

SECOND DIVISION

[G.R. No. 124050, June 19, 1997]

**MAYER STEEL PIPE CORPORATION AND HONGKONG
GOVERNMENT SUPPLIES DEPARTMENT, PETITIONERS, VS.
COURT OF APPEALS, SOUTH SEA SURETY AND INSURANCE CO.,
INC. AND THE CHARTER INSURANCE CORPORATION,
RESPONDENTS.**

D E C I S I O N

PUNO, J.:

This is a petition for review on *certiorari* to annul and set aside the Decision of respondent Court of Appeals dated December 14, 1995^[1] and its Resolution dated February 22, 1996^[2] in CA-G.R. CV No. 45805 entitled Mayer Steel Pipe Corporation and Hongkong Government Supplies Department v. South Sea Surety Insurance Co., Inc. and The Charter Insurance Corporation.^[3]

In 1983, petitioner Hongkong Government Supplies Department (Hongkong) contracted petitioner Mayer Steel Pipe Corporation (Mayer) to manufacture and supply various steel pipes and fittings. From August to October, 1983, Mayer shipped the pipes and fittings to Hongkong as evidenced by Invoice Nos. MSPC-1014, MSPC-1015, MSPC-1025, MSPC-1020, MSPC-1017 and MSPC-1022.^[4]

Prior to the shipping, petitioner Mayer insured the pipes and fittings against all risks with private respondents South Sea Surety and Insurance Co., Inc. (South Sea) and Charter Insurance Corp. (Charter). The pipes and fittings covered by Invoice Nos. MSPC-1014, 1015 and 1025 with a total amount of US\$212,772.09 were insured with respondent South Sea, while those covered by Invoice Nos. 1020, 1017 and 1022 with a total amount of US\$149,470.00 were insured with respondent Charter.

Petitioners Mayer and Hongkong jointly appointed Industrial Inspection (International) Inc. as third-party inspector to examine whether the pipes and fittings are manufactured in accordance with the specifications in the contract. Industrial Inspection certified all the pipes and fittings to be in good order condition before they were loaded in the vessel. Nonetheless, when the goods reached Hongkong, it was discovered that a substantial portion thereof was damaged.

Petitioners filed a claim against private respondents for indemnity under the insurance contract. Respondent Charter paid petitioner Hongkong the amount of HK\$64,904.75. Petitioners demanded payment of the balance of HK\$299,345.30 representing the cost of repair of the damaged pipes. Private respondents refused to pay because the insurance surveyor's report allegedly showed that the damage is a factory defect.

On April 17, 1986, petitioners filed an action against private respondents to recover

the sum of HK\$299,345.30. For their defense, private respondents averred that they have no obligation to pay the amount claimed by petitioners because the damage to the goods is due to factory defects which are not covered by the insurance policies.

The trial court ruled in favor of petitioners. It found that the damage to the goods is not due to manufacturing defects. It also noted that the insurance contracts executed by petitioner Mayer and private respondents are "all risks" policies which insure against all causes of conceivable loss or damage. The only exceptions are those excluded in the policy, or those sustained due to fraud or intentional misconduct on the part of the insured. The dispositive portion of the decision states:

WHEREFORE, judgment is hereby rendered ordering the defendants jointly and severally, to pay the plaintiffs the following:

1. the sum equivalent in Philippine currency of HK\$299,345.30 with legal rate of interest as of the filing of the complaint;
2. P100,000.00 as and for attorney's fees; and
3. costs of suit.

SO ORDERED.^[5]

Private respondents elevated the case to respondent Court of Appeals.

Respondent court affirmed the finding of the trial court that the damage is not due to factory defect and that it was covered by the "all risks" insurance policies issued by private respondents to petitioner Mayer. However, it set aside the decision of the trial court and dismissed the complaint on the ground of prescription. It held that the action is barred under Section 3(6) of the Carriage of Goods by Sea Act since it was filed only on April 17, 1986, more than two years from the time the goods were unloaded from the vessel. Section 3(6) of the Carriage of Goods by Sea Act provides that "the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered." Respondent court ruled that this provision applies not only to the carrier but also to the insurer, citing *Filipino Merchants Insurance Co., Inc. vs. Alejandro*.^[6]

Hence this petition with the following assignments of error:

1. The respondent Court of Appeals erred in holding that petitioners' cause of action had already prescribed on the mistaken application of the Carriage of Goods by Sea Act and the doctrine of *Filipino Merchants Co., Inc. v. Alejandro* (145 SCRA 42); and
2. The respondent Court of Appeals committed an error in dismissing the complaint.^[7]

The petition is impressed with merit. Respondent court erred in applying Section 3(6) of the Carriage of Goods by Sea Act.

Section 3(6) of the Carriage of Goods by Sea Act states that the carrier and the ship