

SECOND DIVISION

[G.R. NO. 136888, June 29, 2005]

**PHILIPPINE CHARTER INSURANCE CORPORATION, PETITIONER,
VS. CHEMOIL LIGHTERAGE CORPORATION, RESPONDENT.**

DECISION

CHICO-NAZARIO, J.:

Before Us is a petition for review on *certiorari* which assails the Decision of the Court of Appeals^[1] in CA-G.R. CV No. 56209, dated 18 December 1998. The Decision reversed and set aside the decision of the Regional Trial Court (RTC),^[2] Branch 16, City of Manila, which ordered herein respondent to pay the petitioner's claim in the amount of P5,000,000.00 with legal interest from the date of the filing of the complaint.

THE FACTS

Petitioner Philippine Charter Insurance Corporation is a domestic corporation engaged in the business of non-life insurance. Respondent Chemoil Lighterage Corporation is also a domestic corporation engaged in the transport of goods.

On 24 January 1991, Samkyung Chemical Company, Ltd., based in Ulsan, South Korea, shipped 62.06 metric tons of the liquid chemical DIOCTYL PHTHALATE (DOP) on board MT "TACHIBANA" which was valued at US\$90,201.57 under Bill of Lading No. ULS/MNL-1^[3] and another 436.70 metric tons of DOP valued at US\$634,724.89 under Bill of Lading No. ULS/MNL-2^[4] to the Philippines. The consignee was Plastic Group Phils., Inc. (PGP) in Manila.

PGP insured the cargo with herein petitioner Philippine Charter Insurance Corporation against all risks. The insurance was under Marine Policies No. MRN-30721^[5] dated 06 February 1991 for P31,757,969.19 and No. MRN-30722^[6] for P4,514,881.00. Marine Endorsement No. 2786^[7] dated 11 May 1991 was attached and formed part of MRN-30721, amending the latter's insured value to P24,667,422.03, and reduced the premium accordingly.

The ocean tanker MT "TACHIBANA" unloaded the cargo to Tanker Barge LB-1011 of respondent Chemoil Lighterage Corporation, which shall transport the same to Del Pan Bridge in Pasig River. Tanker Barge LB-1011 would unload the cargo to tanker trucks, also owned by the respondent, and haul it by land to PGP's storage tanks in Calamba, Laguna.

Upon inspection by PGP, the samples taken from the shipment showed discoloration from yellowish to amber, demonstrating that it was damaged, as DOP is colorless and water clear. PGP then sent a letter to the petitioner dated 18 February 1991^[8]

where it formally made an insurance claim for the loss it sustained due to the contamination.

The petitioner requested an independent insurance adjuster, the GIT Insurance Adjusters, Inc. (GIT), to conduct a Quantity and Condition Survey of the shipment. On 22 February 1991, GIT issued a Report,^[9] part of which states:

As unloading progressed, it was observed on February 14, 1991 that DOP samples taken were discolored from yellowish to amber. Inspection of cargo tanks showed manhole covers of ballast tanks' ceilings loosely secured. Furthermore, it was noted that the rubber gaskets of the manhole covers of the ballast tanks re-acted to the chemical causing shrinkage thus, loosening the covers and cargo ingress to the rusty ballast tanks...^[10]

On 13 May 1991, the petitioner paid PGP the amount of P5,000,000.00^[11] as full and final payment for the loss. PGP issued a Subrogation Receipt to the petitioner.

Meanwhile, on 03 April 1991, PGP paid the respondent the amount of P301,909.50 as full payment for the latter's services, as evidenced by Official Receipt No. 1274.^[12]

On 15 July 1991, an action for damages was instituted by the petitioner-insurer against respondent-carrier before the RTC, Branch 16, City of Manila, docketed as Civil Case No. 91-57923.^[13] The petitioner prayed for actual damages in the amount of P5,000,000.00, attorney's fees in the amount of no less than P1,000,000.00, and costs of suit.

An Answer with Compulsory Counterclaim^[14] was filed by the respondent on 05 September 1991. The respondent admitted it undertook to transport the consignee's shipment from MT "TACHIBANA" to the Del Pan Bridge, Pasig River, where it was transferred to its tanker trucks for hauling to PGP's storage tanks in Calamba, Laguna. The respondent alleged that before the DOP was loaded into its barge (LB-1011), the surveyor/representative of PGP, Adjustment Standard Corporation, inspected it and found the same clean, dry, and fit for loading. The entire loading and unloading of the shipment were also done under the control and supervision of PGP's surveyor/representative. It was also mentioned by the respondent that the contract between it and PGP expressly stipulated that it shall be free from any and all claims arising from contamination, loss of cargo or part thereof; that the consignee accepted the cargo without any protest or notice; and that the cargo shall be insured by its owner sans recourse against all risks. As subrogee, the petitioner was bound by this stipulation. As carrier, no fault and negligence can be attributed against respondent as it exercised extraordinary diligence in handling the cargo.^[15]

After due hearing, the trial court rendered a Decision on 06 January 1997, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of plaintiff ordering defendant to pay plaintiff's claim of

P5,000,000.00 with legal interest from the date of the filing of the complaint. The counterclaims are DISMISSED.^[16]

Aggrieved by the trial court's decision, the respondent sought relief with the Court of Appeals where it alleged in the main that PGP failed to file any notice, claim or protest within the period required by Article 366 of the Code of Commerce, which is a condition precedent to the accrual of a right of action against the carrier.^[17] A telephone call which was supposedly made by a certain Alfred Chan, an employee of PGP, to one of the Vice Presidents of the respondent, informing the latter of the discoloration, is not the notice required by Article 366 of the Code of Commerce.^[18]

On 18 December 1998, the Court of Appeals promulgated its Decision reversing the trial court, the dispositive portion of which reads:

WHEREFORE, the decision appealed from is hereby **REVERSED AND SET ASIDE** and a new one is entered dismissing the complaint.^[19]

A petition for review on *certiorari*^[20] was filed by the petitioner with this Court, praying that the decision of the trial court be affirmed.

After the respondent filed its Comment^[21] and the petitioner filed its Reply^[22] thereto, this Court issued a Resolution^[23] on 18 August 1999, giving due course to the petition.

ASSIGNMENT OF ERRORS

The petitioner assigns as errors the following:

I

THE APPELLATE COURT GRAVELY ERRED IN FINDING THAT THE NOTICE OF CLAIM WAS NOT FILED WITHIN THE REQUIRED PERIOD.

II

THE APPELLATE COURT GRAVELY ERRED IN NOT HOLDING THAT DAMAGE TO THE CARGO WAS DUE TO THE FAULT OR NEGLIGENCE OF RESPONDENT CHEMOIL.

III

THE APPELLATE COURT GRAVELY ERRED IN SETTING ASIDE THE TRIAL COURT'S DECISION AND IN DISMISSING THE COMPLAINT.^[24]

ISSUES

Synthesized, the issues that must be addressed by this Court are:

I

WHETHER OR NOT THE NOTICE OF CLAIM WAS FILED WITHIN THE REQUIRED PERIOD. If the answer is in the affirmative,

II

WHETHER OR NOT THE DAMAGE TO THE CARGO WAS DUE TO THE FAULT OR NEGLIGENCE OF THE RESPONDENT.

THE COURT'S RULINGS

Article 366 of the Code of Commerce has profound application in the case at bar. This provision of law imparts:

Art. 366. Within twenty-four hours following the receipt of the merchandise a claim may be made against the carrier on account of damage or average found upon opening the packages, provided that the indications of the damage or average giving rise to the claim cannot be ascertained from the exterior of said packages, in which case said claim shall only be admitted at the time of the receipt of the packages.

After the periods mentioned have elapsed, or after the transportation charges have been paid, no claim whatsoever shall be admitted against the carrier with regard to the condition in which the goods transported were delivered.

As to the first issue, the petitioner contends that the notice of contamination was given by Alfredo Chan, an employee of PGP, to Ms. Encarnacion Abastillas, Vice President for Administration and Operations of the respondent, at the time of the delivery of the cargo, and therefore, within the required period.^[25] This was done by telephone.

The respondent, however, claims that the supposed notice given by PGP over the telephone was denied by Ms. Abastillas. Between the testimonies of Alfredo Chan and Encarnacion Abastillas, the latter's testimony is purportedly more credible because it would be quite unbelievable and contrary to business practice for Alfredo Chan to merely make a verbal notice of claim that involves millions of pesos.^[26]

On this point, the Court of Appeals declared:

. . . We are inclined to sustain the view that a telephone call made to defendant-company could constitute substantial compliance with the requirement of notice considering that the notice was given to a responsible official, the Vice-President, who promptly replied that she will look into the matter. However, it must be pointed out that compliance with the period for filing notice is an essential part of the requirement, i.e., immediately if the damage is apparent, or otherwise within twenty-four hours from receipt of the goods, the clear import being that prompt examination of the goods must be made to ascertain damage if this is not immediately apparent. We have examined the evidence, and We are unable to find any proof of compliance with the required period, which is fatal to the accrual of the right of action against the carrier.^[27]