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FIRST DIVISION

[G.R. No. 126212, March 02, 2000]

SEA-LAND SERVICE, INC., PETITIONER, VS. COURT OF APPEALS, A.P. MOLLER/MAERSK LINE AND MAERSK-TABACALERA SHIPPING AGENCY (FILIPINAS), INC., RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review on certiorari seeks to annul and set aside the decision of the Court of Appeals dated September 29, 1995 in CA-G.R. SP No. 35777,[1] dismissing the petition for certiorari filed by petitioner to annul the two (2) orders issued by the Regional Trial Court of Quezon City, Branch 216, in Civil Case No. Q-92-12593.

The facts are as follows:

On April 29, 1991, petitioner Sea-Land Services, Inc. and private respondent A.P. Moller/Maersk Line (hereinafter referred to as "AMML"), both carriers of cargo in containerships as well as common carriers, entered into a contract entitled, "Co-operation in the Pacific"[2] (hereinafter referred to as the "Agreement"), a vessel sharing agreement whereby they mutually agreed to purchase, share and exchange needed space for cargo in their respective containerships. Under the Agreement, they could be, depending on the occasion, either a principal carrier (with a negotiable bill of lading or other contract of carriage with respect to cargo) or a containership operator (owner, operator or charterer of containership on which the cargo is carried).

During the lifetime of the said Agreement, or on 18 May 1991, Florex International, Inc. (hereinafter referred to as "Florex") delivered to private respondent AMML cargo of various foodstuffs, with Oakland, California as port of discharge and San Francisco as place of delivery. The corresponding Bill of Lading No. MAEU MNL110263 was issued to Florex by respondent AMML. Pursuant to the Agreement, respondent AMML loaded the subject cargo on MS Sealand Pacer, a vessel owned by petitioner. Under this arrangement, therefore, respondent AMML was the principal carrier while petitioner was the containership operator.

The consignee refused to pay for the cargo, alleging that delivery thereof was delayed. Thus, on June 26, 1992, Florex filed a complaint against respondent Maersk-Tabacalera Shipping Agency (Filipinas), Inc. for reimbursement of the value of the cargo and other charges.[3] According to Florex, the cargo was received by the consignee only on June 28, 1991, since it was discharged in Long Beach, California, instead of in Oakland, California on June 5, 1991 as stipulated.

Respondent AMML filed its Answer[4] alleging that even on the assumption that Florex was entitled to reimbursement, it was petitioner who should be liable.

Accordingly, respondent AMML filed a Third Party Complaint[5] against petitioner on November 10, 1992, averring that whatever damages sustained by Florex were caused by petitioner, which actually received and transported FlorexÕs cargo on its vessels and unloaded them.

On January 1, 1993, petitioner filed a Motion to Dismiss the Third Party Complaint[6] on the ground of failure to state a cause of action and lack of jurisdiction, the amount of damages not having been specified therein. Petitioner also prayed either for dismissal or suspension of the Third Party Complaint on the ground that there exists an arbitration agreement between it and respondent AMML. On September 27, 1993, the lower court issued an Order denying petitionerÕs Motion to Dismiss. Petitioner's Motion for Reconsideration was likewise denied by the lower court in its August 22, 1994 Order.

Undaunted, petitioner filed a petition for certiorari[7] with the Court of Appeals on November 23, 1994. Meanwhile, petitioner also filed its Answer to the Third Party Complaint in the trial court.

On September 29, 1995, respondent Court of Appeals rendered the assailed Decision dismissing the petition for certiorari. With the denial of its Motion for Reconsideration, petitioner filed the instant petition for review, raising the following issues -

I.

> THE COURT OF APPEALS DISREGARDED AN AGREEMENT TO ARBITRATE IN VIOLATION OF STATUTE AND SUPREME COURT DECISIONS HOLDING THAT ARBITRATION IS A CONDITION PRECEDENT TO SUIT WHERE SUCH AN AGREEMENT TO ARBITRATE EXISTS.

II.

> THE COURT OF APPEALS HAS RULED IN A MANNER NOT IN ACCORD WITH JURISPRUDENCE WHEN IT REFUSED TO HAVE THE THIRD-PARTY COMPLAINT DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION AND FOR RULING THAT THE FAILURE TO STATE A CAUSE OF ACTION MAY BE REMEDIED BY REFERENCE TO ITS ATTACHMENTS.[8]

Resolving first the issue of failure to state a cause of action, respondent Court of Appeals did not err in reading the Complaint of Florex and respondent AMML's Answer together with the Third Party Complaint to determine whether a cause of action is properly alleged. In *Fil-Estate Golf and Development, Inc. vs. Court of Appeals,*[9] this Court ruled that in the determination of whether or not the complaint states a cause of action, the annexes attached to the complaint may be considered, they being parts of the complaint.

Coming now to the main issue of arbitration, the pertinent clauses of the "Co-operation in the Pacific" contract entered into by the parties provide:

> 16.2 For the purposes of this agreement the Containership Operator shall be deemed to have issued to the Principal

Carrier for good consideration and for both loaded and empty containers its non-negotiable memo bills of lading in the form attached hereto as Appendix 6, consigned only to the Principal Carrier or its agents, provisions of which shall govern the liability between the Principal Carrier and the Containership Operator and that for the purpose of determining the liability in accordance with either Lines' memo bill of lading, the number of packages or customary freight units shown on the bill of lading issued by the Principal Carrier to its shippers shall be controlling.

16.3 The Principal Carrier shall use all reasonable endeavours to defend all in personam and in rem suits for loss of or damage to cargo carried pursuant to bills of lading issued by it, or to settle such suits for as low a figure as reasonably possible. The Principal Carrier shall have the right to seek damages and/or an indemnity from the Containership Operator by arbitration pursuant to Clause 32 hereof. Notwithstanding the provisions of the Lines' memo bills of lading or any statutory rules incorporated therein or applicable thereto, the Principal Carrier shall be entitled to commence such arbitration at any time until one year after its liability has been finally determined by agreement, arbitration award or judgment, such award or judgment not being the subject of appeal, provided that the Containership Operator has been given notice of the said claim in writing by the Principal Carrier within three months of the Principal Carrier receiving notice in writing of the claim. Further the Principal Carrier shall have the right to grant extensions of time for the commencement of suit to any third party interested in the cargo without prior reference to the Containership Operator provided that notice of any extension so granted is given to the Containership Operator within 30 days of any such extension being granted.

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32. ARBITRATION

32.1 If at any time a dispute or claim arises out of or in connection with the Agreement the Lines shall endeavour to settle such amicably, failing which it shall be referred to arbitration by a single arbitrator in London, such arbitrator to be appointed by agreement between the Lines within 14 days after service by one Line upon the other of a notice specifying the nature of the dispute or claim and requiring reference of such dispute or claim to arbitration pursuant to this Article.

32.2 Failing agreement upon an arbitrator within such period of 14 days, the dispute shall be settled by three Arbitrators, each party appointing one Arbitrator, the third being appointed by the President of the London Maritime Arbitrators Association.

32.3 If either of the appointed Arbitrators refuses or is incapable of acting, the party who appointed him shall appoint a new Arbitrator in his place.

32.4 If one of the parties fails to appoint an Arbitrator - either originally or by way of substitution Ð for two weeks after