

MARIA L. LOPEZ, PETITIONER, VS. NORTHWEST AIRLINES, INC., AND REGIONAL TRIAL COURT OF MAKATI, BRANCH 65, RESPONDENTS.*G.R. No. 106973. June 17, 1993*

Ponente: DAVIDE, JR., J.

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Alleging that the respondent court seriously erred in dismissing Civil Case No. 88-1014 entitled Maria L. Lopez vs. Northwest Airlines, Inc. before it on the ground that it had no jurisdiction to hear and render judgment therein notwithstanding the fact that its jurisdiction over the very same suit had long been sustained and/or settled with finality and conclusiveness by this Court in G.R. No. 91393 entitled Northwest Airlines, Inc. vs. Court of Appeals and Maria L. Lopez, petitioner has come to Us by way of this petition for review on certiorari to seek a reversal of the said order of dismissal. We shall treat this petition as a special civil action for certiorari under Rule 65 of the Revised Rules of Court.

Petitioner purchased from the private respondent Northwest Airlines, Inc. (NWA) in New York Ticket No. 8443546771 with bookings for an airplane flight covering the following destinations: "New York - Seattle - Manila - Tokyo - New York." [1]

It appears that the petitioner made the trip to the Philippines on the New York - Seattle - Manila leg of her ticket and that her trip back to New York via Tokyo was confirmed by the private respondent for 10 July 1987. However, when she went to the latter's representative in the Philippines on 7 July 1987, or barely two (2) days before the date of the flight, to reconfirm her booking, she was informed that she could not be accommodated in view of its cancellation. Despite her insisting that she be allowed to take the 10 July 1987 flight as stipulated in her ticket, private respondent remained adamant; it scheduled her flight for 11 July 1987.

Consequently, the petitioner filed a complaint for damages against the private respondent before the Regional Trial Court (RTC) of Makati, Metro Manila alleging that in bad faith and utter disregard of her rights as well as its own obligation under the contract of carriage, the private respondent unjustly and without good and/or valid cause cancelled her accommodation in its scheduled flight for 10 July 1987; as a result thereof, she supposedly suffered mental anguish, embarrassment, humiliation and great inconvenience. [2] The complaint was docketed as Civil Case No. 88-1014 and was raffled off to Branch 147 of the said court.

On 29 July 1988, private respondent filed a motion to dismiss the complaint on the ground that the court has no jurisdiction over the subject matter of the action under the Warsaw Convention. Petitioner opposed the motion. [3] On 8 November 1988, the trial court, per Judge Teofilo Guadiz, Jr., handed down an Order denying the motion to dismiss on the ground that the same is "not well-taken." [4]

Thereupon, private respondent filed with the Court of Appeals on 24 November 1988 a special civil action for certiorari to set aside the aforesaid order. The case was docketed as CA--G.R. SP No. 16174. Private respondent insisted that the trial court is precluded from exercising jurisdiction over the case pursuant to Article 28(1) of the Warsaw Convention which provides:

"ART. 28(1). 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 of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination."

On 29 November 1989, the Court of Appeals promulgated its decision therein, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the instant petition before Us is hereby DENIED."[5]

This denial is anchored on the appellate court's view that Article 28(1) of the Warsaw Convention prescribes the venue for the different actions for damages enumerated in Articles 17, 18 and 19 therein, and does not cover an action for damages arising out of the carrier's absolute refusal, in bad faith, to comply with the contract of carriage. Said court further maintained that Article 28(1) was never meant to exempt a carrier from liability arising from breaches of contract not enumerated in said Articles 17, 18 and 19.[6] It invoked the decision in *Pan American World Airways, Inc. vs. Intermediate Appellate Court*,[7] the factual background of which is similar to the instant case, wherein this Court affirmed the decision of the appellate court awarding damages to the private respondent therein. Reliance was likewise placed on its own decision in *KLM Royal Dutch Airlines vs. Tamayo*,[8] a case wherein the Court of Appeals ruled that even "off-loading or bumping off" does not come under the contemplation of Article 28(1) just as Article 28 thereof should not be interpreted to be a rule on jurisdiction but of mere venue.

Not satisfied with the appellate court's decision, private respondent filed with this Court a petition for review under Rule 45 of the Revised Rules of Court. The case was docketed as G.R. No. 91393. In the Resolution of 21 March 1990, this Court dismissed the petition for the "failure to sufficiently show that the Court of Appeals had committed any reversible error in the questioned judgment." [9] Private respondent sought to have this adverse resolution reconsidered. On 9 May 1990, however, this Court denied the motion with finality, "the basic issues raised therein having previously been duly considered and passed upon by this Court in the aforesaid resolution and no substantial matter having been adduced to warrant the reconsideration sought." [10] Per entry of judgment which was made in due course, the Resolution of 21 March 1990 became final on 19 June 1990.

In view of the foregoing, private respondent was compelled to go back to the trial court in Civil Case No. 88-1014 where it filed its Answer on 31 August 1990. In the meantime, said case was re-raffled to Branch 65 of the Regional Trial Court of Makati.[11]

After the issues were properly joined, trial on the merits ensued and was terminated on 15 January 1992. On said date, the trial court issued an order giving the parties "thirty (30) days from today to file their respective memorandum (sic) after which the case shall be deemed submitted for decision." [12] This 30-day period expired on 14 February 1992.

On 10 July 1992, private respondent filed a second motion to dismiss Civil Case No. 88-1014[13] on the ground that the rulings of the Court of Appeals in the aforesaid CA-G.R. SP No. 16174 and this Court in G.R. No. 91393 "cannot stand, and therefore must be deemed overruled and superseded, by the subsequent Decision" [14] promulgated by this Court on 23 June 1992 in *Santos vs. Northwest Orient Airlines, Inc.*, [15] the factual setting of which is "substantially identical" [16] to that in this case. Private respondent contends that the trial court is bound by the said decision for it "now unquestionably provides the controlling doctrine concerning the Warsaw Convention and its provisions on jurisdiction, in accordance with Article 8 of the Civil Code and the doctrine of stare decisis." [17]

On 31 August 1992, after exchanges of pleadings --Opposition to Motion to Dismiss,[18] Reply to

Opposition,[19] Rejoinder to Reply[20] wherein the petitioner vigorously maintains that the jurisdiction of the trial court over the said case had already long been sustained with finality and conclusiveness in G.R. No. 91393, now the law of the case as far as the said questioned jurisdiction is concerned -- the trial court[21] handed down an order[22] dismissing the case for want of jurisdiction. The order reads:

"Consistent with the ruling of the Supreme Court in *Augusto Benedicto Santos III vs. Northwest Airlines and Court of Appeals*, G.R. No. 101538, where the constitutionality of Article 28(1) of the Warsaw Convention was upheld, and it appearing clear that the court is not vested with jurisdiction to hear and render judgment in the present case, this court resolves to grant defendant's Motion to Dismiss.

Consequently, this case is DISMISSED for want of jurisdiction."

Petitioner then took this recourse and imputes upon the respondent court the error adverted to in the beginning of this ponencia. She urges Us to set aside the aforesaid order of the trial court and reiterates the arguments which she had raised in her pleadings filed in the court below in opposition to the private respondent's second motion to dismiss.

After the filing of the Comment to the petition by the private respondent, the Reply thereto by the petitioner and the Rejoinder to the latter by the private respondent, this Court gave due course to the petition and considered the case submitted for resolution.

There is merit in the petition.

Private respondent filed its Answer to the Complaint in Civil Case No. 88-1014 after this Court, in G.R. No. 91393, had, in effect, sustained the decision of the Court of Appeals in CA--G.R. SP No. 16174 which dismissed the former's petition to set aside the trial court's denial of its motion to dismiss based on the lack of jurisdiction over the subject matter. None of the parties has attached to their pleadings filed before this Court copies of the Complaint and the Answer in Civil Case No. 88-1014. It is therefore not clear to Us whether the said complaint contains specific allegations which may not entirely bring the subject matter within the broad confines of Article 28(1) of the Warsaw Convention, or whether the private respondent (a) had pleaded in its Answer lack of jurisdiction as one of its affirmative defenses, or (b) had set up a counterclaim invoking the jurisdiction of the trial court for specific reliefs in its favor as a consequence of the filing of the case. What is sufficiently certain is that private respondent participated in the said case by presenting and offering its evidence, and advanced no objection to the trial court's order requiring the parties to submit their evidence within thirty (30) days from 15 January 1992 and declaring the case submitted for decision upon the lapse of the said thirty (30) day period on 14 February 1992. Pursuant to paragraphs (1) and (2), Section 15, Article VIII of the 1987 Constitution and paragraph 11.1, subdivision 11 of Administrative Circular No. 1 of this Court dated 28 January 1988, the trial court had ninety (90) days from 15 February 1992 -- or until 15 May 1992 -- within which to decide the case. There was nothing more for the trial court to do except decide the case especially since its 90-day mandatory period to do so had already expired. Doubtless, in view of the decision of the Court of Appeals in CA-G.R. SP No. 16174 and Our resolution in G.R. No. 91393, it had at least *prima facie* jurisdiction over the case and, therefore, the rendition of judgment therein was undeniably within its authority.

Jurisdiction over the subject matter is determined by the allegations in the complaint[23] and is not made to depend upon the allegations in the answer or in the motion to dismiss.[24] Jurisdiction continues until the case is finally terminated.[25] And while jurisdiction over the subject matter of the case may be raised at any stage of the proceedings as the same is conferred by law,[26] it is nevertheless settled that a party may be barred from raising it on the ground of laches or estoppel.[27]

It is clear that the decision in *Santos vs. Northwest Orient Airlines*, *supra.*, promulgated by this Court on 23 June

1992, cannot be invoked to peremptorily oust the trial court of jurisdiction over Civil Case No. 88-1014. For one, there is no indubitable showing that indeed, the factual antecedents in Santos are substantially the same as those obtaining in this case. Whether there exists such an identity would depend largely on the findings of fact which the trial court must make in its decision in Civil Case No. 88-1014. It is quite evident that the trial court has not yet endeavored to do so. Moreover, it behooves the trial court to determine whether the private respondent is already barred from raising the issue of jurisdiction because of estoppel or laches.

Finally, the trial court should have seriously taken into consideration the earlier case of Pan American World Airways, Inc. vs. Intermediate Appellate Court, supra., wherein this Court affirmed a decision of the appellate court awarding damages to the private respondent therein arising from Pan American World Airways' (PAN AM) refusal to accommodate the latter on PAN AM Flight No. 431 from Sto. Domingo, Republica Dominica, to San Juan, Puerto Rico on 29 April 1973 notwithstanding the fact that said private respondent had a confirmed plane ticket which she purchased from PAN AM's office in Sto. Domingo. We have ruled in a number of cases that posterior changes in the doctrine of this Court cannot retroactively be applied to nullify a prior final ruling in the same proceeding where the prior adjudication was had, whether the case should be civil or criminal in nature.[28]

Thus, the trial court committed grave abuse of discretion amounting to lack of jurisdiction in granting the second motion to dismiss solely on the basis of the Santos case, and in dismissing Civil Case No. 88-1014 weeks after its period to decide the same had expired. The Presiding Judge of Branch 65 should have denied the motion and decided the case taking into account, however, the decision in the Santos case and the above observations.

WHEREFORE, the instant petition is hereby GRANTED. The Order of Branch 65 of the Regional Trial Court of Makati, Metro Manila of 31 August 1992 in Civil Case No. 88-1014 entitled Maria L. Lopez vs. Northwest Airlines, Inc. is hereby ANNULLED and SET ASIDE. The respondent court is directed to render its decision in the said case with purposeful dispatch.

Costs against the private respondent.

SO ORDERED.

Feliciano, (Chairman), Bidin, and Romero, JJ., concur.

Melo, J., please see dissent.

[1] Rollo, 39.

[2] Id., 28.

[3] Rollo, 39.

[4] Id., 26.

[5] Id., 27-33.

[6] Citing Northwest Airlines, Inc. vs. Cuenca, 14 SCRA 1063 [1965].

[7] 153 SCRA 521 [1987].

[8] CA-G.R. SP No. 09259, 22 January 1987, 85 O.G. No. 23, 3766.

[9] Rollo, 34.

[10] Id., 35.

[11] Id., 6.

[12] Id., 37.

[13] Id., 38-53.

[14] Rollo, 38-39.

[15] 210 SCRA, 256 [1992].

[16] Rollo, op. cit., 39.

[17] Id.

[18] Id., 54-64.

[19] Id., 65-73.

[20] Id., 74-86.

[21] Per Judge Salvador S. Abad Santos.

[22] Rollo, op. cit., 87.

[23] Magay vs. Estiandan, 69 SCRA 456 [1976]; Ganadin vs. Ramos, 99 SCRA 613 [1980]; Orosa, Jr. vs. Court of Appeals, 193 SCRA 391 [1991].

[24] Tinitigan vs. Tinitigan, Sr., 100 SCRA 619 [1980]; see also, Notre Dame de Lourdes Hospital vs. Mallare-Phillips, 197 SCRA 187 [1991]; Multinational Village Homeowners' Association vs. Court of Appeals, 203 SCRA 104 [1991]; Abrin vs. Campos, 203 SCRA 420 [1991].

[25] Denila vs. Bellosillo, 64 SCRA 63 [1975]; Lat vs. PLDT, 67 SCRA 425 [1975]; Tinitigan vs. Tinitigan, Sr., supra.

[26] Lagman vs. Court of Appeals, 44 SCRA 228 [1972]; People vs. Eduarte, 182 SCRA 750 [1990].

[27] Tijam vs. Sibonghanoy, 23 SCRA 29 [1968]; Quimpo vs. Dela Victoria, 46 SCRA 139 [1972]; Zulueta vs. Pan American World Airways, Inc., 49 SCRA 1 [1973]; Tejones vs. Gironella, 159 SCRA 100 [1988]; Marquez vs. Secretary of Labor, 171 SCRA 33 [1989]; Gulang vs. Nadayag, G.R. No. 82630, 30 September 1992.

[28] Lee Bun Ting vs. Aligaen, 76 SCRA 416 [1977], citing, inter alia, People vs. Pinuila, 103 Phil. 992 [1958]; Pomeroy vs. Director of Prisons, 107 Phil. 50 [1960]; see also, Benzonan vs. Court of Appeals, 205 SCRA 515 [1992].

DISSENTING

MELO, J.:

I am constrained to register my dissent.

The observation is expressed by the majority to the effect that private respondent is estopped from impugning the jurisdiction of the court is concerned. To my mind, private respondent's participation in the case below via the filing of an Answer, the presentation of its evidence, and the absence of objection to the trial court's order requiring the parties to submit their evidence may not be equated to estoppel. It may be recalled that private

respondent had no alternative but to go through with the trial after the challenge it posed against the denial of the first motion to dismiss was rebuffed by the Court of Appeals in C.A.-G.R. SP No. 16174 and by this Court in G.R. No. 91393. Verily, the ponencia even acknowledges that "private respondent was compelled to go back to the trial court in Civil Case No. 88-1014 where it filed its answer on 31 August 1990" (p. 5, Decision). Therefore, to construe private respondent's demeanor in the course of the proceedings, subsequent to the filing of an Answer, as akin to estoppel is certainly incongruous considering that it was forced by circumstances to pursue procedural measures in order to protect its interests in the case.

And in view of the recent pronouncement of this Court in *Santos III vs. Northwest Orient Airlines* (210 SCRA 256 [1992]) that it is the passenger's ultimate destination that determines the country where the suit against an international carrier is to be filed, I believe that the trial court is now precluded from exercising competencia over the case.

It seems unreasonable and self-contradictory at this point to insist that because we said previous to *Santos* that our courts may hear the complaint of petitioner, that the case must go on despite the subsequent pronouncement that our courts cannot validly and legally do so. It would have been a totally different matter, and I would have without reluctance extended my concurrence, if previous to *Santos* the case below were decided on the merits and the decision thereafter attained finality. Then the doctrine of the law of the case would apply. Surely, if the case below were decided, granted upon our previous say so, and the decision is thence elevated with *Santos* in the meantime having been pronounced, surely and inevitably, any appellate court will vacate the judgment of the trial court for lack of jurisdiction.

I, therefore, vote to dismiss the petition

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