CARGOLIFT SHIPPING, INC. PETITIONER, VS. L. ACUARIO MARKETING CORP. AND SKYLAND BROKERAGE, INC., RESPONDENTS.

G.R. NO. 146426. June 27, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review on certiorari of the July 6, 2000 Decision[1] of the Court of Appeals in CA-G.R. CV No. 55664, which affirmed the judgment[2] of the Regional Trial Court of Caloocan City, Branch 121, in Civil Case No. C-16120 in so far as it found petitioner Cargolift Shipping, Inc. ("Cargolift") liable, as third-party defendant, for actual damages in the sum of P97,021.20, as well as the November 28, 2000 Resolution[3] denying the motion for reconsideration.

The antecedent facts of the case are as follows:

Sometime in March 1993, respondent L. Acuario Marketing Corp., ("Acuario") and respondent Skyland Brokerage, Inc., ("Skyland") entered into a time charter agreement[4] whereby Acuario leased to Skyland its L. Acuario II barge for use by the latter in transporting electrical posts from Manila to Limay, Bataan. At the same time, Skyland also entered into a separate contract[5] with petitioner Cargolift, for the latter's tugboats to tow the aforesaid barge.

In accordance with the foregoing contracts, petitioner's tugboat M/T Beejay left the Manila South Harbor on April 1, 1993 with Acuario's barge in tow. It reached the port of Limay, Bataan on April 3, 1993, whereupon M/T Beejay disengaged and once again set sail for Manila. Petitioner's other tugboat, the M/T Count, remained in Bataan to secure the barge for unloading.

Off-loading operations went underway until April 7, 1993, when operations were interrupted for the next two days to give way to the observance of the lenten season. The unloading of the cargo was concluded on April 12, 1993, by which time M/T Beejay had gone back to Bataan for the return trip. The M/T Beejay and the barge returned to the port of Manila on April 13, 1993.

On the same day, the barge was brought to Acuario's shipyard where it was allegedly discovered by Acuario's dry-docking officer, Guillermo Nacu, Jr., that the barge was listing due to a leak in its hull. According to Nacu, he was informed by the skipper of the tugboat that the damage was sustained in Bataan. To confirm the same, Nacu ordered an underwater survey of the barge and prepared a damage report dated April 14, 1993. No representative of Skyland was present during the inspection although it was furnished with a copy of the said report.

The barge was consequently dry-docked for repairs at the Western Shipyard from April 16 to April 26, 1993. Acuario spent the total sum of P97,021.20 for the repairs.[6]

Pursuant to its contract with Skyland which provided that "(a)ny damage or loss on the barge due to the fault or negligence of charterers shall be the responsibility of the (c)harterer or his representative,"[7] Acuario wrote

Skyland seeking reimbursement of its repair costs, failing which, it filed a complaint for damages against Skyland before the Regional Trial Court of Caloocan City, where the case was docketed as Civil Case No. C-16120 and raffled to Branch 121.

Skyland, in turn, filed a third-party complaint[8] against petitioner alleging that it was responsible for the damage sustained by the barge.

According to Acuario and its witnesses, the weather in Bataan shifted drastically at dawn of April 7, 1993 while the barge was docked at the Limay port eight meters away from the stone wall. Due to strong winds and large waves, the barge repeatedly hit its hull on the wall, thus prompting the barge patron to alert the tugboat captain of the M/T Count to tow the barge farther out to sea. However, the tugboat failed to pull the barge to a safer distance due to engine malfunction, thereby causing the barge to sustain a hole in its hull. Fortunately, no part of the cargo was lost even if only half of it had been unloaded at that time.[9]

On the other hand, petitioner and Skyland denied that the barge had been damaged. One of its witnesses, Salvador D. Ocampo, claimed that he was involved in all aspects of the operation and that no accident of any sort was brought to his knowledge. He alleged that the barge patron and tug master made no mention of any maritime casualty during the clearing of the vessels at the Philippine Ports Authority in Limay, Bataan. The barge was in good condition and was not damaged when it was turned over to Acuario on April 13, 1993.[10]

In due course, the trial court promulgated its decision dated June 10, 1996, the dispositive part of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> - Ordering the defendant Skyland Brokerage to pay to the plaintiff L. Acuario Marketing Corporation the cost of repairs of the barge L. Acuario II in the amount of P97,021.20 and to seek reimbursement from the third-party defendant Cargolift Shipping;
>
> - Ordering the defendant to pay attorney's fees in the amount of P24,255.30 and to seek reimbursement thereof from the third-party defendant; and
>
> - Ordering the defendant to pay the costs of suit subject to reimbursement from the third-party defendant.
>
> SO ORDERED.[11]

The trial court gave credence to the testimonies of Acuario's witnesses that the barge sustained damage while it was being chartered by Skyland. It held that the positive testimonies of Acuario's witnesses, coupled with documentary evidence detailing the nature and extent of the damage as well as the repairs done on the barge, should prevail over the bare denials of Skyland and petitioner. It also noted that two of the latter's three witnesses were not in Limay, Bataan when the incident happened.

The trial court further held that Skyland was liable under its time charter agreement with Acuario pursuant to Article 1159 of the Civil Code which states that "contracts have the force of law between the contracting parties." Skyland must bear the consequences of the tugboat's incapacity to respond to the barge's request for assistance because Acuario had no control in the selection of the tugboats used by Skyland. But since the ultimate fault lies with petitioner, justice demands that the latter reimburse Skyland for whatever it may be adjudged to pay Acuario.[12]

Both Skyland and petitioner elevated the matter to the Court of Appeals which, on July 6, 2000, rendered the assailed Decision affirming the trial court, but deleting the award of attorney's fees. Upon denial of its motion for reconsideration,[13] petitioner brought the instant petition raising the following issues:

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I

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT THAT L. ACUARIO II SUSTAINED DAMAGE AND THAT IT WAS SUSTAINED DURING ITS CHARTER TO RESPONDENT SKYLAND.

II

ASSUMING THAT L. ACUARIO II SUFFERED DAMAGE, WHETHER THE COURT OF APPEALS ERRED IN UPHOLDING THE TRIAL COURT DECISION HOLDING PETITIONER LIABLE THEREFOR.[14]

The petition lacks merit.

On the first assigned error, petitioner is asking this Court to resolve factual issues that have already been settled by the courts below. The question of whether the barge had been damaged during its charter to Skyland is a factual matter, the determination of which may not be generally disturbed on appeal. Questions of fact are not reviewable by this Court except under certain exceptional circumstances.[15] No such exceptional circumstance exists in the case at bar.

On the contrary, the factual conclusions reached by the courts below are consistent with the evidence on record. Acuario's witnesses testified that strong winds and waves caused the barge to bump into the walls of the pier where it was berthed for unloading. Petitioner's tugboat failed to tow it farther away due to engine breakdown, thus causing the barge to sustain a hole in its hull. These testimonies were duly supported and corroborated by documentary evidence detailing the damage and repairs done on the barge.[16]

On the other hand, petitioner and Skyland's denial that there was inclement weather in the early hours of April 7, 1993 and that the barge sustained no damage on this occasion were not supported by evidence to overcome the positive allegations of Acuario's witnesses who were present at the place and time of the incident. The categorical declaration of Acuario's witnesses regarding the events which led to the damage on the barge shifted the burden of evidence on petitioner and Skyland. They could have easily disproved Acuario's claims by presenting competent proof that there was no weather disturbance on that day or, by presenting the testimony of individuals who have personal knowledge of the events which transpired.

Moreover, the inability of petitioner's and Skyland's witnesses to unequivocally declare that it was still the M/T Count that secured the barge during the resumption of off-loading operations casts suspicion on their credibility. As aptly observed by the trial court, such hesitation on the part of its witnesses is indicative of uncertainty, if not a propensity to withhold information that could be unfavorable to their cause.[17] To our mind, therefore, the trial court rightly concluded that petitioner's M/T Count indeed encountered mechanical trouble, as asserted by Acuario. The fact that petitioner did not categorically deny the allegation of mechanical trouble only serves to strengthen the trial court's conclusion.

Petitioner's assertion that it is contrary to human experience for the barge to have made the return trip to Manila if it sustained the alleged damage deserves short shrift. The trial court found that the damage on the barge was not too extensive as to render it incapable of staying afloat and being used in operation. Neither was it impossible for the barge's cargo to remain intact and undamaged during the weather disturbance. Apart from the fact that the cargo which consisted of wooden electric poles are, by nature, not easily damaged by adverse weather,[18] part of it had already been unloaded when the unfortunate incident occurred.

Consequently, we find no cogent reason to disturb the lower courts' finding that the barge sustained a hole in its hull when petitioner's tugboat failed to tow it to a safer distance as the weather changed in the port of Limay. This

Court is bound by the factual determinations of the appellate court especially when these are supported by substantial evidence and merely affirm those of the trial court,[19] as in this case. There is no showing here that the inferences made by the Court of Appeals were manifestly mistaken, or that the appealed judgment was based on a misapprehension of facts, or that the appellate court overlooked certain relevant, undisputed facts which, if properly considered, would justify a different conclusion.[20] Thus, a reversal of the factual findings in this case is unwarranted.

As for the second assigned error, petitioner asserts that it could not be held liable for the damage sustained by Acuario's barge because the latter sought to recover upon its contract with Skyland, to which petitioner was not a party. Since it had no contractual relation with Acuario, only Skyland should be held liable under the contract. Besides, Skyland contractually assumed the risk that the tugboat might encounter engine trouble when it acknowledged in its contract with petitioner that the latter's vessels were in good order and in seaworthy condition. At any rate, it was neither negligent in the performance of its obligation nor the proximate cause of the damage.

We do not agree.

It was not Acuario that seeks to hold petitioner liable for the damage to the barge, as the former in fact sued only Skyland pursuant to their charter agreement. It was Skyland that impleaded petitioner as third-party defendant considering that Skyland was being held accountable for the damage attributable to petitioner. In other words, petitioner was not sued under Skyland's charter agreement with Acuario, but pursuant to its separate undertaking with Skyland. Strictly speaking, therefore, petitioner is not being held liable under any charter agreement with Acuario.

Consequently, it is not correct for petitioner to assert that Acuario could not recover damages from it due to lack of privity of contract between them. It is not Acuario that is seeking damages from petitioner but Skyland, with whom it undoubtedly had a juridical tie. While Acuario could hold Skyland liable under its charter agreement, Skyland in turn could enforce liability on petitioner based on the latter's obligation to Skyland. In other words, petitioner is being held liable by Skyland and not by Acuario.

Thus, in the performance of its contractual obligation to Skyland, petitioner was required to observe the due diligence of a good father of the family. This much was held in the old but still relevant case of Baer Senior & Co.'s Successors v. La Compania Maritima[21] where the Court explained that a tug and its owners must observe ordinary diligence in the performance of its obligation under a contract of towage. The negligence of the obligor in the performance of the obligation renders him liable for damages for the resulting loss suffered by the obligee. Fault or negligence of the obligor consists in his failure to exercise due care and prudence in the performance of the obligation as the nature of the obligation so demands.[22]

In the case at bar, the exercise of ordinary prudence by petitioner means ensuring that its tugboat is free of mechanical problems. While adverse weather has always been a real threat to maritime commerce, the least that petitioner could have done was to ensure that the M/T Count or any of its other tugboats would be able to secure the barge at all times during the engagement. This is especially true when considered with the fact that Acuario's barge was wholly dependent upon petitioner's tugboat for propulsion. The barge was not equipped with any engine and needed a tugboat for maneuvering.[23]

Needless to say, if petitioner only subjected the M/T Count to a more rigid check-up or inspection, the engine malfunction could have been discovered or avoided. The M/T Count was exclusively controlled by petitioner and the latter had the duty to see to it that the tugboat was in good running condition. There is simply no basis for petitioner's assertion that Skyland contractually assumed the risk of any engine trouble that the tugboat may

encounter. Skyland merely procured petitioner's towing service but in no way assumed any such risk.

That petitioner's negligence was the proximate cause of the damage to the barge cannot be doubted. Had its tugboat been serviceable, the barge could have been moved away from the stone wall with facility. It is too late in the day for petitioner to insist that the proximate cause of the damage was the barge patron's negligence in not objecting to the position of the barge by the stone wall. Aside from the fact that the position of the barge is quite understandable since off-loading operations were then still underway,[24] the alleged negligence of the barge patron is a matter that is also being raised for the first time before this Court.

Thus, the damage to the barge could have been avoided had it not been for the tugboat's inability to tow it away from the stone wall. Considering that a barge has no power of its own and is totally defenseless against the ravages of the sea, it was incumbent upon petitioner to see to it that it could secure the barge by providing a seaworthy tugboat. Petitioner's failure to do so did not only increase the risk that might have been reasonably anticipated during the shipside operation but was the proximate cause of the damage.[25] Hence, as correctly found by the courts below, it should ultimately be held liable therefor.

WHEREFORE, the petition is DENIED for lack of merit. The Decision of the Court of Appeals in CA-G.R. CV No. 55664 dated July 6, 2000 and the Resolution dated November 28, 2000, finding petitioner Cargolift Shipping, Inc. liable, as third-party defendant, for actual damages in the sum of P97,021.20, are AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, pp. 27-34. Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Godardo A. Jacinto and Remedios Salazar-Fernando.

[2] Id. at 58-67. Penned by Judge Adoracion G. Angeles.

[3] Id. at 36-37.

[4] Id. at 38.

[5] Id. at 45-47.

[6] Id. at 28.

[7] Id. at 38.

[8] Id. at 42-44.

[9] Id. at 28.

[10] Id. at 29.

[11] Id. at 67.

[12] Id. at 64-66.

[13] Id. at 36-37.

[14] Id. at 11.

[15] Central Shipping Company, Inc. v. Insurance Company of North America, G.R. No. 150751, September 20,

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2004, 438 SCRA 511, 518.

[16] Rollo, p. 64.

[17] Id. at 66.

[18] Id. at 65.

[19] Smith Bell Dodwell Shipping Agency Corporation v. Borja, 432 Phil. 913, 922 (2002).

[20] Central Shipping Company, Inc. v. Insurance Company of North America, supra note 15 at 518.

[21] 6 Phil. 215, 217-218 (1906).

[22] Bayne Adjusters and Surveyors, Inc. v. Court of Appeals, 380 Phil. 196, 201 (2000).

[23] Rollo, p. 32.

[24] Id. at 189.

[25] Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc., G.R. No. 150255, April 22, 2005, 456 SCRA 557, 572.

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