The trial court considered the case submitted for decision. The BANK moved for reconsideration, which the trial court denied.

On 8 October 1990, the trial court rendered its decision in favor of Marcos. Aggrieved, the BANK appealed to the Court of Appeals.

On 10 December 1996, the Court of Appeals modified the decision of the trial court by reducing the amount of actual damages and deleting the attorney's fees awarded to Marcos.

The Ruling of the Trial Court

The trial court ruled that the total amount of time deposits of Marcos was P1,429,795.34 and not only P764,897.67 as claimed by the BANK. The trial court found that Marcos made a time deposit on two occasions. The first time deposit was made on 11 March 1982 for P664,897.67 as shown by Receipt No. 635743. On 12 March 1982, Marcos again made a time deposit for P764,897.67 as acknowledged by Pagsaligan in a letter of certification. The two time deposits thus amounted to P1,429,795.34.

The trial court pointed out that no receipt was issued for the 12 March 1982 time deposit because the letter of certification was sufficient. The trial court made a finding that the certification letter did not include the time deposit made on 11 March 1982. The 12 March 1982 deposit was in cash while the 11 March 1982 deposit was in checks which still had to clear. The checks were not included in the certification letter since the BANK could not credit the amounts of the checks prior to clearing. The trial court declared that even the Deed of Assignment acknowledged that Marcos made several time deposits as the Deed stated that the assignment was charged against "various" time deposits.

The trial court recognized the existence of the Deed of Assignment and the two loans that Marcos supposedly obtained from the BANK on 28 May 1982 for P340,000 and on 2 June 1982 for P420,000. The two loans amounted to P760,000. On 2 June 1982, the same day that he secured the second loan, Marcos executed a Deed of Assignment assigning to the BANK P760,000 of his time deposits. The trial court concluded that obviously the two loans were immediately paid by virtue of the Deed of Assignment.

The trial court found it strange that Marcos borrowed money from the BANK at a higher rate of interest instead of just withdrawing his time deposits. The trial court saw no rhyme or reason why Marcos had to secure the loans from the BANK. The trial court was convinced that Marcos did not know that what he had signed were loan applications and a Deed of Assignment in payment for his loans. Nonetheless, the trial court recognized "the said loan of P760,000 and its corresponding payment by virtue of the Deed of Assignment for the equal sum." [10]

If the BANK's claim is true that the time deposits of Marcos amounted only to P764,897.67 and he had already assigned P760,000 of this amount, the trial court pointed out that what would be left as of 3 June 1982 would only be P4,867.67. [11] Yet, after the time deposits had matured, the BANK allowed Marcos to open letters of credit three times. The three letters of credit were all secured by the time deposits of Marcos after he had paid the 30% marginal deposit. The trial court opined that if Marcos' time deposit was only P764,897.67, then the letters of credit totalling P595,875 (less 30% marginal deposit) was guaranteed by only P4,867.67, [12] the remaining time deposits after Marcos had executed the Deed of Assignment for P760,000.

According to the trial court, a security of only P4,867.67 [13] for a loan worth P595,875 (less 30% marginal deposit) is not only preposterous, it is also comical. Worse, aside from allowing Marcos to have unsecured trust receipts, the BANK still claimed to have granted Marcos another loan for P500,000 on 25 October 1983 covered by Promissory Note No. 20-979-83. The BANK is a commercial bank engaged in the business of lending money. Allowing a loan of more than a million pesos without collateral is in the words of the trial court, "an impossibility

and a gross violation of Central Bank Rules and Regulations, which no Bank Manager has such authority to grant.”[14] Thus, the trial court held that the BANK could not have granted Marcos the loan covered by Promissory Note No. 20-979-83 because it was unsecured by any collateral.

The trial court required the BANK to produce the original copies of the loan application and Promissory Note No. 20-979-83 so that it could determine who applied for this loan. However, the BANK presented to the trial court only the “machine copies of the duplicate” of these documents.

Based on the “machine copies of the duplicate” of the two documents, the trial court noticed the following discrepancies: (1) Marcos’ signature on the two documents are merely initials unlike in the other documents submitted by the BANK; (2) it is highly unnatural for the BANK to only have duplicate copies of the two documents in its custody; (3) the address of Marcos in the documents is different from the place of residence as stated by Marcos in the other documents annexed by the BANK in its Answer; (4) Pagsaligan made it appear that a check for the loan proceeds of P470,588 less bank charges was issued to Marcos but the check’s payee was one ATTY. LEONILLO MARCOS and, as the trial court noted, Marcos is not a lawyer; and (5) Pagsaligan was not sure what branch of the BANK issued the check for the loan proceeds. The trial court was convinced that Marcos did not execute the questionable documents covering the P500,000 loan and Pagsaligan used these documents as a means to justify his inability to explain and account for the time deposits of Marcos.

The trial court noted the BANK’s “defective” documentation of its transaction with Marcos. First, the BANK was not in possession of the original copies of the documents like the loan applications. Second, the BANK did not have a ledger of the accounts of Marcos or of his various transactions with the BANK. Last, the BANK did not issue a certificate of time deposit to Marcos. Again, the trial court attributed the BANK’s lapses to Pagsaligan’s scheme to defraud Marcos of his time deposits.

The trial court also took note of Pagsaligan’s demeanor on the witness stand. Pagsaligan evaded the questions by giving unresponsive or inconsistent answers compelling the trial court to admonish him. When the trial court ordered Pagsaligan to produce the documents, he “conveniently became sick”[15] and thus failed to attend the hearings without presenting proof of his physical condition.

The trial court disregarded the BANK’s assertion that the time deposits were converted into a savings account at 14% or 10% per annum upon maturity. The BANK never informed Marcos that his time deposits had already matured and these were converted into a savings account. As to the interest due on the trust receipts, the trial court ruled that there is no basis for such a charge because the documents do not stipulate any interest.

In computing the amount due to Marcos, the trial court took into account the marginal deposit that Marcos had already paid which is equivalent to 30% of the total amount of the three trust receipts. The three trust receipts totalling P851,250 would then have a balance of P595,875. The balance became due in March 1987 and on the same date, Marcos’ time deposits of P669,932.30 had already earned interest from 1983 to 1987 totalling P569,323.21 at 17% per annum. Thus, the trial court ruled that the time deposits in 1987 totalled P1,239,115. From this amount, the trial court deducted P595,875, the amount of the trust receipts, leaving a balance on the time deposits of P643,240 as of March 1987. However, since the BANK failed to return the time deposits of Marcos, which again matured in March 1990, the time deposits with interest, less the amount of trust receipts paid in 1987, amounted to P971,292.49 as of March 1990.

In the alternative, the trial court ruled that even if Marcos had only one time deposit of P764,897.67 as claimed by the BANK, the time deposit would have still earned interest at the rate of 17% per annum. The time deposit of P650,163 would have increased to P1,415,060 in 1987 after earning interest. Deducting the amount of the three trust receipts, Marcos’ time deposits still totalled P1,236,969.30 plus interest.

The dispositive portion of the decision of the trial court reads:

WHEREFORE, under the foregoing circumstances, judgment is hereby rendered in favor of Plaintiff, directing Defendant Bank as follows:

1)

to return to Plaintiff his time deposit in the sum of P971,292.49 with interest thereon at the legal rate, until fully restituted;

2)

to pay attorney's fees of P200,000.00; [and]

3)

[to pay the] cost of these proceedings.

IT IS SO ORDERED.[16]

The Ruling of the Court of Appeals

The Court of Appeals addressed the procedural and substantive issues that the BANK raised.

The appellate court ruled that the trial court committed a reversible error when it denied the BANK's motion to cross-examine Marcos. The appellate court ruled that the right to cross-examine is a fundamental right that the BANK did not waive because the BANK vigorously asserted this right. The BANK's failure to serve a notice of the motion to Marcos is not a valid ground to deny the motion to cross-examine. The appellate court held that the motion to cross-examine is one of those non-litigated motions that do not require the movant to provide a notice of hearing to the other party.

The Court of Appeals pointed out that when the trial court lifted the order of default, it had the duty to afford the BANK its right to cross-examine Marcos. This duty assumed greater importance because the only evidence supporting the complaint is Marcos' ex-parte testimony. The trial court should have tested the veracity of Marcos' testimony through the distilling process of cross-examination. The Court of Appeals, however, believed that the case should not be remanded to the trial court because Marcos' testimony on the time deposits is supported by evidence on record from which the appellate court could make an intelligent judgment.

On the second procedural issue, the Court of Appeals held that the trial court did not err when it declared that the BANK had waived its right to present its evidence and had submitted the case for decision. The appellate court agreed with the grounds relied upon by the trial court in its Order dated 7 September 1990.

The Court of Appeals, however, differed with the finding of the trial court as to the total amount of the time deposits. The appellate court ruled that the total amount of the time deposits of Marcos is only P764,897.67 and not P1,429,795.34 as found by the trial court. The certification letter issued by Pagsaligan showed that Marcos made a time deposit on 12 March 1982 for P764,897.67. The certification letter shows that the amount mentioned in the letter was the aggregate or total amount of the time deposits of Marcos as of that date. Therefore, the P764,897.67 already included the P664,897.67 time deposit made by Marcos on 11 March 1982.

The Court of Appeals further explained:

Besides, the Official Receipt (Exh. "B", p. 32, Records) dated March 11, 1982 covering the sum of P664,987.67 time deposit did not provide for a maturity date implying clearly that the amount covered by said receipt forms part of the total sum shown in the letter-certification which contained a maturity date. Moreover,

it taxes one's credulity to believe that appellee would make a time deposit on March 12, 1982 in the sum of P764,897.67 which except for the additional sum of P100,000.00 is practically identical (see underlined figures) to the sum of P664,897.67 deposited the day before March 11, 1982.

Additionally, We agree with the contention of the appellant that the lower court wrongly appreciated the testimony of Mr. Pagsaligan. Our finding is strengthened when we consider the alleged application for loan by the appellee with the appellant in the sum of P500,000.00 dated October 24, 1983. (Exh. "J", p. 40, Records), wherein it was stated that the loan is for additional working capital versus the various time deposit amounting to P760,000.00.[17] (Emphasis supplied)

The Court of Appeals sustained the factual findings of the trial court in ruling that Promissory Note No. 20-979-83 is void. There is no evidence of a bank ledger or computation of interest of the loan. The appellate court blamed the BANK for failing to comply with the orders of the trial court to produce the documents on the loan. The BANK also made inconsistent statements. In its Answer to the Complaint, the BANK alleged that the loan was fully paid when it debited the time deposits of Marcos with the loan. However, in its discussion of the assigned errors, the BANK claimed that Marcos had yet to pay the loan.

The appellate court deleted the award of attorney's fees. It noted that the trial court failed to justify the award of attorney's fees in the text of its decision. The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, premises considered, the appealed decision is SET ASIDE. A new judgment is hereby rendered ordering the appellant bank to return to the appellee his time deposit in the sum of P764,897.67 with 17% interest within 90 days from March 11, 1982 in accordance with the letter-certification and with legal interest thereafter until fully paid. Costs against the appellant.

SO ORDERED.[18] (Emphasis supplied)

The Issues

The BANK anchors this petition on the following issues:

1) WHETHER OR NOT THE PETITIONER [sic] ABLE TO PROVE THE PRIVATE RESPONDENT'S OUTSTANDING OBLIGATIONS SECURED BY THE ASSIGNMENT OF TIME DEPOSITS?
1.1) COROLLARILY, WHETHER OR NOT THE PROVISIONS OF SECTION 8 RULE 10 OF [sic] THEN REVISED RULES OF COURT BE APPLIED [sic] SO AS TO CREATE A JUDICIAL ADMISSION ON THE GENUINENESS AND DUE EXECUTION OF THE ACTIONABLE DOCUMENTS APPENDED TO THE PETITIONER'S ANSWER?

2) WHETHER OR NOT PETITIONER [sic] DEPRIVED OF DUE PROCESS WHEN THE LOWER COURT HAS [sic] DECLARED PETITIONER TO HAVE WAIVED PRESENTATION OF FURTHER EVIDENCE AND CONSIDERED THE CASE SUBMITTED FOR RESOLUTION?[19]

The Ruling of the Court

The petition is without merit.

Procedural Issues

There was no violation of the BANK's right to procedural due process when the trial court denied the BANK's motion to cross-examine Marcos. Prior to the denial of the motion, the trial court had properly declared the BANK in default. Since the BANK was in default, Marcos was able to present his evidence ex-parte including his own testimony. When the trial court lifted the order of default, the BANK was restored to its standing and rights in the action. However, as a rule, the proceedings already taken should not be disturbed.[20] Nevertheless, it is

within the trial court's discretion to reopen the evidence submitted by the plaintiff and allow the defendant to challenge the same, by cross-examining the plaintiff's witnesses or introducing countervailing evidence.[21] The 1964 Rules of Court, the rules then in effect at the time of the hearing of this case, recognized the trial court's exercise of this discretion. The 1997 Rules of Court retained this discretion.[22] Section 3, Rule 18 of the 1964 Rules of Court reads:

Sec. 3. Relief from order of default. — A party declared in default may any time after discovery thereof and before judgment file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable neglect and that he has a meritorious defense. In such case the order of default may be set aside on such terms and conditions as the judge may impose in the interest of justice. (Emphasis supplied)

The records show that the BANK did not ask the trial court to restore its right to cross-examine Marcos when it sought the lifting of the default order on 9 January 1990. Thus, the order dated 7 February 1990 setting aside the order of default did not confer on the BANK the right to cross-examine Marcos. It was only on 2 March 1990 that the BANK filed the motion to cross-examine Marcos. During the 12 March 1990 hearing, the trial court denied the BANK's oral manifestation to grant its motion to cross-examine Marcos because there was no proof of service on Marcos. The BANK's counsel pleaded for reconsideration but the trial court denied the plea and ordered the BANK to present its evidence. Instead of presenting its evidence, the BANK moved for the resetting of the hearing and when the trial court denied the same, the BANK informed the trial court that it was elevating the denial to the "upper court." [23]

To repeat, the trial court had previously declared the BANK in default. The trial court therefore had the right to decide whether or not to disturb the testimony of Marcos that had already been terminated even before the trial court lifted the order of default.

We do not agree with the appellate court's ruling that a motion to cross-examine is a non-litigated motion and that the trial court gravely abused its discretion when it denied the motion to cross-examine. A motion to cross-examine is adversarial. The adverse party in this case had the right to resist the motion to cross-examine because the movant had previously forfeited its right to cross-examine the witness. The purpose of a notice of a motion is to avoid surprises on the opposite party and to give him time to study and meet the arguments.[24] In a motion to cross-examine, the adverse party has the right not only to prepare a meaningful opposition to the motion but also to be informed that his witness is being recalled for cross-examination. The proof of service was therefore indispensable and the trial court was correct in denying the oral manifestation to grant the motion for cross-examination.

We find no justifiable reason to relax the application of the rule on notice of motions[25] to this case. The BANK could have easily re-filed the motion to cross-examine with the requisite notice to Marcos. It did not do so. The BANK did not make good its threat to elevate the denial to a higher court. The BANK waited until the trial court rendered a judgment on the merits before questioning the interlocutory order of denial.

While the right to cross-examine is a vital element of procedural due process, the right does not necessarily require an actual cross-examination, but merely an opportunity to exercise this right if desired by the party entitled to it.[26] Clearly, the BANK's failure to cross-examine is imputable to the BANK when it lost this right[27] as it was in default and failed thereafter to exhaust the remedies to secure the exercise of this right at the earliest opportunity.

The two other procedural lapses that the BANK attributes to the appellate and trial courts deserve scant consideration.

The BANK raises for the very first time the issue of judicial admission on the part of Marcos. The BANK even has the audacity to fault the Court of Appeals for not ruling on this issue when it never raised this matter before the appellate court or before the trial court. Obviously, this issue is only an afterthought. An issue raised for the first time on appeal and not raised timely in the proceedings in the lower court is barred by estoppel.[28]

The BANK cannot claim that Marcos had admitted the due execution of the documents attached to its answer because the BANK filed its answer late and even failed to serve it on Marcos. The BANK's answer, including the actionable documents it pleaded and attached to its answer, was a mere scrap of paper. There was nothing that Marcos could specifically deny under oath. Marcos had already completed the presentation of his evidence when the trial court lifted the order of default and admitted the BANK's answer. The provision of the Rules of Court governing admission of actionable documents was not enacted to reward a party in default. We will not allow a party to gain an advantage from its disregard of the rules.

As to the issue of its right to present additional evidence, we agree with the Court of Appeals that the trial court correctly ruled that the BANK had waived this right. The BANK cannot now claim that it was deprived of its right to conduct a re-direct examination of Pagsaligan. The BANK postponed the hearings three times[29] because of its inability to secure Pagsaligan's presence during the hearings. The BANK could have presented another witness or its other evidence but it obstinately insisted on the resetting of the hearing because of Pagsaligan's absence allegedly due to illness.

The BANK's propensity for postponements had long delayed the case. Its motion for postponement based on Pagsaligan's illness was not even supported by documentary evidence such as a medical certificate. Documentary evidence of the illness is necessary before the trial court could rule that there is a sufficient basis to grant the postponement.[30]The BANK's Fiduciary Duty to its Depositor

The BANK is liable to Marcos for offsetting his time deposits with a fictitious promissory note. The existence of Promissory Note No. 20-979-83 could have been easily proven had the BANK presented the original copies of the promissory note and its supporting evidence. In lieu of the original copies, the BANK presented the "machine copies of the duplicate" of the documents. These substitute documents have no evidentiary value. The BANK's failure to explain the absence of the original documents and to maintain a record of the offsetting of this loan with the time deposits bring to fore the BANK's dismal failure to fulfill its fiduciary duty to Marcos.

Section 2 of Republic Act No. 8791 (General Banking Law of 2000) expressly imposes this fiduciary duty on banks when it declares that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance." This statutory declaration merely echoes the earlier pronouncement of the Supreme Court in *Simex International (Manila) Inc. v. Court of Appeals*[31] requiring banks to "treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship." [32] The Court reiterated this fiduciary duty of banks in subsequent cases.[33]

Although RA No. 8791 took effect only in the year 2000,[34] at the time that the BANK transacted with Marcos, jurisprudence had already imposed on banks the same high standard of diligence required under RA No. 8791.[35] This fiduciary relationship means that the bank's obligation to observe "high standards of integrity and performance" is deemed written into every deposit agreement between a bank and its depositor.

The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family. Thus, the BANK's fiduciary duty imposes upon it a higher level of accountability than that expected of Marcos, a businessman, who negligently signed blank forms and entrusted his certificates of time deposits to Pagsaligan without retaining copies of the certificates.

The business of banking is imbued with public interest. The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks. In *Simex International (Manila) Inc. v. Court of Appeals*[36] we pointed out the depositor's reasonable expectations from a bank and the bank's corresponding duty to its depositor, as follows:

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.

As the BANK's depositor, Marcos had the right to expect that the BANK was accurately recording his transactions with it. Upon the maturity of his time deposits, Marcos also had the right to withdraw the amount due him after the BANK had correctly debited his outstanding obligations from his time deposits.

By the very nature of its business, the BANK should have had in its possession the original copies of the disputed promissory note and the records and ledgers evidencing the offsetting of the loan with the time deposits of Marcos. The BANK inexplicably failed to produce the original copies of these documents. Clearly, the BANK failed to treat the account of Marcos with meticulous care.

The BANK claims that it is a reputable banking institution and that it has no reason to forge Promissory Note No. 20-979-83. The trial court and appellate court did not rule that it was the bank that forged the promissory note. It was Pagsaligan, the BANK's branch manager and a close friend of Marcos, whom the trial court categorically blamed for the fictitious loan agreements. The trial court held that Pagsaligan made up the loan agreement to cover up his inability to account for the time deposits of Marcos.

Whether it was the BANK's negligence and inefficiency or Pagsaligan's misdeed that deprived Marcos of the amount due him will not excuse the BANK from its obligation to return to Marcos the correct amount of his time deposits with interest. The duty to observe "high standards of integrity and performance" imposes on the BANK that obligation. The BANK cannot also unjustly enrich itself by keeping Marcos' money.

Assuming Pagsaligan was behind the spurious promissory note, the BANK would still be accountable to Marcos. We have held that a bank is liable for the wrongful acts of its officers done in the interest of the bank or in their dealings as bank representatives but not for acts outside the scope of their authority.[37] Thus, we held:

A bank holding out its officers and agents as worthy of confidence will not be permitted to profit by the frauds they may thus be enabled to perpetrate in the apparent scope of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom (10 Am Jur 2d, p. 114). Accordingly, a banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetrate a fraud upon his principal or some other person, for his own ultimate benefit.[38]

The Existence of Promissory Note No. 20-979-83 was not Proven

The BANK failed to produce the best evidence — the original copies of the loan application and promissory note. The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had.[39] Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence.[40]

What the BANK presented were merely the “machine copies of the duplicate” of the loan application and promissory note. No explanation was ever offered by the BANK for its inability to produce the original copies of the documentary evidence. The BANK also did not comply with the orders of the trial court to submit the originals.

The purpose of the rule requiring the production of the best evidence is the prevention of fraud.[41] If a party is in possession of evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes, which its production would expose and defeat.[42]

The absence of the original of the documentary evidence casts suspicion on the existence of Promissory Note No. 20-979-83 considering the BANK’s fiduciary duty to keep efficiently a record of its transactions with its depositors. Moreover, the circumstances enumerated by the trial court bolster the conclusion that Promissory Note No. 20-979-83 is bogus. The BANK has only itself to blame for the dearth of competent proof to establish the existence of Promissory Note No. 20-979-83.

Total Amount Due to Marcos

The BANK and Marcos do not now dispute the ruling of the Court of Appeals that the total amount of time deposits that Marcos placed with the BANK is only P764,897.67 and not P1,429,795.34 as found by the trial court. The BANK has always argued that Marcos’ time deposits only totalled P764,897.67.[43] What the BANK insists on in this petition is the trial court’s violation of its right to procedural due process and the absence of any obligation to pay or return anything to Marcos. Marcos, on the other hand, merely prays for the affirmation of either the trial court or appellate court decision.[44] We uphold the finding of the Court of Appeals as to the amount of the time deposits as such finding is in accord with the evidence on record.

Marcos claimed that the certificates of time deposit were with Pagsaligan for safekeeping. Marcos was only able to present the receipt dated 11 March 1982 and the letter-certification dated 12 March 1982 to prove the total amount of his time deposits with the BANK. The letter-certification issued by Pagsaligan reads:

March 12, 1982

Dear Mr. Marcos:

This is to certify that we are taking care in your behalf various Time Deposit Certificates with an aggregate value of PESOS: SEVEN HUNDRED SIXTY FOUR THOUSAND EIGHT HUNDRED NINETY SEVEN AND 67/100 (P764,897.67) ONLY, issued today for 90 days at 17% p.a. with the interest payable at maturity on June 10, 1982.

Thank you.

Sgd. FLORENCIO B. PAGSALIGAN
Branch Manager[45]

The foregoing certification is clear. The total amount of time deposits of Marcos as of 12 March 1982 is P764,897.67, inclusive of the sum of P664,987.67 that Marcos placed on time deposit on 11 March 1982. This is plainly seen from the use of the word “aggregate.”

We are not swayed by Marcos’ testimony that the certification is actually for the first time deposit that he placed on 11 March 1982. The letter-certification speaks of “various Time Deposits Certificates with an ‘aggregate value’ of P764,897.67.” If the amount stated in the letter-certification is for a single time deposit only, and did not include the 11 March 1982 time deposit, then Marcos should have demanded a new letter of certification from

Pagsaligan. Marcos is a businessman. While he already made an error in judgment in entrusting to Pagsaligan the certificates of time deposits, Marcos should have known the importance of making the letter-certification reflect the true nature of the transaction. Marcos is bound by the letter-certification since he was the one who prodded Pagsaligan to issue it.

We modify the amount that the Court of Appeals ordered the BANK to return to Marcos. The appellate court did not offset Marcos' outstanding debt with the BANK covered by the three trust receipt agreements even though Marcos admits his obligation under the three trust receipt agreements. The total amount of the trust receipts is P851,250 less the 30% marginal deposit of P255,375 that Marcos had already paid the BANK. This reduced Marcos' total debt with the BANK to P595,875 under the trust receipts.

The trial and appellate courts found that the parties did not agree on the imposition of interest on the loan covered by the trust receipts and thus no interest is due on this loan. However, the records show that the three trust receipt agreements contained stipulations for the payment of interest but the parties failed to fill up the blank spaces on the rate of interest. Put differently, the BANK and Marcos expressly agreed in writing on the payment of interest[46] without, however, specifying the rate of interest. We, therefore, impose the legal interest of 12% per annum, the legal interest for the forbearance of money,[47] on each of the three trust receipts.

Based on Marcos' testimony[48] and the BANK's letter of demand,[49] the trust receipt agreements became due in March 1987. The records do not show exactly when in March 1987 the obligation became due. In accordance with Article 2212 of the Civil Code, in such a case the court shall fix the period of the duration of the obligation.[50] The BANK's letter of demand is dated 6 March 1989. We hold that the trust receipts became due on 6 March 1987.

Marcos' payment of the marginal deposit of P255,375 for the trust receipts resulted in the proportionate reduction of the three trust receipts. The reduced value of the trust receipts and their respective interest as of 6 March 1987 are as follows:

- Trust Receipt No. CD 83.7 issued on 8 March 1983 originally for P300,000 was reduced to P210,618.75 with interest of P101,027.76.[51]
- Trust Receipt No. CD 83.9 issued on 15 March 1983 originally for P300,000 was reduced to P210,618.75 with interest of P100,543.04.[52]
- Trust Receipt No. CD 83.10 issued on 15 March 1983 originally for P251,250 was reduced to P174,637.5 with interest of P83,366.68. [53]

When the trust receipts became due on 6 March 1987, Marcos owed the BANK P880,812.48. This amount included P595,875, the principal value of the three trust receipts after payment of the marginal deposit, and P284,937.48, the interest then due on the three trust receipts.

Upon maturity of the three trust receipts, the BANK should have automatically deducted, by way of offsetting, Marcos' outstanding debt to the BANK from his time deposits and its accumulated interest. Marcos' time deposits of P764,897.67 had already earned interest[54] of P616,318.92 as of 6 March 1987.[55] Thus, Marcos' total funds with the BANK amounted to P1,381,216.59 as of the maturity of the trust receipts. After deducting P880,812.48, the amount Marcos owed the BANK, from Marcos' funds with the BANK of P1,381,216.59, Marcos' remaining time deposits as of 6 March 1987 is only P500,404.11. The accumulated interest on this P500,404.11 as of 30 August 1989, the date of filing of Marcos' complaint with the trial court, is P211,622.96.[56] From 30 August 1989, the interest due on the accumulated interest of P211,622.96 should earn legal interest at 12% per annum pursuant to Article 2212[57] of the Civil Code.

The BANK's dismal failure to account for Marcos' money justifies the award of moral[58] and exemplary damages.[59] Certainly, the BANK, as employer, is liable for the negligence or the misdeed of its branch manager which caused Marcos mental anguish and serious anxiety.[60] Moral damages of P100,000 is reasonable and is in accord with our rulings in similar cases involving banks' negligence with regard to the accounts of their depositors.[61]

We also award P20,000 to Marcos as exemplary damages. The law allows the grant of exemplary damages by way of example for the public good.[62] The public relies on the banks' fiduciary duty to observe the highest degree of diligence. The banking sector is expected to maintain at all times this high level of meticulousness.[63]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED with MODIFICATION. Petitioner Philippine Banking Corporation is ordered to return to private respondent Leonilo Marcos P500,404.11, the remaining principal amount of his time deposits, with interest at 17% per annum from 30 August 1989 until full payment. Petitioner Philippine Banking Corporation is also ordered to pay to private respondent Leonilo Marcos P211,622.96, the accumulated interest as of 30 August 1989, plus 12% legal interest per annum from 30 August 1989 until full payment. Petitioner Philippine Banking Corporation is further ordered to pay P100,000 by way of moral damages and P20,000 as exemplary damages to private respondent Leonilo Marcos.

Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Arturo B. Buena with Associate Justices Ma. Alicia Austria-Martinez and Bernardo Ll. Salas, concurring, Third Division.

[2] Penned by Judge N. C. Perello.

[3] Rollo, p. 204.

[4] The case was docketed as Civil Case No. B-3148.

[5] The sum of P664,897.67 and P764,897.67 is P1,429,795.34, not P1,428,795.34.

[6] Rollo, p. 211.

[7] Should be P1,429,795.34. See note 5.

[8] Records, p. 11.

[9] Rollo, p. 231.

[10] Rollo, p. 256.

[11] The difference between P764,897.67 and P760,000 is P4,897.67, not P4,867.67.

[12] Should be P4,897.67. See note 11.

[13] Should be P4,897.67. See note 11.

[14] Rollo, p. 257.

[15] Rollo, p. 262.

- [16] Ibid., pp. 262-263.
- [17] Rollo, p. 35.
- [18] Ibid., p. 37.
- [19] Ibid., p. 321.
- [20] FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, Vol. 1, 173 (Sixth Revised Ed., 1997).
- [21] Ibid.
- [22] Now Section 3(b), Rule 9 of the 1997 Rules of Court.
- [23] TSN, 12 March 1990, p. 12.
- [24] OSCAR M. HERRERA, REMEDIAL LAW, Vol. I, 733 (2000).
- [25] Section 4, Rule 15 of the 1964 Rules of Court.
- [26] Fulgado v. Court of Appeals, G.R. No. 61570, 12 February 1990, 182 SCRA 81.
- [27] See OSCAR M. HERRERA, REMEDIAL LAW, Vol. 6, 176 (1999 ed.).
- [28] Caltex (Philippines), Inc. v. Court of Appeals, G.R. No. 97753, 10 August 1992, 212 SCRA 448.
- [29] Records, p.117.
- [30] Spouses Reaport v. Judge Mariano, 413 Phil. 299 (2001).
- [31] G.R. No. 88013, 19 March 1990, 183 SCRA 360.
- [32] Ibid.
- [33] See Bank of the Philippine Islands v. Intermediate Appellate Court, G.R. No. 69162, 21 February 1992, 206 SCRA 408; Citytrust Banking Corporation v. Intermediate Appellate Court, G.R. No. 84281, 27 May 1994, 232 SCRA 559; Tan v. Court of Appeals, G.R. No. 108555, 20 December 1994, 239 SCRA 310; Metropolitan Bank & Trust Co. v. Court of Appeals, G.R. No. 112576, 26 October 1994, 237 SCRA 761; Philippine Bank of Commerce v. Court of Appeals, 336 Phil. 667 (1997); Firestone v. Court of Appeals, G.R. No. 113236, 5 March 2001, 353 SCRA 601.
- [34] RA No. 8791 was approved on 3 May 2000.
- [35] The Consolidated Bank and Trust Corporation v. Court of Appeals, G.R. No. 138569, 11 September 2003.
- [36] Supra, note 31.
- [37] Prudential Bank v. Court of Appeals, G.R. No. 108957, 14 June 1993, 223 SCRA 350.
- [38] Ibid.
- [39] San Pedro v. Court of Appeals, 333 Phil. 597 (1996).
- [40] Ibid.
- [41] IBM Philippines, Inc. v. National Labor Relations Commission, 365 Phil. 137 (1999).
- [42] Ibid.

[43] Rollo, p. 21.

[44] Ibid., p. 373.

[45] Ibid., pp. 34-35.

[46] Article 1956, Civil Code of the Philippines.

[47] EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES, Vol. 5, 832 (14th Ed., 2000); *Biesterbos v. Court of Appeals*, G.R. No. 152529, 22 September 2003.

[48] TSN, 18 December 1989, p. 24.

[49] Records, p. 36.

[50] Article 2212 of the Civil Code provides:

“If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends on the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.”

[51] Rate of Legal Interest = 12% per annum

Period from 8 March 1983 (Date Trust Receipt No. CD 83.7 was issued) to 6 March 1987 (date when Trust Receipt No. CD 83.7 became due) = 1,459 days

Interest Due = (Value of Trust Receipt No. CD 83.7 after payment of the marginal deposit) (12%) (Number of Days)/ 365 days

Interest Due = (P210,618.75) (12%) (1,459)/365

Interest Due = P101,027.76

[52] Rate of Legal Interest = 12% per annum

Period from 15 March 1983 (Date Trust Receipt No. CD 83.9 was issued) to 6 March 1987 (date when Trust Receipt No. CD 83.9 became due) = 1,452 days

Interest Due = (Value of Trust Receipt No. CD 83.9 after payment of the marginal deposit) (12%) (Number of Days)/365 days

Interest Due = (P210,618.75) (12%) (1,452)/365

Interest Due = P100,543.04

[53] Rate of Legal Interest = 12% per annum

Period from 15 March 1983 (Date Trust Receipt No. CD 83.10 was issued) to 6 March 1987 (date when Trust Receipt No. CD 83.10 became due) = 1,452 days

Interest Due = (Value of Trust Receipt No. CD 83.10 after payment of the marginal deposit) (12%) (Number of Days)/ 365 days

Interest Due = (P174,637.5) (12%) (1,452)/365

Interest Due = P83,366.68

[54] The time deposits matured every 90 days. The practice of banks is to compound the interest earned on every renewal of the time deposit. However, Marcos failed to allege and prove this practice. The documents presented in court to prove the time deposits do not contain any stipulation on compounding of interest. Thus, the interest on Marcos' time deposits is computed on a straight, non-compounded basis. See *Mambulao Lumber Co. v.*

Philippine National Bank, 130 Phil. 366 (1968); The Consolidated Bank and Trust Corporation v. Court of Appeals, G.R. No. 138569, 11 September 2003.

[55] Stipulated Interest Rate = 17% per annum, with interest earned capitalized every 90 days upon every renewal of the time deposits.

Period from 10 June 1982 (Maturity date of the time deposits) to 6 March 1987 (Due date of the trust receipts) = 1,730 days

Interest Due = (Principal) (17%) (Number of Days)/ 365 days

Interest Due = (P 764,897.67) (17%) (1,730)/365 = P616,318.92

[56] Stipulated Interest Rate = 17% per annum

Period from 6 March 1987 (Due date of the trust receipts) to 30 August 1989 (Date of filing of the complaint with the trial court) = 908 days

Interest Due = (Time deposits and interest –total value of the trust receipts) (17%) (Number of Days)/365 days

Interest Due = (P500,404.11) (17%) (908)/365 = P211,622.96

[57] Article 2212 of the Civil Code provides:

“Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.”

[58] Philippine National Bank v. Court of Appeals, G.R. No. 126152, 28 September 1999, 315 SCRA 309.

[59] Prudential Bank v. Court of Appeals, G.R. No. 125536, 16 March 2000, 328 SCRA 264.

[60] The Consolidated Bank and Trust Corporation v. Court of Appeals, G.R. No. 138569, 11 September 2003; Prudential Bank v. Court of Appeals, G.R. No. 125536, 16 March 2000, 328 SCRA 264.

[61] Ibid. See also Tan v. Court of Appeals, G.R. No. 108555, 20 December 1994, 239 SCRA 310.

[62] Prudential Bank v. Court of Appeals, *supra*, note 59.

[63] Ibid.

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