

NATIONAL STEEL CORPORATION, PETITIONER, VS. COURT OF APPEALS AND VLASONS SHIPPING, INC., RESPONDENTS.

G.R. No. 112287. December 12, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The Court finds occasion to apply the rules on the seaworthiness of a private carrier, its owner's responsibility for damage to the cargo and its liability for demurrage and attorney's fees. The Court also reiterates the well-known rule that findings of facts of trial courts, when affirmed by the Court of Appeals, are binding on this Court.

The Case

Before us are two separate petitions for review filed by National Steel Corporation (NSC) and Vlasons Shipping, Inc. (VSI), both of which assail the August 12, 1993 Decision of the Court of Appeals. [1] The Court of Appeals modified the decision of the Regional Trial Court of Pasig, Metro Manila, Branch 163 in Civil Case No. 23317. The RTC disposed as follows:

“WHEREFORE, judgment is hereby rendered in favor of defendant and against the plaintiff dismissing the complaint with cost against plaintiff, and ordering plaintiff to pay the defendant on the counterclaim as follows:

1. The sum of P75,000.00 as unpaid freight and P88,000.00 as demurrage with interest at the legal rate on both amounts from April 7, 1976 until the same shall have been fully paid;
2. Attorney's fees and expenses of litigation in the sum of P100,000.00; and
3. Cost of suit.

SO ORDERED.” [2]

On the other hand, the Court of Appeals ruled:

“WHEREFORE, premises considered, the decision appealed from is modified by reducing the award for demurrage to P44,000.00 and deleting the award for attorney's fees and expenses of litigation. Except as thus modified, the decision is AFFIRMED. There is no pronouncement as to costs.

SO ORDERED.” [3]

The Facts

The MV Vlasons I is a vessel which renders tramping service and, as such, does not transport cargo or shipment for the general public. Its services are available only to specific persons who enter into a special contract of charter party with its owner. It is undisputed that the ship is a private carrier. And it is in this capacity that its owner, Vlasons Shipping, Inc., entered into a contract of affreightment or contract of voyage charter hire with

National Steel Corporation.

The facts as found by Respondent Court of Appeals are as follows:

“(1) On July 17, 1974, plaintiff National Steel Corporation (NSC) as Charterer and defendant Vlasons Shipping, Inc. (VSI) as Owner, entered into a Contract of Voyage Charter Hire (Exhibit ‘B’; also Exhibit ‘1’) whereby NSC hired VSI’s vessel, the MV ‘VLASONS I’ to make one (1) voyage to load steel products at Iligan City and discharge them at North Harbor, Manila, under the following terms and conditions, viz:

- ‘1. x x x x x.
2. Cargo: Full cargo of steel products of not less than 2,500 MT, 10% more or less at Master’s option.
3. x x x x x
4. Freight/Payment: P30.00 /metric ton, FIOST basis. Payment upon presentation of Bill of Lading within fifteen (15) days.
5. Laydays/Cancelling: July 26, 1974/Aug. 5, 1974.
6. Loading/Discharging Rate: 750 tons per WWDSHINC. (Weather Working Day of 24 consecutive hours, Sundays and Holidays Included).
7. Demurrage/Dispatch: P8,000.00/P4,000.00 per day.
8. x x x x x
9. Cargo Insurance: Charterer’s and/or Shipper’s must insure the cargoes. Shipowners not responsible for losses/damages except on proven willful negligence of the officers of the vessel.
10. Other terms:(a) All terms/conditions of NONYAZAI C/P [sic] or other internationally recognized Charter Party Agreement shall form part of this Contract.

The terms ‘F.I.O.S.T.’ which is used in the shipping business is a standard provision in the NANYOZAI Charter Party which stands for ‘Freight In and Out including Stevedoring and Trading’, which means that the handling, loading and unloading of the cargoes are the responsibility of the Charterer. Under Paragraph 5 of the NANYOZAI Charter Party, it states, ‘Charterers to load, stow and discharge the cargo free of risk and expenses to owners. x x x’ (Underscoring supplied).

Under paragraph 10 thereof, it is provided that ‘(o)wners shall, before and at the beginning of the voyage, exercise due diligence to make the vessel seaworthy and properly manned, equipped and supplied and to make the holds and all other parts of the vessel in which cargo is carried, fit and safe for its reception, carriage and preservation. Owners shall not be liable for loss of or damage of the cargo arising or resulting from: unseaworthiness unless caused by want of due diligence on the part of the owners to make the vessel seaworthy, and to secure that the vessel is properly manned, equipped and supplied and to make the holds and all other parts of the vessel in which cargo is carried, fit and safe for its reception, carriage and preservation; xxx; perils, dangers and accidents of the sea or other navigable waters; xxx; wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the cargo; insufficiency of packing; xxx; latent defects not discoverable by due diligence; any other cause arising without the actual fault or privity of Owners or without the fault of the agents or servants of owners.’

Paragraph 12 of said NANYOZAI Charter Party also provides that ‘(o)wners shall not be responsible for split, chafing and/or any damage unless caused by the negligence or default of the master and crew.’

(2) On August 6, 7 and 8, 1974, in accordance with the Contract of Voyage Charter Hire, the MV ‘VLASONS

I' loaded at plaintiff's pier at Iligan City, the NSC's shipment of 1,677 skids of tinplates and 92 packages of hot rolled sheets or a total of 1,769 packages with a total weight of about 2,481.19 metric tons for carriage to Manila. The shipment was placed in the three (3) hatches of the ship. Chief Mate Gonzalo Sabando, acting as agent of the vessel[,] acknowledged receipt of the cargo on board and signed the corresponding bill of lading, B.L.P.P. No. 0233 (Exhibit 'D') on August 8, 1974.

(3) The vessel arrived with the cargo at Pier 12, North Harbor, Manila, on August 12, 1974. The following day, August 13, 1974, when the vessel's three (3) hatches containing the shipment were opened by plaintiff's agents, nearly all the skids of tinplates and hot rolled sheets were allegedly found to be wet and rusty. The cargo was discharged and unloaded by stevedores hired by the Charterer. Unloading was completed only on August 24, 1974 after incurring a delay of eleven (11) days due to the heavy rain which interrupted the unloading operations. (Exhibit 'E')

(4) To determine the nature and extent of the wetting and rusting, NSC called for a survey of the shipment by the Manila Adjusters and Surveyors Company (MASCO). In a letter to the NSC dated March 17, 1975 (Exhibit 'G'), MASCO made a report of its ocular inspection conducted on the cargo, both while it was still on board the vessel and later at the NDC warehouse in Pureza St., Sta. Mesa, Manila where the cargo was taken and stored. MASCO reported that it found wetting and rusting of the packages of hot rolled sheets and metal covers of the tinplates; that tarpaulin hatch covers were noted torn at various extents; that container/metal casings of the skids were rusting all over. MASCO ventured the opinion that 'rusting of the tinplates was caused by contact with SEA WATER sustained while still on board the vessel as a consequence of the heavy weather and rough seas encountered while en route to destination (Exhibit 'F'). It was also reported that MASCO's surveyors drew at random samples of bad order packing materials of the tinplates and delivered the same to the M.I.T. Testing Laboratories for analysis. On August 31, 1974, the M.I.T. Testing Laboratories issued Report No. 1770 (Exhibit 'I') which in part, states, 'The analysis of bad order samples of packing materials xxx shows that wetting was caused by contact with SEA WATER'.

(5) On September 6, 1974, on the basis of the aforesaid Report No. 1770, plaintiff filed with the defendant its claim for damages suffered due to the downgrading of the damaged tinplates in the amount of P941,145.18. Then on October 3, 1974, plaintiff formally demanded payment of said claim but defendant VSI refused and failed to pay. Plaintiff filed its complaint against defendant on April 21, 1976 which was docketed as Civil Case No. 23317, CFI, Rizal.

(6) In its complaint, plaintiff claimed that it sustained losses in the aforesaid amount of P941,145.18 as a result of the act, neglect and default of the master and crew in the management of the vessel as well as the want of due diligence on the part of the defendant to make the vessel seaworthy and to make the holds and all other parts of the vessel in which the cargo was carried, fit and safe for its reception, carriage and preservation -- all in violation of defendant's undertaking under their Contract of Voyage Charter Hire.

(7) In its answer, defendant denied liability for the alleged damage claiming that the MV 'VLASONS I' was seaworthy in all respects for the carriage of plaintiff's cargo; that said vessel was not a 'common carrier' inasmuch as she was under voyage charter contract with the plaintiff as charterer under the charter party; that in the course of the voyage from Iligan City to Manila, the MV 'VLASONS I' encountered very rough seas, strong winds and adverse weather condition, causing strong winds and big waves to continuously pound against the vessel and seawater to overflow on its deck and hatch covers; that under the Contract of Voyage Charter Hire, defendant shall not be responsible for losses/damages except on proven willful negligence of the officers of the vessel, that the officers of said MV 'VLASONS I' exercised due diligence and proper seamanship and were not willfully negligent; that furthermore the Voyage Charter Party provides that loading and discharging of the cargo was on FIOST terms which means that the vessel was free of risk and expense in connection with the loading and discharging of the cargo; that the damage, if any, was due to the inherent defect, quality or vice of the cargo or to the insufficient packing thereof or to latent defect of the cargo not discoverable by due diligence or to any other cause arising without the actual fault or privity of defendant and

without the fault of the agents or servants of defendant; consequently, defendant is not liable; that the stevedores of plaintiff who discharged the cargo in Manila were negligent and did not exercise due care in the discharge of the cargo; and that the cargo was exposed to rain and seawater spray while on the pier or in transit from the pier to plaintiff's warehouse after discharge from the vessel; and that plaintiff's claim was highly speculative and grossly exaggerated and that the small stain marks or sweat marks on the edges of the tinplates were magnified and considered total loss of the cargo. Finally, defendant claimed that it had complied with all its duties and obligations under the Voyage Charter Hire Contract and had no responsibility whatsoever to plaintiff. In turn, it alleged the following counterclaim:

(a) That despite the full and proper performance by defendant of its obligations under the Voyage Charter Hire Contract, plaintiff failed and refused to pay the agreed charter hire of P75,000.00 despite demands made by defendant;

(b) That under their Voyage Charter Hire Contract, plaintiff had agreed to pay defendant the sum of P8,000.00 per day for demurrage. The vessel was on demurrage for eleven (11) days in Manila waiting for plaintiff to discharge its cargo from the vessel. Thus, plaintiff was liable to pay defendant demurrage in the total amount of P88,000.00.

(c) For filing a clearly unfounded civil action against defendant, plaintiff should be ordered to pay defendant attorney's fees and all expenses of litigation in the amount of not less than P100,000.00.

(8) From the evidence presented by both parties, the trial court came out with the following findings which were set forth in its decision:

(a) The MV 'VLASONS I' is a vessel of Philippine registry engaged in the tramping service and is available for hire only under special contracts of charter party as in this particular case.

(b) That for purposes of the voyage covered by the Contract of Voyage Charter Hire (Exh. '1'), the MV 'VLASONS I' was covered by the required seaworthiness certificates including the Certification of Classification issued by an international classification society, the NIPPON KAIJI KYOKAI (Exh. '4'); Coastwise License from the Board of Transportation (Exh. '5'); International Loadline Certificate from the Philippine Coast Guard (Exh. '6'); Cargo Ship Safety Equipment Certificate also from the Philippine Coast Guard (Exh. '7'); Ship Radio Station License (Exh. '8'); Certificate of Inspection by the Philippine Coast Guard (Exh. '12'); and Certificate of Approval for Conversion issued by the Bureau of Customs (Exh. '9'). That being a vessel engaged in both overseas and coastwise trade, the MV 'VLASONS I' has a higher degree of seaworthiness and safety.

(c) Before it proceeded to Iligan City to perform the voyage called for by the Contract of Voyage Charter Hire, the MV 'VLASONS I' underwent drydocking in Cebu and was thoroughly inspected by the Philippine Coast Guard. In fact, subject voyage was the vessel's first voyage after the drydocking. The evidence shows that the MV 'VLASONS I' was seaworthy and properly manned, equipped and supplied when it undertook the voyage. It had all the required certificates of seaworthiness.

(d) The cargo/shipment was securely stowed in three (3) hatches of the ship. The hatch openings were covered by hatchboards which were in turn covered by two or double tarpaulins. The hatch covers were water tight. Furthermore, under the hatchboards were steel beams to give support.

(e) The claim of the plaintiff that defendant violated the contract of carriage is not supported by evidence. The provisions of the Civil Code on common carriers pursuant to which there exists a presumption of negligence in case of loss or damage to the cargo are not applicable. As to the damage to the tinplates which was allegedly due to the wetting and rusting thereof, there is un rebutted testimony of witness Vicente Angliongto that tinplates 'sweat' by themselves when packed even without being in contact (sic) with water from outside especially when

the weather is bad or raining. The rust caused by sweat or moisture on the tinplates may be considered as a loss or damage but then, defendant cannot be held liable for it pursuant to Article 1734 of the Civil Code which exempts the carrier from responsibility for loss or damage arising from the 'character of the goods x x x'. All the 1,769 skids of the tinplates could not have been damaged by water as claimed by plaintiff. It was shown as claimed by plaintiff that the tinplates themselves were wrapped in kraft paper lining and corrugated cardboards could not be affected by water from outside.

(f) The stevedores hired by the plaintiff to discharge the cargo of tinplates were negligent in not closing the hatch openings of the MV 'VLASONS I' when rains occurred during the discharging of the cargo thus allowing rainwater to enter the hatches. It was proven that the stevedores merely set up temporary tents to cover the hatch openings in case of rain so that it would be easy for them to resume work when the rains stopped by just removing the tent or canvas. Because of this improper covering of the hatches by the stevedores during the discharging and unloading operations which were interrupted by rains, rainwater drifted into the cargo through the hatch openings. Pursuant to paragraph 5 of the NANYOSAI [sic] Charter Party which was expressly made part of the Contract of Voyage Charter Hire, the loading, stowing and discharging of the cargo is the sole responsibility of the plaintiff charterer and defendant carrier has no liability for whatever damage may occur or maybe [sic] caused to the cargo in the process.

(g) It was also established that the vessel encountered rough seas and bad weather while en route from Iligan City to Manila causing sea water to splash on the ship's deck on account of which the master of the vessel (Mr. Antonio C. Dumlao) filed a 'Marine Protest' on August 13, 1974 (Exh. '15') which can be invoked by defendant as a force majeure that would exempt the defendant from liability.

(h) Plaintiff did not comply with the requirement prescribed in paragraph 9 of the Voyage Charter Hire contract that it was to insure the cargo because it did not. Had plaintiff complied with the requirement, then it could have recovered its loss or damage from the insurer. Plaintiff also violated the charter party contract when it loaded not only 'steel products', i.e. steel bars, angular bars and the like but also tinplates and hot rolled sheets which are high grade cargo commanding a higher freight. Thus plaintiff was able to ship high grade cargo at a lower freight rate.

(I) As regards defendant's counterclaim, the contract of voyage charter hire under paragraph 4 thereof, fixed the freight at P30.00 per metric ton payable to defendant carrier upon presentation of the bill of lading within fifteen (15) days. Plaintiff has not paid the total freight due of P75,000.00 despite demands. The evidence also showed that the plaintiff was required and bound under paragraph 7 of the same Voyage Charter Hire contract to pay demurrage of P8,000.00 per day of delay in the unloading of the cargoes. The delay amounted to eleven (11) days thereby making plaintiff liable to pay defendant for demurrage in the amount of P88,000.00.

Appealing the RTC decision to the Court of Appeals, NSC alleged six errors:

"I

The trial court erred in finding that the MV 'VLASONS I' was seaworthy, properly manned, equipped and supplied, and that there is no proof of willful negligence of the vessel's officers.

"II

The trial court erred in finding that the rusting of NSC's tinplates was due to the inherent nature or character of the goods and not due to contact with seawater.

“III

The trial court erred in finding that the stevedores hired by NSC were negligent in the unloading of NSC's shipment.

“IV

The trial court erred in exempting VSI from liability on the ground of force majeure.

“V

The trial court erred in finding that NSC violated the contract of voyage charter hire.

“VI

The trial court erred in ordering NSC to pay freight, demurrage and attorney's fees, to VSI.”[4]

As earlier stated, the Court of Appeals modified the decision of the trial court by reducing the demurrage from P88,000.00 to P44,000.00 and deleting the award of attorneys fees and expenses of litigation. NSC and VSI filed separate motions for reconsideration. In a Resolution[5] dated October 20, 1993, the appellate court denied both motions. Undaunted, NSC and VSI filed their respective petitions for review before this Court. On motion of VSI, the Court ordered on February 14, 1994 the consolidation of these petitions.[6]

The Issues

In its petition[7] and memorandum,[8] NSC raises the following questions of law and fact:

Questions of Law

- “1. Whether or not a charterer of a vessel is liable for demurrage due to cargo unloading delays caused by weather interruption;
2. Whether or not the alleged ‘seaworthiness certificates’ (Exhibits ‘3’, ‘4’, ‘5’, ‘6’, ‘7’, ‘8’, ‘9’, ‘11’ and ‘12’) were admissible in evidence and constituted evidence of the vessel's seaworthiness at the beginning of the voyages; and
3. Whether or not a charterer's failure to insure its cargo exempts the shipowner from liability for cargo damage.”

Questions of Fact

- “1. Whether or not the vessel was seaworthy and cargo-worthy;
2. Whether or not vessel's officers and crew were negligent in handling and caring for NSC's cargo;
3. Whether or not NSC's cargo of tinplates did sweat during the voyage and, hence, rusted on their own; and
- (4) Whether or not NSC's stevedores were negligent and caused the wetting[/]rusting of NSC's tinplates.”

In its separate petition, [9] VSI submits for the consideration of this Court the following alleged errors of the CA:

“A. The respondent Court of Appeals committed an error of law in reducing the award of demurrage from P88,000.00 to P44,000.00.

B. The respondent Court of Appeals committed an error of law in deleting the award of P100,000 for attorney's fees and expenses of litigation.”

Amplifying the foregoing, VSI raises the following issues in its memorandum: [10]

“I. Whether or not the provisions of the Civil Code of the Philippines on common carriers pursuant to which there exist[s] a presumption of negligence against the common carrier in case of loss or damage to the cargo are applicable to a private carrier.

II. Whether or not the terms and conditions of the Contract of Voyage Charter Hire, including the Nanyozai Charter, are valid and binding on both contracting parties.”

The foregoing issues raised by the parties will be discussed under the following headings:

1. Questions of Fact
2. Effect of NSC’s Failure to Insure the Cargo
3. Admissibility of Certificates Proving Seaworthiness
4. Demurrage and Attorney’s Fees.

The Court’s Ruling

The Court affirms the assailed Decision of the Court of Appeals, except in respect of the demurrage.

Preliminary Matter: Common Carrier or Private Carrier?

At the outset, it is essential to establish whether VSI contracted with NSC as a common carrier or as a private carrier. The resolution of this preliminary question determines the law, standard of diligence and burden of proof applicable to the present case.

Article 1732 of the Civil Code defines a common carrier as “persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.” It has been held that the true test of a common carrier is the carriage of passengers or goods, provided it has space, for all who opt to avail themselves of its transportation service for a fee. [11] A carrier which does not qualify under the above test is deemed a private carrier. “Generally, private carriage is undertaken by special agreement and the carrier does not hold himself out to carry goods for the general public. The most typical, although not the only form of private carriage, is the charter party, a maritime contract by which the charterer, a party other than the shipowner, obtains the use and service of all or some part of a ship for a period of time or a voyage or voyages.” [12]

In the instant case, it is undisputed that VSI did not offer its services to the general public. As found by the Regional Trial Court, it carried passengers or goods only for those it chose under a “special contract of charter party.” [13] As correctly concluded by the Court of Appeals, the MV Vlasons I “was not a common but a private carrier.” [14] Consequently, the rights and obligations of VSI and NSC, including their respective liability for damage to the cargo, are determined primarily by stipulations in their contract of private carriage or charter party. [15] Recently, in Valenzuela Hardwood and Industrial Supply, Inc., vs. Court of Appeals and Seven Brothers Shipping Corporation, [16] the Court ruled:

“ x x x in a contract of private carriage, the parties may freely stipulate their duties and obligations which perforce would be binding on them. Unlike in a contract involving a common carrier, private carriage does not involve the general public. Hence, the stringent provisions of the Civil Code on common carriers protecting the general public cannot justifiably be applied to a ship transporting commercial goods as a private carrier. Consequently, the public policy embodied therein is not contravened by stipulations in a charter party that lessen or remove the protection given by law in contracts involving common carriers.”[17]

Extent of VSI's Responsibility and Liability Over NSC's Cargo

It is clear from the parties' Contract of Voyage Charter Hire, dated July 17, 1974, that VSI "shall not be responsible for losses except on proven willful negligence of the officers of the vessel." The NANYOZAI Charter Party, which was incorporated in the parties' contract of transportation, further provided that the shipowner shall not be liable for loss of or damage to the cargo arising or resulting from unseaworthiness, unless the same was caused by its lack of due diligence to make the vessel seaworthy or to ensure that the same was "properly manned, equipped and supplied," and to "make the holds and all other parts of the vessel in which cargo [was] carried, fit and safe for its reception, carriage and preservation." [18] The NANYOZAI Charter Party also provided that "[o]wners shall not be responsible for split, chafing and/or any damage unless caused by the negligence or default of the master or crew." [19]

Burden of Proof

In view of the aforementioned contractual stipulations, NSC must prove that the damage to its shipment was caused by VSI's willful negligence or failure to exercise due diligence in making MV Vlasons I seaworthy and fit for holding, carrying and safekeeping the cargo. Ineluctably, the burden of proof was placed on NSC by the parties' agreement.

This view finds further support in the Code of Commerce which pertinently provides:

"Art. 361. Merchandise shall be transported at the risk and venture of the shipper, if the contrary has not been expressly stipulated.

Therefore, the damage and impairment suffered by the goods during the transportation, due to fortuitous event, force majeure, or the nature and inherent defect of the things, shall be for the account and risk of the shipper.

The burden of proof of these accidents is on the carrier."

"Art. 362. The carrier, however, shall be liable for damages arising from the cause mentioned in the preceding article if proofs against him show that they occurred on account of his negligence or his omission to take the precautions usually adopted by careful persons, unless the shipper committed fraud in the bill of lading, making him to believe that the goods were of a class or quality different from what they really were."

Because the MV Vlasons I was a private carrier, the shipowner's obligations are governed by the foregoing provisions of the Code of Commerce and not by the Civil Code which, as a general rule, places the prima facie presumption of negligence on a common carrier. It is a hornbook doctrine that:

"In an action against a private carrier for loss of, or injury to, cargo, the burden is on the plaintiff to prove that the carrier was negligent or unseaworthy, and the fact that the goods were lost or damaged while in the carrier's custody does not put the burden of proof on the carrier.

Since x x x a private carrier is not an insurer but undertakes only to exercise due care in the protection of the goods committed to its care, the burden of proving negligence or a breach of that duty rests on plaintiff and proof of loss of, or damage to, cargo while in the carrier's possession does not cast on it the burden of proving proper care and diligence on its part or that the loss occurred from an excepted cause in the contract or bill of lading. However, in discharging the burden of proof, plaintiff is entitled to the benefit of the presumptions and inferences by which the law aids the bailor in an action against a bailee, and since the carrier is in a better position to know the cause of the loss and that it was not one involving its liability, the law requires that it come forward with the information available to it, and its failure to do so warrants an inference or presumption of its liability. However, such inferences and presumptions, while they may affect the burden of coming forward with evidence, do not alter the burden of proof which remains on plaintiff, and, where the carrier comes forward with evidence explaining the loss or damage, the burden of going forward with the evidence is

again on plaintiff.

Where the action is based on the shipowner's warranty of seaworthiness, the burden of proving a breach thereof and that such breach was the proximate cause of the damage rests on plaintiff, and proof that the goods were lost or damaged while in the carrier's possession does not cast on it the burden of proving seaworthiness. x x x Where the contract of carriage exempts the carrier from liability for unseaworthiness not discoverable by due diligence, the carrier has the preliminary burden of proving the exercise of due diligence to make the vessel seaworthy." [20]

In the instant case, the Court of Appeals correctly found that NSC "has not taken the correct position in relation to the question of who has the burden of proof. Thus, in its brief (pp. 10-11), after citing Clause 10 and Clause 12 of the NANYOZAI Charter Party (incidentally plaintiff-appellant's [NSC's] interpretation of Clause 12 is not even correct), it argues that 'a careful examination of the evidence will show that VSI miserably failed to comply with any of these obligations' as if defendant-appellee [VSI] had the burden of proof." [21]

First Issue: Questions of Fact

Based on the foregoing, the determination of the following factual questions is manifestly relevant: (1) whether VSI exercised due diligence in making MV Vlasons I seaworthy for the intended purpose under the charter party; (2) whether the damage to the cargo should be attributed to the willful negligence of the officers and crew of the vessel or of the stevedores hired by NSC; and (3) whether the rusting of the tinplates was caused by its own "sweat" or by contact with seawater.

These questions of fact were threshed out and decided by the trial court, which had the firsthand opportunity to hear the parties' conflicting claims and to carefully weigh their respective evidence. The findings of the trial court were subsequently affirmed by the Court of Appeals. Where the factual findings of both the trial court and the Court of Appeals coincide, the same are binding on this Court. [22] We stress that, subject to some exceptional instances, [23] only questions of law -- not questions of fact -- may be raised before this Court in a petition for review under Rule 45 of the Rules of Court. After a thorough review of the case at bar, we find no reason to disturb the lower courts' factual findings, as indeed NSC has not successfully proven the application of any of the aforecited exceptions.

Was MV Vlasons I Seaworthy?

In any event, the records reveal that VSI exercised due diligence to make the ship seaworthy and fit for the carriage of NSC's cargo of steel and tinplates. This is shown by the fact that it was drydocked and inspected by the Philippine Coast Guard before it proceeded to Iligan City for its voyage to Manila under the contract of voyage charter hire. [24] The vessel's voyage from Iligan to Manila was the vessel's first voyage after drydocking. The Philippine Coast Guard Station in Cebu cleared it as seaworthy, fitted and equipped; it met all requirements for trading as cargo vessel. [25] The Court of Appeals itself sustained the conclusion of the trial court that MV Vlasons I was seaworthy. We find no reason to modify or reverse this finding of both the trial and the appellate courts.

Who Were Negligent: Seamen or Stevedores?

As noted earlier, the NSC had the burden of proving that the damage to the cargo was caused by the negligence of the officers and the crew of MV Vlasons I in making their vessel seaworthy and fit for the carriage of tinplates. NSC failed to discharge this burden.

Before us, NSC relies heavily on its claim that MV Vlasons I had used an old and torn tarpaulin or canvas to cover the hatches through which the cargo was loaded into the cargo hold of the ship. It faults the Court of

Appeals for failing to consider such claim as an “uncontroverted fact” [26] and denies that MV Vlasons I “was equipped with new canvas covers in tandem with the old ones as indicated in the Marine Protest xxx.” [27] We disagree.

The records sufficiently support VSI’s contention that the ship used the old tarpaulin, only in addition to the new one used primarily to make the ship’s hatches watertight. The foregoing are clear from the marine protest of the master of the MV Vlasons I, Antonio C. Dumlao, and the deposition of the ship’s boatswain, Jose Pascua. The salient portions of said marine protest read:

“x x x That the M/V “VLASONS I” departed Iligan City or or about 0730 hours of August 8, 1974, loaded with approximately 2,487.9 tons of steel plates and tin plates consigned to National Steel Corporation; that before departure, the vessel was rigged, fully equipped and cleared by the authorities; that on or about August 9, 1974, while in the vicinity of the western part of Negros and Panay, we encountered very rough seas and strong winds and Manila office was advised by telegram of the adverse weather conditions encountered; that in the morning of August 10, 1974, the weather condition changed to worse and strong winds and big waves continued pounding the vessel at her port side causing sea water to overflow on deck and hatch (sic) covers and which caused the first layer of the canvass covering to give way while the new canvass covering still holding on;

That the weather condition improved when we reached Dumali Point protected by Mindoro; that we re-secured the canvass covering back to position; that in the afternoon of August 10, 1974, while entering Maricaban Passage, we were again exposed to moderate seas and heavy rains; that while approaching Fortune Island, we encountered again rough seas, strong winds and big waves which caused the same canvass to give way and leaving the new canvass holding on;

xxx xxx xxx” [28]

And the relevant portions of Jose Pascua’s deposition are as follows:

Q: What is the purpose of the canvas cover?

A: So that the cargo would not be soaked with water.

A: And will you describe how the canvas cover was secured on the hatch opening?

WITNESS

A: It was placed flat on top of the hatch cover, with a little canvas flowing over the sides and we place[d] a flat bar over the canvas on the side of the hatches and then we place[d] a stopper so that the canvas could not be removed.

ATTY DEL ROSARIO

Q: And will you tell us the size of the hatch opening? The length and the width of the hatch opening.

A: Forty-five feet by thirty-five feet, sir.

Q: How was the canvas supported in the middle of the hatch opening?

A: There is a hatch board.

ATTY DEL ROSARIO

Q: What is the hatch board made of?

A: It is made of wood, with a handle.

Q: And aside from the hatch board, is there any other material there to cover the hatch?

A: There is a beam supporting the hatch board.

Q: What is this beam made of?

A: It is made of steel, sir.

Q: Is the beam that was placed in the hatch opening covering the whole hatch opening?

A: No, sir.

Q: How many hatch beams were there placed across the opening?

A: There are five beams in one hatch opening.

ATTY DEL ROSARIO

Q: And on top of the beams you said there is a hatch board. How many pieces of wood are put on top?

A: Plenty, sir, because there are several pieces on top of the hatch beam.

Q: And is there a space between the hatch boards?

A: There is none, sir.

Q: They are tight together?

A: Yes, sir.

Q: How tight?

A: Very tight, sir.

Q: Now, on top of the hatch boards, according to you, is the canvas cover. How many canvas covers?

A: Two, sir.” [29]

That due diligence was exercised by the officers and the crew of the MV Vlasons I was further demonstrated by the fact that, despite encountering rough weather twice, the new tarpaulin did not give way and the ship's hatches and cargo holds remained waterproof. As aptly stated by the Court of Appeals, “xxx we find no reason not to sustain the conclusion of the lower court based on overwhelming evidence, that the MV ‘VLASONS I’ was seaworthy when it undertook the voyage on August 8, 1974 carrying on board thereof plaintiff-appellant's shipment of 1,677 skids of tinplates and 92 packages of hot rolled sheets or a total of 1,769 packages from NSC's pier in Iligan City arriving safely at North Harbor, Port Area, Manila, on August 12, 1974; xxx.” [30]

Indeed, NSC failed to discharge its burden to show negligence on the part of the officers and the crew of MV Vlasons I. On the contrary, the records reveal that it was the stevedores of NSC who were negligent in unloading the cargo from the ship.

The stevedores employed only a tent-like material to cover the hatches when strong rains occasioned by a passing typhoon disrupted the unloading of the cargo. This tent-like covering, however, was clearly inadequate for keeping rain and seawater away from the hatches of the ship. Vicente Angliongto, an officer of VSI, testified thus:

“ATTY ZAMORA:

Q: Now, during your testimony on November 5, 1979, you stated on August 14 you went on board the vessel upon notice from the National Steel Corporation in order to conduct the inspection of the cargo. During the course of the investigation, did you chance to see the discharging operation?

WITNESS:

A: Yes, sir, upon my arrival at the vessel, I saw some of the tinplates already discharged on the pier but majority of the tinplates were inside the hall, all the hatches were opened.

Q: In connection with these cargoes which were unloaded, where is the place.

A: At the Pier.

Q: What was used to protect the same from weather?

ATTY LOPEZ:

We object, your Honor, this question was already asked. This particular matter . . . the transcript of stenographic notes shows the same was covered in the direct examination.

ATTY ZAMORA:

Precisely, your Honor, we would like to go on detail, this is the serious part of the testimony.

COURT:

All right, witness may answer.

ATTY LOPEZ:

Q: What was used in order to protect the cargo from the weather?

A: A base of canvas was used as cover on top of the tin plates, and tents were built at the opening of the hatches.

Q: You also stated that the hatches were already opened and that there were tents constructed at the opening of the hatches to protect the cargo from the rain. Now, will you describe [to] the Court the tents constructed.

A: The tents are just a base of canvas which look like a tent of an Indian camp raise[d] high at the middle with the whole side separated down to the hatch, the size of the hatch and it is soaks [sic] at the middle because of those weather and this can be used only to temporarily protect the cargo from getting wet by rains.

Q: Now, is this procedure adopted by the stevedores of covering tents proper?

A: No, sir, at the time they were discharging the cargo, there was a typhoon passing by and the hatch tent was not good enough to hold all of it to prevent the water soaking through the canvas and enter the cargo.

Q: In the course of your inspection, Mr. Anglingto [sic], did you see in fact the water enter and soak into the canvas and tinplates.

A: Yes, sir, the second time I went there, I saw it.

Q: As owner of the vessel, did you not advise the National Steel Corporation [of] the procedure adopted by its stevedores in discharging the cargo particularly in this tent covering of the hatches?

A: Yes, sir, I did the first time I saw it, I called the attention of the stevedores but the stevedores did not mind at all, so, I called the attention of the representative of the National Steel but nothing was done, just the same. Finally, I wrote a letter to them.” [31]

NSC attempts to discredit the testimony of Anglingto by questioning his failure to complain immediately about the stevedores’ negligence on the first day of unloading, pointing out that he wrote his letter to petitioner only seven days later. [32] The Court is not persuaded. Anglingto’s candid answer in his aforequoted testimony satisfactorily explained the delay. Seven days lapsed because he first called the attention of the stevedores, then the NSC’s representative, about the negligent and defective procedure adopted in unloading the cargo. This series of actions constitutes a reasonable response in accord with common sense and ordinary human experience. Vicente Anglingto could not be blamed for calling the stevedores’ attention first and then the NSC’s representative on location before formally informing NSC of the negligence he had observed, because he was not responsible for the stevedores or the unloading operations. In fact, he was merely expressing concern for NSC which was ultimately responsible for the stevedores it had hired and the performance of their task to unload the cargo.

We see no reason to reverse the trial and the appellate courts' findings and conclusions on this point, viz:

"In the THIRD assigned error, [NSC] claims that the trial court erred in finding that the stevedores hired by NSC were negligent in the unloading of NSC's shipment. We do not think so. Such negligence according to the trial court is evident in the stevedores hired by [NSC], not closing the hatch of MV 'VLASONS I' when rains occurred during the discharging of the cargo thus allowing rain water and seawater spray to enter the hatches and to drift to and fall on the cargo. It was proven that the stevedores merely set up temporary tents or canvas to cover the hatch openings when it rained during the unloading operations so that it would be easier for them to resume work after the rains stopped by just removing said tents or canvass. It has also been shown that on August 20, 1974, VSI President Vicente Angliongto wrote [NSC] calling attention to the manner the stevedores hired by [NSC] were discharging the cargo on rainy days and the improper closing of the hatches which allowed continuous heavy rain water to leak through and drip to the tinplates' covers and [Vicente Angliongto] also suggesting that due to four (4) days continuous rains with strong winds that the hatches be totally closed down and covered with canvas and the hatch tents lowered. (Exh '13'). This letter was received by [NSC] on 22 August 1974 while discharging operations were still going on (Exhibit '13-A')." [33]

The fact that NSC actually accepted and proceeded to remove the cargo from the ship during unfavorable weather will not make VSI liable for any damage caused thereby. In passing, it may be noted that the NSC may seek indemnification, subject to the laws on prescription, from the stevedoring company at fault in the discharge operations. "A stevedore company engaged in discharging cargo xxx has the duty to load the cargo xxx in a prudent manner, and it is liable for injury to, or loss of, cargo caused by its negligence xxx and where the officers and members and crew of the vessel do nothing and have no responsibility in the discharge of cargo by stevedores xxx the vessel is not liable for loss of, or damage to, the cargo caused by the negligence of the stevedores xxx" [34] as in the instant case.

Do Tinplates "Sweat"?

The trial court relied on the testimony of Vicente Angliongto in finding that " xxx tinplates 'sweat' by themselves when packed even without being in contact with water from outside especially when the weather is bad or raining xxx." [35] The Court of Appeals affirmed the trial court's finding.

A discussion of this issue appears inconsequential and unnecessary. As previously discussed, the damage to the tinplates was occasioned not by airborne moisture but by contact with rain and seawater which the stevedores negligently allowed to seep in during the unloading.

Second Issue: Effect of NSC's Failure to Insure the Cargo

The obligation of NSC to insure the cargo stipulated in the Contract of Voyage Charter Hire is totally separate and distinct from the contractual or statutory responsibility that may be incurred by VSI for damage to the cargo caused by the willful negligence of the officers and the crew of MV Vlasons I. Clearly, therefore, NSC's failure to insure the cargo will not affect its right, as owner and real party in interest, to file an action against VSI for damages caused by the latter's willful negligence. We do not find anything in the charter party that would make the liability of VSI for damage to the cargo contingent on or affected in any manner by NSC's obtaining an insurance over the cargo.

Third Issue: Admissibility of Certificates Proving Seaworthiness

NSC's contention that MV Vlasons I was not seaworthy is anchored on the alleged inadmissibility of the certificates of seaworthiness offered in evidence by VSI. The said certificates include the following:

1. Certificate of Inspection of the Philippine Coast Guard at Cebu

2. Certificate of Inspection from the Philippine Coast Guard
3. International Load Line Certificate from the Philippine Coast Guard
4. Coastwise License from the Board of Transportation
5. Certificate of Approval for Conversion issued by the Bureau of Customs. [36]

NSC argues that the certificates are hearsay for not having been presented in accordance with the Rules of Court. It points out that Exhibits 3, 4 and 11 allegedly are “not written records or acts of public officers”; while Exhibits 5, 6, 7, 8, 9, 11 and 12 are not “evidenced by official publications or certified true copies” as required by Sections 25 and 26, Rule 132, of the Rules of Court. [37]

After a careful examination of these exhibits, the Court rules that Exhibits 3, 4, 5, 6, 7, 8, 9 and 12 are inadmissible, for they have not been properly offered as evidence. Exhibits 3 and 4 are certificates issued by private parties, but they have not been proven by one who saw the writing executed, or by evidence of the genuineness of the handwriting of the maker, or by a subscribing witness. Exhibits 5, 6, 7, 8, 9, and 12 are photocopies, but their admission under the best evidence rule have not been demonstrated.

We find, however, that Exhibit 11 is admissible under a well-settled exception to the hearsay rule per Section 44 of Rule 130 of the Rules of Court, which provides that “(e)ntries in official records made in the performance of a duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.” [38] Exhibit 11 is an original certificate of the Philippine Coast Guard in Cebu issued by Lieutenant Junior Grade Noli C. Flores to the effect that “the vessel ‘VLASONS I’ was drydocked x x x and PCG Inspectors were sent on board for inspection x x x. After completion of drydocking and duly inspected by PCG Inspectors, the vessel ‘VLASONS I’, a cargo vessel, is in seaworthy condition, meets all requirements, fitted and equipped for trading as a cargo vessel was cleared by the Philippine Coast Guard and sailed for Cebu Port on July 10, 1974.” (sic) NSC’s claim, therefore, is obviously misleading and erroneous.

At any rate, it should be stressed that that NSC has the burden of proving that MV Vlasons I was not seaworthy. As observed earlier, the vessel was a private carrier and, as such, it did not have the obligation of a common carrier to show that it was seaworthy. Indeed, NSC glaringly failed to discharge its duty of proving the willful negligence of VSI in making the ship seaworthy resulting in damage to its cargo. Assailing the genuineness of the certificate of seaworthiness is not sufficient proof that the vessel was not seaworthy.

Fourth Issue: Demurrage and Attorney’s Fees

The contract of voyage charter hire provides inter alia:

2. Cargo: Full cargo of steel products of not less than 2,500 MT, 10% more or less at Master’s option.
6. Loading/Discharging Rate : 750 tons per WWDSHINC.
7. Demurrage/Dispatch : P8,000.00/P4,000.00 per day.” [39]

The Court defined demurrage in its strict sense as the compensation provided for in the contract of affreightment for the detention of the vessel beyond the laytime or that period of time agreed on for loading and unloading of cargo. [40] It is given to compensate the shipowner for the nonuse of the vessel. On the other hand, the following is well-settled:

“Laytime runs according to the particular clause of the charter party. x x x If laytime is expressed in ‘running days,’ this means days when the ship would be run continuously, and holidays are not excepted. A

qualification of ‘weather permitting’ excepts only those days when bad weather reasonably prevents the work contemplated.” [41]

In this case, the contract of voyage charter hire provided for a four-day laytime; it also qualified laytime as WWDSHINC or weather working days Sundays and holidays included. [42] The running of laytime was thus made subject to the weather, and would cease to run in the event unfavorable weather interfered with the unloading of cargo. [43] Consequently, NSC may not be held liable for demurrage as the four-day laytime allowed it did not lapse, having been tolled by unfavorable weather condition in view of the WWDSHINC qualification agreed upon by the parties. Clearly, it was error for the trial court and the Court of Appeals to have found and affirmed respectively that NSC incurred eleven days of delay in unloading the cargo. The trial court arrived at this erroneous finding by subtracting from the twelve days, specifically August 13, 1974 to August 24, 1974, the only day of unloading unhampered by unfavorable weather or rain which was August 22, 1974. Based on our previous discussion, such finding is a reversible error. As mentioned, the respondent appellate court also erred in ruling that NSC was liable to VSI for demurrage, even if it reduced the amount by half.

Attorney’s Fees

VSI assigns as error of law the Court of Appeals’ deletion of the award of attorney’s fees. We disagree. While VSI was compelled to litigate to protect its rights, such fact by itself will not justify an award of attorney’s fees under Article 2208 of the Civil Code when “ x x x no sufficient showing of bad faith would be reflected in a party’s persistence in a case other than an erroneous conviction of the righteousness of his cause x x x.” [44] Moreover, attorney’s fees may not be awarded to a party for the reason alone that the judgment rendered was favorable to the latter, as this is tantamount to imposing a premium on one’s right to litigate or seek judicial redress of legitimate grievances. [45]

Epilogue

At bottom, this appeal really hinges on a factual issue: when, how and who caused the damage to the cargo? Ranged against NSC are two formidable truths. First, both lower courts found that such damage was brought about during the unloading process when rain and seawater seeped through the cargo due to the fault or negligence of the stevedores employed by it. Basic is the rule that factual findings of the trial court, when affirmed by the Court of Appeals, are binding on the Supreme Court. Although there are settled exceptions, NSC has not satisfactorily shown that this case is one of them. Second, the agreement between the parties -- the Contract of Voyage Charter Hire -- placed the burden of proof for such loss or damage upon the shipper, not upon the shipowner. Such stipulation, while disadvantageous to NSC, is valid because the parties entered into a contract of private charter, not one of common carriage. Basic too is the doctrine that courts cannot relieve a party from the effects of a private contract freely entered into, on the ground that it is allegedly one-sided or unfair to the plaintiff. The charter party is a normal commercial contract and its stipulations are agreed upon in consideration of many factors, not the least of which is the transport price which is determined not only by the actual costs but also by the risks and burdens assumed by the shipper in regard to possible loss or damage to the cargo. In recognition of such factors, the parties even stipulated that the shipper should insure the cargo to protect itself from the risks it undertook under the charter party. That NSC failed or neglected to protect itself with such insurance should not adversely affect VSI, which had nothing to do with such failure or neglect.

WHEREFORE, premises considered, the instant consolidated petitions are hereby DENIED. The questioned Decision of the Court of Appeals is AFFIRMED with the MODIFICATION that the demurrage awarded to VSI is deleted. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Fifth Division, composed of J. Eduardo G. Montenegro, ponente, and JJ. Justo P. Torres (who was later named a member of this Court), and Fidel P. Purisima, 5th division chairman, concurring.

[2] Decision of the Regional Trial Court, p. 5; records, p. 455. Penned by Judge Eduardo C. Abaya.

[3] Decision of the Court of Appeals, p. 18; Rollo (G.R. No. 112287), p. 63.

[4] Ibid., p. 10; Rollo (G.R. No. 112287), p. 55.

[5] Rollo (G.R. No. 112350), pp. 72-74.

[6] This case was deemed submitted for resolution upon receipt by this Court of VSI's memorandum on September 9, 1997.

[7] Pp. 12-13; Rollo (G.R. No. 112287), pp. 19-20.

[8] P. 8.

[9] Petition of VSI, p. 10; Rollo (G.R. No. 112350), p. 41.

[10] VSI's Memorandum, p. 7.

[11] *Mendoza vs. Philippine Airlines, Inc.*, 90 Phil. 836, 842-843 (1952), per Montemayor, J. and *United States vs. Quinajon and Qutorio*, 31 Phil. 189, 196-197 (1915), per Johnson, J. See also Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. V, p. 297 (1992), and Hernandez and Peñasales, *Philippine Admiralty and Maritime Law*, pp. 238-241 (1987).

[12] Hernandez, and Peñasales, p. 243; citing Schoenbaum & Yiannopoulos, p. 364.

[13] Decision of the Regional Trial Court, p. 2; Records, p. 452.

[14] Decision of the Court of Appeals, p. 11; Rollo (G.R. No. 112287), p. 56.

[15] *Maritime Agencies & Services, Inc. vs. Court of Appeals*, 187 SCRA 346, 351, July 12, 1990, per Cruz, J.

[16] G.R. No. 102316, June 30, 1997, per Panganiban, J.

[17] Ibid., pp. 11-12.

[18] See No. 10, par. 2, *NANYOZAI Charter Party*, p. 42, Folder of Exhibits No. 2.

[19] See No. 12, *NANYOZAI Charter Party*, p. 42, Folder of Exhibits No. 2.

[20] 80 C.J.S., pp. 1044-1045.

[21] Decision of the Court of Appeals, p. 17; Rollo (G.R. No. 112287), p. 62.

[22] See *First Philippine International Bank vs. Court of Appeals*, 252 SCRA 259, 309, January 24, 1996, per Panganiban, J.

[23] *Fuentes vs. Court of Appeals*, G.R. No. 109849, pp. 6-8, February 26, 1997, per Panganiban, J., enumerated the following instances:

“(1) When the factual findings of the Court of Appeals and the trial court are contradictory;

- (2) When the conclusion is a finding grounded entirely on speculation, surmises, or conjectures;
- (3) When the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;
- (4) When there is grave abuse of discretion in the appreciation of facts;
- (5) When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
- (6) When the judgment of the Court of Appeals is premised on a misapprehension of facts;
- (7) When the Court of Appeals failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;
- (8) When the findings of fact are themselves conflicting;
- (9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and
- (10) When the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.”

[24] Certificate of Inspection of the Philippine Coast Guard, Exhibit ‘11.’

[25] Comment of Vlasons Shipping Inc., p. 11; Rollo (G.R. No. 112287), p. 250.

[26] Petition of NSC, p. 24; Rollo (G.R. No. 112287), p. 31.

[27] Memorandum of VSI, p. 22.

[28] Marine Protest, Record of Exhibits Folder No. 2, p. 55.

[29] TSN, pp. 13-16, November 28, 1977.

[30] Decision of the Court of Appeals, p. 12; Rollo (G.R. No. 112287), p. 57.

[31] TSN, pp. 7-8, September 1, 1980.

[32] Memorandum of NSC, p. 32.

[33] Decision of the Court of Appeals, p. 14; Rollo (G.R. No. 112287), p. 59.

[34] 80 C.J.S. 1018.

[35] Decision of the Regional Trial Court, p. 3; record, p. 453.

[36] Comment of VSI, pp. 11-14; Rollo (G.R. No. 112287), pp. 250-253.

[37] Memorandum of NSC, p. 14. See also Petition of NSC, pp. 17-18; Rollo (G.R. No. 112287), pp. 24-25.

[38] See also Harverton Shipping Ltd. vs. NLRC, 135 SCRA 685, April 15, 1985, per Melencio-Herrera, J.

[39] Contract of Voyage Charter Hire, p. 1; Record Folder No. 2, p. 39.

[40] Magellan Mftg. Marketing Corp. vs. Court of Appeals, 201 SCRA 102, 119, August 22, 1991, per Regalado, J.

[41] Ibid.

[42] Memorandum of NSC, p. 10. See also Comment of NSC, p. 3; Rollo (G.R. No.112350), p. 82.

[43] The Statement of Facts of Unloading (Record, pp. 49-52) shows that throughout the time of unloading from August 13, 1974 to August 24, 1974, it was only on August 22, 1974 that there was no heavy rain.

[44] Servicewide Specialists, Incorporated, vs. Court of Appeals, 256 SCRA 649, 655, May 8, 1996, per Romero, J.; citing Gonzales vs. National Housing Corporation, et al., 94 SCRA 786, December 18, 1979.

[45] Ibid., p. 656.

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