

AGUSTIN Y. GO AND THE CONSOLIDATED BANK AND TRUST CORPORATION (SOLIDBANK), PETITIONERS, VS. HONORABLE INTERMEDIATE APPELLATE COURT AND FLOVERTO JAZMIN, RESPONDENTS.

G.R. No. 68138. May 13, 1991

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The instant petition for review on certiorari questions the propriety of the respondent appellate court's award of nominal damages and attorney's fees to private respondent whose name was used by a syndicate in encashing two U.S. treasury checks at petitioner bank.

Floerto Jazmin is an American citizen and retired employee of the United States Federal Government. He had been a visitor in the Philippines since 1972 residing at 34 Maravilla Street, Mangatarem, Pangasinan. As a pensionado of the U.S. government, he received annuity checks in the amounts of \$67.00 for disability and \$620.00 for retirement through the Mangatarem post office. He used to encash the checks at the Prudential Bank branch at Clark Air Base, Pampanga.

In January, 1975, Jazmin failed to receive one of the checks on time thus prompting him to inquire from the post offices at Mangatarem and Dagupan City. As the result of his inquiries proved unsatisfactory, on March 4, 1975, Jazmin wrote the U.S. Civil Service Commission, Bureau of Retirement at Washington, D.C. complaining about the delay in receiving his check. Thereafter, he received a substitute check which he encashed at the Prudential Bank at Clark Air Base.

Meanwhile, on April 22, 1975, Agustin Go, in his capacity as branch manager of the then Solidbank (which later became the Consolidated Bank and Trust Corporation) in Baguio City, allowed a person named "Floerto Jazmin" to open Savings Account No. BG 5206 by depositing two (2) U.S. treasury checks Nos. 5-449-076 and 5-448-890 in the respective amounts of \$1810.00 and \$913.40[1] equivalent to the total amount of P20,565.69, both payable to the order of Floerto Jasmin of Maranilla St., Mangatarem, Pangasinan and drawn on the First National City Bank, Manila.

The savings account was opened in the ordinary course of business. Thus, the bank, through its manager Go, required the depositor to fill up the information sheet for new accounts to reflect his personal circumstances. The depositor indicated therein that he was Floerto Jazmin with mailing address at Mangatarem Pangasinan and home address at Maravilla St., Mangatarem, Pangasinan; that he was a Filipino Citizen and a security officer of the US Army with the rank of a sergeant bearing AFUS Car No. H-2711659; that he was married to Milagros Baustista; and that his initial deposit was P3,565.35. He wrote CSA No. 138134 under remarks or instructions and left blank the spaces under telephone number, residence certificate/alien certificate of registration/passport, bank and trade performance and as to who introduced him to the bank.[2] The depositor's signature specimens were also taken.

Thereafter, the deposited checks were sent to the drawee bank for clearance. Inasmuch as Solidbank did not receive any word from the drawee bank, after three (3) weeks it allowed the depositor to withdraw the amount indicated in the checks.

On June 29, 1976 or more than a year later, the two dollar checks were returned to Solidbank with the notation that the amounts were altered.[3] Consequently, Go reported the matter to the Philippine Constabulary in Baguio City.

On August 3, 1976, Jazmin received radio messages requiring him to appear before the Philippine Constabulary headquarters in Benguet on September 7, 1976 for investigation regarding the complaint filed by Go against him for estafa by passing altered dollar checks. Initially, Jazmin was investigated by constabulary officers in Lingayen, Pangasinan and later, at Camp Holmes, La Trinidad, Benguet. He was shown xerox copies of U.S. Government checks Nos. 5-449-076 and 5-448-890 payable to the order of Floerto Jasmin in the respective amounts of \$1,810.00 and \$913.40. The latter amount was actually for only \$13.40; while the records do not show the unaltered amount of the other treasury check.

Jazmin denied that he was the person whose name appeared on the checks; that he received the same and that the signature on the indorsement was his. He likewise denied that he opened an account with Solidbank or that he deposited and encashed therein the said checks. Eventually, the investigators found that the person named "Floerto Jazmin" who made the deposit and withdrawal with Solidbank was an impostor.

On September 24, 1976, Jazmin filed with the then Court of First Instance of Pangasinan, Branch II at Lingayen a complaint against Agustin Y. Go and the Consolidated Bank and Trust Corporation for moral and exemplary damages in the total amount of P90,000 plus attorney's fees of P5,000. He alleged therein that Go allowed the deposit of the dollar checks and the withdrawal of their peso equivalent "without ascertaining the identity of the depositor considering the highly suspicious circumstances under which said deposit was made; that instead of taking steps to establish the correct identity of the depositor, Go "immediately and recklessly filed (the) complaint for estafa through alteration of dollar check" against him; that Go's complaint was "an act of vicious and wanton recklessness and clearly intended for no other purpose than to harass and coerce the plaintiff into paying the peso equivalent of said dollar checks to the CBTC branch office in Baguio City" so that Go would not be "disciplined by his employer;" that by reason of said complaint, he was "compelled to present and submit himself" to investigations by the constabulary authorities; and that he suffered humiliation and embarrassment as a result of the filing of the complaint against him as well as "great inconvenience" on account of his age (he was a septuagenarian) and the distance between his residence and the constabulary headquarters. He averred that his peace of mind and mental and emotional tranquility as a respected citizen of the community would not have suffered had Go exercised "a little prudence" in ascertaining the identity of the depositor and, for the "grossly negligent and reckless act" of its employee, the defendant CBTC should also be held responsible.[4]

In their answer, the defendants contended that the plaintiff had no cause of action against them because they acted in good faith in seeking the "investigative assistance" of the Philippine Constabulary on the swindling operations against banks by a syndicate which specialized in the theft, alteration and encashment of dollar checks. They contended that contrary to plaintiff's allegations, they verified the signature of the depositor and their tellers conducted an identity check. As counterclaim, they prayed for the award of P100,000 as compensatory and moral damages; P20,000 as exemplary damages; P20,000 as attorney's fees and P5,000 as litigation, incidental expenses and costs.[5]

In its decision of March 27, 1978[6], the lower court found that Go was negligent in failing to exercise "more care, caution and vigilance" in accepting the checks for deposit and encashment. It noted that the checks were

payable to the order of Floverto Jasmin, Maranilla St., Mangatarem, Pangasinan and not to Floverto Jazmin, Maravilla St., Mangatarem, Pangasinan and that the differences in name and address should have put Go on guard. It held that more care should have been exercised by Go in the encashment of the U.S. treasury checks as there was no time limit for returning them for clearing unlike in ordinary checks wherein a two to three-week limit is allowed.

Emphasizing that the main thrust of the complaint was "the failure of the defendants to take steps to ascertain the identity of the depositor," the court noted that the depositor was allegedly a security officer while the plaintiff was a retiree-pensioner. It considered as "reckless" the defendants' filing of the complaint with the Philippine Constabulary noting that since the article on a fake dollar check ring appeared on July 18, 1976 in the Baguio Midland Courier, it was only on August 24, 1976 or more than a month after the bank had learned of the altered checks that it filed the complaint and therefore, it had sufficient time to ascertain the identity of the depositor.

The court also noted that instead of complying with the Central Bank Circular Letter of January 17, 1973 requesting all banking institutions to report to the Central Bank all crimes involving their property within 48 hours from knowledge of the crime, the bank reported the matter to the Philippine Constabulary.

Finding that the plaintiff had sufficiently shown that prejudice had been caused to him in the form of mental anguish, moral shock and social humiliation on account of the defendants' gross negligence, the court, invoking Articles 2176, 2217 and 2219 (10) in conjunction with Article 21 of the Civil Code, ruled in favor of the plaintiff. The dispositive portion of the decision states:

"WHEREFORE, this Court finds for plaintiff and that he is entitled to the reliefs prayed for in the following manner: Defendant Agustin Y. CO and the CONSOLIDATED BANK AND TRUST CORPORATION are hereby ordered to pay, jointly and severally, to the plaintiff the amount of SIX THOUSAND PESOS (P6,000.00) as moral damages; ONE THOUSAND PESOS (P1,000.00) as attorney's fees and costs of litigation and to pay the costs and defendant AGUSTIN Y. GO in addition thereto in his sole and personal capacity to pay the plaintiff the amount of THREE THOUSAND PESOS (P3,000.00) as exemplary damages, all with interest at six (6) percent per annum until fully paid.

"SO ORDERED."

The defendants appealed to the Court of Appeals. On January 24, 1984, said court (then named Intermediate Appellate Court) rendered a decision^[7] finding as evident negligence Go's failure to notice the substantial difference in the identity of the depositor and the payee in the check, concluded that Go's negligence in the performance of his duties was "the proximate cause why appellant bank was swindled" and that denouncing the crime to the constabulary authorities "merely aggravated the situation." It ruled that there was a cause of action against the defendants although Jazmin had nothing to do with the alteration of the checks, because he suffered damages due to the negligence of Go. Hence, under Article 2180 of the Civil Code, the bank shall be held liable for its manager's negligence.

The appellate court, however, disallowed the award of moral and exemplary damages and granted nominal damages instead. It explained thus:

"While it is true that denouncing a crime is not negligence under which a claim for moral damages is available, still appellants are liable under the law for nominal damages. The fact that appellee did not suffer from any loss is of no moment for nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying the plaintiff for any loss suffered by him (Article 2221, New Civil Code). These are damages recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind, or where there has been a breach of contract and no substantial injury or actual

damages whatsoever have been or can be shown (*Elgarra vs. Sandijas*, 27 Phil. 284). They are not intended for indemnification of loss suffered but for the vindication or recognition of a right violated or invaded (*Ventanilla vs. Centeno*, L-14333, January 28, 1961). And, where the plaintiff as in the case at bar, the herein appellee has established a cause of action, but was not able to adduce evidence showing actual damages then nominal damages may be recovered (*Sia vs. Espenilla*, CA-G.R. Nos. 45200-45201-R, April 21, 1975). Consequently, since appellee has no right to claim for moral damages, then he may not likewise be entitled to exemplary damages (*Estopa vs. Piansay*, No. L-14503, September 30, 1960). Considering that he had to defend himself in the criminal charges filed against him, and that he was constrained to file the instant case, the attorney's fees to be amended (sic) to plaintiff should be increased to P3,000.00."

Accordingly, the appellate court ordered Go and Consolidated Bank and Trust Corporation to pay jointly and severally Floerto Jazmin only NOMINAL DAMAGES in the sum of Three Thousand Pesos (P3,000.00) with interest at six (6%) percent per annum until fully paid and One Thousand Pesos (P1,000.00) as attorney's fees and costs of litigation.

Go and the bank filed a motion for the reconsideration of said decision contending that in view of the finding of the appellate court that "denouncing a crime is not negligence under which a claim for moral damages is available," the award of nominal damages is unjustified as they did not violate or invade Jazmin's rights. Corollarily, there being no negligence on the part of Go, his employer may not be held liable for nominal damages.

The motion for reconsideration having been denied, Go and the bank interposed the instant petition for review on certiorari arguing primarily that the employer bank may not be held "co-equally liable" to pay nominal damages in the absence of proof that it was negligent in the selection of and supervision over its employee.[8]

The facts of this case reveal that damages in the form of mental anguish, moral shock and social humiliation were suffered by private respondent only after the filing of the petitioners' complaint with the Philippine Constabulary. It was only then that he had to bear the inconvenience of travelling to Benguet and Lingayen for the investigations as it was only then that he was subjected to embarrassment for being a suspect in the unauthorized alteration of the treasury checks. Hence, it is understandable why petitioners appear to have overlooked the facts antecedent to the filing of the complaint to the constabulary authorities and to have put undue emphasis on the appellate court's statement that "denouncing a crime is not negligence."

Although this Court has consistently held that there should be no penalty on the right to litigate and that error alone in the filing of a case be it before the courts or the proper police authorities, is not a ground for moral damages,[9] we hold that under the peculiar circumstances of this case, private respondent is entitled to an award of damages.

Indeed, it would be unjust to overlook the fact that petitioners' negligence was the root of all the inconvenience and embarrassment experienced by the private respondent albeit they happened after the filing of the complaint with the constabulary authorities. Petitioner Go's negligence in fact led to the swindling of his employer. Had Go exercised the diligence expected of him as a bank officer and employee, he would have noticed the glaring disparity between the payee's name and address on the treasury checks involved and the name and address of the depositor appearing in the bank's records. The situation would have been different if the treasury checks were tampered with only as to their amounts because the alteration would have been unnoticeable and hard to detect as the herein altered check bearing the amount of \$913.40 shows. But the error in the name and address of the payee was very patent and could not have escaped the trained eyes of bank officers and employees. There is therefore, no other conclusion than that the bank through its employees (including the tellers who allegedly conducted an identification check on the depositor) was grossly negligent in handling the business transaction herein involved.

While at that stage of events private respondent was still out of the picture, it definitely was the start of his consequent involvement as his name was illegally used in the illicit transaction. Again, knowing that its viability depended on the confidence reposed upon it by the public, the bank through its employees should have exercised the caution expected of it.

In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.[10] As Go's negligence was the root cause of the complained inconvenience, humiliation and embarrassment, Go is liable to private respondents for damages.

Anent petitioner bank's claim that it is not "co-equally liable" with Go for damages, under the fifth paragraph of Article 2180 of the Civil Code, "(E)mployers shall be liable for the damages caused by their employees x x x acting within the scope of their assigned tasks." Pursuant to this provision, the bank is responsible for the acts of its employee unless there is proof that it exercised the diligence of a good father of a family to prevent the damage.[11] Hence, the burden of proof lies upon the bank and it cannot now disclaim liability in view of its own failure to prove not only that it exercised due diligence to prevent damage but that it was not negligent in the selection and supervision of its employees.

WHEREFORE, the decision of the respondent appellate court is hereby affirmed. Costs against the petitioners.

SO ORDERED.

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

[1] Exhs. 8 & 9.

[2] Exh. D.

[3] Exh. 6.

[4] Record on Appeal, pp. 1-7.

[5] Ibid, pp. 8-15.

[6] Penned by Judge Emmanuel G. Cleto.

[7] Penned by Justice Jorge R. Coquia and concurred in by Justices Mariano A. Zosa and Florelina Castro-Bartolome.

[8] Petition, p. 8.

[9] Lagman vs. Intermediate Appellate Court, G.R. No. 72281, October 28, 1988, 166 SCRA 734.

[10] Art. 2202, Civil Code of the Philippines.

[11] Campo, et al. vs. Camarote and GemiIga, 100 Phil. 459 (1956).

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