

**FERNANDO LOPEZ, MARIA J. LOPEZ, ALFREDO MONTELIBANO, JR.
AND MILAGROS L. MONTELIBANO, PLAINTIFFS AND APPELLANTS,
VS. PAN AMERICAN WORLD AIRWAYS, DEFENDANT AND
APPELLANT.**

G.R. No. 22415. March 30, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Plaintiffs and defendant appeal from a decision of the Court of First Instance of Rizal. Since the value in controversy exceeds P200,000 the appeals were taken directly to this Court upon all questions involved (Sec. 17, par. 3[5], Judiciary Act).

Stated briefly the facts not in dispute are as follows. Reservations for first class accommodations in Flight No. 2 of Pan American World Airways—hereinafter otherwise called PAN AM—from Tokyo to San Francisco on May 24, 1960 were made with PAN AM on March 29, 1960, by "Your Travel Guide" agency, specifically, by Delfin Faustino, for then Senator Fernando Lopez, his wife Maria J. Lopez, his son-in-law Alfredo Montelibano, Jr., and his daughter Mrs. Alfredo Montelibano, Jr. (Milagros Lopez Montelibano). PAN AM's San Francisco head office confirmed the reservations on March 31, 1960.

First class tickets for the abovementioned flight were subsequently issued by PAN AM on May 21 and 23, 1960, in favor of Senator Lopez and his party. The total fare of P9,444 for all of them was fully paid before the tickets were issued.

As scheduled Senator Lopez and party left Manila by Northwest Airlines on May 24, 1960, arriving in Tokyo at 5:30 P.M. of that day. As soon as they arrived Senator Lopez requested Minister Busuego of the Philippine Embassy to contact PAN AM's Tokyo office regarding their first class accommodations for that evening's flight. For the given reason that the first class seats therein were all booked up, however, PAN AM's Tokyo office informed Minister Busuego that PAN AM could not accommodate Senator Lopez and party in that trip as first class passengers. Senator Lopez thereupon gave their first class tickets to Minister Busuego for him to show the same to PAN AM's Tokyo office, but the latter firmly reiterated that there was no accommodation for them in the first class, stating that they could not go in that flight unless they took the tourist class therein.

Due to pressing engagements awaiting Senator Lopez and his wife in the United States—he had to attend a business conference in San Francisco the next day and she had to undergo a medical check-up in Mayo Clinic, Rochester, Minnesota, on May 28, 1960 and needed three days rest before that in San Francisco—Senator Lopez and party were constrained to take PAN AM's flight from Tokyo to San Francisco as tourist passengers. Senator Lopez however made it clear, as indicated in his letter to PAN AM's Tokyo office on that date (Exh. A), that they did so "under protest" and without prejudice to further action against the airline.

Suit for damages was thereafter filed by Senator Lopez and party against PAN AM on June 2, 1960 in the Court

of First Instance of Rizal. Alleging breach of contracts in bad faith by defendant, plaintiffs asked for P500,000 actual and moral damages, P100,000 exemplary damages, P25,000 attorney's fees, plus costs. PAN AM filed its answer on June 22, 1960, asserting that its failure to provide first class accommodations to plaintiffs was due to honest error of its employees. It also interposed a counterclaim for attorney's fees of P25,000.

Subsequently, further pleadings were filed, thus: plaintiffs' answer to the counterclaim, on July 25, 1960; plaintiffs' reply attached to motion for its admittance, on December 2, 1961; defendant's supplemental answer, on March 8, 1962; plaintiffs' reply to supplemental answer, on March 10, 1962; and defendant's amended supplemental answer, on July 10, 1962.

After trial—which took twenty-two (22) days ranging from November 25, 1960 to January 5, 1963—the Court of First Instance rendered its decision on November 13, 1963, the dispositive portion stating:

"IN VIEW OF THE FOREGOING CONSIDERATION, judgment is hereby rendered in favor of the plaintiffs and against the defendant, which is accordingly ordered to pay the plaintiffs the following: (a) P100,000.00 as moral damages; (b) P20,000.00 as exemplary damages; (c) P25,000.00 as attorney's fees, and the costs of this action.

"So ordered."

Plaintiffs, however, on November 21, 1963, moved for reconsideration of said judgment, asking that moral damages be increased to P400,000 and that six per cent (6%) interest per annum on the amount of the award be granted. And defendant opposed the same. Acting thereon the trial court issued an order on December 14, 1963, reconsidering the dispositive part of its decision to read as follows:

"IN VIEW OF THE FOREGOING CONSIDERATION, judgment is hereby rendered in favor of the plaintiffs and against the defendant, which is accordingly ordered to pay the plaintiffs the following: (a) P150,000.00 as moral damages; (b) P25,000.00 as exemplary damages; with legal interest on both from the date of the filing of the complaint until paid; and (c) P25,000.00 as attorney's fees; and the costs of this action.

"So ordered."

It is from said judgment, as thus reconsidered, that both parties have appealed.

Defendant, as stated, has from the start admitted that it breached its contracts with plaintiffs to provide them with first class accommodations in its Tokyo-San Francisco flight of May 24, 1960. In its appeal, however, it takes issue with the finding of the court a quo that it acted in bad faith in the breach of said contracts. Plaintiffs, on the other hand, raise questions on the amount of damages awarded in their favor, seeking that the same be increased to a total of P650,000.

Anent the issue of bad faith the records show the respective contentions of the parties as follows.

According to plaintiffs, defendant acted in bad faith because it deliberately refused to comply with its contract to provide first class accommodations to plaintiffs, out of racial prejudice against Orientals. And in support of its contention that what was done to plaintiffs is an oft-repeated practice of defendant, evidence was adduced relating to two previous instances of alleged racial discrimination by defendant against Filipinos in favor of "white" passengers. Said previous occasions are what allegedly happened to (1) Benito Jalbuena and (2) Cenon S. Cervantes and his wife.

And from plaintiffs' evidence this is what allegedly happened. Jalbuena bought a first class ticket from PAN AM on April 13, 1960; he confirmed it on April 15, 1960 as to the Tokyo-Hongkong flight of April 20, 1960; PAN AM similarly confirmed it on April 20, 1960. At the airport, he and another Oriental—Mr. Tung - were asked to

step aside while other passengers—including "white" passengers—boarded PAN AM's plane. Then PAN AM officials told them that one of them had to stay behind. Since Mr. Tung was going all the way to London, Jalbuena was chosen to be left behind. PAN AM's officials could only explain by saying there was "some mistake". Jalbuena thereafter wrote PAN AM to protest the incident (Exh. B).

As to Cenon S. Cervantes it would appear that in Flight No. 6 of PAN AM on September 29, 1958 from Bangkok to Hongkong, he and his wife had to take tourist class, although they had first class tickets, which they had previously confirmed, because their seats in first class were given to "passengers from London."

Against the foregoing, however, defendant's evidence would seek to establish its theory of honest mistake, thus:

The first class reservations of Senator Lopez and party were made on March 29, 1960 together with those of four members of the Rufino family, for a total of eight (8) seats, as shown in their joint reservation card (Exh. 1). Subsequently, on March 30, 1960, two other Rufinos secured reservations and were given a separate reservation card (Exh. 2). A new reservation card consisting of two pages (Exhs. 3 and 4) was then made for the original group of eight passengers, namely, Senator Lopez and party and four members of the Rufino family, the first page (Exh. 3) referring to 2 Lopezes, 2 Montelibanos and 1 Rufino and the second page (Exh. 4) referring to 3 Rufinos. On April 18, 1960 "Your Travel Guide" agency cancelled the reservations of the Rufinos. A telex message was thereupon sent on that date to PAN AM's head office at San Francisco by Mariano Herranz, PAN AM's reservations employee at its office in Escolta, Manila. (Annex A-Acker's to Exh. 6) In said message, however, Herranz mistakenly cancelled all the seats that had been reserved, that is, including those of Senator Lopez and party.

The next day—April 19—Herranz discovered his mistake, upon seeing the reservation card newly prepared by his co-employee Pedro Asensi for Senator Lopez and party to the exclusion of the Rufinos (Exh. 5). It was then that Herranz sent another telex wire to the San Francisco head office, stating his error and asking for the reinstatement of the four (4) first class seats reserved for Senator Lopez and party (Annex A-Velasco's to Exh. 6). San Francisco head office replied on April 22, 1960 that Senator Lopez and party are waitlisted and that said office is unable to reinstate them (Annex B-Velasco's to Exh. 6).

Since the flight involved was still more than a month away and confident that reinstatement would be made, Herranz forgot the matter and told no one about it except his co-employee, either Armando Davila or Pedro Asensi or both of them (Tsn., 123-124, 127, Nov. 17, 1961).

Subsequently, on April 27, 1960, Armando Davila, PAN AM's reservations employee working in the same Escolta office as Herranz, phoned PAN AM's ticket sellers at its other office in the Manila Hotel, and confirmed the reservations of Senator Lopez and party.

PAN AM's reservations supervisor, Alberto Jose, discovered Herranz's mistake after "Your Travel Guide" phoned on May 18, 1960 to state that Senator Lopez and party were going to depart as scheduled. Accordingly, Jose sent a telex wire on that date to PAN AM's head office at San Francisco to report the error and asked said office to continue holding the reservations of Senator Lopez and party (Annex B-Acker's to Exh. 6). Said message was reiterated by Jose in his telex wire of May 19, 1960 (Annex C-Acker's to Exh. 6). San Francisco head office replied on May 19, 1960 that it regrets being unable to confirm Senator Lopez and party for the reason that the flight was solidly booked (Exh. 7). Jose sent a third telex wire on May 20, 1960 addressed to PAN AM's offices at San Francisco, New York (Idlewild Airport), Tokyo and Hongkong, asking all-out assistance towards restoring the cancelled spaces and for report of cancellations at their end (Annex D-Acker's to Exh. 6). San Francisco head office reiterated on May 20, 1960 that it could not reinstate the spaces and referred Jose to the Tokyo and Hongkong offices (Exh. 8). Also on May 20, the Tokyo office of PAN AM wired Jose stating it will do

everything possible (Exh. 9).

Expecting that some cancellations of bookings would be made before the flight time, Jose decided to withhold from Senator Lopez and party, or their agent, the information that their reservations had been cancelled.

Armando Davila having previously confirmed Senator Lopez and party's first class reservations to PAN AM's ticket sellers at its Manila Hotel office, the latter sold and issued in their favor the corresponding first class tickets on the 21st and 23rd of May, 1960.

From the foregoing evidence of defendant it is in effect admitted that defendant—through its agents—first cancelled plaintiffs' reservations by mistake and thereafter deliberately and intentionally withheld from plaintiffs or their travel agent the fact of said cancellation, letting them go on believing that their first class reservations stood valid and confirmed. In so misleading plaintiffs into purchasing first class tickets in the conviction that they had confirmed reservations for the same, when in fact they had none, defendant wilfully and knowingly placed itself into the position of having to breach its aforesaid contracts with plaintiffs should there be no last-minute cancellation by other passengers before flight time, as it turned out in this case. Such actuation of defendant may indeed have been prompted by nothing more than the promotion of its self-interest in holding on to Senator Lopez and party as passengers in its flight and foreclosing on their chances to seek the services of other airlines that may have been able to afford them first class accommodations. All the time, in legal contemplation such conduct already amounts to action in bad faith. For bad faith means a breach of a known duty through some motive of interest or ill will (*Spiegel v. Beacon Participations* 8 NE 2d 895, 907). As stated in *Kamm v. Flink*, 113 N.J.L. 582, 175 A. 62, 99 A.L.R. 1, 7: "Self-enrichment or fraternal interest, and not personal ill will, may well have been the motive; but it is malice nevertheless."

As of May 18, 1960 defendant's reservations supervisor Alberto Jose knew that plaintiffs' reservations had been cancelled. As of May 20 he knew that the San Francisco head office stated with finality that it could not reinstate plaintiffs' cancelled reservations. And yet said reservations supervisor made the "decision"—to use his own word—to withhold the information from the plaintiffs. Said Alberto Jose in his testimony:

"Q—Why did you not notify them?

"A—Well, you see, sir, in my fifteen (15) years of service with the air lines business my experience is that even if the flights are solidly booked months in advance, usually the flight departs with plenty of empty seats both on the first class and tourist class. This is due to late cancellation of passengers, or because passengers do not show up in the airport, and it was our hope others come in from another flight and, therefore, are delayed and, therefore, missed their connections. This experience of mine, coupled with that wire from Tokyo that they would do everything possible prompted me to withhold the information, but unfortunately, instead of the first class seat that I was hoping for and which I anticipated only the tourists class was open on which Senator and Mrs. Lopez, Mr. and Mrs. Montelibano were accommodated. Well, I fully realize now the gravity of my decision in not advising Senator and Mrs. Lopez, Mr. and Mrs. Montelibano nor their agents about the erroneous cancellation and for which I would like them to know that I am very sorry.

* * * * *

"Q—So it was not your duty to notify Sen. Lopez and parties that their reservations had been cancelled since May 18, 1960?

"A—As I said before it was my duty. It was my duty but as I said again with respect to that duty I have the power to make a decision or use my discretion and judgment whether I should go ahead and tell the passenger about the cancellation." (Tsn., pp. 17-19, 28-29, March 15, 1962)

At the time plaintiffs bought their tickets, defendant, therefore, in breach of its known duty, made plaintiffs

believe that their reservations had not been cancelled. An additional indication of this is the fact that upon the face of the two tickets of record, namely, the ticket issued to Alfredo Montelibano, Jr. on May 21, 1960 (Exh. 22) and that issued to Mrs. Alfredo Montelibano, Jr., on May 23, 1960 (Exh. 23), the reservation status is stated as "OK". Such wilful non-disclosure of the cancellation or pretense that the reservations for plaintiffs stood—and not simply the erroneous cancellation itself—is the factor to which is attributable the breach of the resulting contracts. And, as above-stated, in this respect defendant clearly acted in bad faith.

As if to further emphasize its bad faith on the matter, defendant subsequently promoted the employee who cancelled plaintiffs' reservations and told them nothing about it. The record shows that said employee—Mariano Herranz—was not subjected to investigation and suspension by defendant but instead was given a reward in the form of an increase of salary in June of the following year (Tsn., 86-88, Nov. 20, 1961).

At any rate, granting all the mistakes advanced by the defendant, there would at least be negligence so gross and reckless as to amount to malice or bad faith (*Fores vs. Miranda*, 105 Phil. 266; *Necesito vs. Paras*, 104 Phil. 75). Firstly, notwithstanding the entries in the reservation cards (Exhs. 1 & 3) that the reservations cancelled are those of the Rufinos only, Herranz made the mistake, after reading said entries, of sending a wire cancelling all the reservations, including those of Senator Lopez and party (Tsn., pp. 103-108, Nov. 17, 1961). Secondly, after sending a wire to San Francisco head office on April 19, 1960 stating his error and asking for reinstatement, Herranz simply forgot about the matter. Notwithstanding the reply of San Francisco head office on April 22, 1960 that it cannot reinstate Senator Lopez and party (Annex B-Velasco's to Exh. 6), it was assumed and taken for granted that reinstatement would be made. Thirdly, Armando Davila confirmed plaintiffs' reservations in a phone call on April 27, 1960 to defendant's ticket sellers, when at the time it appeared in plaintiffs' reservation card (Exh. 5) that they were only waitlisted passengers. Fourthly, defendant's ticket sellers issued plaintiffs' tickets on May 21 and 23, 1960, without first checking their reservations just before issuing said tickets. And, finally, no one among defendant's agents notified Senator Lopez and party that their reservations had been cancelled, a precaution that could have averted their entering with defendant into contracts that the latter had already placed beyond its power to perform.

Accordingly, there being a clear admission in defendant's evidence of facts amounting to bad faith on its part in regard to the breach of its contracts with plaintiffs, it becomes unnecessary to further discuss the evidence adduced by plaintiffs to establish defendant's bad faith. For what is admitted in the course of the trial does not need to be proved (Sec. 2, Rules 129, Rules of Court).

Addressing ourselves now to the question of damages, it is well to state at the outset these rules and principles. First, moral damages are recoverable in breach of contracts where the defendant acted fraudulently or in bad faith (Art. 2220, New Civil Code). Second, in addition to moral damages, exemplary or corrective damages may be imposed by way of example or correction for the public good, in breach of contract where the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner (Articles 2229, 2232, New Civil Code). And, third, a written contract for an attorney's services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable (Sec. 24, Rule 138, Rules of Court).

First, then, as to moral damages. As a proximate result of defendant's breach in bad faith of its contracts with plaintiffs, the latter suffered social humiliation, wounded feelings, serious anxiety and mental anguish. For plaintiffs were travelling with first class tickets issued by defendant and yet they were given only the tourist class. At stop-overs, they were expected to be among the first-class passengers by those awaiting to welcome them, only to be found among the tourist passengers. It may not be humiliating to travel as tourist passengers; it is humiliating to be compelled to travel as such, contrary to what is rightfully to be expected from the contractual undertaking.

Senator Lopez was then Senate President Pro Tempore. International carriers like defendant know the prestige of such an office. For the Senate is not only the Upper Chamber of the Philippine Congress, but the nation's treaty-ratifying body. It may also be mentioned that in his aforesaid office Senator Lopez was in a position to preside in impeachment cases should the Senate sit as Impeachment Tribunal. And he was former Vice-President of the Philippines. Senator Lopez was going to the United States to attend a private business conference of the Binalbagan-Isabela Sugar Company; but his aforesaid rank and position were by no means left behind, and in fact he had a second engagement awaiting him in the United States; a banquet tendered by Filipino friends in his honor as Senate President Pro Tempore (Tsn., pp. 14-15, Nov. 25, 1960). For the moral damages sustained by him, therefore, an award of P100,000.00 is appropriate.

Mrs. Maria J. Lopez, as wife of Senator Lopez, shared his prestige and therefore his humiliation. In addition, she suffered physical discomfort during the 13-hour trip (5 hours from Tokyo to Honolulu and 8 hours from Honolulu to San Francisco). Although Senator Lopez stated that "she was quite well" (Tsn., p. 22, Nov. 25, 1960) - he obviously meant relatively well, since the rest of his statement is that two months before, she was attacked by severe flu and lost 10 pounds of weight and that she was advised by Dr. Sison to go to the United States as soon as possible for medical check-up and relaxation (Ibid.). In fact, Senator Lopez stated, as shown a few pages after in the transcript of his testimony, that Mrs. Lopez was sick when she left the Philippines:

"A—Well, my wife really felt very bad during the entire trip from Tokyo to San Francisco. In the first place, she was sick when we left the Philippines, and then with that discomfort which she[experienced] or suffered during that evening, it was her worst experience. I myself, who was not sick, could not sleep because of the discomfort." (Tsn., pp. 27-28, Nov. 25, 1960)

It is not hard to see that in her condition then a physical discomfort sustained for thirteen hours may well be considered a physical suffering. And even without regard to the noise and trepidation inside the plane—which defendant contends, upon the strength of expert testimony, to be practically the same in first class and tourist class—the fact that the seating spaces in the tourist class are quite narrower than in first class, there being six seats to a row in the former as against four to a row in the latter, and that in tourist class there is very little space for reclining in view of the closer distance between rows (Tsn., p. 24, Nov. 25, 1960), will suffice to show that the aforesaid passenger indeed experienced physical suffering during the trip. Added to this, of course, was the painful thought that she was deprived by defendant—after having paid for and expected the same—of the most suitable place for her, the first class, where evidently the best of everything would have been given her, the best seat, service, food and treatment. Such difference in comfort between first class and tourist class is too obvious to be recounted, is in fact the reason for the former's existence, and is recognized by the airline in charging a higher fare for it and by the passengers in paying said higher rate. Accordingly, considering the totality of her suffering and humiliation, an award to Mrs. Maria J. Lopez of P50,000.00 for moral damages will be reasonable.

Mr. and Mrs. Alfredo Montelibano, Jr., were travelling as immediate members of the family of Senator Lopez. They formed part of the Senator's party as shown also by the reservation cards of PAN AM. As such they likewise shared his prestige and humiliation. Although defendant contends that a few weeks before the flight they had asked their reservations to be changed from first class to tourist class—which did not materialize due to alleged full booking in the tourist class—the same does not mean they suffered no shame in having to take tourist class during the flight. For by that time they had already been made to pay for first class seats and therefore to expect first class accommodations. As stated, it is one thing to take the tourist class by free choice; a far different thing to be compelled to take it notwithstanding having paid for first class seats. Plaintiffs-appellants now ask P37,500.00 each for the two but we note that in their motion for reconsideration filed in the court a quo, they were satisfied with P25,000.00 each for said persons. (Record on Appeal, p. 102) For their social humiliation, therefore, the award to them of P25,000.00 each is reasonable.

The rationale behind exemplary or corrective damages is, as the name implies, to provide an example or correction for public good. Defendant having breached its contracts in bad faith, the court, as stated earlier, may award exemplary damages in addition to moral damages (Articles 2229, 2232, New Civil Code).

In view of its nature, it should be imposed in such an amount as to sufficiently and effectively deter similar breach of contracts in the future by defendant or other airlines. In this light, we find it just to award P75,000.00 as exemplary or corrective damages.

Now, as to attorney's fees, the record shows a written contract of services executed on June 1, 1960 (Exh. F) whereunder plaintiffs-appellants engaged the services of their counsel—Atty. Vicente J. Francisco—and agreed to pay the sum of P25,000.00 as attorney's fees upon the termination of the case in the Court of First Instance, and an additional sum of P25,000.00 in the event the case is appealed to the Supreme Court. As said earlier, a written contract for attorney's services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable. A consideration of the subject matter of the present controversy, of the professional standing of the attorney for plaintiffs-appellants, and of the extent of the services rendered by him, shows that said amount provided for in the written agreement is reasonable. Said lawyer—whose prominence in the legal profession is well known—studied the case, prepared and filed the complaint, conferred with witnesses, analyzed documentary evidence, personally appeared at the trial of the case in twenty-two days, during a period of three years, prepared four sets of cross-interrogatories for deposition taking, prepared several memoranda and the motion for reconsideration, filed a joint record on appeal with defendant, filed a brief for plaintiffs as appellants consisting of 45 printed pages and a brief for plaintiffs as appellees consisting of 265 printed pages. And we are further convinced of its reasonableness because defendant's counsel likewise valued at P50,000.00 the proper compensation for his services rendered to defendant in the trial court and on appeal.

In concluding, let it be stressed that the amount of damages awarded in this appeal has been determined by adequately considering the official, political, social, and financial standing of the offended parties on one hand, and the business and financial position of the offender on the other (*Domingding vs. Ng*, 55 Off. Gaz. 10). And further considering the present rate of exchange and the terms at which the amount of damages awarded would approximately be in U.S. dollars, this Court is all the more of the view that said award is proper and reasonable.

WHEREFORE, the judgment appealed from is hereby modified so as to award in favor of plaintiffs and against defendant, the following: (1) P200,000.00 as moral damages, divided among plaintiffs, thus: P100,000.00 for Senate President Pro Tempore Fernando Lopez; P50,000.00 for his wife Maria J. Lopez; P25,000.00 for his son-in-law Alfredo Montelibano, Jr.; and P25,000.00 for his daughter Mrs. Alfredo Montelibano, Jr; (2) P75,000.00 as exemplary or corrective damages; (3) interest at the legal rate of 6% per annum on the moral and exemplary damages afore-stated, from December 14, 1963, the date of the amended decision of the court a quo, until said damages are fully paid; (4) P50,000.00 as attorney's fees; and (5) the costs. Counterclaim dismissed.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Regala, Makalintal, Zaldivar, and Sanchez, JJ., concur.

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