

FIRST DIVISION

[G.R. NO. 161730, January 28, 2005]

**JAPAN AIRLINES, PETITIONER, VS. MICHAEL ASUNCION AND
JEANETTE ASUNCION, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review seeks to reverse and set aside the October 9, 2002 decision^[1] of the Court of Appeals and its January 12, 2004 resolution,^[2] which affirmed *in toto* the June 10, 1997 decision of the Regional Trial Court of Makati City, Branch 61 in Civil Case No. 92-3635.^[3]

On March 27, 1992, respondents Michael and Jeanette Asuncion left Manila on board Japan Airlines' (JAL) Flight 742 bound for Los Angeles. Their itinerary included a stop-over in Narita and an overnight stay at Hotel Nikko Narita. Upon arrival at Narita, Mrs. Noriko Etou-Higuchi of JAL endorsed their applications for shore pass and directed them to the Japanese immigration official.^[4] A shore pass is required of a foreigner aboard a vessel or aircraft who desires to stay in the neighborhood of the port of call for not more than 72 hours.

During their interview, the Japanese immigration official noted that Michael appeared shorter than his height as indicated in his passport. Because of this inconsistency, respondents were denied shore pass entries and were brought instead to the Narita Airport Rest House where they were billeted overnight.

The immigration official also handed Mrs. Higuchi a Notice^[5] where it was stated that respondents were to be "watched so as not to escape".

Mr. Atsushi Takemoto of the International Service Center (ISC), the agency tasked by Japan's Immigration Department to handle passengers who were denied shore pass entries, brought respondents to the Narita Airport Rest House where they stayed overnight until their departure the following day for Los Angeles. Respondents were charged US\$400.00 each for their accommodation, security service and meals.

On December 12, 1992, respondents filed a complaint for damages^[6] claiming that JAL did not fully apprise them of their travel requirements and that they were rudely and forcibly detained at Narita Airport.

JAL denied the allegations of respondents. It maintained that the refusal of the Japanese immigration authorities to issue shore passes to respondents is an act of state which JAL cannot interfere with or prevail upon. Consequently, it cannot impose upon the immigration authorities that respondents be billeted at Hotel Nikko

instead of the airport resthouse.^[7]

On June 10, 1997, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiffs ordering defendant JAL to pay plaintiffs as follows:

1. the sum of US\$800.00 representing the expenses incurred at the Narita Airport with interest at 12% per annum from March 27, 1992 until the sum is fully paid;
2. the sum of P200,000.00 for each plaintiff as moral damages;
3. the amount of P100,000.00 for each plaintiff as exemplary damages;
4. the amount of P100,000.00 as attorney's fees; and
5. costs of suit.

SO ORDERED.^[8]

The trial court dismissed JAL's counterclaim for litigation expenses, exemplary damages and attorney's fees.

On October 9, 2002, the Court of Appeals affirmed *in toto* the decision of the trial court. Its motion for reconsideration having been denied,^[9] JAL now files the instant petition.

The basic issue for resolution is whether JAL is guilty of breach of contract.

Under Article 1755 of the Civil Code, a common carrier such as JAL is bound to carry its passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances. When an airline issues a ticket to a passenger, confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger has every right to expect that he be transported on that flight and on that date and it becomes the carrier's obligation to carry him and his luggage safely to the agreed destination.^[10] If the passenger is not so transported or if in the process of transporting he dies or is injured, the carrier may be held liable for a breach of contract of carriage.^[11]

We find that JAL did not breach its contract of carriage with respondents. It may be true that JAL has the duty to inspect whether its passengers have the necessary travel documents, however, such duty does not extend to checking *the veracity of every entry* in these documents. JAL could not vouch for the authenticity of a passport and the correctness of the entries therein. The power to admit or not an alien into the country is a sovereign act which cannot be interfered with even by JAL. This is not within the ambit of the contract of carriage entered into by JAL and herein respondents. As such, JAL should not be faulted for the denial of respondents' shore pass applications.

Prior to their departure, respondents were aware that upon arrival in Narita, they must secure shore pass entries for their overnight stay. Respondents' mother, Mrs. Imelda Asuncion, insisted though that Ms. Linda Villavicencio of JAL assured her that her children would be granted the passes.^[12] This assertion was satisfactorily refuted by Ms. Villavicencio's testimony during the cross examination, to wit:

ATTY. GONZAGA:

Q I will show to you Exh. 9 which is the TIM and on page 184 hereof, particularly number 10, and I quote, "Those holding tickets with confirmed seats and other documents for their onward journey and continuing their journey to a third country provided that they obtain an indorsement with an application of shore pass or transit pass from the airline ground personnel before clearing the immigration formality?"

WITNESS:

A Yes, Sir.

Q Did you tell this provision to Mrs. Asuncion?

A Yes, Sir. I did.

Q Are you sure?

A Yes, Sir.

Q Did you give a copy?

A No, Sir, I did not give a copy but verbally I explained to her the procedure they have to undergo when they get to narita airport.

....

Q And you read the contents of this [TIM]?

A No, Sir, I did not read it to her but I explained to her the procedure that each passenger has to go through before when they get to narita airport before they line up in the immigration counter.

Q In other words, you told Mrs. Asuncion the responsibility of securing shore passes bears solely on the passengers only?

A Yes, Sir.

Q That the airline has no responsibility whatsoever with regards (sic) to the application for shore passes?

A Yes, Sir.^[13]

Next, respondents claimed that petitioner breached its contract of carriage when it failed to explain to the immigration authorities that they had overnight vouchers at the Hotel Nikko Narita. They imputed that JAL did not exhaust all means to prevent the denial of their shore pass entry applications.

To reiterate, JAL or any of its representatives have no authority to interfere with or influence the immigration authorities. The most that could be expected of JAL is to