



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

INTERNATIONAL EXCHANGE G.R. No. 243163
 BANK (NOW UNIONBANK OF
 THE PHILIPPINES),
 Petitioner,

Present:

LEONEN, J., *Chairperson*,
 LAZARO-JAVIER,
 LOPEZ, M.,
 LOPEZ, J., and
 KHO, JR., *JJ*.

-versus-

JOSE CO LEE AND ANGELA T.
 LEE,
 Respondents.

Promulgated:

JUL 24 2019

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DECISION

LEONEN, J.:

Generally, an appeal is the proper remedy to question the grant of a demurrer to evidence because if the Court of Appeals reverses the dismissal, the case is not remanded for reception of the defendant's evidence. Instead, the Court of Appeals has to render judgment on the merits based on the plaintiff's evidence. However, when the grant of a demurrer to evidence leaves the main case pending before the trial court, the plaintiff can resort to a petition under Rule 65 if there is a showing that in granting the demurrer there was grave abuse of discretion.¹

This resolves a Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by International Exchange Bank (iBank), now Union

¹ *BDO Unibank, Inc. v. Chou*, G.R. No. 237553, July 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Jul/2019/1>> (Per J. Leonen, Third Division).

Bank of the Philippines (UnionBank), against Jose Co Lee and Angela T. Lee.² The Petition assails the August 17, 2018 Decision³ and November 13, 2018 Resolution⁴ of the Former Twelfth Division of the Court of Appeals.⁵

On November 20, 2003, iBank filed a complaint⁶ for sum of money and damages against Christina T. Lee (Christina), Jeffrey R. Esquivel (Jeffrey), Violeta T. Lee (Violeta), Karin Tse Go (Karin), Jose Co Lee (Jose), and Angela T. Lee (Angela). It alleged that Christina, Jeffrey, Violeta, Karin, Jose, and Angela fraudulently took ₱8,800,000.00 and ₱8,244,645.27 from the Forward Foreign Exchange Placement Accounts of iBank's clients, Liu Siu Lang Sy (Sy) and Ernesto and Olivia Co (Spouses Co), respectively, and transferred the money to their own bank accounts.⁷

The bank alleged that Christina, as the treasury products sales associate in its Tektite Branch, was tasked to coordinate instructions from clients regarding their money market transactions. In line with her function, she informed the Branch Distribution Sector for Treasury that Sy and Spouses Co intended to terminate their Forward Foreign Exchange Placement Accounts in the amounts of ₱8,800,000.00 and ₱8,244,645.27, respectively.⁸ Consequently, the Bank's Treasury Department credited the amounts of ₱8,800,000.00 and ₱8,244,645.27 to Settlement Account No. 006100040891. These amounts were to be credited to the investment accounts of Sy and Spouses Co. However, Christina allegedly tricked her superior into believing that the money in Settlement Account No. 006100040891 belonged to her partner and boyfriend, Jeffrey. Thus the amounts were credited to Jeffrey's account.⁹

Later, it was alleged that the proceeds of the fraud were transferred from Jeffrey's account to that of Karin, Jose, and Angela, and that the amounts had been withdrawn. Consequently, when iBank learned of Christina's deceit, it was forced to reinstate the withdrawn ₱8,800,000.00 and ₱8,244,645.27 into Sy and Spouses Co's respective accounts.¹⁰

In their Answer with Counterclaim, Christina's parents, Jose and Violeta, and her sister, Angela, denied their involvement in the fraud. They alleged that iBank only impleaded them as leverage against Christina.¹¹

² *Rollo*, pp. 27-171.

³ *Id.* at pp. 9-21, The August 17, 2018 Decision in CA-G.R. SP No. 151834 was penned by Associate Justice Ronaldo Roberto B. Martin with the concurrence of Associate Justices Ramon R. Garcia (Chair) and Eduardo B. Peralta, Jr. of the Twelfth Division, Court of Appeals Manila.

⁴ *Id.* at pp. 22-23, The November 13, 2018 Decision in CA-G.R. SP No. 151834 was penned by Associate Justice Ronaldo Roberto B. Martin with the concurrence of Associate Justices Ramon R. Garcia (Chair) and Eduardo B. Peralta, Jr. of the Former Twelfth Division, Court of Appeals Manila.

⁵ *Id.* at p. 34.

⁶ *Id.* at 333-349.

⁷ *Id.* at 10, CA Decision.

⁸ *Id.*

⁹ *Id.* at 10-11.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 11.

On May 10, 2016, after iBank presented its evidence in chief, Jose and Angela¹² filed a Demurrer to Evidence¹³ which the Regional Trial Court granted in its March 1, 2017 Resolution.¹⁴

The Regional Trial Court held that iBank's evidence showed that it was Christina who made alleged false remarks in the Log Card to make it appear that Sy and Spouses Co wanted to terminate their Forward Foreign Exchange Placement Accounts. It was also Christina who processed the debit memo to transfer Sy and Spouses Co's funds to Jeffrey's account.¹⁵

The Regional Trial Court also pointed out that the bank failed to substantiate its assertion that the termination of Sy and Spouses Co's respective accounts were fraudulently done because it failed to present Sy and Spouses Co as witnesses to confirm that they did not consent to the termination of their accounts.¹⁶ It then pointed out that iBank failed to give Jose and Angela a demand letter for the return of the funds that were supposedly fraudulently credited to their account.¹⁷

The dispositive portion of the Regional Trial Court Resolution reads:

WHEREFORE, premises considered, the Court Resolved to **GRANT** the Demurrer to Evidence with Motion to Dismiss filed by defendants Jose Co Lee and Angela Lee for being meritorious. Accordingly, the complaint against defendants Jose Co Lee and Angela Lee is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.¹⁸

UnionBank, formerly iBank, filed a Motion for Partial Reconsideration¹⁹ of the Regional Trial Court's March 1, 2017 Resolution. However, it was denied in a May 22, 2017 Order.²⁰

UnionBank received the denial of its motion on May 30, 2017 and on June 2, 2017 filed its Notice of Appeal.²¹ A few days later, it filed a Motion for Leave to Allow Notice of Appeal dated June 2, 2017.²²

¹² Violeta had passed away by the time the Demurrer to Evidence was filed.

¹³ *Rollo*, pp. 323-331.

¹⁴ *Id.* at 296-317. The Resolution docketed as Civil Case No. 03-1361 was penned by Presiding Judge Eugene C. Paras of the Regional Trial Court of Makati City, Branch 58.

¹⁵ *Id.* at 314-315, RTC Resolution.

¹⁶ *Id.* at 315.

¹⁷ *Id.* at 316.

¹⁸ *Id.* at 317.

¹⁹ *Id.* at 387-423.

²⁰ *Id.* at 319-321. The Order was penned by Presiding Judge Eugene C. Paras of the Regional Trial Court of Makati City, Branch 58.

²¹ *Id.* at 1010-1012.

²² *Id.* at 1015-1019.

On June 9, 2017, Jose and Angela's counsel asked for time to file its comment to the Motion for Leave which UnionBank's opposed.²³

On July 5, 2017, UnionBank moved²⁴ for the resolution of its Motion for Leave to Allow Notice of Appeal. It stressed that Jose and Angela's counsel did not file a comment despite asking for additional time. It also pointed out that it took the Regional Trial Court more than one month to rule upon a "simple, straightforward and non-litigious Motion for Leave."²⁵

On July 28, 2017, UnionBank withdrew²⁶ its Notice of Appeal since the Regional Trial Court still had not acted on its Motion for Leave and it needed to preserve its available legal remedies.²⁷

On July 31, 2017, UnionBank filed a Petition for Certiorari²⁸ with the Court of Appeals to assail the Regional Trial Court's Resolution and Order.

On August 23, 2017, the Regional Trial Court granted Unionbank's withdrawal of its Notice of Appeal.²⁹

On August 17, 2018, the Court of Appeals dismissed UnionBank's Petition for Certiorari.³⁰

The Court of Appeals held that instead of a petition for certiorari, UnionBank should have appealed the Regional Trial Court's Resolution granting the demurrer since it was a judgment on the merits. It called attention to UnionBank's withdrawal of its Notice of Appeal with the Regional Trial Court in ruling that certiorari was improper since it cannot be said that no plain, adequate, and speedy remedy was available.³¹

As for the substantive matters, the Court of Appeals held that the Regional Trial Court did not commit grave abuse of discretion in granting the demurrer to evidence since the assailed Resolution showed that the lower court carefully weighed and scrutinized the evidence presented by the bank. It emphasized that whatever error may have been committed was one of judgment which is correctible by appeal and not by a petition for certiorari.³²

²³ Id. at 1029.

²⁴ Id. at 1028- 1033.

²⁵ Id. at 1030.

²⁶ Id. at 1036- 1040.

²⁷ Id. at 1038-1039.

²⁸ Id. at 190-282.

²⁹ Id. at 72. The Order was penned by Presiding Judge Eugene C. Paras of the Regional Trial Court of Makati City, Branch 58.

³⁰ Id. at 173-185.

³¹ Id. at 177- 179.

³² Id. at 184.

UnionBank moved for a reconsideration of the Court of Appeals' August 17, 2018 Decision, but its motion was denied in a November 13, 2018 Resolution.³³

Aggrieved, UnionBank, filed a Petition for Review on Certiorari before this Court on January 4, 2019.

On June 21, 2019, Respondents Jose and Angela filed their Comment³⁴ to which petitioner filed its Reply.³⁵

In its Petition for Review on Certiorari,³⁶ petitioner UnionBank asserts that a petition for certiorari was the correct remedy to take in light of the Regional Trial Court's noticeable and unjustifiable delay in acting on its Motion for Leave to file its Notice of Appeal. It maintains that it had no choice but to withdraw its Motion for Leave so that it could still avail of the remedy of a petition for certiorari within the allowable period.³⁷

Moreover, it argues that since a demurrer to evidence is akin to a motion to dismiss, the proper remedy to assail its grant is a petition for certiorari with the Court of Appeals.³⁸ It asserts that a petition for certiorari "is the proper remedy to question the dismissal of an action against one of the other parties while the main case is still pending."³⁹

Furthermore, petitioner contends that the Regional Trial Court gravely abused its discretion in granting the demurrer to evidence despite the fact that petitioner established by sufficient evidence its allegations against respondents Jose and Angela and its entitlement to the relief sought in its Complaint.⁴⁰ It emphasizes that it showed evidence to the effect that Jose and Angela transferred the funds to their other accounts, with Jose even using the stolen funds to fund one of the checks he issued.⁴¹

Petitioner underscores that prior to Jeffrey's transfer of ₱1,200,000.00 to Jose's account, the latter's account only contained ₱25,000.00. Further, on the same day that Jeffrey transferred ₱1,200,000.00 to Jose's account, Jose

³³ Id. at 187-188.

³⁴ Id. at 3595-3604.

³⁵ Id. at 3611-3627.

³⁶ Id. at 27-161.

³⁷ Id. at 70-73.

³⁸ Id. at 65-68.

³⁹ Id. at 67 citing *DM Ferrer & Associates Corporation v. University of Sto. Tomas*, 680 Phil. 805 (2012) [Per J. Sereno, Second Division].

⁴⁰ Id. at 68.

⁴¹ Id. at 116-117.

issued a check for ₱1,200,000.00 to Triangle Ace Corporation, clearly showing his complicity with Christina and Jeffrey.⁴²

In their Comment dated June 19, 2019, respondents Jose and Angela assert that the matters raised in the Petition before this Court are all questions of facts not errors of law, and that all allegations of petitioner has been tackled by the Court of Appeals.⁴³ They then reproduce the findings of the Court of Appeals regarding the improper remedy availed of by petitioner,⁴⁴ and the absence of grave abuse of discretion on the part of the trial court judge when it granted respondents' demurrer to evidence.⁴⁵

In its Reply, petitioner pointed out that the Comment of respondents merely quoted the bulk of the Court of Appeals' Decision⁴⁶ without refuting the substantive portions of the Petition.⁴⁷ It adds that contrary to respondents' assertion, its Petition raised questions of law which this Court may appropriately pass upon, to wit: (a) whether petitioner availed of the correct remedy when it filed its Petition for Certiorari under Rule 65 of the Rules of Court with the Court of Appeals; and (b) whether the trial court erred when it granted the demurrer filed by respondents.⁴⁸

The issues for this Court's resolution are:

First, whether or not a petition for certiorari under Rule 65 was the correct remedy to contest the Regional Trial Court's grant of the demurrer to evidence.

Second, whether or not petitioner has established by sufficient evidence that it is entitled to the relief sought against respondents in its complaint for sum of money and damages.

I

We first rule on the procedural matter of whether the Court of Appeals erred in dismissing the petition for certiorari for being the improper remedy.

Petitioner asserts it was correct in filing a petition for certiorari with the Court of Appeals considering that a demurrer to evidence acts as a motion to dismiss.⁴⁹ It adds that the Regional Trial Court's seeming intention to deny

⁴² Id. at 120–123.

⁴³ Id. at 3295.

⁴⁴ Id.

⁴⁵ Id. at 3599.

⁴⁶ Id. at 3611.

⁴⁷ id. at 3612.

⁴⁸ Id. at 3613.

⁴⁹ Id. at 65–68.

its Motion for Leave to file its Notice of Appeal left it no other recourse but to file a petition for certiorari. On the other hand, respondents reiterate that petitioner should have filed an appeal when the trial court granted their demurrer to evidence.⁵⁰

A demurrer to evidence is governed by Rule 33, Section 1 of the Rules of Civil Procedure. In filing it, a party questions the sufficiency of the evidence presented by the plaintiff on the ground that the plaintiff failed to show a right to the relief it asks for.⁵¹ If granted, it results in the dismissal of the complaint in favor of the movant. Thus, it is akin to a motion to dismiss. Rule 33, Section 1 of the Rules of Civil Procedure provides:

SECTION 1. *Demurrer to evidence.* — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

The provision states that an order granting a demurrer to evidence may be appealed. Pursuant to Rule 41 of the Rules of Civil Procedure, an appeal may be taken from a judgment or final order completely disposing of the case, or in a matter appealable as mandated by the Rules of Court.⁵² Given the result brought about by the grant of a demurrer to evidence, that is, a dismissal of the case on its merits, an appeal would be the appropriate remedy available to an aggrieved party.

Nevertheless, Rule 41, Section 1 admits of exceptions to the general rule. Thus —

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

- (a) An order denying a motion for new trial or reconsideration;
- (b) An order denying a petition for relief or any similar motion seeking relief from judgment;
- (c) An interlocutory order;
- (d) An order disallowing or dismissing an appeal;
- (e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

⁵⁰ Id. at 70–73.

⁵¹ *Celino v. Heirs of Santiago*, 479 Phil. 617 (2004) [Per J. Tinga, Second Division].

⁵² *Marmo v. Anacay*, 621 Phil. 212 (2009) [Per J. Brion, Second Division].

- (f) An order of execution;
- (g) *A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and*
- (h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Emphasis supplied)

Pertinent is item (g) of Rule 41 which states that “a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom.” This exception was demonstrated in *Jan-Dec Construction Corp. v. Court of Appeals*:⁵³

Evidently, the CA erred in dismissing petitioner's petition for certiorari from the Order of the RTC dismissing the complaint against respondent. While Section 1, Rule 41 of the 1997 Rules of Civil Procedure states that an appeal may be taken only from a final order that completely disposes of the case, it also provides several exceptions to the rule, to wit: (a) an order denying a motion for new trial or reconsideration; (b) an order denying a petition for relief or any similar motion seeking relief from judgment; (c) an interlocutory order; (d) an order disallowing or dismissing an appeal; (e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent; (f) an order of execution; (g) a judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and (h) an order dismissing an action without prejudice. In the foregoing instances, the aggrieved party may file an appropriate special civil action for certiorari under Rule 65.

*In the present case, the Order of the RTC dismissing the complaint against respondent is a final order because it terminates the proceedings against respondent but it falls within exception (g) of the Rule since the case involves two defendants, Intermodal and herein respondent and the complaint against Intermodal is still pending. Thus, the remedy of a special civil action for certiorari availed of by petitioner before the CA was proper and the CA erred in dismissing the petition.*⁵⁴ (Emphasis supplied)

Similarly, in *D.M. Ferrer v. University of Santo Tomas*,⁵⁵ this Court held that a petition for certiorari under Rule 65 is the proper remedy to question the dismissal of an action against one of the parties while the main case is still pending.

⁵³ 517 Phil. 96 (2006) [Per J. Austria-Martinez, First Division].

⁵⁴ Id. at 106–107.

⁵⁵ 680 Phil. 805 (2012) [Per J. Sereno, Second Division].

Here, the Court of Appeals opined that the above-mentioned cases cannot apply since what was involved was a motion to dismiss and not a demurrer to evidence.⁵⁶ Nevertheless, considering that a demurrer to evidence is akin to a motion to dismiss and has the effect of dismissing a case on the merits, the cited cases should apply.

In this case, the Regional Trial Court's Order granting the demurrer to evidence of respondent was indeed a final order. However, considering that the dismissal was only as to respondents in this case and the complaint for recovery of damages remained pending with the other defendants—Christina, Jeffrey, and Karin—it falls within the provided exception.⁵⁷ Thus, the petition for certiorari under Rule 65 was proper.

Even if respondents insist that the proper remedy of petitioner was an appeal under Rule 41, the facts of the case, particularly the Regional Trial Court's inordinate delay in acting on petitioner's Motion for Leave to file its Notice of Appeal, would still leave petitioner with no recourse but to file a petition for certiorari under Rule 65.

In this case, the Regional Trial Court refused to rule on petitioner's Motion for Leave to File Notice of Appeal.⁵⁸ Petitioner subsequently filed a Motion to Resolve,⁵⁹ to no avail.⁶⁰ Two months after the Notice of Appeal was filed and two days before the expiration of the reglementary period for filing a petition under Rule 65, petitioner filed a Notice of Withdrawal of its Notice of Appeal and instead filed a Petition for Certiorari before the opportunity was lost completely.⁶¹ Surely, petitioner cannot be faulted for protecting its right in light of the lower court's inaction.

Consequently, petitioner availed of the correct remedy of certiorari under Rule 65 of the Rules of Civil Procedure.

II

This Court is now tasked to rule upon the grant of respondents' demurrer to evidence.

It is a settled rule that this Court is not a trier of facts. The Rules of Court categorically states that in petitions for review on certiorari, only questions of law may be raised. As such, we are limited to reviewing only

⁵⁶ *Rollo*, p. 16.

⁵⁷ *Palma v. Galvez*, 629 Phil. 86 (2010) [Per J. Peralta, Third Division].

⁵⁸ *Rollo*, p. 55.

⁵⁹ *Id.* at 1028 Re: Motion for Leave to Allow Notice of Appeal dated 02 June 2017

⁶⁰ *Id.* at 56.

⁶¹ *Id.*

errors of law committed by the lower courts.⁶² It is likewise a general rule that factual findings of appellate courts, when supported by substantial evidence, are binding upon this Court.⁶³

The difference between a question of fact and a question of law was discussed in *Century Iron Works, Inc. v. Bañas*.⁶⁴

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.⁶⁵ (Citations omitted)

A question of law inquires as to how a legal principle is applied given a certain set of undisputed facts while a question of fact entails the review of evidence to ascertain the “truth or falsity” of alleged facts.⁶⁶ A question of fact delves into the probative value of the evidence submitted, including the credibility of witnesses, the existence of surrounding circumstances, and the relevance of facts presented. With this, this Court generally defers to the factual findings of the trial courts given their unique opportunity to directly observe the disposition and demeanor of the parties and witnesses.⁶⁷

Nevertheless, this Court has the power to review questions of facts when one of the exceptions provided by law or jurisprudence are present.⁶⁸ In *Medina v. Mayor Asistio, Jr.*,⁶⁹ these exceptions were enumerated:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings

⁶² *Frabelle Properties Corp. v. AC Enterprises, Inc.*, G.R. No. 245438, November 3, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66569>> [Per J. Peralta, First Division].

⁶³ *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

⁶⁴ 711 Phil. 576 (2013) [Per J. Brion, Second Division].

⁶⁵ *Id.* at 585–586.

⁶⁶ *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172 (2017) [Per J. Peralta, Second Division].

⁶⁷ *Felipe v. M/GM Motor Trading Corp.*, 770 Phil. 232 (2015) [Per J. Perez, First Division].

⁶⁸ *Id.*

⁶⁹ 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.⁷⁰ (Citations omitted)

Here, the Petition raised questions of fact as it entails an assessment of the probative value of petitioner's evidence and asks this Court to determine if there is *prima facie* evidence to prove that petitioner is entitled to its claim. Nonetheless, this Court may appropriately act on the matter as an exception applies, namely, that the Court of Appeals' finding of fact is premised on the supposed absence of evidence and is contradicted by the evidence on record.

The Court of Appeals found that the Regional Trial Court did not act capriciously when it granted the demurrer to evidence. It agreed with the trial court that while petitioner's evidence clearly showed that Christina maneuvered the transfer of money from Sy and Co's accounts, to her boyfriend Jeffrey's accounts, and then later to the accounts of Karin, and respondents Jose and Angela, it failed to substantiate its claim that Jose and Angela participated in or were even aware of the fraudulent act.⁷¹ The Court of Appeals found that the evidence of petitioner was insufficient to sustain a claim for sum of money and damages against respondents Jose and Angela.

The Court of Appeals erred in ruling that the trial court committed no grave abuse of discretion.

Contrary to the Court of Appeals' conclusion, a review of the records shows that Jose cannot be entirely absolved of liability. The following evidence submitted by petitioner which may prove its claim or right to relief against respondent Jose: (1) after the post-audit review by the bank, it was discovered that the Sy investment in the amount of ₱8,800,00.00 and the Spouses Co investment in the amount of ₱8,244,645.27 were pre-terminated and concealed by Christina and that the proceeds were diverted to the accounts of Jeffrey, Jose, Angela, Violeta and Karin;⁷² (2) respondent Jose is the father of Christina and is a depositor of petitioner bank with account numbers 013-10-0-026462 and 013-0-20-010888 and is the signatory for J.C. Lee Construction, Inc. with account number 029-03-0-006188;⁷³ (3) post-audit documents show that "[Jose's] account number 013-0-20-010888 was credited with a portion of the proceeds from the Sy's investment in the amount of ₱2,715,000.00 while J.C. Lee's Construction, Inc. account number 029-03-0-006188 was credited with the proceeds of the Co's investment in the amount of ₱2,020,000.00;"⁷⁴ (4) later, the amount of ₱2,020,000.00 in J.C. Lee

⁷⁰ *Id.* at 232.

⁷¹ *Rollo*, p. 29.

⁷² *Id.* at 3334.

⁷³ *Id.*

⁷⁴ *Id.*

Construction, Inc. was transferred to the personal account of Jose in multiple smaller batches in the amounts of ₱1,600,000.00, ₱206,225.80, and ₱600,000.00 on January 7 and 13, 2003;⁷⁵ and (5) on February 11, 2002, Jose's account was credited ₱1,200,000.00 and he issued a check also worth ₱1,200,000.00 payable to Triangle Ace Corporations on the same date.⁷⁶

Christina herself admitted that the amount of ₱8,244,645.27 from the Co Investment was transferred from its Forward Foreign Exchange Placement Accounts to Jeffrey's personal account.⁷⁷ Thereafter, Jeffrey transferred various amounts to various accounts including that of respondents. According to petitioner, these sequence of events prove that respondent Jose was aware of and even benefitted from the fraudulent funds credited to his account.

Respondent Jose denies this by claiming that as a businessman, he has transacted a total of ₱84,332,477.71 in his various personal and business accounts with petitioner bank.⁷⁸ Thus, withdrawals or transfers of amounts may have easily been prompted by reasons related to the nature of his job. He alleged that the mere fact that he had issued a check from one of his accounts is not proof of his involvement in his daughter's fraudulent schemes.⁷⁹

Conversely, petitioner highlights that before Jeffrey's transfer of ₱1,200,000.00 to Jose's account, it only contained ₱25,000.00. However, on the same day that Jeffrey transferred the ₱1,200,000.00 to Jose's account, Jose immediately issued a check for the same amount payable to Triangle Ace Corporation, as if he knew it would be funded on that day. Petitioner claims this clearly shows his complicity in Christina and Jeffrey's plans.⁸⁰

We are of the view that the evidence presented by petitioner is sufficient to maintain a claim against respondent Jose. The facts of the case would have been better weighed and decided based on a full-blown trial to allow the parties opportunity to defend their case and to fully thresh out the circumstances surrounding the case. Hence, the demurrer to evidence should not have been granted, at least with respect to respondent Jose.

In *Republic v. Spouses Gimenez*,⁸¹ this Court held that the Court must act with caution when granting a motion to dismiss through a demurrer to evidence.

⁷⁵ Id. at 3337.

⁷⁶ Id. at 3335.

⁷⁷ Id. at 50.

⁷⁸ Id. at 446.

⁷⁹ Id. at 495.

⁸⁰ Id. at 120-123.

⁸¹ 776 Phil. 233 (2016) [Per J. Leonen, Second Division].

The court cannot arbitrarily disregard evidence especially when resolving a demurrer to evidence which tests the sufficiency of the plaintiff's evidence.

The difference between the admissibility of evidence and the determination of its probative weight is canonical.

Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to [be] considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue. Thus, a letter may be offered in evidence and admitted as such but its evidentiary weight depends upon the observance of the rules on evidence. Accordingly, the author of the letter should be presented as witness to provide the other party to the litigation the opportunity to question him on the contents of the letter. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect. As earlier stated, hearsay evidence, whether objected to or not, has no probative value.

The Sandiganbayan should have considered *Atienza v. Board of Medicine, et al.* where this court held that it is better to admit and consider evidence for determination of its probative value than to outright reject it based on very rigid and technical grounds.⁸² (Citations omitted)

In *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistics Systems, Inc.*,⁸³ this Court held that a denial of a demurrer to evidence shifts the burden of proof to the defendant.

It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side. The RTC's denial of TDLSI's Demurrer to Evidence shows and proves that petitioner had indeed laid a *prima facie* case in support of its claim. Having been ruled that petitioner's claim is meritorious, the burden of proof, therefore, was shifted to TDLSI to controvert petitioner's *prima facie* case.

....

Section 1, Rule 133 of the Rules of Court mandates that in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. By preponderance of evidence, according to *Raymundo v. Lunaria*, [means] that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.⁸⁴ (Citations omitted)

⁸² Id. at 283–284.

⁸³ 805 Phil. 244 (2017) [Per J. Peralta, Second Division]

⁸⁴ Id. at 260–262.

Accordingly, if there was even the slightest doubt as to the participation of respondent Jose in the grand scheme of Christina, the trial court should have denied the demurrer to evidence. It would have been more prudent for the lower court to receive evidence to dispel any doubt than to dismiss the case on merits through a demurrer to evidence, only to have it reversed. The same, however, cannot be said for Angela. There is no such similar evidence presented against Angela and her use of the funds credited to her account. Moreover, there is no showing that she was aware of Christina's scheme. Accordingly, the grant of the demurrer of evidence as to Angela is affirmed.

III

The last part of Rule 33, Section 1 of the Rules of Court provides that “[i]f the motion [to dismiss] is granted but on appeal the order of dismissal is reversed [the movant] shall be deemed to have waived the right to present evidence.” The wisdom behind this rule was explained by Justice Teehankee in *Siyngco v. Costibolo*.⁸⁵

The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal (i.e. demur to the plaintiff's evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court *denies* the dismissal motion, i.e., finds that plaintiff's evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. Nothing is lost. This doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all preferred evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence with the possibility thereafter of still another appeal, with all the concomitant delays. The rule, however, imposes the condition by the same token that if his demurrer is *granted* by the trial court, and the order of dismissal is *reversed on appeal*, the movant loses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the insufficiency of plaintiff's case and evidence. In such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merit on the basis of plaintiff's evidence.⁸⁶ (Emphasis in the original)

Thus, in keeping with the spirit behind Rule 31, Section 1, and to avoid further congestion in the lower courts, this Court shall resolve the question of

⁸⁵ 136 Phil. 475 (1969) [Per J. Teehankee, En Banc].

⁸⁶ *Id.* at 488.

whether petitioner UnionBank is entitled to the relief it seeks from respondent Jose without remanding the issue to the trial court.


Petitioner is entitled to relief.

Respondent Jose cannot be absolved of liability. While he feigns ignorance of his daughter's schemes, the evidence suggests otherwise. As stated above, upon Jeffrey's transfer of ₱1,200,000.00 to respondent Jose's account, the latter immediately issued a check for the same amount in favor of one Triangle Ace Corporation.

It is highly unlikely that respondent Jose, who claims to be a businessman that has had multiple transactions with the bank, would not be aware of the balance in his bank accounts. Moreover, before the ₱1,200,000.00 was deposited into his account, he only had ₱25,000.00—a far cry from the amount he had written on his check. Surely, he would not have issued such a check if he had not known that it would be funded. In addition, if he had been made aware of an unidentified deposit in his bank account, he should have notified the bank and inquired as to its source rather than use it for his benefit. All told, respondent Jose must return the money that was fraudulently transferred into his account. Conversely, respondent Angela is absolved of any liability.


WHEREFORE, premises considered, the Petition for Review under Rule 45 of the Rules of Court dated January 3, 2019 is **PARTIALLY GRANTED**. The August 17, 2018 Decision and November 13, 2018 Resolution of the Court of Appeals, Manila in CA-G.R. SP No. 151834 affirming the March 1, 2017 Resolution and May 22, 2017 Order of the Regional Trial Court of Makati City, Branch 58 are **REVERSED** and **SET ASIDE AS TO RESPONDENT JOSE CO LEE**. Respondent Jose Co Lee is hereby **ORDERED** to return the amounts fraudulently transferred into his account.

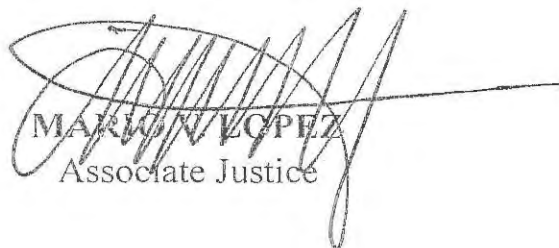
SO ORDERED.



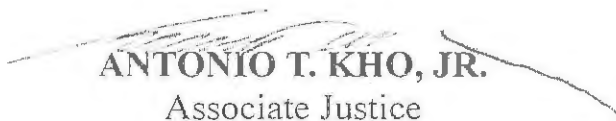
MARVIC M.V.F. LEONEN
Senior Associate Justice

WE CONCUR:


AMY C. LAZARO-JAVIER
Associate Justice


MARVIC LOPEZ
Associate Justice


JHOSEP LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

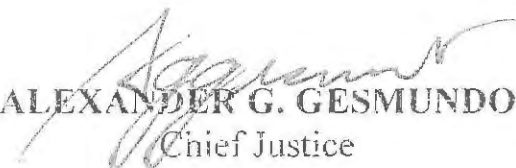
ATTESTATION

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.


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice