

ZEST AIRWAYS, INC., PETITIONER, VS. SPS. CESAR S. ABAD AND DRA. GEORGINA IMPERIAL ABAD, RESPONDENTS.

Ponente: BUESER, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6142fef643c2/>

BUESER, J.:

This is a Petition for Review[1] under Rule 42 of the Rules of Court seeking to reverse and set aside the Order[2] of the Regional Trial Court (“RTC”), Branch 117, Pasay City dated August 30, 2013 affirming its earlier Decision[3] dated January 16, 2012. The dispositive portion of which reads in this wise:

“WHEREFORE, the Court rules to consider the “Motion for Reconsideration (Of the Decision dated 16 January 2012)” filed by defendant-appellant as DULY FILED, but DENIES the same for lack of merit. Consequently, plaintiffs-appellees’ Motion for Issuance of Certificate of Finality of Judgment is also DENIED for being premature.”

THE ANTECEDENT FACTS

The case before Us arose from the Complaint[4] for breach of contract of carriage with damages dated July 15, 2010 filed by respondents Dra. Georgina Imperial Abad (“Respondent Georgina”) and Cesar Abad (“Respondent Cesar”) against petitioner Zest Airways, Inc. (“Petitioner Zest”) before the Metropolitan Trial Court (“MeTC”), Branch 46, Pasay City.

The pertinent facts of the case are as follows:

Petitioner Zest is a common carrier engaged in the business of carrying or transporting of passengers or goods or both for compensation, offering their services to the public. Respondent Georgina, as early as August 2009, invited their close relatives to have a three (3) day vacation dream in Boracay, Aklan, to hold a joint celebration of the 76[th] birthday of respondent Cesar and 57[th] birthday of respondent Georgina’s sister and to serve as a homecoming celebration for the balikbayans among their group. They availed of petitioner Zest’s promotional low-cost airfares for the said trip scheduled on December 11 to 13, 2009. It was sometime on August 29 and September 3, 2009 that respondent Georgina bought their passage tickets from petitioner Zest which were booked on Flight No. 853 bound to Kalibo Airport with departure time in Manila at 11:50 on December 11, 2009 and a return flight from Kalibo Airport to Manila at 5:40pm on December 13, 2009. The tickets cost respondent Georgina the amounts of Php1,668.00 and Php1,898.00, respectively, which were paid through respondents’ credit cards.

It was noontime of December 12, 2009, Saturday, that respondent Georgina received a text message from the office of petitioner Zest advising them that their return flight to Manila had been changed to an earlier time slot from 5:40pm to 1:30pm of December 13, 2009 or four (4) hours earlier from their original schedule. As a consequence of the abrupt change in their return flights, it caused them great inconvenience, tension and confusion because they immediately looked for their companions who were scattered in different places and location in Boracay so that they could inform them of the change in their return flights.

As alleged by the respondents, all their scheduled activities were cut-short or cancelled on the evening of December 12, 2009, including their scheduled joint birthday celebration for respondent Cesar and respondent Georgina's sister; island hopping which was scheduled the next day or December 13, 2009 and was paid in advance but was not refunded. Respondents further stressed that instead of having fun and enjoying the night of December 12, 2009, they and the rest of their group were instead busy and engrossed in packing their things and baggage for an early trip back to Kalibo Airport on December 13, 2009 to catch up their return flight scheduled to depart at 1:30pm and they had to be at the Kalibo Airport three (3) hours before departure time. It takes 20 minutes boat ride from the island to Caticlan and two (2) hours bus ride from Caticlan to Kalibo. Respondents also stressed that they, together with the rest of the group, had long-planned and thoroughly prepared this anticipated vacation trip to Boracay since this would also serve as their reunion and homecoming of their balikbayans. They adjusted and synchronized their free time and availability and filed their leave of absences in their respective works and offices.

Respondents alleged that the unilateral abrupt change of their return flight by petitioner Zest from 5:40pm to 1:30pm of December 13, 2009, which was four (4) hours earlier, was a clear breach of contract because it impaired and spoiled their three (3) day vacation in Boracay. Moreover, petitioner Zest's general conditions of carriage which states that schedules are subject to change without notice is a contract of adhesion contained in a finely printed provision at the back of the airline ticket and is frowned upon by the courts and has been consistently declared to be void or unenforceable in several cases. Further, respondents also alleged that petitioner Zest's bad faith in changing their return flight to Manila could be deduced from the fact that the aircraft with return flight to Manila from Kalibo Airport at 1:30pm of December 13, 2009 carried only a few passengers that in order to save operational expenses, the passengers scheduled to depart at 5:40pm of the same day were unreasonably and unjustly hustled and booked at 1:30pm return flight. Respondents had to abide despite protest, otherwise, they would be left without any available flight in returning to Manila.

The version of petitioner Zest, on the other hand, is that flight schedules are subject to change without notice and no liability in any way whatsoever for any loss incurred by passengers as a result of such change, pursuant to its General Conditions of Carriage duly approved by Civil Aeronautics Board. In the case of respondents herein, the conditions of carriage of petitioner Zest could be easily read and considering that the former were able to secure their tickets on August 29, 2009 and September 3, 2009, or at least three (3) months prior to the date of their departure on December 11, 2009, they had all the time to read and understand the conditions of carriage. Also, the fact that petitioner Zest duly notified respondents of the intended change of flight schedule showed that there was no ill will, malice, bad faith on their part or any intention to violate the law in disregard of respondents' rights. Petitioner Zest further alleged that they had acted in accordance with its Conditions of Carriage. Thus, absence of a wrongful act or omission or bad faith would not entitle respondents to moral damages. Petitioner Zest stressed that it went out of its way to accommodate respondents' demands especially their demand to accommodate free of charge Rebecca Austria, Norma Austria and Minda Austria, who were not passengers of petitioner Zest but of another airline in Flight No. 301, which was the same flight taken by respondents for their return flight from Kalibo to Manila on December 13, 2009. Stressing further that the mere fact that petitioner Zest made a generous gesture of good will and accommodation was never alleged nor admitted in the complaint and petitioner Zest felt duty bound to bring the matter on record before the lower court.

After trial, the court a quo rendered its Decision[5] dated March 15, 2011 in favor of herein respondents. The dispositive portion of which is instructive in this wise:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, Zest Air Ways:

1. Ordering the defendant to pay the plaintiff the sum of Php3,566.00 representing the actual travel expenses incurred by the plaintiffs;
2. Ordering the defendant to pay the sum of P200,000.00 as moral damages suffered by the plaintiff;
3. Ordering the defendant to pay the sum of P20,000.00 as Attorney's fee;
4. Ordering the defendant to pay the costs of suit."

Thereafter, petitioner Zest appealed the said Decision dated March 15, 2011 before RTC, Branch 117, Pasay City, which affirmed the same in toto in a Decision[6] dated January 16, 2012.

On January 31, 2012, a motion for reconsideration of the Decision dated January 16, 2012 was filed by petitioner Zest which was subsequently denied for lack of merit.

Hence, this petition.

THE ISSUES

1. Whether the lower courts seriously erred in finding that petitioner breached its contract of carriage.
2. Whether the lower courts seriously erred in awarding moral damages in the amount of Php200,000.00 because petitioner was not guilty of bad faith or willful misconduct in its dealings with respondents.

THE RULING OF THE COURT

The petition is bereft of merit.

Anent the first issue, petitioner argued that it did not breach its contract of carriage when it changed the schedule of Flight Z2 880 at 17:40pm and merged the same with Flight Z2 301 at 13:30pm as the same was brought about by the circumstances beyond the control of petitioner Zest making it impossible to continue with the said flight schedule.

We do not agree.

The Supreme Court consistently ruled that when an airline issues a ticket to a passenger, confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger then has every right to expect that he be transported on that flight and on that date. If he does not, then the carrier opens itself to a suit for a breach of contract of carriage.[7]

In the case at bench, it is worth stressing that the only reason given by petitioner Zest that brought about the change in the flight schedule was the unavailability of their aircraft during that period which it claimed as an unavoidable occurrence in the aviation industry. Further, it argued that at the time Flight Z2 880 was scheduled to depart at 17:40pm there was an aircraft available to accommodate all the passengers thereof and it was only discovered on December 12, 2009 or three (3) months after the booking was made that there was no available aircraft to make the said flight. Thus, Flight Z2 880 had to be cancelled. Petitioner even went on saying that it was quite unreasonable to expect it to foresee more than three (3) months before the said flight that nothing would go wrong and that the flight would proceed without any problem.[8] This is indeed a clear breach of contract of carriage between petitioner Zest and the respondents.

In an action for breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that is necessary to prove is the existence of the contract and the fact of its non-performance by the carrier.[9] We, therefore, sustain the findings of the court a quo that the mere fact that

there was a confirmed flight schedule at about 5:30 in the afternoon on December 13, 2009 already gave rise to a contract of air carriage and non-compliance of the time schedule as stipulated on the Airline passage ticket was a clear breach thereof.[10]

Anent the second issue, petitioner Zest argued that other than respondents' bare allegations of bad faith and willful misconduct on the part of petitioner not even a scintilla of evidence was presented to actually prove the same.

We are not persuaded.

In the case at bench, the court a quo correctly ruled that the mere fact that the change of flight schedule was due to aircraft unavailability was not a valid and reasonable excuse to exempt petitioner Zest from civil liability. Further, it ruled that the act of the airline in confirming a flight schedule at 5:30pm of December 13, 2009 was in itself an assurance that there was an available aircraft for the same time slot. Under these circumstances, it is just right to infer that petitioner Zest was indeed in bad faith in fixing a flight schedule even if there was no sure aircraft available to accommodate the same or that petitioner Zest was negligent in the performance of its contract of carriage with the respondents that caused the latter to suffer mental anguish, serious anxiety, embarrassment and humiliation, for which they became entitled to recover reasonable moral damages.[11]

As held by the Supreme Court, a contract to transport passengers is quite different in kind and degree from any other contractual relation. And this, because of the relation which an air-carrier with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty.[12]

Thus, the failure of petitioner Zest to provide respondents the comfort, the utmost satisfaction and advantages it offers makes it liable to moral damages. Nobody, much less a common carrier who is under constant special obligation to give utmost consideration to the convenience of its customers, may be permitted to relieve itself from any difficult situation created by its own lack of diligence in the conduct of its affairs in a manner prejudicial to such customers.[13] We, therefore, sustain the award of moral damages by the court a quo in favor of herein respondents.

However, We must bear in mind that moral damages are not intended to enrich the complainant at the expense of the defendant. They are awarded only to enable the injured parties to obtain means, diversions or amusements that will serve to alleviate the moral sufferings the injured parties have undergone by reason of defendant's culpable action. In other words, the award of moral damages is aimed at a restoration within the limits of the possible, of the spiritual status quo ante; and therefore it must be proportionate to the suffering inflicted.[14] While indeed, there is no hard and fast rule in the determination of what would be a fair amount of moral damages, since each case must be governed by its own peculiar circumstances[15], and that the same is matter left largely to the sound discretion of a court[16], We find the amount of Php200,000.00 too excessive compared to the actual losses sustained by the respondents and should, therefore, be reduced to a more reasonable amount, considering the attendant facts and circumstances[17].

In other words, it is essential that in the award of damages, the claimant must have satisfactorily proven during the trial the existence of the factual basis of the damages and its causal connection to defendant's acts. This is so because moral damages, though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer, and are allowable only when specifically prayed for in the complaint.[18]

In the instant case, We find the award of Php200,000.00 as moral damages excessive and, accordingly, reduce it

to Php75,000.00, which is proportionate to the suffering inflicted by the respondents.

The court a quo in its Decision dated March 15, 2011 denied the award of exemplary damages saying that there was no clear showing that petitioner Zest acted with gross negligence sufficient enough to award the same.

We do not agree. The imposition of exemplary damages is necessary to deter petitioner or other airlines from committing similar breaches of contract in the future, although there are still reported instances thereof.[19] Article 2229 of the Civil Code provides that such damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.[20] There can be no question that the entitlement of respondents to moral damages having been established, exemplary damages may also be awarded.[21]

All told, We find that an award of Php50,000.00 as exemplary damages in favor of respondents is in order.

WHEREFORE, in view of the foregoing, the assailed Order dated August 30, 2013 of the Regional Trial Court, Branch 117, Pasay City affirming its earlier Decision dated January 16, 2012 is hereby MODIFIED as follows:

1. Ordering petitioner Zest to pay respondents the sum of Php3,566.00 representing the actual travel expenses incurred by respondents;
2. Ordering petitioner Zest to pay the sum of Php75,000.00 as moral damages suffered by respondents;
3. Ordering petitioner Zest to pay the sum of Php50,000.00 as exemplary damages;
4. Ordering petitioner Zest to pay the sum of Php20,000.00 as Attorney's fee;
5. Ordering petitioner Zest to pay the costs of suit.

IT IS SO ORDERED.

Bruselas, Jr., A. D., Chairman, and [*]Paredes, V. I. A., JJ., concur.

[*] Acting Junior Member for 15 working days only from February 24-March 16, 2015 per Office Order No. 55-15-ABR dated February 23, 2015.

[1] Rollo, p.13.

[2] Id., p. 35.

[3] Id., p. 107.

[4] Rollo, p. 137.

[5] Id., p. 148.

[6] Supra. see note 3.

[7] Singapore Airlines Limited vs. Andion Fernandez, G.R. No. 142305, December 10, 2003 citing Alitalia Airways vs. CA (187 SCRA 763).

[8] Supra. see note 1 at p.27.

[9] Supra. see note 7 citing China Airlines, Ltd. vs. Court of Appeals, et al., G.R. No. 129988, July 14, 2003.

[10] Supra. see note 5 p. 154.

[11] Tan vs. Court of Appeals, G.R. No. 108555, December 20, 1994 citing American Express International, Inc. v. IAC (167 SCRA 209).

[12] Philippine Airlines, Inc. vs. Court of Appeals, G.R. No. 50504-05, August 13, 1990 citing Air France vs. Carrascoso, et al., 18 SCRA 155 (1966).

[13] Philippine Airlines, Inc. vs. Court of Appeals, G.R. No. 50504-05, August 13, 1990 citing Ortigas, Jr. vs. Lufthansa German Airlines(64 SCRA 610).

[14] Makabali vs. Court of Appeals, G.R. No. L-46877, January 22, 1988.

[15] Supra. see note 12 citing Sanchez & Sanchez vs. Cebu Auto Bus Company, 52 OG 6250.

[16] Siguenza vs. Court of Appeals, G.R. No. L-44050, July 16, 1985 citing San Andres v. Court of Appeals (116 SCRA 81).

[17] Supra.

[18] Supra. see note 13 citing Enervida v. De la Torre, 55 SCRA 340 [1974] and San Miguel Brewery, Inc. v. Magno, 21 SCRA 292 (1968). laibra

[19] Supra. see note 12.

[20] Supra. see note 14.

[21] Supra. see note 13 citing Kapoe et al. vs. Masa, et al., 134 SCRA 231 (1985).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.