

FIRST DIVISION

[G.R. No. 198237, October 08, 2018]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. LAND INVESTORS AND DEVELOPERS CORPORATION, RESPONDENT.

DECISION

TIJAM, J.:

Through this petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court, petitioner Bank of the Philippine Islands (BPI) seeks to annul the Decision^[2] dated February 28, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 93752 which reversed and set aside the Resolutions dated April 14, 2009 and June 26, 2009 of the Regional Trial Court (RTC) of Makati City, Branch 61.

In its assailed Decision, the CA found BPI liable to its depositor, respondent Land Investors and Development Corporation for breach of fiduciary duty.

Antecedent Facts

Between the years 1995 and 1999, respondent maintained savings and current accounts with the Pamplona, Las Piñas Branch of Far East Bank & Trust Company (FEBTC). FEBTC later on merged with BPI.^[3] In its transactions with the bank, respondent authorized any two of its Ruth Fariñas (Fariñas), Orlando Dela Peña (Dela Peña) and Juanito Collas (Collas) as bank signatories. Dela Peña was respondent's President.^[4]

Sometime in 2001, Dela Peña was convicted for *estafa* and was consequently dismissed from employment. It was also around this time that respondent discovered that Dela Peña, acting in alleged conspiracy or taking advantage of the gross negligence of BPI, succeeded in unlawfully withdrawing various amounts from respondent's deposit accounts. Respondent alleged that BPI was negligent and violated its fiduciary duties when it allowed the withdrawals in the total amount of P3,652,095.01 on the basis of Dela Peña's lone signature or thru the forged signatures of his cosignatories.^[5] Despite demand, BPI failed to heed respondent's claims which prompted the latter to file the complaint *a quo* for sum of money and damages against BPI and Dela Peña.^[6]

BPI initially moved to dismiss the complaint on the ground that respondent's claims covering the withdrawals prior to September 30, 1998 have already prescribed. The RTC denied the motion to dismiss and reasoned that the period of prescription is reckoned from the discovery of the fraud, or from 2001.^[7] This led BPI to file its answer, raising the defenses of lack of cause of action, prescription, and laches.^[8] On the other hand, Dela Peña failed to file his answer and was consequently declared in default.^[9]

During the preliminary conference, respondent moved for the production of documents to compel BPI to produce the originals of the signature cards and withdrawal slips marked as Exhibits "A", "A-1", "B", "B-1", "G", "G-1" and "H" to "H-28." Instead of producing the originals, BPI admitted said exhibits, except for Exhibits "A" and "B-1", and stipulated that Exhibits "G" to "H-28" were obtained by respondent from the microfilm copies of BPI.^[10]

Trial on the merits ensued until respondent filed its formal offer of exhibits, which included the following:

1. Signature cards (Exhibits "A", "A-1", "B" and "B-1") with petitioner that show the names and specimen signatures of the authorized signatories of respondent;
2. Respondent's Board Resolution (Exhibit "C") showing the authority of the signatories in "any two" capacity;
3. Counterchecks taken from the bank's checkbook which allowed Dela Peña to make encashments on the basis of Dela Peña's lone signature (Exhibits "D" to "D-2" and "E") and checks that bear the lone signature of Dela Peña (Exhibit "F" to "F-6");
4. Withdrawal slips bearing Dela Peña's lone signature (Exhibits "G" to "G-1"); withdrawal slips bearing Dela Peña's lone signature and in some cases, together with the forged signature of Fariñas (Exhibits "H" to "H-28"); checks bearing the signatures of Dela Peña with the forged signatures of Fariñas (Exhibits "I" to "I-80"); and
5. Sample signatures of Fariñas (Exhibits "Q" to "Q-17"); NBI Comparison Charts showing the sample and questioned signatures of Fariñas (Exhibits "S" to "S-12" and "T" to "T-17"); and the NBI Report with the conclusion that the questioned and standard/sample signatures of Fariñas were not written by one and the same person (Exhibit "R").^[11]

Respondent's exhibits were all admitted by the court *a quo*.^[12]

For its part, BPI filed a demurrer to evidence on the ground that respondent has shown no right to relief with respect to: (a) Exhibits H, H-1 up to H-28 representing various withdrawal slips bearing the allegedly forged signature of Fariñas because no evidence whatsoever was adduced to prove the alleged forgery of Fariñas' signatures in these exhibits; (b) Exhibits D, D-1, D-2, F, F-1, F-2, F-3, F-4, F-5, F-6, G and G-1 representing counterchecks, checks, withdrawal slips because these exhibits were not identified by any of respondent's witnesses as required by Section 20, Rule 132 of the Rules of Court; (c) Exhibits I-1 to Exhibits I-12 representing various checks with the alleged forged signature of Fariñas which were examined by NBI Document Examiner because it was not proved that the alleged sample or specimen signatures used for comparison were indeed genuine signatures of Fariñas; (d) Exhibits I to I-80 representing various checks with the allegedly forged signature of Fariñas because no corroborative evidence was adduced to prove the alleged forgeries; (e) claims covering allegedly unauthorized withdrawals prior to September 30, 1998 because these claims are barred by prescription; (f) the

entirety of its claims because its loss or damage is attributable to its own fault or negligence.^[13]

The RTC granted BPI's demurrer to evidence, reasoning thus:

"In a nutshell, the grievance of [respondent] against BPI is that the latter, through the 'deliberate malfeasance' or 'gross negligence' of its 'Pamplona Branch personnel,' conspired with the herein defendant [Dela Peña] in defrauding the former the total sum of Three Million Six Hundred Fifty-Two Thousand Ninety[-]Five Pesos and One Centavo (P3,652,095.01).

Necessarily, the herein [respondent] should prove by strong and convincing evidence that the defendant [BPI] colluded with Mr. Dela Peña and that BPI failed to exercise the diligence higher than that of a good father of a family in dealing with [respondent's] account with it.

The testimonial and documentary pieces of evidence of the herein [respondent] are so barren when it comes to its allegation of connivance between BPI and Mr. Dela Peña. This Court has perused the record apropos over and over again but it could not find any proof of conspiracy between Mr. Dela Peña and BPI adduced by [respondent]. It would seem that [respondent] may have forgotten about this particular allegation of it against BPI. Hence, on this score alone, the demurrer to evidence extant of BPI has no merit.

Withal, the evidence presented by the [respondent] herein is also very inadequate to establish gross negligence on the part of defendant [BPI].^[14]

Resultantly, the RTC disposed:

WHEREFORE, premises duly considered, the instant "Demurrer to Evidence" of the herein defendant [BPI] is hereby **GRANTED**.

Congruently with Section 1, Rule 33 of the Revised Rules of Court, the case extant is hereby **DISMISSED** apropos herein defendant [BPI] on the ground that upon the facts and the law the. [respondent] herein has shown no right to relief.

Vis-a-vis herein defendant [Dela Peña], who was declared in default by the Court via its fiat on 30 November 2004, in accordance with Section 3, Rule 10 of the Revised Rules of Court, he is hereby **ORDERED** to pay the herein [respondent] the following sums, to wit:

1. Three Million Six Hundred Fifty-Two Thousand Ninety[-]Five Pesos and One Centavo (P3,652,095.01), plus legal interest counted from the date of each unauthorized withdrawal until the entire amount is fully paid as and for actual damages;
2. Five Hundred Thousand Pesos (P500,000.00) as and by way of moral damages;

3. Two Hundred Thousand Pesos ([P]200,000.00) as and by way of exemplary damages;
4. One Hundred Thousand Pesos (P100,000.00) as and for attorney's fees; and
5. The costs of suit.

Serve copies of this Resolution to the plaintiff herein and herein defendant bank and to their respective counsel of record, including the defaulted defendant at his given address on record.

SO ORDERED.^[15]

Respondent's motion for reconsideration having been denied, it appealed to the CA.

Ruling of the CA

While agreeing with the RTC that respondent failed to demonstrate that indeed Dela Peña conspired with BPI, the CA nevertheless held that the non-existence of conspiracy would not necessarily exculpate BPI from liability if there is evidence to show that the latter violated its fiduciary duty to respondent. In other words, the CA ruled that a negligent bank is liable regardless of any allegation of conspiracy.^[16]

In finding BPI to be negligent, the CA factually found that it allowed withdrawals from respondent's accounts with just the signature of Dela Peña, despite respondent's instruction that the signatures of "any two" of its authorized signatories are required to effect payment of funds. The lone signature of Dela Peña for which BPI allowed withdrawals are to be found on three counterchecks (Exhibits "D" to "D-2"), seven checks (Exhibits "F" to "F-6") and two withdrawal slips (Exhibits "G" and "G-1"). Disregarding BPI's defense that these exhibits were not properly identified or authenticated as required by Section 20, Rule 132 of the Rules of Court, the CA ruled that BPI's failure to specifically deny under oath said exhibits resulted to an implied admission of their genuineness and due execution pursuant to Section 8, Rule 8 of the Rules of Court.^[17]

As regards the other withdrawal slips (Exhibits "H" to "H-28") and checks (Exhibits "I" to "I-80"), the CA found that these carried forged signatures of Fariñas. According to the CA, the fact of forgery was proven not only by Fariñas' testimony but also by the presentation of her standard signatures and by the testimony of a handwriting expert.^[18] The CA held that the differences between the questioned signatures appearing on the withdrawal slips and checks and Fariñas' standard signatures are readily apparent. Moreover, the CA found that these exhibits were in fact properly identified by Fariñas and admitted by BPI to have been sourced from its own microfilm copies.^[19]

The CA, thus, held that the evidence sufficiency established that BPI breached its fiduciary duty when it honored the subject withdrawals with only Dela Peña's signature in violation of the "any two" authorized signatories requirement. The CA also found that BPI failed to exercise extraordinary diligence in scrutinizing the

checks.

These findings led the CA to conclude that the RTC committed reversible error in granting BPI's demurrer to evidence. Instead, the CA ruled that BPI should be held solidarily liable with Dela Peña for actual losses plus 12% legal interest from the date of each unauthorized withdrawal.

In disposal, the CA held:

WHEREFORE, above premises considered, the instant appeal is **GRANTED**. The Resolutions of the RTC of Makati City, Branch 61 dated 14 April 2009 and 26 June 2009, respectively, are **REVERSED** and **SET ASIDE**.

Defendant-appellee BPI and defendant [Dela Peña], who was declared in default, are solidarily liable to [respondent]. Defendant appellee and defendant [Dela Peña] are ORDERED to pay (1) actual damages in the amount of P3,652,095.01 plus 12% legal interest from the date of each unauthorized withdrawal until the entire amount is fully paid and (2) P100,000.00 as attorney's fees in favor of [respondent].

SO ORDERED.^[20]

BPI's motion for reconsideration was similarly denied by the CA in its Resolution^[21] dated August 12, 2011.

Hence, this petition.

Issues

BPI argues that the CA erred in applying the rule on actionable documents to extend probative value to respondents' Exhibits D, F, and G and its sub-markings considering that BPI was not a party nor a signatory to said counterchecks, checks and withdrawal slips.

Also, BPI questions the CA's finding that Fariñas' signatures as appearing on the Exhibits "H" to "H-28" and Exhibits "I" to "I-80" were forged. According to BPI, the bare claim that Fariñas' signatures were forged is not sufficient pursuant to the Court's ruling in *Sps. Salonga v. Sps. Concepcion*.^[22] Admitting for the sake of argument that the signatures were forged, BPI claims that respondent is guilty of negligence which precludes it from setting up forgery or want of authority.

BPI also disputes the imposition of interest and the award of attorney's fees in the absence of evident bad faith.

Ruling of the Court

The assailed CA decision is affirmed but with the modification that: (1) Dela Peña should not be held solidarily liable with BPI considering that their specific liabilities are anchored on two separate sources of obligations; and (2) the rate and reckoning period of the interest imposed.