

THIRD DIVISION

[G.R. NO. 142541, December 15, 2005]

**CATHAY PACIFIC AIRWAYS, PETITIONER, VS. SPOUSES
ARNULFO AND EVELYN FUENTEBELLA, RESPONDENTS.**

D E C I S I O N

SANDOVAL GUTIERREZ, J.:

For our resolution is the instant petition for review on *certiorari* of the Decision^[1] and Resolution^[2] of the Court of Appeals (Special Sixteenth Division) dated November 5, 1999 and March 6, 2000, respectively, in CA-G.R. SP No. 48731.

The pertinent facts as found by the Court of Appeals are:

Spouses Arnulfo and Evelyn Fuentebella, herein respondents, filed with the Regional Trial Court, Branch 30, San Jose, Camarines Sur, a complaint for damages, docketed as Civil Case No. T-635. Impleaded as defendant was Cathay Pacific Airways, herein petitioner. Inasmuch as the witnesses reside in Metro Manila, more than 100 kilometers away from the trial court, the parties agreed to present their witnesses through deposition by oral examination, pursuant to Section 4 (c) (2), Rule 23 of the 1997 Rules of Civil Procedure, as amended, quoted as follows:

"Sec. 4. *Use of depositions.* - At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

x x x

(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose for if the court finds: (1) that the witness is dead; or (2) **that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines**, unless it appears that his absence was procured by the party offering the deposition x x x;"

The deposition of Congressman Alberto Lopez, second rebuttal witness for respondent spouses, was scheduled to be taken on August 19, 1997 at Room 501, 5th Floor, Regina Building, Aguirre corner Graciera Streets, Legaspi Village, Makati City. However, on that date, typhoon "*Miling*" hit the metropolis, prompting Atty. Salvador Belaro of Siguion Reyna Montecillo & Ongsiako, counsel for petitioner, and Atty. Juanito Velasco, counsel for respondents, to reset the taking of deposition to August 21, 1997.