

SPOUSES CESAR & SUTHIRA ZALAMEA AND LIANA ZALAMEA, PETITIONERS, VS. HONORABLE COURT OF APPEALS AND TRANSWORLD AIRLINES, INC., RESPONDENTS.*G.R. No. 104235. November 18, 1993*

Ponente: NOCON, J.

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Disgruntled over TransWorld Airlines, Inc.'s refusal to accommodate them in TWA Flight 007 departing from New York to Los Angeles on June 6, 1984 despite possession of confirmed tickets, petitioners filed an action for damages before the Regional Trial Court of Makati, Metro Manila, Branch 145. Advocating petitioners' position, the trial court categorically ruled that respondent TransWorld Airlines (TWA) breached its contract of carriage with petitioners and that said breach was "characterized by bad faith." On appeal, however, the appellate court found that while there was a breach of contract on respondent TWA's part, there was neither fraud nor bad faith because under the Code of Federal Regulations by the Civil Aeronautics Board of the United States of America it is allowed to overbook flights.

The factual backdrop of the case is as follows:

Petitioners-spouses Cesar C. Zalamea and Suthira Zalamea, and their daughter, Liana Zalamea, purchased three (3) airline tickets from the Manila agent of respondent TransWorld Airlines, Inc. for a flight from New York to Los Angeles on June 6, 1984. The tickets of petitioners-spouses were purchased at a discount of 75% while that of their daughter was a full fare ticket. All three tickets represented confirmed reservations.

While in New York, on June 4, 1984, petitioners received notice of the reconfirmation of their reservations for said flight. On the appointed date, however, petitioners checked in at 10:00 am., an hour earlier than the scheduled flight at 11:00 am. but were placed on the wait-list because the number of passengers who had checked in before them had already taken all the seats available on the flight. Liana Zalamea appeared as No. 13 on the wait-list while the two other Zalameas were listed as "No. 34, showing a party of two." Out of the 42 names on the wait-list, the first 22 names were eventually allowed to board the flight to Los Angeles, including petitioner Cesar Zalamea. The two others, on the other hand, at No. 34, being ranked lower than 22, were not able to fly. As it were, those holding full-fare tickets were given first priority among the wait-listed passengers. Mr. Zalamea, who was holding the full-fare ticket of his daughter, was allowed to board the plane; while his wife and daughter, who presented the discounted tickets were denied boarding. According to Mr. Zalamea, it was only later when he discovered that he was holding his daughter's full-fare ticket.

Even in the next TWA flight to Los Angeles Mrs. Zalamea and her daughter, could not be accommodated because it was also fully booked. Thus, they were constrained to book in another flight and purchased two tickets from American Airlines at a cost of Nine Hundred Eighteen (\$918.00) Dollars.

Upon their arrival in the Philippines, petitioners filed an action for damages based on breach of contract of air carriage before the Regional Trial Court of Makati, Metro Manila, Branch 145. As aforesaid, the lower court ruled

in favor of petitioners in its decision[1] dated January 9, 1989 the dispositive portion of which states as follows:

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay plaintiffs the following amounts:

"(1) US \$918.00, or its peso equivalent at the time of payment, representing the price of the tickets bought by Suthira and Liana Zalamea from American Airlines, to enable them to fly to Los Angeles from New York City;

"(2) US \$159.49, or its peso equivalent at the time of payment, representing the price of Suthira Zalamea's ticket for TWA Flight 007;

"(3) Eight Thousand Nine Hundred Thirty-four Pesos and Fifty Centavos (P8,934.50), Philippine Currency, representing the price of Liana Zalamea's ticket for TWA Flight 007;

"(4) Two Hundred Fifty Thousand Pesos (P250,000.00), Philippine Currency, as moral damages for all the plaintiffs;

"(5) One Hundred Thousand Pesos (P100,000.00), Philippine Currency, as and for attorney's fees; and

"(6) The costs of suit.

"SO ORDERED."[2]

On appeal, the respondent Court of Appeals held that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage only where there is fraud or bad faith. Since it is a matter of record that overbooking of flights is a common and accepted practice of airlines in the United States and is specifically allowed under the Code of Federal Regulations by the Civil Aeronautics Board, no fraud nor bad faith could be imputed on respondent TransWorld Airlines.

Moreover, while respondent TWA was remiss in not informing petitioners that the flight was overbooked and that even a person with a confirmed reservation may be denied accommodation on an overbooked flight, nevertheless it ruled that such omission or negligence cannot under the circumstances be considered to be so gross as to amount to bad faith.

Finally, it also held that there was no bad faith in placing petitioners in the wait-list along with forty-eight (48) other passengers where full-fare first class tickets were given priority over discounted tickets.

The dispositive portion of the decision of respondent Court of Appeals[3] dated October 25, 1991 states as follows:

"WHEREFORE, in view of all the foregoing, the decision under review is hereby MODIFIED in that the award of moral and exemplary damages to the plaintiffs is eliminated, and the defendant-appellant is hereby ordered to pay the plaintiffs the following amounts:

"(1) US\$159.49, or its peso equivalent at the time of payment, representing the price of Suthira Zalamea's ticket for TWA Flight 007;

"(2) US\$159.49, or its peso equivalent at the time of payment, representing the price of Cesar Zalamea's ticket for TWA Flight 007;

"(3) P50,000.00 as and for attorney's fees.

"(4) The costs of suit.

"SO ORDERED."[4]

Not satisfied with the decision, petitioners raised the case on petition for review on certiorari and alleged the following errors committed by the respondent Court of Appeals, to wit:

I

“X X X IN HOLDING THAT THERE WAS NO FRAUD OR BAD FAITH ON THE PART OF RESPONDENT TWA BECAUSE IT HAS A RIGHT TO OVERBOOK FLIGHTS.

II

“X X X IN ELIMINATING THE AWARD OF EXEMPLARY DAMAGES.

III

“X X X IN NOT ORDERING THE REFUND OF LIANA ZALAMEA'S TWA TICKET AND PAYMENT FOR THE AMERICAN AIRLINES TICKETS.”[5]

That there was fraud or bad faith on the part of respondent airline when it did not allow petitioners to board their flight for Los Angeles in spite of confirmed tickets cannot be disputed. The U.S. law or regulation allegedly authorizing overbooking has never been proved. Foreign laws do not prove themselves nor can the courts take judicial notice of them. Like any other fact, they must be alleged and proved.[6] Written law may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has custody. The certificate may be made by a secretary of an embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.[7]

Respondent TWA relied solely on the statement of Ms. Gwendolyn Lather, its customer service agent, in her deposition dated January 27, 1986 that the Code of Federal Regulations of the Civil Aeronautics Board allows overbooking. Aside from said statement, no official publication of said code was presented as evidence. Thus, respondent court's finding that overbooking is specifically allowed by the US Code of Federal Regulations has no basis in fact.

Even if the claimed U.S. Code of Federal Regulations does exist, the same is not applicable to the case at bar in accordance with the principle of *lex loci contractus* which requires that the law of the place where the airline ticket was issued should be applied by the court where the passengers are residents and nationals of the forum and the ticket is issued in such State by the defendant airline.[8] Since the tickets were sold and issued in the Philippines, the applicable law in this case would be Philippine law.

Existing jurisprudence explicitly states that overbooking amounts to bad faith, entitling the passengers concerned to an award of moral damages. In *Alitalia Airways v. Court of Appeals*,[9] where passengers with confirmed bookings were refused carriage on the last minute, this Court held that when an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage. Where an airline had deliberately overbooked, it took the risk of having to deprive some passengers of their seats in case all of them would show up for check in. For the indignity and inconvenience of being refused a confirmed seat on the last minute, said passenger is entitled to an award of moral damages.

Similarly, in *Korean Airlines Co., Ltd. v. Court of Appeals*,[10] where private respondent was not allowed to

board the plane because her seat had already been given to another passenger even before the allowable period for passengers to check in had lapsed despite the fact that she had a confirmed ticket and she had arrived on time, this Court held that petitioner airline acted in bad faith in violating private respondent's rights under their contract of carriage and is therefore liable for the injuries she has sustained as a result.

In fact, existing jurisprudence abounds with rulings where the breach of contract of carriage amounts to bad faith. In *Pan American World Airways, Inc. v. Intermediate Appellate Court*,^[11] where a would-be passenger had the necessary ticket, baggage claim and clearance from immigration all clearly and unmistakably showing that she was indeed a confirmed passenger and that she was, in fact, included in the passenger manifest of said flight, and yet was denied accommodation in said flight, this Court did not hesitate to affirm the lower court's finding awarding her damages.

A contract to transport passengers is quite different in kind and degree from any other contractual relation. So ruled this Court in *Zulueta v. Pan American World Airways, Inc.*^[12] This is so, for a contract of carriage generates a relation attended with public duty - a duty to provide public service and convenience to its passengers which must be paramount to self-interest or enrichment. Thus, it was also held that the switch of planes from Lockheed 1011 to a smaller Boeing 707 because there were only 138 confirmed economy class passengers who could very well be accommodated in the smaller plane, thereby sacrificing the comfort of its first class passengers for the sake of economy, amounts to bad faith. Such inattention and lack of care for the interest of its passengers who are entitled to its utmost consideration entitles the passenger to an award of moral damages.^[13]

Even on the assumption that overbooking is allowed, respondent TWA is still guilty of bad faith in not informing its passengers beforehand that it could breach the contract of carriage even if they have confirmed tickets if there was overbooking. Respondent TWA should have incorporated stipulations on overbooking on the tickets issued or to properly inform its passengers about these policies so that the latter would be prepared for such eventuality or would have the choice to ride with another airline.

Respondent TWA contends that Exhibit I, the detached flight coupon upon which were written the name of the passenger and the points of origin and destination, contained such a notice. An examination of Exhibit I does not bear this out. At any rate, said exhibit was not offered for the purpose of showing the existence of a notice of overbooking but to show that Exhibit I was used for Flight 007 in first class of June 11, 1984 from New York to Los Angeles.

Moreover, respondent TWA was also guilty of not informing its passengers of its alleged policy of giving less priority to discounted tickets. While the petitioners had checked in at the same time, and held confirmed tickets, yet, only one of them was allowed to board the plane ten minutes before departure time because the full-fare ticket he was holding was given priority over discounted tickets. The other two petitioners were left behind.

It is respondent TWA's position that the practice of overbooking and the airline system of boarding priorities are reasonable policies, which when implemented do not amount to bad faith. But the issue raised in this case is not the reasonableness of said policies but whether or not said policies were incorporated or deemed written on petitioners' contracts of carriage. Respondent TWA failed to show that there are provisions to that effect. Neither did it present any argument of substance to show that petitioners were duly apprised of the overbooked condition of the flight or that there is a hierarchy of boarding priorities in booking passengers. It is evident that petitioners had the right to rely upon the assurance of respondent TWA, thru its agent in Manila, then in New York, that their tickets represented confirmed seats without any qualification. The failure of respondent TWA to so inform them when it could easily have done so thereby enabling respondent to hold on to them as passengers up to the last minute amounts to bad faith. Evidently, respondent TWA placed its self-interest over the rights of petitioners

under their contracts of carriage. Such conscious disregard of petitioners' rights makes respondent TWA liable for moral damages. To deter breach of contracts by respondent TWA in similar fashion in the future, we adjudge respondent TWA liable for exemplary damages, as well.

Petitioners also assail the respondent court's decision not to require the refund of Liana Zalamea's ticket because the ticket was used by her father. On this score, we uphold the respondent court. Petitioners had not shown with certainty that the act of respondent TWA in allowing Mr. Zalamea to use the ticket of her daughter was due to inadvertence or deliberate act. Petitioners had also failed to establish that they did not accede to said arrangement. The logical conclusion, therefore, is that both petitioners and respondent TWA agreed, albeit impliedly, to the course of action taken.

The respondent court erred, however, in not ordering the refund of the cost of the American Airlines tickets purchased and used by petitioners Suthira and Liana. The evidence shows that petitioners Suthira and Liana were constrained to take the American Airlines flight to Los Angeles not because they "opted not to use their TWA tickets on another TWA flight" but because respondent TWA could not accommodate them either on the next TWA flight which was also fully booked.[14] The purchase of the American Airlines tickets by petitioners Suthira and Liana was the consequence of respondent TWA's unjustifiable breach of its contracts of carriage with petitioners. In accordance with Article 2201, New Civil Code, respondent TWA should, therefore, be responsible for all damages which may be reasonably attributed to the non-performance of its obligation. In the previously cited case of *Alitalia Airways v. Court of Appeals*,[15] this Court explicitly held that a passenger is entitled to be reimbursed for the cost of the tickets he had to buy for a flight on another airline. Thus, instead of simply being refunded for the cost of the unused TWA tickets, petitioners should be awarded the actual cost of their flight from New York to Los Angeles. On this score, we differ from the trial court's ruling which ordered not only the reimbursement of the American Airlines tickets but also the refund of the unused TWA tickets. To require both prestations would have enabled petitioners to fly from New York to Los Angeles without any fare being paid.

The award to petitioners of attorney's fees is also justified under Article 2208(2) of the Civil Code which allows recovery when the defendant's act or omission has compelled plaintiff to litigate or to incur expenses to protect his interest. However, the award for moral and exemplary damages by the trial court is excessive in the light of the fact that only Suthira and Liana Zalamea were actually "bumped off" An award of P50,000.00 moral damages and another P50,000.00 exemplary damages would suffice under the circumstances obtaining in the instant case.

WHEREFORE, the petition is hereby GRANTED and the decision of the respondent Court of Appeals is hereby MODIFIED to the extent of adjudging respondent TransWorld Airlines to pay damages to petitioners in the following amounts, to wit:

- (1) US\$918.00 or its peso equivalent at the time of payment representing the price of the tickets bought by Suthira and Liana Zalamea from American Airlines, to enable them to fly to Los Angeles from New York City;
- (2) P50,000.00 as moral damages;
- (3) P50,000.00 as exemplary damages;
- (4) P50,000.00 as attorney's fees; and
- (5) Costs of suit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Penned by Judge Job B. Madayag.

[2] Rollo, PP. 47-48.

[3] Penned by Associate Justice Venancio D. Aldecoa, Jr. and concurred in by Associate Justices Jose C. Campos, Jr. and Filemon H Mendoza.

[4] Rollo, p. 38.

[5] Rollo, p. 15.

[6] *The Collector of Internal Revenue v. Fisher and Fisher v. The Collector of Internal Revenue*, 110 Phil. 686 (1961).

[7] Salonga, *Private International Law* (1979), pp. 82-83.

[8] *Ibid*, p. 300.

[9] G.R No. 77011, 187 SCRA 763 (1990).

[10] G.R. No. 61418, 154 SCRA 211 (1987).

[11] G.R No. 74442, 153 SCRA 521 (1987).

[12] G.R. No. L-28589, 43 SCRA 397 (1972).

[13] *TransWorld Airlines v. Court of Appeals*, G.R No. 78656, 165 SCRA 143 (1988).

[14] TSN, August 12, 1985, p. 19.

[15] *Supra*.

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