

COMMERCIAL UNION ASSURANCE COMPANY LIMITED AND NORTH BRITISH & MERCANTILE INSURANCE CO., LTD., PETITIONERS, VS. LEPANTO CONSOLIDATED MINING COMPANY AND COURT OF APPEALS, RESPOND...*G.R. No. 52027. April 27, 1982*

Ponente: AQUINO, J.

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This is a marine insurance case. Lepanto Consolidated Mining Company alleged in its complaint of February 7, 1974 that on November 8 and 23, 1971 it shipped (for smelting) copper ore concentrates on board the vessels M/S Hermosa and M/S General Aguinaldo from Poro Point, San Fernando, La Union to Tacoma, Washington, U. S. A.

The first shipment is known as No. 167 and the other shipment as Nos. 168 and 168-A. The copper ore concentrates were stored on board the carrying vessels under the supervision and approval of a marine surveying firm designated by the insurer (pp. 8-9, Record on Appeal). American Smelting and Refining Co., Ltd. (Asarco) was the consignee. The ore was to be discharged at the wharf of Asarco's smelter at Tacoma (pp. 75-76, 98-9, Record on Appeal).

The shipments were covered by two "all risks" marine insurance policies issued to Asarco by North British & Mercantile Insurance Company Limited, a subsidiary of Commercial Union Assurance Company Limited. The first policy was for US\$4,509,014 or 80% of the agreed total value of US\$5,636,268 while the second policy was for US\$6,230,591.03 or 80% of the agreed total value of US\$7,788,233.79. The 20% balance was covered by insurance policies issued by Malayan Insurance Co., Inc.

Both policies contain this stipulation: " It is hereby noted and agreed that Lepanto Consolidated Mining Co. have (has) an interest on this Policy" (pp. 22 and 58, Record on Appeal). From the opening clause of the policies (couched in Chaucerian English), it may be inferred that Asarco and all persons having an interest in the shipments were covered by the insurance (pp. 20-21, 45-46, Record on Appeal).

Because the two shipments were damaged in transit, Lepanto filed claims under the policies. Commercial Union Assurance and North British denied the claims.

On February 8, 1974, Lepanto filed a complaint in the Court of First Instance of Rizal, Pasig Branch 22, against Commercial Union Assurance and North British wherein it prayed that they be ordered to pay Lepanto the sums of US\$523,139.20 and US\$553,564.80, representing 80% of the damages suffered by Lepanto plus interest, litigation expenses and attorney's fees.

On motion to dismiss filed by the defendants, the lower court dismissed the complaint for lack of cause of action. Lepanto appealed to the Court of Appeals which in its decision dated September 27, 1979 reversed the order of dismissal (CA-G. R. No. 55948-R).

In a resolution dated November 12, 1979, it denied the motion for reconsideration filed by Commercial Union Assurance and North British. A copy of that resolution was received by their lawyers on November 19. Twelve days later, or on December 1, they filed a special civil action of certiorari in this Court wherein they alleged that the Court of Appeals acted without jurisdiction in entertaining Lepanto's appeal. The certiorari petition was treated as an appeal. As directed, the parties filed their briefs.

The petitioners contend in their first assignment of error that the Court of Appeals had no jurisdiction over Lepanto's appeal because it raised only a pure question of law.

That contention is devoid of merit because Lepanto in its notice of appeal expressly stated that it was appealing on questions of fact and law and because in its assignment of errors it contended that the trial court erred in finding that the marine policies were issued solely in favor of Asarco, in not finding that Lepanto was insured under the said policies and in not finding that the insurers were estopped to deny that Lepanto was an insured party.

The ventilation of those factual issues would explain why the Court of Appeals did not certify the case to this Court as a case involving a pure question of law.

The petitioners in their other assignments of error argue that the Court of Appeals gravely abused its discretion in taking into account Lepanto's manifestation which is not a part of its complaint; in finding that Lepanto claimed ownership of the cargo covered by the marine insurance policies; in not finding that Lepanto is not the real party in interest and has no personality to sue and in not finding that under the ultimate facts alleged in Lepanto's complaint Lepanto has no cause of action against the insurers.

The issue is the correctness of the trial court's conclusion that Lepanto has no right to sue the insurers since it has no cause of action against them (p. 119, Record on Appeal), or, as stated by the Appellate Court, whether Lepanto can legally sue on the marine insurance policies.

We hold, without prejudging the merits of Lepanto's case and petitioners' affirmative defenses, that there is a *prima facie* showing in Lepanto's complaint and pleadings that it is a real party in interest under the policies and that it has a cause of action against the petitioners as insurers.

This holding is based (1) on the stipulation (already quoted) in the two policies that it has an interest therein and (2) on the facts that it was the shipper (and presumably the owner) of the insured cargoes, that the shipments were undertaken in accordance with the instructions of the insurer's marine surveyor and that it was Lepanto that filed the corresponding claim with the adjuster when the cargoes were damaged (pp. 34-37, Record on Appeal).

It is noteworthy that when Commercial Union Assurance Company Limited rejected Lepanto's claims it did not question Lepanto's right and personality to file the claims nor did it state that Lepanto had no interest in the marine policies and that it was not an insured party. Commercial Union rejected the claims, not on those grounds, but because "both cargoes were inherently vicious" (pp. 37-45, Record on Appeal).

To say that Lepanto has no interest under the policies would render meaningless the said stipulation in its favor. To say that Lepanto as shipper of the insured property had no proprietary interest therein before its delivery at Asarco's wharf in Tacoma is to imply that the insured property was *res nullius*. These conclusions are preposterous.

Hence, the trial court erred in dismissing the complaint. Whether after hearing the parties it would appear that Lepanto's claims for damages are justified or not is an issue on which we make no anticipatory and premature finding.

WHEREFORE, the decision of the Court of Appeals is affirmed. Costs against the petitioners.

SO ORDERED.

Barredo, (Chairman), De Castro, Ericta, and Escolin, JJ., concur.

Concepcion, Jr., and Abad Santos, JJ., no part.

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