

NICHOLAS Y. CERVANTES, PETITIONER, VS. COURT OF APPEALS AND THE PHILIPPINE AIR LINES, INC., RESPONDENT.

G.R. No. 125138. March 02, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This Petition for Review on certiorari assails the 25 July 1995 decision of the Court of Appeals[1] in CA GR CV No. 41407, entitled "Nicholas Y. Cervantes vs. Philippine Air Lines Inc.", affirming in toto the judgment of the trial court dismissing petitioner's complaint for damages.

On March 27, 1989, the private respondent, Philippines Air Lines, Inc. (PAL), issued to the herein petitioner, Nicholas Cervantes (Cervantes), a round trip plane ticket for Manila-Honolulu-Los Angeles-Honolulu-Manila, which ticket expressly provided an expiry of date of one year from issuance, i.e., until March 27, 1990. The issuance of the said plane ticket was in compliance with a Compromise Agreement entered into between the contending parties in two previous suits, docketed as Civil Case Nos. 3392 and 3451 before the Regional Trial Court in Surigao City.[2]

On March 23, 1990, four days before the expiry date of subject ticket, the petitioner used it. Upon his arrival in Los Angeles on the same day, he immediately booked his Los Angeles-Manila return ticket with the PAL office, and it was confirmed for the April 2, 1990 flight.

Upon learning that the same PAL plane would make a stop-over in San Francisco, and considering that he would be there on April 2, 1990, petitioner made arrangements with PAL for him to board the flight in San Francisco instead of boarding in Los Angeles.

On April 2, 1990, when the petitioner checked in at the PAL counter in San Francisco, he was not allowed to board. The PAL personnel concerned marked the following notation on his ticket: "TICKET NOT ACCEPTED DUE EXPIRATION OF VALIDITY."

Aggrieved, petitioner Cervantes filed a Complaint for Damages, for breach of contract of carriage docketed as Civil Case No. 3807 before Branch 32 of the Regional Trial Court of Surigao del Norte in Surigao City. But the said complaint was dismissed for lack of merit.[3]

On September 20, 1993, petitioner interposed an appeal to the Court of Appeals, which came out with a Decision, on July 25, 1995, upholding the dismissal of the case.

On May 22, 1996, petitioner came to this Court via the Petition for Review under consideration.

The issues raised for resolution are: (1) Whether or not the act of the PAL agents in confirming subject ticket extended the period of validity of petitioner's ticket; (2) Whether or not the defense of lack of authority was correctly ruled upon; and (3) Whether or not the denial of the award for damages was proper.

To rule on the first issue, there is a need to quote the findings below. As a rule, conclusions and findings of fact

arrived at by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons.[4]

The facts of the case as found by the lower court[5] are, as follows:

"The plane ticket itself (Exhibit A for plaintiff; Exhibit 1 for defendant) provides that it is not valid after March 27, 1990. (Exhibit 1-F). It is also stipulated in paragraph 8 of the Conditions of Contract (Exhibit 1, page 2) as follows:

"8. This ticket is good for carriage for one year from date of issue, except as otherwise provided in this ticket, in carrier's tariffs, conditions of carriage, or related regulations. The fare for carriage hereunder is subject to change prior to commencement of carriage. Carrier may refuse transportation if the applicable fare has not been paid."[6]

The question on the validity of subject ticket can be resolved in light of the ruling in the case of Lufthansa vs. Court of Appeals[7]. In the said case, the Tolentinos were issued first class tickets on April 3, 1982, which will be valid until April 10, 1983. On June 10, 1982, they changed their accommodations to economy class but the replacement tickets still contained the same restriction. On May 7, 1983, Tolentino requested that subject tickets be extended, which request was refused by the petitioner on the ground that the said tickets had already expired. The non-extension of their tickets prompted the Tolentinos to bring a complaint for breach of contract of carriage against the petitioner. In ruling against the award of damages, the Court held that the "ticket constitute the contract between the parties. It is axiomatic that when the terms are clear and leave no doubt as to the intention of the contracting parties, contracts are to be interpreted according to their literal meaning."

In his effort to evade this inevitable conclusion, petitioner theorized that the confirmation by the PAL's agents in Los Angeles and San Francisco changed the compromise agreement between the parties.

As aptly ruled by the appellate court:

"xxx on March 23, 1990, he was aware of the risk that his ticket could expire, as it did, before he returned to the Philippines." (pp. 320-321, Original Records)"[8]

"The question is: 'Did these two (2) employees, in effect, extend the validity or lifetime of the ticket in question? The answer is in the negative. Both had no authority to do so. Appellant knew this from the very start when he called up the Legal Department of appellee in the Philippines before he left for the United States of America. He had first hand knowledge that the ticket in question would expire on March 27, 1990 and that to secure an extension, he would have to file a written request for extension at the PAL's office in the Philippines (TSN, Testimony of Nicholas Cervantes, August 2, 1991, pp 20-23). Despite this knowledge, appellant persisted to use the ticket in question."[9]

From the aforesaid facts, it can be gleaned that the petitioner was fully aware that there was a need to send a letter to the legal counsel of PAL for the extension of the period of validity of his ticket.

Since the PAL agents are not privy to the said Agreement and petitioner knew that a written request to the legal counsel of PAL was necessary, he cannot use what the PAL agents did to his advantage. The said agents, according to the Court of Appeals,[10] acted without authority when they confirmed the flights of the petitioner.

Under Article 1898[11] of the New Civil Code, the acts of an agent beyond the scope of his authority do not bind the principal, unless the latter ratifies the same expressly or impliedly. Furthermore, when the third person (herein petitioner) knows that the agent was acting beyond his power or authority, the principal cannot be held liable for the acts of the agent. If the said third person is aware of such limits of authority, he is to blame, and is not entitled to recover damages from the agent, unless the latter undertook to secure the principal's ratification.[12]

Anent the second issue, petitioner's stance that the defense of lack of authority on the part of the PAL employees was deemed waived under Rule 9, Section 2 of the Revised Rules of Court, is unsustainable. Thereunder, failure of a party to put up defenses in their answer or in a motion to dismiss is a waiver thereof.

Petitioner stresses that the alleged lack of authority of the PAL employees was neither raised in the answer nor in the motion to dismiss. But records show that the question of whether there was authority on the part of the PAL employees was acted upon by the trial court when Nicholas Cervantes was presented as a witness and the depositions of the PAL employees, Georgina M. Reyes and Ruth Villanueva, were presented.

The admission by Cervantes that he was told by PAL's legal counsel that he had to submit a letter requesting for an extension of the validity of subject tickets was tantamount to knowledge on his part that the PAL employees had no authority to extend the validity of subject tickets and only PAL's legal counsel was authorized to do so.

However, notwithstanding PAL's failure to raise the defense of lack of authority of the said PAL agents in its answer or in a motion to dismiss, the omission was cured since the said issue was litigated upon, as shown by the testimony of the petitioner in the course of trial. Rule 10, Section 5 of the 1997 Rules of Civil Procedure provides:

"Sec. 5. Amendment to conform or authorize presentation of evidence. - When issues not raised by the pleadings are tried with express or implied consent of the parties, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. xxx"

Thus, "when evidence is presented by one party, with the express or implied consent of the adverse party, as to issues not alleged in the pleadings, judgment may be rendered validly as regards the said issue, which shall be treated as if they have been raised in the pleadings. There is implied consent to the evidence thus presented when the adverse party fails to object thereto." [13]

Re: the third issue, an award of damages is improper because petitioner failed to show that PAL acted in bad faith in refusing to allow him to board its plane in San Francisco.

In awarding moral damages for breach of contract of carriage, the breach must be wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith. [14] Petitioner knew there was a strong possibility that he could not use the subject ticket, so much so that he bought a back-up ticket to ensure his departure. Should there be a finding of bad faith, we are of the opinion that it should be on the petitioner. What the employees of PAL did was one of simple negligence. No injury resulted on the part of petitioner because he had a back-up ticket should PAL refuse to accommodate him with the use of subject ticket.

Neither can the claim for exemplary damages be upheld. Such kind of damages is imposed by way of example or correction for the public good, and the existence of bad faith is established. 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. [15] Here, there is no showing that PAL acted in such a manner. An award for attorney's fees is also improper.

WHEREFORE, the Petition is DENIED and the decision of the Court of Appeals dated July 25, 1995 AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.

Romero, (Chairman), and Gonzaga-Reyes, JJ., concur.

Vitug, J., abroad on official business.

Panganiban, J., on leave.

[1] Eighth Division of CA with Ma. Alicia -Martinez ponente and Justices Jaime M. Lantin and Bernardo LL. Salas as members.

[2] The compromise agreement which was approved by the court in its joint decision dated Nov. 15, 1988 (Exhibit 4) provides in paragraph 4 thereof, to wit:

"PAL will issue the tickets only upon the written advice of plaintiff or counsel. The ticket issued will have the same conditions as revenue tickets of PAL, except that such tickets shall be specifically restricted as non-refundable and non-endorsable. The ticket (s) will be valid for one (1) year from the date of issuance; (Page 16 of Rollo, page 2 of CA Decision) (underscoring ours)

[3] Judge Diomedes M. Eviota of RTC-Surigao, Branch 32.

[4] Donato vs. Court of Appeals, 217 SCRA 196

[5] Rollo, p. 15.

[6] Rollo, p. 16; CA Decision, p. 2.

[7] 208 SCRA 708, p. 711.

[8] Rollo, p. 17; CA Decision, p. 3.

[9] Rollo, p. 18; CA Decision, p. 4.

[10] Rollo, p. 19.

[11] Art. 1898. If the agent contracts in the name of the principal, exceeding the scope of his authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification.

[12] Tolentino, Arturo M. Civil Code of the Philippines, Vol. V, page 421-422. 1992 ed.

[13] Moran, Comments on the Rules of Court, Vol. 1, p. 380.

[14] Perez vs. Court of Appeals, 13 SCRA 137

[15] Sangco, Philippine Law on Torts and Damages, Vol. II, p. 1034.

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