

SECOND DIVISION

[G.R. No. 171337, July 30, 2012]

**BENJAMIN CUA (CUA ULAN TEK), PETITIONER, VS. WALLEM
PHILIPPINES SHIPPING, INC. AND ADVANCE SHIPPING
CORPORATION, RESPONDENTS.**

D E C I S I O N

BRION, J.:

Petitioner Benjamin Cua invokes the Court's power of review, through a petition for review on *certiorari*,^[1] to set aside the decision dated May 16, 2005^[2] and the resolution dated January 31, 2006^[3] of the Court of Appeals (CA) in CA-G.R. CV No. 53538. The CA rulings reversed the decision dated December 28, 1995^[4] of the Regional Trial Court (RTC), Branch 31, Manila, in Civil Case No. 90-55098, where the RTC ordered the respondents, Wallem Philippines Shipping, Inc. (*Wallem*) and Advance Shipping Corporation (*Advance Shipping*), jointly and severally liable to pay damages in favor of Cua.

THE FACTS

On November 12, 1990, Cua filed a civil action for damages against Wallem and Advance Shipping before the RTC of Manila.^[5] Cua sought the payment of P2,030,303.52 for damage to 218 tons and for a shortage of 50 tons of shipment of Brazilian Soyabean consigned to him, as evidenced by Bill of Lading No. 10. He claimed that the loss was due to the respondents' failure to observe extraordinary diligence in carrying the cargo. Advance Shipping (a foreign corporation) was the owner and manager of M/V *Argo Trader* that carried the cargo, while Wallem was its local agent.

Advance Shipping filed a motion to dismiss the complaint,^[6] assailing the RTC's jurisdiction over Cua's claim; it argued that Cua's claim should have first been brought to arbitration. Cua opposed Advance Shipping's argument; he contended that he, as a consignee, was not bound by the Charter Party Agreement, which was a contract between the ship owner (Advance Shipping) and the charterers.^[7] The RTC initially deferred resolving the question of jurisdiction until after trial on the merits,^[8] but upon motion by Advance Shipping,^[9] the RTC ruled that Cua was not bound by the arbitration clause in the Charter Party Agreement.^[10]

In the meantime, Wallem filed its own motion to dismiss,^[11] raising the sole ground of prescription. Section 3(6) of the Carriage of Goods by Sea Act (COGSA) provides that "the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought **within one year after delivery of the goods.**" Wallem alleged that the goods were delivered to Cua on August 16, 1989, but the damages suit was instituted only on November 12, 1990 – more than one year than

the period allotted under the COGSA. Since the action was filed beyond the one year prescriptive period, Wallem argued that Cua's action has been barred.

Cua filed an opposition to Wallem's motion to dismiss, denying the latter's claim of prescription.^[12] Cua referred to the **August 10, 1990** telex message sent by Mr. A.R. Filder of Thomas Miller,^[13] manager of the UK P&I Club,^[14] which stated that Advance Shipping agreed to extend the commencement of suit for 90 days, from August 14, 1990 to November 12, 1990; the extension was made with the concurrence of the insurer of the vessel, the UK P&I Club. A copy of the August 10, 1990 telex was *supposedly* attached to Cua's opposition.

On February 11, 1992, Wallem filed an omnibus motion,^[15] withdrawing its motion to dismiss and adopting instead the arguments in Advance Shipping's motion to dismiss. It made an express reservation, however, that it was not waiving "the defense of prescription and will allege as one of its defenses, such defense of prescription and/or laches in its Answer should this be required by the circumstances[.]"^[16] Accordingly, in an order dated June 5, 1992,^[17] the RTC resolved that "the Court need not act on the Motion to Dismiss filed by the defendant Wallem Philippines Shipping, Inc.["^[18] and required the defendants therein to file their Answer.

After trial on the merits, the RTC issued its decision on December 28, 1995,^[19] ordering the respondents jointly and severally liable to pay as damages to Cua:

1. the amount of P2,030,000.00, plus interests until the same is fully paid;
2. the sum of P100,00.00 as attorney's fees; and
3. the costs of [the] suit,

and dismissing the counterclaims of the respondents.

The respondents filed an appeal with the CA, insisting that Cua's claim is arbitrable and has been barred by prescription and/or laches.^[20] The CA found the respondents' claim of prescription meritorious after finding that the August 10, 1990 telex message, extending the period to file an action, was neither attached to Cua's opposition to Wallem's motion to dismiss, nor presented during trial. The CA ruled that there was no basis for the RTC to conclude that the prescriptive period was extended by the parties' agreement. Hence, it set aside the RTC decision and dismissed Cua's complaint.^[21]

Cua filed a motion for reconsideration^[22] of the CA decision, which was denied by the CA in a resolution dated January 31, 2006.^[23] Cua thus filed the present petition to assail the CA rulings.

THE PARTIES' ARGUMENTS

Cua contends that the extension of the period to file a complaint for damages was a fact that was already admitted by the respondents who may no longer assert the contrary, unless they sufficiently show that it was made through palpable mistake or that no admission was made. Cua points out that Wallem's motion to dismiss raised solely the issue of prescription, which he refuted by referring to the August 10, 1990

telex message extending the prescriptive period. Immediately after, Wallem withdrew its motion to dismiss. Cua thus attributes the withdrawal to an admission by Wallem of the existence of the August 10, 1990 telex message. Cua adds that Wallem's withdrawal of its motion to dismiss dispensed with the need for him to present as evidence the telex message, since the RTC ruled that there is no more need to act on the motion to dismiss. Cua, therefore, prays for the setting aside of the CA rulings and the reinstatement of the RTC decision.

The respondents, on the other hand, deny that an admission was made with respect to the existence of the August 10, 1990 telex message. The telex message was never attached to Cua's opposition to Wallem's motion to dismiss, hence, there was no need for the respondents to deny its existence. They contend that Wallem's withdrawal of its motion to dismiss does not amount to an admission of the existence of the telex message, nor does it amount to a waiver of the defense for prescription. As stated in the June 5, 1992 Order of the RTC, the "defendant [referring to Wallem] moved for the withdrawal of the Motion to Dismiss *without waiving the defense of prescription*."^[24] They thus pray for the denial of the petition.

THE COURT'S RULING

The basic issue presented by the case is *whether Cua's claim for payment of damages against the respondents has prescribed*. After considering the facts and the applicable law, the Court finds that Cua timely filed his claim before the trial court.

Prescription may be considered by the courts motu proprio if the facts supporting the ground are apparent from the pleadings or the evidence on record

Section 1, Rule 16 of the Rules of Court^[25] enumerates the grounds on which a motion to dismiss a complaint may be based, and the prescription of an action is included as one of the grounds under paragraph (f). The defendant may either raise the grounds in a motion to dismiss or plead them as an affirmative defense in his answer.^[26] The failure to raise or plead the grounds generally amounts to a waiver, except if the ground pertains to (1) lack of jurisdiction over the subject matter, (2) *litis pendentia*, (3) *res judicata*, or (4) prescription.^[27] If the facts supporting any of these four listed grounds are apparent from the pleadings or the evidence on record, the courts may consider these grounds *motu proprio* and accordingly dismiss the complaint. Accordingly, no reversible error may be attributed to the CA in considering prescription as a ground to dismiss Cua's action despite Wallem's supposed waiver of the defense. The Court, therefore, need not resolve the question of whether Wallem actually waived the defense of prescription; an inquiry into this question is useless, as courts are empowered to dismiss actions on the basis of prescription even if it is not raised by the defendant so long as the facts supporting this ground are evident from the records. In the present case, what is decisive is whether the pleadings and the evidence support a finding that Cua's claim has prescribed, and it is on this point that we disagree with the CA's findings. We find that the CA failed to appreciate the admissions made by the respondents in their pleadings that negate a finding of prescription of Cua's claim.

***Respondents admitted the agreement
extending the period to file the claim***

The COGSA is the applicable law for all contracts for carriage of goods by sea to and from Philippine ports in foreign trade;^[28] it is thus the law that the Court shall consider in the present case since the cargo was transported from Brazil to the Philippines.

Under **Section 3(6) of the COGSA**, the carrier is discharged from liability for loss or damage to the cargo “unless the suit is brought within **one year after delivery of the goods** or the date when the goods should have been delivered.”^[29] Jurisprudence, however, recognized the validity of an agreement between the carrier and the shipper/consignee extending the one-year period to file a claim.^[30]

The vessel *MV Argo Trader* arrived in Manila on July 8, 1989; Cua’s complaint for damages was filed before the RTC of Manila on November 12, 1990. Although the complaint was clearly filed beyond the one-year period, Cua additionally alleged in his complaint (under paragraph 11) that “[t]he defendants x x x agreed to **extend the time for filing of the action up to November 12, 1990.**”^[31]

The allegation of an agreement extending the period to file an action in Cua’s complaint is a material averment that, under Section 11, Rule 8 of the Rules of Court, must be specifically denied by the respondents; otherwise, the allegation is deemed admitted.^[32]

A specific denial is made by specifying each material allegation of fact, the truth of which the defendant does not admit and, whenever practicable, setting forth the substance of the matters upon which he relies to support his denial.^[33] The purpose of requiring the defendant to make a specific denial is to make him disclose the matters alleged in the complaint which he succinctly intends to disprove at the trial, *together with the matter which he relied upon to support the denial.*^[34]

A review of the pleadings submitted by the respondents discloses that they failed to specifically deny Cua’s allegation of an agreement extending the period to file an action to November 12, 1990. Wallem’s motion to dismiss simply referred to the fact that Cua’s complaint was filed more than one year from the arrival of the vessel, but it did not contain a denial of the extension.^[35] Advance Shipping’s motion to dismiss, on the other hand, focused solely on its contention that the action was premature for failure to first undergo arbitration.^[36] While the joint answer submitted by the respondents denied Cua’s allegation of an extension,^[37] they made no further statement other than a bare and unsupported contention that Cua’s “complaint is barred by prescription and/or laches[.]”^[38] The respondents did not provide in their joint answer any factual basis for their belief that the complaint had prescribed.

We cannot consider the respondents’ discussion on prescription in their Memorandum filed with the RTC,^[39] since their arguments were based on Cua’s supposed failure to comply with Article 366 of the Code of Commerce, not Section