Supreme Court of the Philippines

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG, PA/AMERICAN INTERNATIONAL UNDERWRITER (PHIL.) INC. v. STOLT-NIELSEN PHILIPPINES, INC. and COURT OF APPEALS - [1990] PHSC 353 (26 April 1990)

PHILIPPINE JURISPRUDENCE - FULL TEXT

The Lawphil Project - Arellano Law Foundation

Republic of the Philippines

SUPREME COURT

Manila

SECOND DIVISION

G.R. No. 87958 April 26, 1990

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG, PA/AMERICAN INTERNATIONAL UNDERWRITER (PHIL.) INC., petitioners,

vs.

STOLT-NIELSEN PHILIPPINES, INC. and COURT OF APPEALS, respondents.

Fajardo Law Offices for petitioners. Sycip, Salazar, Hernandez & Gatmaitan for Stolt-Nielsen Phil., Inc.

MELENCIO-HERRERA, *J.:*

We uphold the ruling of respondent Court of Appeals that the claim or dispute herein is arbitrable.

On 9 January 1985, United Coconut Chemicals, Inc. (hereinafter referred to as SHIPPER) shipped 404.774 metric tons of distilled C6-C18 fatty acid on board MT "Stolt Sceptre," a tanker owned by Stolt-Nielsen Philippines Inc. (hereinafter referred to as CARRIER), from Bauan, Batangas, Philippines, consigned to "Nieuwe Matex" at Rotterdam, Netherlands, covered by Tanker Bill of Lading BL No. BAT-1. The shipment was insured under a marine cargo policy with Petitioner National Union Fire Insurance Company of Pittsburg (hereinafter referred to as INSURER), a non-life American insurance corporation, through its settling agent in the Philippines, the American International Underwriters (Philippines), Inc., the other petitioner herein.

It appears that the Bill of Lading issued by the CARRIER contained a general statement of incorporation of the terms of a Charter Party between the SHIPPER and Parcel Tankers, Inc., entered into in Greenwich, Connecticut, U.S.A.

Upon receipt of the cargo by the CONSIGNEE in the Netherlands, it was found to be discolored and totally contaminated. The claim filed by the SHIPPER-ASSURED with the CARRIER having been denied, the INSURER indemnified the SHIPPER pursuant to the stipulation in the marine cargo policy covering said shipment.

On 21 April 1986, as subrogee of the SHIPPER-ASSURED, the INSURER filed suit against the CARRIER, before the Regional Trial Court of Makati, Branch 58 (RTC), for recovery of the sum of P1,619,469.21, with interest, representing the amount the INSURER had paid the SHIPPER-ASSURED. The CARRIER moved to dismiss/suspend the proceedings on the ground that the RTC had no jurisdiction over the claim the same being an arbitrable one; that as subrogee of the SHIPPER-ASSURED, the INSURER is subject to the provisions of the Bill of Lading, which includes a provision that the shipment is carried under and pursuant to the terms of the Charter Party, dated 21 December 1984, between the SHIPPER-ASSURED and Parcel Tankers, Inc. providing for arbitration.

The INSURER opposed the dismissal/suspension of the proceedings on the ground that it was not legally bound to submit the claim for arbitration inasmuch as the arbitration clause provided in the Charter Party was not incorporated into the Bill of Lading, and that the arbitration clause is void for being unreasonable and unjust. On 28 July 1987, the RTC [1] denied the Motion, but subsequently reconsidered its action on 19 November 1987, and deferred resolution on the Motion to Dismiss/Suspend Proceedings until trial on the merits "since the ground alleged in said motion does not appear to be indubitable."

The CARRIER then resorted to a Petition for C *ertiorari* and Prohibition with prayer for Preliminary Injunction and/or Temporary Restraining Order before the respondent Appellate Court seeking the annulment of the 19 November 1987 RTC Order. On 12 April 1989, the respondent Court [2] promulgated the Decision now under review, with the following dispositive tenor:

WHEREFORE', the order of respondent Judge dated November 19, 1987 deferring resolution on petitioner Stolt-Nielsen's Motion to Dismiss/Suspend Proceedings is hereby SET ASIDE; private respondent NUFIC (the INSURER) is ordered to refer its claims for arbitration; and respondent Judge is directed to suspend the proceedings in Civil case No. 13498 pending the return of the corresponding arbitral award.

On 21 August 1989, we resolved to give due course and required the parties to submit their respective Memoranda, which they have done, the last filed having been Noted on 23 October 1989.

First, herein petitioner-INSURER alleges that the RTC Order deferring resolution of the CARRIER's Motion to Dismiss constitutes an interlocutory order, which can not be the subject of a special civil action on *certiorari* and prohibition.

Generally, this would be true. However, the case before us falls under the exception. While a Court Order deferring action on a motion to dismiss until the trial is interlocutory and cannot be challenged until final judgment, still, where it clearly appears that the trial Judge or Court is proceeding in excess or outside of its jurisdiction, the remedy of prohibition would lie since it would be useless and a waste of time to go ahead with the proceedings (University of Sto. Tomas vs. Villanueva, 106 Phil. 439, [1959] *citing* Philippine International Fair, Inc., et al., vs. Ibanez, et al., 94 Phil. 424 [1954]; Enrique vs. Macadaeg, et al., 84 Phil. 674 [1949]; San Beda College vs. CIR, 97 Phil. 787 [1955]). Even a cursory reading of the subject Bill of Lading, in relation to the Charter Party, reveals the Court's patent lack of jurisdiction to hear and decide the claim.

We proceed to the second but more crucial issue: Are the terms of the Charter Party, particularly the provision on arbitration, binding on the INSURER?

The INSURER postulates that it cannot be bound by the Charter Party because, as insurer, it is subrogee only with respect to the Bill of Lading; that only the Bill of Lading should regulate the relation among the INSURER, the holder of the Bill of Lading, and the CARRIER; and that in order to bind it, the arbitral clause in the Charter Party should have been incorporated into the Bill of Lading.

We rule against that submission.

The pertinent portion of the Bill of Lading in issue provides in part:

This shipment is carried under and pursuant to the terms of the Charter dated December 21st 1984 at Greenwich, Connecticut, U.S.A. between Parcel Tankers. Inc. and United Coconut Chemicals, Ind. as Charterer and *all the terms whatsoever of the said Charter* except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment.

Copy of the Charter may be obtained from the Shipper or Charterer. (Emphasis supplied)

While the provision on arbitration in the Charter Party reads:

H. Special Provisions.

xxx xxx xxx 4. Arbitration. Any dispute arising from the making, performance or termination of this Charter Party shall be settled in New York, Owner and Charterer each appointing an arbitrator, who shall be a merchant, broker or individual experienced in the shipping business; the two thus chosen, if they cannot agree, shall nominate a third arbitrator who shall be an admiralty lawyer. Such arbitration shall be conducted in conformity with the provisions and procedure of the United States arbitration act, and a judgment of the court shall be entered upon any award made by said arbitrator. Nothing in this clause shall be deemed to waive Owner's right to lien on the cargo for freight, deed of freight, or demurrage.

Clearly, the Bill of Lading incorporates by reference the terms of the Charter Party. It is settled law that the charter may be made part of the contract under which the goods are carried by an appropriate reference in the Bill of Lading (Wharton Poor, Charter Parties and Ocean Bills of Lading (5th ed., p. 71). This should include the provision on arbitration even without a specific stipulation to that effect. The entire contract must be read together and its clauses interpreted in relation to one another and not by parts. Moreover, in cases where a Bill of Lading has been issued by a carrier covering goods shipped aboard a vessel under a charter party, and the charterer is also the holder of the bill of lading, "the bill of lading operates as the receipt for the goods, and as document of title passing the property of the goods, but not as varying the contract between the charterer and the shipowner" (In re Marine Sulphur Queen, 460 F 2d 89, 103 [2d Cir. 1972]; Ministry of Commerce vs. Marine Tankers Corp. 194 F. Supp 161, 163 [S.D.N.Y. 1960]; Greenstone Shipping Co., S.A. vs. Transworld Oil, Ltd., 588 F Supp [D.El. 1984]). The Bill of Lading becomes, therefore, only a receipt and not the contract of carriage in a charter of the entire vessel, for the contract is the Charter Party (Shell Oil Co. vs. M/T Gilda, 790 F 2d 1209, 1212 [5th Cir. 1986]; Home Insurance Co. vs. American Steamship Agencies, Inc., G.R. No. L-25599, 4 April 1968, 23 SCRA 24), and is the law between the parties who are bound by its terms and condition provided that these are not contrary to law, morals, good customs, public order and public policy (Article 1306, Civil Code).

As the respondent Appellate Court found, the INSURER "cannot feign ignorance of the arbitration clause since it was already charged with notice of the existence of the charter party due to an appropriate reference thereof in the bill of lading and, by the exercise of ordinary diligence, it could have easily obtained a copy thereof either from the shipper or the charterer.

We hold, therefore, that the INSURER cannot avoid the binding effect of the arbitration clause. By subrogation, it became privy to the Charter Party as fully as the SHIPPER before the latter was indemnified, because as subrogee it stepped into the shoes of the SHIPPER-ASSURED and is subrogated merely to the latter's rights. It can recover only the amount that is recoverable by the assured. And since the right of action of the SHIPPER-ASSURED is governed by the provisions of the Bill of Lading, which includes by reference the terms of the Charter Party, necessarily, a suit by the INSURER is subject to the same agreements (see St. Paul Fire and Marine Insurance Co. vs. Macondray, G.R. No. L-27796, 25 March 1976, 70 SCRA 122).

Stated otherwise, as the subrogee of the SHIPPER, the INSURER is contractually bound by the terms of the Charter party. Any claim of inconvenience or additional expense on its part should not render the arbitration clause unenforceable.

Arbitration, as an alternative mode of settling disputes, has long been recognized and accepted in our jurisdiction (Chapter 2, Title XIV, Book IV, Civil Code). Republic Act No. 876 (The Arbitration Law) also expressly authorizes arbitration of domestic disputes. Foreign arbitration as a system of settling commercial disputes of an international character was likewise recognized when the Philippines adhered to the United Nations "Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958," under the 10 May 1965 Resolution No. 71 of the Philippine Senate, giving reciprocal recognition and allowing enforcement of international arbitration agreements between parties of different nationalities within a contracting state. Thus, it pertinently provides:

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

It has not been shown that the arbitral clause in question is null and void, inoperative, or incapable of being performed. Nor has any conflict been pointed out between the Charter Party and the Bill of Lading.

In fine, referral to arbitration in New York pursuant to the arbitration clause, and suspension of the proceedings in Civil Case No. 13498 below, pending the return of the arbitral award, is, indeed called for.

WHEREFORE, finding no reversible error in respondent Appellate Court's 12 April 1989 Decision, the instant Petition for Review on *certiorari* is DENIED and the said judgment is hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Padilla, Sarmiento and Regalado JJ., concur. Paras, J., took no part.

[#] Footnotes

1 Judge Zosimo Z. Angeles, Presiding.

2 Penned by Justice Santiago M. Kapunan and concurred in by Justices Ricardo J. Francisco and Abelardo M. Dayrit.

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[#] 87958_4_26_90_footnotes
