

THIRD DIVISION

[G.R. No. 155550, January 31, 2008]

NORTHWEST AIRLINES, INC., Petitioner, vs. STEVEN P. CHIONG, Respondent.

DECISION

NACHURA, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Court of Appeals (CA) Decision^[1] in CA-G.R. CV No. 50308^[2] which affirmed *in toto* the Regional Trial Court (RTC) Decision^[3] holding petitioner Northwest Airlines, Inc. (Northwest) liable for breach of contract of carriage.

On March 14, 1989, Philimare Shipping and Seagull Maritime Corporation (Philimare), as the authorized Philippine agent of TransOcean Lines (TransOcean), hired respondent Steven Chiong as Third Engineer of TransOcean's vessel *M/V Elbia* at the San Diego, California Port. Under the service crew agreement, Chiong was guaranteed compensation at a monthly salary of US\$440.00 and a monthly overtime pay of US\$220.00, or a total of US\$7,920.00 for one year.

Subsequently, on March 27, 1989, Philimare dispatched a Letter of Guarantee to CL Hutchins & Co., Inc., TransOcean's agent at the San Diego Port, confirming Chiong's arrival thereat in time to board the *M/V Elbia* which was set to sail on April 1, 1989 (California, United States time). For this purpose, Philimare purchased for Chiong a Northwest plane ticket for San Diego, California with a departure date of April 1, 1989 from Manila. Ten (10) days before his scheduled departure, Chiong fetched his entire family from Samar and brought them to Manila to see him off at the airport.

On April 1, 1989, Chiong arrived at the Manila International Airport^[4] (MIA), at about 6:30 a.m., three (3) hours before the scheduled time of departure. Marilyn Calvo, Philimare's Liaison Officer, met Chiong at the departure gate, and the two proceeded to the Philippine Coast Guard (PCG) Counter to present Chiong's seaman service record book for clearance. Thereafter, Chiong's passport was duly stamped, after complying with government requirements for departing seafarers.

Calvo remained at the PCG Counter while Chiong proceeded to queue at the Northwest check-in counter. When it was Chiong's turn, the Northwest personnel^[5] informed him that his name did not appear in the computer's list of confirmed departing passengers. Chiong was then directed to speak to a "man in *barong*" standing outside Northwest's counters from whom Chiong could allegedly obtain a boarding pass. Posthaste, Chiong approached the "man in *barong*" who demanded US\$100.00 in exchange therefor. Without the said amount, and anxious to board the plane, Chiong queued a number of times at Northwest's Check-in Counter and presented his ticket. However, the Northwest personnel at the counter told him to

simply wait and that he was being a pest.

Frustrated, Chiong went to Calvo at the PCG counter and inquired if she had money so he could obtain a boarding pass from the "man in *barong*." Calvo, who already saw that something was amiss, insisted that Chiong's plane ticket was confirmed and as such, he could check-in smoothly and board the plane without shelling out US\$100.00 for a boarding pass. Ultimately, Chiong was not allowed to board Northwest Flight No. 24 bound for San Diego that day and, consequently, was unable to work at the *M/V Elbia* by April 1, 1989 (California, U.S.A. time).

It appears that Chiong's name was crossed out and substituted with "W. Costine" in Northwest's Air Passenger Manifest.^[6]

In a letter dated April 3, 1989, Chiong's counsel demanded as recompense: (1) the amount equivalent to Chiong's salary under the latter's Crew Agreement^[7] with TransOcean; (2) P15,000.00 for Chiong's expenses in fetching and bringing his family from Samar to Manila; (3) P500,000.00 as moral damages; and (4) P500,000.00 as legal fees.^[8]

Northwest demurred. Thus, on May 24, 1989, Chiong filed a Complaint for breach of contract of carriage before the RTC. Northwest filed a Motion to Dismiss^[9] the complaint citing the trial court's lack of jurisdiction over the subject matter of the case, but the trial court denied the same.^[10]

In its Answer,^[11] Northwest contradicted the claim that it breached its contract of carriage with Chiong, reiterating that Chiong had no cause of action against it because per its records, Chiong was a "no-show" passenger for Northwest Flight No. 24 on April 1, 1989.

In the RTC's Pre-trial Order^[12] based on the parties' respective Pre-trial Briefs,^[13] the triable issues were limited to the following:

(a) Whether [Chiong] was bumped-off by [Northwest] from Flight NW 24 or whether [Chiong] "no-showed" for said flight.

(b) If defendant is found guilty of having breached its contract of carriage with plaintiff, what damages are awardable to plaintiff and how much.

In the course of proceedings, Northwest, on September 14, 1990, filed a separate criminal complaint for False Testimony^[14] against Chiong based on the latter's testimony that he did not leave the Philippines after April 1, 1989 contrary to the notations in his seaman service record book that he had left the country on April 17, 1989, and returned on October 5 of the same year. Chiong did not participate in the preliminary investigation; thus, on December 14, 1990, the City Prosecutor of Manila filed an Information against Chiong with the RTC Manila, Branch 54, docketed as Criminal Case No. 90-89722.

In the meantime, after a flurry of motions filed by Northwest in the civil case were denied by the RTC, Northwest filed a Petition for *Certiorari* before the CA imputing grave abuse of discretion to the RTC.^[15] Correlatively, Northwest moved for a suspension of the proceedings before the trial court. However, both the Petition for

Certiorari and Motion for Suspension of the proceedings were denied by the CA and RTC, respectively.^[16]

After trial, the RTC rendered a Decision finding preponderance of evidence in favor of Chiong, and holding Northwest liable for breach of contract of carriage. The RTC ruled that the evidence adduced by the parties supported the conclusion that Chiong was deliberately prevented from checking-in and his boarding pass unjustifiably withheld to accommodate an American passenger by the name of W. Costine.

The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, in consideration of all the foregoing, judgment is hereby rendered, ordering the defendant liable to plaintiff in damages by reason of the latter's inability to take defendant's NW Flight No. 24 on April 1, 1989, for the following amounts:

- 1) U.S.\$8,447.00^[17] or its peso equivalent at the time of finality of this judgment with legal interests until fully paid, representing compensatory damages due to plaintiff's loss of income for one (1) year as a direct result of defendant's breach of contract of carriage;
- 2) P15,000.00, Philippine Currency, representing plaintiff's actual incurred damages as a consequence of his failure to avail of defendant's Flight No. 24 on April 1, 1989;
- 3) P200,000.00, Philippine Currency, representing moral damages suffered and sustained by the plaintiff as a result of defendant's breach of contract of carriage;
- 4) P200,000.00, Philippine Currency, representing exemplary or punitive damages due to plaintiff from defendant, owing to the latter's breach of contract of carriage with malice and fraud; and
- 5) P200,000.00, Philippine Currency, for and as attorney's fees, plus costs of suit.

SO ORDERED.

On appeal, the CA affirmed *in toto* the ruling of the RTC. Identical to the RTC's findings, those of the CA were as follows: on April 1, 1989, Chiong was at the MIA three hours before the 10:15 a.m. departure time for Northwest Flight No. 24. Contrary to Northwest's claim that Chiong was a "no-show" passenger, the CA likewise concluded, as the RTC did, that Chiong was not allowed to check-in and was not issued a boarding pass at the Northwest check-in counter to accommodate a certain W. Costine. As for Northwest's defense that Chiong had left the country after April 1, 1989 and worked for *M/V Elbia*, the CA ruled that Northwest's failure to raise this defense in its Answer or Motion to Dismiss is equivalent to a waiver thereof. The CA declared that, in any event, Northwest failed to present any evidence to prove that Chiong had worked under the original crew agreement.

Hence, this recourse.

Northwest ascribes grievous errors to the CA when the appellate court ruled that: (1) Northwest breached the contract of carriage with Chiong who was present at the MIA on April 1, 1989 to board Northwest's Flight No. 24; (2) As a result of the breach, Northwest is liable to Chiong for compensatory, actual, moral and exemplary damages, attorney's fees, and costs of suit; and (3) Northwest's Exhibits "2" and "3," the Flight Manifest and the Passenger Name Record, respectively, were hearsay evidence and ought to be excluded from the records.

The petition must fail.

We are in complete accord with the common ruling of the lower courts that Northwest breached the contract of carriage with Chiong, and as such, he is entitled to compensatory, actual, moral and exemplary damages, attorney's fees and costs of suit.

Northwest contends that Chiong, as a "no-show" passenger on April 1, 1989, already defaulted in his obligation to abide by the terms and conditions of the contract of carriage;^[18] and thus, Northwest could not have been in breach of its reciprocal obligation to transport Chiong. In sum, Northwest insists that Chiong's testimony is a complete fabrication, supposedly demonstrated by the following: (1) Chiong's seaman service record book reflects that he left the Philippines after April 1, 1989, specifically on April 17, 1989, to board the *M/V Elbia*, and was discharged therefrom upon his personal request; (2) the Information filed against Chiong for False Testimony; and (3) the Flight Manifest and the Passenger Name Record both indicate that he was a "no-show" passenger.

We are not convinced.

The records reveal that Chiong, as plaintiff in the trial court, satisfied the burden of proof required in civil cases, i.e., preponderance of evidence. Section 1 of Rule 133 provides:

SECTION 1. *Preponderance of evidence, how determined.* – In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstance of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though preponderance is not necessarily with the greater number.

In this regard, the Court notes that, in addition to his testimony, Chiong's evidence consisted of a Northwest ticket for the April 1, 1989 Flight No. 24, Chiong's passport and seaman service record book duly stamped at the PCG counter, and the testimonies of Calvo, Florencio Gomez,^[19] and Philippine Overseas Employment and Administration (POEA) personnel who all identified the signature and stamp of the PCG on Chiong's passport.

We have scoured the records, and found no reason to depart from the well-settled rule that factual findings of the lower courts deserve the utmost respect and are not to be disturbed on appeal.^[20] Indeed, Chiong's Northwest ticket for Flight No. 24 on April 1, 1989, coupled with the PCG stamps on his passport showing the same date, is direct evidence that he was present at MIA on said date as he intended to fly to the United States on board that flight. As testified to by POEA personnel and officers, the PCG stamp indicates that a departing seaman has passed through the PCG counter at the airport, surrendered the exit pass, and complied with government requirements for departing seafarers. Calvo, Philimare's liaison officer tasked to assist Chiong at the airport, corroborated Chiong's testimony on the latter's presence at the MIA and his check-in at the PCG counter without a hitch. Calvo further testified that she purposely stayed at the PCG counter to confirm that Chiong was able to board the plane, as it was part of her duties as Philimare's liaison officer, to confirm with their principal, TransOcean in this case, that the seafarer had left the country and commenced travel to the designated port where the vessel is docked.^[21] Thus, she had observed that Chiong was unable to check-in and board Northwest Flight No. 24, and was actually being given the run-around by Northwest personnel.

It is of no moment that Chiong's witnesses – who all corroborated his testimony on his presence at the airport on, and flight details for, April 1, 1989, and that he was subsequently bumped-off – are, likewise, employees of Philimare which may have an interest in the outcome of this case. We intoned in *Philippine Airlines, Inc. v. Court of Appeals*,^[22] thus:

(T)his Court has repeatedly held that a witness' relationship to the victim does not automatically affect the veracity of his or her testimony. While this principle is often applied in criminal cases, we deem that the same principle may apply in this case, albeit civil in nature. **If a witness' relationship with a party does not *ipso facto* render him a biased witness in criminal cases where the quantum of evidence required is proof beyond reasonable doubt, there is no reason why the same principle should not apply in civil cases where the quantum of evidence is only preponderance of evidence.**

The foregoing documentary and testimonial evidence, taken together, amply establish the fact that Chiong was present at MIA on April 1, 1989, passed through the PCG counter without delay, proceeded to the Northwest check-in counter, but when he presented his confirmed ticket thereat, he was not issued a boarding pass, and ultimately barred from boarding Northwest Flight No. 24 on that day.

In stark contrast is Northwest's bare-faced claim that Chiong was a "no-show" passenger, and was scheduled to leave the country only on April 17, 1989. As previously discussed, the records belie this assertion. It is also noteworthy that Northwest did not present any evidence to support its belated defense that Chiong departed from the Philippines on April 17, 1989 to work as Third Engineer on board *M/V Elbia* under the original crew agreement.

It is true that Chiong's passport and seaman service record book indicate that he had left the country on April 17, 1989 and come back on October 5 of the same year. However, this evidence fails to debunk the facts established to have transpired