



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**COMSAVINGS BANK (now GSIS
FAMILY BANK),**

Petitioner,

- versus -

**SPOUSES DANILO AND
ESTRELLA CAPISTRANO,**
Respondents.

G.R. No. 170942

Present:

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
*MENDOZA, and
REYES, JJ.

Promulgated:

AUG 28 2013

x-----x

DECISION

BERSAMIN, J.:

A banking institution serving as an originating bank for the Unified Home Lending Program (UHLP) of the Government owes a duty to observe the highest degree of diligence and a high standard of integrity and performance in all its transactions with its clients because its business is imbued with public interest.

The Case

Comsavings Bank (now GSIS Family Bank) seeks the review and reversal of the decision promulgated on November 30, 2005,¹ whereby the Court of Appeals (CA) affirmed with modifications the decision rendered on

* Vice Associate Justice Martin S. Villarama, Jr., who is on leave per Special Order No. 1502 dated August 8, 2013.

¹ *Rollo*, pp. 30-48; penned by Associate Justice Portia Aliño-Hormachuelos (retired), with Associate Justice Mariano C. Del Castillo (now a Member of this Court) and Associate Justice Magdangal M. De Leon concurring.

April 25, 2003 by the Regional Trial Court (RTC), Branch 135, in Makati City finding it liable for damages to respondents.²

Antecedents

Respondents were the owners of a residential lot with an area of 200 square meters known as Lot 8 of Block 4 of the Infant Jesus Subdivision situated in Bacoor, Cavite, and covered by Transfer Certificate of Title (TCT) No. 316885 of the Register of Deeds of Cavite. Desirous of building their own house on the lot, they availed themselves of the UHLP implemented by the National Home Mortgage Finance Corporation (NHMFC). On May 28, 1992, they executed a construction contract with Carmencita Cruz-Bay, the proprietor of GCB Builders, for the total contract price of ₱265,000.00 with the latter undertaking to complete the construction within 75 days. To finance the construction, GCB Builders facilitated their loan application with Comsavings Bank, an NHFMC-accredited originator. As proof of their qualifications to avail themselves of a loan under the UHLP and to comply with the conditions prescribed for the approval of their application, they submitted their record of employment, the amount of their income, and a clearance from the Social Security System (SSS) to the effect that they had no existing loans, among others. On May 28, 1992, they executed in favor of GCB Builders a deed of assignment of the amount of the ₱300,000.00 proceeds of the loan from Comsavings Bank.

On July 2, 1992, Comsavings Bank informed respondent Estrella Capistrano that she would have to sign various documents as part of the requirements for the release of the loan. Among the documents was a *certificate of house completion and acceptance*. On the same date, Comsavings Bank handed Estrella a letter addressed to GCB Builders informing the latter that respondents had complied with the preliminary requirements of the UHLP, and were qualified to avail themselves of the loan amounting to ₱303,450.00 payable within 25 years at 16% *per annum*, subject to the following terms and conditions, namely: the signing of mortgage documents, 100% completion of the construction of the housing unit, original certificate of occupancy permit and certification of completion, and submission of house pictures signed by the borrower at the back.

On August 10, 1992, Comsavings Bank informed respondents of the approval of an interim financing loan of ₱260,000.00 payable within 180 days, which amount was to be paid out of the proceeds of the loan from NHMFC. By October 9, 1992, GCB Builders received from Comsavings Bank the total sum of ₱265,000.00 as construction cost in four releases, to wit:

² Id. at 72-82.

August 7, 1992	- ₱ 39,210.00
August 19, 1992	- ₱112,181.00
September 3, 1992	- ₱ 53,565.00
October 9, 1992	- ₱ 24,779.25 ³

In late September 1992, after Comsavings Bank had released the total of ₱265,000.00 to GCB Builders as construction cost, respondents inquired from GCB Builder when their house would be completed considering that their contract stipulated a completion period of 75 days. Cruz-Bay gave various excuses for the delay, such as the rainy season, but promised to finish the construction as soon as possible. The year 1992 ended with the construction of the house unfinished.⁴

In February 1993, respondents demanded the completion of the house. In reply, Cruz-Bay told them to give the further amount of ₱25,000.00 to finish the construction. They requested a breakdown of the amounts already spent in the construction considering that the ₱303,450.00 that Comsavings Bank had been paid by NHMFC on their loan had been more than the contract price of the contract. Instead of furnishing them the requested breakdown, GCB Builders' counsel sent a demand letter for an additional construction cost of ₱52,511.59.

On May 30, 1993, respondents received a letter from NHMFC advising that they should already start paying their monthly amortizations of ₱4,278.00 because their loan had been released on April 20, 1993 directly to Comsavings Bank. On June 1, 1993, Estrella Capistrano went to the construction site and found to her dismay that the house was still unfinished. She noted that there were no doorknobs; that the toilet bath floor was not even constructed yet because the portion of the house was still soil; that there were no toilet and bathroom fixtures; that the toilet and bath wall tiles had no end-capping; that there were cracks on the wall plastering; that the kitchen sink had no plumbing fixtures; and that the main door installed was a flush-type instead of the sliding door specified in the approved plans.

On July 5, 1993, respondents wrote to NHMFC protesting the demand for amortization payments considering that they had not signed any *certification of completion and acceptance*, and that even if there was such a *certification of completion and acceptance*, it would have been forged.

On July 14, 1993, respondents again wrote to NHMFC requesting an ocular inspection of the construction site.

³ Id. at 32-33.

⁴ Id. at 33.

On November 11, 1993, Atty. Ruben C. Corona, the Manager of the Collateral Verification & External Examination Department of NHMFC, informed the counsel of respondents that the inspection of the construction site conducted on August 4, 1993 showed the following:

- 1) That the subject unit is being occupied by tenant, a certain Mr. Mark Inanil;
- 2) That the toilet/bath and kitchen counter are not installed with Plumbing fixtures;
- 3) That there are no door knobs on bedroom and no handles on Kitchen cabinet;
- 4) That the toilet bath has no concrete flooring and the tiles has no end/corner cappings; and
- 5) That there are hairline cracks on flooring.⁵

On July 12, 1993, respondents sued GCB Builders and Comsavings Bank for breach of contract and damages,⁶ praying that defendants be ordered jointly and severally liable: (1) to finish the construction of the house according to the plans and specifications agreed upon at the price stipulated in the construction contract; and (2) to pay them ₱38,450.00 as the equivalent of the mortgage value in excess of the contract price; ₱25,000.00 as actual damages for the expenses incurred by reason of the breach of contract; ₱200,000.00 as moral damages; ₱30,000.00 as attorney's fees; and ₱50,000.00 as exemplary damages.

Respondents amended their complaint to implead NHMFC as an additional defendant. Aside from adopting the reliefs under the original complaint, they prayed that NHMFC be directed to hold in abeyance its demand for amortization payment until the case had been finally adjudged; that NHMFC, GCB Builders and Comsavings Bank be ordered to pay moral and exemplary damages, and attorney's fees; and that GCB Builders and Comsavings be directed to pay ₱4,500.00 as monthly rental from the filing of the complaint until the house was turned-over and accepted by them.⁷

In their respective answers,⁸ GCB Builders, Comsavings Bank and NHMFC asserted that the complaint as amended stated no cause of action against them. On its part, GCB Builders claimed that the construction of the house had been completed a long time ago; that respondent had failed, despite demand, to occupy the house and to pay a balance of ₱46,849.94 as of August 23, 1993; and that it had received only ₱239,355.30 out of the

⁵ Id. at 31-35.

⁶ Id. at 49-53.

⁷ Id. at 54-60.

⁸ Records, pp. 22-26, 119-120, 123-126, and 186-189.

₱303,000.00 loan, inasmuch as the balance went to interim interest, originator fee, service charge and other bank charges. Comsavings Bank averred that respondents were estopped from assailing their signing of the *certificate of house acceptance/completion* on July 2, 1992 considering that they had the option not to pre-sign the certificate; and that it did not make any representation as to the conditions and facilitation of the loan with NHMFC when it submitted the *certificate of house acceptance/completion* to NHMFC after the completion of the house on April 20, 1993 because such representations were normal and regular requirements in loan processing of the conduit banks of NHMFC. Lastly, NHMFC alleged that it administered the UHLP of the Government by granting financing to qualified home borrowers through loan originators, like Comsavings Bank in this case; and that respondents had applied and had been granted a housing loan, and, as security, they had executed a loan and mortgage agreement and promissory note for ₱303,450.00 dated July 2, 1992.

Decision of the RTC

On April 25, 2003, after trial, the RTC rendered a decision in favor of respondents.⁹ Specifically, it found that although the proceeds of the loan had been completely released, the construction of the house of respondents remained not completed; that the house had remained in the possession of GCB Builders, which had meanwhile leased it to another person; that GCB Builders did not comply with the terms and conditions of the construction contract; and that NHMFC approved the loan in the gross amount of ₱303,450.00, and released ₱289,000.00 of that amount to Comsavings Bank on April 20, 1993. It concluded that respondents were entitled to recover from all defendants actual damages of ₱25,000.00; moral damages for their mental anguish and sleepless night in the amount of ₱200,000.00; exemplary damages of ₱100,000.00; and ₱30,000.00 as attorney's fees. It ruled, however, that only GCB Builders was liable for the monthly rental of ₱4,500.00 because GCB Builders was alone in renting out the house; and that NHMFC was equally liable with the other defendants by reason of its having released the loan proceeds to Comsavings Bank without verifying whether the construction had already been completed, thereby indicating that NHMFC had connived and confederated with its co-defendants in the irregular release of the loan proceeds to Comsavings Bank.

The RTC disposed thusly:

WHEREFORE, judgment is hereby rendered ordering:

1. Defendants GCB Builder, COMSAVINGS BANK, and NATIONAL HOUSING FINANCE MORTGAGE CORPORATION (sic) jointly and severally:

⁹ Supra note 2.

1.1 To complete the construction of the house of plaintiff Spouses DANILO and ESTRELLA CAPISTRANO within thirty [30] days;

1.2 To pay said plaintiffs:

1.2.1 ₱25,000.00 in actual damages;

1.2.2 ₱200,000.00 in moral damages;

1.2.3 ₱100,000.00 in exemplary damages;

1.2.4 ₱30,000.00 as attorney's fees.

2. Defendant GCB Builder to pay the plaintiffs the amount of ₱4,500.00, as rentals from the date of the filing of the Complaint until the construction of the house is completed, turned over to and accepted by the plaintiffs;

3. Defendants NHMFC to hold in abeyance the collection of the amortizations until 30 days from the completion and acceptance by the plaintiffs of the house in question.

SO ORDERED.¹⁰

GCB Builders, Comsavings Bank and NHMFC appealed to the CA.

Decision of the CA

GCB Builders assigned the following errors to the RTC, namely:

1. IN FINDING THAT THE HOUSE IN QUESTION WAS NOT COMPLETED.

2. IN FINDING THAT GCB BUILDERS DID NOT COMPLY WITH THE TERM AND CONDITIONS OF THE CONSTRUCTION.

3. IN NOT FINDING THAT THE PLAINTIFFS ARE LIABLE TO PAY DEFENDANT GCB THE AMOUNT OF ₱45,000.00.

4. IN RENDERING WITHOUT LEGAL AND FACTUAL BASIS THE DECISION, THE DISPOSTIVE PORTION OF WHICH READS, AS FOLLOWS:

x x x x

5. IN NOT GRANTING THE RELIEFS PRAYED FOR IN THE COUNTERCLAIM;

6. IN NOT DISMISSING THE COMPLAINT.¹¹

¹⁰ Id. at 80-82.

¹¹ CA *rollo*, pp. 138-139.

Comsavings Bank phrased its assignment of error thuswise:

I

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT COMSAVINGS BANK IS JOINTLY AND SEVERALLY LIABLE WITH THE OTHER DEFENDANTS-APPELLANTS GCB BUILDERS AND NATIONAL HOME MORTGAGE FINANCE CORPORATION TO PAY PLAINTIFFS-APPELLEES ACTUAL, MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.¹²

NHMFC ascribes to the RTC the following errors, to wit:

I

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT NATIONAL HOME MORTGAGE FINANCE CORPORATION IS JOINTLY AND SEVERALLY LIABLE WITH THE OTHER DEFENDANT-APPELLANTS GCB BUILDERS AND COMSAVINGS BANK TO PAY PLAINTIFFS-APPELLEES ACTUAL, MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.

II

THE TRIAL COURT ERRED IN HOLDING THAT DEFENDANT-APPELLANT NATIONAL HOME MORTGAGE FINANCE CORPORATION SHOULD HOLD IN ABEYANCE THE COLLECTION OF AMORTIZATION UNTIL 30 DAYS FROM THE COMPLETION AND ACCEPTANCE BY THE PLAINTIFFS OF THE HOUSE IN QUESTION.¹³

On November 30, 2005, the CA promulgated the appealed decision,¹⁴ affirming the RTC subject to the modification that NHMFC was absolved of liability, and that the moral and exemplary damages were reduced, *viz*:

X X X X

The Court *a quo* held appellant Comsavings Bank jointly and severally liable with appellant GCB Builders since it likewise committed misrepresentations in obtaining the mortgage loan from the NHMFC in the name of the appellees. We concur. The records show that it was appellant Comsavings Bank which called up the appellee Estrella Capistrano and had her sign various documents as part of the documentary requirements for the release of the construction loan. One of these documents, was the Certificate of House Completion and Acceptance, which, upon appellant Bank's representation was signed by the appellees even if the construction of the house had not yet started. On July 2, 1992, Comsavings Bank informed appellant GCB Builders that appellees had provisionally complied with the preliminary requirements under the Unified Home

¹² Id. at 46.

¹³ Id. at 73-74.

¹⁴ Supra note 1.

Lending Program of appellant NHMFC and qualified for a loan in the amount of ₱303,450.00 payable in twenty-five (25) years at an interest of 16% per annum. One condition for the approval of the loan was “100% completion of the construction of the housing unit located on the property described plus: Original Certificate of Occupancy Permit and Certification of Completion and Submission of House pictures signed at the back by the borrower. However, the loan documents which appellant Bank submitted to appellant NHMFC were false. Appellant Comsavings Bank in order to show that the construction of the subject house had been completed, submitted a photograph of a toilet/bath with plumbing and fixtures installed when in the truth, as admitted by appellant GCB Builders, the plumbing fixtures had not (been) installed as the appellees were still indebted to GCB. Comsavings Bank also submitted photographs of wall tiles of the toilet/bath showing them to be brown or mustard, but the color of the wall tiles actually installed was white per testimony of appellee Estrella Capistrano and corroborated by appellant GCB Builders’ witness Leopoldo Arnaiz. The appellees complained to appellant NHMFC that the house which they bought was unfinished on the basis of which NHMFC conducted an inspection of the housing unit and found the complaint to be true.

By submitting false or forged documents to the NHMFC, appellant Comsavings Bank violated the warranties contained in the purchase of the loan agreement with appellant NHMFC. On the strength of such warranties, NHMFC issued Check No. 425824 in the amount of ₱1,382,806.63 that include the mortgage loan of the appellees. It must be recalled that the agreement provided among others that “the housing loan extended to the appellees would be released to and received by Comsavings Bank, and the latter warrants the genuineness of all loan documents it submitted to NHMFC. Incidentally, Carmencita B. Cruz, owner and proprietor of appellant GCB Builders admitted that she is even not an accredited builder of housing units under the Unified Home Lending Program (UHLP) of the NHMFC in the area. Appellant Comsavings Bank in allowing appellant GCB Builders to participate in the UHLP program undermined and defeated its real purpose, to help low income families build their own homes, to the damage and prejudice of the appellees.¹⁵

X X X X

WHEREFORE, in view of all the foregoing, the decision appealed from is AFFIRMED with MODIFICATIONS. The dispositive portion finding the NHMFC jointly and severally liable with the other appellants for the payment of actual, moral and exemplary damages, is hereby deleted; the awards of moral and exemplary damages are reduced to ₱100,000.00 and ₱50,000.00, respectively, and the amount of rentals to be paid by GCB Builders is to be reckoned from August 4, 1993.

SO ORDERED.¹⁶

Hence, this further appeal by Comsavings Bank.

¹⁵ Id. at 45-48.

¹⁶ Id.

Issue

Comsavings Bank submits the lone issue of:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING PETITIONER BANK JOINTLY AND SEVERALLY LIABLE WITH GCB BUILDERS TO PAY RESPONDENT ACTUAL, MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEY'S FEES.¹⁷

Comsavings Bank insists on its non-liability, contending that it committed no misrepresentation when it made respondents sign the *certificate of house acceptance/completion* notwithstanding that the construction of the house had not yet started; that they agreed to pre-sign the certificate, although they had the option not to; that it made them sign the certificate to enable them to avoid the inconvenience of returning back and forth just to sign the certificate; that it made clear to them during the pre-signing that the certificate would be submitted to NHMFC only after the completion of the house; that it submitted the certificate to NHMFC after the completion of the construction of the house on April 23, 2003; that they had thus been informed beforehand of the conditions in pre-signing the certificate; that choosing to pre-sign the certificate estopped them from questioning the procedural aspect of the documentation; and that the practice of pre-signing documents was not expressly prohibited considering that they were not induced to pre-sign the certificate.¹⁸

Ruling

The appeal has no merit.

1.

**Comsaving Bank's liability was not based
on its *purchase of loan agreement* with NHMFC
but on Article 20 and Article 1170 of the *Civil Code***

The CA rightfully declared Comsavings Bank solidarily liable with GCB Builders for the damages sustained by respondents. However, we point out that such liability did not arise from Comsavings Bank's breach of warranties under its *purchase of loan agreement* with NHMFC. Under the *purchase of loan agreement*, it undertook, for value received, to sell, transfer and deliver to NHMFC the loan agreements, promissory notes and other supporting documents that it had entered into and executed with respondents, and warranted the genuineness of the loan documents and the "construction of the residential units."¹⁹ Having made the warranties in favor

¹⁷ Id. at 17.

¹⁸ Id. at 20-22.

¹⁹ Records, p. 880.

of NHMFC, it would be liable in case of breach of the warranties to NHMFC, not respondents, eliminating breach of such warranties as a source of its liability towards respondents.

Instead, the liability of Comsavings Bank towards respondents was based on Article 20 and Article 1170 of the *Civil Code*, viz:

Article 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Based on the provisions, a banking institution like Comsavings Bank is obliged to exercise the highest degree of diligence as well as high standards of integrity and performance in all its transactions because its business is imbued with public interest.²⁰ As aptly declared in *Philippine National Bank v. Pike*:²¹ “The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks.”

Gross negligence connotes want of care in the performance of one’s duties;²² it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.²³ It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.²⁴

There is no question that Comsavings Bank was grossly negligent in its dealings with respondents because it did not comply with its legal obligation to exercise the required diligence and integrity. As a banking institution serving as an originator under the UHLP and being the maker of the *certificate of acceptance/completion*,²⁵ it was fully aware that the purpose of the signed certificate was to affirm that the house had been *completely* constructed according to the approved plans and specifications, and that respondents had thereby accepted the delivery of the *complete* house. Given the purpose of the certificate, it should have desisted from

²⁰ *Philippine National Bank v. Chea Chee Chong*, G.R. Nos. 170865 and 170892, April 25, 2012, 671 SCRA 49, 62-63; *Solidbank Corporation v. Arrieta*, G.R. No. 152720, February 17, 2005, 451 SCRA 711, 720; and *Philippine Commercial International Bank v. Court of Appeals*, G.R. Nos. 121413, 121479 and 128604, January 29, 2001, 350 SCRA 446, 472.

²¹ G.R. No. 157845, September 20, 2005, 470 SCRA 328, 347.

²² *Premiere Development Bank v. Mantal*, G.R. No. 167716, March 23, 2006, 485 SCRA 234, 239.

²³ *Macalinao v. Ong*, G.R. No. 146635, December 14, 2005, 477 SCRA 740, 760.

²⁴ *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31 2009, 594 SCRA 683, 696.

²⁵ Records, p. 812.

presenting the certificate to respondents for their signature without such conditions having been fulfilled. Yet, it made respondents sign the certificate (through Estrella Capistrano, both in her personal capacity and as the attorney-in-fact of her husband Danilo Capistrano) despite the construction of the house not yet even starting. Its act was irregular *per se* because it contravened the purpose of the certificate. Worse, the pre-signing of the certificate was fraudulent because it was thereby enabled to gain in the process the amount of ₱17,306.83 in the form of several deductions from the proceeds of the loan on top of other benefits as an originator bank.²⁶ On the other hand, respondents were prejudiced, considering that the construction of the house was then still incomplete and was ultimately defective. Compounding their plight was that NHMFC demanded payment of their monthly amortizations despite the non-completion of the house. Had Comsavings Bank been fair towards them as its clients, it should not have made them pre-sign the certificate until it had confirmed that the construction of the house had been completed.

Comsavings Bank asserts that it submitted the certificate to NHMFC after the construction of the house had been completed on April 23, 2003. The assertion could not be true, however, because Atty. Corona of NHMFC testified that he had inspected the house on August 4, 1993 and had found the construction to be incomplete and defective.²⁷

Contrary to the claim of Comsavings Bank, the records contain no showing that respondents had been given the option not to pre-sign the *certificate of acceptance/completion*; that Comsavings Bank had made respondents sign the certificate so that they would not be inconvenienced in going back and forth just to sign the certificate; and that it made clear to them during the pre-signing that the certificate would be submitted to NHMFC only after the completion of the house. Felicisima M. Miranda, the loan officer of Comsavings Bank and its sole witness during trial, did not attest to such option not to pre-sign. Also, Estrella Capistrano (Estrella) mentioned nothing about it during the trial, testifying only that after signing several documents, including the certificate, she was told by Comsavings Bank's personnel that the documents would be needed for the processing of the loan.²⁸ Clearly, the supposed option was Comsavings Bank's lame justification for the pre-signing of the certificate.

The submission of pictures of the fully-constructed house bearing the signatures of respondents on the dorsal sides was a requirement for the release of the loan by Comsavings Bank to GCB Builders, and for the Comsavings Bank's reimbursement of the loan from NHMFC.²⁹ The signatures were ostensibly for authentication of the pictures. In its

²⁶ Records, p. 11.

²⁷ TSN, October 19, 1998, pp. 2-9; records, pp. 110.

²⁸ TSN, September 14, 1995, pp. 4 and 7.

²⁹ Records, pp. 11 and 880.

compliance, GCB Builders submitted pictures of a different house sans the signatures of respondents on the dorsal sides.³⁰ Ignoring the glaring irregularity, Comsavings Bank accepted the unsigned (hence, unauthenticated) pictures, released the loan to GCB Builders, and turned over the pictures to NHMFC for the reimbursement of the loan. Had Comsavings Bank complied with its duty of observing the highest degree of diligence, it would have checked first whether the pictures carried the signatures of respondents on their dorsal sides, and whether the house depicted on the pictures was really the house of respondents, before releasing the proceeds of the loan to GCB Builders and before submitting the pictures to NHMFC for the reimbursement. Again, this is an indication of Comsavings Bank's gross negligence.

2.

Comsavings Bank is liable for damages

As to the damages that should be awarded to respondents, moral and exemplary damages were warranted.

Under Article 2219 of the *Civil Code*, moral damages may be recovered for the acts or actions referred to in Article 20 of the *Civil Code*. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.³¹

In their amended complaint, respondents claimed that the acts of GCB Builders and Comsavings Bank had caused them to suffer sleepless nights, worries and anxieties. The claim was well founded. Danilo worked in Saudi Arabia in order to pay the loan used for the construction of their family home. His anxiety and anguish over the incomplete and defective construction of their house, as well as the inconvenience he and his wife experienced because of this suit were not easily probable. On her part, Estrella was a mere housewife, but was the attorney-in-fact of Danilo in matters concerning the loan transaction. With Danilo working abroad, she was alone in overseeing the house construction and the progress of the present case. Given her situation, she definitely experienced worries and sleepless nights. The award of moral damages of ₱100,000.00 awarded by the CA as exemplary damages is proper.

With respect to exemplary damages, the amount of ₱50,000.00 awarded by the CA as exemplary damages is sustained. Relevantly, we have held that:

³⁰ Id. at 726.

³¹ See also *Cagungan v. Planters Development Bank*, G.R. No. 158674, October 17, 2005, 473 SCRA 259, 271.

The law allows the grant of exemplary damages to set an example for the public good. The business of a bank is affected with public interest; thus, it makes a sworn profession of diligence and meticulousness in giving irreproachable service. For this reason, the bank should guard against injury attributable to negligence or bad faith on its part. The banking sector must at all times maintain a high level of meticulousness. The grant of exemplary damages is justified by the initial carelessness of petitioner, aggravated by its lack of promptness in repairing its error.³²

However, the award of actual damages amounting to ₱25,000.00 is not warranted. To justify an award for actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims duly supported by receipts.³³ Respondents did not submit any documentary proof, like receipts, to support their claim for actual damages.

Nonetheless, it cannot be denied that they had suffered substantial losses. Article 2224 of the *Civil Code* allows the recovery of temperate damages when the court finds that some pecuniary loss was suffered but its amount cannot be proved with certainty. In lieu of actual damages, therefore, temperate damages of ₱25,000.00 are awarded. Such amount, in our view, is reasonable under the circumstances.

Article 2208 of the *Civil Code* allows recovery of attorney's fees when exemplary damages are awarded or where the plaintiff has incurred expenses to protect his interest by reason of defendant's act or omission. Considering that exemplary damages were properly awarded here, and that respondents hired a private lawyer to litigate its cause, we agree with the RTC and CA that the ₱30,000.00 allowed as attorney's fees were appropriate and reasonable.

A defendant who did not appeal may be benefitted by the judgment in favor of the other defendant who appealed.³⁴ Thus, the foregoing modifications as to the nature and amount of damages inures to the benefit of GCB Builders although it did not appeal the ruling of the CA.

WHEREFORE, we **AFFIRM** the decision promulgated by the Court of Appeals on November 30, 2005, subject to the **MODIFICATIONS** that Comsavings Bank and GCB Builders are further ordered to pay, jointly and severally, to the Spouses Danilo and Estrella Capistrano the following amounts: (1) ₱25,000.00 as temperate damages; (2) ₱30,000.00 as attorney's

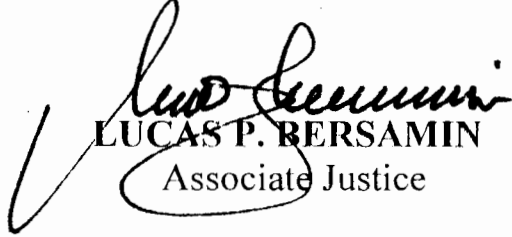
³² *Solidabank Corporation v. Arrieta*, G.R. No. 152720, February 17, 2005, 451 SCRA 711, 722.

³³ *Gamboa, Rodriguez, Rivera & Co., Inc. v. Court of Appeals*, G.R. No. 117456, May 6, 2005, 458 SCRA 68, 74.

³⁴ *Petilla v. Court of Appeals*, No. L-38188, June 18, 1987, 151 SCRA 1, 12.


fees; (3) interest of 6% *per annum* on all the amounts of damages reckoned from the finality of this decision; and (4) the costs of suit.

SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



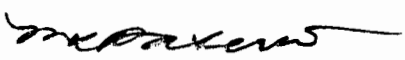
JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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