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10:30 am

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BANK OF THE PHILIPPINE ISLANDS,	**G.R. No. 198799**
Petitioner,	Present:
- versus -	SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, DEL CASTILLO, PERLAS-BERNABE, and CAGUIOA, *JJ.*
AMADO M. MENDOZA and MARIA MARCOS *VDA. DE* MENDOZA,	
Respondents.	
	Promulgated:
	MAR 20 2017

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DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated February 4, 2011 and the Resolution[3] dated August 26, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 91704, which reversed and set aside the Decision[4] dated May 9, 2007 of the Regional Trial Court of Gapan City, Nueva Ecija, Branch 87 (RTC) in Civil Case No. 1913, and consequently, dismissed the complaint filed by petitioner Bank of the Philippine Islands (BPI) against respondents Amado M. Mendoza (Amado) and his mother, Maria Marcos *vda. de* Mendoza (Maria; collectively, respondents).

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1 *Rollo*, pp. 8-21.
2 Id. at 22-31. Penned by Associate Justice Mario V. Lopez with Associate Justices Magdangal M. De Leon and Rodil V. Zalameda concurring.
3 CA *rollo*, pp. 149-150.
4 Id. at 49-62. Penned by Judge Victoriano B. Cabanos.

The Facts

This case stemmed from a Complaint for Sum of Money with Application for Writ of Attachment[5] filed by BPI against respondents before the RTC. BPI alleged that on April 8, 1997, respondents: (*a*) opened a foreign currency savings account with Account No. 0584-0007-08 (US savings account) at BPI-Gapan Branch and deposited therein the total amount of US$16,264.00, broken down as follows: US$100.00 in cash and US$16,164.00 in US Treasury Check with No. 3149-09693369 payable to "Ma. Marcos Vda. de Mendoza" (subject check); and (*b*) placed the amount of US$2,000.00 in a time deposit account. After the lapse of the thirty (30)-day clearing period on May 9 and 13, 1997, respondents withdrew the amount of US$16,244.00 from the US savings account, leaving only US$20.00 for bank charges.[6] However, on June 26, 1997, BPI received a notice from its correspondent bank, Bankers Trust Company New York (Bankers Trust), that the subject check was dishonored due to "amount altered",[7] as evidenced by (1) an electronic mail (e-mail) advice from Bankers Trust,[8] and (2) a photocopy of the subject check with a notation "endorsement cancelled" by Bankers Trust[9] as the original copy of the subject check was allegedly confiscated by the government of the United States of America (US government).[10] This prompted BPI to inform respondents of such dishonor and to demand reimbursement.[11] BPI then claimed that: (*a*) on July 18, 1997, respondents allowed BPI to apply the proceeds of their time deposit account in the amount of US$2,015.00 to their outstanding obligation;[12] (*b*) upon the exhaustion of the said time deposit account, Amado gave BPI a promissory note dated September 8, 1997 containing his promise to pay BPI-Gapan Branch the amount of ₱1,000.00 monthly;[13] and (*c*) when respondents failed to fulfill their obligation despite repeated demands, BPI was constrained to give a final demand letter[14] to respondents on November 27, 1997.[15]

For their part, while respondents admitted the withdrawals and exchanged the same with BPI at the rate of ₱26.159 per dollar, they did not receive the amount of ₱582,140.00 from the proceeds. Respondents then maintained that Amado only affixed his signature in the letter dated July 18, 1997 in order to acknowledge its receipt, but not to give his consent to the application of the proceeds of their time deposit account to their purported

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5 Dated January 20, 1998; records, pp. 1-4.
6 *Rollo*, pp. 22-23. See also records, pp. 1-2.
7 *Rollo*, p. 23. See also CA *rollo*, pp. 49-50.
8 See Records, p. 11.
9 See id. at 6.
10 CA *rollo*, p. 55.
11 See letter dated June 27, 1997; records, p. 12. See also *rollo*, p. 23.
12 See letter dated July 18, 1997; records, p. 13. The amount mentioned in the letter dated July 18, 1997 is "$2,000.00" while the amount mentioned in the Complaint is "US$2,015.00"; see records, p. 2. See also *rollo*, p. 23.
13 Records, p. 14. See also *rollo*, p. 23.
14 Records, p. 15. See also *rollo*, p. 23.
15 See also *rollo*, p. 23.

obligations to BPI. According to Amado, he would have been willing to pay BPI, if only the latter presented proper and authenticated proof of the dishonor of the subject check. However, since the bank failed to do so, Amado argued that BPI had no cause of action against him and his mother, Maria.[16]

The RTC Ruling

In a Decision[17] dated May 9, 2007, the RTC ruled in BPI's favor, and accordingly, ordered respondents to pay: (*a*) ₱369,600.51 representing the peso equivalent of amounts withdrawn by respondent less the amounts already recovered by BPI, plus legal interest of 12% per annum reckoned from the time the money was withdrawn; and (*b*) 10% of the aforesaid monetary award representing attorney's fees.[18]

The RTC found that: (*a*) BPI duly notified respondents of the dishonor of the subject check, thus, creating an obligation on the part of the respondents to return the proceeds that they had already withdrawn; and (*b*) Amado unmistakably acknowledged the same by executing a promissory note dated September 8, 1997 promising to pay BPI-Gapan Branch the amount of ₱1,000.00 monthly in connection with such obligation. In this regard, the RTC opined that since respondents withdrew the money prior to the dishonor and that BPI allowed such withdrawal by mistake, it is only proper that respondents return the proceeds of the same pursuant to the principle of *solutio indebiti* under Article 2154 of the Civil Code.[19]

Aggrieved, respondents appealed to the CA.[20]

The CA Ruling

In a Decision[21] dated February 4, 2011, the CA reversed and set aside the RTC's ruling, and consequently, dismissed BPI's complaint for lack of merit.[22] It held that BPI failed to prove the dishonor of the subject check, since: (*a*) the presentation of a mere photocopy of the subject check is in violation of the Best Evidence Rule; and (*b*) the e-mail advice from Bankers Trust was not properly authenticated in accordance with the Rules on Electronic Evidence as the person who sent the e-mail advice was neither identified nor presented in court. As such, the CA ordered the dismissal of the complaint due to BPI's failure to prove its claim against respondents.[23]

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16 Id. at 23. See also records, pp. 51-52, 57-58.
17 CA *rollo*, pp. 49-62.
18 Id. at 61-62.
19 Id. at 58-61.
20 See Brief for the Defendant-Appellant dated June 1, 2009; id. at 30-47.
21 *Rollo*, pp. 22-31.
22 Id. at 30.
23 See id. at 25-30.

Dissatisfied, BPI moved for reconsideration,[24] which was, however, denied in a Resolution[25] dated August 26, 2011; hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly dismissed BPI's complaint for sum of money against respondents.

The Court's Ruling

The petition is meritorious.

As a general rule, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts.[26] Case law provides that "there is a 'question of law' when the doubt or difference arises as to what the law is on a certain set of facts or circumstances; on the other hand, there is a 'question of fact' when the issue raised on appeal pertains to the truth or falsity of the alleged facts. The test for determining whether the supposed error was one of 'law' or 'fact' is not the appellation given by the parties raising the same; rather, it is whether the reviewing court can resolve the issues raised without evaluating the evidence, in which case, it is a question of law; otherwise, it is one of fact."[27] Where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is a question of law. However, if the question posed requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relationship to each other, the issue is factual.[28]

Notably, however, the foregoing general rule admits of several exceptions, such as where the factual findings of the RTC and the CA are conflicting or contradictory,[29] which is evident in this case. As such, the

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24 CA *rollo*, pp. 102-105.

25 Id. at 149-150.

26 See *General Mariano Alvarez Services Cooperative, Inc. v. National Housing Authority*, G.R. No. 175417, February 9, 2015, 750 SCRA 156, 162.

27 *Bases Conversion Development Authority v. Reyes*, 711 Phil. 631, 638-639 (2013), citations omitted.

28 Id.

29 See *Miro v. Vda. de Erederos*, 721 Phil. 772, 786 (2013). See also *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.* (665 Phil. 784, 789 [2011]) where the Court enumerated the following exceptions to the general rule: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is 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 of fact are conclusions without citation of specific evidence on which

Court is constrained to make its own factual findings in order to resolve the issue presented before it.

To recapitulate, the RTC declared that BPI was able to sufficiently establish by preponderance of evidence that respondents were duly notified of the dishonor of the subject check, rendering them liable to refund what they had withdrawn from BPI. Pertinently, it hinged its ruling on the pieces of evidence presented during the trial, namely: the e-mail printout advice from Bankers Trust informing BPI that the subject check was dishonored, the BPI letters dated June 27, 1997 and July 18, 1997 addressed to respondents, and the subject promissory note voluntarily executed by Amado. On the contrary, the CA held that respondents were not liable to BPI for its failure to competently prove the fact of the subject check's dishonor and its subsequent confiscation by the US government. In this relation, the CA deemed that the printout of the e-mail advice is inadmissible in evidence for lack of proper authentication pursuant to the Rules on Electronic Evidence.

After a judicious review of the records, including a re-evaluation of the evidence presented by the parties, the Court is inclined to sustain the findings of the RTC over that of the CA, as will be explained hereunder.

It is settled that in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's.[30] Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of evidence' or 'greater weight of credible evidence.'[31] Succinctly put, it only requires that evidence be greater or more convincing than the opposing evidence.[32]

Records evince that BPI was able to satisfactorily prove by preponderance of evidence the existence of respondents' obligation in its favor. Verily, Amado acknowledged its existence and expressed his conformity thereto when he voluntarily: (*a*) affixed his signature in the letters dated June 27, 1997[33] and July 18, 1997,[34] where he acknowledged the dishonor of the subject check, and subsequently, allowed BPI to apply the proceeds of their US time deposit account to partially offset their obligation to the bank; and (*b*) executed a Promissory Note[35] dated

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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 respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

30 See *Republic v. Galeno*, G.R. No. 215009, January 23, 2017.

31 *Ogawa v. Menigishi*, 690 Phil. 359, 367 (2012), citing *Amoroso v. Alegre, Jr.*, 552 Phil. 22, 34 (2007).

32 See *Diaz v. People*, G.R. No. 208113, December 2, 2015, 776 SCRA 43, 50.

33 Records, p. 12.

34 Id. at 13.

35 Id. at 14.

September 8, 1997 wherein he undertook to pay BPI in installments of ₱1,000.00 per month until the remaining balance of his obligation is fully paid.

On the other hand, aside from his bare testimony, Amado did not present any corroborative evidence to support his claim that his performance of the aforesaid voluntary acts was subject to BPI's presentment of the proper and authenticated proof of the dishonored subject check. Amado's unsubstantiated testimony is self-serving at the most, and hence, cannot be relied upon.[36] In fact, the RTC did not lend any credence to Amado's testimony in resolving this case. In this regard, it should be borne in mind that the "findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under gruelling examination. Absent any showing that the trial court's calibration of credibility was flawed, the appellate court is bound by its assessment,"[37] as in this case.

Overall, assessing the pieces of evidence presented by BPI as opposed to the self-serving allegations of respondents, the weight of evidence clearly preponderates in favor of the former. Otherwise stated, BPI has proven by the required quantum of proof, *i.e.*, preponderance of evidence, respondents' obligation towards it, and as such, respondents must be made to fulfill the same.

In any event, the CA erred in concluding that BPI failed to prove the dishonor of the subject check by merely presenting: (*a*) a photocopy thereof with its dorsal portion stamped "ENDORSEMENT CANCELLED" by Bankers Trust;[38] and (*b*) a print-out of the e-mail advice from Bankers Trust stating that the subject check was returned unpaid because the amount was altered.[39]

Anent the subject check, while the Best Evidence Rule under Section 3, Rule 130[40] of the Rules of Court states that generally, the original copy of

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[36] See *Reyes v. Nieva*, A.C. No. 8560, September 6, 2016, citing *People v. Mangune*, 698 Phil. 759, 771 (2012).

[37] *People v. Sevillano*, G.R. No. 200800, February 9, 2015, 750 SCRA 221, 227 .

[38] Records, p. 6.

[39] Id. at 11.

[40] Section 3, Rule 130 of the Rules of Court reads:

> Section 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:
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> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

the document must be presented whenever the content of the document is under inquiry, the rule admits of certain exceptions, such as "[w]hen the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror."[41] In order to fall under the aforesaid exception, it is crucial that the offeror proves: (*a*) the existence or due execution of the original; (*b*) the loss and destruction of the original, or the reason for its non-production in court; and (*c*) the absence of bad faith on the part of the offeror to which the unavailability of the original can be attributed.[42]

In this case, BPI sufficiently complied with the foregoing requisities. *First*, the existence or due execution of the subject check was admitted by both parties. *Second*, the reason for the non-presentation of the original copy of the subject check was justifiable as it was confiscated by the US government for being an altered check. The subject check, being a US Treasury Warrant, is not an ordinary check, and practically speaking, the same could not be easily obtained. *Lastly*, absent any proof to the contrary and for the reasons already stated, no bad faith can be attributed to BPI for its failure to present the original of the subject check. Thus, applying the exception to the Best Evidence Rule, the presentation of the photocopy of the subject check as secondary evidence was permissible.

As to the e-mail advice, while it may not have been properly authenticated in accordance with the Rules on Electronic Evidence, the same was merely corroborative evidence, and thus, its admissibility or inadmissibility should not diminish the probative value of the other evidence proving respondents' obligation towards BPI, namely: (*a*) Amado's voluntary acts of conforming to BPI's letters dated June 27, 1997 and July 18, 1997 and executing the promissory note to answer for such obligation; and (*b*) the photocopy of the subject check, which presentation was justified as falling under the afore-discussed exception to the Best Evidence Rule. As such, their probative value remains.

Besides, it should be pointed out that respondents did not proffer any objection to the evidence presented by BPI, as shown by their failure to file their comment or opposition to the latter's formal offer of evidence.[43] It is well-settled that evidence not objected to is deemed admitted and may validly be considered by the court in arriving at its judgment, as what the

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(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.

41 Id.

42 See *Heirs of Prodon v. Heirs of Alvarez*, 717 Phil. 54, 66 (2013), citing *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 487 (2003).

43 See Order dated June 17, 2004; records, p. 188.

RTC did in this case, since it was in a better position to assess and weigh the evidence presented during the trial.[44]

In sum, considering that BPI had proven its cause of action by preponderance of evidence, the Court finds the CA to have erred in dismissing BPI's complaint against respondents. Accordingly, the RTC ruling must be reinstated, subject to modification in the award of interest imposed on the adjudged amount.

To recount, respondents were ordered by the RTC to pay BPI the amount of ₱369,600.51 representing the peso equivalent of the amounts withdrawn by respondents less the amounts already recovered by BPI, plus legal interest of twelve percent (12%) per annum reckoned from the time the money was withdrawn,[45] thus, implying that such amount was a loan or a forbearance of money. However, records reveal that BPI's payment of the proceeds of the subject check was due to a mistaken notion that such check was cleared, when in fact, it was dishonored due to an alteration in the amount indicated therein. Such payment on the part of BPI to respondents was clearly made by mistake, giving rise to the quasi-contractual obligation of *solutio indebiti* under Article 2154[46] in relation to Article 2163[47] of the Civil Code. Not being a loan or forbearance of money, an interest of six percent (6%) per annum should be imposed on the amount to be refunded and on the damages and attorney's fees awarded, if any, computed from the time of demand until its satisfaction.[48] Consequently, respondents must return to BPI the aforesaid amount, with legal interest at the rate of six percent (6%) per annum from the date of extrajudicial demand – or on June 27, 1997, the date when BPI informed respondents of the dishonor of the subject check and demanded the return of its proceeds – until fully paid.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 4, 2011 and the Resolution dated August 26, 2011 of the Court of Appeals in CA-G.R. CV No. 91704 is hereby **REVERSED** and **SET ASIDE**. The Decision dated May 9, 2007 of the Regional Trial Court of Gapan City, Nueva Ecija, Branch 87 in Civil Case No. 1913 is **REINSTATED** with **MODIFICATION**, adjusting the interest imposed on the amount ordered to be returned, *i.e.*, ₱369,600.51, to six percent (6%) per annum reckoned from the date of extrajudicial demand on June 27, 1997, until fully paid.

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44 See *Spouses Enriquez v. Isarog Line Transport, Inc.*, G.R. No. 212008, November 16, 2016, citations omitted.

45 See CA *rollo*, p. 61.

46 Article 2154 of the Civil Code states:

> Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

47 Article 2163 of the Civil Code states:

> Article 2163. It is presumed that there was a mistake in the payment if something which had never been due or had already been paid was delivered; but he from whom the return is claimed may prove that the delivery was made out of liberality or for any other just cause.

48 *Marilag v. Martinez*, G.R. No. 201892, July 22, 2015, 763 SCRA 533, 549-550.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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