

THIRD DIVISION

[G.R. NO. 141462, December 15, 2005]

DANZAS CORPORATION AND ALL TRANSPORT NETWORK, INC., PETITIONERS, VS. HON. ZEUS C. ABROGAR, PRESIDING JUDGE OF BR. 150 OF MAKATI CITY, SEABOARD EASTERN INSURANCE CO., INC. AND PHILIPPINE SKYLANDERS, INC., RESPONDENTS.

DECISION

CORONA, J.:

Petitioner Danzas Corporation, through its agent, petitioner All Transport Network brings to us this petition for review on certiorari^[1] questioning the decision^[2] and resolution^[3] of the Court of Appeals which affirmed two orders issued by the Regional Trial Court, Makati City, Branch 150.^[4]

The facts of the case follow.^[5]

On February 22, 1994, petitioner Danzas took a shipment of nine packages of ICS watches for transport to Manila. The consignee, International Freeport Traders, Inc. (IFTI) secured Marine Risk Note No. 0000342 from private respondent Seaboard.

On March 2, 1994, the Korean Airlines plane carrying the goods arrived in Manila and discharged the goods to the custody of private respondent Philippine Skylanders, Inc. for safekeeping. On withdrawal of the shipment from private respondent Skylanders' warehouse, IFTI noted that one package containing 475 watches was shortlanded while the remaining eight were found to have sustained tears on sides and the retape of flaps. On further examination and inventory of the cartons, it was discovered that 176 Guess watches were missing. Private respondent Seaboard, as insurer, paid the losses to IFTI.

On February 23, 1995, Seaboard, invoking its right of subrogation, filed a complaint against Skylanders, petitioner and its authorized representative, petitioner All Transport Network, Inc. (ATN), praying for actual damages in the amount of P612,904.97 plus legal interest, attorney's fees and cost of suit. Petitioners impleaded Korean Airlines (KAL) as third-party defendant.

While the case was pending, IFTI's treasurer, Mary Eileen Gozon accepted the proposal of KAL to settle consignee's claim by paying the amount of US \$522.20. On May 8, 1996, Felipe Acebedo, IFTI's representative received a check from KAL and correspondingly signed a release form.

On July 2, 1996, petitioners filed a motion to dismiss the case on the ground that private respondent Seaboard's demand had been paid or otherwise extinguished by KAL.

On December 9, 1996, the trial court issued an order denying the motion to dismiss. Petitioners, private respondent Skylanders and KAL filed separate motions for reconsideration. Prior to the resolution of these motions, the trial court allowed private respondent Skylanders to present evidence in a preliminary hearing on November 14, 1997, after which the court set a date to hear the presentation of rebuttal evidence.

On December 5, 1997, petitioners filed a manifestation and motion for reconsideration of the order of the trial court dated November 14, 1997, questioning the propriety of the preliminary hearing.

On February 18, 1998, the trial court issued an order denying: (1) the motion for reconsideration of the December 9, 1996 order filed by petitioners, private respondent Skylanders and KAL; (2) the motion to dismiss filed by Skylanders and (3) petitioners' motion for reconsideration of the November 14, 1997 order.

On April 6, 1998, petitioners filed in the Court of Appeals a special civil action for certiorari under Rule 65 of the Rules of Court. On March 5, 1999, the CA dismissed the petition.^[6] Petitioners filed^[7] a motion for reconsideration but this was denied.^[8]

Hence, this petition.

Petitioners' principal contention is that private respondent's right of subrogation was extinguished when IFTI received payment from KAL in settlement of its obligation. They also claim that public respondent committed grave abuse of discretion by refusing to dismiss the case on that ground. Finally, they claim that, by granting private respondent Skylanders a preliminary hearing on an affirmative defense other than one of the grounds stated in Section 1, Rule 16 of the 1997 Rules of Civil Procedure, public respondent committed another grave abuse of discretion.

For its part, private respondent Seaboard argues that the payment made by the tortfeasor did not relieve it of liability because at the time of payment, its (Seaboard's) suit against petitioners was already ongoing. It also insists that because the assailed order was interlocutory, it was not a proper subject for certiorari.^[9]

Private respondent Skylanders likewise contends that the order denying dismissal cannot be the subject of certiorari in the absence of grave abuse of discretion. It also defends the trial court's order granting a preliminary hearing, saying that, assuming the trial court had erroneously granted such a hearing, such error was merely one of judgment and not of jurisdiction as to merit certiorari.^[10]

The petition has no merit.

It is true that the doctrine in *Manila Mahogany Manufacturing Corporation v. Court of Appeals*^[11] remains the controlling doctrine on the issue of whether the tortfeasor, by settling with the insured, defeats the right to subrogation of the insurer. According to Manila Mahogany: