

REGIONAL CONTAINER LINES (RCL) OF SINGAPORE AND EDSA SHIPPING AGENCY, PETITIONERS, VS. THE NETHERLANDS INSURANCE CO. (PHILIPPINES), INC., RESPONDENT.

G.R. No. 168151. September 04, 2009

Ponente: BRION, J.

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BRION, J.:

For our resolution is the petition for review on certiorari filed by petitioners Regional Container Lines of Singapore (RCL) and EDSA Shipping Agency (EDSA Shipping) to annul and set aside the decision[1] and resolution[2] of the Court of Appeals (CA) dated May 26, 2004 and May 10, 2005, respectively, in CA-G.R. CV No. 76690.

RCL is a foreign corporation based in Singapore. It does business in the Philippines through its agent, EDSA Shipping, a domestic corporation organized and existing under Philippine laws. Respondent Netherlands Insurance Company (Philippines), Inc. (Netherlands Insurance) is likewise a domestic corporation engaged in the marine underwriting business.

FACTUAL ANTECEDENTS

The pertinent facts, based on the records are summarized below.

On October 20, 1995, 405 cartons of Epoxy Molding Compound were consigned to be shipped from Singapore to Manila for Temic Telefunken Microelectronics Philippines (Temic). U-Freight Singapore PTE Ltd.[3] (U-Freight Singapore), a forwarding agent based in Singapore, contracted the services of Pacific Eagle Lines PTE. Ltd. (Pacific Eagle) to transport the subject cargo. The cargo was packed, stored, and sealed by Pacific Eagle in its Refrigerated Container No. 6105660 with Seal No. 13223. As the cargo was highly perishable, the inside of the container had to be kept at a temperature of 0° Celsius. Pacific Eagle then loaded the refrigerated container on board the M/V Piya Bhum, a vessel owned by RCL, with which Pacific Eagle had a slot charter agreement. RCL duly issued its own Bill of Lading in favor of Pacific Eagle.

To insure the cargo against loss and damage, Netherlands Insurance issued a Marine Open Policy in favor of Temic, as shown by MPO-21-05081-94 and Marine Risk Note MRN-21 14022, to cover all losses/damages to the shipment.

On October 25, 1995, the M/V Piya Bhum docked in Manila. After unloading the refrigerated container, it was plugged to the power terminal of the pier to keep its temperature constant. Fidel Rocha (Rocha), Vice-President for Operations of Marines Adjustment Corporation, accompanied by two surveyors, conducted a protective survey of the cargo. They found that based on the temperature chart, the temperature reading was constant from October 18, 1995 to October 25, 1995 at 0° Celsius. However, at midnight of October 25, 1995 - when the cargo had already been unloaded from the ship - the temperature fluctuated with a reading of 33° Celsius. Rocha believed the fluctuation was caused by the burnt condenser fan motor of the refrigerated container.

On November 9, 1995, Temic received the shipment. It found the cargo completely damaged. Temic filed a claim for cargo loss against Netherlands Insurance, with supporting claims documents. The Netherlands Insurance paid Temic the sum of P1,036,497.00 under the terms of the Marine Open Policy. Temic then executed a loss and subrogation receipt in favor of Netherlands Insurance.

Seven months from delivery of the cargo or on June 4, 1996, Netherlands Insurance filed a complaint for subrogation of insurance settlement with the Regional Trial Court, Branch 5, Manila, against "the unknown owner of M/V Piya Bhum" and TMS Ship Agencies (TMS), the latter thought to be the local agent of M/V Piya Bhum's unknown owner.[4] The complaint was docketed as Civil Case No. 96-78612.

Netherlands Insurance amended the complaint on January 17, 1997 to implead EDSA Shipping, RCL, Eagle Liner Shipping Agencies, U-Freight Singapore, and U-Ocean (Phils.), Inc. (U-Ocean), as additional defendants. A third amended complaint was later made, impleading Pacific Eagle in substitution of Eagle Liner Shipping Agencies.

TMS filed its answer to the original complaint. RCL and EDSA Shipping filed their answers with cross-claim and compulsory counterclaim to the second amended complaint. U-Ocean likewise filed an answer with compulsory counterclaim and cross-claim. During the pendency of the case, U-Ocean, jointly with U-Freight Singapore, filed another answer with compulsory counterclaim. Only Pacific Eagle and TMS filed their answers to the third amended complaint.

The defendants all disclaimed liability for the damage caused to the cargo, citing several reasons why Netherlands Insurance's claims must be rejected. Specifically, RCL and EDSA Shipping denied negligence in the transport of the cargo; they attributed any negligence that may have caused the loss of the shipment to their co-defendants. They likewise asserted that no valid subrogation exists, as the payment made by Netherlands Insurance to the consignee was invalid. By way of affirmative defenses, RCL and EDSA Shipping averred that the Netherlands Insurance has no cause of action, and is not the real party-in-interest, and that the claim is barred by laches/prescription.

After Netherlands Insurance had made its formal offer of evidence, the defendants including RCL and EDSA Shipping sought leave of court to file their respective motions to dismiss based on demurrer to evidence.

RCL and EDSA Shipping, in their motion, insisted that Netherlands Insurance had (1) failed to prove any valid subrogation, and (2) failed to establish that any negligence on their part or that the loss was sustained while the cargo was in their custody.

On May 22, 2002, the trial court handed down an Order dismissing Civil Case No. 96-78612 on demurrer to evidence. The trial court ruled that while there was valid subrogation, the defendants could not be held liable for the loss or damage, as their respective liabilities ended at the time of the discharge of the cargo from the ship at the Port of Manila.

Netherlands Insurance seasonably appealed the order of dismissal to the CA.

On May 26, 2004, the CA disposed of the appeal as follows:

WHEREFORE, in view of the foregoing, the dismissal of the complaint against defendants Regional Container Lines and Its local agent, EDSA Shipping Agency, is REVERSED and SET ASIDE. The dismissal of the complaint against the other defendants is AFFIRMED. Pursuant to Section 1, Rule 33 of the 1997 Rules of Civil Procedure, defendants Regional Container Lines and EDSA Shipping Agency are deemed to have waived the right to present evidence.

As such, defendants Regional Container Lines and EDSA Shipping Agency are ordered to reimburse plaintiff in the sum of P1,036,497.00 with interest from date hereof until fully paid.

No costs.

SO ORDERED. [Emphasis supplied.]

The CA dismissed Netherland Insurance's complaint against the other defendants after finding that the claim had already been barred by prescription.[5]

Having been found liable for the damage to the cargo, RCL and EDSA Shipping filed a motion for reconsideration, but the CA maintained its original conclusions.

The sole issue for our resolution is whether the CA correctly held RCL and EDSA Shipping liable as common carriers under the theory of presumption of negligence.

THE COURT'S RULING

The present case is governed by the following provisions of the Civil Code:

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.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

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:

- 1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
- 2) Act of the public enemy in war, whether international or civil;
- 3) Act of omission of the shipper or owner of the goods;
- 4) The character of the goods or defects in the packing or in the containers;
- 5) Order or act of competent public authority.

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 by article 1733.

ART. 1736. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them, without prejudice to the provisions of articles 1738.

ART. 1738. The extraordinary liability of the common carrier continues to be operative even during the time the goods are stored in a warehouse of the carrier at the place of destination, until the consignee has been advised of the arrival of the goods and has had reasonable opportunity thereafter to remove them or otherwise dispose of them.

ART. 1742. Even if the loss, destruction, or deterioration of the goods should be caused by the character of the goods, or the faulty nature of the packing or of the containers, the common carrier must exercise due diligence to forestall or lessen the loss.

In *Central Shipping Company, Inc. v. Insurance Company of North America*,^[6] we reiterated the rules for the liability of a common carrier for lost or damaged cargo as follows:

(1)

Common carriers are bound to observe extraordinary diligence over the goods they transport, according to all the circumstances of each case;

(2)

In the event of loss, destruction, or deterioration of the insured goods, common carriers are responsible, unless they can prove that such loss, destruction, or deterioration was brought about by, among others, "flood, storm, earthquake, lightning, or other natural disaster or calamity"; and

(3)

In all other cases not specified under Article 1734 of the Civil Code, common carriers are presumed to have been at fault or to have acted negligently, unless they observed extraordinary diligence.[7]

In the present case, RCL and EDSA Shipping disclaim any responsibility for the loss or damage to the goods in question. They contend that the cause of the damage to the cargo was the "fluctuation of the temperature in the reefer van," which fluctuation occurred after the cargo had already been discharged from the vessel; no fluctuation, they point out, arose when the cargo was still on board M/V Piya Bhum. As the cause of the damage to the cargo occurred after the same was already discharged from the vessel and was under the custody of the arrastre operator (International Container Terminal Services, Inc. or ICTSI), RCL and EDSA Shipping posit that the presumption of negligence provided in Article 1735 of the Civil Code should not apply. What applies in this case is Article 1734, particularly paragraphs 3 and 4 thereof, which exempts the carrier from liability for loss or damage to the cargo when it is caused either by an act or omission of the shipper or by the character of the goods or defects in the packing or in the containers. Thus, RCL and EDSA Shipping seek to lay the blame at the feet of other parties.

We do not find the arguments of RCL and EDSA Shipping meritorious.

A common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported.[8] When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable.[9]

To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.[10]

In the present case, RCL and EDSA Shipping failed to prove that they did exercise that degree of diligence required by law over the goods they transported. Indeed, there is sufficient evidence showing that the fluctuation of the temperature in the refrigerated container van, as recorded in the temperature chart, occurred after the cargo had been discharged from the vessel and was already under the custody of the arrastre operator, ICTSI. This evidence, however, does not disprove that the condenser fan - which caused the fluctuation of the temperature in the refrigerated container - was not damaged while the cargo was being unloaded from the ship. It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier;[11] RCL and EDSA Shipping failed to dispute this.

RCL and EDSA Shipping could have offered evidence before the trial court to show that the damage to the condenser fan did not occur: (1) while the cargo was in transit; (2) while they were in the act of discharging it from the vessel; or (3) while they were delivering it actually or constructively to the consignee. They could have

presented proof to show that they exercised extraordinary care and diligence in the handling of the goods, but they opted to file a demurrer to evidence. As the order granting their demurrer was reversed on appeal, the CA correctly ruled that they are deemed to have waived their right to present evidence,[12] and the presumption of negligence must stand.

It is for this reason as well that we find RCL and EDSA Shipping's claim that the loss or damage to the cargo was caused by a defect in the packing or in the containers. To exculpate itself from liability for the loss/damage to the cargo under any of the causes, the common carrier is burdened to prove any of the causes in Article 1734 of the Civil Code claimed by it by a preponderance of evidence. If the carrier succeeds, the burden of evidence is shifted to the shipper to prove that the carrier is negligent.[13] RCL and EDSA Shipping, however, failed to satisfy this standard of evidence and in fact offered no evidence at all on this point; a reversal of a dismissal based on a demurrer to evidence bars the defendant from presenting evidence supporting its allegations.

WHEREFORE, we DENY the petition for review on certiorari filed by the Regional Container Lines of Singapore and EDSA Shipping Agency. The decision of the Court of Appeals dated May 26, 2004 in CA-G.R. CV No. 76690 is AFFIRMED IN TOTO. Costs against the petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Del Castillo, and Abad, JJ., concur.

[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok, and concurred in by Associate Justice Martin S. Villarama, Jr., and Associate Justice Danilo B. Pine (retired); rollo, pp. 40, 45-53.

[2] *Id.*, pp. 44-54.

[3] U-Freight issued its own Bill of Lading No. SINMNL 048/10/95 covering the cargo.

[4] TMS was actually the local agent of Pacific Eagle.

[5] The bill of lading issued by U-Freight provided that its liability shall be discharged "unless a suit is brought in the proper forum and written notice thereof received by the carrier within nine (9) months after the delivery of the goods." By the time U-Freight, U-Ocean, and Pacific Eagle were impleaded in the amended complaints, the period to file claims had already lapsed.

[6] G.R. 150751, September 20, 2004, 438 SCRA 511.

[7] *Ibid*, citing *Asia Lighterage and Shipping, Inc. v. Court of Appeal*, 409 SCRA 340 (2003), and *Delsan Transport Lines, Inc. v. Court of Appeals*, 369 SCRA 24 (2001).

[8] *Edgar Cokaliong Shipping Lines, Inc. v. UCPB General Insurance Company, Inc.*, G.R. No. 146018, June 25, 2003, 404 SCRA 706.

[9] *DSR-Senator Lines v. Federal Phoenix Assurance Co., Inc.*, G.R. No. 135377, October 7, 2003, 413 SCRA 14, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, 234 SCRA 78 (1994) and cases cited therein.

[10] *Aboitiz Shipping Corporation v. Insurance Company of North America*, G.R. No. 168402, August 6, 2008; *Calvo v. UCPB General Insurance Co., Inc.*, G.R. No. 148896, March 19, 2002, 379 SCRA 510.

[11] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, G.R. No. 165647, March 26, 2009.

[12] RULES OF COURT, RULE 33. SEC. 1. Demurrer to evidence.- After the plaintiff has completed the

presentation of his evidence, the defendant may move for dismissal right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

[13] Philippine Charter Insurance Corporation v. M/V National Honor, G.R. No. 161833, July 8, 2003, 463 SCRA 202.

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