

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 C...

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

Ponente: PUNO, J.

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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 shall be discharged from all liability for loss or damage to the goods if no suit is filed within one year after delivery of the goods or the date when they should have been delivered. Under this provision, only the carrier's liability is extinguished if no suit is brought within one year. But the liability of the insurer is not extinguished because the insurer's liability is based not on the contract of carriage but on the contract of insurance. A close reading of the law reveals that the Carriage of Goods by Sea Act governs the relationship between the carrier on the one hand and the shipper, the consignee and/or the insurer on the other hand. It defines the obligations of the carrier under the contract of carriage. It does not, however, affect the relationship between the shipper and the insurer. The latter case is governed by the Insurance Code.

Our ruling in *Filipino Merchants Insurance Co., Inc. v. Alejandro*^[8] and the other cases^[9] cited therein does not support respondent court's view that the insurer's liability prescribes after one year if no action for indemnity is

filed against the carrier or the insurer. In that case, the shipper filed a complaint against the insurer for recovery of a sum of money as indemnity for the loss and damage sustained by the insured goods. The insurer, in turn, filed a third-party complaint against the carrier for reimbursement of the amount it paid to the shipper. The insurer filed the third-party complaint on January 9, 1978, more than one year after delivery of the goods on December 17, 1977. The court held that the Insurer was already barred from filing a claim against the carrier because under the Carriage of Goods by Sea Act, the suit against the carrier must be filed within one year after delivery of the goods or the date when the goods should have been delivered. The court said that "the coverage of the Act includes the insurer of the goods." [10]

The Filipino Merchants case is different from the case at bar. In Filipino Merchants, it was the insurer which filed a claim against the carrier for reimbursement of the amount it paid to the shipper. In the case at bar, it was the shipper which filed a claim against the insurer. The basis of the shipper's claim is the "all risks" insurance policies issued by private respondents to petitioner Mayer.

The ruling in Filipino Merchants should apply only to suits against the carrier filed either by the shipper, the consignee or the insurer. When the court said in Filipino Merchants that Section 3(6) of the Carriage of Goods by Sea Act applies to the insurer, it meant that the insurer, like the shipper, may no longer file a claim against the carrier beyond the one-year period provided in the law. But it does not mean that the shipper may no longer file a claim against the insurer because the basis of the insurer's liability is the insurance contract. An insurance contract is a contract whereby one party, for a consideration known as the premium, agrees to indemnify another for loss or damage which he may suffer from a specified peril. [11] An "all risks" insurance policy covers all kinds of loss other than those due to willful and fraudulent act of the insured. [12] Thus, when private respondents issued the "all risks" policies to petitioner Mayer, they bound themselves to indemnify the latter in case of loss or damage to the goods insured. Such obligation prescribes in ten years, in accordance with Article 1144 of the New Civil Code. [13]

IN VIEW WHEREOF, the petition is GRANTED. The Decision of respondent Court of Appeals dated December 14, 1995 and its Resolution dated February 22, 1996 are hereby SET ASIDE and the Decision of the Regional Trial Court is hereby REINSTATED. No costs.

SO ORDERED.

Regalado, (Chairman), Romero, Mendoza, and Torres, Jr., JJ., concur.

[1] Annex "A" of the Petition, Rollo, pp. 15-30.

[2] Annex "B" of the Petition, Rollo, pp. 31-32.

[3] Penned by Justice Minerva P. Gonzaga-Reyes with the concurrence of Justices Buenaventura J. Guerrero and Romeo A. Brawner.

[4] The pipes and fittings covered by Invoice Nos. MSPC-1014 and MSPC-1017 were loaded on August 24, 1983; those covered by Invoice No. MSPC-1015 were loaded on August 31, 1983; those covered by Invoice Nos. MSPC-1020 and MSPC-1022 were loaded on October 10, 1983; and those covered by Invoice No. MSPC-1025 were loaded on October 21, 1983.

[5] Rollo, pp. 20-21.

[6] 145 SCRA 42 (1986).

[7] Petition, Rollo, p. 10.

[8] 145 SCRA 42 (1986).

[9] See *Chua Kuy v. Everett Steamship Corporation* (93 Phil 207) and *Aetna Insurance Co. v. Luzon Stevedoring Corporation* (62 SCRA 11).

[10] At p. 47.

[11] 43 American Jurisprudence 2d 74-75.

[12] *Filipino Merchants Insurance Co., Inc. v. Court of Appeals*, 179 SCRA 638 (1989).

[13] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment.

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