

**AIRASIA BERHAD, PETITIONER, VS. HON, JUDGE GAMOR B. DISALO,
IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 9 OF THE
REGIONAL TRIAL COURT OF LANA DEL SUR, MARAWI CITY,
AMROSI LAO,...**

Ponente: INTING, J.

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INTING, J.:

This is a petition for Certiorari under Rule 65 of the Rules of Court seeking to annul and set aside the December 2, 2011 and March 9, 2012 Orders[1] of the Regional Trial Court, Branch 9, Marawi City in Civil Case No. 2279-11 for Breach of Contract and Damages, denying the petitioner's Motion to Dismiss and Motion for Reconsideration, respectively.

The facts of the case are as follows:

Sometime in early January of 2011, herein private respondents, acting through their agent Khalil Lao, booked online a round trip ticket from Cagayan de Oro City to New Delhi, India. They booked their Cagayan de Oro to Manila to Kuala Lumpur trip with Cebu Pacific while their Kuala Lumpur to New Delhi trip with Air Asia/AirAsia X with Flight No. D72506 for the outbound flight to New Delhi and Flight No. D72507 for the return flight to Kuala Lumpur. The bookings made through Air Asia's website were confirmed and e-tickets were issued and sent to the private respondents via Khalil's email address. The tickets were paid using SMART Money and a Bank of Philippine Islands credit card.

The private respondents were able to travel without any glitches until they reached Kuala Lumpur for their flight to New Delhi. However, the station agents at the AirAsia check-in counter denied the private respondents of their boarding passes on the ground that the bank did not pay their booking tickets and told them that they cannot be allowed to board the plane even if they already had their tickets and assigned seat numbers. Thus, respondents Porilano and Maguidala were constrained to buy new tickets while the rest of the private respondents opted to stay in Kuala Lumpur until their return flight to the Philippines. Consequently, on April 26, 2011, herein private respondents filed an action for Breach of Contract and Damages against AirAsia Berhad, AirAsia X, Smart Communications and BPI.[2]

AirAsia Berhad (AAB) filed a Motion to Dismiss[3] the private respondents' Complaint averring that it states no cause of action; and that the Regional Trial Court (RTC), Marawi City has no jurisdiction.

AAB avers that Article 28 of the Warsaw Convention provides that an action for damages must be brought at the option of the plaintiff in the territory of one of the High Contracting Parties either before the court having jurisdiction where the carrier is ordinarily a resident, or has his principal place of business, or has an establishment by which the contract has been made, or before the court having jurisdiction at the place of the destination. Based on the provision, AAB maintains that the RTC, Marawi City has no jurisdiction as AAB is not a resident of Marawi City and there is no such allegation in the Complaint; and that Marawi City is not AAB's principal place of business and AAB has no establishment in Marawi City where the contract had been made.

AAB also claims that the required docket fees were not paid by the private respondents since their Complaint failed to state the amount of damages they are seeking.

AAB likewise assails the private respondents' Verification and Certification of Non-Forum Shopping as it merely states that they have read and understood the contents of the Complaint and that they are true and correct of their own "knowledge and belief" which is in violation of the Rules which require that it must be based on "knowledge, information and belief" or upon "information and belief." AAB argues that the violation renders the Complaint as an unsigned pleading which produces no legal effect.

Moreover, AAB maintains that the private respondents' flights are operated by AirAsia X (AAX), an entity separate and distinct from AAB, thus, the latter had no participation or involvement in the transaction; and that there was neither an act or omission by AAB that violated the rights of the private respondents nor was there a breach of any obligation by AAB as there was no privity of contract between it and the private respondents.

On December 2, 2011, the RTC rendered the assailed Order denying the petitioner's Motion to Dismiss as the issues posed could be traced in a full blown trial. Petitioner's Motion for Reconsideration[4] was denied per March 9, 2012 Order.

Unyielding, petitioner comes to Us via this petition arguing that the public respondent acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction when he issued the assailed Orders since the private respondents clearly have no cause of action against AAB; and that the lower court has no jurisdiction over the action as the Complaint failed to comply with the provisions of the Warsaw Convention, the docket fees were not properly paid, and the Complaint lacked proper verification.

In reply to the petitioner's averments, the private respondents explained that AAB was impleaded in the case despite the fact that the airlines were actually operated by AAX because the tickets were bought and could only be bought through AAB's website, thus, the latter acted as AAX's agent. The private respondents insist on the jurisdiction of RTC, Marawi City as the tickets were booked online in Marawi City hence, the contract was actually perfected there. They likewise deny not having paid the docket fees and further alleged that granting their payment is insufficient, it could be considered as a lien on the judgment.

Our Ruling

The petition lacks merit.

The term grave abuse of discretion connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction.[5] The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[6] The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[7]

We hold that the petitioner failed to discharge the burden to prove that the public respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction. We find no error by the public respondent in resolving to deny the petitioner's Motion to Dismiss.

Cause of action

The petitioner avers that the Complaint should have been dismissed because it failed to state a cause of action. We disagree.

A cause of action is defined as the act or omission by which a party violates a right of another.[8] It is determined from the allegations in the complaint. A complaint is said to sufficiently assert a cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for.[9] Thus, if the allegations furnish adequate basis by which the complaint can be maintained, then the same should not be dismissed, regardless of the defenses that may be averred by the defendants.[10]

In *Sea-Land Service v. CA*,[11] it was held that in determining whether or not the complaint states a cause of action, the annexes attached to the complaint may be considered, they being parts of the complaint. To assess whether there is failure of a complaint to state a cause of action, the allegations therein must be taken into account such that if they were true, they would justify the relief prayed for. Stated differently, may the court render a valid judgment upon the facts alleged therein?[12] What is considered momentarily is the sufficient basis and not the veracity of the allegations. Thus, if the allegations in the complaint furnish sufficient basis on which it can be maintained, it should not be dismissed regardless of the defense that may be presented by the defendants.[13]

The elements of a cause of action consist of: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right.[14]

A careful perusal of the private respondents' Complaint shows that they sufficiently established a cause of action against the petitioner. Based on the allegations in the Complaint, the private respondents bought their online tickets through the petitioner and/or AirAsia X. The annexed invoices for the purchased tickets indicate the petitioner's address. Setting aside the reliability of the attachments, there is enough basis for the court a quo to consider that the petitioner was a party to the transaction. When the private respondents were not allowed to take their flight, they were deprived of a right which the petitioner had the duty to respect. With their right violated, the private respondents may be entitled to a relief if proven during trial; and they may seek it from the petitioner from which the tickets were booked. The court a quo did not err in resolving that the Complaint amply stated a cause of action against the petitioner and that the petitioner's contention can aptly be addressed in a full blown trial or hearing. Regardless of the defense, a complaint cannot be dismissed if a valid judgment upon the facts alleged therein can be inferred.

Docket fees

In *MBTC v. Perez*,[15] the Supreme Court reiterated that the rule that a pleading which does not specify in the prayer the amount sought shall not be admitted or shall be expunged and the court acquires jurisdiction only upon payment of the prescribed docket fees was already relaxed in later cases. The Supreme Court held that while the payment of prescribed docket fee is a jurisdictional requirement, even its non-payment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period, more so when the party involved demonstrate a willingness to abide by the rules prescribing such payment.[16]

In the case at bench, the private respondents' Complaint indeed failed to state the amount of damages they seek to recover because of the alleged breach of contract. However, this is not enough to justify a dismissal of the case and hold that the court a quo has lost its jurisdiction. In the case of *de Ungria v. CA*,[17] the Supreme Court discussed:

Furthermore, the fact that private respondents prayed for payment of damages 'in amounts justified by the evidence' does not call for the dismissal of the complaint for violation of SC Circular No. 7, dated March 24, 1988 which required that all complaints must specify the amount of damages sought not only in the body of the pleadings but also in the prayer in order to be accepted and admitted for filing. Sun Insurance effectively

modified SC Circular No. 7 by providing that filing fees for damages and awards that cannot be estimated constitute liens on the awards finally granted by the trial court.

x x x judgment awards which were left for determination by the court or as may be proven during trial would still be subject to additional filing fees which shall constitute a lien on the judgment. It would then be the responsibility of the Clerk of Court of the trial court or his duly-authorized deputy to enforce said lien and assess and collect the additional fees.

Accordingly, when there is an insufficiency in the docket fees paid, the court may opt to allow the payment of the deficit within the prescribed period or the deficiency may constitute as a lien on the judgment if the amount of the estimated damages is determined by the court and proved during the trial.

Moreover, it bears stressing that the private respondents paid the legal fees including the docket fees when they filed the Complaint. There is no indication that they intended to defraud the government by understating the amount of fees they paid. In fact, the annexed documents of the Complaint clearly show where their claims for actual damages are founded and the computation would yield the amount they are claiming. In the case of *de Ungria*,^[18] it was held that upon respondents' proof of payment of the assessed fees, the RTC has properly acquired jurisdiction over the complaint. Jurisdiction once acquired is never lost, it continues until the case is terminated. In the same vein, the private respondents' payment of the docket fees per assessment of the clerk aptly vested the court a quo with jurisdiction which continues until the determination of the case.

Verification

The private respondents' Verification and Certification of Non-Forum Shopping contain a sworn statement that they have read and understood the contents of their complaint and declare them to be true and correct of their own knowledge and belief. We agree with the petitioner that such verification is defective.

In the analogous case of *Negros Oriental Planters Association, Inc. v. RTC Negros Occidental*,^[19] where the petitioner's verification stated that it affirms and confirms that all the allegations contained therein are "true and correct to my own knowledge and belief," the High Court had this to say:

NOPA claims that this Court has in several cases allowed pleadings with a Verification that contains the allegation 'to the best of my knowledge' and the allegation 'are true and correct,' without the words 'of his own knowledge,' citing *Decano v. Edu*, and *Quimpo v. De la Victoria*. NOPA claims that the allegations in these cases constitute substantial compliance with the Rules of Court, and should likewise apply to the case at bar.

NOPA is mistaken. NOPA cited cases promulgated before 1 May 2000, when Section 4 of Rule 7 was amended by A.M. No. 00-2-10. Before the amendment, said Section 4 stated:

SEC.4. Verification.—Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

As amended, said Section 4 now states:

SEC.4. Verification.—Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

Clearly, the amendment was introduced in order to make the verification requirement stricter, such that the party cannot now merely state under oath that he believes the statements made in the pleading. He cannot even merely state under oath that he has knowledge that such statements are true and correct. His knowledge must be specifically alleged under oath to be either personal knowledge or at least based on authentic records.

The Supreme Court went on to hold:

A pleading, therefore, wherein the Verification is merely based on the party's knowledge and belief produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied.

Verily, the Verification made by the private respondents is improper and contrary to what is required by the rules which shall cause the pleading to be treated as unsigned and thus, produces no legal effect.

However, it bears emphasis that Section 4 of Rule 7 of the Rules of Court provides that except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit. The provision further states that a pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification shall be treated as an unsigned pleading. Apparently, not every pleading need to be verified unless mandated by the rules and only those pleadings which require the verification shall be treated as unsigned if the verification is flawed. In the case before Us, the complaint was for breach of contract and damages. Would such action require a verification? We hold in the negative.

In *Vallacar Transit, Inc. v. Catubig*,^[20] the Supreme Court enumerated the pleadings that require verification, to wit: (1) all pleadings filed in civil cases under the 1991 Revised Rules on Summary Procedure; (2) petition for review from the Regional Trial Court to the Supreme Court raising only questions of law under Rule 41, Section 2; (3) petition for review of the decision of the Regional Trial Court to the Court of Appeals under Rule 42, Section 1; (4) petition for review from quasi-judicial bodies to the Court of Appeals under Rule 43, Section 5; (5) petition for review before the Supreme Court under Rule 45, Section 1; (6) petition for annulment of judgments or final orders and resolutions under Rule 47, Section 4; (7) complaint for injunction under Rule 58, Section 4; (8) application for preliminary injunction or temporary restraining order under Rule 58, Section 4; (9) application for appointment of a receiver under Rule 59, Section 1; (10) application for support pendente lite under Rule 61, Section 1; (11) petition for certiorari against the judgments, final orders or resolutions of constitutional commissions under Rule 64, Section 2; (12) petition for certiorari, prohibition, and mandamus under Rule 65, Sections 1 to 3; (13) petition for quo warranto under Rule 66, Section 1; (14) complaint for expropriation under Rule 67, Section 1; (15) petition for indirect contempt under Rule 71, Section 4, all from the 1997 Rules of Court; (16) all complaints or petitions involving intra-corporate controversies under the Interim Rules of Procedure on Intra-Corporate Controversies; (17) complaint or petition for rehabilitation and suspension of payment under the Interim Rules on Corporate Rehabilitation; and (18) petition for declaration of absolute nullity of void marriages and annulment of voidable marriages as well as petition for summary proceedings under the Family Code.

The private respondents' Complaint is far from the above enumerations. Thus, it can be concluded that an action for breach and damages does not require a verification. As even held in the aforementioned case of *Vallacar Transit*, no such law or rule specifically requires that complaint for damages should be verified. Therefore, since verification is not a requirement for the private respondents' complaint, a defect thereof would not render their pleading as unsigned or treat it as having no legal effect. Accordingly, there is no viable reason to dismiss outright the private respondents' Complaint against the petitioner as the alleged procedural defect is absent. It is worthy to note that a verification is a formal, not a jurisdictional requisite, as it is mainly intended to secure an assurance that the allegations therein made are done in good faith or are true and correct and not mere speculation.^[21] The

Court may order the correction of the pleading, if not verified, or act on the unverified pleading if the attending circumstances are such that a strict compliance with the rule may be dispensed with in order that the ends of justice may be served.[22]

Jurisdiction of the RTC

Under Article 28 (1) of the Warsaw convention, an action for damages must be brought at the option of the plaintiff either before the court of the 1) domicile of the carrier; 2) the carrier's principal place of business; 3) the place where the carrier has a place of business through which the contract was made; 4) the place of destination. The petitioner avers that the RTC, Marawi City lacks jurisdiction because Marawi City is not its domicile, or its principal place of business, or where it has a place of business through which the contract was made or the place of destination.

We differ. In the Complaint, it is alleged that the tickets were booked online when the private respondents were in the Philippines. Consequently, the contract was actually executed and perfected in the Philippines. Since the petitioner has a business presence in the Philippines, as initially claimed in the Complaint, Philippine courts therefore, has jurisdiction over the action.

In the case of *United Airlines, Inc. v. CA*, [23] the Supreme Court held that although the contract of carriage was to be performed in the United States, the tickets were purchased through the petitioner's agent in Manila and even if the tickets were rewritten in Washington, D.C., it did not change the nature of the original contract of carriage entered into in Manila. The High Court further held to apply the general rule that the law of the place where the contract is made or entered into governs with respect to its nature and validity, obligation and interpretation. Thus, in the aforementioned case, the Court applied the law of the place where the ticket was issued, when the passengers are residents and nationals of the forum and the tickets are issued in such State by the defendant airline.

As settled, the RTC has jurisdiction over actions for breach of contract so that the private respondents' Complaint was properly filed there. Given emphasis is the fact that Marawi City is merely a venue the impropriety of which is not a ground to dismiss an action because there was no stipulation as to where the complaint should be commenced. Since the private respondents are residents of Marawi City, they can bring the action before the RTC, Marawi City in accordance with Section 2 Rule 4 of the Rules of Court which provides that all other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a nonresident defendant, where he may be found, at the election of the plaintiff.

In the case of *American Airlines v. CA*, [24] the petitioner therein assails the trial court's order denying the petitioner's motion to dismiss the action for damages filed by the private respondent for lack of jurisdiction. What happened was that the private respondent purchased from Singapore Airlines in Manila conjunction tickets for Manila-Singapore-Athens-Larnaca-Rome-Turin-Zurich-Geneva-Copenhagen -New York. The petitioner was not a participating airline in any of the segments in the itinerary under the conjunction tickets. In Geneva the petitioner decided to forego his trip to Copenhagen and to go straight to New York and in the absence of a direct flight under his conjunction tickets from Geneva to New York, the private respondent exchanged the unused portion of the conjunction ticket for a one-way ticket from Geneva to New York from the petitioner airline. However, at the Geneva Airport, the petitioner's security officers prevented him from boarding the plane. This led to the filing of action for damages by the private respondent against the petitioner which was sought to be dismissed by the latter asserting that the Philippines is neither the domicile nor the principal place of business of the defendant airline; nor is it the place of destination.

Further, the petitioner contends that since the Philippines is not the place where the contract of carriage was entered into by the parties, Philippine courts do not have jurisdiction over the action for damages. The Supreme Court held that the petitioner is considered to be an agent of the other airlines although of a different carrier. The lower and appellate courts found that the contract of carriage perfected in Manila between the private respondent and Singapore Airlines binds the petitioner as an agent of Singapore Airlines. Also, considering that the petitioner has a place of business in Manila, the third option of the plaintiff under the Warsaw Convention, i.e. that the action may be brought in the place where the contract was perfected and where the airline has a place of business, is applicable. This was upheld by the High Court declaring:

The third option of the plaintiff under Art 28 (1) of the Warsaw Convention e.g., to sue in the place of business of the carrier wherein the contract was made, is therefore, Manila, and Philippine courts are clothed with jurisdiction over this case. We note that while this case was filed in Cebu and not in Manila the issue of venue is no longer an issue as the petitioner is deemed to have waived it when it presented evidence before the trial court.

The facts in the afore-stated case may not squarely fit herein circumstance because the former case involves a series of airline tickets. Yet, it cannot be denied that essentially, the jurisdiction of Philippine courts was sustained therein when it was held that the private respondents may sue in the Philippines even if the ticket was bought and issued outside of the country on the ground that the private respondent was able to buy the other tickets in the Philippines albeit for a different carrier. In substance, when the ticket is purchased within the Philippines and the issuing airline has a place of business therein, Philippine courts have the jurisdiction to entertain the action against them.

Similarly, in the case at hand, even if Philippines is not the place of destination or place where the petitioner has a domicile it was alleged that the tickets were brought online from the petitioner which was said to have a business presence in the country. Ergo, the private respondents, being residents of the Philippines where the tickets were bought, may file the action before the RTC.

In sum, We find that the petitioner utterly failed to persuade that the public respondent acted capriciously and whimsically in dismissing the former's motion to dismiss. There was neither a patent or gross exercise of discretion that is tantamount to an evasion of a positive duty or a refusal to do it nor a proof that the public respondent arbitrarily and despotically exercised its power.

WHEREFORE, the petition is DENIED. The December 2, 2011 and March 9, 2012 Orders of the Regional Trial Court, Branch 9, Marawi City in Civil Case No. 2279-11 are AFFIRMED.

SO ORDERED.

Camello, J. Ch., and Perez, JJ., concur.

[1] Rollo, pp. 35-36.

[2] Supra, pp. 62-66.

[3] Supra, pp. 37-46.

[4] Supra, pp. 49-59.

[5] Sps. Mendiola v. CA, G.R. No. 159746, July 18, 2012.

[6] Supra.

- [7] Tan v. Antazo, G.R. No. 187208, February 23, 2011.
- [8] Unicapital, Inc. v. Consing, G.R. Nos. 175277 and 175285; Consing, Jr. v. Guillen, G.R. No. 192073, September 11, 2013.
- [9] Ibid.
- [10] Ibid.
- [11] G.R. No. 126212, March 2, 2000.
- [12] Ibid.
- [13] Ibid.
- [14] Cathay Pacific Airways v. Reyes, G.R. No. 185891, June 26, 2013.
- [15] G.R. No. 181842, February 5, 2010.
- [16] Ibid.
- [17] G.R. No. 165777, July 25, 2011.
- [18] Supra.
- [19] G.R. No. 179878, December 24, 2008.
- [20] G.R. No. 175512, May 30, 2011.
- [21] S.C. Megaworld Construction and Development Corp. v. Parada, G.R. No. 183804, September 11, 2013.
- [22] Ibid.
- [23] G.R. No. 124110, April 20, 2001.
- [24] G.R. No. 116044-45, March 9, 2000.

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