

**NEW WORLD INTERNATIONAL DEVELOPMENT (PHILS.), INC.,
PETITIONER, VS. NYK-FILJAPAN SHIPPING CORP., LEP PROFIT
INTERNATIONAL, INC. (ORD), LEP INTERNATIONAL PHILIPPINES,
INC., DMT C...**

G.R. No. 171468. August 24, 2011

Ponente: ABAD, J.

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ABAD, J.:

These consolidated petitions involve a cargo owner's right to recover damages from the loss of insured goods under the Carriage of Goods by Sea Act and the Insurance Code.

The Facts and the Case

Petitioner New World International Development (Phils.), Inc. (New World) bought from DMT Corporation (DMT) through its agent, Advatech Industries, Inc. (Advatech) three emergency generator sets worth US\$721,500.00.

DMT shipped the generator sets by truck from Wisconsin, United States, to LEP Profit International, Inc. (LEP Profit) in Chicago, Illinois. From there, the shipment went by train to Oakland, California, where it was loaded on S/S California Luna V59, owned and operated by NYK Fil-Japan Shipping Corporation (NYK) for delivery to petitioner New World in Manila. NYK issued a bill of lading, declaring that it received the goods in good condition.

NYK unloaded the shipment in Hong Kong and transshipped it to S/S ACX Ruby V/72 that it also owned and operated. On its journey to Manila, however, ACX Ruby encountered typhoon Kadiang whose captain filed a sea protest on arrival at the Manila South Harbor on October 5, 1993 respecting the loss and damage that the goods on board his vessel suffered.

Marina Port Services, Inc. (Marina), the Manila South Harbor arrastre or cargo-handling operator, received the shipment on October 7, 1993. Upon inspection of the three container vans separately carrying the generator sets, two vans bore signs of external damage while the third van appeared unscathed. The shipment remained at Pier 3's Container Yard under Marina's care pending clearance from the Bureau of Customs. Eventually, on October 20, 1993 customs authorities allowed petitioner's customs broker, Serbros Carrier Corporation (Serbros), to withdraw the shipment and deliver the same to petitioner New World's job site in Makati City.

An examination of the three generator sets in the presence of petitioner New World's representatives, Federal Builders (the project contractor) and surveyors of petitioner New World's insurer, Seaboard-Eastern Insurance Company (Seaboard), revealed that all three sets suffered extensive damage and could no longer be repaired. For these reasons, New World demanded recompense for its loss from respondents NYK, DMT, Advatech, LEP Profit, LEP International Philippines, Inc. (LEP), Marina, and Serbros. While LEP and NYK acknowledged receipt of the demand, both denied liability for the loss.

Since Seaboard covered the goods with a marine insurance policy, petitioner New World sent it a formal claim dated November 16, 1993. Replying on February 14, 1994, Seaboard required petitioner New World to submit to it an itemized list of the damaged units, parts, and accessories, with corresponding values, for the processing of the claim. But petitioner New World did not submit what was required of it, insisting that the insurance policy did not include the submission of such a list in connection with an insurance claim. Reacting to this, Seaboard refused to process the claim.

On October 11, 1994 petitioner New World filed an action for specific performance and damages against all the respondents before the Regional Trial Court (RTC) of Makati City, Branch 62, in Civil Case 94-2770.

On August 16, 2001 the RTC rendered a decision absolving the various respondents from liability with the exception of NYK. The RTC found that the generator sets were damaged during transit while in the care of NYK's vessel, ACX Ruby. The latter failed, according to the RTC, to exercise the degree of diligence required of it in the face of a foretold raging typhoon in its path.

The RTC ruled, however, that petitioner New World filed its claim against the vessel owner NYK beyond the one year provided under the Carriage of Goods by Sea Act (COGSA). New World filed its complaint on October 11, 1994 when the deadline for filing the action (on or before October 7, 1994) had already lapsed. The RTC held that the one-year period should be counted from the date the goods were delivered to the arrastre operator and not from the date they were delivered to petitioner's job site.[1]

As regards petitioner New World's claim against Seaboard, its insurer, the RTC held that the latter cannot be faulted for denying the claim against it since New World refused to submit the itemized list that Seaboard needed for assessing the damage to the shipment. Likewise, the belated filing of the complaint prejudiced Seaboard's right to pursue a claim against NYK in the event of subrogation.

On appeal, the Court of Appeals (CA) rendered judgment on January 31, 2006,[2] affirming the RTC's rulings except with respect to Seaboard's liability. The CA held that petitioner New World can still recoup its loss from Seaboard's marine insurance policy, considering a) that the submission of the itemized listing is an unreasonable imposition and b) that the one-year prescriptive period under the COGSA did not affect New World's right under the insurance policy since it was the Insurance Code that governed the relation between the insurer and the insured.

Although petitioner New World promptly filed a petition for review of the CA decision before the Court in G.R. 171468, Seaboard chose to file a motion for reconsideration of that decision. On August 17, 2006 the CA rendered an amended decision, reversing itself as regards the claim against Seaboard. The CA held that the submission of the itemized listing was a reasonable requirement that Seaboard asked of New World. Further, the CA held that the one-year prescriptive period for maritime claims applied to Seaboard, as insurer and subrogee of New World's right against the vessel owner. New World's failure to comply promptly with what was required of it prejudiced such right.

Instead of filing a motion for reconsideration, petitioner instituted a second petition for review before the Court in G.R. 174241, assailing the CA's amended decision.

The Issues Presented

The issues presented in this case are as follows:

a) In G.R. 171468, whether or not the CA erred in affirming the RTC's release from liability of respondents DMT, Advatech, LEP, LEP Profit, Marina, and Serbros who were at one time or another involved in handling the

shipment; and

b) In G.R. 174241, 1) whether or not the CA erred in ruling that Seaboard's request from petitioner New World for an itemized list is a reasonable imposition and did not violate the insurance contract between them; and 2) whether or not the CA erred in failing to rule that the one-year COGSA prescriptive period for marine claims does not apply to petitioner New World's prosecution of its claim against Seaboard, its insurer.

The Court's Rulings

In G.R. 171468 --

Petitioner New World asserts that the roles of respondents DMT, Advatech, LEP, LEP Profit, Marina and Serbros in handling and transporting its shipment from Wisconsin to Manila collectively resulted in the damage to the same, rendering such respondents solidarily liable with NYK, the vessel owner.

But the issue regarding which of the parties to a dispute incurred negligence is factual and is not a proper subject of a petition for review on certiorari. And petitioner New World has been unable to make out an exception to this rule.[3] Consequently, the Court will not disturb the finding of the RTC, affirmed by the CA, that the generator sets were totally damaged during the typhoon which beset the vessel's voyage from Hong Kong to Manila and that it was her negligence in continuing with that journey despite the adverse condition which caused petitioner New World's loss.

That the loss was occasioned by a typhoon, an exempting cause under Article 1734 of the Civil Code, does not automatically relieve the common carrier of liability. The latter had the burden of proving that the typhoon was the proximate and only cause of loss and that it exercised due diligence to prevent or minimize such loss before, during, and after the disastrous typhoon.[4] As found by the RTC and the CA, NYK failed to discharge this burden.

In G.R. 174241 --

One. The Court does not regard as substantial the question of reasonableness of Seaboard's additional requirement of an itemized listing of the damage that the generator sets suffered. The record shows that petitioner New World complied with the documentary requirements evidencing damage to its generator sets.

The marine open policy that Seaboard issued to New World was an all-risk policy. Such a policy insured against all causes of conceivable loss or damage except when otherwise excluded or when the loss or damage was due to fraud or intentional misconduct committed by the insured. The policy covered all losses during the voyage whether or not arising from a marine peril.[5]

Here, the policy enumerated certain exceptions like unsuitable packaging, inherent vice, delay in voyage, or vessels unseaworthiness, among others.[6] But Seaboard had been unable to show that petitioner New World's loss or damage fell within some or one of the enumerated exceptions.

What is more, Seaboard had been unable to explain how it could not verify the damage that New World's goods suffered going by the documents that it already submitted, namely, (1) copy of the Supplier's Invoice KL2504; (2) copy of the Packing List; (3) copy of the Bill of Lading 01130E93004458; (4) the Delivery of Waybill Receipts 1135, 1222, and 1224; (5) original copy of Marine Insurance Policy MA-HO-000266; (6) copies of Damage Report from Supplier and Insurance Adjusters; (7) Consumption Report from the Customs Examiner; and (8) Copies of Received Formal Claim from the following: a) LEP International Philippines, Inc.; b) Marina Port Services, Inc.; and c) Serbros Carrier Corporation.[7] Notably, Seaboard's own marine surveyor attended the inspection of the generator sets.

Seaboard cannot pretend that the above documents are inadequate since they were precisely the documents listed in its insurance policy.[8] Being a contract of adhesion, an insurance policy is construed strongly against the insurer who prepared it. The Court cannot read a requirement in the policy that was not there.

Further, it appears from the exchanges of communications between Seaboard and Advatech that submission of the requested itemized listing was incumbent on the latter as the seller DMT's local agent. Petitioner New World should not be made to suffer for Advatech's shortcomings.

Two. Regarding prescription of claims, Section 3(6) of the COGSA provides that the carrier and the ship shall be discharged from all liability in case of loss or damage unless the suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

But whose fault was it that the suit against NYK, the common carrier, was not brought to court on time? The last day for filing such a suit fell on October 7, 1994. The record shows that petitioner New World filed its formal claim for its loss with Seaboard, its insurer, a remedy it had the right to take, as early as November 16, 1993 or about 11 months before the suit against NYK would have fallen due.

In the ordinary course, if Seaboard had processed that claim and paid the same, Seaboard would have been subrogated to petitioner New World's right to recover from NYK. And it could have then filed the suit as a subrogee. But, as discussed above, Seaboard made an unreasonable demand on February 14, 1994 for an itemized list of the damaged units, parts, and accessories, with corresponding values when it appeared settled that New World's loss was total and when the insurance policy did not require the production of such a list in the event of a claim.

Besides, when petitioner New World declined to comply with the demand for the list, Seaboard against whom a formal claim was pending should not have remained obstinate in refusing to process that claim. It should have examined the same, found it unsubstantiated by documents if that were the case, and formally rejected it. That would have at least given petitioner New World a clear signal that it needed to promptly file its suit directly against NYK and the others. Ultimately, the fault for the delayed court suit could be brought to Seaboard's doorstep.

Section 241 of the Insurance Code provides that no insurance company doing business in the Philippines shall refuse without just cause to pay or settle claims arising under coverages provided by its policies. And, under Section 243, the insurer has 30 days after proof of loss is received and ascertainment of the loss or damage within which to pay the claim. If such ascertainment is not had within 60 days from receipt of evidence of loss, the insurer has 90 days to pay or settle the claim. And, in case the insurer refuses or fails to pay within the prescribed time, the insured shall be entitled to interest on the proceeds of the policy for the duration of delay at the rate of twice the ceiling prescribed by the Monetary Board.

Notably, Seaboard already incurred delay when it failed to settle petitioner New World's claim as Section 243 required. Under Section 244, a prima facie evidence of unreasonable delay in payment of the claim is created by the failure of the insurer to pay the claim within the time fixed in Section 243.

Consequently, Seaboard should pay interest on the proceeds of the policy for the duration of the delay until the claim is fully satisfied at the rate of twice the ceiling prescribed by the Monetary Board. The term "ceiling prescribed by the Monetary Board" means the legal rate of interest of 12% per annum provided in Central Bank Circular 416, pursuant to Presidential Decree 116.[9] Section 244 of the Insurance Code also provides for an award of attorney's fees and other expenses incurred by the assured due to the unreasonable withholding of payment of his claim.

In *Prudential Guarantee and Assurance, Inc. v. Trans-Asia Shipping Lines, Inc.*,^[10] the Court regarded as proper an award of 10% of the insurance proceeds as attorney's fees. Such amount is fair considering the length of time that has passed in prosecuting the claim.^[11] Pursuant to the Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*,^[12] a 12% interest per annum from the finality of judgment until full satisfaction of the claim should likewise be imposed, the interim period equivalent to a forbearance of credit.

Petitioner New World is entitled to the value stated in the policy which is commensurate to the value of the three emergency generator sets or US\$721,500.00 with double interest plus attorney's fees as discussed above.

WHEREFORE, the Court DENIES the petition in G.R. 171468 and AFFIRMS the Court of Appeals decision of January 31, 2006 insofar as petitioner New World International Development (Phils.), Inc. is not allowed to recover against respondents DMT Corporation, Advatech Industries, Inc., LEP International Philippines, Inc., LEP Profit International, Inc., Marina Port Services, Inc. and Serbros Carrier Corporation.

With respect to G.R. 174241, the Court GRANTS the petition and REVERSES and SETS ASIDE the Court of Appeals Amended Decision of August 17, 2006. The Court DIRECTS Seaboard-Eastern Insurance Company, Inc. to pay petitioner New World International Development (Phils.), Inc. US\$721,500.00 under Policy MA-HO-000266, with 24% interest per annum for the duration of delay in accordance with Sections 243 and 244 of the Insurance Code and attorney's fees equivalent to 10% of the insurance proceeds. Seaboard shall also pay, from finality of judgment, a 12% interest per annum on the total amount due to petitioner until its full satisfaction.

SO ORDERED.

Velasco, Jr., (Chairperson), Leonardo-De Castro,^[*] Peralta, and Mendoza, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order 1069 dated August 23, 2011.

[1] *Union Carbide Philippines, Inc. v. Manila Railroad Co.*, 168 Phil. 22, 31 (1977).

[2] Penned by Associate Justice Vicente S.E. Veloso with the concurrence of Associate Justices Edgardo F. Sundiam and Aurora S. Lagman, rollo (G.R. 171468), pp. 9-41.

[3] See *Cang v. Cullen*, G.R. No. 163078, November 25, 2009, 605 SCRA 391.

[4] Civil Code, Article 1739.

[5] *Choa Tiek Seng v. Court of Appeals*, 262 Phil. 245, 255 (1990).

[6] Rollo (G.R. 174241), p. 163.

[7] Exhibit "BB" for petitioner, id. at 216.

[8] For documentation of claims, the policy requires submission of: (1) Original policy or certificate of insurance; (2) Original copy of shipping invoices together with shipping specifications and/or weight notes; (3) Original Bill of Lading and/or other contract of carriage; (4) Survey report or other documentary evidence to show the extent of the loss or damage; (5) Landing account and weight notes at final destination, and; (6) Correspondence exchanged with the Carrier and other parties regarding the liability for the loss or damage, id. at 165.

[9] Otherwise known as "Amending Further Certain Sections of Act Numbered Two Thousand Six Hundred Fifty-Five, as amended, otherwise known as "The Usury Law."

[10] G.R. Nos. 151890 and 151991, June 20, 2006, 491 SCRA 411.

[11] Cathay Insurance Company, Inc. v. Court of Appeals, 255 Phil. 714, 723 (1989).

[12] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

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