

**SWITZERLAND GENERAL INSURANCE COMPANY, LTD.,
PETITIONER, VS. HON. PEDRO A. RAMIREZ, PRESIDING JUDGE OF
THE COURT OF FIRST INSTANCE OF MANILA, BRANCH XXX, OYAMA
LINES, CITADEL L...**

G.R. No. L-48264. February 21, 1980

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petition for review of the decision, dated February 24, 1978 of the Court of First Instance of Manila in Civil Case No. 100704, entitled "Switzerland General Insurance Co., Ltd. v. Oyama Lines and Citadel Lines, and/or Mabuhay Brokerage Co., Inc."

On December 24, 1975, petitioner, a foreign insurance company authorized to do business in the Philippines thru its agent, F. E. Zuellig, Inc., filed an admiralty case (Civil Case No. 100704) against private respondents Oyama Shipping Co., Ltd. (referred to as Oyama Lines), a foreign firm doing business in the Philippines, and Citadel Lines, Inc. which is the local agent of private respondent Oyama Shipping Co., Inc. and/or Mabuhay Brokerage Co., Inc.

The complaint alleged that on December 21, 1974, 60,000 bags of Urea Nitrogen were shipped from Niihama, Japan, on board the S/S "St. Lourdes", claimed to be owned and operated by defendant Citadel Lines, Inc. The goods were consigned to Borden International Phils., Inc., and insured by petitioner for the sum of P9,319,105.00 against all risks.

The shipment was discharged from the vessel S/S "St. Lourdes" shipside into lighters owned by Mabuhay Brokerage Company, Inc., but when the same was subsequently delivered to and received by the consignee, it was found to have sustained losses and/or damage amounting to P38,698.94. This amount was paid by petitioner insurance company to the consignee/assured, by virtue of which payment it became subrogated to the rights of the latter.

Petitioner made repeated demands against herein private respondents for payment of the aforesaid losses or damage but no payment was made and, uncertain in whose custody the goods were damaged, impleaded the private respondents as alternative defendants to determine their respective liability.

Defendant Citadel Lines, Inc. filed an Answer with Compulsory Counterclaim and Cross-claim, inter-posing special and affirmative defenses and alleging that defendant Citadel Lines was merely the civil agent in the Philippines for the Japanese firm Oyama Shipping Co., Ltd., which was the charterer of the vessel S/S "St. Lourdes", said vessel being owned by Companie Maritime de Brios, Sociedad Anonima, a Panamanian corporation. It was further alleged that the principal agency relationship between the said Oyama Shipping Co., Ltd. and defendant Citadel Lines, Inc. was terminated on August 21, 1975 when the Tokyo District Court declared and decreed the insolvency of the said Oyama Shipping Co., Ltd.

It was argued that defendant Citadel Lines "has always acted as an agent of a disclosed principal and, therefore, in accordance with Art. 1897 of the Civil Code, the herein defendant is without any liability at all" in connection with the plaintiff's claim.

By way of cross-claim, defendant Citadel Lines alleged that the loss/damage to the cargo took place while the latter was being delivered to the consignee thereof by the Mabuhay Brokerage, Inc. and said corporation should be held liable therefor, as well as for all damages suffered and expenses incurred by defendant Citadel Lines as a result of the filing of the suit. Defendant likewise interposed a counterclaim for damages against plaintiff Switzerland General Insurance Company, Ltd. (herein petitioner).

Defendant Oyama Shipping Co. Ltd. likewise filed its Answer, denying the material averments of the complaint, alleging that it ceased to be represented in the Philippines upon the declaration of its insolvency by the Tokyo Court; that it was a mere charterer of the S/S "St. Lourdes" which is owned by Companie Maritime de Brios, Sociedad Anonima, a Panamanian corporation; that due to the insolvency of Oyama Shipping Co. Ltd., the case as against it should be dismissed, the remedy for the plaintiff being to file its claim before the insolvency court in Tokyo, Japan. Further, it imputed the loss or damage to the shipment to the shipper, Sumitomo Shoji Kaisha, Ltd. for failing to provide seaworthy packages for the goods, and/or the Mabuhay Brokerage for failure to exercise utmost diligence after it took possession of the cargo from the vessel S/S "St. Lourdes". Finally, it was averred that plaintiff's reinsurer had already paid the plaintiff's claim and, hence, said reinsurer is the real party to the action, and that assuming defendant Oyama Shipping Co., Ltd. to be liable, its liability is limited to the amount of the loss in relation to the total amount of the freight of the goods, which, if computed, would be a much lower amount. It was prayed that the complaint be dismissed as against this defendant.

After trial on the merits, respondent court rendered a decision, dated February 23, 1978, in favor of petitioner as against therein defendant Oyama Shipping Co., Ltd., but absolving Citadel Lines, Inc. and Mabuhay Brokerage Co., Inc. from liability. The decision reads, in part, as follows:

"Since in the case at bar there is no question that the shipment in question has suffered loss or damage while in the custody of the carrier, the herein defendant Oyama Line, but it has not adduced evidence to prove that it was caused by any of those factors or reasons exempting it from liability, particularly that the bags became torn or burst and the contents spilled because of the character of the shipment or defects in the packing or in the containers, or the nature or defect of the article itself, the defendant Oyama Line, as carrier, cannot avoid liability to the consignee or its subrogee, the plaintiff herein.

"The defendant Oyama Line pleads prescription of the plaintiff's cause of action under Article 366 of the Code of Commerce. The defense is untenable. To begin with, the required claim that the owner of merchandise is supposed to make within 24 hours from receipt is but in the nature of a limitation upon his right to recovery and the burden of proof is accordingly on the carrier to show that the limitation is reasonable and in proper form or without the time stated (Southern Lines, Inc. vs. Court of Appeals, 4 SCRA 258, 261--262). And it is incumbent upon the said defendant to prove its defense, particularly that no such claim was filed within the required period. Without such proof of a negative allegation, which it has failed to adduce, the pleader must suffer defeat under the rules of evidence (section 1, Rule 131, Revised Rules of Court). Be that as it may, the survey report submitted in evidence by the plaintiff states that after completion of delivery the consignee signified its 'intention to file a claim for the full value of the loss sustained by the shipment' (Exhibits I, I-1 to I-5), a fact that has not at all been refuted by the defendant Oyama Line.

"The fact that the defendant Oyama Line has been declared insolvent by the Tokyo District Court of Japan since August 21, 1975, is no defense at all. For such declaration of insolvency, even under Philippine laws, does not bar recovery of damages based on contract. Neither can it successfully ward off liability on a claim that it is a mere charterer of the carrying vessel, having represented on the face of the bill of lading as the

carrier itself (Exhibit A; Exhibit 1-Oyama). And even if it is but a charterer of the vessel that it claims it is, it cannot avoid its liability as a carrier for loss and damage suffered by the goods it has transported.

"As a mere agent in the Philippines of the defendant Oyama Line, the defendant Citadel Line (see paragraph I, complaint) cannot be held liable for the damages recoverable from its principal. But for failure to substantiate it, its counter-claim against the plaintiff should be dismissed. So must its cross-claim against its co-defendant brokerage company be dismissed since it has not at all been held liable to the plaintiff.

"Neither can the defendant Mabuhay Brokerage Company, Inc. be held answerable for the loss and damage sustained by the cargo in question while still in custody of the carrying vessel, for obvious reasons. Nor can it be made liable, jointly and severally, with the defendant Oyama Line for further loss and damage to the contents of the torn or burst bags turned over to its custody in that condition in view of the required extra-ordinary diligence that it has observed to prevent further loss or damage to them. According to the defendant brokerage's witness, Virgilio de Jesus, as soon as the bags in bad order were received from the lighters they were tied and the torn parts sewed, the falsity of which the plaintiff has failed to prove.

"WHEREFORE, the Court hereby renders judgment in favor of the plaintiff Switzerland General Insurance Company, Ltd. and against the defendant Oyama Line, ordering the latter to pay the former the amount of P38,698.94, with interest thereon at the legal rate from the date of the filing of the complaint on December 24, 1975, until fully paid, P5,000.00 as attorney's fees and the costs of the suit. The plaintiff's complaint against the defendants Citadel Line and Mabuhay Brokerage Company, Inc. are dismissed. So is the defendant Citadel Lines' counterclaim against the plaintiff and cross-claim against its co-defendant brokerage company dismissed."

Petitioner filed a Motion for Reconsideration of the aforesaid decision insofar as it absolves respondents Citadel Lines, Inc. and Mabuhay Brokerage Co., Inc. from liability, but said Motion for Reconsideration was denied on April 21, 1979; hence, the instant petition for review.

The main issue raised in the instant petition is whether or not respondent Citadel Lines, Inc., the local agent of a foreign ocean going vessel, the S/S "St. Lourdes", may be held primarily liable for the loss/damage found to have been sustained by subject shipment while on board and/or still in the custody of the said vessel.

Petitioner contends that respondent Citadel Lines, Inc., being the ship agent for the vessel S/S "St. Lourdes", is liable under the pertinent provisions of the Code of Commerce and applicable jurisprudence.

Respondent Citadel Lines, Inc., in its Comment to the petition, alleges that the lower court had made a finding that it is a mere agent of Oyama Shipping Co., Ltd., and not a ship agent, and this, being a finding of fact, can no longer be questioned in the instant proceedings. Further, it argues that the provisions of the Code of Commerce relied upon by petitioner are applicable to a ship agent, but not to a mere agent like private respondent, and that granting that it is a ship agent, it contends that it should not be held liable because the principal, Oyama Shipping Co., Ltd. has been declared insolvent. It is claimed that petitioner, upon being informed of the insolvency of the Oyama Shipping Co., Ltd., should have filed its claim before the Trustee of the Oyama Shipping Co., Ltd. in Japan.

In fine, private respondents do not dispute that a ship agent is liable to third persons under certain circumstances as provided in the Code of Commerce, but insists that it is not a ship agent but a mere agent and hence, not liable.

We find the instant petition meritorious. The error of the lower court lies in its application of the general rule on agency to the case at quo, when the applicable law is contained in the pertinent provisions of the Code of Commerce as applied in relevant decisions of this Court. Its finding, therefore, that respondent Citadel Lines, Inc. was a mere agent of Oyama Shipping Co., Ltd. was a result of its erroneous application of the law on agency to

the instant case. Considering the peculiar relationship of the parties, respondent Citadel Lines, Inc. cannot be considered as a "mere agent" under the civil law on agency as distinguished from a ship agent, within the context of the Code of Commerce. In *Yu Biao Sontua & Co. v. Ossorio*,^[1] for example, it was held that the doctrines having reference to the relations between principal and agent cannot be applied in the case of ship agents and ship owners. For this reason, respondent cannot validly claim that the court a quo made a finding of fact which is conclusive upon this Court. A ship agent, according to Article 586 of the Code of Commerce, is "the person entrusted with the provisioning of a vessel, or who represents her in the port in which she happens to be." (Italics supplied.)

It is not disputed by the private respondent that it is the local representative in the Philippines of the Oyama Shipping Co., Ltd. and, as alleged by petitioner, upon arrival of the vessel S/S "St. Lourdes" in Manila, it took charge of the unloading of the cargo and issued cargo receipts (or tally sheets) in its own name, for the purpose of evidencing discharge of cargoes and the conditions thereof from the vessel to the arrastre operators and/or unto barges/lighters, and that claims against the vessel S/S "St. Lourdes" for losses/damages sustained by shipments were in fact filed and processed by respondent Citadel Lines, Inc. These facts point to the inevitable conclusion that private respondent is the entity that represents the vessel in the port of Manila and hence is a ship agent within the meaning and context of Article 586 of the Code of Commerce.

The Code of Commerce provides, among others, that the ship agent shall also be liable for the indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freightage he may have earned during the voyage. (Article 587).

In addition, Article 618 of the same Code states:

"Art. 618. The captain shall be civilly liable to the ship agent and the latter to the third persons who may have made contracts with the former -

"1. For all the damages suffered by the vessel and its cargo by reason of want of skill or negligence on his part. If a misdemeanor or crime has been committed he shall be liable in accordance with the Penal Code.

"2. For all the thefts and robberies committed by the crew, reserving his right of action against the guilty parties.

"3. For the losses, fines, and confiscations imposed on account of violation of the laws and regulations of customs, police, health, and navigation.

"4. For the losses and damages caused by mutinies on board the vessel, or by reason of faults committed by the crew in the service and defense of the same, if he does not prove that he made full use of his authority to prevent or avoid them.

"5. For those arising by reason of a misuse of powers and nonfulfillment of the duties which pertain to him in accordance with Articles 610 and 612.

"6. For those arising by reason of his going out of his course or taking a course which, in the opinion of the officers of the vessel, at a meeting attended by the shippers or supercargoes who may be on board, he should not have taken without sufficient cause.

"No exception whatsoever shall exempt him from his obligation.

"7. For those arising by reason of his voluntarily entering a port other than his destination, with the exception of the cases or without the formalities referred to in Article 612.

"8. For those arising by reason of the non-observance of the provisions contained in the regulations for lights and maneuvers for the purpose of preventing collisions."

The foregoing provisions have been repeatedly applied by this Court in various cases, among them: *Pons y Compañia v. La Compañia Maritima*;[2] *Behn, Meyer & Co. v. McMicking, et al.*;^[3] *Yu Biao Sontua & Co. v. Ossorio*;^[4] *Wing Kee Compradoring Co. v. Bark "Monongahela"*;^[5] and *The American Insurance Co., Inc. v. Macondray & Co., Inc.*^[6]

In *Pons v. La Compañia Maritima*, supra, it was held that for damages resulting to merchandise in transit due to negligence of the officers of the ship, a cause of action arises against the owners or agents of the vessels which may be prosecuted by the shipper or consignor of the damaged goods.

At any rate, the liabilities of the ship agent are not disputed by private respondent. It appearing that the Citadel Lines is the ship agent for the vessel S/S "St. Lourdes" at the port of Manila, it is, therefore, liable to the petitioner, solidarily with its principal, Oyama Shipping Co., Ltd., in an amount representing the value of the goods lost and or damaged, amounting to P38,698.94, which was like-wise the amount paid by petitioner, as insurer, to the insured/consignee. As found by the court a quo, there has been no proof presented to show that the officers of the vessel, in whose custody the goods were lost or damaged, are exempt from liability therefrom and that the damage was caused by factors and circumstances exempting them from liability.

The insolvency of Oyama Lines has no bearing on the instant case insofar as the liability of Citadel Lines, Inc. is concerned. The law does not make the liability of the ship agent dependent upon the solvency or insolvency of the ship owner.

WHEREFORE, the decision appealed from is modified, and private respondent Citadel Lines, Inc. is hereby ordered to pay, solidarily with its principal, Oyama Lines (Oyama Shipping Co., LTD.), the amount of P38,698.94, with interest thereon at the legal rate from the date of the filing of the complaint on December 24, 1975 until fully paid, P5,000.00 as attorney's fees and the costs of suit. The rest of the decision is affirmed. No pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), and Concepcion, Jr., JJ., concur.

Abad Santos, J., on leave.

Aquino, J., I concur with the observation that the liability of a ship agent, like Citadel Lines, Inc., is limited to the value of the vessel or to its insurance, in view of the so-called real and hypothecary nature of maritime law (*Yangco vs. Laserna*, 73 Phil. 330; *Philippine Shipping Co. vs. Garcia*, 6 Phil. 281).

[1] No. 17690, June 14, 1922, 43 Phil. 511.

[2] No. 3676, Oct. 26, 1907, 9 Phil. 125.

[3] No. 4536, Sept. 17, 1908, 11 Phil. 276.

[4] No. 17690, June 14, 1922, 43 Phil. 511.

[5] No. 19540, Jan. 29, 1923, 44 Phil. 464.

[6] L-23222, June 10, 1971, 39 SCRA 494.

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