



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
DEC 07 2015

THIRD DIVISION

MODESTO W. RIVERA,
Petitioner,

G.R. No. 196597

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, JJ.

**ALLIED BANKING
CORPORATION, CORA D.
CORPUS and ANTONIO H.
SANTOS,**

Promulgated:
October 21, 2015

Respondents.

x-----

Wilfredo V. Lapitan x

DECISION

VILLARAMA, JR., J.:

Assailed in this petition for review on certiorari under Rule 45 are the Decision¹ dated December 28, 2010 and Resolution² dated April 6, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 115008. The CA affirmed the Decision³ dated October 23, 2009 as modified by Resolution⁴ dated April 20, 2010 of the National Labor Relations Commission (NLRC), Seventh Division, which reversed the Labor Arbiter's Decision⁵ dated June 30, 2008 declaring petitioner's dismissal as illegal.

Factual Antecedents

Petitioner Modesto W. Rivera started working for respondent Allied Banking Corporation ("Bank") on March 1, 1995 as a junior officer (Accountant). He rose to the position of Branch Head (with rank of

¹ *Rollo*, pp. 62-78. Penned by Associate Justice Ramon R. Garcia with Associate Justices Rosmari D. Carandang and Manuel M. Barrios concurring.

² *Id.* at 80-81.

³ *Id.* at 303-319. Penned by Presiding Commissioner Herminio V. Suelo with Commissioners Angelo Ang Palana and Numeriano D. Villena concurring.

⁴ *Id.* at 349-353.

⁵ *Id.* at 150-169.

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Assistant Manager) assigned at the Bank's branch in La Trinidad, Benguet in June 2006.

On July 23, 2007, petitioner received an Inter-Office Communication⁶ (IOC) from respondent Antonio H. Santos, the Bank's Vice-President, directing him to explain in writing within 48 hours why no disciplinary action should be taken against him for misconduct, dishonesty, fraud or willful breach of the trust reposed on him by the Bank. A bank client, Ms. Nene Sta. Cruz,⁷ had sought an audience with the Bank's Legal Department complaining that she had entrusted big sums of money to petitioner for rediscounting of foreign currency checks which were then deposited into her savings accounts, with the supposed payees as co-depositors. Most of these checks were returned and her total uncollected deposits amounted to US\$71,146.00.

In his letter-reply⁸ dated July 31, 2007, petitioner denied having enticed Ms. Sta. Cruz who was already engaged in rediscounting transactions long before she opened an account at his branch. He explained that the arrangement with Ms. Sta. Cruz regarding the opening of joint accounts for her foreign currency check deposits was merely an accommodation service to a bank client, which was done in good faith and in accordance with the Bank's policies.

On August 2, 2007, petitioner received another IOC⁹ from the Retail Banking Group (RBG) which was already investigating the allegations of Ms. Sta. Cruz. This time, it was about a letter-complaint sent to the Bank's Legal Department by the law office of Magno & Associates in behalf of their client, Milagros Ocampo Vda. de Palalay. The letter stated that Globe Life and Accident Insurance Co. of Oklahoma City, U.S.A. had issued checks representing life insurance benefits to the heirs of Hector Palalay. It turned out that one of these checks in the amount of US\$4,307.42 payable to Alexa Palalay was deposited by a certain "Nena Soriano Sta. Cruz" with the Bank on July 31, 2007. The Bank's crediting of this check was fraudulent because Alexa Palalay could not have signed the check as she was then barely two years old. Again, petitioner was directed to submit his written explanation as to why he should not be subjected to disciplinary action for his violation of the Bank's policy against accepting for deposit or encashment second-endorsed US Dollar-denominated currency checks.

In his letter-reply,¹⁰ petitioner admitted that the negotiated check of Alexa Palalay was among those second-endorsed checks from Ms. Sta. Cruz who was engaged in the rediscounting business. He explained that before accepting such checks from Ms. Sta. Cruz, he made a background check on

⁶ Records (Vol. 1), pp. 45-46.

⁷ Also referred to as "Nena D. Sta. Cruz" and "Nena Del Rosario Sta. Cruz" in some parts of the records.

⁸ Records (Vol. 1), pp. 47-48.

⁹ Id. at 52.

¹⁰ Id. at 56-57.

her businesses and based on data gathered he allowed her to open accounts in his branch for marketing considerations. Having already informed Ms. Sta. Cruz regarding the returned check, petitioner said the branch is awaiting her action on the matter.

After the conclusion of the investigation, petitioner was immediately terminated under IOC¹¹ dated October 3, 2007 from the Bank's Senior Vice-President, respondent Cora D. Corpus. The said memo stated in part:

This is in relation to your acceptance of second endorsed/illegitimate foreign currency (FxCy) checks during your tenure as Branch Head of ABC[,] La Trinidad.

In the preliminary examination conducted, it was determined that -

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01. From 15 November 2006 to 17 June 2007[,] you accepted/approved for outright credit Ninety-Three (93) second endorsed/illegitimate foreign currency checks aggregating Two Hundred Fifty two Thousand One Hundred Ninety US Dollars and 79/100 (US\$252,190.79).
02. Eighty-six (86) of said checks aggregating Two Hundred Twenty Six Thousand Seven Hundred Fifty US Dollars and 25/100 (US\$226,750.25) were credited outright to nine (9) FxCy saving[s] accounts while seven (7) aggregating Twenty-five Thousand Four Hundred Forty US Dollars and 54/100 (US\$25,440.54) were accepted for collection and subsequently credited upon expiry of the holding period.
03. As of 01 October 2007, thirty-four (34) of said checks aggregating One Hundred Fifty Eight Thousand Five Hundred Thirty Three US Dollars and 70/100 (US\$158,533.70) were returned by the respective foreign drawee banks/financial services for reasons such as forged/unauthorized endorsements.
04. The proceeds of fifty-nine (59) FxCy checks aggregating Ninety Three Thousand Six Hundred Fifty Seven US Dollars and 09/100 (US\$93,657.09) previously credited to nine (9) FxCy Saving Accounts were allowed to be withdrawn by Ms. Nena Sta. Cruz or representatives including **you**.
05. These transactions, as of 01 October 2007, exposed the Bank to losses in the amount of Ninety Six Thousand Nine Hundred Thirty Four US Dollars and 85/100 (US\$96,934.85).¹²

The IOC declared that petitioner's acts constitute non-compliance with the Bank's policies and rules, which likewise breached the trust and confidence reposed on him by the Bank. Petitioner was also informed of the forfeiture of all benefits that may be due him on account of his termination for just cause.

¹¹ Id. at 64-67.

¹² Id. at 64-65.

On December 13, 2007, petitioner filed a Complaint¹³ for illegal dismissal with prayer for reinstatement and payment of backwages, his share in Profit-Sharing, damages and attorney's fees. In addition, he sought the return of his personal contributions to the Employment Investment Savings Plan amounting to at least ₱335,200.00 and to the Mutual Savings Plan in the sum of ₱42,000.00, as well as payment of his combined accumulated vacation and sick leaves (175 days), totaling about ₱425,000.00.

Petitioner claimed his termination was illegal because he was never informed of its true reasons despite making repeated requests to be furnished a copy of the Bank's audit findings. He surmised that respondents already decided to dismiss him as of June 26, 2007 when the Bank's management met with Ms. Sta. Cruz and, relying completely on her complaint, considered him guilty of committing irregularities in his branch. Even assuming he was indeed guilty, petitioner believes the penalty of warning for the first offense and not dismissal should have been imposed, as provided in the Bank's Employee Discipline Policies and Procedures (EDPP).¹⁴

Respondents countered that petitioner's acceptance of second-endorsed foreign currency checks was not an isolated transaction but repeated infractions throughout his tenure as Branch Head. They claimed that the most damning evidence against petitioner was his own admission that he received commissions in exchange for acceptance of the second-endorsed foreign currency checks from Ms. Sta. Cruz.¹⁵

In his comment/reply, petitioner denied having made such admission during the investigation conducted by the Bank. He suggested that the Bank instead should file appropriate actions against Ms. Sta. Cruz who is trying to mislead the Bank for the losses she incurred from her illegal rediscounting business.¹⁶

In his Decision dated June 30, 2008, Labor Arbiter Monroe C. Tabingan ruled in favor of petitioner and awarded him the following reliefs:

WHEREFORE, all premises duly considered, finding the complainant to have been illegally dismissed, the respondents, jointly and severally, are hereby ordered to pay to the complainant the following:

1. His separation pay in a sum equivalent to one-month pay for every year of service, currently computed at **PhP686,042.50** with legal interest thereon until fully paid;

P50,000.00 x 13 years	=	P656,500.00	
Add: Interest P656,500 x	=		
6% x 9/12		<u>29,542.50</u> <u>P686,042.50</u>

¹³ Id. at 2-4.

¹⁴ Complainant's Position Paper, id. at 30-31.

¹⁵ Respondents' Position Paper, id. at 104-110.

¹⁶ Id. at 61-63, 157-164.

- 2. His backwages from the time of his dismissal to the finality of this decision, currently computed at **PhP514,531.85** with legal interest thereon until fully paid;

P50,000.00 x 9 months	=	P454,500.00	
13 th MP: 454,500.00/12	=	37,875.00	
Add: Interest P492,375.00			
x 6% x 9/12	=	<u>22,156.85</u> <u>P514,531.85</u>

- 13. His contributions to the Employment Investment Savings Plan in the amount of PhP335,000.00 with legal interest thereon until fully paid now computed at P335,000.00 x 12% x 9/12) P30,150.00 or a total of **P365,150.00**
- 4. His personal contributions in the Mutual Savings Plan, in the amount of PhP42,000.00 with the corresponding earned interest until fully paid (P42,000.00 x 12% x 9/12) = 3,780.00 or a total of **P 45,780.00;**
- 5. The cash value of his accumulated vacation and sick leave benefits must also be given, in the amount of..... **PhP425,000.00;**
- 6. An exemplary damage of **PhP200,000.00;**
- 7. Moral damages in the amount of **PhP200,000.00;**
- 8. Attorney’s fee equivalent to not more than ten (10%) per centum of the total monetary awards (**P2,036,504.35** x 10%) amounting to **P203,650.45.**

All other claims are dismissed for lack of merit.

SO ORDERED.¹⁷

Respondents appealed to the NLRC, which reversed the Labor Arbiter’s ruling, as follows:

WHEREFORE, premises considered, the appealed Decision is hereby **REVERSED** and **SET ASIDE** but ordering respondent Allied Banking Corporation to pay the complainant the following amounts:

- 1. P425,000.00 representing accumulated vacation and sick leave credits;
- 2. P365,150.00 representing refund of contributions to the Employment Investment Savings Plan with legal interest; and
- 3. P45,780.00 representing refund of contributions to the Manual [*sic*] savings Plan plus earned interest.

SO ORDERED.¹⁸

¹⁷ *Rollo*, p. 169.

¹⁸ *Id.* at 318.

Petitioner moved to reconsider the above decision while respondents filed a motion for partial reconsideration.

The NLRC issued a Resolution modifying its Decision, as follows:

WHEREFORE, premises considered, the assailed Decision rendered by this Commission dated October 23, 2009 is hereby **MODIFIED** deleting the award of Php425,000.00 representing complainant's accumulated vacation and sick leave credits.

The rest of the award stays **AFFIRMED**.

SO ORDERED.¹⁹

Petitioner filed a petition for certiorari in the CA alleging grave abuse of discretion on the part of the NLRC in completely overlooking what he asserted as obvious illegal dismissal.

By Decision dated December 28, 2010, the CA sustained the ruling of the NLRC. The CA held that the requirement that there be some basis or reasonable ground to believe that petitioner was responsible for the breach of the Bank's standard operating procedure was satisfied in this case. Petitioner's motion for reconsideration was likewise denied by the CA.

Hence, this petition reiterating the lack of a valid ground for petitioner's termination because respondents failed to fully apprise him of the complaint against him and the findings in the audit report which was disclosed to him only during the investigation.

Issue

The sole issue to be resolved is whether the respondents validly dismissed petitioner.

Ruling

The petition has no merit.

Article 282 of the Labor Code, as amended, provides:

ART. 282. Termination by employer. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

¹⁹ Id. at 352.

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

Under Article 282(c) of the Labor Code, as amended, an employer may dismiss the employee either for (1) fraud; or (2) willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.

Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence.²⁰ More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination. Loss of confidence as a just cause for dismissal is premised on the fact that an employee concerned holds a position of trust and confidence.²¹

While it is true that loss of trust and confidence is one of the just causes for termination, such loss of trust and confidence must, however, have some basis. Proof beyond reasonable doubt is not required. It is sufficient that there must only be some basis for such loss of confidence or that there is reasonable ground to believe, if not to entertain, the moral conviction that the concerned employee is responsible for the misconduct and that the nature of his participation therein rendered him absolutely unworthy of trust and confidence demanded by his position.²² Loss of trust and confidence, to be a valid cause for dismissal, must be based on a willful breach of trust and founded on clearly established facts.²³

There is no question that petitioner's position as Branch Head requires a high degree of trust and confidence. Given the sensitive functions of his office, he is thus expected to strictly observe and comply with the Bank's standard operating procedures.

Contrary to petitioner's asseveration, respondents did not just rely on the allegations of Ms. Sta. Cruz, whose complaint merely triggered the full investigation conducted by the Bank on the return of several foreign currency checks. Subsequently, the audit on petitioner's branch revealed that several US Dollar denominated currency checks were returned due to

²⁰ *House of Sara Lee v. Rey*, 532 Phil. 121, 138 (2006), citing *Etcuban, Jr. v. Sulpicio Lines, Inc.*, 489 Phil. 483, 496 (2005), further citing *Caoile v. National Labor Relations Commission*, 359 Phil. 399, 405 (1998).

²¹ *Id.*, citing *Etcuban, Jr. v. Sulpicio Lines, Inc.*, *id.*, further citing *Kwikway Engineering Works v. National Labor Relations Commission*, G.R. No. 85014, March 22, 1991, 195 SCRA 526, 529, *Lamsan Trading, Inc. v. Leogardo, Jr.*, 228 Phil. 542, 547 (1986); *New Frontier Mines, Inc. v. National Labor Relations Commission*, 214 Phil. 443 (1984); *Associated Citizens Bank v. Ople*, No. L-48896, February 24, 1981, 103 SCRA 130.

²² *Jerusalem v. Keppel Monte Bank*, 662 Phil. 676, 685-686 (2011), citing *Central Pangasinan Electric Cooperative, Inc. v. Macaraeg*, 443 Phil. 866, 874-875 (2003).

²³ *Abel v. Philex Mining Corporation*, 612 Phil. 203, 216 (2009).

forged or unauthorized endorsements. The practice of accepting for deposit *second-endorsed* US Dollar denominated checks is strictly prohibited under the Bank's established policies, and may be allowed only in certain exceptional cases.

The Bank's Operations Memorandum (OM) No. 81-071 dated August 31, 1981 prescribed the procedures for foreign checks purchased outright, to wit:

1. The checks maybe purchased outright only from clients with established credit facility for the purpose.
2. The authenticity of the check purchased shall always be established and if possible issuance of the same shall be confirmed from the drawer.²⁴

Furthermore, the Bank's OM No. 03-367 dated October 8, 2003 provided explicit guidelines regarding second-endorsed US Dollar currency denominated checks, as follows:

As a matter of policy, acceptance of second-endorsed US Dollar currency denominated checks either for deposit to a foreign currency deposit account, payment of US Dollar denominated loans or credit cards, or presented for encashment over-the-counter is NOT ALLOWED, more so multiple endorsed checks. However, due to marketing and customer relation conditions, **second-endorsed US Dollar checks may be accepted at the discretion of the Branch Head (BH)/Officer-in-Charge (OIC) who shall be personally accountable/responsible therefore.** In this connection, the following shall be observed:

1. Second-endorsed US Dollar checks shall be accepted ONLY from selected valued/Triple A Depositor/Client well known to the bank and whose financial/credit standing warrant/ensure reimbursement in case of claim from legitimate Payee.

X X X X

US Bank[s] are now very strict in accepting second-endorsed US Dollar checks either for deposit or thru clearing because of the Anti-Money Laundering Law. In view of this, all concerned shall ensure that the above-mentioned guidelines/procedures are strictly enforced to avoid/prevent losses to the Bank. **Losses incurred due to non-compliance shall be charged to the erring Officer/Personnel.**²⁵ (Emphasis supplied)

The Bank's investigation on the transactions involving foreign currency checks during petitioner's tenure as Branch Head disclosed that petitioner deliberately disregarded the foregoing rules when he accepted for deposit several US Dollar denominated checks from Ms. Sta. Cruz. Based on the information gathered by the Bank's investigating committee, the following facts are established:

²⁴ *Rollo*, p. 410.

²⁵ *Id.*

1. *Check payable to Mr. Fisher*

Imelda Sta. Cruz, daughter of Nena Sta. Cruz, opened a joint savings account together with a certain “Mr. Fisher” as co-depositor. A check in the amount of US\$9,012.53 payable to Michael Fisher which was deposited under the account name “Imelda D. Sta. Cruz &/or Michael Fisher” with S/A No. 1122-00147-6 on February 28, 2007, was already cleared 45 days after. However, the check was tagged on hold because a male person called the branch office and told petitioner he is the real “Mr. Fisher” and requested to freeze the check deposited to the aforesaid account since it was the insurance claim of his deceased father.

Regarding this incident, petitioner relayed to the RBG on March 20, 2007 that he had advised Imelda Sta. Cruz to check or confirm who was really with her when she opened S/A No. 1122-00147-6. This real “Mr. Fisher” supposedly visited the main office of the Bank and presented his identification credentials.

Nena Sta. Cruz told the Bank’s Legal Department that it was petitioner himself, as with other similar instances, who introduced to her “Mr. Fisher” and enticed her to rediscount the check and then open a joint account under her daughter’s name (Imelda) and “Mr. Fisher.” Petitioner sent a letter dated June 12, 2007 to Imelda informing her that the check of “Mr. Fisher” was cleared but was tagged on hold upon request of another male person claiming to be the real “Mr. Fisher.” The last paragraph of said letter states:

The amount of US\$ 9,012.53 in your account is still intact and only to release such amount if his credentials and identification cards are completed and submitted by this person claiming as the real Mr. Fisher. As of today, Mr. Fisher have not shown up nor submitted his complete credentials for his claim. As I am informed, Mr. Fisher had filed a stop payment of his alleged lost check.

Nena Sta. Cruz went to the Head Office (HO) primarily to confirm if the real Mr. Fisher indeed came to the HO.²⁶

2. *Check payable to Ms. Riza Silva*

A check in the amount of US\$ 404.90 payable to “Ms. Riza Silva” was deposited in Nena Sta. Cruz’ account SAFX 1122-00135-2 on February 19, 2007. The real

²⁶ Records (Vol. 1), pp. 45-49, 51.

owner, Ms. Riza Silva went to the HO bringing with her a copy of the letter she sent to petitioner on May 16, 2007 stating that another person forged the said check payable to her. She also presented sufficient documents to prove her ownership of the check.

Nena Sta. Cruz discussed this case of Ms. Riza Silva with the Legal Department, claiming that it was also petitioner who introduced to her another woman as “Ms. Riza Silva.”

Petitioner was instructed to debit the amount of the check to the client’s account on May 18, 2007 and temporarily lodged to Accounts payable. In his incident report dated May 21, 2007, he told the RBG it was Ms. Riza Silva who personally came to the branch regarding the forged check and he accordingly advised her how to reclaim her check.²⁷

3. *Check deposited under the passbook of Depositors Salome Obana &/or Rafael Ungson*

Nena Sta. Cruz accepted as collateral a passbook under the name “Salome Obana &/or Rafael Ungson” in which was deposited the check for US\$ 50,307.60 she had rediscounted. For several times, she had tried to withdraw from the said account but the check was returned as it was dishonored for reason of “forged or unauthorized endorsement.”

Petitioner denied the accusation of Ms. Sta. Cruz that he was in complicity with Obana and Ungson after she discovered that there were withdrawals made from their account, explaining to her it was not possible for him to make those withdrawals.²⁸

In March 2008, Nena Sta. Cruz instituted a criminal complaint for Estafa against petitioner, Obana, et al. (I.S. No. 088-01-2008). On March 26, 2008, Criminal Case No. 08-CR-7252 was filed by the Provincial Prosecutor in the Regional Trial Court of La Trinidad, Benguet, Branch 62 (People of the Philippines vs. Modesto Rivera, Salome Obana, Janet Cenizal a.k.a. Janet De Jesus/Corazon David/Liberty Scott/Editha Rivera). The checks of Fisher and Silva were among the 27 checks subject of the criminal case. Before the Office of the Provincial Prosecutor, Sta. Cruz detailed the check rediscounting transactions whereby petitioner offered her US Dollar denominated checks which she paid after the supposed payees were introduced to her and they deposited the check

²⁷ Id. at 46, 50.

²⁸ Id. at 46, 48.

to a joint account they made her open at petitioner's branch and because of the latter's position she became confident that she could indeed withdraw the amounts of the check. Because of the incident involving Mr. Fisher when she discovered withdrawals were made by Obana from their joint account despite the passbook and pre-signed withdrawal slips that were in her possession, she was alarmed and complained directly to the Bank's Legal Department. Warrants of arrest have already been issued by the RTC of La Trinidad, Benguet against petitioner, Obana and Janet Ceniza.²⁹

4. *Check Payable to Alexa Palalay*

On January 16, 2007, Globe Life & Accident Insurance Co. of Oklahoma, City, U.S.A. released insurance benefits to the children of Hector C. Palalay who died in Laoag City, Ilocos Norte on December 2, 2005. One of the checks representing the proceeds of insurance benefits was issued to Alexa Palalay in the amount of US\$4,307.42. On July 16, 2007, the lawyers of Milagros Ocampo Vda. de Palalay, wrote the Bank's Legal Department stating that the payment of this check was fraudulent because the payee could not have signed or endorsed it as she was just a two-year-old child.

The Bank's Legal Department discovered that said check was deposited by Nena Sta. Cruz whose account left a balance of only US\$203.04 on July 31, 2007. Petitioner's branch credited the amount to her account on February 13, 2007.

Petitioner said he already advised Sta. Cruz to reimburse the bank on the returned check and the branch is awaiting her action on the matter.³⁰

We find substantial evidence of petitioner's misconduct that justified respondents' loss of confidence in petitioner whose repeated violations of OM 03-367 resulted in huge losses to the Bank. Petitioner knew of the risky and questionable rediscounting business of Ms. Sta. Cruz and yet allowed her to deposit second-endorsed US Dollar denominated checks in substantial amounts even if these were sourced only from her various "contacts" or agents. Moreover, the criminal case filed by Ms. Sta. Cruz against petitioner and two other individuals further lends credence to her claim that petitioner himself had actively participated in the rediscounting scheme, which defrauded her of no less than ₱4 million, by introducing to her the alleged payees and making her open a joint account with these

²⁹ *Rollo*, pp. 195-202.

³⁰ Records (Vol. 1), pp. 52-57.

payees upon the assurance of petitioner that she can withdraw the proceeds of the check upon its clearing. Respondents were also acting well within its rights when they rejected petitioner's request to be exempted from personal liability considering that despite several returned checks, he continued to receive for deposit similar checks from Ms. Sta. Cruz. Indeed, his written replies to respondents' memoranda are replete with admission of lapses in judgment, accompanied by remorse and simultaneous plea for consideration, viz:

Letter dated July 31, 2007 (Re: Complaints of Ms. Sta. Cruz)

The predicament of Mrs. Sta. Cruz should not be thrown to me as th[ese] deals [were] her own decision and fully trusted her contacts/agents. This is her fault considering the nature of the business which involves great risk. She should have exercise[d] extra caution in dealing this kind of business and should had not think only of earning a big profit the easy and fastest way. In fact I have warned her the risk involve[d] on these 2nd endorsed checks transacted but still proceeded with these deals.

x x x As I realize it now, I think I am just a victim of circumstances and presumably was used and the bank thru Sta. Cruz by some syndicate.³¹

Letter dated August 2, 2007 (Negotiated Check of A. Palalay)

- before these 2nd endorsed check transactions were accepted from Ms. Sta. Cruz, a background checking was made as to her business engagement and financial standing. In my checking, it was established that she was engage[d] in money lending, rediscounting of checks and previously operator of small businesses like videoke rental, eatery, *lechon manok* outlet and bicycle rental in Baguio City. Her financial standing were likewise check[ed] and I have confirmed some of her deposits with Accord Bank, Baguio Branch, PNB and other banks. Based on these data gathered and given the discretion and my judgment, she was allowed this type of deposit and account was opened for marketing considerations.

- client initially opened a dollar savings account then a time deposit of \$14,000.00 and later a Triple A account. Check deposits for the first 3 to 4 months from date account opened was good with no returns and savings deposit balance have accumulated over US\$80K.

Mrs. Sta. Cruz was warned and reminded that these checks she rediscounts must be known to her and assured us of it. She give the assurance that all her agents and contacts who transact these checks are known to her and these are legitimately transacted. I also informed her that forged endorsed checks is not covered by clearing period.

x x x x

It is with deep regret that this situation occurs now while I have no recourse but to face it as a consequence of my judgment. I have to fight this out with client and just hope management be considerate and assist me in dealing this situation. Also, I trust management will give its support and exhaust all the possibilities in handling whatever be the development on this account. This account was opened in line with my marketing work and as I had judged it, this was expected as a good account then.³²

³¹ Id. at 47-48.

³² Id. at 56.

Letter dated September 5, 2007 (Re: end Endorsed Check –Ms. Palalay)

I pray that your good office be more kind to assist and help the branch on this situation as such actions were in relation with the performance of our work. Also, I believe that this is not a personal but a bank claim against Ms. Sta. Cruz as this is a bank transaction which was a deposit to her account.³³

Petitioner contends that respondents failed to observe due process as they only gave him the termination notice which included numerous alleged infractions without giving him reasonable opportunity to be heard and present his case. However, records showed that he submitted a letter dated September 25, 2007 to the Chairman of the Investigating Committee where he gave his comments to the committee's findings as relayed to him during the hearing conducted on September 13, 2007. The contents of this letter confirm that petitioner was fully apprised of the charges against him as in fact he reiterated his previous written replies to the RBG on each incident of fraudulently endorsed check.

As branch manager, petitioner clearly occupies a position of trust. His right to stay in the service depends on the employer's trust and confidence in him and on his managerial services. Having breached that trust in deliberately disregarding the Bank's strict policy on accepting US Dollar denominated currency checks resulting in substantial loss to the Bank when the said checks were returned for reason of forged or unauthorized endorsement, respondents are justified in imposing the supreme penalty of dismissal.

We find no merit in petitioner's contention that he had sufficiently explained the accommodation service extended to Ms. Sta. Cruz and therefore he should not be held accountable for the returned fraudulent checks.

The discretion conferred upon him under OM 03-367 requires utmost prudence on his part and demands that he exercises judgment for the protection of the Bank's interest above all other considerations. Despite awareness of the risks of the rediscounting business of Ms. Sta. Cruz, he accepted from her several questionable checks and even aided the scheme by making her open joint accounts with the so-called payees who, as alleged by Ms. Sta. Cruz, were introduced to her by petitioner himself. His seeming personal interest in this kind of deposits became manifest when he continued to receive such second-endorsed checks despite the return of several checks due to forged or unauthorized endorsements thereby exposing the Bank to even greater financial damage. His repeated violation of the bank policy was indeed deliberate and constitutes gross misconduct. An employer cannot be compelled to retain an employee who is guilty of acts inimical to

³³ Id. at 59.

the interests of the employer.³⁴ A company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel occupying positions of responsibility.³⁵ Indeed, it would be oppressive and unjust to order the respondents to take petitioner back, for the law, in protecting the rights of the employee, authorizes neither oppression nor self-destruction of the employer.³⁶

The forfeiture of petitioner's vacation and sick leaves is likewise proper. This is based on Section B (03) and (04) of the EDPP, which state:

- (03) **Dismissal** - Dismissal is a permanent separation for cause of any employee for the commission of an offense necessitating such separation. An employee who is terminated for cause forfeits all benefits he may have been entitled to arising from his employment with the Bank or to separation pay.
- (04) **Forfeiture** - Forfeiture is a divesture of salaries, bonuses and other pecuniary benefits including leaves, retirement or service credits and their equivalent monetary values which an employee may receive or be entitled to and may be imposed upon an employee who has committed an offense, in addition to other penalties that may be imposed.³⁷

Having been dismissed for cause, the penalty of dismissal imposed on petitioner carried with it the forfeiture of his leave credits and their monetary equivalent. Moreover, pursuant to OM 03-367, the losses resulting from the returned fraudulent checks became the personal liability of petitioner who allowed the deposit and crediting of second-endorsed US Dollar denominated currency checks in Ms. Sta. Cruz's savings/joint accounts.

In closing, we stress the need to assert public interest in preventing bank fraud and not sanctioning bank employees like petitioner who have no qualms abetting the now rampant practice of rediscounting of US Dollar currency checks, which often turn out to be stolen or falsified instruments. In *Cadiz v. Court of Appeals*,³⁸ we said:

Moreover, it would simply be temerarious for the Court to sanction the reinstatement of bank employees who have clearly engaged in anomalous banking practices. The particular fiduciary responsibilities reposed on banks and its employees cannot be emphasized enough. The fiduciary nature of banking is enshrined in Republic Act No. 8791 or the General Banking Law of 2000. Section 2 of the law specifically says that the State recognizes the "fiduciary nature of banking that requires high standards of integrity and performance." The bank must not only exercise "high standards of integrity and performance," it must also ensure that its

³⁴ *Santos v. San Miguel Corporation*, 447 Phil. 264, 282 (2003), citing *Better Buildings, Inc. v. National Labor Relations Commission*, 347 Phil. 521, 530 (1997).

³⁵ *Id.* at 282-283, citing *MGG Marine Services, Inc. v. National Labor Relations Commission*, 328 Phil. 1046, 1067 (1996).

³⁶ *House of Sara Lee v. Rey*, supra note 20, at 145, citing *San Miguel Corporation v. National Labor Relations Commission*, 200 Phil. 725, 729-730 (1982).

³⁷ Records (Vol. I), pp. 70-71.

³⁸ 510 Phil. 721 (2005).

employees do likewise because this is the only way to ensure that the bank will comply with its fiduciary duty.³⁹


WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated December 28, 2010 and Resolution dated April 6, 2011 of the Court of Appeals in CA-G.R. SP No. 115008 are hereby **AFFIRMED**.


With treble costs against the petitioner.

SO ORDERED.



MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice

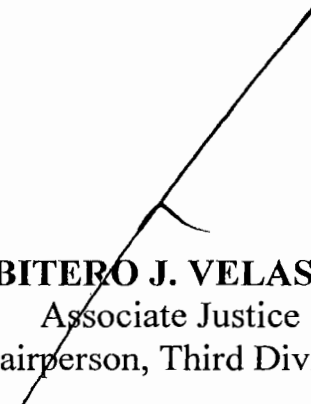

BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

³⁹ Id. at 735.

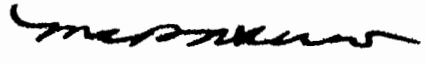
ATTESTATION

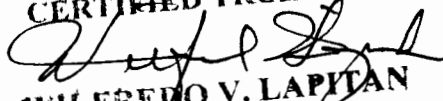
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 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.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPID
Division Clerk of Court
Third Division
DEC 07 2015

