

## SECOND DIVISION

[ G.R. No. 128899, June 08, 1999 ]

**AMERICAN EXPRESS INTERNATIONAL, INC., PETITIONER, VS.  
COURT OF APPEALS, AND M R TRAVEL SERVICES INC.  
RESPONDENTS.**

### DECISION

**BELLOSILLO, J.:**

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to review and set aside the decision of the Court of Appeals in CA G.R. CV No. 43667, "*M R Travel Services, Inc., v. American Express International, Inc.*," promulgated 17 April 1997.

Petitioner American Express International, Inc. (AMEXCO) is a foreign corporation doing business in the country by maintaining a credit system known as *American Express Card Service*. On 10 July 1986 petitioner entered into a "Travel Agreement" with M R Travel Services, Inc. (M R TRAVEL), a domestic corporation transacting business as a travel agency. Under the agreement AMEXCO cardholders would be allowed to charge purchases of travel services from M R TRAVEL under the following terms and conditions: (a) The card shall be presented prior to its expiration, and at the time of its presentation, M R TRAVEL shall not have been notified of its cancellation; (b) The card shall bear the signature of the person whose name is stamped on its face and the charge record form signed by the customer with the same signature; and, (c) AMEXCO's responsibility shall be limited to \$100.00 unless it has priorly authorized M R TRAVEL to accept a charge for a larger amount.<sup>[1]</sup>

Further, it was stipulated that M R TRAVEL would promptly send to AMEXCO at least once each week completed charge record forms indicating the dates when the charges were incurred;<sup>[2]</sup> otherwise, AMEXCO would not answer for charges that were not sent to it within ten (10) days from the date they were incurred.<sup>[3]</sup>

On 14 December 1987 M R TRAVEL sent AMEXCO five (5) charge record forms reflecting charge purchases made by AMEXCO cardholders with the corresponding particulars, to wit:<sup>[4]</sup>

<u>Cardholder</u>	<u>Date</u>	<u>Amount</u>	<u>S/A No.</u>
Samat Kadir	12/08/87	P 29,468.04	0326
Woon Man Voon	12/10/87	28,935.00	0335
Lau Lee Chuan A.	12/12/87	23,533.60	0341
Carl McCabe	12/14/87	31,794.00	0343
John Demoss	12/14/87	31,794.00	0347

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AMEXCO refused to honor these accounts on the ground that the dates of the transactions were not indicated in the forms and that the charges were confirmed by the cardholders concerned to have been fraudulently made.<sup>[5]</sup> With respect to the charge purchases of John Demoss, AMEXCO claimed that the signature on the charge record form was not that of the cardholder, and as regards Carl McCabe, his charge record form contained no approval code.<sup>[6]</sup>

M R TRAVEL insisted on demanding payment of the above charges from AMEXCO but to no avail. On 4 January 1988 AMEXCO unilaterally terminated their "Travel Agreement."

Aggrieved, M R TRAVEL commenced a suit for collection and damages against AMEXCO. The court *a quo* found that:<sup>[7]</sup> (a) M R TRAVEL failed to secure prior authorization from AMEXCO to charge beyond \$100.00; (b) All the five (5) charge record forms did not reflect the dates when the charges were incurred, which was fatal since the period of payment was to be reckoned from those dates; (c) M R TRAVEL failed to verify the identities of the cardholders considering that the airplane tickets bought on credit with the use of the AMEXCO cards were not in the name of the AMEXCO cardholders; and, (d) The signatures of the AMEXCO cardholders were forged since the AMEXCO cards concerned were reported lost and/or stolen and the signatures appearing on the charge slips were different from those of the cardholders.

Based on the foregoing, the lower court concluded that M R TRAVEL violated the provisions of its agreement with AMEXCO and, thus, the latter was justified in refusing to pay the claims of M R TRAVEL.

M R TRAVEL appealed to the Court of Appeals which reversed and set aside the trial court's decision resolving that its findings and conclusions were bereft of support and that M R TRAVEL substantially complied with all the conditions set forth in their "Travel Agreement."<sup>[8]</sup>

AMEXCO now assails the conclusions of the Court of Appeals and maintains that it should not be held liable to M R TRAVEL for the payment of the charges incurred.

Well-settled is the rule that in the exercise of the power to review the findings of fact of the Court of Appeals are conclusive and binding on this Court. However, there are recognized exceptions among which is when the factual findings of the trial court and the appellate court are conflicting.<sup>[9]</sup> The instant case falls within this exception and we are thus constrained to examine the arguments presented by petitioner.

AMEXCO questions the finding of the Court of Appeals that the conclusions of the trial court were devoid of support. Petitioner argues that the testimony of Miguel Licarte, fraud analyst of AMEXCO, was conclusive in establishing the findings of the trial court. Licarte testified that upon verification the cardholders denied using their cards as they were outside of the Philippines at the time the transactions were supposedly made.<sup>[10]</sup> From the foregoing evidence, petitioner avers that it can be deduced that the cards were stolen or lost and the signatures on the charge record forms were forged.<sup>[11]</sup> There was therefore no reason for the Court of Appeals to

discard Licarte's testimony and label it as hearsay. Citing *Top Weld Manufacturing, Inc. v. ECED*,<sup>[12]</sup> petitioner argues that since no objection was made at the time the testimonial evidence was presented it should be admitted and given value as such.

Licarte's testimony does not qualify as hearsay and must be admitted. Where evidence is based on what was supposedly told the witness, the same is patently hearsay and is without evidentiary weight. However, the hearsay rule admits of exceptions, one of which is where, regardless of the truth or falsity of a statement, the fact that it has been made is relevant.<sup>[13]</sup> Where the statements or utterances of specific words are the facts in issue the testimony of witnesses thereto is not hearsay.<sup>[14]</sup> In other words, if the fact sought to be established is that certain words were spoken, without reference to the truth and falsity of the words, the testimony of any person who heard the statement uttered is original evidence and not hearsay.<sup>[15]</sup> It must be emphasized however that such evidence is admitted merely for the purpose of establishing the utterance of the words and not their truth.<sup>[16]</sup>

In the instant case, the testimony of Licarte underscored his conversations with the cardholders and their respective denials which simply established that AMEXCO verified the transactions and that Licarte was told that the cardholders did not use their cards, as they were outside of the Philippines. Whether the cardholders indeed used their cards or were in fact out of the country was, however, never ascertained. The cardholders themselves were never presented before the trial court. Hence, despite admission of the testimony of Licarte the same still does not sufficiently establish the truth of any of the claims of AMEXCO. Consequently, the testimony of Licarte failed to prove the theft or loss of the AMEXCO cards, particularly so when he did not elucidate on how the theft occurred and later on reported. As M R TRAVEL pointed out, it was the usual standard operating procedure for credit companies to require their cardholders to report a loss immediately<sup>[17]</sup> but Licarte failed to dwell on this matter in his testimony.

Moreover, under the "Travel Agreement," AMEXCO is obliged to notify M R TRAVEL of any cancellation of cards. Absent this notification, M R TRAVEL is called upon to honor any AMEXCO card presented and to allow charge purchases of travel services. Since M R TRAVEL was not notified of any cancellation of cards the allegation of theft or loss becomes doubtful if not highly questionable.

Licarte's testimony likewise failed to demonstrate the existence of forgery. He only stated that the cardholders denied having made the transactions as they were allegedly not in the Philippines. Forgery cannot be deduced therefrom. As stated in *Tenio-Obsequio v. Court of Appeals*,<sup>[18]</sup> forgery cannot be presumed; it must be proved by clear, positive and convincing evidence. In imputing discrepancy in the signatures appearing in the charge forms and those appearing on the credit cards as well as in its records, AMEXCO should have conducted an examination of the signatures before the court.<sup>[19]</sup> A comparison of both the differences and similarities in the questioned signatures should have been made to satisfy the demands of evidence. Failing to introduce ample proof to substantiate its claim of forgery, petitioner's case has no leg to stand on.

AMEXCO contends that the Court of Appeals erred in finding that M R TRAVEL substantially complied with all the requirements set forth in their agreement when it