

405 Phil. 43

## FIRST DIVISION

[ G.R. No. 127957, February 21, 2001 ]

**COLLIN A. MORRIS AND THOMAS P. WHITTIER, PETITIONERS, VS.  
COURT OF APPEALS (TENTH DIVISION) AND SCANDINAVIAN  
AIRLINES SYSTEM, RESPONDENTS.**

### DECISION

**PARDO, J.:**

Petitioners appeal *via* certiorari from the decision<sup>[1]</sup> of the Court of Appeals, which reversed the decision of the trial court and ordered the dismissal of petitioners' complaint for damages against respondent for breach of contract of air carriage.

On February 14, 1978, petitioners filed with the Regional Trial Court, Makati, Branch 143 an action for damages for breach of contract of air carriage against respondent airline because they were bumped off from SAS Flight SK 893, Manila-Tokyo, on February 14, 1978, despite a confirmed booking in the first class section of the flight.

Petitioners Collin A. Morris and Thomas P. Whittier were American citizens; the vice-president for technical services and the director for quality assurance, respectively, of Sterling Asia, a foreign corporation with regional headquarters at No. 8741 Paseo de Roxas, Makati City.

Respondent Scandinavian Airline System (SAS for brevity) is and at times material hereto has been engaged in the commercial air transport of passengers globally.

Petitioner Morris and co-petitioner Whittier had a series of business meetings with Japanese businessmen in Japan from February 14 to February 22, 1978. They requested their travel agent, Staats Travel Service, Inc. to book them as first class passengers in SAS Manila-Tokyo flight on February 14, 1978. Respondent booked them as first-class passengers on Flight SK 893, Manila-Tokyo flight on February 14, 1978, at 3:50 in the afternoon.

At 1:30 in the afternoon of February 14, 1978, a limousine service of the travel agency fetched petitioner Morris at his house in Urdaneta Village, Makati City. Thereafter, they went to Merville Park, Parañaque and fetched petitioner Whittier, arriving there at around 2:00 in the afternoon. From Parañaque, they went to the Manila International Airport and arrived at 2:35 in the afternoon.

Upon arrival at the airport, representatives of the travel agency met petitioners. It took petitioners two to three minutes to clear their bags at the customs section. After that, they proceeded to the SAS check-in counter and presented their tickets, passports,

immigration cards and travel documents to Ms. Erlinda Ponce at the reception desk.

After about fifteen (15) minutes, petitioners noticed that their travel documents were not being processed at the check-in counter. They were informed that there were no more seats on the plane for which reason they could not be accommodated on the flight.

Petitioner Morris contacted Staats Travel Service and asked the latter to contact the management of SAS to find out what was the problem. After ten (10) minutes, Staats Travel Service called and confirmed their booking. Thereafter, petitioners Morris and Whittier returned to respondent's check-in counter anticipating that they would be allowed to check-in. However, the check-in counter was closed. When they informed Ms. Ponce, in-charge at the check-in counter that arrangements had been made with respondent's office, she ignored them. Even respondent's supervisor, Raul Basa, ignored them and refused to answer their question why they could not be accommodated in the flight despite their confirmed booking.

When petitioners went to the supervisor's desk to check the flight manifest, they saw that their names on top of the list of the first class section had been crossed out. They pressed the supervisor to allow them in the flight as they had confirmed tickets. Mr. Basa informed them that it could not be done because the flight was closed and it was too late to do anything. They checked in at exactly 3:10 in the afternoon and the flight was scheduled to leave Manila International Airport at 3:50 in the afternoon.<sup>[2]</sup>

Petitioner Morris said that they were advised to be at the airport at least an hour before departure time. This has been respondent's policy in petitioner's previous travels abroad.<sup>[3]</sup>

Ms. Erlinda Ponce, SAS employee on duty at the check-in counter on February 14, 1978 testified that the economy class of SAS Flight SK 893 was overbooked; however, the first class section was open. She met petitioners, who were booked in the first class section, when they approached the counter to check-in. They were not accommodated on the flight because they checked-in after the flight manifest had been closed, forty (40) minutes prior to the plane's departure. Petitioners' seats were given to economy class passengers who were upgraded to first class.<sup>[4]</sup>

Upon cross-examination, Ms. Ponce said that petitioners might have arrived at the airport earlier than 3:10 in the afternoon when the flight manifest was closed; she was sure that they arrived at the check-in counter at past 3:10 in the afternoon. The first class seats of petitioners were given to upgraded economy class passengers three (3) minutes before the flight manifest was closed.<sup>[5]</sup>

Raul Cruz Basa, a supervisor of respondent airline company, testified that SAS Flight SK 893 on February 14, 1978 was overbooked in the economy class. Petitioner Morris and Whittier were among the names listed in the first class section of the flight manifest. However, their names were crossed out and the symbols "NOSH," meaning NO SHOW, written after their names. The "NO SHOW" notation could mean either that the booked passengers or his travel documents were not at the counter at the time of the closing of

the flight manifest.

Mr. Basa said that he talked to petitioners at about 3:20 in the afternoon after receiving a radio call from the ground staff at the check-in counter about complaints from passengers.

He learned from Ms. Ponce that petitioners checked in late after the flight manifest had been closed, after which time waitlisted passengers from the economy class had been upgraded. He explained to petitioners that they could not be accommodated on the plane because the seats were all filled up. He admitted that there were about six (6) passengers in the counter who were refused boarding because waitlisted passengers had been accepted. Most of those who were refused boarding came in late.<sup>[6]</sup>

Alice Magtulac, another witness of the respondent, testified that she was supervisor of ticketing and reservation section. She said that petitioners Morris and Whittier had confirmed reservation tickets to the first class section of SAS Flight SK 893, Manila-Tokyo flight, on February 14, 1978. She confirmed that Ms. Thelma Lorraine Sayer was one of the economy class passengers who was not able to leave because the flight was overbooked on the economy class.

Ms. Magtulac said that it was not SAS' policy to upgrade economy passengers to first class if passengers booked for first class did not show up.<sup>[7]</sup>

On August 24, 1988, the trial court rendered a judgment against respondent and in favor of petitioners Morris and Whittier. The dispositive portion reads:

"WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of the plaintiffs and against defendant, ordering the latter to pay the former the following:

- 1) Moral damages to plaintiff Collin A. Morris in the amount of P1,000,000.00 and to plaintiff Thomas P. Whittier the sum of P750,000.00;
- 2) Exemplary damages in the sum of P200,00.00;
- 3) Attorney's fees in the amount of P300,000.00, plus the costs of suit.

"SO ORDERED.

"Makati, Metro Manila, August 24, 1988.

[ORIGINAL SIGNED]  
TEOFILO GUADIZ, JR.

J u d g e"<sup>[8]</sup>

On October 5, 1988, respondent filed a notice of appeal.<sup>[9]</sup>

Meanwhile, on October 6, 1988, petitioners Morris and Whittier moved for

reconsideration of the decision as regards the award of damages.

On November 2, 1988, respondent opposed the motion for reconsideration.<sup>[10]</sup>

On February 26, 1992, the trial court issued an order granting petitioners' motion for reconsideration, the decretal portion of which is quoted herein, to wit:

"WHEREFORE, in view of the foregoing, the Court hereby grants the "Motion for Reconsideration". The dispositive portion of the "Decision" is hereby amended with respect to the amount of moral damages, ordering the defendant to pay moral damages to Collin Morris in the amount of P1,500,000.00 and to Thomas Whittier the amount of P1,000,000.00.

"SO ORDERED.

"Makati, Metro Manila, February 26, 1992.

[ORIGINAL SIGNED]  
TEOFILO GUADIZ, JR.

J u d g e"<sup>[11]</sup>

Respondent's appeal rested mainly on the ground that the trial court misappreciated the facts and evidence adduced during the trial. The thrust of its defense was petitioners' lack of cause of action, considering that they checked-in at the SAS counter at the Manila International Airport after the flight manifest was closed and after their first class seats were given to waitlisted economy class passengers.<sup>[12]</sup>

On January 21, 1997, the Court of Appeals promulgated a decision reversing the decision of the court *a quo*, and ordering the dismissal of the complaint for damages. The dispositive portion of the decision provides:

"WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE and another one rendered dismissing plaintiffs-appellees' complaint.

SO ORDERED."<sup>[13]</sup>

In reversing the trial court's decision, the Court of Appeals found petitioners' statements self-serving. Petitioners failed to prove that they checked-in on time. The appellate court lent credence to respondent's claim that petitioners were denied boarding on SAS Flight SK 893 because of their late arrival for check-in at the international airport. Respondent's employee, Ms. Erlinda Ponce, testified that petitioners checked in after the flight manifest was closed.

Hence, this petition.<sup>[14]</sup>

Petitioners allege that the Court of Appeals gravely erred in dismissing their complaint for damages and in finding their testimonies self-serving. They contend that the trial court did not act arbitrarily in lending credence to their testimonies and finding their evidence sufficient to warrant the award of damages against respondent. In sum, they

claim to be entitled to the award for damages because, as found by the trial court, they were wrongfully and in bad faith, "bumped-off" from SAS Flight SK 893 on February 14, 1978, despite their timely arrival at the airport for check-in and confirmed bookings as first class passengers.<sup>[15]</sup>

The petition has no merit.

"To begin with, it must be emphasized that a contract to transport passengers is quite different in kind and degree from any other contractual relations, and this is because of the relation, which an air carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail [themselves] of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages."<sup>[16]</sup>

"In awarding moral damages for breach of contract of carriage, the breach must be wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith."<sup>[17]</sup> "Where in breaching the contract of carriage the defendant airline is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of obligation which the parties had foreseen or could have reasonably foreseen. In that case, such liability does not include moral and exemplary damages."<sup>[18]</sup> "Moral damages are generally not recoverable in culpa contractual except when bad faith had been proven. However, the same damages may be recovered when breach of contract of carriage results in the death of a passenger."<sup>[19]</sup>

"The award of exemplary damages has likewise no factual basis. It is a requisite that the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner--circumstances which are absent in this case. In addition, exemplary damages cannot be awarded as the requisite element of compensatory damages was not present."<sup>[20]</sup>

In the instant case, assuming *arguendo* that breach of contract of carriage may be attributed to respondent, petitioners' travails were directly traceable to their failure to check-in on time, which led to respondent's refusal to accommodate them on the flight.

"The rule is that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage only where (a) the mishap results in the death of a passenger and (b) it is proved that the carrier was guilty of fraud and bad faith even if death does not result."<sup>[21]</sup>

For having arrived at the airport after the closure of the flight manifest, respondent's employee could not be faulted for not entertaining petitioners' tickets and travel documents for processing, as the checking in of passengers for SAS Flight SK 893 was finished. There was no fraud or bad faith as would justify the court's award of moral damages.

"Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud."<sup>[22]</sup>

In the instant case, respondent's denial of petitioners' boarding on SAS Flight SK 893 was not attended by bad faith or malice.

To the contrary, facts revealed that they were not allowed to board the plane due to their failure to check-in on time. Petitioner Morris admitted that they were at the check-in counter at around 3:10, exactly the same time that the flight manifest was closed, but still too late to be accommodated on the plane. Respondent's supervisor, Raul C. Basa, testified that he met petitioners at about 3:20 in the afternoon after receiving a radio call from the ground staff regarding petitioners' complaints. Clearly, petitioners did not arrive on time for check-in.

As we find petitioners not entitled to moral damages, "an award of exemplary damages is likewise baseless."<sup>[23]</sup> "Where the award of moral and exemplary damages is eliminated, so must the award for attorney's fees be deleted."<sup>[24]</sup>

**WHEREFORE**, the Court **DENIES** the petition for lack of merit. The Court **AFFIRMS *in toto*** the decision of the Court of Appeals in CA-G. R. CV. No. 38684.

No costs.

**SO ORDERED.**

*Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.*

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<sup>[1]</sup> In CA-G. R. CV No. 38684, promulgated on January 21, 1997, Justice Aliño-Hormachuelos, ponente, Justices Gonzaga-Reyes, and Mabutas, Jr., concurring; Rollo, pp. 43-56.

<sup>[2]</sup> Petition for Review, Annex "B", Rollo, p. 59.

<sup>[3]</sup> *Ibid.*, Rollo, p. 58.

<sup>[4]</sup> *Ibid.*, Rollo, p. 60.

<sup>[5]</sup> *Ibid.*, Rollo, pp. 60-61.

<sup>[6]</sup> *Ibid.*, Rollo, p. 61.

<sup>[7]</sup> *Ibid.*, Rollo, p. 62.

<sup>[8]</sup> *Ibid.*, Rollo, p. 67.

[9] Ibid., Rollo, p. 17.

[10] Ibid.

[11] Petition for Review, Annex "C", Rollo, p. 68.

[12] Court of Appeal's Decision, Rollo, p. 45.

[13] Rollo, pp. 43-56, at p. 55.

[14] Petition for Review, Rollo pp. 9-41.

[15] Petition, p. 20, Rollo, p. 28.

[16] Philippine Airlines, Inc. v. Court of Appeals, 341 Phil. 624, 628 [1997].

[17] Cervantes v. Court of Appeals, 304 SCRA 25, 32 [1999], citing Perez v. Court of Appeals, 121 Phil. 149 [1965].

[18] Tan v. Northwest Airlines, Inc., G.R. No. 135802, March 3, 2000.

[19] Yobido v. Court of Appeals, 346 Phil. 1, 13 [1997].

[20] "J" Marketing Corporation v. Sia, Jr., 285 SCRA 580, 583-584 [1998], citing Philippine National Bank v. Court of Appeals 326 Phil. 46 [1996]; Xentrex Automotive, Inc. v. Court of Appeals, 353 Phil. 258 [1998].

[21] Singson v. Court of Appeals, 346 Phil. 831, 838 [1997].

[22] Tan v. Northwest Airlines, Inc., *supra*, Note 18, citing Ford Philippines, Inc. v. Court of Appeals, 335 Phil. 1 [1997]; Llorente, Jr. v. Sandiganbayan, 287 SCRA 382 [1998].

[23] Audion Electric Co., Inc. v. National Labor Relations Commission, 308 SCRA 340, 355 [1999], citing Bernardo v. Court of Appeals, 341 Phil. 413 [1997].

[24] Orosa v. Court of Appeals, G.R. No. 111080, April 5, 2000.



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