583 Phil. 257

THIRD DIVISION

[G.R. No. 168402, August 06, 2008]

ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. INSURANCE COMPANY OF NORTH AMERICA, RESPONDENT.

D E C I S I O N

REYES, R.T., J.:

THE RIGHT of subrogation attaches upon payment by the insurer of the insurance claims by the assured. As subrogee, the insurer steps into the shoes of the assured and may exercise only those rights that the assured may have against the wrongdoer who caused the damage.

Before Us is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) which reversed the Decision[2] of the Regional Trial Court (RTC). The CA ordered petitioner Aboitiz Shipping Corporation to pay the sum of P280,176.92 plus interest and attorney's fees in favor of respondent Insurance Company of North America (ICNA).

The Facts

Culled from the records, the facts are as follows:

On June 20, 1993, MSAS Cargo International Limited and/or Associated and/or Subsidiary Companies (MSAS) procured a marine insurance policy from respondent ICNA UK Limited of London. The insurance was for a transshipment of certain wooden work tools and workbenches purchased for the consignee Science Teaching Improvement Project (STIP), Ecotech Center, Sudlon Lahug, Cebu City, Philippines.[3] ICNA issued an "all-risk" open marine policy,[4] stating:

> This Company, in consideration of a premium as agreed and subject to the terms and conditions printed hereon, does insure for MSAS Cargo International Limited &/or Associated &/or Subsidiary Companies on behalf of the title holder: - Loss, if any, payable to the Assured or order.[5]

The cargo, packed inside one container van, was shipped "freight prepaid" from Hamburg, Germany on board M/S Katsuragi. A clean bill of lading[6] was issued by Hapag-Lloyd which stated the consignee to be STIP, Ecotech Center, Sudlon Lahug, Cebu City.

The container van was then off-loaded at Singapore and transshipped on board M/S Vigour Singapore. On July 18, 1993, the ship arrived and docked at the Manila International Container Port where the container van was again off-loaded. On July 26, 1993, the cargo was received by petitioner Aboitiz Shipping Corporation

(Aboitiz) through its duly authorized booking representative, Aboitiz Transport System. The bill of lading[7] issued by Aboitiz contained the notation "grounded outside warehouse."

The container van was stripped and transferred to another crate/container van without any notation on the condition of the cargo on the Stuffing/Stripping Report.[8] On August 1, 1993, the container van was loaded on board petitioner's vessel, MV Super Concarrier I. The vessel left Manila *en route* to Cebu City on August 2, 1993.

On August 3, 1993, the shipment arrived in Cebu City and discharged onto a receiving apron of the Cebu International Port. It was then brought to the Cebu Bonded Warehousing Corporation pending clearance from the Customs authorities. In the Stripping Report[9] dated August 5, 1993, petitioner's checker noted that the crates were slightly broken or cracked at the bottom.

On August 11, 1993, the cargo was withdrawn by the representative of the consignee, Science Teaching Improvement Project (STIP) and delivered to Don Bosco Technical High School, Punta Princesa, Cebu City. It was received by Mr. Bernhard Willig. On August 13, 1993, Mayo B. Perez, then Claims Head of petitioner, received a telephone call from Willig informing him that the cargo sustained water damage. Perez, upon receiving the call, immediately went to the bonded warehouse and checked the condition of the container and other cargoes stuffed in the same container. He found that the container van and other cargoes stuffed there were completely dry and showed no sign of wetness.[10]

Perez found that except for the bottom of the crate which was slightly broken, the crate itself appeared to be completely dry and had no water marks. But he confirmed that the tools which were stored inside the crate were already corroded. He further explained that the "grounded outside warehouse" notation in the bill of lading referred only to the container van bearing the cargo.[11]

In a letter dated August 15, 1993, Willig informed Aboitiz of the damage noticed upon opening of the cargo.[12] The letter stated that the crate was broken at its bottom part such that the contents were exposed. The work tools and workbenches were found to have been completely soaked in water with most of the packing cartons already disintegrating. The crate was properly sealed off from the inside with tarpaper sheets. On the outside, galvanized metal bands were nailed onto all the edges. The letter concluded that apparently, the damage was caused by water entering through the broken parts of the crate.

The consignee contacted the Philippine office of ICNA for insurance claims. On August 21, 1993, the Claimsmen Adjustment Corporation (CAC) conducted an ocular inspection and survey of the damage. CAC reported to ICNA that the goods sustained water damage, molds, and corrosion which were discovered upon delivery to consignee.[13]

On September 21, 1993, the consignee filed a formal claim[14] with Aboitiz in the amount of P276,540.00 for the damaged condition of the following goods:

ten (10) wooden workbenches
three (3) carbide-tipped saw blades
one (1) set of ball-bearing guides
one (1) set of overarm router bits
twenty (20) rolls of sandpaper for stroke sander

In a Supplemental Report dated October 20, 1993,[15] CAC reported to ICNA that based on official weather report from the Philippine Atmospheric, Geophysical and Astronomical Services Administration, it would appear that heavy rains on July 28 and 29, 1993 caused water damage to the shipment. CAC noted that the shipment was placed outside the warehouse of Pier No. 4, North Harbor, Manila when it was delivered on July 26, 1993. The shipment was placed outside the warehouse as can be gleaned from the bill of lading issued by Aboitiz which contained the notation "grounded outside warehouse." It was only on July 31, 1993 when the shipment was stuffed inside another container van for shipment to Cebu.

Aboitiz refused to settle the claim. On October 4, 1993, ICNA paid the amount of P280,176.92 to consignee. A subrogation receipt was duly signed by Willig. ICNA formally advised Aboitiz of the claim and subrogation receipt executed in its favor. Despite follow-ups, however, no reply was received from Aboitiz.

RTC Disposition

ICNA filed a civil complaint against Aboitiz for collection of actual damages in the sum of P280,176.92, plus interest and attorney's fees.[16] ICNA alleged that the damage sustained by the shipment was exclusively and solely brought about by the fault and negligence of Aboitiz when the shipment was left grounded outside its warehouse prior to delivery.

Aboitiz disavowed any liability and asserted that the claim had no factual and legal bases. It countered that the complaint stated no cause of action, plaintiff ICNA had no personality to institute the suit, the cause of action was barred, and the suit was premature there being no claim made upon Aboitiz.

On November 14, 2003, the RTC rendered judgment against ICNA. The dispositive portion of the decision[17] states:

> WHEREFORE, premises considered, the court holds that plaintiff is not entitled to the relief claimed in the complaint for being baseless and without merit. The complaint is hereby DISMISSED. The defendant's counterclaims are, likewise, DISMISSED for lack of basis.[18]

The RTC ruled that ICNA failed to prove that it is the real party-in-interest to pursue the claim against Aboitiz. The trial court noted that Marine Policy No. 87GB 4475 was issued by ICNA UK Limited with address at Cigna House, 8 Lime Street, London EC3M 7NA. However, complainant ICNA Phils. did not present any evidence to show that ICNA UK is its predecessor-in-interest, or that ICNA UK assigned the insurance policy to ICNA Phils. Moreover, ICNA Phils.' claim that it had been subrogated to the rights of the consignee must fail because the subrogation receipt had no probative value for being hearsay evidence. The RTC reasoned:

> While it is clear that Marine Policy No. 87GB 4475 was issued by Insurance Company of North America (U.K.) Limited (ICNA UK) with address at Cigna House, 8 Lime Street, London EC3M 7NA, *no evidence has been adduced which would show that ICNA UK is the same as or the predecessor-in-interest of plaintiff Insurance Company of North America ICNA with office address at Cigna-Monarch Bldg., dela Rosa cor. Herrera Sts., Legaspi Village, Makati, Metro Manila or that ICNA UK assigned the Marine Policy to ICNA.* Second, the assured in the Marine Policy appears to be MSAS Cargo International Limited &/or Associated &/or Subsidiary Companies. Plaintiff's witness, Francisco B. Francisco, claims that the signature below the name MSAS Cargo International is an endorsement of the marine policy in favor of Science Teaching Improvement Project. *Plaintiff's witness, however, failed to identify whose signature it was and plaintiff did not present on the witness stand or took (sic) the deposition of the person who made that signature. Hence, the claim that there was an endorsement of the marine policy has no probative value as it is hearsay.*
>
> Plaintiff, further, claims that it has been subrogated to the rights and interest of Science Teaching Improvement Project as shown by the Subrogation Form (Exhibit "K") allegedly signed by a representative of Science Teaching Improvement Project. Such representative, however, was not presented on the witness stand. Hence, the Subrogation Form is self-serving and has no probative value.[19] (Emphasis supplied)

The trial court also found that ICNA failed to produce evidence that it was a foreign corporation duly licensed to do business in the Philippines. Thus, it lacked the capacity to sue before Philippine Courts, to wit:

> Prescinding from the foregoing, ***plaintiff alleged in its complaint that it is a foreign insurance company duly authorized to do business in the Philippines.*** This allegation was, however, denied by the defendant. In fact, in the Pre-Trial Order of 12 March 1996, one of the issues defined by the court is whether or not the plaintiff has legal capacity to sue and be sued. ***Under Philippine law, the condition is that a foreign insurance company must obtain licenses/authority to do business in the Philippines. These licenses/authority are obtained from the Securities and Exchange Commission, the Board of Investments and the Insurance Commission. If it fails to obtain these licenses/authority, such foreign corporation doing business in the Philippines cannot sue before Philippine courts.*** *Mentholatum Co., Inc. v. Mangaliman,* 72 Phil. 524. (Emphasis supplied)

CA Disposition

ICNA appealed to the CA. It contended that the trial court failed to consider that its cause of action is anchored on the right of subrogation under Article 2207 of the Civil Code. ICNA said it is one and the same as the ICNA UK Limited as made known in the dorsal portion of the Open Policy.[20]

On the other hand, Aboitiz reiterated that ICNA lacked a cause of action. It argued that the formal claim was not filed within the period required under Article 366 of

the Code of Commerce; that ICNA had no right of subrogation because the subrogation receipt should have been signed by MSAS, the assured in the open policy, and not Willig, who is merely the representative of the consignee.

On March 29, 2005, the CA reversed and set aside the RTC ruling, disposing as follows:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed decision of the Regional Trial Court of Makati City in Civil Case No. 94-1590 is hereby REVERSED and SET ASIDE. A new judgment is hereby rendered ordering defendant-appellee Aboitiz Shipping Corporation to pay the plaintiff-appellant Insurance Company of North America the sum of P280,176.92 with interest thereon at the legal rate from the date of the institution of this case until fully paid, and attorney's fees in the sum of P50,000, plus the costs of suit.[21]

The CA opined that the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. As subrogee, ICNA is entitled to reimbursement from Aboitiz, even assuming that it is an unlicensed foreign corporation. The CA ruled:

> At any rate, We find the ground invoked for the dismissal of the complaint as legally untenable. Even assuming *arguendo* that the plaintiff-insurer in this case is an unlicensed foreign corporation, such circumstance will not bar it from claiming reimbursement from the defendant carrier by virtue of subrogation under the contract of insurance and as recognized by Philippine courts. x x x
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> x x x x
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> Plaintiff insurer, whether the foreign company or its duly authorized Agent/Representative in the country, as subrogee of the claim of the insured under the subject marine policy, is therefore the real party in interest to bring this suit and recover the full amount of loss of the subject cargo shipped by it from Manila to the consignee in Cebu City. x x x[22]

The CA ruled that the presumption that the carrier was at fault or that it acted negligently was not overcome by any countervailing evidence. Hence, the trial court erred in dismissing the complaint and in not finding that based on the evidence on record and relevant provisions of law, Aboitiz is liable for the loss or damage sustained by the subject cargo.

Issues

The following issues are up for Our consideration:

> (1) THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT ICNA HAS A CAUSE OF ACTION AGAINST ABOITIZ BY VIRTUE OF THE RIGHT OF SUBROGATION BUT WITHOUT CONSIDERING THE ISSUE CONSISTENTLY RAISED BY ABOITIZ THAT THE FORMAL CLAIM OF STIP WAS NOT MADE WITHIN THE PERIOD PRESCRIBED