CRISOSTOMO ALCARAZ, PETITIONER, VS. COURT OF APPEALS AND EQUITABLE CREDIT CARD NETWORK, INC., RESPONDENTS.

G.R. NO. 152202. July 28, 2006

Ponente: PUNO, J.

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PUNO, J.:

Assailed before this Court in a Petition for Review on Certiorari is the decision of the Court of Appeals in CA-G.R. CV No. 65911, entitled "Equitable Credit Card Network, Inc. v. Crisostomo Alcaraz," affirming the decision of Branch 147 of the Regional Trial Court of Makati City. The case stemmed from an action for the collection of sum of money.

The facts of this case are undisputed.

Private respondent, Equitable Credit Card Network, Inc. (Equitable), is a company engaged in the business of extending credit accommodations/facilities through the use of the credit cards issued to its clientele. Through these credit cards, cash advances may be availed from automated teller machines or ATMs, and goods or services may be purchased on credit from accredited merchant shops.[1]

In May 1995, private respondent Equitable issued a credit card, Equitable Visa Gold International Card with card number 4921-0100-0743-2013 and account base number 4921-0100-0743-2005 with peso and dollar accounts/facilities, to petitioner Crisostomo Alcaraz. The petitioner through the use of the said credit card secured cash advances and purchased goods and services on credit with private respondent Equitable's affiliated merchant establishments.[2] Thus, the petitioner accumulated unpaid credit with private respondent and despite the receipt of several demand letters, failed to pay his outstanding obligations.[3]

In its complaint before the lower court, private respondent Equitable sought the payment of the accumulated outstanding balance including interest of 2.5% per month as well as a monthly late penalty/surcharge of 1.5% for the peso account, and 1.5% monthly interest and 1% late penalty/surcharge per month for the dollar account until full payment thereof as provided in the "Terms and Conditions Governing the Issuance and Use of Equitable Visa Card" (hereinafter referred to as the Terms and Conditions). The private respondent also prayed for liquidated damages of 25% of the total amount of both accounts and attorney's fees at the same rate allegedly also in accordance with the Terms and Conditions.[4] Private respondent Equitable claims petitioner Alcaraz has an accumulated outstanding balance of US$8,970.54 in his dollar account as of February 18, 1999, and P192,500.00 on his peso account as of February 28, 1999 inclusive of interest and surcharges.[5]

The petitioner admitted he had made use of the credit card issued in his name by private respondent Equitable, but contested the amount of his liability. Petitioner alleged that he was issued the credit card as an "honorary member." As such, he was not required to submit any application or sign any document prior to the issuance of the card and he was entitled to pay on an installment basis without any interest. He denied signing the document Terms and Conditions Governing the Issuance and Use of Equitable Visa Card. Petitioner Alcaraz further alleged that prior to the filing of the complaint, he formally requested for a reconciliation of his accounts with the private

respondent but the same has remained unanswered until the present day. Thus, the case filed against him was premature.

After several postponements of the pretrial conference, the trial court declared petitioner Alcaraz as in default upon motion of private respondent Equitable and allowed the latter to present its evidence ex parte.[6] After the private respondent's presentation of evidence which included the testimony of its sole witness, one of its collection officers, and the submission of documents, the court ruled in favor of private respondent Equitable. It, however, rejected private respondent Equitable's claim for liquidated and exemplary damages.[7] Petitioner Alcaraz filed a Motion for New Trial which was denied.[8] The petitioner elevated the case to the appellate court.

The Court of Appeals partially affirmed the decision of the trial court. It modified the trial court's judgment by ordering petitioner Alcaraz to pay private respondent Equitable "the principal amount of P81,000.00, on his peso account, and the amount of US$4,397.34 or its peso equivalent, on his dollar account" with 12% annual interest from June 25, 1996 until full payment thereof. The appellate court likewise reduced the amount of attorney's fees to P20,000.00.[9]

Undaunted, petitioner comes to this Court via a petition for review on certiorari raising the following issues: (1) whether the trial court violated the petitioner's right to due process when the private respondent was allowed to present its evidence ex parte; and (2) whether the monetary award ordered by the Court of Appeals is in accord with the evidence, and applicable law and jurisprudence.

The petition is without merit.

Petitioner Alcaraz laments that the trial court did not postpone and reschedule the pretrial conference on February 23, 1999 despite the manifestation of petitioner's wife that petitioner Alcaraz suffered a stroke which rendered him paralyzed while Atty. Ben Ibuyan, the petitioner's counsel, suffered from a "lingering gall bladder ailment." Instead, upon motion of private respondent Equitable, the trial court declared the petitioner as in default and allowed the private respondent to present its evidence ex-parte.[10] Petitioner Alcaraz also charge the trial court with arbitrariness and of depriving him of the right to have the case against him heard before an impartial judge or tribunal. In support of his allegations, he maintains that, aside from brushing aside the clearly meritorious reasons for his and his counsel's absence on the February 23, 1999 pretrial conference, the trial court judge and its personnel have shown their bias against him in several occasions such as the alleged difficulty his counsel encountered in filing a Motion for New Trial.[11]

With regard to the first issue, it is well-settled that this Court is not a trier of facts. This Court accords due respect to the findings of the trial court and the appellate court save in clearly exceptional cases.[12] This case, however, does not fall within those exceptions. The trial court clearly has the discretion on whether to grant or deny a motion to postpone and/or reschedule the pretrial conference in accordance with the circumstances then obtaining in the case.[13] This must be so as it is the trial court which was able to witness firsthand the events as they unfolded in the trial of a case. Postponements, while permissible, must not be countenanced except for clearly meritorious grounds and in light of the attendant circumstances.[14] The trial court's discretion on this matter, however, is not unbridled. The trial courts are well advised to reasonably and wisely exercise such discretion. This Court will not hesitate to strike down clearly arbitrary acts or orders of the lower court. This, however, is not the situation in this case. While it is true that private respondent Equitable and inclement weather have on occasion caused the postponement of the pretrial conference, the repeated resetting of the pretrial conference was primarily due to the petitioner.

As to the reasons proffered by the petitioner's wife at the February 23, 1999 pretrial conference, we agree with the findings of the trial court and the Court of Appeals. Under the Rules of Court, both the parties and their counsels

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are mandated to appear in the pretrial conference.[15] If the parties opt not to be present, their counsel must be armed with a special power of attorney specifically for the purpose. This must be so as the pretrial conference is primarily for the purpose of exploring the possibility of a compromise, or on the failure thereof, for the parties to make certain admissions and stipulations in order to facilitate a more efficient proceeding at the trial proper.[16] In the case at bar, both petitioner Alcaraz and his counsel did not appear at the scheduled pretrial. Instead, it was the petitioner's wife alone who made the verbal manifestation on behalf of her husband and his counsel while presenting an unverified medical certificate on the latter's behalf. As correctly observed by the Court of Appeals, the records are bereft of any medical certificate, verified or unverified, in the name of petitioner Alcaraz to establish the cause of his absence at the pretrial conference.[17] Even assuming arguendo that petitioner Alcaraz and Atty. Ibuyan's absence on the February 23, 1999 pretrial conference is due to justifiable causes, the petitioner is represented by a law firm and not by Atty. Ibuyan alone. As such, any of the latter's partners or associates could have appeared before the court and participate in the pretrial or at least make the proper motion for postponement if necessary.

A charge of arbitrariness and bias against the trial court, in this case against the judge as well as all the court personnel, is a serious charge that must be substantiated. Bare allegations of partiality will not suffice. It must be shown that the trial court committed acts or engaged in conduct clearly indicative of bias or pre-judgment against a party. The petitioner failed to do so in this case. The disallowance of a motion for postponement is not sufficient to show arbitrariness and partiality of the trial court. As this Court ruled in the case of Gochan v. Gochan,[18] to wit:

> . . . . A motion for continuance or postponement is not a matter of right, but a request addressed to the sound discretion of the court. Parties asking for postponement have absolutely no right to assume that their motions would be granted. Thus, they must be prepared on the day of the hearing.
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> Given this rule, the question of the correctness of the denial of respondents' requests for postponements was addressed to the sound discretion of Judge Dicdican. His action thereon cannot be disturbed by appellate courts in the absence of any clear and manifest abuse of discretion resulting in a denial of substantial justice. Since there was no such finding with regard to the disallowance of the requests for postponement, the CA [Court of Appeals] cannot overturn the decision of the judge. Much less can it assume his bias and partiality based merely on the denial of the requests for postponement.[19]

With regard to the second issue, the petitioner never disputed his use of the credit card issued to him by the private respondent. While he maintains that there is a "great disparity" between the amount of credit he availed of and what was actually being collected from him by the private respondent, nowhere in the records of this case, however, did petitioner Alcaraz contest any specific purchase or cash advance charged to the credit card, whether the peso or the dollar account. While the petitioner did request the private respondent in writing for a computation of his outstanding balance, the petitioner likewise in the very same letter offered to pay his outstanding obligations in twelve (12) equal monthly installments.[20] Private respondent Equitable responded by proposing that the amount due as stated in the statement of accounts sent to the petitioner instead be paid in six (6) equal monthly installments.[21] Petitioner Alcaraz likewise made partial payments before and after he made the proposed payment scheme to the private respondent. Clearly, what the petitioner contests is the application of the interests, penalties and other charges as provided for in the Terms and Conditions when he never signed nor conformed to the said document. Petitioner Alcaraz likewise claims that the contested provisions are not applicable to him because he was considered an honorary member who is entitled to pay for his credit purchases and cash advances on an installment basis free of any interest. The petitioner asserts that the "honorary" status given to him was evidenced by the fact that private respondent Equitable issued the credit card in his name without the necessity of any application or document submitted and signed by him prior to such issuance.[22]

Private respondent Equitable, on the other hand, avers that while petitioner Alcaraz did not file or sign an application for the credit card, this did not exempt him from the provisions of the Terms and Conditions. Petitioner's claim of honorary membership which allegedly entitles him to pay his obligations on an interest-free installment basis is fallacious and groundless.[23] Private respondent Equitable contends that the waiver of the filing of an application simply means that petitioner Alcaraz has been pre-screened. Such a status is conferred on a person by virtue of his good credit standing or upon recommendation of a reputable client or officer of private respondent Equitable. It is private respondent Equitable's assertion that by signing the credit card and subsequently using the same, the petitioner has agreed to the Terms and Conditions and any amendment thereto as stated in the back of the credit card itself.[24] Except from his bare assertions that the non-filing of application entitles him to pay for his credit card obligations free of interest on an installment basis, the petitioner was not able to show that it was in fact the agreement between him and the private respondent or that the same is the policy and/or practice of the latter.

The evidence sustains the claim of private respondent Equitable that petitioner Alcaraz is what is known as a pre-screened client. When a client is classified as pre-screened, the usual screening procedures of prospective cardholders, such as the filing of an application form and submission of other relevant documents prior to the issuance of a credit card, are dispensed with and the credit card is issued outright. Upon receipt of the card, the pre-screened client has the option of accepting or rejecting the credit card. In the case at bar, petitioner Alcaraz signified his acceptance of the credit card by signing and subsequently using the same. This, however, without more, does not confer "honorary membership" status to the petitioner.

We come now to the application of the provisions of the Terms and Conditions, particularly the interest rates, penalties and surcharges, to petitioner Alcaraz. It is the petitioner's contention that since he never signed an application form or any other document containing the Terms and Conditions, the same should not be applied to him as it violates one of the most essential and basic tenets of contract law which is consent. It is petitioner Alcaraz's position that he is not bound by the Terms and Conditions as he never signed it.

Private respondent Equitable, on the other hand, claims that at the back of the credit card itself the following is stated:

> By signing or using this card, the holder agrees to be bound by Equitable Bank's Credit Card Agreement, all future amendments thereto. . . .[25]

The private respondent maintains that the above stipulation is a standard clause printed at the back of each credit card that it issued and that the Agreement mentioned therein refers to the Terms and Conditions which governs the use of the credit card as contained in private respondent Equitable's standard application form.[26] Thus, by signing the back of the credit card, petitioner Alcaraz has explicitly consented to the Terms and Conditions including the applicable interests, service fees, attorney's fees and liquidated damages in the event of nonpayment within the period stated in the statements of account regularly sent every month to the petitioner.

It is a basic rule of evidence that a party has the burden of proving his own affirmative allegations.[27] In the instant case, private respondent Equitable has the burden of proving the material allegations of its complaint with the requisite quantum of evidence. One such material allegation is the applicability of the provisions of the Terms and Conditions to petitioner Alcaraz. In support thereof private respondent Equitable presented a copy of the Terms and Conditions as contained in its standard application form[28] and a copy of its "Visa Card" issued to another client in order to show the alleged standard stipulation printed at the back of the card.[29] The standard application form presented to the court does not bear the signature of the petitioner. In fact, as admitted by private respondent Equitable, petitioner Alcaraz, as a pre-screened client, did not submit or sign any application form or document prior to the issuance of the credit card. Neither is there any evidence on record that the petitioner was

shown a copy of the Terms and Conditions before or after the issuance of the credit card in his name, much less that he has given his consent thereto. As correctly pointed out by the Court of Appeals, the petitioner should not be condemned to pay the interests and charges provided in the Terms and Conditions on the mere claim of the private respondent without any proof of the former's conformity and acceptance of the stipulations contained therein.[30] Even if we are to accept the private respondent's averment that the stipulation quoted earlier is printed at the back of each and every credit card issued by private respondent Equitable, such stipulation is not sufficient to bind the petitioner to the Terms and Conditions without a clear showing that the petitioner was aware of and consented to the provisions of this document. This, the private respondent failed to do.

It is, however, undeniable that petitioner Alcaraz accumulated unpaid obligations both in his peso and dollar accounts through the use of the credit card issued to him by private respondent Equitable. As such, petitioner Alcaraz is liable for the payment thereof. Since the provisions of the Terms and Conditions are inapplicable to petitioner Alcaraz, the legal interest on obligations consisting of loan or forbearance of money shall apply. As this Court ruled in the landmark case of Eastern Shipping Lines, Inc. v. Court of Appeals,[31] to wit:

> - When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.[32]
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> - When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[33]

In the present case, the records reveal that the principal amount of the obligation on the peso account of the subject credit card as of March 17, 1996 is P81,000.00,[34] while the dollar account of the same credit card has an unpaid balance of $4,397.34 exclusive of any interests, penalties and other charges as of March 3, 1996.[35] The extrajudicial demand for payment for the dollar account was made on June 25, 1996 by virtue of a letter sent to and duly received by the petitioner. The June 25, 1996 demand letter was, however, silent on the unpaid balance on the peso account. The records likewise reveal that it was only on October 5, 1996 that private respondent Equitable may be deemed to have extrajudicially demanded payment of the outstanding obligation of petitioner Alcaraz on his peso account. Hence, it is only from the aforesaid dates that the legal rate of interest shall apply on the dollar and peso accounts, respectively, until full payment thereof.

IN VIEW WHEREOF, the petition is DISMISSED and the February 11, 2002 decision of the Court of Appeals is AFFIRMED with MODIFICATIONS and the petitioner is ordered to pay the following:

- on the peso account of Equitable Visa Gold International Card with card number 4921-0100-0743-2013 and account base number 4921-0100-0743-2005, the principal amount of P81,000.00 with interests thereon at the rate of 12% per annum from October 5, 1996 until full payment thereof;

- on the dollar account of Equitable Visa Gold International Card with card number 4921-0100-0743-2013 and account base number 4921-0100-0743-2005, the principal amount of $4,397.34 with interests thereon at the rate of 12% per annum from June 25, 1996 until the said amount is paid in full; and

- the amount of P20,000.00 as and by way of attorney's fees.

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No costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

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[1] Rollo, p. 136.

[2]Id. at 136 and 165.

[3]Id. at 47-49.

[4] Id. at 42-43.

[5] Id. at 136.

[6] Id. at 60-61.

[7] Id.

[8] Id. at 16-18.

[9] Id. at 26-39.

[10] Id. at 13-14.

[11] Id. at 16-18.

[12] Rosario Textile Mills, Inc. v. Court of Appeals, G.R. No. 137326, August 25, 2003, 409 SCRA 515.

[13] Domingo Padua v. Vicente Ericta, G.R. No. L-38570, May 24, 1988, 161 SCRA 458, 459.

[14] Producer's Bank of the Philippines v. Court of Appeals, G.R. No. 125468, October 9, 2000, 342 SCRA 327.

[15] Revised Rules of Court, Rule 18, Section 4.

[16] Id.

[17] Rollo, pp. 33-34.

[18] G.R. No. 143089, February 27, 2003, 398 SCRA 323.

[19] Id., citing Republic v. Sandiganbayan, 301 SCRA 237, January 20, 1999; Iriga Telephone Co., Inc. v. NLRC, 286 SCRA 600, February 27, 1998; emphases supplied, caption supplied.

[20] Rollo, p. 27.

[21] Id.

[22] Id. at 185-187.

[23] Id. at 150-151.

[24] Id. at 152; Transcript of Stenographic Notes (TSN), February 23, 1999, pp. 22-24.

[25] Rollo, p. 139, citing TSN, February 23, 1999, pp. 22-24; Records, Plaintiff's Exhibits, pp. 67-110.

[26] Id. at 45 and 139.

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[27] Revised Rules of Court, Rule 131, Section 1.

[28] Rollo, p. 45.

[29] Id. at 37.

[30] Id. at 38.

[31] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[32] Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95; emphases supplied.

[33] Id. at p. 97.

[34] Records, Plaintiff's Exhibits, p. 67.

[35] Records, Plaintiff's Exhibits, p. 68.

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