

BPI EXPRESS CARD CORPORATION, PETITIONER, VS. COURT OF APPEALS AND RICARDO J. MARASIGAN, RESPONDENTS.

G.R. No. 120639. September 25, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The question before this Court is whether private respondent can recover moral damages arising from the cancellation of his credit card by petitioner credit card corporation.

The facts of the case are as stated in the decision of the respondent court,[1] to wit:

The case arose from the dishonor of the credit card of the plaintiff Atty. Ricardo J. Marasigan by Cafe Adriatico, a business establishment accredited with the defendant-appellant BPI Express Card Corporation (BECC for brevity) on December 8, 1989 when the plaintiff entertained some guests thereat.

The records of this case show that plaintiff, who is a lawyer by profession was a complimentary member of BECC from February 1988 to February 1989 and was issued Credit Card No. 100-012-5534 with a credit limit of P3,000.00 and with a monthly billing every 27th of the month (Exh. N), subject to the terms and conditions stipulated in the contract (Exh. 1-b). His membership was renewed for another year or until February 1990 and the credit limit was increased to P5,000.00 (Exh. A). The plaintiff oftentimes exceeded his credit limits (Exhs. I, I-1 to I-12) but this was never taken against him by the defendant and even his mode of paying his monthly bills in check was tolerated. Their contractual relations went on smoothly until his statement of account for October, 1989 amounting to P8,987.84 was not paid in due time. The plaintiff admitted having inadvertently failed to pay his account for the said month because he was in Quezon province attending to some professional and personal commitments. He was informed by his secretary that defendant was demanding immediate payment of his outstanding account, was requiring him to issue a check for P15,000.00 which would include his future bills, and was threatening to suspend his credit card. Plaintiff issued Far East Bank and Trust Co. Check No. 494675 in the amount of P15,000.00, postdated December 15, 1989 which was received on November 23, 1989 by Tess Lorenzo, an employee of the defendant (Exhs. J and J-1), who in turn gave the said check to Jeng Angeles, a co-employee who handles the account of the plaintiff. The check remained in the custody of Jeng Angeles. Mr. Roberto Maniquiz, head of the collection department of defendant was formally informed of the postdated check about a week later. On November 28, 1989, defendant served plaintiff a letter by ordinary mail informing him of the temporary suspension of the privileges of his credit card and the inclusion of his account number in their Caution List. He was also told to refrain from further use of his credit card to avoid any inconvenience/embarrassment and that unless he settles his outstanding account with the defendant within 5 days from receipt of the letter, his membership will be permanently cancelled (Exh. 3). There is no showing that the plaintiff received this letter before December 8, 1989. Confident that he had settled his account with the issuance of the postdated check, plaintiff invited some guests on December 8, 1989 and entertained them at Café Adriatico. When he presented his credit card to Café Adriatico for the bill amounting to P735.32, said card was dishonored. One of his guests, Mary Ellen Ringler, paid the bill by using her own credit card, a Unibankard (Exhs. M, M-1 and M-2).

In a letter addressed to the defendant dated December 12, 1989, plaintiff requested that he be sent the exact

billing due him as of December 15, 1989, to withhold the deposit of his postdated check and that said check be returned to him because he had already instructed his bank to stop the payment thereof as the defendant violated their agreement that the plaintiff issue the check to the defendant to cover his account amounting to only P8,987.84 on the condition that the defendant will not suspend the effectivity of the card (Exh. D). A letter dated December 16, 1989 was sent by the plaintiff to the manager of FEBTC, Ramada Branch, Manila requesting the bank to stop the payment of the check (Exhs. E, E-1). No reply was received by plaintiff from the defendant to his letter dated December 12, 1989. Plaintiff sent defendant another letter dated March 12, 1990 reminding the latter that he had long rescinded and cancelled whatever arrangement he entered into with defendant and requesting for his correct billing, less the improper charges and penalties, and for an explanation within five (5) days from receipt thereof why his card was dishonored on December 8, 1989 despite assurance to the contrary by defendant's personnel-in-charge, otherwise the necessary court action shall be filed to hold defendant responsible for the humiliation and embarrassment suffered by him (Exh. F). Plaintiff alleged further that after a few days, a certain Atty. Albano, representing himself to be working with office of Atty. Lopez, called him inquiring as to how the matter can be threshed out extrajudicially but the latter said that such is a serious matter which cannot be discussed over the phone. The defendant served its final demand to the plaintiff dated March 21, 1990 requiring him to pay in full his overdue account, including stipulated fees and charges, within 5 days from receipt thereof or face court action also to replace the postdated check with cash within the same period or face criminal suit for violation of the Bouncing Check Law (Exh. G/Exh. 13). The plaintiff, in a reply letter dated April 5, 1990 (Exh. H), demanded defendant's compliance with his request in his first letter dated March 12, 1990 within three (3) days from receipt, otherwise the plaintiff will file a case against them, x x x.[2]

Thus, on May 7, 1990 private respondent filed a complaint for damages against petitioner before the Regional Trial Court of Makati, Branch 150, docketed as Civil Case No. 90-1174.

After trial, the trial court ruled for private respondent, finding that herein petitioner abused its right in contravention of Article 19 of the Civil Code.[3] The dispositive portion of the decision reads:

Wherefore, judgment is hereby rendered ordering the defendant to pay plaintiff the following:

1. P100,000.00 as moral damages;
2. P50,000.00 as exemplary damages; and
3. P20,000.00 by way of attorney's fees.

On the other hand, plaintiff is ordered to pay defendant its outstanding obligation in the amount of P14,439.41, amount due as of December 15, 1989.[4]

The trial court's ruling was based on its findings and conclusions, to wit:

There is no question that plaintiff had been in default in the payment of his billings for more than two months, prompting defendant to call him and reminded him of his obligation. Unable to personally talk with him, this Court is convinced that somehow one or another employee of defendant called him up more than once.

However, while it is true that, as indicated in the terms and conditions of the application for BPI credit card, upon failure of the cardholder to pay his outstanding obligation for more than thirty (30) days, the defendant can automatically suspend or cancel the credit card, that reserved right should not have been abused, as it was in fact abused, in plaintiff's case. What is more peculiar here is that there have been admitted communications between plaintiff and defendant prior to the suspension or cancellation of plaintiff's credit card and his inclusion in the caution list. However, nowhere in any of these communications was there ever a hint given to plaintiff that his card had already been suspended or cancelled. In fact, the Court observed that while defendant was trying its best to persuade plaintiff to update its account and pay its obligation, it had already taken steps to suspend/cancel plaintiff's card and include him in the caution list. While the Court admires defendant's diplomacy in dealing with its clients, it cannot help but frown upon the backhanded way defendant dealt with

plaintiff's case. For despite Tess Lorenzo's denial, there is reason to believe that plaintiff was indeed assured by defendant of the continued honoring of his credit card so long as he pays his obligation of P15,000.00. Worst, upon receipt of the postdated check, defendant kept the same until a few days before it became due and said check was presented to the head of the collection department, Mr. Maniquiz, to take steps thereon, resulting to the embarrassing situation plaintiff found himself in on December 8, 1989. Moreover, Mr. Maniquiz himself admitted that his request for plaintiff to replace the check with cash was not because it was a postdated check but merely to tally the payment with the account due.

Likewise, the Court is not persuaded by the sweeping denials made by Tess Lorenzo and her claim that her only participation was to receive the subject check. Her immediate superior, Mr. Maniquiz testified that he had instructed Lorenzo to communicate with plaintiff once or twice to request the latter to replace the questioned check with cash, thus giving support to the testimony of plaintiff's witness, Dolores Quizon, that it was one Tess Lorenzo who she had talked over the phone regarding plaintiff's account and plaintiff's own statement that it was this woman who assured him that his card has not yet been and will not be cancelled/suspended if he would pay defendant the sum of P15,000.00.

Now, on the issue of whether or not upon receipt of the subject check, defendant had agreed that the card shall remain effective, the Court takes note of the following:

1. An employee of defendant corporation unconditionally accepted the subject check upon its delivery, despite its being a postdated one; and the amount did not tally with plaintiff's obligation;
2. Defendant did not deny nor controvert plaintiff's claim that all his payments were made in checks;
3. Defendant's main witness, Mr. Maniquiz, categorically stated that the request for plaintiff to replace his postdated check with cash was merely for the purpose of tallying plaintiff's outstanding obligation with his payment and not to question the postdated check;
4. That the card was suspended almost a week after receipt of the postdated check;
5. That despite the many instances that defendant could have informed plaintiff over the phone of the cancellation or suspension of his credit card, it did not do so, which could have prevented the incident of December 8, 1989, the notice allegedly sent thru ordinary mail is not only unreliable but takes a long time. Such action as suspension of credit card must be immediately relayed to the person affected so as to avoid embarrassing situations.
6. And that the postdated check was deposited on December 20, 1989.

In view of the foregoing observations, it is needless to say that there was indeed an arrangement between plaintiff and the defendant, as can be inferred from the acts of the defendant's employees, that the subject credit card is still good and could still be used by the plaintiff as it would be honored by the duly accredited establishment of defendant.[5]

Not satisfied with the Regional Trial Court's decision, petitioner appealed to the Court of Appeals, which, in a decision promulgated on March 9, 1995 ruled in its dispositive portion:

WHEREFORE, premises considered, the decision appealed from is hereby AFFIRMED with the MODIFICATION that the defendant-appellant shall pay the plaintiff-appellee the following: P50,000.00 as moral damages; P25,000.00 as exemplary damages; and P10,000.00 by way of attorney's fees.

SO ORDERED.[6]

Hence, the present petition on the following assignment of errors:

I

THE LOWER COURT ERRED IN DECLARING THAT THERE WAS INDEED AN AGREEMENT OR ARRANGEMENT ENTERED INTO BETWEEN THE PARTIES WHEREIN THE DEFENDANT REQUIRED THE PLAINTIFF TO ISSUE A POSTDATED CHECK IN ITS FAVOR IN THE AMOUNT OF P15,000.00 AS PAYMENT FOR HIS OVERDUE ACCOUNTS, WITH THE CONDITION THAT THE PLAINTIFF'S CREDIT CARD WILL NOT BE SUSPENDED OR CANCELLED.

II

THE LOWER COURT ERRED IN HOLDING DEFENDANT LIABLE FOR DAMAGES AND ATTORNEY'S FEES ARISING OUT FROM THE DISHONOR OF THE PLAINTIFF'S CREDIT CARD.[7]

We find the petition meritorious.

The first issue to be resolved is whether petitioner had the right to suspend the credit card of the private respondent.

Under the terms and conditions of the credit card, signed by the private respondent, any card with outstanding balances after thirty (30) days from original billing/statement shall automatically be suspended, thus:

PAYMENT OF CHARGES - BECC shall furnish the Cardholder a monthly statement of account made through the use of the CARD and the Cardholder agrees that all charges made through the use of the CARD shall be paid by the Cardholder on or before the last day for payments, which is twenty (20) days from the date of the said statement of account, and such payment due date may be changed to an earlier date if the Cardholder's account is considered overdue and/or with balances in excess of the approved credit limit; or to such other date as may be deemed proper by the CARD issuer with notice to the Cardholder on the same monthly statement of account. If the last day for payment falls on a Saturday, Sunday or Holiday, the last day for payment automatically becomes the last working day prior to said payment date. However, notwithstanding the absence or lack of proof of service of the statement of charges to the Cardholder, the latter shall pay any or all charges made through the use of the CARD within thirty (30) days from the date or dates thereof. Failure of Cardholder to pay any and all charges made through the CARD within the payment period as stated in the statement of charges or within thirty (30) days from actual date or dates whichever occur earlier, shall render him in default without the necessity of demand from BECC, which the Cardholder expressly waives. These charges or balance thereof remaining unpaid after the payment due date indicated on the monthly statement of account shall bear interest at the rate of 3% per month and an additional penalty fee equivalent to another 3% of the amount due for every month or a fraction of a month's delay. PROVIDED, that if there occurs any change on the prevailing market rates. BECC shall have the option to adjust the rate of interest and/or penalty fee due on the outstanding obligation with prior notice to the Cardholder.

xxx xxx xxx

Any CARD with outstanding balances unpaid after thirty (30) days from original billing/statement date shall automatically be suspended, and those with accounts unpaid after sixty (60) days from said original billing/statement date shall automatically be cancelled, without prejudice to BECC's right to suspend or cancel any CARD any time and for whatever reason. In case of default in his obligation as provided for in the preceding paragraph, Cardholder shall surrender his CARD to BECC and shall in addition to the interest and penalty charges aforementioned, pay the following liquidated damages and/or fees (a) a collection fee of 25% of the amount due if the account is referred to a collection agency or attorney; (b) a service fee of P100 for every dishonored check issued by the Cardholder in payment of his account, with prejudice, however, to BECC's right of considering Cardholder's obligation unpaid, cable cost for demanding payment or advising cancellation of membership shall also be for Cardholder's account; and (c) a final fee equivalent to 25% of the unpaid balance, exclusive of litigation expenses and judicial costs, if the payment of the account is enforced through court action.[8]

The aforequoted provision of the credit card cannot be any clearer. By his own admission, private respondent

made no payment within thirty days for his original billing/statement dated 27 September 1989. Neither did he make payment for his original billing/statement dated 27 October 1989. Consequently, as early as 28 October 1989, thirty days from the non-payment of his billing dated 27 September 1989, petitioner corporation could automatically suspend his credit card.

The next issue is whether prior to the suspension of private respondent's credit card on 28 November 1989, the parties entered into an agreement whereby the card could still be used and would be duly honored by duly accredited establishments.

We agree with the findings of the respondent court, that there was an arrangement between the parties, wherein the petitioner required the private respondent to issue a check worth P15,000 as payment for the latter's billings. However, we find that the private respondent was not able to comply with his obligation.

As the testimony of private respondent himself bears out, the agreement was for the immediate payment of the outstanding account:

Q

In said statement of account that you are supposed to pay the P8,974.84 the charge of interest and penalties, did you note that?

A

Yes, sir. I noted the date.

Q

When?

A

When I returned from the Quezon province, sir.

Q

When?

A

I think November 22, sir.

Q

So that before you used again the credit card you were not able to pay immediately this P8,987.84 in cash?

A

I paid P15,000.00, sir.

Q

My question Mr. Witness is, did you pay this P8,987.84 in charge of interest and penalties immediately in cash?

A

In cash no, but in check, sir.

Q

You said that you noted the word "immediately" in bold letters in your statement of account, why did you not pay immediately?

A

Because I received that late, sir.

Q

Yes, on November 22 when you received from the secretary of the defendant telling you to pay the principal amount of P8,987.84, why did you not pay?

A

There was a communication between me and the defendant, I was required to pay P8,000.00 but I paid in check for P15,000.00, sir.

Q

Do you have any evidence to show that the defendant required you to pay in check for P15,000.00?

A

Yes, sir.

Q

Where is it?

A

It was by telecommunication, sir.

Q

So there is no written communication between you and the defendant?

A

There was none, sir.

Q

There is no written agreement which says that P8,987.84 should be paid for P15,000.00 in check, there is none?

A

Yes, no written agreement, sir.

Q

And you as a lawyer you know that a check is not considered as cash specially when it is postdated sent to the defendant?

A

That is correct, sir.

Clearly, the purpose of the arrangement between the parties on November 22, 1989, was for the immediate payment of the private respondent's outstanding account, in order that his credit card would not be suspended.

As agreed upon by the parties, on the following day, private respondent did issue a check for P15,000. However, the check was postdated 15 December 1989. Settled is the doctrine that a check is only a substitute for money and not money, the delivery of such an instrument does not, by itself operate as payment.[9] This is especially true in the case of a postdated check.

Thus, the issuance by the private respondent of the postdated check was not effective payment. It did not comply with his obligation under the arrangement with Miss Lorenzo. Petitioner corporation was therefore justified in suspending his credit card.

Finally, we find no legal and factual basis for private respondent's assertion that in canceling the credit card of the private respondent, petitioner abused its right under the terms and conditions of the contract.

To find the existence of an abuse of right under Article 19 the following elements must be present: (1) There is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[10]

Time and again this Court has held that good faith is presumed and the burden of proving bad faith is on the party alleging it.[11] This private respondent failed to do. In fact, the action of the petitioner belies the existence of bad faith. As early as 28 October 1989, petitioner could have suspended private respondent's card outright. Instead, petitioner allowed private respondent to use his card for several weeks. Petitioner had even notified private respondent of the impending suspension of his credit card and made special accommodations for him for settling his outstanding account. As such, petitioner cannot be said to have capriciously and arbitrarily canceled the private respondent's credit card.

We do not dispute the findings of the lower court that private respondent suffered damages as a result of the cancellation of his credit card. However, there is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. In such cases, the consequences must be borne by the injured person alone, the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. These situations are often called *damnum absque injuria*. [12]

In other words, in order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff - a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be a breach of some duty and the imposition of liability for that breach before damages may be awarded; [13] and the breach of such duty should be the proximate cause of the injury.

We therefore disagree with the ruling of the respondent court that the dishonor of the credit card of the private respondent by Café Adriatico is attributable to petitioner for its willful or gross neglect to inform the private respondent of the suspension of his credit card, the unfortunate consequence of which brought social humiliation and embarrassment to the private respondent.[14]

It was petitioner's failure to settle his obligation which caused the suspension of his credit card and subsequent dishonor at Café Adriatico. He can not now pass the blame to the petitioner for not notifying him of the

suspension of his card. As quoted earlier, the application contained the stipulation that the petitioner could automatically suspend a card whose billing has not been paid for more than thirty days. Nowhere is it stated in the terms and conditions of the application that there is a need of notice before suspension may be effected as private respondent claims.[15]

This notwithstanding, on November 28, 1989, the day of the suspension of private respondent's card, petitioner sent a letter by ordinary mail notifying private respondent that his card had been temporarily suspended. Under the Rules on Evidence, there is a disputable presumption that letters duly directed and mailed were received on the regular course of mail.[16] Aside from the private respondent's bare denial, he failed to present evidence to rebut the presumption that he received said notice. In fact upon cross examination, private respondent admitted that he did received the letter notifying him of the cancellation:

Q

Now you were saying that there was a first letter sent to you by the defendant?

A

Your letter, sir.

Q

Was that the first letter that you received?

A

Yes, sir.

Q

Is it that there was a communication first between you and the defendant?

A

There was none, sir. I received a cancellation notice but that was after November 27.[17]

As it was private respondent's own negligence which was the proximate cause of his embarrassing and humiliating experience, we find the award of damages by the respondent court clearly unjustified. We take note of the fact that private respondent has not yet paid his outstanding account with petitioner.

IN VIEW OF THE FOREGOING, the decision of the Court of Appeals ordering petitioner to pay private respondent P100,000.00 as moral damages, P50,000.00 as exemplary damages and P20,000.00 as attorney's fees, is SET ASIDE. Private respondent is DIRECTED to pay his outstanding obligation with the petitioner in the amount of P14,439.41.

SO ORDERED.

Narvasa, C.J., (Chairman), and Romero, J., concur.

Purisima, J., no part, being signatory to CA decision.

[1] CA decision penned by: Justice Salome A. Montoya, concurred by: Justices Fidel P. Purisima and Godardo A. Jacinto, Rollo, p. 12.

[2] Id., at 24-26.

[3] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[4] See note 1, p. 45.

[5] *Id.*, at 42-44.

[6] *Id.*, at 35.

[7] *Id.*, at 6.

[8] Records, p. 104.

[9] Roman Catholic Bishop of Malolos, Inc. vs. IAC, 191 SCRA 411 (1990).

[10] Albenson Enterprises Corp. vs. CA, 217 SCRA 16, 25 (1993).

[11] Barons Marketing Corp. vs. Court of Appeals and Phelps Dodge Phils., Inc., G.R. No. 126486, February 9, 1998.

[12] Custodio vs. CA, 253 SCRA 483 (1996) citing 22 Am Jur 2d, Damages, Sec. 4, 35-36.

[13] *Ibid.*

[14] See note 1, p. 33.

[15] During cross-examination of plaintiff-private respondent Ricardo Marasigan by counsel for the defendant-petitioner, the following exchange ensued:

Q Now you know that after using the credit card you have to pay the monthly charges as they fall due in accordance with the obligation/application that you signed?

A Yes, sir.

Q And if the payments were not made on time they are supposed to earn interest?

A Yes, sir.

Q They also earn charges, may we know your answer Mr. Witness?

A Yes, sir.

Q Thank you. In case collection suit is filed you know that there were litigation charges that will be claimed against you, is it not?

A I don't know sir.

Q But you as a practicing lawyer?

A Yes, as matter of fact that is the procedure.

Q But you did not read the contents?

A Yes, sir.

Q But how did you come to know that you are supposed to pay the charges since you have not read the contents?

A By the statement of account, sir.

Q What about the date when you should pay your monthly charges, did you know when to pay it?

A It is also stated there, sir.

Q In the monthly statement of account?

A Yes, sir.

Q When you received this monthly statement of account did you not complain to the defendant the credit card since you have not read the contents of your application?

A No, sir. I did not.

Q You continued using that credit card until it was suspended and terminated?

A Yes, sir.

Q Now do you also know from the terms and conditions of the contract between you and the defendant that if the charges for the use of the credit card are not paid it will be suspended?

A Yes, sir. But there has got to be a prior notice.

Q Thank you. After a suspension is still not paid your credit card has to be terminated?

A I think that is the procedure, sir (TSN, November 5, 1990, pp. 39-42).

[16] Revised Rules of Court, Rule 131 Sec. 3 (m).

[17] TSN, November 5, 1990, pp. 51-52.

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