

## FIRST DIVISION

[ G.R. No. 173259, July 25, 2011 ]

### PHILIPPINE NATIONAL BANK, PETITIONER, VS. F.F. CRUZ AND CO., INC. RESPONDENT.

#### D E C I S I O N

As between a bank and its depositor, where the bank's negligence is the proximate cause of the loss and the depositor is guilty of contributory negligence, the greater proportion of the loss shall be borne by the bank.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's January 31, 2006 Decision <sup>[1]</sup> in CA-G.R. CV No. 81349, which modified the January 30, 2004 Decision <sup>[2]</sup> of the Regional Trial Court of Manila City, Branch 46 in Civil Case No. 97-84010, and the June 26, 2006 Resolution <sup>[3]</sup> denying petitioner's motion for reconsideration.

#### ***Factual Antecedents***

The antecedents are aptly summarized by the appellate court:

In its complaint, it is alleged that [respondent F.F. Cruz & Co., Inc.] (hereinafter FFCCI) opened savings/current or so-called combo account No. 0219-830-146 and dollar savings account No. 0219-0502-458-6 with [petitioner Philippine National Bank] (hereinafter PNB) at its Timog Avenue Branch. Its President Felipe Cruz (or Felipe) and Secretary-Treasurer Angelita A. Cruz (or Angelita) were the named signatories for the said accounts.

The said signatories on separate but coeval dates left for and returned from the United States of America, Felipe on March 18, 1995 until June 10, 1995 while Angelita followed him on March 29, 1995 and returned ahead on May 9, 1995.

While they were thus out of the country, applications for cashier's and manager's [checks] bearing Felipe's [signature] were presented to and both approved by the PNB. The first was on March 27, 1995 for P9,950,000.00 payable to a certain Gene B. Sangalang and the other one was on April 24, 1995 for P3,260,500.31 payable to one Paul Bautista. The amounts of these checks were then debited by the PNB against the combo account of [FFCCI].

When Angelita returned to the country, she had occasion to examine the PNB statements of account of [FFCCI] for the months of February to August 1995 and she noticed the deductions of P9,950,000.00 and P3,260,500.31. Claiming that these were unauthorized and fraudulently made, [FFCCI] requested PNB to credit back and restore to its account

the value of the checks. PNB refused, and thus constrained [FFCCI] filed the instant suit for damages against the PNB and its own accountant Aurea Caparas (or Caparas).

In its traverse, PNB averred lack of cause of action. It alleged that it exercised due diligence in handling the account of [FFCCI]. The applications for manager's check have passed through the standard bank procedures and it was only after finding no infirmity that these were given due course. In fact, it was no less than Caparas, the accountant of [FFCCI], who confirmed the regularity of the transaction. The delay of [FFCCI] in picking up and going over the bank statements was the proximate cause of its self-proclaimed injury. Had [FFCCI] been conscientious in this regard, the alleged chicanery would have been detected early on and Caparas effectively prevented from absconding with its millions. It prayed for the dismissal of the complaint. [4]

### ***Regional Trial Court's Ruling***

The trial court ruled that F.F. Cruz and Company, Inc. ( FFCCI) was guilty of negligence in clothing Aurea Caparas (Caparas) with authority to make decisions on and dispositions of its account which paved the way for the fraudulent transactions perpetrated by Caparas; that, in practice, FFCCI waived the two-signature requirement in transactions involving the subject combo account so much so that Philippine National Bank (PNB) could not be faulted for honoring the applications for manager's check even if only the signature of Felipe Cruz appeared thereon; and that FFCCI was negligent in not immediately informing PNB of the fraud.

On the other hand, the trial court found that PNB was, likewise, negligent in not calling or personally verifying from the authorized signatories the legitimacy of the subject withdrawals considering that they were in huge amounts. For this reason, PNB had the last clear chance to prevent the unauthorized debits from FFCCI's combo account. Thus, PNB should bear the whole loss -

WHEREFORE, judgment is hereby rendered ordering defendant [PNB] to pay plaintiff [FFCCI] P13,210,500.31 representing the amounts debited against plaintiff's account, with interest at the legal rate computed from the filing of the complaint plus costs of suit.

IT IS SO ORDERED. [5]

### ***Court of Appeal's Ruling***

On January 31, 2006, the CA rendered the assailed Decision affirming with modification the Decision of the trial court, viz:

**WHEREFORE**, the appealed Decision is **AFFIRMED** with the **MODIFICATION** that [PNB] shall pay [FFCCI] only 60% of the actual damages awarded by the trial court while the remaining 40% shall be borne by [FFCCI].

**SO ORDERED.** [6]

The appellate court ruled that PNB was negligent in not properly verifying the genuineness of the signatures appearing on the two applications for manager's check as evidenced by the lack of the signature of the bank verifier thereon. Had this procedure been followed, the forgery would have been detected.

Nonetheless, the appellate court found FFCCI guilty of contributory negligence because it clothed its accountant/bookkeeper Caparas with apparent authority to transact business with PNB. In addition, FFCCI failed to timely examine its monthly statement of account and report the discrepancy to PNB within a reasonable period of time to prevent or recover the loss. FFCCI's contributory negligence, thus, mitigated the bank's liability. Pursuant to the rulings in *Philippine Bank of Commerce v. Court of Appeals* [7] and *The Consolidated Bank & Trust Corporation v. Court of Appeals*, [8] the appellate court allocated the damages on a 60-40 ratio with the bigger share to be borne by PNB.

From this decision, both FFCCI and PNB sought review before this Court.

On August 17, 2006, FFCCI filed its petition for review on *certiorari* which was docketed as G.R. No. 173278. [9] On March 7, 2007, the Court issued a Resolution [10] denying said petition. On June 13, 2007, the Court issued another Resolution [11] denying FFCCI's motion for reconsideration. In denying the aforesaid petition, the Court ruled that FFCCI essentially raises questions of fact which are, as a rule, not reviewable under a Rule 45 petition; that FFCCI failed to show that its case fell within the established exceptions to this rule; and that FFCCI was guilty of contributory negligence. Thus, the appellate court correctly mitigated PNB's liability.

On July 13, 2006, PNB filed its petition for review on *certiorari* which is the subject matter of this case.

### **Issue**

Whether the Court of Appeals seriously erred when it found PNB guilty of negligence. [12]

### **Our Ruling**

We affirm the ruling of the CA.

*PNB is guilty of negligence.*

Preliminarily, in G.R. No. 173278, we resolved with finality [13] that FFCCI is guilty of contributory negligence, thus, making it partly liable for the loss (*i.e.*, as to 40% thereof) arising from the unauthorized withdrawal of P13,210,500.31 from its combo account. The case before us is, thus, limited to PNB's alleged negligence in the subject transactions which the appellate court found to be the proximate cause of the loss, thus, making it liable for the greater part of the loss (*i.e.*, as to 60% thereof) pursuant to our rulings in *Philippine Bank of Commerce v. Court of Appeals* [14] and *The Consolidated Bank & Trust Corporation v. Court of Appeals*. [15]

PNB contends that it was not negligent in verifying the genuineness of the