



Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

ALFREDO MANAY, JR., G.R. No. 210621

FIDELINO SAN LUIS, ADRIAN

SAN LUIS, ANNALEE SAN LUIS,

MARK ANDREW JOSE, MELISSA

JOSE, CHARLOTTE JOSE, DAN

JOHN DE GUZMAN, PAUL MARK

BALUYOT, and CARLOS S. JOSE,

Petitioners,

Present:

CARPIO, J., Chairperson,

BRION,

DEL CASTILLO,

MENDOZA, and

LEONEN, JJ.

-versus-

CEBU AIR, INC.,

Respondent.

Promulgated:

04 APR 2016

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DECISION

LEONEN, J.:

The Air Passenger Bill of Rights¹ mandates that the airline must inform the passenger *in writing* of all the conditions and restrictions in the contract of carriage.² Purchase of the contract of carriage binds the passenger and imposes reciprocal obligations on both the airline and the passenger. The airline must exercise extraordinary diligence in the fulfillment of the terms and conditions of the contract of carriage. The passenger, however, has the correlative obligation to exercise ordinary diligence in the conduct of his or her affairs.

¹ DOTC-DTI Joint Adm. O. No. 1 (2012).

² DOTC-DTI Joint Adm. O. No. 1 (2012), sec. 4.

This resolves a Petition for Review on Certiorari³ assailing the Court of Appeals Decision⁴ dated December 13, 2013 in CA-G.R. SP. No. 129817. In the assailed Decision, the Court of Appeals reversed the Metropolitan Trial Court Decision⁵ dated December 15, 2011 and the Regional Trial Court Decision⁶ dated November 6, 2012 and dismissed the Complaint for Damages filed by petitioners Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan John De Guzman, Paul Mark Baluyot, and Carlos S. Jose against respondent Cebu Air, Incorporated (Cebu Pacific).⁷

On June 13, 2008, Carlos S. Jose (Jose) purchased 20 Cebu Pacific round-trip tickets from Manila to Palawan for himself and on behalf of his relatives and friends.⁸ He made the purchase at Cebu Pacific's branch office in Robinsons Galleria.⁹

Jose alleged that he specified to "Alou," the Cebu Pacific ticketing agent, that his preferred date and time of departure from Manila to Palawan should be on July 20, 2008 at 0820 (or 8:20 a.m.) and that his preferred date and time for their flight back to Manila should be on July 22, 2008 at 1615 (or 4:15 p.m.).¹⁰ He paid a total amount of ₱42,957.00 using his credit card.¹¹ He alleged that after paying for the tickets, Alou printed the tickets,¹² which consisted of three (3) pages, and recapped only the first page to him.¹³ Since the first page contained the details he specified to Alou, he no longer read the other pages of the flight information.¹⁴

On July 20, 2008, Jose and his 19 companions boarded the 0820 Cebu Pacific flight to Palawan and had an enjoyable stay.¹⁵

On the afternoon of July 22, 2008, the group proceeded to the airport for their flight back to Manila.¹⁶ During the processing of their boarding passes, they were informed by Cebu Pacific personnel that nine (9)¹⁷ of them

³ *Rollo*, pp. 15–27.

⁴ *Id.* at 33–48. The Decision was penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Rosmari D. Carandang (Chair) and Edwin D. Sorongon of the Fifth Division.

⁵ *Id.* at 55–63. The Decision was penned by Presiding Judge Flordeliza M. Silao of Branch 59 of the Metropolitan Trial Court, City of Mandaluyong.

⁶ *Id.* at 49–54. The Decision was penned by Judge Rizalina T. Capco-Umali of Branch 212 of the Regional Trial Court, City of Mandaluyong.

⁷ *Id.* at 47, Court of Appeals Decision.

⁸ *Id.* at 49–50, Regional Trial Court Decision.

⁹ *Id.* at 49.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 380–382.

¹³ *Id.* at 49, Regional Trial Court Decision.

¹⁴ *Id.*

¹⁵ *Id.* at 50.

¹⁶ *Id.*

¹⁷ *Id.* at 382, plane ticket. The nine (9) passengers were Alfredo Manay, Jr., Fidelino San Luis, Adrian

could not be admitted because their tickets were for the 1005 (or 10:05 a.m.)¹⁸ flight earlier that day.¹⁹ Jose informed the ground personnel that he personally purchased the tickets and specifically instructed the ticketing agent that all 20 of them should be on the 4:15 p.m. flight to Manila.²⁰

Upon checking the tickets, they learned that only the first two (2) pages had the schedule Jose specified.²¹ They were left with no other option but to rebook their tickets.²² They then learned that their return tickets had been purchased as part of the promo sales of the airline, and the cost to rebook the flight would be ₱7,000.00 more expensive than the promo tickets.²³ The sum of the new tickets amounted to ₱65,000.00.²⁴

They offered to pay the amount by credit card but were informed by the ground personnel that they only accepted cash.²⁵ They then offered to pay in dollars, since most of them were balikbayans and had the amount on hand, but the airline personnel still refused.²⁶

Eventually, they pooled enough cash to be able to buy tickets for five (5) of their companions.²⁷ The other four (4) were left behind in Palawan and had to spend the night at an inn, incurring additional expenses.²⁸ Upon his arrival in Manila, Jose immediately purchased four (4) tickets for the companions they left behind, which amounted to ₱5,205.²⁹

Later in July 2008, Jose went to Cebu Pacific's ticketing office in Robinsons Galleria to complain about the allegedly erroneous booking and the rude treatment that his group encountered from the ground personnel in Palawan.³⁰ He alleged that instead of being assured by the airline that someone would address the issues he raised, he was merely "given a run around."³¹

Jose and his companions were frustrated and annoyed by Cebu Pacific's handling of the incident so they sent the airline demand letters

San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan John De Guzman, and Paul Mark Baluyot.

¹⁸ Id.

¹⁹ Id. at 50, Regional Trial Court Decision.

²⁰ Id.

²¹ Id.

²² Id.

²³ Id. at 35, Court of Appeals Decision.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id. at 36.

²⁹ Id. at 35.

³⁰ Id. at 36.

³¹ Id.

dated September 3, 2008³² and January 20, 2009³³ asking for a reimbursement of ₱42,955.00, representing the additional amounts spent to purchase the nine (9) tickets, the accommodation, and meals of the four (4) that were left behind.³⁴ They also filed a complaint³⁵ before the Department of Trade and Industry.³⁶

On February 24, 2009, Cebu Pacific, through its Guest Services Department, sent petitioners' counsel an email³⁷ explaining that "ticketing agents, like Alou, recap [the] flight details to the purchaser to avoid erroneous booking[s]."³⁸ The recap is given one other time by the cashier.³⁹ Cebu Pacific stated that according to its records, Jose was given a full recap and was made aware of the flight restriction of promo tickets,⁴⁰ "which included [the] promo fare being non-refundable."⁴¹

Jose and his companions were unsatisfied with Cebu Pacific's response so they filed a Complaint⁴² for Damages against Cebu Pacific before Branch 59 of the Metropolitan Trial Court of Mandaluyong.⁴³ The Complaint prayed for actual damages in the amount of ₱42,955.00, moral damages in the amount of ₱45,000.00, exemplary damages in the amount of ₱50,000.00, and attorney's fees.⁴⁴

In its Answer,⁴⁵ Cebu Pacific essentially denied all the allegations in the Complaint and insisted that Jose was given a full recap of the tickets.⁴⁶ It also argued that Jose had possession of the tickets 37 days before the scheduled flight; hence, he had sufficient time and opportunity to check the flight information and itinerary.⁴⁷ It also placed a counterclaim of ₱100,000.00 by reason that it was constrained to litigate and it incurred expenses for litigation.⁴⁸

On December 15, 2011, the Metropolitan Trial Court rendered its Decision ordering Cebu Pacific to pay Jose and his companions ₱41,044.50

³² Id. at 266–268.

³³ Id. at 270–271.

³⁴ Id. at 36, Court of Appeals Decision.

³⁵ Id. at 272–273.

³⁶ Id. at 36, Court of Appeals Decision.

³⁷ Id. at 344.

³⁸ Id. at 36, Court of Appeals Decision.

³⁹ Id.

⁴⁰ Id. at 36–37.

⁴¹ Id. at 37, Court of Appeals Decision.

⁴² Id. at 232–247.

⁴³ Cebu Pacific was referred to as "Cebu Pacific, Incorporated" in the Metropolitan Trial Court and Regional Trial Court and as "Cebu Air, Incorporated (doing business as Cebu Pacific)" before the Court of Appeals.

⁴⁴ *Rollo*, p. 245, Complaint.

⁴⁵ Id. at 134–140.

⁴⁶ Id. at 137.

⁴⁷ Id.

⁴⁸ Id.

in actual damages and ₱20,000.00 in attorney's fees with costs of suit.⁴⁹ The Metropolitan Trial Court found that as a common carrier, Cebu Pacific should have exercised extraordinary diligence in performing its contractual obligations.⁵⁰ According to the Metropolitan Trial Court, Cebu Pacific's ticketing agent "should have placed markings or underlined the time of the departure of the nine passengers"⁵¹ who were not in the afternoon flight since it was only logical for Jose to expect that all of them would be on the same flight.⁵² It did not find merit, however, in the allegation that the airline's ground personnel treated Jose and his companions rudely since this allegation was unsubstantiated by evidence.⁵³

Cebu Pacific appealed to the Regional Trial Court, reiterating that its ticketing agent gave Jose a full recap of the tickets he purchased.⁵⁴

On November 6, 2012, Branch 212 of the Regional Trial Court of Mandaluyong rendered the Decision dismissing the appeal.⁵⁵ The Regional Trial Court affirmed the findings of the Metropolitan Trial Court but deleted the award of attorney's fees on the ground that this was granted without stating any ground under Article 2208 of the Civil Code to justify its grant.⁵⁶

Cebu Pacific appealed to the Court of Appeals, arguing that it was not at fault for the damages caused to the passengers.⁵⁷

On December 13, 2013, the Court of Appeals rendered the Decision granting the appeal and reversing the Decisions of the Metropolitan Trial Court and the Regional Trial Court.⁵⁸ According to the Court of Appeals, the extraordinary diligence expected of common carriers only applies to the carriage of passengers and not to the act of encoding the requested flight schedule.⁵⁹ It was incumbent upon the passenger to exercise ordinary care in reviewing flight details and checking schedules.⁶⁰ Cebu Pacific's counterclaim, however, was denied since there was no evidence that Jose and his companions filed their Complaint in bad faith and with malice.⁶¹

Aggrieved, Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan

⁴⁹ Id. at 62, Metropolitan Trial Court Decision.

⁵⁰ Id. at 60.

⁵¹ Id.

⁵² Id.

⁵³ Id. at 61–62.

⁵⁴ Id. at 52, Regional Trial Court Decision.

⁵⁵ Id. at 54.

⁵⁶ Id.

⁵⁷ Id. at 39–40, Court of Appeals Decision.

⁵⁸ Id. at 47.

⁵⁹ Id. at 43.

⁶⁰ Id. at 45–46.

⁶¹ Id. at 47.

John De Guzman, Paul Mark Baluyot, and Carlos S. Jose (Jose, et al.) filed before this Court a Petition for Review on Certiorari⁶² assailing the Court of Appeals' December 13, 2013 Decision.⁶³

Cebu Pacific was ordered to comment on the Petition.⁶⁴ Upon compliance,⁶⁵ Jose, et al. submitted their Reply.⁶⁶ The parties were then directed⁶⁷ to submit their respective memoranda.⁶⁸

Jose, et al. argue that Cebu Pacific is a common carrier obligated to exercise extraordinary diligence to carry Jose, et al. to their destination at the time clearly instructed to its ticketing agent.⁶⁹ They argue that they have the decision to choose flight schedules and that Cebu Pacific should not choose it for them.⁷⁰ They insist that they have made their intended flight schedule clear to the ticketing agent and it would have been within normal human behavior for them to expect that their entire group would all be on the same flight.⁷¹ They argue that they should not have to ask for a full recap of the tickets since they are under no obligation, as passengers, to remind Cebu Pacific's ticketing agent of her duties.⁷²

Jose, et al. further pray that they be awarded actual damages in the amount of ₱43,136.52 since the Metropolitan Trial Court erroneously failed to add the costs of accommodations and dinner spent on by four (4) of the petitioners who were left behind in Palawan.⁷³ They also pray for ₱100,000.00 in moral damages and ₱100,000.00 in exemplary damages for the "profound distress and anxiety"⁷⁴ they have undergone from the experience, with ₱100,000.00 in attorney's fees to represent the reasonable expenses incurred from "engaging the services of their counsel."⁷⁵

Cebu Pacific, on the other hand, argues that the damage in this case was caused by Jose, et al.'s "gross and inexplicable [negligence]."⁷⁶ It maintains that Jose, et al. should have read the details of their flight, and if there were errors in the encoded flight details, Jose, et al. would still have ample time to have the error corrected.⁷⁷ It argues further that its ticketing agent did not neglect giving Jose a full recap of his purchase since the tickets

⁶² Id. at 15, Petition for Review on Certiorari.

⁶³ Id. at 24.

⁶⁴ Id. at 75, Supreme Court Resolution dated March 10, 2014.

⁶⁵ Id. at 76–88, Comment.

⁶⁶ Id. at 461–466.

⁶⁷ Id. at 470–471, Supreme Court Resolution dated October 20, 2014.

⁶⁸ Id. at 472–488, Cebu Pacific's Memorandum, and 831–847, Alfredo Manay, Jr., et al.'s Memorandum.

⁶⁹ Id. at 837, Alfredo Manay, Jr., et al.'s Memorandum.

⁷⁰ Id.

⁷¹ Id. at 838.

⁷² Id.

⁷³ Id. at 842–843.

⁷⁴ Id. at 843.

⁷⁵ Id. at 842.

⁷⁶ Id. at 481, Cebu Pacific's Memorandum.

⁷⁷ Id.

clearly indicated in the “Comments” section: “FULL RECAP GVN TO CARLOS JOSE.”⁷⁸

Cebu Pacific further posits that according to the Parol Evidence Rule, the plane tickets issued to Jose, et al. contain all the terms the parties agreed on, and it was agreed that nine (9) of the passengers would be on the July 22, 2008, 1005 flight to Manila.⁷⁹ It argues that Jose, et al. have not been able to present any evidence to substantiate their allegation that their intent was to be on the July 22, 2008 1615 flight to Manila.⁸⁰

From the arguments in the parties’ pleadings, the sole issue before this Court is whether respondent Cebu Air, Inc. is liable to petitioners Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan John De Guzman, Paul Mark Baluyot, and Carlos S. Jose for damages for the issuance of a plane ticket with an allegedly erroneous flight schedule.

I

Although it was not mentioned by the parties, a procedural issue must first be addressed before delving into the merits of the case.

Petitioners received the assailed Court of Appeals Decision on December 27, 2013.⁸¹ They chose to forego the filing of a motion for reconsideration. Instead, petitioners filed before this Court a Motion for Extension of Time⁸² on January 13, 2014.

Under Rule 45, Section 2 of the Rules of Court,⁸³ petitioners only had 15 days or until January 11, 2014 to file their petition. Since January 11, 2014 fell on a Saturday, petitioners could have filed their pleading on the following Monday, or on January 13, 2014.

⁷⁸ Id. at 482.

⁷⁹ Id. at 483–484.

⁸⁰ Id. at 484.

⁸¹ Id. at 3, Motion for Extension of Time (to File Petition for Review on Certiorari).

⁸² Id. at 3–6.

⁸³ RULES OF COURT, Rule 45, sec. 2 provides:

Section 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner’s motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

In their Motion for Extension of Time, however, petitioners requested an additional 30 days *from January 13, 2014* within which to file their petition for review on certiorari.⁸⁴

This Court already clarified the periods of extension in A.M. No. 00-2-14-SC:⁸⁵

Whereas, Section 1, Rule 22 of the 1997 Rules of Civil Procedure provides:

Section 1. *How to compute time.* – In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Whereas, the aforecited provision applies in the matter of filing of pleadings in courts when the due date falls on a Saturday, Sunday or legal holiday, in which case, the filing of the said pleading on the next working day is deemed on time;

Whereas, the question has been raised if the period is extended *ipso jure* to the next working day immediately following where the last day of the period is a Saturday, Sunday or a legal holiday, so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration of the period.

NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that *Section 1, Rule 22 speaks only of “the last day of the period” so that when a party seeks an extension and the same is granted, the due date ceases to be the last day and hence, the provision no longer applies. Any extension of time to file the required pleading should therefore be counted from the expiration of the period regardless of the fact that said due date is a Saturday, Sunday or legal holiday.* (Emphasis supplied)

Thus, petitioners’ request for extension of time should have been reckoned from the original due date on January 11, 2014, even if this day fell on a Saturday. A request for extension of 30 days would have ended on February 10, 2014.⁸⁶

⁸⁴ Rollo, p. 4, Motion for Extension of Time (to File Petition for Review on Certiorari).

⁸⁵ Entitled *Re: Computation of Time When the Last Day Falls on a Saturday, Sunday or a Legal Holiday and a Motion for Extension on Next Working Day is Granted* (2000).

⁸⁶ Rollo, p. 4, Motion for Extension of Time (to File Petition for Review on Certiorari).

Petitioners subsequently filed their Petition for Review on Certiorari on February 12, 2014.⁸⁷ Pursuant to A.M. No. 00-2-14-SC,⁸⁸ this Petition would have been filed out of time.

We are not, however, precluded from granting the period of extension requested and addressing the Petition filed on its merits, instead of outright dismissing it. After all, “[l]itigations should, as much as possible, be decided on the merits and not on technicalities.”⁸⁹

However, it does not follow that in the relaxation of the procedural rules, this Court automatically rules in favor of petitioners. Their case must still stand on its own merits for this Court to grant the relief petitioners pray for.

II

Common carriers are required to exercise extraordinary diligence in the performance of its obligations under the contract of carriage. This extraordinary diligence must be observed not only in the *transportation* of goods and services but also in the issuance of the contract of carriage, including its ticketing operations.

Article 1732 of the Civil Code defines a common carrier as “persons, corporations or firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public.” Articles 1733, 1755, and 1756 of the Civil Code outline the degree of diligence required of common carriers:

ARTICLE 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

....

ARTICLE 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.

ARTICLE 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently,

⁸⁷ Id. at 15, Petition for Review on Certiorari.

⁸⁸ Entitled *Re: Computation of Time When the Last Day Falls on a Saturday, Sunday or a Legal Holiday and a Motion for Extension on Next Working Day is Granted* (2000).

⁸⁹ *Montajes v. People*, 684 Phil. 1, 11 (2012) [Per J. Peralta, Third Division], citing *Fabrigar v. People*, 466 Phil. 1036, 1044 (2004) [Per J. Callejo, Sr., Second Division].

unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

Respondent, as one of the four domestic airlines in the country,⁹⁰ is a common carrier required by law to exercise extraordinary diligence. Extraordinary diligence requires that the common carrier must transport goods and passengers “safely as far as human care and foresight can provide,” and it must exercise the “utmost diligence of very cautious persons . . . with due regard for all the circumstances.”⁹¹

When a common carrier, through its ticketing agent, has not yet issued a ticket to the prospective passenger, the transaction between them is still that of a seller and a buyer. The obligation of the airline to exercise extraordinary diligence commences upon the issuance of the contract of carriage.⁹² Ticketing, as the act of issuing the contract of carriage, is necessarily included in the exercise of extraordinary diligence.

A contract of carriage is defined as “one whereby a certain person or association of persons obligate themselves to transport persons, things, or news from one place to another for a fixed price.”⁹³ In *Cathay Pacific Airways v. Reyes*.⁹⁴

[W]hen an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.⁹⁵ (Emphasis supplied)

Once a plane ticket is issued, the common carrier binds itself to deliver the passenger safely on the date and time stated in the ticket. The contractual obligation of the common carrier to the passenger is governed principally by what is written on the contract of carriage.

⁹⁰ DOTC Civil Aeronautics Board, Domestic Airlines <<http://www.cab.gov.ph/directory/domestic-airlines>> (visited March 15, 2016). The other domestic commercial airlines are Philippine Airlines, Air Asia Philippines, and SkyJet. Tiger Airways Philippines and SeAir, Inc. have since been absorbed by Cebu Pacific while Zest Air has been absorbed by Air Asia Philippines.

⁹¹ CIVIL CODE, art. 1755.

⁹² This, of course, is specific to airlines as common carriers, as an air passenger cannot board a plane without a plane ticket. On the other hand, a prospective passenger may board a bus before the bus company issues the bus ticket. In this instance, the obligation of the bus company to exercise extraordinary diligence commences upon the physical act of transporting the prospective passenger.

⁹³ *Crisostomo v. Court of Appeals*, 456 Phil. 845, 855 (2003) [Per J. Ynares-Santiago, First Division], citing 4 AGUEDO F. AGBAYANI, COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES 1 (1993), in turn citing 1 Blanco 640.

⁹⁴ G.R. No. 185891, June 26, 2013, 699 SCRA 725 [Per J. Perez, Second Division].

⁹⁵ Id. at 738, citing *Japan Airlines v. Simangan*, 575 Phil. 359, 374–375 (2008) [Per J. R.T. Reyes, Third Division].

In this case, both parties stipulated⁹⁶ that the flight schedule stated on the nine (9) disputed tickets was the 10:05 a.m. flight of July 22, 2008. According to the contract of carriage, respondent's obligation as a common carrier was to transport nine (9) of the petitioners safely on the 10:05 a.m. flight of July 22, 2008.

Petitioners, however, argue that respondent was negligent in the issuance of the contract of carriage since the contract did not embody their intention. They insist that the nine (9) disputed tickets should have been scheduled for the 4:15 p.m. flight of July 22, 2008. Respondent, on the other hand, denies this and states that petitioner Jose was fully informed of the schedules of the purchased tickets and petitioners were negligent when they failed to correct their ticket schedule.

Respondent relies on the Parol Evidence Rule in arguing that a written document is considered the best evidence of the terms agreed on by the parties. Petitioners, however, invoke the exception in Rule 130, Section 9(b) of the Rules of Court that evidence may be introduced if the written document fails to express the true intent of the parties:⁹⁷

Section 9. Evidence of written agreements. When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake, or imperfection in the written agreement;

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

In *ACI Philippines, Inc. v. Coquia*:⁹⁸

It is a cardinal rule of evidence, not just one of technicality but of substance, that the written document is the best evidence of its own contents. It is also a matter of both principle and policy that when the written contract is established as the repository of the parties stipulations,

⁹⁶ *Rollo*, p. 59, Metropolitan Trial Court Decision.

⁹⁷ *Id.* at 840–841, Alfredo Manay, Jr., et al.'s Memorandum.

⁹⁸ 580 Phil. 275 (2008) [Per J. Tinga, Second Division].

any other evidence is excluded and the same cannot be used as a substitute for such contract, nor even to alter or contradict them. This rule, however, is not without exception. Section 9, Rule 130 of the Rules of Court states that a party may present evidence to modify, explain or add to the terms of the agreement if he puts in issue in his pleading the failure of the written agreement to express the true intent and agreement of the parties.⁹⁹

It is not disputed that on June 13, 2008, petitioner Jose purchased 20 Manila-Palawan-Manila tickets from respondent's ticketing agent. Since all 20 tickets were part of a single transaction made by a single purchaser, it is logical to presume that all 20 passengers would prefer the same flight schedule, unless the purchaser stated otherwise.

In petitioners' Position Paper before the Metropolitan Trial Court, they maintain that respondent's ticketing agent was negligent when she failed to inform or explain to petitioner Jose that nine (9) members of their group had been booked for the 10:05 a.m. flight, and not the 4:15 p.m. flight.¹⁰⁰

The first page of the tickets contained the names of eight (8) passengers.¹⁰¹ In the Information box on the left side of the ticket, it reads:

Sunday, July 20, 2008 HK PHP999.00 PHP
5J 637 MNL-PPS 08:20- 09:35
Tuesday, July 22, 2008 HK PHP999.00 PH
5J 640 PPS-MNL 16:15- 17:30¹⁰²

In the Comments box, it reads:

R - FULL RECAP GVN TO CARLOS JOSE//AWRE
I - FULL RECAP GVN TO CARLOS JOSE//AWRE
M - FULL RECAP GVN TO CARLOS JOSE//AWRI¹⁰³

The second page contained the names of three (3) passengers.¹⁰⁴ In the Information box, it reads:

Sunday, July 20, 2008 HK PHP1,998.00 PH
5J 637 MNL-PPS 08:20- 09:35
Tuesday, July 22, 2008 HK PHP999.00 PH
5J 640 PPS-MNL 16:15- 17:30¹⁰⁵

⁹⁹ Id. at 284, *citing Sabio v. The International Corporate Bank, Inc.* 416 Phil. 785 (2001) [Per J. Ynares-Santiago, First Division].

¹⁰⁰ *Rollo*, p. 58, Metropolitan Trial Court Decision.

¹⁰¹ Id. at 331, plane ticket. The eight (8) passengers were Violeta Manay, Carlos Jose, Audrey Jose, Cyde Cheraisse Jose, Julita Jose, Priscilla San Luis, Federico Jose, and Marc Louie Manay.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id. at 332. The three (3) passengers were Maricris Sitjar, Dianaden Ada, and Krisha Joy Saladaga.

¹⁰⁵ Id.

Under the caption “Comments,” it reads:

R - FULL RECAP GVN TO CARLOS JOSE//AWRE
I - FULL RECAP GVN TO CARLOS JOSE//AWRE
M - FULL RECAP GVN TO CARLOS JOSE//AWRI¹⁰⁶

The third page contained the names of nine (9) passengers.¹⁰⁷ In the Information box, it reads:

Sunday, July 20, 2008 HK PHP999.00 PHP
5J 637 MNL-PPS 08:20- 09:35
Tuesday, July 22, 2008 HK PHP999.00 PH
5J 638 PPS-MNL 10:05- 11:20¹⁰⁸

In the Comments box, it reads:

R - FULL RECAP GVNT O JOSE//CARLOS AWRE
R - NON-REFUNDBLE//VALID TIL 15 OCT08 O¹⁰⁹

Respondent explained that as a matter of protocol, flight information is recapped to the purchaser twice: first by the ticketing agent before payment, and second by the cashier during payment. The tickets were comprised of three (3) pages. Petitioners argue that only the first page was recapped to petitioner Jose when he made the purchase.

The common carrier’s obligation to exercise extraordinary diligence in the issuance of the contract of carriage is fulfilled by requiring a full review of the flight schedules to be given to a prospective passenger before payment. Based on the information stated on the contract of carriage, all three (3) pages were recapped to petitioner Jose.

The only evidence petitioners have in order to prove their true intent of having the entire group on the 4:15 p.m. flight is petitioner Jose’s self-serving testimony that the airline failed to recap the last page of the tickets to him. They have neither shown nor introduced any other evidence before the Metropolitan Trial Court, Regional Trial Court, Court of Appeals, or this Court.

¹⁰⁶ Id.

¹⁰⁷ Id. at 333. The nine (9) passengers were Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan John De Guzman, and Paul Mark Baluyot.

¹⁰⁸ Id.

¹⁰⁹ Id.

Even assuming that the ticketing agent encoded the incorrect flight information, it is incumbent upon the purchaser of the tickets to at least check if all the information is correct before making the purchase. Once the ticket is paid for and printed, the purchaser is presumed to have agreed to all its terms and conditions. In *Ong Yiu v. Court of Appeals*:¹¹⁰

While it may be true that petitioner had not signed the plane ticket, he is nevertheless bound by the provisions thereof. “Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter’s lack of knowledge or assent to the regulation.” It is what is known as a contract of “adhesion,” in regards which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.¹¹¹

One of the terms stated in petitioners’ tickets stipulates that the photo identification of the passenger must match the name entered upon booking:

Guests should present a valid photo ID to airport security and upon check-in. Valid IDs for this purpose are Company ID, Driver’s License, Passport, School ID, SSS Card, TIN Card. The name in the photo-ID should match the guest name that was entered upon booking. Failure to present a valid photo ID will result in your being refused check-in.¹¹²

Considering that respondent was entitled to deny check-in to passengers whose names do not match their photo identification, it would have been prudent for petitioner Jose to check if all the names of his companions were encoded correctly. Since the tickets were for 20 passengers, he was expected to have checked each name on each page of the tickets in order to see if all the passengers’ names were encoded and correctly spelled. Had he done this, he would have noticed that there was a different flight schedule encoded on the third page of the tickets since the flight schedule was stated directly above the passengers’ names.

Petitioners’ flight information was not written in fine print. It was clearly stated on the left portion of the ticket above the passengers’ names. If petitioners had exercised even the slightest bit of prudence, they would have been able to remedy any erroneous booking.

¹¹⁰ 180 Phil. 185 (1979) [Per J. Melencio-Herrera, First Division].

¹¹¹ Id. at 193, citing *Tannebaum v. National Airline, Inc.* 13 Misc. 2d 450, 176 N.Y.S. 2d 400; *Lichten vs. Eastern Airlines*, 87 Fed. Supp. 691; *Migoski v. Eastern Air Lines, Inc.*, Fla. 63 So. 2d 634; 4 TOLENTINO, CIVIL CODE 462 (1962); and JUSTICE J.B.L. REYES, LAWYER’S JOURNAL 49 (1951).

¹¹² *Rollo*, pp. 331–333, plane tickets.

This is not the first time that this Court has explained that an air passenger has the correlative duty to exercise ordinary care in the conduct of his or her affairs.

In *Crisostomo v. Court of Appeals*,¹¹³ Estela Crisostomo booked a European tour with Caravan Travel and Tours, a travel agency. She was informed by Caravan's travel agent to be at the airport on Saturday, two (2) hours before her flight. Without checking her travel documents, she proceeded to the airport as planned, only to find out that her flight was actually scheduled the day before. She subsequently filed a suit for damages against Caravan Travel and Tours based on the alleged negligence of their travel agent in informing her of the wrong flight details.¹¹⁴

This Court, while ruling that a travel agency was not a common carrier and was not bound to exercise extraordinary diligence in the performance of its obligations, also laid down the degree of diligence concurrently required of passengers:

Contrary to petitioner's claim, the evidence on record shows that respondent exercised due diligence in performing its obligations under the contract and followed standard procedure in rendering its services to petitioner. As correctly observed by the lower court, *the plane ticket issued to petitioner clearly reflected the departure date and time*, contrary to petitioner's contention. The travel documents, consisting of the tour itinerary, vouchers and instructions, were likewise delivered to petitioner two days prior to the trip. Respondent also properly booked petitioner for the tour, prepared the necessary documents and procured the plane tickets. It arranged petitioner's hotel accommodation as well as food, land transfers and sightseeing excursions, in accordance with its avowed undertaking.

Therefore, it is clear that respondent performed its prestation under the contract as well as everything else that was essential to book petitioner for the tour. *Had petitioner exercised due diligence in the conduct of her affairs, there would have been no reason for her to miss the flight. Needless to say, after the travel papers were delivered to petitioner, it became incumbent upon her to take ordinary care of her concerns. This undoubtedly would require that she at least read the documents in order to assure herself of the important details regarding the trip.*¹¹⁵ (Emphasis supplied)

Most of the petitioners were balikbayans.¹¹⁶ It is reasonable to presume that they were adequately versed with the procedures of air travel,

¹¹³ 456 Phil. 845 (2003) [Per J. Ynares-Santiago, First Division].

¹¹⁴ Id. at 850–851.

¹¹⁵ Id. at 858–859.

¹¹⁶ *Rollo*, pp. 91–92, Complaint. According to the Complaint, Fidelino San Luis, Adrian San Luis, and Annalee San Luis were American citizens and residents of California, while Mark Andrew Jose, Melissa Jose, and Charlotte Jose were Australian citizens and residents of New South Wales. Alfredo Manay, Jr., Dan John De Guzman, Paul Mark Baluyot, and Carlos S. Jose were Filipino citizens and

including familiarizing themselves with the itinerary before departure. Moreover, the tickets were issued 37 days before their departure from Manila and 39 days from their departure from Palawan. There was more than enough time to correct any alleged mistake in the flight schedule.

Petitioners, in failing to exercise the necessary care in the conduct of their affairs, were without a doubt negligent. Thus, they are not entitled to damages.

Before damages may be awarded, “the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant’s acts.”¹¹⁷ The cause of petitioners’ injury was their own negligence; hence, there is no reason to award moral damages. Since the basis for moral damages has not been established, there is no basis to recover exemplary damages¹¹⁸ and attorney’s fees¹¹⁹ as well.

III

Traveling by air for leisure is a fairly new concept to the average Filipino. From 1974, there was only one local airline commanding a monopoly on domestic air travel.¹²⁰ In 1996, respondent introduced the concept of a budget airline in the Philippines, touting “low-cost services to more destinations and routes with higher flight frequency within the Philippines than any other airline.”¹²¹ In its inception, respondent offered plane fares that were “40% to 50% lower than [Philippine Airlines].”¹²²

On March 1, 2007, to celebrate its new fleet of aircraft, respondent offered a promo of ₱1.00 base fare for all their domestic and international destinations.¹²³ The fare was non-refundable and exclusive of taxes and surcharges.¹²⁴

residents of Metro Manila.

¹¹⁷ *Keirulf v. Court of Appeals*, 336 Phil., 414, 431–432 (1997) [Per J. Panganiban, Third Division].

¹¹⁸ CIVIL CODE, art. 2234 provides:

Art. 2234. While the amount of the exemplary damages need not be proven, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded[.]

¹¹⁹ CIVIL CODE, art. 2208 provides:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

When exemplary damages are awarded;

¹²⁰ Philippine Airlines, History and Milestones <<http://www.philippineairlines.com/AboutUs/HistoryAndMilestone>> (visited March 15, 2016).

¹²¹ Cebu Pacific, About Cebu Pacific <<https://www.cebupacificair.com/about-us/Pages/company-info.aspx>> (visited March 15, 2016).

¹²² Sunshine Lichauco De Leon, *Making Flying Fun*, Forbes Online, May 26, 2011 <<http://www.forbes.com/global/2011/0606/features-cebu-pacific-lance-gokongwei-flying-fun.html>> (visited March 15, 2016).

¹²³ Cebu Pacific, Cebu Pacific offers P1 fare to all domestic & International destinations, March 1, 2007 <<https://www.cebupacificair.com/about-us/pages/news.aspx?id=758>> (visited March 15, 2016).

¹²⁴ Cebu Pacific, Cebu Pacific marks domestic leadership with P1 fare to all domestic destinations,

Despite the conditions imposed on these “piso fares,” more people were enticed to travel by air. From January to June 2007, respondent had a total number of 2,256,289 passengers while Philippines Airlines had a total of 1,981,267 passengers.¹²⁵ The domestic air travel market also had a 24% increase in the first half of 2007.¹²⁶

Promotional fares encouraged more Filipinos to travel by air as the number of fliers in the country increased from 7.2 million in 2005 to 16.5 million in 2010.¹²⁷ The emergence of low-cost carriers “liberalized [the] aviation regime”¹²⁸ and contributed to an “unprecedented and consistent double digit growth rates of domestic and international travel”¹²⁹ from 2007 to 2012.

This development, however, came with its own set of problems. Numerous complaints were filed before the Department of Trade and Industry and the Department of Transportation and Communications, alleging “unsatisfactory airline service”¹³⁰ as a result of flight overbooking, delays, and cancellations.¹³¹

This prompted concerned government agencies to issue Department of Transportation and Communications-Department of Trade and Industry Joint Administrative Order No. 1, Series of 2012, otherwise known as the Air Passenger Bill of Rights.

Section 4 of the Joint Administrative Order requires airlines to provide the passenger with accurate information before the purchase of the ticket:

Section 4. *Right to Full, Fair, and Clear Disclosure of the Service Offered and All the Terms and Conditions of the Contract of Carriage.* Every passenger shall, before purchasing any ticket for a contract of carriage by the air carrier or its agents, be entitled to the full, fair, and clear disclosure of all the terms and conditions of the contract of carriage about to be purchased. The disclosure shall include, among others, documents required to be presented at check-in, provisions on check-in deadlines, refund and rebooking policies, and procedures and

September 6, 2007 <<https://www.cebupacificair.com/about-us/pages/news.aspx?id=722>> (visited March 15, 2016).

¹²⁵ Cebu Pacific, CAB confirms Cebu Pacific is really the No. 1 domestic airline, August 30, 2007 <<https://www.cebupacificair.com/about-us/pages/news.aspx?id=723>> (visited March 15, 2016).

¹²⁶ Id., data from the Civil Aeronautics Board.

¹²⁷ Sunshine Lichauco De Leon, *Making Flying Fun*, Forbes Online, May 26, 2011 <<http://www.forbes.com/global/2011/0606/features-cebu-pacific-lance-gokongwei-flying-fun.html>> (visited March 15, 2016).

¹²⁸ DOTC-DTI Joint Adm. O. No. 1 (2012), third whereas clause.

¹²⁹ DOTC-DTI Joint Adm. O. No. 1 (2012), third whereas clause.

¹³⁰ Raul J. Palabrica, *Truth in Airline Promos*, Philippine Daily Inquirer, December 14, 2012 <<http://www.cab.gov.ph/news/765-truth-in-airline-promos>> (visited March 15, 2016).

¹³¹ Id.

responsibility for delayed and/or cancelled flights. These terms and conditions may include liability limitations, claim-filing deadlines, and other crucial conditions.

4.1 An air carrier shall cause the disclosure under this Section to be printed on or attached to the passenger ticket and/or boarding pass, or the incorporation of such terms and conditions of carriage by reference. Incorporation by reference means that the ticket and/or boarding pass shall clearly state that the complete terms and conditions of carriage are available for perusal and/or review on the air carrier's website, or in some other document that may be sent to or delivered by post or electronic mail to the passenger upon his/her request.

....

4.3 Aside from the printing and/or publication of the above disclosures, the same shall likewise be verbally explained to the passenger by the air carrier and/or its agent/s in English and Filipino, or in a language that is easily understood by the purchaser, placing emphasis on the limitations and/or restrictions attached to the ticket.

....

4.5 Any violation of the afore-stated provisions shall be a ground for the denial of subsequent applications for approval of promotional fare, or for the suspension or recall of the approval made on the advertised fare/rate. (Emphasis in the original)

The Air Passenger Bill of Rights recognizes that a contract of carriage is a contract of adhesion, and thus, all conditions and restrictions must be fully explained to the passenger before the purchase of the ticket:

WHEREAS, such a contract of carriage creates an asymmetrical relationship between an air carrier and a passenger, considering that, while a passenger has the option to buy or not to buy the service, the decision of the passenger to buy the ticket binds such passenger, by adhesion, to all the conditions and/or restrictions attached to the air carrier ticket on an all-or-nothing basis, without any say, whatsoever, with regard to the reasonableness of the individual conditions and restrictions attached to the air carrier ticket;¹³²

Section 4.4 of the Air Passenger Bill of Rights requires that "all rebooking, refunding, baggage allowance and check-in policies" must be stated in the tickets:

4.4 The key terms of a contract of carriage, which should include, among others, the rebooking, refunding, baggage allowance and check-in policies, must be provided to a passenger and shall substantially be stated in the following manner and, if done in print, must be in bold letters:

¹³² DOTC-DTI Joint Adm. O. No. 1 (2012), seventh whereas clause.

(English)

“NOTICE:

The ticket that you are purchasing is subject to the following conditions/restrictions:

- 1. _____
- 2. _____
- 3. _____

Your purchase of this ticket becomes a binding contract on your part to follow the terms and conditions of the ticket and of the flight. Depending on the fare rules applicable to your ticket, non-use of the same may result in forfeiture of the fare or may subject you to the payment of penalties and additional charges if you wish to change or cancel your booking.

For more choices and/or control in your flight plans, please consider other fare types.”

(Filipino)

“PAALALA:

Ang tiket na ito ay binibili ninyo nang may mga kondisyon/restriksyon:

- 1. _____
- 2. _____
- 3. _____

Sa pagpili at pagbili ng tiket na ito, kayo ay sumasang-ayon sa mga kondisyon at restriksyon na nakalakip dito, bilang kontrata ninyo sa air carrier. Depende sa patakarang angkop sa iyong tiket, ang hindi paggamit nito ay maaaring magresulta sa pagwawalang bisa sa inyong tiket o sa paniningil ng karagdagang bayad kung nais ninyong baguhin o kanselahin ang inyong tiket.

Para sa mas maraming pagpipilian at malawak na control sa inyong flight, inaanyayahan kayong bumili ng iba pang klase ng tiket galing sa air carrier.” (Emphasis in the original)

The Air Passenger Bill of Rights acknowledges that “while a passenger has the option to buy or not to buy the service, *the decision of the passenger to buy the ticket binds such passenger[.]*”¹³³ Thus, the airline is mandated to place in writing all the conditions it will impose on the passenger.

However, the duty of an airline to disclose all the necessary information in the contract of carriage does not remove the correlative

¹³³ DOTC-DTI Joint Adm. O. No. 1 (2012), seventh whereas clause. Emphasis supplied.

obligation of the passenger to exercise ordinary diligence in the conduct of his or her affairs. The passenger is still expected to read through the flight information in the contract of carriage before making his or her purchase. If he or she fails to exercise the ordinary diligence expected of passengers, any resulting damage should be borne by the passenger.


WHEREFORE, the Petition is **DENIED**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



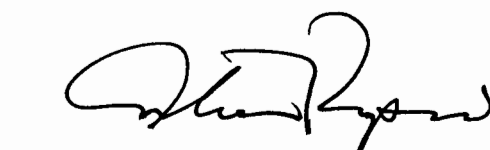
MARIANO C. DEL CASTILLO
Associate Justice



JOSE CANRAL MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice