

SECOND DIVISION

[G.R. NO. 141761, July 28, 2006]

**BANKARD, INC., PETITIONER, VS. DR. ANTONIO NOVAK
FELICIANO,**

DECISION

PUNO, J.:

Before us is a petition for review under Rule 45 of the May 31, 1999 Decision^[1] and January 28, 2000 Resolution^[2] of the Court of Appeals in CA-G.R. CV No. 56734 which modified the July 22, 1997 Decision^[3] of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 95-1492.

The facts are as follows:

Respondent Dr. Antonio Novak Feliciano is the holder of PCIBank Mastercard No. 5407-2610-0000-5864, issued and managed by petitioner Bankard, Inc. An extension of the card, PCIBank Mastercard No. 5407-2611-0000-5863, was issued to his wife, Mrs. Marietta N. Feliciano.

On June 19, 1995, respondent used his PCIBank Mastercard No. 5407-2610-0000-5864 to pay a breakfast bill in Toronto, Canada. The card was, however, dishonored for payment. Respondent's guests, Dr. Bellaflor Bumanlag and three other Filipino doctors based in Canada, had to pay the bill. Respondent immediately called the US toll-free number of petitioner to inquire on the cause of dishonor. He was informed that the reason was the nonpayment of his last billing statement. Respondent denied that he failed to pay, and requested the person on the line to verify the correct status of his credit card again. Respondent likewise called his secretary in the Philippines to confirm the fact of payment, and requested her to advise petitioner's office in Manila.

The following day, respondent met with Dr. Bumanlag to reimburse her for the cost of the breakfast the previous day. Thereafter, Dr. Bumanlag accompanied the respondent to the Eddie Bauer Fairview Mall, a prestigious mall in Toronto, where the latter bought several dressing items. Respondent presented his PCIBank Mastercard No. 5407-2610-0000-5864 for payment. Again, the card was dishonored to the embarrassment of the respondent. Worse, the manager of the department store confiscated the card in front of Dr. Bumanlag and other shoppers. Respondent protested but the manager called security and forcibly retained the card. To end the commotion that ensued, respondent just asked for a receipt for the confiscated card.

On October 5, 1995, respondent filed a complaint against petitioner Bankard, Inc. and Mastercard International for breach of contractual rights and damages before the RTC-Makati City, docketed as Civil Case No. 95-1492. Respondent alleged that

he is a holder in good standing for more than ten (10) years of PCIBank Mastercard No. 5407-2610-0000-5864, and that petitioner and Mastercard International reneged on their agreement by suspending the services of the card without notice to him. As a result of the suspension and confiscation of his card in Toronto, Canada, respondent suffered social humiliation, embarrassment and besmirched reputation. The Canadian-based doctors, who were his guests during the breakfast meeting in Toronto and whom he expected to donate at least fifty thousand Canadian dollars to his charitable clinic in Makati, withdrew their contributions because of the incidents. Respondent prayed for P1,000,000.00 in actual damages representing the peso equivalent of the aborted contributions, P1,000,000.00 for moral damages, P200,000.00 for exemplary damages, and P100,000.00 for attorney's fees and costs of suit.

In defense, petitioner claimed due diligence before suspending the privileges of respondent's credit card. Petitioner alleged that on June 13, 1995, it received a fraud alert or warning bulletin^[4] from Bank International Indonesia. A fraud alert or warning bulletin is a notice by telex^[5] or telephone addressed to the issuer of a card when a fraudulent or counterfeit use of the card has been detected or suspected by an acquirer. In the June 13, 1995 fraud alert, PCIBank Mastercard No. 5407-2611-0000-5863 was listed as having had a suspected counterfeit transaction in Indonesia on June 11, 1995. Petitioner's fraud analyst, Mr. Ferdinand Lopez, then accessed petitioner's directory of cardholders to identify the holder of PCIBank Mastercard No. 5407-2611-0000-5863. The directory showed that the principal cardholder for PCIBank Mastercard No. 5407-2611-0000-5863 was respondent Dr. Antonio Novak Feliciano, and that the credit card was the extension card issued to his wife, Marietta Feliciano. Mr. Lopez immediately called respondent at his clinic but the latter was not there. Neither he nor his wife was at home. Consequently, Mr. Lopez left his name, telephone number, and a message for respondent to return his call, to the woman who answered the phone. He likewise inquired from the woman whether respondent and his wife were in the country or whether they had just arrived from abroad. The woman answered "no." With that information and considering that Indonesia has a high incidence of counterfeit credit card transactions, Mr. Lopez concluded that the transaction involving PCIBank Mastercard No. 5407-2611-0000-5863 was counterfeit. He sent a notice of card account blocking to the Authorization Department. He likewise sent a written notice to the Felicianos that PCIBank Mastercard No. 5407-2611-0000-5863 had a counterfeit movement in another country and that petitioner is temporarily suspending the services of the card including the principal card, PCIBank Mastercard No. 5407-2610-0000-5864, pending investigation on the matter. The Felicianos were required to submit an affidavit of disclaim and photocopies of their passports. The Felicianos did not respond to the notification.

On July 22, 1997, the trial court decided the case in favor of respondent.^[6] It found that petitioner's negligence was the immediate and proximate cause of respondent's injury. Although the claim for actual damages was disallowed for lack of proof, petitioner was ordered to pay: (1) P1,000,000.00 as moral damages, (2) P200,000.00 as exemplary damages, and (3) P100,000.00 for attorney's fees and costs of suit. Petitioner was likewise ordered to restore respondent's good name with the merchant establishment in Canada which confiscated his Mastercard, and to return the card with apologies to respondent.

Petitioner assailed the decision in a petition for review with the Court of Appeals. In its Decision dated May 31, 1999,^[7] the Court of Appeals affirmed the trial court's finding of negligence on the part of the petitioner. However, the appellate court modified the trial court's decision by deleting the award for exemplary damages, and by reducing moral damages to P800,000.00, and attorney's fees and costs of suit to P50,000.00. Actual damages was still disallowed for lack of proof. Petitioner's motion for partial reconsideration was denied. Hence, this petition.

Petitioner assigns the following errors:

I.

THE COURT OF APPEALS ERRED IN AWARDING RESPONDENT MORAL DAMAGES IN THE EXCESSIVE AND UNPRECEDENTED AMOUNT OF P800,000.00, WITHOUT ANY LEGAL OR FACTUAL BASIS, CONSIDERING THAT:

A. NO EVIDENCE WAS PRESENTED TO SHOW THAT PETITIONER ACTED FRAUDULENTLY OR IN BAD FAITH OR IN A WANTON, RECKLESS AND OPPRESSIVE MANNER IN SUSPENDING RESPONDENT'S CREDIT CARD.

B. EVEN AS IT WAS RESPONDENT'S DUTY TO AFFIRMATIVELY PROVE HIS CLAIM FOR MORAL DAMAGES, PETITIONER HAS DULY ESTABLISHED THAT IT WAS PROMPTED TO SUSPEND THE CREDIT CARD OF RESPONDENT SOLELY TO PROTECT ITSELF AND THE RESPONDENT FROM ANYONE WRONGFULLY USING HIS CREDIT CARD AND NOT OUT OF MALICE, OR ANY DELIBERATE INTENT TO CAUSE HARM TO RESPONDENT.

C. CONTRARY TO THE FINDINGS OF THE TRIAL COURT WHICH THE COURT OF APPEALS AFFIRMED, PETITIONER WAS NOT GUILTY OF NEGLIGENCE IN SUSPENDING RESPONDENT'S CREDIT CARD. ASSUMING *ARGUENDO* THAT PETITIONER WAS NEGLIGENT IN DOING SO, THE SAME DOES NOT WARRANT A FINDING OF MALICE OR BAD FAITH AS TO JUSTIFY GRANTING AN AWARD OF MORAL DAMAGES IN THE STAGGERING AMOUNT OF P800,000.00.

D. IN THE ABSENCE OF AN AWARD OF ACTUAL DAMAGES, RESPONDENT IS NOT ENTITLED TO MORAL DAMAGES.

E. THE HONORABLE COURT HAS REPEATEDLY ADMONISHED AGAINST GRANTING EXCESSIVE MORAL DAMAGES WHICH ARE NOT INTENDED TO ENRICH A COMPLAINANT AT THE EXPENSE OF A DEFENDANT.

II.

THE COURT OF APPEALS ERRED IN AWARDING ATTORNEY'S FEES TO RESPONDENT CONSIDERING THAT PETITIONER ACTED IN GOOD FAITH AND WITH DUE DILIGENCE IN SUSPENDING RESPONDENT'S CREDIT