

FIRST DIVISION

[G.R. NO. 160026, December 10, 2007]

**EDMERITO ANG GOBONSENG, AND EDUARDO ANG GOBONSENG,
SR., PETITIONERS, VS. UNIBANCARD CORPORATION,
RESPONDENT.**

DECISION

AZCUNA, J.:

This is a petition for review on *certiorari*^[1] seeking the nullification of the Decision rendered by the Court of Appeals (CA) on February 27, 2003, and its Resolution, dated September 2, 2003, in CA-G.R. SP No. 67510 entitled "Edmerito Ang Gobonseng, et al. v. Unibancard Corporation."

The facts are as follows:

Respondent Unibancard Corporation (Unicard) is engaged in the credit card business. Petitioner Edmerito Ang Gobonseng applied with Unicard for the issuance of a Unicard credit card in his name with co-petitioner Eduardo Ang Gobonseng as co-obligor. A Unicard credit card^[2] with a monthly credit limit of P10,000 was issued to petitioners.

As of May 16, 1995, petitioner Edmerito's credit card purchases had accumulated to P179,638.74. Petitioner defaulted in his monthly payments, so respondent's lawyer sent a demand letter to petitioners requiring the payment of the following amounts:

Principal	P179,638.74
Interest	73,112.97
Penalty	<u>148,447.17</u>
TOTAL	P401,198.88

Despite repeated demands, Unicard was unable to recover the amounts stated. A complaint for the collection of a sum of money was thus filed by Unicard against petitioners with the Metropolitan Trial Court (MeTC) of Makati City.

Petitioners, instead of filing an Answer, filed a motion to dismiss on the ground of improper venue. The motion was denied by the MeTC, and so was the motion for reconsideration. A petition for *certiorari* was subsequently filed with the Regional Trial Court (RTC) of Makati City. The same was denied, as well as petitioners' motion for reconsideration. A petition for *certiorari* was then filed with the CA^[3] but the same was likewise denied.^[4]

The proceedings before the MeTC continued notwithstanding the pendency of the petition before the CA. Respondent moved to declare petitioners in default for non-filing of an answer within the reglementary period, and upon the court's approval

thereof, the former was allowed to present evidence *ex parte*.

The RTC rendered a decision on January 22, 1998, the dispositive portion of which reads:

WHEREFORE, judgment is rendered ordering defendants [petitioners], jointly and severally, to pay the plaintiff the amount of P179,638.74 as of October 10, 1997 representing the principal amount of the credit charges plus interest at the rate of 3% per month; penalties at the rate of 5% per month to be reckoned from the filing of the complaint until the amount is fully paid and 25% of the amount due, as and for attorney's fees, and to pay the cost.

SO ORDERED.^[5]

Petitioners' motion for reconsideration was denied and they filed a petition for *certiorari* with the CA.^[6]

On February 27, 2003, the CA^[7] rendered a decision, the pertinent portions of which read:

It is herein emphasized that petitioners were declared in default for non-filing of an answer; thus, the facts relied upon by the trial court, [upon] which its judgment was rooted, were established in an *ex-parte* presentation of evidence of private respondents. Nevertheless, gathered from the pleadings, petitioners did not deny the existence of the principal obligation but merely contested the sky-high interest rate and penalty charges including the charge of attorney's fees.

In the instant case, the penalty of 5% per month on top of the monthly interest of 3% is considerably high, which if added, would result to almost 100% per annum. Moreover, the lowering of penalty is justified by the contributory negligence of private respondent since it did not observe diligence in monitoring petitioners' use of the credit card which had accumulated to P179,638.74 or more than ten times his credit card limit of only P10,000.00 per month. Although well-settled is the rule that a contract has the force of law between the parties, and each is bound to fulfill what has been expressly stipulated therein, it is not always so, since any contract, which appears to be so heavily weighted in favor of one of the parties so as to lead to an unconscionable result, is void. There is no way a prospective credit card holder can object to any onerous provision in the contract containing standard stipulations imposed upon those who seek to avail of credit services as they are offered on a take-it-or-leave-it basis as the contract between them is one of adhesion (*Polotan, Sr. v. Court of Appeals*, 296 SCRA 247).

Finally, the attorney's fees of 25% of the amount due, with the interest and penalties as of May 16, 1995 of P221,560.14 which even exceed the principal debt of P179,638.74 are considered exorbitant. While the parties may have agreed to the payment of attorney's fees, the court has jurisdiction to determine the reasonableness of the sum stipulated. For the court to ignore an express contract for attorney's fees, it is sufficient

that it is unreasonable or unconscionable (Civil Code, Volume 4, 1996, by Arturo M. Tolentino, p. 269).

WHEREFORE, premises considered and finding no grave abuse of discretion amounting to lack or excess of jurisdiction was committed by the respondent Presiding Judge of Branch 57 of the Regional Trial Court of Makati City in the issuance of the assailed Orders dated December 5, 2000, May 28, 2001, and August 10, 2001, the said Orders are **AFFIRMED** with **MODIFICATION** in that the penalties are reduced to 1% per month and attorney's fees to 10%.

SO ORDERED.^[8]

Petitioners' motion for reconsideration was denied, hence, the petition herein raising the following arguments:^[9]

First, the baseless and exorbitant interest of 3% per month which is shocking to the conscience of man and the court is contrary to the 12% interest per annum set by the Supreme Court in *Medel v. Court of Appeals*^[10] and *Eastern Assurance and Surety, Corporation (EASCO) v. Court of Appeals*;^[11]

Second, the penalty of 5% per month violates Article 1226 of the Civil Code which states that in obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interest in case of noncompliance; and

Lastly, the attorney's fees should be fixed below 10%.

The issue is whether the CA erred in failing to: 1) apply the interest rate of 12% to the principal amount owed; 2) disregard the penalty of 5%; and, 3) reduce the attorney's fees to below 10%.

The contract between the parties stipulated the following:

9. All charges made through the use of [the] card shall be paid by the UNICARD holder and/or co-obligor within twenty (20) days from the date of the said statement of account without the necessity of demand. These charges or balance thereof remaining unpaid after this 20-day period shall bear interest at the rate of 3% per month and a penalty equivalent to 5% of the amount due for every month or a fraction of a month's delay... In case it is necessary to collect the account by or thru an attorney-at-law or collection agency, the UNICARD holder and co-obligor shall pay 25% of the amount due which shall in no case be less than P1,000.00, as collection or attorney's fees, in addition to costs and other litigation expenses.

^[12]

The CA was correct in applying the 3% interest on the principal amount owed by petitioners to respondent Unicard, as well as the penalty due thereon, for the following reasons:

One, Article 1226 of the Civil Code provides that in obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests