

## SECOND DIVISION

[ G.R. No. 132981, August 31, 2004 ]

**MAMITUA SABER, SUBSTITUTED BY HIS HEIRS, REPRESENTED BY ORFIA ALICER SABER, PETITIONERS, VS. COURT OF APPEALS, PHILIPPINE AMANAH BANK AND ASGARI ARADJI, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on certiorari filed by the heirs of Dr. Mamitua Saber of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 22626 reversing the Decision<sup>[2]</sup> of the Regional Trial Court of Marawi City, Branch 9, in Civil Case No. 2323 (84-R), as well as the Resolution of the appellate court denying the motion for reconsideration thereof.

#### The Antecedents

On April 8, 1974 then President Ferdinand E. Marcos appointed Dr. Mamitua Saber, then Dean of Research at the Mindanao State University and Acting Director, National Science Museum, as Executive Vice-President of the Philippine Amanah Bank (PAB).<sup>[3]</sup> He was also designated as the Officer-in-Charge of the bank pending the election of its president by the Board of Directors. Saber was surprised because he did not apply for appointment to the position. He inquired from Executive Secretary Alejandro Melchor why he was appointed thereto, considering that he had no experience whatsoever in the field of business and banking. He was told that he was chosen by the President from among forty applicants because of his proven personal integrity. Saber took a year-long leave of absence from the university and assumed office at the PAB. From the serenity of the academe, he plunged head-on into the turbulent and intricate world of business.

One of the members of the Board of Directors of the bank was Asgari Aradji who was also the Acting Chairman of the Screening Committee for Personnel. Martin Saludo, then Senior Vice-President of the Philippine National Bank (PNB), was a management consultant of the PAB.

Saber was sent to Malaysia to study how its Malaysian government prepared and managed the annual Muslim pilgrimage (Hajj) to Mecca, and thus, avoid the fiascos that plagued previous such pilgrimages of Filipino Muslims in the past. After his stint in Malaysia, Saber resumed his duties at the PAB.

In a Letter dated September 19, 1974, Executive Secretary Alejandro Melchor informed Chairman of the PAB Board of Directors Dr. Cesar A. Majul, that the bank had been designated to make appropriate preparations and arrangements for the annual pilgrimage of Filipino Muslims to Mecca.<sup>[4]</sup> The next day, Majul forwarded the

letter to Saber, directing the latter to undertake the appropriate arrangements for the pilgrimage.<sup>[5]</sup> Saber was concerned because he had only two months to prepare; the pilgrims had to be in Mecca in time for the one-day ceremony at Mt. Arafat on December 23, 1974. Considering that Saber had no experience thereon, the PAB Board of Directors designated Saludo as the head of the one-man oversight committee to oversee the preparations.

Saber issued Office Memorandum No. 92 forming a Pilgrimage Secretariat with the following officers: Atty. Lanang S. Ali, as Chairman and Pilgrimage Administrator; Dialel Basman, as Finance Officer; and Kuisan Go, as Trade and Investment Officer. Saber later issued Office Order No. 95, designating ten (10) members of the Secretariat who would join the pilgrimage and coordinate the same. This included Lugum Uka, as Vice-Chairman, and Alexander Lucman, as member.<sup>[6]</sup> On October 4, 1974, Saber issued another Memorandum delineating the specific duties of the Secretariat members who were joining the trip.<sup>[7]</sup>

Saber decided to charter the M/V Sweet Homes, owned by the Sweet Lines, Inc., for the trip. In behalf of the PAB, as charter, Saber executed a Uniform Time-Charter on October 15, 1974 under which the PAB chartered the M/V Sweet Homes to transport the pilgrims to Mecca and back to the Philippines for P5,300,000 cash, the amount budgeted<sup>[8]</sup> by the PAB. The parties executed a Rider to Charter Party in which the PAB was allowed to load cargoes in the cargo hold of the vessel up to 500 metric tons free of freight.<sup>[9]</sup> The vessel was scheduled to leave on November 28, 1974. There was no time to lose; the PAB conducted a massive information drive to inform the Muslims of the arrangements, including the accommodations on board the vessel and urged them to join the Hajj through the bank. Prospective pilgrims, including PAB depositors, made reservations for the voyage and made partial payments for their tickets thereon.

On October 25, 1974, Saber wrote then President Marcos requesting that other parties not be allowed to charter any ship or aircraft bringing pilgrims to Jeddah, to avoid unfair competition with the PAB.<sup>[10]</sup> However, President Marcos granted Congressman Ali Dimaporo and some politicians from Lanao del Sur permission to charter a plane to transport the pilgrims. Worse, Sacar Basman, the General Manager of the Arabian Gulf Export Agency Corporation (AGEAC) had been representing to the public that he was one of the Pilgrimage Directors, that he had been allotted 25 passengers for the voyage on board the M/V Sweet Homes and solicited fare payments from interested pilgrims.<sup>[11]</sup>

On November 8, 1974, Indar Tampi, the Marawi Branch Manager of the PAB, wrote Saber expressing his disappointment over the turn of events – politicians being allowed to charter a private plane which was in direct competition with the PAB. He stated that this could derail the success of the pilgrimage and cause great financial loss to the bank. He also expressed his apprehensions about the representations of Sacar Basman that he was one of pilgrimage directors, and that he was allotted 25 accommodations on the M/V Sweet Homes.<sup>[12]</sup> Tampi sent a telegram to Saber on November 14, 1974 informing the latter that many prospective passengers, including 120 depositors of the PAB who were booked for the voyage on board the M/V Sweet Homes, had withdrawn their reservations. Furthermore, about 200 1<sup>st</sup> and 2<sup>nd</sup> class cabin accommodations were rendered vacant.<sup>[13]</sup> When he learned of

the foregoing developments, President Marcos was alarmed and ordered that pilgrims going to Mecca by plane be limited to 100 passengers.<sup>[14]</sup>

In November 1974, Saber formed a three-man panel called the "Troika," composed of Atty. Lanang Ali, Dialel Basman and Ibrahim Mamao, to coordinate the arrangements for the pilgrimage. Rather than allow the vessel to leave for Mecca with many vacant cabins, Saber decided to sell tickets to Basman on credit. He issued a Memorandum<sup>[15]</sup> on November 21, 1974, informing the Troika that he had reached an agreement with Basman that the latter would purchase forty (40) first class (ordinary) cabin accommodations and thirty (30) second class (dormitory) accommodations on board the M/V Sweet Homes, and that Basman would pay *via* a postdated check. Saber directed the Troika to implement the agreement. Saber issued a supplemental memorandum to the Secretariat ordering it as follows:

... [T]o give and issue on credit purchase basis additional One Hundred Twenty (120) fare tickets all of first class accommodations at P6,500.00 each under the following terms and conditions, tax FREE;

1. The said fare tickets all first class accommodations at P6,500.00 each in the total sum of SEVEN HUNDRED FIFTY-SIX THOUSAND (P756,000.00) PESOS, Philippine Currency, shall consist of the unsold tickets and the same shall be given and issued to Datu Sacar Basman on credit purchase basis.
2. The said sum of P756,000.00 shall be paid by means of post-dated check issued by Datu Sacar Basman in favor of the Philippine Amanah Bank.<sup>[16]</sup>

In a parallel development, Atty. Mangawan Toro, the Legal Counsel of the PAB, prepared a Freight Contract which the PAB, through Saber, and the AGEAC, through Basman, its General Manager, executed without the approval of the PAB Board of Directors. Under the contract, AGEAC was allowed to load on the M/V Sweet Homes chartered by the PAB, exportable/importable goods and other cargoes on its trip to Saudi Arabia and return, in consideration of P178,000 to be paid by AGEAC via a postdated check, under the following terms and conditions:

7. That the PARTY OF THE SECOND PART will pay, and hand in and deliver the payment of the consideration referred to above within a period of ten (10) days from and after arrival in the Philippines in its return home trip.
8. That as a security for the payment of the freight agreed upon, the PARTY OF THE SECOND PART hereby agrees that the PARTY OF THE FIRST PART shall have a superior lien in the proceeds on the sale of the goods evidenced by the bill of lading, invoices and other documents and/or on the goods in case no sale is made.<sup>[17]</sup>

On the other hand, Saber stated in his Memo-Directives in the Secretariat that in connection with the Freight Contract with AGEAC –

4. The proceeds of the exported goods sold shall be placed in the possession of the PAB Treasurer or his authorized representative which shall be made available to Datu Sacar Basman for use in

payment for goods to be imported; likewise, the proceeds derived from the sale of the imported goods shall be kept by the said Treasurer or his authorized representative and all sums indicated in the postdated check/s issued by Datu Sacar Basman be deducted therefrom and/or whatever amount or sums of money due to the bank as embodied in the memo-directive of November 21, 1974 and in this addendum, likewise, in other contracts signed by the parties herein.<sup>[18]</sup>

Although they believed that the agreements of Saber with Basman/AGEAC were against the policies of the PAB, the Troika/Secretariat had to implement the Memoranda, and because of Saber's insistence, gave the tickets to Basman. In payment thereof, Basman drew and issued PAB Check Nos. 00377 and 00378, both postdated February 4, 1975 against his account No. 10000008 payable to PAB with no amounts written thereon.<sup>[19]</sup> Basman loaded exportable goods on board the vessel. When the vessel arrived in Saudi Arabia, the authorities did not allow the M/V Sweet Homes to dock. Its passengers were boarded on boats and transported to the pier. Basman failed to unload and sell the exportable goods, much less purchase importable goods. When the postdated checks were deposited on the due dates thereof in the account of the PAB, they were dishonored.<sup>[20]</sup> Basman, likewise, failed to pay for the freight charge for the exportable cargo of AGEAC to Saudi Arabia. Consequently, the PAB sustained a huge financial loss.

PAB Auditor Aramis Aguilar submitted his Report of the Accounts Receivables in connection with the pilgrimage in the total amount of P1,033,700, thus:

#### SCHEDULE OF RECEIVABLES

I.	<u>FOR TICKETS SOLD:</u>	
	1. SACAR BASMAN	P654,000.00
	2. 78 PASSENGERS (SURRENDEREES) SPONSORED BY PC AUTHORITIES	296,400.00
	3. EIGHT (8) PERSONS GUARANTEED BY AMBASSADOR L. PANGANDAMAN	49,600.00
	4. NASCUIN DAKINANGCOB	1,700.00
	5. ACMAD BUAT	2,700.00
	6. ALI USMAN	3,800.00
	7. ALI LAGUINDAB	<u>3,800.00</u>
	SUB-TOTAL	P1,012,000.00
II.	<u>FOR MUTAWIFF:</u>	
	1. COSAIN ALI USMAN	900.00
	2. SURRENDEREES ASSESSED BY THE PC AUTHORITIES	13,600.00
	3. EIGHT (8) PASSENGERS GUARANTEED BY AMBASSADOR L. PANGANDAMAN	7,200.00
	3. EIGHT (8) PASSENGERS	<u>7,200.00</u>

GUARANTEED BY  
AMBASSADOR L.  
PANGANDAMAN

SUB-TOTAL      P 21,700.00

TOTAL RECEIVABLES      P  
1,033,700.00<sup>[21]</sup>

During the meeting of the PAB Board of Directors, Saber was present. The Board, after exhaustive deliberations, approved Resolution No. 67, Series of 1975, without any objection, declaring Saber liable for the receivables on the ground that the Board did not authorize him to sell tickets on credit payable *via* postdated checks, and to execute the Freight Contract with AGEAC. The Board directed Saber to collect the receivables himself, because of its perception that if the PAB endeavored to collect the receivables, it would, thereby, be ratifying the unauthorized acts of Saber.

PAB Director Asgari A. Aradji, who was also Acting Chairman of the Personnel Screening Committee of the PAB, made verbal representations to the PAB Board of Directors to grant PAB Management Consultant and PAB Senior Vice-President Martin L. Saludo the power to perform the duties and exercise the powers of PAB President, in lieu of Saber who was only the Officer-in-Charge. He issued a Memorandum to the Board of Directors, through the Chairman of the Board, on February 21, 1975 reiterating his proposal. He explained the following therein:

Specifically, I refer to the mishandling of the 1974 MECCA Pilgrimage. The Board set a budget of P5.53 million but the incumbent OIC authorized a total disbursement of P9.157 million or an excess of P3.62 million.

As Chairman of the Personnel Screening Committee, I have discovered, much to my surprise, that a number of employees have been retained in spite their not having the necessary qualifications for the positions; other[s] were terminated despite the fact that they are more deserving than those who were retained.

These instances clearly indicate the apparent lack of exercise of effective leadership which is so vital and essential at this crucial stage if we are to make the Amanah Bank truly responsive to the needs of our Muslim brothers. Moreover, the purpose for which Dr. Namitua Saber has been designated as OIC have already been accomplished and such designation has become academic with the constitution of the PAB Board of Directors.

[22]

Meanwhile, Saber's leave of absence at the Mindanao State University expired and he had to report back to the university. He applied for a clearance from the PAB. Assistant Auditor Rodolfo Ocampo signed the said clearance for and in behalf of Auditor Aramis Aguilar, subject to Resolution No. 67, Series of 1975 of the PAB Board of Directors. Because of the conditional clearance issued by the PAB, Saber was reinstated to his position as professor at the university with the salary of P34,000.00 per annum, but not to his former position as Dean for Research.

On May 6, 1975, the PAB Board of Directors approved Resolution No. 92 confirming the recommendation of the management of the bank for the creation of an