

MANDARIN VILLA, INC., PETITIONER, VS. COURT OF APPEALS AND CLODUALDO DE JESUS, RESPONDENTS.*G.R. No. 119850. June 20, 1996*

Ponente: FRANCISCO, J.

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With ample evidentiary support are the following antecedent facts:

In the evening of October 19, 1989, private respondent, Clodualdo de Jesus, a practicing lawyer and businessman, hosted a dinner for his friends at the petitioner's restaurant the Mandarin Villa Seafoods Village, Greenhills, Mandaluyong City. After dinner the waiter handed to him the bill in the amount of P2,658.50. Private respondent offered to pay the bill through his credit card issued by Philippine Commercial Credit Card Inc. (BANKARD). This card was accepted by the waiter who immediately proceeded to the restaurant's cashier for card verification. Ten minutes later, however, the waiter returned and audibly informed private respondent that his credit card had expired.[1] Private respondent remonstrated that said credit card had yet to expire on September 1990, as embossed on its face.[2] The waiter was unmoved, thus, private respondent and two of his guests approached the restaurant's cashier who again passed the credit card over the verification computer. The same information was produced, i.e., CARD EXPIRED. Private respondent and his guests returned to their table and at this juncture, Professor Lirag, another guest, uttered the following remarks: "Clody [referring to Clodualdo de Jesus], may problema ba? Baka kailangang maghugas na kami ng pinggan?"[3] Thereupon, private respondent left the restaurant and got his BPI Express Credit Card from his car and offered it to pay their bill. This was accepted and honored by the cashier after verification.[4] Petitioner and his companions left afterwards.

The incident triggered the filing of a suit for damages by private respondent. Following a full-dress trial, judgment was rendered directing the petitioner and BANKARD to pay jointly and severally the private respondent: (a) moral damages in the amount of P250,000.00; (b) exemplary damages in the amount of P100,000.00; and (c) attorney's fees and litigation expenses in the amount of P50,000.00.

Both the petitioner and BANKARD appealed to the respondent Court of Appeals which rendered a decision, thus:

"WHEREFORE, the decision appealed from is hereby MODIFIED by:

1. Finding appellant MANDARIN solely responsible for damages in favor of appellee;
2. Absolving appellant BANKARD of any responsibility for damages;
3. Reducing moral damages awarded to appellee to TWENTY FIVE THOUSAND and 00/100 (P25,000.00) PESOS;
4. Reducing exemplary damages awarded to appellee to TEN THOUSAND and 00/100 (P10,000.00) PESOS;
5. Reversing and setting aside the award of P50,000.00 for attorney's fees as well as interest awarded; and
6. AFFIRMING the dismissal of all counterclaims and cross-claims.

Costs against appellant Mandarin.

SO ORDERED."[5]

Mandarin Villa, thus, interposed this present petition, faulting the respondent court with six (6) assigned errors which may be reduced to the following issues, to wit: (1) whether or not petitioner is bound to accept payment by means of credit card; (2) whether or not petitioner is negligent under the circumstances obtaining in this case; and (3) if negligent, whether or not such negligence is the proximate cause of the private respondent's damage.

Petitioner contends that it cannot be faulted for its cashier's refusal to accept private respondent's BANKARD credit card, the same not being a legal tender. It argues that private respondent's offer to pay by means of credit card partook of the nature of a proposal to novate an existing obligation for which petitioner, as creditor, must first give its consent otherwise there will be no binding contract between them. Petitioner cannot seek refuge behind this averment.

We note that Mandarin Villa Seafood Village is affiliated with BANKARD. In fact, an "Agreement"[6] entered into by petitioner and BANKARD dated June 23, 1989, provides inter alia:

"The MERCHANT shall honor validly issued PCCCI credit cards presented by their corresponding holders in the purchase of goods and/or services supplied by it provided that the card expiration date has not elapsed and the card number does not appear on the latest cancellation bulletin of lost, suspended and cancelled PCCCI credit cards and, no signs of tampering, alterations or irregularities appear on the face of the credit card."[7]

While private respondent may not be a party to the said agreement, the above-quoted stipulation conferred a favor upon the private respondent, a holder of credit card validly issued by BANKARD. This stipulation is a stipulation pour autri and under Article 1311 of the Civil Code private respondent may demand its fulfillment provided he communicated his acceptance to the petitioner before its revocation.[8] In this case, private respondent's offer to pay by means of his BANKARD credit card constitutes not only an acceptance of the said stipulation but also an explicit communication of his acceptance to the obligor.

In addition, the record shows that petitioner posted a logo inside Mandarin Villa Seafood Village stating that "Bankard is accepted here." [9] This representation is conclusive upon the petitioner which it cannot deny or disprove as against the private respondent, the party relying thereon. Petitioner, therefore, cannot disclaim its obligation to accept private respondent's BANKARD credit card without violating the equitable principle of estoppel.[10]

Anent the second issue, petitioner insists that it is not negligent. In support thereof, petitioner cites its good faith in checking, not just once but twice, the validity of the aforementioned credit card prior to its dishonor. It argues that since the verification machine flashed an information that the credit card has expired, petitioner could not be expected to honor the same much less be adjudged negligent for dishonoring it. Further, petitioner asseverates that it only followed the guidelines and instructions issued by BANKARD in dishonoring the aforementioned credit card. The argument is untenable.

The test for determining the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use the reasonable care and caution which an ordinary prudent person would have used in the same situation? If not, then he is guilty of negligence.[11] The Point of Sale (POS) Guidelines which outlined the steps that petitioner must follow under the circumstances provides:

"x x x x x x x x

"CARD EXPIRED

a. Check expiry date on card.

- b.If unexpired, refer to CB.
- b.1. If valid, honor up to maximum of SPL only.
- b.2. If in CB as Lost, do procedures 2a to 2e.,
- b.3. If in CB as Suspended/Cancelled, do not honor card.

c.If expired, do not honor card."[12]

A cursory reading of said rule reveals that whenever the words CARD EXPIRED flashes on the screen of the verification machine, petitioner should check the credit card's expiry date embossed on the card itself. If unexpired, petitioner should honor the card provided it is not invalid, cancelled or otherwise suspended. But if expired, petitioner should not honor the card. In this case, private respondent's BANKARD credit card has an embossed expiry date of September 1990.[13] Clearly, it has not yet expired on October 19,1989, when the same was wrongfully dishonored by the petitioner. Hence, petitioner did not use the reasonable care and caution which an ordinary prudent person would have used in the same situation and as such petitioner is guilty of negligence. In this connection, we quote with approval the following observations of the respondent Court.

"Mandarin argues that based on the POS Guidelines (supra), it has three options in case the verification machine flashes 'CARD EXPIRED.' It chose to exercise option (c) by not honoring appellee's credit card. However, appellant apparently intentionally glossed over option '(a) Check expiry date on card' (id.) which would have shown without any shadow of doubt that the expiry date embossed on the BANKARD was 'SEP 90.' (Exhibit "D".) A cursory look at the appellee's BANKARD would also reveal that appellee had been as of that date a cardholder since 1982, a fact which would have entitled the customer the courtesy of better treatment."[14]

Petitioner, however, argues that private respondent's own negligence in not bringing with him sufficient cash was the proximate cause of his damage. It likewise sought exculpation by contending that the remark of Professor Lirag[15] is a supervening event and at the same time the proximate cause of private respondent's injury.

We find this contention also devoid of merit. While it is true that private respondent did not have sufficient cash on hand when he hosted a dinner at petitioner's restaurant, this fact alone does not constitute negligence on his part. Neither can it be claimed that the same was the proximate cause of private respondent's damage. We take judicial notice[16] of the current practice among major establishments, petitioner included, to accept payment by means of credit cards in lieu of cash. Thus, petitioner accepted private respondent's BPI Express Credit Card after verifying its validity,[17] a fact which all the more refutes petitioner's imputation of negligence on the private respondent.

Neither can we conclude that the remark of Professor Lirag was a supervening event and the proximate cause of private respondent's injury. The humiliation and embarrassment of the private respondent was brought about not by such a remark of Professor Lirag but by the fact of dishonor by the petitioner of private respondent's valid BANKARD credit card. If at all, the remark of Professor Lirag served only to aggravate the embarrassment then felt by private respondent, albeit silently within himself.

WHEREFORE, the instant petition is hereby DISMISSED.

SO ORDERED.

Davide, Jr., Melo, and Panganiban, JJ., concur.

Narvasa, C.J., (Chairman), no part, no participation in deliberations.

[1] TSN., Clodualdo de Jesus, October 7, 1990, p. 5.

[2] Id., p. 6.

[3] Id., p. 8.

[4] Exhibit E; Records, p. 119.

[5] Court of Appeals Decision, promulgated on March 21, 1995, p. 8; Rollo, p. 49. Ninth Division, penned by Justice Canizares-Nye with Justices Imperial and Callejo concurring.

[6] Exhibit 13; Records, p. 189.

[7] Exhibit 13-D; Records, p. 189.

[8] See *Kauffman v. Philippine National Bank*, 42 Phil. 182 (1921).

[9] TSN., Clodualdo de Jesus, October 7, 1990, p. 25.

[10] Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it and cannot be denied or disapproved as against the person relying thereon (Civil Code).

[11] See *Picart v. Smith*, 37 Phil. 809; *Cangco v. Manila Railroad Co.*, 38 Phil. 768.

[12] Rollo, pp. 17-18.

[13] Exhibit D; Records, p. 118.

[14] Rollo, p. 18.

[15] "Clody, may problems ba? Baka kailangang maghugas na kami ng pinggan?"

[16] 16 Sec. 2. Judicial notice, when discretionary. - A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. Rule 129, Revised Rules of Court.

[17] TSN., Clodualdo de Jesus, October 7, 1990, p. 8; Exhibit E, Records, p. 119.

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