

## THIRD DIVISION

[ G.R. No. 156168, December 14, 2004 ]

**EQUITABLE BANKING CORPORATION, PETITIONER, VS. JOSE T. CALDERON, RESPONDENT.**

### D E C I S I O N

**GARCIA, J.:**

Thru this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner **Equitable Banking Corporation (EBC)**, seeks the reversal and setting aside of the **decision dated November 25, 2002<sup>[1]</sup>** of the Court of Appeals in **CA-G.R. CV No. 60016**, which partially affirmed an earlier decision of the Regional Trial Court at Makati City, Branch 61, insofar as it grants moral damages and costs of suit to herein respondent, **Jose T. Calderon**.

The decision under review recites the factual background of the case, as follows:

*Plaintiff-appellee [now respondent] Jose T. Calderon (Calderon for brevity), is a businessman engaged in several business activities here and abroad, either in his capacity as President or Chairman of the Board thereon. In addition thereto, he is a stockholder of PLDT and a member of the Manila Polo Club, among others. He is a seasoned traveler, who travels at least seven times a year in the U.S., Europe and Asia. On the other hand, the defendant-appellant [now petitioner] Equitable Banking Corporation (EBC for brevity), is one of the leading commercial banking institutions in the Philippines, engaged in commercial banking, such as acceptance of deposits, extension of loans and credit card facilities, among others.*

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*Sometime in September 1984, Calderon applied and was issued an Equitable International Visa card (Visa card for brevity). The said Visa card can be used for both peso and dollar transactions within and outside the Philippines. The credit limit for the peso transaction is TWENTY THOUSAND (P20,000.00) PESOS; while in the dollar transactions, Calderon is required to maintain a dollar account with a minimum deposit of \$3,000.00, the balance of dollar account shall serve as the credit limit.*

*In April 1986, Calderon together with some reputable business friends and associates, went to Hongkong for business and pleasure trips. Specifically on 30 April 1986, Calderon accompanied by his friend, Ed De Leon went to Gucci Department Store located at the basement of the Peninsula Hotel (Hongkong). There and then, Calderon purchased several Gucci items (t-shirts, jackets, a pair of shoes, etc.). The cost of his total*

*purchase amounted to HK\$4,030.00 or equivalent to US\$523.00. Instead of paying the said items in cash, he used his Visa card (No. 4921 6400 0001 9373) to effect payment thereof on credit. He then presented and gave his credit card to the saleslady who promptly referred it to the store cashier for verification. Shortly thereafter, the saleslady, in the presence of his friend, Ed De Leon and other shoppers of different nationalities, informed him that his Visa card was blacklisted. Calderon sought the reconfirmation of the status of his Visa card from the saleslady, but the latter simply did not honor it and even threatened to cut it into pieces with the use of a pair of scissors.*

*Deeply embarrassed and humiliated, and in order to avoid further indignities, Calderon paid cash for the Gucci goods and items that he bought.*

Upon his return to the Philippines, and claiming that he suffered much torment and embarrassment on account of EBC's wrongful act of blacklisting/suspending his VISA credit card while at the Gucci store in Hongkong, Calderon filed with the Regional Trial Court at Makati City a complaint for damages<sup>[2]</sup> against EBC.

In its Answer,<sup>[3]</sup> EBC denied any liability to Calderon, alleging that the latter's credit card privileges for dollar transactions were earlier placed under suspension on account of Calderon's prior use of the same card in excess of his credit limit, adding that Calderon failed to settle said prior credit purchase on due date, thereby causing his obligation to become past due. Corollarily, EBC asserts that Calderon also failed to maintain the required minimum deposit of \$3,000.00.

To expedite the direct examination of witnesses, the trial court required the parties to submit affidavits, in question-and-answer form, of their respective witnesses, to be sworn to in court, with cross examination to be made in open court.

Eventually, in a decision dated October 10, 1997,<sup>[4]</sup> the trial court, concluding that "defendant bank was negligent if not in bad faith, in suspending, or 'blacklisting' plaintiff's credit card without notice or basis", rendered judgment in favor of Calderon, thus:

*WHEREFORE PREMISES ABOVE CONSIDERED, judgment is hereby rendered in favor of plaintiff as against defendant EQUITABLE BANKING CORPORATION, which is hereby ORDERED to pay plaintiff as follows:*

- 1. the sum of US\$150.00 as actual damages;*
- 2. the sum of P200,000.00 as and by way of moral damages;*
- 3. the amount of P100,000.00 as exemplary damages;*
- 4. the sum of P100,000.00 as attorney's fees plus P500.00 per court hearing and*
- 5. costs of suit.*

*SO ORDERED.*

Therefrom, EBC went to the Court of Appeals (CA), whereat its recourse was docketed as **CA G.R. CV No. 60016**.

After due proceedings, the CA, in a **decision dated November 25, 2002**,<sup>[5]</sup> affirmed that of the trial court but only insofar as the awards of moral damages, the amount of which was even reduced, and the costs of suits are concerned. More specifically, the CA decision dispositively reads:<sup>[6]</sup>

*WHEREFORE, in consideration of the foregoing disquisitions, the decision of the court a quo dated 10 October 1997 is **AFFIRMED** insofar as the awards of moral damages and costs of suit are concerned. However, anent the award of moral damages, the same is reduced to One Hundred Thousand (P100,000.00) Pesos.*

*The rest of the awards are deleted.*

*SO ORDERED.*

Evidently unwilling to accept a judgment short of complete exemption from any liability to Calderon, EBC is now with us via the instant petition on its lone submission that "THE COURT OF APPEALS ERRED IN HOLDING THAT THE RESPONDENT IS ENTITLED TO MORAL DAMAGES NOTWITHSTANDING ITS FINDING THAT PETITIONER'S ACTIONS HAVE NOT BEEN ATTENDED WITH ANY MALICE OR BAD FAITH."<sup>[7]</sup>

The petition is impressed with merit.

In law, moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.<sup>[8]</sup> However, to be entitled to the award thereof, it is not enough that one merely suffered sleepless nights, mental anguish or serious anxiety as a result of the actuations of the other party.<sup>[9]</sup> In *Philippine Telegraph & Telephone Corporation vs. Court of Appeals*,<sup>[10]</sup> we have had the occasion to reiterate the conditions to be met in order that moral damages may be recovered, viz:

*An award of moral damages would require, firstly, evidence of besmirched reputation, or physical, mental or psychological suffering sustained by the claimant; secondly, a culpable act or omission factually established; thirdly, proof that the wrongful act or omission of the defendant is the proximate cause of the damages sustained by the claimant; and fourthly, that the case is predicated on any of the instances expressed or envisioned by Articles 2219 and 2220 of the Civil Code.*

Particularly, in *culpa contractual* or breach of contract, as here, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith,<sup>[11]</sup> or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations.<sup>[12]</sup> Verily, the breach must be wanton, reckless, malicious or in bad faith, oppressive or abusive.<sup>[13]</sup>

Here, the CA ruled, and rightly so, that no malice or bad faith attended petitioner's