

BANCO DE ORO UNIVERSAL BANK, INC., VIVIAN DULDULAO, AND CHRISTINE NAKANISHI, PETITIONERS, VS. LIZA A. SEASTRES AND ANNABELLE N. BENAJE, RESPONDENTS.*G.R. No. 257151 (Formerly UDK 16942). February 13, 2023*

Ponente: CAGUIOA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-257151/>**CAGUIOA, J.:**

This is a Petition for Review on Certiorari[6] (Petition) under Rule 45 of the Rules of Court filed by petitioners Banco de Oro Universal Bank, Inc. (BDO), Vivian Duldulao (Duldulao) and Christine T. Nakanishi (Nakanishi) (collectively, petitioners) assailing the Decision[7] dated September 30, 2020 and the Resolution[8] dated February 16, 2021 of the Court of Appeals (CA) in CA-G.R. CV No. 110142, which affirmed with modification the Decision[9] dated March 10, 2017 of the Regional Trial Court of Taguig City, Branch 70 (RTC) in Civil Case No. 72161-TG finding petitioners jointly and severally liable to respondent Liza A. Seastres (Seastres).

The Facts

The CA narrates the antecedents as follows:

[Respondent Seastres] is a depositor of [petitioner BDO] maintaining various personal and corporate accounts in two of its branches, BDO People Support Branch and BDO Rufino Branch, in Makati City.

Sometime in October 2008, Nella Zablan [(Zablan)], the Finance Officer of Seastres['] business [named] Las Management and General Services, Inc.[10] (Las Management), called BDO People Support Branch and requested for a transaction history with respect to Account No. 20800471, as Seastres suspected that several unauthorized withdrawals were made from April to September 2008. Acting on said request, BDO immediately provided Seastres with her account history. [Petitioner Nakanishi], the Branch Head of BDO People Support Branch, personally called Seastres to inform her that all the withdrawals were made by [respondent] Anabelle Benaje (Benaje), Seastres['] long-time friend and the Chief Operating Officer of Las Management. An investigation was made but nothing irregular was discovered.

Nakanishi then reported the matter to BDO management and likewise informed [petitioner Duldulao], the Branch Head of BDO Rufino Branch, where Seastres likewise maintained an account. BDO Rufino Branch conducted its own investigation and like the BDO People Support Branch, no anomalous transactions were found.

Particularly, Seastres discovered that there were several unauthorized withdrawals from her accounts without her knowledge, instruction, and authority [(hereinafter, the "subject withdrawal slips")], to wit:

From BDO People Support Branch under Account No. 20800471:

Transaction and date:

Amount:

[BDO] Withdrawal Slip dated August 1, 2008

P128,000.00

[BDO] Withdrawal Slip dated May 9, 2008

P130,000.00

[BDO] Withdrawal Slip dated July 11, 2008

P437,200.00

[BDO] Withdrawal Slip dated July 16, 2008

P282,000.00

[BDO] Withdrawal Slip dated July 4, 2008

P54,000.00

[BDO] Withdrawal Slip dated May 2, 2008

P300,000.00

From BDO Rufino Branch under Account No. 5420-015499:

Transaction and Date:

Amount:

[BDO] Withdrawal Slip dated September 18, 2008

P180,000.00

[BDO] Withdrawal Slip dated September 9, 2008

P345,000.00

[BDO] Withdrawal Slip dated August 29, 2008

P381,000.00

[BDO] Withdrawal Slip dated July 24, 2008

P503,000.00

[BDO] Withdrawal Slip dated September 12, 2008

P222,600.00

[BDO] Withdrawal Slip dated July 2, 2008

P646,000.00

She also discovered that the following manager's checks were encashed without her knowledge, consent, and authority [(hereinafter, the "subject manager's checks")]:

Check [Number] and Date:

Amount:

Manager's Check No. 0001466 dated May 23, 2008

P2,500,000.00

Manager's Check No. 0001549 dated June 23, 2008

P 508,072.92

Manager's Check No. 0001346 dated April 8, 2008

P1,505,066.67

The total amount of the unauthorized transactions was P8,121,939.59.

Seastres sought the assistance of BDO in reconciling her accounts. All relevant withdrawal slips as well as pertinent bank documents were provided to her. BDO, for its part, conducted its own investigation.

It was discovered that all these transactions were facilitated and made by Benaje. As usual practice, Seastres rarely went to BDO and simply allowed her authorized representatives, particularly Benaje, to process her personal and corporate transactions for her. Whenever the bank would make confirmatory calls to Seastres['] office regarding the transactions, the calls would always be referred to Benaje for confirmation or Benaje would be the one to answer the call. If the bank would insist on talking to Seastres, Benaje would say that Seastres is out of the office, in a meeting or is busy. Thus, the confirmation would still be made by Benaje.

As regards the [subject] [m]anager's [c]hecks, the same were encashed because Benaje presented application forms bearing the signatures of Seastres. She also furnished the bank the documents showing that Seastres had special instructions to partially roll over the Special Deposit Account with the amount withdrawn from said account to be partially deposited to another account and the rest to be encashed.

In all these transactions, BDO, through its employees including Duldulao and Nakanishi, all verified the signatures of Seastres on the [subject] withdrawal slips and manager's checks, and found the same to be genuine.

Meanwhile, a meeting was held where Benaje admitted that she made all the questioned withdrawals. Benaje likewise voluntarily suITendered two (2) rubber stamps bearing the signature of Seastres, which the fom1er used for the transactions. She also promised to return the money to Seastres.

Accordingly, Seastres filed a criminal case against Benaje before the Makati City Prosecutor's Office but the same was dismissed for lack of probable cause. Seastres did not appeal this finding. Instead, she filed the instant case for collection of sum of money against [petitioners]. Benaje was included as defendant when Seastres filed a Motion for Leave to File Amended Complaint, which was granted by the RTC in an Order dated April 17, 2012.[11]

Ruling of the RTC

In its Decision[12] dated March 10, 2017, the RTC held that BDO, through its employees, reneged in its obligation to treat the accounts of its customers, particularly Seastres, with meticulous care and extraordinary diligence,[13] to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

- [Seastres'] prayer for actual and moral damages including the attorney's fees and costs of suit is hereby GRANTED. [Petitioners] are hereby ordered to be jointly and severally liable to [Seastres] in the following damages and amounts:

- The actual damages in the amount of Eight Million Sixty[-]Seven Thousand Nine Hundred Thirty[-]Nine Pesos and Fifty[-]Nine Centavos (Php 8,067,939.59);
- One Hundred Thousand Pesos (Php 100,000.00) as moral damages;
- One Hundred Thousand Pesos (Php 100,000.00) as attorney's fees; and
- d. Costs of suit.
- [Seastres'] prayer for exemplary damages is hereby DENIED for lack of merit.
- [Petitioners'] Counterclaim against the [Seastres] is hereby DENIED for lack of merit.
- [Respondent] Benaje is hereby ordered to indemnify and pay [petitioners] BDO, Duldulao and Nakanishi:
- Any and all damages, costs and expenses that BDO, Duldulao and Nakanishi may be required to pay [Seastres] under the Amended Complaint;
- One Hundred Thousand Pesos (Php 100,000.00) each for moral damages;
- Fifty Thousand Pesos (Php 50,000.00) each for exemplary damages; and
- Fifty Thousand Pesos (Php 50,000) for attorney's fees.

SO ORDERED.[14]

According to the RTC, the lack of information provided in the withdrawal through representative should have caught the attention of the bank, and BDO should have taken precautions to avoid the unauthorized transactions.[15] BDO failed to see to it that the required details for withdrawals were correctly filled out and the procedures for confirming the transactions with the account owner were not followed.[16]

The RTC also ruled that the doctrine of apparent authority does not apply in the instant case because the Special Power of Attorney as well as the Authorization relied upon by BDO shows that it only pertains to the delivery to and/or receipt from the bank of any and all papers, documents, checks, statements and other related papers pertaining to any and/or all transactions of Seastres, but it does not include the authority to withdraw from Seastres' account and encash Seastres' checks.[17]

Aggrieved, petitioners then filed a Motion for Partial Reconsideration[18] dated May 18, 2017, which was denied by the RTC in an Order[19] dated September 22, 2017. Thereafter, petitioners filed a Notice of Appeal[20] dated October 11, 2017 to the CA.

Ruling of the CA

In its Decision[21] dated September 30, 2020, the CA partly granted petitioners' appeal. Although the CA affirmed the RTC's findings that petitioners failed to exercise the degree of diligence required of banking institutions and that the doctrine of apparent authority is not applicable in the instant case, the CA held that Seastres is guilty of contributory negligence and therefore should be made to shoulder part of the damages she sustained,[22] particularly forty percent (40%) of the total liability, while petitioners should be accountable for the remaining sixty percent (60%).[23]

The CA also modified the amount of actual damages on the ground that Seastres was not able to formally offer the BDO Withdrawal Slip dated July 2, 2008 in the amount of P646,000.00. Thus, the said amount should be reduced from the total amount of actual damages.[24] Further, the CA held that the award of moral damages and attorney's fees in favor of Seastres should be deleted since there is neither basis nor any legal, factual or equitable justification for such awards.[25]

The dispositive portion of the Decision dated September 30, 2020 states:

WHEREFORE, the appeal is PARTLY GRANTED. The Decision dated March 10, 2017 issued by the Regional Trial Court, National Capital Judicial Region, Branch 70, Taguig City, in Civil Case No. 72161-TG, is AFFIRMED WITH MODIFICATION as follows:

[Petitioners] Banco De Oro, Vivian Duldulao, and Christine Nakanishi are jointly and severally liable to [respondent] Liza A. Seastres [for] actual damages in the amount of P4,453,163.75. The award of moral damages and attorney's fees are hereby deleted. Costs of suit to be borne by the parties.

SO ORDERED.[26]

Both petitioners and Seastres moved for reconsideration, but both were denied by the CA in a Resolution[27] dated February 16, 2021.

Thereafter, BDO, Duldulao and Nakanishi filed this present Petition. Seastres, on the other hand, no longer sought a review.

Issues

The issues presented before the Court are: (a) whether the CA correctly found that petitioners failed to exercise the diligence expected from banking institutions in handling Seastres' bank accounts; and (b) if so, whether Seastres can be found guilty of contributory negligence in handling her personal bank accounts, which would justify the reduction of petitioners' total liability to Seastres.

The Court's Ruling

The Petition is without merit.

At the outset, the Court is not a trier of facts. Cases which would require a re-evaluation of the evidence are inappropriate under Rule 45 of the Rules of Court since the jurisdiction of the Court is limited only to errors of law.[28] However, this rule admits of exceptions, such as: (1) where the conclusion is a finding grounded entirely on speculation, surmise, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record.[29]

Here, the CA's finding that Seastres is liable for 40% of the total amount of actual damages on the finding of contributory negligence is clearly based on a misapprehension of facts. Upon an exhaustive review of the records, the Court is compelled to yield to the factual findings made by the trial court that BDO totally failed to comply with its duty to exercise extraordinary diligence in taking care of Seastres' bank accounts. For this, BDO should be liable for the full amount of the actual damages suffered by Seastres.

Banks are expected and required to exercise extraordinary diligence in their business dealings, particularly in handling their clients' accounts

Based on current jurisprudence, banks are required to exercise the highest standard of diligence. As explained in *Philippine Commercial International Bank v. Court of Appeals*,[30] the banking business is one affected with public interest so that banks are expected to exercise the highest degree of diligence[31]:

Time and again, we have stressed that banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be very high, if not the highest, degree of diligence. A bank's liability as obligor is not merely vicarious

but primary, wherein the defense of exercise of due diligence in the selection and supervision of its employees is of no moment.

Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.[32]

Taking into consideration the fiduciary nature of a bank's relationship with its depositors, banks are duty bound to treat the accounts of their clients with the highest degree of care. Thus, in *Simex International (Manila), Inc. v. Court of Appeals*,[33] the Court emphatically held:

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. A blunder on the part of the bank, such as the dishonor of a check without good reason, can cause the depositor not a little embarrassment if not also financial loss and perhaps even civil and criminal litigation.[34]

As a business affected with public interest and because of the nature of its functions, banks are under obligation to treat the accounts of their depositors with meticulous care always having in mind the fiduciary nature of their relationship.[35]

Here, BDO was duty bound to exercise the highest degree of diligence in handling Seastres' bank accounts and in ascertaining that the signatures in the subject withdrawal slips and manager's checks were made by Seastres and not by anybody else.

The records show, however, that BDO did not practice the highest degree of diligence required of it in taking care of Seastres' bank accounts.

Primarily, BDO actually failed to comply with its own rules and regulations regarding withdrawals made through a representative. Specifically, BDO allowed Benaje to personally transact the unauthorized withdrawals without confirming from Seastres the authority of Benaje and without the latter accomplishing the authority for withdrawal through representative as indicated in the subject withdrawal slips.[36] Records also show that the spaces provided for withdrawal through representative in the subject withdrawal slips were not filled out at all,[37] to wit:

Q

Ms. Witness, you will agree with me that it is the rule of BDO that all withdrawals must be made by depositor by properly filling-out a withdrawal slip and presenting it together with the passbook to the bank teller?

A

Yes, Ma'am.

Q

You will also agree with me that withdrawals made by a person other than the depositor himself may be allowed only upon the depositor's written authorization which shall be verified by the bank teller?

A

Yes, Ma'am.

Q

And you will also agree with me that such written authorization is written on the withdrawal slip itself on the space provided for that purpose?

A

Yes, Ma'am.

Q

By the way, Ms. Witness, am I also correct to state that any withdrawal transactions made by representatives, is it not that x x x the policy of the BDO that the withdrawal must first be confirmed with the depositor before the money will be administered to the representative?

A

Yes[,] that is the best effort of the bank.

Q

Let's go back to your Exhibits "7" to "11". For September 18, 2008, you will agree with me that BDO Ayala Rufino Branch allowed Annabelle Benaje to withdraw the amount of One Hundred Eighty Thousand Pesos (PhP180,000.00) from the personal savings account of Ms. Sea[s]tres despite that (sic) the authorization provided for that purpose was not filled-up (sic)?

A

Yes, Ma'am.

Q

And this withdrawal was not also confirmed with Ms. Liza Sea[s]tres?

A

To my knowledge, they were confirmed.

Q

There was confirmation with Ms. Sea[s]tres?

A

Yes.

Q

Do you have proof of that?

A

No.

Q

In your Exhibit "A", you will also agree with me that Ms. Annabelle Benaje was allowed to withdraw the amount of Three [Hundred] Forty- Five Thousand Pesos (PhP345,000.00) from the personal savings account

of Liza Sea[s]tres despite that (sic) no written authorization was filled-out in this particular withdrawal slip?

A

Yes, Ma'am.

Q

And this withdrawal transaction was not confirmed also, will you agree with me, with Ms. Liza Sea[s]tres?

A

No. Can I say because this were transact (sic), for assess by other (sic), but to my knowledge they were confirmed with Ms. Sea[s]tres.

Q

Do you have proof that there was confirmation?

A

None.

Q

For your Exhibit "9", you will also agree with me that on August 29, 2008, Ms. Annabelle Benaje, herself was allowed to withdraw the amount of Three Hundred Eighty-One Thousand from the personal savings account of Liza A. Sea[s]tres despite the fact that the authorization form provided on the withdrawal slip was not filled-up (sic)?

A

Yes.

Q

And this was also confirmed with - - -

A

Yes, to my knowledge also confirmed by the officers.

x x x x

Q

For Exhibit "10", you will also agree with me that on July 24, 2008, Ms. Annabelle Benaje was allowed to withdraw in the amount of Five Hundred Three Thousand Pesos (PhP503,000.00) from the personal account of Ms. Liza A. Sea[s]tres despite the fact that the authorization form provided on the withdrawal slip was not filled-up (sic)?

A

Yes, Ma'am.

Q

And this was confirmed?

A

To my knowledge, yes.

Q

But no proof?

A

No proof.

Q

And lastly, for your Exhibit "11", you will also agree with me that on September 12, 2008, Ms. Annabelle Benaje [was again] allowed to withdraw in the amount of Two Hundred Twenty-Two Thousand Six Hundred from the personal account of Ms. Liza A. Sea[s]tres despite the fact that the authorization provided for that purpose on the withdrawal slip was not also filled-up (sic)?

A

Yes, Ma'am.

Q

And to your knowledge again, there was confirmation?

A

Yes, Ma'am.

Q

But no proof?

A

Yes, Ma'am.

x x x x

ATTY. ROXAS –

By the way, Ms. Witness, let's refer to your Exhibit "35"[,] the rules and regulations of BDO with regard to opening of accounts, withdrawals, and deposits. You mentioned in your Judicial Affidavit, Ms. Witness, that the bank allowed Ms. Annabelle Benaje to withdraw from the personal savings account of Ms. Liza Sea[s]tres despite the fact that authorization was not provided, [and] was not properly filled-up (sic) because of practice. Do you affirm this?

THE WITNESS –

Yes, Ma'am.

Q

I am showing to you, can you refer to your Exhibit "35"[,] which is one of the documents you have presented and identified. Can you please point out to the Honorable Court which part of the regulations and policies of BDO that [that] practice is allowed in withdrawal transactions? The practice that you were referring to, Ms. Witness.

A

It is not stated here, Ma'am.[38] (Emphasis supplied)

It is clear from the foregoing testimony of Duldulao, that had it not been for BDO's failure to abide by its own rules and regulations, the unauthorized transactions from Seastres' bank account would not have happened.

As regards the subject withdrawal slips bearing the alleged signature of Seastres, BDO was also negligent when it still processed the transactions even if it was Seastres' representative Benaje, and not Seastres, who presented the subject withdrawal slips. As earlier discussed, there was no proof of authority, even a confirmation, from Seastres that Benaje was her authorized representative.

It should be noted that the Authorization of Account Name Liza A. Seastres (Exhibit "24"[39] of the records), which was claimed by petitioners to be the alleged authorization from Seastres in favor of Benaje, plainly shows that the power of Seastres' authorized representative is only to make deposits, account inquiry, pick up bank statements, print outs, checkbooks and other documents pertinent to Seastres' accounts.[40] There is absolutely nothing in the authorization which authorized Benaje to make any withdrawals. The Authorization of Account Name Liza A. Seastres reads:

ACCOUNT NAME : LIZA A. SEASTRES

ACCOUNT NUMBER/S : _____

AUTHORIZATION

The following representative/s whose signature appears below is/are hereby authorized to transact business with you but limited only to making deposits, account inquiry, pick up bank statements, print outs, checkbooks and other documents pertinent to my/our deposit accounts or fund placements with you and other transactions.

This authority is to remain in full force and in effect until revoked by me/us in writing.

AUTHORIZED SIGNATORIES

LIZA A. SEASTRES [signature]

x x x x

AUTHORIZED REPRESENTATIVES

NAMES SIGNATURES

ANNABELLE N. BENAJE [signature]

x x x x[41]

Moreover, BDO violated its contractual duty and obligation to Seastres by allowing the encashment of the subject manager's checks despite the fact that the payee in the said checks was Seastres, but the person encashing the same was Benaje. This lapse on the part of BDO was emphasized in the testimony of Nakanishi:

Q

Ms. Witness, will you agree with me that BDO has this particular policy on checks that only if the check is in the name of a specific payee, only that specific payee is authorized or allowed to encash the said check including the manager's check?

A

Yes, Ma'am.

Q

In other words, Ms. Witness, am I correct to say that in the event that a check, including a manager's check, if

it's in the name of a specific payee, it cannot, in any way, be encashed by another person or a representative?

A

Yes, Ma'am.

Q

Let's go to your attachments, Ms. Witness, of your Judicial Affidavit. You attached hereof as Exhibits "12", "13", and "14", the manager's check (sic). For Exhibit "12", Ms. Witness, am I correct to say that since Ms. Liza Aguilar is the payee of this manager's check dated May 23, 2008, it is only Ms. Liza Aguilar who is able or allowed to encash this manager's check and no other?

A

Yes, Ma'am.

Q

Am I correct to say, Ms. Witness, that for your Judicial Affidavit, if I understand it right, that this manager's check also was encashed by Ms. Annabelle Benaje?

A

Yes, Ma'am.

Q

For this Exhibit "13", manager's check dated June 23, 2008, since the payee of this particular manager's check is also Ms. Liza M. Aguilar, am I also correct to say that it should have been Liza Aguilar only that is allowed to have encashed this particular manager's check?

A

Yes, Ma'am.

Q

And no other?

A

These are the procedures.

Q

Am I correct to say, Ms. Witness, if I understand your Judicial Affidavit, [that] this particular manager's check was also encashed by Ms. Annabelle Benaje?

A

Yes, Ma'am.

Q

And for this manager's check dated April 8, 2008 which is marked as Exhibit "14", since it is also in the name of Liza M. Aguilar as the payee, am I also correct to say that it should have been only Liza Aguilar that could have encashed this manager's check?

A

Yes, Ma'am.

Q

And if I also understand it right from your Judicial Affidavit, am I correct also to state that this particular manager's check also was encashed by Ms. Annabelle Benaje?

A

Yes, Ma'am.

Q

x x x You have identified in your answer No. 34 Equitable PCI Bank authorization form. Am I correct to say, Ms. Witness, that this Equitable PCI Bank authorization form[,] which has been previously marked as Exhibit "21"[,] is not binding insofar as BDO is concerned?

A

Yes.

Q

You also identified Exhibit "24", Ms. Witness, in your Judicial Affidavit, which is an authorization. Please go over the same. Am I correct to say, Ms. Witness, that this Exhibit "24", [the] authorization, pertains only to safety deposit box? Excuse me, excuse me. Am I correct to say that this authorization does not include withdrawals?

A

Yes.

x x x x

Q

And may I also know, Ms. Witness, if you know, what is the authority of the bank to have made this transfer to this particular bank account number?

A

It is being instructed by client to transfer.

Q

Where is the instruction, Ms. Witness, if you have it?

A

As I have said, this is what we are doing as a procedure.

Q

Am I correct to say that it was just a presumption on your part that this particular 208, that the transfer to bank account No. 208004813 was to be made?

A

Yes, Ma'am.

Q

Would you agree with me that there was no written authorization made by Liza Aguilar or Liza Seastres to make this transfer?

A

Yes, as far as I can remember.

Q

Am I also correct to say, M[s]. Witness, that for Exhibit "28", the transfer like (sic) to the same bank account number, am I correct to say that Ms. Liza Seastres likewise has not executed any written authorization to make such transfer?

A

Yes, Ma'am.

x x x x

Q

And also with regard to encashment, Ms. Witness, am I also correct to say that there is no written authorization whatsoever executed by Ms. Liza Seastres or Liza Aguilar in favor of Annabelle Benaje to make [a] withdrawal transaction with BDO?

A

Yes, Ma'am.[42] (Emphasis supplied)

BDO had existing rules and regulations for the withdrawal and encashment of checks through a representative. Based on the foregoing testimony, these were not followed at all. To be sure, the procedure for withdrawal and encashment by a representative is a very basic and uncomplicated banking procedure. Safeguards are imbedded in BDO's procedures for the protection of the depositor and payee. Accordingly, BDO's blatant disregard of its own procedures, as admitted by BDO's own officers, constitutes a clear violation of the bank's fiduciary obligation to its depositor and account holder.

Seastres is not guilty of contributory negligence

Considering that the bank itself is the one who violated its own rules, the Court rules that Seastres is not guilty of any contributory negligence and should not be made to shoulder any liability.

While it is true that Seastres dealt with the bank through Benaje, this cannot be considered contributory negligence because she did so within the parameters set by BDO itself in transactions through a representative. Again, Exhibit "24" of the records, the alleged authorization from Seastres in favor of Benaje, shows the limited powers of Benaje as Seastres' authorized representative — i.e., Benaje was allowed only to make deposits, account inquiry, pick up bank statements, print outs, checkbooks and other documents pertinent to Seastres' accounts.[43] Nothing in the authorization declared that Benaje was authorized to make any withdrawals.

Thus, when BDO violated its own procedures, and totally disregarded the limits of Benaje's authority as

representative of Seastres, then it is evident that this was done to accommodate Benaje — and contrary to the interests of its depositor, Seastres, to whom it owed the fiduciary duty of treating her accounts with the highest degree of care. Stated differently, the "practice" adverted to by BDO of transacting with Seastres through Benaje[44] was a practice it had with Benaje, not Seastres. This "practice" does not detract from or diminish the obligation of BDO to exercise extraordinary diligence in taking care of Seastres' accounts.

Simply put, BDO should not have allowed such "practice" that was violative of its own rules and procedures.

To be sure, what the records show is Seastres' vigilance. After being informed by her company's accountant, Ms. Zablan, regarding the suspicious withdrawals, Seastres immediately conducted an investigation on her bank accounts and caused the production of new passbooks and account print outs when Benaje, as the Chief Operating Officer of Las Management, failed to promptly deliver the passbooks as demanded by Seastres.[45]

BDO is liable to Seastres in the full amount of P7,421,939.59

In assailing the CA Decision, petitioners argue that the actual damages awarded by the CA in the amount of P7,421,939.59 should be further reduced because Seastres failed to prove forgery in the subject withdrawal slips and manager's checks.[46] According to petitioners, Jennifer B. Dominguez (Dominguez), the National Bureau of Investigation Expert Witness who examined the signatures on the subject withdrawal slips and manager's checks, neither assessed nor rendered an opinion with regard to Seastres' signatures on four (4) out of the eleven (11) subject withdrawal slips.[47] Moreover, the testimony of Dominguez also did not cover any of the three (3) subject manager's checks.[48] Thus, the total amount of P5,574,139.59 representing the value of the unexamined subject withdrawal slips and manager's checks should be deducted from the actual damages of P7,421,939.59. Petitioners posit that without the examination and assessment on the genuineness of Seastres' signatures on the four (4) subject withdrawal slips and three (3) manager's checks, there is no credible evidence to prove Seastres' claim that her signatures thereon were forged.[49]

The Court is not convinced.

As pointed out by Associate Justice Maria Filomena D. Singh during the Court deliberations, Seastres' failure to prove the forgery of her signature on the subject withdrawal slips and manager's checks is irrelevant to the negligence of BDO in fulfilling its obligations to Seastres as its depositor.

To reiterate, banks are required to exercise the highest degree of diligence, along with high standards of integrity and performance in view of its significant role in commercial transactions.[50] Since their business and industry are imbued with public interest, banks are required to exercise extraordinary diligence in handling their transactions.[51] Anything that falls short of this required standard of care constitutes negligence in the performance of the banks' obligations to their depositors.

As previously discussed, the negligence of BDO in handling Seastres' accounts is undisputed. Accordingly, the bank should be held liable for the damages that Seastres incurred without regard to whether Seastres proved that her signature was forged. Based on the records, the negligence of BDO lies not in the forgery of Seastres' signature but on the fact that the bank allowed withdrawals on Seastres' account even though such withdrawals were made in violation of its own rules and regulations. The negligence in this case consists not in allowing the withdrawals by virtue of a forged signature, but in acceding to such withdrawals despite being violative of the bank's own policies and procedures.

Stated differently, even assuming that the signatures of Seastres on the subject withdrawal slips and manager's checks were genuine, these documents could still not have been used by Benaje to withdraw the amounts indicated therein without Seastres' written authorization because to allow Benaje to do such withdrawals was against the policies of the bank.

Moreover, Article 1207 of the Civil Code states that, "x x x (t]here is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity." An examination of the rulings of the lower courts show that Duldulao and Nakanishi, as bank employees, were held liable to Seastres as joint tortfeasors. However, based on the facts, it is evident that what BDO breached was its contractual obligations to Seastres by its own failure to follow its own rules. Accordingly, the Court finds it proper to hold BDO solely liable to Seastres. Having BDO's contractual breach as the basis for liability, Duldulao and Nakanishi, who are merely employees or agents of BDO, should not be held jointly and severally liable to Seastres.

In light of the foregoing, the liability of BDO should not be reduced in spite of Seastres' failure to establish the forgery of her signature on the subject withdrawal slips and the manager's checks. BDO is liable to Seastres in the full amount of P7,421,939.59, broken down as follows:

BDO Withdrawal Slips

Amount

BDO Withdrawal Slip dated August 1, 2008
(Exhibit "A" and Exhibit "1")

P 128,000.00

BDO Withdrawal Slip dated May 9, 2008
(Exhibit "B" and Exhibit "2")

P 130,000.00

BDO Withdrawal Slip dated July 11, 2008
(Exhibit "C" and Exhibit "3")

P 437,200.00

BDO Withdrawal Slip dated July 16, 2008
(Exhibit "D" and Exhibit "4")

P 282,000.00

BDO Withdrawal Slip dated May 2, 2008
(Exhibit "F" and Exhibit "6")

P 300,000.00

BDO Withdrawal Slip dated September 18, 2008
(Exhibit "G" and Exhibit "7")

P 180,000.00

BDO Withdrawal Slip dated September 9, 2008
(Exhibit "H" and Exhibit "8")

P 345,000.00

BDO Withdrawal Slip dated August 29, 2008
(Exhibit "I" and Exhibit "9")

P 381,000.00

BDO Withdrawal Slip dated July 24, 2008
(Exhibit "J" and Exhibit "10")

P 503,000.00

BDO Withdrawal Slip dated September 12, 2008
(Exhibit "K" and Exhibit "11")

P 222,600.00

Manager's Checks

Amount

Manager's Check No. 0001466 dated May 23, 2008
(Exhibit "L" and Exhibit "12")

P2,500,000.00

Manager's Check No. 0001549 dated June 23, 2008
(Exhibit "M" and Exhibit "13")

P 508,072.92

Manager's Check No. 0001346 dated April 8, 2008
(Exhibit "N" and Exhibit "14")

P1,505,066.67[52]

BDO is liable to Seastres for moral damages and attorney's fees

The Court also finds it proper to reinstate the award of moral damages in favor of Seastres.

Under Article 2220 of the Civil Code, "[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." In *Philippine National Bank v. Vila*,^[53] the Court held that "moral damages are not awarded to penalize the defendant but to compensate the plaintiff for the injuries he may have suffered. Willful 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."^[54]

Here, the wanton and repeated disregard by BDO of its own bank rules and procedures, which by their very nature are basic and primary, constitutes bad faith on its part. Clearly, BDO breached its contractual obligations to Seastres when it failed to exercise the highest degree of diligence required of banks. The lack of the required care and caution allowed the unauthorized withdrawals of huge amounts from Seastres' account without her consent and to the latter's detriment and loss.^[55] Hence, the award of P100,000.00 as moral damages is warranted.

In addition, the Court affirms the finding of the trial court that the award of attorney's fees is proper since Seastres was compelled to engage the services of a lawyer and incurred expenses to protect her interest.

Considering that the culpability of BDO was already established because of its failure to exercise extraordinary diligence in handling Seastres' accounts, and that the damages and attorney's fees awarded to Seastres is based on prevailing jurisprudence, the Court finds that the other issues raised in the Petition need not be belabored.

WHEREFORE, the Court DENIES the instant Petition and AFFIRMS with MODIFICATION the Decision dated September 30, 2020 of the Court of Appeals in CA-G.R. CV No. 110142. Petitioner Banco de Oro Universal Bank, Inc. is solely liable to respondent Liza A. Seastres for:

- The full amount of Seven Million Four Hundred Twenty-One Thousand Nine Hundred Thirty-Nine Pesos and Fifty-Nine Centavos (P7,421,939.59) as actual damages, with interest of six percent (6%) per annum from March 3, 2009 or the date when extrajudicial demand was made until finality of judgment;
- One Hundred Thousand Pesos (P100,000.00) as moral damages;
- One Hundred Thousand Pesos (P100,000.00) as attorney's fees; and
- Costs of suit.

The amount of the aforementioned damages shall earn legal interest of six percent (6%) per annum from finality of judgment until fully paid.

SO ORDERED.

Inting and Singh, JJ., concur.

Gaerlan, J., with dissenting opinion.

Dimaampao, J., I join J. Gaerlan's dissent.

[1] Now BDO Unibank, Inc.

[2] Also appears as "Olimpia Vivian Duldulao" in some parts of the rollo.

[3] Also appears as "Christina" in some parts of the rollo.

[4] Also referred to as "Liza M. Aguilar" in some parts of the rollo.

[5] Also spelled as "Anabelle" in some parts of the rollo.

[6] Rollo, Vol. I, pp. 13-89.

[7] Id. at 90-108. Penned by Associate Justice Perpetua Susana T. Atal-Paño, with Associate Justices Ramon A. Cruz and Walter S. Ong concurring.

[8] Id. at 109-111.

[9] Rollo, Vol. III, pp. 1451-1472. Penned by Presiding Judge Louis P. Acosta.

[10] Also "LAS MGSI" and "LAS Management and Manpower" in some parts of the rollo.

[11] Rollo, Vol. I, pp. 91-94.

[12] Rollo, Vol. III, pp. 1451-1472.

[13] Id. at 1466.

[14] Id. at 1471-1472.

- [15] Id. at 1466.
- [16] Id. at 1466-1467.
- [17] Id. at 1467.
- [18] Id. at 1473-1506.
- [19] Id. at 1575-1576.
- [20] Id. at 1577-1581.
- [21] Rollo, Vol. I, pp. 90-108.
- [22] Id. at 104-105.
- [23] Id. at 106.
- [24] Id. at 105.
- [25] Id. at 106-107.
- [26] Id. at 107-108.
- [27] Id. at 109-111.
- [28] Lopez v. Saludo, Jr., G.R. No. 233775, September 15, 2021, p. 5.
- [29] Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza, 810 Phil. 172, 178-179 (2017).
- [30] 403 Phil. 361 (2001).
- [31] Id. at 388.
- [32] Id. at 388-389. Citations omitted.
- [33] 262 Phil. 387 (1990).
- [34] Id. at 396, quoted in Citytrust Banking Corp. v. Intermediate Appellate Court, 302 Phil. 593, 598 (1994).
- [35] BPI Family Bank v. Franco, 563 Phil. 495, 509 (2007), quoting Simex International (Manila), Inc. v. Court of Appeals, *supra* note 33, at 396.
- [36] See rollo, Vol. III, pp. 1803-1814.
- [37] See *id.* at 1803 and 1821-1823.
- [38] TSN, April 24, 2015, pp. 28-33; rollo, Vol. II, pp. 789-794.
- [39] Rollo, Vol. II, p. 992.
- [40] Id.
- [41] Id.
- [42] TSN, December 5, 2014, pp. 37-43 and 47; *id.* at 731-737 and 741.
- [43] Rollo, Vol. II, p. 992.
- [44] See rollo, Vol. III, p. 1821.

[45] Id. at 1827-1829.

[46] Rollo, Vol. I, pp. 70-73.

[47] Id. at 70.

[48] Id. at 70-71.

[49] Id. at 71.

[50] Banta v. Equitable Bank, Inc. (now BDO Unibank, Inc.), G.R. No. 223694, February 10, 2021, p. 5, citing Philippine National Bank v. Vila, 792 Phil. 86, 98-99 (2016).

[51] Id., citing Philippine National Bank v. Raymundo, 802 Phil. 617, 631 (2016).

[52] Rollo, Vol. I, pp. 530-539 and 541-544.

[53] Supra note 50.

[54] Id. at 99-100. Citations omitted.

[55] See Oliver v. Philippine Savings Bank, 783 Phil. 687, 710 (2016).

DISSENTING OPINION

GAERLAN, J.:

I disagree with the conclusion of the ponencia that Liza A. Seastres (Seastres) was not guilty of contributory negligence.

I adhere to the settled doctrine that banks assume a degree of prudence and diligence higher than that of a good father of a family, because their business is imbued with public interest and is inherently fiduciary. Thus, banks have the obligation to treat the accounts of their clients meticulously and with the highest degree of care.[1]

As earlier settled, Banco De Oro Universal Bank (BDO), through its employees Vivian Duldulao (Duldulao) and Christina Nakanishi (Nakanishi) (collectively, petitioners), were negligent on account of their failure to properly handle Seastres' accounts. This is shown in the following established facts:

First, BDO failed to comply with its own rules and regulations regarding withdrawal through a representative. It allowed the withdrawals despite the fact that it was Benaje who made the same and without Seastres accomplishing the authority for withdrawal through a representative as indicated in the said forms.

Second, regarding the withdrawal slips bearing the signature of Seastres, and indicating therein that the same slips were duly accomplished by Seastres herself, BDO still processed the transaction even if it was her representative Benaje, and not Seastres, who presented the same.

Third, BDO allowed the encashment of the manager's checks despite the fact that the payee in the said checks is Seastres, but the person encashing the same is Benaje.[2]

Seastres, however, was guilty of contributory negligence.

Contributory negligence is defined as the conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection.[3] It is an act or omission amounting to want of ordinary care on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury.[4]

Seastres entrusted all her banking transactions to Anabelle Benaje (Benaje). This is a fact. She gave full access to her accounts, gave Benaje her passbooks, and allowed her to transact with the banks on her behalf.[5] While the authorization submitted to petitioners shows limited power granted in favor of Benaje, i.e., Benaje was only allowed to make deposits, account inquiry, pick up bank statements, print outs, checkbooks, and other documents pertinent to Seastres' accounts, the records of the case, however, show otherwise.[6] It is evident that it became an established practice between petitioners and Seastres that all transactions made by Benaje on behalf of Seastres were with Seastres' full consent and authority.[7]

This is proven by the established fact that way before Benaje committed the irregular withdrawals from Seastres' account and encashment of several manager's checks, Benaje had been representing Seastres in all transactions with petitioners. The respective Judicial Affidavits of Nakanishi, Fajardo, Duldulao, and Paglinawan are consistent, thus:

Nakanishi

Q22: You said that Liza (Plaintiff) has been your long time client, even when you are still with Equitable PCI Bank. How often did you see Liza at the bank when you were still with Equitable PCI Bank Rufino Branch?

A22: Very rarely, maybe once or twice during the entire time I was assigned to that Branch.

Q23: What about when you transferred to BDO Ayala Avenue - People Support Branch, how often did you see Liza transact?

A23: I do not remember seeing her there.

Q24: You previously stated that you have a close relationship with Liza but you also said that you seldom see her at Equitable PCI Bank and never saw her at BDO Ayala Avenue - People Support Branch, how did you establish a close relationship with Liza?

A24: Although I don't get to see Liza at the bank premises, I sometimes go to the office of her company, Las Management, where Liza is the President. Because of those visits, we developed a close relationship.

x x x x

Q26: You said that you do not remember seeing Liza make transaction with the bank, how does she make the transactions if she is not physically present in the bank?

A26: Liza always transacts through Ms. Annabelle N. Benaje ("Ann").

Fajardo

Q20: How did you know that she (Benaje) is the authorized and trusted representative of Plaintiff?

A20: When I started working at the Branch, I was acquainted with such fact the moment the account of Plaintiff was introduced to me. It was always Ms. Benaje who transacted on behalf of Plaintiff Plaintiff herself confirmed that she trusted defendant Annabelle N. Benaje when I and other BDO employees helped her reconcile her accounts later, pursuant to her request, when Plaintiff allegedly discovered the subject transactions that she disputes in this case.

Q21: How often did defendant Annabelle N. Benaje transact on behalf of Plaintiff?

A21: All the time. As far as I remember, before Plaintiff questioned the alleged unauthorized transactions, all transaction relating to Plaintiff's accounts were made by Ms. Benaje on her behalf.

Duldulao

Q26: How did you know that Ms. Benaje is a very close and trusted friend of Plaintiff?

A26: When I star[t]ed working at the Branch, Plaintiff was already a valued client. I was introduced to Ms. Benaje who, I was advised and, as I later saw, almost always transacted on behalf of Plaintiff.

Q27: Why else do you know that Ben je is a very close and trusted friend of Plaintiff?

A27: Later, when I was finally introduced to Plaintiff, she confirmed this. Also, when the alleged disputed withdrawals were discovered, and I and other BDO employees helped Plaintiff reconcile her accounts pursuant to her request, Plaintiff again mentioned that she had trusted Ms. Benaje.

Paglinawan

Q28: You also said that Ms. Benaje is the authorized representative of Plaintiff for both her personal and company accounts, how did you know this?

A28: As I have mentioned earlier, Ms. Benaje has been the one transacting on behalf of Plaintiff. In fact, prior to the disputed transactions, I never saw Ms. Seastres transact with the bank directly. It was always Ms. Benaje who transacted on Plaintiff's behalf, not only with respect to her personal accounts, but also with respect to the bank accounts of her company Las Management, and her joint accounts with other persons.[8]

During cross-examination, Nakanishi further testified that it has been the practice of Benaje to transact with petitioners on behalf of Seastres for the past 12 years, to wit:

Q:

Why then did the bank allow the representative, Annabelle Benaje, process this withdrawal slips despite the fact that the space for authorization was not filled-up?

A:

It has been the practice of Anabelle [Benaje] and Liza Seastres to do such transaction for the past twelve years when they were banking with Equitable PCI Bank because I was also a branch head of Rufino Ayala.

x x x x

Q:

And, however, in this case, for the disputed manager's checks, although plaintiff is the payee of these checks, the bank allowed Anabelle Benaje to encash them?

A:

Yes, Ma'am.

Q:

Why did the bank allowed the encaslm1ent of these checks by Anabelle Benaje?

A:

As I have said, in accordance being stated in my .Judicial Affidavit, it was really the practice of Annabelle Benaje and Liza Seastres because she has been a trusted person of Liza Seastres.[9]

Furthermore, Benaje's full authority to represent Seastres was in full display whenever BDO's tellers and branch officers made confirmatory calls to Seastres' office regarding transactions involving a large amount of money. In all these instances, the calls were always referred to Benaje for the latter to make the confirmation.[10] Likewise, when the bank employees tried to get confirmation from Seastres after withdrawals had been processed, even Seastres' employees would always forward the call to Benaje for confirmation.[11]

Clearly, Benaje's actual authority and power to transact with petitioners on behalf of Seastres is more than what the authorization submitted to petitioners grants her.

While petitioners should not have allowed this kind of practice, it could have been prevented had Seastres been

more hands-on with her finances. Not that she should herself do all these banking transactions, but she should have, at the very least, made sure that Benaje acted within the authority granted her from the very start. By allowing her to go beyond the authority granted her, Seastres has given Benaje full authority over all her bank accounts. It is, therefore, beyond cavil that Seastres failed to observe caution in giving Benaje full trust which led her to be swindled.

Moreover, as found by the CA, Seastres regularly receives her bank statements. Had she only checked the statements, she could have easily discovered Benaje's unauthorized transactions and prevented her from further making unauthorized transactions and robbing her of her hard-earned money. This, however, was not the case herein. She failed to check her bank statements and it was only when Ms. Nella Zablan called Seastres' attention regarding suspicious transactions on her account that she investigated and made the necessary vigilance to protect her finances. Again, this only shows that she gave Benaje her full trust and confidence to such an extent that she no longer finds it necessary to check and review her bank statements.

It bears stressing at this point that even Seastres admitted giving Benaje her full trust and confidence. In her Complaint-Affidavit filed against Benaje for Falsification of Commercial Document, Seastres admitted:

- As the COO of the firm, the Respondent (Benaje) enjoys my trust and confidence to the point that she could enter my office freely, she can gain access with the Firm's financial records and is privy to the Firm's account and my personal accounts in the bank;[12]

Seastres' actions and/or omissions prior to and immediately before the discovery of the irregularities clearly show want of ordinary care which, concurring with the petitioners' negligence, is the proximate cause of the damages she incurred. She failed to exercise due diligence to protect her very own welfare. This is the very definition of contributory negligence. Verily, if only Seastres had exercised due diligence which is required of her, this could not have happened. If she did not give full trust and confidence to Benaje, this could have been prevented. Needless to state, Seastres' credulousness is also blameworthy.

It is worth noting of the Court's pronouncement in the case of *Philippine National Bank v. Spouses Cheah*[13] which, though not on all fours with the case, may be applied analogously herein. In that case, the Court ruled that while Philippine National Bank's act of releasing the proceeds of the check prior to the lapse of the 15-day clearing period was the proximate cause of the loss, it found Spouses Cheah guilty of contributory negligence after they gave their full trust in accommodating a complete stranger, which led them to be swindled.[14]

The CA is, therefore, correct when it ruled that Seastres must shoulder 40% of the actual damages, and petitioners must pay the remaining 60%. This is pursuant to the ruling in a series of cases[15] where the 60-40 ratio was adopted.

I further disagree with the ponencia that BDO is liable to Seastres in the full amount of P7,421,939.59.[16]

In the ponencia, it is pointed out that Seastres' failure to prove the forgery of her signatures on the subject withdrawal slips and manager's checks is irrelevant to the negligence of BDO in fulfilling its obligations to Seastres as its depositor.[17] Otherwise stated, even assuming that the signatures of Seastres appearing on the subject withdrawal slips and manager's checks were genuine, these documents could still not have been used by Benaje to withdraw the amounts indicated therein without written authorization from Seastres because to allow Benaje to do such withdrawals was against the policies of the bank. This, however, is only true if Seastres was not guilty of contributory negligence.

Needless to state, the ponencia is premised on the notion that only petitioners are grossly negligent; and that Seastres was not guilty of contributory negligence.[18] However, as I have above discussed, though petitioners

were negligent in their dealing with Seastres' bank accounts, Seastres was also guilty of contributory negligence after she gave her full trust and confidence to Benaje, which proved to be prejudicial to her. Thus, there is a need to prove the alleged forgery committed by Benaje. Otherwise, it cannot be said that these transactions were unauthorized and that Seastres was prejudiced by these transactions.

In the instant case, to prove that the transactions were unauthorized, hence, illegal, Seastres sought the expertise of Jennifer B. Dominguez (Dominguez), a National Bureau of Investigation document examiner. She examined the alleged signatures of Seastres on several withdrawal slips. After which, Dominguez concluded that these signatures were all just facsimile signature stamps, hence, not genuine. Her findings were contained in two document reports: (i) Questioned Document Report No. 392-811(A),[19] and (ii) Questioned Document Report No. 392-811(B).[20] Based on Dominguez's Judicial Affidavit[21] and these document reports, the Regional Trial Court (RTC) and the CA found that Seastres' signatures on the withdrawal slips and the dorsal portion of the manager's checks were all forged; hence, Seastres did not authorize the transactions.

However, the records reveal that not all of the withdrawal slips, and not even one of the manager's checks were actually evaluated by Dominguez for possible forgery.

Of the 10 withdrawal slips offered as evidence, only seven were examined by Dominguez. Based on her reports,[22] she examined:

Banco de Oro Withdrawal slip dated July 11, 2008

P 437,200.00

Banco de Oro Withdrawal slip dated July 16, 2008

P 282,000.00

Banco de Oro Withdrawal slip dated September 18, 2008

P 180,000.00

Banco de Oro Withdrawal slip dated September 9, 2008

P 345,000.00

Banco de Oro Withdrawal slip dated August 29, 2008

P 381,000.00

Banco de Oro Withdrawal slip dated July 24, 2008

P 503,000.00

Banco de Oro Withdrawal slip dated September 12, 2008

P 222,600.00

Dominguez, however, failed to examine these withdrawal slips:

Banco de Oro Withdrawal slip dated August 1, 2008

P 128,000.00

Banco de Oro Withdrawal slip dated May 9, 2008

P 130,000.00

Banco de Oro Withdrawal slip dated May 2, 2008

P 300,000.00[23]

Moreover, the signatures on the dorsal portion of the manager's checks which Benaje were able to encash were not subjected to scrutiny. These manager's checks and their corresponding amounts are as follows:

Manager's Check No. 0001466 dated May 23, 2008

P 2,500,000.00

Manager's Check No. 0001549 dated June 23, 2008

P 508,072.92

Manager's Check No. 0001346 dated April 8, 2008

P 1,505,066.67

The total amount corresponding to these unexamined withdrawal slips and manager's checks is P5,071,139.59 (P558,000.00-withdrawal slips PLUS P4,513,139.59-manager's checks). This amount should be deducted from the total amount awarded by the RTC, as modified by the CA, because without Dominguez's examination and assessment of Seastres' alleged signatures thereon, there is no credible evidence that her signatures were indeed forged.

Settled is the rule that forgery cannot be presumed, and must be proved by clear, positive and convincing evidence. The burden of proof lies on the party alleging forgery.[24] Accordingly, it was incumbent upon Seastres to prove the fact of forgery.

As discussed above, however, except for the signatures appearing on the seven withdrawal slips which were proven by an expert witness to be a mere forgery, Seastres failed to prove that her signatures on the manager's checks and the three remaining withdrawal slips were forged. Seastres' testimony that her signatures appearing on these unexamined withdrawal slips and manager's checks were forged, standing alone, is not credible. Worse, no other witnesses, expert or not, testified on her allegation of forgery. Without any clear and convincing proof, this allegation remains as such, a mere allegation that is bare and self-serving. It bears stressing that mere allegations are not legally compelling unless proved.[25]

In addition, Seastres failed to make even a bare denial of the genuineness of her signatures appearing on the Investment Management Account (IMA) forms and application forms for the issuance of managers' checks.

Petitioners offered as evidence IMA Forms[26] and application forms[27] for the issuance of manager's checks signed by Seastres (signing in her maiden name - Liza Aguilar). The IMA forms were offered as evidence to prove that Seastres consented to the transaction and duly authorized the same.[28] Meanwhile, the application forms for the issuance of manager's checks were offered as evidence to prove that Seastres acknowledged the receipt of the proceeds of the IMA Form and consented to the transaction, and duly authorized the same.[29]

By her failure to deny and refute the genuineness of her signatures appearing thereon, she impliedly admitted that she executed these forms, authorized these transactions, and received the proceeds thereof. This further bolsters her non-entitlement to the recovery of the amounts covered by these manager's checks.

It is important to note that her averment that her signatures on these documents were forged, standing alone, lacks credibility considering that Seastres even admitted during her meeting with the officers and personnel of the bank after the discovery of the alleged unauthorized transaction, that she could not identify with certainty which of

these transactions were indeed unauthorized.[30] Moreover, after the investigation conducted by BDO, it was concluded that the signatures on the questioned documents were genuine.[31] Furthermore, the need to prove forgery on the questioned withdrawal slips and checks arises on account of the dismissal of the criminal complaint for qualified theft and falsification of commercial documents against Benaje due to lack of probable cause as the signatures thereon appeared to be genuine.[32]

It bears stressing that if her signatures were indeed forged, Seastres could have easily proven them as fake as what she had done in the other withdrawal slips and manager's checks where her signatures appeared.

Corollarily, if f were to adhere to the ponencia, then how can the Court know if the transactions made by Benaje, allegedly on behalf of Seastres, were indeed unauthorized if her signatures appearing on the questioned withdrawal slips and checks were not proven to be mere forgeries? How can the Court know if Seastres was indeed prejudiced by these transactions? Otherwise stated, since there is no evidence to prove that Seastres' signatures thereon were forged, the Court cannot say, for sure, that the transactions involving these withdrawal slips and manager's checks were without her consent and authority and that she was prejudiced by these transactions.

I, therefore, conclude that the amount of actual damages to be awarded to Seastres needs to be modified. From the total amount of P7,421,939.59 awarded by the CA, the amount of P5,071,139.59, corresponding to the total amount of the unexamined withdrawal slips and manager's checks, should be deducted on account of Seastres' failure to prove that her signatures thereon appearing were not genuine. Accordingly, Seastres is entitled to actual damages in the amount of P2,350,800.00. Of the said amount, petitioners should pay 60% or the amount of P1,410,480.00. On the other hand, Seastres, on account of her contributory negligence, should shoulder the remaining 40% or P940,320.00.

From the foregoing, I vote to PARTIALLY GRANT the instant Petition for Review on Certiorari.

[1] See *Oliver v. Philippine Savings Bank*, 783 Phil. 687, 704 (2016).

[2] *Rollo*, p. 100.

[3] *Dela Cruz v. Capt. Octaviano*, 814 Phil. 891, 910 (2017).

[4] *Phil. National Railways Corp. v. Vizcara*, 682 Phil. 343, 355 (2012).

[5] *Rollo*, p. 104.

[6] *Id.* at 103.

[7] *Id.* at 104.

[8] *Id.* at 125-127.

[9] *Id.* at 738-739.

[10] *Id.* at 30.

[11] *Id.* at 104.

[12] *Id.* at 1092.

[13] 686 Phil. 760 (2012).

[14] Id. at 770-774.

[15] *Central Bank of the Philippines v. Citytrust Banking Corporation*, 597 Phil. 609 (2009); *Bank of America NT and SA v. Philippine Racing Club*, 611 Phil. 687 (2009); *The Consolidated Bank and Trust Corporation v. Court of Appeals*, 457 Phil. 688 (2003); *Philippine Bank of Commerce, now absorbed by Philippine Commercial International Bank v. Court of Appeals*, 336 Phil. 667 (1997).

[16] Ponencia, p. 14.

[17] Id. at 15.

[18] Id. at 13.

[19] Rollo, pp. 628-629.

[20] Id. at 634-635.

[21] Id. at 560-577.

[22] Id. at 628-629; 634-635.

[23] Id. at 26.

[24] *Spouses Yabut v. Nachbaur*, G.R. No. 243470, January 12, 2021.

[25] *Pacific Royal Basic Foods, Inc. v. Noche*, G.R. No. 202392, October 4, 2021.

[26] Rollo, pp. 996-997.

[27] Id. at 993-995.

[28] Id. at 969-970.

[29] Id. at 968-969.

[30] Id. at 1062.

[31] Id.

[32] Id. at 1127-1128.

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