608 Phil. 478

THIRD DIVISION

[G. R. No. 180817, June 23, 2009]

MULTI-TRANS AGENCY PHILS. INC., PETITIONER, VS. ORIENTAL ASSURANCE CORP., RESPONDENT.

D E C I S I O N

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks the reversal and setting aside of the Decision[1] of the Court of Appeals dated 4 December 2006 in CA-G.R. CV No. 67581 affirming with modification the decision[2] and order[3] of the Regional Trial Court (RTC) of Manila, Branch 13, in Civil Case No. 97-84259; and its Resolution[4] dated 10 December 2007 denying petitioner Multi-Trans Agency Phils., Inc.'s (Multi-Trans) Motion for Reconsideration.

The instant case arose from a complaint for sum of money filed by respondent Oriental Assurance Corporation (Oriental) against petitioner and Neptune Orient Lines, Ltd. (Neptune) before the RTC of Manila on 22 July 1997. The case was raffled to Branch 13. The complaint alleged, *inter alia*, that **Multi-Trans was the operator/ship agent of the vessel "Tokyo Bay**" while Neptune was the operator/ship agent of the vessel "M/V Neptune Beryl." Oriental's predecessor-in-interest - Imrex Enterprises - imported from England seventy-two (72) boxes and one (1) pal/box of various colors of Opacolor, contained in one container van which was transported from Southampton to Manila on board the vessel "Tokyo Bay" as evidenced by Bill of Lading No. MA-19943/02. The shipment was transshipped from Singapore on board the vessel "M/V Neptune Beryl," which arrived and docked at the Manila International Port, Manila, on 29 August 1996. The shipment was insured by respondent against loss and/or damage for P1,078,012.16 under Marine Insurance Policy No. OAC-M-96/688.

The container van containing the shipment was unloaded from the carrying vessel and stripped of its contents at the open Container Yard of the Manila North Harbor. Only 72 boxes were found, while the one pal/box of Opacolor CC 22932 Yellow weighing 500 kilos was not delivered by the carrying vessel, or was shortlanded, as evidenced by Good Order Cargo Receipt No. 1792 issued by Neptune. The 72 boxes were withdrawn from the Manila North Harbor and delivered to the consignee's (Imrex Enterprises') warehouse at No. 7 Jose Cruz St., Barrio Ugong, Pasig City.

Respondent alleged that the non-delivery or shortlanding of one box of the shipment was due to the negligence of petitioner and Neptune and/or the captain and crew of the vessels "Tokyo Bay" and/or "MV Neptune Beryl" in loading, stowing, taking care of, handling and unloading the shipment. By being negligent, petitioner and Neptune breached their contract of carriage in failing to deliver one box of the shipment to Imrex Enterprises at the point of destination. Imrex Enterprises filed a claim with respondent for the value of the one box that was shortlanded. Pursuant to the terms and conditions of Marine Insurance Policy No. OAC-M-96/688, respondent paid

Imrex Enterprises the amount P256,937.03, for which reason, it claims that it is subrogated into the rights of Imrex Enterprises to be indemnified by petitioner and Neptune.

Respondent made demands upon petitioner and Neptune to pay, but they refused to satisfy the former's claim. As a result, the complaint was filed and both petitioner and Neptune were sued, because respondent was uncertain from whom it was entitled to relief. It prayed that either or both petitioner and Neptune be ordered to pay (a) P256,937.03 with legal interest from the date of the filing of the complaint; (b) P50,000.00 as attorney's fees; and (c) costs of suit.[5]

Neptune filed its Answer with Compulsory Counterclaim.[6] It alleged, among other things, that it was a mere commercial agent of "M/V Neptune Beryl;" and that it had no knowledge of the contents, quantity, quality, condition and value of the subject shipment, as it was carried on a "Said to Contain" (or STC) and "Shipper's Load and Count" basis. It claimed that the dorsal portion of Bill of Lading No. MA-19943/02 was not produced. It added that the shipment was discharged from the vessel complete and in good order, and that it exercised the diligence required by law in the handling of and vigilance over the shipment. It also alleged that no demand was made. It invoked the following defenses: the complaint stated no cause of action; the plaintiff and subrogor had no privity of contract with Neptune; plaintiff and Neptune were not the real parties-in-interest; the subject shipment was discharged at the Port of Manila complete and in good order; its responsibility ceased upon the shipment's discharge from the ship's tackle; the damages, losses and spillages, if any, were due to the inherent nature, vice or defect of the goods; or the perils, dangers and accidents of the sea; pre-shipment loss or damage; or the insufficiency of the packing thereof, for which it was not liable; the alleged payment made by plaintiff to the alleged assured/consignee was not legally due and demandable, so there was consequently no legal subrogation in favor of the plaintiff; its liability should not exceed the cost insurance freight value of the loss or damaged shipment or the amount of $500 per package; or in any event, said liability, if any, should not exceed the limitation of liability provided for in the Bill of Lading; no invoice of loss/damage was made by the consignee within the time required by law, the Bill of Lading, and the pertinent charter party; the complaint was barred by prescription and/or laches; plaintiff's claim was excessive and unreasonable; the terms and conditions of the relevant Bill of Lading, Carriage of Goods by Sea Act and existing laws absolved it from any and all liability for the alleged loss/damage; the damage, if any, to the shipment was due to the negligent acts or omissions committed by the consignee or its representatives, or to causes for which defendant is not responsible; the shipment was loaded on board the vessel subject to the terms and conditions of the relevant Bill of Lading; the subject shipment was carried under "weight, measure, marks and numbers, quality, contents and value unknown," indicating that the carrier did not know the exact quantity, quality and weight of the shipment, as it was not given the opportunity to inspect the same; and the Bill of Lading was issued based on the declaration made by the shipper; and the vessel (M/V Neptune Beryl) acted as a special carrier, and Neptune was a mere commercial agent of "M/V Neptune Beryl."

On the other hand, petitioner, through its counsel Jose Ma. Q. Austria, filed a Motion to Dismiss[7] on the ground that the complaint did not state a cause of action. It argued that the complaint stated that petitioner Multi-Trans was the "operator/ship

agent of the vessel "Tokyo Bay." However, in the Bill of Lading attached to the complaint, **petitioner was named agent of Multimodal Transport Operator and not of the vessel "Tokyo Bay**." Neither can it be the operator of the said vessel, there being no allegation that said vessel was on a bareboat charter to Transtainer Lines, the principal of petitioner. It maintains that the evidence presented by plaintiff defeats its own allegations as to the participation of petitioner in the transaction.

On 8 October 1997, respondent opposed the motion to dismiss.[8] On 23 October 1997, respondent filed its answer to counterclaim.[9]

In an Order dated 25 October 1997, petitioner's motion to dismiss was denied.[10]

In an Order dated 20 February 1998, the trial court directed its personnel to transmit immediately to counsel of petitioner a copy of the Order dated 25 October 1997 it appearing that Multi-Trans was not sent a copy thereof. For this reason, it declared that petitioner's period to file an answer had not yet started to run.[11]

On 15 January 1999, the trial court archived the case, there being no movement in the case.[12]

On 17 February 1999, respondent filed a motion to declare defendant Multi-Trans in default for failure to file its answer to the complaint.[13]

In its order[14] dated 26 February 1999, the trial court stated that the copy of the Order dated 25 October 1997 was sent to defendant Multi-Trans and not to its counsel. For this reason, the period to file an Answer had not yet started to run. It directed that a copy of the 25 October 1997 Order be sent to defendant Multi-Trans' counsel. A notice of the transmittal of the Order dated 25 October 1997 to Atty. Austria was shown to the trial court without any return.

Per Order dated 27 March 1999, petitioner Multi-Trans was declared in default, there being a certification from the Post Office of Makati showing that counsel for petitioner received a copy of the Order dated 25 October 1997 denying its motion to dismiss, and that it had not yet filed an Answer.[15]

The trial court scheduled the pre-trial between respondent and Neptune and required them to submit their pre-trial briefs.

On 14 April 1999, respondent reiterated its motion to declare petitioner Multi-Trans in default.[16] On 15 April 1999, the trial court reiterated its earlier Order of 27 March 1999 declaring petitioner Multi-Trans in default.[17]

Respondent Oriental filed its pre-trial brief on 6 May 1999,[18] while Neptune filed its pre-trial brief on 18 May 1999.[19]

In an Order dated 20 May 1999, respondent Oriental was allowed to present its evidence ex parte for failure of Neptune and its counsel to appear at pre-trial despite notice.[20]

On 17 June 1999, Oriental presented two witnesses: (1) Erlinda Espiritu and (2) Perfecto Mojica. It formally offered in evidence Exhibits A to O, inclusive,[21] which the trial court admitted.[22]

On 30 August 1999, the trial court rendered its decision finding petitioner and Neptune solidarily liable to respondent. The dispositive portion of the decision reads:

> WHEREFORE, judgment is rendered ordering defendants Multi-Trans Agency Phils., Inc. and Neptune Orient Lines Ltd. jointly and severally to pay the plaintiff Oriental Assurance Corporation the sum of P256,937.03 with legal interest of 6 percent per annum from the date of filing of the complaint until payment, plus reasonable attorney's fees of P30,000, and costs.[23]

On 10 September 1999, Atty. Jose Ma. Austria, with conformity of petitioner, filed a Notice of Withdrawal of Appearance.[24] The trial court ordered notices be furnished petitioner until a new counsel appeared.[25]

On 27 September 1999, Melgar Tria & Associates entered its appearance for petitioner Multi-Trans.[26] Simultaneously with its entry of appearance, new counsel for petitioner filed a Motion for New Trial and to Admit Attached Answer.[27] Petitioner prayed that the judgment of the trial court be set aside and a new trial be granted on the ground of its former counsel's negligence/incompetence constituting excusable neglect, and that its Answer to the Complaint be admitted. The following are contained in the Affidavit of Merit executed by petitioner's Administration Manager:

> 4. That I was surprised considering that per last conversation with our lawyer Atty. Jose Ma. Austria, he informed us that we have been declared in default and that they have already filed a Motion to Lift Order of default;
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> 5. That upon verification of the records of the case, I found out that our lawyer Atty. Jose Ma. Austria did not actually file any Motion to Lift Order of Default despite receipt of the Order of the Court declaring us in default;
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> 6. Furthermore, review of the records of the case, disclosed that the only action taken by our counsel was to file in our behalf a Motion to Dismiss but the same was denied by this Honorable Court on October 25, 1997 and received by Atty. Austria on February 25, 1998 as evidenced by the Certification coming from the Post Office of Makati City;
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> x x x x
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> 9. As can be clearly seen, from the time he received the order of this Court dated October 25, 1997 denying its Motion to Dismiss, up to the

time he received plaintiff's motion to declare defendant in default until the time he received the Order of this Court declaring us in default, our lawyer has not done nothing (sic) either by filing an answer or a motion to lift the order of default (which he led us to believe that he indeed filed the same) which is clearly a breach of trust that we have reposed in him;

10. By the negligence of our counsel, we were denied the opportunity to present evidence and participate in the trial, and thus deprived us the chance to contest the suit that has been filed against us by the plaintiff;

11. That we have a good and meritorious defense in that our company is just a mere freight forwarding firm. Likewise our principal in London, John Goods & Sons (London) Ltd. is also a freight forwarder. While Transtainer Systems (UK) Ltd., Multimodal Operators (wherein John Goods & Sons Ltd. is the agent) is a non-operating vessel cargo consolidator.

12. As can be shown, neither one of us is the owner/operator of the vessel "Tokyo Bay" wherein the subject cargo was loaded and shipped nor have we any participation in the filing up, packing, storing of the subject cargo in the container nor in the loading and shipping of the same in the vessel; x x x.[28]

On 28 September 1999, Neptune filed a Motion for Reconsideration of the decision of the trial court.[29]

Respondent filed its opposition to the motions for new trial and for reconsideration. [30]

In its Order dated 29 November 1999, the trial court denied the motion for new trial. It declared:

In seeking new trial, defendant Multi-Trans Agency assails its former counsel Atty. Jose Ma. Austria for not taking any action at all from the time that he received the denial of his motion to dismiss until the decision was rendered. It cites rulings to the effect that negligence or incompetence of counsel is a well-recognized ground for new trial. While this may be true in a number of cases, the factual backdrop therein will reveal that the parties aggrieved by the inaction of their counsels had not contributed to the situation in which they found themselves. A party must truly be a victim of its counsel's misconduct for it to claim new trial. This is not the case here. Atty. Austria may have ignored the orders and other papers sent to him, but the records will show that defendant was also furnished copies of the same papers. It cannot pretend to be ignorant of what was going on. In particular, it had received copy of the Order of March 27, 1999 declaring it in default, but from the time it received this in April until the decision on August 30, 1999 - a period of four months - it did nothing to regain its standing. Defendant was already alerted to the fact that its counsel was remiss in his duties. A normally prudent and careful person would have taken pains to rectify the situation when there