

## THIRD DIVISION

[ G.R. No. 147442, March 03, 2004 ]

**SY SIU KIM, PETITIONER, VS. COURT OF APPEALS AND  
ASIANBANK CORPORATION, RESPONDENTS.**

### DECISION

**VITUG, J.:**

Can a depositary bank, after mistakenly crediting money to the account of its depositor, rectify its error by debiting sums from other accounts of the depositor in the same bank? Before the Court is a petition for review assailing the writ of preliminary injunction issued by the Court of Appeals which nullifies the order of the Cebu Regional Trial Court prohibiting respondent bank from "freezing" the accounts of petitioner.

Petitioner Sy Siu Kim was a depositor of Asianbank Corporation at its Cebu-Ayala Branch; she held Dollar Account No. 4416100308-9 containing the amount of US\$5,088.48<sup>[1]</sup> and Savings Account No. 442810000310-9 with a balance of Php33,786.12.<sup>[2]</sup> On 03 May 2000, petitioner received from Asianbank a notice to debit from the accounts, by way of "settlement or restitution of the over-credit" erroneously made by its personnel to two other bank accounts in her name - Savings Account No. 44121000267 and "COS" No. 025143 - totaling Php556,693.34 which, by the time the notice was made, appeared to have already been withdrawn. Respondent bank refused any further attempt of petitioner to withdraw sums from her two remaining accounts, prompting the latter to file before the Regional Trial Court of Cebu an action for "Injunction and Damages with Prayer for Preliminary Injunction/Temporary Restraining Order" against Asianbank, its vice-president and branch manager. The complaint sought to enjoin the bank from unilaterally applying the remaining balance in her existing accounts to offset the "over-credit." Finding merit in petitioner's prayer, Presiding Judge Benigno Gaviola, in his order of 12 May 2000, issued a temporary restraining order. The order was followed by the issuance, on 09 June 2000, of a writ of preliminary injunction against private respondent, conditioned upon the posting of a Php50,000.00 bond.

Its motion for reconsideration of the court's order having been denied, respondent bank filed a "Special Civil Action for Certiorari and Prohibition, with Prayer for the Issuance of a Temporary Restraining Order and Preliminary Injunction," with the Court of Appeals. On 06 October 2000, the appellate court reversed the assailed order of the trial court and held that Judge Gaviola had committed grave abuse of discretion in ordering the issuance of a writ of preliminary injunction.

Hence, the instant petition for review.

The controversy hinges on whether the appellate court has erred in reversing the trial court in the latter's issuance of the writ of preliminary injunction which would