639 Phil. 322

SECOND DIVISION

[G.R. No. 156599, July 26, 2010]

BORMAHECO, INCORPORATED, PETITIONER, VS. MALAYAN INSURANCE COMPANY, INCORPORATED AND INTERWORLD BROKERAGE CORPORATION, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing 1] the August 22, 2002 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. CV NO. 47469, which affirmed the decision of the Regional Trial Court of Manila, Branch 17 *(RTC);* and 2] its December 5, 2002 Resolution which denied the motion for reconsideration of the petitioners.

On December 13, 1985, Marcel Kopfli Company of Lucerne, Switzerland shipped the following cargo to the Manila Peninsula Hotel *(the Hotel)*: (a) one unit Kolb modular construction bakery oven; (b) one steam extraction hood; (c) one lateral proofer; (d) one proofing cabinet; (e) one trolley for setters; (f) eight setters; and (g) spare parts for the Kolb bakery oven. The cargo was packed in one crate and loaded on board the vessel *MS Nedlloyd Dejima* which left the port of Fos, Switzerland on said date. The cargo was insured by the Hotel with the private respondent Malayan Insurance Company *(Malayan).*

On January 6, 1986, *MS Nedlloyd Dejima* arrived at the port in Manila. The subject cargo was unloaded at Pier 13 of the South Harbor in good order and condition. On February 3, 1986, pursuant to its contract with the Hotel, the other private respondent Interworld Brokerage Corporation *(Interworld)* withdrew the cargo from the pier and delivered it to the Hotel's warehouse. For this undertaking, Interworld secured the services of petitioner Border Machinery & Heavy Equipment Co., Incorporated *(Bormaheco)* to provide a forklift truck and a qualified operator for the purpose of unloading the cargo from the delivery truck.[2]

At the premises of the warehouse, Bormaheco's forklift operator, Custodio Trinidad, proceeded to unload the cargo from the delivery truck. He placed the fork under the crate and immediately lifted it. The cargo fell from the fork at a height of six feet and broke open.[3] As a result, the Kolb construction bakery oven, the lateral proofer and the proofing cabinet sustained "extensive damage" and were declared as a "total loss."[4]

For the loss, the Hotel sought indemnity from Malayan under its insurance policy. Malayan paid the Hotel the sum of P690,849.68 plus the additional amount of P75,151.33 representing the *pro-rata* share of the freight charges on the damaged items. In turn, Malayan, which was subrogated to the rights of the Hotel, made formal demands for reimbursement from Interworld but to no avail.

On August 7, 1986, Malayan filed a complaint against Interworld before the RTC of Manila, docketed as Civil Case No. 86-37017 and raffled to Branch 17 thereof. Interworld, on the other hand, filed a Third-Party Complaint against Bormaheco for indemnity or other relief for the damages of the cargo. After trial, the RTC resolved the conflict in favor of the private respondents as it found that the forklift operator lifted the cargo when it was not yet properly balanced causing it to tilt, fall and sustain damages. The *fallo* of the subject decision[5] reads:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff Malayan Insurance Company, Inc. and against defendant and third-party plaintiff Interworld Brokerage Corporation, ordering the latter to pay the former the sum of P756,000.71 with legal interest thereon at the rate of six percent (6%) per annum from August 7, 1986 until the said sum is fully paid, and the further sum of P40,000.00 as attorney's fees.
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> Third-party defendant Bormaheco, Inc. is ordered to pay the defendant and third-party plaintiff whatever sums the latter will pay to the plaintiff by virtue of this judgment.
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> Costs are assessed against the defendant and third-party plaintiff in favor of the plaintiff, and against the third-party defendant in favor of the defendant and third-party plaintiff.
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> The counterclaim of the defendant against the plaintiff as well as the counterclaim of the third-party defendant against the third-party plaintiff are dismissed.
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> SO ORDERED.

Aggrieved, Interworld and Bormaheco separately filed their respective appeals before the Court of Appeals. After a review of the records, the appellate court affirmed the RTC's finding with regard to the damages sustained by the cargo items. [6] The CA gave probative weight to the Final Report of the appraisal company, Adjustment Standards Company. Interworld and Bormaheco failed to convince the CA that the damage was caused by the faulty packing of the cargo rather than by the forklift operator. According to the appellate court,

> x x x. Verily, if the cargo was improperly packed, as appellants would have Us believe, then the accident should have happened while it was in transit. There were a lot of instances when the stacked oven could have caved-in while it was being handled during its voyage yet as the records show, the transport of the cargo went well without incident until that fateful day. There is but one explanation for all these - the cargo was properly handled during transit and corollarily, the trial court was correct in holding the forklift operator responsible for the mishap.
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> Appellants nevertheless suggest that faulty packing caused the stacked oven to suddenly slip - forcing the crate to tilt to the left as the forklift

> was lowering it. Such theory is specious. If the crate was properly balanced on the forklift as the operator claims, then there is no reason why the cargo would slip and tilt on its own force seeing as it was stacked horizontally. Appellants' scenario could only be possible if the crate was not properly balanced on the forklift and the heavier weight is concentrated on one flank, in this case the left side. Settled is the rule that evidence to be believed must not only proceed from the mouth of a credible witness, but it must be credible in itself - such as common experience and observation of mankind can prove as probable under the circumstances. Common experience and observation leads Us to believe that the forklift operator miscalculated the position where he placed the forklift under the crate. This caused the imbalance and eventually induced the crate to tilt and fall towards the left side of the forklift. Hence, Our inclination to believe appellee's explanation that the mishap was brought about by the forklift operator's negligence in suddenly lifting the crate even while it was not yet properly balanced on the fork and thereby causing the entire crate to fall on the ground. This is more in consonance with human observation and experience.[7] (citations omitted)

The CA thus ruled that Interworld was liable under its contract of carriage with the Hotel, wherein the former undertook to transport the subject cargo from the pier to the latter's premises. Since the cargo was damaged when it was being delivered, Interworld is liable therefor pursuant to its contractual undertaking. The appellate court also affirmed the trial court's finding with regard to Bormaheco's liability to Interworld.

> On the other hand, Bormaheco is responsible for the work done by persons whom it employs in its performance. Neither can Bormaheco be absolved from liability because it exercised due diligence in the selection of the employee whose negligent act caused the damage in question. The reason is that the obligation of Bormaheco was created by contract, and Article 2180 is not applicable to negligence arising in the course of the performance of a contractual obligation. Article 2180 is exclusively concerned with cases where negligence arises in the absence of agreement.[8] (citations omitted)

Finally, resolving the issue on whether or not the incident was outside or beyond the thirty (30) day period of coverage of the insurance policy, the CA noted that the incident occurred on February 3, 1986 which was well within the said 30-day period reckoned from January 6, 1986, the date of the unloading. According to the CA, the date February 13, 1986 mentioned in Malayan's initial complaint was nothing but a typographical error which was subsequently corrected and rectified.[9]

Not in conformity, Bormaheco filed this petition for review on certiorari. Malayan submitted its comment, but Interworld did not, despite several court orders. On June 13, 2007, the National Bureau of Investigation's *(NBI)* reported that it failed to locate Interworld's general manager despite efforts to serve this Court's Order of Arrest and Commitment against its president. The Court eventually resolved to

dispense with Interworld's comment.[10] After Bormaheco filed its Reply, the Court gave due course to the petition and required the parties to submit their respective memoranda.

To amplify its prayer for the reversal of the subject decision, in its memorandum, Bormaheco presents the following:

ISSUES

> **WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT AFFIRMED IN TOTO THE DECISION OF BRANCH 17, REGIONAL TRIAL COURT OF MANILA**
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> **WHETHER OR NOT THE CLAIM OF THE RESPONDENT MALAYAN IS STILL ENFORCEABLE AGAINST PETITIONER AND RESPONDENT INTERWORLD**
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> **WHETHER OR NOT THE PETITIONER SHOULD BE HELD LIABLE FOR THE NEGLIGENCE OF RESPONDENT INTERWORLD FOR THE IMPROPER PACKING OF THE GOODS**
>
> **WHETHER OR NOT IT WAS RESPONDENT INTERWORLD WHO EXERCISED SUPERVISION OVER THE FORKLIFT OPERATOR.**[11]

The petition is devoid of merit.

Primarily, petitioner Bormaheco zeroes in on the fact that the Complaint indicated that the incident happened on February 13, 1986, and was, therefore, filed beyond the 30-day coverage of the insurance policy reckoned from the date of discharge of the shipment from the vessel, on January 6, 1986. For said reason, petitioner claims that the policy already expired. It then argues that Malayan's amendment as to the date should not have been permitted because it was a substantial amendment and was filed three (3) years after a responsive pleading had been submitted.

The Court is not persuaded.

At present, Section 4, Rule 10 of the Revised Rules of Court is quite clear with regard to formal amendments:

> SEC. 4. *Formal amendments.* - A defect in the designation of the parties and *other clearly clerical or typographical errors* may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.

Although the Rule prior to its revision did not specifically include the phrase "other clearly clerical or typographical errors," a similar intention may be gleaned from the judicial pronouncements then.