

SECOND DIVISION

[G.R. No. 157314, July 29, 2005]

**FAR EAST BANK AND TRUST COMPANY, NOW BANK OF THE
PHILIPPINE ISLANDS, PETITIONER, VS. THEMISTOCLES
PACILAN, JR., RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is the petition for review on *certiorari* filed by Far East Bank and Trust Company (now Bank of the Philippines Islands) seeking the reversal of the Decision^[1] dated August 30, 2002 of the Court of Appeals (CA) in CA-G.R. CV No. 36627 which ordered it, together with its branch accountant, Roger Villadelgado, to pay respondent Themistocles Pacilan, Jr.^[2] the total sum of P100,000.00 as moral and exemplary damages. The assailed decision affirmed with modification that of the Regional Trial Court (RTC) of Negros Occidental, Bacolod City, Branch 54, in Civil Case No. 4908. Likewise sought to be reversed and set aside is the Resolution dated January 17, 2003 of the appellate court, denying petitioner bank's motion for reconsideration.

The case stemmed from the following undisputed facts:

Respondent Pacilan opened a current account with petitioner bank's Bacolod Branch on May 23, 1980. His account was denominated as Current Account No. 53208 (0052-00407-4). The respondent had since then issued several postdated checks to different payees drawn against the said account. Sometime in March 1988, the respondent issued Check No. 2434886 in the amount of P680.00 and the same was presented for payment to petitioner bank on April 4, 1988.

Upon its presentment on the said date, Check No. 2434886 was dishonored by petitioner bank. The next day, or on April 5, 1988, the respondent deposited to his current account the amount of P800.00. The said amount was accepted by petitioner bank; hence, increasing the balance of the respondent's deposit to P1,051.43.

Subsequently, when the respondent verified with petitioner bank about the dishonor of Check No. 2434866, he discovered that his current account was closed on the ground that it was "improperly handled." The records of petitioner bank disclosed that between the period of March 30, 1988 and April 5, 1988, the respondent issued four checks, to wit: Check No. 2480416 for P6,000.00; Check No. 2480419 for P50.00; Check No. 2434880 for P680.00 and; Check No. 2434886 for P680.00, or a total amount of P7,410.00. At the time, however, the respondent's current account with petitioner bank only had a deposit of P6,981.43. Thus, the total amount of the checks presented for payment on April 4, 1988 exceeded the balance of the respondent's deposit in his account. For this reason, petitioner bank, through its

branch accountant, Villadelgado, closed the respondent's current account effective the evening of April 4, 1988 as it then had an overdraft of P428.57. As a consequence of the overdraft, Check No. 2434886 was dishonored.

On April 18, 1988, the respondent wrote to petitioner bank complaining that the closure of his account was unjustified. When he did not receive a reply from petitioner bank, the respondent filed with the RTC of Negros Occidental, Bacolod City, Branch 54, a complaint for damages against petitioner bank and Villadelgado. The case was docketed as Civil Case No. 4908. The respondent, as complainant therein, alleged that the closure of his current account by petitioner bank was unjustified because on the first banking hour of April 5, 1988, he already deposited an amount sufficient to fund his checks. The respondent pointed out that Check No. 2434886, in particular, was delivered to petitioner bank at the close of banking hours on April 4, 1988 and, following normal banking procedure, it (petitioner bank) had until the last clearing hour of the following day, or on April 5, 1988, to honor the check or return it, if not funded. In disregard of this banking procedure and practice, however, petitioner bank hastily closed the respondent's current account and dishonored his Check No. 2434886.

The respondent further alleged that prior to the closure of his current account, he had issued several other postdated checks. The petitioner bank's act of closing his current account allegedly preempted the deposits that he intended to make to fund those checks. Further, the petitioner bank's act exposed him to criminal prosecution for violation of *Batas Pambansa Blg. 22*.

According to the respondent, the indecent haste that attended the closure of his account was patently malicious and intended to embarrass him. He claimed that he is a Cashier of Prudential Bank and Trust Company, whose branch office is located just across that of petitioner bank, and a prominent and respected leader both in the civic and banking communities. The alleged malicious acts of petitioner bank besmirched the respondent's reputation and caused him "social humiliation, wounded feelings, insurmountable worries and sleepless nights" entitling him to an award of damages.

In their answer, petitioner bank and Villadelgado maintained that the respondent's current account was subject to petitioner bank's Rules and Regulations Governing the Establishment and Operation of Regular Demand Deposits which provide that "the Bank reserves the right to close an account if the depositor frequently draws checks against insufficient funds and/or uncollected deposits" and that "the Bank reserves the right at any time to return checks of the depositor which are drawn against insufficient funds or for any reason."^[3]

They showed that the respondent had improperly and irregularly handled his current account. For example, in 1986, the respondent's account was overdrawn 156 times, in 1987, 117 times and in 1988, 26 times. In all these instances, the account was overdrawn due to the issuance of checks against insufficient funds. The respondent had also signed several checks with a different signature from the specimen on file for dubious reasons.

When the respondent made the deposit on April 5, 1988, it was obviously to cover for issuances made the previous day against an insufficiently funded account. When his Check No. 2434886 was presented for payment on April 4, 1988, he had already

incurred an overdraft; hence, petitioner bank rightfully dishonored the same for insufficiency of funds.

After due proceedings, the court *a quo* rendered judgment in favor of the respondent as it ordered the petitioner bank and Villadelgado, jointly and severally, to pay the respondent the amounts of P100,000.00 as moral damages and P50,000.00 as exemplary damages and costs of suit. In so ruling, the court *a quo* also cited petitioner bank's rules and regulations which state that "a charge of P10.00 shall be levied against the depositor for any check that is taken up as a returned item due to 'insufficiency of funds' on the date of receipt from the clearing office even if said check is honored and/or covered by sufficient deposit the following banking day." The same rules and regulations also provide that "a check returned for insufficiency of funds for any reason of similar import may be subsequently recleared for one more time only, subject to the same charges."

According to the court *a quo*, following these rules and regulations, the respondent, as depositor, had the right to put up sufficient funds for a check that was taken as a returned item for insufficient funds the day following the receipt of said check from the clearing office. In fact, the said check could still be recleared for one more time. In previous instances, petitioner bank notified the respondent when he incurred an overdraft and he would then deposit sufficient funds the following day to cover the overdraft. Petitioner bank thus acted unjustifiably when it immediately closed the respondent's account on April 4, 1988 and deprived him of the opportunity to reclear his check or deposit sufficient funds therefor the following day.

As a result of the closure of his current account, several of the respondent's checks were subsequently dishonored and because of this, the respondent was humiliated, embarrassed and lost his credit standing in the business community. The court *a quo* further ratiocinated that even granting *arguendo* that petitioner bank had the right to close the respondent's account, the manner which attended the closure constituted an abuse of the said right. Citing Article 19 of the Civil Code of the Philippines which states that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith" and Article 20 thereof which states that "[e]very person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same," the court *a quo* adjudged petitioner bank of acting in bad faith. It held that, under the foregoing circumstances, the respondent is entitled to an award of moral and exemplary damages.

The decretal portion of the court *a quo*'s decision reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered:

1. Ordering the defendants [petitioner bank and Villadelgado], jointly and severally, to pay plaintiff [the respondent] the sum of P100,000.00 as moral damages;
2. Ordering the defendants, jointly and severally, to pay plaintiff the sum of P50,000.00 as exemplary damages plus costs and expenses of the suit; and

3. Dismissing [the] defendants' counterclaim for lack of merit.

SO ORDERED.^[4]

On appeal, the CA rendered the Decision dated August 30, 2002, affirming with modification the decision of the court *a quo*.

The appellate court substantially affirmed the factual findings of the court *a quo* as it held that petitioner bank unjustifiably closed the respondent's account notwithstanding that its own rules and regulations allow that a check returned for insufficiency of funds or any reason of similar import, may be subsequently recleared for one more time, subject to standard charges. Like the court *a quo*, the appellate court observed that in several instances in previous years, petitioner bank would inform the respondent when he incurred an overdraft and allowed him to make a timely deposit to fund the checks that were initially dishonored for insufficiency of funds. However, on April 4, 1988, petitioner bank immediately closed the respondent's account without even notifying him that he had incurred an overdraft. Even when they had already closed his account on April 4, 1988, petitioner bank still accepted the deposit that the respondent made on April 5, 1988, supposedly to cover his checks.

Echoing the reasoning of the court *a quo*, the CA declared that even as it may be conceded that petitioner bank had reserved the right to close an account for repeated overdrafts by the respondent, the exercise of that right must never be despotic or arbitrary. That petitioner bank chose to close the account outright and return the check, even after accepting a deposit sufficient to cover the said check, is contrary to its duty to handle the respondent's account with utmost fidelity. The exercise of the right is not absolute and good faith, at least, is required. The manner by which petitioner bank closed the account of the respondent runs afoul of Article 19 of the Civil Code which enjoins every person, in the exercise of his rights, "to give every one his due, and observe honesty and good faith."

The CA concluded that petitioner bank's precipitate and imprudent closure of the respondent's account had caused him, a respected officer of several civic and banking associations, serious anxiety and humiliation. It had, likewise, tainted his credit standing. Consequently, the award of damages is warranted. The CA, however, reduced the amount of damages awarded by the court *a quo* as it found the same to be excessive:

We, however, find excessive the amount of damages awarded by the RTC. In our view the reduced amount of P75,000.00 as moral damages and P25,000.00 as exemplary damages are in order. Awards for damages are not meant to enrich the plaintiff-appellee [the respondent] at the expense of defendants-appellants [the petitioners], but to obviate the moral suffering he has undergone. The award is aimed at the restoration, within limits possible, of the *status quo ante*, and should be proportionate to the suffering inflicted.^[5]

The dispositive portion of the assailed CA decision reads:

WHEREFORE, the decision appealed from is hereby AFFIRMED, subject to the MODIFICATION that the award of moral damages is reduced to P75,000.00 and the award of exemplary damages reduced to