

## SECOND DIVISION

[ G.R. No. 172901, October 29, 2008 ]

**AMERICAN EXPRESS INTERNATIONAL, INC., PETITIONER, VS.  
HON. JUDGE MARLENE GONZALES SISON, IN HER CAPACITY AS  
PRESIDING JUDGE OF BRANCH 85 OF THE QUEZON CITY  
REGIONAL TRIAL COURT, AND MARIA TERESA FERNANDO,  
RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

American Express International, Inc. (Amex) questions the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 71987, dated December 19, 2005, insofar as it ruled that Amex was not able to prove that it had paid the appeal docket fees within the reglementary period thereby warranting the trial court's denial of its notice of appeal, and the appellate court's Resolution,<sup>[2]</sup> dated June 1, 2006, denying its motion for partial reconsideration.

The records disclose the following antecedent facts:

Celia A. Silang-Cruz (Cruz) filed a complaint for Collection of Sum of Money and Damages against Ma. Teresa S. Fernando (Fernando) and Enrico Pineda (Pineda) arising from Fernando's use of an Amex supplementary credit card to obtain accommodations for a certain Alejandra Rodriguez (Rodriguez) at the Mandarin Oriental Hotel (Mandarin). Cruz alleged that Fernando did not seek her prior authority for the use of the Amex card, of which Cruz was the principal cardholder, before charging Rodriguez's bill, which amounted to \$17,318.94, to her account. Fernando allegedly admitted having incurred the charges and even issued a check to answer for the account which, however, was dishonored by the drawee bank.

As a consequence of the foregoing, Cruz's Amex card was cancelled, prompting her to file suit against Fernando and Pineda before the Regional Trial Court (RTC) of Quezon City, Branch 85, docketed as Civil Case No. Q-93-16680.

Pineda and Fernando were initially declared in default but the trial court ultimately admitted their answers.

Fernando claimed that she and Cruz were business partners engaged in the supply of construction materials. In one of their business transactions, Fernando and Cruz earned an aggregate net income of P1,878,221.00 which they were supposed to divide equally, with each of them receiving P939,110.50. Cruz allegedly refused to give Fernando her share in the income of their venture and even filed the collection case against her in order to evade having to pay the sum.

Fernando professed that she had not authorized the use of her supplementary credit

card to pay for Rodriguez's accommodations at the Mandarin and even filed a third party complaint against the hotel, Amex and Rodriguez. Mandarin was allegedly grossly negligent in charging Rodriguez's bill to Fernando's supplementary card without authority from the latter and without asking Fernando to sign the required credit card stencil or credit authorization form as is the standard practice in such transactions. Amex was also allegedly grossly negligent when it settled the account amounting to P438,169.18 and charged the same against Cruz's credit.

In answer to the third party complaint, Mandarin insisted that the supplementary card was charged for Rodriguez's accommodations with Fernando's knowledge and authorization.

Amex, for its part, claimed that its responsibility in the questioned transaction was limited to verifying whether the card was valid and had not exceeded its charging limit. It had allegedly performed its responsibility in this case.

After due proceedings, the trial court rendered judgment<sup>[3]</sup> in favor of Fernando. The dispositive portion of the trial court's decision states:

WHEREFORE, for and in consideration of the foregoing premises, judgment is hereby rendered in favor of Defendant-Third Party Plaintiff MA. TERESA FERNANDO and against CELIA SILANG CRUZ, Third Party Defendants MANDARIN, AMEX and RODRIGUEZ, as follows:

1. Ordering plaintiff to pay defendant MA. TERESA FERNANDO the amount of P1,000,000.00 as moral damages, P500,000.00 as exemplary damages and attorney's fees equivalent to 20% of the foregoing amount;
2. Ordering Third Party Defendants MANDARIN, AMEX and RODRIGUEZ to pay Third Party Plaintiff MA. TERESA FERNANDO the amount of ONE MILLION (P1,000,000.00) PESOS each as moral damages;
3. Ordering Third Party Defendants MANDARIN, AMEX and RODRIGUEZ to pay Third Party Plaintiff MA. TERESA FERNANDO the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS each as and for exemplary damages;
4. Ordering plaintiff and Third Party Defendants MANDARIN, AMEX and RODRIGUEZ jointly and severally to pay attorney's fees in the amount of thirty per cent (30%) of the foregoing amount;
5. Ordering plaintiff and Third Party Defendants MANDARIN, AMEX and RODRIGUEZ similarly to pay the costs of the suit.

SO ORDERED.<sup>[4]</sup>

The motions for reconsideration filed by Amex<sup>[5]</sup> and Mandarin were denied by the RTC in its Order<sup>[6]</sup> dated January 15, 2001.

Amex filed its Notice of Appeal<sup>[7]</sup> on January 29, 2001, which was promptly opposed

by Fernando on the ground of non-payment of the appeal, docket and other legal fees within the reglementary period. In an Order<sup>[8]</sup> dated March 4, 2002, the trial court denied the Notice of Appeal and declared its decision dated December 1, 2000 final and executory with respect to Amex. It denied reconsideration in its Order<sup>[9]</sup> dated June 27, 2002.

Amex assailed the March 4, 2002 and June 27, 2002 Orders as having been issued with grave abuse of discretion. It claimed that it had paid the prescribed docket fee twice; the first time by registered mail within the reglementary appeal period. The trial court allegedly ignored the well-entrenched principle of subserving technicalities in the interest of substantial justice. Amex further averred that the trial court should not have denied its appeal in view of the fact that the appeal filed by Mandarin, its co-judgment debtor, had been duly perfected and given due course.

Ruling on the issues raised by Amex, the Court of Appeals, in its assailed Decision dated December 19, 2005, declared that the non-receipt by the Office of the Clerk of Court (OCC) of the letter in which Amex supposedly enclosed payment of the appeal docket fees produced the effect of non-payment thereof. The appellate court noted that Amex failed to discharge its burden to prove that the letter was mailed and received by the OCC as it did not present any certification from the postmaster as to how, when and to whom delivery of the registry notice of the subject mail was made; whether said notice was received by the OCC; or whether the letter was in fact received by the OCC.

However, the Court of Appeals ruled that the trial court can not yet execute its decision with respect to the judgment against Amex pending Mandarin's appeal.

The appellate court denied reconsideration in its Resolution<sup>[10]</sup> dated June 1, 2006.

Insisting that it actually sent the payment for docket fees by registered mail on January 29, 2001, Amex argues in its Petition for Review on Certiorari<sup>[11]</sup> dated July 17, 2006, that the non-receipt by the OCC of its letter dated January 29, 2001 with the enclosed payment of docket fees does not produce the effect of non-payment of such fees. Amex also avers that the Court of Appeals should have liberally construed the rules in the interest of substantial justice.

In her Comment<sup>[12]</sup> dated October 4, 2006, Fernando contends that the petition should be denied because it erroneously impleads Hon. Marlene Gonzales Sison<sup>[13]</sup> (Judge Sison) in her capacity as Presiding Judge of Branch 85 of the RTC in contravention of Sec. 4, Rule 45 of the 1997 Rules of Civil Procedure (Rules of Court). The petition also raises factual issues which have already been passed upon by the appellate court.

Fernando suggests that if the Notice of Appeal and the letter in which the payment of docket fee was supposedly enclosed were mailed simultaneously as Amex claims, the registry receipts of these mail matters would have been consecutively numbered.

Amex filed a Reply<sup>[14]</sup> dated November 3, 2006, insisting that Judge Sison was properly impleaded because the petition is an appeal from the decision of the Court