

## THIRD DIVISION

[ G.R. No. 119379, September 25, 1998 ]

**RODELO G. POLOTAN, SR., PETITIONER, VS. HON. COURT OF APPEALS (ELEVENTH DIVISION), REGIONAL TRIAL COURT IN MAKATI CITY (BRANCH 132), AND SECURITY DINERS INTERNATIONAL CORPORATION, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

Assailed before this Court in a Petition for Review on Certiorari is the decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 33270 affirming the decision of Branch 132 of the Regional Trial Court of Makati City.

Private respondent Security Diners International Corporation (Diners Club), a credit card company, extends credit accommodations to its cardholders for the purchase of goods and other services from member establishments. Said goods and services are reimbursed later on by cardholders upon proper billing.

Petitioner Rodelo G. Polotan, Sr. applied for membership and credit accommodations with Diners Club in October 1985. The application form contained terms and conditions governing the use and availment of the Diners Club card, among which is for the cardholder to pay all charges made through the use of said card within the period indicated in the statement of account and any remaining unpaid balance to earn 3% interest per annum plus prime rate of Security Bank & Trust Company. Notably, in the application form submitted by petitioner, Ofriano Canlas obligated himself to pay jointly and severally with petitioner the latter's obligation to private respondent.

Upon acceptance of his application, petitioner was issued Diners Club card No. 3651-212766-3005. As of May 8, 1987, petitioner incurred credit charges plus appropriate interest and service charges in the aggregate amount of P33,819.84 which had become due and demandable.

Demands for payment made against petitioner proved futile. Hence, private respondent filed a Complaint for Collection of Sum of Money against petitioner before the lower court.

The lower court ruled, thus:

"WHEREFORE, judgment is hereby rendered ordering defendants to pay jointly and severally plaintiff:

a) The amount of P33,819.84 and interest of 3% per annum plus prime rate of SBTC and service charges of 2% per month starting May 9, 1987

until the entire obligation is fully paid;

b) An amount equivalent to 25% of any and all amounts due and payable as attorney's fees, plus costs of suit.

With respect to the cross-claim of defendant Ofriano Canlas, defendant Rodelo G. Polotan, Sr. is ordered to indemnify and/or reimburse the former for whatever he may be ordered to pay plaintiff."

The Court of Appeals affirmed the ruling of the lower court. Hence, this petition. Petitioner assigns the following errors:

## **I**

RESPONDENT COURT OF APPEALS COMMITTED AN ERROR OF LAW IN RULING AS VALID AND LEGAL THE FOLLOWING PROVISION ON INTEREST IN THE DINERS CARD CONTRACT, TO WIT:

PAYMENT OF CHARGES - xxx xxx xxx The Cardholder agrees to pay interest per annum at 3% plus the prime rate of Security Bank and Trust Company. xxx xxx xxx Provided that if there occurs any change in the prevailing market rates the new interest rate shall be the guiding rate of computing the interest due on the outstanding obligation without need of serving notice to the Cardholder other than the required posting on the monthly statement served to the Cardholder.

The Cardholder hereby authorizes Security Diners to correspondingly increase the rate of such interest in the event of changes in prevailing market rates and to charge additional service fees as may be deemed necessary in order to maintain its service to the Cardholder.

## **II**

RESPONDENT COURT OF APPEALS COMMITTED AN ERROR OF LAW IN RULING IN EFFECT THAT PRIVATE RESPONDENT'S STATEMENT OF ACCOUNT (Exh. "2") AS A JUDICIAL ADMISSION THAT MRS. POLOTAN HAD ALREADY PAID COULD BE CONTRADICTED WITHOUT THE PRIVATE RESPONDENT LAYING THE PROPER BASIS FOR THE INTRODUCTION OF CONTRARY EVIDENCE;

## **III**

RESPONDENT COURT OF APPEALS COMMITTED A GRIEVOUS ERROR OF FACT IN FINDING AS CREDIBLE THE ILLOGICAL AND ABSURD EXPLANATION OF PRIVATE RESPONDENT'S MR. VICENTE;

## **IV**

RESPONDENT COURT OF APPEALS ERRED IN NOT AWARDING DAMAGES TO PETITIONER.

In the first assignment of error, petitioner argues that the provision on interest rate is "obscure and ambiguous and not susceptible of reasonable interpretation"

particularly the terms "prime rate", "prevailing market rate" and "guiding rate". In effect, there was no meeting of minds. As such, this being a contract of adhesion, any ambiguity should be resolved against the one who caused it.

Petitioner added that the said provision was also illegal as it violated the laws and Central Bank Circulars. While said proviso allowed for the escalation of interest, it did not allow for a downward adjustment of the same.

In his second and third assignment of error, petitioner claimed that Diners Club admitted, through its statement of account, that petitioner's wife, Mrs. Polotan, had no more account with it. But then, he claimed that the lower court and the Court of Appeals allowed the testimony of one Mr. Vicente explaining that the reason why Mrs. Polotan had no more account with it was that being a supplementary cardholder, her account was consolidated with that of petitioner in accordance with its new policy. He argued that since Diners Club admitted that Mrs. Polotan had no more account with it, the only way it could contradict such admission was by declaring that the same was a result of a palpable mistake in accordance with Section 4 of Rule 129 of the Revised Rules on Evidence. In admitting said explanation, the lower court and the Court of Appeals violated the rule on the weight to be accorded conflicting evidence. In effect, petitioner insists that both courts favored the uncorroborated testimonial evidence of Mr. Vicente over the documentary evidence presented by petitioner and admitted by Diners Club.

In its fourth assignment of error, petitioner claimed that he should have been awarded damages because of Diners Club's bad faith.

This Court finds petitioner's contentions without merit.

The issues presented by petitioner are clearly questions of law. Notwithstanding petitioner's submission of the above errors, however, the core issue is basically one of fact. This case stemmed from a simple complaint for collection of sum of money. The lower court and the Court of Appeals found that petitioner indeed owed Diners Club the amount being demanded.

In the case of *Reyes v. CA*,<sup>[2]</sup> this Court held that factual findings of the trial court, adopted and confirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal. The exceptions to this rule are as follows: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is a grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.

Only a clear showing that any of the above-cited exceptions exists would justify a