

## THIRD DIVISION

[ G.R. No. 180157, February 08, 2012 ]

### **EQUITABLE CARDNETWORK, INC., PETITIONER, VS. JOSEFA BORROMEO CAPISTRANO, RESPONDENT.**

#### **D E C I S I O N**

##### **ABAD, J.:**

This case is about the sufficiency of the defendant's allegations in the answer denying the due execution and genuineness of the plaintiff's actionable documents and the kind of evidence needed to prove forgery of signature.

#### **The Facts and the Case**

Petitioner Equitable Cardnetwork, Inc. (ECI) alleged in its complaint that in September 1997 respondent Josefa B. Capistrano (Mrs. Capistrano) applied for membership at the Manila Yacht Club (MYC) under the latter's widow-membership program. Since the MYC and ECI had a credit card sponsorship agreement in which the Club would solicit for ECI credit card enrollment among its members and dependents, Mrs. Capistrano allegedly applied for and was granted a Visa Credit Card by ECI.

ECI further alleged that Mrs. Capistrano authorized her daughter, Valentina C. Redulla (Mrs. Redulla), to claim from ECI her credit card and ATM application form.

[1] Mrs. Redulla signed the acknowledgment receipt<sup>[2]</sup> on behalf of her mother, Mrs. Capistrano. After Mrs. Capistrano got hold of the card, she supposedly started using it. On November 24, 1997 Mrs. Redulla personally issued a P45,000.00 check as partial payment of Mrs. Capistrano's account with ECI. But Mrs. Redulla's check bounced upon deposit.

Because Mrs. Capistrano was unable to settle her P217,235.36 bill, ECI demanded payment from her. But she refused to pay, prompting ECI to file on February 30, 1998 a collection suit against her before the Regional Trial Court (RTC) of Cebu City.

Answering the complaint, Mrs. Capistrano denied ever applying for MYC membership and ECI credit card; that Mrs. Redulla was not her daughter; and that she never authorized her or anyone to claim a credit card for her. Assuming she applied for such a card, she never used it. Mrs. Redulla posed as Mrs. Capistrano and fooled ECI into issuing the card to her. Consequently, the action should have been brought against Mrs. Redulla. Mrs. Capistrano asked the court to hold ECI liable to her for moral and exemplary damages, attorney's fees, and litigation expenses.

After trial, the RTC<sup>[3]</sup> ruled that, having failed to deny under oath the genuineness and due execution of ECI's actionable documents that were attached to the complaint, Mrs. Capistrano impliedly admitted the genuineness and due execution of

those documents. In effect she admitted: 1) applying for membership at the MYC; [4] 2) accomplishing the MYC membership information sheet [5] which contained a request for an ECI Visa card; 3) holding herself liable for all obligations incurred in the use of such card; 4) authorizing Mrs. Redulla to receive the Visa card issued in her name; [6] 5) applying for an ATM Card with ECI; [7] and 6) using the credit card in buying merchandise worth P217,235.36 as indicated in the sales slips.

The RTC said that when an action is founded upon written documents, their genuineness and due execution shall be deemed admitted unless the defendant specifically denies them under oath and states what he claims to be the facts. [8] A mere statement that the documents were procured by fraudulent representation does not raise any issue as to their genuineness and due execution. [9] The RTC rejected Mrs. Capistrano's argument that, having verified her answer, she should be deemed to have denied those documents under oath. The RTC reasoned that she did not, in her verification, deny signing those documents or state that they were false or fabricated.

The RTC added that respondent Mrs. Capistrano could no longer raise the defense of forgery since this had been cut-off by her failure to make a specific denial. Besides, said the RTC, Mrs. Capistrano failed to present strong and convincing evidence that her signatures on the document had been forged. She did not present a handwriting expert who could attest to the forgery. The trial court ordered Mrs. Capistrano to pay ECI's claim of P217,235.36 plus interests, attorney's fees and litigation expenses. Mrs. Capistrano appealed the decision to the Court of Appeals (CA).

On May 10, 2007 the CA reversed the trial court's decision and dismissed ECI's complaint. [10] The CA ruled that, although Mrs. Capistrano's answer was somewhat infirm, still she raised the issue of the genuineness and due execution of ECI's documents during trial by presenting evidence that she never signed any of them. Since ECI failed to make a timely objection to its admission, such evidence cured the vagueness in her answer. Further, the CA ruled that Mrs. Capistrano sufficiently proved by evidence that her signatures had been forged.

### **The Issues Presented**

The issues presented are:

1. Whether or not the CA correctly ruled that, although Mrs. Capistrano failed to make an effective specific denial of the actionable documents attached to the complaint, she overcame this omission by presenting parol evidence to which ECI failed to object; and
2. Whether or not the CA correctly ruled that Mrs. Capistrano presented clear and convincing evidence that her signatures on the actionable documents had been forged.

### **Ruling of the Court**

**One.** An answer to the complaint may raise a negative defense which consists in defendant's *specific denial* of the material fact that plaintiff alleges in his complaint,

which fact is essential to the latter's cause of action.<sup>[11]</sup> Specific denial has three modes. Thus:

- 1) The defendant must specify each material allegation of fact the truth of which he does not admit and whenever practicable set forth the substance of the matters on which he will rely to support his denial;
- 2) When the defendant wants to deny only a part or a qualification of an averment in the complaint, he must specify so much of the averment as is true and material and deny the remainder; and
- 3) When the defendant is without knowledge and information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state and this shall have the effect of a denial.

But the rule that applies when the defendant wants to contest the documents attached to the claimant's complaint which are essential to his cause of action is found in Section 8, Rule 8 of the Rules of Court, which provides:

SECTION 8. *How to contest such documents.* --When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the *genuineness and due execution* of the instrument shall be *deemed admitted* unless the adverse party, under oath, *specifically denies them, and sets forth what he claims to be the facts*; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

To determine whether or not respondent Mrs. Capistrano effectively denied the genuineness and due execution of ECI's actionable documents as provided above, the pertinent averments of the complaint and defendant Capistrano's answer are here reproduced.

***ECI's complaint:***

*3. That sometime in 1997, defendant applied for membership, as widow of a deceased member of the Manila Yacht Club;*

*4. That in connection with her application for membership in the Manila Yacht Club, defendant applied for and was granted a Manila Yacht Club Visa Card in accordance with Credit Card Sponsorship Agreement entered into between the plaintiff and the Manila Yacht Club wherein Manila Yacht Club shall solicit applications for the Manila Yacht Club Visa Cards from Manila Yacht Club members and dependents. Copy of the Manila Yacht Club Information Sheet is hereto attached as Annex "A";*

***Mrs. Capistrano's answer:***

3. She specifically denies paragraph[s] 3 and 4 of the complaint for want of sufficient knowledge to form a belief as to the veracity of the allegations contained therein and for the reasons stated in her special and affirmative defenses.

x x x x

**ECI's complaint:**

*5. That defendant authorized her daughter, Mrs. Valentina Redulla to get the said credit card including her ATM application form from the plaintiff which enabled the defendant to avail of the cash advance facility with the use of said card; Copy of the authorization letter, application form and acknowledgment receipt showing that Valentina C. Redulla received the said credit card are hereto attached as Annexes "B", "C", and "D", respectively;*

**Mrs. Capistrano's answer:**

4. She specifically denies paragraph 5 of the complaint for want of sufficient knowledge to form a belief as to the allegations contained therein. She never authorized any person to get her card. Valentina Redulla is not her daughter.

x x x x

**ECI's complaint:**

*6. That with the use of the said Manila Yacht Club Visa Card, defendant could purchase goods and services from local and accredited stores and establishments on credit and could make cash advances from ATM machines since it is the plaintiff who pays first the said obligations and later at a stated period every month, the plaintiff will send a statement of account to defendant showing how much she owes the plaintiff for the payments it previously made on her behalf. Copy of the monthly statement of accounts for the months of November and December 1997 are hereto attached as Annexes "E" and "F", respectively;*

**Mrs. Capistrano's answer:**

5. She specifically denies paragraph 6 of the complaint for want of sufficient knowledge to form a belief as to the veracity of the allegations contained therein and for the reasons as stated in her special and affirmative defenses.

x x x x

**ECI's complaint:**

*7. That it is the agreement of the parties that in the event that an account is overdue, interest at 1.75% per month and service charge at*

*1.25% will be charged to the defendant;*

**Mrs. Capistrano's answer:**

6. She specifically denies paragraph 7 of the complaint for want of sufficient knowledge to form a belief as to the veracity of the allegations contained therein.

x x x x

***ECI's complaint:***

*8. That on November 24, 1997, defendant's daughter, Mrs. Valentina C. Redulla issued Solidbank Check No. 0127617 dated November 24, 1997 in the amount of P45,000.00 in partial payment of defendant's account with the plaintiff;*

*9. That when the said check was deposited in the bank, the same was dishonored for the reason "Account Closed." Copy of said said check is hereto attached as Annex "G";*

**Mrs. Capistrano's answer:**

7. She denies paragraph[s] 8 and 9 for want of sufficient knowledge to form a belief as to the veracity of the allegations contained therein and for the reasons aforesated. It is quite peculiar that herein defendant's alleged account would be paid with a personal check of somebody not related to her.

x x x x

***ECI's complaint:***

*10. That defendant has an unpaid principal obligation to the plaintiff in the amount of P217,235.326;*

**Mrs. Capistrano's answer:**

8. She denies paragraph 10 for want of sufficient knowledge as to the veracity of the allegations contained therein and for the reasons stated in her special and affirmative defenses. Granting ex gratia argumenti that defendant did indeed apply for a card, still, she vehemently denies using the same to purchase goods from any establishment on credit.

x x x x

**ECI's complaint**

*11. That plaintiff made demands on the defendant to pay her obligation but despite said demands, defendant has failed and refused to pay her obligation and still fails and refuses to pay her obligation to the plaintiff and settle her obligation, thus, compelling the plaintiff to file the present*