

THIRD DIVISION

[G.R. No. 119850, June 20, 1996]

**MANDARIN VILLA, INC., PETITIONER, VS. COURT OF APPEALS
AND CLODUALDO DE JESUS, RESPONDENTS.**

R E S O L U T I O N

FRANCISCO, J.:

With ample evidentiary support are the following antecedent facts:

In the evening of October 19, 1989, private respondent, Clodualdo de Jesus, a practicing lawyer and businessman, hosted a dinner for his friends at the petitioner's restaurant the Mandarin Villa Seafoods Village, Greenhills, Mandaluyong City. After dinner the waiter handed to him the bill in the amount of P2,658.50. Private respondent offered to pay the bill through his credit card issued by Philippine Commercial Credit Card Inc. (BANKARD). This card was accepted by the waiter who immediately proceeded to the restaurant's cashier for card verification. Ten minutes later, however, the waiter returned and audibly informed private respondent that his credit card had expired.^[1] Private respondent remonstrated that said credit card had yet to expire on September 1990, as embossed on its face.^[2] The waiter was unmoved, thus, private respondent and two of his guests approached the restaurant's cashier who again passed the credit card over the verification computer. The same information was produced, i.e., CARD EXPIRED. Private respondent and his guests returned to their table and at this juncture, Professor Lirag, another guest, uttered the following remarks: "*Clody [referring to Clodualdo de Jesus], may problema ba? Baka kailangang maghugas na kami ng pinggan?*"^[3] Thereupon, private respondent left the restaurant and got his BPI Express Credit Card from his car and offered it to pay their bill. This was accepted and honored by the cashier after verification.^[4] Petitioner and his companions left afterwards.

The incident triggered the filing of a suit for damages by private respondent. Following a full-dress trial, judgment was rendered directing the petitioner and BANKARD to pay jointly and severally the private respondent: (a) moral damages in the amount of P250,000.00; (b) exemplary damages in the amount of P100,000.00; and (c) attorney's fees and litigation expenses in the amount of P50,000.00.

Both the petitioner and BANKARD appealed to the respondent Court of Appeals which rendered a decision, thus:

"WHEREFORE, the decision appealed from is hereby MODIFIED by:

1. Finding appellant MANDARIN solely responsible for damages in favor of appellee;

2. Absolving appellant BANKARD of any responsibility for damages;
3. Reducing moral damages awarded to appellee to TWENTY FIVE THOUSAND and 00/100 (P25,000.00) PESOS;
4. Reducing exemplary damages awarded to appellee to TEN THOUSAND and 00/100 (P10,000.00) PESOS;
5. Reversing and setting aside the award of P50,000.00 for attorney's fees as well as interest awarded; and
6. AFFIRMING the dismissal of all counterclaims and cross-claims.

Costs against appellant Mandarin.

SO ORDERED."^[5]

Mandarin Villa, thus, interposed this present petition, faulting the respondent court with six (6) assigned errors which may be reduced to the following issues, to wit: (1) whether or not petitioner is bound to accept payment by means of credit card; (2) whether or not petitioner is negligent under the circumstances obtaining in this case; and (3) if negligent, whether or not such negligence is the proximate cause of the private respondent's damage.

Petitioner contends that it cannot be faulted for its cashier's refusal to accept private respondent's BANKARD credit card, the same not being a legal tender. It argues that private respondent's offer to pay by means of credit card partook of the nature of a proposal to novate an existing obligation for which petitioner, as creditor, must first give its consent otherwise there will be no binding contract between them. Petitioner cannot seek refuge behind this averment.

We note that Mandarin Villa Seafood Village is affiliated with BANKARD. In fact, an "Agreement"^[6] entered into by petitioner and BANKARD dated June 23, 1989, provides inter alia:

"The MERCHANT shall honor validly issued PCCCI credit cards presented by their corresponding holders in the purchase of goods and/or services supplied by it provided that the card expiration date has not elapsed and the card number does not appear on the latest cancellation bulletin of lost, suspended and cancelled PCCCI credit cards and, no signs of tampering, alterations or irregularities appear on the face of the credit card."^[7]

While private respondent may not be a party to the said agreement, the above-quoted stipulation conferred a favor upon the private respondent, a holder of credit card validly issued by BANKARD. This stipulation is a stipulation *pour autrui* and under Article 1311 of the Civil Code private respondent may demand its fulfillment provided he communicated his acceptance to the petitioner before its revocation.^[8] In this case, private respondent's offer to pay by means of his BANKARD credit card constitutes not only an acceptance of the said stipulation but also an explicit