815 Phil. 439

# SECOND DIVISION

# [ G.R. No. 226345, August 02, 2017 ]

## PIONEER INSURANCE AND SURETY CORPORATION, PETITIONER, VS. APL CO. PTE. LTD., RESPONDENT.

## DECISION

**MENDOZA, J.:**

This petition for review on *certiorari* seeks to reverse and set aside the May 26, 2016 Decision[1] and August 8, 2016 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 143912, which reversed the November 3, 2015 Decision[3] of the Regional Trial Court, Branch 137, Makati City (*RTC*). The RTC affirmed in *toto* the March 9, 2015 Decision[4] of the Municipal Trial Court, Branch 65, Makati City (*MTC*).

On January 13, 2012, the shipper, Chillies Export House Limited, turned over to respondent APL Co. Pte. Ltd. (*APL*) 250 bags of chili pepper for transport from the port of Chennai, India, to Manila. The shipment, with a total declared value of $12,272.50, was loaded on board M/V Wan Hai 262. In turn, BSFIL Technologies, Inc. (*BSFIL*), as consignee, insured the cargo with petitioner Pioneer Insurance and Surety Corporation (*Pioneer Insurance*).[5]

On February 2, 2012, the shipment arrived at the port of Manila and was temporarily stored at North Harbor, Manila. On February 6, 2012, the bags of chili were withdrawn and delivered to BSFIL. Upon receipt thereof, it discovered that 76 bags were wet and heavily infested with molds. The shipment was declared unfit for human consumption and was eventually declared as a total loss.[6]

As a result, BSFIL made a formal claim against APL and Pioneer Insurance. The latter hired an independent insurance adjuster, which found that the shipment was wet because of the water which seeped inside the container van APL provided. Pioneer Insurance paid BSFIL P195,505.65 after evaluating the claim.[7]

Having been subrogated to all the rights and cause of action of BSFIL, Pioneer Insurance sought payment from APL, but the latter refused. This prompted Pioneer Insurance to file a complaint for sum of money against APL.

*MTC Ruling*

In its March 9, 2015 decision, the MTC granted the complaint and ordered APL to pay Pioneer Insurance the amount claimed plus six percent (6%) interest *per annum* from the filing of the complaint until fully paid, and P10,000.00 as attorney's fees. It explained that by paying BSFIL, Pioneer Insurance was subrogated to the rights of the insured and, as such, it may pursue all the remedies the insured may

have against the party whose negligence or wrongful act caused the loss. The MTC declared that as a common carrier, APL was bound to observe extraordinary diligence. It noted that because the goods were damaged while it was in APL's custody, it was presumed that APL did not exercise extraordinary diligence, and that the latter failed to overcome such presumption. The dispositive portion reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering defendant APL Co. Pte Ltd. to pay plaintiff the amount of P195,505.65 plus 6% interest per annum from the filing of this case (01 February 2013) until the whole amount is fully paid and the amount of P10,000.00 as attorney's fees; and the costs.
>
> SO ORDERED.[8]

Aggrieved, APL appealed to the RTC.

*The RTC Ruling*

In its November 3, 2015 decision, the RTC concurred with the MTC. It agreed that APL was presumed to have acted negligently because the goods were damaged while in its custody. In addition, the RTC stated that under the Carriage of Goods by Sea Act (*COGSA*), lack of written notice shall not prejudice the right of the shipper to bring a suit within one year after delivery of the goods. Further, the trial court stated that the shorter prescriptive period set in the Bill of Lading could not apply because it is contrary to the provisions of the COGS A. It ruled:

> **WHEREFORE, PREMISES CONSIDERED,** the Decision dated March 9, 2015 of the Metropolitan Trial Court Branch 65, Makati City is hereby **AFFIRMED** *in toto*, with costs against defendant-appellant APL.
>
> **SO ORDERED.**[9]

Undeterred, APL appealed before the CA.

*The CA Ruling*

In its May 26, 2016 decision, the CA *reversed* the decisions of the trial courts and ruled that the present action was barred by prescription. The appellate court noted that under Clause 8 of the Bill of Lading, the carrier shall be absolved from any liability unless a case is filed within nine (9) months after the delivery of the goods. It explained that a shorter prescriptive period may be stipulated upon, provided it is reasonable. The CA opined that the nine-month prescriptive period set out in the Bill of Lading was reasonable and provided a sufficient period of time within which an action to recover any loss or damage arising from the contract of carriage may be instituted.

The appellate court pointed out that as subrogee, Pioneer Insurance was bound by the stipulations of the Bill of Lading, including the shorter period to file an action. It stated that the contract had the force of law between the parties and so it could not countenance an interpretation which may undermine the stipulations freely agreed upon by the parties. The *fallo* reads:

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. The assailed Decision dated November 3, 2015 of the RTC, Branch 137, Makati City in Civil Case No. 15-403 is hereby **REVERSED** and **SET ASIDE**. Respondent Pioneer Insurance & Surety Corporation's Complaint is accordingly **DISMISSED**.

**SO ORDERED.**[10]

Pioneer Insurance moved for reconsideration, but the CA denied its motion in its August 8, 2016 Resolution.

Hence, this petition.

## ISSUES

**I**

**WHETHER THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT PETITIONER'S CLAIM AGAINST THE RESPONDENT IS ALREADY BARRED BY PRESCRIPTION; AND**

**II**

**WHETHER THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE ONE YEAR PRESCRIPTIVE PERIOD PROVIDED UNDER THE CARRIAGE OF GOODS BY SEA ACT (COGSA) IS NOT APPLICABLE IN THE INSTANT CASE.**[11]

Pioneer Insurance insists the action, which was filed on February 1, 2013, was within the one year prescriptive period under the COGSA after BSFIL received the goods on February 6, 2012. It argues that the nine-month period provided under the Bill of Lading was inapplicable because the Bill of Lading itself states that in the event that such time period is found to be contrary to any law compulsorily applicable, then the period prescribed by such law shall then apply. Pioneer Insurance is of the view that the stipulation in the Bill of Lading is subordinate to the COGSA. It asserts that while parties are free to stipulate the terms and conditions of their contract, the same should not be contrary to law, morals, good customs, public order, or public policy.

Further, Pioneer Insurance contends that it was not questioning the validity of the terms and conditions of the Bill of Lading as it was merely pointing out that the Bill of Lading itself provides that the nine-month prescriptive period is subservient to the one-year prescriptive period under the COGSA.

In its Comment,[12] dated November 3, 2016, APL countered that Pioneer Insurance erred in claiming that the nine-month period under the Bill of Lading applies only in the absence of an applicable law. It stressed that the nine-month period under the Bill of Lading applies, unless there is a law to the contrary. APL explained that "absence" differs from "contrary." It, thus, argued that the nine-month period was applicable because it is not contrary to any applicable law.

In its Reply,[13] dated February 23, 2017, Pioneer Insurance averred that the nine-