



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**SECOND DIVISION**

**ANNA MARIE L. GUMABON,**  
Petitioner,

**G.R. No. 202514**

Present:

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

- versus -

Promulgated:  
**25 JUL 2016**

**PHILIPPINE NATIONAL BANK,**  
Respondent.

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**DECISION**

**BRION, J.:**

Before us is a petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by Anna Marie Gumabon (*Anna Marie*) assailing the December 16, 2011 decision<sup>2</sup> and June 26, 2012 resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CV. No. 96289. The CA reversed the Regional Trial Court (RTC)'s ruling<sup>4</sup> in Civil Case No. Q-04-53432 favoring Anna Marie.

<sup>1</sup> *Rollo*, pp. 3-20.

<sup>2</sup> Id. at 21-38. Penned by CA Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S. E. Veloso and Danton Q. Bueser of the Special Fourteenth Division.

<sup>3</sup> Id. at 52-53.

<sup>4</sup> Id. at 55-79.

### The Facts

On August 12, 2004, Anna Marie filed a complaint for recovery of sum of money and damages before the RTC against the Philippine National Bank (PNB) and the PNB Delta branch manager Silverio Fernandez (*Fernandez*). The case stemmed from the PNB's refusal to release Anna Marie's money in a consolidated savings account and in two foreign exchange time deposits, evidenced by *Foreign Exchange Certificates of Time Deposit (FXCTD)*.

In 2001, Anna Marie, together with her mother Angeles and her siblings Anna Elena and Santiago, (*the Gumabons*) deposited with the PNB Delta Branch \$10,945.28 and \$16,830.91, for which they were issued FXCTD Nos. **A-993902**<sup>5</sup> and **A-993992**,<sup>6</sup> respectively.

The Gumabons also maintained eight (8) savings accounts<sup>7</sup> in the same bank. Anna Marie decided to consolidate the eight (8) savings accounts and to withdraw ₱2,727,235.85 from the consolidated savings account to help her sister's financial needs.

Anna Marie called the PNB employee handling her accounts, Reino Antonio Salvoro (*Salvoro*), to facilitate the consolidation of the savings accounts and the withdrawal. When she went to the bank on April 14, 2003, she was informed that she could not withdraw from the savings accounts since her bank records were missing and Salvoro could not be contacted.

On April 15, 2003, Anna Marie presented her two FXCTDs, but was also unable to withdraw against them. Fernandez informed her that the bank would still verify and investigate before allowing the withdrawal since Salvoro had not reported for work.

Thus, Anna Marie sent two demand letters<sup>8</sup> dated April 23 and April 25, 2003 to the PNB.

After a month, the PNB finally consolidated the savings accounts and issued a passbook for **Savings Account (SA) No. 6121200**.<sup>9</sup> The PNB also confirmed that the total deposits amounted to ₱2,734,207.36. Anna Marie, her mother, and the PNB executed a *Deed of Waiver and Quitclaim* dated May 23, 2003<sup>10</sup> to settle all questions regarding the consolidation of the savings accounts. After withdrawals, the balance of her consolidated savings account was ₱250,741.82.

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<sup>5</sup> Exhibit "A," RTC records, pp. 17.

<sup>6</sup> Exhibit "B," *id.* at 18.

<sup>7</sup> Exhibit "M" to "M-7," *id.* at 232-239.

<sup>8</sup> *Id.* at 244; Exhibit "C," *id.* at 19-20, and Exhibit "H," *id.* at 30.

<sup>9</sup> Exhibit "D" and "D-1," *id.* at 21-22.

<sup>10</sup> Exhibit "G," *id.* at 28-29.

On July 30, 2003, the PNB sent letters to Anna Marie to inform her that the PNB refused to honor its obligation under FXCTD Nos. 993902 and 993992,<sup>11</sup> and that the PNB withheld the release of the balance of ₱250,741.82 in the consolidated savings account.<sup>12</sup> According to the PNB, Anna Marie pre-terminated, withdrew and/or debited sums against her deposits.

Thus, Anna Marie filed before the RTC a **complaint** for sum of money and damages against the PNB and Fernandez.<sup>13</sup>

As to the two FXCTDs, Anna Marie contended that the PNB's refusal to pay her time deposits is contrary to law. The PNB cannot claim that the bank deposits have been paid since the certificates of the time deposits are still with Anna Marie.<sup>14</sup>

As to the consolidated savings account, Anna Marie stated that the PNB had already acknowledged the account's balance in the *Deed of Waiver and Quitclaim* amounting to ₱2,734,207.36. As of January 26, 2004, the remaining balance was ₱250,741.82. PNB presented no concrete proof that this amount had been withdrawn.

Anna Marie prayed that the PNB and Fernandez be held solidarily liable for actual, moral, and exemplary damages, as well as attorney's fees, costs of suit, and legal interests because of the PNB's refusal to honor its obligations.

In its **answer**,<sup>15</sup> the PNB argued that: (1) Anna Marie is not entitled to the balance of the consolidated savings account based on *solutio indebiti*; (2) the PNB already paid the \$10,058.01 covered by FXCTD No. 993902; (3) the PNB is liable to pay only \$10,718.87 of FXCTD No. 993992, instead of the full amount of \$17,235.41; and (4) Anna Marie is guilty of contributory negligence. The PNB's arguments are discussed below.

*First*, Anna Marie is not entitled to the alleged balance of ₱250,741.82. The PNB's investigation showed that Anna Marie withdrew a total of ₱251,246.81<sup>16</sup> from two of the eight savings accounts and she used this amount to purchase manager's check no. 0000760633.<sup>17</sup> Hence, ₱251,246.81 should be deducted from the sum agreed upon in the *Deed of Waiver and Quitclaim*. The PNB offered photocopies of the PNB's **miscellaneous ticket**<sup>18</sup> and the **manager's check** as evidence to prove the withdrawals. The PNB argued that unjust enrichment would result if Anna

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<sup>11</sup> Exhibit "I," *id.* at 31-32.

<sup>12</sup> Exhibit "P," *id.* at 240.

<sup>13</sup> RTC Records, pp. 1-16, Volume 1.

<sup>14</sup> CA records, p. 236.

<sup>15</sup> RTC records, pp. 41-52.

<sup>16</sup> ₱100,408.65 and ₱150,838.17 = ₱251,246.81.

<sup>17</sup> Exhibit "15," RTC records, p. 70.

<sup>18</sup> Exhibit "14," *id.* at 69.

Marie would be allowed to collect ₱250,741.82 from the consolidated savings account without deducting her previous withdrawal of ₱251,246.81.

*Second*, Anna Marie is not entitled to receive \$10,058.01 covered by FXCTD No. 993902. Based on the PNB's records, Anna Marie pre-terminated FXCTD No. 993902 on March 11, 2002, and used the deposit, together with another deposit covered by FXCTD No. 993914 (for \$8,111.35), to purchase a **foreign demand draft** (FX Demand Draft No. 4699831) payable to Anna Rose/Angeles Gumabon. The PNB presented a facsimile copy of **Anna Rose's Statement of Account (SOA)**<sup>19</sup> from the PNB Bank to prove that the amount covered by FXCTD No. 993902 was already paid.

*Third*, Anna Marie is only entitled to receive \$10,718.87 instead of the full amount of \$17,235.41 covered by FXCTD No. 993992 because: (a) the amount of \$1,950.00 was part of the money used by Anna Marie to purchase the manager's check; (2) the amount of \$2,566.54 was credited to Current Account No. 227-810961-8 owned by Anna Marie's aunt, Lolita Lim; and (3) the amount of \$2,000.00 was credited to Current Account No. 2108107498 of Anna Marie and Savings Account No. 212-5057333 of Anna Marie/or Angeles or Santiago/or Elena (all surnamed Gumabon). Hence, these amounts should be deducted from the amount payable to Anna Marie.

*Finally*, the PNB alleged that Anna Marie was guilty of contributory negligence in her bank dealings.

In her reply,<sup>20</sup> Anna Marie argued that the best evidence of her withdrawals is the withdrawal slips duly signed by her and the passbooks pertaining to the accounts. PNB, however, failed to show any of the withdrawal slips and/or passbooks, and also failed to present sufficient evidence that she used her accounts' funds.

### The RTC Ruling

The RTC ruled in Anna Marie's favour.<sup>21</sup>

The RTC held that the PNB had not yet paid the remaining balance of \$10,058.01 under FXCTD No. 993902. Anna Marie's SOA,<sup>22</sup> which the PNB relied upon, is a mere photocopy and does not satisfy the best evidence rule. Moreover, there is no indication on the stated amounts in the SOA that the funds have come from FXCTD No. 993902.<sup>23</sup> The PNB failed to obtain the deposition of a PNB Bank officer or present any other evidence to show that the amounts stated in the SOA came from FXCTD No. 993902. The

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<sup>19</sup> Exhibits "19," "19-a," "19-b," id. at 75-77.

<sup>20</sup> RTC records, pp. 84-96.

<sup>21</sup> RTC decision dated October 26, 2010. Penned by Acting Presiding Judge Fernando T. Sagun, Jr. *Rollo*, pp. 55-79.

<sup>22</sup> Exhibit 19, p. 75.

<sup>23</sup> CA records, p. 252.

RTC also held that the alleged pre-termination of FXCTD No. 993902 on March 11, 2002, is hard to believe since the certificate shows that the last entry was made on March 24, 2003, with a reflected balance of \$10,058.01.

**On FXCTD No. 993992**, the RTC held that the PNB failed to prove Anna Marie's alleged withdrawals. These alleged withdrawals are not reflected at the back of the certificate. Anna Marie's ledger was also not presented as evidence to show that several withdrawals had been made against FXCTD No. 993992.

**On the consolidated savings account**, the RTC held that the PNB failed to prove that Anna Marie withdrew the balance of ₱250,741.82. The RTC excluded PNB's evidence, *i.e.*, *photocopies of the miscellaneous ticket and manager's check*, to prove the alleged withdrawals, since these documents were just photocopies and thus failed to satisfy the best evidence rule.

The RTC awarded damages to Anna Marie due to the PNB's mishandling of her account through its employee, Salvoro. The RTC also held that the PNB failed to establish Anna Marie's contributory negligence.

In conclusion, the RTC ordered the PNB to pay Anna Marie these amounts:

- (1) Actual damages of:
  - (a) \$10,058.01, as the outstanding balance of FXCTD No. 993902;
  - (b) \$20,244.42, as the outstanding balance of FXCTD No. 993992;and
  - (c) ₱250,741.82, as the outstanding balance of SA No. 6121200;
- (2) ₱100,000.00 as moral damages;
- (3) ₱50,000.00 as exemplary damages;
- (4) ₱150,000.00 as attorney's fees; and
- (5) Costs of suit.

From this ruling, the PNB appealed before the CA.

#### The CA Ruling

The CA **reversed** the RTC's ruling.<sup>24</sup>

The CA held that the PNB had paid the actual amounts claimed by Anna Marie in her complaint. The CA noted Anna Marie's suspicious and exclusive dealings with Salvoro and the Gumabons' instruction to Salvoro to

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<sup>24</sup> CA decision dated December 16, 2011. *Rollo*, pp. 21-38.

make unauthorized and unrecorded withdrawals. Hence, there are no entries of withdrawals reflected in Anna Marie's passbook.

The CA also considered Anna Rose's SOA as proof that the PNB had paid the remaining balance of \$10,058.01 on FXCTD No. 993902. The CA held that the PNB verified the SOA and it was corroborated by the **affidavit**<sup>25</sup> of the PNB Branch Operations Officer in New York. The CA stated that the RTC should have allowed the taking of the deposition of the PNB bank officer.

The CA also relied on the PNB's investigation and concluded that the PNB had already paid the amounts claimed by Anna Marie under FXCTD Nos. 993902 and 993992.

As to Anna Marie's consolidated savings account, the CA gave credence to the miscellaneous ticket and the manager's check presented by the PNB to prove that it had already paid the balance.

Anna Marie moved but failed to obtain reconsideration of the CA's decision; hence, the present petition.<sup>26</sup>

### The Petition

Anna Marie filed the present petition for review to question the CA's decision and resolution which reversed the RTC's ruling.

Anna Marie argues that: *first*, the CA should not have disregarded the RTC's conclusive findings; *second*, the CA erred in considering the PNB New York bank officer's affidavit because it was not formally offered as evidence; *third*, the CA erroneously relied on a foreign demand draft<sup>27</sup> to prove the PNB's payment of the amount due under FXCTD No. 993902; *fourth*, the CA erroneously considered the miscellaneous ticket and the manager's check because these documents are mere photocopies and inadmissible under the best evidence rule; and *fifth*, the CA's conclusion about a purported "connivance" between Anna Marie and Salvoro has no evidentiary basis.

In its comment, the PNB counters that: *first*, the CA can rectify the RTC's factual findings since the RTC committed errors in its appreciation of the evidence; *second*, the RTC completely ignored the PNB's several evidence proving its payment of Anna Marie's FXCTDs; *third*, Anna Marie did not refute the PNB's allegations of payment; *fourth*, the CA has the right to review even those exhibits which were excluded by the RTC; and *fifth*, the CA correctly ruled that the PNB should not be faulted about the unrecorded transactions, and that the PNB had done its duty to its depositors

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<sup>25</sup> Exhibit "20," RTC records, p. 78.

<sup>26</sup> CA Resolution dated June 26, 2012.

<sup>27</sup> Exhibit "18," RTC records, p. 349.

when it conducted investigations and an internal audit of Anna Marie's accounts.

### The Issues

The issue before this Court is whether Anna Marie is entitled to the payment of the following amounts:

- (a) \$10,058.01 or the outstanding balance under FXCTD No. 993902;
- (b) \$20,244.42 for FXCTD No. 993992;
- (c) ₱250,741.82 for SA No. 6121200; and
- (3) Damages.

### Our Ruling

#### ***We grant the petition and reverse the CA's ruling.***

The core issue raised in the present petition is a question of fact. As a general rule, a petition for review under Rule 45 of the Rules of Court covers *only* questions of law. Questions of fact are not reviewable and cannot be passed upon by the Court in the exercise of its power to review under Rule 45.<sup>28</sup>

There are, however, exceptions to the general rule. Questions of fact may be raised before this Court in any of these instances: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>29</sup>

The present case falls under two of the exceptions, particularly that the CA's findings are contrary to the RTC's findings, and that the CA's findings of fact are premised on absent evidence and contradicted by the evidence on record.

We note that the CA considered pieces of evidence which are inadmissible under the Rules of Court, particularly the manager's check and the corresponding miscellaneous ticket, Anna Rose's SOA, and the affidavit of the PNB New York's bank officer. The inadmissibility of these documents is explained more fully in the following discussion.

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<sup>28</sup> *Westmont Investment Corp. v. Francia, Jr.*, G.R. No. 194128, December 7, 2011, 661 SCRA 787, 797.

<sup>29</sup> *Macasero v. Southern Industrial Gases*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 504.

***PNB failed to establish the fact of payment to Anna Marie in FXCTD Nos. 993902 and 993992, and SA No. 6121200.***

It is a settled rule in evidence that the one who alleges payment has the burden of proving it.<sup>30</sup> The burden of proving that the debt had been discharged by payment rests upon the debtor once the debt's existence has been fully established by the evidence on record. When the debtor introduces some evidence of payment, the burden of going forward with the evidence – as distinct from the burden of proof – shifts to the creditor. Consequently, the creditor has a duty to produce evidence to show non-payment.<sup>31</sup>

In the present case, both the CA and the RTC declared that the PNB has the burden of proving payment. The lower courts, however, differed in resolving the question of whether the PNB presented sufficient evidence of payment to shift the burden of evidence to Anna Marie. The RTC ruled that the PNB failed to do so, after excluding PNB's evidence, *i.e.*, *miscellaneous ticket, manager's check, and the affidavit of the PNB New York's bank officer*, based on the rules of evidence. The CA, on the other hand, considered the excluded evidence and found that the PNB presented sufficient proof of payment.

*i. The PNB's alleged payment of the amount covered by SA No. 6121200*

The PNB alleged that it had already paid the balance of the consolidated savings account (SA No. 6121200) amounting to ₱250,741.82. It presented the manager's check to prove that Anna Marie purchased the check using the amounts covered by the Gumabon's two savings accounts which were later part of Anna Marie's consolidated savings account. The PNB also presented the miscellaneous ticket to prove Anna Marie's withdrawal from the savings accounts.

The RTC denied the admission of the manager's check and the miscellaneous ticket since the original copies were never presented.<sup>32</sup> The PNB moved to tender the excluded evidence and argued that even without the presentation of the original copies, the photocopies are admissible because they have been identified by Fernandez.<sup>33</sup>

Evidence, to be admissible, must comply with two qualifications: (a) relevance and (b) competence. Evidence is relevant if it has a relation to the

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<sup>30</sup> *Jimenez v NLRC*, 326 Phil 89-90 (1996).

<sup>31</sup> *Saberola v. Suarez*, G.R. No. 151227, July 14, 2008, 558 SCRA 135, 146-147.

<sup>32</sup> RTC records, p. 387.

<sup>33</sup> *Id.* at 411.

fact in issue as to induce a belief in its existence or nonexistence.<sup>34</sup> On the other hand, evidence is competent if it is not excluded by the law or by the Rules of Court.<sup>35</sup>

One of the grounds under the Rules of Court that determines the competence of evidence is the best evidence rule. Section 3, Rule 130 of the Rules of Court provides that the original copy of the document must be presented whenever the content of the document is under inquiry.<sup>36</sup>

However, there are instances when the Court may allow the presentation of secondary evidence in the absence of the original document. Section 3, Rule 130 of the Rules of Court enumerates these exceptions:

- (a) when the original has been lost, or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) when the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) when the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) when the original is a public record in the custody of a public officer or is recorded in a public office.

While the RTC cannot consider the excluded evidence to resolve the issues, such evidence may still be admitted on appeal provided there has been tender of the excluded evidence under Section 40 of Rule 132 of the Rules of Court.<sup>37</sup>

The PNB cannot simply substitute the mere photocopies of the subject documents for the original copies without showing the court that any of the exceptions under Section 3 of Rule 130 of the Rules of Court applies. The PNB's failure to give a justifiable reason for the absence of the original documents and to maintain a record of Anna Marie's transactions only

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<sup>34</sup> Rule 128, Rules of Court, Sec. 4.

<sup>35</sup> Id., Sec. 3.

<sup>36</sup> "Sec. 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and (d) When the original is a public record in the custody of a public officer or is recorded in a public office."

<sup>37</sup> "Sec. 40. *Tender of excluded evidence.* – If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony."

shows the PNB's dismal failure to fulfill its fiduciary duty to Anna Marie.<sup>38</sup> The Court expects the PNB to "treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship."<sup>39</sup> The Court explained in *Philippine Banking Corporation v. CA*,<sup>40</sup> the fiduciary nature of the bank's relationship with its depositors, to wit:

The business of banking is imbued with public interest. The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks. In *Simex International (Manila) Inc. v. Court of Appeals* we pointed out **the depositor's reasonable expectations from a bank and the bank's corresponding duty to its depositor**, as follows:

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. (emphasis and underscoring supplied)

Consequently, the CA should **not** have admitted the subject documents even if the PNB tendered the excluded evidence.

Notably, the PNB clearly admitted in the executed *Deed of Waiver and Quitclaim* that it owed Anna Marie ₱2,734,207.36 under the consolidated savings account. After a number of uncontested transactions, the remaining balance of Anna Marie's deposit became **₱250,741.82**. The inevitable conclusion is that PNB's obligation to pay ₱250,741.82 under SA No. 6121200 subsists.

ii. *The PNB's alleged payment of the amount covered by FXCTD No. 993902*

The PNB claimed that it had already paid the amount of \$10,058.01 covered by FXCTD No. 993902. It presented the foreign demand draft dated March 11, 2002 which Anna Marie allegedly purchased with the funds of FXCTD No. 993902. In addition, the PNB also presented Anna Rose's SOA to show that there was a fund transfer involving the contested amount. To further support its claim, the PNB annexed the affidavit of the PNB New York's branch officer about the fund transfer. The PNB, however, failed to formally offer the affidavit as evidence.

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<sup>38</sup> *Philippine Banking Corporation v. Court of Appeals*, G.R. No. 127469, January 15, 2004, 419 SCRA 487, 505-506.

<sup>39</sup> Id.

<sup>40</sup> Id.

Anna Marie moved for the exclusion of the photocopy of Anna Rose's SOA for failing to conform to the best evidence rule. The RTC granted her motion and denied its admission. When the case reached the CA, the CA stated that the RTC should have considered the evidence in the light of the PNB's identification of the SOA as an exact copy of the original and the claim that it is corroborated by the affidavit of the PNB New York's bank officer.

The PNB explained that its failure to present the original copy of Anna Rose's SOA was because the original was not in the PNB's possession.

We rule that the **SOA is inadmissible** because it fails to qualify as relevant evidence. As the RTC correctly stated, the SOA "does not show which of the amount stated therein came from the funds of Certificate of Time Deposit No. A-993902."<sup>41</sup>

**The affidavit of the PNB New York's bank officer is also inadmissible** in the light of the following self-explanatory provision of the Rules of Court:

"Sec. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. x x x."<sup>42</sup>

Formal offer means that the offeror shall inform the court of the purpose of introducing its exhibits into evidence. Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified.<sup>43</sup>

In *Heirs of Pedro Pasag v. Parocha*,<sup>44</sup> we reiterated the importance of a formal offer of evidence. Courts are mandated to rest their factual findings and their judgment only and strictly upon the evidence offered by the parties at the trial. The formal offer enables the judge to know the purpose or purposes for which the proponent is presenting the evidence. It also affords the opposing parties the chance to examine the evidence and to object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.

In *People v. Napat-a*,<sup>45</sup> *People v. Mate*,<sup>46</sup> and *Heirs of Romana Saves, et al. v. Escolastico Saves, et al.*,<sup>47</sup> we recognized the exceptions from the requirement of a formal offer of evidence, namely: (a) the evidence must

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<sup>41</sup> *Rollo*, p. 74.

<sup>42</sup> Rule 132, Rules of Court.

<sup>43</sup> *Star Two (SPV-AMC), Inc. v. Ko*, G.R. No. 185454, March 23, 2011, 646 SCRA 371, 375-376.

<sup>44</sup> G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

<sup>45</sup> G.R. No. 84951, November 14, 1989, 179 SCRA 403, 407.

<sup>46</sup> G.R. No. L-34754, March 27, 1981, 103 SCRA 484, 493.

<sup>47</sup> G.R. No. 152866, October 6, 2010, 632 SCRA 236, 246.

have been duly identified by testimony duly recorded; and (b) the evidence must have been incorporated in the records of the case.

It is unmistakable that the PNB did not include the affidavit of the PNB New York's bank officer in its formal offer of evidence to corroborate Anna Rose's SOA. Although the affidavit was included in the records and identified by Fernandez, it remains inadmissible for being **hearsay**. Jurisprudence dictates that an affidavit is merely hearsay evidence when its affiant or maker did not take the witness stand.<sup>48</sup>

In the present case, Fernandez is not the proper party to identify the affidavit executed by the PNB New York's bank officer since he is not the affiant. Therefore, the affidavit is inadmissible.

Thus, the PNB failed to present sufficient and admissible evidence to prove payment of the \$10,058.01. This failure leads us to conclude that the PNB is still liable to pay the amount covered by FXCTD No. 993902.

*iii. The PNB's alleged payment of  
the amount covered by FXCTD  
No. 993992*

The PNB alleged that Anna Marie's claim over FXCTD No. 993992 should only be limited to \$5,857.79. It presented the manager's check, which admissibility we have heretofore discussed and settled, and the miscellaneous tickets.

We cannot absolve the PNB from liability based on these miscellaneous tickets alone. As the RTC correctly stated, the transactions allegedly evidenced by these tickets were neither posted at the back of Anna Marie's certificate, nor recorded on her ledger to show that several withdrawals had been made on the account.

At this point, we remind the PNB of the negotiability of a certificate of deposit as it is a written acknowledgment by the bank of the receipt of a sum of money on deposit which the bank promises to pay to the depositor, to the latter's order, or to some other person or the latter's order.<sup>49</sup> To discharge a debt, the bank must pay to someone authorized to receive the payment.<sup>50</sup> A bank acts at its peril when it pays deposits evidenced by a certificate of deposit, without its production and surrender after proper indorsement.<sup>51</sup>

Again, as the RTC had correctly stated, the PNB should not have allowed the withdrawals, if there were indeed any, without the presentation

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<sup>48</sup> *Dantis v. Maghinang, Jr.*, G.R. No. 191696, April 10, 2013, 695 SCRA 599, 610.

<sup>49</sup> *Far East Bank and Trust Company v. Querimit*, G.R. No. 148582, January 16, 2002, 373 SCRA 665, 671.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

of the covering foreign certificates of time deposit. There are no irregularities on Anna Marie's certificates to justify the PNB's refusal to pay the stated amounts in the certificates when it was presented for payment.

Therefore, the PNB is liable for Anna Marie's claims since it failed to prove that it had already been discharged from its obligation.

***PNB is liable to Anna Marie for actual, moral, and exemplary damages as well as attorney's fees for its negligent acts as a banking institution.***

Since the PNB is clearly liable to Anna Marie for her deposits, the Court now determines PNB's liability for damages under existing laws and jurisprudence.

Section 2 of Republic Act No. 8791,<sup>52</sup> declares the State's recognition of the "fiduciary nature of banking that requires high standards of integrity and performance." It cannot be overemphasized that the banking business is impressed with public interest. The trust and confidence of the public to the industry is given utmost importance.<sup>53</sup> Thus, the bank is under obligation to treat its depositor's accounts with meticulous care, having in mind the nature of their relationship.<sup>54</sup> The bank is required to assume a degree of diligence higher than that of a good father of a family.<sup>55</sup>

As earlier settled, the PNB was negligent for its failure to update and properly handle Anna Marie's accounts. This is patent from the PNB's letter to Anna Marie, admitting the error and unauthorized withdrawals from her account. Moreover, Anna Marie was led to believe that the amounts she has in her accounts would remain because of the *Deed of Waiver and Quitclaim* executed by her, her mother, and PNB. Assuming *arguendo* that Anna Marie made the contested withdrawals, due diligence requires the PNB to record the transactions in her passbooks.

The Court has established in a number of cases the standard of care required from banks, and the bank's liability for the damages sustained by the depositor. The bank is not absolved from liability by the fact that it was the bank's employee who committed the wrong and caused damage to the depositor.<sup>56</sup> Article 2180 of the New Civil Code provides that the owners

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<sup>52</sup> The General Banking Law of 2000.

<sup>53</sup> *Philippine Savings Bank v. Chowking Food Corporation*, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 330.

<sup>54</sup> *Simex International Incorporated v. CA*, G.R. No. 88013, March 19, 1990, 183 SCRA 360, 367.

<sup>55</sup> *Consolidated Bank and Trust Corporation v. CA*, G.R. 138569, September 11, 2003, 410 SCRA 328, 341 (2003).

<sup>56</sup> *Far East Bank and Trust Company v. Tentmakers Group Inc.*, G.R. No. 171050, July 4, 2012, 675 SCRA 546, 556-557; *Philippine Bank of Commerce v. Court of Appeals*, G.R. No. 97626, March

and managers of an establishment are responsible for damages caused by their employees while performing their functions.<sup>57</sup>

In addition, we held in *PNB v. Pike*,<sup>58</sup> that although the bank's employees are the ones negligent, a bank is primarily liable for the employees' acts because banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.

Indeed, a great possibility exists that Salvoro was involved in the unauthorized withdrawals. Anna Marie entrusted her accounts to and made her banking transactions only through him. Salvoro's unexplained disappearance further confirms this Court's suspicions. The Court is alarmed that he was able to repeatedly do these unrecorded transactions without the bank noticing it. This only shows that the PNB has been negligent in the supervision of its employees.

As to contributory negligence, the Court agrees with the RTC that the PNB failed to substantiate its allegation that Anna Marie was guilty of contributory negligence.

Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.<sup>59</sup> Whether contributory negligence transpired is a factual matter that must be proven.

In the present case, Anna Marie cannot be held responsible for entrusting her account with Salvoro. As shown in the records, Salvoro was the bank's time deposit specialist. Anna Marie cannot thus be faulted if she engaged the bank's services through Salvoro for transactions related to her time deposits.

The Court also cannot accept the CA's conclusion that there was connivance between Anna Marie and Salvoro. This conclusion is simply not supported by the records and is therefore baseless.

In these lights, we hold that Anna Marie is entitled to moral damages of ₱100,000.00. In cases of breach of contract, moral damages are recoverable only if the defendant acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in clear disregard of his

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14, 1997, 269 SCRA 695, 708-710; *Metropolitan Bank and Trust Company v. Cabilzo*, G.R. No. 154469, December 6, 2006, 510 SCRA 259, 270-271.

<sup>57</sup> "Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. x x x The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions. x xx"

<sup>58</sup> G.R. No. 157845, September 20, 2005, 470 SCRA 328, 341.

<sup>59</sup> *Valenzuela v. Court of Appeals*, 323 Phil. 374, 388 (1996).

contractual obligations.<sup>60</sup> Anna Marie was able to establish the mental anguish and serious anxiety that she suffered because of the PNB's refusal to honor its obligations.

Anna Marie is likewise entitled to exemplary damages of ₱50,000.00. Article 2229 of the New Civil Code imposes exemplary damages by way of example or correction for the public good. To repeat, banks must treat the accounts of its depositors with meticulous care and always have in mind the fiduciary nature of its relationship with them.<sup>61</sup> Having failed to observe these, the award of exemplary damages is justified.

As exemplary damages are awarded herein<sup>62</sup> and as Anna Marie was compelled to litigate to protect her interests,<sup>63</sup> the award of attorney's fees and expenses of litigation of ₱150,000.00 is proper.

Finally, we impose legal interest pursuant to the guidelines in *Nacar v. Gallery Frames*.<sup>64</sup> We held in that case that for interest awarded on actual and compensatory damages, the interest rate is imposed as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum [changed to 6% per annum starting July 1, 2013] to be computed from default, *i.e.*, from extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

x x x x

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x shall be 6% per annum from such finality until its satisfaction. x x x

We note that pursuant to the Bangko Sentral ng Pilipinas-Monetary Board Circular No. 799, the legal interest rate is 6% per annum effective July 1, 2013. The new rate is applicable prospectively; thus, the 12% per annum shall still apply until June 30, 2013.

In the present case, Anna Marie filed her complaint on August 12, 2004. PNB is therefore liable for legal interest of 12% per annum from August 12, 2004 until June 30, 2013, and 6% per annum from July 1, 2013, until its full satisfaction.

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<sup>60</sup> *The Metropolitan Bank and Trust Company v. Rosales*, G.R. No. 183204, January 13, 2014, 713 SCRA 75, 88.

<sup>61</sup> *Solidbank Corporation v. Sps. Arrieta*, 492 Phil. 95, 97 (2005).

<sup>62</sup> Art. 2208 (1), New Civil Code.

<sup>63</sup> *Id.*, par. (2).

<sup>64</sup> G.R. No. 189871, August 13, 2013, 703 SCRA 439, 441.

**WHEREFORE**, the petition is **GRANTED**. The assailed December 16, 2011 decision and June 26, 2012 resolution of the Court of Appeals is hereby reversed. The October 26, 2010 decision of the Regional Trial Court is **REINSTATED with MODIFICATIONS**. Thus, the Philippine National Bank is **ORDERED** to pay Anna Marie Gumabon the following:

- (1) Actual damages of:
  - (a) \$10,058.01, as the outstanding balance of FXCTD No. 993902;
  - (b) \$ 20,244.42, as the outstanding balance of FXCTD No. 993992; and
  - (c) P250,741.82, as the outstanding balance of SA No. 6121200;
- (2) Legal interest of twelve percent (12%) *per annum* of the total actual damages from August 12, 2004 to June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction;
- (3) P100,000.00 as moral damages;
- (4) P50,000.00 as exemplary damages;
- (5) P150,000.00 as attorney's fees; and
- (7) Costs of suit.

Let a copy of this Decision be furnished the Financial Consumers Protection Department of the Bangko Sentral ng Pilipinas, for information and possible action in accordance with the Bangko Sentral ng Pilipinas' mandate to protect the banking public.

**SO ORDERED.**



**ARTURO D. BRION**  
Associate Justice

**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
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

**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