

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COURT OF APPEALS, ANNABELLE A. SALAZAR, AND JULIO R. TEMPLONUEVO, RESPONDENTS.

G.R. NO. 136202. January 25, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the Decision[1] dated April 3, 1998, and the Resolution[2] dated November 9, 1998, of the Court of Appeals in CA-G.R. CV No. 42241.

The facts[3] are as follows:

A.A. Salazar Construction and Engineering Services filed an action for a sum of money with damages against herein petitioner Bank of the Philippine Islands (BPI) on December 5, 1991 before Branch 156 of the Regional Trial Court (RTC) of Pasig City. The complaint was later amended by substituting the name of Annabelle A. Salazar as the real party in interest in place of A.A. Salazar Construction and Engineering Services. Private respondent Salazar prayed for the recovery of the amount of Two Hundred Sixty-Seven Thousand, Seven Hundred Seven Pesos and Seventy Centavos (P267,707.70) debited by petitioner BPI from her account. She likewise prayed for damages and attorney's fees.

Petitioner BPI, in its answer, alleged that on August 31, 1991, Julio R. Templonuevo, third-party defendant and herein also a private respondent, demanded from the former payment of the amount of Two Hundred Sixty-Seven Thousand, Six Hundred Ninety-Two Pesos and Fifty Centavos (P267,692.50) representing the aggregate value of three (3) checks, which were allegedly payable to him, but which were deposited with the petitioner bank to private respondent Salazar's account (Account No. 0203-1187-67) without his knowledge and corresponding endorsement.

Accepting that Templonuevo's claim was a valid one, petitioner BPI froze Account No. 0201-0588-48 of A.A. Salazar and Construction and Engineering Services, instead of Account No. 0203-1187-67 where the checks were deposited, since this account was already closed by private respondent Salazar or had an insufficient balance.

Private respondent Salazar was advised to settle the matter with Templonuevo but they did not arrive at any settlement. As it appeared that private respondent Salazar was not entitled to the funds represented by the checks which were deposited and accepted for deposit, petitioner BPI decided to debit the amount of P267,707.70 from her Account No. 0201-0588-48 and the sum of P267,692.50 was paid to Templonuevo by means of a cashier's check. The difference between the value of the checks (P267,692.50) and the amount actually debited from her account (P267,707.70) represented bank charges in connection with the issuance of a cashier's check to Templonuevo.

In the answer to the third-party complaint, private respondent Templonuevo admitted the payment to him of

P267,692.50 and argued that said payment was to correct the malicious deposit made by private respondent Salazar to her private account, and that petitioner bank's negligence and tolerance regarding the matter was violative of the primary and ordinary rules of banking. He likewise contended that the debiting or taking of the reimbursed amount from the account of private respondent Salazar by petitioner BPI was a matter exclusively between said parties and may be pursuant to banking rules and regulations, but did not in any way affect him. The debiting from another account of private respondent Salazar, considering that her other account was effectively closed, was not his concern.

After trial, the RTC rendered a decision, the dispositive portion of which reads thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff [private respondent Salazar] and against the defendant [petitioner BPI] and ordering the latter to pay as follows:

- The amount of P267,707.70 with 12% interest thereon from September 16, 1991 until the said amount is fully paid;
- The amount of P30,000.00 as and for actual damages;
- The amount of P50,000.00 as and for moral damages;
- The amount of P50,000.00 as and for exemplary damages;
- The amount of P30,000.00 as and for attorney's fees; and
- Costs of suit.

The counterclaim is hereby ordered DISMISSED for lack of factual basis.

The third-party complaint [filed by petitioner] is hereby likewise ordered DISMISSED for lack of merit.

Third-party defendant's [i.e., private respondent Templonuevo's] counterclaim is hereby likewise DISMISSED for lack of factual basis.

SO ORDERED.[4]

On appeal, the Court of Appeals (CA) affirmed the decision of the RTC and held that respondent Salazar was entitled to the proceeds of the three (3) checks notwithstanding the lack of endorsement thereon by the payee. The CA concluded that Salazar and Templonuevo had previously agreed that the checks payable to JRT Construction and Trading[5] actually belonged to Salazar and would be deposited to her account, with petitioner acquiescing to the arrangement.[6]

Petitioner therefore filed this petition on these grounds:

I.

The Court of Appeals committed reversible error in misinterpreting Section 49 of the Negotiable Instruments Law and Section 3 (r and s) of Rule 131 of the New Rules on Evidence.

II.

The Court of Appeals committed reversible error in NOT applying the provisions of Articles 22, 1278 and 1290 of the Civil Code in favor of BPI.

III.

The Court of Appeals committed a reversible error in holding, based on a misapprehension of facts, that the account from which BPI debited the amount of P267,707.70 belonged to a corporation with a separate and

distinct personality.

IV.

The Court of Appeals committed a reversible error in holding, based entirely on speculations, surmises or conjectures, that there was an agreement between SALAZAR and TEMPLONUEVO that checks payable to TEMPLONUEVO may be deposited by SALAZAR to her personal account and that BPI was privy to this agreement.

V.

The Court of Appeals committed reversible error in holding, based entirely on speculation, surmises or conjectures, that SALAZAR suffered great damage and prejudice and that her business standing was eroded.

VI.

The Court of Appeals erred in affirming instead of reversing the decision of the lower court against BPI and dismissing SALAZAR's complaint.

VII.

The Honorable Court erred in affirming the decision of the lower court dismissing the third-party complaint of BPI.[7]

The issues center on the propriety of the deductions made by petitioner from private respondent Salazar's account. Stated otherwise, does a collecting bank, over the objections of its depositor, have the authority to withdraw unilaterally from such depositor's account the amount it had previously paid upon certain unendorsed order instruments deposited by the depositor to another account that she later closed?

Petitioner argues thus:

- There is no presumption in law that a check payable to order, when found in the possession of a person who is neither a payee nor the indorsee thereof, has been lawfully transferred for value. Hence, the CA should not have presumed that Salazar was a transferee for value within the contemplation of Section 49 of the Negotiable Instruments Law,[8] as the latter applies only to a holder defined under Section 191 of the same.[9]
- Salazar failed to adduce sufficient evidence to prove that her possession of the three checks was lawful despite her allegations that these checks were deposited pursuant to a prior internal arrangement with Templonuevo and that petitioner was privy to the arrangement.
- The CA should have applied the Civil Code provisions on legal compensation because in deducting the subject amount from Salazar's account, petitioner was merely rectifying the undue payment it made upon the checks and exercising its prerogative to alter or modify an erroneous credit entry in the regular course of its business.
- The debit of the amount from the account of A.A. Salazar Construction and Engineering Services was proper even though the value of the checks had been originally credited to the personal account of Salazar because A.A. Salazar Construction and Engineering Services, an unincorporated single proprietorship, had no separate and distinct personality from Salazar.
- Assuming the deduction from Salazar's account was improper, the CA should not have dismissed petitioner's third-party complaint against Templonuevo because the latter would have the legal duty to return to petitioner the proceeds of the checks which he previously received from it.
- There was no factual basis for the award of damages to Salazar.

The petition is partly meritorious.

First, the issue raised by petitioner requires an inquiry into the factual findings made by the CA. The CA's conclusion that the deductions from the bank account of A.A. Salazar Construction and Engineering Services were improper stemmed from its finding that there was no ineffective payment to Salazar which would call for the exercise of petitioner's right to set off against the former's bank deposits. This finding, in turn, was drawn from the pleadings of the parties, the evidence adduced during trial and upon the admissions and stipulations of fact made during the pre-trial, most significantly the following:

(a) That Salazar previously had in her possession the following checks:

- (1) Solid Bank Check No. CB766556 dated January 30, 1990 in the amount of P57,712.50;
- (2) Solid Bank Check No. CB898978 dated July 31, 1990 in the amount of P55,180.00; and,
- (3) Equitable Banking Corporation Check No. 32380638 dated August 28, 1990 for the amount of P154,800.00;

(b) That these checks which had an aggregate amount of P267,692.50 were payable to the order of JRT Construction and Trading, the name and style under which Templonuevo does business;

(c) That despite the lack of endorsement of the designated payee upon such checks, Salazar was able to deposit the checks in her personal savings account with petitioner and encash the same;

(d) That petitioner accepted and paid the checks on three (3) separate occasions over a span of eight months in 1990; and

(e) That Templonuevo only protested the purportedly unauthorized encashment of the checks after the lapse of one year from the date of the last check.[10]

Petitioner concedes that when it credited the value of the checks to the account of private respondent Salazar, it made a mistake because it failed to notice the lack of endorsement thereon by the designated payee. The CA, however, did not lend credence to this claim and concluded that petitioner's actions were deliberate, in view of its admission that the "mistake" was committed three times on three separate occasions, indicating acquiescence to the internal arrangement between Salazar and Templonuevo. The CA explained thus:

It was quite apparent that the three checks which appellee Salazar deposited were not indorsed. Three times she deposited them to her account and three times the amounts borne by these checks were credited to the same. And in those separate occasions, the bank did not return the checks to her so that she could have them indorsed. Neither did the bank question her as to why she was depositing the checks to her account considering that she was not the payee thereof, thus allowing us to come to the conclusion that defendant-appellant BPI was fully aware that the proceeds of the three checks belong to appellee.

For if the bank was not privy to the agreement between Salazar and Templonuevo, it is most unlikely that appellant BPI (or any bank for that matter) would have accepted the checks for deposit on three separate times nary any question. Banks are most finicky over accepting checks for deposit without the corresponding indorsement by their payee. In fact, they hesitate to accept indorsed checks for deposit if the depositor is not one they know very well.[11]

The CA likewise sustained Salazar's position that she received the checks from Templonuevo pursuant to an internal arrangement between them, ratiocinating as follows:

If there was indeed no arrangement between Templonuevo and the plaintiff over the three questioned checks, it baffles us why it was only on August 31, 1991 or more than a year after the third and last check was deposited that he demanded for the refund of the total amount of P267,692.50.

A prudent man knowing that payment is due him would have demanded payment by his debtor from the moment the same became due and demandable. More so if the sum involved runs in hundreds of thousand of pesos. By and large, every person, at the very moment he learns that he was deprived of a thing which rightfully belongs to him, would have created a big fuss. He would not have waited for a year within which to do so. It is most inconceivable that Templonuevo did not do this.[12]

Generally, only questions of law may be raised in an appeal by certiorari under Rule 45 of the Rules of Court.[13] Factual findings of the CA are entitled to great weight and respect, especially when the CA affirms the factual findings of the trial court.[14] Such questions on whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are questions of fact. The same holds true for questions on whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by the adverse party may be said to be strong, clear and convincing, or whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight – all these are issues of fact which are not reviewable by the Court.[15]

This rule, however, is not absolute and admits of certain exceptions, namely: a) when the conclusion is a finding grounded entirely on speculations, surmises, or conjectures; b) when the inference made is manifestly mistaken, absurd, or impossible; c) when there is a grave abuse of discretion; d) when the judgment is based on a misapprehension of facts; e) when the findings of fact are conflicting; f) when the CA, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; g) when the findings of the CA are contrary to those of the trial court; h) when the findings of fact are conclusions without citation of specific evidence on which they are based; i) when the finding of fact of the CA is premised on the supposed absence of evidence but is contradicted by the evidence on record; and j) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion.[16]

In the present case, the records do not support the finding made by the CA and the trial court that a prior arrangement existed between Salazar and Templonuevo regarding the transfer of ownership of the checks. This fact is crucial as Salazar's entitlement to the value of the instruments is based on the assumption that she is a transferee within the contemplation of Section 49 of the Negotiable Instruments Law.

Section 49 of the Negotiable Instruments Law contemplates a situation whereby the payee or indorsee delivers a negotiable instrument for value without indorsing it, thus:

Transfer without indorsement; effect of- Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. [17]

It bears stressing that the above transaction is an equitable assignment and the transferee acquires the instrument subject to defenses and equities available among prior parties. Thus, if the transferor had legal title, the transferee acquires such title and, in addition, the right to have the indorsement of the transferor and also the right, as holder of the legal title, to maintain legal action against the maker or acceptor or other party liable to the transferor. The underlying premise of this provision, however, is that a valid transfer of ownership of the negotiable instrument in question has taken place.

Transferees in this situation do not enjoy the presumption of ownership in favor of holders since they are neither payees nor indorsees of such instruments. The weight of authority is that the mere possession of a negotiable

instrument does not in itself conclusively establish either the right of the possessor to receive payment, or of the right of one who has made payment to be discharged from liability. Thus, something more than mere possession by persons who are not payees or indorsers of the instrument is necessary to authorize payment to them in the absence of any other facts from which the authority to receive payment may be inferred.[18]

The CA and the trial court surmised that the subject checks belonged to private respondent Salazar based on the pre-trial stipulation that Templonuevo incurred a one-year delay in demanding reimbursement for the proceeds of the same. To the Court's mind, however, such period of delay is not of such unreasonable length as to estop Templonuevo from asserting ownership over the checks especially considering that it was readily apparent on the face of the instruments[19] that these were crossed checks.

In *State Investment House v. IAC*,[20] the Court enumerated the effects of crossing a check, thus: (1) that the check may not be encashed but only deposited in the bank; (2) that the check may be negotiated only once - to one who has an account with a bank; and (3) that the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that such holder must inquire if the check has been received pursuant to that purpose.

Thus, even if the delay in the demand for reimbursement is taken in conjunction with Salazar's possession of the checks, it cannot be said that the presumption of ownership in Templonuevo's favor as the designated payee therein was sufficiently overcome. This is consistent with the principle that if instruments payable to named payees or to their order have not been indorsed in blank, only such payees or their indorsees can be holders and entitled to receive payment in their own right.[21]

The presumption under Section 131(s) of the Rules of Court stating that a negotiable instrument was given for a sufficient consideration will not inure to the benefit of Salazar because the term "given" does not pertain merely to a transfer of physical possession of the instrument. The phrase "given or indorsed" in the context of a negotiable instrument refers to the manner in which such instrument may be negotiated. Negotiable instruments are negotiated by "transfer to one person or another in such a manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery. If payable to order it is negotiated by the indorsement completed by delivery." [22] The present case involves checks payable to order. Not being a payee or indorsee of the checks, private respondent Salazar could not be a holder thereof.

It is an exception to the general rule for a payee of an order instrument to transfer the instrument without indorsement. Precisely because the situation is abnormal, it is but fair to the maker and to prior holders to require possessors to prove without the aid of an initial presumption in their favor, that they came into possession by virtue of a legitimate transaction with the last holder.[23] Salazar failed to discharge this burden, and the return of the check proceeds to Templonuevo was therefore warranted under the circumstances despite the fact that Templonuevo may not have clearly demonstrated that he never authorized Salazar to deposit the checks or to encash the same. Noteworthy also is the fact that petitioner stamped on the back of the checks the words: "All prior endorsements and/or lack of endorsements guaranteed," thereby making the assurance that it had ascertained the genuineness of all prior endorsements. Having assumed the liability of a general indorser, petitioner's liability to the designated payee cannot be denied.

Consequently, petitioner, as the collecting bank, had the right to debit Salazar's account for the value of the checks it previously credited in her favor. It is of no moment that the account debited by petitioner was different from the original account to which the proceeds of the check were credited because both admittedly belonged to Salazar, the former being the account of the sole proprietorship which had no separate and distinct personality from her, and the latter being her personal account.

The right of set-off was explained in *Associated Bank v. Tan*:^[24]

A bank generally has a right of set-off over the deposits therein for the payment of any withdrawals on the part of a depositor. The right of a collecting bank to debit a client's account for the value of a dishonored check that has previously been credited has fairly been established by jurisprudence. To begin with, Article 1980 of the Civil Code provides that "[f]ixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan."

Hence, the relationship between banks and depositors has been held to be that of creditor and debtor. Thus, legal compensation under Article 1278 of the Civil Code may take place "when all the requisites mentioned in Article 1279 are present," as follows:

- (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
- (3) That the two debts be due;
- (4) That they be liquidated and demandable;
- (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

While, however, it is conceded that petitioner had the right of set-off over the amount it paid to Templonuevo against the deposit of Salazar, the issue of whether it acted judiciously is an entirely different matter.^[25] As businesses affected with public interest, and because of the nature of their functions, banks are under obligation to treat the accounts of their depositors with meticulous care, always having in mind the fiduciary nature of their relationship.^[26] In this regard, petitioner was clearly remiss in its duty to private respondent Salazar as its depositor.

To begin with, the irregularity appeared plainly on the face of the checks. Despite the obvious lack of indorsement thereon, petitioner permitted the encashment of these checks three times on three separate occasions. This negates petitioner's claim that it merely made a mistake in crediting the value of the checks to Salazar's account and instead bolsters the conclusion of the CA that petitioner recognized Salazar's claim of ownership of checks and acted deliberately in paying the same, contrary to ordinary banking policy and practice. It must be emphasized that the law imposes a duty of diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity. The collecting bank, being primarily engaged in banking, holds itself out to the public as the expert on this field, and the law thus holds it to a high standard of conduct.^[27] The taking and collection of a check without the proper indorsement amount to a conversion of the check by the bank.^[28]

More importantly, however, solely upon the prompting of Templonuevo, and with full knowledge of the brewing dispute between Salazar and Templonuevo, petitioner debited the account held in the name of the sole proprietorship of Salazar without even serving due notice upon her. This ran contrary to petitioner's assurances to private respondent Salazar that the account would remain untouched, pending the resolution of the controversy between her and Templonuevo.^[29] In this connection, the CA cited the letter dated September 5, 1991 of Mr. Manuel Ablan, Senior Manager of petitioner bank's Pasig/Ortigas branch, to private respondent Salazar informing her that her account had been frozen, thus:

From the tenor of the letter of Manuel Ablan, it is safe to conclude that Account No. 0201-0588-48 will remain frozen or untouched until herein [Salazar] has settled matters with Templonuevo. But, in an unexpected move, in less than two weeks (eleven days to be precise) from the time that letter was written, [petitioner] bank issued a cashier's check in the name of Julio R. Templonuevo of the J.R.T. Construction and Trading for the sum of

P267,692.50 (Exhibit “8”) and debited said amount from Ms. Arcilla’s account No. 0201-0588-48 which was supposed to be frozen or controlled. Such a move by BPI is, to Our minds, a clear case of negligence, if not a fraudulent, wanton and reckless disregard of the right of its depositor.

The records further bear out the fact that respondent Salazar had issued several checks drawn against the account of A.A. Salazar Construction and Engineering Services prior to any notice of deduction being served. The CA sustained private respondent Salazar’s claim of damages in this regard:

The act of the bank in freezing and later debiting the amount of P267,692.50 from the account of A.A. Salazar Construction and Engineering Services caused plaintiff-appellee great damage and prejudice particularly when she had already issued checks drawn against the said account. As can be expected, the said checks bounced. To prove this, plaintiff-appellee presented as exhibits photocopies of checks dated September 8, 1991, October 28, 1991, and November 14, 1991 (Exhibits “D”, “E” and “F” respectively)[30]

These checks, it must be emphasized, were subsequently dishonored, thereby causing private respondent Salazar undue embarrassment and inflicting damage to her standing in the business community. Under the circumstances, she was clearly not given the opportunity to protect her interest when petitioner unilaterally withdrew the above amount from her account without informing her that it had already done so.

For the above reasons, the Court finds no reason to disturb the award of damages granted by the CA against petitioner. This whole incident would have been avoided had petitioner adhered to the standard of diligence expected of one engaged in the banking business. A depositor has the right to recover reasonable moral damages even if the bank’s negligence may not have been attended with malice and bad faith, if the former suffered mental anguish, serious anxiety, embarrassment and humiliation.[31] Moral damages are not meant to enrich a complainant at the expense of defendant. It is only intended to alleviate the moral suffering she has undergone. The award of exemplary damages is justified, on the other hand, when the acts of the bank are attended by malice, bad faith or gross negligence. The award of reasonable attorney’s fees is proper where exemplary damages are awarded. It is proper where depositors are compelled to litigate to protect their interest.[32]

WHEREFORE, the petition is partially GRANTED. The assailed Decision dated April 3, 1998 and Resolution dated April 3, 1998 rendered by the Court of Appeals in CA-G.R. CV No. 42241 are MODIFIED insofar as it ordered petitioner Bank of the Philippine Islands to return the amount of Two Hundred Sixty-seven Thousand Seven Hundred and Seven and 70/100 Pesos (P267,707.70) to respondent Annabelle A. Salazar, which portion is REVERSED and SET ASIDE. In all other respects, the same are AFFIRMED.

No costs.

SO ORDERED.

Puno C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] CA Rollo, pp. 100-116.

[2] Rollo, p. 57.

[3] CA Rollo, pp. 100-105.

[4] Records, pp. 323-324.

[5] Private respondent Templonuevo admitted that he was doing business under the name and style, “JRT Construction and Trading.” See Records, p.179.

[6] Rollo, p. 106.

[7] Id. at 12-13.

[8] Infra note 17.

[9] Sec. 191. Definition and meaning of terms. - In this Act, unless the contract otherwise requires:

x x x

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;

x x x

[10] Records, pp. 178-179.

[11] CA Rollo, pp. 106-107.

[12] Id. at 107.

[13] *Madrigal v. CA*, G.R. No. 142944, April 15, 2005, 456 SCRA 247; *Bernardo v. CA*, G.R. No. 101680, December 7, 1992, 216 SCRA 224; *Remalante v. Tibe*, G.R. No. L-59514, February 25, 1988, 158 SCRA 138.

[14] *Borromeo v. Sun*, G.R. No. 75908, October 22, 1999, 317 SCRA 176.

[15] *Paterno v. Paterno*, G.R. No. 63680, March 23, 1990, 183 SCRA 630.

[16] *Arcaba v. Tabancura*, 421 Phil. 1096 (2001); *Martinez v. CA*, G.R. No. 123547, May 21, 2001, 358 SCRA 38.

[17] Act No. 2031 (1911).

[18] 11 Am Jur 2d, § 988, citing *Doubleday v. Kress*, 50 NY 410, *Hoffmaster v. Black*, 84 NE 423, and *First Nat. Bank v. Gorman*, 21 P2d 549.

[19] Records, pp. 286-293.

[20] G.R. No. 72764, July 13, 1989, 175 SCRA 310.

[21] Supra note 18.

[22] Negotiable Instruments Law, Section 30.

[23] Campos Jr. and Lopez Campos, "Notes and Selected Cases on Negotiable Instruments Law," p. 108, (1994).

[24] G.R. No. 156940, December 14, 2004, 446 SCRA 282.

[25] Id.

[26] *Prudential Bank v. CA*, G.R. No. 125536, March 16, 2000, 328 SCRA 264; *Simex International [Manila], Inc. v. CA*, G.R. No. 88013, March 19, 1990, 183 SCRA 360; *BPI v. IAC*, G.R. No. 69162, February 21, 1992, 206 SCRA 408.

[27] *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corp.*, G.R. No. L-74917, January 20, 1988, 157 SCRA 188.

[28] *Associated Bank v. CA*, G.R. No. 89802, May 7, 1992, 208 SCRA 465; *City Trust Banking Corp. v. IAC*, G.R. No. 84281, May 27, 1994, 232 SCRA 559.

[29] CA rollo, p. 112; Transcript of Stenographic Notes dated November 9, 1992, pp. 8-9.

[30] CA rollo, pp. 111.

[31] Civil Code, Article 2217.

[32] Prudential Bank v. CA, supra note 26.

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