

EUSEBIO GONZALES, PETITIONER, VS. PHILIPPINE COMMERCIAL AND INTERNATIONAL BANK, EDNA OCAMPO, AND ROBERTO NOCEDA, RESPONDENTS.

G.R. No. 180257. February 23, 2011

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an appeal via a Petition for Review on Certiorari under Rule 45 from the Decision[1] dated October 22, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 74466, which denied petitioner's appeal from the December 10, 2001 Decision[2] in Civil Case No. 99-1324 of the Regional Trial Court (RTC), Branch 138 in Makati City. The RTC found justification for respondents' dishonor of petitioner's check and found petitioner solidarily liable with the spouses Jose and Jocelyn Panlilio (spouses Panlilio) for the three promissory notes they executed in favor of respondent Philippine Commercial and International Bank (PCIB).

The Facts

Petitioner Eusebio Gonzales (Gonzales) was a client of PCIB for a good 15 years before he filed the instant case. His account with PCIB was handled by respondent Edna Ocampo (Ocampo) until she was replaced by respondent Roberto Noceda (Noceda).

In October 1992, PCIB granted a credit line to Gonzales through the execution of a Credit-On-Hand Loan Agreement[3] (COHLA), in which the aggregate amount of the accounts of Gonzales with PCIB served as collateral for and his availment limit under the credit line. Gonzales drew from said credit line through the issuance of check. At the institution of the instant case, Gonzales had a Foreign Currency Deposit (FCD) of USD 8,715.72 with PCIB.

On October 30, 1995, Gonzales and his wife obtained a loan for PhP 500,000. Subsequently, on December 26, 1995 and January 3, 1999, the spouses Panlilio and Gonzales obtained two additional loans from PCIB in the amounts of PhP 1,000,000 and PhP 300,000, respectively. These three loans amounting to PhP 1,800,000 were covered by three promissory notes.[4] To secure the loans, a real estate mortgage (REM) over a parcel of land covered by Transfer Certificate of Title (TCT) No. 38012 was executed by Gonzales and the spouses Panlilio. Notably, the promissory notes specified, among others, the solidary liability of Gonzales and the spouses Panlilio for the payment of the loans. However, it was the spouses Panlilio who received the loan proceeds of PhP 1,800,000.

The monthly interest dues of the loans were paid by the spouses Panlilio through the automatic debiting of their account with PCIB. But the spouses Panlilio, from the month of July 1998, defaulted in the payment of the periodic interest dues from their PCIB account which apparently was not maintained with enough deposits. PCIB allegedly called the attention of Gonzales regarding the July 1998 defaults and the subsequent accumulating

periodic interest dues which were left still left unpaid.

In the meantime, Gonzales issued a check dated September 30, 1998 in favor of Rene Unson (Unson) for PhP 250,000 drawn against the credit line (COHLA). However, on October 13, 1998, upon presentment for payment by Unson of said check, it was dishonored by PCIB due to the termination by PCIB of the credit line under COHLA on October 7, 1998 for the unpaid periodic interest dues from the loans of Gonzales and the spouses Panlilio. PCIB likewise froze the FCD account of Gonzales.

Consequently, Gonzales had a falling out with Unson due to the dishonor of the check. They had a heated argument in the premises of the Philippine Columbian Association (PCA) where they are both members, which caused great embarrassment and humiliation to Gonzales. Thereafter, on November 5, 1998, Unson sent a demand letter[5] to Gonzales for the PhP 250,000. And on December 3, 1998, the counsel of Unson sent a second demand letter[6] to Gonzales with the threat of legal action. With his FCD account that PCIB froze, Gonzales was forced to source out and pay the PhP 250,000 he owed to Unson in cash.

On January 28, 1999, Gonzales, through counsel, wrote PCIB insisting that the check he issued had been fully funded, and demanded the return of the proceeds of his FCD as well as damages for the unjust dishonor of the check.[7] PCIB replied on March 22, 1999 and stood its ground in freezing Gonzales' accounts due to the outstanding dues of the loans.[8] On May 26, 1999, Gonzales reiterated his demand, reminding PCIB that it knew well that the actual borrowers were the spouses Panlilio and he never benefited from the proceeds of the loans, which were serviced by the PCIB account of the spouses Panlilio.[9]

PCIB's refusal to heed his demands compelled Gonzales to file the instant case for damages with the RTC, on account of the alleged unjust dishonor of the check issued in favor of Unson.

The Ruling of the RTC

After due trial, on December 10, 2001, the RTC rendered a Decision in favor of PCIB. The decretal portion reads:

WHEREFORE, judgment is rendered as follows -

(a) on the first issue, plaintiff is liable to pay defendant Bank as principal under the promissory notes, Exhibits A, B and C;

(b) on the second issue, the Court finds that there is justification on part of the defendant Bank to dishonor the check, Exhibit H;

(c) on the third issue, plaintiff and defendants are not entitled to damages from each other.

No pronouncement as to costs.

SO ORDERED.[10]

The RTC found Gonzales solidarily liable with the spouses Panlilio on the three promissory notes relative to the outstanding REM loan. The trial court found no fault in the termination by PCIB of the COHLA with Gonzales and in freezing the latter's accounts to answer for the past due PhP 1,800,000 loan. The trial court ruled that the dishonor of the check issued by Gonzales in favor of Unson was proper considering that the credit line under the COHLA had already been terminated or revoked before the presentment of the check.

Aggrieved, Gonzales appealed the RTC Decision before the CA.

The Ruling of the CA

On September 26, 2007, the appellate court rendered its Decision dismissing Gonzales' appeal and affirming in

toto the RTC Decision. The fallo reads:

WHEREFORE, in view of the foregoing, the decision, dated December 10, 2001, in Civil Case No. 99-1324 is hereby AFFIRMED in toto.

SO ORDERED.[11]

In dismissing Gonzales' appeal, the CA, first, confirmed the RTC's findings that Gonzales was indeed solidarily liable with the spouses Panlilio for the three promissory notes executed for the REM loan; second, it likewise found neither fault nor negligence on the part of PCIB in dishonoring the check issued by Gonzales in favor of Unson, ratiocinating that PCIB was merely exercising its rights under the contractual stipulations in the COHLA brought about by the outstanding past dues of the REM loan and interests for which Gonzales was solidarily liable with the spouses Panlilio to pay under the promissory notes.

Thus, we have this petition.

The Issues

Gonzales, as before the CA, raises again the following assignment of errors:

I - IN NOT CONSIDERING THAT THE LIABILITY ARISING FROM PROMISSORY NOTES (EXHIBITS "A", "B" AND "C", PETITIONER; EXHIBITS "1", "2" AND "3", RESPONDENT) PERTAINED TO BORROWER JOSE MA. PANLILIO AND NOT TO APPELLANT AS RECOGNIZED AND ACKNOWLEDGE[D] BY RESPONDENT PHILIPPINE COMMERCIAL & INDUSTRIAL BANK (RESPONDENT BANK).

II - IN FINDING THAT THE RESPONDENTS WERE NOT AT FAULT NOR GUILTY OF GROSS NEGLIGENCE IN DISHONORING PETITIONER'S CHECK DATED 30 SEPTEMBER 1998 IN THE AMOUNT OF P250,000.00 FOR THE REASON "ACCOUNT CLOSED", INSTEAD OF MERELY "REFER TO DRAWER" GIVEN THE FACT THAT EVEN AFTER DISHONOR, RESPONDENT SIGNED A CERTIFICATION DATED 7 DECEMBER 1998 THAT CREDIT ON HAND (COH) LOAN AGREEMENT WAS STILL VALID WITH A COLLATERAL OF FOREIGN CURRENCY DEPOSIT (FCD) OF [USD] 48,715.72.

III - IN NOT AWARDING DAMAGES AGAINST RESPONDENTS DESPITE PRESENTATION OF CLEAR PROOF TO SUPPORT ACTION FOR DAMAGES.[12]

The Court's Ruling

The core issues can be summarized, as follows: first, whether Gonzales is liable for the three promissory notes covering the PhP 1,800,000 loan he made with the spouses Panlilio where a REM over a parcel of land covered by TCT No. 38012 was constituted as security; and second, whether PCIB properly dishonored the check of Gonzales drawn against the COHLA he had with the bank.

The petition is partly meritorious.

First Issue: Solidarily Liability on Promissory Notes

A close perusal of the records shows that the courts a quo correctly found Gonzales solidarily liable with the spouses Panlilio for the three promissory notes.

The promissory notes covering the PhP 1,800,000 loan show the following:

(1) Promissory Note BD-090-1766-95,[13] dated October 30, 1995, for PhP 500,000 was signed by Gonzales and his wife, Jessica Gonzales;

(2) Promissory Note BD-090-2122-95,[14] dated December 26, 1995, for PhP 1,000,000 was signed by Gonzales and the spouses Panlilio; and

(3) Promissory Note BD-090-011-96,[15] dated January 3, 1996, for PhP 300,000 was signed by Gonzales and the spouses Panlilio.

Clearly, Gonzales is liable for the loans covered by the above promissory notes. First, Gonzales admitted that he is an accommodation party which PCIB did not dispute. In his testimony, Gonzales admitted that he merely accommodated the spouses Panlilio at the suggestion of Ocampo, who was then handling his accounts, in order to facilitate the fast release of the loan. Gonzales testified:

ATTY. DE JESUS:

Now in this case you filed against the bank you mentioned there was a loan also applied for by the Panlilio's in the sum of P1.8 Million Pesos. Will you please tell this Court how this came about?

GONZALES:

Mr. Panlilio requested his account officer . . . at that time it is a P42.0 Million loan and if he secures another P1.8 Million loan the release will be longer because it has to pass to XO.

Q:

After that what happened?

A:

So as per suggestion since Mr. Panlilio is a good friend of mine and we co-owned the property I agreed initially to use my name so that the loan can be utilized immediately by Mr. Panlilio.

Q:

Who is actually the borrower of this P1.8 Million Pesos?

A:

Well, in paper me and Mr. Panlilio.

Q:

Who received the proceeds of said loan?

A:

Mr. Panlilio.

Q:

Do you have any proof that it was Mr. Panlilio who actually received the proceeds of this P1.8 Million Pesos loan?

A:

A check was deposited in the account of Mr. Panlilio.[16]

x x x x

Q:

By the way upon whose suggestion was the loan of Mr. Panlilio also placed under your name initially?

A:

Well it was actually suggested by the account officer at that time Edna Ocampo.

Q:

How about this Mr. Rodolfo Noceda?

A:

As you look at the authorization aspect of the loan Mr. Noceda is the boss of Edna so he has been familiar with my account ever since its inception.

Q:

So these two officers Ocampo and Noceda knew that this was actually the account of Mr. Panlilio and not your account?

A:

Yes, sir. In fact even if there is a change of account officer they are always informing me that the account will be debited to Mr. Panlilio's account.[17]

Moreover, the first note for PhP 500,000 was signed by Gonzales and his wife as borrowers, while the two subsequent notes showed the spouses Panlilio sign as borrowers with Gonzales. It is, thus, evident that Gonzales signed, as borrower, the promissory notes covering the PhP 1,800,000 loan despite not receiving any of the proceeds.

Second, the records of PCIB indeed bear out, and was admitted by Noceda, that the PhP 1,800,000 loan proceeds went to the spouses Panlilio, thus:

ATTY. DE JESUS: [on Cross-Examination]

Is it not a fact that as far as the records of the bank [are] concerned the proceeds of the 1.8 million loan was received by Mr. Panlilio?

NOCEDA:

Yes sir.[18]

The fact that the loans were undertaken by Gonzales when he signed as borrower or co-borrower for the benefit of the spouses Panlilio--as shown by the fact that the proceeds went to the spouses Panlilio who were servicing or paying the monthly dues--is beside the point. For signing as borrower and co-borrower on the promissory notes with the proceeds of the loans going to the spouses Panlilio, Gonzales has extended an accommodation to said spouses.

Third, as an accommodation party, Gonzales is solidarily liable with the spouses Panlilio for the loans. In *Ang v. Associated Bank*,^[19] quoting the definition of an accommodation party under Section 29 of the Negotiable Instruments Law, the Court cited that an accommodation party is a person "who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person."^[20] The Court further explained:

[A]n accommodation party is one who meets all the three requisites, viz: (1) he must be a party to the instrument, signing as maker, drawer, acceptor, or indorser; (2) he must not receive value therefor; and (3) he must sign for the purpose of lending his name or credit to some other person. An accommodation party lends

his name to enable the accommodated party to obtain credit or to raise money; he receives no part of the consideration for the instrument but assumes liability to the other party/ies thereto. The accommodation party is liable on the instrument to a holder for value even though the holder, at the time of taking the instrument, knew him or her to be merely an accommodation party, as if the contract was not for accommodation.

As petitioner acknowledged it to be, the relation between an accommodation party and the accommodated party is one of principal and surety--the accommodation party being the surety. As such, he is deemed an original promisor and debtor from the beginning; he is considered in law as the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter since their liabilities are interwoven as to be inseparable. Although a contract of suretyship is in essence accessory or collateral to a valid principal obligation, the surety's liability to the creditor is immediate, primary and absolute; he is directly and equally bound with the principal. As an equivalent of a regular party to the undertaking, a surety becomes liable to the debt and duty of the principal obligor even without possessing a direct or personal interest in the obligations nor does he receive any benefit therefrom.[21]

Thus, the knowledge, acquiescence, or even demand by Ocampo for an accommodation by Gonzales in order to extend the credit or loan of PhP 1,800,000 to the spouses Panlilio does not exonerate Gonzales from liability on the three promissory notes.

Fourth, the solidary liability of Gonzales is clearly stipulated in the promissory notes which uniformly begin, "For value received, the undersigned (the "BORROWER") jointly and severally promise to pay x x x." Solidary liability cannot be presumed but must be established by law or contract.[22] Article 1207 of the Civil Code pertinently states that "there is solidary liability only when the obligation expressly so states, or when the obligation requires solidarity." This is true in the instant case where Gonzales, as accommodation party, is immediately, equally, and absolutely bound with the spouses Panlilio on the promissory notes which indubitably stipulated solidary liability for all the borrowers. Moreover, the three promissory notes serve as the contract between the parties. Contracts have the force of law between the parties and must be complied with in good faith.[23]

Second Issue: Improper Dishonor of Check

Having ruled that Gonzales is solidarily liable for the three promissory notes, We shall now touch upon the question of whether it was proper for PCIB to dishonor the check issued by Gonzales against the credit line under the COHLA.

We answer in the negative.

As a rule, an appeal by certiorari under Rule 45 of the Rules of Court is limited to review of errors of law.[24] The factual findings of the trial court, especially when affirmed by the appellate court, are generally binding on us unless there was a misapprehension of facts or when the inference drawn from the facts was manifestly mistaken.[25] The instant case falls within the exception.

The courts a quo found and held that there was a proper dishonor of the PhP 250,000 check issued by Gonzales against the credit line, because the credit line was already closed prior to the presentment of the check by Unson; and the closing of the credit line was likewise proper pursuant to the stipulations in the promissory notes on the bank's right to set off or apply all moneys of the debtor in PCIB's hand and the stipulations in the COHLA on the PCIB's right to terminate the credit line on grounds of default by Gonzales.

Gonzales argues otherwise, pointing out that he was not informed about the default of the spouses Panlilio and that the September 21, 1998 account statement of the credit line shows a balance of PhP 270,000 which was likewise borne out by the December 7, 1998 PCIB's certification that he has USD 8,715.72 in his FCD account

which is more than sufficient collateral to guarantee the PhP 250,000 check, dated September 30, 1998, he issued against the credit line.

A careful scrutiny of the records shows that the courts a quo committed reversible error in not finding negligence by PCIB in the dishonor of the PhP 250,000 check.

First. There was no proper notice to Gonzales of the default and delinquency of the PhP 1,800,000 loan. It must be borne in mind that while solidarily liable with the spouses Panlilio on the PhP 1,800,000 loan covered by the three promissory notes, Gonzales is only an accommodation party and as such only lent his name and credit to the spouses Panlilio. While not exonerating his solidary liability, Gonzales has a right to be properly apprised of the default or delinquency of the loan precisely because he is a co-signatory of the promissory notes and of his solidary liability.

We note that it is indeed understandable for Gonzales to push the spouses Panlilio to pay the outstanding dues of the PhP 1,800,000 loan, since he was only an accommodation party and was not personally interested in the loan. Thus, a meeting was set by Gonzales with the spouses Panlilio and the PCIB officers, Noceda and Ocampo, in the spouses Panlilio's jewelry shop in SM Megamall on October 5, 1998. Unfortunately, the meeting did not push through due to the heavy traffic Noceda and Ocampo encountered.

Such knowledge of the default by Gonzales was, however, not enough to properly apprise Gonzales about the default and the outstanding dues. Verily, it is not enough to be merely informed to pay over a hundred thousand without being formally apprised of the exact aggregate amount and the corresponding dues pertaining to specific loans and the dates they became due.

Gonzales testified that he was not duly notified about the outstanding interest dues of the loan:

ATTY. DE JESUS:

Now when Mr. Panlilio's was encountering problems with the bank did the defendant bank [advise] you of any problem with the same account?

GONZALES:

They never [advised] me in writing.

Q: How did you come to know that there was a problem?

A: When my check bounced sir.[26]

On the other hand, the PCIB contends otherwise, as Corazon Nepomuceno testified:

ATTY. PADILLA:

Can you tell this Honorable Court what is it that you told Mr. Gonzales when you spoke to him at the cellphone?

NEPOMUCENO:

I just told him to update the interest so that we would not have to cancel the COH Line and he could withdraw the money that was in the deposit because technically, if an account is past due we are not allowed to let the client withdraw funds because they are allowed to offset funds so, just to help him get his money, just to update the interest so that we could allow him to withdraw.

Q: Withdraw what?

A: His money on the COH, whatever deposit he has with us.

Q: Did you inform him that if he did not update the interest he would not be able to withdraw his money?

A: Yes sir, we will be forced to hold on to any assets that he has with us so that's why we suggested just to

update the interest because at the end of everything, he would be able to withdraw more funds than the interest that the money he would be needed to update the interest.[27]

From the foregoing testimonies, between the denial of Gonzales and the assertion by PCIB that Gonzales was properly apprised, we find for Gonzales. We find the testimonies of the former PCIB employees to be self-serving and tenuous at best, for there was no proper written notice given by the bank. The record is bereft of any document showing that, indeed, Gonzales was formally informed by PCIB about the past due periodic interests.

PCIB is well aware and did not dispute the fact that Gonzales is an accommodation party. It also acted in accordance with such fact by releasing the proceeds of the loan to the spouses Panlilio and likewise only informed the spouses Panlilio of the interest dues. The spouses Panlilio, through their account[28] with PCIB, were paying the periodic interest dues and were the ones periodically informed by the bank of the debiting of the amounts for the periodic interest payments. Gonzales never paid any of the periodic interest dues. PCIB's Noceda admitted as much in his cross-examination:

ATTY. DE JESUS: [on Cross-Examination]

And there was no instance that Mr. Gonzales ever made even interest for this loan, is it not, it's always Mr. Panlilio who was paying the interest for this loan?

NOCEDA:

Yes sir.[29]

Indeed, no evidence was presented tending to show that Gonzales was periodically sent notices or notified of the various periodic interest dues covering the three promissory notes. Neither do the records show that Gonzales was aware of amounts for the periodic interests and the payment for them. Such were serviced by the spouses Panlilio.

Thus, PCIB ought to have notified Gonzales about the status of the default or delinquency of the interest dues that were not paid starting July 1998. And such notification must be formal or in written form considering that the outstanding periodic interests became due at various dates, i.e., on July 8, 17, and 28, 1998, and the various amounts have to be certain so that Gonzales is not only properly apprised but is given the opportunity to pay them being solidarily liable for the loans covered by the promissory notes.

It is the bank which computes these periodic interests and such dues must be put into writing and formally served to Gonzales if he were asked to pay them, more so when the payments by the spouses Panlilio were charged through the account of the spouses Panlilio where the interest dues were simply debited. Such arrangement did not cover Gonzales' bank account with PCIB, since he is only an accommodation party who has no personal interest in the PhP 1,800,000 loan. Without a clear and determinate demand through a formal written notice for the exact periodic interest dues for the loans, Gonzales cannot be expected to pay for them.

In business, more so for banks, the amounts demanded from the debtor or borrower have to be definite, clear, and without ambiguity. It is not sufficient simply to be informed that one must pay over a hundred thousand aggregate outstanding interest dues without clear and certain figures. Thus, We find PCIB negligent in not properly informing Gonzales, who is an accommodation party, about the default and the exact outstanding periodic interest dues. Without being properly apprised, Gonzales was not given the opportunity to properly act on them.

It was only through a letter[30] sent by PCIB dated October 2, 1998 but incongruously showing the delinquencies of the PhP 1,800,000 loan at a much later date, i.e., as of October 31, 1998, when Gonzales was formally apprised by PCIB. In it, the interest due was PhP 106,1616.71 and penalties for the unpaid interest due of PhP 64,766.66, or a total aggregate due of PhP 171,383.37. But it is not certain and the records do not show when the letter was sent and when Gonzales received it. What is clear is that such letter was belatedly sent by PCIB and received by

Gonzales after the fact that the latter's FCD was already frozen, his credit line under the COHLA was terminated or suspended, and his PhP 250,000 check in favor of Unson was dishonored.

And way much later, or on May 4, 1999, was a demand letter from the counsel of PCIB sent to Gonzales demanding payment of the PhP 1,800,000 loan. Obviously, these formal written notices sent to Gonzales were too late in the day for Gonzales to act properly on the delinquency and he already suffered the humiliation and embarrassment from the dishonor of his check drawn against the credit line.

To reiterate, a written notice on the default and deficiency of the PhP 1,800,000 loan covered by the three promissory notes was required to apprise Gonzales, an accommodation party. PCIB is obliged to formally inform and apprise Gonzales of the defaults and the outstanding obligations, more so when PCIB was invoking the solidary liability of Gonzales. This PCIB failed to do.

Second. PCIB was grossly negligent in not giving prior notice to Gonzales about its course of action to suspend, terminate, or revoke the credit line, thereby violating the clear stipulation in the COHLA.

The COHLA, in its effectivity clause, clearly provides:

4. EFFECTIVITY -- The COH shall be effective for a period of one (1) year commencing from the receipt by the CLIENT of the COH checkbook issued by the BANK, subject to automatic renewals for same periods unless terminated by the BANK upon prior notice served on CLIENT.[31] (Emphasis ours.)

It is undisputed that the bank unilaterally revoked, suspended, and terminated the COHLA without giving Gonzales prior notice as required by the above stipulation in the COHLA. Noceda testified on cross-examination on the Offering Ticket[32] recommending the termination of the credit line, thus:

ATTY. DE JESUS: [on Cross-Examination]

This Exhibit 8, you have not furnished at anytime a copy to the plaintiff Mr. Gonzales is it not?

NOCEDA:

No sir but verbally it was relayed to him.

Q:

But you have no proof that Mr. Gonzales came to know about this Exhibit 8?

A:

It was relayed to him verbally.

Q:

But there is no written proof?

A:

No sir.

Q:

And it is only now that you claim that it was verbally relayed to him, it's only now when you testified in Court?

A:

Before . . .

Q:

To whom did you relay this information?

A: It was during the time that we were going to Megamall, it was relayed by Liza that he has to pay his obligations or else it will adversely affect the status of the account.[33]

On the other hand, the testimony of Corazon Nepomuceno shows:

ATTY. DE JESUS: [on Cross-Examination]

Now we go to the other credit facility which is the credit on hand extended solely of course to Mr. Eusebio Gonzales who is the plaintiff here, Mr. Panlilio is not included in this credit on hand facility. Did I gather from you as per your Exhibit 7 as of October 2, 1998 you were the one who recommended the cancellation of this credit on hand facility?

NEPOMUCENO:

It was recommended by the account officer and I supported it.

Q:

And you approved it?

A:

Yes sir.

Q:

Did you inform Mr. Gonzales that you have already cancelled his credit on hand facility?

A:

As far as I know, it is the account officer who will inform him.

Q:

But you have no record that he was informed?

A:

I don't recall and we have to look at the folder to determine if they were informed.

Q:

If you will notice, this letter . . . what do you call this letter of yours?

A:

That is our letter advising them or reminding them of their unpaid interest and that if he is able to update his interest he can extend the promissory note or restructure the outstanding.

Q:

Now, I call your attention madam witness, there is nothing in this letter to the clients advising them or Mr. Gonzales that his credit on hand facility was already cancelled?

A:

I don't know if there are other letters aside from this.

Q:

So in this letter there is nothing to inform or to make Mr. Eusebio aware that his credit on hand facility was already cancelled?

A:

No actually he can understand it from the last sentence. "If you will be able to update your outstanding interest, we can apply the extension of your promissory note" so in other words we are saying that if you don't, you cannot extend the promissory note.

Q:

You will notice that the subject matter of this October 2, 1998 letter is only the loan of 1.8 million is it not, as you can see from the letter? Okay?

A:

Ah . . .

Q:

Okay. There is nothing there that will show that that also refers to the credit on hand facility which was being utilized by Mr. Gonzales is it not?

A:

But I don't know if there are other letters that are not presented to me now.[34]

The foregoing testimonies of PCIB officers clearly show that not only did PCIB fail to give prior notice to Gonzales about the Offering Ticket for the process of termination, suspension, or revocation of the credit line under the COHLA, but PCIB likewise failed to inform Gonzales of the fact that his credit line has been terminated. Thus, we find PCIB grossly negligent in the termination, revocation, or suspension of the credit line under the COHLA. While PCIB invokes its right on the so-called "cross default provisions," it may not with impunity ignore the rights of Gonzales under the COHLA.

Indeed, the business of banking is impressed with public interest and great reliance is made on the bank's sworn profession of diligence and meticulousness in giving irreproachable service. Like a common carrier whose business is imbued with public interest, a bank should exercise extraordinary diligence to negate its liability to the depositors.[35] In this instance, PCIB is sorely remiss in the diligence required in treating with its client, Gonzales. It may not wantonly exercise its rights without respecting and honoring the rights of its clients.

Art. 19 of the New Civil Code clearly provides that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." This is the basis of the principle of abuse of right which, in turn, is based upon the maxim *sum jus summa injuria* (the abuse of right is the greatest possible wrong).[36]

In order for Art. 19 to be actionable, the following elements must be present: "(1) the existence of a legal right or duty, (2) which is exercised in bad faith, and (3) for the sole intent of prejudicing or injuring another." [37] We find that such elements are present in the instant case. The effectivity clause of the COHLA is crystal clear that termination of the COH should be done only upon prior notice served on the CLIENT. This is the legal duty of PCIB--to inform Gonzales of the termination. However, as shown by the above testimonies, PCIB failed to give

prior notice to Gonzales.

Malice or bad faith is at the core of Art. 19. Malice or bad faith "implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity." [38] In the instant case, PCIB was able to send a letter advising Gonzales of the unpaid interest on the loans [39] but failed to mention anything about the termination of the COHLA. More significantly, no letter was ever sent to him about the termination of the COHLA. The failure to give prior notice on the part of PCIB is already prima facie evidence of bad faith. [40] Therefore, it is abundantly clear that this case falls squarely within the purview of the principle of abuse of rights as embodied in Art. 19.

Third. There is no dispute on the right of PCIB to suspend, terminate, or revoke the COHLA under the "cross default provisions" of both the promissory notes and the COHLA. However, these cross default provisions do not confer absolute unilateral right to PCIB, as they are qualified by the other stipulations in the contracts or specific circumstances, like in the instant case of an accommodation party.

The promissory notes uniformly provide:

The lender is hereby authorized, at its option and without notice, to set off or apply to the payment of this Note any and all moneys which may be in its hands on deposit or otherwise belonging to the Borrower. The Borrower irrevocably appoint/s the Lender, effective upon the nonpayment of this Note on demand/at maturity or upon the happening of any of the events of default, but without any obligation on the Lender's part should it choose not to perform this mandate, as the attorney-in-fact of the Borrower, to sell and dispose of any property of the Borrower, which may be in the Lender's possession by public or private sale, and to apply the proceeds thereof to the payment of this Note; the Borrower, however, shall remain liable for any deficiency. [41] (Emphasis ours.)

The above provisos are indeed qualified with the specific circumstance of an accommodation party who, as such, has not been servicing the payment of the dues of the loans, and must first be properly apprised in writing of the outstanding dues in order to answer for his solidary obligation.

The same is true for the COHLA, which in its default clause provides:

16. DEFAULT -- The CLIENT shall be considered in default under the COH if any of the following events shall occur:

- x x x

- Violation of the terms and conditions of this Agreement or any contract of the CLIENT with the BANK or any bank, persons, corporations or entities for the payment of borrowed money, or any other event of default in such contracts. [42]

The above pertinent default clause must be read in conjunction with the effectivity clause (No. 4 of the COHLA, quoted above), which expressly provides for the right of client to prior notice. The rationale is simple: in cases where the bank has the right to terminate, revoke, or suspend the credit line, the client must be notified of such intent in order for the latter to act accordingly--whether to correct any ground giving rise to the right of the bank to terminate the credit line and to dishonor any check issued or to act in accord with such termination, i.e., not to issue any check drawn from the credit line or to replace any checks that had been issued. This, the bank--with gross negligence--failed to accord Gonzales, a valued client for more than 15 years.

Fourth. We find the testimony [43] of Ocampo incredible on the point that the principal borrower of the PhP 1,800,000 loan covered by the three promissory notes is Gonzales for which the bank officers had special instructions to grant and that it was through the instructions of Gonzales that the payment of the periodic interest

dues were debited from the account of the spouses Panlilio.

For one, while the first promissory note dated October 30, 1995 indeed shows Gonzales as the principal borrower, the other promissory notes dated December 26, 1995 and January 3, 1996 evidently show that it was Jose Panlilio who was the principal borrower with Gonzales as co-borrower. For another, Ocampo cannot feign ignorance on the arrangement of the payments by the spouses Panlilio through the debiting of their bank account. It is incredulous that the payment arrangement is merely at the behest of Gonzales and at a mere verbal directive to do so. The fact that the spouses Panlilio not only received the proceeds of the loan but were servicing the periodic interest dues reinforces the fact that Gonzales was only an accommodation party.

Thus, due to PCIB's negligence in not giving Gonzales--an accommodation party--proper notice relative to the delinquencies in the PhP 1,800,000 loan covered by the three promissory notes, the unjust termination, revocation, or suspension of the credit line under the COHLA from PCIB's gross negligence in not honoring its obligation to give prior notice to Gonzales about such termination and in not informing Gonzales of the fact of such termination, treating Gonzales' account as closed and dishonoring his PhP 250,000 check, was certainly a reckless act by PCIB. This resulted in the actual injury of PhP 250,000 to Gonzales whose FCD account was frozen and had to look elsewhere for money to pay Unson.

With banks, the degree of diligence required is more than that of a good father of the family considering that the business of banking is imbued with public interest due to the nature of their function. The law imposes on banks a high degree of obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of banking.[44] Had Gonzales been properly notified of the delinquencies of the PhP 1,800,000 loan and the process of terminating his credit line under the COHLA, he could have acted accordingly and the dishonor of the check would have been avoided.

Third Issue: Award of Damages

The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society--banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence, and it is for this reason, banks should guard against injury attributable to negligence or bad faith on its part.[45]

In the instant case, Gonzales suffered from the negligence and bad faith of PCIB. From the testimonies of Gonzales' witnesses, particularly those of Dominador Santos[46] and Freddy Gomez,[47] the embarrassment and humiliation Gonzales has to endure not only before his former close friend Unson but more from the members and families of his friends and associates in the PCA, which he continues to experience considering the confrontation he had with Unson and the consequent loss of standing and credibility among them from the fact of the apparent bouncing check he issued. Credit is very important to businessmen and its loss or impairment needs to be recognized and compensated.[48]

The termination of the COHLA by PCIB without prior notice and the subsequent dishonor of the check issued by Gonzales constitute acts of *contra bonus mores*. Art. 21 of the Civil Code refers to such acts when it says, "Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damage."

Accordingly, this Court finds that such acts warrant the payment of indemnity in the form of nominal damages. Nominal damages "are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind x x x." [49] We further explained the nature of nominal damages in *Almeda v. Cariño*:

x x x Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right. Indeed, nominal damages are damages in name only and not in fact. When granted by the courts, they are not treated as an equivalent of a wrong inflicted but simply a recognition of the existence of a technical injury. A violation of the plaintiff's right, even if only technical, is sufficient to support an award of nominal damages. Conversely, so long as there is a showing of a violation of the right of the plaintiff, an award of nominal damages is proper.[50] (Emphasis Ours.)

In the present case, Gonzales had the right to be informed of the accrued interest and most especially, for the suspension of his COHLA. For failure to do so, the bank is liable to pay nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances.[51] In this case, the Court finds that the grant of PhP 50,000 as nominal damages is proper.

Moreover, as We held in *MERALCO v. CA*,[52] failure to give prior notice when required, such as in the instant case, constitutes a breach of contract and is a clear violation of Art. 21 of the Code. In cases such as this, Art. 2219 of the Code provides that moral damages may be recovered in acts referred to in its Art. 21. Further, Art. 2220 of the Code provides that "[w]illful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith." Similarly, "every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same." [53] Evidently, Gonzales is entitled to recover moral damages.

Even in the absence of malice or bad faith, a depositor still has the right to recover reasonable moral damages, if the depositor suffered mental anguish, serious anxiety, embarrassment, and humiliation.[54] Although incapable of pecuniary estimation, moral damages are certainly recoverable if they are the proximate result of the defendant's wrongful act or omission. The factual antecedents bolstered by undisputed testimonies likewise show the mental anguish and anxiety Gonzales had to endure with the threat of Unson to file a suit. Gonzales had to pay Unson PhP 250,000, while his FCD account in PCIB was frozen, prompting Gonzales to demand from PCIB and to file the instant suit.

The award of moral damages is aimed at a restoration within the limits of the possible, of the spiritual status quo ante--it must always reasonably approximate the extent of injury and be proportional to the wrong committed.[55] Thus, an award of PhP 50,000 is reasonable moral damages for the unjust dishonor of the PhP 250,000 which was the proximate cause of the consequent humiliation, embarrassment, anxiety, and mental anguish suffered by Gonzales from his loss of credibility among his friends, colleagues and peers.

Furthermore, the initial carelessness of the bank's omission in not properly informing Gonzales of the outstanding interest dues--aggravated by its gross neglect in omitting to give prior notice as stipulated under the COHLA and in not giving actual notice of the termination of the credit line--justifies the grant of exemplary damages of PhP 10,000. Such an award is imposed by way of example or correction for the public good.

Finally, an award for attorney's fees is likewise called for from PCIB's negligence which compelled Gonzales to litigate to protect his interest. In accordance with Art. 2208(1) of the Code, attorney's fees may be recovered when exemplary damages are awarded. We find that the amount of PhP 50,000 as attorney's fees is reasonable.

WHEREFORE, this petition is PARTLY GRANTED. Accordingly, the CA Decision dated October 22, 2007 in CA-G.R. CV No. 74466 is hereby REVERSED and SET ASIDE. The Philippine Commercial and International Bank (now Banco De Oro) is ORDERED to pay Eusebio Gonzales PhP 50,000 as nominal damages, PhP 50,000 as moral damages, PhP 10,000 as exemplary damages, and PhP 50,000 as attorney's fees.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Nachura,[*] Del Castillo, and Perez, JJ., concur.

[*] Additional member per Special Order No. 947 dated February 11, 2011.

[1] Rollo, pp. 28-44. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Rodrigo V. Cosico and Hakim S. Abdulwahid.

[2] Records, pp. 751-764. Penned by Judge Sixto Marella, Jr.

[3] Id. at 157, 159.

[4] Id. at 10-15.

[5] Id. at 38.

[6] Id. at 39.

[7] Id. at 40-41.

[8] Id. at 42.

[9] Id. at 43-44.

[10] Id. at 760.

[11] Rollo, p. 43.

[12] Id. at 12.

[13] Records, pp. 10-11.

[14] Id. at 12-13.

[15] Id. at 14-15.

[16] Id. at 222-224, TSN, January 13, 2000, pp. 12-14.

[17] Id. at 247-248, TSN, January 13, 2000, pp. 37-38.

[18] Id. at 377, TSN, July 6, 2000, p. 4.

[19] G.R. No. 146511, September 5, 2007, 532 SCRA 244.

[20] Id. at 272-273.

[21] Id. at 273-274; citations omitted.

[22] Hi-Cement Corporation v. Insular Bank of Asia and America, G.R. No. 132403, September 28, 2007, 534 SCRA 269, 283.

[23] Panlilio v. Citibank, N.A., G.R. No. 156335, November 28, 2007, 539 SCRA 69, 82-83; citing Civil Code, Art. 1159.

[24] Usero v. Court of Appeals, G.R. No. 152115, January 26, 2005, 449 SCRA 352, 358.

[25] Casol v. Purefoods Corporation, G.R. No. 166550, September 22, 2005, 470 SCRA 585, 589.

- [26] Records, pp. 384-A-386, TSN, January 13, 2000, pp. 35-36.
- [27] Id. at 612-614, TSN, July 20, 2000, pp. 9-11.
- [28] Id. at 26-37, Account No. 00-1423-01005-3 in the name of the spouses Panlilio with the PCIBank Forbes-Edsa Branch (issued in lieu of Passbook 142-868324).
- [29] Id. at 384-A, TSN, July 6, 2000, p. 13.
- [30] Id. at 160.
- [31] Id. at 157.
- [32] Id. at 162.
- [33] Id. at 377, TSN, July 6, 2000, pp. 13-16.
- [34] Id. at 695-700, TSN, October 26, 2000, pp. 18-23.
- [35] Solidbank Corporation/Metropolitan Bank and Trust Company v. Tan, G.R. No. 167346, April 2, 2007, 520 SCRA 123, 129-130; citations omitted.
- [36] Arlegui v. CA, G.R. No. 126437, March 6, 2002, 378 SCRA 322, 337.
- [37] ABS-CBN Broadcasting Corporation v. CA, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 603.
- [38] Id. at 604.
- [39] Records, p. 160.
- [40] Manila Electric Company v. Hon. Navarro-Domingo, G.R. No. 161893, June 27, 2006, 493 SCRA 363, 371.
- [41] Records, p. 10.
- [42] Id. at 159.
- [43] Id. at 470-482, TSN, July 7, 2000, pp. 9-21.
- [44] Philippine National Bank v. Pike, G.R. No. 157845, September 20, 2005, 470 SCRA 328, 347.
- [45] Sandejas v. Ignacio, Jr., G.R. No. 155033, December 19, 2007, 541 SCRA 61, 82.
- [46] Records, pp. 274-286, TSN, March 9, 2000, pp. 2-13.
- [47] Id. at 287-298, TSN, March 9, 2000, pp. 13-25.
- [48] Prudential Bank v. Lim, G.R. No. 136371, November 11, 2005, 474 SCRA 485, 497; citing Samson v. Bank of the Philippine Islands, G.R. No. 154087, July 10, 2003, 405 SCRA 607.
- [49] Francisco v. Ferrer, Jr., G.R. No. 142029, February 28, 2001, 353 SCRA 261, 267.
- [50] G.R. No. 152143, January 13, 2003, 395 SCRA 144, 150.
- [51] Ancheta v. Destiny Financial Plans, Inc., G.R. No. 179702, February 16, 2010, 612 SCRA 648, 664; citing Agabon v. NLRC, G.R. No. 158693, November 17, 2004, 442 SCRA 616.
- [52] No. L-39019, January 22, 1988, 157 SCRA 243, 248.
- [53] Civil Code, Art. 20.

[54] Bank of Philippine Islands v. Court of Appeals, G.R. No. 136202, January 25, 2007, 512 SCRA 620, 641.

[55] Solidbank Corporation v. Arrieta, G.R. No. 152727, February 17, 2005, 451 SCRA 711, 721-722; citations omitted.

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