POLO S. PANTALEON, PETITIONER, VS. AMERICAN EXPRESS INTERNATIONAL, INC., RESPONDENT.

G.R. No. 174269. August 25, 2010

Ponente: BRION, J.

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BRION, J.:

We resolve the motion for reconsideration filed by respondent American Express International, Inc. (AMEX) dated June 8, 2009,[1] seeking to reverse our Decision dated May 8, 2009 where we ruled that AMEX was guilty of culpable delay in fulfilling its obligation to its cardholder -petitioner Polo Pantaleon. Based on this conclusion, we held AMEX liable for moral and exemplary damages, as well as attorney's fees and costs of litigation.[2]

FACTUAL ANTECEDENTS

The established antecedents of the case are narrated below.

AMEX is a resident foreign corporation engaged in the business of providing credit services through the operation of a charge card system. Pantaleon has been an AMEX cardholder since 1980.[3]

In October 1991, Pantaleon, together with his wife (Julialinda), daughter (Regina), and son (Adrian Roberto), went on a guided European tour. On October 25, 1991, the tour group arrived in Amsterdam. Due to their late arrival, they postponed the tour of the city for the following day.[4]

The next day, the group began their sightseeing at around 8:50 a.m. with a trip to the Coster Diamond House (Coster). To have enough time for take a guided city tour of Amsterdam before their departure scheduled on that day, the tour group planned to leave Coster by 9:30 a.m. at the latest.

While at Coster, Mrs. Pantaleon decided to purchase some diamond pieces worth a total of US$13,826.00. Pantaleon presented his American Express credit card to the sales clerk to pay for this purchase. He did this at around 9:15 a.m. The sales clerk swiped the credit card and asked Pantaleon to sign the charge slip, which was then electronically referred to AMEX's Amsterdam office at 9:20 a.m.[5]

At around 9:40 a.m., Coster had not received approval from AMEX for the purchase so Pantaleon asked the store clerk to cancel the sale. The store manager, however, convinced Pantaleon to wait a few more minutes. Subsequently, the store manager informed Pantaleon that AMEX was asking for bank references; Pantaleon responded by giving the names of his Philippine depository banks.

At around 10 a.m., or 45 minutes after Pantaleon presented his credit card, AMEX still had not approved the purchase. Since the city tour could not begin until the Pantaleons were onboard the tour bus, Coster decided to release at around 10:05 a.m. the purchased items to Pantaleon even without AMEX's approval.

When the Pantaleons finally returned to the tour bus, they found their travel companions visibly irritated. This irritation intensified when the tour guide announced that they would have to cancel the tour because of lack of

time as they all had to be in Calais, Belgium by 3 p.m. to catch the ferry to London.[6]

From the records, it appears that after Pantaleon's purchase was transmitted for approval to AMEX's Amsterdam office at 9:20 a.m.; was referred to AMEX's Manila office at 9:33 a.m.; and was approved by the Manila office at 10:19 a.m. At 10:38 a.m., AMEX's Manila office finally transmitted the Approval Code to AMEX's Amsterdam office. In all, it took AMEX a total of 78 minutes to approve Pantaleon's purchase and to transmit the approval to the jewelry store.[7]

After the trip to Europe, the Pantaleon family proceeded to the United States. Again, Pantaleon experienced delay in securing approval for purchases using his American Express credit card on two separate occasions. He experienced the first delay when he wanted to purchase golf equipment in the amount of US$1,475.00 at the Richard Metz Golf Studio in New York on October 30, 1991. Another delay occurred when he wanted to purchase children's shoes worth US$87.00 at the Quiency Market in Boston on November 3, 1991.

Upon return to Manila, Pantaleon sent AMEX a letter demanding an apology for the humiliation and inconvenience he and his family experienced due to the delays in obtaining approval for his credit card purchases. AMEX responded by explaining that the delay in Amsterdam was due to the amount involved - the charged purchase of US$13,826.00 deviated from Pantaleon's established charge purchase pattern. Dissatisfied with this explanation, Pantaleon filed an action for damages against the credit card company with the Makati City Regional Trial Court (RTC).

On August 5, 1996, the RTC found AMEX guilty of delay, and awarded Pantaleon P500,000.00 as moral damages, P300,000.00 as exemplary damages, P100,000.00 as attorney's fees, and P85,233.01 as litigation expenses.

On appeal, the CA reversed the awards.[8] While the CA recognized that delay in the nature of mora accipiendi or creditor's default attended AMEX's approval of Pantaleon's purchases, it disagreed with the RTC's finding that AMEX had breached its contract, noting that the delay was not attended by bad faith, malice or gross negligence. The appellate court found that AMEX exercised diligent efforts to effect the approval of Pantaleon's purchases; the purchase at Coster posed particularly a problem because it was at variance with Pantaleon's established charge pattern. As there was no proof that AMEX breached its contract, or that it acted in a wanton, fraudulent or malevolent manner, the appellate court ruled that AMEX could not be held liable for any form of damages.

Pantaleon questioned this decision via a petition for review on certiorari with this Court.

In our May 8, 2009 decision, we reversed the appellate court's decision and held that AMEX was guilty of mora solvendi, or debtor's default. AMEX, as debtor, had an obligation as the credit provider to act on Pantaleon's purchase requests, whether to approve or disapprove them, with "timely dispatch." Based on the evidence on record, we found that AMEX failed to timely act on Pantaleon's purchases.

Based the testimony of AMEX's credit authorizer Edgardo Jaurique, the approval time for credit card charges would be three to four seconds under regular circumstances. In Pantaleon's case, it took AMEX 78 minutes to approve the Amsterdam purchase. We attributed this delay to AMEX's Manila credit authorizer, Edgardo Jaurique, who had to go over Pantaleon's past credit history, his payment record and his credit and bank references before he approved the purchase. Finding this delay unwarranted, we reinstated the RTC decision and awarded Pantaleon moral and exemplary damages, as well as attorney's fees and costs of litigation.

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THE MOTION FOR RECONSIDERATION

In its motion for reconsideration, AMEX argues that this Court erred when it found AMEX guilty of culpable delay in complying with its obligation to act with timely dispatch on Pantaleon's purchases. While AMEX admits that it normally takes seconds to approve charge purchases, it emphasizes that Pantaleon experienced delay in Amsterdam because his transaction was not a normal one. To recall, Pantaleon sought to charge in a single transaction jewelry items purchased from Coster in the total amount of US$13,826.00 or P383,746.16. While the total amount of Pantaleon's previous purchases using his AMEX credit card did exceed US$13,826.00, AMEX points out that these purchases were made in a span of more than 10 years, not in a single transaction.

Because this was the biggest single transaction that Pantaleon ever made using his AMEX credit card, AMEX argues that the transaction necessarily required the credit authorizer to carefully review Pantaleon's credit history and bank references. AMEX maintains that it did this not only to ensure Pantaleon's protection (to minimize the possibility that a third party was fraudulently using his credit card), but also to protect itself from the risk that Pantaleon might not be able to pay for his purchases on credit. This careful review, according to AMEX, is also in keeping with the extraordinary degree of diligence required of banks in handling its transactions. AMEX concluded that in these lights, the thorough review of Pantaleon's credit record was motivated by legitimate concerns and could not be evidence of any ill will, fraud, or negligence by AMEX.

AMEX further points out that the proximate cause of Pantaleon's humiliation and embarrassment was his own decision to proceed with the purchase despite his awareness that the tour group was waiting for him and his wife. Pantaleon could have prevented the humiliation had he cancelled the sale when he noticed that the credit approval for the Coster purchase was unusually delayed.

In his Comment dated February 24, 2010, Pantaleon maintains that AMEX was guilty of mora solvendi, or delay on the part of the debtor, in complying with its obligation to him. Based on jurisprudence, a just cause for delay does not relieve the debtor in delay from the consequences of delay; thus, even if AMEX had a justifiable reason for the delay, this reason would not relieve it from the liability arising from its failure to timely act on Pantaleon's purchase.

In response to AMEX's assertion that the delay was in keeping with its duty to perform its obligation with extraordinary diligence, Pantaleon claims that this duty includes the timely or prompt performance of its obligation.

As to AMEX's contention that moral or exemplary damages cannot be awarded absent a finding of malice, Pantaleon argues that evil motive or design is not always necessary to support a finding of bad faith; gross negligence or wanton disregard of contractual obligations is sufficient basis for the award of moral and exemplary damages.

OUR RULING

We GRANT the motion for reconsideration.

Brief historical background

A credit card is defined as "any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, goods, property, labor or services or anything of value on credit."[9] It traces its roots to the charge card first introduced by the Diners Club in New York City in 1950.[10] American Express followed suit by introducing its own charge card to the American market in 1958.[11]

In the Philippines, the now defunct Pacific Bank was responsible for bringing the first credit card into the country in the 1970s.[12] However, it was only in the early 2000s that credit card use gained wide acceptance in the country, as evidenced by the surge in the number of credit card holders then.[13]

Nature of Credit Card Transactions

To better understand the dynamics involved in credit card transactions, we turn to the United States case of Harris Trust & Savings Bank v. McCray[14] which explains:

> The bank credit card system involves a tripartite relationship between the issuer bank, the cardholder, and merchants participating in the system. The issuer bank establishes an account on behalf of the person to whom the card is issued, and the two parties enter into an agreement which governs their relationship. This agreement provides that the bank will pay for cardholder's account the amount of merchandise or services purchased through the use of the credit card and will also make cash loans available to the cardholder. It also states that the cardholder shall be liable to the bank for advances and payments made by the bank and that the cardholder's obligation to pay the bank shall not be affected or impaired by any dispute, claim, or demand by the cardholder with respect to any merchandise or service purchased.
>
> The merchants participating in the system agree to honor the bank's credit cards. The bank irrevocably agrees to honor and pay the sales slips presented by the merchant if the merchant performs his undertakings such as checking the list of revoked cards before accepting the card. x x x.
>
> These slips are forwarded to the member bank which originally issued the card. The cardholder receives a statement from the bank periodically and may then decide whether to make payment to the bank in full within a specified period, free of interest, or to defer payment and ultimately incur an interest charge.

We adopted a similar view in CIR v. American Express International, Inc. (Philippine branch),[15] where we also recognized that credit card issuers are not limited to banks. We said:

> Under RA 8484, the credit card that is issued by banks in general, or by non-banks in particular, refers to "any card x x x or other credit device existing for the purpose of obtaining x x x goods x x x or services x x x on credit;" and is being used "usually on a revolving basis." This means that the consumer-credit arrangement that exists between the issuer and the holder of the credit card enables the latter to procure goods or services "on a continuing basis as long as the outstanding balance does not exceed a specified limit." The card holder is, therefore, given "the power to obtain present control of goods or service on a promise to pay for them in the future."
>
> Business establishments may extend credit sales through the use of the credit card facilities of a non-bank credit card company to avoid the risk of uncollectible accounts from their customers.Under this system, the establishments do not deposit in their bank accounts the credit card drafts that arise from the credit sales. Instead, they merely record their receivables from the credit card company and periodically send the drafts evidencing those receivables to the latter.
>
> The credit card company, in turn, sends checks as payment to these business establishments, but it does not redeem the drafts at full price. The agreement between them usually provides for discounts to be taken by the company upon its redemption of the drafts. At the end of each month, it then bills its credit card holders for their respective drafts redeemed during the previous month. If the holders fail to pay the amounts owed, the company sustains the loss.

Simply put, every credit card transaction involves three contracts, namely: (a) the sales contract between the credit card holder and the merchant or the business establishment which accepted the credit card; (b) the loan agreement between the credit card issuer and the credit card holder; and lastly, (c) the promise to pay between the credit card issuer and the merchant or business establishment.[16]

Credit card issuer - cardholder relationship

When a credit card company gives the holder the privilege of charging items at establishments associated with the issuer,[17] a necessary question in a legal analysis is - when does this relationship begin? There are two diverging views on the matter. In City Stores Co. v. Henderson,[18] another U.S. decision, held that:

> The issuance of a credit card is but an offer to extend a line of open account credit. It is unilateral and supported by no consideration. The offer may be withdrawn at any time, without prior notice, for any reason or, indeed, for no reason at all, and its withdrawal breaches no duty - for there is no duty to continue it - and violates no rights.

Thus, under this view, each credit card transaction is considered a separate offer and acceptance.

Novack v. Cities Service Oil Co.[19] echoed this view, with the court ruling that the mere issuance of a credit card did not create a contractual relationship with the cardholder.

On the other end of the spectrum is Gray v. American Express Company[20] which recognized the card membership agreement itself as a binding contract between the credit card issuer and the card holder. Unlike in the Novack and the City Stores cases, however, the cardholder in Gray paid an annual fee for the privilege of being an American Express cardholder.

In our jurisdiction, we generally adhere to the Gray ruling, recognizing the relationship between the credit card issuer and the credit card holder as a contractual one that is governed by the terms and conditions found in the card membership agreement.[21] This contract provides the rights and liabilities of a credit card company to its cardholders and vice versa.

We note that a card membership agreement is a contract of adhesion as its terms are prepared solely by the credit card issuer, with the cardholder merely affixing his signature signifying his adhesion to these terms.[22] This circumstance, however, does not render the agreement void; we have uniformly held that contracts of adhesion are "as binding as ordinary contracts, the reason being that the party who adheres to the contract is free to reject it entirely."[23] The only effect is that the terms of the contract are construed strictly against the party who drafted it.[24]

On AMEX's obligations to Pantaleon

We begin by identifying the two privileges that Pantaleon assumes he is entitled to with the issuance of his AMEX credit card, and on which he anchors his claims. First, Pantaleon presumes that since his credit card has no pre-set spending limit, AMEX has the obligation to approve all his charge requests. Conversely, even if AMEX has no such obligation, at the very least it is obliged to act on his charge requests within a specific period of time.

i. Use of credit card a mere offer to enter into loan agreements

Although we recognize the existence of a relationship between the credit card issuer and the credit card holder upon the acceptance by the cardholder of the terms of the card membership agreement (customarily signified by the act of the cardholder in signing the back of the credit card), we have to distinguish this contractual relationship from the creditor-debtor relationship which only arises after the credit card issuer has approved the cardholder's purchase request. The first relates merely to an agreement providing for credit facility to the cardholder. The latter involves the actual credit on loan agreement involving three contracts, namely: the sales contract between the credit card holder and the merchant or the business establishment which accepted the credit card; the loan agreement between the credit card issuer and the credit card holder; and the promise to pay between the credit card issuer and the merchant or business establishment.

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From the loan agreement perspective, the contractual relationship begins to exist only upon the meeting of the offer[25] and acceptance of the parties involved. In more concrete terms, when cardholders use their credit cards to pay for their purchases, they merely offer to enter into loan agreements with the credit card company. Only after the latter approves the purchase requests that the parties enter into binding loan contracts, in keeping with Article 1319 of the Civil Code, which provides:

> Article 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

This view finds support in the reservation found in the card membership agreement itself, particularly paragraph 10, which clearly states that AMEX "reserve[s] the right to deny authorization for any requested Charge." By so providing, AMEX made its position clear that it has no obligation to approve any and all charge requests made by its card holders.

ii. AMEX not guilty of culpable delay

Since AMEX has no obligation to approve the purchase requests of its credit cardholders, Pantaleon cannot claim that AMEX defaulted in its obligation. Article 1169 of the Civil Code, which provides the requisites to hold a debtor guilty of culpable delay, states:

> Article 1169.Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. x x x.

The three requisites for a finding of default are: (a) that the obligation is demandable and liquidated; (b) the debtor delays performance; and (c) the creditor judicially or extrajudicially requires the debtor's performance.[26]

Based on the above, the first requisite is no longer met because AMEX, by the express terms of the credit card agreement, is not obligated to approve Pantaleon's purchase request. Without a demandable obligation, there can be no finding of default.

Apart from the lack of any demandable obligation, we also find that Pantaleon failed to make the demand required by Article 1169 of the Civil Code.

As previously established, the use of a credit card to pay for a purchase is only an offer to the credit card company to enter a loan agreement with the credit card holder. Before the credit card issuer accepts this offer, no obligation relating to the loan agreement exists between them. On the other hand, a demand is defined as the "assertion of a legal right; xxx an asking with authority, claiming or challenging as due."[27] A demand presupposes the existence of an obligation between the parties.

Thus, every time that Pantaleon used his AMEX credit card to pay for his purchases, what the stores transmitted to AMEX were his offers to execute loan contracts. These obviously could not be classified as the demand required by law to make the debtor in default, given that no obligation could arise on the part of AMEX until after AMEX transmitted its acceptance of Pantaleon's offers. Pantaleon's act of "insisting on and waiting for the charge purchases to be approved by AMEX"[28] is not the demand contemplated by Article 1169 of the Civil Code.

For failing to comply with the requisites of Article 1169, Pantaleon's charge that AMEX is guilty of culpable delay in approving his purchase requests must fail.

iii. On AMEX's obligation to act on the offer within a specific period of time

Even assuming that AMEX had the right to review his credit card history before it approved his purchase

requests, Pantaleon insists that AMEX had an obligation to act on his purchase requests, either to approve or deny, in "a matter of seconds" or "in timely dispatch." Pantaleon impresses upon us the existence of this obligation by emphasizing two points: (a) his card has no pre-set spending limit; and (b) in his twelve years of using his AMEX card, AMEX had always approved his charges in a matter of seconds.

Pantaleon's assertions fail to convince us.

We originally held that AMEX was in culpable delay when it acted on the Coster transaction, as well as the two other transactions in the United States which took AMEX approximately 15 to 20 minutes to approve. This conclusion appears valid and reasonable at first glance, comparing the time it took to finally get the Coster purchase approved (a total of 78 minutes), to AMEX's "normal" approval time of three to four seconds (based on the testimony of Edgardo Jaurigue, as well as Pantaleon's previous experience). We come to a different result, however, after a closer look at the factual and legal circumstances of the case.

AMEX's credit authorizer, Edgardo Jaurigue, explained that having no pre-set spending limit in a credit card simply means that the charges made by the cardholder are approved based on his ability to pay, as demonstrated by his past spending, payment patterns, and personal resources.[29] Nevertheless, every time Pantaleon charges a purchase on his credit card, the credit card company still has to determine whether it will allow this charge, based on his past credit history. This right to review a card holder's credit history, although not specifically set out in the card membership agreement, is a necessary implication of AMEX's right to deny authorization for any requested charge.

As for Pantaleon's previous experiences with AMEX (i.e., that in the past 12 years, AMEX has always approved his charge requests in three or four seconds), this record does not establish that Pantaleon had a legally enforceable obligation to expect AMEX to act on his charge requests within a matter of seconds. For one, Pantaleon failed to present any evidence to support his assertion that AMEX acted on purchase requests in a matter of three or four seconds as an established practice. More importantly, even if Pantaleon did prove that AMEX, as a matter of practice or custom, acted on its customers' purchase requests in a matter of seconds, this would still not be enough to establish a legally demandable right; as a general rule, a practice or custom is not a source of a legally demandable or enforceable right.[30]

We next examine the credit card membership agreement, the contract that primarily governs the relationship between AMEX and Pantaleon. Significantly, there is no provision in this agreement that obligates AMEX to act on all cardholder purchase requests within a specifically defined period of time. Thus, regardless of whether the obligation is worded was to "act in a matter of seconds" or to "act in timely dispatch," the fact remains that no obligation exists on the part of AMEX to act within a specific period of time. Even Pantaleon admits in his testimony that he could not recall any provision in the Agreement that guaranteed AMEX's approval of his charge requests within a matter of minutes.[31]

Nor can Pantaleon look to the law or government issuances as the source of AMEX's alleged obligation to act upon his credit card purchases within a matter of seconds. As the following survey of Philippine law on credit card transactions demonstrates, the State does not require credit card companies to act upon its cardholders' purchase requests within a specific period of time.

Republic Act No. 8484 (RA 8484), or the Access Devices Regulation Act of 1998, approved on February 11, 1998, is the controlling legislation
that regulates the issuance and use of access devices,[32] including credit cards. The more salient portions of this law include the imposition of the obligation on a credit card company to disclose certain important financial information[33] to credit card applicants, as well as a definition of the acts that constitute access device fraud.

As financial institutions engaged in the business of providing credit, credit card companies fall under the supervisory powers of the Bangko Sentral ng Pilipinas (BSP).[34] BSP Circular No. 398 dated August 21, 2003 embodies the BSP's policy when it comes to credit cards -

> The Bangko Sentral ng Pilipinas (BSP) shall foster the development of consumer credit through innovative products such as credit cards under conditions of fair and sound consumer credit practices. The BSP likewise encourages competition and transparency to ensure more efficient delivery of services and fair dealings with customers. (Emphasis supplied)

Based on this Circular, "x x x [b]efore issuing credit cards, banks and/or their subsidiary credit card companies must exercise proper diligence by ascertaining that applicants possess good credit standing and are financially capable of fulfilling their credit commitments."[35] As the above-quoted policy expressly states, the general intent is to foster "fair and sound consumer credit practices."

Other than BSP Circular No. 398, a related circular is BSP Circular No. 454, issued on September 24, 2004, but this circular merely enumerates the unfair collection practices of credit card companies - a matter not relevant to the issue at hand.

In light of the foregoing, we find and so hold that AMEX is neither contractually bound nor legally obligated to act on its cardholders' purchase requests within any specific period of time, much less a period of a "matter of seconds" that Pantaleon uses as his standard. The standard therefore is implicit and, as in all contracts, must be based on fairness and reasonableness, read in relation to the Civil Code provisions on human relations, as will be discussed below.

AMEX acted with good faith

Thus far, we have already established that: (a) AMEX had neither a contractual nor a legal obligation to act upon Pantaleon's purchases within a specific period of time; and (b) AMEX has a right to review a cardholder's credit card history. Our recognition of these entitlements, however, does not give AMEX an unlimited right to put off action on cardholders' purchase requests for indefinite periods of time. In acting on cardholders' purchase requests, AMEX must take care not to abuse its rights and cause injury to its clients and/or third persons. We cite in this regard Article 19, in conjunction with Article 21, of the Civil Code, which provide:

> Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.
>
> Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Article 19 pervades the entire legal system and ensures that a person suffering damage in the course of another's exercise of right or performance of duty, should find himself without relief.[36] It sets the standard for the conduct of all persons, whether artificial or natural, and requires that everyone, in the exercise of rights and the performance of obligations, must: (a) act with justice, (b) give everyone his due, and (c) observe honesty and good faith. It is not because a person invokes his rights that he can do anything, even to the prejudice and disadvantage of another.[37]

While Article 19 enumerates the standards of conduct, Article 21 provides the remedy for the person injured by the willful act, an action for damages. We explained how these two provisions correlate with each other in GF Equity, Inc. v. Valenzona:[38]

> [Article 19], known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's

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> duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.

In the context of a credit card relationship, although there is neither a contractual stipulation nor a specific law requiring the credit card issuer to act on the credit card holder's offer within a definite period of time, these principles provide the standard by which to judge AMEX's actions.

According to Pantaleon, even if AMEX did have a right to review his charge purchases, it abused this right when it unreasonably delayed the processing of the Coster charge purchase, as well as his purchase requests at the Richard Metz' Golf Studio and Kids' Unlimited Store; AMEX should have known that its failure to act immediately on charge referrals would entail inconvenience and result in humiliation, embarrassment, anxiety and distress to its cardholders who would be required to wait before closing their transactions.[39]

It is an elementary rule in our jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging it.[40] Although it took AMEX some time before it approved Pantaleon's three charge requests, we find no evidence to suggest that it acted with deliberate intent to cause Pantaleon any loss or injury, or acted in a manner that was contrary to morals, good customs or public policy. We give credence to AMEX's claim that its review procedure was done to ensure Pantaleon's own protection as a cardholder and to prevent the possibility that the credit card was being fraudulently used by a third person.

Pantaleon countered that this review procedure is primarily intended to protect AMEX's interests, to make sure that the cardholder making the purchase has enough means to pay for the credit extended. Even if this were the case, however, we do not find any taint of bad faith in such motive. It is but natural for AMEX to want to ensure that it will extend credit only to people who will have sufficient means to pay for their purchases. AMEX, after all, is running a business, not a charity, and it would simply be ludicrous to suggest that it would not want to earn profit for its services. Thus, so long as AMEX exercises its rights, performs its obligations, and generally acts with good faith, with no intent to cause harm, even if it may occasionally inconvenience others, it cannot be held liable for damages.

We also cannot turn a blind eye to the circumstances surrounding the Coster transaction which, in our opinion, justified the wait. In Edgardo Jaurigue's own words:

> Q 21: With reference to the transaction at the Coster Diamond House covered by Exhibit H, also Exhibit 4 for the defendant, the approval came at 2:19 a.m. after the request was relayed at 1:33 a.m., can you explain why the approval came after about 46 minutes, more or less?
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> A21: Because we have to make certain considerations and evaluations of [Pantaleon's] past spending pattern with [AMEX] at that time before approving plaintiff's request because [Pantaleon] was at that time making his very first single charge purchase of US$13,826 [this is below the US$16,112.58 actually billed and paid for by the plaintiff because the difference was already automatically approved by [AMEX] office in Netherland[s] and the record of [Pantaleon's] past spending with [AMEX] at that time does not favorably support his ability to pay for such purchase. In fact, if the foregoing internal policy of [AMEX] had been strictly followed, the transaction would not have been approved at all considering that the past spending pattern of the plaintiff with [AMEX] at that time does not support his ability to pay for such purchase.[41]

> x x x x
>
> Q: Why did it take so long?
>
> A: It took time to review the account on credit, so, if there is any delinquencies [sic] of the cardmember. There are factors on deciding the charge itself which are standard measures in approving the authorization. Now in the case of Mr. Pantaleon although his account is single charge purchase of US$13,826. [sic] this is below the US$16,000. plus actually billed x x x we would have already declined the charge outright and asked him his bank account to support his charge. But due to the length of his membership as cardholder we had to make a decision on hand.[42]

As Edgardo Jaurigue clarified, the reason why Pantaleon had to wait for AMEX's approval was because he had to go over Pantaleon's credit card history for the past twelve months.[43] It would certainly be unjust for us to penalize AMEX for merely exercising its right to review Pantaleon's credit history meticulously.

Finally, we said in Garciano v. Court of Appeals that "the right to recover [moral damages] under Article 21 is based on equity, and he who comes to court to demand equity, must come with clean hands. Article 21 should be construed as granting the right to recover damages to injured persons who are not themselves at fault."[44] As will be discussed below, Pantaleon is not a blameless party in all this.

Pantaleon's action was the
proximate cause for his injury

Pantaleon mainly anchors his claim for moral and exemplary damages on the embarrassment and humiliation that he felt when the European tour group had to wait for him and his wife for approximately 35 minutes, and eventually had to cancel the Amsterdam city tour. After thoroughly reviewing the records of this case, we have come to the conclusion that Pantaleon is the proximate cause for this embarrassment and humiliation.

As borne by the records, Pantaleon knew even before entering Coster that the tour group would have to leave the store by 9:30 a.m. to have enough time to take the city tour of Amsterdam before they left the country. After 9:30 a.m., Pantaleon's son, who had boarded the bus ahead of his family, returned to the store to inform his family that they were the only ones not on the bus and that the entire tour group was waiting for them. Significantly, Pantaleon tried to cancel the sale at 9:40 a.m. because he did not want to cause any inconvenience to the tour group. However, when Coster's sale manager asked him to wait a few more minutes for the credit card approval, he agreed, despite the knowledge that he had already caused a 10-minute delay and that the city tour could not start without him.

In Nikko Hotel Manila Garden v. Reyes,[45] we ruled that a person who knowingly and voluntarily exposes himself to danger cannot claim damages for the resulting injury:

> The doctrine of volenti non fit injuria ("to which a person assents is not esteemed in law as injury") refers to self-inflicted injury or to the consent to injury which precludes the recovery of damages by one who has knowingly and voluntarily exposed himself to danger, even if he is not negligent in doing so.

This doctrine, in our view, is wholly applicable to this case. Pantaleon himself testified that the most basic rule when travelling in a tour group is that you must never be a cause of any delay because the schedule is very strict.[46] When Pantaleon made up his mind to push through with his purchase, he must have known that the group would become annoyed and irritated with him. This was the natural, foreseeable consequence of his decision to make them all wait.

We do not discount the fact that Pantaleon and his family did feel humiliated and embarrassed when they had to wait for AMEX to approve the Coster purchase in Amsterdam. We have to acknowledge, however, that Pantaleon

was not a helpless victim in this scenario - at any time, he could have cancelled the sale so that the group could go on with the city tour. But he did not.

More importantly, AMEX did not violate any legal duty to Pantaleon under the circumstances under the principle of damnum absque injuria, or damages without legal wrong, loss without injury.[47] As we held in BPI Express Card v. CA:[48]

> We do not dispute the findings of the lower court that private respondent suffered damages as a result of the cancellation of his credit card. However, there is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. In such cases, the consequences must be borne by the injured person alone, the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. These situations are often called damnum absque injuria.
>
> In other words, in order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff - a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be a breach of some duty and the imposition of liability for that breach before damages may be awarded; and the breach of such duty should be the proximate cause of the injury.

Pantaleon is not entitled to damages

Because AMEX neither breached its contract with Pantaleon, nor acted with culpable delay or the willful intent to cause harm, we find the award of moral damages to Pantaleon unwarranted.

Similarly, we find no basis to award exemplary damages. In contracts, exemplary damages can only be awarded if a defendant acted "in a wanton, fraudulent, reckless, oppressive or malevolent manner."[49] The plaintiff must also show that he is entitled to moral, temperate, or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[50]

As previously discussed, it took AMEX some time to approve Pantaleon's purchase requests because it had legitimate concerns on the amount being charged; no malicious intent was ever established here. In the absence of any other damages, the award of exemplary damages clearly lacks legal basis.

Neither do we find any basis for the award of attorney's fees and costs of litigation. No premium should be placed on the right to litigate and not every winning party is entitled to an automatic grant of attorney's fees.[51] To be entitled to attorney's fees and litigation costs, a party must show that he falls under one of the instances enumerated in Article 2208 of the Civil Code.[52] This, Pantaleon failed to do. Since we eliminated the award of moral and exemplary damages, so must we delete the award for attorney's fees and litigation expenses.

Lastly, although we affirm the result of the CA decision, we do so for the reasons stated in this Resolution and not for those found in the CA decision.

WHEREFORE, premises considered, we SET ASIDE our May 8, 2009 Decision and GRANT the present motion for reconsideration. The Court of Appeals Decision dated August 18, 2006 is hereby AFFIRMED. No costs.

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SO ORDERED.

Carpio Morales, (Acting Chairperson), Velasco, Jr., Leonardo-De Castro, and [*]Bersamin, JJ., concur.

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[*] Designated additional Member of the Special Second Division, per Raffle dated August 10, 2010.

[1] Rollo, pp. 1504-1514.

[2] Id. at 1488-1503.

[3] Id. at 14-15.

[4] Id. at 735-736.

[5] Id. at 739-749.

[6] Id. at 20-21.

[7] Id., citing defendant's Exhibit "9-G," "9-H," and "9-I."

[8] In a decision dated August 18, 2006 penned by Associate Justice E. J. Asuncion, with the concurrence of Associate Justices J. Mendoza and A. Tayag.

[9] Section 3(f), Republic Act 8484.

[10] See M.J. Stephey, A Brief History of: Credit Cards, TIME Magazine, April 23, 2009, http://www.time.com/time/magazine/article/0,9171,1893507,00.html

[11] http://home3.americanexpress.com/corp/os/history.asp

[12] See Advice on Wise Credit Card Use and Money Management, Business Section of the February 9, 2009 issue of the Philippine Star, http://www.philstar.com/Article.aspx?articleid=438524

[13] http://www.economywatch.com/credit-card/international/philippines-credit-cards.html

[14] 21 III. App.3d 605, 316 N.E.2d 209 (1974).

[15] G.R. No. 152609, June 29, 2005, 462 SCRA 197.

[16] In Presta Oil, Inc. v. Van Waters & Rogers Corporation, the court characterized the nature of this last contract, thus:

> Credit cards are more automatic in their operation than checks or notes, but courts which have examined whether a credit card is legal tender have concluded that it is not. Instead, these courts held that the debt incurred in a credit card transaction is discharged when the merchant receives payment from the card issuer.

276 F.Supp.2d 1128, (2003) citing Porter v. City of Atlanta, 259 Ga. 526, 384 S.E.2d 631, 634 (1989), cert denied *1137 494 U.S. 1004, 110 S.Ct. 1297, 108 L.Ed.2d 474 (1990); Berry v. Hannigan, 7 Cal.App.4th 587, 9 Cal.Rptr.2d 213, 215 (1992), rev. denied Sept. 02, 1992; Cade v. Montgomery Co., 83 Md.App. 419, 575 A.2d 744, 749 (1990), rev. denied Aug. 30, 1990, cert denied 498 U.S. 1085, 111 S.Ct. 960, 112 L.Ed.2d 1047 (1991).

[17] Katz v. Carte Blanche Corp., 496 F.2d 747 (3d Cir. 1974).

[18] 116 Ga.App. 114, 156 S.E.2d 818 (1967).

[19] 149 NJ Super 542, 374 A.2d 89 (1977), aff'd, 159 NJ Super. 400, 388 A.2d 264 (1978).

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[20] 743 F.2d 10, 240 US.App.D.C. 10 (1984).

[21] See BPI Express v. CA, G.R. No. 120639, September 25, 1998; Aznar v. Citibank, G.R. No. 164273, March 28, 2007; Sps. Ermitano v. CA, G.R. No. 127246, April 21, 1999; Acol v. Philippine Commercial Credit Card Incorporation,G.R. No. 135149, July 25, 2006; Equitable Banking Corporation v. Calderon, G.R. No. 156168,December 14, 2004; Bankard v. Feliciano, G.R. No. 141761, July 28, 2006.

[22] See BPI Express Card Corp. v. Olalia, 423 Phil. 593, 599 (2001).

[23] Polotan, Sr. vs. Court of Appeals, 296 SCRA 247, 255 [1998].

[24] Palmares vs. Court of Appeals, G.R. No. 126490, 288 SCRA 422, 433 (1998), citing Philippine Airlines vs. Court of Appeals, et al., G.R. No. 119706, 255 SCRA 48, 58 (1996).

[25] An offer is defined as "a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Black's Law Dictionary, 5[th] edition, p. 976.

[26] See Selegna Management and Development Corporation v. UCPB, G.R. No. 165662, May 3, 2006.

[27] Black's Law Dictionary, 5[th] ed., p. 386.

[28] Rollo, p. 1429.

[29] Id. at 210.

[30] See Makati Stock Exchange, Inc. v. Campos, G.R. No. 138814, April 16, 2009.

[31] RTC records, p. 893-894.

[32] Defined in Section 3 of RA 8484 as "any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, goods, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument)."

[33] Credit card companies are required to provide information on the annual interest rates on the amount of credit obtained by the card holder, the annual membership fees, if any, the manner by which all charges and fees are computed, among others.

[34] Section 3 of Republic Act No. 7653, or the New Central Bank Act, provides:

Section 3. Responsibility and Primary Objective. - The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions, hereafter referred to as quasi-banks, and institutions performing similar functions.

The primary objective of the Bangko Sentral is to maintain price stability conducive to a balanced and sustainable growth of the economy. It shall also promote and maintain monetary stability and the convertibility of the peso.

[35] Subsections X320.3 and 4301N.3 of BSP Circular No. 398.

[36] Albano, Ed Vincent. Persons and Family Relations, 3[rd] Edition, 2006, p. 66, citing the Report of the Code Commission, p. 39.

[37] Id., at 67.

[38] G.R. No. 156841, June 30, 2005, 462 SCRA 466.

[39] Rollo, p. 50.

[40] Barons Marketing Corp. v. Court of Appeals, G.R. No. 126486, February 9, 1998, 286 SCRA 96, 105.

[41] RTC Records, p. 210.

[42] Id. at 1064.

[43] Id. at 1074.

[44] G.R. No. 96126, August 10, 1992, citing Mabutas v. Calapan Electric Co. [CA], 50 OG 5828 (cited in Padilla, Civil Code Annotated, Vol. 1, 1975 ed., p. 87).

[45] G.R. No. 154259, February 28, 2005.

[46] RTC records, pp. 1299-1300.

[47] See 17 C.J., 1125; Gilchrist v. Cuddy, 29 Phil. 542.

[48] G.R. No. 120639, September 25, 1998.

[49] CIVIL CODE, Article 2232.

[50] Ibid. Article 2234.

[51] Tanay Recreation Center and Development Corp. v. Fausto, 495 Phil. 400 (2005).

[52] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

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