



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ANITA A. LEDDA,
Petitioner,

G.R. No. 200868

Present:

-versus-

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, JJ.

BANK OF THE PHILIPPINE ISLANDS,
Respondent.

Promulgated:

NOV 21 2012 *Alvin C. Borja*

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DECISION

CARPIO, J.:

The Case

This petition for review¹ assails the 15 July 2011 Decision² and 9 February 2012 Resolution³ of the Court of Appeals in CA-G.R. CV No. 93747. The Court of Appeals partially granted the appeal filed by petitioner Anita A. Ledda (Ledda) and modified the 4 June 2009 Decision⁴ of the Regional Trial Court, Makati City, Branch 61. The Court of Appeals denied the motion for reconsideration.

¹ Under Rule 45 of the 1997 Rules of Civil Procedure.
² *Rollo*, pp. 21-29. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Ramon R. Garcia and Samuel H. Gaerlan concurring.
³ *Id.* at 39-40.
⁴ *Id.* at 50-54. Penned by Presiding Judge J. Cedrick O. Ruiz.

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The Facts

This case arose from a collection suit filed by respondent Bank of the Philippine Islands (BPI) against Ledda for the latter's unpaid credit card obligation.

BPI, through its credit card system, extends credit accommodations to its clientele for the purchase of goods and availment of various services from accredited merchants, as well as to secure cash advances from authorized bank branches or through automated teller machines.

As one of BPI's valued clients, Ledda was issued a pre-approved BPI credit card under Customer Account Number 020100-9-00-3041167. The BPI Credit Card Package, which included the Terms and Conditions governing the use of the credit card, was delivered at Ledda's residence on 1 July 2005. Thereafter, Ledda used the credit card for various purchases of goods and services and cash advances.

Ledda defaulted in the payment of her credit card obligation, which BPI claimed in their complaint amounted to ₱548,143.73 per Statement of Account dated 9 September 2007.⁵ Consequently, BPI sent letters⁶ to Ledda demanding the payment of such amount, representing the principal obligation with 3.25% finance charge and 6% late payment charge per month.

Despite BPI's repeated demands, Ledda failed to pay her credit card obligation constraining BPI to file an action for collection of sum of money with the Regional Trial Court, Makati City, Branch 61. The trial court declared Ledda in default for failing to file Answer within the prescribed

⁵ Records, pp. 8-9.

⁶ Id. at 47-48. In the letter dated 17 August 2007, BPI's counsel demanded the payment of ₱502,431.69, allegedly the amount due from Ledda as of the period 9 August 2007 to 9 September 2007.

period, despite receipt of the complaint and summons. Upon Ledda's motion for reconsideration, the trial court lifted the default order and admitted Ledda's Answer *Ad Cautelam*.

While she filed a Pre-Trial Brief, Ledda and her counsel failed to appear during the continuation of the Pre-Trial. Hence, the trial court allowed BPI to present its evidence *ex-parte*.

In its Decision of 4 June 2009, the trial court ruled in favor of BPI, thus:

WHEREFORE, premises duly considered, the instant "Complaint" of herein plaintiff Bank of the Philippine Islands (BPI) is hereby given **DUE COURSE/GRANTED**.

Accordingly, judgment is hereby rendered against herein defendant **ANITA A. LEDDA** and in favor of the plaintiff.

Ensuaably, the herein defendant **ANITA A. LEDDA** is hereby ordered to pay the herein plaintiff Bank of the Philippine Islands (BPI) the following sums, to wit:

1. Five Hundred Forty-Eight Thousand One Hundred Forty-Three Pesos and Seventy-Three Centavos (₱548,143.73) as and for actual damages, with finance and late-payment charges at the rate of three and one-fourth percent (3.25%) and six percent (6%) per month, respectively, to be counted from 19 October 2007 until the amount is fully paid;
2. Attorney's fees equivalent to twenty-five percent (25%) of the total obligation due and demandable, exclusive of appearance fee for every court hearing, and
3. Costs of suit.

SO ORDERED.⁷ (Emphasis in the original)

The Ruling of the Court of Appeals

The Court of Appeals rejected Ledda's argument that the document containing the Terms and Conditions governing the use of the BPI credit card is an actionable document contemplated in Section 7, Rule 8 of the

⁷ *Rollo*, p. 54.

1997 Rules of Civil Procedure. The Court of Appeals held that BPI's cause of action is based on "Ledda's availment of the bank's credit facilities through the use of her credit/plastic cards, coupled with her refusal to pay BPI's outstanding credit for the cost of the goods, services and cash advances despite lawful demands."

Citing *Macalinao v. Bank of the Philippine Islands*,⁸ the Court of Appeals held that the interest rates and penalty charges imposed by BPI for Ledda's non-payment of her credit card obligation, totalling 9.25% per month or 111% per annum, are exorbitant and unconscionable. Accordingly, the Court of Appeals reduced the monthly finance charge to 1% and the late payment charge to 1%, or a total of 2% per month or 24% per annum.

The Court of Appeals recomputed Ledda's total credit card obligation by deducting ₱226,000.15, representing interests and charges, from ₱548,143.73, leaving a difference of ₱322,138.58 as the principal amount, on which the reduced interest rates should be imposed.

The Court of Appeals awarded BPI ₱10,000 attorney's fees, pursuant to the ruling in *Macalinao*.

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, premises considered, the appeal is **PARTLY GRANTED**, and accordingly the herein assailed June 4, 2009 Decision of the trial court is hereby **MODIFIED**, ordering defendant-appellant Anita Ledda to pay plaintiff-appellee BPI the amount of Php322,138.58, with 1% monthly finance charges from date of availment of the plaintiff's credit facilities, and penalty charge at 1% per month of the amount due from the date the amount becomes due and payable, until full payment. The award of attorney's fees is fixed at Php10,000.00.

SO ORDERED.⁹ (Emphasis in the original)

⁸ G.R. No. 175490, 17 September 2009, 600 SCRA 67.

⁹ *Rollo*, p. 28.

The Issues

Ledda raises the following issues:

1. Whether the Court of Appeals erred in holding that the document containing the Terms and Conditions governing the issuance and use of the credit card is not an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Civil Procedure.
2. Whether the Court of Appeals erred in applying *Macalinao v. Bank of the Philippine Islands* instead of *Alcaraz v. Court of Appeals*¹⁰ as regards the imposition of interest and penalty charges on the credit card obligation.
3. Whether the Court of Appeals erred in awarding attorney's fees in favor of BPI.

The Ruling of the Court

The petition is partially meritorious.

I.

Whether the document containing the Terms and Conditions is an actionable document.

Section 7, Rule 8 of the 1997 Rules of Civil Procedure provides:

SEC. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Clearly, the above provision applies when the action is based on a written instrument or document.

¹⁰

529 Phil. 77 (2006).

In this case, the complaint is an action for collection of sum of money arising from Ledda's default in her credit card obligation with BPI. BPI's cause of action is primarily based on Ledda's (1) acceptance of the BPI credit card, (2) usage of the BPI credit card to purchase goods, avail services and secure cash advances, and (3) non-payment of the amount due for such credit card transactions, despite demands.¹¹ In other words, BPI's cause of action is not based only on the document containing the Terms and Conditions accompanying the issuance of the BPI credit card in favor of Ledda. Therefore, the document containing the Terms and Conditions governing the use of the BPI credit card is not an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Civil Procedure. As such, it is not required by the Rules to be set forth in and attached to the complaint.

At any rate, BPI has sufficiently established a cause of action against Ledda, who admits having received the BPI credit card, subsequently used the credit card, and failed to pay her obligation arising from the use of such credit card.¹²

¹¹ *Rollo*, pp. 44-45. The pertinent portions of the Complaint are as follows:

Paragraph 5 states:

5. Defendant Anita was issued a BPI Credit Card under customer No. 020100 900 3041167, upon her acceptance of the terms and conditions governing the issuance and use of the BPI Credit Card.

Paragraph 7 states:

7. Defendant availed herself of such credit accommodation by using the said BPI card.

Paragraph 8 states:

8. Through the use of her aforesaid credit card, defendant incurred credit charges, with Total Outstanding Balance (TOB) of ₱548,143.73 per Statement of Account (SOA) dated 09 September 2007, x x x.

Paragraph 10 states:

10. The plaintiff made several verbal and written demands on the defendant for the payment of her credit availments through the use of the subject credit card, by sending the defendant demand letters and also the pertinent statements of account showing the amount owed and the date of the required payment is due from her. Notwithstanding the defendant's receipt of these demands, she unjustifiably refused and failed, as she unjustifiably continues to refuse and fail to pay her plain, just, valid, outstanding and overdue obligation to the plaintiff.

¹² *Id.* at 4. Paragraphs 6 and 8 of the Petition.

II.
**Whether *Alcaraz v. Court of Appeals*,
instead of *Macalinao v. BPI*, is applicable.**

Ledda contends that the case of *Alcaraz v. Court of Appeals*,¹³ instead of *Macalinao v. Bank of the Philippine Islands*¹⁴ which the Court of Appeals invoked, is applicable in the computation of the interest rate on the unpaid credit card obligation. Ledda claims that similar to Alcaraz, she was a “pre-screened” client who did not sign any credit card application form or terms and conditions prior to the issuance of the credit card. Like Alcaraz, Ledda asserts that the provisions of the Terms and Conditions, particularly on the interests, penalties and other charges for non-payment of any outstanding obligation, are not binding on her as such Terms and Conditions were never shown to her nor did she sign it.

We agree with Ledda. The ruling in *Alcaraz v. Court of Appeals*¹⁵ applies squarely to the present case. In *Alcaraz*, petitioner there, as a pre-screened client of Equitable Credit Card Network, Inc., did not submit or sign any application form or document before the issuance of the credit card. There is no evidence that petitioner Alcaraz was shown a copy of the terms and conditions before or after the issuance of the credit card in his name, much less that he has given his consent thereto.

In this case, BPI issued a pre-approved credit card to Ledda who, like Alcaraz, did not sign any credit card application form prior to the issuance of the credit card. Like the credit card issuer in *Alcaraz*, BPI, which has the burden to prove its affirmative allegations, failed to establish Ledda’s agreement with the Terms and Conditions governing the use of the credit card. It must be noted that BPI did not present as evidence the Terms and

¹³ Supra note 10.

¹⁴ Supra note 8.

¹⁵ Supra note 10.

Conditions which Ledda allegedly received and accepted.¹⁶ Clearly, BPI failed to prove Ledda's conformity and acceptance of the stipulations contained in the Terms and Conditions. Therefore, as the Court held in *Alcaraz*, the Terms and Conditions do not bind petitioner (Ledda in this case) "without a clear showing that x x x petitioner was aware of and consented to the provisions of [such] document."¹⁷

On the other hand, *Macalinao v. Bank of the Philippine Islands*,¹⁸ which the Court of Appeals cited, involves a different set of facts. There, petitioner Macalinao did not challenge the existence of the Terms and Conditions Governing the Issuance and Use of the BPI Credit Card and her consent to its provisions, including the imposition of interests and other charges on her unpaid BPI credit card obligation. Macalinao simply questioned the legality of the stipulated interest rate and penalty charge, claiming that such charges are iniquitous. In fact, one of Macalinao's assigned errors before this Court reads: "The reduction of interest rate, from 9.25% to 2%, should be upheld since the **stipulated rate of interest** was unconscionable and iniquitous, and thus illegal."¹⁹ Therefore, there is evidence that Macalinao was fully aware of the stipulations contained in the Terms and Conditions Governing the Issuance and Use of the Credit Card, unlike in this case where there is no evidence that Ledda was aware of or consented to the Terms and Conditions for the use of the credit card.

Since there is no dispute that Ledda received, accepted and used the BPI credit card issued to her and that she defaulted in the payment of the total amount arising from the use of such credit card, Ledda is liable to pay BPI ₱322,138.58 representing the principal amount of her unpaid credit card obligation.²⁰

¹⁶ See BPI's Formal Offer of Evidence, records, pp. 197-199.

¹⁷ *Alcaraz v. Court of Appeals*, supra note 10 at 88.

¹⁸ Supra note 8.

¹⁹ Supra note 8 at 75.

²⁰ Relevantly, Ledda states in paragraph 28 of her petition that: "Assuming, *arguendo*, that respondent was able to establish a cause of action against petitioner, the same will only be limited

Consistent with *Alcaraz*, Ledda must also pay interest on the total unpaid credit card amount at the rate of 12% per annum since her credit card obligation consists of a loan or forbearance of money.²¹ In *Eastern Shipping Lines, Inc. v. Court of Appeals*,²² the Court explained:

1. When an obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

We reject Ledda's contention that, since there was no written agreement to pay a higher interest rate, the interest rate should only be 6%. Ledda erroneously invokes Article 2209 of the Civil Code.²³ Article 2209 refers to indemnity for damages and not interest on loan or forbearance of money, which is the case here. In *Sunga-Chan v. Court of Appeals*,²⁴ the Court held:

Eastern Shipping Lines, Inc. synthesized the rules on the imposition of interest, if proper, and the applicable rate, as follows: **The 12% per annum rate under CB Circular No. 416 shall apply only to loans or forbearance of money, goods, or credits, as well as to judgments involving such loan or forbearance of money, goods, or credit, while the 6% per annum under Art. 2209 of the Civil Code applies "when the transaction involves the payment of indemnities in the concept of damage arising from the breach or a delay in the performance of obligations in general,"** with the application of both rates reckoned "from the time the complaint was filed until the [adjudged] amount is fully paid." In either instance, the reckoning period for the commencement of the running of the legal interest shall be subject to the condition "that the courts are vested with discretion, depending on the equities of each case, on the award of interest. (Emphasis supplied)

to the principal obligation of ₱322,138.58. Given the illegality of the finance charges unilaterally imposed by respondent in the amount of ₱226,005.15 should be deleted and deducted from the ₱548,143.73, leaving an unpaid principal balance of only ₱322,138.58 as of September 2007." (*Rollo*, p. 15)

²¹ *Alcaraz*, supra note 10 at 88, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95.

²² G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95.

²³ Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, **the indemnity for damages**, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum. (Emphasis supplied)

²⁴ G.R. No. 164401, 25 June 2008, 555 SCRA 275, 288.

In accordance with *Eastern Shipping Lines, Inc.*, the 12% legal interest shall be reckoned from the date BPI extrajudicially demanded from Ledda the payment of her overdue credit card obligation. Thus, the 12% legal interest shall be computed from 2 October 2007, when Ledda, through her niece Sally D. Ganceña,²⁵ received BPI's letter²⁶ dated 26 September 2007 demanding the payment of the alleged overdue amount of ₱548,143.73.

III.

Whether the award of attorney's fees is proper.

Ledda assails the award of attorney's fees in favor of BPI on the grounds of (1) erroneous reliance by the Court of Appeals on the case of *Macalinao* and (2) failure by the trial court to state the reasons for the award of attorney's fees.

Settled is the rule that the trial court must state the factual, legal or equitable justification for the award of attorney's fees.²⁷ The matter of attorney's fees cannot be stated only in the dispositive portion of the decision.²⁸ The body of the court's decision must state the reasons for the award of attorney's fees.²⁹ In *Frias v. San Diego-Sison*,³⁰ the Court held:

Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in all cases, it must be reasonable, just and equitable if the same were to be granted. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the

²⁵ *Rollo*, p. 74.

²⁶ Sent by registered mail.

²⁷ *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 123238, 22 September 2008, 566 SCRA 124, 137; *Tomimbang v. Tomimbang*, G.R. No. 165116, 4 August 2009, 595 SCRA 135, 146, citing *Delos Santos v. Papa*, G.R. No. 154427, 8 May 2009, 587 SCRA 385; *Siga-an v. Villanueva*, G.R. No. 173227, 20 January 2009, 576 SCRA 696.

²⁸ *Buñing v. Santos*, 533 Phil. 610, 617 (2006); *Serrano v. Spouses Gutierrez*, 537 Phil. 187, 198 (2006), citing *Legaspi v. Spouses Ong*, 498 Phil. 167 (2005).

²⁹ *Buñing v. Santos*, 533 Phil. 610, 617 (2006).

³⁰ G.R. No. 155223, 3 April 2007, 520 SCRA 244, 259-260.

general rule. As such, it is necessary for the trial court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its Decision the reasons for awarding the same. Consequently, the award of attorney's fees should be deleted.

In this case, the trial court failed to state in the body of its decision the factual or legal reasons for the award of attorney's fees in favor of BPI. Therefore, the same must be deleted.

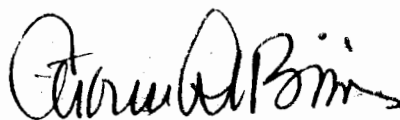
WHEREFORE, we **GRANT** the petition **IN PART**. Petitioner Anita A. Ledda is **ORDERED** to pay respondent Bank of the Philippine Islands the amount of ₱322,138.58, representing her unpaid credit card obligation, with interest thereon at the rate of 12% per annum to be computed from 2 October 2007, until full payment thereof. The award of attorney's fees is **DELETED** for lack of basis.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice


WE CONCUR:



ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ATTESTATION

I attest 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.


ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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