



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

WESTMONT BANK, formerly
ASSOCIATED BANK now
UNITED OVERSEAS BANK
PHILIPPINES,

Petitioner,

- versus -

G.R. No. 160260

Present:

VELASCO, JR., *J.*, Chairperson,
LEONARDO DE CASTRO,¹
PERALTA,
ABAD, and
MENDOZA, *JJ.*

MYRNA DELA ROSA-
RAMOS, DOMINGO TAN
and WILLIAM CO.,

Respondents.

Promulgated:

24 October 2012

X ----- X

DECISION

MENDOZA, J.:

This is a Petition for Review under Rule 45 of the 1997 Rules of Civil procedure seeking a partial review of the February 14, 2003 Decision¹ and the October 2, 2003 Resolution² of the Court of Appeals (CA), in CA-G.R. CV No. 63983, which modified the September 16, 1993 Decision of the Regional Trial Court, Branch 7, Manila (RTC) in Civil Case No. 89-47926 entitled, *Myrna Dela Rosa-Ramos v. Westmont Bank, formerly Associated Bank, Domingo Tan, and William Co.*

* Designated additional member, per Special Order No. 1343, dated October 9, 2012.

¹ *Rollo*, pp. 8-25. Penned by Justice Mercedes Gozo-Dadole with Associate Justice B.A. Adenuga-Dela Cruz and Associate Justice Mariano C. Del Castillo (now an Associate Justice of the Supreme Court) concurring.

² *Id.* at 27.

The petition was filed on November 24, 2003 and received by this Court on December 15, 2003. The case was given due course on February 6, 2008.

The Facts

From 1986, respondent Myrna Dela Rosa-Ramos (*Dela Rosa-Ramos*) maintained a checking/current account with the United Overseas Bank Philippines³ (*Bank*) at the latter's Sto. Cristo Branch, Binondo, Manila. In her several transactions with the Bank, Dela Rosa-Ramos got acquainted with its Signature Verifier, respondent Domingo Tan (*Tan*).⁴

In the course of their acquaintance, Tan offered Dela Rosa-Ramos a "special arrangement"⁵ wherein he would finance or place sufficient funds in her checking/current account whenever there would be an overdraft or when the amount of said checks would exceed the balance of her current account. It was their arrangement to make sure that the checks she would issue would not be dishonored. Tan offered the service for a fee of ₱50.00 a day for every ₱40,000.00 he would finance. This financier-debtor relationship started in 1987 and lasted until 1998.⁶

In order to guarantee payment for such funding, Dela Rosa-Ramos issued postdated checks covering the principal amount plus interest as computed by Tan on specified date. There were also times when she just

³ The Bank was formerly known as **Associated Bank**, later became **Westmont Bank** and now known as **United Overseas Bank Philippines**.

⁴ *Rollo*, p. 85.

⁵ *Id.* at 9.

⁶ *Id.* at 9-10.

paid in cash.⁷ Relative to their said agreement, Dela Rosa-Ramos issued and delivered to Tan the following Associated Bank checks⁸ drawn against her current account and payable to “**cash**,” to wit:

CHECK NO.	CURRENT ACCT.	DATE	AMOUNT
467322 (Exh. A)	1008-08341-0	May 8, 1988	PhP200,000.00
510290 (Exh. C)	1008-08734-3	June 10, 1988	232,500.00
613307 (Exh. E)	1008-08734-3	June 14, 1988	200,000.00
613306 (Exh. D)	1008-08734-3	July 4, 1988	290,595.00

According to Dela Rosa-Ramos, **Check No. 467322** for ₱200,000.00 was a “stale” guarantee check. The check was originally dated August 28, 1987 but was altered to make it appear that it was dated May 8, 1988. Tan then deposited the check in the account of the other respondent, William Co (Co), despite the obvious superimposed date. As a result, the amount of ₱200,00.00 or the value indicated in the check was eventually charged against her checking account.⁹

Check No. 510290 for ₱232,500.00, dated June 10, 1988, was issued in payment of cigarettes that Dela Rosa-Ramos bought from Co. This check allegedly “bounced” so she replaced it with her “good customer’s check and cash” and gave it to Tan. The latter, however, did not return the bounced check to her. Instead, he “redeposited” it in Co’s account.¹⁰

Check No. 613307 for ₱200,000.00, was another guarantee check that was also “undated.” Dela Rosa-Ramos claimed that it was Tan who

⁷ Id. at 389.
⁸ Id. at 556.
⁹ Id. at 163.
¹⁰ Id.

placed the date “June 14, 1988.” For this check, an order to stop payment was issued because of insufficient funds. Expectedly, the words “PAYMENT STOPPED” were stamped on both sides of the check. This check was not returned to her either and, instead, it was “redeposited” in Co’s account.¹¹

Check Nos. 510290 and 613307 were both dishonored for insufficient funds. When Dela Rosa-Ramos got the opportunity to confront Co regarding their deposit of the two checks, the latter disclosed that her two checks were deposited in his account to cover for his ₱432,500.00 cash which was taken by Tan. Then, with a threat to expose her relationship with a married man, Tan and Co were able to coerce her to replace the two above-mentioned checks with Check No. 598648¹² in the amount of ₱432,500.00 which was equivalent to the total amount of the two dishonored checks.¹³

Check No. 613306 for ₱290,595.00, was also undated when delivered to Tan who later placed the date, July 4, 1988. Dela Rosa-Ramos pointed out that as of July 5, 1988, her checking account had ₱121,989.66 which was insufficient to answer for the value of said check. A check of a certain Lee See Bin in the amount of ₱170,000.00 was, however, deposited in her checking account. As a result, Tan was able to encash **Check No. 613306** and withdrew her ₱121,989.66 balance. Later, Dela Rosa-Ramos found out that the Lee See Bin Check was not funded because the Bank’s bookkeeper demanded from her the return of the deficiency.¹⁴

¹¹ *Rollo*, p. 390.

¹² Not in issue.

¹³ *Rollo*, p. 390.

¹⁴ *Id.* at 164.

Claiming that the four checks mentioned were deposited by Tan without her consent, Dela Rosa-Ramos instituted a complaint¹⁵ against Tan and the Bank before the RTC seeking, among other things, to recover from the Bank the sum of ₱754,689.66 representing the total amount charged or withdrawn from her current account. Dela Rosa-Ramos subsequently amended her complaint to include Co.¹⁶

During the trial, Tan's partial direct testimony was ordered stricken off the records because he failed to complete it and make himself available for cross-examination. Later, it was found out that he had passed away.¹⁷

On September 16, 1998, the RTC resolved the case in this wise:

WHEREFORE, judgment is hereby rendered, sentencing defendant Associated Bank now the Westmont Bank and defendants – DOMINGO TAN and WILLIAM CO, to pay the plaintiff, jointly and severally:

1. The sum of ₱754,689.66, representing plaintiff's lost deposit, plus interest thereon at the legal rate of 12% per annum from the filing of the complaint, until fully paid;
2. The sum of ₱1,000,000.00, as moral damages;
3. The sum equivalent to 10% thereof, as exemplary damages;
4. The sum equivalent to 25% of the total amount due, as and for attorney's fees; and
5. Costs.

Defendant's counterclaims are hereby dismissed for lack of merit.

SO ORDERED.¹⁸

¹⁵ Id. at 85-93.

¹⁶ Id. at 38.

¹⁷ Id. at 167.

¹⁸ Id. at 172.

Co and the Bank appealed their cases to the CA. As Co failed to file a brief within the period prescribed, his appeal was dismissed.¹⁹ The CA then proceeded to resolve the appeal of the Bank. On February 14, 2003, the CA rendered its appealed decision, the dispositive portion of which reads:

WHEREFORE, premises considered, Decision dated September 16, 1998 of the Regional Trial Court of Manila, National Capital Region, Branch 7, in Civil Case No. 89-17926, is hereby AFFIRMED with the MODIFICATION that: (a) the defendants are liable only for the amount of ₱521,989.00 covering Check Nos. 467322, 613307 and ₱121,989.66 covered by Check No. 613306 and (b) deleting the award for moral damages and attorney's fees.

SO ORDERED.²⁰

Still not satisfied, the Bank moved for partial reconsideration. On October 2, 2003, the CA denied it for lack of merit. In the case of Co, he never appealed the CA decision. Thus, only the Bank is now before this Court raising the following issues:

I.

WITHOUT DELINEATING THE SOURCE OF THE RESPECTIVE OBLIGATIONS OF PETITIONER BANK, RESPONDENT TAN AND RESPONDENT CO IN RELATION TO RESPONDENT DELA ROSA-RAMOS, THE HONORABLE COURT OF APPEALS UTTERLY AND GRAVELY ERRED WHEN IT SWEEPINGLY AFFIRMED THE JUDGMENT OF THE HONORABLE TRIAL COURT MAKING THEM JOINTLY AND SEVERALLY LIABLE FOR THE JUDGMENT AWARD IN FAVOR OF RESPONDENT DELA ROSA-RAMOS.

II.

THE JUDGMENT AWARD AGAINST PETITIONER BANK UNDER CHECK NO. 467322 (EXH. 'A') IS TOTALLY WITHOUT LEGAL BASIS AS THE SAME WAS MERELY BASED ON SPECULATIVE ASSUMPTION OR PURE SPECULATION.

¹⁹ Id. at 41.

²⁰ Id. at 25.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE ACCOUNT OF RESPONDENT DELA ROSA-RAMOS WAS DEBITED WITH THE FACE AMOUNT OF CHECK NO. 613307 (EXH. 'E') AS SUCH FINDING IS CONTRARY TO THE FINDING OF THE HONORABLE TRIAL COURT THAT THE SAID CHECK WAS DISHONORED TOGETHER WITH CHECK NO. 510290 (EXH. 'C') FOR THE REASON THAT BOTH CHECKS WERE DRAWN AGAINST INSUFFICIENT FUNDS.

IV.

NOTWITHSTANDING AND CLEARLY CONTRADICTING ITS VERY FINDING THAT "AS TO CHECK NO. 613306 (EXH.'D'), THIS COURT OPINES THAT NO MANIFEST IRREGULARITY EXISTS," THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT ERRONEOUSLY FOUND PETITIONER BANK LIABLE IN THE AMOUNT OF P121,989.96 COVERED BY SAID CHECK.

V.

ASSUMING *ARGUENDO* THAT PETITIONER BANK IS LIABLE TO ANSWER FOR THE ALLEGED DAMAGES SUFFERED BY RESPONDENT DELA ROSA-RAMOS, THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT FAILED TO PASS UPON PETITIONER BANK'S CROSS-CLAIM AGAINST RESPONDENT TAN.²¹

It must be remembered that public interest is intimately carved into the banking industry because the primordial concern here is the trust and confidence of the public. This fiduciary nature of every bank's relationship with its clients/depositors impels it to exercise the highest degree of care, definitely more than that of a reasonable man or a good father of a family.²² It is, therefore, required to treat the accounts and deposits of these

²¹ Id. at 561-562.

²² *BPI v. Lifetime Marketing Corp.*, G.R. No. 176434, June 25, 2008, 555 SCRA 373, 381; *PNB v. Pike*, 507 Phil. 322, 340 (2005).

individuals with meticulous care.²³ The rationale behind this is well-expressed in *Sandejas v. Ignacio*,²⁴

The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society – banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence, and it is for this reason, banks should guard against injury attributable to negligence or bad faith on its part.

Considering that banks can only act through their officers and employees, the fiduciary obligation laid down for these institutions necessarily extends to their employees. Thus, banks must ensure that their employees observe the same high level of integrity and performance for it is only through this that banks may meet and comply with their own fiduciary duty.²⁵ It has been repeatedly held that “a bank’s liability as an obligor is not merely vicarious, but primary”²⁶ since they are expected to observe an equally high degree of diligence, not only in the selection, but also in the supervision of its employees. Thus, even if it is their employees who are negligent, the bank’s responsibility to its client remains paramount making its liability to the same to be a direct one.

Guided by the following standard, the Bank, given the fiduciary nature of its relationship with Dela Rosa- Ramos, should have exerted every effort to safeguard and protect her money which was deposited and entrusted with it. As found by both the RTC and the CA, Ramos was defrauded and she lost her money because of the negligence attributable to the Bank and its employees. Indeed, it was the employees who directly dealt with Dela Rosa-

²³ Id. at 381; *BPI v. Casa Montessori Internationale*, G.R. Nos. 149454 and 149507, May 23, 2004, 430 SCRA 261, 283.

²⁴ G.R. No. 155033, December 19, 2007, 541 SCRA 61, 82.

²⁵ *Cadiz v. CA*, 510 Phil. 721, 735 (2005).

²⁶ *PNB v. Pike*, 507 Phil. 322, 340 (2005); *PCIBank v. CA*, 403 Phil. 361, 388 (2001).

Ramos, but the Bank cannot distance itself from them. That they were the ones who gained at the expense of Dela Rosa-Ramos will not excuse it of its fundamental responsibility to her. As stated by the RTC,

The factual circumstances attending the repeated irregular entries and transactions involving the current account of the plaintiff-appellee is evidently due to, if not connivance, gross negligence of other bank officers since the repeated assailed transactions could not possibly be committed by defendant Tan alone considering the fact that the processing of the questioned checks would pass the hands of various bank officers who positively identified their initials therein. Having a number of employees commit mistake or gross negligence at the same situation is so puzzling and obviates the appellant bank's laxity in hiring and supervising its employees. Hence, this Court is of the opinion that the appellant bank should be held liable for the damages suffered by the plaintiff-appellee in the case at bench.²⁷

That matter being settled, the next matter to be determined is the amount of liability of the Bank.

As regards **Check No. 467322**, the Bank avers that Dela Rosa-Ramos' acquiesced to the change of the date in the said check. It argues that her continued acts of dealing and transacting with the Bank like subsequently issuing checks despite her experience with this check only shows her acquiescence which is tantamount to giving her consent. Obviously, the Bank has not taken to heart its fiduciary responsibility to its clients. Rather than ask and wonder why there were indeed subsequent transactions, the more paramount issue is why the Bank through its several competent employees and officers, did not stop, double check and ascertain the genuineness of the date of the check which displayed an obvious alteration. This failure on the part of the Bank makes it liable for that loss. As the RTC held:

²⁷ *Rollo*, p. 24.

x x x defendant-bank is not faultless in the irregularities of its signature-verifier. In the first place, it should have readily rejected the obviously altered plaintiff's ₱200,000.00-check, thus, avoid its unwarranted deposit in defendant-Co's account and its corollary loss from plaintiff's deposit, had its other employees, even excepting TAN, performed their duties efficiently and well. x x x²⁸

The glaring error did not escape the observation of the CA either. On the matter, it hastened to add:

A careful scrutiny of the evidence shows that indeed the date of Check No. 467322 had been materially altered from August 1987 to May 8, 1988 in accordance with Section 125 of the Negotiable Instruments Law. It is worthy to take note of the fact that such alteration was not countersigned by the drawer to make it a valid correction of its date as consented by its drawer as the standard operating procedure of the appellant bank in such situation as admitted by its Sto. Cristo Branch manager, Mabini Z. Mil(l)an. x x x.²⁹

On **Check No. 613307**, the Bank argues that the CA erred in considering that the said check was debited against the account of Dela Rosa-Ramos when the fact was that it was dishonored for having been drawn against insufficient funds. This means that the check was not charged against her account.

In this regard, the Court agrees with the Bank. Indeed, the admission made by Dela Rosa-Ramos that she had to issue a replacement check for **Check No. 613307** as well as for **Check No. 510290** only proves that these checks were never paid and charged or debited against her account. The replacement check is, of course, a totally different matter and is not covered as an issue in this case.

²⁸ Id. at 169-170.

²⁹ Id. at 21.

Lastly, with respect to **Check No. 613306**, the Court agrees with the CA when it found:

x x x that no manifest irregularity exists as shown from the Statement of Accounts for the month of July 1988 that as of July 4, 1988, the plaintiff-appellee had an outstanding deposit of ₱121,989.66. It was also cleared therein that, on July 5, 1988, ₱170,000.00, through the check of Lee See Bin with the same UNITED OVERSEAS BANK-Sto. Cristo Branch, was deposited on the account of the plaintiff-appellee and on the very same day Check No. 613306 in the amount of ₱290,595.00 was approved and processed and its equivalent was debited from the account of the plaintiff-appellee since the check is an 'on-us' check which is deposited to an account of another with the same branch as that of the drawer of the said check, and is considered as good as cash if funded, hence, may be withdrawn on the very same day it was deposited.³⁰

The Court has reviewed the findings of the RTC on the matter and agrees with the CA that there was no irregularity. The burden of proof was on Dela Rosa-Ramos to establish that Lee See Bin was fictitious and that the money which purportedly came from him was merely simulated. She unfortunately failed to discharge this burden.

Withal, the Bank should only be made to answer the value of **Check No. 467322** in the amount of ₱200,000.00 plus the legal rate of interest. This must be further tempered down for there is no denying that it was Dela Rosa-Ramos who exposed herself to risk when she entered into that "special arrangement" with Tan. While the Bank reneged on its responsibility to Dela Rosa-Ramos, she is nevertheless equally guilty of contributory negligence. It has been held that where the bank and a depositor are equally negligent, they should equally suffer the loss. The two must both bear the

³⁰ Id. at 23.


consequences of their mistakes.³¹ Thus, the Bank should only pay 50% of the actual damages awarded while Dela Rosa-Ramos should have to shoulder the remaining 50%.

Considering that Tan was primarily responsible for the damages caused to Dela Rosa-Ramos, the Bank can seek compensation from his estate, subject to the applicable laws and rules.

The reinstatement of deleted damages sought by Dela Rosa-Ramos in her comment may not be entertained for she did not appeal the CA decision.

WHEREFORE, the petition for review is **PARTIALLY GRANTED**. The February 14, 2003 Decision and the October 2, 2003 Resolution of the Court of Appeals in CA-G.R. CV No. 63983 are **MODIFIED**. Petitioner United Overseas Bank Philippines (formerly Westmont Bank) is hereby ordered to pay respondent Myrna Dela Rosa-Ramos the amount of ₱100,000.00, representing 50% of the actual damages awarded plus legal interest.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

³¹ *PNB v. Spouses Cheah Chee Chong and Ofelia Camacho Cheah*, G.R. No. 170865, April 25, 2012.

WE CONCUR:

PRESBITERO J. VELASCO, JR.

Associate Justice

Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO

Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA

Associate Justice

Roberto A. Abad
ROBERTO A. ABAD

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.

Associate Justice

Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO

Chief Justice