

**Commercial Law—Agency—Banks and Banking—Officers and Agents—Agents Granting Loans Contrary to Regulations and Instructions of the Bank Held Liable for Uncollected Amounts.**

**PHILIPPINE NATIONAL BANK v. BAGAMASPAD AND FERRER.** G. R. No. L-3407, Prom. June 29, 1951

The Philippine National Bank acting upon instructions from the President of the Philippines, passed a resolution authorizing the granting of ten-month special crop loans to bona-fide food producers, landowners or their tenants, under certain conditions. The Cotabato Agency of said bank under the management of Bernardo Bagamaspad and Bienvenido Ferrer, Agent and Assistant-Agent, respectively, began granting these special crop loans in July, 1946. By March, 1947, said Agency had granted to over 5,000 borrowers, loan in the total amount of ₱8,688,864.00. The Rules and Regulations of the Bank, the circular letters issued to the agents and the Conference of Managers and Agents of the Bank, required compliance with the Rules and Regulations issued, namely, that crop loans should be granted only to bona-fide planters, landowners or tenants. Bagamaspad and Ferrer granted new special crop loans in excess of the limit allowed their Agency; utilized the funds intended for the payment of second installments, to be paid on first installments on loans; granted loans to persons who were neither bona-fide landowners or planters nor tenants; employed intermediaries in their transactions with borrowers; released loans without approval of a Loan Board; all contrary to the Rules and Regulations of the Philippine National Bank and the express instructions given to them. The Bank initiated this suit for the purpose of recovering ₱704,903.18 said to have been negligently disbursed and released by Bagamaspad and Ferrer without authority. Later, upon petition of the plaintiff's counsel, the amount of the claim was reduced to ₱699,803.57 due to payment made by some of the borrowers. *Held*, under the provisions of Arts. 1718 and 1719 of the Civil Code, defining and enumerating the duties and obligations of an agent and his liability for failure to comply with such duties, and Art. 259 of the Code of Commerce, and also Art. 1902 of the Civil Code, providing for the liability of one for his tortious act, the agent is liable. Judgment for the plaintiffs by the lower court affirmed.

As early as 1922, the Philippine Supreme Court, in a criminal case held liable the President of the Philippine National Bank for violating the provisions of Act. 2612, as amended, requiring loans to be granted to members of the board and agents only with the unanimous approval of the members of the Board of Directors.<sup>1</sup> Although the present case is civil in nature, from the aspect of vio-

<sup>1</sup> People v. Concepcion, 43 Phil. 653.

lating laws, rules and regulations, these two cases are not very dissimilar.

In the above case, the Supreme Court based its decision on the provisions of Arts. 1718<sup>2</sup> and 1719<sup>3</sup> of the Old Civil Code which Manresa believes "es una secuela de la aceptación del mandato. Libre el mandatario para rehusarlo; puedo ahorarse sus molestias; mas aceptandolo, al no cumplirlo traciona la confianza en el depositada: ha contraido la obligacion de ejecutarlo; constituyendose en deudor del mandante y por tal titulo responde de los daños y perjuicios."<sup>4</sup> The principle is that agents of a corporation are charged with the duties of trustees and are bound to care for its property and manage its affairs in good faith, and for a violation of that duty, resulting in waste of its assets, injury to property or unlawful gain to themselves, they are liable to account in equity the same as ordinary trustees.<sup>5</sup> If they deliberately refrained from investigating that which it was their duty to investigate any resulting violation of statute or regulation must be regarded "in effect intentional" and being intentional, they are liable for damages.<sup>6</sup> If it is shown, however, that the agents have not exceeded their authority or have not acted with negligence, deceit or fraud they cannot be held responsible for the failure of their principal to accomplish the object of the agency.<sup>7</sup> But in this case it is clear that the "defendants have not only violated instructions of the plaintiff bank, including things which said Bank wanted done or not done, all of which were fully understood by them, but also violated standing regulations x x x through their carelessness, laxity and negligence."<sup>8</sup>

Art. 259 of the Code of Commerce<sup>9</sup> was also cited by the Supreme Court to support its decisions. This provision, though pertinent at the time the action accrued, can no longer be cited in sup-

<sup>2</sup> "The agent by his acceptance shall become bound to fulfill the agency, and he shall answer for the losses and damages caused to the principal through his non-compliance, . . ." This is now Art. 1884 of the New Civil Code.

<sup>3</sup> "In complying with the agency the agent shall follow the instructions of the principal. In default of instructions, he shall do all that which, according to the nature of the business, a good father of the family would do." This is now Art. 1887 of the New Civil Code.

<sup>4</sup> Manresa, *Comentarios al Codigo Civil*, Tomo XI, p. 490.

<sup>5</sup> *Bosworth v. Allen*, 168 N.Y. 157, 55 L.R.A. 751, 762.

<sup>6</sup> *Thomas v. Taylor*, 224 U.S. 73, 82; *Jones National Bank v. Yates*, 240 U.S. 541, 555.

<sup>7</sup> *Gutierrez Hermanos v. Oria Hermanos*, 30 Phil. 491, 520; See also: *Swentzel v. Penn. Bank*, 15 L.R.A. 305, 316; *Greenfield Savings Bank v. Abercrombie, et al.*, 39 L.R.A. (N.S.) 173, 178; *Briggs v. Spaulding*, 141 U.S. 132, 146; *Holman v. Cross*, 75 F. (2d) 909, 912.

<sup>8</sup> *Philippine National Bank v. Bagamaspad and Ferrer*, G.R. L-3407, p. 10-11; see: *Yates v. Jones National Bank*, 206 U.S. 158, 180; *Corsicana National Bank v. Johnson*, 64 L. Ed. 141, 147.

<sup>9</sup> "An agent must observe the provisions contained in the laws and regulations with regard to the transaction which has been intrusted to him, and shall be liable for the results of their violation or omission. If he acted in virtue of the express order of the principal, the liabilities which may arise shall be incurred by both conjointly."

port of future decisions on a similar issue, because it has been expressly repealed by the New Civil Code.<sup>10</sup>

The Supreme Court further cited Art. 1902<sup>11</sup> of the Old Civil Code "which provides for liability of one for his tortious act" as relevant to sustain the civil liability of the defendants. It is believed that Art. 1902 is not in point. The New Civil Code in defining quasi-delict<sup>12</sup> expressly states that such fault or negligence, if there is *no pre-existing contractual relation* between the parties, is called a quasi-delict." The facts of this case show that the plaintiff bank entered into a contract of agency with the defendants,<sup>13</sup> hence there was a pre-existing contractual relation. Although in the United States, the act may have been considered tortious,<sup>14</sup> in the Philippines, it is well-settled that once there is an existing contractual relation the resulting act cannot be considered tortious.<sup>15</sup> In our laws "quasi-delict" does not have the same meaning as the word "tort" in Anglo-American law.<sup>16</sup>

Defendants contend that the plaintiff should not be allowed to proceed against both the defendants for amounts loaned by them and the individual borrowers for amounts borrowed by them, since if that were permitted the plaintiffs would be enriching themselves at the expense of the defendants. The Supreme Court disposed of this by saying that "the plaintiff is not trying to enrich itself at the expense of the defendants but is merely trying to diminish as much as possible the loss to itself and automatically decrease the financial liability of the defendants x x x far from being iniquitous, is really beneficial to the defendants."<sup>17</sup>

Defendants further contend that the present action is premature, no showing having been previously made that the borrowers to whom they allegedly gave loans without authority are manifestly insolvent or unqualified. The Supreme Court said "it is not necessary for the plaintiff bank to first go against the individual borrowers, exhaust all remedies against them and then hold the defendants liable only for the balance which cannot be collected. x x x The damage as well as the injury was complete at that time and the Bank is not obliged to await maturity" of the obligation.<sup>18</sup>

<sup>10</sup> Art. 2270: "The following laws and regulations are hereby repealed: . . .

(2) The provisions of the Code of Commerce governing . . . agency . . ."

<sup>11</sup> "Any person who by act or omission causes damage to another by his fault or negligence shall be liable for the damage so done."

<sup>12</sup> Art. 2176.

<sup>13</sup> Philippine National Bank v. Bagamaspad and Ferrer, G.R. L-3407, p. 1-2.

<sup>14</sup> See Bigelow v. Old Dominion Mining and Smelting Co., 225 U.S. 111, 132.

<sup>15</sup> Rakes v. Atlantic Gulf and Pacific Co., 7 Phil. 359; Cangco v. Manila Railroad, 38 Phil. 769; Del Prado v. Manila Electric, 52 Phil. 900.

<sup>16</sup> Report of the Code Commission, p. 161.

<sup>17</sup> Philippine National Bank v. Bagamaspad and Ferrer, G.R. L-3407, p. 11.

<sup>18</sup> *Ibid.*, p. 12; see also: Corsicana National Bank v. Johnson, 64 L. Ed. 141, 153-154.