

SECOND DIVISION

[G.R. No. 166250, July 26, 2010]

**UNSWORTH TRANSPORT INTERNATIONAL (PHILS.), INC.,
PETITIONER, VS. COURT OF APPEALS AND PIONEER INSURANCE
AND SURETY CORPORATION, RESPONDENTS.**

DECISION

NACHURA, J.:

For review is the Court of Appeals (CA) Decision^[1] dated April 29, 2004 and Resolution^[2] dated November 26, 2004. The assailed Decision affirmed the Regional Trial Court (RTC) decision^[3] dated February 22, 2001; while the assailed Resolution denied petitioner Unsworth Transport International (Philippines), Inc., American President Lines, Ltd. (APL), and Unsworth Transport International, Inc.'s (UTI's) motion for reconsideration.

The facts of the case are:

On August 31, 1992, the shipper Sylvex Purchasing Corporation delivered to UTI a shipment of 27 drums of various raw materials for pharmaceutical manufacturing, consisting of: "1) 3 drums (of) extracts, flavoring liquid, flammable liquid x x x banana flavoring; 2) 2 drums (of) flammable liquids x x x turpentine oil; 2 pallets. STC: 40 bags dried yeast; and 3) 20 drums (of) Vitabs: Vitamin B Complex Extract." ^[4] UTI issued Bill of Lading No. C320/C15991-2, ^[5] covering the aforesaid shipment. The subject shipment was insured with private respondent Pioneer Insurance and Surety Corporation in favor of Unilab against all risks in the amount of P1,779,664.77 under and by virtue of Marine Risk Note Number MC RM UL 0627 92 ^[6] and Open Cargo Policy No. HO-022-RIU. ^[7]

On the same day that the bill of lading was issued, the shipment was loaded in a sealed 1x40 container van, with no. APLU-982012, boarded on APL's vessel *M/V "Pres. Jackson,"* Voyage 42, and transshipped to APL's *M/V "Pres. Taft"* ^[8] for delivery to petitioner in favor of the consignee United Laboratories, Inc. (Unilab).

On September 30, 1992, the shipment arrived at the port of Manila. On October 6, 1992, petitioner received the said shipment in its warehouse after it stamped the Permit to Deliver Imported Goods ^[9] procured by the Champs Customs Brokerage. ^[10] Three days thereafter, or on October 9, 1992, Oceanica Cargo Marine Surveyors Corporation (OCMSC) conducted a stripping survey of the shipment located in petitioner's warehouse. The survey results stated:

2-pallets STC 40 bags Dried Yeast, both in good order condition and properly sealed

19- steel drums STC Vitamin B Complex Extract, all in good order condition and properly sealed

1-steel drum STC Vitamin B Complex Extra^[ct] with cut/hole on side, with approx. spilling of 1%^[11]

On October 15, 1992, the arrastre Jardine Davies Transport Services, Inc. (Jardine) issued Gate Pass No. 7614^[12] which stated that "22 drums^[13] Raw Materials for Pharmaceutical Mfg." were loaded on a truck with Plate No. PCK-434 facilitated by Champs for delivery to Unilab's warehouse. The materials were noted to be complete and in good order in the gate pass.^[14] On the same day, the shipment arrived in Unilab's warehouse and was immediately surveyed by an independent surveyor, J.G. Bernas Adjusters & Surveyors, Inc. (J.G. Bernas). The Report stated:

1-p/bag torn on side contents partly spilled

1-s/drum #7 punctured and retaped on bottom side content lacking

5-drums shortship/short delivery^[15]

On October 23 and 28, 1992, the same independent surveyor conducted final inspection surveys which yielded the same results. Consequently, Unilab's quality control representative rejected one paper bag containing dried yeast and one steel drum containing Vitamin B Complex as unfit for the intended purpose.^[16]

On November 7, 1992, Unilab filed a formal claim^[17] for the damage against private respondent and UTI. On November 20, 1992, UTI denied liability on the basis of the gate pass issued by Jardine that the goods were in complete and good condition; while private respondent paid the claimed amount on March 23, 1993. By virtue of the Loss and Subrogation Receipt^[18] issued by Unilab in favor of private respondent, the latter filed a complaint for *Damages* against APL, UTI and petitioner with the RTC of Makati.^[19] The case was docketed as Civil Case No. 93-3473 and was raffled to Branch 134.

After the termination of the pre-trial conference, trial on the merits ensued. On February 22, 2001, the RTC decided in favor of private respondent and against APL, UTI and petitioner, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff PIONEER INSURANCE & SURETY CORPORATION and against the defendants AMERICAN PRESIDENT LINES and UNSWORTH TRANSPORT INTERNATIONAL (PHILS.), INC. (now known as JUGRO TRANSPORT INT'L., PHILS.), ordering the latter to pay, jointly and severally, the former the following amounts:

1. The sum of SEVENTY SIX THOUSAND TWO HUNDRED THIRTY ONE and 27/100 (Php76,231.27) with interest at the legal rate of 6% per annum to be computed starting from September 30, 1993 until fully paid, for and as actual damages;
2. The amount equivalent to 25% of the total sum as attorney's fees;
3. Cost of this litigation.

SO ORDERED.^[20]

On appeal, the CA affirmed the RTC decision on April 29, 2004. The CA rejected UTI's defense that it was merely a forwarder, declaring instead that it was a common carrier. The appellate court added that by issuing the Bill of Lading, UTI acknowledged receipt of the goods and agreed to transport and deliver them at a specific place to a person named or his order. The court further concluded that upon the delivery of the subject shipment to petitioner's warehouse, its liability became similar to that of a depositary. As such, it ought to have exercised ordinary diligence in the care of the goods. And as found by the RTC, the CA agreed that petitioner failed to exercise the required diligence. The CA also rejected petitioner's claim that its liability should be limited to \$500 per package pursuant to the Carriage of Goods by Sea Act (COGSA) considering that the value of the shipment was declared pursuant to the letter of credit and the pro forma invoice. As to APL, the court considered it as a common carrier notwithstanding the non-issuance of a bill of lading inasmuch as a bill of lading is not indispensable for the execution of a contract of carriage.^[21]

Unsatisfied, petitioner comes to us in this petition for review on *certiorari*, raising the following issues:

1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN UPHOLDING THE DECISION OF THE REGIONAL TRIAL COURT DATED 22 FEBRUARY 2001, AWARDING THE SUM OF SEVENTY SIX THOUSAND TWO HUNDRED THIRTY ONE AND 27/100 PESOS (PHP76,231.27) WITH LEGAL INTEREST AT 6% PER ANNUM AS ACTUAL DAMAGES AND 25% AS ATTORNEY'S FEES.
2. WHETHER OR NOT PETITIONER UTI IS A COMMON CARRIER.
3. WHETHER OR NOT PETITIONER UTI EXERCISED THE REQUIRED ORDINARY DILIGENCE.
4. WHETHER OR NOT THE PRIVATE RESPONDENT SUFFICIENTLY ESTABLISHED THE ALLEGED DAMAGE TO ITS CARGO.^[22]

Petitioner admits that it is a forwarder but disagrees with the CA's conclusion that it is a common carrier. It also questions the appellate court's findings that it failed to establish that it exercised extraordinary or ordinary diligence in the vigilance over the subject shipment. As to the damages allegedly suffered by private respondent, petitioner counters that they were not sufficiently proven. Lastly, it insists that its

liability, in any event, should be limited to \$500 pursuant to the package limitation rule. Indeed, petitioner wants us to review the factual findings of the RTC and the CA and to evaluate anew the evidence presented by the parties.

The petition is partly meritorious.

Well established is the rule that factual questions may not be raised in a petition for review on *certiorari* as clearly stated in Section 1, Rule 45 of the Rules of Court, viz.:

Section 1. *Filing of petition with Supreme Court.* - A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Admittedly, petitioner is a freight forwarder. The term "freight forwarder" refers to a firm holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and, in the ordinary course of its business, (1) to

assemble and consolidate, or to provide for assembling and consolidating, shipments, and to perform or provide for break-bulk and distribution operations of the shipments; (2) to assume responsibility for the transportation of goods from the place of receipt to the place of destination; and (3) to use for any part of the transportation a carrier subject to the federal law pertaining to common carriers.^[23]

A freight forwarder's liability is limited to damages arising from its own negligence, including negligence in choosing the carrier; however, where the forwarder contracts to deliver goods to their destination instead of merely arranging for their transportation, it becomes liable as a common carrier for loss or damage to goods. A freight forwarder assumes the responsibility of a carrier, which actually executes the transport, even though the forwarder does not carry the merchandise itself.^[24]

It is undisputed that UTI issued a bill of lading in favor of Unilab. Pursuant thereto, petitioner undertook to transport, ship, and deliver the 27 drums of raw materials for pharmaceutical manufacturing to the consignee.

A bill of lading is a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his or her order.^[25] It operates both as a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and

deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks, condition, quality, and value. As a contract, it names the contracting parties, which include the consignee; fixes the route, destination, and freight rate or charges; and stipulates the rights and obligations assumed by the parties.^[26]