

THIRD DIVISION

[G.R. No. 139273, November 28, 2000]

CALIFORNIA AND HAWAIIAN SUGAR COMPANY; PACIFIC GULF MARINE, INC.; AND C.F. SHARP & COMPANY, PETITIONERS, VS. PIONEER INSURANCE AND SURETY CORPORATION, RESPONDENT.

DECISION

PANGANIBAN, J.:

Under the pre-1997 Rules of Court, a preliminary hearing on affirmative defenses may be allowed when a motion to dismiss has not been filed or when, having been filed, it has not been denied unconditionally. Hence, if its resolution has merely been deferred, the grounds it invokes may still be raised as affirmative defenses, and a preliminary hearing thereon allowed.

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the January 21, 1999 Decision of the Court of Appeals^[1] (CA) in CA-GR SP No. 33723, as well as the July 6, 1999 CA Resolution^[2] denying reconsideration. The challenged Decision, which sustained the Orders^[3] of the Regional Trial Court of Makati City, disposed as follows:

"**WHEREFORE**, [there being] no grave abuse of discretion on the part of public respondent, the instant petition is hereby **DISMISSED**."^[4]
(emphasis in the original)

The Facts

The facts, as summarized by the CA, are as follows:

"On November 27, 1990, the vessel MV "SUGAR ISLANDER" arrived at the port of Manila carrying a cargo of soybean meal in bulk consigned to several consignees, one of which was the Metro Manila Feed Millers Association (Metro for [b]revity). Discharging of cargo from vessel to barges commenced on November 30, 1990. From the barges, the cargo was allegedly offloaded, rebagged and reloaded on consignee's delivery trucks. Respondent, however, claims that when the cargo [was] weighed on a licensed truck scale a shortage of 255.051 metric tons valued at P1,621,171.16 was discovered. The above-mentioned shipment was insured with private respondent against all risk in the amount of P19,976,404.00. Due to the alleged refusal of petitioners to settle their respective liabilities, respondent, as insurer, paid the consignee Metro Manila Feed Miller's Association. On March 26, 1992, as alleged subrogee of Metro, private respondent filed a complaint for

damages against herein petitioners. Within the reglementary period to file an Answer, petitioners filed a Motion to Dismiss the complaint on the ground that respondent's claim is premature, the same being arbitrable. Private respondent filed its Opposition thereto and petitioners filed their Reply to Opposition.

"On November 11, 1992, [the RTC] issued an Order deferring the hearing on the Motion to Dismiss until the trial and directing petitioners to file their Answer. Petitioners then moved to reconsider said Order which was, however, denied by [the RTC] on the ground that the reason relied upon by herein petitioners in its Motion to Dismiss and Motion for Reconsideration [was] a matter of defense which they must prove with their evidence.

"On August 20, 1993, petitioners filed their Answer with Counterclaim and Crossclaim alleging therein that plaintiff, herein respondent, did not comply with the arbitration clause of the charter party; hence, the complaint was allegedly prematurely filed. The trial court set the case for pre-trial on November 26, 1993.

"On November 15 and 16, 1993, petitioners filed a Motion to Defer Pre-Trial and Motion to Set for Preliminary Hearing the Affirmative Defense of Lack of Cause of Action for Failure to comply with Arbitration Clause, respectively. Private respondent did not file an Opposition to the said Motion to Set for Preliminary Hearing. On December 28, 1993, [the RTC] issued an Order denying the Motion to Set for Preliminary Hearing. On February 2, 1994 petitioners filed a Motion for Reconsideration of the Order dated December 28, 1993. On February 11, 1994, [the RTC] issued an Order denying petitioners' Motion for Reconsideration. Hence, the instant petition."^[5]

Ruling of the Court Of Appeals

Affirming the trial court, the CA held that petitioners cannot rely on Section 5, Rule 16^[6] of the pre-1997 Rules of Court,^[7] because a Motion to Dismiss had previously been filed. Further, it ruled that the arbitration clause provided in the charter party did not bind respondent. It reasoned as follows:

"Petitioners argue that [the RTC] committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the preliminary hearing of the affirmative defense of lack of cause of action for failure to comply with the arbitration clause.

"Petitioners, in so filing the Motion to Set for Preliminary Hearing the Affirmative Defense of Lack of Cause of Action for Failure to Comply with Arbitration Clause, premised their alleged right to a preliminary hearing on the provision of Section 5, Rule 16 of the Old Rules of Court which provide[s]:

`Sec. 5. *Pleading grounds as affirmative defenses.* Any of the grounds

for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense and a preliminary hearing may be had thereon as if a motion to dismiss had been filed.'

"Petitioners' reliance on said provision is misplaced. The above-mentioned provision contemplates a situation where no motion to dismiss is filed. If a motion to dismiss has been filed, as in the case at bar, Section 5, Rule 16 of the Old Rules of Court will not come into play. Furthermore, the same provision gives the judge discretion whether to set for preliminary hearing the grounds for affirmative defenses. Respondent judge deferred the hearing and determination of the Motion to Dismiss until the trial since the ground relied upon by petitioners therein did not appear to be indubitable. Petitioners then filed their Answer as ordered by the Court again raising as an affirmative defense lack of cause of action for failure to comply with [the] arbitration clause, praying for the dismissal of the complaint against them, and filing afterwards a Motion to Set for Preliminary Hearing the Affirmative Defense of lack of Cause of Action. In effect, petitioners are asking the trial court to set aside its Order denying the Motion to Dismiss and Order denying the Motion for Reconsideration thereof.

"Petitioners cannot do this.

"The remedy of the aggrieved party in a denied motion to dismiss is to file an answer and interpose as defense or defenses, the objection or objections raised by him in said motion to dismiss, then proceed to trial and, in case of adverse decision, to elevate the entire case by appeal in due course. Petitioners could also resort to the extraordinary legal remedies of certiorari, prohibition and mandamus to question the denial of the motion to dismiss. As correctly ruled by the trial court in its Order dated June 30, 1993, denying the Motion for Reconsideration of the Order dated November 11, 1992 (denying the Motion to Dismiss) the ground relied upon by petitioners is a matter of defense which petitioners must prove with their evidence at the trial.

"Petitioners in asking the lower court to set the case for preliminary hearing further argue that this would give the court and the parties a shorter time to resolve the matter and the case without a full blown trial. However, petitioners fail to realize that they themselves are delaying the determination and resolution of the issues involved by resorting to an improper remedy.

"On the issue raised by petitioners that private respondent's claim is premature for failure to comply with [the] arbitration clause, we hold that the right of the respondent as subrogee, in filing the complaint against herein petitions is not dependent upon the charter party relied upon by petitioners; nor does it grow out of any privity contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by respondent as insurer to the insured. This was the pronouncement by the Supreme Court in the case of Pan Malayan Insurance Corp. vs. Court of Appeals 184 SCRA 54, to wit:

`Payment by the insurer to the insured operates as an equitable assignment to the former of all the remedies which the latter may have against the third party whose negligence or wrongful (sic) caused the loss. The right of subrogation is not dependent upon, nor does it grow out of, any privity contract or upon written assignment of claim. It accrues simply upon payment of the insurance claim by the insurer.'"[8]

Hence, this recourse.[9]

The Issues

In their Memorandum, petitioners submit the following issues for our consideration:
[10]

- "1. Whether or not insurer, as subrogee of the consignee, is bound by the charter party which is incorporated and referred to in the bill of lading.
2. Whether or not the motion to dismiss should be granted on the ground that a condition precedent has not been complied with, based on the arbitration clause incorporated in the bill of lading.
3. Whether or not the Court of Appeals erred in holding that the trial court did not commit grave abuse of discretion in denying petitioners' motion for preliminary hearing.
4. Whether or not the trial court can defer the resolution of a motion to dismiss on the ground that the ground relied upon is indubitable.
5. Whether or not the petitioners have resorted to an improper remedy which makes them responsible for delaying the case."

In the main, the two principal matters before us are: (1) the denial of petitioners' Motion for Preliminary Hearing and (2) the propriety of the CA ruling regarding the arbitration clause.

The Court's Ruling

The Petition is meritorious.

First Issue: *Preliminary Hearing of Affirmative Defense*

At the outset, we must emphasize that the crux of the present controversy is the trial court's Order denying petitioner's Motion to Set for Preliminary Hearing the affirmative defense of lack of cause of action. Not questioned here is the said court's Order holding in abeyance the hearing of petitioner's Motion to Dismiss.

Affirmative Defense May Be Raised