



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**BANK OF THE PHILIPPINE
ISLANDS,**

Petitioner,

- versus -

**CENTRAL BANK OF THE
PHILIPPINES (NOW BANGKO
SENTRAL NG PILIPINAS) and
CITIBANK, N.A.,**

Respondents.

G.R. No. 197593

Present:

PERLAS-BERNABE,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
BALTAZAR-PADILLA,* JJ.

Promulgated:

12 OCT 2020

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DECISION

HERNANDO, J.:

Challenged in this Petition for Review on *Certiorari*¹ are the January 26, 2011 Decision² and July 8, 2011 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 70699, which reversed and set aside the April 24, 2001 Decision⁴ of the Regional Trial Court (RTC), Branch 64 of Makati City, in Civil Case No. 18793. The appellate court dismissed the complaint filed by petitioner Bank of the Philippine Islands (BPI) against respondent Central Bank of the Philippines (CBP), now Bangko Sentral ng Pilipinas, and ordered the cancellation of payment made by CBP in the amount of ₱4.5 million earlier credited to BPI's "Suspense Account".

* On leave.

¹ *Rollo*, pp. 9-47.

² *CA rollo*, pp. 373-391; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Hakim S. Abdulwahid and Samuel H. Gaerlan (now a member of this Court).

³ *Id.* at 462-463.

⁴ *Records*, pp. 489-515; penned by Judge Delia H. Panganiban.

The Antecedents

Petitioner BPI and respondent Citibank, N.A. (Citibank) are both members of the Clearing House established and supervised by the CBP. Both banks maintained demand deposit balances with the CBP for their clearing transactions with other commercial banks coursed through the said clearing facilities.

On January 28, 1982, BPI Laoag City Branch discovered outstanding discrepancies in its inter-bank reconciliation statements in CBP in the amount of ₱9 million. Hence, on February 9, 1982, petitioner BPI filed a letter-complaint before the CBP on the latter's irregular charging of its demand deposit account in the amount of ₱9 million.⁵ It also requested CBP to conduct the necessary investigation of the matter. In addition, both CBP and petitioner BPI agreed to refer the matter to the National Bureau of Investigation (NBI) to conduct a separate investigation.⁶

The results of the NBI Investigation Report⁷ showed that an organized criminal syndicate using a scheme known as "pilferage scheme" committed the bank fraud in the following manner: (a) the infiltration of the Clearing Division of the CBP with the connivance of some personnel of the CBP Clearing House; (b) the pilferage of "out-of-town" checks; (c) the tampering of vital banking documents, such as clearing manifests and clearing statements; (d) the opening of Current Accounts by members of the syndicate with the BPI Laoag City Branch and Citibank, Greenhills Branch in Mandaluyong City; and (e) the withdrawal of funds through checks deposited with Citibank and drawn against BPI.

It was further disclosed that on October 14, 1981, two accounts were opened at BPI Laoag City Branch and another at Citibank Greenhills Branch.⁸ A Savings Account in BPI Laoag City Branch was opened by Mariano Bustamante (Bustamante) with an initial deposit of ₱3,000.00, ₱2,000.00 of which was in check and ₱1,000.00 in cash.⁹ On the same day, Bustamante also opened a Current Account with the BPI Laoag City Branch with an initial deposit of ₱1,000 with which he was given a checkbook.¹⁰ On the other hand, Marcelo Desiderio (Desiderio) opened a Current Account under Magna Management Consultant (MMC) with Citibank Greenhills Branch with an initial deposit of ₱10,000.00 and with Rolando San Pedro as the authorized signatory or owner of the account.¹¹

Thereafter, Citibank Greenhills Branch received by way of deposit to the Current Account of MMC various checks drawn against BPI Laoag City

⁵ Id. at 911-918.

⁶ Id.

⁷ Id. at 781-786.

⁸ Id. at 782.

⁹ Id.

¹⁰ Id. at 500.

¹¹ Id. at 782.

Branch: (a) two checks dated October 9 and 15, 1981 in the amounts of ₱498,719.70 and ₱501,260.30, respectively, deposited on October 16, 1981; (b) two checks dated October 26 and 28, 1981 in the total amount of ₱3 million deposited on October 30, 1981; and (c) various checks in the total amount of ₱5 million deposited on November 20, 1981. All these checks were sent by Citibank Greenhills Branch to the CBP Clearing House for clearing purposes.¹²

Upon arrival of the checks at the CBP Clearing House, Manuel Valentino (Valentino), CBP's Bookkeeper, with the assistance of Janitor-Messenger Jesus Estacio (Estacio), intercepted and pilfered the BPI Laoag City Branch checks, and tampered the clearing envelope. They reduced the amounts appearing on the clearing manifest, the BPI clearing statement and the CBP manifest to conceal the fact that the BPI Laoag City Branch checks showing the original amounts were deposited with Citibank Greenhills Branch.¹³ Thereafter, the altered CBP manifest and clearing statement, together with the clearing envelope which contained the checks intended for BPI Laoag City Branch but without the pilfered checks deposited with the Citibank Greenhills Branch in the account of MMC and drawn against Bustamante's BPI Laoag City Branch account, were forwarded to CBP Laoag Clearing Center.¹⁴

As a standard operating procedure, the CBP Laoag Clearing Center forwarded the said documents to the drawee bank, BPI Laoag City Branch, which would then process the same by either honoring or dishonoring the checks received by it. However, BPI Laoag City Branch could neither honor nor dishonor the pilfered checks as they were not included in the clearing envelope or in the tampered CBP manifest and clearing statement. BPI Laoag City Branch was not given the chance to dishonor the pilfered checks as they were not presented for payment. Thereafter, upon receipt of the original clearing manifest from CBP Laoag Clearing Center with BPI's acknowledgement, Valentino added back the amount of the pilfered checks so that the original manifest would tally with all the records in CBP.¹⁵

On the other hand, the sending bank, Citibank Greenhills Branch, did not receive any notice of dishonor within the period provided under the CBP regulations, thus, it presumed that the checks deposited in MMC's Current Account had been presented in due course to the drawee bank, BPI Laoag City Branch, and were consequently honored by the latter. Thereafter, Citibank Greenhills Branch allowed the withdrawal of the checks in the total amount of ₱9 million.¹⁶

¹² Id. at 784.

¹³ Id. at 783.

¹⁴ Id. at 501.

¹⁵ Id. at 783.

¹⁶ Id. at 502.

As a result of the aforesaid fraud committed against petitioner BPI, Desiderio and Estacio, together with other personalities, were convicted of three (3) counts of *Estafa* thru Falsification of Public Documents by the *Sandiganbayan* (SB). On the other hand, Valentino was discharged and utilized as the main witness for the prosecution.¹⁷

In addition, Carlito Bondoc, the former Assistant Manager of Citibank Greenhills Branch and Rogelio Vicente (Vicente), Assistant Manager of BPI Laoag City Branch, were charged as co-conspirators in the bank fraud against petitioner BPI. However, the case against Vicente was dismissed without prejudice by the SB after Valentino recanted his earlier statement implicating Vicente and for insufficiency of evidence to support his conviction.¹⁸

Thereafter, petitioner BPI requested CBP, through a letter dated June 15, 1982, to credit back to its demand deposit account the amount of ₱9 million with interest.¹⁹ However, CBP credited only the amount of ₱4.5 million to BPI's demand deposit account.²⁰ Despite several requests made by BPI, CBP refused to credit back the remaining amount of ₱4.5 million plus interest.²¹ Hence, on January 21, 1988, petitioner BPI filed a complaint²² for sum of money against CBP.

In its Answer,²³ CBP denied any liability to BPI and demanded the latter to return the ₱4.5 million it earlier credited to BPI as the said amount was allegedly held under a "suspense account" pending the final outcome of the NBI investigation. CBP likewise filed a third-party complaint against Citibank for the latter's negligence which caused the perpetration of the fraud.²⁴ Citibank, on its part, denied any negligence in the supervision of its employees.²⁵ CBP further alleged, in its Amended Answer,²⁶ that the fraud could not have been committed without the connivance and collusion of certain employees of both petitioner BPI and respondent Citibank.

Ruling of the Regional Trial Court:

On April 24, 2001, the RTC rendered its Decision²⁷ in favor of petitioner BPI. It gave credence to the NBI Investigation Report that the immediate and proximate cause of the defraudation were the criminal acts of CBP employees, Valentino and Estacio. The lower court ruled that CBP, as employer, shall be liable for the damage caused by its employees, Valentino

¹⁷ Id. at 789-891.

¹⁸ Id. at 495.

¹⁹ Id. at 893.

²⁰ Id. at 895.

²¹ Id. at 897-910.

²² Id. at 1-12.

²³ Id. at 32-38.

²⁴ Id. at 45-48.

²⁵ Id. at 70-74.

²⁶ Id. at 700-706.

²⁷ Id. at 489-515.

and Estacio, to petitioner BPI under Articles 2176 and 2180 of the Civil Code. The dispositive portion of the judgment reads:

WHEREFORE, in view of the foregoing, the following judgment is rendered:

1. Ordering defendant Central Bank of the Philippines now Bangko Sentral ng Pilipinas (BSP) to credit the demand deposit account of plaintiff, Bank of the Philippine Islands the sum of P4.5 Million plus six (6) percent interest per annum from September 23, 1986 until full payment is made;
2. Ordering the defendant Central Bank now BSP to delete the words "Suspense Account" from the P4.5 Million earlier credited to the account of BPI, thus restoring fully the P9 Million to demand deposit account of BPI;
3. Ordering defendant Central Bank, now BSP to pay BPI the amount corresponding to 10% of the amount due as attorney's fees;
4. Ordering defendant Central Bank to pay the cost of suit; and
5. Dismissing the third-party complaint against third-party defendant Citibank, N.A. for lack of merit.²⁸

Ruling of the Court of Appeals:

Both petitioner BPI and respondent CBP filed their respective appeals before the CA. In its January 26, 2011 Decision,²⁹ the CA reversed and set aside the RTC's April 24, 2001 Decision.³⁰ The appellate court dismissed the complaint filed by petitioner BPI and ordered the cancellation of the payment made by CBP in the amount of ₱4.5 million to BPI. It reasoned that under Article 2180 of the Civil Code, the State is generally liable only for *quasi-delicts* in case the act complained of was performed by a special agent. Both Valentino and Estacio were not special agents as neither of them was duly empowered by a definite order or commission to perform some act or were charged with some definite purpose which gives rise to the claim. They were employed in accordance with ordinary rules and regulations governing civil service and assigned to carry out tasks naturally related to their employment.

The appellate court clarified that the State may be held liable for *quasi-delicts* as an ordinary employer when it is performing proprietary acts, citing *Fontanilla v. Maliaman*.³¹ Even assuming that CBP, in operating and administering the clearing house is performing proprietary functions, it still cannot be held liable for the acts of its employees as both Valentino and Estacio were not acting within the scope of their employment when they committed the fraud against petitioner BPI.

Finally, the appellate court held that Article 2180 provides that diligence of a good father of a family or ordinary diligence absolves the employer or master from any liability committed by their employees. The CA

²⁸ Id. at 515.

²⁹ CA *rollo*, pp. 373-391.

³⁰ *Rollo*, pp. 82-108.

³¹ 259 Phil. 302, 309, (1989).

found that the CBP met the standard of ordinary diligence in determining both Valentino's and Estacio's respective qualifications prior to their employment through the conduct of mental, psychological, and physical examinations as required by the Civil Service Commission. They were also required to obtain National Intelligence and Security Authority (NISA) and NBI clearances prior to their employment.

A motion for reconsideration was filed by petitioner BPI which was denied by the appellate court in its July 8, 2011 Resolution.³² Hence, petitioner BPI filed a Petition for Review on *Certiorari*³³ under Rule 45 before this Court.

Issues

The issues to be resolved in this case are the following:

1. Whether or not CBP may be sued on its governmental and/or proprietary functions.
2. Whether or not CBP is performing a proprietary function when it entered into clearing operations of regional checks of its member institutions.
3. Whether or not CBP exercised the diligence of a good father of a family in supervising the two employees involved in the bank fraud.
4. Whether or not Citibank as the sending bank shall bear the damage caused to petitioner BPI as per Central Bank Circular No. 580, Series of 1977, as amended.

Arguments of BPI:

Petitioner BPI argues that CBP's function of operating clearing house facilities for regional checks is proprietary in character as the same may be assigned to, and exercised by private entities. During that time, all Metro Manila checks in the banking system were being cleared through the Philippine Clearing House Corporation (PCHC), a private corporation, while the regional checks were coursed through the CBP's clearing facilities. At present, all regional checks are now being cleared in the PCHC. The CBP also collected fees as per the Central Bank Manual of Regulations for its supervision of its employees, including those in the Clearing Division. Thus, petitioner BPI contends that as a corporate entity, CBP shall be held liable for the acts of its employees just like any other employer.

Moreover, petitioner BPI claims that Section 4 of Republic Act No. 265 (RA 265) or the Central Bank Act (CBA) provides that the CBP is authorized to sue and be sued, without any qualification that it may only be sued in

³² CA rollo, pp. 462-463.

³³ Rollo, pp. 9-47.

performance of its proprietary functions. In addition, the clearing of checks is not essential to the main purpose for which CBP was established as per Section 2 of the CBA; neither is it incidental to CBP's governmental function as the clearing of checks has no relevance in CBP's duty to foster a balanced and sustainable growth in the economy.

Petitioner BPI further argues that both CBP's employees, Bookkeeper Valentino and Janitor-Messenger Estacio, acted within the scope of their functions when they committed the bank fraud. The fact that CBP required its employees to undergo mental, psychological and physical examinations as well as to procure the necessary NISA and NBI clearances before their employment are not sufficient to prove that CBP exercised the required diligence in supervising its employees.

Also, petitioner BPI claims that although CBP invoked the provisions of Central Bank Circular No. 580, Series of 1977, as amended, which was incorporated in the Central Bank Manual of Regulations, and provides that "Loss of clearing items: Any loss or damage arising from theft, pilferage, or other causes affecting items in transit shall be for the account of the sending bank/branch concerned," it nonetheless refused to apply the same. Despite petitioner BPI's repeated demands, CBP refused to credit the remaining ₱4.5 million to petitioner BPI's account to be charged against Citibank, the sending bank.

Lastly, petitioner BPI demands that the interest due should be computed from June 15, 1982, the date of the extrajudicial demand, pursuant to Article 1169 of the Civil Code and *Eastern Shipping Lines, Inc. v. Court of Appeals*.³⁴ In addition, the monetary award shall earn interest at the rate of 12% per annum from the time of judicial demand, that is, January 21, 1988 until payment is actually made.

Arguments of Citibank:

Respondent Citibank supports petitioner BPI's contention that CBP can be sued under Section 4 of RA 265. It argues that CBP waived its non-suability when it commenced litigation by filing a third-party complaint against Citibank. Moreover, in providing clearing facilities for regional checks and collecting fees therefor, CBP is performing proprietary functions which made it vulnerable to suit.

It further argues that the fraudulent acts of CBP's employees, Valentino and Estacio, were the proximate cause of BPI's defraudation, which fact was not disturbed by the appellate court in its assailed ruling. Also, no sufficient evidence was offered to prove that petitioner BPI and Citibank's employees contributed to the said fraudulent acts.

³⁴ 304 Phil. 236, 253, (1994).

On its alleged negligence, Citibank contends that it complied with all the banking requirements by sending the six (6) checks to BPI Laoag City Branch for clearing purposes through the clearing facilities of CBP. In fact, the clearing statements sent by Citibank Greenhills Branch to BPI Laoag City Branch were free from any erasures or alterations. Also, it did not allow the withdrawal of the said checks from the account of MMC until after the lapse of three (3) business days and until after the said checks were not returned or dishonored by BPI Laoag City Branch. Hence, the said checks in the total amount of ₱9 million were deemed cleared and withdrawable after the lapse of the mandatory three (3)-day period.

Also, Citibank claims that CBP cannot invoke Central Bank Circular No. 580, Series of 1977 as it applies only to those clearing items lost “in transit”. The subject checks were not lost “in transit” but were tampered, altered and falsified upon its arrival at the CBP Clearing Center. Moreover, it was duly proved that CBP’s employees, Valentino and Estacio, pilfered the subject checks, thus, there was no more need to impute presumption of liability on Citibank as the sending bank with respect to any loss or damage arising from the said pilferage. Lastly, Citibank argues that CBP failed to prove that it exercised the proper diligence required in supervising its employees in the performance of their functions.

Arguments of the CBP:

On the other hand, CBP argues that its operation of the clearing facility was purely governmental in nature. Under Section 107³⁵ of RA 265, the establishment of a clearing facility was CBP’s responsibility and mandate. It was erroneous for petitioner BPI to claim that providing clearing house facilities for regional checks is proprietary in character since it may be assigned to, and exercised by, private entities. Following petitioner BPI’s reasoning, the construction and maintenance of public roads, the establishment and maintenance of hospitals, schools and post offices are to be considered proprietary in character as they may be assigned to, and exercised by, private entities. However, that is not the case as those functions are evidently governmental.

Moreover, CBP’s capacity to sue and be sued does not necessarily mean that it is generally liable for torts committed in the discharge of its governmental functions. It may only be held answerable for acts committed in its proprietary capacity. In allowing CBP to be sued, the State merely gives the claimant the right to show that it was not acting in any governmental

³⁵ Section 107. Interbank Settlements. – The Central Bank shall provide facilities for interbank clearing.

The deposit reserves maintained by the banks in the Central Bank, in accordance with the provisions of Section 100, shall serve as a basis for the clearing of checks and the settlement of interbank balances, subject to such rules and regulations as the Monetary Board may issue with respect to such operations.

capacity when the injury was committed or that the case comes under the exceptions recognized by law.³⁶

Furthermore, CBP contends that under its Charter, it is tasked to administer the monetary, banking and credit system of the Philippines. Hence, it is duty bound to use the powers granted to it to achieve its objectives, namely: (a) primarily to maintain internal and external monetary value of the peso and convertibility of the peso into other freely convertible currencies; and (b) to foster monetary, credit and exchange conditions conducive to a balanced and sustainable growth of the economy. It argues that providing facilities for clearing operations falls within the second objective which is governmental or sovereign in nature.

Also, CBP maintains that when the State consents to be sued, it does not necessarily concede its liability. By consenting to be sued, CBP waives its immunity from suit. However, it does not waive its lawful defenses to the action. Hence, applying Article 1280 of the Civil Code, CBP in its performance of governmental functions may be held liable only for tort committed by its employees when it acts through a special agent which is not the case here. Thus, CBP cannot be held liable for the damages caused by the alleged tortuous acts of its officers and employees.

To make CBP liable under paragraphs 5 and 6 of Article 2180, it must be established that the injurious or tortuous act was committed while the employee was performing his or her functions. However, Valentino and Estacio were not acting within the scope of their duties when they committed the bank fraud. Moreover, CBP has sufficiently proved that it exercised the proper diligence in the selection and supervision of Valentino and Estacio. On the other hand, CBP argues that the negligence of petitioner BPI's employees and the connivance of the employees of both BPI and Citibank with the syndicate contributed to petitioner BPI's defraudation.

Assuming that CBP was negligent, it claims that it shall be liable only for the interest due from the date of the RTC's Decision, that is, April 24, 2001, and that the monetary award shall not earn interest at the rate of twelve percent (12%) per *annum* from the time of finality until its satisfaction. CBP claims that petitioner BPI's demands were reasonably established only from the date of the RTC's Decision on April 24, 2001, hence, the interest due should begin to run only on such date.

Also, no interest shall be due on the monetary award from its finality until satisfaction thereof as CBP's liability is not based on a contractual obligation. Therefore, there is no reason for petitioner BPI to demand compounding of interest from the time payment was judicially demanded as there was no stipulated interest. Moreover, CBP's liability is not based on a forbearance of money, goods or credit but on quasi-delict. Hence, there is no

³⁶ *Spouses Jayme vs. Apostol*, 592 Phil. 424, 437, (2008) citing *Municipality of San Fernando, La Union vs. Firme*, 273 Phil. 56, 63, (1991).

requirement for the RTC to state in its judgment that the rate of legal interest applicable to their monetary judgments is twelve percent (12%) per *annum*. Nonetheless, the applicable interest rate provided under Article 2209 of the Civil Code is six percent (6%) per *annum*.

Lastly, CBP argues that it cannot be held liable for attorney's fees and cost of suit as there was no showing that it acted in bad faith when it refused to accede to petitioner BPI's demands.

The Court's Ruling

CBP is a corporate body performing governmental functions. Operating a clearing house facility for regional checks is within CBP's governmental functions and duties as the central monetary authority.

One of the generally accepted principles of international law, which we have adopted in our Constitution under Article XVI, Section 3 is the principle that a state may not be sued without its consent, which principle is also embodied in the 1935 and 1973 Constitutions.³⁷ However, state immunity may be waived expressly or impliedly. Express consent may be embodied in a general or special law. On the other hand, consent is implied when the state enters into a contract or it itself commences litigation.³⁸

In the case of government agencies, the question of its suability depends on whether it is incorporated or unincorporated. An incorporated agency has a Charter of its own with a separate juridical personality while an unincorporated agency has none. In addition, the Charter of an incorporated agency shall explicitly provide that it has waived its immunity from suit by granting it with the authority to sue and be sued. This applies regardless of whether its functions are governmental or proprietary in nature.³⁹

Indubitably, the CBP, which was created under RA 265 as amended by Presidential Decree No. 72 (PD 72), is a government corporation with separate juridical personality and not a mere agency of the government. Specifically, Sections 1 and 4 of RA 265, as amended, provided for the creation of the CBP, a corporate body with certain corporate powers which include the authority to sue and be sued. Its main function is to administer the monetary, banking and credit system of the Philippines which is primarily governmental in nature. It has the following duties: (a) to primarily maintain internal and external monetary stability in the Philippines, and to preserve the international value of the peso and the convertibility of the peso into other freely

³⁷ *United States of America v. Guinto*, 261 Phil. 777, 790-791, (1990).

³⁸ *Id.* at 792.

³⁹ *Deutsche Gesellschaft Für Technische Zusammenarbeit v. Court of Appeals*, 603 Phil. 150, 166, (2009).

convertible currencies; and (b) to foster monetary, credit and exchange conditions conducive to a balanced and sustainable growth of the economy.

Undoubtedly, the function of the CBP as the central monetary authority is a purely governmental function. Prior to its creation, the supervision of banks, banking and currency, and the administration of laws relating to coinage and currency of the Philippines was lodged with the Bureau of Treasury under the immediate supervision of the Executive Bureau (EB), to wit:

SECTION 1761. *Functions of Bureau of Treasury.* — The Bureau of the Treasury shall be charged with the safekeeping of governmental funds, the supervision of banks, banking, and currency, and generally with the administration of the laws of the United States and of the Philippine Islands relating to coinage and currency in said Islands, and any other laws or parts of laws that may be expressly placed within its jurisdiction.⁴⁰

Thereafter, still under the immediate supervision of the Executive Bureau, the Bureau of Banking was created to supervise and inspect banks and banking institutions, to wit:

SECTION 1634. *Chief Official of the Bureau of Banking; His Duties, Powers and Jurisdiction.* — The Bureau of Banking shall have one chief to be known as Bank Commissioner and shall be charged with the supervision and inspection of banks and banking institutions. The terms “bank” and “banking institution” as used in this chapter shall include banker, banks, mortgage banks, savings banks, commercial banks, trust companies, building and loan associations, and all other corporations, companies, partnerships, and associations performing banking functions.⁴¹

In 1948, the CBP was created under RA 265, as amended, with a separate and distinct juridical personality. Undeniably, the function of the CBP and its predecessors of supervising the monetary and the banking systems of the Philippines is a governmental function. In fact, both the 1973 and 1987 Constitutions provide for the establishment of a central monetary authority which shall provide policy direction in the areas of money, banking, and credit; and supervise the operations of banks and exercise regulatory authority over the operations of finance companies and other institutions.

Thus, incidental to its main function and duties, Section 107 of RA 265, as amended by Section 54 of PD 72, mandated CBP to establish nationwide facilities to provide interbank clearing, to wit:

SECTION 54. Section one hundred seven of the same Act is hereby amended to read as follows:

SEC. 107. *Interbank settlements.* — The Central Bank shall establish nationwide facilities to provide interbank clearing at no cost to the banks.

⁴⁰ Act No. 2657, Administrative Code, Approved: December 31, 1916.

⁴¹ Act No. 2711, Revised Administrative Code, Approved: March 10, 1917.

The deposit reserves maintained by the banks in the Central Bank, in accordance with the provisions of Section 100, shall serve as a basis for the clearing of checks and the settlement of interbank balances, subject to such rules and regulations as the Monetary Board may issue with respect to such operations.

Contrary to the contention of petitioner BPI, CBP's clearing house facility for regional checks is within its functions and duties as the central monetary authority mandated in its Charter. This is true despite the existence of the Philippine Clearing House Corporation (PCHC), a private corporation incorporated in July 1977, which also provides clearing services for checks issued within Metro Manila during the time of petitioner BPI's defraudation. While at present, the PCHC handles the clearing of all checks issued by its member banks, this does not necessarily mean that CBP was performing a proprietary function during that time by providing a clearing house facility for regional checks. It bears stressing that establishing clearing house facilities for the member banks is a necessary incident to its primary governmental function of administering monetary, banking and credit system of the Philippines as per Section 107 of RA 265, as amended. The subsequent privatization of the clearing of checks did not negate the fact that it was CBP's duty to establish nationwide facilities to provide interbank clearing at no cost to the banks as per RA 265 as amended.

CBP is not immune to suit although it performed governmental functions.

Nonetheless, while the CBP performed a governmental function in providing clearing house facilities, it is not immune from suit as its Charter, by express provision, waived its immunity from suit. However, although the CBP allowed itself to be sued, it did not necessarily mean that it conceded its liability. Petitioner BPI had been given the right to bring suit against CBP, such as in this case, to obtain compensation in damages arising from torts, subject, however, to the right of CBP to interpose any lawful defense.

CBP is not liable for the acts of its employees because Valentino and Estacio were not "special agents".

Anent the issue of whether CBP is liable for the torts committed by its employees Valentino and Estacio, the test of liability depends on whether or not the employees, acting in behalf of CBP, were performing governmental or proprietary functions. The State in the performance of its governmental functions is liable only for the tortuous acts of its special agents. On the other hand, the State becomes liable as an ordinary employer when performing its proprietary functions.⁴² Thus, Articles 2176 and 2180 of the Civil Code provide that:

⁴² *Fontanilla v. Maliaman*, supra note 31 citing p. 961, Civil Code of the Philippines; Annotated, Paras, 1986 Ed.

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

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 x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

To reiterate, CBP's establishment of clearing house facilities for its member banks to which Valentino and Estacio were assigned as Bookkeeper and Janitor-Messenger, respectively, is a governmental function. As such, the State or CBP in this case, is liable only for the torts committed by its employee when the latter acts as a special agent but not when the said employee or official performs his or her functions that naturally pertain to his or her office. A special agent is defined as one who receives a definite and fixed order or commission, foreign to the exercise of the duties of his office.⁴³ Evidently, both Valentino and Estacio are not considered as special agents of CBP during their commission of the fraudulent acts against petitioner BPI as they were regular employees performing tasks pertaining to their offices, namely, bookkeeping and janitorial-messenger. Thus, CBP cannot be held liable for any damage caused to petitioner BPI by reason of Valentino and Estacio's unlawful acts.

Even on the assumption that CBP is performing proprietary functions, still, it cannot be held liable because Valentino and Estacio acted beyond the scope of their duties.

Nonetheless, even assuming that CBP is an ordinary employer, it still cannot be held liable. Article 2180 of the Civil Code provides that an employer shall be liable for the damages caused by their employees acting

⁴³ *Merritt v. Government of the Philippine Islands*, 34 Phil 311, 322, (1916).

within the scope of their assigned tasks. An act is deemed an assigned task if it is “done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage.”⁴⁴ Obviously, Valentino and Estacio’s fraudulent acts of tampering with and pilfering of documents are not in furtherance of CBP’s interests nor done for its account as the said acts were unauthorized and unlawful. Also, petitioner BPI has the burden to prove that Valentino and Estacio’s fraudulent acts were performed within the scope of their assigned tasks,⁴⁵ which it failed to do. It is only then that the presumption that CBP, as employer, was negligent would arise which then compels CBP to show evidence that it exercised due diligence in the selection and supervision of its employees.

Thus, where a public officer acts without or in excess of jurisdiction, any injury or damage caused by such acts is his or her own personal liability and cannot be imputed to the State.⁴⁶ In *Festejo v. Fernando*,⁴⁷ we ruled that the acts of the Director of Public Works in taking over a private property and constructing thereon an irrigation canal were without authority, hence, the action for the recovery of land or its value filed by the property owner was in his own personal capacity. Applying analogously our ruling in *Festejo v. Fernando*, the fraudulent acts of CBP’s employees Valentino and Estacio, were evidently not pursuant to their functions and were in excess of or without authority; therefore, any injury or damage caused by such acts to petitioner BPI shall be Valentino’s and Estacio’s own personal liabilities which should not be imputed to CBP as their employer.

Finally, anent the issue of Citibank’s liability as the collecting bank, we affirm the trial court’s dismissal of the third-party complaint against it. In this case, the subject checks were not returned to Citibank before the lapse of the clearing period.⁴⁸ Thus, Citibank acted within its authority in allowing the withdrawal of said checks after the lapse of the clearing period without any notice of dishonor from the drawee bank, petitioner BPI. The remedy, therefore, of petitioner BPI lies against the parties responsible for the tampering with and pilfering of the subject checks and other bank documents which resulted in the total damage of ₱9 million.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The assailed January 26, 2011 Decision and July 8, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 70699 are **AFFIRMED**.

⁴⁴ *Imperial v. Heirs of Spouses Bayaban*, G.R. No. 197626, October 3, 2018.

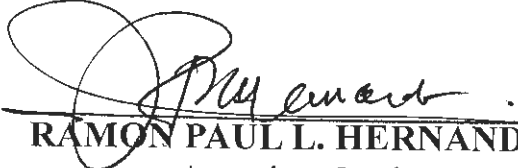
⁴⁵ *Id.*

⁴⁶ *Philippine Political Law*; Annotated, Cruz, 2002 Ed. p. 34.

⁴⁷ *Id.*, citing *Festejo v. Fernando*, 94 Phil. 504, 507, (1954).


⁴⁸ *Metropolitan Bank and Trust Co. v. First National City Bank*, 204 Phil. 172, 178-179, (1982).

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

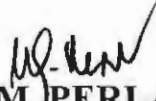

HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

On leave.
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

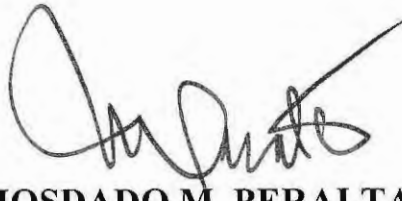
ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior 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.


DIOSDADO M. PERALTA
Chief Justice