

THIRD DIVISION

[G.R. No. 157177, February 11, 2008]

BANK OF THE PHILIPPINE ISLANDS, Petitioner, vs. JESUSA P. REYES and CONRADO B. REYES, Respondents.

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to annul the Decision^[1] of the Court of Appeals (CA) dated October 29, 2002 as well as its Resolution^[2] dated February 12, 2003, which affirmed with modification the Decision of the Regional Trial Court (RTC) of Makati, Branch 142, in Civil Case No. 91-3453,^[3] requiring Bank of Philippine Islands (petitioner) to return to spouses Jesusa P. Reyes and Conrado B. Reyes (respondents) the amount of P100,000.00 plus interest and damages.

The conflicting versions of the parties are aptly summarized by the trial court, to wit:

On December 7, 1990 at around 2:00 p.m., plaintiff Jesusa Reyes together with her daughter, Joan Reyes, went to BPI Zapote Branch to open an ATM account, she being interested with the ongoing promotions of BPI entitling every depositor with a deposit amounting to P2,000.00 to a ticket with a car as its prize to be raffled every month.

She was accommodated, in lieu of the bank manager Mr. Nicasio, by Cicero Capati (Pats) who was an employee of the bank and in charge of the new accounts and time deposits characteristically described as having homosexual inclinations. They were entertained by Capati and were made to sit at a table occupied by a certain Liza.

Plaintiff informed Capati that they wanted to open an ATM account for the amount of P200,000.00, P100,000.00 of which shall be withdrawn from her exiting savings account with BPI bank which is account no. 0233-2433-88 and the other P100,000.00 will be given by her in cash.

Capati allegedly made a mistake and prepared a withdrawal slip for P200,00.00 to be withdrawn from her existing savings account with said bank and the plaintiff Jesusa Reyes believing in good faith that Capati prepared the papers with the correct amount signed the same unaware of the mistakes in figures.

While she was being entertained by Capati, her daughter Joan Reyes was filling up the signature cards and several other forms.

Minutes later after the slips were presented to the teller, Capati returned to where the plaintiff was seating and informed the latter that the withdrawable balance could not accommodate P200,000.00.

Plaintiff explained that she is withdrawing the amount of P100,000.00 only and then changed and correct the figure two (2) into one (1) with her signature super-imposed thereto signifying the change, afterwhich the amount of P100,000.00 in cash in two bundles containing 100 pieces of P500.00 peso bill were given to Capati with her daughter Joan witnessing the same. Thereafter Capati prepared a deposit slip for P200,000.00 in the name of plaintiff Jesusa Reyes with the new account no. 0235-0767-48 and brought the same to the teller's booth.

After a while, he returned and handed to the plaintiff her duplicate copy of her deposit to account no. 0235-0767-48 reflecting the amount of P200,000.00 with receipt stamp showing December 7, as the date.

Plaintiff and daughter then left.

On December 14, 1990, Mrs. Jesusa received her express teller card from said bank.

Thereafter on December 26, 1990, plaintiff left for the United States (Exhs. "T", "U"- "U-1") and returned to Manila on January 31, 1991 (Exhs. "V"- "V-1").

When she went to her pawnshop, she was made aware by her statement of account sent to her by BPI bank that her ATM account only contained the amount of P100,000.00 with interest.

She then sent her daughter to inquire, however, the bank manager assured her that they would look into the matter.

On February 6, 1991, plaintiff instructed Efren Luna, one of her employees, to update her savings account passbook at the BPI with the folded deposit slip for P200,000.00 stapled at the outer cover of said passbook. After presenting the passbook to be updated and when the same was returned, Luna noticed that the deposit slip stapled at the cover was removed and validated at the back portion thereof.

Thereafter, Luna returned with the passbook to the plaintiff and when the latter saw the validation, she got angry.

Plaintiff then asked the bank manager why the deposit slip was validated, whereupon the manager assured her that the matter will be investigated into.

When no word was heard as to the investigation made by the bank, Mrs. Reyes sent two (2) demand letters thru her lawyer demanding return of the missing P100,000.00 plus interest (Exhs. "B" and "C"). The same was received by defendant on July 25, 1991 and October 7, 1991, respectively.

The last letter prompted reply from defendant inviting plaintiff to sit down and discuss the problem.

The meeting resulted to the bank promising that Capati will be submitted to a lie detector test.

Plaintiff, however, never learned of the result of said test. Plaintiff filed this instant case.

Defendant on the other hand claimed that Bank of the Philippine Island admitted that Jesusa Reyes had effected a fund transfer in the amount of P100,000.00 from her ordinary savings account to the express teller account she opened on December 7, 1990 (Exhs. "3" to "3-C"), however, it was the only amount she deposited and no additional cash deposit of P100,000.00 was made. That plaintiff wanted to effect the transfer of P200,000.00 but the balance in her account was not sufficient and could not accommodate the same. Plaintiff thereafter agreed to reduce the amount to be withdrawn from P200,000.00 to P100,000.00 with plaintiff's signature superimposed on said corrections; that the original copy of the deposit slip was also altered from P200,000.00 to P100,000.00, however, instead of plaintiff signing the same, the clerk-in-charge of the bank, in this case Cicero Capati, signed the alteration himself for Jesusa Reyes had already left without signing the deposit slip. The documents were subsequently machine validated for the amount of P100,000.00 (Exhs. "2" and "4").

Defendant claimed that there was actually no cash involved with the transactions which happened on December 7, 1990 as contained in the bank's teller tape (Exhs."1" to "1-C").

Defendant further claimed that when they subjected Cicero Capati to a lie detector test, the latter passed the same with flying colors (Exhs. "5" to "5-C"), indicative of the fact that he was not lying when he said that there really was no cash transaction involved when plaintiff Jesusa Reyes went to the defendant bank on December 7, 1990; defendant further alleged that they even went to the extent of informing Jesusa Reyes that her claim would not be given credit (Exh. "6") considering that no such transaction was really made on December 7, 1990. [4]

On August 12, 1994, the RTC issued a Decision^[5] upholding the versions of respondents, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds in favor of the plaintiff Jesusa P. Reyes and Conrado Reyes and against defendant Bank of the Philippine Islands ordering the latter to:

1. Return to plaintiffs their P100,000.00 with interest at 14% per annum from December 7, 1990;
2. Pay plaintiffs P1,000,000.00 as moral damages;
2. Pay plaintiffs P350,000.00 as exemplary damages;

3. Pay plaintiffs P250,000.00 for and attorney's fees.^[6]

The RTC found that petitioner's claim that respondent Jesusa deposited only P100,000.00 instead of P200,000.00 was hazy; that what should control was the deposit slip issued by the bank to respondent, for there was no chance by which respondent could write the amount of P200,000.00 without petitioner's employee noticing it and making the necessary corrections; that it was deplorable to note that it was when respondent Jesusa's bankbook was submitted to be updated after the lapse of several months when the alleged error claimed by petitioner was corrected; that Article 1962 of the New Civil Code provides that a deposit is constituted from the moment a person receives a thing belonging to another with the obligation of safely keeping it and of returning the same; that under Article 1972, the depository is obliged to keep the thing safely and to return it when required to the depositor or to his heirs and successors or to the person who may have been designated in the contract.

Aggrieved, petitioner appealed to the CA which in a Decision dated October 29, 2002 affirmed the RTC decision with modification as follows:

Nonetheless, the award of 14% interest per annum on the missing P100,000.00 can stand some modification. The interest thereon should be 12% per annum, reckoned from May 12, 1991, the last day of the five day-grace period given by plaintiff-appellees' counsel under the first demand letter dated May 6, 1991 (Exhibit B), or counted from May 7, 1991, the date when defendant-appellant received said letter. Interest is demandable when the obligation consist in the payment of money and the debtor incurs in delay.

Also, we have to reduce the P1 million award of moral damages to a reasonable sum of P50,000.00. Moral damages are not intended to enrich a plaintiff at the expense of a defendant. They are awarded only to enable the injured party to obtain means, diversion, or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action. The award of moral damages must be proportionate to the suffering inflicted.

In addition, we have to delete the award of P350,000.00 as exemplary damages. The absence of malice and bad faith, as in this case, renders the award of exemplary damages improper.

Finally, we have to reduce the award of attorney's fees to a reasonable sum of P30,000.00, as the prosecution of this case has not been attended with any unusual difficulty.

WHEREFORE, with the modifications thus indicated, the judgment appealed from is in all other respects AFFIRMED. Without costs.^[7]

In finding petitioner liable for the missing P100,000.00, the CA held that the RTC correctly gave credence to the testimonies of respondent Jesusa and Joan Reyes to the effect that aside from the fund transfer of P100,000.00 from Jesusa's savings account, Jesusa also made a cash deposit of P100,000.00 in the afternoon of December 7, 1990; that it is unlikely for these two to concoct a story of falsification

against a banking institution of the stature of petitioner if their claims were not true; that the duplicate copy of the deposit slip showed a deposit of P200,000.00; this, juxtaposed with the fact that it was not machine-validated and the original copy altered by the bank's clerk from P200,000.00 to P100,000.00 with the altered amount "validated," is indicative of anomaly; that even if it was bank employee Cicero Capati who prepared the deposit slip, Jesusa stood her ground and categorically denied having any knowledge of the alteration therein made; that petitioner must account for the missing P100,000.00 because it was the author of the loss; that banks are engaged in business imbued with public interest and are under strict obligation to exercise utmost fidelity in dealing with its clients, in seeing to it that the funds therein invested or by them received are properly accounted for and duly posted in their ledgers.

Petitioner's motion for reconsideration was denied in a Resolution dated February 12, 2003.

Hence, the present petition on the following grounds:

- A. In affirming the decision of the trial court holding BPI liable for the amount of P100,000.00 representing an alleged additional deposit of respondents, the Honorable Court of Appeals gravely abused its discretion by resolving the issue based on a conjecture and ignoring physical evidence in favor of testimonial evidence.
- B. The Court of Appeals gravely abused its discretion, being as it is contrary to law, in holding BPI liable to respondents for the payment of interest at the rate of 12% per annum.
- C. This Honorable Court gravely abused its discretion, being as it is contrary to law, in holding BPI liable for moral damages and attorney's fees at the reduced amounts of P50,000.00 and P30,000.00, respectively. ^[8]

The main issue for resolution is whether the CA erred in sustaining the RTC's finding that respondent Jesusa made an initial deposit of P200,000.00 in her newly opened Express Teller account on December 7, 1990.

The issue raises a factual question. The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts.^[9] As a rule, the findings of fact of the trial court when affirmed by the CA are final and conclusive and cannot be reviewed on appeal by this Court, as long as they are borne out by the record or are based on substantial evidence.^[10] Such rule however is not absolute, but is subject to well-established exceptions, which are: 1) when the inference made is manifestly mistaken, absurd or impossible; 2) when there is a grave abuse of discretion; 3) when the finding is grounded entirely on speculations, surmises or conjectures; 4) when the judgment of the CA is based on a misapprehension of facts; 5) when the findings of facts are conflicting; 6) when the CA, in making its findings, went beyond the issues of the case, and those findings are contrary to the admissions of both appellant and appellee; 7) when the findings of the CA are contrary to those of the trial court; 8) when the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the CA manifestly overlooked certain relevant facts not disputed by the parties