

FIRST DIVISION

[G.R. No. 138569, September 11, 2003]

**THE CONSOLIDATED BANK AND TRUST CORPORATION,
PETITIONER, VS. COURT OF APPEALS AND L.C. DIAZ AND
COMPANY, CPA'S, RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

Before us is a petition for review of the Decision^[1] of the Court of Appeals dated 27 October 1998 and its Resolution dated 11 May 1999. The assailed decision reversed the Decision^[2] of the Regional Trial Court of Manila, Branch 8, absolving petitioner Consolidated Bank and Trust Corporation, now known as Solidbank Corporation ("Solidbank"), of any liability. The questioned resolution of the appellate court denied the motion for reconsideration of Solidbank but modified the decision by deleting the award of exemplary damages, attorney's fees, expenses of litigation and cost of suit.

The Facts

Solidbank is a domestic banking corporation organized and existing under Philippine laws. Private respondent L.C. Diaz and Company, CPA's ("L.C. Diaz"), is a professional partnership engaged in the practice of accounting.

Sometime in March 1976, L.C. Diaz opened a savings account with Solidbank, designated as Savings Account No. S/A 200-16872-6.

On 14 August 1991, L.C. Diaz through its cashier, Mercedes Macaraya ("Macaraya"), filled up a savings (cash) deposit slip for P990 and a savings (checks) deposit slip for P50. Macaraya instructed the messenger of L.C. Diaz, Ismael Calapre ("Calapre"), to deposit the money with Solidbank. Macaraya also gave Calapre the Solidbank passbook.

Calapre went to Solidbank and presented to Teller No. 6 the two deposit slips and the passbook. The teller acknowledged receipt of the deposit by returning to Calapre the duplicate copies of the two deposit slips. Teller No. 6 stamped the deposit slips with the words "DUPLICATE" and "SAVING TELLER 6 SOLIDBANK HEAD OFFICE." Since the transaction took time and Calapre had to make another deposit for L.C. Diaz with Allied Bank, he left the passbook with Solidbank. Calapre then went to Allied Bank. When Calapre returned to Solidbank to retrieve the passbook, Teller No. 6 informed him that "somebody got the passbook."^[3] Calapre went back to L.C. Diaz and reported the incident to Macaraya.

Macaraya immediately prepared a deposit slip in duplicate copies with a check of P200,000. Macaraya, together with Calapre, went to Solidbank and presented to Teller No. 6 the deposit slip and check. The teller stamped the words "DUPLICATE" and "SAVING TELLER 6 SOLIDBANK HEAD OFFICE" on the duplicate copy of the deposit slip. When Macaraya asked for the passbook, Teller No. 6 told Macaraya that someone got the passbook but she could not remember to whom she gave the passbook. When Macaraya asked Teller No. 6 if Calapre got the passbook, Teller No. 6 answered that someone shorter than Calapre got the passbook. Calapre was then standing beside Macaraya.

Teller No. 6 handed to Macaraya a deposit slip dated 14 August 1991 for the deposit of a check for P90,000 drawn on Philippine Banking Corporation ("PBC"). This PBC check of L.C. Diaz was a check that it had "long closed."^[4] PBC subsequently dishonored the check because of insufficient funds and because the signature in the check differed from PBC's specimen signature. Failing to get back the passbook, Macaraya went back to her office and reported the matter to the Personnel Manager of L.C. Diaz, Emmanuel Alvarez.

The following day, 15 August 1991, L.C. Diaz through its Chief Executive Officer, Luis C. Diaz ("Diaz"), called up Solidbank to stop any transaction using the same passbook until L.C. Diaz could open a new account.^[5] On the same day, Diaz formally wrote Solidbank to make the same request. It was also on the same day that L.C. Diaz learned of the unauthorized withdrawal the day before, 14 August 1991, of P300,000 from its savings account. The withdrawal slip for the P300,000 bore the signatures of the authorized signatories of L.C. Diaz, namely Diaz and Rustico L. Murillo. The signatories, however, denied signing the withdrawal slip. A certain Noel Tamayo received the P300,000.

In an Information^[6] dated 5 September 1991, L.C. Diaz charged its messenger, Emerano Ilagan ("Ilagan") and one Roscon Verdazola with Estafa through Falsification of Commercial Document. The Regional Trial Court of Manila dismissed the criminal case after the City Prosecutor filed a Motion to Dismiss on 4 August 1992.

On 24 August 1992, L.C. Diaz through its counsel demanded from Solidbank the return of its money. Solidbank refused.

On 25 August 1992, L.C. Diaz filed a Complaint^[7] for Recovery of a Sum of Money against Solidbank with the Regional Trial Court of Manila, Branch 8. After trial, the trial court rendered on 28 December 1994 a decision absolving Solidbank and dismissing the complaint.

L.C. Diaz then appealed^[8] to the Court of Appeals. On 27 October 1998, the Court of Appeals issued its Decision reversing the decision of the trial court.

On 11 May 1999, the Court of Appeals issued its Resolution denying the motion for reconsideration of Solidbank. The appellate court, however, modified its decision by deleting the award of exemplary damages and attorney's fees.

The Ruling of the Trial Court

In absolving Solidbank, the trial court applied the rules on savings account written on the passbook. The rules state that "possession of this book shall raise the presumption of ownership and any payment or payments made by the bank upon the production of the said book and entry therein of the withdrawal shall have the same effect as if made to the depositor personally."^[9]

At the time of the withdrawal, a certain Noel Tamayo was not only in possession of the passbook, he also presented a withdrawal slip with the signatures of the authorized signatories of L.C. Diaz. The specimen signatures of these persons were in the signature cards. The teller stamped the withdrawal slip with the words "Saving Teller No. 5." The teller then passed on the withdrawal slip to Genere Manuel ("Manuel") for authentication. Manuel verified the signatures on the withdrawal slip. The withdrawal slip was then given to another officer who compared the signatures on the withdrawal slip with the specimen on the signature cards. The trial court concluded that Solidbank acted with care and observed the rules on savings account when it allowed the withdrawal of P300,000 from the savings account of L.C. Diaz.

The trial court pointed out that the burden of proof now shifted to L.C. Diaz to prove that the signatures on the withdrawal slip were forged. The trial court admonished L.C. Diaz for not offering in evidence the National Bureau of Investigation ("NBI") report on the authenticity of the signatures on the withdrawal slip for P300,000. The trial court believed that L.C. Diaz did not offer this evidence because it is derogatory to its action.

Another provision of the rules on savings account states that the depositor must keep the passbook "under lock and key."^[10] When another person presents the passbook for withdrawal prior to Solidbank's receipt of the notice of loss of the passbook, that person is considered as the owner of the passbook. The trial court ruled that the passbook presented during the questioned transaction was "now out of the lock and key and presumptively ready for a business transaction."^[11]

Solidbank did not have any participation in the custody and care of the passbook. The trial court believed that Solidbank's act of allowing the withdrawal of P300,000 was not the direct and proximate cause of the loss. The trial court held that L.C. Diaz's negligence caused the unauthorized withdrawal. Three facts establish L.C. Diaz's negligence: (1) the possession of the passbook by a person other than the depositor L.C. Diaz; (2) the presentation of a signed withdrawal receipt by an unauthorized person; and (3) the possession by an unauthorized person of a PBC check "long closed" by L.C. Diaz, which check was deposited on the day of the fraudulent withdrawal.

The trial court debunked L.C. Diaz's contention that Solidbank did not follow the precautionary procedures observed by the two parties whenever L.C. Diaz withdrew significant amounts from its account. L.C. Diaz claimed that a letter must accompany withdrawals of more than P20,000. The letter must request Solidbank to allow the withdrawal and convert the amount to a manager's check. The bearer must also have a letter authorizing him to withdraw the same amount. Another person driving a car must accompany the bearer so that he would not walk from Solidbank to the office in making the withdrawal. The trial court pointed out that

L.C. Diaz disregarded these precautions in its past withdrawal. On 16 July 1991, L.C. Diaz withdrew P82,554 without any separate letter of authorization or any communication with Solidbank that the money be converted into a manager's check.

The trial court further justified the dismissal of the complaint by holding that the case was a last ditch effort of L.C. Diaz to recover P300,000 after the dismissal of the criminal case against Ilagan.

The dispositive portion of the decision of the trial court reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered DISMISSING the complaint.

The Court further renders judgment in favor of defendant bank pursuant to its counterclaim the amount of Thirty Thousand Pesos (P30,000.00) as attorney's fees.

With costs against plaintiff.

SO ORDERED.^[12]

The Ruling of the Court of Appeals

The Court of Appeals ruled that Solidbank's negligence was the proximate cause of the unauthorized withdrawal of P300,000 from the savings account of L.C. Diaz. The appellate court reached this conclusion after applying the provision of the Civil Code on quasi-delict, to wit:

Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this chapter.

The appellate court held that the three elements of a quasi-delict are present in this case, namely: (a) damages suffered by the plaintiff; (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damage incurred by the plaintiff.

The Court of Appeals pointed out that the teller of Solidbank who received the withdrawal slip for P300,000 allowed the withdrawal without making the necessary inquiry. The appellate court stated that the teller, who was not presented by Solidbank during trial, should have called up the depositor because the money to be withdrawn was a significant amount. Had the teller called up L.C. Diaz, Solidbank would have known that the withdrawal was unauthorized. The teller did not even verify the identity of the impostor who made the withdrawal. Thus, the appellate court found Solidbank liable for its negligence in the selection and supervision of its employees.

The appellate court ruled that while L.C. Diaz was also negligent in entrusting its deposits to its messenger and its messenger in leaving the passbook with the teller, Solidbank could not escape liability because of the doctrine of "last clear chance."

Solidbank could have averted the injury suffered by L.C. Diaz had it called up L.C. Diaz to verify the withdrawal.

The appellate court ruled that the degree of diligence required from Solidbank is more than that of a good father of a family. The business and functions of banks are affected with public interest. Banks are obligated to treat the accounts of their depositors with meticulous care, always having in mind the fiduciary nature of their relationship with their clients. The Court of Appeals found Solidbank remiss in its duty, violating its fiduciary relationship with L.C. Diaz.

The dispositive portion of the decision of the Court of Appeals reads:

WHEREFORE, premises considered, the decision appealed from is hereby REVERSED and a new one entered.

1. Ordering defendant-appellee Consolidated Bank and Trust Corporation to pay plaintiff-appellant the sum of Three Hundred Thousand Pesos (P300,000.00), with interest thereon at the rate of 12% per annum from the date of filing of the complaint until paid, the sum of P20,000.00 as exemplary damages, and P20,000.00 as attorney's fees and expenses of litigation as well as the cost of suit; and
2. Ordering the dismissal of defendant-appellee's counterclaim in the amount of P30,000.00 as attorney's fees.

SO ORDERED.^[13]

Acting on the motion for reconsideration of Solidbank, the appellate court affirmed its decision but modified the award of damages. The appellate court deleted the award of exemplary damages and attorney's fees. Invoking Article 2231^[14] of the Civil Code, the appellate court ruled that exemplary damages could be granted if the defendant acted with gross negligence. Since Solidbank was guilty of simple negligence only, the award of exemplary damages was not justified. Consequently, the award of attorney's fees was also disallowed pursuant to Article 2208 of the Civil Code. The expenses of litigation and cost of suit were also not imposed on Solidbank.

The dispositive portion of the Resolution reads as follows:

WHEREFORE, foregoing considered, our decision dated October 27, 1998 is affirmed with modification by deleting the award of exemplary damages and attorney's fees, expenses of litigation and cost of suit.

SO ORDERED.^[15]

Hence, this petition.

The Issues

Solidbank seeks the review of the decision and resolution of the Court of Appeals on these grounds: