

PHILIPPINE NATIONAL BANK/NATIONAL INVESTMENT DEVELOPMENT CORPORATION, PETITIONERS, VS. THE COURT OF APPEALS, CHINA BANKING CORPORATION, RESPONDENTS.

G.R. No. 128661. August 08, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioners seek the reversal of the 21 March 1997 decision[1] of the Court of Appeals in C.A.-G.R. No. CV-38131. The assailed decision set aside the Order[2] dated 4 March 1992 of the Regional Trial Court of Makati City, Branch 146 in Civil Case No. 7119 insofar as it dismissed the complaint-in-intervention of private respondent China Banking Corporation.

The facts of the case are as follows:

To finance the acquisition of seven (7) ocean-going vessels, namely M/V “Asean Liberty,” M/V “Asean Independence,” M/V “Asean Mission,” M/V “Asean Knowledge,” M/V “Asean Nations,” M/V “Asean Greatness,” and M/V “Asean Objectives,” the Philippine International Shipping Corporation (hereinafter “PISC”) applied for and was granted by petitioner National Investment and Development Corporation (hereinafter “NIDC”) the following guaranty accommodations:

- US\$9.44 Million in favor of Ultrafin A.G. of Zurich, Switzerland as Agent for the banks/financial institutions as evidenced by and subject to the terms and conditions of a Guaranty Agreement dated December 7, 1978 to partly finance the acquisition of two (2) ocean-going vessels;
- US\$23.60 Million in favor of the Philippine National Bank (hereinafter “PNB” as evidenced by and subject to the terms and conditions of a Consolidated Amendatory Agreement dated January 25, 1979 to finance the acquisition cost of four (4) additional ocean-going vessels; and
- US\$1.291 Million in favor of PNB as evidenced by and subject to the terms and conditions of that Second Consolidated Amendatory Agreement dated July 17, 1979 to finance the additional acquisition cost of one (1) ocean-going vessel.[3]

As security for these guaranty accommodations, PISC executed in favor of petitioners the following mortgage documents:

- Deed of Chattel Mortgage dated September 14, 1979 constituted on M/V “Asean Liberty” and M/V “Asean Nation” and recorded on September 25, 1979 with the Philippine Coast Guard Headquarters;
- Supplemental Chattel Mortgage dated October 2, 1979 constituted on M/V “Asean Independence,” M/V “Asean Mission,” M/V “Asean Knowledge,” and M/V “Asean Objectives” and recorded with the Philippine Coast Guard Headquarters on February 13, 1980; and
- Supplemental Chattel Mortgage constituted on M/V “Asean Greatness” and recorded with the Philippine Coast Guard Headquarters on February 3, 1981.[4]

Meanwhile, on March 12, 1979, PISC entered into a Contract Agreement with Hong Kong United Dockyards, Ltd. for the repair and conversion of the vessel M/V “Asean Liberty” at a contract price of HK\$2,200,000.00 variable as provided therein.[5]

On May 28, 1979, the Central Bank of the Philippines authorized PISC to open with private respondent China Banking Corporation (hereinafter “CBC”) a standby letter of credit for US\$545,000.00 in favor of Citibank, N.A. (hereinafter “Citibank”) to cover the repair and partial conversion of the vessel M/V “Asean Liberty”. This was pursuant to the letter of the Central Bank of the Philippines dated May 28, 1979 as amended on June 20, 1979.[6]

On June 15, 1979, PISC executed an Application and Agreement for Commercial Letter of Credit for \$545,000.00 with private respondent CBC in favor of Citibank. Pursuant to this application and agreement, private respondent CBC issued on September 12, 1979 its Irrevocable Standby Letter of Credit No. 79/4174 for US\$545,000.00 in favor of Citibank for account of PISC.

On September 17, 1979, a Promissory note for US\$545,000.00 was executed by PISC in favor of Citibank pursuant to the Loan Agreement for US\$545,000.00 between PISC, as borrower, and Citibank, as lender.[7]

Upon failure of PISC to fulfill its obligations under the said promissory note, Citibank sent to private respondent CBC a letter dated March 25, 1983 drawing on Letter of Credit No. 79/4174. In this letter, Citibank certified that the draft attached thereto for US\$242,225.00 represented the principal balance due to Citibank as of March 17, 1983 under the promissory note executed by PISC, the proceeds of which were used for the repair and conversion of M/V Asean Liberty. Thus, on March 30, 1983, CBC instructed its correspondent Irving Trust Co., by cable, to pay to Citibank the amount of US\$242,225.00. On the same date, Irving Trust Co. advised private respondent CBC by mail that the amount of US\$242,225.00 had been debited against CBC’s Account No. 8033278269 and remitted to Citibank.[8]

On May 10, 1983, for failure of PISC to settle its obligations in the amount of US\$64,789,470.96, petitioner PNB conducted, thru the Sheriff’s Office, an auction sale of the mortgaged vessels, except for the vessel M/V “Asean Objective.” Petitioner NIDC emerged as the highest bidder in these auctions.[9]

On May 27, 1983, claiming that the foreclosure sale of its mortgaged vessels was illegal, unjust, irregular, and oppressive, PISC instituted before the Regional Trial Court of Makati, a civil case[10] against petitioners for the annulment of the foreclosure and auction sale of its vessels and damages.

As accurately narrated in the trial court’s Order and adopted by the Court of Appeals in its Decision of March 21, 1997, the following proceedings transpired in the lower court:

“Records show that on May 27, 1983, PISC (Philippine International Shipping Corporation) filed suit against National Investment and Development Corporation (NIDC, for short) and Philippine National Bank (PNB, for short) for annulment of foreclosure of mortgage and auction sale with damages vis-à-vis the sale on foreclosure of vessels Asean Mission, Asean Knowledge, Asean Nations and Asean Greatness (as well as Asean Liberty and Asean Independence). NIDC answered the complaint, and in an amended answer impleaded additional counterclaim defendants. In an Order dated September 29, 1984, then Judge Jose L. Coscolluela, Jr. dismissed the complaint as against PNB and the counterclaimed defendants. And under date of November 3, 1986, the complaint itself against and the NIDC counterclaims were dismissed with prejudice.

In the meantime, NIDC acquired the vessels as highest bidder in the foreclosure thereof initiated by PNB, NIDC having thereafter disposed of said vessels in favor of the National Steel Corporation (NSC).

Complaints in intervention were filed by and for Unitor Ships Services PTE, Ltd., IMO Industries AB, UDDVALLARVARVET AB, Hyundai, Shipyard Co., Lloyd’s, China bank, Chiang Tung Enterprises Co., Ltd., Pan Asia, Inc., and HANMF Marine Service, Co., Ltd., for recovery upon maritime liens against the

proceeds of the sale of the foreclosed vessels. The parties concerned, except for intervenors Lloyd's and China Bank, eventually submitted a Compromise Agreement dated July 12, 1989, and made the basis for the Decision of August 23, 1989.

As first stated, there now remain only Lloyd's and China Bank claims in intervention, recovery upon which is covered by a PNB bank guarantee therefor if found matters of entitlement (sic) by said intervenors.

Intervenor Lloyd's claim is for 'the service of herein intervenor Lloyd's Register of Shipping to class aforementioned vessels (M/V Asean Nations and Asean Greatness) during the period covering July 22, 1981 to July 14, 1983 and the cost for said maritime surveys in the sum of HK\$65,930.00, UKC10,363.45 and P9,653.00' said to have been unpaid by PISC despite demands. NIDC traversed the Lloyd's claim as not being preferred maritime liens and in any event inferior in nature.

Intervenor China Bank's claims are predicated on (i) a China Bank Standby Letter of Credit in favor of Citibank, N. A. purportedly to cover repair and partial conversion of M/V Asean Liberty, to the extent of US\$242,225.00 paid by China Bank to Citibank, and said to be now owing by PISC together with stipulated interest; (ii) a China Bank loan of US\$2,700,000.00 as evidenced by a promissory note, the loan proceeds said to have allowed PISC to reduce overhead expenses and afford it competitive advantage in overseas shipping, and to pay for bunker fuel, defray port expenses and storage, container rental and insurance, as well as salaries and wages of crew members; and (iii) a China bank commercial letter of credit to PISC in favor of Bank of America, particularly a BA Draft for US\$648,002.54 said to have been applied towards vessel repair and conversion by the China Shipbuilding Corporation of Taiwan, together with stipulated interests due from PISC. China Bank's claims are premised on the above as being preferred maritime liens. NIDC rejects said claims as not being maritime liens, much less preferred maritime liens.

Shortly after the undersigned penning Judge assumed his duties in this Court, Lloyd's and China Bank were enjoined to furnish opposite counsel with copies of the documentation of their respective claims, to obviate the necessity of adducing evidence in point on matters capable of stipulation. Thus, failing formulation of any amicable settlement in the manner arrived at by all other intervenors, pre-trial proceedings for the subject last remaining claims in intervention by and for Lloyd's and China Bank resulted in an August 9, 1991 Pre-Trial Order which set forth-

'A. NATURE OF THE CASE

Claimant-intervenor Lloyd's Register of Shipping seeks recovery as unpaid creditor of HK\$65,930., UK Pounds C10,363.45 and P9,653.00 as being in the nature of preferred maritime liens on the vessels M/V "ASEAN NATIONS" and "ASEAN GREATNESS", representing costs for maritime services rendered for said vessels for the period July 22, 1981 to July 14, 1983.

Intervenor-claimant China Banking Corporation seeks recovery, as being in the nature of a preferred maritime lien, of the sum of US\$3,890,227.53, representing the totality of loans extended by said intervenor-claimant said to have been expended in financing repair and conversion costs, for expenses and storage container rentals and insurance premium paid out by it.

Plaintiffs admit the recoverability of said claims as being in the nature of preferred maritime liens, whereas PNB-NIDC contests the said claims.

B. STIPULATIONS AND ADMISSIONS.

Plaintiffs, PNB-NIDC and intervenor-claimant Lloyd's Register of Shipping stipulate and admit that the totality of its claims as fully supported by documentation already verified by the parties are in the sums of HK\$65,930,00, UKC10,363.45 and P9,653.00.

Plaintiffs, PNB-NIDC and intervenor-claimant China Banking Corporation stipulate and admit that the totality

of its claim is in the sum of US\$3,870,227.53 as fortified by documentation already verified in point.

C. ISSUES.

The parties have agreed to limit the resolution of the last two remaining claims in intervention aforementioned to the following legal questions:

- i. Whether or not said claims, in the context in which they sought to be recovered, are preferred maritime lien as would entitle said claims to recover, and
- ii. Whether or not assuming recoverability thereon as being in the nature of maritime liens, such recovery may be allowed in relation with PNB's being the mortgagee of the assets from which recovery is sought.

Considering that the issues to be addressed are purely legal in nature, presentation of evidence and/or witnesses in point is unnecessary.”[11]

After the parties submitted their respective memoranda, the trial court issued on March 4, 1992 an Order dismissing the complaint-in-intervention filed by private respondent CBC for lack of merit. In dismissing the complaint-in-intervention, the trial court ruled that the claim of private respondent CBC was not a preferred maritime lien but was merely a loan extended to PISC by CBC.

Private respondent CBC appealed the Order of the trial court to the Court of Appeals. In its appeal, private respondent CBC imputed the following errors allegedly committed by the trial court:

- the trial court erred in holding that the loans extended by China Banking Corporation to the Philippine International Shipping Corporation did not create maritime liens.
- assuming that the loans are not themselves maritime liens, the trial court erred in holding that the China Banking Corporation did not acquire the maritime liens of Philippine International Shipping Corporation's creditors by subrogation.

For its part, herein petitioners PNB/NIDC raised as an issue in its Appellee's Brief before the Court of Appeals the lack of jurisdiction of the appellate court to entertain and pass upon the appeal interposed by CBC on the ground that the issues raised therein were purely legal; and that the appeal of CBC should have been lodged with the Supreme Court by petition for review on certiorari.[12]

On March 21, 1997, the Court of Appeals promulgated its questioned decision, the dispositive portion of which states:

“WHEREFORE, insofar as the appellant CBC is concerned, the appealed Order is hereby SET ASIDE and judgment is rendered:

(a) Directing the appellee Philippine National Bank/National Investment and Development Corporation to pay the appellant China Banking Corporation from the proceeds of the foreclosure sale of M/V Asean Liberty the amount of US\$242,225.00 or its Philippine Peso Equivalent at the time of payment, with interest thereon at the legal rate from November 7, 1984, the date of filing of CBC's complaint-in-intervention, until fully paid; and

(b) Ordering the appellee Philippine International Shipping Corporation to pay the same CBC the amounts of US\$648,002.54 and US\$2.7 Million plus stipulated interests, arrangement fees, swap premiums, expenses, losses, taxes and penalties,

xxx

SO ORDERED.”[13]

In the said decision, the appellate court held petitioners PNB/NIDC liable to CBC only for the amount of US\$242,225.00, which was used for the repair and conversion of the M/V “Asean Liberty”, as it was only this amount which CBC was able to prove as being a preferred maritime lien. Moreover, such amount was to be paid by petitioners PNB/NIDC from the proceeds of the foreclosure sale of the vessel M/V “Asean Liberty”. Private respondent CBC’s other claims of US\$648,000.54 and US\$2.7 Million were found by the appellate court as not being in the nature of maritime liens and as such, recoverable only from PISC, not from herein petitioners PNB/NIDC.

Not satisfied with the decision of the appellate court, petitioners PNB/NIDC institute the present petition for review on certiorari where they raise the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS HAS APPELLATE JURISDICTION TO ENTERTAIN AND PASS UPON THE APPEAL INTERPOSED BY PRIVATE RESPONDENT CBC FROM THE ORDER OF THE TRIAL COURT OF MARCH 4, 1992 WHICH INVOLVED PURE QUESTIONS OF LAW.

II.

WHETHER OR NOT PRIVATE RESPONDENT CBC’S CLAIM FOR US\$242,225.00 AS EVIDENCED BY ITS IRREVOCABLE LETTER OF CREDIT NO. 79/4174 OF SEPTEMBER 12, 1979 IS IN THE NATURE OF A MARITIME LIEN UNDER THE PROVISIONS OF P.D. NO. 1521; AND IF SO, WHETHER OR NOT SAID MARITIME LIEN IS PREFERRED OVER THE MORTGAGE LIEN OF PETITIONER PNB/NIDC ON THE FORECLOSED VESSEL M/V “ASEAN LIBERTY”.

On the first issue, petitioners argue that the Court of Appeals committed grave error in law in taking cognizance of the appeal interposed by private respondent CBC from the Order of the trial court dated 4 March 1992 involving as it does pure questions of law. They claim that the Court of Appeals had no jurisdiction to entertain and pass upon the appeal interposed by private respondent CBC as the issues raised therein are purely legal. As such, petitioners continue, the appeal of CBC should have been lodged directly with the Supreme Court by way of petition for review on certiorari under Rule 45 of the Revised Rules of Court. Citing the pronouncement of this Court en banc in *Anacleto Murillo vs. Rodolfo Consul*[14], the petitioners conclude that the appeal made by private respondent CBC to the Court of Appeals should have been dismissed by the respondent court for lack of jurisdiction.

It is true that the decisions of the Regional Trial Court may be directly reviewed by the Supreme Court on petition for review if pure questions of law are raised. Circular 2-90,[15] which petitioners cite and which outlined the applicable rules of procedure on this matter at that time, indirectly states that cases from the Regional Trial Court raising only questions of law should be taken to the Supreme Court. Paragraphs No. 4(c) and (d) of the said Circular provide as follows:

“4. Erroneous Appeals. – An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.

xxx xxx xxx

(c) Raising issues purely of law in the Court of Appeals or appeal by wrong mode. – If an appeal under Rule 41 is taken from the Regional Trial Court to the Court of Appeals and therein the appellant raises only questions of law, the appeal shall be dismissed, issues purely of law not being reviewable by said court. xxx

(d) No transfer of appeals erroneously taken. – No transfers of appeals erroneously taken to the Supreme Court or to the Court of Appeals to whichever of these Tribunals has appropriate appellate jurisdiction will be

allowed; continued ignorance or willful disregard of the law on appeals will not be tolerated.”

From the cited provisions, it is clear that the Court of Appeals does not have jurisdiction over appeals from the Regional Trial Court that raise purely questions of law. Appeals of this nature should be raised to the Supreme Court.[16] Furthermore, transfer of erroneous appeals is not allowed and the tribunal which receives the erroneous appeal should perforce dismiss the same for lack of jurisdiction.

Notwithstanding this legal rule, the appeal brought before the Court of Appeals by the private respondent CBC must first be analyzed as to whether the same raised questions or errors of law alone. If the petition raised only questions of law, then the Court of Appeals had no jurisdiction to take cognizance of the case and should have dismissed the case outright. On the other hand, if the petition raised only questions of fact or questions of both fact and law, then the Court of Appeals correctly exercised jurisdiction over the issue.[17]

As such, even if, as in this case, the documentary evidence adduced by the parties was admitted without objection, a question of fact is still involved when the query necessarily invites the calibration of the whole evidence including the relevancy of surrounding circumstances and their relation to each other.

On this point, we note with approval the following justification made by the respondent court in assuming jurisdiction over the case:

“A question of fact has been distinguished from a question of law in this wise:

‘At this point, the distinction between a question of fact and a question of law must be clear. As distinguished from a question of law which exists ‘when the doubt or difference arises as to what the law is on certain state of facts’ – ‘there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;’ or when the query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and probabilities of the situation.’(Bernardo vs. Court of Appeals, 216 SCRA 224)

Stated differently, a question of law does not involve an examination of the probative value of the evidence presented by the litigants or any of them; otherwise, if such examination and re-evaluation of the evidence is called for, a question of fact is raised.

“In the decision from which the CBC appealed, the trial court primarily held that the former is a mere money lender and not a maritime lienor. In its appeal, the CBC argues that in so holding, the trial court disregarded the maritime purposes for which the loans it extended to the Philippine International Shipping Corporation (PISC) were availed of and used. The issue thus raised cannot be judiciously resolved without reviewing the probative weight of the evidence on record consisting in the main of the various documents, contracts and transactions attached to CBC’s complaint-in-intervention. It is, therefore, indubitable that mixed questions of fact and of law are involved over which this Court has jurisdiction.”[18]

Thus, in resolving the issues raised by private respondent in the Court of Appeals, the appellate court had to make a factual inquiry, among others, on the nature and terms of the contracts among the different parties, the relationship of the different parties with one another and with respect to the vessels involved in the case, how the proceeds of the loans were used, and the correct dates when the maritime and mortgage liens were constituted on the vessels. The determination of these facts is crucial as it will resolve whether the amount advanced by respondent CBC is in the nature of a maritime lien and if so, whether the lien is superior to the mortgage lien of petitioners. If the appellate court, in the exercise of its review power, finds that the amount advanced by CBC was used for the repair of the vessels, then a mortgage lien was indubitably established over the shipping vessels. Moreover, a determination of the dates when the respective liens of the parties were constituted over the vessels

will answer the question as to which lien is preferred over the other. In short, in order to address fully the issues raised by the parties in their pleadings, the appellate court necessarily had to make factual findings.

Verily, the issues raised by private respondent in the appellate court were cognizable by the said court, the issues being mixed questions of fact and law. Respondent court was therefore acting within its jurisdiction when it promulgated its questioned decision.

The next issue brought up by petitioners is whether or not private respondent CBC's claim for US\$242,225.00 is in the nature of a maritime lien. It is the contention of petitioners that "(t)he Court of Appeals gravely erred in law in holding that private respondent CBC's claim under its Standby Letter of Credit No. 79/4174 is a maritime lien, and that said maritime lien is preferred over the mortgage lien of petitioners PNB/NIDC on the foreclosed vessel M/V Asean Liberty." [19]

The applicable law on the matter is Presidential Decree No. 1521, otherwise known as the Ship Mortgage Decree of 1978. Sections 17 and 21 of the said Presidential Decree provides as follows:

"Sec. 17. Preferred Maritime Liens, Priorities, Other Liens – (a) Upon the sale of any mortgaged vessel in any extra-judicial sale or by order of a district court of the Philippines in any suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon, all pre-existing claims on the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of Section 16 of this Decree, shall be held terminated and shall thereafter attach, in like amount and in accordance with the priorities established herein to the proceeds of the sale. The preferred mortgage lien shall have priority over all claims against the vessel, except the following claims in the order stated: (1) expenses and fees allowed and costs taxed by the court and taxes due to the government; (2) crew's wages; (3) general average; (4) salvage; including contract salvage; (5) maritime liens arising prior in time to the recording of the preferred mortgage; and (6) damages arising out of tort; and (7) preferred mortgage registered prior in time.

(b) If the proceeds of the sale should not be sufficient to pay all creditors included in one number or grade, the residue shall be divided among them pro rata. All credits not paid, whether fully or partially shall subsist as ordinary credits enforceable by personal action against the debtor. The record of judicial sale or sale by public auction shall be recorded in the Record of Transfers & Encumbrances of Vessels in the port of documentation."

"Sec. 21. Maritime Lien for Necessaries; persons entitled to such lien. – Any person furnishing repairs, supplies, towage, use of dry dock or maritime railway, or other necessities to any vessel, whether foreign or domestic, upon the order of the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall be necessary to allege or prove that credit was given to the vessel."

Under these provisions, any person furnishing repairs, supplies, or other necessities to a vessel on credit will have a maritime lien on the said vessel. Such maritime lien, if it arose prior to the recording of a preferred mortgage lien, shall have priority over the said mortgage lien.

In the instant case, it was Hongkong United Dockyards, Ltd. which originally possessed a maritime lien over the vessel M/V "Asean Liberty" by virtue of its repair of the said vessel on credit. Under the Contract Agreement dated March 12, 1979 between Hongkong United Dockyards, Ltd. and PISC, the former, as contractor, obligated itself to repair and convert the vessel M/V "Asean Liberty," which was owned by PISC. Section 7 of the said Agreement provides as follows:

"(7) a) The Owner will, before the commencement of work, provide an Irrevocable Documentary Credit for the Contract Price plus an estimate to cover the cost of extra work. The banks and wording of the Credit are to be agreed by the Contractor.

b) Payment will be:

- (1) Before departure of vessel from Contractor's yard: 20% of contract price;
- (2) 60 days from departure of vessel from Contractors yard: 40% of contract price;
- (3) 90 days from departure of vessel from Contractors yard: 40% of contract price.”[20]

The foregoing provision of the contract agreement indubitably shows that credit was given to the vessel M/V “Asean Liberty” by Hongkong United Dockyards, Ltd. and as a result, a maritime lien in favor of Hongkong United Dockyards, Ltd. was constituted on the said vessel by virtue of Section 21 of the Ship Mortgage Decree of 1978.

It is the contention of private respondent CBC however, that it ultimately acquired the maritime lien of Hongkong United Dockyards, Ltd. over the vessel M/V “Asean Liberty”. As shown by the documentary evidence offered by private respondent CBC, its proof that it acquired said maritime lien is as follows:

(a) On March 12, 1979, PISC entered into a Contract Agreement with Hongkong United Dockyards, Ltd., as contractor, for the repair and conversion of its vessel M/V “Asean Liberty” for a contract price of HK\$2,200,000.00[21];

(b) On May 28, 1979, the Central Bank of the Philippines approved PISC's request to open with private respondent China Banking Corporation a Standby Letter of Credit for US\$545,000.00 in favor of Hongkong United Dockyards, Ltd. This May 28, 1979 letter stated that the credit for US\$545,000 would be used “to cover the partial conversion cost of the vessel ‘Asean Liberty’”. On June 20, 1979, the Central Bank approved the request of PISC to change the beneficiary of the said Standby Letter of Credit from Hongkong United Dockyards, Ltd. to Citibank[22];

(c) On June 15, 1979, PISC executed an Application and Agreement with private respondent CBC for the opening of a Standby Letter of Credit for US\$545,000.00 in favor of Citibank, N.A., Makati, Metro Manila as beneficiary. The agreement confirmed that the letter of credit would be used to guarantee the loan in the amount of US\$545,000.00, the proceeds of which will be used “to finance partially the conversion cost of the vessel MV ‘ASIAN LIBERTY’”[23];

(d) On September 12, 1979, private respondent CBC issued an Irrevocable Standby Letter of Credit in favor of Citibank for any sum or sums not exceeding a total of US\$545,000.00. Per express terms of the Letter of Credit, its purpose was “to guarantee (Citibank's) loan to Philippine International Shipping Corporation, the proceeds of which loan, according to accountee, are to finance partially the conversion cost of the vessel M/V ‘ASIAN LIBERTY’”[24];

(e) Pursuant to its loan agreement with Citibank, PISC executed on September 17, 1979 a promissory note for US\$545,000.00 in favor of Citibank, promising to pay the latter the principal sum of US\$545,000.00 in nine (9) consecutive semi-annual installments of US\$60,555.00 commencing one (1) year from date hereof or on September 17, 1980 until September 17, 1984[25];

(f) On March 25, 1983, Citibank sent a letter to private respondent CBC calling and drawing on CBC's Letter of Credit No. 79/4174 and certifying that the draft attached thereto for US\$242,225.00 represents the principal balance due to Citibank as of March 17, 1983 under PISC's Promissory Note of September 17, 1979[26]. This March 25, 1983 letter likewise indicated that the loan due from PISC was used to finance partially the conversion cost of the vessel M/V “Asian Liberty”;

(g) On March 30, 1983, private respondent CBC instructed by cable its correspondent, Irving Trust Co., to pay Citibank US\$242,225.00. On the same date, Irving Trust Co., advised private respondent CBC by mail that the sum of US\$242,225.00 was debited against CBC's Account No. 8033278269 and remitted to the Citibank

Foreign Currency Deposit Unit, Makati[27];

From the documentary evidence thus presented, it is clear that private respondent's claim is predicated on the payment it made to Citibank by virtue of the Irrevocable Letter of Credit it established in the latter's favor. Per express provisions of the Letter of Credit, the same was established to "guarantee your (Citibank) loan in the principal amount of US\$545,000.00 to Philippine International Shipping Corporation, the proceeds of which loan, according to accountee, are to finance partially the conversion cost of the vessel M/V "Asean Liberty." [28]

In short, private respondent CBC was a guarantor of the loan extended by Citibank to PISC. It was Citibank, which advanced the money to PISC. It was only upon the failure of PISC to fulfill its obligations under its promissory note to Citibank that private respondent CBC was called upon by Citibank to exercise its duties under the Standby Letter of Credit.

It is the holding of the appellate court, however, that private respondent stepped into the shoes of Hongkong United Dockyards, Ltd. by legal subrogation and thus acquired the maritime lien of the latter over the vessel M/V "Asean Liberty." Thus:

"It is not disputed that CBC's claim for US\$242,225.00 and US\$648,002.54 refer to the repair and conversion of two (2) of PISC's vessels, namely M/V Asean Liberty and M/V Asean Mission, undertaken by Hongkong United Dockyards, Ltd. and the China Shipbuilding Corporation of Taiwan, respectively, upon the order of the owner, as deposed by George Lim, the President of the PISC. Such being the case, maritime liens on the vessels concerned arose conformably with the aforequoted provision of Section 21 of P.D. No. 1521. True it is that under the law the persons entitled to the lien are the Hongkong United Dockyards, Ltd. and the China Shipbuilding Corporation of Taiwan, they being the ones who furnished the repair works. However, since it was CBC who paid off these lienors, it stepped into the shoes of the latter by subrogation. This is the prevailing doctrine in American jurisprudence which holds that: 'A creditor who advances money specifically for the purpose of discharging a maritime lien is subrogated to the lienor's rights.' Significantly, the Federal Maritime Lien Act, like our Ship Mortgage Decree of 1978, provides that, 'any person furnishing repairs, supplies, towage, use of drydock or marine railway, or other necessities, to any foreign or domestic vessel on the order of the owner of such vessel, or of a person authorized by the owner of such vessel, or of a person authorized by the owner has a maritime lien on the vessel which may be enforced by suit in rem.' The only difference is that under the Federal Maritime Lien Act, it is not necessary to allege or prove that the credit was given to the vessel. Hence, insofar as the creation of the lien and the persons entitled to the lien are concerned, American jurisprudence is highly persuasive. Furthermore, Article 1302 (2) of our Civil Code explicitly provides:

'Art. 1302 (2). It is presumed that there is legal subrogation:

xxx xxx xxx

(2) When a third person not interested in the obligation pays with the express or tacit approval of the debtor;

xxx xxx xxx.'

Accordingly, since CBC's payment to the lienors was with the express consent of the debtor owner of the vessels repaired, legal subrogation took place in CBC's favor."

Petitioners do not question the abovequoted rationale of the Court of Appeals. It takes exception however to the appellate court's finding and conclusion that it was ultimately private respondent CBC which paid off the maritime lienor and that the US\$545,000.00 advanced by Citibank was actually paid to the persons who furnished the repairs on the vessels. On this point, petitioners argue that the entirety of the documentary evidence of private respondent CBC does not show that the latter actually paid off the maritime lienholder for the repair of M/V

“Asean Liberty” as required by Section 21 of the Ship Mortgage Act of 1978.[29] Furthermore, petitioners claim that the respondent court committed serious error in law when it considered and gave credence to the written deposition of Mr. George Lim, the President of PISC, as basis for the said finding considering that the same had earlier been denied admission by the trial court.

There is no merit in the contentions of petitioners.

The provisions of our Ship Mortgage Decree of 1978 were patterned quite closely after the U.S. Ship Mortgage Act of 1920.[30] Significantly, the Federal Maritime Lien Act of the United States, like our Ship Mortgage Decree of 1978, provides that “any person furnishing repairs, supplies, towage, use of drydock, or marine railway, or other necessities, to any foreign or domestic vessel on the order of the owner of such vessel, or of a person authorized by the owner has a maritime lien on the vessel, which may be enforced by suit in rem.”[31] Being of foreign origin, the provisions of the Ship Mortgage Decree of 1978 may thus be construed with the aid of foreign jurisprudence from which they are derived except insofar as they conflict with existing laws or are inconsistent with local customs and institutions.

As held by the public respondent Court of Appeals, those who provide credit to a master of a vessel for the purpose of discharging a maritime lien also acquire a lien over the said vessel. Under American jurisprudence, “(f)urnishing money to a master in good faith to obtain repairs or supplies or to remove liens, in order to forward the voyage of the vessel, raises a lien just as though the things (for which) money was obtained to pay for had been furnished by the lender.”[32] Likewise, “(a)dvances to discharge maritime liens create a lien on the vessel, and one advancing money to discharge a valid lien gets a lien of equal dignity with the one discharged.”[33] There is no reason why these doctrines cannot be given persuasive application in the instant case considering that they do not violate or contravene any of our existing laws. Moreover, as pointed out by the appellate court, these doctrines are in accord with our provisions on subrogation particularly Art. 1302, paragraph 2 of the New Civil Code which provides that there is legal subrogation “when a third person, not interested in the fulfillment in the obligation, pays with the express or tacit approval of the debtor.”

Under these doctrines, a person who extends credit for the purpose of discharging a maritime lien is not entitled to the said lien “where the funds were not furnished to the ship on the order of the master and there was no evidence that the money was actually used to pay debts secured by the lien.”[34] As applied in the instant case, it becomes necessary to prove that the credit advanced by Citibank to PISC was actually utilized for the repair and conversion of the vessel M/V “Asean Liberty.” Otherwise, Citibank could not have acquired the maritime lien of Hongkong United Dockyards, Ltd. over the vessel M/V “Asean Liberty.”

On this point, we agree with the position of private respondent that the question of whether or not the proceeds of the loans extended by Citibank were used for the repair and conversion of M/V “Asean Liberty” is a factual issue[35] which the Court cannot review absent a showing that it was arbitrarily resolved.[36]

Contrary to the assertions of petitioners, the records are replete with documents that show that the proceeds of the loans were used for the repair and conversion of the vessel M/V “Asean Liberty.” Even without the written deposition of Mr. George Lim, there is still sufficient documentary evidence in the records supporting the appellate court’s findings. The correspondences between PISC and the Central Bank, the Application and Agreement, and the Standby Letter of Credit itself explicitly state that the proceeds of the loan applied for by PISC are to be used to finance partially the conversion cost of the vessel M/V “Asean Liberty.” Moreover, the March 25, 1983 letter of Citibank to private respondent CBC drawing on the latter’s letter of credit, confirmed that the loan due from PISC was used to finance partially the conversion cost of the said vessel.

In the presence of such documentary evidence, which were admitted without objection from the petitioners, we

cannot say that the Court of Appeals resolved the issue arbitrarily. The appellate court's finding that the amount sought to be recovered by petitioner was actually used for the repair and conversion of the vessel M/V "Asean Liberty" is based on substantial evidence.

From the foregoing, it is clear that the amount used for the repair of the vessel M/V "Asean Liberty" was advanced by Citibank and was utilized for the purpose of paying off the original maritime lienor, Hongkong United Dockyards, Ltd. As a person not interested in the fulfillment of the obligation between PISC and Hongkong United Dockyards, Ltd., Citibank was subrogated to the rights of Hongkong United Dockyards, Ltd. as maritime lienor over the vessel, by virtue of Article 1302, par. 2 of the New Civil Code. By definition, subrogation is the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights.[37] Considering that Citibank paid off the debt of PISC to Hongkong United Dockyards, Ltd. it became the transferee of all the rights of Hongkong United Dockyards, Ltd. as against PISC, including the maritime lien over the vessel M/V "Asean Liberty."

Private respondent CBC, as guarantor, was itself subrogated to all the rights of Citibank as against PISC, the latter's debtor. Article 2067 of the New Civil Code provides that "(t)he guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor." Private respondent, having paid off the debt of PISC to Citibank, was therefore, subrogated to all the rights Citibank had against its debtor PISC. Considering that Citibank had a maritime lien over the vessel M/V "Asean Liberty," private respondent was likewise subrogated to this right when it paid off Citibank under the contract of guarantee.

Having thus established that private respondent CBC possessed a maritime lien over the vessel M/V "Asean Liberty," the next issue is whether the said maritime lien is preferred over the mortgage lien of petitioners.

In the case at bench, petitioners' mortgage lien arose on September 25, 1979 when the said mortgage was registered with the Philippine Coast Guard Headquarters.[38] As such, in order for the maritime lien of private respondent CBC to be preferred over the mortgage lien of petitioners, the same must have arisen prior to the recording of the mortgage on September 25, 1979.

On this point, petitioners argue that inasmuch as the Standby Letter of Credit was in the nature of a guarantee, the right of private respondent CBC to claim or to collect the maritime lien arose only at the time CBC actually paid off the said lien to Citibank on March 30, 1983. Otherwise stated, it is the contention of petitioners that private respondent CBC's maritime lien under its Standby Letter of Credit No. 79/4174 arose only on March 30, 1983 when CBC actually paid off the outstanding obligation of PISC to Citibank.[39] Considering that its mortgage lien arose on September 25, 1979, petitioners thus conclude that its lien is preferred as against private respondent CBC's maritime lien.

There is no merit in this contention.

As stated by a noted commentator on the subject, a maritime lien "constitutes a present right of property in the ship, a *jus in re*, to be afterward enforced in admiralty by process in *rem*. From the moment the claim or privilege attaches, it is inchoate, and when carried into effect by legal process, by a proceeding in *rem*, it relates back to the period when it first attached." [40]

In the case at bench, the maritime lien over the vessel M/V "Asean Liberty" arose or was constituted at the time Hongkong United Drydocks, Ltd. made repairs on the said vessel on credit. As such, as early as March 12, 1979, the date of the contract for the repair and conversion of M/V "Asean Liberty," a maritime lien had already attached to the said vessel. When Citibank advanced the amount of US\$242,225.00 for the purpose of paying off PISC's debt to Hongkong United Dockyards, Ltd., it acquired the existing maritime lien over the vessel. When

private respondent honored its contract of guarantee with Citibank on March 30, 1983, it likewise acquired by subrogation the maritime lien that was already existing over the vessel M/V “Asean Liberty.” Thus, when private respondent CBC chose to exercise its right to the maritime lien during the proceedings in the trial court, it was actually enforcing a privilege that attached to the ship as early as March 12, 1979.

The maritime lien of private respondent CBC thus arose prior in time to the recording of petitioners’ mortgage on September 25, 1979. As such, the said maritime lien has priority over the said mortgage lien. Pursuant to Section 17 of the Ship Mortgage Decree of 1978, a “preferred mortgage lien shall have priority over all claims against the vessel” except, among others, “maritime liens arising prior in time to the recording of the preferred mortgage.” The respondent court thus committed no reversible error when it ruled that the maritime lien of private respondent CBC is superior to the mortgage lien of petitioners.

WHEREFORE, in view of the foregoing, the petition is denied and the decision of the Court of Appeals dated March 21, 1997 in CA-G.R. CV. No. 38131 is hereby AFFIRMED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Annex “A” of Petition; Rollo, pp. 30-53. Per Justice Salvador J. Valdez, Jr, with Justices Jaime M. Lantin and Corona Ibay-Somera, concurring.

[2] Penned by Judge Salvador S. Tensuan, C.A. Rollo, pp. 26-32.

[3] Petition, pp. 3-4; Rollo, pp. 10-11.

[4] Petition, p. 4; Rollo, p. 11.

[5] Memorandum for Private Respondent, p. 2; Rollo, p.139

[6] *ibid.*

[7] Memorandum for Private Respondent, pp. 2-3; Rollo, pp. 139-140.

[8] Rollo, p. 140.

[9] Petition, p. 4; Rollo, p. 11.

[10] Docketed as Civil Case No. 4068.

[11] Rollo, pp. 32-35.

[12] Petition, p. 7; Rollo, p. 14.

[13] Rollo, pp. 52-53.

[14] UDK-9748, 1 March 1990.

[15] Subject: Guidelines to be Observed in Appeals to the Court of Appeals and to the Supreme Court , dated March 9, 1990, based on the Resolution of the Court En Banc in UDK-9748 (Anacleto Murillo vs. Rodolfo Consul), March 1, 1990.

[16] Roman Catholic Archbishop of Manila vs. Court of Appeals, 258 SCRA 186.

[17] Please also see Section 17 (1) of the Judiciary Act of 1948.

- [18] Rollo, p. 45.
- [19] Petition, p. 12; Rollo, p. 19.
- [20] China Banking Corporation's Record on Appeal, p. 187.
- [21] Ibid, pp. 184-188.
- [22] Ibid, pp. 189-191.
- [23] Ibid, pp. 192-193.
- [24] Ibid, p. 194.
- [25] Ibid, pp. 195-196.
- [26] Ibid, pp. 197-200.
- [27] Ibid, p. 201.
- [28] Ibid, p. 194.
- [29] Petition, p. 17; Rollo, p. 24.
- [30] Hernandez, Eduardo F. and Penasales, Antero A., Philippine Admiralty and Maritime Law, 1987 Edition, p. 133.
- [31] 70 Am. Jur. 2nd §552, p. 800.
- [32] 70 Am. Jur. 2nd § 561, p. 807.
- [33] Ibid.
- [34] Ibid.
- [35] K.K. Shell Sekiyu Osaka Hatsubaisho vs. Court of Appeals, 188 SCRA 145.
- [36] Tan Chun Suy vs. Court of Appeals, 212 SCRA 713.
- [37] Chemphil Export and Import Corporation vs. Court of Appeals, 251 SCRA 257.
- [38] Petition, p. 4; Rollo, p. 11.
- [39] Petition, p. 19; Rollo, p. 26.
- [40] Agbayani, Aguedo F., Commentaries and Jurisprudence on the Commercial Laws of the Philippines, 1993 ed., Volume IV, pp. 699-700 citing 70 Am Jur 2nd, 472.

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