EQUITABLE PCI BANK, PETITIONER, VS. ARCELITO B. TAN, RESPONDENT.

G.R. No. 165339. August 23, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 41928.

The antecedents are as follows:

Respondent Arcelito B.Tan maintained a current and savings account with Philippine Commercial International Bank (PCIB), now petitioner Equitable PCI Bank.[3] On May 13, 1992, respondent issued PCIB Check No. 275100 postdated May 30, 1992[4] in the amount of P34,588.72 in favor of Sulpicio Lines, Inc. As of May 14, 1992, respondent's balance with petitioner was P35,147.59. On May 14, 1992, Sulpicio Lines, Inc. deposited the aforesaid check to its account with Solid Bank, Carbon Branch, Cebu City. After clearing, the amount of the check was immediately debited by petitioner from respondent's account thereby leaving him with a balance of only P558.87.

Meanwhile, respondent issued three checks from May 9 to May 16, 1992, specifically, PCIB Check No. 275080 dated May 9, 1992, payable to Agusan del Sur Electric Cooperative Inc. (ASELCO) for the amount of P6,427.68; PCIB Check No. 275097 dated May 10, 1992 payable to Agusan del Norte Electric Cooperative Inc., (ANECO) for the amount of P6,472.01; and PCIB Check No. 314104 dated May 16, 1992 payable in cash for the amount of P10,000.00. When presented for payment, PCIB Check Nos. 275080, 275097 and 314014 were dishonored for being drawn against insufficient funds.

As a result of the dishonor of Check Nos. 275080 and 275097 which were payable to ASELCO and ANECO, respectively, the electric power supply for the two mini-sawmills owned and operated by respondent, located in Talacogon, Agusan del Sur; and in Golden Ribbon, Butuan City, was cut off on June 1, 1992 and May 28, 1992, respectively, and it was restored only on July 20 and August 24, 1992, respectively.

Due to the foregoing, respondent filed with the Regional Trial Court (RTC) of Cebu City a complaint against petitioner, praying for payment of losses consisting of unrealized income in the amount of P1,864,500.00. He also prayed for payment of moral damages, exemplary damages, attorney's fees and litigation expenses.

Respondent claimed that Check No. 275100 was a postdated check in payment of Bills of Lading Nos. 15, 16 and 17, and that his account with petitioner would have had sufficient funds to cover payment of the three other checks were it not for the negligence of petitioner in immediately debiting from his account Check No. 275100, in the amount of P34,588.72, even as the said check was postdated to May 30, 1992. As a consequence of petitioner's error, which brought about the dishonor of the two checks paid to ASELCO and ANECO, the electric supply to his two mini-sawmills was cut off, the business operations thereof were stopped, and purchase orders

were not duly served causing tremendous losses to him.

In its defense, petitioner denied that the questioned check was postdated May 30, 1992 and claimed that it was a current check dated May 3, 1992. It alleged further that the disconnection of the electric supply to respondent's sawmills was not due to the dishonor of the checks, but for other reasons not attributable to the bank.

After trial, the RTC, in its Decision[5] dated June 21, 1993, ruled in favor of petitioner and dismissed the complaint.

Aggrieved by the Decision, respondent filed a Notice of Appeal.[6] In its Decision dated May 31, 2004, the Court of Appeals reversed the decision of the trial court and directed petitioner to pay respondent the sum of P1,864,500.00 as actual damages, P50,000.00 by way of moral damages, P50,000.00 as exemplary damages and attorney's fees in the amount of P30,000.00. Petitioner filed a motion for reconsideration, which the CA denied in a Resolution dated August 24, 2004.

Hence, the instant petition assigning the following errors:

> I
>
> THE FOURTH DIVISION OF THE COURT OF APPEALS DEFIED OFFICE ORDER NO. 82-04-CG BY HOLDING ON TO THIS CASE AND DECIDING IT INSTEAD OF UNLOADING IT AND HAVING IT RE-RAFFLED AMONG THE DIVISIONS IN CEBU CITY.
>
> II
>
> THE COURT OF APPEALS ERRED IN REVERSING THE FINDING OF THE REGIONAL TRIAL COURT THAT CHECK NO. 275100 WAS DATED MAY 3, 1992.
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> III
>
> THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT'S WAY OF WRITING THE DATE ON CHECK NO. 275100 WAS THE PROXIMATE CAUSE OF THE DISHONOR OF HIS THREE OTHER CHECKS.
>
> IV
> THE COURT OF APPEALS ERRED IN AWARDING ACTUAL DAMAGES, MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

Anent the first issue, petitioner submits that the CA defied Office Order No. 82-04-CG dated April 5, 2004 issued by then CA Presiding Justice Cancio C. Garcia when it failed to unload CA-G.R. CV No. 41928 so that it may be re-raffled among the Divisions in Cebu City.

Office Order No. 82-04-CG[7] provides:

> x x x x
>
> In view of the reorganization of the different Divisions due to the appointment of eighteen (18) new Justices to the additional divisions in the cities of Cebu and Cagayan de Oro, the raffle of civil, criminal and special cases submitted for decision and falling within the jurisdiction of the additional divisions shall commence on April 6, 2004.
>
> The raffle of newly-filed cases and those for completion likewise falling within the jurisdiction of the additional divisions, shall start on April 12, 2004.
>
> x x x x

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Petitioner alleged that since the aforementioned Office Order directed the raffle of civil, criminal and special cases submitted for decision and falling within the jurisdiction of the additional divisions on April 6, 2004, CA-G.R. CV No. 41928 should have been unloaded by the CA's Fourth Division and re-raffled to the CA's Division in Cebu City instead of deciding the case on May 31, 2004.

Respondent argued that the CA's Fourth Division correctly acted in taking cognizance of the case. The CA defended its jurisdiction by ruling that cases already submitted for decision as of the effectivity of Republic Act (R.A.) 8246[8] on February 1, 1997 were no longer included for re-raffle to the newly-created Visayas and Mindanao Divisions of the CA, conformable to Section 5 of the said statute.

Petitioner's argument is misplaced. Under Section 3 of R.A. 8246, it is provided that:

> Section 3. Section 10 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:
>
> Sec. 10. Place of Holding Sessions. -- The Court of Appeals shall have its permanent stations as follows: The first seventeen (17) divisions shall be stationed in the City of Manila for cases coming from the First to the Fifth Judicial Regions; the Eighteenth, Nineteenth, and Twentieth Divisions shall be in Cebu City for cases coming from the Sixth, Seventh and Eighth Judicial Regions; the Twenty-first, Twenty-second and Twenty-third Divisions shall be in Cagayan de Oro City for cases coming from the Ninth, Tenth, Eleventh, and Twelfth Judicial Regions. Whenever demanded by public interest, or whenever justified by an increase in case load, the Supreme Court, upon its own initiative or upon recommendation of the Presiding Justice of the Court of Appeals, may authorize any division of the Court to hold sessions periodically, or for such periods and at such places as the Supreme Court may determine, for the purpose of hearing and deciding cases. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months unless extended by the Chief Justice of the Supreme Court.

Further, Section 5 of the same Act provides:

> Upon the effectivity of this Act, all pending cases, except those which have been submitted for resolution, shall be referred to the proper division of the Court of Appeals.[9]

Although CA-G.R. CV No. 41928 originated from Cebu City and is thus referable to the CA's Divisions in Cebu City, the said case was already submitted for decision as of July 25, 1994.[10] Hence, CA-G.R. CV No. 41928, which was already submitted for decision as of the effectivity of R.A. 8246, i.e., February 1, 1997, can no longer be referred to the CA's Division in Cebu City. Thus, the CA's Former Fourth Division correctly ruled that CA-G.R. CV No. 41928 pending in its division was not among those cases that had to be re-raffled to the newly-created CA Divisions in the Visayas Region.

Further, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out.[11] Thus, Office Order No. 82-04-CG cannot defeat the provisions of R.A. 8246.

As to the second issue, petitioner maintains that the CA erred in reversing the finding of the RTC that Check No. 275100 was dated May 3, 1992. Petitioner argued that in arriving at the conclusion that Check No. 275100 was postdated May 30, 1992, the CA just made a visual examination of the check, unlike the RTC which verified the truth of respondent's testimony relative to the issuance of Check No. 275100. Respondent argued that the check was carefully examined by the CA which correctly found that Check No. 275100 was postdated to May 30, 1992 and not May 3, 1992.

The principle is well established that this Court is not a trier of facts. Therefore, in an appeal by certiorari under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court. However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court

are contrary to those of the trial court.[12] Due to the divergence of the findings of the CA and the RTC, We shall re-examine the facts and evidence presented before the lower courts.

The RTC ruled that:

> x x x x
>
> The issue to be resolved in this case is whether or not the date of PCIB Check No. 275100 is May 3, 1992 as contended by the defendant, or May 30, 1992 as claimed by the plaintiff. The date of the check is written as follows - 5/3/0/92. From the manner by which the date of the check is written, the Court cannot really make a pronouncement as to whether the true date of the check is May 3 or May 30, 1992, without inquiring into the background facts leading to the issuance of said check.
>
> According to the plaintiff, the check was issued to Sulpicio Lines in payment of bill of lading nos. 15, 16 and 17. An examination of bill of lading no. 15, however, shows that the same was issued, not in favor of plaintiff but in favor of Coca Cola Bottlers Philippines, Inc. Bill of Lading No. 16 is issued in favor of Suson Lumber and not to plaintiff. Likewise, Bill of Lading No. 17 shows that it was issued to Jazz Cola and not to plaintiff. Furthermore, the receipt for the payment of the freight for the shipments reflected in these three bills of lading shows that the freight was paid by Coca Cola Bottlers Philippines, Inc. and not by plaintiff.
>
> Moreover, the said receipt shows that it was paid in cash and not by check. From the foregoing, the evidence on record does not support the claim of the plaintiff that Check No. 275100 was issued in payment of bills of lading nos. 15, 16 and 17.
>
> Hence, the conclusion of the Court is that the date of the check was May 3, 1992 and not May 30, 1992.[13]
>
> x x x x

In fine, the RTC concluded that the check was dated May 3, 1992 and not May 30, 1992, because the same check was not issued to pay for Bills of Lading Nos. 15, 16 and 17, as respondent claims. The trial court's conclusion is preposterous and illogical. The purpose for the issuance of the check has no logical connection with the date of the check. Besides, the trial court need not look into the purpose for which the check was issued. A reading of Check No. 275100[14] would readily show that it was dated May 30, 1992. As correctly observed by the CA:

> On the first issue, we agree with appellant that appellee Bank apparently erred in misappreciating the date of Check No. 275100. We have carefully examined the check in question (Exh. DDDD) and we are convinced that it was indeed postdated to May 30, 1992 and not May 3, 1992 as urged by appellee. The date written on the check clearly appears as "5/30/1992" (Exh. DDDD-4). The first bar (/) which separates the numbers "5" and "30" and the second bar (/) which further separates the number "30" from the year 1992 appear to have been done in heavy, well-defined and bold strokes, clearly indicating the date of the check as "5/30/1992" which obviously means May 30, 1992. On the other hand, the alleged bar (/) which appellee points out as allegedly separating the numbers "3" and "0," thereby leading it to read the date as May 3, 1992, is not actually a bar or a slant but appears to be more of an unintentional marking or line done with a very light stroke. The presence of the figure "0" after the number "3" is quite significant. In fact, a close examination thereof would unerringly show that the said number zero or "0" is connected to the preceeding number "3." In other words, the drawer of the check wrote the figures "30" in one continuous stroke, thereby contradicting appellee's theory that the number "3" is separated from the figure "0" by a bar. Besides, appellee's theory that the date of the check is May 3, 1992 is clearly untenable considering the presence of the figure "0" after "3" and another bar before the year 1992. And if we were to accept appellee's theory that what we find to be an unintentional mark or line between the figures "3" and "0" is a bar separating the two numbers, the date of the check would then appear as "5/3/0/1992, which is simply absurd. Hence, we cannot go along with appellee's theory which will lead us to an absurd result. It is therefore our conclusion that the check was postdated to May 30, 1992 and appellee Bank or its personnel erred in debiting the amount of the check from appellant's account even before

> the check's due date. Undoubtedly, had not appellee bank prematurely debited the amount of the check from appellant's account before its due date, the two other checks (Exhs. LLLL and GGGG) successively dated May 9, 1992 and May 16, 1992 which were paid by appellant to ASELCO and ANECO, respectively, would not have been dishonored and the said payees would not have disconnected their supply of electric power to appellant's sawmills, and the latter would not have suffered losses.

The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of R.A. 8791[15] decrees:

> Declaration of Policy. - The State recognizes the vital role of banks in providing an environment conducive to the sustained development of the national economy and the fiduciary nature of banking that requires high standards of integrity and performance. In furtherance thereof, the State shall promote and maintain a stable and efficient banking and financial system that is globally competitive, dynamic and responsive to the demands of a developing economy.

Although R.A. 8791 took effect only in the year 2000, the Court had already imposed on banks the same high standard of diligence required under R.A. 8791 at the time of the untimely debiting of respondent's account by petitioner in May 1992. In Simex International (Manila), Inc. v. Court of Appeals,[16] which was decided in 1990, the Court held that as a business affected with public interest and because of the nature of its functions, 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.

The diligence required of banks, therefore, is more than that of a good father of a family.[17] In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.[18] From the foregoing, it is clear that petitioner bank did not exercise the degree of diligence that it ought to have exercised in dealing with its client.

With respect to the third issue, petitioner submits that respondent's way of writing the date on Check No. 275100 was the proximate cause of the dishonor of his three other checks. Contrary to petitioner's view, the Court finds that its negligence is the proximate cause of respondent's loss.

Proximate cause is that cause which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[19] The proximate cause of the loss is not respondent's manner of writing the date of the check, as it was very clear that he intended Check No. 275100 to be dated May 30, 1992 and not May 3, 1992. The proximate cause is petitioner's own negligence in debiting the account of the respondent prior to the date as appearing in the check, which resulted in the subsequent dishonor of several checks issued by the respondent and the disconnection by ASELCO and ANECO of his electric supply.

The bank on which the check is drawn, known as the drawee bank, is under strict liability to pay to the order of the payee in accordance with the drawer's instructions as reflected on the face and by the terms of the check.[20] Thus, payment made before the date specified by the drawer is clearly against the drawee bank's duty to its client.

In its memorandum[21] filed before the RTC, petitioner submits that respondent caused confusion on the true date of the check by writing the date of the check as 5/3/0/92. If, indeed, petitioner was confused on whether the check was dated May 3 or May 30 because of the "/" which allegedly separated the number "3" from the "0," petitioner should have required respondent drawer to countersign the said "/" in order to ascertain the true intent of the

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drawer before honoring the check. As a matter of practice, bank tellers would not receive nor honor such checks which they believe to be unclear, without the counter-signature of its drawer. Petitioner should have exercised the highest degree of diligence required of it by ascertaining from the respondent the accuracy of the entries therein, in order to settle the confusion, instead of proceeding to honor and receive the check.

Further, petitioner's branch manager, Pedro D. Tradio, in a letter[22] addressed to ANECO, explained the circumstances surrounding the dishonor of PCIB Check No. 275097. Thus:

> June 11, 1992
>
> ANECO
>
> Agusan del Norte
>
> Gentlemen:
>
> This refer (sic) to PCIB Check No. 275097 dated May 16, 1992 in the amount of P6,472.01 payable to your goodselves issued by Mr. Arcelito B. Tan (MANWOOD Industries) which was returned by PCIB Mandaue Branch for insufficiency of funds.
>
> Please be advised that the return of the aforesaid check was a result of an earlier negotiation to PCIB-Mandaue Branch through a deposit made on May 14, 1992 with SOLIDBANK Carbon Branch, or through Central Bank clearing via Philippine Clearing House Corporation facilities, of a postdated check which ironically and without bad faith passed undetected through several eyes from the payee of the check down to the depository bank and finally the drawee bank (PCIB) the aforesaid Check No. 275097 issued to you would have been honored because it would have been sufficiently funded at the time it was negotiated. It should be emphasized, however, that Mr. Arcelito B. Tan was in no way responsible for the dishonor of said PCIB Check No. 275097.
>
> We hope that the foregoing will sufficiently explain the circumstances of the dishonor of PCIB Check No. 275097 and would clear the name and credit of Mr. Arcelito Tan from any misimpressions which may have resulted from the dishonor of said check.
>
> Thank you.
>
> x x x x

Although petitioner failed to specify in the letter the other details of this "postdated check," which passed undetected from the eyes of the payee down to the petitioner drawee bank, the Court finds that petitioner was evidently referring to no other than Check No. 275100 which was deposited to Solidbank, and was postdated May 30, 1992. As correctly found by the CA:

> In the aforequoted letter of its Manager, appellee Bank expressly acknowledged that Check No. 275097 (Exh. GGGG) which appellant paid to ANECO "was sufficiently funded at the time it was negotiated," but it was dishonored as a "result of an earlier negotiation to PCIB-Mandaue Branch through a deposit made on May 14, 1992 with SOLIDBANK xxx xxx xxx of a postdated check which xxx xxx passed undetected." He further admitted that "Mr. Arcelito B. Tan was in no way responsible for the dishonor of said PCIB Check No. 275097." Needless to state, since appellee's Manager has cleared appellant of any fault in the dishonor of the ANECO check, it [necessarily] follows that responsibility therefor or fault for the dishonor of the check should fall on appellee bank. Appellee's attempt to extricate itself from its inadvertence must therefore fail in the face of its Manager's explicit acknowledgment of responsibility for the inadvertent dishonor of the ANECO check.[23]

Evidently, the bank's negligence was the result of lack of due care required of its managers and employees in handling the accounts of its clients. Petitioner was negligent in the selection and supervision of its employees. In

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Citibank, N.A. v. Cabamongan,[24] the Court ruled:

> x x x Banks handle daily transactions involving millions of pesos. By the very nature of their works the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.

We now resolve the question on the award of actual, moral and exemplary damages, as well as attorney's fees by the CA to the respondent.

The CA based the award of actual damages in the amount of P1,864,500.00 on the purchase orders[25] submitted by respondent. The CA ruled that:

> x x x In the case at bar, appellant [respondent herein] presented adequate evidence to prove losses consisting of unrealized income that he sustained as a result of the appellee Bank's gross negligence. Appellant identified certain Purchase Orders from various customers which were not met by reason of the disruption of the operation of his sawmills when ANECO and ASELCO disconnected their supply of electricity thereto. x x x

Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice and are aimed at repairing the wrong done. Except as provided by law or by stipulation, a party is entitled to an adequate compensation only for such pecuniary loss as he has duly proven.[26] To recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.[27]

Respondent's claim for damages was based on purchase orders from various customers which were allegedly not met due to the disruption of the operation of his sawmills. However, aside from the purchase orders and his testimony, respondent failed to present competent proof on the specific amount of actual damages he suffered during the entire period his power was cut off. No other evidence was provided by respondent to show that the foregoing purchase orders were not met or were canceled by his various customers. The Court cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages.[28]

Moreover, an examination of the purchase orders and job orders reveal that the orders were due for delivery prior to the period when the power supply of respondent's two sawmills was cut off on June 1, 1992 to July 20, 1992 and May 28, 1992 to August 24, 1992, respectively. Purchase Order No. 9906[29] delivery date is May 4, 1992; Purchase Order No. 9269[30] delivery date is March 19, 1992; Purchase Order No. 147796[31] is due for delivery on January 31, 1992; Purchase Order No. 76000[32] delivery date is February and March 1992; and Job Order No. 1824,[33] dated March 18, 1992, has a 15 days duration of work. Clearly, the disconnection of his electricity during the period May 28, 1992 to August 24, 1992 could not possibly affect his sawmill operations and prior orders therefrom.

Given the dearth of respondent's evidence on the matter, the Court resolves to delete the award of actual damages rendered by the CA in favor of respondent for his unrealized income.

Nonetheless, in the absence of competent proof on the actual damages suffered, respondent is entitled to temperate damages. Under Article 2224 of the Civil Code of the Philippines, temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[34] The allowance of temperate damages when actual damages were not adequately proven is ultimately a rule drawn from equity, the principle affording relief to those definitely injured who are unable to prove how definite the injury.[35]

It is apparent that respondent suffered pecuniary loss. The negligence of petitioner triggered the disconnection of his electrical supply, which temporarily halted his business operations and the consequent loss of business opportunity. However, due to the insufficiency of evidence before Us, We cannot place its amount with certainty. Article 2216[36] of the Civil Code instructs that assessment of damages is left to the discretion of the court according to the circumstances of each case. Under the circumstances, the sum of P50,000.00 as temperate damages is reasonable.

Anent the award of moral damages, it is settled that 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.[37] In Philippine National Bank v. Court of Appeals,[38] the Court held that a bank is under obligation to treat the accounts of its depositors with meticulous care whether such account consists only of a few hundred pesos or of millions of pesos. Responsibility arising from negligence in the performance of every kind of obligation is demandable. While petitioner's negligence in that case may not have been attended with malice and bad faith, the banks' negligence caused respondent to suffer mental anguish, serious anxiety, embarrassment and humiliation. In said case, We ruled that respondent therein was entitled to recover reasonable moral damages.

In this case, the unexpected cutting off of respondent's electricity, which resulted in the stoppage of his business operations, had caused him to suffer humiliation, mental anguish and serious anxiety. The award of P50,000.00 is reasonable, considering the reputation and social standing of respondent. As found by the CA, as an accredited supplier, respondent had been reposed with a certain degree of trust by various reputable and well- established corporations.

On the award of exemplary damages, Article 2229 of the Civil Code states:

> Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

The law allows the grant of exemplary damages to set an example for the public good. 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 safekeeping and saving of money or as active instruments of business and commerce, banks have attained an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence. For this reason, banks should guard against injury attributable to negligence or bad faith on its part. Without a doubt, it has been repeatedly emphasized that since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required of it.[39] Petitioner, having failed in this respect, the award of exemplary damages in the amount of P50,000.00 is in order.

As to the award of attorney's fees, Article 2208[40] of the Civil Code provides, among others, that attorney's fees may be recovered when exemplary damages are awarded or when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.[41] Respondent has been forced to undergo unnecessary trouble and expense to protect his interest. The Court affirms the appellate court's award of attorney's fees in the amount of P30,000.00.

WHEREFORE, the petition is PARTIALLY GRANTED. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 41928, dated May 31, 2004 and August 24, 2004, respectively, are AFFIRMED with the following MODIFICATIONS:

1. The award of One Million Eight Hundred Sixty-Four Thousand and Five Hundred Pesos (P1,864,500.00) as

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actual damages, in favor of respondent Arcelito B. Tan, is DELETED; and

2. Petitioner Equitable PCI Bank is instead directed to pay respondent the amount of Fifty Thousand Pesos (P50,000.00) as temperate damages.

SO ORDERED.

Carpio, (Chairperson), Nachura, Abad, and Mendoza, JJ., cocnur.

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[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Jose L. Sabio Jr. and Noel G. Tijam, concurring; rollo, pp. 30-39.

[2] Id. at 52.

[3] Pursuant to a merger between Equitable Bank and PCI Bank, rollo, p. 5.

[4] Petitioner alleged that the check was dated May 3, 1992.

[5] Rollo, pp. 25-28.

[6] Records, p. 212.

[7] Rollo, p. 54.

[8] An Act Creating Additional Divisions in the Court of Appeals, Increasing the Number of Court of Appeals Justices from Fifty-One (51) to Sixty-Nine (69), Amending for the Purpose Batas Pambansa Bilang 129, As Amended otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor, and for other purposes.

[9] Emphasis supplied.

[10] CA's resolution dated July 25, 1994; CA rollo, p. 326.

[11] Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc., G.R. No. 150947, 453 Phil. 1043, 1052 (2003), citing Commissioner of Internal Revenue v. CA, 310 Phil. 392 (1995).

[12] Guillang v. Bedania, G.R. No. 162987, May 21, 2009, 588 SCRA 73, 84.

[13] Decision dated June 21, 1993, rollo, p. 27.

[14] Exhibit DDDD, CA rollo, p. 253.

[15] The General Banking Law of 2000.

[16] G.R. No. 88013, March 19, 1990, 183 SCRA 360, 367.

[17] Samsung Construction Company Philippines, Inc. v. Far East Bank and Trust Company, G.R. No. 129015, August 13, 2004, 436 SCRA 402, 421.

[18] Metropolitan Bank and Trust Company v. Cabilzo, G.R. No. 154469, December 6, 2006, 510 SCRA 259, 270.

[19] Bank of the Philippine Islands v. Lifetime Marketing Corporation, G.R. No. 176434, June 25, 2008, 555 SCRA 373, 381-382.

[20] Metropolitan Bank and Trust Company v. Cabilzo, supra note 18, at 272.

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[21] Records, p. 187.

[22] CA rollo, p. 121.

[23] Rollo, p. 35.

[24] G.R. No. 146918, May 2, 2006, 488 SCRA 517, 532.

[25] Purchase Order No. 9906 of Coca-Cola Bottlers Inc in the amount of P97,500 (Exhibit YYY, CA rollo, p. 248).

Purchase Order No. 9269 of Coca Cola Bottlers Inc. in the amount of P195,000 (Exhibit ZZZ, CA rollo, p. 249).

Purchase Order No. 147796 of Coca Cola Bottlers Inc in the amount of P591,000 (Exhibit AAAA, CA rollo, p. 250).

Purchase Order No. 76000 of San Miguel Corporation in the amount of P882,000 (Exhibit BBBB, CA rollo, p. 252).

Job Order No. 1824 of Classic American Flavors Inc. in the amount of P99,000 (Exhibit CCCC, CA rollo, p. 251).

[26] Spouses Villafuerte v. Court of Appeals, 498 Phil. 105, 116 (2005).

[27] Spouses Quisumbing v. Manila Electric Company, 429 Phil. 727, 747 (2002).

[28] Dueñas v. Guce-Africa, G.R. No. 165679, October 5, 2009, 603 SCRA 11, 22.

[29] CA rollo, p. 248.

[30] Id. at 249.

[31] Id. at 250.

[32] Id. at 252.

[33] Id. at 251.

[34] Viron Transportation Co., Inc. v. Delos Santos, 399 Phil. 243, 255, 256 (2000).

[35] Republic v. Tuvera, G.R. No. 148246, February 16, 2007, 516 SCRA 113, 152.

[36] No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the Court, according to the circumstances of each case.

[37] Samson, Jr. v. Bank of the Philippine Islands, 453 Phil. 577, 583 (2003).

[38] 373 Phil. 942, 948 (1999).

[39] Equitable PCI Bank v. Ong, G.R. No. 156207, September 15, 2006, 502 SCRA 119, 138.

[40] 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 expense to protect his interest;

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[41] Sandejas v Ignacio, Jr. G.R. No. 155033, December 19, 2007, 541 SCRA 61, 83-84.

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