

SECOND DIVISION

[G.R. NO. 152202, July 28, 2006]

**CRISOSTOMO ALCARAZ, PETITIONER, VS. COURT OF APPEALS
AND EQUITABLE CREDIT CARD NETWORK, INC., RESPONDENTS.**

DECISION

PUNO, J.:

Assailed before this Court in a Petition for Review on Certiorari is the decision of the Court of Appeals in CA-G.R. CV No. 65911, entitled "Equitable Credit Card Network, Inc. v. Crisostomo Alcaraz," affirming the decision of Branch 147 of the Regional Trial Court of Makati City. The case stemmed from an action for the collection of sum of money.

The facts of this case are undisputed.

Private respondent, Equitable Credit Card Network, Inc. (Equitable), is a company engaged in the business of extending credit accommodations/facilities through the use of the credit cards issued to its clientele. Through these credit cards, cash advances may be availed from automated teller machines or ATMs, and goods or services may be purchased on credit from accredited merchant shops.^[1]

In May 1995, private respondent Equitable issued a credit card, Equitable Visa Gold International Card with card number 4921-0100-0743-2013 and account base number 4921-0100-0743-2005 with peso and dollar accounts/facilities, to petitioner Crisostomo Alcaraz. The petitioner through the use of the said credit card secured cash advances and purchased goods and services on credit with private respondent Equitable's affiliated merchant establishments.^[2] Thus, the petitioner accumulated unpaid credit with private respondent and despite the receipt of several demand letters, failed to pay his outstanding obligations.^[3]

In its complaint before the lower court, private respondent Equitable sought the payment of the accumulated outstanding balance including interest of 2.5% per month as well as a monthly late penalty/surcharge of 1.5% for the peso account, and 1.5% monthly interest and 1% late penalty/surcharge per month for the dollar account until full payment thereof as provided in the "Terms and Conditions Governing the Issuance and Use of Equitable Visa Card" (hereinafter referred to as the Terms and Conditions). The private respondent also prayed for liquidated damages of 25% of the total amount of both accounts and attorney's fees at the same rate allegedly also in accordance with the Terms and Conditions.^[4] Private respondent Equitable claims petitioner Alcaraz has an accumulated outstanding balance of US\$8,970.54 in his dollar account as of February 18, 1999, and P192,500.00 on his peso account as of February 28, 1999 inclusive of interest and surcharges.^[5]

The petitioner admitted he had made use of the credit card issued in his name by private respondent Equitable, but contested the amount of his liability. Petitioner alleged that he was issued the credit card as an "honorary member." As such, he was not required to submit any application or sign any document prior to the issuance of the card and he was entitled to pay on an installment basis without any interest. He denied signing the document Terms and Conditions Governing the Issuance and Use of Equitable Visa Card. Petitioner Alcaraz further alleged that prior to the filing of the complaint, he formally requested for a reconciliation of his accounts with the private respondent but the same has remained unanswered until the present day. Thus, the case filed against him was premature.

After several postponements of the pretrial conference, the trial court declared petitioner Alcaraz as in default upon motion of private respondent Equitable and allowed the latter to present its evidence *ex parte*.^[6] After the private respondent's presentation of evidence which included the testimony of its sole witness, one of its collection officers, and the submission of documents, the court ruled in favor of private respondent Equitable. It, however, rejected private respondent Equitable's claim for liquidated and exemplary damages.^[7] Petitioner Alcaraz filed a Motion for New Trial which was denied.^[8] The petitioner elevated the case to the appellate court.

The Court of Appeals partially affirmed the decision of the trial court. It modified the trial court's judgment by ordering petitioner Alcaraz to pay private respondent Equitable "the principal amount of P81,000.00, on his peso account, and the amount of US\$4,397.34 or its peso equivalent, on his dollar account" with 12% annual interest from June 25, 1996 until full payment thereof. The appellate court likewise reduced the amount of attorney's fees to P20,000.00.^[9]

Undaunted, petitioner comes to this Court via a petition for review on certiorari raising the following issues: (1) whether the trial court violated the petitioner's right to due process when the private respondent was allowed to present its evidence *ex parte*; and (2) whether the monetary award ordered by the Court of Appeals is in accord with the evidence, and applicable law and jurisprudence.

The petition is without merit.

Petitioner Alcaraz laments that the trial court did not postpone and reschedule the pretrial conference on February 23, 1999 despite the manifestation of petitioner's wife that petitioner Alcaraz suffered a stroke which rendered him paralyzed while Atty. Ben Ibuyan, the petitioner's counsel, suffered from a "lingering gall bladder ailment." Instead, upon motion of private respondent Equitable, the trial court declared the petitioner as in default and allowed the private respondent to present its evidence *ex-parte*.^[10] Petitioner Alcaraz also charge the trial court with arbitrariness and of depriving him of the right to have the case against him heard before an impartial judge or tribunal. In support of his allegations, he maintains that, aside from brushing aside the clearly meritorious reasons for his and his counsel's absence on the February 23, 1999 pretrial conference, the trial court judge and its personnel have shown their bias against him in several occasions such as the alleged difficulty his counsel encountered in filing a Motion for New Trial.^[11]

With regard to the first issue, it is well-settled that this Court is not a trier of facts. This Court accords due respect to the findings of the trial court and the appellate court save in clearly exceptional cases.^[12] This case, however, does not fall within those exceptions. The trial court clearly has the discretion on whether to grant or deny a motion to postpone and/or reschedule the pretrial conference in accordance with the circumstances then obtaining in the case.^[13] This must be so as it is the trial court which was able to witness firsthand the events as they unfolded in the trial of a case. Postponements, while permissible, must not be countenanced except for clearly meritorious grounds and in light of the attendant circumstances.^[14] The trial court's discretion on this matter, however, is not unbridled. The trial courts are well advised to reasonably and wisely exercise such discretion. This Court will not hesitate to strike down clearly arbitrary acts or orders of the lower court. This, however, is not the situation in this case. While it is true that private respondent Equitable and inclement weather have on occasion caused the postponement of the pretrial conference, the repeated resetting of the pretrial conference was primarily due to the petitioner.

As to the reasons proffered by the petitioner's wife at the February 23, 1999 pretrial conference, we agree with the findings of the trial court and the Court of Appeals. Under the Rules of Court, both the parties and their counsels are mandated to appear in the pretrial conference.^[15] If the parties opt not to be present, their counsel must be armed with a special power of attorney specifically for the purpose. This must be so as the pretrial conference is primarily for the purpose of exploring the possibility of a compromise, or on the failure thereof, for the parties to make certain admissions and stipulations in order to facilitate a more efficient proceeding at the trial proper.^[16] In the case at bar, both petitioner Alcaraz and his counsel did not appear at the scheduled pretrial. Instead, it was the petitioner's wife alone who made the verbal manifestation on behalf of her husband and his counsel while presenting an unverified medical certificate on the latter's behalf. As correctly observed by the Court of Appeals, the records are bereft of any medical certificate, verified or unverified, in the name of petitioner Alcaraz to establish the cause of his absence at the pretrial conference.^[17] Even assuming *arguendo* that petitioner Alcaraz and Atty. Ibuyan's absence on the February 23, 1999 pretrial conference is due to justifiable causes, the petitioner is represented by a law firm and not by Atty. Ibuyan alone. As such, any of the latter's partners or associates could have appeared before the court and participate in the pretrial or at least make the proper motion for postponement if necessary.

A charge of arbitrariness and bias against the trial court, in this case against the judge as well as all the court personnel, is a serious charge that must be substantiated. Bare allegations of partiality will not suffice. It must be shown that the trial court committed acts or engaged in conduct clearly indicative of bias or pre-judgment against a party. The petitioner failed to do so in this case. The disallowance of a motion for postponement is not sufficient to show arbitrariness and partiality of the trial court. As this Court ruled in the case of **Gochan v. Gochan**,^[18] to wit:

. . . . **A motion for continuance or postponement is not a matter of right, but a request addressed to the sound discretion of the court.** Parties asking for postponement have absolutely no right to assume that their motions would be granted. Thus, they must be

prepared on the day of the hearing.

Given this rule, **the question of the correctness of the denial of respondents' requests for postponements was addressed to the sound discretion of Judge Dicdican. His action thereon cannot be disturbed by appellate courts in the absence of any clear and manifest abuse of discretion resulting in a denial of substantial justice.** Since there was no such finding with regard to the disallowance of the requests for postponement, the CA [Court of Appeals] cannot overturn the decision of the judge. **Much less can it assume his bias and partiality based merely on the denial of the requests for postponement.**^[19]

With regard to the second issue, the petitioner never disputed his use of the credit card issued to him by the private respondent. While he maintains that there is a "great disparity" between the amount of credit he availed of and what was actually being collected from him by the private respondent, nowhere in the records of this case, however, did petitioner Alcaraz contest any specific purchase or cash advance charged to the credit card, whether the peso or the dollar account. While the petitioner did request the private respondent in writing for a computation of his outstanding balance, the petitioner likewise in the very same letter offered to pay his outstanding obligations in twelve (12) equal monthly installments.^[20] Private respondent Equitable responded by proposing that the amount due as stated in the statement of accounts sent to the petitioner instead be paid in six (6) equal monthly installments.^[21] Petitioner Alcaraz likewise made partial payments before and after he made the proposed payment scheme to the private respondent. Clearly, what the petitioner contests is the application of the interests, penalties and other charges as provided for in the Terms and Conditions when he never signed nor conformed to the said document. Petitioner Alcaraz likewise claims that the contested provisions are not applicable to him because he was considered an honorary member who is entitled to pay for his credit purchases and cash advances on an installment basis free of any interest. The petitioner asserts that the "honorary" status given to him was evidenced by the fact that private respondent Equitable issued the credit card in his name without the necessity of any application or document submitted and signed by him prior to such issuance.^[22]

Private respondent Equitable, on the other hand, avers that while petitioner Alcaraz did not file or sign an application for the credit card, this did not exempt him from the provisions of the Terms and Conditions. Petitioner's claim of honorary membership which allegedly entitles him to pay his obligations on an interest-free installment basis is fallacious and groundless.^[23] Private respondent Equitable contends that the waiver of the filing of an application simply means that petitioner Alcaraz has been pre-screened. Such a status is conferred on a person by virtue of his good credit standing or upon recommendation of a reputable client or officer of private respondent Equitable. It is private respondent Equitable's assertion that by signing the credit card and subsequently using the same, the petitioner has agreed to the Terms and Conditions and any amendment thereto as stated in the back of the credit card itself.^[24] Except from his bare assertions that the non-filing of application entitles him to pay for his credit card obligations free of interest on an installment basis, the petitioner was not able to show that it was in fact the agreement between him and the private respondent or that the same is the policy