

CRESCENT PETROLEUM, LTD., PETITIONER, VS. M/V "LOK MAHESHWARI"; THE SHIPPING CORPORATION OF INDIA, AND PORTSERV LIMITED AND/OR TRANSMAR SHIPPING, INC., RESPONDENTS.

G.R. No. 155014. November 11, 2005

Ponente: PUNO, J.

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PUNO, J.:

This petition for review on certiorari under Rule 45 seeks the (a) reversal of the November 28, 2001 Decision of the Court of Appeals in CA-G.R. No. CV-54920,[1] which dismissed for "want of jurisdiction" the instant case, and the September 3, 2002 Resolution of the same appellate court,[2] which denied petitioner's motion for reconsideration, and (b) reinstatement of the July 25, 1996 Decision[3] of the Regional Trial Court (RTC) in Civil Case No. CEB-18679, which held that respondents were solidarily liable to pay petitioner the sum prayed for in the complaint.

The facts are as follows: Respondent M/V "Lok Maheshwari" (Vessel) is an oceangoing vessel of Indian registry that is owned by respondent Shipping Corporation of India (SCI), a corporation organized and existing under the laws of India and principally owned by the Government of India. It was time-chartered by respondent SCI to Halla Merchant Marine Co. Ltd. (Halla), a South Korean company. Halla, in turn, sub-chartered the Vessel through a time charter to Transmar Shipping, Inc. (Transmar). Transmar further sub-chartered the Vessel to Portserv Limited (Portserv). Both Transmar and Portserv are corporations organized and existing under the laws of Canada.

On or about November 1, 1995, Portserv requested petitioner Crescent Petroleum, Ltd. (Crescent), a corporation organized and existing under the laws of Canada that is engaged in the business of selling petroleum and oil products for the use and operation of oceangoing vessels, to deliver marine fuel oils (bunker fuels) to the Vessel. Petitioner Crescent granted and confirmed the request through an advice via facsimile dated November 2, 1995. As security for the payment of the bunker fuels and related services, petitioner Crescent received two (2) checks in the amounts of US\$100,000.00 and US\$200,000.00. Thus, petitioner Crescent contracted with its supplier, Marine Petrobulk Limited (Marine Petrobulk), another Canadian corporation, for the physical delivery of the bunker fuels to the Vessel.

On or about November 4, 1995, Marine Petrobulk delivered the bunker fuels amounting to US\$103,544 inclusive of barging and demurrage charges to the Vessel at the port of Pioneer Grain, Vancouver, Canada. The Chief Engineer Officer of the Vessel duly acknowledged and received the delivery receipt. Marine Petrobulk issued an invoice to petitioner Crescent for the US\$101,400.00 worth of the bunker fuels. Petitioner Crescent issued a check for the same amount in favor of Marine Petrobulk, which check was duly encashed.

Having paid Marine Petrobulk, petitioner Crescent issued a revised invoice dated November 21, 1995 to "Portserv Limited, and/or the Master, and/or Owners, and/or Operators, and/or Charterers of M/V 'Lok Maheshwari'" in the

amount of US\$103,544.00 with instruction to remit the amount on or before December 1, 1995. The period lapsed and several demands were made but no payment was received. Also, the checks issued to petitioner Crescent as security for the payment of the bunker fuels were dishonored for insufficiency of funds. As a consequence, petitioner Crescent incurred additional expenses of US\$8,572.61 for interest, tracking fees, and legal fees.

On May 2, 1996, while the Vessel was docked at the port of Cebu City, petitioner Crescent instituted before the RTC of Cebu City an action "for a sum of money with prayer for temporary restraining order and writ of preliminary attachment" against respondents Vessel and SCI, Portserv and/or Transmar. The case was raffled to Branch 10 and docketed as Civil Case No. CEB-18679.

On May 3, 1996, the trial court issued a writ of attachment against the Vessel with bond at P2,710,000.00. Petitioner Crescent withdrew its prayer for a temporary restraining order and posted the required bond.

On May 18, 1996, summonses were served to respondents Vessel and SCI, and Portserv and/or Transmar through the Master of the Vessel. On May 28, 1996, respondents Vessel and SCI, through Pioneer Insurance and Surety Corporation (Pioneer), filed an urgent ex-parte motion to approve Pioneer's letter of undertaking, to consider it as counter-bond and to discharge the attachment. On May 29, 1996, the trial court granted the motion; thus, the letter of undertaking was approved as counter-bond to discharge the attachment.

For failing to file their respective answers and upon motion of petitioner Crescent, the trial court declared respondents Vessel and SCI, Portserv and/or Transmar in default. Petitioner Crescent was allowed to present its evidence ex-parte.

On July 25, 1996, the trial court rendered its decision in favor of petitioner Crescent, thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff [Crescent] and against the defendants [Vessel, SCI, Portserv and/or Transmar].

Consequently, the latter are hereby ordered to pay plaintiff jointly and solidarily, the following:

(a)

the sum of US\$103,544.00, representing the outstanding obligation;

(b)

interest of US\$10,978.50 as of July 3, 1996, plus additional interest at 18% per annum for the period thereafter, until the principal account is fully paid;

(c)

attorney's fees of P300,000.00; and

(d)

P200,000.00 as litigation expenses.

SO ORDERED.

On August 19, 1996, respondents Vessel and SCI appealed to the Court of Appeals. They attached copies of the charter parties between respondent SCI and Halla, between Halla and Transmar, and between Transmar and Portserv. They pointed out that Portserv was a time charterer and that there is a clause in the time charters between respondent SCI and Halla, and between Halla and Transmar, which states that "the Charterers shall provide and pay for all the fuel except as otherwise agreed." They submitted a copy of Part II of the Bunker Fuel Agreement between petitioner Crescent and Portserv containing a stipulation that New York law governs the "construction, validity and performance" of the contract. They likewise submitted certified copies of the Commercial Instruments and Maritime Lien Act of the United States (U.S.), some U.S. cases, and some Canadian cases to support their defense.

On November 28, 2001, the Court of Appeals issued its assailed Decision, which reversed that of the trial court, viz:

WHEREFORE, premises considered, the Decision dated July 25, 1996, issued by the Regional Trial Court of Cebu City, Branch 10, is hereby REVERSED and SET ASIDE, and a new one is entered DISMISSING the instant case for want of jurisdiction.

The appellate court denied petitioner Crescent's motion for reconsideration explaining that it "dismissed the instant action primarily on the ground of forum non conveniens considering that the parties are foreign corporations which are not doing business in the Philippines."

Hence, this petition submitting the following issues for resolution, viz:

- Philippine courts have jurisdiction over a foreign vessel found inside Philippine waters for the enforcement of a maritime lien against said vessel and/or its owners and operators;
- The principle of forum non conveniens is inapplicable to the instant case;
- The trial court acquired jurisdiction over the subject matter of the instant case, as well as over the res and over the persons of the parties;
- The enforcement of a maritime lien on the subject vessel is expressly granted by law. The Ship Mortgage Acts as well as the Code of Commerce provides for relief to petitioner for its unpaid claim;
- The arbitration clause in the contract was not rigid or inflexible but expressly allowed petitioner to enforce its maritime lien in Philippine courts provided the vessel was in the Philippines;
- The law of the state of New York is inapplicable to the present controversy as the same has not been properly pleaded and proved;
- Petitioner has legal capacity to sue before Philippine courts as it is suing upon an isolated business transaction;
- Respondents were duly served summons although service of summons upon respondents is not a jurisdictional requirement, the action being a suit quasi in rem;
- The trial court's decision has factual and legal bases; and,
- The respondents should be held jointly and solidarily liable.

In a nutshell, this case is for the satisfaction of unpaid supplies furnished by a foreign supplier in a foreign port to a vessel of foreign registry that is owned, chartered and sub-chartered by foreign entities.

Under Batas Pambansa Bilang 129, as amended by Republic Act No. 7691, RTCs exercise exclusive original jurisdiction "(i)n all actions in admiralty and maritime where the demand or claim exceeds two hundred thousand pesos (P200,000) or in Metro Manila, where such demand or claim exceeds four hundred thousand pesos (P400,000)." Two (2) tests have been used to determine whether a case involving a contract comes within the admiralty and maritime jurisdiction of a court - the locational test and the subject matter test. The English rule follows the locational test wherein maritime and admiralty jurisdiction, with a few exceptions, is exercised only on contracts made upon the sea and to be executed thereon. This is totally rejected under the American rule where the criterion in determining whether a contract is maritime depends on the nature and subject matter of the contract, having reference to maritime service and transactions.[4] In *International Harvester Company of the Philippines v. Aragon*,[5] we adopted the American rule and held that "(w)hether or not a contract is maritime depends not on the place where the contract is made and is to be executed, making the locality the test, but on the subject matter of the contract, making the true criterion a maritime service or a maritime transaction."

A contract for furnishing supplies like the one involved in this case is maritime and within the jurisdiction of admiralty.[6] It may be invoked before our courts through an action in rem or quasi in rem or an action in personam. Thus: [7]

x x x

"Articles 579 and 584 [of the Code of Commerce] provide a method of collecting or enforcing not only the liens created under Section 580 but also for the collection of any kind of lien whatsoever." [8] In the Philippines, we have a complete legislation, both substantive and adjective, under which to bring an action in rem against a vessel for the purpose of enforcing liens. The substantive law is found in Article 580 of the Code of Commerce. The procedural law is to be found in Article 584 of the same Code. The result is, therefore, that in the Philippines any vessel – even though it be a foreign vessel – found in any port of this Archipelago may be attached and sold under the substantive law which defines the right, and the procedural law contained in the Code of Commerce by which this right is to be enforced.[9] x x x. But where neither the law nor the contract between the parties creates any lien or charge upon the vessel, the only way in which it can be seized before judgment is by pursuing the remedy relating to attachment under Rule 59 [now Rule 57] of the Rules of Court.[10]

But, is petitioner Crescent entitled to a maritime lien under our laws? Petitioner Crescent bases its claim of a maritime lien on Sections 21, 22 and 23 of Presidential Decree No. 1521 (P.D. No. 1521), also known as the Ship Mortgage Decree of 1978, viz:

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 of such vessel, or of a person authorized by 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.

Sec. 22. Persons Authorized to Procure Repairs, Supplies and Necessaries. - The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessities for the vessel: The managing owner, ship's husband, master or any person to whom the management of the vessel at the port of supply is entrusted. No person tortuously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

Sec. 23. Notice to Person Furnishing Repairs, Supplies and Necessaries. - The officers and agents of a vessel specified in Section 22 of this Decree shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this Decree shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence

could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefor.

Petitioner Crescent submits that these provisions apply to both domestic and foreign vessels, as well as domestic and foreign suppliers of necessities. It contends that the use of the term "any person" in Section 21 implies that the law is not restricted to domestic suppliers but also includes all persons who supply provisions and necessities to a vessel, whether foreign or domestic. It points out further that the law does not indicate that the supplies or necessities must be furnished in the Philippines in order to give petitioner the right to seek enforcement of the lien with a Philippine court.[11]

Respondents Vessel and SCI, on the other hand, maintain that Section 21 of the P.D. No. 1521 or the Ship Mortgage Decree of 1978 does not apply to a foreign supplier like petitioner Crescent as the provision refers only to a situation where the person furnishing the supplies is situated inside the territory of the Philippines and not where the necessities were furnished in a foreign jurisdiction like Canada.[12]

We find against petitioner Crescent.

I.

P.D. No. 1521 or the Ship Mortgage Decree of 1978 was enacted "to accelerate the growth and development of the shipping industry" and "to extend the benefits accorded to overseas shipping under Presidential Decree No. 214 to domestic shipping." [13] It is patterned closely from the U.S. Ship Mortgage Act of 1920 and the Liberian Maritime Law relating to preferred mortgages.[14] Notably, Sections 21, 22 and 23 of P.D. No. 1521 or the Ship Mortgage Decree of 1978 are identical to Subsections P, Q, and R, respectively, of the U.S. Ship Mortgage Act of 1920, which is part of the Federal Maritime Lien Act. Hence, U.S. jurisprudence finds relevance to determining whether P.D. No. 1521 or the Ship Mortgage Decree of 1978 applies in the present case.

The various tests used in the U.S. to determine whether a maritime lien exists are the following:

One. "In a suit to establish and enforce a maritime lien for supplies furnished to a vessel in a foreign port, whether such lien exists, or whether the court has or will exercise jurisdiction, depends on the law of the country where the supplies were furnished, which must be pleaded and proved." [15] This principle was laid down in the 1888 case of *The Scotia*, [16] reiterated in *The Kaiser Wilhelm II* [17] (1916), in *The Woudrichem* [18] (1921) and in *The City of Atlanta* [19] (1924).

Two. The *Lauritzen-Romero-Rhoditis* trilogy of cases, which replaced such single-factor methodologies as the law of the place of supply.[20]

In *Lauritzen v. Larsen*, [21] a Danish seaman, while temporarily in New York, joined the crew of a ship of Danish flag and registry that is owned by a Danish citizen. He signed the ship's articles providing that the rights of the crew members would be governed by Danish law and by the employer's contract with the Danish Seamen's Union, of which he was a member. While in Havana and in the course of his employment, he was negligently injured. He sued the shipowner in a federal district court in New York for damages under the Jones Act. In holding that Danish law and not the Jones Act was applicable, the Supreme Court adopted a multiple-contact test to determine, in the absence of a specific Congressional directive as to the statute's reach, which jurisdiction's law should be applied. The following factors were considered: (1) place of the wrongful act; (2) law of the flag; (3) allegiance or domicile of the injured; (4) allegiance of the defendant shipowner; (5) place of contract; (6) inaccessibility of foreign forum; and (7) law of the forum.

Several years after *Lauritzen*, the U.S. Supreme Court in the case of *Romero v. International Terminal Operating Co.*[22] again considered a foreign seaman's personal injury claim under both the Jones Act and the general maritime law. The Court held that the factors first announced in the case of *Lauritzen* were applicable not only to personal injury claims arising under the Jones Act but to all matters arising under maritime law in general.[23]

Hellenic Lines, Ltd. v. Rhoditis[24] was also a suit under the Jones Act by a Greek seaman injured aboard a ship of Greek registry while in American waters. The ship was operated by a Greek corporation which has its largest office in New York and another office in New Orleans and whose stock is more than 95% owned by a U.S. domiciliary who is also a Greek citizen. The ship was engaged in regularly scheduled runs between various ports of the U.S. and the Middle East, Pakistan, and India, with its entire income coming from either originating or terminating in the U.S. The contract of employment provided that Greek law and a Greek collective bargaining agreement would apply between the employer and the seaman and that all claims arising out of the employment contract were to be adjudicated by a Greek court. The U.S. Supreme Court observed that of the seven factors listed in the *Lauritzen* test, four were in favor of the shipowner and against jurisdiction. In arriving at the conclusion that the Jones Act applies, it ruled that the application of the *Lauritzen* test is not a mechanical one. It stated thus: "[t]he significance of one or more factors must be considered in light of the national interest served by the assertion of Jones Act jurisdiction. (footnote omitted) Moreover, the list of seven factors in *Lauritzen* was not intended to be exhaustive. x x x [T]he shipowner's base of operations is another factor of importance in determining whether the Jones Act is applicable; and there well may be others."

The principles enunciated in these maritime tort cases have been extended to cases involving unpaid supplies and necessities such as the cases of *Forsythe International U.K., Ltd. v. M/V Ruth Venture*,[25] and *Comoco Marine Services v. M/V El Centroamericano*. [26]

Three. The factors provided in Restatement (Second) of Conflicts of Law have also been applied, especially in resolving cases brought under the Federal Maritime Lien Act. Their application suggests that in the absence of an effective choice of law by the parties, the forum contacts to be considered include: (a) the place of contracting; (b) the place of negotiation of the contract; (c) the place of performance; (d) the location of the subject matter of the contract; and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.[27]

In *Gulf Trading and Transportation Co. v. The Vessel Hoegh Shield*,[28] an admiralty action in rem was brought by an American supplier against a vessel of Norwegian flag owned by a Norwegian Company and chartered by a London time charterer for unpaid fuel oil and marine diesel oil delivered while the vessel was in U.S. territory. The contract was executed in London. It was held that because the bunker fuel was delivered to a foreign flag vessel within the jurisdiction of the U.S., and because the invoice specified payment in the U.S., the admiralty and maritime law of the U.S. applied. The U.S. Court of Appeals recognized the modern approach to maritime conflict of law problems introduced in the *Lauritzen* case. However, it observed that *Lauritzen* involved a torts claim under the Jones Act while the present claim involves an alleged maritime lien arising from unpaid supplies. It made a disclaimer that its conclusion is limited to the unique circumstances surrounding a maritime lien as well as the statutory directives found in the Maritime Lien Statute and that the initial choice of law determination is significantly affected by the statutory policies surrounding a maritime lien. It ruled that the facts in the case call for the application of the Restatement (Second) of Conflicts of Law. The U.S. Court gave much significance to the congressional intent in enacting the Maritime Lien Statute to protect the interests of American supplier of goods, services or necessities by making maritime liens available where traditional services are routinely rendered. It concluded that the Maritime Lien Statute represents a relevant policy of the forum that serves the needs of the international legal system as well as the basic policies underlying maritime law. The court also gave

equal importance to the predictability of result and protection of justified expectations in a particular field of law. In the maritime realm, it is expected that when necessities are furnished to a vessel in an American port by an American supplier, the American Lien Statute will apply to protect that supplier regardless of the place where the contract was formed or the nationality of the vessel.

The same principle was applied in the case of *Swedish Telecom Radio v. M/V Discovery I*[29] where the American court refused to apply the Federal Maritime Lien Act to create a maritime lien for goods and services supplied by foreign companies in foreign ports. In this case, a Swedish company supplied radio equipment in a Spanish port to refurbish a Panamanian vessel damaged by fire. Some of the contract negotiations occurred in Spain and the agreement for supplies between the parties indicated Swedish company's willingness to submit to Swedish law. The ship was later sold under a contract of purchase providing for the application of New York law and was arrested in the U.S. The U.S. Court of Appeals also held that while the contacts-based framework set forth in *Lauritzen* was useful in the analysis of all maritime choice of law situations, the factors were geared towards a seaman's injury claim. As in *Gulf Trading*, the lien arose by operation of law because the ship's owner was not a party to the contract under which the goods were supplied. As a result, the court found it more appropriate to consider the factors contained in Section 6 of the Restatement (Second) of Conflicts of Law. The U.S. Court held that the primary concern of the Federal Maritime Lien Act is the protection of American suppliers of goods and services.

The same factors were applied in the case of *Ocean Ship Supply, Ltd. v. M/V Leah*.[30]

II.

Finding guidance from the foregoing decisions, the Court cannot sustain petitioner Crescent's insistence on the application of P.D. No. 1521 or the Ship Mortgage Decree of 1978 and hold that a maritime lien exists.

First. Out of the seven basic factors listed in the case of *Lauritzen*, Philippine law only falls under one – the law of the forum. All other elements are foreign – Canada is the place of the wrongful act, of the allegiance or domicile of the injured and the place of contract; India is the law of the flag and the allegiance of the defendant shipowner. Balancing these basic interests, it is inconceivable that the Philippine court has any interest in the case that outweighs the interests of Canada or India for that matter.

Second. P.D. No. 1521 or the Ship Mortgage Decree of 1978 is inapplicable following the factors under Restatement (Second) of Conflict of Laws. Like the Federal Maritime Lien Act of the U.S., P.D. No. 1521 or the Ship Mortgage Decree of 1978 was enacted primarily to protect Filipino suppliers and was not intended to create a lien from a contract for supplies between foreign entities delivered in a foreign port.

Third. Applying P.D. No. 1521 or the Ship Mortgage Decree of 1978 and rule that a maritime lien exists would not promote the public policy behind the enactment of the law to develop the domestic shipping industry. Opening up our courts to foreign suppliers by granting them a maritime lien under our laws even if they are not entitled to a maritime lien under their laws will encourage forum shopping.

Finally. The submission of petitioner is not in keeping with the reasonable expectation of the parties to the contract. Indeed, when the parties entered into a contract for supplies in Canada, they could not have intended the laws of a remote country like the Philippines to determine the creation of a lien by the mere accident of the Vessel's being in Philippine territory.

III.

But under which law should petitioner Crescent prove the existence of its maritime lien?

In light of the interests of the various foreign elements involved, it is clear that Canada has the most significant interest in this dispute. The injured party is a Canadian corporation, the sub-charterer which placed the orders for the supplies is also Canadian, the entity which physically delivered the bunker fuels is in Canada, the place of contracting and negotiation is in Canada, and the supplies were delivered in Canada.

The arbitration clause contained in the Bunker Fuel Agreement which states that New York law governs the "construction, validity and performance" of the contract is only a factor that may be considered in the choice-of-law analysis but is not conclusive. As in the cases of *Gulf Trading* and *Swedish Telecom*, the lien that is the subject matter of this case arose by operation of law and not by contract because the shipowner was not a party to the contract under which the goods were supplied.

It is worthy to note that petitioner Crescent never alleged and proved Canadian law as basis for the existence of a maritime lien. To the end, it insisted on its theory that Philippine law applies. Petitioner contends that even if foreign law applies, since the same was not properly pleaded and proved, such foreign law must be presumed to be the same as Philippine law pursuant to the doctrine of processual presumption.

Thus, we are left with two choices: (1) dismiss the case for petitioner's failure to establish a cause of action^[31] or (2) presume that Canadian law is the same as Philippine law. In either case, the case has to be dismissed.

It is well-settled that a party whose cause of action or defense depends upon a foreign law has the burden of proving the foreign law. Such foreign law is treated as a question of fact to be properly pleaded and proved.^[32] Petitioner Crescent's insistence on enforcing a maritime lien before our courts depended on the existence of a maritime lien under the proper law. By erroneously claiming a maritime lien under Philippine law instead of proving that a maritime lien exists under Canadian law, petitioner Crescent failed to establish a cause of action.^[33]

Even if we apply the doctrine of processual presumption, the result will still be the same. Under P.D. No. 1521 or the Ship Mortgage Decree of 1978, the following are the requisites for maritime liens on necessities to exist: (1) the "necessaries" must have been furnished to and for the benefit of the vessel; (2) the "necessaries" must have been necessary for the continuation of the voyage of the vessel; (3) the credit must have been extended to the vessel; (4) there must be necessity for the extension of the credit; and (5) the necessities must be ordered by persons authorized to contract on behalf of the vessel.^[34] These do not avail in the instant case.

First. It was not established that benefit was extended to the vessel. While this is presumed when the master of the ship is the one who placed the order, it is not disputed that in this case it was the sub-charterer Portserv which placed the orders to petitioner Crescent.^[35] Hence, the presumption does not arise and it is incumbent upon petitioner Crescent to prove that benefit was extended to the vessel. Petitioner did not.

Second. Petitioner Crescent did not show any proof that the marine products were necessary for the continuation of the vessel.

Third. It was not established that credit was extended to the vessel. It is presumed that "in the absence of fraud or collusion, where advances are made to a captain in a foreign port, upon his request, to pay for necessary repairs or supplies to enable his vessel to prosecute her voyage, or to pay harbor dues, or for pilotage, towage and like services rendered to the vessel, that they are made upon the credit of the vessel as well as upon that of her owners."^[36] In this case, it was the sub-charterer Portserv which requested for the delivery of the bunker fuels.

The issuance of two checks amounting to US\$300,000 in favor of petitioner Crescent prior to the delivery of the bunkers as security for the payment of the obligation weakens petitioner Crescent's contention that credit was extended to the Vessel.

We also note that when copies of the charter parties were submitted by respondents in the Court of Appeals, the time charters between respondent SCI and Halla and between Halla and Transmar were shown to contain a clause which states that "the Charterers shall provide and pay for all the fuel except as otherwise agreed." This militates against petitioner Crescent's position that Portserv is authorized by the shipowner to contract for supplies upon the credit of the vessel.

Fourth. There was no proof of necessity of credit. A necessity of credit will be presumed where it appears that the repairs and supplies were necessary for the ship and that they were ordered by the master. This presumption does not arise in this case since the fuels were not ordered by the master and there was no proof of necessity for the supplies.

Finally. The necessities were not ordered by persons authorized to contract in behalf of the vessel as provided under Section 22 of P.D. No. 1521 or the Ship Mortgage Decree of 1978 - the managing owner, the ship's husband, master or any person with whom the management of the vessel at the port of supply is entrusted. Clearly, Portserv, a sub-charterer under a time charter, is not someone to whom the management of the vessel has been entrusted. A time charter is a contract for the use of a vessel for a specified period of time or for the duration of one or more specified voyages wherein the owner of the time-chartered vessel retains possession and control through the master and crew who remain his employees.[37] Not enjoying the presumption of authority, petitioner Crescent should have proved that Portserv was authorized by the shipowner to contract for supplies. Petitioner failed.

A discussion on the principle of forum non conveniens is unnecessary.

IN VIEW WHEREOF, the Decision of the Court of Appeals in CA-G.R. No. CV 54920, dated November 28, 2001, and its subsequent Resolution of September 3, 2002 are AFFIRMED. The instant petition for review on certiorari is DENIED for lack of merit. Cost against petitioner.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

Chico-Nazario, J., on leave.

[1] Penned by Associate Justice Juan Q. Enriquez, Jr., concurred in by Associate Justices Delilah Vidallon-Magtolis and Candido V. Rivera; Rollo, pp. 72-81.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., concurred in by Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga; id., pp. 83-85.

[3] Penned by Judge Leonardo B. Canares, Regional Trial Court, Branch 10, Cebu City; id., pp. 87-90.

[4] Hernandez, Eduardo F. and Peñasales, Antero A., Philippine Admiralty and Maritime Law (1987 ed.), pp. 9-10, citing *New England Mutual Marine Insurance Co. v. Dunkan* 8 U.S. (11 Wall) 1 (1870).

[5] G.R. No. L-2372, August 26, 1949.

[6] 2 C.J.S. Section 39, p. 100.

[7] Agbayani, Aguedo F., *Commentaries and Jurisprudence on the Commercial Laws of the Philippines IV*

(1987), p. 178, citing *McMicking v. Banco Español-Filipino*, 13 Phil. 429 (1909), *Ivanvich v. Odlin*, 1 Phil. 284 (1902), and *Heather v. Steamer "San Nicholas"*, 7 Phil. 532 (1907).

[8] *McMicking v. Banco Español-Filipino*, *id.*

[9] *Ivancich vs. Odlin & Pacific Lumber Co.*, *supra*.

[10] *Heather vs. Steamer "San Nicholas"*, *supra*.

[11] *Rollo*, p. 315.

[12] *Id.*, p. 469.

[13] 1[st] and 4[th] *Whereas* Clauses, P.D. No. 1521.

[14] See note 4, p. 133.

[15] *The Woudrichem*, 278 F. 568.

[16] 35 F. 907.

[17] 230 F. 717.

[18] 278 F. 568.

[19] 17 F.2d 308.

[20] Dougherty, William F., "Multi-contact analysis for a multinational industry: The United States' approach to choice of law analysis in the enforcement of maritime liens," *University of San Francisco Maritime Law Journal* (2000-2001), p. 89.

[21] 345 U.S. 571 (1953).

[22] 358 U.S. 354, 1959 AMC 832 (1959).

[23] See Dougherty, p. 82.

[24] 398 U.S. 306, 1970 AMC 994 (1970).

[25] 633 F.Supp. 74 (1985). A British corporation based in London brought an in rem action against the vessel *M/V Ruth Venture* to enforce a maritime lien. A Liberian sub-charterer contracted for the supply of bunkers in London with Forsythe as its broker. The bunkers were furnished to the vessel at Richards Bay, South Africa but was not paid. The vessel was arrested in Portland, Oregon. In ruling that English law applies, it held that the *Lauritzen/Rhoditis* factors should be applied in a balancing analysis. "[T]he choice of law questions involving maritime liens is to be resolved by weighing and evaluating the points of contract between the transaction and the sovereign legal systems touched and affected by it... The interests of competing sovereigns may be taken into account without rejecting altogether the contacts the bar and the maritime industry are accustomed to weigh in making the initial determination of governing law." Because English law disallows a lien for bunkers, the court held there was no lien.

[26] 1983 WL 602 (D.Or.) (1983). This involves a suit by a Singaporean corporation against a Panamanian vessel that is owned by Costa Ricans for supplies furnished in Singapore. The court, applying the *Lauritzen* factors, held that U.S. law did not apply to determine whether there exists a maritime lien. The case was dismissed under the

doctrine of forum non conveniens. (See Tetley, William, Maritime Liens, Mortgages and Conflict of Laws, University of San Francisco Maritime Law Journal [Fall, 1993], p. 17.)

[27] Gulf Trading and Transportation Co. v. The Vessel Hoegh Shield, 658 F.2d 363 (1981).

[28] Id.

[29] 712 F.Supp 1542 (1988).

[30] 729 F.2d 971 (1984).

[31] Coquia, J. R. and Aguilung-Pangalangan, E., Conflict of Laws (2000), p. 129.

[32] Id., p. 121, citing Beale, The Conflict of Laws, Section 621.2 (1935).

[33] See note 31.

[34] Agbayani, p. 631.

[35] TSN, p. 6.

[36] Agbayani, p. 631, citing 70 Am Jur 2d, 479.

[37] Litonjua Shipping Inc. v. National Seamen Board, G.R. No. 51910, August 10, 1989.

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