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APPENDIX A

**Supreme Court of the State of New York
Appellate Division: Second Judicial Department**

D61390
L/htr

Argued – September 3, 2019

AD3d

MARK C. DILLON, J.P.
JOHN M. LEVENTHAL
JOSEPH J. MALTESE
LINDA CHRISTOPHER, JJ.

2017-00971

DECISION & ORDER

Macarieto I. Trayvilla, etc., (Filed Dec. 4, 2019)
et al., appellants, v Japan
Airlines, etc., et al.,
respondents.

(Index No. 4330/16)

Macarieto I. Trayvilla, Celestina Pinero-Trayvilla,
Rey Louis P. Trayvilla, and Sherry Lyn Dorado-
Trayvilla, Woodside, NY, appellants pro se.

Clyde & Co US LLP, New York, NY (Andrew J.
Harakas and Daniel E. Correll of counsel), for re-
spondents.

In an action, inter alia, to recover damages for
negligent infliction of emotional distress, the plaintiffs
appeal from an order of the Supreme Court, Queens
County (Thomas D. Raffaele, J.), entered December 14,

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2016. The order granted the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint.

ORDERED that the order is affirmed, with costs.

This action was commenced after the plaintiffs Macarieto I. Trayvilla, and Celestina Pinero-Trayvilla were refused carriage on a Japan Airlines flight from New York to the Philippines, based on the expiration of their Philippine passports, and allegedly were treated rudely and threatened with arrest by an employee of the defendant Japan Airlines. The complaint asserted causes of action to recover damages for negligent infliction of emotional distress, assault, negligence, breach of contract, and intentional infliction of emotional distress. The defendants moved pursuant to CPLR 3211(a) to dismiss the complaint. The Supreme Court granted the defendants' motion, and the plaintiff's appeal.

We agree with the Supreme Court's determination directing the dismissal of the causes of action to recover damages for negligent infliction of emotional distress, assault, negligence, and -intentional infliction of emotional distress as barred by the applicable statute of limitations (*see* CPLR 3211[a][5]). Those causes of action were all barred by the one-year statute of limitations applicable to intentional torts (*see* CPLR 215[3]). In that regard, the causes of action that were denominated as claims to recover damages for negligent infliction of emotional distress and negligence were premised only on allegations of intentional conduct, which cannot form the basis of a cause of action

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sounding in negligence and, thus, are governed by the one-year limitations period of CPLR 215(3) (*see McDonald v Riccuiti*, 126 AD3d 954; *Dunn v Brown*, 261 AD2d 432, 433).

In addition, we agree with the Supreme Court's determination directing the dismissal of the cause of action to recover damages for breach of contract for failure to state a cause of action (*see CPLR 3211[a][7]*).

DILLON, J.P., LEVENTHAL, MALTESE and CHRISTOPHER, JJ., concur.

ENTER:

/s/ Aprilanne Agostino
Aprilanne Agostino
Clerk of the Court

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APPENDIX B

Short Form Order

NEW YORK SUPREME COURT –
QUEENS COUNTY

Present: HONORABLE IA Part 13
THOMAS D. RAFFAELE
Justice

X Index
Former Prosecutor Macarieto
I. Trayvilla, Celestina Pinero-
Trayvilla, Rey Louis Pinero
Trayvilla, Esq., Sherry Lyn
Dorado-Trayvilla,
Plaintiffs,
-against-
Japan Airlines (JAL) Erjon
Fjora In his capacity as
employee of JAL,
Defendants.

X

The following papers numbered 1 to 9 read on this motion by defendants Japan Airlines (JAL) and Erjon Flora, seeking an order dismissing plaintiffs' verified complaint on the grounds that plaintiffs have failed to state a claim upon which relief can be granted, their claims are time barred by the applicable statute of limitations and/or preempted by the Airline Deregulation Act and granting such other and further relief as this court deems just and proper.

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Papers Numbered

Notice of Motion – Affidavits – Exhibits	1-4
Memorandum of Law in Support	5
Plaintiff’s Affidavit in Opposition	6-7
Memorandum of Law in Opposition	8
Reply Memorandum of Law	9

Upon the foregoing papers, the motion is granted in its entirety. It is undisputed that plaintiffs Macarieto I. Trayvilla and Celestina Pinero-Trayvilla attempted to travel on a Japan Airlines aircraft with expired passports. It is well settled that a valid unexpired passport is required for Philippine nationals returning to the Philippines and accordingly JAL correctly refused to check them in on October 22, 2014 (*see Affirmation of Antonio C. Pido, dated August 2, 2016 relying on the Philippines Passport Act of 1996*). Under Philippine law, a passenger holding an expired passport who needs to travel to the Philippines on an emergent basis must first obtain a travel document (*id at paragraph 20; see also the website for Embassy of the Philippines, Washington, D.C. Travel Document requirements*). The aforestated plaintiffs failed to obtain a travel document.

Moreover, the causes of action alleged herein are time-barred.

In accordance with the foregoing, the action is hereby dismissed, with prejudice.

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The foregoing constitutes the decision and order of
this court.

Dated: December 1, 2016 /s/ Thomas D. Raffaele
Thomas D. Raffaele,
J.S.C.

APPENDIX C

***State of New York
Court of Appeals***

***Decided and Entered on the
twentieth day of October, 2020***

Present, Hon. Janet DiFiore, Chief Judge, presiding.

Mo. No. 2020-503

Macarieto I. Trayvilla, &c., et al.,
Appellants,

v.
Japan Airlines, &c., et al.,
Respondents.

Appellants having appealed and moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that no substantial constitutional question is directly involved; and it is further

ORDERED, that the motion for leave to appeal is denied with one hundred dollars costs and necessary reproduction disbursements.

/s/ HDavis
Heather Davis
Deputy Clerk of the Court

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APPENDIX D

[LOGO] Consulate General of the Republic of the Philippines NEW YORK

556 Fifth Avenue, New York, NY 10036
Tel. No.: (+1) 212 7641330/Fax: (+1) 212-3821146
email: newyork.pcg@dfa.gov.ph • www.newyorkpcg.org

27 May 2016

Dear Atty. Travillas,

This has reference to your query on Filipinos returning to the Philippines on an expired passport.

As a matter of policy, the Philippine Bureau of Immigration (BI) will allow entry into the Philippines of a Filipino citizen travelling with an expired Philippine passport. This is an established and known practice conveyed by BID to the Department of Foreign Affairs and disseminated to international airlines, including Philippine Airlines, operating in the Philippines.

In the past, there were actual emergency cases involving Filipinos returning with expired passports using PAL who were allowed to board the flight and subsequently enter the Philippines.

That being said, however, the Consulate General cannot vouch for the policy/ies of international airlines and their appreciation of BID policy and rules and regulations. Any question arising from a BID policy involving passengers returning to the Philippines lies exclusively within the determination of BID.

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As a way forward, your client may wish to consider taking Philippine Airlines to travel to the Philippines and, if a different airline is being considered, prior consultations with that airline would be necessary to verify whether they will allow the passenger to board.

Sincerely

/s/ Mario L. De Leon, Jr.

MARIO L. DE LEON, JR.

Consul General

Atty. Rey Louis Travillas

Cc: paroy_t@yahoo.com

APPENDIX E
CONDITIONS OF CARRIAGE
(INTERNATIONAL PASSENGERS AND BAGGAGE)
- Effective 23 August 2011 -

* * *

19. TIME LIMITATIONS ON CLAIMS AND ACTIONS

(A) Time Limitation on Claims

No claim for damage may be made in the case of damage to Baggage, unless the person entitled to delivery complains to an office of JAL forthwith after the discovery thereof and no later than 7 Days from the date of receipt; and, in the case of delay or loss, unless the complaint is made no later than 21 Days from the date on which the Baggage has been (in the case of delay) or should have been (in the case of loss) placed at his/her disposal. Every complaint must be in writing and dispatched within the time aforesaid. In case Carriage is not "International Carriage" as defined in the Convention, failure to give such notice of complaint shall not prevent a claimant's filing a suit if the Claimant proves that:

- (1) it was not reasonably possible for him/her to give such notice;
- (2) such notice was not given due to fraud on the part of JAL; or
- (3) JAL had knowledge of the damage to the Passenger's Baggage.

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(B) Time Limitation on Actions

Any right to damages against JAL shall be extinguished unless an action is brought within 2 years reckoned from the date of arrival at the Destination, from the date on which the aircraft ought to have arrived, or from the date on which the Carriage stopped.

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APPENDIX F

June 8, 2016

Attention: Mr. Correll

Clyde & Co.
405 Lexington Avenue
16th Floor
New York, NY 10174

Mr. Correll

I hereby certify that the attached electronic pages are true copies of the official tariff pages issued by Airline Tariff Publishing Company, Agent, for and on behalf of **Japan Airlines**.

These pages are sent in reference to your request dated 2/6/16.

Sincerely,

/s/ Bernice C. Gray
Bernice C. Gray
Transportation Industry Analyst
Office of Pricing and Multilateral
Affairs Division

Enclosures

* * *

CASE OF DELAY, OR LOSS, UNLESS THE COMPLAINT IS MADE NO LATER THAN 21 DAYS FROM THE DATE ON WHICH THE BAGGAGE HAS BEEN PLACED AT HIS DISPOSAL (IN THE CASE OF DELAY), OR SHOULD HAVE

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BEEN PLACED AT HIS DISPOSAL (IN THE CASE OF LOSS). EVERY COMPLAINT MUST BE IN WRITING AND DISPATCHED WITHIN THE TIME AFORESAID. IN CASE CARRIAGE IS NOT "INTERNATIONAL CARRIAGE" AS DEFINED IN THE

- A CONVENTION, FAILURE TO GIVE SUCH NOTICE OF COMPLAINT SHALL NOT PREVENT A CLAIMANTS FILING A SUIT IF THE CLAIMANT PROVES THAT (A) IT WAS NOT REASONABLY POSSIBLE FOR HIM/HER TO GIVE SUCH NOTICE, (B) SUCH NOTICE WAS NOT GIVEN DUE TO FRAUD ON THE PART OF JAL, (C) JAL HAD KNOWLEDGE OF THE DAMAGE TO THE PASSENGER'S BAGGAGE.
- C (2) ANY RIGHT TO DAMAGES AGAINST JAL SHALL BE EXTINGUISHED UNLESS AN ACTION IS BROUGHT WITHIN TWO YEARS RECKONED FROM THE DATE OF ARRIVAL AT THE DESTINATION, OR. FROM THE DATE ON WHICH THE AIRCRAFT OUGHT TO HAVE ARRIVED, OR FROM THE DATE ON WHICH THE CARRIAGE STOPPED.

OVERRIDING LAW – 74

- A (E) OVERRIDING LAW
- C AS ANY PROVISION CONTAINED OR REFERRED TO IN A TICKET OR IN THIS TARIFF OR JAL'S REGULATIONS SHALL, EVEN IF IT IS IN VIOLATION OF APPLICABLE LAWS AND IS INVALID, REMAIN VALID TO THE EXTENT

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NOT IN CONFLICT WITH APPLICABLE LAWS.
THE INVALIDITY OF ANY

* * *

APPENDIX G

To be Argued by:
ANDREW J. HARAKAS
(Time Requested: 15 Minutes)

New York Supreme Court
Appellate Division – Second Department

Docket No.:
2017-00971

FORMER PROSECUTOR MACARIETO I.
TRAYVILLA, CELESTINA PINERO-TRAYVILLA,
REY LOUIS P. TRAYVILLA, ESQ. and
SHERRY LYN DORADO-TRAYVILLA,

Plaintiffs-Appellants,

– against –

JAPAN AIRLINES (JAL) and ERJON FJORA,
in his capacity as employee of JAL,

Defendants-Respondents.

BRIEF FOR DEFENDANTS-RESPONDENTS

ANDREW J. HARAKAS
DANIEL E. CORRELL
CLYDE & CO US LLP
Attorneys for Defendants-Respondents
405 Lexington Avenue
New York, New York 10174
(212) 710-3900

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* * *

Appellants further allege that Fjora:

in a hateful manner assaulted all the plaintiffs thru [sic] THREATS of immediate ARREST, stressing the words with marked resentment tones, at the same time pointing and SWINGING his forefinger at the plaintiffs with disrespect and grave threats, saying, "IF YOU SPEAK ONE MORE WORD I'll signal that security to ARREST you and this time you are really going to be in BIG BIG TROUBLE!! I don't want to hear ONE MORE WORD!!" There were, then, some armed men in dark uniform some few meters nearby waiting and looking straight at the Plaintiffs and Erjon, who are conveniently available upon his call or disposal.

R. 71, Complaint, ¶13 (emphasis in original).

JAL's Conditions of Carriage and Filed Tariffs.

JAL's Conditions of Carriage and Tariffs on file with the United States Department of Transportation ("U.S. DOT") are incorporated by reference in the Passenger Plaintiffs' tickets and are part of the contract of carriage between the Passenger Plaintiffs and JAL. See R. 133, Affidavit of Joseph Gutierrez, ¶¶7-8.

The relevant JAL Conditions of Carriage in effect on the date of the incident provide:

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9. CHECK IN

A Passenger shall arrive at JAL's check-in counter and the boarding gate, respectively by the time indicated by JAL or, if no time is indicated, sufficiently in advance of the flight departure so that there will be enough time for the Passenger to have check-in and departure procedures completed by the departure time of the flight. If a Passenger fails to arrive at JAL's check-in counter or the boarding gate by the time indicated by JAL or is unable to depart because of improper or incomplete exit, entry or other necessary documentation required for his/her departure, JAL may cancel his/her reservation of a

* * *
