

## THIRD DIVISION

**[ G.R. No. 116044-45, March 09, 2000 ]**

**AMERICAN AIRLINES, PETITIONER, VS. COURT OF APPEALS,  
HON. BERNARDO LL. SALAS AND DEMOCRITO MENDOZA,  
RESPONDENTS.**

### D E C I S I O N

**GONZAGA-REYES, J.:**

Before us is a petition for review of the decision dated December 24, 1993 rendered by the Court of Appeals in the consolidated cases docketed as CA-G.R. SP nos. 30946 and 31452 entitled American Airlines vs. The Presiding Judge Branch 8 of the Regional Trial Court of Cebu and Democrito Mendoza, petitions for certiorari and prohibition. In SP no. 30946, the petitioner assails the trial court's order denying the petitioner's motion to dismiss the action for damages filed by the private respondent for lack of jurisdiction under section 28 (1) of the Warsaw Convention; and in SP No. 31452 the petitioner challenges the validity of the trial court's order striking off the record the deposition of the petitioner's security officer taken in Geneva, Switzerland for failure of the said security officer to answer the cross interrogatories propounded by the private respondent.

The sole issue raised in SP No. 30946 is the questioned jurisdiction of the Regional Trial Court of Cebu to take cognizance of the action for damages filed by the private respondent against herein petitioner in view of Art 28 (1) of the Warsaw Convention.

[1] It is undisputed that the private respondent purchased from Singapore Airlines in Manila conjunction tickets for Manila - Singapore - Athens - Larnaca - Rome - Turin - Zurich - Geneva - Copenhagen - New York. The petitioner was not a participating airline in any of the segments in the itinerary under the said conjunction tickets. In Geneva the petitioner decided to forego his trip to Copenhagen and to go straight to New York and in the absence of a direct flight under his conjunction tickets from Geneva to New York, the private respondent on June 7, 1989 exchanged the unused portion of the conjunction ticket for a one-way ticket from Geneva to New York from the petitioner airline. Petitioner issued its own ticket to the private respondent in Geneva and claimed the value of the unused portion of the conjunction ticket from the IATA<sup>[2]</sup> clearing house in Geneva.

In September 1989, private respondent filed an action for damages before the regional trial court of Cebu for the alleged embarrassment and mental anguish he suffered at the Geneva Airport when the petitioner's security officers prevented him from boarding the plane, detained him for about an hour and allowed him to board the plane only after all the other passengers have boarded. The petitioner filed a motion to dismiss for lack of jurisdiction of Philippine courts to entertain the said proceedings under Art. 28 (1) of the Warsaw Convention. The trial court denied the motion. The order of denial was elevated to the Court of Appeals which affirmed the ruling of the trial court. Both the trial and that appellate courts held that the suit

may be brought in the Philippines under the pool partnership agreement among the IATA members, which include Singapore Airlines and American Airlines, wherein the members act as agents of each other in the issuance of tickets to those who may need their services. The contract of carriage perfected in Manila between the private respondent and Singapore Airlines binds the petitioner as an agent of Singapore Airlines and considering that the petitioner has a place of business in Manila, the third option of the plaintiff under the Warsaw Convention i.e. the action may be brought in the place where the contract was perfected and where the airline has a place of business, is applicable. Hence this petition assailing the order upholding the jurisdiction of Philippine courts over the instant action.

Both parties filed simultaneous memoranda pursuant to the resolution of this Court giving due course to the petition.

The petitioner's theory is as follows: Under Art 28 (1) of the Warsaw convention an action for damages must be brought at the option of the plaintiff either before the court of the 1) domicile of the carrier; 2) the carrier's principal place of business; 3) the place where the carrier has a place of business through which the contract was made; 4) the place of destination. The petitioner asserts that the Philippines is neither the domicile nor the principal place of business of the defendant airline; nor is it the place of destination. As regards the third option of the plaintiff, the petitioner contends that since the Philippines is not the place where the contract of carriage was made between the parties herein, Philippine courts do not have jurisdiction over this action for damages. The issuance of petitioner's own ticket in Geneva in exchange for the conjunction ticket issued by Singapore Airlines for the final leg of the private respondent's trip gave rise to a separate and distinct contract of carriage from that entered into by the private respondent with Singapore Airlines in Manila. Petitioner lays stress on the fact that the plane ticket for a direct flight from Geneva to New York was purchased by the private respondent from the petitioner by "exchange and cash" which signifies that the contract of carriage with Singapore Airlines was terminated and a second contract was perfected. Moreover, the second contract of carriage cannot be deemed to have been an extension of the first as the petitioner airline is not a participating airline in any of the destinations under the first contract. The petitioner claims that the private respondent's argument that the petitioner is bound under the IATA Rules as agent of the principal airline is irrelevant and the alleged bad faith of the airline does not remove the case from the applicability of the Warsaw Convention. Further, the IATA Rule cited by the private respondent which is admittedly printed on the ticket issued by the petitioner to him which states, "An air carrier issuing a ticket for carriage over the lines of another carrier does so only as its agent" does not apply herein, as neither Singapore Airlines nor the petitioner issued a ticket to the private respondent covering the route of the other. Since the conjunction tickets issued by Singapore Airlines do not include the route covered by the ticket issued by the petitioner, the petitioner airline submits that it did not act as an agent of Singapore Airlines.

Private respondent controverts the applicability of the Warsaw Convention in this case. He posits that under Article 17 of the Warsaw Convention<sup>[3]</sup> a carrier may be held liable for damages if the "accident" occurred on board the airline or in the course of "embarking or disembarking" from the carrier and that under Article 25 (1)<sup>[4]</sup> thereof the provisions of the convention will not apply if the damage is caused by the "willful misconduct" of the carrier. He argues that his cause of action is based

on the incident at the pre-departure area of the Geneva airport and not during the process of embarking nor disembarking from the carrier and that security officers of the petitioner airline acted in bad faith. Accordingly, this case is released from the terms of the Convention. Private respondent argues that assuming that the convention applies, his trip to nine cities in different countries performed by different carriers under the conjunction tickets issued in Manila by Singapore Airlines is regarded as a single transaction; as such the final leg of his trip from Geneva to New York with the petitioner airline is part and parcel of the original contract of carriage perfected in Manila. Thus, the third option of the plaintiff under Art. 28 (1) e.g., where the carrier has a place of business through which the contract of carriage was made, applies herein and the case was properly filed in the Philippines. The private respondent seeks affirmance of the ruling of the lower courts that the petitioner acted as an agent of Singapore Airlines under the IATA Rules and as an agent of the principal carrier the petitioner may be held liable under the contract of carriage perfected in Manila, citing the judicial admission made by the petitioner that it claimed the value of the unused portion of the private respondent's conjunction tickets from the IATA Clearing House in Geneva where the accounts of both airlines are respectively credited and debited. Accordingly, the petitioner cannot now deny the contract of agency with Singapore Airlines after it honored the conjunction tickets issued by the latter.

The petition is without merit.

The Warsaw Convention to which the Republic of the Philippines is a party and which has the force and effect of law in this country applies to all international transportation of persons, baggage or goods performed by an aircraft gratuitously or for hire.<sup>[5]</sup> As enumerated in the Preamble of the Convention, one of the objectives is "to regulate in a uniform manner the conditions of international transportation by air".<sup>[6]</sup> The contract of carriage entered into by the private respondent with Singapore Airlines, and subsequently with the petitioner, to transport him to nine cities in different countries with New York as the final destination is a contract of international transportation and the provisions of the Convention automatically apply and exclusively govern the rights and liabilities of the airline and its passengers.<sup>[7]</sup> This includes section 28 (1) which enumerates the four places where an action for damages may be brought.

The threshold issue of jurisdiction of Philippine courts under Art 28 (1) must first be resolved before any pronouncements may be made on the liability of the carrier thereunder.<sup>[8]</sup> The objections raised by the private respondent that this case is released from the terms of the Convention because the incident on which this action is predicated did not occur in the process of embarking and disembarking from the carrier under Art 17<sup>[9]</sup> and that the employees of the petitioner airline acted with malice and bad faith under Art 25 (1)<sup>[10]</sup> pertain to the merits of the case which may be examined only if the action has first been properly commenced under the rules on jurisdiction set forth in Art. 28 (1).

Art (28) (1) of the Warsaw Convention states:

Art 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