

## **SPECIAL SIXTEENTH DIVISION**

**[ CA-G.R. SP NO. 132092, March 06, 2015 ]**

**ZEST AIRWAYS, INC., PETITIONER, VS. SPS. CESAR S. ABAD AND  
DRA. GEORGINA IMPERIAL ABAD, RESPONDENTS.**

### **DECISION**

**BUESER, J.:**

This is a Petition for Review<sup>[1]</sup> under Rule 42 of the Rules of Court seeking to reverse and set aside the Order<sup>[2]</sup> of the Regional Trial Court ("RTC"), Branch 117, Pasay City dated August 30, 2013 affirming its earlier Decision<sup>[3]</sup> dated January 16, 2012. The dispositive portion of which reads in this wise:

*"WHEREFORE, the Court rules to consider the "Motion for Reconsideration (Of the Decision dated 16 January 2012)" filed by defendant-appellant as DULY FILED, but DENIES the same for lack of merit. Consequently, plaintiffs-appellees' Motion for Issuance of Certificate of Finality of Judgment is also DENIED for being premature."*

### **THE ANTECEDENT FACTS**

The case before Us arose from the Complaint<sup>[4]</sup> for breach of contract of carriage with damages dated July 15, 2010 filed by respondents Dra. Georgina Imperial Abad ("Respondent Georgina") and Cesar Abad ("Respondent Cesar") against petitioner Zest Airways, Inc. ("Petitioner Zest") before the Metropolitan Trial Court ("MeTC"), Branch 46, Pasay City.

The pertinent facts of the case are as follows:

Petitioner Zest is a common carrier engaged in the business of carrying or transporting of passengers or goods or both for compensation, offering their services to the public. Respondent Georgina, as early as August 2009, invited their close relatives to have a three (3) day vacation dream in Boracay, Aklan, to hold a joint celebration of the 76<sup>th</sup> birthday of respondent Cesar and 57<sup>th</sup> birthday of respondent Georgina's sister and to serve as a homecoming celebration for the balikbayans among their group. They availed of petitioner Zest's promotional low-cost airfares for the said trip scheduled on December 11 to 13, 2009. It was sometime on August 29 and September 3, 2009 that respondent Georgina bought their passage tickets from petitioner Zest which were booked on Flight No. 853 bound to Kalibo Airport with departure time in Manila at 11:50 on December 11, 2009 and a return flight from Kalibo Airport to Manila at 5:40pm on December 13, 2009. The tickets cost respondent Georgina the amounts of Php1,668.00 and Php1,898.00, respectively, which were paid through respondents' credit cards.

It was noontime of December 12, 2009, Saturday, that respondent Georgina received a text message from the office of petitioner Zest advising them that their return flight to Manila had been changed to an earlier time slot from 5:40pm to 1:30pm of December 13, 2009 or four (4) hours earlier from their original schedule. As a consequence of the abrupt change in their return flights, it caused them great inconvenience, tension and confusion because they immediately looked for their companions who were scattered in different places and location in Boracay so that they could inform them of the change in their return flights.

As alleged by the respondents, all their scheduled activities were cut-short or cancelled on the evening of December 12, 2009, including their scheduled joint birthday celebration for respondent Cesar and respondent Georgina's sister; island hopping which was scheduled the next day or December 13, 2009 and was paid in advance but was not refunded. Respondents further stressed that instead of having fun and enjoying the night of December 12, 2009, they and the rest of their group were instead busy and engrossed in packing their things and baggage for an early trip back to Kalibo Airport on December 13, 2009 to catch up their return flight scheduled to depart at 1:30pm and they had to be at the Kalibo Airport three (3) hours before departure time. It takes 20 minutes boat ride from the island to Caticlan and two (2) hours bus ride from Caticlan to Kalibo. Respondents also stressed that they, together with the rest of the group, had long-planned and thoroughly prepared this anticipated vacation trip to Boracay since this would also serve as their reunion and homecoming of their balikbayans. They adjusted and synchronized their free time and availability and filed their leave of absences in their respective works and offices.

Respondents alleged that the unilateral abrupt change of their return flight by petitioner Zest from 5:40pm to 1:30pm of December 13, 2009, which was four (4) hours earlier, was a clear breach of contract because it impaired and spoiled their three (3) day vacation in Boracay. Moreover, petitioner Zest's general conditions of carriage which states that schedules are subject to change without notice is a contract of adhesion contained in a finely printed provision at the back of the airline ticket and is frowned upon by the courts and has been consistently declared to be void or unenforceable in several cases. Further, respondents also alleged that petitioner Zest's bad faith in changing their return flight to Manila could be deduced from the fact that the aircraft with return flight to Manila from Kalibo Airport at 1:30pm of December 13, 2009 carried only a few passengers that in order to save operational expenses, the passengers scheduled to depart at 5:40pm of the same day were unreasonably and unjustly hustled and booked at 1:30pm return flight. Respondents had to abide despite protest, otherwise, they would be left without any available flight in returning to Manila.

The version of petitioner Zest, on the other hand, is that flight schedules are subject to change without notice and no liability in any way whatsoever for any loss incurred by passengers as a result of such change, pursuant to its General Conditions of Carriage duly approved by Civil Aeronautics Board. In the case of respondents herein, the conditions of carriage of petitioner Zest could be easily read and considering that the former were able to secure their tickets on August 29, 2009 and September 3, 2009, or at least three (3) months prior to the date of their departure on December 11, 2009, they had all the time to read and understand the conditions of carriage. Also, the fact that petitioner Zest duly notified respondents of the intended change of flight schedule showed that there was no ill will, malice, bad

faith on their part or any intention to violate the law in disregard of respondents' rights. Petitioner Zest further alleged that they had acted in accordance with its Conditions of Carriage. Thus, absence of a wrongful act or omission or bad faith would not entitle respondents to moral damages. Petitioner Zest stressed that it went out of its way to accommodate respondents' demands especially their demand to accommodate free of charge Rebecca Austria, Norma Austria and Minda Austria, who were not passengers of petitioner Zest but of another airline in Flight No. 301, which was the same flight taken by respondents for their return flight from Kalibo to Manila on December 13, 2009. Stressing further that the mere fact that petitioner Zest made a generous gesture of good will and accommodation was never alleged nor admitted in the complaint and petitioner Zest felt duty bound to bring the matter on record before the lower court.

After trial, the court *a quo* rendered its Decision<sup>[5]</sup> dated March 15, 2011 in favor of herein respondents. The dispositive portion of which is instructive in this wise:

*"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, Zest Air Ways:*

- 1. Ordering the defendant to pay the plaintiff the sum of Php3,566.00 representing the actual travel expenses incurred by the plaintiffs;*
- 2. Ordering the defendant to pay the sum of P200,000.00 as moral damages suffered by the plaintiff;*
- 3. Ordering the defendant to pay the sum of P20,000.00 as Attorney's fee;*
- 4. Ordering the defendant to pay the costs of suit."*

Thereafter, petitioner Zest appealed the said Decision dated March 15, 2011 before RTC, Branch 117, Pasay City, which affirmed the same in toto in a Decision<sup>[6]</sup> dated January 16, 2012.

On January 31, 2012, a motion for reconsideration of the Decision dated January 16, 2012 was filed by petitioner Zest which was subsequently denied for lack of merit.

Hence, this petition.

### **THE ISSUES**

1. Whether the lower courts seriously erred in finding that petitioner breached its contract of carriage.
2. Whether the lower courts seriously erred in awarding moral damages in the amount of Php200,000.00 because petitioner was not guilty of bad faith or willful misconduct in its dealings with respondents.

### **THE RULING OF THE COURT**

The petition is bereft of merit.