

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. EMMANUEL OÑATE, RESPONDENT.

G.R. No. 192371. January 15, 2014

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This Petition for Review on Certiorari[1] assails the December 18, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 89346, which affirmed with modification the May 31, 2006 Decision[3] of the Regional Trial Court (RTC), Branch 141, Makati City. The RTC dismissed the Complaint[4] for Sum of Money, which petitioner Land Bank of the Philippines (Land Bank) filed against respondent Emmanuel C. Oñate (Oñate), and ordered Land Bank to return the amount of P1,471,416.52 it unilaterally debited from his accounts. On separate appeals by both parties, the CA affirmed the RTC Decision with modification that Land Bank was further ordered to pay Oñate the sums of P60,663,488.11 and US\$3,210,222.85 representing the undocumented withdrawals and drawings from his trust accounts with 12% per annum interest compounded annually from June 21, 1991 until fully paid.

Also assailed is the CA's May 27, 2010 Resolution[5] denying Land Bank's Motion for Reconsideration.[6]

Factual Antecedents

Land Bank is a government financial institution created under Republic Act No. 3844.[7] From 1978 to 1980, Oñate opened and maintained seven trust accounts with Land Bank, more particularly described as follows:

Trust Account No.

Date Opened

Beginning Balance

01-014

09.07.78

P 250,000.00[8]

01-017

11.16.78

1,312,896.00[9]

01-024

02.23.79

900,000.00[10]

01-075

10.08.79

500,000.00[11]

01-082

10.25.79

200,001.00[12]

01-089

03.18.80

43.98[13]

01-125

03.13.80

188,161.00[14]

Each trust account was covered by an Investment Management Account (IMA) with Full Discretion[15] and has a corresponding passbook where deposits and withdrawals were recorded. Pertinent portions common to the IMAs read:

You [Land Bank] are appointed as my agent with full powers and discretion, subject only to the following provisions:

1. You are authorized to hold, invest and reinvest the Fund and keep the same invested, in your sole discretion, without distinction between principal and income, in any assets which you deem advisable, without being restricted to those of the character authorized for fiduciaries under any present or future law.

2. You shall have full power and authority:

(a)

to treat all the Fund as one aggregate amount for purposes of investment, and to deposit all or any part thereof with a reputable bank including your own commercial banking department;

(b)

to pay all costs, expenses and charges incurred in connection with the administration, preservation, maintenance and protection of the Fund and to charge the same to the Fund;

(c)

to vote in person or by proxy on any stocks, bonds or other securities held by you, for my/our account;

(d)

to borrow money for the Fund (from your banking department or from others) with or without giving securities from the Fund;

(e)

to cause any asset of the Fund to be issued, held or registered in your name or in the name of your nominee, or

in such form that title will pass by delivery, provided your records shall indicate the true ownership of such assets;

(f)

to hold the Fund in cash and to invest the same in fixed income placements traded and sold by your own Money Market Division; and

(g)

to sign all documents pertinent to the transaction which you will make in behalf of this Account.

3. All actions taken by you hereunder shall be for my account and risk. Except for willful default or gross misconduct, you shall not be liable for any loss or depreciation in the value of the assets of the Fund arising from any cause whatsoever.

4. You shall maintain accurate records of all investments, receipts, disbursements and other transactions of the Account. Records relating thereto shall be open at all reasonable times to inspection and audit by me either personally or through duly authorized representatives. Statements consisting of a balance sheet, portfolio analysis, statement of income and expenses, and summary of investment changes are to be sent to me/us quarterly.

I/We shall approve such accounting by delivering in writing to you a statement to that effect or by failure to express objection to such accounting in writing delivered to you within thirty (30) days from my receipt of the accounting.

Upon your receipt of a written approval of the accounting, or upon the passage of said period of time within which objections may be filed, without written objections having been delivered to you, such accounting shall be deemed to be approved, and you shall be released and discharged as to all items, matters and things set forth in such accounting as if such accounting had been settled and allowed by a decree of a court of competent jurisdiction, in an action or proceeding in which you and I were parties.[16] (Emphasis supplied)

In a letter[17] dated October 8, 1981, however, Land Bank demanded from Oñate the return of P4 million it claimed to have been inadvertently deposited to Trust Account No. 01-125 as his additional funds but actually represents the total amount of the checks issued to Land Bank by its corporate borrowers as payment for their pre-terminated loans. Oñate refused. To settle the matter, a meeting was held, but the parties failed to reach an agreement. Since then, the issue of “miscrediting” remained unsettled. Then on June 21, 1991, Land Bank unilaterally applied the outstanding balance in all of Oñate’s trust accounts against his resulting indebtedness by reason of the “miscrediting” of funds. Although it exhausted the funds in all of Oñate’s trust accounts, Land Bank was able to debit the amount of P1,528,583.48 only.[18]

Proceedings before the Regional Trial Court

To recoup the remaining balance of Oñate’s indebtedness, Land Bank filed a Complaint[19] for Sum of Money seeking to recover the amount of P8,222,687.89[20] plus interest at the legal rate of 12% per annum computed from May 15, 1992 until fully paid. Pertinent portions of Land Bank’s Complaint reads:

5. By virtue of the Deeds of Revocable Trust executed on January 9, 1989[21] [sic] and February 5, 1989[22] [sic] by Philippine Virginia Tobacco Administration (PVTA) and Philippine Virginia Tobacco Board (PVTB), LANDBANK likewise became a Trustee of certain funds belonging to PVTA and PVTB.

6. As authorized under the [Deeds] of Revocable Trust, on October 10, 1980, LANDBANK invested P4 Million of the trust accounts of PVTA and PVTB, through a direct lending scheme to the following companies:
(a) Republic Telephone Company, Inc. (RETELCO), under Promissory Note No. 1145 dated October 10,

1980, for P1,021,250.00 with maturity date on November 24, 1980, subject to automatic roll-over up to October 10, 1981 at 17% interest per annum.

(b) Philippine Blooming Mills Company, Inc. (PBM), under Promissory Note (unnumbered) dated October 10, 1980, for P1,021,250.00, with maturity date on November 24, 1980, subject to automatic roll-over up to October 10, 1981, at 17% interest per annum;

(c) Cheng Ban Yek (CBY), under Promissory Note (unnumbered) dated October 10, 1980, for P1,023,138.89, with maturity date on November 28, 1980, subject to automatic roll-over up to October 10, 1981, at 17% interest per annum;

(d) Philippine Tobacco Filters Corporation (PHILTOFIL), under Promissory Note (unnumbered) dated October 10, 1980, for P1,021,250.00, with maturity date on November 24, 1980, subject to automatic roll-over up to October 10, 1981, at 17% interest per annum.

x x x x

7. Pursuant to such direct loan transactions granted to the aforementioned companies, LANDBANK issued four (4) cashier's checks for P1 Million each payable to RETELCO, PBM, CBY, and PHILTOFIL x x x

8. On or about November 24 and 28, 1980, the aforesaid borrowers (RETELCO, PBM, CBY, AND PHILTOFIL), pre-terminated their corresponding loans and paid their respective obligations in the form of checks payable to LANDBANK and delivered by [Oñate's] representative, Mr. Eduardo Polonio.

9. When the checks were delivered, [Oñate] fraudulently misrepresented to LANDBANK that they were [Oñate's] additional capital contribution to his personal trust account. On the basis of this misrepresentation, LANDBANK credited the payments made by the aforementioned corporate borrowers to [Oñate's] Trust Account No. 01-125.

10. After the payments were credited to his personal trust account, Oñate proceeded to withdraw the same, to the damage and prejudice of LANDBANK as the owner thereof.[23]

In his Answer (With Compulsory Counterclaim),[24] Oñate asserted that the setoff was without legal and factual bases. He specifically denied any knowledge or involvement in the transaction between Land Bank and its clients Philippine Virginia Tobacco Administration (PVTa) and Philippine Virginia Tobacco Board (PVTB). He also denied that he made fraudulent misrepresentation to induce the bank to deposit to his Trust Account No. 01-125 as his additional capital the payments allegedly tendered by the bank's corporate borrowers. He maintained that all the funds in his accounts came from legitimate sources and that he was totally unaware of and had nothing to do with the alleged "miscrediting." While Oñate admitted having received the October 8, 1981 demand letter, he argued that he did not acquiesce thereto and, in fact, disputed the same during a meeting with an officer of Land Bank. He also refuted Land Bank's claim that it formally demanded for the return of the disputed amount as the September 3, 1991 letter[25] it alluded to is not a demand letter. It was sent in response to his counsel's letter requesting for an accounting of his trust accounts.

By way of compulsory counterclaim, Oñate pointed out that per Balance Sheets[26] as of June 30, 1982 the funds in his trust accounts already totaled P35,555,464.78. And as of January 1993, the accumulated balance of his accounts reached P229,222,160.25 and \$3,472,683.94 computed as follows:

With interest at the rate of eighteen percent (18%) compounded every ninety (90) days from the third quarter of 1982 to January, 1993, the trustor's equity of P35,555,464.78 has earned interest in the amount of P193,666,695.47. Adding the trustor's equity to the aforesaid accrued interest thereon, [Oñate's] peso deposits [in] his trust accounts with plaintiff bank have an accumulated balance of P229,222,160.25 as of January 1993.

But that is not all. [Oñate's] dollar deposits to Trust Account No. 01-014 (which is for an "Undisclosed Principal") from the period July-September, 1980 alone, already amounted to \$1,690,943.78. x x x

With interest at the rate of six percent (6%) compounded every ninety (90) days from the first quarter of 1981, the said dollar deposits have earned interest of \$1,781,740.16 up to January, 1993. Thus, [Oñate's] dollar deposits [in] Trust Account No. 01-014 have an aggregate balance of \$3,472,683.94 as of January 1993.[27]

Hence, even if the amount of P8,222,687.89 as of May 15, 1992 is deducted from the outstanding balance of his trust accounts as of January 1993, the bank still owes him P220,999,472.36 on top of his dollar deposits amounting to \$3,472,683.94.

Oñate prayed that a judgment be issued dismissing the Complaint and ordering Land Bank to pay him:

- i) The sum of P220,999,472.36, representing the outstanding balance on the peso deposits [of Oñate's] various trust accounts as of January 1993, with interest thereon from said date at the rate of eighteen percent (18%) compounded every ninety (90) days, until the said amount is fully paid;
- ii) The sum of \$3,472,683.94, representing the aggregate balance as of January 1993 on [Oñate's] dollar deposits [in] Trust Account No. 01-014, with interest thereon from said date at the rate of six percent (6%) compounded every ninety (90) days, until the said amount is fully paid;
- iii) The sum of P100,000,000.00 as and by way of moral damages;
- iv) The sum of P50,000,000.00 as and by way of exemplary damages; and
- v) The sum of P15,000,000.00, or 20% of all sums collected, whichever is higher, as and for attorney's fees, the further sum of P3,000.00 as appearance fee for each hearing attended, and such other sums that may be proved during the trial as litigation expenses.[28]

Upon Oñate's motion, the RTC issued an Order[29] dated May 27, 1994, creating a Board of Commissioners (the Board) for the purpose of examining the records of Oñate's seven trust accounts, as well as to determine the total amount of deposits, withdrawals, funds invested, earnings, and expenses incurred. It was composed of Atty. Engracio M. Escasinas, the Clerk of Court of the RTC of Makati City, as the Chairman; and, Atty. Ma. Cristina C. Malab and Ms. Adeliza M. Jaranilla representing Land Bank and Oñate, respectively, as members.

Initially, the Board submitted three reports.[30] But for clarity, the trial court ordered[31] the Board to reconvene and to submit a consolidated report furnishing copies of the same to both parties, who were given 10 days from receipt thereof to file their respective comments thereto. The Board complied and on August 16, 2004 submitted its consolidated report.[32] As summarized by the RTC, the said consolidated report revealed that there were undocumented and over withdrawals and drawings[33] from Oñate's trust accounts:

Thus, the Commissioners' Report showed that the total amount of drawings and withdrawals from each account without withdrawal slips are as follows:

In Trust Account No. 01-014, there was a total withdrawals [sic] without withdrawal slips but reflected in the passbook in the amount of P45,103,297.33 and this account showed a negative balance of P40,367,342.34. On the dollar deposit under the same trust account, there was a total [withdrawal] without withdrawal slips but reflected in the passbook in the amount of \$3,210,222.85.

In Trust Account No. 01-017, there was a total withdrawal without withdrawal slips in the amount of P2,682,088.58 and there was an over withdrawal of P11,738,470.53 and \$30,000.00.

In Trust Account No. 01-024, there was a total withdrawal without withdrawal slips of P900,000.00 and over withdrawal of P13,310,328.01.

In Trust Account No. 01-075, there was a total withdrawal of P500,000.00 without withdrawal slips and there was a negative balance of P33,342,132.64 and \$286,399.34 on the dollar account.

In Trust Account No. 01-082, the total amount of withdrawal without withdrawal slips but reflected in the passbook was P1,782,741.86 and there was an over withdrawal of P14,031.63.

In Trust Account No. 01-089, there was a total withdrawal without withdrawal slips in the amount of P5,054,809.00 but the report indicated that there was a negative balance of P1,296,441.92.

In Trust Account No. 01-125, there was a total withdrawal without withdrawal slips in the amount of P4,640,551.34 and there was a negative balance of P58,327,459.23.[34]

On even date, the Board also submitted a Manifestation[35] informing the RTC that its findings as to the outstanding balance of each trust account may not be accurate considering that it was not given ample opportunity to collate and sort out the documents related to each trust account and that there may have been double take up of accounts since the documents previously reviewed may have been considered again in subsequent reports.

In his Comment,[36] Oñate asserted that the undocumented withdrawals mentioned in the consolidated report should not be considered as cash outflows. Rather, they should be treated as unauthorized transactions and the amounts subject thereof must be credited back to his accounts.

Land Bank did not file any comment or objection to the Board's consolidated comment.

During the pre-trial conference, the parties agreed that they would submit the case for decision based on the reports of the Board after they have submitted their respective memoranda. They also stipulated on the following issues for resolution of the RTC:

- Whether x x x Oñate could claim on Trust Account Nos. 01-014 and 01-017 which were opened for an undisclosed principal;
- Whether x x x the undocumented withdrawals and drawings are considered valid and regular and, conversely, if in the negative, whether x x x such amounts shall be credited [back] to the accounts.[37]

In his Memorandum[38] filed on July 12, 2005, Oñate reiterated that Land Bank should be held liable for the undocumented withdrawals and drawings. For its part, Land Bank posited, inter alia, that Trust Account Nos. 01-014 and 01-017 should be excluded from the computation of Oñate's counterclaim considering his allegation that said accounts are owned by an undisclosed principal whom/which he failed to join as indispensable party. Land Bank further theorized that Oñate must answer for the negative balances as revealed by the Board's reports.[39]

Thereafter, the case was submitted for decision.

Ruling of the Regional Trial Court

On May 31, 2006, the RTC rendered a Decision[40] dismissing Land Bank's Complaint for its failure to establish that the amount of P4,086,888.89 allegedly "miscredited" to Oñate's Trust Account No. 01-125 actually came from the investments of PVTB and PVTB. Hence, the RTC ordered Land Bank to restore the total amount of P1,471,416.52 which the bank unilaterally debited from Oñate's five trust accounts.[41]

With regard to Oñate's counterclaim for the recovery of P220,999,472.36, as well as the alleged US\$3,472,683.94 balance of his dollar deposits in Trust Account No. 01-014, the RTC ruled that under the IMAs, Land Bank had the authority to withdraw funds (as in fact it was at all times in possession of the passbooks) from Oñate's accounts even without a letter of instruction or withdrawal slip coming from Oñate. It thus gave weight

to the entries in the passbooks since the same were made in the ordinary course of business. The RTC also ruled that Oñate is deemed to have approved the entries in the statements of account that were sent to him as he never interposed any objection thereto within the period given him to do so.

Anent Land Bank's claim for the negative balances, the RTC likewise denied the same for Land Bank never sought them in its Complaint. Moreover, being the manager of the funds and keeper of the records, the RTC held that Land Bank should not have allowed further withdrawals if there were no more funds.

The RTC likewise debunked Land Bank's argument that Oñate's counterclaim with respect to Trust Account Nos. 01-014 and 01-017 should be dismissed for his failure to join his undisclosed principal. According to the RTC, Land Bank should have earlier invoked such defense when it filed its answer to the counterclaim. Also, if it is true that said accounts are not owned by Oñate, then the bank had no right to apply the funds in said accounts as payment for the alleged personal indebtedness of Oñate.

The dispositive portion of the RTC's Decision reads:

WHEREFORE, in view of all the foregoing, decision is hereby rendered dismissing the complaint and ordering [Land Bank] to pay [Oñate] the total amount of P1,471,416.52 representing the total amount of funds debited from the five (5) trust accounts of the defendant with legal rate of interest of 12% per annum, compounded yearly, effective on 21 June 1991 until fully paid.

No pronouncement as to costs.

SO ORDERED.[42]

Land Bank filed a Motion for Reconsideration.[43] In an Order[44] dated July 11, 2006, however, the RTC denied the same.

Both parties appealed to the CA.

Ruling of the Court of Appeals

In its December 18, 2009 Decision,[45] the CA denied Land Bank's appeal and granted that of Oñate. The CA affirmed the RTC's ruling that Land Bank failed to establish the source of the funds it claimed to have been erroneously credited to Oñate's account. With respect to Oñate's appeal, the CA agreed that he is entitled to the unaccounted withdrawals which, as found by the Board, stood at P60,663,488.11 and \$3,210,222.85.[46] The CA's ruling is anchored on the bank's failure to observe Sections X401 and X425 of the Bangko Sentral ng Pilipinas Manual of Regulation for Banks (MORB) requiring it to give full disclosure of the services it offered and conduct its dealings with transparency, as well as to render reports that would sufficiently apprise its clients of the significant developments in the administration of their accounts. Aside from allowing undocumented withdrawals, the CA likewise noted that Land Bank failed to keep an accurate record and render an accounting of Oñate's accounts. For the CA, the entries in the passbooks are not sufficient because they do not specify where the funds withdrawn from Oñate's accounts were invested.

The dispositive portion of the CA's Decision reads:

WHEREFORE, the appeal of plaintiff-appellant Land Bank is DENIED.

The appeal of defendant-appellant Emmanuel Oñate is hereby partially GRANTED. Accordingly, the May 31, 2006 Decision of the Regional Trial Court, Branch 141, Makati City is hereby MODIFIED in that, in addition to the previous grant of P1,471,416.52 representing the total amount of funds debited from defendant-appellant Oñate's trust accounts, plaintiff-appellant Land Bank is hereby ordered to pay defendant-appellant Oñate the sum of P60,663,488.11 and \$3,210,222.85 representing the undocumented withdrawals it debited from the

latter's trust account with interest at the rate of 12% per annum, compounded yearly from June 21, 1991 until fully paid.

SO ORDERED.[47]

Land Bank filed a Motion for Reconsideration.[48] In a Resolution[49] dated May 27, 2010, however, the CA denied its motion. Hence, Land Bank filed the instant Petition for Review on Certiorari based on the following issues:

Issues

- WHETHER X X X THE ENTRIES IN THE PASSBOOK ISSUED BY LBP IN OÑATE'S TRUST ACCOUNT (EXPRESS TRUST) COVERED BY AN INVESTMENT MANAGEMENT AGREEMENT (IMA) WITH FULL DISCRETION ARE SUFFICIENT TO MEET THE "RULE ON PRESUMPTION OF REGULARITY OF ENTRIES IN THE COURSE OF BUSINESS" PROVIDED FOR UNDER SECTION 43, RULE 130 OF THE RULES OF COURT.
- WHETHER X X X OÑATE IS ENTITLED TO CLAIM FOR P1,471,416.52 WHICH IS NOT PLEADED AS COUNTERCLAIM IN HIS ANSWER PURSUANT TO SECTION 2, RULE 9 OF THE RULES OF COURT.
- WHETHER X X X OÑATE IS ENTITLED TO THE AWARD OF P60,663,488.11 AND \$3,210,222.85 REPRESENTING THE ALLEGED UNDOCUMENTED WITHDRAWALS DEBITED FROM HIS TRUST ACCOUNTS ON THE GROUND OF LBP'S ALLEGED FAILURE TO MEET THE STANDARDS SET FORTH UNDER THE 2008 MANUAL ON REGULATIONS FOR BANKS (MORB) ISSUED BY BSP.
- WHETHER X X X OÑATE MAY SUE [ON] TRUST ACCOUNT NOS. 01-014 AND 01-017 OPENED FOR AN UNDISCLOSED PRINCIPAL WITHOUT JOINING HIS UNDISCLOSED PRINCIPAL.
- WHETHER X X X THE AWARD OF INTEREST TO OÑATE AT THE RATE OF TWELVE PERCENT (12%) PER ANNUM, COMPOUNDED YEARLY FROM JUNE 21, 1991 UNTIL FULLY PAID, IS VIOLATIVE OF ARTICLE 1959 OF THE CIVIL CODE.[50]

Land Bank's Arguments

Land Bank disputes the ruling of both lower courts that it failed to prove the fact of "miscrediting" the amount of P4,086,888.89 to Oñate's Trust Account No. 01-125 as the deposit slips pertaining thereto were not presented. Land Bank maintains that in trust accounts the passbooks are always in the bank's possession so that it can record the cash inflows and outflows even without the corresponding deposit or withdrawal slips. Citing Section 43, Rule 130 of the Rules of Court, it asserts that the entries in the passbooks must be accepted as proof of the regularity of the transactions reflected in the trust accounts, including the "miscrediting" of P4,086,888.89, for they were made in the regular course of business. In addition, said entries are supported by demand letters dated October 8, 1981[51] and September 3, 1991,[52] as well as a Statement of Account[53] as of May 15, 1992. Land Bank avers that Oñate never questioned the statements of account and the reports it presented to him and, hence, he is deemed to have approved all of them.

Land Bank also imputes error on the lower courts in ordering the restoration of the amount of P1,471,416.52 it debited from Oñate's five trust accounts because he never sought it in his Answer.

Petitioner bank vigorously argues that Oñate is not entitled to the undocumented withdrawals amounting to P60,663,488.11 and \$3,210,222.85. According to Land Bank, in holding it liable for the said amounts, the CA erroneously relied on the 2008 MORB which was not yet in existence at the time the transactions subject of this case were made or even at the time when Land Bank filed its Complaint. In any case, Land Bank insists that it

made proper accounting and apprised Oñate of the status of his investments in accordance with the terms of the IMAs. In its demand letter^[54] dated September 3, 1991 Land Bank made a full disclosure that the total outstanding balance of all the trust accounts amounted to P1,471,416.52, but that the same was setoff to recoup the “miscredited” funds. It faults Oñate for not interposing any objection as his silence constitutes as his approval after 30 days from receipt thereof. Land Bank asseverates that Oñate could have also inspected and audited the records of his accounts at any reasonable time. But he never did.

Land Bank likewise faults the CA in treating the undocumented withdrawals as unauthorized transactions as the Board’s reports do not state anything to that effect. It claims that the CA’s reliance on the consolidated report in awarding the extremely huge amounts of P60,663,488.11 and \$3,210,222.85 is a grievous mistake because the Board itself already manifested that said report “may not be accurate.” Consequently too, Land Bank asserts that the reports of the Board cannot prevail over the entries in the passbooks which were made in the regular course of business.

Land Bank further states that as computed by the Board, the amount of negative balances in Oñate’s accounts reached P131,747,487.02 and \$818,674.71.^[55] It thus proposes that if the CA awarded to Oñate the undocumented withdrawals on the basis of the Board’s reports, then it should have also awarded to Land Bank said negative balances or over withdrawals as reflected in the same reports. After all, Oñate admitted in his Answer that all withdrawals from his trust accounts were done in the ordinary course of business.

Furthermore, Land Bank claims that it argued before the CA that Oñate cannot sue on Trust Account Nos. 01-014 and 01-017. While Oñate alleged that said accounts were opened for an undisclosed principal, he did not, however, join as an indispensable party said principal in violation of Section 3, Rule 3 of the Rules of Court.^[56] Unfortunately, the CA sidestepped the issue and proceeded to grant Oñate the unaccounted withdrawals from said accounts in the aggregate amounts of P47,785,385.91 and \$3,210,222.85. Following *Quilatan v. Heirs of Lorenzo Quilatan*,^[57] Land Bank insists that this case should be remanded to the trial court even if the issue of failure to implead an indispensable party was raised for the first time in a Motion for Reconsideration of the trial court’s Decision.

Finally, Land Bank questions the ruling of the CA imposing 12% per annum rate of interest. It contends that trust accounts are in the nature of “Express Trust” and not in the nature of a regular deposit account where a debtor-creditor relationship exists between the bank and its depositor. It was not indebted to Oñate but merely held and managed his funds. There being no loan or forbearance of money involved, in the absence of stipulation, the applicable rate of interest is only 6% per annum. Land Bank claims that the CA further erred when it compounded the 12% interest even in the absence of any such stipulation.

Oñate’s Arguments

In opposing the Petition, Oñate argues that the issues raised by Land Bank involve factual matters not proper in a petition for review on certiorari. He posits that the Petition does not fall under any of the exceptions where this Court could review factual issues.

As to Land Bank’s allegation that he cannot claim the funds without divulging and impleading as an indispensable party his undisclosed principal, Oñate points out that in his Answer (With Compulsory Counterclaim) he alleged that Trust Account Nos. 01-014 and 01-017 were opened for an “undisclosed principal.” Yet Land Bank did not controvert his allegation. It is, therefore, too late in the day for Land Bank to invoke non-joinder of principal as an indispensable party. Besides, when he executed the IMAs, he was acting for himself and on behalf of an undisclosed principal. Hence, he could claim and recover the amounts owing not only to himself but also to his undisclosed principal.

Oñate likewise asserts that Land Bank, as uniformly found by both lower courts, failed to prove by preponderance of evidence the fact of “miscrediting.” As to the demand letters adverted to by Land Bank, Oñate asserts that the lower courts did not consider the same because they were not formally offered. Land Bank also failed to present competent and sufficient evidence that he admitted his indebtedness on account of the “miscrediting” of funds. Since Land Bank failed to prove the fact of “miscrediting” it had no right to debit any amount from his accounts and must restore whatever funds it had debited therefrom. Oñate also denies having failed to seek the return of the funds debited from his account.

Oñate further claims that in 1982 his peso trust accounts had a total balance of P35,555,464.78 while the dollar trust accounts had a balance of US\$1,690,943.78. Since then, however, he never received any report or update regarding his accounts until the bank sent him financial reports dated June 30, 1991 indicating that the balances of his trust accounts had been unilaterally setoff. According to Oñate, Land Bank’s failure to keep an accurate record of his accounts and to make proper accounting violate several circulars of the Central Bank.[58] Hence, it is only proper to require the bank to return the undocumented withdrawals which, as found by the Board, amount to P60,663,488.11 and \$3,210,222.82. In addition, Oñate points out Land Bank’s failure to keep an accurate record of his accounts as shown by the huge amounts of unsupported withdrawals and drawings which constitutes willful default if not gross misconduct in violation of the IMAs which, in turn, makes the bank liable for its actions.

Anent Land Bank’s invocation that the entries in the passbook made in the ordinary course of business are presumed correct and regular, Oñate argues that such presumption does not relieve the trustee, Land Bank in this case, from presenting evidence that the undocumented withdrawals and drawings were authorized. In any case, the presumption invoked by Land Bank does not lie as one of its elements – that the entrant must be deceased or unable to testify – is lacking. Land Bank cannot also excuse itself for failing to regularly submit to him accounting reports as, anyway, he was free to inspect the records at any reasonable day. Oñate emphasizes that it is the duty of the bank to keep him updated with significant developments in his accounts.

In refutation of Land Bank’s claim to negative balances and over withdrawals, Oñate posits that the bank cannot benefit from its own negligence in mismanaging the trust accounts.

Lastly, Oñate defends the CA’s grant of 12% per annum rate of interest as under BSP Circular No. 416, said rate shall be applied in cases where money is transferred from one person to another and the obligation to return the same or a portion thereof is adjudged. In any event, Land Bank is estopped from disputing said rate for Land Bank itself applied the same 12% per annum rate of interest when it sought to recover the amount allegedly “miscredited” to his account. As to the compounding of interest, Oñate claims that the parties intended that interest income shall be capitalized and shall form part of the principal.

Our Ruling

We deny the Petition.

The issues raised are factual and do not involve questions of law.

From the very start the issues involved in this case are factual – the very reason why the RTC created a Board of Commissioners to assist it in examining the records pertaining to Oñate’s accounts and determine the respective cash inflows and outflows in said accounts. Thereafter, the parties agreed to submit the case based on the Board’s reports. And when the controversy reached the CA, the appellate court basically conducted an “assiduous assessment of the evidentiary records.”[59] No question of law was ever raised for determination of the lower

courts. Now, Land Bank practically beseeches us to assess the probative weight of the documentary evidence on record to resolve the same basic issues of (i) whether Land Bank “miscredited” P4,086,888.89 to Trust Account No. 01-125 and (ii) “whether x x x the undocumented withdrawals and drawings are considered valid and regular and, conversely, if in the negative, whether x x x such amounts shall be credited to the accounts.”[60]

These issues could be resolved by consulting the evidence extant on records, such as the IMAs, the passbooks, the letters of instructions, withdrawal and deposit slips, statements of account, and the Board’s reports. Land Bank’s heavy reliance on Section 43, Rule 130 of the Rules of Court[61] also attests to the factual nature of the issues involved in this case. “Well-settled is the rule that in petitions for review on certiorari under Rule 45, only questions of law can be raised.”[62] In *Velayo-Fong v. Spouses Velayo*,[63] we defined a question of law as distinguished from a question of fact:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. (Italics supplied)

While there are recognized exceptions[64] to this rule, none exists in this case.

Anent Land Bank’s contention that the determination of whether the CA erred in retroactively applying the 2008 MORB poses a legal question, the same deserves scant consideration. True, the CA included in its ratio decidendi a discussion on the 2008 MORB to give emphasis to the duties of banks to keep an accurate record and regularly apprise their clients of the status of their accounts. But the issue of whether Land Bank failed to comply with those duties can be resolved even without the MORB as the same duties are also imposed on Land Bank by the IMAs, the contract that primarily governs the parties in this case. “As a general rule, a contract is the law between the parties. Thus, ‘from the moment the contract is perfected, the parties are bound not only to the fulfilment of what has been expressly stipulated but also to all consequences which, according to their nature, may be in keeping with good faith, usage and law.’ Also, ‘the stipulations of the contract being the law between the parties, courts have no alternative but to enforce them as they were agreed [upon] and written’ x x x.”[65]

Based on the factual milieu of this case even without touching on the MORB, we found that Land Bank still failed to perform its bounden duties to keep accurate records and render regular accounting. We also found no cogent reason to disturb the other factual findings of the CA.

Land Bank failed to prove that the “miscredited” funds came from the proceeds of the pre-terminated loans of its corporate borrowers.

Land Bank argues that the entries in the passbooks were made in the regular course of business and should be accepted as prima facie evidence of the facts stated therein. But before entries made in the course of business may qualify under the exception to the hearsay rule and given weight, the party offering them must establish that: (1) the person who made those entries is dead, outside the country, or unable to testify; (2) the entries were made at, or near the time of the transaction to which they refer; (3) the entrant was in a position to know the facts stated therein; (4) the entries were made in the professional capacity or in the course of duty of the entrant; and, (5) the

entries were made in the ordinary or regular course of business or duty.[66]

Here, Land Bank has neither identified the persons who made the entries in the passbooks nor established that they are already dead or unable to testify as required by Section 43,[67] Rule 130 of the Rules of Court. Also, and as correctly opined by the CA, “[w]hile the deposit entries in the bank’s passbook enjoy a certain degree of presumption of regularity x x x,” the same do “not indicate or explain the source of the funds being deposited or withdrawn from an individual account.”[68] They are mere prima facie proof of what are stated therein – the dates of the transactions, the amounts deposited or withdrawn, and the outstanding balances. They do not establish that the total amount of P4,086,888.89 deposited in Oñate’s Trust Account No. 01-125 in November 1980 came from the proceeds of the pre-terminated loans of Land Bank’s corporate borrowers. It would be too presumptuous to immediately conclude that said amount came from the checks paid to Land Bank by its corporate borrowers just because the maturity dates of the loans coincided with the dates said total amount was deposited. There must be proof showing an unbroken link between the proceeds of the pre-terminated loans and the amount allegedly “miscredited” to Oñate’s Trust Account No. 01-125. As a bank and custodian of records, Land Bank could have easily produced documents showing that its borrowers pre-terminated their loans, the checks they issued as payment for such loans, and the deposit slips used in depositing those checks. But it did not.

Land Bank did not also bother to explain how Oñate or his representative, Eduardo Polonio (Polonio), obtained possession of the checks when, according to it, the corporate borrowers issued the checks in its name as payment for their loans.[69] Under paragraph 8 of its Complaint, Land Bank alleged that its corporate borrowers “paid their respective obligations in the form of checks payable to LANDBANK x x x”.[70] If it is true, then why were the checks credited to Oñate’s account? Unless subsequently endorsed to Oñate, said checks can only be deposited in the account of the payee appearing therein. We cannot thus lend credence to Land Bank’s excuse that the proximate cause of the alleged “miscrediting” was the fraudulent representation of Polonio, for assuming that the latter indeed employed fraudulent machinations, with the degree of prudence expected of banks, Land Bank and its tellers could have easily detected that Oñate was not the intended payee. In *Traders Royal Bank v. Radio Philippines Network, Inc.*,[71] we held that petitioner bank was remiss in its duty and obligation for accepting and paying a check to a person other than the payee appearing on the face of the check sans valid endorsement. Consequently, it was made liable for its own negligence and in disregarding established banking rules and procedures.

We are also groping in the dark as to the number of checks allegedly deposited by Polonio to Oñate’s Trust Account No. 01-125. According to Land Bank, the entire amount of P4,086,888.89 represents the proceeds of the pre-terminated loans of four of its clients, namely, RETELCO, PBM, CBY and PHILTOFIL. But it could only point to two entries made on two separate dates in the passbook as reproduced below:

Date

WITHDRAWAL

DEPOSIT

BALANCE

x x x

x x x

P250,704.60

24NOV80

159,000.00
409,704.60
24NOV80
3,063,750.00CK
3,473,454.60
24NOV80
42,000.00
3,431,454.60
25NOV80
275,923.75 CK
3,707,378.35
25NOV 80
1,235,962.00
2,471,416.35
26NOV80
193,800.00 CK
2,665,216.35
26NOV80
250,000.00 CK
2,915,216.35
26NOV80
2,915,216.35
2,915,216.35
321,188.38 CK
3,236,404.73
26NOV80
1,373,167.00
1,863,237.73
27NOV80
1,021,250.00 CK
2,884,487.73

28NOV80

70,833.33 CK

2,955,321.06

27NOV80

919,300.00

2,036,021.06

28NOV80

1,023,138.89 CK

3,059,159.95[72]

Were there only two checks issued as payment for the separate loans of these four different entities? These hanging questions only confirm the correctness of the lower courts' uniform conclusion that Land Bank failed to prove that the amount allegedly "miscredited" to Oñate's account came from the proceeds of the pre-terminated loans of its clients. It is worth emphasizing that in civil cases, the party making the allegations has the burden of proving them by preponderance of evidence. Mere allegation is not sufficient.[73]

As a consequence of its failure to prove the source of the claimed "miscredited" funds, Land Bank had no right to debit the total amount of P1,471,416.52 and must, therefore, restore the same.

In view of the above, Land Bank's argument that the lower courts erred in ordering the return of the amount of P1,471,416.52 it debited from Oñate's five trust accounts since he did not seek such relief in his Answer as a counterclaim, falls flat on its face. The order to restore the debited amount is consistent with the lower courts' ruling that Land Bank failed to prove that the amount of P4,086,888.89 was "miscredited" to Oñate's account and, hence, it had no right to seek reimbursement or debit any amount from his accounts in payment therefor. Without such right, Land Bank should return the amount of P1,471,416.52 it debited from Oñate's accounts in its attempt to recoup what it allegedly lost due to "miscrediting." Moreover, contrary to Land Bank's assertion, Oñate contested the bank's application of the balance of his trust accounts in payment for the allegedly "miscredited" amount in his Answer (With Compulsory Counterclaim) for being "without any factual and legal [bases]."[74]

Land Bank was remiss in performing its duties under the IMAs and as a banking institution.

The contractual relation between Land Bank and Oñate in this case is primarily governed by the IMAs. Paragraph 4 thereof expressly imposed on Land Bank the duty to maintain accurate records of all his investments, receipts, disbursements and other transactions relating to his accounts. It also obliged Land Bank to provide Oñate with quarterly balance sheets, statements of income and expenses, summary of investments, etc. Thus:

4. You shall maintain accurate records of all investments, receipts, disbursements and other transactions of the Account. Records relating thereto shall be open at all reasonable times to inspection and audit by me either personally or through duly authorized representatives. Statements consisting of a balance sheet, portfolio

analysis, statement of income and expenses, and summary of investment changes are to be sent to me/us quarterly.

I/We shall approve such accounting by delivering in writing to you a statement to that effect or by failure to express objections to such accounting in writing delivered to you within thirty (30) days from my receipt of the accounting.

Upon your receipt of a written approval of the accounting, or upon the passage of said period of time within which objections may be filed, without written objections having been delivered to you, such accounting shall be deemed to be approved, and you shall be released and discharged as to all items, matters and things set forth in such accounting as if such accounting had been settled and allowed by a decree of a court of competent jurisdiction, in an action or proceeding in which you and I were parties.[75] (Emphasis supplied)

These are the obligations of Land Bank which it should have faithfully complied with in good faith.[76] Unfortunately, Land Bank failed in its contractual duties to maintain accurate records of all investments and to regularly furnish

Oñate with financial statements relating to his accounts. Had Land Bank kept an accurate record there would have been no need for the creation of a Board of Commissioners or at least the latter's work would have been a lot easier and more accurate. But because of Land Bank's inefficient record keeping, the Board performed the tedious task of trying to reconcile messy and incomplete records. The lackadaisical attitude of Land Bank in keeping an updated record of Oñate's accounts is aggravated by its reluctance to accord the Board full and unrestricted access to the records when it was conducting a review of the accounts upon the orders of the trial court. Thus, in its Manifestation[77] dated August 16, 2004, the Board informed the trial court that its report pertaining to outstanding balances may not be accurate because "the documents were then in the custody of Land Bank and the documents to be reviewed by the Board at a designated hearing depended on what was released by the then handling lawyer of Land Bank." They were "not given the opportunity to collate/sort-out the documents related to each trust account"[78] and "the folders being reviewed contained documents related to different trust accounts." [79] As a result, "[t]here may have been double take up of accounts since the documents previously reviewed may have been repeatedly considered in the reports." [80]

For its failure to faithfully comply with its obligations under the IMAs and for having agreed to submit the case on the basis of the reports of the Board of Commissioners, the latter's findings are binding on Land Bank.

Because of Land Bank's failure to keep an updated and accurate record of Oñate's account, it would have been difficult, if not impossible, to determine with some degree of accuracy the outstanding balances in Oñate's accounts. Indeed, the creation of a Board of Commissioners was a significant development in this case as it facilitated the examination of the records and helped in the determination of the balances in each of Oñate's accounts. In a span of four years, the Board held 60 meetings and scoured the voluminous and scattered records of subject accounts. In the course thereof, it found several undocumented withdrawals and over withdrawals. Thereafter, the Board submitted its consolidated report, to which Land Bank did not file its comment despite having been given the opportunity to do so. It did not question the result of the examinations conducted by the Board, particularly the Board's computation of the outstanding balance in each account, the existence of undocumented and over withdrawals, and how often the bank sent Oñate statements of account. In fact, during the pre-trial conference, Land Bank agreed to submit the case based on the reports of the Board.

Consequently, we found no cogent reason to deviate from the same course taken by the CA – give weight to the consolidated report of the Board and treat it as competent and sufficient evidence of what are stated therein. After all, the dearth of evidentiary documents that could have shed light on the alleged unintended crediting and unexplained withdrawals was brought about by Land Bank’s failure to maintain accurate records as required by the IMAs. In *Simex International (Manila), Inc. v. Court of Appeals*,^[81] we elucidated on the nature of banking business and the responsibility of banks:

The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Thus, even the humble wage-earner has not hesitated to entrust his life’s savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him. The ordinary person, with equal faith, usually maintains a modest checking account for security and convenience in the settling of his monthly bills and the payment of ordinary expenses. As for business entities like the petitioner, the bank is a trusted and active associate that can help in the running of their affairs, not only in the form of loans when needed but more often in the conduct of their day-to-day transactions like the issuance or encashment of checks.

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. x x x

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligations to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. x x x (Emphasis supplied)

As to the conceded inaccuracies in the reports, we cannot allow Land Bank to benefit therefrom. Time and again, we have cautioned banks to spare no effort in ensuring the integrity of the records of its clients.^[82] And in *Philippine National Bank v. Court of Appeals*,^[83] we held that “as between parties where negligence is imputable to one and not to the other, the former must perforce bear the consequences of its neglect.” In this case, the Board could have submitted a more accurate report had Land Bank faithfully complied with its duty of maintaining a complete and accurate record of Oñate’s accounts. But the Board could not find and present the corresponding slips for the withdrawals reflected in the passbooks. In addition, and as earlier mentioned, Land Bank was less than cooperative when the Board was examining the records of Oñate’s accounts. It did not give the Board enough leeway to go over the records systematically or in orderly fashion. Hence, we cannot allow Land Bank to benefit from possible inaccuracies in the reports.

Neither does Oñate’s failure to exercise his rights to inspect the records and audit his accounts excuse the bank from sending the required notices, for under the IMAs it behooved upon Land Bank to keep him fully informed of the status of his investments by sending him regular reports and statements. Oñate’s failure to inspect the record of his accounts should neither be construed as his waiver to be furnished with updates on his accounts nor authority for the bank to make undocumented withdrawals. As aptly opined by the CA:

x x x The least that Land Bank could have done was to keep a detailed quarterly report on [its] file. In this case, Land Bank did away with this procedure that made [its] records a complete mess of voluminous and meaningless records of numerous folders containing more than 7,600 leaves/pages and some 90 passbooks, with 1,355 leaves/pages of entries, corresponding to the seven (7) Trust Accounts.

The passbook entries alone are insufficient compliance with Land Bank’s duty to keep “accurate records of all

investments, receipts, disbursements and other transactions of the Account.” These passbooks do not inform what investments were made on the funds withdrawn. Moreover, these passbook entries do not show if the amounts purported to have been invested were indeed received by the concerned entity, facility, or borrower. From these entries alone, Oñate would have no way of knowing where his money went.[84]

But Land Bank next postulates that if Oñate is entitled to the undocumented withdrawals on the basis of the reports of the Board, then it should also be entitled to the negative balances or over withdrawals as reflected in the same reports.

We cannot agree for a number of reasons. First, as earlier discussed, Land Bank is guilty of negligence while Oñate (at least insofar as over withdrawals are concerned) is not. Had Land Bank maintained an accurate record, it would have readily detected and prevented over withdrawals. But without any qualms, Land Bank asks for the negative balances, unmindful that such claim is actually detrimental to its cause because it amounts to an admission that it allowed over withdrawals. As aptly observed by the CA:

Corollarily, the Court cannot allow Land Bank to recover the negative balances from Oñate’s trust accounts. Examining the Commissioners’ Report, the Court notes that the funds of Oñate’s trust accounts became seriously depleted due to the unaccounted withdrawals that Land Bank charged against his accounts. At any rate, those negative balances on Oñate’s accounts show Land Bank’s inefficient performance in managing his trust accounts. Reasonable bank practice and prudence [dictate] that Land Bank should not have authorized the withdrawal of various sums from Oñate’s accounts if it would result to overwithdrawals. x x x[85]

Second, Land Bank never prayed for the recovery of the negative balances in its Complaint.

It is settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party. x x x Due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court. In *Development Bank of the Philippines v. Teston*, [86] this Court expounded that:

Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.[87]

Last, during the pre-trial conference, the issue of the validity of undocumented withdrawals was properly put into issue. The parties also agreed, as a collateral issue, that should it appear that the bank was not authorized to make the undocumented withdrawals, the next issue for consideration would be whether the amount subject thereof should be credited back to Oñate’s accounts.[88] The case of negative balances as alluded to by Land Bank, however, is different. It was never put into issue during the pre-trial conference. In *Caltex (Philippines), Inc. v. Court of Appeals*, [89] we held that “to obviate the element of surprise, parties are expected to disclose at a pre-trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve privileged or impeaching matters. The determination of issues at a pre-trial conference bars the consideration of other questions on appeal.” Land Bank interposed its claim to the negative balances for the first time only when it filed its Memorandum with the RTC.

Land Bank knew from the start and admitted during trial that Trust Account Nos. 01-014 and 01-017 do not belong to Oñate; hence, it should not have debited any amount therefrom to compensate for the alleged personal

indebtedness of Oñate.

Land Bank claims that Oñate cannot sue on Trust Account Nos. 01-014 and 01-017 without joining as an indispensable party his undisclosed principal.

But if anyone in this case is guilty of failing to join an indispensable party, it is Land Bank that first committed a violation. The IMAs covering Trust Account Nos. 01-014 and 01-017 attached as Annexes “A”[90] and “B,”[91] respectively, of Land Bank’s Complaint clearly state that Oñate signed the same “FOR: UNDISCLOSED PRINCIPAL.” As party to the said IMAs, Land Bank knew and ought not to forget that Oñate is merely an agent and not the owner of the funds in said accounts. Yet Land Bank garnished the total amount of P792,595.25 from Trust Account Nos. 01-014 and 01-017 to answer for the alleged personal indebtedness of Oñate. Worse, when Land Bank filed its Complaint for Sum of Money, it did not implead said undisclosed principal or inform the trial court thereof. Now that Oñate is seeking the restoration of the amounts debited and withdrawn without withdrawal slips from said accounts, Land Bank is invoking the defense of failure to implead an indispensable party. We cannot allow Land Bank to do this. As aptly observed by the trial court:

Under the circumstances obtaining, it is highly unfair, unjust and iniquitous, to dismiss the suit with respect to the two Trust Accounts after [Land Bank] had garnished the balances of said accounts to pay the alleged indebtedness of [Oñate] allegedly incurred by the erroneous crediting of P4 million to x x x Trust Account No. 01-125 which does not appear to be owned by an undisclosed principal. Trust Account No. 01-125 is [Oñate’s] personal trust account with plaintiff. Stated differently, [Land Bank] having now recognized and admitted that Trust Account Nos. 01-014 and 01-017 were not owned by [Oñate], it has perforce no right, nay unlawful for it, to apply the funds in said accounts to pay the alleged indebtedness of [Oñate’s] personal account. Equity and justice so demand that the funds be restored to Trust Account Nos. 01-014 and 01-017.[92]

Oñate protested the contents of the statements of account at the earliest opportunity.

As to Land Bank’s insistence that Oñate is deemed to have accepted the contents of the statements of account for his failure to manifest his objection thereto within 30 days from receipt thereof, it should be recalled that from the time the alleged “miscrediting” occurred in November 1980, the first communication coming from Land Bank was its letter dated October 8, 1981.[93] This, however, was the subject of a failed negotiation between the parties. Besides, said letter can hardly be considered as an statement that would apprise Oñate of the status of his investments. It is not “a balance sheet, portfolio analysis, statement of income and expenses or a summary of investment changes” as contemplated in paragraph 4 of the IMAs. It is a demand letter seeking the return of the alleged “miscredited” amount. The same goes true with Land Bank’s letter dated September 3, 1991. As can be readily seen from its opening paragraph, said letter is in response to Oñate’s “demand” for information regarding the offsetting,[94] which Oñate protested and is now one of the issues involved in this case. In fine, it cannot be said that Oñate approved and adopted the outstanding balances in his accounts for his failure to object to the contents of those letters within the 30-day period allotted to him under the IMAs.

From what is available on the voluminous records of this case and as borne out by the Board’s consolidated report dated August 16, 2004, the statements which Land Bank sent to Oñate are only the following:

Based on the Annexes[95] attached to Oñate’s Answer (With Compulsory Counterclaim)

ITF No.

Balance Sheet

As of

Total Liabilities and
Trustor's Equity

01-014

June 30, 1982

P 1,909,349.80

01-017

June 30, 1982

6,003,616.35

01-089

June 30, 1982

551,267.24

01-082

June 30, 1982

1,915.28

01-075

June 30, 1982

12,113,262.95

01-125

June 30, 1982

13,595,271.16

01-024

June 30, 1982

1,131,854.20

Based on the Consolidated Report

ITF No

Report Details

Last Date
of Report

Balances

01-024

Schedule of Money Market Placement

03.31.82

P 453,140.69

01-075

Statement of Income and Expenses

Sheet Balance

03.31.90

03.31.90

0.00

1,207,501.69

01-014

Schedule of Money Market Placement

Statement of Income and Expenses

Balance Sheet

06.30.91

06.30.91

06.30.91

14,767.20

3,267.19

20,673.58

01-017

Schedule of Investment

Statement of Income and Expenses

Balance Sheet

06.30.91

06.30.91

06.30.91

38,502.06

10,437.22

39,659.56

01-082

Statement of Income and Expense

Balance Sheet

06.30.91

06.30.91

59.75

70.28

01-125

Schedule of Investment

Statement of Income and Expenses

Balance Sheet

06.30.91

06.30.91

06.30.91

44,055.72

10,079.16

60,920.42

The patent wide gap between the time Land Bank furnished Oñate with Balance Sheets as of June 30, 1982 and the date it sent him an Statement of Income and Expenses, as well as a Balance Sheet, on March 31, 1990 is a clear and gross violation of the IMAs requiring it to furnish him with balance sheet, portfolio analysis, statement of income and expenses and the like, quarterly. As to the reports dated June 30, 1991 and letters subsequent thereto, it should be noted that during those times Oñate had already interposed his objections to the outstanding balances of his accounts.[96]

The proper rate of legal
interest.

Land Bank's argument that the lower courts erred in imposing 12% per annum rate of interest is likewise devoid of merit. The unilateral offsetting of funds without legal justification and the undocumented withdrawals are tantamount to forbearance of money. In the analogous case of *Estores v. Supangan*,[97] we held that "[the] unwarranted withholding of the money which rightfully pertains to [another] amounts to forbearance of money which can be considered as an involuntary loan." Following *Eastern Shipping Lines, Inc. v. Court of Appeals*,[98] therefore, the applicable rate of interest in this case is 12% per annum. Besides, Land Bank is estopped from assailing the award of 12% per annum rate of interest. In its Complaint, Land Bank arrived at P8,222,687.89 as the outstanding indebtedness of Oñate by using the same 12% per annum rate of interest. It was only after the lower courts rendered unfavorable decisions that Land Bank started to insist that the applicable rate of interest is 6% per annum.

Of equal importance is the determination of when the said 12% per annum rate of interest should commence. Recall that both the RTC and the CA reckoned the running of the 12% per annum rate of interest from June 21, 1991, or the day Land Bank unilaterally applied the outstanding balance in all of Oñate's trust accounts, until fully paid. The compounding of interest, on the other hand, was based on the provision of the IMAs granting Land Bank "to hold, invest and reinvest the Fund and keep the same invested, in your sole discretion, without distinction between principal and income."

While we find sufficient basis for the compounding of interest, we find it necessary however to modify the commencement date. In *Eastern Shipping*,[99] it was observed that the commencement of when the legal interest should start to run varies depending on the factual circumstances obtaining in each case.[100] As a rule of thumb, it was suggested that "where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the

date the judgment of the court is made[101] (at which time the quantification of damages may be deemed to have been reasonably ascertained).”[102]

In the case at bench, while Oñate protested the setting off, no proof was presented that he formally demanded for the return of the amount so debited prior to the filing of the Complaint. Quite understandably so because at that time he could not determine with some degree of certainty the outstanding balances of his accounts as Land Bank neglected on its duty to keep him updated on the status of his accounts. Land Bank even undertook to furnish him with “the exact computation”[103] of what remains in his accounts after the set off. But this never happened until Land Bank initiated the Complaint on September 7, 1992. Oñate, on the other hand, filed his Answer (With Compulsory Counterclaim) on May 26, 1993. In other words, we cannot reckon the running of the interest prior to the filing of the Complaint or Oñate’s Counterclaim as no demand prior thereto was made. Neither could the interest commence to run at the time of filing of any of aforesaid pleadings (as to constitute judicial demand) since the undocumented withdrawals in the sums of P60,663,488.11 and US\$3,210,222.85, as well as the amount actually debited from all of Oñate’s accounts, were determined only after the Board submitted its consolidated report on August 16, 2004 or more than 10 years after Land Bank and Oñate filed their Complaint and Answer, respectively. Note too that while Oñate sought to recover the amount of undocumented withdrawals before the RTC,[104] the same was denied in the latter’s May 31, 2006 Decision. The RTC granted Oñate only the total amount of funds debited from his trust accounts. It was only when the CA rendered its December 18, 2009 Decision that Oñate was awarded the undocumented withdrawals. Hence, we find it just and proper to reckon the running of the interest of 12% per annum, compounded yearly, for the debited amount and undocumented withdrawals on different dates. The debited amount of P1,471,416.52, shall earn interest beginning May 31, 2006 or the day the RTC rendered its Decision granting said amount to Oñate. As to the undocumented withdrawals of P60,663,488.11 and US\$3,210,222.85, the legal rate of interest should start to run the day the CA promulgated its Decision on December 18, 2009.

During the pendency of this case, however, the Monetary Board issued Resolution No. 796 dated May 16, 2013, stating that in the absence of express stipulation between the parties, the rate of interest in loan or forbearance of any money, goods or credits and the rate allowed in judgments shall be 6% per annum. Said Resolution is embodied in Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, which took effect on July 1, 2013. Hence, the 12% annual interest mentioned above shall apply only up to June 30, 2013. Thereafter, or starting July 1, 2013, the applicable rate of interest for both the debited amount and undocumented withdrawals shall be 6% per annum, compounded annually, until fully paid.

WHEREFORE, the Petition is hereby DENIED and the December 18, 2009 Decision of the Court of Appeals in CA-G.R. CV No. 89346 is AFFIRMED with modification in that the interest of 12% per annum, compounded annually, for the debited amount of P1,471,416.52 shall commence to run on May 31, 2006, while the same rate of interest shall apply to the undocumented withdrawals in the amounts of P60,663,488.11 and US\$3,210,222.85 starting December 18, 2009. Beginning July 1, 2013, however, the applicable rate of interest on all amounts awarded shall earn interest at the rate of 6% per annum, compounded yearly, until fully paid.

SO ORDERED.

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

[1] Rollo, pp. 11-94.

[2] CA rollo, pp. 484-511; penned by Associate Justice Jose Catral Mendoza (now a Member of this Court) and

concurred in by Associate Justices Myrna Dimaranan Vidal and Priscilla J. Baltazar-Padilla.

[3] Records, Vol. IV, pp.1358-1387; penned by Judge Manuel D. Victorio.

[4] Id., Vol. I, pp. 1-8.

[5] CA Rollo, pp. 594-595; penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Michael P. Elbinias.

[6] Id. at 518-558.

[7] AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved August 8, 1963.

[8] See Passbook 1, Exhibit “D-31.”

[9] See Passbook 2, Exhibit “F-3.”

[10] See Passbook 7, Exhibit “C-3.”

[11] See Passbook 5, Exhibit “B-3.”

[12] See Passbook 4, Exhibit “A-3.”

[13] See Passbook 3, Exhibit “E-3.”

[14] See Passbook 6, Exhibit “G-3.”

[15] Records, Vol. I, pp. 9-23.

[16] Id.

[17] Id. at 33.

[18] As alleged in paragraph 14 of the Complaint, id. at 5-6. But per Annex “P” of the same Complaint, id. at 34-35, the total amount debited was P1,471,416.52.

[19] Id. at 1-8.

[20] Under paragraph 15 of the Complaint, Land Bank explained how it arrived at the amount of P8,222,687.89, viz:

15. [Oñate’s] outstanding indebtedness to LANDBANK stands at P8,222,687.89 as of May 15, 1992, which was computed on the basis of the more than P4 Million erroneously credited to [Oñate] multiplied by 12% interest per annum from the date of the erroneous crediting up to February 4, 1992, minus P1,528,583.48 representing the balance standing in [Oñate’s] personal trust accounts which was applied as payment by way of set-off. x x x (Id. at 6.)

[21] Should be 1980.

[22] Should be 1980.

[23] Records, Vol. I, pp. 2-5.

[24] Id. at 138-152.

[25] Id. at 34-35.

[26] Id. at 153-159.

[27] Id. at 144-145. Emphases in the original.

[28] Id. at 151-152.

[29] Id., Vol. II, pp. 409-410.

[30] (i) Report of the Board of Commissioners dated September 24, 1999, id., Vol. V, pp. 1432-1441; (ii) supplemental summary report dated January 27, 2000, id., Vol. III, pp. 790-797; (iii) second supplemental report dated April 6, 2000, id. at 811-812.

[31] See Order dated May 25, 2004, id., Vol. IV, p. 1216.

[32] Id. at 1220-1228.

[33] Per commissioners' consolidated report dated August 16, 2004, id., "withdrawals" is defined as cash outflow reflected on the passbooks of Oñate, while "drawings" is cash outflow from the capital contribution of Oñate per his Letter of Instructions.

[34] Id. at 1380-1381.

[35] Id. at 1229-1230.

[36] See Comment (Re: Board of Commissioners' Compliance dated 16 August 2004), id. at 1241-1245.

[37] See Order dated June 10, 2005, id. at 1286.

[38] Id. at 1288-1307.

[39] See Land Bank's Memorandum dated August 5, 2005, id. at 1319-1345.

[40] Id. at 1358-1387.

[41] Broken down as follows: Trust Account No. 01-014, P170,172.91; Trust Account No. 01-017, P622,422.34; Trust Account No. 01-082, P4,175.88; Trust Account No. 01-089, P148,298.79; and, Trust Account No. 01-125, P526,346.61, for a total amount of P1,471,416.52.

[42] Records, Vol. IV, p. 1387.

[43] Id. at 1388-1399.

[44] Id. at 1416-1417.

[45] CA Rollo, pp. 484-511.

[46] Broken down as follows:

Trust Account No.

Undocumented Withdrawals

01-014

P45,103,297.33

01-017

2,682,088.58
01-024
900,000.00
01-075
500,000.00
01-082
1,782,741.86
01-089
5,054,089.00
01-125
4,640,551.34
TOTAL
P60,663,488.11

DOLLAR ACCOUNT

Trust Account No.
Undocumented Withdrawals
01-014
\$3,210,222.85

[47] CA rollo, pp. 510-511.

[48] Id. at 518-558.

[49] Id. at 594-595.

[50] Rollo, p. 465.

[51] Records, Vol. I, p. 33.

[52] Id. at 34-35.

[53] Id. at 36.

[54] Id. at 34-35.

[55] See Memorandum dated October 4, 2011, rollo, pp. 443-528, 508.

[56] SEC. 3. Representatives as parties. mdash; Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when

the contract involves things belonging to the principal.

[57] G.R. No. 183059, August 28, 2009, 597 SCRA 519.

[58] CBP Circular No. 824-81 dated September 17, 1981; Subsection 2415.1 of the 1982 Manual of Regulations for Banks (MORB); and CBP Memorandum dated October 16, 1990 and the 1993 MORB.

[59] CA Rollo, p. 504.

[60] See Order dated June 10, 2005, Records, Vol. IV, p. 1286.

[61] See paragraph 7 of the Petition, Rollo, p. 39.

[62] *Atiko Trans, Inc. v. Prudential Guarantee and Assurance, Inc.*, G.R. No. 167545, August 17, 2011, 655 SCRA 625, 633.

[63] 539 Phil. 377, 386-387 (2006).

[64] Section 4, Rule 3, The Internal Rules of the Supreme Court enumerates the following exceptions: (a) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (b) the inference made is manifestly mistaken; (c) there is grave abuse of discretion; (d) the judgment is based on a misapprehension of facts; (e) the findings of fact are conflicting; (f) the collegial appellate courts went beyond the issues of the case, and their findings are contrary to the admissions of both appellant and appellee; (g) the findings of fact of the collegial appellate courts are contrary to those of the trial court; (h) said findings of fact are conclusions without citation of specific evidence on which they are based; (i) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (j) the findings of fact of the collegial appellate courts are premised on the supposed evidence, but are contradicted by the evidence on record; and, (k) all other similar and exceptional cases warranting a review of the lower courts' findings of fact.

[65] *Valarao v. Court of Appeals*, 363 Phil. 495, 506 (1999). Citations omitted.

[66] *Canque v. Court of Appeals*, 365 Phil. 124, 131 (1999).

[67] SEC. 43. Entries in the course of business. – Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

[68] CA rollo, p. 504.

[69] See Land Bank's Memorandum dated October 13, 2011, Rollo, pp. 443-528, 462.

[70] Records, Vol. I, p. 4.

[71] 439 Phil. 475 (2002).

[72] Passbook Under Account No. 101 5759-3 with Name of Depositor LBP ITF 01-125 marked as Exhibits "G-18" to "G-19".

[73] *Hyatt Elevators and Escalators Corporation v. Cathedral Heights Building Complex Association, Inc.*, G.R. No. 173881, December 1, 2010, 636 SCRA 401, 412.

[74] Records, Vol. I, p. 143.

[75] *Id.* at 9-23.

[76] Article 1159 of the CIVIL CODE OF THE PHILIPPINES provides:

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[77] See Manifestation dated August 16, 2004, Records, Vol. IV, pp. 1229-1230.

[78] Id.

[79] Id.

[80] Id.

[81] 262 Phil. 387, 395-396 (1990).

[82] Dycoco, Jr. v. Equitable PCI Bank, G.R. No. 188271, August 16, 2010, 628 SCRA 346, 353.

[83] G.R. No. 97995, January 21, 1993, 217 SCRA 347, 358.

[84] CA rollo, p. 509.

[85] Id. at 505.

[86] G.R. No. 174966, February 14, 2008, 545 SCRA 422, 429.

[87] Diona v. Balangue, G.R. No. 173559, January 7, 2013, 688 SCRA 22, 35-36.

[88] See Order dated June 10, 2005, Records, Vol. IV, p. 1286.

[89] G.R. No. 97753, August 10, 1992, 212 SCRA 448, 462.

[90] Records, Vol. I, pp. 9-11.

[91] Id. at 12-14.

[92] Id., Vol. IV, p. 1387.

[93] Id., Vol. 1, p. 33.

[94] Id. at 34.

[95] Id. at 153-159.

[96] See Land Bank's letter to Oñate's counsel dated June 4, 1991, id. at 60 as well as the latter's letter to the former dated June 20, 1991, id. at 61-62.

[97] G.R. No. 175139, April 18, 2012, 670 SCRA 95, 106.

[98] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[99] Id.

[100] Id. at 94-95.

[101] Emphasis supplied.

[102] Id. at 96.

[103] See Letter dated June 4, 1991, Records, Vol. I, p. 60; Letter dated June 20, 1991, id.

[104] See Comment (Re: Board of Commissioners' Compliance dated 16 August 2004), id. at 1241-1245.

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