

AGUSTIN P. DELA TORRE, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, CRISOSTOMO G. CONCEPCION, RAMON “BOY” LARRAZABAL, PHILIPPINE TRIGON SHIPYARD CORPORATION, AND ROLAND G. DE...

G.R. No. 160088. July 13, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

These consolidated petitions [1] for review on certiorari seek to reverse and set aside the September 30, 2002 Decision [2] and September 18, 2003 Resolution [3] of the Court of Appeals (CA) in CA-G.R. CV No. 36035, affirming in toto the July 10, 1991 Decision [4] of the Regional Trial Court, Branch 60, Angeles City (RTC). The RTC Decision in Civil Case No. 4609, an action for Sum of Money and Damages, ordered the defendants, jointly and severally, to pay various damages to the plaintiff.

The Facts:

Respondent Crisostomo G. Concepcion (Concepcion) owned LCT-Josephine, a vessel registered with the Philippine Coast Guard. On February 1, 1984, Concepcion entered into a "Preliminary Agreement" [5] with Roland de la Torre (Roland) for the dry-docking and repairs of the said vessel as well as for its charter afterwards. [6] Under this agreement, Concepcion agreed that after the dry-docking and repair of LCT-Josephine, it "should" be chartered for ₱10,000.00 per month with the following conditions:

- The CHARTERER will be the one to pay the insurance premium of the vessel
- The vessel will be used once every three (3) months for a maximum period of two (2) weeks
- The SECOND PARTY (referring to Concepcion) agreed that LCT-Josephine should be used by the FIRST PARTY (referring to Roland) for the maximum period of two (2) years
- The FIRST PARTY (Roland) will take charge[x] of maintenance cost of the said vessel. [Underscoring Supplied]

On June 20, 1984, Concepcion and the Philippine Trigon Shipyard Corporation [7] (PTSC), represented by Roland, entered into a "Contract of Agreement," [8] wherein the latter would charter LCT-Josephine retroactive to May 1, 1984, under the following conditions:

a.

Chartered amount of the vessel - ₱20,000.00 per month effective May 1, 1984;

j.

The owner (Concepcion) shall pay 50% downpayment for the dry-docking and repair of the vessel and the balance shall be paid every month in the amount of P10,000.00, to be deducted from the rental amount of the

vessel;

k.

In the event that a THIRD PARTY is interested to purchase the said vessel, the SECOND PARTY (PTSC/Roland) has the option for first priority to purchase the vessel. If the SECOND PARTY (PTSC/Roland) refuses the offer of the FIRST PARTY (Concepcion), shall give the SECOND PARTY (PTSC/Roland) enough time to turn over the vessel so as not to disrupt previous commitments;

l.

That the SECOND PARTY (PTSC/Roland) has the option to terminate the contract in the event of the SECOND PARTY (PTSC/Roland) decide to stop operating;

m.

The SECOND PARTY (PTSC/Roland) shall give 90 days notice of such termination of contract;

n.

Next x x year of dry-docking and repair of vessel shall be shouldered by the SECOND PARTY (PTSC/Roland); (Underscored Supplied)

On August 1, 1984, PTSC/Roland sub-chartered LCT-Josephine to Trigon Shipping Lines (TSL), a single proprietorship owned by Roland's father, Agustin de la Torre (Agustin). [9] The following are the terms and conditions of that "Contract of Agreement:" [10]

- Chartered amount of the vessel ₱30,000.00 per month effective August, 1984;
- Downpayment of the 50% upon signing of the contract and the balance every end of the month;
- Any cost for the additional equipment to be installed on the vessel will be borne by the FIRST PARTY (PTSC/ Roland) and the cost of the equipment will be deductible from the monthly rental of the vessel;
- In the event the vessel is grounded or other [force majeure] that will make the vessel non-operable, the rental of the vessel shall be suspended from the start until the vessel will be considered operational;
- The cost for the dry-docking and/or repair of vessel shall not exceed ₱200,000.00, any excess shall be borne by the SECOND PARTY (TSL/Agustin);
- The SECOND PARTY (TSL/Agustin) undertakes to shoulder the maintenance cost for the duration of the usage;
- All cost for the necessary repair of the vessel shall be on the account of the SECOND PARTY (TSL/Agustin);
- That the SECOND PARTY (TSL/Agustin) has the option to terminate the contract in the event the SECOND PARTY (TSL/Agustin) decides to stop operating;
- The FIRST PARTY (PTSC/Roland) will terminate the services of all vessel's crew and the SECOND PARTY (TSL/Agustin) shall have the right to replace and rehire the crew of the vessel.
- Insurance premium of the vessel will be divided equally between the FIRST PARTY (PTSC/Rolando) and the SECOND PARTY (TSL/ Agustin). [Underscored supplied]

On November 22, 1984, TSL, this time represented by Roland per Agustin's Special Power of Attorney, [11] sub-chartered LCT-Josephine to Ramon Larrazabal (Larrazabal) for the transport of cargo consisting of sand and

gravel to Leyte. The following were agreed upon in that contract, [12] to wit:

- That the FIRST PARTY (TSL by Roland) agreed that LCT-Josephine shall be used by the SECOND PARTY (Larrazabal) for and in consideration on the sum of FIVE THOUSAND FIVE HUNDRED (P5,500.00) PESOS, Philippine currency per day charter with the following terms and conditions.
- That the CHARTERER should pay P2,000.00 as standby pay even that will made (sic) the vessel non-operable cause[d] by natural circumstances.
- That the CHARTERER will supply the consumed crude oil and lube oil per charter day.
- That the SECOND PARTY (Larrazabal) is the one responsible to supervise in loading and unloading of cargo load on the vessel.
- That the SECOND PARTY (Larrazabal) shall give one week notice for such termination of contract.
- TERMS OF PAYMENTS that the SECOND PARTY (Larrazabal) agreed to pay 15 days in advance and the balance should be paid weekly. [Underscoring Supplied]

On November 23, 1984, the LCT-Josephine with its cargo of sand and gravel arrived at Philpos, Isabel, Leyte. The vessel was beached near the NDC Wharf. With the vessel's ramp already lowered, the unloading of the vessel's cargo began with the use of Larrazabal's payloader. While the payloader was on the deck of the LCT-Josephine scooping a load of the cargo, the vessel's ramp started to move downward, the vessel tilted and sea water rushed in. Shortly thereafter, LCT-Josephine sank. [13]

Concepcion demanded that PTSC/ Roland refloat LCT-Josephine. The latter assured Concepcion that negotiations were underway for the refloating of his vessel. [14] Unfortunately, this did not materialize.

For this reason, Concepcion was constrained to institute a complaint for "Sum of Money and Damages" against PTSC and Roland before the RTC. PTSC and Roland filed their answer together with a third-party complaint against Agustin. Agustin, in turn, filed his answer plus a fourth-party complaint against Larrazabal. The latter filed his answer and counterclaim but was subsequently declared in default by the RTC. [15] Eventually, the fourth-party complaint against Larrazabal was dismissed when the RTC rendered its decision in favor of Concepcion on July 10, 1991. [16] In said RTC decision, the following observations were written:

The testimonies of Roland de la Torre and Hubart Sungayan quoted above, show: (1) that the payloader was used to unload the cargo of sand and gravel; (2) that the payloader had to go inside the vessel and scoop up a load; (3) that the ramp according to Roland de la Torre, "was not properly put into peak (sic) such that the front line will touch the bottom, particularly will touch the sea x x x"; (4) that "the tires (of the payloader) will be submerged to (sic) the sea"; (5) that according to Sungayan "the ramp of the vessel was moving down"; (6) that the payloader had to be maneuvered by its operator who dumped the load at the side of the vessel; (7) that the dumping of the load changed the stability of the vessel and tilted it to the starboard side; and (8) that the tilting caused the sliding of the cargo toward that side and opened the manhole through which seawater rushed in. [17]

Hubart Sungayan, who was the chiefmate of LCT-Josephine and under the employ of TSL/Agustin, also admitted at the trial that it was TSL/Agustin, through its crew, who was in-charge of LCT-Josephine's operations although the responsibility of loading and unloading the cargo was under Larrazabal. Thus, the RTC declared that the "efficient cause of the sinking of the LCT-JOSEPHINE was the improper lowering or positioning of the ramp," which was well within the charge or responsibility of the captain and crew of the vessel. [18] The fallo of the RTC Decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered as follows:

- The defendants, Philippine Trigon Shipping Corporation and Roland de la Torre, and the third-party defendant, Agustin de la Torre, shall pay the plaintiff, jointly and severally, the sum of EIGHT HUNDRED FORTY-ONE THOUSAND THREE HUNDRED EIGHTY SIX PESOS AND EIGHTY SIX CENTAVOS (₱841,386.86) as the value of the LCT JOSEPHINE with interest thereon at the legal rate of 6% per annum from the date of demand, that is from March 14, 1985, the date when counsel for the defendant Philippine Trigon Shipyard Corporation answered the demand of the plaintiff, until fully paid;
- The defendants, Philippine Trigon Shipyard Corporation and Roland de la Torre, shall pay to the plaintiff the sum of NINETY THOUSAND PESOS (₱90,000.00) as unpaid rentals for the period from May 1, 1984, to November, 1984, and the sum of ONE HUNDRED SEVENTY THOUSAND PESOS (₱170,000.00) as lost rentals from December, 1984, to April 30, 1986, with interest on both amounts at the rate of 6% per annum also from demand on March 14, 1985, until fully paid;
- The defendants and the third-party defendant shall likewise pay to the plaintiff jointly and severally the sum of TWENTY-FIVE THOUSAND PESOS (₱25,000.00) as professional fee of plaintiff's counsel plus FIVE HUNDRED PESOS (₱500.00) per appearance of said counsel in connection with actual trial of this case, the number of such appearances to be determined from the records of this case;
- The defendants' counterclaim for the unpaid balance of plaintiff's obligation for the dry-docking and repair of the vessel LCT JOSEPHINE in the amount of TWENTY-FOUR THOUSAND THREE HUNDRED FOUR PESOS AND THIRTY-FIVE CENTAVOS (₱24,304.35), being valid, shall be deducted from the unpaid rentals, with interest on the said unpaid balance at the rate of 6% per annum from the date of the filing of the counter-claim on March 31, 1986;
- The counter-claim of the defendants in all other respects, for lack of merit, is hereby DISMISSED;
- The fourth-party complaint against the fourth-party defendant, Ramon Larrazabal, being without basis, is likewise DISMISSED; and
- The defendants and third-party defendant shall pay the costs.

SO ORDERED. [19]

Agustin, PTSC and Roland went to the CA on appeal. The appellate court, in agreement with the findings of the RTC, affirmed its decision in toto.

Still not in conformity with the CA findings against them, Agustin, PTSC and Roland came to this Court through these petitions for review. In G.R. No. 160088, petitioner Agustin raises the following issues:

AGUSTIN'S STATEMENT OF THE ISSUES

I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PROXIMATE CAUSE OF THE SINKING OF LCT JOSEPHINE IS THE NEGLIGENCE OF THE PETITIONER (Agustin) AND THE RESPONDENTS TRIGON (PTSC) AND DE LA TORRE (Roland).

II

THE COURT OF APPEALS ERRED IN NOT HOLDING RESPONDENT RAMON LARRAZABAL AS SOLELY LIABLE FOR THE LOSS AND SINKING OF LCT JOSEPHINE.

III

THE TRIAL COURT AND THE COURT OF APPEALS GRAVELY ERRED IN TAKING JUDICIAL NOTICE OF THE CHARACTERISTICS OF THE LCT JOSEPHINE AND PAYLOADER WITHOUT

INFORMING THE PARTIES OF THEIR INTENTION.

IV

THE COURT OF APPEALS ERRED IN HOLDING PETITIONER DIRECTLY AND SOLIDARILY LIABLE WITH THE RESPONDENTS TRIGON AND DE LA TORRE DESPITE THE FACT THAT SUCH KIND OF LIABILITY IS NOT DULY ALLEGED IN THE COMPLAINT OF RESPONDENT CONCEPCION AND NOT ONE OF THE ISSUES TRIED BY THE PARTIES.

V

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS LIABLE BASED ON CULPA CONTRACTUAL.

VI

THE COURT OF APPEALS ERRED IN NOT EXCULPATING PETITIONER FROM LIABILITY BASED ON THE LIMITED LIABILITY RULE.

VII

THE COURT OF APPEALS ERRED IN NOT APPLYING THE PROVISIONS OF THE CODE OF COMMERCE ON THE LIABILITY OF THE SHIP CAPTAIN. [20]

On the other hand, in G.R. No. 160565, PTSC and Roland submit the following issues:

PTSC and ROLAND'S STATEMENT OF THE ISSUES

I.

DID THE HONORABLE COURT OF APPEALS ERRxx IN APPLYING THE PROVISIONS OF THE CIVIL CODE OF THE PHILIPPINES PARTICULARLY ON CONTRACTS, LEASE, QUASI-DELICT AND DAMAGES INSTEAD OF THE PROVISIONS OF THE CODE OF COMMERCE ON MARITIME COMMERCE IN ADJUDGING PETITIONERS LIABLE TO PRIVATE RESPONDENT CONCEPCION.

II.

DID THE HONORABLE COURT OF APPEALS ERRxx IN UPHOLDING THE FINDINGS OF FACT OF THE TRIAL COURT.

III.

DID THE HONORABLE COURT OF APPEALS COMMITxx GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION IN APPRECIATING THE FACTS OF THE CASE.

IV.

DID THE HONORABLE COURT OF APPEALS, IN ADJUDGING PETITIONERS JOINTLY AND SEVERALLY LIABLE WITH RESPONDENT AGUSTIN DE LA TORRE, ERRxx WHEN IT MADE FINDINGS OF FACT AND CONCLUSIONS OF LAW WHICH ARE BEYOND THE ISSUES SET FORTH AND CONTEMPLATED IN THE ORIGINAL PLEADINGS OF THE PARTIES. [21]

From the foregoing, the issues raised in the two petitions can be categorized as: (1) those referring to the factual milieu of the case; (2) those concerning the applicability of the Code of Commerce, more specifically, the Limited Liability Rule; and (3) the question on the solidary liability of the petitioners.

As regards the issues requiring a review of the factual findings of the trial court, the Court finds no compelling

reason to deviate from the rule that findings of fact of a trial judge, especially when affirmed by the appellate court, are binding before this Court. [22] The CA, in reviewing the findings of the RTC, made these observations:

We are not persuaded that the trial Court finding should be set aside. The Court a quo sifted through the records and arrived at the fact that clearly, there was improper lowering or positioning of the ramp, which was not at "peak," according to de la Torre and "moving down" according to Sungayan when the payloader entered and scooped up a load of sand and gravel. Because of this, the payloader was in danger of being lost ('submerged') and caused Larrazabal to order the operator to go back into the vessel, according to de la Torre's version, or back off to the shore, per Sungayan. Whichever it was, the fact remains that the ramp was unsteady (moving) and compelled action to save the payloader from submerging, especially because of the conformation of the sea and the shore. x x x.

x x x

The contract executed on June 20, 1984, between plaintiff-appellee and defendants-appellants showed that the services of the crew of the owner of the vessel were terminated. This allowed the charterer, defendants-appellants, to employ their own. The sub-charter contract between defendants-appellants Philippine Trigon Shipyard Corp. and third-party defendant-appellant Trigon Shipping Lines showed similar provision where the crew of Philippine Trigon had to be terminated or rehired by Trigon Shipping Lines. As to the agreement with fourth-party Larrazabal, it is silent on who would hire the crew of the vessel. Clearly, the crew manning the vessel when it sunk belonged to third-party defendant-appellant. Hubart Sungayan, the acting Chief Mate, testified that he was hired by Agustin de la Torre, who in turn admitted to hiring the crew. The actions of fourth-party defendant, Larrazabal and his payloader operator did not include the operation of docking where the problem arose. [23] [Underscoring supplied]

Similarly, the Court has examined the records at hand and completely agree with the CA that the factual findings of the RTC are in order.

With respect to petitioners' position that the Limited Liability Rule under the Code of Commerce should be applied to them, the argument is misplaced. The said rule has been explained to be that of the real and hypothecary doctrine in maritime law where the shipowner or ship agent's liability is held as merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. [24] In this jurisdiction, this rule is provided in three articles of the Code of Commerce. These are:

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

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

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

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

Article 837 specifically applies to cases involving collision which is a necessary consequence of the right to abandon the vessel given to the shipowner or ship agent under the first provision - Article 587. Similarly, Article

590 is a reiteration of Article 587, only this time the situation is that the vessel is co-owned by several persons. [25] Obviously, the forerunner of the Limited Liability Rule under the Code of Commerce is Article 587. Now, the latter is quite clear on which indemnities may be confined or restricted to the value of the vessel pursuant to the said Rule, and these are the - "indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel." Thus, what is contemplated is the liability to third persons who may have dealt with the shipowner, the agent or even the charterer in case of demise or bareboat charter.

The only person who could avail of this is the shipowner, Concepcion. He is the very person whom the Limited Liability Rule has been conceived to protect. The petitioners cannot invoke this as a defense. In *Yangco v. Laserna*, [26] this Court, through Justice Moran, wrote:

The policy which the rule is designed to promote is the encouragement of shipbuilding and investment in maritime commerce.

x x x.

`Grotius, in his law of War and Peace, says that men would be deterred from investing in ships if they thereby incurred the apprehension of being rendered liable to an indefinite amount by the acts of the master, x x x.' [27]

Later, in the case of *Monarch Insurance Co., Inc. v. CA*, [28] this Court, this time through Justice Sabino R. De Leon, Jr., again explained:

`No vessel, no liability,' expresses in a nutshell the limited liability rule. The shipowner's or agent's liability is merely coextensive with his interest in the vessel such that a total loss thereof results in its extinction. The total destruction of the vessel extinguishes maritime liens because there is no longer any res to which it can attach. This doctrine is based on the real and hypothecary nature of maritime law which has its origin in the prevailing conditions of the maritime trade and sea voyages during the medieval ages, attended by innumerable hazards and perils. To offset against these adverse conditions and to encourage shipbuilding and maritime commerce, it was deemed necessary to confine the liability of the owner or agent arising from the operation of a ship to the vessel, equipment, and freight, or insurance, if any. [29]

In view of the foregoing, Concepcion as the real shipowner is the one who is supposed to be supported and encouraged to pursue maritime commerce. Thus, it would be absurd to apply the Limited Liability Rule against him who, in the first place, should be the one benefitting from the said rule. In distinguishing the rights between the charterer and the shipowner, the case of *Yueng Sheng Exchange and Trading Co. v. Urrutia & Co.* [30] is most enlightening. In that case, no less than Chief Justice Arellano wrote:

The whole ground of this assignment of errors rests on the proposition advanced by the appellant company that `the charterer of a vessel, under the conditions stipulated in the charter party in question, is the owner pro hac vice of the ship and takes upon himself the responsibilities of the owner.'

x x x

If *G. Urrutia & Co.*, by virtue of the above-mentioned contract, became the agents of the Cebu, then they must respond for the damages claimed, because the owner and the agent are civilly responsible for the acts of the captain.

But *G. Urrutia & Co.* could not in any way exercise the powers or rights of an agent. They could not represent the ownership of the vessel, nor could they, in their own name and in such capacity, take judicial or extrajudicial steps in all that relates to commerce; thus if the Cebu were attached, they would have no legal capacity to proceed to secure its release; speaking generally, not even the fines could or ought to be paid by them, unless such fines were occasioned by their orders. x x x.

The contract executed by Smith, Bell & Co., as agents for the Cebu, and G. Urrutia & Co., as charterers of the vessel, did not put the latter in the place of the former, nor make them agents of the owner or owners of the vessel. With relation to those agents, they retained opposing rights derived from the charter party of the vessel, and at no time could they be regarded by the third parties, or by the authorities, or by the courts, as being in the place of the owners or the agents in matters relating to the responsibilities pertaining to the ownership and possession of the vessel. x x x. [31]

In *Yueng Sheng*, it was further stressed that the charterer does not completely and absolutely step into the shoes of the shipowner or even the ship agent because there remains conflicting rights between the former and the real shipowner as derived from their charter agreement. The Court again quotes Chief Justice Arellano:

Their (the charterer's) possession was, therefore, the uncertain title of lease, not a possession of the owner, such as is that of the agent, who is fully subrogated to the place of the owner in regard to the dominion, possession, free administration, and navigation of the vessel. [32]

Therefore, even if the contract is for a bareboat or demise charter where possession, free administration and even navigation are temporarily surrendered to the charterer, dominion over the vessel remains with the shipowner. Ergo, the charterer or the sub-charterer, whose rights cannot rise above that of the former, can never set up the Limited Liability Rule against the very owner of the vessel. Borrowing the words of Chief Justice Artemio V. Panganiban, "Indeed, where the reason for the rule ceases, the rule itself does not apply." [33]

The Court now comes to the issue of the liability of the charterer and the sub-charterer.

In the present case, the charterer and the sub-charterer through their respective contracts of agreement/charter parties, obtained the use and service of the entire LCT-Josephine. The vessel was likewise manned by the charterer and later by the sub-charterer's people. With the complete and exclusive relinquishment of possession, command and navigation of the vessel, the charterer and later the sub-charterer became the vessel's owner pro hac vice. Now, and in the absence of any showing that the vessel or any part thereof was commercially offered for use to the public, the above agreements/charter parties are that of a private carriage where the rights of the contracting parties are primarily defined and governed by the stipulations in their contract. [34]

Although certain statutory rights and obligations of charter parties are found in the Code of Commerce, these provisions as correctly pointed out by the RTC, are not applicable in the present case. Indeed, none of the provisions found in the Code of Commerce deals with the specific rights and obligations between the real shipowner and the charterer obtaining in this case. Necessarily, the Court looks to the New Civil Code to supply the deficiency. [35] Thus, the RTC and the CA were both correct in applying the statutory provisions of the New Civil Code in order to define the respective rights and obligations of the opposing parties.

Thus, Roland, who, in his personal capacity, entered into the Preliminary Agreement with Concepcion for the dry-docking and repair of LCT-Josephine, is liable under Article 1189 [36] of the New Civil Code. There is no denying that the vessel was not returned to Concepcion after the repairs because of the provision in the Preliminary Agreement that the same "should" be used by Roland for the first two years. Before the vessel could be returned, it was lost due to the negligence of Agustin to whom Roland chose to sub-charter or sublet the vessel.

PTSC is liable to Concepcion under Articles 1665 [37] and 1667 [38] of the New Civil Code. As the charterer or lessee under the Contract of Agreement dated June 20, 1984, PTSC was contract-bound to return the thing leased and it was liable for the deterioration or loss of the same.

Agustin, on the other hand, who was the sub-charterer or sub-lessee of LCT-Josephine, is liable under Article 1651 of the New Civil Code. [39] Although he was never privy to the contract between PTSC and Concepcion, he

remained bound to preserve the chartered vessel for the latter. Despite his non-inclusion in the complaint of Concepcion, it was deemed amended so as to include him because, despite or in the absence of that formality of amending the complaint to include him, he still had his day in court [40] as he was in fact impleaded as a third-party defendant by his own son, Roland - the very same person who represented him in the Contract of Agreement with Larrazabal.

(S)ince the purpose of formally impleading a party is to assure him a day in court, once the protective mantle of due process of law has in fact been accorded a litigant, whatever the imperfection in form, the real litigant may be held liable as a party. [41]

In any case, all three petitioners are liable under Article 1170 of the New Civil Code. [42] The necessity of insuring the LCT-Josephine, regardless of who will share in the payment of the premium, is very clear under the Preliminary Agreement and the subsequent Contracts of Agreement dated June 20, 1984 and August 1, 1984, respectively. The August 17, 1984 letter of Concepcion's representative, Rogelio L. Martinez, addressed to Roland in his capacity as the president of PTSC inquiring about the insurance of the LCT-Josephine as well as reiterating the importance of insuring the said vessel is quite telling.

August 17, 1984

Mr. Roland de la Torre
President Phil. Trigon Shipyard Corp.
Cebu City

Dear Sir:

In connection with your chartering of LCT JOSEPHINE effective May 1, 1984, I wish to inquire regarding the insurance of said vessel to wit:

- Name of Insurance Company
- Policy No.
- Amount of Premiums
- Duration of coverage already paid

Please send a Xerox copy of policy to the undersigned as soon as possible.

In no case shall LCT JOSEPHINE sail without any insurance coverage.

Hoping for your (prompt) action on this regard.

Truly yours,

(sgd) ROGELIO L. MARTINEZ
Owner's representative [43]

Clearly, the petitioners, to whom the possession of LCT Josephine had been entrusted as early as the time when it was dry-docked for repairs, were obliged to insure the same. Unfortunately, they failed to do so in clear contravention of their respective agreements. Certainly, they should now all answer for the loss of the vessel.

WHEREFORE, the petitions are DENIED.

SO ORDERED.

Carpio,[*] Velasco, Jr., (Chairperson), Abad, and Sereno,**] JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 1029 dated June 30, 2011.

**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

[1] G.R. No. 160088 and G.R. No. 160565 consolidated as per Court Resolution dated May 17, 2004.

[2] Rollo (G.R. No. 160088), pp. 38-55. Penned by then Associate Justice Ruben T. Reyes (a retired member of this Court) with Associate Justices Andres B. Reyes (now Presiding Justice of the Court of Appeals) and Mariano C. Del Castillo (now an Associate Justice of this Court), concurring..

[3] Id. (G.R. No. 160505), p. 63.

[4] Records, pp. 85-100. Penned by Judge Antonio L. Descallar, RTC, Br. 60, Angeles City.

[5] Roland de la Torre is a petitioner in G.R. No. 160565 and one of the respondents in G.R. No. 160088.

[6] Rollo (G.R. No. 160088), p. 39.

[7] PTSC is also a petitioner in G.R. No. 160565 and the respondent corporation in G.R. No. 160088.

[8] Exhibit "C," Folder of Exhibits, Vol. 1, p. 194.

[9] Agustin de la Torre is the Petitioner in G.R. No. 160088 and one of the respondents in G.R. No. 160565; rollo (G.R. No. 160088), p. 41.

[10] Exhibits "2"/"102," Folder of Exhibits, vol. 3, p. 1.

[11] Exhibit "4"/"101," Folder of Exhibits, vol. 3, p. 3.

[12] Exhibit "3"/"103;" Folder of Exhibits, vol. 3, p. 2.

[13] CA rollo, p. 153.

[14] Exhibit "D," Folder of Exhibits, vol. 1, p. 196.

[15] CA rollo, pp. 86-88.

[16] Id. at 100.

[17] Id. at 94.

[18] Id. at 94-95.

[19] Id. at 99-100.

[20] Rollo (G.R. No. 160088), pp. 146-147.

[21] Rollo (G.R. No. 160565), pp. 200-201.

[22] Bormaheco, Inc. v. Malayan Insurance Co. Inc., G.R. No. 156599, July 26, 2010, 625 SCRA 309, 318-319.

[23] Rollo (G.R. No. 160088), p. 50.

[24] *Aboitiz Shipping Corporation v. CA*, G.R. Nos. 121833, 130752, 137801, October 17, 2008, 569 SCRA 294, 307.

[25] *Yangco v. Laserna*, 73 Phil. 330, 333 (1941).

[26] *Id.*

[27] *Id.* at 339.

[28] 338 Phil. 725 (2000).

[29] *Id.* at 751.

[30] 12 Phil. 747 (1909).

[31] *Id.* at 751-752.

[32] *Id.* at 747, 753.

[33] *Valenzuela Hardwood and Industrial Supply, Inc. v. CA*, G.R. No. 102316, June 30, 1997, 274 SCRA 642, 654.

[34] *National Steel Corporation v. CA*, 347 Phil. 345, 362 (1997); *Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc.*, 508 Phil. 656, 663 (2005).

[35] Article 18 of the New Civil Code:

Art. 18. In matters which are governed by the Code of Commerce and Special Laws, their deficiency shall be supplied by the provisions of this Code.

[36] Article 1189 of the New Civil Code:

Art. 1189. When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:

(1) x x x

(2) If the things is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or cannot be recovered.

x x x.

[37] Article 1665 of the New Civil Code:

Art. 1665. The lessee shall return the thing leased, upon the termination of the lease, just as he received it, save what has been lost or impaired by the lapse of time, or by ordinary wear and tear, or from an inevitable cause.

[38] Article 1667 of the New Civil Code:

Art. 1667. The lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place with his fault. This burden of proof on the lessee does not apply when the destruction is due to earthquake, flood, storm or other natural calamity.

[39] Article 1651 of the New Civil Code:

Art.1651. Without prejudice to his obligation toward the sublessor, the sublessee is bound to the lessor for all acts which refer to the use and preservation of the thing leased in the manner stipulated between the lessor and

the lessee.

[40] HERRERA, Remedial Law, Vol. I, 2000 Edition, p. 354

[41] Balquidra v. CFI of Capiz, Branch II, L-40490, October 28, 1977, 80 SCRA 123, 133.

[42] Article 1170 of the New Civil Code:

Art.1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[43] Exhibit "G," Folder of Exhibits, vol.1, p. 203.

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