

SPOUSES FERNANDO AND LOURDES VILORIA, PETITIONERS, VS. CONTINENTAL AIRLINES, INC., RESPONDENT.

G.R. No. 188288. January 16, 2012

Ponente: REYES, J.

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REYES, J.:

This is a petition for review under Rule 45 of the Rules of Court from the January 30, 2009 Decision[1] of the Special Thirteenth Division of the Court of Appeals (CA) in CA-G.R. CV No. 88586 entitled “Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.,” the dispositive portion of which states:

WHEREFORE, the Decision of the Regional Trial Court, Branch 74, dated 03 April 2006, awarding US\$800.00 or its peso equivalent at the time of payment, plus legal rate of interest from 21 July 1997 until fully paid, [P]100,000.00 as moral damages, [P]50,000.00 as exemplary damages, [P]40,000.00 as attorney’s fees and costs of suit to plaintiffs-appellees is hereby REVERSED and SET ASIDE.

Defendant-appellant’s counterclaim is DENIED.

Costs against plaintiffs-appellees.

SO ORDERED.[2]

On April 3, 2006, the Regional Trial Court of Antipolo City, Branch 74 (RTC) rendered a Decision, giving due course to the complaint for sum of money and damages filed by petitioners Fernando Viloria (Fernando) and Lourdes Viloria (Lourdes), collectively called Spouses Viloria, against respondent Continental Airlines, Inc. (CAI). As culled from the records, below are the facts giving rise to such complaint.

On or about July 21, 1997 and while in the United States, Fernando purchased for himself and his wife, Lourdes, two (2) round trip airline tickets from San Diego, California to Newark, New Jersey on board Continental Airlines. Fernando purchased the tickets at US\$400.00 each from a travel agency called “Holiday Travel” and was attended to by a certain Margaret Mager (Mager). According to Spouses Viloria, Fernando agreed to buy the said tickets after Mager informed them that there were no available seats at Amtrak, an intercity passenger train service provider in the United States. Per the tickets, Spouses Viloria were scheduled to leave for Newark on August 13, 1997 and return to San Diego on August 21, 1997.

Subsequently, Fernando requested Mager to reschedule their flight to Newark to an earlier date or August 6, 1997. Mager informed him that flights to Newark via Continental Airlines were already fully booked and offered the alternative of a round trip flight via Frontier Air. Since flying with Frontier Air called for a higher fare of US\$526.00 per passenger and would mean traveling by night, Fernando opted to request for a refund. Mager, however, denied his request as the subject tickets are non-refundable and the only option that Continental Airlines can offer is the re-issuance of new tickets within one (1) year from the date the subject tickets were issued. Fernando decided to reserve two (2) seats with Frontier Air.

As he was having second thoughts on traveling via Frontier Air, Fernando went to the Greyhound Station where

he saw an Amtrak station nearby. Fernando made inquiries and was told that there are seats available and he can travel on Amtrak anytime and any day he pleased. Fernando then purchased two (2) tickets for Washington, D.C.

From Amtrak, Fernando went to Holiday Travel and confronted Mager with the Amtrak tickets, telling her that she had misled them into buying the Continental Airlines tickets by misrepresenting that Amtrak was already fully booked. Fernando reiterated his demand for a refund but Mager was firm in her position that the subject tickets are non-refundable.

Upon returning to the Philippines, Fernando sent a letter to CAI on February 11, 1998, demanding a refund and alleging that Mager had deluded them into purchasing the subject tickets.[3]

In a letter dated February 24, 1998, Continental Micronesia informed Fernando that his complaint had been referred to the Customer Refund Services of Continental Airlines at Houston, Texas.[4]

In a letter dated March 24, 1998, Continental Micronesia denied Fernando's request for a refund and advised him that he may take the subject tickets to any Continental ticketing location for the re-issuance of new tickets within two (2) years from the date they were issued. Continental Micronesia informed Fernando that the subject tickets may be used as a form of payment for the purchase of another Continental ticket, albeit with a re-issuance fee.[5]

On June 17, 1999, Fernando went to Continental's ticketing office at Ayala Avenue, Makati City to have the subject tickets replaced by a single round trip ticket to Los Angeles, California under his name. Therein, Fernando was informed that Lourdes' ticket was non-transferable, thus, cannot be used for the purchase of a ticket in his favor. He was also informed that a round trip ticket to Los Angeles was US\$1,867.40 so he would have to pay what will not be covered by the value of his San Diego to Newark round trip ticket.

In a letter dated June 21, 1999, Fernando demanded for the refund of the subject tickets as he no longer wished to have them replaced. In addition to the dubious circumstances under which the subject tickets were issued, Fernando claimed that CAI's act of charging him with US\$1,867.40 for a round trip ticket to Los Angeles, which other airlines priced at US\$856.00, and refusal to allow him to use Lourdes' ticket, breached its undertaking under its March 24, 1998 letter.[6]

On September 8, 2000, Spouses Vilorio filed a complaint against CAI, praying that CAI be ordered to refund the money they used in the purchase of the subject tickets with legal interest from July 21, 1997 and to pay P1,000,000.00 as moral damages, P500,000.00 as exemplary damages and P250,000.00 as attorney's fees.[7]

CAI interposed the following defenses: (a) Spouses Vilorio have no right to ask for a refund as the subject tickets are non-refundable; (b) Fernando cannot insist on using the ticket in Lourdes' name for the purchase of a round trip ticket to Los Angeles since the same is non-transferable; (c) as Mager is not a CAI employee, CAI is not liable for any of her acts; (d) CAI, its employees and agents did not act in bad faith as to entitle Spouses Vilorio to moral and exemplary damages and attorney's fees. CAI also invoked the following clause printed on the subject tickets:

3. To the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (i) provisions contained in this ticket, (ii) applicable tariffs, (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier), except in transportation between a place in the United States or Canada and any place outside thereof to which tariffs in force in those countries apply.[8]

According to CAI, one of the conditions attached to their contract of carriage is the non-transferability and non-refundability of the subject tickets.

The RTC's Ruling

Following a full-blown trial, the RTC rendered its April 3, 2006 Decision, holding that Spouses Vilorio are entitled to a refund in view of Mager's misrepresentation in obtaining their consent in the purchase of the subject tickets.[9] The relevant portion of the April 3, 2006 Decision states:

Continental Airlines agent Ms. Mager was in bad faith when she was less candid and diligent in presenting to plaintiffs spouses their booking options. Plaintiff Fernando clearly wanted to travel via AMTRAK, but defendant's agent misled him into purchasing Continental Airlines tickets instead on the fraudulent misrepresentation that Amtrak was fully booked. In fact, defendant Airline did not specifically denied (sic) this allegation.

Plainly, plaintiffs spouses, particularly plaintiff Fernando, were tricked into buying Continental Airline tickets on Ms. Mager's misleading misrepresentations. Continental Airlines agent Ms. Mager further relied on and exploited plaintiff Fernando's need and told him that they must book a flight immediately or risk not being able to travel at all on the couple's preferred date. Unfortunately, plaintiffs spouses fell prey to the airline's and its agent's unethical tactics for baiting trusting customers.”[10]

Citing Articles 1868 and 1869 of the Civil Code, the RTC ruled that Mager is CAI's agent, hence, bound by her bad faith and misrepresentation. As far as the RTC is concerned, there is no issue as to whether Mager was CAI's agent in view of CAI's implied recognition of her status as such in its March 24, 1998 letter.

The act of a travel agent or agency being involved here, the following are the pertinent New Civil Code provisions on agency:

Art. 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

Art. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

Agency may be oral, unless the law requires a specific form.

As its very name implies, a travel agency binds itself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. This court takes judicial notice of the common services rendered by travel agencies that represent themselves as such, specifically the reservation and booking of local and foreign tours as well as the issuance of airline tickets for a commission or fee.

The services rendered by Ms. Mager of Holiday Travel agency to the plaintiff spouses on July 21, 1997 were no different from those offered in any other travel agency. Defendant airline impliedly if not expressly acknowledged its principal-agent relationship with Ms. Mager by its offer in the letter dated March 24, 1998 – an obvious attempt to assuage plaintiffs spouses' hurt feelings.[11]

Furthermore, the RTC ruled that CAI acted in bad faith in reneging on its undertaking to replace the subject tickets within two (2) years from their date of issue when it charged Fernando with the amount of US\$1,867.40 for a round trip ticket to Los Angeles and when it refused to allow Fernando to use Lourdes' ticket. Specifically:

Tickets may be reissued for up to two years from the original date of issue. When defendant airline still charged plaintiffs spouses US\$1,867.40 or more than double the then going rate of US\$856.00 for the unused tickets when the same were presented within two (2) years from date of issue, defendant airline exhibited callous treatment of passengers.[12]

The Appellate Court's Ruling

On appeal, the CA reversed the RTC's April 3, 2006 Decision, holding that CAI cannot be held liable for Mager's act in the absence of any proof that a principal-agent relationship existed between CAI and Holiday Travel. According to the CA, Spouses Vilorio, who have the burden of proof to establish the fact of agency, failed to present evidence demonstrating that Holiday Travel is CAI's agent. Furthermore, contrary to Spouses Vilorio's claim, the contractual relationship between Holiday Travel and CAI is not an agency but that of a sale.

Plaintiffs-appellees assert that Mager was a sub-agent of Holiday Travel who was in turn a ticketing agent of Holiday Travel who was in turn a ticketing agent of Continental Airlines. Proceeding from this premise, they contend that Continental Airlines should be held liable for the acts of Mager. The trial court held the same view.

We do not agree. By the contract of agency, a person binds him/herself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it. Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. Agency is never presumed, neither is it created by the mere use of the word in a trade or business name. We have perused the evidence and documents so far presented. We find nothing except bare allegations of plaintiffs-appellees that Mager/Holiday Travel was acting in behalf of Continental Airlines. From all sides of legal prism, the transaction in issue was simply a contract of sale, wherein Holiday Travel buys airline tickets from Continental Airlines and then, through its employees, Mager included, sells it at a premium to clients.[13]

The CA also ruled that refund is not available to Spouses Vilorio as the word "non-refundable" was clearly printed on the face of the subject tickets, which constitute their contract with CAI. Therefore, the grant of their prayer for a refund would violate the proscription against impairment of contracts.

Finally, the CA held that CAI did not act in bad faith when they charged Spouses Vilorio with the higher amount of US\$1,867.40 for a round trip ticket to Los Angeles. According to the CA, there is no compulsion for CAI to charge the lower amount of US\$856.00, which Spouses Vilorio claim to be the fee charged by other airlines. The matter of fixing the prices for its services is CAI's prerogative, which Spouses Vilorio cannot intervene. In particular:

It is within the respective rights of persons owning and/or operating business entities to peg the premium of the services and items which they provide at a price which they deem fit, no matter how expensive or exorbitant said price may seem vis-à-vis those of the competing companies. The Spouses Vilorio may not intervene with the business judgment of Continental Airlines.[14]

The Petitioners' Case

In this Petition, this Court is being asked to review the findings and conclusions of the CA, as the latter's reversal of the RTC's April 3, 2006 Decision allegedly lacks factual and legal bases. Spouses Vilorio claim that CAI acted in bad faith when it required them to pay a higher amount for a round trip ticket to Los Angeles considering CAI's undertaking to re-issue new tickets to them within the period stated in their March 24, 1998 letter. CAI likewise acted in bad faith when it disallowed Fernando to use Lourdes' ticket to purchase a round trip to Los Angeles given that there is nothing in Lourdes' ticket indicating that it is non-transferable. As a common carrier,

it is CAI's duty to inform its passengers of the terms and conditions of their contract and passengers cannot be bound by such terms and conditions which they are not made aware of. Also, the subject contract of carriage is a contract of adhesion; therefore, any ambiguities should be construed against CAI. Notably, the petitioners are no longer questioning the validity of the subject contracts and limited its claim for a refund on CAI's alleged breach of its undertaking in its March 24, 1998 letter.

The Respondent's Case

In its Comment, CAI claimed that Spouses Viloria's allegation of bad faith is negated by its willingness to issue new tickets to them and to credit the value of the subject tickets against the value of the new ticket Fernando requested. CAI argued that Spouses Viloria's sole basis to claim that the price at which CAI was willing to issue the new tickets is unconscionable is a piece of hearsay evidence – an advertisement appearing on a newspaper stating that airfares from Manila to Los Angeles or San Francisco cost US\$818.00.[15] Also, the advertisement pertains to airfares in September 2000 and not to airfares prevailing in June 1999, the time when Fernando asked CAI to apply the value of the subject tickets for the purchase of a new one.[16] CAI likewise argued that it did not undertake to protect Spouses Viloria from any changes or fluctuations in the prices of airline tickets and its only obligation was to apply the value of the subject tickets to the purchase of the newly issued tickets.

With respect to Spouses Viloria's claim that they are not aware of CAI's restrictions on the subject tickets and that the terms and conditions that are printed on them are ambiguous, CAI denies any ambiguity and alleged that its representative informed Fernando that the subject tickets are non-transferable when he applied for the issuance of a new ticket. On the other hand, the word "non-refundable" clearly appears on the face of the subject tickets.

CAI also denies that it is bound by the acts of Holiday Travel and Mager and that no principal-agency relationship exists between them. As an independent contractor, Holiday Travel was without capacity to bind CAI.

Issues

To determine the propriety of disturbing the CA's January 30, 2009 Decision and whether Spouses Viloria have the right to the reliefs they prayed for, this Court deems it necessary to resolve the following issues:

- Does a principal-agent relationship exist between CAI and Holiday Travel?
- Assuming that an agency relationship exists between CAI and Holiday Travel, is CAI bound by the acts of Holiday Travel's agents and employees such as Mager?
- Assuming that CAI is bound by the acts of Holiday Travel's agents and employees, can the representation of Mager as to unavailability of seats at Amtrak be considered fraudulent as to vitiate the consent of Spouse Viloria in the purchase of the subject tickets?
- Is CAI justified in insisting that the subject tickets are non-transferable and non-refundable?
- Is CAI justified in pegging a different price for the round trip ticket to Los Angeles requested by Fernando?
- Alternatively, did CAI act in bad faith or renege its obligation to Spouses Viloria to apply the value of the subject tickets in the purchase of new ones when it refused to allow Fernando to use Lourdes' ticket and in charging a higher price for a round trip ticket to Los Angeles?

This Court's Ruling

I. A principal-agent relationship exists between CAI and Holiday Travel.

With respect to the first issue, which is a question of fact that would require this Court to review and re-examine

the evidence presented by the parties below, this Court takes exception to the general rule that the CA's findings of fact are conclusive upon Us and our jurisdiction is limited to the review of questions of law. It is well-settled to the point of being axiomatic that this Court is authorized to resolve questions of fact if confronted with contrasting factual findings of the trial court and appellate court and if the findings of the CA are contradicted by the evidence on record.[17]

According to the CA, agency is never presumed and that he who alleges that it exists has the burden of proof. Spouses Viloria, on whose shoulders such burden rests, presented evidence that fell short of indubitably demonstrating the existence of such agency.

We disagree. The CA failed to consider undisputed facts, discrediting CAI's denial that Holiday Travel is one of its agents. Furthermore, in erroneously characterizing the contractual relationship between CAI and Holiday Travel as a contract of sale, the CA failed to apply the fundamental civil law principles governing agency and differentiating it from sale.

In *Rallos v. Felix Go Chan & Sons Realty Corporation*,^[18] this Court explained the nature of an agency and spelled out the essential elements thereof:

Out of the above given principles, sprung the creation and acceptance of the relationship of agency whereby one party, called the principal (mandante), authorizes another, called the agent (mandatario), to act for and in his behalf in transactions with third persons. The essential elements of agency are: (1) there is consent, express or implied of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself, and (4) the agent acts within the scope of his authority.

Agency is basically personal, representative, and derivative in nature. The authority of the agent to act emanates from the powers granted to him by his principal; his act is the act of the principal if done within the scope of the authority. *Qui facit per alium facit se*. "He who acts through another acts himself."^[19]

Contrary to the findings of the CA, all the elements of an agency exist in this case. The first and second elements are present as CAI does not deny that it concluded an agreement with Holiday Travel, whereby Holiday Travel would enter into contracts of carriage with third persons on CAI's behalf. The third element is also present as it is undisputed that Holiday Travel merely acted in a representative capacity and it is CAI and not Holiday Travel who is bound by the contracts of carriage entered into by Holiday Travel on its behalf. The fourth element is also present considering that CAI has not made any allegation that Holiday Travel exceeded the authority that was granted to it. In fact, CAI consistently maintains the validity of the contracts of carriage that Holiday Travel executed with Spouses Viloria and that Mager was not guilty of any fraudulent misrepresentation. That CAI admits the authority of Holiday Travel to enter into contracts of carriage on its behalf is easily discernible from its February 24, 1998 and March 24, 1998 letters, where it impliedly recognized the validity of the contracts entered into by Holiday Travel with Spouses Viloria. When Fernando informed CAI that it was Holiday Travel who issued to them the subject tickets, CAI did not deny that Holiday Travel is its authorized agent.

Prior to Spouses Viloria's filing of a complaint against it, CAI never refuted that it gave Holiday Travel the power and authority to conclude contracts of carriage on its behalf. As clearly extant from the records, CAI recognized the validity of the contracts of carriage that Holiday Travel entered into with Spouses Viloria and considered itself bound with Spouses Viloria by the terms and conditions thereof; and this constitutes an unequivocal testament to Holiday Travel's authority to act as its agent. This Court cannot therefore allow CAI to take an altogether different position and deny that Holiday Travel is its agent without condoning or giving imprimatur to whatever damage or prejudice that may result from such denial or retraction to Spouses Viloria, who relied on good faith on CAI's acts in recognition of Holiday Travel's authority. Estoppel is primarily based

on the doctrine of good faith and the avoidance of harm that will befall an innocent party due to its injurious reliance, the failure to apply it in this case would result in gross travesty of justice.[20] Estoppel bars CAI from making such denial.

As categorically provided under Article 1869 of the Civil Code, “[a]gency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.”

Considering that the fundamental hallmarks of an agency are present, this Court finds it rather peculiar that the CA had branded the contractual relationship between CAI and Holiday Travel as one of sale. The distinctions between a sale and an agency are not difficult to discern and this Court, as early as 1970, had already formulated the guidelines that would aid in differentiating the two (2) contracts. In *Commissioner of Internal Revenue v. Constantino*,^[21] this Court extrapolated that the primordial differentiating consideration between the two (2) contracts is the transfer of ownership or title over the property subject of the contract. In an agency, the principal retains ownership and control over the property and the agent merely acts on the principal’s behalf and under his instructions in furtherance of the objectives for which the agency was established. On the other hand, the contract is clearly a sale if the parties intended that the delivery of the property will effect a relinquishment of title, control and ownership in such a way that the recipient may do with the property as he pleases.

Since the company retained ownership of the goods, even as it delivered possession unto the dealer for resale to customers, the price and terms of which were subject to the company’s control, the relationship between the company and the dealer is one of agency, tested under the following criterion:

“The difficulty in distinguishing between contracts of sale and the creation of an agency to sell has led to the establishment of rules by the application of which this difficulty may be solved. The decisions say the transfer of title or agreement to transfer it for a price paid or promised is the essence of sale. If such transfer puts the transferee in the attitude or position of an owner and makes him liable to the transferor as a debtor for the agreed price, and not merely as an agent who must account for the proceeds of a resale, the transaction is a sale; while the essence of an agency to sell is the delivery to an agent, not as his property, but as the property of the principal, who remains the owner and has the right to control sales, fix the price, and terms, demand and receive the proceeds less the agent’s commission upon sales made. 1 *Mechem on Sales*, Sec. 43; 1 *Mechem on Agency*, Sec. 48; *Williston on Sales*, 1; *Tiedeman on Sales*, 1.” (*Salisbury v. Brooks*, 94 SE 117, 118-119)[22]

As to how the CA have arrived at the conclusion that the contract between CAI and Holiday Travel is a sale is certainly confounding, considering that CAI is the one bound by the contracts of carriage embodied by the tickets being sold by Holiday Travel on its behalf. It is undisputed that CAI and not Holiday Travel who is the party to the contracts of carriage executed by Holiday Travel with third persons who desire to travel via Continental Airlines, and this conclusively indicates the existence of a principal-agent relationship. That the principal is bound by all the obligations contracted by the agent within the scope of the authority granted to him is clearly provided under Article 1910 of the Civil Code and this constitutes the very notion of agency.

II. In actions based on quasi-delict, a principal can only be held liable for the tort committed by its agent’s employees if it has been established by preponderance of evidence that the principal was also at fault or negligent or that the principal exercise control and supervision over them.

Considering that Holiday Travel is CAI’s agent, does it necessarily follow that CAI is liable for the fault or negligence of Holiday Travel’s employees? Citing *China Air Lines, Ltd. v. Court of Appeals, et al.*,^[23] CAI argues that it cannot be held liable for the actions of the employee of its ticketing agent in the absence of an

employer-employee relationship.

An examination of this Court's pronouncements in *China Air Lines* will reveal that an airline company is not completely exonerated from any liability for the tort committed by its agent's employees. A prior determination of the nature of the passenger's cause of action is necessary. If the passenger's cause of action against the airline company is premised on culpa aquiliana or quasi-delict for a tort committed by the employee of the airline company's agent, there must be an independent showing that the airline company was at fault or negligent or has contributed to the negligence or tortuous conduct committed by the employee of its agent. The mere fact that the employee of the airline company's agent has committed a tort is not sufficient to hold the airline company liable. There is no vinculum juris between the airline company and its agent's employees and the contractual relationship between the airline company and its agent does not operate to create a juridical tie between the airline company and its agent's employees. Article 2180 of the Civil Code does not make the principal vicariously liable for the tort committed by its agent's employees and the principal-agency relationship per se does not make the principal a party to such tort; hence, the need to prove the principal's own fault or negligence.

On the other hand, if the passenger's cause of action for damages against the airline company is based on contractual breach or culpa contractual, it is not necessary that there be evidence of the airline company's fault or negligence. As this Court previously stated in *China Air Lines* and reiterated in *Air France vs. Gillego*,^[24] "in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier."

Spouses Vilorio's cause of action on the basis of Mager's alleged fraudulent misrepresentation is clearly one of tort or quasi-delict, there being no pre-existing contractual relationship between them. Therefore, it was incumbent upon Spouses Vilorio to prove that CAI was equally at fault.

However, the records are devoid of any evidence by which CAI's alleged liability can be substantiated. Apart from their claim that CAI must be held liable for Mager's supposed fraud because Holiday Travel is CAI's agent, Spouses Vilorio did not present evidence that CAI was a party or had contributed to Mager's complained act either by instructing or authorizing Holiday Travel and Mager to issue the said misrepresentation.

It may seem unjust at first glance that CAI would consider Spouses Vilorio bound by the terms and conditions of the subject contracts, which Mager entered into with them on CAI's behalf, in order to deny Spouses Vilorio's request for a refund or Fernando's use of Lourdes' ticket for the re-issuance of a new one, and simultaneously claim that they are not bound by Mager's supposed misrepresentation for purposes of avoiding Spouses Vilorio's claim for damages and maintaining the validity of the subject contracts. It may likewise be argued that CAI cannot deny liability as it benefited from Mager's acts, which were performed in compliance with Holiday Travel's obligations as CAI's agent.

However, a person's vicarious liability is anchored on his possession of control, whether absolute or limited, on the tortfeasor. Without such control, there is nothing which could justify extending the liability to a person other than the one who committed the tort. As this Court explained in *Cangco v. Manila Railroad Co.*:^[25]

With respect to extra-contractual obligation arising from negligence, whether of act or omission, it is competent for the legislature to elect — and our Legislature has so elected — to limit such liability to cases in which the person upon whom such an obligation is imposed is morally culpable or, on the contrary, for reasons of public policy, to extend that liability, without regard to the lack of moral culpability, so as to include responsibility for the negligence of those persons whose acts or omissions are imputable, by a legal fiction, to others who are in a position to exercise an absolute or limited control over them. The legislature which adopted our Civil Code has elected to limit extra-contractual liability — with certain well-defined exceptions — to cases

in which moral culpability can be directly imputed to the persons to be charged. This moral responsibility may consist in having failed to exercise due care in one's own acts, or in having failed to exercise due care in the selection and control of one's agent or servants, or in the control of persons who, by reasons of their status, occupy a position of dependency with respect to the person made liable for their conduct.[26] (emphasis supplied)

It is incumbent upon Spouses Vilorio to prove that CAI exercised control or supervision over Mager by preponderant evidence. The existence of control or supervision cannot be presumed and CAI is under no obligation to prove its denial or nugatory assertion. Citing *Belen v. Belen*,[27] this Court ruled in *Jayne v. Apostol*,[28] that:

In *Belen v. Belen*, this Court ruled that it was enough for defendant to deny an alleged employment relationship. The defendant is under no obligation to prove the negative averment. This Court said:

“It is an old and well-settled rule of the courts that the burden of proving the action is upon the plaintiff, and that if he fails satisfactorily to show the facts upon which he bases his claim, the defendant is under no obligation to prove his exceptions. This [rule] is in harmony with the provisions of Section 297 of the Code of Civil Procedure holding that each party must prove his own affirmative allegations, etc.”[29] (citations omitted)

Therefore, without a modicum of evidence that CAI exercised control over Holiday Travel’s employees or that CAI was equally at fault, no liability can be imposed on CAI for Mager’s supposed misrepresentation.

III. Even on the assumption that CAI may be held liable for the acts of Mager, still, Spouses Vilorio are not entitled to a refund. Mager’s statement cannot be considered a causal fraud that would justify the annulment of the subject contracts that would oblige CAI to indemnify Spouses Vilorio and return the money they paid for the subject tickets.

Article 1390, in relation to Article 1391 of the Civil Code, provides that if the consent of the contracting parties was obtained through fraud, the contract is considered voidable and may be annulled within four (4) years from the time of the discovery of the fraud. Once a contract is annulled, the parties are obliged under Article 1398 of the same Code to restore to each other the things subject matter of the contract, including their fruits and interest.

On the basis of the foregoing and given the allegation of Spouses Vilorio that Fernando’s consent to the subject contracts was supposedly secured by Mager through fraudulent means, it is plainly apparent that their demand for a refund is tantamount to seeking for an annulment of the subject contracts on the ground of vitiated consent.

Whether the subject contracts are annulable, this Court is required to determine whether Mager’s alleged misrepresentation constitutes causal fraud. Similar to the dispute on the existence of an agency, whether fraud attended the execution of a contract is factual in nature and this Court, as discussed above, may scrutinize the records if the findings of the CA are contrary to those of the RTC.

Under Article 1338 of the Civil Code, there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. In order that fraud may vitiate consent, it must be the causal (*dolo causante*), not merely the incidental (*dolo incidente*), inducement to the making of the contract.[30] In *Samson v. Court of Appeals*,[31] causal fraud was defined as “a deception employed by one party prior to or simultaneous to the contract in order to secure the consent of the other.”[32]

Also, fraud must be serious and its existence must be established by clear and convincing evidence. As ruled by

this Court in *Sierra v. Hon. Court of Appeals, et al.*,^[33] mere preponderance of evidence is not adequate:

Fraud must also be discounted, for according to the Civil Code:

Art. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which without them, he would not have agreed to.

Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

To quote Tolentino again, the “misrepresentation constituting the fraud must be established by full, clear, and convincing evidence, and not merely by a preponderance thereof. The deceit must be serious. The fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error; that which cannot deceive a prudent person cannot be a ground for nullity. The circumstances of each case should be considered, taking into account the personal conditions of the victim.”^[34]

After meticulously poring over the records, this Court finds that the fraud alleged by Spouses Viloría has not been satisfactorily established as causal in nature to warrant the annulment of the subject contracts. In fact, Spouses Viloría failed to prove by clear and convincing evidence that Mager’s statement was fraudulent. Specifically, Spouses Viloría failed to prove that (a) there were indeed available seats at Amtrak for a trip to New Jersey on August 13, 1997 at the time they spoke with Mager on July 21, 1997; (b) Mager knew about this; and (c) that she purposely informed them otherwise.

This Court finds the only proof of Mager’s alleged fraud, which is Fernando’s testimony that an Amtrak had assured him of the perennial availability of seats at Amtrak, to be wanting. As CAI correctly pointed out and as Fernando admitted, it was possible that during the intervening period of three (3) weeks from the time Fernando purchased the subject tickets to the time he talked to said Amtrak employee, other passengers may have cancelled their bookings and reservations with Amtrak, making it possible for Amtrak to accommodate them. Indeed, the existence of fraud cannot be proved by mere speculations and conjectures. Fraud is never lightly inferred; it is good faith that is. Under the Rules of Court, it is presumed that “a person is innocent of crime or wrong” and that “private transactions have been fair and regular.”^[35] Spouses Viloría failed to overcome this presumption.

IV. Assuming the contrary, Spouses Viloría are nevertheless deemed to have ratified the subject contracts.

Even assuming that Mager’s representation is causal fraud, the subject contracts have been impliedly ratified when Spouses Viloría decided to exercise their right to use the subject tickets for the purchase of new ones. Under Article 1392 of the Civil Code, “ratification extinguishes the action to annul a voidable contract.”

Ratification of a voidable contract is defined under Article 1393 of the Civil Code as follows:

Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

Implied ratification may take diverse forms, such as by silence or acquiescence; by acts showing approval or adoption of the contract; or by acceptance and retention of benefits flowing therefrom.^[36]

Simultaneous with their demand for a refund on the ground of Fernando’s vitiated consent, Spouses Viloría likewise asked for a refund based on CAI’s supposed bad faith in renegeing on its undertaking to replace the subject tickets with a round trip ticket from Manila to Los Angeles.

In doing so, Spouses Vilorias are actually asking for a rescission of the subject contracts based on contractual breach. Resolution, the action referred to in Article 1191, is based on the defendant's breach of faith, a violation of the reciprocity between the parties^[37] and in *Solar Harvest, Inc. v. Davao Corrugated Carton Corporation*,^[38] this Court ruled that a claim for a reimbursement in view of the other party's failure to comply with his obligations under the contract is one for rescission or resolution.

However, annulment under Article 1390 of the Civil Code and rescission under Article 1191 are two (2) inconsistent remedies. In resolution, all the elements to make the contract valid are present; in annulment, one of the essential elements to a formation of a contract, which is consent, is absent. In resolution, the defect is in the consummation stage of the contract when the parties are in the process of performing their respective obligations; in annulment, the defect is already present at the time of the negotiation and perfection stages of the contract. Accordingly, by pursuing the remedy of rescission under Article 1191, the Vilorias had impliedly admitted the validity of the subject contracts, forfeiting their right to demand their annulment. A party cannot rely on the contract and claim rights or obligations under it and at the same time impugn its existence or validity. Indeed, litigants are enjoined from taking inconsistent positions.^[39]

V. Contracts cannot be rescinded
for a slight or casual breach.

CAI cannot insist on the non-transferability
of the subject tickets.

Considering that the subject contracts are not annulable on the ground of vitiated consent, the next question is: "Do Spouses Vilorias have the right to rescind the contract on the ground of CAI's supposed breach of its undertaking to issue new tickets upon surrender of the subject tickets?"

Article 1191, as presently worded, states:

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 1388 and the Mortgage Law.

According to Spouses Vilorias, CAI acted in bad faith and breached the subject contracts when it refused to apply the value of Lourdes' ticket for Fernando's purchase of a round trip ticket to Los Angeles and in requiring him to pay an amount higher than the price fixed by other airline companies.

In its March 24, 1998 letter, CAI stated that "non-refundable tickets may be used as a form of payment toward the purchase of another Continental ticket for \$75.00, per ticket, reissue fee (\$50.00, per ticket, for tickets purchased prior to October 30, 1997)."

Clearly, there is nothing in the above-quoted section of CAI's letter from which the restriction on the non-transferability of the subject tickets can be inferred. In fact, the words used by CAI in its letter supports the position of Spouses Vilorias, that each of them can use the ticket under their name for the purchase of new tickets whether for themselves or for some other person.

Moreover, as CAI admitted, it was only when Fernando had expressed his interest to use the subject tickets for the purchase of a round trip ticket between Manila and Los Angeles that he was informed that he cannot use the ticket in Lourdes' name as payment.

Contrary to CAI's claim, that the subject tickets are non-transferable cannot be implied from a plain reading of the provision printed on the subject tickets stating that "[t]o the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (a) provisions contained in this ticket, x x x (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier) x x x." As a common carrier whose business is imbued with public interest, the exercise of extraordinary diligence requires CAI to inform Spouses Vilorio, or all of its passengers for that matter, of all the terms and conditions governing their contract of carriage. CAI is proscribed from taking advantage of any ambiguity in the contract of carriage to impute knowledge on its passengers of and demand compliance with a certain condition or undertaking that is not clearly stipulated. Since the prohibition on transferability is not written on the face of the subject tickets and CAI failed to inform Spouses Vilorio thereof, CAI cannot refuse to apply the value of Lourdes' ticket as payment for Fernando's purchase of a new ticket.

CAI's refusal to accept Lourdes' ticket for the purchase of a new ticket for Fernando is only a casual breach.

Nonetheless, the right to rescind a contract for non-performance of its stipulations is not absolute. The general rule is that rescission of a contract will not be permitted for a slight or casual breach, but only for such substantial and fundamental violations as would defeat the very object of the parties in making the agreement.[40] Whether a breach is substantial is largely determined by the attendant circumstances.[41]

While CAI's refusal to allow Fernando to use the value of Lourdes' ticket as payment for the purchase of a new ticket is unjustified as the non-transferability of the subject tickets was not clearly stipulated, it cannot, however be considered substantial. The endorsability of the subject tickets is not an essential part of the underlying contracts and CAI's failure to comply is not essential to its fulfillment of its undertaking to issue new tickets upon Spouses Vilorio's surrender of the subject tickets. This Court takes note of CAI's willingness to perform its principal obligation and this is to apply the price of the ticket in Fernando's name to the price of the round trip ticket between Manila and Los Angeles. CAI was likewise willing to accept the ticket in Lourdes' name as full or partial payment as the case may be for the purchase of any ticket, albeit under her name and for her exclusive use. In other words, CAI's willingness to comply with its undertaking under its March 24, 1998 cannot be doubted, albeit tainted with its erroneous insistence that Lourdes' ticket is non-transferable.

Moreover, Spouses Vilorio's demand for rescission cannot prosper as CAI cannot be solely faulted for the fact that their agreement failed to consummate and no new ticket was issued to Fernando. Spouses Vilorio have no right to insist that a single round trip ticket between Manila and Los Angeles should be priced at around \$856.00 and refuse to pay the difference between the price of the subject tickets and the amount fixed by CAI. The petitioners failed to allege, much less prove, that CAI had obliged itself to issue to them tickets for any flight anywhere in the world upon their surrender of the subject tickets. In its March 24, 1998 letter, it was clearly stated that "[n]on-refundable tickets may be used as a form of payment toward the purchase of another Continental ticket"[42] and there is nothing in it suggesting that CAI had obliged itself to protect Spouses Vilorio from any fluctuation in the prices of tickets or that the surrender of the subject tickets will be considered as full payment for any ticket that the petitioners intend to buy regardless of actual price and destination. The CA was correct in holding that it is CAI's right and exclusive prerogative to fix the prices for its services and it may not be compelled to observe and maintain the prices of other airline companies.[43]

The conflict as to the endorsability of the subject tickets is an altogether different matter, which does not preclude CAI from fixing the price of a round trip ticket between Manila and Los Angeles in an amount it deems proper and which does not provide Spouses Viloria an excuse not to pay such price, albeit subject to a reduction coming from the value of the subject tickets. It cannot be denied that Spouses Viloria had the concomitant obligation to pay whatever is not covered by the value of the subject tickets whether or not the subject tickets are transferable or not.

There is also no showing that Spouses Viloria were discriminated against in bad faith by being charged with a higher rate. The only evidence the petitioners presented to prove that the price of a round trip ticket between Manila and Los Angeles at that time was only \$856.00 is a newspaper advertisement for another airline company, which is inadmissible for being “hearsay evidence, twice removed.” Newspaper clippings are hearsay if they were offered for the purpose of proving the truth of the matter alleged. As ruled in *Feria v. Court of Appeals*,^[44]

[N]ewspaper articles amount to “hearsay evidence, twice removed” and are therefore not only inadmissible but without any probative value at all whether objected to or not, unless offered for a purpose other than proving the truth of the matter asserted. In this case, the news article is admissible only as evidence that such publication does exist with the tenor of the news therein stated.^[45] (citations omitted)

The records of this case demonstrate that both parties were equally in default; hence, none of them can seek judicial redress for the cancellation or resolution of the subject contracts and they are therefore bound to their respective obligations thereunder. As the 1st sentence of Article 1192 provides:

Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages. (emphasis supplied)

Therefore, CAI’s liability for damages for its refusal to accept Lourdes’ ticket for the purchase of Fernando’s round trip ticket is offset by Spouses Viloria’s liability for their refusal to pay the amount, which is not covered by the subject tickets. Moreover, the contract between them remains, hence, CAI is duty bound to issue new tickets for a destination chosen by Spouses Viloria upon their surrender of the subject tickets and Spouses Viloria are obliged to pay whatever amount is not covered by the value of the subject tickets.

This Court made a similar ruling in *Central Bank of the Philippines v. Court of Appeals*.^[46] Thus:

Since both parties were in default in the performance of their respective reciprocal obligations, that is, Island Savings Bank failed to comply with its obligation to furnish the entire loan and Sulpicio M. Tolentino failed to comply with his obligation to pay his P17,000.00 debt within 3 years as stipulated, they are both liable for damages.

Article 1192 of the Civil Code provides that in case both parties have committed a breach of their reciprocal obligations, the liability of the first infractor shall be equitably tempered by the courts. WE rule that the liability of Island Savings Bank for damages in not furnishing the entire loan is offset by the liability of Sulpicio M. Tolentino for damages, in the form of penalties and surcharges, for not paying his overdue P17,000.00 debt. x x x.^[47]

Another consideration that militates against the propriety of holding CAI liable for moral damages is the absence of a showing that the latter acted fraudulently and in bad faith. Article 2220 of the Civil Code requires evidence of bad faith and fraud and moral damages are generally not recoverable in culpa contractual except when bad faith had been proven.^[48] The award of exemplary damages is likewise not warranted. Apart from the requirement that the defendant acted in a wanton, oppressive and malevolent manner, the claimant must prove his entitlement to moral damages.^[49]

WHEREFORE, premises considered, the instant Petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, Reyes, and Bernabe, JJ.,[*] concur.

[*]Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012.

[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr., concurring; rollo, pp. 42-54.

[2] Id. at 53.

[3] Id. at 64.

[4] Id. at 65.

[5] Id. at 67.

[6] Id. at 68.

[7] Id. at 69-76.

[8] Id. at 80.

[9] Id. at 77-85.

[10] Id. at 84.

[11] Id. at 83.

[12] Id. at 84.

[13] Id. at 50-51.

[14] Id. at 52.

[15] Id. at 214.

[16] Id. at 215.

[17] See *Heirs of JoseLim v. Lim*, G.R. No. 172690, March 3, 2010, 614 SCRA 141, 147; *Ontimare, Jr. v. Spouses Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

[18] 171 Phil 222 (1978).

[19] Id. at 226-227, citing Articles 1868 and 1881, New Civil Code; 11 *Manresa* 422-423; 4 *Sanchez Roman* 478, 2[nd] Ed.; 25 *Scaevola*, 243, 262; Tolentino, Comments, Civil Code of the Philippines, p.340, vol. 5, 1959 Ed., *Columbia University Club v. Higgins*, D.C.N.Y., 23 f. Supp. 572, 574; *Valentine Oil Co. v. Young*, 109 P. 2d 180, 185; 74 C.J.S. 4; *Valentine Oil Co. v. Powers*, 59 N.W. 2d 160, 163, 157 Neb. 87; *Purnell v. City of Florence*, 175 So. 417, 27 Ala. App. 516; *Stroman Motor Co. v. Brown*; 243 P. 133, 126 Ok. 36.

[20] *Philippine Airlines, Inc. v. CA*, 325 Phil 303, 323 (1996).

[21] G.R. No. L-25926, February 27, 1970, 31 SCRA 779.

- [22] Id. at 785.
- [23] 264 Phil 15 (1990).
- [24] G.R. No. 165266, December 15, 2010, 638 SCRA 472.
- [25] 38 Phil 768 (1918).
- [26] Id. at 775-776.
- [27] 13 Phil 202 (1909).
- [28] G.R. No. 163609, November 27, 2008, 572 SCRA 41.
- [29] Id. at 51-52.
- [30] See *Tongson v. Emergency Pawnshop Bula, Inc.*, G.R. No. 167874, 15 January 2010, 610 SCRA 150, 159, citing *Woodhouse v. Halili*, 93 Phil 526, 537 (1953).
- [31] G.R. No. 108245, November 25, 1994, 238 SCRA 397.
- [32] Id. at 404.
- [33] G.R. No. 90270, July 24, 1992, 211 SCRA 785.
- [34] Id. at 793, citing Tolentino, *Commentaries on the Civil Code*, Vol. 4, pp. 508, 514.
- [35] *Trinidad v. Intermediate Appellate Court*, G.R. No. 65922, December 3, 1991, 204 SCRA 524, 530, citing Rule 131, Sections 5(a) and 5(p).
- [36] *Acuña v. Batac Producers Coop. Mktg. Ass.*, 126 Phil 896, 902 (1967).
- [37] *Heirs of Sofia Quirong, v. Development Bank of the Philippines*, G.R. No. 173441, December 3, 2009, 606 SCRA 543, 550.
- [38] G.R. No. 176868, July 26, 2010, 625 SCRA 448.
- [39] *Gonzales v. Climax Mining Ltd.*, 492 Phil 682, 697 (2005).
- [40] See *Barredo v. Leaño*, G.R. No. 156627, June 4, 2004, 431 SCRA 106, 115.
- [41] See *Central Bank of the Philippines v. Spouses Bichara*, 385 Phil 553, 565 (2000), citing *Vermen Realty Development Corporation v. Court of Appeals, et al.*, 224 SCRA 549, 555.
- [42] *Rollo*, p. 67.
- [43] Id. at 52.
- [44] 382 Phil 412 (2000).
- [45] Id. at 423.
- [46] 223 Phil 266 (1985).
- [47] Id. at 276-277.
- [48] See *Yobido v. Court of Appeals*, 346 Phil 1, 13 (1997).
- [49] *Mahinay v. Atty. Velasquez, Jr.*, 464 Phil 146, 150 (2004).

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