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THIRD DIVISION

[G.R. No. 182307, June 06, 2018]

BELINA CANCIO AND JEREMY PAMPOLINA, PETITIONERS, VS. PERFORMANCE FOREIGN EXCHANGE CORPORATION, RESPONDENT.

DECISION

LEONEN, J.:

When a party assails a lower court's appreciation of the evidence, that party raises a question of fact that cannot be entertained in a petition for review filed under Rule 45 of the Rules of Court.

This is a Petition for Review on Certiorari[1] assailing January 31, 2008 Decision[2] and March 31, 2008 Resolution[3] of the Court of Appeals, which overturned the Regional Trial Court July 15, 2006 Decision. The Regional Trial Court found Performance Foreign Exchange Corporation (Performance Forex) solidarity liable with broker Rolando Hipol (Hipol) for unauthorized trade transactions he made on Belina Cancio (Cancio) and Jeremy Pampolina's (Pampolina) joint trading account. The Court of Appeals, however, absolved Performance Forex from any liability.

Performance Forex is a corporation operating as a financial broker/agent between market participants in foreign exchange transactions.[4]

Foreign currency exchange trading or forex trading is the speculative trade of foreign currency for the sole purpose of gaining profit from the change in prices.[5] The forex market is a "global, decentralized," and essentially "an over-the-counter (OTC) market where the different currency trading locations around the globe electronically form a unified, interconnected market entity."[6]

Unlike a stock exchange market where the opening and closing of trades rely on only one (1) or two (2) time zones, a forex market may have overlapping time zones. Foreign currency, due to its decentralized nature, may be traded in different financial markets.[7] For instance, trading currency using US dollars would not depend on the business or banking hours only of financial institutions in the United States.[8]

Traders are drawn to the forex market since the price of currency constantly fluctuates. The value of a foreign currency is determined by international capital flow or the "movement of money from one currency to another."[9] International capital flow is caused by a number of factors, among which are "a country's interest rates, inflation situation, [Gross Domestic Product] growth, employment, trade balance, and other barometers of economic health."[10]

Currencies are traded in pairs by speculating the value of one currency against another.[11] One currency, usually the US dollar,[12] is considered the "base currency" while the other currency is a "quote or counter currency."[13] If a trader speculates that the base currency will be stronger than the counter currency, the trader will sell the base currency to buy more counter currency. If the trader speculates that the base currency will be weaker than the counter currency, then the trader will sell the counter currency to buy more of the base currency.[14] For example, if a trader speculates that the US dollar will rise in value as against the Philippine peso, the trader will sell dollars to acquire more pesos. If the trader speculates that the dollar will weaken against the peso, the trader will sell pesos to acquire more dollars.

In a standard forex trade, a trader would "open a position" by buying or selling a certain amount of a particular currency based on its value against the US dollar. The trader would then hold on to this particular currency until its value appreciates or depreciates. Once the value changes, the trader then "closes position" by selling this currency at a higher price or buying it at a lower price; hence, earning a profit.[15] If the trader sells when the value depreciates or buys when the value appreciates, the trader suffers a loss. Losses, however, are only realized when the traders close their positions.[16]

The participants in a forex market are banks, hedge funds, investment firms, and individual retail traders.[17] Unlike banks, hedge funds, and investment firms that have significant amounts of capital to engage in trade, individual retail traders often make use of brokers, who "serve as an agent of the customer in the broader [foreign currency exchange] market, by seeking the best price in the market for a retail order and dealing on behalf of the retail customer."[18] Individual retail traders also rely on "leverage trading," where traders can open margin accounts with a financial broker or agent to make use of that broker or agent's credit line to engage in trade.[19]

A margin account is an account where the broker-dealer lends money to the trader to purchase currency, using the same purchased currency as collateral.[20] Returns will be proportional to the amount deposited.[21] Leverage is determined by the amount that the trader is required to deposit. If a trader has to deposit US$1,000.00 into a margin account to trade US$100,000.00 in currency, the margin account has a leverage of 100 to 1.[22] This system allows the trader to control more money in the market than what was originally deposited.[23]

Individual retail traders make use of leverage trading and margin accounts since price movements are usually miniscule. A "pip" is "the smallest unit of price movement in the exchange rate of a currency pair."[24] The goal of every trader in foreign currency exchange is to earn pips. To underscore how miniscule expected profits are, pips commonly refer to the price movement of the *fourth* decimal place of major currencies.[25] Miniscule price movements, thus, require large amounts of capital for them to have significant impact on the profits to be earned.

For example, the current Philippine peso equivalent of one (1) Japanese yen is P0.4830.[26] A pip would be a change from P0.4830 to 0.4831. A P0.0001 price movement in the purchase of one (1) Japanese yen may not exactly have a significant effect but when multiplied by a hundred, it will actually mean a P48.31 increase for every trader betting on the rise of the yen and a P48.31 decrease for those expecting a rise in peso prices. Leverage trading can substantially magnify profits. Considering, however, that leverage trading is essentially trade using borrowed money, leverage trading can magnify losses just as much. Forex trade is, thus, considered a lucrative but risky endeavor since every trade multiplies profit and loss by a much higher rate than what was originally invested.

Sometime in 2000, Cancio and Pampolina accepted Hipol's invitation to open a joint account with Performance Forex. Cancio and Pampolina deposited the required margin account deposit of US$10,000.00 for trading. The parties executed an application for the opening of a joint account,[27] with a trust/trading facilities agreement[28] between Performance Forex, and Cancio and Pampolina. They likewise entered into an agreement for appointment of an agent[29] between Hipol, and Cancio and Pampolina.[30] They agreed that Cancio and Pampolina would make use of Performance Forex's credit line to trade in the forex market while Hipol would act as their commission agent and would deal on their behalf in the forex market.

The trust/trading facilities agreement between Performance Forex, and Cancio and Pampolina provided:

> 6. Orders
>
> You hereby irrevocably authorize us to act upon any instructions, whether in writing, by cable, telex, facsimile or telephone given or purported to be given by you or your agent or representative which appear whether on their respective faces (in the case of writing, cable, telex or facsimile) or otherwise to be bonafide. We shall not be responsible and you shall indemnify us for any losses incurred as a result of acting upon such instructions should there in fact be any error commission ambiguities or other irregularities therein or

therewith.

....

Commission Agent

You acknowledge and agree that the commission agent (one Mr/Ms Ronald (sic) M. Hipol) who introduced you to us in connection with this Facility is your agent and we are in no way responsible for his actions or any warranties or representations he may have made (whether expressly on our behalf or not) and that pursuant to his having introduced you to us, we will (if you accept this Facility) pay him a commission based on your trading with us (details of which will be applied to you on request). Should you choose to also vest in him trading authority on your behalf please do so only after considering the matter carefully, for we shall not be responsible nor liable for any abuse of the authority you may confer on him. This will be regarded strictly as a private matter between you and him. You further acknowledge that for our own protection and commercial purpose you are aware of the terms of the trading agreement between the commission agent and ourselves where the commission agent is to trade for you.[31]

All parties agreed that the trading would only be executed by Cancio and Pampolina, or, upon instructions to their agent, Hipol. The trading orders to Hipol would be coursed through phone calls from Cancio and Pampolina.[32]

From March 9, 2000 to April 4, 2000, Cancio and Pampolina earned US$7,223.98. They stopped trading for more or less two (2) weeks, after which, however, Cancio again instructed Hipol to execute trading currency orders. When she called to close her position, Hipol told her that he would talk to her personally.[33]

Cancio later found out that Hipol never executed her orders. Hipol confessed to her that he made unauthorized transactions using their joint account from April 5, 2000 to April 12, 2000. The unauthorized transactions resulted in the loss of all their money, leaving a negative balance of US$35.72 in their Statement of Account. Cancio later informed Pampolina about the problem.[34]

Pampolina met with two (2) Performance Forex officers, Dave Almarinez and Al Reyes, to complain about Hipol's unauthorized trading on their account and to confront them about his past unauthorized trades with Performance Forex's other client,[35] Justine Dela Rosa.[36] The officers apologized for Hipol's actions and promised to settle their account. However, they stayed quiet about Hipol's past unauthorized trading.[37]

Performance Forex offered US$5,000.00 to settle the matter but Cancio and Pampolina rejected this offer. Their demand letters to Hipol were also unheeded.[38] Thus, they filed a Complaint[39] for damages against Performance Forex and Hipol before the Regional Trial Court of Mandaluyong City.

Hipol was declared in default. Since the parties were unable to come to a settlement, trial commenced.[40]

During trial, Performance Forex's General Manager for Sales and Marketing Jonathan Reyes Ocampo (Ocampo) testified that clients could trade through two (2) types of brokers. The first type is the independent broker, or one who is already experienced in trading and merely attends Performance Forex's orientation trainings to know its policies and regulations. The second type is an in-house broker or business relations officer, who is new to the business and has to be supervised by the sales and marketing managers. He stated that Hipol was an Investment Portfolio Manager, or an independent broker who not only provided information from financial experts but also executed orders on behalf of the clients.[41]

Performance Forex Senior Manager Gabriel Erazo (Erazo) added that in-house brokers usually cater to walk-in clients and are stationed in the company premises while independent brokers, like Hipol, seek clients and introduce them to the company.[42]

Ocampo likewise testified that clients must first sign a Purchase Order Form before Performance Forex could authorize an order transaction. Every transaction must have its own Purchase Order Form.[43] Erazo confirmed that dealings were still done manually at the time of the questioned transactions, and that clients or agents must submit an actual signed Purchase Order Form.[44]

Ocampo confirmed that they paid a "goodwill offer," i.e. the return of the broker's commission, to their client Justine Dela Rosa for Hipol's alleged unauthorized transactions. He also testified that Hipol's accreditation had to be cancelled after Pampolina complained against him to protect the reputation of the company.[45]

On July 15, 2006, the Regional Trial Court rendered its Decision[46] finding Performance Forex and Hipol solidarity liable to Cancio and Pampolina for damages.

According to the Regional Trial Court, Performance Forex should have disclosed to Cancio and Pampolina that Hipol made similar unauthorized trading activities in the past, which could have affected their consent to Hipol's appointment as their agent. It also noted that innocent third persons should not be prejudiced due to Performance Forex's failure to adopt the necessary measures to prevent unauthorized trading by its agents.[47] The dispositive portion of the Regional Trial Court July 15, 2006 Decision read:

> ACCORDINGLY, judgment is hereby rendered in favor of the plaintiffs and against the defendants PERFORMANCE FOREIGN EXCHANGE CORPORATION and ROLANDO HIPOL. Both defendants are jointly and severally liable to pay the plaintiffs the following:
>
> a. the amount of US$17,223.98 or its peso equivalent plus legal interest from the filing of the complaint until the whole obligation is fully paid.
>
> b. the amount of Php50,000.00 as attorney's fees; Php100,000.00 moral damages and Php100,000.00 exemplary damages.
>
> c. cost of suit
>
> SO ORDERED.[48]

Performance Forex appealed this Decision to the Court of Appeals, arguing that it had adequate safeguards concerning dealings with commission agents, and that it was Cancio and Pampolina who vested Hipol with "broad powers to conduct trading on their behalf."[49]

On January 31, 2008, the Court of Appeals rendered its Decision[50] granting the appeal.

According to the Court of Appeals, Performance Forex was a trading facility that acted only on whatever their clients or their representatives would order. It was not privy to anything that happened between its clients and their representatives.[51] It found that Cancio admitted to giving Hipol pre-signed authorizations to trade; hence, Performance Forex relied on these orders and on Hipol's designation as their agent to facilitate the trades from April 5, 2000 to April 9, 2000.[52]

The Court of Appeals likewise found that Performance Forex's non disclosure of Hi pol's prior unauthorized transactions with another client was irrelevant since he was an independent broker who was not employed with Performance Forex. Thus, Performance Forex had no legal duty to disclose any prior misconduct to its clients. It also noted that the trust/trading facilities agreement between Cancio and Pampolina, and Performance Forex contained a provision freeing itself from any liability from losses incurred by acting on the instructions of its clients or their authorized representatives. Thus, the Court of Appeals concluded that Cancio and Pampolina's action should only be against Hipol.[53] The dispositive portion of the Court of Appeals January 31, 2008 Decision read:

> WHEREFORE, the appeal is hereby GRANTED. Appellant Performance Foreign Exchange Corporation is hereby released from liability.

> SO ORDERED.[54]

Cancio and Pampolina moved for reconsideration but were denied by the Court of Appeals in its March 31, 2008 Resolution.[55] Hence, this Petition[56] was filed before this Court.

Petitioners Cancio and Pampolina argue that bonafide transactions in respondent Performance Forex's facility depends on signed purchase order forms from clients. They allege that there were only 10 purchase order forms signed by petitioner Cancio and yet respondent executed 29 transactions on their account, in clear breach of its assurance that only bonafide transactions would be honored.[57] They likewise point out that respondent was aware of similar unauthorized transactions by Hipol in the past and even settled the complaint against him, but respondent neglected to inform petitioners about them, thus, failing to observe the degree of care, precaution, and vigilance for the protection of petitioners' interests.[58] They claim that in view of respondent's bad faith and breach of its contractual obligations, it is liable for actual damages, exemplary damages, and moral damages with attorney's fees.[59]

Respondent counters that it was unnecessary to examine other purchase order forms since "petitioners' cause of action against respondent is grounded on defendant Hipol's purported unauthorized trading transactions which occurred during the period 4 to 12 April 2000 **and no other**."[60] It likewise insists that it cannot be held liable for damages caused by Hipol considering that it is not Hipol's employer and that any losses suffered were due to "the very broad and vast powers"[61] that petitioners gave him to transact on their behalf. It also points out that according to the trust/trading facilities agreement, petitioners agreed that respondent would not be responsible for any act, warranty, or representation made by their agent on their behalf; thus, it cannot be held liable for any damages claimed.[62]

Respondent asserts that the Petition should be dismissed outright since petitioners failed to attach the necessary documents to support their Petition. It also submits that the Petition raises questions of fact by asking this Court to examine the probative value of the evidence introduced before the Regional Trial Court and the Court of Appeals.[63]

Petitioners, on the other hand, counter that there was substantial compliance by their subsequent submission of the required documents.[64] They claim that they only raise questions of law since the facts have been settled. What they argue is merely the Court of Appeals' application of the law given the facts of the case.[65]

From the arguments of the parties, this Court is asked to resolve the issue of whether or not respondent Performance Forex Exchange Corporation should be held solidarity liable with petitioners Belina Cancio and Jeremy Pampolina's broker, Hipol, for damages due to the latter's unauthorized transactions in the foreign currency exchange trading market. Before this issue can be resolved, this Court must first pass upon the procedural issues of whether or not the Petition should be dismissed for petitioners' failure to attach necessary pleadings, and whether or not the Petition raises questions of fact.

I

The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition. While Rule 45, Section 4 of the Rules of Court requires that the petition "be accompanied by ... such material portions of the record as would support the petition,"[66] this Court may still give due course if there is substantial compliance with the Rules.[67] Rule 45, Section 7 states:

> Section 7. Pleadings and documents that may be required; sanctions. - For purposes of determining whether the petition should be dismissed or denied pursuant to section 5 of this Rule, or where the petition is given due course under section 8 hereof, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may