

LAPRECIOSISIMA CAGUNGUN, REMEDIOS L. CAGUNGUN, JESUS L. CAGUNGUN, VICENTE L. CAGUNGUN, JR., RICARDO L. CAGUNGUN, EDUARDO L. CAGUNGUN, ROWENA L. CAGUNGUN, ALVIN L. CAGUNGUN AND A...*G.R. NO. 158674. October 17, 2005*

Ponente: CHICO-NAZARIO, J.

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Assailed in a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure are the decision[1] of the Court of Appeals dated 25 March 2002 that modified the decision of the Regional Trial Court (RTC) of Olongapo City, Branch 74, in Civil Case No. 245-0-83, dated 26 June 1997, deleting the awards of moral and exemplary damages and finding that the mortgaged loan was deemed paid and enjoining foreclosure, as well as reducing the awards for litigation fees and expenses, and its Resolution[2] dated 06 June 2003 denying petitioners Lapreciosisima Cagungun, et al.'s motion for reconsideration.

The antecedents are summarized by the Court of Appeals in its decision as follows:

On September 1, 1987, the spouses Vicente Cagungun and Lapreciosisima Cagungun (or the Cagungun spouses) filed suit with the Regional Trial Court of Olongapo City against the Country Development Bank (or COUNTRY), and which was docketed as Civil Case No. 245-083 and assigned to Branch 74. Vicente Cagungun has since died and was substituted as plaintiff on August 8, 1984 by their children. On the other hand COUNTRY has entered into a merger and reflective of this the party defendant has been changed to Planters Development Bank (or PLANTERS) on September 1, 1987.

COUNTRY had opened an extension office in Olongapo City, and among their first customers were the Cagungun spouses who had diverse business interests in the locality. They opened some accounts, and for two (2) of which they were issued Savings Passbook No. 12241-16 in the name of Puring's Dry Goods and Savings Passbook No. 38470-29 in the names of V/L Cagungun.

It was claimed by the Cagungun spouses and testified to by them and their daughter-in-law Sarah Cagungun, that because of the exigencies of their businesses that required daily deposits of the proceeds and of the trust that they have reposed with COUNTRY and its personnel, they entrusted and left with them their said savings pass books. At least once a day the Branch manager Ruperto Reyes or a certain Bong and Ding would come to get their funds and with the agreement that these would be rounded off and deposited to their account while the odd remainder would be applied to their loan. The arrangement apparently went well, until March 1981 when the Cagungun spouses received a letter from COUNTRY telling them that their loan is past due and payment was demanded . . . or else. This prompted them to investigate, but this was tedious and difficult because of lack of cooperation and even resistance from COUNTRY. But with the help of friends in high places the Cagungun spouses were able to access and pry information that in the year 1979 on the dates of October 8, 18, 20 and 31 and November 15, and December 4 and 8, with the use of withdrawal slips a total of P220,000.00 was withdrawn from their Savings Passbook No. 12241-16. These withdrawals were invalid for no such withdrawal was authorized, made or received by the depositors, and the signatures of Vicente Cagungun on the slips were

forgeries. This was confirmed by Arcadio Ramos, Chief of the Questioned Documents Division of the NBI when these were subjected to examination.

The side of PLANTERS was explicated by its employees, Internal Auditor Lilia Tactay, Branch Manager Lolita Mendoza and Cashier Bella Lumanog. It was explained that the withdrawal of P20,000.00 made on October 8, 1979 from Savings Account No. 12241-16 and the withdrawals of a total of P30,000.00 from several of the other accounts of the spouses, were placed on time deposits on the same date by Vicente Cagungun in five (5) accounts held with their children. The other said withdrawals from Savings Account No. 12241-16 were made by Vicente Cagungun in exchange for Manager's Checks made in the names of payees Santiago Lee, Rosita Saldana, Benito Yap and Joaquin Aganda.[3]

The lower court ruled, among other things, that the withdrawals from Savings Account No. 12241-16 through seven (7) withdrawal slips[4] amounting to P220,000.00 were not made by petitioners as the alleged signatures of Vicente Cagungun, Jr. appearing therein were falsified as confirmed by the National Bureau of Investigation Handwriting Expert Arcadio Ramos. It likewise considered petitioners to have paid their mortgage loan in the amount of P58,297.16 in view of their instruction to respondent to apply their funds in Savings Account No. 38470-29 thereto which were adequate for this purpose.

For not applying the savings of petitioners in Savings Account No. 38470-29 as payment to their loan, thereby causing the threatened foreclosure of the real estate mortgage over their house and lot, and for allowing the unauthorized withdrawals from Savings Account No. 12241-16 through falsified withdrawal slips, the lower court held respondent liable to pay moral damages. For ignoring the two (2) demand letters of petitioners, the demand letter of petitioners' counsel and the representations made by Pampanga Gov. Estelito Mendoza and Central Bank Governor Jaime Laya, and for the attempt to cover up the misdeeds of its employees constituting malice and bad faith, respondent was also ordered to pay exemplary damages as an example to others. On account of these acts, respondent was also ordered to pay attorney's fees and the cost of suit.

In its decision[5] dated 26 June 1997, the lower court disposed of the case in this wise:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant as follows:

- 1.) Enjoining the defendant from foreclosing the mortgage of plaintiffs property located at No. 88 Gordon Avenue, Pag-asa, Olongapo City;
- 2.) Ordering the defendant to pay plaintiffs the amount of P220,000.00 actual damages representing the total amount withdrawn from their accounts plus twelve (12%) per cent interest per annum from the date of the filing of the complaint until it shall have been fully paid;
- 3.) Considering plaintiffs mortgaged account in the amount of P58,297.16 to have been paid;
- 4.) Ordering the defendant to pay plaintiffs the amount of P300,000.00 moral damages;
- 5.) Ordering the defendant to pay plaintiffs the amount of P300,000.00 exemplary damages; and
- 6.) Ordering defendant to pay plaintiffs the amount of P50,000.00 litigation expense, P50,000.00 attorney's fee plus the cost of suit.[6]

Aggrieved, respondent appealed to the Court of Appeals.

The Court of Appeals agreed that money was withdrawn from the deposits of petitioners without their authority or knowledge, and that this was done by one or some of the personnel of respondent. However, it held that petitioners are not free from the obligation to pay the admitted loan (P58,297.16) for though the same was not paid for failure of respondent to comply with the instruction to apply the remainder of the sums deposited to their

loan, it remained admittedly an unpaid obligation. It removed the awards for moral and exemplary damages and reduced the awards for attorney's fees and litigation expenses.

The Court of Appeals promulgated its decision on 25 March 2002, the dispositive portion of which reads:

WHEREFORE, the appealed decision is AFFIRMED, but with these MODIFICATONS (a) the dispositions in Par. 1 and Par. 3 of the fallo deeming the mortgaged loan paid and enjoining foreclosure, are DELETED; (b) the disposition in Par. 4 and Par. 5 of the fallo awarding moral and exemplary damages, are DELETED; and (c) the awards of litigation fees and expenses are REDUCED to a combined P30,000.00.[7]

The motion for reconsideration filed by petitioners was denied in a resolution dated 06 June 2003.[8]

Petitioners are now before us assailing the Decision and Resolution of the Court of Appeals when the latter:

(A) DELETED THE PORTION OF THE RTC DECISION DECLARING THE MORTGAGED LOAN PAID AND ENJOINING FORECLOSURE;

(B) DELETED THE AWARD OF MORAL AND EXEMPLARY DAMAGES; AND

(C) REDUCED THE LITIGATION FEES AND EXPENSES.[9]

Respondent filed a Comment[10] on 04 September 2003 to which petitioners filed their Reply[11] dated 06 February 2004.

On 06 December 2004, the Court gave due course to the petition and required the parties to submit their respective memoranda within thirty (30) days from notice.[12] Both parties complied.[13]

We first discuss the deletion made by the Court of Appeals of the awards of moral damages and exemplary damages.

Petitioners maintain that the Court of Appeals erred in removing the award of moral damages considering that it is settled jurisprudence that the same should be awarded when the injured party suffers mental anguish and serious anxiety. They contend that the Court of Appeals failed to appreciate the torment they suffered from the time they noticed their deposits were not properly recorded until the receipt of respondent's letter threatening the foreclosure of their residential house and lot for a loan of P58,000.00. They narrated that respondent bank refused to give them copies of the ledgers of their deposits as well as copies of the withdrawal slips. Despite the intercession of Pampanga Governor Estelito Mendoza and Central Bank Governor Jaime Laya, respondent did not give them copies of the ledgers and withdrawal slips. It was only after the Chief of the Criminal Investigation Service (CIS) of the Philippine Constabulary sent two of his investigators, whom they authorized to look into the records of their deposits, that they received copies thereof. They discovered therein that the sum of P220,000.00 was withdrawn from their accounts by respondent bank through its employees by falsifying the signatures of Vicente Cagungan, Jr. in seven withdrawal slips. Despite the forgeries, they refused to acknowledge its liability. Thus, on 07 September 1983, in order to protect their rights, petitioners were forced to file the instant case with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction to enjoin the foreclosure of their property. Petitioners insist that respondent, in allowing withdrawals in their savings account without their authority or knowledge, is guilty of gross negligence to which it is liable for moral damages.

On the other hand, respondent maintains that the Court of Appeals was correct in deleting the award of moral damages.

Respondent argues that it should not be faulted if petitioners had to experience inconveniences in acquiring copies of ledgers of their deposits as well as copies of the withdrawal slips since certain banking procedures must be

observed. It likewise faults petitioners for not strictly observing security rules of financial institutions in the care and custody of their passbooks, as well as in the standard operating procedure for deposits and withdrawals which led to the alleged improper recording of deposits and the alleged losses they incurred. It stresses that passbooks should be securely kept by the owner but, in the case of petitioners, they openly entrusted their passbooks to other people leaving them totally unable to monitor their transactions. It added that there was absence of any actual injury on the part of the petitioners. It asserts that it neither acted in bad faith nor took advantage of petitioners' deposit for its use and benefit. It claims that petitioners failed to establish fraud on the part of respondent bank as to make it liable for the alleged improper recording of deposits. It claims that petitioners failed to present in court the persons (Bong or Ding) to whom they entrusted their money for deposit and to prove that Ruperto Reyes, then Officer-In-Charge (O-I-C) of the Extension Office of Country Development Bank, defrauded them by facilitating withdrawals for the benefit of the bank. No proof was adduced to show that they verified if the persons to whom they delegated to make the deposits faithfully performed the tasks in accordance with their intentions. Respondent insists that it is the negligence of petitioners, not fraud on its part, which was the reason that petitioners' deposits were not applied in accordance with their intentions resulting to the (threatened) foreclosure of their mortgaged property.

From the foregoing reasons advanced by respondent bank, it is apparent that it is trying to pass all the blame on petitioners for the unauthorized withdrawals amounting to P220,000.00 and the non-applications of deposits to their loan.

This cannot be. The fact that petitioners left the custody of their passbooks to respondent, through its employee O-I-C Ruperto Reyes, and that they entrusted to Bong or Ding their deposits will not excuse respondent from being liable. Petitioners did these things because they trusted and depended on respondent to take care of their accounts with it. If respondent bank was really strict in enforcing the banking rule that the passbook must be kept by the depositor, why did it not do so? For its failure, any anomaly or damage that might result therefrom should be borne by it.

We, likewise, find untenable respondent's contention that petitioners should have presented O-I-C Ruperto Reyes, Bong or Ding as witnesses to clear the air. On the contrary, it should have been respondent's duty to present these persons they being their employees. It should have presented these people, especially O-I-C Ruperto Reyes, who had custody of the passbooks, to explain why unauthorized withdrawals were made and why the instruction to apply petitioners' deposit to their loan was not complied with.

The bank was indeed grossly negligent when it allowed the sum of P220,000.00 to be withdrawn through falsified withdrawal slips without petitioners' authority and knowledge and its failure to comply with petitioners' instruction to apply their deposits on their loan. In so doing, respondent bank breached the trust that petitioners reposed on it.

We agree in the findings of the two courts below that the unauthorized transactions were committed by one or some of the employees of respondent bank for which it should be liable. The evidence showed that respondent did not exercise the degree of diligence it ought to have exercised in dealing with its clients -- diligence higher than that of a good father of a family. If only respondent exercised such diligence, no anomaly or irregularity would have happened.

In the case of *Philippine National Bank v. Pike*,^[14] we discussed the degree of diligence imposed on banks as follows:

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, 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."

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* 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."

Likewise, in the case of *The Consolidated Bank and Trust Corporation v. Court of Appeals*, 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 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 utmost fidelity, whether such accounts consists only of a few hundred pesos or of millions of pesos.

Settled is the rule that gross negligence of a bank in the handling of its client's deposit amounts to bad faith that calls for an award of moral damages. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.[15]

In the case at bar, the failure of the bank to prevent seven unauthorized withdrawals from the deposits of petitioners and its non-compliance with petitioners' instructions regarding the loan payments constitute gross negligence which justifies the award of moral damages. As employer, respondent is liable for the negligence or misdeed of its employees which caused petitioners to have sleepless nights thinking about the threatened foreclosure of their house and lot. In addition, the way respondent gave petitioners a hard time in securing copies of their withdrawal slips and ledgers of their deposits is an indication of bad faith. Respondent could have easily cooperated with petitioners by immediately furnishing the latter with documents they wanted. This was not to be. Written communications from petitioners' lawyers and from the Central Bank Governor were not sufficient in order that respondent will provide petitioners with the documents they needed. It was only after two agents of the CIS of the Philippine Constabulary went to the bank that respondent was obliged to give petitioners what they were asking for.

In culpa contractual or breach of contract, as in the case[16] before us, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith,[17] or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations.[18]

In fine, the requisites on 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 Article 2219[19] and Article 2220 of the Civil Code.[20] All these elements are present in the instant case.

There is no hard-and-fast rule in the determination of what would be a fair amount of moral damages since each

case must be governed by its own peculiar facts. The yardstick should be that it is not palpably and scandalously excessive.[21] We find the sum of P300,000.00 awarded by the lower courts excessive. In our view, the award of P100,000.00 as moral damages is reasonable and is in accord with our rulings in similar cases involving banks' negligence with regard to the accounts of their depositors.[22]

Anent the removal by the Court of Appeals of the award of exemplary damages, we find the same to be not in order.

The law allows the grant of exemplary damages to set an example for the public good.[23] The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society. Whether as mere passive entities for the safe-keeping and saving of money or as active instruments of business and commerce, banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence.[24] For this reason, banks should guard against injury attributable to negligence or bad faith on its part.[25] The award of exemplary damages is warranted by the failure of respondent bank to prevent the unauthorized withdrawals from petitioners' deposits and its failure to properly apply the latter's deposits to their loan. We, however, find the P300,000.00 awarded by the lower court to be excessive and should accordingly be reduced to P50,000.00.

On the matter of attorney's fees and expenses of litigation, it is settled that the reasons or grounds for the award thereof must be set forth in the decision of the court.[26] An award of attorney's fees, being an exception from the policy of not putting a premium or a penalty on the right to litigate, has since been limited to the grounds specified by law.[27] Article 2208[28] of the Civil Code enumerates the instances where attorney's fees and expenses of litigation can be recovered.

In the case at bar, the RTC clearly stated in its decision that petitioners are entitled to attorney's fees and litigation expenses because they were compelled to litigate in order to protect their interest. We agree. Moreover, there being an award for exemplary damages, it follows that there should be an award of attorney's fees and litigation expenses. However, the awards of P50,000.00 for attorney's fees and P50,000.00 for litigation expenses by the RTC are too much, while the award of P30,000.00 of the Court of Appeals for both is too small. In as much as this case has been pending for more than twenty (20) years, the award of P25,000.00 for each will be sufficient.

Petitioners claim that the Court of Appeals erred in deleting the portions of the RTC decision declaring their mortgage loan paid and enjoining foreclosure. They insist that they were able to prove that the amounts of P30,000.00 and P118,000.00 were respectively withdrawn from their accounts (SA No. 38470-29 and No. 12241-16) and that same were not applied as payment for their loan. They maintain that by adding together said amounts, the sum thereof is sufficient to pay their loan and to consider the real estate mortgage as discharged.

Looking at the complaint filed by petitioners, there is no allegation that said amounts were withdrawn from their accounts and that same were not applied as payments for their loan. Petitioners likewise did not ask in their prayer that said amounts be returned to them or that they be used to off-set their indebtedness to respondent. Moreover, when petitioners tried to prove this allegation, counsel for respondent objected[29] and attempted to have the testimony thereon stricken off the record on the ground of *allegata et probata*. [30]

Under Section 5, Rule 10 of the Revised Rules of Court,[31] if evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended freely when the presentation of the merits of the action will be subserved thereby and the admission of such evidence would not prejudice the objecting party in maintaining his action or defense upon the merit. Said section reads:

Sec. 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they

had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

It is thus clear that when there is an objection on the evidence presented because it is not within the issues made by the pleadings, an amendment must be made before accepting such evidence. If no amendment is made, the evidence objected to cannot be considered. In the case before us, the trial court, there being an objection on the evidence being presented by respondent, failed to order the amendment of the complaint. Thus, we are constrained not to consider evidence regarding the P30,000.00 and P118,000.00 allegedly withdrawn from their accounts. With this ruling, it follows that the outstanding loan of petitioners in the amount of P58,297.16 remains unpaid.

As regards respondent's right to exercise its right to foreclosure of the real estate mortgage on petitioners' property, we rule that respondent cannot exercise such right under the circumstances obtaining. It will be the height of inequity if we allow such a thing. The evidence is clear that the sum of P220,000.00 was withdrawn from petitioners' deposits without their knowledge and authority. This amount is more than sufficient to pay for the loan had it not been illegally withdrawn. Neither should petitioners be held liable for any interest on the remaining balance of the loan considering that they could have easily settled their obligation with respondent if they were not embroiled in the anomaly caused by respondent's employees. Finally, payment for the remaining balance of the loan amounting to P58,297.16 should be deducted from the actual damages awarded by the court.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The 25 March 2002 decision of the Court of Appeals modifying the decision of the Regional Trial Court of Olongapo City is **AFFIRMED** with **MODIFICATIONS**. As modified, respondent Planters Development Bank is ordered to pay petitioners the following: (1) P220,000.00 as actual damages representing the total amount withdrawn from petitioners' accounts 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 of finality of this judgment until actual payment; (2) P100,000.00 as moral damages; (3) P50,000.00 as exemplary damages; and (4) P25,000.00 as attorney's fees and P25,000.00 for litigation expenses. Respondent is enjoined from foreclosing the real estate mortgage on petitioners' property located at No. 88 Gordon Avenue, Pag-asa, Olongapo City. Payment for the outstanding loan of petitioners in the amount of P58,297.16 shall be deducted from the damages awarded by the Court.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.
Austria-Martinez, J., no part.

[1] CA Rollo, pp. 91-98; Penned by Associate Justice Roberto A. Barrios with Associate Justices Ma. Alicia Austria-Martinez (now Associate Justice of this Court) and Bienvenido L. Reyes, concurring.

[2] Id. at 132.

[3] CA Rollo, pp. 91-93.

[4] Exhs. A, A-1 to A-6.

[5] Records, pp. 473-493.

[6] Id. at 492-493.

[7] CA Rollo, p. 97.

[8] Id. at 132.

[9] Rollo, p. 4.

[10] Id. at 59-67.

[11] Id. at 73-82.

[12] Id. at 85.

[13] Id. at 87-104; 105-118.

[14] G.R. No. 157845, 20 September 2005.

[15] *Samson, Jr. v. Bank of the Philippine Islands*, G.R. No. 150487, 10 July 2003, 405 SCRA 607.

[16] The provisions of the New Civil Code on simple loan govern the contract between a bank and its depositor. Specifically, Article 1980 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.

[17] Article 2220, New Civil Code.

Article 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.

[18] *Philippine Telegraph & Telephone Corporation v. Court of Appeals*, G.R. No. 139268, 03 September 2002, 388 SCRA 270.

[19] 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 and 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.

[20] Philippine Telegraph & Telephone Corporation v. Court of Appeals, *supra*, note 18; Citytrust Banking Corporation (now Bank of the Philippine Islands) v. Villanueva, G.R. No. 141011, 19 July 2001, 361 SCRA 446.

[21] Prudential Bank v. Court of Appeals, G.R. No. 125536, 16 March 2000, 328 SCRA 264; Philippine National Bank v. Court of Appeals, G.R. No. 126152, 28 September 1999, 315 SCRA 309; Samson, Jr. v. Bank of the Philippine Islands, *supra*, note 15.

[22] Philippine Banking Corporation v. Court of Appeals, G.R. No. 127469, 15 January 2004, 419 SCRA 487; Samson, Jr. v. Bank of the Philippine Islands, *supra* note 15; Philippine National Bank v. Court of Appeals, *ibid*.

[23] Prudential Bank v. Court of Appeals, *supra*, note 21.

[24] Bautista v. Mangaldan Rural Bank, Inc., G.R. No. 100755, 10 February 1994, 230 SCRA 16.

[25] Solidbank Corporation v. Arrieta, G.R. No. 152720, 17 February 2005, 451 SCRA 711, 722.

[26] Cipriano v. Court of Appeals, G.R. No. 107968, 30 October 1996, 263 SCRA 711.

[27] Olan v. Court of Appeals, G.R. No. 126848, 12 March 1998, 287 SCRA 504.

[28] 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;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[29] TSN, 26 September 1984, pp. 3-7.

[30] A rule of procedure whereby only matters alleged in the pleadings may be proved (*Robles v. Del Rosario*, 100 Phil. 891) cited in *Philippine Law Dictionary* by Moreno, 2nd Ed., p. 35.

[31] SEC. 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberally if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. (1997 Rules of Civil Procedure)

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