

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. NORMAN Y. PIKE,
RESPONDENT.***G.R. No. 157845. September 20, 2005*

Ponente: CHICO-NAZARIO, J.

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This petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeks to reverse the Decision[1] dated 19 December 2002, and the Resolution[2] dated 02 April 2003, both of the Court of Appeals, in CA-G.R. CV No. 59389, which affirmed with modification the Decision[3] rendered by the Regional Trial Court (RTC), Branch 07 of Manila, dated 10 January 1997, in Civil Case No. 94-68821 in favor of herein respondent Norman Pike (Pike).

The case stemmed from a complaint[4] filed by herein respondent Pike for damages[5] against Philippine National Bank (PNB) on 04 January 1994.

Complainant Pike often traveled to and from Japan as a gay entertainer in said country. Sometime in 1991, he opened U.S. Dollar Savings Account No. 0265-704591-0 with herein petitioner PNB Buendia branch for which he was issued a corresponding passbook. The complaint alleged in substance that before complainant Pike left for Japan on 18 March 1993, he kept the aforementioned passbook inside a cabinet under lock and key, in his home; that on 19 April 1993, a few hours after he arrived from Japan, he discovered that some of his valuables were missing including the passbook; that he immediately reported the incident to the police which led to the arrest and prosecution of a certain Mr. Joy Manuel Davasol; that complainant Pike also discovered that Davasol made two (2) unauthorized withdrawals from his U.S. Dollar Savings Account No. 0265-704591-0, both times at the PNB Buendia branch on the following dates:

DATE

AMOUNT

31 March 1993

\$3,500.00

05 April 1993

4,000.00

=====

TOTAL

\$7,500.00

that on several occasions, complainant Pike went to defendant PNB's Buendia branch and verbally protested the unauthorized withdrawals and likewise demanded the return of the total withdrawn amount of U.S. \$7,500.00, on

the ground that he never authorized anybody to withdraw from his account as the signatures appearing on the subject withdrawal slips were clearly forgeries; that defendant PNB refused to credit said amount back to complainant's U.S. Dollar Savings Account without justifiable reason, and instead, defendant bank wrote him that it exercised due diligence in the handling of said account; and that on 06 May 1993, complainant Pike wrote defendant PNB simply to request that the hold-account be lifted so that he may withdraw the remaining balance left in his U.S.\$ Savings Account and nothing else.

On the other hand, defendant PNB alleged, in its Motion to Dismiss[6] of 18 April 1994, a counterstatement of facts. Its factual allegations read:

. . . On March 15, 1993 at PNB Buendia Branch, Mr. Norman Y. Pike, together with a certain Joy Davasol went to see PNB AVP Mr. Lorenzo T. Val (sic), Jr. purposely to withdraw the amount of \$2,000.00. Mr. Pike also informed AVP Val that he is leaving for abroad (Japan) and made verbal instruction to honor all withdrawals to be transmitted by his Talent Manager and Choreographer, Joy Davasol who shall present pre-signed withdrawal slips bearing his (Pike's) signature. . .

On April 19, 1993, a certain Josephine Balmaceda, who claimed to be plaintiff's sister executed an affidavit . . . stating therein that they discovered today (April 19, 1993) the lost (sic) of her brother's passbook issued by PNB on account of robbery, committed in the residence/office of her brother, promptly reporting the matter to the police authorities and her brother cannot report the matter to the Bank because he was currently in Japan and therefore requesting the Bank to issue a hold-order on her brother's passbook.

But a copy of an alarm (Police) Report dated April 19, 1993. . . stated that plaintiff (who was the one who reported the matter) after one month in Japan, he (complainant) arrived yesterday. . .

On April 26, 1993, Atty. Nathaniel Ifurung who claims to be plaintiff's counsel sent a demand letter to VP Violeta T. Suquila (then VP and Manager of PNB Buendia Branch) demanding the bank to credit back the amount of US\$7,500.00 which were withdrawn on March 31, 1993 and April 5, 1993, because his client's signatures were forged and the withdrawal made thereon were unauthorized. . .

On May 5, 1993, Mr. Norman Y. Pike executed an affidavit of loss (sic) Dollar Account Passbook ... and requested the PNB to replace the same and allow him to make withdrawals thereon. He stated that his passbook was stolen together with other valuables which he discovered only in the early morning of April 19, 1993. . .

On May 6, 1993, plaintiff Norman Y. Pike wrote a letter. . . addressed to the Manager of PNB, Buendia Branch the full contents of said letter hereto quoted as follows:

May 6, 1993

The Manager
Philippine National Bank
Buendia Branch
Paseo de Roxas cor. Gil Puyat Street
Makati, Metro Manila

Sir:

In connection with the request of my sister, Mrs. Josephine P. Balmaceda for the hold-order on my dollar savings passbook No. 265-704591-0, I am now requesting your good office to lift the same so I can withdraw the remaining balance of my passbook which was reported lost sometime in March of this year.

I also promise not to hold responsible the bank and its officers for the withdrawal made on my dollar savings passbook on March 19 and April 5, 1993 respectively as a result of the lost (sic) of my passbook.

Sgd. NORMAN Y. PIKE
Depositor
Philippine Passport
No. H918022
Issued at Manila on
Sept. 6, 1990
Place of Issuance

On the same day May 6, 1993 Plaintiff Norman Y. Pike was allowed by defendant bank to withdraw the remaining balance from his passbook

A letter dated May 18, 1993 was sent to Plaintiff's counsel ... by PNB ... stating that the Bank regrets that it cannot accede to such request inasmuch as the Bank exercised due diligence of a good father to his family in the handling of transactions covering the deposit account of Mr. Pike

On July 2, 1993, Plaintiff's counsel sent a letter to PNB Vice Pres. Suquila denying that his client made any such promise not to hold responsible the bank and its officers for the withdrawal made

A letter dated July 29, 1993 ... was sent to Plaintiff's counsel by VP Suquila stating that plaintiff's withdrawal of the remaining balance of his account with the Bank effectively estops him from claiming on the alleged unauthorized withdrawals.

The trial court, in its decision dated 10 January 1997, made the following findings of fact:

. . . [T]hat the bank is responsible for such unauthorized withdrawals. The court is not impressed with the defense put up by the bank. Its contention that the withdrawals were authorized by the plaintiff because there was an arrangement between the bank represented by its Asst. Vice President Lorenzo Bal, Jr. and the depositor Norman Y. Pike to the effect that pre-signed withdrawal slips, that is, withdrawal slip signed by the depositor in the presence of Mr. Bal whereby it would be made to appear that it was the depositor himself who presented the same to the bank despite the fact that it was another person who presented the same should be honored by the bank cannot be sanctioned by the court. Firstly, the court is not satisfied that there was indeed such an arrangement. . . It is Mr. Bal's contention that such an arrangement although not ordinarily entered into is still a legal procedure of the bank and is resorted to accommodate the depositors' specially honored and valued depositor at that.

. . .

The court compared the signatures in the questioned withdrawal slips with the known signatures of the depositor and is convinced that the signatures in the unauthorized withdrawal slips do not correspond to the true signatures of the depositor.

From the evidence that it received, the court is convinced that the bank was negligent in the performance of its duties such that unauthorized withdrawals were made in the deposit of plaintiff Norman Y. Pike.[7]

The dispositive portion of the trial court's decision reads:

WHEREFORE and considering the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant and ordering the defendant to pay the following:

- US\$7,500.00 plus interest thereon at the rate of 12% per annum until the full amount is paid;
- P25,000.00 for and as attorney's fees;
- P50,000.00 as moral damages and P50,000.00 as exemplary damages; and

- Plus the costs of suit.[8]

Defendant PNB's motion for reconsideration was subsequently denied by the court a quo.[9]

On appeal, the Court of Appeals issued the assailed decision dated 19 December 2002, affirming the findings of the RTC that indeed defendant-appellant PNB was negligent in exercising the diligence required of a business imbued with public interest such as that of the banking industry, however, it modified the rate of interest and award for damages, to wit:

WHEREFORE, premises considered, the Decision dated January 10, 1997 issued by the Regional Trial Court of Manila, Branch 7, in Civil Case No. 94-68821, is hereby AFFIRMED with MODIFICATION, as follows:

- Ordering appellant, the Philippine National Bank, Buendia Branch, to refund appellee the amount of \$7,500.00 plus interest of 6% per annum to be computed from the date of the filing of the complaint which interest rate shall become 12% per annum from the time the judgment in this case becomes final and executory until its satisfaction;
- The award for moral damages is reduced to P20,000.00; and
- The award for exemplary damages is likewise reduced to P20,000.00.

Costs against appellant.[10]

The appellate court held that:

Appellant claims that appellee personally talked to its officers to allow Joy Manuel Davasol to make withdrawals. Appellee even left pre-signed withdrawal slips before he went to Japan. However, appellant could have told appellee to authorize the withdrawal by a representative by indicating the same at the space provided at the back portion of the withdrawal slip. This operational flaw was observed by the trial court, when it ruled: The court cannot also understand why the bank did not require the correct, proper and the usual procedure of requiring a depositor who is withdrawing the money through a representative to fill up the back portion of the withdrawal slips, which form was issued by the bank itself.

A perusal of the records discloses that appellee had previously authorized withdrawals by a representative. However, these withdrawals were properly accompanied by a "withdrawal by a representative" form aside from a handwritten request by appellee to allow such withdrawals by his representative, or a typewritten letter-request for withdrawal by a representative. Certainly, appellant lacked the due care and caution required of managers and employees of a firm engaged in so sensitive and demanding business as banking. ...

In its desire to be exonerated from liability, appellant advances the argument that, granting negligence on its part, appellee condoned this negligence as shown in his letter dated May 6, 1993, wherein appellee purportedly undertook, not to hold the bank and its officers responsible for the unauthorized withdrawals from his account.

We do not agree. It should be emphasized that while the appellee admitted signing the letter dated May 6, 1993, he, however, denied having undertaken (sic) to exonerate the appellant from liability for the unauthorized withdrawals. Appellee questioned the second paragraph of the said letter as being superimposed so that his signature overlapped the text of the second paragraph of said letter. A waiver of right, in order to be valid, should be in a language that clearly manifests his desire to do so. ... In the instant case, appellee's filing of the instant action is inconsistent with appellant's contention that he had waived his right to question appellant's negligent act of allowing the unauthorized withdrawals from his account.[11]

Defendant-appellant PNB filed a motion for reconsideration. In a Resolution dated 02 April 2003, the Court of Appeals denied said motion.

Hence, this petition.

Petitioner PNB now seeks the review of the aforequoted decision and resolution of the Court of Appeals predicated on the following issues:

I.

WHETHER OR NOT THE PRINCIPLE OF ESTOPPEL WAS NOT PROPERLY APPLIED IN THIS CASE;

II.

WHETHER OR NOT RESPONDENT HAVE SUBSTANTIALLY PROVEN THAT THE SIGNATURES APPEARING ON THE TWO (2) QUESTIONED PRE-SIGNED WITHDRAWAL SLIP FORMS ARE ALL FORGERIES IN ACCORDANCE WITH SECTION 22, RULE 132 OF THE REVISED RULES OF COURT; and

III.

WHETHER OR NOT MORAL AND EXEMPLARY DAMAGES CAN BE AWARDED AGAINST A PARTY IN GOOD FAITH.

Petitioner PNB contends that due to the verbal instructions[12] of respondent Pike, a valued depositor, it allowed the withdrawal by another person. Plus, the fact that said respondent withdrew the remaining balance in his US Savings Account and executed a waiver releasing petitioner PNB from any liability due to the loss of the funds should rightly negate a finding of negligence on its part. Accordingly, petitioner PNB claims that the appellate court, as well as the trial court erred in holding that the withdrawals in question were unauthorized as the signatures appearing on the subject withdrawal slips were forgeries. Petitioner PNB, therefore, argues that it should not be held liable for the amount withdrawn from the account of respondent Pike in the sum of \$7,500.00, as well as for moral and exemplary damages.

A priori, it is quite evident that the petition is anchored on a plea to review or re-examine the factual conclusions reached by the trial court and affirmed by the Court of Appeals, and for this Court to hold otherwise. Whether:

1) respondent Pike's signatures appearing on the pertinent withdrawal slips used by Joy Manuel Davasol[13] to withdraw the amount of \$7,500.00, were forgeries, as found by the trial court and affirmed by the Court of Appeals, or were authentic as claimed by petitioner bank; and

2) respondent Pike in fact executed a waiver absolving petitioner bank from any legal responsibility due to the unauthorized withdrawals, as maintained by petitioner bank, or the paragraph containing said waiver was intercalated by some other person, thus, amounting no waiver at all, as held by the courts a quo.

are questions of fact and not of law. Inexorably, these issues call for an inquiry into the facts and evidence on record. This, as we have so often held, we cannot do.

Elementary is the rule that this Court is not the appropriate venue to consider anew the factual issues as it is not a trier of facts, and, it generally does not weigh anew the evidence already passed upon by the Court of Appeals.[14] When this Court is tasked to go over once more the evidence presented by both parties, and analyze, assess and weigh them to ascertain if the trial court and the appellate court were correct in according superior credit to this or that piece of evidence of one party or the other, the Court cannot and will not do the same.[15] Such task is foreclosed by the rule enunciated under Section 1 of Rule 45[16] of the Rules of Court:

SECTION 1. Filing of petition with Supreme Court. - . . . The petition shall raise only questions of law[17] which must be distinctly set forth.

We have oft "ruled that factual findings of the Court of Appeals are conclusive on the parties and not reviewable by this Court - and they carry even more weight when the Court of Appeals affirms the factual findings of the trial court,"[18] and in the absence of any showing that the findings complained of are totally devoid of support in the evidence on record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand. The courts a quo are in a much better position to evaluate properly the evidence.

Finding no other alternative but to affirm their finding that petitioner PNB negligently allowed the unauthorized withdrawals subject of the case at bar, the instant petition for review must necessarily fail.

At this juncture, it bears emphasizing that negligence of banking institutions should never be countenanced. The negligence here lies in the lackadaisical attitude exhibited by employees of petitioner PNB in their treatment of respondent Pike's US Dollar Savings Account that resulted in the unauthorized withdrawal of \$7,500.00. Nevertheless, though its employees may be the ones negligent, a bank's liability as an obligor is not merely vicarious but primary, as banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees,[19] and having such obligation, this Court cannot ignore the circumstances surrounding the case at bar - how the employees of petitioner PNB turned their heads, nay, closed their eyes to the suspicious circumstances enfolding the two withdrawals subject of the case at bar. It may even be said that they went out of their ways to disregard standard operating procedures formulated to ensure the security of each and every account that they are handling. Petitioner PNB does not deny that the withdrawal slips used were in breach of standard operating procedures of banks in the ordinary and usual course of banking operations as testified to by one of its witnesses, Mr. Lorenzo T. Bal, Assistant Vice President of Petitioner PNB's Buendia branch, on cross-examination[20] he stated thus:

Q:

Mr. Witness, when the original of Exhibit "B"[21] was presented to you for approval, how many signatures of depositor appears thereon?

A:

Two (2) signatures appears (sic) on the face of the withdrawal slip.

Q:

When it (sic) was (sic) presented to you immediately?

A:

Yes, sir.

Q:

Are you sure of that?

A:

Yes, sir. Because it was pre signed withdrawal slip.

Q:

What does the signature appear, the word recipient means?

A:

Received.

Q:

So, what you are saying is that, the depositor here signed this even before receiving the amount?

A:

Because before the withdrawal was made, Mr. Pike, the depositor came to the bank when he withdrew the \$2,000.00 and instructed me or requested us even the supervisor to honor all withdrawal slip.

Q:

And this is a regular procedure?

A:

Yes, sir.

Q:

Are you sure of that?

A:

Yes, sir.

Q:

Do you have written manual on this particular procedure, Mr. Witness?

A:

Of course, that includes in the Rules and regulations of the bank.

Q:

Are you are (sic) are very sure of that?

A:

And banking is a fast transaction between the depositor and the bank.

Q:

And then, is the use of the back portion of the withdrawal slip ... with a heading of authorization?

A:

Normally, a depositor and the bank agrees on certain terms that if you allow withdrawal from his account, his or her account, its enough that the signature of the depositor appears on both spaces in the front side of the withdrawal slip. Even if you do not have the back portion of the withdrawal slip.

Q:

You are very sure of that?

A:

Yes, sir.

Q:

And that has been done with the other withdrawal slip of Norman Pike as stated or as shown in the Statement of Account?

A:

Yes, sir.

Q:

That withdrawal made by representative?

A:

Yes, sir.

From the foregoing, petitioner PNB's witness was utterly remiss in protecting the bank's client, as well as the bank itself, when he allowed an account holder to make it appear as if he was the one actually withdrawing from an account and actually receiving the withdrawn amount. Ordinarily, banks allow withdrawal by someone who is not the account holder so long as the account holder authorizes his representative to withdraw and receive from his account by signing on the space provided particularly for such transactions, usually found at the back of withdrawal slips. As fittingly found by the courts a quo, if indeed, respondent Pike signed the withdrawal slips in the presence of Mr. Lorenzo Bal, petitioner PNB's AVP at its Buendia branch, why did he not call respondent Pike's attention and refer him to the space provided for authorizing representatives to withdraw from and receive the proceeds of such withdrawal? Or, at the very least, sign or initial the same so that he could identify the pre-signed withdrawal slips made by Mr. Pike?

Q:

You are also saying that on March 15, 1993, you likewise met Joy Manuel Dabasol?

A:

Yes, sir.

Q:

And you (sic) also saying on March 15, 1993, you also met Norman Pike, the depositor,

A:

Yes, sir.

Q:

And when did you first met (sic) Norman Pike?

A:

March 15 when he withdrew \$2,000.00.

Q:

That was the first time?

A:

First time, yes.

Q:

And Mr. Norman Pike was already transacting with you long before that day, is this correct? For how long was he transacting with you?

A:

That was my first time.

Q:

That was the first time. What I mean is, that he was transacting with the PNB, Buendia Branch long before you met him?

A:

Maybe.

...

Q:

And the withdrawal made on April 5, 1993 which you approved, you did not look at Exhibit "C", the Savings Signature Card Individual?

A:

We do not look at that, that is kept in the vault.

Q:

Yes or no?

A:

No, sir.

...

Q:

And Mr. witness, Exhibit "C-1"[22] which is being kept at your vault, also contains a picture?

A:

Yes, sir.

Q:

And the picture of the depositor?

A:

Yes, sir.

Q:

And are you familiar with the identity of the depositor Norman Pike?

A:

What particular identity?

Q:

His appearance?

A:

He is gay looking fellow.

COURT:

Answer. You are familiar with his physical appearance?

A:

Not so much. Because there are so much depositor (sic) in the bank.[23][Emphasis ours.]

By his own testimony, the witness negated the very reason for the bank's bizarre "accommodation" of the alleged verbal request of respondent Pike - that he was a "valued client." From the aforequoted, it appears that the witness, Lorenzo Bal, was not even reasonably familiar with respondent Pike, yet, he was ready, willing and able

to accommodate the verbal request of said depositor. Worse still, the witness still approved the withdrawal transaction without asking for any proof of identification for the reason that: 1) Davasol was in possession of a pre-signed withdrawal slip; and 2) the witness "recognized" the signature of respondent Pike - even after admitting that he did not bother to counter check the signature on the slip with the specimen signature card of respondent Pike and that he met respondent Pike just once so that he cannot seem to recall what the latter looks like. The ensuing quoted testimony of the same witness will justify a finding of negligence amounting to bad faith, to wit:

Q:

And you also met Joy Manuel Dabasol on March 15?

A:

Yes, sir.

Q:

And can you describe Joy Manuel Dabasol?

A:

I cannot recall his face but then he is a Talent manager, because there are so many depositors in the bank.

...

Q:

Mr. witness, you are saying that Mr. Pike, the depositor gave you verbal authority to honor withdrawal by Joy Manuel Dabasol?

A:

Yes, sir.

Q:

Why did you not require then that Mr. Pike instead sign the authorization portion and that the name of Joy Manuel Dabasol appear thereon with his signature?

...

A:

I required Mr. Norman Pike to sign the withdrawal slip on the face of the withdrawal slip.

Q:

But not the authorization portion of the said withdrawal slip?

...

A:

No, because that is sufficient already.

Q:

And is this your normal procedure, Mr. witness? This particular procedure that you conducted?

A:

I don't think so.

Q:

Mr. witness, when - on April 5, 1993, when Joy Dabasol came to the office and according to you, you do not remember him, is that correct?

A:

I cannot recall his face.

...

Q:

And he just showed you a withdrawal slip, is this correct?

A:

Yes, on April 5.

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Q:

Did you require him to produce any Identification Card, yes or no?

A:

No.

Q:

And how did you know then that it was Joy Dabasol who was making the withdrawal on April 5?

A:

Because the presigned withdrawal slip was presented to me.

Q:

Is that all your basis?

A:

Yes, sir. Because his signature appears.

...

Q:

Mr. witness, this alleged authority given to you by Norman Pike to honor withdrawal by Joy Manuel Dabasol, was that in writing?

A:

It was verbally requested.

Q:

And that is SPO (sic) of PNB, Buendia Branch to accept verbal authorities?

A:

Yes.

Q:

Is that Standard Operating Procedure?

A:

It is not SPO, but when you knew the client, Your Honor, you have to honor also the trust and confidence. Let us say if you...

Q:

According to you, you met Norman Pike only on March 15, 1993 and immediately you allowed him to withdraw through pre-signed withdrawal slip?

A:

Yes, Your Honor. Because a depositor requested you to honor his signature, you have to do that or else will...and besides the request is for purpose of expediency, Your Honor. Because most often than that, he is out of the country, in Japan. And his Talent Manager is the one managing the recruiting agency. The money will be used in the operating expenses.

...

Q:

You did not even bother to look at the Savings Signature Card Individual, yes or no?

A:

No, sir.[24] [Emphases supplied.]

Having admitted that pre-signed withdrawal slips do not constitute the normal procedure with respect to withdrawals by representatives should have already put petitioner PNB's employees on guard. Rather than readily validating and permitting said withdrawals, they should have proceeded more cautiously. Clearly, petitioner

bank's employee, Lorenzo T. Bal, an Assistant Vice President at that, was exceedingly careless in his treatment of respondent Pike's savings account.

From the foregoing, the evidence clearly showed that the petitioner bank did not exercise the degree of diligence that it ought to have exercised in dealing with their clients.

With banks, the degree of diligence required, contrary to the position of petitioner PNB, is more than that of a good father of a family considering that the business of banking is imbued with public interest due to the nature of their functions. The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks. Thus, the law imposes on banks a high degree of obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of banking. Section 2 of Republic Act No. 8791,[25] which took effect on 13 June 2000, makes a categorical declaration that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance." [26]

Though passed long after the unauthorized withdrawals in this case, the aforequoted provision is a statutory affirmation of Supreme Court decisions already in esse at the time of such withdrawals. We elucidated in the 1990 case of *Simex International, Inc. v. Court of Appeals*, [27] that "the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship." [28]

Likewise, in the case of *The Consolidated Bank and Trust Corporation v. Court of Appeals*, [29] we clarified that said fiduciary relationship means that the bank's obligation to observe "highest standards of integrity and performance" is deemed written into every deposit agreement between a bank and its depositor. The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family. Article 1172 of the New Civil Code states that the degree of diligence required of an obligor [30] is that prescribed by law or contract, and absent such stipulation then the diligence of a family. In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such accounts consist only of a few hundred pesos or of millions of pesos. [31]

Anent the issue of the propriety of the award of damages in this case, petitioner PNB asseverates that there was no evidence to prove that respondent Pike "suffered anguish, embarrassment and mental sufferings" [32] due to its acts in allowing the alleged unauthorized withdrawals. And, having relied on the instructions of a valued depositor, petitioner PNB likewise avers that its actions were made in good faith, for this reason, there is no factual basis for said award.

Petitioner PNB's assertions fail to impress us.

The award of moral and exemplary damages is left to the sound discretion of the court, and if such discretion is well exercised, as in this case, it will not be disturbed on appeal. [33] In the case of *Philippine Telegraph & Telephone Corporation v. Court of Appeals*, [34] we had the occasion to reiterate the conditions to be met in order that moral damages may be recovered. In said case we stated:

An award of moral damages would require, firstly, evidence of besmirched reputation, or physical, mental or psychological suffering sustained by the claimant; secondly, a culpable act or omission factually established; thirdly, proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and fourthly, that the case is predicated on any of the instances expressed or envisioned by Articles 2219 [35] and 2220 [36] of the Civil Code.

Specifically, in culpa contractual or breach of contract, as here, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, [37] or is found guilty of gross negligence amounting to bad faith, [38] or in wanton disregard of his contractual obligations. [39] Verily, the breach must be wanton, reckless,

malicious, or in bad faith, oppressive or abusive.[40]

There is no reason to disturb the trial court's finding of petitioner bank's employees' negligence in their treatment of respondent Pike's account. In the case on hand, the Court of Appeals sustained, and rightly so, that an award of moral damages is warranted. For, as found by said appellate court, citing the case of Prudential Bank v. Court of Appeals,[41] "the bank's negligence is a result of lack of due care and caution required of managers and employees of a firm engaged in so sensitive and demanding business, as banking, hence, the award of P20,000.00 as moral damages, is proper.

The award of exemplary damages is also proper as a warning to petitioner PNB and all concerned not to recklessly disregard their obligation to exercise the highest and strictest diligence in serving their depositors.

Finally, the aforesaid grant of exemplary damages entitles respondent Pike the award of attorney's fees in the amount of P20,000.00 and the award of P10,000.00 for litigation expenses.[42]

WHEREFORE, the instant petition is DENIED. The assailed Decision dated 19 December 2002, and the Resolution dated 02 April 2003, both of the Court of Appeals, in CA-G.R. CV No. 59389, which affirmed with modification the Decision rendered by the Regional Trial Court (RTC), Branch 07 of Manila, dated 10 January 1997, in Civil Case No. 94-68821, are hereby AFFIRMED with the modification that petitioner PNB is directed to pay respondent Pike additional 1) P20,000.00 representing attorney's fees; and 2) P10,000.00 representing expenses of litigation. Costs against petitioner PNB.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Bernardo P. Abesamis and Edgardo F. Sundiam, concurring; Rollo, p. 8.

[2] Rollo, p. 16.

[3] Penned by Honorable Enrico A. Lanzas, presiding judge of RTC-Branch 07, Manila; Rollo, p. 43.

[4] Records, pp. 1-5.

[5] In his complaint filed before the RTC, herein respondent Pike prayed that judgment be rendered ordering defendant PNB (herein petitioner) to pay the following:

- US\$7,500.00 plus 3% interest per month until fully paid representing actual damages;
- P25,000.00 for and as attorney's fees plus P1,000.00 honorarium per court appearance;
- P50,000.00 as moral damages;
- P50,000.00 as exemplary damages; and
- P20,000.00 as cost of suit and litigation expenses.

RTC Records, p. 4.

[6] Records, pp. 22-47.

[7] Rollo, pp. 52-54.

[8] Rollo, pp. 54-55.

[9] [denial of mr by rtc].

[10] Rollo, p. 15.

[11] Rollo, pp. 12-13.

[12] According to petitioner PNB's AVP Lorenzo T. Bal, respondent Pike gave verbal instructions to allow the latter's representative, namely "Joy Manuel Davasol," to be able to withdraw from said US \$ Savings Account by presenting a pre-signed withdrawal slip.

[13] The person who, undisputedly, withdrew the amount of \$7,500.00 from the US Dollar Savings Account of respondent Pike.

[14] Prudential Bank and Trust Company v. Reyes, G.R. No. 141093, 20 February 2001, 352 SCRA 316; and Langkaan Realty Development, Inc. v. United Coconut Planters Bank, G.R. No. 139437, 08 December 2000, 347 SCRA 542.

[15] Elayda v. Court of Appeals, G.R. No. 49327, 18 July 1991, 199 SCRA 349.

[16] Appeal by Certiorari to the Supreme Court

[17] Question of law has been defined as one that does not call for any examination of the probative value of the evidence presented by the parties.

[18] Borromeo v. Sun, G.R. No. 75908, 22 October 1999, 317 SCRA 176.

[19] BPI v. Court of Appeals, G.R. No. 102383, 26 November 1992, 216 SCRA 51.

[20] TSN, 01 December 1994, pp. 18-20.

[21] Withdrawal slip for \$4,000.00.

[22] Savings Signature Card of Norman Pike.

[23] TSN, 01 December 1994, pp. 22-25.

[24] Id., pp. 26-52.

[25] The General Banking Law of 2000.

[26] The Consolidated Bank and Trust Corporation v. Court of Appeals, G.R. No.138569, 11 September 2003, 410 SCRA 562.

[27] G.R. No. 88013, 19 March 1990, 183 SCRA 360.

[28] Bank of the Philippine Islands v. Intermediate Appellate Court, G.R. No. 69162, 21 February 1992, 206, SCRA 408; Tan v. Court of Appeals, G.R. No. 108555, 20 December 1994, 239 SCRA 310; Metropolitan Bank & Trust Co v. Court of Appeals, G.R. No. 112576, 26 October 1994, 237 SCRA 761; Firestone v. Court of Appeals, G.R. No. 113236, 05 March 2001, 353 SCRA 601.

[29] Supra, note 19.

[30] The provisions of the New Civil Code on simple loan govern the contract between a bank and its depositor. Specifically, Article 1880 categorically provides that ". . . savings . . . deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan." Thus, the relationship between a bank

and its depositor is that of a debtor-creditor, the depositor being the creditor as it lends the bank money; and the bank is the debtor, which agrees to pay the depositor on demand.

[31] *Supra*, note 11.

[32] Petitioner PNB's Memorandum, p. 43; Rollo, p. 277.

[33] *Barzaga v. Court of Appeals*, G.R. No. 115159, 12 February 1997, 268 SCRA 105, 1997.

[34] G.R. No. 139268, 03 September 2002.

[35] Art. 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts of actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[36] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[37] Article 2220 New Civil Code.

[38] *Supra*.

[39] *Supra*, note 27.

[40] *Herbosa v. Court of Appeals*, G.R. No. 119086, 25 January 2002, 374 SCRA 578.

[41] G.R. No. 125536, 16 March 2000, 328 SCRA 264.

[42] Art. 2208 (1) of the New Civil Code provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;

... .

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