

## FIRST DIVISION

[ G.R. No. 127469, January 15, 2004 ]

### PHILIPPINE BANKING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND LEONILO MARCOS, RESPONDENTS.

#### DECISION

**CARPIO, J.:**

#### The Case

Before us is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 34382 dated 10 December 1996 modifying the Decision<sup>[2]</sup> of the Regional Trial Court, Fourth Judicial Region, Assisting Court, Biñan, Laguna in Civil Case No. B-3148 entitled "Leonilo Marcos v. Philippine Banking Corporation."

#### The Antecedent Facts

On 30 August 1989, Leonilo Marcos ("Marcos") filed with the trial court a Complaint for Sum of Money with Damages<sup>[3]</sup> against petitioner Philippine Banking Corporation ("BANK").<sup>[4]</sup>

Marcos alleged that sometime in 1982, the BANK through Florencio B. Pagsaligan ("Pagsaligan"), one of the officials of the BANK and a close friend of Marcos, persuaded him to deposit money with the BANK. Marcos yielded to Pagsaligan's persuasion and claimed he made a time deposit with the BANK on two occasions. The first was on 11 March 1982 for P664,897.67. The BANK issued Receipt No. 635734 for this time deposit. On 12 March 1982, Marcos claimed he again made a time deposit with the BANK for P764,897.67. The BANK did not issue an official receipt for this time deposit but it acknowledged a deposit of this amount through a letter-certification Pagsaligan issued. The time deposits earned interest at 17% *per annum* and had a maturity period of 90 days.

Marcos alleged that Pagsaligan kept the various time deposit certificates on the assurance that the BANK would take care of the certificates, interests and renewals. Marcos claimed that from the time of the deposit, he had not received the principal amount or its interest.

Sometime in March 1983, Marcos wanted to withdraw from the BANK his time deposits and the accumulated interests to buy materials for his construction business. However, the BANK through Pagsaligan convinced Marcos to keep his time deposits intact and instead to open several domestic letters of credit. The BANK required Marcos to give a marginal deposit of 30% of the total amount of the letters of credit. The time deposits of Marcos would secure 70% of the letters of credit. Since Marcos trusted the BANK and Pagsaligan, he signed blank printed forms of the application for the domestic letters of credit, trust receipt agreements and

promissory notes.

Marcos executed three Trust Receipt Agreements totalling P851,250, broken down as follows: (1) Trust Receipt No. CD 83.7 dated 8 March 1983 for P300,000; (2) Trust Receipt No. CD 83.9 dated 15 March 1983 for P300,000; and (3) Trust Receipt No. CD 83.10 dated 15 March 1983 for P251,250. Marcos deposited the required 30% marginal deposit for the trust receipt agreements. Marcos claimed that his obligation to the BANK was therefore only P595,875 representing 70% of the letters of credit.

Marcos believed that he and the BANK became creditors and debtors of each other. Marcos expected the BANK to offset automatically a portion of his time deposits and the accumulated interest with the amount covered by the three trust receipts totalling P851,250 less the 30% marginal deposit that he had paid. Marcos argued that if only the BANK applied his time deposits and the accumulated interest to his remaining obligation, which is 70% of the total amount of the letters of credit, he would have paid completely his debt. Marcos further pointed out that since he did not apply for a renewal of the trust receipt agreements, the BANK had no right to renew the same.

Marcos accused the BANK of unjustly demanding payment for the total amount of the trust receipt agreements without deducting the 30% marginal deposit that he had already made. He decried the BANK's unlawful charging of accumulated interest because he claimed there was no agreement as to the payment of interest. The interest arose from numerous alleged extensions and penalties. Marcos reiterated that there was no agreement to this effect because his time deposits served as the collateral for his remaining obligation.

Marcos also denied that he obtained another loan from the BANK for P500,000 with interest at 25% *per annum* supposedly covered by Promissory Note No. 20-979-83 dated 24 October 1983. Marcos bewailed the BANK's belated claim that his time deposits were applied to this void promissory note on 12 March 1985.

In sum, Marcos claimed that:

(1) his time deposit with the BANK "in the total sum of P1,428,795.34<sup>[5]</sup> has earned accumulated interest since March 1982 up to the present in the total amount of P1,727,305.45 at the rate of 17% *per annum* so his total money with defendant (the BANK) is P3,156,100.79 less the amount of P595,875 representing the 70% balance of the marginal deposit and/or balance of the trust agreements;" and

(2) his indebtedness was only P851,250 less the 30% paid as marginal deposit or a balance of P595,875, which the BANK should have automatically deducted from his time deposits and accumulated interest, leaving the BANK's indebtedness to him at P2,560,025.79.

Marcos prayed the trial court to declare Promissory Note No. 20-979-83 void and to order the BANK to pay the amount of his time deposits with interest. He also sought the award of moral and exemplary damages as well as attorney's fees for P200,000 plus 25% of the amount due.

On 18 September 1989, summons and a copy of the complaint were served on the

BANK.<sup>[6]</sup>

On 9 October 1989, the BANK filed its Answer with Counterclaim. The BANK denied the allegations in the complaint. The BANK believed that the suit was Marcos' desperate attempt to avoid liability under several trust receipt agreements that were the subject of a criminal complaint.

The BANK alleged that as of 12 March 1982, the total amount of the various time deposits of Marcos was only P764,897.67 and not P1,428,795.35<sup>[7]</sup> as alleged in the complaint. The P764,897.67 included the P664,897.67 that Marcos deposited on 11 March 1982.

The BANK pointed out that Marcos delivered to the BANK the time deposit certificates by virtue of the Deed of Assignment dated 2 June 1989. Marcos executed the Deed of Assignment to secure his various loan obligations. The BANK claimed that these loans are covered by Promissory Note No. 20-756-82 dated 2 June 1982 for P420,000 and Promissory Note No. 20-979-83 dated 24 October 1983 for P500,000. The BANK stressed that these obligations are separate and distinct from the trust receipt agreements.

When Marcos defaulted in the payment of Promissory Note No. 20-979-83, the BANK debited his time deposits and applied the same to the obligation that is now considered fully paid.<sup>[8]</sup> The BANK insisted that the Deed of Assignment authorized it to apply the time deposits in payment of Promissory Note No. 20-979-83.

In March 1982, the wife of Marcos, Consolacion Marcos, sought the advice of Pagsaligan. Consolacion informed Pagsaligan that she and her husband needed to finance the purchase of construction materials for their business, L.A. Marcos Construction Company. Pagsaligan suggested the opening of the letters of credit and the execution of trust receipts, whereby the BANK would agree to purchase the goods needed by the client through the letters of credit. The BANK would then entrust the goods to the client, as entrustee, who would undertake to deliver the proceeds of the sale or the goods themselves to the entrustor within a specified time.

The BANK claimed that Marcos freely entered into the trust receipt agreements. When Marcos failed to account for the goods delivered or for the proceeds of the sale, the BANK filed a complaint for violation of Presidential Decree No. 115 or the Trust Receipts Law. Instead of initiating negotiations for the settlement of the account, Marcos filed this suit.

The BANK denied falsifying Promissory Note No. 20-979-83. The BANK claimed that the promissory note is supported by documentary evidence such as Marcos' application for this loan and the microfilm of the cashier's check issued for the loan. The BANK insisted that Marcos could not deny the agreement for the payment of interest and penalties under the trust receipt agreements. The BANK prayed for the dismissal of the complaint, payment of damages, attorney's fees and cost of suit.

On 15 December 1989, the trial court on motion of Marcos' counsel issued an order declaring the BANK in default for filing its answer five days after the 15-day period to file the answer had lapsed.<sup>[9]</sup> The trial court also held that the answer is a mere

scrap of paper because a copy was not furnished to Marcos. In the same order, the trial court allowed Marcos to present his evidence *ex parte* on 18 December 1989. On that date, Marcos testified and presented documentary evidence. The case was then submitted for decision.

On 19 December 1989, Marcos received a copy of the BANK's Answer with Compulsory Counterclaim.

On 29 December 1989, the BANK filed an opposition to Marcos' motion to declare the BANK in default. On 9 January 1990, the BANK filed a motion to lift the order of default claiming that it had only then learned of the order of default. The BANK explained that its delayed filing of the Answer with Counterclaim and failure to serve a copy of the answer on Marcos was due to excusable negligence. The BANK asked the trial court to set aside the order of default because it had a valid and meritorious defense.

On 7 February 1990, the trial court issued an order setting aside the default order and admitting the BANK's Answer with Compulsory Counterclaim. The trial court ordered the BANK to present its evidence on 12 March 1990.

On 5 March 1990, the BANK filed a motion praying to cross-examine Marcos who had testified during the *ex-parte* hearing of 18 December 1989. On 12 March 1990, the trial court denied the BANK's motion and directed the BANK to present its evidence. Trial then ensued.

The BANK presented two witnesses, Rodolfo Sales, the Branch Manager of the BANK's Cubao Branch since 1987, and Pagsaligan, the Branch Manager of the same branch from 1982 to 1986.

On 24 April 1990, the counsel of Marcos cross-examined Pagsaligan. Due to lack of material time, the trial court reset the continuation of the cross-examination and presentation of other evidence. The succeeding hearings were postponed, specifically on 24, 27 and 28 of August 1990, because of the BANK's failure to produce its witness, Pagsaligan. The BANK on these scheduled hearings also failed to present other evidence.

On 7 September 1990, the BANK moved to postpone the hearing on the ground that Pagsaligan could not attend the hearing because of illness. The trial court denied the motion to postpone and on motion of Marcos' counsel ruled that the BANK had waived its right to present further evidence. The trial court considered the case submitted for decision. The BANK moved for reconsideration, which the trial court denied.

On 8 October 1990, the trial court rendered its decision in favor of Marcos. Aggrieved, the BANK appealed to the Court of Appeals.

On 10 December 1996, the Court of Appeals modified the decision of the trial court by reducing the amount of actual damages and deleting the attorney's fees awarded to Marcos.

### **The Ruling of the Trial Court**

The trial court ruled that the total amount of time deposits of Marcos was P1,429,795.34 and not only P764,897.67 as claimed by the BANK. The trial court found that Marcos made a time deposit on two occasions. The first time deposit was made on 11 March 1982 for P664,897.67 as shown by Receipt No. 635743. On 12 March 1982, Marcos again made a time deposit for P764,897.67 as acknowledged by Pagsaligan in a letter of certification. The two time deposits thus amounted to P1,429,795.34.

The trial court pointed out that no receipt was issued for the 12 March 1982 time deposit because the letter of certification was sufficient. The trial court made a finding that the certification letter did not include the time deposit made on 11 March 1982. The 12 March 1982 deposit was in cash while the 11 March 1982 deposit was in checks which still had to clear. The checks were not included in the certification letter since the BANK could not credit the amounts of the checks prior to clearing. The trial court declared that even the Deed of Assignment acknowledged that Marcos made several time deposits as the Deed stated that the assignment was charged against "various" time deposits.

The trial court recognized the existence of the Deed of Assignment and the two loans that Marcos supposedly obtained from the BANK on 28 May 1982 for P340,000 and on 2 June 1982 for P420,000. The two loans amounted to P760,000. On 2 June 1982, the same day that he secured the second loan, Marcos executed a Deed of Assignment assigning to the BANK P760,000 of his time deposits. The trial court concluded that obviously the two loans were immediately paid by virtue of the Deed of Assignment.

The trial court found it strange that Marcos borrowed money from the BANK at a higher rate of interest instead of just withdrawing his time deposits. The trial court saw no rhyme or reason why Marcos had to secure the loans from the BANK. The trial court was convinced that Marcos did not know that what he had signed were loan applications and a Deed of Assignment in payment for his loans. Nonetheless, the trial court recognized "the said loan of P760,000 and its corresponding payment by virtue of the Deed of Assignment for the equal sum."<sup>[10]</sup>

If the BANK's claim is true that the time deposits of Marcos amounted only to P764,897.67 and he had already assigned P760,000 of this amount, the trial court pointed out that what would be left as of 3 June 1982 would only be P4,867.67.<sup>[11]</sup> Yet, after the time deposits had matured, the BANK allowed Marcos to open letters of credit three times. The three letters of credit were all secured by the time deposits of Marcos after he had paid the 30% marginal deposit. The trial court opined that if Marcos' time deposit was only P764,897.67, then the letters of credit totalling P595,875 (less 30% marginal deposit) was guaranteed by only P4,867.67,<sup>[12]</sup> the remaining time deposits after Marcos had executed the Deed of Assignment for P760,000.

According to the trial court, a security of only P4,867.67<sup>[13]</sup> for a loan worth P595,875 (less 30% marginal deposit) is not only preposterous, it is also comical. Worse, aside from allowing Marcos to have unsecured trust receipts, the BANK still claimed to have granted Marcos another loan for P500,000 on 25 October 1983 covered by Promissory Note No. 20-979-83. The BANK is a commercial bank