

CITYTRUST BANKING CORPORATION, PETITIONER, VS. THE INTERMEDIATE APPELLATE COURT AND EMME HERRERO, RESPONDENTS.*G.R. No. 84281, May 27, 1994*

Ponente: VITUG, J.

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This case emanated from a complaint filed by private respondent Emme Herrero for damages against petitioner Citytrust Banking Corporation. In her complaint, private respondent averred that she, a businesswoman, made regular deposits, starting September of 1979, with petitioner Citytrust Banking Corporation at its Burgos branch in Calamba, Laguna. On 15 May 1980, she deposited with petitioner the amount of Thirty One Thousand Five Hundred Pesos (P31,500.00), in cash, in order to amply cover six (6) postdated checks she issued, viz:

Check No. Amount

007383 - P1,507.00

007384 - 1,262.00

007387 - 4,299.00

007389 - 2,204.00

007492 - 6,281.00

007400 - 4,716.00

When presented for encashment upon maturity, all the checks were dishonored due to "insufficient funds." The last check No. 007400, however, was personally redeemed by private respondent in cash before it could be redeposited.

Petitioner, in its answer, asserted that it was due to private respondent's fault that her checks were dishonored. It averred that instead of stating her correct account number, i.e., 29000823, in her deposit slip, she inaccurately wrote 2900823.

The Regional Trial Court (Branch XXXIV) of Calamba, Laguna, on 27 February 1984, dismissed the complaint for lack of merit; thus:

"WHEREFORE, judgment is hereby rendered in favor of the defendant and against the plaintiff, DISMISSING the complaint for lack of merit, plaintiff is hereby adjudged to pay the defendant reasonable attorney's fee in the amount of FIVE THOUSAND PESOS (P5,000.00) plus cost of suit."

Private respondent went to the Court of Appeals, which found the appeal meritorious. Hence, it rendered judgment, on 15 July 1988, reversing the trial court's decision. The appellate court ruled:

"WHEREFORE, the judgment appealed from is REVERSED and a new one entered thereby ordering defendant to pay plaintiff nominal damages of P2,000.00, temperate and moderate damages of P5,000.00, and attorney's fees of P4,000.00."

"The counterclaim of defendant is dismissed for lack of merit, with costs against him."

Petitioner Citytrust Banking Corporation is now before us in this petition for review on certiorari.

Petitioner bank concedes that it is its obligation to honor checks issued by private respondent which are sufficiently funded, but, it contends, private respondent has also the duty to use her account in accordance with the rules of petitioner bank to which she has contractually acceded. Among such rules, contained in its "brochures" governing current account deposits, is the following printed provision:

"In making a deposit x x x kindly insure accuracy in filing said deposit slip forms as we hold ourselves free of any liability for loss due to an incorrect account number indicated in the deposit slip although the name of the depositor is correctly written."

Exactly the same issue was addressed by the appellate court, which, after its deliberations, made the following findings and conclusions[1]:

"We cannot uphold the position of defendant. For, even if it be true that there was error on the part of the plaintiff in omitting a 'zero' in her account number, yet, it is a fact that her name, 'Emme E. Herrero,' is clearly written on said deposit slip (Exh. 'B'). This is controlling in determining in whose account the deposit is made or should be posted. This is so because it is not likely to commit an error in one's name than merely relying on numbers which are difficult to remember, especially a number with eight (8) digits as the account numbers of defendant's depositors. We view the use of numbers as simply for the convenience of the bank but was never intended to disregard the real name of its depositors. The bank is engaged in business impressed with public interest, and it is its duty to protect in return its many clients and depositors who transact business with it. It should not be a matter of the bank alone receiving deposits, lending out money and collecting interests. It is also its obligation to see to it that all funds invested with it are properly accounted for and duly posted in its ledgers.

"In the case before Us, We are not persuaded that defendant bank was not free from blame for the fiasco. In the first place, the teller should not have accepted plaintiff's deposit without correcting the account number on the deposit slip which, obviously, was erroneous because, as pointed out by defendant, it contained only seven (7) digits instead of eight (8). Second, the complete name of plaintiff depositor appears in bold letters on the deposit slip (Exh. 'B'). There could be no mistaking in her name, and that the deposit was made in her name, 'Emma E. Herrero.' In fact, defendant's teller should not have fed her deposit slip to the computer knowing that her account number written thereon was wrong as it contained only seven (7) digits. As it happened, according to defendant, plaintiff's deposit had to be consigned to the suspense accounts pending verification. This, indeed, could have been avoided at the first instance had the teller of defendant bank performed her duties efficiently and well. For then she could have readily detected that the account number in the name of 'Emma E. Herrero' was erroneous and would be rejected by the computer. That is, or should be, part of the training and standard operating procedure of the bank's employees. On the other hand, the depositors are not concerned with banking procedure. That is the responsibility of the bank and its employees. Depositors are only concerned with the facility of depositing their money, earning interest thereon, if any, and withdrawing therefrom, particularly businessmen, like plaintiff, who are supposed to be always 'on--the-go.' Plaintiff's account is a 'current account' which should immediately be posted. After all, it does not earn interest. At least, the forbearance should be commensurated with prompt, efficient and satisfactory service.

"Bank clients are supposed to rely on the services extended by the bank, including the assurance that their deposits will be duly credited them as soon as they are made. For, any delay in crediting their account can be

embarrassing to them as in the case of plaintiff."

"We agree with plaintiff that ?

'x x x even in computerized systems of accounts, ways and means are available whereby deposits with erroneous account numbers are properly credited depositor's correct account numbers. They add that failure on the part of the defendant to do so is negligence for which they are liable. As proof thereof plaintiff alludes to five particular incidents where plaintiff admittedly wrongly indicated her account number in her deposit slips (Exhs. 'J', 'L', 'N', 'O' and 'P'), but were nevertheless properly credited her deposit (pp. 4-5, Decision).'

"We have already ruled in *Mundin v. Far East Bank & Trust Co.*, AC-G.R. CV No. 03639, prom. Nov. 2, 1985, quoting the court a quo in an almost identical set of facts, that -

'Having accepted a deposit in the course of its business transactions, it behooved upon defendant bank to see to it and without recklessness - that the depositor was accurately credited therefor. To post a deposit in somebody else's name despite the name of the depositor clearly written on the deposit slip is indeed sheer negligence which could have easily been avoided if defendant bank exercised due diligence and circumspection in the acceptance and posting of plaintiff's deposit.'

We subscribe to the above disquisitions of the appellate court. In *Simex International (Manila), Inc., vs. Court of Appeals*, 183 SCRA 360, reiterated in *Bank of Philippine Islands vs. Intermediate Appellate Court*, 206 SCRA 408, we similarly said, in cautioning depository banks on their fiduciary responsibility, that -

"In every case, the depositor expects the bank to treat his account with 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.

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

We agree with petitioner, however, that it is wrong to award, along with nominal damages, temperate or moderate damages. The two awards are incompatible and cannot be granted concurrently. Nominal damages are given 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 (Art. 2221, New Civil Code; *Manila Banking Corp. vs. Intermediate Appellate Court*, 131 SCRA 271). Temperate or moderate damages, which are more than nominal but less than compensatory damages, on the other hand, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with reasonable certainty (Art. 2224, New Civil Code).

In the instant case, we also find need for vindicating the wrong done on private respondent, and we accordingly agree with the Court of Appeals in granting to her nominal damages but not in similarly awarding temperate or moderate damages.

WHEREFORE, the appealed decision is MODIFIED by deleting the award of temperate or moderate damages. In all other respects, the appellate court's decision is AFFIRMED. No costs in this instance.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Penned by Mr. Justice Josue N. Bellosillo, concurred in by Justices Felipe B. Kalalo and Regina G. Ordoñez-Benitez.

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