

## THIRD DIVISION

[ G.R. No. 137932, March 28, 2001 ]

**CHIANG YIA MIN, PETITIONER, VS. COURT OF APPEALS, RIZAL COMMERCIAL BANKING CORPORATION, PAPERCON (PHILIPPINES), INC. AND TOM PEK, RESPONDENTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

The instant petition concerns the recovery of a sum of money and damages, initiated by herein petitioner, a Chinese national based in Taiwan, against Rizal Commercial Banking Corporation (hereafter, "RCBC" or "respondent bank") before Branch 151<sup>[1]</sup> of the Regional Trial Court of Pasig City. The case, docketed as Civil Case No. 54694, sought the collection of US\$100,000.00, or its equivalent per Central Bank rates, legal interest, moral and exemplary damages, and attorney's fees.

Petitioner's version of the case, which was upheld by the trial court, alleges that the said US\$100,000.00 was sent by Hang Lung Bank Ltd. of Hong Kong on February 7, 1979 through the Pacific Banking Corporation to respondent bank's head office.<sup>[2]</sup> The remittance was for petitioner's own account and was intended to qualify him as a foreign investor under Philippine laws. As found by the trial court, it was sent by petitioner himself prior to his arrival in the Philippines.<sup>[3]</sup>

When petitioner checked on his money sometime in mid-1985, he found out that that the dollar deposit was transferred to the Shaw Boulevard branch of respondent bank and converted to a peso account, which had a balance of only P1,362.10 as of October 29, 1979. A letter of respondent bank dated August 9, 1985 stated that petitioner's Current Account No. 12-2009 was opened on February 8, 1979, with an initial deposit of P729,752.20; a total of P728,390.00 was withdrawn by way of five checks respectively dated February 13, 19 and 23, 1979 and October 5 and 29, 1979, apparently issued by petitioner in favor of Papercon (Phils.), Inc., (hereafter, "Papercon") one of the herein private respondents and a business venture of Tom Pek.<sup>[4]</sup> Thus, the balance of the account was reduced to P1,362.10 as of October 29, 1979 and no transactions were made on the account since.<sup>[5]</sup> In the same letter, the bank stated that it was no longer able to locate the microfilm copies of the issued checks, specimen signature cards, and other records related to the questioned account, since the account had been inactive for more than five years.

Petitioner insisted that he did not cause the transfer of his money to the Shaw Boulevard branch of RCBC, as his instructions in the telegraphic transfer were for the money to be remitted to the RCBC head office in Makati, nor its conversion to pesos and the subsequent withdrawals. Nor did he authorize anyone to perform these acts.

In its Answer, respondent bank alleged that there is no indication from its records of the transfer of US\$100,000.00 for petitioner's account from Hang Lung Bank Ltd. through the Pacific Banking Corporation. However, after plaintiff-petitioner had adduced his evidence, it filed a third-party complaint against Papercon and Tom Pek, "admitting that plaintiff conclusively appeared to have deposited the sum of US\$100,000.00 with the bank and said foreign currency deposit was converted, adopting the prevailing rate of interest at the time, to P730,000.00 and deposited to plaintiff's Current Account No. 12-2009 which he opened with Shaw Boulevard branch, after which plaintiff issued Check No. 492327 to third-party defendant Papercon (Phils.), Inc. for the amount of P700,000.00 and Check No. 492328 to third-party defendant Tom Pek for the amount of P12,700.00."<sup>[6]</sup> Respondent bank thus contended that should it be made liable to petitioner, said third-party defendants as payees and beneficiaries of the issued checks should be held solidarily liable with it.

Tom Pek and Papercon did not deny receiving the checks worth P712,700.00 but argued that unless proven otherwise, the said checks should be presumed to have been issued in their favor for a sufficient and valuable consideration.

Based on the evidence and arguments before it, the trial court determined that the withdrawals were not made by petitioner nor authorized by him, and held respondent bank liable for the US\$100,000.00 (and the interest thereon from date of filing of the complaint), damages, attorney's fees, and costs.

It is not disputed that petitioner did not personally go to respondent bank to open the account; it was Catalino Reyes, an employee of Tom Pek, who obtained the blank application forms from the Shaw Boulevard branch and returned them bearing petitioner's signature; and, the application forms were not completely filled out. The trial court found the actuations of the bank's officers of allowing Reyes to take out the forms, approving the scarcely-completed application form, validating petitioner's signature thereon even when they have not met petitioner, and permitting the hefty withdrawals made from the account to be in contravention with sound and well-recognized banking procedures, and contrary to "its (the bank's) primordial duty of safeguarding the interest of its depositors, because for having allowed the same, it enabled an unscrupulous person to open an account for the plaintiff without the latter's consent."<sup>[7]</sup>

The trial court also took against respondent bank its inability to present in evidence the depositor's card showing petitioner's specimen signatures and the requisition slip for the issuance of a checkbook, and disregarded the bank's contention that they could not anymore be located. From this, the trial court concluded that petitioner did not submit any card showing his specimen signature since he did not open the said current account, and that the withdrawals made on the said account were unauthorized and in fraud of petitioner.<sup>[8]</sup>

The trial court further concluded that the withdrawals from petitioner's account could not have been made possible without the collusion of the officers and employees of respondent bank. In its decision dated May 24, 1991, it held respondent bank solely culpable and fully exonerated the other private respondents. It also upheld petitioner's claims for moral damages, for the mental anguish that he

suffered, and exemplary damages, to remind respondent bank "that it should always act with care and caution in handling the money of its depositors in order to uphold the faith and confidence of its depositors to banking institutions xxx".<sup>[9]</sup> Thus, the dispositive part of the said decision read:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant and third-party plaintiff, Rizal Commercial Banking Corporation, ordering the latter to pay plaintiff the following sums:

- 1) US\$100,000.00, or its equivalent according to Central Bank rate at the time payment is actually made with interest thereon at 12% per annum from June 26, 1987, when the complaint was filed, until fully paid;
- 2) P30,000.00 as moral damages;
- 3) P20,000.00 as exemplary damages; and
- 4) 20% of the total amount due to the plaintiff as attorney's fees and litigation expenses, all three foregoing items with interest at 12% per annum from date hereof.

The defendant bank's counterclaims and third-party complaint are dismissed.

The third-party defendants' counterclaims are likewise dismissed.

Costs against defendant.

SO ORDERED.<sup>[10]</sup>

Respondent bank and third-party defendants sought reconsideration of the above decision and on September 2, 1991, Judge Migriño amended his decision to hold Papercon and Tom Pek solidarily liable with respondent bank. He also changed the interest rate for the US\$100,000 from 12% to 6% per annum, charged interest for the awards of moral damages and exemplary damages until they are paid, and reduced the award of attorney's fees from 20% to 10% of the total monetary awards. Following is the dispositive portion of the RTC decision, as modified:

WHEREFORE, judgment is hereby rendered:

On the Main Action

1. Ordering the defendant Rizal Commercial Banking Corporation to pay the plaintiff Chiang Yia Min the following sums:
  - a) US\$100,000.00, or its equivalent in Philippine currency at the time of actual payment, with interest thereon at the legal rate of 6% per annum from June 26, 1987, the date of filing of the complaint, until fully paid;
  - b) P30,000.00 as moral damages;

- c) P20,000.00 as exemplary damages;
- d) 10% of the total amount due for and as attorney's fees, all three foregoing items with interest at 6% per annum from date hereof; and
- e) the costs of the suit.

On the Third-Party Complaint

Judgment is hereby rendered in favor of the defendant-third-party plaintiff and against third-party defendants, ordering the latter, jointly and severally, to pay and reimburse the third-party plaintiff the aforeadjudged amounts which it is ordered to pay to the plaintiff in accordance with this decision.

The defendant bank's counterclaims are hereby dismissed.

The counterclaims of the third-party defendants are likewise dismissed.

SO ORDERED.<sup>[11]</sup>

The Court of Appeals, on the other hand, found that the opening of the current account and the withdrawals therefrom were authorized by petitioner; accordingly, it reversed the decision of the RTC and absolved private respondents of liability.

Respondent court gave credence to the statements of Catalino Reyes, an accountant of Pioneer Business Forms, Inc., another business venture of Tom Pek, who testified that petitioner and Tom Pek were close friends and business partners. Sometime in January or February 1979 Reyes was instructed by petitioner to withdraw the US\$100,000.00 from Pacific Banking Corporation and to deposit the peso equivalent of the same in the Shaw Boulevard branch of RCBC. These were undertaken to facilitate petitioner's change of visa from tourist to foreign investor. Respondent court also accepted Reyes's testimony that he was instructed by petitioner to prepare two of the checks drawn against the questioned account, and that he witnessed petitioner sign these checks and hand them over to Tom Pek. It declared that Reyes's testimony that petitioner caused the opening of the said account was more believable than petitioner's mere denial of the same.<sup>[12]</sup> Moreover, Reyes's testimony was supported by a memorandum of the Board of Special Inquiry, Bureau of Immigration which stated that the peso equivalent of the US\$100,000.00 had been tendered and delivered to applicant Chiang Yia Min as evidenced by a cashier's check dated February 8, 1979 and issued to the latter.<sup>[13]</sup> According to the Court of Appeals, this coincides with Catalino Reyes's testimony that petitioner's money was deposited by him in respondent bank, and was contrary to petitioner's contention that the money was transferred by Pacific Banking Corporation to respondent bank through a bank-to-bank transaction.

Respondent court was also not convinced by petitioner's allegation that the conversion of the US\$100,000.00 and its being deposited in the Shaw Boulevard branch of respondent bank was made without his knowledge and consent. It pointed out that it was petitioner himself who wrote the Shaw Boulevard branch inquiring about the status of his current account; thus, he could not later be heard to

maintain that he thought his money was deposited with the head office of respondent bank in Makati.

Further contrary to the findings of the trial court, the Court of Appeals determined that the inward remittance of US\$100,000.00 was made while petitioner was already in the Philippines. Based on the records of the Bureau of Immigration, petitioner arrived in the country as a tourist on or about January 25, 1979,<sup>[14]</sup> but subsequently applied for a change of status of admission to special non-immigrant as a foreign investor.<sup>[15]</sup> Because of this, petitioner's initial argument --- that he could not have authorized the deposit in the Shaw Boulevard branch and the withdrawals therefrom because he was not yet in the country at the time --- could not be believed.

Moreover, respondent court found it incredible that petitioner checked on his dollar remittance only in 1985, long after it was sent into the country. As for respondent bank's inability to produce the depositor's card bearing petitioner's specimen signatures, the checkbook requisition slip, and other documents requested by petitioner, respondent court found plausible the explanation of respondent bank that it only holds records for a period of five years after the last transaction on an account was made. It also noted several other inconsistencies in the testimony of petitioner, such as his inability to recall his date of arrival in the country,<sup>[16]</sup> the date or even the year when he made inquiries with respondent bank,<sup>[17]</sup> or his presence before the Commission on Immigration and Deportation when he applied for a change of status.<sup>[18]</sup> Thus, petitioner lost credibility with respondent court which found his testimony to be false on material points and applied the principle of *falsus in uno, falsus in omnibus*.

Hence, the dispositive portion of the Court of Appeals decision provides:

WHEREFORE, premises considered, the decision of the court *a quo* is hereby REVERSED and SET ASIDE. Herein defendant/third-party plaintiff and third-party defendants are hereby absolved of any liability arising out of this case. Likewise, the third-party complaint is hereby DISMISSED.

Costs against plaintiff-appellant.

SO ORDERED.<sup>[19]</sup>

Petitioner is now before us seeking the reversal of the above decision, maintaining that the evidence on record preponderated in his favor and was enough to sustain the finding that the opening of Current Account No. 12-2009 and the withdrawals thereon were unauthorized by him and that respondent bank connived with third persons to defraud petitioner. Private respondents, for their part, ask that the petition be dismissed and the factual findings of the Court of Appeals be sustained.

The grounds set out in the petition are:

1. The findings of facts of the trial court and the Court of Appeals are conflicting hence, an examination by this Honorable Court of the evidence on record is in order. There is an imperative need for this Honorable Court to exercise its power of supervision and review of