

## SECOND DIVISION

[ G.R. No. 176434, June 25, 2008 ]

### **BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. LIFETIME MARKETING CORPORATION, RESPONDENT.**

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

**TINGA, J,:**

The Bank of the Philippine Islands (BPI) seeks the reversal of the Decision<sup>[1]</sup> of the Court of Appeals dated 31 July 2006 in CA-G.R. CV No. 62769 which ordered it to pay Lifetime Marketing Corporation (LMC) actual damages in the amount of P2,075,695.50 on account of its gross negligence in handling LMC's account.

The following facts, quoted from the decision of the Court of Appeals, are undisputed:

On October 22, 1981, Lifetime Marketing Corporation (LMC, for brevity), opened a current account with the Bank of the Philippine Islands (BPI, for brevity), Greenhills-Edsa branch, denominated as Account No. 3101-0680-63. In this account, the "sales agents" of LMC would have to deposit their collections or payments to the latter. As a result, LMC and BPI, made a special arrangement that the former's agents will accomplish three (3) copies of the deposit slips, the third copy to be retained and held by the teller until LMC's authorized representatives, Mrs. Virginia Mongon and Mrs. Violeta Ancajas, shall retrieve them on the following banking day.

Sometime in 1986, LMC availed of the BPI's inter-branch banking network services in Metro Manila, whereby the former's agents could make [a] deposit to any BPI branch in Metro Manila under the same account. Under this system, BPI's bank tellers were no longer obliged to retain the extra copy of the deposit slips instead, they will rely on the machine-validated deposit slip, to be submitted by LMC's agents. For its part, BPI would send to LMC a monthly bank statement relating to the subject account. This practice was observed and complied with by the parties.

As a business practice, the registered sales agents or the Lifetime Educational Consultants of LMC, can get the books from the latter on consignment basis, then they would go directly to their clients to sell. These agents or Lifetime Educational Consultants would then pay to LMC, seven (7) days after they pick up all the books to be sold. Since LMC have several agents around the Philippines, it required to remit their payments through BPI, where LMC maintained its current account. It has been LMC's practice to require its agents to present a validated deposit

slip and, on that basis, LMC would issue to the latter an acknowledgement receipt.

Alice Laurel, is one of LMC's "Educational Consultants" or agents. On various dates covering the period from May, [sic] 1991 up to August, 1992, Alice Laurel deposited checks to LMC's subject account at different branches of BPI, specifically: at the Harrison/Buendia branch-8 checks; at Arrangue branch-4 checks; at Araneta branch-1 check; at Binondo branch-3 checks; at Ermita branch-5 checks; at Cubao Shopping branch-1 check; at Escolta branch-4 checks; at the Malate branch-2 checks; at Taft Avenue branch-2 checks; at Paseo de Roxas branch-1 check; at J. Ruiz, San Juan branch, at West Avenue and Commonwealth Quezon City branch- 2 checks; and at Vito Cruz branch-2 checks.

Each check thus deposited were retrieved by Alice Laurel after the deposit slips were machine-validated, except the following thirteen (13) checks, which bore no machine validation, to wit: CBC Check No. 484004, RCBC Check No. 419818, CBC Check No. 484042, FEBTC Check No. 171857, RCBC Check No. 419847, CBC Check No. 484053, MBTC Check No. 080726, CBC Check No. 484062, PBC Check No. 158076, CBC Check No. 484027, CBC Check No. 484017, CBC Check No. 484023 and CBC Check No. 218190.

A verification with BPI by LMC showed that Alice Laurel made check deposits with the named BPI branches and, after the check deposit slips were machine-validated, requested the teller to reverse the transactions. Based on general banking practices, however, the cancellation of deposit or payment transactions upon request by any depositor or payor, requires that all copies of the deposit slips must be retrieved or surrendered to the bank. This practice, in effect, cancels the deposit or payment transaction, thus, it leaves no evidence for any subsequent claim or misrepresentation made by any innocent third person. Notwithstanding this, the verbal requests of Alice Laurel and her husband to reverse the deposits even after the deposit slips were already received and consummated were accommodated by BPI tellers.

Alice Laurel presented the machine-validated deposit slips to LMC which, on the strength thereof, considered her account paid. LMC even granted her certain privileges or prizes based on the deposits she made.

The total aggregate amount covered by Alice Laurel's deposit slips was Two Million Seven Hundred Sixty Seven Thousand, Five Hundred Ninety Four Pesos (P2,767,594.00) and, for which, LMC paid Laurel the total sum of Five Hundred Sixty Thousand Seven Hundred Twenty Six Pesos (P560,726.00) by way of "sales discount and promo prizes."

The above fraudulent transactions of Alice Laurel and her husband was made possible through BPI teller's failure to retrieve the duplicate original copies of the deposit slips from the former, every time they ask for cancellation or reversal of the deposit or payment transaction.

Upon discovery of this fraud in early August 1992, LMC made queries

from the BPI branches involved. In reply to said queries, BPI branch managers formally admitted that they cancelled, without the permission of or due notice to LMC, the deposit transactions made by Alice and her husband, and based only upon the latter's verbal request or representation.

Thereafter, LMC immediately instituted a criminal action for Estafa against Alice Laurel and her husband Thomas Limoanco, before the Regional Trial Court of Makati, Branch 65, docketed as Criminal Case No. 93-7970 to 71, entitled People of the Philippines v. Thomas Limoanco and Alice Laurel. This case for estafa, however, was archived because summons could not be served upon the spouses as they have absconded. Thus, the BPI's apparent reluctance to admit liability and settle LMC's claim for damages, and a hopeless case of recovery from Alice Laurel and her husband, has left LMC, with no option but to recover damages from BPI.

On July 24, 1995, LMC, through its representative, Miss Consolacion C. Rogacion, the President of the company, filed a Complaint for Damages against BPI, docketed as Civil Case No. 95-1106, and was raffled to Regional Trial Court of Makati City, Branch 141.

After trial on the merits, the court *a quo* rendered a Decision in favor of LMC. The dispositive portion of which reads, as follows:

***WHEREFORE, decision is hereby rendered ordering defendant bank to pay plaintiff actual damages equitably reduced to one (1) million pesos plus attorney's fees of P100,000.00.***

*No pronouncement as to costs.*

***SO ORDERED.***<sup>[2]</sup>

Only BPI filed an appeal. The Court of Appeals affirmed the decision of the trial court but increased the award of actual damages to P2,075,695.50 and deleted the award of P100,000.00 as attorney's fees.<sup>[3]</sup> Citing public interest, the appellate court denied reconsideration in a Resolution<sup>[4]</sup> dated 30 January 2007.

In this Petition for Review<sup>[5]</sup> dated 19 March 2007, BPI insists that LMC should have presented evidence to prove not only the amount of the checks that were deposited and subsequently reversed, but also the actual delivery of the books and the payment of "sales and promo prizes" to Alice Laurel. Failing this, there was allegedly no basis for the award of actual damages. Moreover, the actual damages should not have been increased because the decision of the trial court became conclusive as regards LMC when it did not appeal the said decision.

BPI further avers that LMC's negligence in considering the machine-validated check deposit slips as evidence of Alice Laurel's payment was the proximate cause of its own loss. Allegedly, by allowing its agents to make deposits with other BPI branches, LMC violated its own special arrangement with BPI's Greenhills-EDSA branch for the latter to hold on to an extra copy of the deposit slip for pick up by