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FIRST DIVISION

[G.R. No. 118917. December 22, 1997]

PHILIPPINE DEPOSIT INSURANCE CORPORATION, *petitioner, vs.* **COURT OF APPEALS, ROSA AQUERO, GERARD YU, ERIC YU, MINA YU, ELIZABETH NGKAION, MERLY CUESCANO, LETICIA TAN, FELY RUMBANA, LORNA ACUB, represented by their Attorney-in-Fact, JOHN FRANCIS COTAOCO,** *respondents.*

SYNOPSIS

This is a petition for review on *certiorari* filed by petitioner Philippine Deposit Insurance Corporation (PDIC) seeking the reversal of the decision of the Court of Appeals affirming with modification the decision of the Regional Trial Court holding petitioner liable for the value of thirteen certificates of time deposits (CTD) in the possession of private respondents. The records of the case reveal that private respondents invested in money market placements with the Premiere Financing Corporation (PFC) in the sum P10,000.00 each for which they were issued by the PFC corresponding promissory notes and checks. When they were about to encash the said notes and checks to Regent Saving Bank (RSB), the said bank, instead of paying, issued 13 certificates of time deposit with Nos. 09648 to 09660. Upon maturity of said certificates, RSB failed to pay the same and advised herein private respondents to file a claim with the Philippine Deposit Insurance Corporation (PDIC). Meanwhile, the Monetary Board of the Central Bank issued a resolution suspending the operations of RSB and thereafter, liquidated all its assets. However, the certificates of time deposit of herein private respondents were not included in the list on the ground that the certificates were not funded by the PFC or duly recorded as liabilities of RSB. Herein private respondents filed with the PDIC their respective claims but said corporation refused to pay. Consequently, private respondents filed an action in the Regional Trial Court for collection against PDIC, RSB and the Central Bank. After trial on the merits, the court *a quo* rendered its decision ordering the petitioner, RSB and Central Bank to pay the private respondents, jointly and severally, the amount

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corresponding to the latter's certificates. Both PDIC and RSB appealed. On February 8, 1995, the Court of Appeals rendered its decision granting the central Bank's petition but dismissing the appeals of PDIC and RSB. The main issue to be resolved in this case is whether or not petitioner can be held liable to private respondents to the amount corresponding to the latter's certificate of time deposit.

The Supreme Court ruled that the petition is meritorious. The PDIC was created by law and, as such , is governed primarily by the provisions of the special law creating it. The liability of the PDIC for insured deposits is therefore, statutory and under Republic Act No. 3591, such liability rests upon the existence of deposits with the insured bank, not on the negotiability or non-negotiability of the certificate as evidencing these deposits. In the case at bar, pieces of evidence convincingly show that the subject CTDs were indeed issued without RSB receiving any money therefor. In such a case, since no deposit as defined in section 3(f) of RA No 3591 came into existence, petitioner cannot be held liable for the value of the certificates of time deposit held by private respondents. In view thereof, the instant petition is granted and the challenged decision is reversed.

SYLLABUS

1. **COMMERCIAL LAW; PHILIPPINE DEPOSIT INSURANCE CORPORATION, THE LIABILITY OF PDIC FOR INSURED DEPOSITS IS STATUTORY, AND UNDER R.A. 3591, AS AMENDED, SUCH LIABILITY RESTS UPON THE EXISTENCE OF DEPOSITS WITH THE INSURED BANK, NOT ON THE NEGOTIABILITY OR NON-NEGOTIABILITY OF THE CERTIFICATES OF BANK DEPOSIT.**— The Philippine Deposit Insurance Corporation (PDIC) was created by law and, as such, is governed primarily by the provisions of the special law creating it. The liability of the PDIC for insured deposits therefore is *statutory* and, under Republic Act No. 3591, as amended, such liability rests upon the existence of deposits with the insured bank, not on the negotiability or non-negotiability of the certificates evidencing these deposits. The authority for this conclusion finds support in decisions by American state courts applying their respective bank guaranty laws. The fact that the certificates state that the certificates are insured by PDIC does not *ipso facto* make the latter liable for the same should the

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contingency insured against arise. As stated earlier, the deposit liability of PDIC is determined by the provisions of R.A. No. 3591, and statements in the certificates that the same are insured by PDIC are not binding upon the latter.

2. **ID.; ID.; DEPOSIT; DEFINED AND HOW CONSTITUTED.**— A deposit as defined in Section 3(f) of R.A. No. 3591, may be constituted only if money or the equivalent of money is received by a bank: SEC. 3. As used in this Act — (f) The term "deposit" means the unpaid balance of money or its equivalent *received by a bank* in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account or which is evidenced by passbook, check and/or certificate of deposit printed or issued in accordance with Central Bank rules and regulations and other applicable laws, together with such other obligations of a bank which, consistent with banking usage and practices, the Board of Directors shall determine and prescribe by regulations to be deposit liabilities of the Bank.

3. **ID.; ID.; IN ORDER THAT A CLAIM FOR DEPOSIT INSURANCE WITH THE PDIC MAY PROSPER, THE LAW REQUIRES THAT A CORRESPONDING DEPOSIT BE PLACED IN THE INSURED BANK; CASE AT BAR.**— In order that a claim for deposit insurance with the PDIC may prosper, the law requires that a corresponding deposit be placed in the insured bank. Did RSB receive money or its equivalent when it issued the certificates of time deposit? The Court of Appeals, in resolving who between RSB and PFC issued the certificates to private respondents, answered this question in the negative. A perusal of the impugned decision, however, reveals that such finding is grounded entirely on speculation, and thus, cannot bind this Court. Pieces of evidence convincingly show that the subject CTDs were indeed issued without RSB receiving any money therefor. No deposit, as defined in Section 3(f) of R.A. No. 3591, therefore came into existence. Accordingly, petitioner PDIC cannot be held liable for value of the certificates of time deposit held by private respondents.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Cesar M. Carino for Regent Savings & Loan Bank, Inc.
David E. Calvario for Rosa Aquero, et al.

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DECISION

KAPUNAN, *J.*:

Petitioner Philippine Deposit Insurance Corporation (PDIC) seeks the reversal of the decision of the Court of Appeals affirming with modification the decision of the Regional Trial Court holding petitioner liable for the value of thirteen (13) certificates of time deposit (CTDs) in the possession of private respondents.

The facts, as found by the Court of Appeals, are as follows:

On September 22, 1983, plaintiffs-appellees invested in money market placements with the Premiere Financing Corporation (PFC) in the sum of ₱10,000.00 each for which they were issued by the PFC corresponding promissory notes and checks. On the same date (September 22, 1983), John Francis Cotaoco, for and in behalf of plaintiffs-appellees, went to the PFC to encash the promissory notes and checks, but the PFC referred him to the Regent Saving Bank (RSB). Instead of paying the promissory notes and checks, the RSB, upon agreement of Cotaoco, issued the subject 13 certificates of time deposit with Nos. 09648 to 09660, inclusive, each stating, among others, that the same certifies that the bearer thereof has deposited with the RSB the sum of ₱10,000.00; that the certificate shall bear 14% interest per annum; that the certificate is insured up to ₱15,000.00 with the PDIC; and that the maturity date thereof is on November 3, 1983 (Exhs. "B", "B-1" to "B-12").

On the aforesaid maturity dated (November 3, 1983), Cotaoco went to the RSB to encash the said certificates. Thereat, RSB Executive Vice President Jose M. Damian requested Cotaoco for a deferment or an extension of a few days to enable the RSB to raise the amount to pay for the same (Exh. "D"). Cotaoco agreed. Despite said extension, the RSB still failed to pay the value of the certificates. Instead, RSB advised Cotaoco to file a claim with the PDIC.

Meanwhile, on June 15, 1984, the Monetary Board of the Central Bank issued Resolution No. 788 (Exh. '2', Records, p. 159) suspending the operations of the RSB. Eventually, the records of RSB were secured and its deposit liabilities were eventually determined. On December 7, 1984, the Monetary Board issued Resolution No. 1496 (Exh. '1') liquidating the RSB. Subsequently, a masterlist or inventory of the RSB assets and liabilities was prepared. However, the certificates of time deposit of plaintiffs-appellees were not included in the list on the ground

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that the certificates were not funded by the PFC or duly recorded as liabilities of RSB.

On September 4, 1984, plaintiffs-appellees filed with the PDIC their respective claims for the amount of the certificates (Exhs. "C", "C-1" to "C-12"). Sabina Yu, James Ngkaion, Elaine Ngkaion and Jeffrey Ngkaion, who have similar claims on their certificates of time deposit with the RSB, likewise filed their claims with the PDIC. To their dismay, PDIC refused the aforesaid claims on the ground that the Traders Royal Bank Check No. 299255 dated September 22, 1983 for the amount of ₱125,846.07 (Exh. "B") issued by PFC for the aforementioned certificates was returned by the drawee bank for having been drawn against insufficient funds; and said check was not replaced by the PFC, resulting in the cancellation of the certificates as indebtedness or liabilities of RSB.[1]

Consequently, on March 31, 1987, private respondents filed an action for collection against PDIC, RSB and the Central Bank.

On September 14, 1987, the trial court, declared the Central Bank in default for failing to file an answer.

On May 29, 1989, the trial court rendered its decision ordering the defendants therein to pay plaintiffs, jointly and severally, the amount corresponding to the latter's certificates of time deposit.

Both PDIC and RSB appealed. The Central Bank, on the other hand, filed a petition for *certiorari*, prohibition and *mandamus* before the Court of Appeals praying that the writ of execution issued by the trial court against it be set aside.

On February 8, 1995, the Court of Appeals rendered its decision granting the Central Bank's petition but dismissing the appeals of PDIC and RSB. Hence, this petition by PDIC assigning the following errors:

I

THE CA ERRED IN HOLDING THAT THE SUBJECT CTDS ARE NEGOTIABLE INSTRUMENTS

II

THE CA ERRED IN HOLDING THAT THE CTDS WERE ACQUIRED FOR VALUE AND CONSIDERATION

[1] *Rollo*, pp. 30-31.

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III

THE CA ERRED WHEN IT HELD THAT BECAUSE THE CTDS STATE THAT THESE WERE INSURED, PETITIONER SHOULD BE HELD LIABLE FOR THE SAME.

We deal jointly with petitioner's first and third assigned errors.

Relying on this Court's ruling in *Caltex (Philippines), Inc. v. Court of Appeals and Security Bank and Trust Company,*[2] the Court of Appeals concluded that the subject CTDs are negotiable. Petitioner, on the other hand, contends that the CTDs are non-negotiable since they do not contain an unconditional promise or order to pay a sum certain in money nor are they made payable to order or bearer, as required by Section 1 of the Negotiable Instruments Law.

Whether the CTDs in question are negotiable or not is, however, immaterial in the present case. The Philippine Deposit Insurance Corporation was created by law and, as such, is governed primarily by the provisions of the special law creating it.[3] The liability of the PDIC for insured deposits therefore is *statutory* and, under Republic Act No. 3591,[4] as amended such liability rests upon the existence of deposits with the insured bank, not on the negotiability or non-negotiability of the certificates evidencing these deposits.

The authority for this conclusion finds support in decisions by American state courts applying their respective bank guaranty laws. Invariably, the plaintiffs in these cases argued that the negotiability of the certificates of deposit in their possession entitled them to be paid out of the bank guaranty fund, a contention that the courts uniformly rejected.

Thus, the plaintiffs in *Fourth Nat. Bank of Wichita v. Wilson*[5] argued that:

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[2] 212 SCRA 448 (1992).

[3] Section 4, Corporation Code.

[4] Entitled "An Act Establishing The Philippine Deposit Insurance Corporation. Defining Its Powers And Duties And For Other Purposes."

[5] 204 Pac. 715 (1922), 110 Kan. 380.

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x x x the court should hold the certificates to be guaranteed because they are negotiable instruments, and were acquired by the present holders in due course; otherwise it is said certificates of deposit will be deprived of the quality of commercial paper. Certificates of deposit have been regarded as the highest form of collateral. They are of wide currency in the banking and business worlds, and are particularly useful to persons of small means, because they bear interest, and may be readily cashed; therefore to deprive them of the benefit of the guaranty fund would be a calamity. x x x

The Supreme Court of Kansas, however, found the plaintiffs' contention to be without merit, ruling thus:

x x x The argument confuses negotiability of commercial paper with statutory guaranty of deposits. The guaranty is something extrinsic to all forms of evidence of bank obligation; and negotiability of instruments has no dependence on existence or nonexistence of the guaranty.

x x x Whatever the status of the plaintiffs may be as holders in due course under the Negotiable Instruments Law, they cannot be assignees of a deposit which was not made, and cannot be entitled to the benefit of a guaranty which did not come into existence. x x x

In arriving at the above decision, the Kansas Supreme Court relied on its earlier ruling in *American State Bank v. Foster*,[6] which arose from the same facts as the *Fourth National Bank* case. There the Court held:

x x x Even if the plaintiff were to be regarded as an innocent purchaser of the certificates as negotiable instruments, its situation would be in no wise bettered so far as relate to a claim against the guaranty fund. The fund protects deposits only. And if no deposit is made, or no deposit within the protection of the guaranty law, the transfer of a certificate cannot impose a liability on the fund. xxx where a certificate of deposit is given under such circumstances that it is not protected by the guaranty fund, although that fact is not indicated by anything on its face, its indorsement to an innocent holder cannot confer that quality upon it.

In like fashion did the Supreme Court of Nebraska brush aside a similar contention in *State v. Farmers' State Bank*:[7]

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[6] 204 Pac. 709, 110 Kan. 520 (1922).

[7] 196 N.W. 908, 111 Neb. 117 (1923).

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In this contention we think the appellants fail to distinguish between the liability of the maker of a negotiable instrument, which rests upon the law pertaining to negotiable paper, and the liability of the guaranty fund, which is purely statutory. The circumstances under which the guaranty fund may be liable are entirely apart from the law pertaining to negotiable paper. A holder of a certificate of deposit in a bank who seeks to hold the guaranty fund liable for its payment must show that the transaction leading up to the issuance of the certificate was such that the law holds the guaranty fund liable for its payment. x x x

The *Farmers' State Bank* ruling was reiterated by the Nebraska Supreme Court in *State v. Home State Bank of Dunning*[8] and in *State v. Kilgore State Bank*.[9] The same ruling was adopted by the Supreme Court of South Dakota in *Mildenstein v. Hirning*.[10]

In the case at bar, the Court of Appeals initially found the subject CTDs to be negotiable. Subsequently, however, respondent court deemed the issue immaterial, albeit for entirely different reasons.

x x x Besides, whether the certificates are negotiable or not is of no moment. The fact remains that the certificates categorically state that their bearer [sic] have a deposit in the RSB; that the same will mature on November 3, 1993; and that the certificates are insured by PDIC.[11]

We disagree with respondent court's rationale. The fact that the certificates state that the certificates are insured by PDIC does not *ipso facto* make the latter liable for the same should the contingency insured against arise. As stated earlier, the deposit liability of PDIC is determined by the provisions of R.A. No. 3591, and statements in the certificates that the same are insured by PDIC are not binding upon the latter.

x x x The mere fact that a certificate recites on its face that a certain sum has been deposited, or that officers of the bank may have stated that the deposit is protected by the guaranty law, does not make the guaranty fund liable for payment, if in fact a deposit has not been made xxx. The banks have nothing to do with the guaranty fund as such. It is a fund

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[8] 201 N.W. 971, 113 Neb. 93 (1925).

[9] 205 N.W. 297 (1925).

[10] 207 N.W. 979 (1926).

[11] *Rollo*, p. 38.

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raised by assessments against all state banks, administered by officers of the state to protect deposits in banks. x x x[12]

We come now to petitioner's second assigned error.

In order that a claim for deposit insurance with the PDIC may prosper, the law requires that a corresponding deposit be placed in the insured bank. This is implicit from a reading of the following provisions of R.A. 3591:

SECTION 1. There is hereby created a Philippine Deposit Insurance Corporation xxx which shall insure, as provided, the *deposits* of all banks which are entitled to the benefits of insurance under this Act xxx. (Italics supplied).

xxx xxx xxx

SEC. 10 (a) xxx

xxx xxx xxx

(c) Whenever an insured bank shall have been closed on account of insolvency, payment of the insured *deposits* in such bank shall be made by the Corporation as soon as possible xxx. (Italics supplied.)

A deposit as defined in Section 3(f) of R.A. No. 3591, may be constituted only if money or the equivalent of money is received by a bank:

SEC. 3 As used in this Act —

(f) The term "deposit" means the unpaid balance of money or its equivalent *received by a bank* in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account or which is evidenced by passbook, check and/or certificate of deposit printed or issued in accordance with Central Bank rules and regulations and other applicable laws, together with such other obligations of a bank which, consistent with banking usage and practices, the Board of Directors shall determine and prescribe by regulations to be deposit liabilities of the Bank xxx. (Italics ours).

Did RSB receive money or its equivalent when it issued the certificates of time deposit? The Court of Appeals, in resolving who between RSB and PFC issued the certificates to private

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[12] State *v.* Farmers' State Bank, *supra*, note 6.

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respondents, answered this question in the negative. A perusal of the impugned decision, however, reveals that such finding is grounded entirely on speculation, and thus, cannot bind this Court:[13]

> Equally unimpressive is the contention of PDIC and RSB that the certificates were issued to PFC which did not acquire the same for value because the check issued by the latter for the certificates bounced for insufficiency of funds. First, granting *arguendo* that the certificates were originally issued in favor of PFC, such issuance could only give rise to the presumption that the amount stated in the certificates have been deposited to RSB. Had not PFC deposited the amount stated therein, then RSB would have surely refused to issue the certificates certifying to such fact. Second, why did not RSB demand that PFC pay the certificates or file a claim against PFC on the ground that the latter failed to pay for the value of the certificates? It could very well be that the reason why RSB did not run after PFC for payment of the value of the certificates was because the instruments were issued to the latter by RSB for value or were already paid to RSB by plaintiffs-appellees. Third, if it is true at the time RSB issued the certificates to PFC, the instruments were paid for with checks still to be encashed, then why did not RSB specifically state in the certificates that the validity thereof hinges on the encashment of said check? Fourth, even if it is true that PFC did not deposit with or pay the RSB the amount stated in the certificates, the latter is not be such reason freed from civil liability to plaintiffs-appellees. For, by issuing the certificates, RSB bound itself to pay the amount stated therein to whoever is the bearer upon its presentment for encashment. Truly, there is no reason to depart from the established principle that where a bank issues a certificate of deposit acknowledging a deposit made with a third person or an officer of the bank, or with another bank representing it to be the certificate of the bank, upon which assurance the depositor accepts it, the bank is liable for the amount of the deposit (Michis, Banks and Banking, Vol. 5A, pp. 48-49, as cited in the Decision on p. 3 thereof).[14]

Moreover, such finding totally ignores the evidence presented by defendants. Cardola de Jesus, RSB Deputy Liquidator, testified that RSB received three (3) checks in consideration for the issuance of several CTDs, including the ones in dispute. The first check amounted to ₱159,153.93, the second, ₱121,665.95, and the third,

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[13] Cuizon *vs.* Court of Appeals, G.R. No. 102096, August 22, 1996.

[14] *Id.*, at 39-40.

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₱125,846.07. In consideration of the third check, private respondents received thirteen (13) certificates of deposit with Nos. 09648 to 09660, inclusive, with a value of ₱10,000.00 each or a total of ₱130,000.00. To conform with the value of the third check, CTD No. 09648 was "chopped," and only the sum of ₱5,846.07 was credited in favor of private respondents. The first two checks "made good in the clearing" while the third was returned for being "drawn against insufficient funds."

The check in question appears on the records as Exhibit "3" (for Regent),[15] and is described in RSB's offer of evidence as "Traders Royal Bank Check No. 292555 dated September 22, 1983 covering the amount or ₱125,846.07 xxx issued by Premiere Financing Corporation."[16] At the back of said check are the words "Refer to Drawer,"[17] indicating that the drawee bank (Traders Royal Bank) refused to pay the value represented by said check. By reason of the check's dishonor, RSB cancelled the corresponding as evidenced by an RSB "ticket" dated November 4, 1983.[18]

These pieces of evidence convincingly show that the subject CTDs were indeed issued without RSB receiving any money therefor. No deposit, as defined in Section 3 (f) of R.A. No. 3591, therefore came into existence. Accordingly, petitioner PDIC cannot be held liable for value of the certificates of time deposit held by private respondents.

ACCORDINGLY, the instant petition is hereby *GRANTED* and the decision of the Court of Appeals *REVERSED*. Petitioner is absolved from any liability to private respondents.

SO ORDERED.

Davide, Jr., (Chairman), Bellosillo, and *Vitug, JJ.*, concur.

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[15] Records, p. 161.

[16] *Id.*, at 155.

[17] Exhibit 3-1 (Regent).

[18] Exhibit "5" and "5-A" (Regent); records, p. 163.