

SECOND DIVISION

[G.R. No. 127246, April 21, 1999]

**SPOUSES LUIS M. ERMITAÑO AND MANUELITA C. ERMITAÑO,
PETITIONERS, VS. THE COURT OF APPEALS AND BPI EXPRESS
CARD CORP., RESPONDENTS.**

DECISION

QUISUMBING, J.:

This petition for review under Rule 45, of the Rules of Court, seeks to set aside the decision of the Court of Appeals in C.A.-G.R. CV No. 47888 reversing the trial court's^[1] judgment in Civil Case No. 61357, as well as the resolution of the Court of Appeals denying petitioners' motion for reconsideration.

In dispute is the validity of the stipulation embodied in the standard application form for credit cards furnished by private respondent. The stipulation makes the cardholder liable for purchases made through his lost or stolen credit card until (a) notice of such loss or theft has been given to private respondent and (b) the latter has communicated such loss or theft to its member-establishments.

The facts, as found by the trial court, are not disputed.

Petitioner Luis Ermitaño applied for a credit card from private respondent BPI Express Card Corp. (BECC) on October 8, 1986 with his wife, Manuelita, as extension cardholder. The spouses were given credit cards with a credit limit of P10,000.00. They often exceeded this credit limit without protest from BECC.

On August 29, 1989, Manuelita's bag was snatched from her as she was shopping at the Greenbelt Mall in Makati, Metro Manila. Among the items inside the bag was her BECC credit card. That same night she informed, by telephone, BECC of the loss. The call was received by BECC offices through a certain Gina Banzon. This was followed by a letter dated August 30, 1989. She also surrendered Luis' credit card and requested for replacement cards. In her letter, Manuelita stated that she "shall not be responsible for any and all charges incurred [through the use of the lost card] after August 29, 1989."^[2]

However, when Luis received his monthly billing statement from BECC dated September 20, 1989, the charges included amounts for purchases made on August 30, 1989 through Manuelita's lost card. Two purchases were made, one amounting to P2,350.05 and the other, P607.50. Manuelita received a billing statement dated October 20, 1989 which required her to immediately pay the total amount of P3,197.70 covering the same (unauthorized) purchases. Manuelita again wrote BECC disclaiming responsibility for those charges, which were made after she had served BECC with notice of the loss of her card.

Despite the spouses' refusal to pay and the fact that they repeatedly exceeded their monthly credit limit, BECC sent them a notice dated December 29, 1989 stating that their cards had been renewed until March 1991. Notwithstanding this, however, BECC continued to include in the spouses' billing statements those purchases made through Manuelita's lost card. Luis protested this billing in his letter dated June 20, 1990.

However, BECC, in a letter dated July 13, 1990, pointed out to Luis the following stipulation in their contract:

"In the event the card is lost or stolen, the cardholder agrees to immediately report its loss or theft in writing to BECC ... purchases made/incurred arising from the use of the lost/stolen card shall be for the exclusive account of the cardholder and the cardholder continues to be liable for the purchases made through the use of the lost/stolen BPI Express Card until after such notice has been given to BECC and the latter has communicated such loss/theft to its member establishments."

[3]

Pursuant to this stipulation, BECC held Luis liable for the amount of P3,197.70 incurred through the use of his wife's lost card, exclusive of interest and penalty charges.

In his reply dated July 18, 1990, Luis stressed that the contract BECC was referring to was a contract of adhesion and warned that if BECC insisted on charging him and his wife for the unauthorized purchases, they will sue BECC for damages. This warning notwithstanding, BECC continued to bill the spouses for said purchases.^[4]

On April 10, 1991, Luis used his credit card to purchase gasoline at a Caltex station. The latter, however, dishonored his card. In reply to Luis' demand for an explanation, BECC wrote that it transferred the balance of his old credit card to his new one, including the unauthorized charges. Consequently, his outstanding balance exceeded his credit limit of P10,000.00. He was informed that his credit card had not been cancelled but, since he exceeded his credit limit, he could not avail of his credit privileges.

Once more, Luis pointed out that notice of the lost card was given to BECC before the purchases were made.

Subsequently, BECC cancelled the spouses' credit cards and advised them to settle the account immediately or risk being sued for collection of said account.

Constrained, petitioners sued BECC for damages. The trial court ruled in their favor, stating that there was a waiver on the part of BECC in enforcing the spouses' liability, as indicated by the following circumstances:

(1) Its failure to inform the spouses that the unauthorized charges on the lost card would be carried over to their replacement cards; and

(2) Its act of unqualifiedly replacing the lost card and Luis' card which were both surrendered by the spouses, even after the spouses unequivocally denied liability for the unauthorized purchases.

The trial court further noted that the suspension of the spouses' credit cards was based upon the "lame excuse" that the credit limit had been exceeded, despite the fact that BECC allowed the spouses previously to exceed their credit limit, even for almost two years after the loss of Manuelita's card. Moreover, the credit limit was exceeded only after BECC added the unauthorized purchases to the liability of the spouses. BECC continued to send the spouses separate billing statements that included the unauthorized purchases, with interest and penalty charges.

The trial court opined that the only purpose for the suspension of the spouses' credit privileges was to compel them to pay for the unauthorized purchases. The trial court ruled that the latter portion of the condition in the parties' contract, which states that liability for purchases made after a card is lost or stolen shall be for the account of the cardholder until after notice of the loss or theft has been given to BECC and after the latter has informed its member establishments, is void for being contrary to public policy and for being dependent upon the sole will of the debtor.^[5]

Moreover, the trial court observed that the contract between BECC and the Ermitaños was a contract of adhesion, whose terms must be construed strictly against BECC, the party that prepared it.

The dispositive portion of the trial court's decision reads:

"WHEREFORE, and IN VIEW OF THE ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiffs, Spouses Luis M. Ermitaño and Manuelita C. Ermitaño and against defendant BPI Express Card Corporation:

1. Ordering the said defendant to pay the plaintiffs the sum of P100,000.00 as moral damages.
2. Ordering said defendant to pay the plaintiffs the sum of P50,000.00 as exemplary damages.
3. Ordering said defendant to pay the plaintiffs the sum equivalent to twenty per cent (20%) of the amounts abovementioned as and for attorney's fees and expenses of litigation; and
4. Ordering the said defendant to pay the costs of suit.

SO ORDERED."

But, on appeal this decision was reversed. The Court of Appeals stated that the spouses should be bound by the contract, even though it was one of adhesion. It also said that Luis, being a lawyer, had "all the tools to drive a hard bargain had he wanted to."^[6] It cited the case of *Serra v. Court of Appeals*^[7] wherein this Court ruled that contracts of adhesion are as binding as ordinary contracts. The petitioner in *Serra* was a CPA-lawyer, "a highly educated man ... who should have been more cautious in (his) transactions..."^[8] The Court of Appeals therefore disposed of the appeal as follows:

"THE FOREGOING CONSIDERED, the contested decision is REVERSED. Plaintiffs/appellees are hereby directed to pay the defendant/appellant