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Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 174116 September 11, 2009

EASTERN SHIPPING LINES, INC., Petitioner,
vs.
PRUDENTIAL GUARANTEE AND ASSURANCE, INC., Respondent.

D E C I S I O N

DEL CASTILLO, *J.:*

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the April 26, 2006 Decision[2] and August 15, 2006 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 68165.

The facts of the case:

On November 8, 1995, fifty-six cases of completely knock-down auto parts of Nissan motor vehicle (cargoes) were loaded on board M/V Apollo Tujuh (carrier) at Nagoya, Japan, to be shipped to Manila. The shipment was consigned to Nissan Motor Philippines, Inc. (Nissan) and was covered by Bill of Lading No. NMA-1.[4] The carrier was owned and operated by petitioner Eastern Shipping Lines, Inc.

On November 16, 1995, the carrier arrived at the port of Manila. On November 22, 1995, the shipment was then discharged from the vessel onto the custody of the *arrastre* operator, Asian Terminals, Inc. (ATI), complete and in good condition, except for four cases.[5]

On November 24 to 28, 1995, the shipment was withdrawn by Seafront Customs and Brokerage from the pier and delivered to the warehouse of Nissan in Quezon City.[6]

A survey of the shipment was then conducted by Tan-Gaute Adjustment Company, Inc. (surveyor) at Nissan's warehouse. On January 16, 1996, the surveyor submitted its report[7] with a finding that there were "short (missing)" items in Cases Nos. 10/A26/T3K and 10/A26/7K and "broken/scratched" and "broken" items in Case No. 10/A26/70K"; and that "(i)n (its) opinion, the "shortage and damage sustained by the shipment were due to pilferage and improper handling, respectively while in the custody of the vessel and/or Arrastre Contractors."[8]

As a result, Nissan demanded the sum of ₱1,047,298.34[9] representing the cost of the damages sustained by the shipment from petitioner, the owner of the vessel, and ATI, the *arrastre* operator. However, the demands were not heeded.[10]

On August 21, 1996, as insurer of the shipment against all risks per Marine Open Policy No. 86-168 and Marine Cargo Risk Note No. 3921/95, respondent Prudential Guarantee and Assurance Inc. paid Nissan the sum of ₱1,047,298.34.

On October 1, 1996, respondent sued petitioner and ATI for reimbursement of the amount it paid to Nissan before the Regional Trial Court (RTC) of Makati City, Branch 148, docketed as Civil Case No. 96-1665, entitled *Prudential Guarantee and Assurance, Inc. v. Eastern Shipping Lines, Inc.* Respondent claimed that it was subrogated to the rights of Nissan by virtue of said payment.[11]

On June 21, 1999, the RTC rendered a Decision,[12] the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants Eastern Shipping Lines, Inc. and ATI, and said defendants are hereby ordered to pay jointly and

solidarily plaintiff the following:

> 1) The claim of ₱1,047,298.34 with legal interest thereon of 6% per annum from the date of the filing of this complaint until the same is fully paid;
>
> 2) [Twenty-five (25%)] percent of the principal claim, as and for attorney's fees;
>
> 3) Plus costs of suit.

Both the counterclaims and crossclaims are without legal basis. The counterclaims and crossclaims are based on the assumption that the other defendant is the one solely liable. However, inasmuch as the solidary liability of the defendants have been established, the counterclaims and crossclaims must be denied.

Equal costs against Eastern Shipping Lines, Inc. and Asian Terminals, Inc.

SO ORDERED.[13]

Both petitioner and ATI appealed to the CA.

On April 26, 2006, the CA rendered a Decision the dispositive portion of which reads:

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATIONS, in that (i) defendant-appellant Eastern Shipping Lines, Inc. is ordered to pay appellee (a) the amount of ₱904,293.75 plus interest thereon at the rate of 6% per annum from the filing of the complaint up to the finality of this judgment, when the interest shall become 12% per annum until fully paid, and (b) the costs of suit; (ii) the award of attorney's fees is DELETED; and (iii) the complaint against defendant-appellant Asian Terminals, Inc. is DISMISSED.

SO ORDERED.[14]

The CA exonerated ATI and ruled that petitioner was solely responsible for the damages caused to the cargoes. Moreover, the CA relying on *Delsan Transport Lines, Inc. vs. Court of Appeals,*[15] ruled that the right of subrogation accrues upon payment by the insurance company of the insurance claim and that the presentation of the insurance policy is not indispensable before the appellee may recover in the exercise of its subrogatory right.[16]

Petitioner then filed a motion for reconsideration, which was, however, denied by the CA in a Resolution dated August 15, 2006.

Hence, herein petition, with petitioner raising the following assignment of errors to wit:

I.

> **WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT FINDING HEREIN PETITIONER LIABLE DESPITE THE FACT THAT RESPONDENT FAILED TO SUBMIT ANY INSURANCE POLICY.**

II.

> **WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT APPLYING THE US$500.00/PACKAGE/CASE PACKAGE LIMITATION OF LIABILITY IN ACCORDANCE WITH THE CARRIAGE OF GOODS BY SEA ACT.**[17]

The petition is meritorious.

The rule in our jurisdiction is that only questions of law may be entertained by this Court in a petition for review on *certiorari*. This rule, however, is not iron-clad and admits of certain exceptions, one of which is when the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion.[18] In the case at bar, the records of the case contain evidence which justify the application of the exception.

Anent the first error, petitioner argues that respondent was not properly subrogated because of the non-presentation of the marine insurance policy. In the case at bar, in order to prove its claim, respondent presented a marine cargo risk note and a subrogation receipt. Thus, the question to be resolved is whether the two documents, without the Marine Insurance Policy, are sufficient to prove respondent's right of subrogation.

Before anything else, it must be emphasized that a marine risk note is not an insurance policy. It is only an acknowledgment or declaration of the insurer confirming the specific shipment covered by its marine open policy,

the evaluation of the cargo and the chargeable premium.[19] In International Container Terminal Services, Inc. v. FGU Insurance Corporation (International),[20] the nature of a marine cargo risk note was explained, thus:

x x x It is the marine open policy which is the main insurance contract. In other words, the marine open policy is the blanket insurance to be undertaken by FGU on all goods to be shipped by RAGC during the existence of the contract, while the marine risk note specifies the particular goods/shipment insured by FGU on that specific transaction, including the sum insured, the shipment particulars as well as the premium paid for such shipment. x x x.[21]

For clarity, the pertinent portions of the Marine Cargo Risk Note, [22] relied upon by respondent, are hereunder reproduced, to wit:

RN NO 39821/95
Date: Nov. 16, 1995
NISSAN MOTOR PHILS., INC.

x x x

Gentlemen:

We have this day noted a Risk in your favor **subject to all clauses and condition of the Company's printed form of <u>Marine Open Policy No. 86-168</u>**

For PHILIPINE PESOS FOURTEEN MILLION ONE HUNDRED SEVENTY-THREE THOUSAND FORTY-TWO & 91/100 ONLY (P14, 173,042.91) xxx

CARGO:	56 CASES NISSAN MOTOR VEHICLE CKD (GC22)
CONDITIONS:	**INSTITUTE CARGO CLAUSES "A" OTHER TERMS AND CONDITIONS PER MOP-86-168**

From: NAGOYA

To: MANILA, PHILS.

ETD: NOV. 8, 1995 ETA: NOV. 17, 1995

CARRIER: "APOLLO TUJUH"

B/L NO: NMA-1

BANK: BANK OF THE PHILLIPINE ISLANDS

L/C NO: 026010051971

Shipper/ Consignee: MARUBENI CORPORATION

It is undisputed that the cargoes were already on board the carrier as early as November 8, 1995 and that the same arrived at the port of Manila on November 16, 1995. It is, however, very apparent that the Marine Cargo Risk Note was issued only on November 16, 1995. The same, therefore, should have raised a red flag, as it would be impossible to know whether said goods were actually insured while the same were in transit from Japan to Manila. On this score, this Court is guided by *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.,*[23] where this Court ruled:

Thus, we can only consider the Marine Risk Note in determining whether there existed a contract of insurance between ABB Koppel and Malayan at the time of the loss of the motors. **However, the very terms of the Marine Risk Note itself are quite damning. It is dated 21 March 1995, or after the occurrence of the loss**, and specifically states that Malayan "ha[d] this day noted the above-mentioned risk in your favor and hereby guarantee[s] that this document has all the force and effect of the terms and conditions in the Corporation's printed form of the standard Marine Cargo Policy and the Company's Marine Open Policy."[24]

Likewise, the date of the issuance of the Marine Risk Note also caught the attention of petitioner. In petitioner's Comment/Opposition[25] to the formal offer of evidence before the RTC, petitioner made the following manifestations, to wit:

Exhibit "B," **Marine Cargo Risk Note No. 39821 dated November 16, 1995 is being objected to for being irrelevant and immaterial as it was executed on November 16, 1995. The cargoes arrived in Manila on November 16, 1995. This means that the cargoes are not specifically covered by any particular insurance at the time of transit**. The alleged Marine Open Policy was not presented. Marine Open Policy may be subject to Institute Cargo Clauses which may require arbitration prior to the filing of an action in court.[26]

In addition, petitioner also contended that the Marine Cargo Risk Note referred to "Institute Cargo Clauses A and other terms and conditions per Marine Open Policy-86-168."

Based on the forgoing, it is already evident why herein petition is meritorious. The Marine Risk Note relied upon by respondent as the basis for its claim for subrogation is insufficient to prove said claim.

As previously stated, the Marine Risk Note was issued only on November 16, 1995; hence, without a copy of the marine insurance policy, it would be impossible and simply guesswork to know whether the cargo was insured during the voyage which started on November 8, 1995. Again, without the marine insurance policy, it would be impossible for this Court to know the following: first, the specifics of the "Institute Cargo Clauses A and other terms and conditions per Marine Open Policy-86-168" as alluded to in the Marine Risk Note; second, if the said terms and conditions were actually complied with before respondent paid Nissan's claim.

Furthermore, a reading of the transcript of the records clearly show that, at the RTC, petitioner had already objected to the non-presentation of the marine insurance policy, to wit:

Q. Are you also the one preparing the Marine Insurance Contract?

A. No, sir.

Q. Who is the one?

A. Our Marine Cargo Underwriting Department.

Q. And do you know anybody in that department?

A. Yes, sir.

Q. And you were aware that this particular cargo of the shipment was insured?

A. Yes, sir, per policy issued.

Q. And that you are referring to Exhibit?

A. The Marine Cargo Risk.

Q. Is this the only contract of Insurance between Prudential Guarantee and Nissan?

A. Sir, there is a Marine Open Policy.

Q. Do you have any copy of that?

A. It is in the office.

Atty. Alojado Can you produce that copy?

Atty. Zapa May we know the request of counsel for producing this Marine Open Policy?

Atty. Alojado The basis of the question is the answer of the witness which says that there is another contract of insurance.

COURT Yes, that is a Marine Open Policy.

Are you familiar with Marine Open Policy?

Atty. Alojado Yes, Your Honor.

But we would also like to be familiarize with that contract.

COURT But you know already a Marine Open Policy

Atty. Alojado Yes, Your Honor.

COURT I do not know if you work as a lawyer for several Insurance Company?

Atty. Alojado No, Your Honor. Honestly, Your Honor I worked as

a Maritime lawyer.

COURT Then you should know what is Marine Open Policy.

Atty. Alojado **I would like to know the specification of the**

Marine Open Policy in this regard.

Atty. Zapa I think your Honor, between the plaintiff and the defendant there is no issue against the insurance.

COURT Yes because this witness it not testifying on the Marine Open Policy.

Atty. Alojado We submit.

COURT Proceed.

Atty. Alojado

Q. But there is a Marine Open Policy

A. Yes, sir.[27]

x x x x

COURT

Q. Is the policy a standing policy, a continuing policy or is it going only for only a year or for a particular shipment or what?

A. For this particular consignee, they have Marine Open Policy.

Atty. Alojado That was not presented.

COURT That's why I'm asking. So the policy is not only for a particular shipment, but all other shipments that may come?

A. Yes, Your Honor.

Q. Are covered?

A. Yes, Your Honor.

Q. Without any specifications?

A. Yes, Your Honor.[28]

Clearly, petitioner was not remiss when it openly objected to the non-presentation of the Marine Insurance Policy. As testified to by respondent's witness, they had a copy of the marine insurance policy in their office. Thus, respondent was already apprised of the possible importance of the said document to their cause.

In addition, this Court takes notice that notwithstanding that the RTC may have denied the repeated manifestation of petitioner of the non-presentation of the marine insurance policy, the same by itself does not exonerate respondent. As plaintiff, it was respondent's burden to present the evidence necessary to substantiate its claim.

In its Complaint,[29] respondent alleged: "That the above-described shipment was insured for ₱14,173,042.91 against all risks under plaintiff's Marine Cargo Risk Note No. 39821/**Marine Open Policy No. 86-168."**[30] Therefore, other than the marine cargo risk note, respondent should have also presented the marine insurance policy, as the same also served as the basis for its complaint. Section 7, Rule 9 of the 1997 Rules of Civil Procedure, provide:

SECTION 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.

On this score, *Malayan* is instructive:

Malayan's right of recovery as a subrogee of ABB Koppel cannot be predicated alone on the liability of the respondent to ABB Koppel, even though such liability will necessarily have to be established at the trial for Malayan to recover. Because Malayan's right to recovery derives from contractual subrogation as an incident to an insurance relationship, and not from any proximate injury to it inflicted by the respondents, it is critical that Malayan establish the legal basis of such right to subrogation by presenting the contract constitutive of the insurance relationship between it and ABB Koppel. Without such legal basis, its cause of action cannot survive.

Our procedural rules make plain how easily Malayan could have adduced the Marine Insurance Policy. Ideally, this should have been accomplished from the moment it filed the complaint. Since the Marine Insurance Policy was constitutive of the insurer-insured relationship from which Malayan draws its right to subrogation, such document should have been attached to the complaint itself, as provided for in Section 7, Rule 9 of the 1997 Rules of Civil Procedure: x x x[31]

Therefore, since respondent alluded to an actionable document in its complaint, the contract of insurance between it and Nissan, as integral to its cause of action against petitioner, the Marine Insurance Policy should have been attached to the Complaint. Even in its formal offer of evidence, respondent alluded to the marine insurance policy which can stand independent of the Marine Cargo Risk Note, to wit:

EXH "B" = Marine Cargo Risk Note No. 39821/95 Dated November 16, 1995.

Purpose: As proof that the subject shipment was covered by insurance for ₱14,173, 042.91 **under Marine Open Policy No. 86-168**.[32]

It is significant that the date when the alleged insurance contract was constituted cannot be established with certainty without the contract itself. Said point is crucial because there can be no insurance on a risk that had already occurred by the time the contract was executed.[33] Surely, the Marine Risk Note on its face does not specify when the insurance was constituted.

The importance of the presentation of the Marine Insurance Policy was also emphasized in *Wallem Philippines Shipping, Inc. v. Prudential Guarantee & Assurance, Inc.,*[34] where this Court ruled:

x x x Wallem still cannot be held liable because of the failure of Prudential to present the contract of insurance or a copy thereof. Prudential claims that it is subrogated to the rights of GMC pursuant to their insurance contract. For this purpose, it submitted a subrogation receipt (Exh. J) and a marine cargo risk note (Exh. D). However, as the trial court pointed out, this is not sufficient. As GMC's subrogee, Prudential can exercise only those rights granted to GMC under the insurance contract. The contract of insurance must be presented in evidence to indicate the extent of its coverage. As there was no determination of rights under the insurance contract, this Court's ruling in Home Insurance Corporation v. Court of Appeals is applicable:

The insurance contract has not been presented. It may be assumed for the sake of argument that the subrogation receipt may nevertheless be used to establish the relationship between the petitioner [Home Insurance Corporation] and the consignee [Nestlé Phil.] and the amount paid to settle the claim. But that is all the document can do. By itself alone, the subrogation receipt is not sufficient to prove the petitioner's claim holding the respondent [Mabuhay Brokerage Co., Inc.] liable for the damage to the engine.

. . . .

It is curious that the petitioner disregarded this rule, knowing that the best evidence of the insurance contract was its original copy, which was presumably in the possession of Home itself. Failure to present this original (or even a copy of it), for reasons the Court cannot comprehend, must prove fatal to this petition.[35]

Finally, there have been cases where this Court ruled that the non-presentation of the marine insurance policy is not fatal, as can be gleaned in

International, where this Court held:

Indeed, jurisprudence has it that the marine insurance policy needs to be presented in evidence before the trial court or even belatedly before the appellate court. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*, the Court stated that the presentation of the marine insurance policy was necessary, as the issues raised therein arose from the very existence of an insurance contract between Malayan Insurance and its consignee, ABB Koppel, even prior to the loss of the shipment. In *Wallem Philippines Shipping, Inc. v. Prudential Guarantee and Assurance, Inc.,* the Court ruled that the insurance contract must be presented in evidence in order to determine the extent of the coverage. This was also the ruling of the Court in *Home Insurance Corporation v. Court of Appeals*.

However, as in every general rule, there are admitted exceptions. In *Delsan Transport Lines, Inc. v. Court of Appeals*, the Court stated that the presentation of the insurance policy was not fatal because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel, unlike in *Home Insurance* in which the cargo passed through several stages with different parties and it could not be determined when the damage to the cargo occurred, such that the insurer should be liable for it.

As in *Delsan*, there is no doubt that the loss of the cargo in the present case occurred while in petitioner's custody. Moreover, there is no issue as regards the provisions of Marine Open Policy No. MOP-12763, such that the presentation of the contract itself is necessary for perusal, not to mention that its existence was already admitted by petitioner in open court. And even though it was not offered in evidence, it still can be considered by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case.[36]

Although the CA may have ruled that the damage to the cargo occurred while the same was in petitioner's custody, this Court cannot apply the ruling in *International* to the case at bar. In contrast, unlike in International where there was no issue as regards the provisions of the marine insurance policy, such that the presentation of the contract itself is necessary for perusal, herein petitioner had repeatedly objected to the non-presentation of the marine insurance policy and had manifested its desire to know the specific provisions thereof. Moreover, and the same is critical, the marine risk note in the case at bar is questionable because: *first*, it is dated on the same day the cargoes arrived at the port of Manila and not during the duration of the voyage; *second*, without the Marine Insurance Policy to elucidate on the specifics of the terms and conditions alluded to in the marine risk note, it would be simply guesswork to know if the same were complied with.

Lastly, to cast all doubt on the merits of herein petition, this Court is guided by the ruling in Malayan, to wit:

It cannot be denied from the only established facts that Malayan and ABB Koppel comported as if there was an insurance relationship between them and documents exist that evince the presence of such legal relationship. But, under these premises, the very insurance contract emerges as the white elephant in the room – an obdurate presence which everybody reacts to, yet, legally invisible as a matter of evidence since no attempt had been made to prove its corporeal existence in the court of law. It may seem commonsensical to conclude anyway that there was a contract of insurance between Malayan and ABB Koppel since they obviously behaved in a manner that indicates such relationship, yet the same conclusion could be had even if, for example, those parties staged an elaborate charade to impress on the world the existence of an insurance contract when there actually was none. While there is absolutely no indication of any bad faith of such import by Malayan or ABB Koppel, the fact that the "commonsensical" conclusion can be drawn even if there was bad faith that convinces us to reject such line of thinking.

The Court further recognizes the danger as precedent should we sustain Malayan's position, and not only because such a ruling would formally violate the rule on actionable documents. Malayan would have us effectuate an insurance contract without having to consider its particular terms and conditions, and on a blind leap of faith that such contract is indeed valid and subsisting. The conclusion further works to the utter prejudice of defendants such as Regis or Paircargo since they would be deprived the opportunity to examine the document that gives rise to the plaintiff's right to recover against them, or to raise arguments or objections against the validity or admissibility of such document. If a legal claim is irrefragably sourced from an actionable document, the defendants cannot be deprived of the right to examine or utilize such document in order to intelligently raise a defense. The inability or refusal of the plaintiff to submit such document into evidence constitutes an effective denial of that right of the defendant which is ultimately rooted in due process of law, to say nothing on how such failure fatally diminishes the plaintiff's substantiation of its own cause of action.[37]

In conclusion, this Court rules that based on the applicable jurisprudence, because of the inadequacy of the Marine Cargo Risk Note for the reasons already stated, it was incumbent on respondent to present in evidence the Marine Insurance Policy, and having failed in doing so, its claim of subrogation must necessarily fail.

Because of the foregoing, it would be unnecessary to discuss the second error raised by petitioner.

WHEREFORE, premises considered, the petition is **GRANTED**. The April 26, 2006 Decision and August 15, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 68165 are hereby **REVERSED** and **SET ASIDE**. The Complaint in Civil Case No. 96-1665 is **DISMISSED.**

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

CONSUELO YNARES-SANTIAGO
Associate Justice
Chairperson

MINITA V. CHICO-NAZARIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

A T T E S T A T I O N

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.

CONSUELO YNARES-SANTIAGO
Associate Justice
Third Division, Chairperson

C E R T I F I C A T I O N

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

REYNATO S. PUNO
Chief Justice

Footnotes

[1] *Rollo*, pp. 3-20.

[2] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon, concurring; *id.* at 24-34.

[3] *Id.* at 36.

[4] *Rollo*, p. 24.

[5] *Id.*

[6] Id.

[7] Exhibit J; records pp. 181-183.

[8] *Rollo*, p. 25.

[9] Exhibit A; records, pp. 76-78.

[10] *Rollo*, p. 25.

[11] *Id*.

[12] *Rollo,* pp. 109-115.

[13] *Id.* at 114-115.

[14] *Id.* at 33-34.

[15] 420 Phil. 824, 835 (2001).

[16] *Rollo*, p. 32.

[17] *Id.* at 11.

[18] *Philippine Charter Insurance Corporation v. Unknown Owner of the Vessel M/V "National Honor,"* G.R. No. 161833 , July 8, 2005, 463 SCRA 202, 215.

[19] *Aboitiz Shipping Corporation v. Philippine American General Insurance Co.*, G.R. No. 77530, October 5, 1989, 178 SCRA 357, 360-361.

[20] G.R. No. 161539, June 27, 2008, 556 SCRA 194.

[21] *Id.* at 202-203. (Emphasis supplied.)

[22] Records, p. 79.

[23] G.R. No. 172156, November 23, 2007, 538 SCRA 681.

[24] *Id.* at 689.

[25] Records, pp. 186-188.

[26] *Id.* at 186.

[27] TSN, May 20, 1997, pp. 14-18.

[28] TSN, July 3, 1997, pp. 9-10.

[29] Records, pp. 1-5.

[30] *Id.* at. 2.

[31] *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*, *supra* note 23, at 690.

[32] Records, p. 72.

[33] *Malayan Insurance Co., Inc. v. Regis Brokerage Corp., supra* note 23, at 694.

[34] G.R. No. 152158, February 7, 2003, 397 SCRA 158.

[35] *Id.* at 170-171.

[36] *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, *supra* note 20, at 203-204.

[37] *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*, *supra* note 23, at 692-693. (Emphasis supplied.)

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