

NORTHWEST AIRLINES, INC. PETITIONER, VS. COURT OF APPEALS AND ROLANDO I. TORRES RESPONDENTS.

G.R. No. 120334. January 20, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Unable to accept the decision of the Court of Appeals in CA-G.R. CV No. 24068,[1] petitioner Northwest Airlines, Inc., (hereafter NORTHWEST) and petitioner Rolando I. Torres (hereafter TORRES) filed separate petitions for review under Rule 45 of the Rules of Court, which were docketed as G.R. No. 120334 and G.R. No. 120337 and thereafter consolidated.

The antecedents of these cases were summarized by the Court of Appeals as follows:[2]

The plaintiff, [Torres], allegedly on a special mission to purchase firearms for the Philippine Senate, purchased a round trip ticket from defendant [Northwest] for his travel to Chicago and back to Manila. Via defendant's flight, plaintiff left for United States.

After purchasing firearms and on the way back to Manila, plaintiff checked-in and presented before defendant's representative his two identical baggage, one of which contained firearms. Defendant's representative required the baggage to be opened and the supporting evidence to be presented. Plaintiff showed them his authorization from the Philippine government and the purchase receipts. Plaintiff thereafter sealed the baggage and defendant's representative placed a red tag on the baggage with firearms with the marking "CONTAINS FIREARMS".

Upon arrival in Manila on June 22, 1988 plaintiff was not able to claim one of his baggages. Plaintiff was informed by defendant's representative that his baggage containing firearms was recalled back to Chicago by defendant for US Customs verification. A telex to this effect was shown to plaintiff.

On June 28, 1988, after being advised of the arrival of his other baggage, plaintiff claimed and opened the baggage in the presence of defendant's representative and found out that the firearms were missing. A Personal Property Missing Damage Report was issued by defendant to plaintiff.

On account of the continuous refusal of defendant to settle amicably, plaintiff then prayed before the trial court that defendant be ordered to pay actual damages, moral damages, temperate damages, exemplary damages and attorney's fees (pp. 1-6, Complaint; p. 1, Record).

In its answer, defendant pleaded: a) that it was the agents from the US Customs who ordered for the return of the weapons which plaintiff checked-in; b) that when opened in the presence of US Customs agents the box contained no firearms; and c) that since the baggage which was returned back to Chicago did not contain any firearms, then the baggage which plaintiff received upon arrival in Manila must have contained the firearms (pp. 3-5, Answer; pp. 32-34, Record).

After plaintiff had presented its evidence, defendant filed a "Motion to Dismiss (By Way of Demurrer to the Evidence with Motion for Summary Judgment)" dated April 24, 1989.

In said motion, defendant moved for the “dismissal of the complaint in so far as it prays for moral, exemplary and temperate damages and attorney's fees” and further moved for "Summary Judgment to be rendered awarding the plaintiff \$640.00 as actual damages." (Motion to Dismiss By Way of Demurrer to Evidence with Motion for Summary Judgment; p. 115, Records).

Plaintiff on the other hand, offered no objection to the submission of the case for decision but insisted that he is entitled to damages as prayed for (p. 1, Comment on Defendant's Motion to Dismiss by Way of Demurrer to Evidence with Summary Judgment; pp. 136-169, Records).

We add to this summary the following relevant matters:

NORTHWEST argued in its motion for summary judgment that the Warsaw Convention and the contract of carriage limited its liability to US\$640 and that the evidence presented by TORRES did not entitle him to moral, exemplary, and temperate damages and attorney's fees.[3]

Instead of just ruling on NORTHWEST's Motion to Dismiss (By Way of Demurrer to Evidence) with Motion for Summary Judgment, which it considered submitted for resolution in the order of 14 June 1989,[4] the trial court rendered on 13 September 1989 a full-blown decision[5] ordering NORTHWEST to pay TORRES the following amounts:

- The amount of \$9,009.32, with legal interest thereon from the date of the filing of the complaint, in its peso equivalent at the official rate of exchange at the time payment is made, representing the value of the goods lost by the plaintiff;
- The amount of P100,000.00 by way of attorney's fees;
- The amount of P5,181.09 as filing fees paid by the plaintiff and the amount of P20,000.00 for expenses of litigation, representing travel expenses and hotel accommodations of plaintiff's counsels; and
- The amount of P50,000.00 as moral damages.

The award of US\$9,009.32, representing the value of the lost firearms, was grounded on the trial court's finding that “the act of [NORTHWEST's] personnel in Tokyo or Narita Airport in just guessing which baggage contained the firearms was careless and imprudent, amounting to careless disregard for the safety of the luggage of the passenger.” According to the trial court, such act constituted willful misconduct which brought the case beyond the application of Section 22(2) of the Warsaw Convention, thereby depriving NORTHWEST of the limitation of the liability provided for in said section.

The awards of attorney's fees and expenses of litigation were premised on NORTHWEST's having ignored the demands of TORRES forcing the latter to litigate in order to assert his right. TORRES was also awarded moral damages because of the “inconvenience, anxiety and worry” he suffered by reason of NORTHWEST's unjustifiable refusal to settle his claim.

Both TORRES and NORTHWEST appealed from the decision to the Court of Appeals, which docketed the case as CA-G.R. CV No. 24068. Torres assailed the failure of the trial court to award the actual, moral, and exemplary damages prayed for by him.[6] Northwest, on the other hand, alleged that in prematurely resolving the case on the merits the court prevented it from presenting evidence, thereby denying it due process; and that even assuming that the trial court could resolve the entire case on the merits, it erred in awarding damages, attorney's fees, and expenses of litigation.[7]

In its Decision[8] of 14 September 1994, the Court of Appeals sustained the trial court's judgment that TORRES was entitled to actual damages, since NORTHWEST had, in effect, admitted the loss of the firearms when it

insisted that its liability was limited to \$9.07 per pound or \$20 per kilo. The appellate court then concluded that NORTHWEST's guessing of which luggage contained the firearms amounted to willful misconduct under Section 25(1) of the Warsaw Convention which entitled TORRES to claim actual damages in excess of the limitation provided for under Section 22(2) of said Convention.

Nevertheless, the Court of Appeals held that while the trial court properly ruled on the right of TORRES to actual damages, it erred in determining by way of summary judgment the amount of damages; for under Section 3 of Rule 34 of the Rules of Court, a summary judgment may be rendered upon proper motion except as to the amount of damages.

As to the trial court's act of disposing of the entire case by way of summary judgment, the Court of Appeals noted that NORTHWEST categorically moved for summary judgment only on the issue of actual damages, but not on the claims for moral damages and attorney's fees. NORTHWEST moved for the dismissal of the latter claims by way of demurrer to evidence. That being so, the trial court could not, by way of summary judgment, dispose of the case on its entirety. Section 2 of Rule 34 of the Rules of Court required that summary judgment should be issued only after the motion therefor has been heard. Since there was no such motion as to the claims for moral damages and attorney's fees, no summary judgment thereon could be made.

Anent the demurrer to evidence, the Court of Appeals held that the trial court had to either grant or deny it. If granted, no award therefor could have been validly made. If denied, then under Section 1 of Rule 35 of the Rules of Court, NORTHWEST should have been allowed to present its evidence, as it was not deemed to have waived that right. This section provided:

SECTION 1. Effect of judgment on demurrer to evidence. -- After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf.[9]

The Court of Appeals then held that since the demurrer was impliedly denied by the trial court, NORTHWEST should have been allowed to present its evidence in accordance with the above rule.

Accordingly, the Court of Appeals affirmed the trial court's finding as to the right of TORRES to actual damages but set aside the rest of the appealed decision. It then remanded the case to the court a quo for further proceedings.

On 23 May 1995, the Court of Appeals denied[10] NORTHWEST's motion for a partial reconsideration of the decision.

Hence, the present petitions.

NORTHWEST contests the right of TORRES to actual damages on the following grounds: (1) the loss of firearms was disputed; (2) the finding of willful misconduct was arbitrary; and (3) TORRES failed to produce a United States license for the shipment of the firearms; hence, the importation was illegal and no damages could arise therefrom.

TORRES, on the other hand, claims that the Court of Appeals erred (1) in setting aside the appealed decision of the court a quo as to the awards of damages, attorney's fees, and cost of suit; (2) in remanding the case to the court a quo for further proceedings; and (3) in failing to award other damages for breach of contract and willful misconduct committed by Northwest for mishandling the cargo.

NORTHWEST's Motion to Dismiss (By Way of Demurrer to Evidence) with Motion for Summary Judgment

involved two distinct and separate processes, viz: (1) demurrer to evidence, which was then governed by Rule 35, now by Rule 33; and (2) motion for summary judgment, which was then governed by Rule 34, now Rule 35, of the Rules of Court. The subject of the demurrer were the claims for moral, exemplary, and temperate damages and attorney's fees; while the target of the motion for summary judgment was the claim for actual damages.

We agree with the Court of Appeals in its holding that the trial court erred in deciding the entire case on its merits. Indeed, as to the demurrer to evidence, the trial court should have been solely guided by the procedure laid down in the abovementioned rule on demurrer to evidence. It had no choice other than to grant or to deny the demurrer. It could not, without committing grave abuse of discretion amounting to excess of jurisdiction, deny the motion and then forthwith grant TORRES' claims on a finding that TORRES has established a preponderance of evidence in support of such claims. In the instant case, the trial court did just that insofar as moral damages, attorney's fees, and expenses of litigation were concerned. What it should have done was to merely deny the demurrer and set a date for the reception of NORTHWEST's evidence in chief.

As to the motion for summary judgment, both the trial court and the Court of Appeals were in error. Summary judgments were formerly governed by Rule 34 of the Rules of Court. The rule is now Rule 35 of the 1987 Rules of Civil Procedure with the amendments allowing the parties to submit not only affidavits but also depositions or admissions in support of their respective contentions.[11] Motions for summary judgment may be filed by the claimant or by the defending party. Sections 1, 2, and 3 of the old Rule 34, the governing law in this case, provided as follows:

SECTION 1. Summary judgment for claimant. -- A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits for a summary judgment in his favor upon all or any part thereof.

SEC. 2. Summary judgment for defending party. -- A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits for a summary judgment in his favor as to all or any part thereof.

SEC. 3. Motion and proceedings thereon. -- The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NORTHWEST, the defending party, moved for summary judgment on the claim for actual damages after TORRES had presented his evidence in chief. This was allowed by Section 2 where the motion may be filed "at any time," as distinguished from section 1 where the claimant, like TORRES, may file the motion at any time after the answer is filed.

Summary judgment is allowed if, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law.

In this case, NORTHWEST denied in its Answer the material allegations in the complaint and asserted, in fact, that it was not liable for actual damages because the box containing the alleged lost firearms was the one received by TORRES when he arrived in Manila. It likewise contended that, even granting that the firearms were lost, its liability was limited by the Warsaw Convention and the contract of transportation to \$9.07 per pound, or a total of \$640 as the box weighed 70 pounds.[12] It also denied having acted fraudulently or in bad faith.[13]

In thus submitting for summary judgment the matter of its liability only to the maximum allowed in Section 22(2) of the Warsaw Convention, NORTHWEST was deemed to have hypothetically admitted *arguendo* that the

firearms were lost. It did not waive the presentation of evidence that it was not in fact liable for the alleged loss of firearms. And even if it were so liable, NORTHWEST could still prove at the appropriate time that it was not liable beyond the maximum provided in said Section 22(2). Notably, TORRES prayed for actual damages in the amounts of (1) \$9,009.32 representing the value of the lost firearms; and (2) P39,065[14] representing the cost of his plane tickets.

Concretely then, there remained a genuine issue on the fact and amount of actual damages. The motion for summary judgment was not therefore in order. NORTHWEST must have resorted to it, in like manner as it did in filing the demurrer, to delay the progress of the trial of the case. Verily, it was grave abuse of discretion on the part of the trial court to grant such motion and award TORRES actual damages commensurate to the value of the firearms and based on his evidence alone.

We, however, agree with both the trial court and the Court of Appeals that NORTHWEST's liability for actual damages may not be limited to that prescribed in Section 22(2) of the Warsaw Convention. In *Alitalia v. Intermediate Appellate Court*, [15] we held:

The [Warsaw] Convention does not operate as an exclusive enumeration of the instances of an airline's liability, or as an absolute limit of the extent of that liability. Such a proposition is not borne out by the language of the Convention, as this Court has now, and at an earlier time, pointed out. Moreover, slight reflection readily leads to the conclusion that it should be deemed a limit of liability only in those cases where the cause of the death or injury to person, or destruction, loss or damage to property or delay in its transport is not attributable to or attended by any willful misconduct, bad faith, recklessness, or otherwise improper conduct on the part of any official or employee for which the carrier is responsible, and there is otherwise no special or extraordinary form of resulting injury. The Convention's provisions, in short, do not "regulate or exclude liability for other breaches of contract by the carrier" or misconduct of its officers and employees, or for some particular or exceptional type of damage.

IN VIEW WHEREOF, judgment is hereby rendered (1) PARTLY GRANTING the petition in G.R. No. 120334 by setting aside that portion of the challenged decision of the Court of Appeals in CA-G.R. CV No. 24068 affirming the summary judgment as to the right of respondent ROLANDO I. TORRES to actual damages; (2) DENYING for want of merit the petition in G.R. No. 120337; and (3) REMANDING this case to the trial court for the reception of the evidence for Northwest Airlines, Inc. in Civil Case No. 88-46117 and, thereafter, for the rendition of the judgment therein on the merits.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Kapunan, and Vitug, JJ., concur.

[1] Per Labitoria, E., J., with Ramirez, P. and Abad Santos, Q., Jr., JJ., concurring. Rollo G.R. No. 120334, 42-50; Rollo G.R. No. 120337, 27-35.

[2] Rollo G.R. No. 120334, 44-45; Rollo G.R. No. 120337, 29-30.

[3] Original Record (OR) Civil Case No. 88-46117, 115.

[4] *Id.*, 189.

[5] Per Judge Sergio D. Mabunay. OR, 191-204.

[6] Rollo, CA-G.R. CV No. 24068, 11.

[7] Id., unpaginated; Defendant-Appellant's Brief, 6-7.

[8] Supra note 1.

[9] This is now Section 1 of Rule 33 of the 1997 Rules of Civil Procedure with modification in the wordings to make the provision clearer.

[10] Rollo, G.R. No. 120334, 52.

[11] 1 Florenz D. Regalado, Remedial Law Compendium 359-360 (Sixth Revised Edition 1997).

[12] Paragraphs 21 and 22, Answer, OR, 33-34.

[13] Paragraph 23, Answer, OR, 34.

[14] Paragraph 13 of the Complaint and letter (b) of the Prayer thereof, OR, 5 and 6.

[15] 192 SCRA 9, 17 [1990].

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