

UNIVERSAL SHIPPING LINES, INC., PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND ALLIANCE ASSURANCE COMPANY, LTD., RESPONDENTS.

G.R. No. 74125. July 31, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

In this appeal by certiorari, the petitioner seeks to set aside the decision of the then Intermediate Appellate Court, now Court of Appeals, promulgated on March 25, 1986 in AC-G.R. CV No. 69824, affirming with modification the decision of the former Court of First Instance of Manila dated February 4, 1981, against the herein petitioner, Universal Shipping Lines, Inc., the defendant in the trial court.

On or about March 22, 1974, SEVALCO, Limited, owned and operated by the petitioner, shipped from Rotterdam, Netherlands, to Bangkok, Thailand, aboard its M/V "TAIWAN", two (2) cargoes of 50 palletized cartons consisting of 2,000 units of 25-kilogram bags of Statex R Brand carton black, with a declared gross weight of 53,000 kilos each. They were respectively consigned to S. Lersen Company, Ltd. and Muang Ngarm Retreads, Ltd., per Bills of Lading Nos. RB-15 (Exh. A) and RB-16 (Exh. B). Both shipments were insured with the private respondent, Alliance Assurance Company, Ltd., a foreign insurance company domiciled in London, England, which had withdrawn from the Philippine market on June 30, 1951 yet.

Despite the arrival of the vessel on June 28, 1974 at Bangkok, the cargo covered by Bill of Lading No. RB-15 was not unloaded nor delivered to the consignee, S. Lersen Company, Ltd. The shipment under Bill of Lading No. RB-16 was delivered to Muang Ngarm Retreads, Ltd. with a total weight shortage of 11,070 kilos because the cargoes had been either totally or partially dissolved in saltwater which flooded Hatch No. 2 of the vessel where they had been stored.

Upon arrival in Manila on July 4, 1974, Arturo C. Saavedra, master of M/V "TAIWAN," filed a marine protest (Exh. H), pertinent portions of which read:

"By investigation, the source of the water could not be definitely ascertained where it comes from. However, the bilge pump was employed to pump out continue working for almost 12 hours No. 2. The bilge pump was employed every other day to pump out the water, but it was seems to be almost same soundings. Suspecting of some leakage of suction pipes.

"That the hold No. 2 cannot be inspected on account of the full cargoes inside the hold, rendering it to be inaccessible.

"Suspecting that the water comes from outside passing through some loosen rivets on starboard side of the ship. (sic.)

"That the pumping out the water from the hold was done by shore help upon arrival at Bangkok." (sic.) (pp. 23-24, Rollo.)

The consignees, S. Lersen Co., Ltd. and Muang Ngarm Retreads, Inc., filed their respective formal claims for loss and damage to their cargoes on August 7, 1974 (Exhs. N and N-1) and on November 12, 1974 (Exh. M). (p. 24, Rollo.) The insurer paid both claims in the amounts of L12,180 and L2,547.18 for the loss and damage to their cargoes.

On June 25, 1976, private respondent, as insurer-subrogee, filed an action in the Court of First Instance of Manila to recover from the petitioner and its Manila agent, Carlos Go Thong & Company, what it paid the consignees of the cargo.

After trial, the court a quo rendered judgment for the private respondent, the dispositive portion of which reads:

"PREMISES CONSIDERED, judgment is hereby rendered ordering defendants Universal Shipping Lines, Inc. and Carlos Go Thong & Co., jointly and severally, to pay plaintiff Alliance Assurance Co., Ltd., under the first cause of action, the sum of L12,180.00 or the peso equivalent thereof, and under the second cause of action, the sum of L2,547.18 or the peso equivalent thereof, both with legal interest thereon from June 25, 1976, the date of the filing of the present action, until said obligations are fully paid, plus attorney's fees in the sum of P10,000.00, with costs." (pp. 24-25, Rollo.)

On appeal to the Court of Appeals, the decision was affirmed after exculpating petitioner's ship-agents in Manila (Go Thong) from any liability on the ground that it had no participation in the shipment of the cargo which had been loaded and discharged in places other than Manila (p. 28, Rollo).

In this appeal by certiorari, petitioner alleges that respondent court erred:

1. in holding petitioner liable for the damage/loss suffered by the subject shipments;
2. in holding that private respondent has capacity to sue in this jurisdiction;
3. in finding that private respondent's cause of action has not yet prescribed; and
4. in awarding attorney's fees without stating any factual, legal and equitable justification.

The petition is not meritorious.

The first assignment of error raises a factual issue which we decline to review as this Court may review only legal issues which must be distinctly set forth in the petition (Sec. 2, Rule 45, Rules of Court). In any event, the Court of Appeals committed no reversible error in holding, as the trial court did, that:

"x x x. It was incumbent upon the defendants to prove that the losses and damages were due to causes other than the negligence or fault of their employees. Said defendants have not adduced proof on this point. It having been shown that the losses and damages were incurred while the shipments were in the custody of the M/V 'Taiwan' the liability of its owner/operator and shipping agent is clear -- they must pay for the losses and damages sustained by the consignees as a consequence of the breach of contract of water transportation." (pp. 27-28, Rollo.)

On the issue of jurisdiction, we uphold the appellate court's ruling that the private respondent may sue in Philippine courts upon the marine insurance policies issued by it abroad to cover international-bound cargoes shipped by a Philippine carrier, even if it has no license to do business in this country, for it is not the lack of the prescribed license (to do business in the Philippines) but doing business without such license, which bars a foreign corporation from access to our courts. (*Pacific Vegetable Oil Corporation vs. Singzon*, L-7919, April 29, 1955; *Eastboard Navigation, Ltd. vs. J. Ysmael & Co., Inc.*, L--9090, Sept. 10, 1957.)

Anent the issue of prescription of the action under Section 3(6), Title I, of the Carriage of Goods by Sea Act (Commonwealth Act No. 65) which provides that:

"x x x the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered. x x x."

This provision of the law admits of an exception: if the one-year period is suspended by express agreement of the parties (*Chua Kay vs. Everett Steamship Corporation*, L-5554, May 27, 1953; *Tan Liao vs. American President Lines, Ltd.*, L-7280, January 20, 1956) for in such a case, their agreement becomes the law for them. (*Phoenix Assurance Co., Ltd. vs. United States Lines*, 22 SCRA 674; *Baluyot vs. Venegas*, 22 SCRA 412; *Lazo vs. Republic Surety & Insurance, Co., Inc.*, 31 SCRA 329; *Philippine American General Insurance Co., Inc. vs. Mutuc*, 61 SCRA 22-23.)

The exchange of correspondence between the parties and/or their associates/representatives (Exhs. R, S, S--1, T, T-1 and T-2) shows that the parties had mutually agreed to extend the time within which the plaintiff or its predecessors-in-interest may file suit until December 27, 1976. When the complaint was filed on June 25, 1976, that deadline had not yet expired.

An award of attorney's fees lies within the discretion of the court and depends upon the circumstances of each case (*Medco Industrial Corp., et al. vs. Court of Appeals, et al.*, 167 SCRA 838). In this case, the award of P10,000 as attorney's fees was reasonable and justified because the defendant's rejection of the private respondent's demand, compelled the latter to litigate and incur expenses to protect and enforce its just and valid claim.

WHEREFORE, the petition for review is denied for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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