UNITED AIRLINES, PETITIONER, VS. WILLIE J. UY, RESPONDENT.

G.R. No. 127768. November 19, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

UNITED AIRLINES assails in this petition for review on certiorari under Rule 45 the 29 August 1995 Decision of the Court of Appeals in CA-G.R. CV No. 39761 which reversed the 7 August 1992 order issued by the trial court in Civil Case No. Q-92-12410[1] granting petitioner's motion to dismiss based on prescription of cause of action. The issues sought to be resolved are whether the notice of appeal to the appellate court was timely filed, and whether Art. 29 of the Warsaw Convention[2] should apply to the case at bar.

On 13 October 1989 respondent Willie J. Uy, a revenue passenger on United Airlines Flight No. 819 for the San Francisco - Manila route, checked in together with his luggage one piece of which was found to be overweight at the airline counter. To his utter humiliation, an employee of petitioner rebuked him saying that he should have known the maximum weight allowance to be 70 kgs. per bag and that he should have packed his things accordingly. Then, in a loud voice in front of the milling crowd, she told respondent to repack his things and transfer some of them from the overweight luggage to the lighter ones. Not wishing to create further scene, respondent acceded only to find his luggage still overweight. The airline then billed him overweight charges which he offered to pay with a miscellaneous charge order (MCO) or an airline pre-paid credit. However, the airline's employee, and later its airport supervisor, adamantly refused to honor the MCO pointing out that there were conflicting figures listed on it. Despite the explanation from respondent that the last figure written on the MCO represented his balance, petitioner's employees did not accommodate him. Faced with the prospect of leaving without his luggage, respondent paid the overweight charges with his American Express credit card.

Respondent's troubles did not end there. Upon arrival in Manila, he discovered that one of his bags had been slashed and its contents stolen. He particularized his losses to be around US $5,310.00. In a letter dated 16 October 1989 respondent bewailed the insult, embarrassment and humiliating treatment he suffered in the hands of United Airlines employees, notified petitioner of his loss and requested reimbursement thereof. Petitioner United Airlines, through Central Baggage Specialist Joan Kroll, did not refute any of respondent's allegations and mailed a check representing the payment of his loss based on the maximum liability of US $9.70 per pound. Respondent, thinking the amount to be grossly inadequate to compensate him for his losses, as well as for the indignities he was subjected to, sent two (2) more letters to petitioner airline, one dated 4 January 1990 through a certain Atty. Pesigan, and another dated 28 October 1991 through Atty. Ramon U. Ampil demanding an out-of-court settlement of P1,000,000.00. Petitioner United Airlines did not accede to his demands.

Consequently, on 9 June 1992 respondent filed a complaint for damages against United Airlines alleging that he was a person of good station, sitting in the board of directors of several top 500 corporations and holding senior executive positions for such similar firms;[3] that petitioner airline accorded him ill and shabby treatment to his extreme embarrassment and humiliation; and, as such he should be paid moral damages of at least P1,000,000.00, exemplary damages of at least P500,000.00, plus attorney's fees of at least P50,000.00. Similarly, he alleged that

the damage to his luggage and its stolen contents amounted to around $5,310.00, and requested reimbursement therefor.

United Airlines moved to dismiss the complaint on the ground that respondent's cause of action had prescribed, invoking Art. 29 of the Warsaw Convention which provides -

> Art. 29 (1) The right to damages shall be extinguished if an action is not brought within two (2) years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.
>
> (2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

Respondent countered that par. (1) of Art. 29 of the Warsaw Convention must be reconciled with par. (2) thereof which states that "the method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted." Interpreting thus, respondent noted that according to Philippine laws the prescription of actions is interrupted "when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."[4] Since he made several demands upon United Airlines: first, through his personal letter dated 16 October 1989; second, through a letter dated 4 January 1990 from Atty. Pesigan; and, finally, through a letter dated 28 October 1991 written for him by Atty. Ampil, the two (2)-year period of limitation had not yet been exhausted.

On 2 August 1992 the trial court ordered the dismissal of the action holding that the language of Art. 29 is clear that the action must be brought within two (2) years from the date of arrival at the destination. It held that although the second paragraph of Art. 29 speaks of deference to the law of the local court in "calculating the period of limitation," the same does not refer to the local forum's rules in interrupting the prescriptive period but only to the rules of determining the time in which the action may be deemed commenced, and within our jurisdiction the action shall be deemed "brought" or commenced by the filing of a complaint. Hence, the trial court concluded that Art. 29 excludes the application of our interruption rules.

Respondent received a copy of the dismissal order on 17 August 1992. On 31 August 1992, or fourteen (14) days later, he moved for the reconsideration of the trial court's order. The trial court denied the motion and respondent received copy of the denial order on 28 September 1992. Two (2) days later, on 1 October 1992 respondent filed his notice of appeal.

United Airlines once again moved for the dismissal of the case this time pointing out that respondent's fifteen (15)-day period to appeal had already elapsed. Petitioner argued that having used fourteen (14) days of the reglementary period for appeal, respondent Uy had only one (1) day remaining to perfect his appeal, and since he filed his notice of appeal two (2) days later, he failed to meet the deadline.

In its questioned Decision dated 29 August 1995[5] the appellate court gave due course to the appeal holding that respondent's delay of two (2) days in filing his notice of appeal did not hinder it from reviewing the appealed order of dismissal since jurisprudence dictates that an appeal may be entertained despite procedural lapses anchored on equity and justice.

On the applicability of the Warsaw Convention, the appellate court ruled that the Warsaw Convention did not preclude the operation of the Civil Code and other pertinent laws. Respondent's failure to file his complaint within the two (2)-year limitation provided in the Warsaw Convention did not bar his action since he could still hold petitioner liable for breach of other provisions of the Civil Code which prescribe a different period or procedure for instituting an action. Further, under Philippine laws, prescription of actions is interrupted where, among

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others, there is a written extrajudicial demand by the creditors, and since respondent Uy sent several demand letters to petitioner United Airlines, the running of the two (2)-year prescriptive period was in effect suspended. Hence, the appellate court ruled that respondent's cause of action had not yet prescribed and ordered the records remanded to the Quezon City trial court for further proceedings.

Petitioner now contends that the appellate court erred in assuming jurisdiction over respondent's appeal since it is clear that the notice of appeal was filed out of time. It argues that the courts relax the stringent rule on perfection of appeals only when there are extraordinary circumstances, e.g., when the Republic stands to lose hundreds of hectares of land already titled and used for educational purposes; when the counsel of record was already dead; and wherein appellant was the owner of the trademark for more than thirty (30) years, and the circumstances of the present case do not compare to the above exceptional cases.[6]

Section 1 of Rule 45 of the 1997 Rules of Civil Procedure provides that "a party may appeal by certiorari, from a judgment of the Court of Appeals, by filing with the Supreme Court a petition for certiorari, within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time x x x x" This Rule however should not be interpreted as "to sacrifice the substantial right of the appellant in the sophisticated altar of technicalities with impairment of the sacred principles of justice."[7] It should be borne in mind that the real purpose behind the limitation of the period of appeal is to forestall or avoid an unreasonable delay in the administration of justice. Thus, we have ruled that delay in the filing of a notice of appeal does not justify the dismissal of the appeal where the circumstances of the case show that there is no intent to delay the administration of justice on the part of appellant's counsel,[8] or when there are no substantial rights affected,[9] or when appellant's counsel committed a mistake in the computation of the period of appeal, an error not attributable to negligence or bad faith.[10]

In the instant case, respondent filed his notice of appeal two (2) days later than the prescribed period. Although his counsel failed to give the reason for the delay, we are inclined to give due course to his appeal due to the unique and peculiar facts of the case and the serious question of law it poses. In the now almost trite but still good principle, technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration.[11]

Petitioner likewise contends that the appellate court erred in ruling that respondent's cause of action has not prescribed since delegates to the Warsaw Convention clearly intended the two (2)-year limitation incorporated in Art. 29 as an absolute bar to suit and not to be made subject to the various tolling provisions of the laws of the forum. Petitioner argues that in construing the second paragraph of Art. 29 private respondent cannot read into it Philippine rules on interruption of prescriptive periods and state that his extrajudicial demand has interrupted the period of prescription.[12] American jurisprudence has declared that "Art. 29 (2) was not intended to permit forums to consider local limitation tolling provisions but only to let local law determine whether an action had been commenced within the two-year period, since the method of commencing a suit varies from country to country."[13]

Within our jurisdiction we have held that the Warsaw Convention can be applied, or ignored, depending on the peculiar facts presented by each case.[14] Thus, we have ruled that the Convention's provisions 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.[15] Neither may the Convention be invoked to justify the disregard of some extraordinary sort of damage resulting to a passenger and preclude recovery therefor beyond the limits set by said Convention.[16] Likewise, we have held that the Convention does not preclude the operation of the Civil Code and other pertinent laws.[17] It does not regulate, much less exempt, the carrier from liability for damages for violating the rights of its passengers under the contract of carriage, especially if willful

misconduct on the part of the carrier's employees is found or established.[18]

Respondent's complaint reveals that he is suing on two (2) causes of action: (a) the shabby and humiliating treatment he received from petitioner's employees at the San Francisco Airport which caused him extreme embarrassment and social humiliation; and, (b) the slashing of his luggage and the loss of his personal effects amounting to US $5,310.00.

While his second cause of action - an action for damages arising from theft or damage to property or goods - is well within the bounds of the Warsaw Convention, his first cause of action -an action for damages arising from the misconduct of the airline employees and the violation of respondent's rights as passenger - clearly is not.

Consequently, insofar as the first cause of action is concerned, respondent's failure to file his complaint within the two (2)-year limitation of the Warsaw Convention does not bar his action since petitioner airline may still be held liable for breach of other provisions of the Civil Code which prescribe a different period or procedure for instituting the action, specifically, Art. 1146 thereof which prescribes four (4) years for filing an action based on torts.

As for respondent's second cause of action, indeed the travaux preparatories of the Warsaw Convention reveal that the delegates thereto intended the two (2)-year limitation incorporated in Art. 29 as an absolute bar to suit and not to be made subject to the various tolling provisions of the laws of the forum. This therefore forecloses the application of our own rules on interruption of prescriptive periods. Article 29, par. (2), was intended only to let local laws determine whether an action had been commenced within the two (2)-year period, and within our jurisdiction an action shall be deemed commenced upon the filing of a complaint. Since it is indisputable that respondent filed the present action beyond the two (2)-year time frame his second cause of action must be barred. Nonetheless, it cannot be doubted that respondent exerted efforts to immediately convey his loss to petitioner, even employed the services of two (2) lawyers to follow up his claims, and that the filing of the action itself was delayed because of petitioner's evasion.

In this regard, Philippine Airlines, Inc. v. Court of Appeals[19] is instructive. In this case of PAL, private respondent filed an action for damages against petitioner airline for the breakage of the front glass of the microwave oven which she shipped under PAL Air Waybill No. 0-79-1013008-3. Petitioner averred that, the action having been filed seven (7) months after her arrival at her port of destination, she failed to comply with par. 12, subpar. (a) (1), of the Air Waybill which expressly provided that the person entitled to delivery must make a complaint to the carrier in writing in case of visible damage to the goods, immediately after discovery of the damage and at the latest within 14 days from receipt of the goods. Despite non-compliance therewith the Court held that by private respondent's immediate submission of a formal claim to petitioner, which however was not immediately entertained as it was referred from one employee to another, she was deemed to have substantially complied with the requirement. The Court noted that with private respondent's own zealous efforts in pursuing her claim it was clearly not her fault that the letter of demand for damages could only be filed, after months of exasperating follow-up of the claim, on 13 August 1990, and that if there was any failure at all to file the formal claim within the prescriptive period contemplated in the Air Waybill, this was largely because of the carrier's own doing, the consequences of which could not in all fairness be attributed to private respondent.

In the same vein must we rule upon the circumstances brought before us. Verily, respondent filed his complaint more than two (2) years later, beyond the period of limitation prescribed by the Warsaw Convention for filing a claim for damages. However, it is obvious that respondent was forestalled from immediately filing an action because petitioner airline gave him the runaround, answering his letters but not giving in to his demands. True, respondent should have already filed an action at the first instance when his claims were denied by petitioner but

the same could only be due to his desire to make an out-of-court settlement for which he cannot be faulted. Hence, despite the express mandate of Art. 29 of the Warsaw Convention that an action for damages should be filed within two (2) years from the arrival at the place of destination, such rule shall not be applied in the instant case because of the delaying tactics employed by petitioner airline itself. Thus, private respondent's second cause of action cannot be considered as time-barred under Art. 29 of the Warsaw Convention.

WHEREFORE, the assailed Decision of the Court of Appeals reversing and setting aside the appealed order of the trial court granting the motion to dismiss the complaint, as well as its Resolution denying reconsideration, is AFFIRMED. Let the records of the case be remanded to the court of origin for further proceedings taking its bearings from this disquisition.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] RTC-Br. 97, Quezon City.

[2] Convention for the Unification of Certain Rules Relating to International Transportation by Air. Philippine adherence embodied in Presidential Proclamation No. 201 signed on 23 September 1965 by President Ramon Magsaysay.

[3] Willie J. Uy is a graduate of Master of Business Administration of the Ateneo Graduate School of Business, and Bachelor of Science and Marketing Management from De La Salle University as well as of Xavier School and Council High School of Idaho, USA. He is presently the Vice President for Operations of Phinma Property Holdings Corporation; Senior Vice-President/Chief Operating Officer of Phinma-Dee Construction Venture Corporation; Vice-President and General Manager of Trans-Oceanic Insurance Agencies, Inc; Treasurer of Phinma Fisheries, Inc.; Treasurer/Director of Uni-Products Company, Inc.; Asst. Vice-Pres./Asst. Treasurer of Phinma Consultants, Inc; Asst. Treasurer of Filmag (PHILS), Inc.; Vice-President of Fil-House of Consumer Products, Inc.; Vice-Pres. of Mariposa Properties, Inc.; Director of SANAEA International Corp.; and, Director of Southeast Asia Tour & Travel Corp.; Asst. Corporate Secretary/Director of Harrison Industrial Corporation.

[4] Art. 1155, Civil Code.

[5] With Justice Ruben T. Reyes as ponente and Justices Antonio M. Martinez and Consuelo Ynares-Santiago, concurring.

[6] Rollo, p. 18.

[7] Pan American World Airways, Inc. v. Espiritu, No. L-35401, 20 January 1976, 69 SCRA 36.

[8] De las Alas v.Court of Appeals, No. L-38006, 16 May 1978, 83 SCRA 200; American Home Assurance Company v. Court of Appeals, No. L-45026, 12 November 1981, 109 SCRA 180.

[9] Margate v. Court of Appeals, No. L-42366, 15 December 1982, 119 SCRA 259.

[10] Ibid.

[11] See Note 7.

[12] Ibid.

[13] Split End Ltd. v. Dimerco Express (Phils.), 19 Avi. 18363, as cited in Petition; Rollo, p. 12.

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[14] Alitalia v. Intermediate Appellate Court, G.R. No. 71929, 4 December 1990, 192 SCRA 9.

[15] Ibid.

[16] Ibid.

[17] Cathay Pacific Airways Ltd. v. Court of Appeals, G.R. No. 60501, 5 March 1993, 219 SCRA 520; Luna v. Northwestern Airways, G.R. Nos. 100374-75, 27 November 1992, 216 SCRA 107.

[18] Ibid.

[19] G.R. No. 119706, 14 March 1996, 255 SCRA 48.

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