

REPUBLIC FLOUR MILLS CORPORATION, PETITIONER, VS. FORBES FACTORS, INC. RESPONDENT.

G.R. No. 152313. October 19, 2011

Ponente: SERENO, J.

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SERENO, J.:

Petitioner filed this present Petition for Review[1] under Rule 45 of the Rules of Court, seeking a reversal of the Court of Appeals Decision,[2] the dispositive portion of which states:

WHEREFORE, premises considered, the Decision dated April 15, 1996 rendered by the Regional Trial Court of Makati City, Branch 60, is hereby AFFIRMED, with MODIFICATIONS, as follows:

- 1) The legal interest rate of six percent (6%) per annum should be computed from the date of the filing of the complaint which shall become twelve percent (12%) per annum from the time the judgment becomes final and executory until its satisfaction.
- 2) The award of P300,000.00 as exemplary damages is reduced to P50,000.00;
- 3) The award of P400,00.00 as attorney's fees is likewise reduced to P75,000.00;
- 4) The Decision is hereby affirmed in all other respects.

SO ORDERED.

The case arose when petitioner refused to pay the demurrage being collected by respondent.

The facts are as follows:

In a contract dated 26 April 1983, respondent was appointed as the exclusive Philippine indent representative of Richco Rotterdam B.V. (Richco), a foreign corporation, in the sale of the latter's commodities. Under one of the terms of the contract, respondent was to assume the liabilities of all the Philippine buyers, should they fail to honor the commitments on the discharging operations of each vessel, including the payment of demurrage and other penalties. In such instances, Richco shall have the option to debit the account of respondent corresponding to the liabilities of the buyers, and respondent shall then be deemed to be subrogated to all the rights of Richco against these defaulting buyers.[3]

Sometime in 1987, petitioner purchased Canadian barley and soybean meal from Richco. The latter thereafter chartered four (4) vessels to transport the products to the Philippines. Each of the carrier bulk cargoes was covered by a Contract of Sale executed between respondent as the seller and duly authorized representative of Richco and petitioner as the buyer. The four contracts specifically referred to the charter party in determining demurrage or dispatch rate. The contract further provided that petitioner guarantees to settle any demurrage due within one (1) month from respondent's presentation of the statement.

Upon delivery of the barley and soybean meal, petitioner failed to discharge the cargoes from the four (4) vessels

at the computed allowable period to do so. Thus, it incurred a demurrage amounting to a total of US\$193,937.41.

On numerous occasions, on behalf of Richco, respondent demanded from petitioner the payment of the demurrage, to no avail. Consequently, on 20 October 1991, Richco sent a communication to respondent, informing it that the demurrage due from petitioner had been debited from the respondent's account.

Thereafter, on 12 February 1992, respondent filed with the Regional Trial Court (RTC), National Capital Judicial Region, Makati City, a Complaint for demurrage and damages against petitioner. Meanwhile, the latter raised the defense that the delay was due to respondent's inefficiency in unloading the cargo.

On 15 April 1996, after trial on the merits, the RTC rendered a Decision^[4] holding petitioner liable to pay demurrage and damages to respondent, to wit:

34. WHEREFORE, the Court hereby renders judgment as follows:

34.1 The defendant REPUBLIC FLOUR MILLS CORPORATION is ordered to pay the plaintiff FORBES FACTORS, INC. the following:

34.1.1. US\$193,937.41 or its Philippine PESO equivalent at the rate of exchange at the time of payment - As demurrage.

34.1.2 Six (6) percent of the amount in the preceding paragraph 34.1.1 - Per annum from October 29, 1991 until the said amount is fully paid - As damages.

34.1.3. P300,000.00 - As exemplary damages.

34.1.4. P 400,000.00 - As attorney's fees.

34.2. The COUNTERCLAIM is DISMISSED; and

34.3. Cost is taxed against the defendant.

The RTC found that the delay in discharging the cargoes within the allowable period was due to petitioner's failure to provide enough barges on which to load the goods. It likewise found that petitioner in fact acknowledged that the latter had incurred demurrage when it alleged that the computation was bloated. Petitioner was thus liable to pay demurrage based on the sales contracts executed with respondent and on the contract executed between respondent and Richco.

Finally, the court ruled that respondent was entitled to damages from petitioner's "wanton, fraudulent, reckless, oppressive or malevolent" refusal to pay the latter's liabilities despite repeated demands.

Subsequently, petitioner appealed to the Court of Appeals (CA), alleging that respondent was not a real party-in-interest to bring the collection suit. Petitioner insisted that the payment of demurrage should be made to the owner of the vessels that transported the goods, and not to respondent who was merely the indent representative of Richco, the charterer of the vessel. In addition, petitioner claimed that it was denied due process when the RTC refused to reset the hearing for the presentation of Reynaldo Santos, petitioner's witness and export manager. Finally, petitioner contested the RTC's award of exemplary damages and attorney's fees.

On 18 February 2002, the CA promulgated the assailed Decision. It upheld the validity of the Contracts of Sale and held that these had the force of law between the contracting parties and must be complied with in good faith. However, the appellate court modified the trial court's award of damages. It held that exemplary damages are not intended to enrich anyone, thus, reducing the amount from P300,000 to P50,000. It also found the award of attorney's fees to be excessive, and consequently reduced it from P400,000 to P75,000.

Hence this Petition.

Three issues are raised for the resolution by this Court. First, petitioner assails the right of respondent to demand payment of demurrage. Petitioner asserts that, by definition, demurrage is the sum fixed by the contract of carriage as remuneration to the ship owner for the detention of the vessel beyond the number of days allowed by the charter party.[5] Thus, since respondent is not the ship owner, it has no right to demand the payment of demurrage and has no personality to bring the claim against petitioner. Second, petitioner questions the propriety of the award of damages in favor of respondent. And third, the former insists that it was denied due process when the RTC denied its Motion to reset the hearing to present its witness.

We find the petition without merit.

The facts are undisputed. The delay incurred by petitioner in discharging the cargoes from the vessels was due to its own fault. Its obligation to demurrage is established by the Contracts of Sale it executed, wherein it agreed to the conditions to provide all discharging facilities at its expense in order to effect the immediate discharge of cargo; and to place for its account all discharging costs, fees, taxes, duties and all other charges incurred due to the nature of the importation.[6]

Meanwhile, respondent unequivocally established that Richco charged to it the demurrage due from petitioner. Thus, at the moment that Richco debited the account of respondent, the latter is deemed to have subrogated to the rights of the former, who in turn, paid demurrage to the ship owner. It is therefore immaterial that respondent is not the ship owner, since it has been able to prove that it has stepped into the shoes of the creditor.

Subrogation is either "legal" or "conventional." Legal subrogation is an equitable doctrine and arises by operation of the law, without any agreement to that effect executed between the parties; conventional subrogation rests on a contract, arising where "an agreement is made that the person paying the debt shall be subrogated to the rights and remedies of the original creditor." [7] The case at bar is an example of legal subrogation, the petitioner and respondent having no express agreement on the right of subrogation. Thus, it is of no moment that the Contracts of Sale did not expressly state that demurrage shall be paid to respondent. By operation of law, respondent has become the real party-in-interest to pursue the payment of demurrage. As aptly stated by the RTC:

19. True it is that demurrage is, as a rule, an amount payable to a shipowner by a charterer for the detention of the vessel beyond the period allowed for the loading or unloading or sailing. This however, does not mean that a party cannot stipulate with another who is not a shipowner, on demurrage. In this case, FORBES stipulated under the charter parties on demurrage with the shipowners. This stipulation could be the basis of the provisions on demurrage in the four (4) Contracts of Sale (Exhs. B, N, X, and CC) and contract between FORBES and RICHCO (Exh. A).

xxx xxx xxx

20. RICHCO debited the US\$193,937.41 from the accounts of FORBES as evidenced by Exh. OO. Hence, FORBES was subrogated to the right of RICHCO to collect the said amount from RFM pursuant to the contract between RICHCO and FORBES (Exh. A).

21. Under Exh. A, FORBES guaranteed its "...buyers (sic) payment schedule..." Consequently, it was subrogated to the rights of RICHCO arising from the failure of RFM to pay its demurrage and FORBES paid for it. The subrogation was pursuant to Articles 1302 and 2067, New Civil Code, which read:

"Art. 1302. It is presumed that there is legal subrogation:

- (1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;
- (2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;

(3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share."

"Art. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid."

As we held in *Fireman's Fund Insurance Company v. Jamila & Company, Inc.*:

...Subrogation has been referred to as the doctrine of substitution. It "is an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another" (83 C.J.S. 576, 678, note 16, citing *Fireman's Fund Indemnity Co. vs. State Compensation Insurance Fund*, 209 Pac. 2d 55).

"Subrogation is founded on principles of justice and equity, and its operation is governed by principles of equity. It rests on the principle that substantial justice should be attained regardless of form, that is, its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form"(83 C.J.S. 579- 80)[8]

Anent the second issue, we have previously held in *Pepsi Cola Products Phil., Inc. v. Court of Appeals*,[9] that a motion for continuance of postponement is not a matter of right. Rather, the motion is addressed to the sound discretion of the court, whose action thereon will not be disturbed by appellate courts in the absence of clear and manifest abuse of discretion, resulting in a denial of substantial justice.

On the last issue, we find that the award of exemplary damages proper. Petitioner refused to honor the contract despite respondent's repeated demands and its proof of payment to Richco; and despite its repeated promise to settle its outstanding obligations in the span of almost five years. Petitioner indeed acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Because respondent was also forced to initiate the present Complaint, it was only proper that it was awarded attorney's fees. Lastly, the CA was correct in reducing the award of exemplary damages or attorney's fees, since neither is meant to enrich anyone.

WHEREFORE, in view of the foregoing, the assailed Decision of the Court of Appeals is hereby AFFIRMED. The present Petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Brion, Reyes, and Perlas-Bernabe,[*] JJ., concur.

[*] Designated as Acting Member of the Second Division vice Associate Justice Jose P. Perez per Special Order No. 1114 dated October 3, 2011.

[1] Rollo at 8-30.

[2] Id. at 31-41. Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Delilah Vidallon-Magtolis and Candido V. Rivera, concurring.

[3] Id. at 246-247.

[4] Id. at 46-62, penned by Judge Pedro N. Laggui.

[5] Black's Law Dictionary, revised 4[th] ed., 519 (1968).

[6] Rollo, pp. 51-53.

[7] *Financial Sec. Assur., Inc. v. Stephens, Inc.* 500 F.3d 1276, 1287 (2007), citing *Gilbert v. Dunn* 218 Ga. 531, 128 S.E.2d 739 Ga. (1962).

[8] G.R. No. L-27427, 7 April 1976, 70 SCRA 323, 327-328.

[9] G.R. No. 122629, 2 December 1998, 299 SCRA 519, 525.

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