

MARIMPERIO COMPANIA NAVIERA, S.A, PETITIONER, VS. COURT OF APPEALS AND UNION IMPORT & EXPORT CORPORATION AND PHILIN TRADERS CORPORATION, RESPONDENTS.

G.R. No. L-40234. December 14, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari under Section 1, Rule 65 of the Rules of Court seeking the annulment and setting aside of the decision of the Court of Appeals* and promulgated on September 2, 1974 in CA-G.R. No. 48521-R entitled "Union Import and Export Corporation, et al., Plaintiffs-Appellees v. Marimperio Compania Naviera, S.A., Defendant-Appellant", ordering petitioner to pay respondent the total sum of US \$265,482.72 plus attorney's fees of US \$100,000.00 and (b) the resolution of the said Court of Appeals in the same case, dated February 17, 1975 fixing the amount of attorney's fees to P100,000.00 instead of \$100,000.00 as erroneously stated in the decision but denying petitioner's motion for reconsideration and/or new trial.

The dispositive portion of the decision sought to be annulled (Rollo, p. 215) reads as follows:

For all the foregoing, and in accordance therewith, let judgment be entered (a) affirming the decision appealed from insofar as it directs the defendant-appellant: (1) to pay plaintiffs the sum of US\$22,500.00 representing the remittance of plaintiffs to said defendant for the first 15-day hire of the vessel 'SS PAXOI', including overtime and an overpayment of US\$254.00; (2) to pay plaintiffs the sum of US \$16,000.00, corresponding to the remittance of plaintiffs to defendant for the second 15-day hire of the aforesaid vessel; (3) to pay plaintiffs the sum of US\$6,982.72, representing the cost of bunker oil, survey and watering of the said vessel; (4) to pay plaintiffs the sum of US\$100,000.00 as and for attorney's fees; and, (b) reversing the portion granting commission to the intervenor-appellee and hereby dismissing the complaint-in-intervention. The order of the court a quo denying the plaintiffs' Motion for Partial Reconsideration, is likewise, affirmed, without any special pronouncement as to costs."

The facts of the case as gathered from the amended decision of the lower court (Amended Record on Appeal, p. 352), are as follows:

In 1964 Philin Traders Corporation and Union Import and Export Corporation entered into a joint business venture for the purchase of copra from Indonesia for sale in Europe. James Liu, President and General Manager of the Union took charge of the European market and the chartering of a vessel to take the copra to Europe. Peter Yap of Philin on the other hand, found one P.T. Karkam in Dumai, Sumatra who had around 4,000 tons of copra for sale. Exequiel Toeg of Interocean was commissioned to look for a vessel and he found the vessel "SS Paxoi" of Marimperio available. Philin and Union authorized Toeg to negotiate for its charter but with instructions to keep confidential the fact that they are the real charterers.

Consequently on March 21, 1965, in London England, a "Uniform Time Charter" for the hire of vessel "Paxoi" was entered into by the owner, Marimperio Compania Naviera, S.A. through its agents N. & J. Vlassopulos, Ltd.

and Matthews Wrightson, Burbridge, Ltd. to be referred to simply as Matthews, representing Interocean Shipping Corporation, which was made to appear as charterer, although it merely acted in behalf of the real charterers, private respondents herein.

The pertinent provisions or clauses of the Charter Party read:

'1. The Owners let, and the Charterers hire the Vessel for a period of 1 (one) trip via safe port or ports Hong Kong, Philippine Islands and/or INDONESIA from the time the Vessel is delivered and placed at the disposal of the Charterers on sailing HSINKANG x x x.

4. The Charterers are to provide and pay for oil-fuel, water for boilers, port charges, pilotages x x x.

6. The Charterers to pay as hire s.21 (Twenty-one Shillings per deadweights ton per 30 days or pro rata commencing in accordance with Clause 1 until her redelivery to the owners.

"Payment of hire to be made in cash as per Clause 40 without discount, every 15 days in advance.

In default of payment of the Owners to have the right of withdrawing the vessel from the services of the Charterers, without noting any protest and without interference by any court or any formality whatsoever and without prejudice the Owners may otherwise have on the Charterers under the Charter.

7. The Vessel to be redelivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear expected) in the Charterer's option in ANTWERP HAMBURG RANGE.

20. The Charterers to have the option of subletting the Vessel, giving due notice to the Owners, but the original Charterers always to remain responsible to the Owners for due performance of the Charter.

29. Export and/or import permits for Charterers' cargo to the Charterers' risk and expense. Charterers to obtain and be responsible for all the necessary permits to enter and/or trade in and out of all ports during the currency of the Charter at their risk and expense. x x x

33. Charterers to pay as overtime, bonus and premiums to Master, Officers and crew, the sum of £200 (Two Hundred Pounds) per month to be paid together with hire.

37. Bunkers on delivery as on board. Bunkers on redelivery maximum 110 tons. Prices of bunkers at 107' per long ton at both ends.

38. Upon sailing from each loading port, Master to cable SEASHIPS MANILA advising the quantity loaded and the time of completion

40. The hire shall be payable in external sterling or at Charterers' option in U.S. dollars in London: - Williams Deacon's Vlassopoulos Ltd., Account No. 861769."

In view of the aforesaid Charter, on March 30, 1965 plaintiff Charterer cabled a firm offer to P.T. Karkam to buy the 4,000 tons of copra for U.S. \$180.00 per ton, the same to be loaded either in April or May, 1965. The offer was accepted and plaintiffs opened two irrevocable letters of Credit in favor of P.T. Karkam.

On March 29, 1965, the Charterer was notified by letter by Vlassopoulos through Matthews that the vessel "PAXOI" had sailed from Hsinkang at noontime on March 27, 1965 and that it had left on hire at that time and date under the Uniform Time-Charter.

The Charterer was however twice in default in its payments which were supposed to have been done in advance. The first 15-day hire comprising the period from March 27 to April 11, 1965 was paid despite follow-ups only on April 6, 1965 and the second 15-day hire for the period from April 12 to April 27, 1965 was paid also despite follow-ups only on April 26, 1965. On April 14, 1965 upon representation of Toeg, the Esso Standard Oil

(Hongkong) Company supplied the vessel with 400 tons of bunker oil at a cost of US \$6,982.73.

Although the late payments for the charter of the vessel were received and acknowledged by Vlassopoulos without comment or protest, said agent notified Matthews, by telex on April 23, 1965 that the shipowners in accordance with Clause 6 of the Charter Party were withdrawing the vessel from Charterer's service and holding said Charterer responsible for unpaid hirings and all legal claims.

On April 29, 1965, the shipowners entered into another charter agreement with another Charterer, the Nederlandsche Stoomvaart of Amsterdam, the delivery date of which was around May 3, 1965 for a trip via Indonesia to Antwerp/Hamburg at an increased charter cost.

Meanwhile, the original Charterer again remitted on April 30, 1965, the amount corresponding to the 3rd 15-day hire of the vessel PAXOI, but this time the remittance was refused.

On May 3, 1965, respondents Union Import and Export Corporation and Philin Traders Corporation filed a complaint with the Court of First Instance of Manila, Branch VIII, against the Unknown Owners of the Vessel "SS Paxoi", for specific performance with prayer for preliminary attachment, alleging, among other things, that the defendants (unknown owners) through their duly authorized agent in London, the N & J Vlassopoulos, Ltd., ship brokers, entered into a contract of Uniform Time-Charter with the Interocean Shipping Company of Manila through the latter's duly authorized broker, the Overseas Steamship Co., Inc., for the Charter of the vessel "SS PAXOI" under the terms and conditions appearing therein x x x; that, immediately thereafter, the Interocean Shipping Company sublet the said vessel to the plaintiff Union Import & Export Corporation which in turn sublet the same to the other plaintiff, the Philin Traders Corporation (Amended Record on Appeal, p. 17). Respondents as plaintiffs in the complaint obtained a writ of preliminary attachment of vessel "PAXOI" which was anchored at Davao on May 5, 1969, upon the filing of the corresponding bond of P1,663,030.00 (Amended Record on Appeal, p. 27). However, the attachment was lifted on May 15, 1969 upon defendant's motion and filing of a counterbond for P1,663,030 (Amended Record on Appeal, p. 62).

On May 11, 1965, the complaint was amended to identify the defendant as Marimperio Compania Naviera S.A., petitioner herein (Amended Record on Appeal, p. 38). In answer to the amended complaint, by way of special defenses defendant (petitioner herein) alleged among others that the Charter Party covering its vessel "SS (PAXOI) was entered into by defendant with Interocean Shipping Co. which is not a party in the complaint; that defendant has no agreement or relationship whatsoever with the plaintiffs; that plaintiffs are unknown to defendant; that the charter party entered into by defendant with the Interocean Shipping Co. over the vessel "SS PAXOI" does not authorize a sub-charter of said vessel to other parties; and that at any rate, any such sub-charter was without the knowledge or consent of defendant or defendant's agent, and therefore, has no effect and/or is not binding upon defendant. By way of counterclaim, defendant prayed that plaintiffs be ordered to pay defendant (1) the sum of £5,085.133d or its equivalent, in Philippine currency of P54,929.60, which the defendant failed to realize under the substitute charter, from May 3, 1965 to May 16, 1965, while the vessel was under attachment; (2) the sum of £68.7.10 or its equivalent of P7,132.83, Philippine currency, as premium for defendant's counterbond for the first year, and such other additional premiums that will have to be paid by defendant for additional premiums while the case is pending; and (3) a sum of not less than P200,000.00 for and as attorney's fees and expenses of litigations (Amended Record on Appeal, p. 64).

On March 16, 1966, respondent Interocean Shipping Corporation filed a complaint-in-intervention to collect what it claims to be its loss of income by way of commission and expenses in the amount of P15,000.00 and the sum of P2,000.00 for attorney's fees (Amended Record on Appeal, p. 87). In its amended answer to the complaint-in-intervention petitioner, by way of special defenses alleged that (1) the plaintiff-in-intervention, being

the charterer, did not notify the defendant shipowner, petitioner, herein, about any alleged sub-charter of the vessel "SS PAXOI" to the plaintiffs; consequently, there is no privity of contract between defendant and plaintiffs and it follows that plaintiff-in-intervention, as charterer, is responsible for defendant shipowner for the proper performance of the charter party; (2) that the charter party provides that any dispute arising from the charter party should be referred to arbitration in London; that Charterer plaintiff-in-intervention has not complied with this provision of the charter party; consequently its complaint-in-intervention is pre-mature; and (3) that the alleged commission of 2-1/2% had not become due for the reason, among others, that the charterer violated the contract, and the full hiring fee due the shipowner was not paid in accordance with the terms and conditions of the charter party. By way of counterclaim defendant shipowner charged the plaintiff-in-intervention attorney's fees and expenses of litigation in the sum of P10,000.00 (Amended Record on Appeal, p. 123).

On November 22, 1969 the Court of First Instance of Manila, Branch VIII rendered its decision* in favor of defendant Marimperio Compania Naviera, S.A., petitioner herein, and against plaintiffs Union Import and Export Corporation and Philin Traders Corporation, respondents herein, dismissing the amended complaint, and ordering said plaintiff on the counterclaim to pay defendant, jointly and severally, the amount of £8,011.38 or its equivalent in Philippine currency of P75,303.40, at the exchange rate of P9.40 to 1 for the unearned charter hire due to the attachment of the vessel "PAXOI" in Davao, plus premiums paid on the counterbond as of April 22, 1968 plus the telex and cable charges and the sum of P10,000.00 as attorney's fees and costs. The trial court dismissed the complaint-in-intervention, ordering the intervenor, on the counterclaim, to pay defendant the sum of P10,000.00 as attorney's fees, and the costs (Amended Record on Appeal, p. 315).

Plaintiffs filed a Motion for Reconsideration and/or new trial of the decision of the trial court on December 23, 1969 (Amended Record on Appeal, p. 286); the intervenor filed its motion for reconsideration and/or new trial on January 7, 1970 (Amended Record on Appeal, p. 315).

Acting on the two motions for reconsideration, the trial court reversed its stand in its amended decision dated January 24, 1978. The dispositive portion of the amended decision states:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court renders judgment for the plaintiffs Union Import & Export Corporation and Philin Traders Corporation, and plaintiff-in-intervention, Interocean Shipping Corporation, and consequently orders the defendant, Marimperio Compania Naveria, S.A.:

- (1) To pay plaintiffs the sum of US\$22,500.00 representing the remittance of plaintiffs to said defendant for the first 15-day hire of the vessel 'SS PAXOI', including overtime and an overpayment of US\$254.00;
- (2) To pay plaintiffs the sum of US\$16,000.00 corresponding to the remittance of plaintiffs to defendant for the second 15-day hire of the aforesaid vessel;
- (3) To pay plaintiffs the sum of US\$6,982.72 representing the cost of bunker oil, survey and watering of the said vessel;
- (4) To pay plaintiffs the sum of US\$220,000.00 representing the unrealized profits; and
- (5) To pay plaintiffs the sum of P100,000.00, as and for attorney's fees (Moran, Comments on the Rules of Court, Vol. III, 1957 5d, 644, citing Haussermann vs. Rahmayer, 12 Phil. 350; and others)" (Francisco vs. Matias, G.R. No. L-16349, January 31, 1964; Sison vs. Suntay, G.R. No. L-1000, December 28, 1957).

The Court further orders defendant to pay plaintiff-in-intervention the amount of P15,450.44, representing the latter's commission as broker, with interest thereon at 6% per annum from the date of the filing of the complaint-in-intervention, until fully paid, plus the sum of P2,000.00 as attorney's fees.

The Court finally orders the defendant to pay the costs.

In view of the above conclusion, the Court orders the dismissal of the counterclaims filed by defendant against the plaintiffs and plaintiff-in-intervention, as well as its motion for the award of damages in connection with the issuance of the writ of preliminary attachment."

Defendant (petitioner herein), filed a motion for reconsideration and/or new trial of the amended decision on February 19, 1970 (Amended Record on Appeal, p. 382). Meanwhile a new Judge was assigned to the Trial Court (Amended Record on Appeal, p. 541). On September 10, 1970 the trial court issued its order of September 10, 1970* denying defendant's motion for reconsideration (Amended Record on Appeal, p. 583).

On appeal, the Court of Appeals affirmed the amended decision of the lower court except the portion granting commission to the intervenor-appellee, which it reversed thereby dismissing the complaint-in-intervention. Its two motions (1) for reconsideration and/or new trial and (2) for new trial having been denied by the Court of Appeals in its Resolution of February 17, 1975 which, however, fixed the amount of attorney's fees at P100,000.00 instead of \$100,000.00 (Rollo, p. 81), petitioner filed with this Court its petition for review on certiorari on March 19, 1975 (Rollo, p. 86).

After deliberating on the petition, the Court resolved to require the respondents to comment thereon, in its resolution dated April 2, 1975 (Rollo, p. 225).

The comment on petition for review by certiorari was filed by respondents on April 21, 1975, praying that the petition for review by certiorari dated March 18, 1975 be dismissed for lack of merit (Rollo, p. 226). The reply to comment was filed on May 8, 1975 (Rollo, p. 259). The rejoinder to reply to comment was filed on May 13, 1975 (Rollo, p. 264).

On October 20, 1975, the Court resolved (a) to give due course to the petition; (b) to treat the petition for review as a special civil action; and (c) to require both parties to submit their respective memoranda within thirty (30) days from notice hereof (Rollo, p. 27).

Respondents filed their memoranda on January 27, 1976 (Rollo, p. 290); petitioner, on February 26, 1976 (Rollo, p. 338). Respondents' reply memorandum was filed on April 14, 1976 (Rollo, p. 413) and Rejoinder to respondents' reply memorandum was filed on May 28, 1976 (Rollo, p. 460).

On June 11, 1976, the Court resolved to admit petitioner's rejoinder to respondents' reply memorandum and to declare this case submitted for decision (Rollo, p. 489).

The main issues raised by petitioner are:

1. Whether or not respondents have the legal capacity to bring the suit for specific performance against petitioner based on the charter party; and
2. Whether or not the default of Charterer in the payment of the charter hire within the time agreed upon gives petitioner a right to rescind the charter party extrajudicially.

I.

According to Article 1311 of the Civil Code, a contract takes effect between the parties who made it, and also their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. Since a contract may be violated only by the parties, thereto as against each other, in an action upon that contract, the real parties in interest, either as plaintiff or as defendant, must be parties to said contract. Therefore, a party who has not taken part in it cannot sue or be

sued for performance or for cancellation thereof, unless he shows that he has a real interest affected thereby (Macias & Co. v. Warner Barnes & Co., 43 Phil. 155 [1922] and Salonga v. Warner Barnes & Co., Ltd., 88 Phil. 125 [1951]; Coquia v. Fieldmen's Insurance Co., Inc., 26 SCRA 178 [1968]).

It is undisputed that the charter party, basis of the complaint, was entered into between petitioner Marimperio Compania Naviera, S.A., through its duly authorized agent in London, the N & J Vlassopoulos, Ltd., and the Interocean Shipping Company of Manila through the latter's duly authorized broker, the Overseas Steamship Co., Inc., represented by Matthews, Wrightson Burbridge Ltd., for the Charter of the "SS PAXOI" (Amended Complaint, Amended Record on Appeal, p. 33; Complaint-in-Intervention, Amended Record on Appeal, p. 87). It is also alleged in both the Complaint (Amended Record on Appeal, p. 18) and the Amended Complaint (Amended Record on Appeal, p. 39) that the Interocean Shipping Company sublet the said vessel to respondent Union Import and Export Corporation which in turn sublet the same to respondent Philin Traders Corporation. It is admitted by respondents that the charterer is the Interocean Shipping Company. Even paragraph 3 of the complaint-in-intervention alleges that respondents were given the use of the vessel "pursuant to paragraph 20 of the Uniform Time Charter x x x" which precisely provides for the subletting of the vessel by the charterer (Rollo, p. 24). Furthermore, Article 652 of the Code of Commerce provides that the charter party shall contain, among others, the name, surname, and domicile of the charterer, and if he states that he is acting by commission, that of the person for whose account he makes the contract. It is obvious from the disclosure made in the charter party by the authorized broker, the Overseas Steamship Co., Inc., that the real charterer is the Interocean Shipping Company (which sublet the vessel to Union Import and Export Corporation which in turn sublet it to Philin Traders Corporation).

In a sublease, there are two leases and two distinct judicial relations although intimately connected and related to each other, unlike in a case of assignment of lease, where the lessee transmits absolutely his right, and his personality disappears; there only remains in the juridical relation two persons, the lessor and the assignee who is converted into a lessee (Moreno, Philippine Law Dictionary, 2nd ed., p. 594). In other words, in a contract of sublease, the personality of the lessee does not disappear; he does not transmit absolutely his rights and obligations to the sublessee; and the sublessee generally does not have any direct action against the owner of the premises as lessor, to require the compliance of the obligations contracted with the plaintiff as lessee, or vice versa (10 Manresa, Spanish Civil Code, 438).

However, there are at least two instances in the Civil Code which allow the lessor to bring an action directly (accion directa) against the sub-lessee (use and preservation of the premises under Art. 1651, and rentals under Article 1652).

Art. 1651 reads:

"Without prejudice to his obligation toward the sub-lessor, the sub-lessee is bound to the lessor for all acts which refer to the use and preservation of the thing leased in the manner stipulated between the lessor and the lessee."

Article 1652 reads:

"The sub-lessee is subsidiarily liable to the lessor for any rent due from the lessee. However, the sub-lessee shall not be responsible beyond the amount of rent due from him, in accordance with the terms of the sub-lease, at the time of the extra-judicial demand by the lessor.

Payments of rent in advance by the sub-lessee shall be deemed not to have been made, so far as the lessor's claim is concerned, unless said payments were effected in virtue of the custom of the place."

It will be noted however that in said two Articles it is not the sub-lessee, but the lessor, who can bring the action. In the instant case, it is clear that the sub-lessee as such cannot maintain the suit they filed with the trial court (See *A. Maluenda and Co. v. Enrquez*, 46 Phil. 916).

In the law of agency "with an undisclosed principal, the Civil Code in Article 1883 reads:

"If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.

In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent."

While in the instant case, the true charterers of the vessel were the private respondents herein and they chartered the vessel through an intermediary which upon instructions from them did not disclose their names. Article 1883 cannot help the private respondents, because although they were the actual principals in the charter of the vessel, the law does not allow them to bring any action against the adverse party and vice-versa.

II.

The answer to the question of whether or not the default of charterer in the payment of the charter hire within the time agreed upon gives petitioner a right to rescind the charter party extrajudicially, is undoubtedly in the affirmative.

Clause 6 of the Charter party specifically provides that the petitioner has the right to withdraw the vessel from the service of the charterers, without noting any protest and without interference of any court or any formality in the event that the charterer defaults in the payment of hire. The payment of hire was to be made every fifteen (15) days in advance.

It is undisputed that the vessel "SS PAXOI" came on hire on March 27, 1965. On March 29, Vlassopoulos notified by letter the charterer through Matthews of that fact, enclosing therein owner's debit note for a 15-day hire payable in advance. On March 30, 1965 the shipowner again notified Matthews that the payment for the first 15-day hire was overdue. Again on April 2 the shipowner telexed Matthews insisting on the payment, but it was only on April 7 that the amount of US \$22,500.00 was remitted to Williams Deacons Bank, Ltd. through the Rizal Commercial Banking Corporation for the account of Vlassopoulos, agent of petitioner, corresponding to the first 15-day hire from March 27 to April 11, 1965.

On April 8, 1965, Vlassopoulos acknowledged receipt of the payment, again with a debit note for the second 15-day hire and overtime which was due on April 11, 1965. On April 23, 1965, Vlassopoulos notified Matthews by telex that charterers were in default and in accordance with Clause 6 of the charter party, the vessel was being withdrawn from charterer's service, holding them responsible for unpaid hire and all other legal claims of the owner. Respondents remitted the sum of US \$6,000.00 and US \$10,000.00 to the bank only on April 26, 1965 representing payment for the second 15-day hire from April 12 to April 27, 1965, received and accepted by the payee, Vlassopoulos without any comment or protest.

Unquestionably, as of April 23, 1965, when Vlassopoulos notified Matthews of the withdrawal of the vessel from the Charterers' service, the latter was already in default. Accordingly, under Clause 6 of the charter party the owners had the right to withdraw "SS PAXOI" from the service of charterers, which withdrawal they did.

The question that now arises is whether or not petitioner can rescind the charter party extrajudicially. The answer is also in the affirmative. A contract is the law between the contracting parties, and when there is nothing in it which is contrary to law, morals, good customs, public policy or public order, the validity of the contract must be sustained (*Consolidated Textile Mills, Inc. v. Reparations Commission*, 22 SCRA 674 [1968]; *Lazo v. Republic Surety & Insurance Co., Inc.*, 31 SCRA 329 [1970]; *Castro v. Court of Appeals*, 99 SCRA 722 [1980]; *Escano v. Court of Appeals*, 100 SCRA 197 [1980]). A judicial action for the rescission of a contract is not necessary where the contract provides that it may be revoked and cancelled for violation of any of its terms and conditions (*Enrile v. Court of Appeals*, 29 SCRA 504 [1969]; *University of the Philippines v. De los Angeles*, 35 SCRA 102 [1970]; *Palay, Inc. v. Clave*, 124 SCRA 638 [1983]).

PREMISES CONSIDERED, (1) the decision of the Court of Appeals affirming the amended decision of the Court of First Instance of Manila, Branch VIII, is hereby REVERSED and SET ASIDE except for that portion of the decision dismissing the complaint-in-intervention; and (2) the original decision of the trial court is hereby REINSTATED.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

* Decision of the Fourth Division, penned by Associate Justice Pacifico P. de Castro (concurrent in by Justices Guillermo S. Santos and Ramon G. Gaviola, Jr.) who also penned the questioned resolution.

* Rendered by Judge Manuel P. Barcelona.

* Issued by Judge Abundio Z. Arrieta.

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