

# FIRST DIVISION

[ G.R. No. 244407, January 26, 2021 ]

**UCPB GENERAL, INSURANCE CO., INC., PETITIONER, VS.  
ASGARD CORRUGATED BOX MANUFACTURING CORPORATION,  
RESPONDENT.**

## DECISION

**CARANDANG, J.:**

Assailed in this Petition for Partial Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court is the Decision<sup>[2]</sup> dated August 31, 2018 and the Resolution<sup>[3]</sup> dated January 8, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 109543 which partially granted petitioner UCPB General Insurance Co., Inc.'s (UCPB Insurance) appeal by deleting the awards of exemplary damages and attorney's fees and denied for lack of merit UCPB Insurance's motion for partial reconsideration.

### Facts of the Case

This case stemmed from a complaint for "Sum of Money with Application for Writ of Preliminary Attachment"<sup>[4]</sup> filed by respondent Asgard Corrugated Manufacturing Corp. (Asgard) against UCPB Insurance.<sup>[5]</sup>

On February 1, 2006, Asgard and Milestone Paper Products, Inc. (Milestone) entered into a Toll Manufacturing Agreement (TMA)<sup>[6]</sup> whereby Asgard undertook to perform toll-manufacturing of paper products for Milestone, effective until January 31, 2008, unless earlier terminated by either party upon 60-day prior written notice.<sup>[7]</sup> The TMA shall be deemed automatically extended on a month-to-month basis if no new agreement is executed after the lapse of said time. Section 19 of the TMA provides:

#### 19. EFFECTIVITY AND DURATION

This Agreement shall become effective upon signing hereof and shall be in full force and effect until 31<sup>st</sup> of January 2008, unless earlier terminated by either Party upon sixty (60) days prior written notice to the other if without cause, or in accordance with the following Clause. In the event the parties fail to execute a new toll manufacturing agreement upon the lapse of time indicated in this paragraph, the term of this Agreement shall be deemed automatically extended on a month to month basis only.

Termination or expiration of this Agreement will not abrogate, impair, release or extinguish any debt, obligation, or liability of either party incurred or arising prior to the date of termination and all undertakings, obligations, releases or indemnities which by their terms or by

reasonable implication are to survive, or are to be performed in whole or in part after the termination of this Agreement, will survive such terminations or expiration.

Any renewal of this Agreement, under terms and conditions to be mutually agreed upon, may at the option of the parties be done by a letter-agreement signed by both Parties. Should this Agreement expire without a written renewal thereof, the Parties shall continue their relationship herein and the provisions of this Agreement shall continue to govern them except for the term of the Agreement, which shall henceforth be from month to month.<sup>[8]</sup>

Under the TMA, Asgard undertook to perform for Milestone toll-manufacturing of paper products in accordance with the volume and specifications as Milestone may define from time to time.<sup>[9]</sup> Milestone shall advise Asgard of its requirements for the products to be toll-manufactured via a purchase order submitted monthly at least fifteen (15) days in advance of Milestone's desired delivery or withdrawal date stated therein to enable Asgard to timely complete production thereof. The toll-manufacturing requirements of Milestone shall be performed at Asgard's premises at Asgard Corrugated Box Manufacturing Corporation, No. 80 P. de la Cruz, Street, San Bartolome, Novaliches (the Plant) with the use of the facilities therein. Milestone shall source materials and supplies and cause the same to be delivered to the Plant.<sup>[10]</sup>

It appears that Asgard needed additional capital for the purchase of new equipment for its manufacturing plant. So, it invited Milestone to invest in the company. Instead of immediately investing, Milestone proposed to take over the management and operations of Asgard to determine the probability of the business. Milestone installed new equipment for the manufacturing plant and paper mill. After months of managing and operating the business, Milestone accepted Asgard's invitation by contributing the installed equipment and infusing such amount of capital as may be necessary for the operations of the company.<sup>[11]</sup>

Sometime in 2007, Asgard and Milestone further agreed that the latter would convert the paper products into corrugated carton boxes using the corrugating machines owned by Asgard. The agreement likewise included the modification of the corrugated machines by replacing the parts with the ones owned by Milestone. As a result thereof, all vital parts of the corrugating machines of Asgard were detached and replaced with parts owned by Milestone.<sup>[12]</sup>

On December 22, 2007, due to financial difficulties, Asgard filed with the Regional Trial Court (RTC) of Quezon City, Branch 90 an Amended Petition for Corporate Rehabilitation.<sup>[13]</sup> It submitted an Amended Rehabilitation Plan stating, among others, that Milestone shall contribute P150,000,000.00 worth of machinery and equipment in Asgard's business.<sup>[14]</sup> However, the rehabilitation court disapproved the Amended Plan finding the same to be vague, unrealistic and not feasible, and denied the rehabilitation petition in the Order<sup>[15]</sup> dated June 9, 2009. The rehabilitation court ruled that it would be extremely difficult for Asgard to undergo corporate rehabilitation with a paid-up capital of only P12,500,000.00 and negative retained earnings of P168,341,292.51.<sup>[16]</sup>

On August 7, 2009, Asgard and Milestone took out an insurance policy from UCPB Insurance.<sup>[17]</sup> Upon payment of insurance premium, UCPB Insurance issued Industrial All Risk Policy No. HOF09FD-FAR087915 (Policy)<sup>[18]</sup> to Milestone and/or Market Link and/or Nova Baile and/or Asgard to insure, among others, Asgard's machinery and equipment of every kind and description in Novaliches, Quezon City for P500,000,000.00 covering the period August 1, 2009 to August 1, 2010.<sup>[19]</sup>

On July 15, 2010, Milestone pulled out its stocks, machinery, and equipment from Asgard's plant in Novaliches, Quezon City for relocation to Milestone's own premises in Laguna. In the course thereof, it caused damage to Asgard's complete line of Isowa corrugating machine and accessories as well as its printer-slotter-stacker.<sup>[20]</sup> Physical inventory of machinery and equipment conducted by the staff of Paul Uy Ong of Asgard showed that the following machinery and equipment were damaged:

1. "Isowa" corrugating machines such as Single Facer "A" and "B" Flutes, "Lechida" Single Facer "A" Flute, "Ishikawa" Single facer "E" Flute and other accessories, originally installed at ground level were dismantled and were dumped at the rear portion of the warehouse.
2. "Isowa" dual backer conveyor heater, Slitter station, Cut-Off Station, Akebono Tsusho Printer Slotter Machine were welded to steel pole which appear to be unstable.
3. Other machine parts were unaccounted.<sup>[21]</sup>

Asgard notified UCPB Insurance about the loss and filed an insurance claim under the Policy based on the Malicious Damage Endorsement provision which reads:

It is hereby declared and agreed that the insurance under the said Riot and Strike endorsement shall extend to include MALICIOUS DAMAGE, which for the purpose of this extension shall mean:

LOSS OF OR DAMAGE TO THE PROPERTY INSURED DIRECTLY CAUSED BY THE MALICIOUS ACT OF ANY PERSON (WHETHER OR NOT SUCH ACT IS COMMITTED IN THE COURSE OF DISTURBANCE OF THE PUBLIC PEACE) NOT BEING AN ACT AMOUNTING TO OR COMMITTED IN CONNECTION WITH AN OCCURRENCE MENTIONED IN SPECIAL CONDITION NO. 6 OF THE SAID RIOT AND STRIKE ENDORSEMENT.<sup>[22]</sup>

UCPB Insurance denied the claim explaining that the Policy had no cross liability cover, and the malicious damage was committed by Milestone, one of the name insured, and not committed by a third party.<sup>[23]</sup>

Asgard moved for reconsideration but UCPB Insurance denied<sup>[24]</sup> the same contending that Milestone's infliction of damage is not among the acts contemplated under Section 87 (now Section 89) of the Insurance Code which provides:

Section 87. An insurer is not liable for a loss caused by the willful act or through the connivance of the insured; but he is not exonerated by the negligence of the insured, or of the insurance agents of others.<sup>[25]</sup>

Hence, Asgard filed a complaint for sum of money with application for writ of preliminary attachment praying for actual damages in the amount of P147,000,000.00 plus legal interest.<sup>[26]</sup> Asgard alleged that it solely owns the damaged corrugating machine and Milestone has no insurable interest therein; thus, Section 87 (now Section 89) of the Insurance Code is inapplicable. Further, UCPB Insurance's consolidation of the building, various machineries, equipment and stocks, which are owned by different entities then occupying one compound, into a single insurance policy may have been resorted to only for convenience, and did not reflect the actual and separate ownership thereof. The damaged machine could be repaired for P147,000,000.00 which was paid by Asgard's sister company, Diamond Packaging Industrial Corporation,<sup>[27]</sup> as evidenced by 98 Philippine Business Bank checks issued as payment to Taiphil.<sup>[28]</sup>

In its Answer with Compulsory Counterclaim,<sup>[29]</sup> UCPB Insurance countered that the inclusion of Milestone's name among the insured in the Policy was upon Asgard's request while the malicious damage admittedly caused by Milestone was not among the risks covered by the Policy pursuant to Section 87 (now Section 89) of the Insurance Code. Even if Asgard was in fact the sole owner of the machine, Milestone still has an insurable interest therein because it would suffer a loss upon its destruction as it cannot produce the corrugated boxes. Asgard and Milestone's insurable interests were not also separate and distinct as the machine would be inoperable without the parts provided by Milestone.<sup>[30]</sup>

On July 10, 2012, UCPB Insurance filed a Motion for Summary Judgment<sup>[31]</sup> contending that there was no genuine issue of fact since Asgard already admitted that Milestone, its co-insured, maliciously caused the damage, and that UCPB Insurance had consolidated the insurable interests into only one policy. Hence, the applicability of Section 87 (now Section 89) of the Insurance Code remains to be the only legal issue.<sup>[32]</sup>

The RTC granted the motion and dismissed Asgard's complaint in its Order<sup>[33]</sup> dated October 9, 2012. In granting the motion, the RTC declared that no genuine factual issue is extant in this case that would warrant threshing the same in a full blown trial. Further, the issue on the insurable interest of Milestone over the property is a legal issue which does not necessitate a presentation of the parties' respective pieces of evidence considering that this may be determined by referring to specific provisions of the Insurance Code governing the matter.<sup>[34]</sup> In dismissing Asgard's complaint, the RTC ruled that Milestone had insurable interest over the property. It had actual and real interest in the preservation of the corrugating machines not only because its maintenance was necessary for Asgard but also because it owns the parts which were incorporated into Asgard's corrugating machines. Even if Milestone was not the owner of the whole machine, it would still be benefited by its preservation and would be damnified by its loss. Also, Asgard had already made a judicial admission that Milestone is one of the named insured under the Policy.<sup>[35]</sup>

On appeal by Asgard, the CA reversed and set aside the RTC's ruling and remanded the case for further proceedings. The issues raised therein were as follows:

- I. Whether the trial court patently erred in law and in fact when it granted defendant-appellee's motion for summary judgment despite the

clear existence of genuine issues of fact.<sup>[36]</sup>

II. Whether the trial court patently erred in law and in fact when it ruled that plaintiff-appellant had impliedly admitted MPPI's insurable interest over plaintiff-appellant's machinery and equipment since plaintiff-appellant admitted MPPI is one of the co-insured and invoked the malicious damage endorsement of the policy.<sup>[37]</sup>

III. Whether the trial court patently erred in law and in fact when it absolved defendant-appellee from any liability under the policy.<sup>[38]</sup>

IV. Whether the trial court patently erred in law and in fact when it took cognizance of defendant-appellee's motion for summary judgment despite the fact that it failed to comply with Rules 35, Sec 3 of the 1997 Rules of Procedure.<sup>[39]</sup>

The CA, in its Decision<sup>[40]</sup> dated April 3, 2014, held that summary judgment cannot be rendered in this case as there are clearly factual issues disputed or contested by the parties. A trial is necessary to ascertain which of the conflicting parties' allegations are true. The issue on the existence of insurable interest is a factual and triable issue which the trial court could not resolve on the basis of the provisions of the Insurance Code. The fact that Asgard admitted that MPPI (Milestone) is a co-insured at the time the Policy was taken does not amount to an admission that Milestone has insurable interest at the time when the machinery and equipment were maliciously damaged. The CA ruled that the core issue is whether Milestone has insurable interest at the time of the loss, not at the time the Policy was taken.

Asgard gave the testimony of its Corporate Treasurer, Claire U. Ong,<sup>[41]</sup> who confirmed that only one policy was issued over Asgard's machine and Milestone was among those insured. When the petition for rehabilitation was denied, Asgard asked Milestone to pull out their stocks, machinery, and equipment from the plant. When Milestone finally complied, it maliciously damaged Asgard's complete line of corrugating machine and left several other machines "floating" on temporary posts. Asgard had the incident blotted. It also repeatedly asked Milestone to restore the damaged machine to no avail. Asgard notified UCPB Insurance of the loss, but the latter denied the insurance claim and the demand for reimbursement of replacement costs amounting to P147,000,000.00. Asgard was constrained to replace the damaged machine. Since it did not have the money, Asgard asked its sister company, Diamond Packaging Industrial Corporation, to pay to Taiphil Machinery and Equipment Sales Services which replaced the damaged parts.

UCPB Insurance presented Agripina De Luna,<sup>[42]</sup> the Multi-Lines Section Head of UCPB Claim's Department. She testified that Universal Adjuster-Appraisers Co., Inc. (Universal) conducted an investigation on the insurance claim of Asgard. It advised UCPB Insurance that Asgard could not claim for damage maliciously caused by Milestone. UCPB Insurance also based the denial of Asgard's claim on the exception under the policy for loss, damage, or destruction caused or occasioned by or happening through any willful act committed by or with the connivance of any relative of the insured. De Luna further testified that UCPB Insurance usually checked for insurable interest in issuing a policy and Milestone had an insurable interest at the time the Policy took effect because it owned some parts of Asgard's