

## SECOND DIVISION

[ G.R. NO. 126780, February 17, 2005 ]

**YHT REALTY CORPORATION, ERLINDA LAINEZ AND ANICIA  
PAYAM, PETITIONERS, VS. THE COURT OF APPEALS AND  
MAURICE MCLOUGHLIN, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

The primary question of interest before this Court is the only legal issue in the case: It is whether a hotel may evade liability for the loss of items left with it for safekeeping by its guests, by having these guests execute written waivers holding the establishment or its employees free from blame for such loss in light of Article 2003 of the Civil Code which voids such waivers.

Before this Court is a Rule 45 petition for review of the *Decision*<sup>[1]</sup> dated 19 October 1995 of the Court of Appeals which affirmed the *Decision*<sup>[2]</sup> dated 16 December 1991 of the Regional Trial Court (RTC), Branch 13, of Manila, finding YHT Realty Corporation, Brunhilda Mata-Tan (Tan), Erlinda Lainez (Lainez) and Anicia Payam (Payam) jointly and solidarily liable for damages in an action filed by Maurice McLoughlin (McLoughlin) for the loss of his American and Australian dollars deposited in the safety deposit box of Tropicana Copacabana Apartment Hotel, owned and operated by YHT Realty Corporation.

The factual backdrop of the case follow.

Private respondent McLoughlin, an Australian businessman-philanthropist, used to stay at Sheraton Hotel during his trips to the Philippines prior to 1984 when he met Tan. Tan befriended McLoughlin by showing him around, introducing him to important people, accompanying him in visiting impoverished street children and assisting him in buying gifts for the children and in distributing the same to charitable institutions for poor children. Tan convinced McLoughlin to transfer from Sheraton Hotel to Tropicana where Lainez, Payam and Danilo Lopez were employed. Lopez served as manager of the hotel while Lainez and Payam had custody of the keys for the safety deposit boxes of Tropicana. Tan took care of McLoughlin's booking at the Tropicana where he started staying during his trips to the Philippines from December 1984 to September 1987.<sup>[3]</sup>

On 30 October 1987, McLoughlin arrived from Australia and registered with Tropicana. He rented a safety deposit box as it was his practice to rent a safety deposit box every time he registered at Tropicana in previous trips. As a tourist, McLoughlin was aware of the procedure observed by Tropicana relative to its safety deposit boxes. The safety deposit box could only be opened through the use of two keys, one of which is given to the registered guest, and the other remaining in the possession of the management of the hotel. When a registered guest wished to

open his safety deposit box, he alone could personally request the management who then would assign one of its employees to accompany the guest and assist him in opening the safety deposit box with the two keys.<sup>[4]</sup>

McLoughlin allegedly placed the following in his safety deposit box: Fifteen Thousand US Dollars (US\$15,000.00) which he placed in two envelopes, one envelope containing Ten Thousand US Dollars (US\$10,000.00) and the other envelope Five Thousand US Dollars (US\$5,000.00); Ten Thousand Australian Dollars (AUS\$10,000.00) which he also placed in another envelope; two (2) other envelopes containing letters and credit cards; two (2) bankbooks; and a checkbook, arranged side by side inside the safety deposit box.<sup>[5]</sup>

On 12 December 1987, before leaving for a brief trip to Hongkong, McLoughlin opened his safety deposit box with his key and with the key of the management and took therefrom the envelope containing Five Thousand US Dollars (US\$5,000.00), the envelope containing Ten Thousand Australian Dollars (AUS\$10,000.00), his passports and his credit cards.<sup>[6]</sup> McLoughlin left the other items in the box as he did not check out of his room at the Tropicana during his short visit to Hongkong. When he arrived in Hongkong, he opened the envelope which contained Five Thousand US Dollars (US\$5,000.00) and discovered upon counting that only Three Thousand US Dollars (US\$3,000.00) were enclosed therein.<sup>[7]</sup> Since he had no idea whether somebody else had tampered with his safety deposit box, he thought that it was just a result of bad accounting since he did not spend anything from that envelope.<sup>[8]</sup>

After returning to Manila, he checked out of Tropicana on 18 December 1987 and left for Australia. When he arrived in Australia, he discovered that the envelope with Ten Thousand US Dollars (US\$10,000.00) was short of Five Thousand US Dollars (US\$5,000). He also noticed that the jewelry which he bought in Hongkong and stored in the safety deposit box upon his return to Tropicana was likewise missing, except for a diamond bracelet.<sup>[9]</sup>

When McLoughlin came back to the Philippines on 4 April 1988, he asked Lainez if some money and/or jewelry which he had lost were found and returned to her or to the management. However, Lainez told him that no one in the hotel found such things and none were turned over to the management. He again registered at Tropicana and rented a safety deposit box. He placed therein one (1) envelope containing Fifteen Thousand US Dollars (US\$15,000.00), another envelope containing Ten Thousand Australian Dollars (AUS\$10,000.00) and other envelopes containing his traveling papers/documents. On 16 April 1988, McLoughlin requested Lainez and Payam to open his safety deposit box. He noticed that in the envelope containing Fifteen Thousand US Dollars (US\$15,000.00), Two Thousand US Dollars (US\$2,000.00) were missing and in the envelope previously containing Ten Thousand Australian Dollars (AUS\$10,000.00), Four Thousand Five Hundred Australian Dollars (AUS\$4,500.00) were missing.<sup>[10]</sup>

When McLoughlin discovered the loss, he immediately confronted Lainez and Payam who admitted that Tan opened the safety deposit box with the key assigned to him.<sup>[11]</sup> McLoughlin went up to his room where Tan was staying and confronted her. Tan admitted that she had stolen McLoughlin's key and was able to open the safety

deposit box with the assistance of Lopez, Payam and Lainez.<sup>[12]</sup> Lopez also told McLoughlin that Tan stole the key assigned to McLoughlin while the latter was asleep.<sup>[13]</sup>

McLoughlin requested the management for an investigation of the incident. Lopez got in touch with Tan and arranged for a meeting with the police and McLoughlin. When the police did not arrive, Lopez and Tan went to the room of McLoughlin at Tropicana and thereat, Lopez wrote on a piece of paper a promissory note dated 21 April 1988. The promissory note reads as follows:

I promise to pay Mr. Maurice McLoughlin the amount of AUS\$4,000.00 and US\$2,000.00 or its equivalent in Philippine currency on or before May 5, 1988.<sup>[14]</sup>

Lopez requested Tan to sign the promissory note which the latter did and Lopez also signed as a witness. Despite the execution of promissory note by Tan, McLoughlin insisted that it must be the hotel who must assume responsibility for the loss he suffered. However, Lopez refused to accept the responsibility relying on the conditions for renting the safety deposit box entitled "*Undertaking For the Use Of Safety Deposit Box*,"<sup>[15]</sup> specifically paragraphs (2) and (4) thereof, to wit:

2. To release and hold free and blameless TROPICANA APARTMENT HOTEL from any liability arising from any loss in the contents and/or use of the said deposit box for any cause whatsoever, including but not limited to the presentation or use thereof by any other person should the key be lost;

. . .

4. To return the key and execute the RELEASE in favor of TROPICANA APARTMENT HOTEL upon giving up the use of the box.<sup>[16]</sup>

On 17 May 1988, McLoughlin went back to Australia and he consulted his lawyers as to the validity of the abovementioned stipulations. They opined that the stipulations are void for being violative of universal hotel practices and customs. His lawyers prepared a letter dated 30 May 1988 which was signed by McLoughlin and sent to President Corazon Aquino.<sup>[17]</sup> The Office of the President referred the letter to the Department of Justice (DOJ) which forwarded the same to the Western Police District (WPD).<sup>[18]</sup>

After receiving a copy of the indorsement in Australia, McLoughlin came to the Philippines and registered again as a hotel guest of Tropicana. McLoughlin went to MalacaHang to follow up on his letter but he was instructed to go to the DOJ. The DOJ directed him to proceed to the WPD for documentation. But McLoughlin went back to Australia as he had an urgent business matter to attend to.

For several times, McLoughlin left for Australia to attend to his business and came back to the Philippines to follow up on his letter to the President but he failed to obtain any concrete assistance.<sup>[19]</sup>

McLoughlin left again for Australia and upon his return to the Philippines on 25 August 1989 to pursue his claims against petitioners, the WPD conducted an investigation which resulted in the preparation of an affidavit which was forwarded

to the Manila City Fiscal's Office. Said affidavit became the basis of preliminary investigation. However, McLoughlin left again for Australia without receiving the notice of the hearing on 24 November 1989. Thus, the case at the Fiscal's Office was dismissed for failure to prosecute. McLoughlin requested the reinstatement of the criminal charge for theft. In the meantime, McLoughlin and his lawyers wrote letters of demand to those having responsibility to pay the damage. Then he left again for Australia.

Upon his return on 22 October 1990, he registered at the Echelon Towers at Malate, Manila. Meetings were held between McLoughlin and his lawyer which resulted to the filing of a complaint for damages on 3 December 1990 against YHT Realty Corporation, Lopez, Lainez, Payam and Tan (defendants) for the loss of McLoughlin's money which was discovered on 16 April 1988. After filing the complaint, McLoughlin left again for Australia to attend to an urgent business matter. Tan and Lopez, however, were not served with summons, and trial proceeded with only Lainez, Payam and YHT Realty Corporation as defendants.

After defendants had filed their Pre-Trial Brief admitting that they had previously allowed and assisted Tan to open the safety deposit box, McLoughlin filed an *Amended/Supplemental Complaint*<sup>[20]</sup> dated 10 June 1991 which included another incident of loss of money and jewelry in the safety deposit box rented by McLoughlin in the same hotel which took place prior to 16 April 1988.<sup>[21]</sup> The trial court admitted the *Amended/Supplemental Complaint*.

During the trial of the case, McLoughlin had been in and out of the country to attend to urgent business in Australia, and while staying in the Philippines to attend the hearing, he incurred expenses for hotel bills, airfare and other transportation expenses, long distance calls to Australia, Meralco power expenses, and expenses for food and maintenance, among others.<sup>[22]</sup>

After trial, the RTC of Manila rendered judgment in favor of McLoughlin, the dispositive portion of which reads:

WHEREFORE, above premises considered, judgment is hereby rendered by this Court in favor of plaintiff and against the defendants, to wit:

1. Ordering defendants, jointly and severally, to pay plaintiff the sum of US\$11,400.00 or its equivalent in Philippine Currency of P342,000.00, more or less, and the sum of AUS\$4,500.00 or its equivalent in Philippine Currency of P99,000.00, or a total of P441,000.00, more or less, with 12% interest from April 16 1988 until said amount has been paid to plaintiff (Item 1, Exhibit CC);
2. Ordering defendants, jointly and severally to pay plaintiff the sum of P3,674,238.00 as actual and consequential damages arising from the loss of his Australian and American dollars and jewelries complained against and in prosecuting his claim and rights administratively and judicially (Items II, III, IV, V, VI, VII, VIII, and IX, Exh. "CC");
3. Ordering defendants, jointly and severally, to pay plaintiff the sum of P500,000.00 as moral damages (Item X, Exh. "CC");

4. Ordering defendants, jointly and severally, to pay plaintiff the sum of P350,000.00 as exemplary damages (Item XI, Exh. "CC");
5. And ordering defendants, jointly and severally, to pay litigation expenses in the sum of P200,000.00 (Item XII, Exh. "CC");
6. Ordering defendants, jointly and severally, to pay plaintiff the sum of P200,000.00 as attorney's fees, and a fee of P3,000.00 for every appearance; and
7. Plus costs of suit.

SO ORDERED.<sup>[23]</sup>

The trial court found that McLoughlin's allegations as to the fact of loss and as to the amount of money he lost were sufficiently shown by his direct and straightforward manner of testifying in court and found him to be credible and worthy of belief as it was established that McLoughlin's money, kept in Tropicana's safety deposit box, was taken by Tan without McLoughlin's consent. The taking was effected through the use of the master key which was in the possession of the management. Payam and Lainez allowed Tan to use the master key without authority from McLoughlin. The trial court added that if McLoughlin had not lost his dollars, he would not have gone through the trouble and personal inconvenience of seeking aid and assistance from the Office of the President, DOJ, police authorities and the City Fiscal's Office in his desire to recover his losses from the hotel management and Tan.<sup>[24]</sup>

As regards the loss of Seven Thousand US Dollars (US\$7,000.00) and jewelry worth approximately One Thousand Two Hundred US Dollars (US\$1,200.00) which allegedly occurred during his stay at Tropicana previous to 4 April 1988, no claim was made by McLoughlin for such losses in his complaint dated 21 November 1990 because he was not sure how they were lost and who the responsible persons were. But considering the admission of the defendants in their pre-trial brief that on three previous occasions they allowed Tan to open the box, the trial court opined that it was logical and reasonable to presume that his personal assets consisting of Seven Thousand US Dollars (US\$7,000.00) and jewelry were taken by Tan from the safety deposit box without McLoughlin's consent through the cooperation of Payam and Lainez.<sup>[25]</sup>

The trial court also found that defendants acted with gross negligence in the performance and exercise of their duties and obligations as innkeepers and were therefore liable to answer for the losses incurred by McLoughlin.<sup>[26]</sup>

Moreover, the trial court ruled that paragraphs (2) and (4) of the "*Undertaking For The Use Of Safety Deposit Box*" are not valid for being contrary to the express mandate of Article 2003 of the New Civil Code and against public policy.<sup>[27]</sup> Thus, there being fraud or wanton conduct on the part of defendants, they should be responsible for all damages which may be attributed to the non-performance of their contractual obligations.<sup>[28]</sup>

The Court of Appeals affirmed the disquisitions made by the lower court except as to