Supreme Court E-Library

SECOND DIVISION

[G.R. No. 210928; February 14, 2022]

REX G. RICO, *Petitioner*, *v.* **UNION BANK OF THE PHILIPPINES,** *Respondent*.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this petition[1] are the June 28, 2013 Decision[2] and January 21, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 96400 which affirmed with modification the June 24, 2010 Decision[4] of the Regional Trial Court (RTC), Parañaque City, Branch 195 in Civil Case No. 06-0029. Respondent Union Bank of the Philippines (Union Bank) was ordered to pay petitioner Rex G. Rico (Rico) ₱30,000.00 as moral damages, ₱20,000.00 as exemplary damages; and ₱10,000.00 as attorney's fees.

The Antecedents:

Union Bank issued Rico a Union Bank Visa credit card under Account No. 4404-5305-3656 with a credit limit of ₱150,000.00 and cash advance limit of ₱75,000.00.[5]

On January 24, 2006, Rico filed a complaint[6] for damages before the RTC claiming that Union Bank negligently handled his credit card account. He alleged that Union Bank: (a) charged him an amount for "U-Protect Premium Plan," an insurance coverage

---

[1] *Rollo*, pp. 8-25.

[2] CA *rollo*, pp. 388-405. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Magdangal M. De Leon and Stephen C. Cruz.

[3] Id. at 502-503.

[4] Records, Vol. 4, pp. 2452-2473. Penned by Judge Aida Estrella Macapagal.

[5] Records, Vol. 1, p. 3.

[6] Id. at 2-9.

Supreme Court E-Library

against unauthorized use of others in case of loss or theft; (b) charged him $20.00 as Expedia Service Fees in his Statement of Account (SOA) dated June 10, 2005; (c) declined his transaction with Tiger Airways when he used the credit card to purchase airline tickets online on June 18, 2005; (d) imposed late payment charges and interests despite having paid his credit card bill for SOA dated May 2005 on June 15, 2005; (e) imposed an annual membership fee despite its guarantee that he would not be charged thereof; and (f) charged him an amount of ₱30,076.79 in his SOA dated October 15, 2005 when he only used his credit card to pay for a ₱347.00 meal in Kitaro Sushi restaurant during the billing period.[7]

In addition, Rico averred that Union Bank dishonored his credit card for alleged non-payment of overdue account which consequently caused his card to be declined when he tried to pay for his bill at Gourdo's Restaurant on November 20, 2005. Rico claimed that his SOA dated November 15, 2005 stated a balance of ₱1,228.84 when he did not use his credit card during the covered billing period. Even if Union Bank reversed all charges and admitted its error, Rico maintained that he suffered embarrassment, social humiliation, mental anguish, serious anxieties, besmirched reputation, and wounded feelings when his card was dishonored at Gourdo's Restaurant.[8]

In its answer,[9] Union Bank asserted that it handled Rico's credit card account diligently in good faith. It claimed that the "U-Protect Premium Plan" is automatically offered to cardholders who meet certain criteria. However, considering Rico's request for cancellation sent *via* mail, it took time for the bank to process the request. Thus, Rico was still billed for the insurance coverage for the meantime.[10]

---

[7] Id.

[8] Id.

[9] Id. at 87-99.

[10] Id.

Supreme Court E-Library

As regards the Expedia Service Fee, Union Bank averred that Rico was electronically charged thereof as a result of his online purchase. Rico's credit card was declined when he tried to purchase online a ticket with Tiger Airways because his account was already in "past due" status. Union Bank alleged that Rico only paid his May 2005 SOA on June 14, 2005, which was way past the due date, *i.e.*, June 8, 2005. Union Bank added that the annual membership fee was waived only for the first year after its issuance.[11]

Moreover, the SOA dated October 16, 2005 still included the transaction with Tiger Airways amounting to ₱30,376.79, in addition to the ₱347.00 for Kitaro Sushi, because although the said airline transaction was disputed, it had not yet been resolved when the October 16, 2005 SOA was issued. However, Rico only paid ₱347.00 for his SOA dated October 16, 2005 instead of the minimum payment due of ₱500. Thus, when Rico used his credit card on November 20, 2005 at Gourdo's Restaurant, it was dishonored because his account was already in "past due" status for failure to pay the minimum amount due.[12]

Union Bank averred that it should not be held liable for damages since it was Rico who failed to comply with the terms and conditions of the credit card. Thus, Union Bank prayed for attorney's fees and litigation expenses against Rico.[13]

Ruling of the Regional Trial Court:

On June 24, 2010, the RTC rendered its Decision[14] in favor of Rico. The dispositive portion of which reads:

WHEREFORE, [Union Bank] is hereby ordered to pay [Rico] the following:

1. Five Hundred Thousand Pesos (Php500,000.00) as moral damages;

---

[11] Id.

[12] Id.

[13] Id.

[14] Records, Vol. 4, pp. 2452-2473.

Supreme Court E-Library

2. Two Hundred Thousand Pesos (Php200,000.00) as exemplary damages;
3. Three Hundred Thousand Pesos (Php300,000.00) as attorney's fees; and
4. costs of suit.

Defendant's counter claims are Dismissed for lack of merit.

SO ORDERED.[15]

The RTC ruled that the dishonor of Rico's credit card on November 20, 2005 was without any valid reason, as Union Bank in fact reversed all the charges in Rico's SOA dated November 15, 2005. Union Bank's contention that Rico's failure to pay the minimum amount due, *i.e.*, ₱500, on his SOA dated October 2005 resulted in the blocking of his card was untenable as Rico's outstanding obligation to the bank was only ₱347.00 which he already paid on November 3, 2005. Hence, when Rico used his credit card on November 20, 2005 at Gourdo's Restaurant, he had no liability to Union Bank which would justify the bank's action to put his account on "past due" status.[16]

The RTC ruled that Union Bank's careless, negligent, and unjustified dishonor of Rico's credit card placed the latter in an embarrassing situation at Gourdo's Restaurant. The RTC took note of Rico's several complaints with Union Bank which should have prompted Union Bank to carefully handle Rico's account to protect the client from a potentially embarrassing and humiliating situation. While it is true that Union Bank had no control over the machine which generates the billing, the RTC ruled that once a complaint is lodged by the account holder, the bank should act with utmost care and diligence in the billing of items included or excluded in the SOA. Hence, the RTC granted an award of moral damages in the amount of ₱500,000.00.[17]

In addition, the RTC found that Union Bank's wrongful act was accompanied by bad faith or done in a wanton and reckless

---

[15] Id. at 2473.

[16] *Rollo*, pp. 75-76.

[17] Id. at 76-78.

Supreme Court E-Library

manner. Thus, it awarded Rico with exemplary damages in the amount of ₱200,000.00. Lastly, the RTC granted an award of ₱300,000.00 attorney's fees, and the costs of suit because Rico was compelled to litigate to protect his interest under Article 2208 of the Civil Code.[18]

Ruling of the Court of Appeals:

On June 2, 2013, the CA rendered its Decision[19] affirming the June 24, 2010 Decision of the RTC, with modification as to the amount of damages awarded. The dispositive portion of which reads:

> WHEREFORE, the decision of the Regional Trial Court of Parañaque City Branch 195 dated June 24, 2010 in Civil Case No. 06-0029 is AFFIRMED with the following modification. Defendant-appellant Union Bank of the Philippines is ordered to pay plaintiff-appellant Rex G. Rico moral damages in the amount of THIRTY THOUSAND PESOS (Php30,000.00); exemplary damages in the amount of TWENTY THOUSAND PESOS (Php20,000.00); and attorney's fees in the amount of TEN THOUSAND PESOS (Php10,000.00).
>
> SO ORDERED.[20]

The CA found that the damages imposed by the RTC were excessive. Although there is no hard and fast rule in determining what is a fair and reasonable amount of moral damages, each case must be governed by its own peculiar facts, and must be commensurate to the loss or injury suffered. Hence, the CA reduced the award of: (a) moral damages to ₱30,000.00; (b) exemplary damages to ₱20,000.00; and (c) attorney's fees to ₱10,000.00.[21]

Both parties filed their motions for reconsideration[22] which were both denied by the CA in its January 21, 2014 Resolution.[23]

---

[18] Id. at 79.

[19] CA *rollo*, pp. 388-405.

[20] Id. at 404.

[21] *Rollo*, pp. 42-43.

[22] *Rollo*, p. 45.

[23] CA *rollo*, pp. 502-503.

Supreme Court E-Library

Hence, this petition for review on *certiorari* under Rule 45.

Issue:

The sole issue presented before this Court is whether or not Rico is entitled to moral damages, exemplary damages and attorney's fees due to the alleged gross negligence of Union Bank when it dishonored Rico's credit card purchase request, which caused him embarrassment and humiliation in the restaurant.

Our Ruling

After a careful consideration, We find the petition unmeritorious.

Indisputably, Union Bank issued Rico a Visa credit card with a credit limit of ₱150,000.00, which was increased to ₱250,000.00.[24] Both parties admitted that the credit card was disapproved when Rico used it in payment for a meal in Gourdo's Restaurant on November 20, 2005.[25] The RTC and the CA found Union Bank grossly negligent in handling Rico's credit card account, which consequently resulted to the dishonor of the credit card upon Rico's use thereof in a restaurant to the latter's embarrassment and humiliation.

Although the CA affirmed the RTC's finding of Union Bank's gross negligence, it considerably reduced the awards of moral damages from ₱500,000.00 to ₱30,000.00; exemplary damages from ₱200,000.00 to ₱20,000.00; and, attorney's fees from ₱100,000.00 to ₱10,000.00. Hence, Rico comes before this Court to plead for the reinstatement of the monetary awards granted by the RTC on the ground that the CA's reduction thereof was without factual and legal basis as it did not clearly and distinctly express the facts and the law on which its Decision was based.

Preliminary Matters:

As a general rule, only questions of law may be raised in a petition for review on *certiorari* as this Court is not a trier of facts. In this petition, Rico assails the CA's basis for the reduction of

---

[24] Records, Vol. 2, pp. 942-943.

[25] Id. at 953 & 705.

Supreme Court E-Library

the award of moral damages, exemplary damages, and attorney's fees, which necessarily involves a re-examination of the evidence presented. In the exercise of the power of review, we do not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[26] However, this rule admits of exceptions,[27] such as, when the findings of fact of the courts *a quo* will not bind the parties where the inference made on the evidence is mistaken and the judgment is based on a misapprehension of facts, as here.

Thus, We now proceed to the core of the controversy.

A credit card is a form of credit accommodation granted by the credit card company to the card holder for the latter's use in the

---

[26] *Locsin v. Hizon*, 743 Phil. 420, 428 (2014), citing *Urieta Vda. De Aguilar v. Sps. Alfaro*, 637 Phil. 131, 140-141 (2010).

[27] Id. at 428 citing *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 789 (2011). This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

1. When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
2. When the inference made is manifestly mistaken, absurd or impossible;
3. Where there is a grave abuse of discretion;
4. When the judgment is based on a misapprehension of facts;
5. When the findings of fact are conflicting;
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
7. When the findings are contrary to those of the trial court;
8. When the findings of fact are conclusions without citation of specific evidence on which they are based;
9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

Supreme Court E-Library

purchase of goods and services. The contract between the card company and the credit card holder is a simple loan arrangement. Although the relationship between the card company and the card holder is that of creditor-debtor[28] which exists upon the acceptance by the cardholder of the terms of the card membership agreement. We explained in *Pantaleon v. American Express International, Inc.*[29] that this creditor-debtor relationship arises only after the credit card issuer has approved the cardholder's purchase request. In other words, when the cardholder uses his or her credit card to pay for purchases, an offer to enter into loan agreement with the credit card company is made. Only when the card company approves the purchase request that the parties enter into a binding loan agreement in line with Article 1319 of the Civil Code.

The question now, therefore, is whether Union Bank has the obligation to approve all the purchase requests of Rico by virtue of the issuance of the credit card. Consequently, when the bank disapproved Rico's purchase request on November 20, 2005 at Gourdo's Restaurant, is Union Bank liable to pay moral damages allegedly due to the embarrassment and humiliation resulting from the credit card's dishonor?

To reiterate, "the use of a credit card to pay for a purchase is only an offer to the credit card company to enter into a loan agreement with the credit card holder. Before the credit card issuer accepts this offer, no obligation relating to the loan agreement exists between them."[30] Thus, Union Bank has no obligation to enter into a loan agreement with Rico when the latter tendered his offer by using his Union Bank Visa credit card to pay for his purchase at Gourdo's Restaurant. Rico, cannot, therefore demand from Union Bank to loan him or to pay for his purchase at Gourdo's Restaurant by virtue of the issued Visa credit card. "A demand presupposes the existence of an obligation between the parties."[31]

---

[28] See *Pantaleon v. American Express International, Inc.*, 605 Phil. 631, 639 (2009), citing *Citibank, N.A. v. Cabamongan*, 522 Phil. 476, 493 (2006).

[29] 643 Phil. 488, 506 (2010).

[30] Id. at 507.

[31] Id.

Supreme Court E-Library

While it is true that with the issuance of the credit card to Rico, Union Bank granted him a credit facility or a pre-approved amount which the card holder may use in his purchase of goods and services, this is not a demandable right which the card holder may hold against the credit card company as if he is entitled to be granted a loan whenever he or she wants to, or that the bank owes him or her money by the mere issuance of a credit card. Hence, Union Bank may or may not approve Rico's purchase requests based on the latter's credit standing, credit card history, and financial capability. Rico cannot demand that Union Bank should pay for his purchase in Gourdo's Restaurant through the use of the Visa credit card as if the bank is obliged to do so. The disapproval of the credit card transaction which allegedly caused him embarrassment and humiliation worthy of moral damages cannot be solely attributed to Union Bank when there is no demandable right to begin with. In the same manner, Rico is not compelled nor obliged to use his Union Bank Visa credit card to pay for any of his purchases.

However, We recognize that when Union Bank issued a Visa credit card to Rico, the parties entered into a contractual relationship governed by the terms and conditions found in the card membership agreement which constitute as the law between the parties.[32] Hence, in case of breach thereof, moral damages may be recovered if any of the party is shown to have acted fraudulently or in bad faith.[33] "Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.[34] However, a conscious or intentional design need not always be present because negligence may occasionally be so gross as to amount to malice or bad faith."[35] Article 2220 of the Civil Code contemplates gross negligence as bad faith which would justify an award of moral damages.

---

[32] See *BPI Express Card Corp. v. Armovit*, 745 Phil. 31, 36 (2014).

[33] Article 2220, New Civil Code.

[34] *BPI Express Card Corp. v. Armovit*, supra, citing *Gonzales v. Philippine Commercial and International Bank*, 659 Phil. 244, 269-270 (2011).

[35] Id. at 36, citing *Bankard, Inc. v. Feliciano*, 529 Phil. 53, 60-61 (2006).

Supreme Court E-Library

The Terms and Conditions[36] did not expressly state that Union Bank would honor all purchase requests of Rico at all times. Nonetheless, with the issuance of the credit card, Union Bank granted Rico credit card privileges which the latter may use in payment for goods and services. Thus, although the credit card company may disapprove the card holder's credit card transaction, it shall do so justifiably and within the bounds of laws and the credit card membership agreement. Otherwise, it would be futile to procure a credit card without a reasonable expectation that the card company will approve the card holder's purchase requests despite being in good credit standing and abiding by the terms and conditions.

A perusal of the records would show that Union Bank disapproved Rico's use of credit card on November 20, 2005 due to the latter's failure to pay the minimum amount due of his SOA dated October 16, 2005.[37] However, Rico countered that he paid all his purchases in the total amount of ₱347.00, and that he was not liable for the other charges in the SOA dated October 16, 2005.

A further examination of the events that transpired before the disapproval of Rico's credit card transaction on November 20, 2005 would reveal that the cause of the inadvertent late payment charges and interests charged in the SOA dated October 16, 2005 was Rico's use of the credit card to pay for his Tiger Airways airline tickets on June 20, 2005 and June 29, 2005,[38] which he allegedly cancelled as he did not want to pursue his travel anymore. As per Rico's letter dated June 30, 2005[39] addressed to Tiger Airways, he did not want to proceed with his flight to Singapore due to the absence of available seats when he tried to modify or change his return flight to Manila. Hence, even when the said airline tickets were already posted in his SOA dated July 15, 2005,[40] Rico

---

[36] *Rollo*, pp. 527-528.

[37] Records, Vol. 2, pp. 702 & 947.

[38] Id. at 690 & 944.

[39] Id. at 692.

[40] Id. at 690 & 944.

Supreme Court E-Library

insisted that he cancelled the same and demanded Union Bank to refund the amount.[41]

However, as per Rico's letter dated July 4, 2005[42] to Tiger Airways, the airline refused to grant his demand to cancel the airline tickets because they were non-refundable. Thus, he stated in his letter that he would not pay his credit card for the allegedly cancelled tickets nor any change fees. In another letter dated July 7, 2005[43] to Tiger Airways, Rico insisted that he was not liable for any cancellation charges and change fees, and that he was not considering any option of flight change. He reiterated the same stance against Tiger Airways in his letter dated July 12, 2005.[44]

As a result, Rico did not pay Union Bank for the amount corresponding to the Tiger Airways airline tickets charged to his account. He even demanded from Union Bank to refund or reverse the amount charged in his credit card despite knowledge that the said transaction successfully pushed through and was not yet cancelled by Tiger Airways as per his letters dated July 4, 2005, July 7, 2005, and July 12, 2005. Clearly, he did not want to proceed with his flight but Tiger Airways refused to cancel his non-refundable tickets. The only option for Rico is to request the bank to cancel the transaction on the pretext of cancelled airline tickets.

In Union Bank's letter dated August 13, 2005[45] to Rico, the bank noted that Rico disputed the Tiger Airways airline tickets transaction posted in his SOA dated July 15, 2005. However, Union Bank advised him to coordinate the cancellation with Tiger Airways so it could facilitate its request of refund or reversal.[46] In

---

[41] Id. at 697.

[42] Id. at 694.

[43] Id. at 695.

[44] Id. at 696.

[45] Id. at 952.

[46] Id.

Supreme Court E-Library

reply, Rico, in his letter dated August 25, 2005,[47] demanded from the bank to reverse the amount of airline tickets or else he would not use the credit card.

Nevertheless, Union Bank continued to charge the amount of the airline tickets in his succeeding SOAs, *i.e.*, August 15, 2005[48] and September 15, 2005[49] with interest, charges, and/or other fees. Obviously, in the August 15, 2005 and September 15, 2005 SOAs, the cancellation of the airline tickets was not yet resolved which explains why Union Bank continued to charge Rico's credit card account.

However, in SOA dated October 16, 2005,[50] Union Bank classified the airline tickets as disputed items but still continued to charge the said amount in Rico's account. Hence, the total amount due on SOA dated October 16, 2005 is ₱30,376.79, which includes the price of the airline tickets, with a minimum amount due of ₱500.00.[51] Rico, however, insisting that he is not liable to pay the airline tickets as he claimed to have cancelled the same, only paid ₱347.00, or less than the minimum amount due.[52]

Thereafter, Union Bank made a credit adjustment on November 7, 2005[53] so as not to charge Rico with additional charges for the disputed transaction while undergoing the process of reversal or refund, if entitled. Clearly, in Union Bank's letter dated November 29, 2005,[54] the disputed airline tickets transactions were not yet resolved but the bank made the necessary credit adjustment to avoid the running of additional charges or interests. The bank clarified that the said credit adjustment is not considered as

---

[47] Id. at 699.

[48] Id. at 698 & 945.

[49] Id. at 700 & 946.

[50] Id. at 702 & 947.

[51] Id.

[52] Id. at 703.

[53] Id. at 948.

[54] Id. at 954.

Supreme Court E-Library

payment and that Rico still needs to pay the minimum amount due to prevent the revocation of credit card privileges.[55]

Hence, even with the credit adjustment on November 7, 2005, Rico's transaction on November 20, 2005 was disapproved as he failed to pay the minimum amount due of ₱500 as billed in his SOA dated October 16, 2005 which was due on November 8, 2005. Finally, the cancellation of the airline tickets was resolved in Rico's favor. Thus, the SOA dated December 15, 2005 showed that Rico had no outstanding obligation to Union Bank. The bank also reversed all interests and charges charged against Rico's credit card account due to his failure to pay the amount of airline tickets.

Granting that the cancellation of the airline ticket was finally resolved in Rico's favor, it must be stressed that at the time of the purported embarrassing and humiliating incident, *i.e.*, November 20, 2005, the said disputed transaction was not yet resolved. Thus, Union Bank had the right to revoke Rico's credit card privileges, and consequently disapprove the transaction in Gourdo's Restaurant. Union Bank further explained that the reversal of the amount of airline tickets was not considered as payment, and thus the bank system automatically put his account on "past due status" which caused the disapproval of Rico's transaction on November 20, 2005. As far as Union Bank is concerned, the disputed items were not yet resolved, and were part of the total outstanding obligation of the card holder. It is quite unfortunate for Rico to fault Union Bank for its failure to refund or reverse the amount of Tiger Airways airline tickets, when it was clear that the incident arose from his own decision to cancel his flight with Tiger Airways and insistence to refund or reverse the same.

Notably, "every credit card transaction involves three contracts, namely: (a) the **sales contract** between the credit card holder and the merchant or the business establishment which accepted the credit card; (b) the **loan agreement** between the credit card issuer and the credit card holder; and lastly, (c) the **promise to**

---

[55] Id.

Supreme Court E-Library

pay between the credit card issuer and the merchant or business establishment."[56]

When Rico used his credit card to pay for his purchase of Tiger Airways airline tickets, three contracts were created, namely: (a) sales contract between Rico and Tiger Airways; (b) loan agreement between Rico and Union Bank; and (c) the promise to pay between Union Bank and Tiger Airways. When the said transaction was executed, Union Bank's promise to pay Tiger Airways arose. On the other hand, a creditor-debtor relationship was created between Union Bank and Rico, respectively. Thus, Union Bank had the right to demand the payment of the amount of airline tickets against Rico which the bank did so as indicated in its July, August, September, and October 2005 SOAs.

Rico's claim that the said airline tickets were already cancelled was belied by his own admission in his letters dated June 30, 2005,[57] July 4, 2005,[58] and July 12, 2005,[59] to Tiger Airways demanding from the latter to cancel his non-refundable flights from Manila to Singapore and *vice versa*. In return, Union Bank in its letter dated August 13, 2005,[60] advised Rico to request the

---

[56] *Pantaleon v. American Express International, Inc.*, supra note 25 at 503, citing in *Presta Oil, Inc. v. Van Waters & Rogers Corporation*, the court characterized the nature of this last contract, thus:

> Credit cards are more automatic in their operation than checks or notes, but courts which have examined whether a credit card is legal tender have concluded that it is not. Instead, these courts held that the debt incurred in a credit card transaction is discharged when the merchant receives payment from the card issuer.
>
> 276 F.Supp.2d 1128, (2003) citing *Porter v. City of Atlanta*, 259 Ga. 526, 384 S.E.2d 631, 634 (1989), *cert denied* *1137, 494 U.S. 1004, 110 S.Ct. 1297, 108 L.Ed.2d 474 (1990); *Berry v. Hannigan*, 7 Cal.App.4th 587, 9 Cal. Rptr.2d 213, 215 (1992), *rev. denied* Sept. 02, 1992; *Cade v. Montgomery Co.*, 83 Md.App. 419, 575 A.2d 744, 749 (1990), *rev. denied* Aug. 30, 1990, *cert denied* 498 U.S. 1085, 111 S.Ct. 960, 112 L.Ed.2d 1047 (1991).

[57] Records, Vol. 2, p. 694.

[58] Id. at 695.

[59] Id. at 696.

[60] Id. at 952.

Supreme Court E-Library

cancellation of the airline tickets from Tiger Airways, in order for Union Bank to process the reversal or refund of the amount charged in his account. Clearly, Union Bank cannot be considered to have breached its contract with Rico when the bank loaned him the money to pay for his purchase of airline tickets from Tiger Airways.

Rico, however, retorted in his letter dated August 13, 2005 to Union Bank, that he would not present any proof of cancellation of the said transaction with Tiger Airways as **"the latter insists not to honor my cancellation of my flight reservation."**[61] Patently, Union Bank cannot be considered to have willfully put Rico's account on "past due status" in bad faith, when it was Rico himself who did not want to proceed with the already perfected and binding: (a) sales contract with Tiger Airways, and (b) loan agreement with Union Bank, from the mere fact that Rico used his credit card to pay for that subject purchase online. Consequently, Union Bank cannot just reverse nor refund the amount charged at the mere whim of the credit card holder who did not want to proceed with the flight he himself purchased from Tiger Airways.

Thus, Union Bank cannot be faulted when it continued to charge Rico with the amount of the airline tickets, pending investigation of the said disputed items. Rico knew fully well that the disputed airline tickets were still under the process of investigation by Union Bank, and that the said transactions were charged against his account as per SOA dated October 16, 2005. He also knew that as per SOA dated October 16, 2005, the minimum amount due to be paid is ₱500.00. As per the Terms and Conditions, in case of payment default, the right to use the credit card shall automatically be revoked which Union Bank did rightly so.

Regardless of the resolution of the cancellation of the airline tickets and the reversal of the interests and/or charges in Rico's favor, it bears stressing that when the alleged embarrassing situation happened on November 20, 2005, Rico was well aware of the pending dispute involving the airline tickets, and

---

[61] Id. at 697.

Supreme Court E-Library

his nonpayment of the minimum amount which was due on or before November 8, 2005. Union Bank made no representation that the disputed items would be resolved in Rico's favor. Also, it bears stressing that Union Bank is a business, and not a charity. It would be absurd to assume that Union Bank would simply accept Rico's representation that the disputed airline tickets were already cancelled, without conducting its own review and investigation, and thereby, open itself to a possible liability to Tiger Airways, when the debtor, Rico, refuses to pay Union Bank and insists on its cancellation.

Apropos, Union Bank cannot be considered grossly negligent in charging the amount of airline tickets against Rico's credit card account in the July to October SOAs, or prior to the final resolution of the dispute. Union Bank did not violate the Terms and Conditions, nor any legal duty, to pay for Rico's purchases using the credit card. Union Bank cannot also be considered grossly negligent when it automatically revoked Rico's credit card account when the latter failed to pay the minimum amount due pending the resolution of the disputed transactions. Insofar as Union Bank is concerned, Rico offered to enter into a loan agreement with Union Bank to pay for his Tiger Airways airline tickets and Union Bank, when it allowed the said transactions, accepted Rico's offer. Subsequently, a contract between Union Bank and Tiger Airways arose, such that, the former is obliged to pay the latter the amount of airline tickets purchased by Rico. In reviewing and investigating the alleged cancelled sales agreement between Rico and Tiger Airways, Union Bank is justified to protect itself as a business for profit.

Based on the foregoing, we find the disapproval of Rico's credit card on November 20, 2005 as justified and done in good faith. Union Bank neither breached its contract with Rico nor acted with willful intent to cause harm when it revoked Rico's credit card privileges when he failed to pay the minimum amount due on his SOA dated October 16, 2005. Nobody can be faulted for Rico's alleged humiliation or embarrassment in Gourdo's Restaurant but himself. *Damnum absque injuria* – there can be no damage without

Supreme Court E-Library

injury when the loss or harm was not the result of a violation of a legal duty. As held in *BPI Express Card 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 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.[63]

In order for Rico to maintain an action for the injuries which he claims to have sustained, he must establish that such injuries resulted from a breach of duty which Union Bank owed to him. In other words, there must be a concurrence of injury to Rico and the legal responsibility of the person causing it, *i.e.*, Union Bank.[64] "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."[65]

---

[62] 357 Phil. 262 (1998).

[63] Id. at 275-276.

[64] *Aznar v. Citibank, N.A. (Philippines)*, 548 Phil. 218 (2007).

[65] Id. at 240.

Supreme Court E-Library

It is not enough that Rico merely suffered humiliation or embarrassment as a result of Union Bank's disapproval of the credit card transaction on November 20, 2005. "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 and 2220 of the Civil Code."[66]

While Rico suffered humiliation or embarrassment from the disapproval of his credit card at Gourdo's Restaurant in front of his two guests, We are constrained to reverse the findings of the RTC and the CA that Union Bank was grossly negligent in revoking Rico's credit card privileges. Rico failed to convince Us that Union Bank breached any obligation that would make it answerable for his humiliation or embarrassment.

Hence, as it was Rico's own action, *i.e.*, his resolve to cancel his flight with Tiger Airways, which was the proximate cause of his embarrassing and humiliating experience, We find the award of moral damages by the RTC and the CA clearly unjustified. With the deletion of the award of moral damages, we find no basis for the award of exemplary damages as it can only be awarded if Rico is entitled to moral, temperate, or compensatory damages.[67] In the same vein, We must delete the award of attorney's fees and costs of litigation as Rico failed to show that he falls under one of the instances enumerated in Article 2208 of the Civil Code.

WHEREFORE, the petition is **DENIED**. The June 28, 2013 Decision and January 21, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 96400 are hereby **REVERSED** and **SET ASIDE**. The complaint for damages filed by petitioner Rex G. Rico before the Regional Trial Court, Parañaque City, Branch 195

---

[66] Id. at 240-241, citing *Equitable Banking Corp. v. Calderon*, 487 Phil. 499, 507 (2004).

[67] See Article 2234, New Civil Code.

Supreme Court E-Library

docketed as Civil Case No. 06-0029 against respondent Union Bank of the Philippines, is hereby **DISMISSED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Inting, Gaerlan, and *Dimaampao, JJ.*, concur.

APPEARANCES OF COUNSEL

Rico & Associates for petitioner.
Cruz Marcelo & Tenefrancia for respondent.