

## SECOND DIVISION

[ G.R. No. 212362, March 14, 2018 ]

**JOSE T. ONG BUN, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.**

### DECISION

**PERALTA, J.:**

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated May 22, 2014, of petitioner Jose T. Ong Bun, that seeks to reverse and set aside the Decision<sup>[1]</sup> dated September 25, 2012 and Resolution<sup>[2]</sup> dated March 19, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 02715 dismissing petitioner's complaint for collection of sum of money and damages against respondent Bank of the Philippine Islands (BPI).

The facts follow:

In 1989, Ma. Lourdes Ong, the wife of petitioner, purchased the following three (3) silver custodian certificates (CC) in the Spouses' name from the Far East Bank & Trust Company (FEBTC):

- a) CC No. 131157 dated June 9, 1989 in the name of Jose Ong Bun or Ma. Lourdes Ong for One Hundred Thousand Pesos;
- b) CC No. 131200 dated July 25, 1989 in the name of Jose Ong Bun or Ma. Lourdes Ong for Five Hundred Thousand Pesos; and
- c) CC No. 224826 dated November 8, 1989 in the name of Jose or Ma. Lourdes Ong Bun for One Hundred Fifty Thousand Pesos.

The three CCs have the following common provisions:

This instrument is transferable only in the books of the Custodian by the holder, or in the event of transfer, by the transferee or buyer thereof in person or by a duly authorized attorney-in-fact upon surrender of this instrument together with an acceptable deed of assignment.

The Holder hereof or transferee can withdraw at anytime during office hours his/her Silver Certificate of Deposit herein held in custody.

This instrument shall not be valid unless duly signed by the authorized signatories of the Bank, and shall cease to have force and effect upon payment under the terms hereof.

Thereafter, FEBTC merged with BPI after about eleven years since the said CCs were purchased. After the death of Ma. Lourdes Ong in December 2002, petitioner

discovered that the three CCs bought from FEBTC were still in the safety vault of his deceased wife and were not surrendered to FEBTC. As such, petitioner sent a letter dated August 12, 2003 to BPI, through the manager of its Trust Department Asset Management, to advise him on the procedure for the claim of the said certificates. BPI replied to petitioner and informed the latter that upon its merger with FEBTC in 2000, there were no Silver Certificates of Deposit outstanding, which meant that the certificates were fully paid on their respective participation's maturity dates which did not go beyond 1991. There were further exchanges of written communications between petitioner and BPI, but the latter still refused to pay petitioner's claim because his certificates were no longer outstanding in its records. Thus, petitioner, with the assistance of counsel, made a final demand in writing for the payment of the certificates, to no avail.

After about three years from his discovery of the certificates, petitioner filed a complaint for collection of sum of money and damages against BPI on March 7, 2006 with the Regional Trial Court (RTC), Branch 33, Iloilo City (Civil Case No. 06-28822) praying that BPI be ordered to pay him P750,000.00 for the three CCs, legal interest, P175,000.00 for attorney's fees, P100,000.00 for moral damages, and an unspecified amount for exemplary damages as well as cost of suit.

BPI, in its Answer, insists that as early as 1991, all the Silver Certificates of Deposits, including those issued to petitioner and his wife, were already paid. It claimed that the CCs had terms of only 25 months and that by the year 2000, when it merged with FEBTC and when the Trust and Investments Group of FEBTC was no longer in existence, there were no longer any outstanding CCs in its books. It had checked and double-checked its records as well as those of FEBTC. It also claimed that FEBTC had fully paid all of its silver certificates of time deposit on their maturity dates. According to BPI, contrary to petitioner's assertion, the presentation or surrender of the certificates is not a condition precedent for its payment by FEBTC. It also argued that petitioner filed his claim for the first time only on August 12, 2003, or 12 years after the maturity of the CCs and under Article 1144 of the Civil Code, actions based on a written contract must be brought within 10 years from the time the right accrues. In this case, according to BPI, petitioner's right accrued upon the maturity of the CCs in 1991, and the same has prescribed by the time he filed his claim. As a counterclaim, BPI prayed that petitioner be ordered to pay it P75,000.00 as attorney's fees, P2,000.00 per court appearance, at least P20,000.00 for litigation expenses, and P1,000,000.00 for exemplary damages. It further prayed that the complaint be dismissed and that petitioner be ordered to pay for the cost of the suit.

After trial on the merits, the RTC found in favor of petitioner and disposed of the case as follows:

WHEREFORE, judgment is hereby rendered:

(a) Ordering defendant to pay plaintiff the sum of One Hundred Thousand Pesos (P100,000.00) for the Custodian Certificate dated June 9, 1989 bearing Serial CC No. 13115; the sum of Five Hundred Thousand Pesos (P500,000.00) for the Custodian Certificate dated July 25, 1989 bearing Serial CC No. 131200; and the sum of One Hundred Fifty Thousand Pesos (P150,000.00) for the Custodian Certificate dated November 8, 1989 bearing Serial CC No. 224826, including their respective interests for

twenty-five (25) months under the terms and conditions of the Silver Certificate of Deposit - entrusted for custody to defendant by plaintiff - that the said Custodian Certificates represent; plus legal interest thereon as regular savings deposit of the investments and their accrued interests from the time of their respective maturity up to the time of payment.

(b) Ordering defendant to pay the plaintiff P100,000.00 for moral damages and another P100,000.00 as exemplary damages; and

(c) Ordering the defendant to pay P75,000.00 as attorney's fees, plus costs of the suit.

SO ORDERED.<sup>[3]</sup>

As a consequence, BPI elevated the case to the CA wherein the latter granted the appeal of the former. The dispositive portion of the CA's decision reads as follows:

WHEREFORE, the appeal is hereby GRANTED. The 5 JUNE 2008 Decision rendered in Civil Case No. 06-28822 by Branch 33 of the Regional Trial Court in Iloilo City is hereby REVERSED and SET ASIDE and the complaint filed in the said case is hereby DISMISSED.

SO ORDERED.<sup>[4]</sup>

The CA ruled that petitioner failed to prove that the deposits, which he claims to be unpaid, are still outstanding. According to the appellate court, the custodian certificates, standing alone, do not prove an outstanding deposit with the bank, but merely certify that FEBTC had in its custody for and in behalf of either petitioner or his late wife the corresponding Silver Certificates of Deposit and nothing more. The CA further ruled that the surrender of the custodian certificates is not required for the withdrawal of the certificates of deposits themselves or for the payment of the Silver Certificates of Deposit, hence, even if the holder has in his possession the said custodian certificates, this does not ipso facto mean that he is an unpaid depositor of the bank.

Hence, the present petition.

Petitioner insists that the CCs are evidence that the Silver Certificates of Deposit in his name in varying amounts are in the possession of the Trust Investments Group of FEBTC and constitute an outstanding obligation of respondent with whom FEBTC merged. He adds that since it has been proved that the CCs remained in the possession of the petitioner and has not been controverted or shown to be non-existing, the said CCs remain incontrovertible and un rebutted evidence of indebtedness of the respondent because said CCs all openly admit that the Silver Certificates of Deposit in varying amounts owned by the petitioner are in its possession and has not been discharged by payment. Hence, according to petitioner, the CA erred in its conclusion that the CCs in his possession do not prove an outstanding deposit with the respondent simply because the CCs are not the Certificates of Deposit themselves.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.<sup>[5]</sup> This court is not a trier of facts. It will not entertain questions

of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"<sup>[6]</sup> when supported by substantial evidence.<sup>[7]</sup> Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.<sup>[8]</sup>

In *Chessman v. Intermediate Appellate Court*,<sup>[9]</sup> this Court distinguished questions of law from questions of fact, thus:

As distinguished from a question of law which exists "when the doubt or difference arises as to what the law is on a certain state of facts" - "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."<sup>[10]</sup>

However, these rules do admit of exceptions.<sup>[11]</sup> Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Assistor, Jr.*:<sup>[12]</sup>

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.<sup>[13]</sup>

In the present case, the findings of facts of the RTC and the CA are apparently in contrast, hence, this Court deems it proper to rule on the issues raised in the petition.

After careful consideration, this Court finds the petition to be meritorious.

It is undisputed that petitioner is in possession of three (3) CCs from FEBTC in the following amounts: (a) Custodian Certificate of Silver Certificate of Deposit No. 131157 issued on June 9, 1989 in the amount of One Hundred Thousand Pesos (P100,000.00); (b) Custodian Certificate of Silver Certificate of Deposit No. 131200 issued on July 25, 1989, in the amount of Five Hundred Thousand Pesos (P500,000.00); (c) Custodian Certificate of Silver Certificate of Deposit No. 224826 issued on November 8, 1989 in the amount of One Hundred Fifty Thousand Pesos (P150,000.00).

Simply put, the said CCs are proof that Silver Certificates of Deposits are in the custody of a custodian, which is, in this case, FEBTC. The CA therefore, erred in suggesting that the possession of petitioner of the same CCs does not prove an outstanding deposit because the latter are not the certificates of deposit themselves. What proves the deposits of the petitioner are the Silver Certificates of Deposits that have been admitted by the Trust Investments Group of the FEBTC to be in its custody as clearly shown by the wordings used in the subject CCs. Custodian Certificate of Silver Certificate of Deposit No. 131200 reads, in part:

This is to certify that the TRUSTS INVESTMENTS GROUP of FAR EAST BANK AND TRUST COMPANY (Custodian) has in its custody for and in behalf of \*\*\*\*\* JOSE ONG BUN OR MA. LOURDES ONG \*\*\*\*\* (Holder) the Silver Certificate of Deposit in the amount of PESOS: Php500,000.00.

This instrument is transferable only in the books of the Custodian by the holder, or in the event of transfer, by the transferee or buyer thereof in person or by a duly authorized attorney-in-fact upon surrender of this instrument together with an acceptable deed of assignment.

The Holder hereof or transferee can withdraw at anytime during office hours his/her Silver Certificate of Deposit herein held in custody.

This instrument shall not be valid unless duly signed by the authorized signatories of the Bank, and shall cease to have force and effect upon payment under the terms hereof.<sup>[14]</sup>

The other two custodian certificates are of the same tenor.

In its Comment, respondent argued that upon its merger with FEBTC, there were no longer any outstanding Silver Certificates of Deposits, thus:

As previously discussed, the nature of the Silver Custodian Certificates of Time Deposit was issued by then FEBTC on the occasion of its 25<sup>th</sup> year anniversary in the year 1989. Consequently, these certificates had a term/maturity of twenty-five (25) months from its issuance or in the year 1991. Further, these certificates should be accompanied by a Confirmation of Participation which provides for the details of each participant would have. Upon the merger of FEBTC and BPI sometime in the year 2000, there were no outstanding Silver Certificates of Deposit in its books of accounts; neither did the petitioner present the Confirmation of Participation which should have been attached to his Custodian Certificates.<sup>[15]</sup>

Such an argument does not prove that petitioner has already been paid or that his deposits have already been returned. Likewise, there was no proof or evidence that petitioner or his late wife withdrew the said Silver Certificates of Deposit. When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor.<sup>[16]</sup> Even where it is the plaintiff ([petitioner] herein) who alleges nonpayment, the general rule is that the burden rests on the defendant ([respondent] herein) to prove payment, rather than on the plaintiff to prove non-payment.<sup>[17]</sup> Verily, an obligation may be extinguished