

A.F. SANCHEZ BROKERAGE INC., PETITIONERS, VS. THE HON. COURT OF APPEALS AND FGU INSURANCE CORPORATION, RESPONDENTS.

G.R. No. 147079. December 21, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Before this Court on a petition for Certiorari is the appellate court's Decision[1] of August 10, 2000 reversing and setting aside the judgment of Branch 133, Regional Trial Court of Makati City, in Civil Case No. 93-76B which dismissed the complaint of respondent FGU Insurance Corporation (FGU Insurance) against petitioner A.F. Sanchez Brokerage, Inc. (Sanchez Brokerage).

On July 8, 1992, Wyeth-Pharma GMBH shipped on board an aircraft of KLM Royal Dutch Airlines at Dusseldorf, Germany oral contraceptives consisting of 86,800 Blisters Femenal tablets, 14,000 Blisters Nordiol tablets and 42,000 Blisters Trinordiol tablets for delivery to Manila in favor of the consignee, Wyeth-Suaco Laboratories, Inc.[2] The Femenal tablets were placed in 124 cartons and the Nordiol tablets were placed in 20 cartons which were packed together in one (1) LD3 aluminum container, while the Trinordial tablets were packed in two pallets, each of which contained 30 cartons.[3]

Wyeth-Suaco insured the shipment against all risks with FGU Insurance which issued Marine Risk Note No. 4995 pursuant to Marine Open Policy No. 138.[4]

Upon arrival of the shipment on July 11, 1992 at the Ninoy Aquino International Airport (NAIA),[5] it was discharged "without exception"[6] and delivered to the warehouse of the Philippine Skylanders, Inc. (PSI) located also at the NAIA for safekeeping.[7]

In order to secure the release of the cargoes from the PSI and the Bureau of Customs, Wyeth-Suaco engaged the services of Sanchez Brokerage which had been its licensed broker since 1984.[8] As its customs broker, Sanchez Brokerage calculates and pays the customs duties, taxes and storage fees for the cargo and thereafter delivers it to Wyeth-Suaco.[9]

On July 29, 1992, Mitzi Morales and Ernesto Mendoza, representatives of Sanchez Brokerage, paid PSI storage fee amounting to P8,572.35 a receipt for which, Official Receipt No. 016992,[10] was issued. On the receipt, another representative of Sanchez Brokerage, M. Sison,[11] acknowledged that he received the cargoes consisting of three pieces in good condition.[12]

Wyeth-Suaco being a regular importer, the customs examiner did not inspect the cargoes[13] which were thereupon stripped from the aluminum containers[14] and loaded inside two transport vehicles hired by Sanchez Brokerage.[15]

Among those who witnessed the release of the cargoes from the PSI warehouse were Ruben Alonso and Tony Akas,[16] employees of Elite Adjusters and Surveyors Inc. (Elite Surveyors), a marine and cargo surveyor and insurance claim adjusters firm engaged by Wyeth-Suaco on behalf of FGU Insurance.

Upon instructions of Wyeth-Suaco, the cargoes were delivered to Hizon Laboratories Inc. in Antipolo City for quality control check.[17] The delivery receipt, bearing No. 07037 dated July 29, 1992, indicated that the delivery consisted of one container with 144 cartons of Femenal and Nordiol and 1 pallet containing Trinordiol.[18]

On July 31, 1992, Ronnie Likas, a representative of Wyeth-Suaco, acknowledged the delivery of the cargoes by affixing his signature on the delivery receipt.[19] Upon inspection, however, he, together with Ruben Alonzo of Elite Surveyors, discovered that 44 cartons containing Femenal and Nordiol tablets were in bad order.[20] He thus placed a note above his signature on the delivery receipt stating that 44 cartons of oral contraceptives were in bad order. The remaining 160 cartons of oral contraceptives were accepted as complete and in good order.

Ruben Alonzo thus prepared and signed, along with Ronnie Likas, a survey report[21] dated July 31, 1992 stating that 41 cartons of Femenal tablets and 3 cartons of Nordiol tablets were “wetted” (sic).[22]

The Elite Surveyors later issued Certificate No. CS-0731-1538/92[23] attached to which was an “Annexed Schedule” whereon it was indicated that prior to the loading of the cargoes to the broker’s trucks at the NAIA, they were inspected and found to be in “apparent good condition.”[24] Also noted was that at the time of delivery to the warehouse of Hizon Laboratories Inc., slight to heavy rains fell, which could account for the wetting of the 44 cartons of Femenal and Nordiol tablets.[25]

On August 4, 1992, the Hizon Laboratories Inc. issued a Destruction Report[26] confirming that 38 x 700 blister packs of Femenal tablets, 3 x 700 blister packs of Femenal tablets and 3 x 700 blister packs of Nordiol tablets were heavily damaged with water and emitted foul smell.

On August 5, 1992, Wyeth-Suaco issued a Notice of Materials Rejection[27] of 38 cartons of Femenal and 3 cartons of Nordiol on the ground that they were “delivered to Hizon Laboratories with heavy water damaged (sic) causing the cartons to sagged (sic) emitting a foul order and easily attracted flies.”[28]

Wyeth-Suaco later demanded, by letter[29] of August 25, 1992, from Sanchez Brokerage the payment of P191,384.25 representing the value of its loss arising from the damaged tablets.

As the Sanchez Brokerage refused to heed the demand, Wyeth-Suaco filed an insurance claim against FGU Insurance which paid Wyeth-Suaco the amount of P181,431.49 in settlement of its claim under Marine Risk Note Number 4995.

Wyeth-Suaco thus issued Subrogation Receipt[30] in favor of FGU Insurance.

On demand by FGU Insurance for payment of the amount of P181,431.49 it paid Wyeth-Suaco, Sanchez Brokerage, by letter[31] of January 7, 1993, disclaimed liability for the damaged goods, positing that the damage was due to improper and insufficient export packaging; that when the sealed containers were opened outside the PSI warehouse, it was discovered that some of the loose cartons were wet,[32] prompting its (Sanchez Brokerage’s) representative Morales to inform the Import-Export Assistant of Wyeth-Suaco, Ramir Calicdan, about the condition of the cargoes but that the latter advised to still deliver them to Hizon Laboratories where an adjuster would assess the damage.[33]

Hence, the filing by FGU Insurance of a complaint for damages before the Regional Trial Court of Makati City against the Sanchez Brokerage.

The trial court, by Decision[34] of July 29, 1996, dismissed the complaint, holding that the Survey Report prepared by the Elite Surveyors is bereft of any evidentiary support and a mere product of pure guesswork.[35]

On appeal, the appellate court reversed the decision of the trial court, it holding that the Sanchez Brokerage engaged not only in the business of customs brokerage but also in the transportation and delivery of the cargo of

its clients, hence, a common carrier within the context of Article 1732 of the New Civil Code.[36]

Noting that Wyeth-Suaco adduced evidence that the cargoes were delivered to petitioner in good order and condition but were in a damaged state when delivered to Wyeth-Suaco, the appellate court held that Sanchez Brokerage is presumed negligent and upon it rested the burden of proving that it exercised extraordinary negligence not only in instances when negligence is directly proven but also in those cases when the cause of the damage is not known or unknown.[37]

The appellate court thus disposed:

IN THE LIGHT OF ALL THE FOREGOING, the appeal of the Appellant is GRANTED. The Decision of the Court a quo is REVERSED. Another Decision is hereby rendered in favor of the Appellant and against the Appellee as follows:

- The Appellee is hereby ordered to pay the Appellant the principal amount of P181, 431.49, with interest thereupon at the rate of 6% per annum, from the date of the Decision of the Court, until the said amount is paid in full;
- The Appellee is hereby ordered to pay to the Appellant the amount of P20,000.00 as and by way of attorney's fees; and
- The counterclaims of the Appellee are DISMISSED.[38]

Sanchez Brokerage's Motion for Reconsideration having been denied by the appellate court's Resolution of December 8, 2000 which was received by petitioner on January 5, 2001, it comes to this Court on petition for certiorari filed on March 6, 2001.

In the main, petitioner asserts that the appellate court committed grave and reversible error tantamount to abuse of discretion when it found petitioner a "common carrier" within the context of Article 1732 of the New Civil Code.

Respondent FGU Insurance avers in its Comment that the proper course of action which petitioner should have taken was to file a petition for review on certiorari since the sole office of a writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction and does not include correction of the appellate court's evaluation of the evidence and factual findings thereon.

On the merits, respondent FGU Insurance contends that petitioner, as a common carrier, failed to overcome the presumption of negligence, it being documented that petitioner withdrew from the warehouse of PSI the subject shipment entirely in good order and condition.[39]

The petition fails.

Rule 45 is clear that decisions, final orders or resolutions of the Court of Appeals in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[40]

The Resolution of the Court of Appeals dated December 8, 2000 denying the motion for reconsideration of its Decision of August 10, 2000 was received by petitioner on January 5, 2001. Since petitioner failed to appeal within 15 days or on or before January 20, 2001, the appellate court's decision had become final and executory. The filing by petitioner of a petition for certiorari on March 6, 2001 cannot serve as a substitute for the lost remedy of appeal.

In another vein, the rule is well settled that in a petition for certiorari, the petitioner must prove not merely

reversible error but also grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner alleges that the appellate court erred in reversing and setting aside the decision of the trial court based on its finding that petitioner is liable for the damage to the cargo as a common carrier. What petitioner is ascribing is an error of judgment, not of jurisdiction, which is properly the subject of an ordinary appeal.

Where the issue or question involves or 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 petition for certiorari.[41] The supervisory jurisdiction of this Court to issue a cert writ cannot be exercised in order to review the judgment of lower courts as to its intrinsic correctness, either upon the law or the facts of the case.[42]

Procedural technicalities aside, the petition still fails.

The appellate court did not err in finding petitioner, a customs broker, to be also a common carrier, as defined under Article 1732 of the Civil Code, to wit:

Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

Anacleto F. Sanchez, Jr., the Manager and Principal Broker of Sanchez Brokerage, himself testified that the services the firm offers include the delivery of goods to the warehouse of the consignee or importer.

ATTY. FLORES:

Q: What are the functions of these license brokers, license customs broker?

WITNESS:

As customs broker, we calculate the taxes that has to be paid in cargos, and those upon approval of the importer, we prepare the entry together for processing and claims from customs and finally deliver the goods to the warehouse of the importer.[43]

Article 1732 does not distinguish between one whose principal business activity is the carrying of goods and one who does such carrying only as an ancillary activity.[44] The contention, therefore, of petitioner that it is not a common carrier but a customs broker whose principal function is to prepare the correct customs declaration and proper shipping documents as required by law is bereft of merit. It suffices that petitioner undertakes to deliver the goods for pecuniary consideration.

In this light, petitioner as a common carrier is mandated to observe, under Article 1733[45] of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence.[46]

The concept of “extra-ordinary diligence” was explained in *Compania Maritima v. Court of Appeals*:[47]

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for sale, carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and “to use all reasonable means to ascertain the nature and characteristics of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires.”[48]

In the case at bar, it was established that petitioner received the cargoes from the PSI warehouse in NAIA in good order and condition;[49] and that upon delivery by petitioner to Hizon Laboratories Inc., some of the cargoes were

found to be in bad order, as noted in the Delivery Receipt[50] issued by petitioner, and as indicated in the Survey Report of Elite Surveyors[51] and the Destruction Report of Hizon Laboratories, Inc.[52]

In an attempt to free itself from responsibility for the damage to the goods, petitioner posits that they were damaged due to the fault or negligence of the shipper for failing to properly pack them and to the inherent characteristics of the goods[53]; and that it should not be faulted for following the instructions of Calicdan of Wyeth-Suaco to proceed with the delivery despite information conveyed to the latter that some of the cartons, on examination outside the PSI warehouse, were found to be wet.[54]

While paragraph No. 4 of Article 1734[55] of the Civil Code exempts a common carrier from liability if the loss or damage is due to the character of the goods or defects in the packing or in the containers, the rule is that if the improper packing is known to the carrier or his employees or is apparent upon ordinary observation, but he nevertheless accepts the same without protest or exception notwithstanding such condition, he is not relieved of liability for the resulting damage.[56]

If the claim of petitioner that some of the cartons were already damaged upon delivery to it were true, then it should naturally have received the cargo under protest or with reservations duly noted on the receipt issued by PSI. But it made no such protest or reservation.[57]

Moreover, as observed by the appellate court, if indeed petitioner's employees only examined the cargoes outside the PSI warehouse and found some to be wet, they would certainly have gone back to PSI, showed to the warehouseman the damage, and demanded then and there for Bad Order documents or a certification confirming the damage.[58] Or, petitioner would have presented, as witness, the employees of the PSI from whom Morales and Domingo took delivery of the cargo to prove that, indeed, part of the cargoes was already damaged when the container was allegedly opened outside the warehouse.[59]

Petitioner goes on to posit that contrary to the report of Elite Surveyors, no rain fell that day. Instead, it asserts that some of the cargoes were already wet on delivery by PSI outside the PSI warehouse but such notwithstanding Calicdan directed Morales to proceed with the delivery to Hizon Laboratories, Inc.

While Calicdan testified that he received the purported telephone call of Morales on July 29, 1992, he failed to specifically declare what time he received the call. As to whether the call was made at the PSI warehouse when the shipment was stripped from the airport containers, or when the cargoes were already in transit to Antipolo, it is not determinable. Aside from that phone call, petitioner admitted that it had no documentary evidence to prove that at the time it received the cargoes, a part of it was wet, damaged or in bad condition.[60]

The 4-page weather data furnished by PAGASA[61] on request of Sanchez Brokerage hardly impresses, no witness having identified it and interpreted the technical terms thereof.

The possibility on the other hand that, as found by Hizon Laboratories, Inc., the oral contraceptives were damaged by rainwater while in transit to Antipolo City is more likely then. Sanchez himself testified that in the past, there was a similar instance when the shipment of Wyeth-Suaco was also found to be wet by rain.

ATTY. FLORES:

Q: Was there any instance that a shipment of this nature, oral contraceptives, that arrived at the NAIA were damaged and claimed by the Wyeth-Suaco without any question?

WITNESS:

A: Yes sir, there was an instance that one cartoon (sic) were wetted (sic) but Wyeth-Suaco did not claim anything against us.

ATTY. FLORES:

Q: HOW IS IT?

WITNESS:

A: We experienced, there was a time that we experienced that there was a cartoon (sic) wetted (sic) up to the bottom are wet specially during rainy season.[62]

Since petitioner received all the cargoes in good order and condition at the time they were turned over by the PSI warehouseman, and upon their delivery to Hizon Laboratories, Inc. a portion thereof was found to be in bad order, it was incumbent on petitioner to prove that it exercised extraordinary diligence in the carriage of the goods. It did not, however. Hence, its presumed negligence under Article 1735 of the Civil Code remains unrebutted.

WHEREFORE, the August 10, 2000 Decision of the Court of Appeals is hereby AFFIRMED.

Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Rollo at 22-43.

[2] Records of the Regional Trial Court at 92, 94-95.

[3] Id. at 93.

[4] Id. at 96-99.

[5] TSN, November 10, 1994 at 16.

[6] Records at 35.

[7] Rollo at 18.

[8] TSN, November 10, 1994 at 10.

[9] Id. at 9.

[10] Records at 132.

[11] Rollo at 23.

[12] Records at 132.

[13] TSN, January 10, 1995 at 5.

[14] TSN, November 10, 1994 at 15, T.S.N. January 10, 1995 at 6-7.

[15] Rollo at 23.

[16] TSN, March 24, 1994 at 12.

[17] Id. at 17.

[18] Records at 32.

[19] TSN, March 24, 1994 at 26-27.

[20] Records at 33.

[21] Ibid.

[22] Ibid.

[23] Id. at 34-36.

[24] Id. at 36.

[25] Id. at 35-36.

[26] Id. at 37.

[27] Id. at 38-39.

[28] Ibid.

[29] Id. at 40.

[30] Id. at 109.

[31] Id. at 134-135.

[32] Id. at 134.

[33] TSN, January 10, 1995 at 8-9.

[34] Rollo at 18-20.

[35] Id. at 19.

[36] Id. at 29.

[37] Id. at 31-32.

[38] Id. at 42.

[39] Id. at 51.

[40] *Heirs of Marcelino Pagobo v. Court of Appeals*, 280 SCRA 870, 883 (1997).

[41] *Land bank of the Philippines v. Court of Appeals*, 409 SCRA 455, 482 (2003).

[42] Id. at 482-483.

[43] TSN, November 10, 1994 at 9.

[44] *De Guzman v. Court of Appeals*, 168 SCRA 612, 617 (1988).

[45] Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

x x x

[46] Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required on Article 1733.

[47] 164 SCRA 685 (1988).

[48] Id. at 692.

[49] Records at 132.

[50] Id. at 32.

[51] Id. at 102-104.

[52] Id. at 105-107.

[53] Rollo at 10.

[54] Id. at 9.

[55] Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

xxx

(4) The character of the goods or defects in the packing or in the containers;

[56] Calvo v. UCPB General Insurance Co. Inc., 379 SCRA 510, 520 (2002).

[57] Rollo at 34.

[58] Id. at 36.

[59] Ibid.

[60] TSN, December 2, 1994 at 25.

[61] Exh. "1-A," Records at 127-131.

[62] T.S.N. November 10, 1994 at 19.

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