

SECOND DIVISION

[CA-G.R. CV NO. 101857, February 25, 2015]

BANCO DE ORO UNIBANK, INC., (FORMERLY "BANCO DE ORO-EPCI, INC.") PLAINTIFF-APPELLEE, VS. BOTOANUN BARAIMAN BAUNTO, DEFENDANT-APPELLANT.

DECISION

GONZALES-SISON, M., J.:

This appeal seeks to reverse and set aside the Decision^[1] dated September 13, 2013 of the National Capital Judicial Region, Regional Trial Court (RTC), Branch 148, Makati in Civil Case No. 12-304, the *dispositive* portion of which reads as follows, to wit:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Banco De Oro Unibank Inc. and against defendant Botoanun Baraiman Baunto and the latter is hereby ordered to pay plaintiff the following:

a) The principal amount of P365,509.19 ascertained from the actual purchases and advances of the defendant using BDO Platinum Master Card Credit Card No. 5243-0100-5892-5103 with interest and late payment charge of 12% per annum from the date of demand or from December 06, 2011 until the obligation is fully paid;

b) Cost of suit.

SO ORDERED."^[2]

The factual and procedural antecedents of the case are as follows:

On April 16, 2012, complainant, a domestic corporation duly organized and existing under and by virtue of Philippine laws, filed with the trial court a Complaint for a Sum of Money^[3] against defendant alleging *inter alia* that:

"2. Plaintiff (herein appellee) has acquired the credit cards receivables of the former Equitable Card Network, Inc. and is now the issuer and owner of BDO and ECNI credit cards and credit card receivables, including the credit card receivables/collectibles subject matter of this Complaint xxx;

xxx

xxx

xxx

4. Plaintiff issued and defendant (herein appellant) received a BDO Credit Card No. 5243-0100-5892-5103 xxx. The delivery receipt provides that by accepting the card, the cardholder agrees and is bound by the terms and conditions as stated at the back of the document;

5. By the terms and conditions governing the issuance and use of the BDO Credit Card, defendant undertook and is obliged to pay all the charges incurred through to the use of the aforesaid card within the period of 21 calendar days from his assigned cut-off date without the necessity of demand. He is given the option to pay the amount billed in full of the minimum payment required in the statement of account. Should he opted to pay the minimum payment, he shall be liable only for interest charges of 3.5% monthly of the remaining balance. However, in case he fails to pay on the due date indicated in the billing statement, the unpaid balance shall be subject to late payment interest and service fee at the rate of 5% for every month of the fraction of a month's delay;

6. Defendant availed himself of such credit accommodation by using his said BDO Credit Card, and accordingly incurred credit charges, with Total Outstanding Balance of xxx Four Hundred Twelve Thousand Six Hundred Three and 92/100 (Php412,603.92) as of 19 July 2011 xxx;

7. Defendant made some partial payments but short of the required minimum payment. His last partial payment was posted on March 17, 2011 in the amount of Php19,548.47 per Statement of Account (SOA) dated March 20, 2011; consequently, his Total Outstanding Balance became due and demandable xxx;

8. Plaintiff made several demands upon the defendant for the payment of his aforesaid obligation but to no avail xxx.

9. To protect its interest, plaintiff was constrained to engage the services of the undersigned counsel for an agreed attorney's fees equivalent to 25% of the total amount due, plus appearance fee for every court hearing, which expenses should be reimbursed by the defendant to the plaintiff."

Plaintiff prayed that after trial, judgment be rendered in its favor by ordering the defendant to pay the amount of P412,603.90 as of July 19, 2011 plus late payment interest and service fee at the rate of 8.5% per month from August 19, 2011 until the total obligation is fully paid; attorney's fees equivalent to twenty five percent (25%) of the total obligations due and demandable, plus appearance fee for every court hearing, and the costs of the suit.

After the Court a quo denied the plaintiff's Motion to Declare Defendant in Default and admitted defendant's belatedly filed Answer with Counterclaim,^[4] the case was set for preliminary conference^[5] and thereafter referred to the Philippine Mediation Center for amicable settlement.^[6] When the parties failed to settle their differences, the trial court set the case for pre-trial.^[7]

In the scheduled pre-trial, the plaintiff through its counsel, manifested its willingness to settle particularly with the terms of the initial offer of the defendant. In view however of the absence of the defendant's counsel, the pre-trial was cancelled and reset to another date.^[8] The trial court again referred the case to the Philippine Mediation Center for possible amicable settlement,^[9] but the same was

futile as the defendant's proposal was not accepted by the plaintiff.^[10]

Thereafter, pre-trial ensued but neither defendant nor her counsel appeared.^[11] Upon motion by counsel of the plaintiff, the ex-parte reception of evidence was granted and was set on June 21, 2013.^[12]

During the ex-parte reception of evidence, Norman N. Lorenzo, Legal Accounts Officer of plaintiff who is in charge to collect unpaid credit card account, analyze the accounts of their cardholders; monitor the accounts assigned to him was presented as its lone witness. His Judicial Affidavit was offered as his direct examination, the pertinent parts thereof, which was summarized by the Court a quo and which We hereby quote, viz:

"2. Plaintiff bank operates a credit card business and the witness came across the account of defendant due to the latter's unpaid credit card obligations with plaintiff under BDO Platinum Master Card Credit Card No. 5243-0100-5892-5103 which was endorsed to him for collection.

3. Defendant was issued and received a BDO Credit Card as evidenced by a delivery receipt (Exhibit "A"). Defendant signed the back portion of his BDO Credit Card as proof that he accepted the terms and conditions governing the issuance and use of the credit card. He used the said credit card and availed of the privileges and credit accommodations accorded to BDO credit cardholders and benefited therefrom. The monthly statements of account were sent to the defendant on a regular basis at his given address and the latter did not make any timely protests on the entries therein as in fact, defendant even made partial payments and/or minimum payment required before he defaulted in his obligation.

4. The terms and conditions (Exhibit "B") of the credit card were written and printed at the dorsal portion of the card carrier and forms part of the Welcome Letter/Package received by the defendant when his BDO Credit card was delivered.

5. Defendant incurred his present obligation through cash advances, purchase and availment he made from the accredited merchant establishments using his BDO credit card. These were reflected in the five monthly billing statements from February 20, 2011 to June 19, 2011 (Exhibits "C-1" to "C-5"). The aforesaid statements of account are electronic documents and reflect the true and correct records of defendant's credit card transactions, availments, payments made and total outstanding obligation.

6. The transactions reflected in the Monthly billing statements/Statements of Account per customer/cardholder are posted and encoded electronically in the Computer System of BDO without any human intervention and the said statements or billings generated from the BDO computer system were sent to the cardholder at their (sic) last known address on a regular basis. The cardholders are given a period of 30 days from statement date within which to submit written protest on the entries stated therein.

7. Defendant did not submit any written protest on the entries in any of the monthly statements sent to him and even made partial payment on March 17, 2011 in the amount of P19,548.47 as reflected in the March 20, 2011 Statement of Account (Exhibit "C-2"). Thus, the statements of account became binding upon the defendant-cardholder. This was provided in the terms and conditions particularly in paragraph no. 12 thereof. (Exhibit "B-2").

8. Under the terms and conditions of the issuance of the BDO credit card, defendant is obliged to pay all charges incurred within a period of 21 calendar days from his assigned cut-off date without the necessity of demand. If defendant, failed to pay on due date, he shall be liable for late payment charge of 5.5 % and service fee charge of 3% or a total of 8.5% a month computed until the account is fully paid.

9. Defendant's account is considered delinquent as he stop paying even the required minimum payment since April 2011 as reflected in the monthly billings. As of July 19, 2011 defendant's outstanding obligation amounted to P412,603.92 inclusive of finance, interest and late payment charges.

10. The witness tried to contact the defendant and collect the unpaid amount but to no avail, thus, upon approval of his superiors, he referred the matter to their lawyer, Dabu & Associates for legal action.

11. Their lawyer sent a demand letter (Exhibit "D") to the defendant as evidenced by the registry receipt (Exhibit "D-1") which was received by a certain Rene Boy in behalf of the defendant as shown by the signature (Exhibit "D-3") appearing in the return card (Exhibit "D-2"). Despite the receipt of the said demand, defendant still failed to pay his obligation, hence this instant complaint. Their company engaged the services of a counsel and agreed to an attorney's fees of 25% of all sums due plus appearance fee."^[13]

After the plaintiff formally offered its evidence and admitted by the Court *a quo*, a decision^[14] was rendered finding the plaintiff to have a cause of action against the defendant. However, the *Court a quo* ordered the defendant to pay the plaintiff the amount of P365,509.19 only as principal amount, plus interest and late payment charge of 12% per annum from December 6, 2011 until the obligation is fully paid, and the cost of the suit. The dispositive portion of which was rendered in the manner earlier aforequoted.

Unfazed, defendant, now appellant, comes before Us via this instant appeal which assigns the following errors purportedly committed by the Court *a quo*, to wit:

I.

THE COURT A QUO COMMITTED A SERIOUS REVERSIBLE ERROR IN NOT DISMISSING THE COMPLAINT ON GROUND OF BEING PRE-MATURE SINCE A DEMAND DULY RECEIVED BY DEFENDANT IS A CONDITION

PRECEDENT IN FILING A SUIT FOR SUM OF MONEY;

II.

THE COURT A QUO COMMITTED A SERIOUS REVERSIBLE ERROR IN NOT DISMISSING THE COMPLAINT FOR LACK OF VALID AND LEGITIMATE CAUSE OF ACTION OF PLAINTIFF AGAINST DEFENDANTS;

III.

THE COURT A QUO COMMITTED A SERIOUS REVERSIBLE ERROR IN NOT AWARDING DAMAGES AND ATTORNEY'S FEES IN FAVOR OF HEREIN APPELLANTS.^[15]

The plaintiff, now appellee, vehemently opposes the appeal.^[16] It counter-argues that:

I.

THE COMPLAINT STATES A CAUSE OF ACTION BECAUSE:

A. THE DEFENDANT-APPELLANT INCURRED AN OBLIGATION WITH PLAINTIFF-APPELLEE THROUGH HIS UNPAID PURCHASES USING HIS BDO PLATINUM MASTERCARD, AND

B. WHILE DEMAND IS NOT NEEDED BY VIRTUE OF AN AGREEMENT, SEVERAL WRITTEN DEMANDS WERE MADE UPON THE DEFENDANT-APPELLANT PRIOR TO THE FILING OF THE CASE.

II.

THE COURT A QUO WAS CORRECT IN NOT AWARDING DAMAGES AND ATTORNEY'S FEES IN FAVOR OF DEFENDANT-APPELLANT. ^[17]

Appellant reiterates his contentions and asseverations in his Reply.^[18]

THE APPEAL FAILS .

After a careful examination of the case together with the applicable laws and jurisprudence in the premises, WE have come up with a finding that the appeal filed in this case is *bereft of merit* and WE are constrained to uphold the assailed decision.

It is a rule in civil cases that the party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law.^[19] The evidence required is *preponderance of evidence* which means "the evidence by one side is, as a whole, superior to or has greater weight than that of the other"^[20] at bottom, it means probability of truth.^[21]

In here, WE find appellee to have proven its cause of action against appellant by