CENTRAL BANK OF THE PHILIPPINES, PETITIONER, VS. CITYTRUST BANKING CORPORATION, RESPONDENT.

G.R. No. 141835. February 04, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Pursuant to Republic Act No. 625, the old Central Bank Law, respondent Citytrust Banking Corporation (Citytrust), formerly Feati Bank, maintained a demand deposit account with petitioner Central Bank of the Philippines, now Bangko Sentral ng Pilipinas.

As required, Citytrust furnished petitioner with the names and corresponding signatures of five of its officers authorized to sign checks and serve as drawers and indorsers for its account. And it provided petitioner with the list and corresponding signatures of its roving tellers authorized to withdraw, sign receipts and perform other transactions on its behalf. Petitioner later issued security identification cards to the roving tellers one of whom was "Rounceval Flores" (Flores).

On July 15, 1977, Flores presented for payment to petitioner's Senior Teller Iluminada dela Cruz (Iluminada) two Citytrust checks of even date, payable to Citytrust, one in the amount of P850,000 and the other in the amount of P900,000, both of which were signed and indorsed by Citytrust's authorized signatory-drawers.

After the checks were certified by petitioner's Accounting Department, Iluminada verified them, prepared the cash transfer slip on which she affixed her signature, stamped the checks with the notation "Received Payment" and asked Flores to, as he did, sign on the space above such notation. Instead of signing his name, however, Flores signed as "Rosauro C. Cayabyab" - a fact Iluminada failed to notice.

Iluminada thereupon sent the cash transfer slip and checks to petitioner's Cash Department where an officer verified and compared the drawers' signatures on the checks against their specimen signatures provided by Citytrust, and finding the same in order, approved the cash transfer slip and paid the corresponding amounts to Flores. Petitioner then debited the amount of the checks totaling P1,750,000 from Citytrust's demand deposit account.

More than a year and nine months later, Citytrust, by letter dated April 23, 1979, alleging that the checks were already cancelled because they were stolen, demanded petitioner to restore the amounts covered thereby to its demand deposit account. Petitioner did not heed the demand, however.

Citytrust later filed a complaint for estafa, with reservation on the filing of a separate civil action, against Flores. Flores was convicted.

Citytrust thereafter filed before the Regional Trial Court (RTC) of Manila a complaint for recovery of sum of money with damages against petitioner which it alleged erred in encashing the checks and in charging the proceeds thereof to its account, despite the lack of authority of "Rosauro C. Cayabyab."

By Decision[1] of November 13, 1991, Branch 32 of the RTC of Manila found both Citytrust and petitioner negligent and accordingly held them equally liable for the loss. Both parties appealed to the Court of Appeals which, by Decision[2] dated July 16, 1999, affirmed the trial court's decision, it holding that both parties contributed equally to the fraudulent encashment of the checks, hence, they should equally share the loss in consonance with Article 2179[3] vis a vis Article 1172[4] of the Civil Code.

In arriving at its Decision, the appellate court noted that while "Citytrust failed to take adequate precautionary measures to prevent the fraudulent encashment of its checks," petitioner was not entirely blame-free in light of its failure to verify the signature of Citytrust's agent authorized to receive payment.

Brushing aside petitioner's contention that it cannot be sued, the appellate court held that petitioner's Charter specifically clothes it with the power to sue and be sued.

Also brushing aside petitioner's assertion that Citytrust's reservation of the filing of a separate civil action against Flores precluded Citytrust from filing the civil action against it, the appellate court held that the "action for the recovery of sum of money is separate and distinct and is grounded on a separate cause of action from that of the criminal case for estafa."

Hence, the present appeal, petitioner maintaining that Flores having been an authorized roving teller, Citytrust is bound by his acts. Also maintaining that it was not negligent in releasing the proceeds of the checks to Flores, the failure of its teller to properly verify his signature notwithstanding, petitioner contends that verification could be dispensed with, Flores having been known to be an authorized roving teller of Citytrust who had had numerous transactions with it (petitioner) on its (Citytrust's) behalf for five years prior to the questioned transaction.

Attributing negligence solely to Citytrust, petitioner harps on Citytrust's allowing Flores to steal the checks and failing to timely cancel them; allowing Flores to wear the issued identification card issued by it (petitioner); failing to report Flores' absence from work on the day of the incident; and failing to explain the circumstances surrounding the supposed theft and cancellation of the checks.

Drawing attention to Citytrust's considerable delay in demanding the restoration of the proceeds of the checks, petitioners argue that, assuming arguendo that its teller was negligent, Citytrust's negligence, which preceded that committed by the teller, was the proximate cause of the loss or fraud.

The petition is bereft of merit.

Petitioner's teller Iluminada did not verify Flores' signature on the flimsy excuse that Flores had had previous transactions with it for a number of years. That circumstance did not excuse the teller from focusing attention to or at least glancing at Flores as he was signing, and to satisfy herself that the signature he had just affixed matched that of his specimen signature. Had she done that, she would have readily been put on notice that Flores was affixing, not his but a fictitious signature.

Given that petitioner is the government body mandated to supervise and regulate banking and other financial institutions, this Court's ruling in Consolidated Bank and Trust Corporation v. Court of Appeals[5] illumines:

> The contract between the bank and its depositor is governed by the provisions of the Civil Code on simple loan. Article 1980 of the Civil Code expressly provides that "x x x savings x x x deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan." There is a debtor-creditor relationship between the bank and its depositor. The bank is the debtor and the depositor is the creditor. The depositor lends the bank money and the bank agrees to pay the depositor on demand. The savings deposit agreement between the bank and the depositor is the contract that determines the rights and obligations of the parties.

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> The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of Republic Act No. 8791 ("RA 8791"), which took effect on 13 June 2000, declares that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance." This new provision in the general banking law, introduced in 2000, is a statutory affirmation of Supreme Court decisions, starting with the 1990 case of Simex International v. Court of Appeals, holding that "the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship."
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> 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. Article 1172 of the Civil Code states that the degree of diligence required of an obligor is that prescribed by law or contract, and absent such stipulation then the diligence of a good father of a family. Section 2 of RA 8791 prescribes the statutory diligence required from banks - that banks must observe "high standards of integrity and performance" in servicing their depositors. Although RA 8791 took effect almost nine years after the unauthorized withdrawal of the P300,000 from L.C. Diaz's savings account, jurisprudence at the time of the withdrawal already imposed on banks the same high standard of diligence required under RA No. 8791. (Emphasis supplied)

Citytrust's failure to timely examine its account, cancel the checks and notify petitioner of their alleged loss/theft should mitigate petitioner's liability, in accordance with Article 2179 of the Civil Code which provides that if the plaintiff's negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. For had Citytrust timely discovered the loss/theft and/or subsequent encashment, their proceeds or part thereof could have been recovered.

In line with the ruling in Consolidated Bank, the Court deems it proper to allocate the loss between petitioner and Citytrust on a 60-40 ratio.

WHEREFORE, the assailed Court of Appeals Decision of July 16, 1999 is hereby AFFIRMED with MODIFICATION, in that petitioner and Citytrust should bear the loss on a 60-40 ratio.

SO ORDERED.

Carpio Morales,[*] (Acting Chairperson), Tinga, Velasco, Jr., Nachura[**], and Brion, JJ., concur.

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[*] Acting Chairperson in lieu of Justice Leonardo A. Quisumbing who inhibited himself from the case due to close relation to a party, per Raffle dated January 26, 2009.

[**] Additional member per Raffle dated January 26, 2009.

[1] CA rollo, pp. 160-172. Penned by Assisting Judge Benjamin P. Martinez.

[2] Id. at 287-300. Penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justices Corona Ibay-Somera and Andres B. Reyes, Jr.

[3] Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

[4] Art. 1172. 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.

[5] G.R. No. 138569, September 11, 2003, 410 SCRA 562, 574-575.

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