

SPOUSES DATU PADUKA DR. ISMAIL BIN MOHAMAD AND MARISSA T. ABDULLAH, AS REPRESENTED BY TAGORANAO BATUA, PLAINTIFFS-APPELLEES, VS. CEBU AIR, INC., DEFENDANT-APPELLANT.

Ponente: TOLENTINO, A.G., J.

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TOLENTINO, A.G., J.:

Before this Court is an appeal from the decision dated November 15, 2012[1] of the Regional Trial Court (RTC) of Pasay City, Branch 111, which found the defendant-appellant Cebu Air, Inc. liable for damages and ordered it to pay the plaintiffs-appellees P500,000.00 as moral damages, P100,000.00 as exemplary damages, P100,000.00 as attorney's fees and the costs of suit.

The essential facts are as follows:

The Center for Moderate Muslims invited plaintiff-appellee Datu Paduka Dr. Ismail Bin Mohamad (Datu Ismail), a Malaysian national and resident[2], to be its keynote speaker during the 3[rd] International Conference of Muslim Leaders to be held on January 9 to 11, 2009 in Dusit Thani Hotel, Makati.[3]

For this event, Datu Ismail, using his Hongkong and Shanghai Banking Corporation (HSBC) credit card, purchased tickets for himself, his wife and co-plaintiff-appellee (Marisa Tiansay Abdullah), their son (Mohd Wali Ismail) and for their guests, Turaia Binti Islamazih (Turaia), Siti Maznah Binti Ahmad (Siti Maznah) and Nik Rahimah Binti Wan Ahmad (Nik Rahimah), from the defendant-appellant Cebu Air's website. The details of the online transactions are as follows:

Confirmation Number

Date of Booking/ Purchase

Passenger

Flight Details

U93ING[4]

Dec. 19, 2008

Ismael Bin Mohamed

Jan 9, 2009 KUALA LUMPUR-MANILA

Marisa Tiansay Abdullah

Jan 9, 2009 KUALA LUMPUR-MANILA

Mohd Wali Ismail

Jan 9, 2009 KUALA LUMPUR-MANILA

LBQ68X[5]

Jan. 5, 2009

Turaia Binti Islamazih

Jan 9, 2009 KUALA LUMPUR-MANILA

Jan. 13, 2009 MANILA-KUALA LUMPUR

Siti Maznah Binti Ahmad

Jan 9, 2009 KUALA LUMPUR-MANILA

Jan. 13, 2009 MANILA-KUALA LUMPUR

NCCWNN[6]

Jan. 5, 2009

Nik Rahimah Binti Wan Ahmad

Jan 9, 2009 KUALA LUMPUR-MANILA

Jan. 13, 2009 MANILA-KUALA LUMPUR

D1IBFY[7]

Jan. 7, 2009

Ismael Bin Mohamed

Jan. 13, 2009 MANILA-KUALA LUMPUR

Marissa Tiansay Abdullah

Jan. 13, 2009 MANILA-KUALA LUMPUR

Mohd Wali Ismail

Jan. 13, 2009 MANILA-KUALA LUMPUR

When Marisa checked-in for her family and guests on January 9, 2009 at the Low Cost Carrier Terminal (LCCT) in Kuala Lumpur, only her, Datu Ismail and their son were issued boarding passes. Their three (3) guests were not allowed by the defendant-appellant to check-in on their scheduled flight (with confirmation number LBQ68X and NCCWNN), despite the plaintiffs-appellees' presentation of the bookings' confirmation and the credit card used to pay the tickets online on the ground that the credit card payment was a suspicious transaction. Datu Ismail asked for an alternative, to which the staff replied that they have to pay in cash. The plaintiffs-appellees paid MYR3,090.00 for their guests' tickets to be on time for the conference. They apologized profusely to their guests for the inconvenience and embarrassment.

On January 13, 2009, the same incident transpired, this time to the plaintiffs-appellees and their son's return flight from Manila to Kuala Lumpur (confirmation number D1IBFY). Upon check-in at the NAIA Terminal 3, the plaintiffs-appellees and their son were refused by the defendant-appellant to board their flight on the same ground that the credit card payment was declined due to suspicious transaction.[8] Utterly dismayed and embarrassed, Datu Ismail had to shell out cash for their tickets.

Upon their arrival in Kuala Lumpur, Datu Ismail requested an explanation from HSBC, which replied that the transactions made on January 5 and 7, 2009 were all approved by their system and it was the merchant (the defendant-appellant) which reversed the transaction for some unknown reason. He then sent a letter-complaint to Cebu Air, and the latter replied that an e-mail was sent to the address noor_miza@yahoo.com stating that “after exercising diligent efforts, the credit card used to book your flight could not be authenticated”. It was only when the defendant-appellant mentioned about the e-mail that the plaintiffs-appellees checked the same. Datu Ismail, sent another letter through counsel, reiterating their previous demands.

On June 10, 2009, plaintiffs-appellees filed a complaint for damages against the defendant-appellant with the RTC of Pasay City for the latter's failure to comply with its obligation, for tainting their image in the eyes of the public and for the wounded feelings, mental anguish and anxiety they suffered, considering Datu Ismail's image as recent Gusi Peace Prize Winner in 2008, philanthropist and construction magnate in Malaysia. The plaintiffs-appellees thus prayed for moral damages in the amount of P5,000,000.00; exemplary damages in the amount of P500,000.00; and attorney's fees in the amount of P100,000.00.[9] The complaint was docketed as Civil Case No. 09-0854-CFM.

For its part, the defendant-appellant cited Section 5.6 of its terms and conditions that it reserves the right to refuse a passenger if in the exercise of reasonable discretion, it has been determined that the payment of the fare has been done unlawfully or suspiciously.

The defendant-appellant averred that on January 5, 2009, immediately after bookings LBQ68X and NCCNWK were made by Datu Ismail, the defendant-appellant, through Gadel Castromayor, defendant-appellant's Fraud Risk Management Supervisor, received a notice from HSBC Card Security Department requesting it (defendant-appellant) to void transactions as suspicious. Acting on this notice from HSBC Card Security, the defendant-appellant had voided the credit card payments for bookings LBQ68X and NCCNWK.

The defendant-appellant continued that on January 7, 2009, after Datu Ismail made booking D1IBFY, the defendant-appellant received another e-mail notice from HSBC Card Security to void transactions as suspicious. Acting on this e-mail, the defendant-appellant had voided the credit card payment for booking D1IBFY.

The defendant-appellant asserted that after having voided the credit card payments for bookings LBQ68X, NCCNWK and D1IBFY, it was not remiss in its duty to inform the plaintiffs-appellees of the invalidation of the online transaction.

The defendant-appellant duly sent notices[10] to the plaintiffs-appellees informing them that their bookings were put on hold because the online transaction was invalidated on the ground that the credit card used could not be authenticated. The said notices or e-mail advisories were sent to and received by the plaintiffs-appellees through e-mail address noor_miza@yahoo.com, the e-mail address they provided to the defendant-appellant at the time they were booking the subject flights. The defendant-appellant claimed that the plaintiffs-appellees were able to access their own itineraries, and so it is bewildering why they allegedly were unable to receive the notice duly sent by the defendant-appellant regarding the invalidation of the reservation made.[11]

During the trial, the plaintiffs-appellees presented the testimony of Marisa and Datu Ismail.

Marisa testified that using her husband's credit card, she booked and bought, through the internet and with the assistance of his husband's secretary, plane tickets for them and for their guests' travel to Manila to attend the Muslim Conference. The defendant-appellant issued travel itineraries for their guests Turaia, Siti Maznah, and Nik Rahiman wherein the bookings were confirmed. For her family's return flight to Kuala Lumpur, another travel itinerary was issued by the defendant-appellant confirming the booking. When she checked-in at the airport

in Malaysia, she got her boarding pass and that of her husband and son. But, when she checked-in for their three (3) guests, the defendant-appellant's ground staff refused due to instruction not to honor the tickets as they were fraudulently purchased. She told the staff that her husband has the credit card, to which she was showed the print-out of the instruction. Despite her insistence that the bookings were confirmed, the staff relied on the instruction. She called the attention of her husband who blew his temper and insisted that the tickets were not fraudulently purchased. She asked for an alternative, to which the staff replied to pay in cash. Left with no other choice, they paid cash for the tickets of their guests.[12] Stressed out and embarrassed, they apologized to their guests who are special people to her husband and prominent people in Malaysia.[13]

Marisa further testified that a few hours before their return flight to Kuala Lumpur on January 13, 2009, she called HSBC, which told her that the transactions were not declined. When they checked-in at NAIA, their guests were allowed to check-in, but she and her family were refused. The defendant-appellant's ground staff told them that, as per instruction their tickets will not be honored because these were fraudulently purchased. Despite her explanation, they were not allowed to check-in and they were showed a print-out of the defendant-appellant's instruction. As it was the second time, she talked to the Supervisor who told them the instruction not to honor their tickets and the only way to board the plane is to pay the tickets. Thus, they paid cash for their three tickets. Upon their return to Malaysia, they immediately called HSBC which they blamed for declining the transactions. HSBC informed them that it did not decline the transactions. After investigation, HSBC learned that the charges were dropped by the defendant-appellant. They received letters from HSBC explaining that the transactions were not declined. Her husband wrote a letter to the defendant-appellant asking for an explanation. They were not happy with the defendant-appellant's reply so they instituted this case for the embarrassment they suffered, not only once but twice, in front of their guests and other people.[14]

On cross-examination, she admitted that she received the travel itineraries through the same e-mail address, but she did not receive defendant-appellant's notice that the transactions could not be completed. Confronted with the allegations in the complaint, she admitted that they checked the e-mails and saw defendant-appellant's notice of invalidation only after they received Mr. Ivan Henry Gaw's, defendant-appellant's Guest Service Manager, reply, which was already after the travel. Although the notice was sent to and received on the same day the bookings were made, she did not check the e-mail anymore.[15]

Datu Ismail testified that they bought the tickets in Malaysia, using his HSBC credit card, to attend the Muslim Conference in Manila where he was invited as guest speaker. He identified the travel itineraries issued to his family and invited guests, Nik Rahimah, the mother of the Crown Princess of one of the States of Malaysia, Turaia, mother of an officer in the Attorney General's Chamber in Kuala Lumpur, and Siti Maznah, the wife of the former judge of Federal Court in Malaysia. On January 9, 2009, his guests were not allowed to check-in and he was told that their tickets are fraudulent. He was embarrassed in front of the public. He paid the tickets in cash. On their return, his family was not allowed to check-in and he was told that their tickets are fraudulent. When they arrived in Malaysia, they went to HSBC to check. HSBC replied that their transactions were approved. He wrote the defendant-appellant for an explanation why the tickets were rejected. He was not satisfied with the defendant-appellant's reply. His lawyer sent the defendant-appellant a letter, but to no avail. For all the embarrassment and humiliation, he is requesting for P5 Million.[16]

On cross-examination, he confirmed that the bookings were personally arranged by his secretary using the e-mail address noor_miza@yahoo.com, to which the travel itineraries were sent. He admitted that his secretary is the contact person using the e-mail address, but insisted that they also provided their phone numbers. He is not aware of the e-mail advice from his credit card company that their bookings were suspected of being fraudulent. His secretary never told him.[17]

The plaintiffs-appellees also presented as evidence, among others, the following documents:

- Exhibit “B”[18] - Letter of invitation of the Center for Moderate Muslims to Datu Ismail dated December 1, 2008
- Exhibit “C”[19] - Travel Itinerary of Marisa, Datu Ismail and Mohd Wali booked on December 19, 2008
- Exhibit “D”[20] - Travel Itinerary of Turaia and Siti booked on January 5, 2009
- Exhibit “E”[21] - Travel Itinerary of Nik Rahimah booked on January 5, 2009
- Exhibit “F”[22] - Travel itinerary of Marissa, Datu Ismail and Mohd Wali booked on January 7, 2009
- Exhibit “H”[23] - Reservation Summary for NCCNWK with comments “suspicious transaction”
- Exhibit “K”[24] - Reservation Summary for plaintiffs-appellees' return flight on January 13, 2009 with comments “suspicious transaction”
- Exhibit “M”[25] - Letter of HSBC Malaysia, Branch Manager Anna Chua dated January 19, 2009
- Exhibit “N”[26] - Letter of Datu Ismail to the defendant-appellant dated January 19, 2009
- Exhibit “O”[27]- Letter response of the defendant-appellant to Datu Ismail dated January 29, 2009
- Exhibit “P”[28] - Notice of invalidation sent by the defendant-appellant through e-mail dated January 7, 2009
- Exhibit “Q”[29] - Letter dated February 5, 2009 to Mr. Ivan Henry D. Gaw by Atty. Jehan B. Sampao, plaintiffs-appellees' counsel.
- Exhibit “R” - Letter dated February 16, 2009 to Datu Ismail of Joyce tan of HSBC, Malaysia.

For its part, the defendant-appellant presented the testimonies of its Guest Services Manager, Ivan Henry Gaw, and its Treasury Risk Management Supervisor, Gadel C. Castromayor.

Ivan Henry Gaw testified that they accept credit card payment for tickets purchased online. The payment will be verified by the acquiring bank to authenticate the payment. The authentication is to protect the purchaser or the credit card holder against misuse or fraudulent transactions. If a certain transaction is high risk and a report is submitted by the bank, they void or reverse the payment and sent notification to the guest. They placed risk parameters online for credit card payments. All payments go through a system called cyber source which reviews all payment transactions. If the credit card details do not match the original details of the card, it will fall under high risk, and will be submitted to the acquiring bank. The acquiring bank will notify, by e-mail, the defendant-appellant's risk management to void the transaction or tag it as fraudulent. He identified HSBC's e-mail communications to defendant-appellant to void record locators NCCNWK, LBQ68X and D1IBFY.[30]

He further testified that upon receipt of the bank's report to cancel or void the transaction, they immediately void the payment and notify the guest. They notify the guest through e-mail communications. But, they still retain the booking reservation. Only the payment is cancelled. In their notification, they tell the guest that they cannot authenticate the payment and that they can still avail the same rate, but they need to purchase through their call center, their ticketing office or upon check-in. He identified the e-mail notices sent to the e-mail address noor_miza@yahoo.com on January 5, 2009 at around 4:52 in the afternoon, and on January 7, 2009 at around 5:33 in the afternoon. Based on the airline's terms and conditions, they can refuse the passenger if the record is not paid.[31]

Gadel Castromayor testified that it is the policy of the defendant-appellant to screen all approved credit card

payments made online. From January 2009 up to the present, all web transactions and call center bookings were screened in the defendant-appellant's fraud tool, then the risk management team will review the transactions, and if detected as suspicious, the risk management team follows the established policies and procedures. She also testified that once the acquiring bank sees a suspicious transaction, it advises them through e-mail, to tag or void the payment. After receipt of the e-mail advices from the acquiring bank, they will update the booking reference in their system. The transactions are still confirmed but they reflect the payment as under collection or for payment with amount due. After updating the PNR or booking reference number in their reservation system, they returned or voided the payment and they sent an e-mail advisory to the passengers immediately after they have updated the PNR in their system. She further testified that their department sent e-mail advisories to the e-mail address noor_miza@yahoo.com, the same e-mail address where the confirmed itineraries were sent. She also said that the reason for holding the booking and returning the payment is for the protection of the legitimate card holder and at the same time to avoid inconvenience to the passengers. The tickets are still confirmed but they have to pay if they want to proceed with their flight as stated in the e-mail advisory.[32]

On cross-examination, she testified that the subject transactions were not fraudulent, but suspected as fraudulent. She said that they merely relied on their acquiring bank which informed them that the transactions were fraudulent. Their team is not in the right position to investigate further with the issuing bank. She likewise said that the passengers in the subject transactions can be notified not only through e-mails but also through their phone numbers. But according to her, their department is only allowed to send through e-mail. In some instances, it is the call center department which is tasked to inform the clients through telephone calls.[33]

The defendant-appellant also presented as evidence, among others, the following documents:

- Exhibit "5"[34] - Email advisory from the acquiring bank (HSBC-Philippines) sent to Gadel Castromayor to void payment fro LBQ68X and NCCNWK for being suspicious.
- Exhibit "6"[35] - Email advisory from the acquiring bank sent to Glydel Castromayor to void payment for D1IBFY for being suspicious.
- Exhibit "7"[36] - Cebu Pacific Advisory dated January 5, 2009 sent at 4:52 p.m. to e-mail noor_miza@yahoo.com
- Exhibit "8"[37] - Cebu Pacific Advisory dated January 7, 2009 sent at 5:33 p.m. to e-mail address noor_miza@yahoo.com
- Exhibit "9"[38] - Terms and Conditions of the Contract of Carriage

The RTC then rendered its assailed decision. The RTC ruled that with respect to the incident on January 9, 2009, the plaintiffs-appellees' guests are the proper persons in interest to claim for moral damages. With respect to the second incident on January 13, 2009, the RTC found the defendant-appellant liable for damages. The RTC ruled that Cebu Pacific acted in bad faith when it failed to notify the plaintiffs-appellees through the contact number indicated in the travel itineraries. The RTC thus ordered the defendant-appellant to pay the plaintiffs-appellees P500,000.00 as moral damages. The RTC likewise found the defendant-appellant liable for exemplary damages in the amount of P100,000.00 and attorney's fees in the amount of P100,000.00.[39]

The defendant-appellant filed a Motion for Reconsideration[40], which was denied in the Order dated February 12, 2013.[41] Hence, this appeal.

In his brief, the defendant-appellant assigned the following errors allegedly committed by the trial court:

“I.

THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT-APPELLANT ACTED IN BAD FAITH.

II.

THE TRIAL COURT ERRED IN AWARDING MORAL AND EXEMPLARY DAMAGES IN FAVOR OF PLAINTIFFS-APPELLEES.

III.

THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES AND COST OF the SUIT IN FAVOR OF PLAINTIFFS-APPELLEES.

IV.

THE TRIAL COURT ERRED IN NOT GRANTING DEFENDANT-APPELLANT'S COUNTER-CLAIMS.[42]”

The appeal is impressed with merit.

The defendant-appellant argues that the trial court erred in finding that it (defendant-appellant) acted in bad faith. The defendant-appellant avers that under its terms and conditions, it reserves the right to refuse a passenger if in the exercise of reasonable discretion, it has been determined that the payment of the fare has been done fraudulently or unlawfully.

The defendant-appellant states that it sent a notice through noor_miza@yahoo.com, the e-mail address indicated by Datu Ismail when he purchased the ticket, that the credit card used to book the flight could not be authenticated, causing the invalidation of the online transaction.

According to the defendant-appellant, the trial court erred in finding that it (defendant-appellant) was guilty of bad faith on the lone premise that it did not notify the plaintiffs-appellees through their contact numbers despite the fact that they have been notified through the e-mail address that they provided when they purchased the tickets online.[43]

We are persuaded.

As a general rule, indeed, moral damages are not recoverable in an action predicated on a breach of contract. This is because such action is not included in Article 2219 of the Civil Code as one of the actions in which moral damages may be recovered. By way of exception, moral damages are recoverable in an action predicated on a breach of contract: (a) where the mishap results in the death of a passenger, as provided in Article 1764, in relation to Article 2206, (3), of the Civil Code; and (b) where the common carrier has been guilty of fraud or bad faith, as provided in Article 2220 of the Civil Code.[44]

Under Article 2220 of the Civil Code of the Philippines, an award of moral damages, in breaches of contract, is in order upon a showing that the defendant acted fraudulently or in bad faith. What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit.[45]

The person claiming bad faith must prove its existence by clear and convincing evidence for the law always presumes good faith. Bad faith does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred

from one's conduct and/or contemporaneous statements.[46]

At the outset, it must be emphasized that the booking with confirmation numbers LBQ68X and NCCNWK were made on January 5, 2009. On even date at 2:57 p.m., the defendant-appellant received an e-mail notification from the acquiring bank, HSBC-Philippines through hsbccardsecurity@hsbc.com.ph, to void transaction as suspicious.[47] At 4:52 p.m. of January 5, 2009, the defendant-appellant sent an e-mail advisory to the plaintiffs-appellees at the e-mail address they provided, noor_miza@yahoo.com[48] that it invalidated the credit card transaction on the ground that the credit card payment could not be authenticated.

With respect to booking with confirmation number D1IBFY which was made on January 7, 2009, the defendant-appellant received an e-mail notification from the acquiring bank, HSBC-Philippines through hsbccardsecurity@hsbc.com.ph to void transaction as suspicious at 5:01 p.m.[49] At 5:33 p.m. of January 7, 2009,[50] the defendant appellant sent an e-mail advisory to the plaintiffs-appellees at noor_miza@yahoo.com that it invalidated the credit card transaction on the ground that the credit card payment could not be authenticated.

It must likewise be stressed that only the credit card transactions, meaning, the payments through credit card, were cancelled. The booked flights (NCCNWK, LBQ68X and D1IBFY) remained confirmed that is why upon payment in cash, the plaintiffs-appellees and their guests who were initially refused to check-in, were allowed and accommodated in the same flight that they have booked. The reason for the cancellation only of the credit card payment but not the confirmed booking is for the protection of the cardholder and also to avoid inconvenience to the passengers.[51]

In this case, this Court is tasked to determine whether the failure of the defendant-appellant to inform the plaintiffs-appellees of the invalidation of their credit card payments for their Manila-Kuala Lumpur flight on January 13, 2009 under D1IBFY booking reference amounted to bad faith.

We disagree with the trial court. The records show that the plaintiffs-appellees made four (4) online bookings through the defendant-appellant's website, using Datu Ismail's HSBC's credit card. These bookings were referred to as U93ING, LBQ68X, NCCNWK and D1IBFY. In booking the said transactions, the plaintiffs-appellees provided the e-mail address noor_miza@yahoo.com as well as their contact numbers.

The plaintiffs-appellees and their son under the D1IBFY booking were initially not allowed to check-in for their Manila-Kuala Lumpur flight on January 13, 2009 on the ground that the credit card payment has been invalidated, for being a suspicious transaction.

The records likewise show that the defendant-appellant sent e-mail advisories to noor_miza@yahoo.com, the email provided for by the plaintiffs-appellees when they were booking the flight, about the invalidation of the credit card payment. The e-mail advisories were sent on the same day the bookings were made.[52]

The plaintiffs-appellees, however, claim that they found out about the e-mail advisories only when the defendant-appellant mentioned the same in their letter to the plaintiffs-appellees dated January 29, 2009.

Given the foregoing circumstances, this Court is constrained to rule that the defendant-appellant did not act in bad faith when it informed the plaintiffs-appellees about the invalidation of their payment through the e-mail address that they themselves provided.

The email advisories sent by the defendant-appellant to the plaintiffs-appellees through the email they provided is adequate notice to the latter about the invalidation of their payment. The plaintiffs-appellees were the ones who provided for the said email and the plaintiffs-appellees testified that it was through the same e-mail where the

travel itineraries for the bookings on January 5 and 7, 2009, were sent. Hence, the defendant-appellant can reasonably expect that the plaintiffs-appellees would be duly notified about the invalidation of payment, through the said e-mail.

Mere failure of the defendant-appellant to inform the plaintiffs-appellees through the contact number they provided does not necessarily amount to bad faith. At the most, the same may amount to bad judgment or negligence, which is not equivalent to bad faith.

As stated above, the plaintiffs-appellees' booking on January 13, 2009 for the Manila-Kuala Lumpur flight remained confirmed. What was merely invalidated was the credit card payment and the plaintiffs-appellees were still accommodated on the very same flight that they have booked, upon payment in cash of the same fare at the time of booking.

The plaintiffs-appellees failed to prove by clear and convincing evidence that the defendant-appellant acted in bad faith when the latter failed to inform them of the invalidation of their credit card payment through the contact numbers that they have provided.

Accordingly, the defendant-appellant cannot be held liable for moral damages. The defendant-appellant's act of informing the plaintiffs-appellees only through e-mail, and its failure to inform them through the contact numbers that they have provided, were not proven to have been tainted with malice, ill-motive or bad faith.

The award of exemplary damages is likewise deleted. To justify an award for exemplary damages, the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.[53] The plaintiffs-appellees failed to prove that the defendant-appellant acted in bad faith or in a wanton, fraudulent, reckless or malevolent manner. Likewise, we delete the award of attorney's fees for lack of factual and legal justification.

Finally, the defendant-appellant's counterclaim for damages is dismissed for lack of basis. The filing alone of a clearly unfounded civil action is not among the grounds for moral damages. Besides, a juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock.[54] Moreover, as to its claim of besmirched goodwill and reputation[55], there is no evidence presented to establish the factual basis for the same. There is nothing in the testimonies of its witnesses that will support its claim for moral damages. It should be stressed that mere allegations do not suffice; they must be substantiated by clear and convincing proof.[56]

The defendant-appellant's prayer for exemplary damages cannot also be sustained for failure to substantiate and prove that the plaintiffs-appellees acted in a wanton, fraudulent, reckless, oppressive or malevolent manner in filing the instant case. The defendant-appellant is not entitled to litigation expenses as the right to litigate should bear no premium.[57]

WHEREFORE, premises considered, the appeal is GRANTED. The assailed decision dated November 15, 2012 is reversed and set aside. The complaint in Civil Case No. 09-0854-CFM is dismissed for lack of merit. The defendant-appellant's counterclaim for damages is likewise dismissed for lack of merit.

SO ORDERED.

Rosario and Dimagiba, JJ., concur.

[1] Records, pp. 290-305

- [2]tsn, hearing on February 1, 2011, p. 4
- [3] Exhibit “B”, Records, p. 163
- [4] Exhibit “C”, Records, p. 164
- [5] Exhibit “D”, Records, p. 165
- [6] Exhibit “E”, Records, p. 166
- [7] Exhibit “F”, Records, p. 167
- [8] Records, p. 272
- [9]Records, pp. 3-9
- [10] Exhibits 7 and 8
- [11] Rollo, pp. 24-27
- [12]tsn, hearing on February 1, 2011, pp. 8-22
- [13] tsn, hearing on February 1, 2011, pp. 25-26
- [14] tsn, hearing dated February 1, 2011, pp. 27-37
- [15] tsn, hearing on February 1, 2011, pp. 50-55
- [16] tsn, hearing on April 5, 2011, pp. 6-7, 12-36
- [17] tsn, hearing on April 5, 2011, pp. 39-47; Records, pp. 293-296
- [18] Records, p. 163
- [19] Records, p. 164
- [20] Records, p. 165
- [21] Records, p. 166
- [22] Records, p. 167
- [23] Records, p. 169
- [24] Records, p. 172
- [25] Records, p. 174
- [26]Records, pp. 175-177
- [27] Records, p. 178
- [28] Records, p. 179
- [29] Records, pp. 180-181
- [30]tsn, hearing on June 30, 2011, pp. 8-11
- [31]tsn, hearing on June 30, 2011, pp. 16-21
- [32]tsn, hearing on November 10, 2011, pp. 4-12

- [33]tsn, hearing on November 10, 2011, pp. 16-28; Records, pp. 296-298
- [34]Records, p. 224
- [35]Records, p. 227
- [36]Records, p. 229
- [37]Records, p. 230
- [38]Records, pp. 231-241
- [39]Records, pp.
- [40]Records, pp. 323-331
- [41]Records, p. 348
- [42]Rollo, p. 21
- [43]Rollo, pp. 28-42
- [44]Philtranco Service Enterprises, Inc. v. Paras, G.R. No. 161909, April 25, 2012.
- [45]Cathay Pacific Airways v. Reyes, G.R. No. 185891, June 26, 2013.
- [46]Adriano v. Lasala, G.R. No. 197842, October 9, 2013.
- [47]Exhibit 5, Records, p. 224
- [48]tsn, hearing on November 10, 2011, pp. 10-11; Exhibit 7, Records, p. 229
- [49]Exhibit 6, Records, p. 227
- [50]tsn, hearing on November 10, 2011, pp. 10-11; Exhibit 8, Records, p. 230
- [51]tsn, hearing on November 10, 2011, p. 12
- [52]Records, pp. 229-230
- [53]Tankeh v. Development Bank of the Philippines, G.R. No. 171428, November 11, 2013.
- [54]First Lepanto-Taisho Insurance Corporation v. Chevron Philippines, Inc., G.R. No. 177839, January 18, 2012.
- [55]Records, p. 53
- [56]David Sia Tio v. Abataya, G.R. No. 160898, June 27, 2008.
- [57]id.

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