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FIRST DIVISION

[G.R. No. 190271, September 14, 2016]

TRANSIMEX CO., PETITIONER, VS. MAFRE ASIAN INSURANCE CORP., RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This case involves a money claim filed by an insurance company against the ship agent of a common carrier. The dispute stemmed from an alleged shortage in a shipment of fertilizer delivered by the carrier to a consignee. Before this Court, the ship agent insists that the shortage was caused by bad weather, which must be considered either a storm under Article 1734 of the Civil Code or a peril of the sea under the Carriage of Goods by Sea Act (COGSA).[1]

In the Decision[2] and the Resolution[3] assailed in this Petition for Review on *Certiorari*,[4] the Court of Appeals (CA) affirmed the Decision[5] of the Regional Trial Court (RTC). The RTC ordered petitioner Transimex Co. (Transimex) to pay respondent Mafre Asian Insurance Corp.[6] the amount of P1,617,527.37 in addition to attorney's fees and costs. Petitioner is the local ship agent of the vessel, while respondent is the subrogee of Fertiphil Corporation (Fertiphil),[7] the consignee of a shipment of Prilled Urea Fertilizer transported by *M/V Meryem Ana*.

FACTUAL ANTECEDENTS

On 21 May 1996, *M/V Meryem Ana* received a shipment consisting of 21,857 metric tons of Prilled Urea Fertilizer from Helm Duengemittel GMBH at Odessa, Ukraine.[8] The shipment was covered by two separate bills of lading and consigned to Fertiphil for delivery to two ports - one in Poro Point, San Fernando, La Union; and the other in Tabaco, Albay.[9] Fertiphil insured the cargo against all risks under Marine Risk Note Nos. MN-MAR-HO-0001341 and MN-MAR-HO-0001347 issued by respondent.[10]

On 20 June 1996, *M/V Meryem Ana* arrived at Poro Point, La Union, and discharged 14,339.507 metric tons of fertilizer under the first bill of lading.[11] The ship sailed on to Tabaco, Albay, to unload the remainder of the cargo. The fertilizer unloaded at Albay appeared to have a gross weight of 7,700 metric tons.[12] The present controversy involves only this second delivery.

As soon as the vessel docked at the Tabaco port, the fertilizer was bagged and stored inside a warehouse by employees of the consignee.[13] When the cargo was subsequently weighed, it was discovered that only 7,350.35 metric tons of fertilizer had been delivered.[14] Because of the alleged shortage of 349.65 metric tons,

Fertiphil filed a claim with respondent for P1,617,527.37,[15] which was found compensable.[16]

After paying the claim of Fertiphil, respondent demanded reimbursement from petitioner on the basis of the right of subrogation. The claim was denied, prompting respondent to file a Complaint with the RTC for recovery of sum of money.[17] In support of its claim, respondent presented a Report of Survey[18] and a Certification[19] from David Cargo Survey Services to prove the shortage. In addition, respondent submitted an Adjustment Report[20] prepared by Adjustment Standards Corporation (ASC) to establish the outturn quantity and condition of the fertilizer discharged from the vessel at the Tabaco port.[21] In the report, the adjuster also stated that the shortage was attributable to the melting of the fertilizer while inside the hatches, when the vessel took on water because of the bad weather experienced at sea.[22] Two witnesses were then presented by respondent to buttress its documentary evidence.[23]

Petitioner, on the other hand, denied that there was loss or damage to the cargo.[24] It submitted survey certificates and presented the testimony of a marine surveyor to prove that there was, in fact, an excess of 3.340 metric tons of fertilizer delivered to the consignee.[25] Petitioner also alleged that defendants had exercised extraordinary diligence in the transport and handling of the cargo.[26]

THE RTC RULING

The RTC ruled in favor of respondent and ordered petitioner to pay the claim of P1,617,527.37. In its Decision,[27] the trial court found that there was indeed a shortage in the cargo delivered, for which the common carrier must be held responsible under Article 1734 of the Civil Code. The RTC also refused to give credence to petitioner's claim of overage and noted that the presumption of fault and/or negligence on the part of the carrier remained unrebutted. The trial court explained:

> The defendants' defense is that there was no loss/damage to the cargo because instead of a shortage there was an overage of 3.340, invoking the findings of Raul Pelagio, a marine surveyor connected with Survey Specialists, Inc. whose services were engaged by the defendants. However, the Court notes that what was loaded in the vessel M/V Meryem Ana at Odessa, Ukraine on May 21, 1996 was 21,857 metric tons of prilled urea fertilizer (Draft Survey Report, Exhibit F). How the quantity loaded had increased to 21,860.34 has not been explained by the defendants. Thus, the Court finds incredible the testimony of Raul Pelagio that he found an overage of 3.340 metric tons. The Court is inclined to give credence to the testimonies of witness Jaime David, the cargo surveyor engaged by consignee Fertiphil Corporation, and witness Fabian Bon, a cargo surveyor of Adjustment Standards Corporation, whose services were engaged by plaintiff Mafre Asian Insurance Corporation, there being no reason for the Court to disregard their findings which jibe with one another.

> Thus, it appears crystal clear that on the vessel M/V Meryem Ana was loaded in bulk on May 21, 1996 at Odessa, Ukraine a cargo consisting of 21,857 metric tons of prilled urea fertilizer bound for delivery at Poro Point, San Fernando, La Union and at Tabaco, Albay; that the cargo unloaded at said ports of destination had a shortage of 349.65 metric tons.
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> As to the defense that defendants had supposedly exercised extraordinary care and diligence in the transport and handling of the cargo, the Court finds that the evidence presented by the defendants is absolutely and completely bereft of anything to support their claim of having exercised extraordinary care and diligence.
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> Hence, the presumption of fault and/or negligence as provided in Art. 1735 of the Civil Code on the part of the defendants stands unrebutted as against the latter.[28]

THE CA RULING

The CA affirmed the ruling of the RTC and denied petitioner's appeal.[29] After evaluating the evidence presented during trial, the appellate court found no reason to disturb the trial court's conclusion that there was indeed a shortage in the shipment.[30]

The CA also rejected the assertion that petitioner was not a common carrier.[31] Because the latter offered services to the public for the transport of goods in exchange for compensation, it was considered a common carrier in accordance with Article 1732 of the Civil Code. The CA further noted that petitioner had already admitted this fact in the Answer[32] and even raised the defenses usually invoked by common carriers during trial and on appeal, i.e., the exercise of extraordinary care and diligence, and fortuitous event.[33] These defenses were, however, found unmeritorious:

> Defendants-appellants claim that the loss was due to a fortuitous event as the Survey Report of Jaime David stated that during its voyage, the vessel encountered bad weather. But to excuse a common carrier fully of any liability, Article 1739 of the Civil Code requires that the fortuitous event must have been the proximate and only cause of the loss. Moreover, it should have exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the fortuitous event.
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> In the present case, defendants-appellants did not present proof that the "bad weather" they encountered was a "storm" as contemplated by Article 1734(1). String winds are the ordinary vicissitudes of a sea voyage. Even if the weather encountered by the ship was to be deemed a natural disaster under Article 1739 of the Civil Code, defendants-appellants failed to show that such natural disaster or calamity was the

> proximate and only cause of the loss. The shortage must not have been caused or worsened by human participation. The defense of fortuitous event or natural disaster cannot be successfully made when the injury could have been avoided by human precaution.[34]

Petitioner moved for reconsideration of the CA Decision, but the motion was denied.[35] Not only did the Motion for Reconsideration lack meit according to the appellate court; it was also filed out of time.[36]

PROCEEDINGS BEFORE THIS COURT

On 3 December 2009, Transimex filed a Petition for Review on *Certiorari*[37] before this Court praying for the reversal of the CA Decision and Resolution.[38] Petitioner asserts that the lower courts erred in holding it liable for the alleged shortage in the shipment of fertilizer. While it no longer questions the existence of the shortage, it claims that the loss or damage was caused by bad weather.[39] It then insists that the dispute is governed by Section 4 of COGSA, which exempts the carrier from liability for any loss or damage arising from "perils, dangers and accidents of the sea.[40]

In its Comment,[41] respondent maintains that petitioner was correctly held liable for the shortage of the cargo in accordance with the Civil Code provisions on common carriers.[42] It insists that the factual findings of the lower courts must be respected[43] particularly in this case, since petitioner failed to timely appeal the Decision of the CA.[44]

Petitioner, in its Reply,[45] takes a position different from its initial stance as to the law applicable to the dispute. It concedes that the Civil Code primarily governs its liability as a carrier, with COGSA as a suppletory source.[46] Under both laws, petitioner contends that it is exempt from liability, because damage to the cargo was caused by the bad weather encountered by the vessel while at sea. This kind of weather supposedly qualifies as a violent storm under the Civil Code; or as a peril, danger or accident of the sea under COGSA.[47]

ISSUES

The following issues are presented for resolution by this Court:

1. Whether the CA Decision has become final and executory

2. Whether the transaction is governed by the provisions of the Civil Code on common carriers or by the provisions of COGSA

3. Whether petitioner is liable for the loss or damage sustained by the cargo because of bad weather

OUR RULING

We **DENY** the Petition.

This Court finds that the CA Decision has become final because of the failure of petitioner to timely file a motion for reconsideration. Furthermore, contrary to the argument raised by the latter, there is insufficient evidence to establish that the loss or damage to the cargo was caused by a storm or a peril of the sea.

The CA Decision has become final and executory.

In the assailed Resolution, in which the CA ruled that petitioner's Motion for Reconsideration was filed late, it explained:

> Defendants-appellants' motion for reconsideration of the Court's Decision dated August 7, 2009 was filed out of time, as based on the reply letter dated October 13, 2009 of the Chief, Administrative Unit, Office of the Postmaster, Makati City, copy of said Decision was received by defendants-appellants' counsel on September 4, 2009, not September 14, 2009 as alleged in the motion for reconsideration. Consequently, the subject Decision dated August 27, 2009 had become final and executory considering that the motion for reconsideration was filed only on September 29, 2009, beyond the fifteen (15)-day reglementary period which lasted until September 19, 2009.[48]

The Court agrees. The Certification issued by the Office of the Postmaster of Makati, which states that the Decision was received by respondent's counsel on 4 September 2009, is entitled to full faith and credence. In the absence of contradictory evidence, the presumption is that the postmaster has regularly performed his duty.[49] In this case, there is no reason to doubt his statement as to the date respondent received the CA Decision.

Significantly, Transimex failed to address this matter in its Petition. While it continued to allege that it received the CA Decision on 14 September 2009, it did not refute the finding of the appellate court that the former's Motion for Reconsideration had been filed late. It was only after respondent again asserted the finality of the CA Decision in its Comment did petitioner attempt to explain the discrepancy:

> x x x Apparently, the said Decision dated 27 August 2009 was delivered by the postman to the guard on duty at the ground floor of the building where undersigned counsel's office is located. It was the guard on duty who received the said decision on 4 September 2009 but it was only on 14 September 2009 that undersigned counsel actually received the said decision. Hence, the date of receipt of the decision should be reckoned from the date of receipt by the counsel of the decision and not from the date of receipt of the guard who is not an employee of the law office of the undersigned counsel.

This Court notes that the foregoing account remains unsupported by evidence. The guard on duty or any employee of the law firm could have easily substantiated the explanation offered by counsel for petitioner, but no statement from any of them was ever submitted. Since petitioner was challenging the official statement of the Office of the Postmaster of Makati on the matter, the former had the burden of proving its assertions and presenting countervailing evidence. Unfounded allegations would not suffice.