

FIRST DIVISION

[G.R. No. 176697, September 10, 2014]

**CESAR V. AREZA AND LOLITA B. AREZA, PETITIONERS, VS.
EXPRESS SAVINGS BANK, INC. AND MICHAEL POTENCIANO,
RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to reverse the Decision^[1] and Resolution^[2] dated 29 June 2006 and 12 February 2007 of the Court of Appeals in CA-G.R. CV No. 83192. The Court of Appeals affirmed with modification the 22 April 2004 Resolution^[3] of the Regional Trial Court (RTC) of Calamba, Laguna, Branch 92, in Civil Case No. B-5886.

The factual antecedents follow.

Petitioners Cesar V. Areza and Lolita B. Areza maintained two bank deposits with respondent Express Savings Bank's Biñan branch: 1) Savings Account No. 004-01-000185-5 and 2) Special Savings Account No. 004-02-000092-3.

They were engaged in the business of "buy and sell" of brand new and second-hand motor vehicles. On 2 May 2000, they received an order from a certain Gerry Mambuay (Mambuay) for the purchase of a second-hand Mitsubishi Pajero and a brand-new Honda CRV.

The buyer, Mambuay, paid petitioners with nine (9) Philippine Veterans Affairs Office (PVAO) checks payable to different payees and drawn against the Philippine Veterans Bank (drawee), each valued at Two Hundred Thousand Pesos (P200,000.00) for a total of One Million Eight Hundred Thousand Pesos (P1,800,000.00).

About this occasion, petitioners claimed that Michael Potenciano (Potenciano), the branch manager of respondent Express Savings Bank (the Bank) was present during the transaction and immediately offered the services of the Bank for the processing and eventual crediting of the said checks to petitioners' account.^[4] On the other hand, Potenciano countered that he was prevailed upon to accept the checks by way of accommodation of petitioners who were valued clients of the Bank.^[5]

On 3 May 2000, petitioners deposited the said checks in their savings account with the Bank. The Bank, in turn, deposited the checks with its depositary bank, Equitable-PCI Bank, in Biñan, Laguna. Equitable-PCI Bank presented the checks to the drawee, the Philippine Veterans Bank, which honored the checks.

On 6 May 2000, Potenciano informed petitioners that the checks they deposited with

the Bank were honored. He allegedly warned petitioners that the clearing of the checks pertained only to the availability of funds and did not mean that the checks were not infirmed.^[6] Thus, the entire amount of P1,800,000.00 was credited to petitioners' savings account. Based on this information, petitioners released the two cars to the buyer.

Sometime in July 2000, the subject checks were returned by PVAO to the drawee on the ground that the amount on the face of the checks was altered from the original amount of P4,000.00 to P200,000.00. The drawee returned the checks to Equitable-PCI Bank by way of Special Clearing Receipts. In August 2000, the Bank was informed by Equitable-PCI Bank that the drawee dishonored the checks on the ground of material alterations. Equitable-PCI Bank initially filed a protest with the Philippine Clearing House. In February 2001, the latter ruled in favor of the drawee Philippine Veterans Bank. Equitable-PCI Bank, in turn, debited the deposit account of the Bank in the amount of P1,800,000.00.

The Bank insisted that they informed petitioners of said development in August 2000 by furnishing them copies of the documents given by its depositary bank.^[7] On the other hand, petitioners maintained that the Bank never informed them of these developments.

On 9 March 2001, petitioners issued a check in the amount of P500,000.00. Said check was dishonored by the Bank for the reason "Deposit Under Hold." According to petitioners, the Bank unilaterally and unlawfully put their account with the Bank on hold. On 22 March 2001, petitioners' counsel sent a demand letter asking the Bank to honor their check. The Bank refused to heed their request and instead, closed the Special Savings Account of the petitioners with a balance of P1,179,659.69 and transferred said amount to their savings account. The Bank then withdrew the amount of P1,800,000.00 representing the returned checks from petitioners' savings account.

Acting on the alleged arbitrary and groundless dishonoring of their checks and the unlawful and unilateral withdrawal from their savings account, petitioners filed a Complaint for Sum of Money with Damages against the Bank and Potenciano with the RTC of Calamba.

On 15 January 2004, the RTC, through Judge Antonio S. Pozas, ruled in favor of petitioners. The dispositive portion of the Decision reads:

WHEREFORE, the foregoing considered, the Court orders that judgment be rendered in favor of plaintiffs and against the defendants jointly and severally to pay plaintiffs as follows, to wit:

1. P1,800,000.00 representing the amount unlawfully withdrawn by the defendants from the account of plaintiffs;
2. P500,000.00 as moral damages; and
3. P300,000.00 as attorney's fees.^[8]

The trial court reduced the issue to whether or not the rights of petitioners were violated by respondents when the deposits of the former were debited by

respondents without any court order and without their knowledge and consent. According to the trial court, it is the depository bank which should safeguard the right of the depositors over their money. Invoking Article 1977 of the Civil Code, the trial court stated that the depository cannot make use of the thing deposited without the express permission of the depositor. The trial court also held that respondents should have observed the 24-hour clearing house rule that checks should be returned within 24-hours after discovery of the forgery but in no event beyond the period fixed by law for filing a legal action. In this case, petitioners deposited the checks in May 2000, and respondents notified them of the problems on the check three months later or in August 2000. In sum, the trial court characterized said acts of respondents as attended with bad faith when they debited the amount of P1,800,000.00 from the account of petitioners.

Respondents filed a motion for reconsideration while petitioners filed a motion for execution from the Decision of the RTC on the ground that respondents' motion for reconsideration did not conform with Section 5, Rule 16 of the Rules of Court; hence, it was a mere scrap of paper that did not toll the running of the period to appeal.

On 22 April 2004, the RTC, through Pairing Judge Romeo C. De Leon granted the motion for reconsideration, set aside the Pozas Decision, and dismissed the complaint. The trial court awarded respondents their counterclaim of moral and exemplary damages of P100,000.00 each.

The trial court first applied the principle of liberality when it disregarded the alleged absence of a notice of hearing in respondents' motion for reconsideration. On the merits, the trial court considered the relationship of the Bank and petitioners with respect to their savings account deposits as a contract of loan with the bank as the debtor and petitioners as creditors. As such, Article 1977 of the Civil Code prohibiting the depository from making use of the thing deposited without the express permission of the depositor is not applicable. Instead, the trial court applied Article 1980 which provides that fixed, savings and current deposits of money in banks and similar institutions shall be governed by the provisions governing simple loan. The trial court then opined that the Bank had all the right to set-off against petitioners' savings deposits the value of their nine checks that were returned.

On appeal, the Court of Appeals affirmed the ruling of the trial court but deleted the award of damages. The appellate court made the following ratiocination:

Any argument as to the notice of hearing has been resolved when the pairing judge issued the order on February 24, 2004 setting the hearing on March 26, 2004. A perusal of the notice of hearing shows that request was addressed to the Clerk of Court and plaintiffs' counsel for hearing to be set on March 26, 2004.

The core issues in this case revolve on whether the appellee bank had the right to debit the amount of P1,800,000.00 from the appellants' accounts and whether the bank's act of debiting was done "without the plaintiffs' knowledge."

We find that the elements of legal compensation are all present in the case at bar. Hence, applying the case of the *Bank of the Philippine Islands v. Court of Appeals*, the obligors bound principally are at the same time creditors of each other. Appellee bank stands as a debtor of appellant, a depositor. At the same time, said bank is the creditor of the appellant with respect to the dishonored treasury warrant checks which amount were already credited to the account of appellants. When the appellants had withdrawn the amount of the checks they deposited and later on said checks were returned, they became indebted to the appellee bank for the corresponding amount.

It should be noted that [G]erry Mambuay was the appellants' walk-in buyer. As sellers, appellants ought to have exercised due diligence in assessing his credit or personal background. The 24-hour clearing house rule is not the one that governs in this case since the nine checks were discovered by the drawee bank to contain material alterations.

Appellants merely allege that they were not informed of any development on the checks returned. However, this Court believes that the bank and appellants had opportunities to communicate about the checks considering that several transactions occurred from the time of alleged return of the checks to the date of the debit.

However, this Court agrees with appellants that they should not pay moral and exemplary damages to each of the appellees for lack of basis.

The appellants were not shown to have acted in bad faith.^[9]

Petitioners filed the present petition for review on *certiorari* raising both procedural and substantive issues, to wit:

1. Whether or not the Honorable Court of Appeals committed a reversible error of law and grave abuse of discretion in upholding the legality and/or propriety of the Motion for Reconsideration filed in violation of Section 5, Rule 15 of the Rules on Civil Procedure;
2. Whether or not the Honorable Court of Appeals committed a grave abuse of discretion in declaring that the private respondents "had the right to debit the amount of P1,800,000.00 from the appellants' accounts" and the bank's act of debiting was done with the plaintiff's knowledge.^[10]

Before proceeding to the substantive issue, we first resolve the procedural issue raised by petitioners.

Sections 5, Rule 15 of the Rules of Court states:

Section 5. Notice of hearing. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the

hearing which must not be later than ten (10) days after the filing of the motion.

Petitioners claim that the notice of hearing was addressed to the Clerk of Court and not to the adverse party as the rules require. Petitioners add that the hearing on the motion for reconsideration was scheduled beyond 10 days from the date of filing.

As held in *Maturan v. Araula*,^[11] the rule requiring that the notice be addressed to the adverse party has been substantially complied with when a copy of the motion for reconsideration was furnished to the counsel of the adverse party, coupled with the fact that the trial court acted on said notice of hearing and, as prayed for, issued an order^[12] setting the hearing of the motion on 26 March 2004.

We would reiterate later that there is substantial compliance with the foregoing Rule if a copy of the said motion for reconsideration was furnished to the counsel of the adverse party.^[13]

Now to the substantive issues to which procedural imperfection must, in this case, give way.

The central issue is whether the Bank had the right to debit P1,800,000.00 from petitioners' accounts.

On 6 May 2000, the Bank informed petitioners that the subject checks had been honored. Thus, the amount of P1,800,000.00 was accordingly credited to petitioners' accounts, prompting them to release the purchased cars to the buyer.

Unknown to petitioners, the Bank deposited the checks in its depository bank, Equitable-PCI Bank. Three months had passed when the Bank was informed by its depository bank that the drawee had dishonored the checks on the ground of material alterations.

The return of the checks created a chain of debiting of accounts, the last loss eventually falling upon the savings account of petitioners with respondent bank. The trial court in its reconsidered decision and the appellate court were one in declaring that petitioners should bear the loss.

We reverse.

The fact that material alteration caused the eventual dishonor of the checks issued by PVAO is undisputed. In this case, before the alteration was discovered, the checks were already cleared by the drawee bank, the Philippine Veterans Bank. Three months had lapsed before the drawee dishonored the checks and returned them to Equitable-PCI Bank, the respondents' depository bank. And it was not until 10 months later when petitioners' accounts were debited. A question thus arises: What are the liabilities of the drawee, the intermediary banks, and the petitioners for the altered checks?

LIABILITY OF THE DRAWEE