

**DANZAS CORPORATION AND ALL TRANSPORT NETWORK, INC.,
PETITIONERS, VS. HON. ZEUS C. ABROGAR, PRESIDING JUDGE OF BR.
150 OF MAKATI CITY, SEABOARD EASTERN INSURANCE CO., INC.
AND PH...**

G.R. NO. 141462. December 15, 2005

Ponente: CORONA, J.

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CORONA, J.:

Petitioner Danzas Corporation, through its agent, petitioner All Transport Network brings to us this petition for review on certiorari[1] questioning the decision[2] and resolution[3] of the Court of Appeals which affirmed two orders issued by the Regional Trial Court, Makati City, Branch 150.[4]

The facts of the case follow.[5]

On February 22, 1994, petitioner Danzas took a shipment of nine packages of ICS watches for transport to Manila. The consignee, International Freeport Traders, Inc. (IFTI) secured Marine Risk Note No. 0000342 from private respondent Seaboard.

On March 2, 1994, the Korean Airlines plane carrying the goods arrived in Manila and discharged the goods to the custody of private respondent Philippine Skylanders, Inc. for safekeeping. On withdrawal of the shipment from private respondent Skylanders' warehouse, IFTI noted that one package containing 475 watches was shortlanded while the remaining eight were found to have sustained tears on sides and the retape of flaps. On further examination and inventory of the cartons, it was discovered that 176 Guess watches were missing. Private respondent Seaboard, as insurer, paid the losses to IFTI.

On February 23, 1995, Seaboard, invoking its right of subrogation, filed a complaint against Skylanders, petitioner and its authorized representative, petitioner All Transport Network, Inc. (ATN), praying for actual damages in the amount of P612,904.97 plus legal interest, attorney's fees and cost of suit. Petitioners impleaded Korean Airlines (KAL) as third-party defendant.

While the case was pending, IFTI's treasurer, Mary Eileen Gozon accepted the proposal of KAL to settle consignee's claim by paying the amount of US \$522.20. On May 8, 1996, Felipe Acebedo, IFTI's representative received a check from KAL and correspondingly signed a release form.

On July 2, 1996, petitioners filed a motion to dismiss the case on the ground that private respondent Seaboard's demand had been paid or otherwise extinguished by KAL.

On December 9, 1996, the trial court issued an order denying the motion to dismiss. Petitioners, private respondent Skylanders and KAL filed separate motions for reconsideration. Prior to the resolution of these motions, the trial court allowed private respondent Skylanders to present evidence in a preliminary hearing on November 14, 1997, after which the court set a date to hear the presentation of rebuttal evidence.

On December 5, 1997, petitioners filed a manifestation and motion for reconsideration of the order of the trial court dated November 14, 1997, questioning the propriety of the preliminary hearing.

On February 18, 1998, the trial court issued an order denying: (1) the motion for reconsideration of the December 9, 1996 order filed by petitioners, private respondent Skylanders and KAL; (2) the motion to dismiss filed by Skylanders and (3) petitioners' motion for reconsideration of the November 14, 1997 order.

On April 6, 1998, petitioners filed in the Court of Appeals a special civil action for certiorari under Rule 65 of the Rules of Court. On March 5, 1999, the CA dismissed the petition.[6] Petitioners filed[7] a motion for reconsideration but this was denied.[8]

Hence, this petition.

Petitioners' principal contention is that private respondent's right of subrogation was extinguished when IFTI received payment from KAL in settlement of its obligation. They also claim that public respondent committed grave abuse of discretion by refusing to dismiss the case on that ground. Finally, they claim that, by granting private respondent Skylanders a preliminary hearing on an affirmative defense other than one of the grounds stated in Section 1, Rule 16 of the 1997 Rules of Civil Procedure, public respondent committed another grave abuse of discretion.

For its part, private respondent Seaboard argues that the payment made by the tortfeasor did not relieve it of liability because at the time of payment, its (Seaboard's) suit against petitioners was already ongoing. It also insists that because the assailed order was interlocutory, it was not a proper subject for certiorari.[9]

Private respondent Skylanders likewise contends that the order denying dismissal cannot be the subject of certiorari in the absence of grave abuse of discretion. It also defends the trial court's order granting a preliminary hearing, saying that, assuming the trial court had erroneously granted such a hearing, such error was merely one of judgment and not of jurisdiction as to merit certiorari.[10]

The petition has no merit.

It is true that the doctrine in *Manila Mahogany Manufacturing Corporation v. Court of Appeals*[11] remains the controlling doctrine on the issue of whether the tortfeasor, by settling with the insured, defeats the right to subrogation of the insurer. According to *Manila Mahogany*:

Since the insurer can be subrogated to only such rights as the insured may have, should the insured, after receiving payment from the insurer, release the wrongdoer who caused the loss, the insurer loses his rights against the latter. But in such a case, the insurer will be entitled to recover from the insured whatever it has paid to the latter, unless the release was made with the consent of the insurer.

This is buttressed by a later decision, *Pan Malayan Insurance Corporation v. Court of Appeals*,[12] in which we cited a number of exceptions to the rule laid down in Article 2207 of the Civil Code.[13] Under the first of these exceptions, "if the assured by his own act releases the wrongdoer or third party liable for the loss or damage from liability, the insurer's right of subrogation is defeated."

However, certain factual differences pointed out by private respondent Seaboard render this doctrine inapplicable. In *Manila Mahogany*, the tortfeasor San Miguel Corporation paid the insured without knowing that the insurer had already made such payment. KAL was not similarly situated, being fully aware of the prior payment made by the insurer to the consignee. Private respondent Seaboard asserts that, being in bad faith, KAL should bear the consequences of its actions. [14]

While *Manila Mahogany* is silent on whether the existence of good faith or bad faith on the tortfeasor's part

affects the insurer's right of subrogation, there exists a wealth of U.S. jurisprudence holding that whenever the wrongdoer settles with the insured without the consent of the insurer and with knowledge of the insurer's payment and right of subrogation, such right is not defeated by the settlement.[15] Because this doctrine is actually consistent with the facts of Mahogany and helps fill a slight gap left by our ruling in that case, we adopt it now. The trial court correctly refused to dismiss the case. In that respect, therefore, the trial court did not commit grave abuse of discretion which would justify certiorari.

We likewise find that no grave abuse of discretion was committed by public respondent when it granted private respondent Skylanders' motion for a preliminary hearing.

In *California and Hawaiian Sugar Company v. Pioneer Insurance and Surety Corporation*, [16] we held that a preliminary hearing was not mandatory but was rather subject to the discretion of the trial court. We found in that instance that the trial court had committed grave abuse of discretion in refusing the party's motion for a preliminary hearing on the ground that the case was premature, not having been submitted for arbitration. A preliminary hearing could have settled the entire case, thereby helping decongest the dockets. It was therefore the refusal to allow the most efficient and expeditious process which we condemned.

In the instant case, we are not convinced that public respondents' act of allowing a preliminary hearing constituted grave abuse of discretion.

In *Land Bank of the Philippines v. the Court of Appeals* [17] we discussed the meaning of "grave abuse of discretion:"

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

The special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The *raison d'être* for the rule is when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a scenario, the administration of justice would not survive. Hence, where the issue or question involved affects the wisdom or legal soundness of the decision—not the jurisdiction of the court to render said decision—the same is beyond the province of a special civil action for certiorari. (emphasis supplied)

Public respondent's order granting the preliminary hearing does not at all fit the description above. At worst, it was an error in judgment which is beyond the domain of certiorari.

WHEREFORE, in view of the foregoing, the petition is hereby DENIED. The decision and resolution of the Court of Appeals are AFFIRMED.

Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.

[1] Under Rule 45.

[2] CA Decision dated March 5, 1999 in CA-G.R. SP No. 47321, penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justices Corona Ibay-Somera and Eloy R. Bello, Jr. of the Eleventh

Division of the Court of Appeals; Rollo pp. 45-51.

[3] CA Resolution dated January 12, 2000 (affirming the March 5, 1999 CA Decision) in CA-G.R. SP No. 47321, penned by Associate Justice Oswaldo D. Agcaoili and concurred in by Associate Justices Corona Ibay-Somera and Eloy R. Bello, Jr. of the Eleventh Division of the Court of Appeals; Rollo, p. 60.

[4] Order dated December 9, 1996 penned by Presiding Judge Erna Falloran Aliposa, and order dated February 18, 1998, in Civil Case No. 95-237; Rollo, pp. 85-88.

[5] Rollo, pp. 11-13.

[6] Id., pp. 10-16.

[7] Id., pp. 52-58.

[8] Id., p. 18.

[9] Id., pp. 142-147.

[10] Id., pp. 178-181.

[11] G.R. No. L-52756, 12 October 1987, 154 SCRA 650.

[12] G.R. No. 81026, 3 April 1990, 184 SCRA 54.

[13] 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 has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

[14] Rollo, p. 282-283.

[15] *Collins v. Mobile & O.R. Co.*, 210 Ala 234, 97 So 631; *Pittsburgh, C., C. & S. L. R. Co. v. Home Ins. Co.*, 183 Ind 355, 108 NE 525; *Sharp v. Bannon (Ky)* 258 SW2d 713; *Travelers Indem. Co. v. Chumbley (Mo App)* 394 SW2d 418, 19 ALR3d 1043; *Fire Ass'n of Philadelphia v. Wells*, 84 NJ Eq 484, 94 A 619; *Connecticut Fire Ins. Co. v. Erie R. Co.*, 73 NY 399; *Nationwide Mut. Ins. Co. v. Spivey*, 259 NC 732, 131 SE2d 338; *Wichita City Lines, Inc. v. Puckett*, 156 Tex 456, 295 SW2d 894; *Cushman & Rankin Co. v. Boston & M.R.R.*, 82 Vt 390, 73 A 1073.

[16] G.R. No. 139273, 28 November 2000, 346 SCRA 214.

[17] G.R. No. 129368, 25 August 2003, 409 SCRA 455.

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