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FIRST DIVISION

[G.R. No. 69162. February 21, 1992]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **THE INTERMEDIATE APPELLATE COURT and the SPOUSES ARTHUR CANLAS and VIVIENE CANLAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; VENUE; WHERE PERSONAL ACTIONS MAY BE INSTITUTED. — Personal actions may be instituted in the Court of First Instance (now Regional Trial Court) of the province where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff (Section 2[b], Rule 4 of the Rules of Court).

2. COMMERCIAL LAW; BANKS; NATURE OF RELATIONSHIP BETWEEN BANK AND ITS DEPOSITORS; EXTENT OF DILIGENCE EXPECTED OF IT IN HANDLING ACCOUNTS ENTRUSTED TO ITS CARE.— In *Simex International (Manila), Inc. vs. Court of Appeals* (183 SCRA 360, 367), this Court stressed the fiduciary nature of the relationship between a bank and its depositors and the extent of diligence expected of it in handling the accounts entrusted to its care. "In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. A blunder on the part of the bank, such as the dishonor of a check without good reason, can cause the depositor not a little embarrassment if not also financial loss and perhaps even civil and criminal litigation. "The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary

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nature of their relationship. x x x" The bank is not expected to be infallible but, as correctly observed by respondent Appellate Court, in this instance, it must bear the blame for not discovering the mistake of its teller despite the established procedure requiring the papers and bank books to pass through a battery of bank personnel whose duty it is to check and countercheck them for possible errors.

3. CIVIL LAW; MORAL DAMAGES; BASIS THEREOF.— While the bank's negligence may not have been attended with malice and bad faith, nevertheless, it caused serious anxiety, embarrassment and humiliation to the private respondents for which they are entitled to recover reasonable moral damages (*American Express International, Inc. vs. IAC*, 167 SCRA 209).

4. ID.; ATTORNEY'S FEES; WHEN AWARD THEREOF PROPER.— The award of reasonable attorney's fees is proper for the private respondents were compelled to litigate to protect their interest (Art. 2208, Civil Code).

5. ID.; EXEMPLARY DAMAGES; AWARD THEREOF IMPROPER ABSENT MALICE AND BAD FAITH. — The absence of malice and bad faith renders the award of exemplary damages improper.

APPEARANCES OF COUNSEL

Leonen, Ramirez & Associates for petitioner.

L. Emmanuel B. Canilao for private respondents.

D E C I S I O N

GRIÑO-AQUINO, *J.*:

In a decision dated September 3, 1984, the Intermediate Appellate Court (now Court of Appeals) in AC-G.R. CV No. 69178 entitled. "*Arthur A. Canlas, et al., Plaintiff-Appellees vs. Commercial Bank and Trust Company of the Philippines, Defendant-Appellant*," reduced to ₱105,000 the ₱465,000 damage-award of the trial court to the private respondents for an error of a bank teller which resulted in the dishonor of two small checks which the private respondents had issued against

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their joint current account. This petition for review of that decision was filed by the Bank.

The respondent spouses, Arthur and Vivienne Canlas, opened a joint current account No. 210-520-73 on April 25, 1977 in the Quezon City branch of the Commercial Bank and Trust Company of the Philippines (CBTC) with an initial deposit of ₱2,250. Prior thereto, Arthur Canlas had an existing separate personal checking account No. 210-442-41 in the same branch.

When the respondent spouses opened their joint current account, the "new accounts" teller of the bank pulled out from the bank's files the old and existing signature card of respondent Arthur Canlas for Current Account No. 210-442-41 for use as ID and reference. By mistake, she placed the old personal account number of Arthur Canlas on the deposit slip for the new joint checking account of the spouses so that the initial deposit of ₱2,250 for the joint checking account was miscredited to Arthur's personal account (p. 9, *Rollo*). The spouses subsequently deposited other amounts in their joint account.

However, when respondent Vivienne Canlas issued check for ₱1,639.89 in April 1977 and another check for ₱1,160 on June 1, 1977, one of the checks was dishonored by the bank for insufficient funds and a penalty of ₱20 was deducted from the account in both instances. In view of the overdrawings, the bank tried to call up the spouses at the telephone number which they had given in their application form, but the bank could not contact them because they actually reside in Porac, Pampanga. The city address and telephone number which they gave to the bank belonged to Mrs. Canlas' parents.

On December 15, 1977, the private respondents filed a complaint for damages against CBTC in the Court of First Instance of Pampanga (p. 113, *Rollo*).

On February 27, 1978, the bank filed a motion to dismiss the complaint for improper venue. The motion was denied.

During the pendency of the case, the Bank of the Philippine Islands (BPI) and CBTC were merged. As the surviving corporation under the merger agreement and under Section 80(5)

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of the Corporation Code of the Philippines. BPI took over the prosecution and defense of any pending claims, actions or proceedings by and against CBTC.

On May 5, 1981, the Regional Trial Court of Pampanga rendered a decision against BPI, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered sentencing defendant to pay the plaintiffs the following:

"1. ₱5,000.00 as actual damages;

"2. ₱150,000.00 for plaintiff Arthur Canlas and ₱150,000.00 for plaintiff Vivienne S. Canlas representing moral damages;

"3. ₱150,000.00 as exemplary damages;

"4. ₱10,000.00 as attorney's fees; and

"5. Costs." (p. 36, *Rollo*.).

On appeal, the Intermediate Appellate Court deleted the actual damages and reduced the other awards. The dispositive portion of its decision reads:

"WHEREFORE, the judgment appealed from is hereby modified as follows:

"1. The award of ₱50,000.00 in actual damages is herewith deleted.

"2. Moral damages of ₱50,000.00 is awarded to plaintiffs-appellees Arthur Canlas and Vivienne S. Canlas, not ₱50.000.00 each.

"3. Exemplary damages is likewise reduced to the sum of ₱5,000.00 and attorney's fees to ₱5,000.00.

"Costs against the defendant-appellant." (p. 40, *Rollo*.)

Petitioner filed this petition for review alleging that the appellate court erred in holding that:

1. The venue of the case had been properly laid at Pampanga in the light of private respondents' earlier declaration that Quezon City is their true residence.

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2. The petitioner was guilty of gross negligence in the handling of private respondents' bank account.

3. Private respondents are entitled to the moral and exemplary damages and attorney's fees adjudged by the respondent appellate court.

On the question of venue raised by petitioner, it is evident that personal actions may be instituted in the Court of First Instance (now Regional Trial Court) of the province where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff (Section 2[b]. Rule 4 of the Rules of Court). In this case, there was ample proof that the residence of the plaintiffs is B. Sacan, Porac, Pampanga (p. 117, *Rollo*). The city address of Mrs. Canlas' parents was placed by the private respondents in their application for a joint checking account, at the suggestion of the new accounts teller, presumably to facilitate mailing of the bank statements and communicating with the private respondents in case any problems should arise involving the account. No waiver of their provincial residence for purposes of determining the venue of an action against the bank may be inferred from the so-called "misrepresentation" of their true residence.

The appellate court based its award of moral and exemplary damages, and attorney's fees on its finding that the mistake committed by the new accounts teller of the petitioner constituted "serious" negligence (p. 38, *Rollo*). Said court further stressed that it cannot absolve the petitioner from liability for damages to the private respondents, even on the assumption of an honest mistake on its part, because of the embarrassment that even an honest mistake can cause its depositors (p. 39, *Rollo*).

There is no merit in petitioner's argument that it should not be considered negligent, much less held liable for damages on account of the inadvertence of its bank employee for Article 1173 of the Civil Code only requires it to exercise the diligence of a good father of a family.

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In *Simex International (Manila), Inc. vs. Court of Appeals* (183 SCRA 360, 367), this Court stressed the fiduciary nature of the relationship between a bank and its depositors and the extent of diligence expected of it in handling the accounts entrusted to its care.

"In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. A blunder on the part of the bank, such as the dishonor of a check without good reason, can cause the depositor not a little embarrassment if not also financial loss and perhaps even civil and criminal litigation.

"The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. . . ."

The bank is not expected to be infallible but, as correctly observed by respondent Appellate Court, in this instance, it must bear the blame for not discovering the mistake of its teller despite the established procedure requiring the papers and bank books to pass through a battery of bank personnel whose duty it is to check and countercheck them for possible errors. Apparently, the officials and employees tasked to do that did not perform their duties with due care, as may be gathered from the testimony of the bank's lone witness. Antonio Enciso, who casually declared that "the approving officer does not have to see the account numbers and all those things. *Those are very petty things for the approving manager to look into*" (p. 78, Record on Appeal). Unfortunately, it was a "petty thing," like the incorrect account number that the bank teller wrote on the initial deposit slip for the newly-opened joint current account of the Canlas spouses, that sparked this half-a-million-peso damage suit against the bank.

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While the bank's negligence may not have been attended with malice and bad faith, nevertheless, it caused serious anxiety, embarrassment and humiliation to the private respondents for which they are entitled to recover reasonable moral damages (*American Express International, Inc. vs. IAC,* 167 SCRA 209). The award of reasonable attorney's fees is proper for the private respondents were compelled to litigate to protect their interest (Art. 2208, Civil Code). However, the absence of malice and bad faith renders the award of exemplary damages improper (*Globe Mackay Cable and Radio Corp. vs. Court of Appeals,* 176 SCRA 778).

WHEREFORE, petition for review is granted. The appealed decision is *MODIFIED* by deleting the award of exemplary damages to the private respondents. In all other respects, the decision of the Intermediate Appellate Court, now Court of Appeals, is *AFFIRMED*. No costs.

SO ORDERED.

Narvasa, C.J., Cruz, and *Medialdea, JJ.*, concur.

SECOND DIVISION

[G.R. No. 94008. February 21, 1992]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGAR B. FERNANDEZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; POSITIVE IDENTIFICATION OF MALEFACTOR; DECISIVE.— What is decisive and cannot be denied is his positive identification as the malefactor. It is worthwhile mentioning that Marites, a young girl of seven,