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FIRST DIVISION

[G.R. No. 84764. April 18, 1989]

CONTINENTAL AIRLINES, INC. and AIR MICRONESIA, INC., *petitioners, vs.* **HON. CONSUELO Y. SANTIAGO, Judge, RTC, Makati, Br. 149, The SECURITIES & EXCHANGE COMMISSION, ALBERTO P. ATAS,** *etc.*, **and ARPAN AIR, INC., represented by CUSTODIO A. PARLADE,** *respondents,* **TRANS PACIFIC AIR SERVICE CORPORATION,** *intervenor.*

SYLLABUS

1. **CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PARTIES ARE CHARGED WITH KNOWLEDGE OF THE EXISTING LAW AT THE TIME THEY ENTER INTO THE CONTRACT AND AT THE TIME IT IS TO BECOME OPERATIVE; PLEA OF IGNORANCE OF THE LAW, UNAVAILING.** — At the time that ARPAN signed its agency contracts with CONTINENTAL and MICRONESIA in May, 1986, it could not but have known of the provisions of PD 1789 above referred to. Its plea of ignorance thereof is unavailing. It is axiomatic that "parties are charged with knowledge of the existing law at the time they enter into the contract and at the time it is to become operative ** (Indeed), a person is presumed to be more knowledgeable about his own state law than his alien or foreign contemporary **."

2. **ID.; ESTOPPEL; PRESENT IN THE CASE AT BAR.** — The fact is that ARPAN signed the agency agreements, and fulfilled its commitment, enforced its rights and accepted benefits thereunder for more than two (2) years, without once demurring to or seeking modification or clarification of the provision for unilateral cancellation. Indeed, it is obvious that during that period of two years, it could have itself invoked and applied the provision in question, had it wished to. ARPAN impugned the validity of the provision only after its principals sought to apply it. The impugnation comes too late in the day. After consenting to the stipulation with full knowledge of the relevant provisions of law, and accepting benefits under the contracts containing said stipulation for two (2) years, ARPAN in now

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estopped from invoking those legal provisions to deny validity or propriety to the stipulation.

3. MERCANTILE LAW; PRESIDENTIAL DECREE NO. 1789; VIOLATION THEREOF MERELY GIVES RISE TO A SUFFICIENT CAUSE FOR CANCELLATION OF A CERTIFICATE OF AUTHORITY BY THE BOARD OF INVESTMENTS; CONTRACTS ARE NOT ON THAT ACCOUNT DECLARED TO BE VOID. — Of no little significance too is the fact that — even on the assumption that the stipulation for unilateral termination be deemed violative of PD 1789 (ART. 70, par [9]) — the contracts are not on that account declared to be void either *ab initio* or at time of challenge. What the law says (ART. 71, *supra*) is that the violation, if that it be, merely gives rise to a *sufficient cause for cancellation of a certificate of authority* by the Board of Investments.

4. CIVIL LAW; CONTRACTS; NO MEETING OF THE MINDS AMONG THE PARTIES ON A COLLATERAL OR ADDITIONAL AGREEMENT; PARTIES WERE STILL IN PROCESS OF NEGOTIATIONS, PROPOSING AND CONSIDERING ALTERNATIVES AND OPTIONS. — No conclusion of a meeting of minds on a covenant to change the remuneration system can be extracted from the Green letter; there is just an understanding upon a *future* arrangement, an understanding to achieve a *future* goal: *to convert* to "a more conventional remuneration system consistent with Continental's other GSA agreements." The absence of any meeting of minds on a definite amendment of the remuneration plan is, again, quite evident. The parties were obviously still in process of negotiations, proposing and considering alternatives and options.

5. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE; PROOF OF VERBAL ARRANGEMENTS OFFERED TO VARY THE TERMS OF THE PARTIES' WRITTEN AGREEMENTS, INADMISSIBLE. — It may furthermore be observed, although no longer necessary to the conclusion now affirmed — relative to the non-existence of any collateral or additional agreement modifying the compensation scheme set forth in the GSA contracts in question — that any verbal arrangements, if any, arrived at between ARPAN and an officer of either of the petitioner airlines, would not be binding on the latter, as they now precisely contend, not only because Green had no authority

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to speak for them, but also because proof of such verbal arrangements, offered to vary the terms of the parties' written agreements, would be inadmissible under the Parol Evidence Rule.

6. ID.; PROVISIONAL REMEDIES; INJUNCTION; INTENDED CHIEFLY TO PRESERVE OR RESTORE THE *STATUS QUO*; *STATUS QUO*, DEFINED. — Nor does ARPAN have the right, in virtue of the Trial Court's preliminary injunction, to retain the sum of US$52,000.00 which it believes corresponds to the "underpayment" under the "cost-plus" scheme in its agreements with petitioner airlines, or ₱100,000.00 as alleged litigation expenses and attorney's fees, or other amounts as damages for injury yet to be proven. An injunction is intended chiefly to preserve or restore the *status quo*. It is not meant to furnish security for the satisfaction of any judgment that a claimant might obtain, this being the office of a preliminary attachment, which may issue upon specified grounds other than those set for a preliminary injunction. The *status quo* in this case is of course the state of affairs prior to the controversy, *i.e.*, before notice of termination was served by CONTINENTAL and MICRONESIA on ARPAN, during which the latter was making regular remittances to the former without retaining any amount to make up for any "underpayment" supposedly resulting from the compensation system then being observed, and during which ARPAN was making no claim of any other injury.

APPEARANCES OF COUNSEL

Quisumbing and *Torres* for petitioners.
Victor J. Lee and *Florante A. Bautista* for private respondents.
Agcaoili & Associates for intervenor.

D E C I S I O N

NARVASA, *J.*:

The special civil action of *certiorari* at bar was instituted for the nullification of a writ of preliminary injunction issued by respondent Regional Trial Court Judge in Case No. 88-1466 shortly after commencement of the suit. The writ enjoined the attempted cancellation by petitioners of their contracts with respondent Arpan Air, Inc., and ordered the maintenance of

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the *status quo*. The writ was predicated chiefly on the Court's holding that the stipulation in said contracts granting each of the parties the right to terminate the agreements in its "complete discretion" and "with or without cause," by simply giving 90-day notice, was proscribed by Article 70 of Presidential Decree No. 1789 (now Article 49, Executive Order No. 226). Ordinarily, the resolution of such a question would have entailed merely an ascertainment of whether or not there was, *prima facie*, cause for the issuance of the provisional writ so that, in turn, it might be determined if the respondent Court had acted with grave abuse of discretion warranting extension of this Court's correcting hand; and final adjudication on the merits of the issue concerning the termination of the agreements would have been reserved to the Trial Court in subsequent, appropriate proceedings. However, the voluminous pleadings filed by the parties in this case, and the submission by them of all the documentary evidence relevant to the issue — as well as the related one of whether or not, under the facts, a collateral agreement substantially varying the original contracts had come into being — have laid before the Court all the material facts and legal propositions necessary to resolve said questions on the merits, and very plainly evince the parties' desire that this Court do so. This the Court will now do, to the end that the ultimate disposition of the controversy may be expedited, by limiting the issues to be ventilated before and decided by the Trial Court. Such a procedure is indicated by logical and pragmatic considerations, is in line with analogous jurisprudence,[1] and is consistent with the rule that when a new trial is granted, or a case is otherwise remanded for further proceedings to the trial court, the appellate court "shall pass upon all the questions of law involved for the final determination of the action."[2]

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[1] SEE *Zook v. Coker*, 24 Phil. 434; *Lichauco v. Limjuco*, 19 Phil. 12; *Esperanza, et al. v. Catindig*, 27 Phil. 397; *Hilario v. Paulist Congregation*, 27 Phil. 593, all cited in Moran, *Comments on the Rules*, 1979 ed., Vol. 2, p. 518; SEE, also *Que v. IAC*, G.R. No. 66865, Jan. 13, 1989; *Peo. v. Escober*, G.R. Nos. 69564-69658, Jan. 29, 1988; *Amante v. CA.*, 155 SCRA 46, 58-59; *Valenzuela v. C.A.*, G.R. No. 56168, Dec. 22, 1988.

[2] Sec. 3, Rule 51, in relation to Sec. 1, Rule 56, Rules of Court.

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The petitioners, Continental Airlines, Inc. (hereafter simply CONTINENTAL) and Air Micronesia, Inc. (hereafter, MICRONESIA), are foreign corporations licensed to do business in the Philippines and engaged in the business of providing air transportation services to the public.[3] They both appointed private respondent Arpan Air, Inc. (hereafter, ARPAN) their passenger and cargo sales agent in virtue of identical contracts dated February 12, and March 11, 1986, entitled "General Passenger Sales Agency Agreement."[4] After the contracts had been in force for two years, CONTINENTAL and MICRONESIA gave notice of the termination of the agreements by letters dated May 31, 1988,[5] following oral advice thereof about a week earlier.[6] They did so in reliance on a provision in the agreements[7] allowing termination thereof by any party in its "complete discretion" and "with or without cause," *viz.*:

"This agreement shall terminate ninety (90) days following the delivery of one party to the other of a notice of termination, and such termination shall be in the complete discretion of the terminating party and may be with or without cause."

When the matter of the termination of the agreements was taken up by the 5-member board of directors of ARPAN, shortly after being verbally informed thereof, only one director, Custodio Parlade, opted to contest the termination; three voted not to oppose it, namely, Artemio V. Panganiban, Jr., Mathilde L. Castro and Edgardo M. Tamoria; and one Agustin Benitez abstained.[8]

What Parlade did was to file, on May 30, 1988, a complaint with the Securities and Exchange Commission against

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[3] *Rollo*, pp. 3-4.

[4] *Id.*, pp. 28-46, 47-62.

[5] *Id.*, p. 63.

[6] *Ibid.*

[7] Par. 18.1, General Sales Agency Agreement dtd. Feb. 12, 1986 (*Rollo*, p. 41) and Par. 17.1, General Sales Agency Agreement dtd. March 11, 1986 (*Rollo*, p. 58).

[8] *Rollo*, p. 66.

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Panganiban, Castro and Tamoria, the three directors who had declined to contest the cancellation of the agency agreements.[9] In his complaint, which he amended on June 14, 1988,[10] Parlade prayed for damages amounting to ₱9.3 million and ₱50,000.00 as attorney's fees. The SEC Hearing Officer (herein respondent Alberto Atas) to whom the case was assigned issued on June 23, 1988 a preliminary injunction restraining the defendant directors "from (a) complying with the written confirmation of the notice of termination of the ** Agreements if such has been served already; (b) delivering or remitting ** all passenger and/or cargo sales and other sales transactions for the month of May, 1988 and succeeding months or period; and (c) performing any act which may render academic the final outcome of this case."[11]

Now, as of the date of Parlade's complaint, Arpan had in its possession the amount of ₱44,997,998.71 representing collections for passenger and cargo ticket sales, *etc.*, for the months of May, June and July, 1988, which should have been remitted to Continental and Micronesia pursuant to their Agreements of March 11, 1986. The amount was retained by ARPAN by reason of the preliminary injunction of the SEC Hearing Officer.[12]

CONTINENTAL and MICRONESIA sought leave to intervene in the SEC proceeding by motion filed on July 4, 1988.[13] This was opposed by Parlade who declared *inter alia* that he was willing to make "suitable arrangements" for the release of the funds in excess of his claim.[14] The intervention incident was however rendered inconsequential when Parlade and the defendant directors executed a compromise agreement on

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[9] Docketed as SEC Case No. 03366, *Rollo*, pp. 64-77.

[10] *Rollo*, pp. 78-91.

[11] Order dtd. June 23, 1988 (*Rollo*, pp. 92-96).

[12] *Rollo*, p. 23.

[13] *Id.*, pp. 97-100.

[14] *Id.*, pp. 102-105.

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September 14, 1988, and by Order dated September 15, 1988, the SEC Hearing Officer (a) approved the compromise and rendered judgment in accordance therewith; (b) dissolved the injunction and discharged the injunction bond; and (c) declared moot the motion for intervention of Continental and Air Micronesia.[15]

Some seven weeks after the filing of his complaint with the Securities and Exchange Commission, as aforestated, or more precisely on July 21, 1988, Parlade, in representation ARPAN, filed with the Regional Trial Court at Makati a complaint against CONTINENTAL and MICRONESIA, basically on the theory that the stipulation allowing termination of the agency agreements at a party's "complete discretion" and "with or without cause" was violative of Republic Act No. 5455 (The Omnibus Investments Act).[16] The complaint prayed for nullification of the attempted cancellation of the agency contracts, the declaration that the agreements remain in full force, and for payment of damages consisting of —

(a) lost commission income because of the so-called "cost plus" scheme put into effect by Continental and Micronesia ostensibly in pursuance to the agency contracts, in an amount estimated at an average of "not less than ₱300,000.00 a month, or at least ₱9.3 million during the last two years and seven months" consisting of three (3%) per cent of gross revenue from passenger sales with an additional sales, five (5%) per cent override commission, five (5%) per cent on cargo sales, plus nine (9%) on 'walk-in' passenger sales" (par. 7, amended complaint);

(b) underpayment under the same "cost plus" scheme, in the amount of US $2,000.00 for 26 months, or US $52,000.00 (par. 8, *id.*);

(c) litigation expenses and attorney's fees of not less than ₱100,000.00 (par. 15, *id.*)

The case, docketed as Case No. 88-1466, was raffled to the *sala* of respondent Judge Santiago. On August 26, 1988, the

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[15] *Id.*, pp. 261-262.

[16] *Id.*, pp. 132-145.

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Judge issued a writ of preliminary injunction on a bond of ₱120,000.00, (1) forbidding defendants (a) "from carrying out the cancellation of their ** Agreements"; and (b) "from demanding the remittance to them of the May 1988 collections referred to in par. 14 (c) as well as subsequent monthly collections," and (2) "directing the defendants and their officers, employees, representatives, agents or persons acting on their behalf, or for their interest and benefit ** to respect the *status quo*" (Annex R).[17] The Judge observed that while each of the contracts does indeed grant either of the parties the right to terminate it on 90-day notice, such a stipulation appears proscribed by Article 70, Presidential Decree No. 1789, now Article 49, Executive Order No. 226, particularly paragraph 9 thereof; and therefore, to prevent the action's becoming moot, it was needful to maintain the *status quo*.

Subsequently, at Arpan's instance and by Order dated September 15, 1988, the Judge reduced the scope of the injunction to an amount equivalent to "the aggregate net commission as well as stipulated compensation of which ** (Arpan) corporation had been unjustly deprived by the defendants (Continental and Micronesia) as alleged in pars. 7 (c) and 8 (b) ** (or the amended complaint)."[18]

On September 17, 1988, Arpan remitted to CONTINENTAL US $854,117.30 plus ₱519,193.74 in "cash and checks." The remittance was accompanied by a letter signed by Arpan's president, stating that the remittance (representing "collections ** made for the period May, June and July 1988") had been made possible by the dissolution of the preliminary injunction issued in SEC Case No. 3366; that the balance would "be retained ** in accordance with the modified injunction" (in Civil Case No. 88-1466); and "the collections for August sales will be remitted ** on September 30, 1988 as per usual remittance procedure."[19]

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[17] *Rollo*, pp. 224-230.

[18] Annex 5, Urgent Manifestation dated September 19, 1988.

[19] Annexes 6 and 7, *Id.*

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Before the modification by respondent Judge of the preliminary injunction, however, CONTINENTAL and MICRONESIA instituted in this Court the present action of *certiorari* and prohibition, seeking nullification not only of said injunction but also of that issued by the SEC Hearing Officer, and the perpetual inhibition of further proceedings in the Court and Commission *a quo*.[20] Obviously, as regards the Securities and Exchange Commission, the case has become moot and academic. The action in this Court will thus be limited to a determination of the relief, if any, that should properly be accorded to the petitioners Continental and Micronesia against the orders of respondent Judge Santiago, and against her co-respondents, Arpan and Parlade.

The petitioners submit that the preliminary injunction of August 26, 1988 was issued by Judge Santiago with grave abuse of discretion because —

1) Assuming *arguendo* that the stipulation for unilateral termination incorporated in the parties' agency agreement is proscribed by Article 70, PD 1789 (now ART. 49, EO 226) — the issuance of the injunction is contrary to this Court's decision in *Top-Weld Mfg. Inc. v. ECED, S.A.*, 138 SCRA 119, also involving a violation of RA No. 5455, in which it was inferentially ruled that said statute does not "appear to intend to prevent the courts from enforcing *contracts made in contravention of its licensing provisions*," and the axiom was reiterated that parties must come to court with clean hands.

2) In truth, (a) EO 226 applies only to the sale of products, not services, such as those subject of the parties' agreements; (b) the law is inapplicable to contracts entered into after a license has already been issued in accordance with its provisions; (c) it is inapplicable to the case at bar also because no "expenses were incurred by the licensee in developing a market for the ** products" (involved); (d) it is inapplicable, too, because another sales agent will take the place of Arpan, hence, no prejudice will be caused to any licensee or franchisee; and (e) actually, EO 226 allows termination of agreements for "just cause" and evidently, a stipulation giving the parties the option to terminate their agreement, must be deemed a "just cause."

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[20] *Rollo*, pp. 24-25.

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3) The injunction contravenes the familiar doctrine that the contract is the law between the parties, and courts cannot create contracts thru injunction.

(4) Having voluntarily entered into the agreements in question with full awareness of the law now cited by them, Arpan is estopped, or barred by laches to question their validity (an issue which, by the way, was not dealt with by the respondent Judge at all).

(5) By the injunction, the petitioners are being coerced to continue to employ Arpan as their sales agent.

(6) The injunction was issued by the Judge under the impression that the matter of irreparable injury is a question of no importance.

(7) In the subject contracts, Arpan had agreed to exempt petitioners from "any costs incurred or damages sustained upon or as a consequence of the termination of this Agreement, which costs or damages shall be the sole responsibility of the General Sales Agent"; and respondent Judge's holding that the stipulation applies only in case of fraud has no basis.

On November 23, 1988, this Court issued a Resolution *inter alia* commanding ARPAN to remand to petitioner airlines ₱16,092,692.68, it appearing that the amounts then in its possession — ₱44,997,998.71, representing ticket sales for several months — were far in excess of the aggregate sum specifically claimed by it in its complaint and the amount turned over by it to said petitioners on September 17, 1988, conceding to it only the right to retain the commissions and other compensation stipulated in the agency agreements.[21] ARPAN's motion for reconsideration of this resolution[22] remains pending.

In the meantime, or about 4 days after the commencement by ARPAN on July 21, 1988 of its suit in the Regional Trial Court at Makati, petitioners CONTINENTAL and MICRONESIA appointed Citadel Holdings, Inc. its General Sales Agent effective September 1, 1988.[23] Later, with the

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[21] *Rollo*, pp. 432-436.

[22] *Id.*, p. 495.

[23] *Rollo*, p. 366, Annex A, Petition in Intervention.

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consent of petitioners, Citadel Holdings assigned its rights as General Sales Agent to Trans Pacific Air Services Corporation;[24] and a General Sales Agency Agreement was executed between petitioner airlines and Trans Pacific Air Services Corporation[25] (hereafter referred to simply as TRANS-PACIFIC). TRANS-PACIFIC then entered into contracts for the lease of office space, for the renovation and interior decoration thereof, and purchased furniture and equipment in anticipation of its discharge of functions as petitioners' general sales agent, all involving disbursements of more than a million pesos.[26] Under the circumstances, it can hardly be doubted that TRANS-PACIFIC has a legal and material interest in the matter in litigation and in the success of the petitioners, warranting its intervention in the action at bar as petitioner-in-intervention.[27] Its intervention will not furthermore unduly delay or prejudice the adjudication of the rights of the original parties;[28] and it goes without saying that it will be bound by whatever judgment is rendered in the proceeding at bar. It is hereby granted leave to so intervene, and its petition-in-intervention dated November 2, 1988 is admitted, together with all the motions and pleadings subsequently filed by it.

The issues arising from the pleadings and extensively argued by the parties are as follows:

1. Whether or not the stipulation in the sales agreements between petitioner airlines and ARPAN—giving to each airline and to ARPAN the reciprocal right to unilaterally terminate their contracts by simply giving 90-day notice, in the entire discretion of the cancelling party and regardless of cause — is void as being contrary to law and public policy and the airlines' undertakings.

   a. Corollarily, whether or not ARPAN may be considered as having waived its objection, or as being estopped from objecting to such a stipulation.

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[24] *Id.*, p. 367, Annex A-1. Petition in Intervention.

[25] *Id.*, p. 368, Annex B. Petition in Intervention.

[26] *Id.*, pp. 370-385.

[27] Sec. 2, Rule 12, Rules of Court.

[28] Sec. 2 (b), Rule 12.

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2. Whether or not the minds of the parties had met on a collateral agreement to convert the so-called "cost-plus" scheme in their sales agency contracts into a "standard general sales agency system of compensation."

3. whether or not under the admitted or undisputed facts, ARPAN had the right to retain funds otherwise due to petitioner airlines under their agency contracts, as security for its claimed damages.

The law applicable at the time the parties executed their sales agency agreements on March 31, 1986 was Presidential Decree No. 1789 (effective Jan. 16, 1981), which amended Republic Act No. 5455 (eff. Sept. 30, 1968). Article 70 of PD 1789[29] empowered the Board of Investments to impose certain requirements — "in addition to those set forth in the Corporation Code of the Philippines for authorizing foreign corporations to transact business in the Philippines — on an "alien or firm, association, partnership, corporation or other form of business organization that is not organized or existing under the laws of the Philippines," which had been granted by the Board a certificate of authority to engage in business or economic activity in the Philippines. Among these was the requirement set out in paragraph (9) of Article 70 —

"** Not to terminate any franchise, licensing or other agreement that applicant may have with a resident of the Philippines, authorizing the latter to assemble, manufacture or sell within the Philippines the products of the applicant, except for violation thereof or other just cause and upon payment of compensation and reimbursement of investment and other expenses incurred by the licensee in developing a market for the said products: *Provided, however*; That in case of disagreement, the amount of compensation or reimbursement shall be determined by the court where the licensee is domiciled or has its principal office who shall require the applicant to file a bond in such amount as, in its opinion, is sufficient for this purpose."

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[29] The provisions of which are identical to the second part of SEC. 4, RA 5455, as well as to Art. 49 of Executive Order No. 266, *eff. July 16, 1987.*

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The sanction for an infringement of the requirements above mentioned is prescribed by Article 71, reading in part as follows:

"ART. 71. *Cause for Cancellation of Certificate of Authority.* — A violation of any of the requirements set forth in Article 70 of the terms and conditions which the board may impose shall be sufficient cause to cancel the certificate of authority issued pursuant to this Book. ***."

1. The first question is whether the above quoted provisions rendered void *ab initio* the unilateral termination of the agency agreements between ARPAN, on the one hand, and the petitioner airlines, on the other, sought to be effected by the latter on the strength of the stipulation in said agreements reading as follows:

"This agreement shall terminate ninety (90) days following the delivery of one party to the other of a notice of termination, and such termination shall be in the complete discretion of the terminating party and may be with or without cause."

At the time that ARPAN signed its agency contracts with CONTINENTAL and MICRONESIA in May, 1986, it could not but have known of the provisions of PD 1789 above referred to. Its plea of ignorance thereof is unavailing. It is axiomatic that "parties are charged with knowledge of the existing law at the time they enter into the contract and at the time it is to become operative ** (Indeed), a person is presumed to be more knowledgeable about his own state law than his alien or foreign contemporary **."[30] Being thus aware of the requirement imposed on CONTINENTAL and MICRONESIA that, among others, it should "(n)ot ** terminate any franchise, licensing or other agreement that applicant may have with a resident of the Philippines, authorizing the latter to assemble, manufacture or sell within the Philippines the products of the applicant, except for violation thereof or other just cause and upon payment of compensation and reimbursement of investment and other expenses incurred by the licensee in developing a market for

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[30] *Top-Weld Manufacturing, Inc. v. ECED, S.A., etc.*, 138 SCRA 118, *supra*, citing *Twiehaus v. Rosner*, 245 SE 2d 107; *Hall v. Bucher*, 227 SW 2d 98.

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the said products **," ARPAN's execution of contracts with said firms which *inter alia* accorded to each of them — and to it (ARPAN) as well — the right to terminate said agreements by mere 90-day notice, "in the complete discretion of the terminating party and ** with or without cause," can only be construed either as a waiver or renunciation of the requirement, or as the constitution of an additional proper cause for the contracts' cancellation. It is quite significant that the right of unilateral termination was a mutual one, conceded not only to CONTINENTAL and/or MICRONESIA, but to ARPAN also, and was not challenged by ARPAN prior to the signing of the contracts. It is not unreasonable to assume that had it done so then, and the parties had not been able to agree on a satisfactory modification or clarification of the provision, the contracts would have been aborted. The fact is that ARPAN signed the agency agreements, and fulfilled its commitment, enforced its rights and accepted benefits thereunder for more than two (2) years, without once demurring to or seeking modification or clarification of the provision for unilateral cancellation. Indeed, it is obvious that during that period of two years, it could have itself invoked and applied the provision in question, had it wished to. ARPAN impugned the validity of the provision only after its principals sought to apply it. The impugnation comes too late in the day. After consenting to the stipulation with full knowledge of the relevant provisions of law, and accepting benefits under the contracts containing said stipulation for two (2) years, ARPAN in now estopped from invoking those legal provisions to deny validity or propriety to the stipulation.

Of no little significance too is the fact that — even on the assumption that the stipulation for unilateral termination be deemed violative of PD 1789 (ART. 70, par [9]) — the contracts are not on that account declared to be void either *ab initio* or at time of challenge. What the law says (ART. 71, *supra*) is that the violation, if that it be, merely gives rise to a *sufficient cause for cancellation of a certificate of authority* by the Board of Investments. ARPAN can take small comfort from this prescription of the law, however, since the Board of

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Investments, in response to inquiries by CONTINENTAL and MICRONESIA,[31] had formally opined[32] that —

"With respect to the validity of the termination/cancellation of the Sales Agreement(s), ** the same *is valid provided that sufficient notice was given to the other party as stipulated in the Agreement(s).* Where the parties agreed to terminate/cancel the agreement even without cause, the *Defendant may not be considered to have violated paragraph 9 of the Undertaking* (executed by the holder of a certificate of authority from the BOI [*i.e.*, CONTINENTAL and MICRONESIA]) because this paragraph contemplates that there must be grounds for termination which be either a violation of the franchise, licensing or other agreement or other just cause."

In other words, the stipulation in question must be regarded as valid until declared void by competent authority, and enforceable until the certificate of authority of the alleged violator is cancelled by the Board of Investments. And that the Board of Investments will not cancel the certificates of authority of either petitioner airline on the ground precisely that the stipulation is violative of the law, seems fairly certain in light of its resolution above quoted.[33] Upon this consideration, and those previously stated, the validity of the stipulation and the propriety of its application to the instant case must be sustained.

2. The second issue raised, and ventilated by the parties, is whether or not there had been a meeting of minds among

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[31] The last being contained in a letter dated Sept. 23, 1988 by CONTINENTAL's Finance Manager (Annex B of Intervenor Trans Pacific's REPLY [To ARPAN's Manifestation and Comment] dated Jan. 6, 1989; *Rollo*, p. 565.

[32] Resolution reproduced as Annex A of Trans Pacific's REPLY, *supra*, italics supplied, authenticity of which is not disputed by private respondents.

[33] The resolution is entitled to great respect, "As a general rule, the findings of government agencies with respect to the construction of statutes the implementation of which has been reposed in them, are controlling on the court." *Greenhills Mining Company v. Office President*, G.R. No. 75962, June 30, 1988. SEE also *Commissioner of Internal Revenue v. Wander Philippines, Inc.*, G.R. No. 68375, April 15, 1988, and *Presidential Commission on Good Government v. Peña*, G.R. No. 77663, April 12, 1988.

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them on a collateral or additional agreement to convert the so-called "cost-plus" scheme in their sales agency contracts into a "standard general sales agency system of compensation," or "percentage of sales" plan. In this Tribunal, ARPAN insists that there had in truth been a meeting of minds on the additional convenant,[34] that petitioner airlines had not complied therewith, and had thus caused no inconsiderable loss to it. In substantiation of this theory, ARPAN relies on the sworn declaration of John R. Green, Regional Director of CONTINENTAL and MICRONESIA from February, 1982 to May 1988,[35] and his letter to Artemio V. Panganiban, President of ARPAN dated November 11, 1987.[36] The petitioner airlines, on the other hand, allege that although there had actually been negotiations for such a conversion from the "cost-plus" scheme (provided for in their contracts with ARPAN) to a "percentage of sales" system (prescribing a higher rate of compensation), the parties had failed to agree on all the details and therefore failed to finalize and execute the corresponding additional pact; and in proof thereof, they point to several letters written to them by said A.V. Panganiban, in behalf of ARPAN.[37]

A careful analysis of the documents thus adverted to by the parties — the authenticity of which is not disputed, although petitioner airlines do say that the Green affidavit is inadmissible under the Parol Evidence Rule and that, in any event, as mere Regional Director, he had no authority to bind the airlines, that power being reserved to the president of the Pacific Region[38] — discloses no such collateral, additional compact, but merely *negotiations towards such a covenant, or an intentions to execute* it after the threshing out of certain details and at such time as may be deemed appropriate.

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[34] *Rollo*, p. 442; Comment dtd. Nov. 3, 1988.

[35] *Id.*, p. 627; Annex 1 of ARPAN's Reply and Opposition dated Feb. 20, 1989.

[36] *Id.*, p. 628; Annex 2 of same pleading.

[37] *Id.*, pp. 501-511.

[38] *Id.*, pp. 643-644.

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Panganiban's letter to petitioner airlines dated September 28, 1987 merely requested for an adjustment in its fees either by reverting to a normal GSA[39] arrangement or retaining the "cost-plus" scheme on "Route 1" and granting it additional cost plus 1½% override on all tickets in the Philippines flown on CONTINENTAL. This proves a request, not an "understanding" or "agreement" regarding a change in compensation plan.

Panganiban's letter dated October 22, 1987, suggested that in lieu of a new GSA agreement, the parties just implement the already existing contract based on cost plus $2,000 per month effective November 1, 1987, *i.e.*, $4,000 per month effective said date, with the understanding that within one (1) year from November 1, 1987, the contracts shall mature into normal IATA-GSA contracts where compensation is based on 3% of gross receipts from Philippine sales (passenger and cargo) of both airlines. This communication makes even clearer the absence of any "understanding" at this time; all it proves is that ARPAN desired to have a modification of its existing agreements. Now, Green's reply dated November 11, 1987 to Panganiban's aforesaid letter of October 22, 1987, simply accepted the suggestion for a "total compensation" of "$4,000 per month plus expenses of the ARPAN unit assigned to our office ** effective November 1st, 1987," but made clear that no "conforme" could be given to the request for conversion to a compensation system of 3% of gross receipts for the reason that "there still needs to be more discussion about ** (such an) eventual conversion to the 'normal' GSA contract with a three percent over-ride, expressed preference "that we not establish a specific date for the turn-over ** and to have the letter (Panganiban's) re-written with that portion removed" and "re-worded to acknowledge that we have an understanding that our goal would be to place the relationship between our three companies in a more conventional remuneration system consistent with Continental's other GSA agreements."[40] No conclusion

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[39] General Sales Agency.

[40] *Rollo*, p. 628.

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of a meeting of minds on a covenant to change the remuneration system can be extracted from the Green letter; there is just an understanding upon a *future* arrangement, an understanding to achieve a *future* goal: *to convert* to "a more conventional remuneration system consistent with Continental's other GSA agreements." In his letter dated November 16, 1987, Panganiban confirmed that as soon as opportunity allows, the existing contracts would be converted into a "normal" IATA-GSA contract consistent with Continental's other general agreements. Again, the advertence is to a *future* conversion, not to one already consented to.

The uncertainty as to the ultimate form of the additional agreement regarding ARPAN's compensation scheme — and obviously the non-existence of any such additional covenant — was further stressed in Green's letter of November 24, 1987, in response to that of Panganiban just mentioned (dated November 16, 1987). Green there says that he had discussed Panganiban's letter with a certain "Clyde" and while they were "for the most part in general agreement, there ** (were) some things we *will* (still) need to clarify."[41] Green in fact suggested other possible arrangements: "I believe it would be appropriate if there was either a new GSA contract with a territory clause allowing the three percent over-ride or, if this adjustment can be handled with merely a side agreement to the present contract."[42] The absence of any meeting of minds on a definite amendment of the remuneration plan is, again, quite evident. The parties were obviously still in process of negotiations, proposing and considering alternatives and options.

Panganiban's subsequent communications further emphasize the absence of any conversion compact. His letter dated March 11, 1988 expressed the hope that CONTINENTAL should then already consider ARPAN's repeated requests for the conversion. His letter of May 26, 1988 once more adverts to ARPAN's *desire* for such a conversion, which it had made known many times, and its belief that the conversion to a 3% override was

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[41] *Id.*, p. 629: italics supplied.

[42] *Ibid.*

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necessary to pinpoint responsibility and authority, and give it the incentive to increase sales.

The statement in the Green affidavit—that "it was the firm understanding of the parties that such compensation scheme (set out in the existing GSA contracts) was only tentative or temporary and that the same was intended to be the more conventional 'percentage on gross' remuneration system **," but the corresponding agreement was not executed during his term because of many internal matters that occupied his time and attention and those of his superiors — is acknowledgment that the "cost-plus" scheme had indeed been agreed upon and implemented by the parties, *albeit with the intention in the future to change* to the "more conventional percentage on gross remuneration system," and, more importantly, that such a conversion compact had never been executed during his term of office. The declaration in the affidavit that "the real intention was to implement from the beginning the more conventional remuneration system" is obviously false, flying as it does in the teeth of the actuality that the "cost plus" scheme had been incorporated in the GSA contracts, and the facts established by the correspondence between Green and Panganiban themselves, just specified.

It may furthermore be observed, although no longer necessary to the conclusion now affirmed — relative to the non-existence of any collateral or additional agreement modifying the compensation scheme set forth in the GSA contracts in question — that any verbal arrangements, if any, arrived at between ARPAN and an officer of either of the petitioner airlines, would not be binding on the latter, as they now precisely contend, not only because Green had no authority to speak for them,[43] but also because proof of such verbal arrangements, offered to vary the terms of the parties' written agreements, would be inadmissible under the Parol Evidence Rule.[44]

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[43] SEE footnote 37. *supra*.

[44] Sec. 7, Rule 130, Rules of Court, to the effect that subject to specified exceptions, "When the terms of an agreement have been reduced to writing,

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The conclusion here laid down — *i.e.*, that no agreement was ever executed between petitioner airlines and ARPAN for a change in the remuneration system from the so-called "cost-plus" to "percentage-of-sales" scheme — pulls out the rug from under ARPAN, as the saying goes. It deprives ARPAN of any legal basis to recover damages consisting of lost commission income because of the implementation of said "cost plus" scheme (instead of the desired "percentage-of-sales" plan), in an amount estimated at an average of "not less than ₱300,000.00 a month, or at least ₱9.3 million during the last two years and seven months," which amount, it is theorized, ARPAN would have earned in accordance with said "percentage-of-sales" mode of compensation.

Whether or not there had been underpayment to ARPAN under the "cost-plus" plan observed and implemented by the parties conformably with their GSA contracts as written, and whether or not, as ARPAN also contends, it had incurred expenses in developing a market for petitioners' services for which it may be entitled to be reimbursed, are questions which the Court does not now resolve, and reserves for final determination by the Trial Court. What the Court does hereby conclude and adjudge is that:

(1) the stipulation in the agency sales agreements dated March 11, 1986, conferring on all the parties including ARPAN, mutually and reciprocally, the right to unilaterally terminate the agreements upon 90-day notice, in the entire discretion of the terminating party and with or without cause, is not in the premises void or otherwise defective, and that in any event, ARPAN is estopped to challenge the stipulation after having voluntarily and knowingly signed the agreements containing it, and for two years complied with the terms of said agreements and accepted benefits thereunder, and

(2) as sufficiently demonstrated by the established or undisputed facts laid before this Court by the parties, no additional

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there shall be between the parties and their successors-in-interest, no proof of the agreement other than the writing itself **."

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covenant was ever executed between petitioner airlines and ARPAN altering the compensation system from a "cost-plus" to a "percentage of sales" scheme.

(3) The last question relates to ARPAN's asserted right to retain the funds otherwise due to petitioner airlines under their agency contracts, as security for its claimed damages. ARPAN's retention of funds is predicated upon the respondent Court's preliminary injunction restraining petitioner airlines (a) "from carrying out the cancellation of their ** Agreements"; (b) "from demanding the remittance to them of ** the aggregate net commission as well as stipulated compensation of which ** (Arpan) corporation had been unjustly deprived by the defendants (Continental and Micronesia) as alleged in pars. 7(c) and 8(b) ** (or the amended complaint)," and otherwise to preserve the *status quo*. The preliminary injunction is, in turn, on the Trial Court's opinion that the stipulation in the agency contracts granting the parties the right to terminate them on 90-day notice, regardless of cause, in the terminating party's absolute discretion, was "proscribed by ART. 70, PD 1789, now ART. 49, EO 226, particularly par. 9." But since this stipulation has not been invalidated but has been sustained by this Court, it follows that the general agency sales agreements of February 12, and March 11, 1986 had been validly and effectually terminated by written notice given on May 31, 1988 to ARPAN by petitioner airlines, the termination becoming effective 90 days thereafter, or on or about the end of August, 1988 It also follows that ARPAN had the obligation to remit to CONTINENTAL and MICRONESIA all the receipts for cargo and passenger sales earned or collected during all the months following the notice of termination; and since that remuneration scheme in the agency agreements in question had never been altered, ARPAN had the right to retain only the compensation due it pursuant to the remuneration scheme provided for in the agency sales agreements of February 12, and March 11, 1986, but nothing more.

Nor does ARPAN have the right, in virtue of the Trial Court's preliminary injunction, to retain the sum of US$52,000.00 which it believes corresponds to the "underpayment" under the "cost-

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plus" scheme in its agreements with petitioner airlines, or ₱100,000.00 as alleged litigation expenses and attorney's fees, or other amounts as damages for injury yet to be proven. An injunction is intended chiefly to preserve or restore the *status quo*.[45] It is not meant to furnish security for the satisfaction of any judgment that a claimant might obtain, this being the office of a preliminary attachment, which may issue upon specified grounds other than those set for a preliminary injunction.[46] The *status quo* in this case is of course the state of affairs prior to the controversy, *i.e.*, before notice of termination was served by CONTINENTAL and MICRONESIA on ARPAN, during which the latter was making regular remittances to the former without retaining any amount to make up for any "underpayment" supposedly resulting from the compensation system then being observed, and during which ARPAN was making no claim of any other injury.

WHEREFORE, judgment is hereby rendered: (1) nullifying and setting aside the challenged order and writ of preliminary injunction issued by the respondent Court and modified by this Court's Resolution of November 23, 1988, and denying the respondents' motion for reconsideration of said Resolution which has been rendered *functus officio* by this and the following dispositions; (2) declaring valid the stipulation in the parties' General Passenger Sales Agency Agreements dated February 12, 1986 and March 11, 1986 providing that said agreements "shall terminate ninety (90) days following the delivery of one party to the other of a notice of termination, ** such termination ** (being) in the complete discretion of the terminating party ** (and whether or not it) be with or without cause"; (3) declaring proper and efficacious the termination of said General Passenger Sales Agency Agreements by petitioner airlines through service of notice to that effect on private respondent ARPAN on May

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[45] Moran, *Comments on the Rules*, 1980 ed., Vol. 3, p. 74, citing *Calo, et al. v. Roldan, et al.*, 76 Phil. 445; *De los Reyes v. Elepaño, et al.*, L-5282, May 29, 1953; *De la Cruz v. Tan Torres*, L-14925, April 30, 1960.

[46] Sec. 1, Rule 57, in relation to Sec. 3, Rule 58, Rules of Court; Moran, *op cit.*, pp. 2-3.

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31, 1988, the termination becoming effective ninety (90) days thereafter; (4) declaring also that the compensation scheme in said General Passenger Sales Agency Agreements had not been validly modified or converted into another remuneration system prior or subsequent to the termination of said agreements; (5) commanding private respondents ARPAN and Custodio Parlade to remit and pay to the petitioner airlines (a) the sum of ₱26,308,342.98 which said respondents allege to be on deposit in ARPAN's name with the Hongkong and Shanghai Banking Corporation and the Far East Bank and Trust Co. as of February 20, 1989, (b) the sum of US$130,755 alleged to be in a safe deposit box in the Hongkong and Shanghai Banking Corporation, also in ARPAN's name, as of February 20, 1989, as well as (c) such other sums of money as are in private respondents' custody rightfully pertaining to the petitioner airlines conformably with the General Sales Agency Agreements; (6) authorizing ARPAN to retain only such amounts as correspond to it in accordance with the remuneration scheme explicity prescribed in said agreements; and (7) remanding the case to the Trial Court *a quo* for trial and determination on the merits of the issues of (a) whether or not there had been underpayment to ARPAN under the "cost-plus" plan observed and implemented by the parties conformably with their GSA contracts, (b) whether or not, as ARPAN also contends, it had incurred expenses in developing a market for petitioners' services for which it was entitled to be reimbursed, and (c) such other issues as have not been hereby passed upon and resolved. Costs against private respondents.

IT IS SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur.