

AMERICAN AIRLINES, PETITIONER, VS. COURT OF APPEALS, HON. BERNARDO LL. SALAS AND DEMOCRITO MENDOZA, RESPONDENTS.*G.R. Nos. 116044-45. March 09, 2000*

Ponente: GONZAGA-REYES, J.

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Before us is a petition for review of the decision dated December 24, 1993 rendered by the Court of Appeals in the consolidated cases docketed as CA-G.R. SP nos. 30946 and 31452 entitled American Airlines vs. The Presiding Judge Branch 8 of the Regional Trial Court of Cebu and Democrito Mendoza, petitions for certiorari and prohibition. In SP no. 30946, the petitioner assails the trial court's order denying the petitioner's motion to dismiss the action for damages filed by the private respondent for lack of jurisdiction under section 28 (1) of the Warsaw Convention; and in SP No. 31452 the petitioner challenges the validity of the trial court's order striking off the record the deposition of the petitioner's security officer taken in Geneva, Switzerland for failure of the said security officer to answer the cross interrogatories propounded by the private respondent.

The sole issue raised in SP No. 30946 is the questioned jurisdiction of the Regional Trial Court of Cebu to take cognizance of the action for damages filed by the private respondent against herein petitioner in view of Art 28 (1) of the Warsaw Convention.[1] It is undisputed that the private respondent purchased from Singapore Airlines in Manila conjunction tickets for Manila - Singapore - Athens - Larnaca - Rome - Turin - Zurich - Geneva - Copenhagen - New York. The petitioner was not a participating airline in any of the segments in the itinerary under the said conjunction tickets. In Geneva the petitioner decided to forego his trip to Copenhagen and to go straight to New York and in the absence of a direct flight under his conjunction tickets from Geneva to New York, the private respondent on June 7, 1989 exchanged the unused portion of the conjunction ticket for a one-way ticket from Geneva to New York from the petitioner airline. Petitioner issued its own ticket to the private respondent in Geneva and claimed the value of the unused portion of the conjunction ticket from the IATA[2] clearing house in Geneva.

In September 1989, private respondent filed an action for damages before the regional trial court of Cebu for the alleged embarrassment and mental anguish he suffered at the Geneva Airport when the petitioner's security officers prevented him from boarding the plane, detained him for about an hour and allowed him to board the plane only after all the other passengers have boarded. The petitioner filed a motion to dismiss for lack of jurisdiction of Philippine courts to entertain the said proceedings under Art. 28 (1) of the Warsaw Convention. The trial court denied the motion. The order of denial was elevated to the Court of Appeals which affirmed the ruling of the trial court. Both the trial and that appellate courts held that the suit may be brought in the Philippines under the pool partnership agreement among the IATA members, which include Singapore Airlines and American Airlines, wherein the members act as agents of each other in the issuance of tickets to those who may need their services. The contract of carriage perfected in Manila between the private respondent and Singapore Airlines binds the petitioner as an agent of Singapore Airlines and considering that the petitioner has a place of business in Manila, the third option of the plaintiff under the Warsaw Convention i.e. the action may be brought in the place

where the contract was perfected and where the airline has a place of business, is applicable. Hence this petition assailing the order upholding the jurisdiction of Philippine courts over the instant action.

Both parties filed simultaneous memoranda pursuant to the resolution of this Court giving due course to the petition.

The petitioner's theory is as follows: Under Art 28 (1) of the Warsaw convention an action for damages must be brought at the option of the plaintiff either before the court of the 1) domicile of the carrier; 2) the carrier's principal place of business; 3) the place where the carrier has a place of business through which the contract was made; 4) the place of destination. The petitioner asserts that the Philippines is neither the domicile nor the principal place of business of the defendant airline; nor is it the place of destination. As regards the third option of the plaintiff, the petitioner contends that since the Philippines is not the place where the contract of carriage was made between the parties herein, Philippine courts do not have jurisdiction over this action for damages. The issuance of petitioner's own ticket in Geneva in exchange for the conjunction ticket issued by Singapore Airlines for the final leg of the private respondent's trip gave rise to a separate and distinct contract of carriage from that entered into by the private respondent with Singapore Airlines in Manila. Petitioner lays stress on the fact that the plane ticket for a direct flight from Geneva to New York was purchased by the private respondent from the petitioner by "exchange and cash" which signifies that the contract of carriage with Singapore Airlines was terminated and a second contract was perfected. Moreover, the second contract of carriage cannot be deemed to have been an extension of the first as the petitioner airline is not a participating airline in any of the destinations under the first contract. The petitioner claims that the private respondent's argument that the petitioner is bound under the IATA Rules as agent of the principal airline is irrelevant and the alleged bad faith of the airline does not remove the case from the applicability of the Warsaw Convention. Further, the IATA Rule cited by the private respondent which is admittedly printed on the ticket issued by the petitioner to him which states, "An air carrier issuing a ticket for carriage over the lines of another carrier does so only as its agent" does not apply herein, as neither Singapore Airlines nor the petitioner issued a ticket to the private respondent covering the route of the other. Since the conjunction tickets issued by Singapore Airlines do not include the route covered by the ticket issued by the petitioner, the petitioner airline submits that it did not act as an agent of Singapore Airlines.

Private respondent controverts the applicability of the Warsaw Convention in this case. He posits that under Article 17 of the Warsaw Convention[3] a carrier may be held liable for damages if the "accident" occurred on board the airline or in the course of "embarking or disembarking" from the carrier and that under Article 25 (1)[4] thereof the provisions of the convention will not apply if the damage is caused by the "willful misconduct" of the carrier. He argues that his cause of action is based on the incident at the pre-departure area of the Geneva airport and not during the process of embarking nor disembarking from the carrier and that security officers of the petitioner airline acted in bad faith. Accordingly, this case is released from the terms of the Convention. Private respondent argues that assuming that the convention applies, his trip to nine cities in different countries performed by different carriers under the conjunction tickets issued in Manila by Singapore Airlines is regarded as a single transaction; as such the final leg of his trip from Geneva to New York with the petitioner airline is part and parcel of the original contract of carriage perfected in Manila. Thus, the third option of the plaintiff under Art. 28 (1) e.g., where the carrier has a place of business through which the contract of carriage was made, applies herein and the case was properly filed in the Philippines. The private respondent seeks affirmance of the ruling of the lower courts that the petitioner acted as an agent of Singapore Airlines under the IATA Rules and as an agent of the principal carrier the petitioner may be held liable under the contract of carriage perfected in Manila, citing the judicial admission made by the petitioner that it claimed the value of the unused portion of the private respondent's conjunction tickets from the IATA Clearing House in Geneva where the accounts of both airlines are respectively credited and debited. Accordingly, the petitioner cannot now deny the contract of agency with

Singapore Airlines after it honored the conjunction tickets issued by the latter.

The petition is without merit.

The Warsaw Convention to which the Republic of the Philippines is a party and which has the force and effect of law in this country applies to all international transportation of persons, baggage or goods performed by an aircraft gratuitously or for hire.[5] As enumerated in the Preamble of the Convention, one of the objectives is "to regulate in a uniform manner the conditions of international transportation by air".[6] The contract of carriage entered into by the private respondent with Singapore Airlines, and subsequently with the petitioner, to transport him to nine cities in different countries with New York as the final destination is a contract of international transportation and the provisions of the Convention automatically apply and exclusively govern the rights and liabilities of the airline and its passengers.[7] This includes section 28 (1) which enumerates the four places where an action for damages may be brought.

The threshold issue of jurisdiction of Philippine courts under Art 28 (1) must first be resolved before any pronouncements may be made on the liability of the carrier thereunder.[8] The objections raised by the private respondent that this case is released from the terms of the Convention because the incident on which this action is predicated did not occur in the process of embarking and disembarking from the carrier under Art 17[9] and that the employees of the petitioner airline acted with malice and bad faith under Art 25 (1)[10] pertain to the merits of the case which may be examined only if the action has first been properly commenced under the rules on jurisdiction set forth in Art. 28 (1).

Art (28) (1) of the Warsaw Convention states:

Art 28 (1) An action for damages must be brought at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business or where he has a place of business through which the contract has been made, or before the court at the place of destination.

There is no dispute that petitioner issued the ticket in Geneva which was neither the domicile nor the principal place of business of petitioner nor the respondent's place of destination.

The question is whether the contract of transportation between the petitioner and the private respondent would be considered as a single operation and part of the contract of transportation entered into by the latter with Singapore Airlines in Manila.

Petitioner disputes the ruling of the lower court that it is. Petitioner's main argument is that the issuance of a new ticket in Geneva created a contract of carriage separate and distinct from that entered by the private respondent in Manila.

We find the petitioner's argument without merit.

Art 1(3) of the Warsaw Convention which states:

"Transportation to be performed by several successive carriers shall be deemed, for the purposes of this convention, to be one undivided transportation, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or a series of contracts, and it shall not lose its international character merely because one contract or series of contracts is to be performed entirely within the territory subject of the sovereignty, suzerainty, mandate or authority of the same High contracting Party."

The contract of carriage between the private respondent and Singapore Airlines although performed by different carriers under a series of airline tickets, including that issued by petitioner, constitutes a single operation. Members of the IATA are under a general pool partnership agreement wherein they act as agent of each other in

the issuance of tickets[11] to contracted passengers to boost ticket sales worldwide and at the same time provide passengers easy access to airlines which are otherwise inaccessible in some parts of the world. Booking and reservation among airline members are allowed even by telephone and it has become an accepted practice among them.[12] A member airline which enters into a contract of carriage consisting of a series of trips to be performed by different carriers is authorized to receive the fare for the whole trip and through the required process of interline settlement of accounts by way of the IATA clearing house an airline is duly compensated for the segment of the trip serviced.[13] Thus, when the petitioner accepted the unused portion of the conjunction tickets, entered it in the IATA clearing house and undertook to transport the private respondent over the route covered by the unused portion of the conjunction tickets, i.e., Geneva to New York, the petitioner tacitly recognized its commitment under the IATA pool arrangement to act as agent of the principal contracting airline, Singapore Airlines, as to the segment of the trip the petitioner agreed to undertake. As such, the petitioner thereby assumed the obligation to take the place of the carrier originally designated in the original conjunction ticket. The petitioner's argument that it is not a designated carrier in the original conjunction tickets and that it issued its own ticket is not decisive of its liability. The new ticket was simply a replacement for the unused portion of the conjunction ticket, both tickets being for the same amount of US\$ 2,760 and having the same points of departure and destination.[14] By constituting itself as an agent of the principal carrier the petitioner's undertaking should be taken as part of a single operation under the contract of carriage executed by the private respondent and Singapore Airlines in Manila.

The quoted provisions of the Warsaw Convention Art. 1(3) clearly states that a contract of air transportation is taken as a single operation whether it is founded on a single contract or a series of contracts. The number of tickets issued does not detract from the oneness of the contract of carriage as long as the parties regard the contract as a single operation. The evident purpose underlying this Article is to promote international air travel by facilitating the procurement of a series of contracts for air transportation through a single principal and obligating different airlines to be bound by one contract of transportation. Petitioner's acquiescence to take the place of the original designated carrier binds it under the contract of carriage entered into by the private respondent and Singapore Airlines in Manila.

The third option of the plaintiff under Art 28 (1) of the Warsaw Convention e.g., to sue in the place of business of the carrier wherein the contract was made, is therefore, Manila, and Philippine courts are clothed with jurisdiction over this case. We note that while this case was filed in Cebu and not in Manila the issue of venue is no longer an issue as the petitioner is deemed to have waived it when it presented evidence before the trial court.

The issue raised in SP No. 31452 which is whether or not the trial court committed grave abuse of discretion in ordering the deposition of the petitioner's security officer taken in Geneva to be stricken off the record for failure of the said security officer to appear before the Philippine consul in Geneva to answer the cross-interrogatories filed by the private respondent does not have to be resolved. The subsequent appearance of the said security officer before the Philippine consul in Geneva on September 19, 1994 and the answer to the cross-interrogatories propounded by the private respondent was transmitted to the trial court by the Philippine consul in Geneva on September 23, 1994[15] should be deemed as full compliance with the requisites of the right of the private respondent to cross-examine the petitioner's witness. The deposition filed by the petitioner should be reinstated as part of the evidence and considered together with the answer to the cross-interrogatories.

WHEREFORE, the judgment of the appellate court in CA-G.R. SP No. 30946 is affirmed. The case is ordered remanded to the court of origin for further proceedings. The decision of the appellate court in CA-G.R. SP. No. 31452 is set aside. The deposition of the petitioner's security officer is reinstated as part of the evidence.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Convention for the Unification of certain Rules Relating to International Transportation by Air, otherwise known as the Warsaw Convention.

[2] International Air Transport Association.

[3] Chapter III Liability of the Carrier.

Art. 17. The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

[4] Supra.

[5] Article 1 (1) This convention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. It shall apply equally to gratuitous transportation by aircraft performed by air transportation enterprise.

(2) For the purpose of this convention the expression "international transportation" shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment, are situated either within the territories of two High Contracting Parties, or within territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate, or authority of another power, even though that power is not a party to this convention. Transportation without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High contracting Party shall not be deemed to be international for the purpose of this convention.

[6] Santos III vs. Northwest Airlines, 210 SCRA 256.

[7] Ibid.

[8] Ibid., p. 274.

[9] Art. 17. The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

[10] Art 25 (1) The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered equivalent to willful misconduct. See: Art 22 (1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

[11] Article 15 of the IATA Recommended Practice states: Carriage to be performed by several successive carriers under one ticket, or under a ticket and any conjunction ticket issued therewith, is regarded as a single operation.

[12] Ortigas, Jr. vs. Lufthansa German Airlines, 64 SCRA 610.

[13] CIR vs. BOAC, L-65773-74, April 30, 1987, citing Art. VI, Res. 850 of the IATA.

[14] Annexes C and D, pp. 115-116, Rollo.

[15] Rollo, pp. 682-689.

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