

PHILIPPINE BANK OF COMMERCE, NOW ABSORBED BY PHILIPPINE COMMERCIAL INTERNATIONAL BANK, ROGELIO LACSON, DIGNA DE LEON, MARIA ANGELITA PASCUAL, ET AL., PETITIONERS, VS. THE COURT ...

G.R. No. 97626. March 14, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Challenged in this petition for review is the Decision dated February 28, 1991[1] rendered by public respondent Court of Appeals which affirmed the Decision dated November 15, 1985 of the Regional Trial Court, National Capital Judicial Region, Branch CLX (160), Pasig City, in Civil Case No. 27288 entitled “Rommel's Marketing Corporation, etc. v. Philippine Bank of Commerce, now absorbed by Philippine Commercial and Industrial Bank.

The case stemmed from a complaint filed by the private respondent Rommel's Marketing Corporation (RMC for brevity), represented by its President and General Manager Romeo Lipana, to recover from the former Philippine Bank of Commerce (PBC for brevity), now absorbed by the Philippine Commercial International Bank, the sum of P304,979.74 representing various deposits it had made in its current account with said bank but which were not credited to its account, and were instead deposited to the account of one Bienvenido Cotas, allegedly due to the gross and inexcusable negligence of the petitioner bank.

RMC maintained two (2) separate current accounts, Current Account Nos. 53-01980-3 and 53-01748-7, with the Pasig Branch of PBC in connection with its business of selling appliances.

In the ordinary and usual course of banking operations, current account deposits are accepted by the bank on the basis of deposit slips prepared and signed by the depositor, or the latter's agent or representative, who indicates therein the current account number to which the deposit is to be credited, the name of the depositor or current account holder, the date of the deposit, and the amount of the deposit either in cash or checks. The deposit slip has an upper portion or stub, which is detached and given to the depositor or his agent; the lower portion is retained by the bank. In some instances, however, the deposit slips are prepared in duplicate by the depositor. The original of the deposit slip is retained by the bank, while the duplicate copy is returned or given to the depositor.

From May 5, 1975 to July 16, 1976, petitioner Romeo Lipana claims to have entrusted RMC funds in the form of cash totalling P304,979.74 to his secretary, Irene Yabut, for the purpose of depositing said funds in the current accounts of RMC with PBC. It turned out, however, that these deposits, on all occasions, were not credited to RMC's account but were instead deposited to Account No. 53-01734-7 of Yabut's husband, Bienvenido Cotas who likewise maintains an account with the same bank. During this period, petitioner bank had, however, been regularly furnishing private respondent with monthly statements showing its current accounts balances. Unfortunately, it had never been the practice of Romeo Lipana to check these monthly statements of account reposing complete trust and confidence on petitioner bank.

Irene Yabut's modus operandi is far from complicated. She would accomplish two (2) copies of the deposit slip, an original and a duplicate. The original showed the name of her husband as depositor and his current account number. On the duplicate copy was written the account number of her husband but the name of the account holder was left blank. PBC's teller, Azucena Mabayad, would, however, validate and stamp both the original and the duplicate of these deposit slips retaining only the original copy despite the lack of information on the duplicate slip. The second copy was kept by Irene Yabut allegedly for record purposes. After validation, Yabut would then fill up the name of RMC in the space left blank in the duplicate copy and change the account number written thereon, which is that of her husband's, and make it appear to be RMC's account number, i.e., C.A. No. 53-01980-3. With the daily remittance records also prepared by Ms. Yabut and submitted to private respondent RMC together with the validated duplicate slips with the latter's name and account number, she made her company believe that all the while the amounts she deposited were being credited to its account when, in truth and in fact, they were being deposited by her and credited by the petitioner bank in the account of Cotas. This went on in a span of more than one (1) year without private respondent's knowledge.

Upon discovery of the loss of its funds, RMC demanded from petitioner bank the return of its money, but as its demand went unheeded, it filed a collection suit before the Regional Trial Court of Pasig, Branch 160. The trial court found petitioner bank negligent and ruled as follows:

"WHEREFORE, judgment is hereby rendered sentencing defendant Philippine Bank of Commerce, now absorbed by defendant Philippine Commercial & Industrial Bank, and defendant Azucena Mabayad to pay the plaintiff, jointly and severally, and without prejudice to any criminal action which may be instituted if found warranted:

1. The sum of P304,979.72, representing plaintiff's lost deposit, plus interest thereon at the legal rate from the filing of the complaint;
2. A sum equivalent to 14% thereof, as exemplary damages;
3. A sum equivalent to 25% of the total amount due, as and for attorney's fees; and
4. Costs.

Defendants' counterclaim is hereby dismissed for lack of merit."[2]

On appeal, the appellate court affirmed the foregoing decision with modifications, viz:

"WHEREFORE, the decision appealed from herein is MODIFIED in the sense that the awards of exemplary damages and attorney's fees specified therein are eliminated and instead, appellants are ordered to pay plaintiff, in addition to the principal sum of P304,979.74 representing plaintiff's lost deposit plus legal interest thereon from the filing of the complaint, P25,000.00 attorney's fees and costs in the lower court as well as in this Court."[3]

Hence, this petition anchored on the following grounds:

- 1) The proximate cause of the loss is the negligence of respondent Rommel Marketing Corporation and Romeo Lipana in entrusting cash to a dishonest employee.
- 2) The failure of respondent Rommel Marketing Corporation to cross-check the bank's statements of account with its own records during the entire period of more than one (1) year is the proximate cause of the commission of subsequent frauds and misappropriation committed by Ms. Irene Yabut.
- 3) The duplicate copies of the deposit slips presented by respondent Rommel Marketing Corporation are falsified and are not proof that the amounts appearing thereon were deposited to respondent Rommel Marketing Corporation's account with the bank.

4) The duplicate copies of the deposit slips were used by Ms. Irene Yabut to cover up her fraudulent acts against respondent Rommel Marketing Corporation, and not as records of deposits she made with the bank.[4]

The petition has no merit.

Simply put, the main issue posited before us is: What is the proximate cause of the loss, to the tune of P304,979.74, suffered by the private respondent RMC -- petitioner bank's negligence or that of private respondent's?

Petitioners submit that the proximate cause of the loss is the negligence of respondent RMC and Romeo Lipana in entrusting cash to a dishonest employee in the person of Ms. Irene Yabut.[5] According to them, it was impossible for the bank to know that the money deposited by Ms. Irene Yabut belong to RMC; neither was the bank forewarned by RMC that Yabut will be depositing cash to its account. Thus, it was impossible for the bank to know the fraudulent design of Yabut considering that her husband, Bienvenido Cotas, also maintained an account with the bank. For the bank to inquire into the ownership of the cash deposited by Ms. Irene Yabut would be irregular. Otherwise stated, it was RMC's negligence in entrusting cash to a dishonest employee which provided Ms. Irene Yabut the opportunity to defraud RMC.[6]

Private respondent, on the other hand, maintains that the proximate cause of the loss was the negligent act of the bank, thru its teller Ms. Azucena Mabayad, in validating the deposit slips, both original and duplicate, presented by Ms. Yabut to Ms. Mabayad, notwithstanding the fact that one of the deposit slips was not completely accomplished.

We sustain the private respondent.

Our law on quasi-delicts states:

"Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter."

There are three elements of a quasi-delict: (a) damages suffered by the plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.[7]

In the case at bench, there is no dispute as to the damage suffered by the private respondent (plaintiff in the trial court) RMC in the amount of P304, 979.74. It is in ascribing fault or negligence which caused the damage where the parties point to each other as the culprit.

Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do. The seventy-eight (78)-year-old, yet still relevant, case of *Picart v. Smith*,^[8] provides the test by which to determine the existence of negligence in a particular case which may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.

Applying the above test, it appears that the bank's teller, Ms. Azucena Mabayad, was negligent in validating,

officially stamping and signing all the deposit slips prepared and presented by Ms. Yabut, despite the glaring fact that the duplicate copy was not completely accomplished contrary to the self-imposed procedure of the bank with respect to the proper validation of deposit slips, original or duplicate, as testified to by Ms. Mabayad herself, thus:

"Q: Now, as teller of PCIB, Pasig Branch, will you please tell us Mrs. Mabayad your important duties and functions?

A: I accept current and savings deposits from depositors and encashments.

Q: Now in the handling of current account deposits of bank clients, could you tell us the procedure you follow?

A: The client or depositor or the authorized representative prepares a deposit slip by filling up the deposit slip with the name, the account number, the date, the cash breakdown, if it is deposited for cash, and the check number, the amount and then he signs the deposit slip.

Q: Now, how many deposit slips do you normally require in accomplishing current account deposit, Mrs. Mabayad?

A: The bank requires only one copy of the deposit although some of our clients prepare the deposit slip in duplicate.

Q: Now in accomplishing current account deposits from your clients, what do you issue to the depositor to evidence the deposit made?

A: We issue or we give to the clients the depositor's stub as a receipt of the deposit.

Q: And who prepares the deposit slip?

A: The depositor or the authorized representative sir.

Q: Where does the depositor's stub comes (sic) from Mrs. Mabayad, is it with the deposit slip?

A: The depositor's stub is connected with the deposit slip or the bank's copy. In a deposit slip, the upper portion is the depositor's stub and the lower portion is the bank's copy, and you can detach the bank's copy from the depositor's stub by tearing it sir.

Q: Now what do you do upon presentment of the deposit slip by the depositor or the depositor's authorized representative?

A: We see to it that the deposit slip [9] is properly accomplished and then we count the money and then we tally it with the deposit slip sir.

Q: Now is the depositor's stub which you issued to your clients validated?

A: Yes, sir. "[10] [Emphasis ours.]

Clearly, Ms. Mabayad failed to observe this very important procedure. The fact that the duplicate slip was not compulsorily required by the bank in accepting deposits should not relieve the petitioner bank of responsibility. The odd circumstance alone that such duplicate copy lacked one vital information -- that of the name of the account holder -- should have already put Ms. Mabayad on guard. Rather than readily validating the incomplete duplicate copy, she should have proceeded more cautiously by being more probing as to the true reason why the name of the account holder in the duplicate slip was left blank while that in the original was filled up. She should not have been so naive in accepting hook, line and sinker the too shallow excuse of Ms. Irene Yabut to the effect that since the duplicate copy was only for her personal record, she would simply fill up the blank space later on.[11] A "reasonable man of ordinary prudence"[12] would not have given credence to such explanation and would have insisted that the space left blank be filled up as a condition for validation. Unfortunately, this was not how bank teller Mabayad proceeded thus resulting in huge losses to the private respondent.

Negligence here lies not only on the part of Ms. Mabayad but also on the part of the bank itself in its lackadaisical selection and supervision of Ms. Mabayad. This was exemplified in the testimony of Mr. Romeo Bonifacio, then

Manager of the Pasig Branch of the petitioner bank and now its Vice-President, to the effect that, while he ordered the investigation of the incident, he never came to know that blank deposit slips were validated in total disregard of the bank's validation procedures, viz:

"Q: Did he ever tell you that one of your cashiers affixed the stamp mark of the bank on the deposit slips and they validated the same with the machine, the fact that those deposit slips were unfilled up, is there any report similar to that?

A: No, it was not the cashier but the teller.

Q: The teller validated the blank deposit slip?

A: No it was not reported.

Q: You did not know that any one in the bank tellers or cashiers validated the blank deposit slip?

A: I am not aware of that.

Q: It is only now that you are aware of that?

A: Yes, sir."[13]

Prescinding from the above, public respondent Court of Appeals aptly observed:

xxx xxx xxx

It was in fact only when he testified in this case in February, 1983, or after the lapse of more than seven (7) years counted from the period when the funds in question were deposited in plaintiffs accounts (May, 1975 to July, 1976) that bank manager Bonifacio admittedly became aware of the practice of his teller Mabayad of validating blank deposit slips. Undoubtedly, this is gross, wanton, and inexcusable negligence in the appellant bank's supervision of its employees."[14]

It was this negligence of Ms. Azucena Mabayad, coupled by the negligence of the petitioner bank in the selection and supervision of its bank teller, which was the proximate cause of the loss suffered by the private respondent, and not the latter's act of entrusting cash to a dishonest employee, as insisted by the petitioners.

Proximate cause is determined on the facts of each case upon mixed considerations of logic, common sense, policy and precedent.[15] *Vda. de Bataclan v. Medina*, [16] reiterated in the case of *Bank of the Phil. Islands v. Court of Appeals*, [17] defines proximate cause as "that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. x x x." In this case, absent the act of Ms. Mabayad in negligently validating the incomplete duplicate copy of the deposit slip, Ms. Irene Yabut would not have the facility with which to perpetrate her fraudulent scheme with impunity. Apropos, once again, is the pronouncement made by the respondent appellate court, to wit:

" x x x. Even if Yabut had the fraudulent intention to misappropriate the funds entrusted to her by plaintiff, she would not have been able to deposit those funds in her husband's current account, and then make plaintiff believe that it was in the latter's accounts wherein she had deposited them, had it not been for bank teller Mabayad's aforesaid gross and reckless negligence. The latter's negligence was thus the proximate, immediate and efficient cause that brought about the loss claimed by plaintiff in this case, and the failure of plaintiff to discover the same soon enough by failing to scrutinize the monthly statements of account being sent to it by appellant bank could not have prevented the fraud and misappropriation which Irene Yabut had already completed when she deposited plaintiff's money to the account of her husband instead of to the latter's accounts."[18]

Furthermore, under the doctrine of "last clear chance" (also referred to, at times as "supervening negligence" or as "discovered peril"), petitioner bank was indeed the culpable party. This doctrine, in essence, states that where both

parties are negligent, but the negligent act of one is appreciably later in time than that of the other, or when it is impossible to determine whose fault or negligence should be attributed to the incident, the one who had the last clear opportunity to avoid the impending harm and failed to do so is chargeable with the consequences thereof.[19] Stated differently, the rule would also mean that an antecedent negligence of a person does not preclude the recovery of damages for the supervening negligence of, or bar a defense against liability sought by another, if the latter, who had the last fair chance, could have avoided the impending harm by the exercise of due diligence.[20] Here, assuming that private respondent RMC was negligent in entrusting cash to a dishonest employee, thus providing the latter with the opportunity to defraud the company, as advanced by the petitioner, yet it cannot be denied that the petitioner bank, thru its teller, had the last clear opportunity to avert the injury incurred by its client, simply by faithfully observing their self-imposed validation procedure.

At this juncture, it is worth to discuss the degree of diligence ought to be exercised by banks in dealing with their clients.

The New Civil Code provides:

"ART. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required. (1104a)"

In the case of banks, however, the degree of diligence required is more than that of a good father of a family. Considering the fiduciary nature of their relationship with their depositors, banks are duty bound to treat the accounts of their clients with the highest degree of care.[21]

As elucidated in *Simex International (Manila), Inc. v. Court of Appeals*,[22] in every case, the depositor expects the bank to treat his account with the 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 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 failure to duly credit him his deposits as soon as they are made, can cause the depositor not a little embarrassment if not 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. In the case before us, it is apparent that the petitioner bank was remiss in that duty and violated that relationship.

Petitioners nevertheless aver that the failure of respondent RMC to cross-check the bank's statements of account with its own records during the entire period of more than one (1) year is the proximate cause of the commission of subsequent frauds and misappropriation committed by Ms. Irene Yabut.

We do not agree.

While it is true that had private respondent checked the monthly statements of account sent by the petitioner bank to RMC, the latter would have discovered the loss early on, such cannot be used by the petitioners to escape liability. This omission on the part of the private respondent does not change the fact that were it not for the wanton and reckless negligence of the petitioners' employee in validating the incomplete duplicate deposit slips presented by Ms. Irene Yabut, the loss would not have occurred. Considering, however, that the fraud was

committed in a span of more than one (1) year covering various deposits, common human experience dictates that the same would not have been possible without any form of collusion between Ms. Yabut and bank teller Mabayad. Ms. Mabayad was negligent in the performance of her duties as bank teller nonetheless. Thus, the petitioners are entitled to claim reimbursement from her for whatever they shall be ordered to pay in this case.

The foregoing notwithstanding, it cannot be denied that, indeed, private respondent was likewise negligent in not checking its monthly statements of account. Had it done so, the company would have been alerted to the series of frauds being committed against RMC by its secretary. The damage would definitely not have ballooned to such an amount if only RMC, particularly Romeo Lipana, had exercised even a little vigilance in their financial affairs. This omission by RMC amounts to contributory negligence which shall mitigate the damages that may be awarded to the private respondent[23] under Article 2179 of the New Civil Code, to wit:

"x x x. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded."

In view of this, we believe that the demands of substantial justice are satisfied by allocating the damage on a 60-40 ratio. Thus, 40% of the damage awarded by the respondent appellate court, except the award of P25,000.00 attorney's fees, shall be borne by private respondent RMC; only the balance of 60% needs to be paid by the petitioners. The award of attorney's fees shall be borne exclusively by the petitioners.

WHEREFORE, the decision of the respondent Court of Appeals is modified by reducing the amount of actual damages private respondent is entitled to by 40%. Petitioners may recover from Ms. Azucena Mabayad the amount they would pay the private respondent. Private respondent shall have recourse against Ms. Irene Yabut. In all other respects, the appellate court's decision is AFFIRMED.

Proportionate costs.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.

Padilla, J., (Chairman), dissents.

[1] Rollo, pp. 37-46.

[2] Rollo, pp. 40-41.

[3] Decision, pp.9-10; Rollo, pp. 45-46.

[4] Petition, pp. 13-14; Rollo, pp. 20-21.

[5] Petition, p. 14; Rollo, p. 21.

[6] Reply, p. 13; Rollo, p. 82.

[7] *Andamo vs. Intermediate Appellate Court*, 191 SCRA 195, 201 [1990], citing *Taylor vs. Manila Electric Company*, 16 Phil. 8 [1910]; *Vergara vs. Court of Appeals*, 154 SCRA 564 [1987].

[8] 37 Phil. 809, 813 [1918], reiterated in *Bank of the Phil. Islands vs. Court of Appeals*, 216 SCRA 51,72-73 [1992]; *Layugan vs. Intermediate Appellate Court*, 167 SCRA 363, 373 [1988]; *Gan vs. Court of Appeals*, 165 SCRA. 378, 382 [1988]; see also *Leano v. Domingo*, 198 SCRA 800, 804 [1991].

[9] Original or duplicate.

[10] Rollo, pp. 104-105, citing TSN, 14 August 1981, pp. 6-12.

[11] Rollo, p. 56, citing TSN; 14 August 1981, pp. 42-47.

[12] Sangco, Torts and Damages, Vol. I, 1993 ed., p 8, citing Prosser, Law on Torts. 3rd Edition, 1964, pp. 153-154.

[13] Rollo, p. 43, citing TSN, 9 February 1983, pp. 10-12.

[14] Decision, p.8; Rollo, p. 44.

[15] Supra., note 12 at 90.

[16] 102 Phil. 181, 186 [1957].

[17] 216 SCRA 51, 75 [1992].

[18] Decision, pp. 6-7; Rollo, pp. 42-43.

[19] LBC Air Cargo, Inc. vs. Court of Appeals, 241 SCRA 619, 624 [1995], citing Picart vs. Smith, supra

[20] Ibid., citing Pantranco North Express. Inc. vs. Baesa, 179 SCRA 384; Glan People's Lumber and Hardware vs. Intermediate Appellate Court, 173 SCRA 464

[21] Metropolitan Bank and Trust Company vs. Court of Appeals, 237 SCRA 761, 767 [1994]; Bank of the Phil. Islands vs. Court of Appeals, supra., note 16 at 71.

[22] 183 SCRA 360, 367 [1990], cited in Bank of the Phil. Islands vs. Intermediate Appellate Court, 206 SCRA 408, 412-413 [1992]; City Trust Banking Corp. vs. Intermediate Appellate Court, 232 SCRA. 559, 564 [1994]; Metropolitan Bank and Trust Company v. CA, supra.

[23] Phoenix Construction, Inc. v. Intermediate Appellate Court, 148 SCRA 353, 368 [1987]; Del Prado v. Manila Electric Co., 52 Phil. 900, 906 [1929]; Rakes v. Atlantic, Gulf and Pacific Co., 7 Phil. 359, 375 [1907].

DISSENTING OPINION

PADILLA, J.:

I regret that I cannot join the majority in ruling that the proximate cause of the damage suffered by Rommel's Marketing Corporation (RMC) is mainly "the wanton and reckless negligence of the petitioner's employee in validating the incomplete duplicate deposit slips presented by Ms. Irene Yabut" (Decision, p. 15). Moreover, I find it difficult to agree with the ruling that "petitioners are entitled to claim reimbursement from her (the bank teller) for whatever they shall be ordered to pay in this case."

It seems that an innocent bank teller is being unduly burdened with what should fall on Ms. Irene Yabut, RMC's own employee, who should have been charged with estafa or estafa through falsification of private document. Interestingly, the records are silent on whether RMC had ever filed any criminal case against Ms. Irene Yabut, aside from the fact that she does not appear to have been impleaded even as a party defendant in any civil case for damages. Why is RMC insulating Ms. Irene Yabut from liability when in fact she orchestrated the entire fraud on RMC, her employer?

To set the record straight, it is not completely accurate to state that from 5 May 1975 to 16 July 1976, Miss Irene

Yabut had transacted with PCIB (then PBC) through only one teller in the person of Azucena Mabayad. In fact, when RMC filed a complaint for estafa before the Office of the Provincial Fiscal of Rizal, it indicted all the tellers of PCIB in the branch who were accused of conspiracy to defraud RMC of its current account deposits. (See Annex B, Rollo, p. 22 and 47).

Even private respondent RMC, in its Comment, maintains that "when the petitioner's tellers" allowed Irene Yabut to carry out her *modus operandi* undetected over a period of one year, "their negligence cannot but be gross. (Rollo, p. 55; see also Rollo, pp. 58 to 59). This rules out the possibility that there may have been some form of collusion between Yabut and bank teller Mabayad. Mabayad was just unfortunate that private respondent's documentary evidence showed that she was the attending teller in the bulk of Yabut's transactions with the bank.

Going back to Yabut's *modus operandi*, it is not disputed that each time Yabut would transact business with PBC's tellers, she would accomplish two (2) copies of the current account deposit slip. PBC's deposit slip, as issued in 1975, had two parts. The upper part was called the depositor's stub and the lower part was called the bank copy. Both parts were detachable from each other. The deposit slip was prepared and signed by the depositor or his representative, who indicated therein the current account number to which the deposit was to be credited, the name of the depositor or current account holder, the date of the deposit, and the amount of the deposit either in cash or in checks. (Rollo, p. 137)

Since Yabut deposited money in cash, the usual bank procedure then was for the teller to count whether the cash deposit tallied with the amount written down by the depositor in the deposit slip. If it did, then the teller proceeded to verify whether the current account number matched with the current account name as written in the deposit slip.

In the earlier days before the age of full computerization, a bank normally maintained a ledger which served as a repository of accounts to which debits and credits resulting from transactions with the bank were posted from books of original entry. Thus, it was only after the transaction was posted in the ledger that the teller proceeded to machine validate the deposit slip and then affix his signature or initial to serve as proof of the completed transaction.

It should be noted that the teller validated the depositor's stub in the upper portion and the bank copy on the lower portion on both the original and duplicate copies of the deposit slips presented by Yabut. The teller, however, detached the validated depositor's stub on the original deposit slip and allowed Yabut to retain the whole validated duplicate deposit slip that bore the same account number as the original deposit slip, but with the account name purposely left blank by Yabut, on the assumption that it would serve no other purpose but for a personal record to complement the original validated depositor's stub.

Thus, when Yabut wrote the name of RMC on the blank account name on the validated duplicate copy of the deposit slip, tampered with its account number, and superimposed RMC's account number, said act only served to cover-up the loss already caused by her to RMC, or after the deposit slip was validated by the teller in favor of Yabut's husband. Stated otherwise, when there is a clear evidence of tampering with any of the material entries in a deposit slip, the genuineness and due execution of the document become an issue in resolving whether or not the transaction had been fair and regular and whether the ordinary course of business had been followed by the bank.

It is logical, therefore, to conclude that the legal or proximate cause of RMC's loss was when Yabut, its employee, deposited the money of RMC in her husband's name and account number instead of that of RMC, the rightful owner of such deposited funds. Precisely, it was the criminal act of Yabut that directly caused damage to RMC, her employer, not the validation of the deposit slip by the teller as the deposit slip was made out by Yabut in her husband's name and to his account.

Even if the bank teller had required Yabut to completely fill up the duplicate deposit slip, the original deposit slip would nonetheless still be validated under the account of Yabut's husband. In fine, the damage had already been done to RMC when Yabut deposited its funds in the name and account number of her husband with petitioner bank. It is then entirely left to speculation what Yabut would have done afterwards — like tampering both the account number and the account name on the stub of the original deposit slip and on the duplicate copy — in order to cover up her crime.

Under the circumstances in this case, there was no way for PBC's bank tellers to reasonably foresee that Yabut might or would use the duplicate deposit slip to cover up her crime. In the first place, the bank tellers were absolutely unaware that a crime had already been consummated by Yabut when her transaction by her sole doing was posted in the ledger and validated by the teller in favor of her husband's account even if the funds deposited belonged to RMC.

The teller(s) in this case were not in any way proven to be parties to the crime either as accessories or accomplices. Nor could it be said that the act of posting and validation was in itself a negligent act because the teller(s) simply had no choice but to accept and validate the deposit as written in the original deposit slip under the account number and name of Yabut's husband. Hence, the act of validating the duplicate copy was not the proximate cause of RMC's injury but merely a remote cause which an independent cause or agency merely took advantage of to accomplish something which was not the probable or natural effect thereof. That explains why Yabut still had to tamper with the account number of the duplicate deposit slip after filling in the name of RMC in the blank space.

Coming now to the doctrine of "last clear chance," it is my considered view that the doctrine assumes that the negligence of the defendant was subsequent to the negligence of the plaintiff and the same must be the proximate cause of the injury. In short, there must be a last and a clear chance, not a last possible chance, to avoid the accident or injury. It must have been a chance as would have enabled a reasonably prudent man in like position to have acted effectively to avoid the injury and the resulting damage to himself.

In the case at bar, the bank was not remiss in its duty of sending monthly bank statements to private respondent RMC so that any error or discrepancy in the entries therein could be brought to the bank's attention at the earliest opportunity. Private respondent failed to examine these bank statements not because it was prevented by some cause in not doing so, but because it was purposely negligent as it admitted that it does not normally check bank statements given by banks.

It was private respondent who had the last and clear chance to prevent any further misappropriation by Yabut had it only reviewed the status of its current accounts on the bank statements sent to it monthly or regularly. Since a sizable amount of cash was entrusted to Yabut, private respondent should, at least, have taken ordinary care of its concerns, as what the law presumes. Its negligence, therefore, is not contributory but the immediate and proximate cause of its injury.

I vote to grant the petition.

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