

## THIRD DIVISION

**[ G.R. No. 156335, November 28, 2007 ]**

**SPOUSES RAUL AND AMALIA PANLILIO, PETITIONERS, VS. CITIBANK, N.A.,  
RESPONDENT.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse the Decision<sup>[1]</sup> of the Court of Appeals (CA) dated May 28, 2002 in CA-G.R. CV No. 66649 and its Resolution of December 11, 2002, which reversed and set aside the Decision of the Regional Trial Court (RTC) of Makati City.

The case originated as a Complaint<sup>[2]</sup> for a sum of money and damages, filed with the RTC of Makati City on March 2, 1999, by the spouses Raul and Amalia Panlilio (petitioners) against Citibank N.A. (respondent).

The factual antecedents are as follows:

On October 10, 1997, petitioner Amalia Panlilio (Amalia) visited respondent's Makati City office and deposited one million pesos (Php1 million) in the bank's "Citihi" account, a fixed-term savings account with a higher-than-average interest.<sup>[3]</sup> On the same day, Amalia also opened a current or checking account with respondent, to which interest earnings of the Citihi account were to be credited.<sup>[4]</sup> Respondent assigned one of its employees, Jinky Suzara Lee (Lee), to personally transact with Amalia and to handle the accounts.<sup>[5]</sup>

Amalia opened the accounts as ITF or "in trust for" accounts, as they were intended to benefit her minor children, Alejandro King Aguilar and Fe Emanuelle C. Panlilio, in case she would meet an untimely death.<sup>[6]</sup> To open these accounts, Amalia signed two documents: a Relationship Opening Form (ROF)<sup>[7]</sup> and an Investor Profiling and Suitability Questionnaire (Questionnaire).<sup>[8]</sup>

Amalia's initial intention was to invest the money in a Citibank product called the Peso Repriceable Promissory Note (PRPN), a product which had a higher interest. However, as the PRPN was not available that day, Amalia put her money in the Citihi savings account.<sup>[9]</sup>

More than a month later, or on November 28, 1997, Amalia phoned Citibank saying she wanted to place an investment, this time in the amount of three million pesos (Php3 million). Again, she spoke with Lee, the bank employee, who introduced her to Citibank's various investment offerings. After the phone conversation, apparently decided on where to invest the money, Amalia went to Citibank bringing a PCIBank check in the amount of three million pesos (Php3 million). During the visit, Amalia instructed Lee on what to do with the Php3 million. Later, she learned that out of the said amount, Php2,134,635.87 was placed by Citibank in a Long-Term Commercial Paper (LTCP), a debt instrument that paid a high interest, issued by the corporation Camella and Palmera Homes (C P Homes).<sup>[10]</sup> The rest of the money was placed in two PRPN accounts, in trust for each of Amalia's two children.<sup>[11]</sup>

Allegations differ between petitioners and respondent as to whether Amalia instructed Lee to place the money in the LTCP of C P Homes.<sup>[12]</sup>

An LTCP is an evidence of indebtedness, with a maturity period of more than 365 days, issued by a corporation to any person or entity.<sup>[13]</sup> It is in effect a loan obtained by a corporation (as borrower) from the investing public (as lender)<sup>[14]</sup> and is one of many instruments that investment banks can legally buy on behalf of their clients, upon the latter's express instructions, for investment purposes.

[15] LTCPs' attraction is that they usually have higher yields than most investment instruments. In the case of the LTCP issued by C P Homes, the gross interest rate was 16.25% per annum at the time Amalia made her investment.[16]

On November 28, 1997, the day she made the PhP3million investment, Amalia signed the following documents: a Directional Investment Management Agreement (DIMA),[17] Term Investment Application (TIA),[18] and Directional Letter/Specific Instructions.[19] Key features of the DIMA and the Directional Letter are provisions that essentially clear Citibank of any obligation to guarantee the principal and interest of the investment, absent fraud or negligence on the latter's part. The provisions likewise state that all risks are to be assumed by the investor (petitioner).

As to the amount invested, only PhP2,134,635.87 out of the PhP3 million brought by Amalia was placed in the LTCP since, according to Lee, this was the only amount of LTCP then available.[20] According to Lee, the balance of the PhP3 million was placed in two PRPN accounts, each one in trust for Amalia's two children, per her instructions.[21]

Following this investment, respondent claims to have regularly sent confirmations of investment (COIs) to petitioners.[22] A COI is a one-page, computer generated document informing the customer of the investment earlier made with the bank. The first of these COIs was received by petitioners on or about December 9, 1997, as admitted by Amalia, which is around a week after the investment was made.[23] Respondent claims that other succeeding COIs were sent to and received by petitioners.

Amalia claims to have called Lee as soon as she received the first COI in December 1997, and demanded that the investment in LTCP be withdrawn and placed in a PRPN.[24] Respondent, however, denies this, claiming that Amalia merely called to clarify provisions in the COI and did not demand a withdrawal.[25]

On August 6, 1998, petitioners met with respondent's other employee, Lizza Colet, to preterminate the LTCP and their other investments. Petitioners were told that as to the LTCP, liquidation could be made only if there is a willing buyer, a prospect which could be difficult at that time because of the economic crisis. Still, petitioners signed three sets of Sales Order Slip to sell the LTCP and left these with Colet.[26]

On August 18, 1998, Amalia, through counsel, sent her first formal, written demand to respondent "for a withdrawal of her investment as soon as possible." [27] The same was followed by another letter dated September 7, 1998, which reiterated the same demands.[28] In answer to the letters, respondent noted that the investment had a 2003 maturity, was not a deposit, and thus, its return to the investor was not guaranteed by respondent; however, it added that the LTCP may be sold prior to maturity and had in fact been put up for sale, but such sale was "subject to the availability of buyers in the secondary market." [29] At that time, respondent was not able to find a buyer for the LTCP. As this response did not satisfy petitioners, Amalia again wrote respondent, this time a final demand letter dated September 21, 1998, asking for a reconsideration and a return of the money she invested.[30] In reply, respondent wrote a letter dated October 12, 1998 stating that despite efforts to sell the LTCP, no willing buyers were found and that even if a buyer would come later, the price would be lower than Amalia's original investment.[31]

Thus, petitioners filed with the RTC their complaint against respondent for a sum of money and damages.

The Complaint[32] essentially demanded a return of the investment, alleging that Amalia never instructed respondent's employee Lee to invest the money in an LTCP; and that far from what Lee executed, Amalia's instructions were to invest the money in a "trust account" with an "interest of around 16.25% with a term of 91 days." Further, petitioners alleged that it was only later, or on December 8, 1997, when Amalia received the first confirmation of investment (COI) from respondent, that she and her husband learned of Lee's infidelity to her orders. The COI allegedly informed petitioners that the money was placed in an LTCP of C P Homes with a maturity in 2003, and that the investment was not guaranteed by respondent. Petitioners also claimed that as soon as Amalia received the COI, she immediately called Lee; however, the latter allegedly convinced her to ignore

the COI, that C P Homes was an Ayala company, that the investment was secure, and that it could be easily "withdrawn"; hence, Amalia decided not to immediately "withdraw" the investment. Several months later, or on August 6, 1998, petitioners allegedly wanted to "withdraw" the investment to buy a property; however, they failed to do so, since respondent told them the LTCP had not yet matured, and that no buyers were willing to buy it. Hence, they sent various demand letters to respondent, asking for a return of their money; and when these went unheeded, they filed the complaint.

In its Answer,<sup>[33]</sup> respondent admitted that, indeed, Amalia was its client and that she invested the amounts stated in the complaint. However, respondent disputed the claim that Amalia opened a "trust account" with a "request for an interest rate of around 16.25% with a term of 91 days;" instead, respondent presented documents stating that Amalia opened a "directional investment management account," with investments to be made in C P Homes' LTCP with a 2003 maturity. Respondent disputed allegations that it violated petitioners' express instructions. Respondent likewise denied that Amalia, upon her receipt of the COI, immediately called respondent and protested the investment in LTCP, its 2003 maturity and Citibank's lack of guarantee. According to respondent, no such protest was made and petitioners actually decided to liquidate their investment only months later, after the newspapers reported that Ayala Land, Inc. was cancelling plans to invest in C P Homes.

The rest of respondent's Answer denied (1) that it convinced Amalia not to liquidate or "withdraw" her investment or to ignore the contents of the COI; (2) that it assured Amalia that the investment could be easily or quickly "withdrawn" or sold; (3) that it misrepresented that C P was an Ayala company, implying that C P had secure finances; and (4) that respondent had been unfaithful to and in breach of its contractual obligations.

After trial, the RTC rendered its Decision,<sup>[34]</sup> dated February 16, 2000, the dispositive portion of which states:

The foregoing considered, the court hereby rules in favor of plaintiffs and order defendant to pay:

1. The sum of Php2,134,635.87 representing the actual amount deposited by plaintiffs with defendant plus interest corresponding to time deposit during the time material to this action from date of filing of this case until fully paid;
2. The sum of Php300,000.00 representing moral damages;
3. The sum of Php100,000.00 representing attorney's fees;
4. Costs.

SO ORDERED.<sup>[35]</sup>

The RTC upheld all the allegations of petitioners and concluded that Amalia never instructed Citibank to invest the money in an LTCP. Thus, the RTC found Citibank in violation of its contractual and fiduciary duties and held it liable to return the money invested by petitioners plus damages.

Respondent appealed to the CA.

On appeal, in its Decision promulgated on May 28, 2002, the CA reversed the Decision of the RTC, thus:

WHEREFORE, premises considered, the assailed decision dated 16 February 2000 is REVERSED and SET ASIDE and a new one entered DISMISSING Civil Case No. 99-500.<sup>[36]</sup>

The CA held that with respect to the amount of Php2,134,635.87, the account opened by Amalia was an investment management account; as a result, the money invested was the sole and exclusive obligation of C P Homes, the issuer of the LTCP, and was not guaranteed or insured by herein respondent Citibank;<sup>[37]</sup> that Amalia opened such an account as evidenced by the documents she executed with Citibank, namely, the Directional Investment Management Agreement (DIMA), Term Investment Application (TIA), and Directional Letter/Specific Instructions, which were all dated November 28, 1997, the day Amalia brought the money to Citibank. Further, the CA brushed aside petitioners' arguments that Amalia failed to understand the true nature of the LTCP investment, and that she failed to read the documents as they were written in fine print. The CA ruled that petitioners could not seek the court's aid to extricate them from their contractual obligations. Citing

jurisprudence, the CA held that the courts protected only those who were innocent victims of fraud, and not those who simply made bad bargains or exercised unwise judgment.

On petitioners' motion for reconsideration, the CA reiterated its ruling and denied the motion in a Resolution<sup>[38]</sup> dated December 11, 2002.

Thus, the instant petition which raises issues, summarized as follows: (1) whether petitioners are bound by the terms and conditions of the Directional Investment Management Agreement (DIMA), Term Investment Application (TIA), Directional Letter/Specific Instructions, and Confirmations of Investment (COIs); (2) and whether petitioners are entitled to take back the money they invested from respondent bank; or stated differently, whether respondent is obliged to return the money to petitioners upon their demand prior to maturity.

Petitioners contend that they are not bound by the terms and conditions of the DIMA, Directional Letter and COIs because these were inconsistent with the TIA and other documents they signed.<sup>[39]</sup> Further, they claim that the DIMA and the Directional letter were signed in blank or contained unauthorized intercalations by Citibank.<sup>[40]</sup> Petitioners argue that contrary to the contents of the documents, they did not instruct Citibank to invest in an LTCP or to put their money in such high-risk, long-term instruments.<sup>[41]</sup>

The Court notes the factual nature of the questions raised in the petition. Although the general rule is that only questions of law are entertained by the Court in petitions for review on *certiorari*,<sup>[42]</sup> as the Court is not tasked to repeat the lower courts' analysis or weighing of evidence,<sup>[43]</sup> there are instances when the Court may resolve factual issues, such as (1) when the trial court misconstrued facts and circumstances of substance which if considered would alter the outcome of the case;<sup>[44]</sup> and (2) when the findings of facts of the CA and the trial court differ.<sup>[45]</sup>

In the instant case, the CA completely reversed the findings of facts of the trial court on the ground that the RTC failed to appreciate certain facts and circumstances. Thus, applying the standing jurisprudence on the matter,<sup>[46]</sup> the Court proceeded to examine the evidence on record.

### **The Court's Ruling**

The Court finds no merit in the petition. After a careful examination of the records, the Court affirms the CA's ruling for being more in accord with the facts and evidence on record.

On the first issue of whether petitioners are bound by the terms and conditions of the DIMA, TIA, Directional Letter and COIs, the Court holds in the affirmative and finds for respondent.

The DIMA, Directional Letter and COIs are evidence of the contract between the parties and are binding on them, following Article 1159 of the Civil Code which states that contracts have the force of law between the parties and must be complied with in good faith.<sup>[47]</sup> In particular, petitioner Amalia affixed her signatures on the DIMA, Directional Letter and TIA, a clear evidence of her consent which, under Article 1330 of the same Code, she cannot deny absent any evidence of mistake, violence, intimidation, undue influence or fraud.<sup>[48]</sup>

As the documents have the effect of law, an examination is in order to reveal what underlies petitioners' zeal to exclude these from consideration.

Under the DIMA, the following provisions appear:

4. Nature of Agreement - THIS AGREEMENT IS AN AGENCY AND NOT A TRUST AGREEMENT. AS SUCH, THE PRINCIPAL SHALL AT ALL TIMES RETAIN LEGAL TITLE TO THE FUNDS AND PROPERTIES SUBJECT OF THE ARRANGEMENT.

THIS AGREEMENT IS FOR FINANCIAL RETURN AND FOR THE APPRECIATION OF ASSETS OF THE ACCOUNT. THIS AGREEMENT DOES NOT GUARANTEE A YIELD, RETURN OR INCOME BY THE INVESTMENT MANAGER. AS SUCH, PAST PERFORMANCE OF THE ACCOUNT IS NOT A GUARANTY OF FUTURE PERFORMANCE AND THE INCOME OF

INVESTMENTS CAN FALL AS WELL AS RISE DEPENDING ON PREVAILING MARKET CONDITIONS.

IT IS UNDERSTOOD THAT THIS INVESTMENT MANAGEMENT AGREEMENT IS NOT COVERED BY THE PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC) AND THAT LOSSES, IF ANY, SHALL BE FOR THE ACCOUNT OF THE PRINCIPAL. (Underscoring supplied.)

x x x x

**6. Exemption from Liability.** - In the absence of fraud, bad faith, or gross or willful negligence on the part of the INVESTMENT MANAGER or any person acting in its behalf, the INVESTMENT MANAGER shall not be liable for any loss or damage to the Portfolio arising out of or in connection with any act done or omitted or caused to be done or omitted by the INVESTMENT MANAGER pursuant to the terms and conditions herein agreed upon, and pursuant to and in accordance with the written instructions of the PRINCIPAL to carry out the powers, duties and purposes for which this Agreement is executed. The PRINCIPAL will hold the INVESTMENT MANAGER free and harmless from any liability, claim, damage or fiduciary responsibility that may arise from any investment made pursuant to this Agreement and to such letters or instructions under Paragraph 3 hereof due to the default, bankruptcy or insolvency of the Borrower/Issuer or the Broker/Dealer handling the transaction and or their failure in any manner to comply with any of their obligations under the aforesaid transactions, it being the PRINCIPAL'S understanding and intention that the investments/reinvestments under this account shall be strictly for his/its account and risk except as indicated above.

The INVESTMENT MANAGER shall manage the Portfolio with the skill, care, prudence, and diligence necessary under the prevailing circumstances that a good father of the family, acting in a like capacity and familiar with such matters, would exercise in the conduct of an enterprise of like character and with similar aims. (Underscoring supplied.)

x x x x

**11. Withdrawal of Income/Principal** - Subject to availability of funds and taking into consideration the commitment of this account to third parties, the PRINCIPAL may withdraw the income/principal of the Portfolio or portion thereof upon request or application thereof from the Bank. The INVESTMENT MANAGER shall not be required to inquire as to the income/principal so withdrawn from the Portfolio. Any income of the Portfolio not withdrawn shall be accumulated and added to the principal of the Portfolio for further investment and reinvestment.<sup>[49]</sup> (Underscoring supplied.)

Under the Directional Letter, which constituted petitioners' instructions to respondent, the following provisions are found:

In the absence of fraud, bad faith or gross or willful negligence on your part or any person acting in your behalf, you shall not be held liable for any loss or damage arising out of or in connection with any act done or performed or caused to be done or performed by you pursuant to the terms and conditions of our Agreement. I/We shall hold you free and harmless from any liability, claim, damage, or fiduciary responsibility that may arise from this investment made pursuant to the foregoing due to the default, bankruptcy or insolvency of the Borrower/Issuer, or the Broker/Dealer handling the aforesaid transactions/s, it being our intention and understanding that the investment/reinvestment under these transaction/s shall be strictly for my/our account and risk.

In case of default of the Borrower/Issuers, we hereby authorize you at your sole option, to terminate the investment/s therein and deliver to us the securities/loan documents then constituting the assets of my/our DIMA/trust account with you for me/us to undertake the necessary legal action to collect and/or recover from the borrower/issuers.<sup>[50]</sup> (Underscoring supplied.)