

## FIRST DIVISION

[ G.R. NO. 147275, March 31, 2006 ]

### VICENTE ONGKEKO, PETITIONER, VS. BPI EXPRESS CARD CORPORATION, RESPONDENT

#### DECISION

##### AUSTRIA-MARTINEZ, J.:

Assailed in the present petition for review on *certiorari* are the Decision dated January 25, 2001 and Resolution dated February 23, 2001, rendered by the Court of Appeals (CA) in CA-G.R. SP No. 61427.<sup>[1]</sup>

The facts that gave rise to the present case are undisputed. On September 13, 1990, Lina Lodovica (Lodovica) applied for a credit card with respondent, with Vicente Ongkeko (petitioner) acting as surety. Her application was approved and she was originally given a P3,000.00 credit limit. When Lodovica's card expired in 1991, it was renewed and her credit limit was increased to P10,000.00. As of May 12, 1996, Lodovica had an outstanding balance of P22,476.61.

On May 28, 1996, respondent brought an action for sum of money against Lodovica and petitioner. Petitioner filed his Answer admitting his undertaking, but he maintained that he can only be liable for the original credit limit of P3,000.00, and that the renewal of the credit card without his consent extinguished his undertaking.

The Metropolitan Trial Court (MTC) of Makati, Branch 66, rendered judgment on January 31, 2000, finding petitioner liable. The dispositive portion of the Decision reads:

WHEREFORE, judgment is rendered ordering defendant Ongkeko to pay plaintiff the following:

1. the amount of P22,476.61 as of May 12, 1996 plus the interest of 3% per month and 1% penalty charge per month from date of the filing of the complaint on May 28, 1996 until the account is fully paid;
2. 25% of the amount due as attorney's fees or P10,000.00 whichever is lesser;
3. cost of suit.

SO ORDERED.<sup>[2]</sup>

The Regional Trial Court (RTC) of Makati, Branch 135, in its Decision dated July 10, 2000<sup>[3]</sup> and Order dated October 2, 2000,<sup>[4]</sup> affirmed the MTC Decision.

The CA also affirmed the lower courts' decisions when it dismissed the petition for review filed before it. The CA, however, deleted the award of attorney's fees inasmuch as the MTC Decision does not contain any justification for its award.<sup>[5]</sup> The CA denied petitioner's motion for reconsideration.<sup>[6]</sup>

Petitioner merely reiterated in the present petition the arguments he previously raised before the lower courts and the appellate court. Petitioner submits the following contentions:

1. Petitioner is not liable for the purchases made by Lodovica after the expiration of the original term of the credit card because he was not notified of the renewal of the credit and the increase of the credit limit;
2. The surety undertaking, being a contract of adhesion, should have been taken against Respondent;
3. Petitioner is not liable for the purchases made by Lodovica after the expiration of the original term of the credit card because the circumstances at the time he agreed to act as surety for Lodovica were no longer existing at the time of the renewal.<sup>[7]</sup>

Petitioner's case is not a novel one. In the analogous case of *Molino v. Security Diners International Corporation*,<sup>[8]</sup> the Court already had the occasion to rule that suretyship under these circumstances is a continuing one and the surety is bound by the liabilities of the principal until it has been fully paid.

In the *Molino case*, Jeanette Molino, the petitioner, acted as a surety for her brother-in-law, Danilo Alto, in his application for a local credit card with the Security Diners International Corporation (SDIC). The card was subsequently upgraded and the credit limit increased. When Alto failed to pay his liability under the credit card, SDIC filed an action for collection against Alto and Molino. The Court summed up the issues as: whether Molino is liable as surety, and whether the upgrading of the card constituted a novation that will extinguish her obligation and undertaking, which was resolved in this wise, *viz.*:

There is no doubt that the upgrading was a novation of the original agreement covering the first credit card issued to Danilo Alto, basically since it was committed with the intent of cancelling and replacing the said card. **However, the novation did not serve to release petitioner from her surety obligations because in the Surety Undertaking she expressly waived discharge in case of change or novation in the agreement governing the use of the first credit card.**

The nature and extent of petitioner's obligations are set out in clear and unmistakable terms in the Surety Undertaking. Thus:

1. She bound herself jointly and severally with Danilo Alto to pay SDIC all obligations and charges in the use of the Diners Club Card, including fees, interest, attorney's fees, and costs;
2. She declared that "*any change or novation in the Agreement or*