

CHINA BANKING CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND JOSE “JOSEPH” GOTIANUY AS SUBSTITUTED BY ELIZABETH GOTIANUY LO, RESPONDENTS

G.R. No. 140687. December 18, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

A Complaint for recovery of sums of money and annulment of sales of real properties and shares of stock docketed as CEB-21445 was filed by Jose "Joseph" Gotianuy against his son-in-law, George Dee, and his daughter, Mary Margaret Dee, before the Regional Trial Court (RTC) of Cebu City, Branch 58.

Jose Gotianuy accused his daughter Mary Margaret Dee of stealing, among his other properties, US dollar deposits with Citibank N.A. amounting to not less than P35,000,000.00 and US\$864,000.00. Mary Margaret Dee received these amounts from Citibank N.A. through checks which she allegedly deposited at China Banking Corporation (China Bank). He likewise accused his son-in-law, George Dee, husband of his daughter, Mary Margaret, of transferring his real properties and shares of stock in George Dee's name without any consideration. Jose Gotianuy, died during the pendency of the case before the trial court.[1] He was substituted by his daughter, Elizabeth Gotianuy Lo. The latter presented the US Dollar checks withdrawn by Mary Margaret Dee from his US dollar placement with Citibank. The details of the said checks are:

- 1) CITIBANK CHECK NO. 69003194405412 dated September 29 1997 in the amount of US\$5,937.52 payable to GOTIANUY: JOSE AND/OR DEE: MARY MARGARET;
- 2) CITIBANK CHECK NO. 69003194405296 dated September 29 1997 in the amount of US\$7,197.59 payable to GOTIANUY: JOSE AND/OR DEE: MARY MARGARET;
- 3) CITIBANK CHECK NO. 69003194405414 dated September 29 1997 in the amount of US\$1,198.94 payable to GOTIANUY: JOSE AND/OR DEE: MARY MARGARET;
- 4) CITIBANK CHECK NO. 69003194405413 dated September 29 1997 in the amount of US\$989.04 payable to GOTIANUY: JOSE AND/OR DEE: MARY MARGARET;
- 5) CITIBANK CHECK NO. 69003194405297 dated October 01 1997 in the amount of US\$766,011.97 payable to GOTIANUY: JOSE AND/OR DEE: MARY MARGARET; and
- 6) CITIBANK CHECK NO. 69003194405339 dated October 09 1997 in the amount of US\$83,053.10 payable to GOTIANUY: JOSE AND/OR DEE: MARY MARGARET.[2]

Upon motion of Elizabeth Gotianuy Lo, the trial court[3] issued a subpoena to Cristota Labios and Isabel Yap, employees of China Bank, to testify on the case. The Order of the trial court dated 23 February 1999, states:

Issue a subpoena ad testificandum requiring MS. ISABEL YAP and CRISTOTA LABIOS of China Banking Corporation, Cebu Main Branch, corner Magallanes and D. Jakosalem Sts., Cebu City, to appear in person and to testify in the hearing of the above entitled case on March 1, 1999 at 8:30 in the morning, with regards to

Citibank Checks (Exhs. "AAA" to "AAA-5") and other matters material and relevant to the issues of this case.[4]

China Bank moved for a reconsideration. Resolving the motion, the trial court issued an Order dated 16 April 1999 and held:

The Court is of the view that as the foreign currency fund (Exhs. "AAA" to "AAA-5") is deposited with the movant China Banking Corporation, Cebu Main Branch, Cebu City, the disclosure only as to the name or in whose name the said fund is deposited is not violative of the law. Justice will be better served if the name or names of the depositor of said fund shall be disclosed because such a disclosure is material and important to the issues between the parties in the case at bar.

Premises considered, the motion for reconsideration is denied partly and granted partly, in the sense that Isabel Yap and/or Cristuta Labios are directed to appear before this Court and to testify at the trial of this case on April 20, 1999, May 6 & 7, 1999 at 10:00 o'clock in the morning and only for the purpose of disclosing in whose name or names is the foreign currency fund (Exhs. "AAA" to "AAA-5") deposited with the movant Bank and not to other matters material and relevant to the issues in the case at bar.[5]

From this Order, China Bank filed a Petition for Certiorari[6] with the Court of Appeals. In a Decision[7] dated 29 October 1999, the Court of Appeals denied the petition of China Bank and affirmed the Order of the RTC.

In justifying its conclusion, the Court of Appeals ratiocinated:

From the foregoing, it is pristinely clear the law specifically encompasses only the money or funds in foreign currency deposited in a bank. Thus, the coverage of the law extends only to the foreign currency deposit in the CBC account where Mary Margaret Dee deposited the Citibank checks in question and nothing more.

It has to be pointed out that the April 16, 1999 Order of the court of origin modified its previous February 23, 1999 Order such that the CBC representatives are directed solely to divulge "in whose name or names is the foreign currency fund (Exhs. "AAA" to "AAA-5") deposited with the movant bank." It precluded inquiry on "other materials and relevant to the issues in the case at bar." We find that the directive of the court below does not contravene the plain language of RA 6426 as amended by P.D. No. 1246.

The contention of petitioner that the [prescription] on absolute confidentiality under the law in question covers even the name of the depositor and is beyond the compulsive process of the courts is palpably untenable as the law protects only the deposits itself but not the name of the depositor. To uphold the theory of petitioner CBC is reading into the statute "something that is not within the manifest intention of the legislature as gathered from the statute itself, for to depart from the meaning expressed by the words, is to alter the statute, to legislate and not to interpret, and judicial legislation should be avoided. *Maledicta expositio quae corrumpit textum* – It is a dangerous construction which is against the words. Expressing the same principle is the maxim: *Ubi lex non distinguit nec nos distinguere debemus*, which simply means that where the law does not distinguish, we should not make any distinction." (Gonzaga, Statutes and their Construction, p. 75.)[8]

From the Decision of the Court of Appeals, China Bank elevated the case to this Court based on the following issues:

I

THE HONORABLE COURT OF APPEALS HAS INTERPRETED THE PROVISION OF SECTION 8 OF R.A. 6426, AS AMENDED, OTHERWISE KNOWN AS THE FOREIGN CURRENCY DEPOSIT ACT, IN A MANNER CONTRARY TO THE LEGISLATIVE PURPOSE, THAT IS, TO PROVIDE ABSOLUTE CONFIDENTIALITY OF WHATEVER INFORMATION RELATIVE TO THE FOREIGN CURRENCY DEPOSIT.

II

PRIVATE RESPONDENT IS NOT THE OWNER OF THE QUESTIONED FOREIGN CURRENCY DEPOSIT. THUS, HE CANNOT INVOKE THE AID OF THE COURT IN COMPELLING THE DISCLOSURE OF SOMEONE ELSE'S FOREIGN CURRENCY DEPOSIT ON THE FLIMSY PRETEXT THAT THE CHECKS (IN FOREIGN CURRENCY) HE HAD ISSUED MAY HAVE ENDED UP THEREIN.

III

PETITIONER CAN RIGHTLY INVOKE THE PROVISION OF SEC. 8, R.A. 6426, IN BEHALF OF THE FOREIGN CURRENCY DEPOSITOR, OWING TO ITS SOLEMN OBLIGATION TO ITS CLIENT TO EXERCISE EXTRAORDINARY DILIGENCE IN THE HANDLING OF THE ACCOUNT.[9]

As amended by Presidential Decree No. 1246, the law reads:

SEC. 8. Secrecy of Foreign Currency Deposits. – All foreign currency deposits authorized under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall such foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or legislative or any other entity whether public or private: Provided, however, that said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever. (As amended by PD No. 1035, and further amended by PD No. 1246, prom. Nov. 21, 1977) (Emphasis supplied.)

Under the above provision, the law provides that all foreign currency deposits authorized under Republic Act No. 6426, as amended by Sec. 8, Presidential Decree No. 1246, Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034 are considered absolutely confidential in nature and may not be inquired into. There is only one exception to the secrecy of foreign currency deposits, that is, disclosure is allowed upon the written permission of the depositor.

This much was pronounced in the case of *Intengan v. Court of Appeals*,^[10] where it was held that the only exception to the secrecy of foreign currency deposits is in the case of a written permission of the depositor.

It must be remembered that under the whereas clause of Presidential Decree No. 1246 which amended Sec. 8 of Republic Act No. 6426, the Foreign Currency Deposit System including the Offshore Banking System under Presidential Decree 1034 were intended to draw deposits from foreign lenders and investors, and we quote:

Whereas, in order to assure the development and speedy growth of the Foreign Currency Deposit System and the Offshore Banking System in the Philippines, certain incentives were provided for under the two Systems such as confidentiality of deposits subject to certain exceptions and tax exemptions on the interest income of depositors who are nonresidents and are not engaged in trade or business in the Philippines;

Whereas, making absolute the protective cloak of confidentiality over such foreign currency deposits, exempting such deposits from tax, and guaranteeing the vested rights of depositors would better encourage the inflow of foreign currency deposits into the banking institutions authorized to accept such deposits in the Philippines thereby placing such institutions more in a position to properly channel the same to loans and investments in the Philippines, thus directly contributing to the economic development of the country.

As to the deposit in foreign currencies entitled to be protected under the confidentiality rule, Presidential Decree No. 1034,^[11] defines deposits to mean funds in foreign currencies which are accepted and held by an offshore banking unit in the regular course of business, with the obligation to return an equivalent amount to the owner thereof, with or without interest.^[12]

It is in this light that the court in the case of *Salvacion v. Central Bank of the Philippines*,^[13] allowed the inquiry of the foreign currency deposit in question mainly due to the peculiar circumstances of the case such that a strict interpretation of the letter of the law would result to rank injustice. Therein, Greg Bartelli y Northcott, an American tourist, was charged with criminal cases for serious illegal detention and rape committed against then 12 year-old Karen Salvacion. A separate civil case for damages with preliminary attachment was filed against Greg Bartelli. The trial court issued an Order granting the Salvacions' application for the issuance of a writ of preliminary attachment. A notice of garnishment was then served on China Bank where Bartelli held a dollar account. China Bank refused, invoking the secrecy of bank deposits. The Supreme Court ruled: "In fine, the application of the law depends on the extent of its justice x x x It would be unthinkable, that the questioned law exempting foreign currency deposits from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever would be used as a device by an accused x x x for wrongdoing, and in so doing, acquitting the guilty at the expense of the innocent."^[14]

With the foregoing, we are now tasked to determine the single material issue of whether or not petitioner China Bank is correct in its submission that the Citibank dollar checks with both Jose Gotianuy and/or Mary Margaret Dee as payees, deposited with China Bank, may not be looked into under the law on secrecy of foreign currency deposits. As a corollary issue, sought to be resolved is whether Jose Gotianuy may be considered a depositor who is entitled to seek an inquiry over the said deposits.

The Court of Appeals, in allowing the inquiry, considered Jose Gotianuy, a co-depositor of Mary Margaret Dee. It reasoned that since Jose Gotianuy is the named co-payee of the latter in the subject checks, which checks were deposited in China Bank, then, Jose Gotianuy is likewise a depositor thereof. On that basis, no written consent from Mary Margaret Dee is necessitated.

We agree in the conclusion arrived at by the Court of Appeals.

The following facts are established: (1) Jose Gotianuy and Mary Margaret Dee are co-payees of various Citibank checks;^[15] (2) Mary Margaret Dee withdrew these checks from Citibank;^[16] (3) Mary Margaret Dee admitted in her Answer to the Request for Admissions by the Adverse Party sent to her by Jose Gotianuy^[17] that she withdrew the funds from Citibank upon the instruction of her father Jose Gotianuy and that the funds belonged exclusively to the latter; (4) these checks were endorsed by Mary Margaret Dee at the dorsal portion; and (5) Jose Gotianuy discovered that these checks were deposited with China Bank as shown by the stamp of China Bank at the dorsal side of the checks.

Thus, with this, there is no issue as to the source of the funds. Mary Margaret Dee declared the source to be Jose Gotianuy. There is likewise no dispute that these funds in the form of Citibank US dollar Checks are now deposited with China Bank.

As the owner of the funds unlawfully taken and which are undisputably now deposited with China Bank, Jose Gotianuy has the right to inquire into the said deposits.

A depositor, in cases of bank deposits, is one who pays money into the bank in the usual course of business, to be placed to his credit and subject to his check or the beneficiary of the funds held by the bank as trustee.^[18]

On this score, the observations of the Court of Appeals are worth reiterating:

Furthermore, it is indubitable that the Citibank checks were drawn against the foreign currency account with Citibank, NA. The monies subject of said checks originally came from the late Jose Gotianuy, the owner of the account. Thus, he also has legal rights and interests in the CBC account where said monies were deposited. More importantly, the Citibank checks (Exhibits "AAA" to "AAA-5") readily demonstrate (sic) that the late

Jose Gotianuy is one of the payees of said checks. Being a co-payee thereof, then he or his estate can be considered as a co-depositor of said checks. Ergo, since the late Jose Gotianuy is a co-depositor of the CBC account, then his request for the assailed subpoena is tantamount to an express permission of a depositor for the disclosure of the name of the account holder. The April 16, 1999 Order perforce must be sustained.[19] (Emphasis supplied.)

One more point. It must be remembered that in the complaint of Jose Gotianuy, he alleged that his US dollar deposits with Citibank were illegally taken from him. On the other hand, China Bank employee Cristuta Labios testified that Mary Margaret Dee came to China Bank and deposited the money of Jose Gotianuy in Citibank US dollar checks to the dollar account of her sister Adrienne Chu.[20] This fortifies our conclusion that an inquiry into the said deposit at China Bank is justified. At the very least, Jose Gotianuy as the owner of these funds is entitled to a hearing on the whereabouts of these funds.

All things considered and in view of the distinctive circumstances attendant to the present case, we are constrained to render a limited pro hac vice ruling.[21] Clearly it was not the intent of the legislature when it enacted the law on secrecy on foreign currency deposits to perpetuate injustice. This Court is of the view that the allowance of the inquiry would be in accord with the rudiments of fair play,[22] the upholding of fairness in our judicial system and would be an avoidance of delay and time-wasteful and circuitous way of administering justice.[23]

WHEREFORE, premises considered, the Petition is DENIED. The Decision of the Court of Appeals dated 29 October 1999 affirming the Order of the RTC, Branch 58, Cebu City dated 16 April 1999 is AFFIRMED and this case is ordered REMANDED to the trial court for continuation of hearing with utmost dispatch consistent with the above disquisition. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.

* Retired as of 7 December 2006.

[1] CA rollo, p. 50

[2] Rollo, p. 86.

[3] CA rollo, p. 21; Presided by Judge Jose P. Soberano, Jr.

[4] Rollo, p. 47.

[5] Id. at 49.

[6] Docketed as CA-G.R. SP No. 52661.

[7] Penned by then Associate Justice Presbitero J. Velasco, Jr. (now Associate Justice of this Court) with Associate Justices B. A. Adefuin-De La Cruz and Eloy R. Bello, Jr., concurring; rollo, pp. 36-46.

[8] Id. at 41-45.

[9] Id. at 21.

[10] G.R. No. 128996, 15 February 2002, 377 SCRA 74.

[11] Entitled "Authorizing the Establishment of an Offshore Banking System in the Philippines."

[12] Presidential Decree No. 1034, Section 1 Definition of Terms, subsection C.

[13] 343 Phil. 539 (1997).

[14] Estrada v. Desierto, G.R. No. 156160, 9 December 2004, 445 SCRA 655, 672.

[15] CA rollo, pp. 17-20.

[16] Id.

[17] Id. at 92.

[18] Wright v. Holmes, 62 A. 507, 508, 100 Me. 508, 3 L.R. A., N.S. , 769, 4 Ann. Cas. 583. WORDS AND PHRASES, Permanent Edition, Vol. 12, p. 262.

[19] Rollo, pp. 44-45.

[20] Cristuta Labios was compelled to testify in view of the failure of China Bank to secure a Temporary Restraining Order from the trial court. (Comment, p. 3.)

[21] x x x for this turn; for this one particular occasion' only. (Rafael Reyes Trucking Corporation v. People, 386 Phil. 41, 79 (2000); Mijares v. Rañada, G.R. No. 139325, 12 April 2005, 455 SCRA 397, 405).

[22] Alcarazen v. Univet Agricultural Products, Inc., G.R. No. 149628, 22 November 2005, 475 SCRA 636, 655; Litonjua, Jr. v. Litonjua, Sr., G.R. Nos. 166299-300, 13 December 2005, 477 SCRA 576, 594.

[23] Jesus Is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig, Metro Manila, G.R. No. 152230, 9 August 2005, 466 SCRA 235, 255; Teston v. Development Bank of the Philippines, G.R. No. 144374, 11 November 2005, 474 SCRA 597, 607.

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