BANKARD, INC., PETITIONER, VS. DR. ANTONIO NOVAK FELICIANO,

G.R. NO. 141761. July 28, 2006

Ponente: PUNO, J.

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PUNO, J.:

Before us is a petition for review under Rule 45 of the May 31, 1999 Decision[1] and January 28, 2000 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 56734 which modified the July 22, 1997 Decision[3] of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 95-1492.

The facts are as follows:

Respondent Dr. Antonio Novak Feliciano is the holder of PCIBank Mastercard No. 5407-2610-0000-5864, issued and managed by petitioner Bankard, Inc. An extension of the card, PCIBank Mastercard No. 5407-2611-0000-5863, was issued to his wife, Mrs. Marietta N. Feliciano.

On June 19, 1995, respondent used his PCIBank Mastercard No. 5407-2610-0000-5864 to pay a breakfast bill in Toronto, Canada. The card was, however, dishonored for payment. Respondent's guests, Dr. Bellaflor Bumanlag and three other Filipino doctors based in Canada, had to pay the bill. Respondent immediately called the US toll-free number of petitioner to inquire on the cause of dishonor. He was informed that the reason was the nonpayment of his last billing statement. Respondent denied that he failed to pay, and requested the person on the line to verify the correct status of his credit card again. Respondent likewise called his secretary in the Philippines to confirm the fact of payment, and requested her to advise petitioner's office in Manila.

The following day, respondent met with Dr. Bumanlag to reimburse her for the cost of the breakfast the previous day. Thereafter, Dr. Bumanlag accompanied the respondent to the Eddie Bauer Fairview Mall, a prestigious mall in Toronto, where the latter bought several dressing items. Respondent presented his PCIBank Mastercard No. 5407-2610-0000-5864 for payment. Again, the card was dishonored to the embarrassment of the respondent. Worse, the manager of the department store confiscated the card in front of Dr. Bumanlag and other shoppers. Respondent protested but the manager called security and forcibly retained the card. To end the commotion that ensued, respondent just asked for a receipt for the confiscated card.

On October 5, 1995, respondent filed a complaint against petitioner Bankard, Inc. and Mastercard International for breach of contractual rights and damages before the RTC-Makati City, docketed as Civil Case No. 95-1492. Respondent alleged that he is a holder in good standing for more than ten (10) years of PCIBank Mastercard No. 5407-2610-0000-5864, and that petitioner and Mastercard International reneged on their agreement by suspending the services of the card without notice to him. As a result of the suspension and confiscation of his card in Toronto, Canada, respondent suffered social humiliation, embarrassment and besmirched reputation. The Canadian-based doctors, who were his guests during the breakfast meeting in Toronto and whom he expected to donate at least fifty thousand Canadian dollars to his charitable clinic in Makati, withdrew their contributions because of the incidents. Respondent prayed for P1,000,000.00 in actual damages representing the peso equivalent of the aborted contributions, P1,000,000.00 for moral damages, P200,000.00 for exemplary damages, and

P100,000.00 for attorney's fees and costs of suit.

In defense, petitioner claimed due diligence before suspending the privileges of respondent's credit card. Petitioner alleged that on June 13, 1995, it received a fraud alert or warning bulletin[4] from Bank International Indonesia. A fraud alert or warning bulletin is a notice by telex[5] or telephone addressed to the issuer of a card when a fraudulent or counterfeit use of the card has been detected or suspected by an acquirer. In the June 13, 1995 fraud alert, PCIBank Mastercard No. 5407-2611-0000-5863 was listed as having had a suspected counterfeit transaction in Indonesia on June 11, 1995. Petitioner's fraud analyst, Mr. Ferdinand Lopez, then accessed petitioner's directory of cardholders to identify the holder of PCIBank Mastercard No. 5407-2611-0000-5863. The directory showed that the principal cardholder for PCIBank Mastercard No. 5407-2611-0000-5863 was respondent Dr. Antonio Novak Feliciano, and that the credit card was the extension card issued to his wife, Marietta Feliciano. Mr. Lopez immediately called respondent at his clinic but the latter was not there. Neither he nor his wife was at home. Consequently, Mr. Lopez left his name, telephone number, and a message for respondent to return his call, to the woman who answered the phone. He likewise inquired from the woman whether respondent and his wife were in the country or whether they had just arrived from abroad. The woman answered "no." With that information and considering that Indonesia has a high incidence of counterfeit credit card transactions, Mr. Lopez concluded that the transaction involving PCIBank Mastercard No. 5407-2611-0000-5863 was counterfeit. He sent a notice of card account blocking to the Authorization Department. He likewise sent a written notice to the Felicianos that PCIBank Mastercard No. 5407-2611-0000-5863 had a counterfeit movement in another country and that petitioner is temporarily suspending the services of the card including the principal card, PCIBank Mastercard No. 5407-2610-0000-5864, pending investigation on the matter. The Felicianos were required to submit an affidavit of disclaim and photocopies of their passports. The Felicianos did not respond to the notification.

On July 22, 1997, the trial court decided the case in favor of respondent.[6] It found that petitioner's negligence was the immediate and proximate cause of respondent's injury. Although the claim for actual damages was disallowed for lack of proof, petitioner was ordered to pay: (1) P1,000,000.00 as moral damages, (2) P200,000.00 as exemplary damages, and (3) P100,000.00 for attorney's fees and costs of suit. Petitioner was likewise ordered to restore respondent's good name with the merchant establishment in Canada which confiscated his Mastercard, and to return the card with apologies to respondent.

Petitioner assailed the decision in a petition for review with the Court of Appeals. In its Decision dated May 31, 1999,[7] the Court of Appeals affirmed the trial court's finding of negligence on the part of the petitioner. However, the appellate court modified the trial court's decision by deleting the award for exemplary damages, and by reducing moral damages to P800,000.00, and attorney's fees and costs of suit to P50,000.00. Actual damages was still disallowed for lack of proof. Petitioner's motion for partial reconsideration was denied. Hence, this petition.

Petitioner assigns the following errors:

I.

> THE COURT OF APPEALS ERRED IN AWARDING RESPONDENT MORAL DAMAGES IN THE EXCESSIVE AND UNPRECEDENTED AMOUNT OF P800,000.00, WITHOUT ANY LEGAL OR FACTUAL BASIS, CONSIDERING THAT:
> A. NO EVIDENCE WAS PRESENTED TO SHOW THAT PETITIONER ACTED FRAUDULENTLY OR IN BAD FAITH OR IN A WANTON, RECKLESS AND OPPRESSIVE MANNER IN SUSPENDING RESPONDENT'S CREDIT CARD.

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B. EVEN AS IT WAS RESPONDENT'S DUTY TO AFFIRMATIVELY PROVE HIS CLAIM FOR MORAL DAMAGES, PETITIONER HAS DULY ESTABLISHED THAT IT WAS PROMPTED TO SUSPEND THE CREDIT CARD OF RESPONDENT SOLELY TO PROTECT ITSELF AND THE RESPONDENT FROM ANYONE WRONGFULLY USING HIS CREDIT CARD AND NOT OUT OF MALICE, OR ANY DELIBERATE INTENT TO CAUSE HARM TO RESPONDENT.

C. CONTRARY TO THE FINDINGS OF THE TRIAL COURT WHICH THE COURT OF APPEALS AFFIRMED, PETITIONER WAS NOT GUILTY OF NEGLIGENCE IN SUSPENDING RESPONDENT'S CREDIT CARD. ASSUMING ARGUENDO THAT PETITIONER WAS NEGLIGENT IN DOING SO, THE SAME DOES NOT WARRANT A FINDING OF MALICE OR BAD FAITH AS TO JUSTIFY GRANTING AN AWARD OF MORAL DAMAGES IN THE STAGGERING AMOUNT OF P800,000.00.

D. IN THE ABSENCE OF AN AWARD OF ACTUAL DAMAGES, RESPONDENT IS NOT ENTITLED TO MORAL DAMAGES.

E. THE HONORABLE COURT HAS REPEATEDLY ADMONISHED AGAINST GRANTING EXCESSIVE MORAL DAMAGES WHICH ARE NOT INTENDED TO ENRICH A COMPLAINANT AT THE EXPENSE OF A DEFENDANT.

II.

THE COURT OF APPEALS ERRED IN AWARDING ATTORNEY'S FEES TO RESPONDENT CONSIDERING THAT PETITIONER ACTED IN GOOD FAITH AND WITH DUE DILIGENCE IN SUSPENDING RESPONDENT'S CREDIT CARD.

III.

THE COURT OF APPEALS ERRED IN TOTALLY DISREGARDING THE CONTRACT BETWEEN THE PARTIES WHICH, AMONG OTHERS, EXPRESSLY STIPULATES THAT RESPONDENT WOULD HOLD PETITIONER "FREE AND HARMLESS FROM ANY CLAIM OF DAMAGES ARISING FROM THE FAILURE OF ANY ACCREDITED ESTABLISHMENT TO HONOR" HIS CREDIT CARD.

IV.

THE COURT OF APPEALS ERRED IN NOT FINDING THAT RESPONDENT WAS CONTRIBUTORILY NEGLIGENT IN CONTINUING TO USE HIS CREDIT CARD ON 20 JUNE 1995 DESPITE THE FACT THAT IT HAD ALREADY BEEN PREVIOUSLY DISHONORED THE DAY BEFORE WHEN HE FIRST ATTEMPTED TO USE IT AFTER HIS PURPORTED BREAKFAST MEETING WITH SOME DOCTORS.

We shall now resolve the issue of whether petitioner is liable to respondent for moral damages and attorney's fees.

The award of moral damages is governed by Section 1, Chapter 3, Title XVIII, Book IV of the Civil Code. Article 2220 provides:

> Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith. (emphasis added)

Under the foregoing, moral damages may be recovered in culpa contractual where the defendant acted in bad faith or with malice in the breach of the contract.[8] Malice or bad faith implies moral obliquity or a conscious and intentional design to do a wrongful act for a dishonest purpose.[9] However, a conscious or intentional design need not always be present since negligence may occasionally be so gross as to amount to malice or bad faith.[10]

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Bad faith, in the context of Art. 2220 of the Civil Code, includes gross negligence.[11] Thus, we have held in a number of cases that moral damages may be awarded in culpa contractual or breach of contract when the defendant acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations.[12]

Petitioner alleged that it suspended the privileges of respondent's credit card only after it received the fraud alert from Indonesia, and after its fraud analyst, Mr. Lopez, tried to contact both the respondent and his wife at his clinic and at home. At first blush, bad faith or malice appears not to be attributable to petitioner. However, we find that its efforts at personally contacting respondent regarding the suspension of his credit card fall short of the degree of diligence required by the circumstances.

Petitioner received the fraud alert on June 13, 1995. The following day, petitioner's fraud analyst tried to call up respondent at his clinic and at home, to no avail. Apart from this attempt, however, no further effort was exerted to personally inform respondent about the cancellation of his card. Petitioner had more than enough time within which to do so considering that it was not until four (4) days later or June 18, 1995 that respondent left for Canada. But, petitioner's Mr. Lopez contented himself with just leaving a message with an unidentified woman in respondent's house for the latter to return his call. Before receiving the return call, respondent's PCIBank Mastercard No. 5407-2610-0000-5864 and that of his wife, PCIBank Mastercard No. 5407-2611-0000-5863, had been blocked on June 15, 1995. To be sure, a notice of card account blocking was sent to respondent. However, by the ordinary course of mail, the notice was not expected to reach respondent for several days yet. Despite the possibility that respondent or his wife may have occasion to use their credit cards, petitioner's fraud analyst made no further attempt to contact and warn them. Thus, respondent left for Canada on June 18, 1995 armed with his PCIBank Mastercard No. 5407-2610-0000-5864 but totally unaware that the card had been blocked three (3) days previously, and that he was not to use the same.

Petitioner claims that it suspended respondent's card to protect him from fraudulent transactions. However, while petitioner's motive has to be lauded, we find it lamentable that petitioner was not equally zealous in protecting respondent from potentially embarrassing and humiliating situations that may arise from the unsuspecting use of his suspended PCIBank Mastercard No. 5407-2610-0000-5864. Considering the widespread use of access devices in commercial and other transactions,[13] petitioner and other issuers of credit cards should not only guard against fraudulent uses of credit cards but should also be protective of genuine uses thereof by the true cardholders. In the case at bar, the duty is much more demanding for the evidence shows that respondent is a credit cardholder for more than ten (10) years in good standing, and has not been shown to have violated any of the provisions of his credit card agreement with petitioner. Considering the attendant circumstances, we find petitioner to have been grossly negligent in suspending respondent's credit card. To reiterate, moral damages may be awarded in a breach of contract when the defendant acted fraudulently or in bad faith, or is guilty of gross negligence amounting to bad faith.[14]

With respect to the amount of moral damages to be awarded, the well-entrenched principle is that the grant thereof depends upon the discretion of the court considering the circumstances of each case.[15] In the case at bar, it is undisputed that respondent's PCIBank Mastercard No. 5407-2610-0000-5864 was dishonored in a foreign country where the respondent was not expected to have family members or close friends nearby to lend him a helping hand. It was twice dishonored in public places. Worse, the card was first dishonored during a breakfast-cum-business meeting with respected medical colleagues based in that country. Respondent had absolutely no inkling then that there was a problem with his card. Moreover, he had no reason to think that something was amiss since he is a member in good standing for more than ten (10) years and had no previous bad experience with the card. However, since moral damages are patently not meant to enrich the complainant at the

expense of the defendant and should only be commensurate with the actual loss or injury suffered,[16] we reduce the amount awarded by the Court of Appeals from P800,000.00 to P500,000.00.

We likewise affirm the award for attorney's fees. Plaintiff was compelled to litigate to protect his interest, and the lower courts deemed it just and equitable to award him attorney's fees.[17] The respondent had to vindicate his rights up to the highest court of the land.

IN VIEW WHEREOF, the petition is DENIED. The assailed Decision of the Court of Appeals, dated May 31, 1999, granting moral damages and attorney's fees to respondent, as well as its Resolution dated January 28, 2000 in CA-G.R. CV No. 56734, is AFFIRMED with the sole modification that the amount of moral damages is REDUCED to P500,000.00.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur

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[1]Rollo, pp. 53-62.

[2]Id. at 64.

[3] Id. at 65-73.

[4] Exhibit "2."

[5] Teletypewriter exchange.

[6] Supra note 3.

[7] Supra note 1.

[8] Far East Bank and Trust Company v. Court of Appeals, G.R. No. 108164, February 23, 1995, 241 SCRA 671. Also Philippine National Bank v. Pike, G.R. No. 157845, September 20, 2005, 470 SCRA 328 and Paguyo v. Astorga, G.R. No. 130982, September 16, 2005, 470 SCRA 33.

[9]Id. at 675. See also GF Equity, Inc. v. Valenzona, G.R. No. 156841, June 30, 2005, 462 SCRA 466.

[10]Fores v. Miranda, 105 Phil. 266, 276 (1959).

[11] Far East Bank and Trust Company v. Court of Appeals, supra at 675.

[12] Philippine Telegraph and Telephone Corporation v. Court of Appeals, G.R. No. 139268, September 3, 2002, 388 SCRA 270, citing Expertravel & Tours, Inc. v. Court of Appeals, G.R. No. 130030, June 25, 1999, 309 SCRA 141, and Integrated Packaging Corporation v. Court of Appeals, G.R. No. 115117, June 8, 2000, 333 SCRA 170; Bank of the Philippine Islands v. Leobrera, G.R. No. 137148, January 30, 2002, 375 SCRA 268.

[13] See the "Declaration of Policy," Sec. 2, R.A. No. 8484 entitled "An Act Regulating the Issuance and Use of Access Devices, Prohibiting Fraudulent Acts Committed Relative Thereto, Providing Penalties and For Other Purposes."

[14] See Philippine Telegraph and Telephone Corporation v. Court of Appeals, G.R. No. 139268, September 3, 2002, 388 SCRA 270; Bank of the Philippine Islands v. Leobrera, G.R. No. 137148, January 30, 2002, 375 SCRA 268, citing Integrated Packaging Corporation v. Court of Appeals, G.R. No. 115117, June 8, 2000, 333 SCRA 170.

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[15] Singson v. Court of Appeals, G.R. No. 119995, November 18, 1997, 282 SCRA 149.

[16] Del Rosario v. Court of Appeals, G.R. No. 118325, January 29, 1997, 267 SCRA 158.

[17] See paragraphs 2 and 11, Art. 2208, Civil Code.

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