

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND RIZALDY T. ZSHORNACK, RESPONDENTS.

G.R. No. 66826. August 19, 1988

Ponente: CORTES, J.

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CORTES, J.:

The original parties to this case were Rizaldy T. Zshornack and the Commercial Bank and Trust Company of the Philippines [hereafter referred to as "COMTRUST".] In 1980, the Bank of the Philippine Islands (hereafter referred to as "BPI") absorbed COMTRUST through a corporate merger, and was substituted as party to the case.

Rizaldy Zshornack initiated proceedings on June 28, 1976 by filing in the Court of First Instance of Rizal--Caloocan City a complaint against COMTRUST alleging four causes of action. Except for the third cause of action, the CFI ruled in favor of Zshornack. The bank appealed to the Intermediate Appellate Court which modified the CFI decision absolving the bank from liability on the fourth cause of action. The pertinent portions of the judgment, as modified, read:

IN VIEW OF THE FOREGOING, the Court renders judgment as follows:

- Ordering the defendant COMTRUST to restore to the dollar savings account of plaintiff (No. 25-4109) the amount of U.S. \$1,000.00 as of October 27, 1975 to earn interest together with the remaining balance of the said account at the rate fixed by the bank for dollar deposits under Central Bank Circular 343;
- Ordering defendant COMTRUST to return to the plaintiff the amount of U.S. \$3,000.00 immediately upon the finality of this decision, without interest for the reason that the said amount was merely held in custody for safekeeping, but was not actually deposited with the defendant COMTRUST because being cash currency, it cannot by law be deposited with plaintiff's dollar account and defendant's only obligation is to return the same to plaintiff upon demand;
- * * *
- Ordering defendant COMTRUST to pay plaintiff in the amount of P8,000.00 as damages in the concept of litigation expenses and attorney's fees suffered by plaintiff as a result of the failure of the defendant bank to restore to his (plaintiff's) account the amount of U.S.\$1,000.00 and to return to him (plaintiff) the U.S.\$3,000.00 cash left for safekeeping.

Costs against defendant COMTRUST.

SO ORDERED. [Rollo, pp. 47-48.]

Undaunted, the bank comes to this Court praying that it be totally absolved from any liability to Zshornack. The latter not having appealed the Court of Appeals decision, the issues facing this Court are limited to the bank's liability with regard to the first and second causes of action and its liability for damages.

- We first consider the first cause of action.

On the dates material to this case, Rizaldy Zshornack and his wife, Shirley Gorospe, maintained in COMTRUST, Quezon City Branch, a dollar savings account and a peso current account.

On October 27, 1975, an application for a dollar draft was accomplished by Virgilio V. Garcia, Assistant Branch Manager of COMTRUST Quezon City, payable to a certain Leovigilda D. Dizon in the amount of \$1,000.00. In the application, Garcia indicated that the amount was to be charged to Dollar Savings Acct. No. 25-4109, the savings account of the Zshornacks; the charges for commission, documentary stamp tax and others totalling P17.46 were to be charged to Current Acct. No. 210-465-29, again, the current account of the Zshornacks. There was no indication of the name of the purchaser of the dollar draft.

On the same date, October 27, 1975, COMTRUST, under the signature of Virgilio V. Garcia, issued a check payable to the order of Leovigilda D. Dizon in the sum of US\$1,000 drawn on the Chase Manhattan Bank, New York, with an indication that it was to be charged to Dollar Savings Acct. No. 25-4109.

When Zshornack noticed the withdrawal of US\$1,000.00 from his account, he demanded an explanation from the bank. In answer, COMTRUST claimed that the peso value of the withdrawal was given to Atty. Ernesto Zshornack, Jr., brother of Rizaldy, on October 27, 1975 when he (Ernesto) encashed with COMTRUST a cashier's check for P8,450.00 issued by the Manila Banking Corporation payable to Ernesto.

Upon consideration of the foregoing facts, this Court finds no reason to disturb the ruling of both the trial court and the Appellate Court on the first cause of action. Petitioner must be held liable for the unauthorized withdrawal of US\$1,000.00 from private respondent's dollar account.

In its desperate attempt to justify its act of withdrawing from its depositor's savings account, the bank has adopted inconsistent theories. First, it still maintains that the peso value of the amount withdrawn was given to Atty. Ernesto Zshornack, Jr. when the latter encashed the Manilabank Cashier's Check. At the same time, the bank claims that the withdrawal was made pursuant to an agreement where Zshornack allegedly authorized the bank to withdraw from his dollar savings account such amount which, when converted to pesos, would be needed to fund his peso current account. If indeed the peso equivalent of the amount withdrawn from the dollar account was credited to the peso current account, why did the bank still have to pay Ernesto?

At any rate, both explanations are unavailing. With regard to the first explanation, petitioner bank has not shown how the transaction involving the cashier's check is related to the transaction involving the dollar draft in favor of Dizon financed by the withdrawal from Rizaldy's dollar account. The two transactions appear entirely independent of each other. Moreover, Ernesto Zshornack, Jr., possesses a personality distinct and separate from Rizaldy Zshornack. Payment made to Ernesto cannot be considered payment to Rizaldy.

As to the second explanation, even if we assume that there was such an agreement, the evidence do not show that the withdrawal was made pursuant to it. Instead, the record reveals that the amount withdrawn was used to finance a dollar draft in favor of Leovigilda D. Dizon, and not to fund the current account of the Zshornacks. There is no proof whatsoever that peso Current Account No. 210--465-29 was ever credited with the peso equivalent of the US\$1,000.00 withdrawn on October 27, 1975 from Dollar Savings Account No. 25-4109.

- As for the second cause of action, the complaint filed with the trial court alleged that on December 8, 1975, Zshornack entrusted to COMTRUST, thru Garcia, US\$3,000.00 cash (popularly known as greenbacks) for safekeeping, and that the agreement was embodied in a document, a copy of which was attached to and made part of the complaint. The document reads:

Makati

Cable Address:

Philippines

"COMTRUST"

COMMERCIAL BANK AND TRUST

COMPANY

of the Philippines

Quezon City Branch

December 8, 1975

MR. RIZALDY T. ZSHORNACK

&/OR MRS SHIRLEY E. ZSHORNACK

Sir/Madam:

We acknowledged (sic) having received from you today the sum of US DOLLARS: THREE THOUSAND ONLY (US\$3,000.00) for safekeeping.

Received by:

(Sgd.) VIRGILIO V. GARCIA

It was also alleged in the complaint that despite demands, the bank refused to return the money.

In its answer, COMTRUST averred that the US\$3,000 was credited to Zshornack's peso current account at prevailing conversion rates.

It must be emphasized that COMTRUST did not deny specifically under oath the authenticity and due execution of the above instrument.

During trial, it was established that on December 8, 1975 Zshornack indeed delivered to the bank US\$3,000 for safekeeping. When he requested the return of the money on May 10, 1976, COMTRUST explained that the sum was disposed of in this manner: US\$2,000.00 was sold on December 29, 1975 and the peso proceeds amounting to P14,920.00 were deposited to Zshornack's current account per deposit slip accomplished by Garcia; the

remaining US\$1,000.00 was sold on February 3, 1976 and the peso proceeds amounting to P8,350.00 were deposited to his current account per deposit slip also accomplished by Garcia.

Aside from asserting that the US\$3,000.00 was properly credited to Zshornack's current account at prevailing conversion rates, BPI now posits another ground to defeat private respondent's claim. It now argues that the contract embodied in the document is the contract of depositum (as defined in Article 1962, New Civil Code), which banks do not enter into. The bank alleges that Garcia exceeded his powers when he entered into the transaction. Hence, it is claimed, the bank cannot be liable under the contract, and the obligation is purely personal to Garcia.

Before we go into the nature of the contract entered into, an important point which arises on the pleadings, must be considered.

The second cause of action is based on a document purporting to be signed by COMTRUST, a copy of which document was attached to the complaint. In short, the second cause of action was based on an actionable document. It was therefore incumbent upon the bank to specifically deny under oath the due execution of the document, as prescribed under Rule 8, Section 8, if it desired: (1) to question the authority of Garcia to bind the corporation; and, (2) to deny its capacity to enter into such contract. [Soo, E.B. Merchant v. International Banking Corporation, 6 Phil. 314 (1906).] No sworn answer denying the due execution of the document in question, or questioning the authority of Garcia to bind the bank, or denying the bank's capacity to enter into the contract, was ever filed. Hence, the bank is deemed to have admitted not only Garcia's authority, but also the bank's power, to enter into the contract in question.

In the past, this Court had occasion to explain the reason behind this procedural requirement.

The reason for the rule enunciated in the foregoing authorities will, we think, be readily appreciated. In dealing with corporations the public at large is bound to rely to a large extent upon outward appearances. If a man is found acting for a corporation with the external indicia of authority, any person, not having notice of want of authority, may usually rely upon those appearances; and if it be found that the directors had permitted the agent to exercise that authority and thereby held him out as a person competent to bind the corporation, or had acquiesced in a contract and retained the benefit supposed to have been conferred by it, the corporation will be bound, notwithstanding the actual authority may never have been granted . . . Whether a particular officer actually possesses the authority which he assumes to exercise is frequently known to very few, and the proof of it usually is not readily accessible to the stranger who deals with the corporation on the faith of the ostensible authority exercised by some of the corporate officers. It is therefore reasonable, in a case where an officer of a corporation has made a contract in its name, that the corporation should be required, if it denies his authority, to state such defense in its answer. By this means the plaintiff is apprised of the fact that the agent's authority is contested; and he is given an opportunity to adduce evidence showing either that the authority existed or that the contract was ratified and approved. [Ramirez v. Orientalist Co. and Fernandez, 38 Phil. 634, 645-646 (1918).]

Petitioner's argument must also be rejected for another reason. The practical effect of absolving a corporation from liability every time an officer enters into a contract which is beyond corporate powers, even without the proper allegation or proof that the corporation has not authorized nor ratified the officer's act, is to cast corporations in so perfect a mold that transgressions and wrongs by such artificial beings become impossible (Bissell v. Michigan Southern and N.I.R. Cos, 22 N.Y. 258 (1860).] "To say that a corporation has no right to do unauthorized acts is only to put forth a very plain truism; but to say that such bodies have no power or capacity to err is to impute to them an excellence which does not belong to any created existence with which we are acquainted. The distinction between power and right is no more to be lost sight of in respect to artificial than in respect to natural persons." [Ibid.]

Having determined that Garcia's act of entering into the contract binds the corporation, we now determine the correct nature of the contract, and its legal consequences, including its enforceability.

The document which embodies the contract states that the US\$3,000.00 was received by the bank for safekeeping. The subsequent acts of the parties also show that the intent of the parties was really for the bank to safely keep the dollars and to return it to Zshornack at a later time. Thus, Zshornack demanded the return of the money on May 10, 1976, or over five months later.

The above arrangement is that contract defined under Article 1962, New Civil Code, which reads:

Art 1962. A deposit is constituted from the moment a person receives a thing belonging to another, with the obligation of safely keeping it and of returning the same. If the safekeeping of the thing delivered is not the principal purpose of the contract, there is no deposit but some other contract.

Note that the object of the contract between Zshornack and COMTRUST was foreign exchange. Hence, the transaction was covered by Central Bank Circular No. 20, Restrictions on Gold and Foreign Exchange Transactions, promulgated on December 9, 1949, which was in force at the time the parties entered into the transaction involved in this case. The circular provides:

* * *

2. Transactions in the assets described below and all dealings in them of whatever nature, including, where applicable, their exportation and importation, shall NOT be effected, except with respect to deposit accounts included in sub-paragraphs (b) and (c) of this paragraph, when such deposit accounts are owned by and in the name of, banks.

(a)

Any and all assets, provided they are held through, in, or with banks or banking institutions located in the Philippines, including money, checks, drafts, bullions, bank drafts, deposit accounts (demand, time and savings) all debts, indebtedness or obligations, financial brokers and investment houses, notes, debentures, stocks, bonds, coupons, bank acceptances, mortgages, pledges, liens or other rights in the nature of security, expressed in foreign currencies, or if payable abroad, irrespective of the currency in which they are expressed, and belonging to any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation residing or located within the Philippines;

(b)

Any and all assets of the kinds included and/or described in sub-paragraph (a) above, whether or not held through, in, or with banks or banking institutions, and existent within the Philippines, which belong to any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation not residing or located within the Philippines;

(c)

Any and all assets existent within the Philippines including money, checks, drafts, bullions, bank drafts, all debts, indebtedness or obligations, financial securities commonly dealt in by bankers, brokers and investment houses, notes, debentures, stock, bonds, coupons, bank acceptances, mortgages, pledges, liens or other rights in the nature of security expressed in foreign currencies, or if payable abroad, irrespective of the currency in which they are expressed, and belonging to any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation residing or located within the Philippines.

* * *

- (a) All receipts of foreign exchange shall be sold daily to the Central Bank by those authorized to deal in foreign exchange. All receipts of foreign exchange by any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation shall be sold to the authorized agents of the Central Bank by the recipients within one business day following the receipt of such foreign exchange. Any person, firm, partnership, association, branch office, agency, company or other unincorporated body or corporation, residing or located within the Philippines, who acquires on and after the date of this Circular foreign exchange shall not, unless licensed by the Central Bank, dispose of such foreign exchange in whole or in part, nor receive less than its full value, nor delay taking ownership thereof except as such delay is customary; Provided, further, That within one day upon taking ownership, or receiving payment, of foreign exchange the aforementioned persons and entities shall sell such foreign exchange to designated agents of the Central Bank.

* * *

- Strict observance of the provisions of this Circular is enjoined; and any person, firm or corporation, foreign or domestic, who being bound to the observance thereof, or of such other rules, regulations or directives as may hereafter be issued in implementation of this Circular, shall fail or refuse to comply with, or abide by, or shall violate the same, shall be subject to the penal sanctions provided in the Central Bank Act.

* * *

Paragraph 4 (a) above was modified by Section 6 of Central Bank Circular No. 281, Regulations on Foreign Exchange, promulgated on November 26, 1969 by limiting its coverage to Philippine residents only. Section 6 provides:

SEC. 6. All receipts of foreign ex-change by any resident person, firm, company or corporation shall be sold to authorized agents of the Central Bank by the recipients within one business day following the receipt of such foreign exchange. Any resident person, firm, company or corporation residing or located within the Philippines, who acquires foreign exchange shall not, unless authorized by the Central Bank, dispose of such foreign exchange in whole or in part, nor receive less than its full value, nor delay taking ownership thereof except as such delay is customary; Provided, That, within one business day upon taking ownership or receiving payment of foreign exchange the aforementioned persons and entities shall sell such foreign exchange to the authorized agents of the Central Bank.

As earlier stated, the document and the subsequent acts of the parties show that they intended the bank to safekeep the foreign exchange, and return it later to Zshornack, who alleged in his complaint that he is a Philippine resident. The parties did not intend to sell the US dollars to the Central Bank within one business day from receipt. Otherwise, the contract of depositum would never have been entered into at all.

Since the mere safekeeping of the greenbacks, without selling them to the Central Bank within one business day from receipt, is a transaction which is not authorized by CB Circular No. 20, it must be considered as one which falls under the general class of prohibited transactions. Hence, pursuant to Article 5 of the Civil Code, it is void, having been executed against the provisions of a mandatory/prohibitory law. More importantly, it affords neither of the parties a cause of action against the other. "When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no cause of action against each other" [Art. 1411, New Civil Code.] The only remedy is one on behalf of the State to prosecute the parties for violating the law.

We thus rule that Zshornack cannot recover under the second cause of action.

- Lastly, we find the P8,000.00 awarded by the courts a quo as damages in the concept of litigation expenses and attorney's fees to be reasonable. The award is sustained.

WHEREFORE, the decision appealed from is hereby MODIFIED. Petitioner is ordered to restore to the dollar savings account of private respondent the amount of US\$1,000.00 as of October 27, 1975 to earn interest at the rate fixed by the bank for dollar savings deposits. Petitioner is further ordered to pay private respondent the amount of P8,000.00 as damages. The other causes of action of private respondent are ordered dismissed.

SO ORDERED.

Gutierrez, Jr., and Bidin, JJ., concur.

Fernan, C.J., no part, counsel for Bank of P.I.(Cebu)

Feliciano, J., in the result.

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