

**BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF-APPELLEE, VS.
SPOUSES JULIUS MALING AND JANE DOE AND DIOSDADO BERNABE,
DEFENDANTS, JULIUS P. MALING, DEFENDANT-APPELLANT.**

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

Before us is an appeal interposed by defendant-appellant Julius P. Maling from the Decision[1] dated July 31, 2012 of the Regional Trial Court (RTC), Branch 134, Makati City, in Civil Case No. 07-1045, for collection of sum of money.

Plaintiff-appellee Bank of the Philippine Islands (BPI) is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal business address at 18th Floor, BPI Card Center Bldg., 8753 Paseo de Roxas, Makati City.

Through its credit card system, BPI extends credit accommodations to its cardholders for the purchase of goods and services from accredited establishments and availment of cash advances from authorized branches or automated teller machines (ATM) to be paid later on by the cardholders.

The facts show that sometime in 2006, defendant-appellant Julius Maling was issued a BPI MasterCard credit card under Customer No. 0201007006288484, while co-defendant Diosdado Bernabe was issued an extension card, with Maling being the principal cardholder. By the Terms and Conditions governing the issuance and use of a BPI MasterCard, defendants, as the cardholders, obligated themselves to pay all charges incurred through the use of the credit card within a period of twenty (20) calendar days from the assigned cut-off date, without the necessity of a demand.[2]

Defendants availed of the credit accommodation and used their BPI MasterCards on several occasions in accredited establishments. Defendants initially made regular payments to BPI, but began to be remiss in their payment beginning on November 2006. They eventually incurred a total charge of Php 428,407.87 as per Statement of Account dated October 14, 2007.[3]

BPI made several verbal demands[4] for payment on defendants, and on August 17, 2007, it sent defendants a demand letter for the immediate payment of their total outstanding balance, but to no avail. BPI was thus constrained to file a complaint for collection of sum of money[5] against defendants.

During trial proper, BPI presented Carlyn Fernandez,[6] an account specialist, as its only witness. Fernandez attested that Maling agreed to be bound by the Terms and Conditions governing the use and issuance of BPI credit cards when he signed the delivery receipt. It was likewise provided at the back of the credit card that "By signing and/or using this card, the holder agrees to be bound by the Terms and Conditions Governing the Use and Issuance of the BPI Credit Card accompanying this card when issued, as amended from time to time." [7]

Fernandez confirmed that defendants made several purchases and/or cash availments using their BPI MasterCards in accredited establishments. Fernandez also confirmed that as of October 2007, defendants had an outstanding

obligation in the amount of Php 428,407.87.[8]

Defendant-appellant Maling admitted receiving a BPI MasterCard from a messenger and then signing a delivery receipt, but he denied seeing the Terms and Conditions supposedly included with the card. He likewise denied signing anything which would signify his conformity to the Terms and Conditions.[9]

On July 31, 2012, the RTC rendered the assailed Decision, the dispositive portion of which reads, as follows:[10]

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff against defendants Julius Maling and Diosdado Bernabe[,] and the latter are ordered to pay the plaintiff jointly and severally the amount of P428,407.87 at 12% interest per annum from November 13, 2007 until fully paid, plus 1% penalty/charge per month and P50,000.00 attorney's fees and costs of suit.

SO ORDERED.

After his motion for reconsideration[11] was denied,[12] defendant-appellant filed a notice of appeal,[13] and the same was given due course.[14]

On appeal, defendant-appellant raised the following assignment of errors for the consideration of this Court:[15]

I.

THE TRIAL COURT ERRED IN CONCLUDING THAT DEFENDANT-APPELLANT MADE ADMISSIONS AS REGARDS HIS OBLIGATIONS TO THE PLAINTIFF-APPELLEE DESPITE LACK OF EVIDENCE TO SUPPORT SUCH ALLEGED ADMISSION;

II.

THE TRIAL COURT ERRED IN HOLDING THAT THE TERMS AND CONDITIONS BIND THE DEFENDANT-APPELLANT DESPITE HIS LACK OF SIGNATURE THEREIN;

III.

THE TRIAL COURT ERRED IN UPHOLDING THE INTERESTS AND PENALTIES IMPOSED BY THE PLAINTIFF-APPELLEE DESPITE (1) THE VERY SAME PROVISION HAVING BEEN DECLARED NULL AND VOID BY THE SUPREME COURT IN THE CASE OF BANK OF THE PHILIPPINE ISLANDS VS. ILEANA MACALINAO (G.R. NO. 175490, SEPTEMBER 17, 2009) AND (2) THE PROVISION ON INTEREST BEING UNILATERALLY IMPOSED BY THE PLAINTIFF-APPELLEE CONTRARY TO THE REQUIREMENT IN ARTICLE 1956 OF THE CIVIL CODE; and

IV.

THE TRIAL COURT ERRED IN DISREGARDING THE COUNTERCLAIM OF DEFENDANT-APPELLANT AS REGARDS THE PAYMENT OF SUCH AMOUNTS ERRONEOUSLY PAID AS INTERESTS IN ACCORDANCE WITH THE PRINCIPLE OF SOLUTION INDEBITI, AS PROVIDED IN ARTICLES 2154-2156 IN RELATION TO ARTICLE 1960 OF THE CIVIL CODE.

The petition is partially meritorious.

This Court is faced with a situation where defendant-appellant Maling admits receiving, possessing and using a credit card, but in the same breath, denies being bound by its Terms and Conditions. However, the records show that Maling admitted applying for a credit card with BPI and that the credit card delivered to him was merely a renewal card, to wit:[16]

ATTY. AZARCON**Q:**

So, Mr. Witness, this credit card is a renewed issue or a new issue, so, you are already aware of the terms and conditions of the credit card?

A:

Of the first credit card.

ATTY. ALCUDIA:

Objection, Your Honor, the question is misleading. The witness cannot be made aware of the terms and conditions by the mere issuance of the new credit card.

ATTY. AZARCON:

Your Honor, before the good counsel objected, the witness answered that he is aware of the terms and conditions of the first credit card.

WITNESS:**A:**

Of the first credit card. When I first applied — (Emphasis supplied)

Nonetheless, although Maling admitted applying for a credit card with BPI, the bank still had the burden to prove its affirmative allegations.[17] Even if we were to give credence to Maling's admission of applying for a credit card, BPI had the burden to prove that the application form Maling submitted contained the disputed Terms and Conditions, and that he gave his consent thereto. This the bank failed to do.

Therefore, as held in *Alcaraz vs. Court of Appeals*,[18] the Terms and Conditions do not bind the petitioner (Maling in this case) "without a clear showing that petitioner was aware of and consented to the provisions of this document."

Be that as it may, even if Maling had agreed to the different interest charges, finance charges, penalties and fees stated in the Terms and Conditions, whether or not they are lawful is another thing altogether. Although it is well-settled that a contract has the force of law between the parties, any contract which appears to be so heavily weighted in favor of one of the parties so as to lead to an unconscionable result, is void. There is no way a prospective credit card holder can object to any onerous provision in the contract containing standard stipulations imposed upon those who seek to avail of credit services as they are offered on a take-it-or-leave-it basis as the contract between them is one of adhesion.[19]

The Terms and Conditions of the contract between Maling and BPI stipulated, as follow:[20]

PAYMENT OF CHARGES- xxx The TOB (Total Outstanding Balance) remaining unpaid after the payment due date indicated on the monthly SOA shall bear finance charges at the rate of 2.9% per month for BPI Express Credit, 3.25% per month for BPI MasterCard Classic, BPI MasterCard Gold and Petron-BPI MasterCard, an additional interest and penalty fee equivalent to another six percent (6%) of the amount due for every month or a fraction of a month's delay. xxx

In the instant petition, Maling claims that the finance charge of 3.25% per month and the additional interest and penalty fee of 6% should be struck down as he did not signify his consent thereto. Furthermore, he stresses that a monthly charge of 9.25% or 111% per annum is unlawful for being iniquitous and unconscionable.[21]

We agree with defendant-appellant.

The Supreme Court, in *Chua vs. Timan*, [22] categorically declared as excessive and unconscionable a stipulation of 3% monthly interest rate, thus:

The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be equitably reduced to 1% per month or 12% per annum. We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law. (Emphasis supplied) Pertinently, Art. 1229 of the Civil Code provides:

Art. 1229, Civil Code – The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

In exercising this power to determine what is iniquitous and unconscionable, courts must consider the circumstances of each case since what may be iniquitous and unconscionable in one may be totally just and equitable in another.[23]

In the case at bar, the stipulated interest rates and penalty charges totaling to 9.25% per month are indeed iniquitous. Thus, under the circumstances, we uphold the RTC's ruling of equitably reducing the penalty to 1% per month.

Since there is no dispute that Maling received, accepted and used the BPI MasterCard issued to him and that he defaulted in the payment of the total amount due, he cannot escape liability for the charges made on his credit card. Nonetheless, a careful review of the billing statements shows that the monthly finance charge of 3.25% and the additional interest and penalty fee of 6% had already been incorporated into the total outstanding balance.

Based on the Statements of Account dated December 12, 2006 to October 14, 2007,²⁴ it can be seen that of the total outstanding balance of Php428,407.87, penalty interests account for Php102,334.84, while finance charges account for Php104,115.[24]. The penalty interests and finance charges add up to Php206,450.08 or about 48% of the total outstanding balance of Php428,407.87.[25] As such, it is just right that the beginning balance of Php211,026.08, without the inclusion of the excessive penalty interests and finance charges, should be used as the basis for recomputation.

However, we reject Maling's claim that the beginning balance of Php211,026.08 should be reduced by the amount of interest imposed and already paid by him,[26] for the simple reason that he failed to proffer evidence to that effect. A careful review of the records shows that Maling neglected to offer in evidence how much he has actually paid to BPI or how much of the beginning balance is comprised of the illegal charges and interests. We reiterate the rule that when the existence of a debt is fully established by the evidence contained in the record, the burden

of proving that it has been extinguished by payment devolves upon the debtor who offers such defense to the claim of the creditor.[27]

Consistent with *Alcaraz*, Maling must also pay interest on the total unpaid credit card amount at the rate of 12% per annum since his credit card obligation consists of a loan or forbearance of money. In *Eastern Shipping Lines, Inc. vs. Court of Appeals*,[28] the Supreme Court explained:

- When an obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

In accordance with *Eastern Shipping Lines, Inc.*, the 12% legal interest shall be reckoned from the date BPI extrajudicially demanded from Maling and Bernabe the payment of their overdue credit card obligation. Thus, the 12% legal interest shall be computed from September 24, 2007, when Maling, through a certain Jomar Reyes, received BPI's letter[29] dated August 17, 2007 demanding the payment of the alleged overdue amount of Php435,016.40.

WHEREFORE, the petition is PARTLY GRANTED and the assailed Decision dated July 31, 2012 of the RTC, Branch 134, Makati City, in Civil Case No. 07-1045, is MODIFIED to read, as follows:

WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff and against the defendants Julius Maling and Diosdado Bernabe. Maling and Bernabe are ORDERED to pay the plaintiff jointly and severally the amount of Php211,026.08 plus interest and penalty charges of 1% per month from December 12, 2006 until fully paid. Maling and Bernabe are likewise ORDERED to pay the legal interest rate of 12% per annum from September 24, 2007 until fully paid, as well as the amount of Php50,000.00 as attorney's fees and costs of suit.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Cruz, R.A., and [*]Inting, S.B., JJ., concur.

[*] Vice J. R.F. Barza, who is on Baguio Summer Session, per Office Order No. 238-14-ABR dated May 23, 2014.

[1] Records, pp. 236-239.

[2] Id. at 2.

[3] Id. at 138.

[4] Id. at 139.

[5] Id. at 1-4.

[6] Id. at 73-79.

[7] Id. at 75.

[8] Id. at 76.

[9] TSN, August 18, 2010, pp. 3-6.

[10] Records, p. 239.

[11] Id. at 240-250.

[12] Id. at 257-258.

[13] Id. at 259-260.

[14] Id. at 262.

[15] Rollo, p. 37.

[16] TSN, June 1, 2011, p. 6.

[17] Revised Rules of Court, Rule 131, Section 1. Burden of proof- Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[18] 497 SCRA 75, 87 (2006).

[19] See Polotan, Sr. v. Court of Appeals, 296 SCRA 247, 255 (1998).

[20] Records, p. 8.

[21] Rollo, pp. 46-48.

[22] G.R. No. 170452, August 13, 2008.

[23] Imperial vs. Jaucian, 427 SCRA 517, 526 (2004), citing RCBC vs. Court of Appeals, 289 SCRA 292 (1908).

[24] Records, pp. 127-138.

[25] Rollo, p. 50.

[26] Id. at 51.

[27] Coronel vs. Capati, 459 SCRA 205, 213 (2005), citing Pacific Maritime Services, Inc. vs. Ranay, 275 SCRA 717, 726 (1997).

[28] 234 SCRA 78, 95 (1994).

[29] Records, p. 139.

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