

**SPOUSES YU ENG CHO AND FRANCISCO TAO YU, PETITIONERS, VS.
PAN AMERICAN WORLD AIRWAYS, INC., TOURIST WORLD SERVICES,
INC., JULIETA CANILAO AND CLAUDIA TAGUNICAR, RESPONDENTS.**

G.R. No. 123560. March 27, 2000

Ponente: PUNO, J.

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PUNO, J.:

This petition for review seeks a reversal of the 31 August 1995 Decision[1] and 11 January 1998 Resolution[2] of the Court of Appeals holding private respondent Claudia Tagunicar solely liable for moral and exemplary damages and attorney's fees, and deleting the trial court's award for actual damages.

The facts as found by the trial court are as follows:

"Plaintiff Yu Eng Cho is the owner of Young Hardware Co. and Achilles Marketing. In connection with [this] business, he travels from time to time to Malaysia, Taipei and Hongkong. On July 10, 1976, plaintiffs bought plane tickets (Exhs. A & B) from defendant Claudia Tagunicar who represented herself to be an agent of defendant Tourist World Services, Inc. (TWSI). The destination[s] are Hongkong, Tokyo, San Francisco, U.S.A., for the amount of P25,000.00 per computation of said defendant Claudia Tagunicar (Exhs. C & C-1). The purpose of this trip is to go to Fairfield, New Jersey, U.S.A. to buy two (2) lines of infrared heating system processing textured plastic article (Exh. K).

"On said date, only the passage from Manila to Hongkong, then to Tokyo, were confirmed. [PAA] Flight 002 from Tokyo to San Francisco was on "RQ" status, meaning "on request". Per instruction of defendant Claudia Tagunicar, plaintiffs returned after a few days for the confirmation of the Tokyo-San Francisco segment of the trip. After calling up Canilao of TWSI, defendant Tagunicar told plaintiffs that their flight is now confirmed all the way. Thereafter, she attached the confirmation stickers on the plane tickets (Exhs. A & B).

"A few days before the scheduled flight of plaintiffs, their son, Adrian Yu, called the Pan Am office to verify the status of the flight. According to said Adrian Yu, a personnel of defendant Pan Am told him over the phone that plaintiffs' booking[s] are confirmed.

"On July 23, 1978, plaintiffs left for Hongkong and stayed there for five (5) days. They left Hongkong for Tokyo on July 28, 1978. Upon their arrival in Tokyo, they called up Pan-Am office for reconfirmation of their flight to San Francisco. Said office, however, informed them that their names are not in the manifest. Since plaintiffs were supposed to leave on the 29th of July, 1978, and could not remain in Japan for more than 72 hours, they were constrained to agree to accept airline tickets for Taipei instead, per advise of JAL officials. This is the only option left to them because Northwest Airlines was then on strike, hence, there was no chance for the plaintiffs to obtain airline seats to the United States within 72 hours. Plaintiffs paid for these tickets.

"Upon reaching Taipei, there were no flight[s] available for plaintiffs, thus, they were forced to return back to Manila on August 3, 1978, instead of proceeding to the United States. [Japan] Air Lines (JAL) refunded the plaintiffs the difference of the price for Tokyo-Taipei [and] Tokyo-San Francisco (Exhs. I & J) in the total amount of P2,602.00.

"In view of their failure to reach Fairfield, New Jersey, Radiant Heat Enterprises, Inc. cancelled Yu Eng Cho's option to buy the two lines of infra-red heating system (Exh. K). The agreement was for him to inspect the equipment and make final arrangement[s] with the said company not later than August 7, 1978. From this business transaction, plaintiff Yu Eng Cho expected to realize a profit of P300,000.00 to P400,000.00."

"[A] scrutiny of defendants' respective evidence reveals the following:

"Plaintiffs, who were intending to go to the United States, were referred to defendant Claudia Tagunicar, an independent travel solicitor, for the purchase of their plane tickets. As such travel solicitor, she helps in the processing of travel papers like passport, plane tickets, booking of passengers and some assistance at the airport. She is known to defendants Pan-Am, TWSI/Julieta Canilao, because she has been dealing with them in the past years. Defendant Tagunicar advised plaintiffs to take Pan-Am because Northwest Airlines was then on strike and plaintiffs are passing Hongkong, Tokyo, then San Francisco and Pan-Am has a flight from Tokyo to San Francisco. After verifying from defendant TWSI, thru Julieta Canilao, she informed plaintiffs that the fare would be P25,093.93 giving them a discount of P738.95 (Exhs. C, C-1). Plaintiffs, however, gave her a check in the amount of P25,000.00 only for the two round trip tickets. Out of this transaction, Tagunicar received a 7% commission and 1% commission for defendant TWSI.

Defendant Claudia Tagunicar purchased the two round-trip Pan-Am tickets from defendant Julieta Canilao with the following schedules:

Origin

Destination

Airline

Date

Time/Travel

Manila

Hongkong

CX900

7-23-78

1135/1325hrs

Hongkong

Tokyo

CS500

7-28-78

1615/2115hrs

Tokyo

San Francisco

PA002

7-29-78

1930/1640hrs

The use of another airline, like in this case it is Cathay Pacific out of Manila, is allowed, although the tickets issued are Pan-Am tickets, as long as it is in connection with a Pan-Am flight. When the two (2) tickets (Exhs. A & B) were issued to plaintiffs, the letter "RQ" appears below the printed word "status" for the flights from Tokyo to San Francisco which means "under request," (Exh. 3-A, 4-A Pan-Am). Before the date of the scheduled departure, defendant Tagunicar received several calls from the plaintiffs inquiring about the status of their bookings. Tagunicar in turn called up TWSI/Canilao to verify; and if Canilao would answer that the bookings are not yet confirmed, she would relate that to the plaintiffs.

"Defendant Tagunicar claims that on July 13, 1978, a few days before the scheduled flight, plaintiff Yu Eng Cho personally went to her office, pressing her about their flight. She called up defendant Julieta Canilao, and the latter told her "o sige Claudia, confirm na." She even noted this in her index card (Exh. L), that it was Julieta who confirmed the booking (Exh. L-1). It was then that she allegedly attached the confirmation stickers (Exhs. 2, 2-B TWSI) to the tickets. These stickers came from TWSI.

Defendant Tagunicar alleges that it was only in the first week of August, 1978 that she learned from Adrian Yu, son of plaintiffs, that the latter were not able to take the flight from Tokyo to San Francisco, U.S.A. After a few days, said Adrian Yu came over with a gentleman and a lady, who turned out to be a lawyer and his secretary. Defendant Tagunicar claims that plaintiffs were asking for her help so that they could file an action against Pan-Am. Because of plaintiffs' promise she will not be involved, she agreed to sign the affidavit (Exh. M) prepared by the lawyer.

Defendants TWSI/Canilao denied having confirmed the Tokyo-San Francisco segment of plaintiffs' flight because flights then were really tight because of the on-going strike at Northwest Airlines. Defendant Claudia Tagunicar is very much aware that [said] particular segment was not confirmed, because on the very day of plaintiffs' departure, Tagunicar called up TWSI from the airport; defendant Canilao asked her why she attached stickers on the tickets when in fact that portion of the flight was not yet confirmed. Neither TWSI nor Pan-Am confirmed the flight and never authorized defendant Tagunicar to attach the confirmation stickers. In fact, the confirmation stickers used by defendant Tagunicar are stickers exclusively for use of Pan-Am only. Furthermore, if it is the travel agency that confirms the booking, the IATA number of said agency should appear on the validation or confirmation stickers. The IATA number that appears on the stickers attached to plaintiffs' tickets (Exhs. A & B) is 2-82-0770 (Exhs. 1, 1-A TWSI), when in fact TWSI's IATA number is 2-83-0770 (Exhs. 5, 5-A TWSI)."[3]

A complaint for damages was filed by petitioners against private respondents Pan American World Airways, Inc.(Pan Am), Tourist World Services, Inc. (TWSI), Julieta Canilao (Canilao), and Claudia Tagunicar (Tagunicar) for expenses allegedly incurred such as costs of tickets and hotel accommodations when petitioners were compelled to stay in Hongkong and then in Tokyo by reason of the non-confirmation of their booking with Pan-Am. In a Decision dated November 14, 1991, the Regional Trial Court of Manila, Branch 3, held the defendants jointly and severally liable, except defendant Julieta Canilao, thus:

"WHEREFORE, judgment is hereby rendered for the plaintiffs and ordering defendants Pan American World Airways, Inc., Tourist World Services, Inc. and Claudia Tagunicar, jointly and severally, to pay plaintiffs the sum of P200,000.00 as actual damages, minus P2,602.00 already refunded to the plaintiffs; P200,000.00 as moral damages; P100,000.00 as exemplary damages; an amount equivalent to 20% of the award for and as attorney's fees, plus the sum of P30,000.00 as litigation expenses.

Defendants' counterclaims are hereby dismissed for lack of merit.

SO ORDERED."

Only respondents Pan Am and Tagunicar appealed to the Court of Appeals. On 11 August 1995, the appellate court rendered judgment modifying the amount of damages awarded, holding private respondent Tagunicar solely liable therefor, and absolving respondents Pan Am and TWSI from any and all liability, thus: Slxsä c

"PREMISES CONSIDERED, the decision of the Regional Trial Court is hereby SET ASIDE and a new one entered declaring appellant Tagunicar solely liable for:

- 1) Moral damages in the amount of P50,000.00;
- 2) Exemplary damages in the amount of P25,000.00; and
- 3) Attorney's fees in the amount of P10,000.00 plus costs of suit.

The award of actual damages is hereby DELETED.

SO ORDERED."

In so ruling, respondent court found that Tagunicar is an independent travel solicitor and is not a duly authorized agent or representative of either Pan Am or TWSI. It held that their business transactions are not sufficient to consider Pan Am as the principal, and Tagunicar and TWSI as its agent and sub-agent, respectively. It further held that Tagunicar was not authorized to confirm the bookings of, nor issue validation stickers to, herein petitioners and hence, Pan Am and TWSI cannot be held responsible for her actions. Finally, it deleted the award for actual damages for lack of proof.

Hence this petition based on the following assignment of errors:

1. the Court of Appeals, in reversing the decision of the trial court, misapplied the ruling in *Nicos Industrial Corporation vs. Court of Appeals, et. al.* [206 SCRA 127]; and
2. the findings of the Court of Appeals that petitioners' ticket reservations in question were not confirmed and that there is no agency relationship among PAN-AM, TWSI and Tagunicar are contrary to the judicial admissions of PAN-AM, TWSI and Tagunicar and likewise contrary to the findings of fact of the trial court.

We affirm.

I. The first issue deserves scant consideration. Petitioners contend that contrary to the ruling of the Court of Appeals, the decision of the trial court conforms to the standards of an ideal decision set in *Nicos Industrial Corporation, et. al. vs. Court of Appeals, et. al.*,^[4] as "that which, with welcome economy of words, arrives at the factual findings, reaches the legal conclusions, renders its ruling and, having done so, ends." It is averred that the trial court's decision contains a detailed statement of the relevant facts and evidence adduced by the parties which thereafter became the bases for the court's conclusions.

A careful scrutiny of the decision rendered by the trial court will show that after narrating the evidence of the parties, it proceeded to dispose of the case with a one-paragraph generalization, to wit:

"On the basis of the foregoing facts, the Court is constrained to conclude that defendant Pan-Am is the principal, and defendants TWSI and Tagunicar, its authorized agent and sub-agent, respectively. Consequently, defendants Pan-Am, TWSI and Claudia Tagunicar should be held jointly and severally liable to plaintiffs for damages. Defendant Julieta Canilao, who acted in her official capacity as Office Manager of defendant TWSI should not be held personally liable."^[5]

The trial court's finding of facts is but a summary of the testimonies of the witnesses and the documentary evidence presented by the parties. It did not distinctly and clearly set forth, nor substantiate, the factual and legal bases for holding respondents TWSI, Pan Am and Tagunicar jointly and severally liable. In *Del Mundo vs. CA, et*

al.[6]where the trial court, after summarizing the conflicting asseverations of the parties, disposed of the kernel issue in just two (2) paragraphs, we held:

"It is understandable that courts, with their heavy dockets and time constraints, often find themselves with little to spare in the preparation of decisions to the extent most desirable. We have thus pointed out that judges might learn to synthesize and to simplify their pronouncements. Nevertheless, concisely written such as they may be, decisions must still distinctly and clearly express, at least in minimum essence, its factual and legal bases."

For failing to explain clearly and well the factual and legal bases of its award of moral damages, we set it aside in said case. Once more, we stress that nothing less than Section 14 of Article VIII of the Constitution requires that "no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." This is demanded by the due process clause of the Constitution. In the case at bar, the decision of the trial court leaves much to be desired both in form and substance. Even while said decision infringes the Constitution, we will not belabor this infirmity and rather examine the sufficiency of the evidence submitted by the petitioners. RtcÓ spped

II. Petitioners assert that Tagunicar is a sub-agent of TWSI while TWSI is a duly authorized ticketing agent of Pan Am. Proceeding from this premise, they contend that TWSI and Pan Am should be held liable as principals for the acts of Tagunicar. Petitioners stubbornly insist that the existence of the agency relationship has been established by the judicial admissions allegedly made by respondents herein, to wit: (1) the admission made by Pan Am in its Answer that TWSI is its authorized ticket agent; (2) the affidavit executed by Tagunicar where she admitted that she is a duly authorized agent of TWSI; and (3) the admission made by Canilao that TWSI received commissions from ticket sales made by Tagunicar.

We do not agree. By the contract of agency, a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.[7] The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself; (4) the agent acts within the scope of his authority.[8] It is a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it.[9]

In the case at bar, petitioners rely on the affidavit of respondent Tagunicar where she stated that she is an authorized agent of TWSI. This affidavit, however, has weak probative value in light of respondent Tagunicar's testimony in court to the contrary. Affidavits, being taken ex parte, are almost always incomplete and often inaccurate, sometimes from partial suggestion, or for want of suggestion and inquiries. Their infirmity as a species of evidence is a matter of judicial experience and are thus considered inferior to the testimony given in court.[10] Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to her.[11] Respondent Tagunicar testified that her affidavit was prepared and typewritten by the secretary of petitioners' lawyer, Atty. Acebedo, who both came with Adrian Yu, son of petitioners, when the latter went to see her at her office. This was confirmed by Adrian Yu who testified that Atty. Acebedo brought his notarial seal and notarized the affidavit of the same day.[12] The circumstances under which said affidavit was prepared put in doubt petitioners' claim that it was executed voluntarily by respondent Tagunicar. It appears that the affidavit was prepared and was based on the answers which respondent Tagunicar gave to the questions propounded to her by Atty. Acebedo.[13] They never told her that the affidavit would be used in a case to be filed against her.[14] They even assured her that she would not be included as defendant if she agreed to execute the affidavit.[15]

Respondent Tagunicar was prevailed upon by petitioners' son and their lawyer to sign the affidavit despite her objection to the statement therein that she was an agent of TWSI. They assured her that "it is immaterial"[16] and that "if we file a suit against you we cannot get anything from you."[17] This purported admission of respondent Tagunicar cannot be used by petitioners to prove their agency relationship. At any rate, even if such affidavit is to be given any probative value, the existence of the agency relationship cannot be established on its sole basis. The declarations of the agent alone are generally insufficient to establish the fact or extent of his authority.[18] In addition, as between the negative allegation of respondents Canilao and Tagunicar that neither is an agent nor principal of the other, and the affirmative allegation of petitioners that an agency relationship exists, it is the latter who have the burden of evidence to prove their allegation,[19] failing in which, their claim must necessarily fail.

We stress that respondent Tagunicar categorically denied in open court that she is a duly authorized agent of TWSI, and declared that she is an independent travel agent.[20] We have consistently ruled that in case of conflict between statements in the affidavit and testimonial declarations, the latter command greater weight.[21]

As further proofs of agency, petitioners call our attention to TWSI's Exhibits "7", "7-A", and "8" which show that Tagunicar and TWSI received sales commissions from Pan Am. Exhibit "7"[22] is the Ticket Sales Report submitted by TWSI to Pan Am reflecting the commissions received by TWSI as an agent of Pan Am. Exhibit "7-A"[23] is a listing of the routes taken by passengers who were audited to TWSI's sales report. Exhibit "8"[24] is a receipt issued by TWSI covering the payment made by Tagunicar for the tickets she bought from TWSI. These documents cannot justify the deduction that Tagunicar was paid a commission either by TWSI or Pan Am. On the contrary, Tagunicar testified that when she pays TWSI, she already deducts in advance her commission and merely gives the net amount to TWSI.[25] From all sides of the legal prism, the transaction is simply a contract of sale wherein Tagunicar buys airline tickets from TWSI and then sells it at a premium to her clients.

III. Petitioners included respondent Pan Am in the complaint on the supposition that since TWSI is its duly authorized agent, and respondent Tagunicar is an agent of TWSI, then Pan Am should also be held responsible for the acts of respondent Tagunicar. Our disquisitions above show that this contention lacks factual and legal bases. Indeed, there is nothing in the records to show that respondent Tagunicar has been employed by Pan Am as its agent, except the bare allegation of petitioners. The real motive of petitioners in suing Pan Am appears in its Amended Complaint that "[d]efendants TWSI, Canilao and Tagunicar may not be financially capable of paying plaintiffs the amounts herein sought to be recovered, and in such event, defendant Pan Am, being their ultimate principal, is primarily and/or subsidiarily liable to pay said amounts to plaintiffs." [26] This lends credence to respondent Tagunicar's testimony that she was persuaded to execute an affidavit implicating respondents because petitioners knew they would not be able to get anything of value from her. In the past, we have warned that this Court will not tolerate an abuse of the judicial process by passengers in order to pry on international airlines for damage awards, like "trophies in a safari." [27]

This meritless suit against Pan Am becomes more glaring with petitioners' inaction after they were bumped off in Tokyo. If petitioners were of the honest belief that Pan Am was responsible for the misfortune which beset them, there is no evidence to show that they lodged a protest with Pan Am's Tokyo office immediately after they were refused passage for the flight to San Francisco, or even upon their arrival in Manila. The testimony of petitioner Yu Eng Cho in this regard is of little value, viz.:

"Atty. Jalandoni: x x x

q

Upon arrival at the Tokyo airport, what did you do if any in connection with your schedule[d] trip?

a

I went to the Hotel, Holiday Inn and from there I immediately called up Pan Am office in Tokyo to reconfirm my flight, but they told me that our names were not listed in the manifest, so next morning, very early in the morning I went to the airport, Pan Am office in the airport to verify and they told me the same and we were not allowed to leave.

q

You were scheduled to be in Tokyo for how long Mr. Yu?

a

We have to leave the next day 29th.

q

In other words, what was your status as a passenger?

a

Transient passengers. We cannot stay there for more than 72 hours.

x x x x x x x x

q

As a consequence of the fact that you claimed that the Pan Am office in Tokyo told you that your names were not in the manifest, what did you do, if any?

a

I ask[ed] them if I can go anywhere in the States? They told me I can go to LA via Japan Airlines and I accepted it.

q

Do you have the tickets with you that they issued for Los Angeles?

a

It was taken by the Japanese Airlines instead they issue[d] me a ticket to Taipei.

x x x x x x x x

q

Were you able to take the trip to Los Angeles via Pan Am tickets that was issued to you in lieu of the tickets to San Francisco?

a

No, sir.

q

Why not?

a

The Japanese Airlines said that there were no more available seats.

q

And as a consequence of that, what did you do, if any?

a

I am so much scared and worried, so the Japanese Airlines advised us to go to Taipei and I accepted it.

x x x x x x x x

q

Why did you accept the Japan Airlines offer for you to go to Taipei?

a

Because there is no chance for us to go to the United States within 72 hours because during that time Northwest Airlines [was] on strike so the seats are very scarce. So they advised me better left (sic) before the 72 hours otherwise you will have trouble with the Japanese immigration.

q

As a consequence of that you were force[d] to take the trip to Taipei?

a

Yes, sir."[28] (emphasis supplied)

It grinds against the grain of human experience that petitioners did not insist that they be allowed to board, considering that it was then doubly difficult to get seats because of the ongoing Northwest Airlines strike. It is also perplexing that petitioners readily accepted whatever the Tokyo office had to offer as an alternative. Inexplicably too, no demand letter was sent to respondents TWSI and Canilao.[29] Nor was a demand letter sent to respondent Pan Am. To say the least, the motive of petitioners in suing Pan Am is suspect. xä law

We hasten to add that it is not sufficient to prove that Pan Am did not allow petitioners to board to justify petitioners' claim for damages. Mere refusal to accede to the passenger's wishes does not necessarily translate into damages in the absence of bad faith.[30] The settled rule is that the law presumes good faith such that any person who seeks to be awarded damages due to acts of another has the burden of proving that the latter acted in bad faith or with ill motive.[31] In the case at bar, we find the evidence presented by petitioners insufficient to overcome the presumption of good faith. They have failed to show any wanton, malevolent or reckless misconduct imputable to respondent Pan Am in its refusal to accommodate petitioners in its Tokyo-San Francisco flight. Pan Am could not have acted in bad faith because petitioners did not have confirmed tickets and more importantly, they were not in the passenger manifest.

In not a few cases, this Court did not hesitate to hold an airline liable for damages for having acted in bad faith in refusing to accommodate a passenger who had a confirmed ticket and whose name appeared in the passenger manifest. In *Ortigas Jr. v. Lufthansa German Airlines Inc.*[32] we ruled that there was a valid and binding contract between the airline and its passenger after finding that validating sticker on the passenger's ticket had the letters "O.K." appearing in the 'Res. Status' box which means "space confirmed" and that the ticket is confirmed or validated. In *Pan American World Airways Inc. v. IAC, et al.*[33] where a would-be-passenger had the necessary ticket, baggage claim and clearance from immigration all clearly showing that she was a confirmed passenger and included in the passenger manifest and yet was denied accommodation in said flight, we awarded damages. In *Armovit, et al. v. CA, et al.*,[34] we upheld the award of damages made against an airline for gross negligence committed in the issuance of tickets with erroneous entries as to the time of flight. In *Alitalia Airways v. CA, et*

al.,[35] we held that when 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. And finally, an award of damages was held proper in the case of *Zalamea, et al. v. CA, et al.*,[36] where a confirmed passenger included in the manifest was denied accommodation in such flight.

On the other hand, the respondent airline in *Sarreal, Sr. v. Japan Airlines Co., Ltd.*,[37] was held not liable for damages where the passenger was not allowed to board the plane because his ticket had not been confirmed. We ruled that "[t]he stub that the lady employee put on the petitioner's ticket showed among other coded items, under the column "status" the letters "RQ" - which was understood to mean "Request." Clearly, this does not mean a confirmation but only a request. JAL Traffic Supervisor explained that it would have been different if what was written on the stub were the letter "ok" in which case the petitioner would have been assured of a seat on said flight. But in this case, the petitioner was more of a wait-listed passenger than a regularly booked passenger."

In the case at bar, petitioners' ticket were on "RQ" status. They were not confirmed passengers and their names were not listed in the passenger manifest. In other words, this is not a case where Pan Am bound itself to transport petitioners and thereafter reneged on its obligation. Hence, respondent airline cannot be held liable for damages.

IV. We hold that respondent Court of Appeals correctly ruled that the tickets were never confirmed for good reasons: (1) The persistent calls made by respondent Tagunicar to Canilao, and those made by petitioners at the Manila, Hongkong and Tokyo offices of Pan Am, are eloquent indications that petitioners knew that their tickets have not been confirmed. For, as correctly observed by Pan Am, why would one continually try to have one's ticket confirmed if it had already been confirmed? (2) The validation stickers which respondent Tagunicar attached to petitioners' tickets were those intended for the exclusive use of airline companies. She had no authority to use them. Hence, said validation stickers, wherein the word "OK" appears in the status box, are not valid and binding. (3) The names of petitioners do not appear in the passenger manifest. (4) Respondent Tagunicar's "Exhibit 1"[38] shows that the status of the San Francisco-New York segment was "Ok", meaning it was confirmed, but that the status of the Tokyo-San Francisco segment was still "on request". (5) Respondent Canilao testified that on the day that petitioners were to depart for Hongkong, respondent Tagunicar called her from the airport asking for confirmation of the Tokyo-San Francisco flight, and that when she told respondent Tagunicar that she should not have allowed petitioners to leave because their tickets have not been confirmed, respondent Tagunicar merely said "Bahala na." [39] This was never controverted nor refuted by respondent Tagunicar. (6) To prove that it really did not confirm the bookings of petitioners, respondent Canilao pointed out that the validation stickers which respondent Tagunicar attached to the tickets of petitioners had IATA No. 2-82-0770 stamped on it, whereas the IATA number of TWSI is 28-30770.[40]

Undoubtedly, respondent Tagunicar should be liable for having acted in bad faith in misrepresenting to petitioners that their tickets have been confirmed. Her culpability, however, was properly mitigated. Petitioner Yu Eng Cho testified that he repeatedly tried to follow up on the confirmation of their tickets with Pan Am because he doubted the confirmation made by respondent Tagunicar.[41] This is clear proof that petitioners knew that they might be bumped off at Tokyo when they decided to proceed with the trip. Aware of this risk, petitioners exerted efforts to confirm their tickets in Manila, then in Hongkong, and finally in Tokyo. Resultantly, we find the modification as to the amount of damages awarded just and equitable under the circumstances.

WHEREFORE, the decision appealed from is hereby AFFIRMED. Cost against petitioners. Joä spped

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Pardo, JJ., concur.
Ynares-Santiago, J., no part.

[1] Penned by Associate Justice Antonio M. Martinez, with Consuelo Ynares-Santiago and Ruben T. Reyes, JJ., concurring; Rollo, 35-49.

[2] Ibid., 51.

[3] Original Records, 647-650.

[4] 206 SCRA 127 (1992).

[5] Original Record, 650.

[6] 240 SCRA 348 (1995).

[7] New Civil Code, Article 1868.

[8] Tolentino, Civil Code of the Phils., Vol. V, 1992 ed., p. 396.

[9] BA Finance v. CA, et al., 211 SCRA 112 (1992).

[10] People v. Diaz, 262 SCRA 723 (1996).

[11] People v. Gondora, 265 SCRA 408 (1996).

[12] TSN, December 16, 1982, pp. 17-19.

[13] TSN, September 29, 1983, pp. 12-13.

[14] TSN, December 16, 1982, p. 17.

[15] TSN, September 29, 1983, pp. 16-17.

[16] TSN, July 22, 1983, p. 43.

[17] Ibid., p. 38.

[18] Reuschlein & Gregory, The Law of Agency and Partnership, 1990, Second ed., p. 28; BA Finance v. CA, et al., 211 SCRA 112 (1992).

[19] Martinez v. NLRC, et al., 272 SCRA 793 (1997).

[20] TSN, July 22, 1983, p. 44; August 12, 1983, pp. 6-7.

[21] People v. Aliposa, 263 SCRA 471 (1996).

[22] Original Records, p. 448.

[23] Ibid., 449.

[24] Ibid., 450.

[25] TSN, July 22, 1983, p. 50.

[26] Original Records, p. 46.

[27] *Alitalia Airways vs. CA, et al.*, 187 SCRA 763 (1990).

[28] TSN, August 20, 1981, pp. 18-28.

[29] TSN, November 23, 1983, p. 35.

[30] *Air France v. CA, et al.*, 171 SCRA 399 (1989).

[31] *Ford Phils., Inc. v. CA, et al.*, 267 SCRA 320 (1997).

[32] 64 SCRA 610 (1975).

[33] 153 SCRA 521 (1987).

[34] 184 SCRA 476 (1990).

[35] 187 SCRA 763 (1990).

[36] 228 SCRA 23 (1993).

[37] 207 SCRA 359 (1992).

[38] Original Records, p. 292.

[39] TSN, November 23, 1983, pp. 29-31.

[40] *Ibid.*, p. 14.

[41] TSN, August 27, 1981, p. 42.

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