

**PAN AMERICAN WORLD AIRWAYS, INC., PETITIONER, VS.
INTERMEDIATE APPELLATE COURT, RENE V. PANGAN, SOTANG
BASTOS PRODUCTIONS AND ARCHER PRODUCTIONS, RESPONDENTS.**

G.R. No. 70462. August 11, 1988

Ponente: CORTES, J.

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CORTES, J.:

Before the Court is a petition filed by an international air carrier seeking to limit its liability for lost baggage, containing promotional and advertising materials for films to be exhibited in Guam and the U.S.A., clutch bags, barong tagalogs and personal belongings, to the amount specified in the airline ticket absent a declaration of a higher valuation and the payment of additional charges.

The undisputed facts of the case, as found by the trial court and adopted by the appellate court, are as follows:

On April 25, 1978, plaintiff Rene V. Pangan, president and general manager of the plaintiffs Sotang Bastos and Archer Productions, while in San Francisco, California and Primo Quesada of Prime Films, San Francisco, California, entered into an agreement (Exh. A) whereby the former, for and in consideration of the amount of US \$2,500.00 per picture, bound himself to supply the latter with three films, 'Ang Mabait, Masungit at ang Pangit', 'Big Happening with Chikiting and Iking', and 'Kambal Dragon' for exhibition in the United States. It was also their agreement that plaintiffs would provide the necessary promotional and advertising materials for said films on or before May 30, 1978.

On his way home to the Philippines, plaintiff Pangan visited Guam where he contacted Leo Slutchnick of the Hafa Adai Organization. Plaintiff Pangan likewise entered into a verbal agreement with Slutchnick for the exhibition of two of the films above-mentioned at the Hafa Adai Theater in Guam on May 30, 1978 for the consideration of P7,000.00 per picture (p. 11, tsn, June 20, 1979). Plaintiff Pangan undertook to provide the necessary promotional and advertising materials for said films on or before the exhibition date on May 30, 1978.

By virtue of the above agreements, plaintiff Pangan caused the preparation of the requisite promotional handbills and still pictures for which he paid the total sum of P12,900.00 (Exhs. B, B-1, C and C-1). Likewise in preparation for his trip abroad to comply with his contracts, plaintiff Pangan purchased fourteen clutch bags, four capiz lamps and four barong tagalog, with a total value of P4,400.00 (Exhs. D, D-1, E, and F).

On May 18, 1978, plaintiff Pangan obtained from defendant Pan Am's Manila Office through the Your Travel Guide, an economy class airplane ticket with No. 0269207406324 (Exh. G) for passage from Manila to Guam on defendant's Flight No. 842 of May 27, 1978, upon payment by said plaintiff of the regular fare. The Your Travel Guide is a tour and travel office owned and managed by plaintiff's witness Mila de la Rama.

On May 27, 1978, two hours before departure time, plaintiff Pangan was at the defendant's ticket counter at the Manila International Airport and presented his ticket and checked in his two luggages, for which he was given baggage claim tickets Nos. 963633 and 963649 (Exhs. H and H-1). The two luggages contained the promotional

and advertising materials, the clutch bags, barong tagalog and his personal belongings. Subsequently, Pangan was informed that his name was not in the manifest and so he could not take Flight No. 842 in the economy class. Since there was no space in the economy class, plaintiff Pangan took the first class because he wanted to be on time in Guam to comply with his commitment, paying an additional sum of \$112.00.

When plaintiff Pangan arrived in Guam on the date of May 27, 1978, his two luggages did not arrive with his flight, as a consequence of which his agreements with Slutchnick and Quesada for the exhibition of the films in Guam and in the United States were cancelled (Exh. L). Thereafter, he filed a written claim (Exh. J) for his missing luggages.

Upon arrival in the Philippines, Pangan contacted his lawyer, who made the necessary representations to protest as to the treatment which he received from the employees of the defendant and the loss of his two luggages (Exh. M, O, Q, S, and T). Defendant Pan Am assured plaintiff Pangan that his grievances would be investigated and given its immediate consideration (Exhs. N, P and R). Due to the defendant's failure to communicate with Pangan about the action taken on his protests, the present complaint was filed by the plaintiff. (Pages 4-7, Record on Appeal). [Rollo, pp. 27-29.]

On the basis of these facts, the Court of First Instance found petitioner liable and rendered judgment as follows:

(1)

Ordering defendant Pan American World Airways, Inc. to pay all the plaintiffs the sum of P83,000.00, for actual damages, with interest thereon at the rate of 14% per annum from December 6, 1978, when the complaint was filed, until the same is fully paid, plus the further sum of P10,000.00 as attorney's fees;

(2)

Ordering defendant Pan American World Airways, Inc. to pay plaintiff Rene V. Pangan the sum of P8,123.34, for additional actual damages, with interest thereon at the rate of 14% per annum from December 6, 1978, until the same is fully paid;

(3)

Dismissing the counterclaim interposed by defendant Pan American World Airways, Inc.; and

(4)

Ordering defendant Pan American World Airways, Inc. to pay the costs of suit. [Rollo, pp. 106-107.]

On appeal, the then Intermediate Appellate Court affirmed the trial court's decision.

Hence, the instant recourse to this Court by petitioner.

The petition was given due course and the parties, as required, submitted their respective memoranda. In due time the case was submitted for decision.

In assailing the decision of the Intermediate Appellate Court petitioner assigned the following errors:

- The respondent court erred as a matter of law in affirming the trial court's award of actual damages beyond the limitation of liability set forth in the Warsaw Convention and the contract of carriage.

- The respondent court erred as a matter of law in affirming the trial court's award of actual damages consisting of alleged lost profits in the face of this Court's ruling concerning special or consequential damages as set forth in *Mendoza v. Philippine Airlines* [90 Phil. 836 (1952).]

The assigned errors shall be discussed seriatim.

- The airline ticket (Exh. "G") contains the following conditions:

NOTICE

If the passenger's journey involves an ultimate destination or stop in a country other than the country of departure the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage. See also notice headed "Advice to International Passengers on Limitation of Liability."

CONDITIONS OF CONTRACT

- As used in this contract "ticket" means this passenger ticket and baggage check, of which these conditions and the notices form part, "carriage" is equivalent to "transportation", "carrier" means all air carriers that carry or undertake to carry the passenger or his baggage hereunder or perform any other service incidental to such air carriage. "WARSAW CONVENTION" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, 12th October 1929, or that Convention as amended at The Hague, 28th September 1955, whichever may be applicable.
- Carriage hereunder is subject to the rules and limitations relating to liability established by the Warsaw Convention unless such carriage is not "international carriage" as defined by that Convention.
- 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.

* * *

NOTICE OF BAGGAGE LIABILITY LIMITATIONS

Liability for loss, delay, or damage to baggage is limited as follows unless a higher value is declared in advance and additional charges are paid: (1) for most international travel (including domestic portions of international journeys) to approximately \$9.07 per pound (\$20.00 per kilo) for checked baggage and \$400 per passenger for unchecked baggage; (2) for travel wholly between U.S. points, to \$750 per passenger on most carriers (a few have lower limits). Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier. [Emphasis supplied.]

On the basis of the foregoing stipulations printed at the back of the ticket, petitioner contends that its liability for the lost baggage of private respondent Pangan is limited to \$600.00 (\$20.00 x 30 kilos) as the latter did not declare a higher value for his baggage and pay the corresponding additional charges.

To support this contention, petitioner cites the case of *Ong Yiu v. Court of Appeals* [G.R. No. L-40597, June 29, 1979, 91 SCRA 223], where the Court sustained the validity of a printed stipulation at the back of an airline ticket limiting the liability of the carrier for lost baggage to a specified amount and ruled that the carrier's liability was limited to said amount since the passenger did not declare a higher value, much less pay additional charges.

We find the ruling in *Ong Yiu* squarely applicable to the instant case. In said case, the Court, through Justice Melencio-Herrera, stated:

Petitioner further contends that respondent Court committed grave error when it limited PAL's carriage liability to the amount of P100.00 as stipulated at the back of the ticket. . . .

We agree with the foregoing finding. The pertinent Condition of Carriage printed at the back of the plane ticket reads:

8. BAGGAGE LIABILITY...The total liability of the Carrier for lost or damaged baggage of the passenger is LIMITED TO P100.00 for each ticket unless a passenger declares a higher valuation in excess of P100.00, but not in excess, however, of a total valuation of P1,000.00 and additional charges are paid pursuant to Carrier's tariffs.

There is no dispute that petitioner did not declare any higher value for his luggage, much less did he pay any additional transportation charge.

But petitioner argues that there is nothing in the evidence to show that he had actually entered into a contract with PAL limiting the latter's liability for loss or delay of the baggage of its passengers, and that Article 1750[*] of the Civil Code has not been complied with.

While it may be true that petitioner had not signed the plane ticket (Exh. "12"), he is nevertheless bound by the provisions thereof. "Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter's lack of knowledge or assent to the regulation." [*Tannebaum v. National Airline, Inc.*, 13 Misc. 2d 450, 176 N.Y.S. 2d 400; *Lichten v. Eastern Airlines*, 87 Fed. Supp. 691; *Migoski v. Eastern Air Lines, Inc.*, Fla., 63 So. 2d 634.] It is what is known as a contract of "adhesion", in regards which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent [*Tolentino*, Civil Code, Vol IV, 1962 ed., p. 462, citing Mr. Justice J.B.L. Reyes, *Lawyer's Journal*, Jan. 31, 1951, p. 49]. And as held in *Randolph v. American Airlines*, 103 Ohio App. 172, 144 N.E. 2d 878; *Rosenchein v. Trans World Airlines, Inc.*, 349 S.W. 2d 483, "a contract limiting liability upon an agreed valuation does not offend against the policy of the law forbidding one from contracting against his own negligence."

Considering, therefore, that petitioner had failed to declare a higher value for his baggage, he cannot be permitted a recovery in excess of P100.00. . . .

On the other hand, the ruling in *Shewaram v. Philippine Air Lines, Inc.* [G.R. No. L-20099, July 2, 1966, 17 SCRA 606], where the Court held that the stipulation limiting the carrier's liability to a specified amount was invalid, finds no application in the instant case, as the ruling in said case was premised on the finding that the conditions printed at the back of the ticket were so small and hard to read that they would not warrant the presumption that the passenger was aware of the conditions and that he had freely and fairly agreed thereto. In the instant case, similar facts that would make the case fall under the exception have not been alleged, much less shown to exist.

In view thereof, petitioner's liability for the lost baggage is limited to \$20.00 per kilo or \$600.00, as stipulated at the back of the ticket.

At this juncture, in order to rectify certain misconceptions the Court finds it necessary to state that the Court of Appeal's reliance on a quotation from *Northwest Airlines, Inc. v. Cuenca* [G.R. No. L-22425, August 31, 1965, 14 SCRA 1063] to sustain the view that "to apply the Warsaw Convention which limits a carrier's liability to US\$9.07 per pound or US\$20.00 per kilo in cases of contractual breach of carriage[**] is against public policy" is

utterly misplaced, to say the least. In said case, while the Court, as quoted in the Intermediate Appellate Court's decision, said:

Petitioner argues that pursuant to those provisions, an air "carrier is liable only" in the event of death of a passenger or injury suffered by him, or of destruction or loss of, or damage to any checked baggage or any goods, or of delay in the transportation by air of passengers, baggage or goods. This pretense is not borne out by the language of said Articles. The same merely declare the carrier liable for damages in enumerated cases, if the conditions therein specified are present. Neither said provisions nor others in the aforementioned Convention regulate or exclude liability for other breaches of contract by the carrier. Under petitioner's theory, an air carrier would be exempt from any liability for damages in the event of its absolute refusal, in bad faith, to comply with a contract of carriage, which is absurd.

it prefaced this statement by explaining that:

. . . The case is now before us on petition for review by certiorari, upon the ground that the lower court has erred: (1) in holding that the Warsaw Convention of October 12, 1929, relative to transportation by air is not in force in the Philippines; (2) in not holding that respondent has no cause of action; and (3) in awarding P20,000 as nominal damages.

We deem it unnecessary to pass upon the first assignment of error because the same is the basis of the second assignment of error, and the latter is devoid of merit, even if we assumed the former to be well-taken. (Emphasis supplied.)

Thus, it is quite clear that the Court never intended to, and in fact never did, rule against the validity of provisions of the Warsaw Convention. Consequently, by no stretch of the imagination may said quotation from Northwest be considered as supportive of the appellate court's statement that the provisions of the Warsaw Convention limiting a carrier's liability are against public policy.

- The Court finds itself unable to agree with the decision of the trial court, and affirmed by the Court of Appeals, awarding private respondents damages as and for lost profits when their contracts to show the films in Guam and San Francisco, California were cancelled.

The rule laid down in *Mendoza v. Philippine Air Lines, Inc.* [90 Phil. 836 (1952)] cannot be any clearer:

. . . Under Art. 1107 of the Civil Code, a debtor in good faith like the defendant herein, may be held liable only for damages that were foreseen or might have been foreseen at the time the contract of transportation was entered into. The trial court correctly found that the defendant company could not have foreseen the damages that would be suffered by Mendoza upon failure to deliver the can of film on the 17th of September, 1948 for the reason that the plans of Mendoza to exhibit that film during the town fiesta and his preparations, specially the announcement of said exhibition by posters and advertisement in the newspaper, were not called to the defendant's attention.

In our research for authorities we have found a case very similar to the one under consideration. In the case of *Chapman vs. Fargo, L.R.A. (1918 F) p. 1049*, the plaintiff in Troy, New York, delivered motion picture films to the defendant Fargo, an express company, consigned and to be delivered to him in Utica. At the time of shipment the attention of the express company was called to the fact that the shipment involved motion picture films to be exhibited in Utica, and that they should be sent to their destination, rush. There was delay in their delivery and it was found that the plaintiff because of his failure to exhibit the film in Utica due to the delay suffered damages or loss of profits. But the highest court in the State of New York refused to award him special damages. Said appellate court observed:

But before defendant could be held to special damages, such as the present alleged loss of profits on account of delay or failure of delivery, it must have appeared that he had notice at the time of delivery to him of the

particular circumstances attending the shipment, and which probably would lead to such special loss if he defaulted. Or, as the rule has been stated in another form, in order to impose on the defaulting party further liability than for damages naturally and directly, i.e., in the ordinary course of things, arising from a breach of contract, such unusual or extraordinary damages must have been brought within the contemplation of the parties as the probable result of breach at the time of or prior to contracting. Generally, notice then of any special circumstances which will show that the damages to be anticipated from a breach would be enhanced has been held sufficient for this effect.

As may be seen, that New York case is a stronger one than the present case for the reason that the attention of the common carrier in said case was called to the nature of the articles shipped, the purpose of shipment, and the desire to rush the shipment, circumstances and facts absent in the present case. [Emphasis supplied.]

Thus, applying the foregoing ruling to the facts of the instant case, in the absence of a showing that petitioner's attention was called to the special circumstances requiring prompt delivery of private respondent Pangan's luggages, petitioner cannot be held liable for the cancellation of private respondents' contracts as it could not have foreseen such an eventuality when it accepted the luggages for transit.

The Court is unable to uphold the Intermediate Appellate Court's disregard of the rule laid down in *Mendoza* and affirmance of the trial court's conclusion that petitioner is liable for damages based on the finding that "[t]he undisputed fact is that the contracts of the plaintiffs for the exhibition of the films in Guam and California were cancelled because of the loss of the two luggages in question." [Rollo, p. 36] The evidence reveals that the proximate cause of the cancellation of the contracts was private respondent Pangan's failure to deliver the promotional and advertising materials on the dates agreed upon. For this petitioner cannot be held liable. Private respondent Pangan had not declared the value of the two luggages he had checked in and paid additional charges. Neither was petitioner privy to respondents' contracts nor was its attention called to the condition therein requiring delivery of the promotional and advertising materials on or before a certain date.

- With the Court's holding that petitioner's liability is limited to the amount stated in the ticket, the award of attorney's fees, which is grounded on the alleged unjustified refusal of petitioner to satisfy private respondent's just and valid claim, loses support and must be set aside.

WHEREFORE, the Petition is hereby GRANTED and the Decision of the Intermediate Appellate Court is SET ASIDE and a new judgment is rendered ordering petitioner to pay private respondents damages in the amount of US\$600.00 or its equivalent in Philippine currency at the time of actual payment. SO ORDERED.

Fernan, C.J., Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., no part, on leave during the deliberations.

[*] Art. 1750. A contract fixing the sum that may be recovered by the owner or shipper for the loss, destruction, or deterioration of the goods is valid, if it is reasonable and just under the circumstances, and has been fairly and freely agreed upon.

[**] The Warsaw Convention actually provides that "[i]n the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value of delivery and has paid a supplementary sum if the case so requires. In that case, the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery. . . . The sums mentioned above shall be deemed to refer to the French franc consisting of 65-1/2 milligrams of gold at the standard of Fineness of nine hundred thousandths. These sums may be converted into any national currency in

round figures." [51 O.G. 5084, 5091.]

Proclamation No. 201 (September 23, 1955) made public the adherence of the Republic of the Philippines to the Warsaw Convention. [51 O.G. 4933.]

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