



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**BPI EXPRESS CARD
CORPORATION,***
Petitioner,

G.R. No. 163654

Present:

- versus -

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

MA. ANTONIA R. ARMOVIT,
Respondent.

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DECISION

BERSAMIN, J.:

This case involves a credit card holder’s claim for damages arising from the suspension of her credit privileges due to her supposed failure to re-apply for their reactivation. She has insisted that she was not informed of the condition for reactivation.

The Case

Petitioner BPI Express Credit Card Corporation (BPI Express Credit) seeks the reversal of and assails the adverse decision promulgated on February 26, 2004,¹ whereby the Court of Appeals (CA) affirmed the judgment rendered on April 22, 1996 by the Regional Trial Court, Branch 216, in Quezon City, (RTC) adjudging it liable to pay moral and exemplary

* BPI Express Card Corporation initially changed its name to BPI Card Corporation, and then changed its name to BPI Card Finance Corporation in 1998. On April 1, 2002, all the assets and liabilities of BPI Express Card were transferred to the Bank of the Philippine Islands, its mother company; at *rollo*, p. 9

¹ *Rollo*, pp. 20-29; penned by Associate Justice Hakim S. Abdulwahid, with Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Jose L. Sabio, Jr. (deceased) concurring.

damages, attorney's fees and costs of suit to its credit card holder Ma. Antonia R. Armovit, the respondent herein.²

Antecedents

Armovit, then a depositor of the Bank of the Philippine Islands at its Cubao Branch, was issued by BPI Express Credit a pre-approved BPI Express Credit Card (credit card) in 1989 with a credit limit of ₱20,000.00 that was to expire at the end of March 1993.³ On November 21, 1992, she treated her British friends from Hong Kong to lunch at Mario's Restaurant in the Ortigas Center in Pasig. As the host, she handed to the waiter her credit card to settle the bill, but the waiter soon returned to inform her that her credit card had been cancelled upon verification with BPI Express Credit and would not be honored. Inasmuch as she was relying on her credit card because she did not then carry enough cash that day, her guests were made to share the bill to her extreme embarrassment.

Outraged, Armovit called BPI Express Credit to verify the status of her credit card. She learned that her credit card had been summarily cancelled for failure to pay her outstanding obligations. She vehemently denied having defaulted on her payments. Thus, by letter dated February 3, 1993,⁴ she demanded compensation for the shame, embarrassment and humiliation she had suffered in the amount of ₱2,000,000.00.

In its reply letter dated February 5, 1993,⁵ BPI Express Credit claimed that it had sent Armovit a telegraphic message on March 19, 1992 requesting her to pay her arrears for three consecutive months, and that she did not comply with the request, causing it to temporarily suspend her credit card effective March 31, 1992.⁶ It further claimed that she had been notified of the suspension and cautioned to refrain from using the credit card to avoid inconvenience or embarrassment;⁷ and that while the obligation was settled by April, 1992, she failed to submit the required application form in order to reactivate her credit card privileges. Thus, BPI Express Credit countered that her demand for monetary compensation had no basis in fact and in law.

On March 12, 1993, Armovit received a telegraphic message from BPI Express Credit apologizing for its error of inadvertently including her credit card in Caution List No. 225 dated March 11, 1993 sent to its affiliated merchants.⁸

² Records, pp. 221-225.

³ Id. at 134.

⁴ Id. at 131.

⁵ Id. at 132.

⁶ Id. at 155.

⁷ Id. at 157.

⁸ Id. at 119.

As a result, Armovit sued BPI Express Credit for damages in the RTC, insisting that she had been a credit card holder in good standing, and that she did not have any unpaid bills at the time of the incident.

In its answer with counterclaim,⁹ BPI Express Credit raised the defense of lack of cause of action, and maintained that Armovit had defaulted in her obligations for three consecutive months, thereby causing the temporary suspension of her credit card in accordance with the terms and conditions of the credit card.¹⁰ It pointed out that Armovit had been duly notified of the suspension; that for her failure to comply with the requirement for the submission of the application form and other documents as directed in its letter dated April 8, 1992,¹¹ her credit card had not been reactivated and had remained in the list of suspended cards at the time she used it on November 21, 1992; and that the telegraphic message of March 11, 1993, which was intended for another client whose credit card had been erroneously included in the caution list, was mistakenly sent to her.¹²

Judgment of the RTC

In the judgment rendered April 22, 1996,¹³ the RTC, ruling in favor of Armovit, observed that the terms and conditions governing the issuance and use of the credit card embodied in the application form had been furnished to her for the first time only on April 8, 1992, or after her credit card privileges had already been suspended; that, accordingly, she could not be blamed for not complying with the same; that even if she had been notified of the temporary suspension of her credit card, her payment on April 1, 1992 had rendered the continued suspension of her credit card unjustified; and that there was no clear showing that the submission of the application form had been a condition precedent to the lifting of its suspension.

Finding BPI Express Credit guilty of negligence and bad faith, the RTC ordered it to pay Armovit moral damages of ₱100,000.00; exemplary damages and attorney's fees each in the amount of ₱10,000.00; and the costs of suit.

Decision of the CA

Both parties appealed to the CA.

⁹ Id. at 23-27.

¹⁰ Id. at 154.

¹¹ Id. at 158.

¹² Id. at 168.

¹³ Id. at 221-225.

On February 26, 2004, the CA promulgated its assailed decision,¹⁴ concurring with the RTC, and declared that because Armovit had not signed any application form in the issuance and renewals of her credit card from 1989 up to 1992, she could not have known the terms and conditions embodied in the application form even if the credit card had specified that its use bound the holder to its terms and conditions. It did not see merit in BPI Express Credit's contention that the submission of a new application form was a pre-requisite for the lifting of the suspension of her credit card, inasmuch as such condition was not stated in a clear and unequivocal manner in its letter dated April 8, 1992. It noted that the letter of apology mentioning another inadvertence committed, even if it claimed the letter of apology as intended for another card holder, still highlighted BPI Express Credit's negligence in its dealings with her account.

Anent Armovit's appeal, the CA did not increase the amounts of damages for lack of basis, observing that moral and exemplary damages were awarded not to enrich her at the expense of BPI Express Credit but to alleviate the anxiety and embarrassment suffered.

BPI Express Credit's motion for reconsideration was denied through the resolution promulgated on May 14, 2004.¹⁵

Hence, this appeal by petition for review on *certiorari*.

Issue

The sole issue is whether or not the CA erred in sustaining the award of moral and exemplary damages in favor of Armovit.

Ruling of the Court

The petition for review lacks merit.

The relationship between the credit card issuer and the credit card holder is a contractual one that is governed by the terms and conditions found in the card membership agreement.¹⁶ Such terms and conditions constitute the law between the parties. In case of their breach, moral damages may be recovered where the defendant is shown to have acted fraudulently or in bad faith.¹⁷ Malice or bad faith implies a conscious and

¹⁴ *Rollo*, pp. 20-29.

¹⁵ *Id.* at 31-32.

¹⁶ *Pantaleon v. American Express International, Inc.*, G.R. No. 174269, August 25, 2010, 629 SCRA 276, 293.

¹⁷ Article 2220, *New Civil Code*.

intentional design to do a wrongful act for a dishonest purpose or moral obliquity.¹⁸ 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.¹⁹ Hence, bad faith in the context of Article 2220 of the *Civil Code* includes gross negligence.²⁰

BPI Express Credit contends that it was not grossly negligent in refusing to lift the suspension of Armovit's credit card privileges inasmuch as she had not complied with the requisite submission of a new application form; and that under the circumstances its negligence, if any, was not so gross as to amount to malice or bad faith following the ruling in *Far East Bank and Trust Company v. Court of Appeals*.²¹

The Court disagrees with the contentions of BPI Express Credit. The Terms and Conditions Governing the Issuance and Use of the BPI Express Credit Card²² printed on the credit card application form spelled out the terms and conditions of the contract between BPI Express Credit and its card holders, including Armovit. Such terms and conditions determined the rights and obligations of the parties.²³ Yet, a review of such terms and conditions did not reveal that Armovit needed to submit her new application as the antecedent condition for her credit card to be taken out of the list of suspended cards.

Considering that the terms and conditions nowhere stated that the card holder must submit the new application form in order to reactivate her credit card, to allow BPI Express Credit to impose the duty to submit the new application form in order to enable Armovit to reactivate the credit card would contravene the *Parol Evidence Rule*.²⁴ Indeed, there was no agreement between the parties to add the submission of the new application form as the means to reactivate the credit card. When she did not promptly settle her outstanding balance, BPI Express Credit sent a message on March

¹⁸ *Gonzales v. Philippine Commercial and International Bank*, G.R. No. 180257, February 23, 2011, 644 SCRA 180, 202.

¹⁹ *Bankard, Inc. v. Feliciano*, G.R. No. 141761, July 28, 2006, 497 SCRA 52, 58-59.

²⁰ *Id.* at 59.

²¹ G.R. No. 129130, December 9, 2005, 477 SCRA 49, 54.

²² Records, p. 154 (Exhibit 7).

²³ *Norton Resources and Development Corporation v. All Asia Bank Corporation*, G.R. No. 162523, November 25, 2009.

²⁴ Rule 131 of the *Rules of Court* embodies the *Parol Evidence Rule*, thusly:

Section 9. *Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake, or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

19, 1992 demanding payment with the warning that her failure to pay would force it to temporarily suspend her credit card effective March 31, 1992. It then sent another demand letter dated March 31, 1992 requesting her to settle her obligation in order to lift the suspension of her credit card and prevent its cancellation. In April 1992, she paid her obligation. In the context of the contemporaneous and subsequent acts of the parties, the only condition for the reinstatement of her credit card was the payment of her outstanding obligation.²⁵ Had it intended otherwise, BPI Express Credit would have surely informed her of the additional requirement in its letters of March 19, 1992 and March 31, 1992. That it did not do so confirmed that they did not agree on having her submit the new application form as the condition to reactivate her credit card.

The letter of BPI Express Credit dated April 8, 1992 did not clearly and categorically inform Armovit that the submission of the new application form was the pre-condition for the reactivation of her credit card. The statement in the letter (*i.e.*, "... accomplish the enclosed application form and provide us with informations/documents that can help our Credit Committee in reevaluating your existing facility with us.") merely raised doubt as to whether the requirement had really been a pre-condition or not. With BPI Express Credit being the party causing the confusion, the interpretation of the contract could not be done in its favor.²⁶ Moreover, it cannot be denied that a credit card contract is considered as a contract of adhesion because its terms and conditions are solely prepared by the credit card issuer. Consequently, the terms and conditions have to be construed against BPI Express Credit as the party who drafted the contract.²⁷

Bereft of the clear basis to continue with the suspension of the credit card privileges of Armovit, BPI Express Credit acted in wanton disregard of its contractual obligations with her. We concur with the apt observation by the CA that BPI Express Credit's negligence was even confirmed by the telegraphic message it had addressed and sent to Armovit apologizing for the inconvenience caused in inadvertently including her credit card in the caution list. It was of no consequence that the telegraphic message could have been intended for another client, as BPI Express Credit apparently sought to convey subsequently, because the tenor of the apology included its admission of negligence in dealing with its clients, Armovit included. Indeed, BPI Express Credit did not observe the prudence expected of banks whose business was imbued with public interest.

²⁵ The *Civil Code* relevantly states:

Article 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (1282)

²⁶ The *Civil Code* says:

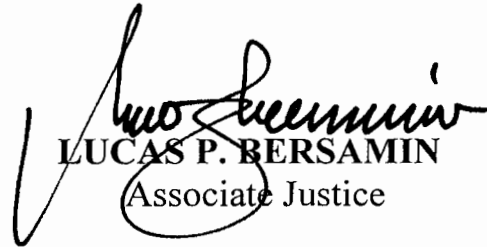
Article. 1377. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.

²⁷ *Pantaleon v. Amercian Express International, Inc.*, supra note 16.


We hold that the CA rightly sustained the award of ₱100,000.00 as moral damages. To us, too, that amount was fair and reasonable under the circumstances. Similarly, the grant of exemplary damages was warranted under Article 2232 of the *New Civil Code* because BPI Express Credit acted in a reckless and oppressive manner. Finally, with Armovit having been forced to litigate in order to protect her rights and interests, she was entitled to recover attorney's fees and expenses of litigation.²⁸

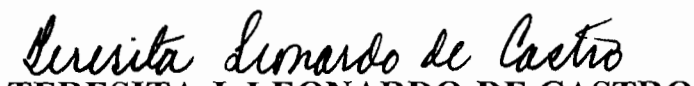
WHEREFORE, the Court **AFFIRMS** the decision promulgated on February 26, 2004; and **ORDERS** the petitioner to pay the costs of suit.


SO ORDERED.

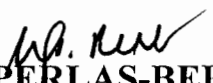

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

²⁸ Article 2208, *New Civil Code*.