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THIRD DIVISION

[G.R. No. 174116, September 11, 2009]

EASTERN SHIPPING LINES, INC., PETITIONER, VS. PRUDENTIAL GUARANTEE AND ASSURANCE, INC., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the April 26, 2006 Decision[2] and August 15, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 68165.

The facts of the case:

On November 8, 1995, fifty-six cases of completely knock-down auto parts of Nissan motor vehicle (cargoes) were loaded on board M/V Apollo Tujuh (carrier) at Nagoya, Japan, to be shipped to Manila. The shipment was consigned to Nissan Motor Philippines, Inc. (Nissan) and was covered by Bill of Lading No. NMA-1.[4] The carrier was owned and operated by petitioner Eastern Shipping Lines, Inc.

On November 16, 1995, the carrier arrived at the port of Manila. On November 22, 1995, the shipment was then discharged from the vessel onto the custody of the *arrastre* operator, Asian Terminals, Inc. (ATI), complete and in good condition, except for four cases.[5]

On November 24 to 28, 1995, the shipment was withdrawn by Seafront Customs and Brokerage from the pier and delivered to the warehouse of Nissan in Quezon City.[6]

A survey of the shipment was then conducted by Tan-Gaute Adjustment Company, Inc. (surveyor) at Nissan's warehouse. On January 16, 1996, the surveyor submitted its report[7] with a finding that there were "short (missing)" items in Cases Nos. 10/A26/T3K and 10/A26/7K and "broken/scratched" and "broken" items in Case No. 10/A26/70K"; and that "(i)n (its) opinion, the "shortage and damage sustained by the shipment were due to pilferage and improper handling, respectively while in the custody of the vessel and/or Arrastre Contractors."[8]

As a result, Nissan demanded the sum of P1,047,298.34[9] representing the cost of the damages sustained by the shipment from petitioner, the owner of the vessel, and ATI, the *arrastre* operator. However, the demands were not heeded.[10]

On August 21, 1996, as insurer of the shipment against all risks per Marine Open Policy No. 86-168 and Marine Cargo Risk Note No. 3921/95, respondent Prudential

Guarantee and Assurance Inc. paid Nissan the sum of P1,047,298.34.

On October 1, 1996, respondent sued petitioner and ATI for reimbursement of the amount it paid to Nissan before the Regional Trial Court (RTC) of Makati City, Branch 148, docketed as Civil Case No. 96-1665, entitled *Prudential Guarantee and Assurance, Inc. v. Eastern Shipping Lines, Inc.* Respondent claimed that it was subrogated to the rights of Nissan by virtue of said payment.[11]

On June 21, 1999, the RTC rendered a Decision,[12] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants Eastern Shipping Lines, Inc. and ATI, and said defendants are hereby ordered to pay jointly and solidarily plaintiff the following:
>
> 1) The claim of P1,047,298.34 with legal interest thereon of 6% per annum from the date of the filing of this complaint until the same is fully paid;
> 2) [Twenty-five (25%)] percent of the principal claim, as and for attorney's fees;
> 3) Plus costs of suit.
>
> Both the counterclaims and crossclaims are without legal basis. The counterclaims and crossclaims are based on the assumption that the other defendant is the one solely liable. However, inasmuch as the solidary liability of the defendants have been established, the counterclaims and crossclaims must be denied.
>
> Equal costs against Eastern Shipping Lines, Inc. and Asian Terminals, Inc.
>
> SO ORDERED.[13]

Both petitioner and ATI appealed to the CA.

On April 26, 2006, the CA rendered a Decision the dispositive portion of which reads:

> WHEREFORE, the appealed decision is AFFIRMED with MODIFICATIONS, in that (i) defendant-appellant Eastern Shipping Lines, Inc. is ordered to pay appellee (a) the amount of P904,293.75 plus interest thereon at the rate of 6% per annum from the filing of the complaint up to the finality of this judgment, when the interest shall become 12% per annum until fully paid, and (b) the costs of suit; (ii) the award of attorney's fees is DELETED; and (iii) the complaint against defendant-appellant Asian Terminals, Inc. is DISMISSED.
>
> SO ORDERED.[14]

The CA exonerated ATI and ruled that petitioner was solely responsible for the damages caused to the cargoes. Moreover, the CA relying on *Delsan Transport Lines, Inc. vs. Court of Appeals,*[15] ruled that the right of subrogation accrues upon payment by the insurance company of the insurance claim and that the presentation of the insurance policy is not indispensable before the appellee may recover in the exercise of its subrogatory right.[16]

Petitioner then filed a motion for reconsideration, which was, however, denied by the CA in a Resolution dated August 15, 2006.

Hence, herein petition, with petitioner raising the following assignment of errors to wit:

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT FINDING HEREIN PETITIONER LIABLE DESPITE THE FACT THAT RESPONDENT FAILED TO SUBMIT ANY INSURANCE POLICY.

II.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT APPLYING THE US$500.00/PACKAGE/CASE PACKAGE LIMITATION OF LIABILITY IN ACCORDANCE WITH THE CARRIAGE OF GOODS BY SEA ACT.[17]

The petition is meritorious.

The 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 iron-clad and admits of certain exceptions, one of which is when the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion.[18] In the case at bar, the records of the case contain evidence which justify the application of the exception.

Anent the first error, petitioner argues that respondent was not properly subrogated because of the non-presentation of the marine insurance policy. In the case at bar, in order to prove its claim, respondent presented a marine cargo risk note and a subrogation receipt. Thus, the question to be resolved is whether the two documents, without the Marine Insurance Policy, are sufficient to prove respondent's right of subrogation.

Before anything else, it must be emphasized that a marine risk note is not an insurance policy. It is only an acknowledgment or declaration of the insurer confirming the specific shipment covered by its marine open policy, the evaluation of the cargo and the chargeable premium.[19] In *International Container Terminal Services, Inc. v. FGU Insurance Corporation* (International),[20] the nature of a

marine cargo risk note was explained, thus:

> x x x **It is the marine open policy which is the main insurance contract.** In other words, the marine open policy is the blanket insurance to be undertaken by FGU on all goods to be shipped by RAGC during the existence of the contract, while the marine risk note specifies the particular goods/shipment insured by FGU on that specific transaction, including the sum insured, the shipment particulars as well as the premium paid for such shipment. x x x.[21]

For clarity, the pertinent portions of the Marine Cargo Risk Note, [22] relied upon by respondent, are hereunder reproduced, to wit:

RN NO 39821/95
Date: Nov. 16, 1995

NISSAN MOTOR PHILS., INC.
x x x

Gentlemen:

We have this day noted a Risk in your favor **subject to all clauses and condition of the Company's printed form of Marine Open Policy No. 86-168**

For PHILIPINE PESOS FOURTEEN MILLION ONE HUNDRED SEVENTY-THREE THOUSAND FORTY-TWO & 91/100 ONLY (P14, 173,042.91) xxx

CARGO: 56 CASES NISSAN MOTOR VEHICLE CKD (GC22)

CONDITIONS: **INSTITUTE CARGO CLAUSES "A"**
OTHER TERMS AND CONDITIONS PER MOP-86-168

From: NAGOYA
To: MANILA, PHILS.
ETD: NOV. 8, 1995 ETA: NOV. 17, 1995
CARRIER: "APOLLO TUJUH"
B/L NO: NMA-1
BANK: BANK OF THE PHILLIPINE ISLANDS
L/C NO: 026010051971
Shipper/ Consignee: MARUBENI CORPORATION

It is undisputed that the cargoes were already on board the carrier as early as November 8, 1995 and that the same arrived at the port of Manila on November 16, 1995. It is, however, very apparent that the Marine Cargo Risk Note was issued only on November 16, 1995. The same, therefore, should have raised a red flag, as it would be impossible to know whether said goods were actually insured while the same were in transit from Japan to Manila. On this score, this Court is guided by

Malayan Insurance Co., Inc. v. Regis Brokerage Corp.,[23] where this Court ruled:

> Thus, we can only consider the Marine Risk Note in determining whether there existed a contract of insurance between ABB Koppel and Malayan at the time of the loss of the motors. **However, the very terms of the Marine Risk Note itself are quite damning. It is dated 21 March 1995, or after the occurrence of the loss**, and specifically states that Malayan "ha[d] this day noted the above-mentioned risk in your favor and hereby guarantee[s] that this document has all the force and effect of the terms and conditions in the Corporation's printed form of the standard Marine Cargo Policy and the Company's Marine Open Policy."[24]

Likewise, the date of the issuance of the Marine Risk Note also caught the attention of petitioner. In petitioner's Comment/Opposition[25] to the formal offer of evidence before the RTC, petitioner made the following manifestations, to wit:

> Exhibit "B," **Marine Cargo Risk Note No. 39821 dated November 16, 1995 is being objected to for being irrelevant and immaterial as it was executed on November 16, 1995. The cargoes arrived in Manila on November 16, 1995. <u>This means that the cargoes are not specifically covered by any particular insurance at the time of transit</u>**. The alleged Marine Open Policy was not presented. Marine Open Policy may be subject to Institute Cargo Clauses which may require arbitration prior to the filing of an action in court.[26]

In addition, petitioner also contended that the Marine Cargo Risk Note referred to "Institute Cargo Clauses A and other terms and conditions per Marine Open Policy-86-168."

Based on the forgoing, it is already evident why herein petition is meritorious. The Marine Risk Note relied upon by respondent as the basis for its claim for subrogation is insufficient to prove said claim.

As previously stated, the Marine Risk Note was issued only on November 16, 1995; hence, without a copy of the marine insurance policy, it would be impossible and simply guesswork to know whether the cargo was insured during the voyage which started on November 8, 1995. Again, without the marine insurance policy, it would be impossible for this Court to know the following: first, the specifics of the "Institute Cargo Clauses A and other terms and conditions per Marine Open Policy-86-168" as alluded to in the Marine Risk Note; second, if the said terms and conditions were actually complied with before respondent paid Nissan's claim.

Furthermore, a reading of the transcript of the records clearly show that, at the RTC, petitioner had already objected to the non-presentation of the marine insurance policy, to wit:

> Q. Are you also the one preparing the Marine Insurance Contract?