

## SECOND DIVISION

[ G.R. No. 142668, August 31, 2004 ]

**UNITED COCONUT PLANTERS BANK AND LUIS MA. ONGSIAPCO,  
PETITIONERS, VS. RUBEN E. BASCO, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on certiorari assailing the Decision<sup>[1]</sup> of the Court of Appeals dated March 30, 2000, affirming, with modifications, the Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Makati City, Branch 146, which found the petitioner bank liable for payment of damages and attorney's fees.

#### **The Case for the Respondent**

Respondent Ruben E. Basco had been employed with the petitioner United Coconut Planters Bank (UCPB) for seventeen (17) years.<sup>[3]</sup> He was also a stockholder thereof and owned 804 common shares of stock at the par value of P1.00.<sup>[4]</sup> He likewise maintained a checking account with the bank at its Las Piñas Branch under Account No. 117-001520-6.<sup>[5]</sup> Aside from his employment with the bank, the respondent also worked as an underwriter at the United Coconut Planters Life Association (Coco Life), a subsidiary of UCPB since December, 1992.<sup>[6]</sup> The respondent also solicited insurance policies from UCPB employees.

On June 19, 1995, the respondent received a letter from the UCPB informing him of the termination of his employment with the bank for grave abuse of discretion and authority, and breach of trust in the conduct of his job as Bank Operations Manager of its Olongapo Branch. The respondent thereafter filed a complaint for illegal dismissal, non-payment of salaries, and damages against the bank in the National Labor Relations Commission (NLRC), docketed as NLRC Cases Nos. 00-09-05354-92 and 00-09-05354-93. However, the respondent still frequented the UCPB main office in Makati City to solicit insurance policies from the employees thereat. He also discussed the complaint he filed against the bank with the said employees.<sup>[7]</sup>

The respondent was also employed by All-Asia Life Insurance Company as an underwriter. At one time, the lawyers of the UCPB had an informal conference with him at the head office of the bank, during which the respondent was offered money so that the case could be amicably settled. The respondent revealed the incident to some of the bank employees.<sup>[8]</sup>

On November 15, 1995, Luis Ma. Ongsiapco, UCPB First Vice-President, Human Resource Division, issued a Memorandum to Jesus Belanio, the Vice-President of the Security Department, informing him that the respondent's employment had been terminated as of June 19, 1995, that the latter filed charges against the bank and

that the case was still on-going. Ongsiapco instructed Belanio not to allow the respondent access to all bank premises.<sup>[9]</sup> Attached to the Memorandum was a passport-size picture of the respondent. The next day, the security guards on duty were directed to strictly impose the security procedure in conformity with Ongsiapco's Memorandum.<sup>[10]</sup>

On December 7, 1995, the respondent, through counsel, wrote Ongsiapco, requesting that such Memorandum be reconsidered, and that he be allowed entry into the bank premises.<sup>[11]</sup> His counsel emphasized that –

In the meantime, we are more concerned with your denying Mr. Basco "access to all bank premises." As you may know, he is currently connected with Cocolife as insurance agent. Given his 17-year tenure with your bank, he has established good relationships with many UCPB employees, who comprise the main source of his solicitations. In the course of his work as insurance agent, he needs free access to your bank premises, within reason, to add the unnecessary. Your memorandum has effectively curtailed his livelihood and he is once again becoming a victim of another "illegal termination," so to speak. And Shakespeare said: "You take his life when you do take the means whereby he lives."

Mr. Basco's work as an insurance agent directly benefits UCPB, Cocolife's mother company. He performs his work in your premises peacefully without causing any disruption of bank operations. To deny him access to your premises for no reason except the pendency of the labor case, the outcome of which is still in doubt – his liability, if any, certainly has not been proven – is a clear abuse of right in violation of our client's rights. Denying him access to the bank, which is of a quasi-public nature, is an undue restriction on his freedom of movement and right to make a livelihood, comprising gross violations of his basic human rights. (This is Human Rights Week, ironically).

We understand that Mr. Basco has been a stockholder of record of 804 common shares of the capital stock of UCPB since July 1983. As such, he certainly deserves better treatment than the one he has been receiving from your office regarding property he partly owns. He is a particle of corporate sovereignty. We doubt that you can impose the functional equivalent of the penalty of destierro on our client who really wishes only to keep his small place in the sun, to survive and breathe. No activity can be more legitimate than to toil for a living. Let us live and let live.<sup>[12]</sup>

In his reply dated December 12, 1995, Ongsiapco informed the respondent that his request could not be granted:

As you understand, we are a banking institution; and as such, we deal with matters involving confidences of clients. This is among the many reasons why we, as a matter of policy, do not allow non-employees to have free access to areas where our employees work. Of course, there are places where visitors may meet our officers and employees to discuss business matters; unfortunately, we have limited areas where our officers and employees can entertain non-official matters.

Furthermore, in keeping with good business practices, the Bank prohibits solicitation, peddling and selling of goods, service and other commodities within its premises as it disrupts the efficient performance and function of the employees.

Please be assured that it is farthest from our intention to discriminate against your client. In the same vein, it is highly improper for us to carve exceptions to our policies simply to accommodate your client's business ventures.<sup>[13]</sup>

The respondent was undaunted. At 5:30 p.m. of December 21, 1995, he went to the office of Junne Cacay, the Assistant Manager of the Makati Branch. Cacay was then having a conference with Bong Braganza, an officer of the UCPB Sucat Branch. Cacay entertained the respondent although the latter did have an appointment. Cacay even informed him that he had a friend who wanted to procure an insurance policy.<sup>[14]</sup> Momentarily, a security guard of the bank approached the respondent and told him that it was already past office hours. He was also reminded not to stay longer than he should in the bank premises.<sup>[15]</sup> Cacay told the guard that the respondent would be leaving shortly.<sup>[16]</sup> The respondent was embarrassed and told Cacay that he was already leaving.<sup>[17]</sup>

At 1:30 p.m. of January 31, 1996, the respondent went to the UCPB Makati Branch to receive a check from Rene Jolo, a bank employee, and to deposit money with the bank for a friend.<sup>[18]</sup> He seated himself on a sofa fronting the teller's booth<sup>[19]</sup> where other people were also seated.<sup>[20]</sup> Meanwhile, two security guards approached the respondent. The guards showed him the Ongsiapco's Memorandum and told him to leave the bank premises. The respondent pleaded that he be allowed to finish his transaction before leaving. One of the security guards contacted the management and was told to allow the respondent to finish his transaction with the bank.

Momentarily, Jose Regino Casil, an employee of the bank who was in the 7th floor of the building, was asked by Rene Jolo to bring a check to the respondent, who was waiting in the lobby in front of the teller's booth.<sup>[21]</sup> Casil agreed and went down to the ground floor of the building, through the elevator. He was standing in the working area near the Automated Teller Machine (ATM) Section<sup>[22]</sup> in the ground floor when he saw the respondent standing near the sofa<sup>[23]</sup> near the two security guards.<sup>[24]</sup> He motioned the respondent to come and get the check, but the security guard tapped the respondent on the shoulder and prevented the latter from approaching Casil. The latter then walked towards the respondent and handed him the check from Jolo.

Before leaving, the respondent requested the security guard to log his presence in the logbook. The guard did as requested and the respondent's presence was recorded in the logbook.<sup>[25]</sup>

On March 11, 1996, the respondent filed a complaint for damages against the petitioners UCPB and Ongsiapco in the RTC of Manila, alleging *inter alia*, that –

12. It is readily apparent from this exchange of correspondence that defendant bank'' acknowledged reason for barring plaintiff from its premises - the pending labor case - is a mere pretense for its real vindictive and invidious intent: to prevent plaintiff, and plaintiff alone, from carrying out his trade as an insurance agent among defendant bank's employees, a practice openly and commonly allowed and tolerated (encouraged even, for some favored proverbial sacred cows) in the bank premises, now being unjustly denied to plaintiff on spurious grounds.
13. Defendants, to this day, have refused to act on plaintiff's claim to be allowed even in only the "limited areas where [the bank's] officers and employees can entertain non-official matters" and have maintained the policy banning plaintiff from all bank premises. As he had dared exercised his legal right to question his dismissal, he is being penalized with a variation of destierro, available in criminal cases where the standard however, after proper hearing, is much more stringent and based on more noble grounds than mere pique or vindictiveness.
14. This appallingly discriminatory policy resulted in an incident on January 31, 1996 at 1:30 p.m. at defendant bank's branch located at its head office, which caused plaintiff tremendous undeserved humiliation, embarrassment, and loss of face.<sup>[26]</sup>

...
15. Defendants' memorandum and the consequent acts of defendants' security guards, together with defendant Ongsiapco's disingenuous letter of December 12, 1995, are suggestive of malice and bad faith in derogation of plaintiff's right and dignity as a human being and citizen of this country, which acts have caused him considerable undeserved embarrassment. Even if defendants, for the sake of argument, may be acting within their rights, they cannot exercise same abusively, as they must, always, act with justice and in good faith, and give plaintiff his due.<sup>[27]</sup>

The respondent prayed that, after trial, judgment be rendered in his favor, as follows:

WHEREFORE, it is respectfully prayed that judgment issue ordering defendants:

1. To rescind the directive to its agents barring plaintiff from all bank premises as embodied in the memorandum of November 15, 1995, and allow plaintiff access to the premises of defendant bank, including all its branches, which are open to members of the general public, during reasonable hours, to be able to conduct lawful business without being subject to invidious discrimination; and

2. To pay plaintiff P100,000.00 as moral damages, P100,000.00 as exemplary damages, and P50,000.00 by way of attorney's fees.

Plaintiff likewise prays for costs, interest, the disbursements of this action, and such other further relief as may be deemed just and equitable in the premises.<sup>[28]</sup>

In their Answer to the complaint, the petitioners interposed the following affirmative defenses:

9. Plaintiff had been employed as Branch Operations Officer, Olongapo Branch, of defendant United Coconut Planters Bank.

In or about the period May to June 1992, he was, together with other fellow officers and employees, investigated by the bank in connection with various anomalies. As a result of the investigation, plaintiff was recommended terminated on findings of fraud and abuse of discretion in the performance of his work. He was found by the bank's Committee on Employee Discipline to have been guilty of committing or taking part in the commission of the following:

- a. Abuse of discretion in connection with actions taken beyond or outside the limits of his authority.
- b. Borrowing money from a bank client.
- c. Gross negligence or dereliction of duty in the implementation of bank policies or valid orders from management.
- d. Direct refusal or willful failure to perform, or delay in performing, an assigned task.
- e. Fraud or willful breach of trust in the conduct of his work.
- f. Falsification or forgery of bank records/documents.

10. Plaintiff thereafter decided to contest his termination by filing an action for illegal dismissal against the bank.

Despite the pendency of this litigation, plaintiff was reported visiting employees of the bank in their place of work during work hours, and circulating false information concerning the status of his case against the bank, including alleged offers by management of a monetary settlement for his "illegal dismissal."

11. Defendants acted to protect the bank's interest by preventing plaintiff's access to the bank's offices, and at the same time informing him of that decision.

Plaintiff purported to insist on seeing and talking to the bank's employees despite this decision, claiming he needed to do this in connection with his insurance solicitation activities, but the bank has not reconsidered.

12. The complaint states, and plaintiff has, no cause of action against defendants.<sup>[29]</sup>

The petitioners likewise interposed compulsory counterclaims for damages.