

## THIRD DIVISION

[ G.R. NO. 164273, March 28, 2007 ]

**EMMANUEL B. AZNAR, PETITIONER, VS. CITIBANK, N.A.,  
(PHILIPPINES),**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before this Court is a Petition for Review assailing the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 62554 dated January 30, 2004 which set aside the November 25, 1998 Order of the Regional Trial Court (RTC) Branch 10, Cebu City and reinstated the Decision of RTC Branch 20 of Cebu City dated May 29, 1998 in Civil Case No. CEB-16474; and the CA Resolution dated May 26, 2004 denying petitioner's motion for reconsideration.

The facts are as follows:

Emmanuel B. Aznar (Aznar), a known businessman<sup>[2]</sup> in Cebu, is a holder of a Preferred Master Credit Card (Mastercard) bearing number 5423-3920-0786-7012 issued by Citibank with a credit limit of P150,000.00. As he and his wife, Zoraida, planned to take their two grandchildren, Melissa and Richard Beane, on an Asian tour, Aznar made a total advance deposit of P485,000.00 with Citibank with the intention of increasing his credit limit to P635,000.00.<sup>[3]</sup>

With the use of his Mastercard, Aznar purchased plane tickets to Kuala Lumpur for his group worth P237,000.00. On July 17, 1994, Aznar, his wife and grandchildren left Cebu for the said destination.<sup>[4]</sup>

Aznar claims that when he presented his Mastercard in some establishments in Malaysia, Singapore and Indonesia, the same was not honored.<sup>[5]</sup> And when he tried to use the same in Ingtan Tour and Travel Agency (Ingtan Agency) in Indonesia to purchase plane tickets to Bali, it was again dishonored for the reason that his card was blacklisted by Citibank. Such dishonor forced him to buy the tickets in cash.<sup>[6]</sup> He further claims that his humiliation caused by the denial of his card was aggravated when Ingtan Agency spoke of swindlers trying to use blacklisted cards.<sup>[7]</sup> Aznar and his group returned to the Philippines on August 10, 1994.<sup>[8]</sup>

On August 26, 1994, Aznar filed a complaint for damages against Citibank, docketed as Civil Case No. CEB-16474 and raffled to RTC Branch 20, Cebu City, claiming that Citibank fraudulently or with gross negligence blacklisted his Mastercard which forced him, his wife and grandchildren to abort important tour destinations and prevented them from buying certain items in their tour.<sup>[9]</sup> He further claimed that he suffered mental anguish, serious anxiety, wounded feelings, besmirched reputation and social humiliation due to the wrongful blacklisting of his card.<sup>[10]</sup> To

prove that Citibank blacklisted his Mastercard, Aznar presented a computer print-out, denominated as ON-LINE AUTHORIZATIONS FOREIGN ACCOUNT ACTIVITY REPORT, issued to him by Ingtan Agency (Exh. "G") with the signature of one Victrina Elnado Nubi (Nubi)<sup>[11]</sup> which shows that his card in question was "DECL OVERLIMIT" or declared over the limit.<sup>[12]</sup>

Citibank denied the allegation that it blacklisted Aznar's card. It also contended that under the terms and conditions governing the issuance and use of its credit cards, Citibank is exempt from any liability for the dishonor of its cards by any merchant affiliate, and that its liability for any action or incident which may be brought against it in relation to the issuance and use of its credit cards is limited to P1,000.00 or the actual damage proven whichever is lesser.<sup>[13]</sup>

To prove that they did not blacklist Aznar's card, Citibank's Credit Card Department Head, Dennis Flores, presented Warning Cancellation Bulletins which contained the list of its canceled cards covering the period of Aznar's trip.<sup>[14]</sup>

On May 29, 1998, RTC Branch 20, Cebu City, through Judge Ferdinand J. Marcos, rendered its decision dismissing Aznar's complaint for lack of merit.<sup>[15]</sup> The trial court held that as between the computer print-out<sup>[16]</sup> presented by Aznar and the Warning Cancellation Bulletins<sup>[17]</sup> presented by Citibank, the latter had more weight as their due execution and authenticity were duly established by Citibank.<sup>[18]</sup> The trial court also held that even if it was shown that Aznar's credit card was dishonored by a merchant establishment, Citibank was not shown to have acted with malice or bad faith when the same was dishonored.<sup>[19]</sup>

Aznar filed a motion for reconsideration with motion to re-raffle the case saying that Judge Marcos could not be impartial as he himself is a holder of a Citibank credit card.<sup>[20]</sup> The case was re-raffled<sup>[21]</sup> and on November 25, 1998, the RTC, this time through Judge Jesus S. De la Peña of Branch 10 of Cebu City, issued an Order granting Aznar's motion for reconsideration, as follows:

WHEREFORE, the Motion for Reconsideration is hereby GRANTED. The DECISION dated May 29, 1998 is hereby reconsidered, and consequently, the defendant is hereby condemned liable to pay the following sums of money:

- a) P10,000,000.00 as moral damages;
- b) P5,000,000.00 as exemplary damages;
- c) P1,000,000.00 as attorney's fees; and
- d) P200,000.00 as litigation expenses.<sup>[22]</sup>

Judge De la Peña ruled that: it is improbable that a man of Aznar's stature would fabricate Exh. "G" or the computer print-out which shows that Aznar's Mastercard was dishonored for the reason that it was declared over the limit; Exh. "G" was printed out by Nubi in the ordinary or regular course of business in the modern credit card industry and Nubi was not able to testify as she was in a foreign country and cannot be reached by subpoena; taking judicial notice of the practice of automated teller machines (ATMs) and credit card facilities which readily print out bank account status, Exh. "G" can be received as *prima facie* evidence of the

dishonor of Aznar's Mastercard; no rebutting evidence was presented by Citibank to prove that Aznar's Mastercard was not dishonored, as all it proved was that said credit card was not included in the blacklisted cards; when Citibank accepted the additional deposit of P485,000.00 from Aznar, there was an implied novation and Citibank was obligated to increase Aznar's credit limit and ensure that Aznar will not encounter any embarrassing situation with the use of his Mastercard; Citibank's failure to comply with its obligation constitutes gross negligence as it caused Aznar inconvenience, mental anguish and social humiliation; the fine prints in the flyer of the credit card limiting the liability of the bank to P1,000.00 or the actual damage proven, whichever is lower, is a contract of adhesion which must be interpreted against Citibank.<sup>[23]</sup>

Citibank filed an appeal with the CA and its counsel filed an administrative case against Judge De la Peña for grave misconduct, gross ignorance of the law and incompetence, claiming among others that said judge rendered his decision without having read the transcripts. The administrative case was held in abeyance pending the outcome of the appeal filed by Citibank with the CA.<sup>[24]</sup>

On January 30, 2004, the CA rendered its Decision granting Citibank's appeal thus:

WHEREFORE, the instant appeal is GRANTED. The assailed order of the Regional Trial Court, 7th Judicial Region, Branch 10, Cebu City, in Civil Case No. CEB-16474, is hereby SET ASIDE and the decision, dated 29 May 1998 of the Regional Trial Court, 7th Judicial Region, Branch 20, Cebu City in this case is REINSTATED.

SO ORDERED.<sup>[25]</sup>

The CA ruled that: Aznar had no personal knowledge of the blacklisting of his card and only presumed the same when it was dishonored in certain establishments; such dishonor is not sufficient to prove that his card was blacklisted by Citibank; Exh. "G" is an electronic document which must be authenticated pursuant to Section 2, Rule 5 of the Rules on Electronic Evidence<sup>[26]</sup> or under Section 20 of Rule 132 of the Rules of Court<sup>[27]</sup> by anyone who saw the document executed or written; Aznar, however, failed to prove the authenticity of Exh. "G", thus it must be excluded; the unrefuted testimony of Aznar that his credit card was dishonored by Ingtan Agency and certain establishments abroad is not sufficient to justify the award of damages in his favor, absent any showing that Citibank had anything to do with the said dishonor; Citibank had no absolute control over the actions of its merchant affiliates, thus it should not be held liable for the dishonor of Aznar's credit card by said establishments.<sup>[28]</sup>

Aznar filed a motion for reconsideration which the CA dismissed in its Resolution dated May 26, 2004.<sup>[29]</sup>

Parenthetically, the administrative case against Judge De la Peña was activated and on April 29, 2005, the Court's Third Division<sup>[30]</sup> found respondent judge guilty of knowingly rendering an unjust judgment and ordered his suspension for six months. The Court held that Judge De la Peña erred in basing his Order on a manifestation submitted by Aznar to support his Motion for Reconsideration, when no copy of such manifestation was served on the adverse party and it was filed beyond office hours.

The Court also noted that Judge De la Peña made an egregiously large award of damages in favor of Aznar which opened himself to suspicion.<sup>[31]</sup>

Aznar now comes before this Court on a petition for review alleging that: the CA erroneously made its own factual finding that his Mastercard was not blacklisted when the matter of blacklisting was already a non-issue in the November 25, 1998 Order of the RTC; the RTC found that Aznar's Mastercard was dishonored for the reason that it was declared over the credit limit; this factual finding is supported by Exh. "G" and by his (Aznar's) testimony; the issue of dishonor on the ground of "DECL OVERLIMIT", although not alleged in the complaint, was tried with the implied consent of the parties and should be treated as if raised in the pleadings pursuant to Section 5, Rule 10 of the Rules of Civil Procedure;<sup>[32]</sup> Exh. "G" cannot be excluded as it qualifies as an electronic evidence following the Rules on Electronic Evidence which provides that print-outs are also originals for purposes of the Best Evidence Rule; Exh. "G" has remained complete and unaltered, apart from the signature of Nubi, thus the same is reliable for the purpose for which it was generated; the RTC judge correctly credited the testimony of Aznar on the issuance of the computer print-out as Aznar saw that it was signed by Nubi; said testimony constitutes the "other evidence showing the integrity and reliability of the print-out to the satisfaction of the judge" which is required under the Rules on Electronic Evidence; the trial court was also correct in finding that Citibank was grossly negligent in failing to credit the additional deposit and make the necessary entries in its systems to prevent Aznar from encountering any embarrassing situation with the use of his Mastercard.<sup>[33]</sup>

Citibank, in its Comment, contends that: Aznar never had personal knowledge that his credit card was blacklisted as he only presumed such fact; the issue of dishonor on the ground that the card was declared over the limit was also never tried with the implied consent of both parties; Aznar's self-serving testimony is not sufficient to prove the integrity and reliability of Exh. "G"; Aznar did not declare that it was Nubi who printed the document and that said document was printed in his presence as he merely said that the print-out was provided him; there is also no annotation on Exh. "G" to establish that it was Nubi who printed the same; assuming further that Exh. "G" is admissible and Aznar's credit card was dishonored, Citibank still cannot be held liable for damages as it only shows that Aznar's credit card was dishonored for having been declared over the limit; Aznar's cause of action against Citibank hinged on the alleged blacklisting of his card which purportedly caused its dishonor; dishonor alone, however, is not sufficient to award Aznar damages as he must prove that the dishonor was caused by a grossly negligent act of Citibank; the award of damages in favor of Aznar was based on Article 1170<sup>[34]</sup> of the Civil Code, *i.e.*, there was fraud, negligence or delay in the performance of its obligation; there was no proof, however that Citibank committed fraud or delay or that it contravened its obligations towards Aznar; the terms and conditions of the credit card cannot be considered as a contract of adhesion since Aznar was entirely free to reject the card if he did not want the conditions stipulated therein; a person whose stature is such that he is expected to be more prudent with respect to his transactions cannot later on be heard to complain for being ignorant or having been forced into merely consenting to the contract.<sup>[35]</sup>

In his Reply, Aznar contended that to a layman, the term "blacklisting" is synonymous with the words "hot list" or "declared overlimit"; and whether his card

was blacklisted or declared over the limit, the same was dishonored due to the fault or gross negligence of Citibank.<sup>[36]</sup>

Aznar also filed a Memorandum raising as issues the following:

- I. Whether or not the augmentation deposit in the amount of P485,000.00 of the Petitioner constitutes relative extinctive novation;
- II. Whether or not the purchases made by Petitioner were beyond his credit limit;
- III. Whether or not the issues of dishonor by reason of overlimit was tried with the consent of the parties;
- IV. Whether or not the "On Line Authorization Report" is an electronic document."
- V. Whether or not the "On Line Authorization Report" constitutes electronic evidence;
- VI. Whether or not the agreement between the parties is a contract of adhesion;
- VII. Whether or not the Respondent is negligent in not crediting the deposits of the Respondent.<sup>[37]</sup>

Aznar further averred in his Memorandum that Citibank assured him that with the use of his Mastercard, he would never be turned down by any merchant store, and that under Section 43, Rule 130 of the Rules of Court, Exh. "G" is admissible in evidence.<sup>[38]</sup>

Citibank also filed a Memorandum reiterating its earlier arguments.<sup>[39]</sup>

Stripped to its essentials, the only question that needs to be answered is: whether Aznar has established his claim against Citibank.

The answer is no.

It is basic that in civil cases, the burden of proof rests on the plaintiff to establish his case based on a preponderance of evidence. The party that alleges a fact also has the burden of proving it.<sup>[40]</sup>

In the complaint Aznar filed before the RTC, he claimed that Citibank blacklisted his Mastercard which caused its dishonor in several establishments in Malaysia, Singapore, and Indonesia, particularly in Ingtan Agency in Indonesia where he was humiliated when its staff insinuated that he could be a swindler trying to use a blacklisted card.

As correctly found by the RTC in its May 29, 1998 Decision, Aznar failed to prove with a preponderance of evidence that Citibank blacklisted his Mastercard or placed the same on the "hot list."<sup>[41]</sup>

Aznar in his testimony admitted that he had no personal knowledge that his Mastercard was blacklisted by Citibank and only presumed such fact from the dishonor of his card.