

AMERICAN EXPRESS INTERNATIONAL, INC., PETITIONER, VS. NOEL CORDERO, DEFENDANT.

G.R. No. 138550. October 14, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals dated April 30, 1999 in CA-G.R. CV No. 51671, entitled, "Noel Cordero, Plaintiff-Appellee versus American Express International, Inc., Defendant-Appellant."

Petitioner is a foreign corporation that issues charge cards to its customers, which the latter then use to purchase goods and services at accredited merchants worldwide. Sometime in 1988, Nilda Cordero, wife of respondent Noel Cordero, applied for and was issued an American Express charge card with No. 3769-895901-010020. The issuance of the charge card was covered by an Amex Cardmember Agreement. As cardholder, Nilda, upon signing the back portion of the card, manifested her acceptance of the terms of the Agreement.

An extension charge card, with No. 3769-895901-01010, was likewise issued to respondent Noel Cordero which he also signed.[2]

On November 29, 1991, respondent, together with his wife, Nilda, daughter, sisters-in-law and uncle-in-law, went on a three-day holiday trip to Hong Kong. In the early evening of November 30, 1991, at about 7:00 o'clock, the group went to the Watson's Chemist Shop located at 277C Ocean Gallery, Kowloon, Hong Kong. Noel picked up some chocolate candies and handed to the sales clerk his American Express extension charge card to pay for his purchases. The sales clerk verified the card by making a telephone call to the American Express Office in Hong Kong. Moments later, Susan Chong, the store manager, emerged from behind the counter and informed respondent that she had to confiscate the card. Thereupon, she cut respondent's American Express card in half with a pair of scissors. This, according to respondent, caused him embarrassment and humiliation considering that it was done in front of his family and the other customers lined up at the check-out counter. Hence, Nilda had to pay for the purchases using her own American Express charge card.[3]

When they returned to the Excelsior Hotel, Nilda called up petitioner's Office in Hong Kong. She was able to talk to Senior Authorizer Johnny Chen, who informed her that on November 1, 1991, a person in Hong Kong attempted to use a charge card with the same number as respondent's card. The Hong Kong American Express Office called up respondent and after determining that he was in Manila and not in Hong Kong, placed his card in the "Inspect Airwarn Support System." This is the system utilized by petitioner as a protection both for the company and the cardholders against the fraudulent use of their charge cards. Once a card suspected of unauthorized use is placed in the system, the person to whom the card is tendered must verify the identity of the holder. If the true identity of the card owner is established, the card is honored and the charges are approved. Otherwise, the card is revoked or confiscated.[4]

When the Watson's sales clerk called up petitioner's Hong Kong Office, its representative said he wants to talk to

respondent in order to verify the latter's identity, pursuant to the procedure observed under the "Inspect Airwarn Support System." However, respondent refused. Consequently, petitioner's representative was unable to establish the identity of the cardholder.[5] This led to the confiscation of respondent's card.

On March 31, 1992, respondent filed with the Regional Trial Court, Branch V, Manila, a complaint for damages against petitioner, docketed as Civil Case No. 92-60807. He prayed for the award of moral damages and exemplary damages, as well as attorney's fees as a result of the humiliation he suffered.

The trial court found that "the inexcusable failure of defendant (petitioner herein) to inform plaintiff (respondent herein) of the November 1, 1991 incident despite sufficient time was the proximate cause of the confiscation and cutting of plaintiff's extension card which exposed the latter to public humiliation for which defendant should be held liable." [6] On February 20, 1995, the trial court promulgated its Decision, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay the former the following amounts, namely:

- a) The sum of P300,000.00 as and by way of moral damages;
- b) The sum of P200,000.00 as exemplary damages;
- c) The sum of P100,000.00 as and for reasonable attorney's fees; and
- d) The costs of the suit.

SO ORDERED." [7]

Upon appeal, the Court of Appeals rendered the assailed Decision affirming the trial court's Decision with modification in the sense that the amounts of damages awarded were reduced, thus:

"WHEREFORE, in view of the foregoing, the appealed decision dated February 20, 1995 of the Regional Trial Court of Manila, Branch V, in Civil Case No. 92-60807 is hereby AFFIRMED, subject to modifications with respect to the amount of damages awarded, which are reduced as follows:

- (a) Moral damages from P300,000.00 to P150,000.00; and
- (b) Exemplary damages from P200,000.00 to P100,000.00.

No pronouncement as to costs.

SO ORDERED."

Hence, the instant petition raising the following issues:

"A. Whether the lower courts gravely erred in attributing the "public humiliation" allegedly suffered by Cordero to Amex.

B. Whether the lower courts gravely erred in holding Amex liable to Cordero for moral damages, exemplary damages and attorney's fees." [8]

Respondent filed his comment contending in the main that the petition raises questions of fact beyond this Court's domain.

While it is true that under Rule 45 of the 1997 Rules of Civil Procedure, as amended, this Court may review only errors of law, however, this rule admits of well-known recognized exceptions, thus:

"... (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both parties; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record." [9]

In this case, the inference made by the courts below is manifestly mistaken. Therefore, we are justified in reviewing the records of this case and rendering judgment based on our own findings.

In his complaint, respondent claimed that he suffered embarrassment and humiliation because his card was unceremoniously confiscated and cut in half by Susan Chong of Watson's Chemist Shop.

Respondent anchors his cause of action on the following provision of the Civil Code:

"Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter." [10]

In order that an obligation based on quasi-delict may arise, there must be no pre-existing contractual relation between the parties. But there are exceptions. There may be an action for quasi-delict notwithstanding that there is a subsisting contract between the parties. A liability for tort may arise even under a contract, where tort is that which breaches the contract. Stated differently, when an act which constitutes a breach of contract would have itself constituted the source of a quasi-delictual liability, the contract can be said to have been breached by tort, thereby allowing the rules on tort to apply. [11]

Furthermore, to constitute quasi-delict, the fault or negligence must be the proximate cause of the damage or injury suffered by the plaintiff. Proximate cause is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred. Proximate cause is determined by the facts of each case upon mixed considerations of logic, common sense, policy and precedent. [12]

According to the trial court, petitioner should have informed respondent that on November 1, 1991, a person in Hong Kong attempted to use a charge card bearing similar number to that of respondent's card; and that petitioner's inexcusable failure to do so is the proximate cause of the "confiscation and cutting of [respondent's] extension card which exposed the latter to public humiliation for which [petitioner] should be held liable." [13]

We cannot sustain the trial court's conclusion.

As explained by respondent himself, he could have used his card upon verification by the sales clerk of Watson that indeed he is the authorized cardholder. This could have been accomplished had respondent talked to petitioner's representative, enabling the latter to determine that respondent is indeed the true holder of the card. Clearly, no negligence which breaches the contract can be attributed to petitioner. If at all, the cause of respondent's humiliation and embarrassment was his refusal to talk to petitioner's representative.

That respondent refused to talk to petitioner's representative can be gleaned from the testimony of Mr. Chen Heng Kun a.k.a. Johnny Chen during the deposition in Hong Kong, [14] thus:

"Question No 9 : Was AEII required under its existing policies and/or membership agreement with its cardholders to advise said cardholders of their card have been put under the support INSPECT " Strictly

Question (for identification) cardmembers before approving any charge?

Mr. Johnny Chen : Under the existing policies of AEII, we don't have to inform the cardholders if they have to pass the INSPECT "Strictly Questions (for identification).

Question No 10 : If the answer to Q9 is in the negative please explain why not?

Mr. Johnny Chen : The reason why we don't have to are because, first, we are not terminating the service to the cardholder. Second, it doesn't mean that we are going to limit the service to the cardholder. Third, as long as the cardholder can present an identification card of his membership, we allow him to use the card. He can show this by telephoning the company or by presenting us his passport or travel document. When Watson Company called AEII for authorization, AEII representative requested that he talk to Mr. Cordero but he refused to talk to any representative of AEII. AEII could not prove then that he is really the real card holder."

Mr. Chen Heng Kun was briefly cross-examined by respondent's counsel, thus:

"Question No 10 : Question 9 is objected to since the best evidence would be the membership agreement between plaintiffs and AEII."

Significantly, paragraph 16 of the Cardmember Agreement signed by respondent provides:

"16. THE CARD REMAINS OUR PROPERTY

"The Card remains our property and we can revoke your right and the right of ay Additional Cardmember to use it at any time, we can do this with or without giving you notice. If we have revoked the Card without cause, we will refund a proportion of your annual Card Account fee. We may list revoked Cards in our "Cancellation Bulletin", or otherwise inform Establishments that the Card issued to you and, if you are the basic Cardmember, any Additional Cards have been revoked or cancelled.

"If we revoke the card or it expires, you must return it to us if we request. Also, if any Establishment asks you to surrender an expired or revoked Card, you must do so. You may not use the Card after it has expired or after it has been revoked.

"The revocation, repossession or request for the return of the Card is not, and shall not constitute any reflection of your character or credit-worthiness and we shall not be liable in any way for any statement made by any person requesting the return or surrender of the Card."[15]

To be sure, pursuant to the above stipulation, petitioner can revoke respondent's card without notice, as was done here. It bears reiterating that the subject card would not have been confiscated and cut had respondent talked to petitioner's representative and identified himself as the genuine cardholder. It is thus safe to conclude that there was no negligence on the part of petitioner and that, therefore, it cannot be held liable to respondent for damages.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 51671 is REVERSED.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio Morales, and Garcia, JJ., concur.

[1] Rollo at 9-25, at 25; penned by Associate Justice B.A. Adefuin-Dela Cruz (retired), concurred in by Associate Justices Eugenio S. Labitoria and Presbitero J. Velasco, Jr. (now Court Administrator).

[2] Exh. "3-C".

[3] TSN, March 25, 1993 at 6-11.

[4] TSN, May 4, 1993 at 13.

[5] TSN of Deposition of Johnny Chen, February 28, 1994, at 6.

[6] Rollo at 154-159, 158.

[7] Id., at 159; penned by Presiding Judge Zeus O. Abrogar.

[8] Petition at 8; Rollo at 60.

[9] Baricuatro v. Court of Appeals, G.R. No. 105902, February 9, 2000, 325 SCRA 137.

[10] Civil Code, Article 2176.

[11] Light Rail Transit Authority, et al. v. Navidad, et al., G.R. No. 145804, February 6, 2003, 397 SCRA 75.

[12] The Consolidated Bank & Trust Co. v. Court of Appeals, G.R. No. 138569, September 11, 2003, 410 SCRA 562.

[13] Rollo at 158.

[14] Deposition upon Written Interrogatories and Cross-Examination Re Case of Mr. Johnny Chen before Vice Consul Marlene Brigida B. Agmata at the Philippine Consulate General, 21-22/F Regent Centre, 88 Queen's Road, Central, Hong Kong, 28 February 1994 at 5-6.

[15] Exh. "3-A".

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