671 Phil. 638

THIRD DIVISION

[G.R. No. 171468, August 24, 2011]

NEW WORLD INTERNATIONAL DEVELOPMENT (PHILS.), INC., PETITIONER, VS. NYK-FILJAPAN SHIPPING CORP., LEP PROFIT INTERNATIONAL, INC. (ORD), LEP INTERNATIONAL PHILIPPINES, INC., DMT CORP., ADVATECH INDUSTRIES, INC., MARINA PORT SERVICES, INC., SERBROS CARRIER CORPORATION, AND SEABOARD-EASTERN INSURANCE CO., INC., RESPONDENTS.

[G.R. NO. 174241]

NEW WORLD INTERNATIONAL DEVELOPMENT (PHILS.), INC., PETITIONER, VS. SEABOARD-EASTERN INSURANCE CO., INC., RESPONDENT.

D E C I S I O N

ABAD, J.:

These consolidated petitions involve a cargo owner's right to recover damages from the loss of insured goods under the Carriage of Goods by Sea Act and the Insurance Code.

The Facts and the Case

Petitioner New World International Development (Phils.), Inc. (New World) bought from DMT Corporation (DMT) through its agent, Advatech Industries, Inc. (Advatech) three emergency generator sets worth US$721,500.00.

DMT shipped the generator sets by truck from Wisconsin, United States, to LEP Profit International, Inc. (LEP Profit) in Chicago, Illinois. From there, the shipment went by train to Oakland, California, where it was loaded on S/S California Luna V59, owned and operated by NYK Fil-Japan Shipping Corporation (NYK) for delivery to petitioner New World in Manila. NYK issued a bill of lading, declaring that it received the goods in good condition.

NYK unloaded the shipment in Hong Kong and transshipped it to S/S ACX Ruby V/72 that it also owned and operated. On its journey to Manila, however, ACX Ruby encountered typhoon *Kadiang* whose captain filed a sea protest on arrival at the Manila South Harbor on October 5, 1993 respecting the loss and damage that the goods on board his vessel suffered.

Marina Port Services, Inc. (Marina), the Manila South Harbor arrastre or cargo-handling operator, received the shipment on October 7, 1993. Upon inspection of the three container vans separately carrying the generator sets, two vans bore signs

of external damage while the third van appeared unscathed. The shipment remained at Pier 3's Container Yard under Marina's care pending clearance from the Bureau of Customs. Eventually, on October 20, 1993 customs authorities allowed petitioner's customs broker, Serbros Carrier Corporation (Serbros), to withdraw the shipment and deliver the same to petitioner New World's job site in Makati City.

An examination of the three generator sets in the presence of petitioner New World's representatives, Federal Builders (the project contractor) and surveyors of petitioner New World's insurer, Seaboard-Eastern Insurance Company (Seaboard), revealed that all three sets suffered extensive damage and could no longer be repaired. For these reasons, New World demanded recompense for its loss from respondents NYK, DMT, Advatech, LEP Profit, LEP International Philippines, Inc. (LEP), Marina, and Serbros. While LEP and NYK acknowledged receipt of the demand, both denied liability for the loss.

Since Seaboard covered the goods with a marine insurance policy, petitioner New World sent it a formal claim dated November 16, 1993. Replying on February 14, 1994, Seaboard required petitioner New World to submit to it an itemized list of the damaged units, parts, and accessories, with corresponding values, for the processing of the claim. But petitioner New World did not submit what was required of it, insisting that the insurance policy did not include the submission of such a list in connection with an insurance claim. Reacting to this, Seaboard refused to process the claim.

On October 11, 1994 petitioner New World filed an action for specific performance and damages against all the respondents before the Regional Trial Court (RTC) of Makati City, Branch 62, in Civil Case 94-2770.

On August 16, 2001 the RTC rendered a decision absolving the various respondents from liability with the exception of NYK. The RTC found that the generator sets were damaged during transit while in the care of NYK's vessel, ACX Ruby. The latter failed, according to the RTC, to exercise the degree of diligence required of it in the face of a foretold raging typhoon in its path.

The RTC ruled, however, that petitioner New World filed its claim against the vessel owner NYK beyond the one year provided under the Carriage of Goods by Sea Act (COGSA). New World filed its complaint on October 11, 1994 when the deadline for filing the action (on or before October 7, 1994) had already lapsed. The RTC held that the one-year period should be counted from the date the goods were delivered to the *arrastre* operator and not from the date they were delivered to petitioner's job site.[1]

As regards petitioner New World's claim against Seaboard, its insurer, the RTC held that the latter cannot be faulted for denying the claim against it since New World refused to submit the itemized list that Seaboard needed for assessing the damage to the shipment. Likewise, the belated filing of the complaint prejudiced Seaboard's right to pursue a claim against NYK in the event of subrogation.

On appeal, the Court of Appeals (CA) rendered judgment on January 31, 2006,[2] affirming the RTC's rulings except with respect to Seaboard's liability. The CA held that petitioner New World can still recoup its loss from Seaboard's marine insurance

policy, considering a) that the submission of the itemized listing is an unreasonable imposition and b) that the one-year prescriptive period under the COGSA did not affect New World's right under the insurance policy since it was the Insurance Code that governed the relation between the insurer and the insured.

Although petitioner New World promptly filed a petition for review of the CA decision before the Court in G.R. 171468, Seaboard chose to file a motion for reconsideration of that decision. On August 17, 2006 the CA rendered an amended decision, reversing itself as regards the claim against Seaboard. The CA held that the submission of the itemized listing was a reasonable requirement that Seaboard asked of New World. Further, the CA held that the one-year prescriptive period for maritime claims applied to Seaboard, as insurer and subrogee of New World's right against the vessel owner. New World's failure to comply promptly with what was required of it prejudiced such right.

Instead of filing a motion for reconsideration, petitioner instituted a second petition for review before the Court in G.R. 174241**,** assailing the CA's amended decision.

The Issues Presented

The issues presented in this case are as follows:

a) In G.R. 171468, whether or not the CA erred in affirming the RTC's release from liability of respondents DMT, Advatech, LEP, LEP Profit, Marina, and Serbros who were at one time or another involved in handling the shipment; and

b) In G.R. 174241, 1) whether or not the CA erred in ruling that Seaboard's request from petitioner New World for an itemized list is a reasonable imposition and did not violate the insurance contract between them; and 2) whether or not the CA erred in failing to rule that the one-year COGSA prescriptive period for marine claims does not apply to petitioner New World's prosecution of its claim against Seaboard, its insurer.

The Court's Rulings

In G.R. 171468 --

Petitioner New World asserts that the roles of respondents DMT, Advatech, LEP, LEP Profit, Marina and Serbros in handling and transporting its shipment from Wisconsin to Manila collectively resulted in the damage to the same, rendering such respondents solidarily liable with NYK, the vessel owner.

But the issue regarding which of the parties to a dispute incurred negligence is factual and is not a proper subject of a petition for review on *certiorari*. And petitioner New World has been unable to make out an exception to this rule.[3] Consequently, the Court will not disturb the finding of the RTC, affirmed by the CA, that the generator sets were totally damaged during the typhoon which beset the vessel's voyage from Hong Kong to Manila and that it was her negligence in continuing with that journey despite the adverse condition which caused petitioner New World's loss.

That the loss was occasioned by a typhoon, an exempting cause under Article 1734