

MACONDRAY & CO., INC., PETITIONER, VS. PROVIDENT INSURANCE CORPORATION, RESPONDENT.

G.R. No. 154305. December 09, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Hornbook is the doctrine that the negligence of counsel binds the client. Also settled is the rule that clients should take the initiative of periodically checking the progress of their cases, so that they could take timely steps to protect their interest.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to set aside the February 28, 2002 Decision[2] and the July 12, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR CV No. 57077. The dispositive portion of the Decision reads as follows:

“WHEREFORE, premises considered, the assailed Decision dated September 17, 1996 is hereby REVERSED and SET ASIDE. Accordingly, [Petitioner] Macondray & Co., Inc., is hereby ORDERED to pay the [respondent] the amount of P1,657,700.95.”

The assailed Resolution denied petitioner’s Motion for Reconsideration.

The Facts

The CA adopted the factual antecedents narrated by the trial court, as follows:

“x x x. On February 16, 1991, at Vancouver, B.C. Canada, CANPOTEX SHIPPING SERVICES LIMITED INC., of Saskatoon, Saskatchewan, (hereinafter the SHIPPER), shipped and loaded on board the vessel M/V ‘Trade Carrier’, 5000 metric tons of Standard Grade Muriate of Potash in bulk for transportation to and delivery at the port of Sangi, Toledo City, Cebu, in favor of ATLAS FERTILIZER CORPORATION, (hereinafter CONSIGNEE) covered by B/L Nos. VAN-SAN-1 for the 815.96 metric tons and VAN-SAN-2 for the 4,184.04 metric tons. Subject shipments were insured with [respondent] against all risks under and by virtue of an Open Marine Policy No. MOP-00143 and Certificate of Marine Insurance No. CMI-823-91.

“When the shipment arrived, CONSIGNEE discovered that the shipment sustained losses/shortage of 476.140 metric tons valued at One Million Six Hundred Fifty Seven Thousand Seven Hundred Pesos and Ninety Five Centavos (P1,657,700.95), Philippine Currency. Provident paid losses. Formal claims was then filed with Trade & Transport and Macondray but the same refused and failed to settle the same. Hence, this complaint.

“As per Officer’s Return dated 4 June 1992, summons was UNSERVED to defendant TRADE AND TRANSPORT at the given address for reason that TRADE AND TRANSPORT is no longer connected with Macondray & Co. Inc., and is not holding office at said address as alleged by Ms. Guadalupe Tan. For failure to effect service of summons the case against TRADE & TRANSPORT was considered dismissed without prejudice.

“Defendant MACONDRAY filed ANSWER, denying liability over the losses, having NO absolute relation with defendant TRADE AND TRANSPORT, the alleged operator of the vessel who transported the subject shipment; that accordingly, MACONDRAY is the local representative of the SHIPPER; the charterer of M/V TRADE CARRIER and not party to this case; that it has no control over the acts of the captain and crew of the Carrier and cannot be held responsible for any damage arising from the fault or negligence of said captain and crew; that upon arrival at the port of Sangi, Toledo City, Cebu, the M/V Trade Carrier discharged the full amount of shipment, as shown by the draft survey with a total quantity of 5,033.59 metric tons discharged from the vessel and delivered to the CONSIGNEE.

“ISSUES: Whether or not Macondray and Co. Inc., as an agent is responsible for any loss sustained by any party from the vessel owned by defendant Trade and Transport. “Whether or not Macondray is liable for loss which was allegedly sustained by the plaintiff in this case.

“EVIDENCE FOR THE PLAINTIFF

“Plaintiff presented the testimonies of Marina Celerina P. Aguas and depositions of Alberto Milan and Alfonso Picson submitted as additional witnesses for PROVIDENT to prove the material facts of the complaint are deemed admitted by defendant MACONDRAY, on their defense that it is not an agent of TRADE AND TRANSPORT.

“EVIDENCE FOR THE DEFENDANT MACONDRAY:

“Witness Ricardo de la Cruz testified as Supercargo of MACONDRAY, that MACONDRAY was not an agent of defendant TRADE AND TRANSPORT; that his functions as Supercargo was to prepare a notice of readiness, statement of facts, sailing notice and custom’s clearance in order to attend to the formalities and the need of the vessel; that MACONDRAY is performing functions in behalf of CANPOTEX and was appointed as local agent of the vessel, which duty includes arrangement of the entrance and clearance of the vessel.”

The trial court, in the decision dated September 17, 1996 earlier adverted to, ruled in favor of the [petitioner] x x x, the dispositive portion of which reads:

“WHEREFORE, PREMISES CONSIDERED, the case as against [petitioner] MACONDRAY is hereby DISMISSED.

“No pronouncement as to costs.”[4]

Ruling of the Court of Appeals

The CA affirmed the trial court’s finding that petitioner was not the agent of Trade and Transport. The appellate court ruled, however, that petitioner could still be held liable for the shortages of the shipment, because the latter was the ship agent of Canpotex Shipping Services Ltd. -- the shipper and charterer of the vessel M/V Trade Carrier.

All told, the CA held petitioner “liable for the losses incurred in the shipment of the subject cargoes to the [respondent], who, being the insurer of the risk, was subrogated to the rights and causes of action which the consignee, Atlas Fertilizer Corporation, had against the [petitioner].”[5]

Hence, this Petition.[6]

The Issues

Petitioner raises the following issues for our consideration:

“Whether or not liability attached to petitioner despite the unequivocal factual findings, that it was not a ship agent.

“Whether or not the 28 February 2002 Decision of the Court of Appeals has attained finality.

“Whether or not by filing the instant Petition for Review on Certiorari, petitioner is guilty of forum-shopping.”[7]

The Court’s Ruling

The Petition has no merit.

First Issue:

Petitioner’s Liability

As a rule, factual findings of the Court of Appeals -- when not in conflict with those of the trial court -- are not disturbed by this Court,[8] to which only questions of law may be raised in an appeal by certiorari.[9]

In the present case, we find no compelling reason to overturn the Court of Appeals in its categorical finding that petitioner was the ship agent. Such factual finding was not in conflict with the trial court’s ruling, which had merely stated that petitioner was not the agent of Trade and Transport. Indeed, although it is not an agent of Trade and Transport, petitioner can still be the ship agent of the vessel M/V Trade Carrier.

Article 586 of the Code of Commerce states that a ship agent is “the person entrusted with provisioning or representing the vessel in the port in which it may be found.”

Hence, whether acting as agent of the owner[10] of the vessel or as agent of the charterer,[11] petitioner will be considered as the ship agent[12] and may be held liable as such, as long as the latter is the one that provisions or represents the vessel.

The trial court found that petitioner “was appointed as local agent of the vessel, which duty includes arrangement for the entrance and clearance of the vessel.”[13] Further, the CA found and the evidence shows that petitioner represented the vessel. The latter prepared the Notice of Readiness, the Statement of Facts, the Completion Notice, the Sailing Notice and Custom’s Clearance.[14] Petitioner’s employees were present at Sangi, Toledo City, one day before the arrival of the vessel, where they stayed until it departed. They were also present during the actual discharging of the cargo.[15] Moreover, Mr. de la Cruz, the representative of petitioner, also prepared for the needs of the vessel, like money, provision, water and fuel.[16]

These acts all point to the conclusion that it was the entity that represented the vessel in the Port of Manila and was the ship agent[17] within the meaning and context of Article 586 of the Code of Commerce.

As ship agent, it may be held civilly liable in certain instances. The Code of Commerce provides:

“Article 586. The shipowner and the ship agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested for the benefit of the same.”

“Article 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight it may have earned during the voyage.”

Petitioner does not dispute the liabilities of the ship agent for the loss/shortage of 476.140 metric tons of standard-grade Muriate of Potash valued at P1,657,700.95. Hence, we find no reason to delve further into the matter or to disturb the finding of the CA holding petitioner, as ship agent, liable to respondent for the losses sustained by the subject shipment.

Second Issue:

Finality of the CA Decision

Petitioner claims that it picked up the February 28, 2002 Decision of the CA on May 14, 2002, after receiving the postal notice the day before. It further attributes gross negligence to its previous counsel for not informing the CA of his change of address. It thus contends that notice of the assailed Decision given to the previous counsel cannot be considered as notice to petitioner.

We are not persuaded. “It is well-settled that when a party is represented by counsel, notice should be made upon the counsel of record at his given address to which notices of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.”[18]

In the present case, service of the assailed Decision was made on petitioner’s counsels of record, Attys. Moldez and Galoz, on March 6, 2002. That copy of the Decision was, however, returned to the sender for the reason that the addressee had “move[d] out.” If counsel moves to another address without informing the court of that change, such omission or neglect is inexcusable and will not stay the finality of the decision.[19] “The court cannot be expected to take judicial notice of the new address of a lawyer who has moved or to ascertain on its own whether or not the counsel of record has been changed and who the new counsel could possibly be or where he probably resides or holds office.”[20]

It is unfortunate that the lawyer of petitioner neglected his duties to the latter. Be that as it may, the negligence of counsel binds the client.[21] Service made upon the present counsel of record at his given address is service to petitioner. Hence, the assailed Decision has already become final and unappealable.

In the present case, there is no compelling reason to overturn well-settled jurisprudence or to interpret the rules liberally in favor of petitioner, who is not entirely blameless. It should have taken the initiative of periodically keeping in touch with its counsel, checking with the court, and inquiring about the status of its case.[22] In so doing, it could have taken timely steps to neutralize the negligence of its chosen counsel and to protect its interests. “Litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of their case.”[23]

In view of the foregoing, there is no necessity of passing upon the third issue raised by petitioner.

WHEREFORE, the Petition is DENIED and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Carpio-Morales, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Rollo, pp. 3-22.

[2] Id., pp. 24-33. Twelfth Division. Penned by Justice B. A. Adefuin-de la Cruz (chair) and concurred in by Justices Wenceslao I. Agnir Jr. and Josefina Guevara-Salonga (members).

[3] Id., pp. 35-36.

[4] CA Decision, pp. 1-3; rollo, pp. 24-26. Emphasis supplied.

[5] Assailed Decision, p. 9; rollo, p. 32.

[6] This case was deemed submitted for decision on February 19, 2003, upon this Court’s receipt of petitioner’s

Memorandum, signed by Attys. Edgar Dennis A. Padernal & Elizabeth L. Benin. Respondent's Memorandum, signed by Atty. Arnold B. Lugares, was received by this Court on February 18, 2003.

[7] Petitioner's Memorandum, p. 6; rollo, p. 150. Original in upper case.

[8] Cuenco v. Cuenco, GR No. 149844, October, 13, 2004; Imperial v. Jaucian, GR No. 149004, April 14, 2004; Go v. Court of Appeals, 351 SCRA 145, February 5, 2001.

[9] Cuenco v. Cuenco, *supra*.

[10] In the Complaint here, Trade and Transport is alleged, but not proven, to be the owner.

[11] Canpotex Shipping Services Limited, Inc.

[12] See Switzerland General Insurance Co., Ltd. v. Ramirez, 96 SCRA 297, February 21, 1980; and Maritime Agencies and Services Inc. v. Court of Appeals, 187 SCRA 346, July 12, 1990.

[13] RTC Decision, pp. 2-3; CA rollo, pp. 46-47.

[14] Records, p. 591 (cited in the assailed Decision).

[15] Records, pp. 208-209 (cited in the assailed Decision).

[16] TSN, July 29, 1993, pp. 48-51 (cited in the assailed Decision).

[17] In *Salonga v. Warner Barnes & Co., Ltd.* (88 Phil. 125, January 31, 1951) the Court held that an agent who acts within the scope of his authority does not assume personal liability for a contract entered into by him in behalf of his principal. This principle, however, does not apply to the present case because the applicable law is not the general rule on agency but the pertinent provisions of the Code of Commerce. (*Switzerland General Insurance Co., Ltd. v. Ramirez*, 96 SCRA 297, 304, February 21, 1980)

[18] *Magno v. Court of Appeals*, 152 SCRA 555, 558, July 31, 1987, per Paras, J. (citing *Cubar v. Mendoza*, 120 SCRA 768, 772, February 23, 1983, per De Castro, J.); see also *Lee v. Romilla Jr.*, 161 SCRA 589, May 28, 1988.

[19] *Ibid*.

[20] *Lee v. Romilla Jr.*; *supra*, p. 600, per Gutierrez Jr., J.

[21] *BR Sebastian Enterprise, Inc. v. Court of Appeals*, 206 SCRA 28, February 7, 1992; *Villaruel Jr. v. Fernando*, 412 SCRA 54, September 24, 2003; *Pallada v. RTC of Kalibo, Aklan, Br. 1*, 364 Phil. 81, March 10, 1999.

[22] *Villaruel Jr. v. Fernandom* *supra*; *Gold Line Transit, Inc. v. Ramos*, 415 Phil. 492, August 15, 2001.

[23] *Villaruel Jr. v. Fernando*, *supra*, p. 66, per Carpio, J.

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