



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

PHILIPPINE BANK OF  
COMMUNICATIONS,

*Petitioner,*

G.R. No. 217411\*

Present:

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

- versus -

RIA DE GUZMAN RIVERA,

*Respondent.*

Promulgated:

DEC 13 2023 *with certiorari*

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DECISION

**GESMUNDO, C.J.:**

An “ON-US check” refers to a client’s check drawn and deposited on the same branch of a bank. Once an ON-US check is cleared and credited to a payee’s account, the bank can no longer enforce a stop payment order and debit the payee’s account. When a late stop payment order is enforced and the payee’s account is debited, resulting in the dishonor of the check drawn from such account, the bank is deemed to have committed a breach of contract which makes it liable for damages.

This is an Appeal by *Certiorari*<sup>1</sup> under Rule 45 of the Revised Rules of Court, which seeks to reverse and set aside the May 27, 2014 Decision<sup>2</sup>

\* Part of the Supreme Court Decongestion Program.

<sup>1</sup> *Rollo*, pp. 4-27.

<sup>2</sup> *Id.* at 29-37; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Edward B. Contreras.

*AB*

and the February 18, 2015 Resolution<sup>3</sup> of the Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. CV No. 02454-MIN. The CA denied the appeal filed by petitioner Philippine Bank of Communications (PBCOM), and affirmed the June 19, 2009 Decision<sup>4</sup> of the Regional Trial Court of General Santos City, Branch 37 (RTC), in Civil Case No. 6931, an action for damages and payment of attorney's fees.

### Antecedents

On March 6, 2001, respondent Ria de Guzman Rivera (*Rivera*), a former assistant branch manager of a bank but then doing business under the name of Daddy's Lechon Manok, presented for payment with PBCOM General Santos City Branch, PBCOM Check No. 056196 (*PBCOM Check No. 056196*) dated January 4, 2001 in the sum of ₱100,000.00 issued by Gabriel Estocapio, Sr.,<sup>5</sup> an officer of LK Fishing Corporation (*LK Fishing Corp.*).<sup>6</sup> Upon instructions of the account officers of PBCOM, Rivera opened Savings Account No. 1782-5 (*savings account*) since the said check was a crossed "ON-US check," although payable to the order of cash.<sup>7</sup>

Rivera claimed that simultaneous with her opening of the savings account, PBCOM Check No. 056196 was accepted and deposited since a full credit of ₱100,000.00 was made to her savings account at exactly 12:44 p.m. on even date. However, PBCOM did not allow her to withdraw from her savings account because the PBCOM check was then still subject to clearing. She was surprised that PBCOM disallowed such withdrawal, as she knew that although ON-US check is only for deposit, the amount can be immediately withdrawn upon the option of the account holder. Nonetheless, she applied for a current account (Current Account No. 933-1) with an automatic fund transfer arrangement from her savings account. PBCOM approved the same upon her deposit of the maintaining balance of ₱5,000.00 in her current account at 2:12 p.m., and ₱10,000.00 in her savings account at 2:55 p.m.<sup>8</sup>

On the following day, March 7, 2001, Rivera issued PBCOM Check No. 088401 in the sum of ₱100,000.00 in favor of Riester Tan (*Tan*). However, said check was dishonored by PBCOM for the reason of Drawn

<sup>3</sup> Id. at 39-40.

<sup>4</sup> Id. at 68-74; penned by Judge Panambulan M. Mimbisa.

<sup>5</sup> Also referred to as "Gabriel Estocapio, Jr." in some parts of the *rollo* (see *rollo*, pp. 8 and 69).

<sup>6</sup> Dropped as respondent per Resolution dated January 11, 2017 for failure of counsel for petitioner to comply with the Resolution dated August 17, 2016 which required petitioner to inform the Court of the correct and present address of respondent LK Fishing Corp. within the period which expired on September 24, 2016; see *rollo*, p. 179.

<sup>7</sup> Records, p. 3.

<sup>8</sup> Id. at 3-4.

Against Insufficient Funds (*DAIF*). She was later informed that a stop payment order was made by LK Fishing Corp. before PBCOM Check No. 056196 was cleared. Rivera alleged that the stop payment order was fictitious, non-existent, and simulated to accommodate LK Fishing Corp., and that the need to further clear PBCOM Check No. 056196, an ON-US check, is dubious and illegal. She further asserted that PBCOM debited the sum of ₱100,000.00 from her savings account, despite the fact that the said amount had already been cleared and credited to her savings account.<sup>9</sup>

On March 10, 2001, Tan sent a letter<sup>10</sup> demanding Rivera to replace her dishonored check with cash under pain of litigation, which allegedly caused her to suffer a nervous breakdown and humiliation.<sup>11</sup>

On March 12, 2001, Rivera's counsel served PBCOM and its general manager a demand letter,<sup>12</sup> to which PBCOM replied thru a letter<sup>13</sup> dated March 13, 2001, explaining the circumstances behind the dishonored check issued by Rivera.

Dissatisfied with the explanation, Rivera filed a Complaint<sup>14</sup> for damages and attorney's fees against PBCOM, LK Fishing Corp., and Alfredo Yap. She alleged that the acts of PBCOM and LK Fishing Corp. are contrary to banking practices and done with malice and bad faith, which caused damage to her reputation and business standing, and brought her anxiety, embarrassment, and humiliation. She thus prayed that they be held jointly and severally liable for moral and exemplary damages, as well as for attorney's fees. She further prayed that LK Fishing Corp. be ordered to pay her the amount of ₱100,000.00 representing the face value of the dishonored check, plus interest.<sup>15</sup>

In its Answer,<sup>16</sup> PBCOM countered that Rivera has no cause of action because it merely followed banking procedures which were fully explained to her and which she accepted upon opening the savings and current accounts. It claimed that it was able to explain to Rivera that PBCOM Check No. 056196 will have to be deposited because it was a crossed check, and that it still had to go through a one-day clearing period despite being an ON-US check. It added that she knew very well that the check was not yet cleared, and that before such check could be cleared, it received a stop

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<sup>9</sup> Id. at 4-5.

<sup>10</sup> Id. at 13.

<sup>11</sup> Id. at 5.

<sup>12</sup> Id. at 14.

<sup>13</sup> Id. at 15-16.

<sup>14</sup> Id. at 2-7.

<sup>15</sup> Id. at 5-6.

<sup>16</sup> Id. at 27-32.

payment order from LK Fishing Corp. Contrary to Rivera's claim, it did not withdraw the ₱100,000.00 from Rivera's savings account, but merely reversed entries to reflect the stop payment order. Finally, PBCOM argued that Rivera's cause of action was only against LK Fishing Corp.<sup>17</sup>

On the other hand, LK Fishing Corp. averred in its Answer<sup>18</sup> that Rivera has no cause of action against it because the stop payment order was not tainted with malice and bad faith. In issuing the stop payment order, LK Fishing Corp. was not denying its obligation, but was merely requesting to defer payment due to business fluctuation coupled with financial crisis.<sup>19</sup>

### The RTC Ruling

After trial, the RTC rendered a Decision dated June 19, 2009, the dispositive portion of which reads:

**WHEREFORE**, premises considered, and in the interest of substantial justice, the Court finds defendants Philippine Bank of Commerce (sic) and LK Fishing Corporation solidarily and jointly liable to plaintiff Ria De Guzman Rivera and are hereby directed to:

1. Pay plaintiff the sum of [₱]100,000.00 representing the face value of the check, plus interest of 6% per annum reckoned from the day the check was dishonored due to the stop payment order issued by LK Fishing Corporation.
2. To pay plaintiff [₱]100,000.00 [as] moral damages for the anguish, difficulties and failed expectations of plaintiff.
3. To pay plaintiff [₱]50,000.00 [as] exemplary damages for defendants' disregard of the public interest vested in the banking services.
4. To pay attorney's fee of [₱]30,000.00 plus appearances fee of [₱]1,000.00 for every hearing actually attended by counsel.
5. To pay [₱]20,000.00 as cost of litigation.

This Court finds no cause of action against defendant Alfredo Yap.

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<sup>17</sup> Id. at 28-30.

<sup>18</sup> Id. at 69-74.

<sup>19</sup> Id. at 71-72.

**SO ORDERED.**<sup>20</sup>

The RTC noted that the check issued by LK Fishing Corp. is an ON-US check which, by its nomenclature, carries the name and guarantee of the drawee bank. Such check does not require further clearance procedures after having been deposited to an account that has been opened with the issuing bank. Any further bank clearance contravenes the nature and character of an ON-US check. Citing the high degree of diligence required of banks in dealing with their clients, the RTC held that even if the stop order came late in the day, PBCOM would have no recourse but to honor the check, bringing to light a joint and solidary obligation and responsibility, for failure to do so.<sup>21</sup>

The RTC pointed out that PBCOM should have at least informed Rivera at the first opportunity that a one-day clearing period is still required. It observed that Rivera had to go through the efforts and rigors of making the required deposit of the crossed check and the difficulty of having to open an account before being told of the clearance requirement under what PBCOM claims as Standby Branch Banking System (SBBS). However, PBCOM failed to present in court the SBBS which allegedly provides for the one-day clearing requirement. In brushing aside PBCOM's excuse that the presentation of the SBBS could expose or place the bank to security risk and danger, the RTC held that such defense runs counter to the fiduciary character of the banking business and the transparency of the rules and guidelines that govern their operations.<sup>22</sup>

Aggrieved, PBCOM appealed the June 19, 2009 Decision of the RTC before the CA.<sup>23</sup>

**The CA Ruling**

On May 27, 2014, the CA rendered a Decision denying the appeal and affirming the Decision of the RTC. The CA ruled that PBCOM is liable for the face value of the check because of the dishonor thereof. As drawee, its liability attached when it accepted the bill. From the moment of its acceptance, it became primarily liable to the holder of the check. When the check was presented for payment, PBCOM accepted it subject to the condition that plaintiff would open a savings account where the proceeds of the check would be credited. When Rivera opened a savings account with

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<sup>20</sup> *Rollo*, pp. 73-74.

<sup>21</sup> *Id.* at 71-72.

<sup>22</sup> *Id.* at 72-73.

<sup>23</sup> *Records*, pp. 309-310.

the bank, PBCOM's liability as drawee attached.<sup>24</sup>

The CA found that PBCOM is liable for damages for its failure to promptly notify Rivera of the stop payment order issued by LK Fishing Corp. Such negligence caused embarrassment and humiliation to Rivera, a businesswoman, whose credit and status are very important.<sup>25</sup>

As regards LK Fishing Corp., the CA ruled that it is likewise liable for the face value of PBCOM Check No. 056196. As the drawer of said check, LK Fishing Corp. had committed that upon presentment, the instrument will be accepted or paid according to its tenor, and in case of dishonor, it will be liable to pay for the amount. Hence, when PBCOM Check No. 056196 was dishonored, LK Fishing Corp. became primarily liable to pay for its face value. The CA further emphasized that the claim of "business fluctuation coupled with financial crisis" is not a valid ground to issue a stop payment order. Otherwise, the stability of the banking industry will be eroded by the scheming and manipulative maneuvers of its clients.<sup>26</sup>

The CA likewise denied PBCOM's cross-claim against LK Fishing Corp., since PBCOM failed to present in court the SBBS.<sup>27</sup>

PBCOM filed a Motion for Reconsideration on June 27, 2014, but the CA denied the same *via* its Resolution dated February 18, 2015. Dissatisfied, PBCOM filed this Petition for Review on *Certiorari*.

### Issues

PBCOM raised the following grounds in support of its petition:

#### I.

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN NOT AWARDING PETITIONER'S CROSS-CLAIM AGAINST LK FISHING CORPORATION DESPITE THE LATTER'S ADMISSION OF ISSUING THE STOP PAYMENT ORDER (SPO) IN ITS ANSWER AND IN FINDING LIABILITY FOR HAVING "ACCEPTED" CHECK NO. 056196 DESPITE BEING ACCEPTED MERELY FOR DEPOSIT.

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<sup>24</sup> *Rollo*, p. 34.

<sup>25</sup> *Id.* at 35.

<sup>26</sup> *Id.* at 35-36.

<sup>27</sup> *Id.* at 36.

## II.

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION [IN] NOT FINDING THAT THE RESPONDENT WAS MADE TO UNDERSTAND AND AGREED THAT CHECK NO. 056196 HAS TO UNDERGO CLEARING, CONSISTENT WITH INTERNAL BANK PROCEDURE AND BANGKO SENTRAL REGULATIONS AT THE TIME OF NEGOTIATION OF THE CHECK.<sup>28</sup>

In her Comment,<sup>29</sup> Rivera posits that the issues raised by PBCOM are factual which are not within the ambit of a petition for review under Rule 45, aside from having already been passed upon by the RTC and the CA.<sup>30</sup> She asserts that PBCOM's petition does not fall under the exceptions to the rule that the findings of fact of the trial court, when affirmed by the CA, are final and conclusive, and will not be reviewed by the Court on appeal.<sup>31</sup>

### The Court's Ruling

The petition is devoid of merit.

Before resolving PBCOM's cross-claim against LK Fishing Corp., the Court shall first address the issue on whether Rivera was aware that PBCOM Check No. 056196 had to undergo the clearance procedure under PBCOM's internal bank policies, as well as regulations of the Bangko Sentral ng Pilipinas (*BSP*).

*PBCOM failed to prove that Rivera was sufficiently informed of the supposed clearing policy of ON-US checks.*

PBCOM asserts that it exerted all efforts to explain and make Rivera understand that the crossed ON-US check cannot be encashed but must be deposited and cleared before a cash withdrawal can be made. PBCOM stresses that the consent and voluntary act of Rivera, who used to be a banker herself, in opening a savings account where the said check is to be deposited and a current account, after having been advised of the bank's clearing system, are clear manifestations that she agreed and understood the

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<sup>28</sup> Id. at 12-13.

<sup>29</sup> Id. at 55-66.

<sup>30</sup> Id. at 59-60.

<sup>31</sup> Id. at 61-62.

policy.<sup>32</sup> PBCOM notes that during her cross-examination, Rivera admitted having been informed that the check must first undergo clearing when she insisted to withdraw upon deposit, even if the ₱100,000.00 was already posted in her savings account.<sup>33</sup> In view thereof, PBCOM considers Rivera negligent for failing to inquire from it the status of her savings account before issuing a check drawn from her current account.<sup>34</sup>

In support of its argument, PBCOM cites the testimony of the Unit Clearing Officer of its General Santos City Branch, Joel C. Peñol (*Peñol*), who stated that pursuant to its SBBS, a deposited ON-US check is tagged for a two-day clearing. Said check will be recorded in the afternoon (presumably at the end of the banking day), and will be debited from the client's account (if funded) and credited to the depositor's account the following day. If the check is not funded, the client will be informed that it is drawn against insufficient funds and will be returned if no deposit is made to fund the check.<sup>35</sup>

PBCOM also takes exception that it was not possible for an ON-US check to immediately be credited or paid upon deposit, since the accounts in PBCOM are not linked. It added that PBCOM only went "online" on June 1, 2001, three months after PBCOM Check No. 056196 was presented for payment on March 6, 2001. Peñol testified that at the time PBCOM Check No. 056196 was deposited, the prevailing procedure was to tag the ON-US check for a two-day clearing.<sup>36</sup>

PBCOM further insists that it has sufficiently proven that the two-day clearing procedure for ON-US checks under its internal rules and the SBBS, was consistent with the Manual of Regulations for Bank (*MORB*) of the BSP. Under the MORB, "dishonored checks by reason of insufficiency of funds or credit shall be returned not later than the next day." PBCOM posits that whether or not the ON-US check passes through clearing, it is subject to return the next day if dishonored by reason of insufficiency of funds.<sup>37</sup>

PBCOM's defense must fail.

In the face of conflicting claims over the clearance requirement of ON-US checks, it was incumbent upon PBCOM to present its bank manager or cashier to testify on whether Rivera was indeed properly informed of the

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<sup>32</sup> Id. at 20.

<sup>33</sup> Id. at 20-21.

<sup>34</sup> Id. at 24.

<sup>35</sup> Id. at 21-22.

<sup>36</sup> Id. at 19-20.

<sup>37</sup> Id. at 18-19.

two-day clearing period, and to submit in evidence the SBBS which provides for PBCOM's clearing policy of ON-US checks. However, PBCOM failed to do so. Instead, it only presented its unit clearing officer as witness, and failed to present the SBBS. As aptly pointed out by Rivera in her Comment, PBCOM was given adequate time and opportunity to present the SBBS to prove the two-day clearing requirement for ON-US checks. Instead of presenting the SBBS, PBCOM sought to excuse the presentation thereof on the premise that it would undermine the bank's internal security.<sup>38</sup>

In fact, Rivera moved for the presentation of the SBBS through a Motion for Production and Inspection of Documents<sup>39</sup> which she filed before the conduct of the pre-trial. However, PBCOM opposed the motion, stating in its Comments to Production and Inspection of Documents<sup>40</sup> that it cannot produce the SBBS guidelines for security reasons, since they contain the system, control, and security measures of the bank, which are highly confidential and cannot be produced without rendering it vulnerable to fraud.<sup>41</sup>

The Court finds PBCOM's position that the disclosure of its SBBS will compromise the security of its banking business as a flimsy excuse. PBCOM could have easily presented the portion of the SBBS which directly deals with the claimed two-day clearing period of ON-US checks. Instead, PBCOM presented its unit clearing officer to testify on the contents of the SBBS without presenting the relevant portion of the said document.

It is also of no moment that PBCOM formally offered in evidence Operations Bulletin No. 2001-018 dated May 29, 2001<sup>42</sup> on the Handling of [On-Us] and Other Branch Checks. The Operations Bulletin No. 2001-018 only provides for PBCOM's guidelines on handling ON-US check deposits effective June 1, 2001, but not the prevailing guidelines on the clearing of ON-US checks at the time Rivera deposited PBCOM Check No. 056196 on March 6, 2001.

The Operations Bulletin No. 2001-018 also reveals the flaw in PBCOM's policy in clearing ON-US checks, and confirms that such checks are not supposed to be subject to clearing, thus:

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<sup>38</sup> Id. at 62.

<sup>39</sup> Records, pp. 57-58.

<sup>40</sup> Id. at 76-77.

<sup>41</sup> Id. at 76.

<sup>42</sup> Id. at 281-285.

**It was noted that “ON-US CHECK AND ON-US MANAGER’S CHECK” deposited by our Metro Manila and Provincial clients are not given immediate credit.** Instead, these are tagged in the CASA System as “Two (2) days” float and sent to Philippine Clearing House Corporation (PCHC)/CB Regional Office. **This process does not conform with industry practice** and hampers our effort to generate low-cost funds.

In view thereof, modification of our CASA System for Metro Manila branches was effected to give immediate credit to “On-Us Check” deposits. For provincial branches, our IT Group is coordinating with the software vendor for the system modification to be done.

**As a rule, “On-Us Check” deposits should be debited from the drawer’s account before crediting the same to the depositor’s account, while other branch checks are subject to clearing.** The number of float days would depend on where the check is drawn. To properly handle these transactions, the following guidelines shall be strictly observed effective JUNE 01, 2001[.]<sup>43</sup> (Emphases supplied)

Assuming *arguendo* that the foregoing guidelines tend to prove PBCOM’s two-day clearing policy of ON-US checks, the Court finds it hard to believe that Rivera’s savings account was provisionally credited with the amount of ₱100,000.00 covered by Check No. 056196 on March 6, 2001, as the dorsal portion of the same check contains a stamp that it was “cleared through the Clearing House” on “MAR 6, 2001.”<sup>44</sup>

Meanwhile, PBCOM seeks to set the record straight with respect to the CA’s finding as to the date of the stop payment order, and the fact of clearing of the checks. PBCOM clarifies that: *first*, the stop payment order was not received on March 7, 2001, but on March 6, 2001 at 4:29 p.m. based on Annex “I” of its Answer; *second*, PBCOM Check No. 056196 was not cleared on March 6, 2001 as the stamp on the dorsal portion thereof merely signifies that the check was submitted for clearing, and that the stamp “cleared through” does not mean that the check has already been cleared, but rather, will undergo the clearing system before it can be paid; and *third*, PBCOM Check No. 088401 is not an ON-US check because while it was drawn from PBCOM, it was not deposited in the same bank; hence, it cannot be concluded that said check was treated differently from PBCOM Check No. 056196, which is an ON-US check.<sup>45</sup>

PBCOM’s clarifications fail to persuade.

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<sup>43</sup> Id. at 281.

<sup>44</sup> Id. at 182.

<sup>45</sup> *Rollo*, pp. 25-26.

First, the Court notes that the stop payment order marked as Annex "1" was not presented during trial and formally offered in evidence. While Section (*Sec.*) 34, Rule 132 of the Revised Rules on Evidence states that the court shall consider no evidence which has not been formally offered, extreme caution has also been exercised in applying the exception to this rule. Relaxation of this rule strictly requires that the evidence must have been (1) duly identified by testimony duly recorded, and (2) incorporated in the records of the case.<sup>46</sup>

In this case, PBCOM did not present any witness to identify and testify on the stop payment order even if it was attached to the records as Annex "1"<sup>47</sup> of its Answer. Therefore, PBCOM's claim that the stop payment order was made on March 6, 2001 at 4:29 p.m. remains a bare allegation. Besides, no probative value can be given on the stop payment order, for failure to explain why the depositor's signature in the stop payment order belongs to one "Yolanda Estocapio,"<sup>48</sup> while the name typewritten below the signature belongs to "Gabriel Estocapio, Sr.,"<sup>49</sup> an officer of LK Fishing Corp.

Second, PBCOM's contention that the stamp "cleared through" on the dorsal portion of PBCOM Check No. 056196 means that it will undergo the clearing system before it can be paid is devoid of merit. The said stamp marked as Exhibit "E-5" clearly speaks for itself: "Cleared through the Clearing House Central Bank of the Philippines March 6, 2001 All prior endorsement or in lack of endorsement guaranteed Philippine Bank of Communications Gen. Santos Branch."<sup>50</sup> Hence, PBCOM cannot insist that PBCOM Check No. 056196 requires prior clearance before the amount of ₱100,000.00 may be credited to the Rivera's savings account.

Besides, "ON-US checks" as defined in PBCOM's Operations Bulletin No. 2001-018 refer to the client's checks drawn and deposited on the same branch.<sup>51</sup> The crossed PBCOM Check No. 056196 was drawn in the same PBCOM branch where Rivera presented it and where she subsequently opened her savings account. As such, the Court sees nothing in the records that would explain why PBCOM Check No. 056196 cannot be cleared and the amount it covers, be credited to Rivera's savings account on the same day. For the same reason, the Court finds no merit in PBCOM's argument that there was no "link" among the accounts of the bank, and that

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<sup>46</sup> *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 344-345 (2014).

<sup>47</sup> Records, p. 33.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id. at 182.

<sup>51</sup> Id. at 281.

it only went "online" three months after PBCOM Check No. 056196 was presented for payment.

Third, while the CA incorrectly treated PBCOM Check No. 088401 as an ON-US check, and erroneously ruled that it was treated differently from PBCOM Check No. 056196, these errors will not excuse PBCOM from civil liability arising from the damages sustained by Rivera due to the dishonor of her check. The fact remains that Rivera was able to establish that the amount of ₱100,000.00 covered by PBCOM Check No. 056196 was already credited by PBCOM to her savings account at 12:44 p.m. on March 6, 2001, but was debited upon receipt of a stop payment order, resulting in the dishonor of Rivera's PBCOM Check No. 088401 drawn from her current account, which has an automatic fund transfer arrangement with her savings account.

Finally, granting that Rivera was informed by the cashier about the supposed clearing policy of ON-US checks when she tried to withdraw a portion of the ₱100,000.00 amount deposited in her savings account, PBCOM failed to refute her testimony that the bank manager had informed the cashier that the transaction is "cash-to-cash," thus:

ATTY. CARTOJANO: (Q) – After the amount of ₱100,000 was posted in your savings account, what happened next?

A: [RIVERA] – I decided to withdraw a portion of the deposited amount.

Q: – What happened after you decided to withdraw some amount?

A: – My withdrawal was denied.

Q: – What was the reason why your withdrawal was denied?

A: – The cashier came to me and said that the check that I just deposited they have to declare a clearing of one day.

Q: – And what was your reaction to the statement made by the cashier that it needs clearing of one day?

A: – I was surprise because it was on ON-US check when it was deposited (sic) automatically withdrawable.

Q: – What was the reply of the cashier to your statement that ON-US check is immediately withdrawable upon deposit?

A: – He insisted that it still (sic) to be cleared for one day.

Q: – What happened after the cashier insisted that the said ON-US check needs clearance of one day?

A: – I called the attention of the Manager, Mr. Yap, at that time he was about to have his lunch break.

Q: – What was the reaction of Mr. Yap to the matter that was brought to him?

A: – He told the cashier that in cash transaction the check is withdrawable upon deposit.

COURT: – Where were you when Mr. Yap advised the cashier?

A: – I was in front of him at New Account desk because he was about to take his lunch and he told the cashier that it is a cash to cash transaction.

COURT: – Proceed.

ATTY. CARTOJANO: (Q) – What happened after Mr. Yap told the cashier that the transaction was cash to cash transaction?

A: – He left to take his lunch.

Q: – What happened after Mr. Yap left?

A: – The cashier said that they will inform their client the LK Fishing Corp.<sup>52</sup>

*PBCOM is not entitled to its cross-claim against LK Fishing Corp., however, they are jointly and severally liable to pay for the face value of PBCOM Check No. 056196.*

The Court now proceeds to resolve the issue on whether the CA erred in denying PBCOM's cross-claims against LK Fishing Corp. for the sums it will pay to Rivera, including attorney's fees, court appearance fees, litigation expenses, and cost of suit.

To recall, the CA affirmed the denial of the cross-claim because PBCOM failed to present the SBBS, which would show that an ON-US check still requires a two-day clearing period. To counter the CA ruling, PBCOM points to the Answer<sup>53</sup> submitted by LK Fishing Corp. where the latter categorically admitted the reason for the stop payment order, thus:

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<sup>52</sup> TSN, July 10, 2003, pp. 15-17.

<sup>53</sup> Records, pp. 69-74.



12.4) A week before March 6, 2001, the staff of LK Fishing Corporation already got forms of Stop Payment Order from the Defendant Bank [PBCOM] with the intention to Stop the payment [of] the said check;

12.5) That since everyone was pre-occupied and considering the distance of the LK Fishing Corporation office in Talisay, Tambler, General Santos City, the Stop Payment Order was only delivered to the bank in the afternoon of March 6, 2001[.]<sup>54</sup>

Citing Sec. 4,<sup>55</sup> Rule 129 of the Rules of Court, PBCOM asserts that an admission made in writing and in the course of the proceedings constitutes judicial admission, which does not require proof. By reason of such express admission, which was never contradicted at any stage in the proceedings, LK Fishing Corp. should have been made liable to PBCOM under its express assumption of liability in issuing the stop payment order.<sup>56</sup>

PBCOM likewise maintains that its liability did not attach because (1) the check was dishonored, and (2) since it was crossed, it was only accepted for deposit and still subject to availability of the drawer's fund.<sup>57</sup> Citing Sec. 137<sup>58</sup> of the Negotiable Instruments Law (*NIL*), PBCOM asserts that it has not accepted the check because it returned the same within the time allowed by law. Considering that dishonoring a check is paradoxical with acceptance, Rivera's remedy, pursuant to Sec. 151<sup>59</sup> of the *NIL*, should have been a recourse to the drawer, LK Fishing Corp.<sup>60</sup>

PBCOM's arguments fail to convince.

The Court affirms the dismissal of PBCOM's cross-claim not only due to its failure to present in evidence the SBBS, but also because it enforced the stop payment order, despite having earlier cleared and credited the amount of ₱100,000.00 to Rivera's savings account on March 6, 2001. Such clearance and credit had prompted Rivera to issue on the following day PBCOM Check No. 088401 with a face value of ₱100,000.00 payable to one

<sup>54</sup> *Id.* at 71.

<sup>55</sup> Sec. 4. *Judicial admissions.* – An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

<sup>56</sup> *Rollo*, p. 14.

<sup>57</sup> *Id.* at 17.

<sup>58</sup> Sec. 137. *Liability of Drawee Retaining or Destroying Bill.* – Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

<sup>59</sup> Sec. 151. *Right of Holder Where Bill Not Accepted.* – When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder and no presentment for payment is necessary.

<sup>60</sup> *Rollo*, pp. 17-18.

Riester Tan. Even if LK Fishing Corp. had judicially admitted the reason for the stop payment order, PBCOM could no longer enforce it because such order was belatedly made since the crossed check had already been cleared and credited to Rivera's account.

Also, records belie PBCOM's contention that it did not accept PBCOM Check No. 056196 because (1) it was dishonored, and (2) assuming it was accepted, it was a crossed check which may only be deposited and subject to availability of the drawer's fund. Exhibit "I-1-A"<sup>61</sup> of Rivera's savings account clearly reveals that PBCOM accepted and credited ₱100,000.00 to Rivera's savings account on March 6, 2001. On the other hand, Exhibit "E-5," the dorsal portion of PBCOM Check No. 056196, shows that it was presented on March 6, 2001 to PBCOM General Santos City Branch, and cleared through the Clearing House, Central Bank of the Philippines.

On the issue of whether an ON-US check which had been cleared and credited to an account can still be the subject of a stop payment order, the Court rules in the negative.

A check is a mere order on a bank to pay money from the drawer's account; as such, it is subject to revocation by the drawer at any time before it is accepted.<sup>62</sup> Under Sec. 189 of the NIL, "a check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check." If a bank pays a check after it has been notified to stop payment, it pays on its own responsibility and will not be permitted to charge the account.<sup>63</sup>

Corollary, in *Spouses Moran v. Court of Appeals*,<sup>64</sup> the Court explained that fixed savings and current deposits of money in banks and similar institutions are governed by the provisions concerning simple loan. Thus:

[T]he relationship between the bank and the depositor is that of a debtor and creditor. By virtue of the contract of deposit between the banker and its depositor, the banker agrees to pay checks drawn by the depositor provided that said depositor has money in the hands of the bank.

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<sup>61</sup> Records, p. 187.

<sup>62</sup> Aquino, T.B. (2003), *Notes and Cases on Banks, Negotiable Instruments and Other Commercial Documents*, p. 416.

<sup>63</sup> Id. at 416-417.

<sup>64</sup> 300 Phil. 859 (1994).

Hence, where the bank possesses funds of a depositor, it is bound to honor his checks to the extent of the amount of his deposits. The failure of a bank to pay the check of a merchant or a trader, when the deposit is sufficient, entitles the drawer to substantial damages without any proof of actual damages.

Conversely, a bank is not liable for its refusal to pay a check on account of insufficient funds, notwithstanding the fact that a deposit may be made later in the day. Before a bank depositor may maintain a suit to recover a specific amount from his bank, he must first show that he had on deposit sufficient funds to meet his demand.<sup>65</sup> (Citations omitted)

In this case, PBCOM cleared LK Fishing Corp.'s crossed ON-US check and credited the face value thereof to Rivera's savings account before it received a stop payment order. Having credited ₱100,000.00 to Rivera's savings account, PBCOM can no longer enforce the stop payment order and unilaterally debit the entire amount earlier credited to her savings account. When it enforced a late stop payment order and debited her savings account, which resulted in the dishonor of the check drawn from her current account with automatic fund transfer from such savings account, PBCOM committed a breach of contract which makes it liable for damages.

Moreover, the CA has aptly ruled that PBCOM is primarily liable for the face value of the dishonored check. As drawee, PBCOM's liability attached when it accepted the check upon presentment for payment, subject to the condition that Rivera would open a savings account where the proceeds of said check would be credited. Thus, when Rivera opened with PBCOM a savings account where it credited the ₱100,000.00 face value of the check, PBCOM's liability as drawee already attached. Likewise, LK Fishing Corp. is primarily liable to Rivera for the face value of the dishonored check. As the drawer of the check, LK Fishing Corp. engages that on due presentment, the check will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, it will pay the amount of the check. For these reasons, the Court finds that the CA correctly affirmed the joint and several liability of PBCOM and LK Fishing Corp. to pay the amount of ₱100,000.00, the face value of PBCOM Check No. 056196, plus legal interest.

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<sup>65</sup> Id. at 865-866.

*PBCOM is liable for moral and exemplary damages, attorney's fees, cost of litigation; all sums of money awarded herein shall be subject to interest.*

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.<sup>66</sup> The requisites for an award of moral damages are as follows: (1) evidence of besmirched reputation or physical, mental or psychological suffering sustained by the claimant; (2) a culpable act or omission factually established; (3) proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and (4) that the case is predicated on any of the instances expressed or envisioned by Article (*Art.*) 2219<sup>67</sup> and Art. 2220<sup>68</sup> of the Civil Code.<sup>69</sup>

On the other hand, Art. 2229<sup>70</sup> of the Civil Code allows the grant of exemplary damages to set an example for the public good.

Finally, it bears emphasizing that the banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have attained a ubiquitous presence among the people,

<sup>66</sup> *Equitable PCI Bank v. Ong*, 533 Phil. 415, 432 (2006).

<sup>67</sup> Article 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

<sup>68</sup> Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

<sup>69</sup> *Equitable PCI Bank v. Ong*, supra at 432-433.

<sup>70</sup> Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

who have come to regard them with respect and even gratitude and most of all, confidence. For this reason, banks should guard against injury attributable to negligence or bad faith on its part.<sup>71</sup> Since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required of it.<sup>72</sup>

In view of the circumstances of the case, as well as the standard of diligence required of banks, the Court affirms the award of moral and exemplary damages.

Here, Rivera testified and presented evidence to prove that the check drawn from her current account (with automatic transfer arrangement) was dishonored,<sup>73</sup> because PBCOM enforced a stop payment order despite having previously cleared PBCOM Check No. 056196 and credited ₱100,000.00 to her savings account.<sup>74</sup> She also proved that a demand letter<sup>75</sup> was sent to her by Tan, and that she was forced to pay the face value of the dishonored check on installment plus interest.<sup>76</sup> She likewise testified to having suffered embarrassment and humiliation by reason of the dishonor of her check, considering her business stature and the fact that she is a former banker.<sup>77</sup> Evidently, Rivera has established that the proximate cause of the dishonor of the check was PBCOM's enforcement of a late stop payment order and the unauthorized debit on Rivera's account, which constitutes a breach of contract of loan between them, whereby the bank is the debtor and latter is the creditor. Hence, PBCOM should pay moral damages for the humiliation and embarrassment she suffered due to the dishonor of the check.

Based on the foregoing reasons, PBCOM should also be held liable for exemplary damages, for failing to exercise the highest standards of integrity and performance required of it as a bank.

Regarding the amount of moral and exemplary damages awarded, Art. 2216 of the Civil Code provides:

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<sup>71</sup> *Solidbank Corporation v. Spouses Arrieta*, 492 Phil. 95, 105 (2005).

<sup>72</sup> *Equitable PCI Bank v. Ong*, supra at 434.

<sup>73</sup> Records, p. 182.

<sup>74</sup> Id. at 187.

<sup>75</sup> Id. at 183.

<sup>76</sup> Id. at 189-190.

<sup>77</sup> TSN, October 2, 2003, pp. 24-27.

ART. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages, may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

The determination of the amount to be awarded (except liquidated damages) is left to the sound discretion of the court according to the circumstances of each case.<sup>78</sup>

Here, the Court upholds the CA in affirming the award of ₱100,000.00 as moral damages, and ₱50,000.00 as exemplary damages, which are reasonable and justified.

Aside from moral and exemplary damages, PBCOM should also be held liable for attorney's fees, and cost of suit. Rivera was compelled to litigate to protect her rights,<sup>79</sup> due to the erroneous enforcement of the stop payment order which resulted in the dishonor of her check and caused her to suffer embarrassment and humiliation.

Finally, as regards the interest rate imposed on the civil liability and damages awarded, the Court modifies the trial court's disposition in line with the guidelines laid down in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*,<sup>80</sup> to wit:

With regard to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

A. In obligations consisting of loans or forbearances of money, goods or credit:

1. The compensatory interest due shall be that which is stipulated by the parties in writing as the penalty or compensatory interest rate, provided it is not unconscionable. In the absence of a stipulated penalty or compensatory interest rate, the compensatory interest due shall be that which is stipulated by the parties in writing as the conventional interest rate, provided it is not unconscionable. In the absence of a stipulated penalty or a stipulated conventional interest rate, or if these rates are unconscionable, the compensatory interest shall be the prevailing legal interest rate prescribed by the Bangko Sentral ng Pilipinas. Compensatory interest, in the absence of a

<sup>78</sup> *Equitable PCI Bank v. Ong*, supra at 434.

<sup>79</sup> *Solidbank Corp. v. Spouses Arrieta*, supra at 106.

<sup>80</sup> G.R. No. 225433, September 20, 2022.

stipulated reckoning date, shall be computed from default, *i.e.*, from extrajudicial or judicial demand, *until full payment*.

2. Interest on conventional/monetary interest and stipulated compensatory interest shall accrue at the stipulated interest rate (compounded interest) from the stipulated reckoning point or, in the absence thereof, from extrajudicial or judicial demand *until full payment*, provided it is not unconscionable. In the absence of a stipulated compounded interest rate or if this rate is unconscionable, the prevailing legal interest rate prescribed by the Bangko Sentral ng Pilipinas shall apply from the time of judicial demand *until full payment*.

B. In obligations not consisting of loans or forbearances of money, goods or credit:

1. For liquidated claims:

The compensatory interest due shall be that which is stipulated by the parties in writing as the penalty or compensatory interest rate, provided it is not unconscionable. In the absence of a stipulated penalty or compensatory interest rate, or if these rates are unconscionable, the compensatory interest shall be at the rate of 6%. Compensatory interest, in the absence of a stipulated reckoning date, shall be computed from default, *i.e.*, from extrajudicial or judicial demand, *until full payment*.

- a. Interest on stipulated compensatory interest shall accrue at the stipulated interest rate (compounded interest) from the stipulated reckoning point or in the absence thereof, from extrajudicial or judicial demand *until full payment*, provided it is not unconscionable. In the absence of a stipulated compounded interest rate or if this rate is unconscionable, legal interest at the rate of 6% shall apply from the time of judicial demand *until full payment*.

2. For unliquidated claims:

Compensatory interest on the amount of damages awarded may be imposed in the discretion of the court at the rate of 6% per annum. No compensatory interest, however, shall be adjudged on unliquidated claims or damages until the demand can be established with reasonable certainty. Thus, when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the trial court (at which time the quantification of damages may be deemed to have been reasonably ascertained) *until full payment*. The actual base for the computation of the interest shall, in any case, be on the principal amount finally adjudged.<sup>81</sup> (Italics in the original; citations omitted)

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<sup>81</sup> Id.

In line with recent jurisprudence, the legal interest rate that may be imposed in the discretion of the Court on the face value of the dishonored check in the sum of ₱100,000.00, is fixed at 6% per annum computed from the date of extrajudicial demand, *i.e.*, receipt of the demand letter on March 12, 2001,<sup>82</sup> until full payment.

It bears noting that the award of ₱100,000.00 does not arise from a loan or forbearance of money or credit; hence, the interest rate provided for under Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013,<sup>83</sup> does not apply. A “forbearance” in the context of the usury law is a “contractual obligation of lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay a loan or debt then due and payable.”<sup>84</sup> In this case, PBCOM’s obligation to pay the face value of dishonored check arises from its late enforcement of a stop payment order and the unauthorized debit of Rivera’s current account (with automatic transfer arrangement from her savings account), which amounts to breach of contract and, thus, creating liability for damages.

In the same vein, legal interest at the rate of 6% per annum from finality of this Decision until fully paid shall also be imposed on the total monetary award in favor of Rivera, which includes: (a) ₱100,000.00 as moral damages for the mental anguish, difficulties, and failed expectations; (b) ₱50,000.00 as exemplary damages for PBCOM’s disregard of the public interest vested in the banking services; (c) attorney’s fees of ₱30,000.00 plus appearance fee of ₱1,000.00 for every hearing actually attended by counsel; and (d) ₱20,000.00 as cost of litigation.

**WHEREFORE**, premises considered, the instant Appeal by *Certiorari* is **DENIED**. The May 27, 2014 Decision and the February 18, 2015 Resolution of the Court of Appeals, Cagayan de Oro City in CA-G.R. CV No. 02454-MIN are **AFFIRMED** with **MODIFICATION**, finding Philippine Bank of Communications and LK Fishing Corporation jointly and solidarily liable to pay Ria de Guzman Rivera the amount of ₱100,000.00 representing the face value of the check plus legal interest of 6% per annum computed from the date of extrajudicial demand on March 12, 2001 until full payment.

<sup>82</sup> Records, p. 14.

<sup>83</sup> Sec. 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum. (Circular took effect on July 1, 2013).

<sup>84</sup> *Crismina Garments, Inc. v. Court of Appeals*, 363 Phil. 701, 709 (1999), citing footnote 16 of *Eastern Shipping Lines, Inc. v. Court of Appeals*, 304 Phil. 236 (1994), to wit: “Black’s Law Dictionary (1990 ed., 644) citing the case of *Hafer v. Spaeth*, 22 Wash. 2d 378, 156 P. 2d 408, 411 defines the word forbearance, within the context of usury law, as a contractual obligation of lender or creditor to refrain, during given period of time, from requiring borrower or debtor to repay loan or debt then due and payable.”

Philippine Bank of Communications is further **DIRECTED** to **PAY** Ria de Guzman Rivera the following amounts, with legal interest rate of 6% per annum from finality of this Decision, until full payment:

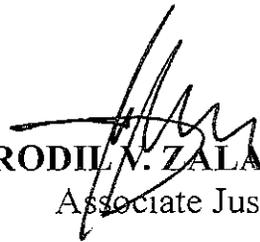
1. ₱100,000.00 as moral damages for the mental anguish, difficulties, and failed expectations of Rivera;
2. ₱50,000.00 as exemplary damages for its disregard of the public interest vested in the banking services;
3. ₱30,000.00 as attorney's fees plus appearance fee of ₱1,000.00 for every hearing actually attended by counsel; and
4. ₱20,000.00 as cost of litigation.

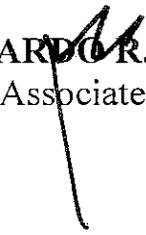
**SO ORDERED.**

  
ALEXANDER G. GESMUNDO  
Chief Justice

**WE CONCUR:**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

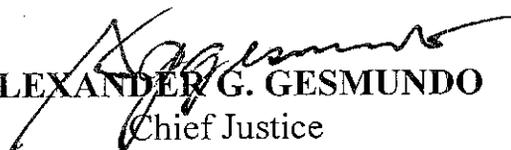
  
**RODIL V. ZALAMEDA**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

