

ORIENT AIR SERVICES & HOTEL REPRESENTATIVES, PETITIONER, VS. COURT OF APPEALS AND AMERICAN AIRLINES INCORPORATED, RESPONDENTS.

G.R. No. 76931. May 29, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

This case is a consolidation of two (2) petitions for review on certiorari of a decision[1] of the Court of Appeals in CA-G.R. No. CV-04294, entitled "American Airlines, Inc. vs. Orient Air Services and Hotel Representatives, Inc." which affirmed, with modification, the decision[2] of the Regional Trial Court of Manila, Branch IV, which dismissed the complaint and granted therein defendant's counterclaim for agent's overriding commission and damages.

The antecedent facts are as follows:

On 15 January 1977, American Airlines, Inc. (herein-after referred to as American Air), an air carrier offering passenger and air cargo transportation in the Philippines, and Orient Air Services and Hotel Representatives (hereinafter referred to as Orient Air), entered into a General Sales Agency Agreement (hereinafter referred to as the Agreement), whereby the former authorized the latter to act as its exclusive general sales agent within the Philippines for the sale of air passenger transportation. Pertinent provisions of the agreement are reproduced, to wit:

"WITNESSETH

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Representation of American by Orient Air Services

Orient Air Services will act on American's behalf as its exclusive General Sales Agent within the Philippines, including any United States military installation therein which are not serviced by an Air Carrier Representation Office (ACRO), for the sale of air passenger transportation. The services to be performed by Orient Air Services shall include:

(a)

soliciting and promoting passenger traffic for the services of American and, if necessary, employing staff competent and sufficient to do so;

(b)

providing and maintaining a suit-able area in its place of business to be used exclusively for the transaction of the business of American;

(c)

arranging for distribution of American's timetables, tariffs and promotional material to sales agents and the general public in the assigned territory;

(d)

servicing and supervising of sales agents (including such sub-agents as may be appointed by Orient Air Services with the prior written consent of American) in the assigned territory including if required by American the control of remittances and commissions retained; and

(e)

holding out a passenger reservation facility to sales agents and the general public in the assigned territory.

In connection with scheduled or non-scheduled air passenger transportation within the United States, neither Orient Air Services nor its sub-agents will perform services for any other air carrier similar to those to be performed hereunder for American without the prior written consent of American. Subject to periodic instructions and continued consent from American, Orient Air Services may sell air passenger transportation to be performed within the United States by other scheduled air carriers provided American does not provide substantially equivalent schedules between the points involved.

.....

- Remittances

Orient Air Services shall remit in United States dollars to American the ticket stock or exchange orders, less commissions to which Orient Air Services is entitled hereunder, not less frequently than semi-monthly, on the 15th and last days of each month for sales made during the preceding half month.

All monies collected by Orient Air Services for transportation sold hereunder on American's ticket stock or on exchange orders, less applicable commissions to which Orient Air Services is entitled hereunder, are the property of American and shall be held in trust by Orient Air Services until satisfactorily accounted for to American.

- Commissions

American will pay Orient Air Services commission on transportation sold hereunder by Orient Air Services or its sub-agents as follows:

(a)

Sales agency commission

American will pay Orient Air Services a sales agency commission for all sales of transportation by Orient Air Services or its sub-agents over American's services and any connecting through air transportation, when made on American's ticket stock, equal to the following percent-ages of the tariff fares and charges:

(i)

For transportation solely between points within the United States and between such points and Canada: 7% or such other rate(s) as may be prescribed by the Air Traffic Conference of America.

(ii)

For transportation included in a through ticket covering transportation between points other than those described above: 8% or such other rate(s) as may be prescribed by the International Air Transport Association.

(b)

Overriding commission

In addition to the above commission American will pay Orient Air Services an overriding commission of 3% of the tariff fares and charges for all sales of transportation over American's service by Orient Air Service or its sub-agents.

.....

- Default

If Orient Air Services shall at any time default in observing or performing any of the provisions of this Agreement or shall become bankrupt or make any assignment for the benefit of or enter into any agreement or promise with its creditors or go into liquidation, or suffer any of its goods to be taken in execution, or if it ceases to be in business, this Agreement may, at the option of American, be terminated forthwith and American may, without prejudice to any of its rights under this Agreement, take possession of any ticket forms, exchange orders, traffic material or other property or funds belonging to American.

- IATA and ATC Rules

The provisions of this Agreement are subject to any applicable rules or resolutions of the International Air Transport Association and the Air Traffic Conference of America, and such rules or resolutions shall control in the event of any conflict with the provisions hereof.

.....

- Termination

American may terminate the Agreement on two days' notice in the event Orient Air Services is unable to transfer to the United States the funds payable by Orient Air Services to American under this Agreement. Either party may terminate the Agreement without cause by giving the other 30 days' notice by letter, telegram or cable.

....."[3]

On 11 May 1981, alleging that Orient Air had reneged on its obligations under the Agreement by failing to promptly remit the net proceeds of sales for the months of January to March 1981 in the amount of US

\$254,400.40, American Air by itself undertook the collection of the proceeds of tickets sold originally by Orient Air and terminated forthwith the Agreement in accordance with Paragraph 13 thereof (Termination). Four (4) days later, or on 15 May 1981, American Air instituted suit against Orient Air with the Court of First Instance of Manila, Branch 24, for Accounting with Preliminary Attachment or Garnishment, Mandatory Injunction and Restraining Order,[4] averring the aforesaid basis for the termination of the Agreement as well as therein defendant's previous record of failures "to promptly settle past outstanding refunds of which, there were available funds in the possession of the defendant, x x x to the damage and prejudice of plaintiff." [5]

In its Answer[6] with counterclaim dated 9 July 1981, defendant Orient Air denied the material allegations of the complaint with respect to plaintiff's entitlement to alleged unremitted amounts, contending that after application thereof to the commissions due it under the Agreement, plaintiff in fact still owed Orient Air a balance in unpaid overriding commissions. Further, the defendant contended that the actions taken by American Air in the course of terminating the Agreement as well as the termination itself were untenable, Orient Air claiming that American Air's precipitous conduct had occasioned prejudice to its business interests.

Finding that the record and the evidence substantiated the allegations of the defendant, the trial court ruled in its favor, rendering a decision dated 16 July 1984, the dispositive portion of which reads:

"WHEREFORE, all the foregoing premises considered, judgment is hereby rendered in favor of defendant and against plaintiff dismissing the complaint and holding the termination made by the latter as affecting the GSA agreement illegal and improper and order the plaintiff to reinstate defendant as its general sales agent for passenger transportation in the Philippines in accordance with said GSA agreement; plaintiff is ordered to pay defendant the balance of the overriding commission on total flown revenue covering the period from March 16, 1977 to December 31, 1980 in the amount of US\$84,821.31 plus the additional amount of US\$8,000.00 by way of proper 3% overriding commission per month commencing from January 1, 1981 until such reinstatement or said amounts in its Philippine peso equivalent legally prevailing at the time of payment plus legal interest to commence from the filing of the counterclaim up to the time of payment. Further, plaintiff is directed to pay defendant the amount of One Million Five Hundred Thousand (P1,500,000.-00) pesos as and for exemplary damages; and the amount of Three Hundred Thousand (P300,000.00) pesos as and by way of attorney's fees.

Costs against plaintiff." [7]

On appeal, the Intermediate Appellate Court (now Court of Appeals) in a decision promulgated on 27 January 1986, affirmed the findings of the court a quo on their material points but with some modifications with respect to the monetary awards granted. The dispositive portion of the appellate court's decision is as follows:

"WHEREFORE, with the following modifications -

- 1) American is ordered to pay Orient the sum of US\$53,491.11 representing the balance of the latter's overriding commission covering the period March 16, 1977 to December 31, 1980, or its Philippine peso equivalent in accordance with the official rate of exchange legally prevailing on July 10, 1981, the date the counterclaim was filed;
- 2) American is ordered to pay Orient the sum of US\$7,440.00 as the latter's overriding commission per month starting January 1, 1981 until date of termination, May 9, 1981, or its Philippine peso equivalent in accordance with the official rate of exchange legally prevailing on July 10, 1981, the date the counterclaim was filed;
- 3) American is ordered to pay interest of 12% on said amounts from July 10, 1981 the date the answer with counterclaim was filed, until full payment;
- 4) American is ordered to pay Orient exemplary damages of P200,000.00;
- 5) American is ordered to pay Orient the sum of P25,000.00 as attorney's fees.

the rest of the appealed decision is affirmed.

Costs against American."[8]

American Air moved for reconsideration of the afore-mentioned decision, assailing the substance thereof and arguing for its reversal. The appellate court's decision was also the subject of a Motion for Partial Reconsideration by Orient Air which prayed for the restoration of the trial court's ruling with respect to the monetary awards. The Court of Appeals, by resolution promulgated on 17 December 1986, denied American Air's motion and with respect to that of Orient Air, ruled thus:

"Orient's motion for partial reconsideration is denied insofar as it prays for affirmance of the trial court's award of exemplary damages and attorney's fees, but granted insofar as the rate of exchange is concerned. The decision of January 27, 1986 is modified in paragraphs (1) and (2) of the dispositive part so that the payment of the sums mentioned therein shall be at their Philippine peso equivalent in accordance with the official rate of exchange legally prevailing on the date of actual payment."[9]

Both parties appealed the aforesaid resolution and decision of the respondent court, Orient Air as petitioner in G.R. No. 76931 and American Air as petitioner in G.R. No. 76933. By resolution[10] of this Court dated 25 March 1987, both petitions were consolidated, hence, the case at bar.

The principal issue for resolution by the Court is the extent of Orient Air's right to the 3% overriding commission. It is the stand of American Air that such commission is based only on sales of its services actually negotiated or transacted by Orient Air, otherwise referred to as "ticketed sales." As basis thereof, primary reliance is placed upon paragraph 5(b) of the Agreement which, in reiteration, is quoted as follows:

"5. Commissions

a) . . .

b) Overriding Commission

In addition to the above commission, American will pay Orient Air Services an overriding commission of 3% of the tariff fees and charges for all sales of transportation over American's services by Orient Air Services or its sub-agents." (underscoring supplied)

Since Orient Air was allowed to carry only the ticket stocks of American Air, and the former not having opted to appoint any sub-agents, it is American Air's contention that Orient Air can claim entitlement to the disputed overriding commission based only on ticketed sales. This is supposed to be the clear meaning of the underscored portion of the above provision. Thus, to be entitled to the 3% overriding commission, the sale must be made by Orient Air and the sale must be done with the use of American Air's ticket stocks.

On the other hand, Orient Air contends that the contractual stipulation of a 3% overriding commission covers the total revenue of American Air and not merely that derived from ticketed sales undertaken by Orient Air. The latter, in justification of its submission, invokes its designation as the exclusive General Sales Agent of American Air, with the corresponding obligations arising from such agency, such as, the promotion and solicitation for the services of its principal. In effect, by virtue of such exclusivity, "all sales of transportation over American Air's services are necessarily by Orient Air." [11]

It is a well settled legal principle that in the interpretation of a contract, the entirety thereof must be taken into consideration to ascertain the meaning of its provisions.[12] The various stipulations in the contract must be read together to give effect to all.[13] After a careful examination of the records, the Court finds merit in the contention of Orient Air that the Agreement, when interpreted in accordance with the foregoing principles,

entitles it to the 3% overriding commission based on total revenue, or as referred to by the parties, "total flown revenue."

As the designated exclusive General Sales Agent of American Air, Orient Air was responsible for the promotion and marketing of American Air's services for air passenger transportation, and the solicitation of sales therefor. In return for such efforts and services, Orient Air was to be paid commissions of two (2) kinds: first, a sales agency commission, ranging from 7-8% of tariff fares and charges from sales by Orient Air when made on American Air ticket stock; and second, an overriding commission of 3% of tariff fares and charges for all sales of passenger transportation over American Air services. It is immediately observed that the precondition attached to the first type of commission does not obtain for the second type of commissions. The latter type of commissions would accrue for sales of American Air services made not on its ticket stock but on the ticket stock of other air carriers sold by such carriers or other authorized ticketing facilities or travel agents. To rule otherwise, i.e., to limit the basis of such overriding commissions to sales from American Air ticket stock would erase any distinction between the two (2) types of commissions and would lead to the absurd conclusion that the parties had entered into a contract with meaningless provisions. Such an interpretation must at all times be avoided with every effort exerted to harmonize the entire Agreement.

An additional point before finally disposing of this issue. It is clear from the records that American Air was the party responsible for the preparation of the Agreement. Consequently, any ambiguity in this "contract of adhesion" is to be taken "contra proferentem", i.e., construed against the party who caused the ambiguity and could have avoided it by the exercise of a little more care. Thus, Article 1377 of the Civil Code provides that the interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity.[14] To put it differently, when several interpretations of a provision are other-wise equally proper, that interpretation or construction is to be adopted which is most favorable to the party in whose favor the provision was made and who did not cause the ambiguity.[15] We therefore agree with the respondent appellate court's declaration that:

"Any ambiguity in a contract, whose terms are susceptible of different interpretations, must be read against the party who drafted it." [16]

We now turn to the propriety of American Air's termination of the Agreement. The respondent appellate court, on this issue, ruled thus:

"It is not denied that Orient withheld remittances but such action finds justification from paragraph 4 of the Agreement, Exh. F, which provides for remittances to American less commissions to which Orient is entitled, and from paragraph 5(d) which specifically allows Orient to retain the full amount of its commissions. Since, as stated ante, Orient is entitled to the 3% override, American's premise, therefore, for the cancellation of the Agreement did not exist. . . ."

We agree with the findings of the respondent appellate court. As earlier established, Orient Air was entitled to an overriding commission based on total flown revenue. American Air's perception that Orient Air was remiss or in default of its obligations under the Agreement was, in fact, a situation where the latter acted in accordance with the Agreement – that of retaining from the sales proceeds its accrued commissions before remitting the balance to American Air. Since the latter was still obligated to Orient Air by way of such commissions, Orient Air was clearly justified in retaining and refusing to remit the sums claimed by American Air. The latter's termination of the Agreement was, therefore, without cause and basis, for which it should be held liable to Orient Air.

On the matter of damages, the respondent appellate court modified by reduction the trial court's award of exemplary damages and attorney's fees. This Court sees no error in such modification and, thus, affirms the same.

It is believed, however, that respondent appellate court erred in affirming the rest of the decision of the trial court.

We refer particularly to the lower court's decision ordering American Air to "reinstate defendant as its general sales agent for passenger transportation in the Philippines in accordance with said GSA Agreement."

By affirming this ruling of the trial court, respondent appellate court, in effect, compels American Air to extend its personality to Orient Air. Such would be violative of the principles and essence of agency, defined by law as a contract whereby "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." [17] (emphasis supplied) In an agent-principal relationship, the personality of the principal is extended through the facility of the agent. In so doing, the agent, by legal fiction, becomes the principal, authorized to perform all acts which the latter would have him do. Such a relationship can only be effected with the consent of the principal, which must not, in any way, be compelled by law or by any court. The Agreement itself between the parties states that "either party may terminate the Agreement without cause by giving the other 30 days' notice by letter, telegram or cable." (emphasis supplied) We, therefore, set aside the portion of the ruling of the respondent appellate court reinstating Orient Air as general sales agent of American Air.

WHEREFORE, with the foregoing modification, the Court AFFIRMS the decision and resolution of the respondent Court of Appeals, dated 27 January 1986 and 17 December 1986, respectively. Costs against petitioner American Air.

SO ORDERED.

Melencio-Herrera, (Chairman), and Regalado, JJ., concur.
Paras, J., no part. Son is a partner in one of the counsel.
Sarmiento, J., on leave.

[1] Penned by Justice Serafin B. Camilon and concurred in by Justices Jose C. Campos, Jr. and Desiderio P. Jurado.

[2] Penned by Judge Herminio C. Mariano.

[3] Rollo, pp. 110-118

[4] Rollo, p. 102

[5] Ibid., p. 104

[6] Ibid., p. 121

[7] Rollo, p. 162

[8] Rollo, pp. 173-174

[9] Ibid., p. 210

[10] Rollo, p. 212

[11] Rollo, p. 291

[12] NAESS Shipping Philippines, Inc. vs. NLRC, G.R. No. 73441, 4 September 1987, 153 SCRA 657

[13] North Negros Sugar Co. vs. Compania General de Tabacos, No. L-9277, 29 March 1957; Article 1374, Civil Code of the Philippines

[14] Equitable Banking Corporation vs. Intermediate Appellate Court, G.R. No. 74451, 25 May 1988, 161 SCRA 518

[15] Government of the Philippine Islands vs. Derham Brothers and the International Banking Corporation, 36 Phil. 960

[16] Rollo, p. 169

[17] Article 1868, Civil Code of the Philippines

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