

SURIGAO CENTURY SAWMILL, CO., INC., PETITIONER, VS. COURT OF APPEALS AND PHOENIX ASSURANCE CO., INC., RESPONDENTS.

G.R. No. 83889. February 09, 1993

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review, by way of appeal on certiorari, seeking to nullify the decision of the Court of Appeals in CA-G.R. No. 08874-SP, dated February 16, 1988,[1] and the Resolution dated June 15, 1988 denying petitioner's motion for reconsideration. Said decision affirmed the order of the trial court in Civil Case No. 83-14947, entitled "Phoenix Assurance Co., LTD v. Surigao Century Sawmill Company, Inc." which denied petitioner's Motion to Dismiss on the ground of improper venue.

Records show that on January 4, 1982 Standard Plywood Corporation (STANDARD) leased a barge, LCT "TANTOY," from Surigao Century Sawmill Co., Inc. (SURIGAO), manned by the latter's crew for delivery of plywood from Butuan City to its consignee, A-1 Construction, Inc. in Surigao City. This was covered by a Contract of Lease,[2] dated January 4, 1982 and a bill of lading,[3] dated January 8, 1982.

The contract of lease specifically provides that the subject of the lease is the LCT "Tantoy," to load at Butuan City between January 7 or 8, 1982 7,000 pieces of panel plywood in 140 crates, with the shipper being Standard Plywood Corporation of Butuan City, for delivery to its consignee A-1 Construction, Inc. at Surigao City.

The shipment loaded on "TANTOY" on January 7 and 8, 1982 failed to reach the consignee resulting in damages to STANDARD in the amount of P490,000.00. However, since the cargo was insured by the shipper (STANDARD) in the amount of P490,000.00 with Phoenix Assurance Co., Inc. (PHOENIX) under Certificate of Insurance No. OP-204/516; PHOENIX settled its obligation to STANDARD in the aforesaid amount; hence as a legal consequence, PHOENIX was subrogated to the rights and interests of the shipper, STANDARD.

Failing to satisfy its demand from SURIGAO, PHOENIX filed a complaint with the Regional Trial Court of Manila. Instead of filing an answer, SURIGAO filed a motion to dismiss on the ground of improper venue, citing paragraph 12 of the lease contract of the barge, which provides:

"12. Any disagreement or dispute arising out of the lease shall be settled by the parties in the proper court in the Province of Surigao del Norte."[4]

The trial court on the other hand, denied the motion calling attention to Sec. 2, Rule 4 of the Rules of Court, giving the choice of venue to the plaintiff.

Since PHOENIX, as insurer of STANDARD, was subrogated to the rights and interest of the latter as shipper for failure of Surigao to satisfy the written demands of Phoenix whose offices are located in Manila, the complaint was filed with the RTC of said city.

The main issue then which needs to be settled in this case is whether the bill of lading should prevail over the

lease contract for purposes of venue.

The matter was correctly resolved by the Court of Appeals, to which We concur, to wit:

"x x x the cause of action is the recovery of the damage ex-contractu on account and on the basis of the bill of lading. . .

"Scrutiny of the complaint will readily show that plaintiff therein, now private respondent, never asserted violation of any term and condition of the lease agreement. Neither can it be said that there was any 'disagreement or dispute arising out of the lease' which would perforce result in the settlement by the parties in the 'proper court of Surigao del Norte.'

"What was claimed in litigation was the shipment of '140 crates . . . or 7,000 Panel Plywood x x x covered by Bill of Lading No. 1,' which shipment was not received by consignee, 'resulting in the damage, loss and prejudice to plaintiff in the amount of P490,000.00.' While reference was made of the lease of the barge, the cause of action was not based on any provision of the lease, but precisely on the bill of lading." [5]

Petitioner anchors its petition on Our pronouncement in the case of *Home Insurance Co. v. American Steamship Agencies, Inc.* where We said:

". . . in a charter of the entire vessel, the bill of lading issued by the master to the charterer, as shipper, is in fact and legal contemplation merely a receipt and a document of title not a contract, for the contract is the charter party." [6]

The court a quo opined and to which We agree that petitioner cannot rely on the ruling of the above case because the facts are not in four-square with the present case. In *Home Insurance*, supra, there was stamped on the face of the bill of lading "Freight prepaid as per charter party. Subject to all terms, conditions and exceptions of charter party . . ." a condition which is not present in the dispute before Us. Instead, the bill of lading in this case contains a provision "subject to the condition printed in the original of this bill of lading."

The present action does not concern or refer to any disagreement or dispute arising out of the lease of the barge which under the lease contract needs to be settled by the parties in the proper court of the Province of Surigao del Norte; withall, this is an action of respondent Phoenix, as subrogor to recover sum of money and damages from petitioner as debtor arising out of marine subrogation recovery and on the basis of the bill of lading.

Petitioner cannot belatedly present as evidence a purported similar bill of lading in its motion for reconsideration with the Court of Appeals. In filing a motion to dismiss with the trial court, petitioner in effect hypothetically admitted the factual allegations in the complaint.

Even assuming arguendo that the contract of lease should prevail over the bill of lading, We have previously held that a statement in a contract where venue should be laid does not preclude the filing of suits at the election of the plaintiff. [7] Sec. 3, Rule 4 of the Rules of Court provides an alternative to Sec. 2(b) of the same rule such that parties may, by written agreement, change or transfer venue of an action from one province to another. But such written agreement should clearly and explicitly state the intention of the parties restricting the filing of action to a particular court or to the exclusion of other courts. Thus, in the case of *Polytrade Corporation v. Blanco*, We said:

"An accurate reading, however, of the stipulation, 'The parties agree to sue and be sued in the Courts of Manila,' does not preclude the filing of suits in the residence of plaintiff or defendant. The plain meaning is that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. . . The parties solely agreed to add the courts of Manila as tribunals to which they may resort. They did not waive their right to pursue remedy in the courts specifically mentioned in Section 2(b) of Rule 4." [8]

We, however, would like to comment on the obiter made by the Court of Appeals where it said that assuming there is conflict between the terms of the lease contract and the bill of lading, the bill of lading should prevail over the lease contract, simply because the former is a subsequent covenant and shall, therefore, take precedence in determining the intent of the parties.[9]

In determining which document should prevail, we should look into the real intent of the parties and/or the characteristic of the documents. A bill of lading serves three distinct functions: first, as a receipt for the goods;[10] second, as contract of carriage;[11] and third, as documentary evidence of title to the goods.[12] The reliance, therefore, of private respondent Phoenix on the bill of lading which serves in the contract of carriage to support its cause of action against petitioner is well-taken.

Premises considered, We hold that respondent has the choice of venue of where to file its complaint for a sum of money and damages against petitioner.

WHEREFORE, the judgment of the Court of Appeals is hereby **AFFIRMED**. Let this case be remanded to the court of origin for further proceedings and reception of evidence.

SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Campos, Jr., JJ., concur.

[1] Justice Manuel Herrera, ponente; Justices Jose A.R. Melo and Jorge S. Imperial, concurring.

[2] Original Records, p. 28.

[3] Original Records, p. 21.

[4] Original Records, p. 28.

[5] Decision, p. 4-5.

[6] L-25599, 23 SCRA 24 (1968), citing *The Crowe*, 294 Fed. 506; *The Fri*, 154, 333.

[7] *Polytrade Corporation v. Blanco*, L-27033, 30 SCRA 187 (1969).

[8] *Id.*, p. 191.

[9] Decision, p. 5; Rollo, p. 28.

[10] *Schwab v. Erie R. Co.* 161 Misc 743, 293 NYS 842.

[11] *Id.*

[12] *New York C. R. Co., v. Warren Ross Lumber Co.* 234 NY 261, 137 NE 324.

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