UNION BANK OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS AND ALLIED BANK CORPORATION, RESPONDENTS.

G.R. No. 134699. December 23, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Section 2 of the Law on Secrecy of Bank Deposits,[1] as amended, declares bank deposits to be "absolutely confidential" except:

> (1) In an examination made in the course of a special or general examination of a bank that is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity,
>
> (2) In an examination made by an independent auditor hired by the bank to conduct its regular audit provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank,
>
> (3) Upon written permission of the depositor,
>
> (4) In cases of impeachment,
>
> (5) Upon order of a competent court in cases of bribery or dereliction of duty of public officials, or
>
> (6) In cases where the money deposited or invested in the subject matter of the litigation.

Whether or not the case at bar falls under the last exception is the issue in the instant petition.

The facts are not disputed.

On March 21, 1990, a check (Check No. 11669677) dated March 31, 1990 in the amount of One Million Pesos (P1,000,000.00) was drawn against Account No. 0111-01854-8 with private respondent Allied Bank payable to the order of one Jose Ch. Alvarez. The payee deposited the check with petitioner Union Bank who credited the P1,000,000.00 to the account of Mr. Alvarez. On May 21, 1990, petitioner sent the check for clearing through the Philippine Clearing House Corporation (PCHC). When the check was presented for payment, a clearing discrepancy was committed by Union Bank's clearing staff when the amount of One Million Pesos (P1,000,000.00) was erroneously "under-encoded" to One Thousand Pesos (P1,000.00) only.

Petitioner only discovered the under-encoding almost a year later. Thus, on May 7, 1991, Union Bank Notified Allied Bank of the discrepancy by way of a charge slip for Nine Hundred Ninety-Nine Thousand Pesos (P999,000.00) for automatic debiting against the account of Allied Bank. The latter, however, refused to accept the charge slip "since [the] transaction was completed per your [Union Bank's] original instruction and client's account is now insufficiently funded."

Subsequently, Union Bank filed a complaint against Allied Bank before the PCHC Arbitration Committee

(Arbicom), praying that:

> ... judgment be rendered in favor of plaintiff against defendant sentencing it to pay plaintiff:
>
> 1. The sum of NINE HUNDRED NINETY-NINE THOUSAND PESOS (P999,000.00);
>
> 2. The sum of THREE HUNDRED SIXTY-ONE AND FOUR HUNDRED EIGHTY AND 20/XX P361,480.20 as of October 9, 1991 representing reimbursements for opportunity losses and interest at the rate of 24% per annum arising from actual losses sustained by plaintiff as of May 21, 1990;
>
> 3. The amount for attorney's fees at the rate of 25% of any and all sums due;
>
> 4. Penalty Charges at the rate of 1/8 of 1% of P999,000.00 from May 22, 1990 until payment thereof.
>
> 5. Exemplary and punitive damages against the defendant in such amounts as may be awarded by this Tribunal in order to serve a lesson to all member-Banks under the PCHC umbrella to striclty comply with the provisions thereof;
>
> 6. The costs of suit which includes filing fee in addition to litigation expenses which shall be proven in the course of arbitration.
>
> 7. Such other damages thay may be awarded by this Tribunal.[2]

Thereafter, Union Bank filed in the Regional Trial court (RTC) of Makati a petition for the examination of Account No. 111-01854-8. Judgment on the arbitration case was held in abeyance pending the resolution of said petition.

Upon motion of private respondent, the RTC dismissed Union Bank's petition. The RTC held that:

> The case of the herein petitioner does not fall under any of the foregoing exceptions to warrant a disclosure of or inquiry into the ledgers/books of account of Allied Checking Account No. 111-01854-8. Needless to say, the complaint filed by herein petitioner against Allied Banking Corporation before the Philippine Clearing House Corporation (PCHC) Arbitration Committee and docketed therein as Arb[i]com Case No. 91-068 (Annex "A", petition) is not one for bribery or dereliction of duty of public officials much less is there any showing that the subject matter thereof is the money deposited in the account in question. Petitioner's complaint primarily hing[e]s on the alleged deliberate violation by Allied Bank Corporation of the provisions of the PCHC Rule Book, Sec. 25[.]3, and as principal reliefs, it seeks for [sic] the recovery of amounts of money as a consequence of an alleged under-coding of check amount to P1,000,000.00 and damage[s] by way of loss of interest income.[3]

The Court of Appeals affirmed the dismissal of the petition, ruling that the case was not one where the money deposited is the subject matter of the litigation.

> Petitioner collecting bank itself in its complaint filed before the PCHC, Arbicom Case No. 91-068, clearly stated that its "cause of action against defendant arose from defendant's deliberate violation of the provisions of the PCHC Rule Book, Sec. 25.3, specifically on Under-Encoding of check amouting to P1,000,000.00 drawn upon defendant's Tondo Branch which was deposited with plaintiff herein on May 20, 1990, xxx which was erroneously encoded at P1,000.00 which defendant as the receiving bank thereof, never called nor notified the plaintiff of the error committed thus causing actual losses to plaintiff in the principal amount of P999,000.00 exclusive of opportunity losses and interest."
>
> Furthermore, a reading of petitioner collecting bank's complaint in the Arbicom case shows that its thrust is directed against respondent drawee bank's alleged failure to inform the former of the under-encoding when Sec. 25.3 of the PCHC Rule Book is clear that it is receiving bank's (respondent drawee bank herein) duty and obligation to notify the erring bank (petitioner collecting bank herein) of any such under-encoding of any

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> check amount submitted for clearing within the member banks of the PCHC not later than 10:00 a.m. of the following clearing day and prays that respondent drawee bank be held liable to petitioner collecting bank for penalties in view of the latter's violation of the notification requirement.
>
> Prescinding from the above, we see no cogent reason to depart from the time-honored general banking rule that all deposits of whatever nature with banks are considered of absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office and corollarily, that it is unlawful for any official or employee of a bank to disclose to any person any information concerning deposits.
>
> Nowhere in petitioner collecting bank's complaint filed before the PCHC does it mention of the amount it seeks to recover from Account No. 0111-018548 itself, but speaks of P999,000.00 only as an incident of its alleged opportunity losses and interest as a result of its own employee's admitted error in encoding the check.
>
> The money depositied in Account No. 0111-018548 is not the subject matter of the litigation in the Arbicom case for as clearly stated by petitioner itself, it is the alleged violation by respondent of the rules and regulations of the PCHC.[4]

Union Bank is now before this Court insisting that the money deposited in Account No. 0111-01854-8 is the subject matter of the litigation Petitioner cites the case of Mathay vs. Consolidated Bank and Trust Company,[5] where we defined "subject matter of the action," thus:

> xxx By the phrase "subject matter of the action" is meant "the physical facts, the things real or personal, the money, lands, chattels, and the like, in relation to which the suit is prosecuted, and not the delict or wrong committed by the defendant."

Petitioner contends that the Court of Appeals confuses the "cause of action" with the "subject of the action." In Yusingco vs. Ong Hing Lian,[6] petitioner points out, this Court distinguished the two concepts.

> xxx "The cause of action is the legal wrong threatened or committed, while the object of the action is to prevent or redress the wrong by obtaining some legal relief; but the subject of the action is neither of these since it is not the wrong or the relief demanded, the subject of the action is the matter or thing with respect to which the controversy has arisen, concerning which the wrong has been done, and this ordinarily is the property, or the contract and its subject matter, or the thing in dispute."

The argument is well taken. We note with approval the difference between the "subject of the action" from the "cause of action." We also find petitioner's definition of the phrase "subject matter of the action" is consistent with the term "subject matter of the litigation," as the latter is used in the Bank Deposits Secrecy Act.

In Mellon Bank, N.A. vs. Magsino,[7] where the petitioner bank inadvertently caused the transfer of the amount of US$1,000,000.00 instead of only US$1,000.00, the Court sanctioned the examination of the bank accounts where part of the money was subsequently caused to be deposited:

> ... Section 2 of [Republic Act No. 1405] allows the disclosure of bank deposits in cases where the money deposited is the subject matter of the litigation. Inasmuch as Civil Case No. 26899 is aimed at recovering the amount converted by the Javiers for their own benefit, necessarily, an inquiry into the wherabouts of the illegally acquired amount extends to whatever is concealed by being held or recorded in the name of persons other than the one responsible for the illegal acquisition.

Clearly, Mellon Bank involved a case where the money deposited was the subject matter of the litigation since the money so deposited was the very thing in dispute. This, however, is not the case here.

Petitioner's theory is that private respondent Allied Bank should have informed petitioner of the under-encoding pursuant to the provisions of Section 25.3.1 of the PCHC Handbook, which states:

> 25.3.1. The Receiving Bank should inform the erring Bank about the under-encoding of amount not later than 10:00 A.M. of the following clearing day.

Failing in that duty, petitioner holds private respondent directly liable for the P999,000.00 and other damages. It does not appear that petitioner is seeking reimbursement from the account of the drawer. This much is evident in petitioner's complaint before the Arbicom.

> xxx plaintiff's cause of action against defendant arose from defendant's deliberate violation of the provisions of the PCHC Rule Book, Sec. 25.3, specifically on Under-Encoding of check amounting to P1,000,000.00 drawn upon defendant's Tondo Branch which was deposited with plaintiff herein sometime on May 20, 1990. From the check amount of P1,000,000.00, it was instead erroneously encoded at P1,000.00 which defendant as the receiving bank thereof, never called nor notified the plaintiff of the error committed thus causing actual losses to plaintiff in the principal amount of P999,000.00 exclusive of opportunity losses and interest thereon whatsoever. xxx[8]

Petitioner even requested private respondent's Branch Manager for reimbursement from private respondent's account through the automatic debiting system.

> 2.7. On May 6, 1991, plaintiff's Senior Vice-President, Ms. ERLINDA V. VALENTON wrote defendant's Tondo Branch Manager, Mr. RODOLFO JOSE on the incident and requested assistance in facilitating correction of the erroneous coding with request for reimbursement thru the industry's automatic debiting of defendant's account....[9]

Further, petitioner rejected private respondent's proposal that the drawer issue postdated checks in favor of petitioner since the identity and credit standing of the depositor were unknown to petitioner.

> 2.9. On May 23, 1991, defendant's Branch Manager, the same Mr. Rodolfo Jose wrote plaintiff's Ms. Erlinda Valenton again insisting on the execution of the Quitclaim and Release in favor of defendant as the Branch has endeavored to negotiate with its client for the collection of such amount. Upon a reading of the terms of the Quitclaim and Release being proposed by defendant, the unmistakable fact lies that again defendant attempts for the second time to take advantage of plaintiff's plight by indicating that the terms of the payment of the principal amount of P999,000.00 is by way of several personal postdated checks up to March 21, 1992 from a person whose identity is not even disclosed to plaintiff....
>
> To an ordinary person aggrieved already by having been taken advantage of for 620 days more or less, the proposal of defendant could not be acceptable for the reason that aside from the interest lost already for the use of its money by another party, no assurance is made as to the actual collection thereof from a party whose credit standing, the recipient is not at all aware of....[10]

Petitioner also believed that it had no privity with the depositor:

> 2.12. Plaintiff then replied to defendant's letter by requesting that in lieu of the post-dated checks from defendant's client with whom plaintiff has no privity whatsoever, if the defendant could tender the full payment of the amount of P999,000.00 in defendant's own Manager's check and that plaintiff is willing to forego its further claims for interest and losses for a period of 620 days, more or less....[11]

The following argument adduced by petitioner in the Arbicom case leaves no doubt that petitioner is holding private respondent itself liable for the discrepancy:

> Defendant by its acceptance thru the clearing exchange of the check deposit from its client cannot be said to be free from any liability for the unpaid portion of the check amount considering that defendant as the drawee bank, is remiss in its duty of verifying possible technicalities on the face of the check.
>
> Since the provisions of the PCHC Rule Book has so imposed upon the defendant being the Receiving Bank of

> a discrepant check item to give that timely notification and defendant failing to comply with such requirement, then it can be said that defendant is guilty of negligence. He who is guilty of negligence in the performance of its [sic] duty is liable for damages. (Art. 1170, New Civil Code.)

Art. 1172 of the Civil Code provides that:

"Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.["][12]

Petitioner points to its prayer in its complaint to show that it sought reimbursement from the drawer's account. The prayer, however, does not specifically state that it was seeking recovery of the amount from the depositor's account. Petitioner merely asked that "judgment be rendered in favor of plaintiff against defendant sentencing it to pay plaintiff: 1. The sum of NINE HUNDRED NINETY-NINE THOUSAND PESOS (P999,000.00)...."[13]

On the other hand, the petition before this court reveals that the true purpose for the examination is to aid petitioner in proving the extent of Allied Bank's liability:

> Hence, the amount actually debited from the subject account becomes very material and germane to petitioner's claim for reimbursement as it is only upon examination of subject account can it be proved that indeed a discrepancy in the amount credited to petitioner was committed, thereby, rendering respondent Allied Bank liable to petitioner for the deficiency. The money deposited in aforesaid account is undeniably the subject matter of the litigation since the issue in the Arbicom case is whether respondent Bank should be held liable to petitioner for reimbursement of the amount of money constituting the difference between the amount of the check and the amount credited to petitioner, that is, P999,000.00, which has remained deposited in aforesaid account.
>
> On top of the allegations in the complaint, which can be verified only by examining the subject bank account, the defense of respondent Allied Bank that the reimbursement cannot be made since client's account is not sufficiently funded at the time petitioner sent its Charge Slip, bolsters petitioner's contention that the money in subject account is the very subject matter of the pending Arbicom case.
>
> Indeed, to prove the allegations in its Complaint before the PCHC Arbitration Committee, and to rebut private respondent's defense on the matter, petitioner needs to determine:
>
> 1. how long respondent Allied Bank had willfully or negligently allowed the difference of P999,000.00 to be maintained in the subject account without remitting the same to petitioner;
>
> 2. whether indeed the subject account was no longer sufficiently funded when petitioner sent its charge slip for reimbursement to respondent bank on May 7, 1991; and
>
> 3. whether or not respondent Allied Bank's actuations in refusing to immediately reimburse the discrepancy was attended by good or bad faith.
>
> In other words, only a disclosure of the pertinent details and information relating to the transactions involving subject account will enable petitioner to prove its allegations in the pending Arbicom case. xxx[14]

In short, petitioner is fishing for information so it can determine the culpability of private respondent and the amount of damages it can recover from the latter. It does not seek recovery of the very money contained in the deposit. The subject matter of the dispute may be the amount of P999,000.00 that petitioner seeks from private respondent as a result of the latter's alleged failure to inform the former of the discrepancy; but it is not the P999,000.00 deposited in the drawer's account. By the terms of R.A. No. 1405, the "money deposited" itself should be the subject matter of the litigation.

That petitioner feels a need for such information in order to establish its case against private respondent does not,

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by itself, warrant the examination of the bank deposits. The necessity of the inquiry, or the lack thereof, is immaterial since the case does not come under any of the exceptions allowed by the Bank Deposits Secrecy Act.

WHEREFORE, the petition is DENIED.

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

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[1] Republic Act No. 1405.

[2] Rollo, pp. 70-71.

[3] Id., at 77-78.

[4] Id. at 51-53. Italics in the original.

[5] 58 SCRA 559 (1974).

[6] 42 SCRA 589 (1971).

[7] 190 SCRA 633 (1990).

[8] Rollo, pp. 58-59. Underscoring supplied.

[9] Id., at 61. Underscoring supplied.

[10] Id., at 62-63.

[11] Id., at 63.

[12] Id., at 70. Underscoring supplied.

[13] Id., at 71. Underscoring supplied.

[14] Id., at 28-29. Underscoring in the original.

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