

SEA-LAND SERVICE, INC., PETITIONER, VS. COURT OF APPEALS AND PHILIPPINE HOME ASSURANCE CORPORATION, RESPONDENTS.

G.R. No. 57828. June 14, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal by certiorari under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals in CA-G.R. No. 64514-R, entitled “Philippine Home Assurance Corporation vs. Donmac Corporation (Rollo, pp. 10-36).

On June 7, 1975, private respondent Philippine Home Assurance Corporation, (“Assurance”), filed an action in the Court of First Instance of Manila (Civil Case No. 98127) as subrogee of the assured-consignee, Republic Flour Mills (RFM) to recover from the defendants, Donmac Corporation (“Donmac”), E. Razon, Inc., (“E. Razon”), Reyma Brokerage, Inc. (“Reyma”), and Sea-Land Services, Inc. (“Sea-Land”) petitioner, herein, the sum of P66,289.29, which it paid to RFM, after the defendants had refused to pay the claim for the loss or damage suffered by REM's shipment, consisting of three units of Smokehouse Airconditioning System and one unit of Mepaco Smoke Generator (Record on Appeal, pp. 6-10, Rollo, p. 37).

Donmac was the carrier; Sea-Land, the ship agent of Donmac; E. Razon, the arrastre contractor in the Port of Manila; and Reyma, the consignee's broker (Record on Appeal, pp. 6-7, Rollo, p. 37). During the pendency of the case in the trial court, the original claim was reduced to P30,980.04 because some of the items claimed to have been lost were found by the consignee and their value refunded to the insurer (Brief for the Petitioner, p. 1; Rollo, p. 104).

After trial, the Court of First Instance rendered a decision, the dispositive portion of which reads:

“WHEREFORE, the Court hereby renders judgment as follows:

(a) Ordering the defendants Donmac Corporation and Sea Land Services, Inc., jointly and severally, to pay the plaintiff the sum of P20,253.36 with interest at the legal rate of 6% per annum from the date of the filing of the complaint on June 7, 1975 up to the date said amount is fully paid;

(b) Ordering the dismissal of the counterclaim of defendant Sea Land Services, Inc.

(c) Without pronouncement as to costs.

SO ORDERED” (Record on Appeal p. 77; Rollo, p. 37).

Sea-Land appealed from the decision of the Court of First Instance to the Court of Appeals (CA-G.R. No. 64514-R), which affirmed the said decision but added cost against the appellant (Rollo, pp. 40-64).

Hence, this petition.

The findings of fact of the trial court, adopted by the Court of Appeals, are as follows:

"On May 5, 1975 the Sea-Land Services, Inc. received at its LVRR Elizabeth Terminal in New Jersey, U.S.A. one (1) H to H container, marked SEAU 17605, STC 3 complete units food processing machinery, with gross weight of 36,000 measuring 2097 cubic feet from the shipper, Julian Engineering Co., thru its forwarding agent Interport Company of Chicago, Illinois. On the same date, the Sea-Land Services Inc. issued on board Bill of Lading No. 901-029162 covering the said shipment (Exhibits B-plaintiff; 21 Sea-Land) and the shipment was finally received by Sea-Land on May 8, 1974 in apparent good order and condition (id. "1"-B Sea-land). The shipment has an invoice value of US\$71,635.00 CLF Manila and was sold to RFM Corporation (Meat Processing Division), consignee, Rizal Philippines, which insured the said shipment on May 14, 1974 with plaintiff Philippine Home Assurance Corporation against all risk including wars and strikes for CAF US\$71,635.00 plus 2; MU Exchange Rate of P6.50 to \$1.00 or for P591,346.93 (Exhibit C). The shipment was loaded at the Port of Oakland, U.S.A. on board the vessel "TRADE" or "SS SEALAND COMMERCE" and subsequently transhipped at the port of Hongkong by the "SS Fairland", which was owned by the defendant Donmac Corporation of Wilmington, Delaware, U.S.S. per Lloyds Register of Ships, 1974-75 edition, page 1153, Identity No. 511160 (tsn., Nov. 15, 1976, p. 3). The "SS Fairland", which was the agency of Sea-Land Services, Inc. (Exhibit "O") arrived at and docked alongside Pier 3, Manila, South Harbor, on June 6, 1974 under Customs Registry No. 935 (Exhibit "4", Sea-Land). On June 5, 1974 Sea-land (Phils.) notified the consignee RFM Corporation that the latter's shipment aboard the S.S. "Fairland" would arrive at the port of Manila on June 6, 1974, which notice was received by the consignee on the same date (exhibit "8" Sea-Land). Cargo Sea Van No. SEAU No. 17605, containing the shipment, was discharged from the carrying vessel on June 6, 1974 in apparent good order and condition, with its seal intact. Its content, however, were not turned over to the arrastre operator. The cargo sea van was brought to the container terminal of Sea-Land at Pier 3. On July 1, 1974 defendant Sea-Land notified the consignee in writing that if the containerized shipment was not taken within 36 hours from receipt of the notice, the container with its contents would be brought to a bonded warehouse designated by the Bureau of Customs (Exhibit "5" Sea-Land). This notice was received by the consignee on the same date, July 1, 1974 (Exhibit "5-A" Sea-Land). As the consignee failed to pick up its containerized shipment from the container terminal, Pier 3, the same was transferred, after a clean gate pass was issued on July 4, 1974 (Exhibit "1" Razon), to the bonded warehouse of the Luzon Brokerage Corporation at Otis St., Paco, Manila, (Exhibit "6" Sea-Land) but later transferred unopened to the LBC bonded warehouse No. 2-A located at Shaw Boulevard, Pasig, Rizal (Exhibit "4" Sea-Land).

On July 13, 1974, Domingo Javier, the checker of defendant Sea-Land went to the LBC Compound at Shaw Boulevard, Pasig, and without securing permission from Bureau of Customs and the consignee, broke the seal of the container in the presence of one in charge of the LBC compound. With the help of the LBC stevedors, he removed the contents of the container and checked them on July 13, and 14, 1974. His checking and examinations are contained in five (5) Good Order Tally sheets No. 8251 (Exhibit "7" Sea-Land), No. 8252 (Exhibit "7-A" Sea-Land), No. 8255 (Exhibit "7-B" Sea-Land), No. 8256 (Exhibit "7-C" Sea-Land), and No. 8259 (Exhibit "7-D" Sea-Land); and in one Bad Order Tally Sheet, No. 8258 (Exhibits "2" and "2-A" Sea-Land). He found that all the contents of the Good Order Tally Sheets were in good condition with the exception of the radiator of the engine which was dented in some parts (see Tally Sheet No. 8252) and of the aluminum sheets which were dented in some parts (see Tally Sheet No. 8256). One case (Bad Order Tally Sheet No. 8258) contained various items in cartons and pieces. One (1) carton of Browning (Big) was in bad order and so with two (2) cartons of Browning (Small) as well as one (1) carton containing 1 gallon Carbit Paint. All the rest were in good order. No representative of the consignee or of the Bureau of Customs was present during the checking.

The evidence of record does not disclose in what particular place is the LBC Compound where the itemized pieces of the shipment stored pending their transfer to the plant of the consignee at Bo. Pulo, Cabuyao, Laguna. On July 24, 1974 the defendant Reyma Brokerage, Inc. brought the itemized contents of the van or container from the LBC compound to the plant of the consignee at Cabuyao, Laguna and delivered them to the consignee thereat (Exhs. "K", "K-1" and "K-2"). Noted on the Delivery Receipt No. 15715 (Exhibit "K-1") were three (3) cartons which were water-damaged and in Delivery Receipt No. 15716 (Exhibit K-2) was noted one (1)

plywood case which was in bad order.

On the same date, July 24, 1974, the Manila Adjusters and Surveyors Co., on request of the consignee, sent its surveyor, Jesus Victa, to the plant of the consignee at Cabuyao, Laguna to survey the imported articles delivered thereat. The Certified Adjusters, Inc., upon request of defendant Sea-Land Services, Inc., also sent its surveyors, and they with the surveyor of the Manila Adjusters and Surveyors Co., inventoried and checked the shipment. The findings of Victa, which are contained in the Certificate of Survey dated August 29, 1974 submitted by the Manila Adjusters and Surveyors Co. (Exhibit "E"), are as follows:

"2 pcs. fresh air damper - cut on one side approximately 3" long.

"1 pc. coil support frame assembly for 1 blower casing BC-17 - slightly dented/cut approximately 10" long x 4" wide.

"3 pcs. duct sleeve SL-1 - not accounted for.

"6 pcs. duct sleeve SL-2 - not accounted for.

"3 pcs. steam coil, 42" x 50" - not accounted for.

"18 rolls block butyl rubber tape - not accounted for.

The surveyors of the Certified Adjusters, Inc. had the same findings (Exhibit "4" Sea-Land). The rest of the items were found in good order condition and accepted by the consignee. The surveyors of the Manila Adjusters and Surveyors Co. gave the opinion that the "damages" sustained by the two (2) fresh air dampers and one (1) coil support frame assembly apparently occurred while the shipment was in transit from port of origin to destination". However, the surveyors could not state where and when the losses (not accounted for items) could have occurred because they were not present during the stripping of the container of its contents (Exhibit "E", p. 4). The surveyors of the Certified Adjusters, Inc. did state their opinion on the cause and place of damage/loss. The Manila Adjusters and Surveyors Co. computed the damages (dentings) and losses (not accounted for items) to have a claimable value of P66,289.29 (Exh. "F"). The consignee filed its claim for the said amount with the defendants Sea-Land Services, Inc. and E. Razon, Inc. but both defendants declined to pay the same, alleging that they are not responsible for the damages/losses suffered by the cargo (Exhibit "G"). The consignee thereupon demanded payment from the plaintiff an insurer of the cargo and the latter complied by issuing on June 5, 1975 a check in favor of the consignee for the amount of P66,289.29. The consignee signed and delivered to the plaintiff a subrogation receipt dated June 5, 1975 for the amount of P66,289.29 (Exhibits "M" and "N"). The plaintiff as subrogee demanded payment from defendants Sea-Land Services, Inc. and E. Razon, Inc., but both refused to pay for, according to them, they are not responsible for the damages/losses suffered by the cargo (Exhibits "I" and "J"). On August 19, 1975 the consignee returned the check in the amount of P66,289.29 issued to it by the plaintiff, informing the latter that the unaccounted for items with a value of P35,909.25 were found and accounted for, and therefore, the said amount should be deducted from the original claim of P66,289.29, thus making the corrected claim to be in the amount of P30,380.04 (Exhibit "L"). The plaintiff paid the consignee the said amount of P30,380.04; and the plaintiff likewise reduced its claim against the defendants from P66,289.29 to P36,380.04 (Partial Stipulation of Facts)" (Decision, CA-G.R. No. 64514-R, pp. 3-7, Rollo, pp. 42-46).

In the Court of Appeals, petitioner invoked the provisions of Section 15 of the Bill of Lading, (Exh. 1--D, Sea-Land) in support of its claim that there was a constructive delivery of the shipment to the consignee and that it had been discharged of its responsibility over the shipment before July 13, 1974 when it opened the sealed container van. The Court of Appeals, however, dismissed this claim of petitioner on the ground that it was raised for the first time on appeal; therefore, it was considered as having been waived by petitioner (Decision, p. 9; Rollo, p. 48).

In appellate procedure, parties are not allowed to change theories or shift positions in the appellate court. On appeal, the parties must keep within the issues stated in their pleadings or the theories on which their causes of action in the trial court were predicated (*American Express Co. v. Natividad*, 46 Phil. 207; *Toribio v. Decasa*, 55 Phil. 461).

The complaint filed by Assurance as a subrogee in Civil Case No. 98127 was to collect damages from the defendants therein, including petitioner, for the short-landing of and damages to the cargo while in the custody of the defendants (Complaint, par. 6; Record on Appeal, p. 8; Rollo, p. 37). The answer of petitioner claimed that the "devanning" of the insured cargo in July 13 and 14, 1974 took place after due notice was given to the consignee and only after the latter failed to claim the cargo.

Paragraph 26 of the Answer of Sea-Land states: "Despite notice to consignee, the latter failed to take delivery of the container for almost one (1) month. Consequently, the subject container was transferred to the Luzon Brokerage Customs Bonded Warehouse for devanning. The devanning took place on July 13 and 14, 1974. Upon devanning, only one case was found in bad condition. The box consisted of 149 packages, but only 4 packages were noted with exceptions" (Record on Appeal, pp. 31-32; Rollo, p. 37).

It is true that petitioner did not specifically cite the provisions of Section 15 of the Bill of Lading (Exh. 1-D, Sea-Land) as the authority to support its right to "devan" the insured cargo, but under the rules on pleading, a party is not required to specify the provisions of the law or contract relied upon by the pleader. The rules only require the allegations of the ultimate facts.

The rules on appellate procedure do not even require the parties to adhere to their position in minute detail but only to abide by the general position adopted by them in the trial court (*Fisk v. Honario*, 14 Ore. 29). Neither do the rules prevent the parties from putting up additional grounds to support their position (*Sons v. Yangco Steamship Co.*, 34 Phil. 597).

Assuming arguendo that the issue of the right of petitioner to "devan" was not raised by it in the trial court, the fact remains that Assurance failed to object when the Bill of Lading (Exhibit 1-D, See Land) was presented in evidence. As a matter of fact, Assurance admitted the genuineness and due execution of said document in the partial stipulation of facts submitted to the trial court (Record on Appeal, p. 50; Rollo, p. 37). Likewise, Assurance did not object to the admissions of the evidence proving the steps taken by petitioner before removing the cargo from the container van. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings (Rule 10, Sec. 5, Revised Rules of Court; *Lizarraga Hermanos v. Yap Tico*, 24 Phil. 504; *Molina v. Somes*, 24 Phil. 49).

This brings us to the issue as to whether petitioner had been relieved of its obligations under the Bill of Lading when it "devaned" the cargo on July 13, 1974.

Section 15 of the Bill of Lading Exh. 1-D Sea-Land provides:

"The carrier or master may appoint a stevedore or any other persons to unload and take delivery of the goods and such delivery from ship's tackle shall be considered complete and all responsibility of the carrier shall then terminate.

It is agreed that when possession of the goods is received or taken by the customs or other authorities or by any operator of any lighter, craft, dock, pier, store, warehouse, refrigerator, elevator or other facilities whether selected by the carrier or master, shipper or consignee, whether public or private, such authority or person shall be considered as having received possession and delivery of the goods solely as agent of and on behalf of the shipper and consignee, at the risk of the goods and subject to any lien of the carrier thereon. Also if the consignee does not take possession or delivery of the goods as soon as the goods are at the disposal of the

consignee for removal, the goods shall be at their own risk and expense, delivery shall be considered complete and the carrier may, subject to carrier's liens, send the goods to store, warehouse, put them on lighters or other craft, put them in possession of authorities, dump, permit to lie where landed or otherwise dispose of them, always at the risk and expense of the goods, and the shipper and consignee shall pay and indemnify the carrier for any loss, damage, fine, charge or expense whatsoever suffered or incurred in so dealing with or disposing of the goods, or by reason of the consignee's failure or delay in taking possession and delivery as provided herein (Rollo, p. 14; Underlining supplied).

The "SS Fairland", carrying the container van SEAU 17605, STC 3, arrived in the Port of Manila on June 6, 1974. On the same day, the said container was unloaded and discharged from the carrying vessel. The day before the arrival of the vessel, petitioner notified RFM, the consignee, that the latter's shipment would be arriving on June 6, 1974.

Petitioner notified RFM in a letter dated July 1, 1974 (Exh. 5) that the shipment in the container van No. 17605 would be transferred to a customs bonded warehouse. In a follow-up letter dated July 12, 1974 (Exh. 6), petitioner again informed RFM that the said container van had been transferred to the bonded warehouse of the Luzon Brokerage Corporation and asked RFM to take immediate delivery of the cargo (Decision, p. 9; Rollo, p. 48).

The bonded warehouse of Luzon Brokerage Corporation is located in Pasig, Metro Manila and in the vicinity of the offices of RFM.

For the third time, petitioner sent a notice to RFM on July 12, 1974 that the cargo had been transferred to the Luzon Brokerage Corporation (Exh. 6, Sea-Land).

The cargo was unloaded from the container van on July 13, 1974 in the presence of the Luzon Brokerage Corporation personnel. It was at this time that portions of the shipment were found to be in bad order. It was only on July 24, 1974 that RFM took delivery of the shipment from the Luzon Brokerage Corporation bonded warehouse and transferred the same to its plant in Cabuyao, Laguna. A survey conducted at the consignee's plant showed that the fresh air damper and the coil support frame assembly had been damaged while several pieces of parts of the food processing machinery were missing. By this time, Sea-Land had been relieved of responsibility over the cargo under Section 15 of the Bill of Lading.

There is no dispute that the cargo was shipped "H to H container STC 3 complete units food processing machinery," meaning that the shipper itself loaded the cargo into the van, which was sealed before its delivery to the carrying vessel.

There was no evidence presented by Assurance as to the actual condition of the cargo when it was loaded into the container van by Julian Engineering Co., the shipper. Assurance issued the insurance policy without prior inspection of the cargo on the assumption that the cargo loaded into the container van was complete and in good order. The insurance policy was issued when the cargo was inside the sealed container van. Assurance was aware that the carrying vessel had not accepted the cargo as complete and in good order as shown by its qualified receipt as appearing in the bill of lading (Exh. 1, Sea-land).

Under the provisions of Section 15 of the Bill of Lading, the carriers can "send the goods to store, warehouse, put them on lighters or other craft, put them in possession of the authorities, dump, permit to lie where landed or otherwise dispose of them, always at the risk and expenses of the goods xxx" after the constructive delivery of the goods. The carriers can "devan" the goods from the container without the prior consent of the consignee or the Bureau of Customs (Decision, p. 17; Rollo, p. 56).

WHEREFORE, the petition for certiorari is GRANTED and the decision of the Court of Appeals appealed from is REVERSED. The complaint in Civil Case No. 98127 of the Court of First Instance of Manila is DISMISSED,

with cost against plaintiff therein.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Bellosillo, JJ., concur.

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