

**MANILA INTERNATIONAL PORT TERMINALS, INC., (MIPTI),
PETITIONER, VS. HON. COURT OF APPEALS AND MUTUAL MARINE
OFFICE, INC., RESPONDENTS.**

G.R. No. 81920, March 14, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The Mutual Marine Office, Inc. (MMOI), a foreign insurance company, filed an action against the Manila International Port Terminal Inc. (or MIPTI), a container yard operator at the North Harbor, Manila, to recover the value of lost and damaged bags of whey powder which it had insured in favor of the consignee, Seng's Commercial Enterprises.

On June 27, 1982, 2,000 bags of whey powder with an invoice value of US\$18,550, covered by a clean Bill of Lading No. NTMN-002T, were shipped from St. John 1, Montreal, Canada, on board the "MV Oriental Knight" bound for Manila, and consigned to Seng's Commercial Enterprises. The bags were loaded in two container vans Nos. OOLU-4667211 and STLU-1388035, with Seals Nos. 148742 and 148741, respectively, which arrived in Manila on August 10, 1982. The container vans were immediately discharged to the custody of MIPTI. On August 23, 1982, the consignee's broker went to the pier to withdraw the container vans, found the seals broken and the vans padlocked. The two container vans were withdrawn by the consignee's broker upon proper gate passes, and were delivered to the consignee's bodega at 12th Avenue, Caloocan City. When the two container vans were opened there, a survey of the shipment was made by the Manila Adjusters Company in the presence of the consignee and its broker. Some bags of whey were missing and some bags were torn. Claims were made by the consignee with MIPTI for the value of the damaged bags and shortages suffered by the shipment, but MIPTI refused to pay the claim.

As the shipment was insured against loss and damage in the total sum of US\$24,150 by the Mutual Marine Office, Inc. (MMOI) under MMOI Policy No. 286 dated June 27, 1982, pursuant to the contract of insurance, MMOI paid the consignee the value of the missing and/or damaged cargo in the total sum of US\$7,700 at the conversion rate of P8.61 to one US dollar. MMOI was thereby subrogated to all the rights, interest and actions of the consignee against MIPTI. Demands made on MIPTI by the insurer for reimbursement were not honored, hence, this action (pp. 27-28, Rollo).

During the pre-trial, the parties agreed on the following:

"a) Parties agreed on their respective capacity to sue and be sued;

"b) That the subject shipment shipped on board the vessel MV Oriental Knight on two separate container vans bearing identification No. STLU 1388035 with seal No. 148741 which shipment arrived at the Port of Manila on August 10, 1982 and discharged to the custody of the defendant prior to the withdrawal of the cargo and consignee/broker;

"c) That the shipment is covered by Special Marine Policy No. 286 issued by plaintiff in favor of the consignee's [sic] Seng Commercial Enterprises and that plaintiff is subrogated to all the rights of the consignee over the cargo;

"d) The shipment consisted of 2,000 bags of whey powder in bags weighing 25 kilos net weight each bag with an invoice value of US\$9.28 per bag at the conversion rate of P8.61 to every US dollar;

"e) That the shipment was received by the defendant from the vessel in two container vans which were not stripped meaning that the cargo was not taken out of the container vans and that the seal both container vans were intact." (p. 29, Rollo.)

In a decision dated October 1, 1984, the Regional Trial Court of Manila, Branch 33, ordered MIPTI to pay MMOI the sum of P65,929.87, the value of the lost and damaged cargo, with legal rate of interest from the filing of the complaint until fully paid, and costs.

Upon appeal to the Court of Appeals (CA-G.R. CV No. 06939), the decision was affirmed in toto on August 31, 1987.

In this petition for review of the appellate court's decision, MIPTI alleges that the Court of Appeals erred in not holding:

1. that private respondent has no legal capacity to sue in the Philippines;
2. that private respondent's capacity to sue was not conferred by the stipulation of the parties;
3. that private respondent failed to prove the actual number of bags contained in the vans upon loading at the port of origin;
4. that the Court of Appeals misappreciated the breaking of the containers' seals and the subsequent padlocking thereof; and
5. in holding that the shipment sustained loss in the custody of the petitioner despite absence of evidence thereof.

The first three assignments of error are devoid of merit. MMOI did not have to present its license and certificate of authority to do business in the Philippines and it did not have to prove, apart from the bill of lading, that the two container vans contained 2,000 bags of whey powder, because those facts were stipulated upon by the parties during the pre-trial. A party is relieved of the duty to prove facts admitted by the other party. Facts admitted need not be proven (*Board of Administrators, Phil. Veterans Adm. vs. Agcaoili*, 58 SCRA 72).

We, however, find merit in the petitioner's argument that the Court of Appeals misappreciated the breaking of the seals of the container vans and the subsequent padlocking thereof. The Court of Appeals, like the trial court, assumed that because the container seals were broken while the containers were in the custody of the petitioner, the pilferage of the contents of the vans took place in the petitioner's yard. The petitioner pointed out, however, that breakage of the container seals and the opening of the vans for customs inspection of the cargo is "normal procedure" of the Bureau of Customs, hence, any claim for damage to, or loss of, the cargo imputable to MIPTI or occurring while the cargo was in its custody, should be filed by the consignee and adjusted by its adjuster in the presence of MIPTI before the withdrawal of the cargo from its yard. As argued in the petition on:

"The breaking of the seals of containers brought to the customs are routinary and normal procedures undertaken by the Bureau of Customs not only to determine the actual tax due on such goods contained therein but also for public interest. This is not only a duty but an obligation of the Bureau of Customs as provided for under the Tariff and Customs Code, to wit:

"SEC. 1401. Designation of all Packages to be Examined. – Unless the Collector is of the opinion that the examination of a less or greater proportion of packages will amply protect the government revenue and public interest, there shall be designated for examination, and appraisal, at least one package of every invoice, and at least one package of every ten packages of articles imported: Provided, that nothing in this section shall preclude the examiner from examining additional or all the packages when he deems it necessary to protect the government revenue and public interest. (As amended by P.D. 34.)" (p. 20, Rollo.)

It was entirely possible that the theft of part of the cargo in question could have occurred after the containers were pulled out by the consignee's broker, P.S. Babasanta Customs Brokerage, from the petitioner's container yard, and while the vans were in transit to the consignee's warehouse. It is significant that the consignee's representative who padlocked the vans and kept the keys after the cargo had been inspected by the customs agents, did not bother to re-open them and inspect their contents to assure that the cargo was intact before removing the vans from the petitioner's container yard. When the containers were transferred to P.S. BABASANTA by the petitioner, receipts and gate passes were issued showing that the containers were "in good order and condition." Only when the consignee received the containers from its broker, were the losses and damage to the cargo discovered. It may be presumed, therefore, that the pilferage of part of the cargo occurred after the containers had been removed from the petitioner's yard and while they were in the possession of the consignee's broker, P.S. Babasanta, whose representative held the keys to the vans. The petitioner, therefore, is not answerable for losses or damage suffered by the cargo after the containers had changed hands.

WHEREFORE, in view of the foregoing, the decision dated August 31, 1987, and the Resolution dated January 28, 1988, of the Court of Appeals are hereby set aside. The complaint against the petitioner is dismissed with costs against the private respondent.

SO ORDERED.

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

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