

### THIRD DIVISION

[ G.R. No. 160260, October 24, 2012 ]

**WESTMONT BANK, FORMERLY ASSOCIATED BANK NOW UNITED OVERSEAS BANK PHILIPPINES,  
PETITIONER, VS. MYRNA DELA ROSA-RAMOS, DOMINGO TAN AND WILLIAM CO, RESPONDENTS.**

#### DECISION

**MENDOZA, J.:**

This is a Petition for Review under Rule 45 of the 1997 Rules of Civil procedure seeking a partial review of the February 14, 2003 Decision<sup>[1]</sup> and the October 2, 2003 Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA-G.R. CV No. 63983, which modified the September 16, 1998 Decision of the Regional Trial Court, Branch 7, Manila (RTC) in Civil Case No. 89-47926 entitled, *Myrna Dela Rosa-Ramos v. Westmont Bank, formerly Associated Bank, Domingo Tan, and William Go*.

The petition was filed on November 24, 2003 and received by this Court on December 15, 2003. The case was given due course on February 6, 2008.

#### The Facts

From 1986, respondent Myrna Dela Rosa-Ramos (*Dela Rosa-Ramos*) maintained a checking/current account with the United Overseas Bank Philippines<sup>[3]</sup> (*Bank*) at the latter's Sto. Cristo Branch, Binondo, Manila. In her several transactions with the Bank, Dela Rosa-Ramos got acquainted with its Signature Verifier, respondent Domingo Tan (*Tan*).<sup>[4]</sup>

In the course of their acquaintance, Tan offered Dela Rosa-Ramos a "special arrangement"<sup>[5]</sup> wherein he would finance or place sufficient funds in her checking/current account whenever there would be an overdraft or when the amount of said checks would exceed the balance of her current account. It was their arrangement to make sure that the checks she would issue would not be dishonored. Tan offered the service for a fee of P50.00 a day for every P40,000.00 he would finance. This financier-debtor relationship started in 1987 and lasted until 1998.<sup>[6]</sup>

In order to guarantee payment for such funding, Dela Rosa-Ramos issued postdated checks covering the principal amount plus interest as computed by Tan on specified date. There were also times when she just paid in cash.<sup>[7]</sup> Relative to their said agreement, Dela Rosa-Ramos issued and delivered to Tan the following Associated Bank checks<sup>[8]</sup> drawn against her current account and payable to "cash," to wit:

CHECK NO.	CURRENT ACCT.	DATE	AMOUNT
<b>467322 (Exh. A)</b>	1008-08341-0	May 8, 1988	PhP200,000.00
<b>510290 (Exh. C)</b>	1008-08734-3	June 10, 1988	232,500.00
<b>613307 (Exh. E)</b>	1008-08734-3	June 14, 1988	200,000.00
<b>613306 (Exh. D)</b>	1008-08734-3	July 4, 1988	290,595.00

According to Dela Rosa-Ramos, **Check No. 467322** for P200,000.00 was a "stale" guarantee check. The check was originally dated August 28, 1987 but was altered to make it appear that it was dated May 8, 1988. Tan then deposited the check in the account of the other respondent, William Co (Co), despite the obvious superimposed date. As a result, the amount of P200,00.00 or the value indicated in the check was eventually charged against her checking account.<sup>[9]</sup>

**Check No. 510290** for P232,500.00, dated June 10, 1988, was issued in payment of cigarettes that Dela Rosa-Ramos bought from Co. This check allegedly "bounced" so she replaced it with her "good customer's check and cash" and gave it to Tan. The latter, however, did not return the bounced check to her. Instead, he "redeposited" it in Co's account.<sup>[10]</sup>

**Check No. 613307** for P200,000.00, was another guarantee check that was also "undated." Dela Rosa-Ramos claimed that it was Tan who placed the date "June 14, 1988." For this check, an order to stop payment was issued because of insufficient funds. Expectedly, the words "PAYMENT STOPPED" were stamped on both sides of the check. This check was not returned to her either and, instead, it was "redeposited" in Co's account.<sup>[11]</sup>

**Check Nos. 510290** and **613307** were both dishonored for insufficient funds. When Dela Rosa-Ramos got the opportunity to confront Co regarding their deposit of the two checks, the latter disclosed that her two checks were deposited in his account to cover for his P432,500.00 cash which was taken by Tan. Then, with a threat to expose her relationship with a married man, Tan and Co were able to coerce her to replace the two above-mentioned checks with Check No. 598648<sup>[12]</sup> in the amount of P432,500.00 which was equivalent to the total amount of the two dishonored checks.<sup>[13]</sup>

**Check No. 613306** for P290,595.00, was also undated when delivered to Tan who later placed the date, July 4, 1988. Dela Rosa-Ramos pointed out that as of July 5, 1988, her checking account had P121,989.66 which was insufficient to answer for the value of said check. A check of a certain Lee See Bin in the amount of P170,000.00 was, however, deposited in her checking account. As a result, Tan was able to encash **Check No. 613306** and withdrew her P121,989.66 balance. Later, Dela Rosa-Ramos found out that the Lee See Bin Check was not funded because the Bank's bookkeeper demanded from her the return of the deficiency.<sup>[14]</sup>

Claiming that the four checks mentioned were deposited by Tan without her consent, Dela Rosa-Ramos instituted a complaint<sup>[15]</sup> against Tan and the Bank before the RTC seeking, among other things, to recover from the Bank the sum of P754,689.66 representing the total amount charged or withdrawn from her current account. Dela Rosa-Ramos subsequently amended her complaint to include Co.<sup>[16]</sup>

During the trial, Tan's partial direct testimony was ordered stricken off the records because he failed to complete it and make himself available for cross-examination. Later, it was found out that he had passed away.<sup>[17]</sup>

On September 16, 1998, the RTC resolved the case in this wise:

WHEREFORE, judgment is hereby rendered, sentencing defendant Associated Bank now the Westmont Bank and defendants – DOMINGO TAN and WILLIAM CO, to pay the plaintiff, jointly and severally:

1. The sum of P754,689.66, representing plaintiff's lost deposit, plus interest thereon at the legal rate of 12% per annum from the filing of the complaint, until fully paid;
2. The sum of P1,000,000.00, as moral damages;
3. The sum equivalent to 10% thereof, as exemplary damages;
4. The sum equivalent to 25% of the total amount due, as and for attorney's fees; and
5. Costs.

Defendant's counterclaims are hereby dismissed for lack of merit.

SO ORDERED.<sup>[18]</sup>

Co and the Bank appealed their cases to the CA. As Co failed to file a brief within the period prescribed, his appeal was dismissed.<sup>[19]</sup> The CA then proceeded to resolve the appeal of the Bank. On February 14, 2003, the CA rendered its appealed decision, the dispositive portion of which reads:

WHEREFORE, premises considered, Decision dated September 16, 1998 of the Regional Trial Court of Manila, National Capital Region, Branch 7, in Civil Case No. 89-17926, is hereby AFFIRMED with the MODIFICATION that: (a) the defendants are liable only for the amount of P521,989.00 covering Check Nos. 467322, 613307 and P121,989.66 covered by Check No. 613306 and (b) deleting the award for moral damages and attorney's fees.

SO ORDERED.<sup>[20]</sup>

Still not satisfied, the Bank moved for partial reconsideration. On October 2, 2003, the CA denied it for lack of merit. In the case of Co, he never appealed the CA decision. Thus, only the Bank is now before this Court raising the following issues:

**I.**

**WITHOUT DELINEATING THE SOURCE OF THE RESPECTIVE OBLIGATIONS OF PETITIONER BANK, RESPONDENT TAN AND RESPONDENT CO IN RELATION TO RESPONDENT DELA ROSA-RAMOS, THE HONORABLE COURT OF APPEALS UTTERLY AND GRAVELY ERRED WHEN IT SWEEPINGLY AFFIRMED THE JUDGMENT OF THE HONORABLE TRIAL COURT MAKING THEM JOINTLY AND SEVERALLY LIABLE FOR THE JUDGMENT AWARD IN FAVOR OF RESPONDENT DELA ROSA-RAMOS.**

**II.**

**THE JUDGMENT AWARD AGAINST PETITIONER BANK UNDER CHECK NO. 467322 (EXH. 'A') IS TOTALLY WITHOUT LEGAL BASIS AS THE SAME WAS MERELY BASED ON SPECULATIVE ASSUMPTION OR PURE SPECULATION.**

**III.**

**THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE ACCOUNT OF RESPONDENT DELA ROSA-RAMOS WAS DEBITED WITH THE FACE AMOUNT OF CHECK NO. 613307 (EXH. 'E') AS SUCH FINDING IS CONTRARY TO THE FINDING OF THE HONORABLE TRIAL COURT THAT THE SAID CHECK WAS DISHONORED TOGETHER WITH CHECK NO. 510290 (EXH. 'C') FOR THE REASON THAT BOTH CHECKS WERE DRAWN AGAINST INSUFFICIENT FUNDS.**

**IV.**

**NOTWITHSTANDING AND CLEARLY CONTRADICTING ITS VERY FINDING THAT "AS TO CHECK NO. 613306 (EXH. 'D'), THIS COURT OPINES THAT NO MANIFEST IRREGULARITY EXISTS," THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT ERRONEOUSLY FOUND PETITIONER BANK LIABLE IN THE AMOUNT OF P121,989.96 COVERED BY SAID CHECK.**

**V.**

**ASSUMING ARGUENDO THAT PETITIONER BANK IS LIABLE TO ANSWER FOR THE ALLEGED DAMAGES SUFFERED BY RESPONDENT DELA ROSA-RAMOS, THE HONORABLE COURT OF APPEALS GROSSLY ERRED WHEN IT FAILED TO PASS UPON PETITIONER BANK'S CROSS-CLAIM AGAINST RESPONDENT TAN.**<sup>[21]</sup>