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SPECIAL SECOND DIVISION

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

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

R E S O L U T I O N

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.

<u>**THE MOTION FOR RECONSIDERATION**</u>

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.
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> 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."
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> 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.
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> 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