335 Phil. 194

THIRD DIVISION

[G.R. No. 110668, February 06, 1997]

SMITH, BELL & CO., INC., PETITIONER, VS. COURT OF APPEALS AND JOSEPH BENGZON CHUA,[1] RESPONDENTS.

D E C I S I O N

PANGANIBAN, J.:

The main issue raised in this case is whether a local claim or settling agent is personally and/or solidarily liable upon a marine insurance policy issued by its disclosed foreign principal.

This is a petition for review on certiorari of the Decision of respondent Court[2] promulgated on January 20, 1993 in CA-G.R. CV No. 31812 affirming the decision[3] of the trial court[4] which disposed as follows:[5]

> "Wherefore, the Court renders judgment condemning the defendants (petitioner and First Insurance Co. Ltd.) jointly and severally to pay the plaintiff (private respondent) the amount of US$7,359.78. plus 24% interest thereon annually until the claim is fully paid, 10% as and for attorney's fees, and the cost."

The Facts

The facts are undisputed by the parties,[6] and are narrated by respondent Court, quoting the trial court, as follows:[7]

> "The undisputed facts of the case have been succintly (sic) summarized by the lower court (,) as follows:
>
> 'x x x in July 1982, the plaintiffs, doing business under the style of Tic Hin Chiong, Importer, bought and imported to the Philippines from the firm Chin Gact Co., Ltd. of Taipei, Taiwan, 50 metric tons of Dicalcium Phospate, Feed Grade F-15% valued at US$13,000.00 CIF Manila. These were contained in 1, 250 bags and shipped from the Port of Kaohsiung, Taiwan on Board S. S. 'GOLDEN WEALTH' for the Port on (sic) Manila. On July 27, 1982, this shipment was insured by the defendant First Insurance Co. for US$19,500.00 'against all risks' at port of departure under Marine Policy No. 1000M82070033219, with the note 'Claim, if any, payable in U. S. currency at Manila (Exh. '1', 'D' for the plaintiff) and with defendant Smith, Bell, and Co. stamped at the lower left side of the policy as 'Claim Agent.'
>
> The cargo arrived at the Port of Manila on September 1, 1982 aboard the

above-mentioned carrying vessel and landed at port on September 2, 1982. Thereafter, the entire cargo was discharged to the local arrastre contractor, Metroport Services Inc. with a number of the cargo in apparent bad order condition. On September 27, 1982, the plaintiff secured the services of a cargo surveyor to conduct a survey of the damaged cargo which were (sic) delivered by plaintiff's broker on said date to the plaintiff's premises at 12th Avenue, Grace Park, Caloocan City. The surveyor's report (Exh. 'E') showed that of the 1,250 bags of the imported material, 600 were damaged by tearing at the sides of the container bags and the contents partly empty. Upon weighing, the contents of the damaged bags were found to be 18, 546. 0 kg short. Accordingly, on October 16 following, the plaintiff filed with Smith, Bell, and Co., Inc. a formal statement of claim (Exh. 'G') with proof of loss and a demand for settlement of the corresponding value of the losses, in the sum of US$7,357.78.00. (sic) After purportedly conveying the claim to its principal, Smith, Bell, and Co., Inc. informed the plaintiff by letter dated February 15, 1983 (Exh. 'G-2') that its principal offered only 50% of the claim or US$3,616.17 as redress, on the alleged ground of discrepancy between the amounts contained in the shipping agent's reply to the claimant of only US$90.48 with that of Metroport's. The offer not being acceptable to the plaintiff, the latter wrote Smith, Bell, & Co. expressing his refusal to the 'redress' offer, contending that the discrepancy was a result of loss from vessel to arrastre to consignees' warehouse which losses were still within the 'all risk' insurance cover. No settlement of the claim having been made, the plaintiff then caused the instant case to be filed. (p. 2, RTC Decision; p. 142, Record).'

Denying any liability, defendant-appellant averred in its answer that it is merely a settling or claim agent of defendant insurance company and as such agent, it is not personally liable under the policy in which it has not even taken part of. It then alleged that plaintiff-appellee has no cause of action against it.

Defendant The First Insurance Co. Ltd. did not file an Answer, hence it was declared in default.

After due trial and proceeding, the lower court rendered a decision favorable to plaintiff-appellee. It ruled that plaintiff-appellee has fully established the liability of the insurance firm on the subject insurance contract as the former presented concrete evidence of the amount of losses resulting from the risks insured against which were supported by reliable report and assessment of professional cargo surveyor. As regards defendant-appellant, the lower court held that since it is admittedly a claim agent of the foreign insurance firm doing business in the Philippines justice is better served if said agent is made liable without prejudice to its right of action against its principal, the insurance firm. x x x"

The Issue

"Whether or not a local settling or claim agent of a disclosed principal — a foreign insurance company — can be held jointly and severally liable with said principal under the latter's marine cargo insurance policy, given that the agent is not a party

to the insurance contract"[8] -- is the sole issue raised by petitioner.

Petitioner rejects liability under the said insurance contract, claiming that: (1) it is merely an agent and thus not personally liable to the party with whom it contracts on behalf of its principal; (2) it had no participation at all in the contract of insurance; and (3) the suit is not brought against the real party-in-interest.[9]

On the other hand, respondent Court in ruling against petitioner disposed of the main issue by citing a case it decided in 1987, where petitioner was also a party-litigant.[10] In that case, respondent Court held that petitioner as resident agent of First Insurance Co. Ltd. was "authorized to settle claims against its principal. Its defense that its authority excluded personal liability must be proven satisfactorily. There is a complete dearth of evidence supportive of appellant's non-responsibility as resident agent." The ruling continued with the statement that "the interest of justice is better served by holding the settling or claim agent jointly and severally liable with its principal."[11]

Likewise, private respondent disputed the applicability of the cases of E. Macias & Co. vs. Warner, Barnes & Co.[12] and Salonga vs. Warner, Barnes & Co., Ltd.[13] invoked by petitioner in its appeal. According to private respondent, these two cases impleaded only the "insurance agent" and did not include the principal. While both the foreign principal -- which was declared in default by the trial court -- and petitioner, as claim agent, were found to be solidarily liable in this case, petitioner still had "recourse" against its foreign principal. Also, being a contract of adhesion, an insurance agreement must be strictly construed against the insurer.[14]

The Court's Ruling

There are three reasons why we find for petitioner.

First Reason : Existing Jurisprudence

Petitioner, undisputedly a settling agent acting within the scope of its authority, cannot be held personally and/or solidarily liable for the obligations of its disclosed principal merely because there is allegedly a need for a speedy settlement of the claim of private respondent. In the leading case of Salonga vs. Warner, Barnes & Co., Ltd. this Court ruled in this wise:[15]

> " We agree with counsel for the appellee that the defendant is a settlement and adjustment agent of the foreign insurance company and that as such agent it has the authority to settle all the losses and claims that may arise under the policies that may be issued by or in behalf of said company in accordance with the instructions it may receive from time to time from its principal, but we disagree with counsel in his contention that as such adjustment and settlement agent, the defendant has assumed personal liability under said policies, and, therefore, it can be sued in its own right. An adjustment and settlement agent is no different from any other agent from the point of view of his responsibilty (sic), for he also acts in a representative capacity. Whenever he adjusts or settles a claim, he does it in behalf of his principal, and his action is

> binding not upon himself but upon his principal. And here again, the ordinary rule of agency applies. The following authorities bear this out:
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> 'An insurance adjuster is ordinarily a special agent for the person or company for whom he acts, and his authority is prima facie coextensive with the business intrusted to him. * * * '
>
> 'An adjuster does not discharge functions of a quasi-judicial nature, but represents his employer, to whom he owes faithful service, and for his acts, in the employer's interest, the employer is responsible so long as the acts are done while the agent is acting within the scope of his employment.' (45 C. J. S., 1338-1340.)
>
> It, therefore, clearly appears that the scope and extent of the functions of an adjustment and settlement agent do not include personal liability. His functions are merely to settle and adjusts claims in behalf of his principal if those claims are proven and undisputed, and if the claim is disputed or is disapproved by the principal, like in the instant case, the agent does not assume any personal liability. The recourse of the insured is to press his claim against the principal." (Underscoring supplied).

The foregoing doctrine may have been enunciated by this Court in 1951, but the passage of time has not eroded its value or merit. It still applies with equal force and vigor.

Private respondent's contention that Salonga does not apply simply because only the agent was sued therein while here both agent and principal were impleaded and found solidarily liable is without merit. Such distinction is immaterial. The agent can not be sued nor held liable whether singly or solidarily with its principal.

Every cause of action ex contractu must be founded upon a contract, oral or written, either express or implied.[16] The only "involvement" of petitioner in the subject contract of insurance was having its name stamped at the bottom left portion of the policy as "Claim Agent." Without anything else to back it up, such stamp cannot even be deemed by the remotest interpretation to mean that petitioner participated in the preparation of said contract. Hence, there is no privity of contract, and correspondingly there can be no obligation or liability, and thus no cause of action against petitioner attaches. Under Article 1311[17] of the Civil Code, contracts are binding only upon the parties (and their assigns and heirs) who execute them. The subject cargo insurance was between the First Insurance Company, Ltd. and the Chin Gact Co., Ltd., both of Taiwan, and was signed in Taipei, Taiwan by the president of the First Insurance Company, Ltd. and the president of the Chin Gact Co., Ltd.[18] There is absolutely nothing in the contract which mentions the personal liability of petitioner.

Second Reason : Absence of Solidary Liability

May then petitioner, in its capacity as resident agent (as found in the case cited by the respondent Court)[19] be held solidarily liable with the foreign insurer ? Article 1207 of the Civil Code clearly provides that " (t)here is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation