

EIGHTEENTH DIVISION

[CA-G.R. CV. NO. 04636, August 29, 2014]

**SPOUSES PATRIA ADORADA AND NOLITO J. PALER, PLAINTIFFS-
APPELLEES, VS. CEBU AIR, INC. DEFENDANT-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

THE CASE

Before this Court is an appeal^[1] filed by defendant-appellant Cebu Air, Inc., (CAI) from the Decision^[2] of the Regional Trial Court, Branch 18, Cebu City in Civil Case No. CEB-32357 for Breach of Contract of Carriage with Damages and Attorney's Fees. The dispositive portion reads:

WHEREFORE, the court hereby finds defendant Cebu Air, Inc. liable for Breach of Contract of Carriage and is hereby directed to pay plaintiffs the sum of Two Hundred Thousand Pesos (P200,000.00) as moral damages, One Hundred Thousand Pesos (P100,000.00) plus 12% per annum legal interest by way of actual and compensatory damages, the amount of Fifty Thousand Pesos as attorney's fees and costs of suit and finally, the amount of Fifty Thousand Pesos (P50,000.00) as exemplary damages.

SO ORDERED.^[3]

THE PARTIES

Plaintiffs-Appellees, Patria Adorada Paler, is of legal age and is joined by her husband Nolito Paler in the present case. Both are residents of No. 7 Maquise Road, Nichols Park Subdivision, Guadalupe, Cebu City where they may be served with summons and other legal processes.

Defendant-Appellant Cebu Air, Inc. (CAI) is a corporation duly organized and existing under and by virtue of Philippine Laws with principal address at Airlines Operation Center, Domestic Road, Pasay City, where it may be served with summons and other legal processes.^[4] CAI is a corporation engaged in the operation of air transport services, both domestic and international for passengers, mail and cargo. It is the owner and operator of Cebu Pacific.^[5]

THE ANTECEDENTS

Plaintiff-Appellee Patria Adorada Palar is a naturalized American Citizen who is working as a nurse in Laredo Medical Center at Laredo, Texas, U.S.A.^[6]

As early as February 7, 2006, Patria already made arrangements for her trip to the Philippines in order to attend the graduation rites of her daughter from the University of San Carlos in Cebu City. In preparation for the event, she filed a leave of absence from work. Patria also booked a flight and was issued her travel schedules^[7] by China Airlines-GTT; the agent of CAI in the U.S.A. She was scheduled to arrive from Manila to Cebu on March 18, 2006 and return from Cebu to Manila on April 21, 2006.^[8]

However, due to a conflict in her work schedule^[9], Patria arrived in Manila on March 21, 2006 at about 11:00 o'clock in the evening. She then took the 5:00 am flight the following day from Manila to Cebu via Cebu Pacific^[10] and arrived on March 22, 2006. Patria's flight to Cebu was uneventful. For deviations from her original schedule, she was merely subjected to a rebooking fee^[11] of one hundred twelve pesos (P112.00) by Cebu Pacific.

However, the same could not be said for her return flight from Cebu to Manila. The events that unfolded have become contentious that this Court shall chronicle both parties' version separately.

Plaintiffs-Appellees aver that on April 21, 2006, Patria was scheduled to leave from Cebu to Manila at 9:00 pm^[12] via Cebu Pacific^[13] carrier 5J, flight **574**.^[14] She arrived at the airport past 7:00 pm to make it before the forty-five (45) minute cut-off time imposed by the airline at 8:25 pm. Upon arriving, she saw other passengers falling in line at the Cebu Pacific counter. She joined the group and queued as well.^[15]

When it was her turn at the counter, Patria surrendered her passport and ticket. The staff then took her baggages and weighed it. Her ticket was also stamped "USED".^[16] Her boarding pass was attached to her ticket but was not handed to her.^[17] Instead, she was told to wait beside the line for further information. When she asked about the matter, the man in the ticket counter told her they were still awaiting two (2) more passengers who were also boarding the same flight.^[18]

At around 8:30 pm, Patria began to wonder why she still was not checked in when her flight was supposed to leave at 9:00 pm. She then asked to talk to the manager. She was brought to the office of the Cebu Pacific. Outside the room was a waiting area. She was told to sit down as someone was coming to talk to her. A man named Apomar^[19] "Popoy" Nellilas came out of the office and again told her she has to "wait and no other way, just wait."^[20]

While waiting, she heard an announcement from Cebu Pacific that the 9:00pm flight was already boarding.^[21] Another announcement came this time from Philippine Airlines (PAL) offering a reward for passengers who will choose to give up their seats in favor of those who needed to take an emergency flight at that time.^[22]

Patria asked Nellas for help if she may be accommodated to take the Philippine Airlines flight. Nellas acquiesced and again told her to wait. After thirty (30) minutes, Nellas came back saying that Philippine Airlines could not also accommodate her since they were also overbooked. By then it was already past 9:00 pm and Patria was crying and begging for their help.^[23]

At about 10:00 pm, Patria was called by the staff and was told she can be accommodated for the 11:00 pm flight. Patria requested Nellas if he could call Korean Airlines to ask them to wait for her as she was going to board the 11:00 pm flight. Nellas however replied that they could not do that. Realizing that she could not make it in time for her 12:10 am connecting flight to the United States, Patria decided not to go at all.^[24]

Thereafter, Patria requested the staff to call Korean Airlines so she could rebook her flight. The outcome however was fruitless as she was told that the next available flight was in the middle of May. Patria explained that she could not wait until then as it was already too late considering that she was due to report back for her work at the hospital^[25] by April 24, 2006.^[26]

The staff returned her ticket, crushed out the stamped word "USED" and wrote the word "UNUSED" followed by some initials.^[27] Patria is baffled since she has confirmed her flight and yet the two passengers who were not yet in line before her were accommodated. In contrast, she, despite her confirmed ticket was not allowed to board her flight.^[28]

As a result of her missed flight, Patria had to purchase a new ticket to the United States costing her nine hundred dollars (\$900). She also had to extend her stay in the Philippines for seven (7) more days. During the said time, she was not able to report to work. At that time, Patria was working twelve (12) hours a day, six (6) days a week. She was paid forty (\$40) dollars per hour for the first forty (40) hours as regular pay. For the succeeding thirty-two (32) hours, she is paid an equivalent of one hundred fifty percent (150%) of her regular pay.^[29]

Upon reporting to work, Patria was reprimanded by her superior. She was threatened of disallowing her scheduled vacation the following year. Instead, priority was given to other nurses whose vacations were delayed due to Patria.^[30]

Defendant-Appellant CAI for their part presented Apomar Nellas to testify on the incident. In his Judicial Affidavit^[31], Nellas stated that he is the Area Manager-Visayas of Cebu Air Inc.^[32] He alleged:

On April 21, 2006, Nellas was on duty at the Mactan Cebu International Airport. Patria was one of the passengers of flight **5J 572** scheduled to depart for Manila at 9:00 pm. On the said day, most of their turnaround flights from Manila was delayed due to the ongoing repair and closure of runway 13/31. As a result, their flights from Cebu to Manila including the flight of Patria was also delayed.

When Patria was about to check in, she was temporarily put on hold since the earlier flight **5J 570** was still boarding. By then, the staff was still waiting for the two (2)

passengers missing at the gate. If the two (2) passengers would not show up, they could offer to accommodate her on **5J 570**. Patria was then informed of the delays in all of their flights. Consequently, her flight would also be delayed.

Upon hearing that her flight would be delayed, Patria requested if she can still be accommodated on the earlier flight **5J 570** since she has an international connecting flight. The staff responded that they can accommodate her if the two (2) passengers who have not yet boarded the plane would not turn up. However, the missing passengers eventually arrived and boarded flight **5J 570**.

After flight **5J 570** departed, the staff checked in Patria on her scheduled flight **5J 572**. Flight **5J 572** was originally scheduled to leave at 9:00 pm. The delay however resulted into a change in the Estimated Time of Departure (ETD) to 10:00 pm.

Patria again insisted that she needed to be in Manila earlier than 10:00pm because of her international flight. The staff then tried to transfer her to a Philippine Airlines flight but the flight was also booked. As a resort, Cebu Pacific informed Patria that she is still checked in on flight **5J 572** and that she can still board the said flight.^[33]

However, Cebu Pacific received another information that the flight will be further delayed and will have a new ETD at 10:45 pm. Patria was duly informed of the said development. It was then that Patria decided to voluntarily back out of her confirmed flight as she would miss her connecting flight to the U.S.A. The staff again informed her that she can still be accommodated on her original flight but she insisted on canceling her booking. Thereafter, Patria's ticket was then marked from "USED" to "UNUSED".^[34]

During Patria's testimony, she insisted that she was never informed of any delay. Rather, nobody explained to her what was going on.^[35] She never requested to go ahead of her scheduled flight.^[36] She further clarified that she was not given an option to fly with PAL. It was she who suggested that perhaps she can take the PAL flight instead.^[37] Patria also insisted that she heard an announcement that her flight number (**5J 574**) was boarding and that the same corresponded to her boarding time.^[38]

On the other hand, Apomar insisted that Patria's flight was booked on flight **5J 572**. On Cross Examination Apomar explained:

ATTY MONZON:

Q So you will confirm that the flight is 5J572?

A Yes.

Q Are you sure of that?

A Yes.

Q Under your oath as a witness?

A Yeah.

Q I now refer you to your Exhibit "1". The flight is not 5J572 but 5J574, how do you now reconcile the flight number of what you stated in your affidavit as the ticket itself which says that the flight is 5J574?

A Tickets are issued on the option of the passenger on which schedule she wants to have. However, it does not prevent passengers from changing their bookings or rebookings.

Q So you are now saying that flight 5J572 was the earlier flight not the scheduled flight of Ms. Palar?

A No. 5J we have flight 574, we have 572, we have flight 570 and Ms. Palar was booked on 5J572 on the updated record because the ticket was issued by a third party office somewhere in China Airlines. That was issued prior to the actual scheduled day of departure.

Xxx

Q And you will also confirmed (*sic*) that the scheduled departure is 9:00pm.

A That's for 5J572, delayed.^[39]

On September 14, 2011, the Regional Trial Court issued the assailed decision finding in favor of plaintiffs-appellants. In resolving the same, the Lower Court narrowed the issues to the following:

1. Whether or not plaintiff Patria was bumped off by the defendant;
2. Whether or not defendant may be held liable for violating the Contract of Carriage;
3. Whether or not the parties are entitled to their respective claims for damages.^[40]

As to the first issue, the Lower Court found Patria to have been bumped off flight **5J 574**. It held that as between Patria's account of events and CAI's bare claims that the delays were caused by the closure of runway 13/31, Patria's claims should prevail. The RTC took note that CAI could not present any proof of their claim that the delay in the flights on the said day was indeed due to the alleged runway closure.

It further held that the passenger list^[41] submitted by CAI failed to prove that Patria backed out from her original flight schedule. Further, the discrepancy in the flight schedules was not sufficiently explained by Nellas during his testimony in Court. Ultimately, the Lower Court declared, "by whatever flight number, the fact is, plaintiff was, not out of her own volition, unable to board in one and that she incurred damages as a consequence of (*sic*) thereof."^[42] Thus, it held defendant-appellant to have breached its Contract of Carriage with Patria.

In justifying the award for damages, the RTC ruled that the Cebu Pacific Personnel acted in evident bad faith in its treatment of Patria. She was left without any