

## THIRD DIVISION

[ G.R. No. 173780, March 21, 2011 ]

### **METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS. MARINA B. CUSTODIO, RESPONDENT.**

#### **D E C I S I O N**

##### **SERENO, J.:**

This civil case is essentially a demand by a bank for the recovery of a sum of money from one of its tellers who allegedly failed to account for funds entrusted to her, amounting to six hundred thousand pesos (PhP600,000).

Petitioner Metropolitan Bank and Trust Company (Metrobank) is a banking corporation. On the other hand, respondent Marina Custodio is a bank teller employed at the Laoag City branch of petitioner Metrobank.<sup>[1]</sup>

On 13 June 1995 at 8:18 a.m.,<sup>[2]</sup> respondent Custodio reported for work in petitioner bank's branch in Laoag City.<sup>[3]</sup> At the start of the banking day, respondent Custodio received loose money (picos)<sup>[4]</sup> for the day's business and was assigned as Teller No. 3.<sup>[5]</sup> In the course of performing her duties, respondent Custodio handled several cash transactions with the customers on behalf of petitioner bank.<sup>[6]</sup>

At 12:10 p.m., a cash transfer of two hundred thousand pesos (PhP200,000) was made from Teller No. 1 to respondent Custodio.<sup>[7]</sup> Petitioner Metrobank explained that, usually, a transfer of money from one teller to another occurs if the latter "needs money, maybe to pay for the withdrawal."<sup>[8]</sup> However, petitioner bank pointed out that it was unnecessary for respondent Custodio to borrow from another teller at that time, since respondent had sufficient cash on hand to cover a withdrawal in the same amount as the cash transfer.<sup>[9]</sup>

At 12:25 p.m., respondent Custodio was reported to have taken her lunch break alone and returned to work thereafter at 1:12 p.m.<sup>[10]</sup>

The security guard for the Laoag City branch of petitioner Metrobank, Mr. Hannibal Jara, testified that respondent Custodio would ordinarily go out for lunch at noon with another teller, Ms. Mary Paula Castro.<sup>[11]</sup> However, he explained that the two employees did not go out for lunch together that day, since another teller was on leave.<sup>[12]</sup> Mr. Jara also noticed that when respondent Custodio went out for lunch, she was carrying a shoulder bag and a paper bag. <sup>[13]</sup> He, however, did not check the contents of the bags carried by respondent.<sup>[14]</sup>

At the close of banking hours, respondent Custodio balanced her transactions for the day and turned over the funds to the bank's cash custodian, Ms. Marinel Castro, in

the amount of two million one hundred thirteen thousand five hundred pesos (PhP2,113,500).<sup>[15]</sup> Ms. Marinel Castro acknowledged receipt of the bundled cash turned over and signed a Cash Transfer Slip.<sup>[16]</sup>

At around 5:05 p.m., after all tellers had turned over their cash on hand,<sup>[17]</sup> Ms. Castro discovered that there was a shortage amounting to PhP600,000.<sup>[18]</sup> She notified Mr. Adriano Lucas, the branch manager, of the missing money.<sup>[19]</sup> The latter then instructed the cashier and the accountant to review all cash transactions to find out the reason for the cash shortage.<sup>[20]</sup> However, no errors were found in the records of the transactions, and the shortage was confirmed.<sup>[21]</sup>

Thereafter, Mr. Lucas instructed all bank employees to check all desks, drawers and even personal bags.<sup>[22]</sup> The guards were likewise instructed to search anybody going out of the office from that time on.<sup>[23]</sup> However, the missing money was not found.<sup>[24]</sup> Thus, the amount "CASH IN VAULT" was reported to be short of PhP600,000.<sup>[25]</sup>

Respondent Custodio left work that day, together with some of the employees, at 8:30 p.m.<sup>[26]</sup>

Later on, petitioner Metrobank alleged that it was able to recover eight bill wrappers only for bundles of five-hundred-peso bills (without the bills thereunder) that purportedly corresponded to the missing four hundred thousand pesos (PhP400,000).<sup>[27]</sup> These bill wrappers bore a rubber stamp "PEPT-3" for Teller No. 3.<sup>[28]</sup> Respondent Custodio countered that the discovery of the bill wrappers being attributed to her care was never mentioned at the time the cash shortage occurred, and that these wrappers could have been obtained subsequently by stamping unmarked ones.<sup>[29]</sup>

Respondent Custodio was allowed to continue to render services as a teller in petitioner bank's Laoag City branch from 14 June 1995 to 23 June 1995<sup>[30]</sup> She argued that had she been found responsible for the cash shortage, then she would not have been allowed to continue working as a teller on subsequent days.<sup>[31]</sup>

On 15 June 1995, investigators from the regional office of petitioner Metrobank as well as from its Department of Internal Affairs, Head Office, arrived at the Laoag City branch to investigate the cash shortage.<sup>[32]</sup> On a one-on-one basis, the investigators confronted the employees, including respondent Custodio.<sup>[33]</sup> After these meetings, Ms. Castro, the cash custodian, allegedly admitted that she received and acknowledged the cash bundles and signed the Cash Transfer Slip for the funds turned over by respondent Custodio.<sup>[34]</sup>

On 16 June 1995, employees of the Laoag City branch of petitioner Metrobank - including the new accounts clerk, the remittance clerk and all the other tellers - were made to take polygraph tests at the National Bureau of Investigation, except for respondent Custodio.<sup>[35]</sup> Respondent was eight months pregnant at that time and, thus, was not required to take the lie detector test.<sup>[36]</sup>

On 22 June 1995, petitioner Metrobank filed a Complaint for a sum of money with ex-parte application for a writ of preliminary attachment, praying that respondent Custodio pay the amount of Php600,000, including attorney's fees and costs of suit.<sup>[37]</sup> The trial court subsequently granted the application for a writ of preliminary attachment against the properties of respondent Custodio.<sup>[38]</sup>

On 23 June 1995 at around 1:30 p.m., while respondent Custodio was performing her duties as a teller, she was served the trial court's summons<sup>[39]</sup> and a copy of petitioner Metrobank's Complaint, including the attachment writ.<sup>[40]</sup>

After she was served the summons, respondent Custodio was supposedly caught bringing out a teller's copy of the journal print transactions with the related cash transfer slips for that particular banking day (23 June 1995).<sup>[41]</sup> These bank records were confiscated from respondent Custodio, when they were discovered in her dress pocket during a body search done on all employees leaving the office.<sup>[42]</sup>

Respondent teller later explained that she had mistakenly brought out these records because she was no longer allowed to go inside the teller's cage to file the transaction journal, after she was served the summons and Complaint.<sup>[43]</sup> She claimed that, at that time, she was confused by the bank's Complaint filed against her, so she placed the transaction journal in her right pocket.<sup>[44]</sup> It was admitted by the bank manager, however, that no cash shortage occurred on that day.<sup>[45]</sup>

Thereafter, respondent Custodio was relegated to a non-accountable position.<sup>[46]</sup>

Because of her alleged attempt to take the journal print transactions, Mr. Lucas, the branch manager, recommended that respondent Custodio be preventively suspended.<sup>[47]</sup> Thereafter, respondent received an Inter-Office Letter<sup>[48]</sup> requiring her to explain why no disciplinary action should be meted out to her for her attempt to "surreptitiously bring out bank records."<sup>[49]</sup> After respondent teller filed her explanation, petitioner Metrobank found it unacceptable and suspended her from work for seven days without pay.<sup>[50]</sup>

On 27 June 1995, respondent Custodio requested from petitioner Metrobank a copy of the Cash Transfer Slip that was signed by the cash custodian, Ms. Castro.<sup>[51]</sup> In reply, Mr. Lucas notified respondent that her request would be sent to the Head Office of petitioner Metrobank for approval.<sup>[52]</sup> This request was, however, not acted upon by petitioner.<sup>[53]</sup> Despite respondent's motion to have the Cash Transfer Slip produced in the trial proceedings<sup>[54]</sup> and the manifestation of petitioner Metrobank's counsel that it would present the slip,<sup>[55]</sup> the document was not entered into the records.

On 06 July 1995, respondent Custodio filed an Answer with Compulsory Counterclaim, denying the allegations of petitioner Metrobank that she was responsible for the cash shortage.<sup>[56]</sup> Respondent argued that Ms. Castro, not she, was the one who incurred the cash shortage, since the loss was discovered only after the cash and other accountabilities were turned over to her, as cash custodian.

[57]

After the case was submitted for decision,<sup>[58]</sup> the trial court rendered its Decision granting petitioner Metrobank's Complaint and ordering respondent Custodio to pay the amount of six hundred thousand pesos (PhP600,000) plus interest.<sup>[59]</sup>

On 06 August 2003, respondent teller subsequently filed a Notice of Appeal.<sup>[60]</sup>

On 29 July 2004, respondent Custodio, thru her counsel Atty. Oliver Cachapero, filed a Brief for the Appellant.<sup>[61]</sup> Meanwhile, petitioner Metrobank submitted a Brief for the Appellee on 15 September 2004.<sup>[62]</sup>

On 16 July 2006, the Court of Appeals (10<sup>th</sup> Division)<sup>[63]</sup> found respondent Custodio's appeal meritorious and reversed the trial court's Decision:

WHEREFORE, the appeal being meritorious, the assailed decision dated July 25, 2003 of the RTC, Branch 11, Laoag City, in Civil Case No. 10814 is REVERSED and SET ASIDE. Consequently, the plaintiff-appellee's complaint against defendant-appellant is **DISMISSED**.<sup>[64]</sup>

On 10 August 2006, petitioner Metrobank, through the Sediego Sc Associates Law Office, in collaboration with Atty. Cachapero, filed in this Court a Motion for Extension of Time to File Petition for Review on Certiorari.<sup>[65]</sup> On 28 August 2006, Atty. Cachapero informed the Court that he had withdrawn as counsel for petitioner Metrobank.<sup>[66]</sup>

Respondent Custodio averred, however, that she received, through counsel, a separate Petition for Review on Certiorari filed by petitioner Metrobank's counsel, Atty. Cachapero, on 07 August 2006.<sup>[67]</sup>

Within the thirty-day extension period granted by the Court,<sup>[68]</sup> petitioner Metrobank filed the Petition for Review under Rule 45, through its new counsel of record, Sediego & Associates Law Office.<sup>[69]</sup> On 30 October 2007, respondent Custodio submitted her Comment on the instant Petition.<sup>[70]</sup> In response, petitioner Metrobank subsequently filed a Reply on 31 January 2008.<sup>[71]</sup>

After the instant Petition was given due course,<sup>[72]</sup> the parties submitted their respective memoranda.<sup>[73]</sup>

Before resolving the substantial legal issue, the Court will first resolve the procedural matters with respect to the propriety of raising questions of fact in the instant Petition and the receipt by respondent Custodio of another Petition through Atty. Cachapero.

In a petition for review on certiorari filed under Rule 45, the issues that can be raised are limited only to questions of law.<sup>[74]</sup> Questions of fact are not reviewable in a Rule 45 petition.<sup>[75]</sup> Nonetheless, this rule permits of exceptions, which the

Court has long since recognized.<sup>[76]</sup>

Unless the party availing of the remedy clearly demonstrates at the first opportunity that the appeal falls under any of the established exceptions, a Rule 45 petition that raises pure questions of fact shall be subject to dismissal by the Court, since it is principally not a trier of facts. Although the emerging trend in the Court's rulings is to afford all party-litigants the amplest opportunity for the proper and just determination of their cause,<sup>[77]</sup> this is not a license for erring litigants to violate the rules with impunity.<sup>[78]</sup>

Respondent Custodio reasons that the bank's Petition before the Court seeks a review of factual issues, and that such kind of review is not countenanced by the Rules.<sup>[79]</sup> Although she recognizes the exceptions to the prohibition against raising a question of fact in a Rule 45 petition, respondent insists that the instant Petition fails to measure up to any of them, which would have permitted a review of the factual circumstances of the case.<sup>[80]</sup> Respondent Custodio's bare allegation that the present controversy<sup>[81]</sup> does not fall within the established exceptions fails to convince the Court.

The difference in appreciation by the trial court and the appellate court of the evidence with respect to the circumstances surrounding the cash shortage is *prima facie* justification for the Court to review the facts and the records of the case. While factual issues are not within the province of this Court, as it is not a trier of facts and is not required to examine or contrast the oral and documentary evidence *de novo*, this Court has the authority to review and, in proper cases, reverse the factual findings of lower courts when the findings of fact of the trial court are in conflict with those of the appellate court.<sup>[82]</sup>

In her Comment, respondent Custodio likewise assails the separate Petition she received from Atty. Cachapero, the former counsel of petitioner Metrobank.<sup>[83]</sup> She claims that the separate Petition should not be entertained by the Court, since there is no proof of payment of the docket fees or proof of service. Moreover, the Petition coming from Atty. Cachapero should preclude the instant Petition filed by the bank's new counsel, Sediego & Associates. Aside from the fact that this issue is not raised in respondent's Memorandum, nothing in the record shows that the separate Petition signed by Atty. Cachapero was ever filed and docketed with the Court.

Courts will not entertain and act on petitions that have yet to be properly filed, even if a copy has been served on the other party. Moreover, the separate Petition that came into the hands of respondent has no bearing on this case, since Atty. Cachapero has already withdrawn as counsel for petitioner Metrobank. Therefore, the Court will only confine itself to the instant Petition, which was duly filed by the bank's new counsel and submitted within the extended reglamentary period, after docket fees were paid and the Court had given due course to it.<sup>[84]</sup>

The Court now proceeds to the substantial merits of the case.

The resolution of the instant Petition hinges on whether there is a preponderance of evidence to establish that respondent Custodio incurred a cash shortage of PhP600,000 at the close of the banking day on 13 June 1995 and is therefore liable