

## SECOND DIVISION

[ G.R. No. 184300, July 11, 2012 ]

**MALAYAN INSURANCE CO., INC., PETITIONER, VS. PHILIPPINES  
FIRST INSURANCE CO., INC. AND REPUTABLE FORWARDER  
SERVICES, INC., RESPONDENTS.**

### DECISION

**REYES, J.:**

Before the Court is a petition for review on *certiorari* filed by petitioner Malayan Insurance Co., Inc. (Malayan) assailing the Decision<sup>[1]</sup> dated February 29, 2008 and Resolution<sup>[2]</sup> dated August 28, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 71204 which affirmed with modification the decision of the Regional Trial Court (RTC), Branch 38 of Manila.

#### Antecedent Facts

Since 1989, Wyeth Philippines, Inc. (Wyeth) and respondent Reputable Forwarder Services, Inc. (Reputable) had been annually executing a contract of carriage, whereby the latter undertook to transport and deliver the former's products to its customers, dealers or salesmen.<sup>[3]</sup>

On November 18, 1993, Wyeth procured Marine Policy No. MAR 13797 (Marine Policy) from respondent Philippines First Insurance Co., Inc. (Philippines First) to secure its interest over its own products. Philippines First thereby insured Wyeth's nutritional, pharmaceutical and other products usual or incidental to the insured's business while the same were being transported or shipped in the Philippines. The policy covers all risks of direct physical loss or damage from any external cause, if by land, and provides a limit of P6,000,000.00 per any one land vehicle.

On December 1, 1993, Wyeth executed its annual contract of carriage with Reputable. It turned out, however, that the contract was not signed by Wyeth's representative/s.<sup>[4]</sup> Nevertheless, it was admittedly signed by Reputable's representatives, the terms thereof faithfully observed by the parties and, as previously stated, the same contract of carriage had been annually executed by the parties every year since 1989.<sup>[5]</sup>

Under the contract, Reputable undertook to answer for "all risks with respect to the goods and shall be liable to the COMPANY (Wyeth), for the loss, destruction, or damage of the goods/products due to any and all causes whatsoever, including theft, robbery, flood, storm, earthquakes, lightning, and other *force majeure* while the goods/products are in transit and until actual delivery to the customers, salesmen, and dealers of the COMPANY".<sup>[6]</sup> The contract also required Reputable to secure an insurance policy on Wyeth's goods.<sup>[7]</sup> Thus, on February 11, 1994,

Reputable signed a Special Risk Insurance Policy (SR Policy) with petitioner Malayan for the amount of P1,000,000.00.

On October 6, 1994, during the effectivity of the Marine Policy and SR Policy, Reputable received from Wyeth 1,000 boxes of Promil infant formula worth P2,357,582.70 to be delivered by Reputable to Mercury Drug Corporation in Libis, Quezon City. Unfortunately, on the same date, the truck carrying Wyeth's products was hijacked by about 10 armed men. They threatened to kill the truck driver and two of his helpers should they refuse to turn over the truck and its contents to the said highway robbers. The hijacked truck was recovered two weeks later without its cargo.

On March 8, 1995, Philippines First, after due investigation and adjustment, and pursuant to the Marine Policy, paid Wyeth P2,133,257.00 as indemnity. Philippines First then demanded reimbursement from Reputable, having been subrogated to the rights of Wyeth by virtue of the payment. The latter, however, ignored the demand.

Consequently, Philippines First instituted an action for sum of money against Reputable on August 12, 1996.<sup>[8]</sup> In its complaint, Philippines First stated that Reputable is a "private corporation engaged in the business of a common carrier." In its answer,<sup>[9]</sup> Reputable claimed that it is a private carrier. It also claimed that it cannot be made liable under the contract of carriage with Wyeth since the contract was not signed by Wyeth's representative and that the cause of the loss was *force majeure*, i.e., the hijacking incident.

Subsequently, Reputable impleaded Malayan as third-party defendant in an effort to collect the amount covered in the SR Policy. According to Reputable, "it was validly insured with [Malayan] for P1,000,000.00 with respect to the lost products under the latter's Insurance Policy No. SR-0001 02577 effective February 1, 1994 to February 1, 1995" and that the SR Policy covered the risk of robbery or hijacking.<sup>[10]</sup>

Disclaiming any liability, Malayan argued, among others, that under Section 5 of the SR Policy, the insurance does not cover any loss or damage to property which at the time of the happening of such loss or damage is insured by any marine policy and that the SR Policy expressly excluded third-party liability.

After trial, the RTC rendered its Decision<sup>[11]</sup> finding Reputable liable to Philippines First for the amount of indemnity it paid to Wyeth, among others. In turn, Malayan was found by the RTC to be liable to Reputable to the extent of the policy coverage. The dispositive portion of the RTC decision provides:

WHEREFORE, on the main Complaint, judgment is hereby rendered finding [Reputable] liable for the loss of the Wyeth products and orders it to pay [Philippines First] the following:

1. the amount of P2,133,257.00 representing the amount paid by [Philippines First] to Wyeth for the loss of the products in question;
2. the amount of P15,650.00 representing the adjustment fees paid by [Philippines First] to hired adjusters/surveyors;
3. the amount of P50,000.00 as attorney's fees; and

4. the costs of suit.

On the third-party Complaint, judgment is hereby rendered finding [Malayan] liable to indemnify [Reputable] the following:

1. the amount of P1,000,000.00 representing the proceeds of the insurance policy;
2. the amount of P50,000.00 as attorney's fees; and
3. the costs of suit.

SO ORDERED.<sup>[12]</sup>

Dissatisfied, both Reputable and Malayan filed their respective appeals from the RTC decision.

Reputable asserted that the RTC erred in holding that its contract of carriage with Wyeth was binding despite Wyeth's failure to sign the same. Reputable further contended that the provisions of the contract are unreasonable, unjust, and contrary to law and public policy.

For its part, Malayan invoked Section 5 of its SR Policy, which provides:

Section 5. INSURANCE WITH OTHER COMPANIES. The insurance does not cover any loss or damage to property which at the time of the happening of such loss or damage is insured by or would but for the existence of this policy, be insured by any Fire or Marine policy or policies except in respect of any excess beyond the amount which would have been payable under the Fire or Marine policy or policies had this insurance not been effected.

Malayan argued that inasmuch as there was already a marine policy issued by Philippines First securing the same subject matter against loss and that since the monetary coverage/value of the Marine Policy is more than enough to indemnify the hijacked cargo, Philippines First alone must bear the loss.

Malayan sought the dismissal of the third-party complaint against it. In the alternative, it prayed that it be held liable for no more than P468,766.70, its alleged pro-rata share of the loss based on the amount covered by the policy, subject to the provision of Section 12 of the SR Policy, which states:

12. OTHER INSURANCE CLAUSE. If at the time of any loss or damage happening to any property hereby insured, there be any other subsisting insurance or insurances, whether effected by the insured or by any other person or persons, covering the same property, the company shall not be liable to pay or contribute more than its ratable proportion of such loss or damage.

On February 29, 2008, the CA rendered the assailed decision sustaining the ruling of

the RTC, the decretal portion of which reads:

**WHEREFORE**, in view of the foregoing, the assailed Decision dated 29 September 2000, as modified in the Order dated 21 July 2001, is **AFFIRMED** with **MODIFICATION** in that the award of attorney's fees in favor of Reputable is **DELETED**.

**SO ORDERED.**<sup>[13]</sup>

The CA ruled, among others, that: (1) Reputable is estopped from assailing the validity of the contract of carriage on the ground of lack of signature of Wyeth's representative/s; (2) Reputable is liable under the contract for the value of the goods even if the same was lost due to fortuitous event; and (3) Section 12 of the SR Policy prevails over Section 5, it being the latter provision; however, since the ratable proportion provision of Section 12 applies only in case of double insurance, which is not present, then it should not be applied and Malayan should be held liable for the full amount of the policy coverage, that is, P1,000,000.00.<sup>[14]</sup>

On March 14, 2008, Malayan moved for reconsideration of the assailed decision but it was denied by the CA in its Resolution dated August 28, 2008.<sup>[15]</sup>

Hence, this petition.

Malayan insists that the CA failed to properly resolve the issue on the "statutory limitations on the liability of common carriers" and the "difference between an 'other insurance clause' and an 'over insurance clause'."

Malayan also contends that the CA erred when it held that Reputable is a private carrier and should be bound by the contractual stipulations in the contract of carriage. This argument is based on its assertion that Philippines First judicially admitted in its complaint that Reputable is a common carrier and as such, Reputable should not be held liable pursuant to Article 1745(6) of the Civil Code.<sup>[16]</sup> Necessarily, if Reputable is not liable for the loss, then there is no reason to hold Malayan liable to Reputable.

Further, Malayan posits that there resulted in an impairment of contract when the CA failed to apply the express provisions of Section 5 (referred to by Malayan as over insurance clause) and Section 12 (referred to by Malayan as other insurance clause) of its SR Policy as these provisions could have been read together there being no actual conflict between them.

Reputable, meanwhile, contends that it is exempt from liability for acts committed by thieves/robbers who act with grave or irresistible threat whether it is a common carrier or a private/special carrier. It, however, maintains the correctness of the CA ruling that Malayan is liable to Philippines First for the full amount of its policy coverage and not merely a ratable portion thereof under Section 12 of the SR Policy.

Finally, Philippines First contends that the factual finding that Reputable is a private carrier should be accorded the highest degree of respect and must be considered conclusive between the parties, and that a review of such finding by the Court is not

warranted under the circumstances. As to its alleged judicial admission that Reputable is a common carrier, Philippines First proffered the declaration made by Reputable that it is a private carrier. Said declaration was allegedly reiterated by Reputable in its third party complaint, which in turn was duly admitted by Malayan in its answer to the said third-party complaint. In addition, Reputable even presented evidence to prove that it is a private carrier.

As to the applicability of Sections 5 and 12 in the SR Policy, Philippines First reiterated the ruling of the CA. Philippines First, however, prayed for a slight modification of the assailed decision, praying that Reputable and Malayan be rendered solidarily liable to it in the amount of P998,000.00, which represents the balance from the P1,000,000.00 coverage of the SR Policy after deducting P2,000.00 under Section 10 of the said SR Policy.<sup>[17]</sup>

### **Issues**

The liability of Malayan under the SR Policy hinges on the following issues for resolution:

- 1) Whether Reputable is a private carrier;
- 2) Whether Reputable is strictly bound by the stipulations in its contract of carriage with Wyeth, such that it should be liable for any risk of loss or damage, for any cause whatsoever, including that due to theft or robbery and other *force majeure*;
- 3) Whether the RTC and CA erred in rendering “nugatory” Sections 5 and Section 12 of the SR Policy; and
- 4) Whether Reputable should be held solidarily liable with Malayan for the amount of P998,000.00 due to Philippines First.

### **The Court’s Ruling**

#### **On the first issue – Reputable is a private carrier.**

The Court agrees with the RTC and CA that Reputable is a private carrier. The issue of whether a carrier is private or common on the basis of facts found by a trial court and/or the appellate court can be valid and reviewable question of law.<sup>[18]</sup> In this case, the conclusion derived by both the RTC and the CA that Reputable is a private carrier finds sufficient basis, not only from the facts on record, but also from prevailing law and jurisprudence.

Malayan relies on the alleged judicial admission of Philippines First in its complaint that Reputable is a common carrier.<sup>[19]</sup> Invoking Section 4, Rule 129 of the Rules on Evidence that “an admission verbal or written, made by a party in the course of the proceeding in the same case, does not require proof,” it is Malayan’s position that the RTC and CA should have ruled that Reputable is a common carrier. Consequently, pursuant to Article 1745(6) of the Civil Code, the liability of Reputable for the loss of Wyeth’s goods should be dispensed with, or at least diminished.