



Republic of the Philippines
Supreme Court
 Baguio City

SECOND DIVISION

DRA. MERCEDES OLIVER,

G.R. No. 214567

Petitioner,

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

**PHILIPPINE SAVINGS BANK
 and LILIA CASTRO,**

Promulgated:

Respondents.

APR 04 2016

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DECISION

MENDOZA, J.:

This is a petition for review on *certiorari* seeking to reverse and set aside the October 25, 2013 Decision¹ and the September 12, 2014 Resolution² of the Court of Appeals (CA) in CA-G.R. CV No. 95656, which reversed the July 22, 2010 Order³ of the Regional Trial Court, Branch 276, Muntinlupa City (RTC) in Civil Case No. 99-278, a case for injunction and damages.

Petitioner Mercedes Oliver (*Oliver*) was a depositor of respondent Philippine Savings Bank (*PSBank*) with account number 2812-07991-6. Respondent Lilia Castro (*Castro*) was the Assistant Vice President of PSBank and the Acting Branch Manager of PSBank San Pedro, Laguna.

¹ Associate Justice Japar B. Dimaampao with Associate Justice Elihu A. Sison, concurring.
² Associate Justice Japar B. Dimaampao with Associate Justice Elihu A. Sison, concurring.
³ Associate Justice Japar B. Dimaampao with Associate Justice Elihu A. Sison, concurring.

Oliver's Position

In her Complaint,⁴ dated October 5, 1999, Oliver alleged that sometime in 1997, she made an initial deposit of ₱12 million into her PSBank account. During that time, Castro convinced her to loan out her deposit as interim or bridge financing for the approved loans of bank borrowers who were waiting for the actual release of their loan proceeds.

Under this arrangement, Castro would first show the approved loan documents to Oliver. Thereafter, Castro would withdraw the amount needed from Oliver's account. Upon the actual release of the loan by PSBank to the borrower, Castro would then charge the rate of 4% a month from the loan proceeds as interim or bridge financing interest. Together with the interest income, the principal amount previously withdrawn from Oliver's bank account would be deposited back to her account. Meanwhile, Castro would earn a commission of 10% from the interest.

Their arrangement went on smoothly for months. Due to the frequency of bank transactions, Oliver even entrusted her passbook to Castro. Because Oliver earned substantial profit, she was further convinced by Castro to avail of an additional credit line in the amount of ₱10 million. The said credit line was secured by a real estate mortgage on her house and lot in Ayala Alabang covered by Transfer Certificate of Title (*TCT*) No. 137796.⁵

Oliver instructed Castro to pay ₱2 million monthly to PSBank starting on September 3, 1998 so that her credit line for ₱10 million would be fully paid by January 3, 1999.

Beginning September 1998, Castro stopped rendering an accounting for Oliver. The latter then demanded the return of her passbook. When Castro showed her the passbook sometime in late January or early February 1999, she noticed several erasures and superimpositions therein. She became very suspicious of the many erasures pertaining to the December 1998 entries so she requested a copy of her transaction history register from PSBank.

When her transaction history register⁶ was shown to her, Oliver was surprised to discover that the amount of ₱4,491,250.00 (estimated at ₱4.5 million) was entered into her account on December 21, 1998. While a total of ₱7 million was withdrawn from her account on the same day, Oliver

⁴ Id. at 18-28.

⁵ Records, Volume IV, p. 1295.

⁶ Id. at 1308-1310.

asserted that she neither applied for an additional loan of ₱4.5 million nor authorized the withdrawal of ₱7 million. She also discovered another loan for ₱1,396,310.45, acquired on January 5, 1999 and allegedly issued in connection with the ₱10 million credit line.

In Oliver's passbook,⁷ there were no entries from December 17, 1998 to December 27, 1998. The transaction history register, however, showed several transactions on these very same dates including the crediting of ₱4.5 million and the debiting of ₱7 million on December 21, 1998. Oliver then learned that the additional ₱4.5 million and ₱1,396,310.45 loans were also secured by the real estate mortgage,⁸ dated January 8, 1998, covering the same property in Ayala Alabang.

Oliver received two collection letters,⁹ dated May 13, 1999 and June 18, 1999, from PSBank referring to the non-payment of unpaid loans, to wit: (1) ₱4,491,250.00 from the additional loan and (2) ₱1,396,310.45 from the P10 million credit line.¹⁰ In response, Oliver protested that she neither availed of the said loans nor authorized the withdrawal of ₱7 million from her account.¹¹ She also claimed that the ₱10 million loan from her credit line was already paid in full.¹²

On July 14, 1999, a final demand letter¹³ was sent to Oliver by PSBank, requiring her to pay the unpaid loans. Oliver, however, still refused to pay. Subsequently, Oliver received a notice of sale¹⁴ involving the property in Ayala Alabang, issued by Notary Public Jose Celestino Torres on September 15, 1999. The said notice informed her of the impending extra-judicial foreclosure and sale of her house and lot to be held on October 21, 1999.

As a result, Oliver filed the subject complaint against PSBank and Castro.

Castro's Position

In her Answer,¹⁵ Castro admitted that she and Oliver agreed that the latter would lend out money to borrowers at 4% to 5% interest per month provided that the former would screen them. She also acknowledged having been instructed by Oliver to pay the bank ₱2 million every month to settle

⁷ Id. at 1311-1314.

⁸ Id. at 1291-1294.

⁹ Id. at 1429-1430.

¹⁰ Records, Volume I, pp. 22-23.

¹¹ Records, Volume IV, pp. 1471-1474.

¹² Records, Volume I, pp. 22-23.

¹³ Records, Volume IV, pp. 1307.

¹⁴ Records, Volume V, pp. 1615.

¹⁵ Id. at 39-48.

the ₱10 million credit line. Nonetheless, Castro informed Oliver that the payment thereof was subject to the availability of funds in her account. She disclosed that she made some alterations and erasures in Oliver's passbook so as to reconcile the passbook with the computer printout of the bank, but denied any attempt to hide the passbook as she was able to return it sometime in January 1999.

Castro also denied the deceit imputed against her. She asserted that their arrangement was not "interim or bridge financing" inasmuch as the loans were entirely new and distinct from that granted by PSBank. When Oliver's clients multiplied, Castro advised her to apply for a credit line of ₱10 million. The said credit line was first approved in December 1997 with a term of one year.¹⁶

Sometime in August 1998, Castro informed Oliver about the impending expiration of her credit line. Subsequently, Oliver applied for another loan in the amount of ₱4.5 million as evidenced by a promissory note,¹⁷ dated December 21, 1998. On January 5, 1999, another promissory note¹⁸ was executed by Oliver to cover a loan in the amount of ₱1,396,310.45.

Castro asserted that, on December 21, 1998, upon Oliver's instruction, a total of ₱7 million was withdrawn from the latter's account and was then deposited to the account of one Ben Lim (*Lim*) on the same date. Lim was a businessman who borrowed money from Oliver. Castro knew him because he was also a depositor and borrower of PSBank San Pedro Branch.¹⁹

As to the amount of ₱1,396,310.45, Castro explained that it was a separate and personal loan obtained by her from Oliver. To secure the payment of such obligation, Castro mortgaged a property located in Camella Homes III in Tunasan, Muntinlupa City.

Castro admitted that on October 19, 1999, she was terminated by PSBank because of certain problems regarding client accommodation and loss of confidence.²⁰

PSBank's Position

In its defense, PSBank averred that Oliver applied for a credit line of ₱10 million which was granted by the bank and which secured by a real estate mortgage. Because Oliver failed to pay the ₱10 million loan, she

¹⁶ *CA rollo*, pp. 168-169.

¹⁷ Records, Volume IV, p. 1298.

¹⁸ *Id.* at 1302.

¹⁹ *Id.* at 138-139.

²⁰ *Id.* at 154-156.

obtained another loan in the amount of ₱4.5 million, as evidenced by a promissory note. Days later, she again acquired a separate loan amounting to ₱1,396,310.45 as shown by another promissory note. Both loans were secured by a real estate mortgage, dated January 8, 1998, and the proceeds thereof were issued as proved by the release tickets,²¹ dated December 21, 1998 and January 5, 1999, respectively.²²

The RTC Decision

In its March 30, 2010 Decision,²³ the RTC dismissed the complaint and rendered judgment in favor of PSBank and Castro. According to the RTC, PSBank and Castro should not be held liable for the loan of ₱4.5 million and the withdrawal of the ₱7 million. Castro was able to submit the Debit Credit Memo²⁴ and the Savings Account Check Deposit Slip²⁵ to prove that there were some previous loan transactions between Oliver and Lim. Considering that neither PSBank nor Castro obtained the ₱7 million, there was no obligation on their part to return the amount.

Moreover, the trial court stated that Oliver failed to controvert PSBank's allegation that she had unpaid loan obligations. Thus, it concluded that PSBank had the right to foreclose the mortgaged property. The *fallo* reads:

WHEREFORE, finding lack of merit, the instant case is hereby DISMISSED. Accordingly, the Writ of Preliminary Injunction is hereby LIFTED and SET ASIDE.

SO ORDERED.²⁶

Oliver seasonably filed her motion for reconsideration.²⁷ She insisted that the ₱7 million was unlawfully withdrawn. She claimed that what happened in this case was a “cash savings withdrawal” and that *there should have been a corresponding withdrawal slip for such transaction*. Also, if indeed the ₱7 million was withdrawn from her account and was credited to the account of Lim, the deposit slip for his account should have been presented.

²¹ Id. at 1300, 1304.

²² *CA rollo*. p. 273.

²³ Records, Volume V, pp. 1828-1837.

²⁴ Records, Volume IV, pp. 1432-1433.

²⁵ Records, Volume V, p. 1617.

²⁶ Id. at 1837.

²⁷ Id. at 1838-1860.

The RTC Order

On July 22, 2010, the RTC resolved the motion and issued an order *reversing* its earlier decision. According to the RTC, Oliver's assertion that the withdrawal was made without her consent prevailed in the absence of any proof to the contrary. The *cash savings withdrawal slips* should have been offered in evidence by either PSBank or Castro to settle the issue of whether the amount of ₱7 million was actually withdrawn by Oliver or by her authorized representative or agent.

The RTC also rejected the position of PSBank and Castro that the erasures and alterations in Oliver's passbook were made simply to reconcile the same with the transaction history register of the bank because even after the alleged corrections, the said documents still contained different entries. Although Oliver and Lim had previous transactions, none of them pertained to the ₱7 million purportedly transferred on December 21, 1998.

With regard to PSBank, the RTC stated that it failed to exercise utmost diligence in safekeeping Oliver's deposit. Had it not been for the unauthorized, withdrawal which was attributable to the bank and Castro, the ₱4.5 million and the ₱1,396,310.45 loans would not have remained outstanding, considering that the improperly withdrawn ₱7 million was more than sufficient to discharge those liabilities.²⁸ The dispositive portion of the order reads:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The Decision dated March 30, 2010 is hereby reconsidered and set aside. In lieu thereof, a new one is hereby rendered ordering the defendants Lilia Castro and Philippine Savings Bank to jointly and solidarily pay plaintiff Dra. Mercedes Oliver, the sums of

1. ₱1,111,850.77 as actual damages;
2. ₱100,000.00 as moral damages;
3. ₱100,000.00 as attorney's fees; and
4. ₱100,000.00 as exemplary damages

Moreover, the Writ of Preliminary Injunction is hereby made permanent.

SO ORDERED.²⁹

Aggrieved, Castro and PSBank appealed before the CA.

²⁸ CA *rollo*, p. 279.

²⁹ Id. at 280.

The CA Decision

On October 25, 2013, the CA granted the appeal. It *reversed* the July 22, 2010 of the RTC order and reinstated its March 30, 2010 decision. The appellate court found no compelling evidence to prove that fraud attended the processing and release of the ₱4.5 million loan as well as the withdrawal of ₱7 million from Oliver's account. The CA found that Oliver admitted signing the loan documents, the promissory notes and the release tickets pertaining to the obligations that she had contracted with PSBank. In addition, the CA stated that Oliver also failed to establish her assertion that she was manipulated and defrauded into signing the said loan documents.

The CA also found that PSBank exercised extraordinary diligence in handling Oliver's account, thus, the awards of damages were deleted. The dispositive portion of the CA decision reads:

WHEREFORE, the Appeal is hereby GRANTED. The Order dated 22 July 2010 of the Regional Trial Court of Muntinlupa City, Branch 276, is REVERSED and SET ASIDE, and another one entered REINSTATING the Decision dated March 30, 2010, in Civil Case No. 99-278.

SO ORDERED.³⁰

Oliver filed her motion for reconsideration but the same was denied in the CA Resolution, dated September 12, 2014.

Hence, this petition.

ISSUES**I**

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE PETITIONER FAILED TO SHOW COMPELLING EVIDENCE TO PROVE THAT FRAUD ATTENDED THE PROCESSING AND RELEASE OF THE LOAN OF ₱4.5 MILLION AS WELL AS THE WITHDRAWAL OF ₱7 MILLION PESOS FROM HER ACCOUNT.

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THERE WAS NO EVIDENCE TO PROVE THAT THE SUM OF ₱7 MILLION WAS DEBITED FROM THE ACCOUNT OF PETITIONER SANS HER AUTHORIZATION.

³⁰ *Rollo*, p. 66.

III

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE RESPONDENTS TREATED THE PETITIONER'S ACCOUNT WITH EXTRAORDINARY DILIGENCE.

IV

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO HOLD THAT THE RESPONDENTS ARE JOINTLY AND SEVERALLY LIABLE TO THE PETITIONER FOR DAMAGES.³¹

In her petition for review,³² Oliver insisted that she had no knowledge of any loan released because she never availed of any new loan from PSBank. Neither the ₱4.5 million loan nor the cash withdrawal of ₱7 million was reflected in her passbook.

Oliver further argued that the burden of proving that the withdrawal was made with her authority would lie on the part of PSBank and Castro. The cash savings withdrawal slip containing the signature of Oliver should have been presented in court. While the respondents claimed that the amount withdrawn was lent to Lim, the latter was never called to the witness stand as PSBank and Castro opted not to present him in court. Castro, aside from her self-serving testimony, failed to present any concrete proof to show that Oliver indeed lent the withdrawn ₱7 million cash to Lim.

Finally, Oliver averred that the erasures and alterations in her passbook undeniably established that Castro manipulated the same to conceal the loan release and the cash withdrawal from her account.

In her Comment,³³ Castro countered that the CA had more opportunity and facilities to examine the facts. Hence, there was no reason to depart from the rule that the findings of fact of the CA were final and conclusive and could not be reviewed on appeal. She asserted that there was no proof that the ₱7 million was withdrawn without Oliver's authority. She added that Oliver was an astute businesswoman who knew her clients and bank deposits and who was knowledgeable of her bank transactions and was aware of her loaned amounts from the bank.

In its Comment,³⁴ PSBank asserted that the issues and arguments propounded by Oliver had been judiciously passed upon. On the stated facts

³¹ Id. at 29-30.

³² Id at 10-52.

³³ Id. at 87-98.

³⁴ Id. at 100-104.

alone, the petition, which was akin to a motion for reconsideration, should be denied outright for being *pro forma*.

In her Reply,³⁵ Oliver faulted PSBank and Castro for failing to present the cash withdrawal slip which would show her signature to prove that the money was withdrawn with her authority. She also reiterated that Lim should have been presented as a witness to substantiate their defense that he actually received the amount of ₱7 million.

The Court's Ruling

The petition is impressed with merit.

*There was an implied agency
between Oliver and Castro; the
loans were properly acquired*

A contract of agency may be inferred from all the dealings between Oliver and Castro. Agency can be express or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency knowing that another person is acting on his behalf without authority.³⁶ The question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or circumstantial evidence. The question is ultimately one of intention.³⁷

In this case, Oliver and Castro had a business agreement wherein Oliver would obtain loans from the bank, through the help of Castro as its branch manager; and after acquiring the loan proceeds, Castro would lend the acquired amount to prospective borrowers who were waiting for the actual release of their loan proceeds. Oliver would gain 4% to 5% interest per month from the loan proceeds of her borrowers, while Castro would earn a commission of 10% from the interests. Clearly, an agency was formed because Castro bound herself to render some service in representation or on behalf of Oliver, in the furtherance of their business pursuit.³⁸

For months, the agency between Oliver and Castro benefited both parties. Oliver, through Castro's representations, was able to obtain loans, relend them to borrowers, and earn interests; while Castro acquired commissions from the transactions. Oliver even gave Castro her passbook to facilitate the transactions.

³⁵ Id. at 119-123.

³⁶ Article 1869, New Civil Code of the Philippines.

³⁷ De Leon and De Leon, Jr., *Comments and Cases on Partnership, Agency and Trusts*, 2010 ed., p. 337-338.

³⁸ Article 1868, New Civil Code of the Philippines.

Accordingly, the laws on agency apply to their relationship. Article 1881 of the New Civil Code provides that the agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency. Thus, as long as the agent acts within the scope of the authority given by his principal, the actions of the former shall bind the latter.

Oliver claims that the ₱4.5 million loan, released on December 21, 1998, and the ₱1,396,310.45 loan, released on January 5, 1999, were not acquired with her consent. Castro and PSBank, on the other hand, countered that these loans were obtained with Oliver's full consent.

The Court finds that the said loans were acquired with Oliver's authority. The promissory notes³⁹ and the release tickets⁴⁰ for the said loans bore her signatures. She failed to prove that her signatures appearing on the loan documents were forged. Hence, the loan documents were reliable and these proved that the loans were processed by Castro within the scope of her authority. As the loans were validly obtained, PSBank correctly stated that Oliver had incurred a debt of ₱4.5 million and ₱1,396,310.45, or a total of ₱5,888,149.33.

*₱7 million was
improperly withdrawn;
agent acted beyond her
scope of authority*

Although it was proven that Oliver authorized the loans, in the aggregate amount of ₱5,888,149.33, there was nothing in the records which proved that she also allowed the withdrawal of ₱7 million from her bank account. Oliver vehemently denied that she gave any authority whatsoever to either Castro or PSBank to withdraw the said amount.

In her judicial affidavit before the RTC, Castro initially claimed that Oliver authorized the withdrawal of ₱7 million from her bank account, to wit:

Q: Do you know when was this 4.5 million pesos loan was credited to plaintiff's deposit account?

A: Based on the Transaction Ledge of PS Bank, the 4.5 million pesos was credit to plaintiff's deposit account on 21 December 21 1998

³⁹ Records, Volume IV, pp. 1298 and 1302.

⁴⁰ Id. at 1300 and 1304.

Q: What happened after the 4.5 million pesos loan was credited to plaintiff's account?

A: **Upon plaintiff's instruction**, 7 million was withdrawn from her account including her loaned amount to be deposited at Mr. Ben Lim's account at PS Bank, San Pedro Branch.⁴¹

[Emphasis Supplied]

During her cross-examination, however, Castro could no longer remember whether Oliver gave her the authority to withdraw the ₱7 million from her account. The transcript of stenographic notes reads:

Q: You said here, your statement here, "Upon Plaintiff's instruction". So, my question is, who did the Plaintiff instruct you, was it you?

A: I cannot remember, sir.

Q: You are not definite? Your statement here it is categorical. It's on page 9 of 17 in the Judicial Affidavit, the question is "What happened after the 4.5 million Pesos loan was credited to the Plaintiff's account" And your answer was, "Upon Plaintiff's instruction Seven (7) million was withdrawn from her account. My question is, this phrase, upon plaintiff's instruction, who did the Plaintiff's (sic) instruct, was it you?"

A: I cannot remember, sir because I still have other officers other than me, who were assisting me during that time, so it could be the instruction even I said upon the instruction of the plaintiff, but **I cannot remember if I was the one who received the instruction from the plaintiff. It could be other officers of mine during that time, sir.**

Q: May I remind you, this is Seven (7) million Pesos?

A: Yes, sir.⁴²

[Emphasis Supplied]

Verily, Castro, as agent of Oliver and as branch manager of PS Bank, utterly failed to secure the authorization of Oliver to withdraw such substantial amount. As a standard banking practice intended precisely to prevent unauthorized and fraudulent withdrawals, a bank manager must verify with the client-depositor to authenticate and confirm that he or she has validly authorized such withdrawal.⁴³

Castro's lack of authority to withdraw the ₱7 million on behalf of Oliver became more apparent when she altered the passbook to hide such transaction. It must be remembered that Oliver entrusted her passbook to Castro. In the transaction history register for her account, it was clear that there was a series of dealings from December 17, 1998 to December 23,

⁴¹ Records, Volume II, p. 681.

⁴² TSN, January 27, 2009, pp. 6-7.

⁴³ *Philippine National Bank v. Tria*, 686 Phil. 1139, 1157 (2012).

1998. When compared with Oliver's passbook, the latter showed that the next transaction from December 16, 1998 was on December 28, 1998. It was also obvious to the naked eye that the December 28, 1998 entry in the passbook was altered. As aptly observed by the RTC, nowhere in the testimony of Castro could be gathered that she made a detailed, plausible and acceptable explanation as to why she had to make numerous corrections in the entries in the passbook.⁴⁴ Even after the corrections allegedly done to reconcile the records, the passbook and the transaction history register still contained different entries.

Curiously, though she asserts that Oliver obtained a loan of ₱4.5 million and authorized the withdrawal of ₱7 million,⁴⁵ Castro could not explain why these transactions were not reflected in the passbook which was in her possession. Bearing in mind that the alleged unauthorized withdrawal happened on December 21, 1998, while Castro was questionably withholding the passbook, the Court is of the impression that she manipulated the entries therein to conceal the ₱7 million withdrawal.

Further, Castro claims that Oliver instructed her to withdraw the ₱7 million from her bank account and to deposit the same in Lim's account. Glaringly, Lim was not presented as a witness to substantiate her defense. Even though she testified that the ₱7 million transfer from Oliver's account to Lim's was duly documented, Castro never presented a single documentary proof of that specific transaction.

The Court is convinced that Castro went beyond the scope of her authority in withdrawing the ₱7 million from Oliver's bank account. Her flimsy excuse that the said amount was transferred to the account of a certain Lim deserves scant consideration. Hence, Castro must be held liable for prejudicing Oliver.⁴⁶

*PSBank failed to
exercise the highest
degree of diligence
required of banking
institutions*

Aside from Castro, PSBank must also be held liable because it failed to exercise utmost diligence in the improper withdrawal of the ₱7 million from Oliver's bank account.

⁴⁴ CA rollo, p. 277.

⁴⁵ Rollo, p. 95.

⁴⁶ Art. 1898. If the agent contracts in the name of the principal, **exceeding the scope of his authority**, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification.

In the case of banks, the degree of diligence required is more than that of a good father of a family. Considering the fiduciary nature of their relationship with their depositors, banks are duty bound to treat the accounts of their clients with the highest degree of care. 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.⁴⁷

In *Simex International v. Court of Appeals*,⁴⁸ the Court held that the depositor expected the bank to treat his account with the utmost fidelity, whether such account consisted 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.⁴⁹

Time and again, the Court has emphasized that the bank is expected to ensure that the depositor's funds shall only be given to him or his authorized representative. In *Producers Bank of the Phil. v. Court of Appeals*,⁵⁰ the Court held that the usual banking procedure was that withdrawals of savings deposits could only be made by persons whose authorized signatures were in the signature cards on file with the bank. In the said case, the bank therein allowed an unauthorized person to withdraw from its depositor's savings account, thus, it failed to exercise the required diligence of banks and must be held liable.

With respect to withdrawal slips, the Court declared in *Philippine National Bank v. Pike*⁵¹ that “[o]rordinarily, banks allow withdrawal by someone who is not the account holder so long as the account holder authorizes his representative to withdraw and receive from his account by signing on the space provided particularly for such transactions, usually found at the back of withdrawal slips.” There, the bank violated its fiduciary duty because it allowed a withdrawal by a representative even though the authorization portion of the withdrawal slip was not signed by the depositor.

⁴⁷ *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667, 682 (1997).

⁴⁸ 262 Phil. 387 (1990).

⁴⁹ *Id.* at 396.

⁵⁰ 445 Phil. 702 (2003).

⁵¹ 507 Phil. 322-344 (2005).

Finally, in *Cagungun v. Planters Development Bank*,⁵² a case very similar to the present one, the depositors therein entrusted their passbook to the bank employees for some specific transactions. The bank employees went beyond their authority and were able to withdraw from the depositors' account without the latter's consent. The bank was held liable therein for the acts of its employees because it failed to safeguard the accounts of its depositors.

In the case at bench, it must be determined whether the ₱7 million was withdrawn from the bank with the authority of Oliver. As testified to by Castro, every withdrawal from the bank was duly evidenced by a cash withdrawal slip, a copy of which is given both to the bank and to its client.⁵³ Contrary to the position of the CA and that of the respondents, Oliver cannot be required to produce the cash withdrawal slip for the said transaction because, precisely, **she consistently denied giving authority to withdraw such amount** from her account.

Necessarily, the party that must have access to such crucial document would either be PSBank or Castro. They must present the said cash withdrawal slip, duly signed by Oliver, to prove that the withdrawal of ₱7 million was indeed sanctioned. Unfortunately, both PSBank and Castro failed to present the cash withdrawal slip.

During the trial, the counsel of PSBank conceded that the cash withdrawal slip for the ₱7 million transaction could not be located, to quote:

ATTY DEJARESCO: Your Honor, excuse me just a comment for the record we asked for two (2) years, Your Honor to subpoena this from the bank, the bank never produce (sic) the withdrawal slip two (2) years (sic), Your Honor, this case was delayed by the previous Court for two (2) years. Your Honor, no withdrawal slip was produced by the bank, Your Honor. I would just like to place it on record.

COURT: Were there subpoenas issued by the bank, was there an order?

ATTY. DEJARESCO: Yes Your Honor, I think the good counsel was the counsel at that time would you able to confirm that it took us two (2) years to subpoena and subpoena (sic) this withdrawal slip because there must be an authority to withdraw, and it there is a signature of the plaintiff, we will admit that.

⁵² 510 Phil. 51-69 (2005).

⁵³ *Rollo*, p. 92.

ATTY. CORPUZ: I remember having manifested that the withdrawal slip cannot be located.

ATTY. DEJARESCO: Let's put that on record, Your Honor.

ATTY. CORPUS: (sic) I remember having made that manifestation, Your Honor.

COURT: That's the reason why no document was produced in Court by the PS Bank?

ATTY. CORPUS: (sic) With respect to the withdrawal slip only, Your Honor on December 21.

ATTY. DEJARESCO: Of that Seven (7) million from the account.

COURT: Make that on record.

ATTY. CORPUS: Yes, Your Honor.⁵⁴

[Emphasis Supplied]

Castro, as agent of Oliver, could not produce either the said withdrawal slip allegedly authorizing the withdrawal of the ₱7 million, her testimony is quoted as follows:

ATTY. DEJARESCO:

Q: Can you show poof of the withdrawal slip?

A: The withdrawal slip.

Q: I'm asking you do you have proof?

A: None, sir.

Q: You cannot produce in Court in support of your Judicial Affidavit?

A: None.

Q: And you cannot produce that in Court?

A: As far as the withdrawal slip as for myself, none.⁵⁵

[Emphasis Supplied]

From the foregoing, there was a clear showing of PSBank's failure to exercise the degree of diligence that it ought to have exercised in dealing with its clients. It could not prove that the withdrawal of ₱7 million was duly

⁵⁴ TSN, January 27, 2009, pp. 65-66.

⁵⁵ TSN, August 9, 2011, pp. 10-11.

authorized by Oliver. As a banking institution, PSBank was expected to ensure that such substantial amount should only be transacted with the consent and authority of Oliver. PSBank, however, reneged on its fiduciary duty by allowing an encroachment upon its depositor's account without the latter's permission. Hence, PSBank must be held liable for such improper transaction.

*PSBank and Castro
failed to discharge their
burden and must be held
solidarily liable*

The party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff establishes his case, the burden of evidence shifts to the defendant, who, in turn, bears the burden to establish his defense.⁵⁶

Here, Oliver alleged that she did not authorize the withdrawal of ₱7 million from her account. To establish her allegation, Oliver presented the following: (1) the transaction history register which showed the withdrawal of ₱7 million from her account on December 21, 1998; (2) the passbook which contained alterations to conceal the withdrawal on December 21, 1998 while in the possession of Castro; and (3) testimonial evidence that she did not allow the withdrawal of the said amount.⁵⁷ The Court is of the view that Oliver had sufficiently discharged her burden in proving that ₱7 million was withdrawn from her account without her authorization. Hence, the burden was shifted to the respondents to refute the allegation of Oliver.

As discussed above, both Castro and PSBank failed to establish the burden of their defense. They failed to present proof that Oliver authorized the said transaction. They could have presented either the cash withdrawal slip for the ₱7 million on December 21, 1999 or Lim's testimony to prove the transfer of funds to the latter's account, but they did neither. Without an iota of proof to substantiate the validity of the said transaction, the respondents unlawfully deprived Oliver of her funds.

⁵⁶ *De Leon v. Bank of the Philippines*, G.R. No. 184565, November 20, 2013, 710 SCRA 443, 453, 454.

⁵⁷ TSN, February 6, 2001, p. 13.

Indeed, the bank should be solidarily liable with its employee for the damages committed to its depositor.⁵⁸ Under Article 2180 of the Civil Code, employers shall be held primarily and solidarily liable for damages caused by their employees acting within the scope of their assigned tasks.

Castro, as acting branch manager of PSBank, was able to facilitate the questionable transaction as she was also entrusted with Oliver's passbook. In other words, Castro was the representative of PSBank, and, at the same time, the agent of Oliver, earning commissions from their transactions. Oddly, PSBank, either consciously or through sheer negligence, allowed the double dealings of its employee with its client. Such carelessness and lack of protection of the depositors from its own employees led to the unlawful withdrawal of the ₱7 million from Oliver's account. Although Castro was eventually terminated by PSBank because of certain problems regarding client accommodation and loss of confidence, the damage to Oliver had already been done. Thus, both Castro and PSBank must be held solidarily liable.

*Award of damages;
invalid foreclosure*

To recapitulate, the loans of Oliver from PSBank which were secured by real estate mortgages amounted to ₱5,888,149.33. Finding PSBank and Castro solidarily liable to Oliver in the amount of ₱7 million because it was improperly withdrawn from her bank account, the Court agrees with the RTC that had it not been for the said unauthorized withdrawal, Oliver's debts amounting to ₱5,888,149.33 would have been satisfied.

Consequently, PSBank's foreclosure of the real estate mortgage covering the two (2) loans in the total amount of ₱5,888,149.33 was improper. With PSBank being found liable to Oliver for ₱7 million, after offsetting her loans would have PSBank and Castro still owing her ₱1,111,850.77, which must be suitably paid in the form of actual damages.

The award of moral damages must also be upheld. Specifically, in *culpa contractual* or breach of contract, like in the present case, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. Verily, the breach must be wanton, reckless, malicious, or in bad faith, oppressive or abusive.⁵⁹

⁵⁸ *Producers Bank of the Phil. v. Court of Appeals*, supra note 50.

⁵⁹ *Herbosa v. Court of Appeals*, 425 Phil. 431, 458 (2002).

Here, Castro and PSBank were utterly reckless in allowing the withdrawal of a huge amount from Oliver's account without her consent. The bank's negligence is a result of lack of due care and caution required of managers and employees of a firm engaged in a business so sensitive and demanding.⁶⁰ Hence, the award of ₱100,000.00 as moral damages is warranted.

The award of exemplary damages is also proper due to the failure of Castro and PSBank to prevent the unauthorized withdrawal from Oliver's account. The law allows the grant of exemplary damages to set an example for public good.⁶¹ The Court, however, finds that the amount of exemplary damages must be decreased to ₱50,000.00.

Finally, the Court agrees with the RTC that Castro and PSBank should be held solidarily liable for attorney's fees. Article 2208 of the Civil Code is clear that attorney's fees may be recovered when exemplary damages are awarded or when the plaintiff, through the defendant's act or omission, has been compelled to litigate with thirds persons. A decreased amount of ₱50,000.00 attorney's fees should be sufficient.

WHEREFORE, the petition is **GRANTED**. The October 25, 2013 Decision and the September 12, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 95656 are **REVERSED** and **SET ASIDE**. The July 22, 2010 Order of the Regional Trial Court, Branch 276, Muntinlupa City in Civil Case No. 99-278 is hereby **REINSTATED** with the **MODIFICATION** that the award of exemplary damages and attorney's fees be decreased to ₱50,000.00 each.

All awards shall earn interests at the rate of six percent (6%) per annum from the finality of this decision.

SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

⁶⁰ *Prudential Bank v. Court of Appeals*, 384 Phil. 817, 824 (2000).

⁶¹ *Cagungun v. Planters Development Bank*, 510 Phil. 51, 65 (2005).

WE CONCUR:



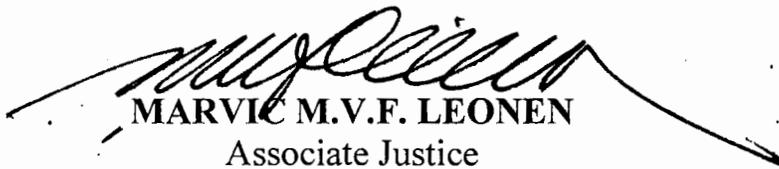
ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

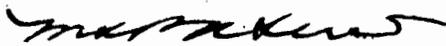
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION.

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice