

SECOND DIVISION

[G.R. No. 200868, November 21, 2012]

ANITA A. LEDDA, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

DECISION

CARPIO, J.:

The Case

This petition for review^[1] assails the 15 July 2011 Decision^[2] and 9 February 2012 Resolution^[3] 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 Decision^[4] of the Regional Trial Court, Makati City, Branch 61. The Court of Appeals denied the motion for reconsideration.

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 P548,143.73 per Statement of Account dated 9 September 2007.^[5] Consequently, BPI sent letters^[6] 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 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.

Ensuably, 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 (P548,143.73) 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 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 P226,000.15, representing interests and charges, from P548,143.73, leaving a

difference of P322,138.58 as the principal amount, on which the reduced interest rates should be imposed.

The Court of Appeals awarded BPI P10,000 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)

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.

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]

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 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