NORTHWEST AIRLINES, INC., PETITIONER, VS. CAMILLE T. CRUZ AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 137136. November 03, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before this Court is a petition for review on certiorari of the Decision of the Court of Appeals, dated September 30, 1998; and, of its Resolution, dated January 11, 1999.

The antecedent facts are as follows:

On August 24, 1992, herein private respondent Camille T. Cruz, then a teenage girl who would be travelling alone for the first time, purchased from petitioner Northwest Airlines a round-trip ticket for a flight from Manila to Boston via Tokyo and back. The scheduled departure date from Manila to Boston was August 27, 1992 at 8:40 a.m. in economy class while the scheduled return flight from Boston to Manila in business class was on December 22, 1992 at 10:25 a.m.[1]

On November 25, 1992, private respondent re-scheduled her return flight from Boston to Manila to December 17, 1992 at 10:05 a.m. Accordingly, petitioner booked her on Northwest flight NW005 C ("Flight 5") with route as follows: Boston to Chicago; Chicago to Tokyo; and, Tokyo to Manila.[2]

Petitioner reconfirmed the flight from Boston, U.S.A. to Manila scheduled on December 17, 1992 at least seventy-two (72) hours prior to the said scheduled flight.[3]

However, barely a day before the scheduled date of departure, petitioner called private respondent and informed her that instead of following her original itinerary of Boston to Chicago; Chicago to Tokyo; and, Tokyo to Manila, private respondent should instead board the TWA flight from Boston to Kennedy International Airport in New York. Private respondent was further instructed by petitioner to proceed to the latter's counter at the Logan Airport in Boston before boarding the TWA flight on the scheduled date of departure.[4]

On December 17, 1992, upon petitioner's instructions, private respondent proceeded early to the petitioner's counter at Logan Airport in Boston but was referred to the TWA counter where she was informed that she may not be able to take the TWA flight. Notwithstanding this uncertainty, private respondent was made to proceed to the International Gate where she was informed that the TWA flight she was to take to Kennedy International Airport in New York was cancelled.[5]

Due to the unexplained and belated cancellation of the TWA flight, private respondent had to rush back from the International Gate to petitioner's counter in Logan Airport in Boston where she was again told to proceed immediately to the Delta Airlines terminal to catch the Delta Airlines flight to La Guardia Airport in New York and thence took the service car to Kennedy Airport in New York.[6]

In her haste to catch the said flight, private respondent tripped and fell down on her way from petitioner's counter

to the Delta Airlines counter in Logan Airport in Boston thereby suffering slight physical injuries and embarrassment.[7]

When private respondent reached La Guardia Airport in New York, she again had to rush to the service car that would take her to Kennedy International Airport which is several miles away from La Guardia. In her haste and anxiety to catch her flight, private respondent again tripped and fell down thereby suffering more physical injuries, embarrassment and great inconvenience.[8]

Private respondent's apprehension was further aggravated when she was informed at petitioner's counter in Kennedy International Airport that she was issued the wrong ticket to Seoul instead of Tokyo. Although the error was rectified by petitioner at Kennedy International Airport, private respondent was by then extremely nervous, worried, stressed out, and exhausted.[9]

To make matters worse, petitioner downgraded private respondent from business class to economy class on two legs of her flight without notice nor apology. Neither did petitioner offer to refund the excess fare private respondent paid for a business class seat.[10]

Hence, on August 6, 1993, private respondent filed a complaint[11] against petitioner Northwest Airlines, Inc. for breach of contract of carriage committed when petitioner changed private respondent's original itinerary of Boston to Chicago, Chicago to Tokyo, Tokyo to Manila to a new itinerary of Boston to New York, New York to Tokyo and Tokyo to Manila, thereby downgrading private respondent on two legs of her return flight to Manila from business to economy class (flights from Boston to New York, and from Tokyo to Manila). Private respondent claimed to have suffered actual, moral and exemplary damages.[12]

Petitioner filed its answer with compulsory counterclaim alleging therein that the flight on which private respondent was originally booked was cancelled due to maintenance problems and bad weather,[13] and that the airline had done its best to re-book private respondent on the next available flights.

Trial progressed until 1995 when it was petitioner's turn to present its witness on three scheduled dates. Two of the settings were cancelled when petitioner's counsel filed notice for oral deposition of one Mario Garza, witness for petitioner, in New York. Private respondent filed her opposition and suggested written interrogatories instead. However, in an Order dated July 26, 1995, the trial court denied private respondent's opposition, thus allowing the deposition to proceed. The oral deposition took place in New York on July 24, 1995[14] or notably two days before the issuance of the trial court's order allowing the deposition to proceed.

The records show that although it was the Honorable Consul Milagros R. Perez who swore in the deponent,[15] she thereafter designated one "Attorney Gonzalez" as Deposition Officer.[16] After stating his personal circumstances, Mr. Mario Garza, testified as follows:

> xxx.
>
> ATTY. AUTEA
>
> What is your present position?
>
> MR. GARZA
>
> I am currently a customer service supervisor and instructor for Northwest in Boston.
>
> ATTY. AUTEA
>
> In or about December 1992, what was your position?

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MR. GARZA

I was a customer service supervisor and instructor.

ATTY. AUTEA

As a customer service supervisor and instructor what are the duties which you discharged?

MR. GARZA

My responsibilities are in Boston field work to oversee the ground staff and for the employees of Northwest who work at the counter, gates, luggage service operations.

ATTY. AUTEA

Do you discharge any responsibilities in connection with canceled flights?

MR. GARZA

Yes, I do. If a flight is canceled it is my responsibility amongst many supervisor, to determine how we are gonna best serve our customers with rebooking for protection some other main customer services.

ATTY. AUTEA

Have you ever been come across the name of Camille T. Cruz in connection with a canceled Northwest flight?

MR. GARZA

Yes, I have.

xxx.

ATTY. AUTEA

Based on this passenger name record marked as Exhibit 2 and the transcript marked as Exhibit 3, very briefly can you tell us what was the original flight schedule of Camille T. Cruz on her return flight from Boston to Manila on December 17, 1992?

MR. GARZA

It actually she goes back a little before that, she was booked originally to return to Manila on the 22[nd] of December and she was advised of the schedule change wherein Northwest changed the flight number from Northwest Flight 3 to Northwest Flight 5 and then on the 14[th] of October the reservation from, I can tell here for the customer was changed from the 22[nd] of December to 17[th] of December, Boston to Manila.

ATTY. AUTEA

Okay. You said that there was a change of flight from Northwest Flight 3 to Northwest Flight 5, what brought about the change?

MR. GARZA

There was a schedule change and during schedule changes sometime, anytime there's a change in departure time or change in flight number and that's referred as a schedule change if there is a phone contact we are advised to contact the customers so they will know what flight they are supposed to be on.

ATTY. AUTEA

And and (sic) that does it show there as it is stated in the complaint filed by the plaintiff that she requested for the change from December 22 to December 17?

MR. GARZA

Yes.

ATTY. AUTEA

Now under this uh--new flight schedule Northwest Flight 5, what was the itinerary of Camille T. Cruz?

MR. GARZA

Flight 5 is referred to as Direct Flight from Boston to Manila, uhh--the routing for that flight goes Boston - Chicago, Tokyo-Manila with a change of equipment and it is a change of aircraft type in Chicago.

ATTY. AUTEA

Okay. What happened to that flight? Northwest Flight 5? The originally first leg of which was Boston to Chicago?

MR. GARZA

On the 17[th], Flight 5 from Boston to Chicago canceled due to maintenance problem.

xxx.

ATTY. AUTEA

Ahh. In other words Mr. Garza, the aircraft which the plaintiff in this case was scheduled to take came from Washington D.C., is that right?

MR. GARZA

That is correct.

ATTY. AUTEA

And from Washington DC that aircraft flew to Boston is that right?

MR. GARZA

Well it supposed to fly it is it didn't fly.

ATTY. AUTEA

It was supposed to fly but it didn't fly?

MR. GARZA

That is correct.

ATTY. AUTEA

What is the reason for the inability of the aircraft to fly from Washington DC to Boston?

MR. GARZA

Based on this messages says "Emergency Lights INOP and unable to repair."

xxx.

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ATTY. AUTEA

In other words Mr. Garza, when the original Northwest Flight Number 5 of the passenger Camille T. Cruz was canceled due to maintenance work she was given two options, is that right?

MR. GARZA

Yes.

ATTY. AUTEA

And the first option is that written in Item Number 8, is that right?

MR. GARZA

That is correct.

ATTY. AUTEA

The second option is that written in Item Number 9 of Exhibit 3, is that right?

MR. GARZA

That is correct.

ATTY. AUTEA

And who made the decision for Camille T. Cruz as to which option to take?

MR. GARZA

In this case to me it would be the customer, because we would always have to go with what the customer wants.

ATTY. AUTEA

When you say that it was the customer who made the decision you are referring to Camille T. Cruz the plaintiff in this case?

MR. GARZA

That's correct.

ATTY. AUTEA

In other words Camille T. Cruz, the plaintiff was the one who chose the alternate flight shown in Item Number 9 of Exhibit 3?

MR. GARZA

That's correct.

xxx.

ATTY. AUTEA

Why in coach?

MR. GARZA

I would say because that was what all that was available, she is a business class passenger and there is no

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business class on domestic flights, we do upgrade our business class passenger to first class domestically on a space available basis so they would indicate to me that possibly from Detroit was probably already sold out in first class but we would be able to confirm her in coach but a smaller flight.

ATTY. AUTEA

Are you saying that because of the cancellation of the original flight of Camille T. Cruz, Northwest tried to book the passenger on the available flight but that the available flight which was then available was this coach class Northwest 440?

MR. GARZA

That's correct, from Boston to Detroit.

xxx.

ATTY. AUTEA

Okay. The second leg of this trip in Item Number 9 says "NW 017 F JFKNRT 17[th] December 1240 to 1700, what does that mean?

MR. GARZA

That means that we re-booked it from New York Kennedy to Tokyo non-stop Narita Airport on Northwest Flight 17 in first class as opposed to business class and that left Kennedy at 1240 arriving into Tokyo at 1700.

ATTY. AUTEA

Why was she booked in first class?

MR. GARZA

Again I would say that business class was already sold out on that flight so since she already been inconvenience before we are allowed at the airport under types of circumstances then to move the business class passenger into first class.

xxx.

ATTY. AUTEA

Now, the third leg of the trip under Item Number 9 of Exhibit 3 says "NW 005 Y NRT MNI, 18[th] December 1815 to 2155," what does that mean?

MR. GARZA

That means that upon arriving in Tokyo she would connect to Flight 5 from Tokyo to Manila on the 18[th] departing at 1815 and arriving at 2155 and that was booked in coach.

ATTY. AUTEA

Why was she booked in coach?

MR. GARZA

I was again in uhh. Because first and business class would have been sold out.[17]

On November 9, 1995, at the hearing of the instant case, petitioner presented the deposition record of its witness while private respondent reserved her right to cross-examine and present rebuttal evidence.

Private respondent, likewise, questioned the conduct of the oral deposition as irregular and moved for suppression of the same on the following grounds:

> - The deposition has been improperly and irregularly taken and returned in that:
> (a) The deposition was taken on July 24, 1995 despite the fact that this Honorable Court only ruled on the matter on July 26, 1995.
>
> (b) There is no certification given by the officer taking the deposition that the same is a true record of the testimony given by the deponent in violation of Rule 24, Section 20 of the Rules of Court.
>
> (c) The deposition was not securely sealed in an envelope indorsed with the title of the action and marked "Deposition of (here insert the name of witness)" in violation of Rule 24, Section 20 of the Rules of Court.
>
> (d) The officer taking the deposition did not give any notice to the plaintiff of the filing of the deposition in violation of Rule 24, Section 21 of the Rules of Court.
>
> (e) The person designated as deposition officer is not among those persons authorized to take deposition in foreign countries in violation of Rule 24, Section 11 of the Rules of Court.
>
> (f) There is no showing on record that the deponent read and signed the deposition in violation of Rule 24, Section 19 of the Rules of Court.

- These irregularities or defects were discovered by the plaintiff during the hearing on November 9, 1995 and plaintiff has acted with reasonable promptness after having ascertained the existence of the aforesaid irregularities and defects.[18]

However, private respondent's motion was denied anew by the trial court.[19] In its Order, dated July 23, 1996, the trial court admitted petitioner's formal offer of evidence with supplement thereto and gave private respondent three days from receipt within which to signify her intention to present rebuttal evidence.

On August 2, 1996, private respondent filed a manifestation and motion stating that the court failed to rule on its motion to suppress deposition and to grant her the right to cross-examine petitioner's deponent. Private respondent also manifested her intention to present rebuttal evidence.

In its Order, dated September 5, 1996, the trial court denied private respondent's manifestation and motion. Said court, likewise, denied private respondent's motion for reconsideration of the above order. Hence, private respondent filed a petition for certiorari with the Court of Appeals on April 7, 1998.[20]

On September 30, 1998, the appellate court rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, the petition is GRANTED. The questioned rulings of the Regional Trial Court are hereby SET ASIDE, and judgment is hereby rendered ORDERING the court a quo to disallow the deposition and continue with the trial of the case without prejudice to petitioner's right to cross examine defendant's witness and to present rebuttal evidence.
>
> SO ORDERED.[21]

Petitioner Northwest, thereafter, filed this instant petition for review alleging that:

> - THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT DISMISSING THE PETITION OUTRIGHT SINCE THE REMEDY OF APPEAL IS AVAILABLE TO PRIVATE RESPONDENT. BESIDES, THE PETITION WAS FILED OUT OF TIME.
>
> - THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FINDING THAT THE TRIAL COURT GRAVELY ABUSED ITS DISCRETION BY ADMITTING INTO EVIDENCE THE ORAL

> DEPOSITION.
>
> - THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN FINDING THAT PRIVATE RESPONDENT HAS NOT WAIVED HER RIGHT TO CROSS-EXAMINE PETITIONER'S WITNESS AND TO PRESENT REBUTTAL EVIDENCE.[22]

Petitioner argues that the remedy of certiorari before respondent Court of Appeals was improper, as private respondent has every opportunity to question on appeal the trial court's ruling admitting the deposition.

According to petitioner, a careful analysis of the petition in the Court of Appeals shows that at the heart of the issues raised is the correctness of the procedure observed by the trial court in appreciating the admissibility of the transcript of the deposition of Mr. Mario Garza. Such being the case, assuming without admitting that the trial court committed any error in issuing the questioned orders, such error is only an error of judgment, and not an error of jurisdiction.

Petitioner further asserts that the trial court did not gravely abuse its discretion by admitting into evidence the oral deposition. While as a general rule, Section 1, Rule 132 of the Rules of Court[23]governs the conduct of trial, this rule admits of exceptions which this Court recognized in the case of Dasmarinas Garments, Inc. vs. Reyes.[24] According to petitioner, one of the exceptions is "when the witness is out of the Philippines." In this case, petitioner has the right to take the deposition of its witness and offer it in evidence since Mr. Mario Garza resides and works outside the Philippines. The deposition-taking at the Philippine Consulate in New York City falls within the exceptions to the requirement that a witness give his testimony in open court pursuant to Section 1, Rule 132 of the Rules.

Finally, petitioner alleges that private respondent must be deemed to have waived her right to cross-examine petitioner's witness and her right to present rebuttal evidence by her failure to attend the deposition-taking despite due notice thereof, or at the very least, to timely reserve her right to serve written interrogatories.

Petitioner's arguments are untenable.

Section 16 of Rule 24 (now Rule 23 of the Rules of Civil Procedure of 1997) provides that after notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court in which the action is pending may, among others, make an order that the deposition shall not be taken. The rest of the same section allows the taking of the deposition subject to certain conditions specified therein.

The provision explicitly vesting in the court the power to order that the deposition shall not be taken connotes the authority to exercise discretion on the matter. However, the discretion conferred by law is not unlimited. It must be exercised, not arbitrarily or oppressively, but in a reasonable manner and in consonance with the spirit of the law. The courts should always see to it that the safeguards for the protection of the parties and deponents are firmly maintained. As aptly stated by Chief Justice Moran:

> xxx. (T)his provision affords the adverse party, as well as the deponent, sufficient protection against abuses that may be committed by a party in the exercise of his unlimited right to discovery. As a writer said: "Any discovery involves a prying into another person's affairs - prying that is quite justified if it is to be a legitimate aid to litigation, but not justified if it is not to be such an aid." For this reason, courts are given ample powers to forbid discovery which is intended not as an aid to litigation, but merely to annoy, embarrass or oppress either the deponent or the adverse party, or both.[25]

Respondent court correctly observed that the deposition in this case was not used for discovery purposes, as the examinee was the employee of petitioner, but rather to accommodate the former who was in Massachusetts,

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U.S.A. Such being the case, the general rules on examination of witnesses under Rule 132 of the Rules of Court requiring said examination to be done in court following the order set therein, should be observed.

Respondent court also correctly noted that private respondent's objections to the oral deposition had been made promptly and vehemently, as required by the Rules, but these were wrongly disregarded as immaterial by the trial court.

We note with approval respondent court's ruling disallowing the depositions and upholding private respondent's right to cross-examine:

> xxx [The] deposition was not a mode of discovery but rather a direct testimony by respondent's witness and there appears a strategy by respondent to exclude petitioner's participation from the proceedings.
>
> While a month's notice would ordinarily be sufficient, the circumstances in this case are different. Two days of trial were cancelled and notice for oral deposition was given in lieu of the third date. The locus of oral deposition is not easily within reach of ordinary citizens for it requires time to get a travel visa to the United States, book a flight in July to the United States, and more importantly substantial travel fare is needed to obtain a round trip ticket by place (sic) from Manila to New York and back to Manila.
>
> As an international carrier, Northwest could very conveniently send its counsel to New York. However, the ends of justice would have been better served if the witness were instead brought to the Philippines. Written interrogatories was (sic) requested to balance this inconvenience which was nonetheless also objected to and denied for simply being time consuming. While time is a factor in deciding cases, the more important principles would have been the thorough presentation and deliberation of a case to ensure that the ends of justice are met since this is the principal mission of a civilized judicial system.
>
> The objections raised by petitioner [private respondent], in the light of the above considerations, take on a greater weight. Section 11 of Rule 24 provides: "In a foreign state or country, depositions shall be taken (a) on notice before a secretary of embassy or legation, consul general, consul, vice-consul or consular agent of the Republic of the Philippines, or (b) before such person or officer as may be appointed by commission or under letters rogatory." The deposition document clearly indicates that while the consul swore in the witness and the stenographer, it was another officer in the Philippine Consulate who undertook the entire proceedings thereafter. Respondent Northwest argues on the presumption of regularity of official functions and even obtained a certification to this effect plus an assertion that none of the participants in the Consulate were in any way related to the respondent or their counsel. But presumptions should fail when the record itself bears out the irregularity.
>
> The Rules (Rule 24, Sec. 29) indicate that objections to the oral deposition will be waived unless the objections are made with reasonable promptness. In this case, the objections have been prompt and vehement, yet they were disregarded as not material such that the deposition and the exhibits related thereto were admitted. Moreover, a Supplemental Offer of Evidence pertaining to a certification by the consul in New York which tends to correct the objections raised was also admitted by the Court. Respondents argue that the rules were not exactly mandatory but merely guides to ensure that the ends of justice are met. The Court interpreted with leniency the objections despite the acknowledged mandatory language of the rules.
>
> There is clear language of the law and the same should not be modified in practice. The separate certification of the FSO from the transcript proper was also questioned as irregular by petitioner [private respondent]. In so doing, she was merely being vigilant of her rights considering that she was not present then. No other proof thereon is needed when the same is clear on the face of the deposition material given.
>
> Petitioner's [private respondent] right to cross examine and to present rebuttal evidence, having been reserved earlier, needed no reiteration. Even then, this was nevertheless manifested and even vehemently argued. As defendant's oral deposition was admitted, despite substantial issues raised against it in the interest of justice,

> similar consideration, aside from substantial and technical basis, also dictates that petitioner's [private respondent] right to cross-examine and present rebuttal evidence should be granted. An even handed treatment of the parties would require the same attitude towards the acceptance of petitioner's [private respondent's] right to cross-examine and present its rebuttal evidence on the same.[26]

In Fortune Corporation vs. Court of Appeals,[27] this Court set aside upon review by certiorari the order of the trial court allowing deposition because the order did not conform to the essential requirements of law and may reasonably cause material injury to the adverse party:

> The rule is that certiorari will generally not lie to review a discretionary action of any tribunal. Also, as a general proposition, a writ of certiorari is available only to review final judgment or decrees, and will be refused where there has been no final judgment or order and the proceeding for which the writ is sought is still pending and undetermined in the lower tribunal. Pursuant to this rule, it has been held that certiorari will not lie to review or correct discovery orders made prior to trial. This is because, like other discovery orders, orders made under Section 16, Rule 24 are interlocutory and not appealable considering that they do not finally dispose of the proceeding or of any independent offshoot of it.
>
> However, such rules are subject to the exception that discretionary acts will be reviewed where the lower court or tribunal has acted without or in excess of its jurisdiction, where an interlocutory order does not conform to essential requirements of law and may reasonably cause material injury throughout the subsequent proceedings for which the remedy of appeal will be inadequate, or where there is a clear or serious abuse of discretion.

IN VIEW OF THE FOREGOING, the Court hereby DENIES the petition for failure of the petitioner to sufficiently show that respondent Court of Appeals committed any reversible error.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and Pardo, JJ., concur.
Puno, and Ynares-Santiago, J., on official business abroad.

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[1] Records, p. 35.

[2] Rollo, p. 12.

[3] Records, p. 36.

[4] Id., at 37.

[5] Ibid.

[6] Id., at 37-38.

[7] Id., at 38.

[8] Id.

[9] Records, pp. 38-39.

[10] Id., at 39.

[11] Id., at 34.

[12] Rollo, p. 15.

[13] Ibid.

[14] Id., at 57.

[15] Records, p. 70.

[16] Id., at 71.

[17] Id., at 75-96.

[18] Id., at 106-108.

[19] Rollo, p. 58.

[20] Id., at 25.

[21] Id., at 62-63.

[22] Id., at 27.

[23] Section 1. Examination to be done in open court.- The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

[24] 225 SCRA 622 (1993).

[25] Moran's Comments on the Rules of Court, Vol. 11, 1996 ed., p. 47.

[26] Rollo, pp. 61-62.

[27] 229 SCRA 368 (1994).

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