

**RIZAL SURETY & INSURANCE COMPANY, PETITIONER, VS.
COURT OF APPEALS AND UNITED STATES LINES COMPANY,
RESPONDENTS.***G.R. No. L-23729. May 16, 1967*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d66266253d12/>**BENGZON, J.P., J.:**

On December 5, 1960, Rizal Surety & Insurance Co. insured against all risks a shipment of six (6) bales of cotton remnants loaded on board the S.S. PIONEER MIST in New York and consigned to Imperial Shirt Factory in Manila. Upon arrival of the ship in Manila, on the same date, the cargo was discharged unto the custody of the Manila Port Service,[1] the arrastre operator at the Port of Manila.

When the consignee Imperial Shirt Factory took delivery of the cargo, it discovered that four (4) bales were either short landed and/or short delivered, possibly due to the fault or negligence of either or both the MPS or the U.S. Lines Company, owner of the vessel. Because of this loss, Rizal Surety paid the consignee P1,422.42, pursuant to the terms of the insurance contract.

Rizal Surety, as subrogee of the consignee, turned to the defendants for reimbursement of what it had paid. On March 23, 1961, it filed its claim with the MPS[2] and on April 25, 1961, demand was made by it on the U.S. Lines. MPS wrote back on April 27, 1961, acknowledging receipt of the claim and stating that the matter was "under careful consideration".[3] On the other hand, the U.S. Lines replied on May 15, 1961, denying the claim and stating that the shipment was landed in good order as evidenced by the attached verifax copies of the discharge tally sheets allegedly attested by both its checker and that of the MPS. It also requested Rizal Surety to take up the matter with the MPS.

On July 11, 1961, Rizal Surety filed suit in the Court of First Instance of Manila, impleading MPS and the U.S. Lines as alternative defendants, to recover the amount of P1,235.32, representing the reasonable value of the short landed and/or short delivered goods. The U.S. Lines answered on July 21, 1961, with a counterclaim for P400.00 as attorney's fees for having been unnecessarily joined as party defendant. The MPS filed its answer on July 29, 1961, denying negligence and responsibility for the loss of the shipment.

On October 27, 1961, the legal counsel of MPS recommended to its general manager the settlement of Rizal Surety's claim with the payment of P1,200.00.[4] On May 15, 1962, the MPS paid said claim.[5]

Upon Rizal Surety's instance, the trial court, on June 18, 1962, dismissed the complaint; however, the hearing on the counterclaim filed by U.S. Lines was continued. Subsequently, the trial court rendered its decision awarding P300.00 as attorney's fees to U.S. Lines on the ground that Rizal Surety was responsible for unnecessarily dragging the former into the suit since it failed to confront the MPS with the copies of the discharge tally sheets furnished by the U.S. Lines.

Rizal Surety's motion to reconsider was denied. On appeal to the Court of Appeals, the decision was affirmed on two grounds: (1) the U.S. Lines was unnecessarily made a party defendant and (2) Rizal Surety's claim against it

was “clearly unfounded”.

Hence, Rizal Surety filed this petition for review of the decision of the Court of Appeals.

Petitioner's first submission is that both courts erred in holding that the U.S. Lines was unnecessarily made a party defendant because of the former's omission in not confronting MPS with the tally sheet copies, thus entitling the latter to attorney's fees under par. 2 of Article 2208 of the Civil Code. This provision authorizes the award of attorney's fees when the defendant's act or omission has caused plaintiff - the U.S. Lines as counterclaimant - to unnecessarily incur expenses to protect its interests. The submission is meritorious. There is no proof that had petitioner confronted the MPS with the verifax copies of the good order tally sheets, the latter would have immediately admitted its liability before the lapse of the one (1) year prescriptive period for filing the action. On the contrary, there is evidence on record that the MPS could not have admitted its liability and paid petitioner's valid claim before May 15, 1962, when payment was actually made, because its records were not immediately available.[6]

In impleading U.S. Lines as alternative defendant in the lower court, petitioner acted pursuant to Section 13, Rule 3 of the Rules of Court. Contrary to respondent's claim, there is uncertainty here, as far as petitioner was concerned, because prior to the filing of the complaint neither respondent U.S. Lines nor the MPS admitted liability. The answers of both to the complaint also denied liability for the loss. To be sure, the appellate court's finding of fact even stated that the loss of the shipment was "due to the negligence of either or both the [MPS] and the defendant-appellee [U.S. Lines]".[7]

Moreover, par. 2 of Article 2208 is not applicable to the case. The lower court granted attorney's fees to respondent U.S. Lines as litigation expenses unnecessarily incurred. First of all, the litigation expenses recoverable therein are those incurred in suing third persons, upon the premise that such expenses were unnecessary. The expenses mentioned in the second situation in said par. 2 are therefore non-litigation; otherwise, there would have been no justification for the distinction. Secondly, the article in question starts out with the general rule: "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered x x x." Now a party sued in court is compelled – under pain of default - to become a party defendant either necessarily or unnecessarily. If necessarily, he can not recover the attorney's fees and litigation expenses incurred even if he should win, since it is not the fact of winning alone that entitles recovery of such items but rather the attendance of special circumstances - the enume-rated exceptions in Article 2208 - in addition. Otherwise, everytime a defendant wins, automatically plaintiff must pay attorney's fees, thereby putting a premium on the right to litigate, which should not be so. For those expenses then, the law deems the award of costs as sufficient reimbursement.[8] On the other hand, if a party is unnecessarily made a defendant it will not be par. 2 of the article but par. 4 of the article that will apply, because the term “unnecessarily” connotes the idea that the cause of action against such party was clearly unfounded in the first place. This brings Us then to the second point raised.

Following the very words of the law, in order that plaintiff - here, respondent as, caunterclaimant - may be entitled to its prayer, the suit must be "clearly unfounded". It is therefore necessary to examine the facts which force petitioner - as the defendant in the counterclaim - to file the complaint to protect its rights under the law and ask some pertinent questions in connection therewith.

In the first place it is not disputed that the goods were received by the consignee in bad order. For petitioner to recover, judicial action must be commenced within a certain limited period of time granted to the consignee, into whose shoes it stepped into, counted from the date of the delivery of the goods. Claim for the loss was timely presented. However, in answer to the same, the MPS stated that the claim was "under careful consideration".

Addressing itself to the U.S. Lines, petitioner was shown and given the verifax copies of the tally sheets purportedly signed by the representatives of the MPS and the U. S. Lines certifying that the goods were discharged in good order.

Considering that the Rules of Court give the petitioner the right to sue the U.S. Lines and the MPS in the alternative, as it did, the following questions become pertinent: Was petitioner bound to accept immediately the verifax copies of the tally sheets presented by the U.S. Lines giving them full probative value? Being mere copies, they cannot be considered the best evidence. Which of the two, U.S. Lines or petitioner, is more interested to show that the U.S. Lines was not responsible? Definitely, the U.S. Lines. Surely, it was incumbent upon U.S. Lines to persuade and convince petitioner that it has no responsibility. Was petitioner under obligation to go to MPS and insist that it was the only one responsible because of the verifax copies of the tally sheets, the authenticity, and genuineness of which the MPS could possibly doubt?[9] We believe not because for petitioner, it is immaterial as to which of the two defendants paid the claim, so long as it is paid. Now, why should petitioner take the trouble of establishing or helping respondent U.S. Lines to establish the latter's own defense to the former's prejudice? We therefore believe that if there was the duty to show non-liability, it was incumbent upon U.S. Lines not merely to show to petitioner the verifax copies of the tally sheets, which incidentally did not bind the consignee because only the U.S. Lines' and the MPS' representatives signed them, but to convince codefendant MPS that it is the only one responsible to petitioner. This was not done. U.S. Lines expected petitioner to accept blindly the copies of the tally sheets at their face value. And because petitioner did not, but instead tried to enforce its claim, availing itself of the right to sue in the alternative, it is contended that petitioner is liable to pay attorney's fees for filing a "clearly unfounded civil action".

Thus pressed by the limited period within which to file a suit, aggravated by the work of operating its own business, facing an uncertainty under the MPS' statement that the claim was "under careful consideration", notified by the U.S. Lines that it has no responsibility based on mere copies of the tally sheets and observing apathy on the part of both prospective defendants - who would be favored by the lapse of the one year period - in the settlement of what it honestly believed to be a legitimate money claim, it is reasonable to expect petitioner Rizal Surety to act the way it did. The suit is, in Our view, not "clearly unfounded" as the Court of Appeals erroneously held.

Furthermore, to be "clearly unfounded", the cause of action must be so untenable as to amount to gross and evident bad faith.[10] There might have been such bad faith on petitioner's part if it knew before filing the complaint against U.S. Lines that MPS would admit liability. But the facts on record negate this hypothesis. The legal counsel for MPS recommended settlement of petitioner's claim only after the complaint and its answer thereto denying responsibility had been filed. And the claim was paid even much later - ten months from the filing of the complaint, to be specific.

WHEREFORE, the decision appealed from awarding P300.00 as attorney's fees to respondent U.S. Lines is hereby reversed. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Hereinafter to be referred to simply as "MPS".

[2] Magyo, Session of Aug. 7, 1962, T.s.n., p. 4.

[3] Ibid, p. 5.

[4] Exn. 1-MPS, Exh. 7-U.S. Lines.

[5] Magyo, Session of Aug. 7, 1962, T.s.n., p. 4.

[6] Ibid.

[7] Petition, Annex A, pp. 3-4.

[8] Tan Ti v. Alvear, 26 Phil. 566; Herrera v. Luy Kim Guan, L-17043, Jan. 31, 1961; Justiva v. Gustillo, L-16396, Jan. 31, 1963.

[9] It is reasonable to assume that MPS would not have immediately changed the tenor of its reply to petitioner even in the face of the verifax copies of the tally sheets. The MPS would still have to verify their authenticity against its own copies, which however were not immediately available. In effect, such action on the part of MPS would have constituted a denial - albeit provisionally - of their genuineness. Petitioner would then still be left in uncertainty. In this connection, see the recently decided case of Fireman's Fund Insurance Co. v. Compania General de Tabacos de Filipinas, L-22625, April 27, 1967, where this Court remarked that when the consignee or its subrogee is not in a position to be certain as to the authenticity of the cargo receipts, or that the arrastre operator would recognize their authenticity, it is justified in suing both carrier and the arrastre operator in the alternative.

[10] Herrera v. Luy Kim Guan, supra.

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