

## SECOND DIVISION

[ G.R. No. 128064, March 04, 2004 ]

**R.V. MARZAN FREIGHT, INC., PETITIONER, VS. COURT OF APPEALS AND SHIELA'S MANUFACTURING, INC., RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review under Rule 45 of the 1997 Rules of Civil Procedure of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 49905 affirming with modification the Decision<sup>[2]</sup> of the Regional Trial Court of Rizal, Pasig, Branch 154, in Civil Case No. 61644.

### THE FACTS

The petitioner RV Marzan Freight, Inc., owned and operated a customs-bonded warehouse located at the Bachrach Corporation Building, where it accepted all forms of goods and merchandise for storage and safekeeping. Private respondent Shiela's Manufacturing, Inc., on the other hand, was a corporation organized and existing under Philippines laws, and engaged in the garment business.

Philippine Fire and Marine Insurance Corporation (Philfire) issued Insurance Policy No. F-8952/4358-HO dated December 11, 1989<sup>[3]</sup> in favor of the petitioner, covering its warehouse as well as "stocks in trade of every kind and description usual to the warehouse operation of the Assured and/or other interest that may appear during the currency of this policy whilst contained in the building, known as BACHRACH CORP."

On April 12, 1989, raw materials consigned to the private respondent covered by Invoice No. TG-89125<sup>[4]</sup> arrived in the Philippines from Keelung, Taiwan on board the vessel SS World Lion V-302W owned by Sea-Land Service, Inc. from its supplier, Tricon Enterprises Ltd. The materials were valued at US\$32,006.93.<sup>[5]</sup> The Bureau of Customs treated the raw materials as subject to ordinary import taxes and were not immediately released to the private respondent. Moreover, the consignee failed to file the requisite import entry<sup>[6]</sup> and failed to claim the cargo.<sup>[7]</sup>

In a Letter<sup>[8]</sup> to the Office of the District Collector of the Bureau of Customs dated July 24, 1989, Sea-Land Service Inc. authorized the petitioner to take delivery of Container No. SEAU-462597 consigned to the private respondent for stripping and safekeeping.

In a Letter<sup>[9]</sup> addressed to Bureau of Customs District Collector Emma M. Rosqueta dated September 11, 1989, the International Container Terminal Services, Inc. (ICTSI) requested for authority "to clear the storage areas of cargoes which have

been abandoned by their owners or seized by the Bureau of Customs.” Included in the request was the cargo of the private respondent. The District Collector of Customs initiated Abandonment Proceedings No. 288-89 over the cargo. On September 29, 1989, the District Collector issued a Notice<sup>[10]</sup> to the consignee of various overstaying cargo, including that of the private respondent, giving them fifteen (15) days from notice thereof to file entry of the cargoes without prejudice to the right of the consignees to redeem articles pursuant to Section 1801 of the Tariff and Customs Code within the prescribed period therein; otherwise, the cargoes would be deemed abandoned and sold at public auction. As ordered, the Notice of the Abandonment Proceedings was posted on the Bureau’s bulletin board on September 29, 1980.<sup>[11]</sup> No separate notice was sent to the private respondent because per the ICTSI’s records, the address of the consignee was unknown.

Earlier, on November 7, 1989, Leonardo S. Doctor, Chief of the Law Division of the Bureau of Customs, issued a Memorandum<sup>[12]</sup> informing the Chief for Auction and Cargo Disposal Division that the declaration of abandonment in the aforestated proceedings had already become final and executory as of October 30, 1989 and that the cargoes subject matter thereof should be inventoried and sold at public auction.

However, before the inventory and sale at public auction of the goods could be accomplished, part of the warehouse containing the shipment was burned on July 26, 1990. The private respondent’s shipment was, likewise, burned and destroyed. The Philfire paid to the private respondent the amount of P12,000,000, for which the latter was issued a receipt.

On March 19, 1991, the private respondent, through counsel, sent a letter to the petitioner demanding payment of the value of the goods in the amount of US\$32,006.93. However, the petitioner rejected the demands. Meanwhile, on October 28, 1991, the petitioner executed a “Release of Claim and Hold Harmless Undertaking.”<sup>[13]</sup>

On December 26, 1991, or after the lapse of more than two years from the arrival of the cargo in the Philippines, the private respondent filed a complaint for damages before the RTC of Pasig City, Branch 154, against the petitioner. The private respondent alleged, *inter alia*, that its goods were stored in the petitioner’s bonded warehouse due to the problem it encountered at the Bureau of Customs; that the goods were gutted by fire on July 26, 1990 while stored in said bonded warehouse; and, despite demands for the release of the goods, the petitioner refused to release the same. The private respondent prayed that the petitioner and Philfire be held jointly and severally liable to pay the following:

- a) the sum of US\$32,006.93 or its peso equivalent computed based on the rate of exchange prevailing at the time of payment with interest thereon from the time of the filing of complaint up to the time of actual payment;
- b) the sum of P30,000.00 as and for attorney’s fees;
- c) the costs of suit;<sup>[14]</sup>

In its answer, the petitioner interposed special and affirmative defenses. Aside from alleging that there was no privity of contract between it and the private respondent, the petitioner also alleged that the private respondent lost the right of action against it as it was not the real party-in-interest in the case. The petitioner averred that the goods in question were received not from the private respondent but from the Bureau of Customs, under Customs Administrative Order No. 102-88 dated August 30, 1988, covering Forfeited Cargoes (FC), Abandoned Cargoes (AC) and Cargoes held under Warrant/Seizure and Detention (CWSD). According to the petitioner, before the subject cargo was destroyed by accidental fire, the private respondent had violated the Tariff and Customs Code and related laws, rules and regulations, and failed to pay the corresponding taxes, duties and penalties for the importation. Furthermore, the private respondent failed to make the corresponding claim for the release of the said cargo, until the same was declared as "overstaying cargo," and later as "abandoned cargo." The petitioner further asserted that the government, and not the private respondent, was the owner thereof. As such, the private respondent was not entitled to the insurance proceeds arising out of the fire policy covering the petitioner as a customs bonded warehouse. Furthermore, considering that the cause of the loss of the subject cargo was a fortuitous event, an "act of God," and the petitioner, having exercised the required due care under the circumstances, cannot be held legally liable for such loss. Finally, the petitioner alleged that its warehouse is legally considered as an "extension of the Bureau of Customs" and all goods transferred therein continue to be in the custody of the Bureau of Customs, with all its legal implications.<sup>[15]</sup>

Defendant Philfire, for its part, filed a motion to dismiss<sup>[16]</sup> on the ground that it had no contractual obligation to the private respondent; hence, the latter had no cause of action against it. The trial court deferred the resolution of the said motion<sup>[17]</sup> until the grounds appeared to be indubitable. In its answer,<sup>[18]</sup> Philfire alleged that there was no privity of contract between it and the private respondent, considering that the petitioner was the insured party. Furthermore, the private respondent had no insurable interest in the goods that were burned in the petitioner's warehouse. Finally, Philfire alleged that the obligation sought to be enforced by the private respondent had already been settled when it paid its obligation under the insurance policy<sup>[19]</sup> as shown in the "Release of Claim and Hold Harmless Undertaking" dated October 28, 1991, executed and signed for and in behalf of the petitioner by its Vice-President, Mr. Cesar D. Catalan.

The private respondent filed its pre-trial brief proposing that the following issues to be litigated by the parties and resolved by the Court:

1. Corporate personality of the plaintiff;
2. Value of plaintiff's goods stored in R.V. Marzan's warehouse and which were destroyed by fire;
3. Whether or not at the time of the fire on July 26, 1990. plaintiff's goods were already "abandoned goods" so that the plaintiff, at the time of the fire, was no longer the owner of the said goods.
4. Attorney's fees and damages;<sup>[20]</sup>

However, the trial court did not issue a pre-trial order.

During the trial, the petitioner presented Atty. Leonardo S. Doctor, the Law Division Chief of the Bureau of Customs, as one of its witnesses to prove that the cargo had already been declared by the District Collector of Customs as "abandoned cargo" in Abandonment Proceedings No. 288-89, and that the cargo was destroyed by fire before it could be sold at public auction.

Thereafter, the private respondent filed its memorandum stating, *inter alia*, that it did not abandon the goods because it did not receive the notice of abandonment of the cargo from the Bureau of Customs. The petitioner insisted that upon the abandonment of the cargo under Section 1802 of the Tariff and Customs Code of the Philippines (TCCP), it became, *ipso facto*, the property of the government; hence, the private respondent had no right to claim the value of the shipment.

After trial, the court rendered judgment, the decretal portion of which reads:

WHEREFORE, foregoing premises considered, defendant RV Marzan is held solely liable for the loss suffered by the plaintiff and is hereby ordered to pay the plaintiff the following:

1. The sum of US\$32,006.93 or its peso equivalent computed on the rate of exchange prevailing at the time of payment with 6% interest thereon from the time of filing of complaint up to the time of actual payment;
2. The sum of P30,000.00 as and for attorney's fees; and
3. Costs of suit.

The complaint against Philfire, the counterclaim against Shiela's and the cross-claim against R.V. Marzan, are hereby dismissed.<sup>[21]</sup>

According to the trial court, the Bureau of Customs' subsequent declaration that the subject shipment was "abandoned cargo" was ineffective, as the private respondent was not sent a copy of the September 29, 1989 Notice as required by Sec. 1801 of the Tariff and Customs Code. Under the law, notice of the proceedings of abandonment should be given to the private respondent as the consignee or its agent, to enable it to adduce evidence at a public hearing, conformably to the requirement of due process. Since the private respondent was never notified of the abandonment proceedings, it cannot, thus, be said that it impliedly abandoned the shipment and lost its ownership over the same in favor of the government.

The trial court rejected the petitioner's claim that it could not be held liable for the private respondent's loss because the fire that destroyed the subject cargo was an "act of God." According to the trial court, this is precisely one of the reasons why a bonded warehouse is required by law to insure the goods received and stored against fire; otherwise, persons dealing with a bonded warehouse would not be afforded due protection. According to the court, the policy procured by the petitioner inures equally and proportionately to the benefit of all the owners of the property insured, even if the owner of the goods did not request or know of the insurance. Citing Section 1902 of the Tariff and Customs Code, the trial court pointed out that the petitioner's bonded warehouse is considered as an extension of

the Bureau of Customs only insofar as it continues with the storage and safekeeping of goods transferred to it by the latter.

Finally, the trial court ruled that the private respondent had no cause of action against the insurer Philfire, as it was not a party to the insurance contract between the petitioner and Philfire. Since the terms of the insurance contract do not confer a benefit upon a third person as required by Article 1311 of the Civil Code, the private respondent had no right to the insurance proceeds.

The petitioner appealed the decision to the Court of Appeals, docketed as CA-G.R. CV No. 49905, and assigned the following errors:

I – THE TRIAL COURT ERRED IN NOT DISMISSING THE COMPLAINT FOR LACK OF A VALID CAUSE OF ACTION AND IN HOLDING THE DEFENDANT MARZAN LIABLE FOR THE LOSS SUFFERED BY PLAINTIFF IN SPITE OF THE FACT THAT, LONG BEFORE THE FIRE OF JULY 26, 1990, WHICH GUTTED DEFENDANT’S WAREHOUSE, THE PLAINTIFF’S SHIPMENT HAS ALREADY BEEN DECLARED ABANDONED BY FINAL ORDER OF THE BUREAU OF CUSTOMS.

II – THE TRIAL COURT ERRED IN AWARDING ATTORNEY’S FEE[S] OF P30,000.00.<sup>[22]</sup>

The petitioner asserted that the private respondent renounced its interests over the cargo by its continued failure and refusal, despite notice to it, to claim the cargo and pay the corresponding duties and taxes. It disclaimed liability on the following grounds:

1. That contrary to the plaintiff’s submission, it was not exempt from the payment of customs duties and taxes and hence, required to file entry within five (5) days from arrival of the shipment as provided for under 1801 of the Tariff and Customs Code...;
2. The subject shipment was declared abandoned by the Bureau of Customs due to the failure of the plaintiff-consignee to claim the same within the 15-day reglementary period from the date of posting of the notice to claim as provided in Section 1801(b) of Republic Act No. 7651; and,
3. The abandonment of the cargo was already declared final as of October 30, 1989 in the abandonment proceedings conducted by the Bureau of Customs, and, hence the plaintiff’s shipment ipso facto became the property of the government pursuant to Section 1802 of the same Act.
4. It was only on January 6, 1992, that plaintiff filed the present complaint against the defendant or more than two years after the declaration of abandonment of subject shipment became final and executory.<sup>[23]</sup>

Anent the award of attorney’s fees in favor of the private respondent, the petitioner averred that, as there was no finding of malice or bad faith in its refusal to pay the private respondent, there was no factual basis for the award.