

AMERICAN EXPRESS COMPANY, INC., PLAINTIFF-APPELLEE, VS. CIRIO H. SANTIAGO, DEFENDANT-APPELLANT.

G.R. No. L-27058. January 17, 1973

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case is on appeal directly to this Court by the defendant from the decision of the Court of First Instance of Manila in its Civil Case No. 48318, sentencing him to pay the plaintiff the amount of \$ 15,297.53, plus interest at the legal rate from the date the complaint was filed and 25% of the amount due by way of attorneys fees.

The essential facts were the subject of stipulation in the court below after the parties had filed their respective pleadings and the court had scheduled the case for pre-trial.

The plaintiff is a foreign corporation with main office in New York City and a branch office in the Philippines which is duly, registered and licensed to transact business as a travel agent. As part of such business and for the convenience of its customers the plaintiff has adopted a credit system known as the American Express Credit Card whereby upon application of a customer the plaintiff may issue to him a credit card by means of which he may enjoy charge privileges in establishments all over the world listed in directories issued periodically by the company for the guidance of its card holders. On November 6, 1959 the defendant applied for one such card to the plaintiff at the latter's office in New York City and upon such application the corresponding American Express Credit Card was issued to him. Hereafter and before the card expired and was cancelled as of June 20, 1961 the defendant used it in making purchases and obtaining services on credit in various foreign countries, such as Hongkong in June of 1960, and France, Switzerland, Germany, Spain, Italy and Hongkong in May and June of 1961. The credit charges he obtained ran up to a total of \$15,297.53. In September 1961 the plaintiff made demands for payment upon the defendant, and after fee latter refused to pay filed the present suit for collection.

His main defense raised by the defendant in his answer to the complaint and now reiterated in his brief as appellant before this Court is that the appellee has no cause of action against him, not being the real party-in-interest, on the allegation that the credit card issued by the appellee was merely to introduce the appellant to the different establishments from which he made purchases and obtained services on credit and that it was these establishments who should properly have brought the suit.

The court below, however, found as a fact — and this is not disputed here — that the stores or establishments which sold goods and services to the appellant on credit "bills the American Express Corporation which settles the accounts directly and, in turn bills the customers who possess the credit cards." The court added: "In other words, with the possession of the credit card, the possessor could purchase on credit from any store, and he could do that because the purchases on credit are backed-up by the American Express Corporation thru the credit card. This corporation pays for the purchase and the defendant has to reimburse such payment to the owner of the credit card; in this case to the plaintiff."

The appellant presented no evidence in his behalf, only relying on the stipulation of facts. On the other hand the

appellee presented as evidence not only the application signed by the appellant for the issuance of the credit card, manifesting conformity to the condition therein stated but also the testimony, in the form of deposition upon written interrogatories, of its employee, George R. de Salvio, who described the operation of the company's credit card system as follows:

"A.-6: We appoint service establishments who accept our credit card. They perform services or deliver goods to our cardholder's and in turn they bill American Express Company for these goods and services. The American Express Company reimburses the establishments and in turn bills the credit card holders for whom the goods were delivered or services performed. The credit card holders are sent a statement once a month supported by all original charge forms.

X X X

X X X

X X X

"A.-8: The service establishments submit charges and summaries to the American Express Company and we pay for these summaries, less the discount, once a week.

"Question 9: After the cardholder's accounts are paid to the establishments concerned by plaintiff, what obligation, if any, has the cardholder to plaintiff concerning the accounts thus paid by plaintiff?

"A.-9: He is obligated to pay the American Express Company upon receipt of this monthly billing."

On the same point the witness also stated that the charge orders of the appellant were in due course of business submitted by the establishments concerned to the appellee for payment and paid by the latter. There can be no doubt, therefore, that the appellee is the creditor of the appellant and as such is the proper party to file this suit for collection.

The other points raised by the appellant in his brief have to do with certain objections of his to a number of questions directed by the appellee to its employee and witness, George R. de Salvio, in the latter's deposition taken upon written interrogatories. The objections were mostly on technical grounds, such as, for example, that the matter sought to be elicited from the witness had already been, admitted in the stipulation of facts, or that it was irrelevant and immaterial; that the question was leading, or vague, or sought to obtain from the witness a conclusion. We have considered the nature and the phrasing of the questions objected to and We find that the objections are either groundless or have no material bearing on the merits of the case.

The appellant also objected to the admission of the aforesaid deposition as a whole on the ground that the procedure prescribed in Section 20 of Rule 24 was not followed, particularly that portion which states that the officer who took the deposition shall "promptly file it with the court in which the action is pending or send it by registered mail to the Clerk of Court thereof for filing." The non-compliance with this rule, according to the appellant, consists in the fact that it was the appellee's counsel who picked up the deposition from the Department of Foreign Affairs and delivered it to the Clerk of Court instead of its being filed directly with the latter.

The appellee's explanation in this regard, which stands uncontradicted and which the trial court considered satisfactory, is as follows:

"X X X

X X X

X X X

"x x x. The Philippine Consulate in New York by letter dated October 8, 1965 notified the undersigned of the transmission on said date of the deposition 'through the Department of Foreign Affairs to the Clerk of Court;' yet, it was verified from the Clerk of Court that as of November 19, 1965 the deposition was not yet received. Upon inquiry with the Department of Foreign Affairs, the latter advised the undersigned that it received the sealed envelop from the consulate on October 20, 1965, and turned it over on October 25, 1965, to its record section, which until November 19, 1965, had done nothing towards transmitting the deposition to the court. This prompted the Department of Foreign Affairs to request the undersigned to take care of having the deposition filed with the court, which the undersigned consented to do, and did by means of their letter to the Clerk of Court dated November 19, 1965 (Exh. G-I) only to expedite filing of the deposition and 'to accommodate the Department of Foreign Affairs.' The undersigned received the sealed envelope from the Department of Foreign Affairs and delivered it in exactly the same condition to the Clerk of Court."

"x x x

X X X

x x x."

We do not believe that the manner in which the deposition was delivered to the Clerk of Court, as above related, so affected its integrity as to render it inadmissible. After all there is no pretense here that the appellant did not contract the indebtedness for the collection of which he is being sued or that the same has been paid, the only important issue posed in this appeal being whether or not the appellee is the real party-in-interest. On this score the finding of the lower court, supported as it is by the evidence before it, is conclusive.

WHEREFORE the judgment appealed from is affirmed with modification as to the principal amount to be paid by the appellant, which is reduced to US \$14,952.31 in view of the waiver by the appellee of its claim to US \$345.22, and the further modification that payment of the said amount, together with the attorneys fees and costs, both in this instance and below, should be made in Philippine currency according to the prevailing rate of exchange at the time of such payment

Conception, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio, and Esguerra JJ., concur.

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