

## **SECOND DIVISION**

**[ G.R. NO. 137775, March 31, 2005 ]**

**FGU INSURANCE CORPORATION, PETITIONER, VS. THE COURT OF APPEALS, SAN MIGUEL CORPORATION, AND ESTATE OF ANG GUI, REPRESENTED BY LUCIO, JULIAN, AND JAIME, ALL SURNAMED ANG, AND CO TO, RESPONDENTS.**

**G.R. NO. 140704**

**ESTATE OF ANG GUI, REPRESENTED BY LUCIO, JULIAN AND JAIME, ALL SURNAMED ANG, AND CO TO, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, SAN MIGUEL CORP., AND FGU INSURANCE CORP., RESPONDENTS.**

### **D E C I S I O N**

**CHICO-NAZARIO, J.:**

Before Us are two separate Petitions for review assailing the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 49624 entitled, "San Miguel Corporation, Plaintiff-Appellee versus Estate of Ang Gui, represented by Lucio, Julian and Jaime, all surnamed Ang, and Co To, Defendants-Appellants, Third-Party Plaintiffs versus FGU Insurance Corporation, Third-Party Defendant-Appellant," which affirmed in toto the decision<sup>[2]</sup> of the Regional Trial Court of Cebu City, Branch 22. The dispositive portion of the Court of Appeals decision reads:

WHEREFORE, for all the foregoing, judgment is hereby rendered as follows:

- 1) Ordering defendants to pay plaintiff the sum of P1,346,197.00 and an interest of 6% per annum to be reckoned from the filing of this case on October 2, 1990;
- 2) Ordering defendants to pay plaintiff the sum of P25,000.00 for attorney's fees and an additional sum of P10,000.00 as litigation expenses;
- 3) With cost against defendants.

For the Third-Party Complaint:

- 1) Ordering third-party defendant FGU Insurance Company to pay and reimburse defendants the amount of P632,700.00.<sup>[3]</sup>

### **The Facts**

Evidence shows that Anco Enterprises Company (ANCO), a partnership between Ang Gui and Co To, was engaged in the shipping business. It owned the M/T ANCO tugboat and the D/B Lucio barge which were operated as common carriers. Since the D/B Lucio had no engine of its own, it could not maneuver by itself and had to be towed by a tugboat for it to move from one place to another.

On 23 September 1979, San Miguel Corporation (SMC) shipped from Mandaue City, Cebu, on board the D/B Lucio, for towage by M/T ANCO, the following cargoes:

Bill of Lading No.	Shipment	Destination
1	25,000 cases Pale Pilsen 350 cases Cerveza Negra	Estancia, Iloilo Estancia, Iloilo
2	15,000 cases Pale Pilsen 200 cases Cerveza Negra	San Jose, Antique San Jose, Antique

The consignee for the cargoes covered by Bill of Lading No. 1 was SMC's Beer Marketing Division (BMD)-Estancia Beer Sales Office, Estancia, Iloilo, while the consignee for the cargoes covered by Bill of Lading No. 2 was SMC's BMD-San Jose Beer Sales Office, San Jose, Antique.

The D/B Lucio was towed by the M/T ANCO all the way from Mandaue City to San Jose, Antique. The vessels arrived at San Jose, Antique, at about one o'clock in the afternoon of 30 September 1979. The tugboat M/T ANCO left the barge immediately after reaching San Jose, Antique.

When the barge and tugboat arrived at San Jose, Antique, in the afternoon of 30 September 1979, the clouds over the area were dark and the waves were already big. The arrastre workers unloading the cargoes of SMC on board the D/B Lucio began to complain about their difficulty in unloading the cargoes. SMC's District Sales Supervisor, Fernando Macabuag, requested ANCO's representative to transfer the barge to a safer place because the vessel might not be able to withstand the big waves.

ANCO's representative did not heed the request because he was confident that the barge could withstand the waves. This, notwithstanding the fact that at that time, only the M/T ANCO was left at the wharf of San Jose, Antique, as all other vessels already left the wharf to seek shelter. With the waves growing bigger and bigger, only Ten Thousand Seven Hundred Ninety (10,790) cases of beer were discharged into the custody of the arrastre operator.

At about ten to eleven o'clock in the evening of 01 October 1979, the crew of D/B Lucio abandoned the vessel because the barge's rope attached to the wharf was cut off by the big waves. At around midnight, the barge run aground and was broken and the cargoes of beer in the barge were swept away.

As a result, ANCO failed to deliver to SMC's consignee Twenty-Nine Thousand Two

Hundred Ten (29,210) cases of Pale Pilsen and Five Hundred Fifty (550) cases of Cerveza Negra. The value per case of Pale Pilsen was Forty-Five Pesos and Twenty Centavos (P45.20). The value of a case of Cerveza Negra was Forty-Seven Pesos and Ten Centavos (P47.10), hence, SMC's claim against ANCO amounted to One Million Three Hundred Forty-Six Thousand One Hundred Ninety-Seven Pesos (P1,346,197.00).

As a consequence of the incident, SMC filed a complaint for Breach of Contract of Carriage and Damages against ANCO for the amount of One Million Three Hundred Forty-Six Thousand One Hundred Ninety-Seven Pesos (P1,346,197.00) plus interest, litigation expenses and Twenty-Five Percent (25%) of the total claim as attorney's fees.

Upon Ang Gui's death, ANCO, as a partnership, was dissolved hence, on 26 January 1993, SMC filed a second amended complaint which was admitted by the Court impleading the surviving partner, Co To and the Estate of Ang Gui represented by Lucio, Julian and Jaime, all surnamed Ang. The substituted defendants adopted the original answer with counterclaim of ANCO "since the substantial allegations of the original complaint and the amended complaint are practically the same."

ANCO admitted that the cases of beer Pale Pilsen and Cerveza Negra mentioned in the complaint were indeed loaded on the vessel belonging to ANCO. It claimed however that it had an agreement with SMC that ANCO would not be liable for any losses or damages resulting to the cargoes by reason of fortuitous event. Since the cases of beer Pale Pilsen and Cerveza Negra were lost by reason of a storm, a fortuitous event which battered and sunk the vessel in which they were loaded, they should not be held liable. ANCO further asserted that there was an agreement between them and SMC to insure the cargoes in order to recover indemnity in case of loss. Pursuant to that agreement, the cargoes to the extent of Twenty Thousand (20,000) cases was insured with FGU Insurance Corporation (FGU) for the total amount of Eight Hundred Fifty-Eight Thousand Five Hundred Pesos (P858,500.00) per Marine Insurance Policy No. 29591.

Subsequently, ANCO, with leave of court, filed a Third-Party Complaint against FGU, alleging that before the vessel of ANCO left for San Jose, Antique with the cargoes owned by SMC, the cargoes, to the extent of Twenty Thousand (20,000) cases, were insured with FGU for a total amount of Eight Hundred Fifty-Eight Thousand Five Hundred Pesos (P858,500.00) under Marine Insurance Policy No. 29591. ANCO further alleged that on or about 02 October 1979, by reason of very strong winds and heavy waves brought about by a passing typhoon, the vessel run aground near the vicinity of San Jose, Antique, as a result of which, the vessel was totally wrecked and its cargoes owned by SMC were lost and/or destroyed. According to ANCO, the loss of said cargoes occurred as a result of risks insured against in the insurance policy and during the existence and lifetime of said insurance policy. ANCO went on to assert that in the remote possibility that the court will order ANCO to pay SMC's claim, the third-party defendant corporation should be held liable to indemnify or reimburse ANCO whatever amounts, or damages, it may be required to pay to SMC.

In its answer to the Third-Party complaint, third-party defendant FGU admitted the existence of the Insurance Policy under Marine Cover Note No. 29591 but maintained that the alleged loss of the cargoes covered by the said insurance policy cannot be attributed directly or indirectly to any of the risks insured against in the

said insurance policy. According to FGU, it is only liable under the policy to Third-party Plaintiff ANCO and/or Plaintiff SMC in case of any of the following:

- a) total loss of the entire shipment;
- b) loss of any case as a result of the sinking of the vessel; or
- c) loss as a result of the vessel being on fire.

Furthermore, FGU alleged that the Third-Party Plaintiff ANCO and Plaintiff SMC failed to exercise ordinary diligence or the diligence of a good father of the family in the care and supervision of the cargoes insured to prevent its loss and/or destruction.

Third-Party defendant FGU prayed for the dismissal of the Third-Party Complaint and asked for actual, moral, and exemplary damages and attorney's fees.<sup>[1]</sup>

The trial court found that while the cargoes were indeed lost due to fortuitous event, there was failure on ANCO's part, through their representatives, to observe the degree of diligence required that would exonerate them from liability. The trial court thus held the Estate of Ang Gui and Co To liable to SMC for the amount of the lost shipment. With respect to the Third-Party complaint, the court a quo found FGU liable to bear Fifty-Three Percent (53%) of the amount of the lost cargoes. According to the trial court:

. . . Evidence is to the effect that the D/B Lucio, on which the cargo insured, run-aground and was broken and the beer cargoes on the said barge were swept away. *It is the sense of this Court that the risk insured against was the cause of the loss.*

. . .

Since the total cargo was 40,550 cases which had a total amount of P1,833,905.00 and the amount of the policy was only for P858,500.00, *defendants as assured, therefore, were considered co-insurers of third-party defendant FGU Insurance Corporation to the extent of 975,405.00 value of the cargo.* Consequently, inasmuch as there was partial loss of only P1,346,197.00, the assured shall bear 53% of the loss...<sup>[4]</sup>  
[Emphasis ours]

The appellate court affirmed in toto the decision of the lower court and denied the motion for reconsideration and the supplemental motion for reconsideration.

Hence, the petitions.

### **The Issues**

In G.R. No. 137775, the grounds for review raised by petitioner FGU can be summarized into two: 1) Whether or not respondent Court of Appeals committed grave abuse of discretion in holding FGU liable under the insurance contract considering the circumstances surrounding the loss of the cargoes; and 2) Whether or not the Court of Appeals committed an error of law in holding that the doctrine of *res judicata* applies in the instant case.

In G.R. No. 140704, petitioner Estate of Ang Gui and Co To assail the decision of the appellate court based on the following assignments of error: 1) The Court of Appeals committed grave abuse of discretion in affirming the findings of the lower court that the negligence of the crewmembers of the D/B Lucio was the proximate cause of the loss of the cargoes; and 2) The respondent court acted with grave abuse of discretion when it ruled that the appeal was without merit despite the fact that said court had accepted the decision in Civil Case No. R-19341, as affirmed by the Court of Appeals and the Supreme Court, as *res judicata*.

### **Ruling of the Court**

First, we shall endeavor to dispose of the common issue raised by both petitioners in their respective petitions for review, that is, whether or not the doctrine of *res judicata* applies in the instant case.

It is ANCO's contention that the decision in Civil Case No. R-19341,<sup>[5]</sup> which was decided in its favor, constitutes *res judicata* with respect to the issues raised in the case at bar.

The contention is without merit. There can be no *res judicata* as between Civil Case No. R-19341 and the case at bar. In order for *res judicata* to be made applicable in a case, the following essential requisites must be present: 1) the former judgment must be final; 2) the former judgment must have been rendered by a court having jurisdiction over the subject matter and the parties; 3) the former judgment must be a judgment or order on the merits; and 4) *there must be between the first and second action identity of parties, identity of subject matter, and identity of causes of action*.<sup>[6]</sup>

There is no question that the first three elements of *res judicata* as enumerated above are indeed satisfied by the decision in Civil Case No. R-19341. However, the doctrine is still inapplicable due to the absence of the last essential requisite of identity of parties, subject matter and causes of action.

The parties in Civil Case No. R-19341 were ANCO as plaintiff and FGU as defendant while in the instant case, SMC is the plaintiff and the Estate of Ang Gui represented by Lucio, Julian and Jaime, all surnamed Ang and Co To as defendants, with the latter merely impleading FGU as third-party defendant.

The subject matter of Civil Case No. R-19341 was the insurance contract entered into by ANCO, the owner of the vessel, with FGU covering the vessel D/B Lucio, while in the instant case, the subject matter of litigation is the loss of the cargoes of SMC, as shipper, loaded in the D/B Lucio and the resulting failure of ANCO to deliver to SMC's consignees the lost cargo. Otherwise stated, the controversy in the first case involved the rights and liabilities of the shipowner vis-à-vis that of the insurer, while the present case involves the rights and liabilities of the shipper vis-à-vis that of the shipowner. Specifically, Civil Case No. R-19341 was an action for Specific Performance and Damages based on FGU Marine Hull Insurance Policy No. VMF-MH-13519 covering the vessel D/B Lucio, while the instant case is an action for Breach of Contract of Carriage and Damages filed by SMC against ANCO based on Bill of Lading No. 1 and No. 2, with defendant ANCO seeking reimbursement from FGU under Insurance Policy No. MA-58486, should the former be held liable to pay SMC.