

**RIZAL SURETY & INSURANCE COMPANY, PETITIONER, VS.
COURT OF APPEALS AND TRANSOCEAN TRANSPORT CORPORATION,
RESPONDENTS.**

G.R. No. 96727. August 28, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Was a trust relationship established between an insurer and the two insureds over the balance of the insurance proceeds being held by the insurer for the account of the two insureds, pending a final settlement by and between the two insureds of their respective claims to said proceeds? Can the insurer -- whether or not considered a trustee -- be held liable for interest on the said insurance proceeds, which proceeds the said insurer failed or neglected to deposit in an interest-bearing account, contrary to the specific written instructions of the two insureds? And should attorney's fees be awarded in this case?

These questions confronted the Court in resolving the instant petition for review on certiorari, which assailed the Decision[1] of the Court of Appeals[2] promulgated October 25, 1990 affirming and modifying the decision[3] dated September 19, 1986 of the Regional Trial Court of Manila, Branch 33,[4] in Civil Case No. 125886.

The Facts

As culled from the stipulations between the parties and the assailed Decision, the factual background of this case is as follows:

On December 5, 1961, the Reparations Commission (hereinafter referred to as REPACOM) sold to private respondent Transocean Transport Corporation the vessel 'M/V TRANSOCEAN SHIPPER' payable in twenty (20) annual installments. On June 22, 1974, the said vessel was insured with petitioner Rizal Surety & Insurance Company for US\$3,500,000.00, with stipulated value in Philippine Currency of P23,763,000.00 under Marine Hull Policy MH-1322 and MH-1331.[5] The said policies named REPACOM and herein private respondent as the insured. Subsequently, petitioner reinsured the vessel with a foreign insurance firm.

Sometime in February, 1975, during the effectivity of the aforementioned marine insurance policies, the vessel 'M/V TRANSOCEAN SHIPPER' was lost in the Mediterranean Sea. The insured filed claims against herein petitioner for the insurance proceeds. Shortly thereafter, a partial compromise agreement was entered into between the REPACOM and respondent Transocean regarding the insurance proceeds.

On April 18, 1975, anticipating payment of the insurance proceeds in dollars, private respondent requested the Central Bank (CB) to allow it to retain the expected dollar insurance proceeds for a period of three (3) months, to enable it to complete its study and decide on how to utilize the said amount.[6] The CB granted the request subject to conditions, one of which was that the proceeds be deposited with a local commercial bank in a special dollar account up to and until July 31, 1975.[7]

On November 18, 1975, private respondent and REPACOM requested petitioner to pay the insurance proceeds in

their joint names,[8] despite problems regarding the amount of their respective claims.

On November 20, 1975, the CB authorized petitioner to receive the insurance proceeds from the English re-insurance firm in foreign currency and to deposit it in the same currency with any local bank in a non-interest bearing account, jointly in the names of private respondent and REPACOM.[9]

On December 2, 1975, upon the request of petitioner,[10] CB authorized it to receive and deposit the dollar insurance proceeds in a non-interest bearing account in the name of petitioner and for the joint account of REPACOM and private respondent.[11]

On January 3, 1976, petitioner informed private respondent and REPACOM that the entire insurance proceeds for the loss of the vessel M/V "Transocean Shipper", consisting of: (a) P2,614,150.00 from local insurance companies and reinsurers, and (b) US\$3,083,850.00 from the petitioner's London insurance broker, had been deposited with Prudential Bank and Trust Company, Escolta Branch, Manila, the latter sum in a non-interest bearing account as authorized by CB.[12]

On January 29, 1976, private respondent and REPACOM entered into a partial compromise agreement,[13] wherein they agreed to divide and distribute the insurance proceeds in such a manner that each would receive as its initial share thereof that portion not disputed by the other party (thus, REPACOM -- US\$434,618.00, and private respondent -- US\$1,931,153.00), leaving the balance in dispute for future settlement, either by way of compromise agreement or court litigation, pending which the said balance would continue to be kept in the same bank account in trust for private respondent and REPACOM unless the parties otherwise agree to transfer said balance to another bank account. Copies of this compromise agreement were sent to petitioner.

In response to the March 10, 1976 letter-request of the parties, the CB on March 15, 1976 authorized private respondent and REPACOM to transfer the balance of the insurance proceeds, amounting to US\$718,078.20, into an interest-bearing special dollar account with any local commercial bank.[14] The CB's letter-authorization was addressed to REPACOM, with private respondent and petitioner duly copy-furnished.

Having obtained the CB authorization, REPACOM and private respondent then wrote the petitioner on April 21, 1976, requesting the latter to remit the said US\$718,078.20 to the Philippine National Bank, Escolta Branch for their joint account.[15]

In a reply dated May 10, 1976, petitioner indicated that it would effect the requested remittance when both REPACOM and private respondent shall have unconditionally and absolutely released petitioner from all liabilities under its policies by executing and delivering the Loss and Subrogation Receipt prepared by petitioner.[16]

Because the parties proposed certain amendments and corrections to the Loss and Subrogation Receipt, a revised version thereof was finally presented to the Office of the Solicitor General, and on May 25, 1977, then Acting Solicitor General Vicente V. Mendoza wrote petitioner demanding that it pay interest on the dollar balance per the CB letter-authority. His letter read in relevant part:[17]

"From the foregoing, it is clear that effective as of the date of your receipt of a copy of the letter of the Central Bank authorizing the deposit of the amount in an interest-bearing special dollar account x x x, the same should bear interest at the authorized rates, and it was your duty as trustee of the said funds to see to it that the same earned the interest authorized by the Central Bank. As trustee, you were morally and legally bound to deposit the funds under terms most advantageous to the beneficiaries. If you did not wish to transfer the deposit from the Prudential Bank and Trust Company, which we understand is your sister company, to another bank where it could earn interest, it was your obligation to require the Prudential Bank and Trust Company, at least, to place the deposit to an interest-bearing account.

In view hereof, we hereby demand in behalf of the Reparations Commission payment of interest on the dollar deposit from the date of your receipt of the authorization by the Central Bank at the authorized rates."

In a reply dated June 14, 1977, petitioner through counsel rejected the Acting Solicitor General's demand, asserting that (i) there was no trust relationship, express or implied, involved in the transaction; (ii) there was no obligation on the part of petitioner to transfer the dollar deposit into an interest-bearing account because the CB authorization was given to REPACOM and not to petitioner, (iii) REPACOM did not ask petitioner to place the dollars in an interest-bearing account, and, (iv) no Loss and Subrogation Receipt was executed.

On October 10, 1977, private respondent and REPACOM sent petitioner the duly executed Loss and Subrogation Receipt, dated January 31, 1977, without prejudice to their claim for interest on the dollar balance from the time CB authorized its placement in an interest bearing account.

On February 27, 1978, a final compromise agreement[18] was entered into between private respondent and REPACOM, whereby the latter, in consideration of an additional sum of one million pesos paid to it by the former, transferred, conveyed and assigned to the former all its rights, interests and claims in and to the insurance proceeds. The dollar balance of the insurance proceeds was then remitted to the Philippine National Bank, Escolta branch for the sole account of private respondent.

On April 14, 1978, a demand letter for interest on the said dollar balance was sent by private respondent's counsel to petitioner and Prudential Bank, which neither replied thereto nor complied therewith.

On August 15, 1979, private respondent filed with the Regional Trial Court of Manila, Branch 33, a complaint for collection of unearned interest on the dollar balance of the insurance proceeds.

On September 19, 1986, the trial court issued its decision holding that (i) a trust relationship existed between petitioner as trustee and private respondent and REPACOM as beneficiaries, (ii) from April 21, 1976, petitioner should have deposited the remaining dollar deposit in an interest-bearing account either by remitting the same to the PNB in compliance with the request of REPACOM and private respondent, or by transferring the same into an interest-bearing account with Prudential Bank, and (iii) this duty to deposit the funds in an interest-bearing account ended when private respondent signed the Loss and Subrogation Receipt on January 31, 1977. Thus, petitioner was ordered to pay (1) interest on the balance of US\$718,078.20 at 6% per annum, computed from April 21, 1976 until January 31, 1977 based on the then prevailing peso-dollar rate of exchange; (2) interest of 6% per annum on the accrued interest earned until fully paid; (3) 10% of the total amount claimed as attorney's fees and (4) costs of suit.[19] The complaint against defendant Prudential Bank and Trust was dismissed for lack of merit.

Both petitioner and private respondent appealed the trial court's decision. Private respondent alleged that the trial court erred when it absolved defendant Prudential Bank from liability and when it ruled that the interest on the balance of the dollar deposit, for which petitioner was held liable, should be computed only until January 31, 1977 (when the Loss and Subrogation Receipt was signed) instead of January 10, 1978 (when the actual transfer of the dollar deposit was made to the bank chosen by private respondent).[20] On the other hand, petitioner charged that the trial court had seriously erred in finding that a trust relationship existed and that petitioner was liable for the interest on the dollar balance despite the execution of the Loss and Subrogation Receipt wherein petitioner was unconditionally and absolutely released from all its liabilities under the marine hull policies.[21]

On October 25, 1990, the Court of Appeals upheld the judgment of the trial court, and confirmed that a trust had in fact been established and that petitioner became liable for interest on the dollar account in its capacity as trustee, not as insurer. As for the Loss and Subrogation document, the appellate Court ruled that petitioner gave undue importance thereto, and that the execution thereof did not bar the claims for accrued interest. By virtue of

that document, petitioner was released only from its liabilities arising from the insurance policies, i.e., in respect of the principal amount representing the insurance proceeds, but not insofar as its liability for accrued interest was concerned, which arose from the violation of its duty as trustee -- i.e., its refusal to deposit the dollar balance in an interest-bearing account, under terms most advantageous to the beneficiaries. The respondent Court modified the trial court's judgment by ordering petitioner to pay said interest computed from April 21, 1976 up to January 10, 1978.

On December 17, 1990, the Court of Appeals denied the petitioner's motion for reconsideration.

Hence, this petition.

Assignment of Errors

Petitioner alleges that the Court of Appeals erred:

"I. xxx when it held that Rizal is liable to Transocean for supposed interest on the balance of US\$718,078.20 after admitting that Transocean and REPACOM had unconditionally and absolutely released and discharged Rizal from its total liabilities when they signed the loss and subrogation receipt xxx on January 31, 1977;

II. xxx in assuming that REPACOM and Transocean on one hand and Rizal, on the other, intended to create a trust;

III. xxx in not holding that Transocean had acted in palpable bad faith and with malice in filing this clearly unfounded civil action, and in not ordering Transocean to pay to Rizal moral and punitive damages xxx, plus attorney's fees and expenses of litigation xxx; and

IV. xxx in affirming the RTC decision which incorrectly awarded attorney's fees and costs of suit to Transocean." [22]

The foregoing grounds are almost exactly the same grounds pleaded by petitioner before the respondent Court. At the heart of the matter is the question of whether the petitioner is liable for accrued interest on the dollar balance of the insurance proceeds. Reiterating the arguments it ventilated before the respondent appellate Court, petitioner continues to deny the existence of the trust, alleging that it never intended to enter into a fiduciary relationship with private respondent and REPACOM and that it held on to the dollar balance only as a means to protect its interest. Furthermore, petitioner insists that the Loss and Subrogation Receipt signed by the insureds released and absolved petitioner from all liabilities, including the claimed interest.

Briefly, the key issues in this case may be re-stated thus:

- I. The existence of a trust relationship;
- II. The significance of the Loss and Subrogation Receipt;
- III. Petitioner's liability for accrued interest on the dollar balance; and
- IV. Correctness of the award of attorney's fees.

The Court's Ruling

The shop-worn arguments recycled by petitioner are mainly devoid of merit. We searched for arguments that could constitute reversible errors committed by respondent Court, but found only one in the last issue.

First Issue: The Trust Relationship

Crucial in the resolution of this case is the determination of the role played by petitioner. Did it act merely as an insurer, or was it also a trustee? In ruling that petitioner was a trustee of the private respondent and REPACOM, the Court of Appeals ratiocinated thus:

"The respondent (trial) court sustained the theory of TRANSOCEAN and was of the view that RIZAL held the

dollar balance of US\$718,078.20 as trustee for the benefit of REPACOM and plaintiff corporation (private respondent herein) upon consideration of the following facts and the said court's observation --

'1. That pursuant to RIZAL's letter to the Central Bank dated November 25, 1975, it requested that its authority to deposit the dollar proceeds with any local bank be amended by allowing it to deposit the same in the name of "Rizal Surety & Insurance Company for the joint account of the Reparations Commission and Transocean Transport Corporation." It further states, to wit:

"This is in conformity with our agreement on this matter with the respective officers of our insureds, Reparations Commission and Transocean Transport Corporation, during our conference held in the office of Solicitor General Estelito Mendoza, last 18 November 1975." (Exhibit I).

From these facts, it is very clear that the parties thereto intended that the entire dollar insurance proceeds be held in trust by defendant RIZAL for the benefit of REPACOM and plaintiff corporation.

2. This agreement was further fortified by the Central Bank's reply to the above-mentioned letter authorizing RIZAL to deposit the dollar insurance proceeds in the name of "Rizal Surety & Insurance Company for the joint account of Transocean Transport Corporation and Reparations Commission" (Exhibit J).

3. Likewise, defendant RIZAL's letter to REPACOM and plaintiff corporation confirming the fact that the insurance proceeds were then deposited with Prudential Bank and it was recorded under the name of Rizal Surety & Insurance Company for the joint account of Transocean Transport Corporation and REPACOM (Exhibit L).

4. The partial compromise agreement entered into between the insureds on January 29, 1976 over the division of the insurance proceeds which provides as follows:

"4. The disputed portion or the balance of the insurance proceeds remaining after deducting the undisputed portions as agreed above shall be kept in the same bank deposit in trust for and in the joint name of REPACOM and TRANSOCEAN until such time as there is a court decision or a compromise agreement on the full amount or portion thereof, or until such time as REPACOM and TRANSOCEAN shall agree jointly to transfer such balance to another bank account."

It appears clearly that even from the start of the communications among themselves, especially between defendant RIZAL on one hand and REPACOM and the plaintiff corporation, on the other hand, it shows that the parties intended that the dollar insurance proceeds be held in the name of defendant RIZAL for the joint benefit of REPACOM and plaintiff corporation. No repudiation was ever made or any one of the parties for that matter questioned said agreement. There was, therefore, created a trust relationship between RIZAL on one hand and the REPACOM and plaintiff corporation on the other, over the dollar insurance proceeds of the lost vessel. x x x'

Indeed, the aforesaid enumerated facts sufficiently manifest the intention between REPACOM and TRANSOCEAN on one hand and RIZAL, on the other, to create a trust.

It was RIZAL itself which requested the Central Bank that it be allowed to deposit the dollars in its name and 'for the joint account of REPACOM and TRANSOCEAN' instead of in the joint account of REPACOM and TRANSOCEAN as originally authorized. Moreover, the Partial Compromise Agreement explicitly states that the dollars 'shall be kept in the same bank deposits in trust for and in the joint name of REPACOM and TRANSOCEAN.' While it is true, that RIZAL was not a party to the Compromise Agreement, nevertheless, RIZAL was furnished a copy of the same and did not in any way manifest objection thereto. On the contrary, RIZAL even implemented certain provisions thereof.

xxx xxx xxx

The intention to create a trust relation can be inferred from the surrounding factual circumstances. Thus:

‘Such a manifestation can in fact be determined merely by construction of, and inference from, the surrounding factual circumstances, so long as the proof thereof is clear, satisfactory, and convincing, and does not rest on loose, equivocal or indefinite declarations’ (Medina vs. CA, 109 SCRA 437).’”

Petitioner claims that respondent Court was misled by the trial court’s crucial mis-assumption that petitioner was the one which took the initiative of requesting[23] authorization from CB to deposit the dollar proceeds in its name, into concluding that a trust relationship had been created. Petitioner insists that it did so only in reaction to the earlier CB letter dated November 20, 1975 which first ordered petitioner to receive the dollar insurance proceeds and deposit the same with any local bank in a non-interest bearing account in the names of Transocean and REPACOM jointly, and that it (petitioner) made such request to avoid having the dollar proceeds paid directly to the account of the two insured, as that would be tantamount to full payment of the loss without first securing petitioner’s release from its liabilities under the insurance policies. In short, petitioner claims it was just trying to protect its interest when it made such request. Petitioner further scores the respondent Court for relying on the two insured’s arrangement contained in the Partial Compromise Agreement that the dollar balance be kept in the same bank deposit (held by petitioner) "in trust for and in the joint name of REPACOM and TRANSOCEAN." Petitioner insists it was never a party to said compromise agreement, and that therefore, it should not be held bound by anything contained therein, and simply because it "did not in any way manifest objection thereto"[24]

Petitioner’s arguments notwithstanding, we hold that the courts below were correct in concluding that a trust relationship existed. It is basic in law that a trust is the right, enforceable solely in equity, to the beneficial enjoyment of property, the legal title to which is vested in another.[25] It is a fiduciary relationship[26] concerning property which obliges a person holding it (i.e., the trustee) to deal with the property for the benefit of another (i.e., the beneficiary). The Civil Code provides that:

"Article 1441. Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. x x x.

"Article 1444. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended."

Express trusts are created by direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust.[27]

The evidence on record is clear that petitioner held on to the dollar balance of the insurance proceeds because (1) private respondent and REPACOM requested it to do so as they had not yet agreed on the amount of their respective claims, and the Final Compromise Agreement was yet to be executed, and (2) they had not, prior to January 31, 1977, signed the Loss and Subrogation Receipt in favor of petitioner.

Furthermore, petitioner’s letter dated November 20, 1975 addressed to the CB expressly stated that the deposit in Prudential Bank was being made in its name for the joint account of the private respondent and REPACOM. Petitioner never claimed ownership over the funds in said deposit. In fact, it made several tenders of payment to the private respondent and REPACOM, albeit the latter declined to accept since the dispute as to their respective claims could not yet be resolved at that time. By its own allegation, petitioner held on to the dollar balance of the insurance proceeds to protect its interest, as it was not yet granted the right of subrogation over the total loss of the vessel. As petitioner continued holding on to the deposit for the benefit of private respondent and REPACOM, petitioner obviously recognized its fiduciary relationship with said parties. This is the essence of the trust flowing from the actions and communications of petitioner.

In *Mindanao Development Authority vs. Court of Appeals*,[28] this Court held:

"x x x It is fundamental in the law of trusts that certain requirements must exist before an express trust will be recognized. Basically, these elements include a competent trustor and trustee, an ascertainable trust res, and sufficiently certain beneficiaries. Stilted formalities are unnecessary, but nevertheless each of the above elements is required to be established, and, if any one of them is missing, it is fatal to the trusts (sic). Furthermore, there must be a present and complete disposition of the trust property, notwithstanding that the enjoyment in the beneficiary will take place in the future. It is essential, too, that the purpose be an active one to prevent trust from being executed into a legal estate or interest, and one that is not in contravention of some prohibition of statute or rule of public policy. There must also be some power of administration other than a mere duty to perform a contract although the contract is for a third-party beneficiary. A declaration of terms is essential, and these must be stated with reasonable certainty in order that the trustee may administer, and that the court, if called upon so to do, may enforce, the trust." (citing Sec. 31, Trusts, Am Jur 2d, pp. 278-279.)

Undeniably, all the abovementioned elements are present in the instant case. Petitioner's argument that it was never a party to the Partial Compromise Agreement is unavailing, since, upon being furnished a copy of the same, it undoubtedly became aware -- if it was not already aware even prior thereto -- that the parties to said agreement considered petitioner as their trustee in respect of said dollar balance; in short, it is all too evident that petitioner fully grasped the situation and realized that private respondent and REPACOM were constituting petitioner their trustee. Yet, petitioner not only did not manifest any objection thereto, but it instead proceeded to accept its role and responsibility as such trustee by implementing the compromise agreement. Equally as significant, petitioner never committed any act amounting to an unequivocal repudiation of its role as trustee.

Petitioner's desperate attempt to establish a viable defense by way of its allegation that no fiduciary relationship could have existed because of the joint insured's adversary positions with respect to the insurance proceeds deserves scant consideration. The so-called adversary positions of the parties had no effect on the trust as it never changed the position of the parties in relation to each other and to the dollar proceeds, i.e., petitioner held it for private respondent and REPACOM, which were the real owners of the money.

Second Issue: The Significance Of The Loss and Subrogation Receipt

The respondent Court committed no reversible error in its appreciation of the Loss and Subrogation Receipt, which reads in relevant part:

"x x x we have unconditionally and absolutely accepted full payment from Rizal Surety & Insurance Company, as insurer, of its total liabilities.

In consideration of this full payment, we hereby assign, cede and transfer to said Insurance Company any and all claims, interests and demands of whatever nature against any person, entity, corporation or property arising from or otherwise connected with such total loss of the insured property and we hereby acknowledge that the said Company is subrogated in our place and stead to any and all claims, interests and demands that we have, or in the future might have, against all persons, entities, corporations or properties to the full extent of the abovementioned payment received by us."

Said receipt absolved the petitioner only from all claims arising from the insurance policies it issued. It did not exculpate petitioner from its liability for the accrued interest as this obligation arose in connection with its role as trustee and its unjustified refusal to deposit the money in an interest-bearing account as required.

The respondent Court correctly held that:

"RIZAL gives undue importance to the Loss and Subrogation Receipt (Exh. U-1) signed by TRANSOCEAN and REPACOM in an effort to absolve itself from liability.

The execution of the said Loss and Subrogation Receipt did not preclude the joint insured from claiming the accrued interest. TRANSOCEAN and REPACOM released RIZAL only from its (RIZAL) liabilities arising

from the insurance policies issued, that is, in regard to the principal amount representing the insurance proceeds but not to the accrued interest which stemmed from its refusal to deposit the disputed dollar portion in violation of its duty as a trustee to deposit the same under the terms most advantageous to TRANSOCEAN and REPACOM. Corollary thereto, RIZAL was subrogated to the rights which stemmed from the insurance contract but not to those which arise from the trust relationship; otherwise, that would lead to an absurd situation."

At most, the signing of the Loss and Subrogation Receipt was a valid pre-condition before petitioner could be compelled to turn over the whole amount of the insurance proceeds to the two insured. Thus, in response to the letter of private respondent and REPACOM to petitioner dated April 21, 1975, petitioner reiterated its offer to pay the balance of the insurance claim provided the former sign the Loss and Subrogation Receipt. But this was done only on October 10, 1977.

Third Issue: Liability of Petitioner For Accrued Interest

Petitioner argues, rather unconvincingly, that it was of the belief that, as it was never the trustee for the insured and thus was under no obligation to execute the instruction to transfer the dollar balance into an interest-bearing account, therefore, it was also not obligated -- and hence it did not bother -- to advise private respondent and REPACOM that it would neither remit the dollar balance to the insured's bank of choice as specifically instructed, nor just deposit the same in an interest-bearing account at Prudential Bank. Petitioner's other contention that it was not bound by the CB order, despite its having been informed thereof and copy furnished by private respondent and REPACOM, simply because said order was not directed to it, is even more ridiculous and undeserving of further comment.

Originally, petitioner, as shown by its November 25, 1975 letter, only agreed to receive and deposit the money under its name for the joint account of the private respondent and REPACOM in a non-interest bearing account. At that point, as trustee, it could have easily discharged its obligation by simply transferring and paying the dollar balance to private respondent and REPACOM and by so doing, would have dissolved the trust. However, when the trustors instructed petitioner as trustee to deposit the funds in an interest-bearing account, the latter ought, as a matter of ordinary common sense and common decency, to have at least informed the insured that it could not or would not, for whatever reason, carry out said instructions. This is the very least it could have done if indeed it wanted to repudiate its role as trustee or be relieved of its obligations as such trustee at that point. Instead of doing thus, petitioner chose to remain silent. After petitioner's receipt of the April 21, 1976 letter of private respondent and REPACOM requesting petitioner to remit the dollar balance to an interest-bearing account, petitioner merely tendered payment of the said dollar balance in exchange for the signed Loss and Subrogation Receipt. This falls far short of the requirement to clearly inform the trustor-beneficiaries of petitioner's refusal or inability to comply with said request/instruction. Such silence and inaction in the face of specific written instructions from the trustors-beneficiaries could not but have misled the latter into thinking that the trustee was amenable to and was carrying out their instructions, there being no reason for them to think otherwise. This in turn prevented the trustors-beneficiaries from early on taking action to discharge the unwilling trustee and appointing a new trustee in its place or from otherwise effecting the transfer of the deposit into an interest-bearing account. The result was that the trustors-beneficiaries, private respondent and REPACOM, suffered prejudice in the form of loss of interest income on the dollar balance. As already mentioned, such prejudice could have been prevented had petitioner acted promptly and in good faith by communicating its real intentions to the trustors.

Beyond the foregoing considerations, we must also make mention of the matter of undue enrichment. We agree with private respondent that the dollar balance of US\$718,078.20 was certainly a large sum of money. Leaving such an enormous amount in a non-interest bearing bank account for an extended period of time -- about one year

and nine months -- would undoubtedly have not only prejudiced the owner(s) of the funds, but, equally as true, would have resulted to the immense benefit of Prudential Bank (which happens to be a sister company of the petitioner), which beyond the shadow of a doubt must have earned income thereon by utilizing and relending the same without having to pay any interest cost thereon. However, one looks at it, it is grossly unfair for anyone to earn income on the money of another and still refuse to share any part of that income with the latter. And whether petitioner benefitted directly, or indirectly as by enabling its sister company to earn income on the dollar balance, is immaterial. The fact is that petitioner's violation of its duty as trustee was at the expense of private respondent, and for the ultimate benefit of petitioner or its stockholders. This we cannot let pass.

Fourth Issue: Award of Attorney's Fees is Improper

Petitioner argues that respondent Court erred in affirming RTC's award of attorney's fees and costs of suit, repeating the oft-heard refrain that it is not sound public policy to place a premium on the right to litigate.

It is well settled that attorney's fees should not be awarded in the absence of stipulation except under the instances enumerated in Art. 2208 of the New Civil Code. As held by this Court in *Solid Homes, Inc. vs. Court of Appeals*:^[29]

"Article 2208 of the Civil Code allows attorney's fees to be awarded by a court when its claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought. While judicial discretion is here extant, an award thereof demands, nevertheless, a factual, legal or equitable justification. The matter cannot and should not be left to speculation and conjecture (*Mirasol vs. De la Cruz*, 84 SCRA 337; *Stronghold Insurance Company, Inc. vs. Court of Appeals*, 173 SCRA 619).

In the case at bench, the records do not show enough basis for sustaining the award for attorney's fees and to adjudge its payment by petitioner. x x x"

Likewise, this Court held in *Stronghold Insurance Company, Inc. vs. Court of Appeals*^[30] that:

"In *Abrogar v. Intermediate Appellate Court* [G.R. No. 67970, January 15, 1988, 157 SCRA 57] the Court had occasion to state that '[t]he reason for the award of attorney's fees must be stated in the text of the court's decision, otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed on appeal.' x x x"

The Court finds that the same situation obtains in this case. A perusal of the text of the decisions of the trial court and the appellate Court reveals the absence of any justification for the award of attorney's fees made in the fallo or dispositive portions. Hence, the same should be disallowed and deleted.

WHEREFORE, the petition is DENIED, and the assailed Decision is hereby AFFIRMED with the sole modification that the award of attorney's fees in favor of private respondent is DELETED.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 38-52.

[2] Fifteenth Division, composed of J. Gloria C. Paras, chairman and ponente, and JJ. Jesus M. Elbinias and Serafin V.C. Guingona, concurring.

[3] Rollo, pp. 131-147.

[4] Judge Felix V. Barbers presiding.

- [5] Annex "A", Petition; rollo, pp. 63-70; and Annex "B", Petition; rollo, pp. 71-75.
- [6] Exhibit "C", Records, p. 15.
- [7] Exhibit "D", Records, p. 16.
- [8] Exhibit "E", Records, p. 18.
- [9] Rollo, p. 76.
- [10] Exhibit "I", Records, pp. 22-23; also, rollo, pp. 77-78.
- [11] Rollo, p. 79.
- [12] Rollo, p. 82.
- [13] Rollo, pp. 85-89.
- [14] Rollo, pp. 90-91.
- [15] Rollo, p. 92.
- [16] Exhibit "R", Records, pp. 39-40.
- [17] Rollo, pp. 93-94.
- [18] Rollo, pp. 99-103.
- [19] RTC decision, pp. 16-17; rollo, pp. 146-147.
- [20] Memorandum for the private respondent, p. 3; rollo, p. 213.
- [21] CA Decision, pp. 7-8; rollo, pp. 44-45.
- [22] Petition, p. 10; rollo, p. 15.
- [23] Letter of petitioner to CB dated November 25, 1975.
- [24] CA Decision, at p. 10.
- [25] *Ramos vs. Ramos*, 61 SCRA 284, 297, December 3, 1974.
- [26] *Pacheco vs. Arro*, 85 Phil. 505, 514-515, February 22, 1950.
- [27] 89 C.J.S. 722; *Ramos vs. Ramos*, *supra*; *Salao vs. Salao*, 70 SCRA 65, 80, March 16, 1976; *Medina vs. CA*, 109 SCRA 437, 445, November 27, 1981.
- [28] 113 SCRA 429, 436-437, April 5, 1982.
- [29] 235 SCRA 299, 303-304, August 12, 1994.
- [30] 173 SCRA 619, 628, May 29, 1989.

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