

METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. MARINA B. CUSTODIO, RESPONDENT.

G.R. No. 173780. March 21, 2011

Ponente: SERENO, J.

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SERENO, J.:

This civil case is essentially a demand by a bank for the recovery of a sum of money from one of its tellers who allegedly failed to account for funds entrusted to her, amounting to six hundred thousand pesos (Php600,000).

Petitioner Metropolitan Bank and Trust Company (Metrobank) is a banking corporation. On the other hand, respondent Marina Custodio is a bank teller employed at the Laoag City branch of petitioner Metrobank.[1]

On 13 June 1995 at 8:18 a.m.,[2] respondent Custodio reported for work in petitioner bank's branch in Laoag City.[3] At the start of the banking day, respondent Custodio received loose money (picos)[4] for the day's business and was assigned as Teller No. 3.[5] In the course of performing her duties, respondent Custodio handled several cash transactions with the customers on behalf of petitioner bank.[6]

At 12:10 p.m., a cash transfer of two hundred thousand pesos (Php200,000) was made from Teller No. 1 to respondent Custodio.[7] Petitioner Metrobank explained that, usually, a transfer of money from one teller to another occurs if the latter "needs money, maybe to pay for the withdrawal." [8] However, petitioner bank pointed out that it was unnecessary for respondent Custodio to borrow from another teller at that time, since respondent had sufficient cash on hand to cover a withdrawal in the same amount as the cash transfer.[9]

At 12:25 p.m., respondent Custodio was reported to have taken her lunch break alone and returned to work thereafter at 1:12 p.m.[10]

The security guard for the Laoag City branch of petitioner Metrobank, Mr. Hannibal Jara, testified that respondent Custodio would ordinarily go out for lunch at noon with another teller, Ms. Mary Paula Castro.[11] However, he explained that the two employees did not go out for lunch together that day, since another teller was on leave.[12] Mr. Jara also noticed that when respondent Custodio went out for lunch, she was carrying a shoulder bag and a paper bag. [13] He, however, did not check the contents of the bags carried by respondent.[14]

At the close of banking hours, respondent Custodio balanced her transactions for the day and turned over the funds to the bank's cash custodian, Ms. Marinel Castro, in the amount of two million one hundred thirteen thousand five hundred pesos (Php2,113,500).[15] Ms. Marinel Castro acknowledged receipt of the bundled cash turned over and signed a Cash Transfer Slip.[16]

At around 5:05 p.m., after all tellers had turned over their cash on hand,[17] Ms. Castro discovered that there was a shortage amounting to Php600,000.[18] She notified Mr. Adriano Lucas, the branch manager, of the missing money.[19] The latter then instructed the cashier and the accountant to review all cash transactions to find out the reason for the cash shortage.[20] However, no errors were found in the records of the transactions, and the shortage was confirmed.[21]

Thereafter, Mr. Lucas instructed all bank employees to check all desks, drawers and even personal bags. [22] The guards were likewise instructed to search anybody going out of the office from that time on.[23] However, the missing money was not found.[24] Thus, the amount "CASH IN VAULT" was reported to be short of PhP600,000.[25]

Respondent Custodio left work that day, together with some of the employees, at 8:30 p.m.[26]

Later on, petitioner Metrobank alleged that it was able to recover eight bill wrappers only for bundles of five-hundred-peso bills (without the bills thereunder) that purportedly corresponded to the missing four hundred thousand pesos (PhP400,000).[27] These bill wrappers bore a rubber stamp "PEPT-3" for Teller No. 3.[28] Respondent Custodio countered that the discovery of the bill wrappers being attributed to her care was never mentioned at the time the cash shortage occurred, and that these wrappers could have been obtained subsequently by stamping unmarked ones.[29]

Respondent Custodio was allowed to continue to render services as a teller in petitioner bank's Laoag City branch from 14 June 1995 to 23 June 1995[30] She argued that had she been found responsible for the cash shortage, then she would not have been allowed to continue working as a teller on subsequent days.[31]

On 15 June 1995, investigators from the regional office of petitioner Metrobank as well as from its Department of Internal Affairs, Head Office, arrived at the Laoag City branch to investigate the cash shortage.[32] On a one-on-one basis, the investigators confronted the employees, including respondent Custodio.[33] After these meetings, Ms. Castro, the cash custodian, allegedly admitted that she received and acknowledged the cash bundles and signed the Cash Transfer Slip for the funds turned over by respondent Custodio.[34]

On 16 June 1995, employees of the Laoag City branch of petitioner Metrobank - including the new accounts clerk, the remittance clerk and all the other tellers - were made to take polygraph tests at the National Bureau of Investigation, except for respondent Custodio.[35] Respondent was eight months pregnant at that time and, thus, was not required to take the lie detector test.[36]

On 22 June 1995, petitioner Metrobank filed a Complaint for a sum of money with ex-parte application for a writ of preliminary attachment, praying that respondent Custodio pay the amount of PhP600,000, including attorney's fees and costs of suit.[37] The trial court subsequently granted the application for a writ of preliminary attachment against the properties of respondent Custodio[38]

On 23 June 1995 at around 1:30 p.m., while respondent Custodio was performing her duties as a teller, she was served the trial court's summons[39] and a copy of petitioner Metrobank's Complaint, including the attachment writ.[40]

After she was served the summons, respondent Custodio was supposedly caught bringing out a teller's copy of the journal print transactions with the related cash transfer slips for that particular banking day (23 June 1995).[41] These bank records were confiscated from respondent Custodio, when they were discovered in her dress pocket during a body search done on all employees leaving the office.[42]

Respondent teller later explained that she had mistakenly brought out these records because she was no longer allowed to go inside the teller's cage to file the transaction journal, after she was served the summons and Complaint.[43] She claimed that, at that time, she was confused by the bank's Complaint filed against her, so she placed the transaction journal in her right pocket.[44] It was admitted by the bank manager, however, that no cash shortage occurred on that day.[45]

Thereafter, respondent Custodio was relegated to a non-accountable position.[46]

Because of her alleged attempt to take the journal print transactions, Mr. Lucas, the branch manager, recommended that respondent Custodio be preventively suspended.[47] Thereafter, respondent received an Inter-Office Letter[48] requiring her to explain why no disciplinary action should be meted out to her for her attempt to "surreptitiously bring out bank records." [49] After respondent teller filed her explanation, petitioner Metrobank found it unacceptable and suspended her from work for seven days without pay.[50]

On 27 June 1995, respondent Custodio requested from petitioner Metrobank a copy of the Cash Transfer Slip that was signed by the cash custodian, Ms. Castro.[51] In reply, Mr. Lucas notified respondent that her request would be sent to the Head Office of petitioner Metrobank for approval.[52] This request was, however, not acted upon by petitioner.[53] Despite respondent's motion to have the Cash Transfer Slip produced in the trial proceedings[54] and the manifestation of petitioner Metrobank's counsel that it would present the slip,[55] the document was not entered into the records.

On 06 July 1995, respondent Custodio filed an Answer with Compulsory Counterclaim, denying the allegations of petitioner Metrobank that she was responsible for the cash shortage.[56] Respondent argued that Ms. Castro, not she, was the one who incurred the cash shortage, since the loss was discovered only after the cash and other accountabilities were turned over to her, as cash custodian.[57]

After the case was submitted for decision,[58] the trial court rendered its Decision granting petitioner Metrobank's Complaint and ordering respondent Custodio to pay the amount of six hundred thousand pesos (PhP600,000) plus interest.[59]

On 06 August 2003, respondent teller subsequently filed a Notice of Appeal.[60]

On 29 July 2004, respondent Custodio, thru her counsel Atty. Oliver Cachapero, filed a Brief for the Appellant.[61] Meanwhile, petitioner Metrobank submitted a Brief for the Appellee on 15 September 2004.[62]

On 16 July 2006, the Court of Appeals (10th Division)[63] found respondent Custodio's appeal meritorious and reversed the trial court's Decision:

WHEREFORE, the appeal being meritorious, the assailed decision dated July 25, 2003 of the RTC, Branch 11, Laoag City, in Civil Case No. 10814 is REVERSED and SET ASIDE. Consequently, the plaintiff-appellee's complaint against defendant-appellant is DISMISSED.[64]

On 10 August 2006, petitioner Metrobank, through the Sediego Sc Associates Law Office, in collaboration with Atty. Cachapero, filed in this Court a Motion for Extension of Time to File Petition for Review on Certiorari.[65] On 28 August 2006, Atty. Cachapero informed the Court that he had withdrawn as counsel for petitioner Metrobank.[66]

Respondent Custodio averred, however, that she received, through counsel, a separate Petition for Review on Certiorari filed by petitioner Metrobank's counsel, Atty. Cachapero, on 07 August 2006.[67]

Within the thirty-day extension period granted by the Court,[68] petitioner Metrobank filed the Petition for Review under Rule 45, through its new counsel of record, Sediego & Associates Law Office.[69] On 30 October 2007, respondent Custodio submitted her Comment on the instant Petition.[70] In response, petitioner Metrobank subsequently filed a Reply on 31 January 2008.[71]

After the instant Petition was given due course,[72] the parties submitted their respective memoranda.[73]

Before resolving the substantial legal issue, the Court will first resolve the procedural matters with respect to the propriety of raising questions of fact in the instant Petition and the receipt by respondent Custodio of another Petition through Atty. Cachapero.

In a petition for review on certiorari filed under Rule 45, the issues that can be raised are limited only to questions of law.[74] Questions of fact are not reviewable in a Rule 45 petition.[75] Nonetheless, this rule permits of exceptions, which the Court has long since recognized.[76]

Unless the party availing of the remedy clearly demonstrates at the first opportunity that the appeal falls under any of the established exceptions, a Rule 45 petition that raises pure questions of fact shall be subject to dismissal by the Court, since it is principally not a trier of facts. Although the emerging trend in the Court's rulings is to afford all party-litigants the amplest opportunity for the proper and just determination of their cause,[77] this is not a license for erring litigants to violate the rules with impunity.[78]

Respondent Custodio reasons that the bank's Petition before the Court seeks a review of factual issues, and that such kind of review is not countenanced by the Rules.[79] Although she recognizes the exceptions to the prohibition against raising a question of fact in a Rule 45 petition, respondent insists that the instant Petition fails to measure up to any of them, which would have permitted a review of the factual circumstances of the case.[80] Respondent Custodio's bare allegation that the present controversy[81] does not fall within the established exceptions fails to convince the Court.

The difference in appreciation by the trial court and the appellate court of the evidence with respect to the circumstances surrounding the cash shortage is prima facie justification for the Court to review the facts and the records of the case. While factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine or contrast the oral and documentary evidence de novo, this Court has the authority to review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court.[82]

In her Comment, respondent Custodio likewise assails the separate Petition she received from Atty. Cachapero, the former counsel of petitioner Metrobank.[83] She claims that the separate Petition should not be entertained by the Court, since there is no proof of payment of the docket fees or proof of service. Moreover, the Petition coming from Atty. Cachapero should preclude the instant Petition filed by the bank's new counsel, Sediego & Associates. Aside from the fact that this issue is not raised in respondent's Memorandum, nothing in the record shows that the separate Petition signed by Atty. Cachapero was ever filed and docketed with the Court.

Courts will not entertain and act on petitions that have yet to be properly filed, even if a copy has been served on the other party. Moreover, the separate Petition that came into the hands of respondent has no bearing on this case, since Atty. Cachapero has already withdrawn as counsel for petitioner Metrobank. Therefore, the Court will only confine itself to the instant Petition, which was duly filed by the bank's new counsel and submitted within the extended reglamentary period, after docket fees were paid and the Court had given due course to it.[84]

The Court now proceeds to the substantial merits of the case.

The resolution of the instant Petition hinges on whether there is a preponderance of evidence to establish that respondent Custodio incurred a cash shortage of PhP600,000 at the close of the banking day on 13 June 1995 and is therefore liable to pay petitioner Metrobank the said amount.[85]

In civil cases such as in the instant action for a sum of money, petitioner Metrobank carries the burden of proof and must establish its cause of action by a preponderance of evidence.[86] The concept of preponderance of evidence refers to evidence that is of greater weight or more convincing, than that which is offered in opposition to it; at bottom, it means probability of truth.[87]

The Court sustains the appellate court's finding that petitioner Metrobank failed to discharge its burden of proving that respondent Custodio was responsible for the cash shortage. Petitioner Metrobank's evidence on record does

not sufficiently establish that respondent Custodio took the funds that were entrusted to her as a bank teller.

The issue of respondent Custodio's civil liability for the cash shortage turns on whether she is the proximate or direct cause of the loss. There is nothing on record that will show that there were any missing bundles of one-thousand-peso and five-hundred-peso bills when respondent Custodio turned over the funds to the cash custodian, Ms. Marinel Castro. As the appellate court correctly found, the Cash Transfer Slip was the best evidence that respondent Custodio had properly turned over the amounts in her care, and that the cash custodian received them without any shortage.[88]

Although the Cash Transfer Slip was not introduced in evidence, Ms. Castro admitted having signed it. Had there been any cash shortage at that point, then the cash custodian could have refused to sign the Cash Transfer Slip, and respondent Custodio could have been required to account for any missing funds. However, having acknowledged receipt of the funds from respondent, it is reasonably presumed that Ms. Castro found nothing out of order in respondent's records of cash transactions and the amounts transferred.

Petitioner Metrobank admits the existence of the cash transfer slip and the custodian's signature thereon. It reasons, though, that it was not unusual for the custodian to sign the slip without counting the money, since she trusted her co-employees. Petitioner seeks to impress upon this Court that the custodian's negligence was in good faith and should not exonerate respondent Custodio from the cash shortage.

As the Court of Appeals correctly surmised, Ms. Castro's procedural lapse in trusting her co-employees by automatically signing the cash transfer slip without ensuring its correctness contributed significantly to the loss of the bank's money.[89] The proper accounting of funds through the cash transfer slip was precisely instituted as a safety mechanism to trace the flow of money from one employee to another. Specifically, the cash transfer slip was meant to ensure that the tellers had properly counted the money that they turned over to the cash custodian.[90] If Ms. Castro, as cash custodian, had not been remiss in her responsibilities, petitioner Metrobank would have been able to identify who among the tellers failed to turn over the proper amount as reflected in the Cash Transfer Slip. The cash custodian is not to be admonished for reposing her trust in her co-employees; nonetheless, she was negligent, insofar as ignoring established bank procedures meant to prevent loss, especially when one of her co-employees had broken that trust.

The Court of Appeals underscored the "highest degree of diligence" from the banking business, considering that it is impressed with public interest and of paramount importance. [91] However, as petitioner Metrobank pointed out, [92] the exacting standard of diligence required by the appellate court pertains to the relationship between a bank and a depositor, and not between a bank and its employees. In this case, no depositors were affected, as the transactions during that day were accounted for, and no error was found in the recording thereof. The relevant standard of diligence that we need to examine here is that of a bank teller who was entrusted monies by the bank and who may have failed to account for them.[93] In this case, petitioner Metrobank was unable to prove that respondent Custodio failed to exercise the necessary degree of diligence that would justify the bank's action for damages. Respondent Custodio was not remiss in her duties as all her dealings with the bank's money were clearly reflected on the records of the bank.

If petitioner bank had to attribute any negligence on the part of its employees, then it should have set its sights on the acts and/or omissions of Ms. Marinel Castro, the cash Custodian, and Mr. Hanibal Jara, the security guard. If theft of the money cannot be established, and negligence is the only legal phenomenon that is evident on the records, then the proximate cause of the loss of the bank's PhP600,000 is Ms. Castro, who, as cash custodian, disregarded established procedures and blindly signed the teller's cash transfer slips without counting the money turned over to her. Meanwhile, Mr. Jara failed to inspect respondent Custodio's belongings as she left the bank on

that day for lunch. Despite his own suspicions of respondent teller's conduct, he ignored them and decided not to check the bags. This omission can conceivably be considered as a grave omission of his duties as a security guard. The Court of Appeals succinctly explained both matters in this wise:

The foregoing circumstance is not sufficient basis for the court to assume that the said paper and should bag contained the cash shortage (P600.000). Ordinary diligence dictates that as a security guard, Jara should have checked and inspected the things of all the bank employees, especially those who were in charge of handling money before going out of the premises. Upon seeing a teller going out for lunch with an expandable shoulder bag and paper bag, prudence dictates that the security guard should have inspected and checked the teller's bags. Bu the security guard failed to do so. It should be noted that the security guard's testimony reveals that the said shoulder bag had been used by appellant even prior to June 13, 1995, and on said days, there were no shortages.

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The signature of the cash custodian in the transfer slip means that , the amount reflected therein corresponds to the bills turned over to her. The cash transfer slip is the best evidence that appellant turned over the amount of P2,l 13,500.00 on June 13, 1995. The cash transfer slip signed by the cash custodian was not presented despite the written requires of appellant. However, the existence of the signed transfer slip was admitted by the cash custodian. She even admitted that she did not follow the bank's standard operating procedure to count the money delivered by the teller to her before signing the cash transfer slip, x x x.

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In her testimony, the cash custodian, attested that it was not only the cash transfer slip of appellant which she signed without counting the money submitted to her, but also those of the other tellers. Under the circumstance, it cannot be determined at what point of the transactions the shortage occurred. But the cash custodian was negligent in not following the standard operating procedure of the bank. Her negligence was the root cause why the cash shortage was not discovered earlier because, had she counted first the money bills delivered to her before signing the cash transfer slip, the shortage could have been detected, x x x (Emphasis supplied)[94]

Verily, it is highly doubtful that Ms. Castro and Mr. Jara had performed the necessary care and caution required of bank employees in this instance, which directly contributed to the loss of PhP600,000 for petitioner Metrobank.

Considering the failure of the cash custodian and the security guard to abide by the procedural safeguards, petitioner bank is now left to find other evidence to determine the person liable for the cash shortage. The Court, however, is not sufficiently convinced that petitioner Metrobank has introduced a preponderance of circumstantial evidence to show that respondent Custodio was liable for the missing bundles of cash worth PhP600,000.

As regards respondent's receipt of PhP200,000 from another teller during the course of the business day, it was never demonstrated that the cash transfer was highly irregular. Neither was it conclusively proven that respondent took the money that was transferred by the other teller.

During one of the hearings, Mr. Lucas, the branch manager, explained that it was unusual for respondent Custodio to have requested a cash transfer, considering that she had sufficient funds to cover the amount.[95] However, as the appellate court explained, the trial court should not have considered his testimony in this respect, since the judge had ordered that particular statement stricken out during the trial court proceedings.[96] A fact elicited from a witness during testimony cannot be considered in the disposition of the case if it has been ordered stricken out, unless it is established by any other evidence on record.[97]

Even if the Court were to take cognizance of the bank manager's statement, the unusual cash transfer does not

tend to prove that respondent Custodio took the money. There was no reason why respondent Custodio would appropriate several bundles of cash from another teller, because the transfer would be reflected in her transaction journals and those of the other teller anyway. Besides, respondent would be held to account for all the transactions and funds at the end of the banking day. If at all, the cash transfer, which was reflected in the records, indicated a movement of funds from one teller to another, but did not establish the movement from the bank's coffers to respondent Custodio's pockets. In any case, based on the transaction journal, no error was found in the records, as all the entries were duly accounted for by respondent Custodio and the other teller.

The security guard's testimony that respondent Custodio left for lunch alone with an expandable shoulder bag and a paper bag is inadequate proof for the Court to believe that she carted away the missing cash. Although she ordinarily took her lunch break at noon with another teller - Ms. Mary Castro - the same security guard explained that respondent deviated from her usual practice, because one of the tellers was on leave. Presumably, respondent Custodio had to take her lunch alone, rather than go with Ms. Castro. Otherwise, the branch would have been left under-staffed and unable to serve the branch's clients fully. The daily time records submitted by petitioner Metrobank even show that there were other instances in which respondent did not have lunch together with her co-teller, yet, no cash shortage was reported.[98]

On the other hand, the bags carried by respondent Custodio when she went out for lunch were never inspected by the security guard. The latter failed to search these bags, which could have determined whether respondent teller had carried away the bank's missing money during her break. As it were, the security guard saw nothing unusual or out of the ordinary, with respect to respondent Custodio's bags that would have aroused his suspicion and prompt him to inspect her belongings before she left.

Meanwhile, the eight wrappers of five-hundred-peso bills allegedly recovered by petitioner Metrobank are likewise of doubtful credibility and are inconclusive in determining liability. The bill wrappers bear the stamp assigned to Teller No. 3, who is respondent Custodio. Yet, as respondent explains, these stamped wrappers can easily be procured by stamping unmarked bill wrappers with tools and materials that are readily available to petitioner Metrobank. Moreover, the wrappers offered into evidence by petitioner bank do not bear respondent Custodio's initials to prove that the bundles of money which these wrappers correspond to were in respondent's care, as is the common practice in the branch and as testified to by the cash custodian, Ms. Castro:

Q:

Madam witness, going over Exhibit G, you claim that these bill wrappers belong to defendant Marina Custodio because all these bill wrappers are stamped "PEPT-3"?

A:

Yes, sir.

Q:

Despite the fact that Marina Custodio did not affix her signature on these bill wrappers, you claim that these belong to her just by the mere stamp?

A:

Yes, sir.

Q:

Is it not a fact, madam witness, that the date when these bill wrappers are turned over to you is supposed to be reflected?

A:

It is supposed to reflect the date, sir; in fact, it is supposed to contain their signatures.[99]

Moreover, the circumstances surrounding the discovery of these bill wrappers by petitioner Metrobank remain unclear. Despite the bank manager's instructions and the bank employees' efforts in conducting a thorough search for the missing cash bundles, neither the money nor the bill wrappers were found on the day of the cash shortage. The cash custodian who identified these bill wrappers did not explain how she came to discover them.[100]

In addition, respondent Custodio was never confronted with these wrappers when the cash shortage was discovered. Neither were the wrappers presented to her when the bank's investigators conducted a one-on-one meeting with the employees two days after the incident. Not even a report by the investigation team of petitioner Metrobank regarding the incident was submitted to show when the bill wrappers were discovered, or when respondent Custodio was suspected of taking the money.[101]

It appears highly unlikely that respondent Custodio would be able to cart away several bundles of cash without being detected at all, only to carelessly leave the purported wrappers of the stolen cash, wrappers stamped with marks that might lead to her identity. The sudden appearance of these bill wrappers begs the question as to where and when they were discovered by petitioner Metrobank. If these empty bill wrappers were allegedly found to be under the account of respondent Custodio soon after the cash shortage was discovered, then there was no reason for petitioner Metrobank to have allowed her to continue with her duties in handling bank funds. Yet, respondent Custodio was subsequently permitted to report for work after the incident until 23 June 1995.

Contrary to the bank's assertions in the Complaint, respondent Custodio was never asked to account for and/or turn over the missing money. Neither did the bank, prior to the service of the summons and the complaint, demand that she return the money. Respondent Custodio was only informed that she was accused of stealing the missing funds when the summons was served upon her on 23 June 1995.[103] Indeed, after the discovery of the cash shortage, every employee was held suspect,[104] and respondent was never singled out for the loss until petitioner bank filed the Complaint with the trial court.

Petitioner Metrobank also argues that respondent Custodio's prior involvement in a cash shortage in its Cubao branch is admissible as evidence to prove a scheme or habit on her part.[105]

The general evidentiary rule is that evidence that one did or did not do a certain thing at one time is not admissible to prove that one did or did not do the same or a similar thing at another time.[106] However, evidence of similar acts may be received to prove a specific intent or knowledge, identity, plan system, scheme, habit, custom or usage and the like.[107] In *Citibank N.A., (Formerly First National City Bank) v. Sabeniano*, the Court explained the rationale for this rule:

The rule is founded upon reason, public policy, justice and judicial convenience. The fact that a person has committed the same or similar acts at some prior time affords, as a general rule, no logical guaranty that he committed the act in question. This is so because, subjectively, a man's mind and even his modes of life may change; and, objectively, the conditions under which he may find himself at a given time may likewise change and thus induce him to act in a different way. Besides, if evidence of similar acts are to be invariably admitted, they will give rise to a multiplicity of collateral issues and will subject the defendant to surprise as well as confuse the court and prolong the trial.[108]

Evidence of similar acts may frequently become relevant, especially to actions based on fraud and deceit, because it sheds light on the state of mind or knowledge of a person; it provides insight into such person's motive or intent; it uncovers a scheme, design or plan, or it reveals a mistake.[109]

In this case however, respondent Custodio's prior involvement in a cash shortage in the bank's Cubao branch does not conclusively prove that she is responsible for the loss of PHP600,000 in the Laoag City branch, subject of the instant case.

Although the previous cash shortage in Cubao could possibly shed light on the intent, scheme or habit of respondent Custodio, that previous cash shortage is not sufficient to affirm a definitive finding of fact that she took the funds in the Laoag City branch. If the prior cash shortage in Cubao showed a reasonable intent or habit on the part of respondent, then there was no reason for petitioner Metrobank to continue to employ her, considering the degree of trust and confidence required of a bank teller. Nevertheless, respondent Custodio continued to serve the bank even after the case in petitioner Metrobank's Cubao branch. Her continued employment was an affirmation that she was still worthy of the bank's trust, insofar as she was allowed to continue to handle sums of money in the Laoag City branch.

With respect to the taking of the journal transaction slip by respondent Custodio, no correlation was ever established between this incident and the cash shortage subject of the instant case. The same journal transaction slip, which respondent allegedly attempted to take away, has to do with transactions occurring on 23 June 1995. It does not pertain to the transactions on 13 June 1995, the day of the cash shortage. No reasonable explanation has been offered regarding how this incident is relevant to the instant case or how it tends to prove that respondent Custodio was the one responsible for a cash shortage that occurred ten days earlier. This incident was distinct and separate from the cash shortage, as shown by the fact that she was subsequently penalized with a seven-day preventive suspension for the incident on 23 June 1995, a penalty that is not the subject of the instant proceedings.

In any event, respondent Custodio sufficiently explains that the incident arose from confusion on her part. It is understandable that at the time she was caught with the journal transaction slip, she was just confronted with petitioner Metrobank's serious accusations that she had taken the missing funds. When the complaint was presented to her and she was barred from entering the teller's cage, respondent must have been so confused that she mistakenly placed the transaction journals in her pocket. That no cash shortage occurred at that time emphasizes that there was no direct and causal link between the transaction journal slip and the cash shortage.

It is not denied that petitioner Metrobank discovered the lost money after all the tellers had turned over their cash for the day, and the cash custodian had signed the Cash Transfer Slip. Without the cash custodian counting the money before signing the Cash Transfer Slip, many probabilities arise.^[110] The shortage may have occurred even prior to the turnover of the cash by respondent Custodio. The missing cash may have also resulted from the transfers done by the other tellers, and not necessarily by respondent Custodio. It may have been taken away during the counting of the money by the cash custodian and the other tellers themselves.

It is not denied that petitioner Metrobank discovered the lost money after all the tellers had turned over their cash for the day, and the cash custodian had signed the Cash Transfer Slip. Without the cash custodian counting the money before signing the Cash Transfer Slip, many probabilities arise.¹¹⁰ The shortage may have occurred even prior to the turnover of the cash by respondent Custodio. The missing cash may have also resulted from the transfers done by the other tellers, and not necessarily by respondent Custodio. It may have been taken away during the counting of the money by the cash custodian and the other tellers themselves.

"Petitioner Metrobank even argued that respondent Custodio may have taken the money after the cash custodian had returned the amounts turned over to the tellers and other employees for sorting and counting.¹ To begin with, this position is directly contrary to petitioner Metrobank's theory that respondent Custodio carried away the money in the morning of 13 June 1995. In addition, the cash custodian had asked for assistance from the other bank employees to speed up the counting and sorting, which necessarily opens the possibility that any of those

involved could have been a suspect as well.[112] Respondent Custodio even argued that the money she had counted and sorted were funds turned over by other tellers, and not the same funds she herself had given to the cash custodian.[113] More disconcerting is the failure of the cash custodian to even remember who were the employees who had helped her in counting the cash at that time, since everybody was in a hurry to go home.[114] The procedural shortcuts resorted to by petitioner bank's employees threw open the doors to a multitude of probable scenarios, leading to ambiguity in determining civil liability.

The secondary and incidental facts offered by petitioner Metrobank do not prove the primary factual issue that it wishes to establish in demanding the instant relief from the courts - that respondent Custodio took the money.

Regrettably, the evidence offered by petitioner Metrobank is insufficient to convince to the Court that the probability of respondent Custodio's having taken the money is greater than its having been taken by another employee. Verily, weighing the evidence on record, the Court finds that petitioner Metrobank failed in its burden of proving by a preponderance of evidence that respondent Custodio took PhP600,000 from petitioner Metrobank and is liable to return the amount to the latter.

In view of the foregoing, the Court DENIES the instant Petition for Review filed by Metropolitan Bank and Trust Company. The Court of Appeals' 14 July 2006 Decision, which dismissed the complaint against respondent Marina Custodio, is hereby AFFIRMED.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Villarama, Jr., JJ., concur.

[1] RTC Pre-Trial Order dated 12 September 1995, RTC records at 60.

[2] Exhibit "A-4," id. at 262.

[3] RTC Pre-Trial Order dated 12 September 1995, id. at 60.

[4] On 13 June 1995, respondent Custodio received fifty-four thousand nine hundred twenty-nine and 19/100 Pesos (PhP54,929.19) as her picos from the cash custodian. (Exhibit "B-1," [id. at 268]; RTC Decision at 6-7 [rollo at 94-95])

[5] TSN, 11 December 1995, at 8-10; Exhibit "B-1," RTC records at 268.

[6] RTC Pre-Trial Order dated 12 September 1995 (id. at 60); Exhibit "B-1" (id. at 268).

[7] Exhibit "B-2," id. at 270.

[8] RTC Decision at 6; rollo at 94.

[9] At the time of the cash transfer, respondent Custodio had cash on hand amounting to one million one hundred thirty-nine thousand eight hundred seventy-four and 32/100 pesos (PhP1,139,874.32). (RTC Decision at 6-7 [rollo at 94-95]; Exhibit "B-3" [RTC records at 270]; TSN, 11 December 1995, at 15)

[10] Exhibits "A-5" and "A-6," RTC records at 262.

[11] TSN, 02 June 1998, at 64-67; RTC Decision at 8 {rollo at 96}.

[12] TSN, 02 June 1998, at 66.

[13] TSN, 03 August 1998, at 83-84; RTC Decision at 14 (rollo at 102).

[14] Id.

[15] Part of the funds transferred by respondent Custodio are bundles of one-thousand-peso bills amounting to PhP400,000 and bundles of five-hundred-peso bills amounting to PhP1,100,00. (Exhibit "B-1," RTC records at 271)

[16] RTC Decision at 14-15; rollo at 102-103.

[17] On that day, there were four tellers who turned over cash to Castro: (1) Virginia Asanon; (2) Eliza Piedad; (3) respondent Custodio; and (4) Mary Paula Castro. (RTC Decision at 9, rollo at 97)

[18] The shortage is broken down as follows: (a) PhP200,000, consisting of one thousand peso bills; and (b) PhP400,000, consisting of five-hundred-peso bills. (RTC Decision at 13 [rollo at 101]; TSN, 11 December 1995, at 7)

[19] RTC Decision dated 25 July 2003, at 13 (rollo at 101); TSN, 11 December 1995, at 7-8.

[20] Id.

[21] Id.

[22] RTC Decision at 13; rollo at 101.

[23] RTC Decision at 10 (id. at 98); TSN, 11 December 1995, at 8.

[24] RTC Decision at 13; id. at 101.

[25] Brief for the Appellant, at 7 (id. at 116); TSN, 28 February 2000, at 97-98.

[26] Exhibit "A-7"; RTC records at 262.

[27] Exhibits "G-1" to "G-8"; id. at 276.

[28] Exhibits "G" to "G-8"; id. at 276.

[29] Brief for the Appellant, at 13-14; rollo at 122-123.

[30] TSN, 27 September 2002, at 129-130; TSN, 09 July 1996, at 34.

[31] TSN, 27 September 2002 at 129-130.

[32] RTC Pre-Trial Order dated 12 September 1995, RTC records at 60.

[33] Answer, id. at 13.

[34] TSN, 22 August 2002, at 114.

[35] Answer, RTC records at 13.

[36] CA Decision at 2; rollo at 46.

[37] RTC records at 1-6.

[38] RTC Order dated 23 June 1995; id. at 17.

[39] Id. at 9.

[40] RTC records at 10.

[41] RTC Decision at 7-8; rollo at 95-96.

[42] Id.

[43] RTC Decision at 11 {rollo at 99}; TSN, 17 March 2000, at 105; TSN, 22 August 2002 at 112-113.

[44] RTC Decision at 11, rollo at 99.

[45] TSN, 12 December 1996, at 44.

[46] Respondent Custody's Formal Offer of Evidence at 2-3, RTC records at 303-304; TSN, 12 December 1996, at 43.

[47] Exhibit "3" (RTC records at 88); RTC Decision at 8 (rollo at 96).

[48] Exhibit "C" (RTC records at 272); id.

[49] Pre-Trial Order at 1, RTC records at 60.

[50] Exhibit "D" (RTC records at 273); RTC Decision at 8 (rollo at 96).

[51] Exhibit "1" {RTC records at 308}; Pre-Trial Order at 1 (RTC records at 60); RTC Decision at 1 i (rollo at 99).

[52] Exhibit "2" (RTC records at 309); Pre-Trial Order at 1-2 (RTC records at 60-61); RTC Decision at 11 (rollo at 99).

[53] RTC Decision at 15 (rollo at 103).

[54] Motion for the Issuance of a Subpoena Duces Tecum dated 16 December 1996; RTC records at 104-107.

[55] RTC Order dated 12 March 1997, RTC records at 125.

[56] Id. at 1146.

[57] RTC Decision at 11; rollo at 99.

[58] After petitioner Metrobank filed its Memorandum on 26 June 2003, the trial court deemed the case submitted for decision. Respondent Custodio failed to file a memorandum within the non-extendible forty-five (45) day period. (Order dated 02 July 2003; RTC records at 323)

[59] "WHEREFORE, the complaint is hereby GRANTED. The defendant is hereby directed to pay the plaintiff-bank the amount of six hundred thousand pesos (P600,000.00) plus interest at the legal rate of 12% per annum beginning June 13, 1995 until fully paid." (RTC Decision at 18-19, rollo at 106-107)

[60] RTC records at 357.

[61] CA Records at 36-57; rollo at 108-128.

[62] Id. at 77-95; rollo at 148-165.

[63] Composed of Justices Andres B. Reyes, Jr., Hakim S. Abdulwahid (ponente) and Estela M. Perlas-Bernabe.

[64] CA Decision dated 14 July 2006. CA Records at 98-107; rollo at 45-54.

[65] Rollo at 3-7.

[66] Id. at 9-10.

[67] Comment at 1-3; rollo at 175-177. (See Annex "1" of the Comment)

[68] Resolution dated 23 August 2006; rollo at 8.

[69] Rollo at 12-42.

[70] Comment dated 08 October 2007; rollo at 175-182.

[71] Reply dated 30 January 2008; id. at 230-235.

[72] Resolution dated 13 February 2008, id. at 242-243.

[73] Petitioner Metrobank's Memorandum dated 02 July 2008 (Id. at 271-285); Respondent Custodio's Memorandum dated 13 June 2009 (Id. at 299-311).

[74] New Rural Bank Guimba (N.E.), Inc., v. Abad, G.R. No. 161818, 20 August 2008, 562 SCRA 503; Rules of Court Rule 45, Sec. 1.

[75] Yokohama Tires Philippines, Inc., v. Yokohama Employees Union, G.R. No. 163532, 12 March 2010.

[76] A question of fact can be entertained in a Rule 45 petition for the following exceptions/reasons: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. {Serrano v. People, G.R. No. 175023, 05 July 2010 [footnote 13] citing Pelonia v. People, G.R. No. 168997, 13 April 2007, 521 SCRA 207}

[77] Tabuham III v. People, G.R. No. 175162, 29 October 2008, 570 SCRA 229.

[78] Marphomsalic v. Cole, G.R. No. 169918, 27 February 2008, 547 SCRA 98.

[79] Respondent Custodio's Comment at 4, rollo at 178.

[80] Memorandum for Respondent at 10-11; id. at 308-309.

[81] Petitioner Metrobank's Memorandum at 11, id. at 281.

[82] Encinares v. Achero, G.R. No. 161419, 25 August 2009, 597 SCRA 34.

[83] Comment at 1-3; rollo at 175-177.

[84] Resolution dated 13 February 2008; rollo at 242-243.

[85] See RTC Pre-Trial Order at 2, RTC records at 61.

[86] Rules of Court, Rule 131, Sec. 1; Spouses Monteclavo v. Primero, G.R. No. 165168, 09 July 2010.

[87] Rizal Commercial Banking Corporation v. Marcopper Mining Corporation, G.R. No. 170738, 12 September 2008, 565 SCRA 125, citing Jison v. Court of Appeals, G.R. No. 124853, 24 February 1998, 286 SCRA 495, 532.

[88] "The cash transfer slip is the best evidence that appellant (Custodio) turned over the amount of P2,13,500.00 on June 13, 1995." (CA Decision at 6; rollo at 50)

[89] "But the cash custodian was negligent in not following the standard operating procedure of the bank. Her negligence was the root cause why the cash shortage was not discovered earlier because, had she counted first the money bills delivered to her before signing the cash transfer, the shortage could have been detected." (CA Decision at 9; Id., at 53)

[90] TSN, 27 September 2002, at 120.

[91] CA Decision at 9 (rollo at 53) citing *Bank of the Philippine Islands v. Casa Montessori Internationale*, 430 SCRA 261, 283 (2004).

[92] Petitioner Metrobank's Memorandum at 9-11; rollo at 279-281.

[93] "A teller's relationship with the bank is necessarily one of trust and confidence. The teller as a trustee is expected to possess a high degree of fidelity to trust and must exercise utmost diligence and care in handling cash. A teller cannot afford to relax vigilance in the performance of his duties." (*Fuentes v. NLRC*, G.R. No. 75955, 28 October 1988, 166 SCRA 752, citing *Galsim v. PNB*, G.R. No. 23921, 24 August 1969, 29 SCRA 293; *Allied Banking Corporation v. Castro, et al.*, G.R. No. 70608, 22 December 1987)

[94] CA Decision, at 6-9; rollo at 50-53.

[95] TSN, 11 December 1995, at 15.

[96] CA Decision at 5; rollo at 49.

[97] 'Striking out answer. — Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, and such objection is found to be meritorious, the court shall sustain the objection and order the answer given to be stricken off the record."

"On proper motion, the court may also order the striking out of answers which are incompetent, irrelevant, or otherwise improper." (Rule 132, Sec. 39)

[98] Exhibit "4" (RTC records at 3II -312); TSN 03 August 1998, at 78-80.

[99] TSN, 28 February 2000 at 95.

[100] Id. at 90-91.

[101] "Further, Mr. Lucas, the manager of appellee bank admitted that investigators from their Regional Office and from their head office, the Department of Internal Affairs conducted an investigation on the shortage and submitted a written report. Interestingly, the manager of appellee bank had to refer to the written investigation report during the cross-examination to refresh his memory. But appellant was not even furnished with a copy of the said report nor was such report presented to enlighten the trial court of what really transpired." (CA Decision at 9, rollo at 53)

[102] "4. That the plaintiff appealed and demanded from defendant to account and/or turn over the said sum of P600,00[0].00 but the latter refused and failed and still refuses and fails to honor plaintiffs demand." (Complaint at 2, RTC records at 2)

[103] TSN, 27 September 2002, at 130.

[104] TSN, 28 February 2000, at 97.

[105] Petition for Review at 25 (rollo at 36); Memorandum for Petitioner at 11 (rollo at 281).

[106] Rules of Court, Rule 130, Sec. 34.

[107] Id.

[108] G.R. No. 156132, 16 October 2006, 504 SCRA 378, citing J.A.R. SIBAL AND J.N. SALAZAR, JR., Compendium On Evidence 199-200 (4th ed., 1995).

[109] Tanzo v. Drilon, G.R. No. 106671, 30 March 2000, 329 SCRA 147, citing Cruz v. Court of Appeals, 293 SCRA 239, 255 (1998).

[110] "In her testimony, the cash custodian, attested that it was not only the cash transfer slip of appellant (Custodio) which she signed without counting the money submitted to her, but also those of the other tellers of the bank. Under the circumstance, it cannot be determined at what point of the transactions the shortage occurred." (CA Decision at 9, rollo at 53)

[111] "" Brief for the Appellee at 9, rollo at 158.

[112] "Q: Is it not a fact that on said date after all the bundles were turned over to you, when you made an bundle count before you placed these bundles of cash inside the vault, there were also bundles missing from other tellers in the person of Mary Paula Castro?

A: Yes, sir." (TSN 28 February 2000, at 96)

[113] TSN, 27 September 2002, at 121.

[114] TSN, 12 May 2003, at 6.

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