

Republic of the Philippines
Supreme Court
Baguio City

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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUN 07 2017

THIRD DIVISION

**SPS. CRISTINO & EDNA
CARBONELL,**

Petitioners,

G.R. No. 178467

Present:

VELASCO, JR., *Chairperson*,
BERSAMIN,
REYES,
JARDELEZA, and
TIJAM, *JJ.*

- versus -

**METROPOLITAN BANK AND
TRUST COMPANY,**

Respondent.

Promulgated:

April 26, 2017

x-----*Wilfredo V. Lapitan*-----x

DECISION

BERSAMIN, J.

The petitioners assail the decision promulgated on December 7, 2006,¹ whereby the Court of Appeals (CA) affirmed with modification the decision rendered on May 22, 1998² by the Regional Trial Court, Branch 157, in Pasig City (RTC) dismissing the petitioners' complaint in Civil Case No. 65725 for its lack of merit, and awarded attorney's fees under the respondent's counterclaim.

Antecedents

The petitioners initiated against the respondent Civil Case No. 65725, an action for damages, alleging that they had experienced emotional shock, mental anguish, public ridicule, humiliation, insults and embarrassment during their trip to Thailand because of the respondent's release to them of five US\$100 bills that later on turned out to be counterfeit. They claimed that they had travelled to Bangkok, Thailand after withdrawing

¹ *Rollo*, pp. 35-50; penned by Associate Justice Lucenito N. Tagle (retired) and concurred in by Associate Justice Roberto A. Barrios (retired) and Associate Justice Mario L. Guariña III (retired).

² *Id.* at 53-61; penned by Judge Vivencio S. Bacilig (retired).

US\$1,000.00 in US\$100 notes from their dollar account at the respondent's Pateros branch; that while in Bangkok, they had exchanged five US\$100 bills into Baht, but only four of the US\$100 bills had been accepted by the foreign exchange dealer because the fifth one was "no good;" that unconvinced by the reason for the rejection, they had asked a companion to exchange the same bill at Norkthon Bank in Bangkok; that the bank teller thereat had then informed them and their companion that the dollar bill was fake; that the teller had then confiscated the US\$100 bill and had threatened to report them to the police if they insisted in getting the fake dollar bill back; and that they had to settle for a Foreign Exchange Note receipt.³

The petitioners claimed that later on, they had bought jewelry from a shop owner by using four of the remaining US\$100 bills as payment; that on the next day, however, they had been confronted by the shop owner at the hotel lobby because their four US\$100 bills had turned out to be counterfeit; that the shop owner had shouted at them: "You Filipinos, you are all cheaters!;" and that the incident had occurred within the hearing distance of fellow travelers and several foreigners.

The petitioners continued that upon their return to the Philippines, they had confronted the manager of the respondent's Pateros branch on the fake dollar bills, but the latter had insisted that the dollar bills she had released to them were genuine inasmuch as the bills had come from the head office; that in order to put the issue to rest, the counsel of the petitioners had submitted the subject US\$100 bills to the Bangko Sentral ng Pilipinas (BSP) for examination; that the BSP had certified that the four US\$100 bills were near perfect genuine notes;⁴ and that their counsel had explained by letter their unfortunate experience caused by the respondent's release of the fake US dollar bills to them, and had demanded moral damages of ₱10 Million and exemplary damages.⁵

The petitioners then sent a written notice to the respondent, attaching the BSP certification and informing the latter that they were giving it five days within which to comply with their demand, or face court action.⁶ In response, the respondent's counsel wrote to the petitioners on March 1996 expressing sympathy with them on their experience but stressing that the respondent could not absolutely guarantee the genuineness of each and every foreign currency note that passed through its system; that it had also been a victim like them; and that it had exercised the diligence required in dealing with foreign currency notes and in the selection and supervision of its employees.⁷

³ Id. at 35-37.

⁴ Id. at 37-38.

⁵ Id. at 38.

⁶ Id. at 38.

⁷ Id. at 38-39.

Prior to the filing of the suit in the RTC, the petitioners had two meetings with the respondent's representatives. In the course of the two meetings, the latter's representatives reiterated their sympathy and regret over the troublesome experience that the petitioners had encountered, and offered to reinstate US\$500 in their dollar account, and, in addition, to underwrite a round-trip all-expense-paid trip to Hong Kong, but they were adamant and staged a walk-out.⁸

In its judgment rendered on May 22, 1998,⁹ the RTC ruled in favor of the respondent, disposing as follows:

WHEREFORE, in the light of all the foregoing, judgment is hereby rendered:

1. Dismissing plaintiff's complaint for lack of merit;
2. On the counterclaim, awarding Metrobank the amount of ₱20,000.00 as attorney's fees.

SO ORDERED.¹⁰

The petitioners appealed, but the CA ultimately promulgated its assailed decision on December 7, 2006 affirming the judgment of the RTC with the modification of deleting the award of attorney's fees,¹¹ to wit:

As to the award of attorneys fees, we agree with appellants that there is simply no factual and legal basis thereto. Unquestionably, appellants filed the present case for the humiliation and embarrassment they suffered in Bangkok. They instituted the complaint in their honest belief that they were entitled to damages as a result of appellee's issuance of counterfeit dollar notes. Such being the case, they should not be made answerable to attorney's fees. It is not good public policy to put a premium on the right to litigate where such right is exercised in good faith, albeit erroneously.

WHEREFORE, the appealed decision is **AFFIRMED** with modification that the award of attorney's fees is deleted.

SO ORDERED.

⁸ Id. at 55.

⁹ Supra note 2.

¹⁰ Id. at 48-50.

¹¹ Supra note 1.

Issues

Hence, this appeal, with the petitioners contending that the CA gravely erred in affirming the judgment of the RTC. They insist that inasmuch as the business of banking was imbued with public interest, the respondent's failure to exercise the degree of diligence required in handling the affairs of its clients showed that it was liable not just for simple negligence but for misrepresentation and bad faith amounting to fraud; that the CA erred in giving weight and relying on the news clippings allegedly showing that the "supernotes" had deceived even the U.S. Secret Service and Central Intelligence Agency, for such news were not based on facts.¹²

Ruling of the Court

The appeal is partly meritorious.

The General Banking Act of 2000 demands of banks the highest standards of integrity and performance. As such, the banks are under obligation to treat the accounts of their depositors with meticulous care.¹³ However, the banks' compliance with this degree of diligence is to be determined in accordance with the particular circumstances of each case.

The petitioners argue that the respondent was liable for failing to observe the diligence required from it by not doing an act from which the material damage had resulted by reason of inexcusable lack of precaution in the performance of its duties.¹⁴ Hence, the respondent was guilty of gross negligence, misrepresentation and bad faith amounting to fraud.

The petitioners' argument is unfounded.

Gross negligence connotes want of care in the performance of one's duties; it is a negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.¹⁵

¹² Id. at 18-19.

¹³ *Philippine Savings Bank v. Chowking Food Corporation*, G.R. No. 177526, July 4, 2008, 557 SCRA 318, 331.

¹⁴ *Rollo*, p. 26.

¹⁵ *Comsaving Banks (now GSIS Family Bank) v. Capistrano*, G.R. No. 170942, August 28, 2013, 704 SCRA 72, 87-88.

In order for gross negligence to exist as to warrant holding the respondent liable therefor, the petitioners must establish that the latter did not exert any effort at all to avoid unpleasant consequences, or that it wilfully and intentionally disregarded the proper protocols or procedure in the handling of US dollar notes and in selecting and supervising its employees.

The CA and the RTC both found that the respondent had exercised the diligence required by law in observing the standard operating procedure, in taking the necessary precautions for handling the US dollar bills in question, and in selecting and supervising its employees.¹⁶ Such factual findings by the trial court are entitled to great weight and respect especially after being affirmed by the appellate court, and could be overturned only upon a showing of a very good reason to warrant deviating from them.

In this connection, it is significant that the BSP certified that the falsity of the US dollar notes in question, which were “near perfect genuine notes,” could be detected only with extreme difficulty even with the exercise of due diligence. Ms. Nanette Malabrigo, BSP’s Senior Currency Analyst, testified that the subject dollar notes were “highly deceptive” inasmuch as the paper used for them were similar to that used in the printing of the genuine notes. She observed that the security fibers and the printing were perfect except for some microscopic defects, and that all lines were clear, sharp and well defined.¹⁷

Nonetheless, the petitioners contend that the respondent should be liable for moral and exemplary damages¹⁸ on account of their suffering the unfortunate experience abroad brought about by their use of the fake US dollar bills withdrawn from the latter.

The contention cannot be upheld.

The relationship existing between the petitioners and the respondent that resulted from a contract of loan was that of a creditor-debtor.¹⁹ Even if the law imposed a high standard on the latter as a bank by virtue of the fiduciary nature of its banking business, bad faith or gross negligence amounting to bad faith was absent. Hence, there simply was no legal basis for holding the respondent liable for moral and exemplary damages. In breach of contract, moral damages may be awarded only where the defendant acted fraudulently or in bad faith. That was not true herein

¹⁶ *Rollo*, p. 59.

¹⁷ *Id.* at 56-58.

¹⁸ *Id.* at 29-30.

¹⁹ Article 1980 of the *Civil Code* provides that fixed, savings, current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.

because the respondent was not shown to have acted fraudulently or in bad faith. This is pursuant to Article 2220 of the *Civil Code*, to wit:

Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. **The same rule applies to breaches of contract where defendant acted fraudulently or in bad faith.**

With the respondent having established that the characteristics of the subject dollar notes had made it difficult even for the BSP itself as the country's own currency note expert to identify the counterfeiting with ease despite adhering to all the properly laid out standard operating procedure and precautions in the handling of US dollar bills, holding it liable for damages in favor of the petitioners would be highly unwarranted in the absence of proof of bad faith, malice or fraud on its part. That it formally apologized to them and even offered to reinstate the USD\$500.00 in their account as well as to give them the all-expense-paid round trip ticket to Hong Kong as means to assuage their inconvenience did not necessarily mean it was liable. In civil cases, an offer of compromise is not an admission of liability, and is inadmissible as evidence against the offeror.²⁰

Even without taking into consideration the news clippings to the effect that the US Secret Service and Central Intelligence Agency had themselves been deceived by the 1990 series of the US dollar notes infamously known as the "supernotes," the record had enough to show in that regard, not the least of which was the testimony of Ms. Malabrigo as BSP's Senior Currency Analyst about the highly deceptive nature of the subject US dollar notes and the possibility for them to pass undetected.

Also, the petitioners' allegation of misrepresentation on the part of the respondent was factually unsupported. They had been satisfied with the services of the respondent for about three years prior to the incident in question.²¹ The incident was but an isolated one. Under the law, moral damages for *culpa contractual* or breach of contract are recoverable only if the defendant 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.²² The breach must be wanton, reckless, malicious or in bad faith, oppressive or abusive.²³ In order to maintain their action for damages, the petitioners must establish that their injury resulted from a breach of duty that

²⁰ Section 27, Rule 130 of the *Rules of Court* pertinently states:

Section 27. *Offer of compromise not admissible.*- In civil cases, an offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror. xxxx

²¹ *Rollo*, pp. 60-61.

²² *Philippine Telegraph & Telephone Corp. v. Court of Appeals*, G.R. No. 139268, September 3, 2002, 388 SCRA 270, 276-277.

²³ *Equitable Banking Corporation v. Calderon*, G.R. No. 156168; December 14, 2004, 446 SCRA 271, 277.

the respondent had owed to them, that is, there must be the concurrence of injury caused to them as the plaintiffs and legal responsibility on the part of the respondent. Underlying the award of damages is the premise that an individual was injured in contemplation of law. In this regard, there must first be a breach of some duty and the imposition of liability for that breach before damages may be awarded; and the breach of such duty should be the proximate cause of the injury.²⁴ That was not so in this case.

It is true that the petitioners suffered embarrassment and humiliation in Bangkok. Yet, we should distinguish between damage and injury. In *The Orchard Golf & Country Club, Inc. v. Yu*,²⁵ the Court has fittingly pointed out the distinction, viz.:

x x x Injury is the illegal invasion of a legal right, damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria*.²⁶

In every situation of *damnum absque injuria*, therefore, the injured person alone bears the consequences because the law affords no remedy for damages resulting from an act that does not amount to a legal injury or wrong. For instance, in *BPI Express Card Corporation v. Court of Appeals*,²⁷ the Court turned down the claim for damages of a cardholder whose credit card had been cancelled *after several defaults in payment*, holding therein that there could be damage *without injury* where the loss or harm was not the result of a violation of a legal duty towards the plaintiff. In such situation, the injured person alone should bear the consequences because the law afforded no remedy for damages resulting from an act that did not amount to a legal injury or wrong.²⁸ Indeed, the lack of malice in the conduct complained of precluded the recovery of damages.²⁹

Here, although the petitioners suffered humiliation resulting from their unwitting use of the counterfeit US dollar bills, the respondent, by virtue of its having observed the proper protocols and procedure in handling the US dollar bills involved, did not violate any legal duty towards them. Being neither guilty of negligence nor remiss in its exercise of the degree of diligence required by law or the nature of its obligation as a banking institution, the latter was not liable for damages. Given the situation being

²⁴ *BPI Express Card v. Court of Appeals*, G.R. No. 120639, September 25, 1998, 296 SCRA 260, 273.

²⁵ G.R. No. 191033, January 11, 2016, 778 SCRA 404.

²⁶ *Id.* at 421, citing *Custodio v. Court of Appeals*, G.R. No. 116100, February 9, 1996, 253 SCRA 483, 490.

²⁷ *Supra*, note 24.

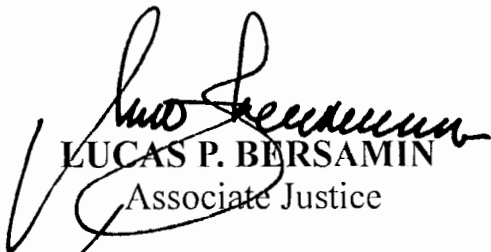
²⁸ *Id.* at 272-273.

²⁹ *Lagon v. Court of Appeals*, G.R. No. 119107, March 18, 2005, 453 SCRA 616, 628.

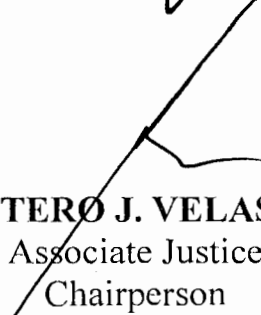
one of *damnum absque injuria*, they could not be compensated for the damage sustained.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on December 7, 2006; and **ORDERS** the petitioners to pay the costs of suit.


SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

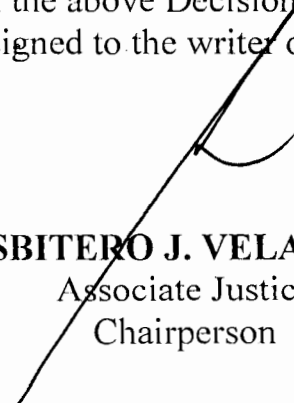

BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


NOEL G. TIAM
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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

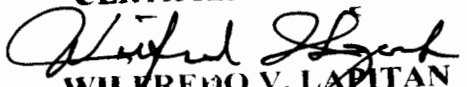
CERTIFICATION

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

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WILFREDO V. LAPIDAN
Division Clerk of Court
Third Division

JUN 07 2017