

FOURTH DIVISION

[CA-G.R. CV. No. 100549, June 19, 2014]

**SPOUSES DATU PADUKA DR. ISMAIL BIN MOHAMAD AND
MARISSA T. ABDULLAH, AS REPRESENTED BY TAGORANAO
BATUA, PLAINTIFFS-APPELLEES, VS. CEBU AIR, INC.,
DEFENDANT-APPELLANT.**

DECISION

TOLENTINO, A.G., J.:

Before this Court is an appeal from the decision dated November 15, 2012^[1] of the Regional Trial Court (RTC) of Pasay City, Branch 111, which found the defendant-appellant Cebu Air, Inc. liable for damages and ordered it to pay the plaintiffs-appellees P500,000.00 as moral damages, P100,000.00 as exemplary damages, P100,000.00 as attorney's fees and the costs of suit.

The essential facts are as follows:

The Center for Moderate Muslims invited plaintiff-appellee Datu Paduka Dr. Ismail Bin Mohamad (Datu Ismail), a Malaysian national and resident^[2], to be its keynote speaker during the 3rd International Conference of Muslim Leaders to be held on January 9 to 11, 2009 in Dusit Thani Hotel, Makati.^[3]

For this event, Datu Ismail, using his Hongkong and Shanghai Banking Corporation (HSBC) credit card, purchased tickets for himself, his wife and co-plaintiff-appellee (Marisa Tiansay Abdullah), their son (Mohd Wali Ismail) and for their guests, Turaia Binti Islamazih (Turaia), Siti Maznah Binti Ahmad (Siti Maznah) and Nik Rahimah Binti Wan Ahmad (Nik Rahimah), from the defendant-appellant Cebu Air's website. The details of the online transactions are as follows:

Confirmation Number	Date of Booking/ Purchase	Passenger	Flight Details
U93ING ^[4]	Dec. 19, 2008	Ismael Bin Mohamed	Jan 9, 2009 KUALA LUMPUR-MANILA
		Marisa Tiansay Abdullah	Jan 9, 2009 KUALA LUMPUR-MANILA
		Mohd Wali Ismail	Jan 9, 2009 KUALA LUMPUR-MANILA
LBQ68X ^[5]	Jan. 5, 2009	Turaia Binti Islamazih	Jan 9, 2009 KUALA LUMPUR-MANILA

			Jan. 13, 2009 MANILA-KUALA LUMPUR
		Siti Maznah Binti Ahmad	Jan 9, 2009 KUALA LUMPUR- MANILA Jan. 13, 2009 MANILA-KUALA LUMPUR
NCCWNK ^[6]	Jan. 5, 2009	Nik Rahimah Binti Wan Ahmad	Jan 9, 2009 KUALA LUMPUR- MANILA Jan. 13, 2009 MANILA-KUALA LUMPUR
D1IBFY ^[7]	Jan. 7, 2009	Ismael Bin Mohamed	Jan. 13, 2009 MANILA-KUALA LUMPUR
		Marissa Tiansay Abdullah	Jan. 13, 2009 MANILA-KUALA LUMPUR
		Mohd Wali Ismail	Jan. 13, 2009 MANILA-KUALA LUMPUR

When Marisa checked-in for her family and guests on January 9, 2009 at the Low Cost Carrier Terminal (LCCT) in Kuala Lumpur, only her, Datu Ismail and their son were issued boarding passes. Their three (3) guests were not allowed by the defendant-appellant to check-in on their scheduled flight (with confirmation number LBQ68X and NCCWNK), despite the plaintiffs-appellees' presentation of the bookings' confirmation and the credit card used to pay the tickets online on the ground that the credit card payment was a suspicious transaction. Datu Ismail asked for an alternative, to which the staff replied that they have to pay in cash. The plaintiffs-appellees paid MYR3,090.00 for their guests' tickets to be on time for the conference. They apologized profusely to their guests for the inconvenience and embarrassment.

On January 13, 2009, the same incident transpired, this time to the plaintiffs-appellees and their son's return flight from Manila to Kuala Lumpur (confirmation number D1IBFY). Upon check-in at the NAIA Terminal 3, the plaintiffs-appellees and their son were refused by the defendant-appellant to board their flight on the same ground that the credit card payment was declined due to suspicious transaction.^[8] Utterly dismayed and embarrassed, Datu Ismail had to shell out cash for their tickets.

Upon their arrival in Kuala Lumpur, Datu Ismail requested an explanation from HSBC, which replied that the transactions made on January 5 and 7, 2009 were all approved by their system and it was the merchant (the defendant-appellant) which reversed the transaction for some unknown reason. He then sent a letter-complaint to Cebu Air, and the latter replied that an e-mail was sent to the address noor_miza@yahoo.com stating that "after exercising diligent efforts, the credit card

used to book your flight could not be authenticated". It was only when the defendant-appellant mentioned about the e-mail that the plaintiffs-appellees checked the same. Datu Ismail, sent another letter through counsel, reiterating their previous demands.

On June 10, 2009, plaintiffs-appellees filed a complaint for damages against the defendant-appellant with the RTC of Pasay City for the latter's failure to comply with its obligation, for tainting their image in the eyes of the public and for the wounded feelings, mental anguish and anxiety they suffered, considering Datu Ismail's image as recent Gusi Peace Prize Winner in 2008, philanthropist and construction magnate in Malaysia. The plaintiffs-appellees thus prayed for moral damages in the amount of P5,000,000.00; exemplary damages in the amount of P500,000.00; and attorney's fees in the amount of P100,000.00.^[9] The complaint was docketed as Civil Case No. 09-0854-CFM.

For its part, the defendant-appellant cited Section 5.6 of its terms and conditions that it reserves the right to refuse a passenger if in the exercise of reasonable discretion, it has been determined that the payment of the fare has been done unlawfully or suspiciously.

The defendant-appellant averred that on January 5, 2009, immediately after bookings LBQ68X and NCCNWK were made by Datu Ismail, the defendant-appellant, through Gadel Castromayor, defendant-appellant's Fraud Risk Management Supervisor, received a notice from HSBC Card Security Department requesting it (defendant-appellant) to void transactions as suspicious. Acting on this notice from HSBC Card Security, the defendant-appellant had voided the credit card payments for bookings LBQ68X and NCCNWK.

The defendant-appellant continued that on January 7, 2009, after Datu Ismail made booking D1IBFY, the defendant-appellant received another e-mail notice from HSBC Card Security to void transactions as suspicious. Acting on this e-mail, the defendant-appellant had voided the credit card payment for booking D1IBFY.

The defendant-appellant asserted that after having voided the credit card payments for bookings LBQ68X, NCCNWK and D1IBFY, it was not remiss in its duty to inform the plaintiffs-appellees of the invalidation of the online transaction.

The defendant-appellant duly sent notices^[10] to the plaintiffs-appellees informing them that their bookings were put on hold because the online transaction was invalidated on the ground that the credit card used could not be authenticated. The said notices or e-mail advisories were sent to and received by the plaintiffs-appellees through e-mail address noor_miza@yahoo.com, the e-mail address they provided to the defendant-appellant at the time they were booking the subject flights. The defendant-appellant claimed that the plaintiffs-appellees were able to access their own itineraries, and so it is bewildering why they allegedly were unable to receive the notice duly sent by the defendant-appellant regarding the invalidation of the reservation made.^[11]

During the trial, the plaintiffs-appellees presented the testimony of Marisa and Datu Ismail.

Marisa testified that using her husband's credit card, she booked and bought, through the internet and with the assistance of his husband's secretary, plane

tickets for them and for their guests' travel to Manila to attend the Muslim Conference. The defendant-appellant issued travel itineraries for their guests Turaia, Siti Maznah, and Nik Rahiman wherein the bookings were confirmed. For her family's return flight to Kuala Lumpur, another travel itinerary was issued by the defendant-appellant confirming the booking. When she checked-in at the airport in Malaysia, she got her boarding pass and that of her husband and son. But, when she checked-in for their three (3) guests, the defendant-appellant's ground staff refused due to instruction not to honor the tickets as they were fraudulently purchased. She told the staff that her husband has the credit card, to which she showed the print-out of the instruction. Despite her insistence that the bookings were confirmed, the staff relied on the instruction. She called the attention of her husband who blew his temper and insisted that the tickets were not fraudulently purchased. She asked for an alternative, to which the staff replied to pay in cash. Left with no other choice, they paid cash for the tickets of their guests.^[12] Stressed out and embarrassed, they apologized to their guests who are special people to her husband and prominent people in Malaysia.^[13]

Marisa further testified that a few hours before their return flight to Kuala Lumpur on January 13, 2009, she called HSBC, which told her that the transactions were not declined. When they checked-in at NAIA, their guests were allowed to check-in, but she and her family were refused. The defendant-appellant's ground staff told them that, as per instruction their tickets will not be honored because these were fraudulently purchased. Despite her explanation, they were not allowed to check-in and they were showed a print-out of the defendant-appellant's instruction. As it was the second time, she talked to the Supervisor who told them the instruction not to honor their tickets and the only way to board the plane is to pay the tickets. Thus, they paid cash for their three tickets. Upon their return to Malaysia, they immediately called HSBC which they blamed for declining the transactions. HSBC informed them that it did not decline the transactions. After investigation, HSBC learned that the charges were dropped by the defendant-appellant. They received letters from HSBC explaining that the transactions were not declined. Her husband wrote a letter to the defendant-appellant asking for an explanation. They were not happy with the defendant-appellant's reply so they instituted this case for the embarrassment they suffered, not only once but twice, in front of their guests and other people.^[14]

On cross-examination, she admitted that she received the travel itineraries through the same e-mail address, but she did not receive defendant-appellant's notice that the transactions could not be completed. Confronted with the allegations in the complaint, she admitted that they checked the e-mails and saw defendant-appellant's notice of invalidation only after they received Mr. Ivan Henry Gaw's, defendant-appellant's Guest Service Manager, reply, which was already after the travel. Although the notice was sent to and received on the same day the bookings were made, she did not check the e-mail anymore.^[15]

Datu Ismail testified that they bought the tickets in Malaysia, using his HSBC credit card, to attend the Muslim Conference in Manila where he was invited as guest speaker. He identified the travel itineraries issued to his family and invited guests, Nik Rahimah, the mother of the Crown Princess of one of the States of Malaysia, Turaia, mother of an officer in the Attorney General's Chamber in Kuala Lumpur, and Siti Maznah, the wife of the former judge of Federal Court in Malaysia. On January 9, 2009, his guests were not allowed to check-in and he was told that their tickets are

fraudulent. He was embarrassed in front of the public. He paid the tickets in cash. On their return, his family was not allowed to check-in and he was told that their tickets are fraudulent. When they arrived in Malaysia, they went to HSBC to check. HSBC replied that their transactions were approved. He wrote the defendant-appellant for an explanation why the tickets were rejected. He was not satisfied with the defendant-appellant's reply. His lawyer sent the defendant-appellant a letter, but to no avail. For all the embarrassment and humiliation, he is requesting for P5 Million.^[16]

On cross-examination, he confirmed that the bookings were personally arranged by his secretary using the e-mail address noor_miza@yahoo.com, to which the travel itineraries were sent. He admitted that his secretary is the contact person using the e-mail address, but insisted that they also provided their phone numbers. He is not aware of the e-mail advice from his credit card company that their bookings were suspected of being fraudulent. His secretary never told him.^[17]

The plaintiffs-appellees also presented as evidence, among others, the following documents:

1. Exhibit "B"^[18] - Letter of invitation of the Center for Moderate Muslims to Datu Ismail dated December 1, 2008
2. Exhibit "C"^[19] - Travel Itinerary of Marisa, Datu Ismail and Mohd Wali booked on December 19, 2008
3. Exhibit "D"^[20] - Travel Itinerary of Turaia and Siti booked on January 5, 2009
4. Exhibit "E"^[21] - Travel Itinerary of Nik Rahimah booked on January 5, 2009
5. Exhibit "F"^[22] - Travel itinerary of Marissa, Datu Ismail and Mohd Wali booked on January 7, 2009
6. Exhibit "H"^[23] - Reservation Summary for NCCNWK with comments "suspicious transaction"
7. Exhibit "K"^[24] - Reservation Summary for plaintiffs-appellees' return flight on January 13, 2009 with comments "suspicious transaction"
8. Exhibit "M"^[25] - Letter of HSBC Malaysia, Branch Manager Anna Chua dated January 19, 2009
9. Exhibit "N"^[26] - Letter of Datu Ismail to the defendant-appellant dated January 19, 2009
10. Exhibit "O"^[27] - Letter response of the defendant-appellant to Datu Ismail dated January 29, 2009
11. Exhibit "P"^[28] - Notice of invalidation sent by the defendant-appellant through e-mail dated January 7, 2009
12. Exhibit "Q"^[29] - Letter dated February 5, 2009 to Mr. Ivan Henry D. Gaw by Atty. Jehan B. Sampao, plaintiffs-appellees' counsel.
13. Exhibit "R" - Letter dated February 16, 2009 to Datu Ismail of Joyce tan of HSBC, Malaysia.

For its part, the defendant-appellant presented the testimonies of its Guest Services Manager, Ivan Henry Gaw, and its Treasury Risk Management Supervisor, Gadel C. Castromayor.

Ivan Henry Gaw testified that they accept credit card payment for tickets purchased online. The payment will be verified by the acquiring bank to authenticate