

SECOND DIVISION

[G.R. No. 138084, April 10, 2002]

**MALAYAN INSURANCE CO., INC., PETITIONER, VS. PHILIPPINE
NAILS AND WIRES CORPORATION, RESPONDENT.**

DECISION

QUISUMBING, J.:

This petition for review seeks the reversal of the decision dated September 30, 1998, of the Court of Appeals in CA-G.R. CV No. 45547, affirming the decision dated December 10, 1993, of the Regional Trial Court of Pasig, Metro Manila, Branch 163, and the resolution dated March 25, 1999, of the Court of Appeals denying the petitioner's motion for reconsideration.^[1]

Respondent Philippine Nails and Wires Corporation insured against all risks its shipment of 10,053.400 metric tons of steel billets valued at P67,156,300 with petitioner Malayan Insurance Company Inc. The shipment delivered was short by 377.168 metric tons. For this shortage, respondent claimed insurance for P2,698,637.04, representing the value of undelivered steel billets, plus customs duties, taxes and other charges paid by respondent. Petitioner refused to pay.

On July 28, 1993, respondent filed a complaint against petitioner for sum of money with the RTC of Pasig representing said lost and/or undelivered cargo. Petitioner moved to dismiss the complaint on the grounds that it failed to state a cause of action, and that it was filed in the wrong venue. The motion was denied. It thus filed a petition for prohibition with the Court of Appeals. This was also denied. Upon motion for reconsideration, the petition was reinstated. However, it was eventually dismissed by the Court of Appeals, and its dismissal became final and executory.

On September 8, 1993, respondent filed a motion to admit an amended complaint which the trial court granted. It sent petitioner summons and a copy of the complaint on October 13, 1993 and also gave petitioner until October 31, 1993 to file its answer.

On November 4, 1993, respondent moved to declare petitioner in default. The trial court granted and allowed the presentation of evidence ex parte before the branch clerk of court. Respondent presented its lone witness, Jeanne King.

On November 11, 1993, petitioner filed its answer with compulsory counterclaim. Upon motion by the respondent, the trial court expunged from the records the answer for late filing.

On December 10, 1993, the trial court rendered a judgment by default which reads:

WHEREFORE, premises considered, Judgment is hereby rendered in favor of plaintiff and against defendant, ordering the latter to pay the following:

1. P2,532,926.53 representing the insured value of the lost and/or not delivered 377.168 metric tons of steel billets plus legal rate of interest from date of filing of this complaint until fully paid;
2. Fifteen (15) percent of the amount awarded to plaintiff as attorney's fees; and
3. Cost of suit.

SO ORDERED.^[2]

Respondent moved to execute judgment pending appeal. The trial court granted the motion. Meanwhile, petitioner filed its notice of appeal which was given due course.

Pursuant to the grant of the motion for execution, the trial court issued the corresponding writ. Petitioner filed a petition for certiorari with prayer for a temporary restraining order to enjoin the implementation of the writ. The Court of Appeals granted the prayer for the temporary restraining order. The writ of execution was likewise stayed by the trial court which favorably considered petitioner's urgent motion to stay execution pending appeal and to approve the supersedeas bond.

Pursuant to the notice of appeal, the entire records of the case were elevated to the Court of Appeals, where petitioner argued that the trial court erred in rendering judgment by default notwithstanding that issues were joined by petitioner's filing of an answer; in awarding damages to respondent based on unauthenticated documentary evidence and hearsay; and in admitting documentary evidence which is irregular in nature and not in accordance with the Rules of Court.

The Court of Appeals concurred with the trial court and disposed the case thus:

WHEREFORE, premises considered, there being no reversible error committed by the lower court, the judgment appealed from is hereby AFFIRMED in toto.^[3]

The Court of Appeals held that the trial court did not abuse its discretion nor err when it expunged the answer from the records because petitioner answered way beyond the prescribed period. It further held that respondent's witness, Jeanne King, was a competent witness because she personally prepared the documentary evidence and had personal knowledge of the allegations in the complaint. In addition, the appellate court said that conclusions and findings of fact of the trial courts were entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, which were not present in this case. Lastly, the absence of a written report by the branch clerk of court on the *ex parte* proceedings did not necessarily deny petitioner due process. Nothing in the Rules of Court stated that the absence of the commissioner's written report nullified a judgment by default. The appellate court observed that if there was a defect, such was only procedural that can be waived. Besides, petitioner was declared in default because of its own failure to answer within the prescribed period. It cannot claim denial of