MANUEL C. ACOL, SUBSTITUTED BY MANUEL RAYMOND ACOL, PETITIONER, VS. PHILIPPINE COMMERCIAL CREDIT CARD INCORPORATED,RESPONDENT.

G.R. NO. 135149. July 25, 2006

Ponente: CORONA, J.

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CORONA, J.:

In this petition for review on certiorari from a decision[1] and a resolution[2] of the Court of Appeals, petitioner assails as contrary to public policy a particular stipulation contained in the terms and conditions governing the use of his Bankard credit card.

The facts of the case follow.[3]

On August 20, 1982, petitioner Manuel Acol applied with respondent for a Bankard credit card and extension.[4] Both were issued to him shortly thereafter. For several years, he regularly used this card, purchasing from respondent's accredited establishments and paying the corresponding charges for such purchases.

Late in the evening of April 18, 1987, petitioner discovered the loss of his credit card. After exhausting all efforts to find it, the first hour of the following day, April 19, 1987, a Sunday, he called up respondent's office and reported the loss. The representative he spoke to told him that his card would be immediately included in the circular of lost cards.

Again, on April 20, 1987, petitioner called up respondent to reiterate his report on the loss of his card. He inquired if there were other requirements he needed to comply with in connection with the loss. Respondent's representative advised him to put into writing the notice of loss and to submit it, together with the extension cards of his wife and daughter. Petitioner promptly wrote a letter dated April 20, 1987 confirming the loss and sent it to respondent which received it on April 22, 1987.

On April 21, 1987, a day before receiving the written notice, respondent issued a special cancellation bulletin informing its accredited establishments of the loss of the cards of the enumerated holders, including petitioner's.

Unfortunately, it turned out that somebody used petitioner's card on April 19 and 20, 1987 to buy commodities worth P76,067.28. The accredited establishments reported the invoices for such purchases to respondent which then billed petitioner for that amount.

Petitioner informed respondent he would not pay for the purchases made after April 19, 1987, the day he notified respondent of the loss. Immediately after receiving his statement of account for the period ending April 30, 1987, petitioner confirmed his exceptions to the billing in writing.

At first, respondent agreed to reverse the disputed billings, pending the result of an investigation of petitioner's account. After the investigation and review, the respondent, through its Executive Vice-President and General Manager, Atty. Serapio S. Gabriel, confirmed that it was not the petitioner who used his Bankard on April 19 and

20, 1987.

Nonetheless, respondent reversed its earlier position to delete the disputed billings and insisted on collecting within 15 days from notice. It alleged that it was the most "practicable procedure and policy of the company." It cited provision no. 1 of the "Terms and Conditions Governing The Issuance and Use of the Bankard" found at the back of the application form:

> xxx Holder's responsibility for all charges made through the use of the card shall continue until the expiration or its return to the Card Issuer or until a reasonable time after receipt by the Card Issuer of written notice of loss of the Card and its actual inclusion in the Cancellation Bulletin. xxx

Petitioner, through his lawyer, wrote respondent to deny liability for the disputed charges. In short order, however, respondent filed suit in the Regional Trial Court (RTC) of Manila[5] against petitioner for the collection of P76,067.28, plus interest and penalty charges.[6]

After considering the evidence, the trial court dismissed the case and ordered the respondent-plaintiff to pay petitioner attorney's fees of P10,000 and the costs of the suit.[7] The RTC denied respondent's motion for reconsideration.[8]

Respondent appealed to the Court of Appeals, which, while not disputing factual findings, reversed the RTC ruling and held petitioner liable for the P76,067.28. The Court of Appeals denied petitioner's motion for reconsideration. Thus, this petition.

The basic issue in this case is whether or not the contested provision in the contract (provision no. 1 of the Terms and Conditions) was valid and binding on the petitioner, given that the contract was one of adhesion.

The petition has merit.

The facts of this case are virtually identical with those of Ermitaño v. Court of Appeals.[9] In that case, petitioner-extension cardholder Manuelita Ermitaño lost her card on the night of August 29, 1989 when her bag was snatched in Makati. That very same evening, she reported the loss and immediately thereafter sent written notice to the respondent credit card company, BPI Express Card Corp. (BECC).

The verbal and written notices notwithstanding, respondent insisted on billing petitioner Luis Ermitaño, Manuelita's husband and the principal cardholder, for purchases made after the date of the loss totalling P3,197.70. To justify the billing, respondent BECC cited 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. (emphasis ours)

It is worth noting that, just like the assailed provision in this case, the stipulation devised by respondent BECC required two conditions before the cardholder could be relieved of responsibility from unauthorized charges: (1) the receipt by the card issuer of a written notice from the cardholder regarding the loss and (2) the notification to the issuer's accredited establishments regarding such loss.

We struck down this stipulation as contrary to public policy and granted the Ermitaños' petition:

> 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

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> 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 the 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. (emphasis ours)

In this case, the stipulation in question is just as repugnant to public policy as that in Ermitaño. As petitioner points out, the effectivity of the cancellation of the lost card rests on an act entirely beyond the control of the cardholder. Worse, the phrase "after a reasonable time" gives the issuer the opportunity to actually profit from unauthorized charges despite receipt of immediate written notice from the cardholder.

Under such a stipulation, petitioner could have theoretically done everything in his power to give respondent the required written notice. But if respondent took a "reasonable" time (which could be indefinite) to include the card in its cancellation bulletin, it could still hold the cardholder liable for whatever unauthorized charges were incurred within that span of time. This would have been truly iniquitous, considering the amount respondent wanted to hold petitioner liable for.

Article 1306 of the Civil Code[10] prohibits contracting parties from establishing stipulations contrary to public policy. The assailed provision was just such a stipulation. It is without any hesitation therefore that we strike it down.

WHEREFORE, the petition is hereby GRANTED. The assailed decision of the Court of Appeals in CA-G.R. CV No. 39590 is reversed. The decision of the Regional Trial Court of Manila on September 30, 1991 in Civil Case No. 88-44115 is REINSTATED and the complaint filed by Philippine Commercial Credit Card Incorporated against petitioner is dismissed.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[1] Decision dated January 19, 1998 in CA-G.R. CV No. 39590, penned by Associate Justice Hilarion L. Aquino (retired) and concurred in by Associate Justices Emeterio C. Cui (retired) and Ramon U. Mabutas, Jr. (retired) of the Third Division of the Court of Appeals; rollo, pp. 52-63.

[2] Resolution dated August 10, 1998 (affirming the January 19, 1998 CA Decision) in CA-G.R. CV No. 39590, penned by Associate Justice Hilarion L. Aquino (retired) and concurred in by Associate Justices Emeterio C. Cui (retired) and Ramon U. Mabutas, Jr. (retired) of the Third Division of the Court of Appeals; id., pp. 65-66.

[3]Id., pp. 13-19.

[4] Id., pp. 72-73. Dorsal sides of application forms not included in pagination.

[5] Branch 24 presided by Judge Sergio D. Mabunay.

[6] Docketed as Civil Case No. 88-44115.

[7] Decision dated September 30, 1991, penned by Judge Sergio D. Mabunay; rollo, pp. 73-81.

[8] Order dated March 9, 1992, penned by Judge Sergio D. Mabunay; id., pp. 82-84.

[9] 365 Phil. 671 (1999).

[10] Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals good customs, public order or public policy.

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