

ABOITIZ SHIPPING CORPORATION, PETITIONER, VS. COURT OF APPEALS, MALAYAN INSURANCE COMPANY, INC., COMPAGNIE MARITIME DES CHARGEURS REUNIS, AND F.E. ZUELLIG (M), INC., RESPONDENTS.*G.R. No. 121833. October 17, 2008*

Ponente: TINGA, J.

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Before this Court are three consolidated Rule 45 petitions all involving the issue of whether the real and hypothecary doctrine may be invoked by the shipowner in relation to the loss of cargoes occasioned by the sinking of M/V P. Aboitiz on 31 October 1980. The petitions filed by Aboitiz Shipping Corporation (Aboitiz) commonly seek the computation of its liability in accordance with the Court's pronouncement in *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.*[1] (hereafter referred to as "the 1993 GAFLAC case").

The three petitions stemmed from some of the several suits filed against Aboitiz before different regional trial courts by shippers or their successors-in-interest for the recovery of the monetary value of the cargoes lost, or by the insurers for the reimbursement of whatever they paid. The trial courts awarded to various claimants the amounts of P639,862.02, P646,926.30, and P87,633.81 in G.R. Nos. 121833, 130752 and 137801, respectively.

ANTECEDENTS

G.R. No. 121833

Respondent Malayan Insurance Company, Inc. (Malayan) filed five separate actions against several defendants for the collection of the amounts of the cargoes allegedly paid by Malayan under various marine cargo policies[2] issued to the insurance claimants. The five civil cases, namely, Civil Cases No. 138761, No. 139083, No. 138762, No. R-81-526 and No. 138879, were consolidated and heard before the Regional Trial Court (RTC) of Manila, Branch 54.

The defendants in Civil Case No. 138761 and in Civil Case No. 139083 were Malayan International Shipping Corporation, a foreign corporation based in Malaysia, its local ship agent, Litonjua Merchant Shipping Agency (Litonjua), and Aboitiz. The defendants in Civil Case No. 138762 were Compagnie Maritime des Chargeurs Reunis (CMCR), its local ship agent, F.E. Zuellig (M), Inc. (Zuellig), and Aboitiz. Malayan also filed Civil Case No. R-81-526 only against CMCR and Zuellig. Thus, defendants CMCR and Zuellig filed a third-party complaint against Aboitiz. In the fifth complaint docketed as Civil Case No. 138879, only Aboitiz was impleaded as defendant.

The shipments were supported by their respective bills of lading and insured separately by Malayan against the risk of loss or damage. In the five consolidated cases, Malayan sought the recovery of amounts totaling

P639,862.02.

Aboitiz raised the defenses of lack of jurisdiction, lack of cause of action and prescription. It also claimed that M/V P. Aboitiz was seaworthy, that it exercised extraordinary diligence and that the loss was caused by a fortuitous event.

After trial on the merits, the RTC of Manila rendered a Decision dated 27 November 1989, adjudging Aboitiz liable on the money claims. The decretal portion reads:

WHEREFORE, judgment is hereby rendered as follows:

- In Civil Case No. 138072 (R-81-526-CV), the defendants are adjudged liable and ordered to pay to the plaintiffs jointly and severally the amount of P128,896.79; the third-party defendant Aboitiz is adjudged liable to reimburse and ordered to pay the defendants or whosoever of them paid the plaintiff up to the said amount;
- In Civil Case No. 138761, Aboitiz is adjudged liable and ordered to pay plaintiff the amount of One Hundred Sixty Three-Thousand Seven Hundred Thirteen Pesos and Thirty-Eight Centavos (P163,713.38).
- In Civil Case No. 138762, defendant Aboitiz is adjudged liable and ordered to pay plaintiff the sum of Seventy Three Thousand Five Hundred Sixty-Nine Pesos and Ninety-Four Centavos (P73,569.94); and Sixty-Four Thousand Seven Hundred Four Pesos and Seventy-Seven Centavos (P64,704.77);
- In Civil Case No. 139083, defendant Aboitiz is adjudged liable and ordered to pay plaintiff the amount of One Hundred Fifty-Six Thousand Two Hundred Eighty-Seven Pesos and Sixty-Four Centavos (P156,287.64);

In Civil Case No. 138879, defendant Aboitiz is adjudged liable and ordered to pay plaintiff the amount of Fifty-Two Thousand Six Hundred Eighty-Nine Pesos and Fifty Centavos (P52,689.50).

All the aforesaid award shall bear interest at the legal rate from the filing of the respective complaints. Considering that there is no clear showing that the cases fall under Article 2208, Nos. 4 and 5, of the Civil Code, and in consonance with the basic rule that there be no penalty (in terms of attorney's fees) imposed on the right to litigate, no damages by way of attorney's fees are awarded; however, costs of the party/parties to whom judgment awards are made shall be made by the party ordered to pay the said judgment awards.

SO ORDERED.[3]

Aboitiz, CMC and Zuellig appealed the RTC decision to the Court of Appeals. The appeal was docketed as CA-G.R. SP No. 35975-CV. During the pendency of the appeal, the Court promulgated the decision in the 1993 GAFLAC case.

On 31 March 1995, the Court of Appeals (Ninth Division) affirmed the RTC decision. It disregarded Aboitiz's argument that the sinking of the vessel was caused by a force majeure, in view of this Court's finding in a related case, Aboitiz Shipping Corporation v. Court of Appeals, et al. (the 1990 GAFLAC case).[4] In said case, this Court affirmed the Court of Appeals' finding that the sinking of M/V P. Aboitiz was caused by the negligence of its officers and crew. It is one of the numerous collection suits against Aboitiz, which eventually reached this Court in connection with the sinking of M/V P. Aboitiz.

As to the computation of Aboitiz's liability, the Court of Appeals again based its ruling on the 1990 GAFLAC case that Aboitiz's liability should be based on the declared value of the shipment in consonance with the exceptional rule under Section 4(5)[5] of the Carriage of Goods by Sea Act.

Aboitiz moved for reconsideration[6] to no avail. Hence, it filed this petition for review on certiorari docketed as G.R. No. 121833.[7] The instant petition is based on the following grounds:

THE COURT OF APPEALS SHOULD HAVE LIMITED THE RECOVERABLE AMOUNT FROM ASC TO THAT AMOUNT STIPULATED IN THE BILL OF LADING.

IN THE ALTERNATIVE, THE COURT OF APPEALS SHOULD HAVE FOUND THAT THE TOTAL LIABILITY OF ASC IS LIMITED TO THE VALUE OF THE VESSEL OR THE INSURANCE PROCEEDS THEREOF.[8]

On 4 December 1995, the Court issued a Resolution[9] denying the petition. Aboitiz moved for reconsideration, arguing that the limited liability doctrine enunciated in the 1993 GAFLAC case should be applied in the computation of its liability. In the Resolution[10] dated 6 March 1996, the Court granted the motion and ordered the reinstatement of the petition and the filing of a comment.

G.R. No. 130752

Respondents Asia Traders Insurance Corporation (Asia Traders) and Allied Guarantee Insurance Corporation (Allied) filed separate actions for damages against Aboitiz to recover by way of subrogation the value of the cargoes insured by them and lost in the sinking of the vessel M/V P. Aboitiz. The two actions were consolidated and heard before the RTC of Manila, Branch 20.

Aboitiz reiterated the defense of force majeure. The trial court rendered a decision[11] on 25 April 1990 ordering Aboitiz to pay damages in the amount of P646,926.30. Aboitiz sought reconsideration, arguing that the trial court should have considered the findings of the Board of Marine Inquiry that the sinking of the M/V P. Aboitiz was caused by a typhoon and should have applied the real and hypothecary doctrine in limiting the monetary award in favor of the claimants. The trial court denied Aboitiz's motion for reconsideration.

Aboitiz elevated the case to the Court of Appeals. While the appeal was pending, this Court promulgated the decision in the 1993 GAFLAC case. The Court of Appeals subsequently rendered a decision on 30 May 1994, affirming the RTC decision.[12]

Aboitiz appealed the Court of Appeals decision to this Court.[13] In a Resolution dated 20 September 1995,[14] the Court denied the petition for raising factual issues and for failure to show that the Court of Appeals committed any reversible error. Aboitiz's motion for reconsideration was also denied in a Resolution dated 22 November 1995.[15]

The 22 November 1995 Resolution became final and executory. On 26 February 1996, Asia Traders and Allied filed a motion for execution before the RTC of Manila, Branch 20. Aboitiz opposed the motion. On 16 August 1996, the trial court granted the motion and issued a writ of execution.

Alleging that it had no other speedy, just or adequate remedy to prevent the execution of the judgment, Aboitiz filed with the Court of Appeals a petition for certiorari and prohibition with an urgent prayer for preliminary injunction and/or temporary restraining order docketed as CA-G.R. SP No. 41696.[16] The petition was mainly anchored on this Court's ruling in the 1993 GAFLAC case.

On 8 August 1997, the Court of Appeals (Special Seventeenth Division) rendered the assailed decision dismissing the petition.[17] Based on the trial court's finding that Aboitiz was actually negligent in ensuring the seaworthiness of M/V P. Aboitiz, the appellate court held that the real and hypothecary doctrine enunciated in the 1993 GAFLAC case may not be applied in the case.

In view of the denial of its motion for reconsideration,[18] Aboitiz filed before this Court the instant petition for review on certiorari docketed as G.R. No. 130752.[19] The petition attributes the following errors to the Court of Appeals:

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE LOWER COURT HAD MADE AN EXPRESS FINDING OF THE ACTUAL NEGLIGENCE OF ABOITIZ IN THE SINKING OF THE M/V P. ABOITIZ THEREBY DEPRIVING ABOITIZ OF THE BENEFIT OF THE DOCTRINE OF THE REAL AND HYPOTHECARY NATURE OF MARITIME LAW.[20]

THE COURT OF APPEALS ERRED IN NOT GIVING WEIGHT TO THE GAFLAC CASE DECIDED BY THE HONORABLE COURT WHICH SUPPORTS THE APPLICABILITY OF THE REAL AND HYPOTHECARY NATURE OF MARITIME LAW IN THE PRESENT CASE.[21]

G.R. No. 137801

On 27 February 1981, Equitable Insurance Corporation (Equitable) filed an action for damages against Aboitiz to recover by way of subrogation the value of the cargoes insured by Equitable that were lost in the sinking of M/V P. Aboitiz.[22] The complaint, which was docketed as Civil Case No. 138395, was later amended to implead Seatrain Pacific Services S.A. and Citadel Lines, Inc. as party defendants.[23] The complaint against the latter defendants was subsequently dismissed upon motion in view of the amicable settlement reached by the parties.

On 7 September 1989, the RTC of Manila, Branch 7, rendered judgment[24] ordering Aboitiz to pay Equitable the amount of P87,633.81, plus legal interest and attorney's fees.[25] It found that Aboitiz was guilty of contributory negligence and, therefore, liable for the loss.

In its appeal, docketed as CA-G.R. CV No. 43458, Aboitiz invoked the doctrine of limited liability and claimed that the typhoon was the proximate cause of the loss. On 27 November 1998, the Court of Appeals rendered a decision, affirming the RTC decision.[26]

The Court of Appeals (Fifteenth Division) ruled that the loss of the cargoes and the sinking of the vessel were due to its unseaworthiness and the failure of the crew to exercise extraordinary diligence. Said findings were anchored on the 1990 GAFLAC case and on this Court's resolution dated November 13, 1989 in G.R. No. 88159, dismissing Aboitiz's petition and affirming the findings of the appellate court on the vessel's unseaworthiness and the crew's negligence.

Its motion for reconsideration[27] having been denied,[28] Aboitiz filed before this Court a petition for review on certiorari, docketed as G.R. No. 137801,[29] raising this sole issue, to wit:

WHETHER OR NOT THE DOCTRINE OF REAL AND HYPOTHECARY NATURE OF MARITIME LAW (ALSO KNOWN AS THE "LIMITED LIABILITY RULE") APPLIES.[30]

ISSUES

The principal issue common to all three petitions is whether Aboitiz can avail limited liability on the basis of the real and hypothecary doctrine of maritime law. Corollary to this issue is the determination of actual negligence on the part of Aboitiz.

These consolidated petitions similarly posit that Aboitiz's liability to respondents should be limited to the value of the insurance proceeds of the lost vessel plus pending freightage and not correspond to the full insurable value of the cargoes paid by respondents, based on the Court's ruling in the 1993 GAFLAC case.

Respondents in G.R. No. 121833 counter that the limited liability rule should not be applied because there was a finding of negligence in the care of the goods on the part of Aboitiz based on this Court's Resolution dated 4 December 1995 in G.R. No. 121833, which affirmed the trial court's finding of negligence on the part of the vessel's captain. Likewise, respondent in G.R. No. 137801 relies on the finding of the trial court, as affirmed by the appellate court, that Aboitiz was guilty of negligence.

Respondents in G.R. No. 130752 argue that this Court had already affirmed in toto the appellate court's finding that the vessel was not seaworthy and that Aboitiz failed to exercise extraordinary diligence in the handling of the cargoes. This being the law of the case, Aboitiz should not be entitled to the limited liability rule as far as this petition is concerned, respondents contend.

RULING of the COURT

These consolidated petitions are just among the many others elevated to this Court involving Aboitiz's liability to shippers and insurers as a result of the sinking of its vessel, M/V P. Aboitiz, on 31 October 1980 in the South China Sea. One of those petitions is the 1993 GAFLAC case, docketed as G.R. No. 100446.[31]

The 1993 GAFLAC case was an offshoot of an earlier final and executory judgment in the 1990 GAFLAC case, where the General Accident Fire and Life Assurance Corporation, Ltd. (GAFLAC), as judgment obligee therein, sought the execution of the monetary award against Aboitiz. The trial court granted GAFLAC's prayer for execution of the full judgment award. The appellate court dismissed Aboitiz's petition to nullify the order of execution, prompting Aboitiz to file a petition with this Court.

In the 1993 GAFLAC case, Aboitiz argued that the real and hypothecary doctrine warranted the immediate stay of execution of judgment to prevent the impairment of the other creditors' shares. Invoking the rule on the law of the case, private respondent therein countered that the 1990 GAFLAC case had already settled the extent of Aboitiz's liability.

Following the doctrine of limited liability, however, the Court declared in the 1993 GAFLAC case that claims against Aboitiz arising from the sinking of M/V P. Aboitiz should be limited only to the extent of the value of the vessel. Thus, the Court held that the execution of judgments in cases already resolved with finality must be stayed pending the resolution of all the other similar claims arising from the sinking of M/V P. Aboitiz. Considering that the claims against Aboitiz had reached more than 100, the Court found it necessary to collate all these claims before their payment from the insurance proceeds of the vessel and its pending freightage. As a result, the Court exhorted the trial courts before whom similar cases remained pending to proceed with trial and adjudicate these claims so that the pro-rated share of each claim could be determined after all the cases shall have been decided.[32]

In the 1993 GAFLAC case, the Court applied the limited liability rule in favor of Aboitiz based on the trial court's finding therein that Aboitiz was not negligent. The Court explained, thus:

x x x In the few instances when the matter was considered by this Court, we have been consistent in this jurisdiction in holding that the only time the Limited Liability Rule does not apply is when there is an actual finding of negligence on the part of the vessel owner or agent x x x. The pivotal question, thus, is whether there is finding of such negligence on the part of the owner in the instant case.

A careful reading of the decision rendered by the trial court in Civil Case No. 144425 as well as the entirety of the records in the instant case will show that there has been no actual finding of negligence on the part of petitioner. x x x

The same is true of the decision of this Court in G.R. No. 89757 affirming the decision of the Court of Appeals in CA-G.R. CV No. 10609 since both decisions did not make any new and additional finding of fact. Both merely affirmed the factual findings of the trial court, adding that the cause of the sinking of the vessel was because of unseaworthiness due to the failure of the crew and the master to exercise extraordinary diligence. Indeed, there appears to have been no evidence presented sufficient to form a conclusion that petitioner shipowner itself was negligent, and no tribunal, including this Court, will add or subtract to such evidence to justify a conclusion to the contrary.[33] (Citations entitled) (Emphasis supplied)

The ruling in the 1993 GAFLAC case cited the real and hypothecary doctrine in maritime law that the shipowner or agent's liability is merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. "No vessel, no liability" expresses in a nutshell the limited liability rule.[34]

In this jurisdiction, the limited liability rule is embodied in Articles 587, 590 and 837 under Book III of the Code of Commerce, thus:

Art. 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel; but he may exempt himself therefrom by abandoning the vessel with all her equipment and the freight it may have earned during the voyage.

Art. 590. The co-owners of the vessel shall be civilly liable in the proportion of their interests in the common fund for the results of the acts of the captain referred to in Art. 587.

Each co-owner may exempt himself from this liability by the abandonment, before a notary, of the part of the vessel belonging to him.

Art. 837. The civil liability incurred by shipowners in the case prescribed in this section, shall be understood as limited to the value of the vessel with all its appurtenances and freightage served during the voyage.

These articles precisely intend to limit the liability of the shipowner or agent to the value of the vessel, its appurtenances and freightage earned in the voyage, provided that the owner or agent abandons the vessel.[35] When the vessel is totally lost in which case there is no vessel to abandon, abandonment is not required. Because of such total loss the liability of the shipowner or agent for damages is extinguished.[36] However, despite the total loss of the vessel, its insurance answers for the damages for which a shipowner or agent may be held liable.[37]

Nonetheless, there are exceptional circumstances wherein the ship agent could still be held answerable despite the abandonment of the vessel, as where the loss or injury was due to the fault of the shipowner and the captain. The international rule is to the effect that the right of abandonment of vessels, as a legal limitation of a shipowner's liability, does not apply to cases where the injury or average was occasioned by the shipowner's own fault.[38] Likewise, the shipowner may be held liable for injuries to passengers notwithstanding the exclusively real and hypothecary nature of maritime law if fault can be attributed to the shipowner.[39]

As can be gleaned from the foregoing disquisition in the 1993 GAFLAC case, the Court applied the doctrine of limited liability in view of the absence of an express finding that Aboitiz's negligence was the direct cause of the sinking of the vessel. The circumstances in the 1993 GAFLAC case, however, are not obtaining in the instant petitions.

A perusal of the decisions of the courts below in all three petitions reveals that there is a categorical finding of negligence on the part of Aboitiz. For instance, in G.R. No. 121833, the RTC therein expressly stated that the captain of M/V P. Aboitiz was negligent in failing to take a course of action that would prevent the vessel from sailing into the typhoon. In G.R. No. 130752, the RTC concluded that Aboitiz failed to show that it had exercised the required extraordinary diligence in steering the vessel before, during and after the storm. In G.R. No. 137801, the RTC categorically stated that the sinking of M/V P. Aboitiz was attributable to the negligence or fault of Aboitiz. In all instances, the Court of Appeals affirmed the factual findings of the trial courts.

The finding of actual fault on the part of Aboitiz is central to the issue of its liability to the respondents. Aboitiz's contention, that with the sinking of M/V P. Aboitiz, its liability to the cargo shippers and shippers should be limited only to the insurance proceeds of the vessel absent any finding of fault on the part of Aboitiz, is not

supported by the record. Thus, Aboitiz is not entitled to the limited liability rule and is, therefore, liable for the value of the lost cargoes as so duly alleged and proven during trial.

Events have supervened during the pendency of the instant petitions. On two other occasions, the Court ruled on separate petitions involving monetary claims against Aboitiz as a result of the 1980 sinking

of the vessel M/V P. Aboitiz. One of them is the consolidated petitions of Monarch Ins. Co., Inc v. Court of Appeals,[40] Allied Guarantee Insurance Company v. Court of Appeals[41] and Equitable Insurance Corporation v. Court of Appeals[42] (hereafter collectively referred to as Monarch Insurance) promulgated on 08 June 2000. This time, the petitioners consisted of claimants against Aboitiz because either the execution of the judgment awarding full indemnification of their claims was stayed or set aside or the lower courts awarded damages only to the extent of the claimants' proportionate share in the insurance proceeds of the vessel.

In Monarch Insurance, the Court deemed it fit to settle once and for all this factual issue by declaring that the sinking of M/V P. Aboitiz was caused by the concurrence of the unseaworthiness of the vessel and the negligence of both Aboitiz and the vessel's crew and master and not because of force majeure. Notwithstanding this finding, the Court did not reverse but reiterated instead the pronouncement in GAFLAC to the effect that the claimants be treated as "creditors in an insolvent corporation whose assets are not enough to satisfy the totality of claims against it." [43] The Court explained that the peculiar circumstances warranted that procedural rules of evidence be set aside to prevent frustrating the just claims of shippers/insurers. Thus, the Court in Monarch Insurance ordered Aboitiz to institute the necessary limitation and distribution action before the proper RTC and to deposit with the said court the insurance proceeds of and the freightage earned by the ill-fated ship.

However, on 02 May 2006, the Court rendered a decision in Aboitiz Shipping Corporation v. New India Assurance Company, Ltd.[44] (New India), reiterating the well-settled principle that the exception to the limited liability doctrine applies when the damage is due to the fault of the shipowner or to the concurrent negligence of the shipowner and the captain. Where the shipowner fails to overcome the presumption of negligence, the doctrine of limited liability cannot be applied.[45] In New India, the Court clarified that the earlier pronouncement in Monarch Insurance was not an abandonment of the doctrine of limited liability and that the circumstances therein still made the doctrine applicable.[46]

In New India, the Court declared that Aboitiz failed to discharge its burden of showing that it exercised extraordinary diligence in the transport of the goods it had on board in order to invoke the limited liability doctrine. Thus, the Court rejected Aboitiz's argument that the award of damages to respondent therein should be limited to its pro rata share in the insurance proceeds from the sinking of M/V P. Aboitiz.

The instant petitions provide another occasion for the Court to reiterate the well-settled doctrine of the real and hypothecary nature of maritime law. As a general rule, a ship owner's liability is merely co-extensive with his interest in the vessel, except where actual fault is attributable to the shipowner. Thus, as an exception to the limited

liability doctrine, a shipowner or ship agent may be held liable for damages when the sinking of the vessel is attributable to the actual fault or negligence of the shipowner or its failure to ensure the seaworthiness of the vessel. The instant petitions cannot be spared from the application of the exception to the doctrine of limited liability in view of the unanimous findings of the courts below that both Aboitiz and the crew failed to ensure the seaworthiness of the M/V P. Aboitiz.

WHEREFORE, the petitions in G.R. Nos. 121833, 130752 and 137801 are DENIED. The decisions of the Court of Appeals in CA-G.R. SP No. 35975-CV, CA-G.R. SP No. 41696 and CA-G.R. CV No. 43458 are hereby

AFFIRMED. Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, [*]Leonardo De Castro and Brion, JJ., Concur.

[*]As replacement of Justice Presbitero J. Velasco, Jr. who inhibited himself due to participation in CA Decision per Administrative Circular No. 84-2007.

[1]G.R. No. 100446, 21 January 1993, 217 SCRA 359.

[2] Rollo (G.R. No. 121833), p. 17. Marine Cargo Policy Nos. M/LP-001-02343, M/RN-001-03595, M/RN-001-03573, M/LP-051-00205, M/LP-001-02341 and M/RN-001-03641.

[3] Rollo (G.R. No. 121833), pp. 37-38.

[4]G.R. No. 89757, 6 August 1990, 188 SCRA 387.

[5](5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding \$500 per package of lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be prima facie evidence, but shall not be conclusive on the carrier. x x x

[6] CA rollo (G.R. No. 121833), pp. 262-271.

[7] Rollo (G.R. No. 121833), pp. 12-32.

[8] Id. at 19.

[9] Id. at 178-179.

[10] Id. at 208.

[11] CA rollo (CA-G.R. No. 41696), pp. 157-160.

[12] Id. at 97-106.

[13] Rollo (G.R. No. 130752), pp. 3-21.

[14] CA rollo (CA-G.R. No. 41696), p. 30.

[15] Id. at 61.

[16] Id. at 1-16.

[17] Id. at 131-146.

[18]Id. at 150-156.

[19] Rollo (G.R. No. 130752), pp. 3-21.

[20] Id. at 9.

[21] Id. at 13.

[22] Records (Civil Case No. 138395), pp. 1-13.

[23] Id. at 11-14.

[24] CA rollo (CA-G.R. No. 43458-CV), pp. 47-50.

[25] Rollo (G.R. No. 137801), pp. 10-27.

[26] Id.

[27] Id. at 159-166.

[28] Id. at 174-175.

[29] Id. at 33-45.

[30] Id. at 35.

[31] Supra note 1.

[32] Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd., supra note 1 at 371.

[33] Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd., supra note 1 at 368-369.

[34] Chua Yek Hong v. Intermediate Appellate Court, G.R. No. L-74811, 30 September 1988, 166 SCRA 183, 188.

[35] Luzon Stevedoring Corp. v. Court of Appeals, G.R. No. L-58897, 3 December 1987, 156 SCRA 169, 176.

[36] Id.

[37] Vasquez v. Court of Appeals, G.R. No. L-42926, 13 September 1985; 138 SCRA 553, 559.

[38] Philamgen v. Court of Appeals, 339 Phil. 455, 463 (1997).

[39] Negros Navigation v. Court of Appeals, 346 Phil. 551, 565 (1997).

[40] 388 Phil. 725 (2000).

[41] Id.

[42] Id.

[43] Id. at 759.

[44] G.R. No. 156978, 02 May 2006, 488 SCRA 563.

[45] Id. at 573

[46] Id. at 570-571.

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