

## JAPAN AIRLINES, PETITIONER, VS. JESUS SIMANGAN, RESPONDENT.

*G.R. No. 170141. April 22, 2008*

Ponente: REYES, R.T., J.

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### REYES, R.T., J.:

WHEN an airline issues a ticket to a passenger confirmed on a particular flight on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.[1]

The power to admit or not an alien into the country is a sovereign act which cannot be interfered with even by Japan Airlines (JAL).[2]

In this petition for review on certiorari,[3] petitioner JAL appeals the: (1) Decision[4] dated May 31, 2005 of the Court of Appeals (CA) ordering it to pay respondent Jesus Simangan moral and exemplary damages; and (2) Resolution[5] of the same court dated September 28, 2005 denying JAL's motion for reconsideration.

### The Facts

In 1991, respondent Jesus Simangan decided to donate a kidney to his ailing cousin, Loreto Simangan, in UCLA School of Medicine in Los Angeles, California, U.S.A. Upon request of UCLA, respondent undertook a series of laboratory tests at the National Kidney Institute in Quezon City to verify whether his blood and tissue type are compatible with Loreto's.[6] Fortunately, said tests proved that respondent's blood and tissue type were well-matched with Loreto's.[7]

Respondent needed to go to the United States to complete his preliminary work-up and donation surgery. Hence, to facilitate respondent's travel to the United States, UCLA wrote a letter to the American Consulate in Manila to arrange for his visa. In due time, respondent was issued an emergency U.S. visa by the American Embassy in Manila.[8]

Having obtained an emergency U.S. visa, respondent purchased a round trip plane ticket from petitioner JAL for US\$1,485.00 and was issued the corresponding boarding pass.[9] He was scheduled to a particular flight bound for Los Angeles, California, U.S.A. via Narita, Japan.[10]

On July 29, 1992, the date of his flight, respondent went to Ninoy Aquino International Airport in the company of several relatives and friends.[11] He was allowed to check-in at JAL's counter.[12] His plane ticket, boarding pass, travel authority and personal articles were subjected to rigid immigration and security routines.[13] After passing through said immigration and security procedures, respondent was allowed by JAL to enter its airplane.[14]

While inside the airplane, JAL's airline crew suspected respondent of carrying a falsified travel document and imputed that he would only use the trip to the United States as a pretext to stay and work in Japan.[15] The stewardess asked respondent to show his travel documents. Shortly after, the stewardess along with a Japanese and a Filipino haughtily ordered him to stand up and leave the plane.[16] Respondent protested, explaining that he

was issued a U.S. visa. Just to allow him to board the plane, he pleaded with JAL to closely monitor his movements when the aircraft stops over in Narita.[17] His pleas were ignored. He was then constrained to go out of the plane.[18] In a nutshell, respondent was bumped off the flight.

Respondent went to JAL's ground office and waited there for three hours. Meanwhile, the plane took off and he was left behind.[19] Afterwards, he was informed that his travel documents were, indeed, in order.[20] Respondent was refunded the cost of his plane ticket less the sum of US\$500.00 which was deducted by JAL.[21] Subsequently, respondent's U.S. visa was cancelled.[22]

Displeased by the turn of events, respondent filed an action for damages against JAL with the Regional Trial Court (RTC) in Valenzuela City, docketed as Civil Case No. 4195-V-93. He claimed he was not able to donate his kidney to Loreto; and that he suffered terrible embarrassment and mental anguish.[23] He prayed that he be awarded P3 million as moral damages, P1.5 million as exemplary damages and P500,000.00 as attorney's fees.[24]

JAL denied the material allegations of the complaint. It argued, among others, that its failure to allow respondent to fly on his scheduled departure was due to "a need for his travel documents to be authenticated by the United States Embassy"[25] because no one from JAL's airport staff had encountered a parole visa before.[26] It posited that the authentication required additional time; that respondent was advised to take the flight the following day, July 30, 1992. JAL alleged that respondent agreed to be rebooked on July 30, 1992.[27]

JAL also lodged a counterclaim anchored on respondent's alleged wrongful institution of the complaint. It prayed for litigation expenses, exemplary damages and attorney's fees.[28]

On September 21, 2000, the RTC presided by Judge Floro P. Alejo rendered its decision in favor of respondent (plaintiff), disposing as follows:

WHEREFORE, judgment is hereby rendered ordering the defendant to pay the plaintiff the amount of P1,000,000.00 as moral damages, the amount of P500,000.00 as exemplary damages and the amount of P250,000.00 as attorney's fees, plus the cost of suit.[29]

The RTC explained:

In summarily and insolently ordering the plaintiff to disembark while the latter was already settled in his assigned seat, the defendant violated the contract of carriage; that when the plaintiff was ordered out of the plane under the pretext that the genuineness of his travel documents would be verified it had caused him embarrassment and besmirched reputation; and that when the plaintiff was finally not allowed to take the flight, he suffered more wounded feelings and social humiliation for which the plaintiff was asking to be awarded moral and exemplary damages as well as attorney's fees.

The reason given by the defendant that what prompted them to investigate the genuineness of the travel documents of the plaintiff was that the plaintiff was not then carrying a regular visa but just a letter does not appear satisfactory. The defendant is engaged in transporting passengers by plane from country to country and is therefore conversant with the travel documents. The defendant should not be allowed to pretend, to the prejudice of the plaintiff not to know that the travel documents of the plaintiff are valid documents to allow him entry in the United States.

The foregoing act of the defendant in ordering the plaintiff to deplane while already settled in his assigned seat clearly demonstrated that the defendant breached its contract of carriage with the plaintiff as passenger in bad faith and as such the plaintiff is entitled to moral and exemplary damages as well as to an award of attorney's fees.[30]

Disagreeing with the RTC judgment, JAL appealed to the CA contending that it is not guilty of breach of contract of carriage, hence, not liable for damages.[31] It posited that it is the one entitled to recover on its counterclaim.[32]

### CA Ruling

In a Decision[33] dated May 31, 2005, the CA affirmed the decision of the RTC with modification in that it lowered the amount of moral and exemplary damages and deleted the award of attorney's fees. The fallo of the CA decision reads:

WHEREFORE, the appealed Decision is AFFIRMED with MODIFICATION. Appellant JAPAN AIR LINES is ordered to pay appellee JESUS SIMANGAN the reduced sums, as follows: Five Hundred Thousand Pesos (P500,000.00) as moral damages, and Two Hundred Fifty Thousand Pesos (P250,000.00) as exemplary damages. The award of attorney's fees is hereby DELETED.[34]

The CA elucidated that since JAL issued to respondent a round trip plane ticket for a lawful consideration, "there arose a perfected contract between them." [35] It found that respondent was "haughtily ejected" [36] by JAL and that "he was certainly embarrassed and humiliated" [37] when, in the presence of other passengers, JAL's airline staff "shouted at him to stand up and arrogantly asked him to produce his travel papers, without the least courtesy every human being is entitled to"; [38] and that "he was compelled to deplane on the grounds that his papers were fake." [39]

The CA ratiocinated:

While the protection of passengers must take precedence over convenience, the implementation of security measures must be attended by basic courtesies.

In fact, breach of the contract of carriage creates against the carrier a presumption of liability, by a simple proof of injury, relieving the injured passenger of the duty to establish the fault of the carrier or of his employees; and placing on the carrier the burden to prove that it was due to an unforeseen event or to force majeure.

That appellee possessed bogus travel documents and that he might stay illegally in Japan are allegations without substantiation. Also, appellant's attempt to rebook appellee the following day was too late and did not relieve it from liability. The damage had been done. Besides, its belated theory of novation, i.e., that appellant's original obligation to carry appellee to Narita and Los Angeles on July 29, 1992 was extinguished by novation when appellant and appellee agreed that appellee will instead take appellant's flight to Narita on the following day, July 30, 1992, deserves little attention. It is inappropriate at bar. Questions not taken up during the trial cannot be raised for the first time on appeal. [40] (Underscoring ours and citations were omitted)

Citing *Ortigas, Jr. v. Lufthansa German Airlines*, [41] the CA declared that "(i)n contracts of common carriage, inattention and lack of care on the part of the carrier resulting in the failure of the passenger to be accommodated in the class contracted for amounts to bad faith or fraud which entitles the passengers to the award of moral damages in accordance with Article 2220 of the Civil Code." [42]

Nevertheless, the CA modified the damages awarded by the RTC. It explained:

Fundamental in the law on damages is that one injured by a breach of a contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as consequence of the defendant's act. Being discretionary on the court, the amount, however, should not be palpably and scandalously excessive.

Here, the trial court's award of P1,000,000.00 as moral damages appears to be overblown. No other proof of

appellee's social standing, profession, financial capabilities was presented except that he was single and a businessman. To Us, the sum of 500,000.00 is just and fair. For, moral damages are emphatically not intended to enrich a complainant at the expense of the defendant. They are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action.

Moreover, the grant of P500,000.00 as exemplary damages needs to be reduced to a reasonable level. The award of exemplary damages is designed to permit the courts to mould behavior that has socially deleterious consequences and its imposition is required by public policy to suppress the wanton acts of the offender. Hence, the sum of P250,000.00 is adequate under the circumstances.

The award of P250,000.00 as attorney's fees lacks factual basis. Appellee was definitely compelled to litigate in protecting his rights and in seeking relief from appellant's misdeeds. Yet, the record is devoid of evidence to show the cost of the services of his counsel and/or the actual expenses incurred in prosecuting his action.[43] (Citations were omitted)

When JAL's motion for reconsideration was denied, it resorted to the petition at bar.

#### Issues

JAL poses the following issues -

##### I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT WAS ENTITLED TO MORAL DAMAGES, CONSIDERING THAT:

A. JAL WAS NOT GUILTY OF BREACH OF CONTRACT.

B. MORAL DAMAGES MAY BE AWARDED IN BREACH OF CONTRACT CASES ONLY WHEN THE BREACH IS ATTENDED BY FRAUD OR BAD FAITH. ASSUMING ARGUENDO THAT JAL WAS GUILTY OF BREACH, JAL DID NOT ACT FRAUDULENTLY OR IN BAD FAITH AS TO ENTITLE RESPONDENT TO MORAL DAMAGES.

C. THE LAW DISTINGUISHES A CONTRACTUAL BREACH EFFECTED IN GOOD FAITH FROM ONE ATTENDED BY BAD FAITH.

##### II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT WAS ENTITLED TO EXEMPLARY DAMAGES CONSIDERING THAT:

A. EXEMPLARY DAMAGES ARE NOT RECOVERABLE IN BREACH OF CONTRACT OF CARRIAGE UNLESS THE CARRIER IS GUILTY OF WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT CONDUCT.

B. ASSUMING ARGUENDO THAT JAL WAS GUILTY OF BREACH, JAL DID NOT ACT IN A WANTON FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER AS TO ENTITLE RESPONDENT TO EXEMPLARY DAMAGES.

##### III.

ASSUMING ARGUENDO THAT RESPONDENT WAS ENTITLED TO AN AWARD OF DAMAGES, WHETHER OR NOT THE COURT OF APPEALS AWARD OF P750,000 IN DAMAGES WAS EXCESSIVE AND UNPRECEDENTED.

#### IV.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT FINDING FOR JAL ON ITS COUNTERCLAIM.[44] (Underscoring Ours)

Basically, there are three (3) issues to resolve here: (1) whether or not JAL is guilty of contract of carriage; (2) whether or not respondent is entitled to moral and exemplary damages; and (3) whether or not JAL is entitled to its counterclaim for damages.

Our Ruling

This Court is not a trier of facts.

Chiefly, the issues are factual. The RTC findings of facts were affirmed by the CA. The CA also gave its nod to the reasoning of the RTC except as to the awards of damages, which were reduced, and that of attorney's fees, which was deleted.

We are not a trier of facts. We generally rely upon, and are bound by, the conclusions on this matter of the lower courts, which are better equipped and have better opportunity to assess the evidence first-hand, including the testimony of the witnesses.[45]

We have repeatedly held that the findings of fact of the CA are final and conclusive and cannot be reviewed on appeal to the Supreme Court provided they are based on substantial evidence.[46] We have no jurisdiction, as a rule, to reverse their findings.[47] Among the exceptions to this rule are: (a) when the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (b) when the inference made is manifestly mistaken, absurd or impossible; (c) where there is grave abuse of discretion; (d) when the judgment is based on a misapprehension of facts; (e) when the findings of facts are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee.[48]

The said exceptions, which are being invoked by JAL, are not found here. There is no indication that the findings of the CA are contrary to the evidence on record or that vital testimonies of JAL's witnesses were disregarded. Neither did the CA commit misapprehension of facts nor did it fail to consider relevant facts. Likewise, there was no grave abuse of discretion in the appreciation of facts or mistaken and absurd inferences.

We thus sustain the coherent facts as established by the courts below, there being no sufficient showing that the said courts committed reversible error in reaching their conclusions.

JAL is guilty of breach of contract of carriage.

That respondent purchased a round trip plane ticket from JAL and was issued the corresponding boarding pass is uncontroverted.[49] His plane ticket, boarding pass, travel authority and personal articles were subjected to rigid immigration and security procedure.[50] After passing through said immigration and security procedure, he was allowed by JAL to enter its airplane to fly to Los Angeles, California, U.S.A. via Narita, Japan.[51] Concisely, there was a contract of carriage between JAL and respondent.

Nevertheless, JAL made respondent get off the plane on his scheduled departure on July 29, 1992. He was not allowed by JAL to fly. JAL thus failed to comply with its obligation under the contract of carriage.

JAL justifies its action by arguing that there was "a need to verify the authenticity of respondent's travel document." [52] It alleged that no one from its airport staff had encountered a parole visa before.[53] It further contended that respondent agreed to fly the next day so that it could first verify his travel document, hence, there

was novation.[54] It maintained that it was not guilty of breach of contract of carriage as respondent was not able to travel to the United States due to his own voluntary desistance.[55]

We cannot agree. JAL did not allow respondent to fly. It informed respondent that there was a need to first check the authenticity of his travel documents with the U.S. Embassy.[56] As admitted by JAL, "the flight could not wait for Mr. Simangan because it was ready to depart." [57]

Since JAL definitely declared that the flight could not wait for respondent, it gave respondent no choice but to be left behind. The latter was unceremoniously bumped off despite his protestations and valid travel documents and notwithstanding his contract of carriage with JAL. Damage had already been done when respondent was offered to fly the next day on July 30, 1992. Said offer did not cure JAL's default.

Considering that respondent was forced to get out of the plane and left behind against his will, he could not have freely consented to be rebooked the next day. In short, he did not agree to the alleged novation. Since novation implies a waiver of the right the creditor had before the novation, such waiver must be express.[58] It cannot be supposed, without clear proof, that respondent had willingly done away with his right to fly on July 29, 1992.

Moreover, the reason behind the bumping off incident, as found by the RTC and CA, was that JAL personnel imputed that respondent would only use the trip to the United States as a pretext to stay and work in Japan.[59]

Apart from the fact that respondent's plane ticket, boarding pass, travel authority and personal articles already passed the rigid immigration and security routines,[60] JAL, as a common carrier, ought to know the kind of valid travel documents respondent carried. As provided in Article 1755 of the New Civil Code: "A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances." [61] Thus, We find untenable JAL's defense of "verification of respondent's documents" in its breach of contract of carriage.

It bears repeating that the power to admit or not an alien into the country is a sovereign act which cannot be interfered with even by JAL.[62]

In an action for breach of contract of carriage, all that is required of plaintiff is to prove the existence of such contract and its non-performance by the carrier through the latter's failure to carry the passenger safely to his destination.[63] Respondent has complied with these twin requisites.

Respondent is entitled to moral and exemplary damages and attorney's fees plus legal interest.

With reference to moral damages, JAL alleged that they are not recoverable in actions ex contractu except only when the breach is attended by fraud or bad faith. It is contended that it did not act fraudulently or in bad faith towards respondent, hence, it may not be held liable for moral damages.

As a general rule, moral damages are not recoverable in actions for damages predicated on a breach of contract for it is not one of the items enumerated under Article 2219 of the Civil Code.[64] As an exception, such damages are recoverable: (1) in cases in which the mishap results in the death of a passenger, as provided in Article 1764, in relation to Article 2206(3) of the Civil Code; and (2) in the cases in which the carrier is guilty of fraud or bad faith, as provided in Article 2220.[65]

The acts committed by JAL against respondent amounts to bad faith. As found by the RTC, JAL breached its contract of carriage with respondent in bad faith. JAL personnel summarily and insolently ordered respondent to disembark while the latter was already settled in his assigned seat. He was ordered out of the plane under the alleged reason that the genuineness of his travel documents should be verified.

These findings of facts were upheld by the CA, to wit:

x x x he was haughtily ejected by appellant. He was certainly embarrassed and humiliated when, in the presence of other passengers, the appellant's airline staff shouted at him to stand up and arrogantly asked him to produce his travel papers, without the least courtesy every human being is entitled to. Then, he was compelled to deplane on the grounds that his papers were fake. His protestation of having been issued a U.S. visa coupled with his plea to appellant to closely monitor his movements when the aircraft stops over in Narita, were ignored. Worse, he was made to wait for many hours at the office of appellant only to be told later that he has valid travel documents.[66] (Underscoring ours)

Clearly, JAL is liable for moral damages. It is firmly settled that moral damages are recoverable in suits predicated on breach of a contract of carriage where it is proved that the carrier was guilty of fraud or bad faith, as in this case. Inattention to and lack of care for the interests of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith which entitles the passenger to an award of moral damages. What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit.[67]

JAL is also liable for exemplary damages as its above-mentioned acts constitute wanton, oppressive and malevolent acts against respondent. Exemplary damages, which are awarded by way of example or correction for the public good, may be recovered in contractual obligations, as in this case, if defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner.[68]

Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in its consequence by creating negative incentives or deterrents against such behaviour. In requiring compliance with the standard of extraordinary diligence, a standard which is, in fact, that of the highest possible degree of diligence, from common carriers and in creating a presumption of negligence against them, the law seeks to compel them to control their employees, to tame their reckless instincts and to force them to take adequate care of human beings and their property.[69]

Neglect or malfeasance of the carrier's employees could give ground for an action for damages. Passengers have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration and are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees.[70]

The assessment of P500,000.00 as moral damages and P100,000.00 as exemplary damages in respondent's favor is, in Our view, reasonable and realistic. This award is reasonably sufficient to indemnify him for the humiliation and embarrassment he suffered. This also serves as an example to discourage the repetition of similar oppressive acts.

With respect to attorney's fees, they may be awarded when defendant's act or omission has compelled plaintiff to litigate with third persons or to incur expenses to protect his interest.[71] The Court, in *Construction Development Corporation of the Philippines v. Estrella*, [72] citing *Traders Royal Bank Employees Union-Independent v. National Labor Relations Commission*, [73] elucidated thus:

There are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of this compensation is the fact of his employment by and his agreement with the client.

In its extraordinary concept, an attorney's fee is an indemnity for damages ordered by the court to be paid by

the losing party in a litigation. The basis of this is any of the cases provided by law where such award can be made, such as those authorized in Article 2208, Civil Code, and is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof.[74]

It was therefore erroneous for the CA to delete the award of attorney's fees on the ground that the record is devoid of evidence to show the cost of the services of respondent's counsel. The amount is actually discretionary upon the Court so long as it passes the test of reasonableness. They may be recovered as actual or compensatory damages when exemplary damages are awarded and whenever the court deems it just and equitable,[75] as in this case.

Considering the factual backdrop of this case, attorney's fees in the amount of P200,000.00 is reasonably modest.

The above liabilities of JAL in the total amount of P800,000.00 earn legal interest pursuant to the Court's ruling in *Construction Development Corporation of the Philippines v. Estrella*,[76] citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,[77] to wit:

Regarding the imposition of legal interest at the rate of 6% from the time of the filing of the complaint, we held in *Eastern Shipping Lines, Inc. v. Court of Appeals*, that when an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for payment of interest in the concept of actual and compensatory damages, subject to the following rules, to wit -

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[78] (Emphasis supplied and citations omitted)

Accordingly, in addition to the said total amount of P800,000.00, JAL is liable to pay respondent legal interest. Pursuant to the above ruling of the Court, the legal interest is 6% and it shall be reckoned from September 21, 2000 when the RTC rendered its judgment. From the time this Decision becomes final and executory, the interest rate shall be 12% until its satisfaction.

JAL is not entitled to its counterclaim for damages.

The counterclaim of JAL in its Answer[79] is a compulsory counterclaim for damages and attorney's fees arising from the filing of the complaint. There is no mention of any other counter claims.

This compulsory counterclaim of JAL arising from the filing of the complaint may not be granted inasmuch as the complaint against it is obviously not malicious or unfounded. It was filed by respondent precisely to claim his

right to damages against JAL. Well-settled is the rule that the commencement of an action does not per se make the action wrongful and subject the action to damages, for the law could not have meant to impose a penalty on the right to litigate.[80]

We reiterate case law that if damages result from a party's exercise of a right, it is *damnum absque injuria*. [81] Lawful acts give rise to no injury. *Walang perhuwisyong maaring idulot ang paggamit sa sariling karapatan*.

During the trial, however, JAL presented a witness who testified that JAL suffered further damages. Allegedly, respondent caused the publications of his subject complaint against JAL in the newspaper for which JAL suffered damages.[82]

Although these additional damages allegedly suffered by JAL were not incorporated in its Answer as they arose subsequent to its filing, JAL's witness was able to testify on the same before the RTC.[83] Hence, although these issues were not raised by the pleadings, they shall be treated in all respects as if they had been raised in the pleadings.

As provided in Section 5, Rule 10 of the Rules of Court, "(w)hen issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings."

Nevertheless, JAL's counterclaim cannot be granted.

JAL is a common carrier. JAL's business is mainly with the traveling public. It invites people to avail themselves of the comforts and advantages it offers.[84] Since JAL deals with the public, its bumping off of respondent without a valid reason naturally drew public attention and generated a public issue.

The publications involved matters about which the public has the right to be informed because they relate to a public issue. This public issue or concern is a legitimate topic of a public comment that may be validly published.

Assuming that respondent, indeed, caused the publication of his complaint, he may not be held liable for damages for it. The constitutional guarantee of freedom of the speech and of the press includes fair commentaries on matters of public interest. This is explained by the Court in *Borjal v. Court of Appeals*, [85] to wit:

To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[86] (Citations omitted and underscoring ours)

Even though JAL is not a public official, the rule on privileged commentaries on matters of public interest applies to it. The privilege applies not only to public officials but extends to a great variety of subjects, and includes matters of public concern, public men, and candidates for office.[87]

Hence, pursuant to the *Borjal* case, there must be an actual malice in order that a discreditable imputation to a public person in his public capacity or to a public official may be actionable. To be considered malicious, the libelous statements must be shown to have been written or published with the knowledge that they are false or in reckless disregard of whether they are false or not.[88]

Considering that the published articles involve matters of public interest and that its expressed opinion is not malicious but based on established facts, the imputations against JAL are not actionable. Therefore, JAL may not claim damages for them.

WHEREFORE, the petition is DENIED. The appealed Decision of the Court of Appeals is AFFIRMED WITH MODIFICATION. As modified, petitioner Japan Airlines is ordered to pay respondent Jesus Simangan the following: (1) P500,000.00 as moral damages; (2) P100,000.00 as exemplary damages; and (3) P200,000.00 as attorney's fees.

The total amount adjudged shall earn legal interest at the rate of 6% per annum from the date of judgment of the Regional Trial Court on September 21, 2000 until the finality of this Decision. From the time this Decision becomes final and executory, the unpaid amount, if any, shall earn legal interest at the rate of 12% per annum until its satisfaction.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] Yu Eng Cho v. Pan American World Airways, Inc., G.R. No. 123560, March 27, 2000, 328 SCRA 717, 735, citing Alitalia Airways v. Court of Appeals, G.R. No. 77011, July 24, 1990, 187 SCRA 763, 770.

[2] Japan Airlines v. Asuncion, G.R. No. 161730, January 28, 2005, 449 SCRA 544, 548.

[3] Under Rule 45 of the 1997 Rules of Civil Procedure. The petition contains a prayer for the issuance of a temporary restraining order and/or preliminary injunction.

[4] Rollo, pp. 58-65. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Salvador J. Valdez, Jr. (now deceased) and Mariano C. Del Castillo, concurring.

[5] Id. at 66-67.

[6] Id. at 126-127.

[7] Id.

[8] Id.

[9] Id. at 59, 128.

[10] Id.

[11] Id. at 127.

[12] Id. at 59.

[13] Id. at 62.

[14] Id. at 59, 128.

[15] Id.

[16] Id.

[17] Id. at 62.

[18] Id. at 62, 127-128.

[19] Id. at 59, 127.

[20] Id.

[21] Id. at 60, 127.

[22] Id.

[23] Id.

[24] Id.

[25] Id. at 85.

[26] Id.

[27] Id.

[28] Id. at 86-87.

[29] Id. at 60, 129.

[30] Id. at 128-129.

[31] Id. at 61.

[32] Id.

[33] Id. at 58-65.

[34] Id. at 65.

[35] Id. at 62.

[36] Id.

[37] Id.

[38] Id.

[39] Id.

[40] Id. at 63.

[41] G.R. No. L-28773, June 30, 1975, 64 SCRA 610.

[42] Rollo, p. 63.

[43] Id. at 64.

[44] Id. at 23-24.

[45] *Malaysian Airline System v. Court of Appeals*, G.R. No. L-78015, December 11, 1987, 156 SCRA 321, 323.

[46] Id., citing *Alsua-Betts v. Court of Appeals*, G.R. Nos. L-46430-31, July 30, 1979, 92 SCRA 332.

[47] *Korean Airlines Co., Ltd. v. Court of Appeals*, G.R. No. L-61418, September 24, 1987, 154 SCRA 211, 213, citing *Tongoy v. Court of Appeals*, G.R. No. L-45645, June 28, 1983, 123 SCRA 99; *Olango v. Court of First*

Instance of Misamis Oriental, G.R. No. L-55864, March 28, 1983, 121 SCRA 338.

[48] Malaysian Airline System v. Court of Appeals, *supra* note 45, at 323-324, citing Ramos v. Pepsi-Cola Bottling Co., G.R. No. L-22533, February 9, 1967, 19 SCRA 289.

[49] Rollo, pp. 59, 128.

[50] *Id.* at 62.

[51] *Id.* at 59, 128.

[52] *Id.* at 25, 85.

[53] *Id.*

[54] *Id.* at 25, 27.

[55] *Id.* at 24.

[56] *Id.* at 85.

[57] *Id.* at 27.

[58] Garcia v. Llamas, G.R. No. 154127, December 8, 2003, 417 SCRA 292, 302, citing Babst v. Court of Appeals, G.R. No. 99398, January 26, 2001, 350 SCRA 341.

[59] Rollo, pp. 59, 128.

[60] *Id.* at 62.

[61] Emphasis ours.

[62] Japan Airlines v. Asuncion, *supra* note 2.

[63] Tolentino, A.M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. V, 1992 ed., p. 299; Aboitiz v. Court of Appeals, G.R. No. 84458, November 6, 1989, 179 SCRA 95, 105.

[64] Calalas v. Court of Appeals, G.R. No. 122039, May 31, 2000, 332 SCRA 356, 365, citing Flores v. Miranda, 105 Phil. 267 (1959).

[65] *Id.*, citing Philippine Rabbit Bus Lines, Inc. v. Esguerra, G.R. No. L-31420, October 23, 1982, 117 SCRA 741; Sabena Belgian World Airlines v. Court of Appeals, G.R. No. 82068, March 31, 1989, 171 SCRA 620; China Airlines, Ltd. v. Intermediate Appellate Court, G.R. No. 73835, January 17, 1989, 169 SCRA 226.

[66] Rollo, p. 62.

[67] Philippine Airlines v. Court of Appeals, G.R. No. 119641, May 17, 1996, 257 SCRA 33, 43.

[68] Victory Liner v. Gammad, G.R. No. 159636, November 25, 2004, 444 SCRA 370, citing Yobido v. Court of Appeals, 346 Phil. 1, 13 (1997).

[69] Mecenas v. Court of Appeals, G.R. No. 88052, December 14, 1989, 180 SCRA 83.

[70] See note 63, citing Zulueta v. Pan-Am Airways, G.R. No. L-28589, February 29, 1972, 43 SCRA 397.

[71] Singson v. Court of Appeals, G.R. No. 119995, November 18, 1997, 282 SCRA 149, 165.

[72] G.R. No. 147791, September 8, 2006, 501 SCRA 228, 243-244.

- [73] G.R. No. 120592, March 14, 1997, 269 SCRA 733.
- [74] Traders Royal Bank Employees Union-Independent v. National Labor Relations Commission, *id.* at 740.
- [75] Vital-Gozon v. Court of Appeals, G.R. No. 129132, July 8, 1998, 292 SCRA 124; Civil Code, Art. 2208.
- [76] *Supra* note 72, at 244-245.
- [77] G.R. No. 97412, July 12, 1994, 234 SCRA 78.
- [78] Eastern Shipping Lines, Inc. v. Court of Appeals, *id.* at 95-97.
- [79] Rollo, pp. 86-87.
- [80] United Coconut Planters Bank v. Basco, G.R. No. 142668, August 31, 2004, 437 SCRA 325, 344.
- [81] *Id.*, citing ABS-CBN Broadcasting Corporation v. Court of Appeals, G.R. No. 128690, January 21, 1999, 301 SCRA 572.
- [82] Rollo, pp. 60, 128.
- [83] *Id.* at 60, 127-128.
- [84] Morris v. Court of Appeals, G.R. No. 127957, February 21, 2001, 352 SCRA 428, 435.
- [85] G.R. No. 126466, January 14, 1999, 301 SCRA 1.
- [86] Borjal v. Court of Appeals, *id.* at 23.
- [87] Baguio Midland Courier v. Court of Appeals, G.R. No. 107566, November 25, 2004, 444 SCRA 28.
- [88] Borjal v. Court of Appeals, *supra* note 85, at 28-29.

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