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Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

**BANK OF THE PHILIPPINE ISLANDS,**

Petitioner,

**G.R. No. 239092**

Present:

- versus -

BERSAMIN, C.J., Chairperson,  
DEL CASTILLO,  
GISMUNDO,  
REYES, JR. JC,\* and  
CARANDANG, JJ.

**SPOUSES RAM M. SARDA and JANE DOE SARDA,**

Respondents.

Promulgated:

**JUN 26 2019**

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**DECISION**

**GISMUNDO, J.:**

Before us is an appeal from the April 27, 2018 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 106788, which reversed and set aside the April 12, 2016 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Makati City, Branch 143, in Civil Case No. 14-351. The RTC ordered respondents to pay petitioner the accumulated amounts for credit card purchases plus interest and charges and attorney's fees.

\* Designated as Additional Member in lieu of Associate Justice Francis H. Jardeleza, who takes no part due to association of a family member with a party, per Raffle dated April 10, 2019.

<sup>1</sup> Rollo, pp. 97-106; penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Ramon R. Garcia and Myra V. Garcia-Fernandez, concurring.

<sup>2</sup> Id. at 108-110; penned by Judge Maximo M. De Leon.

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### Antecedents

Petitioner Bank of the Philippine Islands (*BPI*) is a domestic commercial banking corporation. Among the services it offers is the issuance of credit cards for the purchase of goods and services on credit through its credit card system.

On March 28, 2014, BPI filed a Complaint against spouses Ram M. Sarda (*Mr. Sarda*) and “Jane Doe” Sarda (collectively, *respondents*). BPI alleged that it issued a credit card to Mr. Sarda under terms and conditions attached to the card upon its delivery. Respondents availed of BPI’s credit accommodations by using the said credit card and thereafter incurred an outstanding obligation of ₱1,213,114.19 per BPI statement of account, dated September 22, 2013. Based on the bank’s records, Mr. Sarda’s last payment prior to the cancellation of the BPI credit card was on March 15, 2013, as shown in the March 20, 2013 statement of account. Despite demands for payment, Mr. Sarda refused to settle the obligation.<sup>3</sup>

BPI thus prayed that judgment be rendered against respondents ordering them to pay the principal amount of ₱1,213,114.19; ₱443,915.46 representing 3.25% finance charge per month and 6% late payment charges per month from October 2013 to February 2014; finance charge at the rate of 3.25% per month and late payment charges amounting to 6% per month or a fraction of month’s delay starting March 2014, until the obligation is fully paid; attorney’s fees equivalent to 25% of the total claims due and demandable, exclusive of appearance fee for every court hearing; and the costs of suit.<sup>4</sup>

In their Answer, respondents denied having applied for or having received the credit card issued by BPI. They asserted that they had not used said credit card as they did not have physical possession of it. They likewise denied having signed or agreed to the terms and conditions referred to in the complaint, and much less, incur an outstanding obligation of ₱1,213,114.19. Accordingly, they prayed for the dismissal of the complaint and the grant of their counterclaim for attorney’s fees in the sum of ₱100,000.00.<sup>5</sup>

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<sup>3</sup> Records (Vol. I), pp. 1-2.

<sup>4</sup> Id. at 3.

<sup>5</sup> Id. at 80-81.

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At the trial, BPI presented documentary evidence consisting of Delivery Receipt,<sup>6</sup> Terms and Conditions of Use of BPI Express credit card,<sup>7</sup> and original copies of statements of account pertaining to Mr. Sarđa's credit card, as well as the testimony of its witness, BPI's Account Specialist, Mr. Arlito M. Igos. For respondents, Mr. Sarđa testified to refute BPI's claims.

### **Ruling of the RTC**

The RTC ruled in favor of BPI and against respondents on the basis of the following findings, *viz*:

The first issue to be resolved is whether defendant Ram M. Sarđa has received the credit card from Melissa Tandogon who initially received the said credit card. The fact is that the initial receipt of the credit card by Melissa Tandogon (whom Ram Sarđa admitted that Melissa was his former employee) does not discount the possibility that the credit card may have been subsequently received by Ram Sarđa. Defendant failed to present evidence that Melissa Tandogon has no authority to receive any delivery for Ram Sarđa, nor did they show proof that at the time Melissa received the credit card, she was no longer an employee of Ram Sarđa. If this is the fact, Ram Sarđa should have brought to the attention of BPI the non-receipt of the said credit card from whomsoever received it since the first billing statement was sent to their residence. Even if the address in both complaint and answer was different from the address where the monthly billings were sent, said fact of residence was verified when Ram Sarđa received the demand letter at the address similar to that indicated in the billing statements. Thus, this will only show that Ram Sarđa is in fact residing in the very address where the billing statements were sent. In fact, plaintiff attached as evidence not only one but numerous billing statements. Accordingly, Ram Sarđa has several opportunities to bring to the attention of BPI that they were not in possession of the said credit card if [that] is the fact. On the contrary, this only solidifies the claim of the plaintiff that Ram Sarđa was the one receiving the billing statement and paying for the same. Otherwise stated, he is in possession of the credit card. No one in his right mind will keep receiving billing statements if the same is not his. It is for the defendant to establish by clear evidence that he was not the one who used the credit card.

Furthermore, it is a common practice here in the Philippines and even in foreign countries that the card holder is being asked to present identification card to determine if the credit card he is presenting is really his credit card. Otherwise stated, the establishments like [Resorts] World, Manila, Philippine Airlines, Casinos and Hotels (in or outside the country) will not accept credit card if no valid identification bearing the same name as that in the credit card is presented. Meanwhile, assuming that it was

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<sup>6</sup> Id. at 29; Exhibit "C".

<sup>7</sup> Id. at 30; Exhibit "D".

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Melissa Tandogon who really made use of the credit card, she could not have used it for she does not have any identification bearing the name Ram M. Sarda. Thus, there can be no logical conclusion except that it was defendant Ram M. Sarda who used the credit card.

xxx the plaintiff was able to establish the obligation of the defendant. Corollarily, the defendant failed to pay the said obligation that's why the plaintiff sent a formal demand letter to the defendant to (sic) which the latter ignored.

On the other hand, this court finds the award of the attorney's fees in the amount equal [to] 25% of the principal obligation as unconscionable and excessive in which case this Court reduces said claim to only 15% based from the principal obligation, said amount is considered as fair and reasonable.

Meanwhile, this Court also reduces the claim for finance charges from 3.25% per month to only .5% per month or 6% per annum. The claim for late payment charge of 6% per month is also reduced to only .5% per month or 6% per annum. Said interest payment to be computed from March 28, 2014, the date when the complaint was filed.

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WHEREFORE, viewed in the light of the foregoing premises, judgment is hereby rendered in favor of the plaintiff and against defendants SPS. RAM M. SARDA and JANE DOE SARDA ordering them to pay the plaintiff, jointly and severally, the sum of:

1. ₱1,213,114.19, representing the principal (loan) obligation;
2. 15% representing attorney's fee[s], the same to be computed based from the principal obligation;
3. .5% per month or 6% per annum, representing Finance Charges based from the principal obligation to be computed starting from March 28, 2014; and
4. .5% per month or 6% per annum, representing Late Payment Charges based from the principal obligation to be computed starting from March 28, 2014.

Costs against the defendants.

SO ORDERED.<sup>8</sup>

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<sup>8</sup> Records (Vol. II), pp. 135-137.

Dissatisfied, respondents appealed to the CA, arguing that BPI failed to establish the alleged obligation of respondents under the subject principal and supplementary credit cards.

### Ruling of the CA

The CA reversed the RTC and held that respondents cannot be made liable to pay for the purchases accumulated under the credit card issued by BPI for the following reasons: 1) BPI failed to prove that Mr. Sarda had physical possession of the principal credit card issued in his name, and that Ms. Tandogon was authorized to receive the same; 2) BPI failed to prove that Mr. Sarda authorized the issuance of a supplementary card in favor of Ms. Tandogon; 3) BPI failed to prove the receipt by respondents of the monthly billing statements and demand letter; and 4) BPI failed to observe extraordinary diligence and reasonable business prudence in issuing the subject credit cards.<sup>9</sup>

The CA took note of the fact that all statements of account were addressed to Rm. 507 5F Amberland Plaza, Doña Julia Vargas Ave., Ortigas Center, Pasig City. However, the dorsal portion of the demand letter sent by BPI to the same address contained the remarks: "S/O 2 YRS./MOVEOUT/ROMEO ABDINCULA." The CA thus concluded that the respondents could not have known of the outstanding obligation being claimed by BPI, nor could they apprise BPI of their non-receipt of the credit card and monthly billings.<sup>10</sup>

Despite ruling that BPI failed to prove its claims against respondents by preponderance of evidence, the CA nonetheless denied respondents' counterclaim as it found that BPI did not act in bad faith when it erroneously pursued its claims against them.<sup>11</sup>

The dispositive portion of the CA Decision reads:

**WHEREFORE**, premises considered, the appeal is **GRANTED**. The Decision dated 12 April 2016 of Branch 143 of the Regional Trial Court of Makati City in Civil Case No. 14-351 is **REVERSED** and **SET ASIDE**. The complaint for collection of sum of money in Civil Case No. 14-351 is **DISMISSED**.

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<sup>9</sup> *Rollo*, pp. 100-105.

<sup>10</sup> *Id.* at 103-104.

<sup>11</sup> *Id.* at 104-105.

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**SO ORDERED.**<sup>12</sup>

### **ISSUE**

WHETHER OR NOT MR. SARDA SHOULD BE HELD LIABLE TO PAY THE TOTAL AMOUNTS DUE UNDER THE PRINCIPAL AND SUPPLEMENTARY CREDIT CARDS ISSUED BY BPI.

#### ***Petitioner's Arguments***

BPI argues that given the documentary evidence consisting of statements of account showing continuing transactions using the subject credit cards, it is irrelevant to discuss whether Mr. Sarda actually received the credit card issued in his name, or whether the supplementary card issued to Ms. Tandogon was utilized under his responsibility.<sup>13</sup>

As to the monthly billings, BPI points out that respondents' accountability started way back in 2009. Thus, even if assuming that respondents had moved out from the address indicated in the statements of account two years prior to the demand letter dated October 1, 2013, it was nevertheless established that Mr. Sarda was receiving the said billings and making payments between 2009 and 2011. In any event, Mr. Sarda should not be allowed to use as excuse his failure to receive the statements of account at his previous address because he failed to notify BPI regarding his change of address. Under the terms and conditions of BPI credit card usage and Section 14 of Republic Act (*R.A.*) No. 8484,<sup>14</sup> Mr. Sarda is duty bound to notify the bank/credit card issuer of his whereabouts, as his failure to do so gives rise to a *prima facie* presumption of using his credit card with intent to defraud.<sup>15</sup>

BPI asserts that there was due diligence on its part, as required by law, as well as those of the merchants/establishments where respondents utilized the credit cards, such as at Resorts World Manila (countless transactions including cash advances), Philippine Airlines, Paras Beach Resort, Del Monte Golf Club, Valley Golf Club Antipolo, S & R membership shopping, Waterfront Hotel Cebu, and even abroad: Hickam Air Force Base Commissary, Walmart, Haley Koa Hotel. It further underscores the admission

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<sup>12</sup> *Id.* at 105.

<sup>13</sup> *Id.* at 65.

<sup>14</sup> "AN ACT REGULATING THE ISSUANCE AND USE OF ACCESS DEVICES, PROHIBITING FRAUDULENT ACTS COMMITTED RELATIVE THERETO, PROVIDING PENALTIES AND FOR OTHER PURPOSES." Approved on February 11, 1998.

<sup>15</sup> *Rollo*, pp. 66-68.

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made by Mr. Sarda, when he testified in court, that he is a retired member of the U.S. Army and confirmed having been to Hickam Air Force Base in Honolulu, as well as all those establishments where transactions using his credit card were duly reflected in the statements of account.<sup>16</sup>

### *Respondents' Arguments*

Respondents contend that BPI raises factual issues before this Court which are not proper in a Rule 45 petition. Notwithstanding this procedural lapse, they stress the fact that based on the statements of account submitted by BPI, all the transactions purportedly effected under Mr. Sarda's name, covering the period September 2009 to July 2011 have all been fully paid, such that there is no longer any outstanding obligation arising from purchases using this primary card.<sup>17</sup>

Notably, the supplementary card issued in the name of Ms. Tandogon was linked to the primary card under the name of Mr. Sarda, but without him applying for it and it being issued without his knowledge or conformity. As reflected in the statements of account beginning August 2011, and as admitted by BPI's witness, substantial amounts of purchases and cash advances were made under this supplementary card. Said witness' testimony further disclosed that the issuance of the supplementary card was irregular, in violation of the terms and conditions for the use of BPI credit cards and which respondents repeatedly denied having applied for. The delivery receipt itself shows that it was highly unlikely for Ms. Tandogon to have applied for a supplementary card in her favor as she is not even a member of respondents' family; being a plain office clerk in Mr. Sarda's place of work. Respondents pray that the Court's ruling in *BPI Express Card Corporation v. Olalia*<sup>18</sup> be applied in this case as it also involved noncompliance with the requirements for the issuance of a supplementary card.<sup>19</sup>

Respondents assail the RTC in assuming that Ms. Tandogon had passed on the credit card to Mr. Sarda simply because she received it upon delivery. They maintain that in the absence of the required application form signed by respondents, it is necessary for BPI to present clear evidence to prove that Mr. Sarda actually received the subject credit cards. It is not enough for BPI to insinuate that respondents were the ones who made the payments appearing in the statements of account, as it was never established that they had received those billings to begin with. Moreover, the Court has consistently held that

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<sup>16</sup> Id. at 71-77.

<sup>17</sup> Id. at 344-348.

<sup>18</sup> 423 Phil. 593 (2001).

<sup>19</sup> *Rollo*, pp. 348-366.

the putative cardholder cannot be made to pay the interests and charges contained in the terms and conditions of the credit card issuer without proof of conformity and acceptance by the cardholder of such stipulations.<sup>20</sup>

### THE COURT'S RULING

The petition has no merit.

BPI assails the CA's findings concerning the non-receipt by Mr. Sarda of the credit card and his lack of consent to, or conformity with, the issuance of an extension card to his former employee; the use of both primary and supplementary cards in the alleged purchases and cash advances appearing in the statements of account; and the receipt of the monthly billings and demand letter sent to his office address. Plainly, these are factual matters that the Court cannot entertain in a petition for review on *certiorari* under Rule 45 of the Rules of Court.

In a petition for review on *certiorari* under Rule 45, the Court is generally limited to reviewing only errors of law. Nevertheless, the Court has enumerated several exceptions to this rule, such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.<sup>21</sup> It is the eighth exception that is invoked by BPI to reverse the CA decision and to reinstate the RTC judgment in its favor.

After review of the records, the Court finds no cogent reason to deviate from the CA's findings and conclusion.

First, on the question of whether Mr. Sarda actually received the credit card issued to him by BPI without his knowledge and consent, BPI's witness,

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<sup>20</sup> Id. at 368-378.

<sup>21</sup> *Carbonell v. Carbonnel-Mendes*, 762 Phil. 529, 537 (2015), citing *Republic of the Phils. v. Belmonte*, 719 Phil. 393, 400 (2013).

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Mr. Igos, admitted that Mr. Sarda did not apply for nor request to be issued a credit card, he being a pre-qualified client.<sup>22</sup>

When a client is classified as pre-qualified or pre-screened, the usual screening procedures for prospective cardholders, such as filing of an application form and submission of other relevant documents prior to the issuance of a credit card, are dispensed with and the credit card is issued outright. Upon receipt of the card, the pre-screened client has the option to accept or to reject the credit card.<sup>23</sup>

To prove Mr. Sarda's receipt of the credit card, BPI presented the delivery receipt with check marks on both boxes indicating "Cardholder" and "Cousin," and signed by Ms. Tandogon who received the card.<sup>24</sup> BPI, however, failed to submit proof that Ms. Tandogon was authorized by Mr. Sarda to receive the credit card in his behalf. Such piece of evidence is self-serving and insufficient to sustain BPI's claim,<sup>25</sup> especially since the respondents denied being related to Ms. Tandogon who was their former office clerk.

In a situation where a pre-approved client was issued a credit card, we have held that such client accepted the credit card by signing a receipt and using the card to purchase goods and services. A contractual relationship was thereby created between the cardholder and the credit card issuer, governed by the terms and conditions found in the card membership agreement.<sup>26</sup>

With the denial of respondents that they received and used the credit card issued to Mr. Sarda, it was incumbent upon BPI to substantiate their claim that Mr. Sarda had used it in various transactions. BPI presented original copies of the statements of account beginning September 21, 2009 to September 22, 2013.<sup>27</sup> All these billings were sent to Mr. Sarda at his office located at Rm. 507 5F Amberland Plaza, Doña J. Vargas Ave., Ortigas Center, Pasig City. However, respondents denied having received any of these monthly billings even as payments were indicated to have been made for those purchases using the primary and supplementary cards.

The submission of statements of account is not enough to establish that the cardholder incurred the obligation to pay the purchases appearing therein.

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<sup>22</sup> TSN, April 15, 2015, pp. 16-17.

<sup>23</sup> *Alcaraz v. Court of Appeals, et al.*, 529 Phil. 77, 86 (2006).

<sup>24</sup> Records (Vol. I), p. 29.

<sup>25</sup> See *Spouses Yulo, et al. v. Bank of the Philippine Islands*, G.R. No. 217044, January 16, 2019.

<sup>26</sup> Id.

<sup>27</sup> Records (Vol. II), pp. 31-72, (Vol. I), pp. 31-58.

That it was respondents who made those purchases cannot also be inferred from the mere fact that substantial payments had been made on the total/minimum amounts due every month, in the absence of proof of the identity of the person who had actually paid them. BPI relies heavily on the supposed strict policy of the reputable establishments appearing in the statements of account in ascertaining the identity of the person presenting a credit card. However, it failed to present any witness from those establishments or any other evidence of respondents' alleged purchases and cash advances from them using the subject cards.

During the trial, respondents' counsel requested the charge slips covering the billed transactions. The bank's witness explained that BPI has no copy considering that for each transaction, there would only be one copy for the cardholder and another for the merchant (establishment). It is the latter's copy which is electronically transmitted to BPI and reflected in the monthly statements of account.<sup>28</sup> Still, BPI did not offer a credible explanation for the unavailability of electronic or other evidence to prove the alleged purchases and cash advances.

As to the supplementary card under the name of Ms. Tandogon, there is likewise no evidence that Mr. Sarda requested or applied for it. This was clearly admitted by BPI's witness during cross-examination:

ATTY. DANTE DESIERTO:

Is there an application form submitted to Bank of the Philippine Islands for the issuance of a supplementary credit card to Ms. Melissa Tandogon?

WITNESS:

I believe there is none sir because this was a pre-qualified account of the bank, sir.

ATTY. DANTE DESIERTO:

And kindly explain the meaning of a pre-qualified account?

WITNESS:

Pre-qualified accounts were given to bank clients of Bank of the Philippine Islands who have a business relation with the bank having a deposit or certain loan programs with the bank sir.

ATTY. DANTE DESIERTO:

Are you trying to tell me, Mr. Witness, that the defendant in this case, Mr. Ram Sarda, did not have to request the plaintiff BPI for the issuance of its supplementary credit card in [favor] of Melissa Tandogon because she is pre-qualified?

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<sup>28</sup> TSN, April 15, 2015, pp. 29-34.

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WITNESS:

The request is done just through phone call sir.

ATTY. DANTE DESIERTO:

**Are you trying to tell me that there was a phone call from plaintiff rather the defendant Ram Sarda to the plaintiff BPI requesting for the issuance of the supplementary card?**

WITNESS:

**Yes, sir.**

ATTY. DANTE DESIERTO:

**Do you have the record of that phone call?**

WITNESS:

**None sir.**

ATTY. DANTE DESIERTO:

Did you take that phone call?

WITNESS:

Me, personally? No sir.

ATTY. DANTE DESIERTO:

Then how did you know that there is a phone call?

WITNESS:

Just base[d] on the records of the bank sir.

ATTY. DANTE DESIERTO:

What record?

WITNESS:

During the application, a certain requests (sic) were forwarded to our department.

x x x x

ATTY DANTE DESIERTO:

So what you are saying is there is an application form both for the principal card and the supplementary credit card?

WITNESS:

No actual application form but there was a request for application of the credit card.

ATTY. DANTE DESIERTO:

**There is no written request?**

WITNESS:

**Yes, there is no written request.**

ATTY. DANTE DESIERTO:

**But there is a verbal request?**

WITNESS:

**Yes.**

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ATTY. DANTE DESIERTO:

**And it was made through phone call?**

WITNESS:

**Yes sir.**

ATTY. DANTE DESIERTO:

**Do you know who took the phone (sic)?**

WITNESS:

**No sir.**

ATTY. DANTE DESIERTO:

Is there anyone in your company who would probably know the identity of the person who took the call?

WITNESS:

I cannot answer that sir because the issuance is by year 2009 perhaps some of the staffs were already resigned (sic).

ATTY. DANTE DESIERTO:

Mr. Witness, are these phone calls received by call center agents, if you know?

WITNESS:

No sir. There are times that we hire a certain company to make a call to our clients if they are willing to have a credit card or a loan in the bank sir.

ATTY. DANTE DESIERTO:

So there was a phone call from BPI to Mr. Sarda offering the issuance of the supplementary credit card?

WITNESS:

Offering the issuance of the account sir because the account both at the same time of Mr. Ram Sarda and Melissa Tandogon were generated sir.

ATTY. DANTE DESIERTO:

**So are those phone calls or phone conversations, are they recorded?**

WITNESS:

**I cannot answer that sir...I do not have a personal knowledge on that sir.**<sup>29</sup> (emphases supplied)

The issuance of a supplementary card without Mr. Sarda having applied for it is significant because the statements of account covering the period September 2011 to November 2012 showed huge amounts of purchases/cash advances using the supplementary card.<sup>30</sup> While payments were made on the single account of Mr. Sarda for both cards, there were penalty charges added

<sup>29</sup> TSN, June 10, 2015, pp. 7-12.

<sup>30</sup> Records (Vol. I), pp. 31-40; (Vol. II), pp. 49-72.

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(late payment) and the sums paid were insufficient to cover the outstanding obligation which had ballooned to ₱1,213,114.19 as of September 22, 2013.<sup>31</sup> That it was Mr. Sarda who used the supplementary card cannot be inferred solely from the fact that such payments were made, in the absence of proof of his actual receipt of the card and identity of the payor.

The burden of proof rests upon BPI, as plaintiff, to establish its case based on a preponderance of evidence. It is well-settled that in civil cases, the party that alleges a fact has the burden of proving it.<sup>32</sup> BPI failed to prove the material allegations in its complaint that respondents availed of its credit accommodation by using the subject cards.

Section 1, Rule 133 of the Rules of Court provides:

SECTION 1. *Preponderance of evidence, how determined.* – In civil cases, the party having [the] burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Since BPI clearly failed to present adequate proof that it was respondents who made purchases and cash advances using the cards, the CA did not err in dismissing its complaint.

In relation to the duty imposed on banks to exercise a high degree of diligence in their business transactions, the Bangko Sentral ng Pilipinas (*BSP*) issued Circular No. 702, Series of 2010 pursuant to Monetary Board Resolution No. 1728, dated December 2, 2010, which amended the provisions of the Manual of Regulations for Banks (*MORB*) and the Manual of Regulations for Non-Bank Financial Institutions (*MORNBFI*). Banks, quasi-

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<sup>31</sup> Records (Vol. I), p. 58.

<sup>32</sup> *Citibank, N.A. Mastercard v. Teodoro*, 458 Phil. 480, 488 (2003), citing *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals, et al.*, 333 Phil. 597, 621-622 (1996); *Trans-Pacific Industrial Supplies, Inc. v. Court of Appeals, et al.*, 305 Phil. 534, 542 (1994).

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banks and credit card companies are now prohibited from issuing pre-approved credit cards. Before issuing credit cards, these entities “must exercise proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments.”<sup>33</sup>

Subsequently, on August 15, 2014, the BSP issued Circular No. 845-14, further amending the provisions of the MORB and the MORNBF1 by clarifying the meaning of “Pre-Approved Credit Cards” and enhancing the prohibition against issuing such cards. It enumerated acts tantamount to issuing such unsolicited credit cards and stressed that the provisions of the circular shall prevail notwithstanding any contrary stipulations in the contract between the cardholder and the bank/non-bank credit card issuer.<sup>34</sup> On the

<sup>33</sup> BSP Circular No. 702, Sec. 2, series of 2010.

**AMENDED REGULATIONS TO ENHANCE CONSUMER PROTECTION IN THE CREDIT CARD OPERATIONS OF BANKS AND THEIR SUBSIDIARY OR AFFILIATE CREDIT CARD COMPANIES**

Pursuant to Monetary Board Resolution No. 1728 dated 02 December 2010, the provisions of the Manual Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Institutions (MORNBF1) are hereby amended, as follows:

x x x x

**Section 2.** The provisions of Subsection X320.3 of the MORB, and Subsections 4320Q.3 (2008-4337Q.3) and 4301N.3 of the MORNBF1 on the minimum requirements before issuing credit cards are hereby amended to read as follows:

Banks/Quasi-banks and their subsidiary or affiliate credit card companies shall not issue pre-approved credit cards.

Before issuing credit cards, banks/quasi-banks and/or their subsidiary/affiliate credit card companies must exercise, in accordance with the provisions of Subsection X304.1/4304Q.1 (2008-4312Q.1)/4312N.1, proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments.

The net take home pay of applicants who are employed, the net monthly receipts of those engaged in trade or business, or the net worth or cash flow inferred from deposits of those who are neither employed nor engaged in trade or business or the credit behavior exhibited by the applicant from his other existing credit cards, or other lifestyle indicators such as, but not limited to, club memberships, ownership and location of residence and motor vehicle ownership shall be determined and used as basis for setting credit limits. The gross monthly income may also be used provided reasonable deductions are estimated of income taxes, premium contributions, loan amortizations and other deductions.

All credit card applications, specifically those solicited by third party representatives/agents, shall undergo a strict credit risk assessment process and the information stated thereon validated and verified by authorized personnel of the banks/quasi-banks and their subsidiary or affiliate credit card companies, other than those handling marketing.

<sup>34</sup> BSP Circular No. 845, Secs. 2 and 3, series of 2014.

**Section 2. Addition of related appendices.** Relative to Section 1 of this Circular, the acts tantamount to the act of issuing pre-approved credit cards shall form part of the List of Appendices of MORB and MORNBF1 and shall be designated as follows:

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**Acts Tantamount to the Act of Issuing Pre-approved Credit Cards**

- i. Sending of credit cards to consumers with no prior application, written request and supporting documents required for prudent credit card evaluation;
- ii. Sending of unsolicited supplementary cards and other cards with added features which are not in replacement or substitute to an existing cardholder’s initial credit card;

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other hand, the term “application” is specifically defined as a “*documented request* of the credit card applicant to a credit card issuer for the availment of a credit card” and it is required that “[T]he intention and consent for the availment of the credit card must be clear and explicit.”<sup>35</sup>

Presently, the governing law is R.A. No. 10870,<sup>36</sup> otherwise known as the Philippine Credit Card Industry Regulation Law. Before issuing credit cards, issuers are now mandated to conduct “know-your-client” procedures and to exercise proper diligence in ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments.<sup>37</sup> Further, in the service level agreement between the

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- iii. Unsolicited calls by credit card issuers requesting updated information from selected clients in order to be entitled to receive credit card as a reward for his/her continued patronage of the bank’s other financial products;
  - iv. Unsolicited calls by the bank to its depositors informing them that they already have a credit card from the bank’s Credit Card Department due to good standing as a depositor;
  - v. Sending of mails with credit card enclosed which will be deemed accepted upon the receipt of such card by a receiver, whether authorized or not;
  - vi. Sending to a consumer an unsolicited credit card which is deemed accepted unless a request for termination is promptly instructed by the cardholder to the credit card issuer; and
  - vii. Sending of credit cards as free offers to consumers who availed themselves of the bank’s other financial products.

The acts described above and other similar acts are deemed tantamount to the act of issuing pre-approved credit cards notwithstanding any contrary stipulations in the contract.

**Section 3. Enhancement of the regulation that prohibits the issuance of pre-approved credit cards.** The prohibition on the issuance of pre-approved credit cards by all BSP supervised financial entities with credit card operations under Subsection X320.3 of the MORB, and Subsections 4320Q.3 and 4301N.3 of the MORNBFI is enhanced by stressing, under said regulations, that the provisions of this Circular shall prevail notwithstanding any contrary stipulations in the contract.

Subsection X320.3 of the MORB is hereby amended to read as follows:

**§ X320.3 Minimum Requirements.** *Banks and their subsidiary or affiliate credit cards companies shall not issue pre-approved credit cards as provided under Appendix 103, notwithstanding any contrary stipulations in the contract.*

Subsection X4320Q.3 of the MORNBFI is hereby amended to read as follows:

**§ 4320Q.3 Minimum Requirements.** *QBs and their subsidiary or affiliate credit cards companies shall not issue pre-approved credit cards as provided under Appendix Q-61, notwithstanding any contrary stipulations in the contract.*

Subsection X4301N.3 of the MORNBFI is hereby amended to read as follows:

**§ 4301N.3 Minimum Requirements.** *NBFIs and their subsidiary or affiliate credit cards companies shall not issue pre-approved credit cards as provided under Appendix N-10, notwithstanding any contrary stipulations in the contract.*

<sup>35</sup> BSP Circular No. 845, Sec. 1, series of 2014.

**Section 1. Inclusion under the definition of terms – xxx**

x x x x

n. *Application* is a documented request of the credit card applicant to a credit card issuer for the availment of a credit card. The intention and consent for the availment of the credit card must be clear and explicit.

<sup>36</sup> Approved on July 17, 2016.

<sup>37</sup> R.A. No. 10870, Sec. 7.

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acquiring<sup>38</sup> banks and their partner merchants, there shall be a provision requiring such merchants to perform due diligence to establish the identity of the cardholders.<sup>39</sup> Violations of the provisions of the new law, as well as existing rules and regulations issued by the Monetary Board, are penalized with imprisonment or fine, or both.<sup>40</sup>

In view of the foregoing, the Court finds that BPI failed to exercise proper diligence in the issuance of the primary and supplementary cards and should thus bear the resulting loss or damage caused by its own acts and policies. Even assuming that fraud attended the use of said cards, it was incumbent upon BPI to adduce clear and convincing evidence that the respondents connived with Ms. Tandogon. BPI cannot simply rely on bare insinuations and conjectures to establish respondents' liability for the outstanding amounts incurred under the subject credit card account.

**WHEREFORE**, the petition is **DENIED**. The April 27, 2018 Decision of the Court of Appeals in CA-G.R. CV No. 106788 is hereby **AFFIRMED**.

**SO ORDERED.**

  
ALEXANDER G. GASMUNDO  
Associate Justice

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**SECTION 7. Minimum Requirements for the Issuance of Credit Cards.**— Before issuing credit cards, credit card issuers must conduct know-your-client (KYC) procedures and exercise proper diligence in ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments.

<sup>38</sup> R.A. No. 10870, Sec. 5(b).

**SECTION 5. Definition of Terms.**— As used in this Act, the following terms are defined as follows:  
xxxx

(b) *Acquirer* refers to the institution that accepts and facilitates the processing of the credit card transaction which is initially accepted by the merchant[.]

<sup>39</sup> R.A. No. 10870, Sec. 8.

**SECTION 8. Service Level Agreement.**— There shall be, in the service level agreement between the acquiring banks and their partner merchants, a provision requiring merchants to perform due diligence to establish the identity of the cardholders.

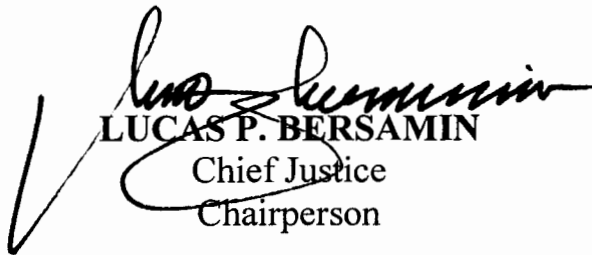
Nothing in this Act shall preclude a card issuer from verifying or seeking confirmation with the cardholder any purchase if in their assessment there is reasonable concern as to the validity of the purchase.

<sup>40</sup> R.A. No. 10870, Sec. 27.

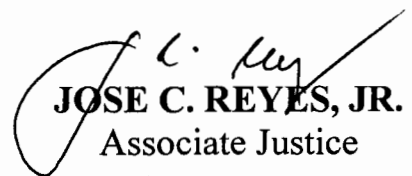
**SECTION 27. Violation of this Act and Other Related Rules, Regulations, Orders or Instructions.**— A person who willfully violates any provision of this Act or any related rules, regulations, order or instructions, issued by the Monetary Board shall be punished by imprisonment of not less than two (2) years nor more than ten (10) years, or by a fine of not less than fifty thousand pesos (P50,000.00) but not more than two hundred thousand pesos (P200,000.00), or both, at the discretion of the court.




**WE CONCUR:**

  
**LUCAS P. BERSAMIN**  
Chief Justice  
Chairperson

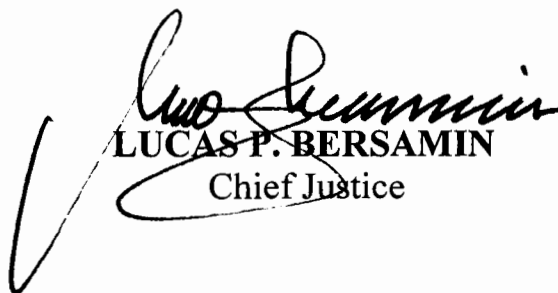
  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE C. REYES, JR.**  
Associate Justice

  
**ROSMARI D. CARANDANG**  
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.

  
**LUCAS P. BERSAMIN**  
Chief Justice

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