Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus -

TARCILA FERNANDEZ,
Respondent.

DALMIRO SIAN,
Third Party Respondent.

G.R. No. 173134

Present:

BRION, *J., Acting Chairperson,*
BERSAMIN,*
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

SEP 0 2 2015

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DECISION

BRION, *J.*:

We resolve the Petition for Review on *Certiorari* filed by the petitioner Bank of the Philippine Islands (*BPI*) under Rule 45 of the Rules of Court, assailing the Court of Appeals (*CA*) July 14, 2005 Decision[1] and the June 14, 2006 Resolution[2] in CA-G.R. CV No. 61764.

The Factual Antecedents

The present case arose from respondent Tarcila "Baby" Fernandez's (*Tarcila*) claim to her proportionate share in the proceeds of four joint **AND/OR** accounts that the petitioner BPI released to her estranged husband Manuel G. Fernandez (*Manuel*) without

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* Designated Additional Member in lieu of Associate Justice Antonio T. Carpio, per raffle dated September 5, 2011.

1 *Rollo*, pp. 70-83.

2 Id. at 85-88.

the presentation of the requisite certificates of deposit. The facts leading to this dispute are outlined below.

In 1991, Tarcila together with her husband, Manuel and their children Monique Fernandez and Marco Fernandez, opened the following **AND/OR** deposit accounts with the petitioner BPI, Shaw Blvd. Branch:

1) Peso Time Certificate of Deposit No. 2425545 issued on June 27, 1991 in the name(s) of **Manuel G. Fernandez Sr. or Baby Fernandez** or Monique Fernandez in the amount of ₱1,684,661.40, with a term of 90 days and a corresponding interest at 17.5% per annum;[3]

2) Peso Time Certificate of Deposit No. 2425556 issued on July 1, 1991 in the name(s) of **Manuel G. Fernandez Sr**. **or Marco Fernandez or Tarcila Fernandez**, in the amount of ₱1,534,335.10, with a term of 92 days and interest at 17.5% per annum;[4]

3) FCDU Time Certificate of Deposit No. 449059 issued on August 27, 1991 in the name(s) of **Manuel or Tarcila Fernandez** in the amount of US$36,219.53, with a term of 30 days and interest at 5.3125% per annum;

4) Deposit under SA No. 3301-0145-61 issued on September 10, 1991 in the name(s) of **Manuel Fernandez or Baby Fernandez or Monique Fernandez** in the amount of ₱11,369,800.78 with interest at 5% per annum.[5]

The deposits were subject to the following conditions:

"x x x

2. Pre-termination of deposits prior to maturity shall be subject to discretion of [BPI] and if pre-termination is allowed, it is subject to an interest penalty to be determined on the date of pre-termination;

3. **Endorsement and presentation of the Certificate of Deposit is necessary for the renewal or termination of the deposit**"

On September 24, 1991, Tarcila went to the BPI Shaw Blvd. Branch to pre-terminate these joint AND/OR accounts. She brought with her the certificates of time deposit and the passbook, and presented them to the bank. BPI, however, refused the requested pre-termination despite Tarcila's presentation of the covering certificates. Instead, BPI, through its branch manager, **Mrs. Elma San Pedro Capistrano (*Capistrano*), insisted on**

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3 Id. at 153.
4 Id. at 156.
5 Id. at 152.

contacting Manuel, alleging in this regard that this is an integral part of its standard operating procedure.[6]

Shortly after Tarcila left the branch, Manuel arrived and likewise requested the pre-termination of the joint AND/OR accounts.[7] Manuel claimed that he had lost the same certificates of deposit that Tarcila had earlier brought with her.[8] BPI, through Capistrano, this time acceded to the pre-termination requests, blindly believed Manuel's claim,[9] and requested him to accomplish BPI's pro-forma affidavit of loss.[10]

Two days after, Manuel returned to BPI, Shaw Blvd. Branch to pre-terminate the joint AND/OR accounts. He was accompanied by Atty. Hector Rodriguez, the respondent Dalmiro Sian (*Sian*), and two (2) alleged National Bureau of Investigation (*NBI*) agents.

In place of the actual certificates of deposit, Manuel submitted BPI's pro-forma affidavit of loss that he previously accomplished and an Indemnity Agreement that he and Sian executed on the same day. The Indemnity Agreement discharged BPI from any liability in connection with the pre-termination.[11] **Notably, none of the co-depositors were contacted in carrying out these transactions.**

On the same day, the proceeds released to Manuel were funneled to Sian's newly opened account with BPI. **Immediately thereafter, Capistrano requested Sian to sign blank withdrawal slips, which Manuel used to withdraw the funds from Sian's newly opened account.**[12] **Sian's account, after its use, was closed on the same day.**[13]

A few days after these transactions, Tarcila filed a petition for "Declaration of Nullity of Marriage, etc." against Manuel, with the Regional Trial Court (*RTC*) of Pasig, docketed as JRDC No. 2098.[14] Based on the records, this civil case has been archived.[15]

Tarcila never received her proportionate share of the pre-terminated deposits,[16] prompting her to demand from BPI the amounts due her as a co-depositor in the joint AND/OR accounts. When her demands remained unheeded, Tarcila initiated a complaint for damages with the Regional Trial Court (*RTC*) of Makati City, Branch 59, docketed as Civil Case No. 95-671.

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6 Id. at 200-202.
7 Id. at 27.
8 Id. at 230-231.
9 Id.
10 Id. at 377.
11 Id. at 207-208.
12 Id. at 80.
13 Id. at 97.
14 Id. at 310-325.
15 Id. at 611.
16 Id. at 611-614.

In her complaint, Tarcila alleged that BPI's payments to Manuel of the pre-terminated deposits were invalid with respect to her share.[17] She argued that BPI was in bad faith for allowing the pre-termination of the time deposits based on Manuel's affidavit of loss when the bank **had actual knowledge that the certificates of deposit were in her possession**.[18]

In its answer, BPI alleged that the accounts contained conjugal funds that Manuel exclusively funded.[19] BPI further argued that Tarcila could not ask for her share of the pre-terminated deposits because her share in the conjugal property is considered inchoate until its dissolution.[20] BPI further denied refusing Tarcila's request for pre-termination as it processed her request but she left the branch before BPI could even contact Manuel.

BPI likewise filed a third-party complaint against Sian and Manuel on the basis of the Indemnity Agreement they had previously executed. As summons against Manuel remained unserved,[21] only BPI's complaint against Sian proceeded to trial.

During the pre-trial, the parties admitted, among others, the **conjugal nature of the funds** deposited with BPI.

After trial on the merits, the RTC of Makati, Branch 59, ruled in favor of Tarcila and awarded her the following amounts: 1.) 1/2 of US$36,379.87; 2.) 1/3 of ₱11,3369,800.78; 3.) 1/3 of Php1,684,661.40; and 1/3 of ₱1,534,335.10. The RTC likewise ordered BPI to pay Tarcila the amount of ₱50,000.00 representing exemplary damages and ₱500,000.00 as attorney's fees.

In its decision,[22] the RTC opined that the AND/OR nature of the accounts indicate an active solidarity that thus entitled any of the account holders to demand from BPI payment of their proceeds. Since Tarcila made the first demand upon BPI, payments should have been made to her[23] under Article 1214 of the Civil Code, which provides:

> "Art. 1214. The debtor may pay any one of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by one of them, payment should be made to him."

The RTC did not find merit either in BPI's third-party complaint against Sian on the ground that he was merely coerced into signing the Indemnity Agreement.[24] BPI appealed the RTC ruling with the CA.

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17 Id. at 140-148.
18 Id.
19 Id. at 331-341.
20 Id.
21 Makati RTC Order dated October 17, 1996, id. at 406.
22 Id. at 89-105.
23 Id. at 100.
24 Id. at 103-104.

CA Ruling

On July14, 2005, the CA denied BPI's appeal through the decision[25] that BPI now challenges before this Court. The CA ruled that as a co-depositor and a solidary creditor of joint "AND/OR" accounts, BPI did not enjoy the prerogative to determine the source of the deposited funds and to refuse payment to Tarcila on this basis.

The CA also found that BPI had acted in bad faith in allowing Manuel to pre-terminate the certificates of deposits and in facilitating the swift funneling of the funds to Sian's account, which allowed Manuel to withdraw them.[26] The CA noted that *the transactions were accomplished in one sitting for the purpose of misleading anyone who would try to trace Manuel's deposit accounts.*[27]

The CA likewise upheld the RTC's dismissal of BPI's third-party complaint against Sian. It affirmed the factual finding that intimidation and undue influence vitiated Sian's consent in signing the Indemnity Agreement.[28]

BPI moved for the reconsideration of the CA ruling, but the appellate court denied its motion in its June 14, 2006 Resolution.[29] BPI then filed the present petition for review on certiorari under Rule 45 with this Court.

The Petition and Comment

BPI insists in its present petition[30] that the CA and the court *a quo* erred in applying the provisions of Article 1214 of the Civil Code to the present case. It believes that the CA should have relied on the conjugal partnership of gains provision in view of the existing marriage between the spouses. Accordingly, BPI argues that Tarcila could not have suffered any damage from its **payment** of the proceeds to Manuel inasmuch as the proceeds of the pre-terminated accounts formed part of the conjugal partnership of gains.

BPI likewise claims that it did not breach its obligations under the certificates of deposit; it processed Tarcila's pre-termination request but she left the branch before her request could be completed. Moreover, assuming without conceding that BPI indeed declined Tarcila's request, it posits that it possessed the discretion to do so since the request for pre-termination was done prior to their maturity dates. Thus, BPI firmly believes that it could not be accused of wanton, fraudulent, reckless, or malevolent conduct as it was merely exercising its rights.

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25 Id. at 70-83.
26 Id. at 79.
27 Id. at 80-81.
28 Id. at 82.
29 Id. at 85-88.
30 Id. at 9-68.

Finally, BPI insists that Sian's consent was not vitiated when he signed the Indemnity Agreement. According to BPI, the records are bereft of any proof that Sian was actually threatened to sign the Indemnity Agreement. Thus, BPI maintains that it may validly invoke the Agreement to release itself from any liability.

In her Comment,[31] Tarcila points out that the petition raised questions of fact that are not proper issues in a petition for review on *certiorari*.[32] She also argues that BPI's acts were not mere precautionary steps but were *indicia* of bias and bad faith. Finally, Tarcila adds that the issue of who has management, control, and custody of conjugal property cannot be set up to justify BPI's patent bad faith.

Sian failed to file his Comment on the petition. Nevertheless, he filed a Memorandum[33] in compliance with the Court's September 22, 2008 Resolution.[34] He alleged that Manuel forced and intimidated him to sign the Indemnity Agreement.

THE COURT'S RULING

We deny the petition for lack of merit.

BPI breached its obligation under the certificates of deposit.

A certificate of deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, **whereby the relation of debtor and creditor between the bank and the depositor is created.**[35] In particular, the **certificates of deposit** contain provisions on the amount of interest, period of maturity, and manner of termination. Specifically, they stressed that endorsement and presentation of the certificate of deposit is **indispensable** to their termination. **In other words, the accounts may only be terminated upon endorsement and presentation of the certificates of deposit.** Without the requisite presentation of the certificates of deposit, BPI may not terminate them.

BPI thus may only terminate the certificates of deposit after it has **diligently completed** two steps. *First,* it must ensure the identity of the account holder. *Second*, BPI must demand the surrender of the certificates of deposit.

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31 Id. at 653-705.
32 Id.
33 Id. at 926-935.
34 Id. at 924.
35 10 Am Jur 2d 455.

This is the essence of the contract entered into by the parties which serves as an accountability measure to other co-depositors. **By requiring the presentation of the certificates prior to termination, the other depositors may rely on the fact that their investments in the interest-yielding accounts may not be indiscriminately withdrawn by any of their co-depositors. This protective mechanism likewise benefits the bank, which shields it from liability upon showing that it released the funds in good faith to an account holder who possesses the certificates.** Without the presentation of the certificates of deposit, BPI may not validly terminate the certificates of deposit.

With these considerations in mind, we find that BPI substantially breached its obligations to the prejudice of Tarcila. BPI allowed the termination of the accounts without demanding the surrender of the certificates of deposits, in the ordinary course of business. Worse, BPI even had **actual knowledge that the certificates of deposit were in Tarcila's possession and yet it chose to release the proceeds to Manuel on the basis of a falsified affidavit of loss, in gross violation of** the terms of the deposit agreements.

As we have stressed in the case of *FEBTC v. Querimit*:[36]

> "x x x **A bank acts at its peril when it pays deposits evidenced by a certificate of deposit, without its production and surrender after proper indorsement**. As a rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove payment. **The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment. x x x Petitioner should not have paid respondent's husband or any third party without requiring the surrender of the certificates of deposit**.[37]"

BPI tried to muddle the issue by claiming that the funds subject of the deposits were conjugal in character. This contention, however, is misleading. The principal issue involved in the present case is BPI's breach of its obligations under the express terms of the certificates of deposit and the consequent damage that Tarcila suffered as a co-depositor because of BPI's acts.

Notably, BPI effectively deprived Tarcila and the other co-depositors of their share in the proceeds of the certificates of deposits. As the CA noted in the assailed Decision, **the series of transactions were accomplished in one sitting for the purpose of misleading anyone who would try to trace the proceeds of [Manuel]'s deposit accounts**.[38] As the court *a quo* likewise observed:

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36 424 Phil. 721 (2002).
37 Emphasis supplied.
38 *Rollo*, pp. 80-81.

> "Aside from the affidavit of loss, the bank required [Manuel] to execute an Indemnity Agreement. Hence, on September 26, 1991, [Manuel] returned to the bank. This time, Dalmiro Sian, his son-in-law, Atty. Hector Rodriguez, his lawyer, and two NBI agents were with him. There, the bank required him and Sian to sign an Indemnity Agreement whereby they undertook "to hold the bank free and harmless from all liabilities arising from said [pre-termination]." The agreement was prepared by one of the officers of the bank. At the same time, Sian was told to open a new account under his name. **The opening of a new account N. 3305-0539-44 in the name of Sian was facilitated. The proceeds of the four deposit accounts were then transferred or deposited to this new account in the name of Sian**. x x x Sian also signed two blank withdrawal slips. **With the use of these withdrawal slips, [Manuel] Fernandez withdrew all the proceeds deposited under the name of Sian.** Shortly thereafter, account no. 3305-0539-44 was closed.[39]"

It appears that BPI **connived** with Manuel to allow him to divest his co-depositors of their share in proceeds. Worse, it cooperated with Manuel in trying to conceal this fraudulent conduct by making it appear that the funds were withdrawn from another account.

The CA correctly ruled that BPI is guilty of bad faith.

We affirm the CA and the trial court's findings that BPI was guilty of bad faith in these transactions. Bad faith imports a dishonest purpose and conscious wrongdoing.[40] It means a breach of a known duty through some motive or interest or ill will.[41]

A review of the records of the case show ample evidence supporting BPI's bad faith, as shown by the clear bias it had against Tarcila. As the CA observed:

> "**The bias and bad faith on the part of [BPI]'s officers become readily apparent in the face of the fact that [BPI]'s officers did not require the presentation of the certificates of deposit from [Manuel] but even assisted and facilitated the pre-termination transaction by the latter on the basis of a mere pro-forma and defective affidavit of loss, which the bank itself supplied, despite the fact that [BPI]'s officers were fully aware that the certificates were not lost but in the possession of [Tarcila**]. Moreover, given the fact that said affidavit of loss was executed by [Manuel] just a few minutes after [Tarcila] had presented the certificates of deposit to [BPI], it taxes one's credulity to say that [BPI] believed in good faith that the certificates were indeed lost."[42]

Similarly, the trial court observed:

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39 Id. at 102.
40 383 Phil. 1026, 1032 (2000).
41 Id.
42 Emphasis supplied.

> "It is quite alarming to note the eagerness and haste by which the defendant bank accommodated [Manuel]'s request for the pre-termination of the questioned account deposits and the subsequent release to him of the full proceeds thereof, to the exclusion of the [Tarcila]. The prejudice of the officers of [BPI] against the [Tarcila] is very apparent. Elma Capistrano, branch manager, categorically testified that [Tarcila] is a client of the bank only in name; and that she does not consider [Tarcila] as a primary depositor to the account because the source of the money being deposited and being transacted was [Manuel]."[43]

BPI argues that it merely took precautionary steps when it insisted on contacting Manuel as a form of standard operating procedure. This assertion, however, is belied by BPI's own witness. During her testimony, Capistrano narrated:

> "x x x
>
> Q: Can you tell us why it was necessary for the branch to get in touch with Mr. Manuel Fernandez?
>
> A: **Because he is the one that handles and is in control of all the money deposited in the branch**[44]
>
> x x x
>
> Q: I heard you mentioned the word "primary depositor" does that mean that Mrs. Tarcila Fernandez is not a primary depositor?
>
> A: **Personally, I do not really consider her as the primary depositor to the account** because the source of the money being deposited and being transacted was Mr. Manuel Fernandez.[45]
>
> x x x
>
> Q: Were you the one who recommended that Mr. Manuel Fernandez prepare this affidavit of loss?
>
> A: That is the usual things that we tell our clients if the original of the certificates of deposits (*sic*) or passbook or checkbooks are missing.
>
> Q: **But is it not a fact that earlier a few minutes before Mr. Fernandez came, you were aware that the certificates were not actually missing but were in the possession of Mrs. [Tarcila] Fernandez, is it not?**
>
> A: **Yes Sir.**
>
> Q: **And yet when this affidavit of loss was later prepared and presented to you, did you give due course to this affidavit of loss? Did you accept the truth of the contents of this affidavit of loss?**

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43 Emphasis supplied.
44 TSN, April 25, 1997, at p 12. *Rollo,* p. 202.
45 Id. at 30. *Rollo,* p. 221.

A: **Because it is Mr. [Manuel] Fernandez who is in possession of all the certificates, and if he is missing it, I believed that it is really missing**."[46]

The records thus abound with evidence that BPI clearly favored Manuel. BPI considered Manuel as the primary depositor despite the clear import of the nature of their AND/OR account, which permits either or any of the co-depositors to transact with BPI, **upon the surrender of the certificates of deposit.** Worse, BPI facilitated the scheme in order to allow Manuel to obtain the proceeds and conceal any evidence of wrongdoing.

BPI did not only fail to exercise that degree of diligence required by the nature of its business, it also exercised its functions with bad faith and manifest partiality against Tarcila. The bank even recognized an affidavit of loss whose allegations, the bank knew, were false. This aspect of the transactions opens up other issues that we do not here decide because they are outside the scope of the case before us.

One aspect is criminal in nature because Manuel swore to a falsity and the act was with the knowing participation of bank officers. The other issue is administrative in character as these bank officers betrayed the trust reposed in them by the bank. We mention all these because these are disturbing acts to observe in a banking institution as large as the BPI.

BPI is sternly reminded that the business of banks is impressed with public interest. The fiduciary nature of their relationship with their depositors requires it to treat the accounts of its clients with the highest degree of **integrity,** care and **respect.** In the present case, the manner by which BPI treated Tarcila also transgresses the general banking law[47] and Article 19 of the Civil Code, which directs every person, in the exercise of his rights, "to give everyone his due, and observe honesty and good faith."

BPI could not invoke the Indemnity Agreement.

BPI assails the CA's declaration voiding the Indemnity Agreement that would allow it to hold Sian liable for the withdrawn deposits.[48] It argues that Sian's allegation of vitiation of consent should not be recognized as it is based solely on the presence of Manuel's lawyer and two (2) alleged NBI Agents.[49] BPI thus claims that "mere presence" of law enforcement officers cannot be reasonably equated as imminent threat.[50]

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46 Id. at 40-41. *Rollo,* pp. 230-231.

47 Section 2 of Republic Act No. 8791 (RA 8791),which took effect on 13 June 2000, declares that the State recognizes the fiduciary nature of banking that requires high standards of integrity and performance.

48 *Rollo*, p. 51.

49 Id. at 52.

50 Id.

This particular issue involves a factual determination of vitiated consent, which is a question of fact and one which is not generally appropriate in a petition for review on *certiorari* under Rule 45. We, however, are not precluded from again examining the evidence introduced and considered with respect to this factual issue where the CA's finding of vitiated consent is both speculative and mistaken.[51]

We agree with BPI's observation on this point that there is nothing in the records that even remotely resembles vitiation of consent. In order that intimidation may vitiate consent, it is essential that the intimidation was the moving cause for giving consent.[52] Moreover, the threatened act must be unjust or unlawful.[53] In addition, **the threat must be real or serious, and** must produce well-grounded fear from the fact that the person making the threat has the necessary means or ability to inflict the threat.[54]

Nothing in the records supports this conclusion. In fact, we find it difficult to believe that the presence of Manuel, his lawyer, and two (2) NBI agents could amount to intimidation in **the absence of any act or threatened injury on Sian**. If he did sign the Indemnity Agreement with reluctance, vitiation of consent is still negated, as we held in *Vales v. Villa*:[55]

> "There must, then, be a distinction to be made between a case where a person gives his consent reluctantly and even against his good sense and judgment, and where he, in reality, gives no consent at all, as where he executes a contract or performs an act against his will under a pressure which he cannot resist. It is clear that one acts as voluntarily and independently in the eye of the law when he acts reluctantly and with hesitation as when he acts spontaneously and joyously. Legally speaking he acts as voluntarily and freely when he acts wholly against his better sense and judgment as when he acts in conformity with them. Between the two acts there is no difference in law. But when his sense, judgment, and his will rebel and he refuses absolutely to act as requested, but is nevertheless overcome by force or intimidation to such an extent that he becomes a mere automation and acts *mechanically only*, a new element enters, namely, a disappearance of the personality of the actor. He ceases to exist as an independent entity with faculties and judgment, and in his place is substituted another — the one exercising the force or making use of intimidation. While his hand signs, the will which moves it is another's. While a contract is made, it has, in reality and in law, only one party to it;

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51 When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: 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; 6.) When the findings are contrary to those of the trial court; 7) When the findings of fact are conclusions without citation of specific evidence on which they are based; 8) 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 9) 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. (emphasis and underscoring supplied)

52 264 Phil. 711 (1990).

53 Id.

54 Id.

55 35 Phil. 769 (1916).

> and, there being only one party, the one using the force or the intimidation, it is unenforceable for lack of a second party.
>
> From these considerations it is clear that every case of alleged intimidation must be examined to determine within which class it falls. If it is within the first class it is not duress in law, if it falls in the second, it is."

This notwithstanding, we hold that BPI may still not invoke the provisions of the Indemnity Agreement on the basis of *in pari delicto* – it was equally at fault. *In pari delicto* is a legal doctrine resting on the theory that courts will not aid parties who base their cause of action on their own immoral or illegal acts.[56] When two parties, acting together, commit an illegal or **wrongful act**, the party held responsible for the act cannot recover from the other, because both have been equally culpable and the damage resulted from their joint offense.[57]

In the present case, equity dictates that BPI should not be allowed to claim from Sian on the basis of the Indemnity Agreement. The facts unmistakably show that both BPI and Sian participated in the deceptive scheme to allow Manuel to withdraw the funds. As succinctly admitted by Capistrano during her testimony:

> x x x
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> Q: **I see, in other words, the same certificates of deposit earlier presented by Mrs. Tarcila were recognized by the bank as having been lost and thereafter transactions were made in favor of Mr. Manuel Fernandez, that was what happened?**
>
> A: Yes Sir, because of the representation of Mr. Manuel Fernandez that he lost it.
>
> Q: You accepted, the bank immediately accepted in face value that representation?
>
> A: Yes Sir.[58]

BPI knew very well the irregularity in Manuel's transaction for it had actual knowledge that the certificates of deposit were in Tarcila's possession. Because of this knowledge, it entertained the possibility of reprisal from the co-depositors. Thus, it **took shrewdly calculated steps** and required Manuel and Sian to execute an Indemnity Agreement, hoping that this instrument would absolve it from liability.

BPI and Sian are *in pari delicto*, thus, no affirmative relief should be given to one against the other. BPI came to court with unclean hands; for which reason, it cannot obtain relief and thereby gain from its indispensable

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56 *Atwood v. Fisk,* 101 Mass. 363 , 364 (1869).

57 *Union Stock Yards Co. of Omaha v. Chicago, Burlington, & Quincy R.*, 196 U.S. 217, 25 S. Ct. 226, 49 L. Ed. 453; 1905 U.S.

58 *Rollo*, pp. 233-234.

participation in the irregular transaction. One who seeks equity and justice must come to court with clean hands.[59]

Award of exemplary damages proper

Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages.[60] In *quasi-delicts*, exemplary damages may be granted if the defendant acted with gross negligence.[61]

In the present case, BPI's bias and bad faith unquestionably caused prejudice to Tarcila. The law allows the grant of exemplary damages 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.[62] From this perspective, we find that the CA did not err in affirming the RTC's award of ₱50,000.00 by way of exemplary damages.

Attorney's fees in order

In view of the award of exemplary damages, we find that that the CA did not err in confirming the RTC's award of attorney's fees, in accordance with Article 2208 (1) of the Civil Code. We find the award of attorney's fees, equivalent to ₱500,000.00, to be just and reasonable under the circumstances.

WHEREFORE, premises considered, the petition is hereby **DENIED.**

Costs against the petitioner.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice

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59 185 Phil. 525 (1980).
60 CIVIL CODE, Article 2229.
61 CIVIL CODE, Article 2231
62 *Cebu Country Club, Inc. v. Elizagaque*, G.R. No. 160273, January 18, 2008, 542 SCRA 65, 75, citing *Country Bankers Insurance Corporation v. Lianga Bay and Community Multi-Purpose Cooperative, Inc.*, G.R. No. 136914, January 25, 2002, 374 SCRA 653.

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
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.

ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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 A. SERENO
Chief Justice