

CATHAY PACIFIC AIRWAYS, LTD., PETITIONER, VS. SPOUSES DANIEL VAZQUEZ AND MARIA LUISA MADRIGAL VAZQUEZ, RESPONDENTS.

G.R. No. 150843. March 14, 2003

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Is an involuntary upgrading of an airline passenger's accommodation from one class to a more superior class at no extra cost a breach of contract of carriage that would entitle the passenger to an award of damages? This is a novel question that has to be resolved in this case.

The facts in this case, as found by the Court of Appeals and adopted by petitioner Cathay Pacific Airways, Ltd., (hereinafter Cathay) are as follows:

Cathay is a common carrier engaged in the business of transporting passengers and goods by air. Among the many routes it services is the Manila-Hongkong-Manila course. As part of its marketing strategy, Cathay accords its frequent flyers membership in its Marco Polo Club. The members enjoy several privileges, such as priority for upgrading of booking without any extra charge whenever an opportunity arises. Thus, a frequent flyer booked in the Business Class has priority for upgrading to First Class if the Business Class Section is fully booked.

Respondents-spouses Dr. Daniel Earnshaw Vazquez and Maria Luisa Madrigal Vazquez are frequent flyers of Cathay and are Gold Card members of its Marco Polo Club. On 24 September 1996, the Vazquezes, together with their maid and two friends Pacita Cruz and Josefina Vergel de Dios, went to Hongkong for pleasure and business.

For their return flight to Manila on 28 September 1996, they were booked on Cathay's Flight CX-905, with departure time at 9:20 p.m. Two hours before their time of departure, the Vazquezes and their companions checked in their luggage at Cathay's check-in counter at Kai Tak Airport and were given their respective boarding passes, to wit, Business Class boarding passes for the Vazquezes and their two friends, and Economy Class for their maid. They then proceeded to the Business Class passenger lounge.

When boarding time was announced, the Vazquezes and their two friends went to Departure Gate No. 28, which was designated for Business Class passengers. Dr. Vazquez presented his boarding pass to the ground stewardess, who in turn inserted it into an electronic machine reader or computer at the gate. The ground stewardess was assisted by a ground attendant by the name of Clara Lai Han Chiu. When Ms. Chiu glanced at the computer monitor, she saw a message that there was a "seat change" from Business Class to First Class for the Vazquezes.

Ms. Chiu approached Dr. Vazquez and told him that the Vazquezes' accommodations were upgraded to First Class. Dr. Vazquez refused the upgrade, reasoning that it would not look nice for them as hosts to travel in First Class and their guests, in the Business Class; and moreover, they were going to discuss business matters during the flight. He also told Ms. Chiu that she could have other passengers instead transferred to the First Class Section. Taken aback by the refusal for upgrading, Ms. Chiu consulted her supervisor, who told her to handle the situation and convince the Vazquezes to accept the upgrading. Ms. Chiu informed the latter that the Business

Class was fully booked, and that since they were Marco Polo Club members they had the priority to be upgraded to the First Class. Dr. Vazquez continued to refuse, so Ms. Chiu told them that if they would not avail themselves of the privilege, they would not be allowed to take the flight. Eventually, after talking to his two friends, Dr. Vazquez gave in. He and Mrs. Vazquez then proceeded to the First Class Cabin.

Upon their return to Manila, the Vazquezes, in a letter of 2 October 1996 addressed to Cathay's Country Manager, demanded that they be indemnified in the amount of P1million for the "humiliation and embarrassment" caused by its employees. They also demanded "a written apology from the management of Cathay, preferably a responsible person with a rank of no less than the Country Manager, as well as the apology from Ms. Chiu" within fifteen days from receipt of the letter.

In his reply of 14 October 1996, Mr. Larry Yuen, the assistant to Cathay's Country Manager Argus Guy Robson, informed the Vazquezes that Cathay would investigate the incident and get back to them within a week's time.

On 8 November 1996, after Cathay's failure to give them any feedback within its self-imposed deadline, the Vazquezes instituted before the Regional Trial Court of Makati City an action for damages against Cathay, praying for the payment to each of them the amounts of P250,000 as temperate damages; P500,000 as moral damages; P500,000 as exemplary or corrective damages; and P250,000 as attorney's fees.

In their complaint, the Vazquezes alleged that when they informed Ms. Chiu that they preferred to stay in Business Class, Ms. Chiu "obstinately, uncompromisingly and in a loud, discourteous and harsh voice threatened" that they could not board and leave with the flight unless they go to First Class, since the Business Class was overbooked. Ms. Chiu's loud and stringent shouting annoyed, embarrassed, and humiliated them because the incident was witnessed by all the other passengers waiting for boarding. They also claimed that they were unjustifiably delayed to board the plane, and when they were finally permitted to get into the aircraft, the forward storage compartment was already full. A flight stewardess instructed Dr. Vazquez to put his roll-on luggage in the overhead storage compartment. Because he was not assisted by any of the crew in putting up his luggage, his bilateral carpal tunnel syndrome was aggravated, causing him extreme pain on his arm and wrist. The Vazquezes also averred that they "belong to the uppermost and absolutely top elite of both Philippine Society and the Philippine financial community, [and that] they were among the wealthiest persons in the Philippine[s]."

In its answer, Cathay alleged that it is a practice among commercial airlines to upgrade passengers to the next better class of accommodation, whenever an opportunity arises, such as when a certain section is fully booked. Priority in upgrading is given to its frequent flyers, who are considered favored passengers like the Vazquezes. Thus, when the Business Class Section of Flight CX-905 was fully booked, Cathay's computer sorted out the names of favored passengers for involuntary upgrading to First Class. When Ms. Chiu informed the Vazquezes that they were upgraded to First Class, Dr. Vazquez refused. He then stood at the entrance of the boarding apron, blocking the queue of passengers from boarding the plane, which inconvenienced other passengers. He shouted that it was impossible for him and his wife to be upgraded without his two friends who were traveling with them. Because of Dr. Vazquez's outburst, Ms. Chiu thought of upgrading the traveling companions of the Vazquezes. But when she checked the computer, she learned that the Vazquezes' companions did not have priority for upgrading. She then tried to book the Vazquezes again to their original seats. However, since the Business Class Section was already fully booked, she politely informed Dr. Vazquez of such fact and explained that the upgrading was in recognition of their status as Cathay's valued passengers. Finally, after talking to their guests, the Vazquezes eventually decided to take the First Class accommodation.

Cathay also asserted that its employees at the Hong Kong airport acted in good faith in dealing with the Vazquezes; none of them shouted, humiliated, embarrassed, or committed any act of disrespect against them (the

Vazquezes). Assuming that there was indeed a breach of contractual obligation, Cathay acted in good faith, which negates any basis for their claim for temperate, moral, and exemplary damages and attorney's fees. Hence, it prayed for the dismissal of the complaint and for payment of P100,000 for exemplary damages and P300,000 as attorney's fees and litigation expenses.

During the trial, Dr. Vazquez testified to support the allegations in the complaint. His testimony was corroborated by his two friends who were with him at the time of the incident, namely, Pacita G. Cruz and Josefina Vergel de Dios.

For its part, Cathay presented documentary evidence and the testimonies of Mr. Yuen; Ms. Chiu; Norma Barrientos, Comptroller of its retained counsel; and Mr. Robson. Yuen and Robson testified on Cathay's policy of upgrading the seat accommodation of its Marco Polo Club members when an opportunity arises. The upgrading of the Vazquezes to First Class was done in good faith; in fact, the First Class Section is definitely much better than the Business Class in terms of comfort, quality of food, and service from the cabin crew. They also testified that overbooking is a widely accepted practice in the airline industry and is in accordance with the International Air Transport Association (IATA) regulations. Airlines overbook because a lot of passengers do not show up for their flight. With respect to Flight CX-905, there was no overall overbooking to a degree that a passenger was bumped off or downgraded. Yuen and Robson also stated that the demand letter of the Vazquezes was immediately acted upon. Reports were gathered from their office in Hong Kong and immediately forwarded to their counsel Atty. Remollo for legal advice. However, Atty. Remollo begged off because his services were likewise retained by the Vazquezes; nonetheless, he undertook to solve the problem in behalf of Cathay. But nothing happened until Cathay received a copy of the complaint in this case. For her part, Ms. Chiu denied that she shouted or used foul or impolite language against the Vazquezes. Ms. Barrientos testified on the amount of attorney's fees and other litigation expenses, such as those for the taking of the depositions of Yuen and Chiu.

In its decision[1] of 19 October 1998, the trial court found for the Vazquezes and decreed as follows:

WHEREFORE, finding preponderance of evidence to sustain the instant complaint, judgment is hereby rendered in favor of plaintiffs Vazquez spouses and against defendant Cathay Pacific Airways, Ltd., ordering the latter to pay each plaintiff the following:12345

a)

Nominal damages in the amount of P100,000.00 for each plaintiff;

b)

Moral damages in the amount of P2,000,000.00 for each plaintiff;

c)

Exemplary damages in the amount of P5,000,000.00 for each plaintiff;

d)

Attorney's fees and expenses of litigation in the amount of P1,000,000.00 for each plaintiff; and

e)

Costs of suit.

SO ORDERED.

According to the trial court, Cathay offers various classes of seats from which passengers are allowed to choose

regardless of their reasons or motives, whether it be due to budgetary constraints or whim. The choice imposes a clear obligation on Cathay to transport the passengers in the class chosen by them. The carrier cannot, without exposing itself to liability, force a passenger to involuntarily change his choice. The upgrading of the Vazquezes' accommodation over and above their vehement objections was due to the overbooking of the Business Class. It was a pretext to pack as many passengers as possible into the plane to maximize Cathay's revenues. Cathay's actuations in this case displayed deceit, gross negligence, and bad faith, which entitled the Vazquezes to awards for damages.

On appeal by the petitioners, the Court of Appeals, in its decision of 24 July 2001,[2] deleted the award for exemplary damages; and it reduced the awards for moral and nominal damages for each of the Vazquezes to P250,000 and P50,000, respectively, and the attorney's fees and litigation expenses to P50,000 for both of them.

The Court of Appeals ratiocinated that by upgrading the Vazquezes to First Class, Cathay novated the contract of carriage without the former's consent. There was a breach of contract not because Cathay overbooked the Business Class Section of Flight CX-905 but because the latter pushed through with the upgrading despite the objections of the Vazquezes.

However, the Court of Appeals was not convinced that Ms. Chiu shouted at, or meant to be discourteous to, Dr. Vazquez, although it might seemed that way to the latter, who was a member of the elite in Philippine society and was not therefore used to being harangued by anybody. Ms. Chiu was a Hong Kong Chinese whose fractured Chinese was difficult to understand and whose manner of speaking might sound harsh or shrill to Filipinos because of cultural differences. But the Court of Appeals did not find her to have acted with deliberate malice, deceit, gross negligence, or bad faith. If at all, she was negligent in not offering the First Class accommodations to other passengers. Neither can the flight stewardess in the First Class Cabin be said to have been in bad faith when she failed to assist Dr. Vazquez in lifting his baggage into the overhead storage bin. There is no proof that he asked for help and was refused even after saying that he was suffering from "bilateral carpal tunnel syndrome." Anent the delay of Yuen in responding to the demand letter of the Vazquezes, the Court of Appeals found it to have been sufficiently explained.

The Vazquezes and Cathay separately filed motions for a reconsideration of the decision, both of which were denied by the Court of Appeals.

Cathay seasonably filed with us this petition in this case. Cathay maintains that the award for moral damages has no basis, since the Court of Appeals found that there was no "wanton, fraudulent, reckless and oppressive" display of manners on the part of its personnel; and that the breach of contract was not attended by fraud, malice, or bad faith. If any damage had been suffered by the Vazquezes, it was *damnum absque injuria*, which is damage without injury, damage or injury inflicted without injustice, loss or damage without violation of a legal right, or a wrong done to a man for which the law provides no remedy. Cathay also invokes our decision in *United Airlines, Inc. v. Court of Appeals*[3] where we recognized that, in accordance with the Civil Aeronautics Board's Economic Regulation No. 7, as amended, an overbooking that does not exceed ten percent cannot be considered deliberate and done in bad faith. We thus deleted in that case the awards for moral and exemplary damages, as well as attorney's fees, for lack of proof of overbooking exceeding ten percent or of bad faith on the part of the airline carrier.

On the other hand, the Vazquezes assert that the Court of Appeals was correct in granting awards for moral and nominal damages and attorney's fees in view of the breach of contract committed by Cathay for transferring them from the Business Class to First Class Section without prior notice or consent and over their vigorous objection. They likewise argue that the issuance of passenger tickets more than the seating capacity of each section of the

plane is in itself fraudulent, malicious and tainted with bad faith.

The key issues for our consideration are whether (1) by upgrading the seat accommodation of the Vazquezes from Business Class to First Class Cathay breached its contract of carriage with the Vazquezes; (2) the upgrading was tainted with fraud or bad faith; and (3) the Vazquezes are entitled to damages.

We resolve the first issue in the affirmative.

A contract is a meeting of minds between two persons whereby one agrees to give something or render some service to another for a consideration. There is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) an object certain which is the subject of the contract; and (3) the cause of the obligation which is established.[4] Undoubtedly, a contract of carriage existed between Cathay and the Vazquezes. They voluntarily and freely gave their consent to an agreement whose object was the transportation of the Vazquezes from Manila to Hong Kong and back to Manila, with seats in the Business Class Section of the aircraft, and whose cause or consideration was the fare paid by the Vazquezes to Cathay.

The only problem is the legal effect of the upgrading of the seat accommodation of the Vazquezes. Did it constitute a breach of contract?

Breach of contract is defined as the “failure without legal reason to comply with the terms of a contract.”[5] It is also defined as the “[f]ailure, without legal excuse, to perform any promise which forms the whole or part of the contract.”[6]

In previous cases, the breach of contract of carriage consisted in either the bumping off of a passenger with confirmed reservation or the downgrading of a passenger’s seat accommodation from one class to a lower class. In this case, what happened was the reverse. The contract between the parties was for Cathay to transport the Vazquezes to Manila on a Business Class accommodation in Flight CX-905. After checking-in their luggage at the Kai Tak Airport in Hong Kong, the Vazquezes were given boarding cards indicating their seat assignments in the Business Class Section. However, during the boarding time, when the Vazquezes presented their boarding passes, they were informed that they had a seat change from Business Class to First Class. It turned out that the Business Class was overbooked in that there were more passengers than the number of seats. Thus, the seat assignments of the Vazquezes were given to waitlisted passengers, and the Vazquezes, being members of the Marco Polo Club, were upgraded from Business Class to First Class.

We note that in all their pleadings, the Vazquezes never denied that they were members of Cathay’s Marco Polo Club. They knew that as members of the Club, they had priority for upgrading of their seat accommodation at no extra cost when an opportunity arises. But, just like other privileges, such priority could be waived. The Vazquezes should have been consulted first whether they wanted to avail themselves of the privilege or would consent to a change of seat accommodation before their seat assignments were given to other passengers. Normally, one would appreciate and accept an upgrading, for it would mean a better accommodation. But, whatever their reason was and however odd it might be, the Vazquezes had every right to decline the upgrade and insist on the Business Class accommodation they had booked for and which was designated in their boarding passes. They clearly waived their priority or preference when they asked that other passengers be given the upgrade. It should not have been imposed on them over their vehement objection. By insisting on the upgrade, Cathay breached its contract of carriage with the Vazquezes.

We are not, however, convinced that the upgrading or the breach of contract was attended by fraud or bad faith. Thus, we resolve the second issue in the negative.

Bad faith and fraud are allegations of fact that demand clear and convincing proof. They are serious accusations

that can be so conveniently and casually invoked, and that is why they are never presumed. They amount to mere slogans or mudslinging unless convincingly substantiated by whoever is alleging them.

Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive, conceals or omits to state material facts and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given.[7]

Bad faith does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.[8]

We find no persuasive proof of fraud or bad faith in this case. The Vazquezes were not induced to agree to the upgrading through insidious words or deceitful machination or through willful concealment of material facts. Upon boarding, Ms. Chiu told the Vazquezes that their accommodations were upgraded to First Class in view of their being Gold Card members of Cathay's Marco Polo Club. She was honest in telling them that their seats were already given to other passengers and the Business Class Section was fully booked. Ms. Chiu might have failed to consider the remedy of offering the First Class seats to other passengers. But, we find no bad faith in her failure to do so, even if that amounted to an exercise of poor judgment.

Neither was the transfer of the Vazquezes effected for some evil or devious purpose. As testified to by Mr. Robson, the First Class Section is better than the Business Class Section in terms of comfort, quality of food, and service from the cabin crew; thus, the difference in fare between the First Class and Business Class at that time was \$250.[9] Needless to state, an upgrading is for the better condition and, definitely, for the benefit of the passenger.

We are not persuaded by the Vazquezes' argument that the overbooking of the Business Class Section constituted bad faith on the part of Cathay. Section 3 of the Economic Regulation No. 7 of the Civil Aeronautics Board, as amended, provides:

Sec 3. Scope. – This regulation shall apply to every Philippine and foreign air carrier with respect to its operation of flights or portions of flights originating from or terminating at, or serving a point within the territory of the Republic of the Philippines insofar as it denies boarding to a passenger on a flight, or portion of a flight inside or outside the Philippines, for which he holds confirmed reserved space. Furthermore, this Regulation is designed to cover only honest mistakes on the part of the carriers and excludes deliberate and willful acts of non-accommodation. Provided, however, that overbooking not exceeding 10% of the seating capacity of the aircraft shall not be considered as a deliberate and willful act of non-accommodation.

It is clear from this section that an overbooking that does not exceed ten percent is not considered deliberate and therefore does not amount to bad faith.[10] Here, while there was admittedly an overbooking of the Business Class, there was no evidence of overbooking of the plane beyond ten percent, and no passenger was ever bumped off or was refused to board the aircraft.

Now we come to the third issue on damages.

The Court of Appeals awarded each of the Vazquezes moral damages in the amount of P250,000. Article 2220 of the Civil Code provides:

Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Although incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.[11] Thus, case law establishes the following requisites for the award of moral damages: (1) there must be an injury clearly sustained by the claimant, whether physical, mental or psychological; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award for damages is predicated on any of the cases stated in Article 2219 of the Civil Code.[12]

Moral damages predicated upon a breach of contract of carriage may only be recoverable in instances where the carrier is guilty of fraud or bad faith or where the mishap resulted in the death of a passenger.[13] Where in breaching the contract of carriage the airline is not shown to have acted fraudulently or in bad faith, 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. In such a case the liability does not include moral and exemplary damages.[14]

In this case, we have ruled that the breach of contract of carriage, which consisted in the involuntary upgrading of the Vazquezes' seat accommodation, was not attended by fraud or bad faith. The Court of Appeals' award of moral damages has, therefore, no leg to stand on.

The deletion of the award for exemplary damages by the Court of Appeals is correct. It is a requisite in the grant of exemplary damages that the act of the offender must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner.[15] Such requisite is absent in this case. Moreover, to be entitled thereto the claimant must first establish his right to moral, temperate, or compensatory damages.[16] Since the Vazquezes are not entitled to any of these damages, the award for exemplary damages has no legal basis. And where the awards for moral and exemplary damages are eliminated, so must the award for attorney's fees.[17]

The most that can be adjudged in favor of the Vazquezes for Cathay's breach of contract is an award for nominal damages under Article 2221 of the Civil Code, which reads as follows:

Article 2221 of the Civil Code provides:

Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

Worth noting is the fact that in Cathay's Memorandum filed with this Court, it prayed only for the deletion of the award for moral damages. It deferred to the Court of Appeals' discretion in awarding nominal damages; thus:

As far as the award of nominal damages is concerned, petitioner respectfully defers to the Honorable Court of Appeals' discretion. Aware as it is that somehow, due to the resistance of respondents-spouses to the normally-appreciated gesture of petitioner to upgrade their accommodations, petitioner may have disturbed the respondents-spouses' wish to be with their companions (who traveled to Hong Kong with them) at the Business Class on their flight to Manila. Petitioner regrets that in its desire to provide the respondents-spouses with additional amenities for the one and one-half (1 1/2) hour flight to Manila, unintended tension ensued.[18]

Nonetheless, considering that the breach was intended to give more benefit and advantage to the Vazquezes by upgrading their Business Class accommodation to First Class because of their valued status as Marco Polo members, we reduce the award for nominal damages to P5,000.

Before writing finis to this decision, we find it well-worth to quote the apt observation of the Court of Appeals

regarding the awards adjudged by the trial court:

We are not amused but alarmed at the lower court's unbelievable alacrity, bordering on the scandalous, to award excessive amounts as damages. In their complaint, appellees asked for P1 million as moral damages but the lower court awarded P4 million; they asked for P500,000.00 as exemplary damages but the lower court cavalierly awarded a whooping P10 million; they asked for P250,000.00 as attorney's fees but were awarded P2 million; they did not ask for nominal damages but were awarded P200,000.00. It is as if the lower court went on a rampage, and why it acted that way is beyond all tests of reason. In fact the excessiveness of the total award invites the suspicion that it was the result of "prejudice or corruption on the part of the trial court."

The presiding judge of the lower court is enjoined to hearken to the Supreme Court's admonition in *Singson vs. CA* (282 SCRA 149 [1997]), where it said:

The well-entrenched principle is that the grant of moral damages depends upon the discretion of the court based on the circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably and scandalously excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court....

and in *Alitalia Airways vs. CA* (187 SCRA 763 [1990]), where it was held:

Nonetheless, we agree with the injunction expressed by the Court of Appeals that passengers must not prey on international airlines for damage awards, like "trophies in a safari." After all neither the social standing nor prestige of the passenger should determine the extent to which he would suffer because of a wrong done, since the dignity affronted in the individual is a quality inherent in him and not conferred by these social indicators. [19]

We adopt as our own this observation of the Court of Appeals.

WHEREFORE, the instant petition is hereby partly GRANTED. The Decision of the Court of Appeals of 24 July 2001 in CA-G.R. CV No. 63339 is hereby MODIFIED, and as modified, the awards for moral damages and attorney's fees are set aside and deleted, and the award for nominal damages is reduced to P5,000.

No pronouncement on costs.

SO ORDERED.

Vitug, Carpio, and Azcuna, JJ., concur.

Ynares-Santiago, J., on leave.

[1] Penned by Judge Escolastico O. Cruz, Jr.

[2] Penned by Associate Justice Wenceslao I. Agnir, Jr., with Associate Justices Salvador J. Valdez, Jr., and Juan Q. Enriquez, Jr., concurring.

[3] 357 SCRA 99 [2001].

[4] Article 1318, Civil Code; *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 301 SCRA 572, 592 [1999].

[5] Webster's Third New International Dictionary 270 (1986).

[6] Black's Law Dictionary 171 (5[th] ed.).

[7] *Strong v. Repide*, 41 Phil. 947, 956 [1909].

[8] *Tan v. Northwest Airlines, Inc.*, 327 SCRA 263, 268 [2000]; *Magat v. Court of Appeals*, 337 SCRA 298, 307

[2000]; *Morris v. Court of Appeals*, 352 SCRA 428, 437 [2001]; *Francisco v. Ferrer*, 353 SCRA 261, 265 [2001].

[9] TSN, 2 April 1988, 37-38; TSN, 17 April 1988, 37.

[10] *United Airlines, Inc. v. Court of Appeals*, supra note 3.

[11] *Citytrust Banking Corporation v. Villanueva*, 361 SCRA 446, 457 [2001].

[12] *Citytrust Banking Corporation v. Villanueva*, supra; *Francisco v. Ferrer*, supra note 8, at 266.

[13] *Cathay Pacific Airways, Ltd. v. Court of Appeals*, 219 SCRA 520, 524 [1993].

[14] *Id.*, 526; *Tan v. Northwest Airlines, Inc.*, supra note 8; *Morris v. Court of Appeals*, supra note 8, at 436.

[15] *Morris v. Court of Appeals*, supra note 8, at 436.

[16] Article 2234, Civil Code.

[17] *Orosa v. Court of Appeals*, 329 SCRA 652,665 [2000]; *Morris v. Court of Appeals*, supra note 8, at 437-438.

[18] *Rollo*, 262.

[19] *Rollo*, 50-51.

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