

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND ROMAX MARKETING CENTER, INC., RESPONDENTS.

G.R. No. 74678. March 08, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari the decision[1] dated April 2, 1986 of the then Intermediate Appellate Court affirming the decision of the trial court[2] in ordering petitioner Bank of the Philippine Islands to pay compensatory damages, damages for loss of income, attorney's fees and costs to private respondent Romax Marketing Center, Inc., as well as the Resolution dated May 12, 1986 denying petitioner's Motion for Reconsideration of the appealed decision.

It appears on record that private respondent Romax Marketing Center, Inc., a domestic corporation engaged primarily in trading construction materials and supplies, opened and maintained a current account deposit with petitioner Bank of Philippine Islands (then Commercial Bank and Trust Company) Magallanes branch under Current Account No. 115-178-12.

Between 10:00 a.m. and 10:30 a.m. of November 28, 1975 which fell on a Friday, private respondent deposited in its current account with Commercial Bank and Trust Company a check in the amount of P25,000.00 as evidenced by the deposit slip on which was stamped 3 DAYS TO CLEAR.[3] Its bank balance on that day was about P3,000.00.[4]

On November 29, 1975, private respondent issued CBTC check number 85063 in the amount of P27,475.90 payable to Far Eastern Plumbing Supply, Inc. for the materials and supplies it bought from the latter.

However, on December 3, 1975, petitioner as successor-in-interest of Commercial Bank and Trust Company dishonored said check for being drawn against uncollected deposit as evidenced by its check return slip.[5]

Upon being informed that private respondent's check was dishonored by the petitioner. Far Eastern Plumbing Supply, Inc. refused to deposit again said check, even upon the advice of the branch manager of petitioner, expressing loss of confidence and trust in private respondent's checks.

On December 4, 1975, petitioner issued a cashier's check in favor of Far Eastern Plumbing Supply, Inc. for the full amount of the dishonored check as evidenced by the petitioner's Statement for Manager's Check[6].

As a result of this incident, private respondent's business and commercial credit standing in the business community was destroyed so much so that it was not able to meet the purchase orders[7] of its clients because of the extreme difficulty it encountered in securing credit facilities considering that private respondent business relied heavily on credit extended to it by its suppliers.

On December 8, 1975, private respondent's counsel sent a letter of demand to petitioner asking compensation in

the amount of P700,000.00 for damages it incurred by reason of petitioner's negligence in unjustly dishonoring its funded check.

Thereafter, or on February 6, 1976, private respondent filed a Complaint for damages against petitioner with the then Court of First Instance of Pasig, Branch XXI in Civil Case No. 22811.

On the other hand, petitioner in its Answer alleged that CBTC Check No. 85063 was issued on November 29, 1975 against a Prudential Bank and Trust Company Check No. 425967 in the amount of P25,000.00 and deposited in private respondent's current account with petitioner on November 28, 1975 (Friday) after the 2:00 p.m. clearing cut-off time. Therefore, said check was only sent for clearing only on Monday, December 1, 1975, the next banking day, November 29 and 30, 1975 being non-banking days.

That when private respondent's CBTC Check No. 85063 was received by petitioner on December 2, 1975, the former's account showed a negative balance of P24,629.58, hence private respondent's CBTC Check No. 85063 was returned unpaid for the reason "Drawn Against Uncollected Deposit".

Petitioner further alleged that private respondent applied for and purchased a cashier's check on December 4, 1975 in an amount equivalent to the dishonored check.[8]

After trial on the merits, the trial court rendered a decision, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff ordering the defendant to pay the former the following:

- "1. P150,000.00 as compensatory damages for injuries caused to plaintiff's business standing;
- "2. P50,000.00 as damages for loss of income;
- "3. P10,000.00 for and as attorney's fees; and
- "4. Costs of suit."[9]

On May 19, 1980, petitioner appealed to the then Intermediate Appellate Court which affirmed the decision of the trial court on April 2, 1986.

Petitioner's contention that at the time the check of private respondent to Far Eastern Plumbing Supply, Inc. was dishonored, the proceeds of the Prudential Bank and Trust Company's check which the latter had deposited in its current account on November 28, 1975 had not yet been collected and therefore it cannot be made liable for the dishonoring of private respondent's check, as its liability attaches only after the proceeds of the check shall have come into its possession, is erroneous to say the least.

There is no doubt that the damage incurred by private respondent, as a result of the dishonoring of its check to Far Eastern Plumbing Supply, Inc., was caused by petitioner's failure to send for clearing the check private respondent deposited on November 28, 1975.

Since private respondent's check to its supplier would have been honored had petitioner only discharged its duty faithfully and diligently in sending all deposited checks for clearing at the appointed time, petitioner was clearly guilty of negligence and therefore liable to pay for the damage caused. This was likewise the finding of the respondent appellate court in its decision, which We quote:

"It has been established by preponderance of evidence that the check was deposited by plaintiff between 10:00 and 10:30 in the morning of November 28, 1975, just in time to reach the Central Bank for clearing at 4:00 p.m. or that same date. While defendant presented the teller's tape (Exh. "2") the same which bears certain figures are very easy to produce and could be interpreted any way that a witness may want, to suit his claim. Besides, defendant has not presented clear and convincing proof that the check was actually deposited after

2:00 p.m. on November 28, 1975. The witness who testified on the teller's tape was simply assuming that documents of this nature are usually prepared after 2:00 p.m.. There is no proof that such practice is a regular rule followed by defendant bank.

"This being the case, defendant had acted negligently in not sending the check to the clearing house to be included in the checks to be cleared at the Central Bank at 4:00 p.m. on November 28, 1975. Because of this, plaintiff suffered loss of goodwill and good reputation in business circles." [10]

Furthermore, Section 4(c) of the Central Bank Circular No. 9, as amended, provides:

"Items which should be returned for any reason whatsoever shall be returned directly to the bank, institution or entity from which the item was received. For this purpose, the Receipt for Returned Checks (Cash Form No. 9) should be used. The original and duplicate copies of said Receipt shall be given to the bank, institution or entity which returned the items and the triplicate copy should be retained by the bank, institution or entity whose demand is being returned. At the following clearing, the original of the Receipt for Returned Checks shall be presented through the Clearing Office as a demand against the bank, institution or entity whose item has been returned. Nothing in this section shall prevent the returned items from being settled by direct reimbursement to the bank, institution or entity returning the items. All items cleared at 11:00 o'clock a.m. shall be returned not later than 1:45 o'clock p.m. on the same day and all items cleared at 3:00 o'clock p.m. shall be returned not later than 8:30 a.m. of the following business day, x x x."

The fact that the deposit slip of private respondent on November 28, 1975 had a 3 DAYS CLEARING stamped on its face indicates that the check deposited on said date in the amount of P25,000.00 was duly deposited before the 2:00 p.m. cut-off time of petitioner and said check would have been cleared on the morning of December 2, 1975.

Therefore, when private respondent issued CBTC Check Number 85063 in the amount of P27,475.90 to its supplier on November 29, 1975, a Saturday, and the supplier deposited it the following banking day or on December 1, 1975, said check would likewise undergo the 3-days clearing period and should have been cleared on December 3, 1975. By that day, private respondent's current account would have been adequately funded by the check deposit it made on November 28, 1975, which should have been cleared on December 2, 1975 if only petitioner had not acted negligently, together with its bank balance of P3,000.00 which would amount to P28,000.00.

However, petitioner's contention that the award of P150,000.00 as compensatory damages and the amount of P50,000.00 as damages for loss of income are both actual or compensatory damages and should not have been awarded to private respondent for his failure to prove the same during trial is meritorious.

Well-settled is the rule that actual or compensatory damages cannot be presumed, but must be duly proved, and proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages but must depend upon competent proof that they have suffered and on evidence of the actual amount thereof. [11]

Evidence that there is a possibility of cancellation on the purchase orders of private respondent's client cannot serve as a basis for the award of compensatory damages in the absence of proof that said purchase orders were actually cancelled. Likewise, the amount of profits private respondent could have earned or realized had the purchase orders of its clients been consummated is merely premised on the fact that it faced the possibility of the cancellation of said purchase orders as it encountered difficulty in securing credit facilities from its suppliers after its check was dishonored by petitioner. Damages which are merely possible are speculative [12] and should therefore not be awarded.

WHEREFORE, the assailed decision is hereby AFFIRMED with the MODIFICATION that the award of

compensatory damages of P150,000.00 and damages in the amount of P50,000.00 for loss of income should be deleted.

SO ORDERED.

Narvasa, C.J., (Chairman), and Regalado, J., concur.

Padilla and Campos, Jr., JJ., no part.

[1] Penned by Justice Jose C. Campos, Jr. with the concurrence of Justice Crisolito Pascual, Justice Serafin E. Camilon and Justice Desiderio P. Jurado.

[2] Penned by Judge Gregorio G. Pineda.

[3] Exhibits "4" and "4-A."

[4] T.S.N., August 19, 1977, p. 56.

[5] Exhibit "B."

[6] Exhibit "D."

[7] Exhibits "F up to M."

[8] Exhibit "1."

[9] Rollo, p. 74.

[10] Id., at p. 23.

[11] Dichoso vs. Court of Appeals, 192 SCRA 169 (1990).

[12] Shauf vs. Court of Appeals, 191 SCRA 713 [1990].

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