

FIRST DIVISION

[G.R. No. 150843, March 14, 2003]

**CATHAY PACIFIC AIRWAYS, LTD., PETITIONER, VS. SPOUSES
DANIEL VAZQUEZ AND MARIA LUISA MADRIGAL VAZQUEZ,
RESPONDENTS.**

D E C I S I O N

DAVIDE JR., C.J.:

Is an involuntary upgrading of an airline passenger's accommodation from one class to a more superior class at no extra cost a breach of contract of carriage that would entitle the passenger to an award of damages? This is a novel question that has to be resolved in this case.

The facts in this case, as found by the Court of Appeals and adopted by petitioner Cathay Pacific Airways, Ltd., (hereinafter Cathay) are as follows:

Cathay is a common carrier engaged in the business of transporting passengers and goods by air. Among the many routes it services is the Manila-Hongkong-Manila course. As part of its marketing strategy, Cathay accords its frequent flyers membership in its Marco Polo Club. The members enjoy several privileges, such as priority for upgrading of booking without any extra charge whenever an opportunity arises. Thus, a frequent flyer booked in the Business Class has priority for *upgrading* to First Class if the Business Class Section is fully booked.

Respondents-spouses Dr. Daniel Earnshaw Vazquez and Maria Luisa Madrigal Vazquez are frequent flyers of Cathay and are Gold Card members of its Marco Polo Club. On 24 September 1996, the Vazquezes, together with their maid and two friends Pacita Cruz and Josefina Vergel de Dios, went to Hongkong for pleasure and business.

For their return flight to Manila on 28 September 1996, they were booked on Cathay's Flight CX-905, with departure time at 9:20 p.m. Two hours before their time of departure, the Vazquezes and their companions checked in their luggage at Cathay's check-in counter at Kai Tak Airport and were given their respective boarding passes, to wit, Business Class boarding passes for the Vazquezes and their two friends, and Economy Class for their maid. They then proceeded to the Business Class passenger lounge.

When boarding time was announced, the Vazquezes and their two friends went to Departure Gate No. 28, which was designated for Business Class passengers. Dr. Vazquez presented his boarding pass to the ground stewardess, who in turn inserted it into an electronic machine reader or computer at the gate. The ground stewardess was assisted by a ground attendant by the name of Clara Lai Han Chiu. When Ms. Chiu glanced at the computer monitor, she saw a message that there was a "seat

change" from Business Class to First Class for the Vazquezes.

Ms. Chiu approached Dr. Vazquez and told him that the Vazquezes' accommodations were upgraded to First Class. Dr. Vazquez refused the upgrade, reasoning that it would not look nice for them as hosts to travel in First Class and their guests, in the Business Class; and moreover, they were going to discuss business matters during the flight. He also told Ms. Chiu that she could have other passengers instead transferred to the First Class Section. Taken aback by the refusal for upgrading, Ms. Chiu consulted her supervisor, who told her to handle the situation and convince the Vazquezes to accept the upgrading. Ms. Chiu informed the latter that the Business Class was fully booked, and that since they were Marco Polo Club members they had the priority to be upgraded to the First Class. Dr. Vazquez continued to refuse, so Ms. Chiu told them that if they would not avail themselves of the privilege, they would not be allowed to take the flight. Eventually, after talking to his two friends, Dr. Vazquez gave in. He and Mrs. Vazquez then proceeded to the First Class Cabin.

Upon their return to Manila, the Vazquezes, in a letter of 2 October 1996 addressed to Cathay's Country Manager, demanded that they be indemnified in the amount of P1million for the "humiliation and embarrassment" caused by its employees. They also demanded "a written apology from the management of Cathay, preferably a responsible person with a rank of no less than the Country Manager, as well as the apology from Ms. Chiu" within fifteen days from receipt of the letter.

In his reply of 14 October 1996, Mr. Larry Yuen, the assistant to Cathay's Country Manager Argus Guy Robson, informed the Vazquezes that Cathay would investigate the incident and get back to them within a week's time.

On 8 November 1996, after Cathay's failure to give them any feedback within its self-imposed deadline, the Vazquezes instituted before the Regional Trial Court of Makati City an action for damages against Cathay, praying for the payment to each of them the amounts of P250,000 as temperate damages; P500,000 as moral damages; P500,000 as exemplary or corrective damages; and P250,000 as attorney's fees.

In their complaint, the Vazquezes alleged that when they informed Ms. Chiu that they preferred to stay in Business Class, Ms. Chiu "obstinately, uncompromisingly and in a loud, discourteous and harsh voice threatened" that they could not board and leave with the flight unless they go to First Class, since the Business Class was overbooked. Ms. Chiu's loud and stringent shouting annoyed, embarrassed, and humiliated them because the incident was witnessed by all the other passengers waiting for boarding. They also claimed that they were unjustifiably delayed to board the plane, and when they were finally permitted to get into the aircraft, the forward storage compartment was already full. A flight stewardess instructed Dr. Vazquez to put his roll-on luggage in the overhead storage compartment. Because he was not assisted by any of the crew in putting up his luggage, his bilateral carpal tunnel syndrome was aggravated, causing him extreme pain on his arm and wrist. The Vazquezes also averred that they "belong to the uppermost and absolutely top elite of both Philippine Society and the Philippine financial community, [and that] they were among the wealthiest persons in the Philippine[s]."

In its answer, Cathay alleged that it is a practice among commercial airlines to upgrade passengers to the next better class of accommodation, whenever an

opportunity arises, such as when a certain section is fully booked. Priority in upgrading is given to its frequent flyers, who are considered favored passengers like the Vazquezes. Thus, when the Business Class Section of Flight CX-905 was fully booked, Cathay's computer sorted out the names of favored passengers for involuntary upgrading to First Class. When Ms. Chiu informed the Vazquezes that they were upgraded to First Class, Dr. Vazquez refused. He then stood at the entrance of the boarding apron, blocking the queue of passengers from boarding the plane, which inconvenienced other passengers. He shouted that it was impossible for him and his wife to be upgraded without his two friends who were traveling with them. Because of Dr. Vazquez's outburst, Ms. Chiu thought of upgrading the traveling companions of the Vazquezes. But when she checked the computer, she learned that the Vazquezes' companions did not have priority for upgrading. She then tried to book the Vazquezes again to their original seats. However, since the Business Class Section was already fully booked, she politely informed Dr. Vazquez of such fact and explained that the upgrading was in recognition of their status as Cathay's valued passengers. Finally, after talking to their guests, the Vazquezes eventually decided to take the First Class accommodation.

Cathay also asserted that its employees at the Hong Kong airport acted in good faith in dealing with the Vazquezes; none of them shouted, humiliated, embarrassed, or committed any act of disrespect against them (the Vazquezes). Assuming that there was indeed a breach of contractual obligation, Cathay acted in good faith, which negates any basis for their claim for temperate, moral, and exemplary damages and attorney's fees. Hence, it prayed for the dismissal of the complaint and for payment of ₱100,000 for exemplary damages and ₱300,000 as attorney's fees and litigation expenses.

During the trial, Dr. Vazquez testified to support the allegations in the complaint. His testimony was corroborated by his two friends who were with him at the time of the incident, namely, Pacita G. Cruz and Josefina Vergel de Dios.

For its part, Cathay presented documentary evidence and the testimonies of Mr. Yuen; Ms. Chiu; Norma Barrientos, Comptroller of its retained counsel; and Mr. Robson. Yuen and Robson testified on Cathay's policy of upgrading the seat accommodation of its Marco Polo Club members when an opportunity arises. The upgrading of the Vazquezes to First Class was done in good faith; in fact, the First Class Section is definitely much better than the Business Class in terms of comfort, quality of food, and service from the cabin crew. They also testified that overbooking is a widely accepted practice in the airline industry and is in accordance with the International Air Transport Association (IATA) regulations. Airlines overbook because a lot of passengers do not show up for their flight. With respect to Flight CX-905, there was no overall overbooking to a degree that a passenger was bumped off or downgraded. Yuen and Robson also stated that the demand letter of the Vazquezes was immediately acted upon. Reports were gathered from their office in Hong Kong and immediately forwarded to their counsel Atty. Remollo for legal advice. However, Atty. Remollo begged off because his services were likewise retained by the Vazquezes; nonetheless, he undertook to solve the problem in behalf of Cathay. But nothing happened until Cathay received a copy of the complaint in this case. For her part, Ms. Chiu denied that she shouted or used foul or impolite language against the Vazquezes. Ms. Barrientos testified on the amount of attorney's fees and other litigation expenses, such as those for the taking of the depositions of Yuen and Chiu.

In its decision^[1] of 19 October 1998, the trial court found for the Vazquezes and decreed as follows:

WHEREFORE, finding preponderance of evidence to sustain the instant complaint, judgment is hereby rendered in favor of plaintiffs Vazquez spouses and against defendant Cathay Pacific Airways, Ltd., ordering the latter to pay each plaintiff the following:12345

- a) Nominal damages in the amount of ₱100,000.00 for each plaintiff;
- b) Moral damages in the amount of ₱2,000,000.00 for each plaintiff;
- c) Exemplary damages in the amount of ₱5,000,000.00 for each plaintiff;
- d) Attorney's fees and expenses of litigation in the amount of ₱1,000,000.00 for each plaintiff; and
- e) Costs of suit.

SO ORDERED.

According to the trial court, Cathay offers various classes of seats from which passengers are allowed to choose regardless of their reasons or motives, whether it be due to budgetary constraints or whim. The choice imposes a clear obligation on Cathay to transport the passengers in the class chosen by them. The carrier cannot, without exposing itself to liability, force a passenger to involuntarily change his choice. The upgrading of the Vazquezes' accommodation over and above their vehement objections was due to the overbooking of the Business Class. It was a pretext to pack as many passengers as possible into the plane to maximize Cathay's revenues. Cathay's actuations in this case displayed deceit, gross negligence, and bad faith, which entitled the Vazquezes to awards for damages.

On appeal by the petitioners, the Court of Appeals, in its decision of 24 July 2001,^[2] deleted the award for exemplary damages; and it reduced the awards for moral and nominal damages for each of the Vazquezes to ₱250,000 and ₱50,000, respectively, and the attorney's fees and litigation expenses to ₱50,000 for both of them.

The Court of Appeals ratiocinated that by upgrading the Vazquezes to First Class, Cathay novated the contract of carriage without the former's consent. There was a breach of contract not because Cathay overbooked the Business Class Section of Flight CX-905 but because the latter pushed through with the upgrading despite the objections of the Vazquezes.

However, the Court of Appeals was not convinced that Ms. Chiu shouted at, or meant to be discourteous to, Dr. Vazquez, although it might seemed that way to the latter, who was a member of the elite in Philippine society and was not therefore used to being harangued by anybody. Ms. Chiu was a Hong Kong Chinese whose fractured Chinese was difficult to understand and whose manner of speaking might sound harsh or shrill to Filipinos because of cultural differences. But the Court of Appeals did not find her to have acted with deliberate malice, deceit, gross negligence, or bad faith. If at all, she was negligent in not offering the First Class accommodations to other passengers. Neither can the flight stewardess in the First Class Cabin be said to have been in bad faith when she failed to assist Dr. Vazquez

in lifting his baggage into the overhead storage bin. There is no proof that he asked for help and was refused even after saying that he was suffering from “bilateral carpal tunnel syndrome.” Anent the delay of Yuen in responding to the demand letter of the Vazquezes, the Court of Appeals found it to have been sufficiently explained.

The Vazquezes and Cathay separately filed motions for a reconsideration of the decision, both of which were denied by the Court of Appeals.

Cathay seasonably filed with us this petition in this case. Cathay maintains that the award for moral damages has no basis, since the Court of Appeals found that there was no “wanton, fraudulent, reckless and oppressive” display of manners on the part of its personnel; and that the breach of contract was not attended by fraud, malice, or bad faith. If any damage had been suffered by the Vazquezes, it was *damnum absque injuria*, which is damage without injury, damage or injury inflicted without injustice, loss or damage without violation of a legal right, or a wrong done to a man for which the law provides no remedy. Cathay also invokes our decision in *United Airlines, Inc. v. Court of Appeals*^[3] where we recognized that, in accordance with the Civil Aeronautics Board’s Economic Regulation No. 7, as amended, an overbooking that does not exceed ten percent cannot be considered deliberate and done in bad faith. We thus deleted in that case the awards for moral and exemplary damages, as well as attorney’s fees, for lack of proof of overbooking exceeding ten percent or of bad faith on the part of the airline carrier.

On the other hand, the Vazquezes assert that the Court of Appeals was correct in granting awards for moral and nominal damages and attorney’s fees in view of the breach of contract committed by Cathay for transferring them from the Business Class to First Class Section without prior notice or consent and over their vigorous objection. They likewise argue that the issuance of passenger tickets more than the seating capacity of each section of the plane is in itself fraudulent, malicious and tainted with bad faith.

The key issues for our consideration are whether (1) by upgrading the seat accommodation of the Vazquezes from Business Class to First Class Cathay breached its contract of carriage with the Vazquezes; (2) the upgrading was tainted with fraud or bad faith; and (3) the Vazquezes are entitled to damages.

We resolve the first issue in the affirmative.

A contract is a meeting of minds between two persons whereby one agrees to give something or render some service to another for a consideration. There is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) an object certain which is the subject of the contract; and (3) the cause of the obligation which is established.^[4] Undoubtedly, a contract of carriage existed between Cathay and the Vazquezes. They voluntarily and freely gave their consent to an agreement whose object was the transportation of the Vazquezes from Manila to Hong Kong and back to Manila, with seats in the Business Class Section of the aircraft, and whose cause or consideration was the fare paid by the Vazquezes to Cathay.

The only problem is the legal effect of the upgrading of the seat accommodation of