

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. RAMON A. UY, RESPONDENT.

G.R. NO. 156994. August 31, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 68494 and its Resolution denying the motion for reconsideration thereof.

The case stemmed from the following factual backdrop:

In 1975, Ramon A. Uy was employed by the Bank of the Philippine Islands (BPI) as a loans clerk in its Tabaco Branch in Tabaco, Albay.

For many years, Uy had served the petitioner with utmost loyalty. He had never been suspended nor involved in any violation of the company's rules and regulations, or charged with any crime.

In 1994, Uy encouraged Evangeline Ong-Sy, a prominent businesswoman in Tabaco, to open an account with BPI. Uy knew that she had a commendable reputation in the business community, aside from having a good credit standing with the other banks in the Municipality of Tabaco, Albay. Ong-Sy agreed and eventually became a depositor-borrower of BPI and, likewise, helped solicit big clients for the bank. She had a P4,000,000.00 time deposit; two US dollar time deposits amounting to US\$40,000.00; and a BPI Express Teller Savings Deposit.

On February 2, 1996, Uy was nominated for the 1995 BPI Excellence Award as Best Operations Staff for his "full work knowledge, not only in sundries operations and loan servicing/appraising/CI, but also in bookkeeping & distributing." [2]

On November 4, 1996, spouses Simeon and Alicia Sy were granted a Revolving Promissory Note Line (RPNL) in the maximum cumulative amount of P4,000,000.00. As loans clerk, Uy processed the loan documents and recommended its approval. On said date, the couple executed a Promissory Note [3] where they bound and obliged themselves to pay their P4,000,000.00 loan. The note was to expire on September 30, 1997.

To insure the payment of their loan, the couple executed a real estate mortgage over their property. From the loan proceeds, Simeon Sy purchased Manager's Check No. 70428 in the same amount, payable to the order of Johnson Sy, Ong-Sy's husband. [4] The check was received by Leilani Pontanez, an employee of Simeon Sy.

On the same day, November 4, 1996, Ong-Sy applied for a back-to-back loan with BPI in the amount of P2,500,000.00, payable in thirty days. [5] She offered her deposits in her Passbook Plus Account No. 0833-1370-85 [6] as collateral for the loan. The loan application was also processed by Uy, who recommended its approval. The Cashier-Assistant Manager and Bank Manager received the application and approved the same. [7]

On November 12, 1996, Ong-Sy preterminated the loan of Simeon Sy by remitting Metrobank Check No. 0004072 in payment of the said loan. BPI accepted the check and approved the pretermination. The check was,

however, dishonored by the drawee bank, as it was drawn against insufficient funds.

The next day, November 13, 1996, Ong-Sy was again at the BPI and presented a withdrawal slip for the amount of P1,500,033.00 from her Savings Account No. 0833-1370-85. Uy again processed the withdrawal and recommended its approval. Ong-Sy again sought the withdrawal of P1,260,016.50 from her savings account. Uy also processed this transaction and recommended its approval. The Cashier-Assistant Bank Manager and Bank Manager reviewed the slips and also approved both withdrawals. Thus, Ong-Sy was able to withdraw the said amounts from her savings account.[8]

Ong-Sy repaid her back-to-back loan from BPI via an ordinary check. Uy issued an official receipt for the check as full payment of the said loan. However, the check was dishonored by the drawee bank for the reason "account closed."

On November 25, 1996, Uy was interviewed by Ernesto R. Ocampo, the BPI Vice-President and the area Head-in-Charge of the Administrative Officers and Employees of the BPI branches in the Southern Tagalog/Bicol Region. Ocampo again interviewed Uy the following day in the presence of Ronaldo J. Fernando, Officer-in-Charge of the Office of the BPI Tabaco Branch, and A.V. Arabia, Jr., the manager of BPI Naga Business Center branch. Uy was placed under preventive suspension on November 26, 1996.

On December 4, 1996, Uy received a Memorandum[9] from Ocampo directing him to explain within 48 hours from the said date why his services should not be terminated by BPI, in view of the fact that on November 26, 1996, he facilitated an availment for P4,000,000.00 against Simeon Sy's RPNL without the latter's knowledge and authority. On December 5, 1996, Uy wrote Ocampo and admitted having accommodated Ong-Sy and allowed her to use the P4,000,000.00 credit line of other borrowers. He, however, claimed that he did it in consideration of her assurance that she would try to convince Rosario Crisol and Tin-Tin Golekoh to transfer their P25,000,000.00 accounts from other banks to BPI which would then be benefited by the said transfer. He also stated that he had talked to Crisol and Golekoh, who agreed to transfer their accounts, provided that they would be given more attractive rates.[10]

However, on December 11, 1996, BPI notified Uy that his employment had been terminated on account of the fraudulent drawing of P4,000,000.00 against the loan account of Simeon Sy.[11]

BPI also filed a criminal complaint for estafa against Uy with the Municipal Trial Court of Tabaco, Albay, relating to Ong-Sy's back-to-back loan account:

That on November 4, 1996, in the Municipality of Tabaco, Albay, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused with deceit and fraud and in conspiracy applied and obtained a loan from the BANK OF THE PHILIPPINE ISLANDS, Tabaco Branch, Tabaco, Albay, in the amount of P2,500,000.00 assigning as collateral the savings deposits of EVANGELINE SY under Account No. SA-0833-1370-85 on the condition that no withdrawals whatsoever of deposits shall be made against the savings account pursuant to the agreement and the Promissory Note with Assignment of Assets executed by Evangeline Sy in favor of the bank; that upon release and receipt of the proceeds of the loan secured by the savings deposits, both accused did, then and there willfully, unlawfully and feloniously conspired in withdrawing all the money deposits under Account No. SA-0833-1370-85, thereby, with deceit and fraud, the concerted infractions of both accused resulted in illegally obtaining from the bank P2,500,000.00 to the damage and prejudice of the bank in such amount of no less than P2,500,000.00.

CONTRARY TO LAW.[12]

However, on February 16, 1998, the trial court issued a Resolution[13] dismissing the case, finding no probable cause against Uy. BPI appealed the resolution of the Investigating Judge, but was, however, dismissed on

March 23, 1998.[14] Meanwhile, BPI's appeal to the Department of Justice was dismissed on January 3, 2000.[15] On December 9, 1999, Uy filed a complaint[16] before the National Labor Relations Commission (NLRC) against BPI and Ocampo for illegal dismissal and damages.

In his position paper, Uy alleged that his job as loans clerk was limited to making recommendations for loan applications. The procedure was the following: Uy would notify BPI's business center in Naga City of the loan approval; he would request the release of the proceeds; and such loan proceeds would then be deposited in the borrower-depositor's account. He stressed that his recommendation was still subject to review by the Cashier, the Assistant Bank Manager, and the Bank Manager, not to mention the officers of the business center in Naga City. Although the check Ong-Sy remitted to BPI was dishonored, no civil and criminal cases were filed against her to collect the amount of the check.

Uy alleged that, relative to the P4,000,000.00 loan of the Spouses Sy, BPI admitted, in its answer in Civil Case No. T-1906, that the signatures of Spouses Sy on the promissory note for his P4,000,000.00 loan, and on the application for the purchase of the P4,000,000.00 Manager's Check in the name of Johnson Sy were genuine; and that it approved Ong-Sy's pretermination of Simeon Sy's loan.

Instead of responding to Uy's allegations relative to his dismissal for the P4,000,000.00 loan account of Simeon Sy, BPI confined itself to alleging, in its Memorandum, that Uy allowed Ong-Sy to withdraw P2,760,049.50 from her savings deposit, although he knew that it was the collateral for her BPI back-to-back loan. In addition, BPI alleged that Uy accepted an ordinary check as payment for the said loan account and, although the check had not yet been cleared, he issued an official receipt therefor.

In his Reply to the Memorandum of BPI, Uy averred that BPI's inadvertence to Ong-Sy's back-to-back loan was irrelevant, because his actuations relative to the said loan were not the bases for the termination of his employment, nor the subject of his complaint:

" Respondent, in its Memorandum, speaks of a 2.5 Million, which complainant Ramon Uy was not aware that the same is the ground for his termination. If indeed it were so, then the [BPI] has committed a very serious violation of complainant's right to due process and indeed was remiss of the two facets of Valid termination which, in the long line of decisions of the Supreme Court and emphasized in *Manebo vs. NLRC* (January 10, 1994) states:

The employer is required to furnish an employee who is to be dismissed two (2) written notices before such termination. The first is the notice to apprise the employee of the particular acts or omission for which his dismissal is sought. This may be loosely considered as the proper charge. The second is the notice informing the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, an ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. This is in consonance with the express provisions of law on the protection to labor and the broader dictates of procedural due process. Non-Compliance therewith is fatal because these requirements are conditions sine qua non before dismissal may be validly effected.

"Ample opportunity" connotes every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense including legal representation." (emphasis ours).

The Respondent's memorandum, therefore, and its evidences presented being entirely immaterial to the subject matter in the case at bar, will be objected to by herein Counsel and calls for its treatment as a mere scrap of paper. Counsel therefore asked this Honorable Commission that decision be rendered in favor of Complainant on the basis of evidences presented by the latter.[17]

On March 31, 2000, the Labor Arbiter rendered judgment in favor of Uy. The dispositive portion of the decision reads:

WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed, and respondent bank is hereby ordered to immediately reinstate complainant to his former position without loss of seniority rights and to pay complainant backwages, which as of date amounts to P641,875.00, as computed above plus attorney's fees equivalent to ten percent (10%) of the total award.

All other claims are dismissed for lack of merit.

SO ORDERED.[18]

Aggrieved, BPI appealed to the NLRC which rendered judgment, on June 29, 2001, reversing the Labor Arbiter's decision and dismissing the appeal for lack of merit. The NLRC declared that Uy connived with Ong-Sy relative to the withdrawal of the P2,500,000.00 from her savings account.

Undaunted, Uy filed a petition for certiorari with the Court of Appeals. The appellate court granted the petition and reinstated the Labor Arbiter's decision. The CA declared that the NLRC overlooked and ignored Uy's documentary evidence, noting that the latter was a mere loans clerk whose recommendations on loan applications were subject to the review and evaluation of the Cashier-Assistant Manager Ma. Linda Ursua, Bank Manager Ronaldo Fernando, and Alejandro V. Arabia, Jr. of the Naga BPI Business Center branch. In fact, the said officers approved the loan application of Ong-Sy.

Inexplicably, however, the appellate court delved into and resolved the matter of Ong-Sy's back-to-back loan. The CA found that Bank Manager Ronaldo J. Fernando had approved the said loan application, accepted and confirmed the check payments after ascertaining from Allan Marbella, the manager of the Rizal Commercial Banking Corporation, that the checks were adequately funded. If at all, Uy committed any irregularity related to Ong-Sy's loan application, he acted for the good of BPI.

A motion for reconsideration was, thereafter, filed by BPI, which the appellate court denied in its Resolution dated January 27, 2003.

BPI, now the petitioner, assails the decision of the CA, claiming that the appellate court committed grave abuse of discretion amounting to excess or lack of jurisdiction in holding (a) that the respondent, who was its loans clerk in its Tabaco branch, was not holding a position of trust and confidence; and (b) that it (petitioner) failed to adduce clear and strong evidence to prove that the respondent committed fraud and willful breach of trust.

In his comment on the petition, respondent Uy averred that the ground relied upon by the petitioner for the reversal of the CA decision (his actuation relative to Ong-Sy's P2,500,000.00 back-to-back loan) has no bearing on his complaint for illegal dismissal; his ground therefor is the alleged accommodation he extended to Ong-Sy to facilitate the alleged fraudulent withdrawal of P4,000,000.00 against Simeon Sy's loan account without the latter's knowledge and consent. He asserts that, as held by the CA in its decision, he was dismissed on the ground of fraud and/or loss of confidence as he caused the fraudulent drawing of P4,000,000.00 on November 4, 1996, against the loan account of another client, Simeon Sy, without the latter's knowledge, allegedly for the benefit of Ong-Sy and her husband.[19]

We agree with the respondent.

The petitioner's insistence that the respondent was lawfully dismissed from his employment on account of his actuations and omissions relative to Ong-Sy's P2,500,000.00 back-to-back loan, as well as her withdrawals from the savings account and her payment of the said loan via an ordinary check, is futile and has to be rejected. We

agree with the respondent's submission that he was dismissed by the petitioner because he facilitated the release of P4,000,000.00 to Ong-Sy against Simeon Sy's loan account, allegedly without the knowledge and consent of the latter. The termination letter the respondent received from the petitioner reads:

NOTICE OF TERMINATION

Dear Mr. Uy:

This is to notify you of the termination of your employment effective immediately on the ground of fraud and/or loss of confidence.

From our initial investigation and by your own admission, it has been established that you caused the fraudulent drawing of P4 Million on 04 November 1996 against the loan account of Simeon Sy, without his knowledge, for the benefit allegedly of Johnson and Evangeline Sy.

This Notice of Termination is without prejudice to such other court action which the bank may initiate against you and to such other findings of irregularity which our auditors may uncover, if any.

Demand is also made upon you to settle all your obligations with the bank.

Very truly yours,

(Sgd.)

ERNESTO R. OCAMPO

Vice President[20]

The respondent did not receive any Memorandum from the petitioner requiring him to explain his alleged involvement in Ong-Sy's back-to-back loan before and after his dismissal from employment.

For the Court to grant the petition at bar and dismiss the respondent from his employment on a ground other than that stated in the petitioner's December 11, 1996 notice of termination, and that raised by the respondent in his complaint for illegal dismissal, would be a blatant denial of the latter's right to due process. Had the petitioner wanted to terminate the employment of the respondent on account of Ong-Sy's P2,500,000.00 loan, the petitioner should have notified him after due investigation so that the respondent could have sought redress from the NLRC based on this ground. Instead, the petitioner terminated the respondent's employment on account of the P4,000,000.00 loan transaction, which is separate and distinct from the back-to-back loan.

The petitioner did not refute the respondent's complaint (as amplified in his position paper), assailing the termination of his employment relative to Simeon Sy's P4,000,000.00 loan and its pretermination by Ong-Sy. We are, thus, more inclined to believe that the petitioner opted to evade the matter, and confined itself to discussing Ong-Sy's P2,500,000.00 back-to-back loan. Evidently, the petitioner found nothing irregular in the manner the respondent processed Simeon Sy's loan availment, as well as the approval of the loan. The petitioner even admitted that the signatures of Simeon Sy on the loan transaction documents and the purchase of the P4,000,000.00 Manager's Check, paid to the order of Johnson Sy, were above board.

However, even if we delve into and resolve the issue of whether the respondent should be dismissed on account of

Ong-Sy's back-to-back loan, we are convinced that the petitioner failed to prove its claim. As gleaned from the Resolution of the Municipal Trial Court in Criminal Case No. 9620, the petitioner's claim, as the private complainant therein, was baseless:

After a careful evaluation of the affidavits, supplemental affidavits and other pleadings of both the prosecution and the defense, the Court finds no evidence whatsoever which will show that accused Ramon Uy used any kind of deceit in the granting of the back-to-back loan to his co-accused Evangeline Sy. It is admitted that he is a mere clerk in the bank and as such his functions are mere clerical. The loan granted to Evangeline Sy amounts to P2,500,000.00, which by the bank standard especially Tabaco Branch, is a very big amount. It's not every day that the bank grant loans amounting to millions of pesos. Definitely, therefore, the approval of the said loan was carefully evaluated and scrutinized by the officers of the bank, in this case, the Branch Manager, Asst. Branch Manager and the Cashier. The loan could not have been released unless approved and signed by these bank officers. No amount of recommendation from Ramon Uy could have influenced the bank officers into approving the loan unless they themselves were satisfied that the same is good business transaction beneficial to the bank, that the same is fully guaranteed by sufficient collaterals and that the loan applicant is a good and solvent client.

With respect to the withdrawals of the deposits under Account No. SA-0833-1370-85 which was supposed to be restricted, considering that the same was made as the collaterals of a loan of P2,500,000.00, the Court finds that said withdrawals consisting of huge amounts were responsibilities of the officers of the bank. Ramon Uy, who is a mere clerk, could not be blamed for the same. It is the standard operating procedure of every bank that withdrawals passed through the bank tellers, verified by the cashier and approved by the Assistant Manager or Branch Manager himself. It is impossible that the cashier, and the Manager could not have been aware of the same. The Court surmised that what happened was administrative lapses attributable to the officers of the bank. They were either negligent or so trustful because Evangeline Sy was a valued client. It could even be an accommodation to a valued client.

The Court is in a quandary as to why the bank should single out Ramon Uy, who is a mere clerk and not run after the bank officers who were the ones responsible for the mess. If ever, the liability of Ramon Uy should only be administrative, if it could be proven that he had a hand in the approval of the loan and the withdrawals of the deposits. However, if Ramon Uy could be administratively liable, more so with the other bank officers, who are supposed to be directly and personally responsible in approving loans and withdrawals, especially if the withdrawals are against an uncleared check as in this case.

Based from the foregoing, the Court finds that there is no sufficient evidence to constitute even a probable cause to establish that the offense charged has been committed by both accused. The possible liability of Ramon Uy is administrative, while Evangeline Ong Sy is definitely civilly liable.[21]

Even Alejandro V. Arabia, Jr., the former manager of the petitioner's Naga Business Center branch, swore:

- That I was formerly the manager of the Naga Sub-Business Center, Naga City of the Bank of the Philippine Islands, in-charge of [the] Loan Division in the Bicol Region from the time the Sub-Business Center was created in 1991 until my retirement in 1997;
- That I was present during the several personal investigations of Mr. Ramon Uy conducted by Vice-President Ernesto Ocampo on the case of Evangeline Sy's loan with the Bank;
- That during the said investigations, Mr. Ramon Uy was not duly-represented by a legal counsel to his great disadvantage;
- That in the course of these investigations, Mr. Ocampo made a promise to Mr. Ramon Uy that he is going to help him and nothing will happen to the latter if he just admit these bank violations;

- That there is no way in the operation of the Bank that a mere employee such as Mr. Ramon Uy, can manipulate loan transaction as Bank of the Philippine Islands has its strong internal control policies in place specially in the granting, releasing and payment of loans;
- That the job of Mr. Ramon Uy, as loans clerk of BPI-Tabaco Branch was limited to documentation of loan transaction, such as typing and completing of entries in the loan documents for verification, authentication and approval of bank officers of said branch before these documents are submitted by the former clerk to the Naga-Sub-Business Center for booking and filing.[22]

It is an oft-repeated rule that in termination disputes, the burden of proof is always on the employer to prove that the dismissal was for a just and valid cause.[23] Taking into account the character of the charges and the penalty meted to an employee, the employer is bound to adduce clear, accurate, consistent and convincing evidence to prove the same.

Invariably, a company's management prerogatives are upheld so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[24]

To validly dismiss an employee on the ground of loss of trust and confidence, the confluence of the following requisites must be established: (a) the loss of confidence must not be simulated; (b) it should not be used as a subterfuge for causes which are illegal, improper or unjustified; (c) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; (d) it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith; and (e) the employee involved holds a position of trust and confidence.[25] While proof beyond reasonable doubt is not required, still, substantial evidence is vital and the burden rests on the employer to establish it.[26] Any other rule would place the employee eternally at the mercy of the employer. Moreover, the term trust and confidence is restricted to managerial employees only.[27]

We have reviewed the records and found that the findings and conclusions of the CA, which are amply supported by the evidence on record, negate the submissions of the petitioner:

Loss of confidence as a just cause of termination of employment is premised on the fact that the employee concerned holds a position of responsibility or trust and confidence. He must be invested with confidence on delicate matters, such as custody, handling or care and protection of the property and assets of the employer. Petitioner as Loan's Clerk was not invested with the custody, handling, or care and protection of the private respondent's monies. The allegation that he was responsible for the procurement and release of the back-to-back loan to Evangeline Sy, the acceptance of the said check and the issuance of the receipt to favor her despite knowing that the same amounts to gross violation of bank procedures and loss to the bank was negated by the fact that as a mere Loan's Clerk and considering that the accounts involved were considerably large, a careful evaluation, assessment and appraisals by the bank officers such as the bank's Branch Managers, Assistant Managers, and Cashier was necessary. The decision to grant loans, which credit line to use, to whom loans should be granted and how much should be granted especially millions of pesos is a management decision and prerogative, which the bank officers are equally responsible. In support of his defense, petitioner has presented pieces of evidence, which to the mind of this court the Honorable National Labor Relations Commission (NLRC) might have overlooked. In particular is the signature of bank officer Ronaldo J. Fernando who approved the loan of Evangeline Ong-Sy. It was also this bank officer who accepted the checks as payment when he confirmed the same as funded from the Manager of RCBC, Allan Marbella. These pieces of evidence were indeed enough to overturn the argument of private respondent that as Loan's Clerk petitioner was responsible only for the loss incurred by it. As enunciated in the recent case of Vitarich Corporation, et al. vs. National Labor Relations Commission, et al., the guidelines for the application of the doctrine of loss of confidence, are: a. loss of confidence should not be simulated; b. it should not be used as a subterfuge for

causes which are improper, illegal or unjustified; c. it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and d. it must be genuine, not a mere afterthought to justify earlier action taken in bad faith. (Underscoring supplied)

On the other hand, private respondent's arguments were based only on the self-serving affidavits of Bank Manager, Mr. Fernando and Respondent Ocampo only to save their faces from what appears to be a glaring administrative lapses attributable to them. As held by the Supreme Court, unsubstantiated suspicions, accusations and conclusions of employers do not provide legal justifications for dismissing employees.[28]

IN LIGHT OF ALL THE FOREGOING, judgment is hereby rendered DISMISSING the petition for lack of merit. Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Eugenio S. Labitoria, with Associate Justices Teodoro P. Regino, and Juan Q. Enriquez, Jr., concurring; Rollo, pp. 7-16.

[2] Records, p. 35.

[3] Id. at 48.

[4] Records, p. 51.

[5] Id. at 227-228.

[6] Id.

[7] Id.

[8] Records, p. 230.

[9] Id. at 53.

[10] Records, pp. 54-56.

[11] Id. at 36.

[12] Id. at 84.

[13] Records, pp. 84-88.

[14] Id. at 89.

[15] Id. at 90-91.

[16] Id. at 1.

[17] Records, pp. 77-78.

[18] Id. at 109.

[19] Rollo, p. 45.

[20] Records, p. 72. (Emphasis supplied)

[21] Records, pp. 86-88.

[22] Records, p. 231.

[23] VH Manufacturing, Inc. v. National Labor Relations Commission, G.R. No. 130957, 19 January 2000, 322 SCRA 417.

[24] Aparente, Sr. v. National Labor Relations Commission, G.R. No. 117652, 27 April 2000, 331 SCRA 82.

[25] Ramos v. Court of Appeals, G.R. No. 145405, 29 June 2004, 433 SCRA 177.

[26] Midas Touch Food Corp. v. NLRC, G.R. No. 111639, 29 July 1996, 259 SCRA 652.

[27] Farrol v. Court of Appeals, G.R. No. 133259, 10 February 2000, 325 SCRA 331.

[28] Rollo, pp. 49-50.

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