

THIRD DIVISION

[G.R. No. 123498, November 23, 2007]

BPI FAMILY BANK, PETITIONER, VS. AMADO FRANCO AND COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

Banks are exhorted to treat the accounts of their depositors with meticulous care and utmost fidelity. We reiterate this exhortation in the case at bench.

Before us is a Petition for Review on *Certiorari* seeking the reversal of the Court of Appeals (CA) Decision^[1] in CA-G.R. CV No. 43424 which affirmed with modification the judgment^[2] of the Regional Trial Court, Branch 55, Manila (Manila RTC), in Civil Case No. 90-53295.

This case has its genesis in an ostensible fraud perpetrated on the petitioner BPI Family Bank (BPI-FB) allegedly by respondent Amado Franco (Franco) in conspiracy with other individuals,^[3] some of whom opened and maintained separate accounts with BPI-FB, San Francisco del Monte (SFDM) branch, in a series of transactions.

On August 15, 1989, Tevesteco Arrastre-Stevedoring Co., Inc. (Tevesteco) opened a savings and current account with BPI-FB. Soon thereafter, or on August 25, 1989, First Metro Investment Corporation (FMIC) also opened a time deposit account with the same branch of BPI-FB with a deposit of P100,000,000.00, to mature one year thence.

Subsequently, on August 31, 1989, Franco opened three accounts, namely, a current,^[4] savings,^[5] and time deposit,^[6] with BPI-FB. The current and savings accounts were respectively funded with an initial deposit of P500,000.00 each, while the time deposit account had P1,000,000.00 with a maturity date of August 31, 1990. The total amount of P2,000,000.00 used to open these accounts is traceable to a check issued by Tevesteco allegedly in consideration of Franco's introduction of Eladio Teves,^[7] who was looking for a conduit bank to facilitate Tevesteco's business transactions, to Jaime Sebastian, who was then BPI-FB SFDM's Branch Manager. In turn, the funding for the P2,000,000.00 check was part of the P80,000,000.00 debited by BPI-FB from FMIC's time deposit account and credited to Tevesteco's current account pursuant to an Authority to Debit purportedly signed by FMIC's officers.

It appears, however, that the signatures of FMIC's officers on the Authority to Debit were forged.^[8] On September 4, 1989, Antonio Ong,^[9] upon being shown the Authority to Debit, personally declared his signature therein to be a forgery. Unfortunately, Tevesteco had already effected several withdrawals from its current

account (to which had been credited the P80,000,000.00 covered by the forged Authority to Debit) amounting to P37,455,410.54, including the P2,000,000.00 paid to Franco.

On September 8, 1989, impelled by the need to protect its interests in light of FMIC's forgery claim, BPI-FB, thru its Senior Vice-President, Severino Coronacion, instructed Jesus Arangorin^[10] to debit Franco's savings and current accounts for the amounts remaining therein.^[11] However, Franco's time deposit account could not be debited due to the capacity limitations of BPI-FB's computer.^[12]

In the meantime, two checks^[13] drawn by Franco against his BPI-FB current account were dishonored upon presentment for payment, and stamped with a notation "account under garnishment." Apparently, Franco's current account was garnished by virtue of an Order of Attachment issued by the Regional Trial Court of Makati (Makati RTC) in Civil Case No. 89-4996 (Makati Case), which had been filed by BPI-FB against Franco et al.,^[14] to recover the P37,455,410.54 representing Tevesteco's total withdrawals from its account.

Notably, the dishonored checks were issued by Franco and presented for payment at BPI-FB prior to Franco's receipt of notice that his accounts were under garnishment.^[15] In fact, at the time the Notice of Garnishment dated September 27, 1989 was served on BPI-FB, Franco had yet to be impleaded in the Makati case where the writ of attachment was issued.

It was only on May 15, 1990, through the service of a copy of the Second Amended Complaint in Civil Case No. 89-4996, that Franco was impleaded in the Makati case.^[16] Immediately, upon receipt of such copy, Franco filed a Motion to Discharge Attachment which the Makati RTC granted on May 16, 1990. The Order Lifting the Order of Attachment was served on BPI-FB on even date, with Franco demanding the release to him of the funds in his savings and current accounts. Jesus Arangorin, BPI-FB's new manager, could not forthwith comply with the demand as the funds, as previously stated, had already been debited because of FMIC's forgery claim. As such, BPI-FB's computer at the SFDM Branch indicated that the current account record was "not on file."

With respect to Franco's savings account, it appears that Franco agreed to an arrangement, as a favor to Sebastian, whereby P400,000.00 from his savings account was temporarily transferred to Domingo Quiaoit's savings account, subject to its immediate return upon issuance of a certificate of deposit which Quiaoit needed in connection with his visa application at the Taiwan Embassy. As part of the arrangement, Sebastian retained custody of Quiaoit's savings account passbook to ensure that no withdrawal would be effected therefrom, and to preserve Franco's deposits.

On May 17, 1990, Franco pre-terminated his time deposit account. BPI-FB deducted the amount of P63,189.00 from the remaining balance of the time deposit account representing advance interest paid to him.

These transactions spawned a number of cases, some of which we had already resolved.

FMIC filed a complaint against BPI-FB for the recovery of the amount of P80,000,000.00 debited from its account.^[17] The case eventually reached this Court, and in *BPI Family Savings Bank, Inc. v. First Metro Investment Corporation*,^[18] we upheld the finding of the courts below that BPI-FB failed to exercise the degree of diligence required by the nature of its obligation to treat the accounts of its depositors with meticulous care. Thus, BPI-FB was found liable to FMIC for the debited amount in its time deposit. It was ordered to pay P65,332,321.99 plus interest at 17% per annum from August 29, 1989 until fully restored. In turn, the 17% shall itself earn interest at 12% from October 4, 1989 until fully paid.

In a related case, Edgardo Buenaventura, Myrna Lizardo and Yolanda Tica (Buenaventura, *et al.*),^[19] recipients of a P500,000.00 check proceeding from the P80,000,000.00 mistakenly credited to Tevesteco, likewise filed suit. Buenaventura *et al.*, as in the case of Franco, were also prevented from effecting withdrawals^[20] from their current account with BPI-FB, Bonifacio Market, Edsa, Caloocan City Branch. Likewise, when the case was elevated to this Court docketed as *BPI Family Bank v. Buenaventura*,^[21] we ruled that BPI-FB had no right to freeze Buenaventura, *et al.*'s accounts and adjudged BPI-FB liable therefor, in addition to damages.

Meanwhile, BPI-FB filed separate civil and criminal cases against those believed to be the perpetrators of the multi-million peso scam.^[22] In the criminal case, Franco, along with the other accused, except for Manuel Bienvenida who was still at large, were acquitted of the crime of Estafa as defined and penalized under Article 351, par. 2(a) of the Revised Penal Code.^[23] However, the civil case^[24] remains under litigation and the respective rights and liabilities of the parties have yet to be adjudicated.

Consequently, in light of BPI-FB's refusal to heed Franco's demands to unfreeze his accounts and release his deposits therein, the latter filed on June 4, 1990 with the Manila RTC the subject suit. In his complaint, Franco prayed for the following reliefs: (1) the interest on the remaining balance^[25] of his current account which was eventually released to him on October 31, 1991; (2) the balance^[26] on his savings account, plus interest thereon; (3) the advance interest^[27] paid to him which had been deducted when he pre-terminated his time deposit account; and (4) the payment of actual, moral and exemplary damages, as well as attorney's fees.

BPI-FB traversed this complaint, insisting that it was correct in freezing the accounts of Franco and refusing to release his deposits, claiming that it had a better right to the amounts which consisted of part of the money allegedly fraudulently withdrawn from it by Tevesteco and ending up in Franco's accounts. BPI-FB asseverated that the claimed consideration of P2,000,000.00 for the introduction facilitated by Franco between George Daantos and Eladio Teves, on the one hand, and Jaime Sebastian, on the other, spoke volumes of Franco's participation in the fraudulent transaction.

On August 4, 1993, the Manila RTC rendered judgment, the dispositive portion of which reads as follows:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of [Franco] and against [BPI-FB], ordering the latter to pay to the former the following sums:

1. P76,500.00 representing the legal rate of interest on the amount of P450,000.00 from May 18, 1990 to October 31, 1991;
2. P498,973.23 representing the balance on [Franco's] savings account as of May 18, 1990, together with the interest thereon in accordance with the bank's guidelines on the payment therefor;
3. P30,000.00 by way of attorney's fees; and
4. P10,000.00 as nominal damages.

The counterclaim of the defendant is DISMISSED for lack of factual and legal anchor.

Costs against [BPI-FB].

SO ORDERED.^[28]

Unsatisfied with the decision, both parties filed their respective appeals before the CA. Franco confined his appeal to the Manila RTC's denial of his claim for moral and exemplary damages, and the diminutive award of attorney's fees. In affirming with modification the lower court's decision, the appellate court decreed, to wit:

WHEREFORE, foregoing considered, the appealed decision is hereby AFFIRMED with modification ordering [BPI-FB] to pay [Franco] P63,189.00 representing the interest deducted from the time deposit of plaintiff-appellant. P200,000.00 as moral damages and P100,000.00 as exemplary damages, deleting the award of nominal damages (in view of the award of moral and exemplary damages) and increasing the award of attorney's fees from P30,000.00 to P75,000.00.

Cost against [BPI-FB].

SO ORDERED.^[29]

In this recourse, BPI-FB ascribes error to the CA when it ruled that: (1) Franco had a better right to the deposits in the subject accounts which are part of the proceeds of a forged Authority to Debit; (2) Franco is entitled to interest on his current account; (3) Franco can recover the P400,000.00 deposit in Quiaoit's savings account; (4) the dishonor of Franco's checks was not legally in order; (5) BPI-FB is liable for interest on Franco's time deposit, and for moral and exemplary damages; and (6) BPI-FB's counter-claim has no factual and legal anchor.

The petition is partly meritorious.

We are in full accord with the common ruling of the lower courts that BPI-FB cannot unilaterally freeze Franco's accounts and preclude him from withdrawing his deposits. However, contrary to the appellate court's ruling, we hold that Franco is not entitled to unearned interest on the time deposit as well as to moral and

exemplary damages.

First. On the issue of who has a better right to the deposits in Franco's accounts, BPI-FB urges us that the legal consequence of FMIC's forgery claim is that the money transferred by BPI-FB to Tevesteco is its own, and considering that it was able to recover possession of the same when the money was redeposited by Franco, it had the right to set up its ownership thereon and freeze Franco's accounts.

BPI-FB contends that its position is not unlike that of an owner of personal property who regains possession after it is stolen, and to illustrate this point, BPI-FB gives the following example: where X's television set is stolen by Y who thereafter sells it to Z, and where Z unwittingly entrusts possession of the TV set to X, the latter would have the right to keep possession of the property and preclude Z from recovering possession thereof. To bolster its position, BPI-FB cites Article 559 of the Civil Code, which provides:

Article 559. The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.

If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor.

BPI-FB's argument is unsound. To begin with, the movable property mentioned in Article 559 of the Civil Code pertains to a specific or determinate thing.^[30] A determinate or specific thing is one that is individualized and can be identified or distinguished from others of the same kind.^[31]

In this case, the deposit in Franco's accounts consists of money which, albeit characterized as a movable, is generic and fungible.^[32] The quality of being fungible depends upon the possibility of the property, because of its nature or the will of the parties, being substituted by others of the same kind, not having a distinct individuality.^[33]

Significantly, while Article 559 permits an owner who has lost or has been unlawfully deprived of a movable to recover the exact same thing from the current possessor, BPI-FB simply claims ownership of the equivalent amount of money, *i.e.*, the value thereof, which it had mistakenly debited from FMIC's account and credited to Tevesteco's, and subsequently traced to Franco's account. In fact, this is what BPI-FB did in filing the Makati Case against Franco, *et al.* It staked its claim on the money itself which passed from one account to another, commencing with the forged Authority to Debit.

It bears emphasizing that money bears no earmarks of peculiar ownership,^[34] and this characteristic is all the more manifest in the instant case which involves money in a banking transaction gone awry. Its primary function is to pass from hand to hand as a medium of exchange, without other evidence of its title.^[35] Money, which had passed through various transactions in the general course of banking business,