

## SECOND DIVISION

[ G.R. No. 173207, February 14, 2008 ]

**PHILIPPINE COMMERCIAL AND INTERNATIONAL BANK (now BANCO DE ORO-EPCI, INC.), Petitioner, vs. DENNIS CUSTODIO, WILFREDO D. GLIANE, and ROLANDO FRANCISCO, Respondents.**

### D E C I S I O N

#### **CARPIO MORALES, J.:**

At the time material to the present case, respondent Dennis Custodio (Custodio) had a door-to-door dollar remittance business. Respondent Wilfredo D. Gliane (Gliane) was one of his agents in Saudi Arabia.

As agent of Custodio, Gliane collected dollars from overseas workers in Saudi Arabia to be remitted to their beneficiaries in the Philippines.

In their transactions, Custodio and Gliane availed of the services of the *Express Padala* desk of petitioner Philippine Commercial and International Bank (PCIB), now Banco de Oro-EPCI, Inc.,<sup>[1]</sup> at its affiliate bank, the Al Rahji Bank in Saudi Arabia. The procedure they adopted in remitting dollars was to course them through regular clients of PCIB who, having established a good relationship with the bank, enjoyed special foreign exchange rates with it. One of those clients was respondent Rolando Francisco (Francisco) who maintained joint accounts, including those with his wife and Erlinda Chua (Erlinda).

On March 12, 1997, Francisco and his wife,<sup>[2]</sup> purportedly on behalf of ROL-ED Traders Group Corporation (ROL-ED), a company said to be owned and controlled by Francisco, entered into a Foreign Bills Purchase Line Agreement (FBPLA)<sup>[3]</sup> in the amount of P70 Million Pesos with the PCIB-Greenhills bank which would purchase checks and demand drafts, among other things, drawn on "U.S. Bank," the proceeds of which would be advanced to Francisco by the bank without going through the regular 23-day clearing period. Under the FBPLA, the spouses made the following undertaking:

If a check is returned/dishonored for any reason whatsoever, we shall immediately, without need of demand, pay [the bank] the amount of the check, together with the interest at the rate of \*\* percent (%) per annum x x x and penalty at the rate of twelve percent (12%) per annum, computed from the date of purchase of the check to the date of full payment.

\*\* - prevailing market rate

The amount of returned and dishonored checks, together with interest, penalty and other charges, shall be debited from any of our accounts

with any of [the bank's] branches, and if the credit balance thereof is insufficient, we undertake to pay [the bank] the deficiency immediately.

[4] (Underscoring supplied)

And they authorized the PCIB-Greenhills

x x x at [its] option and without notice, to set-off or apply to the payment of any dishonored/returned check, interest, penalty and other charges, any and all monies which may be in [its] hands on deposit or otherwise belonging to us.[5] (Underscoring supplied)

Francisco deposited four dollar checks totaling US\$651,000 in his joint account with Erlinda at the PCIB-Greenhills. The checks were cleared and paid by Chase Manhattan Bank, but they were subsequently dishonored for insufficient funds.[6] Chase Manhattan Bank thus debited the amount of the dishonored checks from the account of PCIB-Greenhills which it maintained with it.[7]

Having received notice of the debiting by Chase Manhattan Bank of US\$651,000 from its account, PCIB-Greenhills debited US\$85,000 from Francisco and Erlinda's joint account as partial payment of the US\$651,000 dishonored checks.[8]

In the meantime or on May 17, 1998, Gliane remitted US\$42,300 to the above-said joint account of Francisco at the PCIB-Greenhills. Before that, however, Francisco himself had asked Custodio to desist from remitting dollars to him from Saudi Arabia because PCIB-Greenhills had imposed a higher exchange rate on him (Francisco).

Having gotten wind of Gliane's remittance of dollars to the joint account of Francisco, Custodio instructed Gliane to request, as the latter did, for the amendment of the designated beneficiary from Francisco to Belarmino Cortez and/or Rhodora Cruz who maintained a joint account in PCIB-Greenhills. PCIB's affiliate bank in Saudi Arabia transmitted the request to PCIB-Ermita, Manila which in turn transmitted it to PCIB-Greenhills.

At the time the request for change of beneficiary was received, however, PCIB-Greenhills had set off the US\$42,300 remitted by Gliane against Francisco's remaining balance of his obligation under the FBPLA (US\$651,000 minus the US\$85,000 earlier debited or US\$566,000).

The Area Manager for PCIB-Chinese Banking Group, Marilyn Tan (Marilyn), to whom Custodio attributed the instruction to set-off the US\$42,300 remittance against Francisco's obligation to PCIB-Greenhills, explained to Custodio that the amendment was no longer feasible as the US\$42,300 remitted by Gliane had already been applied as partial payment of his (Francisco's) outstanding obligation with PCIB-Greenhills. She thus advised Custodio to take the matter up with Francisco as she did not know of any arrangement between him and Francisco.

Custodio and Gliane thereafter filed on July 1, 1998 a complaint against PCIB, Marilyn and Francisco, for specific performance and damages before the Regional Trial Court (RTC) of Makati, to recover the US\$42,300, damages and attorney's fees.

[9] They alleged that PCIB failed to perform its obligation to deliver the sum of money they remitted through it to their beneficiaries,[10] and that Francisco

wrongfully appropriated or consented to the appropriation of the aforesaid remittance as payment of his loan account with the bank.<sup>[11]</sup>

PCIB and Marilyn filed their Answer<sup>[12]</sup> with Cross-claim against Francisco. Francisco did file his Answer with Compulsory Counterclaim<sup>[13]</sup> beyond the reglementary period but the trial court admitted it in the interest of substantial justice.<sup>[14]</sup>

Francisco and his counsel did not participate in the pre-trial<sup>[15]</sup> and in the trial on the merits. He was thereupon deemed to have waived his right to present evidence.<sup>[16]</sup>

By Decision of January 30, 2002, Branch 134 of the Makati RTC, finding that PCIB was negligent and that Francisco, albeit not negligent, may not be unjustly enriched, found them jointly and severally liable to pay Custodio and Gliane damages, attorney's fees and costs. Thus the decision disposed:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants PCIB and Francisco. Defendants PCIB and Francisco are hereby directed to pay the plaintiffs, jointly and severally, as follows:

1. US\$42,300.00 as actual damages;
2. P50,000.00 as exemplary damages;
3. P30,000.00 as attorney's fees;
4. cost of suit.

Defendants' counterclaim is dismissed.

SO ORDERED.<sup>[17]</sup> (Emphasis and underscoring supplied)

PCIB at once filed a Notice of Appeal.<sup>[18]</sup>

Francisco surfaced and filed a Motion for Reconsideration,<sup>[19]</sup> raising the following arguments why he could not be held solidarily liable with PCIB:

Defendant FRANCISCO cannot be held liable under the transaction in question considering that it was found out in the decision itself that there was no finding of fault or negligence on the part of FRANCISCO. (see decision p. 8.)<sup>[20]</sup>

It cannot also be said that FRANCISCO benefited from the said act of PCIBank because, according to the findings of this Honorable Court, the payment of the obligation of the defendant FRANCISCO out of US \$4[2],300.00 is void. And if such application of payment by PCIBank is void, no valid payment was made. Therefore, FRANCISCO was never benefited from the invalid and void payment. The decision further state[s]: "There being no objection as to the beneficiary of the US \$42,300.00 which was erroneously credited to the account of defendant FRANCISCO who was unauthorized to receive the same, no valid payment was made and the defendant PCIB as debtor was not released

from its obligation to return the equivalent amount. (see decision p. 7.)

[21] (Emphasis in the original; underscoring supplied)

Custodio and Gliane filed a Motion for Partial Reconsideration<sup>[22]</sup> of the trial court's decision, praying for an additional monetary award of legal interest "on the amount of US\$42,3000 from May 17, 1998 up to the date PCIB, Inc. actually settles the same, and reasonable amount in the award of damages and attorney's fees."<sup>[23]</sup>

By Order of April 26, 2002, the trial court granted the respective motions for reconsideration of Francisco and of Custodio and Gliane, disposing as follows:

WHEREFORE, modified as indicated above, the dispositive portion of this Court's Decision dated January 30, 2002 should be read as follows:

**"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants PCIB and Francisco, as follows:**

- 1) Defendant PCIB is hereby directed to pay the plaintiffs the amount of US\$ 42,300.00 plus 12% interest per annum from May 29, 1988 as actual damages with the right of reimbursement of the amount of US\$42,300.00 against defendant Francisco; and**
- 2) Defendant PCIB is likewise adjudged to pay plaintiffs further sums of:**
  - a) Php 50,000.00 as exemplary damages;**
  - b) Php 30,000.00 as attorney's fees;**
  - c) Cost of suit.**

**Defendants' counterclaim is dismissed.**

**SO ORDERED."**

SO ORDERED.<sup>[24]</sup> (Emphasis in the original; italics and underscoring supplied)

It bears noting that while the trial court, in the above-quoted dispositive portion of the order modifying its original decision, held PCIB solely liable to pay US\$42,300 to Custodio and Gliane, it decreed that PCIB had the right of reimbursement of the amount from Francisco.

PCIB filed a Notice of Appeal *Ad Cautelam*,<sup>[25]</sup> indicating therein that it was likewise appealing the trial court's April 26, 2002 Order modifying its original decision.

The Court of Appeals, by Decision<sup>[26]</sup> of August 11, 2004, granted the appeal of PCIB and accordingly reversed the trial court's April 26, 2002 Order-modified decision. It freed PCIB of any liability and held Francisco solely liable to Custodio and Gliane. And it deleted the award of exemplary damages, attorney's fees and costs. In so deciding, the trial court ruled:

The record belies [the] finding of negligence on the part of appellant bank. Defendant Francisco and appellees are privy to an agreement whereby appellee's dollar remittance shall be coursed through Francisco's account to obtain higher exchange rates. In his testimony before the trial Court, appellee Custodio admitted using defendant Francisco as a pretend-beneficiary to enjoy higher exchange rates on his remittances. [27]

x x x x

x x x Defendant **Francisco** was unjustly enriched when the US\$42,300.00 remittance was credited in his favor by appellant bank. **The obligation to restate the said amount clearly falls on him.** [28] x x x

x x x x

Anent the imposition of exemplary damages, We find the award to be sorely lacking in basis. There is no showing that appellant PCIB or defendant Francisco acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Neither is there any showing of bad faith. x x x [29]

x x x x

The award of attorney's fees and costs of suit likewise finds no factual and legal support. x x x [30] (Emphasis and underscoring supplied)

Thus the appellate court disposed in its August 11, 2004 Decision:

**WHEREFORE**, the appealed judgment is hereby **REVERSED** and **SET ASIDE**. A new one is entered ordering defendant Rolando Francisco to pay the plaintiffs-appellees Dennis Custodio and Alfredo Gliane the sum of US\$42,300.00 or its peso equivalent at the time of payment with legal interest at 6% per annum from finality of this Decision until its satisfaction. [31] (Underscoring supplied)

Francisco filed a Motion for Reconsideration [32] of the appellate court's decision in which he, for the first time on appeal, claimed that it was ROL-ED which entered into the FBPLA with PCIB-Greenhills:

A close examination of the FBLA xxx shows that the said agreement is one between ROL-ED Traders Group Corporation (ROL-ED) and the bank and not with Francisco. This is also true in the other agreements presented by the bank as its evidence. As such, defendant **Francisco is not a party to these agreements**. They cannot be used against him. He has a separate and distinct personality from that of ROL-ED. Consequently, the funds of the appellees could not be applied to Francisco[s] debt on the basis of the Foreign Bills Purchase Line Agreement because the latter is not a party thereto.

True, it was defendant Francisco who signed for the corporation as its signatory but his participation therein is only in a representative capacity