

SECOND DIVISION

[G.R. No. 188288, January 16, 2012]

**SPOUSES FERNANDO AND LOURDES VILORIA, PETITIONERS, VS.
CONTINENTAL AIRLINES, INC., RESPONDENT.**

D E C I S I O N

REYES, J.:

This is a petition for review under Rule 45 of the Rules of Court from the January 30, 2009 Decision^[1] of the Special Thirteenth Division of the Court of Appeals (CA) in CA-G.R. CV No. 88586 entitled "*Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*," the dispositive portion of which states:

WHEREFORE, the Decision of the Regional Trial Court, Branch 74, dated 03 April 2006, awarding US\$800.00 or its peso equivalent at the time of payment, plus legal rate of interest from 21 July 1997 until fully paid, [P]100,000.00 as moral damages, [P]50,000.00 as exemplary damages, [P]40,000.00 as attorney's fees and costs of suit to plaintiffs-appellees is hereby **REVERSED** and **SET ASIDE**.

Defendant-appellant's counterclaim is **DENIED**.

Costs against plaintiffs-appellees.

SO ORDERED.^[2]

On April 3, 2006, the Regional Trial Court of Antipolo City, Branch 74 (RTC) rendered a Decision, giving due course to the complaint for sum of money and damages filed by petitioners Fernando Viloria (Fernando) and Lourdes Viloria (Lourdes), collectively called Spouses Viloria, against respondent Continental Airlines, Inc. (CAI). As culled from the records, below are the facts giving rise to such complaint.

On or about July 21, 1997 and while in the United States, Fernando purchased for himself and his wife, Lourdes, two (2) round trip airline tickets from San Diego, California to Newark, New Jersey on board Continental Airlines. Fernando purchased the tickets at US\$400.00 each from a travel agency called "Holiday Travel" and was attended to by a certain Margaret Mager (Mager). According to Spouses Viloria, Fernando agreed to buy the said tickets after Mager informed them that there were no available seats at Amtrak, an intercity passenger train service provider in the United States. Per the tickets, Spouses Viloria were scheduled to leave for Newark on August 13, 1997 and return to San Diego on August 21, 1997.

Subsequently, Fernando requested Mager to reschedule their flight to Newark to an

earlier date or August 6, 1997. Mager informed him that flights to Newark via Continental Airlines were already fully booked and offered the alternative of a round trip flight via Frontier Air. Since flying with Frontier Air called for a higher fare of US\$526.00 per passenger and would mean traveling by night, Fernando opted to request for a refund. Mager, however, denied his request as the subject tickets are non-refundable and the only option that Continental Airlines can offer is the re-issuance of new tickets within one (1) year from the date the subject tickets were issued. Fernando decided to reserve two (2) seats with Frontier Air.

As he was having second thoughts on traveling via Frontier Air, Fernando went to the Greyhound Station where he saw an Amtrak station nearby. Fernando made inquiries and was told that there are seats available and he can travel on Amtrak anytime and any day he pleased. Fernando then purchased two (2) tickets for Washington, D.C.

From Amtrak, Fernando went to Holiday Travel and confronted Mager with the Amtrak tickets, telling her that she had misled them into buying the Continental Airlines tickets by misrepresenting that Amtrak was already fully booked. Fernando reiterated his demand for a refund but Mager was firm in her position that the subject tickets are non-refundable.

Upon returning to the Philippines, Fernando sent a letter to CAI on February 11, 1998, demanding a refund and alleging that Mager had deluded them into purchasing the subject tickets.^[3]

In a letter dated February 24, 1998, Continental Micronesia informed Fernando that his complaint had been referred to the Customer Refund Services of Continental Airlines at Houston, Texas.^[4]

In a letter dated March 24, 1998, Continental Micronesia denied Fernando's request for a refund and advised him that he may take the subject tickets to any Continental ticketing location for the re-issuance of new tickets within two (2) years from the date they were issued. Continental Micronesia informed Fernando that the subject tickets may be used as a form of payment for the purchase of another Continental ticket, albeit with a re-issuance fee.^[5]

On June 17, 1999, Fernando went to Continental's ticketing office at Ayala Avenue, Makati City to have the subject tickets replaced by a single round trip ticket to Los Angeles, California under his name. Therein, Fernando was informed that Lourdes' ticket was non-transferable, thus, cannot be used for the purchase of a ticket in his favor. He was also informed that a round trip ticket to Los Angeles was US\$1,867.40 so he would have to pay what will not be covered by the value of his San Diego to Newark round trip ticket.

In a letter dated June 21, 1999, Fernando demanded for the refund of the subject tickets as he no longer wished to have them replaced. In addition to the dubious circumstances under which the subject tickets were issued, Fernando claimed that CAI's act of charging him with US\$1,867.40 for a round trip ticket to Los Angeles, which other airlines priced at US\$856.00, and refusal to allow him to use Lourdes' ticket, breached its undertaking under its March 24, 1998 letter.^[6]

On September 8, 2000, Spouses Viloría filed a complaint against CAI, praying that CAI be ordered to refund the money they used in the purchase of the subject tickets with legal interest from July 21, 1997 and to pay P1,000,000.00 as moral damages, P500,000.00 as exemplary damages and P250,000.00 as attorney's fees.^[7]

CAI interposed the following defenses: (a) Spouses Viloría have no right to ask for a refund as the subject tickets are non-refundable; (b) Fernando cannot insist on using the ticket in Lourdes' name for the purchase of a round trip ticket to Los Angeles since the same is non-transferable; (c) as Mager is not a CAI employee, CAI is not liable for any of her acts; (d) CAI, its employees and agents did not act in bad faith as to entitle Spouses Viloría to moral and exemplary damages and attorney's fees. CAI also invoked the following clause printed on the subject tickets:

3. To the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (i) provisions contained in this ticket, (ii) applicable tariffs, (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier), except in transportation between a place in the United States or Canada and any place outside thereof to which tariffs in force in those countries apply.^[8]

According to CAI, one of the conditions attached to their contract of carriage is the non-transferability and non-refundability of the subject tickets.

The RTC's Ruling

Following a full-blown trial, the RTC rendered its April 3, 2006 Decision, holding that Spouses Viloría are entitled to a refund in view of Mager's misrepresentation in obtaining their consent in the purchase of the subject tickets.^[9] The relevant portion of the April 3, 2006 Decision states:

Continental Airlines agent Ms. Mager was in bad faith when she was less candid and diligent in presenting to plaintiffs spouses their booking options. Plaintiff Fernando clearly wanted to travel via AMTRAK, but defendant's agent misled him into purchasing Continental Airlines tickets instead on the fraudulent misrepresentation that Amtrak was fully booked. In fact, defendant Airline did not specifically denied (sic) this allegation.

Plainly, plaintiffs spouses, particularly plaintiff Fernando, were tricked into buying Continental Airline tickets on Ms. Mager's misleading misrepresentations. Continental Airlines agent Ms. Mager further relied on and exploited plaintiff Fernando's need and told him that they must book a flight immediately or risk not being able to travel at all on the couple's preferred date. Unfortunately, plaintiffs spouses fell prey to the airline's and its agent's unethical tactics for baiting trusting customers."

^[10]

Citing Articles 1868 and 1869 of the Civil Code, the RTC ruled that Mager is CAI's agent, hence, bound by her bad faith and misrepresentation. As far as the RTC is concerned, there is no issue as to whether Mager was CAI's agent in view of CAI's implied recognition of her status as such in its March 24, 1998 letter.

The act of a travel agent or agency being involved here, the following are the pertinent New Civil Code provisions on agency:

Art. 1868. By the contract of agency 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.

Art. 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

Agency may be oral, unless the law requires a specific form.

As its very name implies, a travel agency binds itself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. This court takes judicial notice of the common services rendered by travel agencies that represent themselves as such, specifically the reservation and booking of local and foreign tours as well as the issuance of airline tickets for a commission or fee.

The services rendered by Ms. Mager of Holiday Travel agency to the plaintiff spouses on July 21, 1997 were no different from those offered in any other travel agency. Defendant airline impliedly if not expressly acknowledged its principal-agent relationship with Ms. Mager by its offer in the letter dated March 24, 1998 – an obvious attempt to assuage plaintiffs spouses' hurt feelings.^[11]

Furthermore, the RTC ruled that CAI acted in bad faith in reneging on its undertaking to replace the subject tickets within two (2) years from their date of issue when it charged Fernando with the amount of US\$1,867.40 for a round trip ticket to Los Angeles and when it refused to allow Fernando to use Lourdes' ticket. Specifically:

Tickets may be reissued for up to two years from the original date of issue. When defendant airline still charged plaintiffs spouses US\$1,867.40 or more than double the then going rate of US\$856.00 for the unused tickets when the same were presented within two (2) years from date of issue, defendant airline exhibited callous treatment of passengers.^[12]

The Appellate Court's Ruling

On appeal, the CA reversed the RTC's April 3, 2006 Decision, holding that CAI cannot be held liable for Mager's act in the absence of any proof that a principal-agent relationship existed between CAI and Holiday Travel. According to the CA, Spouses Vioria, who have the burden of proof to establish the fact of agency, failed to present evidence demonstrating that Holiday Travel is CAI's agent. Furthermore, contrary to Spouses Vioria's claim, the contractual relationship between Holiday Travel and CAI is not an agency but that of a sale.

Plaintiffs-appellees assert that Mager was a sub-agent of Holiday Travel who was in turn a ticketing agent of Holiday Travel who was in turn a ticketing agent of Continental Airlines. Proceeding from this premise, they contend that Continental Airlines should be held liable for the acts of Mager. The trial court held the same view.

We do not agree. By the contract of agency, a person binds him/herself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it. Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it. Agency is never presumed, neither is it created by the mere use of the word in a trade or business name. We have perused the evidence and documents so far presented. We find nothing except bare allegations of plaintiffs-appellees that Mager/Holiday Travel was acting in behalf of Continental Airlines. From all sides of legal prism, the transaction in issue was simply a contract of sale, wherein Holiday Travel buys airline tickets from Continental Airlines and then, through its employees, Mager included, sells it at a premium to clients.^[13]

The CA also ruled that refund is not available to Spouses Vioria as the word "non-refundable" was clearly printed on the face of the subject tickets, which constitute their contract with CAI. Therefore, the grant of their prayer for a refund would violate the proscription against impairment of contracts.

Finally, the CA held that CAI did not act in bad faith when they charged Spouses Vioria with the higher amount of US\$1,867.40 for a round trip ticket to Los Angeles. According to the CA, there is no compulsion for CAI to charge the lower amount of