

PHILIPPINE COMMERCIAL AND INTERNATIONAL BANK (now BANCO DE ORO–EPCI, INC.), Petitioner, vs. DENNIS CUSTODIO, WILFREDO D. GLIANE, and ROLANDO FRANCISCO, Respondents.

G.R. No. 173207. February 14, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

At the time material to the present case, respondent Dennis Custodio (Custodio) had a door-to-door dollar remittance business. Respondent Wilfredo D. Gliane (Gliane) was one of his agents in Saudi Arabia.

As agent of Custodio, Gliane collected dollars from overseas workers in Saudi Arabia to be remitted to their beneficiaries in the Philippines.

In their transactions, Custodio and Gliane availed of the services of the Express Padala desk of petitioner Philippine Commercial and International Bank (PCIB), now Banco de Oro-EPCI, Inc.,[1] at its affiliate bank, the Al Rahji Bank in Saudi Arabia. The procedure they adopted in remitting dollars was to course them through regular clients of PCIB who, having established a good relationship with the bank, enjoyed special foreign exchange rates with it. One of those clients was respondent Rolando Francisco (Francisco) who maintained joint accounts, including those with his wife and Erlinda Chua (Erlinda).

On March 12, 1997, Francisco and his wife,[2] purportedly on behalf of ROL-ED Traders Group Corporation (ROL-ED), a company said to be owned and controlled by Francisco, entered into a Foreign Bills Purchase Line Agreement (FBPLA)[3] in the amount of P70 Million Pesos with the PCIB-Greenhills bank which would purchase checks and demand drafts, among other things, drawn on “U.S. Bank,” the proceeds of which would be advanced to Francisco by the bank without going through the regular 23-day clearing period. Under the FBPLA, the spouses made the following undertaking:

If a check is returned/dishonored for any reason whatsoever, we shall immediately, without need of demand, pay [the bank] the amount of the check, together with the interest at the rate of ** percent (%) per annum x x x and penalty at the rate of twelve percent (12%) per annum, computed from the date of purchase of the check to the date of full payment.

** - prevailing market rate

The amount of returned and dishonored checks, together with interest, penalty and other charges, shall be debited from any of our accounts with any of [the bank’s] branches, and if the credit balance thereof is insufficient, we undertake to pay [the bank] the deficiency immediately.[4] (Underscoring supplied)

And they authorized the PCIB-Greenhills

x x x at [its] option and without notice, to set-off or apply to the payment of any dishonored/returned check, interest, penalty and other charges, any and all monies which may be in [its] hands on deposit or otherwise belonging to us.[5] (Underscoring supplied)

Francisco deposited four dollar checks totaling US\$651,000 in his joint account with Erlinda at the PCIB-Greenhills. The checks were cleared and paid by Chase Manhattan Bank, but they were subsequently dishonored for insufficient funds.[6] Chase Manhattan Bank thus debited the amount of the dishonored checks from the account of PCIB-Greenhills which it maintained with it.[7]

Having received notice of the debiting by Chase Manhattan Bank of US\$651,000 from its account, PCIB-Greenhills debited US\$85,000 from Francisco and Erlinda's joint account as partial payment of the US\$651,000 dishonored checks.[8]

In the meantime or on May 17, 1998, Gliane remitted US\$42,300 to the above-said joint account of Francisco at the PCIB-Greenhills. Before that, however, Francisco himself had asked Custodio to desist from remitting dollars to him from Saudi Arabia because PCIB-Greenhills had imposed a higher exchange rate on him (Francisco).

Having gotten wind of Gliane's remittance of dollars to the joint account of Francisco, Custodio instructed Gliane to request, as the latter did, for the amendment of the designated beneficiary from Francisco to Belarmino Cortez and/or Rhodora Cruz who maintained a joint account in PCIB-Greenhills. PCIB's affiliate bank in Saudi Arabia transmitted the request to PCIB-Ermita, Manila which in turn transmitted it to PCIB-Greenhills.

At the time the request for change of beneficiary was received, however, PCIB-Greenhills had set off the US\$42,300 remitted by Gliane against Francisco's remaining balance of his obligation under the FBPLA (US\$651,000 minus the US\$85,000 earlier debited or US\$566,000).

The Area Manager for PCIB-Chinese Banking Group, Marilyn Tan (Marilyn), to whom Custodio attributed the instruction to set-off the US\$42,300 remittance against Francisco's obligation to PCIB-Greenhills, explained to Custodio that the amendment was no longer feasible as the US\$42,300 remitted by Gliane had already been applied as partial payment of his (Francisco's) outstanding obligation with PCIB-Greenhills. She thus advised Custodio to take the matter up with Francisco as she did not know of any arrangement between him and Francisco.

Custodio and Gliane thereafter filed on July 1, 1998 a complaint against PCIB, Marilyn and Francisco, for specific performance and damages before the Regional Trial Court (RTC) of Makati, to recover the US\$42,300, damages and attorney's fees.[9] They alleged that PCIB failed to perform its obligation to deliver the sum of money they remitted through it to their beneficiaries,[10] and that Francisco wrongfully appropriated or consented to the appropriation of the aforesaid remittance as payment of his loan account with the bank.[11]

PCIB and Marilyn filed their Answer[12] with Cross-claim against Francisco. Francisco did file his Answer with Compulsory Counterclaim[13] beyond the reglementary period but the trial court admitted it in the interest of substantial justice.[14]

Francisco and his counsel did not participate in the pre-trial[15] and in the trial on the merits. He was thereupon deemed to have waived his right to present evidence.[16]

By Decision of January 30, 2002, Branch 134 of the Makati RTC, finding that PCIB was negligent and that Francisco, albeit not negligent, may not be unjustly enriched, found them jointly and severally liable to pay Custodio and Gliane damages, attorney's fees and costs. Thus the decision disposed:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants PCIB and Francisco. Defendants PCIB and Francisco are hereby directed to pay the plaintiffs, jointly and severally, as follows:

- US\$42,300.00 as actual damages;

- P50,000.00 as exemplary damages;
- P30,000.00 as attorney's fees;
- cost of suit.

Defendants' counterclaim is dismissed.

SO ORDERED.[17] (Emphasis and underscoring supplied)

PCIB at once filed a Notice of Appeal.[18]

Francisco surfaced and filed a Motion for Reconsideration,[19] raising the following arguments why he could not be held solidarily liable with PCIB:

Defendant FRANCISCO cannot be held liable under the transaction in question considering that it was found out in the decision itself that there was no finding of fault or negligence on the part of FRANCISCO. (see decision p. 8.)[20]

It cannot also be said that FRANCISCO benefited from the said act of PCIBank because, according to the findings of this Honorable Court, the payment of the obligation of the defendant FRANCISCO out of US \$42,300.00 is void. And if such application of payment by PCIBank is void, no valid payment was made. Therefore, FRANCISCO was never benefited from the invalid and void payment. The decision further state[s]: "There being no objection as to the beneficiary of the US \$42,300.00 which was erroneously credited to the account of defendant FRANCISCO who was unauthorized to receive the same, no valid payment was made and the defendant PCIB as debtor was not released from its obligation to return the equivalent amount. (see decision p. 7.)[21] (Emphasis in the original; underscoring supplied)

Custodio and Gliane filed a Motion for Partial Reconsideration[22] of the trial court's decision, praying for an additional monetary award of legal interest "on the amount of US\$42,3000 from May 17, 1998 up to the date PCIB, Inc. actually settles the same, and reasonable amount in the award of damages and attorney's fees." [23]

By Order of April 26, 2002, the trial court granted the respective motions for reconsideration of Francisco and of Custodio and Gliane, disposing as follows:

WHEREFORE, modified as indicated above, the dispositive portion of this Court's Decision dated January 30, 2002 should be read as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants PCIB and Francisco, as follows:

1)

Defendant PCIB is hereby directed to pay the plaintiffs the amount of US\$ 42,300.00 plus 12% interest per annum from May 29, 1988 as actual damages with the right of reimbursement of the amount of US\$42,300.00 against defendant Francisco; and

2)

Defendant PCIB is likewise adjudged to pay plaintiffs further sums of:

- a) Php 50,000.00 as exemplary damages;
- b) Php 30,000.00 as attorney's fees;
- c) Cost of suit.

Defendants' counterclaim is dismissed.

SO ORDERED.”

SO ORDERED.[24] (Emphasis in the original; italics and underscoring supplied)

It bears noting that while the trial court, in the above-quoted dispositive portion of the order modifying its original decision, held PCIB solely liable to pay US\$42,300 to Custodio and Gliane, it decreed that PCIB had the right of reimbursement of the amount from Francisco.

PCIB filed a Notice of Appeal Ad Cautelam,[25] indicating therein that it was likewise appealing the trial court’s April 26, 2002 Order modifying its original decision.

The Court of Appeals, by Decision[26] of August 11, 2004, granted the appeal of PCIB and accordingly reversed the trial court’s April 26, 2002 Order-modified decision. It freed PCIB of any liability and held Francisco solely liable to Custodio and Gliane. And it deleted the award of exemplary damages, attorney’s fees and costs. In so deciding, the trial court ruled:

The record belies [the] finding of negligence on the part of appellant bank. Defendant Francisco and appellees are privy to an agreement whereby appellee’s dollar remittance shall be coursed through Francisco’s account to obtain higher exchange rates. In his testimony before the trial Court, appellee Custodio admitted using defendant Francisco as a pretend-beneficiary to enjoy higher exchange rates on his remittances.[27]

x x x x

x x x Defendant Francisco was unjustly enriched when the US\$42,300.00 remittance was credited in his favor by appellant bank. The obligation to reconstitute the said amount clearly falls on him.[28] x x x

x x x x

Anent the imposition of exemplary damages, We find the award to be sorely lacking in basis. There is no showing that appellant PCIB or defendant Francisco acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Neither is there any showing of bad faith. x x x[29]

x x x x

The award of attorney’s fees and costs of suit likewise finds no factual and legal support. x x x[30] (Emphasis and underscoring supplied)

Thus the appellate court disposed in its August 11, 2004 Decision:

WHEREFORE, the appealed judgment is hereby REVERSED and SET ASIDE. A new one is entered ordering defendant Rolando Francisco to pay the plaintiffs-appellees Dennis Custodio and Alfredo Gliane the sum of US\$42,300.00 or its peso equivalent at the time of payment with legal interest at 6% per annum from finality of this Decision until its satisfaction.[31] (Underscoring supplied)

Francisco filed a Motion for Reconsideration[32] of the appellate court’s decision in which he, for the first time on appeal, claimed that it was ROL-ED which entered into the FBPLA with PCIB-Greenhills:

A close examination of the FBLA xxx shows that the said agreement is one between ROL-ED Traders Group Corporation (ROL-ED) and the bank and not with Francisco. This is also true in the other agreements presented by the bank as its evidence. As such, defendant Francisco is not a party to these agreements. They cannot be used against him. He has a separate and distinct personality from that of ROL-ED. Consequently, the funds of the appellees could not be applied to Francisco[’s] debt on the basis of the Foreign Bills Purchase Line Agreement because the latter is not a party thereto.

True, it was defendant Francisco who signed for the corporation as its signatory but his participation therein is

only in a representative capacity and binds only the corporation and not his own private affairs such as a conduit of appellees' funds. The funds were originally directed to "Rolando Francisco" not to "ROL-ED TRADERS GROUP CORPORATION." [33] (Emphasis and underscoring supplied);

In the same motion, Francisco argued that no evidence was presented to prove that the bank indeed credited the amount of US\$42,300 to his bank account and applied it against his obligation. [34]

Custodio and Gliane filed too a Motion for Reconsideration, [35] arguing that

- THE DEBTOR-CREDITOR RELATIONSHIP BETWEEN THE BANK AND HEREIN PLAINTIFFS-APPELLEES EMANATE[S] NOT ONLY FROM THE AMENDMENT REQUEST BUT ALSO FROM THE BANK'S UNDERTAKING UNDER THE "EXPRESS PADALA" SCHEME.
- PLAINTIFF-APPELLEES SHOULD STILL BE CONSIDERED THE OWNER OF THE FUNDS IN THE LIGHT OF THE AMENDMENT REQUEST. [36]

Custodio and Gliane later filed a Supplemental Motion for Reconsideration [37] questioning the appellate court's reduction of the interest and deletion of the award of exemplary damages, attorney's fees, and costs.

Crediting Francisco's argument that it was ROL-ED, which he merely represented, that entered into the FBPLA with PCIB, the appellate court, by AMENDED DECISION [38] of October 25, 2005, set aside its earlier decision and reinstated the trial court's January 30, 2002 decision, as amended by its Order dated April 26, 2002.

PCIB filed a Motion for Reconsideration [39] which the Court of Appeals denied. [40] Hence, its present Petition for Review [41] on Certiorari, contending that the Court of Appeals erred

- x x x in issuing an Amended Decision without any Motion for Reconsideration to prompt it;
- x x x in taking into consideration new matters which were not put to fore before the lower court and in lending credence to Francisco's bare assertions that he and ROL-ED are not one and the same[;]
- x x x in ruling that [E]PCIB was negligent in carrying out its obligations under the Express Padala facility;
- x x x in not ruling that PCIB compensation took place between [E]PCIB and Francisco;
- x x x in disregarding that the root cause of this case was the deceitful scheme hatched by Gliane, Custodio, and Francisco against [E]PCIB. [42] (Emphasis and underscoring supplied)

To PCIB, it was error for the appellate court to entertain Francisco's motion for reconsideration of its original decision, he not having appealed the modified decision of the trial court, hence, the same had, to him, become final.

While a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision, [43] an appellee, like Francisco in the appellate court level, can advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed. [44] It bears recalling at this juncture that while the modified decision of the trial court held PCIB solely liable to Custodio and Gliane, it went on to hold that PCIB had the "right of reimbursement of the amount of US\$42,300.00 against defendant Francisco." [45]

No doubt, PCIB prayed in its Cross-Claim [46] against Francisco that, among other things, "[i]n the unlikely event that PCIB and [Marilyn] are adjudged liable for the claims of the plaintiff[s], the other defendant herein, Rolando Francisco, should be held liable to reimburse PCIBank and [Marilyn] for whatever amounts they may be required to pay the plaintiffs." The trial court did not, however, order Francisco to reimburse PCIB. It merely stated that PCIB had the right of reimbursement from Francisco.

Parenthetically, the Court of Appeals erred in considering Francisco's belated invocation of his separate personality from ROL-ED to justify his freedom from liability.

As earlier noted, Francisco raised this argument for the first time in his motion for reconsideration of the appellate court's original Decision. Points of law, theories, issues and arguments not adequately brought to the attention of the trial court ordinarily will not be considered by a reviewing court as they cannot be raised for the first time on appeal because this would be offensive to the basic rules of fair play, justice, and due process.[47] It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory which it could have done had it been aware of it at the time of the hearing before the trial court.[48]

Furthermore, in his Answer with Compulsory Counterclaim, Francisco claimed that "[h]e never instructed nor authorized the defendant bank to apply the U.S. dollar remittances to pay his loan obligation with the said bank"[49] (emphasis and underscoring supplied). He echoed this claim in his Motion for Reconsideration that he filed also before the trial court, viz:

A close and serious reading of the aforesaid decision will clearly show that there is absolutely no evidence that FRANCISCO directed nor authorized PCIBank to apply the US \$42,300.00 remitted by the plaintiffs through PCIBank to his own loan account with PCIBank.

x x x x

It cannot also be said that FRANCISCO benefited from the said act of PCIBank because, according to the findings of this Honorable Court, the payment of the obligation of the defendant FRANCISCO out of US \$ 4[2],300.00 is void. x x x[50] (Emphasis in the original; underscoring supplied)

Francisco thus virtually admitted in these two cited pleadings that the loan to which the US\$42,300 remittance was applied was his. As the object of pleadings is to draw the lines of battle, so to speak, between the litigants and to indicate fairly the nature of the claims or defenses of both parties, a party cannot subsequently take a position contrary to, or inconsistent, with his pleadings.[51] Unless a party alleges palpable mistake or denies such admission, judicial admissions cannot be controverted.[52]

Therefore, as the US\$42,300 remittance was applied to, by his own admission, Francisco's loan, the set-off was valid.

Parenthetically too, while Francisco claims that the loan in question was that of ROL-ED and not his, he, as earlier stated, deposited the US\$651,000 checks in his joint account with Erlinda and not in the account of ROL-ED.[53]

At all events, while a corporation is clothed with a personality separate and distinct from the persons composing it, the veil of separate corporate personality may be lifted when it is used as a shield to confuse legitimate issues, or where lifting the veil is necessary to achieve equity or for the protection of the creditors.[54] In the case at bar, there can be no mistake that Francisco belatedly invoked the separate identity of ROL-ED to evade his liability to PCIB.

On the failure of PCIB to comply with Gliane's request for amendment of beneficiary, Gliane and Custodio failed to prove that the request for amendment was communicated to PCIB within reasonable time. The testimonies[55] of Marilyn and Allen Alcantara (Alcantara), the PCIB Remittance Officer for the Middle East, that PCIB received the amendatory request after the set-off was not refuted. Thus, Alcantara explained that PCIB-Greenhills received the amendatory request on May 19, 1998, local time, after the said request underwent authentication procedures.

The entry reflecting the debiting of the US\$85,000 against Francisco's account with PCIB-Greenhills is dated

May 19, 1998, 4:45 P.M, local time.[56] Gliane and Custodio argue that “it is of standard operating policy of any banking institutions that the regular “holding period” of money transfers is more or less three (3) days.”[57] They failed to prove, however, that PCIB had that policy, or that the contract under the Express Padala service of PCIB provided for a three-day holding period. Furthermore, PCIB could not be faulted for the dispatch with which it credited the US\$42,300 to Francisco’s account. As it argued:

Equitable agrees with [the Court of Appeals] that the services offered by a banking institution are imbued with public interest. It is precisely with this principle in mind that Equitable effected the transfer of funds the quickest time practicable. Equitable is mindful of the fact that any delay in the remittance of money could be disastrous for the beneficiaries interest.

It is unfortunate for the plaintiffs-appellees, however, that their beneficiary – and by May 19, 1998, after the transfer had been effected, the rightful owner of the amounts remitted – had several outstanding obligations with Equitable. Obligations which Equitable, as Francisco’s creditor, had the right to seek payment for.[58] (Emphasis and underscoring supplied)

Gliane and Custodio themselves admit that time was of the essence in PCIB’s discharge of its obligation under its Express Padala service:

x x x [W]hen petitioner’s personnel in Saudi Arabia [marketed] and [e]nticed respondents Custodio and Gliane to course their money remittances through petitioner bank, they fully assured respondents of a special privilege, one of which is the speed of transfer and as a matter of fact respondents’ money transfers are always noted with the word “PRIORITY”.[59] (Capitalization and emphasis in the original; underscoring supplied)

WHEREFORE, the petition is GRANTED. The Amended Decision of the Court of Appeals dated October 25, 2005 is REVERSED and SET ASIDE, and its August 11, 2004 Decision REINSTATED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] CA rollo, pp. 491-493.

[2] TSN, October 12, 2000, pp. 14-20.

[3] Records, pp. 277-280.

[4] Id. at 277.

[5] Ibid.

[6] Id. at 283-290.

[7] Id. at 284, 286, 288, 290.

[8] Id. at 291. Vide TSN, October 12, 2000, pp. 4-20.

[9] Id. at 1-9.

[10] Vide records, pp. 5-6.

[11] Vide id., p. 6.

[12] Records, pp. 83-90.

[13] Id. at 32-34.

[14] Id. at 46.

[15] There is no showing if he was declared as in default.

[16] Records, pp. 154, 370.

[17] Id. at 376.

[18] Id. at 377-378.

[19] Id. at 380-383.

[20] Id. at 376.

[21] Id. at 375. Block quote from RTC records, pp. 381-382.

[22] Id. at 385-388.

[23] Id. at 387.

[24] Id. at 405.

[25] Id. at 406-407.

[26] Penned by then-Court of Appeals Associate Justice Ruben T. Reyes, with the concurrences of Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr. CA rollo, pp. 131-145.

[27] Id. at 141.

[28] Id. at 143.

[29] Id. at 143.

[30] Id. at 144

[31] Ibid.

[32] Id. at 146-155.

[33] Id. at 150-151.

[34] Id. at 151-153.

[35] Id. at 159-164.

[36] Id. at 160.

[37] Id. at 191-195.

[38] Penned also by the ponente of the original decision, then Court of Appeals Associate Justice Ruben T. Reyes, with the concurrence of Associate Justices Elvi John S. Asuncion and Jose C. Reyes, Jr. Id. at 227-247.

[39] Id. at. 261-273.

[40] Id. at 294-295.

[41] Rollo, pp. 52-78.

[42] Id. at 61-62.

[43] *Filflex Industrial & Manufacturing Corp. v. National Labor Relations Commission*, 349 Phil. 913, 925 (1998).

[44] *Vide SMI Fish Industries, Inc. v. NLRC*, G.R. Nos. 96952-56, September 2, 1992, 213 SCRA 444, 449.

[45] Records, p. 405 (emphasis and underscoring supplied).

[46] Id. at 87.

[47] *Vide Philippine Airlines Inc. v. National Labor Relations Commission*, 328 Phil. 814, 823 (1996).

[48] *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 936 (2003).

[49] Records, pp. 32-33.

[50] Id. at 381.

[51] *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 937 (2003) (citation omitted).

[52] *Ibid*; vide RULES OF COURT, Rule 129, Section 4.

[53] Records, pp. 294-296, 298-299.

[54] *Vide Martinez v. Court of Appeals*, G.R. No. 131673, September 10, 2004, 438 SCRA 130, 150 (citations omitted).

[55] TSN, October 12, 2000, pp. 20-22; TSN, April 3, 2001, pp. 6-13.

[56] Records, p. 291.

[57] Rollo, p. 189.

[58] CA rollo, p. 268.

[59] Rollo, p. 195.

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