

FIRST DIVISION

[G.R. No. 166878, December 18, 2007]

**CITIBANK, N.A., PETITIONER, VS. RUFINO C. JIMENEZ, SR.,
RESPONDENT.**

D E C I S I O N

PUNO, CJ.:

Before us is a petition for review of the decision dated September 14, 2004^[1] of the Court of Appeals in CA-G.R. CV No. 58840 affirming with modification that of the Regional Trial Court (RTC) of Marikina City, Branch 273, dated December 29, 1997^[2] in Civil Case No. 95-130-MK.^[3] The RTC-Marikina City ordered petitioner to pay respondent \$10,921.85 or its peso equivalent, representing the value of respondent's Foreign Currency Time Deposit and P20,000.00 as attorney's fees. The Court of Appeals deleted the award for attorney's fees.

The antecedent facts are:

In 1991, spouses Rufino C. Jimenez, Sr. and Basilia B. Templa opened a Foreign Currency Time Deposit with petitioner in the amount of \$10,000.00 for 360 days with a "roll-over" provision ^[4] and interest at 5.25% per annum. The corresponding certificate of time deposit was issued to "Jimenez, Rufino C. and/or Jimenez, Basilia T.," with address at 600 Huron Avenue, San Francisco, California.

In 1993, respondent opened an account with Citibank F.S.B., San Francisco, California (Citibank San Francisco). Respondent requested the manager, Mr. Robert S. Ostrovsky, to cause the transfer of the proceeds of the time deposit in Manila, upon its maturity, to his account in San Francisco. A letter requesting the transfer, dated March 24, 1993,^[5] was sent by Mr. Ostrovsky to petitioner by mail. Respondent alleged that the letter was likewise faxed to petitioner on April 27, 1993.

In a letter-reply dated May 5, 1993, petitioner informed Mr. Ostrovsky that it cannot comply with the request. Basilia Templa preterminated the time deposit two days previously or on May 3, 1993, and had the proceeds transferred to her newly-opened dollar savings account with petitioner.

On April 3, 1995, respondent sued petitioner and Basilia Templa for damages before the RTC-Marikina City.^[6] Respondent alleged that he and Basilia Templa divorced in January 1993; that the transfer of the subject Foreign Currency Time Deposit by his former wife to her personal account with petitioner was fraudulent and malicious since Basilia's share was already given to her prior to the divorce; and that petitioner is jointly and severally liable with Basilia for such fraudulent and malicious transfer considering petitioner's prior receipt of respondent's request for transfer of

the same Foreign Currency Time Deposit, by facsimile transmission on April 27, 1993, coursed through Citibank San Francisco.

Petitioner denied receiving the request for transfer by facsimile transmission. On the contrary, petitioner alleged receipt of the request only on May 4, 1993 by mail. By then, Basilia Templa had already preterminated the time deposit. Petitioner claimed that it was justified in allowing the pretermination considering the "and/or" nature of the account which presupposes the authority of either of the joint depositors to deposit or withdraw from the account without the knowledge, consent or signature of the other.

The case against Basilia Templa was archived for failure of the trial court to acquire jurisdiction over her person. Trial ensued against petitioner. During trial, respondent was represented by his son and attorney-in-fact, Joselito E. Jimenez.

On December 29, 1997, decision was rendered in favor of the respondent. The trial court gave credence to respondent's claim that the letter-request for transfer dated March 24, 1993 was sent and received by petitioner by facsimile transmission on April 27, 1993. Petitioner's reason for not acting on the letter-request, as disclosed to Joselito E. Jimenez in a letter dated February 2, 1995^[7] in response to the formal inquiry posed by his legal counsel regarding the subject pretermination, was not considered enough to exculpate petitioner from liability. Allegedly, petitioner does not act on faxed transmissions from customers. However, the trial court reasoned that petitioner could have verified the genuineness of the facsimile and deferred action on Basilia Templa's request for pretermination pending such verification. Petitioner was thus adjudged negligent in handling respondent's account and ordered to pay the value of the Foreign Currency Time Deposit, with interests, as well as P20,000.00 for attorney's fees.^[8]

Petitioner appealed to the Court of Appeals. On September 14, 2004, the Court of Appeals modified the decision of the trial court.^[9] The award for attorney's fees was deleted on the ground that no premium should be placed on the right to litigate. Petitioner's motion for reconsideration was denied.^[10] Hence, this petition for review.

Petitioner contends that —

I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT RESPONDENT OVERCAME THE BURDEN OF PROOF TO SHOW THAT CITIBANK WAS NEGLIGENT IN ALLOWING THE PRETERMINATION OF THE SUBJECT "AND/OR" ACCOUNT CONSIDERING THAT:

A. A. CONTRARY TO THE JURISPRUDENTIAL REQUIREMENT LAID DOWN BY THIS HONORABLE COURT, THE COURT OF APPEALS DID NOT CITE ANY SPECIFIC EVIDENCE TO SUPPORT ITS CONCLUSION THAT CITIBANK HAD, IN ANY FORM WHATSOEVER, "PRIOR NOTICE" OF AN "EARLIER REQUEST" TO TRANSFER THE FUNDS FROM

THE SUBJECT "AND/OR" ACCOUNT TO A NEWLY OPENED CHECKING ACCOUNT IN SAN FRANCISCO.

B. B. THE COURT OF APPEALS' FINDING OF NEGLIGENCE IS MISTAKENLY PREMISED ON FACTS ALLEGED BUT NOT ESTABLISHED BY THE EVIDENCE ON RECORD, *I.E.*, THAT THE LETTER-REQUEST WAS MADE ON INSTRUCTIONS OF THE RESPONDENT, THAT THE SAME LETTER-REQUEST WAS SENT BY FAX TO CITIBANK ON 27 APRIL 1993, AND THAT THE SAME LETTER-REQUEST WAS RECEIVED BY CITIBANK PRIOR TO THE QUESTIONED PRETERMINATION.

1. 1. NO EVIDENCE, TESTIMONIAL, DOCUMENTARY OR OTHERWISE, WAS OFFERED TO ESTABLISH THAT THE LETTER-REQUEST WAS MADE ON INSTRUCTIONS OF RESPONDENT.

2. 2. NO EVIDENCE, TESTIMONIAL, DOCUMENTARY OR OTHERWISE, WAS OFFERED TO ESTABLISH THAT THE LETTER-REQUEST WAS SENT BY FAX TO, AND RECEIVED BY, CITIBANK ON 27 APRIL 1993.

C. C. CONTRARY TO THE SETTLED JURISPRUDENTIAL RULINGS LAID DOWN BY THIS HONORABLE COURT, THE COURT OF APPEALS ERRONEOUSLY RELIED, AND THEREBY SANCTIONED THE TRIAL COURT'S ERRONEOUS RELIANCE ON HEARSAY AND INADMISSIBLE EVIDENCE - A HANDWRITTEN NOTATION INTERCALATED IN THE PRINTED LETTER-REQUEST WHICH WAS NOT IDENTIFIED, AUTHENTICATED OR EVEN TESTIFIED ON BY ANY WITNESS.

II.

THE COURT OF APPEALS GRAVELY ERRED, IF NOT ACTED IN EXCESS OF ITS JURISDICTION, WHEN IT SANCTIONED THE TRIAL COURT'S DEPARTURE FROM SETTLED RULES OF PROCEDURE IN ALLOWING, ADMITTING INTO EVIDENCE AND RELYING ON CLEARLY HEARSAY, INCOMPETENT AND UNRELIABLE EVIDENCE--THE "TESTIMONY BY PROXY" OF RESPONDENT'S ATTORNEY-IN-FACT AND SOLE WITNESS AND UNIDENTIFIED AND UNAUTHENTICATED LETTER-REQUEST. SUCH ALLOWANCE, ADMISSION INTO EVIDENCE AND RELIANCE BY THE TRIAL COURT AND THE COURT OF APPEALS EFFECTIVELY RENDERED NUGATORY AND BREACHED CITIBANK'S RIGHTS OF EFFECTIVE CROSS-EXAMINATION AND DUE PROCESS.

III.

THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO CONSIDER

THAT THE TRIAL COURT ERRONEOUSLY SHIFTED THE BURDEN OF PROOF TO CITIBANK WHICH BURDEN, AS HELD BY THIS HONORABLE COURT, NECESSARILY LAY WITH RESPONDENT AS PLAINTIFF THEREIN.

IV.

THE WELL-SETTLED JURISPRUDENTIAL RULE IS THAT, IN THE ABSENCE OF ADMISSIBLE, COMPETENT AND CREDIBLE EVIDENCE, THE BURDEN OF GOING FORWARD WITH EVIDENCE DOES NOT SHIFT TO THE DEFENDANT AND, IN SUCH A CASE, THE DEFENDANT IS UNDER NO OBLIGATION TO PROVE HIS EXCEPTION OR DEFENSE. CONTRARY TO SAID PRINCIPLE OF EVIDENCE, THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT, NOTWITHSTANDING THE ABSENCE OF ANY ADMISSIBLE, COMPETENT AND CREDIBLE EVIDENCE TO PROVE TRANSMISSION OF THE LETTER-REQUEST BY FACSIMILE, THE ONUS OF PROVING THAT IT DID NOT RECEIVE THE LETTER-REQUEST BY FAX LAY ON CITIBANK.

V.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT CITIBANK WAS NEGLIGENT IN PRETERMINATING THE SUBJECT "AND/OR" ACCOUNT, CONSIDERING THAT:

- A. A. IT IS UNDISPUTED THAT CITIBANK RECEIVED THE LETTER-REQUEST ONLY BY MAIL AND ONLY AFTER THE PRETERMINATION OF THE SUBJECT "AND/OR" ACCOUNT.
- B. B. GIVEN THE "AND/OR" NATURE OF THE SUBJECT ACCOUNT, CITIBANK WAS UNDER A LEGAL AND CONTRACTUAL OBLIGATION TO RELEASE THE FUNDS UPON DEMAND OF BASILIA T. JIMENEZ, ONE OF THE CO-ACCOUNT HOLDERS, AND WOULD HAVE BEEN LIABLE FOR BREACH THEREOF HAD IT NOT DONE SO.

VI.

ASSUMING *ARGUENDO* THAT NEGLIGENCE MAY BE ATTRIBUTED TO CITIBANK, THE COURT OF APPEALS GRAVELY ERRED IN NOT MITIGATING DAMAGES IN THIS INSTANCE CONSIDERING THAT RESPONDENT HIMSELF WAS UNDENIABLY GUILTY OF NEGLIGENCE THAT CONTRIBUTED TO, OR EVEN PROXIMATELY CAUSED, THE DAMAGES HE HAD ALLEGEDLY INCURRED.

In sum, the issue involved is whether petitioner bank was guilty of negligence in allowing the pretermination of the Foreign Currency Time Deposit by Basilia Templa and should be held liable for damages to respondent. Resolution of the issue, in turn, hinges on whether petitioner actually received respondent's request for