

**AMERICAN EXPRESS INTERNATIONAL, INC., PETITIONER, VS.
INTERMEDIATE APPELLATE COURT AND JOSE M. ALEJANDRINO,
RESPONDENTS.***G.R. No. 70766. November 09, 1988*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-70766/>**PER CURIAM:**

This is an appeal by certiorari from the decision[*] and resolution of the respondent the then Intermediate Appellate Court in AC-G.R. CV. No. 00406 entitled "Jose M. Alejandrino, plaintiff-appellee, vs. American Express International, Inc., defendant-appellant," the former, dated February 7, 1985, reducing the amount of moral and exemplary damages in Civil Case No. 8882-P of the then Court of First Instance of Rizal, Seventh Judicial District, to P240,000 and P100,000 respectively, and the latter, dated April 29, 1985, restoring the amount of the damages awarded by the trial court: P2,000,000 as moral damages and P400,000 as exemplary damages with interest thereon at 12% per annum from notice of judgment, plus costs of suit.

The facts of the case as found by the trial court are as follows:

"In October 1979, plaintiff applied with defendant at the latter's Hongkong office for a credit card, filing for said purpose an application contained in Exhibits "C-1" and "C-2". Defendant wrote him, informing that to proceed with his application defendant required formal confirmation of his income by a professional third party, such as accountant, solicitor or tax agent, or, in lieu thereof, documentary evidence, like income tax assessment notice, etc., for submission to it. (Exhibit "A").

"In response to Exhibit "A", plaintiff wrote defendant that if his account with the American Express International Banking Corporation in Hongkong was not sufficient to qualify him for an American Express Credit Card, defendant could consider his application withdrawn as, he has no desire to submit papers regarding his income (Exhibit "B").

"Waiving its requirements in Exhibit "A", defendant approved plaintiff's application, sending him for said purpose a letter of acceptance, marked in evidence as Exhibit "C", by plaintiff and Exhibit "1" by defendant. In his complaint and affidavit in support thereof, plaintiff declared under oath that Exhibit "C" was accompanied only by his American Express Card and nothing else. On the other hand, defendant claims in its Answer (Pars. 3-5) that said letter of acceptance was also accompanied by a form agreement, marked as Annex "2" and later marked as Exhibit "2" during the trial, embodying the conditions of the card.

"The principal factual issue, therefore is whether Exhibit "2" was actually furnished plaintiff. As defendant claims that this document constitutes the contract with the plaintiff, it is clear that the burden of proof to show receipt by plaintiff of said document rests upon defendant. Has defendant proved this by credible evidence? This Court does not believe so, for the following reasons:

"First, all the evidence of defendant on this point are the testimonies of witnesses Felixberto Bombasi, Florencia Victoria and Jason Lo. As to the first two, in synthesis, they declared, on direct examination, that it is the standard procedure in all offices of American Express that when a credit card application is approved, a letter of acceptance together with a credit card bearing the name of the cardholder, number of the card and

period of its validity, and a printed form agreement containing the conditions thereof, are mailed to the accepted cardholder in a window envelope similar to Exhibit "C-2" (later changed to Exhibit "E"). Because Bombasi had re-signed from defendant prior to his scheduled testimony on August 19, 1982, it was agreed between the parties that his answers on direct examination would be considered as if they were made by witness Victoria, provided they would be subject to the cross-examination of the latter.

"The only testimony of Bombasi that has any relation to the above factual issue is that as a matter of standard procedure or policy, an approved cardholder is sent a letter of acceptance similar to Exhibit "1" and is issued a credit card and a separate printed form similar to Exhibit "2", concerning the handling of plaintiff's card account in Hongkong. His testimony, therefore, is based on pure assumption. The same is true with witness Victoria because she was never posted in defendant's Hongkong office, except when she was assigned there for a one-month training in December 1980. The letter of acceptance of plaintiff's cardmembership was sent by defendant in October 1979 (TSN, pp. 6-7, September 28, 1982 morning). Hence, her testimony that Exhibit "2" was enclosed with Exhibit "1" is also pure supposition. Considering the big volume of correspondence handled daily as well as the 100,000 card accounts serviced by defendant (tsn., pp. 31, 34, September 28, 1982, p.m.), this Court cannot exclude the possibility that the omission to enclose Exhibit "2" was due to human error on the part of defendant's employees. Even defendant's Hongkong lawyers (DEACONS) have not denied this possibility (Exhibit "U").

"As to witness Jason Lo, his testimony that it was not possible that Exhibit "2" was not sent with Exhibit "1" and the credit card because of the routine procedure in defendant's Hongkong office, is likewise a pure assumption, for, as he himself admitted on cross-examination, he had no personal knowledge when Exhibit "1" was sent to plaintiff since this was the work of the New Accounts and Mailing Departments with which he had nothing to do (TSN, pp. 28, 69, September 28, 1982, p.m.). Then also even if negligence at the New Accounts and Mailing Departments of defendant's Hongkong office were to be ruled out, the possibility that the New Accounts Department deliberately omitted, to make such enclosure cannot be excluded because of the desire of defendant to capture plaintiff's patronage, as evidence by the waiver, in the case of plaintiff, of its usual requirements to show financial reliability listed in Exhibit "A-1". To have sent plaintiff copy of Exhibit "2" might make him reject the card and lose the business which he could bring to defendant.

"While the above are merely circumstantial, on the other hand, the fact remains that defendant has not produced any positive evidence to overcome plaintiff's claim that Exhibit "C" was not accompanied by any form, agreement like Exhibit "2" or Exhibit "8-A".

"Second, the following circumstances, backed up by documentary evidence, have not been contradicted by defendant's evidence, whether testimonial or documentary:

"(1) In his letter, Exhibit "K", plaintiff presented serious charges relative to the Seattle incident, demanding adequate compensation for his moral sufferings resulting from said incident. Far from invoking its rights under Exhibit "2" for its defense, defendant's Hongkong Director of Operations apologized for the incident, claiming that it was due to misunderstanding, and offered to explain to the people at the Bon Department Store in Seattle the circumstances which brought about the incident and to reinstate plaintiff's card account. This was an abnormal reaction by defendant who is supposedly covered comprehensively by an agreement like Exhibit "2" which provides that the card remains the property of American Express, that the latter can revoke the cardholder's right to use it at anytime with or without cause and without giving notice, that it can list revoked cards in the "Cancellation Bulletin" or otherwise inform firms honoring the card as having been revoked cards in the "Cancellation Bulletin." The only logical explanation for this reaction is that either defendant, knew that plaintiff had not been furnished Exhibit "2" or it had no proof he was so furnished.

"(2) When plaintiff replied to Exhibit "L", which is defendant's Hongkong office, instead of simply invoking the tightly protective provisions of Exhibit "2", went to the trouble and expense of engaging a local law firm (DEACONS) to answer plaintiff's reply, Exhibit "M". This again is an unusual reaction for a party allegedly

protected by the terms of Exhibit "2", thus lending further support to plaintiff's claim that defendant failed to furnish him with a copy of such contract and, therefore, is not bound by it.

"(3) In response to Exhibit "M" DEACONS wrote plaintiff that when the card was forwarded to him, with it was dispatched copy of the conditions of cardmembership, quoting in connection therewith Exhibit "U-2", which according to them, was violated by plaintiff, for which violation card was cancelled (Exhibit "U"). All three witnesses presented by defendant during the trial, however, were unanimous in declaring that Exhibit "2" is the standard form agreement that is furnished to all approved American Express cardholders. From this, they assumed that Exhibit "2" must have been the form that was sent to plaintiff with Exhibit "C". But when witness Jason Lo was asked on cross-examination to indicate from what part of Exhibit "2" (tsn., pp. 73-74, September 28, 1982 a.m.), and that he identified in Exhibit "2" did not tally verbatim with Exhibit "U-2". And, later, when DEACONS were asked by defendant's counsel in this case where they had obtained Exhibit "U-2", they explained that it was lifted from a card agreement payable in Hongkong dollars, (Exhibit "8", Exhibit "8-A"), which is a different document from Exhibit "2". This discrepancy in defendant's evidence leads this Court to believe that there was not only one form agreement that could be sent to approved American Express cardholders. If indeed this was the case, and Exhibits "U" and "G" point to it, then Exhibit "2" could not necessarily have been sent to plaintiff; contrary to what is averred in the answer filed in the case. Since the whole theory of defendant in its Answer is founded on the receipt of Exhibit "2" by plaintiff, which must be proved by positive evidence though then Exhibits "U" and "G" destroyed said theory, defendant's main defense has collapsed. Considering that the form agreement that supposedly goes with every credit card is but a separate printed paper which is not signed by the parties, it should not really be difficult for defendant to concoct and print any kind of agreement that could save it from a big damage suit.

"(4) Plaintiff testified, without any contradiction from defendant, that he was not so interested in an American Express Credit Card, so much so that he refused to comply with the requirements demanded in Exhibit "A" and informed the defendant accordingly (Exhibit "B"). Defendant's counsel himself recognized that plaintiff is a prudent and careful lawyer and businessman and a former ambassador of long standing (tsn, pp. 3-4, August 25, 1981). This Court finds it difficult to believe that a person of such attributes would accept a credit card with the harsh conditions contained in Exhibit "2" particularly when he was not even in need of it and the card is not even free.

"Another defense put up by defendant is that plaintiff was duly notified as far back as February 1980 of the closure of his account. According to defendant, the notification was conveyed thru Exhibit "6-C". On this said defense the facts appears as follows:

"The joining fee is \$35 and the annual due, \$35 (Exhibits "C-1", par. 12).

"According to defendant, in November 1979, it mailed to plaintiff at his Philippine address a bill for US\$70 for the joining fee and the first annual due (Annex "3" of the Answer and Exhibit "6"). Having again received no payment, it mailed to him a January 1980 Statement of Account for the same amount (Annex "5" of the Answer and Exhibit "6-B"). As no remittance was still made, defendant cancelled his account in February 1980 and mailed him a statement of account which contains a notice of cancellation of account (Par. 10 of Answer, Exhibits "6-C" and "6-C-1").

"On May 2, 1980, plaintiff received, from Manila office of defendant, not by mail but thru FAR Corporation, a private courier service outfit in Manila, defendant's statement of account, Exhibit "6-B" (Par. 8, Complaint; plaintiff's affidavit, pars. 8 and 10); Exhibits "E" and "E-1" thru "E-4"). Defendant has not controverted this fact.

"Immediately upon receipt of Exhibit "6-B", plaintiff sent defendant his check for US\$70, together with the voucher stub of Exhibit "6-B". This is not denied by defendant. In fact, it admits having received and collected said remittance (Pars. 11-12, Answer), but did not reinstate, plaintiff's account. Instead it merely entered the payment as a credit in said account. It did not inform plaintiff about this action. Defendant's reason for entering

the payment as a credit was that plaintiff's account was already closed but it is company policy of defendant to keep the US\$70 just in case plaintiff had used his card between February and April, 1980 (tsn, pp. 22, 26, September 28, 1982, a.m.).

"In mid-August 1980, plaintiff received the July Statement of Account from defendant for US\$70 (Par. 10, Complaint). This is not controverted by defendant. Having previously paid a similar bill in May 1980 and as plaintiff had never used his credit card, he wrote defendant, inquiring whether said bill was for a new charge and for what purpose. He did not receive any reply (Plaintiff's affidavit, pp. 5-6).

"According to plaintiff, on September 26, 1980, while in Seattle, Washington State, USA, believing his American Express card was valid, he used it to buy a jacket and pants, worth \$117, at Bon Department Store, the biggest in Seattle. The sales clerk did not check his card with the Credit Department, evidently, because the purchase involved a small amount. However, when he tried to buy a gold key chain, worth \$451.11, thru his card, the sales clerk in charge checked up the card with the Credit Department. To his great shock and humiliation, plaintiff was told, in the presence of Philip-pine Consul Landicho, that defendant's Seattle office would not allow the use of his credit card and that, instead, it requested them to seize said card for surrender to defendant. Plaintiff angrily protested against such humiliating treatment, saying that American Express had never informed him of the alleged cancellation of his credit card and that there must have been a mistake in defendant's records because he had never used the card elsewhere and that it was therefore impossible for his account to be delinquent. The lady in-charge answered that she knew nothing about the case and was just following orders. She then passed to plaintiff the phone so that he could speak personally to the American Express agent (a lady) who had ordered the seizure of the card. Plaintiff told the agent that he had never been informed of the cancellation of his alleged delinquency. The agent replied that she was unable to tell the amount as she did not have plaintiff's file before her but that her instructions were to seize the card. Plaintiff asked the agent to verify his account because he was sure that American Express had made a mistake and protested vigorously against the unfair, irresponsible and humiliating treatment being meted out to him, adding further that American Express would pay dearly for the false charge and reckless manner in which it had ordered his card seized. Notwithstanding said protest, the agent ordered the seizure of plaintiff's card. To avoid a public scandal which might have resulted in the calling of the police and a formal investigation, plaintiff surrendered his card on the conditions he was given a receipt for it. The receipt is marked as Exhibit "H". In the course of the argument over the seizure of the card, Consul Landicho identified plaintiff to the Credit Department people at the Bon Store, assured them of plaintiff's high social and financial standing both at home and abroad, and stated that it was unlikely that someone, home and abroad, with the stature of plaintiff would knowingly use a cancelled card and thereby risk his reputation and integrity on items which cost but a few hundred dollars. The Bon personnel regretted they could not be of help in the matter. (Plaintiff's affidavit, pp. 7-8). Defendant has not contradicted the above mentioned evidence.

"Upon plaintiff's return to the Philippines in late October 1980, he found waiting for him Exhibit "J", advising him that his card account had a credit balance of US\$70 and to apply for a refund if so desired. Since his American Express card has been cancelled for delinquency and had been seized in Seattle on September 26, 1980, plaintiff wrote defendant on November 5, 1980, relating his humiliating and painful moral and emotional experience at the Bon Store, and demanding satisfaction, including adequate compensation, for the terrible damage to his integrity, prestige, reputation, feeling, etc. His letter is marked Exhibit "K". The Director of Operations of Defendant's Hongkong office replied on November 20, 1980, apologizing for plaintiff's "inconvenience" which he attributed to an unfortunate "misunderstanding." He offered to write to the Bon Store to explain what had happened and to reopen plaintiff's card account. His answer is marked Exhibit "L". On November 27, 1980, plaintiff wrote back, rejecting defendant's tender of apology for being not only unsatisfactory but also adding insult to injury, besides being insulting to his intelligence, since Exhibit "L" implied that plaintiff was to blame for the incident when it claimed that plaintiff had been informed of the cancellation of his account. Defendant had conveniently omitted to explain why plaintiff's letter of August 15, 1980 (Exhibit "F") was not answered or acted upon in any way by defendant. This letter is marked Exhibit "M"

(Plaintiff's affidavit, p. 10).

"An exchange of letters followed between plaintiff and defendant's Hongkong office, and, later, between him and DEACONS on the dispute (Exhibits N, O, P, Q, U, V, W, X, & Y), as well as between plaintiff and President McCormick of American Express, in an effort to settle the case amicably (Exhibits "R", "S", "T").

"The efforts for extra-judicial settlement having failed, plaintiff commenced the present action on March 2, 1980. After several extensions, defendant filed its Answer on April 14, 1980, to which plaintiff filed a Reply on April 20, 1980." (pp. 119-127, Rollo)

As already stated, the trial court awarded private respondent Alejandrino P2,000,000 as moral damages and P400,000 as exemplary damages for the humiliation and embarrassment he suffered at Bon Department Store in Seattle, Washington, U.S.A. as a result of petitioner's wanton and reckless negligence resulting in the breach of its contract with him.

We agree with the trial court's imputation of negligence on the part of petitioner. But We also agree with the petitioner that the damages awarded by the trial court were extremely excessive. While some moral anguish and embarrassment must have been suffered by private respondent Alejandrino, We cannot say he was without fault.

In November 1979, petitioner mailed to Alejandrino at his Philippine address a bill for US\$70 (joining fee of US\$35 and a December 1979 account of US\$35). When it did not receive any payment, petitioner sent Alejandrino another statement of account in January 1980. As there was still no remittance made, petitioner cancelled Alejandrino's account in February 1980. Alejandrino knew of this cancellation.

However, on May 2, 1980, Alejandrino received from the Manila office of petitioner, thru a private courier service, another statement of account. This happened because the Hongkong office did not inform the Manila office of the status of Alejandrino's account. That was truly a mistake on the part of petitioner, caused by its inexcusable negligence of prematurely cancelling private respondent's account in February 1980 without prior verification from its Manila office.

Alejandrino sent to petitioner a check for US\$70. Petitioner received the amount but it did not reinstate Alejandrino's account. Instead it merely entered the payment as a credit in said account. Alejandrino was not informed about this action taken by petitioner.

In August 1980, Alejandrino received the July 1980 statement of account for US\$70. Having previously paid a similar bill in May 1980, and not having ever used his credit card before, Alejandrino wrote petitioner inquiring what the bill was for. He did not receive any reply. That was another, and bigger, mistake by petitioner. That could have been the opportunity for petitioner to correct any mistakes it might have committed. A simple explanation from petitioner could have, once and for all, straightened out any misunderstanding. It even could have avoided the issue of whether or not private respondent received, along with his credit card, the Amex Agreement which contains this provision:

"The Amex Card remains our property and we can revoke your right to use it at any time. We can do this with or without cause and without giving you notice." (p.21, Petition; p. 41, Rollo)

On the other hand, it is evident that Alejandrino's fault consists in his not having paid the original fee on time. True it is that the succession of events betrayed confusion -- that account is cancelled one day to be reinstated the next, so to speak. Alejandrino inquired but there was no reply. Having received no reply, Alejandrino erroneously presumed that his account with Amexco had been restored, or that there were no conditions to the credit agreement other than those that appeared on the credit card. The absence of any categorical information about the account's cancellation did not entitle Alejandrino to presume that the account had been reinstated. A person of

Alejandrino's stature (he was a former ambassador of the Republic) could have been more circumspect. He should have first definitely ascertained whether the check for US\$70 he sent to petitioner for the May 1980 statement of account indeed restored his standing with petitioner, especially so that he knew that his account with petitioner had supposedly been cancelled three months before, in February 1980. He was certainly mistaken when he thought that the invitation extended to him was a personal one; it was clearly merely a form-letter. The salutation thereof did not bear his name but only the words: "Dear, Pre-Approved Applicant."

Now, the damages. Private respondent Alejandrino was awarded by the trial court the inconceivably large moral and exemplary damages because of the alleged humiliation suffered by him when he was forced to surrender his Credit card at Bon Department Store in Seattle. But the people at Bon's Credit Department acted very politely towards Alejandrino. The lady in charge who knew nothing about the case was just following orders. The lady offered the phone to Alejandrino so that he could speak directly to the Amexco agent who ordered the seizure of his credit card. The Bon personnel regretted the incident but could not be of help in the matter. As there are no pre-set spending limits to the use of the Amexco credit card, petitioner could not be faulted for ordering the immediate seizure of private respondent's credit card. Considering the large number of people availing themselves of the no pre-set spending privilege in the use of the credit card, petitioner's only protection consists in its ability to stop with dispatch anyone wrongfully using the Amex card. Whatever humiliation or embarrassment Alejandrino might have suffered on account of the seizure incident, none was maliciously intended by the petitioner. In fact, upon Alejandrino's return to the Philippines and after the Hongkong office learned of the seizure incident in Seattle, the Director of Operations of the Hongkong office apologized to private respondent. The Director offered to write a letter of explanation to Bon Department Store. He even offered to reopen Alejandrino's account. The offers were rejected by Alejandrino.

While petitioner was not in bad faith, its negligence caused the private respondent to suffer mental anguish, serious anxiety, embarrassment and humiliation, for which he is entitled to recover reasonable moral damages (Article 2217, Civil Code).

Finally, the so-called prejudicial questions raised by Alejandrino, embodied in no less than eleven (11) motions, submitting for resolution by this Court two issues: (a) whether the Supreme Court has jurisdiction to take cognizance of petitioner's motion, filed on May 15, 1985, for extension of time to file a petition for review of the Court of Appeals' resolution dated April 29, 1985, in view of Section 39 of B.P. Blg. 129, in relation to Section 5(2), Art. VIII of the 1987 Constitution; and (b) whether this Court has jurisdiction to entertain the petition for review filed in this case, without leave of court, by waiving the requirement of Section 2, Rule 45, of the Rules of Court, and without the petition containing an assignment of errors.

These are the incontrovertible procedural facts. On May 7, 1985, petitioner received a copy of the Court of Appeals' resolution dated April 29, 1985 which amended the original decision of February 7, 1985 by restoring the damages granted by the trial court Eight (8) days afterwards, or on May 15, 1985, within the reglementary period, petitioner filed with this Court a motion for extension of 30 days counted from May 16, 1985 within which to file its petition for review on June 10, 1985. This Court gave due course to the petition for review in its resolution dated October 28, 1985.

The petition for review was seasonably filed. There is no infirmity in its filing. The appeal on questions of law to this Court thru a petition for review on certiorari is governed by Rule 45 of the Rules of Court and Section 25 of the Interim Rules, and not by B.P. Blg., 129. In fact, the Supreme Court is outside the scope of B.P. Blg. 129. Besides, there is nothing sacred about the procedure of pleadings. This Court may go beyond the pleadings when the interest of justice so warrants. It has the prerogative to suspend its rule for the same purpose. In the language of Mr. Justice Moreland, "a litigation is not a game of technicalities in which one, more deeply schooled and

skilled in the subtle art of movement and position, entraps and destroys the other. It is rather, a contest in which each contend-ing party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicali-ties of procedure, asks that justice be done upon the merits. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." (Alonso v. Villamor, et al. 16 Phil. 315)

WHEREFORE, the assailed decision of the then Intermediate Appellate Court (IAC) is hereby SET ASIDE, and a new one is hereby rendered, ordering petitioner to pay private respondent the sum of One Hundred Thousand P100,000.00) Pesos as moral damages, with six (6%) per cent interest thereon computed from the finality of this decision until paid. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Cruz, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Melencio-Herrera, and Gutierrez, Jr., JJ., no part. Did not participate in the deliberations.

Paras, J., no part.

Feliciano, J., no part, being an Amexco cardholder.

[*] Penned by Justice Floreliana Castro-Bartolome, concurred in by Justices Jorge R. Coquia and Bienvenido C. Ejercito.

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