

THIRD DIVISION

[G.R. No. 156940, December 14, 2004]

**ASSOCIATED BANK (NOW WESTMONT BANK), PETITIONER, VS.
VICENTE HENRY TAN, RESPONDENT.**

DECISION

PANGANIBAN, J.:

While banks are granted by law the right to debit the value of a dishonored check from a depositor's account, they must do so with the highest degree of care, so as not to prejudice the depositor unduly.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, assailing the January 27, 2003 Decision^[2] of the Court of Appeals (CA) in CA-GR CV No. 56292. The CA disposed as follows:

“**WHEREFORE**, premises considered, the Decision dated December 3, 1996, of the Regional Trial Court of Cabanatuan City, Third Judicial Region, Branch 26, in Civil Case No. 892-AF is hereby **AFFIRMED**. Costs against the [petitioner].”^[3]

The Facts

The CA narrated the antecedents as follows:

“Vicente Henry Tan (hereafter TAN) is a businessman and a regular depositor-creditor of the Associated Bank (hereinafter referred to as the BANK). Sometime in September 1990, he deposited a postdated UCPB check with the said BANK in the amount of P101,000.00 issued to him by a certain Willy Cheng from Tarlac. The check was duly entered in his bank record thereby making his balance in the amount of P297,000.00, as of October 1, 1990, from his original deposit of P196,000.00. Allegedly, upon advice and instruction of the BANK that the P101,000.00 check was already cleared and backed up by sufficient funds, TAN, on the same date, withdrew the sum of P240,000.00, leaving a balance of P57,793.45. A day after, TAN deposited the amount of P50,000.00 making his existing balance in the amount of P107,793.45, because he has issued several checks to his business partners, to wit:

<u>CHECK NUMBERS</u>	<u>DATE</u>	<u>AMOUNT</u>
a. 138814	Sept. 29, 1990	P9,000.00
b. 138804	Oct. 8, 1990	9,350.00

c. 138787	Sept. 30, 1990	6,360.00
d. 138847	Sept. 29, 1990	21,850.00
e. 167054	Sept. 29, 1990	4,093.40
f. 138792	Sept. 29, 1990	3,546.00
g. 138774	Oct. 2, 1990	6,600.00
h. 167072	Oct. 10, 1990	9,908.00
i. 168802	Oct. 10, 1990	3,650.00

"However, his suppliers and business partners went back to him alleging that the checks he issued bounced for insufficiency of funds. Thereafter, TAN, thru his lawyer, informed the BANK to take positive steps regarding the matter for he has adequate and sufficient funds to pay the amount of the subject checks. Nonetheless, the BANK did not bother nor offer any apology regarding the incident. Consequently, TAN, as plaintiff, filed a Complaint for Damages on December 19, 1990, with the Regional Trial Court of Cabanatuan City, Third Judicial Region, docketed as Civil Case No. 892-AF, against the BANK, as defendant.

"In his [C]omplaint, [respondent] maintained that he ha[d] sufficient funds to pay the subject checks and alleged that his suppliers decreased in number for lack of trust. As he has been in the business community for quite a time and has established a good record of reputation and probity, plaintiff claimed that he suffered embarrassment, humiliation, besmirched reputation, mental anxieties and sleepless nights because of the said unfortunate incident. [Respondent] further averred that he continuously lost profits in the amount of P250,000.00. [Respondent] therefore prayed for exemplary damages and that [petitioner] be ordered to pay him the sum of P1,000,000.00 by way of moral damages, P250,000.00 as lost profits, P50,000.00 as attorney's fees plus 25% of the amount claimed including P1,000.00 per court appearance.

"Meanwhile, [petitioner] filed a Motion to Dismiss on February 7, 1991, but the same was denied for lack of merit in an Order dated March 7, 1991. Thereafter, [petitioner] BANK on March 20, 1991 filed its Answer denying, among others, the allegations of [respondent] and alleged that no banking institution would give an assurance to any of its client/depositor that the check deposited by him had already been cleared and backed up by sufficient funds but it could only presume that the same has been honored by the drawee bank in view of the lapse of time that ordinarily takes for a check to be cleared. For its part, [petitioner] alleged that on October 2, 1990, it gave notice to the [respondent] as to the return of his UCPB check deposit in the amount of P101,000.00, hence, on even date, [respondent] deposited the amount of P50,000.00 to cover the returned check.

"By way of affirmative defense, [petitioner] averred that [respondent] had no cause of action against it and argued that it has all the right to debit the account of the [respondent] by reason of the dishonor of the check deposited by the [respondent] which was withdrawn by him prior to its clearing. [Petitioner] further averred that it has no liability with

respect to the clearing of deposited checks as the clearing is being undertaken by the Central Bank and in accepting [the] check deposit, it merely obligates itself as depositor's collecting agent subject to actual payment by the drawee bank. [Petitioner] therefore prayed that [respondent] be ordered to pay it the amount of P1,000,000.00 by way of loss of goodwill, P7,000.00 as acceptance fee plus P500.00 per appearance and by way of attorney's fees.

"Considering that Westmont Bank has taken over the management of the affairs/properties of the BANK, [respondent] on October 10, 1996, filed an Amended Complaint reiterating substantially his allegations in the original complaint, except that the name of the previous defendant ASSOCIATED BANK is now WESTMONT BANK.

"Trial ensued and thereafter, the court rendered its Decision dated December 3, 1996 in favor of the [respondent] and against the [petitioner], ordering the latter to pay the [respondent] the sum of P100,000.00 by way of moral damages, P75,000.00 as exemplary damages, P25,000.00 as attorney's fees, plus the costs of this suit. In making said ruling, it was shown that [respondent] was not officially informed about the debiting of the P101,000.00 [from] his existing balance and that the BANK merely allowed the [respondent] to use the fund prior to clearing merely for accommodation because the BANK considered him as one of its valued clients. The trial court ruled that the bank manager was negligent in handling the particular checking account of the [respondent] stating that such lapses caused all the inconveniences to the [respondent]. The trial court also took into consideration that [respondent's] mother was originally maintaining with the x x x BANK [a] current account as well as [a] time deposit, but [o]n one occasion, although his mother made a deposit, the same was not credited in her favor but in the name of another."^[4]

Petitioner appealed to the CA on the issues of whether it was within its rights, as collecting bank, to debit the account of its client for a dishonored check; and whether it had informed respondent about the dishonor prior to debiting his account.

Ruling of the Court of Appeals

Affirming the trial court, the CA ruled that the bank should not have authorized the withdrawal of the value of the deposited check prior to its clearing. Having done so, contrary to its obligation to treat respondent's account with meticulous care, the bank violated its own policy. It thereby took upon itself the obligation to officially inform respondent of the status of his account before unilaterally debiting the amount of P101,000. Without such notice, it is estopped from blaming him for failing to fund his account.

The CA opined that, had the P101,000 not been debited, respondent would have had sufficient funds for the postdated checks he had issued. Thus, the supposed accommodation accorded by petitioner to him is the proximate cause of his business woes and shame, for which it is liable for damages.

Because of the bank's negligence, the CA awarded respondent moral damages of P100,000. It also granted him exemplary damages of P75,000 and attorney's fees of P25,000.

Hence this Petition.^[5]

Issue

In its Memorandum, petitioner raises the sole issue of "whether or not the petitioner, which is acting as a collecting bank, has the right to debit the account of its client for a check deposit which was dishonored by the drawee bank."^[6]

The Court's Ruling

The Petition has no merit.

Sole Issue: **Debit of Depositor's Account**

Petitioner-bank contends that its rights and obligations under the present set of facts were misappreciated by the CA. It insists that its right to debit the amount of the dishonored check from the account of respondent is clear and unmistakable. Even assuming that it did not give him notice that the check had been dishonored, such right remains immediately enforceable.

In particular, petitioner argues that the check deposit slip accomplished by respondent on September 17, 1990, expressly stipulated that the bank was obligating itself merely as the depositor's collecting agent and -- until such time as actual payment would be made to it -- it was reserving the right to charge against the depositor's account any amount previously credited. Respondent was allowed to withdraw the amount of the check prior to clearing, merely as an act of accommodation, it added.

At the outset, we stress that the trial court's factual findings that were affirmed by the CA are not subject to review by this Court.^[7] As petitioner itself takes no issue with those findings, we need only to determine the legal consequence, based on the established facts.

Right of Setoff

A bank generally has a right of setoff over the deposits therein for the payment of any withdrawals on the part of a depositor.^[8] The right of a collecting bank to debit a client's account for the value of a dishonored check that has previously been credited has fairly been established by jurisprudence. To begin with, Article 1980 of the Civil Code provides that "[f]ixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan."

Hence, the relationship between banks and depositors has been held to be that of creditor and debtor.^[9] Thus, legal compensation under Article 1278^[10] of the Civil

Code may take place “when all the requisites mentioned in Article 1279 are present,”^[11] as follows:

“(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.”^[12]

Nonetheless, the real issue here is not so much the right of petitioner to debit respondent’s account but, rather, the manner in which it exercised such right. The Court has held that even while the right of setoff is conceded, separate is the question of whether that remedy has properly been exercised.^[13]

The liability of petitioner in this case ultimately revolves around the issue of whether it properly exercised its right of setoff. The determination thereof hinges, in turn, on the bank’s role and obligations, *first*, as respondent’s depository bank; and *second*, as collecting agent for the check in question.

Obligation as Depository Bank

In *BPI v. Casa Montessori*,^[14] the Court has emphasized that the banking business is impressed with public interest. “Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required of it. By the nature of its functions, a bank is under obligation to treat the accounts of its depositors with meticulous care.”^[15]

Also affirming this long standing doctrine, *Philippine Bank of Commerce v. Court of Appeals*^[16] has held that “the degree of diligence required of banks is more than that of a good father of a family where the fiduciary nature of their relationship with their depositors is concerned.”^[17] Indeed, the banking business is vested with the trust and confidence of the public; hence the “appropriate standard of diligence must be very high, if not the highest, degree of diligence.”^[18] The standard applies, regardless of whether the account consists of only a few hundred pesos or of millions.^[19]

The fiduciary nature of banking, previously imposed by case law,^[20] is now enshrined in Republic Act No. 8791 or the General Banking Law of 2000. Section 2 of the law specifically says that the State recognizes the “fiduciary nature of banking that requires high standards of integrity and performance.”