

**MAERSK-TABACALERA SHIPPING AGENCY (FILIPINAS), INC.,
PETITIONER, VS. THE HON. COURT OF APPEALS, MONET'S
EXPORT AND MANUFACTURING CORPORATION AND/OR VICENTE
TAGLE, RESPONDENTS.**

G.R. No. 89747. July 20, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is petition for review on certiorari of the decision dated July 12, 1989 of the Court of Appeals in CA-G.R. CV No. 18124 affirming that of the Regional Trial Court of Legaspi City in Civil Case No. 7480 which awarded damages to the plaintiff, now private respondent, Monet's Export and Manufacturing (Monet for short) against the petitioner Maersk-Tabacalera Shipping Agency (Filipinas), Inc., (Maersk for short) for breach of a contract of carriage.

The facts are stated in the decision of the Court of Appeals as follows:

"On May 21, 1985, a complaint for damages was filed by plaintiff Monet's Export and Manufacturing Corporation (Monet's) and/or Vicente Tagle against defendants Maersk Tabacalera Shipping (Maersk) and the New Asia Enterprises (New Asia) and/or Manuel Ranola, alleging, among other things, that plaintiff, like defendant New Asia, is engaged in the export of locally-made handicrafts and products, while defendant Maersk Line is engaged in furnishing containerized services through which Monet's and New Asia normally ship their goods; that on March 11, 1984, plaintiff, after complying with all the export and custom requirements, loaded its goods in Maersk's container to be delivered on or before March 15, 1984 to Manila for immediate transshipment to its port of destination; that through fraud and malice, and without prior notice to Monet's, Maersk unloaded the goods at New Asia's factory site at Tagas, Daraga, Albay to give way to the latter's own export shipment; that Monet's shipment was later returned to its warehouse at Banag, Daraga, Albay; and that because of this occurrence, Monet's had to secure another shipper, thereby incurring unnecessary expenses as well as suffering mental anguish, worry and sleepless nights thinking of the possibility of losing its trading partners which would seriously doubt Monet's capacity as a respectable exporter. Monet's likewise alleged having suffered actual, moral and exemplary damages (p. 1, Record).

"Answering the complaint, Maersk contended that contrary to Monet's allegations, the latter's shipment was loaded on March 10, 1984 in Maersk container subject to the condition that the bill of lading would be issued upon Monet's compliance with all the necessary export papers prior to the departure of the truck bearing said container for Manila on March 11, 1984. Maersk further alleged that Monet's knew that the subject goods would not be brought to Manila without submitting all the necessary export papers, as without them, Maersk would incur charges on the cargo when deposited at the customs warehouse in Manila and would subsequently be not allowed to export the goods by custom authorities (p. 16, Record).

"Defendant New Asia, for its part, denied any liability in favor of Monet's, alleging that Monet's has no cause of action against it not being a party to the contract of carriage between Monet and Maersk (p. 24, Record).

"Defendants during the hearing of February 17, 1986 were considered as in default for their failure to attend the scheduled pre-trial conference despite proper notice. Subsequently, the order of default in regard to defendant Maersk was lifted and the latter was allowed to cross-examine all the witnesses of Monet's. Defendant New Asia did not move for the lifting of the order of default and accordingly remained as in default." (p. 204, Record.)

On March 28, 1988, the appealed judgment was rendered:

"WHEREFORE, premises considered, defendant Maersk Shipping Line is found to be liable to plaintiff for damages in the following amounts: For breach of contract of carriage, P50,000.00; for moral damages brought about by the wanton bad faith employed by defendant shipping line in the performance of its contractual obligation, P50,000.00; and as exemplary damages, another P50,000.00 and for attorney's fees, P20,000.00.

"Defendant New Asia Enterprises is exonerated of any liability, there being no valid cause of action by plaintiff against it. New Asia Enterprises cannot be made answerable for whatever action or violation of contracted obligation defendant Maersk Line may have committed against plaintiff because they are 2 separate corporations and there is no proof of any collusion between them." (pp. 27-28, Rollo.)

Maersk appealed to the Court of Appeals which affirmed the judgment of the trial court on July 12, 1989.

Hence, the instant petition wherein Maersk raises the following issues:

1. Respondent court erred in affirming the judgment of the trial court despite the obvious fact that the trial court never acquired jurisdiction over the subject-matter of the action because private respondents did not specify their claims for damages and the correct filing fees were not paid.
2. It was error for respondent court to have awarded P50,000.00 for "breach of contract" because this is not a form of damage and petitioner has a right to know for what it is being made to pay.
3. Respondent court erred also in awarding moral damages to a corporation that was not shown to have a good reputation that was damaged.
4. Again, respondent court erred in awarding exemplary damages in the absence of evidence that petitioner acted in a wanton or malevolent manner.
5. Finally, respondent court erred in awarding attorney's fees without any explanation for such an award. (pp. 13-14, Rollo.)

Petitioner's allegation that the decisions of the trial court and the Court of Appeals were void for lack of jurisdiction (p. 75, Rollo) as Monet did not pay the correct filing fee on its claims for actual, moral and exemplary damages, the amounts of which were not specified in the body and prayer of its complaint, is anchored in the following ruling of this Court in *Manchester Development Corporation vs. CA* (149 SCRA 562 [1987]) --

"x x x the trial court did not acquire jurisdiction over the case by the payment of only P410.00 as docket fee. x x x

"To put a stop to this irregularity, henceforth all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with the requirement shall not be accepted nor admitted, or shall otherwise be expunged from the record.

"The Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. An amendment of the complaint or similar pleading will not thereby vest jurisdiction in the court, much less the payment of the docket fee based on the amounts sought in the amended pleading." (Underscoring supplied; pp.

568-569.)

Unlike Manchester, however, where the jurisdictional issue arising from insufficiency of the docket fee paid, was seasonably raised in the answer of the defendant in the trial court, in this case the issue is being raised for the first time in this Court. Petitioner submitted to the jurisdiction of the trial court without question. It filed a counterclaim seeking affirmative reliefs, and actively took part in the trial (p. 53, Rollo). A party who voluntarily participates in the trial cannot later on raise the issue of the court's lack of jurisdiction (*Tan Boon Bee & Co. v. Judge Jarencio*, 163 SCRA 205).

Maersk should have raised its objection to the trial court's jurisdiction when the case was still in that court. It should not have waited for an adverse decision by the Court of Appeals before waking up to raise the question of jurisdiction. As this Court remarked in *Tijam v. Sibonghanoy*, 23 SCRA 29, 37: "Were we to sanction such conduct on its part, We would in effect be declaring as useless all the proceedings had in the present case since it was commenced x x x and compel the judgment creditors to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting." "A party may be barred by laches from invoking his plea (of lack of jurisdiction) for the first time on appeal for the purpose of annulling everything done in the case with the active participation of said party invoking the plea." (*Tijam vs. Sibonghanoy*, 23 SCRA 29, 34.)

Since this is a case where some of the claims (for moral and exemplary damages) were not specified in the plaintiff's pleading and were left for determination by the court, the applicable rule is the third rule set out in the decision of this Court in *Sun Insurance Office Ltd., et al. vs. Hon. Maximiano Asuncion, et al.*, 170 SCRA 274, to wit:

"3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee."

The Clerk of Court of the trial court shall assess and collect the proper additional fees on the totality of the judgment for the private respondent (*Id.*)

Monet's counsel in the trial court, Attorney Jesus Salazar, is hereby reprimanded for his unethical practice of not specifying the amount of damages sought in the body and prayer of his complaint in order to defraud the Government of the proper fee for docketing said complaint. He is warned that a repetition of that malpractice will be dealt with more severely.

WHEREFORE, the petition for certiorari is denied for lack of merit. However, the Clerk of Court of the trial court shall assess and collect the fees due on the judgment as if the same amounts were specified in the complaint. Costs against the petitioner.

SO ORDERED.

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

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