

TOKIO MARINE MALAYAN INSURANCE CO., INC., PETITIONER, VS. GEOLOGISTICS, LTD. AND GEOLOGISTICS, INC. (NOW KNOWN AS AGILITY INTERNATIONAL LOGISTICS, INC.), RESPONDENTS.*SP NO. 104933, November 30, 2010*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f862ac26d827/>**Court of Appeals**

This is a Petition for Review filed pursuant to Rule 42 of the 1997 Rules of Civil Procedure questioning the April 17, 2008 Decision (Rollo, pp. 28-33) of the Regional Trial Court (RTC) of Makati City, Branch 149 which reversed and set aside the Decision (Rollo, pp. 25-27) rendered by the Metropolitan Trial Court (MTC) of Makati City, Branch 65, in Civil Case No. 91572.

The instant case arose from a Complaint (Rollo, pp. 35-38) for Damages filed by herein petitioner Tokio Marine Malayan Insurance Company, Inc. against Defendants Cathay Pacific Airways, Ltd. (Cathay Pacific), People's Aircargo and Warehousing Co., Ltd (Paircargo) and herein respondents Geologistics, Ltd. and Geologistics, Inc.

The said Complaint alleged that sometime on September 21, 2005, respondent Geologistics Ltd. (a Corporation formed and organized in Hongkong and China) took and received from the Shipper, Suzhous Epson Co., Ltd., a shipment consisting of eleven pallets containing Liquid Crystal Display Module. The said shipment was then transferred and loaded on board the aircraft of defendant Cathay Pacific, for transportation to and delivery to Manila, Philippines, in favor of consignee, Epson Precision (Philippines) Inc. The shipment was covered by a clean Master airway bill No. 160-56872314 and House airway Bill no. ASHAMNLB4482. The aforesaid Shipment has a declared value of US\$479,376.80 (as per Invoice No. P000033330) and was insured with petitioner under and by virtue of Marine Policy No. 001-0395.

The insured shipment arrived at the Ninoy Aquino International Airport on or about September 24, 2005 and subsequently discharged from the carrier. Thereafter, said shipment was brought to and temporarily stored at the Paircargo warehouse pending the release of documents for delivery from the Customs Authority. While the cargo was in the custody and possession of Paircargo, a joint survey and inspection was conducted which was also attended by defendant Cathay Pacific and respondent Geologistics, Inc. and there it was found out that one (1) pallet was damaged and noted with pressed on its edge. Subsequently, the subject cargo was withdrawn by respondent Geologistics, Inc. for delivery to the consignee. Upon final inspection of the damaged cargo, the consignee rejected the damaged cargo as the same cannot be used for intended purposes. Hence, the same was declared a total loss. Consequently, consignee suffered a loss and damage and prejudice in the total amount of Php112, 021.53. Consignee then filed an insurance claim against petitioner, which as insurer of the cargo, paid consignee the amount of P112,021.53 pursuant to the marine cargo policy. Petitioner, by way of subrogation, sought recovery against defendants Paircargo and Cathay Pacific, including herein respondents Geologistics, Ltd. and Geologistics, Inc. Demands were made but defendants and herein respondents refused to admit liability.

Both defendants Paircargo and Cathay Pacific denied liability alleging, among others, no privity of contract with petitioner. Respondent Geologistics, Inc. interposed the defense that the loss or damage to the subject shipment occurred when the said cargo was in the possession and custody of defendants Cathay Pacific and Paircargo.

Respondent Geologistics, Inc. denied that it is the local agent of its co-respondent Geologistics, Ltd., asserting that it is a broker hired by the consignee to claim said cargo from the warehouse of defendant Paircargo at NAIA. Hence, it cannot be made liable for the damage on the cargo prior to its custody and possession.

On September 12, 2006, petitioner Tokio Marine and defendant Cathay Pacific filed a Joint Motion to Dismiss, followed later on August 31, 2007 by defendant Paircargo and petitioner. Both motions were granted. Consequently, the case proceeded against herein respondent Geologistics, Ltd. and Geologistics, Inc. only.

On November 23, 2007, the MTC of Makati City, Branch 65 rendered a Decision finding for petitioner. It ruled, that considering that petitioner had entered into an amicable settlement with defendant Cathay Pacific and paircargo, the only party defendant from which petitioner may seek the remaining amount of P50,013.46 are respondents Geologistics, Inc. and Geologistics, Ltd, as their share/contribution to the claim. The MTC likewise ruled that since respondent Geologistics, Ltd. issued Airway Bill No. 160-56872314 (Rollo, p. 90) covering the shipment, it acknowledged that it has received the subject shipment complete and in good order and condition. Consequently, it must answer for the damages caused on the shipment. Geologistics, Inc, on the other hand, is also solidarily liable, being the local agent of Geologistics, Ltd. Thus, the dispositive portion of the MTC Decision reads as follows:

"WHEREFORE, premises considered, judgment is hereby rendered ordering defendant Geologistics, Inc. to pay plaintiff the amount of P50,013.46 as and by way of damages plus 6% interest per annum from July 5, 2006 until the whole amount is fully paid; the amount of P10,000.00 as attorney's fees and the costs.

SO ORDERED" (Rollo, p. 27).

Dissatisfied with the foregoing Decision, respondents Geologistics, Ltd. and Geologistics, Inc. filed an appeal with the RTC on the following grounds:

- No evidence was ever presented by plaintiff to support the conclusion of the trial court that Geologistics, Inc. is the agent of Geologistics, Ltd.
- That said decision is contrary to law and the evidence adduced in the instant case;
- That the damage on the subject shipment was incurred while in the possession and custody of Cathay Pacific Airways and/or Paircargo.

In the assailed decision, the RTC is convinced that the guilty party for the damage caused to the subject cargo was defendant Cathay Pacific, the one which committed negligence in the handling and transporting of the subject goods. However, the case had already been dismissed against defendant Cathay Pacific, upon motion of petitioner because of the settlement. The RTC then ruled that defendant Cathay Pacific, being the sole wrong doer, is considered an indispensable party. However, since Cathay Pacific had already been excluded and dropped from the case, petitioner's complaint must likewise be dismissed. It thus ruled:

"WHEREFORE, in view of the foregoing premises, the appeal is hereby GRANTED, hence, the appealed Decision is hereby SET ASIDE and REVERSED. Thus, the complaint against the herein defendants-appellants is hereby DISMISSED for lack of cause of action" (Rollo, p. 33).

Undaunted, petitioner filed a Petition for Review with this Court anchored on the following grounds:

I.

THE REGIONAL TRIAL COURT OF MAKATI CITY BRANCH 149 ERRED IN FINDING THAT CATHAY PACIFIC AIRWAYS, LTD IS AN INDISPENSABLE PARTY.

II.

THE REGIONAL TRIAL COURT OF MAKATI CITY BRANCH 149 FURTHER ERRED IN DISMISSING THE COMPLAINT AGAINST THE RESPONDENTS IN VIEW OF THE EXCLUSION AND DROPPING OFF FROM THE CASE OF DEFENDANT CATHAY PACIFIC AIRWAYS, LTD.

The issue posed for this Court's consideration is: "Whether or not the RTC is correct in dismissing the instant complaint in view of the exclusion and dropping off of defendant Cathay Pacific Airways from the instant case.

Respondents asserted that the proximate cause of the damage is the negligence of Cathay Pacific in the carrying and transporting of the subject good. They explained that upon the shipments arrival to Manila, a spot inspection was conducted wherein damage to one of the pallets was discovered as per the Inbound Cargo Receiving Report (Rollo, p. 99). On the subsequent days, two other inspections were conducted again, both yielding the same result, showing the same nature and extent of damage (Inspection Report & Cargo Inspection Report, Rollo, pp. 100 & 101). Thus, respondents asserted that before the shipments arrived in Manila and before their receipt of the same, the goods were already damaged suggesting the fact that the sole wrong doer was Cathay Pacific.

The RTC, giving merit to respondents' claim, ruled that indeed Cathay Pacific was the proximate cause of the damage. Hence, it is an indispensable party to the instant case. Since, Cathay Pacific was dropped off as party defendant, the case must perforce be dismissed for failure to implead the indispensable party (See: RTC Decision, Rollo, p).

To shed light on the issue of whether or not Cathay Pacific is an indispensable party to the case, it is significant to determine first the nature of the action obtaining in the instant case. It must be noted that petitioner's cause of action is anchored on it being subrogated to the rights of the consignee for the damaged shipment predicated on contractual breach. This right of subrogation is provided under Article 2207 of the Civil Code, thus:

"Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who violated the contract." x x x.

As the Supreme Court held in the case of *Pan Malayan Insurance Corporation vs. Court of Appeals*, 184 SCRA 54, 58 [1990], payment by the insurer to the assured operates as an equitable assignment the former (the insured) of all remedies which the latter (the assured) may have against the third party whose negligence or wrongful act caused the loss. This right of subrogation is not dependent upon, nor does it grow out of, any privity of contract or upon written assignment of claim but accrued simply upon payment of the insurance claim by the insurer (cited also in the case of *Aboitiz Shipping Corporation vs. Insurance Company of North America*, 561 SCRA 262, 277 [2008]). The insurer was thus authorized "to file claims and begin suit against any such carrier, vessel, person, corporation or government (*Federal Express Corporation vs. American Home Assurance Company*, 437 SCRA 50, 56 [2004]).

The insurer's entitlement to subrogation pro tanto - being of the highest equity - equips it with a cause of action in case of contractual breach or negligence (*Federal Express Corporation vs. American Home Assurance Company*, 437 SCRA 50, 56 [2004]), such that the insurer may exercised its subrogatory right to sue for recovery under the bill of lading in case of loss of or damage to the cargo (*ibid.*).

Undoubtedly, upon payment by petitioner to the consignee (Epson Precision) of indemnity for the damages caused to the insured goods, the former is entitled to exercise its right of subrogation against the wrongdoers who has caused the said damage. As in this case, petitioner filed a Complaint for damages against all persons who had

taken part in the handling, carrying, transporting and receiving of the goods and prayed that said defendants be ordered to pay actual damages jointly and severally. In other words, petitioner, in its original complaint included as defendants all concerned parties, such as Geologistics, Ltd., Cathay Pacific Airways (the carrier), Paircargo (the warehouse company) and Geologistics, Inc., the alleged local agent of Geologistics, Ltd.

In the course of the proceeding, the instant case was referred to the Mediation Center for possible settlement among the parties. Those who took part in the said mediation were petitioner, Cathay Pacific and Paircargo. Herein respondents did not attend the scheduled mediation among the parties. The mediation resulted to the parties (Cathay Pacific and Paircargo) agreeing to settle their respective liabilities to petitioner. Because of the settlement, the case against Cathay Pacific and Paircargo was dismissed. In effect, they were dropped off as party-defendants in the instant case.

Indeed, respondents' assertion that the proximate cause of the loss is Cathay Pacific (proving that the damage to the goods was incurred while the same was in transport and under the custody of Cathay Pacific, being the carrier), is a matter of defense that respondents could raise against petitioner. The case between the petitioner and the respondents could proceed just the same, with the parties establishing their respective contentions and the court, resolving their respective rights and liabilities. Verily, Cathay Pacific is not an indispensable party to the case.

Under Rule 3, Section 7 of the 1997 Rules of Court, an indispensable party is a party-in-interest, without whom there can be no final determination of an action. As such, they must be joined either as plaintiffs or as defendants. Thus:

"An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without inquiring or affecting such interest; a party who has not only an interest of such a nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. (*Plasabas vs. Court of Appeals*, 582 SCRA 686, 690 [2009], citing 67 C.J.S. 892).

The interest of such indispensable party in the subject matter of the suit and the relief are so bound with those of the other parties that his legal presence as party to the proceeding is an absolute necessity (*Cua, Jr. vs. Tan*, 607 SCRA 645 [2009]). Conversely, the Supreme Court expounding on the concept ruled:

"A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation (*Casals vs. Tayud Gold and Country Club, Inc.* 593 SCRA 468, 492 [2009], cited case omitted).

With the dropping off of Cathay Pacific from the case, the case between petitioner and the respondent can proceed just the same and the final determination can be had of the issues in the case. Such being the case, the rule on compulsory joinder of indispensable party, in so far as Cathay Pacific is concerned, is not applicable to the instant case.

At any rate, it must be recalled that the dropping off of defendant Cathay Pacific from the case was made during the case was pending with the MTC and after a settlement was reached among petitioner, Cathay Pacific, and Paircargo. If respondent had some objections for the dropping off of the said parties, he could have raised the same at the first instance in the course of the trial.

At the very least, Cathay Pacific stands merely as a necessary party to the case. Necessary parties are those who are not indispensable but who sought to be joined as party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action (Section 8, Rule 3, 1997 Rules of Civil Procedure). As characterized by the Supreme Court, they are those whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in their absence without affecting them (*Chua vs. Torres*, 469 SCRA 358 [2005]).

Despite the fact that Cathay Pacific were dropped off and excluded from the case, this does not amount to the outright dismissal of the case. To be sure, the subsequent dropping off of the necessary party, only amounts to a waiver of the claim against such party (Section 9, Rules 3 of the 1997 Rules of Civil Procedure). As held by the Supreme Court:

"We have already pointed out that the joinder of proper parties is necessary in order to determine all the possible issues of the controversy, but if for some reason or another, it is not possible to join them as they are out of the jurisdiction of the Court, the Court may proceed without them and the judgment that may be rendered shall be without prejudice to their rights. Hence, notwithstanding the absence of said defendants, the court could still proceed with the trial of the case as against the remaining defendants in accordance with Sec. 8 of Rule 3." (*Seno vs. Mangubat*, 156 SCRA 113, 124 [1987]).

WHEREFORE, the Decision dated April 17, 2008 of the Regional Trial Court (RTC) of Makati City, Branch 149 which dismissed Civil Case No. 91572 is hereby SET ASIDE. Accordingly, the case is remanded to the RTC which is hereby DIRECTED to DECIDE WITH DISPATCH the appeal of the civil case on the merits.

SO ORDERED.

Villamor and Gaerlan [*], JJ., concur.

[*] Court of Appeals Report Annotated, Vol. 49.

[*] Acting Junior Member per Office Order No. 350-10-ABR dated November 15, 2010.

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