682 Phil. 213

THIRD DIVISION

[G.R. No. 180784, February 15, 2012]

INSURANCE COMPANY OF NORTH AMERICA, PETITIONER, VS. ASIAN TERMINALS, INC., RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari*[1] of the Decision of the Regional Trial Court (RTC) of Makati City, Branch 138 (trial court) in Civil Case No. 05-809 and its Order dated December 4, 2007 on the ground that the trial court committed reversible error of law.

The trial court dismissed petitioner's complaint for actual damages on the ground of prescription under the Carriage of Goods by Sea Act (COGSA).

The facts are as follows:

On November 9, 2002, Macro-Lite Korea Corporation shipped to San Miguel Corporation, through M/V "DIMI P" vessel, one hundred eighty-five (185) packages (231,000 sheets) of electrolytic tin free steel, complete and in good order condition and covered by Bill of Lading No. POBUPOHMAN20638.[2] The shipment had a declared value of US$169,850.35[3] and was insured with petitioner Insurance Company of North America against all risks under Marine Policy No. MOPA-06310.[4]

The carrying vessel arrived at the port of Manila on November 19, 2002, and when the shipment was discharged therefrom, it was noted that seven (7) packages thereof were damaged and in bad order.[5] The shipment was then turned over to the custody of respondent Asian Terminals, Inc. (ATI) on November 21, 2002 for storage and safekeeping pending its withdrawal by the consignee's authorized customs broker, R.V. Marzan Brokerage Corp. (Marzan).

On November 22, 23 and 29, 2002, the subject shipment was withdrawn by Marzan from the custody of respondent. On November 29, 2002, prior to the last withdrawal of the shipment, a joint inspection of the said cargo was conducted per the Request for Bad Order Survey[6] dated November 29, 2002, and the examination report, which was written on the same request, showed that an additional five (5) packages were found to be damaged and in bad order.

On January 6, 2003, the consignee, San Miguel Corporation, filed separate claims[7] against respondent and petitioner for the damage to 11,200 sheets of electrolytic tin free steel.

Petitioner engaged the services of an independent adjuster/surveyor, BA McLarens

Phils., Inc., to conduct an investigation and evaluation on the claim and to prepare the necessary report.[8] BA McLarens Phils., Inc. submitted to petitioner an Survey Report[9] dated January 22, 2003 and another report[10] dated May 5, 2003 regarding the damaged shipment. It noted that out of the reported twelve (12) damaged skids, nine (9) of them were rejected and three (3) skids were accepted by the consignee's representative as good order. BA McLarens Phils., Inc. evaluated the total cost of damage to the nine (9) rejected skids (11,200 sheets of electrolytic tin free steel) to be P431,592.14.

The petitioner, as insurer of the said cargo, paid the consignee the amount of P431,592.14 for the damage caused to the shipment, as evidenced by the Subrogation Receipt dated January 8, 2004. Thereafter, petitioner, formally demanded reparation against respondent. As respondent failed to satisfy its demand, petitioner filed an action for damages with the RTC of Makati City.

The trial court found, thus:

> The Court finds that the subject shipment indeed suffered additional damages. The Request for Bad Order Survey No. 56422 shows that prior to the turn over of the shipment from the custody of ATI to the consignee, aside from the seven (7) packages which were already damaged upon arrival at the port of Manila, five (5) more packages were found with "dent, cut and crumple" while in the custody of ATI. This document was issued by ATI and was jointly executed by the representatives of ATI, consignee and customs, and the Shed Supervisor. Thus, ATI is now estopped from claiming that there was no additional damage suffered by the shipment. It is, therefore, only logical to conclude that the damage was caused solely by the negligence of defendant ATI. This evidence of the plaintiff was refuted by the defendant by merely alleging that "the damage to the 5 Tin Plates is only in its external packaging." However, the fact remains that the consignee has rejected the same as total loss for not being suitable for their intended purpose. In addition, the photographs presented by the plaintiff show that the shipment also suffered severe dents and some packages were even critically crumpled.[11]

As to the extent of liability, ATI invoked the Contract for Cargo Handling Services executed between the Philippine Ports Authority and Marina Ports Services, Inc. (now Asian Terminals, Inc.). Under the said contract, ATI's liability for damage to cargoes in its custody is limited to P5,000.00 for each package, unless the value of the cargo shipment is otherwise specified or manifested or communicated in writing, together with the declared Bill of Lading value and supported by a certified packing list to the contractor by the interested party or parties before the discharge or lading unto vessel of the goods.

The trial court found that there was compliance by the shipper and consignee with the above requirement. The Bill of Lading, together with the corresponding invoice and packing list, was shown to ATI prior to the discharge of the goods from the vessel. Since the shipment was released from the custody of ATI, the trial court found that the same was declared for tax purposes as well as for the assessment of

arrastre charges and other fees. For the purpose, the presentation of the invoice, packing list and other shipping documents to ATI for the proper assessment of the arrastre charges and other fees satisfied the condition of declaration of the actual invoices of the value of the goods to overcome the limitation of liability of the arrastre operator.[12]

Further, the trial court found that there was a valid subrogation between the petitioner and the assured/consignee San Miguel Corporation. The respondent admitted the existence of Global Marine Policy No. MOPA-06310 with San Miguel Corporation and Marine Risk Note No. 3445,[13] which showed that the cargo was indeed insured with petitioner. The trial court held that petitioner's claim is compensable because the Subrogation Receipt,16 which was admitted as to its existence by respondent, was sufficient to establish not only the relationship of the insurer and the assured, but also the amount paid to settle the insurance claim.[14]

However, the trial court dismissed the complaint on the ground that the petitioner's claim was already barred by the statute of limitations. It held that COGSA, embodied in Commonwealth Act (CA) No. 65, applies to this case, since the goods were shipped from a foreign port to the Philippines. The trial court stated that under the said law, particularly paragraph 4, Section 3 (6)[15] thereof, the shipper has the right to bring a suit within one year after the delivery of the goods or the date when the goods should have been delivered, in respect of loss or damage thereto.

The trial court held:

> In the case at bar, the records show that the shipment was delivered to the consignee on 22, 23 and 29 of November 2002. The plaintiff took almost a year to approve and pay the claim of its assured, San Miguel, despite the fact that it had initially received the latter's claim as well as the inspection report and survey report of McLarens as early as January 2003. The assured/consignee had only until November of 2003 within which to file a suit against the defendant. However, the instant case was filed only on September 7, 2005 or almost three (3) years from the date the subject shipment was delivered to the consignee. The plaintiff, as insurer of the shipment which has paid the claim of the insured, is subrogated to all the rights of the said insured in relation to the reimbursement of such claim. As such, the plaintiff cannot acquire better rights than that of the insured. Thus, the plaintiff has no one but itself to blame for having acted lackadaisically on San Miguel's claim.
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> WHEREFORE, the complaint and counterclaim are hereby DISMISSED.[16]

Petitioner's motion for reconsideration was denied by the trial court in the Order[17] dated December 4, 2007.

Petitioner filed this petition under Rule 45 of the Rules of Court directly before this Court, alleging that it is raising a pure question of law:

> THE TRIAL COURT COMMITTED A PURE AND SERIOUS ERROR OF LAW IN APPLYING THE ONE-YEAR PRESCRIPTIVE PERIOD FOR FILING A SUIT UNDER THE CARRIAGE OF GOODS BY SEA ACT (COGSA) TO AN ARRASTRE OPERATOR.[18]

Petitioner states that while it is in full accord with the trial court in finding respondent liable for the damaged shipment, it submits that the trial court's dismissal of the complaint on the ground of prescription under the COGSA is legally erroneous. It contends that the one-year limitation period for bringing a suit in court under the COGSA is not applicable to this case, because the prescriptive period applies only to the carrier and the ship. It argues that respondent, which is engaged in warehousing, arrastre and stevedoring business, is not a carrier as defined by the COGSA, because it is not engaged in the business of transportation of goods by sea in international trade as a common carrier. Petitioner asserts that since the complaint was filed against respondent arrastre operator only, without impleading the carrier, the prescriptive period under the COGSA is not applicable to this case.

Moreover, petitioner contends that the term "carriage of goods" in the COGSA covers the period from the time the goods are loaded to the vessel to the time they are discharged therefrom. It points out that it sued respondent only for the additional five (5) packages of the subject shipment that were found damaged while in respondent's custody, long after the shipment was discharged from the vessel. The said damage was confirmed by the trial court and proved by the Request for Bad Order Survey No. 56422.[19]

Petitioner prays that the decision of the trial court be reversed and set aside and a new judgment be promulgated granting its prayer for actual damages.

The main issues are: (1) whether or not the one-year prescriptive period for filing a suit under the COGSA applies to this action for damages against respondent arrastre operator; and (2) whether or not petitioner is entitled to recover actual damages in the amount of P431,592.14 from respondent.

To reiterate, petitioner came straight to this Court to appeal from the decision of the trial court under Rule 45 of the Rules of Court on the ground that it is raising only a question of law.

Microsoft Corporation v. Maxicorp, Inc.[20] explains the difference between questions of law and questions of fact, thus:

> The distinction between questions of law and questions of fact is settled. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts. Though this delineation seems simple, determining the true nature and extent of the distinction is sometimes problematic. For example, it is incorrect to presume that all cases where the facts are not in dispute automatically involve purely questions of law.

> There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. x x x[21]

In this case, although petitioner alleged that it is merely raising a question of law, that is, whether or not the prescriptive period under the COGSA applies to an action for damages against respondent arrastre operator, yet petitioner prays for the reversal of the decision of the trial court and that it be granted the relief sought, which is the award of actual damages in the amount of P431,592.14. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[22] However, to resolve the issue of whether or not petitioner is entitled to recover actual damages from respondent requires the Court to evaluate the evidence on record; hence, petitioner is also raising a question of fact.

Under Section 1, Rule 45, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth.[23] The Court may resolve questions of fact only when the case falls under the following exceptions:

> (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; **(4) when the judgment is based on a misapprehension of facts;** (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[24]

In this case, the fourth exception cited above applies, as the trial court rendered judgment based on a misapprehension of facts.

We first resolve the issue on whether or not the one-year prescriptive period for filing a suit under the COGSA applies to respondent arrastre operator.

The Carriage of Goods by Sea Act (COGSA), Public Act No. 521 of the 74th US Congress, was accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade by virtue of CA No. 65.