

PHILIPPINES FIRST INSURANCE CO., INC., PETITIONER, VS. WALLEM PHILS. SHIPPING, INC., UNKNOWN OWNER AND/OR PROMULGATED: UNKNOWN CHARTERER OF THE VESSEL M/S "OFFSHORE MASTER"; AND ...

G.R. No. 165647. March 26, 2009

Ponente: TINGA, J.

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TINGA, J.:

Before us is a Rule 45 petition[1] which seeks the reversal of the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. No. 61885. The Court of Appeals reversed the Decision[4] of the Regional Trial Court (RTC) of Manila, Branch 55 in Civil Case No. 96-80298, dismissing the complaint for sum of money.

The facts of the case follow.[5]

On or about 2 October 1995, Anhui Chemicals Import & Export Corporation loaded on board M/S Offshore Master a shipment consisting of 10,000 bags of sodium sulphate anhydrous 99 PCT Min. (shipment), complete and in good order for transportation to and delivery at the port of Manila for consignee, L.G. Atkinson Import-Export, Inc. (consignee), covered by a Clean Bill of Lading. The Bill of Lading reflects the gross weight of the total cargo at 500,200 kilograms.[6] The Owner and/or Charterer of M/V Offshore Master is unknown while the shipper of the shipment is Shanghai Fareast Ship Business Company. Both are foreign firms doing business in the Philippines, thru its local ship agent, respondent Wallem Philippines Shipping, Inc. (Wallem).[7]

On or about 16 October 1995, the shipment arrived at the port of Manila on board the vessel M/S Offshore Master from which it was subsequently discharged. It was disclosed during the discharge of the shipment from the carrier that 2,426 poly bags (bags) were in bad order and condition, having sustained various degrees of spillages and losses. This is evidenced by the Turn Over Survey of Bad Order Cargoes (turn-over survey) of the arrastre operator, Asian Terminals, Inc. (arrastre operator).[8] The bad state of the bags is also evinced by the arrastre operator's Request for Bad Order Survey.[9]

Asia Star Freight Services, Inc. undertook the delivery of the subject shipment from the pier to the consignee's warehouse in Quezon City,[10] while the final inspection was conducted jointly by the consignee's representative and the cargo surveyor. During the unloading, it was found and noted that the bags had been discharged in damaged and bad order condition. Upon inspection, it was discovered that 63,065.00 kilograms of the shipment had sustained unrecovered spillages, while 58,235.00 kilograms had been exposed and contaminated, resulting in losses due to depreciation and downgrading.[11]

On 29 April 1996, the consignee filed a formal claim with Wallem for the value of the damaged shipment, to no avail. Since the shipment was insured with petitioner Philippines First Insurance Co., Inc. against all risks in the amount of P2,470,213.50,[12] the consignee filed a formal claim[13] with petitioner for the damage and losses sustained by the shipment. After evaluating the invoices, the turn-over survey, the bad order certificate and other

documents,[14] petitioner found the claim to be in order and compensable under the marine insurance policy. Consequently, petitioner paid the consignee the sum of P397,879.69 and the latter signed a subrogation receipt.

Petitioner, in the exercise of its right of subrogation, sent a demand letter to Wallem for the recovery of the amount paid by petitioner to the consignee. However, despite receipt of the letter, Wallem did not settle nor even send a response to petitioner's claim.[15]

Consequently, petitioner instituted an action before the RTC for damages against respondents for the recovery of P397,879.69 representing the actual damages suffered by petitioner plus legal interest thereon computed from the time of the filing of the complaint until fully paid and attorney's fees equivalent to 25% of the principal claim plus costs of suit.

In a decision[16] dated 3 November 1998, the RTC ordered respondents to pay petitioner P397,879.69 with 6% interest plus attorney's fees and costs of the suit. It attributed the damage and losses sustained by the shipment to the arrastre operator's mishandling in the discharge of the shipment. Citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,[17] the RTC held the shipping company and the arrastre operator solidarily liable since both the arrastre operator and the carrier are charged with and obligated to deliver the goods in good order condition to the consignee. It also ruled that the ship functioned as a common carrier and was obliged to observe the degree of care required of a common carrier in handling cargoes. Further, it held that a notice of loss or damage in writing is not required in this case because said goods already underwent a joint inspection or survey at the time of receipt thereof by the consignee, which dispensed with the notice requirement.

The Court of Appeals reversed and set aside the RTC's decision.[18] According to the appellate court, there is no solidary liability between the carrier and the arrastre operator because it was clearly established by the court *a quo* that the damage and losses of the shipment were attributed to the mishandling by the arrastre operator in the discharge of the shipment. The appellate court ruled that the instant case falls under an exception recognized in *Eastern*

Shipping Lines. [19] Hence, the arrastre operator was held solely liable to the consignee.

Petitioner raises the following issues:

- Whether or not the Court of Appeals erred in not holding that as a common carrier, the carrier's duties extend to the obligation to safely discharge the cargo from the vessel;
- Whether or not the carrier should be held liable for the cost of the damaged shipment;
- Whether or not Wallem's failure to answer the extra judicial demand by petitioner for the cost of the lost/damaged shipment is an implied admission of the former's liability for said goods;
- Whether or not the courts below erred in giving credence to the testimony of Mr. Talens.

It is beyond question that respondent's vessel is a common carrier.[20] Thus, the standards for determining the existence or absence of the respondent's liability will be gauged on the degree of diligence required of a common carrier. Moreover, as the shipment was an exercise of international trade, the provisions of the Carriage of Goods by Sea Act[21] (COGSA), together with the Civil Code and the Code of Commerce, shall apply.[22]

The first and second issues raised in the petition will be resolved concurrently since they are interrelated.

It is undisputed that the shipment was damaged prior to its receipt by the insured consignee. The damage to the shipment was documented by the turn-over survey[23] and Request for Bad Order Survey.[24] The turn-over survey, in particular, expressly stipulates that 2,426 bags of the shipment were received by the arrastre operator in

damaged condition. With these documents, petitioner insists that the shipment incurred damage or losses while still in the care and responsibility of Wallem and before it was turned over and delivered to the arrastre operator.

The trial court, however, found through the testimony of Mr. Maximino Velasquez Talens, a cargo surveyor of Oceanica Cargo Marine Surveyors Corporation, that the losses and damage to the cargo were caused by the mishandling of the arrastre operator. Specifically, that the torn cargo bags resulted from the use of steel hooks/spikes in piling the cargo bags to the pallet board and in pushing the bags by the stevedores of the arrastre operator to the tug boats then to the ports.[25] The appellate court affirmed the finding of mishandling in the discharge of cargo and it served as its basis for exculpating respondents from liability, rationalizing that with the fault of the arrastre operator in the unloading of the cargo established it should bear sole liability for the cost of the damaged/lost cargo.

While it is established that damage or losses were incurred by the shipment during the unloading, it is disputed who should be liable for the damage incurred at that point of transport. To address this issue, the pertinent laws and jurisprudence are examined.

Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them.[26] Subject to certain exceptions enumerated under Article 1734[27] of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.[28]

For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise. In *Standard Oil Co. of New York v. Lopez Castelo*,[29] the Court interpreted the ship captain's liability as ultimately that of the shipowner by regarding the captain as the representative of the ship owner.

Lastly, Section 2 of the COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act.[30] Section 3 (2) thereof then states that among the carriers' responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

The above doctrines are in fact expressly incorporated in the bill of lading between the shipper Shanghai Fareast Business Co., and the consignee, to wit:

4. PERIOD OF RESPONSIBILITY. The responsibility of the carrier shall commence from the time when the goods are loaded on board the vessel and shall cease when they are discharged from the vessel.

The Carrier shall not be liable of loss of or damage to the goods before loading and after discharging from the vessel, howsoever such loss or damage arises.[31]

On the other hand, the functions of an arrastre operator involve the handling of cargo deposited on the wharf or between the establishment of the consignee or shipper and the ship's tackle.[32] Being the custodian of the goods discharged from a vessel, an arrastre operator's duty is to take good care of the goods and to turn them over to the party entitled to their possession.[33]

Handling cargo is mainly the arrastre operator's principal work so its drivers/operators or employees should

observe the standards and measures necessary to prevent losses and damage to shipments under its custody.[34]

In *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.*[35] the Court explained the relationship and responsibility of an arrastre operator to a consignee of a cargo, to quote:

The legal relationship between the consignee and the arrastre operator is akin to that of a depositor and warehouseman. The relationship between the consignee and the common carrier is similar to that of the consignee and the arrastre operator. Since it is the duty of the ARRASTRE to take good care of the goods that are in its custody and to deliver them in good condition to the consignee, such responsibility also devolves upon the CARRIER. Both the ARRASTRE and the CARRIER are therefore charged with and obligated to deliver the goods in good condition to the consignee.(Emphasis supplied) (Citations omitted)

The liability of the arrastre operator was reiterated in *Eastern Shipping Lines, Inc. v. Court of Appeals*[36] with the clarification that the arrastre operator and the carrier are not always and necessarily solidarily liable as the facts of a case may vary the rule.

Thus, in this case the appellate court is correct insofar as it ruled that an arrastre operator and a carrier may not be held solidarily liable at all times. But the precise question is which entity had custody of the shipment during its unloading from the vessel?

The aforementioned Section 3(2) of the COGSA states that among the carriers' responsibilities are to properly and carefully load, care for and discharge the goods carried. The bill of lading covering the subject shipment likewise stipulates that the carrier's liability for loss or damage to the goods ceases after its discharge from the vessel. Article 619 of the Code of Commerce holds a ship captain liable for the cargo from the time it is turned over to him until its delivery at the port of unloading.

In a case decided by a U.S. Circuit Court, *Nichimen Company v. M/V. Farland*,[37] it was ruled that like the duty of seaworthiness, the duty of care of the cargo is non-delegable,[38] and the carrier is accordingly responsible for the acts of the master, the crew, the stevedore, and his other agents. It has also been held that it is ordinarily the duty of the master of a vessel to unload the cargo and place it in readiness for delivery to the consignee, and there is an implied obligation that this shall be accomplished with sound machinery, competent hands, and in such manner that no unnecessary injury shall be done thereto.[39] And the fact that a consignee is required to furnish persons to assist in unloading a shipment may not relieve the carrier of its duty as to such unloading.[40]

The exercise of the carrier's custody and responsibility over the subject shipment during the unloading actually transpired in the instant case during the unloading of the shipment as testified by Mr. Talens, the cargo surveyor, to quote:

Atty. Repol:

-

Do you agree with me that Wallem Philippines is a shipping [company]?

A

Yes, sir.

Q

And, who hired the services of the stevedores?

A

The checker of the vessel of Wallem, sir.[41]

x x x

Q

Mr. Witness, during the discharging operation of this cargo, where was the master of the vessel?

A

On board the vessel, supervising, sir.

Q

And, observed the discharging operation?

A

Yes, sir.

Q

And, what did the master of the vessel do when the cargo was being unloaded from the vessel?

A

He would report to the head checker, sir.

Q

He did not send the stevedores to what manner in the discharging of the cargo from the vessel?

A

And head checker po and siyang nagpapatakbo ng trabaho sa loob ng barko, sir.[42]

x x x

Q

Is he [the head checker] an employee of the company?

A

He is a contractor/checker of Wallem Philippines, sir.[43]

Moreover, the liability of Wallem is highlighted by Mr. Talen's notes in the Bad Order Inspection, to wit:

"The bad order torn bags, was due to stevedores[`] utilizing steel hooks/spikes in piling the cargo to [the] pallet board at the vessel's cargo holds and at the pier designated area before and after discharged that cause the bags to torn [sic]."[44] (Emphasis supplied)

The records are replete with evidence which show that the damage to the bags happened before and after their discharge[45] and it was caused by the stevedores of the arrastre operator who were then under the supervision of Wallem.

It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier. In the instant case, the damage or losses were incurred during the discharge of the shipment while under the supervision of the carrier. Consequently, the carrier is liable for the damage or losses caused to the

shipment. As the cost of the actual damage to the subject shipment has long been settled, the trial court's finding of actual damages in the amount of P397,879.69 has to be sustained.

On the credibility of Mr. Talens which is the fourth issue, the general rule in assessing credibility of witnesses is well-settled:

x x x the trial court's evaluation as to the credibility of witnesses is viewed as correct and entitled to the highest respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge therefore can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Therefore, unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment on credibility must be respected.[46]

Contrary to petitioner's stance on the third issue, Wallem's failure to respond to its demand letter does not constitute an implied admission of liability. To borrow the words of Mr. Justice Oliver Wendell Holmes, thus:

A man cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts [stated therein]. He no more can impose a duty to answer a charge than he can impose a duty to pay by sending goods. Therefore a failure to answer such adverse assertions in the absence of further circumstances making an answer requisite or natural has no effect as an admission.[47]

With respect to the attorney's fees, it is evident that petitioner was compelled to litigate this matter to protect its interest. The RTC's award of P20,000.00 as attorney's fees is reasonable.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated 22 June 2004 and its Resolution dated 11 October 2004 are REVERSED and SET ASIDE. Wallem is ordered to pay petitioner the sum of P397,879.69, with interest thereon at 6% per annum from the filing of the complaint on 7 October 1996 until the judgment becomes final and executory. Thereafter, an interest rate of 12% per annum shall be imposed.[48] Respondents are also ordered to pay petitioner the amount of P20,000.00 for and as attorney's fees, together with the costs of the suit.

SO ORDERED.

Austria-Martinez[*], Corona[**], Velasco, Jr., and Brion, JJ., concur.

[*]Additional Member per Special Order No. 593 lieu of J. Quisumbing who is on official business.

[**]Additional member per Special Order No. 600 in lieu of J. Carpio Morales who is on official business.

[1] Rollo, pp. 3-29.

[2] Id. at 31-37. Dated 22 June 2004. Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Danilo B. Pine and Arcangelita Romilla-Lontok.

[3] Id. at 54. Dated 11 October 2004. Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Mario L. Guariña III and Celia C. Librea-Leagogo.

[4] CA rollo, pp. 37-45. Dated 3 November 1998. Penned by Judge Hermogenes R. Liwag.

[5] Gathered from the findings of fact of the RTC decision. Supra note 4.

[6] Records, p. 93; Exhibit "C."

[7] Supra note 4 at 37.

[8] Records, p. 104. Exhibit "H" dated 20 October 1995.

[9] Id. at 105. Exhibit "I" dated 11 October 1995.

[10] Supra note 4 at 38.

[11] Id.

[12] Records, p. 82 and back thereof. Exhibits "B" and B-1."

[13] TSN, 30 June 1996, p. 7.

[14] Id. at 5.

[15] Supra note 1 at 8. Records, pp. 107-108, citing Exhibit "K" and "K-1."

[16] Supra note 4.

[17] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[18] Supra note 2.

[19] Supra note 14.

[20] CA rollo, pp. 41-42.

[21] Commonwealth Act No. 65 (1936).

[22] Commonwealth Act No. 65 (1936). "Section 1. That the provisions of Public Act No. 521 of the 74th Congress of the United States, approved on April 16, 1936, be accepted, as it is hereby accepted to be made applicable to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade: Provided, That nothing in this Act shall be construed as repealing any existing provision of the Code of Commerce which is now in force or as limiting its application." Approved on April 22, 1936.

However, in *American President Lines, Ltd. v. Klepper, et al.*, 110 Phil. 243, 248 (1960), reiterated in *Maritime Company of the Philippines v. Court of Appeals* (G.R. No. 47004. March 8, 1989, 171 SCRA 61), the Court ruled that the provisions of the Carriage of Goods by Sea Act are merely suppletory to the Civil Code in view of Articles 1753 and 1756 of the Civil Code.

See also *Sea-Land Service, Inc. v. Intermediate Appellate Court*, No. L-75118, 31 August 1987, 153 SCRA 552.

[23] Records, p. 104; Exhibit "H."

[24] Id. at 105; Exhibit "I."

[25] TSN, 5 December 1997, p. 9.

[26] Civil Code, Art. 1733.

[27] Civil Code, Art. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

- (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
- (2) Act of the public enemy in war, whether international or civil;
- (3) Act or omission of the shipper or owner of the goods;

(4) The character of the goods or defects in the packing or in the containers;

(5) Order or act of competent public authority.

[28] Civil Code, Art. 1736.

[29] 42 Phil. 256, 262 (1921).

[30] This is subject to Section 6 thereof which provides the carrier and the shipper are at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods provided that in this case, no bill of lading shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and marked as such.

[31] Records, dorsal side of p. 93. Exhibit "C-1."

[32] *Hijos de F. Escaño, Inc. v. National Labor Relations Commission*, G.R. No. 59229, 22 August 1991, 261 SCRA 63, 69.

[33] *Summa Insurance Corporation, v. Court of Appeals*, 323 Phil. 214, 223 (1996).

[34] *Fireman's Fund Insurance Co., v. Metro Port Service, Inc.*, G.R. No. 83613, 21 February 1990, 182 SCRA 455, 461.

[35] G.R. No. 83613, 21 February 1990, 182 SCRA 455.

[36] *Supra* note 14.

[37] 462 F.2d 319, 1972 AMC 1573 (2d Cir. 1972), as cited in Schoenbaum, Thomas J., *Admiralty and Maritime Law*, Vol. I, 4th Ed. (2004), p. 687.

[38] Schoenbaum, *id.*, then cites another case, *Sumitomo Corp. of America v. M./V. Sie Kim*, 632 F. Supp. 824, 1987 AMC 160 (S.D.N.Y. 1985) qualifying that the court ruled therein that a shipper and a carrier could enter into a valid agreement placing the duty and expense of loading the cargo on the shipper and, where damage is caused by improper stowage performed by a stevedore who was engaged by the shipper and over whom the carrier has no control, the carrier is not liable.

[39] §489, 70 Am Jur 2d, citing *Kerry v Pacific Marine Co.*, 121 Cal 546, 54 P 89.

[40] §375, 70 Am Jur 2d, citing *Standard Oil Co. v. Soderling*, 112 Ind. App. 437, 42 N.E. 2d 373 (1942).

[41] TSN, 5 December 1997, p. 12.

[42] It is the head checker who manages the operations inside the vessel, *sic*. TSN, 5 December 1997, pp. 13-14.

[43] *Id.* at 14.

[44] Records, p. 130; Exhibit I-f-3.

[45] *Id.* at 132. In Exhibit 1-h there is a surveyor's note which states: the bad order torn bags was due to stevedores mishandling snatching of bags at the inner cargo holds, before discharge and the forklift operator in towing the bags to the designated area at pier apron."

In similar tone, in Exhibit 1-j another surveyor's note states: "The bad order torn bags was due to stevedores/winch operator at the inner cargo holds before discharge and the forklift operator in towing the bag to the designated area at pier apron after discharged."

[46] *People of the Philippines v. Ramirez*, 334 Phil. 305 citing *People v. Gabris*, G.R. No. 116221, pp. 8-9, 11 July 1996; citing *People v. Vallena*, 244 SCRA 685, 1 June 1995.

[47] Cited in *Ravago Equipment Rentals, Inc. v. Court of Appeals*, 337 Phil. 584, 590-591 (1997) citing *A.B. Leach and Co. v. Peirson*, 275 US 120 [1927].

[48] *Supra* note 14.

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