



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**SPOUSES GODFREY and
GERARDINA SERFINO,**
Petitioners,

G.R. No. 171845

Present:

- versus -

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

**FAR EAST BANK AND TRUST
COMPANY, INC., now BANK OF THE
PHILIPPINE ISLANDS,**
Respondent.

Promulgated:

OCT 10 2012 *[Signature]*

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DECISION

BRION, J.:

Before the Court is a petition for review on *certiorari*,¹ filed under Rule 45 of the Rules of Court, assailing the decision² dated February 23, 2006 of the Regional Trial Court (RTC) of Bacolod City, Branch 41, in Civil Case No. 95-9344.

¹ *Rollo*, pp. 9-29.

² Penned by Judge Ray Alan T. Drilon; *id.* at 31-72.

FACTUAL ANTECEDENTS

The present case traces its roots to the **compromise judgment** dated October 24, 1995³ of the RTC of Bacolod City, Branch 47, in Civil Case No. 95-9880. Civil Case No. 95-9880 was an action for collection of sum of money instituted by the petitioner spouses Godfrey and Gerardina Serfino (collectively, *spouses Serfino*) against the spouses Domingo and Magdalena Cortez (collectively, *spouses Cortez*). By way of settlement, the spouses Serfino and the spouses Cortez executed a compromise agreement on October 20, 1995, in which the spouses Cortez acknowledged their indebtedness to the spouses Serfino in the amount of ₱108,245.71. To satisfy the debt, Magdalena bound herself “**to pay in full the judgment debt out of her retirement benefits[.]**”⁴ Payment of the debt shall be made one (1) week after Magdalena has received her retirement benefits from the Government Service Insurance System (*GSIS*). In case of default, the debt may be executed against any of the properties of the spouses Cortez that is subject to execution, upon motion of the spouses Serfino.⁵ After finding that the compromise agreement was not contrary to law, morals, good custom, public order or public policy, the RTC approved the entirety of the parties’ agreement and issued a compromise judgment based thereon.⁶ The debt was later reduced to ₱155,000.00 from ₱197,000.00 (including interest), with the promise that the spouses Cortez would pay in full the judgment debt not later than April 23, 1996.⁷

No payment was made as promised. Instead, Godfrey discovered that Magdalena deposited her retirement benefits in the savings account of her

³ Penned by Judge Edgar G. Garvilles; *id.* at 148-149.

⁴ *Id.* at 143.

⁵ *Id.* at 144.

⁶ *Id.* at 148-149.

⁷ *Id.* at 12.

daughter-in-law, Grace Cortez, with the respondent, Far East Bank and Trust Company, Inc. (*FEBTC*). As of April 23, 1996, Grace's savings account with FEBTC amounted to ₱245,830.37, the entire deposit coming from Magdalena's retirement benefits.⁸ That same day, **the spouses Serfino's counsel sent two letters to FEBTC informing the bank that the deposit in Grace's name was owned by the spouses Serfino by virtue of an assignment made in their favor by the spouses Cortez.** The letter requested FEBTC to prevent the delivery of the deposit to either Grace or the spouses Cortez until its actual ownership has been resolved in court.

On April 25, 1996, the spouses Serfino instituted Civil Case No. 95-9344 against the spouses Cortez, Grace and her husband, Dante Cortez, and FEBTC for the **recovery of money on deposit and the payment of damages**, with a prayer for preliminary attachment.

On April 26, 1996, **Grace withdrew ₱150,000.00 from her savings account with FEBTC.** On the same day, the spouses Serfino sent another letter to FEBTC informing it of the pending action; attached to the letter was a copy of the complaint filed as Civil Case No. 95-9344.

During the pendency of Civil Case No. 95-9344, the spouses Cortez manifested that they were turning over the balance of the deposit in FEBTC (amounting to ₱54,534.00) to the spouses Serfino as partial payment of their obligation under the compromise judgment. The RTC issued an order dated July 30, 1997, authorizing FEBTC to turn over the balance of the deposit to the spouses Serfino.

⁸ Two deposits were made in Grace's savings account: a check deposit in the amount of ₱55,830.37 was made on April 12, 1996, the check was issued to Magdalena and indorsed by her in favor of Grace; and a cash deposit of ₱190,000.00 was made on April 19, 1996 (*id.* at 45).

On February 23, 2006, the RTC issued the assailed decision (a) finding the spouses Cortez, Grace and Dante liable for fraudulently diverting the amount due the spouses Serfino, but (b) **absolving FEBTC from any liability for allowing Grace to withdraw the deposit.** The RTC declared that FEBTC was not a party to the compromise judgment; FEBTC was thus not chargeable with notice of the parties' agreement, as there was no valid court order or processes requiring it to withhold payment of the deposit. Given the nature of bank deposits, FEBTC was primarily bound by its contract of loan with Grace. There was, therefore, no legal justification for the bank to refuse payment of the account, notwithstanding the claim of the spouses Serfino as stated in their three letters.

THE PARTIES' ARGUMENTS

The spouses Serfino appealed the RTC's ruling absolving FEBTC from liability for allowing the withdrawal of the deposit. They allege that the RTC cited no legal basis for declaring that only a court order or process can justify the withholding of the deposit in Grace's name. Since FEBTC was informed of their adverse claim after they sent three letters, they claim that:

[u]pon receipt of a notice of adverse claim in proper form, **it becomes the duty of the bank** to: 1. Withhold payment of the deposit until there is a reasonable opportunity to institute legal proceedings to contest ownership; and 2) give prompt notice of the adverse claim to the depositor. The bank may be held liable to the adverse claimant if it disregards the notice of adverse claim and pays the depositor.

When the bank has **reasonable notice of a bona fide claim that money deposited with it is the property of another than the depositor**, it should withhold payment until there is reasonable opportunity to institute legal

proceedings to contest the ownership.⁹ (emphases and underscoring supplied)

Aside from the three letters, FEBTC should be deemed bound by the compromise judgment, since Article 1625 of the Civil Code states that an assignment of credit binds third persons if it appears in a public instrument.¹⁰ They conclude that FEBTC, having been notified of their adverse claim, should not have allowed Grace to withdraw the deposit.

While they acknowledged that bank deposits are governed by the Civil Code provisions on loan, the spouses Serfino allege that the provisions on voluntary deposits should apply by analogy in this case, particularly Article 1988 of the Civil Code, which states:

Article 1988. The thing deposited must be returned to the depositor upon demand, even though a specified period or time for such return may have been fixed.

This provision shall not apply when the thing is judicially attached while in the depository's possession, or **should he have been notified of the opposition of a third person to the return or the removal of the thing deposited.** In these cases, the depository must immediately inform the depositor of the attachment or opposition.

Based on Article 1988 of the Civil Code, the depository is not obliged to return the thing to the depositor if notified of a third party's adverse claim.

By allowing Grace to withdraw the deposit that is due them under the compromise judgment, **the spouses Serfino claim that FEBTC committed an actionable wrong that entitles them to the payment of actual and moral damages.**

⁹ *Id.* at 22, citing *Miller v. Bank of Washington*, 176 N.C. 152, 96 S.E. 977 and *Lindstrom v. Bank of Jamestown*, 154 Misc. 553, 278 N.Y.S 963, both cases cited in Antonio Viray, *Handbook on Bank Deposits* (1988 revised ed.).

FEBTC, on the other hand, insists on the correctness of the RTC ruling. It claims that it is not bound by the compromise judgment, but only by its contract of loan with its depositor. As a loan, the bank deposit is owned by the bank; hence, the spouses Serfino's claim of ownership over it is erroneous.

Based on these arguments, the case essentially involves a determination of *the obligation of banks to a third party who claims rights over a bank deposit standing in the name of another*.

THE COURT'S RULING

We find the petition unmeritorious and see no reason to reverse the RTC's ruling.

Claim for actual damages not meritorious because there could be no pecuniary loss that should be compensated if there was no assignment of credit

The spouses Serfino's claim for damages against FEBTC is premised on their claim of ownership of the deposit with FEBTC. The deposit consists of Magdalena's retirement benefits, which the spouses Serfino claim to have been assigned to them under the compromise judgment. That the retirement benefits were deposited in Grace's savings account with FEBTC supposedly did not divest them of ownership of the amount, as "the money already belongs to the [spouses Serfino] having been absolutely

¹⁰ Article 1625. An assignment of credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property.

assigned to them and constructively delivered by virtue of the x x x public instrument[.]”¹¹ By virtue of the **assignment of credit**, the spouses Serfino claim ownership of the deposit, and they posit that FEBTC was duty bound to protect their right by preventing the withdrawal of the deposit since the bank had been notified of the assignment and of their claim.

We find no basis to support the spouses Serfino’s claim of ownership of the deposit.

“An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, *dation* in payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor. It may be in the form of sale, but at times it may constitute a *dation* in payment, such as **when a debtor, in order to obtain a release from his debt, assigns to his creditor a credit he has against a third person.**”¹² As a *dation* in payment, the **assignment of credit operates as a mode of extinguishing the obligation;**¹³ the delivery and transmission of ownership of a thing (in this case, the credit due from a third person) by the debtor to the creditor is accepted as the equivalent of the performance of the obligation.¹⁴

The terms of the compromise judgment, however, did not convey an intent to equate the assignment of Magdalena’s retirement benefits (the credit) as the equivalent of the payment of the debt due the spouses Serfino

¹¹ *Rollo*, p. 154.

¹² *Aquintey v. Tibong*, G.R. No. 166704, December 20, 2006, 511 SCRA 414, 438 (italics and emphasis ours; citations omitted).

¹³ Civil Code, Articles 1233 and 1245, in relation to Article 1231.

¹⁴ *Aquintey v. Tibong*, *supra* note 12, at 439.

(the obligation). There was actually no assignment of credit; if at all, **the compromise judgment merely identified the fund from which payment for the judgment debt would be sourced:**

(c) That before the plaintiffs file a motion for execution of the decision or order based [on this] Compromise Agreement, **the defendant, Magdalena Cortez undertake[s] and bind[s] herself to pay in full the judgment debt out of her retirement benefits** as Local [T]reasury Operation Officer in the City of Bacolod, Philippines, upon which full payment, the plaintiffs waive, abandon and relinquish absolutely any of their claims for attorney's fees stipulated in the Promissory Note (Annex "A" to the Complaint).¹⁵ [emphasis ours]

Only when Magdalena has received and turned over to the spouses Serfino the portion of her retirement benefits corresponding to the debt due would the debt be deemed paid.

In *Aquitey v. Tibong*,¹⁶ the issue raised was whether the obligation to pay the loan was extinguished by the execution of the deeds of assignment. The Court ruled in the affirmative, given that, in the deeds involved, the respondent (the debtor) assigned to the petitioner (the creditor) her credits "to make good" the balance of her obligation; the parties agreed to relieve the respondent of her obligation to pay the balance of her account, and for the petitioner to collect the same from the respondent's debtors.¹⁷ The Court concluded that the respondent's obligation to pay the balance of her accounts with the petitioner was extinguished, *pro tanto*, by the deeds of assignment of credit executed by the respondent in favor of the petitioner.¹⁸

In the present case, the judgment debt was not extinguished by the **mere designation** in the compromise judgment of Magdalena's retirement benefits as the fund from which payment shall be sourced. That the

¹⁵ *Rollo*, p. 148.

¹⁶ *Supra* note 12.

¹⁷ *Id.* at 439.

compromise agreement authorizes recourse in case of default on other executable properties of the spouses Cortez, to satisfy the judgment debt, further supports our conclusion that there was no assignment of Magdalena's credit with the GSIS that would have extinguished the obligation.

The compromise judgment in this case also did not give the supposed assignees, the spouses Serfino, the power to enforce Magdalena's credit against the GSIS. In fact, the spouses Serfino are prohibited from enforcing their claim until after the lapse of one (1) week from Magdalena's receipt of her retirement benefits:

(d) That the plaintiffs shall refrain from having the judgment based upon this Compromise Agreement executed until after one (1) week from receipt by the defendant, Magdalena Cortez of her retirement benefits from the [GSIS] but fails to pay within the said period the defendants' judgment debt in this case, in which case [this] Compromise Agreement [may be] executed upon any property of the defendants that are subject to execution upon motion by the plaintiffs.¹⁹

An assignment of credit not only entitles the assignee to the credit itself, but also gives him the power to enforce it as against the debtor of the assignor.

Since no valid assignment of credit took place, the spouses Serfino cannot validly claim ownership of the retirement benefits that were deposited with FEBTC. **Without ownership rights over the amount, they suffered no pecuniary loss that has to be compensated by actual damages.** The grant of actual damages presupposes that the claimant suffered a duly proven pecuniary loss.²⁰

¹⁸ *Id.* at 437.

¹⁹ *Rollo*, p. 149.

²⁰ Civil Code, Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proven. Such compensation is referred to as actual or compensatory damages.

Claim for moral damages not meritorious because no duty exists on the part of the bank to protect interest of third person claiming deposit in the name of another

Under Article 2219 of the Civil Code, moral damages are recoverable for acts referred to in Article 21 of the Civil Code.²¹ Article 21 of the Civil Code, in conjunction with Article 19 of the Civil Code, is part of the cause of action known in this jurisdiction as “abuse of rights.” The elements of abuse of rights are: (a) **there is a legal right or duty**; (b) exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.

The spouses Serfino invoke American common law that imposes a **duty upon a bank receiving a notice of adverse claim to the fund in a depositor’s account to freeze the account for a reasonable length of time, sufficient to allow the adverse claimant to institute legal proceedings to enforce his right to the fund.**²² In other words, the bank has a duty not to release the deposits unreasonably early after a third party makes known his adverse claim to the bank deposit. Acknowledging that no such duty is imposed by law in this jurisdiction, the spouses Serfino ask the Court to adopt this foreign rule.²³

To adopt the foreign rule, however, goes beyond the power of this Court to promulgate rules governing pleading, practice and procedure in all courts.²⁴ **The rule reflects a matter of policy that is better addressed by the other branches of government**, particularly, the *Bangko Sentral ng Pilipinas*, which is the agency that supervises the operations and activities of

²¹ Article 21. Any 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.

²² See J. Adam Sholar, *Bank Deposits: The Need for an Adverse Claim Statute in North Carolina*, 31 Campbell L. Rev. 91, 94 (Fall 2008).

²³ *Rollo*, pp. 13-14.

banks, and which has the power to issue “rules of conduct or the establishment of standards of operation for uniform application to all institutions or functions covered[.]”²⁵ To adopt this rule will have significant implications on the banking industry and practices, as the American experience has shown. Recognizing that the rule imposing duty on banks to freeze the deposit upon notice of adverse claim adopts a policy adverse to the bank and its functions, and opens it to liability to both the depositor and the adverse claimant,²⁶ many American states have since adopted adverse claim statutes that shifted or, at least, equalized the burden. Essentially, these statutes do not impose a duty on banks to freeze the deposit upon a mere notice of adverse claim; they first require either a court order or an indemnity bond.²⁷

In the absence of a law or a rule binding on the Court, it has no option but to uphold the existing policy that recognizes the fiduciary nature of banking. It likewise rejects the adoption of a judicially-imposed rule giving third parties with unverified claims against the deposit of another a better right over the deposit. As current laws provide, the bank’s contractual relations are with its depositor, not with the third party;²⁸ “a bank is under obligation to treat the accounts of its depositors with meticulous care and always to have in mind the fiduciary nature of its relationship with them.”²⁹ In the absence of any positive duty of the bank to an adverse claimant, there could be no breach that entitles the latter to moral damages.

²⁴ CONSTITUTION, Article VIII, Section 5(5).

²⁵ Section 4.1 of Republic Act No. 8791 or The General Banking Law of 2000.

²⁶ The rule was first adopted in the 1922 case of *Huff v. Oklahoma State Bank*, 207 P. 963, 964, (J. Adam Sholar, *supra* note 22, at 94).

²⁷ See J. Adam Sholar, *supra* note 22, at 98-100.

²⁸ See *Gendler v. Sibley State Bank*, 62 F. Supp. 805 (1945).

²⁹ *Prudential Bank v. Lim*, G.R. No. 136371, November 11, 2005, 511 SCRA 100, 112.

WHEREFORE, in view of the foregoing, the petition for review on *certiorari* is **DENIED**, and the decision dated February 23, 2006 of the Regional Trial Court of Bacolod City, Branch 41, in Civil Case No. 95-9344 is **AFFIRMED**. Costs against the petitioners.

SO ORDERED.



ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

A T T E S T A T I O N

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.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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
Chief Justice