

CHINA AIRLINES, LTD., PETITIONER, VS. COURT OF APPEALS, ANTONIO S. SALVADOR AND ROLANDO C. LAO, RESPONDENTS.

G.R. No. 129988. July 14, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Petitioner China Airlines Ltd. ("CAL") assails the 31 July 1997 Decision[1] of the Court of Appeals affirming the award of damages made by the trial court in favor of private respondents Antonio S. Salvador ("Salvador") and Rolando C. Lao ("Lao").

The Antecedent Facts

Sometime in the first week of June 1990, private respondents planned to travel to Los Angeles, California to pursue a cable business deal involving the distribution of Filipino films and programs in Los Angeles. Initially, Morelia Travel Agency ("Morelia") booked private respondents' flight with CAL. Morelia scheduled the flight for Manila-Taipei-Los Angeles on 13 June 1990. On discovering that Morelia charged higher rates than American Express Travel Service Philippines ("Amexco"), private respondents dropped the services of Morelia. Instead, private respondents engaged the services of Amexco through Lao who was an Amexco cardholder.

On 11 June 1990, Lao called up Amexco claiming that he and Salvador had a confirmed booking with CAL. Lao then gave to Amexco the record locator number or booking reference number (No. 4RJ2CJ) that CAL had previously issued to Morelia when Morelia booked the reservations of private respondents. In the afternoon of the same day, Amexco called up CAL to finalize private respondents' reservation for CAL's 13 June 1990 flight. Amexco used the record locator number given by Lao in confirming the reservations of private respondents. CAL confirmed the booking. Amexco then issued to private respondents the confirmed tickets for the 13 June 1990 flight of CAL. On the same day, CAL called up Morelia to reconfirm the reservations of private respondents. Morelia cancelled the reservations of private respondents.

On 13 June 1990, private respondents were at the airport to board CAL Flight 632 but CAL personnel prevented them from boarding the airplane because their names were not in the passengers' manifest. CAL cancelled the reservations when Morelia revoked the booking it had made for private respondents. Private respondents were only able to leave for Los Angeles the following day on a different airline, Northwest Airlines ("Northwest").

Private respondents through counsel sent a demand letter[2] to CAL dated 13 August 1990 for payment of moral damages totaling P500,000. In a letter dated 10 September 1990, CAL explained that it found out upon investigation that while private respondents "indeed made their booking with Amexco, they failed to pick up their tickets from its offices so that the latter caused the cancellation of their bookings." [3] CAL further stated that private respondents' own negligence caused their failure to board CAL. Thus, CAL denied private respondents' exorbitant claim for damages. [4]

In a letter[5] dated 1 October 1990, private respondents informed CAL that they did not fail to pick up the tickets since they were able to present their tickets at the CAL counter at the designated check-in time. In a letter[6] dated 27 November 1990, CAL explained that its records showed that Morelia and not Amexco made the bookings. Morelia also sought the cancellation of the booking and CAL merely accepted the cancellation. CAL argued that private respondents' cause of action should not be against it, but against the travel agencies.

Private respondents also wrote a demand letter[7] dated 13 December 1990 to Amexco. Amexco in its letter dated 11 March 1991 denied any liability.[8]

On 11 June 1992, private respondents filed with the Regional Trial Court, Branch 12, Malolos, Bulacan a complaint for damages against CAL and Amexco. Private respondents alleged in their complaint that the one-day delay in their flight to Los Angeles caused them to lose business opportunities entitling them to actual, moral and exemplary damages and attorney's fees. The case was docketed as Civil Case No. 366-M-92.

On 25 January 1996, the Regional Trial Court issued its decision in favor of private respondents. The dispositive portion of the decision reads:

WHEREFORE, conformably with all the foregoing, judgment is hereby rendered, ordering defendant China Airlines, Ltd. (CAL) as follows:

- To pay each of herein plaintiffs the amount of P100,000.00 as and by way of moral damages;
- To pay both plaintiffs the amount of P50,000.00 as and by way of exemplary damages;
- To pay both plaintiffs another amount of P50,000.00 as and by way of attorney's fees; and
- To pay the costs of suit.

Upon the facts found and the law applicable this case is ordered dismissed, insofar as defendant PCI Travel Corporation/American Express Travel Service Philippines is concerned, whose counterclaim, like the cross-claim against it by defendant CAL, should be, as it is hereby, dismissed for insufficiency of evidence to show its right to such relief.

SO ORDERED.

CAL appealed to the Court of Appeals. On 31 July 1997, the Court of Appeals affirmed the decision of the Regional Trial Court, thus:

The FOREGOING CONSIDERED, the appealed decision is hereby AFFIRMED.

SO ORDERED.

The Ruling of the Trial Court

The trial court disregarded CAL's argument that it had to cancel private respondents' reservations because of the advice of Morelia, the booking agent, and that Amexco had no right to use the booking and record locator number of Morelia. The trial court ruled that CAL already knew that private respondents had confirmed their 13 June 1990 flight, even though Amexco and not Morelia made the confirmation. The trial court found that CAL's cancellation of the reservations despite knowledge of the prior confirmation by Amexco was unjustified and tainted with bad faith.

The trial court gave credence to the testimony of Lea Hamil-Balderas ("Lea"), the booking agent of Amexco, who testified that she called up CAL identifying herself as "Lea-Amexco." Lea used the record locator number that Lao gave Amexco. Lea claimed she did not know that CAL had already assigned the record locator number to Morelia. The trial court pointed out that even if Amexco wittingly or unwittingly missed the truth with respect to

the record locator number, CAL should have known better as it was the assignor of the record locator number. CAL should not have confirmed the booking made by Lea who was not a familiar caller from Morelia.

The trial court wondered why CAL took the initiative of calling up Morelia on the same afternoon that Amexco had already finalized and confirmed the reservations of private respondents. At that point, Morelia cancelled the reservations of private respondents. The trial court believed that CAL's action was highly suspicious because CAL should have waited for Morelia to confirm the reservations. When CAL discovered that Lea was not from Morelia and the record locator number she gave belonged to Morelia, CAL took this, in the view of the trial court, as an excuse to cancel private respondents' reservations. The trial court concluded that CAL's actions justified private respondents' accusation that CAL bumped them off in favor of other passengers.

The trial court was not convinced that CAL tried to contact private respondents before it cancelled private respondents' reservations. The trial court did not believe that CAL failed to contact private respondents only because they gave a different telephone number to Morelia. The trial court opined that if CAL was truly sincere in its attempt to save private respondents' booked flight, CAL should have contacted "Lea-Amexco." The trial court stressed that Lea was not a familiar caller from Morelia. The trial court surmised that if indeed the industry policy prohibited a travel agency from using the bookings made by another travel agency, then CAL should not have entertained Lea's call or CAL should have checked first with Morelia. The trial court also refused to believe that CAL thought that Lea was from Morelia. The trial court pointed out that when CAL finally decided to check with Morelia, immediately after CAL had confirmed to "Lea-Amexco" the reservations of private respondents, CAL telephoned not Lea but a certain "Joel" of Morelia.

In absolving Amexco of any liability, the trial court noted that Amexco did not misrepresent itself to CAL by posing as Morelia when Amexco confirmed the reservations of private respondents. Amexco did not know that the record locator number it was using in confirming the reservations of private respondents belonged to Morelia. Amexco assumed that private respondents acquired the record locator number from CAL itself. All that Amexco wanted was to sell to private respondents the CAL tickets and for Amexco to do this, CAL had to first confirm the reservations.

The trial court declared that CAL should have informed Amexco that private respondents' booking agent was Morelia and that "it (Amexco) could not sell the tickets to plaintiffs (private respondents) even if it wanted to, because CAL itself would not finalize the booking confirmation without Morelia's indorsement x x x." [9] CAL failed to do this. Instead, CAL confirmed the tickets of private respondents only to cancel it immediately on the afternoon of the same day. The trial court thus concluded that CAL cancelled private respondents' reservations "obviously for some reason or motive only of its own, not justifiable at all under the circumstances." [10]

Upon the finding of bad faith, the trial court awarded each of the private respondents P100,000 as moral damages, P50,000 as exemplary damages and P50,000 as attorney's fees. However, the trial court ruled that private respondents are not entitled to actual damages for the costs of their Northwest plane tickets and the car rental expenses they incurred in proceeding to San Francisco. The trial court held that these expenses were necessary in their pursuit of their cable business deal.

The trial court also denied the claim of private respondents for payment of unrealized income. The trial court pointed out that private respondents planned to take the business trip to the United States any day from 10 June to 17 June 1990. Private respondents were able to book the 13 June 1990 flight of CAL. When CAL prevented private respondents from taking that flight, Amexco booked private respondents with Northwest for its flight the next day, 14 June 1990. The trial court stated that private respondents' flight to the United States on 14 June 1990 with Northwest was still within the schedule set by private respondents. The trial court ruled that a delay of one

day could not have resulted in the loss of business opportunity when private respondents could have still pursued the business deal until 17 June 1990. The trial court concluded that there was a pure failure of business negotiations that private respondents could not blame on CAL since there was nothing certain with private respondents' negotiations for the television cable deal.

The Ruling of the Court of Appeals

The Court of Appeals dismissed the appeal of CAL.

Adopting the factual findings of the trial court, the Court of Appeals agreed with the trial court that CAL was in bad faith when it cancelled the confirmed reservation of private respondents. The Court of Appeals considered another fact. Liza Melo ("Melo"), a witness of CAL, testified that she was reluctant to cancel the bookings because they had already finalized the seating arrangements with Lea. The appellate court was convinced that such reluctance indicated CAL's bad faith.

The Court of Appeals held that CAL cancelled the reservations of private respondents without prior notice, in total disregard of private respondents' rights. Such conscious disregard of a passenger's right makes CAL answerable for moral and exemplary damages.

The Issues

CAL seeks the reversal of the decisions of the trial and appellate courts on these grounds:

- "THE RESPONDENT COURT ERRED WHEN IT FOUND THE PETITIONER LIABLE FOR THE DAMAGES AWARDED BY THE TRIAL COURT DESPITE THE FACT THAT THE PETITIONER DID ALL THE ACTS THAT AN AIRLINE COMPANY IS SUPPOSED TO DO UNDER THE CIRCUMSTANCES PRESENT IN THE INSTANT CASE."
- THE RESPONDENT COURT ERRED WHEN IT SUSTAINED LIABILITY AGAINST THE PETITIONER DESPITE THE FACT THAT THE ACTS RESULTING IN THE COMPLAINT AGAINST IT BY PRIVATE RESPONDENT SALVADOR WERE DONE BY EMPLOYEES OF A BOOKING AGENT AND NOT BY IT OR ITS EMPLOYEES AND DESPITE IMPROBABILITY OF THE BASES OF THE CLAIM COUPLED WITH THE LACHES OF THE PRIVATE RESPONDENTS."[11]

The Ruling of the Court

The petition is partly meritorious.

Laches and Use of Objectionable Language in the Comment

Before delving into the core issues of this case, we first resolve two preliminary issues raised by CAL. CAL argues that laches has set in and barred the present action. Moreover, private respondents used improper and abusive language in their Comment, which CAL wants stricken from the records.

We are not convinced that laches has barred the present action. The essence of laches or "stale demands" is the "failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it."[12]

Private respondents' action is based on a written contract. Article 1144(1) of the Civil Code provides that the prescriptive period for an action on a written contract is 10 years from the time the right of action accrues. Private respondents' right of action accrued on 13 June 1990 when CAL disallowed them from boarding its flight. Private respondents filed this case on 11 June 1992. Clearly, private respondents did not tarry in vindicating their claim when they filed this suit within the 10-year period expressly provided by law.[13] Moreover, private respondents vigorously pursued their claim as shown by the demand letters that they sent CAL and Amexco before filing this

case.

CAL calls our attention to the "highly excessive and abusive language"[14] in the Comment of private respondents. The excessive language employed by counsel of private respondents allegedly transgresses Canon 8 of the Code of Professional Responsibility.[15] CAL thus urges us to expunge from the records the abusive language of private respondents' counsel.

We have to examine the foregoing clause, phrase and word in the context of their use in private respondents' Comment. Private respondents were frustrated that CAL continued to raise questions of fact in its petition. In expressing private respondents' frustration, their counsel used the clause (1) "cleverly and adroitly to camouflage the issues of fact," the phrase (2) "insidious ploy" and the word (3) "bleating" in this manner:

(1) Well aware of this, petitioner has cleverly and adroitly camouflaged the issues of FACT it raises in its Petition by disguising them as questions of LAW.[16]

(2) The insidious ploy employed in the above presentation of the issues brought before this Honorable Court is to mislead it into assuming certain FACTS to be true and established, when the truth is quite the contrary, and to make it render a decision based on such falsehoods.[17]

(3) What "FACTS" are [sic] petitioner bleating about? The FACTS as found by the respondent Court of Appeals, and the Regional Trial Court, are precisely the CONTRARY: we quote--- x x x.[18]

Indeed, counsel of private respondents used brash language but it is not "highly excessive and abusive language." Lawyers enjoy some latitude of remark or comment in stressing their arguments. For the felicity of their clients, courts pardon them for some infelicities of phrase.[19] We do not therefore expunge from the records the assailed language, which shall stand as a testament to the counsel's style of prose, or lack of it.

Breach of its Contract of Carriage

In the course of the review of this case, we found the factual findings of the trial and appellate courts insufficient in explaining how the cancellation of private respondents' confirmed reservations with CAL came about. We thus made a thorough examination of the records.

The confusion with the confirmation and cancellation of the reservations began when Lao gave to Amexco the record locator number that CAL had already assigned to Morelia. A record locator number is a combination of letters and numbers issued by an airline to a travel agency when the airline confirms the travel agency's booking.[20] The record locator number in question is No. 4RJ2CJ. Based on the testimonies of the witnesses of Amexco and CAL, industry practice prohibits a travel agency to use the record locator number of another travel agency, as this will usurp the booking of another travel agency.

Morelia was the assignee of the record locator number used by Amexco. CAL issued the record locator number to Morelia when it confirmed the booking of Morelia for private respondents' reservations. However, since private respondents found the rates of Morelia to be steeper than those offered by Amexco and Lao happened to be an Amexco card member, private respondents decided instead to secure their reservations through Amexco. It would have been perfectly all right for private respondents to switch to Amexco, until Lao gave to Amexco the record locator number CAL had already assigned to Morelia. This now set into motion the events leading to the cancellation of private respondents' reservations.

Curiously, the trial and appellate courts failed to point out that prior to Amexco's confirmation with CAL, Amexco had tried in vain to book private respondents' flight with CAL and the other airlines, as it was the peak season then.[21] Amexco was only able to book private respondents' flight with CAL when it used the record

locator number of Morelia. In short, on its own account, Amexco could not have successfully booked the reservations of private respondents with CAL. Thus, Amexco had no recourse but to use Morelia's record locator number in booking private respondents with CAL.

The trial and appellate courts ruled that Amexco did not misrepresent itself to CAL when Amexco used the record locator number of Morelia. Thus, Amexco was not liable to private respondents. There was also no categorical finding of Lao's intention in giving the record locator number to Amexco, or if he indeed disclosed to Amexco that the record locator number was already assigned to Morelia.

Lea, the booking agent of Amexco who dealt with Lao, testified that Lao did not inform her that the record locator number was from Morelia.[22] Lea further declared that had she known that the record locator number belonged to Morelia, she would not have used the record locator number or she would have requested private respondents to ask Morelia to endorse the same to Amexco.[23] On the other hand, private respondents claimed in their answer to CAL's written interrogatories that they informed Amexco that they made their original booking with Morelia and that Lea of Amexco checked this matter with CAL.[24] Private respondents also declared that they informed Morelia through Ms. Gavelino Gironella that they were dropping Morelia's services.[25]

The trial and appellate courts did not pass upon the two conflicting versions of Lao and Amexco. Nevertheless, Lao should have made it known to Amexco that the record locator number belonged to another travel agency, Morelia. On the other hand, Amexco should not have hastily presumed that private respondents themselves obtained the record locator number from CAL and that they engaged the services of Amexco purely for ticketing purposes since Lao was an Amexco card member. Amexco should have inquired how Lao got hold of the record locator number considering that it was difficult for a travel agency at that time to secure reservations with the various airlines including CAL.

Lao and Amexco are not blameless. Lao's act in giving Morelia's record locator number to Amexco, after deciding to terminate Morelia's services, amounted to accepting the benefit of Morelia's services without paying for it. Amexco used Morelia's record locator number when Amexco found out it could no longer book private respondents without Morelia's record locator number. However, the greater blame falls on CAL. When CAL confirmed the reservations of private respondents, a contract of carriage arose between CAL and private respondents, even if Amexco, not Morelia, confirmed the reservations of private respondents. Because of CAL's confirmation, Amexco issued to private respondents the confirmed tickets.

The nature of an airline's contract of carriage partakes of two types, namely: (1) a contract to deliver a cargo or merchandise to its destination, and (2) a contract to transport passengers to their destination.[26] In this case, when CAL confirmed the reservations, it bound itself to transport private respondents on its flight on 13 June 1990.

The airline business is intended to serve the traveling public primarily and is thus imbued with public interest. [27] The law governing common carriers consequently imposes an exacting standard.[28] Thus, in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent.[29] All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier.[30]

CAL does not deny its confirmation of the reservations made by Amexco. The confirmed tickets issued by Amexco to private respondents upon CAL's confirmation of the reservations are undeniable proof of the contract of carriage between CAL and private respondents. In *Alitalia Airways v. CA, et al.*, [31] we held that when an airline issues a ticket to a passenger confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger then has every right to expect that he would fly on that flight and on that date.[32] If he does not,

then the carrier opens itself to a suit for breach of contract of carriage.[33]

CAL did not allow private respondents, who were then in possession of the confirmed tickets, from boarding its airplane because their names were not in the passengers' manifest. Clearly, CAL breached its contract of carriage with private respondents. We, however, rule out bad faith by CAL.

Absence of Bad Faith

Bad faith does not simply connote bad judgment or negligence.[34] It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong.[35] It means breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud.[36] A finding of bad faith entitles the offended party to moral damages.

The trial and appellate courts believed that the confluence of the following circumstances proves that CAL cancelled private respondents' reservations in bad faith: (1) Lea, the booking agent of Amexco identified herself as "Lea-Amexco" when she called up CAL to confirm the reservations of private respondents; (2) Lea was not a familiar caller of Morelia and yet CAL entertained her call; (3) CAL called up Morelia on the very same afternoon that CAL had already confirmed the reservations of private respondents although the confirmation was made by another travel agent, Amexco; (4) CAL called up Morelia looking for a certain Joel to re-confirm the reservations of private respondents; (5) CAL told Joel that it was hesitant to cancel the reservations of private respondents because the seating arrangements had already been finalized with Lea; and (6) CAL did not notify private respondents or Amexco that it was cancelling the reservations even though "Lea-Amexco" left a telephone number with CAL.

As a rule, the factual findings of the trial and appellate courts are binding on the Court. However, there are recognized exceptions to this rule. These are: (1) when the findings are grounded on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the factual findings of the trial and appellate courts are conflicting; (5) when the Court of Appeals, in making its findings, has gone beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the appellate court is premised on a misapprehension of facts or when it has failed to consider certain relevant facts which, if properly taken into account, will justify a different conclusion; (7) when the findings of fact are conclusions without citation of specific evidence upon which they are based; and (8) when findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.[37]

The settled rule is bad faith should be established by clear and convincing evidence since the law always presumes good faith.[38] Thus, the person who seeks damages due to the acts of another has the burden of proving that the latter acted in bad faith or with ill motive.[39] Bad faith is in essence a question of intention.[40] In ascertaining the intention of the person accused of acting in bad faith, the courts must carefully examine the evidence as to the conduct and outward acts from which the inward motive may be determined.[41]

Since bad faith is a question of intention, a clear understanding of the confirmation and pre-flight checking procedure of CAL is vital to determine if CAL indeed bumped off private respondents in favor of other passengers. The factual findings of the trial and appellate courts are wanting in this regard. The two courts only made passing references to the testimonies of CAL's witnesses who were CAL's former reservations officers. Their narration of their respective duties and transactions with Amexco and Morelia is crucial in ascertaining the presence of bad faith in CAL's cancellation of the reservations.

We have held that in a case for recovery of damages arising from a breach of contract, the trial court cannot

totally disregard the testimonies of the officers of an airline on the basis alone of the employment relationship.[42] When the trial and appellate courts commit this grievous error, their factual findings lose their binding effect on the Court, and we will again weigh and evaluate the evidence presented by the parties.[43] We were thus compelled to examine anew the testimonial evidence in this case.

Based on the testimonies of the reservations officers of CAL, not one but two officers made the confirmation and pre-flight checking of the airline. Amity Chang ("Chang"), a reservation officer of CAL, received Amexco's call confirming the reservations of private respondents. Melo, another reservation officer of CAL, was in charge of the pre-flight checking of private respondents' reservations. Melo called up Morelia to reconfirm the reservations.

The trial and appellate courts accepted private respondents' theory that CAL cancelled their reservations under the pretext that CAL had not authorized Amexco to use the record locator number of Morelia. Private respondents assert that in reality CAL just wanted them bumped off to accommodate other passengers. However, private respondents failed to substantiate this particular allegation. We will now point out why the circumstances mentioned by the trial and appellate courts are inadequate to prove CAL's bad faith in cancelling private respondents' reservations.

First, the trial and appellate courts stress that Lea, the booking agent of Amexco, identified herself as "Lea-Amexco" when she called up CAL to confirm the reservations of private respondents. However, the testimonies of Chang and Melo do not show that they heard or recorded that "Lea-Amexco" made the confirmation. Melo unequivocally stated in open court that what the computer monitor recorded was the name Lea and not "Lea-Amexco." [44] Accordingly, when Melo called up Morelia to reconfirm the booking, she asked if there was a person named Lea in Morelia. [45]

Second, we agree with the trial and appellate courts that CAL should not have accepted the confirmation of Lea who is not a familiar caller from Morelia. CAL should have screened and verified the name of the person or travel agency confirming the reservations. Assuming that Lea indeed identified herself as "Lea-Amexco," CAL all the more should not have confirmed the reservations made by Amexco using the record locator number of another travel agency. CAL should have informed Amexco to secure first the endorsement of Morelia. CAL's negligence at this stage of the confirmation process is clear. However, both courts erred in readily imputing bad faith when CAL was only guilty of simple negligence.

Third, it is the standard practice of CAL to re-confirm reservations by calling up the travel agency or passenger two days or even as close as a day before the intended departure date. [46] This is the pre-flight checking procedure of CAL. There is therefore nothing unusual or suspicious in CAL's "initiative" in calling up Morelia. Melo was not aware that "Lea-Amexco" made the confirmation. As far as Melo was concerned, a certain "Lea" made the confirmation and Melo assumed she was from Morelia because Lea used the record locator number that CAL had assigned to Morelia. Since Morelia is the assignee of the record locator number, CAL dealt with Morelia.

The trial court termed the confirmation of Amexco as a "final confirmation" of the reservations that should not have required another re-confirmation from CAL. The trial court believed that CAL's re-confirmation of the reservation on the same day that Amexco made the confirmation is suspicious. Suspicion, however, cannot take the place of evidence. Obviously, CAL did not consider private respondents' confirmation through Amexco as a "final confirmation." CAL still went on with its pre-confirmation procedure precisely because the name Lea registered on its computer was not a familiar caller from Morelia. Thus, when Melo called up Morelia, she asked if there was a certain "Lea" with Morelia.

Fourth, Melo testified that she assumed that a certain telephone number was the contact number of private

respondents.[47] Melo dialed the number and a certain Gemma answered the phone.[48] Gemma denied any knowledge of the booking made by private respondents or by Lea.[49] Melo then decided to call up Morelia.[50]

Melo indeed looked for a certain Joel when she called up Morelia. Melo admitted that Joel has been with Morelia "ever since." [51] Melo's admission indicates that Joel is the familiar caller from Morelia with whom CAL regularly transacted in confirming the bookings of Morelia. Understandably, it was Joel whom Melo looked for when Melo called up Morelia.

Melo first tried to contact private respondents, showing CAL's lack of malice. Since the number was not the contact number of private respondents and Lea, Melo had no recourse but to check with Joel of Morelia.

Fifth, Melo did express to Joel her reluctance to cancel the reservations because a certain Lea had already ended the seating arrangements. Despite Melo's hesitation, the cancellation still pushed through for three reasons: (1) Joel insisted on it; (2) Lea was not from Morelia; and (3) Melo failed to contact private respondents and Lea. The Court of Appeals took Melo's reluctance to cancel the reservations as an indication of CAL's bad faith when such fact is a badge of good faith. CAL cancelled the reservations with trepidation. CAL, therefore, did not make the cancellation wantonly and recklessly.

Lastly, CAL did not have the addresses of private respondents. Melo first tried to notify private respondents through a telephone number presumably given by Lea. However, the telephone number turned out to be a wrong number.

To its credit, CAL still exerted its best efforts to notify private respondents. In reconfirming the reservations, Melo called up Morelia twice. The first time was two days before the scheduled flight of CAL.[52] In that first telephone call, Joel told Melo that he would first check if private respondents were definite in taking the 13 June 1990 flight.[53] Melo called up Morelia the next day or a day before the scheduled flight.[54] Joel informed Melo that Morelia was cancelling the reservations because private respondents did not return to Morelia.[55] Melo then asked Joel if he was sure of the cancellation because a certain Lea had finalized the reservations.[56] Joel said that he did not know of a certain Lea and had no knowledge of Lea's booking.[57] Melo then accepted Morelia's cancellation because Joel seemed confident that there was basis in cancelling the reservations.[58]

CAL did not deliberately bump off private respondents to accommodate other passengers. Amexco's unauthorized use of the record locator number of Morelia was not just a convenient excuse that CAL used to conceal a supposed malicious intent. There were three reasons CAL cancelled the reservations and did not notify private respondents of the cancellation. First was Amexco's unauthorized use of the record locator number. Second was CAL's negligence in confirming the reservations of Amexco. Third was the absence of the correct contact numbers of private respondents and Lea.

There was no concerted effort on the part of CAL's employees to cancel private respondents' reservations in favor of other passengers. In fact, Melo testified that while she knew that the 13 June 1990 flight was fully booked, she was not aware if there were other prospective passengers who wanted to get booked for that flight because of the computerized booking.[59] Melo also had no way of knowing if the cancelled reservations of private respondents were given to other passengers since another officer was in charge of this function.[60]

The peculiar circumstances in this case set it apart from *Zalamea v. Court of Appeals*, [61] the case lengthily quoted by the Court of Appeals in justifying the award of moral damages. The petitioners in *Zalamea* were passengers of TransWorld Airlines, Inc. ("TWA") who held confirmed discounted tickets. Petitioners were, however, wait-listed and eventually prevented from boarding the airplane because TWA had overbooked the flight and gave preference to other passengers who were holders of full-fare tickets. TWA observed the practice of

overbooking and the system of boarding priorities. We held TWA liable for moral damages because TWA did not stipulate these policies in the contract and did not inform the petitioners of the overbooked condition of the flight or of the hierarchy of priorities in booking passengers. TWA was in bad faith when, failing to thus inform petitioners when it could have easily done so, TWA kept them as passengers up to the last minute. TWA's conscious disregard of petitioners' rights made it liable not only for actual but moral damages as well.

Unlike in *Zalamea*, bad faith is not evident in this case. It was CAL's hasty confirmation of the reservations of Amexco that established the contract of carriage between CAL and private respondents as evidenced by the tickets issued by Amexco to private respondents. CAL failed to honor its contract of carriage. However, CAL was not wanton or reckless in cancelling private respondents' reservations. CAL made the cancellation in conformity with its usual procedure, which was neither unreasonable nor arbitrary considering that CAL cancelled the reservations at the behest of Morelia. While Morelia did not issue any ticket to private respondents,[62] on record Morelia still stood as the travel agent that booked the reservations of private respondents since neither CAL nor Morelia endorsed the booking to Amexco. Thus, when Morelia cancelled the reservations, CAL had to accede as if private respondents themselves had asked for the cancellation. Private respondents' names were consequently not included in the passenger's manifest.

Damages

CAL's negligence caused it to breach its contract of carriage. CAL's negligence is, however, not so gross to amount to bad faith. Mere negligence, even if it causes the plaintiff to suffer mental anguish or serious fright, is not a ground for awarding moral damages.[63]

The law distinguishes a contractual breach effected in good faith from one attended by bad faith.[64] Absent fraud or bad faith on defendant's part in breaching his contract, his liability for damages is limited to the natural and probable consequences of the breach of the obligation, which the parties had foreseen or could have reasonably foreseen.[65] In such a case, the liability would not include moral damages. For this reason, not every case of mental anguish, fright or serious anxiety calls for the award of moral damages.

As for exemplary damages, Article 2232 of the Civil Code provides that in a contractual or quasi-contractual relationship, exemplary damages may be awarded only if the defendant had acted in "a wanton, fraudulent, reckless, oppressive or malevolent manner." CAL was not in bad faith and its employees did not act in a wanton, fraudulent, reckless, oppressive or malevolent manner. The award of exemplary damages is therefore unwarranted in this case.

Private respondents' remaining claim is for actual damages. However, private respondents did not shell out any money for their CAL tickets. Amexco voided the CAL tickets when private respondents requested Amexco to book them in another airline.[66] Amexco eventually booked their flight with Northwest. Private respondents would have been entitled to the price difference between the tickets of CAL and Northwest had the latter cost more than the former. The price difference would have been a damage reasonably attributed to CAL's breach of its contract of carriage because private respondents would not have flown via Northwest were it not for CAL's non-performance of its obligation. The evidence, however, shows that the Northwest tickets at US\$625[67] each cost less than the CAL tickets priced at US\$629[68] each. We cannot also order a reimbursement of the Northwest tickets because this would have enabled private respondents to fly to Los Angeles without paying any fare.[69] As correctly pointed out by the trial and appellate courts, the costs of the airplane tickets were a necessary expense that private respondents could not pass on to CAL.

Undeniably, however, private respondents suffered some form of injury. CAL confirmed the reservations of private respondents carelessly. Private respondents relied on this confirmation. Private respondents went through

the trouble of going to the airport at the appointed time expecting that they would be able to board CAL Flight 632. To their consternation, CAL personnel prevented them from boarding because Morelia cancelled their reservations. When plaintiff suffers some species of injury not enough to warrant an award of actual damages, the court may award nominal damages.[70] The court may award nominal damages purely to vindicate a right of a plaintiff which defendant has violated and not to indemnify any loss the plaintiff has suffered.[71] The court may award nominal damages in every obligation arising from any source enumerated in Article 1157 of the Civil Code,[72] or in any case where there is an invasion of any property right.[73] We find P5,000 as a reasonable award of nominal damages to each of the private respondents.

The fact that private respondents were compelled to litigate and incur expenses to protect and enforce their claim does not justify the award of attorney's fees.[74] The court may award attorney's fees only in the instances mentioned in Article 2208 of the Civil Code, and this case is not one of them. Moreover, when there is no basis to award moral and exemplary damages, there is also no basis to award attorney's fees.[75]

WHEREFORE, we AFFIRM the decision of the Court of Appeals with MODIFICATION by deleting the award of moral and exemplary damages as well as attorney's fees. Petitioner China Airlines, Ltd. shall pay nominal damages of Five Thousand Pesos (P5,000) each to private respondents Antonio S. Salvador and Rolando C. Lao. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., (Chairman), Vitug, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Bernardo LL. Salas with Associate Justices Fidel P. Purisima and Angelina Sandoval-Gutierrez concurring.

[2] Records, Vol. I, p. 10.

[3] Ibid.

[4] Ibid.

[5] Ibid., p. 12.

[6] Ibid., p. 13.

[7] Ibid., p. 14.

[8] Ibid., p. 16.

[9] Records, Vol. I, p. 307.

[10] Ibid.

[11] Rollo, p. 5.

[12] *España, Sr. v. Court of Appeals*, 335 Phil. 983 (1997).

[13] See *Vda. de Panaligan v. Court of Appeals*, 328 Phil. 1232 (1996).

[14] Rollo, p. 83.

[15] Canon 8. Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

- [16] Rollo, p. 42.
- [17] Ibid., p. 43.
- [18] Ibid., p. 44.
- [19] *Orchid v. Cabarroguis*, 162 Phil. 891 (1976).
- [20] TSN, 5 January 1995, pp. 221, 227-228 (Lea Hamil-Balderas).
- [21] Ibid., pp. 208-209.
- [22] Ibid., p. 228
- [23] Ibid., p. 232
- [24] Records, Vol. I, p. 114.
- [25] Ibid.
- [26] *British Airways v. Court of Appeals*, G.R. No. 121824, 29 January 1998, 285 SCRA 450.
- [27] Ibid.
- [28] Ibid.
- [29] *China Air Lines, Ltd. v. Court of Appeals*, G.R. No. 45985, 18 May 1990, 185 SCRA 449.
- [30] Ibid.
- [31] G.R. No. 77011, 24 July 1990, 187 SCRA 763.
- [32] Ibid.
- [33] Ibid.
- [34] *Ford Philippines, Inc. v. Court of Appeals*, 335 Phil. 1 (1997).
- [35] Ibid.
- [36] Ibid.
- [37] *Solid Homes, Inc. v. Court of Appeals*, 341 Phil. 261 (1997).
- [38] *Ford Philippines, Inc. v. Court of Appeals*, supra note 34.
- [39] Ibid.
- [40] *Millena v. Court of Appeals*, G.R. No. 127797, 31 January 2000, 324 SCRA 126.
- [41] Ibid.
- [42] *Lufthansa German Airline v. Court of Appeals*, 313 Phil. 503 (1995).
- [43] Ibid.
- [44] TSN, 22 November 1994, p. 187.
- [45] Ibid.
- [46] Ibid., p. 175.

- [47] Ibid., p. 177.
- [48] Ibid., p. 176.
- [49] Ibid., p. 177.
- [50] Ibid., p. 176.
- [51] Ibid., p. 197.
- [52] Ibid., p. 174.
- [53] Ibid.
- [54] Ibid., p. 175.
- [55] Ibid.
- [56] Ibid., p. 176
- [57] Ibid., p. 176.
- [58] Ibid., p. 185.
- [59] Ibid., p. 186.
- [60] Ibid., p. 187.
- [61] G.R. No. 104235, 18 November 1993, 228 SCRA 23.
- [62] Records, Vol. I, p. 114.
- [63] Sabena Belgian World Airlines v. Court of Appeals, G.R. No. 82068, 31 March 1989, 171 SCRA 620.
- [64] China Airlines Limited v. Court of Appeals, G.R. No. 94590, 29 July 1992, 211 SCRA 897.
- [65] Ibid.
- [66] TSN, 5 January 1995, p. 217 (Lea Hamil-Banderas).
- [67] Parties' Exhibits, Vol. VI, p. 10.
- [68] Ibid., p. 1.
- [69] See Zalamea v. Court of Appeals, *supra* note 61.
- [70] Lufthansa German Airline v. Court of Appeals, *supra* note 42.
- [71] Japan Airlines v. Court of Appeals, 355 Phil. 444 (1998).
- [72] Art. 1157. Obligations arise from:
- (1) Law;
 - (2) Contracts;
 - (3) Quasi-contracts;
 - (4) Acts or omissions punished by law; and
 - (5) Quasi-delicts.

[73] Japan Airlines v. Court of Appeals, supra note 71.

[74] Philippine Air Lines v. Miano, 312 Phil. 287 (1995).

[75] Ibid. See also Morris v. Court of Appeals, G.R. No. 127957, 21 February 2001, 352 SCRA 428.

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