

SECOND DIVISION

[G.R. No. 157845, September 20, 2005]

PHILIPPINE NATIONAL BANK, PETITIONER, VS. NORMAN Y. PIKE, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeks to reverse the Decision^[1] dated 19 December 2002, and the Resolution^[2] dated 02 April 2003, both of the Court of Appeals, in CA-G.R. CV No. 59389, which affirmed with modification the Decision^[3] rendered by the Regional Trial Court (RTC), Branch 07 of Manila, dated 10 January 1997, in Civil Case No. 94-68821 in favor of herein respondent Norman Pike (Pike).

The case stemmed from a complaint^[4] filed by herein respondent Pike for damages^[5] against Philippine National Bank (PNB) on 04 January 1994.

Complainant Pike often traveled to and from Japan as a gay entertainer in said country. Sometime in 1991, he opened U.S. Dollar Savings Account No. 0265-704591-0 with herein petitioner PNB Buendia branch for which he was issued a corresponding passbook. The complaint alleged in substance that before complainant Pike left for Japan on 18 March 1993, he kept the aforementioned passbook inside a cabinet under lock and key, in his home; that on 19 April 1993, a few hours after he arrived from Japan, he discovered that some of his valuables were missing including the passbook; that he immediately reported the incident to the police which led to the arrest and prosecution of a certain Mr. Joy Manuel Davasol; that complainant Pike also discovered that Davasol made two (2) unauthorized withdrawals from his U.S. Dollar Savings Account No. 0265-704591-0, both times at the PNB Buendia branch on the following dates:

<u>DATE</u>	<u>AMOUNT</u>
31 March 1993	\$3,500.00
05 April 1993	4,000.00
	=====
TOTAL	\$7,500.00

that on several occasions, complainant Pike went to defendant PNB's Buendia branch and verbally protested the unauthorized withdrawals and likewise demanded the return of the total withdrawn amount of U.S. \$7,500.00, on the ground that he never authorized anybody to withdraw from his account as the signatures appearing on the subject withdrawal slips were clearly forgeries; that defendant PNB refused to credit said amount back to complainant's U.S. Dollar Savings Account without justifiable reason, and instead, defendant bank wrote him that it exercised due diligence in the handling of said account; and that on 06 May 1993, complainant

Pike wrote defendant PNB simply to request that the hold-account be lifted so that he may withdraw the remaining balance left in his U.S.\$ Savings Account and nothing else.

On the other hand, defendant PNB alleged, in its Motion to Dismiss^[6] of 18 April 1994, a counterstatement of facts. Its factual allegations read:

. . . On March 15, 1993 at PNB Buendia Branch, Mr. Norman Y. Pike, together with a certain Joy Davasol went to see PNB AVP Mr. Lorenzo T. Val (sic), Jr. purposely to withdraw the amount of \$2,000.00. Mr. Pike also informed AVP Val that he is leaving for abroad (Japan) and made verbal instruction to honor all withdrawals to be transmitted by his Talent Manager and Choreographer, Joy Davasol who shall present pre-signed withdrawal slips bearing his (Pike's) signature. . .

On April 19, 1993, a certain Josephine Balmaceda, who claimed to be plaintiff's sister executed an affidavit stating therein that they discovered today (April 19, 1993) the lost (sic) of her brother's passbook issued by PNB on account of robbery, committed in the residence/office of her brother, promptly reporting the matter to the police authorities and her brother cannot report the matter to the Bank because he was currently in Japan and therefore requesting the Bank to issue a hold-order on her brother's passbook.

But a copy of an alarm (Police) Report dated April 19, 1993. . . stated that plaintiff (who was the one who reported the matter) after one month in Japan, he (complainant) arrived yesterday. . .

On April 26, 1993, Atty. Nathaniel Ifurung who claims to be plaintiff's counsel sent a demand letter to VP Violeta T. Suquila (then VP and Manager of PNB Buendia Branch) demanding the bank to credit back the amount of US\$7,500.00 which were withdrawn on March 31, 1993 and April 5, 1993, because his client's signatures were forged and the withdrawal made thereon were unauthorized. . .

On May 5, 1993, Mr. Norman Y. Pike executed an affidavit of loss (sic) Dollar Account Passbook ... and requested the PNB to replace the same and allow him to make withdrawals thereon. He stated that his passbook was stolen together with other valuables which he discovered only in the early morning of April 19, 1993. . .

On May 6, 1993, plaintiff Norman Y. Pike wrote a letter. . . addressed to the Manager of PNB, Buendia Branch the full contents of said letter hereto quoted as follows:

May 6, 1993

The Manager
Philippine National Bank
Buendia Branch
Paseo de Roxas cor. Gil Puyat Street
Makati, Metro Manila

Sir:

In connection with the request of my sister, Mrs. Josephine P. Balmaceda for the hold-order on my dollar savings passbook No. 265-704591-0, I am now requesting your good office to lift the same so I can withdraw the remaining balance of my passbook which was reported lost sometime in March of this year.

I also promise not to hold responsible the bank and its officers for the withdrawal made on my dollar savings passbook on March 19 and April 5, 1993 respectively as a result of the lost (sic) of my passbook.

Sgd. NORMAN Y. PIKE
Depositor
Philippine Passport
No. H918022
Issued at Manila on
Sept. 6, 1990
Place of Issuance

On the same day May 6, 1993 Plaintiff Norman Y. Pike was allowed by defendant bank to withdraw the remaining balance from his passbook ...

.

A letter dated May 18, 1993 was sent to Plaintiff's counsel ... by PNB ... stating that the Bank regrets that it cannot accede to such request inasmuch as the Bank exercised due diligence of a good father to his family in the handling of transactions covering the deposit account of Mr. Pike

On July 2, 1993, Plaintiff's counsel sent a letter to PNB Vice Pres. Suquila denying that his client made any such promise not to hold responsible the bank and its officers for the withdrawal made

A letter dated July 29, 1993 ... was sent to Plaintiff's counsel by VP Suquila stating that plaintiff's withdrawal of the remaining balance of his account with the Bank effectively estops him from claiming on the alleged unauthorized withdrawals.

The trial court, in its decision dated 10 January 1997, made the following findings of fact:

. . . [T]hat the bank is responsible for such unauthorized withdrawals. The court is not impressed with the defense put up by the bank. Its contention that the withdrawals were authorized by the plaintiff because there was an arrangement between the bank represented by its Asst. Vice President Lorenzo Bal, Jr. and the depositor Norman Y. Pike to the effect that pre-signed withdrawal slips, that is, withdrawal slip signed by the depositor in the presence of Mr. Bal whereby it would be made to appear that it was the depositor himself who presented the same to the

bank despite the fact that it was another person who presented the same should be honored by the bank cannot be sanctioned by the court. Firstly, the court is not satisfied that there was indeed such an arrangement. . . It is Mr. Bal's contention that such an arrangement although not ordinarily entered into is still a legal procedure of the bank and is resorted to accommodate the depositors' specially honored and valued depositor at that.

. . .

The court compared the signatures in the questioned withdrawal slips with the known signatures of the depositor and is convinced that the signatures in the unauthorized withdrawal slips do not correspond to the true signatures of the depositor.

From the evidence that it received, the court is convinced that the bank was negligent in the performance of its duties such that unauthorized withdrawals were made in the deposit of plaintiff Norman Y. Pike.^[7]

The dispositive portion of the trial court's decision reads:

WHEREFORE and considering the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant and ordering the defendant to pay the following:

1. US\$7,500.00 plus interest thereon at the rate of 12% per annum until the full amount is paid;
2. P25,000.00 for and as attorney's fees;
3. P50,000.00 as moral damages and P50,000.00 as exemplary damages; and
4. Plus the costs of suit.^[8]

Defendant PNB's motion for reconsideration was subsequently denied by the court *a quo*.^[9]

On appeal, the Court of Appeals issued the assailed decision dated 19 December 2002, affirming the findings of the RTC that indeed defendant-appellant PNB was negligent in exercising the diligence required of a business imbued with public interest such as that of the banking industry, however, it modified the rate of interest and award for damages, to wit:

WHEREFORE, premises considered, the Decision dated January 10, 1997 issued by the Regional Trial Court of Manila, Branch 7, in Civil Case No. 94-68821, is hereby AFFIRMED with MODIFICATION, as follows:

1. Ordering appellant, the Philippine National Bank, Buendia Branch, to refund appellee the amount of \$7,500.00 plus interest of 6% per annum to be computed from the date of the filing of the complaint which interest rate shall become 12% per annum from the time the judgment in this case becomes final and executory until its satisfaction;

2. The award for moral damages is reduced to P20,000.00; and

3. The award for exemplary damages is likewise reduced to P20,000.00.

Costs against appellant.^[10]

The appellate court held that:

Appellant claims that appellee personally talked to its officers to allow Joy Manuel Davasol to make withdrawals. Appellee even left pre-signed withdrawal slips before he went to Japan. However, appellant could have told appellee to authorize the withdrawal by a representative by indicating the same at the space provided at the back portion of the withdrawal slip. This operational flaw was observed by the trial court, when it ruled:

The court cannot also understand why the bank did not require the correct, proper and the usual procedure of requiring a depositor who is withdrawing the money through a representative to fill up the back portion of the withdrawal slips, which form was issued by the bank itself.

A perusal of the records discloses that appellee had previously authorized withdrawals by a representative. However, these withdrawals were properly accompanied by a "withdrawal by a representative" form aside from a handwritten request by appellee to allow such withdrawals by his representative, or a typewritten letter-request for withdrawal by a representative. Certainly, appellant lacked the due care and caution required of managers and employees of a firm engaged in so sensitive and demanding business as banking. ...

In its desire to be exonerated from liability, appellant advances the argument that, granting negligence on its part, appellee condoned this negligence as shown in his letter dated May 6, 1993, wherein appellee purportedly undertook, not to hold the bank and its officers responsible for the unauthorized withdrawals from his account.

We do not agree. It should be emphasized that while the appellee admitted signing the letter dated May 6, 1993, he, however, denied having undertaken (sic) to exonerate the appellant from liability for the unauthorized withdrawals. Appellee questioned the second paragraph of the said letter as being superimposed so that his signature overlapped the text of the second paragraph of said letter. A waiver of right, in order to be valid, should be in a language that clearly manifests his desire to do so. ... In the instant case, appellee's filing of the instant action is inconsistent with appellant's contention that he had waived his right to question appellant's negligent act of allowing the unauthorized withdrawals from his account.^[11]

Defendant-appellant PNB filed a motion for reconsideration. In a Resolution dated 02 April 2003, the Court of Appeals denied said motion.