

## THIRD DIVISION

**[ G.R. No. 175490, September 17, 2009 ]**

**ILEANA DR. MACALINAO, PETITIONER, VS. BANK OF THE  
PHILIPPINE ISLANDS, RESPONDENT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the June 30, 2006 Decision<sup>[1]</sup> of the Court of Appeals (CA) and its November 21, 2006 Resolution<sup>[2]</sup> denying petitioner's motion for reconsideration.

#### The Facts

Petitioner Ileana Macalinao was an approved cardholder of BPI Mastercard, one of the credit card facilities of respondent Bank of the Philippine Islands (BPI).<sup>[3]</sup> Petitioner Macalinao made some purchases through the use of the said credit card and defaulted in paying for said purchases. She subsequently received a letter dated January 5, 2004 from respondent BPI, demanding payment of the amount of one hundred forty-one thousand five hundred eighteen pesos and thirty-four centavos (PhP 141,518.34), as follows:

Statement Date	Previous Balance	Purchases (Payments)	Penalty Interest	Finance Charges	Balance Due
10/27/2002	94,843.70		559.72	3,061.99	98,456.41
11/27/2002	98,465.41	(15,000)	0	2,885.61	86,351.02
12/31/2002	86,351.02	30,308.80	259.05	2,806.41	119,752.28
1/27/2003	119,752.28		618.23	3,891.07	124,234.58
2/27/2003	124,234.58		990.93	4,037.62	129,263.13
3/27/2003	129,263.13	(18,000.00)	298.72	3,616.05	115,177.90
4/27/2003	115,177.90		644.26	3,743.28	119,565.44
5/27/2003	119,565.44	(10,000.00)	402.95	3,571.71	113,540.10
6/29/2003	113,540.10	8,362.50 (7,000.00)	323.57	3,607.32	118,833.49
7/27/2003	118,833.49		608.07	3,862.09	123,375.65
8/27/2003	123,375.65		1,050.20	4,009.71	128,435.56
9/28/2003	128,435.56		1,435.51	4,174.16	134,045.23
10/28/2003					
11/28/2003					
12/28/2003					
1/27/2004	<b>141,518.34</b>		8,491.10	4,599.34	<b>154,608.78</b>

Under the Terms and Conditions Governing the Issuance and Use of the BPI Credit and BPI Mastercard, the charges or balance thereof remaining unpaid after the payment due date indicated on the monthly Statement of Accounts shall bear interest at the rate of 3% per month and an additional penalty fee equivalent to another 3% per month. Particularly:

8. PAYMENT OF CHARGES - BCC shall furnish the Cardholder a monthly Statement of Account (SOA) and the Cardholder agrees that all charges made through the use of the CARD shall be paid by the Cardholder as stated in the SOA on or before the last day for payment, which is twenty (20) days from the date of the said SOA, and such payment due date may be changed to an earlier date if the Cardholder's account is considered overdue and/or with balances in excess of the approved credit limit, or to such other date as may be deemed proper by the CARD issuer with notice to the Cardholder on the same monthly SOA. If the last day fall on a Saturday, Sunday or a holiday, the last day for the payment automatically becomes the last working day prior to said payment date. However, notwithstanding the absence or lack of proof of service of the SOA of the Cardholder, the latter shall pay any and all charges made through the use of the CARD within thirty (30) days from date or dates thereof. Failure of the Cardholder to pay the charges made through the CARD within the payment period as stated in the SOA or within thirty (30) days from actual date or dates of purchase whichever occur earlier, shall render him in default without the necessity of demand from BCC, which the Cardholder expressly waives. **The charges or balance thereof remaining unpaid after the payment due date indicated on the monthly Statement of Accounts shall bear interest at the rate of 3% per month for BPI Express Credit, BPI Gold Mastercard and an additional penalty fee equivalent to another 3% of the amount due for every month or a fraction of a month's delay.** PROVIDED that if there occurs any change on the prevailing market rates, BCC shall have the option to adjust the rate of interest and/or penalty fee due on the outstanding obligation with prior notice to the cardholder. The Cardholder hereby authorizes BCC to correspondingly increase the rate of such interest [in] the event of changes in the prevailing market rates, and to charge additional service fees as may be deemed necessary in order to maintain its service to the Cardholder. A CARD with outstanding balance unpaid after thirty (30) days from original billing statement date shall automatically be suspended, and those with accounts unpaid after ninety (90) days from said original billing/statement date shall automatically be cancel (sic), without prejudice to BCC's right to suspend or cancel any card anytime and for whatever reason. In case of default in his obligation as provided herein, Cardholder shall surrender his/her card to BCC and in addition to the interest and penalty charges aforementioned , pay the following liquidated damages and/or fees (a) a collection fee of 25% of the amount due if the account is referred to a collection agency or attorney; (b) service fee for every dishonored check issued by the cardholder in payment of his account without prejudice, however, to BCC's right of considering Cardholder's account, and (c) a final fee equivalent to 25% of the unpaid balance, exclusive of litigation expenses and judicial cost, if the payment of the account is enforced though

court action. Venue of all civil suits to enforce this Agreement or any other suit directly or indirectly arising from the relationship between the parties as established herein, whether arising from crimes, negligence or breach thereof, shall be in the process of courts of the City of Makati or in other courts at the option of BCC.<sup>[4]</sup> (Emphasis supplied.)

For failure of petitioner Macalinao to settle her obligations, respondent BPI filed with the Metropolitan Trial Court (MeTC) of Makati City a complaint for a sum of money against her and her husband, Danilo SJ. Macalinao. This was raffled to Branch 66 of the MeTC and was docketed as Civil Case No. 84462 entitled *Bank of the Philippine Islands vs. Spouses Ileana Dr. Macalinao and Danilo SJ. Macalinao*.<sup>[5]</sup>

In said complaint, respondent BPI prayed for the payment of the amount of one hundred fifty-four thousand six hundred eight pesos and seventy-eight centavos (PhP 154,608.78) plus 3.25% finance charges and late payment charges equivalent to 6% of the amount due from February 29, 2004 and an amount equivalent to 25% of the total amount due as attorney's fees, and of the cost of suit.<sup>[6]</sup>

After the summons and a copy of the complaint were served upon petitioner Macalinao and her husband, they failed to file their Answer.<sup>[7]</sup> Thus, respondent BPI moved that judgment be rendered in accordance with Section 6 of the Rule on Summary Procedure.<sup>[8]</sup> This was granted in an Order dated June 16, 2004.<sup>[9]</sup> Thereafter, respondent BPI submitted its documentary evidence.<sup>[10]</sup>

In its Decision dated August 2, 2004, the MeTC ruled in favor of respondent BPI and ordered petitioner Macalinao and her husband to pay the amount of PhP 141,518.34 plus interest and penalty charges of 2% per month, to wit:

WHEREFORE, finding merit in the allegations of the complaint supported by documentary evidence, judgment is hereby rendered in favor of the plaintiff, **Bank of the Philippine Islands** and against **defendant-spouses Ileana DR Macalinao and Danilo SJ Macalinao** by ordering the latter to pay the former jointly and severally the following:

1. The amount of PESOS: **ONE HUNDRED FORTY ONE THOUSAND FIVE HUNDRED EIGHTEEN AND 34/100 (P141,518.34)** plus interest and penalty charges of 2% per month from January 05, 2004 until fully paid;
2. P10,000.00 as and by way of attorney's fees; and
3. Cost of suit.

SO ORDERED.<sup>[11]</sup>

Only petitioner Macalinao and her husband appealed to the Regional Trial Court (RTC) of Makati City, their recourse docketed as Civil Case No. 04-1153. In its Decision dated October 14, 2004, the RTC affirmed *in toto* the decision of the MeTC and held:

In any event, the sum of P141,518.34 adjudged by the trial court appeared to be the result of a recomputation at the reduced rate of 2% per month. Note that the total amount sought by the plaintiff-appellee was P154,608.75 exclusive of finance charge of 3.25% per month and late payment charge of 6% per month.

WHEREFORE, the appealed decision is hereby affirmed in toto.

No pronouncement as to costs.

SO ORDERED.<sup>[12]</sup>

Unconvinced, petitioner Macalinao filed a petition for review with the CA, which was docketed as CA-G.R. SP No. 92031. The CA affirmed with modification the Decision of the RTC:

**WHEREFORE**, the appealed decision is **AFFIRMED** but **MODIFIED** with respect to the total amount due and interest rate. Accordingly, petitioners are jointly and severally ordered to pay respondent Bank of the Philippine Islands the following:

1. The amount of **One Hundred Twenty Six Thousand Seven Hundred Six Pesos and Seventy Centavos** plus interest and penalty charges of 3% per month from January 5, 2004 until fully paid;
2. P10,000.00 as and by way of attorney's fees; and
3. Cost of Suit.

**SO ORDERED.**<sup>[13]</sup>

Although sued jointly with her husband, petitioner Macalinao was the only one who filed the petition before the CA since her husband already passed away on October 18, 2005.<sup>[14]</sup>

In its assailed decision, the CA held that the amount of PhP 141,518.34 (the amount sought to be satisfied in the demand letter of respondent BPI) is clearly not the result of the re-computation at the reduced interest rate as previous higher interest rates were already incorporated in the said amount. Thus, the said amount should not be made as basis in computing the total obligation of petitioner Macalinao. Further, the CA also emphasized that respondent BPI should not compound the interest in the instant case absent a stipulation to that effect. The CA also held, however, that the MeTC erred in modifying the amount of interest rate from 3% monthly to only 2% considering that petitioner Macalinao freely availed herself of the credit card facility offered by respondent BPI to the general public. It explained that contracts of adhesion are not invalid per se and are not entirely prohibited.

Petitioner Macalinao's motion for reconsideration was denied by the CA in its Resolution dated November 21, 2006. Hence, petitioner Macalinao is now before this Court with the following assigned errors: