

POLO S. PANTALEON, PLAINTIFF-APPELLANT, VS. AMERICAN EXPRESS INTERNATIONAL, INC., DEFENDANT-APPELLANT.

Ponente: TAYAG, J.

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TAYAG, J.:

On appeal to Us is the Decision[1] of the Regional Trial Court, Branch 145 of Makati City in Civil Case No. 92-1665 for damages. The dispositive portion is as follows:

“WHEREFORE, judgment is hereby rendered in favor of plaintiff, POLO PANTALEON. Consequently, defendant AMERICAN EXPRESS INTERNATIONAL, INC. is hereby ordered to pay plaintiff P500,000.00 as moral damages, P300,000.00 as exemplary damages, P100,000.00 as attorney’s fees, and P85,223.01 as expenses of litigation. The counter-claim of defendant is DISMISSED.

Costs against defendant.

SO ORDERED.”

The essential facts, as presented by the parties, are quoted from the appealed decision, to wit:

Defendant American Express International, Inc. is a resident foreign corporation engaged in the business of providing credit services through its operation of a charge card system in the Philippines valid for use locally or internationally. As advertised by defendant, holders of its American Express Basic Card [“AmexCard”] charge purchases on their card and are encouraged as to its use. “Don’t leave home without it”, the AmexCard “being as good as cash.”

Plaintiff Polo S. Pantaleon is a Senior Partner of Castillo Laman Pantaleon and San Jose Law Offices, an institutional law firm in the country. [TSN, February 24, 1993, pp. 12-13]. In 1990, he was issued AmexCard No. 3729-817921-2003. [Exhibits “A-2” and “A-3”]. In 1991, Supplementary cards were likewise issued to plaintiff’s wife Julialinda and his daughter Anna Regina.

Plaintiff’s AmexCard and the supplementary cards issued to his wife and daughter had no pre-set spending limits. [Exhibits “12” and “12-A”]. The use of the cards, which plaintiff, his wife and daughter, cannot charge their purchases.

As a gift to his daughter, Anna Regina, who graduated valedictorian from the U.P. College of Law, Class of 1991, plaintiff, his wife, his daughter and a son joined a first-class escorted tour of Western Europe, known as the “Trafalgar Tour”. The tour group, composed mostly of Caucasians, began its tour on October 4, 1991 and ended it on October 26, 1991. The tourists visited the countries of England, France, Spain, Monaco, Italy, Austria, Germany, Belgium and Holland (Exhibits “B” to “B-2”, “E” to “E-3”, “F”). In the course of their tour, plaintiff, together with his family, forged friendships with the other members of the tour group and eventually earned the latter’s respect (TSN, November 20, 1992, pp. 55-56).

The last leg of the tour was Amsterdam, which the group scheduled to visit on the last two days of the tour. The first day in Amsterdam was unproductive, since the group arrived there already late in the afternoon. As no sightseeing was done for that day, the tour group agreed to start early the next day to see the entire city

before ending the tour. (TSN, November 20, 1992, pp. 28-30).

The following day, the tour group went to their first scheduled stop at Coster Diamond House, which they reached before 9:00 a.m., local time. The store was still closed. It was agreed that the tour group would have only 30 minutes at the store (TSN, November 20, 1992, pp. 31-32).

The tour group was ushered in shortly before 9:00 a.m. And, after brief lecture on diamonds lasting not more than 10 minutes, the group was brought to the store's showroom to select items for purchase. Plaintiff's and his wife immediately made their selection since plaintiff's wife already knew beforehand what she wanted to buy. (TSN, 20 November 1992, pp. 34-36).

After selecting some items for purchase (Exhibit "I"), at about 9:15 a.m., plaintiff presented his AmexCard together with his passport to the Coster sales clerk, who took the imprint at the AmexCard and asked plaintiff to sign the charge slip for a total amount of US\$13,826.00 (Exhibits "H" and "H-1"; TSN, November 20, 1992, pp. 35-40; February 24, 1993, pp. 51-52). The charge purchase was then referred electronically to defendant's Amsterdam office at 9:20 a.m.

Ten minutes later, plaintiff was told by the store clerk that his AmexCard had not yet been approved (TSN, November 20, 1992, pp. 41-42; February 24, 1993, pp. 52-53). This information was relayed to plaintiff within hearing distance of his wife, daughter, and two Caucasian ladies of the tour group, who were then inside the store. (TSN, November 30, 1992, pp. 41-43; February 24, 1993, pp. 53-54).

Plaintiff began to feel anxious about the delay in the approval of his charge purchase. His son, who had already left the store, returned from the tour bus where the tour group was waiting and, in the presence of his wife, daughter and the sales attendant, informed plaintiff that the entire tour group were waiting for them. (TSN, November 20, 1992, pp. 44-45; February 23, 1993, p. 54). Plaintiff, embarrassed and worried about the further inconvenience he would cause the tour group because it was already 9:40 a.m. -- way past the time allotted by the tour guide for the store visit -- asked the store clerk to cancel the sale. The store manager, however, asked plaintiff to wait for a few more minutes and the latter complied. After 15 minutes, plaintiff was informed by the store clerk that bank references were being required by defendant. Plaintiff felt insulted by this demand, but he complied, with great reluctance. (TSN, February 24, 1993, pp. 51-58; November 20, 1992, p. 45; March 1, 1993, pp. 71-72). After giving the name of his depository banks, plaintiff instructed his daughter Anna Regina to hurry back to the tour group inside the bus and apologize for the delay they were causing. His daughter did as she was told. (TSN, November 20, 1992, pp. 46-47, November 27, 1992, pp. 5-6, 7-8).

Almost one hour after plaintiff made his charge purchase, or at about 10:00 a.m., the store manager finally decided to release the items to plaintiff at the store's own risk, even without defendant's approval. (TSN, February 24, 1993, pp. 59-63; March 1, 1993, pp. 43-47).

Plaintiff and his wife hurried to the bus where they were met with stares and stony silence.

Plaintiff noticed that some members of the tour group were visibly irritated by the incident. Plaintiff had to take a tranquilizer to contain his embarrassment, his humiliation, and his anger (TSN, March 1, 1993, pp. 86-88).

Worse, the tour guide announced that the city tour of Amsterdam was to be canceled for lack of time. This caused plaintiff further humiliation, guilt and insult. (TSN, November 20, 1992, pp. 49-51). Plaintiff's family was likewise embarrassed; his daughter Anne Regina testified that her mother wept. (TSN, November 20, 1992, p. 49).

After the European tour, plaintiff and his family proceeded to the United States of America, while there, plaintiff was able to use his AmexCard a number of times, and the approvals for them were obtained quickly, except again on two occasions. (TSN, November 20, 1992, pp. 52-53).

(1) On October 30, 1991, plaintiff, his son, and a friend went to the Richard Metz Golf Studio in New York to purchase some golf equipment worth US\$1, 475.00.

After waiting for defendant's approval of the charge purchase for almost 20 minutes, plaintiff was forced to cancel the sale.

Because of what happened, plaintiff told the store owner that he would return to pay for the items in cash, which he did on November 3, 1991 after borrowing some money from a friend in New York.

(2) Plaintiff encountered another delay of 20 minutes in the approval of a charge purchase of US\$87.00 worth of children's shoes at the Kid's Unlimited Store at the Quincy Market in Boston on November 3, 1991. (TSN, November 20, 1992, pp. 56-58; Exhibit "U").

Because of the delays and the consequent inconvenience, humiliation and hurt which he encountered, plaintiff, upon his return to the Philippines, sent a letter thru his counsel to defendant on March 4, 1992, demanding an apology for the "inconvenience, humiliation and embarrassment he and his family thereby suffered" from defendant's failure and/or refusal to provide credit authorization to (his) aforesaid purchases". (Exhibit "BB-1"). Defendant replied also through counsel, in a letter dated March 24, 1992 (Exhibit "DD") stating, among others, that defendant's delay in giving the needed authorization for the purchase in Coster Diamond House in Amsterdam was because the charge purchase of US\$13,826.00 "was out of the usual charge purchase pattern established", and denied plaintiff's demand. The plaintiff then filed this action.

Defendant, for its part, claims at trial that its authority to reject or disallow charge referrals by plaintiff was covered by the Cardmembership Agreement (Exhibits "A" and "A-1") entered into with plaintiff in November 1990. According to defendant, it had every right to do the acts complained of by plaintiff since the agreement states that:

"9. Problems with Goods and Services.

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However, unless required by law, we are not responsible for any problem you have with any goods or services you charge on the Card, and if you have a dispute with firm honoring the Card, you must pay us anyway and settle the dispute directly with the firm. We will not be responsible in any other problems you may have with such firm."

"16. The Card Remains our Property

The Card remains our property and we can revoke your right to use it at anytime. We can do this with or without cause and without giving you notice. You and any Additional Cardmember[s] agree not to dispute our actions in terminating your Card privileges since the Card is is our property. If we have revoked the Card without cause, we will refund you a proportion of your yearly fee. We may list revoked cards in our Cancellation Bulletin or otherwise inform firms honoring the Card that the Card[s] issued to you has/have been revoked or canceled. We shall not be liable in respect of any statement made arising out of such revocation including the listing or revoked cards in our Cancellation Bulletin.

If we revoke the Card or it expires, you must return it to us, if we request. Also, if a firm that accepts the Card asks you to surrender an expired or revoked card, you must do so. You may not use the Card after it has expired or after it has been revoked." [Exhs. "A" and "A-1"]

In its appealed decision, the trial court concluded that the prolonged processing of the charge purchases made by plaintiff Pantaleon constituted delay which evidently was a cause of action against defendant American Express International, Inc. (AEII). We quote from the decision:

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The delay in the processing is apparent to the undue as shown from the frantic successive queries of Amexco Amsterdam which reads: "US\$13,826.00 Cardmember buying jewels. ID seen. Advise how long will this take?" They were sent at 01:33, 01:37, 01:40, 01:45, 01:52 and 02:08, all times Phoenix. Manila Amexco could be unaware of the need for speed in resolving the charge purchase referred to it, yet it sat on its hands, unconcerned.

The other two purchases subject of this complaint were likewise not approved "in a matter of seconds." The purchase at the Richard Metz Golf store had to be canceled by the plaintiff as the referral was still not acted upon after almost 20 minutes of waiting. [TSN, 24 February 1993, pp. 83-84, Exhibit "S"]. Approval of the charge purchase at Kid's Unlimited Store took 20 minutes. [TSN, 20 November 1992, pp. 56-58, Exhibit "U"] Apparently, the delay was due to the continuing instruction of Manila Amexco for the merchant and the local Amexco to require positive identification of the Cardmember and his bank references before any charge purchase may be granted.

Since defendant's processing of the charge purchase were done electronically and the cardholder's charge account and history were stored in its computer, defendant could have rejected or approved the charge purchase in a matter of seconds. That time is of the essence in the processing of the charge purchase should have been known to defendant, who received the request for approval of a charge purchase using an AmexCard issued in the Philippines from an accredited establishment in Amsterdam and, later on, in the United States. It is quite obvious under the circumstances the cardholder traveled from the Philippines to Amsterdam and the US and was using his card to charge purchases in tourist commercial establishments accredited with Amexco.

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From the foregoing, it is evident that plaintiff has cause of action against defendant since the Civil Code provides:

"Article 1170. Those who in the performance of their obligation are guilty of fraud, negligence or delay, and those who, in any manner contravene the terms thereof, are liable for damages."

The circumstances attendant in the case at bar likewise reveal that the delays committed by defendant are tainted with recklessness and bad faith. Such bad faith is indicated in no small measure by the fact that while it used the "out of usual charge pattern" reason to justify the delay in approving the charge purchase at Coster, there were nevertheless similar delays with the Richard Metz and Kid's Unlimited purchases, which were for much smaller amounts.

The defendant's own evidence reveals that the reason for the delays was the daily-dailying of the credit authorizer, Edgardo Jaurique, in giving or denying the needed authorization on those three occasions.

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The trial court thus ordered the defendant American Express International, Inc. to pay moral damages, exemplary damages, attorney's fees and expenses of litigation. In awarding these damages, the trial court had this to say:

The evidence at hand shows that plaintiff is entitled to an award of moral damages for the moral shock, mental anguish, serious anxiety, wounded feelings, and social humiliation he suffered due to the unreasonable delay in getting the requested charge approval. The deliberate delay by defendant in granting the needed authorization on the three occasions complained of by plaintiff spoiled his and his family's trip to Europe and the United States, which was a graduation gift of plaintiff to his daughter. The Court understands the humiliating circumstances plaintiff was placed after presenting his AmexCard to pay for the jewelry chosen by his wife, in a foreign city and with foreign tourists painfully aware of his unattended cancellation of the group's continuing its tour program. What they knew then was that this plaintiff Filipino and his family tried to buy some jewelry knowingly with a questionable credit card. The Trafalgar tourists, who all paid for the city tour of Amsterdam that they missed, naturally resented plaintiff's and his family's overstaying at the Coster Diamond Store, not

knowing that it was not the fault of plaintiff but of defendant which was taking all of one hour to decide whether the Amexco Cardholder is entitled to charge his purchase against the card.[2]

The experience humiliated plaintiff, not only before his own family but also his friends and acquaintances. Because of the Coster incident, the personal friendships he and his family had cultivated with the other members of the tour group and the efforts made by plaintiff and his family to build a good image for himself and his countrymen in a foreign country were irretrievably lost. They were the only Filipinos in the tour group. [TSN, 20 November 1992, pp. 51-52; 24 February 1993, pp. 73-77; 01 March 1993, pp. 53-55, 56] And plaintiff is painfully aware that the incident would long be the impression of the tour group of every Filipino.[3]

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Plaintiff should likewise be awarded P300,000.00 in exemplary damages, so that defendant, engaged in a worldwide business, may be deterred from repeating its lack of prudence, consideration and care in performing its contractual services to its clients as shown from the acts complained of in this case. The bad faith and recklessness of defendant sanctions the award of exemplary damages [Civil Code, Arts. 2229, 2231 and 2232]

It should be remembered that at the onset, plaintiff merely sought a formal apology and some gesture of concern from defendant for what it had done. In view of defendant's gross and evident bad faith in refusing to satisfy plaintiff's valid claim, thereby compelling him to litigate and incur legal expenses, plaintiff is entitled to P100,000.00 as reasonable attorney's fees and the reimbursement of P85,235.00 in litigation expenses which he has duly proven.[4]

From the decision, both the plaintiff and defendant appealed.

A. Appeal by the Plaintiff

Plaintiff appealed from the decision stating that "THE LOWER COURT ERRED IN LIMITING PLAINTIFF-APPELLANTS' AWARD FOR MORAL AND EXEMPLARY DAMAGES TO ONLY P500,000.00 AND P300,000.00, RESPECTIVELY, AND NOT P2,000,000.00 AND P500,000.00 AS ORIGINALLY PRAYED FOR, DESPITE THE RISE IN INFLATION AND ITS FINDING THAT DEFENDANT-APPELLANT WAS GUILTY OF ACTING IN WANTON, RECKLESS AND OPPRESSIVE MANNER.[5] The plaintiff argues that the amount of moral damages awarded by the lower court is not sufficient to compensate the anxiety and embarrassment he and his family suffered. Likewise, the amount of exemplary damages awarded is not sufficient to deter similar wrongful acts by the defendant AEII.

B. Appeal by the Defendant

For its part, defendant-appellant AEII in its appeal makes the following assignment of errors, to wit:

- I.
THE HONORABLE COURT A QUO ERRED IN FINDING THAT PLAINTIFF-APPELLANT SUFFERED MORAL SHOCK, SERIOUS ANXIETY, WOUNDED FEELINGS AND SOCIAL HUMILIATION.
- II.
THE HONORABLE COURT A QUO ERRED IN FINDING THAT DEFENDANT-APPELLANT VIOLATED ITS CONTRACT WITH PLAINTIFF-APPELLANT.
- III.
THE HONORABLE COURT A QUO ERRED IN FINDING THAT DEFENDANT-APPELLANT'S ACTIONS WERE TAINTED WITH RECKLESSNESS, MALICE AND BAD FAITH.
- IV.

ASSUMING ARGUENDO THAT PLAINTIFF-APPELLANT IS ENTITLED TO DAMAGES, THE AMOUNTS AWARDED BY THE HONORABLE COURT A QUO ARE PATENTLY EXCESSIVE.

V.

THE HONORABLE COURT A QUO ERRED IN DISMISSING DEFENDANT-APPELLANT'S COUNTERCLAIM.[6]

The questions the Court is now tasked to answer are: (1) Did the trial court err in finding that defendant-appellant's actions were tainted with recklessness, malice and bad faith? (2) Was the award of damages and attorney's fees to plaintiff-appellant proper?

On the first issue, plaintiff-appellant claims that AEII's action in unreasonably delaying the approval of the plaintiff-appellant's charge purchases was a clear breach of its contractual representations and obligations. He further claims that AEII acted in bad faith, and in wanton and oppressive manner.

Defendant-appellant AEII dispute the plaintiff-appellant's contentions. It says that there was no contractual obligation on its part to instantaneously approve plaintiff-appellant's charge purchases. It further claims that even assuming there was breach of contract, there is no evidence that AEII acted with malice, or bad faith.

R U L I N G

We considered that plaintiff-appellant was able to show that defendant-appellant AEII had indeed caused delay in the processing of the charge purchases made by plaintiff-appellant. We disagree, however, with the Regional Trial Court that defendant-appellant AEII had breached its contract with plaintiff-appellant by such delay in approving the charge purchases.

In order that there may be delay on the part of AEII, the creditor, the following requisites must concur: (1) an offer of performance by the debtor who has the required capacity; (2) the offer must be to comply with prestation as it should be performed; and (3) the creditor refuses the performance without just cause.[7]

In the instant case, the third requisite appears to be absent. It is not enough that there be delay to hold the AEII liable for damages; such delay must either be attended by bad faith, malice, or gross negligence to be actionable. While in this case, there is probably delay, yet, the said delay cannot be considered without just cause.

It appears to Us that defendant-appellant AEII had exercised diligent efforts to effect the approval of plaintiff-appellant's purchases, especially the one made from the Coster Diamond House which was not automatically approved as the charge purchase of US\$13,826 was not in accordance with the charge pattern plaintiff-appellant had established for himself.

Q21: With reference to the transaction at the Coster Diamond House covered Exhibit R [sic], also Exhibit 4 for the defendant, the request was relayed at the defendant, the approval came at 2:19 a.m. After the request was relayed at 1:33 a.m., can you explain why the approval does came after about 46 minutes, more or less.

A21: Because we have to make certain considerations and evaluations of plaintiff's past spending pattern with AEII at that time before approving plaintiff was at that time making his very first single charge purchase of US\$13,826 [This is below the US\$16,112.58 actually billed and paid for by plaintiff because the difference was already automatically approved by AEII office in Netherland] and the record of plaintiff's past spending with AEII at the time does not not favorably support his ability to pay for such purchase. In fact, if the foregoing internal policy of AEII had been strictly followed, the transaction would not have been approve at all considering that the past spending pattern of the plaintiff with AEII at that time does not support his ability to pay such purchase.

(Affidavit/Direct Testimony of Mr. Edgardo Jaurique, Exhibit 12, p. 5, emphasis supplied)

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Q: And then finally as Manila is several line above Exhibit 9-D which appears on column evidence before 02-19; and it also appeared 206; what does it mean?

A: It could mean that the authorizer in Manila may have checked the status of the account.

Q: And then Marion kept on following up?

A: Yes, sir.

Q: And as you said in your affidavit, the reason was, it took sometime to go through the process in evaluating this particular referral?

A: Yes, sir.

Q: Why did it take that long?

A: It took time to review the account on credit, so if there is any delinquencies of the cardmember. There are factors on deciding the charge itself which are standard measures in approving the authorization. Now in the case of Mr. Pantaleon although his account as single charge purchase of US\$13,826 this is below the US\$16,000 plus actually billed...we would have already declined the charge outright and ask his bank account to support his charge. But due to the length of his membership as a cardholder, we had to make a decision off hand.

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Q: It took you about 45 minutes from the time it was first referred?

A: Yes, sir.

Q: To evaluate?

A: Yes, sir.

Q: I would ask you to evaluate since you said you were the one who evaluated his credit standing at that time; and you said that the particular criteria you looked at spending and payment pattern?

A: That, it was much lower, the amount that he was paying and he was getting bill which as significant lower he was requesting, this was qualified out of pattern criteria of referral.

(Id., at pp. 89-92; emphasis supplied)

Q: You mentioned that among the standard you use in approval high single charge referral you would analyze the accumulated billing over past 12 months, is that correct?

A: That is one of the factors.

Q: In the case of Atty. Pantaleon since you approved the charge then you did not find any factor which would deviate from such standard?

A: I did not find billing balance exactly supportive of the amount charged. It was fair in the sense that there were no delinquencies but in consideration of the tenure of his membership, so the charge was approved.

(Id., at pp. 98-99; emphasis supplied)

Defendant-appellant AEII's review of plaintiff-appellant's past spending and payment patterns was obviously to

ensure the protection of the plaintiff-appellant as a cardholder, and prevent the card from being fraudulently or improperly used by a third party, cannot be held guilty of bad faith; the procedure adopted of seeking verification as precautionary measure was one taken in the usual course of business and was not in itself unreasonable or arbitrary. While the defendant-appellant AEII who had approved the charge purchase at Coster Diamond House some forty-six (46) minutes might be negligent, there was no evidence either of deliberate malice or of gross negligence. We do not believe, again, that the last two (2) charge purchases made at Richard Mertz Golf Studio in New York and at the Kid's Unlimited Store in Boston were motivated by personal malice or bad faith, or that there was patently negligence so gross as to amount to bad faith. Bad faith under the law is not presumed; it must be established by clear and convincing evidence[8]. Plaintiff-appellant has not adduced that kind of evidence in the instant case.

On the matter of damages, we have held that moral damages may be recovered in cases where one willfully causes injury to property, or in cases of breach of contract where the other party acts fraudulently or in bad faith. There is no hard and fast rule in the determination of what would be a fair amount of moral damages, since each case must be governed by its own peculiar circumstances. Exemplary damages, on the other hand, are imposed by way of example or correction for the public good, when the party to a contract acts in wanton, fraudulent, oppressive or malevolent manner. Attorney's fees are allowed when exemplary damages are awarded and when the party to a suit is compelled to incur expenses to protect his interest.[9] There being no breach of contract nor proof that AEII acted in wanton, fraudulent or malevolent manner, there is no basis for the award of any form of damages.

However, we find that the Regional Trial Court correctly dismissed AEII's counterclaim for attorney's fees and litigation expenses. The action was filed by plaintiff-appellant in utmost good faith and not manifestly frivolous. A person's right to litigate should not be penalized by holding him liable for damages. This is especially true when the filing of the case is to enforce what he believes to be his rightful claim against another although found to be erroneous.[10]

WHEREFORE, in view of the above, the judgment of the trial court is SET ASIDE, in that the award of FIVE HUNDRED THOUSAND PESOS (P500,000.00) as moral damages, THREE HUNDRED THOUSAND PESOS (P300,000.00) as exemplary damages, ONE HUNDRED THOUSAND PESOS (P100,000.00) as attorney's fees and EIGHTY FIVE THOUSAND TWO HUNDRED THIRTY THREE PESOS AND ONE CENTAVO (P85,233.01) as litigation expenses is hereby DELETED. However, the dismissal of the counterclaim by defendant-appellant for attorney's fees and litigation expenses is SUSTAINED. No pronouncement as to costs.

SO ORDERED.

Asuncion, (Chairman) and Mendoza, JJ., concur.

[1] Rollo, pp. 55-71

[2] Rollo, p. 69

[3] Ibid., pp. 69-70

[4] Rollo, p. 71

[5] Rollo, pp. 2-3 (Plaintiff-Appellant's Brief)

[6] Rollo, pp. 151-152 (Defendant-Appellant's Brief)

[7] 3 Camus 31-32 (Civil Code of the Philippines by Tolentino, Vol. IV, p. 108)

[8] People's Bank and Trust Co. vs. Syvel's, Inc., 164 SCRA 247.

[9] Banas, Jr. vs. Court of Appeals, G.R. No. 102967, 1325 SCRA 259; 283; Article 2208, Civil Code

[10] J. Marketing Corp. vs. Sia, Jr., 399 Phil. 513, 517

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