

KUWAIT AIRWAYS, CORPORATION, PETITIONER, PHILIPPINE AIRLINES, INC., RESPONDENT.*G.R. No. 156087. May 08, 2009*

Ponente: TINGA, J.

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This petition for review[1] filed by the duly designated air carrier of the Kuwait Government assails a decision[2] dated 25 October 2002 of the Makati Regional Trial Court (RTC), Branch 60, ordering Kuwait Airways to pay respondent Philippine Airlines the amount of US\$1,092,690.00, plus interest, attorney's fees, and cost of suit.[3] The principal liability represents the share to Philippine Airlines in the revenues the foreign carrier had earned for the uplift of passengers and cargo in its flights to and from Kuwait and Manila which the foreign carrier committed to remit as a contractual obligation.

On 21 October 1981, Kuwait Airways and Philippine Airlines entered into a Commercial Agreement,[4] annexed to which was a Joint Services Agreement[5] between the two airlines. The Commercial Agreement covered a twice weekly Kuwait Airways flight on the route Kuwait-Bangkok-Manila and vice versa.[6] The agreement stipulated that "only 3rd and 4th freedom traffic rights between Kuwait and Manila and vice versa will be exercised. No 5th freedom traffic rights will be exercised between Manila on the one hand and Bangkok on the other." [7]

The "freedom traffic rights" referred to in the Agreement are the so-called "five freedoms" contained in the International Air Transport Agreement (IATA) signed in Chicago on 7 December 1944. Under the IATA, each contracting State agreed to grant to the other contracting states, five "freedoms of air." Among these freedoms were "[t]he privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses" (Third Freedom); "[t]he privilege to take on passengers, mail or cargo destined for the territory of the State whose nationality the aircraft possesses" (Fourth Freedom); and the right to carry passengers from one's own country to a second country, and from that country to a third country (Fifth Freedom). In essence, the Kuwait Airways flight was authorized to board passengers in Kuwait and deplane them in Manila, as well as to board passengers in Manila and deplane them in Kuwait. At the same time, with the limitation in the exercise of Fifth Freedom traffic rights, the flight was barred from boarding passengers in Bangkok and deplaning them in Manila, or boarding passengers in Manila and deplaning them in Bangkok.

The Commercial Agreement likewise adverted to the annexed Joint Services Agreement covering the Kuwait-Manila (and vice versa) route, which both airlines had entered into "[i]n order to reflect the high level of friendly relationships between [Kuwait Airways] and [Philippine Airlines] and to assist each other to develop traffic on the route." [8] The Agreement likewise stipulated that "[u]ntil such time as [Philippine Airlines] commences its operations to or via Kuwait, the Joint Services shall be operated with the use of [Kuwait Airways] aircraft and crew." [9] By virtue of the Joint Services Agreement, Philippine Airlines was entitled to seat allocations on specified

Kuwait Airways sectors, special prorates for use by Philippine Airlines to specified Kuwait Airways sectors, joint advertising by both carriers in each other's timetables and other general advertising, and mutual assistance to each other with respect to the development of traffic on the route.[10]

Most pertinently for our purposes, under Article 2.1 of the Commercial Agreement, Kuwait Airways obligated itself to "share with Philippine Airlines revenue earned from the uplift of passengers between Kuwait and Manila and vice versa." [11] The succeeding paragraphs of Article 2 stipulated the basis for the shared revenue earned from the uplift of passengers.

The Commercial Agreement and the annexed Joint Services Agreement was subsequently amended by the parties six times between 1981 and 1994. At one point, in 1988, the agreement was amended to authorize Philippine Airlines to operate provisional services, referred to as "ad hoc joint services," on the Manila-Kuwait (and vice versa) route for the period between April to June 1988.[12] In 1989, another amendment was agreed to by the parties, subjecting the uplift of cargo between Kuwait and Manila to the same revenue sharing arrangement as the uplift of passengers.[13] From 1981 until when the present incidents arose in 1995, there seems to have been no serious disagreements relating to the contract.

In April of 1995, delegations from the Philippines and Kuwait (Philippine Panel and Kuwait Panel) met in Kuwait. The talks culminated in a Confidential Memorandum of Understanding (CMU) entered into in Kuwait on 12 April 1995. Among the members of the Philippine Panel were officials of the Civil Aeronautics Board (CAB), the Department of Foreign Affairs (DFA), and four officials of Philippine Airlines: namely its Vice-President for Marketing, Director for International Relations, Legal Counsel, and a Senior International Relations Specialist. Dr. Victor S. Linlingan, the Head of the Delegation and Executive Director of the CAB, signed the CMU in behalf of the Government of the Republic of the Philippines.

The present controversy stems from the fourth paragraph of the CMU, which read:

4. The two delegations agreed that the unilateral operation and the exercise of third and fourth freedom traffic rights shall not be subject to any royalty payment or commercial arrangements, as from the date of signing of this [CMU].

The aeronautical authorities of the two Contracting Parties will bless and encourage any cooperation between the two designated airlines.

The designated airlines shall enter into commercial arrangements for the unilateral exercise of fifth freedom traffic rights. Such arrangements will be subject to the approval of the aeronautical authorities of both contracting parties.[14]

On 15 May 1995, Philippine Airlines received a letter from Dawoud M. Al-Dawoud, the Deputy Marketing & Sales Director for International Affairs of Kuwait Airways, addressed to Ms. Socorro Gonzaga, the Director for International Relations of Philippine Airlines.[15] Both Al-Dawoud and Gonzaga were members of their country's respective delegations that had met in Kuwait the previous month. The letter stated in part:

Regarding the [Kuwait Airways/Philippine Airlines] Commercial Agreement, pursuant to item 4 of the new MOU[,] we will advise our Finance Department that the Agreement concerning royalty for 3rd/4th freedom traffic will be terminated effective April 12, 1995. Although the royalty agreement will no longer be valid, we are very keen on seeing that [Philippine Airlines] continues to enjoy direct participation in the Kuwait/Philippines market through the Block Space Agreement and to that extent we would like to maintain the Jt. Venture (Block Space) Agreement, although with some minor modifications.[16]

To this, Gonzaga replied to Kuwait Airways in behalf of Philippine Airlines in a letter dated 22 June 1995.[17]

Philippine Airlines called attention to Section 6.5 of the Commercial Agreement, which read:

This agreement may be terminated by either party by giving ninety (90) days notice in writing to the other party. However, any termination date must be the last day of any traffic period, e.g., 31st March or 31st October.[18]

Pursuant to this clause, Philippine Airlines acknowledged the 15 May 1995 letter as the requisite notice of termination. However, it also pointed out that the agreement could only be effectively terminated on 31 October 1995, or the last day of the then current traffic period. Thus, Philippine Airlines insisted that the provisions of the Commercial Agreement "shall continue to be enforced until such date." [19]

Subsequently, Philippine Airlines insisted that Kuwait Airways pay it the principal sum of US\$1,092,690.00 as revenue for the uplift of passengers and cargo for the period 13 April 1995 until 28 October 1995.[20] When Kuwait Airways refused to pay, Philippine Airlines filed a Complaint[21] against the foreign airline with the Regional Trial Court (RTC) of Makati City, seeking the payment of the aforementioned sum with interest, attorney's fees, and costs of suit. In its Answer,[22] Kuwait Airways invoked the CMU and argued that its obligations under the Commercial Agreement were terminated as of the effectivity date of the CMU, or on 12 April 1995. Philippine Airlines countered in its Reply that it was "not privy to the [CMU]," [23] though it would eventually concede the existence of the CMU.[24]

An exhaustive trial on the merits was had. On 25 October 2002, the RTC rendered a Decision in favor of Philippine Airlines. The RTC noted that "the only issue to resolve in this case is a legal one," particularly whether Philippine Airlines is entitled to the sums claimed under the terms of the Commercial Agreement. The RTC also considered as a corollary issue whether Kuwait Airways "validly terminated the Commercial Agreement x x x, plaintiff's contention being that [Kuwait Airways] had not complied with the terms of termination provided for in the Commercial Agreement."

The bulk of the RTC's discussion centered on the Philippine Airlines' claim that the execution of the CMU could not prejudice its existing rights under the Commercial Agreement, and that the CMU could only be deemed effective only after 31 October 1995, the purported effectivity date of termination under the Commercial Agreement. The rationale for this position of Philippine Airlines was that the execution of the CMU could not divest its proprietary rights under the Commercial Agreement.

On this crucial point, the RTC agreed with Philippine Airlines. It asserted the obligatory force of contracts between contracting parties as the source of vested rights which may not be modified or impaired. After recasting Kuwait Airway's arguments on this point as being that "the Confidential Memorandum of Understanding is superior to the Commercial Agreement[,], the same having been supposedly executed by virtue of the state's sovereign power," the RTC rejected the argument, holding that "[t]he fact that the [CMU] may have been executed by a Philippine Panel consisting of representative [sic] of CAB, DFA, etc. does not necessarily give rise to the conclusion that the [CMU] is a superior contract[,], for the exercise of the State's sovereign power cannot be arbitrarily and indiscriminately utilized specifically to impair contractual vested rights." [25]

Instead, the RTC held that "[t]he Commercial Agreement and its specific provisions on revenue sharing having been freely and voluntarily agreed upon by the affected parties x x x has the force of law between the parties and they are bound to the fulfillment of what has been expressly stipulated therein." [26] Accordingly, "the provision of the [CMU] must be applied in such a manner that it does not impair the vested rights of the parties."

From this Decision, Kuwait Airways directly filed with this Court the present Petition for Review, raising pure questions of law. Kuwait Airways poses three questions of law for resolution: whether the designated air carrier of the Republic of the Philippines can have better rights than the government itself; whether the bilateral agreement

between the Republic of the Philippines and the State of Kuwait is superior to the Commercial Agreement; and whether the enforcement of the CMU violates the non-impairment clause of the Constitution.

Let us review the factual backdrop to appreciate the underlying context behind the Commercial Agreement and the CMU. The Commercial Agreement was entered into in 1981 at a time when Philippine Airlines had not provided a route to Kuwait while Kuwait Airways had a route to Manila. The Commercial Agreement established a joint commercial arrangement whereby Philippine Airlines and Kuwait Airways were to jointly operate the Manila-Kuwait (and vice versa) route, utilizing the planes and services of Kuwait Airways. Based on the preambular paragraphs of the Joint Services Agreement, as of 1981, Kuwait Airways was interested in establishing a "second frequency" (or an increase of its Manila flights to two) and that "as a result of cordial and frank discussions the concept of a joint service emerged as the most desirable alternative option." [27]

As a result, the revenue-sharing agreement was reached between the two airlines, an agreement which stood as an alternative to both carriers offering competing flights servicing the Manila-Kuwait route. An apparent concession though by Philippine Airlines was the preclusion of the exercise of one of the fundamental air traffic rights, the Fifth Freedom traffic rights with respect to the Manila-Bangkok-Kuwait, thereby precluding the deplaning of passengers from Manila in Bangkok and the boarding in Bangkok of passengers bound for Manila.

The CMU effectively sought to end the 1981 agreement between Philippine Airlines and Kuwait Airways, by precluding any commercial arrangements in the exercise of the Third and Fourth freedom traffic rights. As a result, both Kuwait and the Philippines had the respective right to board passengers from their respective countries and deplane them in the other country, without having to share any revenue or enter into any commercial arrangements to exercise such rights. In exchange, the designated airline or airlines of each country was entitled to operate six frequencies per week in each direction. In addition, the designated airlines were allowed to enter into commercial arrangements for the unilateral exercise of the Fifth Freedom traffic rights.

Another notable point, one not touched upon by the parties or the trial court. It is well known that at the time of the execution of the 1981 agreements, Philippine Airlines was controlled by the Philippine government, with the Government Service Insurance System (GSIS) holding the majority of shares. However, in 1992, Philippine Airlines was privatized, with a private consortium acquiring 67% of the shares of the carrier. [28] Thus, at the time of the signing of the CMU, Philippine Airlines was a private corporation no longer controlled by the Government. This fact is significant. Had Philippine Airlines remained a government owned or controlled corporation at the time the CMU was executed in 1995, its status as such would have bound Philippine Airlines to the commitments made in the document by no less than the Philippine government. However, since Philippine Airlines had already become a private corporation at that juncture, the question of impairment of private rights may come into consideration.

In this regard, we observe that the RTC appears to have been under the impression that the CMU was brought about by machinations of the Philippine Panel and the Kuwait Panel of which Philippine Airlines was not aware or in which it had a part. This impression is not exactly borne by the record since no less than four of the nine members of the Philippine Panel were officials of Philippine Airlines. It should be noted though that one of these officials, Senior International Relations Specialist Arnel Vibar, testified for Philippine Airlines that the airline voiced its opposition to the withdrawal of the commercial agreements under the CMU even months before the signing of the CMU, but the objections were overruled.

Now, the arguments raised in the petition.

One line of argument raised by Kuwait Airways can be dismissed outright. Kuwait Airways points out that the third Whereas clause of the 1981 Commercial Agreement stated: "NOW, it is hereby agreed, subject to and

without prejudice to any existing or future agreements between the Government Authorities of the Contracting Parties hereto ..." That clause, it is argued, evinces acknowledgement that from the beginning Philippine Airlines had known fully well that its rights under the Commercial Agreement would be limited by whatever agreements the Philippine and Kuwait governments may enter into later.

But can a perambulatory clause, which is what the adverted "Whereas" clause is, impose a binding obligation or limitation on the contracting parties? In the case of statutes, while a preamble manifests the reasons for the passage of the statute and aids in the interpretation of any ambiguities within the statute to which it is prefixed, it nonetheless is not an essential part of an act, and it neither enlarges nor confers powers.[29] Philippine Airlines submits that the same holds true as to the preambular whereas clauses of a contract.

What was the intention of the parties in forging the "Whereas" clause and the contexts the parties understood it in 1981? In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered,[30] and in doing so, the courts may consider the relations existing between the parties and the purpose of the contract.[31] In 1981, Philippine Airlines was still owned by the Philippine government. In that context, it is evident that the Philippine government, as owner Philippine Airlines, could enter into agreements with the Kuwait government that would supersede the Commercial Agreement entered into by one of its GOCCs, a scenario that changed once Philippine Airlines fell to private ownership. Philippine Airlines argues before us that the cited preambular stipulation is in fact superfluous, and we can agree in the sense that as of the time of the execution of the Commercial Agreement, it was evident, without need of stipulation, that the Philippine government could enter into an agreement with the Kuwait government that would prejudice the terms of the commercial arrangements between the two airlines. After all, Philippine Airlines then would not have been in a position to challenge the wishes of its then majority stockholder - the Philippine government.

Yet by the time ownership of Philippine Airlines was transferred into private hands, the controverted "Whereas" clause had taken on a different complexion, for it was newly evident that an act of the Philippine government negating the commercial arrangement between the two airlines would infringe the vested rights of a private individual. The original intention of the "Whereas" clause was to reflect what was then a given fact relative to the nationalized status of Philippine Airlines. With the change of ownership of Philippine Airlines, the "Whereas" clause had ceased to be reflective of the current situation as it now stands as a seeming invitation to the Philippine government to erode private vested rights. We would have no problem according the interpretation preferred by Kuwait Airways of the "Whereas" clause had it been still reflective of the original intent to waive vested rights of private persons, rather than the rights in favor of the government by a GOCC. That is not the case, and we are not inclined to give effect to the "Whereas" clause in a manner that does not reflect the original intention of the contracting parties.

Thusly, the proper focus of our deliberation should be whether the execution of the CMU between the Philippine and Kuwait governments could have automatically terminated the Commercial Agreement, as well as the Joint Services Agreement between Philippine Airlines and Kuwait Airways.

Philippine Airlines is the grantee of a legislative franchise authorizing it to provide domestic and international air services.[32] Its initial franchise was granted in 1935 through Act No. 4271, which underwent substantial amendments in 1959 through Republic Act No. 2360.[33] It was granted a new franchise in 1979 through Presidential Decree No. 1590, wherein statutory recognition was accorded to Philippine Airlines as the "national flag carrier." P.D. No. 1590 also recognized that the "ownership, control, and management" of Philippine Airlines had been reacquired by the Government. Section 19 of P.D. No. 1590 authorized Philippine Airlines to contract loans, credits and indebtedness from foreign sources, including foreign governments, with the unconditional guarantee of the Republic of the Philippines.

At the same time, Section 8 of P.D. No. 1590 subjects Philippine Airlines "to the laws of the Philippines now existing or hereafter enacted." After pointing to this provision, Kuwait Airways correlates it to Republic Act (R.A.) No. 776, or the Civil Aeronautics Act of the Philippines, which grants the Civil Aeronautics Board (CAB) "the power to regulate the economic aspect of air transportation, [its] general supervision and regulation of, and jurisdiction and control over, air carriers as well as their property, property rights, equipment, facilities, and franchise." R.A. No. 776 also mandates that the CAB "shall take into consideration the obligation assumed by the Republic of the Philippines in any treaty, convention or agreement with foreign countries on matters affecting civil aviation."

There is no doubt that Philippine Airlines forebears under several regulatory perspectives. First, its authority to operate air services in the Philippines derives from its legislative franchise and is accordingly bound by whatever limitations that are presently in place or may be subsequently incorporated in its franchise. Second, Philippine Airlines is subject to the other laws of the Philippines, including R.A. No. 776, which grants regulatory power to the CAB over the economic aspect of air transportation. Third, there is a very significant public interest in state regulation of air travel in view of considerations of public safety, domestic and international commerce, as well as the fact that air travel necessitates steady traversal of international boundaries, the amity between nations.

At the same time, especially since Philippine Airlines was already under private ownership at the time the CMU was entered into, we cannot presume that any and all commitments made by the Philippine government are unilaterally binding on the carrier even if this comes at the expense of diplomatic embarrassment. While it may have been, prior to the privatization of Philippine Airlines, that the Philippine Government had the authority to bind the airline in its capacity as owner of the airline, under the post-privatization era, however, whatever authority of the Philippine Government to bind Philippine Airlines can only come in its capacity as regulator.

As with all regulatory subjects of the government, infringement of property rights can only avail with due process of law. Legislative regulation of public utilities must not have the effect of depriving an owner of his property without due process of law, nor of confiscating or appropriating private property without due process of law, nor of confiscating or appropriating private property without just compensation, nor of limiting or prescribing irrevocably vested rights or privileges lawfully acquired under a charter or franchise. The power to regulate is subject to these constitutional limits.[34]

We can deem that the CAB has ample power under its organizing charter, to compel Philippine Airlines to terminate whatever commercial agreements the carrier may have. After all, Section 10 of R.A. No. 776 grants to the CAB the "general supervision and regulation of, and jurisdiction and control over, air carriers as well as their property, property rights, equipment, facilities and franchise," and this power correlates to Section 4(c) of the same law, which mandates that the Board consider in the exercise of its functions "the regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic condition in, such transportation, and to improve the relations between, and coordinate transportation by air carriers."

We do not doubt that the CAB, in the exercise of its statutory mandate, has the power to compel Philippine Airlines to immediately terminate its Commercial Agreement with Kuwait Airways pursuant to the CMU. Considering that it is the Philippine government that has the sole authority to charter air policy and negotiate with foreign governments with respect to air traffic rights, the government through the CAB has the indispensable authority to compel local air carriers to comply with government determined policies, even at the expense of economic rights. The airline industry is a sector where government abjuration is least desired.

However, this is not a case where the CAB had duly exercised its regulatory authority over a local airline in order

to implement or further government air policy. What happened instead was an officer of the CAB, acting in behalf not of the Board but of the Philippine government, had committed to a foreign nation the immediate abrogation of Philippine Airlines's commercial agreement with Kuwait Airways. And while we do not question that ability of that member of the CAB to represent the Philippine government in signing the CMU, we do question whether such member could have bound Philippine Airlines in a manner that can be accorded legal recognition by our courts.

Imagine if the President of the Philippines, or one of his alter egos, acceded to the demands of a foreign counterpart and agreed to shut down a particular Filipino business or enterprise, going as far as to co-sign a document averring that the business "will be shut down immediately." Granting that there is basis in Philippine law for the closure of such business, could the mere declaration of the President have the legal effect of immediately rendering business operations illegal? We, as magistrates in a functioning democratic State with a fully fleshed Bill of Rights and a Constitution that emphatically rejects "l'etat cest moi" as the governing philosophy, think not. There is nothing to prevent the Philippine government from utilizing all the proper channels under law to enforce such closure, but unless and until due process is observed, it does not have legal effect in this jurisdiction. Even granting that the "agreement" between the two governments or their representatives creates a binding obligation under international law, it remains incumbent for each contracting party to adhere to its own internal law in the process of complying with its obligations.

The promises made by a Philippine president or his alter egos to a foreign monarch are not transubstantiated by divine right so as to ipso facto render legal rights of private persons obviated. Had Philippine Airlines remained a government-owned or controlled corporation, it would have been bound, as part of the executive branch, to comply with the dictates of the President or his alter egos since the President has executive control and supervision over the components of the executive branch. Yet Philippine Airlines has become, by this time, a private corporation - one that may have labored under the conditions of its legislative franchise that allowed it to conduct air services, but private in character nonetheless. The President or his alter egos do not have the legal capacity to dictate insuperable commands to private persons. And that undesirable trait would be refuted on the President had petitioner's position prevailed, since it is imbued with the presumption that the commitment made to a foreign government becomes operative without complying with the internal processes for the divestiture of private rights.

Herein, we do not see why the Philippine government could not have observed due process of law, should it have desired to see the Commercial Agreement immediately terminated in order to adhere to its apparent commitment to the Kuwait government. The CAB, with its ample regulatory power over the economic affairs of local airliners, could have been called upon to exercise its jurisdiction to make it so. A remedy even exists in civil law-the judicial annulment or reformation of contracts-which could have been availed of to effect the immediate termination of the Commercial Agreement. No such remedy was attempted by the government.

Nor can we presume, simply because Dr. Linlingan, Executive Director of the CAB had signed the CMU in behalf of the Philippine Panel, that he could have done so bearing the authority of the Board, in the exercise of regulatory jurisdiction over Philippine Airlines. For one, the CAB is a collegial body composed of five members,[35] and no one member-even the chairman-can act in behalf of the entire Board. The Board is disabled from performing as such without a quorum. For another, the Executive Director of the CAB is not even a member of the Board, per R.A. No. 776, as amended.

Even granting that the police power of the State, as given flesh in the various laws governing the regulation of the airline industry in the Philippines, may be exercised to impair the vested rights of privately-owned airlines, the deprivation of property still requires due process of law. In order to validate petitioner's position, we will have to

concede that the right to due process may be extinguished by executive command. While we sympathize with petitioner, who reasonably could rely on the commitment made to it by the Philippine government, we still have to respect the segregate identity of the government and that of a private corporation and give due meaning to that segregation, vital as it is to the very notion of democracy.

WHEREFORE, the petition is DENIED. No pronouncement as to costs.

SO ORDERED.

Carpio-Morales,[*] (Acting Chairperson), Velasco, Jr., Leonardo-De Castro,**] and Brion, JJ., concur.

[*] Acting Chairperson.

**] Per Special Order No. 619, Justice Teresita J. Leonardo-De Castro is hereby designated as additional member of the Second Division in lieu of Justice Leonardo A. Quisumbing, who is on official leave

[1] Rollo, pp. 19-61.

[2] Id. at 118-137.

[3] Id. at 136-137.

[4] Records (Vol. 1), p. 5-9.

[5] Id. at 10-16.

[6] Id. at 5. By 1993, the said flight was expanded to thrice weekly. See id. at 35.

[7] Id.

[8] Id. at 8.

[9] Id.

[10] Id.

[11] Id. at 6.

[12] Id. at 21, 24.

[13] Id. at 26.

[14] Id. at 57-58.

[15] Id. at 206.

[16] Id.

[17] Id. at 207.

[18] Id.

[19] Records, p. 207.

[20] Rollo, p. 136; As found by the trial court, the amount was determined in this manner:

For period 12 April 1995 to 31 October 1995: As defendant Kuwait was using three (3) different aircraft types

namely the B747, A310 and A340, plaintiff made an estimate based on the average capacity of the three types of aircraft less plaintiff's average seat allocation, as follows:

KU ACFT

Seat Capacity

PR Seat Allocation

KU net seat capacity

B747

252

75

177

A340

272

50

222

A310

170

50

120

Average

231

58.3 or 60

171

There were a total of seventy one (71) round trip operated flights or one hundred forty two (142) one-way flights and as provided for under the agreement, plaintiff's revenue share is forty-five United States Dollar (\$45.00) per passenger. Computed as such, plaintiff, for the passenger side of Agreement should received the amount of USD1,092,690.00 or PHP28,221,462.00 (exchange rate 1 USD = PHP25.82651) from defendant Kuwait."

[21] Id. at 65-78.

[22] Records (Vol. 1), pp. 47-56.

[23] Records (Vol. 1), pp. 74-75.

[24] See id. at 138-141.

[25] Rollo, p. 134

[26] Id.

[27] Records (Vol. 1), p. 10.

[28] The consortium, known as PR Holdings, consisted of Ascot Holdings And Equities, Inc., Cube Factor Holdings, Inc., Sierra Holdings & Equities, Inc., Pol Holdings, Inc., the Philippine National Bank, the Development Bank of the Philippines, the AFP Retirement and Separation Benefits System, among others. See *Land Bank v. Ascot Holdings*, G.R. No. 175613, 19 October 2007. In January of 1995, the majority stockholder of PR Holdings, Lucio Tan, became Chairman and Chief Executive Officer of Philippine Airlines. See http://www.philippineairlines.com/about_pal/milestones/milestones.jsp.

[29] West's Encyclopedia of American Law (2nd ed., 2008). "Besides, a preamble is really not an integral part of a law. It is merely an introduction to show its intent or purposes. It cannot be the origin of rights and obligations. Where the meaning of a statute is clear and unambiguous, the preamble can neither expand nor restrict its operation, much less prevail over its text." *Echegaray v. Secretary of Justice*, G.R. No. 132601, Resolution dated 19 January 1999; citing *Agpalo*, *Statutory Construction*, Second Edition 1990 & *Martin*, *Statutory Construction*, Sixth Edition, 1984.

[30] CIVIL CODE, Art. 1371.

[31] *Kidwell v. Cartes*, 43 Phil. 953 (1922).

[32] See *Civil Aeronautics Board v. Philippine Airlines, Inc.*, 159-A Phil. 142, 144 (1975).

[33] *Civil Aeronautics Board v. Philippine Airlines, Inc.*, 159-A Phil. 142, 144-145 (1975) .

[34] AGBAYANI, AGUENDO F., *COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES*, p. 560, 1993 ed.; citing *Fisher v. Yangco Steamship Company*, 31 Phil 1, (1915), referring to *Chicago, etc. R. Co. v. Minnesota*, 134 U.S. 418; *Minneapolis Eastern R. Co. v. Minnesota*, 134 U.S. 467, *Chicago, etc. R. Co. v. Wellman*, 143 U.S. 339; *Smyth v. Arnes*, 169 U.S. 466, 524; *Henderson Bridge Co. v. Henderson City*, 173 U.S. 592, 614.

[35] See Sec. 5, R.A. No. 776, as amended.

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