

THIRD DIVISION

[G.R. No. 223377, June 10, 2020]

**2100 CUSTOMS BROKERS, INC., PETITIONER, VS. PHILAM
INSURANCE COMPANY [NOW AIG PHILIPPINES INSURANCE
INC.], RESPONDENT. DECEMBER 1, 2020**

DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court (Rules), assailing the Decision^[2] dated October 12, 2015 and the Resolution^[3] dated March 7, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138302 filed by petitioner 2100 Customs Brokers, Inc. (2100 CBI).

The Antecedents

On February 27, 2001, Ablestik Laboratories (Ablestik) placed two (2) cardboard boxes containing 63 jars of Ablebond Adhesive on board Japan Airlines (JAL) Flight No. JL 5261 in Los Angeles, California, United States of America^[4] covered by Airway Bill No. 131-66081842^[5] for consignee (TSPIC). After transshipment in Japan, the goods were expected to arrive in Manila aboard JAL Flight No. JL 745 on March 1, 2001.^[6] Ablestik issued a handling instruction^[7] addressed to its freight forwarding agent, U-Freight America Inc., stating the following:

***SHIPMENTS CONTAINING DRY ICE ARE
PERISHABLE AND MUST DELIVER TO OUR
CUSTOMER WITHIN 72 HOURS. DO NOT DELAY.***

x x x x

5. Frozen products must maintain temperatures of -40F.
6. If transit is to be longer than 72 hours[,], total shipment must be reiced [sic] in transit or at broker's import destination, depending on flight schedule.
7. Shipment must be stored upon arrival in destination broker's freezer with temperatures of 32F or colder.^[8]
(Emphasis and italics in the original)

The goods were insured with respondent Philam Insurance Company (Philam; now AIG PHILIPPINES INSURANCE, INC.) against all risks per Marine Cargo Certificate 0801012154^[9] and Open Policy Number 9595292.^[10]

At 1:30 a.m. on March 1, 2001 (Thursday), the goods arrived at the Ninoy Aquino International Airport (NAIA) and were subsequently stored at the Paircargo

warehouse located in NAIA Complex, Parañaque City.^[11]

At 2:47 p.m. on March 2, 2001 (Friday), TSPIC notified 2100 CBI that the shipment had arrived.^[12] TSPIC allegedly forwarded to 2100 CBI the Packing List from Ablestik indicating "1 Year @-40C or colder/ Dry ice shipment"^[13] and the Shipment Handling Instructions^[14] from Ablestik stating "SHIPMENTS CONTAINING DRY ICE ARE PERISHABLE AND MUST DELIVER TO OUR CUSTOMER WITHIN 72 HOURS. DO NOT DELAY." It is further stated in the Shipment Handling Instructions that:

Frozen products must maintain temperatures of -40F.

If transit is to be longer than 72 hours total shipment must be re-iced in transit or at broker's import destination, depending on flight schedule.

Shipment must be stored upon arrival in destination

broker's freezer with temperatures of 32F or colder.^[15]

TSPIC also sent an extra copy^[16] of Airway Bill No. 131-66081842 with "freight collect" stamped on its face which meant that freight charges must be paid to JAL before it could release the original copy of Airway Bill No. 131-66081842. This is required to process the discharge of the shipment from the custody of the Bureau of Customs (BOC).^[17] TSPIC informed 2100 CBI that the latter will advance the necessary funds for the freight charges in the amount of P14,672.00. Since it was already past 3 p.m. on a Friday, the banks were already closed, and there were no available signatories to sign the checks. The freight charges were only settled on March 5, 2001.^[18]

At around 2:00 a.m. on March 6, 2001 (Tuesday) or five (5) days after the date of arrival of the shipment in Manila, 2100 CBI delivered the cargo to TSPIC.^[19] Upon receipt of the goods, TSPIC's representatives found that the dry ice stuffed inside the boxes have melted due to the delay in the delivery as shown in the Damage Report^[20] and photographs taken by the Manila Adjusters Surveyors Company (MASCO).^[21]

TSPIC filed a claim^[22] against 2100 CBI for the value of the shipment but the latter refused to pay. 2100 CBI contended that the delay in the delivery of the goods was due to TSPIC's failure to give pre-alerts as to the expected arrival thereof and TSPIC's failure to pay the freight charges on time.^[23]

TSPIC then filed a formal claim for the recovery of the value of the damaged goods against Philam. After the survey conducted by the MASCO,^[24] payment in the amount of P391,917.69 was recommended.^[25] Philam paid the insurance claim of TSPIC. On July 30, 2001, a subrogation receipt for Claim No. 200140080A was executed certifying that Philam paid the insurance claim of TSPIC.^[26]

Thereafter, Philam filed a claim for reimbursement against 2100 CBI but its claim was denied. Hence, Philam filed a complaint for damages docketed as Civil Case No. 78072 in the Metropolitan Trial Court of Makati City (MeTC).^[27]

In 2100 CBI's Answer with Counterclaim,^[28] it denied the allegations against it and

maintained that it has no liability to pay consignee TSPIC because it had exercised the diligence and care required by law in the vigilance and custody over the shipment. 2100 CBI claimed that the alleged damage, if there is any, did not occur when the shipment was under its custody. 2100 CBI also argued that it was just a mere customs broker or a commercial agent in the transaction specifically tasked to release the shipment from the BOC only after the receipt of the original import documents from the consignees or freight forwarder or at least a pre-alert advice about the arrival of the shipment from the consignee.^[29] In the letter attached to its Answer with Counterclaim, 2100 CBI insisted that it received from TSPIC the shipment documents late in the afternoon of Friday March 2, 2001. Freight payment was advanced by 2100 CBI on March 5, 2001 (Monday) because freight payment is not accepted on Saturdays and Sundays and TSPIC's funds were not sufficient.^[30]

For its counterclaim, 2100 CBI maintained that because of the unfounded suit, it was exposed to litigation and was constrained to hire the services of a lawyer in the amount of P50,000.00.^[31]

Ruling of the Metropolitan Trial Court

In a Decision^[32] dated June 6, 2013, the MeTC ordered 2100 CBI to pay Philam the following: (1) P391,917.69 as actual damages; (2) P10,000.00 as attorney's fees; and (3) costs of suit.^[33] The MeTC held that, as customs broker, 2100 CBI is regarded as a common carrier because transportation of goods is an integral part of its business. It is mandated by law to exercise extraordinary diligence in handling TSPIC's shipment.^[34]

The MeTC explained that because of the nature of 2100 CBI's business, it should have devised ways to prevent the damage to the cargo under its custody and to deliver the same to the consignee with extraordinary care and diligence. Even if the cargo was not released immediately by the BOC due to insufficient funds for the freight payment, 2100 CBI knew from the start that the cargo contained perishable materials and had to be stored in a cool place and required re-icing beyond 72 hours in transit. The packing list clearly indicated that the items are "1 Year @ - 40C or colder/ Dry ice shipment."^[35] For the MeTC, 2100 CBI should have undertaken precautionary measures to avoid or lessen the cargo's possible deterioration.^[36]

The MeTC noted that in 2100 CBI's DR No. 659556,^[37] "the defendant [2100 CBI] accepted the items in good order and condition, noting the carton of frozen adhesive."^[38] The MeTC concluded that the goods "went from good order to bad order condition while in the custody of the defendant [2100 CBI]"^[39] and that it "failed to adduce evidence that it exerted extraordinary diligence to prevent the same from occurring."^[40]

In an Order^[41] dated January 8, 2014, the MeTC denied the Motion for Reconsideration of 2100 CBI.^[42]

Ruling of the Regional Trial Court

In a Decision^[43] dated May 23, 2014, the Regional Trial Court (RTC) affirmed the ruling of the MeTC. In sustaining the ruling of the MeTC, the RTC found that the

cargo deteriorated while inside the Paircargo warehouse because of the delay in the release and withdrawal to TSPIC, as stated in the Certificate of Survey and Material Status Report. The RTC explained that although the cargo was not released immediately by the BOC due to the insufficient freight payment, 2100 CBI knew at the outset that the cargo contained perishable material which had to be stored in cool places and re-iced after 72 hours in transit.^[44] The RTC found that 2100 CBI failed to prove that it exerted extraordinary diligence while the cargo was in its custody.

Ruling of the Court of Appeals

In a Decision^[45] dated October 12, 2015, the CA denied the petition of 2100 CBI and affirmed the ruling of the RTC ordering 2100 CBI to pay P391,917.69 as actual damages, P10,000.00 as attorney's fees, and costs of suit.^[46]

In affirming the ruling of the RTC, the CA held that 2100 CBI, as a common carrier, failed to exercise extraordinary diligence over the goods. The CA observed that 2100 CBI already knew that the goods cannot be released on March 2, 2001 yet it did not take precautionary measures to avoid damage to the cargo. It received the Ablestik packing list which stipulated "1 Year @ -40C or colder/ Dry Ice shipment"^[47] on March 2, 2001. Considering that the transit has exceeded 72 hours, 2100 CBI should have re-iced the goods to maintain its required temperature at -40C or colder.^[48]

Moreover, the CA found no merit in 2100 CBI's contention that there was no valid subrogation. The goods were insured with Philam against all risks pursuant to Marine Cargo Certificate 0801012154 and Open Policy Number 9595292. When the shipment was damaged, TSPIC filed a claim for recovery of the value against Philam. The CA concluded that since Philam paid the insurance claim of TSPIC, it is only but proper that Philam be subrogated to the rights of TSPIC.^[49]

In a Resolution^[50] dated March 7, 2016, the CA denied the Motion for Reconsideration^[51] of 2100 CBI.

In the present petition,^[52] 2100 CBI insists that Philam failed to show that it was negligent in handling the subject goods from the time the BOC released the goods on March 6, 2001 at 2:00 a.m. until they were delivered to TSPIC in good order and condition on March 6, 2001 at 3:44 a.m., or approximately two hours. It would be physically impossible and contrary to logic and experience for 2100 CBI to implement any control or handling instructions over goods not in its possession or custody. Even assuming that it is a common carrier, 2100 CBI suggests that it is excused from liability as it did not cause the delay in the delivery of the goods to TSPIC. The delay in the release of the goods was due to TSPIC's failure to provide sufficient money for the freight charges to be paid.^[53]

2100 CBI also alleges that TSPIC failed to give a copy of the handling instruction. The Shipment Handling Instruction presented was addressed to U-Freight America, Inc., not 2100 CBI.^[54]

In addition, 2100 CBI argues that it was incumbent upon Philam to show that the

alleged damage was within the coverage of the supposed insurance with TSPIC. 2100 CBI posits that the Marine Cargo Certificate, by itself, does not show the scope of coverage over the subject goods. The contract of insurance must be presented to prove the extent of its coverage.^[55] 2100 CBI also points out that as the name "Marine Cargo Certificate" implies, it covers goods transported by sea, and not through air such as the shipment of TSPIC placed onboard JAL Flight No. JL 5261.^[56] Even if the Marine Cargo Certificate covers shipment of goods by air, the Insurance Declaration Report attached to the Marine Cargo Certificate only covers Ablestik's shipment on JL Flight No. 745 from Narita, Japan. Shipment of goods aboard JL Flight No. 5621 from USA was allegedly not included.^[57]

2100 CBI claims that an insurer who pays the insured for loss or liability not covered by the policy is not subrogated to rights of the latter.^[58]

In its Comment,^[59] Philam argues that the present petition only raised questions of fact which, as a general rule, are not reviewable under Rule 45 of the Rules.^[60] Philam also claims that there was a valid subrogation in its favor by virtue of its payment of TSPIC's insurance claim.^[61] Philam also insists that 2100 CBI is a common carrier whose liability is governed by Article 1735 of the Civil Code.^[62]

Issues

The issues to be resolved are:

1. Whether 2100 CBI is a common carrier engaged in the transportation of goods;
2. Whether a Marine Cargo Certificate may include goods transported by air;
3. Whether the insurance policy must be presented to establish the liability of the common carrier to Philam; and
4. Whether 2100 CBI was negligent in handling the shipment of TSPIC, thus making it liable for damages.

The Court's Ruling

At the outset, We deem it necessary to emphasize that a petition for review on *certiorari* under Rule 45 is limited only to questions of law. As a rule, We do not review factual questions raised under Rule 45 as it is not Our function to analyze or weigh evidence already considered in the proceedings below. Nevertheless, this rule is not absolute. In the case of *Microsoft Corp. v. Farajallah*,^[63] the Court declared that a review of the factual findings of the CA is proper in the following instances:

- (1) when the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures;
- (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;