736 Phil. 373

FIRST DIVISION

[G.R. No. 185964, June 16, 2014]

ASIAN TERMINALS, INC., PETITIONER, VS. FIRST LEPANTO-TAISHO INSURANCE CORPORATION, RESPONDENT.

D E C I S I O N

REYES, J.:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated October 10, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 99021 which adjudged petitioner Asian Terminals, Inc. (ATI) liable to pay the money claims of respondent First Lepanto-Taisho Insurance Corporation (FIRST LEPANTO).

The Undisputed Facts

On July 6, 1996,[3] 3,000 bags of sodium tripolyphosphate contained in 100 plain jumbo bags complete and in good condition were loaded and received on board M/V "Da Feng" owned by China Ocean Shipping Co. (COSCO) in favor of consignee, Grand Asian Sales, Inc. (GASI). Based on a Certificate of Insurance[4] dated August 24, 1995, it appears that the shipment was insured against all risks by GASI with FIRST LEPANTO for P7,959,550.50 under Marine Open Policy No. 0123.

The shipment arrived in Manila on July 18, 1996 and was discharged into the possession and custody of ATI, a domestic corporation engaged in arrastre business. The shipment remained for quite some time at ATI's storage area until it was withdrawn by broker, Proven Customs Brokerage Corporation (PROVEN), on August 8 and 9, 1996 for delivery to the consignee.

Upon receipt of the shipment,[5] GASI subjected the same to inspection and found that the delivered goods incurred shortages of 8,600 kilograms and spillage of 3,315 kg for a total of 11,915 kg of loss/damage valued at P166,772.41.

GASI sought recompense from COSCO, thru its Philippine agent Smith Bell Shipping Lines, Inc. (SMITH BELL),[6] ATI[7] and PROVEN[8] but was denied. Hence, it pursued indemnification from the shipment's insurer.[9]

After the requisite investigation and adjustment, FIRST LEPANTO paid GASI the amount of P165,772.40 as insurance indemnity.[10]

Thereafter, GASI executed a *Release of Claim*[11] discharging FIRST LEPANTO from any and all liabilities pertaining to the lost/damaged shipment and subrogating it to all the rights of recovery and claims the former may have against any person or corporation in relation to the lost/damaged shipment.

As such subrogee, FIRST LEPANTO demanded from COSCO, its shipping agency in the Philippines, SMITH BELL, PROVEN and ATI, reimbursement of the amount it paid to GASI. When FIRST LEPANTO's demands were not heeded, it filed on May 29, 1997 a Complaint[12] for sum of money before the Metropolitan Trial Court (MeTC) of Manila, Branch 3. FIRST LEPANTO sought that it be reimbursed the amount of P166,772.41, twenty-five percent (25%) thereof as attorney's fees, and costs of suit.

ATI denied liability for the lost/damaged shipment and claimed that it exercised due diligence and care in handling the same.[13] ATI averred that upon arrival of the shipment, SMITH BELL requested for its inspection[14] and it was discovered that one jumbo bag thereof sustained loss/damage while in the custody of COSCO as evidenced by Turn Over Survey of Bad Order Cargo No. 47890 dated August 6, 1996[15] jointly executed by the respective representatives of ATI and COSCO. During the withdrawal of the shipment by PROVEN from ATI's warehouse, the entire shipment was re-examined and it was found to be exactly in the same condition as when it was turned over to ATI such that one jumbo bag was damaged. To bolster this claim, ATI submitted Request for Bad Order Survey No. 40622 dated August 9, 1996[16] jointly executed by the respective representatives of ATI and PROVEN. ATI also submitted various Cargo Gate Passes[17] showing that PROVEN was able to completely withdraw all the shipment from ATI's warehouse in good order condition except for that one damaged jumbo bag.

In the alternative, ATI asserted that even if it is found liable for the lost/damaged portion of the shipment, its contract for cargo handling services limits its liability to not more than P5,000.00 per package. ATI interposed a counterclaim of P20,000.00 against FIRST LEPANTO as and for attorney's fees. It also filed a cross-claim against its co-defendants COSCO and SMITH BELL in the event that it is made liable to FIRST LEPANTO.[18]

PROVEN denied any liability for the lost/damaged shipment and averred that the complaint alleged no specific acts or omissions that makes it liable for damages. PROVEN claimed that the damages in the shipment were sustained before they were withdrawn from ATI's custody under which the shipment was left in an open area exposed to the elements, thieves and vandals. PROVEN contended that it exercised due diligence and prudence in handling the shipment. PROVEN also filed a counterclaim for attorney's fees and damages.[19]

Despite receipt of summons on December 4, 1996,[20] COSCO and SMITH BELL failed to file an answer to the complaint. FIRST LEPANTO thus moved that they be declared in default[21] but the motion was denied by the MeTC on the ground that under Rule 9, Section 3 of the Rules of Civil Procedure, "when a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the other fail to do so, the Court shall try the case against all upon the answers thus filed, and render judgment upon the evidence presented."[22]

Ruling of the MeTC

In a Judgment[23] dated May 30, 2006, the MeTC absolved ATI and PROVEN from any liability and instead found COSCO to be the party at fault and hence liable for the loss/damage sustained by the subject shipment. However, the MeTC ruled it has no jurisdiction over COSCO because it is a foreign corporation. Also, it cannot enforce judgment upon SMITH BELL because no evidence was presented establishing that it is indeed the Philippine agent of COSCO. There is also no evidence attributing any fault to SMITH BELL. Consequently, the complaint was dismissed in this wise:

> WHEREFORE, in light of the foregoing, judgment is hereby rendered DISMISSING the instant case for failure of [FIRST LEPANTO] to sufficiently establish its cause of action against [ATI, COSCO, SMITH BELL, and PROVEN].
>
> The counterclaims of [ATI and PROVEN] are likewise dismissed for lack of legal basis.
>
> No pronouncement as to cost.
>
> SO ORDERED.[24]

Ruling of the Regional Trial Court

On appeal, the Regional Trial Court (RTC) reversed the MeTC's findings. In its Decision[25] dated January 26, 2007, the RTC of Manila, Branch 21, in Civil Case No. 06-116237, rejected the contentions of ATI upon its observation that the same is belied by its very own documentary evidence. The RTC remarked that, if, as alleged by ATI, one jumbo bag was already in bad order condition upon its receipt of the shipment from COSCO on July 18, 1996, then how come that the Request for Bad Order Survey and the Turn Over Survey of Bad Order Cargo were prepared only weeks thereafter or on August 9, 1996 and August 6, 1996, respectively. ATI was adjudged unable to prove that it exercised due diligence while in custody of the shipment and hence, negligent and should be held liable for the damages caused to GASI which, in turn, is subrogated by FIRST LEPANTO.

The RTC rejected ATI's contention that its liability is limited only to P5,000.00 per package because its Management Contract with the Philippine Ports Authority (PPA) purportedly containing the same was not presented as evidence. More importantly, FIRST LEPANTO or GASI cannot be deemed bound thereby because they were not parties thereto. Lastly, the RTC did not give merit to ATI's defense that any claim against it has already prescribed because GASI failed to file any claim within the 15-day period stated in the gate pass issued by ATI to GASI's broker, PROVEN. Accordingly, the RTC disposed thus:

> WHEREFORE, in light of the foregoing, the judgment on appeal is hereby **REVERSED**.
>
> [ATI] is hereby ordered to reimburse [FIRST LEPANTO] the amount of

[P]165,772.40 with legal interest until fully paid, to pay [FIRST LEPANTO] 10% of the amount due the latter as and for attorney's fees plus the costs of suit.

The complaint against [COSCO/SMITH BELL and PROVEN] are **DISMISSED** for lack of evidence against them. The counterclaim and cross[-]claim of [ATI] are likewise **DISMISSED** for lack of merit.

SO ORDERED.[26]

Ruling of the CA

ATI sought recourse with the CA challenging the RTC's finding that FIRST LEPANTO was validly subrogated to the rights of GASI with respect to the lost/damaged shipment. ATI argued that there was no valid subrogation because FIRST LEPANTO failed to present a valid, existing and enforceable Marine Open Policy or insurance contract. ATI reasoned that the Certificate of Insurance or Marine Cover Note submitted by FIRST LEPANTO as evidence is not the same as an actual insurance contract.

In its Decision[27] dated October 10, 2008, the CA dismissed the appeal and held that the Release of Claim and the Certificate of Insurance presented by FIRST LEPANTO sufficiently established its relationship with the consignee and that upon proof of payment of the latter's claim for damages, FIRST LEPANTO was subrogated to its rights against those liable for the lost/damaged shipment.

The CA also affirmed the ruling of the RTC that the subject shipment was damaged while in the custody of ATI. Thus, the CA disposed as follows:

WHEREFORE, premises considered, the assailed Decision is hereby **AFFIRMED** and the instant petition is **DENIED** for lack of merit.

SO ORDERED.[28]

ATI moved for reconsideration but the motion was denied in the CA Resolution[29] dated January 12, 2009. Hence, this petition arguing that:

(a) The presentation of the insurance policy is indispensable in proving the right of FIRST LEPANTO to be subrogated to the right of the consignee pursuant to the ruling in Wallem Philippines Shipping, Inc. v. Prudential Guarantee and Assurance Inc.;[30]
(b) ATI cannot be barred from invoking the defense of prescription as provided for in the gate passes in consonance with the ruling in International Container Terminal Services, Inc. v. Prudential Guarantee and Assurance Co, Inc.[31]

Ruling of the Court

The Court denies the petition.

ATI failed to prove that it exercised due care and diligence while the shipment was under its custody, control and possession as arrastre operator.

It must be emphasized that factual questions pertaining to ATI's liability for the loss/damage sustained by GASI has already been settled in the uniform factual findings of the RTC and the CA that: ATI failed to prove by preponderance of evidence that it exercised due diligence in handling the shipment.

Such findings are binding and conclusive upon this Court since a review thereof is proscribed by the nature of the present petition. Only questions of law are allowed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. It is not the Court's duty to review, examine, and evaluate or weigh all over again the probative value of the evidence presented, especially where the findings of the RTC are affirmed by the CA, as in this case.[32]

There are only specific instances when the Court deviates from the rule and conducts a review of the courts *a quo's* factual findings, such as when: (1) the inference made is manifestly mistaken, absurd or impossible; (2) there is grave abuse of discretion; (3) the findings are grounded entirely on speculations, surmises or conjectures; (4) the judgment of the CA is based on misapprehension of facts; (5) the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) the findings of fact are conclusions without citation of specific evidence on which they are based; (7) the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[33]

None of these instances, however, are present in this case. Moreover, it is unmistakable that ATI has already conceded to the factual findings of RTC and CA adjudging it liable for the shipment's loss/damage considering the absence of arguments pertaining to such issue in the petition at bar.

These notwithstanding, the Court scrutinized the records of the case and found that indeed, ATI is liable as the arrastre operator for the lost/damaged portion of the shipment.

The relationship between the consignee and the arrastre operator is akin to that existing between the consignee and/or the owner of the shipped goods and the common carrier, or that between a depositor and a warehouseman. Hence, in the performance of its obligations, an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.[34]