480 Phil. 456

THIRD DIVISION

[G.R. No. 150094, August 18, 2004]

FEDERAL EXPRESS CORPORATION, PETITIONER, VS. AMERICAN HOME ASSURANCE COMPANY AND PHILAM INSURANCE COMPANY, INC., RESPONDENTS.

DECISION

PANGANIBAN, J.:

Basic is the requirement that before suing to recover loss of or damage to transported goods, the plaintiff must give the carrier notice of the loss or damage, within the period prescribed by the Warsaw Convention and/or the airway bill.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the June 4, 2001 Decision[2] and the September 21, 2001 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 58208. The assailed Decision disposed as follows:

> "WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Decision of Branch 149 of the Regional Trial Court of Makati City in *Civil Case No. 95-1219*, entitled '*American Home Assurance Co. and PHILAM Insurance Co., Inc. v. FEDERAL EXPRESS CORPORATION and/or CARGOHAUS, INC. (formerly U-WAREHOUSE, INC.)*,' is hereby **AFFIRMED** and **REITERATED.**
>
> "Costs against the [petitioner and Cargohaus, Inc.]."[4]

The assailed Resolution denied petitioner's Motion for Reconsideration.

The Facts

The antecedent facts are summarized by the appellate court as follows:

> "On January 26, 1994, SMITHKLINE Beecham (SMITHKLINE for brevity) of Nebraska, USA delivered to Burlington Air Express (BURLINGTON), an agent of [Petitioner] Federal Express Corporation, a shipment of 109 cartons of veterinary biologicals for delivery to consignee SMITHKLINE and French Overseas Company in Makati City, Metro Manila. The shipment was covered by Burlington Airway Bill No. 11263825 with the words, 'REFRIGERATE WHEN NOT IN TRANSIT' and 'PERISHABLE' stamp marked on its face. That same day, Burlington insured the cargoes in the amount of $39,339.00 with American Home Assurance Company (AHAC). The following day, Burlington turned over the custody of said cargoes to Federal Express which transported the same to Manila. The first shipment, consisting of 92 cartons arrived in Manila on January 29, 1994

in Flight No. 0071-28NRT and was immediately stored at [Cargohaus Inc.'s] warehouse. While the second, consisting of 17 cartons, came in two (2) days later, or on January 31, 1994, in Flight No. 0071-30NRT which was likewise immediately stored at Cargohaus' warehouse. Prior to the arrival of the cargoes, Federal Express informed GETC Cargo International Corporation, the customs broker hired by the consignee to facilitate the release of its cargoes from the Bureau of Customs, of the impending arrival of its client's cargoes.

"On February 10, 1994, DARIO C. DIONEDA ('DIONEDA'), twelve (12) days after the cargoes arrived in Manila, a non-licensed custom's broker who was assigned by GETC to facilitate the release of the subject cargoes, found out, while he was about to cause the release of the said cargoes, that the same [were] stored only in a room with two (2) air conditioners running, to cool the place instead of a refrigerator. When he asked an employee of Cargohaus why the cargoes were stored in the 'cool room' only, the latter told him that the cartons where the vaccines were contained specifically indicated therein that it should not be subjected to hot or cold temperature. Thereafter, DIONEDA, upon instructions from GETC, did not proceed with the withdrawal of the vaccines and instead, samples of the same were taken and brought to the Bureau of Animal Industry of the Department of Agriculture in the Philippines by SMITHKLINE for examination wherein it was discovered that the 'ELISA reading of vaccinates sera are below the positive reference serum.'

"As a consequence of the foregoing result of the veterinary biologics test, SMITHKLINE abandoned the shipment and, declaring 'total loss' for the unusable shipment, filed a claim with AHAC through its representative in the Philippines, the Philam Insurance Co., Inc. ('PHILAM') which recompensed SMITHKLINE for the whole insured amount of THIRTY NINE THOUSAND THREE HUNDRED THIRTY NINE DOLLARS ($39,339.00). Thereafter, [respondents] filed an action for damages against the [petitioner] imputing negligence on either or both of them in the handling of the cargo.

"Trial ensued and ultimately concluded on March 18, 1997 with the [petitioner] being held solidarily liable for the loss as follows:

> 'WHEREFORE, judgment is hereby rendered in favor of [respondents] and [petitioner and its Co-Defendant Cargohaus] are directed to pay [respondents], jointly and severally, the following:
>
> 1. Actual damages in the amount of the peso equivalent of US$39,339.00 with interest from the time of the filing of the complaint to the time the same is fully paid.
> 2. Attorney's fees in the amount of P50,000.00 and
> 3. Costs of suit.
>
> 'SO ORDERED.'

"Aggrieved, [petitioner] appealed to [the CA]."[5]

Ruling of the Court of Appeals

The Test Report issued by the United States Department of Agriculture (Animal and Plant Health Inspection Service) was found by the CA to be inadmissible in evidence. Despite this ruling, the appellate court held that the shipping Receipts were a prima facie proof that the goods had indeed been delivered to the carrier in good condition. We quote from the ruling as follows:

> "Where the plaintiff introduces evidence which shows *prima facie* that the goods were delivered to the carrier in good condition [i.e., the shipping receipts], and that the carrier delivered the goods in a damaged condition, a presumption is raised that the damage occurred through the fault or negligence of the carrier, and this casts upon the carrier the burden of showing that the goods were not in good condition when delivered to the carrier, or that the damage was occasioned by some cause excepting the carrier from absolute liability. This the [petitioner] failed to discharge. x x x."[6]

Found devoid of merit was petitioner's claim that respondents had no personality to sue. This argument was supposedly not raised in the Answer or during trial.

Hence, this Petition.[7]

The Issues

In its Memorandum, petitioner raises the following issues for our consideration:

"I.

> Are the decision and resolution of the Honorable Court of Appeals proper subject for review by the Honorable Court under Rule 45 of the 1997 Rules of Civil Procedure?

"II.

> Is the conclusion of the Honorable Court of Appeals – petitioner's claim that respondents have no personality to sue because the payment was made by the respondents to Smithkline when the insured under the policy is Burlington Air Express is devoid of merit – correct or not?

"III.

> Is the conclusion of the Honorable Court of Appeals that the goods were received in good condition, correct or not?

"IV.

> Are Exhibits 'F' and 'G' hearsay evidence, and therefore, not admissible?

"V.

> Is the Honorable Court of Appeals correct in ignoring and disregarding

respondents' own admission that petitioner is not liable? and

"VI.

Is the Honorable Court of Appeals correct in ignoring the Warsaw Convention?"[8]

Simply stated, the issues are as follows: (1) Is the Petition proper for review by the Supreme Court? (2) Is Federal Express liable for damage to or loss of the insured goods?

This Court's Ruling

The Petition has merit.

Preliminary Issue:
Propriety of Review

The correctness of legal conclusions drawn by the Court of Appeals from undisputed facts is a question of law cognizable by the Supreme Court.[9]

In the present case, the facts are undisputed. As will be shown shortly, petitioner is questioning the conclusions drawn from such facts. Hence, this case is a proper subject for review by this Court.

Main Issue:
Liability for Damages

Petitioner contends that respondents have no personality to sue -- thus, no cause of action against it -- because the payment made to Smithkline was erroneous.

Pertinent to this issue is the Certificate of Insurance[10] ("Certificate") that both opposing parties cite in support of their respective positions. They differ only in their interpretation of what their rights are under its terms. The determination of those rights involves a question of law, not a question of fact. "As distinguished from a question of law which exists 'when the doubt or difference arises as to what the law is on a certain state of facts' -- 'there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts'; or when the 'query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstance, their relation to each other and to the whole and the probabilities of the situation.'"[11]

Proper Payee

The Certificate specifies that loss of or damage to the insured cargo is "payable to order x x x upon surrender of this Certificate." Such wording conveys the right of collecting on any such damage or loss, as fully as if the property were covered by a special policy in the name of the holder itself. At the back of the Certificate appears the signature of the representative of Burlington. This document has thus been duly indorsed in blank and is deemed a bearer instrument.