



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CHINATRUST (PHILS.) G.R. No. 191458
COMMERCIAL BANK,
Petitioner,

Present:

CARPIO, J., *
PERALTA, ** *Acting Chairperson*,
MENDOZA,
LEONEN, and
MARTIRES, JJ.

-versus-

PHILIP TURNER,
Respondent.

Promulgated:

03 JUL 2017
HHH Sabalag Jr. J. Llorente

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DECISION

LEONEN, J.:

Issues that were not alleged or proved before the lower court cannot be decided for the first time on appeal. This rule ensures fairness in proceedings.

This Petition for Review assails the Court of Appeals' (a) December 14, 2009 Decision¹ affirming the Regional Trial Court's Decision dated January 29, 2007 and (b) its March 2, 2010 Resolution² denying petitioner Chinatrust (Philippines) Commercial Bank's (Chinatrust) Motion for

* On official leave.

** Designated Acting Chairperson per S.O. No. 2445 dated June 16, 2017.

¹ *Rollo*, pp. 40-51. The Decision in CA G.R. SP No. 99491, was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Hakim S. Abdulwahid and Jane Aurora C. Lantion of the Special Fourteenth Division of the Court of Appeals, Manila.

² *Id.* at 60-61.

Reconsideration.³ The Regional Trial Court set aside the Metropolitan Trial Court's dismissal⁴ of the complaint. It ordered Chinatrust to restore to the account of respondent Philip Turner (Turner) the following amounts: 1) US\$430 or ₱24,129.88, its peso equivalent as of September 13, 2004; and 2) US\$30 or ₱1,683.48, its peso equivalent as of September 13, 2004. It also ordered Chinatrust to pay ₱20,000.00 as moral damages, ₱10,000.00 as exemplary damages, and ₱5,000.00 as attorney's fees.

On September 13, 2004, British national Turner initiated via Chinatrust-Ayala Branch the telegraphic transfer of US\$430.00 to the account of "MIN TRAVEL/ESMAT AZMY, Account No. 70946017, Citibank, Heliopolis Branch" in Cairo, Egypt.⁵ The amount was partial payment to Turner's travel agent for his and his wife's 11-day tour in Egypt.⁶ Turner paid a service fee of US\$30.00. Both amounts were debited from his dollar savings account with Chinatrust.⁷

On the same day, Chinatrust remitted the funds through the Union Bank of California, its paying bank, to Citibank-New York, to credit them to the bank account of Min Travel/Esmat Azmy in Citibank-Cairo, Egypt.⁸

On September 17, 2004, Chinatrust received Citibank-Cairo's telex-notice about the latter's inability to credit the funds it received because the "beneficiary name d[id] not match their books (referred to as the 'discrepancy notice')."⁹ In other words, the beneficiary's name "Min Travel/Esmat Azmy" given by Turner did not match the account name on file of Citibank-Cairo.¹⁰ Chinatrust relayed this information to Turner on September 20, 2004, "the next succeeding business day."¹¹

Chinatrust claimed that it relayed the discrepancy to Turner and requested him to verify from his beneficiary the correct bank account name.¹² On September 22, 2004, Turner allegedly informed Chinatrust that he was able to contact Esmat Azmy, who acknowledged receipt of the transferred funds. Turner, however, had to cancel his travel-tour because his wife got ill and requested from Chinatrust the refund of his money.¹³

According to Chinatrust, it explained to Turner that since the funds

³ Id. at 183-192.

⁴ Id. at 165-167. The Decision dated January 15, 2006, in CIVIL CASE NO. 87471, was penned by Presiding Judge Rowena De Juan-Quinagoran of Branch 61, Metropolitan Trial Court, Makati City.

⁵ Id. at 40-41.

⁶ Id. at 10.

⁷ Id. at 41.

⁸ Id.

⁹ Id. at 45.

¹⁰ Id.

¹¹ Id.

¹² Id. at 11.

¹³ Id. at 11-12.

were already remitted to his beneficiary's account, they could no longer be withdrawn or retrieved without Citibank-Cairo's consent. Turner was, thus, advised to seek the refund of his payment directly from his travel agency.¹⁴

Turner allegedly insisted on withdrawing the funds from Chinatrust explaining that the travel agency would forfeit fifty percent (50%) as penalty for the cancellation of the booking, as opposed to the minimal bank fees he would shoulder if he withdrew the money through Chinatrust.¹⁵ Hence, Chinatrust required Turner to secure, at least, his travel agency's written certification denying receipt of the funds so that it could act on his request. However, Turner purportedly failed to submit the required certification despite repeated reminders.¹⁶

On October 28, 2004, Chinatrust received Citibank-Cairo's Swift telex reply, which confirmed receipt of Chinatrust's telegraphic funds transfer and its credit to the bank account of Min Travel, not "Min Travel/Esmat Azmy" as indicated by the respondent, as early as September 15, 2004.¹⁷ This information was relayed to Turner on October 29, 2004.¹⁸

Despite this official confirmation, Turner allegedly continued to insist on his demand for a refund.¹⁹

On March 7, 2005, Turner filed a Complaint²⁰ against Chinatrust before the Metropolitan Trial Court of Makati City, demanding the refund of his telegraphic transfer of ₱24,129.88 plus damages.²¹

Upon further queries, Chinatrust received another telex on September 28, 2005 from Citibank-Cairo confirming again and acknowledging receipt of Turner's remittance and its credit to the account of Min Travel on September 15, 2004.²²

After the parties had submitted their respective position papers in accordance with the Rules on Summary Procedure, the Metropolitan Trial Court of Makati City, Branch 61 rendered a Decision²³ on January 15, 2006, dismissing Turner's complaint for lack of merit as well as Chinatrust's counterclaim. The Metropolitan Trial Court found sufficient evidence to prove that Chinatrust complied with its contractual obligation to transmit the

¹⁴ Id. at 12.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 43 and 175.

¹⁹ Id. at 14.

²⁰ Id. at 81-85. The case was docketed as Civil Case No. 87471.

²¹ Id. at 83.

²² Id. at 13.

²³ Id. at 165-167.

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funds to Citibank-Cairo and that these funds were actually credited to the intended beneficiary's account.²⁴

Turner filed an appeal. On the substantive matters, Turner argued that the Metropolitan Trial Court erred in ruling that he had no basis in claiming a refund from Chinatrust and in not awarding him damages and attorney's fees.²⁵

Branch 137, Regional Trial Court of Makati City rendered a Decision²⁶ on January 29, 2007, reversing and setting aside the decision of the Metropolitan Trial Court. While it agreed with the Metropolitan Trial Court's findings that the funds had been deposited to the account of the beneficiary as early as September 15, 2004, the Regional Trial Court ruled that this was not sufficient basis to absolve Chinatrust of any responsibility.²⁷ The trial court found insufficient evidence to show that Chinatrust was not negligent in the performance of its obligation under the telegraphic transfer agreement. It held that no "discrepancy notice" from Citibank-Cairo was even presented in evidence.²⁸

The Regional Trial Court further held that Chinatrust failed to render its services in a manner that could have mitigated, if not prevented, the monetary loss, emotional stress, and mental anguish that Turner suffered for six (6) weeks while waiting for his intended beneficiary's confirmation of receipt of his money.²⁹ Hence, Chinatrust was found liable for the monetary loss suffered by Turner and for damages. The Decision disposed as follows:

WHEREFORE, in view of all the foregoing, the Decision of the Metropolitan Trial Court of Makati City, Branch 61, in Civil Case No. 87471, is hereby REVERSED and SET ASIDE, and a new one entered finding for plaintiff-appellant PHILIP TURNER, and against defendant-appellee CHINA TRUST (PHILS.) COMMERCIAL BANK CORPORATION by ordering the latter to pay, or restore to PHILIP TURNER's account with said Bank, the following amounts:

- (1) US \$ 430.00 or P24,129.88, the Peso equivalent at the rate of P56.1160/US \$1.00, as of 13 September 2004; and
- (2) US \$ 30.00 or P1,683.48, the Peso equivalent at the rate of P56.1160/US \$1.00, as of 13 September 2004.

The defendant-appellee bank is further ordered to pay plaintiff-appellant Philip Turner P20,000.00 as and for moral damages; P10,000.00 as and for exemplary damages; and P5,000.00 as and for reasonable attorney's fees.

²⁴ Id. at 166-167.

²⁵ Id. at 172.

²⁶ Id. at 168-182.

²⁷ Id. at 175.

²⁸ Id. at 175 & 178.

²⁹ Id. at 181-182.

SO ORDERED.³⁰

Chinatrust filed a motion for reconsideration, but it was denied by the Regional Trial Court in a Resolution³¹ dated June 4, 2007.

On July 4, 2007, Chinatrust filed a Petition for Review³² under Rule 42 of the 1997 Rules of Civil Procedure before the Court of Appeals.

In its Decision³³ dated December 14, 2009, the Court of Appeals dismissed the petition and upheld the decision of the Regional Trial Court. Chinatrust's subsequent Motion for Reconsideration³⁴ was likewise denied in the Court of Appeals' Resolution³⁵ dated March 2, 2010.

Hence, this Petition³⁶ was filed. In compliance with this Court's directive, respondent filed his Comment,³⁷ to which petitioner filed its Reply.³⁸

Petitioner stresses that based on the allegations in the Complaint, the real issue is "whether or not the petitioner-bank has legally complied with its contractual obligation with respondent in remitting his telegraphic fund to the latter's beneficiary account with Citibank-Cairo."³⁹ It reasons that as respondent has failed to prove his allegation that his telegraphic transfer funds were not received or credited to his intended beneficiary's Citibank-Cairo account, the Court of Appeals should have dismissed respondent's complaint.⁴⁰

Instead, the Court of Appeals adjudged petitioner liable for negligence: (1) when it did not immediately refund the telexed funds to respondent upon receipt of the discrepancy notice from Citibank-Cairo; and (2) when it did not immediately relay to Citibank-Cairo respondent's demand for the cancellation of the transaction.⁴¹ According to petitioner, this was erroneous because the Court of Appeals ruled upon matters not alleged in the complaint or raised as an issue⁴² and awarded damages not prayed for in the complaint.⁴³

³⁰ Id. at 182.

³¹ Id. at 193-198.

³² Id. at 62-80. The appeal was docketed as CA-G.R. No. 99491.

³³ Id. at 40-51.

³⁴ Id. at 52-59.

³⁵ Id. at 60-61.

³⁶ Id. at 8-39.

³⁷ Id. at 209-217.

³⁸ Id. at 218-224.

³⁹ Id. at 19.

⁴⁰ Id. at 23.

⁴¹ Id. at 25-32.

⁴² Id. at 24.

⁴³ Id. at 23.

Petitioner further argues that respondent demanded for the return of his money long after—and not immediately after—he was informed of the discrepancy in the beneficiary’s name. Moreover, respondent made the demand (1) only because he had changed his mind about the tour because his wife was ill, (2) after he had personally known that his beneficiary had received the transferred funds, and (3) to avoid the 50% forfeiture penalty.⁴⁴

Petitioner adds that Article 1172 of the Civil Code was erroneously applied by the Court of Appeals because this provision refers to an obligor’s negligence in performing the obligation. Here, the “acts of negligence” attributed to petitioner were those that transpired after it had fully performed its obligation to transfer the funds.⁴⁵

Finally, petitioner contends that the Court of Appeals erred “when it unjustly enriched the respondent by making the petitioner liable to refund the amount already legally transferred to, and received by respondent’s beneficiary, for his benefit.”⁴⁶

Respondent counters that the issues raised by petitioner are factual, which are not reviewable by this Court.⁴⁷ He further denies that he disclosed to the petitioner that he was able to contact his travel agency, which admitted that it had received the funds. On the contrary, respondent avers that he “demanded for the return of his money when the petitioner informed him that the funds could not be deposited to the beneficiary account.”⁴⁸

The issues for resolution are:

First, whether the Court of Appeals erred in affirming the Regional Trial Court’s Decision, granting the refund of respondent’s US\$430.00 telegraphic funds transfer despite its successful remittance and credit to respondent’s beneficiary Min Travel’s account with Citibank-Cairo;

Second, whether petitioner Chinatrust (Philippines) Commercial Bank was negligent in the performance of its obligation under the telegraphic transfer agreement; and

Finally, whether the subsequent acts of petitioner after compliance with its obligation can be considered “negligent” to justify the award of

⁴⁴ Id. at 26.

⁴⁵ Id. at 33.

⁴⁶ Id.

⁴⁷ Id. at 210.

⁴⁸ Id. at 214.

damages by the Regional Trial Court, as affirmed by the Court of Appeals.

I

The Regional Trial Court and the Court of Appeals erred in holding that petitioner was negligent in failing to immediately address respondent's queries and return his money and was consequently liable for the anguish suffered by respondent. They ruled on an issue that was not raised by respondent in the lower court, thereby violating petitioner's right to due process.

It is an established principle that "courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party."⁴⁹ The rationale for the rule was explained in *Development Bank of the Philippines v. Teston*,⁵⁰ where this Court held that it is improper to enter an order which exceeds the scope of the relief sought by the pleadings:

The Court of Appeals erred in ordering [Development Bank of the Philippines] to return to respondent "the P1,000,000.00" alleged down payment, a matter not raised in respondent's Petition for Review before it. In *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*, this Court held:

It is elementary that a judgment must conform to, and be supported by, both the pleadings and the evidence, and must be in accordance with the theory of the action on which the pleadings are framed and the case was tried. The judgment must be *secudum allegata et probata*.

Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.⁵¹ (Emphasis supplied, citations omitted)

The bank's supposed negligence in the handling of respondent's concerns was not among respondent's causes of action and was never raised in the Metropolitan Trial Court. Respondent's cause of action was based on the theory that the telexed funds transfer did not materialize, and the relief sought was limited to the refund of his money and damages as a result of the purported non-remittance of the funds to the correct beneficiary account.⁵²

⁴⁹ *Diona v. Balangue*, 701 Phil. 19, 31 (2013) [Per J. Del Castillo, Second Division].

⁵⁰ 569 Phil. 137 (2008) [Per J. Carpio-Morales, Second Division].

⁵¹ *Id.* at 144.

⁵² *Rollo*, pp. 82–83.

“[T]he purpose of an action . . . and the law to govern it . . . is to be determined . . . by the complaint itself, its allegations and the prayer for relief.”⁵³ The complaint states “the theory of a cause of action which forms the bases of the plaintiff’s claim of liability.”⁵⁴

A review of the Complaint filed before the Metropolitan Trial Court reveals that respondent originally sued upon a breach of contract consisting in the alleged failure of petitioner to remit the funds to his travel agency’s account in Cairo-Egypt.

Respondent’s cause of action was based on paragraphs 5 and 6 of his Complaint:

5. That after a few days, the plaintiff verified from the defendant whether the telegraphic transfer was sent but the plaintiff was told that the fund was not applied to the intended account number and name as “THE BENE TITLE DOES NOT MATCH WITH THEIR BOOKS”;

6. That the plaintiff talked with the President of the defendant and asked what was meant by that and was told that they did not succeed in sending the telegraphic transfer to the beneficiary account[.]⁵⁵

Respondent further alleged:

10. That because of the refusal of the defendant to return the amounts given by the plaintiff, *the latter suffered sleepless nights, worry and anxiety because of his fear that he lost the money that he entrusted to the defendant* for transfer to the beneficiary account for which the plaintiff should be awarded moral damages on the amount of P20,000.00;

11. That *the defendant was guilty of gross negligence in failing to comply with its obligation to send the telegraphic transfer to the intended beneficiary account*;

12. That by way of example, the defendant should be ordered to pay exemplary damages in the amount of P20,000.00.⁵⁶ (Emphasis supplied)

In both his Complaint and Position Paper,⁵⁷ respondent anchored his claim for refund and damages on the “discrepancy notice” and the manager’s explanation that the funds were not successfully credited to the beneficiary’s account. Respondent demanded for the return of his money having the impression that the bank was not successful in remitting it.

⁵³ *Heirs of Vda. de Vega v. Court of Appeals*, 276 Phil. 177, 186 (1991) [Per J. Medialdea, First Division] citing *Rone, et al. v. Claro, et al.*, 91 Phil. 250 (1952) [Per J. Montemayor, En Banc].

⁵⁴ *Tantuico, Jr. v. Republic*, 281 Phil. 487, 495 (1991) [Per J. Padilla, En Banc].

⁵⁵ *Rollo*, p. 82.

⁵⁶ *Id.* at 83.

⁵⁷ *Id.* at 105–117.

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The parties' pleadings and position papers submitted before the Metropolitan Trial Court raised the factual issue of whether petitioner had complied with its obligation to remit the funds of the respondent to his intended beneficiary's account with Citibank-Cairo. They likewise raised the legal issue of whether respondent was entitled to rescind the contract.

Furthermore, during the preliminary conference, the following issues were defined: (a) "whether or not the amount was remitted to the correct beneficiary's account," and (b) "whether or not the parties are entitled to their respective claims."⁵⁸ This does not include the issue of negligence on the part of petitioner in attending to respondent's queries or the purported one (1)-month delay in the confirmation of the remittance.

The case was decided by the Metropolitan Trial Court pursuant to the Revised Rules on Summary Procedure.⁵⁹ Accordingly, no trial was conducted as, after the conduct of a preliminary conference, the parties were made to submit their position papers.⁶⁰ There was, thus, no opportunity to present witnesses during an actual trial. However, Section 9 of the Revised Rules on Summary Procedure calls for the submission of witnesses' affidavits together with a party's position paper after the conduct of a preliminary conference:

Section 9. *Submission of Affidavits and Position Papers.* — Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of their witnesses and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and the facts relied upon by them.

The determination of issues at the preliminary conference bars the consideration of other questions on appeal.⁶¹ This is because under Section

⁵⁸ Id. at 166.

⁵⁹ Id. at 171.

⁶⁰ Id. at 166.

⁶¹ See *Land Bank of the Phils. v. Oñate*, 724 Phil. 564 (2014) [Per J. Del Castillo, Second Division].

REV. SUMMARY PROC. RULE, sec. 7 and 8 provides:

Section 7. Preliminary conference; Appearance of parties. — Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

....

Section 8. Record of Preliminary Conference. — Within five (5) days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein, including but not limited to:

- a) Whether the parties have arrived at an amicable settlement, and if so, the terms thereof;
- b) The stipulations or admissions entered into by the parties;
- c) Whether, on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need of further proceedings, in which event the judgment shall be rendered within thirty (30) days from issuance of the order;
- d) A clear specification of material facts which remain controverted; and
- e) Such other matters intended to expedite the disposition of the case.

See *Spouses Martinez v. De la Merced*, 255 Phil. 871, 877 (1989) [Per J. Gancayco, First Division].

9 above, the parties were required to submit their affidavits and other evidence *on the factual issues as defined in the preliminary conference order*. Thus, either of the parties cannot raise a new factual issue on appeal, otherwise it would be unfair to the adverse party, who had no opportunity to present evidence against it.

II

The Metropolitan Trial Court correctly absolved petitioner from liability and dismissed the complaint upon its finding that the bank had duly proven that it had complied with its obligation under the telegraphic transfer. It found that despite the earlier advice of Citibank-Cairo that the beneficiary name did not match their files, Chinatrust and respondent Turner were subsequently informed that the amount sent had been credited to the account of the beneficiary as early as September 15, 2004.⁶²

However, on appeal, the Regional Trial Court reversed the dismissal of the complaint. While the Regional Trial Court affirmed the court *a quo*'s ruling that indeed the funds were credited to the intended beneficiary's account, it went further and touched upon an issue that was beyond the cause of action framed by the respondent. It adjudged petitioner liable not because it failed to perform its obligation to remit the funds but because it purportedly did not exercise due diligence in attending to respondent's queries and demands with regard to the telegraphic funds transfer. Specifically, it found petitioner negligent in its failure to promptly inform respondent that the money was, in fact, credited to the account of the beneficiary.⁶³ According to the Regional Trial Court, "it is but right that the [petitioner] bank be held liable for the monetary loss, as well as the emotional stresses and mental anguish that [respondent] Turner had to go through as a result thereof."⁶⁴ Hence, the Regional Trial Court awarded respondent's claims for refund and damages.

The Regional Trial Court also faulted the petitioner for not submitting in evidence the "discrepancy notice," which according to the trial court "puts the . . . bank's position in a cloud of doubt."⁶⁵

Contrary to the observation of the Regional Trial Court, however, the discrepancy notice's existence and content were not the core of the controversy. In fact, they were never put in issue. The discrepancy notice

The preliminary conference under the Rule on Summary Procedure is similar to the provision on "pre-trial" under the Rules of Court in that "both provisions are essentially designed to promote amicable settlement or to avoid or simplify the trial."

⁶² *Rollo*, pp. 166–167.

⁶³ *Id.* at 178–179.

⁶⁴ *Id.* at 180.

⁶⁵ *Id.* at 175.

only came up because it was the basis for Turner's claim for refund insisting that the funds were not credited to his travel agency's account. Hence, it is understandable that both parties did not present it in evidence.

Similarly, the purported negligence of the bank personnel in attending to his concerns was neither raised by respondent in any of his pleadings nor asserted as an issue in the preliminary conference. Hence, it was improper for the Regional Trial Court to consider this issue on negligence in determining the respective claims of the parties.

Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.⁶⁶

In *Philippine Ports Authority v. City of Iloilo*:⁶⁷

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.⁶⁸ (Citations omitted)

There is more reason for a reviewing court to refrain from resolving *motu proprio* an issue that was not even raised by a party. This Court has previously declared that:

“[C]ourts of justice have no jurisdiction or power to decide a question not in issue” and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid.⁶⁹ (Citations omitted)

As pointed out earlier, respondent's cause of action was anchored on the alleged non-remittance of the funds to his travel agency's account or

⁶⁶ *Vitug v. Abuda*, G.R. No. 201264, January 11, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/201264.pdf>> 7 [Per J. Leonen, Second Division]; *Maxicare PCIB CIGNA Healthcare v. Contreras*, 702 Phil. 688, 696 (2013) [Per J. Mendoza, Third Division].

⁶⁷ 453 Phil. 927 (2003) [Per J. Azcuna, First Division].

⁶⁸ *Id.* at 934-935.

⁶⁹ *Bernas v. Court of Appeals*, 296-A Phil. 90, 140 (1993) [Per J. Padilla, En Banc].

based on a breach of contract.

On appeal, however, the Regional Trial Court *motu proprio* found that petitioner was negligent in addressing respondent's concerns, which justified the award of damages against it. This was unfair to petitioner who had no opportunity to introduce evidence to counteract this new issue. The factual bases of this change of theory would certainly require presentation of further evidence by the bank in order to enable it to properly meet the issue raised.

III

The Regional Trial Court and the Court of Appeals erred in awarding damages to respondent.

Petitioner was not remiss in the performance of its contractual obligation to remit the funds. It was established that the funds were credited to the account of Min Travel on September 15, 2004, or two (2) days from respondent's application.⁷⁰

Petitioner cannot likewise be faulted for the discrepancy notice sent by Citibank-Cairo, assuming there was a mistake in its sending. It merely relayed its contents to respondent. Citibank-Cairo is not an agent of petitioner but a beneficiary bank designated by respondent, upon the instruction of the beneficiary, Min Travel.

The Regional Trial Court, as affirmed by the Court of Appeals, found petitioner negligent in addressing the concerns and queries of respondent. It specifically faulted petitioner for failure to submit any letters, tracers, cables, or other evidence of communication sent to Citibank-Cairo to inquire about the status of the remittance and adjudged petitioner liable for the anxieties suffered by respondent.⁷¹

The rule that factual findings of the Court of Appeals are not reviewable by this Court is subject to certain exceptions such as when there is a misapprehension of facts and when the conclusions are contradicted by the evidence on record.⁷² Here, there is insufficient evidence to show negligence on the part of petitioner.

⁷⁰ Id. at 175.

⁷¹ Id. at 177-178.

⁷² THE INTERNAL RULES OF THE SUPREME COURT, Rule 3, sec. 4 enumerates the following exceptions: Section 4. *Cases when the Court May Determine Factual Issues.* – The Court shall respect the factual findings of lower courts, unless any of the following situations is present:

- (a) the conclusion is a finding grounded entirely on speculation, surmise and conjecture;
- (b) the inference made is manifestly mistaken;
- (c) there is grave abuse of discretion;
- (d) the judgment is based on a misapprehension of facts;

The one (1)-month delay in receiving the telex reply from Citibank-Cairo does not sufficiently prove petitioner's fault or negligence, especially since "[p]etitioner's communications were coursed thru a third-party-correspondent bank, Union Bank of California."⁷³

Furthermore, the lower courts overlooked the fact that respondent knew all along, or as early as September 22, 2004, that his funds were already received by his beneficiary. Despite this, he insisted on demanding the retrieval of the funds after he opted not to pursue with his travel abroad.

Respondent did not specifically deny paragraphs 8 and 9 of petitioner's Answer with Counterclaims, which alleged the following:

8. However, on September 22, 2004, the Plaintiff, despite being aware that his foregoing remittance was already received by the beneficiary MIN TRAVEL, changed his mind, and stated that he will no longer push though with his tour travel, and thus, requested for the retrieval of said funds. Defendant relayed said request through the foregoing channel to Citibank-Cairo. Considering that said fund was already transferred, Citibank-Cairo refused to honor said request, and consider the transmittal closed and accomplished;
9. Plaintiff, however, insisted on demanding refund of said amount from the Defendant, who politely denied such demand, and repeatedly explained to the Plaintiff that Citibank-Cairo will not honor such request, and that there is nothing that the Defendant can do under the circumstances[.]⁷⁴

The Affidavit of Rosario C. Astrologo (Astrologo), Branch Service Head, Chinatrust-Ayala Branch, was never rebutted by respondent by submitting his counter evidence. Portions of it stated:

7. On September 22, 2004, when he visited our branch office, which he has been doing almost everyday, he mentioned to our Ms. Rina Chua, the bank's Senior Service Assistant, Ayala Branch, that he [was] able to contact Mr. Esmat Azmy who already confirmed

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- (e) the findings of fact are conflicting;
 - (f) the collegial appellate courts went beyond the issues of the case, and their findings are contrary to the admissions of both appellant and appellee;
 - (g) the findings of fact of the collegial appellate courts are contrary to those of the trial court;
 - (h) said findings of fact are conclusions without citation of specific evidence on which they are based;
 - (i) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;
 - (j) the findings of fact of the collegial appellate courts are premised on the supposed evidence, but are contradicted by the evidence on record;** and
 - (k) all other similar and exceptional cases warranting a review of the lower courts' findings of fact. (Emphasis supplied)

See Bank of the Philippine Islands v. Suarez, 629 Phil. 305 (2010) [Per J. Carpio, Second Division].
 Rollo, p. 32.

⁷³ *Id.*

⁷⁴ *Id.* at 89.

having received the said remittance;

8. When I also talked to him, also on the same date, he, stated that he changed his mind and will no longer push through with his said travel because his wife, who is supposed to accompany him, became sick, injured, or something to such effect. He also mentioned that if he will cancel his travel agreement, the travel agency will only return to him fifty [percent] (50%) of his foregoing down-payment, but if he will be able to retrieve and withdraw such remittance from the bank, he will only pay the bank charges, which is minimal. He, therefore, insisted, that said fund be withdrawn and returned to him by the bank;
9. He was also told that if such fund was already received by the travel agency and credited to its bank account of said travel agency at Citibank, it cannot be returned anymore, and I advised him to contact his travel agency and negotiate for the refund of his entire proceeds. I do not know if he later made such plea to his travel agency for we were not told what happened later. I promised, however, that we will relay his request for its retrieval of such fund to Citibank, which we did thru various telexes[.]⁷⁵

The successful remittance was later confirmed by the telex-reply from Citibank-Cairo on October 28, 2004, stating that the funds were credited to the account of Min Travel on September 15, 2004.⁷⁶ This telex-reply confirms that petitioner indeed made a follow up with Citibank-Cairo regarding the status of respondent's funds.

Moreover, the refusal of petitioner's personnel to accede to respondent's demand for a refund cannot be considered an actionable wrong. Their refusal was due primarily to lack of information or knowledge of the effective cancellation of the remittance and not from a deliberate intent to ignore or disregard respondent's rights. When respondent insisted on asking for the refund, he was repeatedly requested to submit a certification or, at least, a written denial from his beneficiary that the funds were not in fact received. They cannot be faulted for wanting to verify with Citibank-Cairo the status of the remittance before acting upon his request, especially since the funds have actually been received by Citibank-Cairo. The written denial would also be the basis for petitioner's demand upon Citibank-Cairo.

The Court of Appeals erred in ruling that petitioner had the duty to immediately return the money to Turner together with the service fee upon the first instance that it relayed the discrepancy notice to him. Turner could no longer rescind the telegraphic transfer agreement.

In *Republic of the Philippines v. Philippine National Bank*,⁷⁷ this Court described the nature of a telegraphic transfer agreement:

⁷⁵ Id. at 163.

⁷⁶ Id. at 12 and 175.

⁷⁷ 113 Phil. 828 (1961) [Per J. Bautista Angelo, Second Division].

“[C]redit” in its usual meaning is a sum credited on the books of a company to a person who appears to be entitled to it. It presupposes a creditor-debtor relationship, and may be said to imply ability, by reason of property or estates, to make a promised payment.

....

[A]s the transaction is for the establishment of a telegraphic or cable transfer, the agreement to remit creates a contractual obligation and has been termed a purchase and sale transaction (9 C.J.S. 368). The purchaser of a telegraphic transfer upon making payment completes the transaction insofar as he is concerned, *though insofar as the remitting bank is concerned the contract is executory until the credit is established.*⁷⁸

Thus, once the amount represented by the telegraphic transfer order is credited to the account of the payee or appears in the name of the payee in the books of the receiving bank, the ownership of the telegraphic transfer order is deemed to have been transmitted to the receiving bank. The local bank is deemed to have fully executed the telegraphic transfer and is no longer the owner of this telegraphic transfer order.

It is undisputed that on September 13, 2004, the funds were remitted to Citibank-New York through petitioner’s paying bank, Union Bank of California. Citibank-New York, in turn, credited Citibank-Cairo, Egypt, Heliopolis Branch.

Moreover, it was established that the amount of US\$430.00 was actually credited to the account of Min Travel on September 15, 2004,⁷⁹ or merely two (2) days after respondent applied for the telegraphic transfer and even before petitioner received its “discrepancy notice” on September 17, 2004. Chinatrust is, thus, deemed to have fully executed the telegraphic transfer agreement and its obligation to respondent was extinguished.⁸⁰ Hence, respondent could no longer ask for rescission of the agreement on September 22, 2004.

When the funds were credited to the account of Min Travel at Citibank-Cairo, ownership and control of these funds were transferred to Min Travel. Thus, the funds could not be withdrawn without its consent.

The Court of Appeals, in affirming the decision of the Regional Trial Court, held that petitioner was obliged to immediately return the money to respondent as early as September 17, 2004 when it received the

⁷⁸ Id. at 830–831 and 833–834.

⁷⁹ Id. at 12 and 175.

⁸⁰ CIVIL CODE, art. 1231.

“discrepancy notice” from Citibank-Cairo.⁸¹ It held that petitioner’s failure to do so even upon respondent’s demand constituted an actionable negligence under Article 1172.⁸²

The Court of Appeals misappreciated the true import of the discrepancy notice when it held that the notice was an “effective cancellation of the remittance by the Citibank-Cairo”⁸³ that gave rise to the legal obligation of petitioner to return the funds to respondent.

The discrepancy notice does not mean that the funds were not received by the beneficiary bank. On the contrary, what it implies is that these funds were actually received by Citibank-Cairo but it could not apply it because the account name of the beneficiary indicated in the telex instruction does not match the account name in its books. In short, it cannot find in its file the beneficiary account name “Min Travel/Esmat Azmy” pursuant to the telex instruction, for which reason, Citibank-Cairo asked for clarifications. Petitioner, in turn, had to clarify from respondent, because it was respondent himself, upon instruction of his travel agency, who indicated such beneficiary’s name in his telegraphic transfer form. True enough, as later shown, the beneficiary account name was not “Min Travel/Esmat Azmy” but only “Min Travel.” Petitioner, therefore, had nothing to do with the mismatch of the beneficiary name and could not be made liable for it.

The information initially relayed by Citibank-Cairo and received by petitioner on September 17, 2004—that the funds were not applied to the intended account because the beneficiary name did not match its books—proved to be no longer true. This is because Citibank-Cairo later confirmed that respondent’s remittance was duly credited to the account of Min Travel on September 15, 2004.

As stated earlier, respondent’s request for retrieval of the funds was because he changed his mind about the travel rather than the discrepancy notice sent by Citibank-Cairo. The Affidavit of Astrologo was never refuted.

The tour travel arrangement, which brought about the remittance of the funds, is a separate and private arrangement between respondent and Min Travel. Respondent’s change of mind and claim for refund, therefore, should have been properly addressed to Min Travel, which already had possession of the funds and not to petitioner, who was not privy to the arrangement.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals’

⁸¹ *Rollo*, p. 46.

⁸² *Id.* at 49.

⁸³ *Id.* at 46.

P

Decision dated December 14, 2009 and Resolution dated March 2, 2010 are set aside and the Decision dated January 15, 2006 of the Metropolitan Trial Court, Branch 61, Makati City is reinstated.

SO ORDERED.



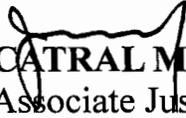
MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

On official leave
ANTONIO T. CARPIO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson



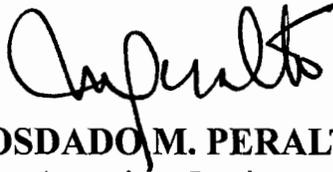
JOSE CATRAL MENDOZA
Associate Justice



SAMUEL R. MARTIRES
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.



DIOSDADO M. PERALTA
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 P. A. SERENO
Chief Justice