

## THIRD DIVISION

[ G.R. No. 179488, April 23, 2012 ]

### **COSCO PHILIPPINES SHIPPING, INC., PETITIONER, VS. KEMPER INSURANCE COMPANY, RESPONDENT.**

### **D E C I S I O N**

#### **PERALTA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA-G.R. CV No. 75895, entitled *Kemper Insurance Company v. Cosco Philippines Shipping, Inc.* The CA Decision reversed and set aside the Order dated March 22, 2002 of the Regional Trial Court (RTC), Branch 8, Manila, which granted the Motion to Dismiss filed by petitioner Cosco Philippines Shipping, Inc., and ordered that the case be remanded to the trial court for further proceedings.

The antecedents are as follows:

Respondent Kemper Insurance Company is a foreign insurance company based in Illinois, United States of America (USA) with no license to engage in business in the Philippines, as it is not doing business in the Philippines, except in isolated transactions; while petitioner is a domestic shipping company organized in accordance with Philippine laws.

In 1998, respondent insured the shipment of imported frozen boneless beef (owned by Genosi, Inc.), which was loaded at a port in Brisbane, Australia, for shipment to Genosi, Inc. (the importer-consignee) in the Philippines. However, upon arrival at the Manila port, a portion of the shipment was rejected by Genosi, Inc. by reason of spoilage arising from the alleged temperature fluctuations of petitioner's reefer containers.

Thus, Genosi, Inc. filed a claim against both petitioner shipping company and respondent Kemper Insurance Company. The claim was referred to McLarens Chartered for investigation, evaluation, and adjustment of the claim. After processing the claim documents, McLarens Chartered recommended a settlement of the claim in the amount of \$64,492.58, which Genosi, Inc. (the consignee-insured) accepted.

Thereafter, respondent paid the claim of Genosi, Inc. (the insured) in the amount of \$64,492.58. Consequently, Genosi, Inc., through its General Manager, Avelino S. Mangahas, Jr., executed a Loss and Subrogation Receipt<sup>[3]</sup> dated September 22, 1999, stating that Genosi, Inc. received from respondent the amount of \$64,492.58 as the full and final satisfaction compromise, and discharges respondent of all claims for losses and expenses sustained by the property insured, under various policy numbers, due to spoilage brought about by machinery breakdown which occurred

on October 25, November 7 and 10, and December 5, 14, and 18, 1998; and, in consideration thereof, subrogates respondent to the claims of Genosi, Inc. to the extent of the said amount. Respondent then made demands upon petitioner, but the latter failed and refused to pay the said amount.

Hence, on October 28, 1999, respondent filed a Complaint for Insurance Loss and Damages<sup>[4]</sup> against petitioner before the trial court, docketed as Civil Case No. 99-95561, entitled *Kemper Insurance Company v. Cosco Philippines Shipping, Inc.* Respondent alleged that despite repeated demands to pay and settle the total amount of US\$64,492.58, representing the value of the loss, petitioner failed and refused to pay the same, thereby causing damage and prejudice to respondent in the amount of US\$64,492.58; that the loss and damage it sustained was due to the fault and negligence of petitioner, specifically, the fluctuations in the temperature of the reefer container beyond the required setting which was caused by the breakdown in the electronics controller assembly; that due to the unjustified failure and refusal to pay its just and valid claims, petitioner should be held liable to pay interest thereon at the legal rate from the date of demand; and that due to the unjustified refusal of the petitioner to pay the said amount, it was compelled to engage the services of a counsel whom it agreed to pay 25% of the whole amount due as attorney's fees. Respondent prayed that after due hearing, judgment be rendered in its favor and that petitioner be ordered to pay the amount of US\$64,492.58, or its equivalent in Philippine currency at the prevailing foreign exchange rate, or a total of P2,594,513.00, with interest thereon at the legal rate from date of demand, 25% of the whole amount due as attorney's fees, and costs.

In its Answer<sup>[5]</sup> dated November 29, 1999, petitioner insisted, among others, that respondent had no capacity to sue since it was doing business in the Philippines without the required license; that the complaint has prescribed and/or is barred by laches; that no timely claim was filed; that the loss or damage sustained by the shipments, if any, was due to causes beyond the carrier's control and was due to the inherent nature or insufficient packing of the shipments and/or fault of the consignee or the hired stevedores or arrastre operator or the fault of persons whose acts or omissions cannot be the basis of liability of the carrier; and that the subject shipment was discharged under required temperature and was complete, sealed, and in good order condition.

During the pre-trial proceedings, respondent's counsel proffered and marked its exhibits, while petitioner's counsel manifested that he would mark his client's exhibits on the next scheduled pre-trial. However, on November 8, 2001, petitioner filed a Motion to Dismiss,<sup>[6]</sup> contending that the same was filed by one Atty. Rodolfo A. Lat, who failed to show his authority to sue and sign the corresponding certification against forum shopping. It argued that Atty. Lat's act of signing the certification against forum shopping was a clear violation of Section 5, Rule 7 of the 1997 Rules of Court.

In its Order<sup>[7]</sup> dated March 22, 2002, the trial court granted petitioner's Motion to Dismiss and dismissed the case without prejudice, ruling that it is mandatory that the certification must be executed by the petitioner himself, and not by counsel. Since respondent's counsel did not have a Special Power of Attorney (SPA) to act on its behalf, hence, the certification against forum shopping executed by said counsel was fatally defective and constituted a valid cause for dismissal of the complaint.

Respondent's Motion for Reconsideration<sup>[8]</sup> was denied by the trial court in an Order<sup>[9]</sup> dated July 9, 2002.

On appeal by respondent, the CA, in its Decision<sup>[10]</sup> dated March 23, 2007, reversed and set aside the trial court's order. The CA ruled that the required certificate of non-forum shopping is mandatory and that the same must be signed by the plaintiff or principal party concerned and not by counsel; and in case of corporations, the physical act of signing may be performed in behalf of the corporate entity by specifically authorized individuals. However, the CA pointed out that the factual circumstances of the case warranted the liberal application of the rules and, as such, ordered the remand of the case to the trial court for further proceedings.

Petitioner's Motion for Reconsideration<sup>[11]</sup> was later denied by the CA in the Resolution<sup>[12]</sup> dated September 3, 2007.

Hence, petitioner elevated the case to this Court *via* Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, with the following issues:

THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT ATTY. RODOLFO LAT WAS PROPERLY AUTHORIZED BY THE RESPONDENT TO SIGN THE CERTIFICATE AGAINST FORUM SHOPPING DESPITE THE UNDISPUTED FACTS THAT:

A) THE PERSON WHO EXECUTED THE SPECIAL POWER OF ATTORNEY (SPA) APPOINTING ATTY. LAT AS RESPONDENT'S ATTORNEY-IN-FACT WAS MERELY AN UNDERWRITER OF THE RESPONDENT WHO HAS NOT SHOWN PROOF THAT HE WAS AUTHORIZED BY THE BOARD OF DIRECTORS OF RESPONDENT TO DO SO.

B) THE POWERS GRANTED TO ATTY. LAT REFER TO [THE AUTHORITY TO REPRESENT DURING THE] PRE-TRIAL [STAGE] AND DO NOT COVER THE SPECIFIC POWER TO SIGN THE CERTIFICATE.<sup>[13]</sup>

Petitioner alleged that respondent failed to submit any board resolution or secretary's certificate authorizing Atty. Lat to institute the complaint and sign the certificate of non-forum shopping on its behalf. Petitioner submits that since respondent is a juridical entity, the signatory in the complaint must show proof of his or her authority to sign on behalf of the corporation. Further, the SPA<sup>[14]</sup> dated May 11, 2000, submitted by Atty. Lat, which was notarized before the Consulate General of Chicago, Illinois, USA, allegedly authorizing him to represent respondent in the pre-trial and other stages of the proceedings was signed by one Brent Healy (respondent's underwriter), who lacks authorization from its board of directors.

In its Comment, respondent admitted that it failed to attach in the complaint a concrete proof of Atty. Lat's authority to execute the certificate of non-forum shopping on its behalf. However, there was subsequent compliance as respondent submitted an authenticated SPA empowering Atty. Lat to represent it in the pre-trial and all stages of the proceedings. Further, it averred that petitioner is barred by

laches from questioning the purported defect in respondent's certificate of non-forum shopping.

The main issue in this case is whether Atty. Lat was properly authorized by respondent to sign the certification against forum shopping on its behalf.

The petition is meritorious.

We have consistently held that the certification against forum shopping must be signed by the principal parties.<sup>[15]</sup> If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.<sup>[16]</sup> With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document.<sup>[17]</sup> A corporation has no power, except those expressly conferred on it by the Corporation Code and those that are implied or incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Thus, it has been observed that the power of a corporation to sue and be sued in any court is lodged with the board of directors that exercises its corporate powers. In turn, physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.<sup>[18]</sup>

In *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP)*,<sup>[19]</sup> we ruled that only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping on behalf of a corporation. We also required proof of such authority to be presented. The petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority.

In the present case, since respondent is a corporation, the certification must be executed by an officer or member of the board of directors or by one who is duly authorized by a resolution of the board of directors; otherwise, the complaint will have to be dismissed.<sup>[20]</sup> The lack of certification against forum shopping is generally not curable by mere amendment of the complaint, but shall be a cause for the dismissal of the case without prejudice.<sup>[21]</sup> The same rule applies to certifications against forum shopping signed by a person on behalf of a corporation which are unaccompanied by proof that said signatory is authorized to file the complaint on behalf of the corporation.<sup>[22]</sup>

There is no proof that respondent, a private corporation, authorized Atty. Lat, through a board resolution, to sign the verification and certification against forum shopping on its behalf. Accordingly, the certification against forum shopping appended to the complaint is fatally defective, and warrants the dismissal of respondent's complaint for Insurance Loss and Damages (Civil Case No. 99-95561) against petitioner.

In *Republic v. Coalbrine International Philippines, Inc.*,<sup>[23]</sup> the Court cited instances wherein the lack of authority of the person making the certification of non-forum shopping was remedied through subsequent compliance by the parties therein.