

## SECOND DIVISION

[ G.R. No. 171092, March 15, 2010 ]

**EDNA DIAGO LHUILLIER, PETITIONER, VS. BRITISH AIRWAYS,  
RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

*Jurisdictio est potestas de publico introducta cum necessitate juris dicendi.* Jurisdiction is a power introduced for the public good, on account of the necessity of dispensing justice.<sup>[1]</sup>

#### ***Factual Antecedents***

On April 28, 2005, petitioner Edna Diago Lhuillier filed a Complaint<sup>[2]</sup> for damages against respondent British Airways before the Regional Trial Court (RTC) of Makati City. She alleged that on February 28, 2005, she took respondent's flight 548 from London, United Kingdom to Rome, Italy. Once on board, she allegedly requested Julian Halliday (Halliday), one of the respondent's flight attendants, to assist her in placing her hand-carried luggage in the overhead bin. However, Halliday allegedly refused to help and assist her, and even sarcastically remarked that "If I were to help all 300 passengers in this flight, I would have a broken back!"

Petitioner further alleged that when the plane was about to land in Rome, Italy, another flight attendant, Nickolas Kerrigan (Kerrigan), singled her out from among all the passengers in the business class section to lecture on plane safety. Allegedly, Kerrigan made her appear to the other passengers to be ignorant, uneducated, stupid, and in need of lecturing on the safety rules and regulations of the plane. Affronted, petitioner assured Kerrigan that she knew the plane's safety regulations being a frequent traveler. Thereupon, Kerrigan allegedly thrust his face a mere few centimeters away from that of the petitioner and menacingly told her that "We don't like your attitude."

Upon arrival in Rome, petitioner complained to respondent's ground manager and demanded an apology. However, the latter declared that the flight stewards were "only doing their job."

Thus, petitioner filed the complaint for damages, praying that respondent be ordered to pay P5 million as moral damages, P2 million as nominal damages, P1 million as exemplary damages, P300,000.00 as attorney's fees, P200,000.00 as litigation expenses, and cost of the suit.

On May 16, 2005, summons, together with a copy of the complaint, was served on the respondent through Violeta Echevarria, General Manager of Euro-Philippine Airline Services, Inc.<sup>[3]</sup>

On May 30, 2005, respondent, by way of special appearance through counsel, filed a Motion to Dismiss<sup>[4]</sup> on grounds of lack of jurisdiction over the case and over the person of the respondent. Respondent alleged that only the courts of London, United Kingdom or Rome, Italy, have jurisdiction over the complaint for damages pursuant to the Warsaw Convention,<sup>[5]</sup> Article 28(1) of which provides:

An action for damages must be brought at the option of the plaintiff, either before the court of domicile of the carrier or his principal place of business, or where he has a place of business through which the contract has been made, or before the court of the place of destination.

Thus, since a) respondent is domiciled in London; b) respondent's principal place of business is in London; c) petitioner bought her ticket in Italy (through Jeepney Travel S.A.S, in Rome);<sup>[6]</sup> and d) Rome, Italy is petitioner's place of destination, then it follows that the complaint should only be filed in the proper courts of London, United Kingdom or Rome, Italy.

Likewise, it was alleged that the case must be dismissed for lack of jurisdiction over the person of the respondent because the summons was erroneously served on Euro-Philippine Airline Services, Inc. which is not its resident agent in the Philippines.

On June 3, 2005, the trial court issued an Order requiring herein petitioner to file her Comment/Opposition on the Motion to Dismiss within 10 days from notice thereof, and for respondent to file a Reply thereon.<sup>[7]</sup> Instead of filing a Comment/Opposition, petitioner filed on June 27, 2005, an Urgent Ex-Parte Motion to Admit Formal Amendment to the Complaint and Issuance of Alias Summons.<sup>[8]</sup> Petitioner alleged that upon verification with the Securities and Exchange Commission, she found out that the resident agent of respondent in the Philippines is Alonzo Q. Ancheta. Subsequently, on September 9, 2005, petitioner filed a Motion to Resolve Pending Incident and Opposition to Motion to Dismiss.<sup>[9]</sup>

### ***Ruling of the Regional Trial Court***

On October 14, 2005, the RTC of Makati City, Branch 132, issued an Order<sup>[10]</sup> granting respondent's Motion to Dismiss. It ruled that:

The Court sympathizes with the alleged ill-treatment suffered by the plaintiff. However, our Courts have to apply the principles of international law, and are bound by treaty stipulations entered into by the Philippines which form part of the law of the land. One of this is the Warsaw Convention. Being a signatory thereto, the Philippines adheres to its stipulations and is bound by its provisions including the place where actions involving damages to plaintiff is to be instituted, as provided for under Article 28(1) thereof. The Court finds no justifiable reason to deviate from the indicated limitations as it will only run counter to the provisions of the Warsaw Convention. Said adherence is in consonance

with the comity of nations and deviation from it can only be effected through proper denunciation as enunciated in the Santos case (*ibid*). Since the Philippines is not the place of domicile of the defendant nor is it the principal place of business, our courts are thus divested of jurisdiction over cases for damages. Neither was plaintiff's ticket issued in this country nor was her destination Manila but Rome in Italy. It bears stressing however, that referral to the court of proper jurisdiction does not constitute constructive denial of plaintiff's right to have access to our courts since the Warsaw Convention itself provided for jurisdiction over cases arising from international transportation. Said treaty stipulations must be complied with in good faith following the time honored principle of *pacta sunt servanda*.

The resolution of the propriety of service of summons is rendered moot by the Court's want of jurisdiction over the instant case.

WHEREFORE, premises considered, the present Motion to Dismiss is hereby GRANTED and this case is hereby ordered DISMISSED.

Petitioner filed a Motion for Reconsideration but the motion was denied in an Order<sup>[11]</sup> dated January 4, 2006.

Petitioner now comes directly before us on a Petition for Review on *Certiorari* on pure questions of law, raising the following issues:

### **Issues**

- I. WHETHER X X X PHILIPPINE COURTS HAVE JURISDICTION OVER A TORTIOUS CONDUCT COMMITTED AGAINST A FILIPINO CITIZEN AND RESIDENT BY AIRLINE PERSONNEL OF A FOREIGN CARRIER TRAVELLING BEYOND THE TERRITORIAL LIMIT OF ANY FOREIGN COUNTRY; AND THUS IS OUTSIDE THE AMBIT OF THE WARSAW CONVENTION.
- II. WHETHER x x x RESPONDENT AIR CARRIER OF PASSENGERS, IN FILING ITS MOTION TO DISMISS BASED ON LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE CASE AND OVER ITS PERSON MAY BE DEEMED AS HAVING IN FACT AND IN LAW SUBMITTED ITSELF TO THE JURISDICTION OF THE LOWER COURT, ESPECIALLY SO, WHEN THE VERY LAWYER ARGUING FOR IT IS HIMSELF THE RESIDENT AGENT OF THE CARRIER.

### ***Petitioner's Arguments***

Petitioner argues that her cause of action arose not from the contract of carriage, but from the tortious conduct committed by airline personnel of respondent in violation of the provisions of the Civil Code on Human Relations. Since her cause of action was not predicated on the contract of carriage, petitioner asserts that she has the option to pursue this case in this jurisdiction pursuant to Philippine laws.

## ***Respondent's Arguments***

In contrast, respondent maintains that petitioner's claim for damages fell within the ambit of Article 28(1) of the Warsaw Convention. As such, the same can only be filed before the courts of London, United Kingdom or Rome, Italy.

## **Our Ruling**

The petition is without merit.

### ***The Warsaw Convention has the force and effect of law in this country.***

It is settled that the Warsaw Convention has the force and effect of law in this country. In *Santos III v. Northwest Orient Airlines*,<sup>[12]</sup> we held that:

The Republic of the Philippines is a party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, otherwise known as the Warsaw Convention. It took effect on February 13, 1933. The Convention was concurred in by the Senate, through its Resolution No. 19, on May 16, 1950. The Philippine instrument of accession was signed by President Elpidio Quirino on October 13, 1950, and was deposited with the Polish government on November 9, 1950. The Convention became applicable to the Philippines on February 9, 1951. On September 23, 1955, President Ramon Magsaysay issued Proclamation No. 201, declaring our formal adherence thereto, "to the end that the same and every article and clause thereof may be observed and fulfilled in good faith by the Republic of the Philippines and the citizens thereof."

The Convention is thus a treaty commitment voluntarily assumed by the Philippine government and, as such, has the force and effect of law in this country.<sup>[13]</sup>

### ***The Warsaw Convention applies because the air travel, where the alleged tortious conduct occurred, was between the United Kingdom and Italy, which are both signatories to the Warsaw Convention.***

Article 1 of the Warsaw Convention provides:

1. This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention. (Emphasis supplied)

Thus, when the place of departure and the place of destination in a contract of carriage are situated within the territories of two High Contracting Parties, said carriage is deemed an "international carriage". The High Contracting Parties referred to herein were the signatories to the Warsaw Convention and those which subsequently adhered to it.<sup>[14]</sup>

In the case at bench, petitioner's place of departure was London, United Kingdom while her place of destination was Rome, Italy.<sup>[15]</sup> Both the United Kingdom<sup>[16]</sup> and Italy<sup>[17]</sup> signed and ratified the Warsaw Convention. As such, the transport of the petitioner is deemed to be an "international carriage" within the contemplation of the Warsaw Convention.

***Since the Warsaw Convention applies in the instant case, then the jurisdiction over the subject matter of the action is governed by the provisions of the Warsaw Convention.***

Under Article 28(1) of the Warsaw Convention, the plaintiff may bring the action for damages before -

1. the court where the carrier is domiciled;
2. the court where the carrier has its principal place of business;
3. the court where the carrier has an establishment by which the contract has been made; or
4. the court of the place of destination.

In this case, it is not disputed that respondent is a British corporation domiciled in London, United Kingdom with London as its principal place of business. Hence, under the first and second jurisdictional rules, the petitioner may bring her case before the courts of London in the United Kingdom. In the passenger ticket and