

SECOND DIVISION

[G.R. No. 158143, September 21, 2011]

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER,
VS. ANTONIO B. BALMACEDA AND ROLANDO N. RAMOS,
RESPONDENTS.**

D E C I S I O N

BRION, J.:

Before us is a petition for review on *certiorari*,^[1] filed by the Philippine Commercial International Bank^[2] (*Bank* or *PCIB*), to reverse and set aside the decision^[3] dated April 29, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 69955. The CA overturned the September 22, 2000 decision of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 93-3181, which held respondent Rolando Ramos liable to PCIB for the amount of P895,000.00.

FACTUAL ANTECEDENTS

On September 10, 1993, PCIB filed an action for recovery of sum of money with damages before the RTC against Antonio Balmaceda, the Branch Manager of its Sta. Cruz, Manila branch. In its complaint, PCIB alleged that between 1991 and 1993, Balmaceda, by taking advantage of his position as branch manager, fraudulently obtained and encashed 31 Manager's checks in the total amount of Ten Million Seven Hundred Eighty Two Thousand One Hundred Fifty Pesos (P10,782,150.00).

On February 28, 1994, PCIB moved to be allowed to file an amended complaint to implead Rolando Ramos as one of the recipients of a portion of the proceeds from Balmaceda's alleged fraud. PCIB also increased the number of fraudulently obtained and encashed Manager's checks to 34, in the total amount of Eleven Million Nine Hundred Thirty Seven Thousand One Hundred Fifty Pesos (P11,937,150.00). The RTC granted this motion.

Since Balmaceda did not file an Answer, he was declared in default. On the other hand, Ramos filed an Answer denying any knowledge of Balmaceda's scheme. According to Ramos, he is a reputable businessman engaged in the business of buying and selling fighting cocks, and Balmaceda was one of his clients. Ramos admitted receiving money from Balmaceda as payment for the fighting cocks that he sold to Balmaceda, but maintained that he had no knowledge of the source of Balmaceda's money.

THE RTC DECISION

On September 22, 2000, the RTC issued a decision in favor of PCIB, with the following dispositive portion:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants as follows:

1. Ordering defendant Antonio Balmaceda to pay the amount of P11,042,150.00 with interest thereon at the legal rate from [the] date of his misappropriation of the said amount until full restitution shall have been made[.]
2. Ordering defendant Rolando Ramos to pay the amount of P895,000.00 with interest at the legal rate from the date of misappropriation of the said amount until full restitution shall have been made[.]
3. Ordering the defendants to pay plaintiff moral damages in the sum of P500,000.00 and attorney's fees in the amount of ten (10%) percent of the total misappropriated amounts sought to be recovered.
4. Plus costs of suit.

SO ORDERED.^[4]

From the evidence presented, the RTC found that Balmaceda, by taking undue advantage of his position and authority as branch manager of the Sta. Cruz, Manila branch of PCIB, successfully obtained and misappropriated the bank's funds by falsifying several commercial documents. He accomplished this by claiming that he had been instructed by one of the Bank's corporate clients to purchase Manager's checks on its behalf, with the value of the checks to be debited from the client's corporate bank account. First, he would instruct the Bank staff to prepare the application forms for the purchase of Manager's checks, payable to several persons. Then, he would forge the signature of the client's authorized representative on these forms and sign the forms as PCIB's approving officer. Finally, he would have an authorized officer of PCIB issue the Manager's checks. Balmaceda would subsequently ask his subordinates to release the Manager's checks to him, claiming that the client had requested that he deliver the checks.^[5] After receiving the Manager's checks, he encashed them by forging the signatures of the payees on the checks.

In ruling that Ramos acted in collusion with Balmaceda, the RTC noted that although the Manager's checks payable to Ramos were crossed checks, Balmaceda was still able to encash the checks.^[6] After Balmaceda encashed three of these Manager's checks, he deposited most of the money into Ramos' account.^[7] The RTC concluded that from the P11,937,150.00 that Balmaceda misappropriated from PCIB, P895,000.00 actually went to Ramos. Since the RTC disbelieved Ramos' allegation that the sum of money deposited into his Savings Account (PCIB, Pasig branch) were proceeds from the sale of fighting cocks, it held Ramos liable to pay PCIB the amount of P895,000.00.

THE COURT OF APPEALS DECISION

On appeal, the CA dismissed the complaint against Ramos, holding that no sufficient evidence existed to prove that Ramos colluded with Balmaceda in the latter's

fraudulent manipulations.^[8]

According to the CA, the mere fact that Balmaceda made Ramos the payee in some of the Manager's checks does not suffice to prove that Ramos was complicit in Balmaceda's fraudulent scheme. It observed that other persons were also named as payees in the checks that Balmaceda acquired and encashed, and PCIB only chose to go after Ramos. With PCIB's failure to prove Ramos' actual participation in Balmaceda's fraud, no legal and factual basis exists to hold him liable.

The CA also found that PCIB acted illegally in freezing and debiting P251,910.96 from Ramos' bank account. The CA thus decreed:

WHEREFORE, the appeal is granted. The Decision of the trial court rendered on September 22, 2000[,] insofar as appellant Ramos is concerned, is SET ASIDE, and the complaint below against him is DISMISSED.

Appellee is hereby ordered to release the amount of P251,910.96 to appellant Ramos plus interest at [the] legal rate computed from September 30, 1993 until appellee shall have fully complied therewith.

Appellee is likewise ordered to pay appellant Ramos the following:

- a) P50,000.00 as moral damages
- b) P50,000.00 as exemplary damages, and
- c) P20,000.00 as attorney's fees.

No costs.

SO ORDERED.^[9]

THE PETITION

In the present petition, PCIB avers that:

I

THE APPELLATE COURT ERRED IN HOLDING THAT THERE IS NO EVIDENCE TO HOLD THAT RESPONDENT RAMOS ACTED IN COMPLICITY WITH RESPONDENT BALMaceda

II

THE APPELLATE COURT ERRED IN ORDERING THE PETITIONER TO RELEASE THE AMOUNT OF P251,910.96 TO RESPONDENT RAMOS AND TO PAY THE LATTER MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES^[10]

PCIB contends that the circumstantial evidence shows that Ramos had knowledge of, and acted in complicity with Balmaceda in, the perpetuation of the fraud. Ramos' explanation that he is a businessman and that he received the Manager's checks as payment for the fighting cocks he sold to Balmaceda is unconvincing, given the large sum of money involved. While Ramos presented evidence that he is a reputable businessman, this evidence does not explain why the Manager's checks were made payable to him in the first place.

PCIB maintains that it had the right to freeze and debit the amount of P251,910.96 from Ramos' bank account, even without his consent, since legal compensation had taken place between them by operation of law. PCIB debited Ramos' bank account, believing in good faith that Ramos was not entitled to the proceeds of the Manager's checks and was actually privy to the fraud perpetrated by Balmaceda. PCIB cannot thus be held liable for moral and exemplary damages.

OUR RULING

We partly grant the petition.

At the outset, we observe that the petition raises mainly questions of fact whose resolution requires the re-examination of the evidence on record. As a general rule, petitions for review on *certiorari* only involve questions of law.^[11] By way of exception, however, we can delve into evidence and the factual circumstance of the case when the findings of fact in the tribunals below (in this case between those of the CA and of the RTC) are conflicting. When the exception applies, we are given latitude to review the evidence on record to decide the case with finality.^[12]

Ramos' participation in Balmaceda's scheme not proven

From the testimonial and documentary evidence presented, we find it beyond question that Balmaceda, by taking advantage of his position as branch manager of PCIB's Sta. Cruz, Manila branch, was able to apply for and obtain Manager's checks drawn against the bank account of one of PCIB's clients. The unsettled question is whether Ramos, who received a portion of the money that Balmaceda took from PCIB, should also be held liable for the return of this money to the Bank.

PCIB insists that it presented sufficient evidence to establish that Ramos colluded with Balmaceda in the scheme to fraudulently secure Manager's checks and to misappropriate their proceeds. Since Ramos' defense - anchored on mere denial of any participation in Balmaceda's wrongdoing - is an intrinsically weak defense, it was error for the CA to exonerate Ramos from any liability.

In civil cases, the party carrying the burden of proof must establish his case by a preponderance of evidence, or evidence which, to the court, is more worthy of belief than the evidence offered in opposition.^[13] This Court, in *Encinas v. National Bookstore, Inc.*,^[14] defined "preponderance of evidence" in the following manner:

"Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

The party, whether the plaintiff or the defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment, subject to the overriding rule that the burden to prove his cause of action never leaves the plaintiff. For the defendant, an affirmative defense is one that is not merely a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will constitute an "avoidance" of the claim.^[15]

Thus, PCIB, as plaintiff, had to prove, by preponderance of evidence, its positive assertion that Ramos conspired with Balmaceda in perpetrating the latter's scheme to defraud the Bank. In PCIB's estimation, it successfully accomplished this through the submission of the following evidence:

[1] Exhibits "A," "D," "PPPP," "QQQQ," and "RRRR" and their submarkings, the application forms for MCs, show that [these MCs were applied for in favor of Ramos;]

[2] Exhibits "K," "N," "SSSS," "TTTT," and "UUUU" and their submarkings prove that the MCs were issued in favor of x x x Ramos[; and]

[3] [T]estimonies of the witness for [PCIB].^[16]

We cannot accept these submitted pieces of evidence as sufficient to satisfy the burden of proof that PCIB carries as plaintiff.

On its face, all that PCIB's evidence proves is that Balmaceda used Ramos' name as a payee when he filled up the application forms for the Manager's checks. But, as the CA correctly observed, the mere fact that Balmaceda made Ramos the payee on some of the Manager's checks is not enough basis to conclude that Ramos was complicit in Balmaceda's fraud; a number of other people were made payees on the other Manager's checks yet PCIB never alleged them to be liable, nor did the Bank adduce any other evidence pointing to Ramos' participation that would justify his separate treatment from the others. Also, while Ramos is Balmaceda's brother-in-law, their relationship is not sufficient, by itself, to render Ramos liable, absent concrete proof of his actual participation in the fraudulent scheme.

Moreover, the evidence on record clearly shows that Balmaceda acted on his own when he applied for the Manager's checks against the bank account of one of PCIB's clients, as well as when he encashed the fraudulently acquired Manager's checks.

Mrs. Elizabeth Costes, the Area Manager of PCIB at the time of the relevant events, testified that Balmaceda committed all the acts necessary to obtain the