

# FIRST DIVISION

[ G.R. No. 239092, June 26, 2019 ]

## **BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SPOUSES RAM M. SARDA AND JANE DOE SARDA, RESPONDENTS.**

### **DECISION**

**GESMUNDO, 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.

### **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 P1,213,114.19 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 P1,213,114.19: P443,915.46 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 P1,213,114.19. Accordingly, they prayed for the dismissal of the complaint and the grant of their counterclaim for attorney's fees in the sum of

P100,000.00.<sup>[5]</sup>

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. Sarda's credit card, as well as the testimony of its witness, BPI's Account Specialist, Mr. Arlito M. Igos. For respondents, Mr. Sarda 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. Sarda 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 Sarda admitted that Melissa was his former employee) does not discount the possibility that the credit card may have been subsequently received by Ram Sarda. Defendant failed to present evidence that Melissa Tandogon has no authority to receive any delivery for Ram Sarda, nor did they show proof that at the time Melissa received the credit card, she was no longer an employee of Ram Sarda. If this is the fact, Ram Sarda 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 Sarda received the demand letter at the address similar to that indicated in the billing statements. Thus, this will only show that Ram Sarda 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 Sarda 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 Sarda 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 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. P1,213,114.19, 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>

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. Sarada 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 SF 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**.

**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 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 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**