

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. REYNALD R. SUAREZ, RESPONDENT.

G.R. No. 167750. March 15, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the Decision dated 30 November 2004[2] and Resolution dated 11 April 2005 of the Court of Appeals in CA-G.R. CV No. 76988, affirming the trial court's decision of 18 October 2002 and denying reconsideration.

The Facts

Respondent Reynald R. Suarez (Suarez) is a lawyer who used to maintain both savings and current accounts with petitioner Bank of the Philippine Islands' (BPI) Ermita Branch from 1988 to 1997.

Sometime in 1997, Suarez had a client who planned to purchase several parcels of land in Tagaytay City, but preferred not to deal directly with the land owners. In accordance with his client's instruction, Suarez transacted with the owners of the Tagaytay properties, making it appear that he was the buyer of the lots. As regards the payment of the purchase money, Suarez and his client made an arrangement such that Suarez's client would deposit the money in Suarez's BPI account and then, Suarez would issue checks to the sellers. Hence, on 16 June 1997, Suarez's client deposited a Rizal Commercial Banking Corporation (RCBC) check with a face value of P19,129,100, representing the total consideration of the sales, in BPI Pasong Tamo Branch to be credited to Suarez's current account in BPI Ermita Branch.

Aware of the banking system's 3-day check clearing policy,[3] Suarez instructed his secretary, Petronila Garaygay (Garaygay), to confirm from BPI whether the face value of the RCBC check was already credited to his account that same day of 16 June 1997. According to Garaygay, BPI allegedly confirmed the same-day crediting of the RCBC check. Relying on this confirmation, Suarez issued on the same day five checks of different amounts totaling P19,129,100 for the purchase of the Tagaytay properties.[4]

The next day, Suarez left for the United States (U.S.) for a vacation. While Suarez was in the U.S., Garaygay informed him that the five checks he issued were all dishonored by BPI due to insufficiency of funds and that his current account had been debited a total of P57,200 as penalty for the dishonor. Suarez's secretary further told him that the checks were dishonored despite an assurance from RCBC, the drawee bank for the sum of P19,129,100, that this amount had already been debited from the account of the drawer on 16 June 1997 and the RCBC check was fully funded.

On 19 June 1997, the payees of the five BPI checks that Suarez issued on 16 June 1997 presented the checks again. Since the RCBC check (which Suarez's client issued) had already been cleared by that time, rendering

Suarez's available funds sufficient, the checks were honored by BPI.

Subsequently, Suarez sent a letter to BPI demanding an apology and the reversal of the charges debited from his account. Suarez received a call from Fe Gregorius, then manager of the BPI Ermita Branch, who requested a meeting with him to explain BPI's side. However, the meeting did not transpire.

Suarez sent another letter to BPI addressed to its president, Xavier Loinaz. Consequently, BPI representatives asked another meeting with Suarez. During the meeting, the BPI officers handed Suarez a letter, the relevant text of which reads:

Dear Atty. Suarez:

Your letter to our President, Xavier P. Loinaz dated 02 July 1997 was referred to us for investigation and reply.

Our investigation discloses that when the checks you issued against your account were received for clearing, the checks you deposited were not yet cleared. Hence, the dishonor of the your checks.

We do not see much in your allegation that you have suffered damages just because the reason for the return was "DAIF" and not "DAUD". In both instances, there is a dishonor nonetheless.[5]

Upon Suarez's request, BPI delivered to him the five checks which he issued on 16 June 1997. Suarez claimed that the checks were tampered with, specifically the reason for the dishonor, prompting him to send another letter informing BPI of its act of falsification by making it appear that it marked the checks with "drawn against uncollected deposit (DAUD) and not "drawn against insufficient fund" (DAIF). In reply, BPI offered to reverse the penalty charges which were debited from his account, but denied Suarez's claim for damages. Suarez rejected BPI's offer.

Claiming that BPI mishandled his account through negligence, Suarez filed with the Regional Trial Court a complaint for damages, docketed as Civil Case No. 98-574.

The Regional Trial Court, Makati City, Branch 136 rendered judgment in favor of Suarez, thus:

WHEREFORE, judgment is hereby rendered ordering defendant bank to pay the following amounts:

- The amount of P57,200.00, with interest from date of first demand until full payment as actual damages;
- The sum of P3,000,000.00 by way of moral damages;
- The amount of P1,000,000.00 as and for exemplary damages;
- The sum of P1.00 as attorney's fees, and

The costs of litigation.

SO ORDERED.[6]

BPI appealed to the Court of Appeals, which affirmed the trial court's decision. The dispositive portion of the 30 November 2004 Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the instant appeal is DISMISSED. The decision dated 18 October 2002 of the Regional Trial Court, Branch 136, of Makati is AFFIRMED in toto.

SO ORDERED.[7]

The Court of Appeals denied BPI's motion for reconsideration in its 11 April 2005 Resolution.

Hence, this petition.

The Court of Appeals' Ruling

In affirming the trial court's decision, the Court of Appeals ruled as follows:

Contrary to its contention, plaintiff-appellee's evidence convincingly established the latter's entitlement to damages, which was the direct result of defendant-appellant's negligence in handling his account. It was duly proven that after his client deposited a check in the amount of P19,129,100.00 on 16 June 1997, it was confirmed through plaintiff-appellee's secretary by an employee of defendant-appellant bank that the aforesaid amount was, on the same day, already credited to his account. It was on the basis of this confirmation which made plaintiff-appellee issue five (5) checks in the amount of P19,129,100.00 to different payees. And despite RCBC's assurance that the aforementioned amount had already been debited from the account of the drawer bank, defendant-appellant bank still dishonored the five (5) checks for DAIF as reason when the various payees presented them for payment on 17 June 1997.

It was also proven that defendant-appellant bank through its employee inadvertently marked the dorsal sides of the checks as DAIF instead of DAUD. A closer look at the checks would indicate that intercalations were made marking the acronym DAIF thereon to appear as DAUD. Although the intercalation was obvious in the P12 million check, still the fact that there was intercalation made in the said check cannot be denied. It bears to stress that there lies a big difference between a check dishonored for reasons of DAUD and a check dishonored for DAIF. A check dishonored for reasons of DAIF would unduly expose herein plaintiff-appellee to criminal prosecution for violation of B.P. 22 while a check dishonored for reasons of DAUD would not. Thus, it was erroneous on the part of defendant-appellant bank to surmise that plaintiff-appellee would not suffer damages anyway for the dishonored checks for reasons of DAUD or DAIF because there was dishonor nonetheless.

While plaintiff-appellee had been spared from any criminal prosecution, his reputation, however, was sullied on account of the dishonored checks by reason of DAIF. His transaction with the would be sellers of the property in Tagaytay was aborted because the latter doubted his capacity to fulfill his obligation as buyer of their [properties.] As the agent of the true buyers, he had a lot of explaining to do with his client. In short, he suffered humiliation.

Defendant-appellant bank also contends that plaintiff-appellee is liable to pay the charges mandated by the Philippine Clearing House Rules and Regulations (PCHRR).

If truly these charges were mandated by the PCHRR, defendant-appellant bank should not have attempted to renege on its act of debiting the charges to plaintiff-appellee's account. In its letter dated 28 July 1997 addressed to plaintiff-appellee, the former has offered to reverse these charges in order to mitigate the effects of the returned checks on the latter. This, to the mind of the court, is tantamount to an admission on their (defendant-appellant bank's employees) part that they have committed a blunder in handling plaintiff-appellee's account. Perforce, defendant-appellant bank should return the amount of the service charges debited to plaintiff-appellee. It is basic in the law governing human relations that "no one shall be unjustly enriched at the expense of others." [8]

The Issues

In its Memorandum, BPI raised the following issues:

- WHETHER [BPI] WAS NEGLIGENT IN HANDLING THE ACCOUNT OF [SUAREZ];
- WHETHER [SUAREZ] IS LIABLE TO PAY THE SERVICE CHARGES IMPOSED BY THE PHILIPPINE CLEARING HOUSE CORPORATION; and
- WHETHER [BPI] IS LIABLE TO PAY [SUAREZ] MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COSTS OF LITIGATION.[9]

The Court's Ruling

The petition is partly meritorious.

As a rule, this Court is not a trier of facts. However, there are well-recognized exceptions to this rule, one of which is when certain relevant facts were overlooked by the lower court, which facts, if properly appreciated, would justify a different conclusion from the one reached in the assailed decision.[10] Reviewing the records, we find that the lower courts misappreciated the evidence in this case.

Suarez insists that BPI was negligent in handling his account when BPI dishonored the checks he issued to various payees on 16 June 1997, despite the RCBC check deposit made to his account on the same day to cover the total amount of the BPI checks.

Negligence is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do." [11] The question concerning BPI's negligence, however, depends on whether BPI indeed confirmed the same-day crediting of the RCBC check's face value to Suarez's BPI account.

In essence, Suarez impresses upon this Court that BPI is estopped [12] from dishonoring his checks since BPI confirmed the same-day crediting of the RCBC check deposit and assured the adequacy of funds in his account. Suarez points out that he relied on this confirmation for the issuance of his checks to the owners of the Tagaytay properties. In other words, Suarez claims that BPI made a representation that he had sufficient available funds to cover the total value of his checks.

Suarez is mistaken.

Based on the records, there is no sufficient evidence to show that BPI conclusively confirmed the same-day crediting of the RCBC check which Suarez's client deposited late on 16 June 1997. [13] Suarez's secretary, Garaygay, testified that she was able to talk to a BPI male employee about the same-day crediting of the RCBC check. [14] However, Garaygay failed to (1) identify and name the alleged BPI employee, and (2) establish that this particular male employee was authorized by BPI either to disclose any information regarding a depositor's bank account to a person other than the depositor over the telephone, or to assure Garaygay that Suarez could issue checks totaling the face value of the RCBC check. Moreover, a same-day clearing of a P19,129,100 check requires approval of designated bank official or officials, and not any bank official can grant such approval. Clearly, Suarez failed to prove that BPI confirmed the same-day crediting of the RCBC check, or that BPI assured Suarez that he had sufficient available funds in his account. Accordingly, BPI was not estopped from dishonoring the checks for inadequacy of available funds in Suarez's account since the RCBC check remained uncleared at that time.

While BPI had the discretion to undertake the same-day crediting of the RCBC check, [15] and disregard the banking industry's 3-day check clearing policy, Suarez failed to convincingly show his entitlement to such privilege. As BPI pointed out, Suarez had no credit or bill purchase line with BPI which would qualify him to the exceptions to the 3-day check clearing policy. [16]

Considering that there was no binding representation on BPI's part as regards the same-day crediting of the RCBC check, no negligence can be ascribed to BPI's dishonor of the checks precisely because BPI was justified in dishonoring the checks for lack of available funds in Suarez's account. [17]

However, BPI mistakenly marked the dishonored checks with "drawn against insufficient funds (DAIF), " instead

of "drawn against uncollected deposit (DAUD)." DAUD means that the account has, on its face, sufficient funds but not yet available to the drawer because the deposit, usually a check, had not yet been cleared.[18] DAIF, on the other hand, is a condition in which a depositor's balance is inadequate for the bank to pay a check.[19] In other words, in the case of DAUD, the depositor has, on its face, sufficient funds in his account, although it is not available yet at the time the check was drawn, whereas in DAIF, the depositor lacks sufficient funds in his account to pay the check. Moreover, DAUD does not expose the drawer to possible prosecution for estafa and violation of BP 22, while DAIF subjects the depositor to liability for such offenses.[20] It is clear therefore that, contrary to BPI's contention, DAIF differs from DAUD. Now, does the erroneous marking of DAIF, instead of DAUD, give rise to BPI's liability for damages?

The following are the conditions for the award of moral damages: (1) there is an injury -- whether physical, mental or psychological -- clearly sustained by the claimant; (2) the culpable act or omission is factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219[21] of the Civil Code.[22]

In the present case, Suarez failed to establish that his claimed injury was proximately caused by the erroneous marking of DAIF on the checks. Proximate cause has been defined as "any cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the result complained of and without which would not have occurred." [23] There is nothing in Suarez's testimony which convincingly shows that the erroneous marking of DAIF on the checks proximately caused his alleged psychological or social injuries. Suarez merely testified that he suffered humiliation and that the prospective consolidation of the titles to the Tagaytay properties did not materialize due to the dishonor of his checks,[24] not due to the erroneous marking of DAIF on his checks. Hence, Suarez had only himself to blame for his hurt feelings and the unsuccessful transaction with his client as these were directly caused by the justified dishonor of the checks. In short, Suarez cannot recover compensatory damages for his own negligence.[25]

While the erroneous marking of DAIF, which BPI belatedly rectified, was not the proximate cause of Suarez's claimed injury, the Court reminds BPI that its business is affected with public interest. It must at all times maintain a high level of meticulousness and should guard against injury attributable to negligence or bad faith on its part.[26] Suarez had a right to expect such high level of care and diligence from BPI. Since BPI failed to exercise such diligence, Suarez is entitled to nominal damages[27] to vindicate Suarez's right to such high degree of care and diligence. Thus, we award Suarez P75,000.00 nominal damages.

On the award of actual damages, we find the same without any basis. Considering that BPI legally dishonored the checks for being drawn against uncollected deposit, BPI was justified in debiting the penalty charges against Suarez's account, pursuant to the Rules of the Philippine Clearing House Corporation,[28] to wit:

SEC. 27. PENALTY CHARGES ON RETURNED ITEMS

27.1 a service charge of p600.00 for each check shall be levied against the DRAWER of any check or checks returned for any reason, except for the following:

- a) account closed
- b) no account
- c) under garnishment
- d) spurious check
- e) documentary stamps missing (for foreign checks/drafts only)
- f) post-dated/stale-dated
- g) validity restricted

- h) miscleared items
- i) deceased depositor
- j) violation of clearing rules and/or procedures
- k) lost by presenting bank while in transit to clearing

as well as other exceptions which may be defined/circulated by PCHC from time to time.[29]

In view of the foregoing, the Court deems it unnecessary to resolve the other issues raised in this case.

WHEREFORE, the Court GRANTS the petition in part. The Court SETS ASIDE the 30 November 2004 Decision and 11 April 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 76988, and deletes the award of all damages and fees. The Court awards to respondent Reynald R. Suarez nominal damages in the sum of P75,000.00.

SO ORDERED.

Brion, Del Castillo, Abad, and Perez, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 28-40. Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente concurring.

[3] TSN, 28 April 1999, pp. 4-5.

[4] Exhibits "A" to "E," records, pp. 144-149.

[5] Records, p. 132.

[6] Rollo, p. 69. Penned by Judge Rebecca R. Mariano.

[7] Id. at 39.

[8] Id. at 34-36.

[9] Id. at 182-183.

[10] Baricuatro, Jr. v. Court of Appeals, 382 Phil. 15, 24-25 (2000).

[11] Bulilan v. Commission on Audit, 360 Phil. 626, 634 citing McKee v. Intermediate Appellate Court, G.R. Nos. 68102 and 68103, 16 July 1992, 211 SCRA 517.

[12] Article 1431 of the Civil Code provides: "Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."

[13] TSN, 10 April 2000, p. 17.

[14] TSN, 6 March 2000, p. 7.

[15] See Security Bank and Trust Company v. Rizal Commercial Banking Corporation, G.R. No. 170984, 30 January 2009, 577 SCRA 407, 415, where the Court stated that the Central Bank, in a Memorandum dated 9 July 1980, gave banks the discretion to "allow immediate drawings on uncollected deposits of manager's checks, among others. Consequently, RCBC, in allowing the immediate withdrawal against the subject manager's check, only exercised a prerogative expressly granted to it by the Monetary Board."

[16] TSN, 13 August 2001, p. 39.

[17] See *Moran v. Court of Appeals*, G.R. No. 105836, 7 March 1994, 230 SCRA 799, 805-806.

[18] See *Salazar v. People*, 458 Phil. 504, 511 (2003).

[19] <http://www.metrobank.com.ph/glossary.asp>

[20] *Dy v. People*, G.R. No. 158312, 14 November 2008, 571 SCRA 59, 74-75, 78-79.

[21] 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.

[22] *Solidbank Corporation v. Sps. Arrieta*, 492 Phil. 95, 102 (2005); *Citytrust Banking Corporation v. Villanueva*, 413 Phil. 776, 787-788 (2001).

[23] *Solidbank Corporation v. Sps. Arrieta*, *supra* at 103.

[24] TSN, 14 April 1999, pp. 9-10.

[25] Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

[26] *Solidbank Corporation v. Sps. Arrieta*, *supra* at 105. See also *Philippine Banking Corporation v. Court of Appeals*, G.R. No. 127469, 15 January 2004, 419 SCRA 487, 505-506; *United Coconut Planters Bank v. Ramos*, G.R. No. 147800, 11 November 2003, 415 SCRA 596, 609; *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 112392, 29 February 2000, 326 SCRA 641, 657; *Simex International (Manila), Inc. v. Court of Appeals*, G.R. No. 88013, 19 March 1990, 183 SCRA 360, 367.

[27] Article 2221 of the Civil Code provides:

Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

[28] Which is known as the exclusive cheque clearing service provider for the country

(<http://pchc.com.ph/profile.jsp>)

[29] Exhibit "15," records, p. 202.

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