



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**UNITRANS INTERNATIONAL
FORWARDERS, INC.,**

Petitioner,

- versus -

**INSURANCE COMPANY OF
NORTH AMERICA, UNKNOWN
CHARTERER OF THE VESSEL
M/S "DORIS WULLF", AND
TMS SHIP AGENCIES,**

Respondents.

G.R. No. 203865

Present:

CARPIO, J., *Chairperson*,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR.,
LAZARO-JAVIER, JJ.

Promulgated:

13 MAR 2019

Alfonso C. Carpio

X-----X

DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court filed by petitioner Unitrans International Forwarders, Inc. (Unitrans) against respondents Insurance Company of North America (ICNA), the unknown charterer of the vessel M/S "Doris Wullf" (unknown charterer of M/S Doris Wullf), and TMS Ship Agencies (TSA).

The instant Petition assails the Decision² dated October 27, 2011 (assailed Decision) and Resolution³ dated October 12, 2012 (assailed Resolution) rendered by the Court of Appeals⁴ (CA) in CA-G.R. CV No. 95367.

¹ *Rollo*, pp. 8-33.

² Id. at 35-46. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Mario L. Guarifia III and Manuel M. Barrios, concurring.

³ Id. at 48-50. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Ricardo R. Rosario and Manuel M. Barrios, concurring.

⁴ Seventh Division and Special Former Seventh Division, respectively.

The Facts and Antecedent Proceedings

As culled from the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

On July 28, 2003, ICNA filed an Amended Complaint⁵ for collection of sum of money (Complaint) arising from marine insurance coverage on two (2) musical instruments imported from Melbourne Australia on April 22, 2002.

The Complaint, which was filed before the Regional Trial Court of Makati City, Branch 139 (RTC), was instituted against South East Asia Container Line (SEACOL) and the unknown owner/charterer of the vessel M/S Buxcrown, both doing business in the Philippines through its local ship agent Unitrans, and against the unknown charterer of M/S Doris Wulff, doing business in the Philippines through its local ship agent TSA, for the collection of the principal amount of Twenty-Two Thousand, Six Hundred Fifty-Seven Dollars and Eighty Three Cents (US\$22,657.83) with interests thereon and attorney's fees. The case was docketed as Civil Case No. 03-505.

ICNA alleged in its Complaint that:

1. On or about 22 April 2002, in Melbourne, Australia, SEACOL [, a foreign company,] solicited and received shipment of pieces of STC musical instruments from the shipper Dominant Musical Instrument for transportation to and delivery at the port of Manila, complete and in good condition, as evidenced by Bill of Lading No. 502645. SEACOL then loaded the insured shipment on board M/S Buxcrown for transportation from Melbourne Australia to Singapore. In Singapore, the shipment was transferred from M/S Buxcrown to M/S Doris Wulff for final transportation to the port of Manila.
2. The aforesaid shipment was insured with ICNA against all risk under its Policy No. MOPA-06310 in favor of the consignee, San Miguel Foundation for the Performing Arts (San Miguel).
3. On 12 May 2002, M/S Doris Wulff arrived and docked at the Manila International Container Port, North Harbor, Manila. The container van was discharged from the vessel [, was received by Unitrans,] and upon stripping the contents thereof, it was found that two of the cartons containing the musical instruments were in bad order condition, per Turn Over Survey Report⁶ dated 14 May 2002. Unitrans then delivered the subject shipment to the consignee. After further inspection, it was found out that two units of musical instruments were damaged and could no longer be used for their intended purpose, hence were declared a total loss;
4. Obviously, the damages sustained by the insured cargo were caused by the fault and negligence of the [therein] defendants;

⁵ *Rollo*, pp. 65-69.

⁶ *Id.* at 72.



5. Formal claims were filed against [the therein] defendants but they refused and failed to pay the same without valid and legal grounds;
6. As cargo-insurer of the subject shipment and by virtue of the insurance claim filed by the consignee, ICNA paid the sum of \$22,657.83.
7. By reason of the said payment, ICNA was subrogated to consignee's rights of recovery against [the] defendants [therein];
8. Due to the unjustified refusal of the defendants [therein] to pay its claims, ICNA was constrained to engage the services of counsel.⁷

In its Answer with Counterclaim⁸ dated July 8, 2004, Unitrans denied being a ship agent of SEACOL and the vessel M/S Buxcrown's unknown owner or charter. According to Unitrans, BTI Logistics PTY LTD. (BTI Logistics), a foreign freight forwarder, engaged its services as delivery or receiving agent in connection to the subject shipment. As such agent, Unitrans' obligations were limited to receiving and handling the bill of lading sent to it by BTI Logistics, prepare an inward cargo manifest, notify the party indicated of the arrival of the subject shipment, and release the bill of lading upon order of the consignee or its representative so that the subject shipment could be withdrawn from the pier/customs. It further alleged that the consignee, San Miguel, also engaged its services as customs broker for the subject shipment. As such, Unitrans' obligation was limited to paying on behalf of San Miguel the necessary duties and kindred fees, file with the Bureau of Customs (BOC) the Import Entry Internal Revenue Declaration together with other pertinent documents, **as well as to pick up the shipment and then transport and deliver the said shipment to the consignee's premises in good condition.**

On its part, TSA and the unknown charterer of M/S Doris Wulff alleged in their Amended Answer with Compulsory Counterclaim⁹ dated July 11, 2004 that while TSA is indeed the commercial agent of M/S Doris Wulff, both parties are not parties whatsoever to the bill of lading and have no connection in any way with SEACOL, the unknown owner and/or charterer of the vessel M/S Buxcrown and Unitrans. It was further alleged that the subject shipment was discharged from the vessel M/S Doris Wulff complete and in the same condition as when it was loaded therein, which is a fact stated in the Turn-Over Survey Report.

The Ruling of the RTC

In its Decision¹⁰ dated March 29, 2010, the RTC granted the Complaint and held Unitrans liable to ICNA for the sum of US\$22,657.83 or its equivalent in Philippine Peso, *i.e.*, One Million, Forty-Two Thousand, Two Hundred Sixty Pesos and Eighteen Centavos (₱1,042,260.18) with interest. The dispositive portion of the RTC's Decision reads:

⁷ Id. at 36-37.

⁸ Id. at 84-90.

⁹ Id. at 98-109.

¹⁰ Id. at 51-62. Penned by Presiding Judge Cesar O. Untalan.



WHEREFORE, in view of the foregoing considerations, the Court hereby **GRANTS** in favor of the plaintiff against defendant Unitrans, hence Unitrans is hereby ordered to pay plaintiff the sum of P1,042,260.18 (US\$22,657.83XP46.00), with interest at six percent (6%) per annum from date hereof until finality, and twelve percent (12%) per annum from finality until fully paid plus cost of suit.

The complaint against TMS is hereby **DISMISSED** for insufficiency of evidence including the counterclaim of TMS.

SO ORDERED.¹¹

The RTC found that the witness of Unitrans itself admitted in open court that “Unitrans is a non-vessel operating common carrier (NVOCC). Moreover, this witness admitted that Unitrans is the delivery and collecting agent of BTI, who is duty bound to [deliver] the subject shipment in good order and condition to San Miguel. Thus, Unitrans is a common carrier. Under Article 1742 of the New Civil Code, it states: ‘Even if the loss, destruction, or deterioration of the goods should be caused by the character of the goods, or [the] faulty nature of the packing or of the containers, the common carrier must exercise due diligence to forestall or lessen the loss.’ It appears that Unitrans, as common carrier, did not observe this requirement of the law.”¹²

Feeling aggrieved, Unitrans appealed the RTC’s Decision before the CA.¹³

The Ruling of the CA

In its assailed Decision, the CA denied Unitrans’ appeal for lack of merit. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DENIED** and the Decision appealed from is **AFFIRMED**.

IT IS SO ORDERED.¹⁴

In sum, the CA denied Unitrans’ argument that the failure of the Court to issue summons and acquire jurisdiction with respect to SEACOL and the unknown charterer/owner of M/S Buxcrown, which are based abroad, is tantamount to a failure to include indispensable parties because Unitrans failed to show that the aforesaid entities are indispensable parties. As observed by the CA, “Unitrans merely concluded that the said parties were

¹¹ Id. at 61-62.

¹² Id. at 61.

¹³ The recital of facts and records of the case do not reveal if Unitrans filed a Motion for Reconsideration of the RTC’s Decision.

¹⁴ *Rollo*, p. 45.



indispensable because they were repeatedly impleaded by ICNA as defendants in its original complaint x x x.”¹⁵

Further, “[t]he contention of Unitrans, that the trial court x x x had no factual and legal basis in holding it liable as a common carrier and agent of BTI Logistics is sorely bereft of merit.”¹⁶

Unitrans filed its Motion for Clarification and Reconsideration¹⁷ of the assailed Decision on November 17, 2011, which was denied by the CA in its assailed Resolution.

Hence, the instant Petition.

TSA and the unknown charterer of M/S Doris Wullf filed their Comment (To Petitioner’s Petition for Review on Certiorari)¹⁸ on April 23, 2013. ICNA filed its Comment¹⁹ on April 30, 2013. Unitrans filed its Consolidated Reply Brief²⁰ on February 12, 2014.

On October 7, 2016, TSA and the unknown charterer of M/S Doris Wullf filed their Memorandum.²¹ ICNA filed its Memorandum²² on October 18, 2016. Unitrans filed its Memorandum²³ on October 27, 2016.

Issue

The central question to be resolved by the Court is whether the CA was correct in rendering the assailed Decision, which affirmed the RTC’s Decision holding Unitrans liable to ICNA.

The Court’s Ruling

The instant Petition is centered on how “the RTC Decision only singled out herein petitioner [Unitrans] x x x [and] is completely silent on how the rest of the defendants came to be absolved from any liability and/or exonerated from being held solidarily liable with herein petitioner, notwithstanding a prayer therefor in the Complaint.”²⁴

In the main, Unitrans posits the view that the RTC’s finding of liability on the part of Unitrans, as affirmed by the CA, supposedly amounts to a misapprehension of the evidence and the facts.²⁵

¹⁵ Id. at 43.

¹⁶ Id.

¹⁷ Id. at 163-175.

¹⁸ Id. at 213-225.

¹⁹ Id. at 233-241.

²⁰ Id. at 249-253.

²¹ Id. at 278-301.

²² Id. at 302-317.

²³ Id. at 318-342.

²⁴ Id. at 24-25.

²⁵ Id. at 29-30.



Unitrans even goes further by arguing that the RTC Decision is non-compliant with Section 14, Article VIII of the 1987 Constitution, which states that “[n]o decision shall be rendered by any court without expressing therein clearly and distinctively the facts and the law on which it is based.”²⁶ Unitrans opines that the RTC’s Decision transgressed the aforementioned constitutional provision because it was supposedly “totally left in the dark on how and why its co-defendants, except for [TSA], had been absolved.”²⁷

The instant Petition is bereft of merit.

First and foremost, Unitrans’ issue on how the RTC and CA allegedly misapprehended the facts of the instant case and failed to fully appreciate evidence on record is undoubtedly a question of fact, asking the Court to recalibrate, reassess, and reexamine evidentiary matters.

A question of facts exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.²⁸ That is precisely what Unitrans is asking the Court to do – to reassess, reexamine, and recalibrate the evidence on record.

A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration.²⁹ The Court is not a trier of facts. It is not the Court’s function to examine and weigh all over again the evidence presented in the proceedings below.³⁰

Upon careful review of the records of the instant case, the Court finds no cogent reason to reverse the RTC’s and CA’s factual findings and their appreciation of the evidence on record. The Court finds that the RTC’s and CA’s factual and legal conclusion that Unitrans is liable to ICNA with respect to the damaged musical instruments is amply supported by the evidence on record.

As found by the RTC in its Decision, and as affirmed by the CA in its assailed Decision, Unitrans’ own witness, Mr. Gerardo Estanislao Del Rosario (Del Rosario) himself testified in open court that Unitrans, as a **freight forwarding entity and an accredited non-vessel operating common carrier**, was the one engaged by BTI Logistics as its delivery agent in Manila. Del Rosario attested that BTI Logistics was the

²⁶ Id. at 24.

²⁷ Id. at 25.

²⁸ *Republic of the Phils. v. Sandiganbayan*, 426 Phil. 104, 110 (2002).

²⁹ *Bautista v. Puyat Vinyl Products, Inc.*, 416 Phil. 305, 309 (2001).

³⁰ *Republic of the Phils. v. Sandiganbayan*, supra note 28.



forwarding agent in Australia who received the cargo shipment from the consignor for shipment to Manila. Del Rosario further testified that Unitrans acted as the delivery/forwarding agent of BTI Logistics with respect to the subject shipment. Del Rosario unequivocally testified that under its agreement with BTI Logistics, **Unitrans engaged itself “to handle the cargo and to make sure that it was delivered to the consignee from the port of Manila to the consignee.”**³¹ As noted by the CA, “Del Rosario also admitted that in so far as the subject shipment is concerned, Unitrans acted as a local agent of BTI Logistics, which was duty bound to deliver the same to the right party.”³²

Moreover, to reiterate, in its Answer with Counterclaim, Unitrans had already expressly admitted that San Miguel also engaged its services as customs broker for the subject shipment; one of its obligations was to pick up the shipment and then transport and deliver the same to the consignee’s premises in **good condition**.

Having been placed with the obligation to deliver the subject shipment from the port of Manila to San Miguel’s premises in good condition, during the pre-trial conference conducted on June 20, 2007, it was admitted by Unitrans that “[t]he subject shipment was delivered by [petitioner] Unitrans.”³³ Yet, it is not disputed by any party that the subject shipment, *i.e.*, musical instruments, were severely damaged beyond use and did not arrive in good condition at the premises of the consignee, San Miguel. It is indubitably clear that Unitrans failed to fulfill its obligation to deliver the subject shipment in good condition.

Emphasis must be placed on the fact that Unitrans itself admitted, through its own witness and general manager, Del Rosario, that in handling the subject shipment and making sure that it was delivered to the consignee’s premises in good condition as the delivery/forwarding agent, Unitrans was acting as a freight forwarding entity and an accredited non-vessel operating **common carrier**.

Article 1735 of the Civil Code states that if the goods are lost, destroyed or deteriorated, **common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733.**

In turn, Article 1733 states that common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

³¹ *Rollo*, p. 41; emphasis supplied.

³² *Id.* at 44.

³³ *Id.* at 55.

Hence, jurisprudence holds that a common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable. **To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.**³⁴

In the instant case, considering that it is undisputed that the subject goods were severely damaged, the presumption of negligence on the part of the common carrier, *i.e.*, Unitrans, arose. Hence, it had to discharge the burden, by way of adequate proof, that it exercised extraordinary diligence over the goods; it is not enough to show that some other party might have been responsible for the damage. **Unitrans failed to discharge this burden.** Hence, it cannot escape liability.

With respect to Unitrans' argument that it was unfair for it to be subjected to sole liability, as aptly explained by the RTC in its Decision, Unitrans itself, through its own witness, Del Rosario, "declared [that TSA] never had an occasion to handle this subject cargo."³⁵ Hence, the RTC noted that "[t]he witness for [petitioner] Unitrans has practically exempted [respondent TSA] when he stated that the subject cargo [was] never in possession of [TSA]. Thus, [respondent TSA] could not be made liable for [this] obvious reason."³⁶

Hence, for the reasons explained above, the Court is not convinced of Unitrans' argument that the RTC's Decision violated Section 14, Article VIII of the 1987 Constitution. To the contrary, the Court finds that the RTC's Decision clearly and distinctively narrated the facts and the applicable law; the RTC's Decision clearly explained the reason why Unitrans is the entity imposed with the liability.

WHEREFORE, premised considered, the instant Petition is hereby **DENIED**. The Decision dated October 27, 2011 and Resolution dated October 12, 2012 rendered by the Court of Appeals in CA-G.R. CV No. 95367 are **AFFIRMED with MODIFICATION**. The total of the amount adjudged against petitioner and the 6% interest thereon computed by the RTC from its Decision until finality shall earn interest at 6% per annum from finality of this Decision until fully paid plus cost of suit.

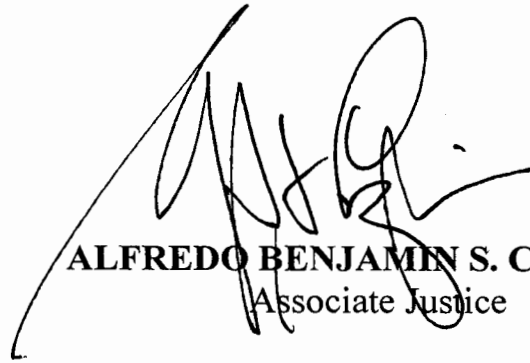
³⁴ *Regional Container Lines (RCL) of Singapore v. The Netherlands Insurance Co. (Phils.), Inc.*, 614 Phil. 485, 493 (2009).

³⁵ *Rollo*, p. 59.

³⁶ *Id.* at 61.




SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

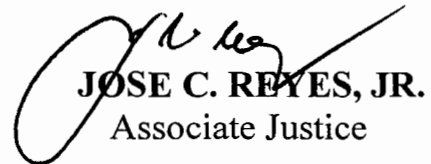
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



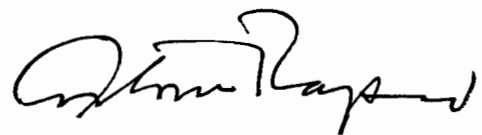
JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

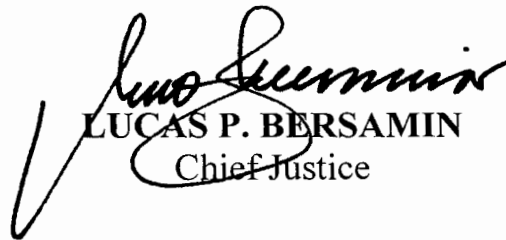
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
Chief Justice

