

PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND RORY W. LIM, RESPONDENTS.

G.R. No. 97785. March 29, 1996

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a petition for review on certiorari seeking the reversal of the Decision of the Court of Appeals in CA-G.R. No. 18843 promulgated on July 30, 1990, and the Resolution dated March 11, 1991, affirming with modification the judgment of the Regional Trial Court of Gingoog City which held petitioner Philippine Commercial International Bank (PCIB) liable for damages resulting from its breach of contract with private respondent Rory W. Lim.

Disputed herein is the validity of the stipulation embodied in the standard application form/receipt furnished by petitioner for the purchase of a telegraphic transfer which relieves it of any liability resulting from loss caused by errors or delays in the course of the discharge of its services.

The antecedent facts are as follows:

On March 13, 1986, private respondent Rory Lim delivered to his cousin Lim Ong Tian PCIB Check No. JJJ 24212467 in the amount of P200,000.00 for the purpose of obtaining a telegraphic transfer from petitioner PCIB in the same amount. The money was to be transferred to Equitable Banking Corporation, Cagayan de Oro Branch, and credited to private respondent's account at the said bank. Upon purchase of the telegraphic transfer, petitioner issued the corresponding receipt dated March 13, 1986 [T/T No. 284][1] which contained the assailed provision, to wit:

"AGREEMENT

xxx xxx xxx

In case of fund transfer, the undersigned hereby agrees that such transfer will be made without any responsibility on the part of the BANK, or its correspondents, for any loss occasioned by errors, or delays in the transmission of message by telegraph or cable companies or by the correspondents or agencies, necessarily employed by this BANK in the transfer of this money, all risks for which are assumed by the undersigned."

Subsequent to the purchase of the telegraphic transfer, petitioner in turn issued and delivered eight (8) Equitable Bank checks[2] to his suppliers in different amounts as payment for the merchandise that he obtained from them. When the checks were presented for payment, five of them bounced for insufficiency of funds,[3] while the remaining three were held overnight for lack of funds upon presentment.[4] Consequent to the dishonor of these checks, Equitable Bank charged and collected the total amount of P1, 100.00 from private respondent. The dishonor of the checks came to private respondent's attention only on April 2, 1986, when Equitable Bank notified him of the penalty charges and after receiving letters from his suppliers that his credit was being cut-off due to the dishonor of the checks he issued.

Upon verification by private respondent with the Gingoog Branch Office of petitioner PCIB, it was confirmed that his telegraphic transfer (T/T No. 284) for the sum of P200,000.00 had not yet been remitted to Equitable Bank, Cagayan de Oro branch. In fact, petitioner PCIB made the corresponding transfer of funds only on April 3, 1986, twenty one (21) days after the purchase of the telegraphic transfer on March 13, 1986.

Aggrieved, private respondent demanded from petitioner PCIB that he be compensated for the resulting damage that he suffered due to petitioner's failure to make the timely transfer of funds which led to the dishonor of his checks. In a letter dated April 23, 1986, PCIB's Branch Manager Rodolfo Villarmia acknowledged their failure to transmit the telegraphic transfer on time as a result of their mistake in using the control number twice and the petitioner bank's failure to request confirmation and act positively on the disposition of the said telegraphic transfer.[5]

Nevertheless, petitioner refused to heed private respondent's demand prompting the latter to file a complaint for damages with the Regional Trial Court of Gingoog City[6] on January 16, 1987. In his complaint, private respondent alleged that as a result of petitioner's total disregard and gross violation of its contractual obligation to remit and deliver the sum of Two Hundred Thousand Pesos (P200,000.00) covered by T/T No. 284 to Equitable Banking Corporation, Cagayan de Oro Branch, private respondent's checks were dishonored for insufficient funds thereby causing his business and credit standing to suffer considerably for which petitioner should be ordered to pay damages.[7]

Answering the complaint, petitioner denied any liability to private respondent and interposed as special and affirmative defense the lack of privity between it and private respondent as it was not private respondent himself who purchased the telegraphic transfer from petitioner. Additionally, petitioner pointed out that private respondent is nevertheless bound by the stipulation in the telegraphic transfer application/form receipt[8] which provides:

"x x x. In case of fund transfer, the undersigned hereby agrees that such transfer will be made without any responsibility on the part of the BANK, or its correspondents, for any loss occasioned by errors or delays in the transmission of message by telegraph or cable companies or by correspondents or agencies, necessarily employed by this BANK in the transfer of this money, all risks for which are assumed by the undersigned."

According to petitioner, they utilized the services of RCPI-Gingoog City to transmit the message regarding private respondent's telegraphic transfer because their telex machine was out of order at that time. But as it turned out, it was only on April 3, 1986 that petitioner's Cagayan de Oro Branch had received information about the said telegraphic transfer.[9]

In its decision dated July 27, 1988[10] the Regional Trial Court of Gingoog City held petitioner liable for breach of contract and struck down the aforecited provision found in petitioner's telegraphic transfer application form/receipt exempting it from any liability and declared the same to be invalid and unenforceable. As found by the trial court, the provision amounted to a contract of adhesion wherein the objectionable portion was unilaterally inserted by petitioner in all its application forms without giving any opportunity to the applicants to question the same and express their conformity thereto.[11] Thus, the trial court adjudged petitioner liable to private respondent for the following amounts:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant, ordering the latter to pay the former as follows:

P960,000.00 as moral damages;

P50,000.00 as exemplary damages;

P40,000.00 as attorney's fees; and

P1,100.00 as reimbursement for the surcharges paid by plaintiff to the Equitable Banking Corporation, plus costs, all with legal interest of 6% per annum from the date of this judgment until the same shall have been paid in full."[12]

Upon appeal by petitioner to the Court of Appeals, respondent court affirmed with modifications the judgment of the trial court and ordered as follows:

"WHEREFORE, premises considered, judgment is hereby rendered affirming the appealed decision with modification, as follows:

The defendant-appellant is ordered to pay to the plaintiff-appellee the following:

1. The sum of Four Hundred Thousand (P400,000.00) Pesos as/for moral damages;
2. The sum of Forty Thousand (P40,000.00) Pesos as exemplary damage to serve as an example for the public good;
3. The sum of Thirty Thousand (P30,000.00) Pesos representing attorney's fees;
4. The sum of One Thousand One Hundred (P1,100.00) Pesos as actual damage, and
5. To pay the costs.

SO ORDERED."[13]

A motion for reconsideration was filed by petitioner but respondent Court of Appeals denied the same.[14]

Still unconvinced, petitioner elevated the case to this Court through the instant petition for review on certiorari invoking the validity of the assailed provision found in the application form/receipt exempting it from any liability in case of loss resulting from errors or delays in the transfer of funds.

Petitioner mainly argues that even assuming that the disputed provision is a contract of adhesion, such fact alone does not make it invalid because this type of contract is not absolutely prohibited. Moreover, the terms thereof are expressed clearly, leaving no room for doubt, and both contracting parties understood and had full knowledge of the same.

Private respondent however contends that the agreement providing non-liability on petitioner's part in case of loss caused by errors or delays despite its recklessness and negligence is void for being contrary to public policy and interest.[15]

A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify.[16] One party prepares the stipulation in the contract, while the other party merely affixes his signature or his "adhesion" thereto,[17] giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.[18] Nevertheless, these types of contracts have been declared as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely.[19] It is equally important to stress, though, that the Court is not precluded from ruling out blind adherence to their terms if the attendant facts and circumstances show that they should be ignored for being obviously too one-sided.[20]

On previous occasions, it has been declared that a contract of adhesion may be struck down as void and unenforceable, for being subversive to public policy, only when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of

the opportunity to bargain on equal footing.[21] And when it has been shown that the complainant is knowledgeable enough to have understood the terms and conditions of the contract, or one whose stature is such that he is expected to be more prudent and cautious with respect to his transactions, such party cannot later on be heard to complain for being ignorant or having been forced into merely consenting to the contract.[22]

The factual backdrop of the instant case, however, militates against applying the aforestated pronouncements. That petitioner failed to discharge its obligation to transmit private respondent's telegraphic transfer on time in accordance with their agreement is already a settled matter as the same is no longer disputed in this petition. Neither is the finding of respondent Court of Appeals that petitioner acted fraudulently and in bad faith in the performance of its obligation, being contested by petitioner. Perforce, we are bound by these factual considerations.

Having established that petitioner acted fraudulently and in bad faith, we find it implausible to absolve petitioner from its wrongful acts on account of the assailed provision exempting it from any liability. In *Geraldez vs. Court of Appeals*,[23] it was unequivocally declared that notwithstanding the enforceability of a contractual limitation, responsibility arising from a fraudulent act cannot be exculpated because the same is contrary to public policy. Indeed, Article 21 of the Civil Code is quite explicit in providing that "[a]ny person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." Freedom of contract is subject to the limitation that the agreement must not be against public policy and any agreement or contract made in violation of this rule is not binding and will not be enforced.[24]

The prohibition against this type of contractual stipulation is moreover treated by law as void which may not be ratified or waived by a contracting party. Article 1409 of the Civil Code states:

"ART. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

xxx xxx xxx

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived."

Undoubtedly, the services being offered by a banking institution like petitioner are imbued with public interest.[25] The use of telegraphic transfers have now become commonplace among businessmen because it facilitates commercial transactions. Any attempt to completely exempt one of the contracting parties from any liability in case of loss notwithstanding its bad faith, fault or negligence, as in the instant case, cannot be sanctioned for being inimical to public interest and therefore contrary to public policy. Resultingly, there being no dispute that petitioner acted fraudulently and in bad faith, the award of moral[26] and exemplary damages were proper.

But notwithstanding petitioner's liability for the resulting loss and damage to private respondent, we find the amount of moral damages adjudged by respondent court in the sum of P400,000.00 exorbitant. Bearing in mind that moral damages are awarded, not to penalize the wrongdoer, but rather to compensate the claimant for the injuries that he may have suffered,[27] we believe that an award of Two Hundred Thousand Pesos (P200,000.00) is reasonable under the circumstances.

WHEREFORE, subject to the foregoing modification reducing the amount awarded as moral damages to the sum of Two Hundred Thousand Pesos (P200,000.00), the appealed decision is hereby **AFFIRMED**.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Panganiban, JJ., concur.

[1] Exhibit A.

[2] Exhibits B, C, D, E, F, G, H and I.

[3] Exhibits B, C, D, E and G.

[4] Exhibits F, H and I.

[5] Exhibit 5.

[6] Civil Case No. 87-047.

[7] Complaint, p.4, Record, p.4.

[8] Exhibit A.

[9] Answer, pp. 2-4, Record, pp. 39-41.

[10] Record, p. 181.

[11] Decision, pp. 11-12, Record, pp. 191-192.

[12] Decision, p. 13, Record, p. 193.

[13] Decision, p. 12; Rollo, p. 36.

[14] Rollo, p. 38.

[15] Comment, Rollo, p.48.

[16] Tolentino, Civil Code of the Philippines, Vol. IV (1986 Ed.), p. 506.

[17] Serra vs. Court of Appeals, 229 SCRA 60, 67(1994).

[18] Geraldez vs. Court of Appeals, 230 SCRA 320,331(1994).

[19] Court of Appeals, supra.

[20] Pan-American World Airways, Inc. vs. Rapadas, 209 SCRA 67, 75(1992).

[21] Saludo, Jr. vs. Court of Appeals, 207 SCRA 498,528(1992) citing Qua Chee Gan vs. Law Union and Rock Insurance Co., Ltd., etc., 98 Phil. 85(1955); Fieldman' s Insurance Co. Inc. vs. Vda. de Songco, 25 SCRA 70(1968); Sweet Lines vs. Teves, 83 SCRA 361 (1978).

[22] Serra vs. Court of Appeals, supra.

[23] Supra.

[24] 17 Am. Jur. 2d, Contracts 257.

[25] Simex International Manila, Inc. vs. Court of Appeals, 183 SCRA 360(1990).

[26] ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[27] Bautista vs. Mangaldan Rural Bank, Inc., 230 SCRA 16(1994).

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