Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ASIAN TERMINALS, INC., Petitioner,	**G.R. No. 185964**
	Present:
- versus -	SERENO, *C.J.*, *Chairperson*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
FIRST LEPANTO-TAISHO INSURANCE CORPORATION, Respondent.	Promulgated: JUN 16 2014

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DECISION

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated October 10, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 99021 which adjudged petitioner Asian Terminals, Inc. (ATI) liable to pay the money claims of respondent First Lepanto-Taisho Insurance Corporation (FIRST LEPANTO).

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1 *Rollo*, pp. 13-37.

2 Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican, concurring; id. at 41-51.

The Undisputed Facts

On July 6, 1996,[3] 3,000 bags of sodium tripolyphosphate contained in 100 plain jumbo bags complete and in good condition were loaded and received on board M/V "Da Feng" owned by China Ocean Shipping Co. (COSCO) in favor of consignee, Grand Asian Sales, Inc. (GASI). Based on a Certificate of Insurance[4] dated August 24, 1995, it appears that the shipment was insured against all risks by GASI with FIRST LEPANTO for □7,959,550.50 under Marine Open Policy No. 0123.

The shipment arrived in Manila on July 18, 1996 and was discharged into the possession and custody of ATI, a domestic corporation engaged in arrastre business. The shipment remained for quite some time at ATI's storage area until it was withdrawn by broker, Proven Customs Brokerage Corporation (PROVEN), on August 8 and 9, 1996 for delivery to the consignee.

Upon receipt of the shipment,[5] GASI subjected the same to inspection and found that the delivered goods incurred shortages of 8,600 kilograms and spillage of 3,315 kg for a total of 11,915 kg of loss/damage valued at □166,772.41.

GASI sought recompense from COSCO, thru its Philippine agent Smith Bell Shipping Lines, Inc. (SMITH BELL),[6] ATI[7] and PROVEN[8] but was denied. Hence, it pursued indemnification from the shipment's insurer.[9]

After the requisite investigation and adjustment, FIRST LEPANTO paid GASI the amount of ₱165,772.40 as insurance indemnity.[10]

Thereafter, GASI executed a *Release of Claim*[11] discharging FIRST LEPANTO from any and all liabilities pertaining to the lost/damaged shipment and subrogating it to all the rights of recovery and claims the former may have against any person or corporation in relation to the lost/damaged shipment.

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3 Id. at 88.
4 Id. at 317.
5 Id. at 92-101.
6 Id. at 104.
7 Id. at 103.
8 Id. at 115.
9 Id. at 102.
10 Id. at 116.
11 Id. at 114.

As such subrogee, FIRST LEPANTO demanded from COSCO, its shipping agency in the Philippines, SMITH BELL, PROVEN and ATI, reimbursement of the amount it paid to GASI. When FIRST LEPANTO's demands were not heeded, it filed on May 29, 1997 a Complaint[12] for sum of money before the Metropolitan Trial Court (MeTC) of Manila, Branch 3. FIRST LEPANTO sought that it be reimbursed the amount of □166,772.41, twenty-five percent (25%) thereof as attorney's fees, and costs of suit.

ATI denied liability for the lost/damaged shipment and claimed that it exercised due diligence and care in handling the same.[13] ATI averred that upon arrival of the shipment, SMITH BELL requested for its inspection[14] and it was discovered that one jumbo bag thereof sustained loss/damage while in the custody of COSCO as evidenced by Turn Over Survey of Bad Order Cargo No. 47890 dated August 6, 1996[15] jointly executed by the respective representatives of ATI and COSCO. During the withdrawal of the shipment by PROVEN from ATI's warehouse, the entire shipment was re-examined and it was found to be exactly in the same condition as when it was turned over to ATI such that one jumbo bag was damaged. To bolster this claim, ATI submitted Request for Bad Order Survey No. 40622 dated August 9, 1996[16] jointly executed by the respective representatives of ATI and PROVEN. ATI also submitted various Cargo Gate Passes[17] showing that PROVEN was able to completely withdraw all the shipment from ATI's warehouse in good order condition except for that one damaged jumbo bag.

In the alternative, ATI asserted that even if it is found liable for the lost/damaged portion of the shipment, its contract for cargo handling services limits its liability to not more than □5,000.00 per package. ATI interposed a counterclaim of □20,000.00 against FIRST LEPANTO as and for attorney's fees. It also filed a cross-claim against its co-defendants COSCO and SMITH BELL in the event that it is made liable to FIRST LEPANTO.[18]

PROVEN denied any liability for the lost/damaged shipment and averred that the complaint alleged no specific acts or omissions that makes it liable for damages. PROVEN claimed that the damages in the shipment were sustained before they were withdrawn from ATI's custody under which the shipment was left in an open area exposed to the elements, thieves and vandals. PROVEN contended that it exercised due diligence and prudence

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12 Id. at 61-65.
13 Id. at 67-70.
14 Id. at 217.
15 Id. at 90.
16 Id. at 91.
17 Id. at 119-128.
18 Id. at 67-70.

in handling the shipment. PROVEN also filed a counterclaim for attorney's fees and damages.[19]

Despite receipt of summons on December 4, 1996,[20] COSCO and SMITH BELL failed to file an answer to the complaint. FIRST LEPANTO thus moved that they be declared in default[21] but the motion was denied by the MeTC on the ground that under Rule 9, Section 3 of the Rules of Civil Procedure, "when a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the other fail to do so, the Court shall try the case against all upon the answers thus filed, and render judgment upon the evidence presented."[22]

Ruling of the MeTC

In a Judgment[23] dated May 30, 2006, the MeTC absolved ATI and PROVEN from any liability and instead found COSCO to be the party at fault and hence liable for the loss/damage sustained by the subject shipment. However, the MeTC ruled it has no jurisdiction over COSCO because it is a foreign corporation. Also, it cannot enforce judgment upon SMITH BELL because no evidence was presented establishing that it is indeed the Philippine agent of COSCO. There is also no evidence attributing any fault to SMITH BELL. Consequently, the complaint was dismissed in this wise:

> WHEREFORE, in light of the foregoing, judgment is hereby rendered DISMISSING the instant case for failure of [FIRST LEPANTO] to sufficiently establish its cause of action against [ATI, COSCO, SMITH BELL, and PROVEN].
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> The counterclaims of [ATI and PROVEN] are likewise dismissed for lack of legal basis.
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> No pronouncement as to cost.
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> SO ORDERED.[24]

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19 Id. at 151-154.
20 Per the findings of the Regional Trial Court; id. at 215.
21 FIRST LEPANTO's Omnibus Motion dated January 16, 2001, id. at 72-74.
22 MeTC Order dated July 23, 2001, id. 75-76.
23 Issued by Presiding Judge Juan O. Bermejo, Jr.; id. at 155-162.
24 Id. at 162.

Ruling of the Regional Trial Court

On appeal, the Regional Trial Court (RTC) reversed the MeTC's findings. In its Decision[25] dated January 26, 2007, the RTC of Manila, Branch 21, in Civil Case No. 06-116237, rejected the contentions of ATI upon its observation that the same is belied by its very own documentary evidence. The RTC remarked that, if, as alleged by ATI, one jumbo bag was already in bad order condition upon its receipt of the shipment from COSCO on July 18, 1996, then how come that the Request for Bad Order Survey and the Turn Over Survey of Bad Order Cargo were prepared only weeks thereafter or on August 9, 1996 and August 6, 1996, respectively. ATI was adjudged unable to prove that it exercised due diligence while in custody of the shipment and hence, negligent and should be held liable for the damages caused to GASI which, in turn, is subrogated by FIRST LEPANTO.

The RTC rejected ATI's contention that its liability is limited only to □5,000.00 per package because its Management Contract with the Philippine Ports Authority (PPA) purportedly containing the same was not presented as evidence. More importantly, FIRST LEPANTO or GASI cannot be deemed bound thereby because they were not parties thereto. Lastly, the RTC did not give merit to ATI's defense that any claim against it has already prescribed because GASI failed to file any claim within the 15-day period stated in the gate pass issued by ATI to GASI's broker, PROVEN. Accordingly, the RTC disposed thus:

> WHEREFORE, in light of the foregoing, the judgment on appeal is hereby **REVERSED**.
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> [ATI] is hereby ordered to reimburse [FIRST LEPANTO] the amount of [□]165,772.40 with legal interest until fully paid, to pay [FIRST LEPANTO] 10% of the amount due the latter as and for attorney's fees plus the costs of suit.
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> The complaint against [COSCO/SMITH BELL and PROVEN] are **DISMISSED** for lack of evidence against them. The counterclaim and cross[-]claim of [ATI] are likewise **DISMISSED** for lack of merit.
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> SO ORDERED.[26]

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25 Issued by Judge Amor A. Reyes; id. at 213-218.

26 Id. at 218.

Ruling of the CA

ATI sought recourse with the CA challenging the RTC's finding that FIRST LEPANTO was validly subrogated to the rights of GASI with respect to the lost/damaged shipment. ATI argued that there was no valid subrogation because FIRST LEPANTO failed to present a valid, existing and enforceable Marine Open Policy or insurance contract. ATI reasoned that the Certificate of Insurance or Marine Cover Note submitted by FIRST LEPANTO as evidence is not the same as an actual insurance contract.

In its Decision[27] dated October 10, 2008, the CA dismissed the appeal and held that the Release of Claim and the Certificate of Insurance presented by FIRST LEPANTO sufficiently established its relationship with the consignee and that upon proof of payment of the latter's claim for damages, FIRST LEPANTO was subrogated to its rights against those liable for the lost/damaged shipment.

The CA also affirmed the ruling of the RTC that the subject shipment was damaged while in the custody of ATI. Thus, the CA disposed as follows:

> **WHEREFORE**, premises considered, the assailed Decision is hereby **AFFIRMED** and the instant petition is **DENIED** for lack of merit.
>
> SO ORDERED.[28]

ATI moved for reconsideration but the motion was denied in the CA Resolution[29] dated January 12, 2009. Hence, this petition arguing that:

(a) The presentation of the insurance policy is indispensable in proving the right of FIRST LEPANTO to be subrogated to the right of the consignee pursuant to the ruling in *Wallem Philippines Shipping, Inc. v. Prudential Guarantee and Assurance Inc.*;[30]

(b) ATI cannot be barred from invoking the defense of prescription as provided for in the gate passes in consonance with the ruling in *International Container Terminal Services, Inc. v. Prudential Guarantee and Assurance Co, Inc*.[31]

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27 Id. at 41-51.
28 Id. at 50.
29 Id. at 53-54.
30 445 Phil. 136 (2003).
31 377 Phil. 1082 (1999).

Ruling of the Court

The Court denies the petition.

ATI failed to prove that it exercised due care and diligence while the shipment was under its custody, control and possession as arrastre operator.

It must be emphasized that factual questions pertaining to ATI's liability for the loss/damage sustained by GASI has already been settled in the uniform factual findings of the RTC and the CA that: ATI failed to prove by preponderance of evidence that it exercised due diligence in handling the shipment.

Such findings are binding and conclusive upon this Court since a review thereof is proscribed by the nature of the present petition. Only questions of law are allowed in petitions for review on *certiorari* under Rule 45 of the Rules of Court. It is not the Court's duty to review, examine, and evaluate or weigh all over again the probative value of the evidence presented, especially where the findings of the RTC are affirmed by the CA, as in this case.[32]

There are only specific instances when the Court deviates from the rule and conducts a review of the courts *a quo*'s factual findings, such as when: (1) the inference made is manifestly mistaken, absurd or impossible; (2) there is grave abuse of discretion; (3) the findings are grounded entirely on speculations, surmises or conjectures; (4) the judgment of the CA is based on misapprehension of facts; (5) the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (6) the findings of fact are conclusions without citation of specific evidence on which they are based; (7) the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (8) the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[33]

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[32] *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.*, G.R. No. 171406, April 4, 2011, 647 SCRA 111, 126.

[33] Id. at 126-127.

None of these instances, however, are present in this case. Moreover, it is unmistakable that ATI has already conceded to the factual findings of RTC and CA adjudging it liable for the shipment's loss/damage considering the absence of arguments pertaining to such issue in the petition at bar.

These notwithstanding, the Court scrutinized the records of the case and found that indeed, ATI is liable as the arrastre operator for the lost/damaged portion of the shipment.

The relationship between the consignee and the arrastre operator is akin to that existing between the consignee and/or the owner of the shipped goods and the common carrier, or that between a depositor and a warehouseman. Hence, in the performance of its obligations, an arrastre operator should observe the same degree of diligence as that required of a common carrier and a warehouseman. Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.[34]

In a claim for loss filed by the consignee (or the insurer), the burden of proof to show compliance with the obligation to deliver the goods to the appropriate party devolves upon the arrastre operator. Since the safekeeping of the goods is its responsibility, it must prove that the losses were not due to its negligence or to that of its employees. To avoid liability, the arrastre operator must prove that it exercised diligence and due care in handling the shipment.[35]

ATI failed to discharge its burden of proof. Instead, it insisted on shifting the blame to COSCO on the basis of the Request for Bad Order Survey dated August 9, 1996 purportedly showing that when ATI received the shipment, one jumbo bag thereof was already in damaged condition.

The RTC and CA were both correct in concluding that ATI's contention was improbable and illogical. As judiciously discerned by the courts *a quo*, the date of the document was too distant from the date when the shipment was actually received by ATI from COSCO on July 18, 1996.

In fact, what the document established is that when the loss/damage was discovered, the shipment has been in ATI's custody for at least two weeks. This circumstance, coupled with the undisputed declaration of PROVEN's witnesses that while the shipment was in ATI's custody, it was

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[34] *Asian Terminals, Inc. v. Daehan Fire and Marine Insurance Co., Ltd.*, G.R. No. 171194, February 4, 2010, 611 SCRA 555, 562-563.

[35] Id. at 563-564.

left in an open area exposed to the elements, thieves and vandals,[36] all generate the conclusion that ATI failed to exercise due care and diligence while the subject shipment was under its custody, control and possession as arrastre operator.

To prove the exercise of diligence in handling the subject cargoes, an arrastre operator must do more than merely show the possibility that some other party could be responsible for the loss or the damage.[37] It must prove that it used all reasonable means to handle and store the shipment with due care and diligence including safeguarding it from weather elements, thieves or vandals.

Non-presentation of the insurance contract is not fatal to FIRST LEPANTO's cause of action for reimbursement as subrogee.

It is conspicuous from the records that ATI put in issue the submission of the insurance contract for the first time before the CA. Despite opportunity to study FIRST LEPANTO's complaint before the MeTC, ATI failed to allege in its answer the necessity of the insurance contract. Neither was the same considered during pre-trial as one of the decisive matters in the case. Further, ATI never challenged the relevancy or materiality of the Certificate of Insurance presented by FIRST LEPANTO as evidence during trial as proof of its right to be subrogated in the consignee's stead.

Since it was not agreed during the pre-trial proceedings that FIRST LEPANTO will have to prove its subrogation rights by presenting a copy of the insurance contract, ATI is barred from pleading the absence of such contract in its appeal. It is imperative for the parties to disclose during pre-trial all issues they intend to raise during the trial because, they are bound by the delimitation of such issues. The determination of issues during the pre-trial conference bars the consideration of other questions, whether during trial or on appeal.[38]

A faithful adherence to the rule by litigants is ensured by the equally settled principle that a party cannot change his theory on appeal as such act violates the basic rudiments of fair play and due process. As stressed in *Jose v. Alfuerto*:[39]

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36 Paragraph 12 of PROVEN's Memorandum before the MeTC, *rollo*, p. 152.
37 Supra note 34, at 563-564.
38 Supra note 32, at 122.
39 G.R. No. 169380, November 26, 2012, 686 SCRA 323.

> [A] party cannot change his theory of the case or his cause of action on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court will not be considered by the reviewing court. The defenses not pleaded in the answer cannot, on appeal, change fundamentally the nature of the issue in the case. To do so would be unfair to the adverse party, who had no opportunity to present evidence in connection with the new theory; this would offend the basic rules of due process and fair play.[40] (Citation omitted)

While the Court may adopt a liberal stance and relax the rule, no reasonable explanation, however, was introduced to justify ATI's failure to timely question the basis of FIRST LEPANTO's rights as a subrogee.

The fact that the CA took cognizance of and resolved the said issue did not cure or ratify ATI's *faux pas.* "[A] judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid."[41] Thus, for resolving an issue not framed during the pre-trial and on which the parties were not heard during the trial, that portion of the CA's judgment discussing the necessity of presenting an insurance contract was erroneous.

At any rate, the non-presentation of the insurance contract is not fatal to FIRST LEPANTO's right to collect reimbursement as the subrogee of GASI.

"Subrogation is the substitution of one person in the place of another with reference to a lawful claim or right, so that he who is substituted succeeds to the rights of the other in relation to a debt or claim, including its remedies or securities."[42] The right of subrogation springs from Article 2207 of the Civil Code which states:

> Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrong-doer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

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40 Id. at 340-341.

41 *Commission on Internal Revenue v. Mirant Pagbilao Corporation*, 535 Phil. 481, 490 (2006).

42 *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation*, G.R. No. 179446, January 10, 2011, 639 SCRA 69, 78-79.

As a general rule, the marine insurance policy needs to be presented in evidence before the insurer may recover the insured value of the lost/damaged cargo in the exercise of its subrogatory right. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*,[43] the Court stated that the presentation of the contract constitutive of the insurance relationship between the consignee and insurer is critical because it is the legal basis of the latter's right to subrogation.[44]

In *Home Insurance Corporation v. CA*,[45] the Court also held that the insurance contract was necessary to prove that it covered the hauling portion of the shipment and was not limited to the transport of the cargo while at sea. The shipment in that case passed through six stages with different parties involved in each stage until it reached the consignee. The insurance contract, which was not presented in evidence, was necessary to determine the scope of the insurer's liability, if any, since no evidence was adduced indicating at what stage in the handling process the damage to the cargo was sustained.[46]

An analogous disposition was arrived at in the *Wallem*[47] case cited by ATI wherein the Court held that the insurance contract must be presented in evidence in order to determine the extent of its coverage. It was further ruled therein that the liability of the carrier from whom reimbursement was demanded was not established with certainty because the alleged shortage incurred by the cargoes was not definitively determined.[48]

Nevertheless, the rule is not inflexible. In certain instances, the Court has admitted exceptions by declaring that a marine insurance policy is dispensable evidence in reimbursement claims instituted by the insurer.

In *Delsan Transport Lines, Inc. v. CA*,[49] the Court ruled that the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. Hence, presentation in evidence of the marine insurance policy is not indispensable before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, was held sufficient to establish not only the relationship between the insurer and consignee, but also the amount paid to settle the insurance claim. The presentation of the insurance contract was deemed not fatal to the insurer's cause of action

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43 563 Phil. 1003 (2007).
44 Id. at 1016.
45 G.R. No. 109293, August 18, 1993, 225 SCRA 411.
46 Id. at 415-416.
47 Supra note 30.
48 Id. at 151-153.
49 420 Phil. 824 (2001).

because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel.[50]

The same rationale was the basis of the judgment in *International Container Terminal Services, Inc. v. FGU Insurance Corporation*,[51] wherein the arrastre operator was found liable for the lost shipment despite the failure of the insurance company to offer in evidence the insurance contract or policy. As in *Delsan*, it was certain that the loss of the cargo occurred while in the petitioner's custody.[52]

Based on the attendant facts of the instant case, the application of the exception is warranted. As discussed above, it is already settled that the loss/damage to the GASI's shipment occurred while they were in ATI's custody, possession and control as arrastre operator. Verily, the Certificate of Insurance[53] and the Release of Claim[54] presented as evidence sufficiently established FIRST LEPANTO's right to collect reimbursement as the subrogee of the consignee, GASI.

With ATI's liability having been positively established, to strictly require the presentation of the insurance contract will run counter to the principle of equity upon which the doctrine of subrogation is premised. Subrogation is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who in justice, equity and good conscience ought to pay.[55]

The payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies which the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of any privity of contract or upon payment by the insurance company of the insurance claim. It accrues simply upon payment by the insurance company of the insurance claim.[56]

ATI cannot invoke prescription

ATI argued that the consignee, thru its insurer, FIRST LEPANTO is barred from seeking payment for the lost/damaged shipment because the claim letter of GASI to ATI was served only on September 27, 1996 or more

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50 Id. at 835.
51 578 Phil. 751 (2008).
52 Id. at 760.
53 *Rollo*, p. 105.
54 Id. at 114.
55 *PHILAMGEN v. CA*, 339 Phil. 455, 466 (1997).
56 Id.

than one month from the date the shipment was delivered to the consignee's warehouse on August 9, 1996. The claim of GASI was thus filed beyond the 15-day period stated in ATI's Management Contract with PPA which in turn was reproduced in the gate passes issued to the consignee's broker, PROVEN, as follows:

> Issuance of this Gate Pass Constitutes delivery to and receipt by consignee of the goods as described above in good order and condition unless an accompanying x x x certificates duly issued and noted on the face of this Gate Pass appeals. [sic]
>
> This Gate pass is subject to all terms and conditions defined in the Management Contract between the Philippine Port[s] Authority and Asian Terminals, Inc. and amendment thereto and alterations thereof particularly but not limited to the [A]rticle VI thereof, limiting the contractor's liability to [□]5,000.00 per package unless the importation is otherwise specified or manifested or communicated in writing together with the invoice value and supported by a certified packing list to the contractor by the interested party or parties before the discharge of the goods and corresponding arrastre charges have been paid providing exception or restrictions from liability releasing the contractor from liability among others unless a formal claim with the required annexes shall have been filed with the contractor within fifteen (15) days from date of issuance by the contractors or certificate of loss, damages, injury, or Certificate of non-delivery.[57]

The contention is bereft of merit. As clarified in *Insurance Company of North America v. Asian Terminals, Inc.*,[58] substantial compliance with the 15-day time limitation is allowed provided that the consignee has made a provisional claim thru a request for bad order survey or examination report, *viz*:

> Although the formal claim was filed beyond the 15-day period from the issuance of the examination report on the request for bad order survey, the purpose of the time limitations for the filing of claims had already been fully satisfied by the request of the consignee's broker for a bad order survey and by the examination report of the arrastre operator on the result thereof, as the arrastre operator had become aware of and had verified the facts giving rise to its liability. Hence, the arrastre operator suffered no prejudice by the lack of strict compliance with the 15-day limitation to file the formal complaint.[59] (Citations omitted)

In the present case, ATI was notified of the loss/damage to the subject shipment as early as August 9, 1996 thru a Request for Bad Order Survey[60] jointly prepared by the consignee's broker, PROVEN, and the representatives of ATI. For having submitted a provisional claim, GASI is

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57 *Rollo*, pp. 119-128.
58 G.R. No. 180784, February 15, 2012, 666 SCRA 226.
59 Id. 245.
60 *Rollo*, p. 91.

thus deemed to have substantially complied with the notice requirement to the arrastre operator notwithstanding that a formal claim was sent to the latter only on September 27, 1996. ATI was not deprived the best opportunity to probe immediately the veracity of such claims. Verily then, GASI, thru its subrogee FIRST LEPANTO, is not barred by filing the herein action in court.

ATI cannot rely on the ruling in *Prudential*[61] because the consignee therein made no provisional claim thru request for bad order survey and instead filed a claim for the first time after four months from receipt of the shipment.

Attorney's fees and interests

All told, ATI is liable to pay FIRST LEPANTO the amount of the ₱165,772.40 representing the insurance indemnity paid by the latter to GASI. Pursuant to *Nacar v. Gallery Frames*,[62] the said amount shall earn a legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until its full satisfaction.

As correctly imposed by the RTC and the CA, ten percent (10%) of the judgment award is reasonable as and for attorney's fees considering the length of time that has passed in prosecuting the claim.[63]

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated October 10, 2008 of the Court of Appeals in CA-G.R. SP No. 99021 is hereby **AFFIRMED** insofar as it adjudged liable and ordered Asian Terminals, Inc., to pay First Lepanto-Taisho Insurance Corp., the amount of ₱165,772.40, ten percent (10%) thereof as and for attorney's fees, plus costs of suit. The said amount shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of this judgment until its full satisfaction.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

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61 Supra note 31.

62 G.R. No. 189871, August 13, 2013, 703 SCRA 439.

63 *See New World International Development (Phils.), Inc. v. NYK-FilJapan Shipping Corp.*, G.R. No. 171468, August 24, 2011, 656 SCRA 129, 138-139.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice