

SECOND DIVISION

[G.R. No. 162727, November 18, 2005]

SSANGYONG CORPORATION, PETITIONER, VS. UNIMARINE SHIPPING LINES, INC., PAUL RODRIGUEZ, PETER RODRIGUEZ, RODSON PHILIPPINES, INC. AND INTER- PACIFIC LINES, INC., RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 50291 which affirmed the Omnibus Order of the Regional Trial Court (RTC) of Makati City, dismissing the complaint in Civil Case No. 93-2273 on the ground of *litis pendentia*, as well as the Resolution^[2] of the CA denying the motion for reconsideration thereof.

The petition at bench was triggered by the following antecedents:

On March 3, 1993, the Ssangyong Corporation (Ssangyong for brevity), a corporation established under the laws of Korea, and Unimarine Shipping Lines, Inc. (Unimarine for brevity), a Philippine registered corporation, entered into a Charter Contract for the shipment of approximately 4,500 metric tons of steel bars from the port of Masan, Korea to the port of Shantou, China on board the M/V Pacific Fortune, owned and operated by Unimarine. Bill of Lading No. MASH-01 covered 3,139 packages of steel bars, while Bill of Lading No. MASH-02 covered 1,755 packages, both issued by Unimarine. It also issued a Fixture Note^[3] which Ssangyong conformed to. The shipment was under the "Free-In and Free-Out Stowed and Trimmed" (FIOST) arrangement.^[4]

On March 25, 1993, the vessel left Masan, Korea and arrived at the port of Shantou on March 29, 1993. The port authorities of Shantou demanded that Unimarine pay sorting charges in the amount of US\$8,000.00 and a quick dispatch bonus before a berthing schedule could be given to the vessel. Unimarine relayed the demand of the port authorities to Ssangyong, and requested the payment of such charges. Ssangyong refused, claiming that the amount was Unimarine's responsibility, to which latter replied that Ssangyong, as shipper, was liable under the Fixture Note of March 3, 1993 covering the shipment, where it was agreed that the shipment was in FIOST condition, which meant that Unimarine was free from expenses in the loading and unloading of the cargo and in stowing the same in the vessel. Unimarine reiterated, under the said note, that Ssangyong, as shipper, was obliged to provide one (1) safe berth and one (1) safe port to the vessel. Unimarine suggested to Ssangyong that it be allowed to lighten the vessel at the port of Dongsan, China, the nearest port to Shantou, China, but again the shipper refused because it would incur additional expenses.^[5]

Under the circumstances, Unimarine notified Ssangyong that it would charge the latter expenses for detention of the vessel, and that it would exercise its lien over the cargo as provided for in the Bills of Lading. After having been anchored outside Shantou for more than 10 days, the captain of the vessel decided to return the vessel to its home port in Cebu City.^[6]

While the vessel was in transit, Paul Rodriguez, the Vice President and General Manager of Unimarine, filed a petition, on April 5, 1993, with Atty. Alberto V. Mercado, Notary Public for the City and Province of Cebu, for the auction sale of the cargo of Ssangyong on board the vessel, conformably with Section 26 of the Bills of Lading. Its purpose was to recover the charges for the detention of the shipment, plus the amount of US\$110,000 for freight of the cargo from Shantou to its home port and attorney's fees.^[7] The sale at public auction was set at 10:00 a.m. of April 12, 1993 at the Cebu International Port in Cebu City. He sent a notice of the said sale to Unimarine and to Ssangyong in Seoul, Korea by registered mail.^[8]

On April 12, 1993 the vessel arrived at the Cebu Port from Shantou, China. During the auction sale on April 12, 1993, Rodson Philippines, Inc. (Rodson for brevity) was declared the highest bidder of the cargo for the sum of US\$100,000. The Notary Public executed a Certificate of Sale in favor of Rodson over the cargo.^[9]

In the meantime, Ssangyong received its copy of the notice of the auction sale only on April 27, 1993. On May 25, 1993, Ssangyong, through counsel, wrote Unimarine demanding that the latter immediately deliver the cargo to the designated consignees in Shantou, China or, in the alternative, to the designated port and to pay Ssangyong the value of the cargo without prejudice to its right to claim damages.^[10] Unimarine refused. On June 2, 1993, Ssangyong caused to be published a notice warning the public that the cargo shipment on the vessel belonged to it and that anyone attempting to sell the same was unauthorized.^[11]

On July 1, 1993, Unimarine filed a complaint against Ssangyong in the RTC of Cebu City for the collection of the principal amount of US\$37,000; P5,000,000.00 by way of moral damages; P200,000.00 by way of exemplary damages; and P100,000.00 as actual damages exclusive of attorney's fees and expenses of litigation. Unimarine alleged that Ssangyong was liable for the detention charges on the vessel (US\$37,000 at the rate of US\$2,700 a day) and expenses for deviation (US\$110,000); since the cargo was sold at public auction for only US\$100,000, it still had an additional deficiency of US\$37,000. The case (Cebu Case, for brevity) was docketed as Civil Case No. CEB-14219.

Apparently still unaware of the said complaint, Ssangyong, as plaintiff, filed on July 8, 1993 a complaint against Unimarine, Rodson, Paul Rodriguez and Peter Rodriguez, residents of Cebu City, as defendants, for specific performance and damages, with a prayer for a writ of preliminary attachment over the vessel M/V Pacific Fortune or M/V Asia Progress in the RTC of Makati City. The case (Makati Case, for brevity) was docketed as Civil Case No. 93-2279.

On July 12, 1993, Ssangyong amended its complaint in the Makati case to implead as additional party-defendant Inter-Pacific Lines, Inc. (Inter-Pacific for brevity), a corporation duly registered in Singapore. Ssangyong alleged therein, *inter alia*, that

Paul Rodriguez, a resident of Cebu City, was the vice-president and a member of the board of directors of Unimarine and the brother of Peter Rodriguez, President of Rodson and a stockholder and member of the Board of Directors of Inter-Pacific; in March 1993, plaintiff Ssangyong shipped in Masan, Korea on board the M/V Pacific Fortune, owned by Unimarine, approximately 4,500 metric tons of steel bars; Unimarine issued Bills of Lading Nos. MASH-01 and MASH-02 and executed a Fixture Note where it undertook to deliver the cargo to its respective consignees in Shantou, China; upon arrival thereat, the vessel did not discharge the cargo at the designated port nor delivered it to the consignees named in the Bills of Lading; the vessel left the port of Shantou, China and proceeded to Cebu, without informing the plaintiff and/or the consignees of the cargo; the plaintiff was not informed of the April 12, 1993 sale at public auction and the sale of the cargo to Rodson, a sister/affiliate company of defendant Unimarine of which defendant Peter Rodriguez, elder brother of defendant Paul Rodriguez, is president; the price of US\$100,000.00 for the cargo worth US\$1,500,000.00 was unconscionably bad; the sale was not reported to Philippine Port and Customs authorities; defendant Unimarine's refusal to deliver the cargo to its consignees and, in the alternative, to pay the value thereof in the sum of US\$1,500,000.00 and for the consequent damages despite demands.

Ssangyong further averred that Peter Rodriguez "conveniently stated" that he was no longer connected with Unimarine but was still the president of Rodson; the defendants conspired and confederated with each other and changed the name of the vessel from M/V Pacific Fortune to M/V Pacific Harmony to conceal the vessel and its cargo and render inoperative efforts to recover the same; in fact, the vessel was sighted in Kelang, Malaysia sometime in June 1993 using the name M/V Pacific Harmony; the vessel M/V Pacific Fortune subsequently docked at Berth No. II, Pier IX South Harbor, Port of Manila, this time under the name of M/V Asia Progress and with Inter-Pacific as registered owner; with intention to confuse it, the Philippine Coast Guard and Philippine Ports Authority deliberately varied the particulars of the vessel; when confronted, the ship captain of M/V Asia Progress confirmed that the vessel M/V Asia Progress is the M/V Pacific Fortune and M/V Pacific Harmony, and declared that its owner was Inter-Pacific with offices at Juana Osmeña Avenue in Cebu City; defendants Unimarine, Paul Rodriguez, Inter-Pacific and the vessel M/V Pacific Harmony, now M/V Asia Progress (ex: M/V Pacific Fortune), violated laws, rules and regulations of the Philippines as it engaged in overseas shipping without the appropriate licenses from government authorities and represented itself to the plaintiff and the international community as duly licensed and authorized by the Philippine government, when, in fact, it used falsified, fictitious or spurious Special Permits allegedly issued by the MARINA; the vessel's Master, Captain Guzman Malicay, is not registered as a seaman nor a Master Mariner; Peter Rodriguez and the Rodriguez family are known to own and/or hold substantial interest in Inter-Pacific and have used the corporate fiction as a shield to perpetrate fraud; Rodson is an affiliate/sister company of Unimarine; all or substantially all of its shares are owned by the Rodriguez family, also owners of defendant Unimarine; defendant Peter Rodriguez is the president and chief executive officer of Rodson; having directly participated in plotting and executing the scheme, using false pretenses to lure plaintiff to ship its cargo on board M/V Pacific Fortune, illegally diverted the cargo to Cebu, selling the same under false claims, purchasing the goods at a sham auction and, subsequently, concealed the vessel and its cargo; dispose of and/or prevent recovery of cargo, defendants Rodson and Peter Rodriguez are as guilty of fraud as the other defendants.

Ssangyong further declared that Unimarine, Paul Rodriguez and Inter-Pacific as willing conspirators, through their fraudulent schemes and manipulations, have caused severe damage to the reputation of the Philippines, especially legitimate and honest Filipino businessmen engaged in the shipping industry and, therefore, must be made to pay exemplary damages to deter those who are of the same predisposition from committing similar malevolent acts. It prayed that after due proceedings, judgment be rendered in its favor:

(1) Immediately after the filing of the complaint, a writ of preliminary attachment issue against the vessel M/V Pacific Fortune, Asia Progress and/or in whatever name it may have subsequently assumed; the properties of all the defendants to satisfy plaintiff's claim as hereinabove indicated;

(2) Ordering defendants to return the cargo to plaintiff and/or in the alternative, jointly and severally, to pay plaintiff:

(a) The amount of US\$1.5 Million or its equivalent in Philippine currency, plus interest thereof until fully paid;

(b) To pay actual and compensatory damages in such amount as may be proven in the course of the trial, but in no case less than P500,000.00;

(c) To pay exemplary damages in the amount of P1,000,000.00;

(d) To pay moral damages in the amount of P1,000,000.00.

(3) To pay attorney's fees in an amount to be proven in the course of the trial, but in no case less than P1,000,000.00.^[12]

On July 14, 1993, the Makati court issued an order granting the plea of the plaintiff for a writ of preliminary attachment upon the approval of the requisite attachment bond, which Ssangyong filed, and upon its approval on July 18, 1993, the court issued a writ of preliminary attachment.^[13]

On August 5, 1993, Ssangyong was served with the complaint and summons in Civil Case No. 93-14219 (Cebu Case). It filed its Answer to the complaint in the Cebu RTC wherein it alleged, by way of special and affirmative defense, that the plaintiff has no cause of action against it and that there is another action pending before the RTC, Makati, Branch 66, entitled *Ssangyong Corporation v. Unimarine Shipping Lines, Inc., Paul Rodriguez, Peter Rodriguez, Rodson Philippines, Inc. and Inter-Pacific Lines, Inc.*^[14] involving the same parties and/or representing same interest, with identity of rights asserted and prayed for, and reliefs founded on the same facts. It further alleged that the identity of both cases is such that the judgment which may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.^[15] Ssangyong filed a motion for hearing of its affirmative defense of *litis pendentia*.^[16]

For their part, defendants Unimarine and Paul Rodriguez filed, on September 23, 1993, a motion in the Makati RTC for the dismissal of the complaint on the ground

of *litis pendentia*, the other case referred to being Civil Case No. CEB-14219 pending in the RTC of Cebu City. Inter-Pacific adopted the motion of the defendants.

On January 3, 1994, the Cebu court issued an Order in Civil Case No. 14219 denying Ssangyong's motion for the dismissal of the complaint. The court ruled that it should be the Makati Case that should be dismissed, not the other way around. It suggested that defendant Ssangyong's claims against the defendants in Civil Case No. 93-2279 be incorporated in its answer to the complaint in Civil Case No. CEB-14219 as compulsory counterclaims. Ssangyong moved for the reconsideration of the order, which the court denied in its Order dated February 15, 1996.^[17]

On May 2, 1994, the Makati Court (in Civil Case No. 93-2279) issued an Omnibus Order granting the motion of Unimarine, Paul Rodriguez and Inter-Pacific for the dismissal of Ssangyong's complaint on the ground of *litis pendentia*. Ssangyong filed a motion for reconsideration, which the court denied; it appealed the orders to the CA, docketed as CA-G.R. CV No. 50291.

Ssangyong then filed a petition for *certiorari* in the CA for the nullification of the order of the Cebu court in Civil Case No. CEB-14219, docketed as CA-G.R. SP No. 42137. On August 13, 1994, the CA rendered judgment in CA-G.R. SP No. 42137 dismissing the petition on the ground that it was filed out of time.^[18] The motion for a reconsideration of the decision was, likewise, denied. Ssangyong then filed a petition for review on *certiorari* in this Court, docketed as G.R. No. 141611. On April 22, 2000, the Court resolved to deny the petition on the ground that the petitioner failed to show that the CA committed a reversible error in the assailed Resolution.

On September 10, 2003, the CA rendered judgment in CA-G.R. CV No. 50291, affirming the appealed orders of the Makati Court and dismissing the appeal of Ssangyong. The appellate court likewise denied the motion for reconsideration filed by Ssangyong.^[19]

Ssangyong, now the petitioner, filed the instant petition for review on *certiorari*, praying that the decision and resolution of the CA in CA-G.R. CV No. 50291 be nullified on the following grounds:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE COURT A *QUO* WAS CORRECT IN DISMISSING CIVIL CASE NO. 93-2279 ON THE GROUND OF A PENDING LITIGATION, THAT IS, CIVIL CASE NO. CEB-14219 IN THE CEBU CITY REGIONAL TRIAL COURT.

II.

SHOULD THERE BE A FINDING THAT THE REQUISITES OF *LITIS PENDENTIA* ARE PRESENT, THE HONORABLE COURT OF APPEALS SHOULD HAVE DISMISSED CIVIL CASE NO. CEB-14219 AND NOT CIVIL CASE NO. 93-2279.^[20]

The petitioner avers that the Makati RTC erred in dismissing its complaint on the ground of *litis pendentia*. It insists that there was a diversity of causes of action between Civil Case No. 93-2279 (Makati Case) and Civil Case No. CEB-14219 (Cebu Case). The parties in the Makati Case are Ssangyong, as plaintiff, and Unimarine, Rodson, Paul and Peter Rodriguez, as defendants; the plaintiff in Civil Case No. CEB-