

## THIRD DIVISION

**[ G.R. No. 154305, December 09, 2004 ]**

**MACONDRAY & CO., INC., PETITIONER, VS. PROVIDENT  
INSURANCE CORPORATION, RESPONDENT.**

### **DECISION**

**PANGANIBAN, J.:**

Hornbook is the doctrine that the negligence of counsel binds the client. Also settled is the rule that clients should take the initiative of periodically checking the progress of their cases, so that they could take timely steps to protect their interest.

### **The Case**

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the February 28, 2002 Decision<sup>[2]</sup> and the July 12, 2002 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-GR CV No. 57077. The dispositive portion of the Decision reads as follows:

“WHEREFORE, premises considered, the assailed Decision dated September 17, 1996 is hereby REVERSED and SET ASIDE. Accordingly, [Petitioner] Macondray & Co., Inc., is hereby ORDERED to pay the [respondent] the amount of P1,657,700.95.”

The assailed Resolution denied petitioner’s Motion for Reconsideration.

### **The Facts**

The CA adopted the factual antecedents narrated by the trial court, as follows:

“x x x. On February 16, 1991, at Vancouver, B.C. Canada, CANPOTEX SHIPPING SERVICES LIMITED INC., of Saskatoon, Saskatchewan, (hereinafter the SHIPPER), shipped and loaded on board the vessel M/V ‘Trade Carrier’, 5000 metric tons of Standard Grade Muriate of Potash in bulk for transportation to and delivery at the port of Sangi, Toledo City, Cebu, in favor of ATLAS FERTILIZER CORPORATION, (hereinafter CONSIGNEE) covered by B/L Nos. VAN-SAN-1 for the 815.96 metric tons and VAN-SAN-2 for the 4,184.04 metric tons. Subject shipments were insured with [respondent] against all risks under and by virtue of an Open Marine Policy No. MOP-00143 and Certificate of Marine Insurance No. CMI-823-91.

“When the shipment arrived, CONSIGNEE discovered that the shipment sustained losses/shortage of 476.140 metric tons valued at One Million Six Hundred Fifty Seven Thousand Seven Hundred Pesos and Ninety Five Centavos (P1,657,700.95), Philippine Currency. Provident paid losses.

Formal claims was then filed with Trade & Transport and Macondray but the same refused and failed to settle the same. Hence, this complaint.

"As per Officer's Return dated 4 June 1992, summons was UNSERVED to defendant TRADE AND TRANSPORT at the given address for reason that TRADE AND TRANSPORT is no longer connected with Macondray & Co. Inc., and is not holding office at said address as alleged by Ms. Guadalupe Tan. For failure to effect service of summons the case against TRADE & TRANSPORT was considered dismissed without prejudice.

"Defendant MACONDRAY filed ANSWER, denying liability over the losses, having NO absolute relation with defendant TRADE AND TRANSPORT, the alleged operator of the vessel who transported the subject shipment; that accordingly, MACONDRAY is the local representative of the SHIPPER; the charterer of M/V TRADE CARRIER and not party to this case; that it has no control over the acts of the captain and crew of the Carrier and cannot be held responsible for any damage arising from the fault or negligence of said captain and crew; that upon arrival at the port of Sangi, Toledo City, Cebu, the M/V Trade Carrier discharged the full amount of shipment, as shown by the draft survey with a total quantity of 5,033.59 metric tons discharged from the vessel and delivered to the CONSIGNEE.

"ISSUES: Whether or not Macondray and Co. Inc., as an agent is responsible for any loss sustained by any party from the vessel owned by defendant Trade and Transport. "Whether or not Macondray is liable for loss which was allegedly sustained by the plaintiff in this case.

#### "EVIDENCE FOR THE PLAINTIFF

"Plaintiff presented the testimonies of Marina Celerina P. Aguas and depositions of Alberto Milan and Alfonso Picson submitted as additional witnesses for PROVIDENT to prove the material facts of the complaint are deemed admitted by defendant MACONDRAY, on their defense that it is not an agent of TRADE AND TRANSPORT.

#### "EVIDENCE FOR THE DEFENDANT MACONDRAY:

"Witness Ricardo de la Cruz testified as Supercargo of MACONDRAY, that MACONDRAY was not an agent of defendant TRADE AND TRANSPORT; that his functions as Supercargo was to prepare a notice of readiness, statement of facts, sailing notice and custom's clearance in order to attend to the formalities and the need of the vessel; that MACONDRAY is performing functions in behalf of CANPOTEX and was appointed as local agent of the vessel, which duty includes arrangement of the entrance and clearance of the vessel."

The trial court, in the decision dated September 17, 1996 earlier adverted to, ruled in favor of the [petitioner] x x x, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, the case as against [petitioner]

MACONDRAY is hereby DISMISSED.

"No pronouncement as to costs."<sup>[4]</sup>

### **Ruling of the Court of Appeals**

The CA affirmed the trial court's finding that petitioner was not the agent of Trade and Transport. The appellate court ruled, however, that petitioner could still be held liable for the shortages of the shipment, because the latter was the ship agent of Canpotex Shipping Services Ltd. -- the shipper and charterer of the vessel *M/V Trade Carrier*.

All told, the CA held petitioner "liable for the losses incurred in the shipment of the subject cargoes to the [respondent], who, being the insurer of the risk, was subrogated to the rights and causes of action which the consignee, Atlas Fertilizer Corporation, had against the [petitioner]."<sup>[5]</sup>

Hence, this Petition.<sup>[6]</sup>

### **The Issues**

Petitioner raises the following issues for our consideration:

"Whether or not liability attached to petitioner despite the unequivocal factual findings, that it was not a ship agent.

"Whether or not the 28 February 2002 Decision of the Court of Appeals has attained finality.

"Whether or not by filing the instant Petition for Review on Certiorari, petitioner is guilty of forum-shopping."<sup>[7]</sup>

### **The Court's Ruling**

The Petition has no merit.

#### **First Issue:**

#### **Petitioner's Liability**

As a rule, factual findings of the Court of Appeals -- when not in conflict with those of the trial court -- are not disturbed by this Court,<sup>[8]</sup> to which only questions of law may be raised in an appeal by certiorari.<sup>[9]</sup>

In the present case, we find no compelling reason to overturn the Court of Appeals in its categorical finding that petitioner was the ship agent. Such factual finding was not in conflict with the trial court's ruling, which had merely stated that petitioner was not the agent of Trade and Transport. Indeed, although it is not an agent of Trade and Transport, petitioner can still be the ship agent of the vessel *M/V Trade Carrier*.

Article 586 of the Code of Commerce states that a ship agent is "the person