



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PHILIPPINE COMMERCIAL
INTERNATIONAL BANK (now
BDO UNIBANK, INC.),

Petitioner,

- versus -

ARTURO P. FRANCO,
substituted by his heirs, namely:
MAURICIA P. FRANCO,
FLORIBEL P. FRANCO, AND
ALEXANDER P. FRANCO,¹

Respondents.

G.R. No. 180069

Present:

VELASCO, JR., J., Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

Promulgated:

March 5, 2014

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DECISION

PERALTA, J.:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the July 31, 2007 Decision² and October 4, 2007 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 82340, which affirmed the October 21, 2003 Decision⁴ of the Makati City Regional Trial Court (RTC), Branch 61.

¹ Respondent Arturo P. Franco died on July 23, 2008. However, his son, Alexander P. Franco, also passed away on September 5, 2012 (*Rollo*, pp. 212, 242).

² Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring; *rollo*, pp. 48-68.

³ *Rollo*, p. 69.

⁴ Penned by Judge (now CA Justice) Romeo F. Barza; *id.* at 70-74.

The pertinent facts, as narrated by the trial court and as adopted both by the CA, as well as petitioner Philippine Commercial International Bank (*Bank*),⁵ are as follows:

This is an action for damages filed [on September 5, 2000] by plaintiff Arturo P. Franco against Philippine Commercial International Bank (PCIB), now known as Equitable-PCIBank, and Equitable Banking Corp.

The complaint essentially alleges, among others, that plaintiff secured from defendant PCIB the following Trust Indenture Certificates:

Number	Issued	Maturity	Amount	Interest
094846 (Exh. “B”)	Dec. 8, 198[6]	Jan. 7, 1987	₱100,000.00	8.75% p.a.
135928 (Exh. “C”)	Jan. 19, 1987	Feb. 18, 1987	₱850,594.54	7.75% p.a.
205007 (Exh. “D”)	May 13, 1987	June 15, 1987	₱500,000.00	8.50% p.a.
205146 (Exh. “E”)	July 15, 1987	Aug 14, 1987	₱502,958.90	9.25% p.a.

that despite demands, defendants refused and still refuses to return to plaintiff the trust amounts, plus the stipulated interest[;] that in all of the trust transactions that defendant PCIB had entered into with the plaintiff, defendant PCIB represented to plaintiff that[,] in making the trust investment, plaintiff was actually providing for his future since the money invested was going to be managed and administered by their PCIB-Trust Services Group and will be commingled, pooled and automatically rolled-over for better investment return; that believing the representation of the bank, the plaintiff invested his lifetime savings in the hope that the defendant bank will actually provide for their future by reinvesting and rolling-over their investment automatically, without any need for the plaintiff to take any further action; that on the few occasions that plaintiff had visited the defendant bank to request for a status on his investments, bank officers would normally pull out his (*sic*) ledger card and show plaintiff the updated amount due him; that sometime in 1995, plaintiff discovered that one of his children had leukemia and[,] in the ensuing hospitalization and treatment, plaintiff spent a lot of money; that because his funds were already exhausted, plaintiff then turned to his Trust Indenture Certificates and started inquiring as to how he could liquidate the trust; that in the beginning, defendant bank constantly asked for time to look for his records, at one time [on June 18, 1998], promising to have an answer before July 15, 1998, then writing plaintiff on May 18, 2000 saying that the bank [had] coordinated with their Branch and Trust Department but that it might take [some time] to retrieve their records; [and] that to plaintiff’s surprise, on June 22, 2000, he received a letter signed by defendant’s counsel, Curato Divina & Partners, in effect denying plaintiff’s request for payment by stating that due to the conversion of all outstanding PCIBank trust indenture accounts into common trust certificates, all such PCIBank trust indenture certificates have been rendered “null and void.” Plaintiff prays for the payment of the amounts under the Trust Indenture Certificates, plus interest, moral and exemplary damages and attorney’s fees.

⁵ See pp. 2-5 of the CA Decision and pp. 6-10 of the Petition; *rollo*, pp. 15-19; 49-52.

In their Answer, defendants admit the issuance by defendant PCIB of the Trust Indenture Certificates subject matter of the complaint, but deny the allegation that the investments subject of the Trust Indenture Certificates are automatically rolled-over as such certificates have their own fixed term and maturity date, and that the present action had already prescribed.

As stated in the Pre-Trial Order issued by this court on 15 February 2002, the following issues were defined and agreed upon by the parties, to wit:

1. Whether or not the plaintiff is entitled to the relief he seeks; and
2. Whether or not the cause of action as exerted (*sic*) by the defendant has already prescribed.

Plaintiff presented as its witness plaintiff Arturo P. Franco himself [who] testified, among others[:] that he is the proprietor of Fair Marketing Freight Services[,] which is the investor named in Trust Indenture Certificate 094846; that[,] in 1986, he decided to save up for his retirement and to invest his hard earned money; that he was then 51 years old and his choice was to deposit his funds with defendant PCIB which later on merged with defendant Equitable Banking Corp. and is now known as Equitable PCIBank; that he chose defendant PCIB for the latter's representation that by making such investment, he was actually providing for his future since his investment would be commingled, pooled and automatically rolled-over for better investment return and which will provide for his needs upon retirement, without need for him to take any further action; that he was a loyal client of the defendants from 1986 up to 1997; that he entered into a trust agreement with defendant PCIB for which the latter issued subject Trust Indenture Certificates ([TICs], for brevity); that sometime in 1997, when he was then 62 years old, he [tried] to encash the trust indenture certificates only to be given a run-around by the defendants; that sometime in 1995, his son, Arthur, was diagnosed to be afflicted with leukemia and eventually died on October 24, 1997; that because of his son's illness, he was forced to go to defendants and try to encash his trust indenture certificates but was denied by defendant bank; that in a letter dated June 22, 2000, defendants, through their counsel, informed plaintiff that the subject [TICs] are "null and void"; that when he received the letter of June 22, 2000, he was at first speechless and totally defeated and at a loss; that he and his wife begun to experience sleepless nights, became anxious because their hope to secure their life in their old age had fallen apart[:]; that instead of just enjoying a secured life with his wife and enjoying his grandchildren and spending more time with the Lord, he was now in debt and burdened with the fact that his lifetime savings just disappeared before his very eyes without a trace; [and] that plaintiff was constrained to file this case and [spend] ₱22,117.80 in filing fees, to engage the services of counsel for the amount of ₱50,000.00 with appearance fee of ₱3,000.00 per hearing, and that he suffered moral damages in the amount of ₱200,000.00.

The foregoing facts were not rebutted by defendants. The court finds the witness and his testimony credible as the witness testified in a simple and straightforward manner. Upon admission of plaintiff's exhibits, plaintiff rested his case.

The defendants presented Cecilia P. Soriano and Antonio M. Fortuno as their witnesses.

Cecilia P. Soriano, Operations Officer of defendant Equitable-PCIBank, testified that she came to know plaintiff in 1987 when she was assigned at PCIB Gil Puyat Branch; that plaintiff was one of the bank's valued clients[;] and that plaintiff secured the [TICs] subject matter of the complaint. On cross-examination, the witness admitted that she has seen only the photocopies of plaintiff's [TICs]; that she had no direct dealing with plaintiff regarding the [TICs] and she had no idea what happened to plaintiff's [TICs] after their respective maturity dates; [and] that valued clients of the bank were given special privileges, such as allowing these clients to withdraw or encash [TICs] or investments over the phone[,] but she did not receive any call from plaintiff withdrawing or encashing the plaintiff's [TICs].

The testimony of their next witness, Antonio Martin S. Fortuno, was offered to prove, among others, that [TICs] expired upon maturity and after which, they were automatically rolled-over.

Antonio Martin S. Fortuno, Operations Officer of defendant Equitable-PCIBank, testified that he is familiar with the Trust Indenture Certificates issued by defendant bank; that when a client would like to secure a Trust Indenture Certificate from the bank, they would ask the client, among others, to sign [roll-over] agreement/rules and regulations; that when a client would like to withdraw his proceeds from the certificate upon maturity, they follow the following steps: (1) they retrieve the old certificates from client, (2) they have [the] client sign on the back portion of the certificate, (3) they prepare mode of payment – MC or credit to other accounts, and (4) they file the paid certificate to paid/roll-over file; that if the holder of a certificate does not withdraw the placement upon maturity, they replace the old certificate with a new one; that if the client is at the branch, the old certificate is replaced with a new certificate, have the client sign at the register copy, then stamp the old certificate as Old Certificate-Stamp rolled-over/replaced; that if the client is not at the branch, they replace the old certificate with a new certificate and stamped with rolled-over; that certificates have fixed maturity dates; that interest rates stated in the certificates vary as they go either up or down depending on the prevailing bank rates as provided by the Trust Department; that[,] in 1992[,] all existing Trust Indenture Certificates were converted into Common Trust Funds; [and] that he is not aware of any Trust Indenture Certificate belonging to plaintiff which were converted into Common Trust Funds in 1992.

On cross-examination, the witness admitted that he is familiar with Trust Indenture Certificates; that Trust Indenture Certificates have been converted into Common Trust Funds; that the change is only in name because they have the same features and that the only difference is that Common Trust Funds are classified into several product types depending on the limit of the amount of investment; that there is nothing in the certificate that says it has a roll-over feature; that, however, if the certificate expires and the client does not claim or withdraw his funds or surrender the certificate, they roll-over the funds of the client; that if a guest comes with the original Trust Indenture Certificate without any

stamp as being taken or cancelled, the bank should verify with the outstanding copy because the bank should have an outstanding copy of that Trust Indenture Certificate; that he is not aware that the Trust Indenture Certificates of the plaintiff were verified with their records; and that he does not know whether plaintiff's Trust Indenture Certificates were actually paid out by the bank to plaintiff.

Defendants did not conduct any re-direct.⁶

On October 21, 2003, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered in favor of plaintiff and ordering defendant Philippine Commercial International Bank, now known as Equitable-PCIBank, to pay plaintiff the following:

1. On the First Cause of Action, the sum of ₱100,000.00, plus the stipulated interest of 8.75% per annum for the period December 8, 1986 to January 7, 1987, plus interest of 6% per annum from January 8, 1987 until fully paid;
2. On the Second Cause of Action, the sum of ₱840,594.54, plus the stipulated interest of 7.75% per annum for the period January 19, 1987 to February 18, 1987, plus interest of 6% per annum from February 19, 1987 until fully paid;
3. On the Third Cause of Action, the sum of ₱500,000.00, plus the stipulated interest of 8.50% per annum for the period May 13, 1987 to June 15, 1987, plus interest of 6% per annum from June 16, 1987 until fully paid;
4. On the Fourth Cause of Action, the sum of ₱502,958.90, plus the stipulated interest of 9.25% per annum for the period July 15, 1987 to August 14, 1987, plus interest of 6% per annum from August 15, 1987 until fully paid;
5. ₱50,000.00 as moral damages;
6. ₱200,000.00 as exemplary damages;
7. Attorney's fees in the amount of ₱50,000.00, plus ₱3,000.00 for every hearing attended; and
8. ₱22,117.80 as reimbursement for filing fees.

The case against Equitable Banking Corporation is dismissed for insufficiency of evidence.

SO ORDERED.⁷

Considering that the four TICs have not been replaced or cancelled, the RTC held that the relationship of express trust between petitioner Bank and respondent still subsists at the time the latter demanded the withdrawal of his funds under them. While the TICs contain a maturity date, the court

⁶ *Rollo*, pp. 70-73.

⁷ *Id.* at 74.

opined that the same refers only to the gross income expectation or the applicable interest rate because the funds are automatically rolled-over with varying interest rates depending on the prevailing interest rates as determined by petitioner's Trust Department. With respect, however, to the interest rate applicable after the stipulated maturity dates, the court deemed it fair and reasonable to impose the legal rate of interest for want of evidence on the prevailing rate at the time of roll-over. Finally, the court found that petitioner Bank is in bad faith in its dealings with respondent when it unilaterally declared – despite claiming that respondent was one of its valued clients – the TICs as null and void by reason of their conversion to Common Trust Funds in 1991. The absence of good faith was made more manifest when Fortuno testified that the trust indenture certificate and common trust fund have the same features and the only difference is in the name and classification of the amount of investment.

On appeal, the CA affirmed the RTC ruling. According to the appellate court, Soriano could not have possibly known if respondent indeed withdrew any or all of his participation in the subject TICS, because by her very own admission during the cross-examination, she did not have any direct dealing with him with respect to the TICs at the time they matured or even thereafter. Likewise, petitioner Bank failed to adduce any documentary evidence to establish the alleged fact that the four TICs were already paid or cancelled, or that respondent's participation therein was already withdrawn. Further, respondent's testimony that he gave verbal instructions to petitioner Bank to roll-over his investment upon their maturity was bolstered by Fortuno's admission in open court that it has been petitioner Bank's practice to roll-over investments which remain unclaimed after their maturity even without instruction from their owners. With all these findings, the CA concluded that the claim of respondent is not yet barred by prescription, since the maturity dates of the four TICs did not terminate the express trust created between the parties.

A motion for reconsideration was filed by petitioner, but the CA acted unfavorably; hence, this petition.

We deny.

Upon perusal of the entire case records, the Court finds no reversible error committed by the CA in sustaining the RTC Decision. Considering the evidence at hand, both courts have applied the law in accordance with the facts of the case.

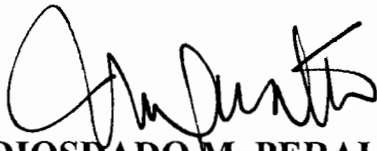
A quick point, however, on the issue of alleged payment by petitioner Bank on the subject trust certificate indentures.

Jurisprudence abounds that, in civil cases, one who pleads payment has the burden of proving it.⁸ Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.⁹ When the creditor is in possession of the document of credit, he need not prove non-payment for it is presumed.¹⁰ The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment.¹¹


In this case, respondent's possession of the original copies of the subject TICs strongly supports his claim that petitioner Bank's obligation to return the principal plus interest of the money placement has not been extinguished. The TICs in the hands of respondent is a proof of indebtedness and a *prima facie* evidence that they have not been paid. Petitioner Bank could have easily presented documentary evidence to dispute the claim, but it did not. In its omission, it may be reasonably deduced that no evidence to that effect really exist. Worse, the testimonies of petitioner Bank's own witnesses, reinforce, rather than belie, respondent's allegations of non-payment.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The July 31, 2007 Decision and October 4, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 82340, which affirmed the October 21, 2003 Decision of the Makati City Regional Trial Court, Branch 61, are **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

⁸ *Agner v. BPI Family Savings Bank, Inc.*, G.R. No. 182963, June 3, 2013, 697 SCRA 89, 96.

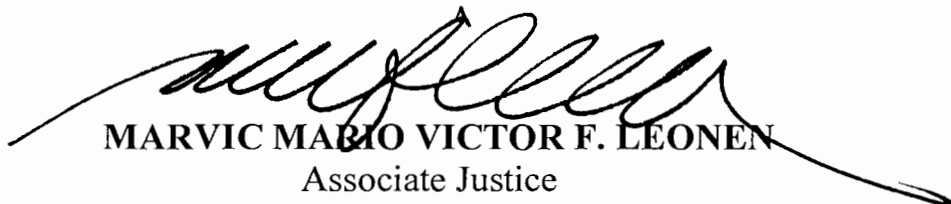
⁹ *Halley v. Printwell, Inc.*, G.R. No. 157549, May 30, 2011, 649 SCRA 116, 136.

¹⁰ *Tai Tong Chuache & Co. v. Insurance Commission*, G.R. No. L-55397, February 29, 1988, 158 SCRA 366, 373.

¹¹ *Bank of the Philippine Islands v. Spouses Royeca*, 581 Phil. 188, 197 (2008).

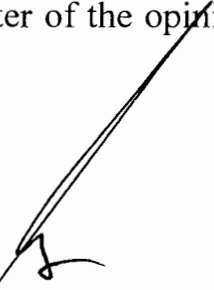

ROBERTO A. ABAD
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
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.


ANTONIO T. CARPIO
Acting Chief Justice