563 Phil. 1003

SECOND DIVISION

[G.R. No. 172156, November 23, 2007]

MALAYAN INSURANCE CO., INC.,[1] PETITIONER, VS. REGIS BROKERAGE CORP., RESPONDENT.

D E C I S I O N

TINGA, J,:

We consider whether an insurer, in an action for recoupment instituted in its capacity as the subrogee of the insured, may be conferred favorable relief even if it failed to introduce in evidence the insurance contract or policy, or even allege the existence nay recite the substance and attach a copy of such document in the complaint. The answer is as self-evident as meets the eye.

This Petition for Review under Rule 45 was filed by petitioner Malayan Insurance Co., Inc. (Malayan),[2] assailing the Decision[3] dated 23 December 2005 of the Court of Appeals in C.A. G.R. SP No. 90505, as well as its Resolution[4] dated 5 April 2006 denying petitioner's motion for reconsideration.

The facts require little elaboration. Around 1 February 1995, Fasco Motors Group loaded 120 pieces of "motors" on board China Airlines Flight 621 bound for Manila from the United States. The cargo was to be delivered to consignee ABB Koppel, Inc. (ABB Koppel).[5] When the cargo arrived at the Ninoy Aquino International Airport, it was discharged without exception and forwarded to People's Aircargo & Warehousing Corp.'s (Paircargo's) warehouse for temporary storage pending release by the Bureau of Customs. Paircargo remained in possession of the cargo until 7 March 1995, at which point respondent Regis Brokerage Corp. (Regis) withdrew the cargo and delivered the same to ABB Koppel at its warehouse.[6] When the shipment arrived at ABB Koppel's warehouse, it was discovered that only 65 of the 120 pieces of motors were actually delivered and that the remaining 55 motors, valued at US$2,374.35, could not be accounted for.[7]

The shipment was purportedly insured with Malayan by ABB Koppel. Demand was first made upon Regis and Paircargo for payment of the value of the missing motors, but both refused to pay.[8] Thus, Malayan paid ABB Koppel the amount of P156,549.55 apparently pursuant to its insurance agreement, and Malayan was on that basis subrogated to the rights of ABB Koppel against Regis and Paircargo.[9] On 24 June 1996, Malayan filed a complaint for damages against Regis and Paircargo with the Metropolitan Trial Court (MeTC) of Manila, Branch 9. In the course of trial, Malayan presented Marine Risk Note No. RN-0001-19832 (Marine Risk Note) dated 21 March 1995 as proof that the cargo was insured by Malayan.[10]

The MeTC rendered a Decision[11] dated 25 May 2001 adjudging Regis alone liable

to Malayan in the amount of P156,549.00 as actual damages, P15,000.00 as attorney's fees, and costs of suits. With the exception of the award of attorney's fees, the MeTC decision was affirmed on appeal to the Regional Trial Court (RTC) of Manila, through a Decision dated 28 February 2005.[12]

Regis filed a petition for review with the Court of Appeals seeking the reversal of the MeTC and RTC decisions. On 23 December 2005, the Court of Appeals promulgated its decision vacating the RTC judgment and ordering the dismissal of Malayan's complaint. The central finding that formed the Court of Appeals decision was that the Marine Risk Note presented as proof that the cargo was insured was invalid.[13] It was observed that the Marine Risk Note was procured from Malayan only on 21 March 1995, when in fact the insured, ABB Koppel, had learned of the partial loss of the motors as early as 7 March 1995.[14] The appellate court noted that under Section 3 of the Insurance Code, the past event which may be insured against must be unknown to the parties and so for that reason the insurance contract in this case violated Section 3. The Court of Appeals further ruled that the due execution and authenticity of the subrogation receipt presented before the trial court by Malayan were not duly proven since the signatories thereto were not presented by Malayan before the trial court to identify their signatures thereon, and neither was evidence presented to establish the genuineness of such signatures.[15]

Malayan filed a motion for reconsideration with the Court of Appeals where it contended that the Marine Risk Note is "an open policy per Marine Open Cargo Policy No. OPEN POLICY-0001-00410 issued before February 1, 1995."[16] The motion was denied by the appellate court,[17] which pointed out that Malayan "did not present the aforecited marine open cargo policy as would indicate the date of its issuance."[18]

Hence, the present petition instituted by Malayan. According to Malayan, the lost cargo was insured not only by the Marine Risk Note but by the anteceding Marine Insurance Policy No. M/OP/95/0001-410 (Marine Insurance Policy) which it issued in favor of ABB Koppel on 20 January 1995, or many days before the motors were transported to Manila. A copy of the Marine Insurance Policy was attached to the present petition, but it is clear and no pretense was made that said policy had not been presented at the trial.

The key arguments raised before us by Malayan flow from the existence of the Marine Insurance Policy. Pains are taken to establish that there existed as between Malayan and ABB Koppel an "open policy" under Section 60 of the Insurance Code, wherein the value of the thing insured is not agreed upon but left to be ascertained in case of loss, and that the Marine Risk Note was nothing but a determination of the value of the thing insured pursuant to the open policy as established by the Marine Insurance Policy. Unfortunately for Malayan, the Court could not attribute any evidentiary weight to the Marine Insurance Policy.

It is elementary that this Court is not a trier of facts. We generally refer to the trial court and the Court of Appeals on matters relating to the admission and evaluation of the evidence. In this case, while the trial courts and the Court of Appeals arrived at differing conclusions, we essentially agree with the Court of Appeals' analysis of Malayan's cause of action, and its ordained result. It appeared that at the very

instance the Marine Risk Note was offered in evidence, Regis already posed its objection to the admission of said document on the ground that such was "immaterial, impertinent and irrelevant to this case because the same was issued on March 21, 1995 which is after the occurrence of the loss on February 1, 1995."[19] Because the trial courts failed to duly consider whether the Marine Risk Note sufficiently established a valid insurance covering the subject motors, the Court of Appeals acted correctly in the exercise of its appellate jurisdiction in setting aside the appealed decisions.

Tellingly, Malayan's argument before this Court is not that the Court of Appeals erred in its evaluation of the Marine Risk Note following that document's terms alone, but that the appellate court could not consider the import of the purported Marine Insurance Policy. Indeed, since no insurance policy was presented at the trial by Malayan, or even before the Court of Appeals,[20] there certainly is no basis for this Court to admit or consider the same, notwithstanding Malayan's attempt to submit such document to us along with its present petition. As we recently held:

> Similarly, petitioner in this case cannot "enervate" the COMELEC's findings by introducing new evidence before this Court, which in any case is not a trier of facts, and then ask it to substitute its own judgment and discretion for that of the COMELEC.
>
> The rule in appellate procedure is that a factual question may not be raised for the first time on appeal, and documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action. This is true whether the decision elevated for review originated from a regular court or an administrative agency or quasi-judicial body, and whether it was rendered in a civil case, a special proceeding, or a criminal case. Piecemeal presentation of evidence is simply not in accord with orderly justice.[21]

Since the Marine Insurance Policy was never presented in evidence before the trial court or the Court of Appeals even, there is no legal basis to consider such document in the resolution of this case, reflective as that document may have been of the pre-existence of an insurance contract between Malayan and ABB Koppel even prior to the loss of the motors. In fact, it appears quite plain that Malayan's theory of the case it pursued before the trial court was that the perfected insurance contract which it relied upon as basis for its right to subrogation was not the Marine Insurance Policy but the Marine Risk Note which, unlike the former, was actually presented at the trial and offered in evidence. The Claims Processor of Malayan who testified in court in behalf of his employer actually acknowledged that the "proof that ABB Koppel insured the [shipment] to [Malayan]" was the Marine Risk Note, and not the Marine Insurance Policy.[22] Even the very complaint filed by Malayan before the MeTC stated that "[t]he subject shipment was insured by [Malayan] under Risk Note No. 0001-19832,"[23] and not by the Marine Insurance Policy, which was not adverted to at all in the complaint.[24]

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." It specifies that at risk are the 120 pieces of motors which unfortunately had already been compromised as of the date of the Marine Risk Note itself.[25]

Certainly it would be obtuse for us to even entertain the idea that the insurance contract between Malayan and ABB Koppel was actually constituted by the Marine Risk Note alone. We find guidance on this point in *Aboitiz Shipping Corporation v. Philippine American General Insurance, Co.,*[26] where a trial court had relied on the contents of a marine risk note, not the insurance policy itself, in dismissing a complaint. For this act, the Court faulted the trial court in "[obviously mistaking] said Marine Risk Note as an insurance policy when it is not."[27] The Court proceeded to characterize the marine risk note therein as "an acknowledgment or declaration of the private respondent confirming the specific shipment covered by its Marine Open Policy, the evaluation of the cargo, and the chargeable premium,"[28] a description that is reflective as well of the present Marine Risk Note, if not of marine risk notes in this country in general.

Malayan correctly points out that the Marine Risk Note itself adverts to "Marine Cargo Policy Number Open Policy-0001-00410" as well as to "the standard Marine Cargo Policy and the Company's Marine Open Policy." What the Marine Risk Note bears, as a matter of evidence, is that it is not apparently the contract of insurance by itself, but merely a complementary or supplementary document to the contract of insurance that may have existed as between Malayan and ABB Koppel. And while this observation may deviate from the tenor of the assailed Court of Appeals' Decision, it does not presage any ruling in favor of petitioner. Fundamentally, since Malayan failed to introduce in evidence the Marine Insurance Policy itself as the main insurance contract, or even advert to said document in the complaint, ultimately then it failed to establish its cause of action for restitution as a subrogee of ABB Koppel.

Malayan's right of recovery as a subrogee of ABB Koppel cannot be predicated alone on the liability of the respondent to ABB Koppel, even though such liability will necessarily have to be established at the trial for Malayan to recover. Because Malayan's right to recovery derives from contractual subrogation as an incident to an insurance relationship, and not from any proximate injury to it inflicted by the respondents, it is critical that Malayan establish the legal basis of such right to subrogation by presenting the contract constitutive of the insurance relationship between it and ABB Koppel. Without such legal basis, its cause of action cannot survive.

Our procedural rules make plain how easily Malayan could have adduced the Marine Insurance Policy. Ideally, this should have been accomplished from the moment it filed the complaint. Since the Marine Insurance Policy was constitutive of the insurer-insured relationship from which Malayan draws its right to subrogation, such document should have been attached to the complaint itself, as provided for in Section 7, Rule 9 of the 1997 Rules of Civil Procedure: