SECURITY BANK AND TRUST COMPANY, PETITIONER, VS. ERIC GAN, RESPONDENT.

G.R. NO. 150464. June 27, 2006

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[1] seeks the reversal of the decision[2] of the Court of Appeals (CA) dated October 18, 2001 in CA-G.R. CV No. 45701, the dispositive portion of which read:

> WHEREFORE, finding no reversible error therefrom, the Decision now on appeal is hereby AFFIRMED in toto.
>
> SO ORDERED.[3]

The factual antecedents follow.

Petitioner Security Bank and Trust Company is a banking institution duly organized and existing under the laws of the Philippines. In 1981, respondent Eric Gan opened a current account with petitioner at its Soler Branch in Santa Cruz, Manila. Petitioner alleged that it had an agreement with respondent wherein the latter would deposit an initial amount in his current account and he could draw checks on said account provided there were sufficient funds to cover them. Furthermore, under a special arrangement with petitioner's branch manager then, Mr. Qui,[4] respondent was allowed to transfer funds from his account to another person's account also within the same branch.[5] Respondent availed of such arrangement several times by depositing checks in his account and even before they cleared, he withdrew the proceeds thereof and transferred them to the other account. These transactions were covered by what were known as "debit memos" since respondent had no sufficient funds to cover the amounts he transferred.[6]

Later on, respondent purportedly incurred an overdraft or negative balance in his account. As of December 14, 1982, the overdraft balance came up to P153,757.78. According to petitioner, respondent refused to heed petitioner's repeated demands for payment. For the period December 14, 1982 to September 15, 1990, the total obligation of respondent reached P297,060.01, inclusive of interest.[7]

Thus, in 1991, petitioner filed a complaint for sum of money against respondent to recover the P297,060.01 with 12% interest per annum from September 16, 1990 until fully paid, attorney's fees, litigation expenses and costs of suit. The case was docketed as Civil Case No. 91-55605 with the Regional Trial Court of Manila, Branch 13.[8]

Respondent denied liability to petitioner for the said amount. He contended that the alleged overdraft resulted from transactions done without his knowledge and consent.

In a decision dated March 31, 1993, the trial court dismissed the complaint. It held that petitioner was not able to prove that respondent owed it the amount claimed considering that the ledger cards it presented were merely hearsay evidence. On petitioner's appeal, the CA affirmed the trial court's decision.

Hence, this petition anchored on the following grounds:

> - The honorable Court of Appeals erred in not ruling that petitioner has sufficiently proved its cause of action against respondent; and that the ledger cards and the testimony of Mr. Patricio Mercado constituted the best evidence of the transactions made by the respondent relative to his account.
>
> - The honorable Court of Appeals erred in not applying the principle of estoppel against respondent who has benefited from the special arrangement accorded to him by petitioner which resulted in an overdraft / negative balance.
>
> - The honorable Court of Appeals erred in affirming the decision of the trial court.[9]

We deny the petition for lack of merit.

It is well established that under Rule 45 of the Rules of Court, only questions of law, not of fact, may be raised before the Supreme Court. It must be stressed that this Court is not a trier of facts and it is not its function to re-examine and weigh anew the respective evidence of the parties. Factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record.[10]

Here, both the trial court and the CA found that petitioner failed to substantiate its claim that respondent knowingly incurred an overdraft against his account. We see no reason to disturb this finding.

To prove its claim, petitioner presented Patricio Mercado who was the bookkeeper who handled the account of respondent and recorded his transactions in a ledger. Based on this ledger, respondent allegedly had a negative balance of P153,757.78. This resulted from transfers of funds from respondent's current account to another person's account. These transfers were made under the authority of Qui.[11] Respondent categorically denied that he ever authorized these "funds transfers."[12]

The entries in the ledger, as testified to by Mercado, were not competent evidence to prove that respondent consented to the transfers of funds. These entries merely showed that the transfers were indeed made and that Qui approved them. Petitioner's claim that respondent availed of a special arrangement to transfer funds from his account to another person's account was a bare allegation that was never substantiated. Admittedly, Mercado had no personal knowledge of this arrangement.[13] In fact, when asked about the details of the alleged consent given by respondent to the transfers, he stated that he could not remember because respondent talked to Qui and not to him.[14] Petitioner could have presented Qui whom they alleged allowed the special arrangement with respondent. But it did not.

Neither can we accept petitioner's argument that the entries made by Mercado in the ledger were competent evidence to prove how and when the negative balance was incurred. Petitioner invokes Section 43 of Rule 130:

> Entries in the course of business. – Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

Under this exception to the hearsay rule, the admission in evidence of entries in corporate books required the satisfaction of the following conditions:

> - the person who made the entry must be dead, or unable to testify;
>
> - the entries were made at or near the time of the transactions to which they refer;
>
> - the entrant was in a position to know the facts stated in the entries;

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- the entries were made in his professional capacity or in the performance of a duty, whether legal, contractual, moral or religious; and

- the entries were made in the ordinary or regular course of business or duty.[15]

The ledger entries did not meet the first and third requisites.

Mercado, petitioner's bookkeeper who prepared the entries, was presented to testify on the transactions pertaining to the account of respondent. It was in the course of his testimony that the ledger entries were presented. There was, therefore, neither justification nor necessity for the presentation of the entries as the person who made them was available to testify in court.[16]

Moreover, Mercado had no personal knowledge of the facts constituting the entries, particularly those entries which resulted in the negative balance. He had no knowledge of the truth or falsity of these entries. We agree entirely with the following discussion of the trial court which was affirmed by the CA:

> The plaintiff submits that the ledger cards constituted the best evidence of the transactions made by the defendant with the bank relative to his account, pursuant to Section 43 of Rule 130 of the Revised Rules on Evidence. There is no question that the entries in the ledgers were made by one whose duty it was to record transactions in the ordinary or regular course of the business. But for the entries to be prima facie evidence of the facts recorded, the Rule interpose[s] a very important condition, one which we think is truly indispensable to the probative worth of the entries as an exception to the hearsay rule, and that is that the entrant must be "in a position to know the facts therein stated." Undeniably, Mr. Mercado was in a position to know the facts of the check deposits and withdrawals. But the transfers of funds through the debit memos in question?
>
> Let us be clear, at the outset, what the transactions covered by the debit memos are. They are, at bottom, credit accommodations said to have been granted by the bank's branch manager Mr. [Q]ui to the defendant, and they are, therefore loans, to prove which competent testimonial or documentary evidence must be presented. In the fac[e] of the denial by the defendant of the existence of any such agreement, and the absence of any document reflecting it, the testimony of a party to the transaction, i.e., Mr. [Q]ui, or of any witness to the same, would be necessary. The plaintiff failed to explain why it did not or could not present any party or witness to the transactions, but even if it had a reason why it could not, it is clear that the existence of the agreements cannot be established through the testimony of Mr. Mercado, for he was [not in] a position to [know] those facts. As a subordinate, he could not have done more than record what was reported to him by his superior the branch manager, and unless he was allowed to be privy to the latter's dealings with the defendant, the information that he received and entered in the ledgers was incapable of being confirmed by him.
>
> There is good reason why evidence of this nature is incorrigibly hearsay. Entries in business records which spring from the duty of other employees to communicate facts occurring in the ordinary course of business are prima facie admissible, the duty to communicate being itself a badge of trustworthiness of the entries, but not when they purport to record what were independent agreements arrived at by some bank officials and a client. In this case, the entries become mere casual or voluntary reports of the official concerned. To permit the ledgers, prepared by the bank at its own instance, to substitute the contract as proof of the agreements with third parties, is to set a dangerous precedent. Business entries are allowed as an exception to the hearsay rule only under certain conditions specified in Section 43, which must be scrupulously observed to prevent them from being used as a source of undue advantage for the party preparing them.[17] (citations omitted)

Thus, petitioner did not prove that respondent had incurred a negative balance in his account. Consequently, there was nothing to show that respondent was indebted to it in the amount claimed.

Petitioner's next argument is that respondent was estopped from denying the claim of petitioner since he benefited from the special arrangement accorded to him resulting in the negative balance. This must likewise fail. The

so-called special arrangement was never established. In addition, there was no evidence that respondent benefited from it. As held by the CA:

> The trial court satisfactorily explained the reason for not applying the principle of estoppel against defendant-appellee. As held by the trial court:"There is no scope here for the application of estoppel against the defendant-appellee, since it was not established that he had ever received copies of the ledgers, and therefore given the opportunity to review the correctness of the entries. As we see it, the case of the [plaintiff suffers from its failure to document its] transactions with its clients, and it is hardly right to close our eyes to that infirmity at the expense of the defendant-appellee."

The temporary overdraft allegedly accorded by plaintiff-appellant to defendant-appellee has not benefited the defendant-appellee in any manner. The 3 debit memos amounting to P150,000.00 appearing on defendant-appellee's ledger consisted of fund transfers from and not to defendant-appellee's account. The transfers resulted [in] the benefit of other accounts, not that of defendant-appellee.[18]

In view of the foregoing, the CA did not err in affirming the decision of the trial court.

WHEREFORE, the petition is hereby DENIED. The assailed decision of the Court of Appeals dated October 18, 2001 in CA-G.R. CV No. 45701 is AFFIRMED in toto.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Bernardo P. Abesamis and concurred in by Associate Justices Godardo A. Jacinto and Eliezer R. De Los Santos of the 17[th] Division; rollo, pp. 26-35.

[3] Rollo, p. 35.

[4] The first name of Mr. Qui was not specified in the records.

[5] One of the transfers was made to a certain Mr. Sy Cho Song; rollo, p. 32; records, p. 170.

[6] Petitioner's Petition, rollo, p. 12.

[7] Id., p. 13; CA Decision, rollo, p. 27.

[8] Penned by Judge Mario Guariña III.

[9] Rollo, p. 14.

[10] Pleyto v. Lomboy, G.R. No. 148737, 16 June 2004, 432 SCRA 329, 336, citations omitted.

[11] Trial Court Decision, Records, p. 170; rollo, p. 32. The entries state:

Date Check Particular Approved by Amount

5-1 DM* Transfer

C/A 125-63 E. Qui P50,000

5-13 DM transfer E. Qui 50,000

5-19 DM transfer
50,000

*Debit memo

[12] CA Decision, rollo, p. 34.

[13] Trial Court Decision, records, p. 170. The trial court stated:

> xxx Asked whether the defendant had consented to the transfer of the funds, he said:"[I]t was the manager to whom (sic) Eric Gan ha[d] talked ..."
> (tsn, July 21, 1992, at 12). xxx

[14] TSN, p. 12.

[15] Canque v. Court of Appeals, 365 Phil. 124, 131 (1999), citing Regalado, REMEDIAL LAW COMPENDIUM, Vol. II, p. 616, 1995.

[16] Id.

[17] Records, pp. 170-171.

[18] Rollo, p. 33; records, p. 171.

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