

**JOSEPH GOYANKO, JR., AS ADMINISTRATOR OF THE ESTATE OF
JOSEPH GOYANKO, SR., PETITIONER, VS. UNITED COCONUT
PLANTERS BANK, MANGO AVENUE BRANCH, RESPONDENT.**

G.R. No. 179096. February 06, 2013

Ponente: BRION, J.

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BRION, J.:

We resolve the petition for review on certiorari[1] filed by petitioner Joseph Goyanko, Jr., administrator of the Estate of Joseph Goyanko, Sr., to nullify the decision[2] dated February 20, 2007 and the resolution[3] dated July 31, 2007 of the Court of Appeals (CA) in CA-G.R. CV. No. 00257 affirming the decision[4] of the Regional Trial Court of Cebu City, Branch 16 (RTC) in Civil Case No. CEB-22277. The RTC dismissed the petitioner's complaint for recovery of sum of money against United Coconut Planters Bank, Mango Avenue Branch (UCPB).

The Factual Antecedents

In 1995, the late Joseph Goyanko, Sr. (Goyanko) invested Two Million Pesos (P2,000,000.00) with Philippine Asia Lending Investors, Inc. (PALII); he died before the investment matured. Goyanko's legitimate family, represented by the petitioner, and his illegitimate family presented conflicting claims to PALII for the release of the investment. Pending the investigation of the conflicting claims, PALII deposited the proceeds of the investment with UCPB on October 29, 1996[5] under the name "Phil Asia: ITF (In Trust For) The Heirs of Joseph Goyanko, Sr." (ACCOUNT). On September 27, 1997, the deposit under the ACCOUNT was P1,509,318.76.

On December 11, 1997, UCPB allowed PALII to withdraw One Million Five Hundred Thousand Pesos (P1,500,000.00) from the Account, leaving a balance of only P9,318.76. When UCPB refused the demand to restore the amount withdrawn plus legal interest from December 11, 1997, the petitioner filed a complaint before the RTC. In its answer to the complaint, UCPB admitted, among others, the opening of the ACCOUNT under the name "ITF (In Trust For) The Heirs of Joseph Goyanko, Sr.," (ITF HEIRS) and the withdrawal on December 11, 1997.

The RTC Ruling

In its August 27, 2003 decision, the RTC dismissed the petitioner's complaint and awarded UCPB attorney's fees, litigation expenses and the costs of the suit.[6] The RTC did not consider the words "ITF HEIRS" sufficient to charge UCPB with knowledge of any trust relation between PALII and Goyanko's heirs (HEIRS). It concluded that UCPB merely performed its duty as a depository bank in allowing PALII to withdraw from the ACCOUNT, as the contract of deposit was officially only between PALII, in its own capacity, and UCPB. The petitioner appealed his case to the CA.

The CA's Ruling

Before the CA, the petitioner maintained that by opening the ACCOUNT, PALII established a trust by which it was the "trustee" and the HEIRS are the "trustors-beneficiaries;" thus, UCPB should be liable for allowing the

withdrawal.

The CA partially granted the petitioner's appeal. It affirmed the August 27, 2003 decision of the RTC, but deleted the award of attorney's fees and litigation expenses. The CA held that no express trust was created between the HEIRS and PALII. For a trust to be established, the law requires, among others, a competent trustor and trustee and a clear intention to create a trust, which were absent in this case. Quoting the RTC with approval, the CA noted that the contract of deposit was only between PALII in its own capacity and UCPB, and the words "ITF HEIRS" were insufficient to establish the existence of a trust. The CA concluded that as no trust existed, expressly or impliedly, UCPB is not liable for the amount withdrawn.[7]

In its July 31, 2007 resolution,[8] the CA denied the petitioner's motion for reconsideration. Hence, the petitioner's present recourse.

The Petition

The petitioner argues in his petition that: first, an express trust was created, as clearly shown by PALII's March 28, 1996 and November 15, 1996 letters.[9] Citing jurisprudence, the petitioner emphasizes that from the established definition of a trust,[10] PALII is clearly the trustor as it created the trust; UCPB is the trustee as it is the party in whom confidence is reposed as regards the property for the benefit of another; and the HEIRS are the beneficiaries as they are the persons for whose benefit the trust is created.[11] Also, quoting *Development Bank of the Philippines v. Commission on Audit*,[12] the petitioner argues that the naming of the cestui que trust is not necessary as it suffices that they are adequately certain or identifiable.[13]

Second, UCPB was negligent and in bad faith in allowing the withdrawal and in failing to inquire into the nature of the ACCOUNT.[14] The petitioner maintains that the surrounding facts, the testimony of UCPB's witness, and UCPB's own records showed that: (1) UCPB was aware of the trust relation between PALII and the HEIRS; and (2) PALII held the ACCOUNT in a trust capacity. Finally, the CA erred in affirming the RTC's dismissal of his case for lack of cause of action. The petitioner insists that since an express trust clearly exists, UCPB, the trustee, should not have allowed the withdrawal.

The Case for UCPB

UCPB posits, in defense, that the ACCOUNT involves an ordinary deposit contract between PALII and UCPB only, which created a debtor-creditor relationship obligating UCPB to return the proceeds to the account holder-PALII. Thus, it was not negligent in handling the ACCOUNT when it allowed the withdrawal. The mere designation of the ACCOUNT as "ITF" is insufficient to establish the existence of an express trust or charge it with knowledge of the relation between PALII and the HEIRS.

UCPB also argues that the petitioner changed the theory of his case. Before the CA, the petitioner argued that the HEIRS are the trustors-beneficiaries, and PALII is the trustee. Here, the petitioner maintains that PALII is the trustor, UCPB is the trustee, and the HEIRS are the beneficiaries. Contrary to the petitioner's assertion, the records failed to show that PALII and UCPB executed a trust agreement, and PALII's letters made it clear that PALII, on its own, intended to turn-over the proceeds of the ACCOUNT to its rightful owners.

The Court's Ruling

The issue before us is whether UCPB should be held liable for the amount withdrawn because a trust agreement existed between PALII and UCPB, in favor of the HEIRS, when PALII opened the ACCOUNT with UCPB.

We rule in the negative.

We first address the procedural issues. We stress the settled rule that a petition for review on certiorari under Rule

45 of the Rules of Court resolves only questions of law, not questions of fact.[15] A question, to be one of law, must not examine the probative value of the evidence presented by the parties;[16] otherwise, the question is one of fact.[17] Whether an express trust exists in this case is a question of fact whose resolution is not proper in a petition under Rule 45. Reinforcing this is the equally settled rule that factual findings of the lower tribunals are conclusive on the parties and are not generally reviewable by this Court,[18] especially when, as here, the CA affirmed these findings. The plain reason is that this Court is not a trier of facts.[19] While this Court has, at times, permitted exceptions from the restriction,[20] we find that none of these exceptions obtain in the present case.

Second, we find that the petitioner changed the theory of his case. The petitioner argued before the lower courts that an express trust exists between PALII as the trustee and the HEIRS as the trustor-beneficiary.[21] The petitioner now asserts that the express trust exists between PALII as the trustor and UCPB as the trustee, with the HEIRS as the beneficiaries.[22] At this stage of the case, such change of theory is simply not allowed as it violates basic rules of fair play, justice and due process. Our rulings are clear - “a party who deliberately adopts a certain theory upon which the case was decided by the lower court will not be permitted to change [it] on appeal”;[23] otherwise, the lower courts will effectively be deprived of the opportunity to decide the merits of the case fairly.[24] Besides, courts of justice are devoid of jurisdiction to resolve a question not in issue.[25] For these reasons, the petition must fail. Independently of these, the petition must still be denied.

No express trust exists; UCPB exercised the required diligence in handling the ACCOUNT; petitioner has no cause of action against UCPB

A trust, either express or implied,[26] is the fiduciary relationship “x x x between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter.”[27] Express or direct trusts are created by the direct and positive acts of the trustor or of the parties.[28] No written words are required to create an express trust. This is clear from Article 1444 of the Civil Code,[29] but, the creation of an express trust must be firmly shown; it cannot be assumed from loose and vague declarations or circumstances capable of other interpretations.[30]

In *Rizal Surety & Insurance Co. v. CA*,[31] we laid down the requirements before an express trust will be recognized:

Basically, these elements include a competent trustor and trustee, an ascertainable trust res, and sufficiently certain beneficiaries. xxx each of the above elements is required to be established, and, if any one of them is missing, it is fatal to the trusts (sic). Furthermore, there must be a present and complete disposition of the trust property, notwithstanding that the enjoyment in the beneficiary will take place in the future. It is essential, too, that the purpose be an active one to prevent trust from being executed into a legal estate or interest, and one that is not in contravention of some prohibition of statute or rule of public policy. There must also be some power of administration other than a mere duty to perform a contract although the contract is for a third-party beneficiary. A declaration of terms is essential, and these must be stated with reasonable certainty in order that the trustee may administer, and that the court, if called upon so to do, may enforce, the trust. [emphasis ours]

Under these standards, we hold that no express trust was created. First, while an ascertainable trust res and sufficiently certain beneficiaries may exist, a competent trustor and trustee do not. Second, UCPB, as trustee of the ACCOUNT, was never under any equitable duty to deal with or given any power of administration over it. On the contrary, it was PALII that undertook the duty to hold the title to the ACCOUNT for the benefit of the HEIRS. Third, PALII, as the trustor, did not have the right to the beneficial enjoyment of the ACCOUNT. Finally, the terms by which UCPB is to administer the ACCOUNT was not shown with reasonable certainty. While we agree

with the petitioner that a trust's beneficiaries need not be particularly identified for a trust to exist, the intention to create an express trust must first be firmly established, along with the other elements laid above; absent these, no express trust exists.

Contrary to the petitioner's contention, PALII's letters and UCPB's records established UCPB's participation as a mere depositary of the proceeds of the investment. In the March 28, 1996 letter, PALII manifested its intention to pursue an active role in and up to the turnover of those proceeds to their rightful owners,[32] while in the November 15, 1996 letter, PALII begged the petitioner to trust it with the safekeeping of the investment proceeds and documents.[33] Had it been PALII's intention to create a trust in favor of the HEIRS, it would have relinquished any right or claim over the proceeds in UCPB's favor as the trustee. As matters stand, PALII never did.

UCPB's records and the testimony of UCPB's witness[34] likewise lead us to the same conclusion. While the words "ITF HEIRS" may have created the impression that a trust account was created, a closer scrutiny reveals that it is an ordinary savings account.[35] We give credence to UCPB's explanation that the word "ITF" was merely used to distinguish the ACCOUNT from PALII's other accounts with UCPB. A trust can be created without using the word "trust" or "trustee," but the mere use of these words does not automatically reveal an intention to create a trust.[36] If at all, these words showed a trustee-beneficiary relationship between PALII and the HEIRS.

Contrary to the petitioner's position, UCPB did not become a trustee by the mere opening of the ACCOUNT. While this may seem to be the case, by reason of the fiduciary nature of the bank's relationship with its depositors,[37] this fiduciary relationship does not "convert the contract between the bank and its depositors from a simple loan to a trust agreement, whether express or implied." [38] It simply means that the bank is obliged to observe "high standards of integrity and performance" in complying with its obligations under the contract of simple loan.[39] Per Article 1980 of the Civil Code,[40] a creditor-debtor relationship exists between the bank and its depositor.[41] The savings deposit agreement is between the bank and the depositor;[42] by receiving the deposit, the bank impliedly agrees to pay upon demand and only upon the depositor's order.[43]

Since the records and the petitioner's own admission showed that the ACCOUNT was opened by PALII, UCPB's receipt of the deposit signified that it agreed to pay PALII upon its demand and only upon its order. Thus, when UCPB allowed PALII to withdraw from the ACCOUNT, it was merely performing its contractual obligation under their savings deposit agreement. No negligence or bad faith[44] can be imputed to UCPB for this action. As far as UCPB was concerned, PALII is the account holder and not the HEIRS. As we held in *Fulton Iron Works Co. v. China Banking Corporation*,[45] the bank's duty is to its creditor-depositor and not to third persons. Third persons, like the HEIRS here, who may have a right to the money deposited, cannot hold the bank responsible unless there is a court order or garnishment.[46] The petitioner's recourse is to go before a court of competent jurisdiction to prove his valid right over the money deposited.

In these lights, we find the third assignment of error mooted. A cause of action requires that there be a right existing in favor of the plaintiff, the defendant's obligation to respect that right, and an act or omission of the defendant in breach of that right.[47] We reiterate that UCPB's obligation was towards PALII as its creditor-depositor. While the HEIRS may have a valid claim over the proceeds of the investment, the obligation to turn-over those proceeds lies with PALII. Since no trust exists, the petitioner's complaint was correctly dismissed and the CA did not commit any reversible error in affirming the RTC decision. One final note, the burden to prove the existence of an express trust lies with the petitioner.[48] For his failure to discharge this burden, the petition must fail.

WHEREFORE, in view of these considerations, we hereby DENY the petition and AFFIRM the decision dated February 20, 2007 and the resolution dated July 31, 2007 of the Court of Appeals in CA-G.R. CV. No. 00257. Costs against the petitioner.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

[1] Dated September 25, 2007 and filed on September 24, 2007 under Rule 45 of the 1997 Rules of Civil Procedure; rollo, pp. 24-42.

[2] Penned by Associate Justice Priscilla Baltazar-Padilla, and concurred in by Executive Justice Arsenio J. Magpale and Associate Justice Romeo F. Barza; id. at 9-17.

[3] Id. at 19-20.

[4] Dated August 27, 2003 per the CA decision; id at 9.

[5] The amount deposited was P1,485,685.09 per the CA decision dated February 20, 2007. Per the attached copy of UCPB's record pertaining to the ACCOUNT, and UCPB's comment, the ACCOUNT was opened on May 31, 1996. Also, per UCPB's comment, the initial deposit on the ACCOUNT was P173,250.00, with subsequent deposits made in the succeeding months, the last of which was on October 28, 1996; id. at 60 and 77.

[6] From the dispositive portion of the RTC decision, as quoted by the CA; id. at 10.

[7] Id. at 15.

[8] Supra note 3.

[9] Rollo, pp. 33-35, 113-114; copy of the letters at pp. 59 and 61.

[10] The petitioner cites the Court's ruling in *Estate of Edward Grimm v. Estate of Charles Parsons and Patrick C. Parsons*, G.R. No. 159810, October 9, 2006, 504 SCRA 67; id. at 36. The petitioner also cites *Galvez v. Court of Appeals*, 485 SCRA 346; id. at 115-116.

[11] Rollo, pp. 34-36, 115-116.

[12] G.R. No. 144516, February 11, 2004, 422 SCRA 459.

[13] Rollo, pp. 35, 116-117.

[14] Id. at 36-40, 119-123.

[15] *Andrada v. Pilhino Sales Corporation*, G.R. No. 156448, February 23, 2011, 644 SCRA 1, 8-9; *Philippine Commercial International Bank v. Balmaceda*, G.R. No. 158143, September 21, 2011, 658 SCRA 33, 42-43; *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 46-47; and *Republic v. De Guzman*, G.R. No. 175021, June 15, 2011, 652 SCRA 101, 113.

[16] *Lorzano v. Tabayag, Jr.* supra note 15, at 46-47; *Republic v. De Guzman*, supra note 15, at 113. See also *Heirs of Pacencia Racaza, etc. v. Spouses Florencio Abay-abay, et al.*, G.R. No. 198402, June 13, 2012.

[17] *Lorzano v. Tabayag, Jr.*, supra note 15, at 46-47; *Republic v. De Guzman*, supra note 15, at 113.

[18] See *Heirs of Pacencia Racaza, etc. v. Spouses Florencio Abay-abay*, supra note 16.

[19] Id.

[20] Among the recognized exceptions to the restriction are:

- (a) When the findings are grounded entirely on speculation, surmises, or conjectures;
- (b) When the inference made is manifestly mistaken, absurd, or impossible;
- (c) When there is grave abuse of discretion;
- (d) When the judgment is based on a misapprehension of facts;
- (e) When the findings of facts are conflicting;
- (f) When in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- (g) When the CA's findings are contrary to those by the trial court;
- (h) When the findings are conclusions without specific citation of specific evidence on which they are based;
- (i) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;
- (j) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or
- (k) When the CA manifestly overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion.

[21] See rollo, pp. 12-13.

[22] Id. at 34-36, 115-116.

[23] *Morla v. Belmonte*, G.R. No. 171146, December 7, 2011, 661 SCRA 717, 727.

[24] *Peña v. Tolentino*, G.R. Nos. 155227-28, February 9, 2011, 642 SCRA 310, 323.

[25] Id. at 324.

[26] *Estate of Margarita D. Cabacungan v. Laigo*, G.R. No. 175073, August 15, 2011, 655 SCRA 366, 376. See also *Philippine National Bank v. Aznar*, G.R. Nos. 171805 and 172021, May 30, 2011, 649 SCRA 214, 230; and *Torbela v. Rosario*, G.R. Nos. 140528 and 140553, December 7, 2011, 661 SCRA 633, 661.

[27] *Estate of Margarita D. Cabacungan v. Laigo*, supra, at 376. See also *Philippine National Bank v. Aznar*, supra; *Torbela v. Rosario*, supra; and *Metropolitan Bank & Trust Company, Inc. v. Board of Trustees of Riverside Mills Corporation Provident and Retirement Fund*, G.R. No. 176959, September 8, 2010, 630 SCRA 350, 357.

[28] *Torbela v. Rosario*, supra note 26; and *PNB v. Aznar*, supra note 26.

[29] Art. 1444. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

[30] *Philippine National Bank v. Aznar*, supra note 26, at 230.

[31] 329 Phil. 789, 805-806, citing *Mindanao Development Authority v. Court of Appeals*, No. L-49087, April 5, 1982, 113 SCRA 429, 436-437.

[32] Rollo, p. 59. The letter stated: "In the meantime, the monthly interest that will accrue to said investments will be, at the instance of our client, deposited in a bank under the account name, 'Heirs of Joseph Goyanko, Sr., x x x x.

x x x our client will be constrained to bring an action before the court for interpleader to compel the claimants to interplead and litigate their several claims among themselves.' (emphasis ours)

[33] Id. at 61. To quote PALII: “Since the money is intact and safe in the bank ready for turn-over to the righteous owner, so with all the documents of the investment in our possession, we would like to request your goodself to please trust us for its safekeeping.” (emphasis ours)

[34] Id. at 62-64. UCPB’s witness testified that the ACCOUNT was owned by PALII and that he was not personally aware of any trust relation between PALII and the HEIRS since he was not yet the bank’s branch manager at that time.

[35] Id. at 60. In the copy of the UCPB’s record, UCPB Form No. 4-1118, under the heading “TYPE OF ACCOUNT,” the option “Savings Account” bears a check mark. Also, on the reverse side, under the heading “TYPE OF ACCT.” “Savings Acct.” was written. Also the ACCOUNT’s authorized signatory was only Crisanto Pescadero, PALII’s general manager.

[36] See *Torbela v. Rosario*, supra note 26, at 661.

[37] See *BPI Family Bank v. Franco*, G.R. No. 123498, November 23, 2007, 538 SCRA 184, 198.

[38] *Consolidated Bank and Trust Corporation v. Court of Appeals*, G.R. No. 138569, September 11, 2003, 457 Phil. 688, 707.

[39] Id. at 705.

[40] Article 1980 of the Civil Code provides:

Art. 1980. Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan. (emphasis ours)

[41] See *Central Bank of the Philippines v. Citytrust Banking Corporation*, G.R. No. 141835, February 4, 2009, 578 SCRA 27, 32, quoting *Consolidated Bank and Trust Corporation v. Court of Appeals*, supra note 38 at 574-575; *Lucman v. Malawi*, 540 Phil. 289, 300 (2006); and *Allied Banking Corporation v. Lim Sio Wan*, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 515. See *Samsung Construction Co. Phils., Inc. v. FEBTC*, 480 Phil. 39, 49 (2004).

[42] *Consolidated Bank and Trust Corporation v. Court of Appeals*, supra note 38, at 705.

[43] *Samsung Construction Co. Phils., Inc. v. FEBTC*, supra note 41, at 49; and *Central Bank of the Philippines v. Citytrust Banking Corporation*, supra note 41, at 32.

[44] Article 1173, Civil Code of the Philippines provides: “Negligence consists in the omission of that diligence which is required by the nature of the obligation, and corresponds with the circumstances of the persons, of the time and of the place.” Bad faith implies a conscious or intentional design to do a wrongful act for a dishonest purpose or moral obliquity. (*Arenas v. CA*, G.R. No. 126466, January 14, 1999, 345 SCRA 617).

[45] 55 Phil. 208, 216-217 (1930).

[46] Ibid.

[47] *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, November 28, 2011, 661 SCRA 328, 338-339; and *Manalo v. PAIC Savings Bank*, 493 Phil. 854, 859 (2005).

Section 2 of the Rules of Court provides:

SEC. 2. Cause of action, defined. – A cause of action is the act or omission by which a party violates a right of another.

[48] Cañez v. Rojas, G.R. No. 148788, November 23, 2007, 538 SCRA 242, 253; and Duran v. Court of Appeals, 522 Phil. 399, 407 (2006).

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