

SECOND DIVISION

[G.R. NO. 156994, August 31, 2005]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. RAMON A. UY, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* assailing the Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 68494 and its Resolution denying the motion for reconsideration thereof.

The case stemmed from the following factual backdrop:

In 1975, Ramon A. Uy was employed by the Bank of the Philippine Islands (BPI) as a loans clerk in its Tabaco Branch in Tabaco, Albay.

For many years, Uy had served the petitioner with utmost loyalty. He had never been suspended nor involved in any violation of the company's rules and regulations, or charged with any crime.

In 1994, Uy encouraged Evangeline Ong-Sy, a prominent businesswoman in Tabaco, to open an account with BPI. Uy knew that she had a commendable reputation in the business community, aside from having a good credit standing with the other banks in the Municipality of Tabaco, Albay. Ong-Sy agreed and eventually became a depositor-borrower of BPI and, likewise, helped solicit big clients for the bank. She had a P4,000,000.00 time deposit; two US dollar time deposits amounting to US\$40,000.00; and a BPI Express Teller Savings Deposit.

On February 2, 1996, Uy was nominated for the 1995 BPI Excellence Award as Best Operations Staff for his "full work knowledge, not only in sundries operations and loan servicing/appraising/CI, but also in bookkeeping & distributing."^[2]

On November 4, 1996, spouses Simeon and Alicia Sy were granted a Revolving Promissory Note Line (RPNL) in the maximum cumulative amount of P4,000,000.00. As loans clerk, Uy processed the loan documents and recommended its approval. On said date, the couple executed a Promissory Note^[3] where they bound and obliged themselves to pay their P4,000,000.00 loan. The note was to expire on September 30, 1997.

To insure the payment of their loan, the couple executed a real estate mortgage over their property. From the loan proceeds, Simeon Sy purchased Manager's Check No. 70428 in the same amount, payable to the order of Johnson Sy, Ong-Sy's husband.^[4] The check was received by Leilani Pontanez, an employee of Simeon Sy.

On the same day, November 4, 1996, Ong-Sy applied for a back-to-back loan with BPI in the amount of P2,500,000.00, payable in thirty days.^[5] She offered her deposits in her Passbook Plus Account No. 0833-1370-85^[6] as collateral for the loan. The loan application was also processed by Uy, who recommended its approval. The Cashier-Assistant Manager and Bank Manager received the application and approved the same.^[7]

On November 12, 1996, Ong-Sy preterminated the loan of Simeon Sy by remitting Metrobank Check No. 0004072 in payment of the said loan. BPI accepted the check and approved the pretermination. The check was, however, dishonored by the drawee bank, as it was drawn against insufficient funds.

The next day, November 13, 1996, Ong-Sy was again at the BPI and presented a withdrawal slip for the amount of P1,500,033.00 from her Savings Account No. 0833-1370-85. Uy again processed the withdrawal and recommended its approval. Ong-Sy again sought the withdrawal of P1,260,016.50 from her savings account. Uy also processed this transaction and recommended its approval. The Cashier-Assistant Bank Manager and Bank Manager reviewed the slips and also approved both withdrawals. Thus, Ong-Sy was able to withdraw the said amounts from her savings account.^[8]

Ong-Sy repaid her back-to-back loan from BPI via an ordinary check. Uy issued an official receipt for the check as full payment of the said loan. However, the check was dishonored by the drawee bank for the reason "account closed."

On November 25, 1996, Uy was interviewed by Ernesto R. Ocampo, the BPI Vice-President and the area Head-in-Charge of the Administrative Officers and Employees of the BPI branches in the Southern Tagalog/Bicol Region. Ocampo again interviewed Uy the following day in the presence of Ronaldo J. Fernando, Officer-in-Charge of the Office of the BPI Tabaco Branch, and A.V. Arabia, Jr., the manager of BPI Naga Business Center branch. Uy was placed under preventive suspension on November 26, 1996.

On December 4, 1996, Uy received a Memorandum^[9] from Ocampo directing him to explain within 48 hours from the said date why his services should not be terminated by BPI, in view of the fact that on November 26, 1996, he facilitated an availment for P4,000,000.00 against Simeon Sy's RPNL without the latter's knowledge and authority. On December 5, 1996, Uy wrote Ocampo and admitted having accommodated Ong-Sy and allowed her to use the P4,000,000.00 credit line of other borrowers. He, however, claimed that he did it in consideration of her assurance that she would try to convince Rosario Crisol and Tin-Tin Golekoh to transfer their P25,000,000.00 accounts from other banks to BPI which would then be benefited by the said transfer. He also stated that he had talked to Crisol and Golekoh, who agreed to transfer their accounts, provided that they would be given more attractive rates.^[10]

However, on December 11, 1996, BPI notified Uy that his employment had been terminated on account of the fraudulent drawing of P4,000,000.00 against the loan account of Simeon Sy.^[11]

BPI also filed a criminal complaint for *estafa* against Uy with the Municipal Trial Court of Tabaco, Albay, relating to Ong-Sy's back-to-back loan account:

That on November 4, 1996, in the Municipality of Tabaco, Albay, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused with deceit and fraud and in conspiracy applied and obtained a loan from the BANK OF THE PHILIPPINE ISLANDS, Tabaco Branch, Tabaco, Albay, in the amount of P2,500,000.00 assigning as collateral the savings deposits of EVANGELINE SY under Account No. SA-0833-1370-85 on the condition that no withdrawals whatsoever of deposits shall be made against the savings account pursuant to the agreement and the Promissory Note with Assignment of Assets executed by Evangeline Sy in favor of the bank; that upon release and receipt of the proceeds of the loan secured by the savings deposits, both accused did, then and there willfully, unlawfully and feloniously conspired in withdrawing all the money deposits under Account No. SA-0833-1370-85, thereby, with deceit and fraud, the concerted infractions of both accused resulted in illegally obtaining from the bank P2,500,000.00 to the damage and prejudice of the bank in such amount of no less than P2,500,000.00.

CONTRARY TO LAW.^[12]

However, on February 16, 1998, the trial court issued a Resolution^[13] dismissing the case, finding no probable cause against Uy. BPI appealed the resolution of the Investigating Judge, but was, however, dismissed on

March 23, 1998.^[14] Meanwhile, BPI's appeal to the Department of Justice was dismissed on January 3, 2000.^[15]

On December 9, 1999, Uy filed a complaint^[16] before the National Labor Relations Commission (NLRC) against BPI and Ocampo for illegal dismissal and damages.

In his position paper, Uy alleged that his job as loans clerk was limited to making recommendations for loan applications. The procedure was the following: Uy would notify BPI's business center in Naga City of the loan approval; he would request the release of the proceeds; and such loan proceeds would then be deposited in the borrower-depositor's account. He stressed that his recommendation was still subject to review by the Cashier, the Assistant Bank Manager, and the Bank Manager, not to mention the officers of the business center in Naga City. Although the check Ong-Sy remitted to BPI was dishonored, no civil and criminal cases were filed against her to collect the amount of the check.

Uy alleged that, relative to the P4,000,000.00 loan of the Spouses Sy, BPI admitted, in its answer in Civil Case No. T-1906, that the signatures of Spouses Sy on the promissory note for his P4,000,000.00 loan, and on the application for the purchase of the P4,000,000.00 Manager's Check in the name of Johnson Sy were genuine; and that it approved Ong-Sy's pretermination of Simeon Sy's loan.

Instead of responding to Uy's allegations relative to his dismissal for the P4,000,000.00 loan account of Simeon Sy, BPI confined itself to alleging, in its

Memorandum, that Uy allowed Ong-Sy to withdraw P2,760,049.50 from her savings deposit, although he knew that it was the collateral for her BPI back-to-back loan. In addition, BPI alleged that Uy accepted an ordinary check as payment for the said loan account and, although the check had not yet been cleared, he issued an official receipt therefor.

In his Reply to the Memorandum of BPI, Uy averred that BPI's inadvertence to Ong-Sy's back-to-back loan was irrelevant, because his actuations relative to the said loan were not the bases for the termination of his employment, nor the subject of his complaint:

" Respondent, in its Memorandum, speaks of a 2.5 Million, which complainant Ramon Uy was not aware that the same is the ground for his termination. If indeed it were so, then the [BPI] has committed a very serious violation of complainant's right to due process and indeed was remiss of the two facets of Valid termination which, in the long line of decisions of the Supreme Court and emphasized in *Manebo vs. NLRC* (January 10, 1994) states:

The employer is required to furnish an employee who is to be dismissed two (2) written notices before such termination. The first is the notice to apprise the employee of the particular acts or omission for which his dismissal is sought. This may be loosely considered as the proper charge. The second is the notice informing the employee of the employer's decision to dismiss him. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, **an ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires. This is in consonance with the express provisions of law on the protection to labor and the broader dictates of procedural due process. Non-Compliance therewith is fatal because these requirements are conditions *sine qua non* before dismissal may be validly effected.**

"Ample opportunity" connotes every kind of assistance that management must accord the employee to enable him to prepare adequately for his defense including legal representation." (emphasis ours).

The Respondent's memorandum, therefore, and its evidences presented being entirely immaterial to the subject matter in the case at bar, will be objected to by herein Counsel and calls for **its treatment as a mere scrap of paper.** Counsel therefore asked this Honorable Commission that decision be rendered in favor of Complainant on the basis of evidences presented by the latter.^[17]

On March 31, 2000, the Labor Arbiter rendered judgment in favor of Uy. The dispositive portion of the decision reads:

WHEREFORE, premises considered, complainant is hereby declared to have been illegally dismissed, and respondent bank is hereby ordered to

immediately reinstate complainant to his former position without loss of seniority rights and to pay complainant backwages, which as of date amounts to P641,875.00, as computed above plus attorney's fees equivalent to ten percent (10%) of the total award.

All other claims are dismissed for lack of merit.

SO ORDERED.^[18]

Aggrieved, BPI appealed to the NLRC which rendered judgment, on June 29, 2001, reversing the Labor Arbiter's decision and dismissing the appeal for lack of merit. The NLRC declared that Uy connived with Ong-Sy relative to the withdrawal of the P2,500,000.00 from her savings account.

Undaunted, Uy filed a petition for *certiorari* with the Court of Appeals. The appellate court granted the petition and reinstated the Labor Arbiter's decision. The CA declared that the NLRC overlooked and ignored Uy's documentary evidence, noting that the latter was a mere loans clerk whose recommendations on loan applications were subject to the review and evaluation of the Cashier-Assistant Manager Ma. Linda Ursua, Bank Manager Ronaldo Fernando, and Alejandro V. Arabia, Jr. of the Naga BPI Business Center branch. In fact, the said officers approved the loan application of Ong-Sy.

Inexplicably, however, the appellate court delved into and resolved the matter of Ong-Sy's back-to-back loan. The CA found that Bank Manager Ronaldo J. Fernando had approved the said loan application, accepted and confirmed the check payments after ascertaining from Allan Marbella, the manager of the Rizal Commercial Banking Corporation, that the checks were adequately funded. If at all, Uy committed any irregularity related to Ong-Sy's loan application, he acted for the good of BPI.

A motion for reconsideration was, thereafter, filed by BPI, which the appellate court denied in its Resolution dated January 27, 2003.

BPI, now the petitioner, assails the decision of the CA, claiming that the appellate court committed grave abuse of discretion amounting to excess or lack of jurisdiction in holding (a) that the respondent, who was its loans clerk in its Tabaco branch, was not holding a position of trust and confidence; and (b) that it (petitioner) failed to adduce clear and strong evidence to prove that the respondent committed fraud and willful breach of trust.

In his comment on the petition, respondent Uy averred that the ground relied upon by the petitioner for the reversal of the CA decision (his actuation relative to Ong-Sy's P2,500,000.00 back-to-back loan) has no bearing on his complaint for illegal dismissal; his ground therefor is the alleged accommodation he extended to Ong-Sy to facilitate the alleged fraudulent withdrawal of P4,000,000.00 against Simeon Sy's loan account without the latter's knowledge and consent. He asserts that, as held by the CA in its decision, he was dismissed on the ground of fraud and/or loss of confidence as he caused the fraudulent drawing of P4,000,000.00 on November 4, 1996, against the loan account of another client, Simeon Sy, without the latter's knowledge, allegedly for the benefit of Ong-Sy and her husband.^[19]

We agree with the respondent.