



Misael Domingo C. Battung III  
Division Clerk of Court  
Third Division

DEC 07 2020

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE

RECEIVED  
DEC 10 2020

BY: R. CANTIAO  
TIME: 2:00

2100 CUSTOMS BROKERS, INC.,  
Petitioner,

G.R. No. 223377

Present:

LEONEN, J.  
Chairperson,  
GISMUNDO,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

- versus -

PHILAM INSURANCE COMPANY  
[now AIG PHILIPPINES  
INSURANCE INC.],

Promulgated:

Respondent.

June 10, 2020

Misael Domingo C. Battung III

X-----X

DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court (Rules), assailing the Decision<sup>2</sup> dated October 12, 2015 and the Resolution<sup>3</sup> dated March 7, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 138302 filed by petitioner 2100 Customs Brokers, Inc. (2100 CBI).

The Antecedents

On February 27, 2001, Ablestik Laboratories (Ablestik) placed two (2) cardboard boxes containing 63 jars of Ablebond Adhesive on board Japan Airlines (JAL) Flight No. JL 5261 in Los Angeles, California, United States of America<sup>4</sup> covered by Airway Bill No. 131-66081842<sup>5</sup> for consignee

<sup>1</sup> Rollo, pp. 3-39.

<sup>2</sup> Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Myra V. Garcia-Fernandez, concurring; id. at 47-59.

<sup>3</sup> Id. at 61-62.

<sup>4</sup> Id. at 5.

<sup>5</sup> Id. at 93.

TSPIC Corporation (TSPIC). After transshipment in Japan, the goods were expected to arrive in Manila aboard JAL Flight No. JL 745 on March 1, 2001.<sup>6</sup> Ablestik issued a handling instruction<sup>7</sup> addressed to its freight forwarding agent, U-Freight America Inc., stating the following:

***SHIPMENTS CONTAINING DRY ICE ARE PERISHABLE AND MUST DELIVER TO OUR CUSTOMER WITHIN 72 HOURS. DO NOT DELAY.***

x x x x

5. Frozen products must maintain temperatures of -40F.
6. If transit is to be longer than 72 hours[,] total shipment must be reiced [sic] in transit or at broker's import destination, depending on flight schedule.
7. Shipment must be stored upon arrival in destination broker's freezer with temperatures of 32F or colder.<sup>8</sup> (Emphasis and italics in the original)

The goods were insured with respondent Philam Insurance Company (Philam; now AIG PHILIPPINES INSURANCE, INC.) against all risks per Marine Cargo Certificate 0801012154<sup>9</sup> and Open Policy Number 9595292.<sup>10</sup>

At 1:30 a.m. on March 1, 2001 (Thursday), the goods arrived at the Ninoy Aquino International Airport (NAIA) and were subsequently stored at the Paircargo warehouse located in NAIA Complex, Paranaque City.<sup>11</sup>

At 2:47 p.m. on March 2, 2001 (Friday), TSPIC notified 2100 CBI that the shipment had arrived.<sup>12</sup> TSPIC allegedly forwarded to 2100 CBI the Packing List from Ablestik indicating "1 Year @-40C or colder/ Dry ice shipment"<sup>13</sup> and the Shipment Handling Instructions<sup>14</sup> from Ablestik stating "SHIPMENTS CONTAINING DRY ICE ARE PERISHABLE AND MUST DELIVER TO OUR CUSTOMER WITHIN 72 HOURS. DO NOT DELAY." It is further stated in the Shipment Handling Instructions that:

Frozen products must maintain temperatures of -40F.  
If transit is to be longer than 72 hours total shipment must be re-iced in transit or at broker's import destination, depending on flight schedule.  
Shipment must be stored upon arrival in destination broker's freezer with temperatures of 32F or colder.<sup>15</sup>

TSPIC also sent an extra copy<sup>16</sup> of Airway Bill No. 131-66081842

---

<sup>6</sup> Id. at 6.  
<sup>7</sup> Id. at 415.  
<sup>8</sup> Id.  
<sup>9</sup> Id. at 413.  
<sup>10</sup> Id. at 48.  
<sup>11</sup> Id. at 6.  
<sup>12</sup> Id.  
<sup>13</sup> Id. at 48  
<sup>14</sup> Id. at 415.  
<sup>15</sup> Id.  
<sup>16</sup> Id. at 93.

9

with “freight collect” stamped on its face which meant that freight charges must be paid to JAL before it could release the original copy of Airway Bill No. 131-66081842. This is required to process the discharge of the shipment from the custody of the Bureau of Customs (BOC).<sup>17</sup> TSPIC informed 2100 CBI that the latter will advance the necessary funds for the freight charges in the amount of ₱14,672.00. Since it was already past 3 p.m. on a Friday, the banks were already closed, and there were no available signatories to sign the checks. The freight charges were only settled on March 5, 2001.<sup>18</sup>

At around 2:00 a.m. on March 6, 2001 (Tuesday) or five (5) days after the date of arrival of the shipment in Manila, 2100 CBI delivered the cargo to TSPIC.<sup>19</sup> Upon receipt of the goods, TSPIC’s representatives found that the dry ice stuffed inside the boxes have melted due to the delay in the delivery as shown in the Damage Report<sup>20</sup> and photographs taken by the Manila Adjusters Surveyors Company (MASCO).<sup>21</sup>

TSPIC filed a claim<sup>22</sup> against 2100 CBI for the value of the shipment but the latter refused to pay. 2100 CBI contended that the delay in the delivery of the goods was due to TSPIC’s failure to give pre-alerts as to the expected arrival thereof and TSPIC’s failure to pay the freight charges on time.<sup>23</sup>

TSPIC then filed a formal claim for the recovery of the value of the damaged goods against Philam. After the survey conducted by the MASCO,<sup>24</sup> payment in the amount of ₱391,917.69 was recommended.<sup>25</sup> Philam paid the insurance claim of TSPIC. On July 30, 2001, a subrogation receipt for Claim No. 200140080A was executed certifying that Philam paid the insurance claim of TSPIC.<sup>26</sup>

Thereafter, Philam filed a claim for reimbursement against 2100 CBI but its claim was denied. Hence, Philam filed a complaint for damages docketed as Civil Case No. 78072 in the Metropolitan Trial Court of Makati City (MeTC).<sup>27</sup>

In 2100 CBI’s Answer with Counterclaim,<sup>28</sup> it denied the allegations against it and maintained that it has no liability to pay consignee TSPIC because it had exercised the diligence and care required by law in the vigilance and custody over the shipment. 2100 CBI claimed that the alleged damage, if there is any, did not occur when the shipment was under its

---

<sup>17</sup> Id. at 6.

<sup>18</sup> Id. at 48, 131; TSN dated October 4, 2019, p. 15.

<sup>19</sup> Id. at 134, 127.

<sup>20</sup> Id. at 238.

<sup>21</sup> Id. at 239-241.

<sup>22</sup> Id. at 135.

<sup>23</sup> Id. at 136.

<sup>24</sup> Id. at 228.

<sup>25</sup> Id. at 233.

<sup>26</sup> Id. at 227.

<sup>27</sup> Id. at 137-141.

<sup>28</sup> Id. at 142-146.

custody. 2100 CBI also argued that it was just a mere customs broker or a commercial agent in the transaction specifically tasked to release the shipment from the BOC only after the receipt of the original import documents from the consignees or freight forwarder or at least a pre-alert advice about the arrival of the shipment from the consignee.<sup>29</sup> In the letter attached to its Answer with Counterclaim, 2100 CBI insisted that it received from TSPIC the shipment documents late in the afternoon of Friday March 2, 2001. Freight payment was advanced by 2100 CBI on March 5, 2001 (Monday) because freight payment is not accepted on Saturdays and Sundays and TSPIC's funds were not sufficient.<sup>30</sup>

For its counterclaim, 2100 CBI maintained that because of the unfounded suit, it was exposed to litigation and was constrained to hire the services of a lawyer in the amount of ₱50,000.00.<sup>31</sup>

### **Ruling of the Metropolitan Trial Court**

In a Decision<sup>32</sup> dated June 6, 2013, the MeTC ordered 2100 CBI to pay Philam the following: (1) ₱391,917.69 as actual damages; (2) ₱10,000.00 as attorney's fees; and (3) costs of suit.<sup>33</sup> The MeTC held that, as customs broker, 2100 CBI is regarded as a common carrier because transportation of goods is an integral part of its business. It is mandated by law to exercise extraordinary diligence in handling TSPIC's shipment.<sup>34</sup>

The MeTC explained that because of the nature of 2100 CBI's business, it should have devised ways to prevent the damage to the cargo under its custody and to deliver the same to the consignee with extraordinary care and diligence. Even if the cargo was not released immediately by the BOC due to insufficient funds for the freight payment, 2100 CBI knew from the start that the cargo contained perishable materials and had to be stored in a cool place and required re-icing beyond 72 hours in transit. The packing list clearly indicated that the items are "1 Year @ -40C or colder/ Dry ice shipment."<sup>35</sup> For the MeTC, 2100 CBI should have undertaken precautionary measures to avoid or lessen the cargo's possible deterioration.<sup>36</sup>

The MeTC noted that in 2100 CBI's DR No. 659556,<sup>37</sup> "the defendant [2100 CBI] accepted the items in good order and condition, noting the carton of frozen adhesive."<sup>38</sup> The MeTC concluded that the goods "went from good order to bad order condition while in the custody of the defendant [2100

---

<sup>29</sup> Id. at 143.

<sup>30</sup> Id. at 136.

<sup>31</sup> Id. at 144.

<sup>32</sup> Penned by Presiding Judge Barbara Aleli H. Briones; id. at 359-364.

<sup>33</sup> Id. at 364.

<sup>34</sup> Id. at 363.

<sup>35</sup> Id. at 364.

<sup>36</sup> Id. at 363-364.

<sup>37</sup> Id. at 134.

<sup>38</sup> Id. at 364.

9

CBI]”<sup>39</sup> and that it “failed to adduce evidence that it exerted extraordinary diligence to prevent the same from occurring.”<sup>40</sup>

In an Order<sup>41</sup> dated January 8, 2014, the MeTC denied the Motion for Reconsideration of 2100 CBI.<sup>42</sup>

### **Ruling of the Regional Trial Court**

In a Decision<sup>43</sup> dated May 23, 2014, the Regional Trial Court (RTC) affirmed the ruling of the MeTC. In sustaining the ruling of the MeTC, the RTC found that the cargo deteriorated while inside the Paircargo warehouse because of the delay in the release and withdrawal to TSPIC, as stated in the Certificate of Survey and Material Status Report. The RTC explained that although the cargo was not released immediately by the BOC due to the insufficient freight payment, 2100 CBI knew at the outset that the cargo contained perishable material which had to be stored in cool places and re-iced after 72 hours in transit.<sup>44</sup> The RTC found that 2100 CBI failed to prove that it exerted extraordinary diligence while the cargo was in its custody.

### **Ruling of the Court of Appeals**

In a Decision<sup>45</sup> dated October 12, 2015, the CA denied the petition of 2100 CBI and affirmed the ruling of the RTC ordering 2100 CBI to pay ₱391,917.69 as actual damages, ₱10,000.00 as attorney’s fees, and costs of suit.<sup>46</sup>

In affirming the ruling of the RTC, the CA held that 2100 CBI, as a common carrier, failed to exercise extraordinary diligence over the goods. The CA observed that 2100 CBI already knew that the goods cannot be released on March 2, 2001 yet it did not take precautionary measures to avoid damage to the cargo. It received the Ablestik packing list which stipulated “1 Year @ -40C or colder/ Dry Ice shipment”<sup>47</sup> on March 2, 2001. Considering that the transit has exceeded 72 hours, 2100 CBI should have re-iced the goods to maintain its required temperature at -40C or colder.<sup>48</sup>

Moreover, the CA found no merit in 2100 CBI’s contention that there was no valid subrogation. The goods were insured with Philam against all risks pursuant to Marine Cargo Certificate 0801012154 and Open Policy Number 9595292. When the shipment was damaged, TSPIC filed a claim for recovery of the value against Philam. The CA concluded that since Philam paid the insurance claim of TSPIC, it is only but proper that Philam be

---

<sup>39</sup> Id.  
<sup>40</sup> Id.  
<sup>41</sup> Penned by Presiding Judge Barbara Aleli H. Briones; id. at 365.  
<sup>42</sup> Id.  
<sup>43</sup> Penned by Judge Marryann E. Corpus-Mañalac; id. at 366-374.  
<sup>44</sup> Id. at 364.  
<sup>45</sup> Supra note 2.  
<sup>46</sup> *Rollo*, p. 59.  
<sup>47</sup> Id. at 58.  
<sup>48</sup> Id. at 57-58.

9

subrogated to the rights of TSPIC.<sup>49</sup>

In a Resolution<sup>50</sup> dated March 7, 2016, the CA denied the Motion for Reconsideration<sup>51</sup> of 2100 CBI.

In the present petition,<sup>52</sup> 2100 CBI insists that Philam failed to show that it was negligent in handling the subject goods from the time the BOC released the goods on March 6, 2001 at 2:00 a.m. until they were delivered to TSPIC in good order and condition on March 6, 2001 at 3:44 a.m., or approximately two hours. It would be physically impossible and contrary to logic and experience for 2100 CBI to implement any control or handling instructions over goods not in its possession or custody. Even assuming that it is a common carrier, 2100 CBI suggests that it is excused from liability as it did not cause the delay in the delivery of the goods to TSPIC. The delay in the release of the goods was due to TSPIC's failure to provide sufficient money for the freight charges to be paid.<sup>53</sup>

2100 CBI also alleges that TSPIC failed to give a copy of the handling instruction. The Shipment Handling Instruction presented was addressed to U-Freight America, Inc., not 2100 CBI.<sup>54</sup>

In addition, 2100 CBI argues that it was incumbent upon Philam to show that the alleged damage was within the coverage of the supposed insurance with TSPIC. 2100 CBI posits that the Marine Cargo Certificate, by itself, does not show the scope of coverage over the subject goods. The contract of insurance must be presented to prove the extent of its coverage.<sup>55</sup> 2100 CBI also points out that as the name "Marine Cargo Certificate" implies, it covers goods transported by sea, and not through air such as the shipment of TSPIC placed onboard JAL Flight No. JL 5261.<sup>56</sup> Even if the Marine Cargo Certificate covers shipment of goods by air, the Insurance Declaration Report attached to the Marine Cargo Certificate only covers Ablestik's shipment on JL Flight No. 745 from Narita, Japan. Shipment of goods aboard JL Flight No. 5621 from USA was allegedly not included.<sup>57</sup>

2100 CBI claims that an insurer who pays the insured for loss or liability not covered by the policy is not subrogated to rights of the latter.<sup>58</sup>

In its Comment,<sup>59</sup> Philam argues that the present petition only raised questions of fact which, as a general rule, are not reviewable under Rule 45

---

<sup>49</sup> Id. at 58.  
<sup>50</sup> Supra note 3.  
<sup>51</sup> *Rollo*, pp. 63-91.  
<sup>52</sup> Id. at 3-38.  
<sup>53</sup> Id. at 21-22.  
<sup>54</sup> Id. at 18.  
<sup>55</sup> Id. at 14-15.  
<sup>56</sup> Id. at 15.  
<sup>57</sup> Id. at 16.  
<sup>58</sup> Id. at 16-17.  
<sup>59</sup> Id. at 554-568.

9

of the Rules.<sup>60</sup> Philam also claims that there was a valid subrogation in its favor by virtue of its payment of TSPIC's insurance claim.<sup>61</sup> Philam also insists that 2100 CBI is a common carrier whose liability is governed by Article 1735 of the Civil Code.<sup>62</sup>

### Issues

The issues to be resolved are:

1. Whether 2100 CBI is a common carrier engaged in the transportation of goods;
2. Whether a Marine Cargo Certificate may include goods transported by air;
3. Whether the insurance policy must be presented to establish the liability of the common carrier to Philam; and
4. Whether 2100 CBI was negligent in handling the shipment of TSPIC, thus making it liable for damages.

### The Court's Ruling

At the outset, We deem it necessary to emphasize that a petition for review on *certiorari* under Rule 45 is limited only to questions of law. As a rule, We do not review factual questions raised under Rule 45 as it is not Our function to analyze or weigh evidence already considered in the proceedings below. Nevertheless, this rule is not absolute. In the case of *Microsoft Corp. v. Farajallah*,<sup>63</sup> the Court declared that a review of the factual findings of the CA is proper in the following instances:

- (1) when the factual findings of the Court of Appeals and the trial court are contradictory;
- (2) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures;
- (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
- (4) when there is a grave abuse of discretion in the appreciation of facts;
- (5) when the Appellate Court, in making its findings, went beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee;
- (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;
- (7) when the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;**
- (8) when the findings of fact are themselves conflicting;

---

<sup>60</sup> Id. at 564.

<sup>61</sup> Id. at 565.

<sup>62</sup> Id. at 566-567.

<sup>63</sup> 742 Phil. 775 (2014).

- (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and  
(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.<sup>64</sup> (Emphasis supplied)

In this case, a careful re-examination of the evidence on record will reveal that the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion. There is a need to review the factual findings of the lower court to determine when 2100 CBI acquired possession over the goods, an issue that is crucial in determining the rights and liabilities of the parties.

**2100 CBI, a customs broker,  
is a common carrier.**

2100 CBI claims that it is not a common carrier because it is not engaged in the transportation or delivery of goods and is primarily engaged in the business of customs brokerage, as reflected in its Amended Articles of Incorporation.<sup>65</sup>

To support 2100 CBI's position, it cited Section 6 of RA No. 9280, otherwise known as "Customs Brokers Act of 2004" the pertinent portion of which states:

*Sec. 6. Scope of the Practice of Customs Brokers. – Customs Broker Profession involves services consisting of consultation, preparation of customs requisite documents for imports and exports, declaration of customs duties and taxes, preparation, signing, filing, lodging and processing of import and export entries; representing importers and exporters before any government agency and private entities in cases related to valuation and classification of imported articles and rendering of other professional services in matters relating to customs and tariff laws, its procedures and practices.*<sup>66</sup>

The contention of 2100 CBI is untenable. A careful study of the scope of the practice of customs brokers reveals that the acts enumerated above clearly pertain to acts incidental and necessary for the transportation of goods to the consignee. The participation of a customs broker, through the acts listed above, are essential to an entity engaged in the business of transporting goods. A customs broker has been regarded as a common carrier because transportation of goods is an integral part of its business. We have already settled in a number of cases that a customs broker

---

<sup>64</sup> Id. at 785.

<sup>65</sup> *Rollo*, pp. 33, 243.

<sup>66</sup> Republic Act No. 9280, Sec. 6.

9

is a common carrier because it undertakes to deliver goods for a pecuniary consideration.<sup>67</sup>

The fact that 2100 CBI is a common carrier is buttressed by the testimony of its own witness, Ildefonso Magnawa (Magnawa), the Night Operations Manager of 2100 CBI, in the following exchange:

Q Can you describe what is the procedure of 2100 Customs Brokers, Inc. for shipment clearances with the Customs?

A Normally, we have to **receive the original airway bill copy and then we have to prepare the import documents which has import entry and other supporting papers like the Bureau of Customs and then proceed to releasing the cargo from the warehouse and delivery of the cargo to the consignee.**

Q Mr. Witness, during this process of shipment clearance, where is the shipment or the goods covered by the transaction?

A The cargo is stored at the warehouse.

Q And who has custody of this cargo?

A The cargo is in the custody of the warehouse who was under the control of the Bureau of Customs.

Q How about the customs broker like 2100 Customs Brokers, Inc, has it having [sic] custody of this cargo at the time of the shipment clearance?

A The custody of 2100 was that if it was already released from the warehouse. It was during delivery of the cargo from the warehouse to the consignee. That is the time the cargo is under their custody.<sup>68</sup>  
(Emphasis supplied)

No matter how minimal or short the period the goods are placed in the custody of 2100 CBI, it remains settled that the participation of 2100 CBI is indispensable to the delivery of the goods to TSPIC. For undertaking the transport of the cargo from Paircargo warehouse to TSPIC's warehouse for a fee, 2100 CBI is considered a common carrier.

**A Marine Cargo Certificate  
may include goods  
transported by air.**

2100 CBI posits that, as the name "Marine Cargo Certificate" implies, it covers goods transported by sea, and not through air such as the shipment of TSPIC.<sup>69</sup>

2100 CBI is mistaken. Simply because the word "marine" was used in Marine Cargo Certificate does not mean that TSPIC availed the wrong

<sup>67</sup> *Schmitz Transport & Brokerage Corp. v. Transport Venture Inc.*, 496 Phil. 437, 450 (2005), citing *A.F. Sanchez Brokerage Inc. v. Court of Appeals*, 488 Phil. 430, 441.

<sup>68</sup> *Rollo*, pp. 104-105; TSN dated August 27, 2009, pp. 7-8.

<sup>69</sup> *Id.* at 15.

9

insurance policy for its cargo transported through airplane. Section 101(a)(2) of Republic Act No. (R.A). 10607 states:

Sec. 101. Marine Insurance includes:

(a) Insurance against loss of or damage to:

x x x x

2) Person or property in connection with or appertaining to a marine, **inland marine**, transit or transportation insurance, including liability for loss of or damage arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to any person arising out of ownership, maintenance, or use of automobiles); x x x<sup>70</sup>  
(Emphasis supplied)

Thus, the scope of marine insurance includes inland marine insurance and covers over the land transportation perils of property shipped by airplanes.<sup>71</sup>

**Presentation of the insurance policy is necessary.**

Marine Cargo Certificate No. 0801012154 certifies that Philam received the premium for Open Policy Number 9595292 and details the clauses, warranties, and special conditions of the policy.<sup>72</sup>

Noticeably, Open Policy Number 9595292 was not presented during trial nor on appeal. From the start, 2100 CBI had already raised the issue of non-presentation of the insurance policy yet it was never produced by Philam. The issue was also repeatedly raised on appeal.<sup>73</sup>

Rule 130, Section 3, of the Rules states:

Sec. 3. *Original document must be produced; exceptions.* – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

<sup>70</sup> Republic Act No. 10607, Sec. 101.

<sup>71</sup> De Leon, H., *The Insurance Code of the Philippines Annotated* (2006), p. 306.

<sup>72</sup> *Rollo*, p. 413.

<sup>73</sup> *Id.* at 336-337, 386-388

- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The original copy of the insurance policy is the best proof of its contents. The contract of insurance must be presented in evidence to indicate the extent of its coverage.<sup>74</sup> At most, Marine Cargo Certificate No. 0801012154<sup>75</sup> and the subrogation receipt<sup>76</sup> may be used to establish the relationship between the insurer and the consignee and the amount paid to settle the claim. The subrogation receipt, by itself, is not sufficient to prove a claim holding an insurer liable for damage sustained by an insured item.<sup>77</sup> These documents are not sufficient to prove that the damage to the cargo is compensable under the insurance policy chargeable against 2100 CBI.

In addition, Section 7, Rule 8 of the Rules provides:

*Sec. 7. Action or defense based on document.* – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.<sup>78</sup>

As an actionable document, the insurance policy must be presented in order to determine whether the damage sustained by the cargo of TSPIC is caused by a peril or risk covered by the policy.

In the absence of proof of the contents of the policy confirming that the damage to the cargo is covered by the insurance policy chargeable against 2100 CBI, Philam cannot hold 2100 CBI responsible for the damage to the cargo. Philam's failure to present the original copy, which was presumably in its possession, or even a copy of it, for unknown reasons, is fatal to its claim against 2100 CBI as this document is the primary basis for its claim of right to subrogation. Had a copy of the insurance policy been presented by Philam, it would have clearly delineated the scope of its coverage. We cannot ignore the possibility that the insurance policy did not cover all phases of handling the shipment.

<sup>74</sup> See *Wallem Philippines Shipping Inc. v. Prudential Guarantee & Assurance Inc.*, 445 Phil.136 (2003).

<sup>75</sup> *Rollo*, pp. 336-337, 386-388.

<sup>76</sup> *Id.* at 227.

<sup>77</sup> *Home Insurance Corp. v. Court of Appeals*, 296-A Phil. 421, 424 (1993).

<sup>78</sup> RULES OF COURT, Rule 8, Sec. 7.

9

**2100 CBI is not negligent in handling the shipment of TSPIC.**

Assuming *arguendo* that the risk or peril that caused the damage to the cargo is covered by the insurance policy, We find that 2100 CBI was not negligent in handling the shipment of TSPIC.

It must be pointed out that the arrangement for the payment of the freight charges is on a "Freight Collect" basis which means that the consignee or receiver of the goods will be responsible for paying the freight and other charges<sup>79</sup> in the total amount of ₱14,672.00. This is confirmed by Magnawa in his testimony, the relevant portion of which is reproduced below:

- Q What is freight collect means [sic]?
- A It is the freight collect of the shipment from origin to Philippines.
- Q And who is supposed to pay that?
- A TSPIC.
- Q And how much freight or how much fund would TSPIC provided [sic] for this cargo?
- A The freight is Php 14,672.00 and there is a requirement for importer that they have to post a fund deposited to the bank that is for the import processing fee for every shipment and **it so happened that it is insufficient.**
- Q After finding out that there was insufficient fund, what did you do next?
- A We informed TSPIC that they are insufficient in fund.
- Q What happened after you informed TSPIC of the insufficient fund?
- A We kept waiting until they advised us March 5 in the afternoon almost 5:00 o'clock. We started processing on backdoor procedure.<sup>80</sup> (Emphasis supplied)

2100 CBI's customs representative, Elmer Remo (Remo) also corroborated Magnawa's testimony, as revealed in the following exchange:

- Q Mr. Witness, the defendant here mentioned that there were handling instructions forwarded to the freight forwarders, can you confirm if [2100] Customs Brokers, Inc. received this shipment handling instructions [sic].
- A No, ma'am.
- Q For the record, I am showing to the witness Exhibit "H" which was also previously marked as defendant's Exhibit "8". Mr. Witness, the clearance of these goods and the delivery from the time it

<sup>79</sup> *MOF Co., Inc. v. Shin Yang Brokerage Corp.*, 623 Phil. 424, 426 (2009).

<sup>80</sup> *Rollo*, pp. 110-111; TSN dated August 27, 2009, pp. 13-14.

arrived took five (5) days, to what do you attribute the length of period it took for the goods to be delivered?

A We were informed on March 2 by the consignee TSPIC that they received an adhesive shipment and it was **freight collect**, ma'am. Then **on Saturday – Sunday, March 3 and 4, the Japan Airlines do not accept payment on weekends.**

Q What time did you received [sic] the notice on Friday, March 2?

A Late it [sic] the afternoon, ma'am.

Q Approximately what time are you referring to?

A Past three (3), ma'am.

Q And why do you consider that late already?

A Because **if we were going to advance the freight charges, the banks are already closed and no one will sign the checks, ma'am.**

COURT:

Were you able to pay the freight collect charges on March 5, Monday?

WITNESS:

Yes, Your Honor, March 5.

Q You were able to pay Japan Airlines on March 5?

A Yes, Your Honor, March 5.

Q But the shipment was released to you early morning of March 6?

A Yes ma'am, we paid them on March 5 then nagkaproblema yung import processing fee then hapon na po nila naayos sa Customs yung payment. That is the only time we continue with the processing, Your Honor.

Q That is why you received this shipment early morning on March 6.

A Yes, Your Honor.<sup>81</sup> [Emphasis supplied]

From the foregoing, it is clear that there is no need to rely on the presumption of the law that a common carrier is presumed to have been at fault or have acted negligently in case of damaged goods. This is because the delay in the release of the goods was through no fault of 2100 CBI. The damage was caused by the late payment of the funds needed for the release of the goods from the custody of BOC which was originally TSPIC's responsibility. It must be noted that while waiting for the freight charges to be settled, 2100 CBI did not have custody over the shipment.

The *pro-forma* stipulation in DR No. 659556<sup>82</sup> that TSPIC received the cargo in good order and condition from 2100 CBI does not disprove the claim of 2100 CBI that the cargo may have been damaged while it was in the possession of BOC. It is important to note that at the time the cargo was released to 2100 CBI from BOC and delivered to TSPIC, the cargo remained sealed. Thus, said *pro-forma* stipulation did not accurately describe the

<sup>81</sup> Id. at 130-132; TSN dated October 4, 2011, pp. 14-17.

<sup>82</sup> Id. at 134.

9

condition of the cargo at the time delivery was made to TSPIC and cannot be used as basis for holding 2100 CBI accountable for the damaged goods.

As aptly pointed out by 2100 CBI in its Reply,<sup>83</sup> there is no basis to conclude that it was apprised of Ablestik's specific handling instructions and could have taken precautionary measures to avoid damage to the cargo.<sup>84</sup> 2100 CBI, through the testimony of Remo, denied receiving handling instructions from TSPIC.<sup>85</sup> The respective testimonies of Elmer Dumo (Dumo), Philam's Senior Claims Examiner and Renato Layug, former Assistant Manager for Cargo Survey of MASCO confirm that they do not have personal knowledge that the subject goods were damaged as none of them personally examined the goods nor prepared any of the documents presented to establish the damage.<sup>86</sup> Thus, their testimonies are hearsay and do not have any probative value.

It is clear that the only handling instruction 2100 CBI received was to "PLS. PUT INTO (*sic*) COOL ROOM UPON ARRIVAL," which was stated in Airway Bill No. 131-66081842.<sup>87</sup> 2100 CBI could not have undertaken precautionary measures nor implement handling instructions because it did not have possession of the cargo until 2:00 a.m. of March 6, 2001 – when the goods were released by the BOC. It must be emphasized that, until the freight charges are paid, JAL cannot release the original copy of Airway Bill No. 131-66081842 and the goods to 2100 CBI. Payment of the freight charges is required to process the release of the goods in the custody of the BOC. At 2:47 p.m. on March 2, 2001, 2100 CBI only received a duplicate copy of Airway Bill No. 131-66081842.<sup>88</sup> Therefore, without the original copy of the Airway Bill No. 131-66081842, the goods remained in the possession of the BOC and were not released to 2100 CBI.

Moreover, 2100 CBI may only be expected to implement the handling instructions when the shipment was in the Paircargo warehouse which was under the control of the BOC. It would be physically impossible and unreasonable for 2100 CBI to implement any control or handling instructions over goods not in its custody. Based on the evidence presented, Philam failed to establish that negligence in the handling of the shipment could be attributed to 2100 CBI from the time the BOC released the goods to the custody of 2100 CBI at 2:00 a.m. on March 6, 2001 until they were delivered to TSPIC in good order and condition at 3:44 a.m. on March 6, 2001.

Accordingly, as an insurer who pays the insured for loss or liability not proven to be compensable under the subject policy, Philam is not subrogated to the rights of TSPIC.

---

<sup>83</sup> Id. at 583-584.

<sup>84</sup> Id. at 584.

<sup>85</sup> Id. at 128-129; TSN dated October 4, 2011, pp. 12-13.

<sup>86</sup> Id. at 178-179, 216-218; TSN dated May 10, 2007, pp. 17-18; TSN dated August 28, 2008, p. 2.

<sup>87</sup> *Rollo*, p. 93.

<sup>88</sup> Id. at 122-124; Id. at 104-105; TSN dated August 27, 2009, pp. 7-8.

9

**WHEREFORE**, premises considered, the petition is **GRANTED**. Civil Case No. 78072 filed against petitioner 2100 Customs Brokers, Inc. is hereby **DISMISSED**.

**SO ORDERED.**



**ROSMARI D. CARANDANG**  
*Associate Justice*

**WE CONCUR:**



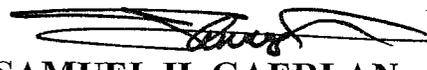
**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*  
*Chairperson*



**ALEXANDER G. GESMUNDO**  
*Associate Justice*



**RODIL V. ZALAMEDA**  
*Associate Justice*



**SAMUEL H. GAERLAN**  
*Associate Justice*

**ATTESTATION**

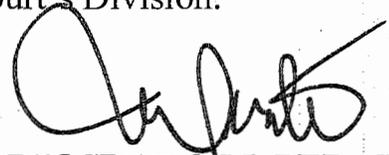
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*  
*Third Division, 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.



**DIOSDADO M. PERALTA**  
*Chief Justice*

CERTIFIED TRUE COPY

*MicDcBatt*  
**MISAELO DOMINGO C. BATTUNG III**  
Division Clerk of Court  
Third Division

DEC 07 2020