

CATHAY INSURANCE CO., PETITIONER, VS. HON. COURT OF APPEALS, AND REMINGTON INDUSTRIAL SALES CORPORATION, RESPONDENTS.

G.R. No. 76145. June 30, 1987

Ponente: PARAS, J.

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PARAS, J.:

This petition seeks the review of the decision of the Court of Appeals[1] in CA-G.R. CV No. 06559 affirming the decision of the Regional Trial Court (RTC)[2], National Capitol Region (NCR) Manila, Branch 38 and the Resolution of the said appellate court denying petitioner's motion for reconsideration.

Originally, this was a complaint filed by private respondent corporation against petitioner (then defendant) company seeking collection of the sum of P868,339.15 representing private respondent's losses and damages incurred in a shipment of seamless steel pipes under an insurance contract in favor of the said private respondent as the insured, consignee or importer of aforesaid merchandise while in transit from Japan to the Philippines on board vessel SS "Eastern Mariner." The total value of the shipment was P2,894,463.83 at the prevailing rate of P7.95 to a dollar in June and July 1984, when the shipment was made.

The trial court decided in favor of private respondent corporation by ordering petitioner to pay it the sum of P868,339.15 as its recoverable insured loss equivalent to 30% of the value of the seamless steel pipes; ordering petitioner to pay private respondent interest on the aforesaid amount at the rate of 34% or double the ceiling prescribed by the Monetary Board per annum from February 3, 1982 or 90 days from private respondent's submission of proof of loss to petitioner until paid as provided in the settlement of claim provision of the policy; and ordering petitioner to pay private respondent certain amounts for Marine Surveyor's fee, attorney's fees and costs of the suit.

Respondent in its comment on the petition, contends that:

1. Coverage of private respondent's loss under the insurance policy issued by petitioner is unmistakable.
2. Alleged contractual limitations contained in insurance policies are regarded with extreme caution by courts and are to be strictly construed against the insurer; obscure phrases and exceptions should not be allowed to defeat the very purpose for which the policy was procured.
3. Rust is not an inherent vice of the seamless steel pipes without interference of external factors.
4. No matter how petitioner might want it otherwise, the 15-day clause of the policy had been foreclosed in the pre-trial order and it was not even raised in petitioner's answer to private respondent's complaint.
5. The decision was correct in not holding that the heavy rusting of the seamless steel pipes did not occur during the voyage of 7 days from July 1 to July 7, 1981.
6. The alleged lack of supposed bad order survey from the arrastre capitalized on by petitioner was more than

clarified by no less than 2 witnesses.

7. The placing of notation "rusty" in the way bills is not only private respondent's right but a natural and spontaneous reaction of whoever received the seamless steel pipes in a rusty condition at private respondent's bodega.

8. The Court of Appeals did not engage in any guesswork or speculation in concluding a loss allowance of 30% in the amount of P868,339.15.

9. The rate of 34 per annum double the ceiling prescribed by the Monetary Board is the rate of interest fixed by the Insurance Policy itself and the Insurance Code.

The petitioner however maintains that:

(1) Private respondent does not dispute the fact that, contrary to the finding of the respondent Court (that petitioner has failed "to present any evidence of any viable exception to the application of the policy") there is in fact an express exception to the application of the policy.

(2) As adverted to in the Petition for Review, private respondent has admitted that the questioned shipment is not covered by a "square provision of the contract." But private respondent claims implied coverage from the phrase "perils of the sea" mentioned in the opening sentence of the policy.

(3) The insistence of private respondent that rusting is a peril of the sea is erroneous.

(4) Private respondent inaccurately invokes the rule of strict construction against insurer under the guise of construction in order to impart a non-existing ambiguity or doubt into the policy so as to resolve it against the insurer.

(5) Private respondent while impliedly admitting that a loss occasioned by an inherent defect or vice in the insured article is not within the terms of the policy, erroneously insists that rusting is not an inherent vice or in the nature of steel pipes.

(6) Rusting is not a risk insured against, since a risk to be insured against should be a casualty or some casualty, something which could not be foreseen as one of the necessary incidents of adventure.

(7) A fact capable of unquestionable demonstration or of public knowledge needs no evidence. This fact of unquestionable demonstration or of public knowledge is that heavy rusting of steel or iron pipes cannot occur within a period of a seven (7) day voyage. Besides, petitioner had introduced the clear cargo receipts or tally sheets indicating that there was no damage on the steel pipes during the voyage.

(8) The evidence of private respondent betrays the fact that the account of P868,339.15 awarded by the respondent Court is founded on speculation, surmises or conjectures and the amount of less has not been proven by competent, satisfactory and clear evidence.

We find no merit in this petition.

There is no question that the rusting of steel pipes in the course of a voyage is a "peril of the sea" in view of the toll on the cargo of wind, water, and salt conditions. At any rate if the insurer cannot be held accountable therefor, We would fail to observe a cardinal rule in the interpretation of contracts, namely, that any ambiguity therein should be construed against the maker/issuer/drafter thereof, namely, the insurer. Besides the precise purpose of insuring cargo during a voyage would be rendered fruitless. Be it noted that any attack of the 15-day clause in the policy was foreclosed right in the pre-trial conference.

Finally, it is a cardinal rule that save for certain exceptions, findings of facts of the appellate tribunal are binding on Us. Not one of said exceptions can apply to this case.

WHEREFORE, this petition is hereby DENIED, and the assailed decision of the Court of Appeals is hereby AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., and Cortes, JJ., concur.

Padilla, J., no part: senior partner of petitioner's counsel is related to me.

Bidin, J., no part. I participated in the appealed decision of the Court of Appeals.

[1] PENNED by CA. Justices, Marcelino R. Veloso, ponente, Porfirio V. Sison, Abdulwahid A. Bidin, Ramon B. Britanico and Josue N. Bellosillo, concurring.

[2] PENNED by RTC judge Natividad G. Adduru-Santillan.

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