705 Phil. 83

FIRST DIVISION

[G.R. No. 177116, February 27, 2013]

ASIAN TERMINALS, INC., PETITIONER, VS. SIMON ENTERPRISES, INC., RESPONDENT.

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated November 27, 2006 and Resolution[2] dated March 23, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 71210.

The facts are as follows:

On October 25, 1995, Contiquincybunge Export Company loaded 6,843.700 metric tons of U.S. Soybean Meal in Bulk on board the vessel M/V "Sea Dream" at the Port of Darrow, Louisiana, U.S.A., for delivery to the Port of Manila to respondent Simon Enterprises, Inc., as consignee. When the vessel arrived at the South Harbor in Manila, the shipment was discharged to the receiving barges of petitioner Asian Terminals, Inc. (ATI), the arrastre operator. Respondent later received the shipment but claimed having received only 6,825.144 metric tons of U.S. Soybean Meal, or short by 18.556 metric tons, which is estimated to be worth US$7,100.16 or P186,743.20.[3]

On November 25, 1995, Contiquincybunge Export Company made another shipment to respondent and allegedly loaded on board the vessel M/V "Tern" at the Port of Darrow, Louisiana, U.S.A. 3,300.000 metric tons of U.S. Soybean Meal in Bulk for delivery to respondent at the Port of Manila. The carrier issued its clean Berth Term Grain Bill of Lading.[4]

On January 25, 1996, the carrier docked at the inner Anchorage, South Harbor, Manila. The subject shipment was discharged to the receiving barges of petitioner ATI and received by respondent which, however, reported receiving only 3,100.137 metric tons instead of the manifested 3,300.000 metric tons of shipment. Respondent filed against petitioner ATI and the carrier a claim for the shortage of 199.863 metric tons, estimated to be worth US$79,848.86 or P2,100,025.00, but its claim was denied.

Thus, on December 3, 1996, respondent filed with the Regional Trial Court (RTC) of Manila an action for damages[5] against the unknown owner of the vessels M/V "Sea Dream" and M/V "Tern," its local agent Inter-Asia Marine Transport, Inc., and petitioner ATI alleging that it suffered the losses through the fault or negligence of the said defendants. Respondent sought to claim damages plus attorney's fees and

costs of suit. Its claim against the unknown owner of the vessel M/V "Sea Dream," however, was later settled in a Release and Quitclaim[6] dated June 9, 1998, and only the claims against the unknown owner of the M/V "Tern," Inter-Asia Marine Transport, Inc., and petitioner ATI remained.

In their Answer,[7] the unknown owner of the vessel M/V "Tern" and its local agent Inter-Asia Marine Transport, Inc., prayed for the dismissal of the complaint essentially alleging lack of cause of action and prescription. They alleged as affirmative defenses the following: that the complaint does not state a cause of action; that plaintiff and/or defendants are not the real parties-in-interest; that the cause of action had already prescribed or laches had set in; that the claim should have been filed within three days from receipt of the cargo pursuant to the provisions of the Code of Commerce; that the defendant could no longer check the veracity of plaintiff's claim considering that the claim was filed eight months after the cargo was discharged from the vessel; that plaintiff hired its own barges to receive the cargo and hence, any damages or losses during the discharging operations were for plaintiff's account and responsibility; that the statement of facts bears no remarks on any short-landed cargo; that the draft survey report indicates that the cargo discharged was more than the figures appearing in the bill of lading; that because the bill of lading states that the goods are carried on a "shipper's weight, quantity and quality unknown" terms and on "all terms, conditions and exceptions as per charter party dated October 15, 1995," the vessel had no way of knowing the actual weight, quantity, and quality of the bulk cargo when loaded at the port of origin and the vessel had to rely on the shipper for such information; that the subject shipment was discharged in Manila in the same condition and quantity as when loaded at the port of loading; that defendants' responsibility ceased upon discharge from the ship's tackle; that the damage or loss was due to the inherent vice or defect of the goods or to the insufficiency of packing thereof or perils or dangers or accidents of the sea, pre-shipment damage or to improper handling of the goods by plaintiff or its representatives after discharge from the vessel, for which defendants cannot be made liable; that damage/loss occurred while the cargo was in the possession, custody or control of plaintiff or its representative, or due to plaintiff's own negligence and careless actuations in the handling of the cargo; that the loss is less than 0.75% of the entire cargo and assuming arguendo that the shortage exists, the figure is well within the accepted parameters when loading this type of bulk cargo; that defendants exercised the required diligence under the law in the performance of their duties; that the vessel was seaworthy in all respects; that the vessel went straight from the port of loading to Manila, without passing through any intermediate ports so there was no chance for any loss of the cargo; the plaintiff's claim is excessive, grossly overstated, unreasonable and a mere paper loss and is certainly unsubstantiated and without any basis; the terms and conditions of the relevant bill of lading and the charter party, as well as the provisions of the Carriage of Goods by Sea Act and existing laws, absolve the defendants from any liability; that the subject shipment was received in bulk and thus defendant carrier has no knowledge of the condition, quality and quantity of the cargo at the time of loading; that the complaint was not referred to the arbitrators pursuant to the bill of lading; that liability, if any, should not exceed the CIF value of the lost cargo, or the limits of liability set forth in the bill of lading and the charter party. As counterclaim, defendants prayed for the payment of attorney's fees in the amount of P220,000. By way of cross-claim, they ask for reimbursement from their co-defendant, petitioner ATI, in the event that they are

held liable to plaintiff.

Petitioner ATI meanwhile alleged in its Answer[8] that it exercised the required diligence in handling the subject shipment. It moved for the dismissal of the complaint, and alleged by way of special and affirmative defense that plaintiff has no valid cause of action against petitioner ATI; that the cargo was completely discharged from the vessel M/V "Tern" to the receiving barges owned or hired by the plaintiff; and that petitioner ATI exercised the required diligence in handling the shipment. By way of counterclaim, petitioner ATI argued that plaintiff should shoulder its expenses for attorney's fees in the amount of P20,000 as petitioner ATI was constrained to engage the services of counsel to protect its interest.

On May 10, 2001, the RTC of Manila rendered a Decision[9] holding petitioner ATI and its co-defendants solidarily liable to respondent for damages arising from the shortage. The RTC held:

> WHEREFORE, premises considered, judgment is hereby rendered ordering defendants M/V "Tern" Inter-Asia Marine Transport, Inc. and Asian Terminal Inc. jointly and severally liable to pay plaintiff Simon Enterprises the sum of P2,286,259.20 with legal interest from the date the complaint was filed until fully satisfied, 10% of the amount due plaintiff as and for attorney's fees plus the costs of suit.
>
> Defendants' counterclaim and cross claim are hereby DISMISSED for lack of merit.
>
> SO ORDERED.[10]

The trial court found that respondent has established that the losses/shortages were incurred prior to its receipt of the goods. As such, the burden shifted to the carrier to prove that it exercised extraordinary diligence as required by law to prevent the loss, destruction or deterioration. However, the trial court held that the defendants failed to prove that they did so. The trial court gave credence to the testimony of Eduardo Ragudo, a super cargo of defendant Inter-Asia Marine Transport, Inc., who admitted that there were spillages or overflow down to the spillage saver. The trial court also noted that said witness also declared that respondent's representative was not allowed to sign the Master's Certificate. Such declaration, said the trial court, placed petitioner ATI in a bad light and weakened its stand.

Not satisfied, the unknown owner of the vessel M/V "Tern," Inter-Asia Marine Transport, Inc. and petitioner ATI respectively filed appeals to the CA. In their petition, the unknown owner of the vessel M/V "Tern" and Inter-Asia Marine Transport, Inc. raised the question of whether the trial court erred in finding that they did not exercise extraordinary diligence in the handling of the goods.[11]

On the other hand, petitioner ATI alleged that:

> THE *COURT-A-QUO* COMMITTED SERIOUS AND REVERSIBLE ERROR IN HOLDING DEFENDANT[-]APPELLANT ATI SOLIDARILY LIABLE WITH CO-

DEFENDANT APPELLANT INTER-ASIA MARINE TRANSPORT, INC. CONTRARY TO THE EVIDENCE PRESENTED.[12]

On November 27, 2006, the CA promulgated the assailed Decision, the decretal portion of which reads:

WHEREFORE, the appealed Decision dated May 10, 2001 is affirmed, except the award of attorney's fees which is hereby deleted.

SO ORDERED.[13]

In affirming the RTC Decision, the CA held that there is no justification to disturb the factual findings of the trial court which are entitled to respect on appeal as they were supported by substantial evidence. It agreed with the findings of the trial court that the unknown owner of the vessel M/V "Tern" and Inter-Asia Marine Transport, Inc. failed to establish that they exercised extraordinary diligence in transporting the goods or exercised due diligence to forestall or lessen the loss as provided in Article 1742[14] of the Civil Code. The CA also ruled that petitioner ATI, as the arrastre operator, should be held jointly and severally liable with the carrier considering that petitioner ATI's stevedores were under the direct supervision of the unknown owner of M/V "Tern" and that the spillages occurred when the cargoes were being unloaded by petitioner ATI's stevedores.

Petitioner ATI filed a motion for reconsideration,[15] but the CA denied its motion in a Resolution[16] dated March 23, 2007. The unknown owner of the vessel M/V "Tern" and Inter-Asia Marine Transport, Inc. for their part, appealed to this Court via a petition for review on certiorari, which was docketed as G.R. No. 177170. Its appeal, however, was denied by this Court on July 16, 2007 for failure to sufficiently show any reversible error committed by the CA in the challenged Decision and Resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction. The unknown owner of M/V "Tern" and Inter-Asia Marine Transport, Inc. sought reconsideration of the denial but their motion was denied by the Court in a Resolution dated October 17, 2007.[17]

Meanwhile, on April 20, 2007, petitioner ATI filed the present petition raising the sole issue of whether the appellate court erred in affirming the decision of the trial court holding petitioner ATI solidarily liable with its co-defendants for the shortage incurred in the shipment of the goods to respondent.

Petitioner ATI argues that:

1. Respondent failed to prove that the subject shipment suffered actual loss/shortage as there was no competent evidence to prove that it actually weighed 3,300 metric tons at the port of origin.

2. Stipulations in the bill of lading that the cargo was carried on a "shipper's weight, quantity and quality unknown" is not contrary to public policy. Thus, herein petitioner cannot be bound by the quantity or weight

of the cargo stated in the bill of lading.

3. Shortage/loss, if any, may have been due to the inherent nature of the shipment and its insufficient packing considering that the subject cargo was shipped in bulk and had a moisture content of 12.5%.

4. Respondent failed to substantiate its claim for damages as no competent evidence was presented to prove the same.

5. Respondent has not presented any scintilla of evidence showing any fault/negligence on the part of herein petitioner.

6. Petitioner ATI should be entitled to its counterclaim.[18]

Respondent, on the other hand, quotes extensively the CA decision and maintains its correctness.

We grant the petition.

The CA erred in affirming the decision of the trial court holding petitioner ATI solidarily liable with its co-defendants for the shortage incurred in the shipment of the goods to respondent.

We note that the matters raised by petitioner ATI involve questions of fact which are generally not reviewable in a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, as the Court is not a trier of facts. Section 1 thereof provides that "[t]he petition x x x shall raise only questions of law, which must be distinctly set forth."

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[19]

The well-entrenched rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on certiorari. This rule, however, is not ironclad and admits certain exceptions, such as when (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and