

FIRST DIVISION

[G.R. No. 116181, January 06, 1997]

**PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF
APPEALS AND CARMELO H. FLORES, RESPONDENTS.
R E S O L U T I O N**

KAPUNAN, J.:

This refers to private respondent's motion for reconsideration dated 29 May 1996 of the Court's decision promulgated on 17 April 1996, the dispositive portion of which reads:

WHEREFORE, premises considered, the assailed decision is hereby MODIFIED as follows:

1. The award of moral damages is reduced from P1,000,000.00 to P100,000.00; and
2. The award of exemplary damages is reduced from P1,000,000.00 to P25,000.00.

In all other respects, the assailed decision is hereby AFFIRMED.^[1]

Private respondent contends that the award of damages is too small considering that petitioner, to end the dispute, was willing to enter into a compromise agreement and offered the amount of P397,272.41 as settlement. In addition, private respondent assails petitioner's malicious act of attacking his character by alluding to his alleged reputation as a "gambler and big time casino player."

Carmelo H. Flores' personality and character are irrelevant to the issues at hand. Petitioner's resort to character assassination is thus unfair and uncalled for.

In its Brief dated 20 January 1993 filed with the Court of Appeals, petitioner audaciously stated that:

Significantly, there is uncontradicted evidence that Flores is a gambler and a big time casino player at that; consequently, his self-serving and uncorroborated evidence cannot be fully believed for as to quote a scholarly treatise-

A common gambler is a common nuisance, insensible to honor, deaf to pity, bent upon plunder, he is human cormorant, more destructible than the bird of prey itself. (VII, part II, FRANCISCO, EVIDENCE ^[1991] citing Smith v. Wilson, 31 How. Pr. [N.Y.] 272, 22 Fed. Cas. No. 13,128 [at p. 721]).^[2]

Similarly, in its memorandum before this Court, petitioner asserted that "Flores used the proceeds of the manager's checks on the gaming table:"

The undeniable truth is that Flores was playing at the gaming table before he transacted with Angelita Sotero, Cashier of PNB Baguio Hyatt Casino Unit, for the encashment of the P1 Million checks; that after he was paid the first P500,000, in his way back to the gaming table, he took from Sotero a P100,000 advance; and that other three (3) P100,000 were separately paid to him by Sotero in the interval of one to two hours while Flores was playing at the gaming table (TSN, July 2, 1991, pp. 19-26, 34).

Thus, the embarrassment claimed by Flores is but a figment of his imagination, as it is but natural to conclude without fear of error that under the circumstances Flores used the money for gambling.^[3]

Petitioner's allegation that it is allowed by Sec. 11, Rule 132 of the Revised Rules on Evidence to impeach the adverse party's witness "by evidence that his general reputation for truth, honesty, or integrity is bad" is undeserving of merit. Petitioner has not presented adequate evidence to show that private respondent is indeed a big time gambler. Mere allegations are not equivalent to proof.

Petitioner has besmirched private respondent's reputation and has considerably caused him undue humiliation. On this point, we reiterate with emphasis the findings of the trial court and the Court of Appeals, to wit:

Since there is no doubt as to the fact that the plaintiff purchased from the defendant bank two (2) manager's check worth P500,000.00 each as this was evidenced by an official receipt (Exhibit "A"), then, following the above jurisprudential ruling, the existence of the manager's check (sic) created as (sic) fiduciary relationship between the defendant bank and the plaintiff and therefore any breach thereof must be borne by the negligent party. In this case, the money counter who, among her other duties, is in charge of counting the money received from a client purchasing a manager's check did not perform her duty with diligence and due care. This may be gathered from her testimony that she did not wait for the counting machine to finish counting the money for the plaintiff is a VIP client and he was in a hurry as he was tapping the window (p. 37, T.S.N., August 28, 1990). Equally negligent is Reynaldo Castor for not doing anything when he noticed that their money counters who entertained the plaintiff were rattled. From these unfolded facts, the so-called honest mistake pleaded is therefore misplaced and perforced, defendant must suffer the consequences of its own negligent acts.

The records further show that plaintiff is a prominent businessman, licensed and engaged in the real estate business, buying and selling houses and lots under the business name and style CMS Commercial. He is at the same time a consultant of Dizon-Esguerra Real Estate Company. Defendant treated him as a valued and VIP client. Because of the bank's refusal to encash the entire one million face amount of his manager's checks, he was so embarrassed for he was not able to purchase a house and lot in Monterroza Subdivision, Baguio City. Significantly, the foregoing undisputed facts made even more untenable defendant's implicit supposition that the subject manager's checks were not intended for the purchase of a house or for any business transaction but for gambling.

Finally, since plaintiff was compelled to litigate to protect its interest due to the non-compliance of defendant's obligation, he is therefore entitled to attorney's fees