

THIRD DIVISION

[G.R. No. 122308, July 08, 1997]

**PURITA S. MAPA, CARMINA S. MAPA AND CORNELIO P. MAPA,
PETITIONERS, VS. COURT OF APPEALS AND TRANS-WORLD
AIRLINES INC., RESPONDENTS.**

DECISION

DAVIDE, JR., J.:

The main issue in this petition for review under Rule 45 of the Rules of Court is the applicability of Article 28(1) of the Warsaw Convention,^[1] which provides as follows:

ARTICLE 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.

We are urged by the petitioners to reverse the 31 May 1995 Decision of the Court of Appeals in CA-G.R. CV No. 39896^[2] affirming the 24 July 1992 Order of the Regional Trial Court of Quezon City, Branch 102, which dismissed Civil Case No. Q-91-9620^[3] on the ground of lack of jurisdiction in view of the aforementioned Article 28(1) of the Warsaw Convention.

The antecedent facts, as summarized by the Court of Appeals, are as follows:

Plaintiffs Cornelio P. Mapa and Purita S. Mapa are respectable members of the society. Mr. Mapa is an established businessman and currently the Regional General Manager of Akerlund and Rausing, a multinational packaging material manufacturer based in Manila. He was previously the Senior Vice President of Phimco Industries, an affiliate company of Swedish Match Company. Mrs. Mapa is a successful businesswoman engaged in the commercial transactions of high value antique and oriental arts decor items originating from Asian countries. Carmina S. Mapa is the daughter of plaintiffs Purita and Cornelio and is a graduate of the International School in Bangkok, Thailand, now presently enrolled at the Boston University where she is majoring in communication.

Plaintiffs Mapa entered into contract of air transportation with defendant TWA as evidenced by TWA ticket Nos. 015:9475:153:304 and 015:9475:153:305, purchased in Bangkok, Thailand. Said TWA tickets are for Los Angeles-New York-Boston-St. Louis-Chicago

Domicile of carrier TWA is Kansas City, Missouri, USA. Its principal place of business is Kansas City, Missouri, USA. TWA's place of business through which the contracts were made is Bangkok, Thailand. The place

of destination is Chicago, USA.

On August 10, 1990, plaintiffs Carmina and Purita left Manila on board PAL flight No. 104 for Los Angeles. Carmina was to commence schooling and thus was accompanied by Purita to assist her in settling down at the University.

They arrived in Los Angeles on the same date and stayed there until August 14, 1990 when they left for New York City.

On August 14, 1990, plaintiffs Purita and Carmina S. Mapa arrived at the John F. Kennedy (JFK) Airport, New York, on TWA Flight No. 904.

On August 27, 1990, plaintiffs Purita and Carmina S. Mapa departed for Boston, taking a connecting flight on TWA's carrier, TW 0901, from JFK Airport, New York, to Boston's Logan Airport, checking in seven (7) pieces of luggage at the TWA counter in the JFK Airport. The seven baggages were received by a porter who issued seven TWA baggage receipts numbered 17-8270, 71, 72, 73, 74, 75, and 76 therefor.

From the entrance gate of the terminal building, plaintiffs Purita and Carmina proceeded to TWA's ticket counter and presented their confirmed TWA tickets numbered 015:9475:153:304 and 015:9475:153:305 with a 3:00 p.m. departure time. They were issued their boarding passes and were instructed to proceed to gate 35 for boarding. At about 2:40 p.m., plaintiffs noticed that there was still no instruction to board the aircraft so they made inquiries. The TWA ground stewardess informed plaintiffs that they were at the wrong gate because their flight was boarding at gate 1. Upon hearing this, plaintiffs rushed to gate 1 which was in another building terminal. At gate 1, they were told by a TWA ground stewardess that flight 901 had just departed. However, they were consoled that another TWA flight was leaving for Boston after 30 minutes and plaintiffs could use the same boarding pass for the next flight. At around 3:15 p.m., plaintiffs Purita and Carmina were able to board the next flight. However, the plane was not immediately cleared for take off on account of a thunderstorm. The passengers were instructed to stay inside the aircraft until 6:00 p.m. when the plane finally left for Boston.

Upon arriving in Boston, plaintiffs Purita and Carmina proceeded to the carousel to claim their baggages and found only three out of the seven they checked in, to wit: one Samsonite on the carousel, another Samsonite lying on the floor near the carousel and a third baggage, an American Tourister, inside the unclaimed baggage office. Plaintiffs immediately reported the loss of their four baggages to the TWA Baggage Office at Logan Airport. TWA's representative confidently assured them that their baggages would be located within 24 hours and not more than 48 hours.

On September 2, 1990, plaintiffs received a letter from TWA, signed by Mr. J.A. Butler, Customer Relations-Baggage Service, apologizing for TWA's failure to locate the missing luggage and requesting plaintiffs to

accomplish a passenger property questionnaire to facilitate a further intensive and computerized search for the lost luggage. Plaintiffs duly accomplished the passenger property questionnaire, taking pains to write down in detail the contents of each missing baggage. The total value of the lost items amounted to \$11, 283.79.

On September 20, 1990, plaintiffs' counsel wrote TWA thru its General Sales Manager in the Philippines, Daniel Tuason, with office address at Ground Floor, Saville Building, Sen. Gil J. Puyat Avenue corner Paseo de Roxas, Makati, Metro Manila demanding indemnification for the grave damage and injury suffered by the plaintiffs.

TWA again assured plaintiffs that intensive search was being conducted.

On October 8, 1990, TWA offered to amicably settle the case by giving plaintiffs-appellants two options: (a) transportation credit for future TWA travel or (b) cash settlement. Five months lapsed without any result on TWA's intensive search.

On January 3, 1991, plaintiffs-appellants opted for transportation credit for future TWA travel.

On January 11, 1991, TWA disregarded plaintiffs' option and unilaterally declared the payment of \$2,560.00 as constituting full satisfaction of the plaintiffs' claim.

On July 19, 1991, plaintiffs accepted the check for \$2,560.00, as partial payment for the actual cost of their lost baggages and their contents.

Despite demands by plaintiffs, TWA failed and refused without just cause to indemnify and redress plaintiffs for the grave injury and damages they have suffered.^[4]

Purita S. Mapa, Carmina S. Mapa, and Cornelio P. Mapa (herein petitioners) then filed with the trial court on 1 August 1991 a complaint^[5] for damages,^[6] which was docketed as Civil Case No. Q-91-9620. Before a responsive pleading was filed, the petitioners filed an Amended Complaint.^[7] They prayed that after due trial private respondent Trans-World Airlines, Inc. (hereafter, TWA), be ordered to pay them the following amounts: (1) US\$8,723.79, or its equivalent in Philippine currency, representing the cost of the lost luggage and its contents; (2) US\$2,949.50, or its equivalent in Philippine currency, representing the cost of hotel, board and lodging, and communication expenses; (3) P1 million, by way of moral damages; (4) P1 million, by way of exemplary damages, with legal interest on said amounts from the date of extrajudicial demand thereof; and (5) P500,000.00 as attorney's fees, costs of the suit, and other expenses of litigation.^[8]

On 26 February 1992, TWA filed its Answer to the Amended Complaint raising, as special and affirmative defense, lack of jurisdiction of Philippine courts over the action for damages in that pursuant to Article 28(1) of the Warsaw Convention, the action could only be brought either in Bangkok where the contract was entered into, or in Boston which was the place of destination, or in Kansas City which is the

carrier's domicile and principal place of business.

TWA further alleged that pursuant to the Warsaw Convention and the Notice of Baggage Limitations at the back of the tickets, its liability to the petitioners is limited to US\$9.07 per pound, or US\$20.00 per kilo, which is in lieu of actual and compensatory damages. Even assuming that petitioners' bag weighed the maximum acceptable weight of 70 pounds, TWA's maximum liability is \$640.00 per bag or \$2,560.00 for the four pieces of baggage, which the petitioners have been offered and have accepted. TWA also submitted that it could not be liable for moral and exemplary damages and attorney's fees because it did not act in a wanton, fraudulent, reckless, oppressive, or malevolent manner.^[9]

On 7 February 1992, the petitioners filed their second Amended Complaint^[10] to include a claim of US\$2,500, or its equivalent in Philippine Currency, representing the additional replacement cost of the items and personal effects contained in their lost luggage; and US\$4,500 representing the travel expenses, hotel, lodging, food and other expenses of petitioner Cornelio Mapa, who was constrained to join his family in Boston to extend the necessary assistance in connection with the lost luggage.

After the filing of TWA's Answer to the second Amended Complaint,^[11] and petitioners' Reply thereto, the trial court gave TWA ten days within which to submit a memorandum in support of its affirmative defenses; after which the incident would be deemed submitted for resolution.^[12] However, after TWA filed its Memorandum,^[13] the trial court gave the petitioners five days within which to file a reply memorandum; and TWA, two days from receipt of the latter to file its comment thereon.^[14] The petitioners then filed their Opposition (by way of Reply Memorandum)^[15] to which TWA filed a Reply.^[16] Thereafter, the petitioners submitted a Rejoinder^[17]; TWA, a Surrejoinder.^[18]

On 24 July 1992, the trial court issued an Order^[19] dismissing the case for lack of jurisdiction in light of Article 28(1) of the Warsaw Convention. Thus:

It is plaintiffs' theory that the Warsaw Convention does not apply to the instant case because plaintiffs' contract of transportation does not constitute "international transportation" as defined in said convention. This however is belied by the Passenger Property Questionnaire which is Annex C of plaintiffs' amended complaint. Page two of said questionnaire accomplished by plaintiffs under the heading "Your Complete Itinerary" shows that the TWA tickets issued to the plaintiffs form part of the contract of transportation to be performed from Manila to the United States. Since the Philippines and the United States are parties to the convention, plaintiffs' contracts of transportation come within the meaning of International Transportation.

...

On the basis of the foregoing, the Court holds that the Warsaw Convention is applicable to the case at bar, even if the basis of plaintiffs' present action is breach of contract of carriage under the New Civil Code.

The next question to be resolved is whether or not the Court has jurisdiction to try the present case in the light of the provision of Art. 28(1) above-quoted.

Under Art. 28(1) *supra*, a complaint for damages against an air carrier can be instituted only in any of the following places/courts:

- (1) The court of the domicile of the carrier;
- (2) The court of its principal place of business;
- (3) The court where it has a place of business through which the contract had been made;
- (4) The court of the place of destination.

In interpreting the provision of Art. 28(1) of the Warsaw Convention, the Supreme Court in the same case of Augusto Benedicto Santos vs. Northwest Airlines held:

"Whether Article 28(1) refers to jurisdiction or only to venue is a question over which authorities are sharply divided. While the petitioner cites several cases holding that Article 28(1) refers to venue rather than jurisdiction, there are later cases cited by the private respondent supporting the conclusion that the provision is jurisdictional.

Venue and jurisdiction are entirely distinct matters. Jurisdiction may not be conferred by consent or waiver upon a court which otherwise would have no jurisdiction over the subject-matter of an action; but the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong country may be waived by the failure of the defendant to make a timely objection. In either case, the court may render a valid judgment. Rules as to jurisdiction can never be left to the consent or agreement of the parties, whether or not a prohibition exists against their alteration.

A number of reasons tends to support the characterization of Article 28(1) as a jurisdiction and not a venue provision. First, the wording of Article 32, which indicates the places where the action for damages "must" be brought, underscores the mandatory nature of Article 28(1). Second, this characterization is consistent with one of the objectives of the Convention, which is to "regulate in a uniform manner the conditions of international transportation by air." Third, the Convention does not contain any provision prescribing rules of jurisdiction other than Article 28(1), which means that the phrase "rules as to jurisdiction" used in Article 32 must refer only to Article 28(1). In fact, the last sentence of Article 32 specifically deals with the exclusive enumeration in Article 28(1) as "jurisdictions," which, as such, cannot be left to the will of the parties regardless of the time when the damage occurred."

...

It has been shown by the defendant that the domicile of the defendant Trans World Airlines, Inc. is Kansas City, Missouri, its principal place of business is also in Kansas City, Missouri, the carrier's place of business