

EQUITABLE PCI BANK (NOW BANCO DE ORO UNIBANK, INC.), PETITIONER, VS. CASTOR A. DOMPOR, RESPONDENT.

G.R. Nos. 163293 & 163297. December 13, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

A bank manager's abuse of authority in implementing bank policies is an abuse of the trust reposed in him by his employer which constitutes as a just cause for his termination.

This Petition for Review on Certiorari[1] assails the Decision[2] dated November 29, 2002 and Resolution[3] dated April 23, 2004 of the Court of Appeals (CA) in CA-G.R. SP Nos. 63948 and 65259, which reversed the Resolution[4] dated

August 31, 2000 of the National Labor Relations Commission (NLRC) finding respondent Castor A. Dompur to have been dismissed for cause.

Factual Antecedents

On October 1, 1975, respondent was employed by then Philippine Commercial and Industrial Bank (PCIB), which came to be Equitable PCI Bank and now herein petitioner Banco De Oro Unibank, Inc.[5] In 1995, he was assigned as branch manager of PCIB's Makati Cinema Branch.

On July 24, 1996, PCIB's Operations Subcenter Head, Gerardo C. Gabriel (Gabriel), called the attention of PCIB's Ayala-Makati Area Head, Cora Mallillin (Mallillin), regarding a number of Philippine Long Distance Telephone Company (PLDT) dividend checks being sent for clearing by PCIB Makati Cinema Branch. It appears that respondent allowed Luz Fuentes (Fuentes), a client-depositor of PCIB Makati Cinema Branch who opened Checking Account No. 0672-04408-0 on July 14, 1995, to deposit several second-endorsed PLDT dividend checks beginning the last quarter of 1995.

Acting on said report, a special audit was conducted on August 14-21, 1996. At the same time, an investigating committee was formed.

On September 2, 1996, the investigating committee conducted a hearing. Several officers and personnel including respondent were queried in relation to the irregular transactions involving the account of Fuentes. Due to the ongoing investigation, respondent was placed under preventive suspension from September 9-27, 1996,[6] which was further extended until October 8, 1996.[7]

Meanwhile, on October 21, 1996, the audit team submitted its findings, thus:

FACTS OF THE CASE.

1. xxx [F]rom 9.01.95 to 7.31.96, there were 67,748 PLOT dividend checks totaling P6.713M sent by Makati Cinema Branch for clearing, xxx [T]he checks were second-endorsed and mainly deposited by a certain Ms. Luz Fuentes (CA No. 0672-04408-0). Of these checks, 3,028 totaling P283M are being held by the Area

Office. These were the last batch of PLDT dividend checks negotiated at Makati Cinema Branch on 7.24.96.

2. The data mentioned in no. 1 were counter-checked with the transaction records at Makati Cinema Branch. The Daily Trial Balance and Transaction Register revealed that from the opening date of CA No. 0672-04408-0 on 7.14.95 to 7.24.96, other banks' checks totaling P6.657M were deposited to the account while P56M were purchased. TTie transactions were covered by 332 deposit slips.

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SIGNIFICANT FINDINGS.

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2. The account of Ms. Luz Fuentes (CA No. 0672-04408-0) was not closed by the Branch Head despite improper handling. From 12.01.95 to 7.31.96, 25 checks drawn on said account were lodged to Returned Checks and Other Cash Items, of which 11 were returned due to insufficiency of account balance.

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3. There were no documents or records presented by the Branch Head which serve as valid justification on the retention of the account and the acceptance of the second-endorsed PLDT dividend checks.

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EVALUATION.

1. The Branch Head, Mr. Castor A. Dompur, Jr. committed gross negligence tantamount to fraud and abuse of authority when he approved the acceptance of checks for deposit/purchase beyond his single approving authority of P15M. He (Mr. Castor A. Dompur, Jr.) failed to exercise prudence when he approved the acceptance of voluminous second-endorsed PLDT dividend checks in the name of different payees (individuals, schools, private corporations and government agencies) for deposit. The magnitude of the checks being deposited and large number of names of payees which included the names of prominent personalities [such as former First Lady Amelita Ramos, Bias Ople, Henry Sy, Lucio Tan, etc.] as payees should have prompted him (Mr. Castor Dompur, Jr.) to question the legality of negotiation of the checks. These lapses exposed the Bank to possible loss of P6.713M because the drawer of the checks can claim reimbursement for wrong payment or forger)' on the endorsement.

2. The magnitude of the PLDT dividend checks being deposited and the similarity of strokes of endorsement of different payees on the checks are strong indications that the checks were stolen and that the negotiation of the checks is fraudulent.

xxxx[8]

Thus, in a Memo9 dated October 23, 1996, respondent was directed to explain in writing why no disciplinary action should be taken against him for committing the following serious policy violations:

1) xxx Failure to comply with [PCIB Accounting Procedure Manual] APM 26B.5A.1b which states that checks payable to corporations, societies, firms, etc. for credit to a personal account and/or checks with unusual endorsement should not be accepted;

2) [Allowing/approving the acceptance of second-endorsed checks] despite Ayala-Makati Area management's instruction to stop accepting [this] type of deposits on June 27,1996[: and]

3) x x x failure to comply with [Credit Policy Supervision] (CPS) No. 6 which prohibits the purchase of second-endorsed PLDT checks totaling P56.435.26 in the absence of approved credit line on October 25,1995.

Respondent submitted his reply[10] on November 28, 1996. He claimed that there was no failure to comply with APM No. 26B.5A.lb because his acceptance of second-endorsed checks for deposit was solely for marketing considerations; that he only accepted checks which are payable to individuals and duly endorsed by the individual payees; and, that he made Fuentes sign an Agreement on Acceptance of Second-Endorsed Checks[11] in order to protect the interest of the bank.

Respondent further explained that in July 1996, he still accepted on two occasions second-endorsed checks despite the June 27, 1996 instruction of the management because, in the first instance, Mallillin gave her verbal approval thereto. On the second instance, the deposit was nevertheless cancelled since it included checks payable to corporations. Respondent further claimed that there was no violation of CPS No. 6 although he admitted that no Bills Purchase Line was established for Fuentes.

On February 7, 1997, respondent received a Memo[12] dated January 7, 1997 dismissing him from employment on the grounds of serious policy violations, willful breach of trust, and loss of confidence, with further sanction of forfeiture of benefits and contingent restitution of the total amount of P6,712,756.61 including costs.

Hence, respondent filed a case for illegal dismissal with money claims.

In his Position Paper, respondent reiterated that his acceptance of the second-endorsed checks did not violate any existing bank policy; and that he did not breach the trust reposed in him. He insisted that he accepted said checks solely for marketing considerations. Respondent also claimed denial of due process alleging that his dismissal was predetermined because no further investigation was conducted after the submission of his reply-explanation.

On the other hand, petitioner claimed that respondent committed flagrant and willful disobedience of bank policies and procedures when he accepted checks endorsed to corporations or firms for credit to the personal account of Fuentes as well as checks with unusual endorsements; when he accepted deposits which exceed his single approving limit; when he failed to close the account of Fuentes despite the mishandling of her account; and, when respondent failed to ensure that all procedures and approval requirements are complied with and being followed by designated staff and officer, thereby abusing his discretion and authority as branch manager. Petitioner alleged that respondent was accorded due process as he was given the opportunity to be heard and be informed of the charges.

Ruling of the Labor Arbiter

On May 26, 1999, the Labor Arbiter rendered a Decision[13] finding respondent's dismissal valid. The Labor Arbiter found respondent guilty of serious misconduct or willful disobedience when he did not close the account of Fuentes despite the fact that from December 1995 to July 1996, 11 of the checks issued by Fuentes were dishonored due to insufficiency of funds. From May 1996 to July 9, 1996, Fuentes again issued three unfunded checks.

The Labor Arbiter also held that while all the second-endorsed checks that were deposited to Fuentes' account were not dishonored, still, the bank was exposed to a substantial risk of loss as there is always a possibility that the payees would later complain that their signatures were forged.

In fine, the Labor Arbiter concluded that respondent was guilty of serious misconduct or willful disobedience, resulting to loss of trust and confidence, which is a just cause for dismissal. The Labor Arbiter, however, awarded respondent separation pay equivalent to one-half (1/2) month salary for every year of service for equity considerations after giving due regard to respondent's 22 years of service.

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered judgment is hereby rendered dismissing the instant complaint for lack of merit.

Respondent PCI Bank is, however, ordered to pay complainant Castor A. Dompur a separation pay of P495,000.00.

All other claims are also dismissed for lack of merit.

SO ORDERED.[14]

Proceedings before the National Labor Relations Commission

Both parties appealed to the NLRC. Respondent assailed the legality of his dismissal for want of substantive and procedural due process.[15] For its part, petitioner partially appealed the decision insofar as the award of separation pay in favor of respondent is concerned. It argued that PCIB's Code of Discipline provides for the automatic forfeiture of all benefits in cases of dismissal; that respondent's length of service should have instead been taken against him; and, that the amount granted is exorbitant.[16]

In its Resolution dated August 31, 2000,[17] the NLRC dismissed both appeals for lack of merit and, consequently, affirmed the Labor Arbiter's Decision. It held that petitioner, as employer, has the discretion of terminating an employee who holds a position of trust and confidence on the ground of lack or absence thereof. According to the NLRC, there were enough bases for the loss of trust and confidence on respondent by petitioner on account of the former's evident disobedience.

The NLRC also ruled that respondent was accorded due process. Before his termination, he was apprised of the charges against him in the October 23, 1996 Memo and was given a chance to refute the charges by virtue of a written reply-explanation submitted on November 28, 1996. The NLRC likewise sustained the award of separation pay as a form of equitable relief.

Petitioner then filed a Partial Motion for Reconsideration[18] [sic] to again question the grant of separation pay, claiming that there were no legal and equitable bases for the award. Said motion was however denied in an October 26, 2000 Resolution[19] of the NLRC. Respondent also filed his Motion for Reconsideration[20] which was likewise denied by the NLRC in its Resolution²¹ dated February 28, 2001.

Proceedings before the Court of Appeals

Petitioner and respondent then filed their separate petitions for certiorari with the CA, docketed as CA-G.R. SP No. 63948 and CA-G.R. SP No. 65259, respectively. On respondent's motion, the CA consolidated both petitions in a Resolution[22] dated October 16, 2001.

On November 29, 2002, the CA rendered its Decision finding respondent's dismissal as illegal. It held that respondent was not afforded due process prior to his termination. According to the CA, the audit team already recommended to the Board as early as October 21, 1996 respondent's dismissal from the service, yet the latter received only on November 15, 1996 the memorandum requiring him to submit his explanation. As such, the CA held that respondent's dismissal was a foregone conclusion.

The CA likewise ruled that there is no just cause for respondent's termination. According to the appellate court, petitioner's rules do not absolutely prohibit the negotiation of second-endorsed checks, "only that their negotiation is governed by certain guidelines, all designed to free the bank from, or avoid, any liability in case the said checks are dishonored." [23] The CA thus found that respondent did not transgress any guideline set by the bank. Moreover, the CA ruled that petitioner's interest was sufficiently protected by Fuentes' execution of the Agreement on Acceptance of Second Endorsed Checks.

The dispositive portion of the CA Decision reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered as follows:

1. The petition in CA-G.R. SP No. 63948 is DENIED for lack of merit;

and

2. The petition in CA-G.R. SP No. 65259 is GRANTED. Petitioner Castor A. Dompur is awarded FULL BACKWAGES from the time of his dismissal until the rendition of this Decision, plus all other accrued benefits as of the latter date.

SO ORDERED.[24]

Respondent filed a motion[25] to clarify and amend the dispositive portion of the CA Decision to include his reinstatement without loss of seniority rights and other privileges as provided for by the Labor Code. Petitioner, on the other hand, filed a motion for reconsideration[26] to reverse the finding of illegal dismissal. In a Resolution[27] dated April 23, 2004, the CA denied both motions.

Issues

Hence, this petition on the following grounds:

I.

THE COURT OF APPEALS (FORMER 12[TH] DIVISION) SERIOUSLY ERRED IN GRANTING THE PETITION FOR CERTIORARI IN CA-G.R. SP NO. 65259 CONSIDERING THAT THE RESOLUTION OF THE NLRC (2nd DIVISION), AFFIRMING THE DECISION OF LABOR ARBITER BARTOLABAC, HAD SUFFICIENT FACTUAL AND LEGAL BASES.

II.

THE COURT OF APPEALS (FORMER 12[TH] DIVISION) SERIOUSLY ERRED IN HOLDING THAT RESPONDENT'S DISMISSAL WAS NOT JUSTIFIED.

III.

THE COURT OF APPEALS (FORMER 12[TH] DIVISION) SERIOUSLY ERRED IN HOLDING THAT RESPONDENT'S DISMISSAL WAS NOT ATTENDED BY DUE PROCESS.

IV.

THE COURT OF APPEALS (FORMER 12[ND] DIVISION) SERIOUSLY ERRED IN DENYING THE PETITION FOR CERTIORARI IN CA. S.P. G.R. NO. 63948.[28]

Petitioner submits that the CA erred in reviewing the factual findings of the NLRC, as well as its appreciation and evaluation of the evidence, because the same is not a Junction of certiorari. It argues that certiorari will only lie to correct errors of jurisdiction, which could hardly be said in the case of the NLRC. Petitioner also claims that the CA erred in holding that respondent did not transgress any bank rule on the acceptance of second-endorsed checks. Petitioner also argues that the fact that it did not suffer any monetary prejudice is immaterial; the fact still remains that respondent betrayed the trust and confidence reposed on him by the petitioner by accepting second-endorsed checks.

Petitioner likewise insists that respondent continued to accept second-endorsed checks despite instructions to the contrary. Furthermore, petitioner denies that the dismissal was preordained and maintains that it complied with

due process requisites of notice and hearing before terminating respondent. Lastly, petitioner argues that separation pay was unjustly awarded since willful disobedience, as a ground for termination, does not warrant the grant of such equitable relief.

Our Ruling

The petition is impressed with merit.

While the Court finds that the CA, by express mandate of the law, may review the decision of quasi-judicial and administrative agencies and may thus resolve factual issues,[29] the Court, however, disagrees with its resultant decision.

Petitioner's Accounting & Procedures

Manual expressly prohibits acceptance of checks endorsed by corporations, societies, firms, etc.

Section 5(A)(l)(b) of petitioner's Accounting & Procedures Manual provides thus:

5. ACCEPTING "CHECKS ONLY" DEPOSIT

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b. Refuse acceptance of checks endorsed by Corporations, Societies, Firms, etc. for credit to a personal account and/or checks with unusual endorsements.

This explicit policy was transgressed by respondent intentionally and willfully. It was not denied that on June 27, 1996, respondent was instructed by management to stop accepting second-endorsed checks due to the irregularities attendant to the transactions with Fuentes. Despite such reasonable order, respondent still accommodated on two occasions in July 1996 the request of Fuentes to accept her checks.

On the first occasion, respondent accepted the second-endorsed checks for deposit allegedly on the strength of the Area Head's approval. However, respondent's assertion that Mallilin approved the acceptance of the second-endorsed checks remains as such - a mere allegation.

Even assuming that on the first occasion, respondent's acceptance of second-endorsed checks was with Mallilin's approval, still, we find respondent guilty of willful disobedience and serious misconduct when he accepted, on the second occasion the deposit of second-endorsed checks.

Respondent admitted the acceptance of the second-endorsed checks on said second occasion; he also admitted that they were indeed issued to corporations. However, he justified his acceptance by the fact that the deposit was nevertheless eventually cancelled and the checks returned, hence no prejudice was caused to the bank.

However, that the checks were eventually cancelled and returned does not erase the fact that respondent clearly and willfully disobeyed the management's instruction to stop accepting second-endorsed checks of PLDT, and also violated the company's policy of not allowing acceptance of second-endorsed checks issued to corporations. It must be mentioned at this juncture that on said second occasion, the second-endorsed PLDT checks accepted by respondent numbered 3,028 totaling P283M. These were the last batch of PLDT second-endorsed checks negotiated at the Makati Cinema Branch on July 24, 1996.

The CA found no wrong on the part of the respondent. It held:

[T]he last tranche of checks were accepted because the client requested that the said checks be accepted as they

were already paid for. Nevertheless, it appears that, as stated above, the deposit was subsequently cancelled, and no liability attached to PCDS by reason thereof. On this score, We find believable the asseverations of Dompur that the checks were accepted in good faith, as it is in fact indubitable that because of the said checks, the deposit level of the branch increased, and that the checks, being PLDT dividend checks, the chances of them being dishonored were nil.[30]

We do not agree. The sheer number of the checks (3,028) militates against the CA's finding of good faith. As branch head, respondent is aware of the prohibition against acceptance of second-endorsed checks issued to corporations.

In addition, the management had instructed him to stop accepting said checks.

Hence, we could not appreciate good faith on the part of the respondent. On the contrary, his actuations revealed a conscious effort to circumvent the company's explicit policy.

As correctly noted by petitioner's audit committee, "[t]he magnitude of the checks being deposited and large number of names of payees which included the names of prominent personalities [such as former First Lady Amelita Ramos, Bias Ople, Henry Sy, Lucio Tan, etc.] as payees should have prompted [respondent] to question the legality of negotiation of the checks." [31] Moreover, in the investigation conducted on September 2, 1996, Gabriel observed that the signatures appearing at the back of the checks accepted by respondent bore the same strokes.[32] As correctly noted by the Labor Arbiter, the negotiation of checks by hundreds of payees to only one individual should have alerted respondent as to the authenticity of the endorsements.

Moreover, the signing of the Agreement on Acceptance of Second-Endorsed Checks by Fuentes does not deviate from the fact that respondent violated the bank's explicit policy against accepting second-endorsed checks issued to corporations. In fact, we find the execution of such agreement as a form of circumventing the company's policy on non-acceptance of second-endorsed checks issued to corporations. As correctly mentioned by the petitioner in its Memorandum[33] dated January 7, 1997, "[e]ven with a signed Acceptance of Second [E]ndorsed Agreement, the same will be useless if the client does not maintain a sufficient balance which we can readily debit in case the checks deposited are dishonored x x x." [34] In effect, the execution of the Agreement on Acceptance of Second-Endorsed Checks did not totally protect the petitioner from unnecessary exposure to possible loss. This observation finds more relevance considering the several instances where Fuentes' checks were returned due to insufficiency of funds.

Respondent violated petitioner's
Credit Policy Supervision No. 6 which
prohibits the purchase of
second-endorsed checks.

Petitioner's Credit Policy Supervision No. 6 provides in part:

The following are generally not acceptable as Bills Purchased:

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3. [S]econd endorsed checks because the risk in accepting second endorsed checks for deposit/encashment is that the Bank would be liable under our endorsement if the check is not on us or if drawn on us, the maker may claim reimbursement for wrong payment, forgery on the endorsement, etc.[35]

In this case, it is not disputed that respondent approved the purchase of checks totaling P56,435.26 on October 25, 1995 notwithstanding that no Bills Purchase Line was established for Fuentes, thus a clear violation of petitioner's Credit Policy Supervision No. 6. Respondent could offer no valid defense except to aver good faith on his part.

Again, we cannot properly appreciate good faith on the part of respondent. As branch head, he is presumed to know that a Bills Purchase Line is necessary before Fuentes could avail of such facility.

Respondent committed serious misconduct when he failed to close the account of Fuentes despite several infractions on the latter's part.

Respondent unduly yielded to the whims of a client and gave undue advantage to her instead of performing his duties towards the best interest of the bank. From the start, respondent was perceived to have been extending special favors to Fuentes even though such entails contravention of strict bank guidelines. Notably, Fuentes was already respondent's client when he was still assigned to another branch. When respondent was assigned to petitioner's Makati Cinema branch, Fuentes likewise transferred her accounts thereto.

As narrated by one of the branch staff personnel, Carmela C. Exconde, Fuentes was able to open an account thru respondent's approval even without the requisite documents.[36] Also, all transactions coursed by Fuentes were approved by respondent even if questionable.

The Labor Arbiter also noted that respondent did not close the account of Fuentes despite the fact that from December 1995 to July 1996, 11 of the checks issued by Fuentes were dishonored due to insufficiency of funds. From May 1996 to July 9, 1996, Fuentes again issued three unfunded checks.

Respondent's superiors have recommended the closure of the account of Fuentes due to commission of several infractions and mishandling of the account yet, respondent defied the instructions. Worse, respondent allowed the deposit of second-endorsed checks to Fuentes' account and even accommodated the purchase of several second-endorsed checks even if the latter was not extended any credit line. It bears stressing that respondent failed to prove that Fuentes is a valued client, as to warrant the undue accommodation given her.

Respondent, as branch head, has the duty to ensure that bank rules are strictly complied with not only to ensure efficient bank operation which is imbued with public interest but also to serve the best interest of the bank as he holds a position of trust and confidence. As emphasized by petitioner, respondent was in charge of the overall administration of the branch and is tasked to ensure that all policies and procedures are strictly followed. Indubitably, any negligence in the exercise of his responsibilities can be sufficient ground for loss of trust and confidence demanded by his position. As held in *Etcuban, Jr. v. Sulpicio Lines, Inc.*, [37] "the mere existence of a basis for believing that [a managerial] employee has breached the trust of his employer would suffice for his dismissal x x x. [P]roof beyond reasonable doubt is not required."

Respondent's wanton violation of bank policies equates to abuse of authority and, therefore, abuse of the trust reposed in him. Such intention to violate the trust of petitioner is enough for his dismissal from service.

The requirements of due process were satisfied.

Petitioner sent respondent a memo informing him of the specific charges and giving him opportunity to air his side. Subsequently, respondent was informed that on the basis of the results of the investigation conducted, his written explanation, the written explanation of other employees as well as the audit report, the management has decided to terminate him. The two-notice requirement, which includes a written notice of the cause of dismissal to afford the employee ample opportunity to be heard and defend himself, and written notice of the decision to terminate him which states the reasons therefor, [38] was thus complied with.

The accusation that his dismissal was preordained lacks factual basis. Respondent's argument that he was not furnished with a copy of the audit report and therefore was not able to refute its findings cannot persuade this Court. The audit report merely served as basis for petitioner's issuance of the show cause memorandum. The audit committee's conclusion to dismiss respondent from the service was merely recommendatory. It was not conclusive upon the petitioner. This is precisely the reason why the petitioner still conducted further investigations. To reiterate, respondent was properly informed of the charges and had every opportunity to rebut the accusations and present his version. Respondent was not denied due process of law for he was adequately heard as "the very essence of due process is the opportunity to be heard." [39]

Separation pay should not be awarded
in favor of respondent.

We are aware that in several instances this Court has awarded separation pay as a measure of social justice. However, the matter of the award of separation pay based on social justice has been clarified in *Philippine Long Distance Telephone Company v. National Labor Relations Commission* [41] where the Court categorically declared that "separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for cause other than serious misconduct x x x." Likewise, we ruled in *Toyota Motor Philippines Corp. Workers Association (TMPCWA) v. National Labor Relations Commission* [42] that in addition to serious misconduct, separation pay should not be conceded to an employee who was dismissed based on willful disobedience.

In the instant case, the Labor Arbiter's basis for the award of separation pay was respondent's length of service and the fact that petitioner sustained no losses. However, as already discussed, it was established that the infractions committed by the respondent constituted serious misconduct or willful disobedience resulting to loss of trust and confidence. Clearly therefore, even based on equity and social justice, respondent does not deserve the award of separation pay. Consequently, the same should be deleted.

WHEREFORE, the petition is GRANTED. The November 29, 2002 Decision and April 23, 2004 Resolution of the Court of Appeals in CA-G.R. SP Nos. 63948 and 65259 are REVERSED and SET ASIDE. The Resolution dated August 31, 2000 of the National Labor Relations Commission, affirming the Labor Arbiter's Decision upholding the legality of respondent's dismissal, is REINSTATED and AFFIRMED with MODIFICATION that the award of separation pay in the amount of P495,000.00 is DELETED for lack of basis.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Abad[**] and Perez, JJ., concur.

[*] Formerly Philippine Commercial and Industrial Bank. See Notice of Change of Name, rollo, p. 611.

[**] In lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 917 dated November 24, 2010.

[***] Also referred to as Castor A. Dompur, Jr. in some parts of the records.

[1] Rollo, pp. 11-57.

[2] Annex "A" of the Petition, id. at 59-70; penned by Associate Justice Romeo A. Brawner and concurred in by Associate Justices Bienvenido L. Reyes and Danilo B. Pine.

[3] Annex "B" of the Petition, id. at 72-74.

[4] Annex "P" of the Petition, id. at 268-282; penned by Commissioner Victoriano R. Calaycay and concurred in

by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

[5] In the latter part of 1999, Philippine Commercial and Industrial Bank (PCIB) merged with Equitable Banking Corporation to form Equitable PCI Bank. Then, on May 31, 2007, Equitable PCI Bank entered into a merger with Banco De Oro Universal Bank, thus creating Banco De Oro Unibank, Inc. (See petitioner's Notice of Change of Name dated March 10, 2008, id. at 611-612).

[6] Memo dated September 2, 1996, rollo, p. 126.

[7] Memo dated September 27, 1996, id. at 127.

[8] CA rollo (CA-G.R. SP No. 65259), pp. 69-73.

[9] Annex "G" of the Petition, rollo, p. 107.

[10] Respondent's Reply dated November 28, 1996, id. at 129-133.

[11] Id. at 123-125.

[12] Annex "H" of the Petition, id. at 108-110.

[13] Annex "M" of the Petition, id. at 219-230.

[14] Id. at 230.

[15] See Respondent's Memorandum of Appeal, Annex "O" of the Petition, id. at 253-267.

[16] See Petitioner's Memorandum on Partial Appeal, Annex "N" of the Petition, id. at 231-252.

[17] Annex "P" of the Petition, id. at 268-282.

[18] Annex "R" of the Petition, id. at 292-307.

[19] Id. at 283.

[20] Annex "Q" of the Petition, id. at 284-291.

[21] Id. at 308.

[22] CA rollo (CA-G.R. SP No. 65259), p. 546.

[23] Rollo, p. 65.

[24] Id. at 69-70.

[25] Motion to Clarify or Amend the Dispositive Portion of the Decision Granting the Petition, CA rollo (CA-G.R. SP No. 63948) pp. 338-340.

[26] Annex "C" of the Petition, rollo, pp 75-93.

[27] Annex "B" of the Petition, id. at 72-74.

[28] Id. at 28-29.

[29] Cosmos Bottling Corporation v. Nagrama, Jr., G.R. No. 164403, March 4, 2008, 547 SCRA 571, 588-590.

[30] Rollo, p. 67.

[31] CA rollo (CA-G.R. No. 65259), p. 73.

[32] Rollo, p. 189.

[33] CA rollo (CA G.R. No. 65259), pp. 65-67.

[34] Id. at 65.

[35] Id. at 102-103.

[36] Rollo, p. 191.

[37] 489 Phil. 483, 496-497 (2005); See also Abel v. Philex Mining Corporation, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 694.

[38] Sy v. Metropolitan Bank and Trust Company, G.R. No. 160618, November 2, 2006, 506 SCRA 580, 588.

[39] KIT Fruits, Inc. v. WSR Fruits, Inc., G.R. No. 174219, November 23, 2007, 538 SCRA 713, 732.

[40] Central Philippines Bandag Retreaders, Inc. v. Diasnes, G. R. No. 163607, July 14, 2008, 558 SCRA 194,205.

[41] 247 Phil. 641, 649 (1988). Emphasis supplied.

[42] G.R. Nos. 158786 & 158789, 158798-99, October 19, 2007, 537 SCRA 171, 223.

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