

FIRST DIVISION

[G.R. NO. 151890, June 20, 2006]

**PRUDENTIAL GUARANTEE AND ASSURANCE INC., PETITIONER,
VS. TRANS-ASIA SHIPPING LINES, INC., RESPONDENT.**

[G.R. NO. 151991]

**TRANS-ASIA SHIPPING LINES, INC., PETITIONER, VS.
PRUDENTIAL GUARANTEE AND ASSURANCE INC., RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

This is a consolidation of two separate Petitions for Review on *Certiorari* filed by petitioner Prudential Guarantee and Assurance, Inc. (PRUDENTIAL) in G.R. No. 151890 and Trans-Asia Shipping Lines, Inc. (TRANS-ASIA) in G.R. No. 151991, assailing the Decision^[1] dated 6 November 2001 of the Court of Appeals in CA G.R. CV No. 68278, which reversed the Judgment^[2] dated 6 June 2000 of the Regional Trial Court (RTC), Branch 13, Cebu City in Civil Case No. CEB-20709. The 29 January 2002 Resolution^[3] of the Court of Appeals, denying PRUDENTIAL's Motion for Reconsideration and TRANS-ASIA's Partial Motion for Reconsideration of the 6 November 2001 Decision, is likewise sought to be annulled and set aside.

The Facts

The material antecedents as found by the court *a quo* and adopted by the appellate court are as follows:

Plaintiff [TRANS-ASIA] is the owner of the vessel M/V Asia Korea. In consideration of payment of premiums, defendant [PRUDENTIAL] insured M/V Asia Korea for loss/damage of the hull and machinery arising from perils, inter alia, of fire and explosion for the sum of P40 Million, beginning [from] the period [of] July 1, 1993 up to July 1, 1994. This is evidenced by Marine Policy No. MH93/1363 (Exhibits "A" to "A-11"). On October 25, 1993, while the policy was in force, a fire broke out while [M/V Asia Korea was] undergoing repairs at the port of Cebu. On October 26, 1993 plaintiff [TRANS-ASIA] filed its notice of claim for damage sustained by the vessel. This is evidenced by a letter/formal claim of even date (Exhibit "B"). Plaintiff [TRANS-ASIA] reserved its right to subsequently notify defendant [PRUDENTIAL] as to the full amount of the claim upon final survey and determination by average adjuster Richard Hogg International (Phil.) of the damage sustained by reason of fire. An adjuster's report on the fire in question was submitted by Richard Hogg International together with the U-Marine Surveyor Report (Exhibits "4" to "4-115").

On May 29, 1995[,] plaintiff [TRANS-ASIA] executed a document denominated "Loan and Trust receipt", a portion of which read (sic):

"Received from Prudential Guarantee and Assurance, Inc., the sum of PESOS THREE MILLION ONLY (P3,000,000.00) as a loan without interest under Policy No. MH 93/1353 [sic], repayable only in the event and to the extent that any net recovery is made by Trans-Asia Shipping Corporation, from any person or persons, corporation or corporations, or other parties, on account of loss by any casualty for which they may be liable occasioned by the 25 October 1993: Fire on Board." (Exhibit "4")

In a letter dated 21 April 1997 defendant [PRUDENTIAL] denied plaintiff's claim (Exhibit "5"). The letter reads:

"After a careful review and evaluation of your claim arising from the above-captioned incident, it has been ascertained that you are in breach of policy conditions, among them "WARRANTED VESSEL CLASSED AND CLASS MAINTAINED". Accordingly, we regret to advise that your claim is not compensable and hereby DENIED."

This was followed by defendant's letter dated 21 July 1997 requesting the return or payment of the P3,000,000.00 within a period of ten (10) days from receipt of the letter (Exhibit "6").^[4]

Following this development, on 13 August 1997, TRANS-ASIA filed a Complaint^[5] for Sum of Money against PRUDENTIAL with the RTC of Cebu City, docketed as Civil Case No. CEB-20709, wherein TRANS-ASIA sought the amount of P8,395,072.26 from PRUDENTIAL, alleging that the same represents the balance of the indemnity due upon the insurance policy in the total amount of P11,395,072.26. TRANS-ASIA similarly sought interest at 42% per annum citing Section 243^[6] of Presidential Decree No. 1460, otherwise known as the "Insurance Code," as amended.

In its Answer,^[7] PRUDENTIAL denied the material allegations of the Complaint and interposed the defense that TRANS-ASIA breached insurance policy conditions, in particular: "WARRANTED VESSEL CLASSED AND CLASS MAINTAINED." PRUDENTIAL further alleged that it acted as facts and law require and incurred no liability to TRANS-ASIA; that TRANS-ASIA has no cause of action; and, that its claim has been effectively waived and/or abandoned, or it is estopped from pursuing the same. By way of a counterclaim, PRUDENTIAL sought a refund of P3,000,000.00, which it allegedly advanced to TRANS-ASIA by way of a loan without interest and without prejudice to the final evaluation of the claim, including the amounts of P500,000.00, for survey fees and P200,000.00, representing attorney's fees.

The Ruling of the Trial Court

On 6 June 2000, the court *a quo* rendered Judgment^[8] finding for (therein defendant) PRUDENTIAL. It ruled that a determination of the parties' liabilities

hinged on whether TRANS-ASIA violated and breached the policy conditions on WARRANTED VESSEL CLASSED AND CLASS MAINTAINED. It interpreted the provision to mean that TRANS-ASIA is required to maintain the vessel at a certain class at all times pertinent during the life of the policy. According to the court *a quo*, TRANS-ASIA failed to prove compliance of the terms of the warranty, the violation thereof entitled PRUDENTIAL, the insured party, to rescind the contract.^[9]

Further, citing Section 107^[10] of the Insurance Code, the court *a quo* ratiocinated that the concealment made by TRANS-ASIA that the vessel was not adequately maintained to preserve its class was a material concealment sufficient to avoid the policy and, thus, entitled the injured party to rescind the contract. The court *a quo* found merit in PRUDENTIAL's contention that there was nothing in the adjustment of the particular average submitted by the adjuster that would show that TRANS-ASIA was not in breach of the policy. Ruling on the denominated loan and trust receipt, the court *a quo* said that in substance and in form, the same is a receipt for a loan. It held that if TRANS-ASIA intended to receive the amount of P3,000,000.00 as advance payment, it should have so clearly stated as such.

The court *a quo* did not award PRUDENTIAL's claim for P500,000.00, representing expert survey fees on the ground of lack of sufficient basis in support thereof. Neither did it award attorney's fees on the rationalization that the instant case does not fall under the exceptions stated in Article 2208^[11] of the Civil Code. However, the court *a quo* granted PRUDENTIAL's counterclaim stating that there is factual and legal basis for TRANS-ASIA to return the amount of P3,000,000.00 by way of loan without interest.

The decretal portion of the Judgment of the RTC reads:

WHEREFORE, judgment is hereby rendered DISMISSING the complaint for its failure to prove a cause of action.

On defendant's counterclaim, plaintiff is directed to return the sum of P3,000,000.00 representing the loan extended to it by the defendant, within a period of ten (10) days from and after this judgment shall have become final and executory.^[12]

The Ruling of the Court of Appeals

On appeal by TRANS-ASIA, the Court of Appeals, in its assailed Decision of 6 November 2001, reversed the 6 June 2000 Judgment of the RTC.

On the issue of TRANS-ASIA's alleged breach of warranty of the policy condition CLASSED AND CLASS MAINTAINED, the Court of Appeals ruled that PRUDENTIAL, as the party asserting the non-compensability of the loss had the burden of proof to show that TRANS-ASIA breached the warranty, which burden it failed to discharge. PRUDENTIAL cannot rely on the lack of certification to the effect that TRANS-ASIA was CLASSED AND CLASS MAINTAINED as its sole basis for reaching the conclusion that the warranty was breached. The Court of Appeals opined that the lack of a certification does not necessarily mean that the warranty was breached by TRANS-ASIA. Instead, the Court of Appeals considered PRUDENTIAL's admission that at the time the insurance contract was entered into between the parties, the vessel was properly classed by Bureau Veritas, a classification society recognized by the

industry. The Court of Appeals similarly gave weight to the fact that it was the responsibility of Richards Hogg International (Phils.) Inc., the average adjuster hired by PRUDENTIAL, to secure a copy of such certification to support its conclusion that mere absence of a certification does not warrant denial of TRANS-ASIA's claim under the insurance policy.

In the same token, the Court of Appeals found the subject warranty allegedly breached by TRANS-ASIA to be a rider which, while contained in the policy, was inserted by PRUDENTIAL without the intervention of TRANS-ASIA. As such, it partakes of a nature of a *contract d'adhesion* which should be construed against PRUDENTIAL, the party which drafted the contract. Likewise, according to the Court of Appeals, PRUDENTIAL's renewal of the insurance policy from noon of 1 July 1994 to noon of 1 July 1995, and then again, until noon of 1 July 1996 must be deemed a waiver by PRUDENTIAL of any breach of warranty committed by TRANS-ASIA.

Further, the Court of Appeals, contrary to the ruling of the court *a quo*, interpreted the transaction between PRUDENTIAL and TRANS-ASIA as one of subrogation, instead of a loan. The Court of Appeals concluded that TRANS-ASIA has no obligation to pay back the amount of P3,000,000.00 to PRUDENTIAL based on its finding that the aforesaid amount was PRUDENTIAL's partial payment to TRANS-ASIA's claim under the policy. Finally, the Court of Appeals denied TRANS-ASIA's prayer for attorney's fees, but held TRANS-ASIA entitled to double interest on the policy for the duration of the delay of payment of the unpaid balance, citing Section 244^[13] of the Insurance Code.

Finding for therein appellant TRANS-ASIA, the Court of Appeals ruled in this wise:

WHEREFORE, the foregoing consideration, We find for Appellant. The instant appeal is ALLOWED and the Judgment appealed from REVERSED. The P3,000,000.00 initially paid by appellee Prudential Guarantee Assurance Incorporated to appellant Trans-Asia and covered by a "Loan and Trust Receipt" dated 29 May 1995 is HELD to be in partial settlement of the loss suffered by appellant and covered by Marine Policy No. MH93/1363 issued by appellee. Further, appellee is hereby ORDERED to pay appellant the additional amount of P8,395,072.26 representing the balance of the loss suffered by the latter as recommended by the average adjuster Richard Hogg International (Philippines) in its Report, with double interest starting from the time Richard Hogg's Survey Report was completed, or on 13 August 1996, until the same is fully paid.

All other claims and counterclaims are hereby DISMISSED.

All costs against appellee.^[14]

Not satisfied with the judgment, PRUDENTIAL and TRANS-ASIA filed a Motion for Reconsideration and Partial Motion for Reconsideration thereon, respectively, which motions were denied by the Court of Appeals in the Resolution dated 29 January 2002.

The Issues

Aggrieved, PRUDENTIAL filed before this Court a Petition for Review, docketed as

G.R. No. 151890, relying on the following grounds, viz:

I.

THE AWARD IS GROSSLY UNCONSCIONABLE.

II.

THE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO VIOLATION BY TRANS-ASIA OF A MATERIAL WARRANTY, NAMELY, WARRANTY CLAUSE NO. 5, OF THE INSURANCE POLICY.

III.

THE COURT OF APPEALS ERRED IN HOLDING THAT PRUDENTIAL, AS INSURER HAD THE BURDEN OF PROVING THAT THE ASSURED, TRANS-ASIA, VIOLATED A MATERIAL WARRANTY.

IV.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE WARRANTY CLAUSE EMBODIED IN THE INSURANCE POLICY CONTRACT WAS A MERE RIDER.

V.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE ALLEGED RENEWALS OF THE POLICY CONSTITUTED A WAIVER ON THE PART OF PRUDENTIAL OF THE BREACH OF THE WARRANTY BY TRANS-ASIA.

VI.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE "LOAN AND TRUST RECEIPT" EXECUTED BY TRANS-ASIA IS AN ADVANCE ON THE POLICY, THUS CONSTITUTING PARTIAL PAYMENT THEREOF.

VII.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE ACCEPTANCE BY PRUDENTIAL OF THE FINDINGS OF RICHARDS HOGG IS INDICATIVE OF A WAIVER ON THE PART OF PRUDENTIAL OF ANY VIOLATION BY TRANS-ASIA OF THE WARRANTY.

VIII.

THE COURT OF APPEALS ERRRED (sic) IN REVERSING THE TRIAL COURT, IN FINDING THAT PRUDENTIAL "UNJUSTIFIABLY REFUSED" TO PAY THE CLAIM AND IN ORDERING PRUDENTIAL TO PAY TRANS-ASIA P8,395,072.26 PLUS DOUBLE INTEREST FROM 13 AUGUST 1996, UNTIL [THE] SAME IS FULLY PAID.^[15]