

SECOND DIVISION

[G.R. No. 174269, May 08, 2009]

POLO S. PANTALEON, PETITIONER, VS. AMERICAN EXPRESS INTERNATIONAL, INC., RESPONDENT.

D E C I S I O N

TINGA, J.:

The petitioner, lawyer Polo Pantaleon, his wife Julialinda, daughter Anna Regina and son Adrian Roberto, joined an escorted tour of Western Europe organized by Trafalgar Tours of Europe, Ltd., in October of 1991. The tour group arrived in Amsterdam in the afternoon of 25 October 1991, the second to the last day of the tour. As the group had arrived late in the city, they failed to engage in any sight-seeing. Instead, it was agreed upon that they would start early the next day to see the entire city before ending the tour.

The following day, the last day of the tour, the group arrived at the Coster Diamond House in Amsterdam around 10 minutes before 9:00 a.m. The group had agreed that the visit to Coster should end by 9:30 a.m. to allow enough time to take in a guided city tour of Amsterdam. The group was ushered into Coster shortly before 9:00 a.m., and listened to a lecture on the art of diamond polishing that lasted for around ten minutes.^[1] Afterwards, the group was led to the store's showroom to allow them to select items for purchase. Mrs. Pantaleon had already planned to purchase even before the tour began a 2.5 karat diamond brilliant cut, and she found a diamond close enough in approximation that she decided to buy.^[2] Mrs. Pantaleon also selected for purchase a pendant and a chain,^[3] all of which totaled U.S. \$13,826.00.

To pay for these purchases, Pantaleon presented his American Express credit card together with his passport to the Coster sales clerk. This occurred at around 9:15 a.m., or 15 minutes before the tour group was slated to depart from the store. The sales clerk took the card's imprint, and asked Pantaleon to sign the charge slip. The charge purchase was then referred electronically to respondent's Amsterdam office at 9:20 a.m.

Ten minutes later, the store clerk informed Pantaleon that his AmexCard had not yet been approved. His son, who had already boarded the tour bus, soon returned to Coster and informed the other members of the Pantaleon family that the entire tour group was waiting for them. As it was already 9:40 a.m., and he was already worried about further inconveniencing the tour group, Pantaleon asked the store clerk to cancel the sale. The store manager though asked plaintiff to wait a few more minutes. After 15 minutes, the store manager informed Pantaleon that respondent had demanded bank references. Pantaleon supplied the names of his depository banks, then instructed his daughter to return to the bus and apologize to the tour group for the delay.

At around 10:00 a.m., or around 45 minutes after Pantaleon had presented his AmexCard, and 30 minutes after the tour group was supposed to have left the store, Coster decided to release the items even without respondent's approval of the purchase. The spouses Pantaleon returned to the bus. It is alleged that their offers of apology were met by their tourmates with stony silence.^[4] The tour group's visible irritation was aggravated when the tour guide announced that the city tour of Amsterdam was to be canceled due to lack of remaining time, as they had to catch a 3:00 p.m. ferry at Calais, Belgium to London.^[5] Mrs. Pantaleon ended up weeping, while her husband had to take a tranquilizer to calm his nerves.

It later emerged that Pantaleon's purchase was first transmitted for approval to respondent's Amsterdam office at 9:20 a.m., Amsterdam time, then referred to respondent's Manila office at 9:33 a.m., then finally approved at 10:19 a.m., Amsterdam time.^[6] The Approval Code was transmitted to respondent's Amsterdam office at 10:38 a.m., several minutes after petitioner had already left Coster, and 78 minutes from the time the purchases were electronically transmitted by the jewelry store to respondent's Amsterdam office.

After the star-crossed tour had ended, the Pantaleon family proceeded to the United States before returning to Manila on 12 November 1992. While in the United States, Pantaleon continued to use his AmEx card, several times without hassle or delay, but with two other incidents similar to the Amsterdam brouhaha. On 30 October 1991, Pantaleon purchased golf equipment amounting to US \$1,475.00 using his AmEx card, but he cancelled his credit card purchase and borrowed money instead from a friend, after more than 30 minutes had transpired without the purchase having been approved. On 3 November 1991, Pantaleon used the card to purchase children's shoes worth \$87.00 at a store in Boston, and it took 20 minutes before this transaction was approved by respondent.

On 4 March 1992, after coming back to Manila, Pantaleon sent a letter^[7] through counsel to the respondent, demanding an apology for the "inconvenience, humiliation and embarrassment he and his family thereby suffered" for respondent's refusal to provide credit authorization for the aforementioned purchases.^[8] In response, respondent sent a letter dated 24 March 1992,^[9] stating among others that the delay in authorizing the purchase from Coster was attributable to the circumstance that the charged purchase of US \$13,826.00 "was out of the usual charge purchase pattern established."^[10] Since respondent refused to accede to Pantaleon's demand for an apology, the aggrieved cardholder instituted an action for damages with the Regional Trial Court (RTC) of Makati City, Branch 145.^[11] Pantaleon prayed that he be awarded P2,000,000.00, as moral damages; P500,000.00, as exemplary damages; P100,000.00, as attorney's fees; and P50,000.00 as litigation expenses.^[12]

On 5 August 1996, the Makati City RTC rendered a decision^[13] in favor of Pantaleon, awarding him P500,000.00 as moral damages, P300,000.00 as exemplary damages, P100,000.00 as attorney's fees, and P85,233.01 as expenses of litigation. Respondent filed a Notice of Appeal, while Pantaleon moved for partial reconsideration, praying that the trial court award the increased amount of moral and exemplary damages he had prayed for.^[14] The RTC denied Pantaleon's motion

for partial reconsideration, and thereafter gave due course to respondent's Notice of Appeal.^[15]

On 18 August 2006, the Court of Appeals rendered a decision^[16] reversing the award of damages in favor of Pantaleon, holding that respondent had not breached its obligations to petitioner. Hence, this petition.

The key question is whether respondent, in connection with the aforementioned transactions, had committed a breach of its obligations to Pantaleon. In addition, Pantaleon submits that even assuming that respondent had not been in breach of its obligations, it still remained liable for damages under Article 21 of the Civil Code.

The RTC had concluded, based on the testimonial representations of Pantaleon and respondent's credit authorizer, Edgardo Jaurigue, that the normal approval time for purchases was "a matter of seconds." Based on that standard, respondent had been in clear delay with respect to the three subject transactions. As it appears, the Court of Appeals conceded that there had been delay on the part of respondent in approving the purchases. However, it made two critical conclusions in favor of respondent. First, the appellate court ruled that the delay was not attended by bad faith, malice, or gross negligence. Second, it ruled that respondent "had exercised diligent efforts to effect the approval" of the purchases, which were "not in accordance with the charge pattern" petitioner had established for himself, as exemplified by the fact that at Coster, he was "making his very first single charge purchase of US\$13,826," and "the record of [petitioner]'s past spending with [respondent] at the time does not favorably support his ability to pay for such purchase."^[17]

On the premise that there was an obligation on the part of respondent "to approve or disapprove with dispatch the charge purchase," petitioner argues that the failure to timely approve or disapprove the purchase constituted *mora solvendi* on the part of respondent in the performance of its obligation. For its part, respondent characterizes the depiction by petitioner of its obligation to him as "to approve purchases instantaneously or in a matter of seconds."

Petitioner correctly cites that under *mora solvendi*, the three requisites for a finding of default are that the obligation is demandable and liquidated; the debtor delays performance; and the creditor judicially or extrajudicially requires the debtor's performance.^[18] Petitioner asserts that the Court of Appeals had wrongly applied the principle of *mora accipiendi*, which relates to delay on the part of the obligee in accepting the performance of the obligation by the obligor. The requisites of *mora accipiendi* are: an offer of performance by the debtor who has the required capacity; the offer must be to comply with the prestation as it should be performed; and the creditor refuses the performance without just cause.^[19] The error of the appellate court, argues petitioner, is in relying on the invocation by respondent of "just cause" for the delay, since while just cause is determinative of *mora accipiendi*, it is not so with the case of *mora solvendi*.

We can see the possible source of confusion as to which type of *mora* to appreciate. Generally, the relationship between a credit card provider and its card holders is that of creditor-debtor,^[20] with the card company as the creditor extending loans and credit to the card holder, who as debtor is obliged to repay the creditor. This

relationship already takes exception to the general rule that as between a bank and its depositors, the bank is deemed as the debtor while the depositor is considered as the creditor.^[21] Petitioner is asking us, not baselessly, to again shift perspectives and again see the credit card company as the debtor/obligor, insofar as it has the obligation to the customer as creditor/obligee to act promptly on its purchases on credit.

Ultimately, petitioner's perspective appears more sensible than if we were to still regard respondent as the creditor in the context of this cause of action. If there was delay on the part of respondent in its normal role as creditor to the cardholder, such delay would not have been in the acceptance of the performance of the debtor's obligation (*i.e.*, the repayment of the debt), but it would be delay in the extension of the credit in the first place. Such delay would not fall under *mora accipiendi*, which contemplates that the obligation of the debtor, such as the actual purchases on credit, has already been constituted. Herein, the establishment of the debt itself (purchases on credit of the jewelry) had not yet been perfected, as it remained pending the approval or consent of the respondent credit card company.

Still, in order for us to appreciate that respondent was in *mora solvendi*, we will have to first recognize that there was indeed an obligation on the part of respondent to act on petitioner's purchases with "timely dispatch," or for the purposes of this case, within a period significantly less than the one hour it apparently took before the purchase at Coster was finally approved.

The findings of the trial court, to our mind, amply established that the tardiness on the part of respondent in acting on petitioner's purchase at Coster did constitute culpable delay on its part in complying with its obligation to act promptly on its customer's purchase request, whether such action be favorable or unfavorable. We quote the trial court, thus:

As to the first issue, both parties have testified that normal approval time for purchases was a matter of seconds.

Plaintiff testified that his personal experience with the use of the card was that except for the three charge purchases subject of this case, approvals of his charge purchases were always obtained in a matter of seconds.

Defendant's credit authorizer Edgardo Jaurique likewise testified:

Q. - You also testified that on normal occasions, the normal approval time for charges would be 3 to 4 seconds?

A. - Yes, Ma'am.

Both parties likewise presented evidence that the processing and approval of plaintiff's charge purchase at the Coster Diamond House was way beyond the normal approval time of a "matter of seconds".

Plaintiff testified that he presented his AmexCard to the sales clerk at Coster, at 9:15 a.m. and by the time he had to leave the store at 10:05 a.m., no approval had yet been received. In fact, the Credit Authorization