



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**FAR EAST BANK & TRUST
COMPANY,**

Petitioner,

- versus -

ROBERT MAR CHANTE,
a.k.a. **ROBERT MAR G. CHAN,**
Respondents.

G.R. No. 170598

Present:

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

Promulgated:

OCT 09 2013

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DECISION

BERSAMIN, J.:

In this dispute between a bank and its depositor over liability for several supposedly fraudulent withdrawals from the latter's account through an automated tellering machine (ATM), we hereby resolve the issue of liability against the bank because of the intervention of a system bug that facilitated the purported withdrawals.

The Case

Under review on *certiorari* is the decision promulgated on August 1, 2005,¹ whereby the Court of Appeals (CA) reversed the judgment the Regional Trial Court, Branch 51, in Manila (RTC) rendered in favor of the

* Vice Associate Justice Martin S. Villarama, Jr., who is on sick leave of absence, pursuant to Special Order No. 1545 (Revised).

¹ *Rollo*, pp. 42-63; penned by Associate Justice Arturo D. Brion (now a Member of this Court), with Associate Justice Eugenio S. Labitoria (retired) and Associate Justice Eliezer R. De los Santos (retired/deceased) concurring.

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petitioner on May 14, 1998 in Civil Case No. 92-61706.² Thereby, the CA relieved the depositor of any liability for the supposedly fraudulent withdrawals.

Antecedents

Robert Mar Chante, also known as Robert Mar G. Chan (Chan), was a current account depositor of petitioner Far East Bank & Trust Co. (FEBTC) at its Ongpin Branch (Current Account No. 5012-00340-3). FEBTC issued to him Far East Card No. 05-01120-5-0 with July 1993 as the expiry date. The card, known as a “Do-It-All” card to handle credit card and ATM transactions, was tagged in his current account. As a security feature, a personal identification number (PIN), known only to Chan as the depositor, was required in order to gain access to the account. Upon the card’s issuance, FEBTC required him as the depositor to key in the six-digit PIN. Thus, with the use of his card and the PIN, he could then deposit and withdraw funds from his current account from any FEBTC ATM facility, including the MEGALINK facilities of other member banks that included the Philippine National Bank (PNB).

Civil Case No. 92-61706 sprang from the complaint brought by petitioner Far East Bank & Trust Co. (FEBTC) on July 1, 1992 in the RTC,³ to recover from Chan the principal sum of ₱770,488.30 representing the unpaid balance of the amount fraudulently withdrawn from Chan’s Current Account No. 5012-00340-3 with the use of Far East Card No. 05-01120-5-0.

FEBTC alleged that between 8:52 p.m. of May 4, 1992 and 4:06 a.m. of May 5, 1992, Chan had used Far East Card No. 05-01120-5-0 to withdraw funds totaling ₱967,000.00 from the PNB-MEGALINK ATM facility at the Manila Pavilion Hotel in Manila; that the withdrawals were done in a series of 242 transactions with the use of the same machine, at ₱4,000.00/withdrawal, except for transaction No. 108 at 3:51 a.m. of May 5, 1992, when the machine dispensed only ₱3,000.00; that MEGALINK’S journal tapes showed that Far East Card No. 05-01120-5-0 had been used in all the 242 transactions; and that the transactions were processed and recorded by the respective computer systems of PNB and MEGALINK despite the following circumstances, namely: (a) the offline status of the branch of account (FEBTC Ongpin Branch); (b) Chan’s account balance being only ₱198,511.70 at the time, as shown in the bank statement; (c) the maximum withdrawal limit of the ATM facility being ₱50,000.00/day; and (d) his withdrawal transactions not being reflected in his account, and no debits or deductions from his current account with the FEBTC Ongpin Branch being recorded.

² Id. at 75-82.

³ Records, pp. 1-7.

FEBTC added that at the time of the ATM withdrawal transactions, there was an error in its computer system known as “system bug” whose nature had allowed Chan to successfully withdraw funds in excess of his current credit balance of ₱198,511.70; and that Chan had taken advantage of the system bug to do the withdrawal transactions.

On his part, Chan denied liability. Although admitting his physical possession of Far East Card No. 05-01120-5-0 on May 4 and May 5, 1992, he denied making the ATM withdrawals totalling ₱967,000.00, and instead insisted that he had been actually home at the time of the withdrawals. He alluded to a possible “inside job” as the cause of the supposed withdrawals, citing a newspaper report to the effect that an employee of FEBTC’s had admitted having debited accounts of its depositors by using his knowledge of computers as well as information available to him. Chan claimed that it would be physically impossible for any human being like him to stand long hours in front of the ATM facility just to withdraw funds. He contested the debiting of his account, stating that the debiting had affected his business and had caused him to suffer great humiliation after the dishonor of his sufficiently-funded checks by FEBTC.

The records show that FEBTC discovered the system bug only after its routine reconciliation of the ATM-MEGALINK transactions on May 7, 1992; that it immediately adopted remedial and corrective measures to protect its interest in order to avoid incurring further damage as well as to prevent a recurrence of the incident; that one of the measures it adopted pursuant to its ATM Service Agreement with Chan was to program its computer system to repossess his ATM card; that his ATM card was repossessed at the Ermita Branch of FEBTC when he again attempted to withdraw at the ATM facility there; that the ATM facility retained his ATM card until its recovery by the bank; and that FEBTC conducted an in-depth investigation and a time-and-motion study of the withdrawals in question.

On May 14, 1992, FEBTC debited his current account in the amount of ₱192,517.20 pursuant to Chan’s ATM Service Agreement. It debited the further sum of ₱3,000.00 on May 18, 1992, leaving the unrecovered portion of the funds allegedly withdrawn by him at ₱770,488.30. Thus, on May 14 and May 18, 1992, FEBTC sent to Chan letters demanding the reimbursement of the unrecovered balance of ₱770,488.30, but he turned a deaf ear to the demands, impelling it to bring this case on July 1, 1992.⁴

⁴ Supra note 3.

Ruling of the RTC

As reflected in the pre-trial order of October 19, 1992, the issues to be resolved were, firstly, whether or not Chan had himself withdrawn the total sum of ₱967,000.00 with the use of his Far East Card No. 05-01120-5-0 at the PNB-MEGALINK ATM facility; and, secondly, if the answer to the first issue was that he did, whether or not he was liable to reimburse to FEBTC the amount of ₱770,488.30 as actual damages, plus interest.⁵

On May 14, 1998, the RTC rendered judgment in favor of FEBTC, pertinently holding and ruling as follows:⁶

In the instant case, what happened was that the defendant who was at the U.N. Branch of the PNB used his card. He entered his PIN to have access to a withdrawal transaction from his account in Far East Bank, Ongpin Branch. However, after recognizing the card and went to the path of his account it could not get a signal to proceed with the transaction so it proceeded to the other path who gave the signal to go on and dispense money. But there was a computer error as it did not only dispense the money limit for the day buty it continued to dispense a lot more until it reached the amount of ₱967,000.00 which took the defendant till the hours of the morning to obtain. But defendant says he did not use his card. He alleges that it could be an inside job just like what happened to the said bank which was published in the newspaper wherein the bank employee admitted having done the theft through his knowledge of the computer. Could this be true?

The Court opines that it is not far-fetched. However why did this Court state that plaintiff's cause of action will survive? **The action of the defendant after the incident gave him away. Merely two days after the heavy withdrawal, the defendant returned not at the exact scene of the incident but at a nearby branch which is also in Ermita and tried again to withdraw. But at this time the bank already knew what happened so it blocked the card and retained it being a hot card. The defendant was not successful this time so what he did was to issue a check almost for the whole amount of his balance in his account leaving only a minimal amount. This incident puzzles the Court. Maybe the defendant was hoping that the machine nearby may likewise dispense so much amount without being detected. He will not definitely go back to the U.N. branch as he may think that it is being watched and so he went to a nearby branch. Unfortunately, luck was not with him this time and his card was taken by the bank. The fact that he hastily withdrew the balance of his account after his card was retained by the bank only showed his knowledge that the bank may debit his account. It also showed his intent to do something further other than first inquire why his card was considered a hot card if he is really innocent. When he went to the Ermita branch to withdraw from the ATM booth he was intending to withdraw not more than ₱50,000.00 as it is the bank's limit for the day and if ever he needed a bigger amount than ₱50,000.00 immediately he should have gone to**

⁵ Records, p. 102.

⁶ *Rollo*, pp. 78-81 (bold emphasis is supplied).

the branch for an over the counter transaction but he did not do so and instead issued a check for ₱190,000.00 dated May 7, 1992 and another check for ₱5,000.00 dated May 13, 1992. To the mind of the Court, to take advantage of a computer error, to gain sudden and undeserved amount of money should be condemned in the strongest terms.

There are no available precedents in this case regarding computer errors, but the Court feels that defendant should be held liable for the mistaken amount he was able to get from the machine based on the following provisions of the law.

Articles 19, 21, 22 and 23 of the Civil Code x x x.

x x x x

There is likewise one point that the Court would like to discuss about the allegation of the defendant that it was impossible for him to withdraw the money in such long period and almost minute after minute. This Court believes that money is the least of all, a person may give priority in life. There are many who would sacrifice a lot just to have lots of it, so it would not be impossible for one to take time, stand for several hours and just enter some items in the computer if the return would be something like a million or close to a million. In fact, the effort exerted was just peanuts compared to other legitimate ways of earning a living as the only capital or means used to obtain it was the defendant's loss of sleep and the time spent in withdrawing the same.

Moreover, though the cause of action in this case may be the erroneous dispensation of money due to computer bug which is not of defendant's wrong doing, the Court sees that what was wrong was the failure to return the amount in excess of what was legally his. There is such a thing as JUSTICE. Justice means rendering to others their due. A person is just when he is careful about respecting the rights of others, and who knows too, how to claim what he rightfully deserves as a consequence of fulfilling his duties.

From the foregoing, the conclusion is manifest that plaintiff is within its right in initiating the instant suit, as defendant's refusal to pay the claim constitutes the cause of action for sum of money.

x x x x

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Far East Bank and Trust Company and against the defendant Robert Mar Chante a.k.a. Robert Mar G. Chan ordering the latter to pay the former the following:

1. the amount of ₱770,488.30 as actual damages representing the unrecovered balance of the amounts withdrawn by defendant;
2. interest of 24% per annum on the actual damages from July 1, 1992, the date of the filing of the complaint until fully paid;

3. the amount of ₱100,000.00 as exemplary damages;
4. the sum of ₱30,000.00 as and for attorney's fees; and
5. the costs of the suit.

Defendant's counterclaim is hereby dismissed for lack of merit.

SO ORDERED.

Ruling of the CA

Chan appealed,⁷ assigning the following errors to the RTC, to wit:

1. THE TRIAL COURT ERRED IN HOLDING DEFENDANT-APPELLANT LIABLE FOR THE ALLEGED WITHDRAWAL OF THE AMOUNT OF ₱967,000.00 WITH INTEREST AT THE RATE OF 24% PER ANNUM BASED MERELY ON CONJECTURES AND SUSPICIONS NOT ESTABLISHED BY SOLID EVIDENCE;

2. THE TRIAL COURT ERRED IN AWARDING IN FAVOR OF APPELLEE EXEMPLARY DAMAGES IN THE AMOUNT OF ₱100,000.00 AND ATTORNEY'S FEES IN THE AMOUNT OF ₱30,000.00;

3. THE TRIAL COURT ERRED IN NOT ORDERING THE RESTITUTION OF THE AMOUNT OF ₱196,521.30 ILLEGALLY DEBITED BY APPELLEE FROM APPELLANT'S ACCOUNT.

On August 1, 2005, the CA promulgated the assailed decision, reversing the RTC's judgment, to wit:

x x x. The issues really before us are issues of contract application and issues of fact that would require an examination and appreciation of the evidence presented. The first order therefore in our review of the trial court's decision is to take stock of the established and undisputed facts, and of the evidence the parties have presented. We say this at the outset as we believe that it was in this respect that the lower court failed in its consideration and appreciation of the case.

x x x x

An evidentiary dilemma we face in this case is the fact that there is no direct evidence on the issue of who made the actual withdrawals. Chan correctly claims that the bank failed to present any witness testifying that he (Chan) made the actual withdrawals. At the same time, Chan can only rely on his own uncorroborated testimony that he was at home on the night that withdrawals were made. We recognize that the bank can claim that no other evidence of actual withdrawal is necessary because the PIN unique

⁷ CA rollo, pp. 34-52.

to Chan is already evidence that only Chan or his authorized representative – and none other – could have accessed his account. But at the same time, we cannot close our eyes to the fact that computers and the ATM system is not perfect as shown by an incident cited by Chan involving the FEBTC itself. Aside from the vulnerability to inside staff members, we take judicial notice that no less than our own Central Bank has publicly warned banks about other nefarious schemes involving ATM machines. In a March 7, 2003 letter, the Central Bank stated:

March 7, 2003

BSP CIRCULAR LETTER

TO : All Banks

SUBJECT : Technology Fraud on ATM Systems

Please be advised that there were incidents in other countries regarding technology fraud in ATM systems perpetrated by unscrupulous individuals and/ or syndicates. These acts are carried out by:

1. A specialized scanner attached to the ATM card slot, and;
2. A pinhole camera

x x x x

In light of the absence of conclusive direct evidence of actual withdrawal that we can rely upon, we have to depend on evidence “other than direct” to reach verdict in this case.

x x x x

WHEREFORE, premises considered, we hereby **GRANT** the appeal and accordingly **REVERSE** and **SET ASIDE** the Decision dated May 14, 1998 of the Regional Trial Court of Manila, Branch 51, in Civil Case No. 92-61706. We accordingly **ORDER** plaintiff-appellee Far East Bank and Trust Company (FEBTC) to return to Chan the amount of Php196,571.30 plus 12% interest per annum computed from August 7, 1992 – the time Chan filed his counterclaim – until the obligation is satisfied. Costs against the plaintiff-appellee FEBTC.

SO ORDERED.⁸

FEBTC moved for reconsideration, but the CA denied its motion on November 24, 2005.⁹

⁸ Supra note 1, at 48-63.

⁹ *Rollo*, pp. 65-68.

Issues

Hence, FEBTC has appealed, urging the reversal of the CA's adverse decision, and praying that Chan be held liable for the withdrawals made from his account on May 4 and May 5, 1992; and that it should not be held liable to return to Chan the sum of ₱196,571.30 debited from his account.

Ruling

The appeal lacks merit.

FEBTC would want us to hold that Chan had authored the May 4 and May 5, 1992 ATM withdrawals based on the following attendant factors, namely: (a) ATM transactions were processed and identified by the PIN, among others; (b) the PIN was exclusive and known only to the account holder; (c) the ATM was tagged in the cardholder's account where the ATM transactions were debited or credited; (d) the account number tagged in the ATM card identified the cardholder; (e) the ATM withdrawals were documented transactions; and (f) the transactions were strictly monitored and recorded not only by FEBTC as the bank of account but also by the ATM machine and MEGALINK. In other words, the ATM transactions in question would not be processed unless the PIN, which was known only to Chan as the cardholder, had been correctly entered, an indication both that it was his ATM card that had been used, and that all the transactions had been processed successfully by the PNB-MEGALINK ATM facility at the Manila Pavilion Hotel with the use of the correct PIN.

We disagree with FEBTC.

Although there was no question that Chan had the physical possession of Far East Card No. 05-01120-5-0 at the time of the withdrawals, the exclusive possession of the card alone did not suffice to preponderantly establish that he had himself made the withdrawals, or that he had caused the withdrawals to be made. In his answer, he denied using the card to withdraw funds from his account on the dates in question, and averred that the withdrawals had been an "inside job." His denial effectively traversed FEBTC's claim of his direct and personal liability for the withdrawals, that it would lose the case unless it competently and sufficiently established that he had personally made the withdrawals himself, or that he had caused the withdrawals. In other words, it carried the burden of proof.

Burden of proof is a term that refers to two separate and quite different concepts, namely: (a) the risk of non-persuasion, or the burden of persuasion, or simply persuasion burden; and (b) the duty of producing

evidence, or the burden of going forward with the evidence, or simply the production burden or the burden of evidence.¹⁰ In its first concept, it is the duty to establish the truth of a given proposition or issue by such a quantum of evidence as the law demands in the case at which the issue arises.¹¹ In its other concept, it is the duty of producing evidence at the beginning or at any subsequent stage of trial in order to make or meet a *prima facie* case. Generally speaking, burden of proof in its second concept passes from party to party as the case progresses, while in its first concept it rests throughout upon the party asserting the affirmative of the issue.¹²

The party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it.¹³ Verily, the party who asserts, not he who denies, must prove.¹⁴

In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.¹⁵ This is because our system frees the trier of facts from the responsibility of investigating and presenting the facts and arguments, placing that responsibility entirely upon the respective parties.¹⁶ The burden of proof, which may either be on the plaintiff or the defendant, is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the *Rules of Court*; or on the defendant if he admits expressly or impliedly the essential allegations but raises an affirmative defense or defenses, that, if proved, would exculpate him from liability.¹⁷

Section 1, Rule 133 of the *Rules of Court* sets the quantum of evidence for civil actions, and delineates how preponderance of evidence is determined, *viz*:

Section 1. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or

¹⁰ James, Jr., *Burdens of Proof*, 47 Virginia Law Review 51 (1961).

¹¹ *Giblin v. Dudley Hardware Co.*, 44 R.I. 371, 375, 117 A. 418, 419 (1922); see also *People v. Macagaling*, G.R. No. 109131-33, October 3, 1994, 237 SCRA 299, 320.

¹² *Id.*; see also *Birmingham Trust & Savings Co. v. Acacia Mutual Life Ass'n*, 221 Ala. 561, 130 So. 327 (1930).

¹³ *Luxuria Homes, Inc. v. Court of Appeals*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325; *Coronel v. Court of Appeals*, G.R. No. 103577, October 7, 1996, 263 SCRA 15, 35.

¹⁴ *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 596; *Luxuria Homes, Inc. v. Court of Appeals*, *supra*, at 327.

¹⁵ *Pacific Banking Corporation Employees Organization v. Court of Appeals*, G.R. No. 109373, March 27, 1998, 288 SCRA 198, 206.

¹⁶ James, Jr., *supra*, at 52.

¹⁷ *Sambar v. Levi Straus & Co.*, G.R. No. 132604, March 6, 2002, 378 SCRA 364, 371.

want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. (Emphasis supplied)

As the rule indicates, preponderant evidence refers to evidence that is of greater weight, or more convincing, than the evidence offered in opposition to it.¹⁸ It is proof that leads the trier of facts to find that the existence of the contested fact is more probable than its nonexistence.¹⁹

Being the plaintiff, FEBTC must rely on the strength of its own evidence instead of upon the weakness of Chan's evidence. Its burden of proof thus required it to preponderantly demonstrate that his ATM card had been used to make the withdrawals, and that he had used the ATM card and PIN by himself or by another person to make the fraudulent withdrawals. Otherwise, it could not recover from him any funds supposedly improperly withdrawn from the ATM account. We remind that as a banking institution, FEBTC had the duty and responsibility to ensure the safety of the funds it held in trust for its depositors. It could not avoid the duty or evade the responsibility because it alone should bear the price for the fraud resulting from the system bug on account of its exclusive control of its computer system.

Did FEBTC discharge its burden of proof?

The CA ruled that FEBTC did not because –

After a review of the records of this case, we find the totality of evidence submitted by FEBTC insufficient to establish the crucial facts that would justify a judgment in its favor.

To our mind, the fact that Chan's account number and ATM card number were the ones used for the withdrawals, by itself, is not sufficient to support the conclusion that he should be deemed to have made the withdrawals. FEBTC offers in this regard the PNB ATM's journal tapes to prove the withdrawals and their details – the time of the transactions; the account number used; the ATM card number; and the amount withdrawn – and at the same time declared that these tapes are authentic and genuine.

These tapes, however, are not as reliable as FEBTC represented them to be as they are not even internally consistent. A disturbing internal discrepancy we note relates to the amounts reflected as "ledger balance" and "available balance". We find it strange that for every 4,000.00 pesos allegedly withdrawn by Chan, the available balance increased rather than diminished. Worse, the amount of available balance as reflected in the tapes was way above the actual available balance of less than

¹⁸ *Jison v. Court of Appeals*, G.R. No. 124853, February 24, 1998, 286 SCRA 495, 532.

¹⁹ 2 McCormick on Evidence, Fifth Edition, §422.

Php200,000.00 that Chan's current account had at that time. These discrepancies must inevitably reflect on the integrity of the journal tapes; the proven inconsistencies in some aspects of these tapes leave the other aspects suspect and uncertain. **But more than this, we are not convinced that the tapes lead us to the inevitable conclusion that Chan's card, rather than a replacement card containing Chan's PIN and card number or some other equivalent scheme, was used. To our mind, we cannot discount this possibility given the available technology making computer fraud a possibility, the cited instances of computer security breaches, the admitted system bug, and – most notably – the fact that the withdrawals were made under circumstances that took advantage of the system bug.** System errors of this kind, when taken advantage of to the extent that had happened in this case, are planned for. Indeed, prior preparation must take place to avoid suspicion and attention where the withdrawal was made for seven (7) long hours in a place frequented by hundreds of guests, over 242 transactions where the physical volume of the money withdrawn was not insignificant. To say that this was done by the owner of the account based solely on the records of the transactions, is a convenient but not a convincing explanation.²⁰

In our view, the CA's ruling was correct.

To start with, Edgar Munarriz, FEBTC's very own Systems Analyst, admitted that the bug infecting the bank's computer system had facilitated the fraudulent withdrawals.²¹ This admission impelled the CA to thoroughly dissect the situation in order to determine the consequences of the intervention of the system bug in FEBTC's computer system. It ultimately determined thusly:

Significantly, FEBTC made the admission that there was a program bug in its computer system. To digress, computers are run based on specific pre-arranged instructions or "programs" that act on data or information that computer users input. Computers can only process these inputted data or information according to the installed programs. Thus, computers are as efficient, as accurate and as convenient to use as the instructions in their installed programs. They can count, sort, compute and arrive at decisions but they do so only and strictly in accordance with the programs that make them work. To cite an easy example, a computer can be programmed to sort a stack of cards prepared by male and female clients, into male and female stacks, respectively. To do this, the computer will first scan a card and look at the place ("a field") where the male/female information can be found. This information may be in an appropriate box which the bank client checks or shades to indicate if he/she is male or female. The computer will check if the box beside the word "Female" is shaded. If it is, it will send the card to the "Female" bin. If the box beside the "male" is shaded, it will send the card to the "Male" bin. If both the squares are shaded or none is shaded or the card cannot be read, it will send the card to the "Unknown" bin. This way, the female cards and the male cards can be sorted efficiently. However, the program

²⁰ Supra note 1, at 58-60 (bold emphasis is supplied).

²¹ TSN, July 16, 1993, pp. 70-84.

instructions can be written in such a way that the computer can only make two decisions, that is, if the Female box is shaded, then the card goes to the "Female" bin; otherwise, the card goes to the "Male" bin. In this program, all the Female cards will be sorted correctly but the Male bin will contain all the other cards, that is, the Male cards, the cards with no shading at all, and all the other cards that cannot be classified. **The imperfect results arose from the imperfect program instructions or from a program "bug". Something very close to this example happened in the present case.**

According to the testimony of the FEBTC's systems analyst, there were two computer programs that were involved in the transactions: CAPDROTH and SCPUP 900. CAPDROTH is the program that validates if the account exists in the FEBTC files, if the transaction is valid, and if the branch where the account is maintained is ON-LINE (i.e. continuously sending data). When the Chan transaction entered the system, it was validated by CAPDROTH which, on seeing that the FEBTC-Ongpin branch was off-line, returned a decision code passing on the decision to authorize the transaction to the SCPUP 900, another module. However, SCPUP 900 was not expecting this type of response or decision code. As the SCPUP 900 program was originally written, it will send back an error message and abort a requested transaction if it receives an error message from any other module; otherwise, it will send a message authorizing the transaction. In other words, SCPUP 900 had only two decisions to make: check if the message is an error message, if not then, authorize. Since what it received in the disputed transactions were not error messages and were not also authorizations, it sent back authorization messages allowing the cash withdrawals. It kept on sending authorization messages for the 242 cash withdrawal transactions made from Chan's account between the evening of May 4 and early morning of May 5, 1992. This program bug was the reason the 242 cash withdrawals were allowed by the PNB ATM-Megalink machine.

The program bug occurred because of the simultaneous presence of three conditions that allowed it to happen: (1) the withdrawal transactions involved a current account; (2) the current account was with a branch that at that time was off-line; and (3) the transaction originated from MEGALINK (i.e., through MEGALINK through a member bank other than FEBTC). Because of the bug, Chan's account was not accessed at the time of the transactions so that withdrawals in excess of what the account contained were allowed. Additionally, FEBTC's rule that only a maximum withdrawable amount per day (in the present case P50,000.00 per day) can be made from an ATM account, was by-passed. Thus, 242 withdrawals were made over an eight hour period, in the total amount of P967,000.00.²²

Secondly, the RTC's deductions on the cause of the withdrawals were faulty. In holding against Chan, the RTC chiefly relied on inferences drawn from his acts subsequent to the series of withdrawals, specifically his attempt to withdraw funds from his account at an FEBTC ATM facility in Ermita, Manila barely two days after the questioned withdrawals; his

²² Supra note 1, at 51-53 (bold emphasis is supplied).

issuance of a check for ₱190,000.00 immediately after the capture of his ATM card by the ATM facility; his failure to immediately report the capture of his ATM card to FEBTC; and his going to FEBTC only after the dishonor of the check he had issued following the freezing of his account. The inferences were not warranted, however, because the subsequent acts would not persuasively establish his actual participation in the withdrawals due to their being actually susceptible of other interpretations consistent with his innocence.

We join the CA's observation that Chan's subsequent acts "could have been impelled by so many reasons and motivations, and cannot simply be given the meaning that the lower court attributed to them," and, instead, were even consistent with the purpose and nature of his maintaining the current account deposit with FEBTC, rendering the acts "not unusual nor ... illegal."²³ Although he was expected to forthwith bring his card's capture to FEBTC's attention, that he did not do so could have other plausible explanations consistent with good faith, among them his being constantly occupied as a businessman to attend to the multifarious activities of his business. He might have also honestly believed that he still had the sufficient funds in his current account, as borne out by his issuance of a check instead after the capture of the card so as not for him to undermine any financial obligation then becoming due. Nor should his opting to withdraw funds from his account at the ATM facility in Ermita in less than two days after the questioned withdrawals manifest responsibility on his part, for he could also be properly presumed to be then still unaware of the situation involving his account. We note that his letters²⁴ written in response to FEBTC's written demands to him disclosed honest intentions rather than malice.

Thirdly, the RTC ignored the likelihood that somebody other than Chan familiar with the bug infection of FEBTC's computer system at the time of the withdrawals and adept with the workings of the computer system had committed the fraud. This likelihood was not far-fetched considering that FEBTC had immediately adopted corrective measures upon its discovery of the system bug, by which FEBTC admitted its negligence in ensuring an error-free computer system; and that the system bug had affected only the account of Chan.²⁵ Truly, the trial court misapprehended the extent to which the system bug had made the computer system of FEBTC stumble in serious error.

Fourthly, and perhaps the most damaging lapse, was that FEBTC failed to establish that the PNB-MEGALINK's ATM facility at the Manila Pavilion Hotel had actually dispensed cash in the very significantly large

²³ *Rollo*, p. 57.

²⁴ Records, pp. 31-35.

²⁵ Per Eduardo Munarriz, TSN, October 18, 1993, pp. 72-75, only the account of Chan was reported to FEBTC; per Irene Tan, TSN, October 10, 1994, pp. 21-22, the fraudulent withdrawals from Chan's account were the only bug-related problem received at FEBTC's Ongpin branch.

amount alleged during the series of questioned withdrawals. For sure, FEBTC should have proved the actual dispensing of funds from the ATM facility as the factual basis for its claim against Chan. It did require PNB to furnish a validated showing of the exact level of cash then carried by the latter's ATM facility in the Manila Pavilion Hotel on May 4, 1992.²⁶ Yet, when PNB employee Erwin Arellano stood as a witness for FEBTC, he confirmed the authenticity of the journal tapes that had recorded Chan's May 4 and May 5, 1992 supposed ATM transactions but did not categorically state how much funds PNB-MEGALINK's ATM facility at the Manila Pavilion Hotel had exactly carried at the time of the withdrawals, particularly the amounts immediately preceding and immediately following the series of withdrawals. The omission left a yawning gap in the evidence against Chan.

And lastly, Chan's allegation of an "inside job" accounting for the anomalous withdrawals should not be quickly dismissed as unworthy of credence or weight. FEBTC employee Manuel Del Castillo, another witness for FEBTC, revealed that FEBTC had previously encountered problems of bank accounts being debited despite the absence of any withdrawal transactions by their owners. He attributed the problems to the erroneous tagging of the affected accounts as somebody else's account, allowing the latter to withdraw from the affected accounts with the use of the latter's own ATM card, and to the former's account being debited.²⁷ The revelation of Del Castillo tended to support Chan's denial of liability, as it showed the possibility of withdrawals being made by another person despite the PIN being an exclusive access number known only to the cardholder.²⁸

It is true that Del Castillo also declared that FEBTC did not store the PINs of its clients' ATM cards. However, he mentioned that FEBTC had stored the opposite numbers corresponding to the PINs, which meant that the PINs did not remain entirely irretrievable at all times and in all cases by any of its officers or employees with access to the bank's computer system. Accordingly, Del Castillo's assertion that the PINs were rendered useless upon being entered in the bank's computer system did not entirely disclose how the information on the PINs of the depositors was stored or discarded as to become useless for any purpose.

In view of the foregoing, FEBTC did not present preponderant evidence proving Chan's liability for the supposedly fraudulent withdrawals. It thus failed in discharging its burden of persuasion.

²⁶ TSN, May 18, 1994, pp. 11-14.

²⁷ TSN, March 31, 1993, pp. 26-29.

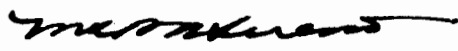
²⁸ Id. at 29-30.

WHEREFORE, the Court **AFFIRMS** the decision of the Court of Appeals; and **DIRECTS** the petitioner to pay 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 **BIENVENIDO L. REYES**
Associate Justice Associate Justice


MARVIC MARIO VICTOR F. LEONEN
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