

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. CASA MONTESSORI INTERNATIONALE AND LEONARDO T. YABUT, RESPONDENTS.

G.R. No. 149454. May 28, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

By the nature of its functions, a bank is required to take meticulous care of the deposits of its clients, who have the right to expect high standards of integrity and performance from it. Among its obligations in furtherance thereof is knowing the signatures of its clients. Depositors are not estopped from questioning wrongful withdrawals, even if they have failed to question those errors in the statements sent by the bank to them for verification.

The Case

Before us are two Petitions for Review[1] under Rule 45 of the Rules of Court, assailing the March 23, 2001 Decision[2] and the August 17, 2001 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 63561. The decretal portion of the assailed Decision reads as follows:

“WHEREFORE, upon the premises, the decision appealed from is AFFIRMED with the modification that defendant bank [Bank of the Philippine Islands (BPI)] is held liable only for one-half of the value of the forged checks in the amount of P547,115.00 after deductions subject to REIMBURSEMENT from third party defendant Yabut who is likewise ORDERED to pay the other half to plaintiff corporation [Casa Montessori Internationale (CASA)].”[4]

The assailed Resolution denied all the parties’ Motions for Reconsideration.

The Facts

The facts of the case are narrated by the CA as follows:

“On November 8, 1982, plaintiff CASA Montessori International[5] opened Current Account No. 0291-0081-01 with defendant BPI[,] with CASA’s President Ms. Ma. Carina C. Lebron as one of its authorized signatories.

“In 1991, after conducting an investigation, plaintiff discovered that nine (9) of its checks had been encashed by a certain Sonny D. Santos since 1990 in the total amount of P782,000.00, on the following dates and amounts:

‘Check No.

Date

Amount

1. 839700 April 24, 1990

P 43,400.00

2. 839459 Nov. 2, 1990

110,500.00

3. 839609 Oct. 17, 1990

47,723.00

4. 839549 April 7, 1990

90,700.00

5. 839569 Sept. 23, 1990

52,277.00

6. 729149 Mar. 22, 1990

148,000.00

7. 729129 Mar. 16, 1990

51,015.00

8. 839684 Dec. 1, 1990

140,000.00

9. 729034 Mar. 2, 1990

98,985.00

Total --

P 782,600.00[6]

“It turned out that ‘Sonny D. Santos’ with account at BPI’s Greenbelt Branch [was] a fictitious name used by third party defendant Leonardo T. Yabut who worked as external auditor of CASA. Third party defendant voluntarily admitted that he forged the signature of Ms. Lebron and encashed the checks.

“The PNP Crime Laboratory conducted an examination of the nine (9) checks and concluded that the handwritings thereon compared to the standard signature of Ms. Lebron were not written by the latter.

“On March 4, 1991, plaintiff filed the herein Complaint for Collection with Damages against defendant bank praying that the latter be ordered to reinstate the amount of P782,500.00[7] in the current and savings accounts of the plaintiff with interest at 6% per annum.

“On February 16, 1999, the RTC rendered the appealed decision in favor of the plaintiff.”[8]

Ruling of the Court of Appeals

Modifying the Decision of the Regional Trial Court (RTC), the CA apportioned the loss between BPI and CASA. The appellate court took into account CASA’s contributory negligence that resulted in the undetected forgery. It then ordered Leonardo T. Yabut to reimburse BPI half the total amount claimed; and CASA, the other half. It also disallowed attorney’s fees and moral and exemplary damages.

Hence, these Petitions.[9]

Issues

In GR No. 149454, Petitioner BPI submits the following issues for our consideration:

“I. The Honorable Court of Appeals erred in deciding this case NOT in accord with the applicable decisions of this Honorable Court to the effect that forgery cannot be presumed; that it must be proved by clear, positive and convincing evidence; and that the burden of proof lies on the party alleging the forgery.

“II. The Honorable Court of Appeals erred in deciding this case not in accord with applicable laws, in particular the Negotiable Instruments Law (NIL) which precludes CASA, on account of its own negligence, from asserting its forgery claim against BPI, specially taking into account the absence of any negligence on the part of BPI.”[10]

In GR No. 149507, Petitioner CASA submits the following issues:

“1. The Honorable Court of Appeals erred when it ruled that ‘there is no showing that [BPI], although negligent, acted in bad faith x x x’ thus denying the prayer for the award of attorney’s fees, moral damages and exemplary damages to [CASA]. The Honorable Court also erred when it did not order [BPI] to pay interest on the amounts due to [CASA].

“2. The Honorable Court of Appeals erred when it declared that [CASA] was likewise negligent in the case at bar, thus warranting its conclusion that the loss in the amount of P547,115.00 be ‘apportioned between [CASA] and [BPI] x x x.’”[11]

These issues can be narrowed down to three. First, was there forgery under the Negotiable Instruments Law (NIL)? Second, were any of the parties negligent and therefore precluded from setting up forgery as a defense? Third, should moral and exemplary damages, attorney’s fees, and interest be awarded?

The Court’s Ruling

The Petition in GR No. 149454 has no merit, while that in GR No. 149507 is partly meritorious.

First Issue:

Forged Signature Wholly Inoperative

Section 23 of the NIL provides:

“Section 23. Forged signature; effect of. -- When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right x x x to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.”[12]

Under this provision, a forged signature is a real[13] or absolute defense,[14] and a person whose signature on a negotiable instrument is forged is deemed to have never become a party thereto and to have never consented to the contract that allegedly gave rise to it.[15]

The counterfeiting of any writing, consisting in the signing of another’s name with intent to defraud, is forgery.[16]

In the present case, we hold that there was forgery of the drawer’s signature on the check.

First, both the CA[17] and the RTC[18] found that Respondent Yabut himself had voluntarily admitted, through an Affidavit, that he had forged the drawer’s signature and encashed the checks.[19] He never refuted these

findings.[20] That he had been coerced into admission was not corroborated by any evidence on record.[21]

Second, the appellate and the trial courts also ruled that the PNP Crime Laboratory, after its examination of the said checks,[22] had concluded that the handwritings thereon -- compared to the standard signature of the drawer -- were not hers.[23] This conclusion was the same as that in the Report[24] that the PNP Crime Laboratory had earlier issued to BPI -- the drawee bank -- upon the latter's request.

Indeed, we respect and affirm the RTC's factual findings, especially when affirmed by the CA, since these are supported by substantial evidence on record.[25]

Voluntary Admission Not Violative of Constitutional Rights

The voluntary admission of Yabut did not violate his constitutional rights (1) on custodial investigation, and (2) against self-incrimination.

In the first place, he was not under custodial investigation.[26] His Affidavit was executed in private and before private individuals.[27] The mantle of protection under Section 12 of Article III of the 1987 Constitution[28] covers only the period "from the time a person is taken into custody for investigation of his possible participation in the commission of a crime or from the time he is singled out as a suspect in the commission of a crime although not yet in custody." [29]

Therefore, to fall within the ambit of Section 12, quoted above, there must be an arrest or a deprivation of freedom, with "questions propounded on him by the police authorities for the purpose of eliciting admissions, confessions, or any information." [30] The said constitutional provision does "not apply to spontaneous statements made in a voluntary manner" [31] whereby an individual orally admits to authorship of a crime. [32] "What the Constitution proscribes is the compulsory or coercive disclosure of incriminating facts." [33]

Moreover, the right against self-incrimination [34] under Section 17 of Article III [35] of the Constitution, which is ordinarily available only in criminal prosecutions, extends to all other government proceedings -- including civil actions, legislative investigations, [36] and administrative proceedings that possess a criminal or penal aspect [37] -- but not to private investigations done by private individuals. Even in such government proceedings, this right may be waived, [38] provided the waiver is certain; unequivocal; and intelligently, understandingly and willingly made. [39]

If in these government proceedings waiver is allowed, all the more is it so in private investigations. It is of no moment that no criminal case has yet been filed against Yabut. The filing thereof is entirely up to the appropriate authorities or to the private individuals upon whom damage has been caused. As we shall also explain later, it is not mandatory for CASA -- the plaintiff below -- to implead Yabut in the civil case before the lower court.

Under these two constitutional provisions, "[t]he Bill of Rights [40] does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State." [41] Moreover, the Bill of Rights "is a charter of liberties for the individual and a limitation upon the power of the [S]tate." [42] These rights [43] are guaranteed to preclude the slightest coercion by the State that may lead the accused "to admit something false, not prevent him from freely and voluntarily telling the truth." [44]

Yabut is not an accused here. Besides, his mere invocation of the aforesaid rights "does not automatically entitle him to the constitutional protection." [45] When he freely and voluntarily executed [46] his Affidavit, the State was not even involved. Such Affidavit may therefore be admitted without violating his constitutional rights while under custodial investigation and against self-incrimination.

Clear, Positive and Convincing Examination and Evidence

The examination by the PNP, though inconclusive, was nevertheless clear, positive and convincing.

Forgery “cannot be presumed.”[47] It must be established by clear, positive and convincing evidence.[48] Under the best evidence rule as applied to documentary evidence like the checks in question, no secondary or substitutionary evidence may inceptively be introduced, as the original writing itself must be produced in court.[49] But when, without bad faith on the part of the offeror, the original checks have already been destroyed or cannot be produced in court, secondary evidence may be produced.[50] Without bad faith on its part, CASA proved the loss or destruction of the original checks through the Affidavit of the one person who knew of that fact[51] -- Yabut. He clearly admitted to discarding the paid checks to cover up his misdeed.[52] In such a situation, secondary evidence like microfilm copies may be introduced in court.

The drawer’s signatures on the microfilm copies were compared with the standard signature. PNP Document Examiner II Josefina de la Cruz testified on cross-examination that two different persons had written them.[53] Although no conclusive report could be issued in the absence of the original checks,[54] she affirmed that her findings were 90 percent conclusive.[55] According to her, even if the microfilm copies were the only basis of comparison, the differences were evident.[56] Besides, the RTC explained that although the Report was inconclusive, no conclusive report could have been given by the PNP, anyway, in the absence of the original checks.[57] This explanation is valid; otherwise, no such report can ever be relied upon in court.

Even with respect to documentary evidence, the best evidence rule applies only when the contents of a document -- such as the drawer’s signature on a check -- is the subject of inquiry.[58] As to whether the document has been actually executed, this rule does not apply; and testimonial as well as any other secondary evidence is admissible.[59] Carina Lebron herself, the drawer’s authorized signatory, testified many times that she had never signed those checks. Her testimonial evidence is admissible; the checks have not been actually executed. The genuineness of her handwriting is proved, not only through the court’s comparison of the questioned handwritings and admittedly genuine specimens thereof,[60] but above all by her.

The failure of CASA to produce the original checks neither gives rise to the presumption of suppression of evidence[61] nor creates an unfavorable inference against it.[62] Such failure merely authorizes the introduction of secondary evidence[63] in the form of microfilm copies. Of no consequence is the fact that CASA did not present the signature card containing the signatures with which those on the checks were compared.[64] Specimens of standard signatures are not limited to such a card. Considering that it was not produced in evidence, other documents that bear the drawer’s authentic signature may be resorted to.[65] Besides, that card was in the possession of BPI -- the adverse party.

We have held that without the original document containing the allegedly forged signature, one cannot make a definitive comparison that would establish forgery;[66] and that a comparison based on a mere reproduction of the document under controversy cannot produce reliable results.[67] We have also said, however, that a judge cannot merely rely on a handwriting expert’s testimony,[68] but should also exercise independent judgment in evaluating the authenticity of a signature under scrutiny.[69] In the present case, both the RTC and the CA conducted independent examinations of the evidence presented and arrived at reasonable and similar conclusions. Not only did they admit secondary evidence; they also appositely considered testimonial and other documentary evidence in the form of the Affidavit.

The best evidence rule admits of exceptions and, as we have discussed earlier, the first of these has been met.[70] The result of examining a questioned handwriting, even with the aid of experts and scientific instruments, may be

inconclusive;[71] but it is a non sequitur to say that such result is not clear, positive and convincing. The preponderance of evidence required in this case has been satisfied.[72]

Second Issue:

Negligence Attributable to BPI Alone

Having established the forgery of the drawer's signature, BPI -- the drawee --erred in making payments by virtue thereof. The forged signatures are wholly inoperative, and CASA -- the drawer whose authorized signatures do not appear on the negotiable instruments --cannot be held liable thereon. Neither is the latter precluded from setting up forgery as a real defense.

Clear Negligence

in Allowing Payment

Under a Forged Signature

We have repeatedly emphasized that, since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence[73] is expected,[74] and high standards of integrity and performance are even required, of it.[75] By the nature of its functions, a bank is "under obligation to treat the accounts of its depositors with meticulous care,[76]always having in mind the fiduciary nature of their relationship." [77]

BPI contends that it has a signature verification procedure, in which checks are honored only when the signatures therein are verified to be the same with or similar to the specimen signatures on the signature cards. Nonetheless, it still failed to detect the eight instances of forgery. Its negligence consisted in the omission of that degree of diligence required[78] of a bank. It cannot now feign ignorance, for very early on we have already ruled that a bank is "bound to know the signatures of its customers; and if it pays a forged check, it must be considered as making the payment out of its own funds, and cannot ordinarily charge the amount so paid to the account of the depositor whose name was forged." [79] In fact, BPI was the same bank involved when we issued this ruling seventy years ago.

Neither Waiver nor Estoppel

Results from Failure to

Report Error in Bank Statement

The monthly statements issued by BPI to its clients contain a notice worded as follows: "If no error is reported in ten (10) days, account will be correct." [80] Such notice cannot be considered a waiver, even if CASA failed to report the error. Neither is it estopped from questioning the mistake after the lapse of the ten-day period.

This notice is a simple confirmation[81] or "circularization" -- in accounting parlance -- that requests client-depositors to affirm the accuracy of items recorded by the banks.[82] Its purpose is to obtain from the depositors a direct corroboration of the correctness of their account balances with their respective banks.[83] Internal or external auditors of a bank use it as a basic audit procedure[84] -- the results of which its client-depositors are neither interested in nor privy to -- to test the details of transactions and balances in the bank's records.[85] Evidential matter obtained from independent sources outside a bank only serves to provide greater assurance of reliability[86] than that obtained solely within it for purposes of an audit of its own financial statements, not those of its client-depositors.

Furthermore, there is always the audit risk that errors would not be detected[87] for various reasons. One, materiality is a consideration in audit planning;[88] and two, the information obtained from such a substantive test is merely presumptive and cannot be the basis of a valid waiver.[89] BPI has no right to impose a condition

unilaterally and thereafter consider failure to meet such condition a waiver. Neither may CASA renounce a right[90] it has never possessed.[91]

Every right has subjects -- active and passive. While the active subject is entitled to demand its enforcement, the passive one is duty-bound to suffer such enforcement.[92]

On the one hand, BPI could not have been an active subject, because it could not have demanded from CASA a response to its notice. Besides, the notice was a measly request worded as follows: "Please examine x x x and report x x x." [93] CASA, on the other hand, could not have been a passive subject, either, because it had no obligation to respond. It could -- as it did -- choose not to respond.

Estoppel precludes individuals from denying or asserting, by their own deed or representation, anything contrary to that established as the truth, in legal contemplation.[94] Our rules on evidence even make a juris et de jure presumption[95] that whenever one has, by one's own act or omission, intentionally and deliberately led another to believe a particular thing to be true and to act upon that belief, one cannot -- in any litigation arising from such act or omission -- be permitted to falsify that supposed truth.[96]

In the instant case, CASA never made any deed or representation that misled BPI. The former's omission, if any, may only be deemed an innocent mistake oblivious to the procedures and consequences of periodic audits. Since its conduct was due to such ignorance founded upon an innocent mistake, estoppel will not arise.[97] A person who has no knowledge of or consent to a transaction may not be estopped by it.[98] "Estoppel cannot be sustained by mere argument or doubtful inference x x x." [99] CASA is not barred from questioning BPI's error even after the lapse of the period given in the notice.

Loss Borne by
Proximate Source
of Negligence

For allowing payment[100] on the checks to a wrongful and fictitious payee, BPI -- the drawee bank -- becomes liable to its depositor-drawer. Since the encashing bank is one of its branches,[101] BPI can easily go after it and hold it liable for reimbursement.[102] It "may not debit the drawer's account[103] and is not entitled to indemnification from the drawer." [104] In both law and equity, when one of two innocent persons "must suffer by the wrongful act of a third person, the loss must be borne by the one whose negligence was the proximate cause of the loss or who put it into the power of the third person to perpetrate the wrong." [105]

Proximate cause is determined by the facts of the case.[106] "It is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred." [107]

Pursuant to its prime duty to ascertain well the genuineness of the signatures of its client-depositors on checks being encashed, BPI is "expected to use reasonable business prudence." [108] In the performance of that obligation, it is bound by its internal banking rules and regulations that form part of the contract it enters into with its depositors.[109]

Unfortunately, it failed in that regard. First, Yabut was able to open a bank account in one of its branches without privity;[110] that is, without the proper verification of his corresponding identification papers. Second, BPI was unable to discover early on not only this irregularity, but also the marked differences in the signatures on the checks and those on the signature card. Third, despite the examination procedures it conducted, the Central Verification Unit[111] of the bank even passed off these evidently different signatures as genuine. Without exercising the required prudence on its part, BPI accepted and encashed the eight checks presented to it. As a

result, it proximately contributed to the fraud and should be held primarily liable^[112] for the “negligence of its officers or agents when acting within the course and scope of their employment.”^[113] It must bear the loss.

CASA Not Negligent in Its Financial Affairs

In this jurisdiction, the negligence of the party invoking forgery is recognized as an exception^[114] to the general rule that a forged signature is wholly inoperative.^[115] Contrary to BPI’s claim, however, we do not find CASA negligent in handling its financial affairs. CASA, we stress, is not precluded from setting up forgery as a real defense.

Role of Independent Auditor

The major purpose of an independent audit is to investigate and determine objectively if the financial statements submitted for audit by a corporation have been prepared in accordance with the appropriate financial reporting practices^[116] of private entities. The relationship that arises therefrom is both legal and moral.^[117] It begins with the execution of the engagement letter^[118] that embodies the terms and conditions of the audit and ends with the fulfilled expectation of the auditor’s ethical^[119] and competent performance in all aspects of the audit.^[120]

The financial statements are representations of the client; but it is the auditor who has the responsibility for the accuracy in the recording of data that underlies their preparation, their form of presentation, and the opinion^[121] expressed therein.^[122] The auditor does not assume the role of employee or of management in the client’s conduct of operations^[123] and is never under the control or supervision^[124] of the client.

Yabut was an independent auditor^[125] hired by CASA. He handled its monthly bank reconciliations and had access to all relevant documents and checkbooks.^[126] In him was reposed the client’s^[127] trust and confidence^[128] that he would perform precisely those functions and apply the appropriate procedures in accordance with generally accepted auditing standards.^[129] Yet he did not meet these expectations. Nothing could be more horrible to a client than to discover later on that the person tasked to detect fraud was the same one who perpetrated it.

Cash Balances Open to Manipulation

It is a non sequitur to say that the person who receives the monthly bank statements, together with the cancelled checks and other debit/credit memoranda, shall examine the contents and give notice of any discrepancies within a reasonable time. Awareness is not equipollent with discernment.

Besides, in the internal accounting control system prudently installed by CASA,^[130] it was Yabut who should examine those documents in order to prepare the bank reconciliations.^[131] He owned his working papers,^[132] and his output consisted of his opinion as well as the client’s financial statements and accompanying notes thereto. CASA had every right to rely solely upon his output -- based on the terms of the audit engagement -- and could thus be unwittingly duped into believing that everything was in order. Besides, “[g]ood faith is always presumed and it is the burden of the party claiming otherwise to adduce clear and convincing evidence to the contrary.”^[133]

Moreover, there was a time gap between the period covered by the bank statement and the date of its actual receipt. Lebron personally received the December 1990 bank statement only in January 1991^[134] -- when she was also informed of the forgery for the first time, after which she immediately requested a “stop payment order.”

She cannot be faulted for the late detection of the forged December check. After all, the bank account with BPI was not personal but corporate, and she could not be expected to monitor closely all its finances. A preschool teacher charged with molding the minds of the youth cannot be burdened with the intricacies or complexities of corporate existence.

There is also a cutoff period such that checks issued during a given month, but not presented for payment within that period, will not be reflected therein.[135] An experienced auditor with intent to defraud can easily conceal any devious scheme from a client unwary of the accounting processes involved by manipulating the cash balances on record -- especially when bank transactions are numerous, large and frequent. CASA could only be blamed, if at all, for its unintelligent choice in the selection and appointment of an auditor -- a fault that is not tantamount to negligence.

Negligence is not presumed, but proven by whoever alleges it.[136] Its mere existence "is not sufficient without proof that it, and no other cause,"[137] has given rise to damages.[138] In addition, this fault is common to, if not prevalent among, small and medium-sized business entities, thus leading the Professional Regulation Commission (PRC), through the Board of Accountancy (BOA), to require today not only accreditation for the practice of public accountancy,[139] but also the registration of firms in the practice thereof. In fact, among the attachments now required upon registration are the code of good governance[140] and a sworn statement on adequate and effective training.[141]

The missing checks were certainly reported by the bookkeeper[142] to the accountant[143] -- her immediate supervisor -- and by the latter to the auditor. However, both the accountant and the auditor, for reasons known only to them, assured the bookkeeper that there were no irregularities.

The bookkeeper[144] who had exclusive custody of the checkbooks[145] did not have to go directly to CASA's president or to BPI. Although she rightfully reported the matter, neither an investigation was conducted nor a resolution of it was arrived at, precisely because the person at the top of the helm was the culprit. The vouchers, invoices and check stubs in support of all check disbursements could be concealed or fabricated -- even in collusion -- and management would still have no way to verify its cash accountabilities.

Clearly then, Yabut was able to perpetrate the wrongful act through no fault of CASA. If auditors may be held liable for breach of contract and negligence,[146] with all the more reason may they be charged with the perpetration of fraud upon an unsuspecting client. CASA had the discretion to pursue BPI alone under the NIL, by reason of expediency or munificence or both. Money paid under a mistake may rightfully be recovered,[147] and under such terms as the injured party may choose.

Third Issue:

Award of Monetary Claims

Moral Damages Denied

We deny CASA's claim for moral damages.

In the absence of a wrongful act or omission,[148] or of fraud or bad faith,[149] moral damages cannot be awarded.[150] The adverse result of an action does not per se make the action wrongful, or the party liable for it. One may err, but error alone is not a ground for granting such damages.[151] While no proof of pecuniary loss is necessary therefor -- with the amount to be awarded left to the court's discretion[152] -- the claimant must nonetheless satisfactorily prove the existence of its factual basis[153] and causal relation[154] to the claimant's act or omission.[155]

Regrettably, in this case CASA was unable to identify the particular instance -- enumerated in the Civil Code -- upon which its claim for moral damages is predicated.[156] Neither bad faith nor negligence so gross that it amounts to malice[157] can be imputed to BPI. Bad faith, under the law, “does not simply connote bad judgment or negligence;[158] it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.”[159]

As a general rule, a corporation -- being an artificial person without feelings, emotions and senses, and having existence only in legal contemplation -- is not entitled to moral damages,[160] because it cannot experience physical suffering and mental anguish.[161] However, for breach of the fiduciary duty required of a bank, a corporate client may claim such damages when its good reputation is besmirched by such breach, and social humiliation results therefrom.[162] CASA was unable to prove that BPI had debased the good reputation of,[163] and consequently caused incalculable embarrassment to, the former. CASA’s mere allegation or supposition thereof, without any sufficient evidence on record,[164] is not enough.

Exemplary Damages Also Denied

We also deny CASA’s claim for exemplary damages.

Imposed by way of correction[165] for the public good,[166] exemplary damages cannot be recovered as a matter of right.[167] As we have said earlier, there is no bad faith on the part of BPI for paying the checks of CASA upon forged signatures. Therefore, the former cannot be said to have acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[168] The latter, having no right to moral damages, cannot demand exemplary damages.[169]

Attorney’s Fees Granted

Although it is a sound policy not to set a premium on the right to litigate,[170] we find that CASA is entitled to reasonable attorney’s fees based on “factual, legal, and equitable justification.”[171]

When the act or omission of the defendant has compelled the plaintiff to incur expenses to protect the latter’s interest,[172] or where the court deems it just and equitable,[173] attorney’s fees may be recovered. In the present case, BPI persistently denied the claim of CASA under the NIL to recredit the latter’s account for the value of the forged checks. This denial constrained CASA to incur expenses and exert effort for more than ten years in order to protect its corporate interest in its bank account. Besides, we have already cautioned BPI on a similar act of negligence it had committed seventy years ago, but it has remained unrelenting. Therefore, the Court deems it just and equitable to grant ten percent (10%)[174] of the total value adjudged to CASA as attorney’s fees.

Interest Allowed

For the failure of BPI to pay CASA upon demand and for compelling the latter to resort to the courts to obtain payment, legal interest may be adjudicated at the discretion of the Court, the same to run from the filing[175] of the Complaint.[176] Since a court judgment is not a loan or a forbearance of recovery, the legal interest shall be at six percent (6%) per annum.[177] “If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of x x x legal interest, which is six percent per annum.”[178] The actual base for its computation shall be “on the amount finally adjudged,”[179] compounded[180] annually to make up for the cost of money[181] already lost to CASA.

Moreover, the failure of the CA to award interest does not prevent us from granting it upon damages awarded for breach of contract.[182] Because BPI evidently breached its contract of deposit with CASA, we award interest in

addition to the total amount adjudged. Under Section 196 of the NIL, any case not provided for shall be “governed by the provisions of existing legislation or, in default thereof, by the rules of the law merchant.”[183] Damages are not provided for in the NIL. Thus, we resort to the Code of Commerce and the Civil Code. Under Article 2 of the Code of Commerce, acts of commerce shall be governed by its provisions and, “in their absence, by the usages of commerce generally observed in each place; and in the absence of both rules, by those of the civil law.”[184] This law being silent, we look at Article 18 of the Civil Code, which states: “In matters which are governed by the Code of Commerce and special laws, their deficiency shall be supplied” by its provisions. A perusal of these three statutes unmistakably shows that the award of interest under our civil law is justified.

WHEREFORE, the Petition in GR No. 149454 is hereby DENIED, and that in GR No. 149507 PARTLY GRANTED. The assailed Decision of the Court of Appeals is AFFIRMED with modification: BPI is held liable for P547,115, the total value of the forged checks less the amount already recovered by CASA from Leonardo T. Yabut, plus interest at the legal rate of six percent (6%) per annum -- compounded annually, from the filing of the complaint until paid in full; and attorney’s fees of ten percent (10%) thereof, subject to reimbursement from Respondent Yabut for the entire amount, excepting attorney’s fees. Let a copy of this Decision be furnished the Board of Accountancy of the Professional Regulation Commission for such action as it may deem appropriate against Respondent Yabut. No costs.

SO ORDERED.

Ynares-Santiago, Carpio, and Azcuna, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

[1] GR No. 149454 rollo, pp. 20-40; GR No. 149507 rollo, pp. 3-20.

[2] Id., pp. 44-52 & 22-30. Penned by Justice Portia Aliño-Hormachuelos, with the concurrence of Justices Fermin A. Martin Jr. (Second Division chairman) and Mercedes Gozo-Dadole (member).

[3] Id., pp. 54 & 32. Penned by Justice Portia Aliño-Hormachuelos, with the concurrence of Justices Ramon A. Barcelona (Special Former Second Division chairman) and Mercedes Gozo-Dadole (member).

[4] Assailed CA Decision, pp. 8-9; GR No. 149454 rollo, pp. 51-52; GR No. 149507 rollo, pp. 29-30.

[5] This is also referred to in the records as Casa Montessori Internationale or Casa Montessori International, Inc.

[6] The amount was earlier stated in the CA Decision as P782,000.

[7] The total amount of the encashed checks was earlier computed in the CA Decision to be P782,600.

[8] Assailed CA Decision, pp. 2-4; GR No. 149454 rollo, pp. 45-47; GR No. 149507 rollo, pp. 23-25. Citations omitted.

[9] These two cases were consolidated and deemed submitted for decision on July 25, 2002, upon the Court’s receipt of BPI’s Memorandum in GR No. 149454, which was signed by Atty. Justino M. Marquez III. CASA’s Memorandum, signed by Atty. Oscar F. Martinez, was filed on July 4, 2002; while Yabut’s Memorandum, signed by Atty. Leny L. Mauricio, was filed on June 25, 2002.

In GR No. 149507, a Manifestation (re: Memorandum) by Yabut, also signed by Atty. Mauricio, was filed on June 25, 2002. BPI’s Memorandum, also signed by Atty. Marquez, was filed on June 3, 2002; while CASA’s Memorandum, also signed by Atty. Martinez, was filed on April 19, 2002.

[10] BPI's Memorandum, p. 7; GR No. 149454 rollo, p. 140. Boldface and upper case characters copied verbatim.

[11] CASA's Memorandum, p. 6; GR No. 149507 rollo, p. 83.

[12] Act No. 2031 took effect on June 2, 1911. Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol I (1989 ed.), p. 191.

[13] Campos and Lopez-Campos, Notes and Selected Cases on Negotiable Instruments Law (5th ed., 1994), pp. 268-269.

[14] *Gempesaw v. CA*, 218 SCRA 682, 689, February 9, 1993.

[15] *Associated Bank v. CA*, 322 Phil. 677, 695, January 31, 1996.

[16] Agbayani, *supra*, p. 191.

[17] Assailed CA Decision, p. 7; GR No. 149454 rollo, p. 50; GR No. 149507 rollo, p. 28.

[18] RTC Decision, p. 4; GR No. 149454 rollo, p. 59.

[19] Yabut's Affidavit, pp. 1-2; GR No. 149454 records, pp. 323-324.

[20] RTC Decision, p. 4; GR No. 149454 rollo, p. 59.

[21] Assailed CA Decision, p. 8; *id.*, p. 51; GR No. 149507 rollo, p. 29.

[22] Questioned Document Report No. 291-91 dated November 25, 1991; GR No. 149454 records, p. 326.

[23] Assailed CA Decision, p. 7; GR No. 149454 rollo, p. 50; GR No. 149507 rollo, p. 28. See also RTC Decision, p. 3; GR No. 149454 rollo, p. 58.

[24] Questioned Document Report No. 029-91 dated January 28, 1991, issued upon the request of BPI Vice President Amante S. Bueno; GR No. 149454 records, p. 328.

[25] *Francisco v. CA*, 377 Phil. 368, 378, November 29, 1999. See also *Almeda v. CA*, 336 Phil. 621, 629, March 13, 1997; *Fuentes v. CA*, 335 Phil. 1163, 1169, February 26, 1997; and *People v. Magallano*, 334 Phil. 276, 282, January 16, 1997.

[26] Custodial investigation is defined as "any questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Sebastian Sr. v. Garchitorena*, 343 SCRA 463, 470, October 18, 2000, per De Leon Jr., J. See also *Navallo v. Sandiganbayan*, 234 SCRA 175, 183-184, July 18, 1994; *People v. Loveria*, 187 SCRA 47, 61, July 2, 1990; and *Miranda v. Arizona*, 384 US 436, 444, 16 L. Ed. 2d 694, 706, June 13, 1966.

In the deliberations on the 1987 Constitution, Commissioner Felicitas Aquino summed up the right as extending to the period of "custodial interrogation, temporary detention and preliminary technical custody." Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, Vol. I (1st ed., 1987), p. 345; citing *Record of the Constitutional Commission: Proceedings and Debates*, Vol. I (1986), pp. 713-714, 716-717.

§12 of Article III of the Constitution provides for the rights available to a person facing custodial investigation. Cruz, *Constitutional Law* (1995 ed.), p. 292.

[27] Yabut's Affidavit, *supra*.

[28] "x x x [A]mong the rights of a person under custodial investigation is the right to have competent and

independent counsel preferably of his own choice and if the person cannot afford the services of counsel, that he must be provided with one.” *Marcelo v. Sandiganbayan*, 361 Phil. 772, 788, January 26, 1999, per Mendoza, J.

See also *People v. Porio*, 376 SCRA 596, 609-610, February 13, 2002; *People v. Suela*, 373 SCRA 163, 182, January 15, 2002; *People v. Tulin*, 416 Phil. 365, 382-383, August 30, 2001; *People v. Continente*, 339 SCRA 1, 17-18, 20-21, 26, August 25, 2000; *People v. Santocildes Jr.*, 378 Phil. 943, 949-950, December 21, 1999; *People v. Bermas*, 365 Phil. 581, 593-596, April 21, 1999; *People v. Santos*, 347 Phil. 943, 949-950, December 22, 1997; *People v. Andal*, 344 Phil. 889, 911-912, September 25, 1997; *People v. Fabro*, 342 Phil. 708, 772, 726, August 11, 1997; *People v. Deniega*, 251 SCRA 626, 638-639, December 29, 1995; and *People v. Duero*, 191 Phil. 679, 687-688, May 13, 1981.

[29] *People v. Felixminia*, 379 SCRA 567, 575, March 20, 2002, per curiam. See also *People v. Bariquit*, 341 SCRA 600, 618, October 2, 2000; *People v. Bravo*, 376 Phil. 931, 940, November 22, 1999; *People v. Andan*, 336 Phil. 91, 102, March 3, 1997; and *People v. Marra*, 236 SCRA 565, 573, September 20, 1994.

These rights are available if a person is in custody, even if not yet a suspect; or if already the suspect, even if not yet in custody. *Bernas*, supra.

[30] *People v. Arondain*, 418 Phil. 354, 367-368, September 27, 2001, per Ynares-Santiago, J. See also *People v. Amestuzo*, 413 Phil. 500, 508, July 12, 2001; *People v. Valdez*, 341 SCRA 25, 41-42, September 25, 2000; *People v. Labtan*, 377 Phil. 967, 982, 984, December 8, 1999; *People v. De la Cruz*, 344 Phil. 653, 660-661, September 17, 1997; *People v. Del Rosario*, 365 Phil. 292, 310, April 14, 1990; *People v. Ayson*, 175 SCRA 216, 231, July 7, 1989; and *Gamboa v. Cruz*, 162 SCRA 642, 648, June 27, 1988.

[31] *People v. Dano*, 339 SCRA 515, 528, September 1, 2000, per Quisumbing, J. See also *Aballe v. People*, 183 SCRA 196, 205, March 15, 1990; *People v. Dy*, 158 SCRA 111, 123-124, February 23, 1988; and *People v. Taylaran*, 195 Phil. 226, 233-234, October 23, 1981.

[32] In fact, the exclusionary rule under §12, paragraph (2) of the Bill of Rights, “applies only to admissions made in a criminal investigation but not to those made in an administrative investigation.” *Remolona v. CSC*, 414 Phil. 590, 599, August 2, 2001, per Puno, J. See also *Sebastian Sr. v. Garchitorena*, supra; *Manuel v. N.C. Construction Supply*, 346 Phil. 1014, 1024, November 28, 1997; and *Lumiqued v. Exevea*, 346 Phil. 807, 822-823, November 18, 1997.

[33] *People v. Dano*, supra. See *People v. Ordoño*, 390 Phil. 169, 183-184, June 29, 2000.

[34] This provision prohibits the “compulsory oral examination of prisoners before the trial, or upon trial, for the purpose of extorting unwilling confessions or declarations implicating them in the commission of a crime.” *Bernas*, supra, pp. 422-423; citing *US v. Tan Teng*, 23 Phil. 145, 152, September 7, 1912.

The kernel of this right is against testimonial compulsion only. *Cruz*, supra, p. 283. See *Regalado*, Remedial Law Compendium, Vol. II (7th rev. ed., 1995), p. 369.

[35] *People v. Rondero*, 378 Phil. 123, 139-140, December 9, 1999. See *People v. Bacor*, 366 Phil. 197, 212, April 30, 1999.

[36] *Cruz*, supra, p. 282.

[37] *Secretary of Justice v. Lantion*, 379 Phil. 165, 200, January 18, 2000; citing *Pascual Jr. v. Board of Medical Examiners*, 138 Phil. 361, 366, May 26, 1969, and *Cabal v. Kapunan Jr.*, 116 Phil. 1361, 1366-1369, December 29, 1962. See *Bernas*, supra, p. 423.

[38] *Alvero v. Dizon*, 76 Phil. 637, 645, May 4, 1946.

[39] *Cruz*, *supra*, p. 286.

[40] The Bill of Rights in Article III of the Constitution is a statement of an individual's rights that are normally protected, except in extreme cases of real public necessity, against impairment, usurpation, or removal by any form of State action. *Sinco*, *Philippine Political Law: Principles and Concepts* (10th ed., 1954), p. 73.

[41] *People v. Silvano*, 381 SCRA 607, 616, April 29, 2002, per *Mendoza*, J. See *People v. Domantay*, 366 Phil. 459, 474, May 11, 1999; *People v. Maqueda*, 312 Phil. 646, 675-676, March 22, 1995; *People v. Marti*, 193 SCRA 57, 67, January 18, 1991.

[42] *Filoteo Jr. v. Sandiganbayan*, 331 Phil. 531, 574, October 16, 1996, per *Panganiban*, J. See *Bernas*, *supra*, p. 33.

[43] A person suspected or accused of a crime is entitled to the specific safeguards embodied in §§12 and 17 of the Bill of Rights against arbitrary prosecution or punishment. *Cruz*, *supra*, p. 274.

[44] *People v. Vallejo*, 382 SCRA 192, 216, May 9, 2002, per *curiam*; citing *People v. Andan*, *supra*. See also *People v. Ordoño*, *supra*; *People v. Barlis*, 231 SCRA 426, 441, March 24, 1994; and *People v. Layuso*, 175 SCRA 47, 53, July 5, 1989.

[45] *Sinco*, *supra*, p. 670.

[46] In the absence of coercion, paragraph 17 of Article 32 of the Civil Code does not apply. It states:

“Art. 32. Any x x x private individual x x x who directly or indirectly x x x violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

“(17) Freedom from being compelled to be a witness against one's self, or from being forced to confess a guilt x x x.”

[47] *American Express International, Inc. v. CA*, 367 Phil. 333, 341, June 8, 1999, per *Bellosillo*, J.; citing *Tenio-Obsequio v. CA*, 230 SCRA 550, 558, March 1, 1994. See *Siasat v. IAC*, 139 SCRA 238, 248, October 10, 1985.

[48] *Metropolitan Bank & Trust Co. v. CA*, 194 SCRA 169, 176, February 18, 1991. See *MWSS v. CA*, 227 Phil. 18, 26, July 14, 1986.

[49] *Regalado*, *supra*, p. 555.

[50] §3(a) of Rule 130 of the Rules of Court.

[51] *De Vera v. Aguilar*, 218 SCRA 602, 607, February 9, 1993.

[52] *Yabut's Affidavit*, p. 1; GR No. 149454 records, p. 323.

[53] *TSN*, January 18, 1994, p. 13.

[54] *Id.*, p. 29.

[55] *Id.*, pp. 33-34.

[56] *Ibid.*

[57] *RTC Decision*, p. 3; GR No. 149454 rollo, p. 58.

[58] §3 of Rule 130 of the Rules of Court.

[59] Regalado, *supra*.

[60] §22 of Rule 132 of the Rules of Court.

[61] This adverse presumption does not arise when the suppression is not willful. Regalado, *supra*, p. 639; citing *People v. Navaja*, 220 SCRA 624, 633, March 30, 1993.

[62] “x x x [T]he genuineness of a standard writing may be established by any of the following: (1) by the admission of the person sought to be charged with the disputed writing made at or for the purposes of the trial, or by his testimony; (2) by witnesses who saw the standards written or to whom or in whose hearing the person sought to be charged acknowledged the writing thereof; (3) by evidence showing that the reputed writer of the standard has acquiesced in or recognized the same, or that it has been adopted and acted upon by him in his business transactions or other concerns.” *Security Bank & Trust Company v. Triumph Lumber and Construction Corp.*, 361 Phil. 463, 478, January 21, 1999, per Davide Jr., CJ, citing *BA Finance Corp. v. CA*, 161 SCRA 608, 618, May 28, 1988.

[63] Regalado, *supra*, p. 561.

[64] This is the normal process followed in verifying signatures for purposes of making bank withdrawals.

[65] *Chiang Yia Min v. CA*, 355 SCRA 608, 622-623, March 28, 2001.

[66] *Heirs of Gregorio v. CA*, 360 Phil. 753, 763, December 29, 1998.

[67] *Ibid*.

[68] *Id.*, p. 764.

[69] *Ibid*.

[70] §3(a) of Rule 130 of the Rules of Court.

[71] Regalado, *supra*, p. 627.

[72] §1 of Rule 133 of the Rules of Court.

[73] The diligence required of banks is more than that of a pater familias or good father of a family. *Bank of the Philippine Islands v. CA*, 383 Phil. 538, 554, February 29, 2000. See *Philippine Bank of Commerce v. CA*, 336 Phil. 667, 681, March 14, 1997.

[74] *Philippine Commercial International Bank v. CA*, 350 SCRA 446, 472, January 29, 2001.

[75] §2 of Republic Act No. 8791, otherwise known as “The General Banking Law of 2000.”

[76] *Westmont Bank v. Ong*, 375 SCRA 212, 221, January 30, 2002; citing *Citytrust Banking Corp. v. IAC*, 232 SCRA 559, 564, May 27, 1994.

[77] *Simex International (Manila), Inc. v. CA*, 183 SCRA 360, 367, March 19, 1990, per Cruz, J.

[78] Article 1173 of the Civil Code.

[79] *San Carlos Milling Co., Ltd. v. Bank of the Philippine Islands*, 59 Phil. 59, 66, December 11, 1933, per Hull, J.

[80] BPI’s Memorandum, p. 14; GR No. 149454 rollo, p. 147.

[81] Aside from positive confirmations, there are also negative ones that request debtors to respond to an auditor only if the balance in an attached statement is incorrect. Ricchiute, *Auditing Concepts and Standards* (rev. 2nd ed., 1991), p. 491.

[82] Santos, *Basic Auditing: Theory and Concepts*, Vol. I (1988), p. 111.

[83] Association of CPAs in Public Practice, *Audit Manual* (1985), p. 49.

[84] Confirmation of accounts payable balances is normally applied to nearly every audit engagement. Holmes and Burns, *Auditing Standards and Procedures* (9th ed., 1979), p. 675.

A bank deposit is in the nature of a simple loan or mutuum, as provided for in Articles 1953 and 1980 of the Civil Code. See De Leon, *Comments and Cases on Credit Transactions*, 1995 ed., pp. 32-33; *Integrated Realty Corp. v. Philippine National Bank*, 174 SCRA 295, 309, June 28, 1989; *Serrano v. Central Bank of the Philippines*, 96 SCRA 96, 102, February 14, 1980; and *Central Bank of the Philippines v. Morfe*, 63 SCRA 114, 119, March 12, 1975.

In bank parlance, a bank deposit is an account payable by the bank to its client-depositor.

[85] Santos, *supra*, p. 102.

[86] Association of CPAs in Public Practice, *Audit Manual*, *supra*.

[87] *Id.*, p. 57.

[88] *Id.*, p. 24.

[89] “Waiver is defined as the relinquishment of a known right with both knowledge of its existence and an intention to relinquish it.” Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. I (1990), p. 29.

[90] Article 6 of the Civil Code.

[91] “The general rule of law is that a person may renounce any right which the law gives x x x.” *The Manila Railroad Company v. The Attorney-General*, 20 Phil. 523, 537, December 1, 1911, per Moreland, J. See Tolentino, *supra*, p. 30.

[92] Tolentino, *supra*, p. 28.

[93] BPI’s Memorandum, p. 14; GR No. 149454 rollo, p. 147.

[94] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV (1991), p. 656.

[95] Conclusive or absolute presumption. §2(a) of Rule 131 of the Rules of Court.

[96] Art. 1431 of the Civil Code also provides:

“Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.”

[97] *Ramiro v. Graño*, 54 Phil. 744, 750, March 31, 1930.

[98] *Lodovica v. CA*, 65 SCRA 154, 158, July 18, 1975.

[99] *Kalalo v. Luz*, 145 Phil. 152, 161, July 31, 1970, per Zaldivar, J.

[100] Under Article 1231(1) of the Civil Code, payment is the actual performance that extinguishes an obligation.

It implies not only an assent to the order of the drawer and a recognition of the drawee's obligation to pay the sum therein, but also a compliance with such obligation. *Philippine National Bank v. CA*, 134 Phil. 829, 833, October 29, 1968.

[101] *Greenbelt Branch. Assailed CA Decision*, p. 3; GR No. 149454 rollo, p. 46; GR No. 149507 rollo, p. 24.

[102] *The Great Eastern Life Insurance Co. v. Hongkong & Shanghai Banking Corp.*, 43 Phil. 678, 683, August 23, 1922.

[103] *Campos and Lopez-Campos*, *supra*, pp. 286-287.

[104] *Associated Bank v. CA*, 322 Phil. 677, 697, January 31, 1996, per Romero, J.; citing *The Great Eastern Life Insurance Co. v. Hongkong & Shanghai Banking Corp.*, *supra*, and *Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corp.*, 157 SCRA 188, 198, January 20, 1988.

[105] *Philippine National Bank v. CA*, *supra*, per Concepcion, CJ; citing *Blondeau v. Nano*, 61 Phil. 625, 631-632, July 26, 1935. See *Philippine National Bank v. The National City Bank of New York*, 63 Phil. 711, 723-726, October 31, 1936.

[106] *Sangco*, *Philippine Law on Torts and Damages*, Vol. I (rev. ed., 1993), p. 90.

[107] *Bataclán v. Medina*, 109 Phil. 181, 185-186, October 22, 1957, per Montemayor, J.

[108] *Philippine National Bank v. Quimpo*, 158 SCRA 582, 585, March 14, 1988, per Gancayco, J.

[109] *Gempesaw v. CA*, *supra*, p. 696.

[110] *Agbayani*, *supra*, p. 207.

[111] As testified to on direct examination by Angelita Dandan, senior manager of the BPI Muntinlupa Branch and formerly connected with the BPI Forbes Park Branch. TSN, August 26, 1997, pp. 3-4, and 7.

[112] "x x x [B]anks are expected to exercise the highest degree of diligence in the selection and supervision of their employees." *BPI v. CA*, 216 SCRA 51, 71, November 26, 1992, per Gutierrez Jr., J.

[113] *Philippine Commercial International Bank v. CA*, *supra*, per Quisumbing, J., p. 469.

[114] *Agbayani*, *supra*, p. 199.

[115] *BPI v. CA*, *supra*, p. 65.

[116] *Holmes and Burns*, *supra*, p. 1.

During the pendency of this case, an auditor had to ascertain whether the financial statements were in conformity with the Generally Accepted Accounting Principles (GAAP). Valix and Peralta, *Financial Accounting* (Vol. I, 1985 ed.), p. 8.

As of April 2004, the Accounting Standards Council (ASC) of the Philippines has approved many Statements of Financial Accounting Standards (SFAS) and has also adopted several International Accounting Standards (IAS) issued by the International Accounting Standards Council (IASC). <http://www.picpa.com.ph/press.htm>, last visited April 23, 2004, 12:05 p.m. PST.

[117] *Holmes and Burns*, *supra*, p. 79.

[118] *Id.*, p. 206.

[119] Certified public accountants or CPAs adhere to a Code of Professional Ethics, promulgated by the Board of Accountancy (BOA) on March 15, 1978. In January 2004, a new Code of Ethics for CPAs was approved by the Board of Directors of the Philippine Institute of CPAs (PICPA), to be recommended for adoption by the BOA and approval by the Professional Regulation Commission (PRC) as part of the rules and regulations of the BOA for the practice of the accountancy profession in the Philippines. <http://www.picpa.com.ph/news/codeofethics2.pdf>, last visited April 23, 2004, 12:17 p.m. PST.

[120] Holmes and Burns, *supra*, p. 79.

[121] Santos, *supra*, pp. 11 & 168.

[122] Holmes and Burns, *supra*, p. 80.

[123] Ricchiute, *supra*, p. 48.

[124] Santos, *supra*, pp. 52 & 76.

[125] As testified to on cross-examination by Carina Lebron (TSN, February 13, 1992, pp. 18-19). See Yabut's Affidavit, p. 1; GR No. 149454 records, p. 323.

That Respondent Yabut is a CPA appears in CASA's pretrial Brief. GR No. 149454 records, p. 83.

[126] Yabut's Affidavit, *supra*.

[127] Ricchiute, *supra*, p. 54.

[128] Santos, *supra*, p. 6.

[129] Commissioner of Internal Revenue v. TMX Sales, Inc., 205 SCRA 184, 191, January 15, 1992.

As of April 2004, many Generally Accepted Auditing Standards (GAAS) have been replaced by International Standards on Auditing (ISA).

[130] A depositor has a duty to set up an accounting system that is reasonably calculated to prevent any forgery or to render it difficult to perpetrate. *Gempesaw v. CA*, *supra*, p. 690.

[131] A bank reconciliation is an audit technique that verifies if the cash balance appearing on a bank statement per bank records is in agreement with that in the depositor's records or books of accounts. Meigs and Meigs, *Accounting: The Basis for Business Decisions*, Part I (5th ed., 1981), p. 315.

[132] §24 of Presidential Decree (PD) No. 692, otherwise known as "The Revised Accountancy Law."

[133] *Chiang Yia Min v. CA*, *supra*, p. 624, per Gonzaga-Reyes, J.

[134] GR No. 149454 records, p. 491.

[135] Cutoff bank statements do not represent all the transactions in a given month. Ricchiute, *supra*, p. 498.

[136] *Taylor v. The Manila Electric Railroad and Light Co.*, 16 Phil. 8, 28, March 22, 1910, per Carson, J.; citing *Scaevola in Jurisprudencia del Código Civil*, Vol. 6 (1902), pp. 551-552.

[137] *Taylor v. The Manila Electric Railroad and Light Co.*, *supra*, p. 27, quoting the judgment of the Supreme Court of Spain on June 12, 1900.

[138] Before there can be a judgment for damages, "negligence must be affirmatively established by competent evidence." *Sor Consuelo Barceló v. The Manila Electric Railroad and Light Co.*, 29 Phil. 351, 359, January 28,

1915, per Carson, J.

[139] §27 of PD 692.

[140] Good governance has been defined as a “really strong senior managerial control” exercised by the chief executive officer or “CEO and one of his/her strongest direct reports.” Gerry Conroy, Good Governance and Good Management Keys to Successful Project Management.<http://www.pwcglobal.com/Extweb/ncinthenews.nsf/docid/28123C3F882E48B7CA256AFA007A33EA>, last visited May 6, 2004, 1:12 p.m. PST.

“Accountability is a key requirement of good governance.” As such, it “cannot be enforced without transparency and the rule of law.” <http://www.unescap.org/huset/gg/governance.htm>, last visited May 6, 2004, 12:55 p.m. PST.

[141] <http://www.picpa.com.ph>, last visited May 4, 2004, 1:57 p.m. PST.

[142] Isidra Carandang. TSN, February 13, 1992, pp. 18-19.

[143] Felipa Cabuyao. TSN, February 13, 1992, pp. 18-19.

Yabut admitted that he had recommended Cabuyao to the position. Yabut’s Affidavit, *supra*.

[144] The job of a bookkeeper is so integrated with a corporation that the regular recording of its business accounts and transactions safeguards it from possible fraud, which is adverse to its corporate interest. *Pabon v. NLRC*, 296 SCRA 7, 14, September 24, 1998.

[145] Yabut’s Affidavit, p. 1; GR No. 149454 records, p. 323.

[146] *Holmes and Burns*, *supra*, pp. 84-86.

[147] *Campos and Lopez-Campos*, *supra*, p. 287; *Agbayani*, *supra*, p. 211. Both cited Article 2154 of the Civil Code.

[148] *Ong Yiu v. CA*, 91 SCRA 223, 229, June 29, 1979.

[149] *Suario v. Bank of the Philippine Islands*, 176 SCRA 688, 696, August 25, 1989; citing *Guita v. CA*, 139 SCRA 576, 580, November 11, 1985.

[150] *Rubio v. CA*, 141 SCRA 488, 515-516, March 12, 1986; citing *R&B Surety & Insurance Co., Inc. v. IAC*, 214 Phil. 649, 657, June 22, 1984.

[151] *Filinvest Credit Corp. v. Mendez*, 152 SCRA 593, 601, July 31, 1987.

[152] Article 2216 of the Civil Code.

[153] *Silva v. Peralta*, 110 Phil. 57, 64, November 25, 1960.

[154] Article 2217 of the Civil Code.

[155] *Dee Hua Liong Electrical Equipment Corp. v. Reyes*, 230 Phil. 101, 107, November 25, 1986.

[156] *Guilatco v. City of Dagupan*, 171 SCRA 382, 389, March 21, 1989; citing *Bagumbayan Corp. v. IAC*, 217 Phil. 421, 424, September 30, 1984.

[157] *Soberano v. Manila Railroad Co.*, 124 Phil. 1330, 1337, November 23, 1966; citing *Fores v. Miranda*, 105 Phil. 266, 274, 276, March 4, 1959 and *Necesito v. Paras*, 104 Phil. 75, 82-83, June 30, 1958.

[158] *Northwest Orient Airlines v. CA*, 186 SCRA 440, 444, June 8, 1990; citing *Sabena Belgian World Airlines*

v. CA, 171 SCRA 620, 629, March 31, 1989.

[159] Cathay Pacific Airways, Ltd. v. Vazquez, 399 SCRA 207, 220, March 14, 2003, per Davide Jr., CJ; citing Francisco v. Ferrer Jr., 353 SCRA 261, 265, February 28, 2001. See also Morris v. CA, 352 SCRA 428, 437, February 21, 2001; Magat Jr. v. CA, 337 SCRA 298, 307, August 4, 2000; and Tan v. Northwest Airlines, Inc., 383 Phil. 1026, 1032, March 3, 2000.

[160] LBC Express, Inc. v. CA, 236 SCRA 602, 607, September 21, 1994. See Layda v. CA, 90 Phil. 724, 730, January 29, 1952.

[161] Article 2217 of the Civil Code.

[162] Morales, The Philippine General Banking Law (Annotated 2002), pp. 3-4; citing Simex International (Manila), Inc. v. CA, supra, and Mambulao Lumber Co. v. Philippine National Bank, 130 Phil. 366, 391, January 30, 1968.

[163] Sangco, supra, p. 989.

[164] Grapilon v. Municipal Council of Carigara, Leyte, 112 Phil. 24, 29, May 30, 1961.

[165] Article 2229 of the Civil Code.

[166] Ledesma v. CA, 160 SCRA 449, 456, April 15, 1988, Prudenciado v. Alliance Transport System, Inc., 148 SCRA 440, 450, March 16, 1987; and Lopez v. Pan American World Airways, 123 Phil. 256, 267, March 30, 1966.

[167] De Leon v. CA, 165 SCRA 166, 176, August 31, 1988; Sweet Lines, Inc. v. CA, 206 Phil. 663, 669, April 28, 1983; Octot v. Ybañez, 197 Phil. 76, 82, January 18, 1982; and Ventanilla v. Centeno, 110 Phil. 811, 816, January 28, 1961, citing Article 2233 of the Civil Code.

[168] Article 2232 of the Civil Code. See Nadura v. Benguet Consolidated, Inc., 116 Phil. 28, 32, August 24, 1962.

[169] Estopa v. Piansay Jr., 109 Phil. 640, 642, September 30, 1960.

[170] Firestone Tire & Rubber Co. of the Philippines v. Ines Chaves & Co., Ltd., 124 Phil. 947, 950, October 19, 1966, citing Heirs of Basilisa Justiva vs. Gustilo, 117 Phil. 71, 73, January 31, 1963. See Tan Ti (alias Tan Tico) v. Alvear, 26 Phil. 566, 571, January 16, 1914.

[171] Scott Consultants & Resource Development Corporation, Inc. v. CA, 312 Phil. 466, 481, March 16, 1995, per Davide Jr., J. (now CJ.).

[172] Article 2208 (2) of the Civil Code. See Rivera v. Litam & Co., Inc., 114 Phil. 1009, 1022, April 25, 1962; and Luneta Motor Co. v. Baguio Bus Co., Inc., 108 Phil. 892, 898, June 30, 1960.

[173] Article 2208 (11) of the Civil Code. See Philippine National Bank v. Utility Assurance & Surety Co., Inc., 177 SCRA 208, 219, September 1, 1989; citing Plaridel Surety & Insurance Co., Inc. v. P.L. Galang Machinery Co., Inc., 100 Phil. 679, 682, January 11, 1957. See also Apelario v. Ines Chavez & Co., Ltd., 113 Phil. 215, 217-218, October 16, 1961; and Guitarte v. Sabaco, 107 Phil. 437, 440, March 28, 1960.

[174] Jarencio, Torts and Damages in Philippine Law (4th ed., 1983), p. 334; citing Pirovano v. The De la Rama Steamship Co., 96 Phil. 335, 367, December 29, 1954.

[175] When a claim is made judicially under Article 1169 of the Civil Code.

[176] Philippine National Bank v. Utility Assurance & Surety Co., Inc., supra.

[177] Cabral v. CA, 178 SCRA 90, 93, September 29, 1989.

[178] Article 2209 of the Civil Code.

[179] Francisco v. CA, supra, p. 381, per Gonzaga-Reyes, J.

[180] In compounding interest, “x x x the amount of interest earned for a certain period is added to the principal for the next period. Interest for the subsequent period is computed on the new amount, which includes both the principal and accumulated interest.” Smith and Skousen, Intermediate Accounting, the 11th ed., 1992, p. 235.

[181] “The payment (cost) for the use of money is interest.” Id., p. 234.

[182] Article 2210 of the Civil Code.

[183] The law merchant refers to the body of law relating to mercantile transactions and instruments of widespread use. Its usage as adopted by the courts is the origin of the law merchant on negotiable securities. Agbayani, supra, pp. 11-12.

[184] A current account is a commercial transaction. In re Liquidation of Mercantile Bank of China, Tan Tiong Tick v. American Apothecaries Co., 65 Phil. 414, 419-420, March 31, 1938.

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