

EQUITABLE BANKING CORPORATION, PETITIONER, VS. JOSE T. CALDERON, RESPONDENT.

G.R. No. 156168. December 14, 2004

Ponente: GARCIA, J.

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GARCIA, J.:

Thru this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Equitable Banking Corporation (EBC), seeks the reversal and setting aside of the decision dated November 25, 2002[1] of the Court of Appeals in CA-G.R. CV No. 60016, which partially affirmed an earlier decision of the Regional Trial Court at Makati City, Branch 61, insofar as it grants moral damages and costs of suit to herein respondent, Jose T. Calderon.

The decision under review recites the factual background of the case, as follows:

Plaintiff-appellee [now respondent] Jose T. Calderon (Calderon for brevity), is a businessman engaged in several business activities here and abroad, either in his capacity as President or Chairman of the Board thereon. In addition thereto, he is a stockholder of PLDT and a member of the Manila Polo Club, among others. He is a seasoned traveler, who travels at least seven times a year in the U.S., Europe and Asia. On the other hand, the defendant-appellant [now petitioner] Equitable Banking Corporation (EBC for brevity), is one of the leading commercial banking institutions in the Philippines, engaged in commercial banking, such as acceptance of deposits, extension of loans and credit card facilities, among others.

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Sometime in September 1984, Calderon applied and was issued an Equitable International Visa card (Visa card for brevity). The said Visa card can be used for both peso and dollar transactions within and outside the Philippines. The credit limit for the peso transaction is TWENTY THOUSAND (P20,000.00) PESOS; while in the dollar transactions, Calderon is required to maintain a dollar account with a minimum deposit of \$3,000.00, the balance of dollar account shall serve as the credit limit.

In April 1986, Calderon together with some reputable business friends and associates, went to Hongkong for business and pleasure trips. Specifically on 30 April 1986, Calderon accompanied by his friend, Ed De Leon went to Gucci Department Store located at the basement of the Peninsula Hotel (Hongkong). There and then, Calderon purchased several Gucci items (t-shirts, jackets, a pair of shoes, etc.). The cost of his total purchase amounted to HK\$4,030.00 or equivalent to US\$523.00. Instead of paying the said items in cash, he used his Visa card (No. 4921 6400 0001 9373) to effect payment thereof on credit. He then presented and gave his credit card to the saleslady who promptly referred it to the store cashier for verification. Shortly thereafter, the saleslady, in the presence of his friend, Ed De Leon and other shoppers of different nationalities, informed him that his Visa card was blacklisted. Calderon sought the reconfirmation of the status of his Visa card from the saleslady, but the latter simply did not honor it and even threatened to cut it into pieces with the use of a pair of scissors.

Deeply embarrassed and humiliated, and in order to avoid further indignities, Calderon paid cash for the Gucci

goods and items that he bought.

Upon his return to the Philippines, and claiming that he suffered much torment and embarrassment on account of EBC's wrongful act of blacklisting/suspending his VISA credit card while at the Gucci store in Hongkong, Calderon filed with the Regional Trial Court at Makati City a complaint for damages[2] against EBC.

In its Answer,[3] EBC denied any liability to Calderon, alleging that the latter's credit card privileges for dollar transactions were earlier placed under suspension on account of Calderon's prior use of the same card in excess of his credit limit, adding that Calderon failed to settle said prior credit purchase on due date, thereby causing his obligation to become past due. Corollarily, EBC asserts that Calderon also failed to maintain the required minimum deposit of \$3,000.00.

To expedite the direct examination of witnesses, the trial court required the parties to submit affidavits, in question-and-answer form, of their respective witnesses, to be sworn to in court, with cross examination to be made in open court.

Eventually, in a decision dated October 10, 1997,[4] the trial court, concluding that "defendant bank was negligent if not in bad faith, in suspending, or 'blacklisting' plaintiff's credit card without notice or basis", rendered judgment in favor of Calderon, thus:

WHEREFORE PREMISES ABOVE CONSIDERED, judgment is hereby rendered in favor of plaintiff as against defendant EQUITABLE BANKING CORPORATION, which is hereby ORDERED to pay plaintiff as follows:

- the sum of US\$150.00 as actual damages;
- the sum of P200,000.00 as and by way of moral damages;
- the amount of P100,000.00 as exemplary damages;
- the sum of P100,000.00 as attorney's fees plus P500.00 per court hearing and
- costs of suit.

SO ORDERED.

Therefrom, EBC went to the Court of Appeals (CA), whereat its recourse was docketed as CA G.R. CV No. 60016.

After due proceedings, the CA, in a decision dated November 25, 2002,[5] affirmed that of the trial court but only insofar as the awards of moral damages, the amount of which was even reduced, and the costs of suits are concerned. More specifically, the CA decision dispositively reads:[6]

WHEREFORE, in consideration of the foregoing disquisitions, the decision of the court a quo dated 10 October 1997 is AFFIRMED insofar as the awards of moral damages and costs of suit are concerned. However, anent the award of moral damages, the same is reduced to One Hundred Thousand (P100,000.00) Pesos.

The rest of the awards are deleted.

SO ORDERED.

Evidently unwilling to accept a judgment short of complete exemption from any liability to Calderon, EBC is now with us via the instant petition on its lone submission that "THE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT IS ENTITLED TO MORAL DAMAGES NOTWITHSTANDING ITS FINDING

THAT PETITIONER'S ACTIONS HAVE NOT BEEN ATTENDED WITH ANY MALICE OR BAD FAITH.”[7]

The petition is impressed with merit.

In law, moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.[8] However, to be entitled to the award thereof, it is not enough that one merely suffered sleepless nights, mental anguish or serious anxiety as a result of the actuations of the other party.[9] In *Philippine Telegraph & Telephone Corporation vs. Court of Appeals*,[10] we have had the occasion to reiterate the conditions to be met in order that moral damages may be recovered, viz:

An award of moral damages would require, firstly, evidence of besmirched reputation, or physical, mental or psychological suffering sustained by the claimant; secondly, a culpable act or omission factually established; thirdly, proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and fourthly, that the case is predicated on any of the instances expressed or envisioned by Articles 2219 and 2220 of the Civil Code.

Particularly, in culpa contractual or breach of contract, as here, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith,[11] or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations.[12] Verily, the breach must be wanton, reckless, malicious or in bad faith, oppressive or abusive.[13]

Here, the CA ruled, and rightly so, that no malice or bad faith attended petitioner's dishonor of respondent's credit card. For, as found no less by the same court, petitioner was justified in doing so under the provisions of its Credit Card Agreement[14] with respondent, paragraph 3 of which states:

xxx the CARDHOLDER agrees not to exceed his/her approved credit limit, otherwise, all charges incurred including charges incurred through the use of the extension CARD/S, if any in excess of credit limit shall become due and demandable and the credit privileges shall be automatically suspended without notice to the CARDHOLDER in accordance with Section 11 hereof.

We are thus at a loss to understand why, despite its very own finding of absence of bad faith or malice on the part of the petitioner, the CA nonetheless adjudged it liable for moral damages to respondent.

Quite evidently, in holding petitioner liable for moral damages, the CA justified the award on its assessment that EBC was negligent in not informing Calderon that his credit card was already suspended even before he left for Hongkong, ratiocinating that petitioner's right to automatically suspend a cardholder's privileges without notice should not have been indiscriminately used in the case of respondent because the latter has already paid his past obligations and has an existing dollar deposit in an amount more than the required minimum for credit card at the time he made his purchases in Hongkong. But, as explained by the petitioner in the memorandum it filed with this Court,[15] which explanations were never controverted by respondent:

“xxx prior to the incident in question (i.e., April 30, 1986 when the purchases at the Gucci store in Hongkong were made), respondent made credit purchases in Japan and Hongkong from August to September 1985 amounting to US\$14,226.12, while only having a deposit of US\$3,639.00 in his dollar account as evidenced by the pertinent monthly statement of respondent's credit card transactions and his bank passbook, thus exceeding his credit limit; these purchases were accommodated by the petitioner on the condition that the amount needed to cover the same will be deposited in a few days as represented by respondent's secretary and his company's general manager – a certain Mrs. Zamora and Mr. F.R. Oliquiano; respondent however failed to make good on his commitment; later, respondent likewise failed to make the required deposit on the due date of the purchases as stated in the pertinent monthly statement of account; as a consequence thereof, his card privileges for dollar transactions were suspended; it was only four months later – on 31 January 1986, that respondent deposited the

sum of P14,501.89 in his dollar account to cover his purchases; the said amount however was not sufficient to maintain the required minimum dollar deposit of \$3,000.00 as the respondent's dollar deposit stood at only US\$2,704.94 after satisfaction of his outstanding accounts; a day before he left for Hongkong, respondent made another deposit of US\$14,000.00 in his dollar account but did not bother to request the petitioner for the reinstatement of his credit card privileges for dollar transactions, thus the same remained under suspension.”[16]

The foregoing are based on the sworn affidavit of petitioner's Collection Manager, a certain Lourdes Canlas, who was never cross examined by the respondent nor did the latter present any evidence to refute its veracity.

Given the above, and with the express provision on automatic suspension without notice under paragraph 3, supra, of the parties' Credit Card Agreement, there is simply no basis for holding petitioner negligent for not notifying respondent of the suspended status of his credit card privileges.

It may be so that respondent, a day before he left for Hongkong, made a deposit of US\$14,000.00 to his dollar account with petitioner. The sad reality, however, is that he never verified the status of his card before departing for Hongkong, much less requested petitioner to reinstate the same.[17]

And, certainly, respondent could not have justifiably assumed that petitioner must have reinstated his card by reason alone of his having deposited US\$14,000.00 a day before he left for Hongkong. As issuer of the card, petitioner has the option to decide whether to reinstate or altogether terminate a credit card previously suspended on considerations which the petitioner deemed proper, not the least of which are the cardholder's payment record, capacity to pay and compliance with any additional requirements imposed by it. That option, after all, is expressly embodied in the same Credit Card Agreement, paragraph 12 of which unmistakably states:

The issuer shall likewise have the option of reinstating the card holder's privileges which have been terminated for any reason whatsoever upon submission of a new accomplished application form if required by the issuer and upon payment of an additional processing fee equivalent to annual fee.[18]

Even on the aspect of negligence, therefore, petitioner could not have been properly adjudged liable for moral damages.

Unquestionably, respondent suffered damages as a result of the dishonor of his card. There is, however, a material distinction between damages and injury. To quote from our decision in *BPI Express Card Corporation vs. Court of Appeals*: [19]

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*.

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; and the breach of such duty should be the proximate cause of the injury. (Emphasis supplied).

In the situation in which respondent finds himself, this is a case of *damnum absque injuria*.

We do not take issue with the appellate court in its observation that the Credit Card Agreement herein involved is

a contract of adhesion, with the stipulations therein contained unilaterally prepared and imposed by the petitioner to prospective credit card holders on a take-it-or-leave-it basis. As said by us in *Polotan, Sr. vs. Court of Appeals*:^[20]

A contract of adhesion is one in which one of the contracting parties imposes a ready-made form of contract which the other party may accept or reject, but cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his 'adhesion' thereto giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing.

On the same breath, however, we have equally ruled that such a contract is "as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely."^[21]

Moreover, the provision on automatic suspension without notice embodied in the same Credit Card Agreement is couched in clear and unambiguous term, not to say that the agreement itself was entered into by respondent who, by his own account, is a reputable businessman engaged in business activities here and abroad.

On a final note, we emphasize that "moral damages are in the category of an award designed to compensate the claim for actual injury suffered and not to impose a penalty on the wrongdoer."^[22]

WHEREFORE, the instant petition is hereby GRANTED and the decision under review REVERSED and SET ASIDE.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Carpio-Morales, JJ., concur.
Corona, J., on leave.

[1] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Romeo A. Brawner and Danilo B. Pine.

[2] *Rollo*, pp. 37-41.

[3] *Rollo*, pp. 42-47.

[4] *Rollo*, pp. 50-55.

[5] *Rollo*, pp. 28-36.

[6] *Rollo*, p. 36.

[7] *Rollo*, p. 19.

[8] Article 2217, Civil Code.

[9] *Ace Haulers Corporation vs. Court of Appeals*, 338 SCRA 572 [2000].

[10] 388 SCRA 270, [2002].

[11] Article 2220, Civil Code.

[12] *Philippine Telegraph & Telephone Corporation vs. Court of Appeals*, *supra*, at p. 277.

[13] *Herbosa vs. CA*, 374, 578, 579 [2002].

[14] Exhibit "1".

[15] Rollo, pp. 92-108, at p. 95 thereof.

[16] Rollo, p. 96.

[17] TSN, p. 18, Dec. 13, 1990.

[18] Rollo, p. 17.

[19] 296 SCRA 260 [1998].

[20] 296 SCRA 247, 255 [1998].

[21] Polotan, Sr. vs. Court of Appeals, *supra*, at p. 256.

[22] Francisco vs. Ferrer, 353 SCRA 261 [2001].

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