



Republic of the Philippines
Supreme Court
Cagayan De Oro City

FIRST DIVISION

EQUITABLE PCIBANK,

Petitioner,

G.R. No. 256144

Present:

- versus -

GESMUNDO, C.J., *Chairperson,*
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

SPOUSES MAXIMO and
SOLEDAD LACSON and
MARIETTA F. YUCHING,
Respondents.

Promulgated:

MAR 06 2023 *mt/bsbw*

X ----- X

DECISION

ROSARIO, J.:

This resolves the Petition for Review on *Certiorari*¹ filed under Rule 45 of the Rules of Court by petitioner Equitable PCIBank² (EPCIB) against respondent Spouses Maximo and Soledad Lacson (Spouses Lacson) and Marietta F. Yuching (Yuching), seeking to set aside the Decision³ dated January 25, 2021 and the Resolution⁴ dated March 10, 2021, promulgated by the Court of Appeals (CA) in the case docketed as CA-G.R. CV No. 114270;

¹ *Rollo*, pp. 3-33.

² Also spelled as "PCI Bank" in other parts of the *rollo*.

³ *Rollo*, pp. 35-47. Penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Geraldine C. Fiel-Macaraig and Alfredo D. Ampuan.

⁴ *Id.* at 49-51. Penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Geraldine C. Fiel-Macaraig and Alfredo D. Ampuan.

and to reinstate the Decision⁵ dated June 11, 2018 of the Regional Trial Court (RTC) of Makati City, Branch 58 in the case docketed as Civil Case No. 03-618.

The Spouses Lacson and their daughter Normita Lacson (Normita), collectively referred to as the Lacsons, maintained two current accounts with the C.M. Recto branch of EPCIB, now BDO Unibank, Inc. One was a joint account of the Spouses Lacson, while the other was the sole account of Normita. The Lacsons used both accounts to issue checks relative to the conduct of their textile business.⁶

EPCIB averred that sometime in 2002, the Lacsons experienced serious difficulties in their collections, which prodded them to engage in the fraudulent and malicious practice of kiting, in connivance with Marietta Yuching (Yuching), Branch Manager of EPCIB's C.M. Recto branch. In purportedly doing so, Yuching acted beyond the authority given to her by the bank, to the latter's damage and prejudice.⁷

In general terms, to kite means to secure temporary use of money by issuing or negotiating worthless paper and then redeeming such paper with the proceeds of similar paper, *ad infinitum*. It is a procedure whereby checks written on accounts in separate banks are used to generate short-term purchasing power through the use of the bank's credit. A depositor with accounts in two banks may build up his or her balance in Bank A by depositing a check drawn on Bank B, although his or her balance in Bank B is not sufficient to cover the check. He or she makes the check good before it is presented for collection but in the meantime has made use of the bank's credit.⁸

Many banks prevent this practice by refusing to credit any check for deposit until collection has been made.⁹ However, the account owner in check kiting can still perpetrate this fraud by certain privileges which allow the checks issued from his or her accounts to be deposited, even without collection made on the said checks, through the participation of a bank officer, who deliberately violates the limitations on the terms of use and amounts covered by the said privileges.¹⁰

Based on EPCIB's investigation, from November 2002 to January 2003, the Lacsons deliberately built up their balance by continuously, repeatedly, and interchangeably drawing checks from one account and then depositing the proceeds thereof to their other account, without sufficient funds. Since most of the checks were "on us" or "same branch" checks, the transfer of funds were easily facilitated despite no actual deposits in both

⁵ Id. at 527-543. Pinned by Presiding Judge Eugene C. Paras.

⁶ Id. at 36.

⁷ Id.

⁸ *Perez v. People*, 192 Phil. 463, 496 (1981) (Concurring Opinion of J. Aquino).

⁹ Id.

¹⁰ *Rollo*, p. 37.

accounts. During the subject period, respondent Lacsons issued and drew from their accounts 214 checks that proved to be Drawn Against Insufficient Funds (DAIF).¹¹

According to EPCIB, the fraudulent scheme only ended when two of the Lacsons' checks, each with a face value of ₱10 Million, were dishonored for being drawn against a closed account.¹²

On January 7, 2003, Yuching reported the supposed kiting to her superiors. On even date, the Bank's Senior Vice President, Annie H. Ngo (SVP Ngo), immediately stopped all activities involving the Lacsons' current accounts. Consequently, Yuching called EPCIB's Senior Vice President and Head of the Retail Banking Group, Dennis Velasquez (SVP Velasquez), to inform him that the Lacsons promised to sign a real estate mortgage (REM) to settle their obligations with the bank. However, the Lacsons reneged on their promise and failed to execute the REM in favor of EPCIB.¹³

On June 4, 2003, EPCIB filed before the RTC a Complaint for Sum of Money and Damages with Prayer for Preliminary Attachment¹⁴ against the Lacsons and Yuching, which was docketed as Civil-Case No. 03-618.¹⁵

In an Answer with Compulsory Counterclaim,¹⁶ Yuching denied conspiring with the Lacsons and stressed that she discovered their kiting scheme only in December 2002. She admitted calling SVP Velasquez, but only for the purpose of facilitating the ongoing negotiations for the settlement of the outstanding obligations of the Lacsons, and after SVP Ngo refused to talk to her. She further asserted that the Lacsons turned over eight Transfer Certificates of Title and endorsed several post-dated checks to EPCIB for the settlement of their obligations.¹⁷

On the other hand, the Lacsons denied ever using their current accounts with EPCIB for fraudulent and malicious practices. They lamented that contrary to normal banking policy, their accounts were subjected to several deductions which were not supported by debit memos, and the bank accepted checks for negotiation despite the variation between the spelled words and written figures therein. Finally, the Lacsons maintained that there was no actual withdrawal of ₱20 Million from either of their current accounts.¹⁸

On June 11, 2018, the RTC rendered a Decision¹⁹ finding the Spouses Lacson liable to pay EPCIB ₱20 Million as actual damages plus interest of 6% per *annum* from finality of the decision, and the Spouses Lacson and

¹¹ Id.

¹² Id.

¹³ Id. at 38.

¹⁴ Id. at 52-68.

¹⁵ Id. at 6.

¹⁶ Id. at 165-171.

¹⁷ Id. at 38.

¹⁸ Id. at 38-39.

¹⁹ Id. at 527-543.

Yuching solidarily liable to pay ₱500,000.00 as exemplary damages, ₱300,000.00 as attorney's fees, and costs of suit, to wit:

WHEREFORE, premises considered, finding preponderance of evidence to sustain the instant complaint, the Court hereby renders judgment in favor of plaintiff, as follows:

- 1) **ORDERING/DIRECTING** defendants Sps. Maximo Lacson and Soledad Lacson liable to pay plaintiff the sum of Php20,000,000.00 as actual damages plus interest of six (6%) percent interest per annum from finality of the decision;
- 2) **ORDERING/DIRECTING** defendants Sps. Maximo Lacson and Soledad Lacson and defendant Marietta Yuching solidarily liable to pay plaintiff the sum of P500,000.00 as exemplary damages;
- 3) **ORDERING/DIRECTING** defendants Sps. Maximo Lacson and Soledad Lacson and defendant Marietta Yuching solidarily liable to pay plaintiff the sum of P300,000.00 as attorney's fees; and
- 4) **ORDERING/DIRECTING** defendants Sps. Maximo Lacson and Soledad Lacson and defendant Marietta Yuching solidarily liable to pay plaintiff the costs of suit.

SO ORDERED.²⁰

Respondent Spouses Lacson and Yuching sought reconsideration²¹ but the same was denied by the RTC in an Order²² dated January 22, 2019.

Aggrieved, Spouses Lacson elevated the case before the CA.²³

On January 25, 2021, the CA promulgated the Decision,²⁴ that granted the Spouses Lacson's appeal, reversed and set aside the RTC's Decision and Order, entered a new judgment dismissing the case, and lifted the writ of attachment issued by the RTC against the four real properties registered under the name of the Lacsons. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED**. Accordingly, the assailed Decision dated June 11, 2018 and the Order dated January 22, 2019 rendered by the Regional Trial Court, Branch 58, Makati City in Civil Case No. 03-618, is hereby **REVERSED** and **SET ASIDE** and a new judgment is hereby entered **DISMISSING** the above captioned case of the plaintiff-appellee.

Likewise, the Writ of Attachment issued by Regional Trial Court, Branch 58, Makati City, has no more legal leg to stand on, and hence, the same is hereby **LIFTED** on the following properties:

²⁰ Id. at 542-543.

²¹ Id. at 544-554.

²² Id. at 579.

²³ Id. at 35.

²⁴ Id. at 35-47.

x x x x

SO ORDERED.²⁵

EPCIB filed a Motion for Reconsideration,²⁶ which was denied by the CA in a Resolution²⁷ dated March 10, 2021.

Undeterred, EPCIB filed before the Court the subject petition, insisting that the court *a quo* committed serious and reversible error: in reversing the findings of the RTC, notwithstanding that EPCIB has proven its case by preponderance of evidence; in ruling that EPCIB did not suffer loss or damage when it dishonored the checks issued by the Lacsons; and in holding that EPCIB is not entitled to exemplary damages and attorney's fees.

In a Comment/Opposition²⁸ dated May 22, 2022, respondent Spouses Lacson contended that EPCIB's petition is procedurally defective; that EPCIB failed to prove its cause of action by preponderance of evidence; that EPCIB is not entitled to actual damages; and that EPCIB is not entitled to exemplary damages, attorney's fees, and costs of suit.²⁹

Respondent Yuching also filed a Comment/Opposition³⁰ dated May 23, 2022, re-pleading that she did not participate, connive, or collude relative to any kiting activities committed by the Spouses Lacson; and that EPCIB is not entitled to any of the damages being claimed.³¹

Upon a careful evaluation of the records of the case and the applicable law and jurisprudence, We find the petition bereft of merit. We note that the issues raised in the petition before Us are a mere rehash of the same issues that were already considered and resolved by the CA. Having adequately addressed the matters raised in the appeal, the CA committed no reversible error when it reversed the RTC Decision and dismissed the case.

Preponderance of Evidence of Actual Damages

Under Article 2199 of the Civil Code,³² actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty.³³ *Yamauchi v. Suñiga*³⁴ explained thus:

²⁵ Id. at 45-46.

²⁶ Id. at 639-647.

²⁷ Id. at 49-51.

²⁸ Id. at 688-701.

²⁹ Id. at 689.

³⁰ Id. at 675-684.

³¹ Id. at 676-681.

³² Entitled "AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES." Approved: June 18, 1949.

³³ *Premiere Development Bank v. Court of Appeals*, 471 Phil. 704, 718 (2004).

³⁴ 830 Phil. 122 (2018).

Actual or compensatory damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended. These are compensation for an injury and will *supposedly* put the injured party in the position in which [they were] before [they were] injured. Since actual damages are awarded to compensate for a pecuniary loss, the injured party is required to prove two things: (1) the fact of the injury or loss and (2) the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available.³⁵

Time and again, this Court has declared that actual damages cannot be presumed. The claimant must prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable. Specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne must be pointed out. Actual damages cannot be anchored on mere surmises, speculations, or conjectures.³⁶ Thus, it was held that before actual damages can be awarded, there must be competent proof of the actual amount of loss, and credence can be given only to claims which are duly supported by receipts.³⁷

Here, the amount of ₱20 Million awarded by the RTC to EPCIB represents the value of the checks the Lacsons issued but were subsequently dishonored for being DAIF. The dishonor of the said checks by EPCIB is uncontroverted. Despite this, the RTC deemed it proper to award actual damages without distinctly stating the factual basis therefor.

A check is dishonored by non-payment when it is duly presented for payment and payment is refused or cannot be obtained; or when presentment is excused and the instrument is overdue and unpaid.³⁸ Meanwhile, a check is dishonored by non-acceptance when it is duly presented for acceptance and such an acceptance as prescribed by law is refused or cannot be obtained; or when presentment for acceptance is excused, and the check is not accepted.³⁹ In both instances, no actual collection is made on the check and, subsequently, no expense is charged against the bank.

We find merit in the CA's ruling that since the checks were dishonored, EPCIB did not suffer any damage or loss. It may be concluded that by dishonoring the checks, EPCIB was able to successfully abate, thwart, or forestall any potential loss or damage that it might have suffered had it not exercised extraordinary diligence. The money being claimed as actual damages never left EPCIB's ledger and custody. The Lacsons had no obligation to return the amount of ₱20 Million which, in the first place, was never disbursed to them by EPCIB.

³⁵ Id. at 133-134.

³⁶ *Republic v. Looyuko*, 788 Phil. 1, 16 (2016).

³⁷ *Dueñas v. Guce-Africa*, 618 Phil. 10, 21 (2009).

³⁸ NEGOTIABLE INSTRUMENTS LAW, Sec. 83.

³⁹ Id., Sec. 149.

EPCIB itself acknowledged that under normal checking transactions, the foregoing pronouncement of the court *a quo* would have been appropriate as no harm or prejudice is caused to a bank if the checks issued by its clients are dishonored for having been drawn against a closed account. While it argued that this case does not qualify as a normal checking transaction, and presented a flow chart and/or spread sheet of the check-kiting activities in the Lacsons' accounts, which ostensibly showed how they intentionally and fraudulently built up their balances, EPCIB failed to show, or even allege, that the subject ₱20 Million, or any other amount for that matter, left its coffers through collection, withdrawal, or any other form of disbursement on the subject checks.

Even granting, *arguendo*, that the Lacsons indeed committed check kiting, the Bank does not automatically become entitled to the award of compensatory damages, as it is still charged with the burden to prove that it suffered injury as a result of the fraudulent scheme. In contrast, the subject petition explicitly recognized that although the proceeds of the subject checks amounting to ₱20 Million were drawn from the Lacsons' account and subsequently credited to their other account before the checks were cleared, the same checks were eventually dishonored by EPCIB due to account closure. This begs the question of whether EPCIB suffered any injury, considering that no cash was paid out by the bank nor received by the Lacsons by virtue of the dishonored checks.

If any, the actual damages suffered by EPCIB could have been in the form of interest on the amounts reflected in the Lacsons' accounts, to the extent that the same may be attributable to the latter's check-kiting scheme, from the time such amounts were credited in the said accounts until their discovery and/or reversal by EPCIB. Before EPCIB uncovered the fraud perpetrated by the Lacsons, the amounts reflected in their accounts were technically under their full control and custody. Moreover, the Lacsons derived benefits from the significant funding in such accounts in terms of business credit and loan integrity. Accordingly, the amount should be treated as having been borrowed by the Lacsons from EPCIB, given that they essentially used the latter's credit. The Spouses Lacson then become answerable to EPCIB for the time value of the subject amounts. The longer the amount remained unutilized by EPCIB, the higher the degree of its depreciation in value, in accordance with the concept of time value of money.⁴⁰ Unfortunately, there is nothing in the petition regarding the interest on the subject amounts.

Exemplary Damages, Attorney's Fees, and Costs of Suit

Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.⁴¹ The law allows the grant of exemplary damages

⁴⁰ See *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 284 (2005).

⁴¹ CIVIL CODE, Art. 2229.

in cases such as this to serve as a warning to the public and as a deterrent against the repetition of this kind of deleterious actions.⁴²

The requirements for an award of exemplary damages to be proper are as follows: that they may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; that the claimant must first establish his or her right to moral, temperate, liquidated, or compensatory damages; and that the wrongful act must be accompanied by bad faith and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.⁴³

In view of EPCIB's non-entitlement to the award of actual or compensatory damages, the first and second requisites are unavailing in this case and the award of exemplary damages to EPCIB by the RTC becomes improper.

As regards the award of attorney's fees and expenses of litigation, the general rule is that they may be recovered pursuant to a stipulation between the parties. In the absence thereof, they may only be recovered in particular situations, such as when exemplary damages are awarded, among others.⁴⁴

Inasmuch as the exemplary damages awarded to EPCIB have been deleted by the appellate court, the award of attorney's fees should likewise be omitted.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated January 25, 2021 and the Resolution dated March 10, 2021 of the Court of Appeals in the case docketed as CA-G.R. CV No. 114270 are **AFFIRMED**.

SO ORDERED.

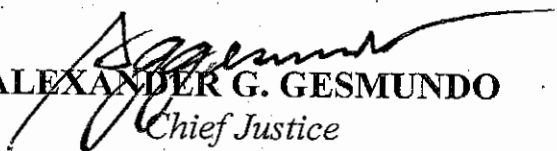

RICARDO R. ROSARIO
Associate Justice


⁴² *Tan v. OMC Carriers, Inc.*, 654 Phil. 443, 458 (2011).

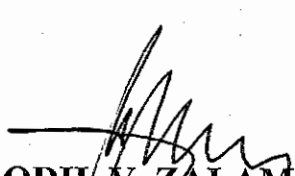
⁴³ *Spouses Timado v. Rural Bank of San Jose, Inc.*, 789 Phil. 453, 459 (2016).

⁴⁴ CIVIL CODE, Art. 2208.

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

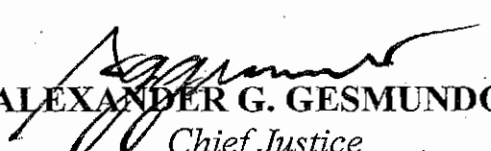

RAMON PAUL L. HERNANDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Art. 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.


ALEXANDER G. GESMUNDO
Chief Justice

