

**THIRD DIVISION**

Agenda of February 13, 2023

Item No. 105

**G.R. No. 257151 (Formerly UDK 16942) – Banco De Oro Universal Bank, Inc., Vivian Duldulao, and Christina Nakanishi v. Liza A. Seastres and Anabelle N. Benaje**

Promulgated: February 13, 2023

X-----~~MistDOFF~~-----X

**DISSENTING OPINION**

**GAERLAN, J.:**

I disagree with the conclusion of the *ponencia* that Liza A. Seastres (Seastres) was not guilty of contributory negligence.

I adhere to the settled doctrine that banks assume a degree of prudence and diligence higher than that of a good father of a family, because their business is imbued with public interest and is inherently fiduciary. Thus, banks have the obligation to treat the accounts of their clients meticulously and with the highest degree of care.<sup>1</sup>

As earlier settled, Banco De Oro Universal Bank (BDO), through its employees Vivian Duldulao (Duldulao) and Christina Nakanishi (Nakanishi) (collectively, petitioners), were negligent on account of their failure to properly handle Seastres' accounts. This is shown in the following established facts:

*First*, BDO failed to comply with its own rules and regulations regarding withdrawal through a representative. It allowed the withdrawals despite the fact that it was Benaje who made the same and without Seastres accomplishing the authority for withdrawal through a representative as indicated in the said forms.

*Second*, regarding the withdrawal slips bearing the signature of Seastres, and indicating therein that the same slips were duly accomplished by Seastres herself, BDO still processed the transaction even if it was her representative Benaje, and not Seastres, who presented the same.

*Third*, BDO allowed the encashment of the manager's checks despite the fact that the payee in the said checks is Seastres, but the person encashing the same is Benaje.<sup>2</sup>

<sup>1</sup> See *Oliver v. Philippine Savings Bank*, 783 Phil. 687, 704 (2016).

<sup>2</sup> *Rollo*, p. 100.

4

Seastres, however, was guilty of contributory negligence.

Contributory negligence is defined as the conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection.<sup>3</sup> It is an act or omission amounting to want of ordinary care on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury.<sup>4</sup>

Seastres entrusted all her banking transactions to Anabelle Benaje (Benaje). This is a fact. She gave full access to her accounts, gave Benaje her passbooks, and allowed her to transact with the banks on her behalf.<sup>5</sup> While the authorization submitted to petitioners shows limited power granted in favor of Benaje, *i.e.*, Benaje was only allowed to make deposits, account inquiry, pick up bank statements, print outs, checkbooks, and other documents pertinent to Seastres' accounts, the records of the case, however, show otherwise.<sup>6</sup> It is evident that it became an established practice between petitioners and Seastres that all transactions made by Benaje on behalf of Seastres were with Seastres' full consent and authority.<sup>7</sup>

This is proven by the established fact that way before Benaje committed the irregular withdrawals from Seastres' account and encashment of several manager's checks, Benaje had been representing Seastres in all transactions with petitioners. The respective Judicial Affidavits of Nakanishi, Fajardo, Duldulao, and Paglinawan are consistent, thus:

**Nakanishi**

Q22: You said that Liza (Plaintiff) has been your long time client, even when you are still with Equitable PCI Bank. How often did you see Liza at the bank when you were still with Equitable PCI Bank Rufino Branch?

A22: Very rarely, maybe once or twice during the entire time I was assigned to that Branch.

Q23: What about when you transferred to BDO Ayala Avenue - People Support Branch, how often did you see Liza transact?

A23: I do not remember seeing her there.

Q24: You previously stated that you have a close relationship with Liza but you also said that you seldom see her at Equitable PCI Bank and never saw her at BDO Ayala Avenue - People Support Branch, how did you establish a close relationship with Liza?

A24: Although I don't get to see Liza at the bank premises, I sometimes go to the office of her company, Las Management, where Liza is the President.

<sup>3</sup> *Dela Cruz v. Capt. Octaviano*, 814 Phil. 891, 910 (2017).

<sup>4</sup> *Phil. National Railways Corp. v. Vizcara*, 682 Phil. 343, 355 (2012).

<sup>5</sup> *Rollo*, p. 104.

<sup>6</sup> *Id.* at 103.

<sup>7</sup> *Id.* at 104.

Because of those visits, we developed a close relationship.

x x x x

Q26: You said that you do not remember seeing Liza make transaction with the bank, how does she make the transactions if she is not physically present in the bank?

A26: Liza always transacts through Ms. Annabelle N. Benaje (“Ann”).

### **Fajardo**

Q20: How did you know that she (Benaje) is the authorized and trusted representative of Plaintiff?

A20: When I started working at the Branch, I was acquainted with such fact the moment the account of Plaintiff was introduced to me. It was always Ms. Benaje who transacted on behalf of Plaintiff. Plaintiff herself confirmed that she trusted defendant Annabelle N. Benaje when I and other BDO employees helped her reconcile her accounts later, pursuant to her request, when Plaintiff allegedly discovered the subject transactions that she disputes in this case.

Q21: How often did defendant Annabelle N. Benaje transact on behalf of Plaintiff?

A21: All the time. As far as I remember, before Plaintiff questioned the alleged unauthorized transactions, all transaction relating to Plaintiff's accounts were made by Ms. Benaje on her behalf.

### **Duldulao**

Q26: How did you know that Ms. Benaje is a very close and trusted friend of Plaintiff?

A26: When I star[t]ed working at the Branch, Plaintiff was already a valued client. I was introduced to Ms. Benaje who, I was advised and, as I later saw, almost always transacted on behalf of Plaintiff.

Q27: Why else do you know that Benaje is a very close and trusted friend of Plaintiff?

A27: Later, when I was finally introduced to Plaintiff, she confirmed this. Also, when the alleged disputed withdrawals were discovered, and I and other BDO employees helped Plaintiff reconcile her accounts pursuant to her request, Plaintiff again mentioned that she had trusted Ms. Benaje.

### **Paglinawan**

Q28: You also said that Ms. Benaje is the authorized representative of Plaintiff for both her personal and company accounts, how did you know this?

A28: As I have mentioned earlier, Ms. Benaje has been the one transacting on behalf of Plaintiff. In fact, prior to the disputed transactions, I never saw Ms. Seastres transact with the bank directly. It was always Ms. Benaje who transacted on Plaintiff's behalf, not only with respect to her personal accounts, but also with respect to the bank accounts of her company Las Management, and her joint accounts with other persons.<sup>8</sup>

---

<sup>8</sup> Id. at 125-127.

During cross-examination, Nakanishi further testified that it has been the practice of Benaje to transact with petitioners on behalf of Seastres for the past 12 years, to wit:

Q: Why then did the bank allow the representative, Annabelle Benaje, process this withdrawal slips despite the fact that the space for authorization was not filled-up?

A: It has been the practice of Anabelle [Benaje] and Liza Seastres to do such transaction for the past twelve years when they were banking with Equitable PCI Bank because I was also a branch head of Rufino Ayala.

x x x x

Q: And, however, in this case, for the disputed manager's checks, although plaintiff is the payee of these checks, the bank allowed Anabelle Benaje to encash them?

A: Yes, Ma'am.

Q: Why did the bank allowed the encashment of these checks by Anabelle Benaje?

A: As I have said, in accordance being stated in my Judicial Affidavit, it was really the practice of Annabelle Benaje and Liza Seastres because she has been a trusted person of Liza Seastres.<sup>9</sup>

Furthermore, Benaje's full authority to represent Seastres was in full display whenever BDO's tellers and branch officers made confirmatory calls to Seastres' office regarding transactions involving a large amount of money. In all these instances, the calls were always referred to Benaje for the latter to make the confirmation.<sup>10</sup> Likewise, when the bank employees tried to get confirmation from Seastres after withdrawals had been processed, even Seastres' employees would always forward the call to Benaje for confirmation.<sup>11</sup>

Clearly, Benaje's actual authority and power to transact with petitioners on behalf of Seastres is more than what the authorization submitted to petitioners grants her.

While petitioners should not have allowed this kind of practice, it could have been prevented had Seastres been more hands-on with her finances. Not that she should herself do all these banking transactions, but she should have, at the very least, made sure that Benaje acted within the authority granted her from the very start. By allowing her to go beyond the authority granted her, Seastres has given Benaje full authority over all her bank accounts. It is, therefore, beyond cavil that Seastres failed to observe caution in giving Benaje full trust which led her to be swindled.

---

<sup>9</sup> Id. at 738-739.

<sup>10</sup> Id. at 30.

<sup>11</sup> Id. at 104.

Moreover, as found by the CA, Seastres regularly receives her bank statements. Had she only checked the statements, she could have easily discovered Benaje's unauthorized transactions and prevented her from further making unauthorized transactions and robbing her of her hard-earned money. This, however, was not the case herein. She failed to check her bank statements and it was only when Ms. Nella Zablan called Seastres' attention regarding suspicious transactions on her account that she investigated and made the necessary vigilance to protect her finances. Again, this only shows that she gave Benaje her full trust and confidence to such an extent that she no longer finds it necessary to check and review her bank statements.

It bears stressing at this point that even Seastres admitted giving Benaje her full trust and confidence. In her Complaint-Affidavit filed against Benaje for Falsification of Commercial Document, Seastres admitted:

5. As the COO of the firm, the Respondent (Benaje) enjoys my trust and confidence to the point that she could enter my office freely, she can gain access with the Firm's financial records and is privy to the Firm's account and my personal accounts in the bank;<sup>12</sup>

Seastres' actions and/or omissions prior to and immediately before the discovery of the irregularities clearly show want of ordinary care which, concurring with the petitioners' negligence, is the proximate cause of the damages she incurred. She failed to exercise due diligence to protect her very own welfare. This is the very definition of contributory negligence. Verily, if only Seastres had exercised due diligence which is required of her, this could not have happened. If she did not give full trust and confidence to Benaje, this could have been prevented. Needless to state, Seastres' credulousness is also blameworthy.

It is worth noting of the Court's pronouncement in the case of *Philippine National Bank v. Spouses Cheah*<sup>13</sup> which, though not on all fours with the case, may be applied analogously herein. In that case, the Court ruled that while Philippine National Bank's act of releasing the proceeds of the check prior to the lapse of the 15-day clearing period was the proximate cause of the loss, it found Spouses Cheah guilty of contributory negligence after they gave their full trust in accommodating a complete stranger, which led them to be swindled.<sup>14</sup>

The CA is, therefore, correct when it ruled that Seastres must shoulder 40% of the actual damages, and petitioners must pay the remaining 60%. This is pursuant to the ruling in a series of cases<sup>15</sup> where the 60-40 ratio was adopted.

---

<sup>12</sup> Id. at 1092.

<sup>13</sup> 686 Phil. 760 (2012).

<sup>14</sup> Id. at 770-774.

<sup>15</sup> *Central Bank of the Philippines v. Citytrust Banking Corporation*, 597 Phil. 609 (2009); *Bank of America NT and SA v. Philippine Racing Club*, 611 Phil. 687 (2009); *The Consolidated Bank and Trust Corporation v. Court of Appeals*, 457 Phil. 688 (2003); *Philippine Bank of Commerce, now absorbed*

I further disagree with the *ponencia* that BDO is liable to Seastres in the full amount of ₱7,421,939.59.<sup>16</sup>

In the *ponencia*, it is pointed out that Seastres' failure to prove the forgery of her signatures on the subject withdrawal slips and manager's checks is irrelevant to the negligence of BDO in fulfilling its obligations to Seastres as its depositor.<sup>17</sup> Otherwise stated, even assuming that the signatures of Seastres appearing on the subject withdrawal slips and manager's checks were genuine, these documents could still not have been used by Benaje to withdraw the amounts indicated therein without written authorization from Seastres because to allow Benaje to do such withdrawals was against the policies of the bank. This, however, is only true if Seastres was not guilty of contributory negligence.

Needless to state, the *ponencia* is premised on the notion that only petitioners are grossly negligent; and that Seastres was not guilty of contributory negligence.<sup>18</sup> However, as I have above discussed, though petitioners were negligent in their dealing with Seastres' bank accounts, Seastres was also guilty of contributory negligence after she gave her full trust and confidence to Benaje, which proved to be prejudicial to her. Thus, there is a need to prove the alleged forgery committed by Benaje. Otherwise, it cannot be said that these transactions were unauthorized and that Seastres was prejudiced by these transactions.

In the instant case, to prove that the transactions were unauthorized, hence, illegal, Seastres sought the expertise of Jennifer B. Dominguez (Dominguez), a National Bureau of Investigation document examiner. She examined the alleged signatures of Seastres on several withdrawal slips. After which, Dominguez concluded that these signatures were all just facsimile signature stamps, hence, not genuine. Her findings were contained in two document reports: (i) Questioned Document Report No. 392-811(A),<sup>19</sup> and (ii) Questioned Document Report No. 392-811(B).<sup>20</sup> Based on Dominguez's Judicial Affidavit<sup>21</sup> and these document reports, the Regional Trial Court (RTC) and the CA found that Seastres' signatures on the withdrawal slips and the dorsal portion of the manager's checks were all forged; hence, Seastres did not authorize the transactions.

However, the records reveal that not all of the withdrawal slips, and not even one of the manager's checks were actually evaluated by Dominguez for possible forgery.

---

by *Philippine Commercial International Bank v. Court of Appeals*, 336 Phil. 667 (1997).

<sup>16</sup> *Ponencia*, p. 14.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> *Id.* at 13.

<sup>19</sup> *Rollo*, pp. 628-629.

<sup>20</sup> *Id.* at 634-635.

<sup>21</sup> *Id.* at 560-577.

Of the 10 withdrawal slips offered as evidence, only seven were examined by Dominguez. Based on her reports,<sup>22</sup> she examined:

Banco de Oro Withdrawal slip dated July 11, 2008	₱ 437,200.00
Banco de Oro Withdrawal slip dated July 16, 2008	₱ 282,000.00
Banco de Oro Withdrawal slip dated September 18, 2008	₱ 180,000.00
Banco de Oro Withdrawal slip dated September 9, 2008	₱ 345,000.00
Banco de Oro Withdrawal slip dated August 29, 2008	₱ 381,000.00
Banco de Oro Withdrawal slip dated July 24, 2008	₱ 503,000.00
Banco de Oro Withdrawal slip dated September 12, 2008	₱ 222,600.00

Dominguez, however, failed to examine these withdrawal slips:

Banco de Oro Withdrawal slip dated August 1, 2008	₱ 128,000.00
Banco de Oro Withdrawal slip dated May 9, 2008	₱ 130,000.00
Banco de Oro Withdrawal slip dated May 2, 2008	₱ 300,000.00 <sup>23</sup>

Moreover, the signatures on the dorsal portion of the manager's checks which Benaje were able to encash were not subjected to scrutiny. These manager's checks and their corresponding amounts are as follows:

Manager's Check No. 0001466 dated May 23, 2008	₱ 2,500,000.00
Manager's Check No. 0001549 dated June 23, 2008	₱ 508,072.92
Manager's Check No. 0001346 dated April 8, 2008	₱ 1,505,066.67

The total amount corresponding to these unexamined withdrawal slips and manager's checks is ₱5,071,139.59 (₱558,000.00-withdrawal slips PLUS ₱4,513,139.59-manager's checks). This amount should be deducted from the total amount awarded by the RTC, as modified by the CA, because without Dominguez's examination and assessment of Seastres' alleged signatures thereon, there is no credible evidence that her signatures were indeed forged.

Settled is the rule that forgery cannot be presumed, and must be proved by clear, positive and convincing evidence. The burden of proof lies on the

<sup>22</sup> Id. at 628-629; 634-635.

<sup>23</sup> Id. at 26.

party alleging forgery.<sup>24</sup> Accordingly, it was incumbent upon Seastres to prove the fact of forgery.

As discussed above, however, except for the signatures appearing on the seven withdrawal slips which were proven by an expert witness to be a mere forgery, Seastres failed to prove that her signatures on the manager's checks and the three remaining withdrawal slips were forged. Seastres' testimony that her signatures appearing on these unexamined withdrawal slips and manager's checks were forged, standing alone, is not credible. Worse, no other witnesses, expert or not, testified on her allegation of forgery. Without any clear and convincing proof, this allegation remains as such, a mere allegation that is bare and self-serving. It bears stressing that mere allegations are not legally compelling unless proved.<sup>25</sup>

In addition, Seastres failed to make even a bare denial of the genuineness of her signatures appearing on the Investment Management Account (IMA) forms and application forms for the issuance of managers' checks.

Petitioners offered as evidence IMA Forms<sup>26</sup> and application forms<sup>27</sup> for the issuance of manager's checks signed by Seastres (signing in her maiden name - Liza Aguilar). The IMA forms were offered as evidence to prove that Seastres consented to the transaction and duly authorized the same.<sup>28</sup> Meanwhile, the application forms for the issuance of manager's checks were offered as evidence to prove that Seastres acknowledged the receipt of the proceeds of the IMA Form and consented to the transaction, and duly authorized the same.<sup>29</sup>

By her failure to deny and refute the genuineness of her signatures appearing thereon, she impliedly admitted that she executed these forms, authorized these transactions, and received the proceeds thereof. This further bolsters her non-entitlement to the recovery of the amounts covered by these manager's checks.

It is important to note that her averment that her signatures on these documents were forged, standing alone, lacks credibility considering that Seastres even admitted during her meeting with the officers and personnel of the bank after the discovery of the alleged unauthorized transaction, that she could not identify with certainty which of these transactions were indeed unauthorized.<sup>30</sup> Moreover, after the investigation conducted by BDO, it was concluded that the signatures on the questioned documents were genuine.<sup>31</sup>

---

<sup>24</sup> *Spouses Yabut v. Nachbaur*, G.R. No. 243470, January 12, 2021.

<sup>25</sup> *Pacific Royal Basic Foods, Inc. v. Noche*, G.R. No. 202392, October 4, 2021.

<sup>26</sup> *Rollo*, pp. 996-997.

<sup>27</sup> *Id.* at 993-995.

<sup>28</sup> *Id.* at 969-970.

<sup>29</sup> *Id.* at 968-969.

<sup>30</sup> *Id.* at 1062.

<sup>31</sup> *Id.*



Furthermore, the need to prove forgery on the questioned withdrawal slips and checks arises on account of the dismissal of the criminal complaint for qualified theft and falsification of commercial documents against Benaje due to lack of probable cause as the signatures thereon appeared to be genuine.<sup>32</sup>

It bears stressing that if her signatures were indeed forged, Seastres could have easily proven them as fake as what she had done in the other withdrawal slips and manager's checks where her signatures appeared.

Corollarily, if I were to adhere to the *ponencia*, then how can the Court know if the transactions made by Benaje, allegedly on behalf of Seastres, were indeed unauthorized if her signatures appearing on the questioned withdrawal slips and checks were not proven to be mere forgeries? How can the Court know if Seastres was indeed prejudiced by these transactions? Otherwise stated, since there is no evidence to prove that Seastres' signatures thereon were forged, the Court cannot say, for sure, that the transactions involving these withdrawal slips and manager's checks were without her consent and authority and that she was prejudiced by these transactions.

I, therefore, conclude that the amount of actual damages to be awarded to Seastres needs to be modified. From the total amount of ₱7,421,939.59 awarded by the CA, the amount of ₱5,071,139.59, corresponding to the total amount of the unexamined withdrawal slips and manager's checks, should be deducted on account of Seastres' failure to prove that her signatures thereon appearing were not genuine. Accordingly, Seastres is entitled to actual damages in the amount of ₱2,350,800.00. Of the said amount, petitioners should pay 60% or the amount of ₱1,410,480.00. On the other hand, Seastres, on account of her contributory negligence, should shoulder the remaining 40% or ₱940,320.00.

From the foregoing, I vote to **PARTIALLY GRANT** the instant Petition for Review on *Certiorari*.

  
**SAMUEL H. GAERLAN**  
Associate Justice

---

<sup>32</sup> Id. at 1127-1128.