REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **11 November 2020** *which reads as follows*:

"G.R. No. 225928 (Candano Shipping Lines, Inc. v. Federal Phoenix Assurance Co., Inc.). – This is an appeal by *certiorari* from the January 8, 2016 Decision[1] and July 18, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 99658, which affirmed the February 8, 2012 Decision[3] and August 24, 2012 Order[4] of the Regional Trial Court of Makati City, Branch 149 *(RTC)*. The RTC held Candano Shipping Lines, Inc. *(petitioner)* liable to pay actual damages in favor of Federal Phoenix Assurance Co., Inc. *(respondent)*.

Antecedents

Respondent alleged in its Complaint[5] that petitioner received a shipment consisting of 542.330 metric tons *(MT)* of copra in bulk from Globe Coco Products Manufacturing Corp. *(shipper)* for transportation and delivery to the shipper's warehouse in Bo. Lidong, Sto. Domingo, Legazpi City, Albay. The cargo was loaded on board petitioner's vessel M/V Ma. Lourdes[6] under Bill of Lading No. 01 and covered by a Marine Open Policy-Commercial MOP No. HDHOC0603968000 issued by respondent in favor of the shipper.[7]

---

[1] *Rollo*, pp. 39-52; penned by Associate Justice Ramon Paul L. Hernando (now a Member of this Court) with Associate Justice Jose C. Reyes, Jr. (now a retired Member of this Court) and Associate Justice Stephen C. Cruz, concurring.
[2] Id. at 54-56.
[3] Id. at 117-129; penned by Presiding Judge Cesar O. Untalan.
[4] Id. at 139.
[5] Id. at 57-62.
[6] "Maria Lourdes" in some parts of the *rollo*.
[7] *Rollo*, p. 40.

12/6

The vessel arrived at the port of Legazpi City on November 25, 2006 but petitioner did not immediately unload the cargo due to a mechanical problem with the ship's crane. Petitioner was able to commence offloading the cargo only on November 28, 2006 and was unable to complete the same when typhoon "*Reming*" struck on November 30, 2006 which caused the vessel to run aground.[8]

Upon delivery on February 6, 2007, the shipper discovered that 358.28 MT of the cargo sustained damages. The shipper declared the said cargo as a total loss with a value of ₱4,813,696.98. Respondent paid the amount in favor of the shipper under the insurance policy and hence subrogated to the rights and causes of action of the shipper against petitioner.[9]

Petitioner denied liability over the damaged cargo in its Answer with Compulsory Counterclaim[10] and argued that any damage or loss to the cargo was brought by typhoon *Reming*. Respondent maintained that it exercised due diligence to prevent loss or damage to the cargo during and after the typhoon; that the shipper and/or consignee failed to file a notice of claim in accordance with Clause 7 of the Bill of Lading; that based on Clause 12, petitioner's liability, if any, shall not exceed ₱35,828.00 because the shipper failed to declare the correct value of the cargo; and that under Clause 11, payment of the insurance indemnity bars respondent from recovering the amount from petitioner.[11]

RTC Ruling

On February 8, 2012, the RTC rendered a decision in favor of herein respondent as follows:

> **WHEREFORE,** judgement is hereby rendered in favor of plaintiff Federal Phoenix Assurance Co., Inc., and against defendant Candano Shipping Lines, Inc., who is ordered to pay plaintiff the amount of Four Million Eight Hundred Thirteen Thousand Six Hundred Ninety-Six and 98/100 (₱4,813,696.98) with interests at 6 percent *per annum* from date hereof up to finality of this Decision, and 12 percent *per annum* from finality of Decision until fully paid, plus costs of suit.
>
> SO ORDERED.[12]

---

[8] Id.
[9] Id.
[10] Id. at 64-72.
[11] Id. at 65-70.
[12] Id. at 128-129; citation omitted.

The RTC found that the loss of the cargo cannot be attributed solely to super typhoon *Reming;* that the testimony of the Second Mate of the vessel and petitioner's own witness, Mr. Ruben B. Brobio, confirmed that petitioner did not immediately unload the cargo upon reaching the Legazpi City port due to a mechanical problem with the vessel's crane and that discharging commenced only in the morning of November 28, 2006;[13] that the vessel ran aground at Polo Island at the height of typhoon *Reming* after it sought shelter at the Sula Anchorage Area; that the vessel remained stranded despite attempts to re-float it; that it took several days for petitioner to transfer the remaining cargo to respondent's other vessels; that it was only on February 6, 2007 that the damaged cargo was finally delivered; and that the 358.285 MT of cargo that remained on the vessel was exposed to rain after the hatch covers were blown away by the typhoon. In sum, the trial court found petitioner to have failed to exert extraordinary diligence to minimize the loss of the subject cargo considering its nature and condition after being soaked in rainwater.[14]

Petitioner filed a Motion for Reconsideration[15] but was denied by the RTC through an Order[16] issued on August 24, 2012. Aggrieved, petitioner appealed to the CA. Petitioner maintained in its appeal that typhoon *Reming* was the proximate cause of the damage on the subject cargo; that the complaint should have been dismissed for failure to comply with a condition precedent based on Clause 7 of the Bill of Lading, that the trial court had no jurisdiction over the complaint because the liability of petitioner, if any, only amounts to ₱92,655.00 under Clause 11; and that based on Clause 12 of the Bill of Lading, respondent is already barred from claiming indemnity from petitioner.[17]

CA Ruling

The CA promulgated the assailed Decision on January 8, 2016 whereby it affirmed the RTC's finding that petitioner's negligence intervened and contributed to the damage of the subject cargo.[18]

As regards the jurisdiction of the RTC over the complaint, the appellate court held that the basis of the trial court's jurisdiction should be based on the sum that respondent seeks to recover under the complaint and not the amount based on petitioner's defense. The CA further explained that

[13] Id. at 125-127.
[14] Id. at 127-128.
[15] Id. at 130-138.
[16] Id. at 139.
[17] Id. at 189-194.
[18] Id. at 47-50.

due to petitioner's failure to set its affirmative defenses for preliminary hearing, petitioner was deemed to have waived the ground that respondent failed to comply with a condition precedent. Finally, the CA held that petitioner failed to adequately explain or prove that respondent violated an express warranty.[19]

Petitioner moved for reconsideration but the CA denied the same in its July 18, 2016 Resolution. The CA held, among others, that petitioner is deemed to have waived the ground of failure to comply with a condition precedent considering that the Pre-Trial Order did not include the issues raised by petitioner in its affirmative defenses.[20]

Hence, this petition.

Issues

Petitioner contends that the CA erred in holding that petitioner waived its affirmative defenses when it did not set the same for preliminary hearing considering that these may still be proved during trial on the merits;[21] that the issues specified in the Pre-Trial Order include petitioner's affirmative defenses;[22] that respondent failed to prove compliance with Clause 7 of the Bill of Lading by filing a claim for loss or damage within twenty-four (24) hours from partial delivery of the cargo;[23] that respondent is barred from claiming indemnity from petitioner pursuant to Clause 11 of the Bill of Lading;[24] and that the RTC had no jurisdiction over the complaint because petitioner's liability, if any, under Clause 12 of the Bill of Lading is in the amount of ₱92,655.00.[25] Petitioner also argues that the insurance policy is void when the shipper breached the requirement that only classed vessels shall be used within allowed voyage areas. It claims that M/V Ma. Lourdes is an unclassed vessel and that the policy expressly excluded voyages from Masbate to Legazpi, Albay.[26]

Respondent counters in its Comment[27] that in rendering its decision, the RTC took into account all the evidence presented by the parties,[28] including the affirmative defenses. In sending a Notice of Loss on December

---

[19] Id. at 50-51.
[20] Id. at 54-55.
[21] Id. at 23-26.
[22] Id. at 29-30.
[23] Id. at 27.
[24] Id. at 27-28.
[25] Id. at 28-29.
[26] Id. at 19-20.
[27] Id. at 214-225.
[28] Id. at 215-216.

5, 2006, respondent had given petitioner the opportunity to verify and investigate its claims.[29] As regards the validity of the insurance policy, respondent argues that an insurance contract is personal between the insurer and the insured to which third persons do not stand to benefit unless expressly named as a beneficiary. Furthermore, as the insurer, respondent may waive its privilege and power to rescind in case of a violation of a warranty.[30]

Based on the above submissions, the Court shall resolve whether the CA committed reversible error: (1) in holding that petitioner waived its affirmative defenses upon its failure to set a preliminary hearing thereon; and (2) in holding petitioner as liable to pay actual damages in the amount of ₱4,813,696.98 in favor of respondent.

Our Ruling

The petition lacks merit.

Section 6, Rule 16 of the 1997 Rules of Civil Procedure[31] provides that a preliminary hearing on the affirmative defenses rests on the sound discretion of the trial court. We have explained in *Misamis Occidental II Electric Cooperative, Inc. v. David*[32] that a preliminary hearing on the affirmative defenses is not mandatory even when it is prayed for considering that it rests largely on the discretion of the trial court, thus:

> In *Municipality of Biñan, Laguna v. Court of Appeals*, decided under the old Rules of Court, we held that a preliminary hearing permitted under Section 5, Rule 16, is not mandatory even when the same is prayed for. It rests largely on the sound discretion of the court, thus:
>
> > SEC. 5. *Pleading grounds as affirmative defenses.* – Any of the grounds for dismissal provided for in this rule, except improper venue, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

---

[29] Id. at 216-220.
[30] Id. at 221-223.
[31] SECTION 6. *Pleading grounds as affirmative defenses.* — If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed. (5a)

The dismissal of the complaint under this section shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer. (n)
[32] 505 Phil. 181 (2005).

> The use of the word "may" in the aforequoted provision shows that such a hearing is not mandatory but discretionary. It is an auxiliary verb indicating liberty, opportunity, permission and possibility.
>
> Such interpretation is now specifically expressed in the 1997 Rules of Civil Procedure. Section 6, Rule 16 provides that a grant of preliminary hearing rests on the sound discretion of the court, to wit –
>
> > SEC. 6. *Pleading grounds as affirmative defenses.* – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.
> >
> > x x x x
>
> Based on the foregoing, a preliminary hearing undeniably is subject to the discretion of the trial court. Absent any showing that the trial court had acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction, as in the present case, the trial court's order granting or dispensing with the need for a preliminary hearing may not be corrected by *certiorari*.[33]

Since the conduct of a preliminary hearing relies on the discretion of the trial court, it is not mandatory for the defendant to file a motion or pray for a hearing on the affirmative defenses. Conversely, the absence of such motion or prayer shall not constitute as a waiver by the defendant of the grounds raised as affirmative defenses. In lieu of a preliminary hearing, the defendant will have to prove his affirmative defenses during the trial on the merits.

Herein petitioner harps on the pronouncement by the CA that petitioner's failure to set the preliminary hearing constituted as a waiver of the grounds invoked as affirmative defenses. Although petitioner may be correct in its contention that its failure to file a motion or pray for a preliminary hearing on the affirmative defenses cannot be construed as a waiver to pursue the same, petitioner failed to comprehend the true import of the CA ruling.

---

[33] Id. at 187-188; citations omitted.

In the July 18, 2016 Resolution denying petitioner's motion for reconsideration, the CA tersely clarified the effect of petitioner's failure to set a preliminary hearing. For purposes of clarity, We quote the pertinent portion of the said resolution:

> Defendant-appellant posited in its appeal that plaintiff-appellee Federal Phoenix Assurance, Co.'s claims for loss were barred by the provisions of the Bill of Lading. This Court addressed this argument by primarily stating that while defendant-appellant filed its *Answer* containing its aforementioned affirmative defense, the said *Answer* was not set for hearing on the said affirmative defense, and even if set for hearing, it is discretionary upon the trial court whether to conduct the said hearing on the affirmative defenses or not. **The trial court merely proceeded with the trial and final disposition of the case without ruling upon the alleged ground for dismissal, and rightly so, since neither was such ground proved during trial.** x x x[34] (emphasis supplied)

Verily, the CA did not attribute the waiver of petitioner's affirmative defenses due to the absence of a preliminary hearing. Instead, the appellate court deemed that petitioner had waived the grounds it raised as affirmative defenses when it failed to prove the same during the trial on the merits. Indeed, when petitioner did not move or pray for a preliminary hearing, it had the duty to support and prove its affirmative defenses during the trial proper.

To recall, petitioner raised, among others, the affirmative defense that respondent did not file a notice of loss within the period provided under Clause 7 of the Bill of Lading. However, petitioner did not offer evidence other than the Bill of Lading to prove its point.[35]

At any rate, petitioner's claim that respondent failed to comply with the notice requirement under Clause 7 of the Bill of Lading lacks merit. The records show that the shipper had notified petitioner of the damage sustained by the remaining cargo onboard M/V Ma. Lourdes through a Notice of Loss[36] dated December 5, 2006, or two (2) months before delivery to the shipper's warehouse. The said letter reads:

---

[34] *Rollo*, p. 54.

[35] Petitioner's Formal Offer of Evidence only included the Bill of Lading, petitioner's Letter dated November 22, 2007, Marine Protest of Ritchie P. Jaculba, Judicial Affidavit of Ruben Brobio and Certified Report of weather and sea conditions from the Philippine Atmospheric, Geophysical and Astronomical Services Administration (Records, Vol II, pp. 204-205). Petitioner presented only two (2) witnesses: Ruben Brobio (Second Mate) and Rosa Barba of the PAGASA.

[36] Records, Vol. II, p. 130.

December 5, 2006

Candano Shipping Lines, Inc.
6/F Victoria Building
429 United Nations Ave., Ermita
Manila, Philippines

NOTICE OF LOSS

Gentlemen/Madam:

This is to formally inform you that our cargo (copra in bulk) shipment from Masbate to Legaspi has been damaged on board the vessel MV Ma. Lourdes while the entire Bicol region takes the beating from typhoon Reming last November 30, 2006. Accordingly, you are requested to make all possible mitigating measures to prevent further damages to the cargo (copra in bulk) while on board the vessel.

The estimated cargo damage is about 400 metric tons and its estimated value is about Seven Million Eight Hundred Eighty Thousand Pesos only (₱7,880,000.00). The company reserves the rights [sic] to revise the estimates when the full facts in details have been ascertained.

Thank you. We do hope for your prompt action on this matter.

Very Truly Yours,

(sgd.)
AIBE UY TAN

On the other hand, Clause 7 of the Bill of Lading No. 01 requires a prior filing of a claim for damages within a prescribed period before a cause of action may accrue on the part of the consignee or its agent, thus:

7. **All claims for damages to the goods must be made to the carrier at the time of delivery to consignee or his agent if the packages or containers show exterior signs of damage, otherwise to be made in writing to the carrier within twenty-four hours, the time of delivery.** Notice of loss due to delay must be given in writing to the carrier within 30 days from the time the goods were ready for delivery, or, in case of non-delivery or misdelivery of shipment, the written notice must be given within 30 days after arrival at the port of discharge of the vessel on which goods were received or, in case of the failure of the vessel on which the goods were shipped to arrive at the port [of] discharge, the written notice must be given within 30 days of the time when she should have arrived. Claims for loss due to delay non-delivery or misdelivery must be presented in writing to the carrier within two months after the arrival of the vessel at the port of discharge, or in case of the failure of the vessel in which the goods were shipped to arrive at the port of discharge written claims shall be made within 80 days of the time the vessel should have arrived. **The giving**

1/14

> **of notice and the filings of claims, as above provided shall be conditions precedent to the accruing of a right of action against the carrier for losses due to delay, non-delivery or misdelivery. In the case of damage to goods, the filing of the claims as above provided shall also constitute a condition precedent to the accrual of the right of actions.** Suits based upon claims arising from damage, delay, non-delivery or misdelivery shall be instituted within one year from the date of the accrual of the right of action. Failure to institute judicial proceeding as herein provided shall constitute a waiver of the claim or right of action, and no agent nor employee of the carrier shall have authority to waive any of the provisions or requirements of this bill of lading. Any action by the shipowner or its agents attorney's in considering or dealing with claims where the provisions or requirements of this bill of lading have not been complied with, shall not be considered a waiver of such requirements and they shall not be considered as waived except by an express waiver.[37] (emphases supplied)

In *UCPB General Insurance Co., Inc. v. Aboitiz Shipping Corp.*,[38] We expounded that the purpose of a notice of loss is to provide the carrier with an opportunity to investigate on the claim of loss by the consignee or its agent. We explained that:

> The requirement to give notice of loss or damage to the goods is not an empty formalism. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to give it an opportunity to examine the nature and extent of the injury. This protects the carrier by affording it an opportunity to make an investigation of a claim while the matter is still fresh and easily investigated so as to safeguard itself from false and fraudulent claims.[39]

We deem that the Notice of Loss sent by the shipper on December 5, 2006 substantially complied with the required claim of damages under Clause 7 of the Bill of Lading. Said notice had adequately provided petitioner with the nature of the shipper's claim, as well as the estimated extent of the damage. Upon receipt of such notice of loss, petitioner already had sufficient time to conduct an investigation and determine the veracity of its claims.

Furthermore, petitioner sent a Letter[40] dated December 7, 2006 as its reply to the shipper's notice. The letter reads:

---

[37] *Rollo*, p. 74.
[38] 598 Phil. 74 (2009), citing *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*, 287 Phil. 212, 226-227 (1992).
[39] Id. at 82.
[40] Records, Vol. II, p. 131.

December 07, 2006

GLOBE COCO
4/F #681 AURORA BLVD.
NEW MANILA, QUEZON CITY

ATTN: MS. AIBE UY TAN

RE: M/V "MARIA LOURDES"

GENTLEMEN:

This is with regards to your fax letter NOTICE OF LOSS dated December 05, 2006, regarding cargo on board by "M/V MARIA LOURDES".

Please be advised that the proximate cause of the damages of your shipment on board was due to FORCE MAJEURE (Super Typhoon REMING), attach MARINE PROTEST executed by our captain.

Thank you.

Very truly yours,

(sgd.)
SALVADOR B. CANDANO
Exec. Vice President

Notable from the above letter that petitioner had acknowledged the damage to the shipment and even pointed to the typhoon as the proximate cause of the said damage. As such, the purpose of the required claim under Clause 7 of the Bill of Lading had already been satisfied. To still require respondent to comply with the notice after delivery of the shipment will only be a futile exercise in view of petitioner's denial of liability over the damages sustained by the subject cargo.

As regards the other affirmative defenses, petitioner's cross-examination of respondent's witnesses proved to be unsuccessful in establishing respondent's noncompliance with the provisions under the Bill of Lading[41] and the insurance policy.[42] Again, petitioner did not offer countervailing evidence to disprove the testimonies of respondent's witnesses. Verily, petitioner had been ineffective in defending the grounds it raised as affirmative defenses during the trial proper. Hence, the trial court cannot be faulted for properly setting them aside for being unmeritorious and lacking in evidentiary support.

---

[41] Cross-examination of Noel N. Salvador, TSN dated July 26, 2010, pp. 10-13.
[42] Cross-examination of Hilario Catral, TSN dated January 15, 2009, pp. 9-19.

Relative to the issue on whether petitioner is liable for damages, We also sustain the findings of the CA. It is basic rule that the findings of fact of the trial court when affirmed by the CA, are final and binding upon this Court[43] and may not be reviewed on appeal.[44] Although there are exceptions to the rule,[45] petitioner failed to present sufficient justification that its case falls under any of these exceptions.

Finally, in line with prevailing jurisprudence[46] and Central Bank Circular No. 799, We modify the interest imposed which should be six percent (6%) *per annum* from November 29, 2007, date of the judicial demand, until its full satisfaction.

WHEREFORE, the Court **DENIES** the petition for review for being unmeritorious; **AFFIRMS** the January 8, 2016 Decision and July 18, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 99658 **with MODIFICATION** imposing six percent (6%) interest *per annum* on the monetary award from November 29, 2007 until full payment; and **ORDERS** petitioner to **PAY** costs of suit.

SO ORDERED. (Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020)"

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
07 DEC 2020

[43] *Meyr Enterprises Corporation v. Cordero*, 742 Phil. 320, 333 (2014); *Esguerra v. Trinidad*, 547 Phil. 99, 107 (2007).
[44] *Bacalso v. Aca-ac*, 778 Phil. 61, 66-67 (2016).
[45] *Philippine Independent Church v. Basañes*, G.R. No. 220220, August 15, 2018, 877 SCRA 544, 550, citing *Dr. Seriña v. Caballero*, 480 Phil. 277, 284-285 (2004) and *Land Bank of the Phils. v. Monet's Export & Mfg. Corp.*, 493 Phil. 327, 338-339 (2005).
[46] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

*ABESAMES LAW OFFICE (reg)
Counsel for Petitioner
Rm. 5, Ground Floor, Our Home Building
114-C, Malakas corner Matulungin Streets
1101 Quezon City

*ATTY. ELLEN CHRISTINE W. UY (reg)
Counsel for Respondent
Unit 2001, Cityland 10 Tower II
No. 6817 H.V. Dela Costa St.
Salcedo Village, 1227 Makati City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 149
Makati City
(Civil Case No. 07-1104)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CV No. 99658

*with copies of CA Decision dated 8 January 2016 &
Resolution dated 18 July 2016.
Please notify the Court of any change in your address.
GR225928. 11/11/2020(151)URES 12/4