

CA AGRO-INDUSTRIAL DEVELOPMENT CORP., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND SECURITY BANK AND TRUST COMPANY, RESPONDENTS.

G.R. No. 90027. March 03, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Is the contractual relation between a commercial bank and another party in a contract of rent of a safety deposit box with respect to its contents placed by the latter one of bailor and bailee or one of lessor and lessee?

This is the crux of the present controversy.

On 3 July 1979, petitioner (through its President, Sergio Aguirre) and the spouses Ramon and Paula Pugao entered into an agreement whereby the former purchased from the latter two (2) parcels of land for a consideration of P350,625.00. Of this amount, P75,725.00 was paid as downpayment while the balance was covered by three (3) postdated checks. Among the terms and conditions of the agreement embodied in a Memorandum of True and Actual Agreement of Sale of Land were that the titles to the lots shall be transferred to the petitioner upon full payment of the purchase price and that the owner's copies of the certificates of titles thereto, Transfer Certificates of Title (TCT) Nos. 284655 and 292434, shall be deposited in a safety deposit box of any bank. The same could be withdrawn only upon the joint signatures of a representative of the petitioner and the Pugaos upon full payment of the purchase price. Petitioner, through Sergio Aguirre, and the Pugaos then rented Safety Deposit Box No. 1448 of private respondent Security Bank and Trust Company, a domestic banking corporation hereinafter referred to as the respondent Bank. For this purpose, both signed a contract of lease (Exhibit "2") which contains, inter alia, the following conditions:

"13. The bank is not a depositary of the contents of the safe and it has neither the possession nor control of the same.

14. The bank has no interest whatsoever in said contents, except herein expressly provided, and it assumes absolutely no liability in connection therewith."[1]

After the execution of the contract, two (2) renter's keys were given to the renters -- one to Aguirre (for the petitioner) and the other to the Pugaos. A guard key remained in the possession of the respondent Bank. The safety deposit box has two (2) keyholes, one for the guard key and the other for the renter's key, and can be opened only with the use of both keys. Petitioner claims that the certificates of title were placed inside the said box.

Thereafter, a certain Mrs. Margarita Ramos offered to buy from the petitioner the two (2) lots at a price of P225.00 per square meter which, as petitioner alleged in its complaint, translates to a profit of P100.00 per square meter or a total of P280,500.00 for the entire property. Mrs. Ramos demanded the execution of a deed of sale which necessarily entailed the production of the certificates of title. In view thereof, Aguirre, accompanied by the

Pugaos, then proceeded to the respondent Bank on 4 October 1979 to open the safety deposit box and get the certificates of title. However, when opened in the presence of the Bank's representative, the box yielded no such certificates. Because of the delay in the reconstitution of the title, Mrs. Ramos withdrew her earlier offer to purchase the lots; as a consequence thereof, the petitioner allegedly failed to realize the expected profit of P280,500.00. Hence, the latter filed on 1 September 1980 a complaint[2] for damages against the respondent Bank with the Court of First Instance (now Regional Trial Court) of Pasig, Metro Manila which docketed the same as Civil Case No. 38382.

In its Answer with Counterclaim,[3] respondent Bank alleged that the petitioner has no cause of action because of paragraphs 13 and 14 of the contract of lease (Exhibit "2"); corollarily, loss of any of the items or articles contained in the box could not give rise to an action against it. It then interposed a counterclaim for exemplary damages as well as attorney's fees in the amount of P20,000.00. Petitioner subsequently filed an answer to the counterclaim.[4]

In due course, the trial court, now designated as Branch 161 of the Regional Trial Court (RTC) of Pasig, Metro Manila, rendered a decision[5] adverse to the petitioner on 8 December 1986, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered dismissing plaintiff's complaint.

On defendant's counterclaim, judgment is hereby rendered ordering plaintiff to pay defendant the amount of FIVE THOUSAND (P5,000.00) PESOS as attorney's fees.

With costs against plaintiff."[6]

The unfavorable verdict is based on the trial court's conclusion that under paragraphs 13 and 14 of the contract of lease, the Bank has no liability for the loss of the certificates of title. The court declared that the said provisions are binding on the parties.

Its motion for reconsideration[7] having been denied, petitioner appealed from the adverse decision to the respondent Court of Appeals which docketed the appeal as CA-G.R. CV No. 15150. Petitioner urged the respondent Court to reverse the challenged decision because the trial court erred in (a) absolving the respondent Bank from liability from the loss, (b) not declaring as null and void, for being contrary to law, public order and public policy, the provisions in the contract for lease of the safety deposit box absolving the Bank from any liability for loss, (c) not concluding that in this jurisdiction, as well as under American jurisprudence, the liability of the Bank is settled and (d) awarding attorney's fees to the Bank and denying the petitioner's prayer for nominal and exemplary damages and attorney's fees.[8]

In its Decision promulgated on 4 July 1989,[9] respondent Court affirmed the appealed decision principally on the theory that the contract (Exhibit "2") executed by the petitioner and respondent Bank is in the nature of a contract of lease by virtue of which the petitioner and its co-renter were given control over the safety deposit box and its contents while the Bank retained no right to open the said box because it had neither the possession nor control over it and its contents. As such, the contract is governed by Article 1643 of the Civil Code[10] which provides:

"ART. 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid."

It invoked *Tolentino vs. Gonzales*[11] -- which held that the owner of the property loses his control over the property leased during the period of the contract -- and Article 1975 of the Civil Code which provides:

"ART. 1975. The depositary holding certificates, bonds, securities or instruments which earn interest shall be bound to collect the latter when it becomes due, and to take such steps as may be necessary in order that the securities may preserve their value and the rights corresponding to them according to law.

The above provision shall not apply to contracts for the rent of safety deposit boxes."

and then concluded that "[c]learly, the defendant-appellee is not under any duty to maintain the contents of the box. The stipulation absolving the defendant-appellee from liability is in accordance with the nature of the contract of lease and cannot be regarded as contrary to law, public order and public policy." [12] The appellate court was quick to add, however, that under the contract of lease of the safety deposit box, respondent Bank is not completely free from liability as it may still be made answerable in case unauthorized persons enter into the vault area or when the rented box is forced open. Thus, as expressly provided for in stipulation number 8 of the contract in question:

"8. The Bank shall use due diligence that no unauthorized person shall be admitted to any rented safe and beyond this, the Bank will not be responsible for the contents of any safe rented from it." [13]

Its motion for reconsideration [14] having been denied in the respondent Court's Resolution of 28 August 1989, [15] petitioner took this recourse under Rule 45 of the Rules of Court and urges Us to review and set aside the respondent Court's ruling. Petitioner avers that both the respondent Court and the trial court (a) did not properly and legally apply the correct law in this case, (b) acted with grave abuse of discretion or in excess of jurisdiction amounting to lack thereof and (c) set a precedent that is contrary to, or is a departure from precedents adhered to and affirmed by decisions of this Court and precepts in American jurisprudence adopted in the Philippines. It reiterates the arguments it had raised in its motion to reconsider the trial court's decision, the brief submitted to the respondent Court and the motion to reconsider the latter's decision. In a nutshell, petitioner maintains that regardless of nomenclature, the contract for the rent of the safety deposit box (Exhibit "2") is actually a contract of deposit governed by Title XII, Book IV of the Civil Code of the Philippines. [16] Accordingly, it is claimed that the respondent Bank is liable for the loss of the certificates of title pursuant to Article 1972 of the said Code which provides:

"ART. 1972. The depositary is obliged to keep the thing safely and to return it, when required, to the depositor, or to his heirs and successors, or to the person who may have been designated in the contract. His responsibility, with regard to the safekeeping and the loss of the thing, shall be governed by the provisions of Title I of this Book.

If the deposit is gratuitous, this fact shall be taken into account in determining the degree of care that the depositary must observe."

Petitioner then quotes a passage from American Jurisprudence [17] which is supposed to expound on the prevailing rule in the United States, to wit:

"The prevailing rule appears to be that where a safe-deposit company leases a safe-deposit box or safe and the lessee takes possession of the box or safe and places therein his securities or other valuables, the relation of bailee and bailor is created between the parties to the transaction as to such securities or other valuables; the fact that the safe-deposit company does not know, and that it is not expected that it shall know, the character or description of the property which is deposited in such safe-deposit box or safe does not change that relation. That access to the contents of the safe-deposit box can be had only by the use of a key retained by the lessee (whether it is the sole key or one to be used in connection with one retained by the lessor) does not operate to alter the foregoing rule. The argument that there is not, in such a case, a delivery of exclusive possession and control to the deposit company, and that therefore the situation is entirely different from that of ordinary bailment, has been generally rejected by the courts, usually on the ground that as possession must be either in

the depositor or in the company, it should reasonably be considered as in the latter rather than in the former, since the company is, by the nature of the contract, given absolute control of access to the property, and the depositor cannot gain access thereto without the consent and active participation of the company. x x x" (citations omitted)

and a segment from Words and Phrases[18] which states that a contract for the rental of a bank safety deposit box in consideration of a fixed amount at stated periods is a bailment for hire.

Petitioner further argues that conditions 13 and 14 of the questioned contract are contrary to law and public policy and should be declared null and void. In support thereof, it cites Article 1306 of the Civil Code which provides that parties to a contract may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.

After the respondent Bank filed its comment, this Court gave due course to the petition and required the parties to simultaneously submit their respective Memoranda.

The petition is partly meritorious.

We agree with the petitioner's contention that the contract for the rent of the safety deposit box is not an ordinary contract of lease as defined in Article 1643 of the Civil Code. However, We do not fully subscribe to its view that the same is a contract of deposit that is to be strictly governed by the provisions in the Civil Code on deposit;[19] the contract in the case at bar is a special kind of deposit. It cannot be characterized as an ordinary contract of lease under Article 1643 because the full and absolute possession and control of the safety deposit box was not given to the joint renters -- the petitioner and the Pugaos. The guard key of the box remained with the respondent Bank; without this key, neither of the renters could open the box. On the other hand, the respondent Bank could not likewise open the box without the renter's key. In this case, the said key had a duplicate which was made so that both renters could have access to the box.

Hence, the authorities cited by the respondent Court[20] on this point do not apply. Neither could Article 1975, also relied upon by the respondent Court, be invoked as an argument against the deposit theory. Obviously, the first paragraph of such provision cannot apply to a depositary of certificates, bonds, securities or instruments which earn interest if such documents are kept in a rented safety deposit box. It is clear that the depositary cannot open the box without the renter being present.

We observe, however, that the deposit theory itself does not altogether find unanimous support even in American jurisprudence. We agree with the petitioner that under the latter, the prevailing rule is that the relation between a bank renting out safe-deposit boxes and its customer with respect to the contents of the box is that of a bailor and bailee, the bailment being for hire and mutual benefit.[21] This is just the prevailing view because:

"There is, however, some support for the view that the relationship in question might be more properly characterized as that of landlord and tenant, or lessor and lessee. It has also been suggested that it should be characterized as that of licensor and licensee. The relation between a bank, safe-deposit company, or storage company, and the renter of a safe-deposit box therein, is often described as contractual, express or implied, oral or written, in whole or in part. But there is apparently no jurisdiction in which any rule other than that applicable to bailments governs questions of the liability and rights of the parties in respect of loss of the contents of safe-deposit boxes." [22] (citations omitted)

In the context of our laws which authorize banking institutions to rent out safety deposit boxes, it is clear that in this jurisdiction, the prevailing rule in the United States has been adopted. Section 72 of the General Banking Act[23] pertinently provides:

"SEC. 72. In addition to the operations specifically authorized elsewhere in this Act, banking institutions other than building and loan associations may perform the following services:

(a) Receive in custody funds, documents, and valuable objects, and rent safety deposit boxes for the safeguarding of such effects.

x x x

The banks shall perform the services permitted under subsections (a), (b) and (c) of this section as depositories or as agents. x x x"[24] (emphasis supplied)

Note that the primary function is still found within the parameters of a contract of deposit, i.e., the receiving in custody of funds, documents and other valuable objects for safekeeping. The renting out of the safety deposit boxes is not independent from, but related to or in conjunction with, this principal function. A contract of deposit may be entered into orally or in writing[25] and, pursuant to Article 1306 of the Civil Code, the parties thereto may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy. The depositary's responsibility for the safekeeping of the objects deposited in the case at bar is governed by Title I, Book IV of the Civil Code. Accordingly, the depositary would be liable if, in performing its obligation, it is found guilty of fraud, negligence, delay or contravention of the tenor of the agreement.[26] In the absence of any stipulation prescribing the degree of diligence required, that of a good father of a family is to be observed.[27] Hence, any stipulation exempting the depositary from any liability arising from the loss of the thing deposited on account of fraud, negligence or delay would be void for being contrary to law and public policy. In the instant case, petitioner maintains that conditions 13 and 14 of the questioned contract of lease of the safety deposit box, which read:

"13. The bank is not a depositary of the contents of the safe and it has neither the possession nor control of the same.

14. The bank has no interest whatsoever in said contents, except herein expressly provided, and it assumes absolutely no liability in connection therewith."[28]

are void as they are contrary to law and public policy. We find Ourselves in agreement with this proposition for indeed, said provisions are inconsistent with the respondent Bank's responsibility as a depositary under Section 72(a) of the General Banking Act. Both exempt the latter from any liability except as contemplated in condition 8 thereof which limits its duty to exercise reasonable diligence only with respect to who shall be admitted to any rented safe, to wit:

"8. The Bank shall use due diligence that no unauthorized person shall be admitted to any rented safe and beyond this, the Bank will not be responsible for the contents of any safe rented from it."[29]

Furthermore, condition 13 stands on a wrong premise and is contrary to the actual practice of the Bank. It is not correct to assert that the Bank has neither the possession nor control of the contents of the box since in fact, the safety deposit box itself is located in its premises and is under its absolute control; moreover, the respondent Bank keeps the guard key to the said box. As stated earlier, renters cannot open their respective boxes unless the Bank cooperates by presenting and using this guard key. Clearly then, to the extent above stated, the foregoing conditions in the contract in question are void and ineffective. It has been said:

"With respect to property deposited in a safe-deposit box by a customer of a safe-deposit company, the parties, since the relation is a contractual one, may by special contract define their respective duties or provide for increasing or limiting the liability of the deposit company, provided such contract is not in violation of law or public policy. It must clearly appear that there actually was such a special contract, however, in order to vary the ordinary obligations implied by law from the relationship of the parties; liability of the deposit company

will not be enlarged or restricted by words of doubtful meaning. The company, in renting safe-deposit boxes, cannot exempt itself from liability for loss of the contents by its own fraud or negligence or that of its agents or servants, and if a provision of the contract may be construed as an attempt to do so, it will be held ineffective for the purpose. Although it has been held that the lessor of a safe-deposit box cannot limit its liability for loss of the contents thereof through its own negligence, the view has been taken that such a lessor may limit its liability to some extent by agreement or stipulation." [30] (citations omitted)

Thus, we reach the same conclusion which the Court of Appeals arrived at, that is, that the petition should be dismissed, but on grounds quite different from those relied upon by the Court of Appeals. In the instant case, the respondent Bank's exoneration cannot, contrary to the holding of the Court of Appeals, be based on or proceed from a characterization of the impugned contract as a contract of lease, but rather on the fact that no competent proof was presented to show that respondent Bank was aware of the agreement between the petitioner and the Pugaos to the effect that the certificates of title were withdrawable from the safety deposit box only upon both parties' joint signatures, and that no evidence was submitted to reveal that the loss of the certificates of title was due to the fraud or negligence of the respondent Bank. This in turn flows from this Court's determination that the contract involved was one of deposit. Since both the petitioner and the Pugaos agreed that each should have one (1) renter's key, it was obvious that either of them could ask the Bank for access to the safety deposit box and, with the use of such key and the Bank's own guard key, could open the said box, without the other renter being present.

Since, however, the petitioner cannot be blamed for the filing of the complaint and no bad faith on its part had been established, the trial court erred in condemning the petitioner to pay the respondent Bank attorney's fees. To this extent, the Decision (dispositive portion) of public respondent Court of Appeals must be modified.

WHEREFORE, the Petition for Review is partially GRANTED by deleting the award for attorney's fees from the 4 July 1989 Decision of the respondent Court of Appeals in CA-G.R. CV No. 15150. As modified, and subject to the pronouncement We made above on the nature of the relationship between the parties in a contract of lease of safety deposit boxes, the dispositive portion of the said Decision is hereby AFFIRMED and the instant Petition for Review is otherwise DENIED for lack of merit.

No pronouncement as to costs.

SO ORDERED.

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

[*] Associate Justice Hugo E. Gutierrez, Jr., Chairman, is on terminal leave.

[1] Rollo, 102.

[2] Annex "A" of Petition; Rollo, 28-32.

[3] Annex "B", Id.; Id., 33-35.

[4] Annex "C", Id.; Id., 36.

[5] Annex "D" of Petition; Rollo, 38-54. Per Judge Cicero C. Jurado.

[6] Id., 54.

[7] Annex "E", Id.; Id., 55-68.

[8] Rollo, 100-101.

- [9] Per Associate Justice Felipe B. Kalalo, concurred in by Associate Justices Bienvenido C. Ejercito and Luis L. Victor, Annex "I" of Petition; Id., 89-105.
- [10] Citing PARAS, E.L., Civil Code of the Philippines, vol. 5, 1982 ed., 717.
- [11] 50 Phil. 558 [1927].
- [12] Rollo, 103.
- [13] Id.
- [14] Annex "J" of Petition; Rollo, 106-113.
- [15] Annex "K", Id.; Id., 114-115.
- [16] Articles 1962 to 2009, inclusive.
- [17] 10 Am Jur 2d., 440-441.
- [18] While the citation is 5 Words and Phrases Permanent Edition, 71-72, We failed to locate this in the said work and volume.
- [19] Title XII, Book IV, Civil Code.
- [20] PARAS, E.L., op. cit., and Tolentino vs. Gonzales, supra.
- [21] 10 Am Jur 2d., 441.
- [22] 10 Am Jur 2d., 442-443.
- [23] R.A. No. 337, as amended.
- [24] "Agents" refers to paragraphs (b) and (c) while "depositories" refers to paragraph (a).
- [25] Article 1969, Civil Code.
- [26] Article 1170, Id.
- [27] Article 1173, Id.
- [28] Supra.
- [29] Supra.
- [30] 10 Am Jur 2d., 448.

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