

TWELFTH DIVISION

[CA-G.R. CV NO. 63958, August 18, 2006]

POLO S. PANTALEON, PLAINTIFF-APPELLANT, VS. AMERICAN EXPRESS INTERNATIONAL, INC., DEFENDANT-APPELLANT.

DECISION

TAYAG, J.:

On appeal to Us is the Decision^[1] of the Regional Trial Court, Branch 145 of Makati City in Civil Case No. 92-1665 for damages. The dispositive portion is as follows:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff, POLO PANTALEON. Consequently, defendant AMERICAN EXPRESS INTERNATIONAL, INC. is hereby ordered to pay plaintiff P500,000.00 as moral damages, P300,000.00 as exemplary damages, P100,000.00 as attorney's fees, and P85,223.01 as expenses of litigation. The counter-claim of defendant is DISMISSED.

Costs against defendant.

SO ORDERED."

The essential facts, as presented by the parties, are quoted from the appealed decision, to wit:

Defendant American Express International, Inc. is a resident foreign corporation engaged in the business of providing credit services through its operation of a charge card system in the Philippines valid for use locally or internationally. As advertised by defendant, holders of its American Express Basic Card ["AmexCard"] charge purchases on their card and are encouraged as to its use. "Don't leave home without it", the AmexCard "being as good as cash."

Plaintiff Polo S. Pantaleon is a Senior Partner of Castillo Laman Pantaleon and San Jose Law Offices, an institutional law firm in the country. [TSN, February 24, 1993, pp. 12-13]. In 1990, he was issued AmexCard No. 3729-817921-2003. [Exhibits "A-2" and "A-3"]. In 1991, Supplementary cards were likewise issued to plaintiff's wife Julialinda and his daughter Anna Regina.

Plaintiff's AmexCard and the supplementary cards issued to his wife and daughter had no pre-set spending limits. [Exhibits "12" and "12-A"]. The use of the cards, which plaintiff, his wife and daughter, cannot charge their purchases.

As a gift to his daughter, Anna Regina, who graduated valedictorian from

the U.P. College of Law, Class of 1991, plaintiff, his wife, his daughter and a son joined a first-class escorted tour of Western Europe, known as the "Trafalgar Tour". The tour group, composed mostly of Caucasians, began its tour on October 4, 1991 and ended it on October 26, 1991. The tourists visited the countries of England, France, Spain, Monaco, Italy, Austria, Germany, Belgium and Holland (Exhibits "B" to "B-2", "E" to "E-3", "F"). In the course of their tour, plaintiff, together with his family, forged friendships with the other members of the tour group and eventually earned the latter's respect (TSN, November 20, 1992, pp. 55-56).

The last leg of the tour was Amsterdam, which the group scheduled to visit on the last two days of the tour. The first day in Amsterdam was unproductive, since the group arrived there already late in the afternoon. As no sightseeing was done for that day, the tour group agreed to start early the next day to see the entire city before ending the tour. (TSN, November 20, 1992, pp. 28-30).

The following day, the tour group went to their first scheduled stop at Coster Diamond House, which they reached before 9:00 a.m., local time. The store was still closed. It was agreed that the tour group would have only 30 minutes at the store (TSN, November 20, 1992, pp. 31-32).

The tour group was ushered in shortly before 9:00 a.m. And, after brief lecture on diamonds lasting not more than 10 minutes, the group was brought to the store's showroom to select items for purchase. Plaintiff's and his wife immediately made their selection since plaintiff's wife already knew beforehand what she wanted to buy. (TSN, 20 November 1992, pp. 34-36).

After selecting some items for purchase (Exhibit "I"), at about 9:15 a.m., plaintiff presented his AmexCard together with his passport to the Coster sales clerk, who took the imprint at the AmexCard and asked plaintiff to sign the charge slip for a total amount of US\$13,826.00 (Exhibits "H" and "H-1"; TSN, November 20, 1992, pp. 35-40; February 24, 1993, pp. 51-52). The charge purchase was then referred electronically to defendant's Amsterdam office at 9:20 a.m.

Ten minutes later, plaintiff was told by the store clerk that his AmexCard had not yet been approved (TSN, November 20, 1992, pp. 41-42; February 24, 1993, pp. 52-53). This information was relayed to plaintiff within hearing distance of his wife, daughter, and two Caucasian ladies of the tour group, who were then inside the store. (TSN, November 30, 1992, pp. 41-43; February 24, 1993, pp. 53-54).

Plaintiff began to feel anxious about the delay in the approval of his charge purchase. His son, who had already left the store, returned from the tour bus where the tour group was waiting and, in the presence of his wife, daughter and the sales attendant, informed plaintiff that the entire tour group were waiting for them. (TSN, November 20, 1992, pp. 44-45; February 23, 1993, p. 54). Plaintiff, embarrassed and worried about the further inconvenience he would cause the tour group because it was

already 9:40 a.m. -- way past the time allotted by the tour guide for the store visit – asked the store clerk to cancel the sale. The store manager, however, asked plaintiff to wait for a few more minutes and the latter complied. After 15 minutes, plaintiff was informed by the store clerk that bank references were being required by defendant. Plaintiff felt insulted by this demand, but he complied, with great reluctance. (TSN, February 24, 1993, pp. 51-58; November 20, 1992, p. 45; March 1, 1993, pp. 71-72). After giving the name of his depository banks, plaintiff instructed his daughter Anna Regina to hurry back to the tour group inside the bus and apologize for the delay they were causing. His daughter did as she was told. (TSN, November 20, 1992, pp. 46-47, November 27, 1992, pp. 5-6, 7-8).

Almost one hour after plaintiff made his charge purchase, or at about 10:00 a.m., the store manager finally decided to release the items to plaintiff at the store's own risk, even without defendant's approval. (TSN, February 24, 1993, pp. 59-63; March 1, 1993, pp. 43-47).

Plaintiff and his wife hurried to the bus where they were met with stares and stony silence.

Plaintiff noticed that some members of the tour group were visibly irritated by the incident. Plaintiff had to take a tranquilizer to contain his embarrassment, his humiliation, and his anger (TSN, March 1, 1993, pp. 86-88).

Worse, the tour guide announced that the city tour of Amsterdam was to be canceled for lack of time. This caused plaintiff further humiliation, guilt and insult. (TSN, November 20, 1992, pp. 49-51). Plaintiff's family was likewise embarrassed; his daughter Anne Regina testified that her mother wept. (TSN, November 20, 1992, p. 49).

After the European tour, plaintiff and his family proceeded to the United States of America, while there, plaintiff was able to use his AmexCard a number of times, and the approvals for them were obtained quickly, except again on two occasions. (TSN, November 20, 1992, pp. 52-53).

(1) On October 30, 1991, plaintiff, his son, and a friend went to the Richard Metz Golf Studio in New York to purchase some golf equipment worth US\$1, 475.00.

After waiting for defendant's approval of the charge purchase for almost 20 minutes, plaintiff was forced to cancel the sale.

Because of what happened, plaintiff told the store owner that he would return to pay for the items in cash, which he did on November 3, 1991 after borrowing some money from a friend in New York.

(2) Plaintiff encountered another delay of 20 minutes in the approval of a charge purchase of US\$87.00 worth of children's shoes at the Kid's Unlimited Store at the Quincy Market in Boston on November 3, 1991. (TSN, November 20, 1992, pp. 56-58; Exhibit "U").

Because of the delays and the consequent inconvenience, humiliation and hurt which he encountered, plaintiff, upon his return to the Philippines, sent a letter thru his counsel to defendant on March 4, 1992, demanding an apology for the "inconvenience, humiliation and embarrassment he and his family thereby suffered" from defendant's failure and/or refusal to provide credit authorization to (his) aforesaid purchases". (Exhibit "BB-1"). Defendant replied also through counsel, in a letter dated March 24, 1992 (Exhibit "DD") stating, among others, that defendant's delay in giving the needed authorization for the purchase in Coster Diamond House in Amsterdam was because the charge purchase of US\$13,826.00 "was out of the usual charge purchase pattern established", and denied plaintiff's demand. The plaintiff then filed this action.

Defendant, for its part, claims at trial that its authority to reject or disallow charge referrals by plaintiff was covered by the Cardmembership Agreement (Exhibits "A" and "A-1") entered into with plaintiff in November 1990. According to defendant, it had every right to do the acts complained of by plaintiff since the agreement states that:

"9. Problems with Goods and Services.

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However, unless required by law, we are not responsible for any problem you have with any goods or services you charge on the Card, and if you have a dispute with firm honoring the Card, you must pay us anyway and settle the dispute directly with the firm. We will not be responsible in any other problems you may have with such firm."

"16. The Card Remains our Property

The Card remains our property and we can revoke your right to use it at anytime. We can do this with or without cause and without giving you notice. You and any Additional Cardmember[s] agree not to dispute our actions in terminating your Card privileges since the Card is is our property. If we have revoked the Card without cause, we will refund you a proportion of your yearly fee. We may list revoked cards in our Cancellation Bulletin or otherwise inform firms honoring the Card that the Card[s] issued to you has/have been revoked or canceled. We shall not be liable in respect of any statement made arising out of such revocation including the listing or revoked cards in our Cancellation Bulletin.

If we revoke the Card or it expires, you must return it to us, if we request. Also, if a firm that accepts the Card asks you to surrender an expired or revoked card, you must do so. You may not use the Card after it has expired or after it has been revoked." [Exhs. "A" and "A-1"]

In its appealed decision, the trial court concluded that the prolonged processing of the charge purchases made by plaintiff Pantaleon constituted delay which evidently was a cause of action against defendant American Express International, Inc. (AEII). We quote from the decision:

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The delay in the processing is apparent to the undue as shown from the frantic successive queries of Amexco Amsterdam which reads: "US\$13,826.00 Cardmember buying jewels. ID seen. Advise how long will this take?" They were sent at 01:33, 01:37, 01:40, 01:45, 01:52 and 02:08, all times Phoenix. Manila Amexco could be unaware of the need for speed in resolving the charge purchase referred to it, yet it sat on its hands, unconcerned.

The other two purchases subject of this complaint were likewise not approved "in a matter of seconds." The purchase at the Richard Metz Golf store had to be canceled by the plaintiff as the referral was still not acted upon after almost 20 minutes of waiting. [TSN, 24 February 1993, pp. 83-84, Exhibit "S"]. Approval of the charge purchase at Kid's Unlimited Store took 20 minutes. [TSN, 20 November 1992, pp. 56-58, Exhibit "U"] Apparently, the delay was due to the continuing instruction of Manila Amexco for the merchant and the local Amexco to require positive identification of the Cardmember and his bank references before any charge purchase may be granted.

Since defendant's processing of the charge purchase were done electronically and the cardholder's charge account and history were stored in its computer, defendant could have rejected or approved the charge purchase in a matter of seconds. That time is of the essence in the processing of the charge purchase should have been known to defendant, who received the request for approval of a charge purchase using an AmexCard issued in the Philippines from an accredited establishment in Amsterdam and, later on, in the United States. It is quite obvious under the circumstances the cardholder traveled from the Philippines to Amsterdam and the US and was using his card to charge purchases in tourist commercial establishments accredited with Amexco.

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From the foregoing, it is evident that plaintiff has cause of action against defendant since the Civil Code provides:

"Article 1170. Those who in the performance of their obligation are guilty of fraud, negligence or delay, and those who, in any manner contravene the terms thereof, are liable for damages."

The circumstances attendant in the case at bar likewise reveal that the delays committed by defendant are tainted with recklessness and bad faith. Such bad faith is indicated in no small measure by the fact that while it used the "out of usual charge pattern" reason to justify the delay in approving the charge purchase at Coster, there were nevertheless