

[SYLLABUS]

[G.R. No. 97785, March 29, 1996]

**PHILIPPINE COMMERCIAL INTERNATIONAL BANK, PETITIONER,
VS. COURT OF APPEALS AND RORY W. LIM, RESPONDENTS.**

D E C I S I O N

FRANCISCO, J.:

This is a petition for review on certiorari seeking the reversal of the Decision of the Court of Appeals in CA-G.R. No. 18843 promulgated on July 30, 1990, and the Resolution dated March 11, 1991, affirming with modification the judgment of the Regional Trial Court of Gingoog City which held petitioner Philippine Commercial International Bank (PCIB) liable for damages resulting from its breach of contract with private respondent Rory W. Lim.

Disputed herein is the validity of the stipulation embodied in the standard application form/receipt furnished by petitioner for the purchase of a telegraphic transfer which relieves it of any liability resulting from loss caused by errors or delays in the course of the discharge of its services.

The antecedent facts are as follows:

On March 13, 1986, private respondent Rory Lim delivered to his cousin Lim Ong Tian PCIB Check No. JJJ 24212467 in the amount of P200,000.00 for the purpose of obtaining a telegraphic transfer from petitioner PCIB in the same amount. The money was to be transferred to Equitable Banking Corporation, Cagayan de Oro Branch, and credited to private respondent's account at the said bank. Upon purchase of the telegraphic transfer, petitioner issued the corresponding receipt dated March 13, 1986 [T/T No. 284]^[1] which contained the assailed provision, to wit:

"AGREEMENT

xxx

xxx

xxx

In case of fund transfer, the undersigned hereby agrees that such transfer will be made without any responsibility on the part of the BANK, or its correspondents, for any loss occasioned by errors, or delays in the transmission of message by telegraph or cable companies or by the correspondents or agencies, necessarily employed by this BANK in the transfer of this money, all risks for which are assumed by the undersigned."

Subsequent to the purchase of the telegraphic transfer, petitioner in turn issued and delivered eight (8) Equitable Bank checks^[2] to his suppliers in different amounts as payment for the merchandise that he obtained from them. When the checks were presented for payment, five of them bounced for insufficiency of funds,^[3] while the remaining three were held overnight for lack of funds upon presentment.^[4] Consequent to the dishonor of these checks, Equitable Bank charged and collected the total amount of P1, 100.00 from private respondent. The dishonor of the checks came to private respondent's attention only on April 2, 1986, when Equitable Bank notified him of the penalty charges and after receiving letters from his suppliers that his credit was being cut-off due to the dishonor of the checks he issued.

Upon verification by private respondent with the Gingoog Branch Office of petitioner PCIB, it was confirmed that his telegraphic transfer (T/T No. 284) for the sum of P200,000.00 had not yet been remitted to Equitable Bank, Cagayan de Oro branch. In fact, petitioner PCIB made the corresponding transfer of funds only on April 3, 1986, twenty one (21) days after the purchase of the telegraphic transfer on March 13, 1986.

Aggrieved, private respondent demanded from petitioner PCIB that he be compensated for the resulting damage that he suffered due to petitioner's failure to make the timely transfer of funds which led to the dishonor of his checks. In a letter dated April 23, 1986, PCIB's Branch Manager Rodolfo Villarmia acknowledged their failure to transmit the telegraphic transfer on time as a result of their mistake in using the control number twice and the petitioner bank's failure to request confirmation and act positively on the disposition of the said telegraphic transfer.^[5]

Nevertheless, petitioner refused to heed private respondent's demand prompting the latter to file a complaint for damages with the Regional Trial Court of Gingoog City^[6] on January 16, 1987. In his complaint, private respondent alleged that as a result of petitioner's total disregard and gross violation of its contractual obligation to remit and deliver the sum of Two Hundred Thousand Pesos (P200,000.00) covered by T/T No. 284 to Equitable Banking Corporation, Cagayan de Oro Branch, private respondent's checks were dishonored for insufficient funds thereby causing his business and credit standing to suffer considerably for which petitioner should be ordered to pay damages.^[7]

Answering the complaint, petitioner denied any liability to private respondent and interposed as special and affirmative defense the lack of privity between it and private respondent as it was not private respondent himself who purchased the telegraphic transfer from petitioner. Additionally, petitioner pointed out that private respondent is nevertheless bound by the stipulation in the telegraphic transfer application/form receipt^[8] which provides:

"x x x. In case of fund transfer, the undersigned hereby agrees that such transfer will be made without any responsibility on the part of the BANK, or its correspondents, for any loss occasioned by errors or delays in the transmission of message by telegraph or cable companies or by correspondents or agencies, necessarily employed by this BANK in the

transfer of this money, all risks for which are assumed by the undersigned."

According to petitioner, they utilized the services of RCPI-Gingoog City to transmit the message regarding private respondent's telegraphic transfer because their telex machine was out of order at that time. But as it turned out, it was only on April 3, 1986 that petitioner's Cagayan de Oro Branch had received information about the said telegraphic transfer.^[9]

In its decision dated July 27, 1988^[10] the Regional Trial Court of Gingoog City held petitioner liable for breach of contract and struck down the aforesaid provision found in petitioner's telegraphic transfer application form/receipt exempting it from any liability and declared the same to be invalid and unenforceable. As found by the trial court, the provision amounted to a contract of adhesion wherein the objectionable portion was unilaterally inserted by petitioner in all its application forms without giving any opportunity to the applicants to question the same and express their conformity thereto.^[11] Thus, the trial court adjudged petitioner liable to private respondent for the following amounts:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against the defendant, ordering the latter to pay the former as follows:

P960,000.00 as moral damages;

P50,000.00 as exemplary damages;

P40,000.00 as attorney's fees; and

P1,100.00 as reimbursement for the surcharges paid by plaintiff to the Equitable Banking Corporation, plus costs, all with legal interest of 6% per annum from the date of this judgment until the same shall have been paid in full."^[12]

Upon appeal by petitioner to the Court of Appeals, respondent court affirmed with modifications the judgment of the trial court and ordered as follows:

"WHEREFORE, premises considered, judgment is hereby rendered affirming the appealed decision with modification, as follows:

The defendant-appellant is ordered to pay to the plaintiff-appellee the following:

1. The sum of Four Hundred Thousand (P400,000.00) Pesos as/for moral damages;
2. The sum of Forty Thousand (P40,000.00) Pesos as exemplary damage to serve as an example for the public good;