



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

VIRGINIA JUDY DY and
GABRIEL DY,

Petitioners,

- versus -

PHILIPPINE BANKING
CORPORATION,¹

Respondent.

G.R. No. 167158

Present:

CARPIO, J., Chairperson,
BERSAMIN,*
PEREZ,
MENDOZA,** and
PERLAS-BERNABE, JJ.

Promulgated:

JAN 30 2013

W. C. Carpio

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DECISION

CARPIO, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the 22 July 2004 Decision² and the 17 February 2005 Resolution³ of the Court of Appeals (CA) in CA-G.R. CV No. 57331. The CA affirmed with modification the 14 July 1997 Decision⁴ of the Regional Trial Court (RTC) of Pasig City, Branch 154, in Civil Case No. 58672, an action for sum of money filed by respondent Philippine Banking Corporation (Philbank) against petitioners Virginia Judy Dy (Dy), Gabriel Dy,⁵ Marina International Marketing Corporation (Marina), Caezar Tanjutco (Tanjutco), Joel Alindogan (Alindogan), Efren Mercado

¹ Designated additional member per Raffle dated 24 August 2009.

² Designated additional member per Raffle dated 28 January 2013.

³ Per Petitioners' Compliance dated 6 March 2006, Philippine Banking Corporation merged with Asian Bank and Global Bank on 22 May 2000, operating under the name Global Business Bank, Inc. On 5 September 2002, the Securities and Exchange Commission approved Global Business Bank, Inc.'s application to change its corporate name to Global Business Holdings, Inc. Thereafter, the banking operations of Global Business Bank, Inc. were consolidated with the Metropolitan Bank and Trust Company (Metrobank) and the former ceased to exist as a banking institution on 11 October 2002. *Rollo*, pp. 128-129.

⁴ *Id.* at 42-65. Penned by Associate Justice Arturo D. Brion (now a Member of this Court), with Associate Justices Delilah Vidallon-Magtolis and Eliezer R. Delos Santos, concurring.

⁵ *Id.* at 67-71.

⁶ *Id.* at 72-104. Penned by Judge Ramon R. Buenaventura.

⁷ Husband of Virginia Judy Dy and impleaded as a formal party.

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(Mercado), and Intercontinental Cargo Specialists, Inc.

The Facts

Sometime in 1989, Philbank’s Internal Auditing Department conducted a verification and audit of Marina’s accounts with the former’s Balintawak, Quezon City branch.⁶ The audit team discovered that there were “fraudulent manipulations and falsification of commercial documents involving, among others, bank drafts, invoices, bills of lading, packing list, certificates of origin, medical and quarantine clearances and other related documents resulting in loss to the bank of the amount of US\$1,538,094.49” in Marina’s export accounts with the bank.⁷

On 22 September 1989, Philbank filed a complaint for a sum of money with preliminary attachment against Marina, Tanjutco, and Alindogan. The complaint was later amended to include the Dy spouses and Mercado as defendants.⁸

The investigation had revealed that in June 1989, Tanjutco and Alindogan negotiated with Philbank the following export shipping documents:

<u>Date of Negotiation</u>	<u>Reference No.</u>	<u>Amount</u>
June 7, 1989	EBBAL 140.89	US\$ 116,688.14
June 7, 1989	EBBAL 141.89	US\$ 118,012.26
June 9, 1989	EBBAL 144.89	US\$ 116,656.37
June 15, 1989	EBBAL 145.89	US\$ 91,833.90
June 15, 1989	EBBAL 146.89	US\$ 92,202.42
June 15, 1989	EBBAL 147.89	US\$ 93,104.72
June 15, 1989	EBBAL 148.89	US\$ 91,117.16
June 15, 1989	EBBAL 149.89	US\$ 110,997.54
June 22, 1989	EBBAL 160.89	US\$ 105,167.14
June 23, 1989	EBBAL 161.89	US\$ 104,339.47
June 23, 1989	EBBAL 162.89	US\$ 105,969.07
June 23, 1989	EBBAL 163.89	US\$ 101,790.06
June 24, 1989	EBBAL 165.89	US\$ 99,717.80
June 24, 1989	EBBAL 166.89	US\$ 95,416.68

⁶ Records, Vol. 1, p. 5.
⁷ Id.
⁸ *Rollo*, p. 72.

June 24, 1989	EBBAL 167.89	US\$ 95,081.76
TOTAL		US\$1,538,094.49

Philbank found that its bank officers, Dy and Mercado, authorized the negotiation of the abovementioned shipping documents despite these being marked as “non-negotiable.”⁹ It further alleged that Dy and Mercado colluded with Tanjutco and Alindogan in the scheme to defraud the bank.

When Philbank demanded the surrender of the negotiable bills of lading, with the corresponding stamp “merchandise loaded on board,” in order to obtain reimbursement for the face value of the documents, Tanjutco and Alindogan could not produce them.¹⁰ It was later found that there was, in fact, no merchandise to be shipped and the documents presented to the bank were fictitious and fraudulent.

Philbank also alleged that Dy and Mercado allowed the outright purchase of said documents knowing them to be fictitious and fraudulent. It also argued that even assuming the documents were genuine, Dy and Mercado could still be held liable for the bank’s loss because they acted in excess of their authority since they approved the transaction without the approval by the Board of Directors and contrary to bank practice and procedure.¹¹

Marina, Tanjutco, and Alindogan denied any liability. They alleged that, assuming they received said amount from the bank, it was by way of a loan, which was not yet due at the time of the filing of the case before the RTC, and secured by the corporate earnings of Marina. If at all, any liability should be borne by Marina alone, they averred.¹²

They further alleged that the bank was bound by its officers’ actions and could not belatedly repudiate such actions by claiming that these transactions were irregular, fraudulent, and prejudicial to it. They claimed to have transacted with Philbank’s officers in good faith, honestly believing that the latter were acting under the authority given to them by the bank.¹³

On the other hand, Dy denied that she conspired with Tanjutco and Alindogan to defraud Philbank.¹⁴ She alleged that, while she had general supervision of Area II – which includes the Balintawak branch – her

⁹ Records, Vol. 1, p. 6.
¹⁰ *Rollo*, p. 74.
¹¹ *Id.*
¹² *Id.* at 75-76.
¹³ Records, Vol. 1, pp. 67-68.
¹⁴ *Id.* at 74.

participation in every transaction was not indispensable.¹⁵ She stated that she was never aware of any false pretenses committed by Tanjutco and Alindogan and that she never authorized the purchase of the alleged fraudulent documents.¹⁶

Mercado, for his part, also denied any liability, alleging that all the transactions were “handled in accordance with standard operating procedures and were referred to and duly approved by his immediate superior, defendant Virginia Judy Dy.”¹⁷ He averred that the subject transactions were “considered at the instance of and approved by defendant Virginia Judy Dy who is the Assistant Vice-President and Area Head of plaintiff bank, and under whose jurisdiction, direction and supervision defendant works as branch manager[.]”¹⁸ Mercado also narrated that it was Dy who brought Marina in as Philbank’s client when she joined the bank on 15 January 1989 since it was one of her clients in the bank where she was previously employed.¹⁹

The Ruling of the RTC

In a Decision dated 14 July 1997, the RTC rendered judgment, the dispositive portion of which states:

WHEREFORE, [the] foregoing premises considered, defendant Marina is held solely liable to the plaintiff and is hereby ordered to pay the plaintiff the following:

- a) to pay the plaintiff the sum of US\$1,538,049.49 or equivalent to ₱21.923 to US\$ 1.00;
- b) to pay 10% of the total amount due, as and for attorney’s fees[;] and
- c) cost of suit.

The complaint against Tanjutco, Alindogan, Spouses Judy Dy and Gabriel Dy, Mercado and ICSI, together with their respective counterclaims and the crossclaim against Marina, Tanjutco, Alindogan, Spouses Judy Dy and Gabriel Dy, [and] Mercado, are hereby DISMISSED.²⁰

The RTC held that since the bank could not obtain reimbursements due to Marina’s failure to surrender the negotiable shipping documents, “[a]n obligation on the part of Marina then clearly arose and [Philbank]’s

¹⁵ Id.

¹⁶ Id. at 75.

¹⁷ Id. at 80.

¹⁸ Id. at 81.

¹⁹ Id.

²⁰ *Rollo*, p. 104.

right to sue to recover the said amount [was] undeniable.”²¹ It further stated that the evident negligence of the bank’s officers “does not exculpate defendant Marina from the fact that it owes plaintiff bank the amount covered by the subject export document[s].”²² Thus, the RTC ruled that the obligation to pay Philbank was Marina’s corporate liability, and consequently, dismissed the complaint against Tanjutco, Alindogan, the Dy spouses, and Mercado.

The Ruling of the CA

Philbank appealed the RTC decision to the CA.

In the assailed 22 July 2004 decision, the CA affirmed with modification the RTC decision, to wit:

WHEREFORE, premises considered, we hereby **AFFIRM** the lower court’s decision with the **MODIFICATION** that the defendants-appellees Caesar Tanjutco, Joel Alindogan[,] and Virginia Judy Dy are held jointly and solidarily liable with MARINA for the reliefs awarded by the lower court, with interest on the principal sum at 12% per annum from the time of the judicial demand.²³ (Emphasis in the original)

The CA held Marina, Tanjutco, and Alindogan liable for the amounts that Philbank paid.²⁴ The CA ruled that “[w]hen the officers of MARINA failed or refused to submit the original bills of lading, MARINA violated the condition under which payment by Philbank was made, and hence, is liable for the return of the amounts paid.”²⁵

The CA pointed out that Tanjutco and Alindogan represented Marina in all its banking transactions with Philbank. The documents Marina’s officers negotiated with the bank were marked “non-negotiable” but the same were accepted by the bank upon Tanjutco and Alindogan’s promise that the original copies of the bills of lading would be presented later on.

The CA also noted that Philbank sent various demand letters to the forwarders that issued the non-negotiable bills of lading because the bills contained a remark that the goods were already on board. That statement turned out to be an act of misrepresentation by Tanjutco and Alindogan.²⁶

²¹ Id. at 102-103.

²² Id. at 102.

²³ Id. at 65.

²⁴ Id. at 55.

²⁵ Id. at 49.

²⁶ Id. at 52.

As to the liability of the bank's officers, the CA upheld the RTC's judgment absolving Mercado of liability but reversed the finding on Dy's guilt. The CA ruled that Dy was jointly and solidarily liable with Marina, Tanjutco, and Alindogan. The CA stated that "the transactions under question transpired because of Judy Dy's approval."²⁷

The CA also held that Dy's testimony on her functions as bank manager was not believable because it "def[ied] logic, reason and common experience."²⁸ The CA noted that Dy claimed to have no authority to approve Marina's transactions since loan transactions were approved by the head office based on the recommendation of the branch manager (Mercado). She claimed that because of the volume of her work, there were some loans she did not know of but still recommended because Mercado recommended them. She further claimed that she did not read all the papers brought to her to sign because she did not have enough time.²⁹

If Dy were truthful, the Court stated, it would appear that, as Philbank's Assistant Vice President, she had no substantial duties or authority; she could not approve anything; she had no control of bank operations (she claimed it was Mercado who oversaw daily operations); and she would sign important documents without reading them.³⁰ The CA concluded that, contrary to her claims, Dy approved the transactions subject of this case.³¹

Further, the CA noted that although there is no direct evidence of conspiracy between Marina and Dy, "circumstances, if read together, point to a concert of action directed towards the same end."³² The CA stated that Tanjutco and Alindogan made it appear that goods were on board the carrier, with all the necessary government clearances. Thereafter, the only missing component to secure Philbank's payment was the acceptance of the non-negotiable bills of lading, which only Dy could provide. The CA held that Marina's non-submission of the original bills of lading evinced not only a failure to comply with the bank's requirements but a mode to divest Philbank of its funds.³³ Thus, the CA concluded that there was collusion among Tanjutco, Alindogan, and Dy.³⁴

²⁷ Id. at 55.

²⁸ Id. at 59.

²⁹ Id. at 57.

³⁰ Id. at 58.

³¹ Id. at 59.

³² Id.

³³ Id. at 60-61.

³⁴ Id. at 64.

The Issue

Petitioners raise this sole issue:

WHETHER OR NOT THE RESPONDENT PHILBANK'S EVIDENCE HAVE SUFFICIENTLY PROVED THAT PETITIONER JUDY DY WAS IN CONSPIRACY/COLLUSION WITH DEFENDANTS MARINA, TANJUTCO AND ALINDOGAN TO DEFRAUD RESPONDENT OF THE VALUE OF THE SUBJECT EXPORTS SHIPPING DOCUMENTS.³⁵

The Court's Ruling

The Court denies the petition and affirms the decision of the CA.

The evidence on record clearly bears out Dy's liability. Based on the testimonies of the witnesses, Dy brought in Marina's account to Philbank³⁶ and she directly transacted with Marina's officers. Mercado testified:

Q: Why do you know that there are non-negotiable Bills of Lading?

A: The form itself states "non-negotiable copy".

Q: And why were these accepted by your bank?

A: This was approved on the promise that they will produce or present to us the original Bills of Lading, the negotiable Bills of Lading.

Q: And to whom was this promise or statement to produce the negotiable or original Bills of Lading made?

A: This was promised to Mrs. Dy.

Q: And who made this promise?

A: Joel Alindogan and Cezar Tanjutco.

Q: And why do you know that there was such a promise made to Mrs. Dy?

A: Because when we made follow up on these lacking documents, they would tell us[, "It is being arranged with Mrs. Dy and we promised her that we will produce the original Bills of Lading["]].³⁷

More importantly, there would have been no completed transaction without Dy's approval. **Her act of approving the transaction was the single most important factor that allowed Tanjutco and Alindogan's scheme to succeed.**

³⁵ Id. at 21-22.

³⁶ TSN, 14 September 1992, p. 17.

³⁷ TSN, 23 November 1992, pp. 8-9.

As the CA noted, only Dy could have supplied the key element that Tanjutco and Alindogan needed: the bank's approval. Mercado, by himself, could not approve the subject transactions. He had no such authority. He only signed the export documents because Dy approved the same. As Mercado himself testified:

Q: So in your experience, is that possible, where a non-negotiable document can be negotiated?

A: Well, in that case, it was negotiated based on the approval of Mrs. Dy.

Q: In your experience, other than this alleged subject matter?

A: During the time by the other Heads, it was not approved by them.

Q: Did you consider that as irregular because the Bills of Lading are non-negotiable and yet the same were being negotiated?

A: I would consider it regular if it was approved by my superior, sir.

x x x x

Q: Were you the one who sought the approval of those documents, thru Mrs. Dy?

A: No, by (sic) the Export Department, sir.³⁸

x x x x

Q: Now, you said that she is an Area head, do you know what her duties are, as Area Head?

A: As an Area Head, she is in charge of the lending operations of several branches under her supervision as well as the operation of other branches. In short, she is our over all boss.

Q: When you said that she is in charge of the lending operations of the several branches of the bank, in this lending operation, what particular function or duties does she perform?

A: As an Area head, she approves the negotiations of our export bills.

x x x x³⁹

Q: Now, who approved the payment to Marina International for these shipments?

A: Since these documents are incomplete, particularly the lack of original bill of Lading, our Export Section (sic) so the Assistant sought the approval of Mrs. Dy, since this is an account solicited by her and since she has the authority to approve the discrepancies.⁴⁰

x x x x

³⁸ TSN, 13 April 1993, pp. 9-10.

³⁹ TSN, 14 September 1992, p. 16.

⁴⁰ TSN, 23 November 1992, p. 7.

Q: You said a while ago that Mrs. Dy approved the payment on these export bills, do you have any proof to show that she approved the payment for these export bills?

A: Yes, sir.

Q: Please present the same to the Honorable Court.

A: These are the proofs, sir.⁴¹

x x x x

Atty. Altuna:

How do you categorize these documents counsel?

Atty. Lozano:

These are approval slips.

Q: You said that in these documents or in these approval slips, the export bills, the approval on these export bills are shown in these approval slips of Mrs. Dy, will you show to us where the approval of Mrs. Dy appears in these documents?

A: This is her initial and some are her actual signatures.⁴²

x x x x

Q: When payment on export bills are made, aside from Mrs. Dy, is there any other officer authorized to approve these payments?

A: She is the only one, since she is our Area Head and the Head of the Lending Area Center.⁴³

Dy's liability was further explained by Philbank's internal auditor, Laurito Abalos (Abalos). Abalos testified that Dy acted beyond her authority, considering that the transaction was not considered a "regular" bank transaction.

A: Well, immediately when we discovered these things, that there were numerous unpaid export bills, what we did is we asked them to submit all these supposedly export bills, that the (sic) supposedly purchased and paid. Now, when we got these copies, immediately we caused an investigation because **this is not a regular transaction, it is an irregular transaction**. So, normally, once the bank or any bank purchased an export bills. (sic) these are being sent to the corresponding bank for reimbursement. In this case, the branch was holding all these supposedly export bills because there was no original Bills of Lading. If there is (sic) not original Bills of Lading and the terms and conditions of the Letters of Credit expressly stated that it has to be supported by a negotiable Bills of Lading, then it cannot be sent for

⁴¹ Id. at 9-10.

⁴² Id.

⁴³ Id. at 13.

reimbursement abroad, so in this particular case, it was never been sent by the branch because there was an irregular practice in this particular transaction.⁴⁴ (Emphasis supplied)

X X X X

Q: Now, you said that per your audit, these export bills, while accompanied only by a non-negotiable Bills of Lading were negotiated and defendant Marina International Marketing Corporation was able to get payment of these export bills. Do you know, from your audit, who approved the payment of these export bills?

A: This one I would say that if ever it was passed or approved, it is an **unauthorized approval** because as I said, the transaction is not regular. Now, in the course of our review of the documents it appears that...and also from the testimony gathered from the officers of the bank, it appears that Judy Dy approved all the transactions but I repeat, she has no authority regarding this transaction.

Q: You said a while ago that Mrs. Judy Dy was an Assistant Vice President of the bank and in charge of Area II or Balintawak Branch, why do you say now that she is not authorized to approve the negotiation of these export bills?

A: Because in a negotiation of export bills supposed to be, only regular transactions. (sic) When we say regular transaction, that means all the documents are complete, that means if there is no discrepancy in the export bills that the bank is purchasing that means that all the documents are clean and in accordance with the terms and conditions, then this can be processed but in this case, there is a very important vital document that is missing here and this is the negotiable Bills of Lading because the Letters of Credit states (sic) the terms and conditions that it has to be supported by a negotiable Bills of Lading, therefore, it is a violation of the terms and conditions and Mrs. Judy Dy has no authority over it.

Q: And why do you say that Mrs. Dy has no authority to approve such kind of negotiation?

A: Because this is not normal. It [was] already what we call an irregular transaction because if you parted [with] something, you should get something in return. That means, when you purchased an export bill, the bank will be able to get reimbursement. In this case, the bank cannot get reimbursement because there was no shipment on the goods that was (sic) being purchased, there is nothing..no export bills to talk about here.⁴⁵ (Emphasis supplied)

Abalos also testified that, based on his unit's investigation, Dy alone was responsible for allowing Marina to obtain funds from the bank.

⁴⁴ TSN, 15 June 1993, pp. 8-9.

⁴⁵ Id. at 12-14.

A: x x x x

Our position in the later part, when we go over all the documents and the testimonies of all the other rank and file as well as the other officers, Mr. Mercado clearly showed that he followed the orders of Mrs. Dy. All the negotiations were done with Mrs. Dy together with the defendant Marina International in this case.

This has been supported later on when they found out that sometimes in June, **they seek already an approval from Mrs. Dy, not only verbal but written approval, that Mrs. Dy has authority, so therefore, they provided (sic), this Efren Mercado and the rest of the officers, a short note wherein they indicated that it is an incomplete document and despite this, Mrs. Dy said “go ahead, purchase it and credit the account of the client.”**

x x x x⁴⁶ (Emphasis supplied)

Finally, the Court agrees with the CA’s finding that Dy colluded with Tanjutco and Alindogan in the latter’s scheme to divest the bank of its funds. Dy knew that Marina could not present the negotiable Bills of Lading; yet, she still approved the purchase of Marina’s export bills.

Tanjutco and Alindogan were holding non-negotiable export documents, which they knew they could not negotiate with any other bank in the regular course of business. Thus, the assurance of Dy’s approval was indispensable to their plans. They had to secure it beforehand, or they would not have implemented the scheme knowing that the outcome was uncertain and could have possibly exposed them to liability. They would not have engaged in the elaborate scheme – concocting fictitious export bills and making them appear to have gone through all the necessary government procedures – if they were not assured of success in the end.

Dy tried to convince the trial court that she should not be held liable for the subject transactions. In her desperation, she even made herself appear as an inconsequential bank officer without power or authority normally given to officers in her position, downplayed her knowledge of banking procedures, and allowed herself to be painted as a negligent officer who would simply sign anything her staff hands to her without reading them.

It is difficult for the Court to believe that someone in Dy’s position, and with her years of experience in the banking sector, could not have known the grave implication and consequent effect of her action. Nor is this Court inclined to accept Dy’s claim of incompetence and negligence. The more logical conclusion is that Dy was fully aware that Tanjutco and Alindogan were out to defraud Philbank and allowed herself to be part of the

⁴⁶ Id. at 21-22.

scheme. For that, she must be held accountable.

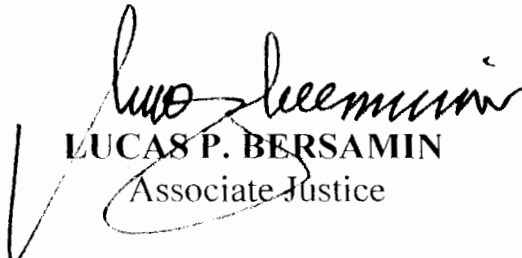
WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision of the Court of Appeals dated 22 July 2004 and Resolution dated 17 February 2005 in CA-G.R. CV No. 57331.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

WE CONCUR:




LUCAS P. BERSAMIN
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



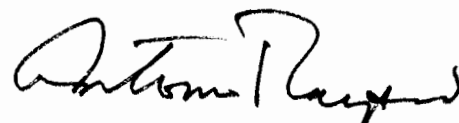
JOSE C. MENDOZA
Associate Justice



ESTELA M. BERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice