

## SECOND DIVISION

[ G.R. No. 197593, October 12, 2020 ]

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. CENTRAL  
BANK OF THE PHILIPPINES (NOW BANGKO SENTRAL NG  
PILIPINAS) AND CITIBANK, N.A., RESPONDENTS.**

### DECISION

**HERNANDO, J.:**

Challenged in this Petition for Review on *Certiorari*<sup>[1]</sup> are the January 26, 2011 Decision<sup>[2]</sup> and July 8, 2011 Resolution<sup>[3]</sup> of the court of Appeals (CA) in CA-G.R. CV No. 70699, which reversed and set aside the April 24, 2001 Decision<sup>[4]</sup> of the Regional Trial Court (RTC), Branch 64 of Makati City, in Civil Case No. 18793. The appellate court dismissed the complaint filed by petitioner Bank of the Philippine Islands (BPI) against respondent Central Bank of the Philippines (CBP), now Bangko Sentral ng Pilipinas, and ordered the cancellation of payment made by CBP in the amount of P4.5 million earlier credited to BPI's "Suspense Account".

#### The Antecedents

Petitioner BPI and respondent Citibank, N.A. (Citibank) are both members of the Clearing House established and supervised by the CBP. Both banks maintained demand deposit balances with the CBP for their clearing transactions with other commercial banks coursed through the said clearing facilities.

On January 28, 1982, BPI Laoag City Branch discovered outstanding discrepancies in its inter-bank reconciliation statements in CBP in the amount of P9 million. Hence, on February 9, 1982, petitioner BPI filed a letter-complaint before the CBP on the latter's irregular charging of its demand deposit account in the amount of P9 million.<sup>[5]</sup> It also requested CBP to conduct the necessary investigation of the matter. In addition, both CBP and petitioner BPI agreed to refer the matter to the National Bureau of Investigation (NBI) to conduct a separate investigation.<sup>[6]</sup>

The results of the NBI Investigation Report<sup>[7]</sup> showed that an organized criminal syndicate using a scheme known as "pilferage scheme" committed the bank fraud in the following manner: (a) the infiltration of the Clearing Division of the CBP with the connivance of some personnel of the CBP Clearing House; (b) the pilferage of "out-of-town" checks; (c) the tampering of vital banking documents, such as clearing manifests and clearing statements; (d) the opening of Current Accounts by members of the syndicate with the BPI Laoag City Branch and Citibank, Greenhills Branch in Mandaluyong City; and (e) the withdrawal of funds through checks deposited with Citibank and drawn against BPI.

It was further disclosed that on October 14, 1981, two accounts were opened at BPI Laoag City Branch and another at Citibank Greenhills Branch.<sup>[8]</sup> A Savings Account

in BPI Laoag City Branch was opened by Mariano Bustamante (Bustamante) with an initial deposit of P3,000.00, P2,000.00 of which was in check and P1,000.00 in cash.

[9] On the same day, Bustamante also opened a Current Account with the BPI Laoag City Branch with an initial deposit of P1,000 with which he was given a checkbook.

[10] On the other hand, Marcelo Desiderio (Desiderio) opened a Current Account under Magna Management Consultant (MMC) with Citibank Greenhills Branch with an initial deposit of P10,000.00 and with Rolando San Pedro as the authorized signatory or owner of the account.[11]

Thereafter, Citibank Greenhills Branch received by way of deposit to the Current Account of MMC various checks drawn against BPI Laoag City Branch: (a) two checks dated October 9 and 15, 1981 in the amounts of P498,719.70 and P501,260.30, respectively, deposited on October 16, 1981; (b) two checks dated October 26 and 28, 1981 in the total amount of P3 million deposited on October 30, 1981; and (c) various checks in the total amount of PS million deposited on November 20, 1981. All these checks were sent by Citibank Greenhills Branch to the CBP Clearing House for clearing purposes.[12]

Upon arrival of the checks at the CBP Clearing House, Manuel Valentino (Valentino), CBP's Bookkeeper, with the assistance of Janitor-Messenger Jesus Estacio (Estacio), intercepted and pilfered the BPI Laoag City Branch checks, and tampered the clearing envelope. They reduced the amounts appearing on the clearing manifest, the BPI clearing statement and the CBP manifest to conceal the fact that the BPI Laoag City Branch checks showing the original amounts were deposited with Citibank Greenhills Branch.[13] Thereafter, the altered CBP manifest and clearing statement, together with the clearing envelope which contained the checks intended for BPI Laoag City Branch but without the pilfered checks deposited with the Citibank Greenhills Branch in the account of MMC and drawn against Bustamante's BPI Laoag City Branch account, were forwarded to CBP Laoag Clearing Center.[14]

As a standard operating procedure, the CBP Laoag Clearing Center forwarded the said documents to the drawee bank, BPI Laoag City Branch, which would then process the same by either honoring or dishonoring the checks received by it. However, BPI Laoag City Branch could neither honor nor dishonor the pilfered checks as they were not included in the clearing envelope or in the tampered CBP manifest and clearing statement. BPI Laoag City Branch was not given the chance to dishonor the pilfered checks as they were not presented for payment. Thereafter, upon receipt of the original clearing manifest from CBP Laoag Clearing Center with BPI's acknowledgement, Valentino added back the amount of the pilfered checks so that the original manifest would tally with all the records in CBP.[15]

On the other hand, the sending bank, Citibank Greenhills Branch, did not receive any notice of dishonor within the period provided under the CBP regulations, thus, it presumed that the checks deposited in MMC's Current Account had been presented in due course to the drawee bank, BPI Laoag City Branch, and were consequently honored by the latter. Thereafter, Citibank Greenhills Branch allowed the withdrawal of the checks in the total amount of P9 million.[16]

As a result of the aforesaid fraud committed against petitioner BPI, Desiderio and Estacio, together with other personalities, were convicted of three (3) counts of *Estafa* thru Falsification of Public Documents by the *Sandiganbayan* (SB). On the

other hand, Valentino was discharged and utilized as the main witness for the prosecution.<sup>[17]</sup>

In addition, Carlito Bondoc, the former Assistant Manager of Citibank Greenhills Branch and Rogelio Vicente (Vicente), Assistant Manager of BPI Laoag City Branch, were charged as co-conspirators in the bank fraud against petitioner BPI. However, the case against Vicente was dismissed without prejudice by the SB after Valentino recanted his earlier statement implicating Vicente and for insufficiency of evidence to support his conviction.<sup>[18]</sup>

Thereafter, petitioner BPI requested CBP, through a letter dated June 15, 1982, to credit back to its demand deposit account the amount of P9 million with interest.<sup>[19]</sup> However, CBP credited only the amount of P4.5 million to BPI's demand deposit account.<sup>[20]</sup> Despite several requests made by BPI, CBP refused to credit back the remaining amount of P4.5 million plus interest.<sup>[21]</sup> Hence, on January 21, 1988, petitioner BPI filed a complaint<sup>[22]</sup> for sum of money against CBP.

In its Answer,<sup>[23]</sup> CBP denied any liability to BPI and demanded the latter to return the P4.5 million it earlier credited to BPI as the said amount was allegedly held under a "suspense account" pending the final outcome of the NBI investigation. CBP likewise filed a third-party complaint against Citibank for the latter's negligence which caused the perpetration of the fraud.<sup>[24]</sup> Citibank, on its part, denied any negligence in the supervision of its employees.<sup>[25]</sup> CBP further alleged, in its Amended Answer,<sup>[26]</sup> that the fraud could not have been committed without the connivance and collusion of certain employees of both petitioner BPI and respondent Citibank.

### **Ruling of the Regional Trial Court:**

On April 24, 2001, the RTC rendered its Decision<sup>[27]</sup> in favor of petitioner BPI. It gave credence to the NBI Investigation Report that the immediate and proximate cause of the defraudation were the criminal acts of CBP employees, Valentino and Estacio. The lower court ruled that CBP, as employer, shall be liable for the damage caused by its employees, Valentino and Estacio, to petitioner BPI under Articles 2176 and 2180 of the Civil Code. The dispositive portion of the judgment reads:

WHEREFORE, in view of the foregoing, the following judgment is rendered:

1. Ordering defendant Central Bank of the Philippines now Bangko Sentral ng Pilipinas (BSP) to credit the demand deposit account of plaintiff, Bank of the Philippine Islands the sum of P4.5 Million plus six (6) percent interest per annum from September 23, 1986 until full payment is made;
2. Ordering the defendant Central Bank now BSP to delete the words "Suspense Account" from the P4.5 Million earlier credited to the account of BPI, thus restoring fully the P9 Million to demand deposit account of BPI;
3. Ordering defendant Central Bank, now BSP to pay BPI the amount corresponding to 10% of the amount due as attorney's fees;

4. Ordering defendant Central Bank to pay the cost of suit; and
5. Dismissing the third-party complaint against third-party defendant Citibank, N.A for lack of merit.<sup>[28]</sup>

### **Ruling of the Court of Appeals:**

Both petitioner BPI and respondent CBP filed their respective appeals before the CA. In its January 26, 2011 Decision,<sup>[29]</sup> the CA reversed and set aside the RTC's April 24, 2001 Decision.<sup>[30]</sup> The appellate court dismissed the complaint filed by petitioner BPI and ordered the cancellation of the payment made by CBP in the amount of P4.5 million to BPI. It reasoned that under Article 2180 of the Civil Code, the State is generally liable only for *quasidelicts* in case the act complained of was performed by a special agent. Both Valentino and Estacio were not special agents as neither of them was duly empowered by a definite order or commission to perform some act or were charged with some definite purpose which gives rise to the claim. They were employed in accordance with ordinary rules and regulations governing civil service and assigned to carry out tasks naturally related to their employment.

The appellate court clarified that the State may be held liable for *quasidelicts* as an ordinary employer when it is performing proprietary acts, citing *Fontanilla v. Maliaman*.<sup>[31]</sup> Even assuming that CBP, in operating and administering the clearing house is performing proprietary functions, it still cannot be held liable for the acts of its employees as both Valentino and Estacio were not acting within the scope of their employment when they committed the fraud against petitioner BPI.

Finally, the appellate court held that Article 2180 provides that diligence of a good father of a family or ordinary diligence absolves the employer or master from any liability committed by their employees. The CA found that the CBP met the standard of ordinary diligence in determining both Valentino's and Estacio's respective qualifications prior to their employment through the conduct of mental, psychological, and physical examinations as required by the Civil Service Commission. They were also required to obtain National Intelligence and Security Authority (NISA) and NBI clearances prior to their employment.

A motion for reconsideration was filed by petitioner BPI which was denied by the appellate court in its July 8, 2011 Resolution.<sup>[32]</sup> Hence, petitioner BPI filed a Petition for Review on *Certiorari*<sup>[33]</sup> under Rule 45 before this Court.

### **Issues**

The issues to be resolved in this case are the following:

1. Whether or not CBP may be sued on its governmental and/or proprietary functions.
2. Whether or not CBP is performing a proprietary function when it entered into clearing operations of regional checks of its member institutions.
3. Whether or not CBP exercised the diligence of a good father of a family in supervising the two employees involved in the bank fraud.
4. Whether or not Citibank as the sending bank shall bear the damage caused to petitioner BPI as per Central Bank Circular No. 580, Series of 1977, as amended.

## **Arguments of BPI:**

Petitioner BPI argues that CBP's function of operating clearing house facilities for regional checks is proprietary in character as the same may be assigned to, and exercised by private entities. During that time, all Metro Manila checks in the banking system were being cleared through the Philippine Clearing House Corporation (PCHC), a private corporation, while the regional checks were coursed through the CBP's clearing facilities. At present, all regional checks are now being cleared in the PCHC. The CBP also collected fees as per the Central Bank Manual of Regulations for its supervision of its employees, including those in the Clearing Division. Thus, petitioner BPI contends that as a corporate entity, CBP shall be held liable for the acts of its employees just like any other employer.

Moreover, petitioner BPI claims that Section 4 of Republic Act No. 265 (RA 265) or the Central Bank Act (CBA) provides that the CBP is authorized to sue and be sued, without any qualification that it may only be sued in performance of its proprietary functions. In addition, the clearing of checks is not essential to the main purpose for which CBP was established as per Section 2 of the CBA; neither is it incidental to CBP's governmental function as the clearing of checks has no relevance in CBP's duty to foster a balanced and sustainable growth in the economy.

Petitioner BPI further argues that both CBP's employees, Bookkeeper Valentino and Janitor-Messenger Estacio, acted within the scope of their functions when they committed the bank fraud. The fact that CBP required its employees to undergo mental, psychological and physical examinations as well as to procure the necessary NISA and NBI clearances before their employment are not sufficient to prove that CBP exercised the required diligence in supervising its employees.

Also, petitioner BPI claims that although CBP invoked the provisions of Central Bank Circular No. 580, Series of 1977, as amended, which was incorporated in the Central Bank Manual of Regulations, and provides that "Loss of clearing items: Any loss or damage arising from theft, pilferage, or other causes affecting items in transit shall be for the account of the sending bank/branch concerned," it nonetheless refused to apply the same. Despite petitioner BPI's repeated demands, CBP refused to credit the remaining P4.5 million to petitioner BPI's account to be charged against Citibank, the sending bank.

Lastly, petitioner BPI demands that the interest due should be computed from June 15, 1982, the date of the extrajudicial demand, pursuant to Article 1169 of the Civil Code and *Eastern Shipping Lines, Inc. v. Court of Appeals*.<sup>[34]</sup> In addition, the monetary award shall earn interest at the rate of 12% per **annum** from the time of judicial demand, that is, January 21, 1988 until payment is actually made.

## **Arguments of Citibank:**

Respondent Citibank supports petitioner BPI's contention that CBP can be sued under Section 4 of RA 265. It argues that CBP waived its non-suability when it commenced litigation by filing a third-party complaint against Citibank. Moreover, in providing clearing facilities for regional checks and collecting fees therefor, CBP is performing proprietary functions which made it vulnerable to suit.

It further argues that the fraudulent acts of CBP's employees, Valentino and Estacio, were the proximate cause of BPI's defraudation, which fact was not disturbed by the appellate court in its assailed ruling. Also, no sufficient evidence was offered to