

SPOUSES RAUL AND AMALIA PANLILIO, PETITIONERS, VS. CITIBANK, N.A., RESPONDENT.

G.R. No. 156335. November 28, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse the Decision[1] of the Court of Appeals (CA) dated May 28, 2002 in CA-G.R. CV No. 66649 and its Resolution of December 11, 2002, which reversed and set aside the Decision of the Regional Trial Court (RTC) of Makati City.

The case originated as a Complaint[2] for a sum of money and damages, filed with the RTC of Makati City on March 2, 1999, by the spouses Raul and Amalia Panlilio (petitioners) against Citibank N.A. (respondent).

The factual antecedents are as follows:

On October 10, 1997, petitioner Amalia Panlilio (Amalia) visited respondent's Makati City office and deposited one million pesos (Php1 million) in the bank's "Citihi" account, a fixed-term savings account with a higher-than-average interest.[3] On the same day, Amalia also opened a current or checking account with respondent, to which interest earnings of the Citihi account were to be credited.[4] Respondent assigned one of its employees, Jinky Suzara Lee (Lee), to personally transact with Amalia and to handle the accounts.[5]

Amalia opened the accounts as ITF or "in trust for" accounts, as they were intended to benefit her minor children, Alejandro King Aguilar and Fe Emanuelle C. Panlilio, in case she would meet an untimely death.[6] To open these accounts, Amalia signed two documents: a Relationship Opening Form (ROF)[7] and an Investor Profiling and Suitability Questionnaire (Questionnaire).[8]

Amalia's initial intention was to invest the money in a Citibank product called the Peso Repriceable Promissory Note (PRPN), a product which had a higher interest. However, as the PRPN was not available that day, Amalia put her money in the Citihi savings account.[9]

More than a month later, or on November 28, 1997, Amalia phoned Citibank saying she wanted to place an investment, this time in the amount of three million pesos (Php3 million). Again, she spoke with Lee, the bank employee, who introduced her to Citibank's various investment offerings. After the phone conversation, apparently decided on where to invest the money, Amalia went to Citibank bringing a PCIBank check in the amount of three million pesos (Php3 million). During the visit, Amalia instructed Lee on what to do with the Php3 million. Later, she learned that out of the said amount, Php2,134,635.87 was placed by Citibank in a Long-Term Commercial Paper (LTCP), a debt instrument that paid a high interest, issued by the corporation Camella and Palmera Homes (C P Homes).[10] The rest of the money was placed in two PRPN accounts, in trust for each of Amalia's two children.[11]

Allegations differ between petitioners and respondent as to whether Amalia instructed Lee to place the money in the LTCP of C P Homes.[12]

An LTCP is an evidence of indebtedness, with a maturity period of more than 365 days, issued by a corporation to any person or entity.[13] It is in effect a loan obtained by a corporation (as borrower) from the investing public (as lender)[14] and is one of many instruments that investment banks can legally buy on behalf of their clients, upon the latter's express instructions, for investment purposes.[15] LTCPs' attraction is that they usually have higher yields than most investment instruments. In the case of the LTCP issued by C P Homes, the gross interest rate was 16.25% per annum at the time Amalia made her investment.[16]

On November 28, 1997, the day she made the PhP3million investment, Amalia signed the following documents: a Directional Investment Management Agreement (DIMA),[17] Term Investment Application (TIA),[18] and Directional Letter/Specific Instructions.[19] Key features of the DIMA and the Directional Letter are provisions that essentially clear Citibank of any obligation to guarantee the principal and interest of the investment, absent fraud or negligence on the latter's part. The provisions likewise state that all risks are to be assumed by the investor (petitioner).

As to the amount invested, only PhP2,134,635.87 out of the PhP3 million brought by Amalia was placed in the LTCP since, according to Lee, this was the only amount of LTCP then available.[20] According to Lee, the balance of the PhP3 million was placed in two PRPN accounts, each one in trust for Amalia's two children, per her instructions.[21]

Following this investment, respondent claims to have regularly sent confirmations of investment (COIs) to petitioners.[22] A COI is a one-page, computer generated document informing the customer of the investment earlier made with the bank. The first of these COIs was received by petitioners on or about December 9, 1997, as admitted by Amalia, which is around a week after the investment was made.[23] Respondent claims that other succeeding COIs were sent to and received by petitioners.

Amalia claims to have called Lee as soon as she received the first COI in December 1997, and demanded that the investment in LTCP be withdrawn and placed in a PRPN.[24] Respondent, however, denies this, claiming that Amalia merely called to clarify provisions in the COI and did not demand a withdrawal.[25]

On August 6, 1998, petitioners met with respondent's other employee, Lizza Colet, to preterminate the LTCP and their other investments. Petitioners were told that as to the LTCP, liquidation could be made only if there is a willing buyer, a prospect which could be difficult at that time because of the economic crisis. Still, petitioners signed three sets of Sales Order Slip to sell the LTCP and left these with Colet.[26]

On August 18, 1998, Amalia, through counsel, sent her first formal, written demand to respondent "for a withdrawal of her investment as soon as possible." [27] The same was followed by another letter dated September 7, 1998, which reiterated the same demands.[28] In answer to the letters, respondent noted that the investment had a 2003 maturity, was not a deposit, and thus, its return to the investor was not guaranteed by respondent; however, it added that the LTCP may be sold prior to maturity and had in fact been put up for sale, but such sale was "subject to the availability of buyers in the secondary market." [29] At that time, respondent was not able to find a buyer for the LTCP. As this response did not satisfy petitioners, Amalia again wrote respondent, this time a final demand letter dated September 21, 1998, asking for a reconsideration and a return of the money she invested.[30] In reply, respondent wrote a letter dated October 12, 1998 stating that despite efforts to sell the LTCP, no willing buyers were found and that even if a buyer would come later, the price would be lower than Amalia's original investment.[31]

Thus, petitioners filed with the RTC their complaint against respondent for a sum of money and damages.

The Complaint[32] essentially demanded a return of the investment, alleging that Amalia never instructed

respondent's employee Lee to invest the money in an LTCP; and that far from what Lee executed, Amalia's instructions were to invest the money in a "trust account" with an "interest of around 16.25% with a term of 91 days." Further, petitioners alleged that it was only later, or on December 8, 1997, when Amalia received the first confirmation of investment (COI) from respondent, that she and her husband learned of Lee's infidelity to her orders. The COI allegedly informed petitioners that the money was placed in an LTCP of C P Homes with a maturity in 2003, and that the investment was not guaranteed by respondent. Petitioners also claimed that as soon as Amalia received the COI, she immediately called Lee; however, the latter allegedly convinced her to ignore the COI, that C P Homes was an Ayala company, that the investment was secure, and that it could be easily "withdrawn"; hence, Amalia decided not to immediately "withdraw" the investment. Several months later, or on August 6, 1998, petitioners allegedly wanted to "withdraw" the investment to buy a property; however, they failed to do so, since respondent told them the LTCP had not yet matured, and that no buyers were willing to buy it. Hence, they sent various demand letters to respondent, asking for a return of their money; and when these went unheeded, they filed the complaint.

In its Answer,[33] respondent admitted that, indeed, Amalia was its client and that she invested the amounts stated in the complaint. However, respondent disputed the claim that Amalia opened a "trust account" with a "request for an interest rate of around 16.25% with a term of 91 days;" instead, respondent presented documents stating that Amalia opened a "directional investment management account," with investments to be made in C P Homes' LTCP with a 2003 maturity. Respondent disputed allegations that it violated petitioners' express instructions. Respondent likewise denied that Amalia, upon her receipt of the COI, immediately called respondent and protested the investment in LTCP, its 2003 maturity and Citibank's lack of guarantee. According to respondent, no such protest was made and petitioners actually decided to liquidate their investment only months later, after the newspapers reported that Ayala Land, Inc. was cancelling plans to invest in C P Homes.

The rest of respondent's Answer denied (1) that it convinced Amalia not to liquidate or "withdraw" her investment or to ignore the contents of the COI; (2) that it assured Amalia that the investment could be easily or quickly "withdrawn" or sold; (3) that it misrepresented that C P was an Ayala company, implying that C P had secure finances; and (4) that respondent had been unfaithful to and in breach of its contractual obligations.

After trial, the RTC rendered its Decision,[34] dated February 16, 2000, the dispositive portion of which states:

The foregoing considered, the court hereby rules in favor of plaintiffs and order defendant to pay:

- The sum of PhP2,134,635.87 representing the actual amount deposited by plaintiffs with defendant plus interest corresponding to time deposit during the time material to this action from date of filing of this case until fully paid;
- The sum of PhP300,000.00 representing moral damages;
- The sum of PhP100,000.00 representing attorney's fees;
- Costs.

SO ORDERED.[35]

The RTC upheld all the allegations of petitioners and concluded that Amalia never instructed Citibank to invest the money in an LTCP. Thus, the RTC found Citibank in violation of its contractual and fiduciary duties and held it liable to return the money invested by petitioners plus damages.

Respondent appealed to the CA.

On appeal, in its Decision promulgated on May 28, 2002, the CA reversed the Decision of the RTC, thus:

WHEREFORE, premises considered, the assailed decision dated 16 February 2000 is REVERSED and SET ASIDE and a new one entered DISMISSING Civil Case No. 99-500.[36]

The CA held that with respect to the amount of PhP2,134,635.87, the account opened by Amalia was an investment management account; as a result, the money invested was the sole and exclusive obligation of C P Homes, the issuer of the LTCP, and was not guaranteed or insured by herein respondent Citibank;[37] that Amalia opened such an account as evidenced by the documents she executed with Citibank, namely, the Directional Investment Management Agreement (DIMA), Term Investment Application (TIA), and Directional Letter/Specific Instructions, which were all dated November 28, 1997, the day Amalia brought the money to Citibank. Further, the CA brushed aside petitioners' arguments that Amalia failed to understand the true nature of the LTCP investment, and that she failed to read the documents as they were written in fine print. The CA ruled that petitioners could not seek the court's aid to extricate them from their contractual obligations. Citing jurisprudence, the CA held that the courts protected only those who were innocent victims of fraud, and not those who simply made bad bargains or exercised unwise judgment.

On petitioners' motion for reconsideration, the CA reiterated its ruling and denied the motion in a Resolution[38] dated December 11, 2002.

Thus, the instant petition which raises issues, summarized as follows: (1) whether petitioners are bound by the terms and conditions of the Directional Investment Management Agreement (DIMA), Term Investment Application (TIA), Directional Letter/Specific Instructions, and Confirmations of Investment (COIs); (2) and whether petitioners are entitled to take back the money they invested from respondent bank; or stated differently, whether respondent is obliged to return the money to petitioners upon their demand prior to maturity.

Petitioners contend that they are not bound by the terms and conditions of the DIMA, Directional Letter and COIs because these were inconsistent with the TIA and other documents they signed.[39] Further, they claim that the DIMA and the Directional letter were signed in blank or contained unauthorized intercalations by Citibank.[40] Petitioners argue that contrary to the contents of the documents, they did not instruct Citibank to invest in an LTCP or to put their money in such high-risk, long-term instruments.[41]

The Court notes the factual nature of the questions raised in the petition. Although the general rule is that only questions of law are entertained by the Court in petitions for review on certiorari,[42] as the Court is not tasked to repeat the lower courts' analysis or weighing of evidence,[43] there are instances when the Court may resolve factual issues, such as (1) when the trial court misconstrued facts and circumstances of substance which if considered would alter the outcome of the case;[44] and (2) when the findings of facts of the CA and the trial court differ.[45]

In the instant case, the CA completely reversed the findings of facts of the trial court on the ground that the RTC failed to appreciate certain facts and circumstances. Thus, applying the standing jurisprudence on the matter,[46] the Court proceeded to examine the evidence on record.

The Court's Ruling

The Court finds no merit in the petition. After a careful examination of the records, the Court affirms the CA's ruling for being more in accord with the facts and evidence on record.

On the first issue of whether petitioners are bound by the terms and conditions of the DIMA, TIA, Directional Letter and COIs, the Court holds in the affirmative and finds for respondent.

The DIMA, Directional Letter and COIs are evidence of the contract between the parties and are binding on them, following Article 1159 of the Civil Code which states that contracts have the force of law between the parties and

must be complied with in good faith.[47] In particular, petitioner Amalia affixed her signatures on the DIMA, Directional Letter and TIA, a clear evidence of her consent which, under Article 1330 of the same Code, she cannot deny absent any evidence of mistake, violence, intimidation, undue influence or fraud.[48]

As the documents have the effect of law, an examination is in order to reveal what underlies petitioners' zeal to exclude these from consideration.

Under the DIMA, the following provisions appear:

- Nature of Agreement - THIS AGREEMENT IS AN AGENCY AND NOT A TRUST AGREEMENT. AS SUCH, THE PRINCIPAL SHALL AT ALL TIMES RETAIN LEGAL TITLE TO THE FUNDS AND PROPERTIES SUBJECT OF THE ARRANGEMENT.

THIS AGREEMENT IS FOR FINANCIAL RETURN AND FOR THE APPRECIATION OF ASSETS OF THE ACCOUNT. THIS AGREEMENT DOES NOT GUARANTEE A YIELD, RETURN OR INCOME BY THE INVESTMENT MANAGER. AS SUCH, PAST PERFORMANCE OF THE ACCOUNT IS NOT A GUARANTY OF FUTURE PERFORMANCE AND THE INCOME OF INVESTMENTS CAN FALL AS WELL AS RISE DEPENDING ON PREVAILING MARKET CONDITIONS.

IT IS UNDERSTOOD THAT THIS INVESTMENT MANAGEMENT AGREEMENT IS NOT COVERED BY THE PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) AND THAT LOSSES, IF ANY, SHALL BE FOR THE ACCOUNT OF THE PRINCIPAL. (Underscoring supplied.)

x x x x

- Exemption from Liability. - In the absence of fraud, bad faith, or gross or willful negligence on the part of the INVESTMENT MANAGER or any person acting in its behalf, the INVESTMENT MANAGER shall not be liable for any loss or damage to the Portfolio arising out of or in connection with any act done or omitted or caused to be done or omitted by the INVESTMENT MANAGER pursuant to the terms and conditions herein agreed upon, and pursuant to and in accordance with the written instructions of the PRINCIPAL to carry out the powers, duties and purposes for which this Agreement is executed. The PRINCIPAL will hold the INVESTMENT MANAGER free and harmless from any liability, claim, damage or fiduciary responsibility that may arise from any investment made pursuant to this Agreement and to such letters or instructions under Paragraph 3 hereof due to the default, bankruptcy or insolvency of the Borrower/Issuer or the Broker/Dealer handling the transaction and or their failure in any manner to comply with any of their obligations under the aforesaid transactions, it being the PRINCIPAL'S understanding and intention that the investments/reinvestments under this account shall be strictly for his/its account and risk except as indicated above.

The INVESTMENT MANAGER shall manage the Portfolio with the skill, care, prudence, and diligence necessary under the prevailing circumstances that a good father of the family, acting in a like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with similar aims. (Underscoring supplied.)

x x x x

- Withdrawal of Income/Principal - Subject to availability of funds and taking into consideration the commitment of this account to third parties, the PRINCIPAL may withdraw the income/principal of the Portfolio or portion thereof upon request or application thereof from the Bank. The INVESTMENT MANAGER shall not be required to inquire as to the income/principal so withdrawn from the Portfolio. Any income of the Portfolio not withdrawn shall be accumulated and added to the principal of the Portfolio for further investment and reinvestment.[49] (Underscoring supplied.)

Under the Directional Letter, which constituted petitioners' instructions to respondent, the following provisions

are found:

In the absence of fraud, bad faith or gross or willful negligence on your part or any person acting in your behalf, you shall not be held liable for any loss or damage arising out of or in connection with any act done or performed or caused to be done or performed by you pursuant to the terms and conditions of our Agreement. I/We shall hold you free and harmless from any liability, claim, damage, or fiduciary responsibility that may arise from this investment made pursuant to the foregoing due to the default, bankruptcy or insolvency of the Borrower/Issuer, or the Broker/Dealer handling the aforesaid transactions/s, it being our intention and understanding that the investment/reinvestment under these transaction/s shall be strictly for my/our account and risk.

In case of default of the Borrower/Issuers, we hereby authorize you at your sole option, to terminate the investment/s therein and deliver to us the securities/loan documents then constituting the assets of my/our DIMA/trust account with you for me/us to undertake the necessary legal action to collect and/or recover from the borrower/issuers.[50] (Underscoring supplied.)

The documents, characterized by the quoted provisions, generally extricate respondent from liability in case the investment is lost. Accordingly, petitioners assumed all risks and the task of collecting from the borrower/issuer C P Homes.

In addition to the DIMA and Directional Letter, respondent also sent petitioners the COIs on a regular basis, the first of which was received by petitioners on December 9, 1997. The COIs have the following provisions in common:

x x x x

NATURE OF TRANSACTION INVESTMENT IN LTCP

NAME OF BORROWER/ISSUER C&P HOMES

x x x x

TENOR 91 DAYS

x x x x

MATURITY DATE

11/05/03

x x x x

OTHERS REPRICEABLE EVERY 91 DAYS

PURSUANT TO THE BANGKO SENTRAL REGULATIONS, THE PRINCIPAL AND INTEREST OF YOUR INVESTMENT ARE OBLIGATIONS OF THE BORROWER AND NOT OF THE BANK. YOUR INVESTMENT IS NOT A DEPOSIT AND IS NOT GUARANTEED BY CITIBANK N.A.

x x x x

Please examine this Confirmation and notify us in writing within seven (7) days from receipt hereof of any deviation from your prior conformity to the investment. If no notice is received by us within this period, this Confirmation shall be deemed correct and approved by you, and we shall be released and discharged as to all items, particulars, matters and things set forth in this Confirmation.[51]

Petitioners admit receiving only the first COI on December 8, 1997.[52] The evidence on record, however,

supports respondent's contentions that petitioners received the three other COIs on February 12, 1998,[53] May 14, 1998,[54] and August 14, 1998,[55] before petitioners' first demand letter dated August 18, 1998.[56]

The DIMA, Directional Letter, TIA and COIs, read together, establish the agreement between the parties as an investment management agreement, which created a principal-agent relationship between petitioners as principals and respondent as agent for investment purposes. The agreement is not a trust or an ordinary bank deposit; hence, no trustor-trustee-beneficiary or even borrower-lender relationship existed between petitioners and respondent with respect to the DIMA account. Respondent purchased the LTCPs only as agent of petitioners; thus, the latter assumed all obligations or inherent risks entailed by the transaction under Article 1910 of the Civil Code, which provides:

Article 1910. The principal must comply with all the obligations which the agent may have contracted within the scope of his authority.

As for any obligation wherein the agent has exceeded his power, the principal is not bound except when he ratifies it expressly or tacitly.

The transaction is perfectly legal, as investment management activities may be exercised by a banking institution, pursuant to Republic Act No. 337 or the General Banking Act of 1948, as amended, which was the law then in effect. Section 72 of said Act provides:

Sec. 72. In addition to the operations specifically authorized elsewhere in this Act, banking institutions other than building and loan associations may perform the following services:

- (a) Receive in custody funds, documents, and valuable objects, and rent safety deposit boxes for the safeguarding of such effects;
- (b) Act as financial agent and buy and sell, by order of and for the account of their customers, shares, evidences of indebtedness and all types of securities;
- (c) Make collections and payments for the account of others and perform such other services for their customers as are not incompatible with banking business.
- (d) Upon prior approval of the Monetary Board, act as managing agent, adviser, consultant or administrator of investment management/ advisory/consultancy accounts.

The banks shall perform the services permitted under subsections (a), (b) and (c) of this section as depositories or as agents. Accordingly, they shall keep the funds, securities and other effects which they thus receive duly separated and apart from the bank's own assets and liabilities.

The Monetary Board may regulate the operations authorized by this section in order to insure that said operations do not endanger the interests of the depositors and other creditors of the banks. (Emphasis supplied.)

while Section 74 prohibits banks from guaranteeing obligations of any person, thus:

Sec. 74. No bank or banking institution shall enter, directly, or indirectly into any contract of guaranty or suretyship, or shall guarantee the interest or principal of any obligation of any person, copartnership, association, corporation or other entity. The provisions of this section shall, however, not apply to the following: (a) borrowing of money by banking institution through the rediscounting of receivables; (b) acceptance of drafts or bills of exchange (c) certification of checks; (d) transactions involving the release of documents attached to items received for collection; (e) letters of credit transaction, including stand-by arrangements; (f) repurchase agreements; (g) shipside bonds; (h) ordinary guarantees or indorsements in favor of foreign creditors where the principal obligation involves loans and credits extended directly by foreign

investment purposes; and (i) other transactions which the Monetary Board may, by regulation, define or specify as not covered by the prohibition. (Emphasis supplied.)

Nothing also taints the legality of the LTCP bought in behalf of petitioners. C P Homes' LTCP was duly registered with the Securities and Exchange Commission while the issuer was accredited by the Philippine Trust Committee.[57]

The evidence also sustains respondent's claim that its trust department handled the account only because it was the department tasked to oversee the trust, and other fiduciary and investment management services of the bank.[58] Contrary to petitioners' claim, this did not mean that petitioners opened a "trust account." This is consistent with Bangko Sentral ng Pilipinas (BSP) regulations, specifically the Manual of Regulations for Banks (MORB), which groups a bank's trust, and other fiduciary and investment management activities under the same set of regulations, to wit:

PART FOUR: TRUST, OTHER FIDUCIARY BUSINESS AND INVESTMENT MANAGEMENT ACTIVITIES

x x x x

Sec. X402 Scope of Regulations. These regulations shall govern the grant of authority to and the management, administration and conduct of trust, other fiduciary business and investment management activities (as these terms are defined in Sec. X403) of banks. The regulations are divided into three (3)

Sub-Parts where:

A.

Trust and Other Fiduciary Business shall apply to banks authorized to engage in trust and other fiduciary business including investment management activities;

B.

Investment Management Activities shall apply to banks without trust authority but with authority to engage in investment management activities; and

C. General Provisions shall apply to both.

x x x x

Sec. X403 Definitions. For purposes of regulating the operations of trust and other fiduciary business and investment management activities, unless the context clearly connotes otherwise, the following shall have the meaning indicated.

a.

Trust business shall refer to any activity resulting from a trustor-trustee relationship (trusteeship) involving the appointment of a trustee by a trustor for the administration, holding, management of funds and/or properties of the trustor by the trustee for the use, benefit or advantage of the trustor or of others called beneficiaries.

b.

Other fiduciary business shall refer to any activity of a trust-licensed bank resulting from a contract or agreement whereby the bank binds itself to render services or to act in a representative capacity such as in an agency, guardianship, administratorship of wills, properties and estates, executorship, receivership, and other similar services which do not create or result in a trusteeship. It shall exclude collecting or paying agency arrangements and similar fiduciary services which are inherent in the use of the facilities of the other operating

departments of said bank. Investment management activities, which are considered as among other fiduciary business, shall be separately defined in the succeeding item to highlight its being a major source of fiduciary business.

c.

Investment management activity shall refer to any activity resulting from a contract or agreement primarily for financial return whereby the bank (the investment manager) binds itself to handle or manage investible funds or any investment portfolio in a representative capacity as financial or managing agent, adviser, consultant or administrator of financial or investment management, advisory, consultancy or any similar arrangement which does not create or result in a trusteeship.(Emphasis supplied.)

The Court finds no proof to sustain petitioners' contention that the DIMA and Directional Letter contradict other papers on record, or were signed in blank, or had unauthorized intercalations.[59] Petitioners themselves admit that Amalia signed the DIMA and the Directional Letter, which bars them from disowning the contract on the belated claim that she signed it in blank or did not read it first because of the "fine print." [60] On the contrary, the evidence does not support these latter allegations, and it is highly improbable that someone fairly educated and with investment experience would sign a document in blank or without reading it first.[61] Petitioners owned various businesses and were clients of other banks, which omits the possibility of such carelessness.[62] Even more damning for petitioners is that, on record, Amalia admitted that it was not her habit to sign in blank and that the contents of the documents were explained to her before she signed.[63]

Testimonial evidence and the complaint itself contained allegations that petitioners' reason for transferring their money from local banks to respondent is because it is safer to do so,[64] a clear indicia of their intelligence and keen business sense which they could not have easily surrendered upon meeting with respondent.

Nothing irregular or illegal attends the execution or construction of the DIMA and the Directional Letter, as their provisions merely conform with BSP regulations governing these types of transactions. Specifically, the MORB mandates that investment managers act as agents, not as trustees, of the investor;[65] that the investment manager is prohibited from guaranteeing returns on the funds or properties;[66] that a written document should state that the account is not covered by the PDIC; and that losses are to be borne by clients.[67] That these legal requirements were communicated to petitioners is evident in Amalia's signatures on the documents and in testimony to this effect.[68]

As to the allegation that the documents were in "fine print," the Court notes that although the print may have looked smaller than average, they were nevertheless of the same size throughout the documents, so that no part or provision is hidden from the reader. The Court also takes judicial notice that the print is no smaller than those found in similar contracts in common usage, such as insurance, mortgage, sales contracts and even ordinary bank deposit contracts. In the documents in question, the provisions hurtful to petitioners' cause were likewise in no smaller print than the rest of the document, as indeed they were even highlighted either in bold or in all caps. This disposes of the argument that they were designed to hide their damaging nature to the signatory.[69] The conclusion is that the print is readable and should not have prevented petitioners from studying the papers before their signing. Considering petitioners' social stature, the nature of the transaction and the amount of money involved, the Court presumes that petitioners exercised adequate care and diligence in studying the contract prior to its execution.[70]

In *Sweet Lines, Inc. v. Teves*, [71] the Court pronounced the general rule regarding contracts of adhesion, thus:

x x x there are certain contracts almost all the provisions of which have been drafted only by one party, usually a corporation. Such contracts are called contracts of adhesion, because the only participation of the other party

is the signing of his signature or his 'adhesion' thereto. Insurance contracts, bills of lading, contracts of sale of lots on the installment plan fall into this category.

x x x it is drafted only by one party, usually the corporation, and is sought to be accepted or adhered to by the other party x x x who cannot change the same and who are thus made to adhere hereto on the 'take it or leave it' basis.

x x x it is hardly just and proper to expect the passengers to examine their tickets received from crowded/congested counters, more often than not during rush hours, for conditions that may be printed thereon, much less charge them with having consented to the conditions, so printed, especially if there are a number of such conditions in fine print, as in this case.

However, Sweet Lines[72] further expounded that the validity and/or enforceability of contracts of adhesion will have to be determined by the peculiar circumstances obtaining in each case and the nature of the conditions or terms sought to be enforced.[73] Thus, while any ambiguity, obscurity or doubt in a contract of adhesion is construed or resolved strictly against the party who prepared it,[74] it is also equally obvious that in a case where no such ambiguity, obscurity or doubt exists, no such construction is warranted. This was the case in the DIMA and the Directional Letter signed by Amalia in the instant controversy.

The parties to this case only disagree on whether petitioners were properly informed of the contents of the documents. But as earlier stated, petitioners were free to read and study the contents of the papers before signing them, without compulsion to sign immediately or even days after, as indeed the parties were even free not to sign the documents at all. Unlike in Sweet Lines, where the plaintiffs had no choice but to take the services of monopolistic transport companies during rush hours, in the instant case, petitioners were under no such pressure; petitioners were free to invest anytime and through any of the dozens of local and foreign banks in the market.

In addition, it has been held that contracts of adhesion are not necessarily voidable. The Court has consistently held that contracts of adhesion, wherein one party imposes a ready-made form of contract on the other, are contracts not entirely prohibited, since the one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his

consent.[75] It is the rule that these contracts are upheld unless they are in the nature of a patently lopsided deal where blind adherence is not justified by other factual circumstances.[76]

Petitioners insist that other documents Amalia signed -- that is, the ROF,[77] Questionnaire[78] and TIA[79] -- contradict the DIMA and Directional Letter. Specifically, they argue that under the ROF and the Questionnaire, they manifested an intent to invest only in a time deposit in the medium term of over a year to three years, with no risk on the capital, or with returns in line with a time deposit.[80] However, this contention is belied by the evidence and testimony on record. Respondent explains that investors fill up the ROF and Questionnaire only when they first visit the bank and only for the account they first opened,[81] as confirmed by the evidence on record and the fact that there were no subsequent ROFs and Questionnaires presented by petitioners.

The ROF and Questionnaire were filled up when the PhP1 million "Citihi" savings account was opened by Amalia on October 10, 1997, during her first visit to the bank. When Amalia returned more than a month later on November 28, 1997, a change in her investment attitude occurred in that she wanted to invest an even bigger amount (PhP3 million) and her interest had shifted to high-yield but riskier long-term instruments like PRPNs and LTCPs. When Amalia proceeded to sign new documents like the DIMA and the Directional Letter for the LTCP investment, despite their obviously different contents from those she was used to signing for ordinary deposits, she essentially confirmed that she knew what she was agreeing to and that it was different from all her previous transactions.

In addition, even the ROF and Questionnaire signed by Amalia during the first visit contained provisions that clearly contradict petitioners' claims. The ROF contained the following:

I/We declare the above information to be correct. I/We hereby acknowledge to have received, read, understood and agree to be bound by the general terms and conditions applicable and governing my/our account/s and/or investment/s which appear in a separate brochure/manual as well as separate documents relative to said account/s and/or investment/s. Said terms and conditions shall likewise apply to all our existing and future account/s and/or investment/s with Citibank. I/We hereby further authorize Citibank to open additional account/s and/or investment/s in the future with the same account title as contained in this relationship opening form subject to the rules governing the aforementioned account/s and/or investment/s and the terms and conditions therein or herein. I/We agree to notify you in writing of any change in the information supplied in this relationship opening form.[82] (Emphasis supplied.)

while the Questionnaire had the following provisions:

I am aware that investment products are not bank deposits or other obligations of, or guaranteed or insured by Citibank N.A., Citicorp or their affiliates. I am aware that the principal and interest of my investments are obligations of the borrower/issuer. They are subject to risk and possible loss of principal. Past performance is not indicative of future performance. In addition, investments are not covered by the Philippine Deposit Insurance Corporation (PDIC) or the Federal Deposit Insurance Corporation (FDIC).[83]

which do not need further elaboration on the matter.

Petitioners contend that the Term Investment Application (TIA), viz:

TERM INVESTMENT APPLICATION

MAKATI Date 1/28/97

Branch and Service Area

TITLE OF ACCOUNT

_____ CIF Keys

PANLILIO, AMALIA ITF _____

ALEJANDRO KING AGUILAR FE _____

EMMANUELLE PANLILIO _____

Address _____

For corporations, c/o _____ Tel. No. _____

Dear Sir:

THIS IS TO AUTHORIZE CITIBANK, N. A. TO: () open () rollover

() rollover w/ added funds

() rollover w/ payout

Ref. No. _____

[] Peso Time Depositories [] Dollar TD [] Confirmation of Sale

[] NNPN TD [] Multicurrency [] CITIHI-Yielder

TRUST

NEW ADDED FUNDS WILL COME FROM:

() debit my/our account no. _____ for P/\$ _____

() Check No. _____ for P/\$ _____

() Cash deposit _____ for P/\$ _____

IN THE AMOUNT AND TERMS SPECIFIED AS FOLLOWS:

PRINCIPAL/Money In P/\$ 3,000,000 Value 11/28/97

MATURITY AMOUNT/Par Value P/\$ _____ Maturity Date

INTEREST RATE around 16.25% Term 91 days [84]

(Emphasis supplied.)

clearly contradicts the DIMA, Directional Letter and COIs.

Petitioners insist that the amount Php3 million in the TIA does not tally with the actual value of the investment which appeared on the first COI, which was Php2,134,635.87. Petitioners add that the TIA's interest rate of "around 16.25%" with the term "91 days" contradicts the COI's interest rate of 16.95% with a tenor of 75 days reprisable after 91 days.[85] Further, petitioners claim that the word "TRUST" inscribed on the TIA obviously meant that they opened a trust account, and not any other account.[86]

The explanation of respondent is plausible. Only Php2,134,635.87 out of the Php3 million was placed in the LTCP since this was the only amount of LTCP then available, while the balance was placed in two PRPN accounts, each one in trust for Amalia's two children, upon her instructions.[87] The disparity in the interest rate is also explained by the fact that the 16.95% rate placed in the COI is gross and not net interest,[88] and that it is subject to repricing every 91 days.

The Court gives credence to respondent's explanation that the word "TRUST" appearing on the TIA simply means that the account is to be handled by the bank's trust department, which handles not only the trust business but also the other fiduciary business and investment management activities of the bank, while the "ITF" or "in trust for" appearing on the other documents only signifies that the money was invested by Amalia in trust for her two children, a device that she uses even in her ordinary deposit accounts with other banks.[89] The ITF device allows the children to obtain the money without need of paying estate taxes in case Amalia meets a premature death.[90] However, it creates a trustee-beneficiary relationship only between Amalia and her children, and not between Amalia, her children, and Citibank.

All the documents signed by Amalia, including the DIMA and Directional Letter, show that her agreement with respondent is one of agency, and not a trust.

The DIMA, TIA, Directional Letter and COIs, viewed altogether, establish without doubt the transaction between the parties, that on November 28, 1997, with Php3 million in tow, Amalia opened an investment management account with respondent, under which she instructed the latter as her agent to invest the bulk of the money in LTCP.

Aside from their bare allegations, evidence that supports petitioners' contentions that no such deal took place, or

that the agreement was different, simply does not exist in the records.

Petitioners were experienced and intelligent enough to be able to demand and sign a different document to signify their real intention; but no such document exists. Thus, petitioners' acts and omissions negate their allegations that they were essentially defrauded by the bank.

Petitioners had other chances to protest respondent's alleged disregard of their instructions. The COIs sent by respondent to petitioners encapsulate the spirit of the DIMA and Directional Letter, with the proviso that should there be any deviations from petitioners' instructions, they may inform respondent in writing within seven days. Assuming *arguendo* that respondent violated the instructions, petitioners did not file a single timely written protest, however, despite their admission that they received the first COI on December 8, 1997.[91] It took eight months for petitioners to formally demand the return of their investment through their counsel in a letter dated August 18, 1998.[92] The letter, however, did not even contest the placement of the money in an LTCP, but merely its maturity in the year 2003. Prior to the letter, it has been shown that petitioners had received COIs on February 12, 1998,[93] May 14, 1998,[94] and August 14, 1998,[95] and in between, petitioners never demanded a return of the money they invested.

Petitioners' acts and omissions strongly indicate that they in fact conformed to the agreement in the months after the signing. In that period, they were receiving their bank statements and earning interest from the investment, as in fact, C P Homes under the LTCP continuously paid interest even up to the time the instant case was already on trial.[96] When petitioners finally contested the contract months after its signing, it was suspiciously during the time when newspaper reports came out that C P Homes' stock had plunged in value and that Ayala Land was withdrawing its offer to invest in the company.[97] The connection is too obvious to ignore. It is reasonable to conclude that petitioners' repudiation of the agreement was nothing more than an afterthought, a reaction to the negative events in the market and an effort to flee from a losing investment.

Anent the second issue, whether petitioners are entitled to recover from respondent the amount of PhP2,134,635.87 invested under the LTCP, the Court agrees with the CA in dismissing the complaint filed by petitioners.

Petitioners may not seek a return of their investment directly from respondent at or prior to maturity. As earlier explained, the investment is not a deposit and is not guaranteed by respondent. Absent any fraud or bad faith, the recourse of petitioners in the LTCP is solely against the issuer, C P Homes, and only upon maturity. The DIMA states, thus:

- Withdrawal of Income/Principal - Subject to availability of funds and taking into consideration the commitment of this account to third parties, the PRINCIPAL may withdraw the income/principal of the Portfolio or portion thereof upon request or application thereof from the Bank. The INVESTMENT MANAGER shall not be required to inquire as to the income/principal so withdrawn from the Portfolio. Any income of the Portfolio not withdrawn shall be accumulated and added to the principal of the Portfolio for further investment and reinvestment.[98] (Emphasis supplied.)

It is clear that since the money is committed to C P Homes via LTCP for five years, or until 2003, petitioners may not seek its recovery from respondent prior to the lapse of this period. Petitioners must wait and meanwhile just be content with receiving their interest regularly. If petitioners want the immediate return of their investment before the maturity date, their only way is to find a willing buyer to purchase the LTCP at an agreed price, or to go directly against the issuer C P Homes, not against the respondent.

The nature of the DIMA and the other documents signed by the parties calls for this condition. The DIMA states that respondent is a mere agent of petitioners and that losses from both the principal and interest of the investment

are strictly on petitioners' account. Meanwhile, the Directional Letter clearly states that the investment is to be made in an LTCP which, by definition, has a term of more than 365 days.[99] Prior to the expiry of the term, which in the case of the C P Homes LTCP is five years, petitioners may not claim back their investment, especially not from respondent bank.

Having bound themselves under the contract as earlier discussed, petitioners are governed by its provisions. Petitioners as principals in an agency relationship are solely obliged to observe the solemnity of the transaction entered into by the agent on their behalf, absent any proof that the latter acted beyond its authority.[100] Concomitant to this obligation is that the principal also assumes the risks that may arise from the transaction.[101] Indeed, as in the instant case, bank regulations prohibit banks from guaranteeing profits or the principal in an investment management account.[102] Hence, the CA correctly dismissed petitioners' complaint against respondent.

WHEREFORE, the Petition is DENIED. For lack of evidence, the Decision of the Court of Appeals dated May 28, 2002 and its Resolution of December 11, 2002, are AFFIRMED.

Costs against the petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Justice Wenceslao I. Aguir, Jr. with the concurrence of Justices B.A. Adekunle-de la Cruz and Regalado E. Maambong, rollo, p. 69.

[2] Records, pp. 1-10.

[3] Records, pp. 1, 58, 228, 519.

[4] Id.

[5] Id. at 57.

[6] Id. at 58, 228.

[7] Exhibit "A," records, p. 348; Exhibit "1," records, pp. 737-738.

[8] Exhibit "B," records, p. 349; Exhibit "2," records, p. 739.

[9] Records, pp. 518-519.

[10] Records, pp. 2, 59, 233, 525.

[11] Id. at 233, 525.

[12] Id. at 3, 47; 230, 523.

[13] Securities and Exchange Commission (SEC) New Rules on the Registration of Long-Term Commercial Papers (LTCP), Sec. 2(a), as cited in respondent's Memorandum, rollo, p. 459.

[14] Records, p. 499.

[15] Section 72 of Republic Act No. 337, as amended, or the General Banking Act; Bangko Sentral ng Pilipinas (BSP) Manual of Regulations for Banks, Sec. X409.6.

[16] Records, pp. 2, 523.

- [17] Exhibit "3," records, p. 740.
- [18] Exhibit "4," records, p. 741.
- [19] Exhibit "5," records, p. 742.
- [20] Records, p. 525.
- [21] Id.
- [22] Id. at 61-65, 528.
- [23] Direct Testimony of Amalia Panlilio, records, p. 233; Exhibit "6." The Complaint states the date of receipt as on or about December 8, 1997, records, p. 2.
- [24] Direct Testimony of Amalia Panlilio, records, p. 233.
- [25] Direct Testimony of Jinky Lee, records, p. 534.
- [26] Direct Testimony of Lizza Colet-Vallente, records, pp. 554-555; Direct Testimony of Amalia Panlilio, records, p. 235.
- [27] Exhibit "Z," records, pp. 172-173, 339; Exhibit "19," records, pp. 758-759.
- [28] Exhibit "Z-1," records, pp. 174-175; Exhibit "20," records, pp. 760-761.
- [29] Exhibit "Z-2," records, p. 176; Exhibit "21," records, p. 762.
- [30] Exhibit "Z-3," records, pp. 177-178; Exhibit "22," records, pp. 763-762.
- [31] Exhibit "Z-4," records, p. 180; Exhibit "24," records, p. 766.
- [32] Records, pp. 1-8.
- [33] Records, pp. 44-90.
- [34] Id. at 1111-1115.
- [35] Records, p. 1115.
- [36] Rollo, pp. 69-91.
- [37] Id. at 82.
- [38] Rollo, pp. 93-97.
- [39] Id. at 26.
- [40] Id. at 26.
- [41] Id. at 34.
- [42] Rules of Court, Rule 45, Sec. 1; *Samala v. Court of Appeals*, 467 Phil. 563, 568 (2004).
- [43] *Potenciano v. Reynoso*, 449 Phil. 396, 405 (2003).
- [44] *Arcilla v. Court of Appeals*, 463 Phil. 914, 924 (2003).
- [45] *National Housing Authority v. Court of Appeals*, G.R. No. 148830. April 13, 2005, 456 SCRA 17, 24.

[46] Cebu Shipyard and Engineering Works, Inc. v. William Lines, Inc., 366 Phil. 439, 452 (1999); In the case, the Court stated that:

There are instances when the findings of fact of the trial court and/or Court of Appeals may be reviewed by the Supreme Court, such as

(1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) when the inference made is manifestly mistaken, absurd or impossible;

(3) where there is a grave abuse of discretion;

(4) when the judgment is based on a misapprehension of facts;

(5) when the findings of fact are conflicting;

(6)

when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) when the findings are contrary to those of the trial court;

(8)

when the findings of fact are conclusions without citation of specific evidence on which they are based;

(9)

when the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10)

when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

[47] Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[48] Art. 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.

[49] Exhibit "3," records, p. 740.

[50] Exhibit "5," records, p. 742.

[51] Exhibits "6," records, p. 743; Exhibit "7," records, p. 744; Exhibit "9," records, p. 746; and Exhibit "17," records, p. 756.

[52] The Complaint, records, p. 2, states that the first COI was received "on or about December 8, 1997; while in the Direct Testimony of Amalia Panlilio, records, p. 233, Amalia claims receipt of the first COI on December 9, 1997. Meanwhile, the Direct Testimony of Jinky Suzara Lee, records, p. 528, states that Amalia received the first COI by personal delivery on December 8, 1997.

[53] Exhibit "8," records, p. 745.

[54] Exhibit "10," records, p. 747.

- [55] Exhibit "18," records, p. 757; TSN July 6, 1999, pp. 46-47.
- [56] Exhibit "Z," records, pp. 172-173, 339; Exhibit "19," records, pp. 758-759.
- [57] Rollo, p. 462.
- [58] Records, pp. 787-789.
- [59] Rollo, p. 26.
- [60] Id. at 37.
- [61] TSN, July 6, 1999, p. 13.
- [62] TSN, July 6, 1999, p. 14-19; TSN, July 16, 1999, pp. 6-8.
- [63] TSN, July 6, 1999, p. 38.
- [64] TSN, July 6, 1999, pp. 17-19; records, p. 1.
- [65] BSP Manual of Regulations for Banks, Sec. X403(c).
- [66] BSP Manual of Regulations for Banks, Sec. X407.
- [67] BSP Manual of Regulations for Banks, Sec. X411.1(b)(6).
- [68] Direct Testimony of Jinky Lee, records, p. 527; TSN, July 6, 1999, p. 38.
- [69] Tan v. Court of Appeals, G.R. No. 48049, June 29, 1989, 174 SCRA 403, 409.
- [70] Rules of Court, Rule 131, Sec. 3, Par. (d).
- [71] No. L-37750, May 19, 1978, 83 SCRA 361, 368-371.
- [72] Sweet Lines, Inc. v. Teves, *supra* note 71.
- [73] Sweet Lines, Inc. v. Teves, *supra* note 71, at 368.
- [74] Civil Code, Art. 1377; Bay View Hotel v. Ker and Co., Ltd., G.R. No. L-28237, August 31, 1982, 116 SCRA 327, 334; Eastern Shipping Lines Inc. v. Margarine-Verkaufs-Union GmbH, G.R. No. L-31087, September 27, 1979, 93 SCRA 257, 262; Eastern Assurance and Surety Corp. v. Intermediate Appellate Court, G.R. No. 69450, November 22, 1989, 179 SCRA 561, 568; Orient Air Services and Hotel Representatives v. Court of Appeals, G.R. No. 76931, May 29, 1991, 197 SCRA 645, 655.
- [75] Ong Yiu v. Court of Appeals, G.R. No. L-40597, June 29, 1979, 91 SCRA 223, 231; Saludo, Jr. v. Court of Appeals, G.R. No. 95536, March 23, 1992, 207 SCRA 498, 528; Maersk Line v. Court of Appeals, G.R. No. 94761, May 17, 1993, 222 SCRA 108, 116.
- [76] Pan American World Airways, Inc. v. Rapadas, G.R. No. 60673, May 19, 1992, 209 SCRA 67, 75.
- [77] Exhibit "A," Exhibits "1" and "1-C."
- [78] Exhibit "B," Exhibit "2."
- [79] Exhibit "4," records, p. 741.
- [80] Rollo, p. 38.
- [81] TSN, August 18, 1999, pp. 74-76.

[82] Exhibit "1-c-3," records, p. 738.

[83] Exhibit "B," and "2," records, pp. 350, 739 (dorsal).

[84] Exhibit "4," records, p. 742.

[85] Rollo, p. 43.

[86] Rollo, p. 44.

[87] Records, p. 525.

[88] TSN, August 18, 1999, p. 77.

[89] TSN, July 6, 1999, p. 27; records, p. 522.

[90] TSN, July 6, 1999, p. 27; records, p. 522.

[91] The Complaint, records, p. 2, states that the first COI was received "on or about December 8, 1997; while in the Direct Testimony of Amalia Panlilio, records, p. 233, Amalia claims receipt of the first COI on December 9, 1997. Meanwhile, the Direct Testimony of Jinky Suzara Lee, records, p. 528, states that Amalia received the first COI by personal delivery on December 8, 1997.

[92] Exhibit "Z," records, pp. 172-173, 339; Exhibit "19," records, pp. 758-759.

[93] Exhibits "7" and "8," records, pp. 744-745.

[94] Exhibits "9" and "10," records, pp. 746- 747.

[95] Exhibits "17" and "18," records, pp. 756-757.

[96] Exhibits "E" to "N-1," records, pp. 353 to 395, 532.

[97] Exhibits "11," "12," "13," and "14," records, pp. 748-751.

[98] Exhibit "3," records, p. 740.

[99] Securities and Exchange Commission (SEC) New Rules on the Registration of Long-Term Commercial Papers (LTCP) state, thus:

Section 2. Definitions. For purposes of these Rules, the following definition shall apply:

- Long-term commercial papers shall refer to evidence of indebtedness of any corporation to any person or entity with maturity period of more than 365 days.

[100] Civil Code, Art. 1910.

[101] Civil Code, Art. 1174.

[102] BSP Manual of Regulations for Banks, Secs. X403(c); X407; and X411.1(b)(6).

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