

FIRST DIVISION

[G.R. No. 187701, July 23, 2014]

PHILAM INSURANCE COMPANY, INC. (NOW CHARTIS PHILIPPINES INSURANCE, INC. *), PETITIONER, VS. HEUNG-A SHIPPING CORPORATION AND WALLEM PHILIPPINES SHIPPING, INC., RESPONDENTS.

[G.R. NO. 187812]

HEUNG-A SHIPPING CORPORATION AND WALLEM PHILIPPINES SHIPPING, INC., PETITIONERS, VS. PHILAM INSURANCE COMPANY, INC. (NOW CHARTIS PHILIPPINES INSURANCE, INC.), RESPONDENT.

D E C I S I O N

REYES, J.:

At bar are consolidated petitions for review on *certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated January 30, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 89482 affirming with modifications the Decision^[3] dated February 26, 2007 of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 01-889.

The Factual Antecedents

On December 19, 2000, Novartis Consumer Health Philippines, Inc. (NOVARTIS) imported from Jinsuk Trading Co. Ltd., (JINSUK) in South Korea, 19 pallets of 200 rolls of Ovaltine Power 18 G laminated plastic packaging material.

In order to ship the goods to the Philippines, JINSUK engaged the services of Protop Shipping Corporation (PROTOP), a freight forwarder likewise based in South Korea, to forward the goods to their consignee, NOVARTIS.

Based on Bill of Lading No. PROTAS 200387 issued by PROTOP, the cargo was on freight prepaid basis and on "shipper's load and count" which means that the "container [was] packed with cargo by one shipper where the quantity, description and condition of the cargo is the sole responsibility of the shipper."^[4] Likewise stated in the bill of lading is the name Sagawa Express Phils., Inc., (SAGAWA) designated as the entity in the Philippines which will obtain the delivery contract.

PROTOP shipped the cargo through Dongnama Shipping Co. Ltd. (DONGNAMA) which in turn loaded the same on M/V Heung-A Bangkok V-019 owned and operated by Heung-A Shipping Corporation, (HEUNG-A), a Korean corporation, pursuant to a 'slot charter agreement' whereby a space in the latter's vessel was reserved for the

exclusive use of the former. Wallem Philippines Shipping, Inc. (WALLEM) is the ship agent of HEUNG-A in the Philippines.

NOVARTIS insured the shipment with Philam Insurance Company, Inc. (PHILAM, now Chartis Philippines Insurance, Inc.) under All Risk Marine Open Insurance Policy No. MOP-0801011828 against all loss, damage, liability, or expense before, during transit and even after the discharge of the shipment from the carrying vessel until its complete delivery to the consignee's premises.

The vessel arrived at the port of Manila, South Harbor, on December 27, 2000 and the subject shipment contained in Sea Van Container No. DNAU 420280-9 was discharged without exception into the possession, custody and care of Asian Terminals, Inc. (ATI) as the customs arrastre operator.

The shipment was thereafter withdrawn on January 4, 2001, by NOVARTIS' appointed broker, Stephanie Customs Brokerage Corporation (STEPHANIE) from ATI's container yard.

The shipment reached NOVARTIS' premises on January 5, 2001 and was thereupon inspected by the company's Senior Laboratory Technician, Annie Rose Caparoso (Caparoso).^[5]

Upon initial inspection, Caparoso found the container van locked with its load intact. After opening the same, she inspected its contents and discovered that the boxes of the shipment were wet and damp. The boxes on one side of the van were in disarray while others were opened or damaged due to the dampness. Caparoso further observed that parts of the container van were damaged and rusty. There were also water droplets on the walls and the floor was wet. Since the damaged packaging materials might contaminate the product they were meant to hold, Caparoso rejected the entire shipment.

Renato Layug and Mario Chin, duly certified adjusters of the Manila Adjusters and Surveyors Company were forthwith hailed to inspect and conduct a survey of the shipment.^[6] Their Certificate of Survey^[7] dated January 17, 2001 yielded results similar to the observations of Caparoso, thus:

[T]he sea van panels/sidings and roofing were noted with varying degrees of indentations and partly corroded/rusty. Internally, water bead clung along the roofs from rear to front section. The mid section dented/sagged with affected area was noted with minutes hole evidently due to thinning/corroded rusty metal plates. The shipment was noted with several palletized cartons already in collapsed condition due to wetting. The van's entire floor length was also observed wet.^[8]

All 17 pallets of the 184 cartons/rolls contained in the sea van were found wet/water damaged. Sixteen (16) cartons/rolls supposedly contained in 2 pallets were unaccounted for although the surveyors remarked that this may be due to short shipment by the supplier considering that the sea van was fully loaded and can no longer accommodate the said unaccounted items. The survey report further stated that the "*wetting sustained by the shipment may have reasonably be attributed to*

the water seepage that gain entry into the sea van container damage roofs (minutes hole) during transit period [sic].”^[9]

Samples from the wet packing materials/boxes were submitted to the chemist of Precision Analytical Services, Inc. (PRECISION), Virgin Hernandez (Hernandez), and per Laboratory Report No. 042-07 dated January 16, 2001, the cause of wetting in the carton boxes and kraft paper/lining materials as well as the aluminum foil laminated plastic packaging material, was salt water.^[10]

Aggrieved, NOVARTIS demanded indemnification for the lost/damaged shipment from PROTOP, SAGAWA, ATI and STEPHANIE but was denied. Insurance claims were, thus, filed with PHILAM which paid the insured value of the shipment in the adjusted amount of One Million Nine Hundred Four Thousand Six Hundred Thirteen Pesos and Twenty Centavos (P1,904,613.20).

Claiming that after such payment, it was subrogated to all the rights and claims of NOVARTIS against the parties liable for the lost/damaged shipment, PHILAM filed on June 4, 2001, a complaint for damages against PROTOP, as the issuer of Bill of Lading No. PROTAS 200387, its ship agent in the Philippines, SAGAWA, consignee, ATI and the broker, STEPHANIE.

On October 12, 2001, PHILAM sent a demand letter to WALLEM for reimbursement of the insurance claims paid to NOVARTIS.^[11] When WALLEM ignored the demand, PHILAM impleaded it as additional defendant in an Amended Complaint duly admitted by the trial court on October 19, 2001.^[12]

On December 11, 2001, PHILAM filed a Motion to Admit Second Amended Complaint this time designating PROTOP as the owner/operator of M/V Heung-A Bangkok V-019 and adding HEUNG-A as party defendant for being the registered owner of the vessel.^[13] The motion was granted and the second amended complaint was admitted by the trial court on December 14, 2001.^[14]

PROTOP, SAGAWA, ATI, STEPHANIE, WALLEM and HEUNG-A denied liability for the lost/damaged shipment.

SAGAWA refuted the allegation that it is the ship agent of PROTOP and argued that a ship agent represents the owner of the vessel and not a mere freight forwarder like PROTOP. SAGAWA averred that its only role with respect to the shipment was to inform NOVARTIS of its arrival in the Philippines and to facilitate the surrender of the original bill of lading issued by PROTOP.

SAGAWA further remarked that it was deprived an opportunity to examine and investigate the nature and extent of the damage while the matter was still fresh so as to safeguard itself from false/fraudulent claims because NOVARTIS failed to timely give notice about the loss/damage.^[15]

SAGAWA admitted that it has a non-exclusive agency agreement with PROTOP to serve as the latter's delivery contact person in the Philippines with respect to the subject shipment. SAGAWA is also a freight forwarding company and that PROTOP was not charged any fee for the services rendered by SAGAWA with respect to the

subject shipment and instead the latter was given US\$10 as commission.^[16] For having been dragged into court on a baseless cause, SAGAWA counterclaimed for damages in the form of attorney's fees.

ATI likewise interposed a counterclaim for damages against PHILAM for its allegedly baseless complaint. ATI averred that it exercised due care and diligence in handling the subject container. Also, NOVARTIS, through PHILAM, is now barred from filing any claim for indemnification because the latter failed to file the same within 15 days from receipt of the shipment.^[17]

Meanwhile, STEPHANIE asserted that its only role with respect to the shipment was its physical retrieval from ATI and thereafter its delivery to NOVARTIS. That entire time, the seal was intact and not broken. Also, based on the Certificate of Survey, the damage to the shipment was due to salt water which means that it could not have occurred while STEPHANIE was in possession thereof during its delivery from ATI's container yard to NOVARTIS' premises. STEPHANIE counterclaimed for moral damages and attorney's fees.^[18]

WALLEM alleged that the damage and shortages in the shipment were the responsibility of the shipper, JINSUK, because it was taken on board on a "shipper's load and count" basis which means that it was the shipper that packed, contained and stuffed the shipment in the container van without the carrier's participation. The container van was already sealed when it was loaded on the vessel and hence, the carrier was in no position to verify the condition and other particulars of the shipment.

WALLEM also asserted that the shipment was opened long after it was discharged from the vessel and that WALLEM or HEUNG-A were not present during the inspection, examination and survey.

WALLEM pointed the blame to PROTOP because its obligation to the shipper as freight forwarder carried the concomitant responsibility of ensuring the shipment's safety from the port of loading until the final place of delivery. WALLEM claimed to have exercised due care and diligence in handling the shipment.

In the alternative, WALLEM averred that any liability which may be imputed to it is limited only to US\$8,500.00 pursuant to the Carriage of Goods by Sea Act (COGSA).^[19]

HEUNG-A argued that it is not the carrier insofar as NOVARTIS is concerned. The carrier was either PROTOP, a freight forwarder considered as a non-vessel operating common carrier or DONGNAMA which provided the container van to PROTOP.^[20] HEUNG-A denied being the carrier of the subject shipment and asserted that its only obligation was to provide DONGNAMA a space on board M/V Heung-A Bangkok V-019.

PROTOP failed to file an answer to the complaint despite having been effectively served with alias summons. It was declared in default in the RTC Order dated June 6, 2002.^[21]

Ruling of the RTC

In a Decision^[22] dated February 26, 2007, the RTC ruled that the damage to the shipment occurred onboard the vessel while in transit from Korea to the Philippines.

HEUNG-A was adjudged as the common carrier of the subject shipment by virtue of the admissions of WALLEM's witness, Ronald Gonzales (Gonzales) that despite the slot charter agreement with DONGNAMA, it was still the obligation of HEUNG-A to transport the cargo from Busan, Korea to Manila and thus any damage to the shipment is the responsibility of the carrier to the consignee.

The RTC further observed that HEUNG-A failed to present evidence showing that it exercised the diligence required of a common carrier in ensuring the safety of the shipment.

The RTC discounted the slot charter agreement between HEUNG-A and DONGNAMA, and held that it did not bind the consignee who was not a party thereto. Further, it was HEUNG-A's duty to ensure that the container van was in good condition by taking an initiative to state in its contract and demand from the owner of the container van that it should be in a good condition all the time. Such initiative cannot be shifted to the shipper because it is in no position to demand the same from the owner of the container van.

WALLEM was held liable as HEUNG-A's ship agent in the Philippines while PROTOP was adjudged liable because the damage sustained by the shipment was due to the bad condition of the container van. Also, based on the statement at the back of the bill of lading, it assumed responsibility for loss and damage as freight forwarder, *viz*:

6.1 The responsibility of the Freight Forwarder for the goods under these conditions covers the period from the time the Freight Forwarder has taken the goods in his charge to the time of the delivery.

6.2 The Freight Forwarder[r] shall be liable for loss or damage to the goods as well as for delay in delivery if the occurrence which caused the loss, damage, delay in delivery took place while the goods were in his charge as defined in clause 2.1.a unless the Freight Forwarder proves that no fault or neglect of his own servants or agents or any other person referred to in Clause 2.2 has caused or contributed to such loss, damage or delay. However, the Freight Forwarder shall only be liable for loss following from delay in delivery if the Consignor has made a declaration of interest in timely delivery which has been accepted by the Freight Forwarder and stated in this FBL.^[23]

PHILAM was declared to have been validly subrogated in NOVARTIS' stead and thus entitled to recover the insurance claims it paid to the latter.

ATI and STEPHANIE were exonerated from any liability. SAGAWA was likewise adjudged not liable for the loss/damage to the shipment by virtue of the phrase "Shipper's Load and Count" reflected in the bill of lading issued by PROTOP. Since the container van was packed under the sole responsibility of the shipper in Korea,