

EMMANUEL B. AZNAR, PETITIONER, VS. CITIBANK, N.A., (PHILIPPINES),

G.R. NO. 164273. March 28, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a Petition for Review assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 62554 dated January 30, 2004 which set aside the November 25, 1998 Order of the Regional Trial Court (RTC) Branch 10, Cebu City and reinstated the Decision of RTC Branch 20 of Cebu City dated May 29, 1998 in Civil Case No. CEB-16474; and the CA Resolution dated May 26, 2004 denying petitioner's motion for reconsideration.

The facts are as follows:

Emmanuel B. Aznar (Aznar), a known businessman[2] in Cebu, is a holder of a Preferred Master Credit Card (Mastercard) bearing number 5423-3920-0786-7012 issued by Citibank with a credit limit of P150,000.00. As he and his wife, Zoraida, planned to take their two grandchildren, Melissa and Richard Beane, on an Asian tour, Aznar made a total advance deposit of P485,000.00 with Citibank with the intention of increasing his credit limit to P635,000.00.[3]

With the use of his Mastercard, Aznar purchased plane tickets to Kuala Lumpur for his group worth P237,000.00. On July 17, 1994, Aznar, his wife and grandchildren left Cebu for the said destination.[4]

Aznar claims that when he presented his Mastercard in some establishments in Malaysia, Singapore and Indonesia, the same was not honored.[5] And when he tried to use the same in Ingtan Tour and Travel Agency (Ingtan Agency) in Indonesia to purchase plane tickets to Bali, it was again dishonored for the reason that his card was blacklisted by Citibank. Such dishonor forced him to buy the tickets in cash.[6] He further claims that his humiliation caused by the denial of his card was aggravated when Ingtan Agency spoke of swindlers trying to use blacklisted cards.[7] Aznar and his group returned to the Philippines on August 10, 1994.[8]

On August 26, 1994, Aznar filed a complaint for damages against Citibank, docketed as Civil Case No. CEB-16474 and raffled to RTC Branch 20, Cebu City, claiming that Citibank fraudulently or with gross negligence blacklisted his Mastercard which forced him, his wife and grandchildren to abort important tour destinations and prevented them from buying certain items in their tour.[9] He further claimed that he suffered mental anguish, serious anxiety, wounded feelings, besmirched reputation and social humiliation due to the wrongful blacklisting of his card.[10] To prove that Citibank blacklisted his Mastercard, Aznar presented a computer print-out, denominated as ON-LINE AUTHORIZATIONS FOREIGN ACCOUNT ACTIVITY REPORT, issued to him by Ingtan Agency (Exh. "G") with the signature of one Victrina Elnado Nubi (Nubi)[11] which shows that his card in question was "DECL OVERLIMIT" or declared over the limit.[12]

Citibank denied the allegation that it blacklisted Aznar's card. It also contended that under the terms and

conditions governing the issuance and use of its credit cards, Citibank is exempt from any liability for the dishonor of its cards by any merchant affiliate, and that its liability for any action or incident which may be brought against it in relation to the issuance and use of its credit cards is limited to P1,000.00 or the actual damage proven whichever is lesser.[13]

To prove that they did not blacklist Aznar's card, Citibank's Credit Card Department Head, Dennis Flores, presented Warning Cancellation Bulletins which contained the list of its canceled cards covering the period of Aznar's trip.[14]

On May 29, 1998, RTC Branch 20, Cebu City, through Judge Ferdinand J. Marcos, rendered its decision dismissing Aznar's complaint for lack of merit.[15] The trial court held that as between the computer print-out[16] presented by Aznar and the Warning Cancellation Bulletins[17] presented by Citibank, the latter had more weight as their due execution and authenticity were duly established by Citibank.[18] The trial court also held that even if it was shown that Aznar's credit card was dishonored by a merchant establishment, Citibank was not shown to have acted with malice or bad faith when the same was dishonored.[19]

Aznar filed a motion for reconsideration with motion to re-raffle the case saying that Judge Marcos could not be impartial as he himself is a holder of a Citibank credit card.[20] The case was re-raffled[21] and on November 25, 1998, the RTC, this time through Judge Jesus S. De la Peña of Branch 10 of Cebu City, issued an Order granting Aznar's motion for reconsideration, as follows:

WHEREFORE, the Motion for Reconsideration is hereby GRANTED. The DECISION dated May 29, 1998 is hereby reconsidered, and consequently, the defendant is hereby condemned liable to pay the following sums of money:

- a) P10,000,000.00 as moral damages;
- b) P5,000,000.00 as exemplary damages;
- c) P1,000,000.00 as attorney's fees; and
- d) P200,000.00 as litigation expenses.[22]

Judge De la Peña ruled that: it is improbable that a man of Aznar's stature would fabricate Exh. "G" or the computer print-out which shows that Aznar's Mastercard was dishonored for the reason that it was declared over the limit; Exh. "G" was printed out by Nubi in the ordinary or regular course of business in the modern credit card industry and Nubi was not able to testify as she was in a foreign country and cannot be reached by subpoena; taking judicial notice of the practice of automated teller machines (ATMs) and credit card facilities which readily print out bank account status, Exh. "G" can be received as prima facie evidence of the dishonor of Aznar's Mastercard; no rebutting evidence was presented by Citibank to prove that Aznar's Mastercard was not dishonored, as all it proved was that said credit card was not included in the blacklisted cards; when Citibank accepted the additional deposit of P485,000.00 from Aznar, there was an implied novation and Citibank was obligated to increase Aznar's credit limit and ensure that Aznar will not encounter any embarrassing situation with the use of his Mastercard; Citibank's failure to comply with its obligation constitutes gross negligence as it caused Aznar inconvenience, mental anguish and social humiliation; the fine prints in the flyer of the credit card limiting the liability of the bank to P1,000.00 or the actual damage proven, whichever is lower, is a contract of adhesion which must be interpreted against Citibank.[23]

Citibank filed an appeal with the CA and its counsel filed an administrative case against Judge De la Peña for grave misconduct, gross ignorance of the law and incompetence, claiming among others that said judge rendered his decision without having read the transcripts. The administrative case was held in abeyance pending the outcome of the appeal filed by Citibank with the CA.[24]

On January 30, 2004, the CA rendered its Decision granting Citibank's appeal thus:

WHEREFORE, the instant appeal is GRANTED. The assailed order of the Regional Trial Court, 7th Judicial Region, Branch 10, Cebu City, in Civil Case No. CEB-16474, is hereby SET ASIDE and the decision, dated 29 May 1998 of the Regional Trial Court, 7th Judicial Region, Branch 20, Cebu City in this case is REINSTATED.

SO ORDERED.[25]

The CA ruled that: Aznar had no personal knowledge of the blacklisting of his card and only presumed the same when it was dishonored in certain establishments; such dishonor is not sufficient to prove that his card was blacklisted by Citibank; Exh. "G" is an electronic document which must be authenticated pursuant to Section 2, Rule 5 of the Rules on Electronic Evidence[26] or under Section 20 of Rule 132 of the Rules of Court[27] by anyone who saw the document executed or written; Aznar, however, failed to prove the authenticity of Exh. "G", thus it must be excluded; the unrefuted testimony of Aznar that his credit card was dishonored by Ingtan Agency and certain establishments abroad is not sufficient to justify the award of damages in his favor, absent any showing that Citibank had anything to do with the said dishonor; Citibank had no absolute control over the actions of its merchant affiliates, thus it should not be held liable for the dishonor of Aznar's credit card by said establishments.[28]

Aznar filed a motion for reconsideration which the CA dismissed in its Resolution dated May 26, 2004.[29]

Parenthetically, the administrative case against Judge De la Peña was activated and on April 29, 2005, the Court's Third Division[30] found respondent judge guilty of knowingly rendering an unjust judgment and ordered his suspension for six months. The Court held that Judge De la Peña erred in basing his Order on a manifestation submitted by Aznar to support his Motion for Reconsideration, when no copy of such manifestation was served on the adverse party and it was filed beyond office hours. The Court also noted that Judge De la Peña made an egregiously large award of damages in favor of Aznar which opened himself to suspicion.[31]

Aznar now comes before this Court on a petition for review alleging that: the CA erroneously made its own factual finding that his Mastercard was not blacklisted when the matter of blacklisting was already a non-issue in the November 25, 1998 Order of the RTC; the RTC found that Aznar's Mastercard was dishonored for the reason that it was declared over the credit limit; this factual finding is supported by Exh. "G" and by his (Aznar's) testimony; the issue of dishonor on the ground of "DECL OVERLIMIT", although not alleged in the complaint, was tried with the implied consent of the parties and should be treated as if raised in the pleadings pursuant to Section 5, Rule 10 of the Rules of Civil Procedure;[32] Exh. "G" cannot be excluded as it qualifies as an electronic evidence following the Rules on Electronic Evidence which provides that print-outs are also originals for purposes of the Best Evidence Rule; Exh. "G" has remained complete and unaltered, apart from the signature of Nubi, thus the same is reliable for the purpose for which it was generated; the RTC judge correctly credited the testimony of Aznar on the issuance of the computer print-out as Aznar saw that it was signed by Nubi; said testimony constitutes the "other evidence showing the integrity and reliability of the print-out to the satisfaction of the judge" which is required under the Rules on Electronic Evidence; the trial court was also correct in finding that Citibank was grossly negligent in failing to credit the additional deposit and make the necessary entries in its systems to prevent Aznar from encountering any embarrassing situation with the use of his Mastercard.[33]

Citibank, in its Comment, contends that: Aznar never had personal knowledge that his credit card was blacklisted as he only presumed such fact; the issue of dishonor on the ground that the card was declared over the limit was also never tried with the implied consent of both parties; Aznar's self-serving testimony is not sufficient to prove the integrity and reliability of Exh. "G"; Aznar did not declare that it was Nubi who printed the document and that

said document was printed in his presence as he merely said that the print-out was provided him; there is also no annotation on Exh. "G" to establish that it was Nubi who printed the same; assuming further that Exh. "G" is admissible and Aznar's credit card was dishonored, Citibank still cannot be held liable for damages as it only shows that Aznar's credit card was dishonored for having been declared over the limit; Aznar's cause of action against Citibank hinged on the alleged blacklisting of his card which purportedly caused its dishonor; dishonor alone, however, is not sufficient to award Aznar damages as he must prove that the dishonor was caused by a grossly negligent act of Citibank; the award of damages in favor of Aznar was based on Article 1170[34] of the Civil Code, i.e., there was fraud, negligence or delay in the performance of its obligation; there was no proof, however that Citibank committed fraud or delay or that it contravened its obligations towards Aznar; the terms and conditions of the credit card cannot be considered as a contract of adhesion since Aznar was entirely free to reject the card if he did not want the conditions stipulated therein; a person whose stature is such that he is expected to be more prudent with respect to his transactions cannot later on be heard to complain for being ignorant or having been forced into merely consenting to the contract.[35]

In his Reply, Aznar contended that to a layman, the term "blacklisting" is synonymous with the words "hot list" or "declared overlimit"; and whether his card was blacklisted or declared over the limit, the same was dishonored due to the fault or gross negligence of Citibank.[36]

Aznar also filed a Memorandum raising as issues the following:

- Whether or not the augmentation deposit in the amount of P485,000.00 of the Petitioner constitutes relative extinctive novation;
- Whether or not the purchases made by Petitioner were beyond his credit limit;
- Whether or not the issues of dishonor by reason of overlimit was tried with the consent of the parties;
- Whether or not the "On Line Authorization Report" is an electronic document."
- Whether or not the "On Line Authorization Report" constitutes electronic evidence;
- Whether or not the agreement between the parties is a contract of adhesion;
- Whether or not the Respondent is negligent in not crediting the deposits of the Respondent.[37]

Aznar further averred in his Memorandum that Citibank assured him that with the use of his Mastercard, he would never be turned down by any merchant store, and that under Section 43, Rule 130 of the Rules of Court, Exh. "G" is admissible in evidence.[38]

Citibank also filed a Memorandum reiterating its earlier arguments.[39]

Stripped to its essentials, the only question that needs to be answered is: whether Aznar has established his claim against Citibank.

The answer is no.

It is basic that in civil cases, the burden of proof rests on the plaintiff to establish his case based on a preponderance of evidence. The party that alleges a fact also has the burden of proving it.[40]

In the complaint Aznar filed before the RTC, he claimed that Citibank blacklisted his Mastercard which caused its dishonor in several establishments in Malaysia, Singapore, and Indonesia, particularly in Ingatan Agency in Indonesia where he was humiliated when its staff insinuated that he could be a swindler trying to use a blacklisted card.

As correctly found by the RTC in its May 29, 1998 Decision, Aznar failed to prove with a preponderance of evidence that Citibank blacklisted his Mastercard or placed the same on the "hot list." [41]

Aznar in his testimony admitted that he had no personal knowledge that his Mastercard was blacklisted by Citibank and only presumed such fact from the dishonor of his card.

Q Now, paragraph 12 also states and I quote: "its entry in the "hot" list was confirmed to be authentic". Now, who confirmed that the blacklisting of your Preferred Citibank Mastercard was authentic?

A. Okey. When I presented this Mastercard, my card rather, at the Merchant's store, I do not know, they called up somebody for verification then later they told me that "your card is being denied". So, I am not in a position to answer that. I do not know whom they called up; where they verified. So, when it is denied that's presumed to be blacklisted.

Q. So the word that was used was denied?

A. Denied.

Q. And after you were told that your card was denied you presumed that it was blacklisted?

A. Definitely.

Q. So your statement that your card was allegedly blacklisted is only your presumption drawn from the fact, from your allegations, that it was denied at the merchandise store?

A. Yes, sir. [42] (Emphasis supplied)

The dishonor of Aznar's Mastercard is not sufficient to support a conclusion that said credit card was blacklisted by Citibank, especially in view of Aznar's own admission that in other merchant establishments in Kuala Lumpur and Singapore, his Mastercard was accepted and honored. [43]

Aznar puts much weight on the ON-LINE AUTHORIZATION FOREIGN ACCOUNT ACTIVITY REPORT, a computer print-out handed to Aznar by Ingtan Agency, marked as Exh. "G", to prove that his Mastercard was dishonored for being blacklisted. On said print-out appears the words "DECL OVERLIMIT" opposite Account No. 5423-3920-0786-7012.

As correctly pointed out by the RTC and the CA, however, such exhibit cannot be considered admissible as its authenticity and due execution were not sufficiently established by petitioner.

The prevailing rule at the time of the promulgation of the RTC Decision is Section 20 of Rule 132 of the Rules of Court. It provides that whenever any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either by (a) anyone who saw the document executed or written; or (b) by evidence of the genuineness of the signature or handwriting of the maker.

Aznar, who testified on the authenticity of Exh. "G," did not actually see the document executed or written, neither was he able to provide evidence on the genuineness of the signature or handwriting of Nubi, who handed to him said computer print-out. Indeed, all he was able to allege in his testimony are the following:

Q I show to you a Computer Print Out captioned as On Line Authorization Activity Report where it is shown that the Preferred Master Card Number 5423392007867012 was denied as per notation on the margin of this Computer Print Out, is this the document evidencing the dishonor of your Preferred Master Card?

x x x x

A Yes sir, after that Ingtan incident, I went straight to the Service Agency there and on the left hand side you will be able to see the name of the person in-charged [sic] there certifying that really my card is being blacklisted and there is the signature there of the agency.

ATTY. NAVARRO:

The witness, your honor, is pointing to the signature over the handwritten name of Victorina Elnado Nubi which I pray, your honor, that the Computer Print Out be marked as our Exhibit "G" and the remarks at the left hand bottom portion of Victorina Elnado Nubi with her signature thereon be encircled and be marked as our Exhibit "G-1".

x x x x

Q Mr. Aznar, where did you secure this Computer Print Out marked as Exhibit "G"?

A This is provided by that Agency, your honor. They were the ones who provided me with this. So what the lady did, she gave me the Statement and I requested her to sign to show proof that my Preferred Master Card has been rejected.[44] (Emphasis supplied).

Even if examined under the Rules on Electronic Evidence, which took effect on August 1, 2001, and which is being invoked by Aznar in this case, the authentication of Exh. "G" would still be found wanting.

Pertinent sections of Rule 5 read:

Section 1. Burden of proving authenticity. - The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule.

Section 2. Manner of authentication. - Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

- (a) by evidence that it had been digitally signed by the person purported to have signed the same;
- (b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
- (c) by other evidence showing its integrity and reliability to the satisfaction of the judge.

Aznar claims that his testimony complies with par. (c), i.e., it constitutes the "other evidence showing integrity and reliability of Exh. "G" to the satisfaction of the judge." The Court is not convinced. Aznar's testimony that the person from Ingtan Agency merely handed him the computer print-out and that he thereafter asked said person to sign the same cannot be considered as sufficient to show said print-out's integrity and reliability. As correctly pointed out by Judge Marcos in his May 29, 1998 Decision, Exh. "G" does not show on its face that it was issued by Ingtan Agency as Aznar merely mentioned in passing how he was able to secure the print-out from the agency; Aznar also failed to show the specific business address of the source of the computer print-out because while the name of Ingtan Agency was mentioned by Aznar, its business address was not reflected in the print-out.[45]

Indeed, Aznar failed to demonstrate how the information reflected on the print-out was generated and how the said information could be relied upon as true. In fact, Aznar to repeat, testified as follows:

ATTY. NERI

Q Now, paragraph 12 also states and I quote: "its entry in the hotlist was confirmed to be authentic"

Now, who confirmed that the blacklisting of your Preferred Citibank Mastercard was authentic?

A Okay. When I presented this Mastercard, my card rather, at the Merchant's store, I do not know, they called up somebody for verification then later they told me that your card is being denied. So, I am not in a position to answer that. I do not know whom they called up; where they verified. So, when it is denied that's presumed to be blacklisted.[46] (Emphasis supplied)

Aznar next invokes Section 43 of Rule 130 of the Rules of Court, which pertains to entries in the course of

business, to support Exh. i½Gi½. Said provision reads:

Sec. 43. Entries in the course of business. i½ Entries made at, or near the time of the transactions to which they refer, by a person deceased or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

Under this rule, however, the following conditions are required:

- the person who made the entry must be dead, or unable to testify;
- the entries were made at or near the time of the transactions to which they refer;
- the entrant was in a position to know the facts stated in the entries;
- the entries were made in his professional capacity or in the performance of a duty, whether legal, contractual, moral or religious; and
- the entries were made in the ordinary or regular course of business or duty.[47]

As correctly pointed out by the RTC in its May 29, 1998 Decision, there appears on the computer print-out the name of a certain i½Victrina Elnado Nubi½ and a signature purportedly belonging to her, and at the left dorsal side were handwritten the words i½Sorry for the delay since the records had to be retrieved. Regards. Darryl Mario.½ It is not clear therefore if it was Nubi who encoded the information stated in the print-out and was the one who printed the same. The handwritten annotation signed by a certain Darryl Mario even suggests that it was Mario who printed the same and only handed the print-out to Nubi. The identity of the entrant, required by the provision above mentioned, was therefore not established. Neither did petitioner establish in what professional capacity did Mario or Nubi make the entries, or whether the entries were made in the performance of their duty in the ordinary or regular course of business or duty.

And even if Exh. i½Gi½ is admitted as evidence, it only shows that the use of the credit card of petitioner was denied because it was already over the limit. There is no allegation in the Complaint or evidence to show that there was gross negligence on the part of Citibank in declaring that the credit card has been used over the limit.

The Court is also perplexed that stated on Exh. i½Gi½ is the amount of i½6,289,195.10½ opposite petitioner's account number, which data, petitioner did not clarify.[48] As plaintiff in this case, it was incumbent on him to prove that he did not actually incur the said amount which is above his credit limit. As it is, the Court cannot see how Exh. i½Gi½ could help petitioner's claim for damages.

The claim of petitioner that Citibank blacklisted his card through fraud or gross negligence is likewise effectively negated by the evidence of Citibank which was correctly upheld by the RTC and the CA, to wit:

xxx Mr. Dennis Flores, the Head of the Credit Card Department of defendant Bank, presented documents known as Warning Cancellation Bulletin for July 10, 17, 24, and 31, 1994 (Exhibits i½3i½, i½3-1i½ to i½3-38i½, i½4i½, i½4-1i½ to i½4-38i½ i½5i½, i½5-1i½ to i½5-39i½ and i½6i½, i½6-1i½ to i½6-39i½), for August 7, 1994 (Exhibit[s] i½7i½, i½7-1i½ to i½7-37i½), for August 8, 1994 (Exhibit[s] i½8i½, i½8-1i½ to i½8-20i½) which show that plaintiff½s Citibank preferred mastercard was not placed in a hot list or was not blacklisted.

The Warning Cancellation Bulletins (WCB) (Exhibits i½3i½, i½4i½, i½5i½, i½6i½, i½7i½, i½8i½ and their submarkings) which covered the period of four (4) days in July 1994 (from July 10, 17, 24 and 31, 1994), and two (2) days in August 1994, (August 7 and 8, 1994), when plaintiff traveled in the aforementioned Asian countries showed that said Citibank preferred mastercard had never been placed in a

hot list or the same was blacklisted, let alone the fact that all the credit cards which had been cancelled by the defendant bank were all contained, reported and listed in said Warning Cancellation Bulletin which were issued and released on a regular basis.

These three hundred (300) Warning Cancellation Bulletins pieces of documentary proofs, all in all, adduced by defendant pointed to the fact that said plaintiff's credit card (sic) was not among those found in said bulletins as having been cancelled for the period for which the said bulletins had been issued.

Between said computer print out (Exhibit iG) and the Warning Cancellation Bulletins (Exhibits i3i to i8i and their submarkings) the latter documents adduced by defendant are entitled to greater weight than that said computer print out presented by plaintiff that bears on the issue of whether the plaintiff's preferred master card was actually placed in the hot list or blacklisted for the following reasons:

The first reason is that the due execution and authentication of these Warning Cancellation Bulletins (or WCB) have been duly established and identified by defendant's own witness, Dennis Flores, one of the bank's officers, who is the head of its credit card department, and, therefore, competent to testify on the said bulletins as having been issued by the defendant bank showing that plaintiff's preferred master credit card was never blacklisted or placed in the Bank's hot list. But on the other hand, plaintiff's computer print out (Exhibit iG) was never authenticated or its due execution had never been duly established. Thus, between a set of duly authenticated commercial documents, the Warning Cancellation Bulletins (Exhibits i3i to i8i and their submarkings), presented by defendant (sic) and an unauthenticated private document, plaintiff's computer print out (Exhibit iG), the former deserves greater evidentiary weight supporting the findings of this Court that plaintiff's preferred master card (Exhibit i1i) had never been blacklisted at all or placed in a so-called hot list by defendant.[49]

Petitioner next argues that with the additional deposit he made in his account which was accepted by Citibank, there was an implied novation and Citibank was under the obligation to increase his credit limit and make the necessary entries in its computerized systems in order that petitioner may not encounter any embarrassing situation with the use of his credit card. Again, the Court finds that petitioner's argument on this point has no leg to stand on.

Citibank never denied that it received petitioner's additional deposit.[50] It even claimed that petitioner was able to purchase plane tickets from Cebu to Kuala Lumpur in the amount of P237,170.00, which amount was beyond his P150,000.00 limit, because it was able to credit petitioner's additional deposit to his account. Flores of Citibank testified:

COURT:

Q When was this ticket purchased, after the account was augmented or before?

A After the account was augmented, Your Honor, because there is no way we can approve a P250,000.00 purchase with a P150,000.00 credit limit.[51]

x x x

ATTY. NERI:

For the record, your honor, the deposit of P450,000.00 was made as per exhibit of the plaintiff on June 28. The purchase of the tickets amount to P237,000.00 was approved and debited on the account of Mr. Aznar on July 20, your honor. The deposit was made about a month before the purchase of the tickets as per documentary exhibits, your honor.

COURT:

So, Atty. Navarro, what do you say to that explanation?

ATTY. NAVARRO [counsel of petitioner]:

That is correct, your honor, that is borne out by the records, your honor. (Emphasis supplied)

COURT: (to witness)

Q So, I think Atty. Navarro is only after whether a credit line could be extended?

A Yes, your honor.

Q Even if there is no augmenting?

A No, sir, it is not possible. So, the only way the P237,000.00 transaction could be approved was by way of advance payment which actually happened in this case because there is no way that the P237,000.00 can be approved with the P150,000.00 credit limit.[52] (Emphasis supplied)

The allegations of blacklisting not having been proved, is Citibank liable for damages for the dishonor of Aznar's Mastercard?

Again, the answer is no.

Citibank, in its attempt to evade liability, invokes paragraphs 7 and 15 of the terms and conditions governing the issuance of its Mastercard which read:

- MERCHANT AFFILIATES. [Citibank is] not responsible if the Card is not honored by any merchant affiliate for any reason. Furthermore, [the cardholder] will not hold [Citibank] responsible for any defective product or service purchased through the Card.

x x x x

- LIMITATION OF LIABILITY. In any action arising from this agreement or any incident thereto which [the cardholder] or any other party may file against [Citibank], [Citibank's] liability shall not exceed One Thousand Pesos [P1,000.00] or the actual damages proven, whichever is lesser.[53]

On this point, the Court agrees with Aznar that the terms and conditions of Citibank's Mastercard constitute a contract of adhesion. It is settled that contracts between cardholders and the credit card companies are contracts of adhesion, so-called, because their terms are prepared by only one party while the other merely affixes his signature signifying his adhesion thereto.[54]

In this case, paragraph 7 of the terms and conditions states that [Citibank is] not responsible if the Card is not honored by any merchant affiliate for any reason x x x. While it is true that Citibank may have no control of all the actions of its merchant affiliates, and should not be held liable therefor, it is incorrect, however, to give it blanket freedom from liability if its card is dishonored by any merchant affiliate for any reason. Such phrase renders the statement vague and as the said terms and conditions constitute a contract of adhesion, any ambiguity in its provisions must be construed against the party who prepared the contract,[55] in this case Citibank.

Citibank also invokes paragraph 15 of its terms and conditions which limits its liability to P1,000.00 or the actual damage proven, whichever is lesser.

Again, such stipulation cannot be considered as valid for being unconscionable as it precludes payment of a larger amount even though damage may be clearly proven. This Court is not precluded from ruling out blind adherence to the terms of a contract if the attendant facts and circumstances show that they should be ignored for being obviously too one-sided.[56]

The invalidity of the terms and conditions being invoked by Citibank, notwithstanding, the Court still cannot award damages in favor of petitioner.

It is settled that 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 before damages may be awarded and the breach of such duty should be the proximate cause of the injury.[57]

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. It is also required that a culpable act or omission was factually established, that proof that the wrongful act or omission of the defendant is shown as the proximate cause of the damage sustained by the claimant and that the case is predicated on any of the instances expressed or envisioned by Arts. 2219[58] and 2220[59] of the Civil Code.[60]

In culpa contractual or breach of contract, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. The breach must be wanton, reckless, malicious or in bad faith, oppressive or abusive.[61]

While the Court commiserates with Aznar for whatever undue embarrassment he suffered when his credit card was dishonored by Ingtan Agency, especially when the agency's personnel insinuated that he could be a swindler trying to use blacklisted cards, the Court cannot grant his present petition as he failed to show by preponderance of evidence that Citibank breached any obligation that would make it answerable for said suffering.

As the Court pronounced in *BPI Express Card Corporation v. Court of Appeals*,[62]

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 to 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*. [63]

WHEREFORE, the petition is denied for lack of merit.

SO ORDERED.

Ynares-Santiago, Callejo, Sr., Chico-Nazario, and Nachura, JJ., concur.

[1] Penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente; rollo, pp. 51-76.

[2] President and Chairman of the Board of E.B. Aznar Shipping Corp., E.B. Aznar Mining Corp., and E.B. Aznar Guardian Security and Detective Agency; Director and stockholder of Aznar Enterprises Inc.; and Director of Aznar Brothers Realty Corp. and Southwestern University, TSN, Emmanuel Aznar, February 22, 1995, pp. 5-6.

[3] Rollo, p. 52 (CA Decision); Records p. 293 (RTC Decision).

[4] Id.

[5] Records, p. 293 (RTC Decision); TSN, Emmanuel Aznar, February 22, 1995, pp. 11-12.

[6] Id. at 293 (RTC Decision); Records, p. 3 (Complaint); TSN, Emmanuel Aznar, February 22, 1995, p. 15.

[7] Id. at 3 (Complaint).

[8] Rollo, p. 53 (CA Decision).

[9] Records, p. 4.

[10] Id.

[11] Spelled as *Rubii* in other parts of the records.

[12] Id. at 153, 295.

[13] Id. at 20-21.

[14] Id. at 293.

[15] Id. at 298.

[16] Exh. *Gii*.

[17] Exhs. *i3i*, *i3-1i* to *i3-38i*, *i4i*, *i4-1i* to *i4-38i*, *i5i*, *i5-1i* to *i5-39i*, *i6i*, *i6-1i* to *i6-39i*, *i7i*, *i7-1i* to *i7-37i*, *i8i*, *i8-1i* to *i8-20i*.

[18] Records, p. 297.

[19] Id. at 298.

[20] Id. at 299-302.

[21] Id. at 304.

[22] Id. at 332.

[23] Id. at 328-331.

[24] See *Neri v. De la Peña*, A.M. No. RTJ-05-1896, April 29, 2005, 457 SCRA 539, 544.

[25] Rollo, p. 76.

[26] Section 2. Manner of authentication. - Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

- (a) by evidence that it had been digitally signed by the person purported to have signed the same;
- (b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or
- (c) by other evidence showing its integrity and reliability to the satisfaction of the judge.

[27] Sec. 20. Proof of private document. - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be.

[28] Rollo, pp. 68-76, (CA Decision, pp. 18-26).

[29] Id. at 92.

[30] Penned by Associate Justice Renato C. Corona and concurred in by Associate Justices Artemio V. Panganiban, Angelina Sandoval-Gutierrez, Conchita Carpio-Morales and Cancio C. Garcia.

[31] *Neri v. De la Peña*, supra note 24, at 547- 548.

[32] Sec. 5. xxx When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. xxx

[33] Rollo, pp. 17-24.

[34] Art. 1170. Those who in the performance of their obligation are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages.

[35] Rollo, pp. 104-118.

[36] Id. at 137-142.

[37] Id. at 164-165.

[38] Id. at 165-171.

[39] Id. at 190-224.

[40] *Citibank N.A. Mastercard v. Teodoro*, 458 Phil. 480, 488 (2003).

[41] See records, p. 297 (RTC Decision, p. 9).

[42] TSN, March 22, 1995, p. 13.

[43] Id. at 8; TSN, May 9, 1995, pp. 3-4.

[44] TSN, February 22, 1995, pp. 15-17.

[45] Records, p. 295.

[46] TSN, March 22, 1995, p. 13.

[47] *Security Bank and Trust Company v. Gan*, G.R. No. 150464, June 27, 2006, 493 SCRA 239, 244-245.

[48] Records, p. 153.

[49] CA rollo, pp. 150-151 (CA Decision, pp. 10-11).

[50] TSN, Dennis Flores, September 18, 1995, p. 10.

[51] Id. at 12.

[52] TSN, Dennis Flores, October 9, 1995, pp. 5-6.

[53] Records, p. 26, Annex 1/2A.1/2

[54] BPI Express Card Corp. v. Olalia, 423 Phil. 593, 599 (2001).

[55] Polotan, Sr. v. Court of Appeals, 357 Phil. 250, 258 (1998).

[56] Id. at 259.

[57] BPI Express Card Corporation v. Court of Appeals, 357 Phil. 262, 276 (1998).

[58] Art. 2219. Moral damages may be recovered in the following and analogous cases:

- (1) A criminal offense resulting in physical injuries;
- (2) Quasi-delicts causing physical injuries;
- (3) Seduction, abduction, rape, or other lascivious acts;
- (4) Adultery or concubinage;
- (5) Illegal or arbitrary detention or arrest;
- (6) Illegal search;
- (7) Libel, slander or any other form of defamation;
- (8) Malicious prosecution;
- (9) Acts mentioned in article 309;
- (10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

x x x

[59] Art. 2220. 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.

[60] Equitable Banking Corp. v. Calderon, G.R. No. 156168, December 14, 2004, 446 SCRA 271, 276.

[61] Id. at 277.

[62] Supra note 57.

[63] Id. at 275-276.

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