

VICENTE ONGKEKO, PETITIONER, VS. BPI EXPRESS CARD CORPORATION, RESPONDENT

G.R. NO. 147275. March 31, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed in the present petition for review on certiorari are the Decision dated January 25, 2001 and Resolution dated February 23, 2001, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 61427.[1]

The facts that gave rise to the present case are undisputed. On September 13, 1990, Lina Lodovica (Lodovica) applied for a credit card with respondent, with Vicente Ongkeko (petitioner) acting as surety. Her application was approved and she was originally given a P3,000.00 credit limit. When Lodovica's card expired in 1991, it was renewed and her credit limit was increased to P10,000.00. As of May 12, 1996, Lodovica had an outstanding balance of P22,476.61.

On May 28, 1996, respondent brought an action for sum of money against Lodovica and petitioner. Petitioner filed his Answer admitting his undertaking, but he maintained that he can only be liable for the original credit limit of P3,000.00, and that the renewal of the credit card without his consent extinguished his undertaking.

The Metropolitan Trial Court (MTC) of Makati, Branch 66, rendered judgment on January 31, 2000, finding petitioner liable. The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered ordering defendant Ongkeko to pay plaintiff the following:

1. the amount of P22,476.61 as of May 12, 1996 plus the interest of 3% per month and 1% penalty charge per month from date of the filing of the complaint on May 28, 1996 until the account is fully paid;
2. 25% of the amount due as attorney's fees or P10,000.00 whichever is lesser;
3. cost of suit.

SO ORDERED.[2]

The Regional Trial Court (RTC) of Makati, Branch 135, in its Decision dated July 10, 2000[3] and Order dated October 2, 2000,[4] affirmed the MTC Decision.

The CA also affirmed the lower courts' decisions when it dismissed the petition for review filed before it. The CA, however, deleted the award of attorney's fees inasmuch as the MTC Decision does not contain any justification for its award.[5] The CA denied petitioner's motion for reconsideration.[6]

Petitioner merely reiterated in the present petition the arguments he previously raised before the lower courts and the appellate court. Petitioner submits the following contentions:

1. Petitioner is not liable for the purchases made by Lodovica after the expiration of the original term of the credit card because he was not notified of the renewal of the credit and the increase of the credit limit;

2. The surety undertaking, being a contract of adhesion, should have been taken against Respondent;
3. Petitioner is not liable for the purchases made by Lodovica after the expiration of the original term of the credit card because the circumstances at the time he agreed to act as surety for Lodovica were no longer existing at the time of the renewal.[7]

Petitioner's case is not a novel one. In the analogous case of *Molino v. Security Diners International Corporation*,^[8] the Court already had the occasion to rule that suretyship under these circumstances is a continuing one and the surety is bound by the liabilities of the principal until it has been fully paid.

In the *Molino* case, Jeanette Molino, the petitioner, acted as a surety for her brother-in-law, Danilo Alto, in his application for a local credit card with the Security Diners International Corporation (SDIC). The card was subsequently upgraded and the credit limit increased. When Alto failed to pay his liability under the credit card, SDIC filed an action for collection against Alto and Molino. The Court summed up the issues as: whether Molino is liable as surety, and whether the upgrading of the card constituted a novation that will extinguish her obligation and undertaking, which was resolved in this wise, viz.:

There is no doubt that the upgrading was a novation of the original agreement covering the first credit card issued to Danilo Alto, basically since it was committed with the intent of cancelling and replacing the said card. However, the novation did not serve to release petitioner from her surety obligations because in the Surety Undertaking she expressly waived discharge in case of change or novation in the agreement governing the use of the first credit card.

The nature and extent of petitioner's obligations are set out in clear and unmistakable terms in the Surety Undertaking. Thus:

1. She bound herself jointly and severally with Danilo Alto to pay SDIC all obligations and charges in the use of the Diners Club Card, including fees, interest, attorney's fees, and costs;
2. She declared that "any change or novation in the Agreement or any extension of time granted by SECURITY DINERS to pay such obligation, charges, and fees, shall not release (her) from this Surety Undertaking";
3. "(S)aid undertaking is a continuous one and shall subsist and bind (her) until all such obligations, charges, and fees have been fully paid and satisfied"; and
4. "The indication of a credit limit to the cardholder shall not relieve (her) of liability for charges and all other amounts voluntarily incurred by the cardholder in excess of said credit limit."

We cannot give any additional meaning to the plain language of the subject undertaking. The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. Article 1370 of the Civil Code provides: "If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."

This case is no different from *Pacific Banking Corporation vs. IAC*, *supra*, correctly applied by the Court of Appeals, which involved a Guarantor's Undertaking (although thus denominated, it was in substance a contract of surety) signed by the husband for the credit card application of his wife. Like herein petitioner, the husband also argued that his liability should be limited to the credit limit allowed under his wife's card but the Court declared him liable to the full extent of his wife's indebtedness. x x x

x x x Private respondent Roberto Regala, Jr., as surety of his wife, expressly bound himself up to the extent of the debtor's (Celia's) indebtedness likewise expressly waiving any "discharge in case of any change or novation of the terms and conditions in connection with the issuance of the Pacificard credit card." Roberto, in fact, made his commitment as a surety a continuing one, binding upon himself until all the liabilities of Celia Regala

have been fully paid. All these were clear under the "Guarantor's Undertaking" Roberto signed, thus: x x x[9]
(Emphasis supplied)

Petitioner's undertaking in this case is similar to that of the petitioner in the Molino case and the Pacific Banking Corporation case[10] cited therein. It reads, in part:

SURETY UNDERTAKING

I/We, the undersigned, bind myself/ourselves, jointly and severally with _____ and/or his/her extension card user, to pay the BPI EXPRESS CARD CORP. all the obligations, charges, and liabilities incurred under and with the use of the BPI EXPRESS CREDIT CARD or the renewals and extensions thereof, issued to said credit cardholder and/or extension user by the BPI EXPRESS CREDIT CARD in accordance with the terms, conditions, covenant and stipulations governing the issuance and use of the BPI EXPRESS CREDIT CARD set forth herewith. Notwithstanding any change or novation in the terms and conditions governing the issuance and use of the BPI EXPRESS CREDIT CARD, or any extension of time given the cardholder and/or extension user of the card to pay such obligations, charges and liabilities this undertaking shall continue to be binding upon me/us until all such obligations, charges and liabilities shall have been fully paid and satisfied.[11] (Underscoring supplied)

Petitioner's undertaking is clear and concise. He solidarily obliged himself to pay respondent all the liabilities incurred under the credit card account, whether under the principal, renewal, or extension card issued, regardless of the changes or novation in the terms and conditions in the issuance and use of the credit card. Petitioner's liability shall be extinguished only when the obligations are fully paid and satisfied.

Petitioner cannot seek sanctuary in his arguments considering that the terms and conditions of his undertaking are unambiguous and well defined; there is no room for any interpretation - only application. Given that Lodovica reneged on her obligations covered by the credit card account, petitioner is, therefore, liable.

Indeed, petitioner's surety undertaking partakes the nature of a contract of adhesion, in that the stipulations were unilaterally prepared and imposed by respondent on a take-it-or-leave-it basis; however, the Court has also ruled that such a contract is "as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely." [12]

Petitioner is the employer of Lodovica. It is safe to assume that he takes great care of his affairs and he very well knows the potential consequences of his acts. He took on the responsibility freely and intelligently, and whatever liability he may have incurred in this case is one within bounds of the law.

Finally, in the Molino case, the Court took time to exhort prospective sureties to exercise caution in signing surety undertakings prepared by credit card companies, and to read carefully the terms and conditions of the agreement. The Court finds the present case another opportune time to reiterate said exhortation, to wit:

x x x Prospective sureties to credit card applicants would be well-advised to study carefully the terms of the agreements prepared by the credit card companies before giving their consent, and pay heed to stipulations that could lead to onerous effects x x x.[13]

WHEREFORE, the petition is DENIED for lack of merit.

Double costs against petitioner.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justices Elvi John S. Asuncion and Mercedes Gozo-Dadole (retired), concurring.

[2] Records, p. 382.

[3] Id. at 437.

[4] Id. at 446.

[5] CA rollo, p. 46.

[6] Id. at 61.

[7] Rollo, p. 6.

[8] 415 Phil. 587 (2001).

[9] Id. at 595-596.

[10] G.R. No. 72275, November 13, 1991, 203 SCRA 496.

[11] See Records, p. 341.

[12] Equitable Banking Corporation v. Calderon, G.R. No. 156168, December 14, 2004, 446 SCRA 271, 280, 281.

[13] Supra note 8 at 597.

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