

SPOUSES LUIS M. ERMITAÑO AND MANUELITA C. ERMITAÑO, PETITIONERS, VS. THE COURT OF APPEALS AND BPI EXPRESS CARD CORP., RESPONDENTS.

G.R. No. 127246. April 21, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review under Rule 45, of the Rules of Court, seeks to set aside the decision of the Court of Appeals in C.A.-G.R. CV No. 47888 reversing the trial court's[1] judgment in Civil Case No. 61357, as well as the resolution of the Court of Appeals denying petitioners' motion for reconsideration.

In dispute is the validity of the stipulation embodied in the standard application form for credit cards furnished by private respondent. The stipulation makes the cardholder liable for purchases made through his lost or stolen credit card until (a) notice of such loss or theft has been given to private respondent and (b) the latter has communicated such loss or theft to its member-establishments.

The facts, as found by the trial court, are not disputed.

Petitioner Luis Ermitaño applied for a credit card from private respondent BPI Express Card Corp. (BECC) on October 8, 1986 with his wife, Manuelita, as extension cardholder. The spouses were given credit cards with a credit limit of P10,000.00. They often exceeded this credit limit without protest from BECC.

On August 29, 1989, Manuelita's bag was snatched from her as she was shopping at the Greenbelt Mall in Makati, Metro Manila. Among the items inside the bag was her BECC credit card. That same night she informed, by telephone, BECC of the loss. The call was received by BECC offices through a certain Gina Banzon. This was followed by a letter dated August 30, 1989. She also surrendered Luis' credit card and requested for replacement cards. In her letter, Manuelita stated that she "shall not be responsible for any and all charges incurred [through the use of the lost card] after August 29, 1989." [2]

However, when Luis received his monthly billing statement from BECC dated September 20, 1989, the charges included amounts for purchases made on August 30, 1989 through Manuelita's lost card. Two purchases were made, one amounting to P2,350.05 and the other, P607.50. Manuelita received a billing statement dated October 20, 1989 which required her to immediately pay the total amount of P3,197.70 covering the same (unauthorized) purchases. Manuelita again wrote BECC disclaiming responsibility for those charges, which were made after she had served BECC with notice of the loss of her card.

Despite the spouses' refusal to pay and the fact that they repeatedly exceeded their monthly credit limit, BECC sent them a notice dated December 29, 1989 stating that their cards had been renewed until March 1991. Notwithstanding this, however, BECC continued to include in the spouses' billing statements those purchases made through Manuelita's lost card. Luis protested this billing in his letter dated June 20, 1990.

However, BECC, in a letter dated July 13, 1990, pointed out to Luis the following stipulation in their contract:

"In the event the card is lost or stolen, the cardholder agrees to immediately report its loss or theft in writing to BECC ... purchases made/incurred arising from the use of the lost/stolen card shall be for the exclusive account of the cardholder and the cardholder continues to be liable for the purchases made through the use of the lost/stolen BPI Express Card until after such notice has been given to BECC and the latter has communicated such loss/theft to its member establishments." [3]

Pursuant to this stipulation, BECC held Luis liable for the amount of P3,197.70 incurred through the use of his wife's lost card, exclusive of interest and penalty charges.

In his reply dated July 18, 1990, Luis stressed that the contract BECC was referring to was a contract of adhesion and warned that if BECC insisted on charging him and his wife for the unauthorized purchases, they will sue BECC for damages. This warning notwithstanding, BECC continued to bill the spouses for said purchases. [4]

On April 10, 1991, Luis used his credit card to purchase gasoline at a Caltex station. The latter, however, dishonored his card. In reply to Luis' demand for an explanation, BECC wrote that it transferred the balance of his old credit card to his new one, including the unauthorized charges. Consequently, his outstanding balance exceeded his credit limit of P10,000.00. He was informed that his credit card had not been cancelled but, since he exceeded his credit limit, he could not avail of his credit privileges.

Once more, Luis pointed out that notice of the lost card was given to BECC before the purchases were made.

Subsequently, BECC cancelled the spouses' credit cards and advised them to settle the account immediately or risk being sued for collection of said account.

Constrained, petitioners sued BECC for damages. The trial court ruled in their favor, stating that there was a waiver on the part of BECC in enforcing the spouses' liability, as indicated by the following circumstances:

- (1) Its failure to inform the spouses that the unauthorized charges on the lost card would be carried over to their replacement cards; and
- (2) Its act of unqualifiedly replacing the lost card and Luis' card which were both surrendered by the spouses, even after the spouses unequivocally denied liability for the unauthorized purchases.

The trial court further noted that the suspension of the spouses' credit cards was based upon the "lame excuse" that the credit limit had been exceeded, despite the fact that BECC allowed the spouses previously to exceed their credit limit, even for almost two years after the loss of Manuelita's card. Moreover, the credit limit was exceeded only after BECC added the unauthorized purchases to the liability of the spouses. BECC continued to send the spouses separate billing statements that included the unauthorized purchases, with interest and penalty charges.

The trial court opined that the only purpose for the suspension of the spouses' credit privileges was to compel them to pay for the unauthorized purchases. The trial court ruled that the latter portion of the condition in the parties' contract, which states that liability for purchases made after a card is lost or stolen shall be for the account of the cardholder until after notice of the loss or theft has been given to BECC and after the latter has informed its member establishments, is void for being contrary to public policy and for being dependent upon the sole will of the debtor. [5]

Moreover, the trial court observed that the contract between BECC and the Ermitaños was a contract of adhesion, whose terms must be construed strictly against BECC, the party that prepared it.

The dispositive portion of the trial court's decision reads:

"WHEREFORE, and IN VIEW OF THE ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiffs, Spouses Luis M. Ermitaño and Manuelita C. Ermitaño and against defendant

BPI Express Card Corporation:

- Ordering the said defendant to pay the plaintiffs the sum of P100,000.00 as moral damages.
- Ordering said defendant to pay the plaintiffs the sum of P50,000.00 as exemplary damages.
- Ordering said defendant to pay the plaintiffs the sum equivalent to twenty per cent (20%) of the amounts abovementioned as and for attorney's fees and expenses of litigation; and
- Ordering the said defendant to pay the costs of suit.

SO ORDERED."

But, on appeal this decision was reversed. The Court of Appeals stated that the spouses should be bound by the contract, even though it was one of adhesion. It also said that Luis, being a lawyer, had "all the tools to drive a hard bargain had he wanted to." [6] It cited the case of *Serra v. Court of Appeals* [7] wherein this Court ruled that contracts of adhesion are as binding as ordinary contracts. The petitioner in *Serra* was a CPA-lawyer, "a highly educated man ... who should have been more cautious in (his) transactions..." [8] The Court of Appeals therefore disposed of the appeal as follows:

"THE FOREGOING CONSIDERED, the contested decision is REVERSED. Plaintiffs/appellees are hereby directed to pay the defendant/appellant the amount of P3,197.70 with 3% interest per month and an additional 3% penalty equivalent to the amount due every month until full payment. Without cost.

SO ORDERED." [9]

Hence, this recourse by petitioners, in which they claim that the Court of Appeals gravely erred in:

- (i) Ruling that petitioners should be bound by the stipulations contained in the credit card application -- a document wholly prepared by private respondent itself -- taking into consideration the professional credentials of petitioner Luis M. Ermitaño;
- (ii) Relying on the case of *Serra v. Court of Appeals*, 229 SCRA 60, because unlike that case, petitioners have no chance at all to contest the stipulations appearing in the credit card application that was drafted entirely by private respondent, thus, a clear contract of adhesion;
- (iii) Ruling that private respondent is not estopped by its subsequent acts after having been notified of the loss/theft of the credit card issued to petitioners; and
- (iv) Holding that the onerous and unconscionable condition in the credit card application that the cardholder continues to be liable for purchases made on lost or stolen credit cards not only after such notice has been given to appellant but also after the latter has communicated such loss/ theft to its member establishments without any specific time or period -- is valid. [10]

At the outset, we note that the contract between the parties in this case is indeed a contract of adhesion, so-called because its terms are prepared by only one party while the other party merely affixes his signature signifying his adhesion thereto. [11] Such contracts are not void in themselves. [12] They are as binding as ordinary contracts. Parties who enter into such contracts are free to reject the stipulations entirely. This Court, however, will not hesitate to rule out blind adherence to such contracts if they prove to be too one-sided under the attendant facts and circumstances. [13]

The resolution of this petition, in our view, hinges on the validity and fairness of the stipulation on notice required by private respondent in case of loss or theft of a BECC-issued credit card. Because of the peculiar nature of contracts of adhesion, the validity thereof must be determined in light of the circumstances under which the

stipulation is intended to apply.[14]

The stipulation in question reads:

"In the event the card is lost or stolen, the cardholder agrees to immediately report its loss or theft in writing to BECC ... purchases made/incurred arising from the use of the lost/stolen card shall be for the exclusive account of the cardholder and the cardholder continues to be liable for the purchases made through the use of the lost/stolen BPI Express Card until after such notice has been given t

o BECC and the latter has communicated such loss/theft to its member establishments."

For the cardholder to be absolved from liability for unauthorized purchases made through his lost or stolen card, two steps must be followed: (1) the cardholder must give written notice to BECC, and (2) BECC must notify its member establishments of such loss or theft, which, naturally, it may only do upon receipt of a notice from the cardholder. Both the cardholder and BECC, then, have a responsibility to perform, in order to free the cardholder from any liability arising from the use of a lost or stolen card.

In this case, the cardholder, Manuelita, has complied with what was required of her under the contract with BECC. She immediately notified BECC of the loss of her card on the same day it was lost and, the following day, she sent a written notice of the loss to BECC. That she gave such notices to BECC is admitted by BECC in the letter sent to Luis by Roberto L. Maniquiz, head of BECC's Collection Department.[15]

Having thus performed her part of the notification procedure, it was reasonable for Manuelita -- and Luis, for that matter -- to expect that BECC would perform its part of the procedure, which is to forthwith notify its member-establishments. It is not unreasonable to assume that BECC would do this immediately, precisely to avoid any unauthorized charges.

Clearly, what happened in this case was that BECC failed to notify promptly the establishment in which the unauthorized purchases were made with the use of Manuelita's lost card. Thus, Manuelita was being liable for those purchases, even if there is no showing that Manuelita herself had signed for said purchases, and after notice by her concerning her card's loss was already given to BECC.

BECC asserts that the period that elapsed from the time of the loss of the card to the time of its unauthorized use was too short such that "it would be next to impossible for respondent to notify all its member-establishments regarding the fact of the loss." [16] Nothing, however, prevents said member-establishments from observing verification procedures including ascertaining the genuine signature and proper identification of the purported purchaser using the credit card.

BECC states that, "between two persons who are negligent, the one who made the wrong possible should bear the loss." We take this to be an admission that negligence had occurred. In effect, BECC is saying that the company, and the member-establishments or the petitioners could be negligent. However, according to BECC, petitioners should be the ones to bear the loss since it was they who made possible the commission of a wrong. This conclusion, however, is self-serving and obviously untenable.

From one perspective, it was not petitioners who made possible the commission of the wrong. It could be BECC for its failure to immediately notify its member-establishments, who appear lacking in care or instruction by BECC in proper procedures, regarding signatures and the identification of card users at the point of actual purchase of goods or services. For how else could an unauthorized person succeed to use Manuelita's lost card?

The cardholder was no longer in control of the procedure after it has notified BECC of the card's loss or theft. It was already BECC's responsibility to inform its member-establishments of the loss or theft of the card at the

soonest possible time. We note that BECC is not a neophyte financial institution, unaware of the intricacies and risks of providing credit privileges to a large number of people. It should have anticipated an occurrence such as the one in this case and devised effective ways and means to prevent it, or otherwise insure itself against such risk.

Prompt notice by the cardholder to the credit card company of the loss or theft of his card should be enough to relieve the former of any liability occasioned by the unauthorized use of his lost or stolen card. The questioned stipulation in this case, which still requires the cardholder to wait until the credit card company has notified all its member-establishments, puts the cardholder at the mercy of the credit card company which may delay indefinitely the notification of its members to minimize if not to eliminate the possibility of incurring any loss from unauthorized purchases. Or, as in this case, the credit card company may for some reason fail to promptly notify its members through absolutely no fault of the cardholder. To require the cardholder to still pay for unauthorized purchases after he has given prompt notice of the loss or theft of his card to the credit card company would simply be unfair and unjust. The Court cannot give its assent to such a stipulation which could clearly run against public policy.[17]

On the matter of the damages petitioners are seeking, we must delete the award of exemplary damages, absent any clear showing that BECC acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner, as required by Article 2232 of the Civil Code. We likewise reduce the amount of moral damages to P50,000.00, considering the circumstances of the parties to the case.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CV No. 47888 is hereby REVERSED and the decision of the Regional Trial Court, Branch 157, Pasig City in Civil Case No. 61375 is REINSTATED, with the MODIFICATION that the award of exemplary damages in the amount of P50,000.00 is hereby deleted; and the amount of moral damages is reduced to P50,000.00; but private respondent is further ordered to pay P25,000 as attorney's fees and litigation expenses.

Costs against private respondents.

SO ORDERED.

Bellosillo (Chairman), Puno, Mendoza, and Buena, JJ., concur.

[1]Regional Trial Court, Branch 157, Pasig City.

[2] Rollo, p. 204.

[3]Id., p. 190.

[4]Id., p. 205.

[5]CIVIL CODE, Art. 1182.

[6]Rollo, p. 48.

[7]229 SCRA 60 (1994).

[8]Serra v. Court of Appeals, *supra*, at 67.

[9]Rollo, p. 51.

[10]Id., pp. 24-25.

[11]Phil. Commercial International Bank v. Court of Appeals, 255 SCRA 299 (1996).

[12]Palmares v. Court of Appeals, G.R. No. 126490, March 31, 1998.

[13]See note 11, supra.

[14]Supra.

[15]Rollo, p. 68. In his letter, Maniquiz said:

"Verification of our records showed that your wife lost her card on August 29, 1990, it was verbally reported to us on the same day, August 29, 1990 and was confirmed in writing on August 30, 1990, the following day. xxx"

[16] Rollo, p. 307.

[17]Civil Code, Article 1306.

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