SECOND DIVISION

[G.R. No. 212107, January 28, 2019]

KEIHIN-EVERETT FORWARDING CO., INC., PETITIONER, VS. TOKIO MARINE MALAYAN INSURANCE CO., INC.** AND SUNFREIGHT FORWARDERS & CUSTOMS BROKERAGE, INC., RESPONDENTS.

DECISION

REYES, J. JR., J.:

The Case

Keihin-Everett Forwarding Co., Inc. (Keihin-Everett) appealed from the April 8, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 98672 which held it liable to pay Tokio Marine Malayan Insurance Co., Inc.'s (Tokio Marine's) claim of P1,589,556.60 with right of reimbursement from Sunfreight Forwarders & Customs Brokerage, Inc. (Sunfreight Forwarders).

The Facts

The facts, as summarized by the CA,[2] are clear and undisputed.

In 2005, Honda Trading Phils. Ecozone Corporation (Honda Trading) ordered 80 bundles of Aluminum Alloy Ingots from PT Molten Aluminum Producer Indonesia (PT Molten).[3] PT Molten loaded the goods in two container vans with Serial Nos. TEXU 389360-5 and GATU 040516-3 which were, in turn, received in Jakarta, Indonesia by Nippon Express Co., Ltd. for shipment to Manila.[4]

Aside from insuring the entire shipment with Tokio Marine & Nichido Fire Insurance Co., Inc. (TMNFIC) under Policy No. 83-00143689, Honda Trading also engaged the services of petitioner Keihin-Everett to clear and withdraw the cargo from the pier and to transport and deliver the same to its warehouse at the Laguna Technopark in Biñan, Laguna.[5] Meanwhile, petitioner Keihin-Everett had an Accreditation Agreement with respondent Sunfreight Forwarders whereby the latter undertook to render common carrier services for the former and to transport inland goods within the Philippines.[6]

The shipment arrived in Manila on November 3, 2005 and was, accordingly, offloaded from the ocean liner and temporarily stored at the CY Area of the Manila International Port pending release by the Customs Authority.[7] On November 8, 2005, the shipment was caused to be released from the pier by petitioner Keihin-Everett and turned over to respondent Sunfreight Forwarders for delivery to Honda

Trading.[8] En route to the latter's warehouse, the truck carrying the containers was hijacked and the container van with Serial No. TEXU 389360-5 was reportedly taken away.[9] Although said container van was subsequently found in the vicinity of the Manila North Cemetery and later towed to the compound of the Metro Manila Development Authority (MMDA), it appears that the contents thereof were no longer retrieved.[10] Only the container van with Serial No. GATU 040516-3 reached the warehouse. As a consequence, Honda Trading suffered losses in the total amount of P2,121,917.04, representing the value of the lost 40 bundles of Aluminum Alloy Ingots.[11]

Claiming to have paid Honda Trading's insurance claim for the loss it suffered, respondent Tokio Marine commenced the instant suit on October 10, 2006 with the filing of its complaint for damages against petitioner Keihin-Everett. Respondent Tokio Marine maintained that it had been subrogated to all the rights and causes of action pertaining to Honda Trading.

Served with summons, petitioner Keihin-Everett denied liability for the lost shipment on the ground that the loss thereof occurred while the same was in the possession of respondent Sunfreight Forwarders.[12] Hence, petitioner Keihin-Everett filed a third-party complaint against the latter, who, in turn, denied liability on the ground that it was not privy to the contract between Keihin-Everett and Honda Trading. If at all, respondent Sunfreight Forwarders claimed that its liability cannot exceed the P500,000.00 fixed in its Accreditation Agreement with petitioner Keihin-Everett.[13]

Ruling of the RTC

On October 27, 2011, the RTC rendered a Decision finding petitioner Keihin-Everett and respondent Sunfreight Forwarders jointly and severally liable to pay respondent Tokio Marine's claim in the sum of P1,589,556.60, together with the legal interest due thereon and attorney's fees amounting to P100,000.00. The RTC found the driver of Sunfreight Forwarders as the cause of the evil caused. Under Article 2180 of the Civil Code, it provides: "Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry." Thus, Sunfreight Forwarders is hereby held liable for the loss of the subject cargoes with Keihin-Everett, being a common carrier. In case, Keihin-Everett pays for the amount, it has a right of reimbursement from Sunfreight Forwarders. It ruled:

> In the event of loss, destruction or deterioration of the insured goods, common carriers are responsible, unless they can prove that the loss, destruction or deterioration was brought about by the causes specified in Article 1734 of the Civil Code. In all other cases, they are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence *(Aboitiz Shipping Corporation v. [New] India Assurance Company, Ltd.,* G.R. No. 156978, August 24, 2007). And, hijacking of [a] carrier's truck is not one of those included as exempting circumstance under Art. 1374 *(De Guzman v. Court of Appeals,* 168 SCRA 612). Thus, [Keihin-Everett] and [Sunfreight Forwarders] are crystal clear liable for the loss of the subject cargo.[14]

Keihin-Everett moved for reconsideration of the foregoing RTC Decision. However, its motion was denied for lack of merit by the RTC in its Order dated March 8, 2012. Hence, Keihin-Everett filed an appeal with the CA.

Ruling of the CA

In the now appealed Decision dated April 8, 2014, the CA modified the ruling of the RTC insofar as the solidary liability of Keihin-Everett and Sunfreight Forwarders is concerned. The CA went to rule that solidarity is never presumed. There is solidary liability when the obligation so states, or when the law or the nature of the obligation requires the same. Thus, because of the lack of privity between Honda Trading and Sunfreight Forwarders, the latter cannot simply be held jointly and severally liable with Keihin-Everett for Tokio Marine's claim as subrogee. In view of the Accreditation Agreement between Keihin-Everett and Sunfreight Forwarders, the former possesses a right of reimbursement against the latter for so much of what Keihin-Everett has paid to Tokio Marine. The dispositive portion of the CA Decision reads as follows:

> WHEREFORE, premises considered, the appealed October 27, 2011 Decision is MODIFIED to hold Keihin-Everett liable for Tokio Marine's claim in the sum of P1,589,556.60, with right of reimbursement from Sunfreight Forwarders. Keihin-Everett is likewise found solely liable for the attorney's fees the RTC awarded in favor of Tokio Marine. The rest is AFFIRMED *in toto.*
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> SO ORDERED.[15]

Dissatisfied with the CA Decision, petitioner Keihin-Everett filed the instant petition with this Court.

The Issue

The main issue for consideration is whether or not the CA erred in affirming with modification the Decision of the RTC dated October 27, 2011 holding petitioner Keihin-Everett liable to respondent Tokio Marine.

Petitioner Keihin-Everett ascribed errors on the part of the CA (a) in considering the documents presented at the trial even if the same were not attached and made integral parts of the complaint in violation of Section 7, Rule 8 of the Rules of Court; (b) in upholding the RTC's failure to dismiss the complaint albeit the plaintiff is not the real party in interest and has no capacity to sue; (c) in ruling that there was legal subrogation; and (d) in affirming the petitioner's liability despite overwhelming evidence showing that the damaged cargoes were in the custody of Sunfreight Forwarders at the time they were lost.[16]

Ruling

Keihin-Everett's arguments will be resolved *in seriatim.*

First. Keihin-Everett argued that the case should have been dismissed for failure of Tokio Marine to attach or state in the Complaint the actionable document or the insurance policy between the insurer and the insured, in clear violation of Section 7, Rule 8 of the 1997 Rules of Court, which states:

> SEC. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

It bears to stress that failure of Tokio Marine to attach in the Complaint the contract of insurance between the insurer (Tokio Marine) and the insured (Honda Trading) is not fatal to its cause of action.

True, in the case of *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*[17] relied upon by Keihin-Everett, the Court makes it imperative for the plaintiff (whose action is predicated upon his right as a subrogee) to attach the insurance contract in the complaint in accordance with Section 7, Rule 8 of the 1997 Rules of Court, just so in order to establish the legal basis of the right to subrogation. The Court ratiocinated:

> Malayan's right of recovery as a subrogee of ABB Koppel cannot be predicated alone on the liability of the respondent to ABB Koppel, even though such liability will necessarily have to be established at the trial for Malayan to recover. Because Malayan's right to recovery derives from contractual subrogation as an incident to an insurance relationship, and not from any proximate injury to it inflicted by the respondents, it is critical that Malayan establish the legal basis of such right to subrogation by presenting the contract constitutive of the insurance relationship between it and ABB Koppel. Without such legal basis, its cause of action cannot survive.
>
> Our procedural rules make plain how easily Malayan could have adduced the Marine Insurance Policy. Ideally, this should have been accomplished from the moment it filed the complaint. Since the Marine Insurance Policy was constitutive of the insurer-insured relationship from which Malayan draws its right to subrogation, such document should have been attached to the complaint itself, as provided for in Section 7, Rule 8 of the 1997 Rules of Civil Procedure.[18]

However, in the aforesaid case, the Court did not suggest an outright dismissal of a complaint in case of failure to attach the insurance contract in the complaint.

Promoting a reasonable construction of the rules so as not to work injustice, the Court makes it clear that failure to comply with the rules does not preclude the plaintiff to offer it as evidence. Thus:

> It may be that there is no specific provision in the Rules of Court which prohibits the admission in evidence of an actionable document in the event a party fails to comply with the requirement of the rule on actionable documents under Section 7, Rule 8.[19]

Unfortunately, in the *Malayan* case cited by Keihin-Everett, Malayan not only failed to attach or set forth in the complaint the insurance policy, it likewise did not present the same as evidence before the trial court or even in the CA. As the Court metaphorically described, the very insurance contract emerges as the white elephant in the room — an obdurate presence which everybody reacts to, yet legally invisible as a matter of evidence since no attempt had been made to prove its corporeal existence in the court of law.[20] Hence, there was sufficient reason for the Court to dismiss the case for it has no legal basis from which to consider the pre-existence of an insurance contract between Malayan and ABB Koppel and the former's right of subrogation.

The instant case cannot be dismissed just like that. Unlike in the *Malayan* case, Tokio Marine presented as evidence, not only the Honda Trading Insurance Policy, but also the Subrogation Receipt evidencing that it paid Honda Trading the sum of US$38,855.83 in full settlement of the latter's claim under Policy No. 83-00143689. During the trial, Keihin-Everett even had the opportunity to examine the said documents and conducted a cross-examination of the said Contract of Insurance.[21] By presenting the insurance policy constitutive of the insurance relationship of the parties, Tokio Marine was able to confirm its legal right to recover as subrogee of Honda Trading.

Second. Keihin-Everett insisted that Tokio Marine is not the insurer but TMNFIC, hence, it argued that Tokio Marine has no right to institute the present action. As it pointed out, the Insurance Policy shows in its face that Honda Trading procured the insurance from TMNFIC and not from Tokio Marine.

While this assertion is true, Insurance Policy No. 83-00143689 itself expressly made Tokio Marine as the party liable to pay the insurance claim of Honda Trading pursuant to the Agency Agreement entered into by and between Tokio Marine and TMNFIC. As properly appreciated by both the RTC and the CA, the Agency Agreement shows that TMNFIC had subsequently changed its name to that of Tokio Marine.[22] By agreeing to this stipulation in the Insurance Policy, Honda Trading binds itself to file its claim from Tokio Marine and thereafter to accept payment from it.

At any rate, even if we consider Tokio Marine as a third person who voluntarily paid the insurance claims of Honda Trading, it is still entitled to be reimbursed of what it had paid. As held by this Court in the case of *Pan Malayan Insurance Corp. v. Court of Appeals,*[23] the insurer who may have no rights of subrogation due to