



SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **November 13, 2019**, which reads as follows:

“**G.R. No. 247776 (Francisco G. Chan v. Bank of the Philippine Islands)**. - Before Us is a Petition for Review on *Certiorari*<sup>1</sup> filed by petitioner Francisco G. Chan (Chan) assailing the Decision<sup>2</sup> dated November 16, 2018 and Resolution<sup>3</sup> dated June 14, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 107366, which reversed and set aside the Decision<sup>4</sup> dated May 26, 2016 of the Regional Trial Court of Makati City, Branch 145 (RTC) in Civil Case No. 14-817. The RTC granted the demurrer to evidence filed by Chan and dismissed the complaint for sum of money of respondent Bank of the Philippine Islands (BPI).<sup>5</sup>

BPI extended credit accommodation to Chan through a credit card under Customer Number 020-100-3-00-1180769. Chan used the card for various purchases amounting to ₱729,119.48<sup>6</sup> based on his Statement of Account dated March 12, 2014. The Statement of Account is broken down as follows:

Item	Balance	Installment Due	Finance Charge	Late Payment Charge	Total
Petron	448,949.16	0.00	15,264.27	6,205.32	470,418.75
Delta	120,157.88	39,252.58	750.43	6,093.87	166,254.76
Gold	19,042.57	72,328.40	155.62	919.38	92,445.97
Total	<b>588,149.61</b>	<b>111,580.98</b>	<b>16,170.32</b>	<b>13,218.57</b>	<b>729,119.48<sup>7</sup></b>

BPI demanded payment from Chan but he did not comply. Thus, BPI filed a complaint for sum of money against him before the RTC.<sup>8</sup>

<sup>1</sup> *Rollo*, pp. 7-15.  
<sup>2</sup> Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ramon R. Garcia and Jhosep Y. Lopez, concurring; id. at 23-34.  
<sup>3</sup> Id. at 36-38.  
<sup>4</sup> Penned by Presiding Judge Carlito B. Calpatura; id. at 16-21.  
<sup>5</sup> Id. at 21.  
<sup>6</sup> Id. at 30.  
<sup>7</sup> Id.  
<sup>8</sup> Id. at 23-24.

After BPI formally offered its evidence, the RTC excluded the following: (1) Special Power of Attorney (SPA) to prove that Ma. Grace Coros (Coros), BPI's account specialist, was authorized to testify against Chan (Exhibit B); (2) Terms and Conditions of Chan's card (Exhibit C); (3) April 14, 2013 to March 12, 2014 Statements of Account (Exhibits D to K and M);<sup>9</sup> and (4) Demand Letter (Exhibit L).<sup>10</sup> Exhibit B was excluded for being irrelevant because Coros is not listed in the SPA as one of BPI's authorized representatives. Exhibit C was not admitted because Chan did not sign it.<sup>11</sup> Exhibits D to K and M were excluded because Coros admitted having no personal knowledge of the preparation of the statements. Moreover, the parties stipulated that Chan did not sign the terms and conditions, and neither the terms and conditions nor the statements of account indicate the 3.25% finance charge and 6% late penalty charge.<sup>12</sup> As for Exhibit L, it was excluded because there is no showing that it was received by Chan. In addition, the person who prepared it and executed its affidavit of service were not presented as witnesses.<sup>13</sup>

BPI made a formal tender of excluded evidence. Chan filed a demurrer to evidence and moved for the dismissal of the complaint. Chan argued that the complaint should be dismissed due to the exclusion of the evidence presented by BPI to prove his non-payment.<sup>14</sup>

On May 26, 2016, the RTC granted the demurrer to evidence and dismissed the case for insufficiency of evidence. It also dismissed Chan's counterclaim for lack of evidence. According to the RTC, BPI's right to collect from Chan was not established due to the exclusion of the statements of account and the demand letter. BPI failed to prove the material allegation of its complaint.<sup>15</sup> BPI appealed to the CA.

On November 16, 2018, the CA partially granted the appeal and ordered Chan to pay BPI the principal sum of ₱729,119.48 plus one percent (1%) interest per month and one percent (1%) penalty charge per month from the date of demand on March 20, 2014 until full payment.<sup>16</sup> The CA held that the statements of account were admissible in evidence. Pursuant to Section 1, Rule 8 of the Rules on Electronic Evidence, a computer-generated statement of account, which was a regular practice of BPI, is excluded from the rule on hearsay evidence.<sup>17</sup> Further, Chan did not question the authenticity of the statements or the existence of his obligation. He only assailed the accuracy of the amount due and insisted he was not in default but did not question the

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<sup>9</sup> Id. at 17.  
<sup>10</sup> Id. at 20.  
<sup>11</sup> Id. at 17.  
<sup>12</sup> Id. at 18.  
<sup>13</sup> Id. at 20.  
<sup>14</sup> Id. at 25.  
<sup>15</sup> Id. at 21.  
<sup>16</sup> Id. at 33.  
<sup>17</sup> Id. at 28.

existence of his obligation.<sup>18</sup> However, the CA deemed it proper to reduce the interest and finance charges.<sup>19</sup>

Chan filed a motion for reconsideration but it was denied by the CA. Chan thus filed a Petition for Review on *Certiorari* before this Court to assail the ruling of the CA. The sole issue before Us is whether the CA erred in reversing the RTC and ordering Chan to pay BPI.

We partially grant the petition.

We agree with the CA that the hearsay evidence rule is inapplicable. Section 1, Rule 8 of the Rules on Electronic Evidence expressly exempts from the rule on hearsay evidence memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses. Coros, being an officer of BPI who had custody of the documents, was qualified to testify thereon.

More importantly, the parties stipulated during pre-trial that Chan used the credit card. Hence, the CA is correct that he is deemed to have admitted his liability for the principal amount.

However, the CA erred in simply lowering the interest and the penalty charge claimed by BPI. BPI stipulated that Chan did not sign the credit card's terms and conditions and that the interest charge and the penalty charge are not even indicated in the terms and conditions.<sup>20</sup> Article 1956 of the Civil Code states that no interest shall be due unless it has been expressly stipulated in writing. Consequently, even penalties must be agreed upon in writing by the parties.<sup>21</sup> Therefore, BPI cannot collect the stipulated interest and penalty charge against Chan because there is no proof that he agreed to it. His use of the credit card is not tantamount to his agreement to these charges. As such, the principal amount to be paid by Chan must exclude the finance charges and late payment charges.<sup>22</sup> This leaves a balance of ₱699,730.59.<sup>23</sup>

<sup>18</sup> Id. at 28-29.

<sup>19</sup> Id. at 32-33.

<sup>20</sup> Id. at 17.

<sup>21</sup> See *Lim v. Development Bank of the Philippines*, 713 Phil. 24, 48 (2013).

<sup>22</sup> See *Spouses Yulo v. Bank of the Philippine Islands*, G.R. No. 217044, January 16, 2019.

<sup>23</sup> Id. at 30. Outstanding Balance of ₱729,119.48 – (Finance Charges and Other Fees of ₱16,170.32 + Late Payment Charges of ₱13,218.57) = ₱699,730.59.

In addition to the principal amount, Chan is liable for legal interest under Art. 2209<sup>24</sup> of the Civil Code. Also, the interest due on the principal amount accruing as of judicial demand shall earn legal interest at the prevailing rate prescribed by the *Bangko Sentral ng Pilipinas* from the time of judicial demand until full payment. This is in accordance with the guidelines laid down in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*<sup>25</sup> Since BPI made a demand upon Chan on March 20, 2014, the prevailing rate of legal interest applicable in this case is six percent (6%) *per annum*.<sup>26</sup>

**WHEREFORE**, the petition is **PARTIALLY GRANTED**. The Decision dated November 16, 2018 and the Resolution dated June 14, 2019 of the Court of Appeals in CA-G.R. CV No. 107366 are hereby **AFFIRMED with MODIFICATION** in that petitioner Francisco G. Chan is **ORDERED** to pay respondent Bank of the Philippine Islands the principal amount of ₱699,730.59 plus legal interest of six percent (6%) *per annum* from the date of demand on March 20, 2014 until full payment. The interest due on the principal amount shall also earn legal interest of six percent (6%) *per annum* from the filing of the complaint until full payment.

**SO ORDERED.** (*Leonen, J., on official business; Gesmundo, J., designated as Acting Chairperson of the Third Division per Special Order No. 2737; Lazaro-Javier, J., designated as Additional Member of the Third Division per Special Order No. 2728, on official leave.*)

Very truly yours,

*Misael DC Batt*  
**MISAELO DOMINGO C. BATTUNG III**  
Deputy Division Clerk of Court

*gm*  
11/24/19

<sup>24</sup> CIVIL CODE, Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum.

<sup>25</sup> G.R. No. 225433, August 28, 2019.

<sup>26</sup> See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

Atty. Tristram B. Zoleta  
Counsel for Petitioner  
18/F Suite 1804 Manila Astral Tower  
1330 Taft Avenue cor. Padre Faura Sts.  
1000 Ermita, Manila

COURT OF APPEALS  
CA G.R. CV No. 107366  
1000 Manila

Atty. Simeon P. Madrid  
Counsel for Respondent  
S.P. MADRID & ASSOCIATES  
Unit 1907 & 1911 19/F Herrera Tower  
V.A. Rufino cor. Valero Streets  
1200 Makati City

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 145, Makati City  
(Civil Case No. 14-817)

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